

CASE NO.:
Appeal (civil) 8418 of 2002

PETITIONER:
Ghaziabad Development Authority

RESPONDENT:
Rajesh Chandra

DATE OF JUDGMENT: 27/09/2004

BENCH:
S. N. VARIAVA & B. P. SINGH

JUDGMENT:
J U D G M E N T

S. N. VARIAVA, J.

Before this Court a large number of Appeals have been filed by the Haryana Urban Development Authority and/or the Ghaziabad Development Authority challenging Orders of the National Consumer Disputes Redressal Commission, granting to Complainants, interest at the rate of 18% per annum irrespective of the fact of each case. This Court has, in the case of Ghaziabad Development Authority vs. Balbir Singh reported in (2004) 5 SCC 65, deprecated this practice. This Court has held that interest at the rate of 18% cannot be granted in all cases irrespective of the facts of the case. This Court has held that the Consumer Forums could grant damages/compensation for mental agony/harassment where it finds misfeasance in public office. This Court has held that such compensation is a recompense for the loss or injury and it necessarily has to be based on a finding of loss or injury and must co-relate with the amount of loss or injury. This Court has held that the Forum or the Commission thus had to determine that there was deficiency in service and/or misfeasance in public office and that it has resulted in loss or injury. This Court has also laid down certain other guidelines which the Forum or the Commission has to follow in future cases.

This Court is now taking up the cases before it for disposal as per principles set out in earlier judgment. On taking the cases we find that the copies of the Claim/Petitions made by the Respondent/Complainant and the evidence, if any, led before the District Forum are not in the paper book. This Court has before it the Order of the District Forum. The facts are thus taken from that Order.

In this case, the Respondent applied for a Shop on 30.10.1995 in Commercial Scheme Kaushambi, 1994 of the Appellants and the value of the shop was Rs.1,20,000/-. The Respondent deposited the entire amount with the Appellants, but the possession of the shop was not delivered, while the possession has been given to other allottees. The Respondent filed a Complaint before the District Forum. On these facts, the District Forum directed the Appellants to handover the physical possession of the shop within three months from the date of order after constructing the shop along with interest at the rate of 18% p.a. from 1.1.1997 till the date of possession and awarded a sum of Rs.2,000/- as cost and damages. It further directed that if the Order is not complied with within the said period, the Appellants shall pay interest at the rate of 21% p.a.

Aggrieved by this Order, the Appellants filed an Appeal before the State Forum challenging the Order of the District Forum. The State Forum partly allowed the Appeal modifying the order of the District Forum to the extent that it directed that the interest, at the

rate of 18% p.a., only shall be payable from 13.8.1997 till the date of delivery of possession and imposed a cost of Rs.2,000/- on the Appellants. The Appellants went in Revision before the National Commission. The National Commission dismissed the Revision relying upon its own decision in the case of Haryana Urban Development Authority v. Darsh Kumar and observing that interest @ 18% p.a. has been allowed by them under similar circumstances.

As has been stated in so many matters, the Order of the National Commission cannot be sustained. It cannot dispose of the matters by confirming award of interest in all matters irrespective of the facts of that case. It must, on facts of a case, award compensation/damage under appropriate heads if it comes to the conclusion that such award is justified/necessary. Accordingly, the Order of the National Commission is set aside.

We are informed that now possession of a shop is offered to the Respondent but a higher rate is being claimed. We find that before the State Forum a claim was made that Respondent must pay a higher rate. The State Forum did not direct Respondent to pay a higher amount. The State Forum instead confirmed the Order of the District Forum. Neither before the National Commission nor in the Appeal before us, is there any challenge or ground that the State Forum erred in not directing payment of higher amount. As there is no challenge we cannot permit oral submissions to the contrary.

We therefore direct that Respondent shall be given possession of the shop within two weeks from today without claiming any further or other amounts. As Respondent is getting the shop at the old rate, in our view, interest at the rate of 12% would be sufficient. The interest amount shall also be paid within two weeks from today, if not already paid. If however interest at a higher rate is already paid, then on principles set out by us in the case of Ghaziabad Development Authority vs. Balbir Singh (supra), no refund will be claimed.

We clarify that this Order shall not be taken as a precedent in any other matter as the order is being passed taking into account special features of the case. The Forum/Commission will follow the principles laid down by this Court in the case of Ghaziabad Development Authority vs. Balbir Singh (supra) in future cases.

With these observations, the Appeal stands disposed of with no order as to costs.