

CASE NO.:
Appeal (civil) 5120 of 2004

PETITIONER:
Haryana Urban Development Authority

RESPONDENT:
Capt. Piyush Babbarwal

DATE OF JUDGMENT: 10/08/2004

BENCH:
S. N. VARIAVA & ARIJIT PASAYAT

JUDGMENT:
J U D G M E N T
[Arising out of SLP (C) No. 13910 of 2003]

S. N. VARIAVA, J.

Leave granted.

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 was allotted a plot bearing No. 603, Sector 38, Urban Estate, Gurgaon vide letter dated 15th December, 1999. The Respondent paid the dues. But the possession has not been given till date.

The Consumer Disputes Redressal Commission, Union Territory, Chandigarh directed payment of interest @ 18% p.a. after two years from the date of deposit till the actual physical possession handed over. It also directed to pay an amount of Rs.50,000/- towards mental agony and harassment and Rs.2,000/- towards costs. The Respondent did not go in Revision before the National Commission. The Appellants went in Revision before the National Commission. The National Commission, while setting aside the award of Rs.50,000/- granted by the State Forum towards mental agony and harassment, maintained the rest of the order of the State Forum. We are told that interest @ 18% has been paid on 18th April, 2003. As set out in our above-mentioned Order there can be no recovery of

amounts paid to the Respondent. We therefore see no reason to interfere. We direct that the Appellants shall deliver possession within a period of one year from today. If possession is not delivered within one year the Respondent will be at liberty to approach this Court. After the possession is delivered, the Respondent will be entitled to approach the State Forum for working out the escalation in the cost of construction. The State Forum will then work out the escalation in the cost of construction as per the CPWD rates and award the same to the Respondent. After giving the possession the Appellant shall execute sale deed and, if applied, also give permission to construct without claiming anything extra except the registration charges.

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.

This Appeal is disposed of accordingly.