

CASE NO.:
Appeal (civil) 5862 of 2002

PETITIONER:
Haryana Urban Development Authority

RESPONDENT:
Som Nath

DATE OF JUDGMENT: 24/09/2004

BENCH:
S.N. VARIAVA & A.K. MATHUR

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 was allotted a plot bearing No. 408/MGA Sector, Hisar on 23rd March 1992. Delivery was to be given within 90 days. The Respondent paid substantial amounts but the possession was not delivered. Thus the Respondent filed a complaint. On these facts, the District Forum awarded interest @ 15% p.a. on the amounts deposited. The interest was directed to be payable after two years from the date of each deposit.

The State Forum dismissed the Appeal and confirmed the Order of the District Forum. The Appellants went in Revision before the National Commission. The National Commission dismissed the Revision filed by the Appellants 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 the Appellants have offered possession on 22nd April, 1997. Counsel had no instructions whether Respondent had taken possession or not. Undoubtedly the Respondent will be entitled to take possession, if he has not already taken possession. Appellants will deliver possession without demanding any further or other amounts.

We are informed that the Respondent has paid a sum of Rs.2,37,000/-. We however find from the copy of the allotment letter, filed in this Court along with the affidavit of the Estate Officer dated 29th July 2004, that only a sum of Rs.1,89,000/- was payable. As per the affidavit interest payable to the Respondent, as per the Orders mentioned hereinabove, is supposed to have been adjusted against alleged outstanding dues and only a sum of Rs.26,392/- has been paid to the Respondent on 23rd July 2004.

Counsel had no instructions and could not explain what were the amounts due from the Respondent. As stated above Respondent has paid more than what he was bound to pay. Also neither before the District Forum or the State Forum or the National Commission and even in the Appeal Memo before this Court is there a claim that Appellants have to recover amounts from the Respondent. When the dispute has been subjudice, the Appellants are bound to put before the Court/Forum not just their defence but also their claim/counterclaim, if any. Without permission of Court, the Appellants cannot set at naught awards of the Forum by raising, outside Court, demands against the Respondents. It must be remembered that the Appellants were to deliver possession in 90 days from 23rd March 1992. They do not offer possession till 1997. As can be seen from the Order of the District Forum possession was not being offered because development work had not taken place. As they were not in a position to deliver possession they cannot expect parties like the Respondent i.e. allottees to keep on paying installments to them. In such cases i.e. where Appellants are not in position to deliver possession they cannot charge interest on delayed payments till after they offer possession. Clause 5 of the letter of allotment also so provides. It reads as follows:

"5. The balance amount i.e. Rs.1,41,750/- of the above price of the plot/building can be paid in lump sum without interest within 60 days from the date of issue of the allotment letter or in six half yearly equal instalments. The first instalment will fall due after the expiry of one year of the date of issue of this letter. Each instalment would be recoverable together with interest on the balance price at 15% (fifteen percent) interest on the remaining amount. The interest shall, however accrue from the date of offer of possession."

Thus, interest could only have been charged from date of offer of possession.

As we are unable to understand and Counsel has no instructions to be able to explain why extra payment has been collected and what adjustments are purported to have been made, we direct that Appellants shall now recalculate in the manner set out hereunder. In this case, Appellants must pay interest at 15% from date of each deposit till date of payment. They will not charge interest on delayed payments prior to 22nd April 1997. If by that date the original price of

Rs.1,89,000/- had been paid they will not be entitled to and will not charge any interest. If anything extra is recovered they will repay that back to the Respondent with interest thereon at 15% from the date of such wrongful recovery till payment. We, however, clarify that if Appellants have a claim and feel that they have to recover such amounts from Respondent, they are at liberty to approach this Court for clarification/modification of the Order and if on that application they are permitted to so recover they may. But in the absence of any such permission, they shall not recover anything extra/over and above the allotment price of Rs.1,89,000/-.

Further, if TDS amount is deducted they will now pay that over to the Respondent with interest thereon at the rate of 15% from date it was so deducted till payment. Such recalculation to be made within 15 days from today and the amounts found due and payable to the Respondent to be paid to him within 15 days thereafter. A compliance report to be filed in this Court within one month from date. A copy of the recalculation to be annexed to the compliance report.

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.