

CASE NO.:
Appeal (civil) 469 of 2008

PETITIONER:
H.U.D.A.

RESPONDENT:
Prem Kumar Agarwal & Anr.

DATE OF JUDGMENT: 17/01/2008

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) 7650 OF 2004)
Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by the National Consumer Disputes Redressal Commission, New Delhi (in short the \021Commission\022). The issue before the Commissioner which was considered in the Revision Petition of the appellant was as follows.

\023When the possession of the plot originally allotted in a particular sector could not be given to the allottee for any reason for no fault of his and HUDA (Haryana Urban Development Authority) is required to allot an alternative plot in lieu thereof in any other sector, what price HUDA is to charge for the alternative plot allotted in the different sector.\024

3. The Commission was considering various cases and the case of HUDA v. R.P. Chawla (Revision Petition Nos.17-18 of 1997) was taken as an illustrative case. Ultimately, the Commission came to hold as follows:

\023The issue before us is the allotment of alternative plot. It is also to be seen that if for no fault of the allottee, he is deprived of his plot allotted to him and in lieu of that he is allotted some other plot in the same or any other sector he cannot be asked to pay the price over and above of original plot which he will have to pay. In this case allottee would be entitled to interest @ 18% per annum. The interest amount shall however be payable from the date of respective deposits of the amounts.\024

4. Rate of interest fixed by the Commission is under challenge.

5. Learned counsel for the appellant has submitted that in several cases this Court has held that a fixed rate of interest of 18% is high.

6. There is no appearance on behalf of respondents in spite of service of notice.

7. In Ghaziabad Development Authority v. Balbir Singh [2004(5) SCC 65] it was inter alia observed as follows:

\0238. However, the power and duty to award compensation does not mean that irrespective of facts of the case compensation can be awarded in all matters at a uniform rate of 18% per annum. As seen above, what is being awarded is compensation i.e. a recompense for the loss or injury. It therefore necessarily has to be based on a finding of loss or injury and has to correlate with the amount of loss or injury. Thus the Forum or the Commission must determine that there has been deficiency in service and/or misfeasance in public office which has resulted in loss or injury. No hard-and-fast rule can be laid down, however, a few examples would be where an allotment is made, price is received/paid but possession is not given within the period set out in the brochure. The Commission/Forum would then need to determine the loss. Loss could be determined on basis of loss of rent which could have been earned if possession was given and the premises let out or if the consumer has had to stay in rented premises then on basis of rent actually paid by him. Along with recompensing the loss the Commission/Forum may also compensate for harassment/injury, both mental and physical. Similarly, compensation can be given if after allotment is made there has been cancellation of scheme without any justifiable cause.

xxx

xxx

xxx

10. As has been set out hereinabove, the National Forum has been awarding interest at a flat rate of 18% per annum irrespective of the facts of each case. This, in our view, is unsustainable. Award of compensation must be under different separate heads and must vary from case to case depending on the facts of each case.

xxx

xxx

xxx

12. The National Forum in the lead judgment has considered the authorities of this Court in the case of Ghaziabad Development Authority v. Dhanesh Chand Goel and the case of Haryana Urban Development Authority v. Rajnish Chander Sharda. From these decisions, the National Forum has concluded that award of interest at the rate of 18% per annum on amount deposited by the allottee where there is a delay in handing over possession is reasonable and could be awarded on equitable grounds. In our view, this conclusion of the National Forum is not correct. In Dhanesh Chand Goel case the facts were gross. Those facts have been set out in

the order of the National Forum itself. Those facts show that GDA started a scheme for allotment of houses in Governdpuram. Dhanesh Chand had applied for allotment. He had paid the amount. He had been intimated on 16-11-1993 that he had been allotted a house, as per the draw held on 20-10-1993. Thereafter in 1996 he was informed that there was an increase in the price. He did not pay the increased amount and therefore possession was not given to him. It appears that the flat which had been allotted to him was thereafter allotted to one Shanti Suraksha Bal. Shri Dhanesh Chand was asked to give his option for allotment in some other scheme at a different place. It is under those circumstances that refund was directed with interest at the rate of 18% per annum. This Court while dismissing the special leave petition was careful enough to record that the rate of 18% interest per annum was reasonable given the facts recorded by the lower authority. Thus, this case shows that if the facts are gross then 18% interest could be given but the Forum must first conclude that the facts justify grant of interest at such a rate. Similarly, in Rajnish Chander Sharda case the facts were such that they justified a grant of interest at the rate of 18% per annum. This Court has noted that there was delay in delivery of possession and in the meantime the complainant had been compelled to live in rented accommodation and pay Rs.1600 per month. This Court has noted that interest at 18% was given instead of directing the body to compensate for the loss caused i.e. at the rate of Rs.1600 per month. It is on those facts that this Court upheld the grant of interest @ 18% per annum. Far from showing that these authorities justify grant of interest at 18% in all cases irrespective of the facts, the authorities of this Court clearly indicate that interest at such rate is to be granted only when the facts so justify.

19. That brings us to the question as to the date from which interest would be payable. Normally in cases of refund interest will be payable from the date the monies were deposited with the body till they are returned either by payment to that party or deposited in a court. In cases where compensation is directed to be paid, the Commission/Forum must direct payment within a particular period and further direct that if payment is not made within that time the authority will also pay interest. Such interest must be based on the current rate of interest.

xxx

xxx

xxx

24. We clarify that in all cases where interest has already been paid @ 18% irrespective of the above order, the authority will not be entitled to call upon the party to refund the amount which has already been paid.\024

(underlined for emphasis)

8. In para 19 quoted above it was held that such rate of interest has to be based on current rate. Considering the fact that by order dated 26.4.2004, we had directed stay of the amount payable beyond 12%, the respondent would be entitled to interest at the rate of 12% instead of 18% as fixed by the Commission.

9. The appeal is allowed to the aforesaid extent. No costs.

JUDIS