

CASE NO.:
Appeal (civil) 6035 of 2002

PETITIONER:
Haryana Urban Development Authority

RESPONDENT:
Dr. Ashok Kumar Aggarwal

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. 1144, Sector-14(P), Hisar on 21.8.1986. 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 entire deposited amount.

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 awarded 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 irrespective of the facts of that case. The National Commission may, on facts of a case, award

compensation/damages under a head set out in Balbir Singh's case (supra) if it concludes that such an award is justified. The Order of the National Forum accordingly stands set aside.

In this case possession has been given on 12th November 1997. Appellants have also paid a sum of Rs.80,767/- on 29th May 2000. However, whilst paying this amount they have deducted TDS. As these are payments towards compensation/damages for mental agony and harassment TDS could not have been deducted. The Appellants shall pay to the Respondent within one month from date of this Order the amount deducted as TDS with interest thereon at 12% from date of deduction till payment. In our view the payment already made and the refund of TDS amount will be sufficient recompense.

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.