

CASE NO.:
Appeal (civil) 5618 of 2004

PETITIONER:
Haryana Urban Development Authority

RESPONDENT:
Dev Dutt Gandhi

DATE OF JUDGMENT: 31/08/2004

BENCH:
S. N. VARIAVA & ARIJIT PASAYAT

JUDGMENT:
J U D G M E N T
[Arising out of SLP (C) No. 13072 of 2003]

S. N. VARIAVA, J.

Leave granted.
Delay condoned.

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. 1803 measuring 300 Sq. Yards in Sector 23, Sonapat on 8th August, 1991. As possession was not given, the Respondent applied for refund of his money with interest thereon. Refund was not given to him. He therefore filed a complaint before the District Forum. The District Forum by its Order dated 6th November, 1996 held that the Appellants were at fault in not delivering the possession for so many years. It found that there was no possibility of delivery of possession in the near future. It held that the Respondent could not wait indefinitely. It therefore directed for refund of all amounts paid with interest thereon at the rate of 18% per annum to be calculated from the date of payment till the date of actual refund. The Appeal filed by the Appellants was dismissed by the State Forum on 15th September, 1997. The National Commission disposed off the Revision filed by the

Appellants with a one paragraph Order relying upon its own decision in the case of Haryana Urban Development Authority vs. Darsh Kumar. We are informed that on 18th March, 1998 a sum of Rs. 2,26,470/- has been paid to the Respondent. As the Appellants were at fault in not developing the area for a number of years, the Commission was right in directing refund of amounts deposited. Normally, in case of refund of amount the Interest Act would have been applicable. However, as interest at the rate of 18% has already been paid on the principle laid down by this Court in the case of Ghaziabad Development Authority vs. Balbir Singh (supra) no refund can be claimed. Counsel could not explain whether TDS had been deducted before making the payment of Rs.2,26,470/-. As has been set out by the National Commission in its earlier Judgments and even by this Court, these are cases where amounts are being directed to be paid as compensation for mental harassment and agony and for failure of public duty. In such cases there is no question of deduction of TDS. If TDS has been deducted the Appellants shall, within two weeks from today, forward to the Respondent the amount of TDS deducted along with interest thereon at the rate of 12% from the date it was deducted till payment.

Save as above, we see no reason to interfere. The Appeal stands disposed of accordingly. There will be no order as to costs. 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.