

CASE NO.:
Appeal (civil) 5619 of 2004

PETITIONER:
Haryana Urban Development Authority & Ors.

RESPONDENT:
Smt. Amarjit Kaur

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) No.13898 of 2003)

S. N. VARIAVA, J.

Delay condoned.

Special 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 placed 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. 1162, Sector 14 (Part), Hisar, on 4th June 1991. Substantial payments had been made but the possession was not delivered as development work had not taken place. The Respondent filed the complaint before the District Forum.

The District Forum by its Order dated 2nd June 1998 directed payment of interest @ 18% p.a. from the date of deposit till the date of offer of possession. The State Forum, in the Appeal filed by the Appellants, reduced the rate of interest from 18% to 15% and directed interest to be payable after two years of the date of deposit. The National Forum disposed of the revision in terms of its Judgment in HUDA vs. Darsh Kumar.

The Order of the National Forum cannot be sustained for reasons set out in our Judgment in the case Ghaziabad Development Authority vs. Balbir Singh (supra). Each case has to be decided on the facts of that case. Award of interest at the rate of 18% irrespective of the facts of the case cannot be justified.

In this case, possession has been offered by a letter dated 12th November 1997 and interest @ 12% has been paid. However, TDS appears to have been deducted. We direct that the Respondent shall be entitled to take possession without any increase or escalation being claimed from him. The Appellants to inform the Respondent that he can take possession. As the possession is being delivered to the Respondent, in our view, interest @ 12% is sufficient. The Appellants shall, however, pay to the Respondent the amount of TDS, which have been deducted, with interest @ 12% from the date the amount was so deducted till payment.

We clarify that this Order shall not be taken as a precedent in any other matter as it has been passed by 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 directions, the Appeal stands disposed off with no order as to costs.