

CASE NO.:
Appeal (civil) 409 of 2003

PETITIONER:
Ghaziabad Development Authority

RESPONDENT:
R.B. Sharma

DATE OF JUDGMENT: 18/08/2004

BENCH:
S. N. VARIAVA & ARIJIT PASAYAT

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 in 1989 in the Indirapuram Housing Scheme. The Respondent paid all dues. Yet possession was not delivered within the time promised. As the Respondent was in urgent need of accommodation he asked for refund of his amount with interest thereon. The Appellants refunded the amount but deducted a sum of Rs.5,800/-. The Respondent thus filed a complaint stating that this amount should also be refunded with interest thereon.

The District Forum held that as the Appellants themselves not delivered possession within the time promised, the Respondent was entitled to the refund of all amounts deposited and the Appellants could not have deducted the sum of Rs.5,800/-. It therefore directed return of that amount with interest at the rate of 18% thereon. The State Forum dismissed the Appeal.

The National Forum has also dismissed the Revision.

We are in agreement with the observations of the District Forum. If the Appellants had not delivered possession within the time

promised the allottee would be entitled to claim for refund. Where the refund is claimed due to the faults of the Appellants themselves they cannot deduct any amount and must refund all the amounts received from the allottee. We therefore see no infirmity in the impugned Order or in the Orders of the District and State Forums. We are told interest at the rate of 10% has been paid. The Appellants shall now pay to the Respondent the balance amount of interest. The interest to be calculated from the date of deposit of each installment till the date of payment. If any TDS has been deducted the same shall also to be refunded with interest at the rate of 18% thereon. Along with the payment, the Appellants shall also handover the calculation sheet showing therein how they have calculated the interest amount.

We clarify that this Order shall not be taken as a precedent in any other matter having been passed on account of the 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.

The Appeal stands disposed off according.