

CASE NO.:
Appeal (civil) 5823 of 2002

PETITIONER:
Haryana Urban Development Authority

RESPONDENT:
Vijay Aggarwal

DATE OF JUDGMENT: 28/07/2004

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 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. 19, Sector 12-A, Gurgaon, in the year 1986. The Respondent paid all dues. The plot allotted turned out to be under litigation thus Complainant was not offered possession. The Complainant was then offered alternate plot No.30-P, Sector-9, Gurgaon, but a much higher price was claimed. Respondent was not willing to pay the higher price and asked for allotment of an alternate plot in original Sector at original price. This was not complied with thus Respondent filed a complaint.

On these facts, the District Forum directed that where the Appellants are not in a position to give possession of the plot allotted they must give an alternate plot at the original price. We are in full agreement with this view and hold that wherever a body like the Appellants is not in a position to deliver possession of the allotted plot, they must offer an alternate plot immediately at the same price. The alternate plot must be in the same Sector or near thereto.

The District Forum has directed delivery of possession of an alternate plot and awarded interest on the compensation amount at

the rate of 15% p.a. from the date of deposit till date possession is given. We are told that possession was given only in 2002.

The State Forum confirmed the Award in the Appeal filed by the Appellants. The Respondent did not go in Revision before the National Commission. The Appellants filed a Revision before the National Commission. The National Commission has increased the rate of interest to 18% p.a.

For reasons set out in the Judgment in the case Ghaziabad Development Authority vs. Balbir Singh (supra), the order of the National Commission cannot be sustained. As stated above, the relevant papers regarding the claim made, the affidavits filed, the evidence submitted before the District Forum are not produced before this Court. In this case, the District Forum has ensured that the possession is given at the old rate. Where possession is given at old rate the party has got benefit of escalation in price of land, thus there cannot and should not also be award of interest on the money. However, considering the fact that the allotment was in 1986 and possession given only in 2002, compensation towards mental agony/harassment should have been awarded. Compensation would also be awarded for escalation in costs of construction. In future compensation must be given under these heads.

In this case, considering the very long period during which no possession was given, on an ad hoc basis, we direct that for mental agony/harassment and for increase in costs of construction, compensation at the rate of 12% from the date of deposit till date of possession be awarded.

We are informed that in spite of there being no stay to payment of interest beyond 12% and in spite of clarification given by this Court's order (reported in (2004) 5 SCC 65), the interest amount has still not been paid. We feel that for the lapse Appellants must pay interest at the rate of 15% from 17th March, 2004 till payment. Appellants shall also pay costs fixed at Rs.500/- to the Legal Aid Society of the Supreme Court. The Appellants must recover the costs of Rs.500/- personally from the officer/s, who was responsible for not paying even after clarification by this Court.

We clarify that this Order shall not be taken as a precedent in any other matter as this has been passed taking special features of the case into account. 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 is disposed off in above terms. There will be no order as to costs.