

CASE NO.:
Appeal (civil) 5826 of 2002

PETITIONER:
Haryana Urban Development Authority & Ors.

RESPONDENT:
A. K. Rampal

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 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. 1579-P, Sector 15-11, Gurgaon, measuring 6 marlas on 27th November 1997. The Respondent made the initial deposit. The Respondent then found that the plot was encroached upon. The Respondent also pointed out other defects. He called upon Appellants to remove encroachments and defects. The Appellants did not remove the encroachment or cure the defects but called upon the Respondent to pay the balance price. As the Respondent did not pay the balance price, the Appellants cancelled the allotment and forfeited the deposit. The Respondent thus filed a complaint. On these facts, the District Forum has held that as the plot was encumbered and not free of defects, the Appellants could not have forfeited the amount deposited. The District Forum has directed refund with interest at the rate of 15% from date of deposit till repayment.

The Respondent filed an Appeal. The State Forum confirmed the Award. The Respondent filed a Revision before the National Commission. The Appellants also went in 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 of 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. However, during argument Counsel for the parties have shown us all relevant papers and documents. The Respondent had also demanded costs for mental agony and harassment. Nothing has been awarded under that head. Considering the fact that the Appellants allotted a plot which had been encroached upon and which in other respect was defective they should have allotted some other plot or got encroachment removed and defects cured. Instead they acted in a high handed manner by cancelling allotment and forfeiting the deposit. There has been mental agony and harassment. We are told that the monies, along with interest at the rate of 12%, have been repaid. In our view, interest of justice will be met if Appellants are directed to pay interest at the rate of 15% p.a. from date of deposit till repayment. Also considering the fact that Appellants have unnecessarily dragged the Respondent through the District Forum, State Forum, National Commission and this Court, they must pay to Respondent cost fixed at Rs.15,000/-.

We clarify that this Order shall not be taken as a precedent in any other matter as it has been passed by 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.

This Appeal is accordingly disposed off. There will be no order as to costs.