

CASE NO.:
Appeal (civil) 5882 of 2002

PETITIONER:
Haryana Urban Development Authority

RESPONDENT:
Mrs. Raj Mehta

DATE OF JUDGMENT: 24/09/2004

BENCH:
S.N. VARIAVA & A.K. MATHUR

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. 181/P.L.A. Sector, Hisar on 9th October 1989. The Respondent paid substantial amounts but the possession was not delivered. The Respondent thus filed a complaint. On these facts, the District Forum awarded interest @ 18% p.a. on the amounts deposited from the date of deposit till actual possession is delivered.

The State Forum dismissed the Appeal and confirmed the Order of the District Forum. The Appellants went in Revision before the National Commission. The National Commission dismissed the Revision filed by the Appellants relying upon its own decision in the case of Haryana Urban Development Authority v. Darsh Kumar and observing that interest @ 18% p.a. has been allowed by them under similar circumstances. As has been stated in so many matters, the Order of the National Commission cannot be sustained. It cannot dispose of the matters by awarding interest @ 18% in all matters irrespective of the facts of that case. The Order of the National Commission is hereby set aside.

In this case possession has been offered on 12th May 1997. Respondent has not taken possession as the Appellants have not complied with the Orders for payment of interest in spite of there being no Orders of stay i.e. their favour. The Appellants have purported to deduct a sum of Rs.1,99,453/- against alleged dues of the Respondent. Respondent has paid a sum of Rs.1,63,391/-.

We find in a number of matters that Appellants unilaterally seek to set off amounts directed to be paid by them against amounts claimed to be due to them. It therefore needs to be clarified that when a matter is sub-judice, then the Appellants have to place before the Court, all their defences/claims. If amounts are allegedly due and payable to them they must so state before the adjudicating body. Then the veracity of their claim can be tested. If before the District Forum or the State Forum or the National Commission, no such claim is made, then unilaterally they cannot raise a claim and seeking to adjust amounts directed to be paid by them. If this is allowed this would be a method of defeating decrees/awards of Courts/Forums. It would unnecessarily lead to another litigation.

In this case, even in the Appeal Memo before this Court, it has not been stated that amounts were recoverable from the Respondent. Counsel had no instructions and could not explain how amounts were allegedly due from the Respondent. Admittedly the Respondent has paid Rs.1,63,391/-. As possession was not being offered till 12th May 1997 the Appellants are not entitled to charge interest even though there may be delayed payments by the Respondent. If Appellants are at fault in not delivering possession they cannot expect Respondent/allottees to go on paying instalments to them. Also as stated in so many matters Appellants cannot deduct TDS as these are payments towards compensation/damages for mental agony and harassment and escalation in costs of construction.

Thus Appellants shall now within 15 days from date of this Order recalculate in this following manner. They shall pay interest at the rate of 12% per annum from date of each deposit till 17th March, 2004 and thereafter @ 15% per annum till payment. They will not be entitled to charge any interest on delayed payments, if any. They will also not be entitled to charge any escalation in price as delivery has to be given at the agreed rate. If TDS has been deducted they shall now pay that over also to the Respondent with interest thereon at 12% per annum from date it was deducted till payment. After recalculating on these basis they will forward to the Respondent the amounts found due and payable to him within one month from date of this Order. They must also send a calculation sheet to the Respondent indicating how they have recalculated. Appellants to also file a compliance report in this Court. Along with the compliance report they must annex the calculation sheet.

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.

With these observations, the Appeal stands disposed of with no order as to costs.