

HARYANA URBAN DEVELOPMENT AUTHORITY

v.

SAURABH AGGARWAL

SEPTEMBER 24, 2004

[S.N. VARIAVA AND A.K. MATHUR, JJ.]

Housing:

Interest—Rate of—Allotment of plot—Delay in handing over possession—Despite deposit of substantial amounts—District Forum awarded 18% interest p.a. on the deposited amount—Correctness of—Held: Interest cannot be granted @ 18% p.a. in all cases irrespective of facts—Development Authority to pay interest @ 15% p.a. from date of each deposit till date of payment—Authority will not charge interest on delayed payment prior to the date of offer of possession—If by that date the original allotment price had been paid the Authority will not be entitled to and will not charge any interest—If anything extra is recovered the Authority will repay that back to the allottee with interest thereon at 15% from the date of such wrongful recovery till payment—If the Authority has a claim and feels that it has to recover such amounts from the allottee, it is at liberty to approach the Supreme Court for clarification/modification of the order and if on that application it is permitted it may recover accordingly—But in the absence of any such permission it shall not recover anything extra/over and above the original allotment price—Further, if TDS amount is deducted the Authority will now pay that over to the allottee with interest thereon at the rate of 15% from the date it was so deposited till payment—This order shall not be taken as a precedent in any other matter as the order is being passed taking into account features of the case.

The respondent was allotted a plot by the appellant-Authority. The respondent had paid substantial amounts but the possession of the plot was not delivered. The respondent, therefore, filed a complaint before the District Consumers Disputes Redressal Forum which awarded interest @ 18% p.a. on the deposited amount. The State Consumers Disputes Redressal Forum confirmed the order of the District Forum but reduced the interest from 18% to 15%. The National Consumers Disputes Redressal Commission dismissed the Revision filed by the appellant on

A the ground that interest @ 18% had been allowed by it under similar circumstances. Hence the appeal.

Disposing of the appeal, the Court

B HELD: 1. The order of the National Consumers Disputes Redressal Commission cannot be sustained. It cannot dispose of the matters by confirming the award of interest in all matters irrespective of the facts of a case. It must, on facts of a case, award compensation/damage under appropriate heads if it comes to the conclusion that such an award is justified/necessary. Accordingly, the order of the National Commission is set aside. [708-B-C]

C *Ghaziabad Development Authority v. Balbir Singh*, [2004] 5 SCC 65, relied on.

D 2.1. The appellant must pay interest @ 15% from the date of each deposit till the date of payment. The appellant will not charge interest on delayed payment prior to the date of offer of possession. Thus, interest could only be charged from the date of offer of possession. If by that date the original allotment price had been paid the appellant will not be entitled to and will not charge any interest. If anything extra is recovered the appellant will repay that back to the respondent with interest thereon @

E 15% from the date of such wrongful recovery till payment. If the appellant has a claim and feels that it has to recover such amounts from the respondent, it is at liberty to approach this Court for clarification/modification of the order and if on that application it is permitted to so recover it may. But in the absence of any such permission, it shall not recover anything extra/

F over and above the original allotment price. [709-E-G]

2.2. Further, if TDS amount is deducted the appellant will now pay that over to the respondent with interest thereon at the rate of 15% from the date it was so deposited till payment. [709-H; 710-A]

G 3. 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 *Ghaziabad Development Authority's case*. [710-B-C]

H *Ghaziabad Development Authority v. Balbir Singh*, [2004] 5 SCC 65, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5877 of 2002. A

From the Judgment and Order dated 18.12.2001 of the National Consumers Disputes Redressal Commission, New Delhi in R.P. No. 229 of 2000.

Jai Prakash Dhanda and Mrs. Raj Rani Dhanda for the Appellant. B

The Judgment of the Court was delivered by

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 v. 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. C
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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. F

In this case, the Respondent was allotted a plot bearing No. 4/13(P) Sector, Hisar on 4th April 1986. The Respondent paid substantial amounts but the possession was not delivered. Thus the Respondent filed a complaint. On these facts, the District Forum awarded interest @ 18% p.a. on the deposited amount. G
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A The State Forum confirmed the Order of the District Forum but reduced
interest from 18% to 15%. 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*
B *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 confirming award of interest
in all matters irrespective of the facts of that case. It must, on facts of a case,
award compensation/damage under appropriate heads if it comes to the
conclusion that such award is justified/necessary. Accordingly the Order of
C the National Commission is set aside.

We are informed that the Appellants have offered possession on 22nd
July 1997. Counsel had no instructions whether Respondent had taken
possession or not. Undoubtedly the Respondent will be entitled to take
D possession, if he has not already taken possession. Appellants will deliver
possession without demanding any further or other amounts.

We are informed that the Respondent has paid a sum of Rs.1,68,338.25.
We however find from the copy of the allotment letter, filed in this Court
along with the affidavit of the Estate Officer dated 29th July 2004, that a sum
E of Rs.1,68,186.50 was payable. In the affidavit the following statement is
made:

“The interest on the amounts deposited by the respondent has
been adjusted on 25.5.1998 for an amount of Rs.2,49,829.65 at the
F interest rate of 15% p.a.”

Counsel had no instructions and could not explain what were the
amounts due from the Respondent which are supposed to have been adjusted.
As stated above Respondent has paid more than what he was bound to pay.
Also neither before the District Forum or the State Forum or the National
G Commission and even in the Appeal Memo before this Court is there a claim
that Appellants have to recover amounts from the Respondent. When the
dispute has been subjudice the Appellants are bound to put before the Court/
Forum not just their defence but also their claim/counterclaim, if any.
Without permission of Court the Appellants cannot set at naught awards of
H the Forum by raising, outside Court, demands against the Respondents. It

must be remembered that the Appellants were to deliver possession within a reasonable time. They do not offer possession till 22nd July 1997. As can be seen from the Order of the District Forum possession was not being offered because development work had not taken place. As they were not in a position to deliver possession they cannot expect parties like the Respondent i.e. allottees to keep on paying installments to them. In such cases i.e. where Appellants are not in position to deliver possession they cannot charge interest on delayed payments till after they offer possession. Clause 6 of the letter of allotment also so provides. It reads as follows:

“6. The balance amount i.e. Rs.1,26,139/50 of the above tentative price of the plot/building can be paid in lump sum without interest within 60 days from the date of issue of the allotment letter or in six equal instalments. The first instalment will fall due after the expiry of one year of the date of issue of this letter. Each instalment would be recoverable together with interest on the balance price at 10% interest on the remaining amount. The interest shall, however accrue from the date of offer of possession.”

Thus, interest could only have been charged from date of offer of possession.

As we are unable to understand and Counsel has no instructions to be able to explain why extra payment has been collected and/or what adjustments are purported to have been made, we direct that Appellants shall now recalculate in the manner set out hereunder. In this case, Appellants must pay interest at 15% from date of each deposit till date of payment. They will not charge interest on delayed payments prior to 22nd July 1997. If by that date the original price of Rs.1,68,186.50 had been paid they will not be entitled to and will not charge any interest. If anything extra is recovered they will repay that back to the Respondent with interest thereon at 15% from the date of such wrongful recovery till payment. We, however, clarify that if Appellants have a claim and feel that they have to recover such amounts from Respondent, they are at liberty to approach this Court for clarification/modification of the Order and if on that application they are permitted to so recover they may. But in the absence of any such permission, they shall not recover anything extra/over and above the allotment price of Rs.1,68,186.50.

Further, if TDS amount is deducted they will now pay that over to the Respondent with interest thereon at the rate of 15% from date it was so

A deposited till payment. Such recalculation to be made within 15 days from today and the amounts found due and payable to the Respondent to be paid to him within 15 days thereafter. A compliance report to be filed in this Court within one month from date. A copy of the recalculation to be annexed to the compliance report.

B 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 v. Balbir Singh* (supra) in future cases.

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

V.S.S.

Appeals disposed of.