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HARYANA URBAN DEVELOPMENT AUTHORITY

v.

SOMA DEVI

SEPTEMBER 27, 2004

B

[S.N. VARIAVA AND B.P. SINGH, JJ.]

Urban Development :

C

Land Development Authority—Allotment of plot—Non-delivery—Claim for refund of amount—Order for refund with interest at the rate of 18% by Consumer Courts—Receipt of refund money—On appeal to Supreme Court plea of allottee for possession of the plot—Held: Allottee having claimed only for refund and having received the same cannot subsequently claim for possession—Refund with interest at the rate of 18% justified—Estoppel—Consumer Protection Act, 1986.

D

Respondent was allotted plot by appellant-Authority. Despite payment of substantial amount possession was not delivered. Respondent filed complaint claiming refund of amounts paid. District Forum directed refund with interest at the rate of 18% p.a. State Commission on appeal reduced the interest rate to 12% p.a. National Commission upheld the payment of interest at the rate of 18% p.a. on principles laid down in

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***Ghaziabad Development Authority v. Balbir Singh*. Appellants refunded the amount to the respondent.**

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On the respondent showing the correspondence wherein he had asked for possession, this Court directed delivery of possession to the Respondent. In fact it was only a case of refund and not possession. Possession was thus delivered to the Respondent.

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Respondent contended that she was also entitled to delivery of possession as the allottee of neighbouring plot had also been given possession, and that she would remit the market value for the same.

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Disposing of the appeal, the Court

HELD: 1. Respondent having claimed a refund and having received the amounts can now have no right to possession. The possession obtained under orders of this Court was without disclosing proper facts to this Court. Respondent cannot be allowed to retain possession. Respondent is directed to forthwith return the possession to the Appellants. [763-E]

2. As refund has been made with interest at the rate of 18%, on principles laid down in the case of *Balbir Singh*, no refund can now be claimed by the Appellants. [763-G]

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

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7596 of 2002.

From the Judgment and Order dated 3.12.2001 of the National Consumer Disputes Redressal Commission, New Delhi in R.P. No. 2006 of 2001.

J.P. Dhanda, Ms. Raj Rani Dhanda and Vineet Dhanda for the Appellant.

Pardeep Gupta, S.K. Trivedi and K.K. Mohan for the Respondent.

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

A guidelines which the Forum or the Commission has to follow in future cases.

B 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.

C In this case, the Respondent was allotted a plot bearing No. 93, Sector-15, Jagadhri on 23.8.1991. The Respondent paid substantial amounts but the possession was not delivered as the plot was under litigation. Thus, the Respondent filed a complaint claiming refund of amounts paid. On these facts, the District Forum directed refund with interest on amounts deposited @ 18% p.a. from each date of deposit till its actual payment. It further directed to pay Rs.5,000 as compensation on account of harassment and mental agony and awarded Rs.2,000 as cost of litigation.

D The State Forum dismissed the Appeal and modified the Order of the District Forum by reducing the interest from 18% p.a to 12% p.a. 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.

F When this matter reached hearing on 1st September, 2004, counsel for the Respondent, without pointing out that in this case the only Order was directing refund of monies paid, showed to Court correspondence wherein Respondent had asked for possession of plot and some officer of the Appellants had offered possession on certain terms. We had thus presumed, on that date, that this was also a matter where Appellants had been directed to deliver possession. Thus by Order dated 1st September, 2004 we had directed that possession be given to the Respondent.

G We are informed that the Appellants have in obedience of our Order given possession. However, now, on looking into the matter, we find that the only Orders are for refund of monies with interest.

H It is not denied that Appellants have on 1st July, 2004 paid to

Respondent a sum of Rs. 4,97,736. They have also, on 26th July, 2004, paid another sum of Rs. 3,000 to the Respondent. The Appellants have thus complied with the Orders directing refund of amounts deposited with interest thereon.

On behalf of Respondent it was submitted that the Respondent is willing to return the sums of Rs. 4,97,736 and Rs.3, 000 to the Appellants and is also willing to pay the market value, as on date, of the plot of which possession is delivered to him. It is submitted that the person who had been allotted the neighbouring plot has also been given possession of his plot and thus the Respondent, is also entitled to possession of the plot.

On behalf of the Appellants it is submitted that the Respondent had asked for a refund of monies deposited by him and thus his monies have been refunded with interest. It is submitted that the Respondent is thus not entitled to possession of any plot. It is submitted that for the first time orally submissions are being made about the allottee of the neighbouring plot. It is submitted that it is possible that the allottee of the neighbouring plot may have waited for possession and not asked for a refund and thus that case may not be a comparable case.

We see substance in submission on behalf of the Appellants. Respondent having claimed a refund and having received the amounts can now have no right to possession. The possession obtained under Orders of this Court was without disclosing proper facts to this Court. Respondent cannot be allowed to retain possession. We therefore direct that the Respondent forthwith return the possession to the Appellants. If Respondent does not return possession, Appellants will be at liberty to take back possession. If Respondent wants a plot, she may apply afresh under any of the Schemes of the Appellants. Such application, if made, will undoubtedly be dealt with on merits in accordance with normal policy.

As refund has been made with interest at the rate of 18%, on principles laid down by us in the case of *Ghaziabad Development Authority v. Balbir Singh* (supra) no refund can now be claimed by the Appellants.

Thus, this Appeal stands disposed off with no further or other Orders. No order as to costs.

K.K.T.

Appeal disposed of.

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