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v.

PREM KUMAR AGARWAL & ANR.

(C.A. No. 469 of 2008)

JANUARY 17, 2008

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[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Interest – Rate of – Allowed by National Consumer Commission at the rate of 18% per annum – Propriety of – Held: Rate of interest has to be based on current rate – Hence rate of interest directed to be at the rate of 12%.

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National Consumer Disputes Redressal Commission allowed interest @ 18% per annum on the appellant-Authority holding that the Authority could not charge price for alternative plot allotted to the respondent, over and above the price of original plot. In the present appeal, the authority has challenged the award of interest as being on the high side.

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Partly allowing the appeal, the Court

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HELD: Rate of interest on compensation has to be based on current rate. Considering the fact that this court by the interim order had directed stay of the amount payable beyond 12%, the respondent would be entitled to interest at the rate of 12% instead of 18% as fixed by the Commission. [Para 8] [811-H; 812-A]

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Ghaziabad Development Authority v. Balbir Singh 2004(5) SCC 65 – relied on.

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 469 of 2008.

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From the final Judgment and Order dated 20.10.2003 of the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 2892 of 2003.

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A D.P. Singh, Sanjay Jain, Rajat Vohra and Priyanka Singh
for the Appellant.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

B 2. Challenge in this appeal is to the order passed by the
National Consumer Disputes Redressal Commission, New
Delhi (in short the 'Commission'). The issue before the
Commissioner which was considered in the Revision Petition
of the appellant was as follows.

C "When the possession of the plot originally allotted in
a particular sector could not be given to the allottee for any
reason for no fault of his and HUDA (Haryana Urban
Development Authority) is required to allot an alternative
D plot in lieu thereof in any other sector, what price HUDA is
to charge for the alternative plot allotted in the different
sector."

E 3. The Commission was considering various cases and
the case of *HUDA v. R.P. Chawla* (Revision Petition Nos.17-18
of 1997) was taken as an illustrative case. Ultimately, the
Commission came to hold as follows:

F "The issue before us is the allotment of alternative plot. It
is also to be seen that if for no fault of the allottee, he is
deprived of his plot allotted to him and in lieu of that he is
allotted some other plot in the same or any other sector he
cannot be asked to pay the price over and above of original
plot which he will have to pay. In this case allottee would
be entitled to interest @ 18% per annum. The interest
amount shall however be payable from the date of
G respective deposits of the amounts."

4. Rate of interest fixed by the Commission is under
challenge.

H 5. Learned counsel for the appellant has submitted that in
several cases this Court has held that a fixed rate of interest of

18% is high.

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6. There is no appearance on behalf of respondents in spite of service of notice.

7. In *Ghaziabad Development Authority v. Balbir Singh* [2004(5) SCC 65] it was inter alia observed as follows:

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"8. However, the power and duty to award compensation does not mean that irrespective of facts of the case compensation can be awarded in all matters at a uniform rate of 18% per annum. As seen above, what is being awarded is compensation i.e. a recompense for the loss or injury. It therefore necessarily has to be based on a finding of loss or injury and has to correlate with the amount of loss or injury. Thus the Forum or the Commission must determine that there has been deficiency in service and/or misfeasance in public office which has resulted in loss or injury. No hard-and-fast rule can be laid down, however, a few examples would be where an allotment is made, price is received/paid but possession is not given within the period set out in the brochure. The Commission/Forum would then need to determine the loss. Loss could be determined on basis of loss of rent which could have been earned if possession was given and the premises let out or if the consumer has had to stay in rented premises then on basis of rent actually paid by him. Along with recompensing the loss the Commission/Forum may also compensate for harassment/injury, both mental and physical. Similarly, compensation can be given if after allotment is made there has been cancellation of scheme without any justifiable cause.

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10. As has been set out hereinabove, the National Forum has been awarding interest at a flat rate of 18% per annum irrespective of the facts of each case. This, in our view, is unsustainable. Award of compensation must be under

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A different separate heads and must vary from case to case depending on the facts of each case. †

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B 12. The National Forum in the lead judgment has considered the authorities of this Court in the case of *Ghaziabad Development Authority v. Dhanesh Chand Goel* and the case of *Haryana Urban Development Authority v. Rajnish Chander Sharda*. From these decisions, the National Forum has concluded that award of interest at the rate of 18% per annum on amount deposited by the allottee where there is a delay in handing over possession is reasonable and could be awarded on equitable grounds. In our view, this conclusion of the National Forum is not correct. In *Dhanesh Chand Goel*.

C case the facts were gross. Those facts have been set out in the order of the National Forum itself. Those facts show that GDA started a scheme for allotment of houses in Governampuram. Dhanesh Chand had applied for allotment. He had paid the amount. He had been intimated on 16-11-1993 that he had been allotted a house, as per the draw held on 20-10-1993. Thereafter in 1996 he was informed that there was an increase in the price. He did not pay the increased amount and therefore possession was not given to him. It appears that the flat which had been allotted to him was thereafter allotted to one Shanti Suraksha Bal. Shri Dhanesh Chand was asked to give his option for allotment in some other scheme at a different place. It is under those circumstances that refund was directed with interest at the rate of 18% per annum. This Court while dismissing the special leave petition was careful enough to record that the rate of 18% interest per annum was reasonable given the facts recorded by the lower authority. Thus, this case shows that if the facts are gross then 18% interest could be given but the Forum must first conclude that the facts justify grant of interest at

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such a rate. Similarly, in *Rajnish Chander Sharda* case A
the facts were such that they justified a grant of interest at
the rate of 18% per annum. This Court has noted that
there was delay in delivery of possession and in the
meantime the complainant had been compelled to live in
rented accommodation and pay Rs.1600 per month. This B
Court has noted that interest at 18% was given instead of
directing the body to compensate for the loss caused
i.e. at the rate of Rs.1600 per month. It is on those facts
that this Court upheld the grant of interest @ 18% per
annum. *Far from showing that these authorities justify C*
grant of interest at 18% in all cases irrespective of the
facts, the authorities of this Court clearly indicate that
interest at such rate is to be granted only when the
facts so justify.

19. That brings us to the question as to the date from D
which interest would be payable. Normally in cases of
refund interest will be payable from the date the monies
were deposited with the body till they are returned either
by payment to that party or deposited in a court. In cases E
where compensation is directed to be paid, the
Commission/Forum must direct payment within a
particular period and further direct that if payment is not
made within that time the authority will also pay interest.
Such interest must be based on the current rate of
interest. F

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24. We clarify that in all cases where interest has already
been paid @ 18% irrespective of the above order, the
authority will not be entitled to call upon the party to refund G
the amount which has already been paid."

(underlined for emphasis)

8. In para 19 quoted above it was held that such rate of
interest has to be based on current rate. Considering the fact H

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B 9. The appeal is allowed to the aforesaid extent. No costs.

K.K.T.

Appeal partly allowed.