

CASE NO.:
Appeal (civil) 7173 of 2002

PETITIONER:
Ghaziabad Development Authority

RESPONDENT:
Balbir Singh

DATE OF JUDGMENT: 03/12/2004

BENCH:
H.K. SEMA & TARUN CHATTERJEE

JUDGMENT:
J U D G M E N T

O R D E R

Heard the parties.

This appeal is directed against the judgment and award passed by the National Consumer Disputes Redressal Commission (in short 'the Commission') awarding interest @ 18% per annum. In view of the order that we propose to pass, necessary facts leading to the filing of the present appeal are obviated. In fact, the appellant has deposited/paid the entire amount of 18% interest and in that view of the matter the appeal is virtually rendered infructuous in view of the order rendered by this Court in Ghaziabad Development Authority v. Balbir Singh (2004) 5 SCC 65: 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 the amount which has already been paid."

This Court after threadbare consideration of the submissions in Balbir Singh's case (supra) in paragraphs 8, 9, 22 and 23, by way of illustrations, as to under what circumstances interest @ 18% would be justifiable.

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.

9. That compensation cannot be uniform and can best be illustrated by considering cases where possession is being directed to be delivered and cases where only monies are directed to be returned. In cases where possession is being directed to be delivered the compensation for harassment will necessarily have to be less because in a way that party is being compensated by increase in the value of the property he is getting. But in cases where monies are being simply returned then the party is suffering a loss inasmuch as he had deposited the money in the hope of getting a flat/plot. He is being deprived of that flat/plot. He has been deprived of the benefit of escalation of the price of that flat/plot. Therefore the compensation in such cases would necessarily have to be higher. Further if the construction is not of good quality or not complete, the compensation would be the cost of putting it in good shape or completing it along with some compensation for harassment. Similarly, if at the time of giving possession a higher price or other amounts are collected unjustifiably and without there being any provision for the same the direction would be to refund it with a reasonable rate of interest. If possession is refused or not given because the consumer has refused to pay the amount, then on the finding that the demand was unjustified the consumer can be compensated for harassment and a direction to deliver possession can be given. If a party who has paid the amount is told by the authority that they are not in a position to ascertain whether he has paid the amount and that party is made to run from pillar to post in order to show that he has paid the amount, there would be deficiency of service for which compensation for harassment must be awarded depending on the extent of harassment. Similarly, if after delivery of possession, the sale deeds or title deeds are not executed without any justifiable reasons, the compensation would depend on the amount of harassment suffered. We clarify that the above are mere examples. They are not exhaustive. The above shows that compensation cannot be the same in all cases irrespective of the type of loss or injury suffered by the consumer.

22. In Civil Appeal No. 7224 of 2002 the respondent had applied for a house in a scheme floated in 1992. He had paid the entire cost. He had been allotted a flat and issued a reservation letter. Yet no possession was given. Thereafter, in 1996 the respondent was informed that for unavoidable reasons the house has been allotted to somebody else and if he desires, he can obtain an alternate flat at a much higher price. This, therefore, is also a case where there is absolutely no justifiable reason why the party has not been delivered possession of the flat which had been allotted to him nor has any offer been made to return his money with interest. Instead the body has asked the party to apply for an alternate flat at a higher rate. In our view, on these facts the award of interest at the rate of 18% is justified. It is not just interest on the amount invested but is also compensation for the harassment and agony caused to the allottee. We have given these two instances only by way of illustrations.

23. As stated above, the interest, in both these cases will be payable from the date the monies were paid till they are

retained or deposited in court/tribunal. We, however, clarify that merely because we are maintaining awards of interest, it must not be taken to mean that in future the Commission/Forum must not work out compensation under various heads and that they can continue to grant interest only by way of damages/ compensation."

Mr. Vijay Hansaria, learned Senior counsel, however, contended that interest should be reckoned from the "date" of deposit to the "date" of offer of possession and not actual taking of possession. He, therefore, contended that when the body offers to the allottee for taking of possession and if the allottee does not take possession without assigning any reasons nor reply to the offer of possession, no interest from the date of offer would be accrued on the amount deposited by the allottee. There is some substance in this contention. Now the consumers are aware that interest are being awarded for belated delivery of possession/non-delivery of possession and unscrupulous consumer may, on one pretext or the other, deliberately avoid taking of possession with a design to earn more interest. In the present case, possession was offered on 26.2.1996. The allottee did not take the possession nor furnished any reply to the offer of possession. He filed a complaint on 28.2.1996 before the District Forum and ultimately, possession was delivered on 14.8.1996. In our view, in such a situation, if there is no reply filed by the allottee assigning the reasons for not being able to take possession, the rate of interest would be reckoned from the date the amount is deposited to the date the offer for possession is made by the body. Similarly, if the allottee replies to the offer stating thereunder the reason for not taking over the possession, as offered by the body, and the reason assigned is reasonably acceptable the Commission may then examine the reasons assigned by the allottee and may pass necessary order. In the present case, the offer of possession was made on 26.2.1996. Instead of taking possession or filing reply to the offer, the allottee filed a complaint before the District Forum on 28.2.1996. Thereafter, the allottee took the possession only on 14.8.1996. There is nothing on record to show that the allottee has replied to the letter of offer of 26.2.1996. This being the position, the allottee would not be entitled to the interest from 26.2.1996 till possession was delivered on 14.8.1996. As explained above, the position would have been different had the allottee filed reply to the letter of offer. As this type of litigation is recurring in nature, we are of the view that other contentions of Mr. Vijay Hansaria also deserve consideration. Learned Senior counsel submits that in case of delivery of possession, albeit belatedly, the rate of interest could be different from non-delivery of possession/ cancellation of scheme/ offer of alternative plots/flats at higher price which has already been dealt with by this Court in Balbir Singh's case (supra). Normally, a case of delivery of possession, though belatedly, stands on a different footing from non-delivery of possession at all because in case of delivery of possession, though belatedly, the allottee also enjoys the benefit of plot/flat. Generally, in such a situation the rate of interest should not exceed 12%. However, as already observed by this Court in Balbir Singh's case (supra) no hard-and-fast rules can be laid down. In a specific case where it is found that delay was culpable and there is no contributory negligence by the allottee resulting in harassment/injury, both mental and physical, the Forum/Commission would not be precluded from making an award in excess of 12% interest per annum. Such order must, however, be supported with reasons. There is yet another contention of the learned counsel for the appellant, which requires consideration. Mr. Hansaria submits that the period the stay granted by the High Court/Court remains operative should not be counted towards the award of interest. In the present case, the stay order was operative from 24.4.1991 to 16.12.1993. This Court in Balbir Singh's case (supra) has dealt with this contention and held that after the enquiry if it was found that the authority was prevented from delivery of possession to anybody by the stay order the interest for the period for which the stay was operative could be refused. We reiterate the view that in such a situation the authority could make an inquiry and if the enquiry report

discloses that the developmental activities/construction of the plot/flat comes to a standstill by reason of interim order thereby prevented the body from delivery of possession, the interest for the period the stay was operative could be refused. Similarly, if the inquiry report shows that despite the operation of the interim order the developmental activities/construction continued and the body was not prevented from delivery of possession, the interest could be awarded during such period also.

As the appellant has already deposited/paid 18% interest amount, they are precluded from calling upon the party to refund the same.

The appeal is, accordingly, disposed of in the above terms.

JUDIS