
(2000) 09 NCDRC CK 0021

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

GHAZIABAD
DEVELOPMENT
AUTHORITY

APPELLANT

Vs

YASH PAL SINGH
CHHABRA

RESPONDENT

Date of Decision: Sept. 14, 2000

Citation: 2001 1 CPJ 139

Hon'ble Judges: K.C.Bhargava , D.D.Bahuguna J.

Final Decision: Appeal dismissed

Judgement

1. THIS is an appeal against the judgment and order dated 31.12.1996 passed by District Consumer Forum, Ghaziabad in Complaint Case No. 1548 of 1994.

2. THE facts of the case stated in brief are that the complainant applied for a flat in Pratap Vihar Scheme-497. THEREafter, the allotment was changed to Govindpuram Housing Scheme for which the Ghaziabad Development Authority agreed. In terms of the allotment order, a sum of Rs. 1,75,000/- and interest of Rs. 20,810/-, total a sum of Rs. 1,95,810/- was deposited by the complainant. According to the complainant, the construction work has been completed in September, 1990. THE complainant was asked to deposit the enhanced cost of Rs. 24,400/- and lease rent of Rs. 5,711/- by allotment-cum-possession letter dated 18.10.1994.

The complainant has alleged that the Ghaziabad Development Authority has used sub-standard materials. There are no roads and sewer, etc. and the house is not

worth-living. The complainant has alleged that he is residing in a rented house paying Rs. 1,500/- per month. He has, therefore, claimed Rs. 55,000/- towards rent paid by him. It is alleged that he took the loan for payment to the Ghaziabad Development Authority. The complainant has prayed for delivering the possession of the house, rent of Rs. 55,000/- and Rs. 35,000/- as interest which has been wrongly charged by the Ghaziabad Development Authority besides the cost etc.

In the written version it has been alleged that the complainant was allotted a house in Govindpuram Housing Scheme. The approximate cost of which was Rs. 1,75,000/- but was later on increased to Rs. 1,99,400/-. The colony has been fully developed and now the possession has been delivered to the complainant. There is no deficiency in service on the part of the Ghaziabad Development Authority.

3. THE learned District Forum, after considering the case of the parties, directed for handing over of the possession of the property within two months to the complainant after completing all the formalities and it also directed for payment of interest at the rate of 18% per annum with effect from 1.9.1993 till the date of payment. It was also directed that if any amount is due to be paid by the complainant, then the same may be adjusted from the interest paid by the Ghaziabad Development Authority.

Aggrieved against this order of the learned District Forum, the Ghaziabad Development Authority has come in appeal and has challenged the correctness of the order. We have heard the learned Counsel for the appellant.

4. LEARNED Counsel for the appellant has argued that the possession has already been delivered on 5.6.1997. According to the learned Counsel, the notice for taking possession of flat was sent on 15.10.1994, hence the interest should not be awarded. No letter of possession has been filed as alleged by the learned Counsel for the appellant. In absence of any such letters having proved the service of the same on the complainant, the Ghaziabad Development Authority is liable to pay the interest. According to the learned Counsel a sum of Rs. 24,400.00 towards enhanced cost was deposited. The learned District Forum has already taken it into consideration and ordered for adjustment of this amount towards the interest payable by the appellant.

Learned Counsel has further argued that the interest awarded is on the higher side. The learned Counsel for the appellant has argued that interest at the rate of 6% per annum should only be awarded while the learned Counsel for the complainant has argued that interest at the rate of 18% per annum be awarded. Learned Counsel for the complainant/respondent has placed reliance on the case of Dr. Ramesh Chandra Ramaniklal Shah & Ors. v. Lata Construction Company & Ors., I (1996) CPJ 81 (NC), decided by the National Commission. In that case the possession was not delivered within the time given in the agreement. When the house was not delivered in time the National Commission found that there was a deficiency in service on behalf of M/s. Lata Construction Company and awarded interest at the rate of 18% per annum. Similarly the National Commission in the case of George Thomas & Ors. v. Ghaziabad Development Authority, I (1999) CPJ 18 (NC), has held that the possession was not given to the allottee as per the scheme. The option was given by the Ghaziabad Development Authority to the complainant for taking another plot but the complainant did not agree to this proposition. On the basis of these facts, the National Commission held that there was deficiency in service on behalf of the Ghaziabad Development Authority and allowed interest at the rate of 18% per annum because Ghaziabad Development Authority recovers interest at the rate of 18% per annum on defaults on the amounts payable to it. Thus this case law also shows that the interest at the rate of 18% per annum is payable by the Development Authorities.

The learned Counsel for the opposite party has also placed reliance on the case of Surendra Kaur v. Government of Punjab & Ors., (1998) 9 Supreme Court Cases 592. The Hon"ble Supreme Court has allowed interest at the rate of 18% per annum.

5. WHEN the delay is on the part of the Development Authority/Housing Board, it is liable to pay interest to the complainant for the period during which the amount remained deposited with it. The learned District Forum has awarded interest at the rate of 18% per annum from the respective dates of deposits till the date of payment. Learned Counsel for the appellant has argued that the interest awarded at the rate of 18% per annum is on the higher side and has placed reliance on the case of Ghaziabad Development Authority v. Union of India & Anr., II (2000) CPJ 1 (SC)=IV (2000) SLT 654=2000 CTJ 205. In this case the Hon"ble Supreme Court has held as under :

"WHEN a Development Authority announces a scheme for allotment of plots, the brochure issued by it for public information is an invitation to offer. Several members of public may make applications for availing benefit of the scheme. Such applications are offers. Some of the offers having been accepted subject to rules of priority or preferences laid down by the Authority result into a contract between the application and the Authority.

The legal relationship governing the performance and consequences flowing from breach would be worked out under the provisions of the Contract Act and the Specific Relief Act except to the extent governed by the law applicable to the Authority floating the scheme. In case of breach of contract, damages may be claimed by one party from the other who had broken its contract obligation in some way or the other. The damages may be liquidated or unliquidated. Liquidated damages are such damages as have been agreed upon and fixed by the parties in anticipation of the breach. Unliquidated damages are such damages as are required to be assessed. Broadly the principle underlying assessment of damages is to put the aggrieved party monetarily in the same position as far as possible in which it would have been if the contract would have been performed. Here the rule as to remoteness of damages comes into play. Such loss may be compensated as the parties would have been contemplated at the time of entering into the contract. The party held liable to compensation shall be obliged to compensate for such losses as directly flow its breach."

6. THE Supreme Court goes to say that "the ordinary heads of damages allowable in contracts for sale of land are settled. A vendor who breaks the contract by failing to convey the land to the purchaser is liable to damages for the purchaser's loss of bargain by paying the market value of the property at the fixed time for completion less the contract price. THE purchaser may claim the loss of profit he intended to make from a particular use of the land if the vendor had actual or imputed knowledge thereof. For delay in performance the normal nature of damages is the value of the use of the land for the period of delay viz., usually its rental value".

On the question of interest which is to be awarded, the Hon"ble Supreme Court has held that the terms of the brochure issued by the Authority are relevant in a particular case. The Hon"ble Supreme Court has distinguished the case of Sovintorg (India) Limited v. State Bank of India, New Delhi, II (1999) CPJ 4 (SC)=VI (1999) SLT 545=(1999) 6 SCC 406, in which the rate of interest was enhanced to 15% per annum. It was observed as under :

"However, in the case before us, the parties have not tendered any evidence enabling formation of opinion on the rate of interest which can be considered ideal to be adopted. The rate of interest awarded in equity should neither be too high or too low. In our opinion awarding interest at the rate of 12 per cent per annum would be just and proper and meet the ends of justice in the cases under consideration. The provision contained in the brochure issued by the Development Authority that it shall not be liable to pay any interest in the event of an occasion arising for return of the amount should be held to be applicable only to such cases in which the claimant is itself responsible for creating

circumstances providing occasion for the refund. In the cases under appeal the fault has been found with the Authority. The Authority does not, therefore, have any justification for resisting refund of the claimant's amount with interest."

The rate of interest allowed by the Hon"ble Supreme Court was only 12% per annum. That was the interest on the basis of the facts which were placed before the Hon"ble Supreme Court. The Court itself has observed that in that case which was before it, the parties have not tendered any evidence enabling formation of any opinion on the rate of interest which can be considered ideal to be adopted. Thus the case which was decided by the Hon"ble Supreme Court was on facts of that particular case in which the parties did not lead any evidence. The Hon"ble Supreme Court observed that it may come to a definite conclusion on the rate of interest on the basis of peculiar facts of the case.

7. THE facts of the present case are different from the facts of the case decided by Hon"ble Supreme Court. Here in the brochure issued by the Development Authority/Housing Board, provision is there that if the amount is not paid in accordance with the schedule mentioned in the brochure, then the interest for the delayed period shall be charged at the rate of 18% per annum. Thus when the Development Authority/Housing Board is charging interest at the rate of 18% per annum if any delay is made in the payment of instalments, then the same applies to it also. When the Development Authority/Housing Board has made provision for charging penal interest at the rate of 18% per annum on delayed payments, then on principles of equity and law, it is bound to pay interest at the same rate. In case of *George Thomas & Ors. v. Ghaziabad Development Authority* (supra), the National Commission has held that the interest payable shall be 18% per annum because the Development Authority is charging the same rate of interest from the allottees in case they fail to pay interest in time. THEREfore, keeping in view the facts of the case and law applicable to it as laid down by Hon"ble Supreme Court, it is held that in the present case the rate of interest payable shall be at the rate of 18% per annum. Thus, in view of what has been said above, the appeal is liable to be dismissed. Order THE appeal is dismissed. THE judgment and order of the learned District Consumer Forum are confirmed. Let compliance of the order be made within a period of two months from the date of this order. Let copy as per rules be made available to the parties. Appeal dismissed.