

A PUNJAB URBAN PLANNING & DEVELOPMENT
AUTHORITY

v.

BHUPINDER SINGH
(Civil Appeal No. 7727 of 2002)

B JULY 14, 2008

[ALTAMAS KABIR AND DR. MUKUNDAKAM SHARMA,
JJ]

C *Consumer Protection Act, 1986 – s. 14(1)(d) – Compensation – Housing – Interest on earnest money – Advertisement for allotment of houses – Stipulation therein that interest would not be payable on earnest money – First draw of lots – Unsuccessful applicants not seeking refund of earnest money – Such applicants included in second draw of lots – Unsuccessful applicants returned earnest money but without interest – Challenge to – Forums below directing the Development Authority to pay interest on earnest money deposited @ 18% p.a. from two years after date of deposit till date of payment – On appeal, held: Complainants got benefit of such retention by participating in second draw of lots – Applicants having not asked for refund, cannot take advantage of their lapse – More so, they would have not raised the claim, had they succeeded in second draw – Thus, the Authority should not be burdened with the responsibility of non-refund of earnest money from date of deposit to date of filing complaint – Rate of interest reduced to 10% p.a. from date of deposit till date of actual payment.*

G In 1989, the appellant-PUDA invited applications for allotment of Higher Income Group (Single Storey) category houses. The amount of Rs. 4000/- was to be deposited as earnest money. However, no interest was payable on its refund. The appellant received applications and draw of lots was held. Among the unsuccessful applicants, 1965 applicants did not seek refund of earnest money and were not returned the same.

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Seven years later, PUDA formulated a Scheme for construction of 354 Higher Income Group Houses. The notice was published in the newspaper that the applicants who applied in 1989 and had not withdrawn the earnest money would be considered in draw of lots for 154 houses. 200 houses were to be offered to the fresh applicants at present rates. The second draw of lots was held. The unsuccessful applicants were returned the earnest money of Rs. 4000/ deposited by them. However, no interest was paid on the earnest money even though it had been retained since 1989. Aggrieved, applicants filed complaints before the District Forum claiming compensation from PUDA by way of interest @ 24% p. a. on the earnest money deposited by them. The complaints were allowed. PUDA was directed to pay interest on the amount deposited as earnest money in 1989, @ 18% p.a. for the period commencing from two years after the date of deposit till the date of payment. Both the State Commission and the National Commission upheld the order. Hence the present appeal.

Partly allowing the appeals, the Court

HELD: 1.1 The earnest money deposited by the respondents in 1989, when making applications for acquiring Higher Income Group (Single storey) Category Houses had not been returned to the respondents, while in other cases the same was returned to the applicants. The explanation given by PUDA that such earnest money was refunded to those who had claimed such refund, but was not refunded to those who did not, is not very convincing. However, it cannot be overlooked that the respondents did get the benefit of such retention by being permitted to participate in the draw of lots held for the second time on 20.9.1996. Apart from that, there is also no explanation as to why the respondents had not asked for refund of the earnest money and allowed the same to remain with PUDA. [Para 16] [967-H; 968-A,B & C]

A 1.2 The respondents did not object to the contents
of the public notice published in the "Tribune", categori-
cally indicating that those applicants who had earlier ap-
plied for allotment of Higher Income Group Houses and
had not withdrawn the deposit of Rs.4,000/- made by them
B would also be included in the draw of lots scheduled to
be held on 20th September, 1996 for 154 such houses. On
the other hand, the respondents allowed themselves to
be included in the draw and only when they proved to be
unsuccessful, then they moved the Consumer Forum con-
C tending that they were entitled to interest on the deposit
which had been made in 1989 and had not been returned
to them by PUDA. [Para 17] [968-C,D & E]

1.3 There is also nothing on record to show that the
respondents had even asked for return of their individual
D deposits of Rs.4,000/-, with or without interest thereupon,
from PUDA before the same was returned to them after
they were unsuccessful in the second draw of lots. De-
spite, the stipulation in the advertisements that no inter-
est would be paid on the earnest money, the District Fo-
E rum allowed the complaints made by the respondents and
awarded cost in each case together with interest at the
rate of 18% per annum for the period from the date of de-
posit up to the date of payment of the total amount, less a
period of two years from the date of deposits. Since no
F one had appeared on behalf of PUDA before the District
Forum, the matter was proceeded with ex-parte and
merely upon recording that it was specified that PUDA
had retained the amount of Rs.4,000/- from 10th March,
1989 till 19th January, 1997, without any reasonable cause,
G which amounted to deficiency in service on the part of
PUDA, it granted interest to the complainant at the rate of
18%. [Para 17] [968-F,G,H; 969-A & B]

1.4 In the appeal filed by PUDA, the State Commis-
sion did not give much importance to the stipulation con-
H tained in the advertisement that no interest would be pay-

able on the registration fee, and without taking into account the fact that on the basis of the said deposits the respondents had been included in the second draw of lots, affirmed the order passed by the District Forum. [Para 18] [969-B & C]

1.5 On the failure of the respondents to ask for refund of the deposited amount within a reasonable time, the same was not refunded to them by PUDA. Not having asked for such refund, the respondents cannot also take advantage of their lapse. If the respondents had succeeded in the second draw of lots, this question, which has been raised on their behalf before the Consumer Forum might never have arisen. It will be inequitable to saddle the appellants only with the responsibility of non-refund of the earnest money between 10th March 1989 and 19th January, 1997. [Para 20] [969-G & H; 970-A & B]

1.6 The rate of interest payable by the appellant, as directed by the District Forum and upheld by the State Commission, at the rate of 18% per annum from the date of deposit till the date of actual payment shall stand reduced to 10% for the period in question. [Para 21] [970-B & C]

S.P. Davaskar vs. Housing Commissioner Karnataka Housing Board 1977 CCJ 360; George Thomas and ors. Vs. Ghaziabad Development Authority and Anr. 1999 (1) CPC 183 – distinguished.

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 7727 of 2002

From the Judgment and Order dated 18.9.2001 of the National Consumer Disputes Redressal Commission, New Delhi in R.P. No. 1057/2001

WITH

Civil Appeal No. 7728, 7730, 7726, 7729 of 2002 and C.A. No. 4366 of 2008

A Rachna Joshi Issar and Rupal Bhatia for the Appellant.
Bhupinder Singh Respondent - In - Person.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Civil Appeal Nos. 7726 to 7730
B arise out of a common order dated 18th September, 2001,
passed by the National Consumer Disputes Redressal Com-
mission in respect of Revision Petitions Nos. 1056, 1057, 1058,
1136 and 1055 of 2001. Special Leave Petition (C) No. 7280
C of 2002 arises out of a similar order of the National Commis-
sion dated 7th November, 2001, passed in Revision Petition
No. 1743 of 2001. Since the five appeals arise out of a com-
mon order of the National Commission and the issue involved
in the special leave petitions is the same, all the six matters
were taken up for hearing and final disposal together. Leave is
D granted in Special Leave Petition (C) No. 7280 of 2002.

2. As will appear from the materials on record, in 1989 the
Punjab Urban Planning and Development Authority (hereinafter
referred to as the "PUDA"), the appellant herein, invited applica-
E tions from persons who wished to acquire Higher Income Group
(Single Storey) category houses at Phase IX SAS Nagar. Inter-
ested applicants were required to deposit a sum of Rs.4,000/-
while making such application. In the advertisement inviting appli-
cations, it was categorically mentioned that no interest would be
payable on the earnest money. About 5416 applications were re-
F ceived by PUDA in response to the said advertisement and draw
of lots for houses immediately available in Phase IX SAS Nagar
was held on 10th November, 1989. According to PUDA, the infor-
mation sheet, supplied along with the prescribed application forms,
made it clear that allotment of houses would be made on the basis
G of draw of lots and that the deposit of earnest money would not
create any vested right of allotment to any of the applicants. Ac-
cording to PUDA, earnest money was refunded to those unsuccess-
ful applicants who desired that their earnest money be returned
to them. However, out of the unsuccessful applicants, 1965 appli-
H cants did not seek refund of their earnest money.

3. It transpires that in 1991 the Department of Housing and Urban Development of the Government of Punjab was merged with the Punjab Housing Development Board. In 1995, the Punjab Housing Development Board which had been constituted under the Punjab Housing Development Board Act, 1972, was abolished by virtue of the provisions of the Punjab Regional and Town Planning and Development Act, 1995 (hereinafter referred to as "the 1995 Act"). The Punjab Urban and Development Authority was thereafter constituted with effect from 1st July, 1995, under the provisions of the 1995 Act and was given the responsibility for the effective and planned development of housing schemes and for undertaking Urban Development and Housing Programmes for establishing new towns in the State of Punjab. It appears that on account of non-availability of suitable land with PUDA, no High Income Group Scheme could be formulated for construction of Higher Income Group houses between 1989 and July, 1996.

4. In 1996 PUDA formulated a scheme for construction of 354 Higher Income Group Houses on land available in Sector 70 SAS Nagar. It also appears that under Section 23 of the 1995 Act, the authority is competent to appoint one or more committees for securing efficient discharge of the functions of the authority. Under Regulation 8 of the Punjab Urban Planning and Development Authority (Committees and Conduct of Business) Regulations, 1996, the Finance and Accounts Committee was duly constituted to perform the function of determining prices and policies for disposal of land, plots and houses, besides discharging other functions. The said committee at its meeting held on 24th July, 1996, considered the question of disposal of the proposed 354 partially finished duplex houses in Sector 70, SAS Nagar and took the following decision:

"Item No. 9.07. Disposal of 354 independent partially finished duplex houses in Sector 70, SAS Nagar.

Approved with the modification that 154 houses be offered to old applicants and 200 to fresh applicants at present

A rates. It may be ensured that money deposited by old or
new applicants be refunded to all unsuccessful applicants
immediately after draw of lots."

B 5. Pursuant to the aforesaid decision, a public notice was
published in the Tribune on 12th September, 1996, wherein it
was announced that the applicants who had applied in 1989 for
Higher Income Group Scheme by deposit of Rs.4,000/- and had
not received refund of the same would be considered for allot-
ment by draw of lots for 154 such houses in Sector 70, SAS
Nagar. Subsequently, on 20th September, 1996, it appears that
C those applicants who had participated in the draw of lots on
10th November, 1989, and had not withdrawn their earnest
money, were included in the draw of lots for the 154 Higher In-
come Group Houses in Sector 70 SAS Nagar.

D 6. That all the applicants who were successful in the draw
of lots conducted on 20.9.1996 were issued allotment letters
and those who were unsuccessful were returned the earnest
money of Rs.4,000/- which had been deposited by them. Since
the said earnest money was returned by PUDA without any in-
E terest calculated thereupon, some of the unsuccessful candi-
dates filed complaints before the District Forum complaining
that despite having retained the earnest money of Rs.4,000/-
since 1989, PUDA had refunded only the said amount without
any interest thereupon. The complainants in the several com-
plaints claimed compensation from PUDA in respect of the
F earnest money deposited by them by way of interest at the rate
of 24% per annum apart from compensation for harassment,
mental agony and inconvenience. The applicants also prayed
for costs of the proceedings.

G 7. The appellant herein contested the several proceed-
ings initiated by the unsuccessful applicants and took a plea
that no interest was required to be paid on the amount depos-
ited by the complainants on account of the fact that it had been
categorically mentioned in the advertisement inviting applica-
H tions that no interest would be payable on the earnest money.

On the basis of the evidence before it the District Forum allowed the complaints and awarded a cost of Rs.550/- in each case and also directed PUDA to pay interest on the amount deposited as earnest money at the rate of 18% per annum for the period up to the date of payment of the total amount to the complainants, less a period of two years from the date of deposit. A B

8. Aggrieved by the aforesaid order of the District Forum, PUDA filed appeals before the Consumer Disputes Redressal Commission, Chandigarh. The submissions made before the District Forum that interest was not payable on the earnest money was reiterated and it was also indicated that since the earnest money deposited by the respondents in 1989 had not been returned to them, as the respondents had not asked for refund of the same, they had been given a second opportunity to participate in the draw of lots on the basis of their original deposit, although, the deposits for participating in the subsequent draw of lots held on 20.9.1996 was much higher. PUDA's case appears to be that on the strength of the earnest money deposited once the respondents had been given two opportunities to participate in the draw of lots and that it could not, therefore, be contended that the said sums deposited by way of earnest money had been retained by PUDA with an ulterior objective in mind. C D E

9. Concurring with the view expressed by the District Forum and relying upon the decision of the National Commission in the case of S.P. Davaskar vs. Housing Commissioner Karnataka Housing Board, reported in 1977 CCJ 360, the Appellate Forum came to the conclusion that according to the law as explained by the National Commission in its above decision, PUDA was required to pay interest on the amounts deposited which were kept by the Board for a period of 2 years or more. The Consumer Disputes Redressal Commission, Chandigarh, accordingly dismissed the appeals preferred by PUDA upon holding that the District Forum had rightly allowed the interest at a rate which was neither excessive nor unreasonable. F G H

A 10. The said decision of the Consumer Disputes
Redressal Commission, Chandigarh was challenged by PUDA
before the National Consumer Disputes Redressal Commis-
sion, New Delhi, by way of Revision. The same was, however,
B dismissed by the National Commission which agreed with the
decision of the District Forum directing PUDA to pay interest
on the deposits made in 1989 and left unreturned till 1996, at
the rate of 18% per annum for the period commencing from two
years after the date of deposit till the date of payment.

C 11. It is against the said order of the National Commission
that the present appeals have been filed.

D 12. Right at the outset it was submitted on behalf of PUDA
that the proceedings taken by the respondents before the Con-
sumer Forum were invalid and ought not to have been enter-
tained by the District Forum, inasmuch as, no case of deficiency
of service had been made out on behalf of the respondents to
attract the provisions of the Consumer Protection Act, 1986.
E Appearing for the appellant, Ms. Rachna Joshi Issar submitted
that it had been consistently held by this Court that the onus of
proving deficiency of service is upon the complainant seeking
relief under the Consumer Protection Act. The respondent did
not have any vested right of allotment unless they succeeded in
the draw of lots. It was submitted that the respondents on their
application had only a right to be considered for allotment if
F they were otherwise eligible and that they have been so consid-
ered for allotment on 10.11.1989 and also on 20.9.1996 when
the earnest money was fixed at Rs.62,700/-, as against
Rs.4,000/- deposited by them at the time of the first draw of lots
held on 10.11.1989. Ms. Issar urged that neither had any malafide
been alleged or proved against PUDA in the conduct of pro-
ceedings relating to the draw of lots on both the dates. Accord-
G ingly, in the absence of any case for deficiency of service or
breach of contract made out by the applicants, the application
before the District Forum was entirely misconceived and wholly
without jurisdiction.

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13. Ms. Issar also urged that when initially the draw of lots was held on 10.11.1989, those unsuccessful applicants who desired refund of their earnest money were given such refund immediately. Out of the unsuccessful candidates 1965 applicants did not seek refund of their earnest money which was retained by PUDA to give such applicants an opportunity to participate in the next draw of lots. Mr. Issar also reiterated that in the advertisement inviting applications it had been clearly indicated that no interest would be payable on the earnest money deposited and that having regard to the above the respondents should have asked for refund of the amount deposited by them without waiting for the same to be refunded by PUDA.

14. Ms. Issar submitted that the respondents should not be allowed to approbate and reprobate in the same breath having participated in the second draw of lots on the basis of the earnest money deposited by them earlier, and, on the other hand, claiming interest thereupon after being unsuccessful in the draw of lots. Ms. Issar submitted that this amounted to malice in law and the claim of the respondents, instead of being allowed, should have been rejected with appropriate costs.

15. At this stage it may be indicated that when the appeals were taken up for final hearing on 3.4.2008, no one appeared on behalf of the respondents in any of the appeals, and, accordingly, fresh notices were issued to the respondents indicating that in the event they were not represented on the next date of hearing, the appeals would be heard and disposed of finally in the absence of the respondents. The Office Report dated 5.5.2008, indicates that notices had been issued to all the respondents on 9.4.2008 but neither the AD Cards nor the unserved covers have been received back. Since one month had expired when the appeals were again listed for hearing and still no one was present on behalf of the respondents, the appeals were taken up for hearing in their absence.

16. From the materials placed before us by Ms. Issar, the admitted position is that the earnest money deposited by the

A respondents in 1989, when making applications for acquiring
Higher Income Group (Single storey) Category Houses at Phase
IX, SAS Nagar, had not been returned to the respondents, while
in other cases the same was returned to the applicants. The
B explanation given by PUDA that such earnest money was re-
funded to those who had claimed such refund, but was not re-
funded to those who did not, is not very convincing. It cannot,
however, be overlooked that the respondents did get the ben-
C efit of such retention by being permitted to participate in the
draw of lots held for the second time on 20.9.1996. Apart from
that, there is also no explanation as to why the respondents had
not asked for refund of the earnest money and allowed the same
to remain with PUDA.

17. Furthermore, the respondents did not object to the con-
D tents of the public notice published in the "Tribune" on 12th Sep-
tember, 1996, categorically indicating that those applicants who
had earlier applied for allotment of Higher Income Group Houses
and had not withdrawn the deposit of Rs.4,000/- made by them
would also be included in the draw of lots scheduled to be held
E on 20th September, 1996 for 154 such houses in Sector 70 SAS
Nagar. On the other hand, the respondents allowed themselves
to be included in the draw and only when they proved to be un-
successful, then they moved the Consumer Forum contending
that they were entitled to interest on the deposit which had been
F made in 1989 and had not been returned to them by PUDA. Of
course, there is also nothing on record to show that the respon-
dents had even asked for return of their individual deposits of
Rs.4,000/-, with or without interest thereupon, from PUDA be-
G fore the same was returned to them after they were unsuccess-
ful in the second draw of lots. Despite, the stipulation in the
advertisements that no interest would be paid on the earnest
money, the District Forum allowed the complaints made by the
H respondents and awarded cost in each case together with in-
terest at the rate of 18% per annum for the period from the date
of deposit up to the date of payment of the total amount, less a
period of two years from the date of deposits. Since no one

had appeared on behalf of PUDA before the District Forum, the matter was proceeded with ex-parte and merely upon recording that it was specified that PUDA had retained the amount of Rs.4,000/- from 10th March, 1989 till 19th January, 1997, without any reasonable cause, which amounted to deficiency in service on the part of PUDA, it granted interest to the complainant at the rate of 18% in the manner indicated herein above.

18. In the appeal filed by PUDA the State Commission did not give much importance to the stipulation contained in the advertisement that no interest would be payable on the registration fee, and without taking into account the fact that on the basis of the said deposits the respondents had been included in the second draw of lots, affirmed the order passed by the District Forum mainly on the basis of a decision of the National Commission in the case of S.P. Davaskar (supra) the facts of which are not only distinguishable but completely different from the facts of the present case.

19. Even the facts of the other decision of the National Commission in the case of George Thomas and ors. Vs. Ghaziabad Development Authority and Anr., [1999 (1) CPC 183], relating to payment of interest on deposited amounts, is distinguishable on facts. If the facts, which are peculiar to this case, are taken into consideration, the retention of the earnest money by PUDA cannot be brought within the ambit of the two aforesaid decisions. The retention of the amount in this particular case was pursuant to a policy which allowed the depositors, who had not withdrawn their deposit, to participate in a subsequent draw of lots without having to pay anything more than what had been deposited by them, even though the amount of deposit may have gone up several times.

20. In our view, the single most important aspect of this case is that on the failure of the respondents to ask for refund of the deposited amount within a reasonable time, the same was not refunded to them by PUDA. Not having asked for such refund, the respondents cannot also take advantage of their lapse.

- A If the respondents had succeeded in the second draw of lots, this question, which has been raised on their behalf before the Consumer Forum might never have arisen. In our view, it will be inequitable to saddle the appellants only with the responsibility of non-refund of the earnest money between 10th March 1989 and 19th January, 1997.
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21. We, therefore, allow the appeals in part and direct that the rate of interest payable by the appellant, as directed by the District Forum and upheld by the State Commission, at the rate of 18% per annum from the date of deposit till the date of actual payment shall stand reduced to 10% for the period in question. The cost of litigation granted by the District Forum is also set aside.

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22. There will be no order as to costs.

N.J.

Appeals partly allowed.