

HARYANA URBAN DEVELOPMENT AUTHORITY

v.

RAJE RAM

(Civil Appeal No. 2381 of 2003)

OCTOBER 23, 2008

[R. V. RAVEENDRAN AND AFTAB ALAM, JJ.]

INTEREST:

Allotment of plots to re-allotees by Development Authority – Delay in delivery of possession – Re-allottee invoking provisions of Consumer Protection Act – Consumer forums awarding interest to re-allottees – HELD: Claimants are not the original allottees – In spite of knowing the fact of delay in delivery of possession, and the time not being essence of the contract, they accepted re-allotment – They even did not pay full price when they approached the District Forum – In the circumstances, award of interest was neither warranted nor justified – Orders of District Forum, State Commission and National Consumer Redressal Commission set aside – Development Authority entitled to restitution and recover back the amount paid – Consumer Protection Act, 1986 – Award of interest to re-allottee of plot – Urban Development.

Ghaziabad Development Authority v. Balbir Singh 2004 (5) SCC 65; HUDA v. Darsh Kumar 2005 (9) SCC 449 and Bangalore Development Authority v. Syndicate Bank 2007 (6) SCC 711, relied on.

Case Law Reference:

2005 (9) SCC 449	relied on	para 6
2004 (5) SCC 65	relied on	para 7
2007 (6) SCC 711	relied on	para 7

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2381 of 2003.

From the final Order and Judgment dated 27.8.2002 of the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 2173 of 1999.

WITH

C.A. No. 2382/2003 and C.A. No. 3413/2003.

C Satinder S. Gulati, Dr. Kailash Chand and Kamaldeep Gulati for the Appellant.

Jaspreet Gogia for the Respondent.

The following Order of the Court was delivered :

D **ORDER**

These appeals by special leave challenge three identical orders of the National Consumer Disputes Redressal Commission ('National Commission' for short).

E CA No. 2381/2003 [HUDA vs. Raje Ram]

F 2. Plot No. 545, Sector 14, Hissar was allotted to Madanlal on 12.12.1986. The allottee had deposited 25% of the cost of the plot. On 15.1.1993, the appellant notified the revision of price from Rs.224.90 to Rs.301.70 per sq. yard and gave an option to the allottee to either accept the revision or receive back the initial deposit with interest at 10% per annum. The allottee and respondent sought transfer of allotment to the name of respondent. The request was accepted and the appellant re-allotted the plot to the respondent vide letter dated 15.3.1994 subject to payment of extension fee. Aggrieved by the non-delivery of possession of the allotted plot, respondent approached the District Consumer Disputes Redressal Forum, Hissar in the year 1997. The appellant contested the claim on several grounds. The appellant also offered possession of the

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plot on 11.3.1998. The District Forum disposed of the complaint by order dated 15.4.1998, with a direction to the appellant to pay interest at the rate of 18% per annum to the respondent on the amounts deposited, from the date of deposit till the date of offer of possession. The appellant challenged the award of interest by filing an appeal before the State Commission. The State Commission did not interfere with the award of interest, but reduced the rate of interest from 18% per annum to 15% per annum, by order dated 5.4.1999.

CA NO. 2382/2003 [HUDA vs. Atam Parkash]

3. Plot No. 53, Sector 13P, Hissar was allotted to O.P. Rathee on 8.4.1986 and the allotment was transferred to one Sheela Devi. Possession of the plot was offered to her on 19.9.1993. On the request of the said Sheela Devi, the appellant re-allotted the plot to the respondent as per letter dated 16.6.1997 subject to payment of extension fee. Alleging that possession of the allotted plot was not delivered, respondent approached the District Consumer Disputes Redressal Forum, Hissar, in the year 1997. The appellant contested the claim. By letter dated 3.11.1997, the appellant also informed the respondents that possession of the plot had already been offered to the earlier allottee in the year 1993. The District Forum by order dated 14.6.1999 directed the appellant to pay interest at the rate of 15% per annum to the respondent on the deposit amount, commencing from the expiry of two years from the date of deposit till the date of fresh offer of possession. The District forum also directed that the appellant shall not charge interest on delayed instalments. The appellant challenged the award of interest by filing an appeal before the State Commission. The State Commission reduced the interest from 15% per annum to 12% per annum by its order dated 16.5.2000. It may be mentioned that even before the State Commission decided the matter, the respondent took possession of the plot on 21.3.2000.

A CA No. 3413/2003 [HUDA vs. Sunil Kumar]

4. Plot No. 1051, Sector 14-P, Hissar was allotted to one Anjani Kumar on 21.3.1986. By letter dated 5.8.1989, the appellant offered to refund the deposit if he did not want to wait till the development was completed. In 1993, the appellant notified the revision of price which was not paid. The original allottee sought transfer of allotment to the name of respondent and the appellant permitted the transfer on 9.7.1996 and re-allotted the plot to the respondent by re-allotment letter no.14662 dated 21.8.1996 subject to payment of extension fee. Alleging non-delivery of possession of the allotted plot, respondent filed Complaint no.451/1997 before the District Consumer Disputes Redressal Forum, Hissar, seeking interest on the amounts deposited, from the date of payment, among other reliefs. The appellant contested the claim. The District Forum by order dated 15.4.1998 directed the appellant to pay interest at the rate of 18% per annum to the respondent on the amounts deposited from the expiry of two years from the date of deposit till the date of offer of possession. The appellant challenged the award of interest by filing an appeal before the State Commission. The appellant also offered possession of the plot on 25.11.1998. The State Commission reduced the interest from 18% per annum to 15% per annum from the date of re-allotment till delivery of possession, by order dated 10.5.1999.

F The common issue

5. The appellants challenged the said orders of State Commission contending that no interest was payable. The National Consumer Redressal Commission by its non-speaking orders dated 27.8.2002, 30.9.2002 and 27.8.2002, disposed of the said revisions filed by the Development Authority, in terms of its earlier decision in *Haryana Urban Development Authority vs. Darsh Kumar* (Revision Petition No. 1197/1998 decided on 31.8.2001) by merely observing that it had upheld the award of interest upto 18% per annum in similar

circumstances. The National Commission did not refer to or consider the facts of these cases. The said orders are challenged in these appeals by special leave. The common issue in all these cases is whether interest could have been awarded against the appellant, and if so whether the rate of interest is excessive.

6. The decision of National Commission in *Darsh Kumar*, followed in the impugned orders, did not find favour of this Court in *HUDA v. Darsh Kumar* - 2005 (9) SCC 449. This Court observed that where possession is given at the old rate, the party has got the benefit of escalation in price of land, and therefore, there cannot and should not be award of interest on the amounts paid by the allottee on the ground of delay in allotment. On the special facts of that case, this Court however awarded compensation for harassment/mental agony.

7. Respondents in the three appeals are not the original allottees. They are re-allottees to whom re-allotment was made by the appellant in the years 1994, 1997 and 1996 respectively. They were aware, when the plots were re-allotted to them, that there was delay (either in forming the layout itself or delay in delivering the allotted plot on account of encroachment etc). In spite of it, they took re-allotment. Their cases cannot be compared to cases of original allottees who were made to wait for a decade or more for delivery and thus put to mental agony and harassment. They were aware that time for performance was not stipulated as the essence of the contract and the original allottees had accepted the delay. The appellant offered possession to respondents (re-allottees) and they took possession of the respective plots on 27.6.2002, 21.3.2000, and 13.9.1999 respectively. They approached the District Forum in 1997, within a short period from the dates of re-allotment in their favour. They had not paid the full price when they approached the District Forum. In the circumstances, having regard to the principles laid down by this Court in *Ghaziabad Development Authority v. Balbir Singh* - 2004 (5)

A SCC 65, *Darsh Kumar (supra)* and *Bangalore Development Authority v. Syndicate Bank* - 2007 (6) SCC 711, we are of the view that the award of interest was neither warranted nor justified.

B 8. We accordingly allow these appeals and set aside the impugned orders of the District Forum, State Commission and National Commission awarding interest. The complaints stand dismissed.

C 9. The appellant states that it had paid interest in pursuance of the State Commission's orders as there was no order of stay, to the respondents in two of the appeals (Rs.23308/- was paid to respondent in CA No. 2381/2003 on 14.10.1999 and Rs.70572/- was paid to the respondent in CA 3413/2003 on 13.7.1999). If so, the appellant is entitled to
D restitution and it can recover back the amounts paid to the respective respondent.

R.P.

Appeals allowed.