

SUPREME COURT OF INDIA

HUDA

Vs.

Anil Kumar

C.A.No.2384 of 2003

(R.V.Raveendran and Aftab Alam JJ.)

23.10.2008

ORDER

1. The Appellant, by these two appeals by special leave, challenges two identical non-speaking common orders dated 27.8.2002 of the National Consumer Disputes Redressal Commission (National Commission for short) under which their two revisions have been disposed of.

2. The respondent is a re-allottee of Plot No.120, Sector 13, Bhiwani re-allotted by appellant to respondent on 4.12.1992. It is stated that as against the total cost of Rs.1,17,480/-, the respondent had paid Rs.1,03,213/- from time to time. The respondent approached the District Consumer Disputes Redressal Forum, Bhiwani in 1996, for refund of the amount deposited by him, with interest at 18% per annum, Rs.10,000/- for mental agony and Rs.50,000 as damages, alleging inordinate delay in delivery of possession of the allotted plot and that it was no longer interested in the allotment. During the pendency of the complaint, the respondent claims to have deposited two further sums - Rs.14,685/- and Rs.50,000/- with the appellant. The District Consumer Disputes Redressal Forum, by order dated 29.7.1999 noted that the appellant had not delivered the plot even after the expiry of six and half years, and directed refund of the sum of Rs.1,67,898/- deposited by the respondent, with interest at the rate of 15% per annum from the respective dates of deposit till date of re-payment, plus Rs.2,000/- for mental agony and Rs.500/- towards costs. The appeal filed by the appellant was dismissed by the State Consumer Redressal Commission by a brief order dated 29.10.1999. The Revision filed by the appellant was disposed of by the National Commission by a non-speaking order dated 27.8.2002 merely stating that it was disposing of the revision in terms of its decision in Haryana Urban Development Authority vs. Darsh Kumar (Revision Petition No.1197/1998 dated 31.8.2001) wherein it had upheld the award of interest even at 18% per annum. The said order is challenged in this appeal by special leave.

3. The appellant had allotted plot No. 2223 in Sector 23, Sonapat to the respondent on 9.6.1991. The respondent claims to have paid a sum of Rs. 1,88,353/- towards the cost of plot. In view of the delay in delivery of possession, the respondent informed the appellant that it was not interested in the allotment and requested for refund. The appellant appears to

have refunded the amount paid towards the plot after forfeiting 10% of the total price. Feeling aggrieved, the respondent approached the District Consumer Forum, Panchkula in December 1997 contending that 10% of the price could not be forfeited, as there was no breach on his part and as the delay was on the part of the appellant. The District Forum allowed the claim of the respondent and issued the following directions to the appellant: (i) to refund the sum of Rs. 23,000/- (deducted/forfeited from the price paid); (ii) to pay interest/compensation at 18% per annum on Rs. 1,88,353/- from the date of deposit till date of payment (iii) not to deduct any Income tax on the interest/compensation; (iv) to pay Rs. 1000/- as litigation costs.

4. On appeal filed by the appellant, the State Consumer Disputes Redressal Commission by its order dated 28.9.1999 held that the appellant was entitled to forfeit 10% of the total price on account of respondent opting out of the allotment. It also reduced the interest payable by appellant on the amount to be refunded to 15% per annum. Feeling aggrieved, by the rate of interest awarded, the appellant filed a revision before the National Commission. The respondent did not challenge the decision on the forfeiture of 10% of total price. The revision filed by the appellant was disposed of by the National Commission by a non-speaking common order dated 27.8.2002 by which it purported to dispose of the revision in terms of its decision in *Haryana Urban Development Authority v. Darsh Kumar* (Revision Petition No. 1197 of 1998 decided on 31.8.2001) wherein it had upheld award of interest at 18% per annum. The said order is challenged in this appeal by special leave. The appellant alleges that during the pendency of the revision before the National Commission, it had paid the interest.

Common issue

5. The decision in *HUDA vs. Darsh Kumar*¹, relied on by the National Commission was found to be not sound, by this Court on appeal. In *Darsh Kumar* (supra), this Court held that interest at 18% per annum is not to be granted in all cases, irrespective of the facts of the case and that principles laid down in *Ghaziabad Development Authority vs. Balbir Singh*² should be followed. This Court has further elaborated on the principles applicable in the event of delay/default, in *Bangalore Development Authority vs. Syndicate Bank*³. By applying the said principles, the finding that the amounts paid by the allottees should be refunded as the allotted plot was not delivered, appears to be correct and is not open to challenge. But the decision awarding interest at 18% or 15% per annum cannot be upheld. On the facts and circumstances we are of the view payment of interest at 10% per annum would meet the ends of justice.

6. We, therefore, allow these appeals in part and reduce the rate of interest payable by the appellant to 10% per annum from the respective dates of payment to date of repayment. The other parts of the order of the State Commission affirmed by National Commission relating to refund, is not disturbed.

7. If the appellant has already refunded the amount paid by the respondent in terms of the orders of the Commission, but has paid interest at higher rate, it is entitled for return/restitution in regard to such excess in terms of this order.

¹[2005 (9) SCC 449]

²[2004 (5) SCC 65]

³[2007 (6) SCC 711]