

**SUPREME COURT OF INDIA**

H.P. Housing Board

Vs.

Janak Gupta

C.A.No.6346 of 2002

(D.K. Jain and R.M. Lodha JJ.)

26.03.2009

**ORDER**

1. These appeals by Himachal Pradesh Housing Board/ Himachal Pradesh Housing and Urban Development Authority are directed against final order dated 18th April, 2002 passed by the National Consumers Disputes Redressal Commission, New Delhi(hereinafter referred to as the `Commission'), awarding to the complainants before it interest @ 18 per cent per annum on the amount deposited, for a period of one year, on account of delay in delivery of the possession of the flats allotted to the applicants.

2. Since a common issue is involved in all these appeals, these are being disposed of by this order.

3. We have heard learned counsel for the parties.

4. Learned counsel for the appellants has submitted that the Commission has awarded interest at a flat rate of 18 per cent per annum in all the cases by placing reliance on its order in the case of Haryana Urban Development Authority vs. Darsh Kumar (R.P. 1197/1998). Learned counsel points out that the view taken by the Commission in the said case has not been accepted by this Court in *Ghaziabad Development Authority vs. Balbir Singh-I*<sup>1</sup>.

5. In Balbir Singh's case, this Court, while disapproving the award of interest at a flat rate of 18% granted by the Commission, has held that the question of award of interest is to be considered on the facts and circumstances of each case and interest cannot be awarded in all cases at a uniform rate of 18 per cent per annum, as was done in Darsh Kumar's case. Yet again, in *Ghaziabad Development Authority vs. Balbir Singh-II*<sup>2</sup>, the same question has been considered again and the view expressed in Balbir Singh's-(I) case (supra) has been reiterated. It has been observed as follows:

"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 case. 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 case 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.”

6. We may note that in *Haryana Urban Development Authority vs. Darsh Kumar*<sup>3</sup>, this Court has said that in future the Forum/Commission will follow the principles laid down by it in the case of Balbir Singh-I(supra).

7. In the light of the aforementioned decisions, the order of the Commission, awarding interest at the rate of 18% per annum cannot be sustained. We are of the view that having regard to the facts and the circumstances of the instant case, award of interest @ 12% per annum would meet the ends of justice. We may note that while granting leave, it was ordered that interim stay of the impugned order will be subject to payment of interest @ 12%. Learned counsel for the appellant submits that interest @ 12% per annum has already been paid to the respondents.

8. Resultantly, the appeals are partly allowed and the order of the Commission is modified to the extent indicated above with no order as to costs.

<sup>1</sup>(2004) 5 SCC 65

<sup>2</sup>(2005) 9 SCC 573

<sup>3</sup>(2005) 9 SCC 449