

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 2381 OF 2003

HARYANA URBAN DEVELOPMENT AUTHORITY Appellant (s)

VERSUS

RAJE RAM Respondent(s)

WITH Civil Appeal NO. 2382 of 2003
Civil Appeal NO. 2383 of 2003
Civil Appeal NO. 2384 of 2003
Civil Appeal NO. 3408 of 2003
Civil Appeal NO. 3409 of 2003
Civil Appeal NO. 3411 of 2003
Civil Appeal NO. 3413 of 2003

Date: 23/10/2008 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE AFTAB ALAM

For Appellant(s) Mr. Satinder S. Gulati, Adv.
Dr. Kailash Chand, Adv.
Mrs. Kamaldeep Gulati, Adv.

For Respondent(s) Rr-Ex-Parte
Ms. Jaspreet Gogia, Adv.

UPON hearing counsel the Court made the following
O R D E R

Civil Appeal Nos. 2381, 2382 and 3413 of 2003

The appeals are allowed in terms of the signed reportable order.

Civil Appeal NO. 2383 of 2003

The appeal is allowed in terms of the signed order.

Civil Appeal Nos. 2384 and 3408 of 2003

The appeals are allowed in part in terms of the signed order.

Civil Appeal NO. 3411 of 2003

The appeal is dismissed as withdrawn in terms of the signed order.

Civil Appeal NO. 3409 of 2003

The appeal is allowed in terms of the signed order.

(PAWAN KUMAR)
COURT MASTER

(ANAND SINGH)
COURT MASTER

(five signed orders including one reportable are placed on the file)

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2381 OF 2003

Haryana Urban Development Authority

... Appellant

Vs.

Raje Ram

... Respondent

[With C.A. No.2382/2003 and CA No.3413/2003]

O R D E R

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

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

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 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.

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.

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) 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.

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.

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 restitution and it can recover back the amounts paid to the respective respondent.

J
[Aftab Alam]

J.
[R. V. Raveendran]

New Delhi;
October 23, 2008.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2383 OF 2003

HUDA Appellant

Vs.

Suresh Kumar Makkar Respondents

O R D E R

The appellant allotted Plot No.1363, Sector 14P, Hissar to the respondent on 21.8.1986. The respondent paid the 25% amount on 11.6.1986 and 18.9.1986.

2. The respondent approached District Consumer Disputes Redressal Forum, Hissar in the year 1995 alleging that plot was not delivered within 90 days of payment of 25% of the price and that there was inordinate delay in delivery of possession; and that he had paid the balance price also in various instalments between 21.8.1987 to 16.2.1995. He therefore prayed for a direction to appellant to pay interest at 24% per annum from the respective dates of deposit of the price. By order dated 10.3.1998 the District Forum directed payment of interest at the rate of 18% per annum from the date of deposit of 25% amount till the date of offer of possession of plot. On appeal by the appellant, the State Commission by order dated 30.9.1998 reduced the rate of interest from 18% to 15% per annum and postponed the commencement of interest by two years from the date of deposit. On revision by the appellant, the National Commission passed a common non-speaking order dated 27.8.1992 disposing of the revision in terms of its earlier decision in Revision Petition No.1197/1998 dated 31.8.2001 [HUDA vs. Darsh Kumar] wherein it had upheld interest even upto 18% per annum. The said order is under challenge in this appeal. The appellant contends that it offered possession of the plot by letter dated 11.6.1999, that it did not claim the prevailing price of 1999, and that the

respondent has taken delivery of possession of the allotted plot on 7.10.2003. It therefore contends that respondent is not entitled to interest on the payments made.

3. The decision in HUDA vs. Darsh Kumar [2005 (9) SCC 449], 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 [2004 (5) SCC 65] should be followed. In Bangalore Development Authority vs. Syndicate Bank [2007 (6) SCC 711], this Court has further elaborated on the principles applicable in the event of delay/default. This Court has consistently held that where possession is given at the old rate, the allottee gets the benefit of escalation in price and therefore, not entitled to interest on the amounts paid, on the ground of delay in allotment. By applying the said principles, the decision awarding interest cannot be upheld.

4. The appeal is therefore allowed and the orders of the consumer fora, awarding interest is set aside. The complaint stands dismissed.

[R. V. Raveendran]

[Aftab Alam]

New Delhi;
October 23, 2008

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2384 OF 2003

HUDA Appellant

Vs.

Anil Kumar Respondents

[With Civil Appeal No. 3408 of 2003]

O R D E R

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.

CA No. 2384 of 2003

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.

CA No. 3408 of 2003

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 [2005 (9) SCC 449], 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 [2004 (5) SCC 65] 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 [2007 (6) SCC 711]. 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.

[R. V. Raveendran]

[Aftab Alam]

New Delhi;
October 23, 2008

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 3409 OF 2003

HUDA Appellant

Vs.

Diwan Singh Respondents

O R D E R

Plot No. 2163P in Sector 13, Bhiwani was allotted by the Appellant in the year 1990, and on the request of the original allottee, it was re-allotted to the respondent by the appellant on 21.4.1998. In the year 1999, respondent approached the District Consumer Disputes Redressal Forum, Bhiwani, alleging that in spite of payment of the full price, the appellant had failed to deliver possession, on

account of non-completion of development. He therefore sought three reliefs. First, a direction to the appellant to pay interest at 24% per annum on the amounts deposited, till the date of delivery of possession (after removing the road laid over a part of the plot). Second was for a direction to the appellant not to charge any extension fee after 1994 or any interest on the extension fee. Third was for payment of compensation of Rs.1,00,000/- for harassment and suffering. The appellant resisted the claim on several grounds and also alleged that it had offered possession in 1994 and again in May 1998. The District Forum by its order dated 10.8.1999 accepted the contention of the respondent that there was no effective offer of delivery of possession in May 1998 and awarded interest at 18% per annum on the amounts deposited, with effect from the date commencing on the expiry of two years from the date of deposit, till date of fresh offer of possession with a further direction to the appellant not to charge interest on the extension fee. The prayer for compensation for suffering/mental agony was rejected.

2. The appeal filed by the appellant was dismissed by the State Consumer Disputes Redressal Commission on 21.9.1999 by a non-speaking order on the ground that there was no merit in the appeal. It assumed that District Forum had awarded interest at the rate 15% per annum and there was nothing wrong in it. During the pendency of the appeal, the appellant claims to have made a fresh offer of possession on 13.9.1999. According to it, the respondent did not take possession.

3. The appellant challenged the order of the State Commission in a Revision filed before the National Consumer Disputes Redressal Commission. The National Commission by a non-speaking order dated 27.8.2002 disposed of the Revision

Petition in terms of its decision in HUDA v. Darsh Kumar (Revision petition No. 1197 of 1998) wherein it had upheld the award of interest even at 18% per annum.

4. The respondent has not surrendered the allotment nor sought refund of the amounts deposited. The reliefs sought in the complaint before the District Forum were only in regard to claim for interest on the payments made and not for refund of the amount paid towards price. It is thus to be inferred that respondent is still interested in the plot. The appellant has again offered to deliver possession in September, 1999. It is open to the respondent to take possession.

5. The only issue raised by the appellant in this appeal is in regard to interest. It is pointed out that direction for payment of interest at 18% per annum is contrary to the decisions of this Court.

6. One significant aspect to be noticed is that respondent is not the allottee who was allotted the plot in 1990, but a re-allottee who was re-allotted the plot in April 1998. When he was offered possession of the plot in May 1998, he found that a part of it was used for purposes of road. Thereafter, the appellant even offered an alternative plot. The respondent however rushed to the District Forum in 1999, hardly within a year of re-allotment. The allegations of inordinate delay, negligence, harassment on the part of appellant, in a complaint filed by a re-allottee, within one year of re-allotment, appears to be hollow and without merit. In this factual background, having regard to the principles laid down in Ghaziabad Development Authority vs. Balbir Singh [2004 (5) SCC 65], Haryana Urban Development Authority vs. Darsh Kumar [2005 (9) SCC 449] and Bangalore Development Authority vs.

Syndicate Bank [2007 (6) SCC 711], the award of interest was not warranted. A re-allottee in 1998 cannot obviously be awarded interest from 1992 on the amounts paid by the original allottee in 1990 on the ground that the original allottee was not offered delivery in 1990.

7. We therefore allow this appeal and set aside the orders of the consumer fora below. The complaint is rejected.

[R. V. Raveendran] J

[Aftab Alam] J

New Delhi;
October 23, 2008

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3411 OF 2003

Haryana Urban Development Authority ... Appellant

Vs.

Inderjeet Kochhar ... Respondent

O R D E R

The learned counsel for the appellant seeks leave to withdraw the appeal.

The appeal is dismissed as withdrawn.

[R. V. Raveendran] J.

[Aftab Alam] J.

New Delhi;
October 23, 2008.