

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.3727 OF 2001

GHAZIABAD DEVELOPMENT AUTHORITY

Appellant (s)

VERSUS

URMILA

Respondent(s)

(With appln(s) for permission to place addl. documents on record
and impleadment of Complainant No.2 as Respondent No.2)

With Civil Appeal No.6955 of 2004

(With appln.(s) for exemption from filing O.T., exemption from
filing c/c of the impugned judgement and prayer for interim relief)

Date: 22/01/2009 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL

HON'BLE MR. JUSTICE G.S. SINGHVI

For Appellant(s) Mr. Vijay Hansaria, Sr. Adv.
Ms. Reena Singh, Adv.
Mr. T. Mahipal, Adv.

For Respondent(s) Dr. Krishan Singh Chauhan, Adv.

Mr. Jitendra Mohan Sharma, Adv.

Mr. Nitin Tyagi, Adv.

Mr. Sandeep Singh, Adv.

Mr. Harsh, Adv.

UPON hearing counsel the Court made the following
ORDER

Civil Appeal No.3727 of 2001:

Heard learned counsel for the parties.

Application for impleadment is allowed.

Permission to place on record additional documents is
granted.

The civil appeal is allowed in-part.

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Civil Appeal No.6955 of 2004:

Heard learned counsel for the parties.

The civil appeal is disposed of.

[T.I. Rajput]
A.R.-cum-P.S.

[Savita Sainani]
Court Master

[Signed order is placed on the file]
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3727 OF 2001

Ghaziabad Development Authority

...Appellant(s)

Versus

Urmila

...Respondent(s)

With Civil Appeal No.6955 of 2004

O R D E R

Civil Appeal No.3727 of 2004:

Heard learned counsel for the parties.

The District Consumer Disputes Redressal Forum, Ghaziabad (for short, "the District Forum") by its order dated 20 th January, 1999, partly allowed the complaint filed by respondent-Urmila and directed Ghaziabad Development Authority (hereinafter referred to as "the Authority") to remove the defects in the house allotted to the respondent with the stipulation that if the needful is not done, then decision will be taken in the execution proceedings for award of the amount spent by the complainant on removal of the defects. The District Forum further directed the Authority to pay interest to the respondent at the rate of 15 per cent per annum for the period from 1st April, 1995 to 6th September, 1996 on the amount deposited by her up to 31st March, 1995 and Rupees four thousand towards mental agony and cost of litigation as, in its opinion, there was delay on the part of the Authority in delivering possession of the house to the respondent. The said order was confirmed in appeal by

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the State Consumer Disputes Redressal Commission, U.P.(for short, "the State Commission") and when the matter was taken in revision before the National Consumer Disputes Redressal Commission (for short, "the National Commission"), the same has been dismissed. Hence, this appeal by special leave.

Learned counsel appearing on behalf of the appellant-Authority submitted that the District Forum was not justified in directing it to remove the defects in the house allotted to the respondent on the basis of report dated 15th September, 1996 prepared by the Engineer appointed by her because she had taken possession of the house without making any grievance regarding the so-called defects. In our view, there is no merit in the submission of the learned counsel and the direction given by the District Forum does not call for interference because the Authority did not adduce any evidence before the District Forum to controvert the report produced by the respondent. If the house was free from defects on the date of delivery of possession and the Authority thought that report dated 15th September, 1996 does not reflect the true status of the house, then it could have, on receipt of the notice of the complaint, deputed its own engineer for inspection and submitted report before the District Forum to convince it that the grievance made by the respondent was untenable. However, the fact of the matter is that no such report was produced by the Authority. Therefore, we do not find any justification to interfere with the direction given by the District Forum, which was confirmed by the State Commission as well as the National Commission.

Learned counsel for the appellant next submitted that the District Forum was not justified in awarding interest on the amount deposited by the respondent up to 31st March, 1995 because there was no delay in the delivery of possession of the house. Learned counsel pointed out that in terms of letter dated 3 rd February, 1993 the respondent was required to

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pay balance of the estimated cost by 30th July, 1995 but she did not pay the instalments

on due dates and the last one was paid after more than one year and four months of the delivery of possession. Learned counsel for the respondent fairly admitted that his client did not pay instalments of the balance estimated cost on due dates. In this view of the matter, the Authority cannot be blamed for delay in handing over possession of the house to the respondent. Even otherwise, we are satisfied that the finding recorded by the District Forum on the issue of delay in the delivery of possession is based on total misreading of letter dated 3rd February, 1993 and the pleadings of the parties. The District Forum completely ignored the fact that the respondent had not paid even a single instalment on due date and even as on the date of handing over possession, substantial amount was due from her. A reading of letter dated 3 rd February, 1993 shows that the respondent was required to pay instalments of the balance estimated costs between 30th January, 1993 and 30th July, 1995. It was mentioned in that letter that the expected date of delivery of possession of the house would be during the year 1995, which would necessarily mean after payment of the instalments by 30th July, 1995. It was further mentioned in the letter that if the house is made ready before one or more instalments are due, then possession of the same would be made over to the complainant only upon payment of entire balance instalments in one lump sum. In paragraph (4) of the complaint the respondent has given a table of the instalments paid by her. A reading thereof makes it clear that not a single instalment was paid within time. Till the year 1994, the respondent paid only a sum of Rupees one lakh. No payment was made in the year 1995 and substantial amount was paid between the years 1996 and 1998. The last instalment was paid on 16 th January, 1998. From these facts it is evident that there were laches on the part of the respondent

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in payment of the instalments. In this view of the matter, it must be held that District Forum was not justified in awarding interest upon the amount deposited till 31st March, 1995 and the sum of Rupees four thousand by way of compensation for mental agony as also cost of litigation.

Accordingly, the appeal is allowed in part and the impugned order passed by the District Forum awarding interest from 1st April, 1995 till 6th September, 1996 and sum of Rupees four thousand by way of compensation and the orders of the State Commission and the National Commission confirming the same are set aside.
CIVIL APPEAL NO. 6955 OF 2004:

Heard learned counsel for the parties.

By the impugned order, the National Consumer Disputes Redressal Commission (for short "the National Commission"), has remanded the matter to the District Consumer Disputes Redressal Forum, Ghaziabad (for short, "the District Forum") for calculation of the amount payable to the respondent as also the amount due to the appellant-Authority. The District Forum, on remand, is directed to pass a fresh order, as directed by the National Commission, after taking into consideration the order passed by us today in Civil Appeal No. 3727 of 2001.

With this direction, the civil appeal is disposed of.

.J.

[B.N. AGRAWAL]

.J.

[G.S. SINGHVI]

New Delhi,
January 22, 2009.