

PART-HEARD

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.2489 OF 1998

GHAZIABAD DEV. AUTHORITY  
(s)

Appellant

VERSUS

HARDEV KUMAR SEHGAL (D) THRU LRS.  
t(s)

Respondent

Date: 10/08/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE S.B.SINHA

For Appellant(s)

Mr.Vijay Hansaria, Sr. Adv.

Ms.Reena Singh,Adv.

Mr.T.Mahipal,Adv.

For Respondent(s)

Mr. S.K. Verma, Adv.

Mr. M.K. Choudhary, Adv.

Mr.Atul Kumar, Adv.

UPON mentioning the Court made the following

O R D E R

Appeal is dismissed with some modifications in terms of the signed order. No costs.

(Parveen Kr. Chawla)

Court Master

(Kanwal Singh)

Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2489 OF 1998

Ghaziabad Development Authority

..APPELLANT(S)

VERSUS

Hardev Kumar Sehgal (Dead) Thru Lrs.

..RESPONDENT(S)

O R D E R

This appeal, by grant of special leave, is directed against the order passed by the Monopolies and Restrictive Trade Practices Commission( for short 'the Commission') in C A No. 138/1994 wherein the Commission has directed the appellant to refund the sum of Rs.4,20,020/- (Rupees Four lacs twenty thousand

twenty only) deposited by Hardev Kumar Sehgal, respondent herein, (since deceased and now represented through his legal representatives) with interest with effect from the date of deposit of the respective amounts.

Ghaziabad Development Authority, for short 'GDA', floated the housing scheme called "Indrapuram Plots Self Financing Scheme". Number of applications were received in response to the said Scheme including one by the respondent herein.

Clause 10.00 provides for surrender/cancellation in different situations defined in subclauses 10.10, 10.20, 10.30, 10.40. Clause 13.00 provides various situations of handing over possession. These are given in sub-clauses 13.10., 13.11, 13.20, 13.30, 13.40. Clause 15.00 provides the expected period of possession of plot to be within 2 years from the date of floating of the Scheme.

Respondent Hardev Kumar Sehgal, since deceased and now represented through his legal representatives, applied for allotment of 350 Sq. Meters plot in the category of Plot A and deposited the registration fee of Rs.42,000/- (Rupees forty two thousand only) on 31st July, 1989. He was issued a reservation letter on 5th November, 1989 reserving a plot for estimated cost of Rs.4,20,020/- (Rupees Four lacs twenty thousand twenty only) which was to be paid in six equal installments payable after every six months. The payment could be made up to 4th November, 1992. Respondent instead of paying the amount in installments paid the entire balance amount of Rs.3,78,000/- (Rupees three lacs seventy eight

thousand only) on 4th January, 1990.

On 19th December, 1992, the appellant sent a communication to the respondent allotting plot No.GYAN KHAND SEC-1/313 in the draw of lots held on 6th November, 1992. The possession of the plot was neither offered nor given to the respondent. Respondent after waiting for three years filed a complaint on 23rd May, 1994 under Section 12-B of the Monopolies and Restrictive Trade Practices Act, 1969 (for short 'the Act') with the allegation that the appellant had indulged itself in unfair trade practice in not delivering the possession even after five years of the coming into force of the Scheme, though it was promised to deliver the possession within two years. During the pendency of the proceedings allegedly the appellant made an offer to the respondent to take possession of the plot. It was also suggested in the written submissions filed before the Commission that the appellant was also prepared to refund the amount but without interest, if so desired, as per the conditions of the Scheme.

The Commission after taking into consideration of the entire facts and the statements made by the counsel for the parties came to the conclusion that the appellant had indulged itself in unfair trade practice and that the same had caused loss and injury to the respondent. Based on these findings, the Commission directed the appellant to refund the sum of Rs.4,20,020/-(Rupees four lacs twenty thousand twenty only) deposited by the respondent with 18 per cent interest with effect from the

date of the deposit. Rupees ten thousand were awarded by way of compensation towards mental agony and pain suffered by the respondent and rupees five thousand were awarded as costs.

Feeling aggrieved against the order of the Commission, the appellant has filed this appeal. On 30th of March, 1998, this Court directed the appellant to pay the undisputed amount to the respondent. It is not disputed before us that the undisputed amount had been paid to the respondent on 25th April, 1998.

This Court in Ghaziabad Development Authority vs. Balbir Singh reported in (2004) 5 SCC 65 held that the Forum/Commission, after determining the deficiency in service and/or misfeasance in public office which has resulted in loss or injury, has the jurisdiction to award interest to compensate the applicants. On the quantum of interest, it has been held that awarding of interest at a flat rate of 18% per annum irrespective of the facts of each case is unsustainable and must vary from case to case depending on the facts of each case.

The only question which remains to be decided is at what rate interest is to be awarded to the respondent. Mr. Hansaria, learned senior counsel appearing for the appellant relying upon the decision of this Court in Ghaziabad Development Authority vs. Balbir Singh reported in (2005) 9 SCC 573 contended that the respondent is not entitled to any interest and if at all not more than 12% as the respondent had refused to take possession inspite of the offer made to him. He relied upon a letter (Annexure

P6) dated 20th February, 1955 attached with the appeal paper book.

This Court in Ghaziabad Development Authority vs. Balbir Singh reported in (2005) 9 SCC 573 held that in a case where an offer to give possession has been made and the allottee does not take the possession or furnish any reply to the offer of possession then he is not entitled to the interest.

The letter of possession was not placed before the Commission though the same has been produced before us. Since this letter of offer of possession was not placed before the Commission we refuse to take the same into consideration. The Commission in its order has observed as follows:

"During the arguments, it was indicated by Shri Pramod Swarup that possession was offered to the applicant but it was refused. We have been shown no evidence on the completion of the development work and on the plot being readied for possession at the time of arguments. Presuming that the respondent's advocate's statement is correct, even then it constitutes a delay of a period of about eight years since the payment of the registration amount by Shri Sehgal. By no standards, can this be considered a reasonable delay to give any benefit of doubt to the respondent. There has been unquestionably a deficiency in service on the part of the respondent."

In view of this finding, we do not accept the contention raised by Shri Hansaria, learned senior counsel appearing for the appellant that an offer of

possession was made to the respondent.

Learned counsel appearing for the respondent contended that the respondent is entitled to the interest on the amount of interest due till date, we do not accept this contention and the same is rejected.

Since the principal amount of Rs.4,20,020/- (Rupees four lacs twenty thousand twenty only) which has been described as the undisputed amount in the order of this Court dated 30th March, 1998, has already been paid to the respondent on 25th April, 1998, the respondent would be entitled to the interest at the rate of 18% per annum on the aforesaid amount from the date of deposit of the amount till it was paid on 25th April, 1998. The respondent would also be entitled to the amount of Rs.10,000/0 towards mental agony and pain as awarded by the Commission as well as the cost of Rs.5,000/- awarded by the Commission.

Appellant is directed to pay the interest amount within six weeks from today failing which it would be liable to pay further interest at the rate of 12% per annum on the amount of interest due till its actual payment.

Appeal is dismissed with the above modifications. No costs.

..J.

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[ASHOK BHAN ]

NEW DELHI;  
...J.

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AUGUST 10, 2005.

[S.B. SINHA]