

DEPESH KUMAR V. JALANDHAR IMPROVEMENT TRUST & ANR.

1. DEPESH KUMAR

.....Complainant(s)

Versus

1. JALANDHAR IMPROVEMENT TRUST & ANR.

JALANDHAR(RESIDENTIAL PLOT IN SURYA ENCLAVE
EXTENSION THROUGH ITS EXECUTIVE OFFICER

2. EXECUTIVE OFFICER

JALANDHAR IMPROVEMENT
TRUST, JALANDHAR, PUNJAB

.....Opp.Party(s)

Case No: CONSUMER CASE NO. 1732 OF 2019

Date of Judgement: 04 October 2023

Judges:

HON'BLE MR. JUSTICE A. P. SAHI, PRESIDENT

FOR THE COMPLAINANT : MR. VARUN BEDI, ADVOCATE

FOR THE OPP. PARTY : MR. PREM KUMAR, ADVOCATE

Facts:

Complainant booked a residential plot from opposite party (Jalandhar Improvement Trust). Allotment letter promised delivery within 2.5 years. Complainant paid Rs 1 crore in instalments and cleared all dues. Trust failed to handover possession even after repeated requests. Land was disputed and matter was in courts

Court's Opinions:

Failure to handover possession after accepting full payment constitutes deficiency in service. Earlier order of Commission

allowed refund with SBI interest rate in similar case against Trust. Supreme Court dismissed SLPs against that order awarding SBI interest rate. In another case, interest was granted @9% from date of deposits and SLP was also dismissed. To prevent discrimination, interest should be from date of deposits in this case as well. Order of Supreme Court laying down interest @9% from deposit dates to prevent discrimination is binding

Arguments by Complainant:

Booked plot by paying full amount of Rs 1 crore as per allotment letter. Trust failed to handover plot after long wait despite clearing all dues. Seeks refund with interest from date of deposits

Arguments by Opposite Party/Trust:

Land was disputed and matter was in courts leading to delay

Referred Laws and Sections:

Reference to Supreme Court order in Kusum Kumar case laying down interest @9% from deposit dates. Reference to dismissal of SLPs against Commission's order granting SBI interest rate

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Court

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Full Text of Judgment:

1. This complaint and the claim can be disposed off in view of the short submissions that have been raised by the learned counsel for both the parties regarding refund sought on the ground of failure to deliver possession within the time frame of the undisputed allotment conditions contained in the letter dated 20.04.2012 for a residential plot no. 62-C in the project titled Surya Enclave Extension, Jalandhar, Punjab. The plot was promised to be delivered in 21□2 years subject to the

payment schedule of the scheme floated by the Jalandhar Improvement Trust.

2. The complainant alleges to have made payments to the tune of Rs.1,00,00,369/- and after waiting for long and having cleared all the installments a letter dated 17.03.2015 was sent demanding possession. This was followed by a reminder dated 27.07.2015. In the year 2016, it came to the notice of the complainant that the land was under serious dispute with its erstwhile owners that was engaging the attention of the Punjab and Haryana High Court in writ petitions which according to the opposite parties have been dismissed on 22.12.2015 and the SLPs' filed against the same before the Supreme Court being Special Leave Petition (Civil) Nos. 7198/2016, 7453/2016, 8544/2016, 9808/2016 and 10743/2016 were also dismissed on 29.04.2016.

3. Nonetheless when the matter has been taken up on a mention made by the learned counsel for both sides, it is pointed out that an identical "Consumer Complaint No. 38 of 2016, Ashish Matta Vs. Jalandhar Improvement Trust" was recently disposed off by this Commission allowing refund with 9% interest on the amount paid from the date of the complaint.

4. The dispute has narrowed down to the rate of interest and the date from which it has to be paid in the light of the judgments compiled and submitted by the learned counsel for the complainant vide written submissions dated 25.09.2023.

5. In "First Appeal No. 995 of 2017, Jalandhar Improvement Trust & Anr. Vs. Pooja Garg", connected with cross appeal filed by the complainant being "First Appeal No. 1268 of 2017, Pooja Garg Vs. Jalandhar Improvement Trust & Anr.", this Commission

ordered refund in the following terms vide order dated 10.04.2019:-

"25. We firm-up the award as below:

(i) The principal amount (total Rs. 38,99,638/-) deposited by the complainant with the improvement trust shall be refunded with interest from the respective date /s of deposit till the date / s of realization. The rate of interest shall be the

rate for house building loan in the corresponding period of a scheduled nationalized bank (take, State Bank of India). If 'floating' / varying / different rates of interest were prescribed in the corresponding period, the higher rate shall be taken for this instant computation.

(ii) In addition, compensation for loss and injury, harassment and difficulty, uncertainty and helplessness, shall remain Rs. 3,00,000/-, and cost of litigation shall remain Rs. 20,000/- (as awarded by the State Commission). All payments shall be made within four weeks of the date of pronouncement of the reasoned judgment. Failure in timely compliance shall attract higher / penal interest and other compensation / costs (which shall be determined by this Commission in the facts and specificities of that contingency if it so arises)."

6. This was followed by another order on the same footing in "First Appeal No. 996 of 2017, Jalandhar Improvement Trust & Anr. Vs. Archit Gupta", connected with cross appeal filed by the complainant being "First Appeal No. 1269 of 2017, Archit Gupta Vs. Jalandhar Improvement Trust & Anr.",, decided on 14.06.2019. Against these orders of this Commission Special Leave Petitions were filed, Special Leave Petition (Civil) Diary No. 42045/2019 and Special Leave Petition (Civil) Diary No. 41995/2019 that were dismissed in limine on 20.10.2021 and 06.12.2019, respectively.

7. Learned counsel for the complainant placing reliance on the same further contends that the rate of interest should be made accordingly and from the date of deposit and not from the date of filing of the complaint.

8. Having heard learned counsel for the parties, it appears that in one set of litigation that ended up with the dismissal of the Special Leave Petitions referred to above, refund was allowed on the terms referred to therein, and in another batch of appeals before this Commission including "First Appeal No. 1044 of 2017, Jalandhar Improvement Trust Vs. Kusum Kumar", decided on 28.02.2020, the interest was awarded @ 9% per annum. Para 55 of the order is quoted herein under:-

55. Moreover, the Hon'ble Supreme Court in DLF Homes Panchkula Pvt. Ltd. & anr. Vs. D S Dhandra, ETC; Sudesh Goyal, ETC, 2019 Law Suit (SC) 1207 has clearly observed that in refund cases an interest @9% p.a. would be reasonable and sufficient. Thus, it is clear that the Hon'ble Supreme Court is not in favour of granting more interest in refund cases in the current interest scenario. It is seen that the State Commission in most of the cases have ordered refund with 9% p.a. interest. However, in FA No.2512 of 2017 and FA No.2513 of 2017, the State Commission has granted 12% interest which cannot be allowed. "

9. Kusum Kumar was aggrieved because the interest was awarded from the date of complaint and he therefore filed Petition (s) for Special Leave to Appeal (c) Nos. 3422-3423 of 2021 that was disposed off modifying the date by providing it from the respective date of deposits. The order of the Apex Court dated 29.08.2023 is reproduced hereinafter:-

"Delay condoned.

The short question which falls for consideration before us is whether the interest as awarded by the State Consumer Disputes Redressal Commission, affirmed by the National Consumer Disputes Redressal Commission (hereinafter referred to as 'National Commission' for brevity) would be payable from the date of filing of the complaint or from the date of deposits, at the time of refund of amount @ 9% as specified by the National Commission. After hearing learned counsel for the parties and 2 considering the fact that the case in which the cocomplainant is Mr. Archit Gupta i.e., Consumer Complaint No.88 of 2015 and another similar case in which the cocomplainant is Ms. Pooja Garg i.e., Consumer Complaint No. 155 of 2014 have been allowed interest from the respective date of deposits at the time of refund of the said amount. In our view, there cannot be any discrimination at the time of refund. The interest shall be payable from the date of deposit and not from the date of filing the complaint as per impugned order of National Commission. Considering the aforesaid, we dispose of these petitions with a direction that at the time

of the refund of the amount, interest @ 9% would be payable from the respective date of deposits of the amount to the petitioners. As the interest has already been paid from the date of the filing of the complaint as directed in the impugned order, however the difference of the amount be worked out by the respondent-Trust within a period of one month and be paid within a further period of one month. Accordingly, the question is answered to the extent indicated hereinabove in favour of the petitioners. We dispose of these special leave petitions in the aforesaid terms."

10. It appears that the said judgment was not brought to the notice of this Commission while passing the order dated 31.08.2023 in Consumer Complaint No. 38 of 2016.

11. Consequently for all the reasons above and in view of the matter already having been decided in all the litigations referred to above, the complainant is also entitled for refund of his entire amount.

12. Accordingly the complaint is disposed off on the terms aforesaid allowing the claim of refund of the entire amount paid by the complainant with 9% interest from the date of respective deposits.