

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No. 15532 of 2018

Date of decision : 11.07.2019

Suchdev

.....Petitioner

Versus

Chairman, Chandigarh Housing Board and another

...Respondents

**CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Argued by : Mr. Deepak Jindal, Advocate for the petitioner.

Mr. Indresh Goel, Advocate for respondents.

* * *

DAYA CHAUDHARY, J.

The prayer in the present petition is for issuance of a writ in the nature of mandamus directing the respondents to grant interest on the amount of ₹4,72,180/-, which has been charged on account of payment of less payment of ₹ 2/-, while paying instalments in respect of two bedroom flat in Sector 63, Chandigarh on leasehold basis under Retired/Retiring category of Sub scheme "A" allotted to the petitioner in draw of lots held on 07.04.2010. A further prayer has also been made by the petitioner for grant of compensation on account of harassment and damages suffered by him due to delayed possession in spite of depositing full amount for allotment of flat.

Briefly, the facts of the case as made out in the present petition

are that respondent-authority *i.e.* Chandigarh Housing Board, Chandigarh floated a scheme of two bedroom flats in Sector 63, Chandigarh on leasehold basis under Retired/Retiring category of Sub scheme "A". The total consideration of the flat was fixed as ₹28,64,051/-. Petitioner was registered for allotment of flat on second floor and was successful in draw of lots held on 07.04.2010. He paid all the instalments as per registration letter dated 15.06.2016 (Annexure P-2). Third instalment was paid by the petitioner on 26.04.2013, much earlier before the last date of payment *i.e.* 03.05.2013. He paid ₹8,17,630/- instead of ₹ 8,17,632/-. He was not given possession in spite of depositing the total amount. Orally he was informed to deposit ₹ 100/- and thereafter ₹17,000/- as penalty amount as he deposited third instalment as ₹ 8,17,630/-, which was ₹ 2/- less than the due amount. On the asking of the respondent-authority, the petitioner deposited said amount of ₹ 100/- on 07.04.2015 and ₹17,000/- on 21.08.2015. He made various requests for issuance of possession letter but no heed was paid to his request. Thereafter, the respondent-authority issued a letter for demand of more amount of ₹4,55,084/- on account of interest, whereas there was difference of ₹2/- only. Again he made representation but the same was not considered. Under the compelling circumstances, the petitioner had to deposit an amount of ₹4,55,084/- under protest on 29.06.2016 and while depositing said amount, it was specifically mentioned that he had deposited that amount under protest. Thereafter, the petitioner was issued an allotment letter on 12.07.2016. Possession of the flat was given on 21.07.2016 on payment of balance amount of ₹ 86,042/-.

Petitioner made various representations to the respondent-authorities to refund amount of ₹4,72,180/- but no action was taken. Ultimately, the amount was refunded to the petitioner after delay of approximately two years. Petitioner also made representation for claim of interest for keeping the amount from 29.06.2016 till 10.05.2018 as well as damages for harassment.

Being aggrieved by the action of the respondent-authorities in not paying interest on the refunded amount, the petitioner has filed the present petition.

Learned counsel appearing for the respondents submits that there is no provision to pay interest to any of the allottee in case any excess amount has been paid. As per the terms and conditions of the allotment, in case there is delay in payment of the amount, the allottee has to pay interest @ 18% per annum for the first month and during second month, the interest is @ 21% per annum and in the third month interest is @ 24% per annum. He further submits that no extension is allowed beyond a period of three months. In the present case, the interest was levied as per the terms and conditions. It is further mentioned in the reply that the Chairman of the Board is competent to allow extension beyond the period of three months or revival of registration in case of exceptional circumstances on written request subject to payment of interest @ 30% per annum beyond the period of three months. The case of the petitioner was considered by the respondent-Board after taking approval from the competent authority and notices were issued to the defaulted allottees including the petitioner.

Heard arguments of learned counsel for the parties and we have also perused the documents available on the file.

Facts are not disputed. Admittedly, there was a difference of ₹2/- as the petitioner while depositing third instalment, paid ₹8,17,630/- instead of ₹ 8,17,632/- on 26.04.2013. It is not disputed that all three instalments were deposited well in time. Petitioner also deposited ₹100/- and thereafter ₹17,000/- as penalty amount because of less amount of ₹2/-. Thereafter, the petitioner was compelled to deposit an amount of ₹4,55,084/- alleging to be the interest on instalment amount of ₹8,17,632/-. Meaning thereby, the amount of interest has been charged on the total amount of the instalment, whereas there was difference of ₹2/- only in making the payment of instalment. Subsequently, the amount of interest was also refunded without any interest. It is also not disputed that the refunded amount was paid to the petitioner after a period of approximately two years as it was kept by the respondent-authorities from 29.06.2016 to 10.05.2018.

It is clear that the petitioner had to pay more amount due to non-payment of ₹2/- only. He was also compelled to deposit an amount of ₹4,72,180/- as possession was not being delivered to him. Calculation made by the respondent-authorities is beyond the understanding of this Court. Even learned counsel for the respondent-Board is not in a position to make it clear as to how the calculation has been made. It is also clear from the facts that an amount of ₹4,72,180/- has been charged, which is more than the amount, the petitioner had to pay but subsequently it was refunded

to the petitioner. Petitioner is claiming interest on the amount along with damages in the present petition.

It is not only a case of charging more amount than the amount to be paid by the petitioner, but the petitioner has also been harassed mentally, physically as well as financially due to delay in issuing allotment letter and in handing over the possession as well as refunding the amount. Petitioner had to remain without house/flat due to action/inaction of the respondent-authorities.

The same question of law was there before Hon'ble the Apex Court in case ***Ghaziabad Development Authority Vs. Balbir Singh 2004 (5) SCC 65***, the relevant portion of which is reproduced as under:-

“The word compensation is of a very wide connotation. It may constitute actual loss or expected loss and may extend to compensation for physical, mental or even emotional suffering, insult or injury or loss. The provisions of the Consumer Protection Act enables a consumer to claim and empower the Commission to redress any injustice done. The Commission or the Forum is entitled to award not only value of goods or services but also to compensate a consumer for injustice suffered by him. The Commission/Forum must determine that such sufferance is due to mala fide or capricious or oppressive act. It can then determine amount for which the authority is liable to compensate the consumer for his sufferance due to misfeasance in public office by the officers. Such compensation is for vindicating the strength of law.”

In other judgment of Hon'ble the Apex Court in case ***Haryana Urban Development Authority Vs. Smt. Dropadi Devi AIR 2005 (SC) 1487***, there was delay in delivery of possession after allotment of plot. The authorities failed to deliver possession within reasonable time. In that case,

extra amount was collected. The appellant before the Supreme Court *i.e.* Haryana Urban Development Authority was directed to re-calculate the amount and direction was issued to pay interest from the date of deposit till the date of payment. In that case also a plot was allotted to the allottee and he paid substantial amount but the possession was not delivered. He filed the complaint before the District Consumer Forum and was awarded interest @ 15% per annum on the entire deposited amount from the date of re-allotment till offer of possession. Appeal was filed by HUDA before the State Commission, which was dismissed and order of District Consumer Forum was confirmed. Thereafter, revision was filed before the National Commission, which was also dismissed. Ultimately, the HUDA approached the Apex Court by way of filing appeal and the same was disposed of with the direction to re-calculate the amount and pay back with interest.

In ***Ghaziabad Development Authority's*** case (supra), Hon'ble the Apex Court, while relying upon judgment in case ***Rooke Vs. Barnard 1964 AC 1129***, has discussed the role of the Government servants, which is relevant for the present controversy. The relevant portion of the observation made in said judgment is reproduced as under :-

*“The jurisdiction and power of the courts to indemnify a citizen for injury suffered due to abuse of power by public authorities is founded as observed by Lord Hailsham in **Cassell & Co. Ltd. v. Broome [1972 AC 1027: (1972) 1 All ER 801]** on the principle that, 'an award of exemplary damages can serve a useful purpose in vindicating the strength of law'. An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law. It acts as a check on arbitrary and capricious exercise of power. In **Rookes v.***

Barnard [1964 AC 1129: (1964) 1 All ER 367, 410] it was observed by Lord Devlin, 'the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service'. A public functionary if he acts maliciously or oppressively and the exercise of powers results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it. Compensation or damage as explained earlier may arise even when the officer discharges his duty honestly and bona fide. But when it arises due to arbitrary or capricious behaviour then it loses its individual character and assumes social significance. Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous. Crime and corruption thrive and prosper in the society due to lack of public resistance. Nothing is more damaging than the feeling of helplessness. An ordinary citizen instead of complaining and fighting succumbs to the pressure of undesirable functioning in offices instead of standing against it. Therefore the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally but helps in curing social evil. It may result in improving the work culture and help in changing the outlook. Wade in his book *Administrative Law* has observed that it is to the credit of public authorities that there are simply few reported English decisions on this form of malpractice, namely, misfeasance in public offices which includes malicious use of power, deliberate maladministration and perhaps also other unlawful acts causing injury. One of the reasons for this appears to be development of law which apart, from other factors succeeded in keeping a salutary check on the functioning in the government or semi-government offices by holding the officers personally responsible for their capricious or even ultra vires action resulting in injury or loss to a citizen by awarding damages against them. Various decisions rendered from time to time have been referred to by Wade on *Misfeasance by Public Authorities*. We shall refer to some of them to

demonstrate how necessary it is for our society.”

In view of the law cited above and also the facts and circumstances of the case, the petitioner also deserves for payment of interest on the amount which remained with the respondent-authorities for a period of approximately two years. He is also held entitled for compensation as well as damages. The petitioner has undergone tremendous agony as the authority concerned empowered to function under a statute while exercising powers discharging public duty, has not acted fairly. Petitioner has suffered physical, mental as well as financial agony due to action and inaction on the part of the respondent-authorities. He is entitled for compensation for harassment or mental agony or oppression because of payment of less amount of ₹ 2/- only. He had to wait for issuance of allotment letter handing over possession and under compelling circumstances he had to deposit more amount which was subsequently refunded. It appears to be an act of *mala fide*. However, no damages can be paid for mental agony as the power and duty to award compensation does not mean that compensation can be awarded in all of the matters and there cannot be a uniform rate of interest. Every case is to be considered on the basis of its facts and circumstances. Under the Interest Act, 1978 the “current rate of interest” would mean the highest of the maximum rates at which the interest may be paid on different classes of deposits by different classes of scheduled banks in accordance with the directions given or issued by the Reserve Bank of India under the Banking Regulations Act, 1949. Section 3 of the Interest Act provides that in any proceedings for the

recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damage already paid is made, the Court may, if it thinks fit, allow interest at a rate not exceeding the current rate of interest. In the present case the petitioner deserve for highest rate of interest.

Accordingly, by considering the facts and circumstances of the case and the law position as discussed above, the petitioner is held entitled for interest @ 15% per annum for the period the refunded amount *i.e.* ₹4,72,180/- remained with the respondent-authorities from 29.06.2016 to 10.05.2018. Other than the interest amount, the petitioner is also entitled to an amount of ₹ 50,000/- for damages. The respondent-authorities are directed to calculate the amount of interest and pay the same along with the amount of damages within a period of two months from the date of receipt of certified copy of the order.

**(DAYA CHAUDHARY)
JUDGE**

Dated : 11.07.2019
sunil yadav

**(SUDHIR MITTAL)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No