

(2001) 02 NCDRC CK 0034

In the National Consumer Disputes Redressal Commission

JASUP ENGINEERING CO.

APPELLANT

Vs

DISTINCTIVE PROPERTIES AND LEASING LTD.

RESPONDENT

Date of Decision : 28-02-2001

Acts Referred:

Citation : 2001 3 CPJ 115

Hon'ble Judges : R.K.Anand , R.L.Sudhir J.

Final Decision : Review Application dismissed

Judgement

1. THIS is an application filed under Section 13(2) of the Monopolies and Restrictive Trade Practices Act, 1969 (the MRTP Act in short), for review of the order dated 9.1.1998 passed by the MRTP Commission in C.A. No. 185/1996.

2. TO put the review application in proper perspective, it is necessary to briefly state the facts relevant to the order under review. In 1989, the review applicant applied for allotment of a three-bedroom flat in Devika Apartments proposed to be constructed by the respondent builders in Vaishali Group Housing Scheme at Ghaziabad. The applicant was allotted Flat No. 305 subject to the conditions given in the letter of allotment dated 23.8.1991. The applicant accepted the aforesaid terms and conditions of allotment and started making payments of instalments in accordance with the instalment plan opted for by the applicant. In all, the applicant is stated to have paid an amount of Rs. 6,81,565/- to the respondent. The applicant, however, felt aggrieved by the delay in the implementation of the project and escalation in the cost of the flat. The applicant, therefore, filed the compensation application referred to above under Section 12B of the MRTP Act for grant of compensation by way of refund of the deposited amount with interest @ 24% per annum. The applicant also prayed for compensation for mental agony. The Commission vide its order under review accepted the compensation application and ordered refund of an amount of Rs. 6,81,565/- with interest @ 12% per annum. No compensation was awarded for mental agony etc. Although the compensation application was decided in favour of the applicant, the applicant has preferred this review application on the

ground that it suffers from some factual errors and legal infirmities. In its reply, the respondent has opposed the review application on various grounds. The arguments addressed by the learned Counsel in support of their respective contentions were heard on 2.2.2001.

The factual inaccuracies pointed out by the applicant are cosmetic in character and have no bearing on the merits of the case. They also do not cause any prejudice to the applicant in respect of the relief prayed for. The main grievance of the applicant appears to be the rate of interest of 12% per annum at which the Commission has ordered the refund of the deposited amount. The other grievance of the applicant appears to be the non-acceptance of the prayer to award compensation for mental agony.

3. THE applicant's contention is that in other cases where there was delay in delivering the possession of flats, the Commission had awarded interest @ 18% per annum whereas the applicant has been awarded interest @ 12% per annum, which is discriminatory. We find it difficult to agree with this contention. THE rate of interest depends on the totality of circumstances in each case and, therefore, it may differ from one case to the other. THE rate of interest awarded in one case cannot be claimed in other cases in routine as a matter of right because the facts and circumstances of these cases may differ from each other. In the instant case, interest @ 12% per annum was considered adequate in the facts and circumstances of this case which have been made a mention of in the Commission's order also. In *Ghaziabad Development Authority v. Union of India & Anr.*, reported in II (2000) CPJ 1 (SC)=IV (2000) SLT 654=2000 CTJ 205 (Supreme Court) (MRTP), the Hon'ble Supreme Court has also considered the rate of interest @ 12% per annum as reasonable. THE order of the Commission, therefore, does not call for review on this count. The other grievance of the applicant relates to non-payment of compensation for mental agony. For award of compensation for mental agony, we have to follow the principle laid down by the Hon'ble Supreme Court in *Lucknow Development Authority v. M.K. Gupta*, reported in III (1993) CPJ 7 (SC)=(1993) CTJ 929 (SC) (CP). This principle was adopted by the Hon'ble Supreme Court in *Ghaziabad Development Authority v. Union of India & Anr.* (supra), also and the compensation of Rs. 50,000/- awarded by the MRTP Commission for mental agony was set aside as not tenable. In the instant case also, award of compensation for mental agony is not justified because the applicant has not been able to prove that the respondent acted capriciously in exercise of its power thereby causing harassment and mental agony to the applicant. Hence the Commission's order under review cannot be faulted on this count, either. Further, in view of the binding ruling of the Hon'ble Supreme Court in *Mahindra and Mahindra Ltd. v. The Director General (Investigation and Registration)*, reported in AIR 1979 Supreme Court 798, we cannot permit rehearing of the case to determine whether the applicant deserved compensation for mental agony or not.

4. IN view of the foregoing discussion, the review application of the applicant is

dismissed with no order as to costs. Review Application dismissed.