

A HARYANA URBAN DEVELOPMENT
AUTHORITY AND ANR.

V.

SATISH HANS
Civil Appeal No. 2903 of 2009

B APRIL 29, 2009

**[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]**

Consumer Protection Act, 1986 – s. 12 – Complaint under

- C – *District Forum directed appellant-authority to re-calculate amount payable by allottee, with simple interest as mentioned in the allotment letter and not with compound rate of interest as demanded by appellant-authority – Order confirmed by State Commission – Revision petition dismissed by National Commission – Placing reliance on Surinder Mohan case, appellant-authority raised plea before Supreme Court that as the allottee had earlier moved the appellant authority/availed available remedy, he could not thereafter move any forum under the Act and that the National Commission did not consider this aspect even though a specific plea was raised – Held: National Commission directed to re-consider the matter in the light of Surinder Mohan case.*

- F **Pursuant to a complaint filed under s.12 of the Consumer Protection Act, 1986, the District Consumer Forum directed the appellant-authority to re-calculate the entire amount payable by the allottee, with simple interest @ 15% p.a. as mentioned in the allotment letter and not with compound interest as demanded by the appellant-authority. The order was confirmed in appeal by the State Commission. Revision petition filed by appellant before the National Commission was dismissed.**

In appeal to this Court, placing reliance on the Surinder Mohan case*, it was contended that as the

allottee had earlier moved the appellate authority/availed available remedy; he could not thereafter move any forum under the Act and that the National Commission did not consider this aspect even though a specific plea was raised.

Allowing the appeal and remitting the matter to the National Commission, the Court

HELD: In the circumstances, it would be appropriate for the National Commission to re-consider the matter in the light of what has been decided in the case of *Surinder Mohan*. [Para 6] [181-A]

* *Surinder Mohan v. Municipal Corporation and Anr.* III (2006) CPJ 136(IC) – referred to.

Case Law Reference

III (2006) CPJ 136(IC) referred to Para 3

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2903 of 2009

From the Judgement and Order dated 07.07.2004 of the Hon'ble National Consumer Disputes Redressal Commission in Revision Petition No. 2145 of 2003.

S.S. Gulati (Dr. for Kailash Chand), for the Appellant(s).

The Judgement of the Court was delivered by

DR. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by the National Consumer Disputes Redressal Commission (in short 'National Commission'). By the impugned order the Commission dismissed the petition. Challenge in the revision petition before the National Commission was to the order passed by the District Consumer Disputes Redressal Forum, Panchkula (in short 'District Forum') as confirmed by the order passed by the State

- A Disputes Redressal Commission, Haryana, (in short the 'State Commission'). The complaint was filed under Section 12 of the Consumer Protection Act, 1986 (in short the 'Act'). The grievance was that the complainant purchased a shop in an auction in 1993 and had deposited a sum of Rs.82,000/- . He had further
- B deposited a sum of Rs.2,07,000/- . Since further payment was not forthcoming there was no area development and the appellant authority resumed the plot. Against this, appeal was filed before the Administrator of the appellant authority who allowed the appeal and fixed schedule of payments. An undertaking was
- C filed before the appellate authority by way of an undertaking that he was ready to pay the balance amount as per HUDA policy. The complaint was filed by the complainant for rectifying statement of accounts by working out the amount payable by charging 10% p.a. rate of interest against the compound rate of interest as demanded by the appellant authority. The District
- D Forum directed the appellant to re-calculate the entire amount with simple interest @15% p.a. as mentioned in the allotment letter and not with compound interest. The appellant filed appeal before the State Commission which was dismissed. The
- E National Commission did not find any substance in the revision petition and held that the National Commission has taken the view that simple interest was to be charged and not otherwise. Therefore, the revision petition was dismissed.

- 3. In support of the appeal learned counsel for the appellant
- F authority submitted that the National Commission itself has taken view that where an allottee moves the appellant authority, or avails remedy available he cannot thereafter move the forum and/or State or National Commission under the Act. Reliance is placed on an order passed by the National Commission in *Surinder Mohan v. Municipal Corporation and Anr.* [III (2006) CPJ 136(IC)]

- 4. It is the stand of the appellant that the National Commission has not considered this aspect even though specific plea was raised.

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5. There is no appearance on behalf of the respondent. A

6. In the circumstances it would be appropriate for the National Commission to re-consider the matter in the light of what has been decided in the case of *Surinder Mohan* (supra).

7. The matter is remitted to the National Commission. The appeal is allowed to the aforesaid extent. No costs. B

B.B.B.

Appeal allowed.