

CASE NO.:
Appeal (civil) 3706 of 1998

PETITIONER:
Bareilly Development Authority

RESPONDENT:
Vrinda Gujarati & Ors.

DATE OF JUDGMENT: 26/02/2004

BENCH:
S. Rajendra Babu, Dr. AR. Lakshmanan & G.P. Mathur.

JUDGMENT:
JUDGMENT

Dr. AR. Lakshmanan

This appeal is directed against the judgment and order dated 14.5.1996 passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 36735 of 1995. The appellant-Bareilly Development Authority (hereinafter referred to as "the BDA") was set up by the State of U.P. by Notification dated 19.4.1977 issued under Section 3 of the U.P. Urban Planning and Development Act, 1973. The BDA issued an advertisement calling for applicants to apply for allotment of flats to be constructed by it in the Priyadarshani Nagar Yojna of Bareilly under the Pushpanjali Scheme and the Kusumanjali Scheme. The appellant also issued a Brochure giving the terms and conditions under which the said applicants could apply for and be allotted the flats under the said Scheme. The estimated cost of the said flats was also given in the said Brochure and it was clearly mentioned that the final costing will be done later and the costing of the flats was subject to the right of the appellant to amend the same. The Brochure also did not contain any prescribed date or time period for either construction of the flats or the delivery of possession.

The respondents in this appeal applied for allotment of flats in Kusumanjali Scheme. As per the Brochure, 52 flats under the Scheme were to be of 57.10 Sq. Mtrs. (614.39 Sq. Ft.) and were to cost as follows:-

Ground Floor	-	Rs.2,10,000.00
First Floor	-	Rs.2,00,000.00
Second Floor	-	Rs.1,90,000.00
Third Floor	-	Rs.1,80,000.00

Respondents 1-5 registered themselves for the flats in Kusumanjali Scheme and also paid the required registration fee. The construction of the flats was started and thereafter, there was some dispute between the BDA and its contractor and the construction was delayed for nearly one and a half year and finally the construction was re-started though only two floors instead of original four were built in the Kusumanjali Scheme and thus only 22 flats were built out of 52 originally intended. After the draw of lots, the respondents were issued allotment letters indicating therein in Clause 2 that the price of the flat was still an estimated one and that the final costing would be done after completion on the basis of the actual costs and would be informed thereafter to the allottee which would be payable by them. Clause 2 of the Allotment Letter (Annexure-B) reads as under: "The estimated cost of the flat is Rs.2,10,000/-. The final cost would be intimated to you on the basis of actual costing after the completion of the Scheme, which would be payable by you."

A Final Costing Committee was set up by the BDA consisting of the Secretary, the Chief Accounts Officer and the Executive Engineer of the BDA and the Committee, after due deliberation, recommended that on the basis of the actual cost of each flat, the price had to be enhanced (in the case of flats on the ground floor, for example, increasing from Rs.2,10,000/- to Rs.2,81,100/-). The Committee also recommended that the allottees be given additional time to deposit the enhanced amount of the price as the said allottees had already deposited their respective quarterly instalments. It has further recommended that in case the allottees fail to deposit the said amount in the time prescribed, interest @ 18% be charged from them. The respondents were duly informed by individual notices by the appellant about the final costing of the said flats and also that they were required to deposit within 15 days of the receipt of the said notice the balance amount of price of the flat as well as the proposed lease rent. The respondents filed objections to the said increase in price. The said representations were rejected by the appellant on 21.10.1993(Annexure-D). When the flats were ready for delivery of possession, in view of the reluctance shown by the respondents in paying the enhanced amount, the BDA offered the option to the respondents to either file an undertaking by way of affidavit that they would pay the enhanced amounts or to take back their deposit sums with interest. All the respondents filed their undertakings by way of affidavits dated 19.5.1994 and undertook unconditionally to be bound by the final costing of the flats by the BDA and also to pay the enhanced amount. The affidavit reads thus:-

AFFIDAVIT

I, Shrimati Vrinda Gujarati, Wife of Shri B.K. Das, am the resident of 330, Madhobadi, Bareilly and I hereby on oath state as following:

1. That the decision taken in future by the Bareilly Development Authority regarding the increase in the cost of the Flat No.9-A (Ground Floor), Kusumanjali Scheme, Priyadarshani Nagar, Bareilly allotted to me would be binding on me.
2. That the deponent is ready to deposit the entire amount of the increase in cost.

Varinda

Sd/-

On 19.6.1993 to 13.7.1994, the BDA delivered possession of the said flats on various dates to the respondents. The respondents, after taking possession of their respective premises and after filing the above undertakings once again made representation to the appellant against the final costing of the said flats. The BDA, in the meantime, sent another notice to the respondents to pay the enhanced unpaid amounts of the costs with 18% interest or else legal action would be taken against them. Since the respondents failed to pay the said amount in spite of repeated demands, the BDA initiated recovery proceedings against the respondents under the U.P. Zamindari Abolition and Land Reforms Act, 1950 and recovery certificates were issued against the respondents by the Tahsildar, Bareilly. Being aggrieved, the respondents filed C.M.W.P. No.36735 of 1995 before the High Court of Judicature at Allahabad challenging enhancement in the final cost of the flats and praying, inter alia, that the recovery proceedings against the respondents initiated by the BDA for recovery of the unpaid amounts be quashed. The High Court stayed the recovery proceedings provided the respondents deposited

Rs.45,000/- on or before 31.1.1996. Before the High Court, the BDA placed the Chart showing the details of the reasons for enhancement of the price. (Annexure-N). The High Court by its judgment and order dated 14.5.1996 allowed the writ petition filed by the respondents herein and issued further directions to the BDA regarding adjustment of various amounts against the final price of the flats, though the High Court did not either strike down the enhanced price or hold it illegal. Aggrieved by the said judgment, the BDA has preferred this appeal by way of special leave petition.

We heard Shri Bharat Sangal, learned senior counsel appearing for the BDA and Mr. A.K. Sanghi & Mr. Punit D. Tyagi, learned counsel appearing for the respondents.

Learned counsel appearing for the appellant made the following submissions:

(i) There has been no application of mind by the High Court to the terms and conditions of the contract entered into between the BDA and the respondents and the High Court has ignored totally the law in regard to such cases as laid down by this Court.

(ii) The High Court failed to appreciate that Clause 2 of the Brochure of May, 1990 produced by the BDA for the concerned scheme in which the said respondents applied for and obtained the concerned flats, clearly provided that the cost of each flat given in the said Brochure was only an estimated and actual cost would be intimated later at the time of allotment.

(iii) The High Court failed to appreciate that in Clause 15 of the Brochure it was clearly stated that the BDA reserves the right to amend any term or condition of the Scheme till the time of allotment and such amendment shall be binding on the allottees.

(iv) It was contended that the revised cost of the said flats, necessitated by the increase in size of the flat as well as the increase in each flat's share in cost of the land due to reduction in number of flats built, were informed to the respondents, they accepted the increased cost and also filed undertakings by way of affidavits affirming their decisions to abide by the increase and pay the required enhanced amount.

(v) The High Court has failed to appreciate that Clause 13 of the Brochure only provides that the possession would be given to the allottee only after the full amount has been deposited and it cannot be interpreted to mean that the possession would be given immediately after the allotment is made. The direction issued by the High Court regarding the payment of interest by the authority to the respondents is baseless and issued without any reason.

It was submitted that the High Court has erred in holding that the appellant is not entitled to any interest on the amounts unpaid to it by the concerned respondents for the period between 20.12.1995, date of the interim order and 14.5.1996, the date of the final judgment.

In this regard, it was submitted that the High Court has failed to appreciate that by the interim order dated 20.12.1995, the High Court had only stayed the recovery proceedings against the said respondents for non-payment of balance amount, and it cannot be said that the said order has also stayed the liability of the said respondents to pay the said amount.

It was further submitted that the High Court has not struck down the enhanced cost announced by the appellant nor has it held that the appellant is not entitled to recover the unpaid amounts from the respondents and it has only directed that certain adjustments on account of interest payable to the respondents and difference in registration fee be adjusted from the final price.

(vi) The High Court has failed to appreciate that there was no challenge made to the terms of the Brochure by the respondents at any stage and thus there could be no interference with the said terms and conditions by the High Court and in that regard, the High Court has exceeded its jurisdiction by doing so.

It was further submitted that the judgment and order of the High Court is also bad as it has exceeded its jurisdiction by granting

compensation to the respondents.

Per contra, Mr. A.K. Sanghi, learned counsel appearing for the respondents, submitted that the appellant being a statutory body is under obligation to provide flats to the respondents, who belong to the Middle Income Group and other citizens of a reasonable and just price. The High Court, therefore, was perfectly justified in law in holding that the enhancement sought to be recovered from the respondents is arbitrary and without basis whatsoever.

A reading of the terms and conditions of the Brochure would show that the same were one sided and were rightly held by the High Court to be unconscionable because the BDA has a duty to construct and allot flats to the poor citizens who are unable to construct houses on their own. It was further contended that the terms and conditions of the contract as well as the undertaking given by the respondents are not voluntary and that the respondents who are weaker sections of the society were forced to give undertakings which were unenforceable.

We have gone through the relevant records, the undertakings and the affidavits given by the respondents and the Chart of Escalation and the judgment of the High Court.

Before proceeding further, it is beneficial to reproduce the Chart of Escalation which is as follows:

Chart of Escalation

1. Estimated area	=	614 Sq.ft.
2. Finally constructed area	=	702 Sq.ft.
3. Increase in covered area	=	88 Sq. ft.
4. Rate of construction per sq. ft. (cost of land included)	=	Rs.342/-
5. Increase in construction cost	=	342x88= Rs.30,096/-
6. Cost of land also increased for every purchaser as the construction made was 2 storey in place of 4 storeyed		
7. Initially purchaser of ground f floor had to pay for land	=	Rs.137/- per Sq. ft.
(This was included in estimated cost of Rs.2,10,000/-)		
8. After final costing cost of land increased to	=	Rs.183/- per sq. ft.
9. Increase in cost of land	=	Rs.46/- per sq. ft.
10. Total increase in cost of land for every purchaser of ground floor	=	Rs.32,292/-
11. Increase in cost of other facilities	=	Rs.8,500/- such as parking, water, sewer etc.
12. Total increase	=	Rs.30,0096+Rs.32,292+ Rs.8,500 = Rs.70,888/-

Details of increased area

1. One more toilet was constructed.
2. In place of two common passages, three common passages were constructed.
3. Bigger Verandah was made.

Total increase in covered area = 88 Sq. ft.

It is seen from the above Chart that the finally constructed area is 702 Sq. ft. and the increase in the covering area is 88 sq. ft. The BDA has claimed only the increase in construction cost of 88 sq. ft. @ construction per sq. ft. at Rs. 342/- namely, Rs.342 x 88 = 30,096/-. According to the BDA, the cost of the land has also increased for every purchaser as the construction made was two storeyed in place of four storeyed. Initially the purchaser of the ground floor had to pay for land Rs.137/- per sq. ft. which was included in the estimated cost of

Rs.2,10,000/-. After final costing, the cost of the land is now increased to Rs.183/- per sq. ft. The increase in cost of the land is Rs. 46/- per sq. ft. and the total increase in the cost of the land for every purchaser of ground floor is Rs. 32,292/-. It is also an admitted fact that the BDA had provided the other facilities such as parking, water, sewer etc. and the increase in cost of these facilities is Rs.8,500/-. Thus the total increase of construction cost, cost of the land and the other facilities come to Rs.70,888/-. The details of the increased area has also been very clearly spelt out which includes one more toilet, in place of two common passages, three common passages were constructed and a bigger Verandah was made and the area covered by these items comes to 88 sq. ft.

We have already referred to the allotment letter, undertaking by way of affidavit and Chart of Escalation etc. and as per the above undertaking, the BDA is entitled to collect the enhanced price from the allottees. Once the respondents owe money to the appellant, it is fully in the competence of the Authority to recover the same. The parties to this action are bound by the terms of the contract.

This Court in its judgment in the case of Bareilly Development Authority & Anr. vs. Ajai Pal Singh & Ors. , (1989) 2 SCC 116 has clearly held that the authority or its agent after entering into the field of ordinary contract acts purely in its executive capacity. Thereafter, the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines the rights and obligations of the parties inter se. At page 124 of the judgment, this Court has also held that once the respondents have given their written consent accepting the changed and varied terms and conditions, they cannot be permitted to contend that the authority has gone back on its original terms and conditions to their detriment. This Court further held that once the respondents have entered into the realm of concluded contract pure and simple with the authority they cannot step out of the terms of the contract unless some statute steps in and confers some special statutory obligations on the authority in the contractual field.

The above view was endorsed by this Court in its judgment in Indore Development Authority vs. Sadhana Agarwal (Smt.) & Ors., (1995) 3 SCC 1.

This Court in paragraph 9 of this judgment held as under:

"But taking all facts and circumstances into consideration, this Court said that it cannot be held that there was misstatement or incorrect statement or any fraudulent concealment, in the brochure published by the Authority. It was also said that the respondents cannot be heard to say that the Authority had arbitrarily and unreasonably changed the terms and conditions of the brochure to the prejudice of the respondents. In that connection, it was pointed out that the most of the respondents had accepted the changed and varied terms. Thereafter they were not justified in seeking any direction from the Court to allot such flats on the original terms and conditions."

This Court further in paragraph 10 of the judgment held as under:

"So far the facts of the present case are concerned, it is an admitted position that in the proforma attached to the application for registration, the appellant said that the price mentioned by them was a probable and estimated cost, the definite price shall be intimated at the time of the allotment. Thereafter, the appellant had been informing the respondents and others who had got themselves registered, from time to time regarding the escalation in the cost of the flat. One of the reasons for the rise of the price for the LIG Flat from Rs.60,000 to Rs.1,16,000 appears to be the increase in area of the flat itself from 500 sq. ft. to 714.94 Sq. ft. From 1982 to 1984,

possession of the flats could not be delivered because of the dispute pending in the Court which also contributed to the increase in the cost of the flat. Admittedly, the respondents came in possession of the flats in the year 1984,. In the facts and circumstances of the case, we are satisfied that no interference was called for by the High Court."

We are, therefore, of the opinion that only obligation on the BDA was to provide the houses in question on the contractual price and in that regard the judgment of this Court in L.I.C. of India & Anr.vs. Consumer Education & Research Centre & Ors., (1995) 5 SCC 482 was cited. The above judgment has no relevance with the present case.

It was denied by the BDA that the respondents have paid full amount towards the cost of the flats as alleged. The enhancement in the cost was due to actual increase in the cost of the flat as detailed in the chart annexed as Annexure-N which formed part of the supplementary affidavit filed before this Court. Such enhancement, in our opinion, was in accordance with clauses 2 and 15 of the Brochure of May, 1990 and the said enhancement was also in accordance with clause 2 of the allotment letters dated 10.12.1991 issued to various applicants. The said enhancement was clearly accepted by the respondents by their various affidavits of undertakings filed on 19.4.1994 and other respective dates before the BDA. The respondents after undertaking to pay the enhanced amount and after taking possession of the flats on that ground cannot be allowed to raise frivolous contentions to avoid payment to the appellant. At the time of hearing, this Court on 11.4.1997 passed an order directing the counsel appearing on behalf of the BDA to find out whether there is a proposal or likelihood of two more storeyes being added to the flats that have been constructed. Counsel for the BDA submitted before the Court that the Scheme originally was to build four storeyed buildings but now only two storeyed building has been built. As a result, the entire cost of the flats has rateably been distributed among the occupiers of the two storeys building instead of larger number of occupiers of the four storeys building as was originally envisaged. This is another reason for the enhancement in the cost of the flat.

This Court in the case of Delhi Development Authority vs. Pushpendra Kumar Jain, 1994 Supp(3) SCC 494, which was cited before the High Court, has misinterpreted the said decision. In that case in paragraph 7 at page 497 of the judgment, this Court held that there was no material produced before any Court in the said matter to show that there was any delay in allotment of the flats in the said case due to inefficiency on the part of the authority and further that as there was no period prescribed in the Scheme for the allotment hence it could not be said that there was any inordinate delay. In the present case also, there was no period prescribed for allotment and in any case, the flats in question were allotted within two years from the issuance of the Brochure and there cannot be said to be any inordinate delay.

The High Court also has not given any finding that the final costing of the flats concerned was wrong or unreasonable. The High Court has only held that there is unreasonable delay in delivery of possession and hence, directed to pay the interest @ 18% for the delayed period from the date of the allotment to the date of the delivery of the possession.

The BDA Housing Scheme provides that no interest is payable on instalments under Self Financing Scheme. However, the Scheme provides that if the amounts payable to the BDA are not paid within the prescribed time limit, penal interest at the rate of 18% per annum shall be payable along with payable amounts.

At the time of hearing, learned counsel made an appeal to the Court to reduce the rate of interest from 18% to 6% on the ground that

the allottees under the Scheme in question belonged to Middle Income Group and, therefore, they would not be in a position to pay the interest. In our view, once the liability of the respondents to pay the balance amount remaining unpaid out of the final cost of the flat is not struck down and remains in existence, the appellant cannot be asked to forego the interest for the period, or any part thereof, for which the said amounts remain unpaid. The High Court is not right in creating double jeopardy for the BDA directing it to pay interest to the respondents while at the same time to direct the respondents not to pay interest on the unpaid amounts. However, taking note of the financial status of the respondents and in the peculiar facts and circumstances of the case, we direct the respondents to pay simple interest @ 9% on the enhanced price of the flats. The enhanced price of the flats shall be paid in six monthly equal instalments together with accrued interest payable on diminishing balance on or before the 10th of every succeeding month commencing from April 2004. If the respondents commit any two defaults in the payment of instalments on the enhanced price, the interest @ 18% shall be recovered from them by the BDA. The amounts deposited by the respondents as per the interim order, if any, will be given credit to. According to the Brochure, the Housing Scheme is a Self Financing Scheme wherein the allottees were to pay the cost of the flats in quarterly instalments. The parties are bound by the terms of the contract in regard to the payment of the original cost of the flats as per the agreement. For the foregoing reasons, the present appeal filed by the BDA deserves to be allowed. The judgment and order of the High Court dated 14.5.1996 in CMWP No. 36735/95 is set aside. But however, we make no order as to costs.