

REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION**

Civil Appeal No(s). 4493 of 2019
(Arising out of SLP(C) No. 34 of 2018)

**Visakhapatnam Metropolitan Region
Development Authority**

Appellant(s)

Versus

Chavva Sheela Reddy

Respondent(s)

J U D G M E N T

Dr. Dhananjaya Y. Chandrachud, J.

Leave granted.

This appeal arises from a judgment in first appeal of the National Consumer Disputes Redressal Commission¹ dated 8 November 2017. The respondent was allotted a flat admeasuring 1765 sq. ft. in Godawari Block-1 of Harita Housing Project Scheme developed by the appellant. The letter of allotment stated that the cost of the flat was Rs 30,40,000. The allotment order set out the payment schedule. Among the terms of allotment, clauses 5, 6(a) and 7 provided as follows:-

“5. No interest is payable on the amounts paid or deposited with VUDA.

6(a) The probable date of completion of construction of the units is by November 2011 and may extend upto 3 month as per site conditions.

7. The allottee or the purchaser of flat shall be bound by any other conditions of VUDA or State Government or Central Government which may impose from time to time.”

During the course of the construction in July 2011, the appellant faced a dispute with the contractor engaged for construction and terminated the contract on 14 October 2011. The construction agency instituted proceedings before the District Court, Vishakhapatnam. In the meantime, a circular was issued by the appellant on 24 February 2012 to all the 710 allottees, bringing to their notice the reasons for the delay in the completion of the project.

After the proceedings before the District Court came to a conclusion, the appellant called for tenders for the execution of the balance work. The development was eventually completed. The respondent instituted a consumer complaint before the A.P. State Consumer Disputes Redressal Commission², aggrieved by the escalation of cost.

By its order dated 11 December 2015, the SCDRC directed the appellant to:

- (i) Deliver possession in accordance with the letter of allotment;
- (ii) Pay costs of Rs 2,00,000 towards costs;
- (iii) Pay a sum of Rs 2,000 towards causing mental agony;
- (iv) Comply within three months failing which the amounts as directed would carry interest at 12% per annum.

In appeal, the NCDRC by its judgment dated 8 November 2017 held that the appellant is liable to hand over possession of the allotted flat in terms of the letter of allotment at the price stipulated therein. However, the order of compensation of Rs 2,00,000 was set aside. As regards the fifth and sixth

instalment, the NCDRC directed that this should be governed by the letter dated 31 July 2013 re-scheduling the payment of installments.

The appeal before this Court raises the issue as to whether the appellant was entitled to raise a demand for escalated cost. According to the appellant, it was entitled to raise a demand for the cost escalation. On the other hand, the respondent submits that this was a fixed price contract as a consequence of which no escalation was payable.

The original price of the HIG flat allotted to the respondent was Rs 30,40,000 computed at Rs 1719 per sq. ft. The escalated price demanded by the appellant at the rate of Rs 2170 per sq. ft. worked out to Rs 38,30,050. It must be noted that the appellant has in pursuance of its own decision granted interest to all allottees including the respondent on the moneys deposited, based on the size of the flats. This has been granted despite the specific covenant contained in the letter of allotment that no interest would be payable by the appellant. The respondent has been granted an interest benefit of Rs 6,28,621. The effective cost of the flat has, hence been reduced to that extent as a result of the concession granted on account of interest.

We find from the letter of allotment dated 18 October 2010 that the respondent was provisionally allotted a HIG flat admeasuring 1765 sq. ft. Though the cost of the flat is stipulated to be Rs 30,40,000, the conditions of allotment contained certain other stipulations. This includes clause 7 which indicates that the allottee or purchaser would be bound by any other conditions imposed by the appellant from time to time. The sale deed under clause 9 was liable to be executed only after payment of the full and final cost of the flat together with penal interest etc.

In the facts of the present case, we also find that the appellant as a public authority has acted fairly by granting to all the allottees including the appellant, interest on the amounts which were deposited with the authority by the allottees. Consequently, the appellant has been granted a concession of approximately Rs 6,28,000 on the total cost of the flat inclusive of escalation.

During the pendency of the appeal, certain developments took place. During the pendency of the appeal, the appellant moved an I.A. for permission to hand over possession of the flat to the respondent. Possession of flat No. 402, Godawari Block-1 was handed over to the spouse of the respondent on 6 March 2019 which has been acknowledged before the Court. It is also an admitted position that the respondent has paid all the outstanding claims and demands raised by the appellant. Since, this is the factual position and having due regard to the terms and conditions of the letter of allotment, the NCDRC, in our view, was not justified in directing that the appellant would be entitled only to the original consideration without escalation.

In terms of clause 7 of the letter of allotment, it was open to the appellant to enhance the price which was charged. In arriving at this conclusion, we are fortified by the decision of this Court in **Bangalore Development Authority v. Syndicate Bank**³. Justice R.V. Raveendran, speaking for a two judge Bench of this Court held:

“(f) Where the plot/flat/house has been allotted at a tentative or provisional price, subject to final determination of price on completion of the project (that is acquisition proceedings and development activities), the development authority will be entitled to revise or increase the price. But where the allotment is at a fixed price, and a higher price or extra payments are illegally or unjustifiably demanded and collected, the allottee will be entitled to refund of such excess with such interest, as may be determined with reference to the facts of the case.”,

Undoubtedly, the appellant as a public authority, is accountable in respect of the demands which it raises and is duty bound to act fairly and reasonably. In the facts of the present case, we find that the appellant has acted fairly by giving all the allottees interest on the amounts which were retained by the Authority.

We accordingly, allow the appeal and set aside the impugned judgment and order of the NCDRC

There shall be no order as to costs.

.....J.
(Dr. Dhananjaya Y. Chandrachud)

.....J.
(Hemant Gupta)

New Delhi
April 30, 2019

ITEM NO.16

COURT NO.9

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 34/2018

(Arising out of impugned final judgment and order dated 08-11-2017 in FA No. 150/2016 passed by the National Consumers Disputes Redressal Commission, New Delhi)

VISAKHAPATNAM METROPOLITAN REGION
DEVELOPMENT AUTHORITY

Petitioner(s)

VERSUS

CHAVVA SHEELA REDDY.

Respondent(s)

(IA 117932/2018- PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA 167050/2018-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA 32558/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 30-04-2019 This petition was called on for hearing today.
CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE HEMANT GUPTA

For Petitioner(s)

Mr. P.N. Misra, Sr. Adv.
Mr. Kunal Cheema, AOR
Ms. Aditi Deshpande Parkhi, Adv.

For Respondent(s)

Mr. D. Ramakrishna Reddy, Adv.
Theerthe Gowda N.M., Adv.
Mrs. D. Bharathi Reddy, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed reportable judgment.

Pending application(s), if any, shall stand disposed of.

(MANISH SETHI)
COURT MASTER (SH)

(SAROJ KUMARI GAUR)
BRANCH OFFICER

(Signed reportable judgment is placed on the file)