

INDORE DEVELOPMENT AUTHORITY

v.

SMT. SADHANA AGARWAL AND ORS.

MARCH 7, 1995

[J.S. VERMA AND N.P. SINGH, JJ.]

*Housing*

*Development Authority—Housing Scheme on hire purchase basis—Allotment of flats—Declaration of initial cost as probabale—Subsequent escalation of cost of flats—Development Authority should not act in Arbitrary or erratic manner—It owes a duty to explain to the Court reasons for the high escalation—Escalation of costs on account of increase in cost of materials, area of flats and litigation held justified.*

The appellant-Authority invited applications for allotment of LIG and MIG flats on hire purchase basis. The advertisement stated that the price of fats was on estimated basis and the definite price will be intimated at the time of allotment. By its letter dated 5.11.1979 the authority informed the resondent-allottees that the probable cost of MIG and LIG flats is expected to be Rs. 70,000 and Rs. 45,000 respectively. However, vide Authority's letter dated 7.10.1980 respondents were informed of the revised cost i.e. Rs. 60,000 for LIG and Rs. 95,000 for MIG flats. The respondent-allottees paid money from time to time. Though the flats were ready for allotment in 1982, possession was not given to the respondents because of a dispute pending in the Court as a result of which also there was increase in the cost of flats.

Once again vide Authority's letter dated 26.1.84 the respondent-allottees were informed that on account of increase in prices of various materials and increase in the area of flats, the cost of LIG flat would be Rs. 1,16,000 while that of MIG flat would be Rs. 1,30,000. Instead of paying the balance amount the respondents challenged the increase in cost of flats before the High Court which held that (i) the appellant - authority had acted in arbitrary and dictatorial manner; (ii) the escalation at different stages which amounted to 100% had not been explained to the satisfaction of Court; and (iii) the respondents be given possession of flats on the basis of letter dated 7.10.1980 i.e. MIG flats at the rate of Rs. 95,000 and LIG

flats at the rate of Rs. 60,000. The Development Authority preferred an appeal to this Court challenging the decision of the High Court.

Allowing the appeal, this Court

**HELD: 1.** Although this Court has from time to time taking the special facts and circumstances of the cases in question has upheld the excess charged by the development authorities, over the cost initially announced as estimated cost, it should not be understood that this Court has held that such development authorities have absolute right to hike the cost of flats, initially announced as approximate or estimated cost for such flats. It is well known that persons belonging to Middle and Lower Income Groups, before registering themselves for such flats, have to take their financial capacity into consideration and in some cases it results in great hardships when the development authorities announce an estimated or approximate cost and deliver the same at twice or thrice the said amount. The final cost should be proportionate to the approximate or estimated cost mentioned in the offers or agreements. With the high rate of inflation, escalation of the prices of construction materials and labour charges, if the scheme is not ready within the time frame, then it is not possible to deliver the flats or houses in question at the cost so announced. It will be advisable that before offering the flats to the public such development authorities should fix the estimated cost of the flats taking into consideration the escalation of the cost during the period the scheme is to be completed. [562-F-H, 563-A-B]

**2.** In the instant case the escalation is more than 100%. The High Court was justified in saying that in such circumstances, the Authority owed a duty to explain and to satisfy the Court, the reasons for such high escalation. This does not mean that the High Court in such disputes, while exercising the writ jurisdiction, has to examine every detail of the construction with reference to the cost incurred. But the High Court has to be satisfied on the materials on record that the authority has not acted in an arbitrary or erratic manner. However, in the facts and circumstances of the case, no interference was called for by the High Court. [563-C-D, G]

*Bareilly Development Authority v. Ajay Pal Singh*, [1989] 2 S.C.C. 166 and *Delhi Development Authority v. Pushpendra Kumar Jain*, JT (1994) 6 S.C. 292, referred to.

3. As the respondents are in possession of the flats since 1984 without payment of any rent to the appellant-authority, they should not have any grievance in making payment of the balance amount with simple interest at the rate of 6% per annum from the date of obtaining possession of the flat until payment. [564-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2734 of 1985.

From the Judgment and Order dated 1.5.85 of the Madhya Pradesh High Court in Misc. P.No. 83 of 1985.

A.M. Singhvi, A.K. Roy, S.S. Shroff and Ms. Monika Sharma for the Appellant.

Sushil Kumar Jain for the Respondent.

B.S. Banthia for the State Madhya Pradesh.

The Judgment of the Court was delivered by

**N.P. SINGH, J.** The Appellant, Indore Development Authority (hereinafter referred to as the 'Development Authority') has been constituted under the provisions of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 (hereinafter referred to as 'the Act'). The writ-petitioners/respondents (hereinafter referred to as 'the respondents') are the intended, allottees of flats in the Navlakha Housing Complex Scheme No. 31 in the town of Indore, on hire-purchase basis.

It appears that in the year 1977, an advertisement was issued by the Development Authority, inviting applications from the persons interested in purchase of flats in multi-storeyed buildings on hire-purchase basis. As per the said advertisement, a deposit of Rs. 1,000 for Lower Income Group (hereinafter referred to as 'the LIG') residential flat and a deposit of Rs. 2,000 for Middle Income Group (hereinafter referred to as 'the MIG') residential flat was to be made. It was also said that the plinth area for the MIG Flat shall be 805 sq. ft. and that of the LIG flat shall be 500 sq. ft. It was further said that at the time of the allotment of the flat a deposit of Rs. 11,000 was to be made by the hire-purchaser for the MIG flat and Rs. 7,500 for the LIG flat. The rest of the amount was to be paid in instalments. Details of such instalments were mentioned. At the foot, it was said that

the cost of the flats aforesaid was based on estimate and that the definite cost would be intimated at the time of allotment. The estimated period for completion of the said scheme was mentioned as two years.

Pursuant to the aforesaid offer made by the Development Authority, in respect of MIG and LIG flats, the respondents and others got themselves registered as prospective hire-purchasers and made the prescribed deposits for the purpose of the allotment of the flats. After a lapse of about two years, the Development Authority by its letter dated 5.11.1979 intimated that according to the plan approved for advance of loan by HUDCO (a financing institution) 162 MIG flats of plinth area of 750 sq. ft., 12 LIG flats of plinth area of 500 sq.ft. each would be constructed in the four blocks from 3rd floor to 7th floor of the building in the Navlakha Housing Scheme. The probable and estimated cost of MIG and LIG flats were given out at Rs. 70,000 and Rs. 45,000 respectively. There was modification also in respect of payment of instalments, so far the cost of flats on hire-purchase was concerned. The registration fee to be deposited was also revised as Rs. 5,000 in place of Rs. 2,000 for MIG flat and Rs. 3,000 in place of Rs. 1,000 in respect of LIG flat.

Once again by letters dated 7.10.1980 and 25.10.1980 the respondents were intimated that due to the increase in the prices of the materials the estimated cost of LIG flats shall be Rs. 60,000 instead of Rs. 45,000 and that of the MIG flats shall be Rs. 95,000 instead of Rs. 70,000. It was said in the communication that the revision had been made on basis of the prevailing market rates of the construction materials. According to the respondents, they had no option but to concede to the aforesaid arbitrary and unilateral demand made by the Development Authority. By letters dated 26.1.1984 and 26.12.1984, the Development Authority again intimated to the respondents a further hike in the cost of the flats. It was said that the cost of LIG flat had been raised to Rs. 1,16,000 and the cost of MIG flat had been raised to Rs. 1,30,000. In the letter aforesaid dated 26.1.1984, respondents were informed that the area of the LIG flat which had already been constructed was 714.94 sq.ft. in place of 500 sq.ft. as initially intimated in the year 1977. From the records, it appears that the construction of the building had been completed in the year 1982 and the flats were ready for allotment. But possession could not be delivered to the respondents because of a writ petition filed in respect of alleged irregular

allotments of 56 flats.

After receipt of communication dated 26.1.1984 the respondents filed a writ petition challenging the increase of the cost of flats registered by the respondents. The stand of the Development Authority, before the High Court, was that the price of the flats had to be raised because of the hike in the cost of construction. In respect of LIG flats, yet another defence was taken, saying that increase in the plinth area from 500 sq.ft. to 714.94 sq.ft. was also a factor for the hike in the price of such LIG flats. The High Court allowed the said writ petition on a finding that the appellant Development Authority, had been dealing with the respondents in an arbitrary and dictatorial manner. The escalation of the cost at different stages amounting to more than 100% had not been explained to the satisfaction of the Court. On that finding a direction was given to the appellant to deliver the possession of the flats to the respondents and other applicants on the basis of the estimated cost conveyed to the respondents and others by letters aforesaid issued in October, 1980 i.e. so far MIG flat is concerned at the rate of Rs. 95,000 and LIG flat at the rate of Rs. 60,000, within one month from the date of the order.

On behalf of the appellant, it was pointed out that at no stage the appellant had made any commitment in respect of the final cost of the flats in question. Since very beginning, they had given out only an estimated and probable cost of the flats and they have kept the respondents informed from time to time about the rise in the price of the flats, due to several intervening circumstances including escalation of the cost of the construction materials. In this connection, our attention was drawn to the advertisement and the application for registration. The particulars which were issued in respect of the flats aforesaid gave the details of the area in respect of Middle Income Group and Lower Income Group. After the schedule for payment of different instalments, Note(1) said:

"The above price is on estimated basis. Definite price will be intimated at the time of allotment. Persons receiving flats will have to pay the service charges fixed. The probable period of completion of the scheme is 2 years".

Reference was also made to a communication dated 5.11.1979, addressed to the respondents. It was said in the said communication that in Scheme No. 31 Navlakha residential Complex, it had been proposed to build

Higher/Middle/Lower income groups houses by taking loan from HUDCO:- "according to scheme sanctioned by HUDCO now 162 and 12 houses of 750 sq. ft. and 500 sq.ft. in four blocks from third storey to seventh storey with provision of lift will be built whose probable cost is expected to be respectively Rs. 70,000 and Rs. 45,000. Thereafter, the details of the payment to be made by the persons who had registered themselves for allotment of the flats, according to the scheme sanctioned by the HUDCO was given out. In that communication, it was also said that if any person wanted to have refund of the registration fee then the whole amount would be refunded without interest. Thereafter the appellant issued the communication aforesaid dated 7.10.1980 in continuation of its earlier communication dated 5.11.1979 to all the respondents saying :

"The Authority had in its earlier letter No. 14039 dated 5.11.1979 indicated the *estimated cost* of the above flat of Rs. 45,000. But as you know the market prices have increased very much. Due to draught causing scarcity of cement, the scheme is delayed. Now the estimated cost of the flat at the current market price has been *estimated* at Rs. 60,000" (emphasis supplied)

Thereafter, the details of the revised instalments which the respondents were required to pay was mentioned. There is no dispute that pursuant to the said communication, the respondents have paid from time to time. However, the communication dated 26.1.1984 aforesaid, which became the subject matter of controversy said:

"In the above mentioned Navlakha Complex one MIG Flat was reserved in your name. In this connection, you were given preliminary information by letter No. 14039 dated 5.11.79 about the amount of instalment based on probable cost and other conditions. Thereafter, in continuation, the Authority by letter No. 11969 dt. 7.10.1980, informed you for the reasons given in letter about the probable cost estimated at the time. During this interval, increase in the price of various materials required in construction, suggestion of Architect and use of the area under construction, the area of each flat increased and that due to inevitable reasons, the actual cost of the flat has become Rs. 1,16,000 (in words Rupees one lac sixteen thousand). On account of the above reasons the area of the flat has become 714.94 sq.ft. in place of 500 sq.ft."

Thereafter, a request was made by the appellant to the respondents to deposit the balance amount. A similar letter was addressed to the persons, who had registered themselves for MIG flats informing them that the area of the flat had become 808.12 sq.ft. and the actual cost of the flat was Rs. 1,30,000.

It may be mentioned that the respondents were given possession of the flats in the year 1984 itself, on basis of the direction given by the High Court. Since then they are in possession thereof. Because of that the appellant - Development Authority is claiming interest at the rate of 15% from the respondents, since the date they have taken possession of the flats, over the amount which are yet to be paid by the respondents.

During the last decade, it has become a common feature not only with the private builders, but with the builders, including Development Authorities which can be held to be a State within the meaning of Article 12 of the Constitution; (1) to escalate the price of the flats booked (2) not to deliver such flats according to the schedule mentioned in the advertisement inviting applications. In this process certainly the victims are the citizens who have booked such flats for shelter. The people belonging to the Lower Income Group, having estimated the total amount, which they may have to pay for the flats in question are on many occasions put to great strain and stress because of the revision and escalation of the cost of such flats. But the development authorities who construct such flats have their own storey. According to them, under the existing circumstances it is very difficult, if not impossible, to keep to the time schedule because of several intervening factors, including litigations pending in courts from time to time. Then the escalating price of the construction materials, labour charges etc. are the other contributory factors.

This Court in the case of *Bareilly Development Authority v. Ajai Pal Singh*, [1989] 2 SCC 116, had to deal with a similar situation in connection with the Bareilly Development Authority which had undertaken construction of dwelling units for people belonging to different income groups styled as 'Lower Income Group', 'Middle Income Group', 'Higher Income Group', and the 'Economically Weaker Sections'. The respondents to the said appeal had registered themselves for allotment of the flats in accordance with the terms and conditions contained in the brochure issued by the

Authority. Subsequently, the respondents of that appeal, received notices from the Authority intimating the revised cost of the houses/flats and the monthly instalment rates which were almost double of the cost and rate of instalments initially stated in the General Information Table. But taking all facts and circumstances into consideration, this Court said that it cannot be held that there was a mis-statement 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. Recently, the same question has been examined in the case of *Delhi Development Authority v. Pushpendra Kumar Jain*, JT (1994) 6 SC 292. In respect of hike in the price of the flats, it was said :-

"Mere identification or selection of the allottee does not clothe the person selected with a legal right to allotment at the price prevailing on the date of drawal of lots. The scheme evolved by the appellants does not say so either expressly or by necessary implication. On the contrary, clause (14) thereof says that "the estimated prices mentioned in the brochure are illustrative and are subject to revision/modification depending upon the exigencies of lay out, cost of construction etc."

Although, this Court has from time to time taking the special facts and circumstances of the cases in question has upheld the excess charged by the development authorities, over the cost initially announced as estimated cost, but it should not be understood that this Court has held that such development authorities have absolute right to hike the cost of flats, initially announced as approximate or estimated cost for such flats. It is well known that persons belonging to Middle and Lower Income Groups, before registering themselves for such flats, have to take their financial capacity into consideration and in some cases it results into great hardship when the development authorities announce an estimated or approximate cost and deliver the same at twice or thrice of the said amount. The final cost should be proportionate to the approximate or estimated cost mentioned



in the offers or agreements. With the high rate of inflation, escalation of the prices of construction materials and labour charges, if the scheme is not ready within the time frame, then it is not possible to deliver the flats or houses in question at the cost so announced. It will be advisable that before offering the flats to the public such development authorities should fix the estimated cost of the flats taking into consideration the escalation of the cost during the period the scheme is to be completed. In the instant case, the estimated cost for the LIG flat was given out at Rs. 45,000. But by the impugned communication, the appellant informed the respondents that the actual cost of the flat shall be Rs. 1,16,000 i.e. the escalation is more than 100%. The High Court was justified in saying that in such circumstances, the Authority owed a duty to explain and to satisfy the Court, the reasons for such high escalation. We may add that this does not mean that the High Court in such disputes, while exercising the writ jurisdiction, has to examine every detail of the construction with reference to the cost incurred. The High Court has to be satisfied on the materials on record that the authority has not acted in an arbitrary or erratic manner.

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. 1,60,000 appears to be the increase in the 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 informed that respondents have not paid the balance amount as demanded by the appellant from them, because of the pendency of the writ application before the High Court and appeal before this Court. The appellant has claimed the said amount with interest at the rate of 15% since the date the possession was delivered, till the balance amount is paid. As

the respondents are in possession of the flats since 1984 without payment of any rent to the appellant, they should not have any grievance in making payment of the balance amount with interest. Still taking all facts and circumstances into consideration, we direct the respondents to make payment of the balance amount along with simple interest at the rate of 6% per annum from the date of obtaining possession of the flat until payment.

Accordingly, the appeal is allowed. However, in the facts and circumstances of the case, there shall be no orders as to cost.

T.N.A.

Appeal allowed.