Delhi Development Authority

Vs

Grihsthapana Co-operative Group Housing Society Ltd.

Civil Appeal No. 931 of 1995

(S. C. Agrawal, B. L. Hansaria, Mrs. Sujata V. Manohar JJ)

20.02.1995

JUDGEMENT

HANSARIA, J. :-

1. The short point which needs to be decided in these appeals is whether the High Court of Delhi was justified in directing the appellant to refund the earnest money deposited by the respondents following allotment of land to them at the cost of Rs. 975/- per sq. mtr., which cost subsequently came to be enhanced to Rs. 1650.65, because of which the respondents refused to finally accept the allotment.

2. The aforesaid question arises on these facts. The appellant proposed to allot land to about 260 Co-operative Group Housing Societies in Dwaraka Phase-1, so also to about 60 such societies in Narela. When the proposal was first made on 1-10-90, the cost was fixed at Rs. 875/- per sq. Mtr. For Dwaraka land and Rs. 950/- for Narela land. The societies interested in the allotment of land were required to deposit Rs. 5 lakhs as earnest money and to formally apply for allotment. On the interested Societies accepting the offer, formal allotment was made by communication of the appellant dated 25-1-91. Before possession of the land came to be delivered, the appellant by its communication dated 3-11-92 stated that the premium of the land shall be payable at Rs. 1650.65/- per sq. mtr. which was the value determined by the Government of India, vide its notification dated 21/23-10-92. Some of the Societies approached the Delhi High Court being aggrieved at the enhancement of the premium. the High Court ultimately upheld the enhancement, which decision has since been reported in (1993) 26 Delhi Reported Judgments 156. On this Court being approached against the judgment of the High Court by way of special leave petitions, the same came to be disposed of by extending the time of paying the first instalment up to 31st May, 1993 which date had been fixed by the High Court as 30th April, 1993. This Court made it clear in its order that the facility to pay first instalment with interest will be available only up to 31st July, 1993; and no extension of time beyond this date would be granted.

3. On the respondents herein not paying the amount as ordered by this Court, the appellant forfeited a sum of money equivalent to 10% of what had become payable @1650.65, taking the same as earnest money due as per clause 411(sic) of the allotment order dated 3-11-1992. This action of the appellant was challenged before the Delhi High Court, who by impugned order has directed the appellant not to make any deduction and to refund the entire amount deposited by the respondents. The validity of this direction has been challenged in these appeals.

4. Shri Jaitley, appearing for the appellant, has confined his submission to that part of the direction of the High Court which is relatable to the refund of earnest money. Learned counsel contends that the respondents having had accepted the allotment on the conditions mentioned in the communication dated 25-1-91 which had visualised enhancement of the rate, and the enhancement having been regarded as reasonable by the High Court, the direction to refund the earnest money is not in accordance with the law for two reasons. First, the very conception of earnest money is that in case the contract goes off, the same can be forfeited. Secondly, the Delhi Development Authority (Disposal of Developed Nazul Land) Amendment Rules, 1981, which were notified on 11-11-91, having provided for forfeiture of earnest money in case of non-deposit of premium as mentioned in amended Rule 24(2), action of the appellant in forfeiting the earnest money was in accordance with the law.

5. In support of the first legal proposition, Shri Jaitley referred us principally to a three-judges Bench decision of this Court in shree Hanuman Cotton Mills v. Tata Aircrafts Ltd.,(1970) 3 SCR 127 : (AIR 1970 SC 1986) in which there is a detail discussion of what is meant by earnest money and what is the consequences of deposit of such money and when can the same be forfeited. The Bench after reviewing various decisions noted in the judgment which includes that of the Privy Council rendered in Chiranjit Singh v. HarSwarup, AIR 1926 PC 1, culled out the following principles regarding the "earnest" at page 139 :(

> "(1) It must be given at the moment at which the contract is concluded.
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> (2) It represents a guarantee that the contract will be fulfilled or, in other words, 'earnest' is given to bind the contract.
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> (3) It is part of the purchase price when the transaction is carried out.
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> (4) It is forfeited when the transaction falls through by reason of the default or failure of the purchase.
>
> (5) Unless there is anything to the contrary in the terms of the contract, on default committed by the buyer, the seller is entitled to forfeit the earnest."

6. In view of the aforesaid legal position, the contention advanced by Shri Bishwajit Bhattacharya for the respondents is that there was no acceptance of the offer given on 3-11-92 in which mention was made about the rate of premium being Rs. 1650.65. The appellant is, therefore, not entitled, according to the learned counsel, to forfeit the earnest money, as no such money had been deposited after this date in token of acceptance of the proposal.

7. Shri Jaitley counters this statement by urging that the proposal to allot land as contained in the communication of 3-11-92 cannot be read dehors what has been mentioned in the allotment offer dated 25-1-91 or for that matter the offer contained in the communication dated 1-10-90. This is brought home by drawing our attention to what has been stated in para 3 of the offer dated 3-11-92 in which, while calculating the entire amount payable by the allottee, the deposit made earlier pursuant to the offer of 1-10-90 was adjusted. Further, in sub-para II of para 4 of the later communication, the fact of deposit earnest money earlier has been taken note of. We also find from the Application Form dated 24-12-92 submitted by the respondent in C.A. No. 931/85 that the earnest money deposited on 22-10-90 as well as part of the premium deposited on 25-1-91, have been mentioned under item 8 dealing with the "Challan Number and date whereby 25% of the total

premium and 10% of earnest money has been deposited."

8. The aforesaid facts leave no manner of doubt in our mind that what was stated in the communication of 3-11-92 was in continuation of the earlier offer dated 1-10-90/25-1-91. We, therefore, hold that the respondents had accepted the offer contained in the communication of 3-11-92 and, as such, they were bound to pay premium at the enhanced rate of Rs. 1650.65, held as reasonable by the High Court. As they did not comply with the condition mentioned in this Court's aforesaid order dated 10-5-93, the respondents had made themselves liable to forfeiture of the earnest money. As, however, the earnest money which was deposited was not 10% of the premium as required by the amended Nazul Rules, but was a fixed sum of Rs.5 lakhs in C.A. No. 931/85 mentioned in the offer of 1-10-90, the earnest money which had become liable to be forfeited was a sum of Rs. 5 lakhs, and not 10% of the total premium calculated at the rate of Rs. 1650.65.

9. The appeals, therefore, stand allowed by modifying the High Court's order by stating that the amount to be refunded to the respondents would not include earnest money which had been deposited by them. The remaining amount would be refunded by the appellant within a period of 4 weeks from today, failing which the respondents would be entitled for the interest @ 18% per annum from today till payment. In the facts and circumstances of the case, we make no order as to costs. Appeals allowed.

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