

SUPREME COURT OF INDIA

H.U.D.A

Vs.

Raj Singh Rana

C.A.No.4436 of 2008

(Altamas Kabir and Markandey Katju JJ.)

16.07.2008

JUDGMENT

Altamas Kabir, J.

1. Leave granted.

2. One Baldev Singh Nagar was allotted residential plot No.718 (later on re- numbered 883) measuring 14 marlas in Sector 13 of the Urban Estate at Karnal under the provisions of the *Punjab Urban Estate (Development and Regulation) Act, 1964*, which was repealed by the *Haryana Urban Development Authority Act, 1997*. The said plot was subsequently transferred to the respondent herein, Shri Raj Singh Rana, as will be evident from the letter dated 22.3.1974 addressed to the respondent by the Estate Officer, Urban Estate, Karnal. In the said letter various conditions have been set out in respect of the said allotment, of which we are concerned with the condition nos.1, 2,3,4,8 and 15, which are reproduced hereinbelow:

"From
The Estate Officer,
Urban Estate,
Karnal.

Transferred vide Memo No.E.O.(M)- 76/5235 Dated 01.10.1976 with condition No.16

To
Shri R.S.Rana
S/o Shri A.S.Rana,
V.P.O. Garhi
Distt. Sonapat.

Memo No.1664/718/14/E.O/K

Dated : 22.3.1974

Subject : Allotment of Residential plot in the Urban Estate, Karnal.

Reference your application dated 25.9.1971 for the allotment of residential plot in the Urban Estate at Karnal.

1. Plot No.718 measuring 14 Marlas in Sector 13 of the Urban Estate at Karnal is hereby allotted to you. The total tentative sale price of said plot is Rs.12250/- against which you have already deposited Rs.6,125/- of the price mentioned in part 1 above is Rs.Nil.
2. The plot is preferential one and an additional price at the rate of 10 per cent of the price mentioned in para 1 above is Rs. Nil.
3. The total tentative sale price of this plot (normal plus preferential cost) is Rs.Nil.
4. The above price of the plot is subject to variation with reference to the actual measurement of the plot as well as in case of enhancement of compensation of acquisition cost of land of this sector by the court or otherwise and you shall have to pay this additional price of the plot, if any, as determined by the Department within 30 days from the date of demand.
5.
6.
7.
8. Balance 50 per cent of the total tentative sale price shall be payable either in lumpsum within 60 days from the date of issue of allotment letter without interest or in 2 equated instalments with interest at the rate of 7 per cent per annum. The first and remaining instalments of the balance amount together with interest at the rate of 7 per cent per annum on the unpaid amount of the total tentative sale price shall fall due to payment as under and no notice shall be served upon you to pay the same but in case in instalment is not paid in time, you will be served with a notice to pay by same within a month together with a sum not exceeding the amount of the instalment as may be determined by the undersigned, by way of penalty. If the payment is not made within the said period of such extended period as may be determined by the undersigned, not exceeding three months in all from the date on which the instalment was originally due, the same will be recovered as an arrear or land revenue or action will be taken under Section 10 of the *Punjab Urban Estate (Development and Regulation) Act, 1964:-*

No. of instalment

Due date on which the

First	$2958.93+28.75 = 3387.68$	Payment is to be made 21.3.1975
Second	$3166.07+221.61 = 3387.68$	21.3.1976
Third		
Fourth		
Fifth		
Sixth:		
9.....		
10.....		
11.....		
12.....		
13.....		
14.....		

15. This allotment is subject to the provisions of the Punjab Urban Estates (Development and Regulation) Act, 1964 and the rules framed there under as amended from time to time and you shall have to accept and abide by them.

16.....

17.....

Sd/-
Estate Officer
Urban Estate
Karnal"

3. There is no dispute that the entire amount, as initially computed as tentative sale price, was fully paid by the respondent, together with further amounts on account of enhanced compensation paid for the plot, on the basis of the demand notices issued to the respondent from time to time. The problem arose when in addition to the above, the Estate Officer, HUDA, Karnal, by his Memo dated 15.6.2001 raised an additional demand of Rs.71,800/- by imposing simple interest @ 10 per cent per annum up to 31.3.1987, 15 per cent per annum up to 15.1.1988, compound interest @

15 per cent up to 31.8.2000 and thereafter again simple interest @ 15% per annum up to 31.8.2001. According to the respondent, the rate of interest as indicated in the allotment letter being 7 per cent simple interest per annum, the appellant had acted illegally in demanding interest at the higher rates, indicated hereinabove and such demand being arbitrary could not be sustained.

4. Aggrieved by such demand, the respondent filed complaint case No.591 of 2002 before the District Consumer Disputes Redressal Forum praying for refund of Rs.35,200/-, which according to the respondent was the excess amount of interest charged over and above the rate of interest at 7 per cent indicated in the allotment letter. The respondent also prayed for interest @ 12per cent on the refund amount from 2.11.2001, when the interest amount was demanded and paid under protest, until repayment. The District Forum accepted the submissions made on behalf of the respondent herein and held that the appellants could charge interest only at the stipulated rate mentioned in the allotment letter, namely, 7 per cent per annum and directed the appellant to calculate the interest @ 7 per cent on the 3rd and 4th enhancements and to refund the extra amount charged to the complainant/respondent with interest at the rate of 7 per cent from the date of the complaint till its refund. The decision of the District Forum was confirmed by the State Commission, and ultimately, the appellant herein took the matter in revision to the National Commission in R.P.No.2217 of 2004. The National Commission, while confirming the view taken by the District Forum and the State Commission as to the rate of interest which could have been charged by the appellant, considered another aspect relating to charging of compound interest @ 15 per cent per annum from 16.1.1988 to 31.8.2000 and held that the appellant was not entitled to charge such compound interest.

5. It is against the said order of the National Commission that this appeal has been filed by the Haryana Urban Development Authority (hereinafter referred to as "HUDA").

6. On behalf of the HUDA it was strenuously urged that the rate of interest @ 17 per cent per annum, as indicated in the allotment letter, was only with regard to default in payment of instalments for the tentative sale price and not as regards the additional amounts required to be paid in case of enhancement of compensation for acquisition cost of the land, for which no rate of interest had been stipulated. It was submitted that on account of default in payment of the instalments of the enhanced compensation, on account of the low interest which was being charged, a decision was taken by HUDA on 15.1.1987 to increase the normal rate of interest to 10 per cent per annum and interest for the delayed payment of instalments to 18 per cent per annum, which would also include the normal interest of 10 per cent. It was submitted that it was on account of such revised policy that HUDA had charged interest at the rates indicated hereinbefore to ensure that instalments were paid in time. Apart from his aforesaid submissions, learned counsel for the appellant could not justify charging of compound interest as was done in the instant case.

7. It was urged that enhancement of rate of interest being a matter of policy to prevent default in payment of instalments the Fora below had erred in co-relating the rate of interest mentioned in the allotment letter, which was only applicable in respect of default payment

of instalments for the tentative price initially fixed, to the defaults committed in respect of the payment of the enhanced compensation on account of increase in the acquisition costs. It was also submitted that since the rate of interests stipulated at 7 per cent per annum has no application to default in payment of enhanced compensation, the Fora below had erred in directing that interest on the latter default be also charged at the stipulated rate of 7 per cent per annum. It is submitted that the understanding of the terms and conditions of the allotment letter and the decision rendered by the consumer forums on the basis thereof, was wholly erroneous and was liable to be set aside.

8. On behalf of the respondent it was contended that apart from the fact that the rate of interest demanded was arbitrary, it was also extremely high and ought not to have been levied from the date of allotment inasmuch as, the tentative sale price had been fully paid and such demand could not operate retrospectively, interest on the unpaid amount could, if at all, have been raised for periods only after the payment was made. In addition it was submitted that it is well settled that when a contractual rate of interest has been agreed upon by the parties, no amount by way of interest in excess thereof could be raised. It was submitted that following the said principle, first the District Forum, and, thereafter, the State and National Commissions had awarded interests on the delayed instalments at the rate of 7 per cent per annum as mentioned in the allotment letter referred to above. It was contended that condition No.8 enumerated in the letter dated 22.3.1974 written to the respondent by the Estate Officer, Karnal, would have to be considered and understood in such light. It is submitted that the orders of the consumer Fora was in consonance with the provisions of the allotment letter and did not, therefore, warrant any interference by this Court and the appeal was liable to be dismissed.

9. Having heard learned counsel for the parties and having perused the documents relied upon by them, we are of the view that the width of the dispute is rather narrow, being confined only to the question as to whether it was within the competence of the appellant to charge interest on delayed payments at the rate at which it has been charged and whether compound interest could have been charged without there being any mutual agreement between the parties to that effect.

10. The concept of levying or allowing interest is available in almost all statutes involving financial deals and commercial transactions, but the provision empowering Courts to allow interest is contained in the Interest Act, 1978, which succeeded and repealed the Interest Act, 1839. Section 3 of the said Act, inter alia, provides that in any proceeding for the recovery of any debt or damages or in any proceeding in which a claim for interest in respect of debt or damage already paid is made, the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, for the whole or part of the periods indicated in the said Section.

11. What is important is the mention of allowing the interest at a rate not exceeding the current rate of interest. Such a provision is, however, excluded in

respect of the interest payable as of right by virtue of any agreement as indicated in sub-section(3) of Section 3.

“In other words, where there is an agreement between the parties to payment of interest at a certain stipulated rate, the same will have the precedence over the provision contained in sub-section(1) which provides for the Court to allow interest at a rate not exceeding the current rate of interest.”

12. Yet another provision which is basic in its operation is contained in Section 34 of the Code of Civil Procedure which also, inter alia, provides that where and insofar as a decree is for the payment of money, the Court may in the decree order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit, till the date of the decree in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding 6 per cent per annum as the court may deem reasonable on such principal sum from the date of the decree till the date of payment or to such earlier date as the court thinks fit.

13. The rates of interest charged by the appellant, purportedly in accordance with their policy decisions, appear to have been influenced by the provisions of the Interest Act and also the Code of Civil Procedure on the supposition that the payment of additional price on account of enhancement of compensation was not covered by the provisions of the allotment letter relating to payment of interest. The views expressed by the District forum have been accepted by the State and National Commissions.

14. It is no doubt true that the law relating to allowing interest and the rates thereof has been considered and settled in the case of *Ghaziabad Development Authority vs. Balbir Singh*¹, which has since been followed in various subsequent decisions. The said decision was also one rendered under the provisions of the *Consumer Protection Act, 1986*, though in the said case it was a reverse situation which the authorities were held to be liable to compensate for misfeasance in public office. In the said case interest was allowed @ 18% per annum which was unacceptable to this Court which observed that the power to award compensation does not mean that irrespective of the facts of the case compensation can be awarded in all matters at a uniform rate of 18 per cent per annum. This Court noticed that the National Forum had been awarding interest at a flat rate of 18 per cent per annum irrespective of the facts of each case. The same was held to be unsustainable. In the said state of facts this Court observed in para 8, as follows:

"However, the power and duty to award compensation does not mean that irrespective of facts of the case compensation can be awarded in all matters at a uniform rate of 18% per annum. As seen above, what is being awarded is compensation i.e. a recompense for the loss or injury. It therefore necessarily has to be based on a finding of loss or injury. No hard-and-fast rule can be laid down, however, a few examples would be where an allotment is made, price is received/paid but possession is not given within the period set out in the

brochure. The Commission/Forum would then need to determine the loss. Loss could be determined on basis of loss of rent which could have been earned if possession was given and the premises let out or if the consumer has had to stay in rented premises then on basis of rent actually paid by him. Along with recompensing the loss the Commission/Forum may also compensate for harassment/injury, both mental and physical. Similarly, compensation can be given if after allotment is made there has been cancellation of scheme without any justifiable cause."

15. Applying the aforesaid principle laid down in the aforesaid case, it was the duty of the Consumer Fora to consider the circumstances of the case and keep in mind the provisions of Section 3 of the Interest Act in awarding the high rate of interest, without linking the same to the current rate of interest. As was mentioned in *Balbir Singh's* case, and, thereafter, in *HUDA vs. Prem Kumar Agarwal and another*²; *Bihar State Housing Board vs. Arun Dakshy*³; *Haryana Urban Development Authority vs. Manoj Kumar*⁴ and *Krishna Bhagya Jala Nigam Limited vs. G.Harischandra Reddy and another*⁵ the rate of interest is to be fixed in the circumstances of each case and it should not be imposed at a uniform rate without looking into the circumstances leading to a situation where compensation was required to be paid.

16. In the instant case, the provision of the allotment letter dated 22.3.1974 appears to have been wrongly interpreted by the Consumer Fora since the stipulated rate of interest only takes into consideration payment of the total tentative sale price while Condition No.4 of the allotment letter mentions that the total tentative sale price was subject to variation in certain circumstances and that the allottee would have to pay an additional price for the plot as a consequence thereof. It does not mention that interest at the rate of 7 per cent per annum would be payable also in respect of the additional price required to be paid on account of increase of the acquisition cost. The said position is further clarified by condition No.8 which also speaks of payment of the total tentative sale price and the rate of interest at 7 per cent per annum on the instalments to be paid in respect thereof. There is nothing further in the agreement which provides for the rate of interest to be levied on the additional price on account of the enhancement of the acquisition cost.

17. On such score we are inclined to agree with the learned counsel for the appellant that the appellant was entitled, even in terms of the allotment letter to charge interest on balance dues at a rate which was different from that stipulated in the allotment letter. At the same time, we are in agreement with the views expressed in *Balbir Singh's* case (supra) which gives an indication of the matters which are required to be considered by the Courts while granting interest where there is no mutual understanding or agreement with regard to the rate of interest that could be charged. While we also agree that for unpaid dues the appellant is entitled to charge interest, such an exercise will have to be undertaken within the parameters of circumstances and reason and the rate of interest should not be fixed arbitrarily. In the decisions referred to hereinabove, this Court has sounded a note of caution that rates of interest fixed by the Courts must not be arbitrary and should take into

account the current bank rates which in recent years have shown a tendency to slide downwards. In fact, in many of the aforesaid cases, the rate of interest has been reduced substantially.

18. In the aforesaid circumstances, even though the rate of interest indicated in the allotment letter dated 22.3.1974 may not have application as far as payment of the additional price is concerned, the District Forum has erred on the site of reason and has allowed interest at the rate of 7 per cent per annum upon holding that the demand made by the appellant at the higher rate was contrary to the mutual agreement contained in the allotment letter. In our view, even though a policy may have been adopted by the appellant for imposing a deterrent rate of interest on defaults committed by allottees in payment of their dues, such imposition has to be in keeping with the provisions of Section 3 of the *Interest Act, 1978* and not in a unreasonable manner. It may perhaps be even more pragmatic if a condition regarding charging of interest at the prevailing banking rates were included in the allotment letters, having regard to the provisions of sub-section(3) of Section 3 of the said Act.

19. We, therefore, allow this appeal, set aside the orders dated 10.3.04 passed by the District Forum, Chandigarh in Complaint Case no.591 of 2002, as affirmed by the State Commission, Chandigarh, on 9.7.2004 and the order passed in Revision by the National Commission on 19.11.2004, which is the subject matter of this appeal, and quash the additional demand of Rs.71,800 raised on behalf of the appellant vide Memo No. EO 8682 dated 15.6.2001 and direct that the appellant will be entitled to impose simple interest on the basis of the prevailing current rate of interest for the purpose indicated in para 6 of the complaint filed by the respondent (Complaint Case No.591 of 2002) before the District Forum, Chandigarh. Such a computation is to be completed within a month from the date of receipt of this order. Since, we have been informed at the Bar that the entire amount by way of additional demand has been deposited upon protest, any amount which is in excess of the amount to be computed on the basis of this order, shall be refunded to the respondent within two weeks of such computation.

20. In the facts and circumstances of the case, the parties will bear their own costs.

¹(2004 (5) SCC 65)

²(2008(1) SCALE 484)

³(2005 (7) SCC 103)

⁴(2005 (9) SCC 541)

⁵(2007 (2) SCC 720)