

**SUPREME COURT OF INDIA**

Commissioner, Avas Evam Vikas Parishad, Lucknow

Vs.

Laxmi Nath Misra

C.A.No.19-20 of 2011

(R.V. Raveendran and A.K.Patnaik,JJ.,)

03.01.2011

**ORDER**

1. Leave granted.

2. The appellants informed the first respondent by allotment letter dated 22.3.2006 that a High Income Group House No.6A/180 had been allotted to him through draw of lots on 18.3.2006. This was followed by an amended letter of allotment dated 26.5.2006. This showed that the allotment was at a total cost of Rs.15,50,740; and that after adjusting Rs.26,250 (that is Rs.25,000 paid as registration deposit and interest thereon) the amount payable was Rs.15,24,490. He was required to pay a lump sum of Rs.7,75,390 immediately and pay the balance of Rs.7,49,100 with interest @13% per annum in 120 equated instalments of Rs.11,185 commencing from 1.4.2006. He was also required to pay Rs.15,190 towards 2 miscellaneous expenses and Rs.155,100 towards stamp duty. It was further provided that if there were any delay in the payment of any of the amount, then additional interest will be charged at the rate of 16% per annum in regard to the amount that had become overdue.

3. The first respondent did not make the payment but filed a writ petition on 6.6.2006 seeking (a) a direction to the appellants not to cancel the allotment and to accept the amount due without any penal interest; and (b) a direction to the appellants to remove the two electrical poles in front of the allotted house before insisting upon the deposit. The appellants filed a counter contending that first respondent cannot object to the existence of electric poles in front of the house (at a distance of 1.2 M on the road from the boundary of the plot allotted to him). During the pendency of the said writ petition, the appellants cancelled the allotment on 21.4.2007, as first respondent failed to deposit the amounts due and complete the formalities. The High Court made an interim order on 18.5.2007 directing the appellants not to allot the said house to anyone else subject to the first respondent depositing a sum of Rupees five lakhs. In pursuance of it, the first respondent deposited Rupees five lakhs on 3 12.6.2007. Ultimately, the High Court disposed of the writ petition on 4.11.2008 directing that if the first respondent pays the entire sum of Rs.15,50,740 (less Rupees five lakhs paid on 12.6.2007) within eight weeks, he shall be extended the benefit of allotments and the

appellant should execute the Sale Deed in his favour. The High Court held that as the first respondent wanted to pay the initial deposit of Rs.7,50,000 and the entire balance in one lump sum, he should not be burdened with any interest. In pursuance of the final order dated 4.11.2008, the first respondent is stated to have deposited Rs.10,50,750, on 12.12.2008.

4. Aggrieved by the direction of the High Court that appellants should waive the interest, they filed a review petition which was dismissed on 29.7.2009. The appellants have challenged the orders dated 4.11.2008 and 29.7.2009 in these appeals by special leave.

5. The allotment of the house is governed by the terms contained in the letter of allotment. According to the letter of allotment the total price was Rs.15,50,740. The first respondent had the option to pay the entire allotment price (less Rs.25,000) in a lump sum forthwith in which case he was not liable to pay any interest. He was also given the option to pay the first instalment of Rs.7,75,390 and pay the balance of Rs.7,49,100 with interest @13% per annum in 120 monthly instalments of Rs.11,185 each. The contract also made it clear that if there were any default, on the defaulted amount, additional interest was payable at the rate of 16% per annum. Thus, there were clear provisions in the contract between the parties contained in the letter of allotment for charging of interest on instalments and additional interest on the defaulted dues. The initial amount of Rs.7,75,390 had to be paid by 30.4.2006 and possession was offered by the appellants on such payment and completion of registration formalities by 30.6.2006. The first respondent could not, therefore, delay the payments due and at the same time contend that he would not pay the interest. Even if he wanted to pay the entire amount in one lump sum, he had to pay interest on Rs.7,75,390 from 1.5.2006 and on Rs.7,49,100 from 1.7.2006, apart from paying the stamp duty and miscellaneous amounts as per the letter of allotment.

6. The High Court could not have ordered waiver of interest. In fact, this Court while directing notice had stayed the order of the High Court subject to the condition that if the first respondent pays interests at the rate of 13% per annum from 22.3.2006 till date of payment, then the appellant shall execute the sale deed, subject to the final decision. We are informed that the interest was not paid and therefore, the sale deed has not been executed.

7. The appellants claimed interest in terms of the contract. No rules or regulations to the contrary were relied on by the first respondent. There is no reason why the appellant should not charge interest in terms of the contract. High Court should not, in exercise of power of judicial review, interfere in such pure matters of contract.

8. We, therefore, allow these appeals in part and modify the order of the High Court as under:

“(a) Having regard to the fact that the entire principal amount has been paid on 12.6.2007 and 12.12.2008, the first respondent shall pay interest at 13% per annum on Rs.15,24,490 from 1.7.2006 (due date) to 12.6.2007 (date of payment of Rs.5 lakhs)

and interest at the rate of 13% per annum on Rs.10,24,490 from 13.6.2007 to 12.12.2008.

(b) As first respondent has paid Rs.15,50,750 instead of Rs.15,24,490 actually due as the cost, the excess of Rs.26,260 6 shall be adjusted towards miscellaneous and other dues claimed by the appellant.

(c) If the first respondent pays the said interest within three months from this date and also pays other dues (namely allotment revival fee, late fee, stamp duty, and miscellaneous charges), the appellants shall execute the Sale Deed in favour of the first respondent. If the first respondent fails to pay the interest due within three months from this date, the cancellation of allotment shall stand confirmed and the appellants will be entitled to allot the said house to anyone else without reference to the first respondent and refund the sum of Rs.15,50,750 (deposited in terms of the orders of High Court) to the first respondent without any interest.

(d) Parties to bear respective costs.”