

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1994 OF 2006

U.T. Chandigarh Administration & anr. Appellants

Vs.

Amarjeet Singh & Ors. Respondents

and Civil Appeal No. 1995 of 2006,

CA No. 1633/2009 @ SLP [C] No.25250/2007;

CA No. 1634/2009 @ SLP [C] No.4518 of 2008,

CA No. 1635/2009 @ SLP [C] No.4519 of 2008,

CA No. 1636/2009 @ SLP [C] No.4520 of 2008,

CA No. 1637/2009 @ SLP [C] No.4523 of 2008,

CA No. 1638/2009 @ SLP [C] No.4525 of 2008,

CA No. 1639/2009 @ SLP [C] No.6362 of 2008,

CA No. 1640/2009 @ SLP [C] No. 6363 of 2008,

CA No. 1641/2009 @ SLP [C] No.6364 of 2008,

CA No. 1642/2009 @ SLP [C] No.6365 of 2008,

CA No. 1643/2009 @ SLP [C] No.6366 of 2008,

CA No. 1644/2009 @ SLP [C] No.6367 of 2008,

CA No. 1645/2009 @ SLP [C] No.6368 of 2008,

CA No. 1646/2009 @ SLP [C] No.6369 of 2008,

CA No. 1647/2009 @ SLP [C] No. 6372 of 2008,
CA No. 1648/2009 @ SLP [C] No.6373 of 2008,
CA No. 1649/2009 @ SLP [C] No.6374 of 2008,
CA No. 1650/2009 @ SLP [C] No.6375 of 2008,
CA No. 1651/2009 @ SLP [C] No.6376 of 2008,
CA No. 1652/2009 @ SLP [C] No.6377 of 2008,
CA No. 1653/2009 @ SLP [C] No.6378 of 2008,
CA No. 1654/2009 @ SLP [C] No.6379 of 2008,
CA No. 1655/2009 @ SLP [C] No.6380 of 2008,
CA No. 1656/2009 @ SLP [C] No.6381 of 2008,
CA No. 1657/2009 @ SLP [C] No.6382 of 2008,
CA No. 1658/2009 @ SLP [C] No.6383 of 2008,
CA No. 1659/2009 @ SLP [C] No.6384 of 2008,
CA No. 1660/2009 @ SLP [C] No.6385 of 2008,
CA No. 1661/2009 @ SLP [C] No.15831 of 2008, and
CA No. 1662/2009 @ SLP [C] No.15859 of 2008.

With

CA Nos.1674-1686/2009 [@ SLP(C) Nos.3271 to 3283 of 2008].

J U D G M E N T

R.V. RAVEENDRAN, J.

Leave granted in the special leave petitions. These appeals are filed by
Union Territory of Chandigarh (for short 'UT Chandigarh'). C.A. Nos.1994

of 2006 and 1995 of 2006 are filed against a common order dated 21.2.2005 passed by the National Consumer Disputes Redressal Commission (“National Commission” for short). Other appeals are filed against the common order dated 21.2.2007 passed by the National Commission following the earlier order dated 21.2.2005. By these orders, the lease premium instalments have been rescheduled and certain reliefs have been granted in regard to interest, to the lessees – respondents (who had secured leasehold interest in sites belonging to UT Chandigarh in public auctions held by it).

FACTS OF THE CASE

2. As the facts are similar, we will refer to the facts of only one case (CA No.1994/2006 arising from FA No.499/2003 on the file of the National Commission). The Estate Officer, Union Territory Chandigarh Administration issued an advertisement notifying the auction of 74 residential sites and 71 commercial sites in different sectors of Chandigarh, on leasehold basis subject to the General Terms and Conditions regarding auction. The relevant terms were :-

(i) The auction was for grant of a lease of sites for 99 years. The auction was governed by the provisions of the Capital of Punjab (Development &

Regulation) Act, 1952 ('Development Act' for short) and Chandigarh Leasehold Sites & Building Rules, 1973 ('Leasehold Rules' for short).

(ii) In addition to the premium for lease (to be offered by bids), the lessee had to pay annual rent at the rate of 2.5% of the premium for the first 33 years, liable to be raised to 3.375% of the premium for the next 33 years and 5% of the premium for the remaining 33 years;

(iii) 25% of the bid amount had to be paid by demand draft or cash at the fall of the hammer. The remaining 75% premium could be paid either in a lump sum with 30 days of the auction without any interest, or at the option of the lessee, in three equated annual instalments along with interest at 10% per annum, the first instalment becoming due on the expiry of one year from the date of auction.

(iv) If the instalments of the lease of premium or the ground rent were not paid on the due dates, interest at the rate of 24% per annum should be paid from the due date to date of payment.

(v) The successful bidder should complete the construction of the building on the plot within three years from the date of auction in accordance with the Punjab Capital (Development & Regulation) Building Rules, 1952 ('Building Rules' for short)

(vi) The government would not be responsible for leveling of uneven sites.

(vii) In the event of default, breach or non compliance of any of the terms and conditions of lease, the lease was liable to be cancelled and the site/building resumed and the amount paid to government towards premium/rent forfeited either wholly or in part.

(viii) The lessee was liable to pay all taxes and fees as may be levied by the Chandigarh Administration in respect of the site and the building to be constructed thereon.

3. Respondents 1 to 4 were the successful bidders in regard to plot No.173 in Sector No.39C & D at the auction held on 18.12.1996. The lease premium bid offered by them was Rs.20,45,000. The acceptance of the bid cum confirmation of the lease of the plot was communicated to respondents 1 to 4 by letter dated 19.5.1997 (for short 'letter of allotment') enclosing therewith a letter offering possession of the leased site. The said letter of allotment acknowledged the receipt of Rs.511,250 towards 25% of the premium and permitted the respondents to pay the balance 75% of the premium with 10% interest thereon in 3 equated instalments of Rs.6,16,736/- on 18.12.1997, 18.12.1998 and 18.12.1999. It also required the respondents to pay annual ground rent of Rs.51125/- during the first 33 years of lease. The letter of allotment set out and reiterated the terms and conditions of lease and

required the respondents to enter into a lease deed within six months and take possession of the site before the lease deed is executed.

4. The respondents filed a complaint before the Consumer Disputes Redressal Commission, Union Territory, Chandigarh (for short 'UT Commission') under the Consumer Protection Act, 1986 ('Act' for short) in the year 1999. In the said complaint they alleged that in addition to the initial payment of Rs.511250/- towards the lease premium, they had paid Rs.616,736/- plus Rs.51,125/- on 9.1.1998, Rs.168,000/- on 4.3.1999 and Rs.200,000/- on 12.5.1999. They alleged that the appellant did not provide any amenities in regard to the site, and as a result they had suffered huge losses. They contended that until the basic amenities were provided, the appellants were not legally entitled to claim the balance of premium or the annual rent. They sought the following directions to the appellants :

- (i) Not to recover the balance amount of premium or the interest on the premium or the ground rent until the basic amenities (approach road, sewerage, ground water, street light, electricity, parking space) were provided.
- (ii) To provide the basic amenities so as to enable them to raise a construction on the site.
- (iii) To pay compensation of Rs.10 lacs for harassment and blocking of various payments made by them.

- (iv) To pay interest at the rate of 18% per annum on the amounts paid by them, from the date of payment till all the basic amenities were provided.

5. The appellants filed a reply resisting the complaint. It was submitted that the respondents, having accepted the terms and conditions of lease contained in the conditions of auction and the letter of allotment were not entitled to wriggle out of the contract terms or refuse to pay the balance. It was also contended that the respondents were liable to pay the 75% balance premium in three annual instalments and in addition pay interest @ 24% per annum on the delayed instalments. The appellants submitted that they had not made any representation to the public in general or the respondents in particular that the plots auctioned were 'fully developed' plots or that the plots are situated in fully developed areas; nor was payment of premium or rent subject to Chandigarh Administration providing any 'basic amenities'. Therefore, the respondents could not link the issue of payment of instalments or ground rent with the issue of basic amenities. It was also submitted neither the terms of lease nor the provisions relating to auction of leasehold rights in the Development Act and the Leasehold Rules, cast any obligation upon the appellants to provide the basic amenities required by the respondents and

ensure that the site auctioned was situated in a fully developed area; and that the auction was on "as is where is" basis and the bidders were fully aware of the situation and condition of the site for which they were bidding, as also the terms and conditions subject to which the auction was held. The appellants also contended that the complaint was not maintainable.

6. The U.T. Commission allowed the complaint by the respondents, alongwith other similar complaints, by a common order dated 31.3.2003 with the following directions :

- (i) The date of auction for the purpose of payment of price shall be deemed to be date on which plinth level and all the basic amenities demanded in the complaint cases are actually provided.
- (ii) An officer of the rank of Chief Engineer (or next rank) of UT Chandigarh shall certify that the plinth level as well as other basic requirements/amenities were provided. The date of such certificate shall be considered to be the date of auction.
- (iii) The instalments shall be rescheduled accordingly and the remaining price of the plots shall be deposited after rescheduling the instalments without any change in the bid price offered.
- (iv) The lease rent shall be payable from the date of certificate of the Chief Engineer mentioned above.
- (v) Interest on the amount due by the lessee shall be payable only from the date the aforesaid certificate is issued.
- (vi) The amount deposited by the complainants shall earn interest @ 18% per annum till the essential requirements were provided.

[Note: Providing of “plinth level” directed by UT Commission apparently refers to filling up of low lying sites so as to bring them to the road level.]

7. Feeling aggrieved, the appellants filed an appeal before the National Commission. The National Commission allowed the appeal in part by a common order dated 21.2.2005, and modified and restricted the reliefs granted by the U.T.Commission as follows :

- (1) The Chandigarh Administration shall reschedule the recovery of three instalments and recover the same on (i) 1.5.2005, (ii) 1.5.2006 and (iii) 1.5.2007.
- (2) Complainants shall pay interest @ 10% on the instalment amounts from the date of taking possession of the plot. This would be in conformity with condition No.5 of the allotment letter which provides that balance of 75% of the premium is to be paid with 10% interest.
- (3) The complainants shall also pay the ground rent as per the prevailing rules.

However, the National Commission made it clear that:

- (a) No penalty shall be levied for delayed payment of instalments or ground rent as the complaints were pending with the State Commission which had ultimately granted relief to the complainants;
- (b) In respect of the premium instalments payable on 1st May, 2005, 2006 and 2007, complainants shall pay interest @ 10% and in case of any default in payment of instalments as above, it would be open to the appellants to recover interest as per the rules.

8. The facts of the other appeals are also similar. Only the plot numbers/dates/amounts vary. CA No.1995/2006 arises out of FA No.500/2003 disposed by the said common order dated 21.2.2005. All other appeals arise from a common order dated 21.2.2007 of the National Commission which was passed in terms of the earlier order dated 21.2.2005, the only change being to alter the dates of rescheduled instalments as 1.5.2007, 1.5.2008 and 1.5.2009. The orders dated 21.2.2005 and 21.2.2007 of the National Commission are challenged in these appeals.

GROUND OF CHALLENGE

9. The appellants have urged the following common contentions in these appeals :

(i) When the auction of sites (for grant of a lease for 99 years) was in exercise of the power of the government (UT Chandigarh Administration) under the provisions of the Development Act in accordance with the Leasehold Rules, it involves neither sale of goods nor rendering of any service. The act of leasing plots by auction by the appellants therefore did not result in the successful bidder becoming a 'consumer' or the appellants

becoming 'service providers'. In the absence of hiring or availing of any service, the question of deficiency in service or unfair or restrictive trade practice with reference to a service, did not arise and the complaint under the Act was not maintainable.

(ii) There was no obligation on the part of the appellants, either statutory or contractual, to provide the 'basic amenities' demanded by the respondents with reference to the lease of sites by public auction. The payment of the premium (which was permitted to be paid in instalments on the request of the successful bidder) and the annual rent was not conditional upon the UT Chandigarh providing any basic amenities. Payment of the amounts due could not be postponed on the ground of absence of amenities. Nor could payment of default interest be avoided, once there was default. Therefore, even assuming that the complaint was maintainable, the National Commission was not justified in interfering with the terms of the contract of lease and giving relief in regard to interest, which was legally due.

Re : first contention

10. A 'complaint' is maintainable before a consumer forum under the Consumer Protection Act, 1986, by a 'complainant' ('consumer' or others

specified) against a ‘trader’ or ‘service provider’. The terms ‘complainant’ ‘complaint’ ‘consumer’ ‘trader’ and ‘service’ are defined in clauses (b),(c), (d),(q) and (o) of Section 2 of the Act. Therefore, a consumer forum will have jurisdiction only when : (i) the complainant is a ‘consumer’ as defined in clause (d) or a person specified in clause (b) of section 2 of the Act; (ii) the respondent is a ‘trader’ as defined in clause (q) or a provider of ‘service’ as defined in clause (o) of section 2 of the Act; and (iii) the ‘complaint’ relates to any of the matters specified in clause (c) of section 2, for obtaining any relief provided by order under the Act. It therefore follows that where the complainant is not a ‘consumer’ (or a person specified in clause (b) of section 2), or where the respondent is not a ‘trader’ or ‘service provider’ or where the complaint does not relate to matters enumerated in clause (c) of Section 2 of the Act, the consumer forum will have no jurisdiction either to entertain any complaint or grant any relief under the Act.

11. The respondents relied upon the decisions in *Lucknow Development Authority v. M.K. Gupta* - 1994 (1) SCC 243, *Sector - 6, Bahadurgarh Plot Holders Association v. State of Haryana* - 1996 (1) SCC 485, *Ghaziabad Development Authority v. Balbir Singh* - 2004 (5) SCC 65 and *Municipal Corporation, Chandigarh & Ors. v. Shanti Kunj Investment (P) Ltd. and Ors.*

- 2006 (4) SCC 109, to contend that the complaints were maintainable and relief sought could be granted. We may straight away note that the decisions in *Bahadurgarh* and *Shantikunj* will not be of any assistance to decide the issue of maintainability, as those cases did not relate to complaints under the Consumer Protection Act, but arose out of writ petitions.

11.1 In *Lucknow Development Authority v. M.K. Gupta* [1994 (1) SCC 243] this Court held that if the nature of duty or function performed was a service as defined under the Act, then the provider of the service, irrespective of whether it is a private body or statutory or a public authority, would be amenable to the provisions of the Act. This Court held :-

“As pointed out earlier the entire purpose of widening the definition (of ‘service’ under section 2(o) of the Consumer Protection Act) is to include in it not only day to day buying and selling activity undertaken by a common man but even such activities which are otherwise not commercial in nature yet they partake of a character in which some benefit is conferred on the consumer. Construction of a house or flat is for the benefit of person for whom it is constructed. He may do it himself or hire services of a builder or contractor. The latter being for consideration is service as defined in the Act. Similarly when a statutory authority develops land or allots a site or constructs a house for the benefit of common man it is as much service as by a builder or contractor. The one is contractual service and other statutory service. If the service is defective or it is not what was represented then it would be unfair trade practice as defined in the Act. Any defect in construction activity would be denial of comfort and service to a consumer. When possession of property is not delivered within stipulated period the delay so caused is denial of service. *Such disputes or claims are not in respect of immovable property as argued but deficiency in rendering of service of particular standard, quality or grade. Such deficiencies or omissions are defined in sub-clause (ii) or clause (r) of Section 2 as unfair trade practice.* xxxxx Therefore if such authority undertakes to construct building or allot houses or building sites to citizens

of the State either as amenity or as benefit then it amounts to rendering of service and will be covered in the expression 'service made available to potential users'. A person who applies for allotment of a building site or for a flat constructed by the development authority or enters into an agreement with a builder or a contractor is a potential user and nature of transaction is covered in the expression 'service or any description'. It further indicates that the definition is not exhaustive. The inclusive clause succeeded in widening its scope but not exhausting the services which could be covered in earlier part. So any service except when it is free of charge or under a constraint of personal service is included in it."

(emphasis supplied).

11.2 In *Ghaziabad Development Authority v. Balbir Singh* [2004(5) SCC

65] this Court held :-

"Thus the law is that the Consumer Protection Act, 1986 has a wide reach and the Commission has jurisdiction even in cases of service rendered by statutory and public authorities. Such authorities become liable to compensate for misfeasance in public office i.e. an act which is oppressive or capricious or arbitrary or negligent provided loss or injury is suffered by a citizen. The Commission/Forum must determine that such sufferance is due to mala fide or capricious or oppressive act. It can then determine the amount for which the authority is liable to compensate the consumer for his sufferance due to misfeasance in public office by the officers. Such compensation is for vindicating the strength of the law. It acts as a check on arbitrary and capricious exercise of power. It helps in curing social evil. It will hopefully result in improving the work culture and in changing the outlook of the officer/public servant. No authority can arrogate to itself the power to act in a manner which is arbitrary. Matters which require immediate attention should not be allowed to linger on. The consumer must not be made to run from pillar to post. Where there has been capricious or arbitrary or negligent exercise or non-exercise of power by an officer of the authority, the Commission/Forum has a statutory obligation to award compensation."

12. The decisions in *Lucknow Development Authority* and *Ghaziabad Development Authority* make it clear that where a public development

authority having invited applications for allotment of sites in a lay out to be formed or for houses to be constructed and delivered, fails to deliver possession by forming the lay out of sites or by constructing the houses within the stipulated period, the delay may amount to a deficiency in service by treating the development authority as a service provider and the allottee as the consumer. But where existing sites are put up for sale or lease by public auction by the owner, and the sale/lease is confirmed in favour of the highest bidder, the resultant contract relates to sale or lease of immovable property. There is no hiring or availing of services by the person bidding at the auction. Nor is the seller or lessor, a trader who sells or distributes 'goods'. The sale price or lease premium paid by the successful bidder of a site, is the consideration for the sale or lease, and not consideration for any service or for provision of any amenity or for sale of any goods.

13. In *Lucknow Development Authority*, it was held that where a developer carries on the activity of development of land and invites applications for *allotment* of sites in a developed layout, it will amount to 'service', that when possession of the allotted site is not delivered within the stipulated period, the delay may amount to a deficiency or denial of service, and that any claim in regard to such delay is not in regard to the immovable property but in regard

to the deficiency in rendering service of a particular standard, quality or grade. The activity of a developer, that is development of land into layout of sites, inviting applications for allotment by assuring formation of a lay out with amenities and delivery of the allotted sites within a stipulated time at a particular price, is completely different from the auction of existing sites either on sale or lease. In a scheme for development and allotment, the allottee has no choice of the site allotted. He has no choice in regard to the price to be paid. The development authority decides which site should be allotted to him. The development authority fixes the uniform price with reference to the size of plots. In most development schemes, the applications are invited and allotments are made long before the actual development of the lay out or formation of sites. Further the development scheme casts an obligation on the development authority to provide specified amenities. Alternatively the developer represents that he would provide certain amenities, in the Brochure or advertisement. In a public auction of sites, the position is completely different. A person interested can inspect the sites offered and choose the site which he wants to acquire and participate in the auction only in regard to such site. Before bidding in the auction, he knows or is in a position to ascertain, the condition and situation of the site. He knows about the existence or lack of amenities. The auction is on 'as is where

is basis'. With such knowledge, he participates in the auction and offers a particular bid. There is no compulsion that he should offer a particular price. When the sites auctioned are existing sites, without any assurance/representation relating to amenities, there is no question of deficiency of service or denial of service. Where the bidder has a choice and option in regard to the site and price and when there is no assurance of any facility or amenity, the question of the owner of the site becoming a service provider, does not arise even by applying the tests laid down in *Lucknow Development Authority* or *Balbir Singh*.

14. Where there is a public auction without assuring any specific or particular amenities, and the prospective purchaser/lessee participates in the auction after having an opportunity of examining the site, the bid in the auction is made keeping in view the existing situation, position and condition of the site. If all amenities are available, he would offer a higher amount. If there are no amenities, or if the site suffers from any disadvantages, he would offer a lesser amount, or may not participate in the auction. Once with open eyes, a person participates in an auction, he cannot thereafter be heard to say that he would not pay the balance of the price/premium or the stipulated interest on the delayed payment, or the ground rent, on the ground that the

site suffers from certain disadvantages or on the ground that amenities are not provided. With reference to a public auction of existing sites (as contrasted from sites to be 'formed'), the purchaser/lessee is not a consumer, the owner is not a 'trader' or 'service provider' and the grievance does not relate to any matter in regard which a complaint can be filed. Therefore, any grievance by the purchaser/lessee will not give rise to a complaint or consumer dispute and the fora under the Act will not have jurisdiction to entertain or decide any complaint by the auction purchaser/lessee against the owner holding the auction of sites.

Re : Second Contention

15. The complaint by the respondents proceeded on the assumption that there was an obligation on the part of the appellants to provide amenities in the nature of approach road, water supply lines, drainage system, rainwater drainage and electricity and that unless such amenities were provided, they were not liable to pay the premium or interest on the premium or the ground rent. As noticed above, neither the terms and conditions of auction, nor the advertisement relating to the auction, nor the letter of allotment contained any assurance regarding provisions of any such amenities with reference to the sites put up for auction. To get over the absence of such term or assurance, the respondents relied upon the definitions of the words 'site' and 'amenity'

in the Development Act and the provisions of the Leasehold Rules to contend that there was a statutory obligation to provide the amenities and failure to provide such amenities gave a cause of action to approach the Consumer Forum with a complaint against the appellants and also withhold payment of the premium instalments and ground rent. On the other hand, the appellants contend that they had no obligation, either contractual or statutory, to provide amenities of any nature, with reference to the auction of the leasehold rights of sites and the lack of amenities or alleged non-provision of amenities cannot be a ground for withholding the premium and rent.

16. In view of the rival contentions, it becomes necessary to refer to the relevant provisions of the Development Act and the Leasehold Rules.

16.1) The Development Act re-enacts and modifies the law in relation to the development and regulation of new capital of Punjab. Section 2(j) defines 'site' as meaning 'any land' which is transferred by the Central Government under section 3. Section 3 relates to the power of Central Government in respect of transfer of land and buildings in Chandigarh. Sub-section (1) thereof provides that subject to the provisions of the said section, the central government may sell, lease or otherwise transfer, whether by auction,

allotment or otherwise, any land or building belonging to the government in Chandigarh on such terms and conditions as it may subject to any rules that may be made under the Act, think fit to impose. Sub-section (2) thereof, provides that the consideration for any transfer under sub-section (1) shall be paid to the central government in such a manner and in such instalments and at such rate of interest as may be prescribed.

16.2) The term ‘amenity’ is defined in section 2(b) of the Development Act as follows :

“2(b). ‘amenity’ includes roads, water-supply, street lighting, drainage, sewerage, public building, horticulture, landscaping and any other public utility service provided at Chandigarh”.

Section 4 relates to power to issue directions in respect of erection of building. Section 5 relates to bar to erection of buildings in contravention of building rules. The term ‘amenity’ is significantly not used in section 3 which relates to transfer of land by sale or lease by the government. The term ‘amenity’ is referred only in sections 6 and 7 which are extracted below :

“6. Power to require proper maintenance of site or building. – If it appears to the Chief Administrator that the condition or use of any site or building is prejudicially affecting the proper planning of, or the *amenities* in, any part of Chandigarh or the interests of the general public there, he may serve on the transferee or occupier of that site or building a notice requiring him to take such steps and within such period as may be specified in the notice and thereafter to maintain it in such a manner as may be specified therein.

7. Levy of fee or tax for amenities. – (1) For the purposes of providing maintaining or continuing any *amenity* at Chandigarh the central government may levy such fees or taxes as it may consider necessary (which shall be in addition to any free or tax for the time being leviable under any other law) in respect of any site or building on the transferee or occupier thereof.

(2) If the central government considers it necessary or expedient so to do having regard to the fact that the transferee or occupier is a religious or charitable institution or that he does not enjoy the amenity for which any fee or tax is levied, the central government may, by general or special order, exempt wholly or partly any class of such transferees or occupiers from the payment of fees or taxes levied under sub-section (1).”

Neither Sections 6 and 7 nor any other provision of the Development Act casts any obligation on the central government to provide amenities to plots sold/leased by public auction. Therefore the assumption that there is a statutory obligation on the part of the Central Government to provide amenities, because the word ‘amenity’ is defined in the Act is erroneous and baseless. As noticed above, the word ‘amenity’ is used in the context of two specific matters. The first is that the transferee/occupier of a site should not use the site or leave it in a condition that it will prejudicially affect the amenities in any part of Chandigarh (vide section 6). The second is that central government can levy fees/taxes in respect of any site/building, on the transferee/occupier for the purpose of providing, maintaining or continuing any amenity at Chandigarh. Thus definition of the ‘amenity’ in the Development Act, does not in any manner cast any obligation on Chandigarh

administration with reference to the auction of leasehold rights relating to sites belonging to central government.

16.3) Section 22 of the Development Act empowers the Central Government to make rules for carrying out the purposes of the Act, in particular and among others : (a) the terms and conditions on which any land or building may be transferred by the (central government) under this Act; (b) the manner in which consideration money for any transfer may be paid; (c) the rate of interest payable, and the procedure for payment of instalments, interest, fees, rents or other dues payable under this Act; (d) the terms and conditions under which the transfer of any right in any site or building may be permitted; (e) erection of any building or the use of any site; (f) levy of fees or taxes under Section 7 of the Act.

16.4) The Leasehold Rules were made in 1973 in regard to lease of properties by UT Chandigarh. We extract below the relevant rules :-

“3. (2). ‘premium’ means the price paid or promised for the transfer of a right to enjoy immovable property under these Rules.”

“4. The Chandigarh Administration may demise sites and buildings at Chandigarh on lease for 99 years. Such leases may be given by allotment or by auction in accordance with these Rules.

x x x

x x x

6. Commencement and period of lease. – The lease shall commence from the date of allotment or auction as the case may be, and shall be for a period of 99 years. After the expiry of said period of 99 years the lease may be renewed for such further period and on such terms and conditions as the Government may decide.

X X X

X X X

8. Lease by allotment, Procedure for : xxx (not relevant)

x x x

9. Lease by auction, procedure for.—In case of auction, at least 25 per cent of the bid accepted by the auctioning officer shall be paid on the spot by the intending lessee in the prescribed mode of payment in accordance with Rule 12:

Provided that the Estate Officer may, in his absolute discretion, allow the successful bidder to deposit in the prescribed mode of payment not less than 10 per cent of the bid on the condition that the difference between the amount deposited and 25 per cent of the bid shall be deposited in the same manner within 30 days of auction.

9A Extension of period : xxx (not relevant) xxx

10. Delivery of possession.—Actual possession of the site/building shall be delivered to the lessee on payment of 25 per cent of the premium in accordance with Rule 8 or Rule 9 as the case may be:

Provided that no ground rent payable under Rule 13 and interest on the instalments of premium payable under sub-rule (2) of Rule 12 shall be paid by the lessee till the actual and physical possession of the site/building is delivered or offered to be delivered to him, whichever is earlier.

11. Premium.—(1) In case of allotment, the premium shall be such amount as may be determined by the Chandigarh Administration.

(2) In case of auction, the premium shall be the bid accepted by the Estate Officer, as a result of bidding in open auction.

12. Payment of premium and consequences of non-payment or late payment.—(1) In addition to payment of 25 per cent premium under Rule 8 or 9 as the case may be, the remaining 75 per cent premium may be paid in lump sum within 30 days from the date of allotment/auction without any interest.

(2) If payment is not made in accordance with sub-rule (1) of this rule, the balance of the 75 per cent premium shall be paid in three annual equated instalments or more as the Chief Administrator may in exceptional circumstances of a case fix with prior approval of the Chief Commissioner along with interest at the rate of 10 per cent per annum or at such higher rate of interest as may be fixed by the Chief Administrator by a notification in the Official Gazette before the commencement of the lease. The first instalment shall become payable after one year from the date of allotment/auction:

(3) x x x (Not relevant) x x x

(3-A) In case any equated instalment or ground rent or part thereof is not paid by the lessee by the date on which it became payable he shall be liable to pay in respect of that instalment or ground rent or part thereof as the case may be, interest calculated at the rate of twenty-four per cent per annum from the date on which the instalment or ground rent became payable till such date it is actually paid.

13. Rent and consequences of non-payment.—In addition to the premium, whether in respect of site or building, the lessee shall pay rent as under --

(i) Annual rent shall be 2 ½ per cent of the premium for the first 33 years which may be enhanced by the Chandigarh Administration to 3 ¾ per cent of the premium for the next 33 years and to 5 per cent of the premium for the remaining period of the lease.

(ii) Rent shall be payable annually on the due date without any demand from the Estate Officer:

Provided that the Estate Officer may for good and sufficient reasons extend the time for payment of rent upto six months on the whole on further payment of 6 per cent per annum interest from the due date upto the date of actual payment.

(iii) If rent is not paid by the due date, the lessee shall be liable to pay a penalty not exceeding 100 per cent of the amount due which may be imposed and recovered in the manner laid down in section 8 of the Capital of Punjab (Development and Regulation) Act, 1952, as amended by Act No.17 of 1973.

14. Execution of lease deed.—(1) After payment of 25 per cent premium the lessee shall execute a lease deed in Form B, B-I, B-II or C, as the case may be, in such manner as may be directed by the Estate Officer within six months of the date of allotment/auction or within such further period as the Estate Officer may, for good and sufficient reasons, allow.

17. The National Commission has proceeded on erroneous and baseless assumptions that there is no obligation to pay the instalments until the amenities were provided and consequently the instalments could be rescheduled so as to begin after the amenities were provided and that interest would start to run only when the lessee takes possession. In view of the conflicting views of the High Court as to whether instalments are payable only after the government provides the basic amenities, the National Commission circumvented the issue. It held that as the appellant herein had however provided all the basic facilities by 1999 and the matter had been pending thereafter before the Consumer fora, the three annual instalments would get postponed and commence only after its decision, that is from 1.5.2005, instead of the instalment schedule specified by the appellants (which commenced in 1997).

18. The conflict referred to by the National Commission was with reference to the decisions of the High Court in *Shanti Kunj Investments Pvt. Ltd. v. U.T. Administration Chandigarh* reported in *AIR 2001 P&H 309* (CWP No. 959/1999 decided on 2.2.2001) and in *DLJ Builders (P) Ltd. v.*

Advisor to the Administrator Chandigarh Administration (CWP No. 13695 of 2001 dated 18.2.2002).

18.1) *Shantikunj Investments* related to an auction of leasehold rights of a site by the UT Chandigarh. In that case, the lessee found large number of jhuggis, adjacent to the plot which were not removed inspite of his repeated requests. He also found no amenities such as road, water, landscaping etc. Therefore the lessee filed a writ petition before the High Court seeking relief. The High Court declared that the UT Chandigarh having failed to provide the basic amenities, its order of resumption and forfeiture could not be sustained and therefore liable to be set aside. The High Court further directed that all amenities should be provided within three months and no interest shall be charged from the allottees if they pay the entire outstanding amount within three months from the date of providing amenities.

18.2) On the other hand, in its subsequent decision in *DLG Builders Pvt. Ltd. v. Advisor to the Administrator, Chandigarh Admn.* (CWP No. 13695/2001 dated 18.2.2002) the High Court had held :-

“In our opinion, the judgment in *M/s. Shanti Kunj Investment Pvt. Ltd.’s* case (supra) has to be read in the light of the peculiar facts brought before the court and the same cannot be read as laying down the proposition that the allottee is not required to pay the instalments of premium with interest and ground rent in accordance with the terms and conditions of allotment and Rule 12 of the Rules till each and every amenity enumerated in Section 2(1) is made available at the site. The obligation of the Administration to provide approach road, water supply, electricity,

sewerage, storm water drainage can be read as implicit in the scheme of the Act and the Rules, but it cannot be said that the allottee is entitled to withhold the payment of instalments on the ground of lack of particular amenity at the site. If the basic amenities, like water, electricity and approach road are not available at the site and on that account it is not possible to construct the building, the allottee can represent to the Administration that he may not be burdened with the liability of ground rent and may not be penalized for non construction within the specified time. After completion of building, he can represent for waiver of ground rent in case facility of sewerage has not been provided. However, after taking possession of the site and constructing the building, he cannot avoid his obligation to pay the balance of the premium along with interest and ground rent in accordance with the conditions of allotment and the provisions of Rule 12 of the Rules on the pretext that land scaping has not been done or pavement has not been tiled or the particular public utility service has not been provided. In our considered view, the allottee is bound to pay the balance premium and other charges in accordance with the conditions of allotment.”

18.3) The decision of the High Court in *Shantkunj Investments* was challenged by the Chandigarh Administration and Municipal Corporation of Chandigarh. The decision in *DLG Builders* was challenged by the allottees.

They were disposed of by this Court by a common judgment reported in *Municipal Corporation, Chandigarh v. Shantikunj Investments Pvt. Ltd.* 2006

(4) SCC 109. This Court noted that the conflict between the two decisions of the High Court were in regard to the question whether providing of amenities as defined in Section 2(b) of the Development Act was a condition precedent for payment of instalments and charging interest. After examining the provisions of the Act and the relevant rules, this Court rejected the

contentions of the lessees and held that the High Court's view in *Shantikunj* could not be sustained. This Court held :-

“On a plain reading of the definition "amenities" read with Rule 11(2) and Rule 12, it cannot be construed to mean that the allottees could take upon themselves not to pay the lease amount and take recourse to say that since all the facilities were not provided, therefore, they are not under any obligation to pay the installment, interest and penalty, if any, as provided under the Act and the Rules. It has never been the condition precedent. It is true that in order to fully enjoy the allotment, proper linkage is necessary. But to say that this is a condition precedent, that is not the correct approach in the matter. It is true the word, "enjoy" appearing in the definition of the word "premium" in Rule 3(2) of the Rules, means the price paid or promised for the transfer of a right to enjoy immovable property under the Rules. It was very seriously contended before us that the word, enjoy immovable property necessarily means that the Administration should provide all the basic amenities as appearing under Section 2(b) of the Act for enjoying that allotment. The expression "premium" appearing in the present context does not mean that the allottees/ lessees cannot enjoy the immovable property without those amenities being provided. The word "enjoy" here in the present context means that the allottees have a right to use the immovable property which has been leased out to them on payment of premium i.e. the price..... It is the common experience that for full development of an area it takes years. It is not possible in every case that the whole area is developed first and allotment is served on a platter. Allotment of the plot was made on an as-is-where-is basis and the Administration promised that the basic amenities will be provided in due course of time. It cannot be made a condition precedent. This has never been a condition of the auction or of the lease. As per the terms of allotment upon payment of the 25 per cent, possession will be handed over and rest of the 75 per cent of the leased amount to be paid in a staggered manner i.e. in three annual equated installments along with interest at the rate of 10 per cent. If someone wants to deposit the whole of the 75 per cent of the amount he can do so. In that case, he will not be required to pay any interest. But if a party wants to make payment within a period of three years then he is under the obligation to pay 10 per cent interest on the amount of installment. This is the obligation on the part of the allottee as per the condition of lease and he cannot get out of it by saying that the basic amenities have not been provided for enjoying the allotted land, therefore he is not liable to pay the interest”.

We asked the learned counsel for the parties to tell us which is the obligation of the lessor in the lease deed which says that they will not charge interest on the installments before providing the amenities. There

is neither any condition in the lease nor any obligation under the auction. If the parties have given their bids with their eyes wide open, they have to blame themselves. It cannot be enforced by any mandamus as there is no obligation contained in the lease deed or in the auction-notice.”

Therefore, it is evident that a lessee/successful bidder cannot seek rescheduling of the instalments of premium or postponement of accrual of the interest payable as per rules.

19. The equated instalment includes interest only upto the dates stipulated as due dates. When the instalments are not paid on the due dates, the lessees become liable to pay penal interest at 24% per annum from the due date to date of actual payment (vide clause 4 of General Term & Conditions of Auction and clause 5 of Letter of allotment and Rule 12(3A) of the Leasehold Rules). We may also refer to two decisions of this Court in the context of interest.

20. In *Sector-6, Bahadurgarh Plot Holders' Association* (supra), the issue that arose for determination was whether the allottee could refuse to pay interest on the instalments of the price on the ground that the site had not been fully developed by providing all the modern amenities as assured. The issue did not arise in a complaint under the Consumer Protection Act, but in a

writ petition filed by the allottees challenging the charging of interest and requiring the authority to complete the development. The allottees contended that what was offered was allotment of developed sites and not undeveloped sites; that they were informed that “all modern amenities like underground sewerage, storm water drainage, roads, electricity, supply of potable water” will be provided; that as the sites were not developed fully and as possession of “developed sites” was yet to be given, the state government could not charge interest. The state government, on the other hand, contended that charging of interest was not correlated to the delivery of possession under the Punjab Urban Estates Sale of Rights Rules, 1965 and having regard to Rule 12(2) of the Rules, interest accrued from the date of issue of an allotment order. Interpreting the said provisions, this Court held that while interest could not be demanded till possession was offered, it was not necessary that such offer should be of fully developed plots. This Court held :-

“As the offer had stated that modern amenities noted above “will be provided”, it cannot be held that till the amenities as mentioned have become fully functional, the offer is incomplete. It is for this reason that the fact that full development has not yet taken place, even if that be the position as contended by Shri Bhandare, cannot be a ground to hold that interest has not become payable. It is true that the applicants were given to understand that the amenities noted above would become available (and within reasonable time), the fact that the same did not become available to the desired extent could not be a ground not to accept delivery of possession. From the order of the High Court which we have quoted above, we find that the offer of possession of the undeveloped plot was not accepted by the counsel of the appellant. That order being of 17-10-1980, we are of the view that interest did become payable from that date. *The fact that the plot has not yet been fully developed, as is the case of the appellant, has, therefore, no significance insofar as charging of interest is*

concerned. We are not in a position to accept the submission of Shri Bhandare that equity would not demand charging of interest, even though the plots are yet to be fully developed. When parties enter into contract, they are to abide by the terms and conditions of the same, unless the same be inequitable. In the present case, question of equity does not really arise inasmuch as the condition relating to interest is founded on a statutory rule, vires of which has not been challenged.”

(emphasis supplied)

If interest could not be denied to the state government even where there was an assurance of all “modern amenities”, it is needless to say that the claim of the government will be much more stronger, when there is no assurance at all, as in this case.

21. In regard to default interest, we may refer to the following observations of this Court in *Secretary, Bhubaneswar Development Authority v. Susanta Kumar Mishra* (C.A.No. 605/2009 decided on 30.1.2009)

“Each equated instalment would then have a principal component and interest component. As the equated instalments would include interest on the principal only up to the due date of instalment, whenever there is a default, there can be no dispute that the ‘principal’ part of the instalment could be subjected to interest from the date of default to date of payment. It is no doubt true that when the defaulted instalment in entirety is subjected to interest, the ‘interest’ component of the defaulted instalment is also subjected to interest. To that limited extent, there may be charging of interest upon interest. Charging of such interest, on the interest part of the instalment, on default in payment of the instalment, at a reasonable rate from the date of default, cannot be termed as charging of compound interest in regard to the entire dues. It is only a provision to ensure that the dues (instalments) are paid promptly and avoid misuse of the concession given by permitting payment in instalments. But for such a provision, lessees/allottees who have already been given possession, will be tempted to delay payments, thereby leading to continuous defaults. A statutory development authority, working on no profit no loss basis, can ill afford to permit such continuous defaults by lessees/allottees, which will paralyse

their very functioning, thereby affecting future developmental activities for the benefit of other members of the general public. Therefore a provision for interest as contained in clause 6 of the lease-cum-sale agreement is neither inequitable nor in terrorem. Where the basic rate of interest is itself very high, or where interest is charged on the entire price instead of charging interest on the reducing balance, when working out the equated instalments, or where the rate of interest on default is punitively excessive, the position may be different. But no such case is made out by the respondent.”

22. In this case, having regard to the provisions in the leasehold Rules and contractual terms (as contained in the General terms and conditions of auction lease and the letter of confirmation of lease cum offer of possession), the following position is evident :

- (i) Interest at 10% per annum is payable from the date of auction till date of payment on the balance of premium (if the lessee chooses to pay the 75% of premium in instalments).
- (ii) Payment of interest has nothing to do with provision of amenities.
- (iii) If the premium interest on ground rent is not paid on the due date, then interest will be payable at 24% P.A. from the date of default (due date) to date of payment.
- (iv) The lessee will not be liable to pay interest on the premium instalments or the rent, till the actual and physical possession of the site is delivered or offered to be delivered to the lessee (whichever date is earlier).

23. The lessees-respondents, however, placed strong reliance on the following observations and directions in para 38 of the decision of this Court

in *Shantikunj* (supra) to contend that commencement of interest could be postponed :-

“We make it clear that though it was not a condition precedent but there is obligation on the part of the Administration to provide necessary facilities for full enjoyment of the same by the allottees. We therefore, remit the matter to the High Court for a very limited purpose to see that in cases where facilities like kutcha road, drainage, drinking water, sewerage, street lighting have not been provided, then in that case, the High Court may grant the allottees some proportionate relief. Therefore, we direct that all these cases be remitted to the High Court and the High Court may consider that in case where kutcha road, drainage, sewerage, drinking water, facilities have not been provided, no relief shall be granted but in case any of the facilities had not been provided, then the High Court may examine the same and consider grant of proportionate relief in the matter of payment of penalty under Rule 12(3) and interest for delay in payment of equated instalment or ground rent or part thereof under Rule 12(3-A) only. We repeat again that in case the above facilities had not been granted then in that case consider grant of proportionate relief and if the facilities have been provided then it will not be open on the part of the allottees to deny payment of interest and penalty. So far as payment of instalment is concerned, this is a part of the contract and therefore, the allottees are under obligation to pay the same. However, so far as the question of payment of penalty and penal interest is concerned, that shall depend on the facts of each case to be examined by the High Court. The High Court shall examine each individual case and consider grant of proportionate relief.”

The above observations and directions were apparently on the special facts and circumstances of that case. As noticed above, in *Shantikunj*, the auction was of the year 1989. The Lessee had approached the High Court in its writ jurisdiction in the year 1999 seeking amenities. Even in 2006 when this Court heard the matter, it was alleged that the amenities had not been provided. It is in those peculiar facts that this Court obviously thought fit to give some reliefs with reference to penal interest wherever amenities had not been

provided at all even after 17 years. In fact, this court made it clear while remanding to High Court that wherever facilities/amenities had been provided before the date of the judgment (28.2.2006), the lessees will not be entitled to any reliefs and where the facilities/amenities had not been granted even in 2006, the High Court may consider giving some relief by proportionate reduction in penal interest. This direction was apparently on the assumption that in case of penalty, the court can grant relief in writ jurisdictions.

24. But the facts of this case are completely different. The auction sale was in December 1996. The National Commission has recorded a finding that almost all the facilities/amenities had provided in the year 1999, that is within about two years. Therefore, the observations of this court in para 38 of *Shantikunj* will have no applications to these cases, particularly as they were made in the context of a writ proceeding, whereas we are concerned with a proceedings under Consumer Protection Act. We may also refer to another aspect. Section 7 of the Act empowers the Central Government to levy such fees and taxes as it may consider necessary (which shall be in addition to any fee or tax for the time being leviable under any other law) in respect of any site or building on the transferee or the occupier thereof, for the purpose of providing, maintaining or continuing any amenity at Chandigarh. This

provision clearly demonstrates that the providing amenities is not linked to auction of plots on lease basis and the premium paid is not for providing any amenity. The Central Government is required to provide amenities by levying fees and taxes in respect of sites/plots on the transferees/ occupiers thereof. Therefore, it is doubtful whether any proportionate reduction in penal/default interest could be made on the ground of non-provision of amenities. Be that as it may. As we have already held that para 38 will not apply, we do not propose examine that aspect any further in these cases.

25. The respondents lastly contended that the rate of default interest was only 12% per annum under Rule 12(3A) of the Leasehold Rules as on the date of the auction and therefore clause (4) of the General Terms & Conditions of Sale and clause (5) of the letter of allotment, providing for payment of default interest @ 24% per annum was illegal and unauthorized. This contention is urged for the first time in this court. The appellants countered by contending that the Administrator had by notification, fixed the default interest at 24% per annum. Suffice it to say that the rate of default interest mentioned in Rule 12(3A) as on the date of auction, would alone apply. If Rule 12(3A) was not amended increasing the rate of default interest from 12% P.A. to 24% per annum as on the date of auction, then the

rate of interest stipulated in Rule 12(3A) as it stood on the date of auction will apply. The appellants could not charge default interest at a rate higher than what was provided in the said rule. If any higher rate has been charged by way of default interest and it is not corrected, it is open to the lessees to seek relief in accordance with law.

26. We may note that the appellants raised one more contention that the complaints were not maintainable against the government can never be considered as a 'service provider' under the Act. As such a contention was not raised either before the UT Commission or National Commission, we do not propose to examine the said contention in these appeals.

27. The appellants thus succeed on both grounds. We, therefore, allow these appeals by UT Chandigarh and set aside the orders dated 21.2.2005 and 21.2.2007 of the *National Commission* in the matters which are the subject matter of these appeals and dismiss the respective complaints filed by the respondents as not maintainable.

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28. Leave granted. The lessees-complainants have filed these appeals against the common order dated 21.2.2007 of the National Commission seeking further relief. They contend that the National Commission ought to have further directed the UT Chandigarh not to charge interest on the premium instalments nor claim the ground rent until the basic amenities were provided. They also contend that as the basic amenities were not provided on the date of delivery of possession of the sites, but were provided only in 1999, their liability to pay ground rent and interest on premium instalments would start only with effect from 25.10.1999.

29. We have considered and rejected these contentions while dealing with the appeals by UT Chandigarh. In view of the dismissal of their complaints, these appeals do not survive and are dismissed.

J
[R. V. Raveendran]

J
[Markandey Katju]

New Delhi;
March 17, 2009