

CASE NO.:  
Appeal (civil) 5875 of 1999

PETITIONER:  
PRASHANT KUMAR SHAHI

Vs.

RESPONDENT:  
GHAZIABAD DEVELOPMENT AUTHORITY

DATE OF JUDGMENT: 03/04/2000

BENCH:  
S. Saghir Ahmad, & R.P. Sethi.

JUDGMENT:

SETHI, J.  
L...I...T.....T.....T.....T.....T.....T.....T...J

The appellant applied for the allotment of a plot measuring 350 sq.mtrs. under the Scheme of "Indrapuram" and paid registration amount of Rs.42,000/- on 28th July, 1989. A further sum of Rs.63,000/- being the reservation amount was paid and plot allotted to him vide letter of the respondent-authority dated 5th November, 1989. The first instalment of Rs.76,125/- was paid by him on 16th August, 1990. Further instalments during 1990-95 were not paid allegedly on the ground that the respondent-authority had not made any development at the site. The appellant further stated that he was made to believe that the possession of the plot would be handed over to him by the year 1991. Vide letter dated 28th February, 1995, the appellant was informed that if the balance amount is not paid by him by 30th November, 1995, interest would be charged on the balance amount due. The appellant's contention is that in terms of the aforesaid letter the interest, if any, can be charged for the period commencing from 30th November, 1995 and not earlier to it. He had already paid a total sum of Rs.5,74,993/- but the respondents were allegedly wrongly insisting for the payment of an additional amount of Rs.2,34,127/- before delivery of possession of the plot. As the plot was not delivered to him, the appellant filed a complaint under Sections 36A, 36B(a) and 36D of the Monopolies & Restrictive Trade Practices Act (hereinafter referred to as "the MRTP Act") before the Monopolies and Restrictive Trade Practices Commission (hereinafter referred to as "the Commission") which was registered as Unfair Trade Practice Enquiry No.92/97. Notice of enquiry under the provisions of the MRTP Act was issued to the respondent who appeared before the Commission and contended that the appellant himself through his letter dated 13th December, 1996 admitted the delay in payments and indicated his willingness to pay the entire amount outstanding against him with the request not to cancel the allotment due to delayed payments. The amount liable to be paid by the appellant was stated to have been calculated strictly in accordance with the terms and conditions of the brochure circulated. The

respondents could have cancelled the allotment in terms of the regulations contained in the brochure but it was not done to facilitate the appellant to make the payment of the balance amount. It was contended that the necessary facilities of sewerage, drainage, water supply and electricity connections were made available to the plot-holders including the appellant in Indrapuram Scheme. Regarding delivery of possession, it was contended on behalf of the respondent-authority, that in the brochure only estimated time of completion of scheme was indicated and delay in completion had occurred due to various factors including the constraints of funds. It was further pleaded that the paucity of financial resources had been caused due to delay or default in payment by the allottees like the appellant. On the basis of the pleadings of the parties, the Commission framed the following issues: "1. Whether the respondent has been indulging in unfair trade practices as alleged in the NOE?

2. Whether these unfair trade practices are prejudicial to the interest of the complainant/ other members of the public?

3. Whether he is entitled to relief/compensation claimed made by him in the compensation application?

4. Relief, if any?"

After referring to the pleadings and the evidence produced, the Commission concluded:

"It transpires that the applicant/complainant has of his own accord, approached the respondent and indicated his willingness to pay the amount due from him. Not only has he shown his desire to clear the dues, he has also acknowledged that there has been delay on his part in making the payment. Perusal of the allotment letter reveals that there is a stipulation with regard to payment of interest and penal interest if the payment is not made within the prescribed time limit. As both the applicant/complainant as well as the respondent are relying on the allotment letter, it stands to reason that the outstanding amount including interest should be calculated in the light of this letter of 5.11.1989. It appears from the affidavit of evidence filed on behalf of the respondent that the calculations have been made on the basis of that letter and the respondent has accordingly, indicated the amount to the applicant/complainant. In that view of the matter, the applicant/complainant's contention that interest should be charged after 30th May, 1995 is not tenable. It is also quite apparent that there has been delay in the completion of the project but delay seems to have been caused by circumstances beyond the control of the respondent. It is also common knowledge that there has been cost escalation and cost estimates of 1989 need revision and the revised estimate is bound to be much higher than the original estimate. It appears that development of infrastructure and provision of utilities like water supply and electricity connection have also contributed to the hike in the estimated cost and demand for additional charges for sewerage, lease rent, etc., cannot be construed or considered to be an unfair trade practice on the part of the respondent. It also transpires that the respondent is charged with the responsibility of developing land for plots/flats and making the same available to the allottees

like the applicant/complainant on actual cost value basis and the total cost incurred by it is required to be recovered from the allottees. In that view of the matter, there is no escape from the conclusion that no case of unfair trade practices by and on behalf of the respondent has been made out and no prejudice seems to have been caused to the applicant/complainant as a consequence thereof."

Learned counsel appearing for the appellant relying upon a judgment of this Court in Bihar State Housing Board and Ors.vs. Lalit Ram [1997 (10) SCC 339] submitted that as the respondent-authority has been proved to be responsible for the delay in delivering possession of the plot, the appellant could not be burdened to pay the penal interest for the period anterior to 30th May, 1995. It is true that if the authority is found to be responsible for the delay in delivery of the possession of the plot in terms of the agreement arrived at or according to the assurance given in the brochure, the allottee cannot be burdened with the interest on the balance amount not paid by him. However, it has to be found on facts as to whether the authority or the allottee was responsible for the alleged delay. According to the available records and the submissions made on behalf of the appellant it transpires that the schedule for payment of the total estimated cost of the plot being Rs.4,29,000/- and registration amount of Rs.42,000/- was to be paid in the following instalments:

| "S.No. | Instalment         | Description | Due date of payment |
|--------|--------------------|-------------|---------------------|
| 1.     | Reservation Amount | 4.12.1989   | 2.                  |
| 2.     | Instalment No.1    | 4.5.1990    | 3.                  |
| 3.     | Instalment No.2    | 4.11.1990   | 4.                  |
| 4.     | Instalment No.3    | 4.5.1991    | 5.                  |
| 5.     | Instalment No.4    | 4.11.1991   | 6.                  |
| 6.     | Instalment No.5    | 4.5.1992    | 7.                  |
| 7.     | Instalment No.6    | 4.11.1992   |                     |

It further transpires that after paying the initial amount of Rs.42,000/- the appellant paid the first instalment of Rs.63,000/- on 3.1.1990 and second instalment of Rs.76,125/- on 16th August, 1990 total being Rs.1,81,125/-. Amounts of instalment due on 4.11.1990, 4.5.1991, 4.11.1991, 4.5.1992 and 4.11.1992 were, admittedly, not paid on the due dates. The respondent-authority vide its letter dated 28th February, 1995 called upon the appellant to make upto date payments and 10% of premium of his plot as lease rent and Rs.4800/- as sewer connection and water connection charges latest by 30th May, 1995. It was pointed out that "if the payment is not made within the due date interest shall be charged @ 18% & chokidata fee Rs.5/- per day shall be charged after 30.5.95". Admittedly, till 16.10.1996 no amount was paid. Even on that date a sum of Rs.72,188/-, the amount of instalment payable on 4.11.1990 was actually paid. The appellant thereafter paid a sum of Rs.2 lakhs on 7.1.1997 and Rs.1,29,600/- on 13.1.1997 before filing his complaint in the Commission on 28th February, 1997. Having failed to perform his part of the contract, the appellant cannot be permitted to urge that he is not liable to pay the balance amount along with interest as according to him the respondent-authority had failed to deliver possession as per terms of the brochure. The authority was not expected to deliver possession in the absence of the payment of the agreed amount. Having failed to perform his part of the agreement, the appellant cannot be permitted to urge, at this stage, that he was not liable to pay the interest as agreed to by him at the time of accepting the allotment of

the plot in his favour. The reliance of the learned counsel on the letter dated 28th February, 1995 is also misplaced inasmuch as by that letter he was given further opportunity to make the payment of the balance amount alongwith charges mentioned therein by a specified date, failing which interest and chokidata was to be charged from him. The letter did not envisage that such interest and chokidata was to be charged from a date subsequent to 30th May, 1995 and not prior to it. The mention of the date was only to intimate the appellant of the concession given to him and upon his failure to avail of the benefit by the specified date, he was liable to pay the interest as agreed upon. The judgment of this Court in Bihar State Housing Board and Ors.vs. Lalit Ram (supra) is also of no help to him. In that case the allottee was found to have been intimating the Board time and again for completion of the construction of the plot but despite his request the same was not completed and it was held that without completion of the construction, the aforesaid allottee could not be asked to execute the agreement and upon his failure to execute the agreement, charged with the liability of paying the interest. The facts of the present case are altogether different and distinguishable. After going through the whole record produced before us, we find that no ground is made out to interfere with the order of the Commission in this appeal. The appeal is, therefore, dismissed. The appellant is held liable to pay the amount demanded from him before the delivery of the possession of the plot. No costs.