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Court : Punjab and Haryana

Decided On : Jan-06-2009

Reported in : (2009)156PLR524

Judge : M.M. Kumar and; Jora Sing, JJ.

Appellant : Ram Gopal

Respondent : Haryana Urban Development Authority and anr.

Judgement :

M.M. Kumar, J.

1. This petition filed under Article 226 of the Constitution challenges charging of compound interest and penalty on enhancement as well as on the instalments. A further direction has been sought to the respondents not to charge the compound interest on delayed installments and to charge the amount as per the terms and conditions of the allotment letter.

2. Brief facts of the case are that as a result of an open auction Booth No. 9, Sector 13 Extension, Karnal, was allotted in the names of Sarvshri Ram Gopal (petitioner), Naresh Kumar and Kishori Lal for a sum of Rs. 2,01,000/-, vide Office Memo. No. 12866, dated 5.8.1985. A sum of Rs. 20,100/- was deposited as bid money at the time of auction. On 13.9.1985, possession of the site was given and an amount of Rs. 30,150/- was required to be deposited within 30 days from the

date of acceptance of the bid. It is claimed that the balance amount of Rs. 1,50,750.08 paise was to be paid with 10% simple interest in terms of clause 5 of the allotment letter. It is pertinent to mention here that the petitioner Shri Ram Gopal and others entered into an agreement with Smt. Mukesh Gupta, who purchased the booth in question and obtained a General Power of Attorney from the petitioner and others. The present petition has been filed through Smt. Mukesh Gupta wife of Shri Om Parkash Gupta being General Power of Attorney of Shri Ram Gopal.

3. It is conceded position that only 25% cost of the site was deposited and thereafter no further payment was made. Accordingly, the respondents issued notices under Section 17(1) & (2) of the Haryana Urban Development Authority Act, 1977 (for brevity, the Act'), dated 3.12.1986, 1.8.1990 and 24.3.1993 imposing penalty of Rs. 2,261/-, Rs. 2,36,611 and Rs. 37,000/-. Thereafter notices under Section 17(3) of the Act were also issued but no response was received from the allottee. Faced with this situation, the respondents further issued notices dated 16.3.1992, 22.1.1993, 3.3.1994, 27.9.1994 and 18.1.1995 under Section 17(4) of the Act. On 18.9.2000, one last opportunity was given for 6.10.2000. However, neither the allottees turned up nor deposited the outstanding amount of the site in question, which by that time increased further to Rs. 13,52,830/-alongwith Rs. 25,013/- as extension fee. Accordingly, the Estate Officer, HUDA, Karnal-respondent No. 2 passed an order dated 31.1.2001 and resumed the built up Booth No. 8, Sector 13 Extension, Karnal and forfeited an amount equivalent to 10% of the consideration money including interest and other dues payable (P-1)

4. Against the resumption order an appeal was filed by the petitioner Ram Gopal and other allottees before the Administrator, HUDA, Panchkula, which was dismissed on 11.9.2001, by holding that the appellant-petitioner were given adequate chance to deposit the dues but he failed. It was further found that they have occupied the premises in question and running business without making outstanding installments to the HUDA. Against the order dated 11.9.2001, passed by the Administrator, a revision was preferred before the Financial Commissioner and Secretary to Government Haryana, Town and Country Planning Department, Chandigarh. During the hearing of revision petition, the GPA Smt. Mukesh Gupta

gave an undertaking to deposit the outstanding dues alongwith interest as per allotment letter, in the event of restoration of site. However, charging of interest over and above the rate of interest mentioned in the allotment letter was agitated.

5. The Revisional Authority felt persuaded to grant one opportunity to the appellant-petitioner to deposit the outstanding dues. Accordingly, an order dated 19.7.2003 was passed restoring the site with the condition that all the outstanding dues alongwith interest as per policy of HUDA and penalty of Rs. 10,000/- are deposited within six months from the date of communication of the dues by the Estate Officer. The Estate Officer was directed to convey the outstanding dues alongwith penalty of Rs. 10,000/- within 15 days from the date of order dated 19.7.2003 (P-2). On 13.8.2003, the Estate Officer-respondent No. 2 sent a communication asking the GPA of the petitioner to deposit Rs. 14,33,900 plus 10,000/- as penalty within 6 months (P-3).

6. Instead of depositing the dues, the petitioner through GPA again sent a representation dated 3.12.2003 disputing charging of interest on delayed payment as well as charging of extension fee claiming that no penal interest could have been charged from them for non-deposit of installments in time and only simple interest is leviable (P-4). The petitioner also requested for supply of details as to how the aforementioned amount was calculated. It is claimed that no details were ever furnished. After referring to Section 17 of the Act, letter dated 12.4.1999 (P-5) and a number of judicial pronouncements, the petitioner has approached this Court by way of instant petition with the grievance that interest beyond the terms and conditions of the allotment letter and beyond 10% cannot be charged from him. Reliance in this regard has been placed on the judgment of Hon'ble the Supreme Court in the case of Roochira Ceramics v. HUDA (2001)128 P.L.R. 218 (S.C.) and various judgments of this Court rendered in the cases of Aruna Luthra v. State of Haryana : (1998-2)119 P.L.R. 687; Kanta Devi Budhiraja v. State of Haryana (2000)125 P.L.R. 698; Manju Jain and Anr. v. HUDA and Ors. C.W.P. No. 4405 of 1998, decided on 2.4.1998; Ashwani Puri v. HUDA C.W.P. No. 2363 of 1996, decided on 2.4.1998; Mohan Dass and Ors. v. HUDA (2007)148 P.L.R. 31, Annexure P-6; Harbans Lal v. HUDA and Anr. C.W.P. No. 8035 of 2007, decided on 24.5.2007, Annexure P-7.

7. In the written statement filed on behalf of the respondents, it has been asserted that charging of compound interest after a long period of 22 years is justified and filing of instant petition is an abuse of the process of law and the same also suffers from delay and laches. It has been pointed out that as per policy dated 19.9.1985 (R-2) it was decided to charge compound interest. The policy was further amended on 15.1.1987 (R-3) and it was decided to charge 18% interest on the delayed payment of installments. The policy was further amended on 22.9.2000 and it was then decided to charge simple interest w.e.f. 1.9.2000. It has, thus, been claimed that the petitioner cannot derive any benefit from policy dated 22.9.2000 and his case is covered under the earlier policies dated 19.9.1985 and 15.1.1987. Regarding charging of interest over and above the terms of the allotment letter, reliance has been placed on the judgments of Hon'ble the Supreme Court in the cases of HUDA v. Raj Singh Rana : A.I.R. 2008 S.C. 3035 and S.M.S. Sandhu v. Chandigarh Administration : A.I.R. 2003 S.C. 1138. It has further been pointed out that account statement giving the complete breakup of the due amount was furnished to the petitioner vide letter dated 16.12.2003 (R-4 & R-5) and that even in the case of Kanta Devi Budhiraja (supra) this Court has upheld charging of 18% interest as per policy dated 15.1.1987, thus, the judgments relied upon by the petitioner are not applicable to the facts and circumstances of the present case.

8. We have thoughtfully considered the submissions made by learned Counsel for the parties and are of the view that the question of charging interest has to be concluded in terms of the judgement in Raj Singh Rana 's case (supra). The Hon'ble Supreme Court has resorted to statutory guidelines available under Section 3 of the Interest Act, 1978 (for brevity 'the Act'). Section 3 of the Act clearly marks a distinction between the agreed rate of interest and rate of interest to be imposed in the absence of concurrence of the parties. Therefore the agreed rate of interest has to be ascertained by referring to the provisions of the allotment letter dated 5.8.1985. According to clause 5 the balance amount of the estimated price of the plot was payable in ten half yearly instalments and the first instalment was to fall due after the expiry of six months. Each instalment was recoverable with interest @ 10 percent on the balance price. The interest was to accrue from the date of offer of possession. The first question which needs to be answered is

whether interest @ 10 percent is required to be charged as per clause 5 of the allotment letter dated 5.8.1985 (Annexure R/I) as has been agreed by the parties or the petitioner can be subjected to higher rate of interest increased by the policies announced later. The aforementioned question has been raised by virtue of clause 2 of the allotment letter (R.1). Another ancillary question would be that the rate of interest at 10 percent p.a. was applicable on the instalments which were to be paid within the period specified in the allotment letter and if the instalment has not been paid according to the schedule then what would be the rate of interest. The aforementioned question infact stand answered in Raj Singh Rana's case (supra). It has been laid down in the following two paras that in the absence of agreed rate of interest the current rate of interest would be applicable as per the provisions of Section 3 of the Act:

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 provisions contained in Sub-section (1) which provides for the Court to allow interest at a rate not exceeding the current rate of interest.

9. In the aforementioned paras two principles with regard to charging of interest have been laid down (a) in any proceeding for recovery of any debt or damages or any proceedings in which claim for interest is made the court may allow interest to the person entitled to the debt or damages at a rate not exceeding the current rate; (b) the above principle would not be applicable in a case where the parties have concurred for charging of interest at a specified rate which flows from sub Section 3 of Section 3 of the Act. This provision has to have precedence over the principle noted above.

10. However, it does not mean that there cannot be any variation in the rate of interest to be awarded in a proceeding where such a claim is made. The Hon'ble Supreme Court in the case of Raj Singh Rana (supra) has placed reliance on para 8 of the judgement rendered in the case of Ghaziabad Development Authority v. Balbir Singh : A.I.R. 2004 S.C. 2141 : 2004(5) S.C.C. 65 which in term applies the principle that facts of each case have to be taken into account and interest should not be imposed at a uniform rate of interest. In para 15 of the judgement it has been concluded as under:..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.

11. When the facts of the present case are examined in the light of the principles laid down in Raj Singh Rana's case (supra) it becomes evident that allotment to the petitioner was made in the year 1985 and possession was also given to him. The petitioner had deposited only 25 percent of the cost of the site and no further payment was made despite the fact that the schedule of payment as per the allotment letter was given. According to schedule provided by clause 5 the whole price of the plot was payable in ten half yearly instalments. In that regard clause 5 deserves to be read in extenso:

5. The balance amount i.e. Rs. 150750-00 of the price of the plot/building can be paid in lump sum without interest within 60 days from the date of issue of the allotment letter or in 10 half/yearly instalments. The first instalment will fall due after the expiry of six months in one year of the date of issue of this letter. Each instalment would be recoverable together with interest on the balance price at 10

percent interest on the remaining amount. The interest shall however accrue from the date of offer of possession.

12. The afore-mentioned ten half yearly instalments were payable upto August, 1990. therefore, the agreed rate of interest in any case does not remain intact. Applying the principles laid down in Raj Singh Rana's case (supra) we are of the view that the petitioner is liable to pay interest in terms of Section 3(1) of the Act and the same reads thus:

3. Power of court to allow interest.- (1) In any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages 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 following period, that is to say,- (a) if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings; (b) if the proceedings do not relate to any such debt, then from the date mentioned in this regard in a written notice given by the person entitled or the person making the claim to the person liable that interest will be claimed, to the date of institution of the proceedings: Provided that where the amount of the debt or damages has been repaid before the institution of the proceedings, interest shall not be allowed under this section for the period after such repayment.

13. The expression 'rate of interest' has not been left to any guess work but has also been defined in Section 2(b) of the Act and the same reads thus:

(b) 'current rate of interest' means the highest of the maximum rates at which interest may be paid on different classes of deposits (other than those maintained in savings account or those maintained by charitable or religious institutions) by different classes of scheduled banks in accordance with the directions given or issued to banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949.

14. A perusal of the afore-mentioned provisions makes it clear that current rate of interest would mean the highest of the maximum rates at which interest may be paid on different classes of deposits by different classes of scheduled banks in accordance with the directions given or issued to the banking companies generally by the Reserve Bank of India under the Banking Regulation Act, 1949. Therefore, the issue with regard to payment of interest is answered in the above terms. There is however, yet another issue as to whether the respondents could charge interest on the additional price on account of increase of the acquisition cost. The afore-mentioned question also stands answered in para 18 of the judgement in Raj Singh Rana's case (supra) wherein it has been held that such imposition has to be kept in view with the provisions of the Act and not in an unreasonable manner. It would be appropriate to extract para 18 which reads thus:

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 percent per annum upon holding that the demand made by the appellant at a 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.

15. In view of the above, the writ petition is disposed of with a direction to the respondents to calculate interest by applying current rate of interest which means the highest of the maximum rates at which interest may be paid on different classes of deposits by different classes of scheduled banks in accordance with the directions issued to the banking companies by the Reserve Bank of India under the Banking Regulation Act, 1949. It would necessarily exclude the rate of interest on the accounts maintained in saving or those maintained by charitable or

religious institutions. The aforementioned calculations shall be in respect of default in payment of instalment as well as in respect of the additional price required to be paid on account of increase of the acquisition cost. However, it is further held that the petitioner shall not be liable to pay any penalty after he has been subjected to payment of interest.

The writ petition stands disposed of in the above terms.

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