
(2010) 11 MP CK 0039
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1869 of 2010

Amit Pande

APPELLANT

Vs

M.P. Housing Board and Others

RESPONDENT

Date of Decision : 24-11-2010

Acts Referred:

Citation : (2011) 1 MPHT 368 : (2011) 2 MPLJ 237

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Gangele, J.

The Petitioner has filed this petition against the orders, Annexure P-3 and Annexure P-4, by which the Petitioner has been asked to deposit additional amount in regard to allotment of a flat.

Respondent No. 1 issued an advertisement inviting applications in regard to allotment of flats in "Shrimant Madhavrao Scindia Enclave", Darpan Colony, Gwalior. The Respondents proposed to construct two types of flats, namely, H.I.G. and M.I.G. Flats, total 32 flats of each types and area 126 sq. meters and 95 meters each types respectively. In the advertisement the approximate cost of H.I.G. Flat Rs. 10.50 lacs and for M.I.G. Flats Rs. 8.50 lacs have been mentioned. It has further been mentioned in Clause (4) of the conditions of registration and allotment in the advertisement that cost is provisional and it could be enhanced subsequently on the basis of actual cost.

The Petitioner applied for purchase and allotment of the flat and he was allotted the flat. The Petitioner deposited the required amount at the time of registration. Subsequently, vide letter dated 11.07.2007 the Petitioner has been informed by the Respondents that there is a likelihood that the cost of the flat be increased between 10 to 20 %. It has further been submitted that the Petitioner has to pay additionally the service tax, lease-rent and maintenance local charges. The

Petitioner accepted the aforesaid proposal. However, vide final order, at the time of allotment, the Respondents further charged parking-charge of Rs. 44,215/- and premium of land at Rs. 1,70,900/-, which is under challenge in this petition. The Petitioner has further been informed vide letter dated 06.04.2007 to deposit the amount fixed vide Annexure P-3, a total amount of Rs. 14,15,548/- within a period of 10 days, failing which the allotment of the flat to the Petitioner shall be cancelled.

Respondent, Housing Board, in its reply stated that initial tentative cost for the flats Rs. 12.60 lacs for H.I.G and Rs. 10.20 lacs for M.I.G. was declared and final cost is Rs. 15,15,548/- and as per Clause (4) of the advertisement the Housing Board is entitled to recover the cost. It has further been submitted that the cost has been increased on the basis of a decision taken by the Cost Fixation Committee in its meeting dated 11.05.2009, copy of the minutes of the meeting has been filed as Annexure R-6.

Learned Counsel for the Petitioner has submitted that the Respondents have no power and authority to charge an amount of Rs. 44,215/- for parking charges and premium of land Rs. 1,70,900/-. It has further been submitted that Respondents have no power and authority to charge the aforesaid parking charges because parking is not part and partial of the flat. Contrary to this, learned Counsel for Respondents has submitted that the Housing Board has a right to charge additional amount on the basis of the amenities provided by the Board. It has further been submitted that the Petitioner himself agreed for payment of cost in the event of escalation, hence, he could not challenge the same subsequently.

In the initial advertisement, copy of which has been filed as Annexure P-1 to the petition, it has clearly been mentioned that there would be a separate parking for every flat and in the advertisement the parking charge was not shown separately and there is also no charge shown towards the premium of the land. It has only been mentioned in the advertisement that cost of H.I.G. Flat is near about Rs. 10.50 lacs and Rs. 8.50 lacs for M.I.G. Flat which could be enhanced subsequently on the basis of final cost. It means that all the facilities have been included by the Respondents at the time of advertisement and only a discretion has been left with the Respondents themselves in regard to charging additional cost in case of escalation. However, subsequently, the Respondents charged 20 % enhanced cost on the basis of escalation of cost and further added the premium of land of Rs. 1,70,900/- and parking charge of Rs. 44,215/-.

Hon'ble the Supreme Court in the case of Nahalchand Laloochand Pvt. Ltd. Vs. Panchali Co-operative Housing Society Ltd., has held, as under, in regard to right of a Housing body, to charge parking fee and the fact that the parking space is included in the definition of "Flat" and the fact that whether the owner of a flat has a right of parking or not:

For proper consideration of questions (i) and (ii) as afore-referred, it is of considerable importance to ascertain the import and meaning of the term "flat"

defined in Section 2(a-1) of MOFA. Rather the answer to the questions presented for consideration must squarely or substantially depend on what is a "flat". Justice G.P. Singh in the "Principles of Statutory Interpretation. (12th edition, 2010) says that the object of a definition of a term is to avoid the necessity of frequent repetitions in describing all the subject matter to which that word or expression so defined is intended to apply. In other words, the definition clause is inserted for the purpose of defining particular subject-matter dealt with and it helps in revealing the legislative meaning. However, the definitive clause may itself require interpretation because of ambiguity or lack of clarity in its language. In the "Construction of Statutes" by Earl T. Crawford (1989 reprint) at page 362, the following statement is made: "...the interpretation clause will control in the absence of anything else in the act opposing the interpretation fixed by the clause. Nor should the interpretation clause be given any wider meaning than is absolutely necessary. In other words, it should be subjected to a strict construction.

The definition of term "flat" in MOFA at the time of its enactment was this: "flat" means a separate and self-contained set of premises used or intended to be used for residence, or office, showroom or shop or godown (and includes a garage), the premises forming part of a building. By Maharashtra Act No. 15 of 1971, the definition of "flat" got amended and the words "and includes an apartment" were inserted after the word "building". Thereafter by Maharashtra Act 36 of 1986, the words "or for carrying on any industry or business" were inserted after the word "godown" and before the bracketed portion "(and includes a garage)".

Before we analyze Section 2(a-1), if we ask what the term "flat" means, apart from the statutory definition, the reply must be that though it has no uniform meaning but in its natural and ordinary meaning, "flat" is a self contained set of premises structurally divided and separately owned for dwelling. Concise Oxford English Dictionary (10th edition, revised) explains "flat" --a set of rooms comprising an individual place of residence within a larger building.

Webster Comprehensive Dictionary; International edition (Vol. 1) explains "flat" --1. a set of rooms on one floor, for the occupancy of a family; apartment. 2. A house containing such flats.

In Strouds Judicial Dictionary (5th edition, Vol. 2), a reference has been made to the observations of Somervell L.J, in *Murgatroyd v. Tresarden* 63 T.L.R. 62 and it is stated; the natural meaning of the word "flat" is a separate self-contained dwelling.

In Words and Phrases, Permanent Edition, (West Publishing Company), Vol. 17, while dealing with the term "flat" generally, it is stated:

The word "flat" has no technical, legal meaning, so that a court can pronounce absolutely one way or the other. A building is a "flat" or not, and, where the testimony is conflicting, the question is one of fact.

Advanced Law Lexicon by P. Ramanatha Aiyar (3rd edition, 2005) explains the term "flat", in the following way -"in the ordinary use of the term a flat is a self-contained set of rooms, structurally divided and separately owned or let from the rest of a building, which for the most part consists of other flats separated in like manner".

Reverting back to the definition of the term "flat" u/s 2(a-1), for a "flat" within the meaning of this definition clause, the set of premises has to be a separate and self-contained that forms part of the building which is used or intended to be used for residence or office, showroom or shop or godown or for carrying on industry or business. Separateness of one premises from another premises physically and also in use or intended use for one of the uses specified in the definition clause containing the necessary facilities for self-contained accommodation is sine qua non for a unit being covered by the definition of "flat" occurring in Section 2(a-1) which includes an "apartment". In other words, it must be a separate unit conforming to the description capable of being used for one of these purposes --namely, residence, office, showroom, shop, godown or for industrial or business purposes. Alternative uses in Section 2(a-1) do expand the ordinary meaning of the term "flat" but nevertheless such premises that form part of building must be separate and self-contained. A set of premises is called self-contained if it has the following basic amenities available: (a) sanitary; (b) washing, bathing and (c) other conveniences (cooking etc.) for the use of its occupant/s although as provided in the explanation appended to Section 2(a-1) such provision may be common to two or more sets of premises. The nature of construction and user are important features of this definition clause. A unit or accommodation to fit in the definition of "flat" must meet twin-test namely: (i) self contained test and (ii) user test. The other predominant characteristic is that it must form part of a building. Crucially, for the relevant premises to be "flat": It must be a separate and self contained premises; It must form part of building; It must be used or intended to be used for any of the uses namely --residence, office, showroom, shop, godown or for carrying on any industry or business.

In the discussion made above, we have not referred to the bracketed portion namely -"(and includes a garage)" so far. What is the meaning and significance of this bracketed portion? On technical linguistic basis, the bracketed phrase can only attach to the word preceding it. That may not be happy construction nor such construction by reading bracketed portion "(and includes a garage)" with the preceding word "business" appropriately reflects the meaning of the phrase. The scope of the bracketed phrase has to be seen in the context of the definition given to the word "flat" which is true indication of intent of the legislature. It was suggested by learned senior counsel and counsel for the promoters that the phrase "and includes a garage" must be read with the "set of premises" and not with the user. This does not appear to be a correct reading of the expression. We are not persuaded to accept such construction. We think that statutory definition of .flat. must be construed keeping in view the intent of the legislature and the context of the statute and, seen thus, the phrase, "and includes a garage" in the

bracket does not bring in "garage" by itself within the meaning of word "flat". If stand alone "garage" (or a garage by itself) were intended by the legislature to be a "flat" within the meaning of Section 2(a-1), that could have been conveniently conveyed by use of the expression "or garage" after the word "business" in the same breath as preceding uses. The bracketed phrase is rather indicative of the legislative intention to include a "garage" as appurtenant or attachment to a flat which satisfies the ingredients of Section 2(a-1). To this extent Mr. Pravin K. Samdani is right in his submission. It is clear to us that stand alone "garage" or in other words "garage" as an independent unit by itself is not a "flat" within the meaning of Section 2(a-1) and we answer question (i) in the negative. The judgment of Bombay High Court in Dr. K.R. Agarwal v. Balkrishna AIR 1972 Bombay 343, to the extent the expression "or garage" has been read after the word "godown" in para 5 (clause 2) of the report does not state the correct legal position in what we have already said above.

(B) Whether stilt parking space is a garage?

The next question is, whether stilt parking space in a building regulated by MOFA is a "garage". The term "garage" has not been defined in MOFA and, therefore, we need to first find out what is the extent and scope of that term in Section 2(a-1). The general term "garage" is appropriated in English from the French language and means "keeping under cover. or "a place for keeping" of wagons as well as automobiles. Concise Oxford English Dictionary (10th edition, revised) explains "garage"--a building for housing a motor vehicle or vehicles. 2 an establishment which sells fuel or which repairs and sells motor vehicles.

Webster Comprehensive Dictionary, International edition (Vol. 1) explains the word "garage" --a building in which motor vehicles are stored and cared for.

Words and Phrases, Permanent Edition, (West Publishing Company), Vol. 17, states that "garage" generally is a station in which motorcars can be sheltered, stored, repaired, cleaned, and made ready for use; it is also place for private storage for motorcars; stable for motor cars.

The DCR define two expressions "garage-private" and "garage-public" in Regulations 2(47) and 2(48) respectively. According to these Regulations, "garage-private" means a building or a portion thereof designed and used for the parking of vehicles and "garage-public" means a building or portion thereof designed other than as a private garage, operated for gain, designed and/or used for repairing, serving, hiring, selling or storing or parking motor-driven or other vehicles. In our view, we must give to the word "garage" occurring in Section 2(a-1) a meaning that general public or for that matter a flat purchaser of ordinary prudence would give to that word or understand by that word. Learned senior counsel Mr. Sunil Gupta referred to Barnett and Block¹ wherein Atkinson, J. stated as follows:

Now what is a garage? No evidence was given to suggest or prove that the word .garage. in the trade had got any special meaning, and it was agreed to

take four dictionary definitions set out in the agreed statement of facts. The four definitions were these. From the SHORTER OXFORD DICTIONARY: "A building for the storage or refitting of motor vehicles." From the NEW CENTURY DICTIONARY: "A building for sheltering, cleaning or repairing motor vehicles. To put or keep in a garage." From the NEW STANDARD DICTIONARY: "A building for stabling or storing of motor vehicles of all kinds" From NUTTA'S STANDARD DICTIONARY: "A storehouse for motor vehicles." Those are four definitions from leading dictionaries all containing at any rate one word in common, and that is "building." As there is no evidence as to how the general public understand the word "garage," I suppose one is entitled to use one's own knowledge. I am inclined to think that ordinary man in the street does regard a garage as connoting some sort of a building; how far he would go I do not know. I do not know whether he would think that there should be a wall all round it, or whether it would be sufficient if there were three sides walled in and a roof. I have one in mind where there is a row of sheds without any protection in front, which are commonly spoken of as "garages," but I am going to apply here the test suggested by counsel for the insured. He said "A garage is a place where one can get reasonable protection and shelter for a car." Can I say that you are getting reasonable protection and shelter for a car, if there is nothing to protect the car from above - if there is no roof of any sort? I think the ordinary man, as counsel for the insurers suggested, who took a house with a garage, if he came and found merely an open shed without any roof, would think he had been swindled, however high the walls might be. I cannot think that one is entitled to say that it is adequate or reasonable protection or shelter if there is no roof; but this is worse than that, though I agree that the walls are very good here. Wherever you put a car in this yard, in addition to there being no shelter from above, there will be no shelter on two sides. That seems to me to be really conclusive.

He, thus, submitted that even a place with merely a roof may well be a "garage". By placing reliance on condition No. 2 in Form v. of 1964 Rules, learned senior counsel submitted that for the purposes of MOFA, even an open parking space is tantamount to a "garage".

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The question then is as to whether the stilted portion or stilt area of a building is a garage under MOFA. A stilt area is a space above the ground and below the first floor having columns that support the first floor and the building. It may be usable as a parking space but we do not think that for the purposes of MOFA, such portion could be treated as garage. It was argued that the test accepted by Atkinson, J. in Barnett & Block - that a garage is a place where one can get reasonable protection and shelter for a car is satisfied by stilt car parking space and such space is a garage. We are unable to agree. The test accepted by Atkinson, J. in Barnett and Block¹ also does not support this argument. Even as per that test a place having roof but offering no shelter or protection on two sides cannot be a garage. It is worth repeating what Atkinson, J. said, "...I am

inclined to think that the ordinary man in the street does regard a garage as connoting some sort of building; how far he would go I do not know. I do not know whether he would think that there should be a wall all round it, or whether it would be sufficient if there were three sides walled in and a roof. I have one in mind where there is row of sheds without any protection in front, which are commonly spoken of as "garages". "Atkinson, J. applied the test of "reasonable protection and shelter for car. as was suggested by the counsel for the insurer while construing the term "garage" in a policy of insurance. For the purposes of MOFA, and particularly Section 2(a-1), the term "garage" must be considered as would be understood by a flat purchaser and such person would contemplate garage which has a roof and wall on three sides. Our answer to question No. (ii) is, therefore, No.

Re: question No. (iii) -Whether stilt parking spaces are part of "common areas and facilities"?

The High Court has held that the stilt car parking spaces are part of the common amenities. Is the High Court right in its view? MOFA does not define nor it explains "common areas and facilities" though the said phrase is used at various places in that Act. Mr. Pravin K. Samdani, learned senior counsel for Maharashtra Chamber of Housing Industry submitted that following could be termed as part of the "common areas":

The Hon"ble Supreme Court has further held, as under, in regard to right for charging the amount which was not included in the initial advertisement:

In the application form as prescribed by the KDA, it is clearly mentioned that the estimated cost of the house in MIG scheme is Rs. 48,000/-(which can also exceed up to 10%). There was some controversy with regard to the terms and conditions mentioned in the brochure. It was contended on behalf of the Respondents that there was deliberate misrepresentation by KDA before the High Court by filing incomplete and incorrect extract of Brochure. Before us, not only translated copy but original of Brochure in Hindi itself was produced by Respondents and there was no controversy as to the terms and conditions in relation to the relevant clauses extracted above. As rightly contended on behalf of the Respondents there is no Clause 4 in the brochure relating to payment of price on which the Appellant claimed that the Vice-Chairman of the KDA has the right to increase the price and fix the final price that would be binding on the Applicants. This being the position, the very foundation for increase of the price of houses and justification thereof itself is destabilized and knocked down. Clause 4 of the brochure is altogether different, which reads:

4. House category 2 and 3, the interested Applicants to deposit full amount of the house, will have to deposit balance to the 1/4th of cost by 31-12-1978. The information of lottery will be sent by registered post on the address mentioned in the application form. The remaining 3/4th of the cost of the house will have to be deposited in cash or by Bank draft in favour of Development Authority within 60

days from the information of lottery given by registered post, otherwise all proceedings regarding allotment will be cancelled and the advance money will be forfeited.

It is not in dispute that the Respondents made applications within the time fixed, satisfied the terms and conditions for allotment of houses and they were not the Plaintiff in the suits filed in 1981/1982. The construction of houses was completed in 1980, the cost of the house was determined as on 24-12-1994. Nothing prevented the KDA from allotting houses to the Respondents, when the houses were ready for allotment. Particularly, when houses available were more than the applications received before the last date. For no fault of the Respondents, they were made to wait for more than 18 years. As per the brochure, the houses were to be allotted through lottery system by drawing lot among the eligible Applicants, who got themselves registered through the prescribed format within the time fixed and paid required money within time. In the instant case in MIG scheme, 111 houses were available but the number of Applicants were less including the Respondents. Only 8 persons had filed suits in the years 1981/1982. There should have been no difficulty in allotting the houses and delivering the possession to the Respondents immediately on their completion in 1980. In that event, the payment of interest on loan said to have been taken by the authority would not have arisen. It cannot also be ignored that the Respondents were/are mostly salaried employees having monthly income of Rs. 601-1500. They must also have adjusted and arranged their finances and affairs to make payment towards the houses. It may also be kept in mind that the allottees were expected to pay the remaining amount after initial deposit and first instalment, in 48 instalments. Even having regard to the payment of money in instalments, the estimated cost which was fixed at Rs. 48,000/-with a clear and express understanding that increase in the cost of the house could be up to 10% of the cost of the house. In the brochure, it is also mentioned that the price of the houses mentioned is totally approximate and that the final price of the houses would be determined by the Vice-Chairman, KDA, on the completion of the houses. Prices of the houses in these cases were determined as on 24-12-1994 as against the express clause that the determination of the final price shall be as on the date of completion of the construction of the houses i.e. in the year 1980. As can be seen from the prescribed form of application and rules for payment the increase of the cost of the house can be up to 10%. Further it is clear from the prescribed form of application as filled by the Respondents that the estimated cost of the house is Rs. 48,000/-which could exceed up to 10%. The argument advanced on behalf of the Appellant to the effect that the Vice-Chairman has power to determine the prices of the houses and the price determined is binding on the Respondents, runs contrary to brochure. Hence it cannot be accepted.

Further for no fault of the Respondents they cannot be penalized to pay the cost of construction as determined on 24-12-1994 when the houses were ready in 1980. As can be seen from the impugned order, the High Court has found thus:

It was undesirable conduct of the authority which gave rise to the civil litigation. There were no restraints and constraints for the Respondents in drawing the lottery and making the allotments to the genuine Applicants even during the pendency of the civil suit and appeal before the District Judge. There is nothing in the counter-affidavit to demonstrate that the Respondents were under legal obligation to refuse the allotment of the houses to the persons or make delay in allotment of the houses to them. So in absence of reasonable and sufficient justification preventing the Respondents to make allotment in 1979, we feel that the Respondents should be blamed for delay in making the allotment.

The High Court has further observed:

It may be mentioned that the Petitioners deposited the instalment under the hope and trust that they will get the houses within the time schedule advertised at the initial stage. Much time is elapsed between the registration of the applications for allotment of the houses and actual construction and delivery of possession thereafter. It is worth mentioning that the Petitioners might be living in the rented house since 1979 and they might have managed their financial position in such a manner that after the deposit of the instalment they will get the house of their own and thereafter they will be free from payment of house rent and then they will be shifted from the rented house to the allotted house, but on account of inordinate delay in delivery of possession of allotted house, their financial calculation and expectation stands frustrated causing various types of financial loss to them. On the other hand, once the authorities made offers and the same were accepted by the allottees, with the legitimate exception, the statutory obligation cast upon the authorities is to complete the same within the time schedule mentioned in the offer and if they fail to discharge the same, they should be held responsible for it and not the Petitioners.

The High Court finally concluded that delay in allotting and in delivering the possession of the houses to the Respondents was caused due to the lapse on the part of the Appellant, and, therefore, in the fairness of things, the KDA should not be allowed to determine unjust and unfair cost of the houses in an arbitrary manner.

We have no good reason to take a different view in the light of what is stated above. We have to note one more submission made on behalf of the Appellant that the Appellant works on no loss and no profit basis and it has raised huge loan under the HUDCO scheme for construction of houses and it has to pay heavy interest on the amount of loan raised. The Appellant neither urged nor laid any foundation for this argument before the High Court. No details and particulars were given as to the amount of loan raised and the period for which interest has been paid in respect of the houses constructed which are to be allotted to the Respondents.

Further the final price of the houses had to be determined on the date of their completion. As found, there was delay on account of the Appellant and if that

occasioned payment of interest, the Respondents cannot be held responsible having regard to the terms and conditions contained in the brochure. This apart, no justifiable case is made out for escalation of price of the houses in these cases, to say that the Appellant could enhance the prices for the unforeseen or compelling reasons beyond control of Appellants even as against the terms and conditions contained in the brochure.

The learned Counsel for the Appellant cited two decisions in Delhi Development Authority Vs. Pushpendra Kumar Jain, and Prashant Kumar Shahi Vs. Ghaziabad Development Authority, , in support of his submissions. In our view both the decisions do not help the Appellant when we look at the facts of those cases and the views expressed therein.

In the case of Delhi Development Authority (supra) the facts were that Delhi Development Authority (DDA) published a scheme called "Registration Scheme of New Pattern, 1979 of intending purchasers of flats to be constructed by Delhi Development Authority" providing a procedure for allotment of flats. In the brochure, Clause (11) provided schedule of payment. Clause (14) was to the effect, that "it may please be noted that the plinth area of the flats indicated and the estimated prices mentioned in the brochure are illustrative and are subject to revision/modification depending upon the exigencies of lay-out, cost of construction etc." The Court took notice that there were always more Applicants than the number of flats available. The DDA had been adopting the method of draw of lots among the registered Applicants to select the allottees. The writ petition was filed by one of the allottees because between the date on which lots were drawn and the date on which the allotment was communicated to the Respondent, the land rates were revised by the DDA by the circular dated 6-12-1990, as there has been substantial enhancement of land rates in the region of about 50 to 70%. Since the allotment was made to allottee on January 9/13, 1991, he was called upon to remit the amount on the basis of revised land rates as aforesaid. The Division Bench of the High Court accepted the plea of the allottee writ Petitioner. This Court, allowing the appeal filed by the DDA, found fault with two reasons given by the High Court: (1) Though the draw was held on 12-10-1990, the allotment-cum-demand letter was issued to the Respondent only on January 9/13, 1991. This delay was the result of inefficiency of the DDA, and (2) as the issue of allotment-cum-demand letter was delayed in the office of DDA, it cannot charge the revised land rates to the Respondent inasmuch as the Respondent became entitled to get the flat on 12-10-1990; the revision of land rates subsequent to the draw of lots cannot affect the Respondent. This Court held that there was no legal basis for holding that the Respondent obtained the vested right to allotment on the draw of lots as the system of drawing of lots was resorted to with a view to identify the allottee; it was not the allotment by itself. Mere identification or selection of the allottee does not clothe the person selected with a legal right to allotment at the price prevailing on the date of draw of lots. The scheme did not say so either expressly or by necessary implication. On the contrary Clause (14) made provision for modification or revision of cost of

construction, etc. On facts it was also found that there was no unreasonable delay or inefficiency on the part of the DDA. Further, the validity or justification of the revision of land rates by circular dated 6-12-1990 was not questioned in the writ petition. But in the present case the facts are entirely different. On facts it is found that there has been unreasonable and unjustified delay on the part of the Appellant in allotting and delivering the possession of the houses. The clause in regard to determination of price is not similar to Clause (14) in the aforementioned case of DDA. The cost of escalation could not exceed 10% of the tentative cost. The cost of construction of house in these cases on hand was to be determined as on the date of the completion of the construction of the house and not on the date of delivering possession of the house. Unlike in the case of DDA it was not the case of revision of land rates alone, that too in the absence of any circular indicating revision of cost of land before allotment or delivery of possession of houses.

The case of Prashant Kumar Shahi, aforementioned, is also of no help to the Appellant. It supports the case of the Respondents. This Court held that if the authority is found to be responsible for the delay in delivery of the possession of the plots 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. But on the facts of that case fault was found with the allottee in regard to the delay in payment. As already recorded above, in these appeals, with which we are concerned, delay was on account of the Appellant authority itself.

The learned Counsel for the Respondents in support of his submissions cited the decision of this Court in Indore Development Authority Vs. Sadhana Agarwal (Smt) and Others, . In the facts and circumstances of that case having regard to the reasons for the increase in the cost no interference was called for by the High Court. Further, the High Court was justified in saying that in such circumstances, the authority owed a duty to explain and satisfy the Court, the reasons for such high escalation. The High Court has to be satisfied on the materials on record that the authority has not acted in an arbitrary or erratic manner. In the said decision reference is made to two earlier decisions of this Court including the case of DDA aforementioned. In paragraph 9 it is stated, thus:

This Court in the case of Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, , had to deal with a similar situation in connection with the Bareilly Development Authority which had undertaken construction of dwelling units for people belonging to different income groups styled as "Lower Income Group", "Middle Income Group", "Higher Income Group" and the "Economically Weaker Sections". The Respondents to the said appeal had registered themselves for allotment of the flats in accordance with the terms and conditions contained in the brochure issued by the Authority. Subsequently, the Respondents of that appeal received notices for the Authority intimating the revised cost of the houses/flats and the monthly instalment rates which were almost double the cost

and rate of instalments initially stated in the General Information Table. But taking all facts and circumstances into consideration, this Court said that it cannot be held that there was a misstatement or incorrect statement or any fraudulent concealment, in the brochure published by the Authority. It was also said that the Respondents cannot be heard to say that the Authority had arbitrarily and unreasonably changed the terms and conditions of the brochure to the prejudice of the Respondents. In that connection, it was pointed out that the most of the Respondents had accepted the changed and varied terms. Thereafter they were not justified in seeking any direction from the Court to allot such flats on the original terms and conditions. Recently, the same question has been examined in the case of Delhi Development Authority v. Pushpendra Kumar Jain. In respect of hike in the price of the flats, it was said:

Mere identification or selection of the allottee does not clothe the person selected with a legal right to allotment at the price prevailing on the date of draw of lots. The scheme evolved by the Appellant does not say so either expressly or by necessary implication. On the contrary, Clause (14) thereof says that "the estimated prices mentioned in the brochure are illustrative and are subject to revisions/modification depending upon the exigencies of lay out, cost of construction etc."

Although this Court has from time to time, taking the special facts and circumstances of cases in question, has upheld the excess charged by the development authorities over the cost initially announced as estimated cost, but it should not be understood that this Court has held that such development authorities have absolute right to hike the cost of flats, initially announced as approximate or estimated cost for such flats. It is well known that persons belonging to middle and lower income groups, before registering themselves for such flats, have to take their financial capacity into consideration and in some cases it results in great hardship when the development authorities announce an estimated or approximate cost and deliver the same at twice or thrice of the said amount. The final cost should be proportionate to the approximate or estimated cost mentioned in the offers or agreements. With the high rate of inflation, escalation of the prices of construction materials and labour charges, if the scheme is not ready within the time-frame, then it is not possible to deliver the flats or houses in question at the cost so announced. It will be advisable that before offering the flats to the public such development authorities should fix the estimated cost of the flats taking into consideration the escalation of the cost during the period the scheme is to be completed. In the instant case the estimated cost for the LIG flat was given out at Rs. 45,000. But by the impugned communication, the Appellant informed the Respondents that the actual cost of the flat shall be Rs. 1,16,000 i.e. the escalation is more than 100%. The High Court was justified in saying that in such circumstances, the Authority owed a duty to explain and to satisfy the Court, the reasons for such high escalation. We may add that this does not mean that the High Court in such disputes, while exercising the writ jurisdiction, has to examine every detail of the construction

with reference to the cost incurred. The High Court had to be satisfied on the materials on record that the Authority has not acted in an arbitrary or erratic manner.

We are of the view that each case is to be decided in the facts and circumstances of the case in the light of the scheme published/framed and the terms and conditions mentioned in the Brochure and/ or in the prescribed form of application in the matter of escalation/determination of cost of house/flat. However, cases where there is limit for fixing the escalation of cost, normally the price of house or flat cannot exceed the limits so fixed. The determination of cost of house/flat or escalation of cost cannot be arbitrary or erratic. The authority has to broadly satisfy by placing material on record to justify the escalation of cost of a house/flat. Whether the delay was caused by the allottee or the authority itself is also a factor which has bearing in determination of the cost of house/flat. The unforeseen causes or the reason beyond control of the authority in a given case may be another factor to be kept in view. We may also notice that in these cases the tentative cost of houses was fixed at Rs. 48,000/-but final cost was determined at Rs. 2,08,000/-. This increase is not mere escalation but it is a multiplication by almost four and half times, although escalation could not exceed 10% as is evident from the contents of the Brochure read with prescribed form of application for allotment of house itself. Contentions of the KDA run contrary to the contents of its own Brochure on which the Respondents acted adjusting their financial affairs understanding that the cost of the houses would be fixed in terms of brochure and that too not exceeding 10% of the estimated cost fixed initially.

On the basis of the aforesaid principles of law laid down by the Hon"ble Supreme Court, in my opinion, the charging of additional amount towards parking facility of Rs. 44,215/-and premium of land of Rs. 1,70,900/-is illegal. In regard to other charges, in my opinion, the Respondents are entitled to charge maintenance local charges, lease rent and insurance and service tax amount.

Consequently, the petition of the Petitioner is allowed to the extent that the Respondent No. 1 is not entitled to charge the amount of Rs. 1,70,900/-towards premium of land and Rs. 44,215/-towards parking charge vide Annexures P-3 and P-4. Hence, the order, Annexure P-3 and P-4 are hereby quashed. Looking to the facts of the case, there shall be no order as to costs.