

(2019) 05 RAJ CK 0039

In the Rajasthan High Court

Case No : Civil Writ Petition No. 13159, 13160, 13378, 13380, 13427, 13849, 13850, 13851, 13852, 13853, 13854, 13855, 13856, 13857, 13872, 14657 Of 2015, 386, 929 Of 2016

Ashok Kumar Jingar And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 06-05-2019

Acts Referred:

Indian Contract Act, 1872 — Section 29
Constitution Of India, 1950 — Article 12, 14, 32, 226
Principal Of Costing Rules, 1988 — Rule 4, 4(1), 4(28)

Citation : (2019) 05 RAJ CK 0039

Hon'ble Judges : Pushpendra Singh Bhati, J

Bench : Single Bench

Advocate : Rajesh Choudhary, Vipin Makkad, Manish Shishodia, Nitesh Mathur

Final Decision : Dismissed

Judgement

1. These writ petitions under Article 226 of the Constitution of India have been preferred claiming, in sum and substance, the following reliefs:

"i) That the impugned demand raised by respondents vide allotment letter Dt.15.10.2015 (Annex.-4) may kindly be declared illegal and quashed and set aside.

ii) That the respondent may kindly be directed to pay the interest on the amount deposited by the petitioner from the date of completion of work mentioned in the brochure till delivery of possession of house of the petitioner.

iii) The cost of the house may kindly be declared to be maintained as mentioned in the brochure.

iv) Any other order or direction, which this Hon'ble Court deems fit and proper in the facts and circumstances of the present case may kindly be passed in favour of the humble petitioner.

v) the cost of writ petition may kindly be awarded in favour of the humble petitioner."

2. The sheet anchor of the present case is that the respondents framed a scheme for Duplex Houses in Mukta Prasad Nagar, Bikaner under the Self Finance Scheme in the year 2012, and their brochure showed two categories, namely, Higher Income Group (HIG) and Medium Income Group-G (MIG-B), which were to be allotted. In some of the petitions, the petitioners have applied for HIG, whereas in other petitions, the petitioners have applied MIG-B.

3. For the purpose of the present adjudication, the facts are being taken as well from S.B. Civil Writ Petition No.13124/2015 (Om Prakash Jakhar Vs. State of Rajasthan & Ors. decided on 19.12.2017), though it was disposed of, but not on merits, and learned counsel for both the parties have requested to take the pleadings of the said petition, as they are complete and comprehensive.

4. The petitioner was declared successful for allotment of house in HIG Scheme and the respondents issued a letter in the year 2013 that he was required to deposit the amount in four equal installments; in compliance whereof, the petitioner deposited the amount, which in the case at hand was Rs.36,47,893/-.

5. The respondents in a meeting on 28.9.2015 took a decision relating to the self finance scheme regarding the issue of difference in the estimated cost and actual cost. The decision included the issue of the cost variation being not more than 10% and in case, the variation is more than 10%, the same would be refunded to the applicants.

6. The allotment letters were issued on 15.10.2015, in which the respondents further sought Rs.20,49,318/- which was in addition to the amount already paid by the petitioners in accordance with the brochure and the advertisement.

7. Learned counsel for the petitioners has shown the document Annexure-6 of writ petition No.13849/2015, which reflects that the respondents decided that if the variation in cost was more than 10%, then charge-sheet shall be given to the officers, who would have made the assessment.

8. Learned counsel for the petitioners has shown the terms and conditions of allotment which are Annexure-1 and which clearly stipulate the fixed rates for the HIG and the MIG houses.

9. Learned counsel for the petitioners has drawn the attention of this Court towards various clauses of Annexure-1, which reflect that the allotment shall be made in accordance with the Rajasthan Housing Board (Disposal of Property) Regulations, 1970, including stipulations of the installments.

10. Learned counsel for the petitioners has also shown to this Court Annexure-P/3 of writ petition No.13124/2015, whereby the stipulated installments were sought by the respondents, which were accordingly paid.

11. Learned counsel for the petitioners has further shown to this Court the check

list in which the version of the respondents is that the variation in the cost shall not be more than 10%, and if at all there shall be a variation, it shall be due to TP differences and increase of land rates due to escalation.

12. Learned counsel for the petitioners submitted that the statement of cost of construction, as per the respondents themselves, was Rs.22,96,500/- per house, which included the escalation clause.

13. Learned counsel for the petitioners has also shown to this Court Principles of Costing-2010 being adhered to by the respondents, which is Annexure-P/5 of writ petition No.13124/2015, relevant portion of which reads as under:

"3.0 Cost of Property

3.1 The total cost of the Board's properties/houses will be based on a direct cost and an indirect cost. The direct cost will comprise of following components:

- (a) Procurement of land
- (b) Land conversion charges
- (c) Charges for change in land use
- (d) Land development
- (e) Cost of construction of houses/properties
- (f) Other direct charges"

14. Learned counsel for the petitioners has further shown to this Court the cost of development of land contained in Principles of Costing-2010, which shall include expenditure on certain works, and the relevant portion of which reads as under"-

"5.0 Land Development

5.1 The development of land shall include expenditure incurred on the following items of work:

- (a) Levelling and dressing of ground.
- (b) Construction of roads and culverts.
- (c) Construction of drains.
- (d) Laying of water supply lines.
- (e) Drawing of electric lines.
- (f) Construction of sewer system.
- (g) Street lighting.
- (h) Plantation, arboriculture, parks and playgrounds.

(I) Any other miscellaneous items."

15. Learned counsel for the petitioners has further shown to this Court clause 22.2(a) of the Principles of Costing-2010, which is pertaining to self financing scheme, and the same reads as under:-

"21. Self Financing Scheme

21.1

22.2 For SFS-houses/flats the following charges shall be applicable:

(a) The cost of land development of the house will be the same as applicable for general category houses but it will be charged as applicable in the year in which the first installment of the house has been asked for from the SFS applicant as the first installment includes the complete cost of developed land prevailing in the year of issue of the reservation letter plus 10% of the cost of construction of the house."

16. Learned counsel for the petitioners has also shown the DLC rates of the concerned Sector i.e. Sector 12 .

17. Learned counsel for the petitioners has further shown the other documents, which stipulated that the respondent shall not increase the cost more than 10% for escalation during the process in question.

18. The allotment letter dated 15.10.2015, which is Annexure-P/10, has also been shown with the escalated cost and the difference amount to be paid being Rs.20,16,096/-, without explaining the same.

19. Learned counsel for the petitioners has also drawn the attention of this Court the letter dated 31.07.2014 (Annexure-P/14 of writ petition No.13124/2015), in which the clear warning is there from the respondents that the cost may not escalate more than 10%.

20. Learned counsel for the petitioners has thus tried to demonstrate that unreasonable escalations are being imposed upon the petitioners.

21. In support of his submissions, learned counsel for the petitioners relied upon the precedent law laid down by the Hon'ble Supreme Court in ABL International Ltd. & Anr. Vs. Export Credit Guarantee Corporation of India Ltd. & Ors., reported in (2004) 3 SCC 553, relevant portion of which reads as under:-

52. On the basis of the above conclusion of ours, the question still remains why should we grant the reliefs sought for by the appellant in a writ petition when a suitable efficacious alternate remedy is available by way of a suit. The answer to this question in our opinion, lies squarely in the decision of this Court in the case of Shri Lekha Vidyarthi (supra) wherein this court held :

"The requirement of Article 14 should extend even in the sphere of contractual matters for regulating the conduct of the State activity. Applicability of Article 14

to all executive actions of the State being settled and for the same reason its applicability at the threshold to the making of a contract in exercise of the executive power being beyond dispute, the State cannot thereafter cast off its personality and exercise unbridled power unfettered by the requirements of Article 14 in the sphere of contractual matters and claim to be governed therein only by private law principles applicable to private individuals whose rights flow only from the terms of the contract without anything more. The personality of the State, requiring regulation of its conduct in all spheres by requirement of Article 14, does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirement of Article 14 and contractual obligations are alien concepts, which cannot co-exist. The Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. Therefore, total exclusion of Article 14 - non-arbitrariness which is basic to rule of law from State actions in contractual field is not justified. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals.

Unlike the private parties the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest. The impact of every State action is also on public interest. It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters. This factor alone is sufficient to import at least the minimal requirements of public law obligations and impress with this character the contracts made by the State or its instrumentality. It is a different matter that the scope of judicial review in respect of disputes tailing within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. However, to the extent challenge is made on the ground of violation of Article 14 by alleging that the impugned act is arbitrary, unfair or unreasonable, the fact that the dispute also falls within the domain of contractual obligations would not relieve the State of its obligation to comply with the basic requirements of Article 14. To this extent, the obligation is of a public character invariably in every case irrespective of there being any other right or obligation in addition thereto. An additional contractual obligation cannot divest the claimant of the guarantee under Article 14 of non-arbitrariness at the hands of the State in any of its actions.

53. From the above, it is clear that when an instrumentality of the State acts

contrary to public good and public interest, unfairly, unjustly and unreasonably, in its contractual constitutional or statutory obligations, it really acts contrary to The constitutional guarantee found in Article 14 of the Constitution. Thus if we apply the above principle of applicability of Article 14 to the facts of this case, then we notice that the first respondent being an instrumentality of State and a monopoly body had to be approached by the appellants by compulsion to cover its export risk. The policy of insurance covering the risk of the appellants was issued by the first respondent after seeking all required information and after receiving huge sums of money as premium exceeding Rs. 16 lacs. On facts we have found that the terms of the policy does not give room to any ambiguity as to the risk covered by the first respondent. We are also of the considered opinion that the liability of the first respondent under the policy arose when the default of the exporter occurred and thereafter when Kazakhstan Government failed to fulfil its guarantee. There is no allegation that the contracts in question were obtained either by fraud or by misrepresentation. In such factual situation, we are of the opinion, the facts of this case do not and should not inhibit the High Court, or this Court from granting the relief sought for by the petitioner."

22. Learned counsel for the petitioners has also placed reliance on the precedent law laid down by the Hon'ble Supreme Court in *Karnataka Industrial Areas Development Board & Anr. Vs. M/s. Prakash Dal Mill & Ors.*, reported in AIR 2011 SC 1570, relevant portion of which reads as under:-

"18. The Board being a State within the meaning of Article 12 of the Constitution of India is required to act fairly, reasonably and not arbitrarily or whimsically. The guarantee of equality before law or equal protection of the law, under Article 14 embraces within its realm exercise of discretionary powers by the State. The High Court examined the entire issue on the touchstone of Article 14 of the Constitution of India. It has been observed that the fixation of price done by the Board has violated the Article 14 of the Constitution of India. It is correctly observed that though Clause 7(b) permits the Board to fix the final price of the demised premises, it cannot be said that where the Board arbitrarily or irrationally fixes the final price of the site without any basis, such fixation of the price could bind the lessee. In such circumstances, the Court will have the jurisdiction to annul the decision, upon declaring the same to be void and non-est. A bare perusal of Clause 7(b) would show that it does not lay down any fixed components of final price. Clause 7(b) also does not speak about the power of the Board to revise or alter the tentative price fixed at the time of allotment. The High Court has correctly observed that Clause 7(b) does not contain any guidelines which would ensure that the Board does not act arbitrarily in fixing the final price of demised premises. Since the validity of the aforesaid Clause was not challenged, the High Court has rightly refrained from expressing any opinion thereon.

19. Even though the Clause gives the Board an undefined power to fix the final price, it would have to be exercised in accordance with the principle of rationality

and reasonableness. The Board can and is entitled to take into account the final cost of the demised premises in the event of it incurring extra expenditure after the allotment of the site. But in the garb of exercising the power to fix the final price, it can not be permitted to saddle the earlier allottees with the liability of sharing the burden of expenditure by the Board in developing some other sites subsequent to the allotment of the site to the Respondents. The Respondents have placed on record sufficient material to show that acquisition and development of land in the industrial area has been in phases. Some areas and segments are fully developed and others are in different stages of development. Sites and plots have been allotted at different times and locations. Thus, it cannot be said that all the allottees form one class. Earlier allottees having sites in fully developed segments cannot be intermingled with the subsequent allottees in areas which may be wholly undeveloped. Such action is clearly violation of Article 14. We are also of the opinion that the Board can not be permitted to exercise its powers of fixing the final price under Clause 7(b) at any indefinite time in the future after the allotment is made. This would render the word "as soon as" in Clause 7(b) wholly redundant. As noticed earlier, in the present case, the Board has sought to fix the final price after a gap of 13 years. Such a course is not permissible in view of the expression "as soon as" contained in Clause 7(b).

20. In our opinion, the High Court correctly concluded that the fixation of final price by the Board is without authority of law. It violates Article 14 of the Constitution of India being arbitrary and unreasonable exercise of discretionary powers."

23. Reliance has also been placed by learned counsel for the petitioners on the precedent law laid down by the Hon'ble Supreme Court in Kanpur Development Authority Vs. Smt. Sheela Devi & Ors., reported in AIR 2004 SC 400, relevant portion of which reads as under:-

"20. 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 cause 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."

24. Learned counsel for the petitioners has further placed reliance on the precedent law laid down by the Hon'ble Supreme Court in *Indore Development Authority Vs. Sadhana Agarwal (Smt.) & Ors.*, reported in (1995) 3 SCC 1, relevant portion of which reads as under:-

"9. This Court in the case of *Bareilly Development Authority v. Ajai Pal Singh* [1989]1SCR743, 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 from the Authority intimating the revised cost of the houses/flats and the monthly installment rates which were almost double of the cost and rate of installments 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 mis-statement 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* : AIR1995SC1. 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 drawal 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 revision/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 the 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 into 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 has to be satisfied on the materials on record that the authority has not acted in an arbitrary or erratic manner.

10. So far the facts of the present case are concerned, it is an admitted position that in the proforma attached to the application for registration, the appellant said that the price mentioned by them was a probable and estimated cost, the definite price shall be intimated at the time of the allotment. Thereafter, the appellant had been informing the respondents and others who had got themselves registered, from time to time regarding the escalation in the cost of the flat. On of the reasons for the rise of the price for the LIG flat from Rs. 60,000 to Rs. 1,60,000 appears to be the increase in the area of the flat itself from 500 sq.ft. to 714.94 sq.ft. From 1982 to 1984, possession of the flats could not be delivered because of the dispute pending in the Court which also contributed to the increase in the cost of the flat. Admittedly, the respondents came in possession of the flats in the year 1984. In the facts and circumstances of the case, we are satisfied that no interference was called for by the High Court."

25. Learned counsel for the petitioners has also placed reliance on the precedent law laid down by the Hon'ble Supreme Court in *Ishwar Dass Nassa & Ors. Vs. State of Haryana & Ors.*, reported in 2012(1) WLC (SC) Civil 302, relevant portion of which reads as under:-

"12. In the result, the appeals are allowed. The impugned order as also the one

passed by the learned Single Judge are set aside and the demand notices issued by Estate Manager, Sonapat requiring the Appellants to pay the additional price are quashed. The parties are left to bear their own costs."

26. Reliance has also been placed by learned counsel for the petitioners on the precedent law laid down by the Hon'ble Supreme Court in Haryana Urban Development Authority & Anr. Vs. Ranjan Dhamina & Anr., reported in (1997) 9 SCC 372, relevant portion of which reads as under:-

"4. The learned Counsel for the appellants contended with emphasis that the price indicated in the letter of allotment (Ex. P. 11) was tentative as is apparent from Clause (9) of the letter of allotment and, therefore, when Clause (9) of the letter of allotment itself postulates enhancement of the cost of the land the authorities were justified in raising additional demand. We do not find any force in the contentions of the learned Counsel for the appellants since Clause (9) enables the competent authority to ask for additional amount only when there has been enhancement in the cost of land on account of any award by the competent authority determining compensation under the Land Acquisition Act. Clause (9) is extracted hereinbelow in extenso:

"The above price is tentative to the extent that any enhancement in the cost of land awarded by the competent Authority under the Land Acquisition Act shall also be payable proportionately as determined by the authority. The additional price determined shall be paid within thirty days of its demand."

The aforesaid clause unequivocally indicates that if there has been any enhancement in the cost of the land on account of award by the competent authority under the land Acquisition Act then the said enhancement would be payable proportionately as determined by the authorities. The aforesaid clause does not authorise the allotting authority to raise additional demand on account of any other escalation. It is well settled that the competent authority is entitled to demand the price as on the date of final letter of allotment, Ex. P. 11 has been found to be the letter of allotment which has not been assailed before us. Even though the appeal arises out of a civil suit and parties had laid evidence in the forums below and no evidence was laid indicating the enhancement of cost of land on account of any development work. Yet the appellant being a public authority, this Court had directed by order dated 23.9.1996 to place materials to indicate any development effected to the plaintiffs plot from the date of possession given to the plaintiffs and the resultant enhancement of the price. It was also indicated that the defendants-appellants should also indicate how many more cases of this type are pending. Pursuant to the aforesaid order a letter dated 16.1.1990 from the Chief Administrator, Haryana Development Authority to the Estate Officer, HUDA, Gurgaon has been filed whereunder the Chief Administrator had directed the Estate Officer to charge at the current rate of Rs. 560.60 per square metre while issuing the final allotment letter. The appellants have also produced a copy of the Resolution of the authority enhancing the price of the land to Rs. 560.60 per square metre. But these documents are of no

assistance to the appellants inasmuch as the final letter of allotment (Ex. P. 11) was dated 24.11.1989 much prior to the issuance of letter from the Chief Administrator to the Estate Officer dated 16.1.1990. That apart by order of this Court dated 23.9.1996 the appellants were called upon to place materials to indicate if any further development to the plaintiffs' land has been made from the date of possession given to them but no such materials have been placed before us. The so-called Resolution alleged to have been passed by the authority enhancing the price of the land will not be applicable to the plaintiffs' plot in whose case the final letter of allotment had been issued on 24.11.1989 as per Ex. P. 11. In the aforesaid circumstances we find no justification for our interference with the impugned judgment of the High Court affirming the decision of the learned Additional District Judge. This appeal is accordingly dismissed but in the circumstances there will be no order as to costs."

27. Learned counsel for the petitioners has also relied upon the precedent law laid down by the Hon'ble Supreme Court in Delhi Development Authority & Anr. Vs. Joint Action Committee Allottee of SFS Flats & Ors., reported in (2008) 2 SCC 672, relevant portion of which reads as under:-

"80. A definite price is an essential element of binding agreement. A definite price although need not be stated in the contract but it must be worked out on some premise as was laid down in the contract. A contract cannot be uncertain. It must not be vague. Section 29 of the Indian Contract Act reads as under:

"Section 29 - Agreements void for uncertainty.-Agreements, the meaning of which is not certain, or capable of being made certain, are void."

A contract, therefore, must be construed so as to lead to a conclusion that the parties understood the meaning thereof. The terms of agreement cannot be vague or indefinite. No mechanism has been provided for interpretation of the terms of the contract. When a contract has been worked out, a fresh liability cannot thrust upon a contracting party.

81. It is well settled that a definite price is an essential element of a binding agreement. Although a definite price need not be stated in the contract, but assertion thereof either expressly or impliedly is imperative.

87. In this case, the case of the appellant is not that they are not bound to pay the binding contractual stipulation as contained in Clause 4 of the letter of allotment. They are and they must. But what cannot be thrust on them is the price determined on the basis of factors which were not contemplated in the original contract."

28. Learned counsel for the petitioners has further placed reliance on the precedent law laid down by the Hon'ble Supreme Court in Popcorn Entertainment & Anr. Vs. City Industrial Development Corporation & Anr., reported in (2007) 9 SCC 593, relevant portion of which reads as under:

"47. We have given our careful consideration to the rival submissions made by

the respective counsel appearing on either side. In our opinion, the High Court has committed a grave mistake by relegating the appellant to the alternative remedy when clearly in terms of the law laid down by this Court, this was a fit case in which the High Court should have exercised its jurisdiction in order to consider and grant relief to the respective parties. In our opinion, in the instant case, 3 of the 4 grounds on which writ petitions can be entertained in contractual matter were made out and hence it was completely wrong by the High Court to dismiss the writ petitions. In the instant case, 3 grounds as referred to in Whirlpool Corpn. (supra) has been made out and accordingly the writ petition was clearly maintainable and the High Court has committed an error in relegating the appellant to the civil court."

29. On the other hand, learned counsel for the respondent has shown to this Court the condition mentioned in Annexure-1 that the respondent is entitled to charge any escalated cost from the petitioners.

30. Learned counsel for the respondent has also shown the document dated 21.07.2016 from the file of writ petition No.13124/2015, whereby the same issue of cost has been explained, and the same reads as under:-

"????????? ????? ????? 2012 ?? ?????????? ???? ?? ???? (???????????) ??
34 ??? ?????? ?? ????-? ?? 40 ??? ?????????? ?? ?????? ???? ??????? 22.10.2013 ??? 2
3.10.2013 ?? ???? ?????? ??????? ???? ?? ?????????? ??????????? ???? ?? ?????? ?? ???
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????? ?? ???? 2012-13 ?? ???? ?? ???? ?? ???? 5660/- ?? ???? ??
11685/- ??? ???? ?? ????-? ??? ???? ?? 5190/- ?? ???? ??
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106.45 ?????????? ??? ?????????? ????
15.87 ?????????? ?? ??????? ???? ??? ???? ???? ????-?
(???????????) ?? ??????? ??? ??? ???? ???? ???? ????
106.35 ?????????? ??? ?????????? ???? ??? 15.37 ?????????? ?? ??????? ???? ?? , ?????? ??????
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? ?????????? ?? ??????? ??? ?? ??????? ?????????? ???? ???? ???? ?????"

31. Learned counsel for the respondent further submitted that the overall aspects of the planning with a time got escalated as the factors involved could not have been envisaged earlier.

32. Learned counsel for the respondent also submitted that they work on zero profit basis and the demand notice being sent was only for the total cost to be incurred by the respondent-Board, which includes escalation and land cost, establishment of drainage system, sewer lines, road network, reconstruction of roads, street lights etc., which could not have been charged before being put in place.

33. Learned counsel for the respondent further submitted that the final costing of the house alongwith civil amenities, that have been installed are necessitated before handing over the possession of the house in question, and in the interest of the entire colony and the local municipality.

34. Learned counsel for the respondent also submitted that once it was made clear in the brochure itself that the respondent is entitled to charge the escalated cost, then the petitioners have no case itself.

35. Learned counsel for the respondent further submitted that the cost initially shown in the initial scheme was subject to change according to the actual cost being incurred by the respondent-Board, and thus, they have now made the final estimation and brought it to the knowledge of the petitioners.

36. Learned counsel for the respondent also submitted that the additional cost being charged for providing of additional facilities and amenities, which are imperative in nature, for example, laying down of sewerage lines, water lines, electric poles etc., costs where against have to be paid by the petitioners.

37. Learned counsel for the respondent further submitted that the expenditure, for which the details have been provided alongwith their reply to writ petition No.13124/2015, were required to be paid by the petitioners, as mentioned in the impugned letter/notice.

38. Learned counsel for the respondent also submitted that the land development rate of the Mukta Prasad Nagar, Bikaner for residential houses are as under:-

"EWS	Rs.3775/- per sq. mtr.
LIG	Rs.4245/- per sq. mtr.
MIG-A	Rs.4715/- per sq. mtr.
MIG-B	Rs.5190/- per sq. mtr.
HIG	Rs.5660/- per sq. mtr."

39. Learned counsel for the respondent further submitted that for calculating the total cost of land before issuing allotment letter in the year 2015, various inputs, which include installation of sewerage system, installation of water supply etc., are to be included under various heads, so as to make the colony and the house in question ready for living, and eventually, ready for being handed over to the local municipality. Due to laying of sewer line for the whole colony/scheme, that

amount has been charged only on remaining/balance saleable area.

40. Learned counsel for the respondent also submitted that various factors, that have contributed in increase in the cost in the present case, are evident from the development expenditure sheet, which has been placed on record.

41. Learned counsel for the respondent further submitted that the aforementioned sheet also provides for total expenditure incurred for 2012-13 and to be incurred for 2013-14 and the same comes out for the entire colony to Rs.38.25 crores.

42. As per learned counsel for the respondent, applying the costing principles, since the net saleable area remaining is 88725 sq. mtr., therefore, the total expenditure already incurred is divided by the net saleable area so as to deduce the land rate per sq. mtr. Thus, 382592313 divided by 88725 comes to Rs.4312/- sq. mtr., and therefore, the total land rate comes to around 9735/-per sq. mtr. Being a sum of previous land rate for the year 2012-13 - Rs.4715/- per sq. mtr. plus interest @ 15 for 12 months i.e. Rs.707/- per sq. mtr. plus additional land rate - Rs.4312/- per sq. mtr., and that is the rate calculated for a MIG-A house and by reducing 10%, one can arrive at the rate for LIG house and by reducing the 20%, one can arrive at the rate for an EWS.

43. According to learned counsel for the respondent, similarly the rate for MIG-B and HIG is calculated by adding 10% and 20% to the said rate. Thus, the final rates for all the categories before the issuance of allotment letter is as under:-

EWS 7790/-

LIG 8765/-

MIG-A 9735/-

MIG-B 10710/-

HIG 11685/-

44. Learned counsel for the respondent also submitted that the DLC rates have no relevance to the controversy sought to be raised by the petitioners as the respondent-Board is required to calculate the land and development rates independently.

45. Learned counsel for the respondent further submitted that out of total 74 houses comprising of 34 houses in HIG category and 40 houses in MIG B category as many as 33 persons have taken refund with interest and the petitioners were also free to withdraw the said amount.

46. Learned counsel for the respondent also submitted that the petitioners were well aware about escalation in price on account of various factors; for example, the respondents have incurred a cost of Rs.559.68 lacs towards laying down of sewerage line, a cost of Rs.249.23 lacs for laying down of water supply line in addition to cost for street lights, transformers etc., and those expenses have

been incurred after issuance of reservation letter, and therefore, the respondent cannot afford to offer houses on the price tentatively offered in the brochure.

47. Learned counsel for the respondent further submitted that the petitioners were entitled to withdraw the amount with interest on or before the due date of depositing the amount, since as many as 23 persons have already taken the refund of the amount deposited by them.

48. Learned counsel for the respondent also submitted that the communication Annexure-P/14 of writ petition No.13124/2015 has no relevance to case in hand. As per learned counsel for the respondent, in fact, in respect of the houses in dispute, the Board has added essential construction over and above the brochure and the petitioners are required to pay for the same; all these houses now have a porch, additional room on the first floor and mummy area balcony.

49. In support of his submissions, learned counsel for the respondent relied upon the judgment rendered by this Hon'ble Court in *Mangat Ram Taneja Vs. Rajasthan Housing Board & Ors.* (S.B. Civil Writ Petition No.11366/2011 decided on 14. 07.2014), which reads as under:

"In all these writ petitions common question of law and fact is involved, therefore, all these petitions are heard together and disposed of by a common order.

For convenience, the facts as narrated in S.B. Civil Writ Petition No.11366 of 2011 are mentioned hereinafter.

The petitioner, in response to the Special Registration Scheme 2008, which was a housing scheme for Hanumangarh and Suratgarh towns floated by the Rajasthan Housing Board (for short, 'the Board'), submitted his application for allotment of a Higher Income Group house measuring 236.25 sq.mtrs. As per SRS Scheme, applications were invited for various income groups on hire-purchase basis with a clear stipulation that allotment of houses shall be made on "No Profit, No Loss" basis and the sale price of the house shall be determined by the Board. For allotment of houses, it was clarified that same shall be made on priority basis. In the month of 2010, a Registration Letter was issued to the petitioner and he was asked to deposit three instalments of Rs.1,00,000/- each, which the petitioner deposited in stipulated period. As per draw, which was held on 26 th of August 2010, House No.8/09 situated at Rajasthan Housing Board, Hanumangarh colony was allotted to him. The contractor completed the house in the month of June 2011 but allotment-cum-demand letter was not issued to him. On 13 th of October 2011, a letter was issued by the Board, whereby the land price was determined as Rs.3,760/- per sq.mtr. and the petitioner was asked to deposit Rs.8,88,300/- for 236.25 sq.mtrs. land, and for extra land measuring 21 sq.mtrs. a sum of Rs.5,640/- per sq.mtr. was charged from him. The petitioner was asked to deposit the requisite amount before taking possession of the house. The cost of construction was also demanded from the petitioner to the tune of Rs.12,51,600/-. Precisely, in the writ petition the petitioner has assailed the

escalated land price by categorizing the same as arbitrary and unreasonable in clear violation of Article 14. In ground (d) of the writ petition, petitioner has specifically pleaded that similar controversy came up before this Court in 1992 and while allowing the writ petition the Court has granted relief to the allottees. The averments contained in ground (d) are reproduced as under:

"(d) That similar controversy came up before this Court in the year 1992, at that time similar kind of Scheme of the Board was launched for the HIG Group and while making the allotment of the house, the Board charged the High Price for the second, third and fourth quarters, this Hon'ble Court allowed the writ petition of those persons while taking into consideration the costing principles Rules issued vide notification dated 09/01/1988. The Hon'ble Court held that as per Rule 4 of that Rule, the Board cannot increase the price of land arbitrarily and can only charge the price of land for the year in which the land is utilized for construction of the houses and it was held that the Board can charge the High Price of Land only by adding 12% of the price of earlier year. But in the present case the Board has charged the different price of land for the same year for the similar persons without any basis. The demand raised by the Board by increasing the price of the land as per Annexure P/3 is contrary to the judgment of this Hon'ble Court reported in WLC (Raj.) 1993 (3) Page 391. Hence the action of the respondent deserves to be quashed on this ground alone."

In relief sub-clause (iii) also, the petitioner has prayed for under-mentioned relief:

iii. That the Board may kindly be directed to make the calculation as per the judgment of this Hon'ble Court in case of A.M.P.A.S.S. & Anr. Vs. Rajasthan Housing Board & Ors. Reported in 1993(3) WLC (Raj.) Page 391 within reasonable period.

After issuance of notice, reply was submitted on behalf of respondent No.3. In the reply, a preliminary objection was raised regarding maintainability of the writ petition by asserting that the writ petition involves disputed questions of facts which cannot be gone into in summary proceedings under Article 226 of the Constitution of India. Joining issue with the petitioner, the respondent has pleaded in the reply that the judgment of this Court reported in 1993 (3) WLC Raj. 391 is not holding the field and the same has been reversed by the Division Bench of this Court in Rajasthan Housing Board & Ors. Vs. Awasan Mandal Parijat Uncha Aywarg Sangarsh Saimiti (AIR 1996 Raj. 47). It is also averred in the reply that the said verdict of the Division Bench has been upheld by the Hon'ble Apex Court by dismissing the SLP preferred by the consumers. While adverting to the merits of the case, it is averred in the reply that construction of the house was completed in August 2011, and thereafter process of determination of final costing for houses of Higher Income Group was sanctioned from Headquarter on 14.09.2011 and the requisite sanction was conveyed on 14.09.2011 and accordingly allotment was made on 13.10.2011. The positive assertion of the petitioner that house was completed in the month of June 2011 was denied. On the issue of cost of land, it is pleaded that for the year 2011-12 rate of

Rs.3,760/- per sq.mtr. was fixed by the Headquarter. It is also submitted in the reply that as per the principle of final costing of the Board for the year 2010, the cost of additional developed land was worked out by adding 50% extra to the basic developed land cost, and ancillary service charges are recovered in one instalment before handing over possession at the rate of 3% for MIG-A, MIG-B, HIG and SFS houses. In the return, it is submitted by the respondent that allotment letter was issued to the petitioner on 13 th of October 2011 and final costing was made on 14 th September 2011 at the rate prevailing for the year 2011-12 whereas the houses of the Scheme at Hanumangarh and Suratgarh where were completed and allotment letters were issued to the allottees before commencement of July 2011 and the prevailing rates of the year 2011-12 were applied as per the principle of costing of the Board. While referring to the brochure of SRS 2008, it is averred in the reply that price of land is determined as per the brochure inasmuch as the same was determined at the time of allotment and therefore in terms of brochure any objection in this behalf at the behest of allottee is not entertainable. Defending the action of the Board, it is also submitted in the reply that in determining the rates of land, following expenditures are also included:

- (i) Leveling, dressing of the ground,
- (i) Construction of bitumous roads,
- (ii) Construction of drains and culverts,
- (iii) Cost of water supply lines and electricity lines,
- (iv) Cost of street lights,
- (v) Cost of sewer lines,
- (vi) Cost of plantation and arboriculture and park, and (vii) Construction of school buildings and dispensary/health centres etc.

The respondent has also pleaded that approximately 50% land is left for the facilities of general public and construction work is carried only upon approximately 50% of the land. The allegation of the petitioner that the Board has charged high price of land is specifically denied.

Learned counsel for the petitioner has argued that the respondents have arbitrarily charged exorbitant price for land from petitioner in clear violation of SRS 2008 and therefore a direction is required to be issued for issuance of revised possession letter after recalculating the cost of extra land by re-assessing cost of premium and extra land, or in the alternative it is liable to be set aside. In the alternative, the learned counsel has argued that for extra land the same rate per square meter is to be applied which is given in the original allotment letter.

Per contra, learned counsel for the respondent has submitted that there is no infirmity in the cost of premium and extra land and as such no interference in the

present petition is warranted. Learned counsel for the respondent has urged that in view of clear stipulation in Clause 20 of the Brochure, grievance of the petitioner is not entertainable inasmuch as it is mentioned in the said clause with clarity and precision that cost shall be determined by the Board at the time of allotment and no grievance of the allottee in this behalf shall be entertained.

Learned counsel for the respondent has also submitted that the entire edifice of the writ petition is based on judgment of this Court reported in 1993 (3) WLC (Raj.) 391, and as the same has been reversed by the Division Bench and subsequently affirmed by the Hon'ble Apex Court, therefore, petition is liable to be rejected.

I have heard learned counsel for the parties and perused the materials available on record.

Cause of grievance of the petitioners in the present petitions relates to premium of land and cost of extra land and for quashment of the allotment letter dated 13th of October 2011 (Annex.3) to that extent. The petitioners have also craved for recalculating the cost of extra land at par for which the house is to be allotted. A direction is also sought to calculate the cost of land in terms of judgment of this Court reported in WLC (Raj.) 1993 (3) Page 391 (Avashan Mandal Parijat Uch Ayavargh Sangarsh Samiti & Anr. Vs. Rajasthan Housing Board & Ors.).

Upon close scrutiny of the matter, in the considered opinion of this Court, the entire grievance of the petitioner is essentially founded on the judgment rendered in Avashan Mandal Parijat Uch Ayavargh Sangarsh Samiti's case (supra), wherein the writ petitions were allowed in part with the following directions:

51. In the result, these writ petitions are allowed in part. The petitioners cannot claim any change in the cost of construction and other charges through these writ petitions because that will require certain amount of accounting, calculations and moreover, they relate to non-statutory conditions of the contract. However, sofaras the cost of the land is concerned, about that Rules in the Shape of the Costing Principles are there, which have been published vide Notification dated 9.1.1988. The respondents cannot depart from those Rules. The increased cost of the land can only be charged by the Rajasthan Housing Board from these allottees of second, third and fourth quarters of 1988 Parijat Scheme is over and above the one which has been charged from the applicants of the first quarter of 1988 Parijat Scheme on the basis of the aforesaid Notification dated 9.1.1988, keeping in view the year of utilisation of land for construction of houses for the applicants of second, third and fourth quarters of 1988 Parijat Scheme. The cost of the land cannot arbitrarily be allowed to be increased from Rs. 38,178/- to Rs. 72,765/-. The respondents are, therefore, directed to issue revised possession-letters to the petitioners by changing the cost of the land keeping in view the land utilisation made by them for construction of houses for the applicants of second, third and fourth quarters of 1988 Parijat Scheme, in accordance with the

Rules framed by it in the shape of Costing Principles vide its Notification dated 9.1.1988 and the lease money @ 2.5% of the cost of the land be charged from the petitioners instead of 3%. However, they will be free to charge interest from the petitioners for late payment of the amount keeping in view Condition No. 12.8 of the Parijat Scheme Book-let. The revised possession-letters be issued within a period of two months from today keeping in view the aforesaid directions and delivery of possession of the houses be ensured to all the applicants of second, third and fourth quarters of 1988 Parijat Scheme within one month of the payment of the amount remaining unpaid on the basis of the revised-possession letters issued by it in accordance with the directions of this Court.

The aforesaid judgment was assailed by the respondent Board before the Division Bench of this Court and the Division Bench was pleased to allow the intra-Court appeal by its judgment dated 8 th of August 1995 reported in AIR 1996 Rajasthan 47 (Rajasthan Housing Board & Ors. etc Vs. Awasan Mandal Parijat Uncha Aywarg Sangarsh Samiti. While allowing the intra-Court appeal, Division Bench held as under:

45. We are further of the opinion that the costing principles could not be made a matter of interference under Article 226 of the Constitution of India. Again, the writ petition could not be filed by the self styled Society jointly as there was a different cause of action to each of the allottees and the petitioner neither being a registered Society nor a juristic person, the petition filed by it was thus incompetent and not maintainable.

46. The jurisdiction vested in the High Court under Article 226 of the Constitution of India is to be used only sparingly and that too only in exceptional cases where there is a violation or infringement of rights of the citizens and further where there is no other adequate, alternate or specific remedy. No case of infringement of any right of the petitioner has been made out.

47. The matter can be viewed from another angle. How would a writ lie in respect of non-statutory contract. The Scheme containing the terms and conditions was too well known to the allottees before they put in the applications for the purpose of registration. It was indicated sufficiently well that the price that was being fixed tentative and approximate and that the final costing would be made at the completion of the houses and the increased amount would be charged from the allottees.

48. We are of the view that the writ petition in the present case was neither maintainable nor competent. We further hold that the petitioner had no locus standi to challenge the action of the Board. We also find that highly disputed questions of fact and accounting were involved in the matter, which just could not have been permitted to be raised in the extraordinary writ jurisdiction of this Court. We also hold that since it was pure and simple a non-statutory contract, the parties to the lis are governed by the terms and conditions laid down in the

Scheme. The same could not form a subject matter for interference under Article 226 of the Constitution of India. It is also held that no writ of mandamus could be issued to the Board to allot a particular house to an allottee at a given price or to reduce the price that was being asked for.

49. The writ petitions in our view could be dismissed on these grounds alone without entering into other questions. But since the learned single Judge entertained these petitions and proceeded to examine the matter on merits and partly allowed the petitions, we had to deal with the merits of the case to negative the conclusion drawn on merits by the learned single Judge. Arguments before us were also raised on merits by the learned counsel appearing for the parties and therefore in all fairness we have dealt with their submissions.

50. In view of what has been said above, the judgment and order passed by the Learned single Judge is set aside. The Special Appeals filed by the Board are allowed and the Special Appeals filed on behalf of the allottees are dismissed. Consequently, the Writ Petitions are ordered to be dismissed.

The aforesaid verdict of the Division Bench was further challenged before the Hon'ble Apex Court and Hon'ble Apex Court by its verdict dated 20 th of March 1997, while upholding the judgment rendered by the Division Bench, held as under:

"After going through the pleadings of the parties in his behalf, we are of the opinion that the land cost which was determined of the Housing Board is in consonance with the brochure and the costing principles reflected in paragraphs 4.1 to 4.1.5, 4.2.1, 4.2.3, 4.2.5 and 4.2.6. It was urged on behalf of the appellants that although construction of the houses of the first and second quarter was completed when the possession of the houses was allotted to the allotted of first quarter and therefore, there was no justification in not issuing the letters of allotment to the allotted of second quarter. This contention has no merit because the development work was yet to be completed and, consequently the possession thereof was delayed by about nine months. Since the allotment letters of the houses of second quarter fell during the financial year 1990-91, the land cost stood enhanced in view of the costing principles. The same was true in respect of third and fourth quarter houses as the letters of allotment were issued in the financial year 1991-92 on different dates i.e. 9th December, 1991 and 5th February, 1992 respectively. The construction of the construction of the houses in respect of second and third quarters was delayed beyond the control of the Housing Board. Consequently, the land cost was required to be re-determined on the basis of costing principles. All these factors were very much known to the Rajasthan Housing Board and they were fully aware of the terms and conditions set out in the brochure and other relevant Rules and Regulations. We have carefully considered the contentions raised on behalf of the parties in this behalf and we find that the Rajasthan Housing Board had committed an error while determining the land cost differently in respect of second, third and fourth quarter based on the costing principles. It also needs to be stated that the

Rajasthan Housing Board had borrowed huge sums from various financial institutions for which it was required to pay the interest thereon. The appellants are unable to demonstrate that the land cost determined by the Rajasthan Housing Board was in violation of any of the terms and conditions mentioned in the brochure and/or Rules or Regulations or it had deviated from the Board's policy of providing houses on profit on loss basis.

In view of the reversal of the judgment rendered in Avashan Mandal Parijat Uch Ayavargh Sangarsh Samiti & Anr. Vs. Rajasthan Housing Board & Ors. [WLC (Raj.) 1993 (3) Page 391] by the Division Bench of this Court, which is affirmed by the Hon'ble Apex Court, in my considered opinion, the so called grievances of the petitioner are wholly unfounded and cannot be sustained.

Even on examining the afflictions of the petitioners on the touchstone of settled legal proposition that disputed questions of fact are not liable to be adjudicated in writ jurisdiction, I am not persuaded to interfere in the matter. There is nothing on record to show that the respondent Board has acted arbitrarily while assessing the land cost as the pleadings in the writ petitions in this behalf are conspicuously silent.

One more redeeming fact is that the brochure, which was issued by the Board while floating the Scheme of 2008, clearly envisages that no complaint of the allottee with respect to land cost shall be entertained and the cost determined by the Board at the time of allotment shall be final. The Board has also asserted in the said clause that Board would make endeavor to keep the price of the house moderate but any escalation in the construction cost for unforeseen reason, which is beyond the control of the Board, shall be borne by the respective allottee. The complete text of the clause is reproduced as under:

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'From the averments contained in the reply, while reading those averments in conjunction with the aforesaid clause, in the considered opinion of this Court, the respondent Board has not committed any illegality in assessing the premium of the land and cost of extra land and as such I am not persuaded to interfere with the impugned allotment letters to the extent same relate to premium of land and cost of extra land, as calculated and determined by the respondent Board.

Resultantly, all these writ petitions lack merit and are accordingly dismissed.

A copy of this order be placed in each file. "

50. Learned counsel for the respondent has also placed reliance on the judgment rendered by this Hon'ble Court in Rajasthan Housing Board & Ors. Etc. Vs. Awasan Mandal Parijat Uncha Ayawarg Sangarsh Samiti, reported in AIR 1996 Raj. 47, relevant portion of which reads as under:-

"29. We also cannot lose sight of the fact that these institutions have been established to help the citizens of this country to have houses at no profit and no loss basis. Nothing has been brought on record to show that there is any element of profit at any stage in the calculation of cost, rather on the other hand, the prices were reduced during the pendency of the writ petition, which shows that the attitude and conduct of the Board was not to earn profit out of the Scheme. Again, the weaker sections of the Society have also to be provided houses sometimes at subsidised rates in such a situation. If the allottees in the higher income group have to pay a little more, the same cannot be held to be discriminatory or arbitrary. How can a mandamus be granted that a particular house has to be allotted at a given price, which according to the petitioner, has to be calculated in the manner he desires. The Board is charging only the additional cost. Under the terms of the contract, the Board, is authorised in exercise of its powers to enhance the price after the calculations are finally arrived at. It is not a case where the Board has concealed anything or committed fraud on the applicants or that there was a mistake in the publication of the Brochure or they were kept in dark. These Housing Board Institutions have no funds of their own and to build houses they have to raise heavy loans from Banking and other Financial Institutions at a very heavy rate of interest. These Institutions, as we see, are always deficit ridden. Unless something could be pointed out which would make the decision of the Board highly arbitrary this Court would not interfere."

51. Reliance has also been placed by learned counsel for the respondent on the precedent law laid down by the Hon'ble Supreme Court in Awasan Mandal Parijat UCH Ayawarg Sangharsh Samiti Vs. Rajasthan Housing Board & Ors., reported in (1997) 9 SCC 641, relevant portion of which reads as under:

"9. We have given our careful thought to the rival contentions raised before us and we find that the impugned judgment does not suffer from any infirmity. The Rajasthan Housing Board in its brochure as well as in its Rules and Regulations had made it clear that the cost of the house would differ for each quarter depending upon in which quarter the letter of allotment/possession would be issued to the allottee. How the cost of a house would be worked out is provided under Rule 4.1 to 4.28 falling under the caption "Cost of Undeveloped Land." Under para 4.2.1., the cost of development was determined by the Rajasthan Housing Board by applying the costing principles in the following manners:

- i) Levelling & dressing of the ground;
- ii) Construction of bituminous roads;
- iii) Cost of drains & culverts;

- iv) Cost of water supply lines;
- v) Cost of electric lines;
- vi) Cost of sewer lines;
- vii) Cost of street lights;
- viii) Costs of plantation, horticulture & parks;
- ix) Miscellaneous."

52. Learned counsel for the respondent has further placed reliance on the precedent law laid down by the Hon'ble Supreme Court in Bareilly Development Authority & Anr. Vs. Ajai Pal Singh & Ors., reported in (1989) 2 SCC 116, relevant portion of which reads as under:

"19. The respondents were under no obligation to seek allotment of houses/flats even after they had registered themselves. Notwithstanding, they voluntarily registered themselves as applicants, only after fully understanding the terms and conditions of the brochure inclusive of Clauses 12 and 13 and Notes 1 and 2 of the General Information Table which we have re-produced above, they are now trying to obtain the houses/flats at the price indicated in the brochure at the initial stage conveniently ignoring the other express conditions by and under which the BDA has reserved its right to change the terms and conditions as and when felt necessary, evidently depending upon the escalation of the prices. One should not lose sight of the fact that the BDA did not compel anyone of the applicants to purchase the flat at the rates subsequently fixed by it and pay the increased monthly installments. On the contrary, the option was left over only to the allottees. In fact, the respondents in Civil Appeal No. 2809 of 1986 except the four above mentioned have unconditionally accepted the changed terms and conditions."

53. Reliance has also been placed by learned counsel for the respondent on the precedent law laid down by the Hon'ble Supreme Court in M.P. Housing Board Vs. Anil Kumar Khiwani, reported in (2005) 10 SCC 796, relevant portion of which reads as under:-

"11. By impugned order dated 22.4.2003, the trial Court prima facie came to the conclusion that the board was guilty of inordinate delay in the implementation of the scheme; that the board had demanded almost twice the amount indicated in the advertisement after accepting the advance and consequently, the board was restrained from allotting the showroom in question to any other person, till the final hearing and disposal of the suit. By the impugned order, the trial Court permitted the board to call upon the contributor to deposit Rs. 39 lacs in four installments in terms of the schedule indicated in the above advertisement.

17. In this case, we are concerned with a self-financing scheme under which a commercial complex is constructed. In a self-financing scheme, costing plays an important role. The building in question comprises of various units. These units

are self-financed. A buyer of the unit has to fund the cost of construction. A buyer under such a scheme cannot be permitted to buy a unit at a price which is less than the cost of construction. In a self-financing scheme, pricing is generally based on cost of construction unlike sale of houses after they are completed, in which cases pricing is generally market related. In the case of a self-financing scheme, no buyer can claim a right to purchase any unit at a price lower than the actual construction cost, as the board raises its funds in turn from the banks and other financial institutions to whom the board is required to pay interest periodically. In the case of a self-financing scheme, even if there is failure on the part of one contributor to pay the costs, the entire scheme falls in jeopardy and, therefore, there is no merit in the contention advanced on behalf of the respondent that the impugned orders should not be interfered with as they are confined only to a particular unit purchased by the respondent."

54. Learned counsel for the respondent has also relied upon the precedent law laid down by the Hon'ble Supreme Court in *Premji Bhai Parmar & Ors. Vs. Delhi Development Authority & Ors.*, reported in (1980) 2 SCC 129, relevant portion of which reads as under:-

"8. Though we are not inclined to reject the petitions on this preliminary objection as we have heard them on merits it is undeniable that camouflage of Article 14 cannot conceal the real purpose motivating these petitions, namely, to get back a part of the purchase price of flats paid by the petitioners with wide open eyes after flats have been securely obtained and petition to this Court under Article 32 is not a proper remedy nor is this Court a proper forum for re-opening the concluded contracts with a view to getting back a part of the purchase price paid and the benefit taken. The undisputed facts are that petitioners offered themselves for registration for allotment of flats that may be constructed by the Authority for MIG scheme. After the registration and when the flats were constructed and ready for occupation brochures were issued by the Authority. One such brochure for allotment of MIG flats in Lawrence Road residential scheme is Annexure R-1. This brochure specifies the terms and conditions including price on which flat will be offered. It also reserved the right to surrender or cancel the registration, the mode and method of paying the price and handing over the possession. There is an application form annexed to the brochure. Annexure 'A' to the brochure sets out the price of flat on the ground floor, first floor and second floor respectively. It sets out the premium amount payable for land as also the total cost in respect of the flats on the ground floor, first floor and second floor. The statement also shows the earnest money deposited at the time of the registration and the balance payable. It is on the basis of these brochures that the applicants applied for the flats in Lawrence Road and other MIG schemes. They knew and are presumed to know the contents of the brochure and particularly the price payable. They offered to purchase the flats at the price on which the Authority offered to sell the same. After the lots were drawn and they were lucky enough to be found eligible for allotment of flats, each one of them paid the price set out in the brochure and

took possession of the flat, and thus sale became complete. There is no suggestion that there was a mis-statement or incorrect statement or any fraudulent concealment in the information supplied in the brochure published by the Authority on the strength of which they applied and obtained flats. How the seller works out his price is a matter of his own choice unless it is subject to statutory control. Price of property is in the realm of contract between a seller and buyer. There is no obligation on the purchaser to purchase the flat at the price offered. Even after registration the registered applicants may opt for other schemes. His right to enter into other scheme opting out of present offer is not thereby jeopardised or negated and applicants so outnumbered the available flats that lots had to be drawn. With this background the petitioners now contend that the Authority has collected surcharge as component of price which the Authority was not authorised or entitled to collect. Even if there may be any merit in this contention, though there is none, such a relief of refund cannot be the subject-matter of a petition under Article 32. And Article 14 cannot camouflage the real bone of contention. Conceding for this submission that the Authority has the trappings of a State or would be comprehended in 'other authority' for the purpose of Article 12, while determining price of flats constructed by it, it acts purely in its executive capacity and "is bound by the obligations which dealings of the State with the individual citizens import into every transaction entered into the exercise of its constitutional powers. But after the State or its agents have entered into the field of ordinary contract, the relations are no longer governed by the Constitutional provisions but by the legally valid contract which determines rights and obligations of the parties inter se. No question arises of violation of Article 14 or of any other constitutional provision when the State or its agents, purporting to act within this field, perform any act. In this sphere, they can only claim rights conferred upon them by contract and are bound by the terms of the contract only unless some statute steps in and confers some special statutory power or obligation on the State in the contractual field which is apart from contract" (see *Radhakrishna Agarwal and Ors. v. State of Bihar and Ors.* : [1977]3SCR249 at 255). Petitioners were under no obligation to seek allotment of flats even after they had registered themselves. They looked at the price and flats and applied for the flats. This they did voluntarily. They were advised by the brochures to look at the flats before going in for the same. They were lucky enough to get allotment when the lots were drawn. Each one of them was allotted a flat and he paid the price voluntarily. They are now trying to wriggle out by an invidious method so as to get back a part of the purchase price not offering to return the benefit under the contract, namely, surrender of flat. The Authority in its affidavit in reply in terms stated that it is willing to take back the flats and to repay them the full price. The transaction is complete, viz., possession of the flat is taken and price is paid. At a later stage when they are secure in possession with title, petitioners are trying to get back a part of the purchase price and thus trying to re-open and wriggle out of a concluded contract only partially. In a similar and identical situation a Constitution Bench of this Court in *Har Shankar and Ors. etc. etc. v. The Dy.*

Excise & Taxation Commr. and Ors. : [1975]3SCR254 has observed that those who contract with open eyes must accept the burdens of the contract along with its benefits. Reciprocal rights and obligations arising out of contract do not depend for their enforceability upon whether a contracting party finds it prudent to abide by the terms of the contract. By such a test no contract would ever have a binding force. The jurisdiction of this Court under Article 32 of the Constitution is not intended to facilitate avoidance of obligations voluntarily incurred. It would thus appear that petitions ought not to have been entertained. However, as the petitions were heard on merits, the contentions canvassed on behalf of the petitioners may as well be examined."

55. Learned counsel for the respondent has further relied upon the precedent law laid down by the Hon'ble Supreme Court in Bareilly Development Authority Vs. Vrinda Gujarati & Ors., reported in (2004) 4 SCC 606, relevant portion of which reads as under:-

"15. This Court in its judgment in the case of Bareilly Development Authority and Anr. v. Ajai Pal Singh and Ors., : [1989]1SCR743 has clearly held that the authority or its agent after entering into the field of ordinary contract acts purely in its executive capacity, Thereafter, the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines the rights and obligations of the parties inter se. At page 124 of the judgment, this Court has also held that once the respondents have given their written consent accepting the changed and varied terms and conditions, they cannot be permitted to contend that the authority has gone back on its original terms and conditions to their detriment. This Court further held that once the respondents have entered into the realm of concluded contract pure and simple with the authority they cannot step out of the terms of the contract unless some statute steps in and confers some special statutory obligations on the authority in the contractual field.

16. The above view was endorsed by this Court in its judgment in Indore Development Authority v. Sadhana Agarwal (Smt.) and Ors., : [1995]2SCR555 .

17. This Court in paragraph 9 of this judgment held as under:

"But taking all facts and circumstances into consideration, this Court said that it cannot be held that there was 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."

This Court further in paragraph 10 of the judgment held as under:

"10. So far the facts of the present case are concerned, it is an admitted position that in the proforma attached to the application for registration, the appellant said that the price mentioned by them was a probable and estimated cost, the definite price shall be intimated at the time of the allotment. Thereafter, the appellant had been informing the respondents and others who had got themselves registered, from time to time regarding the escalation in the cost of the flat. One of the reasons for the rise of the price for the LIG Flat from Rs. 60,000 to Rs. 1,16,000 appears to be the increase in area of the flat itself from 500 ft. to 714.94 Sq. ft. From 1982 to 1984, possession of the flats could not be delivered because of the dispute pending in the Court which also contributed to the increase in the cost of the flat Admittedly, the respondents came in possession of the flats in the year 1984. In the facts and circumstances of the case, we are satisfied that no interference was called for by the High Court."

56. After hearing learned counsel for the parties as well as examining the record of the case, alongwith the precedent laws cited at the Bar, this Court finds that the scheme for duplex houses in Sectors 11 and 12 of Mukta Prasad Nagar, Bikaner, which was a self finance scheme, has required the respondents to provide such houses to the petitioners in their respective categories.

57. This Court finds that the total records of the case indicate that though the respondents were having the power to revise/escalate/enhance the costs, which were earlier envisaged, but an impression was given to the petitioners that the cost shall not be escalated for more than 10%, whereas the escalation in cost is far beyond the same.

58. The respondent-Board, which operates on no profit basis however, seems to have miscalculated its cost; but once the cost has been incurred, then at this stage of allotment asking the respondent-Board not to take the cost, which has incurred on the scheme, would be extremely unfair.

59. This Court has also carefully seen the precedent law cited by both the parties, finds that the petitioners could not establish any such glaring example, which could demonstrate that the cost escalation was due to the arbitrariness or illegalities committed by the respondent.

60. On examination of the complete records, this Court finds that certain amenities, like sewerage systems, installation of water supply systems, road network, reconstruction of roads, street lights etc. for the complete sector, which were not completely envisaged by the respondent-Board, have subsequently, led to such cost escalation.

61. On a careful perusal of the record, this Court also finds that the respondent-Board has shown the details in which they have referred to various heads and various rates, which clearly indicate that the respondent-Board was left with no option, but to escalate the cost. Moreover, the petitioners cannot be said to be prejudiced because the respondent-Board is offering their money back alongwith prevailing interest, and thus, if the petitioners are finding it so unaffordable, then

they can certainly get the refund back. However, it is for sure that there would have been a legitimate expectation of the petitioners that the escalation would not be more than 10%, and therefore, the respondent-Board needs to be more careful, while launching such schemes and needs to give a definite escalation clause whenever in future they come up with a policy or scheme, so that the applicants would not suffer at the belated stage, with a beyond expectation higher escalation.

62. Though all the precedent laws are variant on facts, but the precedent law of *Mangat Ram Taneja* (supra) is quite near to the present dispute being adjudicated and it is based upon a Division Bench and the Hon'ble Apex Court judgments.

63. In light of the aforesaid observations, the present writ petitions are dismissed. However, this Court directs the Rajasthan Housing Board to give the exact details of the costs in their scheme brochures in future, and while giving the probable escalation clauses, approximate idea to the applicants regarding the cost escalation hereafter shall also be included in their initial scheme, which would be disclosed to the applicants. Stay applications also stand dismissed accordingly.