
(2005) 02 PAT CK 0070
In the Patna High Court
Case No : C.W.J.C. No. 4863 of 2000

Sita Devi

APPELLANT

Vs

Bihar State Housing Board and Others

RESPONDENT

Date of Decision : 10-02-2005

Acts Referred:

Citation : (2005) 1 BLJR 613 : (2005) 1 PLJR 603

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Garg, J.—Heard learned counsel for the parties.

2. The petitioner had applied for allotment of a flat with the Bihar State Housing Board on 13.1.1994 and made a deposit of Rs. 17,000/- in form of a draft. On 4.3.1994 she was informed by the respondents that flat bearing No. 6SFC-1/8 had been allotted to her. She was asked to make deposit of Rs. 1,54,875/- within 30 days so that the flat could be delivered to her. The petitioner deposited a sum of Rs. 1,54,8767 on 31.3.1994. It was to be seen that the petitioner deposited the entire amount but possession of the flat could not given to her, therefore, out of sheer frustration and being aggrieved by the platonic approach adopted and indifference shown by the respondents, she made an application to the respondents on 29.10.1996 that she was not ready and willing to have the flat, therefore, the total amount deposited by her be refunded. The respondents deducted 20% from it and refunded the balance.

3. The petitioner is before this Court submitting, inter alia, that the respondents were not entitled to deduct 20% from the said deposits. The respondents submitted before this Court that the flat was ready for delivery but the petitioner was not ready and willing to accept the possession and as the petitioner herself made an application for the refund, in accordance with the terms and conditions of the allotment, the respondents were entitled to deduct the said money. It is

also submitted by them that from perusal of the allotment letter, it would clearly appear that the respondents had stated that the reasonable delay in delivery of possession would be a good cause and condonable in favour of the respondents. It is submitted by them that the petitioner's petition deserves to be dismissed.

5. On the last date, it was submitted before the Court that even in 2004 the flat was incomplete and was not habitable. The fact was hotly contested by the respondents, therefore, by order dated 7.10.2004, this Court appointed Mr. Suraj Samdarshi, Advocate practising in this Court to make an inspection and submit his report that whether the flat is complete or not.

6. Mr. Samdarshi has submitted his report dated 4.2.2005. The report says that the floor with regard to bed room and living space were complete. However, skirting work was yet to be completed. The floor work in relation to bathroom has not yet started. The connection of water supply, sewerage and storage tank was incomplete upto the date of inspection. The windows were fitted and walls were white-washed recently. The internal electrical wiring was incomplete uptill the date of inspection. The doors were not hanged nor the glass was fitted in the windows upto the date of inspection. He also observed that none of the flats in the entire building had any occupant and on inspection it could easily be inferred that prior to inspection unauthorised occupants were residing in the aforesaid premises. He also observed that from the inspection it transpired that it would be difficult for any family to reside in the said flat and the flat cannot be treated to be habitable one.

7. Learned counsel for the respondents submits that even if the flat was incomplete in the year 1996 then too in accordance with paragraph 8 of Annexure 2, a reasonable delay would be condonable in favour of the respondents.

8. It appears from the conduct of the respondents that they are simply selling assurances but are not delivering the real estate to the people less realising that they have been constituted to serve the public. The letter Annexure 4 under which the petitioner had claimed refund was not an absolute offer. It was a conditional offer that the total amount be refunded to her. If the respondents were not ready and willing to refund the entire amount and wanted to cut 20% of the deposit, the lapses being on their side, they were obliged to inform the petitioner that 100% refund cannot be made. It also appears from their conduct that finding an opportunity in their favour, they pounced upon it and readily agreed to refund 80% amount so that they can pocket the balance. If, the flat was not complete in the year 1996 and is yet not complete, it would be too much to say that a person if out of sheer frustration says that he/she does not want a flat then too the respondents would be entitled to a cut. Paragraph 8 of Annexure 2 says that some delay would be condonable but some delay does not mean notorious delay. Some delay should only mean a reasonable delay. If the possession was to be delivered to the petitioner in 1994, or immediately thereafter, then the respondents cannot say that they would not deliver the

possession in the year 1996 and would not complete the construction even upto 2004 and would still be entitled to deduct the amount of 20%. The conduct of the respondents is not fair. It perilously touches the boundaries of dishonesty. A public authority has to act fairly and in favour of the public. These institutions/ organizations are not to act like Shylock but have to act in favour of the public in a welfare State.

9. It is held that the respondents are not entitled to deduct the said 20% amount. Let the said 20% amount be refunded to the, petitioner within a period of three months from today with 6% interest from the date of the application made by the petitioner seeking refund. If the amount is not refunded to the petitioner within a period of three months then from the date of the petitioner's entitlement/application, the respondents would be obliged to pay interest at the rate of 15% on the delayed payment.

10. This application is accordingly allowed.