

(2001) 05 PAT CK 0046
In the Patna High Court
Case No : C.W.J.C. No. 1514 of 2001

Smt. Mira Mishra, Smt. Aparna Devi and Indrajit Kumar	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 16-05-2001

Acts Referred:

Bihar State Housing Board (Management and Disposal of Housing Estates)
Regulations, 1983 — Regulation 33(3), 36(3), 45

Citation : (2001) 3 PLJR 809

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : P.N. Pathak, for the Appellant; V.N. Sinha, for State and Neelu Agarwal, for Board, for the Respondent

Final Decision : Allowed

Judgement

Aftab Alam, J.—There is a single Petitioner in each of these three writ petitions. All the three Petitioners have a common grievance against the Bihar State Housing Board and they seek the same relief under the same set of facts and circumstances. Hence, these three writ petitions were heard together and are being disposed of by a common order.

2. On 23.2.1981 the Bihar State Housing Board (hereinafter referred to as "the Board") issued a notice in the daily newspapers. In that notice the Board made certain announcements in connection with allotment of plot/flat at Digha and Sheikhpura in the town of Patna on hire-cum-purchase basis to persons registered with the Housing Department/Housing Board. In Clause 3 of the notice it was stated that suitable land (s) was being taken in acquisition and the acquisition and development of land and the completion of construction work on the developed land was likely to take four years. In Clause 4, the allottees were classified into four groups. The Middle Income Group, with which we are concerned in these three writ petitions, comprised people with annual income ranging from Rs. 7201 to Rs. 18,000/-. The notice further stipulated that for

making an application for a flat in the Middle Income Group the Applicant should pay a sum of Rs. 6,500/- as earnest money. It was further stated in that notice the prospectus and the application form could be obtained from the Board's office on payment of Rs. 50/- as registration fee and that the prospectus and the application would also be available to those who had got their demands registered earlier, on showing the payment receipt.

3. The Petitioner in C.W.J.C. No. 1576 of 2001 had already paid a sum of Rs. 50/- for registration of demand on 11.2.1979; the Petitioners in C.W.J.C. Nos. 1514 and 1523 of 2001 paid the registration fee of Rs. 50/- each on 9.5.1981 and on that basis the Petitioners were supplied with the prospectus and the application forms.

4. In the Prospectus issued by the Board in the year 1981 the probable cost of building was shown as Rs. 50,000/- and the relevant extract from the prospectus is reproduced below:

Schedule "KH" (Part I)

(Type & Cost of Dwelling units)

Income Group Type Description Probable cost of building only

MIG A Duplex type-2 storeyed ground floor-2 rooms, front and rear Verandah, Kitchen, toilet and backyard. First Floor-2 rooms, front Verandah, toilet and Terrace. Rs. 50.000

5. Each of these three Petitioners then deposited the earnest amount of Rs. 6,500/- (Petitioners in C.W.J.C. Nos. 1514 and 1523 of 2001 on 26.5.1981 and Petitioner in C.W.J.C. 1576 of 2001 on 27.5.1981) and submitted their application forms, duly filled up, and complete in all respects in the Board's office.

6. In 1983, the Board issued an important notice in which it was indicated that the construction of 900 dwelling units for the Middle Income Group was completed which would cover all Applicants in that group.

7. Though this "important notice" was issued by the Board in the year 1983, for some inexplicable reason no further action was taken and the matter was allowed to rest at that stage and finally in December, 2000 letters were issued to the Petitioners intimating them about the Board's decision to allot to each of them certain flats, copies of those letters which are dated 23.12.2000 are at Annexure-1 in each of the three writ petitions. By that letter the Petitioner in C.W.J.C. No. 1514 of 2001 was intimated that on the basis of lottery a decision was taken to allot to her flat No. 7 MF-4-/29 at Bahadurpur, Patna. She was further asked to pay a sum of Rs. 1,59,39, being 30% of the disposal price of the flat by January 31, 2001 so that a formal letter of allotment could be issued in her name. It is significant to note that the price of the flat was still not indicated with any finality in that letter.

8. Similarly Petitioner in C.W.J.C. No. 1523 of 2001 was intimated about the decision to allot her Flat No. 3 MF-11/42 at Bahadurpur, Patna and she was asked to pay a sum of Rs. 1,45,410/- by 31.1.2001. The Petitioner in C.W.J.C. No. 1573 of 2001 was intimated about the decision to allot him Flat No. 7 MF-4/33 and he was required to pay a sum of Rs. 1,69,891/- by January 31, 2001.

9. It was at this stage that the three Petitioners came to this Court. In the writ petitions filed on their behalf it was prayed that a direction be issued to the Board to allot them flats on payment of Rs. 50,000/- only which was the "probable cost" indicated in the prospectus issued by the Board in the year 1981. But in course of submissions learned Counsel appearing for the Petitioners gave up the relief as claimed in the writ petitions and made a limited prayer. Learned Counsel submitted that Rs. 1,59,891/- being 30% of the "disposal price", the total price of the flat would be over Rs. 5,30,000/- and that too was not yet final and was open to further escalation. The counsel submitted that this was far beyond the means of the Petitioners and they were not in a position to take the flats on such a high price. The Petitioners would, therefore, simply want that the payments made by them (Rs. 50/- as registration fee and Rs. 6,500/- as earnest money) be refunded to them, with interest at the rate accruing on a fixed deposit in a scheduled bank.

10. The Board was issued notice on this limited prayer made on behalf of the Petitioners.

11. The Board seems to consider it fit to oppose even this limited prayer made on behalf of the Petitioners. A counter affidavit has been filed on behalf of the Board which, is affirmed by someone posted as the Dy. Revenue Officer in the Board's office. In the counter affidavit it is stated that the Petitioner's failure to accept the allotment made in their favour, on the terms and conditions indicated in the letter dated 23.12.2000, would lead to forfeiture of the deposits made by them to the extent of 20% and the balance 80% of their deposit will be refunded to them without any interest. This stand is sought to be supported by referring to certain provisions of the Bihar State Housing Board Regulations, 1983. The relevant statement is made in paragraph 5 of the counter affidavit which is as follows:

5. That so far as refund of earnest money with Bank's rate of compound interest is concerned. It is stated that the Petitioner deposited earnest money of Rs. 6,500/- in the year 1981. According to the Bihar State Housing Regulations 1983, as envisaged in Regulation 33 (3) and 36 (3) in case if the Applicants to whom allotment letter have been issued and if the said Applicant ask for refund of their deposits a sum equal to 20% of the said deposit. shall be forfeited and the rest 80% will be refunded. Further according to Regulation 45 of the Housing Board Regulation, 1983, simple interest @ 5% will be payable on the amount of earnest money deposited by the Applicants after the date of enforcement of the said regulation. Since the Petitioner had deposited earnest money in the year 1981 no interest is payable to the Petitioner and if the Petitioner wants refund of

his earnest money 20% of the said deposit will be forfeited according to the Housing Board Regulations.

12. Thus, according to the Board, the Petitioners are to be denied even the meagre benefit of simple interest @ 5% because the provisions of interest was made in the Regulations, coming into force in the year 1983 while the deposits were made by the Petitioners in the year 1981. It does not seem to have occurred either to the Board or to its counsel that the provision of interest could atleast be extended to the Petitioners from the date the Regulations came into force and this Court is constrained to say that the affidavit filed on behalf of the Board is completely thoughtless, crass and callous. In its counter affidavit the Board tends to display an institutional arrogance of a bad and dangerous type and it seems to consider individual citizens, for whose benefit the Board was set up, as totally subject to its mercy, caprice and whims. The reference to Clause 33 of the Regulations for deducting 20% of the deposits made by the Petitioners is wholly unsustainable. The regulations are not meant to cover up the Board's inefficiencies, laches and lapses and to be used as a shield to protect the Board from the consequences which are of its own making. The application of the Regulations would require that the Board should itself first act with a modicum of reasonableness. In the case in hand the Board has flagrantly breached its promises on all material issues. Though it is correct that the Board's promises were tentative and "probable", its actions must at least bear a semblance of correlation with its promises. Otherwise, the Board must be held liable to pay suitable compensation to a person suffering loss. by acting on the basis of its promises. The Board announced in the year 1981 that the construction of the houses after the acquisition and development of land will be completed within four years time. In fact it issued an "important notice" in the year 1983 declaring that 900 1 houses, covering all the Applicants in the middle income group were completed and yet the decision to make allotments was taken in December, 2000. It thus extended the time factor by five times.

13. In terms of cost, in the prospectus issued in the year 1981, the probable price of the flat was shown to be Rs. 50,000/-. The construction of the flats was complete in the year 1983 and yet in 2000 the disposal price was escalated to over Rs. 5,30,000/-. The escalation in terms of cost is thus over ten times. And with this kind of track record the Board deems fit to cite the provisions to deduct 20% of the deposits made by the Petitioners and to refund the balance without any interest.

14. There must be a limit to the mindless and insensitive harassment caused by the Board to individual citizens. I feel constrained to observe that in this State, Corporations and the Boards which were intended to serve as vehicles of progress and development are tending to become stumbling blocks in the way of development. To individual citizens they would sometimes appear as instruments of harassment. The case in hand is illustrative of the point.

15. In the aforesaid facts and circumstances, I am of the view that the limited

prayer made on behalf of the Petitioners for the refund of their deposits with suitable interest is wholly justified and the resistance offered by the Board is completely unreasonable and unsustainable in the eyes of law.

16. The Board is accordingly directed to refund to each of the Petitioners the full amount of their deposits along with interest @ 10%, compoundable annually, from the date of the deposits till the date of payment. Apart from the refund of the Petitioners money the Board must also pay to each of the three Petitioners a sum of Rs. 5,000/- as cost of litigation. The payments as directed must be made within 30 days from the date of receipt/production of a copy of this order.

In the result, these writ petitions are allowed with costs as indicated above.