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(2006) 07 OHC CK 0006

In the Orissa High Court

Case No : O.J.C. No. 17544 of 2001

Smt. Radhamani Sahoo — APPELLANT

Vs

State of Orissa and Others — RESPONDENT

Date of Decision : 14-07-2006

Acts Referred:

Citation : (2006) 1 OLR 1029 Supp

Hon'ble Judges : R.N. Biswal, J;P.K. Mohanty, J

Bench : Division Bench

Advocate : A.K. Mishra, for the Appellant; D. Mohapatra, D.K. Sahoo and M. Mahapatra for O.P. 3, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Biswal, J.—The Petitioner has filed this writ petition with the following prayer:

It is therefore prayed that this Hon''ble Court may graciously be pleased to admit this writ application and notices be issued to the O.Ps. to show cause and after hearing both the sides, appropriate writ/writs may be issued to the O.Ps. as a whole and O.P. Nos. 2 and 3 more particularly with the following directions, such as:

(a) to fix up the rate of interest @ 18% for payment to the allottees by modifying the clause-13(A) in view of the clause 9(C) of SVM core Housing Scheme brochure;

(b) to pay the interest to the Petitioner @ 18% on the deposited amount since the date i.e. 1.2.95 when second instalment was paid till the date of actual physical possession was handed over i.e. 24.6.98 within a stipulated period;

(c) to pay the pendentilite interest and future interest on the interest due (as per clause-b) as on 24.6.98 (the date of physical possession) till the date of realization;

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(d) And pass such other and further order/orders, direction/directions as deems it and proper under the fitness of the facts and circumstances of the case.

And for this act of kindness the Petitioner, as in duty bound shall every pray.

2. In response to an advertisement published by the opp. parties for allotment of MIG Core Houses at Samanta Vihar, Bhubaneswar, the Petitioner filed an application with EMD of Rs. 25,000/- interms of the brouchure (Annexure-A/3) which was duly received and acknowledged by the opp.parties 11.7.1994. On being selected, she was allotted a core house and was intimated by the opp parties about such allotment vide their letter No. 9459/AL/BDA dated 17.11.1994 (Annexure-2) stipulating the instalments to be paid by her as per the following schedule:

Sl. No. EMD No. AMOUNT (Rs.) DUE DATE

1. 2nd Rs. 75,000/- Dt. 05.02.95

2. 3rd Rs. 45,000/- Dt. 05.05.95

3. 4th Rs. 45,000/- Dt. 05.08.95

4. 5th Rs. 45,000/- Dt. 05.11.95

5. 6th Rs. 45,000/- Dt. 05.02.96

6. 7th Rs. 45,000/- Dt. 05.05.96

7. 8th Rs. 35,000/- Dt. 05.08.96

(or before taking over possession whichever is earlier.)

The Petitioner went on paying the instalments as stipulated in Annexure-2, but failed to pay the last tree instalments in time, for which opp. parties 2 and 3 charged Rs. 5,134/- towards interest vide letter dated 12.2.1997, which she paid before taking over possession of the house in question on 24.6.1998. According to the Petitioner she is entitled to get interest from the opp. parties at the rate of 18% per annum on the amount she paid since the date of payment of second instalment i.e. 1.2.1995 till the date of actual delivery of physical possession of the core house to her with pendentilite and future interest by modifying clause 13(A), in view of clause 9(C) of the brochure (Annexure-A/3). As per her case, under clause 9(C) of the brochure the B.D.A. charges interest at the rate of 18% per annum in case of default of payment made by an allottee, whereas under clause-13(A) thereof the allotee would be paid interest to be fixed by the B.D.A. in failure of the latter in giving delivery of possession of the house in due time, which is arbitrary and illegal. Hence the case.

3. In their counter affidavit opp. parties 2 and 3 stated that in terms of clause 13 (A) of the brochure the authority decided to pay interest at the rate of 7% per annum to the allottees to whom delivery of possession of the house could not give in due time. But the Petitioner is not entitled to get any interest in as much

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as the allotment of the house was made in her favour on 12.2.1997 vide Annexure-3 and possession of the house was delivered to her in time, on 24.6.1998. Hence opp. parties 2 and 3 prayed to dismiss the writ petition.

4. Learned Counsel for the Petitioner submitted that in terms of clause 9(A)(ii) of the brochure (Annexure-A/3) the second instalment was required to be paid within three months from the date of allotment. As per Annexure-2 the Petitioner was allotted with the house on 17.11.1994 and was asked to pay the second instalment on 5.2.1995 i.e. within three months of the allotment. Since the opp. parties failed to give delivery of possession of the house within 18 months from the date of allotment i.e. 17.11.1994, they are liable to pay interest in terms of clause 13(A) of the brochure. On the other hand learned Counsel appearing for the opp. parties 2 and 3 submitted that as per Annexure-2 the Petitioner was only provisionally selected for allotment of a MIG core house on 17.11.1994, but in fact she was allotted with the house on 12.2.1997 vide letter Annexure-3. As she defaulted in making payment of last three instalments she was asked to deposit Rs. 5,1324/- towards interest in the Oriental Bank of Commerce, B.D.A. Extension counter and to attend the offence of the B.D.A. within a month to take over physical possession of the house. But she cleared up the dues on 4.1997 and possession of the house was delivered to her on 24.6.1998, as such there is no delay in giving delivery of possession of the house to the Petitioner.

Clause 13(A) of the brochure (Annexure-A/3) reads as follows:

The house would be delivered within 18 months from the date of issue of allotment failing which interest would be paid at the rate to be fixed by B.D.A. Interest is not payable on E.M.D.

In the present case, in fact the house was allotted to the Petitioner on 12.2.1997 vide Annexure-3 wherein she was directed to pay Rs. 5,134/- towards interest due to default in payment of the last three instalments. After she cleared up all the dues on 7.4.1997 possession of the house was delivered to her on 24.6.1998 i.e. within 18 months of the date of allotment. No doubt, as submitted by the learned Counsel for the Petitioner as per clause 9(A)(ii) of the brochure the second instalment was required to be paid within three months from the date of allotment of the house, whereas in the case at hand the date of second instalment was fixed to be paid on 5.2.1995, by which date the house had not been allotted in favour of the Petitioner. Fixation of the date for payment of second instalment is against the brochure of the opp.parties. But this fact was not challenged by the Petitioner earlier. She went on paying the instalments regularly up to fourth instalment whereafter she defaulted in payment. However, she cleared up the last three instalments in a belated stage, for which she was saddled with interest and ultimately took delivery of possession of the house. So now she cannot say that the house in fact was allotted to her on 17.11.1994 vide Annexure-2, particularly when as mentioned earlier it is reflected therein that the Petitioner was provisionally selected for allotment of a MIG core house on that date. So in our view the Petitioner cannot claim any interest on the ground of

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delayed delivery of possession of the house.

5. Learned Counsel for the Petitioner further submitted that in terms of clause 9(C) of the brochure, B.D.A. charges 18% interest on the defaulted amount, if the allottee fails to pay the instalments in time, whereas in terms of clause 13(A) of the said brochure they would pay interest to be fixed by them in case of their failure in giving delivery of possession of the house within time and as per the counter affidavit B.D.A. have fixed the interest at the rate of 7% per annum which is illegal and arbitrary. B.D.A. should also pay interest at the rate of 18% per annum in case of their failure to deliver possession of the house in time. On the other hand learned Counsel appearing for the B.D.A. submitted that the Petitioner accepted the contract knowing fully well that the B.D.A. would fix the interest to be paid to the allottee in case of their failure in giving delivery of possession of the house within time. So fixation of interest at the rate of 7% per annum by B.D.A. cannot be said as illegal and arbitrary.

6. The Petitioner purchased the format of the application and after going through the brochure, being satisfied with the terms and conditions contained therein made the application with E.M.D. If she was not satisfied with such terms and conditions, particularly the terms containing payment of interest by the B.D.A. to the allottee, in case of default on their part in giving delivery of possession of the house in due time,she was at liberty not to make such application, but she applied for a MIG core house with E.M.D. of Rs. 25,000/-, paid the instalments including interest for default in paying the last three instalments in time and ultimately took possession of the house. So now she cannot challenge either clause 9(C) or clause 13(A) of the brochure.

Therefore, we do not find any merit in the writ application and as such it stands dismissed.

P.K. Mohanty, J.

7. I agree.

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