(2011) 11 PAT CK 0028

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 11351 of 2000

Umesh Chandra Verma APPELLANT

Vs

The Bihar State Housing Board and Manager Landed Property cum Joint Secretary, Bihar State Housing Board, Patna RESPONDENT

Date of Decision : 11-11-2011

Acts Referred:

Citation : (2011) 11 PAT CK 0028

Judgement

Honourable Mr. Justice Vikash Jain

1. The present writ petition has been filed with a prayer for refund of Rs. 15,000/- along with compound interest @ 16% to the petitioner, the amount having been deposited as earnest money for allotment of a house under M.I.G. Scheme on Hire Purchase basis at Indira Nagar, Purnea. The short facts giving rise to the present petition may be summarized hereunder.

2. It appears that the Bihar State Housing Board (hereinafter referred to as the "Board") issued an advertisement on 19.07.1989, pursuant to which the petitioner made an application for allotment of a house and also deposited a sum of Rs. 15,000/- towards earnest money on 15.08.1989 as required in terms of the said advertisement. The application was lodged with the respondent Board on 23.08.1989.

3. It further appears that in due course by letter dated 29.01.1994 (Annexure-3), the Board issued a letter of allotment stating that pursuant to a lottery conducted on 27.12.1993, the petitioner was allotted house no. P.M.R.-12 in the residential colony of Indira Nagar, Purnea. The probable cost of the house was stated to be Rs. 1,82,280/- subject to redetermination upon revaluation. As against this, a net amount of Rs. 58,112/- was demanded from the petitioner towards the ''disposal price'' being 40% of the probable cost after giving credit of the earnest money of Rs. 15,000/- already paid. The disposal price was required to be paid within 30 days of dispatch of the letter of allotment which thus fell due on 18th March, 1994. The balance amount was payable in 96 equated monthly

instalments as enumerated in the allotment letter. Each such instalment was stated to include a component towards compound interest @ 13.5 %, and a further 2.5% penal compound interest in case payment was made after the 7th day of the relevant month totaling upto 16.5% compound interest.

4. The petitioner states that upon inspection of the site, he was dissatisfied as to the progress of the housing project, describing the same as not being fit for human habitation, which fact has not been disputed before this Court. Accordingly by his letter dated 30.03.1994 (Annexure-4) he recorded his objections while pointing out the deficiencies and in view of the escalating cost of the house expressed his unwillingness to proceed in the matter. He accordingly requested for refund of Rs. 15,000/- paid by him towards earnest money, together with 16% compound interest being the rate chargeable by the Board on the instalments. This letter was lodged with the respondent Board on 30.03.1994. In response, the Board by its letter dated 19.05.1994 (Annexure-5) approved the refund of the earnest money to the petitioner by letter dated 22.06.1996, that is over two years after the allotment letter was issued. The respondent Board required the petitioner to complete the formalities, including filing of an affidavit, to enable making of refund.

5. The considerable delay in the whole episode and with no relief in sight, this petitioner was thus forced to move this Court in its writ jurisdiction with the present prayer.

6. Consequent to the filing of this writ petition, good sense appears to have prevailed upon the Board and the earnest money was refunded to the petitioner albeit after considerable delay, after deduction of 20% out of the same and a net payment of Rs. 12,000/- has been made to the petitioner by cheque dated 25.09.2001 and which is admitted to have been received by the petitioner.

7. In view of the refund of earnest money having already been made, the points for consideration at the present stage are thus limited to only the following two aspects (a) legality of deduction of 20 % out of the earnest money and (b) rate of interest to which the petitioner is entitled for the delay in the refund.

8. Learned counsel for the petitioner Mr. Gyanand Roy submits that the deficiencies pointed out by him in his letter dated 30.03.1994 have not been controverted by the respondent Board. It is by reason of the default on the part of the Board that the petitioner has been wrongly prevented from enjoyment of a house and the very purpose of his application stood defeated.

9. It is submitted by learned counsel for the petitioner that adding insult to injury, the Board has finally driven him to seek his remedy through the instant writ petition. The litigation for the refund of the earnest money has thus been thrust upon him on account of the inordinate and unjustifiable delay by the Board and he is entitled to be compensated for the undue harassment suffered by him.

10. Learned counsel for the respondent Board Mrs. Nilu Agrawal, on the other

hand, submits that no illegality whatsoever has been committed by the Board, rather the refund has been made in accordance with the [Bihar State Housing Board (Management and Disposal of Housing State) Regulation 1983] (hereinafter, the "Regulations"). The Regulations being already in force at the time when the advertisement was brought out, the petitioner was bound by the same. The Regulations contain the terms and conditions for grant of refund, deduction out of the same, as well as liability to interest on delayed refund. She invites attention to Regulation 45, according to which the liability to interest stands at 5% simple interest on the refund of earnest money. She accordingly submits that even if interest is liable to be paid, the same cannot exceed 5% simple interest.

11. Having heard the parties at length and considered the materials on record, this Court is of the opinion that the respondent Board was well within its rights to have deducted the amount of Rs. 3,000/- being 20% out of the earnest money before refunding the balance amount to the petitioner.

12. It is evident from the letter of allotment dated 29.01.1994 itself that the disposal price being 40% of the probable cost was required to be deposited within 30 days of the dispatch of the same and as such the payment became due on 01.03.1994. The petitioner however, raised objection and indicated his decision not to go forward with his entitlement and demanded a refund only by his letter dated 30.03.1994 (Annexure-4), which was almost a month beyond the permissible time limit for making the payment of the disposal price. In view of the default having already been completed, the Board became entitled to make a deduction of 20% out of the earnest money in accordance with Regulation 33 (3).

13. As such the deduction of Rs. 3,000/- out of the earnest money is upheld as having validly been made by the Board.

14. As regards liability for interest in respect of the delay in making refund, it is obvious that there has indeed been an undue delay in making the refund. It is a matter of record that the claim for refund was made on 30.03.1994 and even though the same was processed and forwarded by the Board to its Patna Headquarters for payment on 19.05.1994 (Annexure-5), some requisites for compliance by the petitioner were intimated to him by Patna Headquarters after a considerable delay of 2 years by its letter dated 22.06.1996 (Annexure-6). It is not in dispute that the requisites were soon duly complied with by the petitioner, but then the Board appears to have slept over the matter thus forcing the petitioner to approach this Court for redressal.

15. In the above circumstances the Board is clearly liable for payment of interest for the inordinate delay in making refund of the earnest money to the petitioner.

16. This brings us to the question of the appropriate rate of interest which may be granted to the petitioner.

17. Learned counsel for the petitioner has relied on a decision of this Court

reported in Smt. Mira Mishra, Smt. Aparna Devi and Indrajit Kumar Vs. State of Bihar and Others, in support of his claim for 16% compound interest. The facts of the said decision however, stand on a somewhat different footing. In that case the earnest money of Rs. 6,500/- had been paid by each of the petitioners against the probable cost of building shown at Rs. 50,000/- in terms of the prospectus issued by the Board in 1981. The Board announced that the construction of the houses after acquisition and development of the land would be completed within four years. In 1983 the Board informed that 900 dwelling units of M.I.G. had been completed but however letters of allotment had come to be issued only in December, 2000, after an extraordinary delay of 17 years long. Based on the disposal price required to be paid, the cost had by then escalated and was estimated in the region of Rs. 5,30,000/- which was subject to yet further escalation. In that backdrop, this Court took a serious view of the matter that the Board had completely failed to provide relief in the matter of housing which defeated the very purpose of its existence. In view of the fact that the Board had announced in 1981 itself that the houses would be completed within 4 years time, the exceptional and inordinate delay of 17 years in issuing the letters of allotment could not be justified from any corner, which led this Court to finally award interest @ 10% compounding annually along with Rs. 5,000 as cost of litigation to each of the petitioners therein.

18. Learned counsel for the Board has sought to distinguish the facts of the aforesaid case from those of the instant one, in that primarily the letters of allotment in the instant case had been issued to the petitioner within a reasonable time; no time limit had been fixed nor committed for completion and handing over possession of the house to the petitioner; the petitioner was well aware that the stated price was merely an estimated one liable to escalation; and finally that the Regulations were in force at the time of making of the application and payment of the earnest money being binding on the petitioner as such.

19. Reliance has also been placed on the decision reported in Satya Marandi Vs. The State of Bihar and Others, as well as Bihar State Housing Board Vs. Arun Dakshy, wherein the statutory rate of 5% simple interest has been awarded in terms of Regulation 45 under similar circumstances.

20. I am in agreement with the submissions of the learned counsel for the respondent Board that while an inordinate delay has no doubt occurred in making the refund to the petitioner, the facts of the instant case cannot be placed at par with those obtaining in Smt.Mira Mishra?s case (supra). It is also to be noted that even though the petitioner had complied with all the requisites and formalities in 1996 itself, some part of the delay is attributable to him as well, in approaching this Court for appropriate relief as late as in the year 2000. Moreover, Regulation 45 itself provides for the admissible rates of interest to which the petitioner is statutorily entitled.

21. In the facts and circumstances of this case, therefore, it is held that the petitioner is entitled to simple interest @ 5% in accordance with Regulation 45

on the amount of the entire earnest money of Rs. 15,000/- from the date of its deposit up to the date of refund.

22. The payment of the interest amount shall be made to the petitioner strictly within a period of three months from the date of receipt/production of a copy of this order along with a fresh representation stating the present complete postal address of the petitioner.

23. The writ petition accordingly stands disposed of.

