A KANPUR DEVELOPMENT AUTHORITY

v.

SMT. SHEELA DEVI AND ORS. ETC.

NOVEMBER 28, 2003

B [SHIVRAJ V. PATIL AND D.M. DHARMADHIKARI, JJ.]

Development Authority—Housing Scheme floated in 1978—Tentative cost of MIG Flat fixed at Rs. 48,000—Applications received for such scheme less than total number of flats to be constructed under the scheme—
C *Brochure containing a clause that the price was not to be escalated in excess of 10% of the tentative cost—Construction of flats under the Scheme was completed in 1980—However, flats not allotted to eligible applicants who applied for the scheme—No fault was attributed to the applicants—In 1994 the price of the Flat was increased from Rs. 48,000 to Rs.*
D *2,08,000—Challenge to High Court directing delivery of possession of flats at the cost mentioned in the brochure—Held, valid—The cost of construction of flats was to be determined on the date of the completion of the construction and not on the date of delivering possession - The determination of cost of house/flat or escalation of cost cannot be arbitrary or erratic—*
E *The Development Authority could not enhance the prices for the unforeseen or for compelling reasons beyond control of the Development Authority even as against the terms and conditions contained in. the brochure.*

Appellant floated three housing schemes with financial support from 'HUDCO' "on no profit no loss basis" for Lower Income Group;
F **and Middle Income Group. A brochure was issued showing the cost of each house and terms and conditions of the scheme. Respondents applied for Middle Income Group (the "MIG") and were not allotted the house after more than 18 years for no fault of theirs. The estimated cost of each house was specified in the brochure, which was Rs. 48,000.**
G **The houses were to be allotted among the valid applicants by lottery and on receipt of letter of information of allotment, the applicants had to deposit the balance of the 1/4th of the cost of the house. Thereafter the physical possession of the houses was to be delivered to the allottees and the remaining 3/4th of the cost of the house was to be paid by the**
H **allottees in 48 quarterly installments in 12 years. Out of 111 MIG flats**

only 108 were valid applications so all the applicants were required to be allotted the MIG flats when 1/4th of the cost of the flats were deposited. However, the Appellant chose to include the names of some more persons after the last date, which gave rise to disputes. Some affected applicants filed suits and the court finding fault with the Appellant decreed the suit and directed it to allot the houses to 108 valid applicants keeping 8 houses reserved for the persons who were plaintiffs in those two suits. The appeals filed by the Appellants against the decree passed by the trial court were also dismissed. Instead of complying with the decree, Appellant increased the cost of house from Rs. 48,000 to Rs. 2,08,000 and directed the applicants to deposit further sum of Rs. 40,000 and in case of default the name of such applicant would not be included in the list of lottery for allotment of houses. Some of the Respondents filed Writ Petitions, which were admitted. The High Court quashed the order issued by the Appellant and directed the Appellant to deliver the possession of the houses to the Respondents at the cost fixed in the brochure. Hence these appeals.

It was contended by the Appellant that the High Court failed to appreciate that the Vice Chairman of the Appellant could determine the cost of the houses and the cost fixed by him was reasonable and fair; that the Appellant had brought out the scheme for allotment of houses on 'no profit no loss basis'; that the cost fixed was based on the relevant materials and it was not arbitrary so as to interfere with the same; that it was not open for the High Court to hold that the price of the house fixed was arbitrary and unreasonable without going into the method or the basis for calculating the cost of the house; the delay in allotment of houses was not deliberate or intentional but was because of the long pending litigation in court; that the houses were constructed by raising loans under the HUDCO Scheme; that enormous amount of interest has been paid on the loan amount; and that the appellant had to pay heavy compensation for the acquisition of land.

It was contended by the Respondents that the delay in allotment of houses and delivering possession of the same to the Respondents was on account of the Appellant; the Respondents compiled with every condition of the brochure; the unreasonable stand and the conduct of

A the Appellant was responsible for delay and no blame can be put on the Respondents; that the suits were filed by 8 Plaintiffs and nothing prevented the Appellant from allotting the houses to the Respondents keeping aside eight houses for those Plaintiffs as houses were available in excess of the Applications; that the interim orders in those suits were
B passed in 1981/1982 whereas the Appellants moved the court for vacating the interim order in 1990; that the present Respondents were not parties in those suits; that as per the brochure issued by the Appellant, escalation of cost of houses could not exceed 10%; that the cost of the house should be determined as on the date of completion
C of the houses and not on the date of the allotment or delivering possession of the houses; and that the Respondents were salaried employees having lesser income and they had arranged their financial affairs with a hope to get the houses; that had they been given the possession of the houses in 1981, after its construction, they could have saved money paid by way of rent to houses where they were staying.
D

Dismissing the appeals, the Court

HELD : 1.1. It is not in dispute that the Respondents made applications within the time fixed, satisfied the terms and conditions
E for allotment of houses and they were not the Plaintiffs in the suits filed in 1981/1982. The construction of houses was completed in 1980, the cost of the house was determined as on 24.12.1994. Nothing prevented the Appellant from allotting houses to the Respondents, when the houses were ready for allotment particularly, when houses available were more than the applications received before the last date. For no
F fault on the Respondents, they were made to wait for more than 18 years. As per the brochure the houses were to be allotted through lottery system by drawing lot among the eligible applicants, who got themselves registered through the prescribed format within the time fixed and paid the required money within time. In the MIG Scheme,
G 111 houses were available but the number of applicants were less including the Respondents. Only 8 persons had filed suit in the years 1981/1982. There should have been no difficulty in allotting the houses and delivering possession to the Respondents immediately on their completion in 1980. In that event, the payment of interest on loan said
H to have been taken by the authority would not have arisen. [386-C-F]

1.2 It cannot also be ignored that the Respondents were / are mostly salaried employees having monthly income of Rs. 601 to Rs.1500. They must also have adjusted and arranged their finance and affairs to make payment towards the houses. It may also be kept in mind the allottees were expected to pay the remaining amount after initial deposit in 48 installments. Even having regard to the payment of money in installments, the estimated cost which was fixed at Rs. 48,000 with a clear and express understanding that increase in the cost of the house could be up to 10% of the cost of the house. In the brochure, it is also mentioned that the price of the house mentioned is totally approximate and that the final price of the houses would be determined by the Vice Chairman, on the completion of the houses. Prices of the houses in these cases were determined as on 24.12.1994 as against the express clause that the determination of the final price shall be as on the date of completion of the construction of the houses *i.e.* in the year 1980. As can be seen from the prescribed form of application and rules for payment the increase of the cost of the house can be up to 10%. Further it is clear from the prescribed form of application as filed by the Respondents that the estimated cost of the house is Rs. 48,000, which could exceed up to 10%. [386-F-H; 387-A-C]

1.3. The arguments advanced on behalf of the appellant to the effect that the Vice Chairman has power to determine the prices of the houses and the price determined is binding on the Respondents, runs contrary to brochure. Hence it cannot be accepted. [387-C]

1.4. For no fault of the Respondents they cannot be penalized to pay the cost of construction as determined on 24.12.1994 when the houses were ready in 1980. [387-D]

1.5. The High Court rightly concluded that delay in allotting and in delivering possession of the houses to the Respondents was caused due to the lapse on the part of the Appellant, and, therefore, in the fairness of things, the Appellant should not be allowed to determine unjust and unfair cost of the houses in an arbitrary manner. [388-E]

Delhi Development Authority **v.** *Pushpendra Kumar Jain,* **[1994] Supp. 3 SCC 494 and** *Prashant Kumar Shahi* **v.** *Ghaziabad Development Authority,* **[2000] 4 SCC 120, distinguished.**

A **2. As regards the claim that the Appellant works on no profit no loss basis and it has raised huge loan under the HUDCO scheme for construction of houses and it has to pay heavy interest on the amount of loan raised, the Appellant neither urged nor laid any foundation for this argument before the High Court. No details or particulars were** B **given as to the amount of loan raised and the period for which interest has been paid in respect of the houses constructed which are to be allotted to the Respondents. [388-F-G]**

3. As found, there was delay on account of the Appellant and if that occasioned payment of interest, the respondent cannot be held C **responsible, having regard to the terms and conditions contained in the brochure. This apart, no justifiable case has been made out for escalation of price of the houses in these cases, to say that the Appellant could enhance the prices for the unforeseen or for compelling reasons beyond its control even as against the terms and conditions contained** D **in the brochure. [388-H; 389-A-B]**

4. 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 E **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** F **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 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. [393-C-E]**

G *Indore Development Authority* **v.** *Sadhana Agarawal (Smt.) and Ors.*, **[1995] 3 SCC 1 and** *Bareilly Development Authority* **v.** *Ajay Pal Singh,* **[1989] 2 SCC 116, referred to.**

5. In these cases the tentative cases of houses was fixed at Rs. H **48,000 but the 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 application for allotment of house itself. Contentions of the appellant 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. [393-E-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 913-914 of 1998.

From the Judgment and Order dated 21.5.97 of the Allahabad High Court in c.M.W.P. Nos. 303 and 9478 of 1995.

Vikas Singh and Ms. Amrit Narayan for L.R. Singh for the Appellant.

Ranjeet Kumar, Ms. Bina Gupta, Ms. Rakhi Ray and Ms. Sreedevi Raja for the Respondents.

The Judgment of the Court was delivered by

SHIVARAJ V. PATIL, J. Kanpur Development Authority (KDA) has filed these appeals challenging the correctness and vaiidity of the common order dated 21.5.1997 made by the Division Bench of the High Court in Writ Petitions.

Three schemes were floated by KDA in September, 1978 with financial support of 'HUDCO' "on no profit no loss basis". The three scheme were; (1) For Economically Weaker Section; (2) For lower Income Group and (3) Middle Income Group. Applications were invited in the prescribed form fixing the last date as 29.9.1978. The applications were to be made in the prescribed form along with the earnest money for each category. A brochure was issued showing the cost of each house and terms and conditions of the Schemes. In these cases, we are not concerned with the houses constructed in two other schemes which were allotted to the applicants on the basis of lottery on 25.10.1980 and cost specified in the brochure and the possession of the houses was delivered to them. However, the applicants (respondents herein) in the Middle Income Group were not

A allotted the houses and their applications were kept pending for more than 18 years for no fault of them.

As per the terms and conditions mentioned in the brochure in the MIG Category, the applications were to be made along with the earnest money by 29.9.1978. The estimated cost of each house was specified in the B brochure as Rs. 48,000. The persons whose income was between Rs. 601 to Rs. 1500 per month were eligible for Middle Income Group Houses. The houses were to be allotted among the valid applicants by lottery. After the lottery was drawn and on receipt of letter of information of allotment, the applicants had to deposit balance of the 1/4th of the cost of the house. C Thereafter, physical possession of the houses was to be delivered to the allottees and the remaining 3/4th of the cost of the house *i.e.* Rs. 36,000 was to be paid by the allottees in 48 quarterly installments in 12 years with 11.5% interest as per the brochure. Since there were only 108 valid applications altogether for 111 MIG houses, all the applicants could have D been allotted MIG houses when 1/4th cost of the house was deposited by the applicants as on 31.3.1979, what remained was only to draw a lottery among the 108 valid applicants for the specific houses to each one of the applicants. And thereafter the possession of specified house was to be delivered to each allottee as the constructions of 111 MIG houses were E completed in 1980.

However, KDA chose to include names of some more applicants after the last date *i.e.* 29.9.1978, which gave rise to disputes. Some affected applicants filed suits in 1981/1982. None of these respondents were parties F in those suits.

The court finding fault with the KDA decreed the suit and directed it to allot the houses to 108 valid applicants keeping 8 houses reserved for the person who are plaintiffs in those two suits. The appeals filed by the KDA against the decree passed by the trial court were also dismissed. G Instead of complying with the decree, KDA increased the cost of each houses from Rs. 48,000 to Rs. 2,08,000 by the notification dated 24.12.1994 stating that each applicant had to deposit a further sum of Rs. 40,000 and in case of default the name of the applicant would not be included in the list of lottery for allotment of houses. In these circumstances, some of the H respondents were compelled to file writ petitions.

The writ petitions were admitted and interim orders were issued to include the names of 85 general category applicants in the lottery. In spite of the interim order dated 4.1.1995, KDA again issued a notification on 10.1.1995 stating that the date of lottery had been extended to 17.1.1995.

The lottery was drawn among the 108 valid applications, keeping 8 houses reserved to the plaintiffs in the two suits. In February, 1995, information of allotment was issued to all the allottees along with demand for Rs. 24,000 from each one of them towards first 6th monthly installment. The High Court in the writ petitions stayed this demand. The KDA filed the counter affidavit in the writ petitions taking a stand that it was entitled to escalate the price as per the brochure; the initial price fixed as the cost of the houses, was only tentative; the delay in drawing of lottery and allotment of house was on account of the suits filed and because of the pendency of the cases. According to the KDA, the action taken by it in increasing the cost of the house to Rs. 2,08,000 was quite justified. The Division Bench of the High Court, after detailed consideration of the respective contentions, allowed the writ petitions granting relief to the respondents by quashing the order dated 24.12.1994 of the KDA increasing the cost of the houses and directed it to deliver the possession of the houses to the respondents on the cost fixed in the brochure.

The learned counsel for the appellant urged that the High Court failed to appreciate that the Vice Chairman of KDA could determine the cost of the houses and the cost fixed by him was reasonable and fair; the High Court could not have interfered with such determination of cost. The High Court should have taken into consideration the position that the KDA brought out the scheme for allotment of houses on 'no profit and no loss basis'; the cost fixed was based on the relevant materials and it was not arbitrary so as to interfere with the same; it was not open to the High Court to hold that the price of the house fixed was arbitrary and unreasonable without going into the method or the basis for calculating the cost of the house. The delay in allotment of houses was not deliberate or intentional; it was because of long pending litigation in courts. The learned counsel added that KDA constructed houses by raising loans under the HUDCO Scheme; it has paid enormous amount of interest on the loan raised; it had to pay heavy compensation for acquisition of land.

A On the other hand, the learned senior counsel for the respondents argued fully justifying the impugned order. He submitted that the delay in allotment of houses and delivering the possession of the same to the respondents was on account of the appellant; the respondents complied with the every condition contemplated in the brochure; the unreasonable B stand and conduct of the appellant was responsible for delay and no blame can be put on the respondents in that regard. Two suits were filed in 1981/ 1982 by eight plaintiffs in all. Nothing prevented the appellant from allotting the houses to the respondents keeping aside eight houses for the eight plaintiffs as they were available in excess of the applications. The C appellant moved for vacating the interim order in those suits filed in 1981/ 1982 only in 1990. The present respondents were not parties in those suits. The appeals filed by the KDA against the decree passed in the suits were dismissed on 24.5.1994. The learned counsel further contended that as per the brochure issued by the appellant, escalation of cost of houses could not D exceed 10%; cost of the houses should be determined as on the date of completion of the houses and not on the date of the allotment or delivering the possession of the houses. The appellant has tried to prosecute parallel remedies inasmuch as it filed review petitions before the High Court and special leave petition before this Court against the impugned order. The E respondents were salaried employees having income between Rs. 601 to Rs. 1500 per month; they had arranged their financial affairs with a hope to get houses. Had they been given the possession of the houses immediately after their completion in 1981, they could have saved money paying by way of rent to houses where they were staying. The learned counsel drew our attention to I.A. Nos. 7-8 of 2003 filed by the respondents to take action F against the appellant under Section 340 read with Section 195 of the Code of Criminal Procedure by ordering an inquiry into the offences committed by the appellant under Sections 193, 196, 199, 200, 463, 464, 465, 467, 468, 471 read with Section 120-B of the Indian Penal Code in respect of production of false and fabricated documents and giving false evidence G during the proceedings. In these applications it is specifically averred that the appellant produced a translated copy of the brochure (Annexure A-1) alleging the same to contain the 1978 Scheme for allotment of houses in Mohalla Barra Third Phase, Kanpur. The correct copy (translated) of the brochure that was given to the respondents at the time of application for H the said scheme is filed as Annexure A-2. The original copy in Hindi was

placed before us during the hearing. According to the respondents Annexure A-1 was filed before the High Court by the appellant, which is fake, fabricated and materially different from the true translation of the original brochure and that the said document has been filed by the appellant with oblique motives to thwart/alter the course of justice. It is further stated in these I.As. that the case of the appellant before this Court is based on the premise that "In the brochure Clause 4 relating to payment of price, stipulated that the final price shall be determined by the Vice Chairman of the KDA and that the said price shall be determined by the Vice Chairman of the KDA and the price would be binding on the applicants. The brochure for allotment of houses under the Scheme also provided that the Vice Chairman of the KDA is empowered to alter/change the price/ shape of the houses shown in the brochure and it shall be binding on every applicant". The prayer is made in these I.As. to order for a preliminary inquiry into the offences committed by the persons responsible in the appellant authority during the course of the judicial proceedings and after recording the findings make a complaint to the Chief Judicial Magistrate for the prosecution of the accused persons in accordance with law. During the course of hearing when the original brochure in Hindi was produced on behalf of the respondents the learned counsel for the appellant did not dispute its correctness and authenticity.

We have carefully considered the respective submissions made on behalf of the parties and to appreciate them, it may be necessary to refer to the relevant terms and conditions under different headings contained in the brochure. In the light of the controversy as to the translated copies of the brochures produced by the appellant and the respondents and in view of what is stated above in relation to them the relevant terms and conditions contained in translated copy of the brochure (Annexure A-2) filed along with I.A. Nos. 7-8 on comparison of the same with the original in Hindi, reads :—

"Signature
(L.N. Tripathi) (Rubber stamp)
Head Cleark (Sales)
Kanpur Development Authority

A BURRA HOUSING CONSTRUCTION SCHEME
(financially supported by HUDCO)

Third Phase

B (Application Form)

KANPUR DEVELOPMENT AUTHORITY

Price Rs. 5

C "(Application form for applicant only)

KANPUR DEVELOPMENT AUTHORITY No.:.....
(without putting adverse effect)

Price Rs. 5

D

BARRA HOUSING SCHEME

To:

E Vice Chairman
Development Authority
Kanpur

Sir,

F I/We :..... son/wife of .....apply for a house in the proposed houses under "Barra Gran Nirman Yogna" of Kanpur Development Authority, the estimated cost of which is Rs. 48,000 *(which can also exceed upto 10%)*
G .....”

"SYSTEM AND RULES OF ALLOTMENT OF HOUSES

(8) The Vice-Chairman can change any rule or cn-cancel and
H can make other rule which shall be acceptable to the applicant."

"KANPUR DEVELOPMENT AUTHORITY
BARRA HOUSING CONSTRUCTION SCHEME
Details of House & Rule for Payment

Sl. No.	Category of house	Area of land In sq. mt.	Details of house	Monthly income of family Not exceeding	Sale price of house which can increase upto 10%	Adv. amt. with appli-cation	31.12.78	31.12.79	Qtly. install-ments	Rate of intere-st/year
1	2	3	4	5	6	7	8	9	10	11
1.	.....									
2.	.....									
3.	Middle Income Group	167.20	2 rooms, drawing dinning, Bath & Toilet Room & Lounge	1500	48000	5000	2500	4500	48	11.5%

In the application form as prescribed by the KDA, it is clearly mentioned that the estimated cost of the house in MIG scheme is Rs. 48,000 (which can also exceed up to 10%). There was some controversy with regard to the terms and conditions mentioned in the brochure. It was contended on behalf of the respondents that there was deliberate misrepresentation by KDA before the High Court by filing incomplete and incorrect extract of Brochure. Before us, not only translated copy but original of Brochure in Hindi itself was produced by respondents and there was no controversy as to the terms and conditions in relation to the relevant clauses extracted above. As rightly contended on behalf of the respondents there is no clause 4 in the brochure relating to payment of price on which the appellant claimed that the Vice-Chairman of the KDA has the right to increase the price and fix the final price that would be binding on the applicants. This being the position, the very foundation for increase of the price of houses and justification thereof itself is destabilized and knocked

down. Clause 4 of the brochure is altogether different, which reads:—

> "(4) House category 2 and 3, the interested applicants to deposit full amount of the house, will have to deposit balance of the 1/4th of cost by 31.12.1978. The information of lottery will be sent by registered post on the address mentioned in the application form. The remaining 3/4th of the cost of the house will have to be deposited in cash or by Bank draft in favour of Development Authority within 60 days from the information of lottery given by registered post, otherwise all proceedings regarding allotment will be cancelled and the advance money will be forfeited."

It is not in dispute that the respondents made applications within the time fixed, satisfied the terms and conditions for allotment of houses and they were not the plaintiff in the suits filed in 1981/1982. The construction of houses was completed in 1980, the cost of the house was determined as on 24.12.1994. Nothing prevented the KDA from allotting houses to the respondents, when the houses were ready for allotment. Particularly, when houses available were more than the applications received before the last date. For no fault of the respondents, they were made to wait for more than 18 years. As per the brochure, the house were to do allotted through lottery system by drawing lot among the eligible applicants, who got themselves registered through the prescribed format within the time fixed and paid required money within time. In the instant case in MIG scheme, 111 houses were available but the number of applications were less including the respondents. Only 8 persons had filed suits in the years 1981/1982. There should have been no difficulty in allotting the houses and delivering the possession to the respondents immediately on their completion in 1980. In that event, the payment of interest on loan said to have been taken by the authority would not have arisen. It cannot also be ignored that the respondents were/are mostly salaried employees having monthly income of Rs. 601-1500. They must also have adjusted and arranged their finances and affairs to make payment towards the houses. It may also be kept in mind that the allottees were expected to pay the remaining amount after initial deposit and first installment, in 48 installments. Even having regard to the payment of money in installments, the estimated cost which was fixed at Rs. 48,000 with a clear and express understanding that increase

in the cost of the house could be up to 10% of the cost of the house. In the brochure, it is also mentioned that the price of the houses mentioned is totally approximate and that the final price of the houses would be determined by the Vice Chairman, KDA, on the completion of the houses. Prices of the houses in these cases were determined as on 24.12.1994 as against the express clause that the determination of the final price shall be as on the date of completion of the construction of the houses *i.e.* in the year 1980. As can be seen from the prescribed form of application and rules for payment the increase of the cost of the house can be up to 10%. Further it is clear from the prescribed form of application as filled by the respondents that the estimated cost of the house is Rs. 48,000 which could exceed up to 10%. The argument advanced on behalf of the appellant to the effect that the Vice Chairman has power to determine the prices of the houses and the price determined is binding on the respondents, runs contrary to brochure. Hence it cannot be accepted.

Further for no fault of the respondents they cannot be penalized to pay the cost of construction as determined on 24.12.1994 when the houses were ready in 1980. As can be seen from the impugned order, the High Court has found thus :—

> "It was undesirable conduct of the authority which gave rise to the civil litigation. There were no restraints and constraints for the respondents in drawing the lottery and making the allotments to the genuine applicants even during the pendency of the civil suit and appeal before the District Judge. There is nothing in the counter affidavit to demonstrate that the respondents were under legal obligation to refuse the allotment of the houses to the persons or make delay in allotment of the houses to them. So in absence of a reasonable and sufficient justification preventing the respondents to make allotment in 1979, we feel that the respondents should be blamed for delay in making the allotment."

The High Court has further observed :

> "It may be mentioned that the petitioners deposited the installments under the hope and trust that they will get the houses within the

A time schedule advertised at the initial stage. Much time is elapsed between the registration of the applications for allotment of the houses and actual construction and delivery of possession thereafter. It is worth mentioning that the petitioners might be living in the rented house since 1979 and they might have managed their B financial position in such a manner that after the deposit of the installments they will get the house of their own and thereafter they will be free from payment of house rent and then they will be shifted from the rented house to the allotted house, but on account of inordinate delay in delivery of possession of allotted C house, their financial calculation and expectation stands frustrated causing various types of financial loss to them. On the other hand, once the authorities made offers and the same were accepted by the allottees, with the legitimate exception, the statutory obligation cast upon the authorities to complete the same within the time D schedule mentioned in the offer and if they fail to discharge the same, they should be held responsible for it and not the petitioners."

The High Court finally concluded that delay in allotting and in E delivering the possession of the houses to the respondents was caused due to the lapse on the part of the appellant, and, therefore, in the fairness of things, the KDA should not be allowed to determine unjust and unfair cost of the houses in an arbitrary manner.

We have no good reason to take a different view in the light of what F is stated above. We have to note one more submission made on behalf of the appellant that the appellant works on no loss and no profit basis and it has raised huge loan under the HUDCO scheme for construction of houses and it has to pay heavy interest on the amount of loan raised. The appellant neither urged nor laid any foundation for this argument before G the High Court. No details and particulars were given as to the amount of loan raised and the period for which interest has been paid in respect of the houses constructed which are to be allotted to the respondents.

Further the final price of the houses had to be determined on the date H of their completion. As found, there was delay on account of the appellant

and if that occasioned payment of interest, the respondents cannot be held responsible, having regard to the terms and conditions contained in the brochure. This apart, no justifiable case is made out for escalation of price of the houses in these cases, to say that the appellant could enhance the prices for the unforeseen or compelling reasons beyond control of appellants even as against the terms and conditions contained in the brochure.

The learned counsel for the appellant cited two decisions in *Delhi Development Authority* v. *Pushpendra Kumar Jain,* [1994] Supp. 3 SCC 494 and *Prashant Kumar Shahi* v. *Ghaziabad Development Authority,* [2000] 4 SCC 120, in support of his submissions. In our view both the decisions do not help the appellant when we look at the facts of those cases and the views expressed therein.

In the case of *Delhi Development Authority* (supra) the facts were that Delhi Development Authority (DDA) published a scheme called "Registration Scheme of New Pattern, 1979 of intending purchasers of flats to be constructed by Delhi Development Authority" providing a procedure for allotment of flats. In the brochure, clause (11) provided schedule of payment. Clause (14) was to the effect that "it may please be noted that the plinth area of the flats indicated and 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.". The Court took notice that there were always more applicants than the number of flats available. The DDA had been adopting the method of draw of lots among the registered applicants to select the allottees. The writ petition was filed by one of the allottees because between the date on which lots were drawn and the date on which the allotment was communicated to the respondent, the land rates were revised by the DDA by the circular dated 6.12.1990, as there has been substantial enhancement of land rates in the region of about 50 to 70%. Since the allotment was made ot allottee on January 9/13, 1991, he was called upon to remit the amount on the basis of revised land rates as aforesaid. The Division Bench of the High Court accepted the plea of the allottee writ petitioner. This Court, allowing the appeal filed by the DDA, found fault with two reasons given by the High Court:(1) Though the draw was held on 12.10.1990, the allotment-cum-demand letter was issued to the respondent only on January 9/13, 1991. This delay was the result of inefficiency of the DDA, and (2) as the issue

A of allotment-cum-demand letter was delayed in the office of DDA, it cannot charge the revised land rates to the respondent inasmuch as the respondent became entitled to get the flat on 12.10.1990; the revision of land rates subsequent to the draw of lots cannot effect the respondent. This Court held that there was no legal basis for holding that the respondent B obtained the vested right to allotment on the draw of lots as the system of drawing of lots was resorted to with a view to identify the allottee; it was not the allotment by itself. 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 draw of lots. The scheme did not say so C either expressly or by necessary implication. On the contrary clause (14) made provision for modification or revision of cost of construction, etc. On facts it was also found that there was no unreasonable delay or inefficiency on the part of the DDA. Further, the validity or justification of the revision of land rates by circular dated 6.12.1990 was not questioned in the writ petition. But in the present case the facts are entirely different. D On facts it is found that there has been unreasonable and unjustified delay on the part of the appellant in allotting and delivering the possession of the houses. The clause in regard to determination of price is not similar to clause (14) in the aforementioned case of DDA. The cost of escalation could not exceed 10% of the tentative cost. The cost of construction of E house in these cases on hand was to be determined as on the date of the completion of the construction of the house and not on the date of delivering possession of the house. Unlike in the case of DDA it was not the case of revision of land rates alone, that too in the absence of any circular indicating revision of cost of land before allotment or delivery of F possession of houses.

The case of *Prashant Kumar Shahi,* aforementioned, is also of no help to the appellant. It supports the case of the respondents. This Court held that if the authority is found to be responsible for the delay in delivery of G the possession of the plots in terms of the agreement arrived at or according to the assurance given in the brochure, the allottee cannot be burdened with the interest on the balance amount not paid by him. But on the facts of that case fault was found with the allottee in reagard to the delay in payment. As already recorded above, in these appeals, with which we are H concerned, delay was on account of the appellant. authority itself.

The learned counsel for the respondents in support of his submissions cited the decision of this Court in *Indore Development Authority* v. *Sadhana Agarwal (Smt) and Others.*, [1995] 3 SCC 1. In the facts and circumstances of that case having regard to the reasons for the increase in the cost no interference was called for by the High Court. Further, the High Court was justified in saying that in such circumstances, the authority owed a duty to explain and satisfy the court, the reasons for such high escalation. The High Court has to be satisfied on the materials on record that the authority has not acted in an arbitrary or erratic manner. In the said decision reference is made to two earlier decisions of this Court including the case of DDA aforementioned. In paragraph 9 it is stated, thus :—

> "9. This Court in the case of *Bareilly Development Authority* v. *Ajai Pal Singh,* [1989] 2 SCC 116, 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 for the Authority intimating the revised cost of the houses/flats and the monthly installment rates which were almost double 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 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. Recently, the same question has been examined in the case of *Delhi Development Authority* v. *Puspendra Kumar Jain.* In

respect of hike in the price of the flats, it was said : (SCC p. 497, Para 8)

> "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 draw 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 revisions/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 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 in 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 had to be satisfied on the materials on record that the Authority has not acted in an arbitrary or erratic manner."

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 is these cases the tentative cost of houses was fixed at Rs. 48,000 but final cost was determining at Rs. 2,08,000. This increase is not mere escalation but it is a multiplication by almost four and half time, 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.

As to the complaint that the appellant having filed review petition before the High Court seeking review of the impugned judgment could not prosecute parallel remedy by filing SLP in this Court, the learned counsel for the appellant was not in a position to say as to what happened to the review petition filed in the High Court. In our view it may be unnecessary to say anything further on this aspect in the view we have taken and are

A disposing of these appeals themselves on merits. As regards the prayer made by the respondents in I.As. 7-8 we do not think it necessary to probe further in these proceedings. Hence no orders are required to be passed in these I.As.

B Thus having regard to the facts found and in view of what is stated above, we cannot find fault with the conclusions arrived at by the High Court in the impugned judgment. Hence, finding no merit in these appeals, they are dismissed but with no order as to costs.

R.K.S. Appeals dismissed.