SECRETARY, BHUBANESWAR DEVELOPMENT AUTHORITY

V.

SUSANTA KUMAR MISHRA

Civil Appeal No. 605 Of 2009

JANUARY 30, 2009

[R.V. RAVEENDRAN AND J.M. PANCHAL, JJ.]

Contract: Parties bound by terms of agreement – Demand for any amount due in terms of the unchallenged terms of agreement does not furnish a cause of action to approach the consumer forum – On facts, lease-cum-sale agreement executed in 1991, two years after the original date of allotment – Term of agreement was that lessee in case of default or delay in payment of instalment dues would pay interest @ 15% p.a. from the date when same fell due – Lessee started paying instalments from 1991 – Development authority charged interest on the instalments amount for the period 1989-91 – Justification of – Held: Justified – Charging of interest from the original date of allotment was in accordance with the agreement –Lessee not entitled to contend that the instalments should commence only prospectively.

Consumer Protection Act, 1986: s.2(c) – Deficiency in service – Refusal to execute sale deed by the Development Authority, until amount due was paid – Held: Does not amount to deficiency in service.

Interest: Interest on interest – When the defaulted instalment is subjected to interest, the interest component of defaulted instalments is also subjected to interest – Charging of such interest, on the interest part of the instalment, on default in payment of the instalment, at a reasonable rate from the date of default, cannot be termed as charging of compound interest in regard to entire dues.

A The appellant-authority allotted MIG house to the respondent, as per letter of allotment dated 1.5.1991. A lease-cum-sale agreement was entered between them on 6.5.1991. The agreement stipulated the price of the house to be Rs.1.39 lacs. After deducting the amount paid by B the lessee towards the price (on 29.6.1990), it permitted the lessee to pay the balance in 52 quarterly instalments of Rs.1957/70 each commencing from 1.9.1989. The said clause gave the option to the lessee to convert the lease into a sale on completion of payment of all the instalments C by paying a commitment charge of Rs.200/-. The agreement also required the lessee to pay an annual rent of Rs.24/90 during the period of lease commencing from 1.9.1989. Clause (6) of the agreement further stipulated that in the event of default in paying any instalment or other dues on the due date, the lessee would pay interest D @ 15% per annum on the defaulted instalments/dues from the date when the same fell due.

On execution of the Lease-cum-Sale Agreement, the respondent took possession of the house on 9.5.1991 and E commenced paying the instalments from June, 1991. He paid the last 12 instalments in a lump sum on 5.7.2001. The appellant by letter dated 1.12.2001 informed the respondent that he was still due in a sum of Rs.57,175/-. On 27.12.2001, the respondent applied to the appellant for ex- F ecution and registration of a sale deed claiming that he had paid all the instalments. The appellant informed the respondent that until the sum which was due was paid, the sale deed would not be executed.

Respondent filed complaint before District Forum, G which was dismissed holding that refusal to execute a sale deed until the amount due was paid, was not a deficiency in service. State Commission partly allowed the appeal and directed the respondent to pay Rs.20,000/- to the appellant in full and final settlement of the dues and H directed the appellant to execute the sale deed on receipt

of such amount. The said decision was upheld by National Commission. A

In appeal to this Court, appellant-authority contended that it charged interest strictly in accordance with the terms of the lease agreement and that charging of interest @ 15% per annum on delayed instalments in terms of the agreement was not illegal. B

Allowing the appeal, the Court

HELD: 1.1. There is no requirement in the lease-cum-sale agreement to pay interest, if the instalments were paid on the due dates. Only if the lessee committed default in paying any instalment or other dues, interest at 15% per annum was payable by the lessee, on the defaulted instalments/dues from the date of default to date of payment under clause 6 of the agreement. Charging interest under clause (6) from the date of default to date of payment on the defaulted amount is unexceptionable and does not amount to charging of compound interest as wrongly assumed by the State Commission and National Commission. [Para 5] [157-B, C] C D E

1.2. When the defaulted instalment in entirety is subjected to interest, the 'interest' component of the defaulted instalment is also subjected to interest. To that limited extent, there may be charging of interest upon interest. Charging of such interest, on the interest part of the instalment, on default in payment of the instalment, at a reasonable rate from the date of default, cannot be termed as charging of compound interest in regard to the entire dues. It is only a provision to ensure that the dues (instalments) are paid promptly and avoid misuse of the concession given by permitting payment in instalments. But for such a provision, lessees/allottees who have already been given possession, will be tempted to delay payments, thereby leading to continuous defaults. A statutory development authority, working on no profit no loss F G H

A basis, can ill afford to permit such continuous defaults by lessees/allottees, which will paralyse their very functioning, thereby affecting future developmental activities for the benefit of other members of the general public. Therefore a provision for interest as contained in clause
B 6 of the lease-cum-sale agreement is neither inequitable nor in terrorem. Where the basic rate of interest is itself very high, or where interest is charged on the entire price instead of charging interest on the reducing balance, when working out the equated instalments, or where the
C rate of interest on default is punitively excessive, the position may be different. But no such case is made out by the respondent. [Para 6] [157-F, G, H; 158-A, B, C]

1.3. If the facts are examined, it becomes evident that the sum of Rs.57,175/- was not due on account of charg-
D ing compound interest. Though the allotment was made on 1.5.1991 and the lease-cum-sale agreement was signed on 6.5.1991, clause (2) of the lease-cum-sale agreement contained a rather unusual condition that the quarterly instalment of Rs.1957/70 would commence from 1.9.1989,
E which is a date 28 months prior to the date of allotment and lease-cum-sale agreement. The reason for such a provision was that the last date for applications and allotment of houses under the scheme had expired in the year 1989 and the allotment rate of the house had been worked
F out with reference to 1989. The respondent had applied belatedly on 29.6.1990 and in the normal course, would not have obtained any allotment. In fact, appellant, by letter dated 19.12.1990, informed the respondent that no house was available for allotment. But subsequently,
G when some houses under the MIG scheme became available on account of default or other reason, the appellant issued an letter dated 1.5.1991 to the respondent allotting MIG. Having regarding to the terms of the scheme, it became necessary to require the lessee to pay the earnest money deposit and the instalments with reference
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to the original date stipulated for allotment, namely, 1.9.1989. Therefore, when the lease-cum-sale agreement was executed on 6.5.1991, the respondent was required to pay the original allotment price in quarterly instalments of Rs.1957/70 with effect from 1.9.1989 to avoid revising the allotment price. This meant that when the agreement was executed on 6.5.1991, the respondent had to pay the initial payment and instalments which had fallen due between 1.9.1989 and 6.5.1991 and also pay the interest thereon at 15% per annum from the respective due dates, under clause (6). But the respondent started paying the quarterly instalments of Rs.1957/70 as if such instalments commenced prospectively only after the agreement dated 6.5.1991, and not from 1.9.1989. He paid the first instalment only on 25.6.1991. There was thus an accumulated default in regard to the payments due between 1.9.1989 and 6.5.1991 on which interest was payable under clause (6). There were also some delay in paying the subsequent instalments. If the Development Authority charged interest for the defaulted/delayed instalments, in accordance with the lease-cum-sale agreement, the respondent could not object to the same. Therefore, the orders of the State Commission and National Commission are not justified. [Para 7] [158-E, F, G, H; 159-A, B, C, D, E]

2. The case of the respondent in its complaint was that the interest could not be charged from September, 1989 as the allotment was made only on 1.5.1991 followed by the lease-cum-sale agreement on 6.5.1991 and delivery of possession on 9.5.1991. The respondent did not protest against the provisions of clauses (2) and (6) of the lease-cum-sale agreement requiring payment of instalments with effect from 1.9.1989 and took possession of the house in terms of the said agreement. Therefore, he could not be heard to say that the instalments should commence only prospectively. The District Forum rightly held that charging of interest by the appellant from

A **1.9.1989 in accordance with clause (6) of the agreement and insisting upon payment of dues before executing the sale deed, did not amount to deficiency in service. But the State Commission and National Commission acted on wrong assumptions. Further, any fora under the Con-**
B **sumer Protection Act, 1986 before granting any relief to a complainant, should be satisfied that the complaint relates to any of the matters specified in section 2(c) of the Act, and that the complainant has alleged and made out either unfair or restrictive trade practice by a trader, or**
C **defects in the goods sold, or any deficiency in a service rendered, or charging of excessive price for the goods sold, or offering of any goods hazardous to life and safety without displaying information regarding contents etc. If none of these is alleged and made out, the complaint will**
D **have to be rejected. When a lessee signs without protest an agreement agreeing to pay interest at a given rate from a given date in given circumstances, and does not contend that the term relating to instalments or interest is invalid or inequitable, it is not open to the consumer forum to grant any relief. A demand for any amount due in terms**
E **of the unchallenged terms of an agreement, does not furnish a cause of action to the lessee/allottee to approach the consumer forum. On payment of the balance amount due, the appellant shall execute the sale deed, if it is not already executed. [Para 8] [159-F, G, H; 160-A, B, C, D, E]**

F CIVIL APPELLATE JURISDICTION : Civil Appeal No.605 of 2009

From the Judgement and Order dated 08.05.2007 passed by the National Consumer Disputes Redressal Commission,
G New Delhi in Revision Petition No. 1431 of 2007

Janaranjan Das, Swetaketu, Mishra, P.P. Nayak for the Appellant.

In-Person for the Respondent.

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The order of the Court was delivered by A

R. V. RAVEENDRAN J.,

Leave granted. The respondent who appears in person, in response to the notice informing the hearing date, has requested that his presence may be dispensed with and his written submissions (reply with copies of the documents) may be treated as his arguments and matter may be disposed of. We have heard the learned counsel for appellant and considered the contentions of the respondent in his written submissions. B

2. The appellant (Bhubaneshwar Development Authority) allotted MIG house bearing No. M-19, to the respondent, as per letter of allotment dated 1.5.1991. A lease-cum-sale agreement was entered between the appellant and the respondent on 6.5.1991. Clause (2) of the agreement stipulated the price of the house to be Rs.139,215/40. After deducting the payment of Rs.37,415/- made by the lessee towards the price (on 29.6.1990), it permitted the lessee to pay the balance of Rs.101,800/40 in 52 quarterly instalments of Rs.1957/70 each commencing from 1.9.1989. The said clause gave the option to the Lessee to convert the lease into a sale on completion of payment of all the instalments by paying a commitment charge of Rs.200/-. Clause (3) of the agreement required the lessee to pay an annual rent of Rs.24/90 during the period of lease commencing from 1.9.1989. Clause (6) of the agreement stipulated that in the event of default in paying any instalment or other dues on the due date, the lessee shall pay interest at the rate of 15% per annum on the defaulted instalments/dues from the date when the same fell due. C D E F

3. On execution of the Lease-cum-Sale Agreement, the respondent took possession of the house on 9.5.1991 and commenced paying the instalments from June, 1991. He paid the last 12 instalments (No.41 to 52) in a lump sum on 5.7.2001. The appellant by letter dated 1.12.2001 informed the respondent that he was still due in a sum of Rs.57,175/-. On 27.12.2001, the respondent applied to the appellant for execution and reg- G H

istration of a sale deed claiming that he had paid all the instalments. The appellant sent a reply dated 30.1.2002 informing the respondent that until the sum of Rs.57,175/- which was due was paid, the sale deed could not be executed. A calculation sheet showing how Rs.57,175/- was found to be due was also furnished.

4. Feeling aggrieved, the respondent approached the District Consumer Forum, Khurda alleging deficiency of service. He sought a direction to the appellant to execute the sale deed without insisting upon the payment of Rs.57,175/-. He also claimed Rs.60,000/- as compensation from the appellant. The District Forum by the order dated 27.10.2003 dismissed the complaint holding that refusal to execute a sale deed until the amount due was paid, was not a deficiency in service. The respondent filed an appeal before the State Consumer Disputes Redressal Commission, Cuttack. The State Commission by its order dated 21.12.2006 allowed the appeal in part and directed the respondent to pay a lump sum of Rs.20,000/- to the appellant in full and final settlement of the dues and directed the appellant to execute the sale deed on receipt of such amount. The appellant filed a revision before the National Consumer Disputes Redressal Commission, New Delhi, challenging the reduction in the amount payable, as arbitrary and contrary to the terms of contract. The National Commission dismissed the revision by a short order dated 8.5.2007 observing that the appellant could not charge compound interest and therefore, the order of the State Commission was just and equitable and did not call for interference. Feeling aggrieved the appellant has filed this appeal by special leave.

The appellant contends that it charged interest strictly in accordance with the terms of the lease agreement. It contends that charging of interest at the rate of 15% per annum on delayed instalments in terms of clause (6) of the agreement was not illegal.

5. We find considerable force in the submission of the ap-

pellant. The lease-cum-sale agreement shows the 'price' of the house as Rs.139,215/40. After adjusting Rs.37,415/- paid by the respondent, the balance of Rs.101,800/40 was made payable in 52 quarterly instalments commencing from 1.9.1989. There is no requirement to pay interest, if the instalments were paid on the due dates. Only if the lessee committed default in paying any instalment or other dues, interest at 15% per annum was payable by the lessee, on the defaulted instalments/dues from the date of default to date of payment under clause 6 of the agreement. Even when there was default, neither the instalments that were already paid on the due dates, nor the instalments which were yet to fall due, were subjected to interest under clause (6) of the agreement. Charging interest under clause (6) from the date of default to date of payment on the defaulted amount is unexceptionable and does not amount to charging of compound interest as wrongly assumed by the State Commission and National Commission.

6. Even if we assume that the price of Rs.139,215.40 stipulated in the lease-cum-sale agreement included, in addition to the cost of the plot and the construction of the house, interest thereon, the position will be no different. Each equated instalment would then have a principal component and interest component. As the equated instalments would include interest on the principal only up to the due date of instalment, whenever there is a default, there can be no dispute that the 'principal' part of the instalment could be subjected to interest from the date of default to date of payment. It is no doubt true that when the defaulted instalment in entirety is subjected to interest, the 'interest' component of the defaulted instalment is also subjected to interest. To that limited extent, there may be charging of interest upon interest. Charging of such interest, on the interest part of the instalment, on default in payment of the instalment, at a reasonable rate from the date of default, cannot be termed as charging of compound interest in regard to the entire dues. It is only a provision to ensure that the dues (instalments) are paid promptly and avoid misuse of the concession given by permit-

A ting payment in instalments. But for such a provision, lessees/ allottees who have already been given possession, will be tempted to delay payments, thereby leading to continuous defaults. A statutory development authority, working on no profit no loss basis, can ill afford to permit such continuous defaults by B lessees/allottees, which will paralyse their very functioning, thereby affecting future developmental activities for the benefit of other members of the general public. Therefore a provision for interest as contained in clause 6 of the lease-cum-sale agreement is neither inequitable nor in terrorem. Where the basic C rate of interest is itself very high, or where interest is charged on the entire price instead of charging interest on the reducing balance, when working out the equated instalments, or where the rate of interest on default is punitively excessive, the position may be different. But no such case is made out by the re- D spondent.

7. If the facts are examined, it becomes evident that the sum of Rs.57,175/- was not due on account of charging compound interest. Though the allotment was made on 1.5.1991 and the lease-cum-sale agreement was signed on 6.5.1991, E clause (2) of the lease-cum-sale agreement contained a rather unusual condition that the quarterly instalment of Rs.1957/70 would commence from 1.9.1989, which is a date 28 months prior to the date of allotment and lease-cum-sale agreement. The reason for such a provision was that the last date for appli- F cations and allotment of houses under the scheme had expired in the year 1989 and the allotment rate of the house had been worked out with reference to 1989. The respondent had applied belatedly on 29.6.1990 and in the normal course, would not have obtained any allotment. In fact, appellant, by letter dated 19.12.1990, informed the respondent that no house was avail- G able for allotment. But subsequently, when some houses under the MIG scheme became available on account of default or other reason, the appellant issued an letter dated 1.5.1991 to the respondent allotting MIG House No.M-19. Having regarding to the terms of the scheme, it became necessary to require the les- H

see to pay the earnest money deposit and the instalments with reference to the original date stipulated for allotment, namely, 1.9.1989. Therefore, when the lease-cum-sale agreement was executed on 6.5.1991, the respondent was required to pay the original allotment price in quarterly instalments of Rs.1957/70 with effect from 1.9.1989 to avoid revising the allotment price. This meant that when the agreement was executed on 6.5.1991, the respondent had to pay the initial payment and instalments which had fallen due between 1.9.1989 and 6.5.1991 and also pay the interest thereon at 15% per annum from the respective due dates, under clause (6). But the respondent started paying the quarterly instalments of Rs.1957/70 as if such instalments commenced prospectively only after the agreement dated 6.5.1991, and not from 1.9.1989. He paid the first instalment only on 25.6.1991. There was thus an accumulated default in regard to the payments due between 1.9.1989 and 6.5.1991 on which interest was payable under clause (6). There were also some delay in paying the subsequent instalments. If the Development Authority charged interest for the defaulted/delayed instalments, in accordance with clause (6) of the lease-cum-sale agreement, the respondent could not object to the same. We are therefore of the view that the orders of the State Commission and National Commission are not justified.

8. The case of the respondent in its complaint was that the interest could not be charged from September, 1989 as the allotment was made only on 1.5.1991 followed by the lease-cum-sale agreement on 6.5.1991 and delivery of possession on 9.5.1991. He also contended that there was no provision for payment of any interest by the lessee as clause (6) of the agreement was applicable only in the event of default and he had not committed any default. It should be noted that the respondent did not protest against the provisions of clauses (2) and (6) of the lease-cum-sale agreement requiring payment of instalments with effect from 1.9.1989 and took possession of the house in terms of the said agreement. Therefore, he could not be heard to say that the instalments should commence only prospectively.

A The District Forum rightly held that charging of interest by the appellant from 1.9.1989 in accordance with clause (6) of the agreement and insisting upon payment of dues before executing the sale deed, did not amount to deficiency in service. But the State Commission and National Commission acted on wrong B assumptions. Further, any fora under the Consumer Protection Act, 1986 ('Act' for short) before granting any relief to a complainant, should be satisfied that the complaint relates to any of the matters specified in section 2(c) of the Act, and that the complainant has alleged and made out either unfair or restrictive C trade practice by a trader, or defects in the goods sold, or any deficiency in a service rendered, or charging of excessive price for the goods sold, or offering of any goods hazardous to life and safety without displaying information regarding contents etc. If none of these is alleged and made out, the complaint will have D to be rejected. When a lessee signs without protest an agreement agreeing to pay interest at a given rate from a given date in given circumstances, and does not contend that the term relating to instalments or interest is invalid or inequitable, it is not open to the consumer forum to grant any relief. A demand for any amount due in terms of the unchallenged terms of an agree- E ment, does not furnish a cause of action to the lessee/allottee to approach the consumer forum.

9. Consequently, we allow this appeal, set aside the orders of the State Commission and National Commission and F restore the order of the District Forum. We, however, make it clear that on payment of the balance amount due, the appellant shall execute the sale deed, if it is not already executed.

D.G. Appeal allowed.