

A DELHI DEVELOPMENT AUTHORITY

v.

P.R. SAMANTA

(Civil Appeal No. 3 OF 2003)

B JULY 21, 2015

[VIKRAMAJIT SEN AND SHIVA KIRTI SINGH, JJ.]

Monopolies and Restrictive Trade Practices Act, 1969 – s. 55 – Appeal under – Scheme for allocation of self financing society flats – Rejection of allotment offer by respondent-allottee – Refund of registration amount alongwith 7% interest in terms of the offer document – However, respondent claiming interest @ 15% pa in place of 7% pa – Respondent's case that interest paid on registration amount was less than the rate at which the applicants are to be charged in case of delay/default – Award of interest @ 12% pa on the registration amount as also Rs.5,000/- towards litigation charges by Commission – Correctness of – Held: Order passed by the Commission is against law and unjustified – Commission erred in compensating the respondent with a higher rate of interest – In absence of relevant pleadings and evidence it cannot be presumed that appellant resorted to any unfair trade practice or increased its price unreasonably or made unreasonable earnings by investing the registration amount in accounts bearing higher interest – Relevant provision in the Brochure of the scheme by itself does not appear to be unreasonable in allowing interest @ 7% p.a. – Order passed by the Commission set aside.

Allowing the appeal, the Court

HELD: 1.1 The Commission erred in interfering with the contractual rate of interest in absence of any finding

against the actions and orders of the appellant. The judgment and order under appeal indicates no material for coming to the impugned finding that payment of interest on the registration amount should not be less than one charged from the applicants when they commit a default. A default clause is introduced to deter any delay or default and hence, such penalty is by its very nature a deterrent one. That by itself offers a reasonable justification for the appellant to charge a higher rate of interest in the case of delay/default. So far as interest on the registration amount is concerned, it stands on a different footing. In absence of relevant pleadings and evidence it cannot be presumed that the appellant has resorted to any unfair trade practice as defined under Section 36A or has increased its price unreasonably or made unreasonable earnings by investing the registration amount in accounts bearing higher interest. The relevant provision in the Brochure of the 1985 scheme by itself does not appear to be unreasonable in allowing interest @ 7% p.a. Thus, the order of the Commission awarding interest at the rate of 12% per annum on the registration amount and also award of Rs.5000/- towards litigation charges is against law and unjustified, thus, set aside. [Paras 10, 11] [781-G-H; 782-A-C, F-G]

CIVILAPPELLATE JURISDICTION: Civil Appeal No. 3 of 2003.

From the Judgment and Order dated 20.08.2002 of the Monopolies and Restrictive Trade Practices, Commission, New Delhi in Compensation Application No. 367 of 1997.

Manika Tripathy Pandey for the Appellant.

The Judgment of the Court was delivered by

SHIVA KIRTI SINGH, J. 1. This statutory appeal under

- A Section 55 of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as 'the Act') is directed against judgment and order dated 20.08.2002 passed by the Monopolies and Restrictive Trade Practices Commission, New Delhi (hereinafter referred to as 'the Commission') in
- B Compensation Application No.367/97 preferred by the sole respondent.

2. In view of controversy arising for determination being very limited and confined to reasonableness of rate of interest payable on refund of registration amount, it is not necessary to delve deeper into the facts. Suffice to note that the appellant Delhi Development Authority is a statutory body constituted under the Delhi Development Act, 1957. It is entrusted with the planned development of Delhi and claims to function on a
- D No Profit No Loss basis in the matter of providing subsidized housing to different income groups. The appellant invited applications from eligible members of the general public during the period May 1985 to August 1985 in a scheme described as Sixth Self Financing Housing Registration Scheme, 1985.
- E The respondent deposited the requisite sum of Rs.15000/- and by filing application became a member of that scheme. In due course the appellant released a scheme for allocation of self financing society flats. Pursuant to advertisements published by the appellant the respondent vide his application
- F dated 27.02.1991 opted for a flat at either of three locations, namely, (1) Sarita Vihar, (2) Kondli Gharoli and (3) Narela. He was allotted a flat at Narela but the offer was declined by the respondent on 27.10.1991.

- G 3. In the year 1995 under a similar fresh scheme the persons who had registered with the appellant were required to indicate their preferences for upto 14 localities mentioned in the Brochure Annexure 'A' and 'B'. The advertised terms and conditions clarified that the registrants not indicating their
- H preferences for 14 localities will be allocated/allotted flats which

would be available after accommodating the preferences and choices of the registrants applying in terms of advertisement and the allotment would be through draw of lots. The respondent gave his preference only for 6 localities. He could not be accommodated against any of his 6 preferred localities but as per draw of lots he was allotted a flat in Dwarka. On receipt of the allotment letter dated 14/22.03.1995 the respondent through his letter dated 17.5.1995 declined the offer on the ground that the allotment was not as per his preferences. He demanded the registration deposit of Rs.15000/- made in 1985 along with an interest @ 15% p.a. in place of 7% p.a. indicated in the scheme and the Brochure on the ground that the deposit would have earned a minimum of 15% interest if it was deposited in a Class I company.

4. The appellant chose to accept the proposal for cancellation of allotment made by the respondent but it refunded the registration amount along with only 7% interest in terms of the offer document which had been accepted by the respondent and was thus the rate finalized by agreement between the parties.

5. The respondent in his complaint before the Commission filed on 29.6.1997 raised two-fold grievances which have been noted by the Commission in paragraph 3 of the impugned judgment. The first grievance was against the levy of cancellation charges and penalty when the flat allotted to him was not in the 6 localities for which he had indicated his preference. The second grievance of the respondent was that the interest paid on the registration amount is at a rate lower than the rate at which the applicants are to be charged in case of delay/default.

6. After noticing the relevant provisions in the Brochure for 1985 scheme the Commission found no merit in the first grievance of the respondent since clause 5.5 of the Brochure

A made it clear that allotment of flat as per preference would depend on its availability and it was not the case of the respondent that inspite of availability of flats in the localities preferred, the same was not allocated to the applicant.

B 7. The Commission thereafter considered the next grievance in respect of rate of interest in the penultimate paragraph of the judgment which reads as follows :

C “The applicant’s main grievance is against the payment of the interest on the registration amount, which is less than the one charged from the applicants when in default. I find substantial force in this plea of the applicant and would award interest @ 12% per annum on the registration amount as against the one paid by the Respondent authority. The rate of interest at 12% per annum is considered to be reasonable and equitable and has also been awarded in other cases in the similar circumstances. The applicant is also awarded a sum of Rs.5,000/- towards litigation charges which the Respondent is directed to pay.”

E 8. Inspite of notice the respondent has not chosen to appear nor he has filed any counter affidavit. We have heard learned counsel for the appellant and perused the relevant materials on record including the order under appeal.

F According to learned counsel for the appellant when the main grievance of the respondent in respect of levy of cancellation charges and penalty was not found acceptable by the Commission and when the Commission found nothing wrong in the action of the appellant in the light of declared policy and

G contract governing the matter at hand, it should not have enhanced the contract rate of 7% interest over registration amount on the singular ground that it was less than the one charged from the applicants when in default. According to learned counsel for the appellant the Commission was wholly

H unjustified in interfering with the contractual terms and

conditions and directing the appellant to pay a higher rate of interest at 12% p.a. on the specious plea that such rate in the consideration of the Commission was reasonable and equitable and had been awarded in some other cases. The award of litigation charges of Rs.5000/- was also seriously contested when the Commission had not found any action of the appellant to be unfair, monopolistic or increasing the cost of production unreasonably. A B

9. The Act was enacted with the object of preventing the concentration of economic power to the common detriment, for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices and for matters connected therewith or incidental thereto. It has now been replaced by the Competition Act, 2002. The terms 'monopolistic trade practice' as well as 'restrictive trade practice' have been defined and undoubtedly the Commission had the jurisdiction and power to inquire into any restrictive trade practice or any monopolistic trade practice in view of Section 10 of the Act and also into unfair trade practice as stipulated in Section 36A. C D E

10. Considering the submissions advanced on behalf of the appellant as well as the discussion and reasonings in the impugned order in respect of rate of interest, we find sufficient merit in the submissions advanced on behalf of the appellant. The Commission has clearly erred in interfering with the contractual rate of interest in absence of any finding against the actions and orders of the appellant. Without returning a finding that there was any unfair trade practice or any restrictive/ monopolistic trade practice pursuant to inquiry under the provisions of the Act, the Commission clearly erred in compensating the respondent with a higher rate of interest. Even the basis for grant of higher interest is without discussion of any material. The judgment and order under appeal indicates no material for coming to the impugned finding that payment of interest on the registration amount should not be less than F G H

- A one charged from the applicants when they commit a default. A default clause is introduced to deter any delay or default and hence such penalty is by its very nature a deterrent one. That by itself offers a reasonable justification for the appellant to charge a higher rate of interest in the case of delay/default. So
- B far as interest on the registration amount is concerned it stands on a different footing. In absence of relevant pleadings and evidence it cannot be presumed that the appellant has resorted to any unfair trade practice as defined under Section 36A or has increased its price unreasonably or made unreasonable
- C earnings by investing the registration amount in accounts bearing higher interest. The relevant provision in the Brochure of the 1985 scheme by itself does not appear to be unreasonable in allowing interest @ 7% p.a. It is relevant to
- D indicate here that nothing has been brought to our notice which may show that the registration amount is to remain locked for any fixed term or that the appellant can refuse an application for cancellation of registration at an early stage or even before draw of lots for allotment/allocation of flats. In such a situation
- E it is not possible to infer that the registration deposits must reasonably be kept in long term fixed deposits with a view to earn higher interests. In any case such aspects had to be pleaded and proved by the respondent before the Commission but that has not been done leading to absence of requisite
- F findings.

11. Accordingly, we find the impugned order of the Commission awarding interest at the rate of 12% per annum on the registration amount and also award of Rs.5000/- towards litigation charges to be against law and unjustified.

G The impugned judgment and order is therefore set aside. The appeal stands allowed. However, in the facts of the case the appellant shall itself bear its cost of litigation.