

A
ALOK SHANKER PANDEY
v.
UNION OF INDIA AND ORS.

FEBRUARY 15, 2007

[S.B. SINHA AND MARKANDEY KATJU, JJ.] B

Interest:

Interest on interest—Installments paid for seeking allotment of flat—Flat not allotted—Claim for refund of the installments along with interest—Respondent authority refunded amount without interest—Commission ordered payment of interest @ 12% p.a.—Appeal for higher interest—Held, in the facts of case, interest @ 12% p.a. was appropriate—However as interest was not paid along with the refund amount, respondent authority directed to pay interest at the same rate on the interest amount from the date of refund of installments till date of payment. C D

Appellant applied for a flat in 1994. He paid all the installments as demanded. On finding that there is no likelihood of availability of flat in the near future, he made demand of the amount paid along with interest @ 21% p.a. The amount was refunded to the applicant in the year 2001 without any interest. He claimed compensation by filing an application under S.12B of Monopolies and Restrictive Trade Practices Act, 1969. The Commission held that it is a clear case of deficiency of services on the part of the respondent authority and that the appellant was not only deprived of return on his investment made with the respondent but also the possession of the flat promised to him. The Commission directed the respondent to pay 12% p.a. interest on the installments from the dates of the payment till the date of refund. The present appeal is filed claiming interest at a higher rate. E F

Disposing of the appeal, the Court

HELD: Interest is not a penalty or punishment at all, but it is the normal accretion on capital. Equity demands that borrower should not only pay back the principal amount but also the interest thereon to the lender. There is no hard and fast rule about how much interest should be granted and it all depends on the facts and circumstances of each case. The grant of interest of 12% G

A per annum is appropriate in the facts of this particular case. However, since interest was not granted to the appellant along with the principal amount the respondent should in addition to the interest at the rate of 12% per annum also pay to appellant interest at the same rate on the aforesaid interest from the date of payment of installments by the appellant to the respondent till the date of refund on this amount, and the entire amount must be paid to the appellant within two months. [Para 8, 9] [740-A, B, C, D]

Renusagar Power Co. Ltd. v. General Electric Co., [1994] Suppl. 1 SCC 644, referred to.

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1598 of 2005.

From the Order dated 13.9.2004 of the MRTP Commission in C.A. No. 193/2001.

Parag Tripathi, Deepti Rajpal and Dr. Kailash Chand for the Appellant.

D Mohan K. Parasaran, A.S.G., Ashok K. Srivastava, P. Parmeshwaran (for D.S. Mahra) Reena Singh and Neelam Singh for the Respondents.

The Judgment of the Court was delivered by

E **MARKANDEY KATJU, J.** 1. This appeal has been filed against the order passed by the Monopolies and Restrictive Trade Practice Commission, New Delhi (hereinafter referred to as "the Commission") dated 13.9.2004 in C.A. No.193 of 2001.

2. Heard learned counsel for the parties and perused the record.

F 3. The case of the appellant is that after applying for a flat under the "Indira Puram Housing Scheme" in the year 1994, a reservation letter dated 30th March, 1994 was received by him and he was asked to pay seven installments on the specified dates. The amount as well as the dates on which the installments were to be paid was mentioned therein. The applicant started paying the installments as demanded. Subsequently, he opted out for a **G** **HIG** flat, which was also allotted to him vide letter dated 17th May, 1994. No additional demand was asked for in the second letter. The installments were duly paid as demanded. Thereafter, nothing was heard from the respondent side for almost five years. After finding that there is no likelihood of the flat to be made available to him in the near future, the applicant was left with no **H** alternative but to demand his amount paid along with interest at the rate of

21% per annum. The amount was refunded to the applicant in the year 2001 without any interest as asked for. The applicant thus suffered losses on account of unfair trade practices adopted by the respondent, hence he sought compensation from the respondent by filing an application under Section 12B of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as "the Act").

4. In response to the notice issued under Section 12B of the Act, the respondent filed its reply. The defence of the respondent was that as the full payment of Rs.6,64,000/- (estimated cost) as indicated in the reservation letter was not paid, the possession of the flat was not handed over to him. The refund as requested, on the other hand was issued to him promptly. There was no deficiency of service as alleged in the application and as such the Compensation Application should be dismissed.

5. It is not disputed that the installments as mentioned in both the reservation letters, were paid on the specified dates as indicated therein. It is also not disputed that though the estimated cost was indicated at Rs. 6,64,000/-, the same was not worked out till the year 1998 when the first camp was held, in respect of allotment of such flats. The respondent also made no efforts to issue demand letters in respect of the remaining amount subsequent to the year 1995 when the last installment was paid. On the other hand, the applicant was given an assurance that the possession of the flat would be given to him in the near future. The applicant, therefore, had no alternative but to ask for refund of the amount as deposited. The respondent on its side has no explanation for either not demanding the remaining amount or handing over the possession of the flat. Even the averments of the applicant that the house is not yet ready has not been strongly refuted. Thus it is a clear case of deficiency of services on the part of the respondent. As a result of such unfair trade practices, the applicant has not only been deprived of return on his investment made with the respondent authority but also the possession of the flat promised to him.

6. Considering the above facts, the Commission directed the respondent to pay 12% per annum interest on the installments from the dates of the payment till the date of refund. This appeal has been filed claiming interest at a higher rate.

7. Learned counsel for the appellant Shri Parag P. Tripathi referred to various decisions in which this Court has granted higher rate of interest e.g. *Renusagar Power Co. Ltd. v. General Electric Co.*, [1994] Supp. 1 SCC 644.

A 8. We are of the opinion that there is no hard and fast rule about how much interest should be granted and it all depends on the facts and circumstances of the each case. We are of the opinion that the grant of interest of 12% per annum is appropriate in the facts of this particular case. However, we are also of the opinion that since interest was not granted to the appellant along with the principal amount the respondent should then in addition to the interest at the rate of 12% per annum also pay to appellant interest at the same rate on the aforesaid interest from the date of payment of installments by the appellant to the respondent till the date of refund on this amount, and the entire amount mentioned above must be paid to the appellant within two months from the date of this judgment.

C 9. It may be mentioned that there is misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal amount but also the interest thereon to B.

E 10. With these observations the impugned judgment is modified and the appeal is disposed of accordingly.

D.G.

Appeal disposed of.