

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2849/2009

CHANDIGARH HOUSING BOARD

Appellant(s)

VERSUS

NARESH KANT

Respondent(s)

WITH

CIVIL APPEAL NO.2845/2009

WITH

CIVIL APPEAL NOS. 1974-1975/2012

WITH

CIVIL APPEAL NO.2844/2009

WITH

CIVIL APPEAL No. 2846/2009

WITH

CIVIL APPEAL No. 2847/2009

WITH

CIVIL APPEAL No. 2848/2009

WITH

CIVIL APPEAL NO. \_\_\_\_\_ OF 2023

(@ SPECIAL LEAVE PETITION (CIVIL) NOS.12680-12682/2016)

WITH

CIVIL APPEAL NO. \_\_\_\_\_ OF 2023

(@ SPECIAL LEAVE PETITION (CIVIL) NO.12683/2016)

## O R D E R

1. Leave granted in SLP (C) Nos.12680-12682/2016 and SLP (C) No.12683/2016.
2. The appellant before this Court in these connected appeals is the Chandigarh Housing Board, which has a statutory function to bring and execute housing schemes in Chandigarh, which it is mandated to do under Section 20 of the Haryana Housing Board Act, 1971. This would involve land acquisition, construction of dwelling houses, bring new streets and other ancillary infrastructure, which has to be done within the planning scheme of the Chandigarh Administration.
3. Under this prevailing system a scheme was floated by the Housing Board, *inter alia*, for constructing category III and category IV flats.

For category III flats, the total number of flats were 264 which were to be constructed with an average covered area of 1043 sq. ft. On the other hand, for category IV flats, the total number of flats were 504 which were to be constructed with an average covered area of 709 sq. ft. Accommodation for Category III flats included One living-cum-dining, one kitchen, two bedrooms with a toilet, W.C., scooter garage, stairs and ramps. Whereas, Category IV flats included one living room, one kitchen, one bedroom,

W.C., bath, scooter garage, stairs & ramps.

4. The total estimated cost as per the brochure for category IV flat was Rs.1,50,000/- and for category III flat it was Rs.2,25,000/-. Learned counsel appearing for the appellants has taken us through the scheme of the brochure and the undertaking given therein, where the entire amount had to be paid on a hire purchase basis, with the monthly instalments to be fixed by the Board. The possession of the flats were given in the year 1994.

All the same, subsequently the prices were increased from Rs. 1.55 lakhs to Rs.2.66 lakhs for category IV and Rs. 2.2 lakhs to Rs.3.71 lakhs for category III. Not only this, the allottees allege that the area that was ultimately handed over to them was reduced, though this is strongly contested by the appellant's counsel. We have been given different figures on this by the rival parties, but presently we are not getting into this dispute.

5. The increase in the price of the flats was, however, resented by many of the allottees. The case of the allottees is that what was finally allotted to them was not only a much smaller space, but on a much higher price as well. It is also true that instead of constructing 13 towers (with 24 flats in four stories) the appellant constructed 19 towers (with 24 flats in four stories).

Ultimately, the allottees/respondents filed their writ petitions before the Punjab and Haryana High Court which came up before the learned Single Judge and were decided on 04.03.1994. The challenge of the allottees was primarily against the increase of the price of the flats which were being given to them under the Hire Purchase Scheme of the Board. After hearing the rival contentions, the learned Single Judge was of the opinion that though there is a definite increase in the price of the flat, yet the fact also remains that the Board has given its justification for making this increase - such as the increase in the price of the raw material such as cement, iron, labour cost etc. All this necessitated a consequential increase of the price and it was liable to be paid by the allottees, held the learned Single Judge. The Writ Petitions were hence, dismissed.

6. Letters Patent Appeals were filed against this order and after hearing both the parties, the Division Bench was of the opinion that since the admitted case being that the price advertised by the Board was much less than the price which was ultimately demanded, it could only have been done after hearing the allottees. Since this was not done, the matter was sent to the Board for a decision after hearing the parties concerned, where the Board had to

justify as to why and how it has increased the price of the flats. This order of the Division Bench is now challenged before this Court. The order of the Division Bench of the Punjab & Haryana High Court was stayed by this Court on 24.11.2006. Leave was subsequently granted and the matter has now come up for final hearing today.

7. We have heard Ms. Rachana Joshi Issar learned counsel appearing for the appellant and Mr. P.S. Patwalia, learned Senior Advocate for the respondents at length.

8. This matter has remained pending before this Court since 2006. The order of the Division Bench was stayed way back on 24.11.2006. In the year 2005, when the Letters Patent Appeal was disposed of by the Division Bench of the Punjab and Haryana High Court, it was simply with a direction to the Board to re-determine the price of the flats after hearing the allottees. This simple issue which should have been resolved much earlier remained pending for seventeen long years.

9. It would be now in the interest of everyone to bring a quietus to the entire dispute, particularly considering the size of the flats, the scheme floated by the Board and the allottees belonging to either low-income group or middle-income group, who have all undergone a long litigation.

10. We have gone through the findings of the learned Single Judge in C.W.P. No.7563/1993 where an elaborate discussion has been made by the learned Single Judge justifying the increase in the price of the flats on most counts made by the Board. Primarily the increase in price of raw materials and labour costs seems to be the reason. Therefore, the enhanced price which has been fixed by the Board cannot be said to be arbitrary, and there was a provision in the Brochure in any case for increase in the price depending upon contingencies. The learned counsel for the Board has also taken us to the terms and conditions of the brochure where it has been clearly stipulated that the price of the flat can increase due to given contingency. We may particularly note as under:

"1. The Chandigarh Housing Board reserves the right to increase or decrease the number of flats depending upon the actual feasibility at site during the course of construction. Similarly, the Board also reserves the right to change the facilities and specifications shown in the various plans appended to the brochure. The Board also reserves the right to make variations in the sizes of the individual rooms and over-all covered areas as per actual construction. The various plans as given in the brochure are for the general information and for guidance of the intending purchasers of these flats. The Board further reserves the right to make modifications in the design, scope of work, specifications and price without assigning any reasons. The land will be on lease-hold

basis on the prescribed terms and conditions laid down in the Capital of Punjab (Development and Regulations Act, 1952 and Rules and Regulations made thereunder from time to time.

2. The above terms and conditions will be followed in general but Chandigarh Housing Board reserves the right to alter any of these as and when considered necessary."

(emphasis supplied)

11. Although there are rival claims as to the ultimate area of the plot which was to be given to the allottees, inasmuch as the allottees would argue that the area has shrunk but it is denied by the appellant, we are not getting into this controversy at this stage, as we have already indicated that we want to give a quietus to the entire dispute.

12. Learned counsel appearing for the appellants has cited *Premji Bhai Parmar and Others vs. Delhi Development Authority and Others*, (1980) 2 SCC 129, wherein this Court had held that fixation of price is a job of the executive, which is done by an expert body and the Court may not interfere in the matter as far as fixation of price is concerned. We have no quarrel with this submission.

13. Learned counsel for the appellant would also argue that the respondents cannot be exempted from the responsibility of paying interest, which is otherwise

liable to be paid, as another decision cited is of this Court in *Prashant Kumar Shahi vs. Ghaziabad Development Authority*, (2000) 4 SCC 120. We are totally with the Board inasmuch as the pricing or the rate of interest being charged by them.

14. Under the facts and circumstances of the case, we are not interfering with the amount of price fixed by the Board, which is a statutory body and mandated to bring out Housing Scheme *inter alia* for the lower income group of the society. But we are definitely concerned with the penal interest which is presently being charged, that too at the rate of 24% or may be even more. The learned Senior Counsel for the respondents Mr. P.S. Patwalia would refer to *Indore Development Authority vs. Sadhana Agarwal (Smt.) and Others*, (1995) 3 SCC 1, wherein the cost of dwelling houses (flats) which were to be constructed for Lower Income Group was increased from the initially projected or estimated cost and even though the allottees in occupation of the flats had not been able to pay the increased amount, this Court, while considering similar facts as are there before us, had reduced the interest which was being charged from 15 % to 6 % simple interest.

15. In our considered opinion, in the present case we



are neither interfering with the increased prices nor with the interest being charged on the capital paid by each of the allottees as a part of the Hire Purchase Agreement. We are only concerned with the penal interest being charged and more particularly the rate at which it is being charged.

16. Mr. Patwalia, learned Sr. Advocate contends that at least no penal interest may be charged, considering the facts of the case. On the other hand, the learned counsel for the appellant Ms. Joshi would argue that the entire penal interest is liable to be charged, considering the conduct of the respondents who have not paid the instalments even after taking possession. Considering the entire gamut of the facts which are already narrated above, we are of a considered view that 24% (or even higher) of penal interest is definitely not justified. In order to do complete justice and in exercise of our powers under Article 142 of the Constitution of India, we, therefore, reduce the penal interest to 9%. The rest of the cost is not interfered with.

Let the penal interest be paid at the rate of 9% only. Appeals are disposed of on the above terms.

Pending application(s), if any, shall stand disposed of.

I.A. No.44787/2019 - Application for substitution, I.A. No.61208/2019 - Application for condonation of delay in Substitution and I.A. No.87468 of 2019 - Application for setting aside abatement in Civil Appeal Nos.1974-1975 of 2012

Delay in filing application for substitution is condoned. Abatement is set aside.

Application for substitution is allowed.

.....J.  
(SUDHANSHU DHULIA)

.....J.  
(SATISH CHANDRA SHARMA)

NEW DELHI  
NOVEMBER 22, 2023

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

**CIVIL APPEAL NO(S).2849/2009**

**CHANDIGARH HOUSING BOARD****Appellant(s)****VERSUS****NARESH KANT****Respondent(s)****WITH****C.A. No. 2845/2009 (IV)****C.A. No. 1974-1975/2012 (IV)****IA No. 104130/2023 - SUBSTITUTED SERVICE)****C.A. No. 2844/2009 (IV)****C.A. No. 2846/2009 (IV)****C.A. No. 2847/2009 (IV)****C.A. No. 2848/2009 (IV)****SLP(C) No. 12680-12682/2016 (IV-B)****SLP(C) No. 12683/2016 (IV-B)****IA No. 1/2016 - CONDONATION OF DELAY IN FILING****IA No. 2/2016 - CONDONATION OF DELAY IN REFILING /  
CURING THE DEFECTS)****Date : 22-11-2023 This appeal was called on for hearing  
today.****CORAM : HON'BLE MR. JUSTICE SUDHANSHU DHULIA  
HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA****For Appellant(s) Mrs. Rachana Joshi Issar, AOR  
Ms. Nidhi Tewari, Adv.  
Mr. Svarit Uniyal Mishra, Adv.****For Respondent(s) Mr. P.S. Patwalia, Sr. Adv.**

Mr. Ashok K. Mahajan, AOR

Mr. Pranab Kumar Mullick, AOR  
Mrs. Soma Mullick, Adv.  
Ms. Banani Sikdar, Adv.  
Mr. Sebat Kumar Deuria, Adv.  
Mr. Anil Rana, Adv.

Mr. R. P. Sharma, AOR

Mr. R. S. Manhas, Adv.  
Mr. Hitesh Kumar, Adv.  
Mr. Shashank Gaurav, Adv.  
Mr. Sanjay Maurya, Adv.  
Mr. Sujit Kumar Jha, Adv.  
Mr. Satish Hooda, Adv.  
Mr. Ravi Panwar, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted in SLP (C) Nos.12680-12682/2016 and  
SLP (C) No.12683/2016.

Appeals are disposed of in terms of the signed  
order.

Pending application(s), if any, shall stand  
disposed of.

(KAVITA PAHUJA)  
COURT MASTER (SH)

(RENU BALA GAMBHIR)  
COURT MASTER (NSH)

[Signed order is placed on file]