

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No 1094 of 2013

IN

Civil Writ Jurisdiction Case No 14005 of 2006

- =====
1. Bihar State Housing Board, Through Its Managing Director, Bihar State Housing Board
 2. Secretary, Bihar State Housing Board, Sardar Patel Road, Patna - 15
 3. Manager Estate, Bihar State Housing Board, Sardar Patel Road, Patna - 15
 4. The Executive Engineer, Bihar State Housing Board, Ph Division, Patna
 5. Assistant Engineer, Bihar State Housing Board, Sub-Division, Arrah, District Bhojpur

.... Appellant/s

Versus

Padma Devi Wife Of Sri Kalika Prasad Resident Of Railway Colony, Neal Mal Godown, P.S. Chowk, Patna City, District Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr Ram Shankar Pradhan Sr Advocate with
Mr Pankaj Maijorwar, Advocate

For the Respondent/s : N O N E

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 15-07-2016

IA No 6328 of 2013 has been filed to condone the delay
in filing the appeal.

For the reasons mentioned in IA No 6328 of 2013, delay
in filing the appeal is condoned.

IA No 6328 of 2013 stands disposed of.

We have heard learned counsel for the appellants and

perused the judgment and the records. We are not inclined to interfere.

The writ petitioner-respondent had applied for allotment of a house under MIG plan under self-financing scheme in which she was required to pay the consideration amount in installments. Having waited for several years and having found that there was hardly any construction done much less as per schedule and the flat would not be ready for delivery in time or even in near future thereafter, she stopped paying installments and asked for refund. The Housing Board, after making a deduction of 20% on account of premature withdrawal, refunded the said amount but did not pay any interest. The Writ Court ordered refund of earnest money with 5% interest. Housing Board is aggrieved by this and filed this appeal.

In our view, if one party (Housing Board) is unable to perform its part of the contract, it cannot insist upon the other party (purchaser) to perform the entire agreement in letter and spirit. Admittedly, there being a default on part of the Housing Board, the writ petitioner had a right to withdraw and ask for full refund with full interest. In spite of this, the Writ Court has only granted interest on the earnest money. Whatever little relief that the writ petitioner got, the Housing Board wants to snatch this away in this appeal. We are not impressed.

The appeal is devoid of merit and is dismissed accordingly.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-

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