

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18985 of 2013

1. (A) Saraswati Roy, W/o Late Mathura Nath Roy
(B) Rasmi Sharma, D/o Late Mathura Nath Roy, W/o Manoj Kumar Sharma
(C) Priya Priyadarshani, D/o Late Mathura Nath Roy, W/o Saday Kumar Mishra
(D) Nivedita Rani, D/o Late Mathura Nath Roy, W/o Saroj Kumar
(E) Prabhat Kumar, son of Late Mathura Nath Roy
(F) Pranav Kumar, S/o Late Mathura Nath Roy

All Resident of 6 MF, 1/29, Bahadurpur Housing Colony, Bhoot Nath Road, P.S. Agamkuan, District Patna

... .. Petitioner/s

Versus

1. The Bihar State Housing Board 6, Sardar Patel Marg, Patna -15 through its Managing Director
2. The Managing Director, Bihar State Housing Board, 6, Sardar Patel Marg, Patna- 15
3. The Revenue Officer, Bihar State Housing Board, 6, Sardar Patel Marg, Patna- 15
4. The Manager Of Estate, Bihar State Housing Board, 6, Sardar Patel Marg, Patna- 15
5. The Executive Engineer, Bihar State Housing Board, Patna Division- 2, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. K.N. Singh, Sr. Advocte Mr. Prabhat Kumar, Advocate
For the Respondent/s	:	Mr. Lalit Kishore, Sr. Advocate Mrs.Binita Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 03-05-2019

Heard learned counsel for the petitioner and learned counsel appearing on behalf of the respondents.

2. The issue involved in this writ petition relates to execution and registration of the final deed of lease in respect of Flat No. 6 MF,1/29, Bahadurpur Housing Colony, Bhoot Nath



Road, Patna after quashing the order dated 26.8.2013 passed by the Executive Engineer, Bihar State Housing Board, Patna Division- 2, Patna, respondent No. 5, whereby and whereunder the allotment of the flat has been cancelled.

3. The original applicant died before registration. The second generation died after allotment and now the 3rd generation is before this Court raising the issue of price fixation of the flat by the Bihar State Housing Board.

4. It is the second round of litigation. In the first round of litigation Late Mathura Nath Roy filed CWJC No. 3924 of 1996 for a direction to the Bihar State Housing Board to allot one MIG house or to execute the final deed of agreement/lease of Flat No. 6 MF 1/29. During the pendency of the writ petition, the Housing Board executed agreement on 5.8.1997, which was registered on 6.8.1997. In the agreement the tentative price was indicated as Rs. 80,350/- and 20% of the same was calculated at Rs. 16,070/- for the initial deposit by the petitioner.

5. Clause 4 (a) of Annexure-5 is relevant for the present dispute as the entire controversy hinges around the right of the Housing Board to realize the actual price and the liability of the petitioner under the agreement for allotment of the flat. Clause 4 (a) reads as follows:-



“4.(a). That the total disposal price indicated above is according to the present estimate and hence tentative. Increase in the cost of the construction or development or due to increase in cost of land acquisition due to any decision/award of Court of law or legislation or due to increase in the cost due to final valuation or calculation or otherwise as per the decision of the Board shall be payable by the settlee either in instalments thereof or in lump sum within the period decided by the Board. The settlee shall under no circumstances be entitled to demand any accounts relating to the cost or question or dispute it and this shall be fixed by the Board in its sole discretion.”

6. The tentative cost was Rs. 80,350/- out of which 20% was deposited at the time of agreement. The relevant facts for the purpose of deciding the present writ petition is set out below.

7. The Bihar State Housing Board invited application for allotment of MIG flats under the Retired Government Servant Quota and Late Shree Nath Roy, the father of the original petitioner, applied and allotted a flat on 20.10.1984 but before that date Shri Nath Roy died. When the original petitioner learnt that allotment was not made in the name of his mother after death of his father, he approached the Housing Board for correction that



in the meanwhile the mother of the original petitioner also died on 30.6.1986. After the death of the father and mother of the original petitioner, he applied for substitution and after series of correspondences on 31.8.1996 the Housing Board intimated the original writ petitioner that the name of the petitioner would be substituted provided he is ready to pay the present price and he was asked to execute Ekrarnama with new condition regarding allotment of the flat. Aggrieved by the aforesaid communication of the Housing Board the original petitioner filed CWJC No. 3924 of 1996 with a prayer that direction may be issued to the Housing Board to allot the flat on the same terms and conditions as incorporated in the allotment letter dated 20.10.1984. During the pendency of the writ petition on 8.7.1997 the Revenue Officer, respondent No. 3 intimated the petitioner that his name has been substituted in place of his late father and the original petitioner was asked to execute the Ekrarnama on the same terms and conditions, which was terms and conditions of the original allotment dated 20.10.1984. After the letter dated 8.7.1997, on 5.8.1997 the agreement was executed which was registered on 6.8.1997. As mentioned above, the agreement is indicative of the fact that the tentative price of the flat was Rs. 80,350/- and the original petitioner was required to pay the balance amount after



payment of 20% initial amount in 180 instalments with the condition that the price is tentative and final price shall be determined by the Housing Board. In view of the aforesaid development, CWJC No. 3924 of 1996 has lost its relevance and as such the petitioner had withdrawn the writ petition on 11.8.1997.

8. The original petitioner kept on paying installments and had paid 181 installments. In the present case the respondents asserted that the petitioner has not paid the installment within time and as such he was liable to pay interest/ penalty on delayed payment of installment, whereas the petitioner asserted that after payment of the entire installments he requested the Managing Director and the Revenue Officer to execute and register the deed in favour of the petitioner. The request was made on 13.9.2012 and reminder was also sent on 19.12.2012. The petitioner received letter dated 27.6.2013 issued by the Executive Engineer, Bihar State Housing Board, respondent No. 5, demanding Rs. 16,05,964/-. On objection being raised by the petitioner against the fresh demand, the respondents have cancelled the allotment of the petitioner vide letter dated 26.8.2013 and asked to vacate the flat.



9. In the aforesaid backdrop of development the original petitioner filed the present writ petition for a direction to the respondents to direct the respondents to execute and register the final deed of lease of flat No. 6 MF, 1/29 after setting aside the cancellation of allotment. The petitioner has enclosed Annexure-6 series to indicate that instalments were paid by the petitioner within time. During the pendency of the writ petition, original petitioner Mathura Nath Roy died on 26.6.2015 and the names of his heirs and legal representatives were substituted on 19.8.2015.

10. On behalf of the respondents 1 to 5 a counter affidavit has been filed on 19.12.2013 in which stand has been taken that petitioner was liable to pay as per the calculation chart the revised cost of flat as on 31.12.2013. Paras 9 and 14 of the counter affidavit is relevant for the purpose of deciding the present writ petition which are quoted below:-

“9. That it is submitted that the petitioner vide his letter dated 01.08.1995 and 20.07.1995 requested the Board for transfer of allotment in his name. Thereupon the Board vide letter no. 3616/Aa dated 31.08.1996 informed the petitioner that transfer can be done on deposit of required amount on the basis of current valuation.

14. That as per calculation chart the revised cost of flat as on 31.12.2013 is Rs.



16,03,005.80 which includes interest, penalty in delayed payment of instalments and dues of instalments.”

11. In the counter affidavit stand has been taken that the original petitioner agitated the matter before the Pricing Committee. On 30.1.2014 a supplementary counter affidavit was filed on behalf of the respondents in para-3 they have taken the stand that in the 181st meeting on 30.4.1998 revised price of the flat under the scheme was fixed at Rs. 3,58,800/- and a notice to that effect was affixed on the notice Board. In para-7 the stand was taken that demand of Rs. 8,43,990/- was raised as on 31.1.2008 and again on 26.5.2011 demand was made for Rs. 12,64,887.33 as on May, 2011 and again demand was made for Rs. 12,77,793.07 upto June, 2011 and vide letter dated 28.9.2011 demand was made for Rs. 13,09,295.95 upto September, 2011 and thereafter vide letter dated 26.8.2013, Annexure-11 the allotment of the petitioner was cancelled. In the supplementary affidavit reference was made to Clause 24/C of the agreement and stand has been taken that the petitioner has to pay the escalation of price along with interest as the flats were constructed after borrowing the loan from HUDCO and the Board has to pay the interest on the amount of loan.



12. In the second supplementary counter affidavit in para-5 it has been admitted that the petitioner had challenged the demand in CWJC No. 3924/1996. The Board thereafter executed the purchase agreement on 6.8.1997 and handed over possession on the same day i.e. 6.8.1997. In para-6 they took the plea that the flat in question was completed in 1996-97 and on that date the tentative cost was Rs. 3,58,800/-.

13. It is significant to note that the tentative price kept on changing from time to time. At the time of allotment the tentative price was Rs. 80,350/-. instead of finalizing the final cost the Board came out with a case that again they determined the tentative price and not final price and they fixed the tentative price as Rs. 3,58,800/- after the execution of the agreement and handing over the possession. The Court failed to understand the purpose of fixing tentative price after execution of agreement and handing over possession fixing another tentative price after the flat was completed and possession was handed over to the petitioner is beyond comprehension. The Court also failed to understand that notice was pasted on the notice Board of the office of the Board as if every allottee is required to visit the Housing Board and to see the notice Board every day to understand the development in the Housing Board. This device of the Board is not proper. Referring



to the document Annexure-I to the 2nd supplementary counter affidavit, it is evident that on 30.4.1998 the tentative cost of flat was determined by the Housing Board in its 181st meeting as Rs. 3,58,800/-. The decision purportedly taken on 30.3.1998 was not communicated rather the respondents in the 2nd supplementary counter affidavit has stated that the petitioner was informed by letter dated 20.12.2007 and thereafter the petitioner was communicated about the dues against the flat in question. Referring to the calculation chart the Board has tried to justify their claim. Thus, it is an admitted position that Housing Board maintained golden silence for 9 long years.

14. The Housing Board thereafter filed 3rd supplementary counter affidavit on 8.12.2015 enclosing a calculation chart till 31st August, 2013 to say that Rs. 15,38,511/- was payable by the petitioner towards the price of the flat. The 4th supplementary counter affidavit has been filed by the Housing Board on 28.1.2016 to demonstrate that letter dated 20.12.2007 was sent to the petitioner by registered post and on 20.12.2017 the amount payable was calculated as Rs. 8,35,036. In continuation of the earlier counter affidavit the Housing Board kept on filing one after another supplementary counter affidavits. The 6th supplementary counter affidavit was filed on 12.1.2017 to indicate that the flat



was constructed after borrowing the loan amount from HUDCO. Para-5 and 6 of the 6th of the supplementary counter affidavit is relevant for the purpose of deciding the present writ petition, which is quoted hereinbelow:-

“5. That it is stated that the expenses made in project of construction of 288 Middle Income Group flats at Bahadurpur, Patna from the loan given by HUDCO in agenda No. 9 of Supplementary agenda of Bihar State Housing Board in its 181st meeting dated 30.04.1998 and for full development & according to Section 47 of the Bihar State Housing Board Act, 1982, the price per unit till 31.03.1998 was determined as Rs. 3,58,800/-. The interest was determined as 12.5% on the basis of loan taken under the scheme.

6. That it is stated that the initiation of the said scheme was made in the year 1979-80 and the said scheme was completed in the year 1996-97. The possessions to the allottees during the construction were being given through lottery system.”

In para-11 of the said supplementary counter affidavit stand has been taken by the Housing Board that on the basis of revised value the price was calculated by mathematical calculation of Back Value, so that the advance amount deposited by the allottee



can be given effect of Time Value of money on the tentative date. On that basis the revised value on 31.3.1998 is Rs. 3,58,800.00 and when charged interest of 12.25% on the date of allotment in the month of May, 1984 it comes to Rs. 72,163.97 only. The said cost is adjusted with the advance amount and interest as calculated on the rest amount,. Therefore, the Board reminded the allottee for payment of amount of other installments etc. and, therefore, the statement was made that whatever installment are paid to the Board it was obligatory on the part of the allottee to keep on contacting the Housing Board to know the latest development and make payment of revised price with interest accordingly.

15. On behalf of the petitioner a rejoinder affidavit has been filed in which firstly, it is stated that the petitioner was not informed about the calculation, demand and the revised price and secondly, the flat in question was constructed in 1986-87 and not in 1996.

16. On behalf of the petitioner a written notes of arguments has been filed in the present writ petition and after incorporating the relevant dates and events following submissions have been made in the written notes of argument.

“B. Submissions made on behalf of the petitioners.



i. No valid reasons, as per the clause-4(a) of the agreement entered between the Housing Board and the original petitioner, has been assigned by the respondent Housing Board in its counter affidavit for escalation after 1997. Besides, a policy decision was taken by the Housing Board for allotment of flats on “no profit-no loss” policy and the cost of land as well as construction cost has already been paid, on the basis of which price of the flat in question was fixed by the Housing Board. As such there was no occasion for issuance of increased demand.

ii. Petitioner was never informed regarding the alleged escalation of price in the year 1998, although in the year 2006 some dues was demanded but on objection it was withdrawn (Annexure-15, Page-204). Even Annexure-C of the Counter Affidavit does not say anything about price escalation as observed by this Hon’ble Court in order no. 6 dated 19.12.2013 passed in the present case in support of their contentions.

C. The petitioner relied upon the following case laws :-

i. 2006 (4) PLJR 264 (Shiv Sahay Verma Vs. The State of Bihar)

(Affirmed by the Division Bench reported in 2008 (2) PLJR 384)

ii. 2008(2) PLJR 384 (The Bihar State Housing Board & Others Vs. Shiv Sahay Verma)

iii. 2008(1) BBCJ 324 (Smt. Shanti Verma & Ors. Vs. The State of Bihar & Ors.)

iv. A wed copy of CWJC No. 9391 of 2011 (Most. Sawari Devi Vs. The State of Bihar & Others) affirmed in LPA No. 1027 of 2016.



v. A web copy of LPA No. 1027 of 2016 (The Managing Director, Bihar State Housing Board and others Vs. Most Swari Devi).

17. On behalf of the Housing Board an exhaustive written notes of argument has been filed which is quoted below for ready reference.

“Written Arguments on behalf of respondent Nos. 1 to 5:

Prayers in the Writ petition:

That the present writ petition has been filed praying to quash letter No. 1028 dated 26.8.2013 by which the allotment of Flat No. 6 MF, 1/29 situated at Bahadurpur Housing Colony, Patna has been cancelled. The second prayer in the writ petition is to direct the respondents to execute and register the final lease deed with respect to the said flat.

Pleadings of the petitioners and the Bihar State Housing Board:

1. That in support of the above prayers the petitioners have pleaded in the writ petition and supplementary affidavit as well as their rejoinders the following facts.

(a) That the Bihar State Housing Board vide letter No. 3648 dated 20.10.1984 (Annexure 1 to the writ petition at Page 18) allotted the above flat No. 6MF, 1/29 in the name of the father of the original petitioner i.e. Nath Roy. However as his father and later on his mother died therefore he requested the Board to transfer the said flat in his



name to which request the Board vide letter No. 3616 dated 31.8.1996 (Annexure 2 to the writ petition at Page 22) informed him that his said request would be allowed on the condition that agreement for the said flat would be entered into on payment of the cost after present valuation of the said flat.

(b) That the original writ petitioner filed CWJC No. 3924 of 1996 challenging the above letter No. 3616 dated 31.8.1996 and the said flat be allotted on the same terms and conditions as contained in the allotment letter No. 3648 dated 20.10.1984 and possession thereof be handed over. During pendency of the said writ petition the Board issued letter No. 3352 dated 8.7.1997 (Annexure 3 to the writ petition at Page 22) by which it recalled its impugned letter No. 3616 dated 31.8.1996 and allowed the request for transfer of name of the original petitioner. The Hon'ble Court noting the fact of Board issuing the said letter dated 8.7.1997 on 11.7.1997 was pleased to grant two weeks time for the Board to execute agreement in terms of allotment letter No. 3648 dated 20.10.1984.

(c) That the Board executed agreement on 5.8.1997 (Annexure 5 to the writ petition at Page 30) with the original petitioner containing the terms and conditions of allotment of the above flat and the same was registered on 6.8.1997. Possession of the said flat was also handed over to



the original petitioner on 6.8.1997. Thus in view of the fact that agreement for the flat had been entered into and registered in terms of the allotment letter dated 20.8.1984 and possession of the flat had also been handed over by the Board the Hon'ble Court by order dated 11.8.1997 was pleased to permit the above writ petition to be withdrawn.

(d) That in terms of the agreement dated 5.8.1997 the original petitioner paid all the instalments of the balance cost of the flat to the Board within the time fixed for their payments, except one instalment of April, 2000 which was paid in May, 2000 and the last instalment was paid on 7.8.2012 (except one more instalment paid thereafter on 6.9.2012).

(e) That on payment of all the above instalments the original petitioner by letters dated 13.9.2012 (Annexure 7 of the writ petition at page 84) and 19.12.2012 (Annexure 8 to the writ petition at page 85) requested the Board to execute lease deed in his favour for the said flat. However in response to the said request the Board issued letter No. 583 dated 27.6.2013 (Annexure 9 to the writ petition at page 86) informing the original petitioner that the cost of the flat including interest was Rs. 1605964 as on June 2013 and that the same had not been paid it was also informed that the Board had introduced one time payment scheme and thus it was requested by



the said letter dated 27.6.2013 to avail the benefit of the said scheme and so that steps for final transfer of the flat could be taken failing which the allotment would be cancelled.

(f) That by letter dated 16.7.2013 (Annexure-10 to the writ petition at page 87) the original petitioner filed his reply to the above letter dated 27.6.2013 in which he stated that he has paid all the dues as per the terms of the agreement dated 5.8.1997 and referring to the above order of the Hon'ble Court requested that lease be executed.

(g) That however by impugned letter No. 1028 dated 26.8.2013 (Annexure-11 to the writ petition at page 89) the Board cancelled the allotment of the flat. The ground for cancellation was that the original petitioner had not paid the instalments of the cost of the flat as per the terms of the agreement which was a violation of clause 24C thereof as well as that of clause 13 of the allotment letter dated 20.8.1984.

2. That the Board filed its counter affidavit and other supplementary counter affidavits wherein the grounds and reasons to support the above impugned order dated 26.8.2013 are as follows:

(a) That the Board makes constructions by borrowing money from financial institutions



wherein interest are levied and the Board is bound to pay these.

(b) That the project under which the flat allotted to the petitioners involved construction of 288 MIG flats at Bahadurpur, Patna from the loan taken from HUDCO vide Scheme No. 81/84141 and which was from 1979-80.

(c) In 18th meeting of the Board of Directors of the Board held on 30.4.1998 (Annexure J to 2nd Supplementary counter affidavit) vide Supplementary Agenda Item No. 9 the Board took a decision with respect to the determination of the present tentative cost of the above said flats as on 31.3.1998 i.e. the enhanced amount of the cost of the flats. Pursuant thereto the capitalised cost of each flat under the above Scheme was calculated at Rs. 3,58,755.61 vide Calculation Chart annexed at Annexure H to the 2nd Supplementary counter affidavit. This calculation would show that to arrive at the said cost of each flat the amount of loan of HUDCO, interest thereon as charged by HUDCO (i.e. right from year 1979-80), the expenditure incurred by the Board towards the construction and development, etc. Were taken into account. It would also be evident from this calculation chart that the interest charged by HUDCO from 1979-80 to 1996-97 was from 8.50% per annum to 16.25% per annum. And



accordingly the said decision to charge the capitalised cost of the flat at Rs. 3,58,800 as on 31.3.1998 with interest at the rate of 12.5% per annum was notified by the Board vide Memo No. 2394 dated 2.6.1998.

(d) That account of the facts that the Board makes construction of houses/flats for allotment taking loan from financial institutions which also charge interest from the Board thereon and the Board being a statutory body is bound to pay them therefore the initial cost charge from an allottee of the price of the house/flat is always on a tentative basis and such information of the cost being tentative and subject to its final calculation which an allottee is liable to pay is duly incorporated in the letter of allotment, agreement of hire purchase as well as as in the lease deeds of the Board.

(e) In the present case also the allotment letter dated 20.10.84 in paragraph No. 3 clearly stipulated as one of the conditions of allotment that the cost of the flat was Rs. 80350 as on 31.10.1984 calculated at the tentative basis and in case the same is enhanced due to acquisition and development of land and cost incurred for construction of flat then the increase in the cost on account of final evaluation on account of these reasons would have to be paid by the allottee-petitioner and in case the same is



reduced then the Board would give benefit of the excess amount paid by returning it or adjusting it. Paragraph No. 13 of the allotment letter stipulated that on violation of the terms and conditions of the agreement the allotment would be cancelled. Paragraph 14 thereof stipulated that on payment of the total cost of the flat with interest or any other amount due to the Board and on its confirmation final transfer of the land or flat would be made on the terms and conditions as fixed by the Board.

(f) In the present case as would be evident from Annexure 5 to the writ petition i.e. agreement dated 5.8.1997 that clause 4 thereof contains the same clause as paragraph 3 of the allotment letter i.e. the cost of Rs. 80350 as on 31.10.1984 being tentative and in case of enhancement of the same on final evaluation for the above stated reasons the petitioners would have to pay the same either in instalments or lumpsum as decided by the Board and that the petitioner cannot demand accounts or dispute it though the calculation chart had been attached to letter dated 20.12.2007 and sent by registered post which has not been disputed by the petitioners as required under law. Further clause 9 of the agreement stipulated that only after payment of all dues of the Board lease deed with respect to the flat would be executed by the Board.



(g) That the fact that the Board had enhanced the cost of the flat for the above stated reason was put to the knowledge of the allottees by fixing it on the Notice Board of the Board and also by way of the fact of publication in newspaper.

(h) In the present case the original petitioner by letter dated 20.12.2007 (Annexure C to the supplementary counter affidavit) and 28.9.2011 (Annexure F to the supplementary counter affidavit) was informed about the enhanced cost of the flat in question clearly stating that the dues (being cost and interest) as mentioned therein be paid. With the above letter dated 20.12.2007 bearing No. 6617 the calculation chart was also enclosed and it was sent vide Registered Post to the original allottee addressed to the address of the Flat in question vide Postal Receipt No. 1276 (Annexure L to the 4th to the supplementary counter affidavit) By the remaining three letters dated 26.5.2011, 1.6.2011 and 28.9.2011 the original petitioner was clearly informed that the detail calculation chart of the dues mentioned therein was available on the web site of the Board i.e. www.bshb.in and it can be downloaded or it can be obtained from the Resolution Cell of the Board.



3. That the petitioners have filed their rejoinder to the 2nd and 3rd counter affidavits of the Board wherein they have taken the following pleas:-

a. The construction of the flat in question was completed before July, 1987 as was evident from letter No. 2022 dated 27.7.1987 of the Board (Annexure 13 to the rejoinder)

b. It has reiterated that no notice was ever served on the petitioner/petitioners informing that the price of the flat has increased. Even the above Annexure C i.e. letter dated 20.12.2007 fact of revision of cost was mentioned. In an identical case i.e. of Bhagwati Prasad Singh for flat No. 1/31 situated to the south of the flat of the petitioner the Board had waived the enhanced amount as enhanced in the case of the petitioner which was evident from the lease executed in favour of Bhagwati Prasad Singh (Annexures 16 and 17 to the rejoinder).

c. With the said rejoinder filed by the present petitioner as Annexure-12 thereto the annexed the rejoinder as sworn on 21.2.2014 by the original petitioner to the counter affidavit and to the supplementary counter affidavit of the Board stating that inadvertently the same was not served and not filed before the Hon'ble Court.

d. In this rejoinder of the original petitioner he had also raised the plea of no notice being served on him stating that the cost of the flat



has been increased and that the instalments were also revised and re-determined. He with reference to the above letters of the Board at Annexures C to F stated that they are matters of record but also stated that their authenticity can be verified from the records alleging that they have been created for the purpose of the case with mala fide intention to harass him by way of revenge for filing the earlier writ petition. He also stated that in none of these Annexures C to F it was stated that price of the flat had been revised and increased and that instalments had also been revised and increased and that he was liable to deposit them or that the undertaking given by the Board before the Hon'ble Court on 1.7.1997 was nullified.

e. In the present case the petitioners by way of the above rejoinder to the 2nd and 3rd counter affidavits of the Board have brought on record copies of letter Nos. 1552 dated 4.5.2006 and 1596 dated 6.5.2006 as Annexures 14 and 15. The letter dated 4.5.2006 would show that on 4.5.2006 a demand of Rs. 6,86,664 as on 31.5.2006 was raised against the original petitioner by the Executive Engineer, Patna Division-1, Patna stating that the allottees through newspapers had been informed from time to time to get the amounts deposited by them verified from the Board but he had not



done so and therefore he was requested to get the dues verified by informing the total amount paid by him and to pay the balance within 15 days. The letter dated 6.5.2006 would show that the representative of the original petitioner met with the said Executive Engineer and informed him about the payments made as well as about the fact that agreement was entered at the rate prevailing in the year 1984 as per order of the Hon'ble Court and therefore the Executive Engineer requested the Revenue Officer of the Boarde to inform the original petitioner of the revised dues in light of the order of the Hon'ble Court recalling the earlier letter dated 4.5.2006.

4. That petitioners have also filed a supplementary affidavit in the present writ petition in which they have taken the same stand as that in the writ petition and their above rejoinders.

Submissions on behalf of the respondent Board to the above contentions of the petitioners based on the facts as stated above.

1. The first contention of the petitioners against the enhanced cost of the flat as raised by the Board (as stated in paragraph Nos. 20 to 24 of the writ petition) is that the Board has no unfettered right enhance the cost of the flat (including



charging of interest) and the same has been done in an arbitrary manner without any justifiable cause.

(a) In reply to the above it is submitted that the cost of the flat was increased on justifiable reason and grounds and is as per the cost incurred by the Board to develop and construct the 288 flats at Bahadurpur, Patna which was to be paid back to HUDCO for the loan taken from the year 1979-80 by the Board for the said purpose with interest thereon ranging from 8.50% to 16.25% per annum and the same has been arrived at by following a proper method i.e. total cost incurred by the Board in comparison to the number of flats constructed. This decision is within the competence of the Board of flats constructed. This decision is within the competence of the Board and is a financial decision against which the petitioners have not even alleged or proved as to how and why the said calculation was arbitrary or not justified.

(b) On account of the above facts it was a clear term and condition of the allotment letter dated 20.10.1984 as well as of the registered agreement dated 05.08.1997 that the cost of the flat i.e. Rs. 80350 as on 31.10.1984 was tentative liable to be either enhanced or reduced as the case may be on final calculation and that in case it is increased the petitioners would have to pay the increased amount and in case it is reduced the



benefit thereof would also be passed on to them. The petitioners having accepted the allotment letter and also having entered into registered agreement containing the said term and condition now cannot go back and claim that they are not liable to pay the enhanced amount. This condition of initial value being tentative and subject to final determination with the allottee to pay the increased value has been upheld by the Hon'ble Court in cases of Housing Board itself and thus the petitioners now cannot raise any plea against the same and are bound by it as it is a settled law that the parties are bound by the terms and conditions of the agreement between them.

(c) The plea of the petitioners that construction of their flat was completed in the year 1984 by referring to letter dated 20.10.1987 (Annexure 13 to the Rejoinder at Page 36) and therefore they cannot be charged at value calculated beyond this period is also not sustainable because the cost of each flat or house constructed by the Board is not fixed independently but on the basis of formula as indicated above spreading the total cost incurred by the Board against the total premises constructed equally among all beneficiaries irrespective of completion of construction of an individual premises under a particular scheme more so when loan granted to the Board are not on basis of individual premise to be constructed by it



but to implement an entire scheme of construction of flats or houses and which policy decision of the Board is not under challenge in this writ petition and neither the petitioners have shown as to how or why the same is not justified.

2. That the 2nd contention of the petitioners is that the Board is bound by the undertaking submitted by it before the Hon'ble Court in CWJC No. 3924 of 1996 being that the flat was being allotted to the petitioners on the same terms and conditions as contained in the allotment letter dated 20.10.1984 which contained the cost of the flat as Rs. 80350 as on 31.10.1984 and thus they now cannot turn around and demand any price beyond the said value.

(a) In reply to the above contention of the petitioner it is firstly stated that the orders of the Hon'ble Court passed in CWJC No. 3924 of 1996 do not record any undertaking given by the Board as contended by the petitioners. There is no undertaking recorded by the Hon'ble Court that the cost of the flat would not be increased later on as per clause 3 of the allotment letter dated 31.08.1984 or that the amount of Rs. 80350 as mentioned therein was final and not tentative or that on account of any subsequent increase in the cost the Board would not demand it from the petitioners in terms of clause 3 of the allotment letter of clause 4 of the agreement dated 05.08.1997.



(b) The said writ petition was filed by the original petitioner praying to allot the flat on the same terms and conditions of the allotment letter dated 20.10.1984 and he had further prayed that letter dated 31.08.1996 be quashed by which the original petitioner was asked to pay the up-to-date cost of the flat.

(c) The Board accepted both the plea raised by the original petitioner by recalling the impugned letter dated 31.08.1996 by letter dated 08.07.1997 and by executing the agreement dated 05.08.1997 with him in terms of the allotment letter dated 20.10.1984. The original petitioner accepted these terms and conditions and accordingly the writ petition was withdrawn by him on 11.08.1997.

(d) It is not the case of the original petitioner or the present petitioners that the above clause 3 of the allotment letter or clause 4 of the agreement that they objected to or raise any challenge to these conditions ever in CWJC No. 3924 of 1996 despite the fact that the allotment letter was with them when they filed the said writ petition and the agreement was with them when then writ petition was withdrawn by them.

(e) The Hon'ble Court in CWJC No. 3924 of 1996 did not hold the above clause 3 of the allotment letter or clause 4 of the agreement to be bad in law in as much as no dispute was raised against these clauses by the original petitioner or the present



petitioners. Thus there is no question of the principles of res judicata being applicable in the present case against the Board with respect to the issue of raising demand of enhanced cost of flat and taking action to cancel the agreement on non payment as per clause 24 thereof.

(f) To the contrary the original petitioner/petitioners having accepted clause 3 of the allotment letter or clause 4 of the agreement cannot not raise challenge to these as the same is barred by the principles of constructive res judicate i.e. an issue which ought to have been raised by not raised and thus barred from being raised later on.

(g) Finally, it was the original petitioner's own case to enter into agreement on the basis of allotment letter. The same having been done by the Board and he having accepted it and acted upon it by taking the benefit thereunder cannot now turn around (as also the present petitioners) and claim that the liability attached thereunder would not be applicable on them.

3. That the 3rd contention raised by the petitioner is that another similarly situated person i.e. Bhagwati Prasad Singh the Board has waived the entire increased amount of the flat but in their case the Board is charging the same.

(a) In reply to the above contention it is stated that the same is not correct because it would be evident from the calculation chart



annexed by the petitioners themselves at Annexure 17 to the Rejoinder that in case of Bhagwati Prasad Singh also the revised price of flat allotted to him i.e. 6MF – 1/31 under the same scheme i.e. Scheme 288 MIG at Bahadurpur, Patna was fixed at Rs. 358800 as on 3.3.1998 as has been done in the case of the petitioners also.

(b) Further the calculation charts of the petitioners' flat and flat of Bhagwati Prasad Singh annexed as Annexure M (starting at Page No. 4 and Page No. 20 thereof) would also show that the initial tentative costs for them were Rs. 80350 as on 31.10.1984 and Rs. 60000 as on 31.1.1982 and thereafter the evaluated cost as on 31.3.1998 for both of them was fixed at Rs. 358800 with the same rate of interest i.e. 12.5% per annum and thus because in the lease dated 29.12.2012 between the Board and Bhagwati Prasad Singh only Rs. 60000 has been mentioned as the cost of the flat allotted to him does not make any difference when in clause 3 of the said lease it has clearly been stated that the same is purely tentative and any amount due to increase in total cost on account of final evaluation, including cost of development, etc. would be payable by him. Therefore, no benefit based on the said lease deed dated 29.12.2012 can be derived by the petitioners contrary to what they have specifically agreed to and accepted vide clause Nos. 3 and 4 of the above allotment letter and agreement respectively.



(4) That the 4th contention raised by the petitioners is that they were never informed and no notice was served upon them informing that the cost of the land has increased leading to increased amount of installments by the Board and thus the Board having failed to do so now cannot charge the increased amount from them.

(a) In reply to the above contention of the petitioners it is stated that after the Board took decision in its 181th meeting held on 30.04.1998 the same was notified in form of office order annexed at Annexure K to the 2nd supplementary counter affidavit. The said decision was notified on the Notice Board of the Board.

(b) Notices were published in the newspaper calling upon the allottees to get their accounts verified by the Board by producing the money receipts issued in their favour.

(c) The original petitioner has annexed as Annexure 10 at Page 87 to the writ petition his reply dated 16.07.2013 to notice dated 27.06.2013 at Page 86 of the Board pursuant to which the impugned order was issued. In this reply he has not raised any plea as is being raised in the above said 4th contention. Thus it is submitted that the said contention of the petitioners in the writ petition is an after thought taken for the purposes of this writ petition only so as to escape their liability of delay and laches by them in not raising



any grievance against the increased cost of the flat.

(d) The original petitioner has himself annexed letter dated 04.05.2006 (Annexure 14 to Rejoinder) informing him that the dues as on 31.05.2006 stood at Rs. 686664 on the basis of calculation made by M/s. Hord Food Technologies and to come to the office of the Patna Division No. 1 to have it verified within 15 days and pursuant to which representative of the original petitioner met the Executive Engineer of the said Division on 06.05.2006 and apprised him of the order of the Hon'ble Court leading to his issuing letter dated 06.05.2006 (Annexure 15) with copy to the original petitioner.

(e) The original petitioner in his rejoinder sworn on 21.02.2014 (Annexure 12 to the Rejoinder) has not stated that letters of the Board (i.e. letters dated 20.12.2007, 26.05.2011, 1.06.2011 and 28.9.2011 annexed as Annexures C to F to the supplementary counter affidavit) informing him the increased amount of cost and that these dues (being cost and interest) as mentioned therein be paid, were not served on him. The petitioners have not filed any reply to the 4th supplementary counter affidavit of the Board by which the Postal Receipt No. 1276 (Annexure L to the 4th supplementary counter affidavit) was brought on record as evidence that letter No. 6617 dated 20.12.2007 was brought on



record as evidence that letter No. 6617 dated 20.12.2007 was sent to the original petitioner at his address of the flat in question) by registered post was not served nor have they brought on record any evidence to rebut the presumption that the same was not served despite being sent by registered post as required under law.

(f) But in order to escape from the liability of having received all these letters of the Board at Annexures C to F but yet not challenged by them from the year 2007 itself had raised on untenable plea that their authenticity should be verified from the records and that they were created with in view of this litigation.

(g) Apart from the above it is the consistent stand of the petitioners in the writ petition and in their other affidavits that they have paid all the installments in time and therefore once the Board informed them about the dues being Rs. 686664 as on 31.05.2006 by letter dated 4.05.2006 (Annexure 14 to the Rejoinder) as against the price of Rs. 80350 and pursuant to which the representative of the petitioner met the Executive Engineer, Patna Division No. 1 on 6.5.2006 against the said demand the petitioners cannot claim that they were not aware that the impugned demand was on account of the revised cost of the flat due to its final valuation.

(h) Furthermore the above Letter No. 6617 dated 20.12.2007 (Annexure c to the



supplementary counter affidavit) with dues of Rs. 835036 as on 31.12.2007 mentions that calculation chart was annexed to the said letter. The original writ petitioner has not denied that the same was not annexed to this letter sent to him by registered post.

(i) Furthermore by the letters dated 20.12.2007 and 28.9.2011 the original petitioner was clearly informed that the detail calculation chart of the dues mentioned therein was available on the web site of the Board i.e. www.bshb.in and it can be downloaded or it can be obtained from the Resolution Cell of the Board.

(j) Thus it is submitted that the 4th contention of the petitioners is not sustainable and they cannot be heard to say that they were totally unaware that the increase in the cost of the flat was on account of the above stated facts of increase in the evaluated cost which they were liable to pay more so when they were put to due notice of the same by above letters informing them about the same and asking them to pay it were not acted upon by them since the year 2006 and as they did not pay it the impugned order was rightly issued as per clauses 4 and 24 of the agreement and clause 3 of the allotment letter.

5. That finally it is submitted that the present writ petition is not maintainable in view of the fact that the petitioners have an alternative forum to raise grievance against the calculation of the evaluated



cost of the flat before the Pricing Committee of the Board and also because the agreement vide clause 25 provides for arbitration for resolution of any dispute between the petitioner and the Board and the Hon'ble Court have held that in view of this clause writ petitions are not maintainable. This plea has been raised by the Board in paragraph No. 16 and 17 of the counter affidavit.”

18. After hearing the counsel for the parties and the decisions and pleadings as well as the written notes of arguments, the Court finds that the present writ petition requires adjudication of the following issues:

(a) whether the tentative cost at the time of execution of the agreement and handing over possession be further changed by subsequent decision unilaterally?

(b) whether the respondent-Housing Board is justified in keeping themselves fixing another tentative price of the flat instead of finalizing the price?

(c) Whether the Housing Board is justified in charging revised price after the inordinate delay in construction of the project and justified in realizing the interest without getting the allottee know about the enhanced revised price ?

(d) Whether the petitioner is liable to pay further amount after payment of the installments in terms of the hire purchase agreement?



(e) Whether the Housing Board is justified in calculating revised price and interest to the detriment of the petitioner after 10 years of payment of last installment.

19. The Housing Board initially insisted that petitioner shall be accepted as successor of the original allottee provided he is ready to make payment of the revised price on the date of execution of the agreement but later on during the pendency of the earlier writ petition i.e. CWJC No. 3924/96 the Housing Board accepted the position that the revised rate is not applicable rather as per the agreement and the tentative rate as indicated in the original allotment letter of 1984. In the aforesaid circumstances, whether the Housing Board is precluded from changing the position after the execution of the higher purchase agreement and intimation of the fact that the allotment to the original petitioner of this case is on the same terms and conditions as of the original allotment letter dated 20.10.1984.

20. The salient fact of the instant case are as follows:-

In 1980 application was invited for allotment of MIG Flat. On 20.10.1984 allotment was made indicating the tentative price as 80,350/-. On 31.8.1996 the Housing Board issued letter that Board is ready to allow the petitioner as successor of original allottee subject to the condition that he has to execute Ekrarnama within 15 days on the new conditions regarding price. On 8.7.1997 letter issued by the



Manager, Estate to the petitioner to execute Ekrarnama on the same terms and conditions i.e. 20.10.1984 meaning thereby that the conditions incorporated vide letter dated 31.8.1996 has been superseded. Agreement was executed on 5.8.1997 and possession was handed over on 6.8.97.

21. Considering the aforesaid undisputed fact, the Court comes to a conclusion that the tentative price for the allotment of flat was the same as terms of allotment letter dated 20.10.1984 for this petitioner also and on that condition agreement was executed and the possession of the flat was handed over to the petitioner. The second important aspect is that the Housing Board fixed installments and petitioner came on paying the installments as per the installment fixed by the Housing Board. Therefore, the housing Board is only justified to realize penalty to the extent the delay and liability under the terms of the agreement, Annexure-5. To that extent there is no quarrel. But the main controversy in the present writ petition is the price fixation. As indicated above, initially the tentative price was fixed when the agreement was executed. After the agreement was executed and the possession was handed over it was obligatory on the part of the Housing Board to fix the final price and as such there was absolutely no occasion to fix fresh tentative price as it was known to all concerned after handing over possession of flat that what was the price on the date of handing over the possession. Yet after



handing over possession instead of finalizing the price the Housing Board raised the demand saying that they have worked out fresh tentative price. Such exercise of fixing fresh tentative price is either arbitrary exercise by the Housing Board or it is designed to delay fixation of price and charging the allottee for their incompetence or their failure to fix price and realize the price. The Court failed to understand why the Housing Board instead of fixing final price kept on changing the tentative price. The plea is of borrowing the money from HUDOC in completion of the project is only vague expression in the entire counter affidavit. Firstly, the allottee was not party to the agreement with the HUDCO nor the arrangement between the HUDCO and Housing Board and that cannot be a ground to saddle the allottees with the price which they have worked out on the basis of borrowing loan which the Housing Board has borrowed from the HUDCO. The Housing Board is conspicuously silent on the point whether they have entered into agreement with HUDCO for the purpose of the completion of the project the Housing Board has not explained how that arrangement between the Housing Board and the HUDCO is binding on the petitioner.

22. As discussed hereinabove the Court finds that the Housing Board consumed decades in communicating the allottee the final price. They took the plea that under the agreement the Housing Board was not required to intimate the allottee and it was the obligation of the allottee



to keep on contacting the office of the Housing Board to know the liability.

23. In the counter affidavit they have mentioned about the letter dated 20.12.2007, which was issued after 10 years of the handing over of the possession and the subsequent communication after 2007 does not improve the case of the Housing Board as the Housing Board has not intimated the allottee within time and due to their default i.e. non-communication to the allottee, they kept on capitalizing interest over interest and saddled the petitioner after payment of entire 181 installments with the revised price.

24. Considering the totality of the fact situation the Court is of the considered view that a party cannot be allowed to use their lapse and incompetence in capitalizing interest and revising the cost of the project and taking advantage of their bargaining position issuing letter of cancellation of allotment.

25. Learned counsel for the petitioner has placed reliance on the various judgments of this Court which indicate that the Housing Board has no arbitrary power to fix price of flat. The judgment of the Division Bench rendered in LPA No.221 of 2007 dated 6th February, 2008 is relevant authority. The Division Bench has occasion to consider Clause 4(a) of the Hire Purchase Agreement which is sheet-anchor of the Housing Board in the present case. A tentative price is always subject to



finalization of the actual price but in no case the tentative can be made further tentative by another tentative price and finalization of cost cannot be avoided for years together to the detriment of the interest of the allottee after payment of the entire installments and should not be saddled with the revised price not on the basis of actual cost involved in the project or on the basis of borrowing the money but on the basis of interest over the properties from the date of allotment. The Division Bench judgment is indicative of the fact that it is relevant to the extent of 4(a) of the agreement and does not confer arbitrary power to the Housing Board and is again a subject of judicial scrutiny and if there is no cogent material to justify interest, the Court has jurisdiction to interfere with the matter.

26. Similar view was expressed by a co-ordinate Bench in the case of Most. Sawari Devi in CWJC No. 9391 of 2011. the relevant part of the judgment i.e. paras 11 to 20 are quoted below:-

“11. Learned counsel for the respondents claimed that order dated 10.04.2012 passed by the Board clearly showed tentative price of M.I.G. House No.181 as Rs. 4,81,644.00 as on 28.02.1995 and hence up to April, 2012 the value plus interest would come to Rs.16,71,348.81. In the said circumstances before execution of lease deed in her favour, the entire amount has to be paid by the petitioner.

12. Learned counsel for the respondents argued that the dispute raised in this writ petition was only with



respect to price as to whether the calculation of the authorities was correct and for that purpose the Board had specifically constituted a Price Committee in terms of order of the High Court dated 20.10.1995 passed in C.W.J.C. No.47 of 1994 and C.W.J.C. No.2724 of 1994. Hence, he further argued that the claim of petitioner was not maintainable before this court and it may be referred to the Price Committee.

13. Considering the averments made by learned counsel for the parties as well as the materials on record it becomes quite apparent that the petitioner was homeless widow and in response to the advertisement she applied in the year 1986 for allotment of M.I.G. House and after adopting all the due procedures of law she was allotted double storied M.I.G. House No.232 at Lohiya Nagar under widow quota on 15.02.1991 on the basis of resolution passed by the Board and signed by all its members. In this connection Regulation No.10 (2) (1) of the Bihar State Housing Board Regulation, 1983 clearly showed that two per cent allotment was to be made to helpless widows on the basis of compassion.

14. On the other hand, it is also apparent that Haribansh Mishra, who applied for military quota was allotted single storied M.I.G. House No.181 at Hanuman Nagar, but he raised claims for a house in Lohiya Nagar and for reasons best known to them the authorities of the Board supported him which gave rise to several litigations. However, when all the concerned cases were taken up together by a Division



Bench of this court on 12.08.1988, the writ petitioner Most. Sawari Devi being pressurized from all the quarters gave her consent for exchange of her double storied M.I.G. House No.232 at Lohiya Nagar with single storied M.I.G. House No.181 at Hanuman Nagar and accordingly the Division Bench of this court ordered on 12.08.1988 that the petitioner, who was a widow and in whose favour the State Government had passed order for allotment of a house in the middle income group shall be allotted by the Board M.I.G. House No.181 at Hanuman Nagar for which the Board shall complete all necessary formalities within two weeks from that day and realise therefore price prevailing in the year 1988. Similarly for Haribansh Mishra also the said order provided that M.I.G. House No.232 of Lohiya Nagar be allotted to him and the Board was directed to adjust towards price of the said house only that amount of money which was payable by any allottee/settlee of the year 1979 and claim no more than such amount of money from Haribansh Mishra.

15. The said matter again cropped up in M.J.C. No.763 of 1988 which was disposed of on 28.03.1989 and after considering the implications of the parties not acting in terms of the aforesaid order dated 12.08.1988 and the reasoned order having not been delivered, all the matters connected with the house were directed to be heard before final judgment was delivered by the Court and hence order dated 12.08.1988 was recalled. However,



subsequently the entire matter along with all the pending petitions were heard together by another Division Bench of this court and were decided by a common order dated 12.01.1994 and the Housing Board was directed to allot M.I.G. House No.181 of Hanuman Nagar Colony in favour of Most. Sawari Devi (writ petitioner) and to allot M.I.G. House No.232 of Lohiya Nagar to Haribansh Mishra and all the petitions were disposed of with the aforesaid directions.

16. It is quite surprising to note that order dated 12.08.1988 was complied by the Board immediately thereafter so far the allotment of M.I.G. House No.232 of Lohiya Nagar in favour of Haribansh Mishra was concerned and he was put in possession and money was demanded at the rate prevalent in the year 1979 when he had applied for the said house, but the said order dated 12.08.1988 was not complied immediately thereafter by the authorities of the Board with respect to allotment of M.I.G. House No.181 at Hanuman Nagar in favour of the petitioner Most. Sawari Devi. Although the said order of allotment of M.I.G. House No.181 at Hanuman Nagar to Most. Sawari Devi was also affirmed by subsequent order dated 28.03.1989 passed by a Division Bench of this court in M.J.C. No.763 of 1988, but in spite of that, the order of allotment of M.I.G. House No.181 at Hanuman Nagar was issued much subsequently on 10.03.1995 and possession was given to the petitioner in the year 1999. There is no explanation



by the authorities for such undue delay specially in case of a homeless widow, who according to the provisions of the Act and the Regulations required compassion.

17. On the other hand the military personnel, who did not deserve as much compassion as the homeless widow, was given benefit of making payments for the house at the rate prevalent in the year 1979 when he had filed application for the said allotment, but for the petitioner the Board had a different standard asking her to pay as per the value of the house prevalent in the year 1995 when the subsequent allotment was made in her favour and that too after keeping the homeless widow waiting for several long years.

18. The authorities completely forgot that the petitioner had applied for M.I.G. House in the year 1988 and she was allotted a better house, namely double storied M.I.G. House No.232 at Lohiya Nagar vide resolution of the Board in its meeting dated 11.01.1991 and the tentative cost asked by the authorities concerned at the relevant time was fully deposited by the petitioner along with the earnest money. Hence the case of petitioner has been seriously jeopardized by the act of the authorities. Firstly, that a double storied house bearing M.I.G. House No.232 of Lohiya Nagar allotted to her had been taken away from her and in its place a single storied M.I.G. House No.181 of Hanuman Nagar had been allotted to her in the year 1995 and secondly



that a much higher price with interest is being demanded from her at the rate prevalent in 1999 although she was applicant of 1988.

19. The said circumstances clearly show that the demand of the authorities is absolutely illegal, arbitrary and perverse and they are unnecessarily harassing the petitioner without any valid reasons. Since the petitioner had applied in the year 1988 and she had paid the entire tentative cost with earnest money as calculated by the authorities themselves in the year 1991, the authorities cannot ask the petitioner to pay any amount as per the rate of any subsequent period. In addition to that the petitioner has been kept deprived of a house till 1999 when possession of M.I.G. House No.181 at Hanuman Nagar was given to her.

20. In the said circumstances, this writ petition is allowed and the impugned demand notices dated 06.09.2007, 10.04.2012 and 11.04.2012 along with statement of cost dated 11.11.1998 issued by the Board and its subsequent action in that regard are hereby quashed with a direction to the respondent-authorities to calculate the price of M.I.G. House No.181 at Hanuman Nagar at the rate/price prevailing in the year 1988 and compare it with Rs.41,372.00 as value of the house and Rs.6,500.00 as earnest money which had already been paid by the petitioner in the year 1991 and if any amount is found to be excess payment by the petitioner, it should be refunded to her within three months from the date of



receipt/production of a copy of this order. However, if as per the said calculation any further amount is required to be paid by the petitioner, the petitioner shall be asked to pay the same without any interest in easy monthly instalment. Furthermore, the deed of lease in favour of petitioner with respect to M.I.G. House No.181 of Hanuman Nagar, if not executed by the Board till date, it must be executed after observing all formalities within three months from the date of receipt/production of a copy of this order.”

27. The judgment dated 17.5.2013 passed in CWJC No. 9391 of 2011 was challenged before the Division Bench in LPA No. 1027 of 2016 by the Housing Board and the appeal was dismissed. Since I was party to the Division Bench I had occasion to consider justification of the Housing Board for increase in the price. The Division Bench on consideration of the relevant facts had come to a conclusion that the order of the learned Single Judge is well considered and does not warrant any interference. Most of the reasons mentioned in CWJC No. 9391 of 2011 is attracted in the present case also and as such I am of the considered view that being a party to the Division Bench I cannot take a different view than what was taken by the Division Bench in LPA No. 1027 of 2016.

28. Adverting to the submission of the respondent-Board the Court does not find any substance in the same firstly, for the



reason that in the written notes of argument it is stated that the price was increased because the Housing Board has borrowed loan from HUDCO in the year 1979-80 and they have paid interest at the rate of 16.25% per annum and the total cost incurred by the Board was calculated and that is the justification and the same was not even arbitrary. The aforesaid submission is liable to be rejected for two reasons. Firstly, that neither arrangement of the Housing Board with HUDCO can be a ground for fixing liability on the allottees, the allottees are bound from the terms and conditions of the agreement and not obliged to abide by the terms and conditions with the HUDCO and Housing Board. Secondly, the interest component payable to HUDCO cannot be a ground to be realized if there is delay on the part of the Housing Board in making construction. If the Housing Board failed to complete the project in time and for that interest component was added, that would amount to granting premium to the incompetence. The second contention of the Housing Board is that the Housing Board was justified in revising the tentative price in terms of Clause 4 of the agreement and the petitioner cannot be allowed to challenge the fixation of price. Referring to Clause 3 of the allotment letter and clause 4 of the agreement the plea taken by the respondents is totally misconceived. Time and again courts have deprecated such



action. Since the Housing Board is on better bargaining position then such bargaining can be equal bargaining but bargaining between lion and lamb. The Courts have held out that incorporation of condition which is arbitrary and not fair bargaining is unconscionable. The Housing Board by such condition in the agreement cannot exploit the allottee. The Court has to see the totality of the fact situation and on consideration of the entire facts and circumstances, the Court cannot approve the plea of the Housing Board that the agreement preclude the allottee to question any enhancement therefore, the Board is entitled to raise the price arbitrarily, such contention is in teeth of the judgment of the Apex Court in the case of **Central Inland Water Corpn. Vs. Brojo Nath Ganguly & Anr: AIR 1986 SC 1571**. The third contention of the Housing Board in reply to the issue of discrimination is that price is purely tentative amount and after final calculation the price would be payable by the petitioner. The Housing Board cannot be allowed to take advantage of clauses 3 and 4 of the agreement, such submission in case of pleading of discrimination is unsustainable and is accordingly rejected. Now the last contention of the Housing Board in reply to the submission that the petitioner was never informed and no notice was served upon the allottee about the cost of the flat which has



been increased after payment of installment, the submission was made that decision was taken in 181st meeting held on 30.4.1998 which was notified in the form of office order on the Notice Board of the Housing Board. The notices were published in the newspaper calling upon the allottees to get their accounts verified by the Board by producing the money receipts issued in their favour. The petitioner has annexed Annexure-10 in reply to the notice dated 27.6.2013 where he has not raised the plea that petitioner was not informed as is being raised in the present writ petition. In the preceding paragraphs of the order, I have indicated that the Housing Board was not justified in notifying revised price on notice Board after handing over possession of the flat. Similarly, the newspaper publication calling the individual allottee to produce the money receipt, is again an eye wash. It was the duty of the Housing Board to maintain record and keep on informing the allottee if there is any default in payment and if there is any increase in the price. From the materials available on record, the Court is of the view that if the Board took 10 years and in 2007 for the first time came out with revised price and such exercise of power by the Housing Board is either result of their total incompetence or it is arbitrary exercise of power to realize



revised cost and interest without getting the allottees know about the actual obligation to pay.

29. In the totality of the fact situation, the Court does not approve the action of the respondent-Housing Board. The order contained in Annexure-11 dated 27.8.2013 is, accordingly, quashed.

30. However, quashing of Annexure-11 will not disentitle the Housing Board to realize the amount, if any, payable by the petitioner against the delayed payment of installments. The Housing Board shall work out the details of delayed payment and penalty for delayed payment and raise a demand for payment of the aforesaid amount within a period of sixty days. In addition thereto, the Housing Board may be justified in raising the difference of the amount already paid and the actual amount in construction of the flat which has been worked out by the House Board in 181 installments which has been highlighted in the counter affidavit as tentative price. The difference of the amount fixed at the time of handing over possession and the amount determined in 181st meeting shall be worked out by the respondents within a period of 60 days and the difference between the amount of tentative price already paid and the price which was worked out in the 181st meeting shall be raised by the Housing



Board within the aforesaid period and thereafter within sixty days from raising such demand the petitioner shall pay that amount within a period of six months. The tentative price fixed in 181st meeting shall be treated as final price for the purpose of the present writ petition.

31. It is made clear that the amount shall not carry any interest on the differential amount if the payments is made by the petitioner within a period of six months. It goes without saying that once the payment is made, the Housing Board shall be under obligation to execute the registered deed of transfer in favour of the petitioner within a period of one month after payment of the differential amount subject to payment of registration fees.

32. With the aforesaid observations and directions, the writ petition stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.05.2019
Transmission Date	NA

