

13.03.2023
Item no.4.
Court No.6.
AB

**M.A.T. 2046 of 2022
With
IA CAN 1 of 2023**

**Sekhar Kumar Chandra
Vs
Alipriya Co-operative Housing Society
Limited & Others**

Mr. Kishore Mukherjee,
Mr. Ahitagni Deyfor the Appellant.

Mr. Subrata Kr. Basu,
Mr. Sounak Sen,
Mr. Ronojoy Majumdar
.....for the Respondent
No.1, 4 & 5.

Admittedly, the appellant/writ petitioner has paid an amount of Rs.32 Lacs approximately. Learned Advocate for the Housing Society says that in fact, each member's liability is Rs.39,99,825/-. Learned Advocate further says that in view of the failure of the appellant to pay the installments in due time, he is liable to pay penal interest @ 12% on the defaulted amount, which sums upto approximately Rs.15 Lacs.

Learned Advocate for the appellant seriously disputes the claim on account of penal interest as well as the further claim on account of cost of the flat in question. As regards penal interest, he says that the appellant had tendered a sum of Rs.9 Lacs initially, which was returned by the Society. Thereafter, the

Society could not have charged penal interest on such amount.

Having heard learned Counsel for the parties, we see that one of the disputes between the parties is as regards the amount payable by the appellant to the Housing Society for receiving possession of the flat in question. This is essentially a factual dispute to be decided on taking evidence from both the parties. We are not inclined to undertake that exercise.

We refer the aforesaid disputes between the parties to the Registrar of Cooperative Societies, Government of West Bengal, who shall decide the dispute regarding the actual cost of the flat in question and the dispute regarding the appellant's liability to pay penal interest on installments, which he allegedly defaulted in paying, in accordance with law, after giving an opportunity of hearing to both the concerned parties. The Registrar shall pass a reasoned order in accordance with the provisions of West Bengal Cooperative Societies Act, 2006 and the Rules framed thereunder.

In the meantime, without prejudice to his rights and contentions, the appellant would be at liberty to pay to the Housing Society the balance sum as claimed by the Housing Society towards cost of the flat in question. Upon receipt of such payment, the Housing Society shall makeover vacant peaceful

possession of the flat in question to the appellant without prejudice to the rights and contentions of the Housing Society.

The appellant says that he will makeover the balance amount towards the cost of the flat as claimed by the Housing Society within a week from date. If the Housing Society receives such payment, it will hand over the possession of the flat in question to the appellant within a week thereafter.

We make it clear that if the Registrar decides that further sums are payable by the appellant to the Housing Society on account of penal interest, the appellant shall abide by the same, subject to the same being set aside by any higher forum. We also make it clear that in the event the Housing Society's review application before the West Bengal Cooperative Tribunal succeeds and the cancellation of the appellant's membership is upheld, the appellant will be liable to hand back vacant peaceful possession of the flat in question to the Housing Society and the Housing Society shall be liable to refund the amount received from the appellant.

We further make it clear that we have not gone into the merits of the disputes between the parties as regards the actual cost of the flat in question and the liability of the appellant, if any, to pay penal interest.

Those issues will be decided by the Registrar of Co-operative Societies in accordance with law.

Nothing in this order shall have any effect on the review application of the Housing Society pending before the West Bengal Cooperative Tribunal.

No useful purpose will be served by keeping the appeal pending.

MAT No.2046 of 2022 stands disposed of along with IA CAN 1 of 2023.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)