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Neutral Citation No. - 2024:AHC:134496-DB

AFR

Reserved on: 25.07.2024

Delivered on: 22.08.2024

Court No. - 29
Case :- WRIT - C No. - 15996 of 2022
Petitioner :- Smt. Madhubala Jaiswal
Respondent :- Real Estate Appellate Tribunal And 2 Others
Counsel for Petitioner :- Pankaj Jaiswal
Counsel for Respondent :- Anuj Pratap Singh,Ashish Agrawal,Mohd. Afzal,Wasim Masood

Hon'ble Mahesh Chandra Tripathi,J.
Hon'ble Prashant Kumar,J.

(Delivered by Mahesh Chandra Tripathi, J.)

1. Heard Shri Pankaj Jaiswal, learned counsel for the petitioner, Shri H.N. Singh, learned Senior Counsel assisted by Shri Ashish Agrawal, learned counsel appears for the U.P. State Industrial Development Authority.

FACTUAL MATRIX OF THE PRESENT CASE:

2. Uttar Pradesh State Industrial Development Authority[1] launched a scheme of residential plot in ‘Saraswati-Hi Tech City Naini, Allahabad’. The petitioner who is 75 years old lady, made an Application No. 1693 on 18.09.2016 for allotment of plot and had deposited Rs. 1,95,930/- as Registration amount. The petitioner was found to be successful and was allotted a plot No. B 440 (measuring 200 Sq. Meter) on 18.02.2017 and the cost of plot was fixed at Rs. 36 lakhs. The allotment letter was issued on 18.02.2017, wherein it was stated that 25% of the total premium of plot after adjusting registration amount is to be deposited within 30 days.

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3. From the record it emerges that the condition in the allotment letter was that the allottee while participating has to deposit Rs. 1,93,320/- as registration amount and after he/she was found successful in getting the allotment, the allottee would be required to pay 25% of the total premium amount within 30 days (which was amounting Rs. 7,01,680/-). The allotment also provided the facility of instalment, but, it carried an interest of 14% per annum on remaining premium chargeable from the date of allotment, payable in 12 half yearly installments alongwith interest on first day of January & July each year. Rebate of 2% was also admissible in case the payments due are made on or before the prescribed date if there are no arrears of dues.

4. The petitioner instead of depositing 25% (which was Rs. 7,01,680/-) of the said total amount, has deposited around Rs. 29 lakhs which was approximately 80% of the total amount of the premium, without seeking benefit of instalments which was offered in the allotment letter. So far as the possession of the plot as per the allotment letter is concerned, it was to be delivered to the allottees after payment of 25% of the total premium of plot (after adjusting earnest money/registration amount).

5. As per the terms and condition of the allotment, the petitioner was promised to get possession by July 2017, but the same was not given to the petitioner. Aggrieved with the same, the petitioner approached Real Estate Regulatory Authority[2] on 05.11.2017 and RERA vide order dated 27.02.2018 directed the respondent No. 3-UPSIDA for delivering the possession, however, no order was passed for the interest on the delayed period. Hence, the petitioner

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filed an appeal No. 100 of 2020 before the Real State Appellate Tribunal, Lucknow within time and after admission of appeal, Tribunal fixed date for hearing, but due to lockdown in Corona period, it was informed to the petitioner that the hearing would be conducted through Video conferencing. It is claimed that no link was provided in spite of several requests, hence, the petitioner could not appear. The matter kept pending before the RERA Appellate Authority.

6. On 03.09.2019, an office order was issued by the UPSIDA, whereby the allottees were given option if they want to quit from the project, they can take back their deposited money with 6 percent interest per annum, or in case they want to continue under the scheme they will have to pay the remaining premium amount and other charges as per the original allotment order.

7. It transpires that there was some issue between UPSIDA and the State Government and the State Government for some internal reason did not executed the Conveyance Deed in favour of UPSIDA, as a result, they were also not in position to further execute the Conveyance Deed and hand over possession to the allottees. It seems that ultimately the State Government executed the Conveyance Deed on 23.01.2021 in favour of UPSIDA, and hence the delay in executing the sale deed by UPSIDA in favour of the petitioner was not on account of respondent No. 3, but was on account of State Government.

8. It was somewhere in 2022, the Respondent No. 3 sent a letter informing that they were in position to execute the sale deed, but at the same time, they asked the petitioner to pay (14% - 2%

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=12%) interest on the balance amount from the date of allotment till the date of payment.

9. Aggrieved by the action that respondent no. 3 has not handed over the possession of land in time and thereafter, asking for heavy interest for the delayed period, petitioner instituted the present writ petition under Article 226 of the Constitution of India seeking for the following relief:-

> *"(i). issue a writ, order or direction in the nature of mandamus commanding (a) UPSIDA to pay delay period interest on the amount paid (Rs. 29 lakhs), at the same rate which respondent no. 3 is charging from allottees in case of default, from July 2017 (promised date of possession) till the date of possession.*
>
> *(b) Appellate Tribunal to hear the petitioner and decide the matter on merit.*
>
> *(c) Appellate Tribunal to provide all the orders passed in the matter of petitioner and to provide video link for hearing.*
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> *(ii). issue any other suitable writ, order or direction as this Hon'ble Court may deem fit and proper under the circumstances of the case.*
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> *(iii). Award cost of the writ petition in favour of petitioner.*
>
> *(iv) issue a writ order or direction in the nature of mandamus for directing respondent no. 3 to provide possession of plot no. B-440.*
>
> *(v) issue a writ order or direction in the nature of certiorari for quashing of order dated 08.06.2022 upto payment of interest of Rs. 535967 + Rs. 53552 & GST of Rs. 64762.50."*

ARGUMENTS OF THE PETITIONER

10. Shri Pankaj Jaiswal, learned counsel for the petitioner submitted that while entertaining the present writ petition, the Court had taken a serious view and given show cause to the respondent as to why the possession of the plot has not been delivered to the petitioner so far and why this Court should not direct for payment of exemplary compensation to the petitioner for the said default.

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Order dated 08.07.2022 passed by the coordinate Bench is reproduced herein under:-

> *"The petitioner claims to have deposited Rs. 29 lacs so far under the allotment order issued in her favour by the erstwhile owner, i.e., the U.P.S.I.D.C. (now U.P.S.I.D.A.). The total amount payable under the allotment was a sum of Rs. 36 lacs approximately. The petitioner was entitled to possession of the plot upon deposit of 25 percent of the premium amount, whereas she has deposited almost 80 percent of the amount, still possession has not been delivered to her so far. On the other hand, the respondents have imposed interest upon the petitioner in respect of the remaining amount.*
>
> *We call upon respondent no.3 to show cause as to why possession of the plot has not been delivered to the petitioner so far and why this Court should not direct for payment of exemplary compensation to the petitioner for the said default and also recommend for action being taken against the person responsible for the delay.*
>
> *Sri Ashish Agarwal, learned counsel appearing on behalf of respondent no.3 shall communicate the instant order to the respondent for due compliance.*
>
> List as fresh on 22.7.2022."

11. He further submitted that after filing of the present writ petition UPSIDA had taken a decision on 08th June, 2022, which was received by the petitioner on 17.06.2022 and thereafter the same has been brought before this Court by way of amendment application. UPSIDA vide letter dated 08th June, 2022 called upon the petitioner to complete the formalities for execution of lease deed. The letter requires the petitioner to deposit balance premium amount of Rs. 7,56,452/- and interest amounting to Rs. 5,35,967/- as well as lease rent and GST @ 18% apart from certain other charges.

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12. The petitioner submits that she is ready and willing to take possession of the plot and will also pay the balance amount at the time of execution of sale deed.

13. The submission of the petitioner is that the respondent no. 3 cannot put the petitioner to double loss, in as much as, firstly the possession of land was not handed over to her in time and secondly the Authority is penalising her by asking for heavy interest for delayed payment.

14. The petitioner submitted that the Respondent No. 3 cannot take benefit of their own fault. It came to light that the Respondent No. 3 did not have the “Conveyance Deed” for the land which was allotted to the petitioner, hence, they were not in position to execute the deed. It is not open for the UPSIDA to charge heavy interest rate for a period for which they were on the fault.

ARGUMENT OF RESPONDENT NO. 3.

15. Mr. H.N. Singh, learned Senior Advocate assisted by Shri Ashish Agarwal learned counsel for the Respondent No. 3 submits that UPSIDA has floated a scheme of plot allotment in the year 2017 and the plot was allotted to the petitioner as per the allotment condition. The petitioner was supposed to pay 25% of the total premium, in lieu thereof, the petitioner had paid 80% of the said amount within a month. Due to of some internal problem between UPSIDA and the State Government, the “Conveyance Deed” could not be executed earlier. It was only on 23.01.2021 the “Convenience Deed” was executed in favour of the UPSIDA. However, it was on 03.09.2019 when UPSIDA had issued an order,

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whereby an option was given, if the allottees want to withdraw the money the same will be returned to them with 6% interest per annum after deducting the processing charges and the second option was for those who would like to continue in the project and are ready to wait, would pay the allotment premium along with interest as stated in the allotment letter.

16. Shri H.N. Singh, learned Senior Counsel has placed reliance on judgment passed by the Division Bench of this Court on 17.02.2023 in the matter of **Rajaram Maurya vs. State of U.P. and 3 others**[3] and submitted that this Court had allowed the UPSIDA to repay the entire deposits along with interest at the rate of 8% per month which was subsequently reduced to 6% by the Supreme Court vide judgement and order dated 04.07.2023 in the matter of **U.P. Industrial Development Authority vs. Raja Ram Maurya**[4], hence the petitioner can withdraw the said amount alongwith 6% interest.

17. Learned Senior Counsel submitted that on the basis of the said office order, the petitioner opted to continue under the scheme and as such is liable to pay interest on the remaining amount and hence an interest is being charged @ 12 % per annum and accordingly, the respondent on 08.06.2022 called upon the petitioner to deposit the remaining outstanding premium amount which was Rs. 7,56,452/- along with interest of Rs. 5,35,967/- which comes out to Rs. 12,92,419/- and once this amount is deposited, then the respondent No. 3-UPSIDA would hand over the possession and execute the sale deed in favour of the petitioner.

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3 Writ-C No. 32291 of 2022, Neutral Citation No. 2023:AHC:41120-DB
4 Special Leave to Appeal No. 12196-12197 of 2023

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18. Learned counsel for the respondent no. 3 further submitted that the petitioner is bound to pay the interest as per the provisions of Sections 55, 56 and 73 of the Contract Act.

ISSUES BEFORE THE COURT

19. Heard the submission advanced by learned counsel for the parties and perused the record.

20. The issue that thus arises for consideration in the instant petition is whether UPSIDA, which is State within the meaning of Article 12 of the Constitution of India, is acting in a fair manner. Admittedly, in the advertisement, there was no disclosure that UPSIDA did not have “Conveyance Deed” in its favour and that its title was still inchoate. A very relevant information was thus withheld from the public at large. This had resulted in large number of persons applying under the scheme unaware of the defect in the title of UPSIDA. Again, it kept accepting money without apprising the applicants of the defects in its title. It also failed to deliver possession even after receipt of more than 25 % of the premium amount, which is complete breach of the obligation under the allotment letter.

21. The other question which arises is whether in the above background facts, UPSIDA can charge interest from the allottees on the balance premium amount even when they had defaulted in delivering of possession in terms of the allotment letter. The petitioner has been deprived of use and enjoyment of the plot, to which she was entitled to, as soon as she deposited 25 percent of the total amount. Alternatively, even if, UPSIDA was entitled to

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realize interest on the remaining amount, what should be proper compensation to be awarded to the petitioner.

22. By the order dated 22.07.2022, this Court has framed the basic issues which are as follows :

(i) Whether UPSIDA, which is State within the meaning of Article 12 of the Constitution of India is acting in a fair manner while accepting the money without disclosing the actual condition of the title?

(ii) Whether UPSIDA has failed to deliver the possession even after receipt of 25% of premium amount in complete breach of the obligation under the allotment letter?

(iii) Whether there is justification of charging the interest on the balance amount inspite of failing to deliver the possession on deposit of 80% premium through letter dated 08.06.2022 when the UPSIDA itself is in default in delivering the possession in terms of allotment letter ?

(iv) Whether alternatively, even if, UPSIDA was entitled to realize interest on the remaining amount, what should be proper compensation to be awarded to the petitioner?

ANALYSIS BY THIS COURT

23. This Court vide order dated 22.07.2022, has observed that:-

> *"Before we proceed to decide these larger issues, we give one opportunity to the Chief Executive Officer of U.P.S.I.D.A. to revisit the entire matter and file his personal affidavit on all the aspects noted above."*

24. Thereafter, personal affidavit of C.E.O., UPSIDA was filed on 03.08.2022, however, contrary to the order dated 22.07.2022 Respondent No. 3 did not revisit the entire matter and in response to the 3rd Issue, the C.E.O. in his personal affidavit stated that parties are bound with the agreement and hence they are liable to

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pay the interest, even if there was delay in executing the conveyance deed.

25. The UPSIDA has taken a decision not to charge penal interest and since the petitioner has deposited 80% of the Premium amount, hence, 2% rebate would be given on the contractual rate of interest and only demanded interest of Rs. 4,64,406/- on the balance amount @ 12% per annum (14% - 2% = 12%).

26. Yet another personal affidavit was filed on 15.09.2022 by C.E.O.-respondent no. 3 of UPSIDA and it was brought to the notice that the UPSIDA on 01.08.2019, in it's 33rd meeting, has taken a decision to grant opportunity to the allottees to take money back with interest at the rate of 6%. However, no decision was taken on Issue no. 3, on the issue of charging of interest on the balance amount.

27. Thereafter, the respondent No. 3-UPSIDA filed another affidavit, wherein, they took a stand that despite having deposited entire cost of the land to the State Government, the State Government failed to execute the "Conveyance Deed" in favour of the UPSIDA, as a result, respondent No. 3 could not hand over the possession to the allottees or executed the sale deed in their favour.

28. The allotment letter dated 18.02.2017 by which a plot of 200 Sq. Meter was allotted in favour of the petitioner and the petitioner was supposed to pay 25% of the premium amount of the plot, clearly stipulates that after payment of 25% of the premium amount, the respondent No. 3 was supposed to hand over the possession and execute the lease deed. However, in instant case

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the petitioner who is 75 years old lady had deposited 80% of the total premium amount, but inspite of that neither the sale deed was executed nor the possession of the plot was given by UPSIDA.

29. In the affidavit of UPSIDA it has been admitted that because of some internal dispute between UPSIDA and State Government, the “Conveyance Deed” for the said land was not executed by the State Government till 25.01.2021.

30. Though an option of exit was given to the petitioner, but she chose to stay in the project, and tacitly agreed to adhere the terms of the allotment letter.

31. Therefore, the argument raised by Respondent No. 3 that the instant issue is covered by judgment of Division Bench passed in Writ -C No. 32291 of 2022 is incorrect, as in that case the plot allotted was in low lying area and the allottee wanted a change to a different and better plots, however the facts of that case was different from this case. It was not the case in that scheme, that UPSIDA had no title to pass on to the allottees. Since the issue raised in Writ-C No. 32291 of 2022 is different from the instant writ petition, hence the judgment passed by the Division Bench in that case is not applicable herein and distinguishable on facts.

ISSUE OF WHETHER ONE CAN TAKE ADVANTAGE OF ITS OWN FAULT

32. In this case, now the question before us is as to whether the respondent no. 3 can take advantage of their own fault as they were not even in a position to hand over the possession. However

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they are charging the interest for the period in which infact respondent no. 3 was in default.

33. As per the doctrine of "**commodum ex inijuria sua nemo habere debet**", it is settled law that no party can take advantage of their own fault. The Hon'ble Supreme Court in the matter of **M.K. Shah Engineers and Contractors vs. State of M.P.**[5] has held as follows:-

> *"17. No one can be permitted to take advantage of one's own wrong…….A closer scrutiny of clause 3.3.29 clearly suggests that the parties intended to enter into an arbitration agreement for deciding all the questions and disputes arising between them through arbitration and thereby excluding the jurisdiction of ordinary civil courts. Such reference to arbitration is required to be preceded by a decision of the Superintending Engineer and a challenge to such decision within 28 days by the party feeling aggrieved therewith. The steps preceding the coming into Operating of the arbitration clause though essential are capable of being waived* ***and if one party has by its own conduct or the conduct of its officials, disabled such preceding steps being taken, it will be deemed that the procedural prerequisites were waived. The party at fault cannot be permitted to set up the bar of non-performance of prerequisite obligation so as to exclude the applicability and Operating of the arbitration clause."***
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> **(emphasis supplied)**

34. In **Mrutunjay Pani v. Narmada Bala Sasmal**[6], the Hon'ble Supreme Court observed as under:

5 (1992) 2 SCC 594
6 AIR 1961 SC 1353

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> *"5…….The same principle is comprised in the Latin maxim commodum ex injuria sue nemo habere debet, that is, convenience cannot accrue to a party from his own wrong. To put it in other words, no one can be allowed to benefit from his own wrongful act."*

35. Hon'ble Supreme Court in the matter of **Kusheshwar Prasad Singh vs. State of Bihar and others**[7] has held as follows:-

> *"12. ……..The appellant is right in contending that final statement statement ought to have been issued immediately or in any case within "reasonable time". The authority cannot neglect to do that which the law mandates and requires doing. By not issuing consequential final settlement under Section 11(1) of the Act, the authority had failed to discharge its statutory duty. Obviously, therefore, the appellant is justified in urging that such d**efault in discharge of statutory duty by the respondents under the Act cannot prejudice him.** To that extent, therefore, the grievance of the appellant is well founded.*
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> *13. ……..The appellant, therefore, is right in contending that the authorities cannot be allowed to take undue advantage of their own default in failure to act in accordance with law and initiate fresh proceedings.*
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> *X X X X*
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> *16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrongdoer ought not to be permitted to make a profit out of his own wrong."*
>
> **(emphasis supplied)**

36. In **Broom's Legal Maxims (10th Edn.), p.191** it has been stated as follows:-

> *"It is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim,*

7 (2007) 11 SCC 447

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> *which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure."*

37. Hon'ble Supreme Court in the matter of **Nirmala Anand vs. Advent Corporation (Pvt.) Ltd. And others**[8] has held that the respondents cannot take advantage of their own wrong and that would amount to unfair advantage.

38. Recently Hon'ble Supreme Court in the matter of **Municipal Committee Katra & Ors vs. Ashwani Kumar**[9], has also considered that no one can be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. A wrong doer ought not to be permitted to make profit out of his own wrong. Relevant para nos. 18 and 19 of the judgement are being reproduced herein for ready reference:-

> *"18. The situation at hand is squarely covered by the latin maxim 'nullus commodum capere potest de injuria sua propria', which means that no man can take advantage of his own wrong. This principle was applied by this Court in the case of* ***Union of India v. Maj. Gen. Madan Lal Yadav, (1996) 4 SCC 127*** *observing as below: -*
>
> > *"28. ...In this behalf, the maxim nullus commodum capere potest de injuria sua propria — meaning no man can take advantage of his own wrong — squarely stands in the way of avoidance by the respondent and he is estopped to plead bar of limitation contained in Section*

8 (2002) 5 SCC 481
9 Civil Appeal No(s). 14970-71 of 2017 decided on 09.05.2024

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123(2). In Broom's Legal Maxim (10th Edn.) at p. 191 it is stated:

"... it is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure."

The reasonableness of the rule being manifest, we proceed at once to show its application by reference to decided cases. It was noted therein that a man shall not take advantage of his own wrong to gain the favourable interpretation of the law. In support thereof, the author has placed reliance on another maxim frustra legis auxilium invocat quaerit qui in legem committit. He relies on Perry v. Fitzhowe [(1846) 8 QB 757 : 15 LJ QB 239] . At p. 192, it is stated that if a man be bound to appear on a certain day, and before that day the obligee puts him in prison, the bond is void. At p. 193, it is stated that "it is moreover a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned". At p. 195, it is further stated that "a wrong doer ought not to be permitted to make a profit out of his own wrong". At p. 199 it is observed that "the rule applies to the extent of undoing the advantage gained where that can be done and not to the extent of taking away a right previously possessed".

19. It is beyond cavil of doubt that no one can be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, 'a wrong doer ought not to be permitted to make profit out of his own wrong'.

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> *The conduct of the respondent-writ petitioner is fully covered by the aforesaid proposition.*

39. Hon'ble Supreme Court in catena of judgments starting right from **M.K. Shah Engineers** (supra), **Mrutunjay Pani** (supra), **Kusheshwar Prasad Singh** (supra), **Nirmala Anand** (supra) and **Municipal Committee Katra** (supra) has throughout held that the authorities cannot be allowed to take undue advantage of their own default in failure to act in accordance with law within a reasonable time.

40. In the present case, the undisputed fact remains that the respondent no. 3-UPSIDA allocated the plot to the petitioner without holding proper title, resulting in a delay of nearly four years to acquire the title. This delay was obviously not attributable to the petitioner but solely due to the actions and internal issues of respondent no. 3. Therefore, respondent no. 3 cannot take advantage of the delay or default that they themselves caused and ask for interest to be paid for that period.

CONCLUSION

41. The only bone of contention before the Court is whether the UPSIDA is entitled to levy interest on the remaining balance due from the petitioner during the period in which the delay was attributable to UPSIDA itself. According to the terms of the allotment letter, the petitioner was required to pay 25% of the total premium amount within 30 days of the allotment, following which UPSIDA was obligated to execute the lease deed in favour of the allottee. In this instance, despite the petitioner having paid 80% of the premium amount, UPSIDA failed to execute the "Conveyance

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Deed" or hand over possession until January 25, 2021, due to internal issues within UPSIDA. Consequently, it is unjustifiable for UPSIDA to impose an interest rate of 14%, later reduced to 12%, for the period of delay, which is solely attributable to UPSIDA, caused by its own actions. The 14% interest rate was originally stipulated for instances where the allottee opted for installment payments which the petitioner did not opt for. In the interest of justice, there cannot be a discrepancy in the rate of interest applied. If UPSIDA offers a 6% interest rate to individuals, for withdrawing from the agreement, in all fairness, it cannot charge 14% or 12% interest from those who remain committed to the agreement. Moreover, there is no provision in the allotment letter for charging interest if the default is on UPSIDA's part.

42. A party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate" at the same time. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience. Therefore, UPSIDA cannot take unjust benefit from its own delay and must rectify the interest rate accordingly.

43. Regarding the interest on the 80% premium amount paid by the petitioner, this matter is currently pending before the RERA Appellate Authority. The petitioner is entitled to pursue the issue for interest or damages for the period during which the payment was made, and the property could not be enjoyed by her. This aspect remains open for adjudication, and we are not addressing it in this judgement.

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DIRECTIONS BY THE COURT

44. In view of the aforementioned considerations, it is evident that the respondents cannot capitalize on their own defaults to the detriment of the petitioner. The established legal principle that no party should get benefit for their own wrong applies in the present case. Accordingly, respondent No.3, UPSIDA, is directed to correct the unjust imposition of interest and to comply with appropriate legal standards. They may only charge interest @ 6% on the outstanding amount. Upon the petitioner paying the outstanding amount along with 6% interest rate for the period from the date of allotment of plot, respondent no.3 is obligated to execute the lease deed and complete all other formalities within 2 weeks thereafter.

45. With the above direction, the instant writ petition is **disposed of**.

46. No order as to cost.

Order date : 22.08.2024
Bhanu