

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No. 1920 of 2015
Date of Decision: 06.02.2015

Surender Kumar

.....Petitioner

Versus

Haryana Urban Development Authority and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Shri Gaurav Bakshi, Advocate, for the petitioner.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Hemant Gupta, J.

Challenge in the present writ petition is to the communication dated 23.8.2011 reiterated in the letter dated 04.10.2013 declining the condonation of delay in depositing 15% of the amount of the sale consideration.

The petitioner was allotted residential plot No. 2212, Sector 62, Faridabad on 25.06.2003. The petitioner had to deposit a sum of Rs.40,015.50p within a period of 30 days from the date of issue of the allotment letter, but the same was not deposited. On 02.09.2003, the allotment of the plot was cancelled and earnest money i.e. 10% of the total sale consideration was forfeited. The petitioner filed an appeal against the order of cancellation, which was declined by the Administrator, Faridabad on 27.02.2004. The petitioner, thereafter, filed a revision. The revision was decided on 24.02.2009 with direction to the Chief Administrator to consider the

issue of condonation of delay as per the relevant policy guidelines within a period of 75 days. Since the matter was not decided for 75 days, therefore, in terms of the liberty granted by the Revisional Authority, the matter was again taken up by the Financial Commissioner, Department of Town and Country Planning. The Chief Administrator was directed to take a decision as per the Policy applicable at the time of allotment within 30 days.

The petitioner filed a writ petition since no decision was taken by the Chief Administrator. A Division Bench of this Court vide order dated 15.05.2013 passed in CWP No. 10440 of 2013 directed respondent No.1 for the decision to be taken in respect of the relaxation of payment of 15% of the amount within a period of 2 months. The petitioner filed a Contempt Petition, wherein reply was filed pointing out that the decision had already been taken on 23.08.2011 declining the condonation of delay in deposit of the amount and that the order was re-communicated on 04.10.2013. In view of the reply filed, vide order dated 22.07.2014 the contempt petition was disposed of having been satisfied. It is thereafter, the petitioner had filed the present writ petition, challenging the decision of the Haryana Urban Development Authority in not condoning the delay in deposit of 15%. Reliance was placed on Chaman Lal Singhal v. Haryana Urban Development Authority, (2009)4 SCC 369.

It is contended that the request for condonation of delay was required to be considered by the Board of Haryana Urban Development Authority, whereas the same has been considered by the Chief Administrator alone. Therefore, declining the request of the petitioner is not tenable in law.

The petitioner did not make any representation for extension of time to deposit the amount beyond 30 days any time before the cancellation was ordered on 02.09.2003. As per the Policy,

Annexure P.16 dated 27.07.2005, delay upto 30 days could be condoned by the Estate Officer on payment of 5% of the delayed amount; upto 45 days on payment of 7% by the Administrator and upto 60 days by the Chief Administrator on payment of 10% of the delayed amount apart from payment of penal interest @ 14% p.a. The petitioner had not sought condonation of delay upto the date of cancellation of the allotment letter and even 90 days thereafter, though in the subsequent policy delay can be condoned by the Chairman. The discretion in not condoning the delay has been examined by the Chairman of the Board and the decision communicated by the Chief Administrator.

The Hon'ble Supreme Court in Chaman Lal Singhal's case (supra), held that the non compliance of the terms of the letter of allotment does not give rise to binding contract. It was observed:

“21. In our considered opinion the appellant failed to comply with the aforesaid clauses of the letter of allotment and, therefore, his allotment stood cancelled and the earnest money deposited by him could be forfeited by the Authority. The order of cancellation came to be passed by the competent authority after 500 days. Be that as it may, the aforesaid allotment of plot of land in favour of the appellant came to be cancelled because of non-payment of the amount as stipulated in Clause 5 and, therefore, the earnest money deposited by him could be forfeited by the Authority.

22. Since the case of the appellant comes within the ambit of clauses 4 and 5 of the allotment letter, the provisions of Section 17 of the Act would have no application and would not apply. It is thus established that there was no agreement/contract between the appellant and the respondent Authority and there being no such agreement/contract and because of non-compliance with requirement of Clause 5 the issue with regard to violation of principles of natural justice also would not arise. Therefore, the contentions that provisions of Section 17 of the Act are violated and that

there is non-compliance with the principles of natural justice have no merit.”

Since the letter of offer of allotment of offer was not accepted by the petitioner within 30 days, therefore, no concluded contract comes into existence.

In Greater Mohali Area Development Authority and others v. Manju Jain and others, (2010) 9 SCC 157, the Hon'ble Supreme Court allowed an appeal, wherein the allotment made to the petitioner stood cancelled for failure to deposit 25% of the amount within 60 days of the receipt of the allotment letter. The Hon'ble Court held that allocation letter merely accepted does not confer any right to allotment. It was held to the following effect:-

“29. If the instant case is examined in the light of the aforesaid settled legal propositions, it becomes clear that Respondent 1 did not make any response whatsoever after applying for allotment. No explanation could be furnished by Respondent No. 1 for why she kept quiet for 4½ years after receiving the allocation letter and why she did not make any attempt to find out what had happened to her application. Respondent 1 did not send her acceptance of the allotment; did not deposit the amount which became due in 1999 itself; and did not execute the required hire-purchase agreement with the appellant Authority. Thus, it is solely for her that no concluded contract came into existence between the parties. In such a fact situation, Respondent 1 could not be handed over the possession of the flat. The forfeiture of the earnest money is in terms of the statutory provisions.”

Similar issue came up for consideration before this Court in CWP No. 17297 of 2013 – Sonu Kapoor v. State of Haryana and others, decided on 02.09.2014, wherein it was observed as under:-

“The earlier policy dated 09.04.1999 prescribes the period of condonation of delay in deposit of the 15% amount, the officer who can condone the delay and surcharge rate leviable on 15% amount. Such policy has been considered by this Court in CWP No.16898 of 2014

titled as Om Parkash Thareja v. State of Haryana and others, decided on 28.08.2014, it was held that having failed to communicate the acceptance within 30 days, no concluded contract comes into existence in terms of Chaman Lal Singhal Versus Haryana Urban Development Authority and others, (2009)4 SCC 369. The Hon'ble Supreme Court in Jasbir Singh Chhabra and others v. State of Punjab and others, (2010) 4 SCC 192 and Greater Mohali Area Development Authority and others v. Manju Jain and others, (2010) 9 SCC 157, has also held that on failure to deposit total amount of 25%, no concluded contract comes into existence as the letter of allotment is only an offer which is required to be accepted so as to create a contract."

The provisions of Section 17 of the Haryana Urban Development Authority Act, 1977, for resumption comes into play only if the offer of the allotment of plot is accepted. An appeal would lie only against the order of resumption. In fact, the order of cancellation of offer of allotment is not an appealable order in terms of Section 17 of the Haryana Urban Development Authority Act, 1977. Section 17 of the said Act, reads as under:-

"17. Resumption and forfeiture for breach of conditions of transfer.-

(1) Where any transferee makes default in the payment of any consideration money or any instalment, on account of the sale of any land or building, or both, under section 15, the Estate Officer may, by notice in writing, call upon the transferee to show cause within a period of thirty days, why a penalty which shall be equal to ten percent of the amount due from the transferee, be not imposed upon him.

(2) & (3) xx xx xxx

(4) After considering the cause, if any, shown by the transferee in pursuance of a notice under sub-section(3) and any evidence that he may produce in support of the same and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer, may for reasons to be recorded in writing, make an order

resuming the land or building or both, as the case may be, and directing the forfeiture as provided in sub-section (3) of the whole or any part of the money paid in respect of such sale.

(5) Any person aggrieved by an order of the Estate Officer under section 16 or under this section may, within a period of thirty days of the date of the communication to him of such order, prefer an appeal to the Chief Administrator in such form and manner, as may be prescribed.

xx xx xx

(6) and (7) xx xx xx

(8) Any person aggrieved by the order of Chief Administrator under sub-section (6) may within a period of ninety days of the date of the communication to him of such order, prefer a revision petition to the Secretary to Government, Haryana, Town and Country Planning Department, in such form and manner as may be prescribed.

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Therefore, the appeal and the revision cannot be treated to be statutory remedies availed by the petitioners. It is at best, availing a Departmental Dispute Redressal Mechanism.

Since the petitioner has not sought condonation of delay within the period which could be extended by the authorities such as the Estate Officer; Administrator or the Chief Administrator, therefore, the petitioner cannot claim any right to seek allotment of a plot, the offer of which was withdrawn in the year 2003.

Dismissed.

(Hemant Gupta)
Judge

(Hari Pal Verma)
Judge

06.02.2015
D.Gulati/ds