

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 7078 of 2015

Date of Decision: 20.4.2015

Jagmohan Vashisht

....Petitioner.

Versus

Housing Board Haryana and another

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE SHEKHER DHAWAN.**

PRESENT: Mr. Sandeep Punchhi, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for declaring the action of the respondents in not refunding the excess amount recovered by them from him to be illegal, arbitrary and in-contravention of the decision of this Court in RSA No. 376 of 2004 (Annexure P-2) and also in CWP No. 15953 of 2010 (Annexure P-5).

2. Respondent No.2 advertised constructed houses in Housing Board Colony, Kalka for the allotment to the residents of State of Haryana. The petitioner being eligible applied for the same by way of application along with 10 per cent of the price as earnest money. The petitioner was successful in the draw of lots and consequently was allotted HIG Tenement No. 109, Ground Floor measuring 142.30 square yards at Housing Board Colony, Kalka. The total price of the house, at the time of advertisement was ₹ 1,37,000/- and 20 per cent of the price

of the house was to be given at the time of possession. The petitioner was allotted the house in September, 1989. However, at the time of issuance of allotment letter, the price of the house was mentioned as ₹ 2,07,300/- along with first and second enhancement of land compensation amounting to ₹ 19,964/-. He was directed to pay a sum of ₹ 38,024/- as per allotment letter dated 26.9.1989 (Annexure P-1). The petitioner filed CWP No. 13594 of 1989. In the meantime, the respondents made a demand of an additional amount from all the allottees by sending demand notices of enhancement of price of the tenements. The various allottees including the petitioner formed an association, i.e. Welfare Association Housing Board, Kalka (Regd.) and filed a civil suit for mandatory injunction as well as permanent injunction restraining the respondents from sending the demand notices for enhancement price of tenements allotted to its members. The said suit was dismissed by the trial court and on appeal, the same was also dismissed. Thereafter, RSA No. 376 of 2004 was filed in this Court. The said appeal was decided by this Court vide judgment and decree dated 13.10.2009 (Annexure P-2) that the similar relief be granted to the allottees as in CWP No. 2805/1985 in case the allottees paid the principal amount with simple interest @ 9.5% per annum w.e.f. 1.3.2000 upto the date of final payment. The petitioner in pursuance of the demand notice sent by the respondents, paid the excess amount along with interest. After the passing of the judgment and decree dated 13.10.2009 (Annexure P-2), the petitioner requested the respondents to refund the excess amount. Some of the allottees made a written request in January, 2010. Respondent No.2 vide a letter dated 25.1.2010 (Annexure P-3) followed by letter dated 29.1.2010 (Annexure P-4)

informed that since the petitioner had paid the amount due before the decision of RSA No. 376 of 2004, therefore, he was not entitled to any refund. The respondents at the time of making calculations in pursuance of the judgment, Annexure P-2, refused to recognize some of the allottees on the ground that they were not members of the Association and should deposit the amount as per the policy of the Haryana Housing Board. The said action of the respondents was set aside by this Court vide order dated 13.7.2012 (Annexure P-5) passed in CWP No. 15954 of 2010. Since the respondents refused to pay the excess amount to the allottees, they filed CWP No. 12436 of 2010. The said petition was disposed of as infructuous vide order dated 6.9.2011 (Annexure P-6) and the petitioners therein were granted liberty to raise their claim before the respondents on which action shall be taken by the within two months from the date of presentation of the claim. In pursuance thereto, various representations including representation dated 25.7.2013 (Annexure P-7) were made to respondent No.2, but to no effect. Some of the allottees who were not being refunded the amount, filed CWP No. 12436 of 2010 which was allowed by this Court vide order dated 6.9.2011 directing the respondents to pay the amount to the allottees and in pursuance thereto, the respondents vide order dated 12.12.2011 (Annexure P-8) ordered for refund of the amount which was paid to them vide letter dated 14.12.2011 (Annexure P-9). Since, the amount was not being refunded to the petitioner, he sent a legal notice dated 8.1.2015 (Annexure P-12) to the respondents, but no response has so far been received. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has moved a

representation dated 25.7.2013 (Annexure P-7) to respondent No.2 and thereafter sent a legal notice dated 8.1.2015 (Annexure P-12) to the respondents, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.2 to take a decision on the representation dated 25.7.2013 (Annexure P-7) and legal notice dated 8.1.2015 (Annexure P-12), respectively, in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of three months from the date of receipt of certified copy of the order.

(AJAY KUMAR MITTAL)
JUDGE

April 20, 2015
gbs

(SHEKHER DHAWAN)
JUDGE