

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No.535 of 2011 (O&M)

Date of decision: 6th January, 2015

Shruti Goenka

... Appellant

Versus

Haryana Urban Development Authority

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

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

Present: Mr. Gurinder Singh Sandhu, Advocate for
Mr. Santosh Sharma, Advocate
for the appellant.

Mr. Ajay Nara, Advocate
for the respondent.

FATEH DEEP SINGH, J.

After having been unsuccessful before the two courts below, who have declined any relief to the plaintiff/appellant Ms. Shruti Goenka through judgments and decrees dated 31.05.2010 and 14.10.2010 respectively, has come up in this regular second appeal.

Heard at length Mr. Gurinder Singh Sandhu, Advocate on behalf of Mr. Santosh Sharma, Advocate for the appellant; Mr. Ajay Nara, Advocate representing the respondent and having perused the records.

The undisputed facts which have been brought to the notice of the Court from these submissions are that a plot measuring 502.32 square yards situated in Sector 2, Residential Area, Faridabad on freehold basis was allotted by defendant-Haryana Urban Development Authority (for short, 'HUDA') through allotment letter No.19 dated 05.11.1998 Ex.P1. In terms of these conditions of allotment plaintiff deposited 10% of the tentative price amounting to ₹1,21,562 and thereafter 15% of the tentative price amounting to ₹1,82,342; totaling to ₹3,03,904.

It is the case of the plaintiff/appellant that she was not given possession of the plot and thus, in terms of Clause 26 of the allotment letter she sought refund of her amount as well as cancellation of the allotment of plot vide letter dated 22.03.2002. The only bone of contention and dispute is that the plaintiff claims that she is entitled to refund of the entire amount deposited whereas the defendant-HUDA states that the plaintiff was refunded ₹1,29,420 through Cheque No.426360 dated 16.05.2002 depicted in Ex.P3 and thus, nothing was due.

The trial Court framed the following issues:

1. Whether the plaintiff is entitled for possession of plot No.104, Sector 2, Faridabad on payment of entire balance amount on the ground mentioned in the plaint? OPP

2. Whether the defendant failed to refund the entire amount of Rs.3,03,904 along with interest at the rate of 18%? OPP
3. If issues No.1 & 2 are proved, whether the plaintiff is entitled for decree for declaration and mandatory injunction on the ground mentioned in the plaint? OPP
4. Whether the present suit of the plaintiff is not maintainable in the present form? OPD
5. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD
6. Whether the suit is bad for mis-joinder and non-joinder of the necessary parties? OPD
7. Whether the plaintiff has concealed true and material facts from the Court? OPD
8. Whether the suit of the plaintiff is time barred? OPD
9. Whether the suit of the plaintiff is bad for want of jurisdiction and Court fees? OPD
10. Relief.

The plaintiff examined herself as PW1 and proved documents Ex.P1 to Ex.P5 and Ex.P7 to Ex.P12. On the other hand defendant examined DW1 Chandgi Ram Clerk and proved documents Ex.D1 to Ex.D4. The trial Court of learned Civil Judge (Jr.Divn.), Faridabad dismissed the suit of the plaintiff/appellant and which

finding was upheld by the first appellate Court of learned District Judge, Faridabad.

It is writ large on the records that the plaintiff/appellant on her own made a written request for cancellation of the allotment and sought refund of the amount, which was refunded to her on 20.05.2002 and she received the amount without protest. She filed the suit in question on 21.01.2005, after more than 2½ years which shows that it was on account of her own laches and fault which disentitles her to seek such a prayer at this juncture belatedly.

Though learned counsel for the appellant accepts that at the time of this allotment HUDA had subscribed in its terms of allotment Ex.P1 and by virtue of Clause 26 the eventualities under which surrender of plot may be allowed without forfeiture of any amount and which is also incorporated in office memo No.A-11P-94/2975-76 dated 08.02.1994. Clause 26 of the terms of allotment Ex.P1 is reproduced below to lay emphasis:

“During the demarcation or at any stage after allotment if the plot of any allottee to be falling in an area under any litigation or development could not be done due to litigation/or possession is delayed due to litigation, then the allottee in such case will have to either wait for the possession of his plot till the litigation is over/ the development works are completed in that pocket. The allottee can seek refund of the amount paid by him to HUDA. However, the amount shall be refunded to the allottee without interest. In either case the allottee shall not have any right to claim an alternative plot.”

Mr. Gurinder Singh Sandhu representing the plaintiff/appellant could not impress upon this Court any of the eventualities under which case of the plaintiff/appellant stands covered and since surrender of the residential plot can be made by the exercise of his powers by Estate Officer of the concerned Authority and which is to be done after forfeiting an amount upto 10% of the total amount of consideration money, interest and other dues payable and it is what has been detailed by the lone witness of the defendant DW1 Chandgi Ram Clerk that 10% of the tentative cost of the plot was to be deducted upon refund.

Thus, from this all it was own volition of the plaintiff/appellant which led to this surrender of the plot and therefore as has been held in the impugned findings that neither there was any litigation which could have come in the way of allotment/possession of the plot to the plaintiff and since possession was given as per the records of the defendant and there was enhancement of the price due to increase in the compensation payable to the land owners whose land was acquired was the primary reason which led to surrender as is depicted in the own letter of the plaintiff/appellant.

As has been held the record further reveals that there has been default in the payment of annual instalments by the plaintiff which has been conceded by her in her cross-examination as PW1 and the first installment became due on 05.11.1999 and she has not made any payment of the installment henceforth. Furthermore, she was given opportunity of personal hearing which she never availed of

as per her own cross-examination, are matters which have an adverse impact on the outcome of the case of the plaintiff.

The Court below has held that there was violation of Section 17(3) of the Haryana Urban Development Authority Act, 1977 and which forms part of the conditions of the allotment. Learned counsel for the appellant to the very specific question could not state under what provisions the plaintiff was entitled to refund of the entire amount. Thus, finding no perversity in the concurrent findings recorded by both the courts below, the same do not call for any indulgence.

The appeal being without any merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

January 6, 2015
rps