

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

RSA No. 3885 of 2010 (O&M)

Date of Decision : 14.09.2016

B.K. Nagpal

...Appellant

Versus

Haryana Urban Development Authority

...Respondent

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Shiv Kumar, Advocate for the appellant.

Mr. R.S. Longia, Advocate for the respondent.

Surinder Gupta, J.(Oral)

Heard.

Both the learned counsel for the parties submit that while deciding the appeal, learned first appellate court has mentioned the facts in para 21 onward, which are neither pleaded nor proved. In para 26, it has been mentioned that the entire sale consideration has not been paid and the plaintiff is enjoying the fruits of allotment of the plot after raising the complete construction thereon. It has been observed in para 23 that the counsel for the plaintiff admitted that before starting the construction at the spot, necessary compliance of the instructions was not made.

It is an admitted case of the parties that no construction has been raised at the spot. The observations that after completing the construction upto D.P.C. level and raising further construction, as such, appear to have been made without there being any submission in this regard.

Counsel for the parties request that the matter may be sent back to the first appellate court to decide the appeal afresh as neither of the fact mentioned in para 21 onward is either pleaded or submitted during the course of arguments.

In view of the aforesaid submissions by counsel for the parties, this appeal is accepted. The judgment and decree passed by the first appellate court is set-aside and the matter is remanded to the first appellate court to hear the appeal afresh and decide the same on merits. As the matter is quite old, the first appellate court will decided the appeal within two months from 04.10.2016 when the parties will appear in court, of their own without being any notice. Files of the courts below be sent to the learned District and Session Judge, Faridabad, who will keep the appeal either on his own file or entrust the same to some other competent court for disposal in accordance with law.

The appellant had deposited ₹40 lacs during the pendency of this appeal with the respondent-HUDA. This fact may be submitted before the first appellate court and taken note of by the first appellate court, if pressed before it.

(SURINDER GUPTA)
JUDGE

September 14, 2016.
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Whether speaking/reasoned?

√
Yes/No

Whether reportable?

Yes/No