IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.27 of 2005 (O&M)
Date of Decision:22.12.2017

Wing Commander S.K.Nangia (Retd.) ... Appellant

Versus

Haryana State Industrial Development Corporation and others ... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.C.B.Goel, Advocate for the appellants

Mr.Vishal Garg, Advocate for the respondents

RAJIV NARAIN RAINA, J. (Oral)

1. Heard learned counsel for the parties.

2. The appellant applied for allotment of an Industrial Plot in Phase VI, Udyog Vihar, Gurgaon to set up a unit for manufacturing dynamic handsets and associated accessories. Letter of Intent (Ex.P-5) was issued by the respondent-Corporation on 8th April, 1993 proposing to allot Plot No.827 measuring 250 sq. meters in the aforesaid industrial hub at the rate of 780 per sq. meters. The appellant deposited 25% of the tentative cost of the plot/shed and 75% of the balance premium remained to be deposited. As per the Letter of Intent, the appellant was given an option either to opt for self-financing project according to which the balance 75% of cost of plot was payable within a period of three months from the date of issuance of Letter of Intent or to opt for the other scheme which facilitated the appellant to make payment of the remaining 75% costs of the plot at the time of disbursement of loan by the financial institution. The appellant

opted for the second scheme for deposit of remaining 75% depending on loan. As per Clause 5 of the Letter of Intent (Ex.P-5), the recital was to this effect:-

> "5. In case, you propose to raise loan from HFC/Banks/All India Financial Institution, you will be required to get the term loan disbursed against the cost of land/shed from the financial institution within a period of 9 months from the date of LOI.
> In case, you are not able to get the term loan disbursed within 9 months from the date of issue of LOI, an extension for a period of 3 months can be given after receipt of a nominal fee @ ₹ 1 per sq. meter per month."

Clause 8 of the Letter of Intent (Ex.P-5) stipulates as under:-

> "8. In the event of non-completion of the formalities within the specific period, the LOI shall stand withdrawn/cancelled and the amount deposited by you will be refunded after deducting 10%."

3. The respondents/defendants' case rests on the plea that the plaintiff had not complied with the aforesaid Clause 5 of the LOI which provided for paying the balance sale price within nine months and, therefore, the Letter of Intent was withdrawn vide letter dated 26th May, 1994 (Ex.P-18) which order remained under challenge before both the courts below. The appellant has lost before both the courts below.

4. At this stage, learned counsel for the appellant submits that the appellant would be satisfied if the amount deposited by the appellant is refunded to him with interest, after deducting 10% of the total amount paid by the appellant, in view of Clause 8 of the LOI. Learned counsel for the respondents admits that as per Clause 8 of the LOI, the amount deposited by the appellant has not been refunded after deducting 10% of the total

payment made by the appellant. In these circumstances, I find merit in the submission of the learned counsel for the appellant for refund because Clause 5 is vague and does not clearly spell out the consequences of inability to obtain term loan against cost of land within the time line. On the other hand, Clause 8 is clear and emphatic on refund due to non-completion of formalities. The appellant had applied to the HFC for term loan which did not materialize in time for hardly any fault of his.

5. While setting aside the judgments and decree of the Court below, this appeal is partly allowed with a direction to the respondents/defendants to refund the amount (25% of total cost) deposited by the appellant with the Corporation with interest @ 6% per annum after deducting 10% out of the total amount deposited by the appellant, within a period of two months from the date of receipt of a certified copy of this order. Decree sheet be prepared.

(RAJIV NARAIN RAINA)
JUDGE

22.12.2017
MFK

Whether speaking/reasoned *Yes*

Whether Reportable *No*