

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

CWP No.11835 of 2016 (O&M)

Date of Decision: December 20, 2017

Ramesh

---Petitioner

Versus

State of Haryana and others

---Respondents

**CORAM:HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Ms. Manjari Nehru Kaul, Advocate with
Mr. Abhinandan Pandhi, Advocate
for the petitioner.

Mr. Deepak Sabharwal, Advocate
for respondents No. 2 to 4.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash the decision dated 5.11.2013 (Annexure P-8) of the respondent -Housing Board Haryana refusing to consider the wait listed applicants for allotment of flats and to return their registration amount and also for quashing the decision dated 26.2.2013 (Annexure P-9) of the respondent Board to scrap the waiting list.

It has also been prayed that the respondents be directed to allot one vacant flat from amongst the cancelled flats to the petitioner.

The respondent Board launched a scheme for allotment of 320 built up houses in Category EWS-I and II and LIG-II on hire purchase basis at Gurgaon and Karnal. Of these, 160 houses were on the ground floor and 160 houses were on the first and second floor (combined). The petitioner

applied on 28.12.2004 for allotment of EWS-II FF/SF Flat in Sector 10

Gurgaon. The tentative price thereof was Rs.3.49 lacs. He deposited Rs.17,450/- as earnest money alongwith the application. The mode of allotment as prescribed in the Brochure (Annexure P-3) was as under:-

- “1) The list of successful applicants will be prepared by draw of lots within six months of the closing date of the scheme.*
- 2) The initial deposit made by the applicant not successful in the draw will be refunded in full in due course without interest.*
- 3) The allotment shall be subject to the provisions of Haryana Housing Board Act 1971 and Rules and Regulations framed there under as amended from time to time.*
- 4) The allotment for the specific house number shall be made by draw of lots of the successful applicants after the completion of houses which shall be binding on the applicants.*
- 5) A waiting list to the extent of 25% of the total number of units shall also be prepared by draw of lots which shall remain operative/valid for a period of six months from the date of draw of allotment of house number. After expiry of validity of 6 months, earnest money will be refunded to all the applicants in the waiting list”*

As per the scheme, the list of successful applicants was to be prepared by draw of lots within six months from the last date of registration. Those who were successful in the draw, were required to deposit 15% of the tentative cost. The amount deposited by the unsuccessful applicants was to be refunded to them. Thereafter, the work of construction of flats was to start and on completion of the construction and the development works another draw from amongst the successful applicants was to be held for allotment of specific house numbers to be allotted. Thereafter, another 15% of the tentative cost was required to be deposited thereby making a total of 40% of the tentative costs of the flat (10% on registration, 15% after first draw and another 15% after draw of lots for allotment of specific house numbers). The remaining 60% was to be paid by the allottees in monthly instalments.

As per condition No.5 a waiting list to the extent of 25% of the

total number of units was to be prepared by draw of lots. This was to remain operative/valid for a period of six months from the date of draw of allotment

of house numbers. After expiry of validity of 6 months, earnest money was to be refunded to all the applicants in the waiting list.

It is around this condition that the question in the present petition revolves.

The draw of lots for all the houses offered under the scheme was held on 9.9.2005. As per terms and conditions of registration, a waiting list to the extent of 25% of the total units was prepared for consideration for allotment in cases of cancellation of registration of any of the successful candidates. The petitioner was informed that he had been granted final registration number 55 and kept at Sr. No.3 of the waiting list. The draw of lots for allotment of house numbers was held on 20.5.2011. As per condition No.5 the waiting list was to be operative for a period of six months from that date i.e., till 20.11.2011.

After holding the draw of lots for allotment of house numbers, the eligibility of the successful applicants was to be examined before issuance of allotment letters. The petitioner sought information under the Right to Information Act about the status of the allotment, the number of the flats cancelled and available for allotment etc. and the allotments made from amongst the waiting list. The relevant information sought and received is as under:-

“3. PARTICULARS OF INFORMATION REQUIRED :

- a) *Date of Validity of Waiting List of EWS I GF Flats and EWS II (FF & SF) Flats Housing Board Colony, Sector 9, Gurgaon*
- b) *The date of scrap (withdrawal) of Validity of the above mentioned category of Flats. Supply of copy of the order of the same.*
- c) *Whether extension of the above waiting list was taken or not and if taken, the date upto which taken? Supply of copy of the Order.*
- d) *Details of noting of officials regarding the above Waiting Policy i.e. copy of comments of Clerks, Asst., Revenue Officer, Chief Revenue Officer, Secretary and Chief Administrator may be supplied.*
- e) *How many Flats of EWS-II (FF&SF) Sector 9, H.B. Colony, Gurgaon cancelled and its date & Flat No.?*

- f) To whom the EWS-II (FF&SF), Sector 9, H.B. Colony, Gurgaon Flats allotted out of the cancelled Flats, with their Waiting List Sr. No. and date of allotment and allotted Flat No.*
- g) How many flats of EWS-II (FF&SF), Sector 9 H.B. Colony, Gurgaon which have been cancelled but have not been allotted to anybody till date.*
- h) Under what Order, Refund of my (Ramesh) Flat Waiting List No.3 of EWS-II (FF & SF), Sector 9, Housing Board Colony, Gurgaon, was sent to me, copy of the order may be supplied to me.*
- i) How many waiting list No. of EWS-II (FF&SF), Sector 9, Housing Board Colony, Gurgaon were cancelled. Were they refunded the Regn. Money or not, if refunded on what dates?*
- j) The date of allotment of flat bearing Final Regn. No.68/2, (Flat No.1258), of EWS-I(GF), H.B. Colony, Sector 9, Gurgaon.”*

The pointwise information given was as under:

- “a) Date of validity is 20.11.2011.*
- b) The policy to keep the waiting list has been scrapped on 26.2.2013 vide Board agenda item no.199.10. Copy of agenda item no.199.10 is enclosed herewith.*
- c) 5.11.2013. Copy of orders enclosed.*
- d) Copy of noting page 1-5 is enclosed mentioning the comments of each officials/officers.*
- e) Flat No.1300 A on dated 7.9.2015. Appeal accepted to restore the flats and the same has been accepted and allotted.
1292 A on 18.7.2012. 1271 A on 12.6.2012*
- f) 1272 A allotted on 20.5.2011 out of waiting list at S. No.1*
- g) 2 Nos. EWS-II (FF- SF) Sector 9 HBC Gurgaon.*
- h) Copy of NP 13-14 enclosed herewith.*
- i) 7 Nos. case made along with interest on dated 2.1.2014 and on 8.1.2014.*
- j) Final registration No.68/2 EWS-I(GF) flat No.1258 has been allotted on dated 15.7.2013”*

This information revealed that three flats of EWS-II (FF &SF) , Sector 9, H.B. Colony, Gurgaon, (the category in which the petitioner applied) had been cancelled. One flat out of these cancelled flats i.e., flat No.1272 A was allotted on 20.5.2011 to the applicant at S.No.1 in the waiting list. Two cancelled flats of this category were still available for allotment. Despite this, no allotment was made to the petitioner. Instead, on 20.01.2014 the respondents returned the earnest money of Rs.22,248/- to

the petitioner. The letter returning the earnest money did not specify any reason.

Aggrieved against the cancellation of the registration and non allotment of the flat, the present petition has been filed.

Ms. Manjari Nehru Kaul, learned counsel for the petitioner argued that the applicant who was at Sr. No.2 in the waiting list having registration No.54/2 had died and none of his legal heirs had approached the respondents to claim the allotment. In the light of this, the petitioner, who was next in the waiting list and registered at No. 55/3 was required to have been allotted the flat. Instead vide the impugned decision his earnest money was returned to him. She further argued that the right to allotment of any flat becoming available subsequently on cancellation/ surrender or any other reason, accrued to the petitioner on 20.05.2011 when the draw of lots for allotment of house numbers was held. The decision to scrap the waiting list was taken by the respondent Board in the year 2013. It could not have retrospective application and adversely affect the accrued right of the petitioner for allotment. Moreover, though the initial validity of the waiting list was only till 20.11.2011 (for 6 months after the draw of lots for allotment of house numbers held on 20.5.2011), the respondent-board itself had on 12.01.2012 (Annexure P-7) decided to keep the registration of the waiting list applicants intact. Hence, the action of the respondents in not allotting the cancelled flat to the petitioner was illegal.

Mr. Sabharwal, learned counsel for the respondents, on the other hand, argued that mere inclusion of the name of the petitioner in the waiting list does not confer any right on the petitioner for allotment of the cancelled flats. The validity of the waiting list was only till 20.11.2011. The petitioner had no right to claim allotment of any flat which became available after the expiry of the validity of the waiting list. He further stated that what

the petitioner terms as a decision to keep the waiting list intact, is only a proposal for keeping intact the registration of the petitioner and other waiting list applicants. However, the said proposal was not accepted by the respondents Board as it is clear from its decision dated 05.11.2013 (Annexure P-8).

Explaining the response to the RTI, Mr. Sabharwal states that it is clear that three flats in the category EWS-II (FF & SF) in which the petitioner had applied had been cancelled. Flat No.1292A was cancelled on 18.7.2012 and Flat No.1271A was cancelled on 12.6.2012. Flat No.1272A which was cancelled during the period of the validity of the waiting list was allotted to the candidate at Sr. No.1 in the waiting list. The other flats were cancelled on 18.7.2012 and 12.6.2012 i.e., after the expiry of the validity of the waiting period. Hence, these were rightly not allotted to any candidate in the waiting list including the petitioner.

Heard learned counsel for the parties and perused the record.

After the draw of lots, the petitioner was placed at Sr. No.3 in the waiting list having registration No.55/3. The validity of the waiting list was till 20.12.2011. Three flats in this category were cancelled. Of these, one flat was cancelled during the period of validity of the waiting list and two others after that date. The flat which was cancelled during the period of validity of the waiting list was allotted to the applicant who was at Sr.No.1 in the waiting list. The petitioner was at Sr.No.3 in the waiting list. The applicant at Sr.No.2 in the waiting list having registration No.54/2 meanwhile expired and his legal heirs did not make any application for being allotted the flat in his place. The grievance of the petitioner is that there were two cancelled plots available for allotment and after the death of the applicant at Sr. No.2 in the waiting list, the petitioner being at Sr. No.1 in

The first contention of the petitioner was that vide the decision dated.12.01.2012 (Annexure P-7) respondent Board had decided to keep the validity of the waiting list intact, whereas, the respondents contended that what the petitioner terms as a decision was only a proposal which was not accepted by the Board.

We have gone through Annexure P-7. A perusal thereof reveals that it is only an office note proposing certain action for approval.

The relevant part thereof reads thus:

“In view of the above it is proposed that :

xxx xxx xxx

iii) *The wait listed applicants of EWS-II/GF bearing final registration No.54/2 & 55/3 may please be kept intact because the registration No.64/EWS-II GF was cancelled vide order dated 22.12.2011 and two number case of final registration No.12 and 15 are under process. The amount may be refunded to the remaining wait listed applicants bearing No.56/4, 57/5, 58/6, 59/7, 61/9, 65/13 (6 nos.).*

iv) *The wait listed applicants of EWS-II/FF+SF bearing registration No.54/2, 55/3, 56/4, 58/6 & 60/8 (5 nos.) may please be kept intact till finalization of cases under process. The cases of final registration No.4, 31, 46 & 47 (5 nos.) are under process.” (Emphasis Supplied)*

The said proposal was considered but not accepted by the Board. It was decided that allotment of flats to the waiting list applicants may not be considered and their registration amount may be refunded as per rules. The said decision is dated 5.11.2013 (Annexure P-8). The same is reproduced below:

“Sub:- Allotment of EWS-I GF/FF/SF and EWS-II GF & FF+SF, Housing Board Colony, Sector 9, Gurgaon.

Discussed. The brief facts of the case may kindly be perused at NP-1-5. The worthy Chief Administrator has given approval for consideration to allot Flat nos. to the waiting list applicants vide order dated 24.2.2013. Thereafter, a proposal was put up by the office to allot flat to the waiting list applicants of Final Registration No.54/2-EWS-II/FF+SF and 55/3-EWS/FF+SF, Sector-9, Gurgaon. It is brought out that in similar case of allotment of EWS-I/GF houses in Housing Board Colony, Sector 52, Gurgaon, legal advice was sought from the Legal Advisor of the Board

which is as under:-

“In view of the decision of the Board dated 26.02.2013, in my view there is no justification of the extension of the validity period of the waiting list upto 25.10.2013.”

The then Worthy Principal Secretary to Govt. Haryana, Housing Deptt. has directed on 3.8.2010 that there should be no waiting list in future. Accordingly, the matter was placed before the Board in its 199th meeting held on 26.2.2013 vide supplementary Agenda Item No.199.10 for consideration and approval.

The Board approved the proposal. The relevant para of Agenda item is as under:

“In the meantime, the provision of waiting list was dispensed with as per orders of Hon'ble Chief Minister dated 7.7.2010. Accordingly, Principal Secretary to Govt. Haryana (Housing Deptt.) decided on 31.08.2010 that there should be no waiting list in future (Annexure-A). In view of the above decision, the flats cannot be allotted to the wait listed applicants. Therefore, it is proposed that a scheme for Economically Weaker Sections may be floated for the allotment of these flats.”

Keeping in view the advice given by the Legal Advisor, decision of the Board meeting dated 26.2.2013 vide agenda item no.1999.10 and approval dated 10.10.2013 given by the worthy Chief Administrator in a similar case of Sector 52, Gurgaon, it is proposed that there is no justification to consider the waiting list applicants at Final Registration No.54/2 and 55/3 Sector 9, Gurgaon for allotment of flats at this stage. Therefore, allotment of flats to the waiting list applicants may not be considered and their registration amount may be refunded as per rules.”

Thus, there is no merit in the contention of the learned counsel for the petitioner that though the waiting list was kept intact in which the petitioner was at Sr.No.1 and two flats were available for allotment, the respondents had acted illegally in not allotting a flat to the petitioner.

The other contention of the learned counsel for the petitioner was that though the cancellation was made later yet it should relate back to date of the original allotment and that his right to allotment should be taken to have accrued to him on the date when the original allotments were made, also cannot be accepted. This issue already stands concluded against the petitioner by two decisions of this Court. It has been held therein that an

applicant in the waiting list has no vested right to seek allotment because some plots have become available after the expiry of the prescribed period of the validity of the waiting list.

In Paramjit Singh v. State of Punjab 2013(4) R.C.R.(Civil)

803 it was observed as under:

“21. That apart, we are of the considered view that the petitioner being in waiting list has got no indefeasible or vested right to seek allotment only because some plot(s) measuring 200 square yards also have become available after expiry of the prescribed validity period of the waiting list. Similarly, waiting list cannot be kept alive for an indefinite period, moreso, when its validity period of two years was expressly specified in the Information Brochure itself.”

The issue was considered in greater detail in another decision of a Division Bench of this Court in Amarpreet Singh Deol v. Chandigarh Housing Board 2014(28) R.C.R.(Civil) 893. In this case it had been argued on behalf of the wait list applicants that their claim to allotment could not be defeated on account of the inaction of the respondents in not cancelling the allotment of the ineligible applicants within the period of the validity of waiting list. It was argued that it was incumbent on the respondents to finalize such cancellation within the period of the validity of the waiting list. This argument was rejected by observing as under:

“20. We find that the writ petitioner or the appellant have no right to claim allotment of dwelling units merely for the reason that they were in the waiting list. Firstly, sub-clause (iii) of Clause XV clearly stipulates that mere submission of an application form shall not entitle the applicant to the allotment of a unit. Such is the settled principle of law, as laid down by the Full Bench of this Court in Surjit Singh v. State of Punjab, (1979)81 PLR 413 as well as by the Hon'ble Supreme Court in Chaman Lal Singhal v. Haryana Urban Development Authority & others (2009) 4 SCC 369 and Greater Mohali Area Development Authority and others v. Manju Jain and others, (2010) 9 SCC 157.

24. Mr. Sarin has further argued that it was inaction of the Board, which delayed the cancellation of the units within one year. The action to cancel allotments was required to be completed within the validity of the waiting list i.e. on or before 18.2.1998. It is argued that 3 dwelling units were put to auction after cancellation and that such auction was set aside by the learned trial Court. But none of the purchasers have disputed the judgment and decree passed by the trial Court. Therefore, such dwelling units are available for allotment.

25. We do not find any merit in the said argument as well. The cancellation of the dwelling unit could be carried out only after complying with the principles of natural justice. The right of the appellant is based on fortuitous circumstance of the cancellation being effected within one year. The right of a candidate in the waiting list would arise only if a dwelling unit becomes available. The Board was not required to create a vacancy so as to allot a dwelling unit. None of the dwelling unit became available within one year of the period of waiting list. The unit allotted to Harsh Vardhan was cancelled on 26.08.1999, whereas the show cause notice issued to Bharat Bhushan was withdrawn on 24.01.2000. Since admittedly, no dwelling unit became available within the validity period, the appellant does not get any right for allotment of a unit merely on submission of his application for extension of time. The application of one applicant could be accepted. Since, there was no condition of extension of time nor Board has granted extension to any applicant, the appellant cannot seek extension of the waiting list unilaterally in the absence of any condition in the Scheme or in the Regulations. Once the validity period of the waiting list has come to an end, the claim of the appellant will not survive.”

In the light of the aforesaid, we find no infirmity in the action of the respondents in not allotting the cancelled flat to the petitioner as the cancellation was after the expiry of the validity of the waiting list. Accordingly, there is no merit in the petition and the same is dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

December 20, 2017

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Whether Speaking / Reasoned	Yes	Whether Reportable	Yes / No