IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.15660 of 2017 (O&M)
Date of Decision: October 25, 2017

Rajender Kumar Sharma ---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: Mr. A.P.Bhandari, Advocate assisted by Mr.Rajinder Sharma, Advocate for the petitioner.

Mr. Deepak Sabherwal, Advocate for respondents No.2 and 3.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash the order dated 30.4.2012 passed by the Estate Officer, HUDA, Faridabad, whereby, the allotment of plot to the petitioner was cancelled and the earnest money deposited by him forfeited; the order dated 9.4.2013 passed by the Administrator, HUDA, Faridabad dismissing the appeal and the order 29.9.2016 passed by Additional Chief Secretary, Government of Haryana, Town and Country Planning and Urban Estates Department, whereby, the revision filed by the petitioner has been dismissed.

The petitioner had applied for a plot measuring 209 sq. meter in Sector-64, Faridabad for residential purpose. He had deposited an amount of

Rs.1,29,600/- on 5.1.2010 as earnest money. After consideration of the applications, the petitioner was allotted residential plot No.2198 in Sector-64, Urban Estate, Faridabad. The allotment was on free-hold basis. The respondents issued him allotment letter dated 13.10.2010. The petitioner accepts having received the allotment letter. As per clause 4 the allotment letter, the petitioner could communicate his refusal to accept the allotment within thirty days from the date of the allotment letter, failing which the allotment shall stand cancelled without any notice and the earnest money deposited would be forfeited. As per clause 5 thereof, in case the petitioner chose to accept the allotment, he was required to communicate the acceptance by registered post along with 15% of the amount i.e. Rs.1,94,350/- within thirty days, which together with 10% (Rs.1,29,600/-) of the amount already deposited as earnest money, would constitute 25% of the total tentative price.

It is the case of the petitioner that the petitioner could not deposit the 15% amount within thirty days, as the parents of the petitioner remained ill during that period and the petitioner had to spend a considerable amount on their treatment. The father of the petitioner had to undergo surgery. Immediately, on the petitioner being able to arrange the amount, he prepared two demand drafts of Rs.2,50,000/- and Rs.50,000/- totalling Rs.3,00,000/- in favour of the respondents and under cover of letter dated 28.3.2012 forwarded the same to the Chief Administrator, HUDA, Panchkula requesting that the same be accepted, so that the petitioner could deposit the remaining amount in instalments, as per the allotment letter. Even before the Chief Administrator HUDA could respond to the aforesaid request, the Estate Officer, HUDA passed the order dated 30.4.2012 cancelling the allotment and forfeiting the earnest money deposited by the petitioner. This order was received by the petitioner on 4.5.2012.

The petitioner immediately wrote to the Estate Officer, HUDA on 5.5.2012 followed by reminder on 13.6.2012 intimating that he had already filed an appeal to the Chief Administrator, HUDA and that no action be taken pursuant to the order dated 30.4.2012 till the decision of the appeal. The appeal of the petitioner was dismissed by the Chief Administrator, HUDA on 26.3.2013, which order was communicated to him on 9.4.2013. The petitioner filed a revision petition which was dismissed on 15.9.2016. Hence, the present writ petition.

Ld. Counsel for the petitioner argued that the failure of the petitioner to deposit 15% of the amount was for reasons beyond his control as his aged parents were ill and undergoing treatment. As soon as the petitioner was able to arrange the requisite amount, he wrote to the Chief Administrator, HUDA on 28.3.2012 to accept the amount of Rs.3,00,000/- which was more than 15% of the amount together with interest thereon. The respondents, instead of responding to his request chose to cancel the plot. The cancellation, in these circumstances was wholly irrational as by then, the petitioner had tendered the amount of 15% together with outstanding interest thereon. He states that the respondents should have responded to his offer and not proceeded to cancel the allotment. He further argued that the reliance by the Revisional authority on the policy dt. 3.8.2007 to the effect that delay of more than one year in depositing 15% price cannot be condoned, is not justified. He states that in the case of an allotment of plot No.678, Sector-64, Faridabad, the allotment was restored on the current price by condoning the delay of more than a year in depositing 15% amount.

Mr.Sabharwal, Ld. Counsel for the respondents - HUDA, on the other hand, contended that the cancellation of the allotment was strictly as per the terms and conditions incorporated in the allotment letter. After the allotment letter was issued on 13.10.2010, the petitioner chose to remain silent and it was only about one year and five months thereafter, that the petitioner tendered the amount of 15%, which was required to have been deposited within thirty days of the allotment. No request/application for extension of time to make the deposit was made before that date.

Heard Ld. Counsel for the parties and perused the record.

Clause 4 and 5 of the allotment letter read as under:-

> *"4. In case you refuse to accept this allotment you shall communicate your refusal by a registered letter within 30 days from the date of allotment letter, falling which this allotment shall stand cancelled without any notice and the earnest money deposited by you, shall be forfeited to the authority and you shall have no claim for damages.*
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> *5. In case you accept this allotment, please send you acceptance by registered post along with 15% amount of Rs.1,94,350/- within 30 days from the date of issue of this allotment letter, which together with an amount of Rs.1,29,600/- paid by you along with your application form an earnest money, will constitute 25 percent of the total tentative price.*

As per these clauses, the petitioner could either refuse or accept the allotment. In case, he chose to accept the allotment, he was required to communicate his acceptance by registered post along with 15% of the price within 30 days of the issue of the allotment letter. In case, he did not intend to accept the allotment, he was required to communicate his refusal by a registered letter within 30 days of the date of the allotment letter. In the absence of acceptance or refusal communicated within thirty days, the allotment would stand cancelled without any notice and the earnest money deposited by the petitioner would be forfeited. The petitioner neither communicated his acceptance nor refusal within thirty days. It was only on 28.3.2012 i.e. about one year and five months after the issue of the allotment letter, that the petitioner wrote to the Chief Administrator, HUDA to accept the two demand drafts totalling Rs.3,00,000/- towards 15% of the price together with interest thereon. Clearly, the case of the petitioner fell within the mischief of clause 4 of the allotment letter and consequently, the order of cancellation cannot be faulted.

The Revisional Authority in its order, has also referred to Regulation No.5(5) of the Haryana Urban Development (Disposal of Land and Buildings) Regulation, 1978, which reads as under:-

> "*The applicant whom land/building has been allotted shall communicate his acceptance or refusal within 30 days of the date of allotment, by registered post to the Estate Officer in case of acceptance, the letter shall be accompanied by such amount as intimated to him in the allotment letter. In case of refusal, he shall be entitled to refund of the money tendered with the application. In case, he fails to either accept or refuse within the stipulated period, allotment shall be deemed to be cancelled and the deposit made under sub-regulation (2) may be forfeited to the Authority and the applicant shall have no claim for damages.*"

The Revisional Authority, in its order, has further distinguished the case of the holder of plot No.678, Sector-64, Faridabad by noting that in that case, the allotment letter had actually been sent at a wrong address and had not been received by the allottee. Herein, it is not the case of the petitioner that he had not received the allotment letter dated 13.10.2010.

The cancellation of the allotment, thus, was strictly as per the terms and conditions of the allotment letter. The petitioner having failed to comply therewith can raise no grievance with regard, either to cancellation or the forfeiture of the earnest money. Hon'ble the Supreme Court in **Chaman Lal Singhal Vs. Haryana Urban Development Authority (2009) 4 SCC 369** considering a similar case held as under:

> "*15. In our considered opinion the appellant failed to comply with the aforesaid clauses of the letter of allotment and, therefore, his allotment stood cancelled and the earnest money deposited by him could be forfeited by the Authority. The order of cancellation came to be passed by the competent authority after 500 days. Be that as it may, the aforesaid allotment of plot of land in favour of the appellant came to be cancelled because of non- payment of the amount as stipulated in clause 5 and, therefore, the earnest money deposited by him could be forfeited by the Authority. Since the case of the appellant comes within the ambit of clauses 4 and 5 of the allotment letter, the provisions of Section 17 of the Act would have no application and would not apply. It is thus established that there was no agreement/contract between the appellant and the respondent-Authority and there being no such agreement/contract and because of non-compliance of requirement of clause 5 the issue with regard to violation of principles of natural justice also would not arise. Therefore, the contentions that provisions of Section 17 of the Act are violated and that there is non compliance of the principles of natural justice have no merit."*

Further, there can be no grievance regarding not condoning the delay of about one year and five months in deposit of the 15% amount, because even as per the petitioner, in terms of the policy dated 3.8.2007 of respondent HUDA, the delay of more than one year in depositing 15% price, cannot be condoned.

Thus, there is no merit in the petition and the same is dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

October 25, 2017
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No