

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

RSA No.3640 of 2010 (O&M)

Decided on 07.11.2017

Haryana Urban Development Authority and another

... Appellants

VERSUS

Subhash Bansal & others

..... Respondents.

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT.

PRESENT : Mr. Padamkant Dwivedi, Advocate for the the appellants.

Mr. Ashwani Kumar Chopra, Senior Advocate with

Mr. Sushil Jain, Advocate and

Mr. Abhay Nanda, Advocate for respondent Nos.1 to 3.

RAJBIR SEHRAWAT, J.

This is an appeal filed by the defendant-Haryana Urban Development Authority, against the judgment and decree passed by the lower Appellate Court, whereby reversing the judgment and decree passed by the Trial Court, the learned First Appellate Court had decreed the suit filed by the plaintiffs/respondents herein. For the convenience, the parties would be referred herein as the plaintiffs and defendants, as described in the original plaint.

2. The facts as mentioned in the plaint are that SCO No.58 Sector 12-A, Panchkula (the suit property) was allotted to one Jagan Nath and Smt.Sushma in an open auction on freehold basis for a sum of ₹.19,00,000/- by the defendants

/Haryana Urban Development Authority (referred herein as HUDA), vide allotment letter dated 13.01.1996 and 05.02.1996. After adjusting application money, it was mentioned in the allotment letter that the balance amount of ₹.14,25,000/-, could be paid in lump sum, without interest within 60 days from the date of issue of the allotment letter or in half yearly instalments and the first instalment will fall due out after expiry of six months from the date of issue of allotment letter. It was a further condition laid down that each instalment would be recoverable alongwith interest on balance amount @ 15%PA on the remaining amount; which shall accrue from the date of handing over the possession. It was further claimed that after depositing the initial amount by the original allottee, the plaintiffs purchased the suit property. On application being made by the original allottee the suit property was re-allotted to the plaintiffs vide allotment letter dated 19.12.1996. Possession was also delivered to the plaintiffs vide possession certificate dated 23.12.1996. Thereafter, the plaintiffs got constructed the SCO on the site as per the plan approved by HUDA. However, it was claimed that the area was still not fully developed by HUDA.

3. Still further, it was claimed that under the Rules and Regulations of the HUDA, the defendants were entitled to charge interest only on completion of the development works in the area. It was further pleaded that in the area, 100 juggies existed. Neither the defendants' authorities were getting the encroachment made by juggies removed nor the development works were being completed. It

was further claimed that the defendant-HUDA had also issued an occupation certificate dated 24.7.1998. Therefore, it was claimed that the plaintiffs had paid the entire outstanding amount with regard to the costs of the SCO. However, it was pleaded that still the defendant-HUDA claimed the amount to be outstanding against the plaintiffs. Therefore, a sum of ₹.8,50,000/- as over due instalments, was also paid by the plaintiffs on 4.12.2001 along with a forwarding letter, requesting the defendants to furnish the statement of accounts in respect of balance payment, if any, against the site in question. It was requested that while making calculations, interest should be calculated @ 10% per annum (simple interest) as per the judgment of the Hon'ble Supreme Court in case of **Roochira Ceramic vs. Haryana Urban Development Authority, Faridabad & anr** **2001(1) PLJ page 109.** In response to the said letter written by the plaintiff, the defendant-HUDA wrote a letter dated 27.12.2001 saying therein that as per the clause 5 of the allotment letter, the balance amount is recoverable with 15% interest and HUDA is also entitled to 18% penal interest on the delayed payment and therefore, the defendants-HUDA claimed amount of ₹.5,18,000/- more from the plaintiff, failing which, it was stipulated that, the resumption proceedings will be initiated against the plaintiffs. This letter dated 27.12.2001 was challenged by the plaintiffs by filing the present suit. The quashing of the impugned notice dated 27.12.2001 was sought and it was also prayed that consequent resumption proceedings be also declared as null and void. Still further, a permanent

injunction was sought by the plaintiffs restraining the defendants from charging interest @ 15% on the principal amount.

3. The defendant-HUDA filed written statement. Besides taking routine preliminary objections, the defendants-HUDA claimed that as per the allotment letter the plaintiffs were bound to pay 15% interest along with 18% penal interest on over-due instalments. It was further pleaded that several communications were sent to the plaintiffs to deposit the amount. However, the amount was not deposited by the plaintiffs. Therefore, the resumption order was passed on 07.06.2002. Regarding other pleas of the plaintiffs that development work had not been completed, the defendants-HUDA pleaded that the site was sold on terms and conditions and the plaintiffs could not go outside the terms and conditions of the allotment letter.

4. On the pleadings of the parties, the Trial Court framed the following issues : -

1. Whether the resumption proceedings in respect of SCO No.58, Sector 12-A, Panchkula, are illegal, null and void ? OPP.
2. Whether the plaintiffs are liable to pay interest @ 10% per annum simple interest instead of 18% compound interest ?OPP
3. If issues No.1 and 2 are proved, whether plaintiffs are entitled for mandatory and permanent injunction ? OPP
4. Whether the suit is not maintainable ?OPD
5. Whether the jurisdiction of civil suit is barred under Section 50 of the HUDA ?OPD

6. Whether the plaintiffs have no cause of action and locus standi to file the suit ?OPD
7. Whether the suit is valued properly for the purpose of court fees ?
8. Whether the plaintiffs have violated the terms and conditions of the allotment letter ? OPD
9. Relief.

5. It deserves to be mentioned here that the suit in the present case was filed on 14.05.2002 and the alleged resumption order was passed by the defendant-HUDA on 7.6.2002 i.e. during the pendency of the suit.

6. After hearing the parties, the Trial Court dismissed the suit filed by the plaintiffs. The basis of dismissal of the suit by the Trial Court was that, as per document Ex.P-33 an amount of ₹.6,52,505/- was payable by the plaintiffs, as on 15.11.2004, including the interest as per the terms and conditions of the allotment letter. Still further, it was held that the defendants served several notices on the plaintiffs to deposit the amount up to 03.05.2002. Since the amount was not deposited, therefore, the resumption order dated 7.6.2002 was rightly passed by the defendants. Still further, it was recorded that since the resumption order has not been challenged by any amendment of the plaint, therefore, the suit was not sustainable. However, while deciding the issue No.5 regarding jurisdiction of the civil court, the Trial Court held that no material has been placed on the record to exclude jurisdiction of the Civil Court in the present case or to know that the plaintiffs have no cause of action. But the suit of the plaintiff was dismissed.

7. Aggrieved against the judgment and decree, the plaintiffs filed the appeal before the lower Appellate Court. The lower Appellate Court accepted the appeal filed by the plaintiffs. While allowing the appeal, the learned Appellate Court held that the Trial Court was not right in holding that, since the resumption order had not been challenged, therefore, the plaintiffs could not have sustained the suit. The lower Appellate Court recorded a finding that there was a specific issue regarding validity of the alleged resumption proceedings and the quashing of the same was also sought. Therefore, according to the lower Appellate Court, the resumption proceedings would include the consequent order as well. Hence the suit was held to be sustainable; despite the fact that the plaint was not amended for specifically challenging the resumption order.

8. So far as the merits of the case are concerned, the lower Appellate Court recorded a finding that as per the allotment letter Ex.P-2 interest @ 15% was chargeable. However, the allotment letter also contained stipulation of charging 18% interest on delayed payment. The lower Appellate Court held that as per the judgment of Hon'ble Supreme Court in Roochira Ceramic's case (supra), the defendants could not charge compound interest @ 18% per annum because in that case, the Hon'ble Supreme Court has held that HUDA would be entitled to charge simple interest @ 10% per annum only. But, keeping in view the condition of allotment letter, which contains that interest @ 15% per annum is chargeable, the lower Appellate Court decreed the suit and held that in view of

the allotment letter Ex.P-2, the defendants would be entitled to charge 15% simple interest and not 18% penal interest. Therefore, the impugned notice dated 27.12.2001 was declared null and void. However, the defendants were given liberty to calculate outstanding amount against plaintiffs by calculating simple interest @ 15% on delayed payment. Still further, the lower Appellate Court ordered that the plaintiffs would be liable to make the payment of the amount so calculated by the defendants within a period of two months from the date of receipt of fresh calculation from the defendants. Aggrieved against this judgment and decree, the present appeal has been filed by the defendants-HUDA.

9. Learned counsel for the appellants has submitted that as per the terms and conditions of the allotment letter, the appellants-HUDA is entitled to charge 15% interest and 18% penal interest. Therefore, the lower Appellate Court has wrongly decreed the suit. Still further, it is contended by the counsel for the appellants-HUDA that since the resumption order has been passed by the authorities, therefore, the plaintiffs should have challenged the resumption order. Still further, it was submitted that as per the record, several opportunities were granted to the plaintiffs. Since they failed to pay the amount, therefore, the suit property was rightly resumed.

10. Having heard the learned counsel for the appellants, this Court is of the considered opinion that there is no illegality or perversity in the findings recorded by the lower Appellate Court. The Hon'ble Supreme Court in **Roochira**

Ceramic's case (supra), held that penal interest at the rate of 18% cannot be charged by the defendants-HUDA. In another judgment of this Court rendered in 2007 (3) Law Herald (P&H) (DB) page 1886-Mohan Dass vs. Haryana Urban Development Authority, this Court has held that no penal interest can be charged from the allottee and that HUDA is not entitled to charge compound interest. The appellants herein strongly resisted the grant benefit of judgment of the Supreme Court to the plaintiffs. Once a clause of conditions imposed by HUDA has been considered and interpreted by the Hon'ble Supreme Court, then the defendants were bound to follow the same. Hence, the defendants could not have insisted upon charging compound interest or charging penal interest @ 18% per annum; in violation of the aforesaid judgment of the Supreme Court. Therefore, the impugned resumption notice was rightly held to be illegal by the lower Appellate Court and was rightly set aside.

11. One more fact which needs to be noted here is that the plaintiffs had made a payment of ₹.8,50,000/- to the defendants on 4.12.2001 and they had requested the defendants to furnish statement of accounts regarding balance payment, if any, after calculating the interest @ 10% per annum. It has come on record that if the interest is calculated @ 10% per annum, in terms of the judgment of the Hon'ble Supreme Court then, plaintiffs had paid excess amount to the defendants. Still further while disposing of the application for stay filed by the plaintiffs, the Trial Court had ordered, vide order dated 05.08.2004, that the

balance payment, if any, calculated at the rate of 15% interest shall be paid by the plaintiffs within a period of two months. The stay granted to the plaintiffs was made subject to such payment as ordered above. However, neither any calculation was supplied by the defendants to the plaintiffs after calculating interest @ 15% per annum nor any application for vacation of the order was moved. This would show that there was possibility that the plaintiffs had paid the entire amount, if calculated @ 15% per annum simple interest.

12. The objection of the appellants/defendants, that suit of the plaintiffs was not sustainable since they had not challenged the resumption order, is irrelevant for the purpose of present case. The plaintiffs were already before the Court against the notice of resumption and had prayed for quashing of the consequent resumption proceedings; although prayer for rendition of accounts was also made. There was a specific issue framed regarding the validity of the resumption proceedings also and the parties were totally alive to that issue. Therefore, it is not material that the formal order of resumption was not challenged by the plaintiffs or that a specific issue regarding resumption order was not framed by the Trial Court. In any case, the challenge to the resumption proceedings would include the consequent order of resumption as well. Hence, the suit of the plaintiffs could not have been held to be not sustainable; only on the ground that the formal order of resumption was not challenged by the plaintiffs.

13. The other argument of the learned counsel for the defendants that the

resumption order was rightly passed because despite several opportunities, the plaintiffs had not paid the demanded money, is also not sustainable. The defendants were claiming interest @ 15% per annum and penal interest @ 18% per annum, till the last movement. Therefore, the interest claimed by the defendants was not in accordance with the judgment of the Hon'ble Supreme Court which was rendered by interpreting the rules and regulations of appellant-HUDA only. Hence, the plaintiffs were right in resisting the demand of the defendants. The defendants do not even claim that they ever asked the plaintiffs to pay the outstanding amount, as calculated with 15% simple interest only. Hence, the alleged opportunities to the plaintiffs was given by HUDA on a wrong premise, which was not sustainable in law. So, the same cannot be taken as a due opportunity to pay. Hence, this argument of the learned counsel for the appellants is also not sustainable.

14. No other argument was raised.

15. Having no merits, the present appeal is dismissed. The judgment and decree passed by the lower Appellate Court are upheld.

(RAJBIR SEHRAWAT)
JUDGE

NOVEMBR 07, 2017

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1. Whether speaking/reasoned Yes/No.
2. Whether reportable ? Yes/No.