

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

1. RSA No.3418 of 2016 (O&M)
Date of decision : 12.09.2017

OHM Value Services Ltd.

...Appellant

Versus

Janta Land Promoters Ltd. and another

...Respondents

2. RSA No.5218 of 2016 (O&M)
Date of decision : 12.09.2017

OHM Value Services Ltd.

...Appellant

Versus

Manjit Singh Bhatia and another

...Respondents

3. RSA No.6448 of 2016 (O&M)
Date of decision : 12.09.2017

OHM Value Services Ltd.

...Appellant

Versus

Janta Land Promoters Ltd. and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harmanjit Singh Sethi, Advocate and
Mr. Matti Sindhu, Advocate for the appellant
(In all three appeals).

Mr. Abhinav Gupta, Advocate for respondent No.1

(In RSA Nos.3418 and 6448 of 2016)
for respondent No.2 (In RSA No.5218 of 2016).

Mr. Gaurav Jindal, Advocate for respondent No.2
(In RSA Nos.3418 and 6448 of 2016)
for respondent No.1 (In RSA No.5218 of 2016).

ANIL KSHETARPAL, J.

CM No.10932-C of 2017 in RSA No.3418 of 2016

For the reasons stated in the application, which is duly supported by an affidavit, application is allowed.

Documents i.e. Annexures P-5 to P-11 are taken on record, subject to all just exceptions.

Main Cases

By this common judgment, I shall be disposing of RSA Nos.3418, 6448 and 5218 of 2016 as all the appeals arise out of the same suit.

Plaintiff is in appeals against the judgment passed by the Additional District Judge, SAS Nagar, Mohali.

Plaintiff had filed a suit for declaration to the effect that the plaintiff continues to be an allottee of plot No.164 measuring 4062 square yards, Sector-82, SAS Nagar, Mohali and also sought the cancellation of the order dated 03.02.2010, resuming the plot and also challenged the further re-allotment in favour of defendant No.2 vide letter dated 08.02.2010.

Plaintiff was allotted an industrial plot No.164 measuring 4062 square yards vide allotment letter dated 07.01.2008 Ex.P2 on the file. The relevant terms of the allotment are as under:-

“2. The price of the plot has been calculated @ Rs.3890/- per sq. yds. which works out to Rs.1,58,00,000/- (this price of the plot is subject to variation with reference to the actual measurement of the plot at site) and out of this an amount of Rs.38,00,000/- has already been received and balance amount i.e. Rs.1,20,00,000/- will be recovered in 2 one yearly installments with 12% interest p.a. as per schedule below:-

<u>S. No.</u>	<u>Due Date</u>	<u>Amt. of installment</u>	<u>Interest</u>	<u>Total Amount</u>
1.	7/01/2009	60,00,000/-	14,40,000/-	74,40,000/-
2.	7/01/2010	60,00,000/-	7,20,000/-	67,20,000/-
Total		1,20,00,000/-	21,60,000/-	1,41,60,000/-

5. In the event of failure of the allottee to start commercial production within the admissible extended period the allotment of the plot will be cancelled by the company in consultation with the Govt. of Punjab (Industries Department) after forfeiting 2% of the total price of plot. No interest shall be paid on the refundable amount.

6. In case of delayed payment penal interest for first six months shall be charged @ 15% p.a. and thereafter 18% shall be charged upto one year and thereafter penal proceedings including cancellation of allotment and resumption of site shall be initiated by the company.

17. In the event of breach of any terms and conditions of Letter of Allotment, the company shall have right to withdraw/cancel the allotment of plot and take back possession of plot/building.

18. Notwithstanding the provision of applicability of penal interest on defaulted amount for the defaulted period, the company/govt. can resort to cancellation/resumption of the plot. The cancellation/resumption of the plot shall be made after giving show cause notice of 30 days on account of the following grounds of default:-

a. Non-payment of maintenance charges within 30 days

from the date of demand.

- b. Non-execution of Conveyance Deed within 90 days from the date of issue of No Due Certificate.*
- c. Violation of Zonal Plan and/or Building By-laws or deviation from the approved layout plans.*
- d. Failure of commencing of production within three years from the date of offer of possession or within the allowed extended period, if any.*
- e. Non-payment of extension charges/fee in terms of Condition No.5 above.*
- f. Failure to comply with any of the terms and conditions of Allotment Letter.*

19. This allotment shall be subject to the compliance of conditions of Agreement dated 24.06.2005 earlier entered into by our company with the Govt. of Punjab as per the provisions of Industrial Policy, 2003 of Punjab Govt. For all future correspondence mention of allotted Plot No. is compulsory.”

It is not in dispute that after the initial payment, first installment became due on 07.01.2009. Defendant No.1 sent a reminder to the plaintiff vide letter dated 29.12.2008 Ex.D2 on the record requesting the plaintiff to remit the payment.

Plaintiff vide letter dated 06.01.2009 Ex.D3 requested for extension of time for payment of the installment for a period of three months. The request made by the plaintiff was accepted and three months time was granted to the plaintiff to make the payment i.e. upto 07.04.2009 vide letter dated 12.01.2009. Thereafter, the plaintiff did not make the payment but sent another request seeking six months more time vide letter dated 02.04.2009 Ex.D5 on the record. The aforesaid request of the plaintiff

was considered and plaintiff was granted extension upto 31.05.2009 with clear stipulation that if the overdue amount is not deposited by 31.05.2009, the allotment of the plots would be cancelled. Still the payment was not made upto 31.05.2009. Defendant No.1 wrote a letter on 01.08.2009 directing the plaintiff to clear the overdue payment by 20.08.2009 failing which the penal proceedings will be initiated. Still no payment was made.

Thereafter, the defendant No.1 in terms of Clause 18 of the allotment letter issued a show cause notice to the plaintiff for calling upon to make the payment upto 01.10.2009 failing which the allotment of the plots shall be cancelled without any further notice. Even after this letter, plaintiff did not make payment. Another show cause notice was given to the plaintiff vide letter dated 20.01.2010 Ex.D14 on the record. In this notice, plaintiff was asked to appear if he wants opportunity of being heard on 01.02.2010. Ultimately, on 03.02.2010 after noticing that no one has appeared on behalf of the plaintiff-company, the defendant No.1 cancelled the allotment and deducted 10% of the deposited amount i.e. ₹3,80,000/- and forwarded the balance amount through cheque to the plaintiff.

Lately, plaintiff laid challenged to the letter dated 03.02.2010 before the Civil Court. The learned Civil Judge after noticing that last show cause notice was given only on 20.01.2010 held that the cancellation order is bad as minimum 30 days notice was required to cancel the allotment.

Learned First Appellate Court after re-appreciating the evidence available on the file accepted the appeal filed by defendant Nos.1 and 2.

Defendant No.2 is a subsequent allottee of the plot in question

vide allotment letter dated 08.02.2010.

It may further be significant to note here that the plaintiff was allotted two plots i.e. plot No.725 and plot No.164. Plaintiff pursuant to the various notices ultimately made the payment with regard to the plot No.725 but chose to challenge the resumption of plot No.164 by way of the present suit.

Learned counsel for the appellant has made following submissions:-

- i) 30 days clear notice was not given to the plaintiff as the show cause notice was given on 20.01.2010 and the order of cancellation was passed on 03.02.2010.
- ii) As per the terms of the allotment letter, Government was required to be consulted before the cancellation of the plot and, therefore, the cancellation was bad.
- iii) Action of defendant No.1 was premature because as per Clause 6 of the allotment letter, allottee was entitled to delay the payment upto one year and six months.
- iv) The defendants were not in a position to hand over the possession of the property and, therefore, the action is wholly arbitrary.

On the other hand, learned counsel for the respondents has submitted that the suit filed by the plaintiff is not maintainable as the plaintiff was required to file the suit for specific performance. He has further supported the judgment of the First Appellate Court to the effect that once the appellant was given notice on 01.09.2009 Ex.D12 on the file, 30 days period is to be counted from that day. Subsequent notice Ex.D14 dated

20.01.2010 is to be read in continuation of the earlier notice. He has further submitted that the learned First Appellate Court has discussed the entire evidence and there is a finding of fact which cannot be interfered with in exercise of jurisdiction in the second appeal.

i) 30 days clear notice was not given to the plaintiff as the show cause notice was given on 20.01.2010 and the order of cancellation was passed on 03.02.2010:-

The argument of the learned counsel is factually incorrect because notice dated 01.09.2009 is categoric. It was styled as a show cause notice. While giving opportunity to the allottee to deposit the amount by 01.10.2009, it was specifically pointed out that if the amount is not deposited, the allotment of the plot shall be cancelled without any further notice.

This notice was duly received by the plaintiff. Once this notice has been given, the subsequent notice dated 20.01.2010 was obviously in continuation of the previous notice dated 01.09.2009. Therefore, the learned First Appellate Court was correct in recording a finding that in compliance with the Clause 18 of the allotment letter, show cause notice of 30 days was given to the plaintiff.

ii) As per the terms of the allotment letter, Government was required to be consulted before the cancellation of the plot and, therefore, the cancellation was bad:-

In this regard, learned counsel has referred to Clause 5 of the allotment letter to assert that the cancellation could only be ordered in consultation with the State of Punjab. In my opinion, the argument is

without any basis. Clause 5 extracted above is dealing with the eventuality when the allottee fails to start the commercial production. The aforesaid Clause does not deal with non-payment of the installment. Non-payment of the installment is under Clauses 6 and 18 of the allotment letter. In Clauses 6 and 18, there is no provision for consultation with the Government.

iii) Action of defendant No.1 was premature because as per Clause 6 of the allotment letter, allottee was entitled to delay the payment upto one year and six months:-

Learned Counsel, while trying to interpret Clause 6, has submitted that action of the defendant No.1 was premature. As per Clause 6, 1 ½ year provided before the penal proceedings including the cancellation of the allotment can be initiated. In my considered view, the counsel is reading Clause 6 in isolation. Clause 18 of the allotment letter starts with non-obstantive clause. Clause 18 specifically provide that irrespective of any other Clause, the proceedings for cancellation and resumption can be initiated. Still further, it is clear from the reading of the various letters written by the plaintiff-appellant that the plaintiff had been always requesting for extension of time. If the interpretation as being sought to be projected is accepted, then there was no need for extension of time till the period of 1 ½ year. However, it is not so. Plaintiff has deposited the installment of the second plot bearing No.725. Once the plaintiff himself has deposited the amount, it does not lie in the mouth of the plaintiff to assert that the action of the respondents was premature.

iv) The defendants were not in a position to hand over the possession of the property and, therefore, the action is wholly arbitrary:-

In this regard, it is to be noticed that the allotment letter does not provide that the payment of installments shall be made only when the defendant is ready to deliver the possession. Allotment letter is in the form of a contract between the parties. The schedule for payment has been specifically provided in Clause 2 of the agreement. Counsel for the appellant has not brought attention of this Court to any Clause of the allotment letter which provide that the failure to deliver the possession would be a good ground for the allottee to withhold the payment.

In view of the discussions made above, I do not find any good ground to interfere with the findings of fact arrived at by the First Appellate Court.

All the three appeals are dismissed with a special cost of ₹1,00,000/- to be deposited with Legal Services Authority, Punjab.

All the pending miscellaneous applications are disposed of, in terms of the abovesaid judgment.

12.09.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No