

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

**RSA No.2227 of 2017 (O&M)
Date of Decision : 26.09.2017**

Ansal Housing and Construction Ltd. & Ors.Appellants

versus

Narayan Dass and Anr.Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Munish Mittal, Advocate
for the appellants.

RAJBIR SEHRAWAT, JUDGE (ORAL)

CM-5442-C-2017

This is an application for condonation of delay of 14 days in re-filing the appeal.

For the reasons mentioned in the application, same is allowed and delay of 14 days in re-filing the appeal is condoned.

CM-5441-C-2017

Notice in the application for condonation of delay.

Mr. J.P. Jangu, Advocate accepts notice on behalf of respondent No.1 and filed his memorandum of appearance, which is taken on record. He has submitted that he has no objection if the delay is condoned.

For the reasons mentioned in the application, same is allowed and delay of 01 days in filing the appeal is condoned.

RSA No.2227 of 2017

Learned counsel for the appellants submits that they are ready to compromise the matter on the terms decided by the respondents.

Notice of motion only for this limited purpose.

Mr. J.P. Jangu, Advocate accepts notice on behalf of

respondent No.1. He submits that he is not interested in any other

compromise except to get the plot as directed by the Courts below.

He further submits that he is not interested in getting the refund of the money as per the orders of the trial Court and he is ready to accept the plot of 460.45 sq. yard @ Rs.6750/- per sq. yard, as per the decree passed by the trial Court.

The brief facts of the case are that the plaintiff-respondents herein filed a suit for permanent and mandatory injunction against the defendants-appellants herein stating that defendants No.1 to 3 opened booking for township under the name and style of M/s Ansal House and Construction Ltd. Sector-4, HUDA, Rewari in the month of November 2005. In the said offer, plots of various sizes were offered, including the plot of 360 sq. yard. The appellants had announced the discount of Rs.300/- per sq. yards. The respondents applied for a plot of 360 sq.yard and submitted a cheque dated 04.11.2005 for Rs.1,60,000/- and another cheque for the same date for Rs.2,00,000/-. These cheques, total amounting Rs.2,60,000/- were duly received by the appellants. At the time of launch, the rate of the land was fixed at Rs.7050 per sq. yards and after a discount of Rs.300 per sq. yard the plot was booked by respondents for Rs.6750 per sq. yard. It was further pleaded that 31.01.2006 the appellants intimated the respondents that they have received a LoI (letter of intent) for township and demanded Rs.2,20,000/-. The respondents deposited this amount also. This is not even denied by the appellants. However later on 05.11.2007 the respondents received a demand of Rs.11,52,438.25 for the allotment of plot bearing No.B-31 measuring 460.45 sq. yard. This was not the size of the plot for which the respondents had applied. For the excess area sought to be

allotted to the respondents, the appellants demanded the price at the rate of Rs.7050/- for 36 sq. yard and for the remaining extra area of 64.45 sq. yards they demanded the rate of Rs.7500/- per sq. yards.

Feeling aggrieved of this the respondents filed the suit.

The appellants filed reply and claimed the size of the plot was tentative when it was offered to the public. The company has restricted to the agreed price qua the area of 360 sq. yard. However for the excess area they were entitled to charge the enhanced price and the respondents were bound to accept the plot of 460 sq. yard as offered by the appellants. The total increased area sought to be offered to the plaintiff was 140.45 sq. yard and therefore the enhanced price was demanded from him. It was pleaded that the size of 460.45 sq. yard is only plot which is nearest to the plot of 360 sq. yard. Therefore, the dismissal of the suit was prayed for.

The parties led their respective evidence.

After hearing the parties and perusing the evidence, the trial Court decreed the suit in favour of the plaintiff and issued a directions to the appellants herein, to allot a plot of 460.45 sq. yard to the plaintiff at the rate on which the application for allotment of plot was invited i.e. Rs.6750 per sq. yard; after getting the payments of balance sale consideration. It was further ordered that if the plaintiff does not want to take the plot of 460.45 @ 6750 sq. yard then he will be entitled to get the refund of the amount paid by him alongwith interest @ 12 per cent from the date of payment till its actual realisation.

Aggrieved against this judgement and decree the present appellants filed an appeal before the lower Appellate Court.

The plaintiff/respondents herein also filed a cross-objection by claiming that their suit should be decreed in toto and they could not be forced to accept the plot of size other than they applied for.

However, the lower appellate Court modified the interest part awarded by the trial Court and it was ordered that the interest on the amount to be refunded, if any, would be 9% per annum instead of 12 per cent per annum as granted by the trial Court. Otherwise the lower Appellate Court dismissed the appeal filed by the present appellants except as above, as well as the cross-objections filed by the plaintiff-respondent herein.

Aggrieved against that judgment and decree, the defendants have filed the present appeal.

While arguing the case, learned counsel for the appellants has submitted that size of the plot at the time of offer was tentative and it was stipulated in the application itself that the size of the plot can change. It is his further argument that after receipt of the Letter of Intend from the Government the size was intimated to the respondent. Therefore, they are not at fault.

On the other hand learned counsel for the respondent submits that if the company is allotting plot of the size different than for which he applied and that offer is against their wishes then, they cannot be forced to pay the higher price than the price agreed for the plot for which they had applied. Therefore, learned counsel for the respondent submitted that the findings recorded by the Courts below are totally justified.

After hearing the learned counsel for the parties and perusing the record, this Court find that there is no illegality, irregularity or

perversity in the findings recorded by the Courts below. The appellant/company had offered the plot of the size of 360 sq. yard by way of advertisement. The respondents applied for the plot of their choice and they are not interested to take back the money. Not only this, the company also demanded money for second time without making mention that the respondent would be allotted a plot of the size different than what he had applied for. That money was also paid by the respondent and the company accepted that money without raising any objections of any kind. Therefore, the Court below has rightly held that the company is estopped from changing its track now.

Another aspects which is to be noted is that the company has claimed to have offered the plots even before it received LOI/licence from the Govt. Therefore, the plea of the appellant that the size of the plot was tentative cannot be accepted. They offered the plot knowingly fully well that there would be plots of size of 360 sq. yard, when the plaintiff acted upon the representation made by the appellant. It is also not claimed by the appellant- company that there were no plots of 360 sq. yard as per the LoI (letter of intent) issued by the Govt. Therefore, the stipulation that the size of the plot can differ is totally irrelevant. The appellant had the plot of the size which was applied for by the respondents. The company had the opportunity to offer the plot of the size applied for by the respondent. However, the appellant-company did not allot the plot of the size applied for by the respondent. Since it is the decision of the company to allot a plot of the size different than what was applied by the respondent, therefore the demand of extra money by enhancement of the price cannot be justified by

any means.

Therefore there is no illegality in the decree passed by the Courts below, whereby the appellant-company has been directed to allot the plot at the price which was offered to the plaintiff when he first applied for the plot of the size of 360 sq. yard.

No other argument was raised.

In view of the above the present appeal fails and the same is dismissed being devoid of any merits.

26th September, 2017

Manju

**(RAJBIR SEHRAWAT)
JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No