

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

RSA-1616-2008(O&M)

Date of decision:-17.12.2018

Smt.Pawan Vats

...Appellant

Versus

Haryana Urban Development Authority and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Rajiv Sharma, Advocate
for the appellant.

Mr.B.R. Mahajan, Senior Advocate with
Ms.Manpreet Ghuman, Advocate
for respondents.

H.S. MADAAN, J.

Briefly stated, facts of the case are that plaintiff Pawan Vats, resident of Faridabad had brought a suit for declaration with consequential relief of prohibitory and mandatory injunctions against defendants Haryana Urban Development Authority (for short – HUDA) through its Administrator, Sector-12, Faridabad and the Estate Officer, HUDA, Faridabad on the averments that Booth No.134, Sector-8, Faridabad measuring 75.62 Sq.Meters was allotted to one Bodh Raj vide allotment letter bearing No.291 dated 23.1.1998 for a total sale consideration of Rs.10,15,000/-; that an amount of Rs.1,01,500 was deposited at the time of auction and another amount of Rs.1,52,250/- was deposited in order to make payment of 25% of the total sale price; that the balance amount was to be paid in ten six monthly installments including the interest; that the

plaintiff had deposited a sum of Rs.11,81,943/- towards that plot; that at the time of auction, it was promised by the defendants that necessary development work would be carried out in the area at the earliest including providing facility of sewerage, electricity, roads etc., however, after the allotment the defendants did not carry out any development work in the area; that the plaintiff requested the defendants to hand over the physical possession of the land but defendant No.2 failed to deliver the same; that vide letter dated 8.7.2002, the defendant No.2 was requested to hand over the possession so that plaintiff could raise the construction but the defendants instead of doing so addressed a letter No.28481 dated 15.7.2002 vide which the plaintiff was asked to deposit a sum of Rs.1,42,385 and only then the possession sought could be delivered. According to the plaintiff, she had already deposited the excess amount of Rs.1,12,128.52 and no amount was due towards her; that demand notice No.28841 dated 15.7.2002 whereby the demand of Rs.1,42,365/- had been raised, was illegal, null and void. Hence the suit was filed.

On notice, the defendants appeared and filed written statement contesting the suit raising preliminary objections that the civil Court had no jurisdiction to entertain the suit in view of provisions of Section 50(2) of the HUDA Act, 1977; that no cause of action arose to the plaintiff to bring the suit; that suit was not properly valued for the purpose of Court fee; that as per clause 6 of the letter of allotment, it was clearly mentioned that the possession of the commercial site in question might be taken immediately after making payment of balance 15% amount as demanded. It was further pleaded that as the possession stood offered, the

plaintiff was required to make a motion for taking possession but she failed to do so. It was further pleaded that notice of demand of Rs.1,42,365/- had been validly made and that the HUDA could demand interest on the delayed payment @ 18% per annum as per clause of the allotment letter. Denying remaining allegations, the defendants prayed for dismissal of the suit.

On the pleadings of the parties, following issues were framed:

1. Whether the demand of Rs.1,42,365/- is wrong, illegal, unlawful and against the terms and conditions of the allotment letter? OPP.
2. Whether the defendant is not entitled to charge compound rate of interest? OPP.
3. Whether this Court has no jurisdiction to try the present suit? OPD.
4. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD.
5. Whether the suit is not maintainable in the present form? OPD.
6. Relief.

In order to prove her case, the plaintiff got her statement recorded as PW1 besides examining Hanuman Singh as PW2. The plaintiff also tendered in evidence documents Ex.P1 to Ex.P6.

On the other hand, the defendants had examined Shri Sh.Daya Nand as DW1 besides tendering documents Ex.D1 to Ex.D6.

After hearing the learned counsel for the parties, the trial Court decided issues No.1 and 2 in favour of the plaintiff, issue No.3 in favour of the plaintiff and against the defendants, issues No.4 and 5

against the defendants. In view of the findings on issues No.1 to 5, issue No.6 relating to relief was decided and the suit of the plaintiff was decreed and a decree for declaration was passed in favour of the plaintiff and against the defendants to the effect that the impugned notice of demand bearing No.28481 dated 15.7.2002 was illegal and the same was set aside. In addition to that a decree for mandatory injunction was passed in favour of the plaintiff and against the defendant directing the defendants to recalculate the amount outstanding against the site bearing booth No.134 by charging the interest @ 10% per annum on late payment and if on calculation it was found that the plaintiff had deposited the excess amount then such amount be returned to the plaintiff and if the amount deposited by the plaintiff was found short as per the aforesaid calculation then such outstanding amount could be recovered by the defendants from the plaintiff.

Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal in the Court of District Judge, Faridabad, which was disposed of vide judgment dated 13.2.2008. The observations of first Appellate Court are relevant and reproduced as under:-

11.What has to be examined in this case is the terms which were agreed upon. A written contract was entered into by the parties. Bodh Raj had been allotted a commercial site in Section-8 in January, 1998. The allotment letter is Ex.P1. Clause 4 of the allotment letter provides that 25% of the payment had to be made within 30 days from the date of the issue of the

letter. Clause (5) related to the balance amount which was to be paid without interest within 60 days or in eight half yearly installments from the date of issue of the letter. It was also specified that each installment would be recoverable together with interest on the balance price at 15% interest. Clause 6 provided that possession of the plot could be taken immediately after making payment of balance 15% as demanded in para – 4. Thus possession of the plot could have been taken after making deposit of 15% of the amount over and above the payment referred to in para-4. The plaintiff was to himself approach the department for taking possession. She did not take any steps. The allotment letter was clear and in case of default of payment the installments were to be paid with interest at the rate of 18%. The plaintiff cannot turn around and say that no interest was chargeable because possession had not been taken by her. The allottee cannot hold the site for a number of years by paying a small percentage of the amount and hold on to the allotment and then take a stand that no interest was chargeable. The argument cannot be accepted. The delay was on the part of the allottee. She was to deposit the remaining 15% of the amount and could take possession.

12. In Haryana Builders Ltd., Gurgaon Versus Haryana

Urban Development Authority and Ors., 2002, HRR 649 it has been held that the allottee is bound to pay the price in accordance with the mode of payment laid down in the regulation and HUDA can charge penal interest at the rate of 18%. The Division Bench in Ram Kishan Gulati and others Versus State of Haryana and others, 2000 HRR 63 had also taken this view.

13. The plaintiff had agreed to the allotment and she was bound by the terms of the agreement and HUDA could charge interest at the rate of 18% on delayed payment but since a policy decision had been taken and the interest was reduced, they could charge simple interest as per policy decision Ex.D5.

14. So far as charging interest at the compound rate is concerned, there was no contract and compound interest could not be charged. In the allotment letter there was no condition that delayed payment could be charged calculating at the compound rate. There is no infirmity in the order so far as charging of compound interest is concerned. HUDA had not placed on record their calculation. The demand has to be set aside. Directions are given to HUDA to calculate the amount in the manner stated above and if any amount is found due it would be conveyed to the plaintiff then the plaintiff would pay it within 30 days. The judgment

and decree of the lower Court is modified. The appeal is dismissed. Parties are left to bear their own costs.

The plaintiff is feeling dissatisfied with the said judgment given by District Judge, Faridabad and has knocked at the door of this Court by way of filing regular second appeal praying that the same be accepted, the impugned judgment and decree passed by District Judge, Faridabad be set aside.

On getting notice of regular second appeal, the defendants have appeared before this Court through counsel.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the appellant has contended that the main point to be decided in this case is whether the defendants could charge interest on delayed payments, if so, at what rate and for what period. According to him, the defendants themselves were not aware as to who was owner of the site in question and could not possibly deliver possession of the site. It was only when the plaintiff moved an application that possession was delivered to him. There was no development in the area. The plaintiff could not be held responsible for delayed payments and no interest could be charged from him.

On the other hand, learned counsel for the defendants has vehemently controverted the arguments advanced by learned counsel for the appellant stating that jurisdiction of the civil Court to entertain and try the suit is barred under Section 50 of the HUDA Act, therefore, the suit

filed by the plaintiff deserves to be dismissed on that score alone. Nevertheless admittedly the plaintiff had deposited the installments belatedly, as such, was liable to pay interest on the delayed payment, which has been rightly charged from her. There is no question of excess payment having been paid by the plaintiff or she being entitled to recover some amount from her.

After hearing the rival contentions and going through the record, I find that the appeal lacks merit. In this case, appellant Smt.Pawan Vats is not a original allottee of the booth in question, rather she had purchased it from original allottee Bodh Raj. Bodh Raj, original allottee had not challenged the terms and conditions of allotment including the schedule for payment of the total consideration amount including the clause with regard to interest @ 18% on delayed payments. The original allottee having not done so, plaintiff Smt.Pawan Vats being transferee of the original allottee cannot possibly raise her little finger challenging the terms and conditions of the allotment. Admittedly, the original allottee had paid only 25% of the total amount and remaining amount was paid/deposited belatedly. Haryana Urban Development Authority was justified in claiming interest at the agreed rate of 18% on belated payments and no fault can be found with the same. Even otherwise, Section 50 of the HUDA Act, 1977 deals with finality of orders and bar of jurisdiction of Civil Courts providing that save as otherwise expressly provided in the Act, every order passed or direction issued by the State Government or order passed or notice issued by the Authority or its officer under this Act shall be final and shall not be questioned in any

suit or other legal proceedings. Sub-Section 2 dilates that no Civil Court shall have jurisdiction to entertain any suit or proceedings in respect of any matter the cognizance of which can be taken and disposed of by any authority empowered by this Act or the rules or regulation made thereunder.

Therefore, on account of this provision, the plaintiff could not possibly seek judicial intervention by way of filing civil suit for redressal of his grievances. Once the parties had agreed for payment of interest at a particular rate and nature thereof, plaintiff cannot challenge that clause now.

As regards the contention of learned counsel for the appellant that the defendants themselves were not aware as to who was owner of the site in question and could not possibly deliver the possession of the site and there was no development in the area, such contentions do not carry any weightage. The plaintiff herself was at fault in not depositing the installments as per schedule agreed between the allottee and HUDA. Now it does not lie in her mouth that defendants themselves are not aware as to who was owner of the site in question and could not possibly deliver possession of the site. She has get possession from HUDA itself and none-else.

Regarding lack of development in the area that also does not have any relevance. Regarding the judgments and orders pointed out by learned counsel for the appellant that was in other litigation, where HUDA was not a party.

Learned District Judge, Faridabad hearing the first appeal has

rightly relied upon the law laid down in *Ram Kishan Gulati and others Versus State of Haryana, 2000 Haryana Rent Reporter – 63* and *S.M.S. Sandhu Versus Chandigarh Administration and others, AIR, 2003 Supreme Court – 1138.*

The law is well settled that HUDA can certainly charge penal interest @ 18% and allottee/his transferee is bound to pay the total consideration amount agreed in accordance with mode of payment settled between the parties. This has been so held in *Haryana Builders Ltd.Gurgaon Versus Haryana Urban Development Authority and others, 2002(3) RCR(Civil) 101*, wherein it has been observed by a Division Bench of this Court that an allottee cannot withhold the instalments of premium of plot allotted by HUDA as there is no provision in the Act or the Regulations under which it is mandatory for the authority to allot plots in a fully developed area and that allottee can also not claim waiver of interest merely on the ground that the area was not fully developed to enable the allottee to raise construction.

Therefore, I do not find any merit in the present appeal and do not see any reason to disturb the legal, valid and well reasoned judgment passed by the District Judge, Faridabad.

The appeal stands dismissed accordingly.

17.12.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No