

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-24008-2016

Date of Decision: July 13, 2018

Reema Saharan

.....Petitioner

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

Present: Ms.Anita Balyan, Advocate for the petitioner.

Mr.Padamkant Dwivedi, Advocate for HUDA.

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SURYA KANT, J.(ORAL)

The claim of the petitioner in the instant writ petition has been substantially accepted by this Court by a self speaking order dated 30.05.2018, relevant part of which reads as follows:-

“Affidavit of Administrator, HUDA has been filed in the Court today and the same is taken on record. A copy thereof has been supplied to the counsel opposite.

This writ petition was filed by the petitioner praying for allotment of alternate plot measuring 209.25 sq.mts. The petitioner purchased the plot from the original allottee who in fact was allotted a plot measuring 135 sq.mts. A perusal of the original allotment letter (Annexure P-1) reveals that the allottee was made to understand that the approximate area of the site and the tentative price of the plot is subject to adjustment in accordance with actual measuring at the time of delivery of possession.

For the purposes of reference, relevant portion is

extracted here below:-

The approximate area of the site/building and the tentative price of the plot/building are given below subject to the adjustment in accordance with the actual measurement as the time of delivery of possession.

Sector No.	Name Urban Area	Plot no.	Appr. Dimension or description of building	Area in sq. metres	Tentative price of the plot/building
3	Gurgaon	123 sc	7.5Mx17M	135	Rs.186010

As it transpired subsequent to the allotment the plot that because of its irregular size, plot was incapable of being put to use unless more land was adjusted to it which resulted in the increase in size upto 209.25 sq.mts. Since the petitioner purchased this from the open market from the original allottee, subsequent documents sale deed, transfer letter etc. issued by the HUDA acknowledged the size of the plot and its increase to 209.25 sq.mts. The petitioner paid the entire dues towards the plot and the extension fee etc. before the conveyance deed was executed on 8.8.2006 in favour of the original allottee. This fact is of significance as increase of size of the plot from 135 sq. mts. to 209.25 sq.mts. was duly acknowledged by HUDA on account of the conveyance deed executed by them. The petitioner has purchased this plot on 20.11.2006. The re-allotment was also done in the same terms in so far as size of the plot was concerned. The petitioner attempted to raise construction and submitted site plan alongwith requisite fee but when the petitioner approached the office of HUDA, Gurugram for taking physical possession of the plot, she did not receive any assistance from the office. Eventually, it transpired that the plot was not even available or suitable for construction of a house. Since no positive response was coming from the HUDA,

the petitioner approached the District Consumer Disputes Redressal Forum, Gurugram on 22.11.2007 with a complaint that was accepted. The District Forum noticed the reply of the HUDA where they conceded that the size of the plot was not more than 140 sq.mts. Even though the possession letter indicated the size of the plot as 209.25 sq.mts. The District Forum while allowing the petition directed allotment of alternative plot of the same size i.e 209.25 sq.mts. and further directed that in case such a plot is not available in the same sector, it be allotted in the adjoining sector. The authorities were directed to pay interest on the amount deposited by the petitioner till delivery of the possession. The complaint was disposed of alongwith monetary consequences which were compensatory to the petitioner. In appeal the order of the District Forum was reversed which led to the proceedings before the National Consumer Disputes Redressal Commission which noticed that even though in the original allotment letter the area is of 135 sq.mts but subsequent developments showed the plot to be of 209.25 sq.mts but intervention was refused by the Commission leaving the petitioner to her remedies before the Civil Court of competent jurisdiction. Evidently, what was implied was the recourse to damages that the petitioner could have in view of the conflicting stand of HUDA regarding the size of plot being 135 sq. mts or 209.25 sq.mts or 140 sq.mts.

The petitioner has been thereafter regularly representing to the authorities for redressal of her grievance and finally this petition has been filed. There is hardly any dispute on facts. It is evident that plot measuring 135 sq.mts. was given to the original allottee but for some reason the plot came to be reflected as 209.25 sq.mts. in the documents executed by the HUDA itself. For this they have lot to explain which unfortunately is not forthcoming.

After the intervention of the Court and upon passing of

several orders including some where dis-pleasure was expressed by this Court, Sh.Chander Shekhar Khare, Administrator, HUDA, Gurugram was summoned and today during the course of hearing he has explained that the allotment was of merely 135 sq.mts and the HUDA would have no objection in allotting a plot of similar size. In fact one has been identified and offered to the petitioner but the Administrator has expressed his helplessness in giving a plot of size 209.25 sq.mts. in view of the prevailing policy which prohibits any such allotment contrary to the allotted size of the plot.

Before us it has been stated that plot bearing no. 740, Sector 5, Gurugram has been offered to the petitioner and she is at liberty to take its possession instantaneously.

Petitioner who is present in Court states that she would like to visit and see the plot before making up her mind.

We find this approach to be fair considering that the petitioner has suffered hugely on account of insensitivity of the respondents.

We would thus adjourn the matter for a short date i.e 13.7.2018 to enable the petitioner to visit the site and see the plot being offered to her.

Even if this plot is not acceptable to the petitioner, she would eventually be entitled to a plot of similar size either in the same sector or in the vicinity and we make it clear that in this exercise the choice of the petitioner would be respected by the respondents. For the inconvenience and the troubles caused to the petitioner forcing her into rounds of litigation and depriving her of the possession of the plot for this inordinately long time, petitioner deserves monetary compensation from HUDA. The petitioner has purchased this plot in open market in the year 2006 for a consideration of Rs.6 lacs which is reflected in the sale deed and taking this as an ostensible price of the plot in 2006, the price would work up to approximately

Rs.3,000/- per square metre. We would grant an escalation in the price component of atleast 25% and take the price of the plot today as Rs.3750/- per sq. metre. The difference between size of the plots measuring 209.25 and 135 would be roughly around 75 sq.mts. So this difference has to be made good by the HUDA authorities. This amount would carry an interest of 15% per annum payable from 2006 till the time the amount is paid to the petitioner. The petitioner would also be entitled to extension fee that she has paid to the petitioner as she cannot be held liable to pay such a fee when she is deprived of the possession of the plot. This amount would cumulatively carry an interest of 15% per annum.

To be true to our reasoning, we have arrived at the interest of 15% per annum as this is the rate charged by the HUDA authorities from its own allottees in the event of any default.

Since the petitioner has expressed her desire to see the site, list again on 13.7.2018.”

In deference to the directions reproduced above, the petitioner accepted the site and its physical possession has also been handed over to her but rest of the directions are yet to be complied with. Since HUDA authorities have accepted the order, the writ petition is disposed of with a direction that the other directions contained in the order dated 30.05.2018 be also complied with within two months.

(SURYA KANT)
JUDGE

July 13, 2018
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(SUDIP AHLUWALIA)
JUDGE

1. Whether speaking/reasoned ?
2. Whether reportable ?

Yes/No
Yes/No