

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

RSA-846-2008(O&M)

Date of decision:-17.12.2018

Rakesh Kumar

...Appellant

Versus

Haryana Urban Development Authority and others

...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 Rakesh Kumar, resident of Faridabad had brought a suit for declaration with consequential relief of permanent and mandatory injunctions against defendants Haryana Urban Development Authority (for short – HUDA) through its Chief Administrator, Panchkula, the Administrator, HUDA, Faridabad and the Estate Officer, HUDA, Faridabad on the averments that Booth No.111, Sector-8, Faridabad was originally allotted to Shri Satish Kumar, who had transferred the same to the plaintiff vide a sale deed; that earlier an amount of Rs.11,670/- being 10% of the total cost of the booth was deposited with the defendants and subsequently another sum of Rs.17,505/- was deposited as 25% of the total cost of the booth; the remaining amount of 75% to the tune of Rs.87,525/- was to be deposited

in 10 half yearly installments along with agreed rate of interest @ 10%. According to the plaintiff, a total sum of Rs.4,60,000/- has been deposited as price of the booth. As per the version of the plaintiff, he has been compelled by the defendants to deposit excess amount since the defendants had refused to hand over the possession of site for the booth, so as to enable the plaintiff to raise construction thereon and defendants have been charging penal compound rate of interest i.e. @ 18% per annum on the delayed payment, whereas only simple rate of interest at 10% on delayed payment should have been charged; that the plaintiff requested the defendants to recalculate the amount but to no effect, giving rise to the plaintiff to bring a suit seeking a declaration that defendants are entitled to claim interest on delayed payment of installments only @ 10% and charging of 18% compound rate of interest is totally illegal, unlawful and against the provisions of law, besides craving for grant of mandatory injunction directing the defendants to recalculate the amount against the booth in question with simple rate of interest at 10% and not to charge the compound rate of interest @ 18% per annum on the delayed payment.

On notice, the defendants appeared and filed written statement contesting the suit raising preliminary objections that the suit is false and frivolous; that no cause of action arose to the plaintiff to bring the suit; that suit is not properly valued for the purpose of Court fee and jurisdiction; that the plaintiff has failed to adhere to the terms and conditions of the allotment by not depositing the installments within the time frame and possession was offered immediately on depositing 25% of the price of the booth in question; that the plaintiff is liable to pay interest

that too the compound interest as per the terms and conditions of allotment and in terms of latest HUDA policy, the plaintiff is liable to pay 18% compound interest on delayed payment up to 31.8.2000 and thereafter simple interest at the said rate is payable. It was denied that defendants ever refused to give possession of the booth site to the plaintiff. According to the defendants, as a matter of fact the plaintiff has failed to take any initiative for getting possession and on 22.6.2001, it was for the first time that plaintiff applied for taking possession of the site of booth and the possession was delivered on 3.7.2001; that the development work was complete and civic amenities stood provided at the time of issuance of letter of allotment wherein the possession stood offered on depositing 25% price of the booth in question. So far as interest is concerned, it has been mentioned in the allotment letter itself that in case of delayed payment 18% interest would be charged, in that way no excess amount has been obtained from the plaintiff. Denying remaining allegations, the defendants prayed for dismissal of the suit.

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

1. Whether the rate of interest charged from the plaintiff against the delayed payments of installments @ 18% P.A. is illegal, unlawful and against the provisions of law and the same is liable to be recalculated? OPP.
2. Whether the plaintiff has no cause of action to file the present suit? OPD.
3. Whether the suit is false and frivolous? OPD.

4. Whether the suit has not been properly valued for the purpose of court fee and jurisdiction? OPD.
5. Whether the jurisdiction of the Court is barred to entertain and try the suit under Section 50(2) of the HUDA Act, 1977? OOPD.
6. Relief.

In order to prove his case, the plaintiff had examined Shri Udey Pal Singh as PW1 and he himself appeared as PW2.

On the other hand, the defendants had examined Shri Hanuman Singh, Clerk HUDA as DW1.

After hearing the learned counsel for the parties, the trial Court decided issue No.1 in favour of the plaintiff, issue No.2 against the defendant and in favour of the plaintiff, issues No.3 and 4 against the defendants, issue No.5 against the defendants. In view of the findings on issues No.1 to 5, issue No.6 relating to relief was decided inasmuch as the suit of the plaintiff was decreed with costs and a decree for declaration was passed in favour of the plaintiff and against the defendants to the effect that the defendants are entitled to charge interest on the delayed payment of installment @ 10% P.A. and the memo No.2492 dated 23.10.1989 is held to be illegal. 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 against booth No.111, Sector 8, Faridabad with simple interest @ 10% P.A. as specified in the allotment letter and not to charge compound interest @ 18% P.A. on the delayed payment. It was further held that if the plaintiff has made excess payment, then the defendants are under obligation to refund the same and

if after recalculation with interest @ 10%, it is found that some amount is due against the plaintiff then the defendants are entitled to receive the same.

Feeling aggrieved by the said judgment and decree, the defendants had filed an appeal in the Court of District Judge, Faridabad, which was assigned to Additional District Judge, Faridabad, who vide judgment dated 17.11.2007 modified the findings of the trial Court on issue No.1 holding that the defendants are entitled to charge interest on the delayed payments i.e. on each and every installment which remained unpaid on the due date, at the rate of 18% per annum, clarifying that the interest chargeable at the rate of 18% will not be in addition to 10% interest as provided under clause 5 of the allotment letter Ex.P2 and that in all the interest payable on delayed payments will be calculated at the rate of 10% per annum. As a result appeal filed by appellants/defendants HUDA was partly allowed. The impugned judgment and decree dated 25.11.2005 passed by the trial Court were modified to the extent that the defendants were held entitled to charge interest at the rate of 18% per annum on the delayed payments i.e. on each and every installment which remained unpaid on the due date and directing that the amount deposited by the plaintiff from time to time shall be adjusted towards the balance amount due against him; that he would seek calculation of the due amount from the defendants or they on their own will intimate the same to him within a period of two months from the date of passing of the order and then he would deposit the due amount within one month from the date of intimation.

The plaintiff is feeling dissatisfied with the said judgment recorded by Additional 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 Additional 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 him. There is no question of excess payment having been paid by the plaintiff or he being entitled to recover some amount from him.

After hearing the rival contentions and going through the record, I find that the appeal lacks merit. In this case, appellant Rakesh Kumar is not the original allottee of the booth in question, rather he had purchased it from original allottee Satish Kumar. Satish Kumar, 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 Rakesh Kumar being transferee of the original allottee cannot possibly raise his 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 change 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 himself was at fault in not depositing the installments as per schedule agreed between the allottee and HUDA. Now it does not lie in his 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. He 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 Additional 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 Additional 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