

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

RSA No. 2134 of 2017(O&M)

Date of decision: 18.1.2018

Kuldeep Mann

....Appellant

VERSUS

Sanjay Sharma

.....Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Vineet Dhanda, Advocate for the appellant.

REKHA MITTAL, J.

The present appeal directs challenge against consistent findings recorded by the Courts below whereby suit filed by the respondent for recovery of Rs.2,00,000/- has been decreed.

In short, the respondent/plaintiff filed the suit for recovery on the basis of agreement to sell dated 25.07.2009 whereby the appellant/defendant agreed to sell house no.2053, Sector 13-17, Housing Board Colony, Panipat for Rs.7,30,000/- and received an amount of Rs.1,00,000/- towards earnest money and the sale deed was agreed to be executed on 25.09.2009. It is averred that the respondent/plaintiff always remained ready and willing to perform his part of the agreement. On 25.09.2009, he appeared before the Sub Registrar, Panipat along with balance sale consideration for execution of sale deed but the

appellant/defendant did not turn up and failed to perform his part of contract. Later, he came to know that the appellant/defendant had not cleared dues of Housing Board Haryana for the house in question. He served legal notice dated 28.12.2009 requesting the defendant to make payment of Rs.2,00,000/- as per agreed terms and conditions.

Apart from the fact that the appeal is barred by limitation, contentions raised by the appellant are not meritorious and liable to be rejected.

The appellant/defendant admitted execution of agreement of sale, terms and conditions incorporated therein and so also receipt of Rs.1,00,000/- towards earnest money and sale deed to be executed on 25.09.2009 on payment of balance sale consideration. However, it has been pleaded that the appellant remained present in the office of Sub Registrar Panipat on the stipulated date and got marked his presence vide affidavit dated 25.09.2009. A Panchayat was convened between the parties and it was settled that in case plaintiff failed to make payment of balance sale consideration of Rs.6,30,000/-, earnest money of Rs.1,00,000/- shall be forfeited.

The trial Court framed issues and permitted the parties to adduce evidence in support of their respective contentions. The Court decided issue No.1 in favour of respondent/plaintiff and eventually the suit was decreed for recovery of Rs.2,00,000/- with interest at the rate of 9% per annum from the date of filing of the suit till realisation within three months. As has been noticed hereinbefore, findings recorded by the trial Court have been affirmed as the appeal preferred by the

defendant/appellant did not find favour with the Additional District Judge, Panipat.

The sole submission made by counsel for the appellant is that as the respondent/plaintiff did not file a suit for specific performance of agreement of sale, it can be safely construed that he was not ready and willing to perform his part of the agreement, therefore, he is not entitled to seek refund of earnest money much less double of the amount by enforcing the terms and conditions contained in the agreement in this regard.

There is no dispute that the suit property was allotted to the appellant by Housing Board Panipat. The appellant entered into agreement of sale even before he discharged his obligation qua the Housing Board Panipat on the basis of allotment made in his favour. The Court in appeal has noticed in para 14 of the judgment that the respondent/plaintiff examined Satbir Singh PW-3, Clerk from the office of Housing Board Panipat who proved that the house in question was resumed by Housing Board Panipat on 25.03.2008 as the appellant failed to deposit the instalments. The appeal preferred by the appellant against resumption order was dismissed by the Deputy Commissioner Panipat on 02.09.2009. The appellant did not produce any evidence to show that on 25.09.2009 order of resumption was revoked by Housing Board Panipat or he was having valid title to execute the sale deed. Statement of Satbir Singh PW-3 makes it clear that at the time of execution of agreement to sell Ex.P1, property in dispute has already been resumed by Housing Board Panipat and appellant was not competent to execute the agreement to sell but despite that he received Rs.1,00,000/- as earnest money from the

respondent and assured him to execute the sale deed on 25.09.2009. Further held that the appellant cannot take any benefit from the fact that he marked his presence before the Sub Registrar on 25.09.2009 by attesting affidavit Ex.DW2/A.

Counsel for the appellant is not in a position to challenge correctness of these findings recorded by the Appellate Court much less to contend that the same are contrary to record. He has failed to point out any materials on record that resumption order qua the suit property was ever revoked by the Housing Board Panipat much less the same stood revoked on or before 25.09.2009 authorising the appellant to execute the sale deed in favour of the respondent on the stipulated date. Under the circumstances, no fault can be found in the decision by the respondent/plaintiff to seek recovery of an amount of Rs.2,00,000/- in place of requesting for specific performance of agreement of sale of a property which already stood resumed by its allottee i.e. Housing Board, Panipat. In this view of the matter, contention raised by counsel for the appellant is not tenable and liable to be rejected.

No other point has been raised.

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

JANUARY 18, 2018

‘D. Gulati’

(REKHA MITTAL)

JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no