

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

RSA NO. 2359 OF 2017 (O&M)

DATE OF DECISION: OCTOBER 29, 2018

Haryana Urban Development Authority and another

.....Appellants

Versus

Rajesh Kumar Singhal son of Shri Ved Parkash Singhal

.....Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Sumit Jain, Advocate for the appellants.



TEJINDER SINGH DHINDSA, J.

A suit filed by plaintiff Rajesh Kumar Singhal against the defendant-Haryana Urban Development Authority (for short 'HUDA') seeking declaration to the effect that the statement of accounts prepared in respect of plot No.1721, Sector 4, Urban Estate, Kurukshetra is illegal, null and void and also seeking rendition of accounts was decreed by the trial court on 5.2.2014. A civil appeal preferred by defendant-HUDA has been partly allowed vide judgment dated 31.3.2016 passed by the learned Additional District Judge, Kurukshetra thereby affirming the judgment of the trial Court as regards relief of declaration. However, the judgment of trial Court granting relief of rendition of accounts has been modified and the

defendant-HUDA has been directed to refund the amount charged from the plaintiff towards excess interest on the delayed payments of instalments/ extension fee/ possession interest along with simple interest at the rate of 6% per annum from the date of filing of suit till actual realization.

2. Brief facts of the case are that a suit for declaration and rendition of accounts was instituted by the plaintiff-respondent on the averments that he was allotted plot No.1721, Sector 4, Urban Estate, Kurukshetra vide allotment letter dated 16.12.2005. Symbolic possession of the plot was offered on the same very date i.e. 16.12.2005. Plaintiff-respondent submitted repeated representations to the HUDA authorities that the basic and necessary amenities had not been provided and for which needful steps be taken and a date be fixed for giving actual physical possession. An amount of instalment which was due on 29.5.2006 could not be paid in time and the same was deposited vide cheque dated 11.8.2006 and for which the plaintiff-respondent intimated that he was ready to pay the interest of the delayed payment. Finally, vide letter dated 24.5.2007 issued by HUDA, interest was calculated to the tune of Rs.11,794/- and which was highly excessive. Subsequent instalments were paid by cheque but HUDA authorities on account of ulterior motive declined to accept the same. Plaintiff's case was that HUDA was charging compound interest upon the entire outstanding dues, whereas it was entitled to charge simple interest at the rate of 10% per annum on account of delay in depositing instalments. Ultimately, a sum of Rs.1,60,000/- was deposited by the plaintiff-respondent under protest. It is against such brief factual backdrop that the suit for declaration and rendition of accounts was filed.

3. Suit was contested by HUDA taking a stand that interest on delayed payments as also the possession interest has been charged as per HUDA norms. It was contended that the rate of interest has been revised from time to time as per departmental instructions and, accordingly, the demand had been raised.

4. Trial Court returned findings in favour of the plaintiff holding that the basic amenities at the site had not been provided and, accordingly, as per terms and conditions of the allotment letter, HUDA could not treat the actual physical possession of the plot having been delivered. On account of lack of basic and necessary amenities, it was only a symbolic possession that had been given to the allottee. Accordingly, a view was taken that HUDA was not entitled to charge possession interest w.e.f. 16.12.2005 i.e. the date of allotment and further, the extension fee also could not be charged only on account of expiry of a period of two years from the date of actual physical possession wherein allottee had failed to raise construction. Conclusion drawn by the trial Court is that since actual physical possession was not offered, there was no question for the plaintiff to have raised construction, and under such circumstances, charging of extension fee was illegal.

5. As has been noticed hereinabove, the suit of the plaintiff – respondent was decreed on 5.2.2014.

6. In a civil appeal having been preferred, lower appellate Court has affirmed the judgment of the trial Court, insofar as declaration is concerned. It has taken a view that since the interest charged towards extension fee and the possession interest is a matter of mathematical

calculation and as such, the same could be ascertained. Resort has been taken to Order 7 Rule 7 of Code of Civil Procedure and relief of mandatory injunction has been granted directing HUDA to refund the amount charged towards excess interest on delayed payments of instalments/ extension fee and possession interest @ 6% per annum from the date of filing of suit till actual realization. Trial Court judgment and decree as regards relief of rendition of accounts has been modified to such extent.

7. Learned counsel representing appellant-HUDA has raised a solitary submission that the plot in question had been sold by the plaintiff-respondent on 22.2.2010 and the purchaser was not impleaded as a party-defendant to the suit and since he was a necessary party to the lis, the dispute/controversy could not have been adjudicated.

8. No other point was raised.

9. Having heard learned counsel for the appellants and having perused the case paper book, this Court is of the considered view that no intervention in the matter is called for.

10. The relief sought by the plaintiff-respondent as regards declaration and charging of excessive interest on delayed payments/ extension fee/ possession interest was pertaining to a period prior to 22.2.2010. In other words, grievance of the plaintiff – respondent had stood crystalized at a point of time when he was still owner of the plot and prior to the same having been sold to a subsequent purchaser on 22.2.2010. Since the amount in question had been charged from the plaintiff – respondent at the hands of HUDA authorities, the suit was certainly maintainable against

HUDA and the issues *inter se* parties herein were open to be adjudicated

even without impleading the subsequent purchaser.

11. The solitary contention raised by the learned counsel for the appellant, as such, is found to be without merit.

12. Learned counsel, in any case, has not raised any submissions as regards actual physical possession of the plot in question having not been delivered on account of lack of necessary amenities and facilities on the spot and thereby, the imposition of possession interest as also the excessive interest on delayed payments of instalments/ extension fee having been held to be unjustified.

13. In view of the above, there is no merit in the appeal. The same is dismissed.

(**TEJINDER SINGH DHINDSA**)
JUDGE

OCTOBER 29, 2018

SRM

Note: *Whether speaking/reasoned:* *Yes/No*

Whether Reportable: *Yes/No*