

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

222

RSA No. 204 of 1998 (O&M)

Date of decision: 29.07.2022

Housing Board, Haryana and others

...Appellants

Versus

Dayal Dass

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. D. R. Bansal, Advocate
for the appellants.

Mr. P. S. Jammu, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

Challenge in this appeal, filed by the appellants/defendants, is laid to the judgment and decree dated 12.08.1997 passed by the lower appellate Court, vide which the judgment and decree dated 23.03.1994 passed by the trial Court dismissing the suit of the respondent/plaintiff, was set aside and the appeal of the respondent/plaintiff was allowed.

Brief facts of the case are that the respondent/plaintiff was allotted a tenement, vide allotment letter Ex. P-1 dated 04.06.1987.

Condition Nos. 2 and 10 of this allotment letter read as under:

“2. If the allottee fails to execute the agreement and to take possession of the house within 30 days of the issue of this letter, his name shall be removed from the allotment register and any amount upto 50% of the earnest money deposited by him shall be forfeited.

xxx xxx xxx xxx xxx

10. The allotment of the tenement is made on the basis of the construction that exist at this time and the material/specifications in it. In case you notice any defect, the same should be given in writing to the Assistant Engineer of the colony before taking possession of the tenement. No complaint will be entertained after taking over actual possession of the tenement.”

The appellants/defendants/Housing Board thereafter served a notice dated 14.07.1987 Ex. P-3 to the respondent/plaintiff that since he has defaulted in making balance payment, he should deposit the balance amount, failing which, the allotment will be cancelled. Thereafter, another reminder was given on 24.10.1987 Ex. D-4 and finally on 21.12.1987, vide Ex. P-4, the allotment was cancelled by way of passing the following order:

“Whereas you have failed to take the possession of the house and to execute the Hire-purchase-Tenancy Agreement within stipulated period in compliance of allotment letter No. 599 dated 04.06.1987 and show cause notice No. 778 dated 14.07.1987, your name has been removed from the allotment register and 25% of the earnest money has been forfeited under Regulation 13 of Housing Board Haryana “Allotment Management & Sale of tenement” Regulation 1972. You may apply for the refund of your balance amount by sending an advance receipt on the porforma enclosed.”

As per aforesaid cancellation letter, the respondent/defendant was given an opportunity to apply for refund of the balance amount by sending an advance receipt on the requisite porforma.

The respondent/plaintiff filed a suit for permanent injunction challenging the show cause notice dated 14.07.1987 (Ex. P-3), however,

later on, when the allotment was cancelled, an amended petition was filed challenging the order dated 21.12.1987 (Ex. P-4) of cancellation of allotment.

The suit was contested by the appellants/defendants. The trial Court framed the following issues:

- “1. Whether the impugned order dated 21.12.1987 passed by the Chief Administrator, Housing Board, Haryana, Chandigarh is illegal, null and void and is liable to be set aside? OPP
2. Whether show cause notice dated 14.07.1987 issued by the Estate Manager, Housing Board, Haryana, Sirsa is illegal, on the grounds as alleged, if so, its effect? OPP
3. Whether the Civil Court has no jurisdiction to try the present suit? OPD
4. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD
5. Whether the suit is not maintainable in the present form? OPD
6. Relief.”

After both the parties led their respective evidence, the trial Court finding no merit in the suit dismissed the same, vide aforesaid judgment and decree dated 23.03.1994.

The respondent/plaintiff preferred an appeal before the lower appellate Court, which was allowed by the lower appellate Court, while setting aside the judgment and decree dated 23.03.1994 passed by the trial Court. Hence, the present appeal.

For a ready reference, the observations made by the lower appellate Court are reproduced herein below:

“11. The reading of the above two conditions, therefore,

make it clear that the possession had to be taken by the allottee within 30 days. Otherwise the deposit would be forfeited. But condition no. 10 qualifies condition no. 2 to the extent that before taking possession the allottee must ascertain that the construction that existing at that time and the material specifications used in it should not be defective. It was clear that in case the defect is noticed, the respondents should be informed in writing about the same before taking the possession. A clear warning is contained in this condition that no complaint will be entertained after when the possession is taken. The allotment letter is dated 4.6.1987. The appellant admittedly had not taken possession of the house within 30 days and has not taken possession till this date. The appellant was given a notice by the respondents Ex.P.3 to appear personally or through his agent on 28th July, 1987 as to why he has not taken possession within 30 days from 4.6.1987. The appellant had sent legal notice Ex.P.5 to the respondents which is dated 19th July, 1987 mentioning that on receipt of afore-said letter the appellant visited the house tenement and inspected the same. On inspection he found that the house tenement was not duly complete according to specifications as mentioned in the Haryana Government Gazette dated 31.3.1987. It is mentioned that under the head of 'joinery' 35 mm thick deodar wood pannelled door shutters and 30 mm thick deodar wood glazed window shutters have not been provided in the said house tenement. Further under the head of 'Electrical installation' Surface wiring with necessary fixtures have not been provided in the said house tenement. It has been clarified that because of the above defects the possession has not been taken. The appellant, therefore, duly performed his duty by informing the respondents in writing about the defects in

the house allotted to him and, therefore, the appellant was not bound to take possession of the same. It is nowhere on record that defects have been removed at the site by the respondents. The respondents instead proceed to cancel the allotment and forfeited the money deposited by the appellant. Such order is bad in law. The respondents without fulfilling their obligations and without complying with the conditions of the allotment letter have caused hardship to the appellant by illegally cancelling the allotment and forfeiting the amount of deposits.

12. No other point was urged before me.

13. As a result of my foregoing observations and discussions, the appeal succeeds and the same is allowed with costs. The findings of the learned trial Sub-Judge are reversed. The suit is decreed with costs and the show cause notice dated 14th July, 1987 is declared wrong, illegal, null and void, without jurisdiction and authority and the same does not bind the appellant. Similarly Order dated 21.12.1987 passed by the Chief Administrator, Housing Board Haryana, Chandigarh vide which the name of the appellant had been removed from the allotment register and 25% of the earnest money had been forfeited by the respondents, is declared illegal bad in law, against the principles of natural justice and equity, and the same is not binding on the rights of the appellant and the same is set aside. After when the respondents have removed all the defects and made tenement in accordance with the specifications, fresh offer of possession and agreement be made and if the appellant finds that all the defects have been removed, the appellant should take possession within 30 days thereafter and if the appellant fails to take the possession, it will be upon the respondents to pass such necessary

order as may be found fit under the law. Decree sheet be prepared accordingly and the records be consigned.”

Accordingly, the suit of the respondent/plaintiff was decreed with a direction to the Housing Board, Haryana to issue a fresh offer of possession within a period of 30 days from passing the decree.

The lower Courts' record is requisitioned.

Learned counsel for the appellants/defendants has referred to aforesaid two conditions of the letter of allotment, according to which, the balance amount was to be paid within a period of 30 days and the possession was to be taken, whereas a rider was there in clause 10 of the letter of allotment that in case allottee finds any defect in the construction, it may be notified to the Assistant Engineer of the colony before taking possession of the tenement

Learned counsel for the appellants has further argued that the lower appellate Court has misinterpreted both the said clauses, as Clause 2 is unequivocal that in case the possession is not taken within a period of 30 days, 50% of the earnest money will be forfeited and Clause 10 provided that if any defect is found, the same should be notified to the Assistant Engineer before taking possession, so that the same may be rectified and in case the allottee takes the possession without referring to any defect or shortcoming, the same will not be rectified. It is further submitted that Clause 10 nowhere gives any right to the allottee not to pay the balance amount.

It is further argued that in the cross-examination of the respondent/plaintiff, who appeared as PW-1, it is admitted that he has read the terms and conditions of the allotment letter, wherein it is provided in

Clause 2 that if the possession is not taken within a period of 30 days, the allotment will be cancelled and he has not taken the possession within a period of 30 days. Needless to say that the condition of taking possession within 30 days was subject to the condition of depositing the balance amount. Apparently, neither the possession was taken nor the balance amount was paid as only earnest money was paid and, therefore, the appellants/defendants have rightly cancelled the allotment of the tenement.

Learned counsel for the appellants has further referred to a judgment of Hon'ble Supreme Court rendered in Chaman ***Lal Singhal vs. Haryana Urban Development Authority & Ors., Civil Appeal No. 803 of 2009 (arising out of SLP(C)-20651-2007), decided on 09.02.2009***, wherein it is held that if the allottee himself has failed to comply with the terms and conditions of the allotment letter, the Courts cannot form an opinion contrary to the terms and conditions of allotment and grant relief to said allottee beyond that. It is, thus, submitted that the order of cancellation is legal and valid.

It is submitted In reply, learned counsel for the respondent/plaintiff has argued that in para 4 of the plaint, the respondent/plaintiff has specifically pleaded that since the said tenement was incomplete, therefore, an objection was raised in this regard and the plaintiff, on that account, has not taken the possession and has not deposited the balance amount and in corresponding paragraphs of the written statement, no specific reply is given to the same.

After hearing learned counsel for the parties and going through the record as well as the findings of both the Courts below, I find merit in

the present appeal.

A perusal of Conditions/Clauses Nos. 2 and 10 of the allotment letter clearly shows that there was no relaxation given to the allottee in terms of condition Nos. 2 and 10 that if any defect is reported to the Assistant Engineer before taking possession, it will give a right to the allottee, either to stop the payment of balance amount or not to take possession. Even otherwise, a period of about 30 years has lapsed since the dispute arose and market value of the house has increased manifold, therefore, the lower appellate Court is not justified in restoring the allotment as only 25% of the earnest money was paid by the respondent/plaintiff and the possession was never taken by him.

Accordingly, finding merit in the present appeal, the same is allowed and the impugned judgment and decree dated 12.08.1997 passed by the lower appellate Court is set aside and that of the trial Court dated 23.03.1994, dismissing the suit, is upheld.

29.07.2022

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No