

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

CWP-28998-2022 (O&M)

Date of decision : 16.12.2022

Kusam Kumar

... Petitioner

Versus

State of Punjab and another

... Respondents

**CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU
HON'BLE MR. JUSTICE GURBIR SINGH**

Present: Mr. Deepak Girotra, Advocate
for petitioner.

HARINDER SINGH SIDHU, J.

Petitioner Kusam Kumar has filed this petition seeking directions to respondent-Jalandhar Improvement Trust, Jalandhar to give him possession of the plot in terms of allotment letter dated 02.04.2012 (Annexure P-2). He has further sought directions to the respondents to return the amount deposited in connection with this plot alongwith interest at the rate of 18 per cent per annum.

Respondent-Jalandhar Improvement Trust, Jalandhar had floated a Scheme for allotment of residential plots in Surya Enclave Extension, Jalandhar Improvement Trust, Jalandhar. The booking of the plots was to commence on 08.08.2011 and was to close on 07.09.2011.

The mother of petitioner Smt. Kaushalya Rani (for short “mother”) applied for a plot measuring 356 sq. yards under the Pensioner category. The tentative price of the plot was Rs.70,000/- per sq. yard. She deposited Rs.6,05,000/- (10 per cent of the price as earnest money

alongwith application form). The petitioner also applied for a plot in his own name. Both petitioner and his mother were successful in the draw of lots. Plot No.31-B was allotted to his mother and Plot No.15-D was allotted to the petitioner.

The petitioner and his mother realized that they would not be able to purchase both the plots. Hence, the mother of petitioner applied for surrender of the plot allotted to her on 2.1.2012. She also asked for refund of the earnest money (Rs.6,05,000/-) that she had deposited alongwith application form. The refund was refused vide communication dated 1.10.2012. Instead, allotment letter dated 2.4.2012 was issued, whereby, Plot No.31-B measuring 356 sq. yards was allotted to the mother of petitioner.

She filed a complaint before the District Consumer Disputes Redressal Forum, Jalandhar against action of respondent-Trust in not refunding the amount. The said complaint was dismissed vide order dated 20.9.2013 (Annexure P-3). She preferred an appeal against that order to the State Consumer Disputes Redressal Commission. This appeal was dismissed. Her revision before the National Consumer Disputes Redressal Commission was also dismissed. The mother of petitioner had based her claim for refund on Clause 9 of the Brochure of the respondent-Trust which reads as under :-

“9. If any applicants applies for more than one plot and he/she is successful in all the applications for which he/she has applied, in such case his right will be restricted only up to one plot if his/her spouse, any dependent family member also become successful in the draw then their

right of the claim will also be restricted up to only one plot.”

It was contended on behalf of the mother that she being 78 years of age, was unable to take care of herself and was dependent on her son. As both, she and her son, were successful in the draw of lots as per Clause 9 the claim automatically would be restricted to one. Consequently, she was entitled to refund of earnest money deposited by her. This claim was not accepted on the ground that she was a pensioner having an income of Rs.1,80,000/- per annum. In her application, she had not claimed to be dependent on her son. Her son (petitioner) in his application had not claimed to be dependent on his mother. Since they were not dependent on each other, the benefit of Clause 9 of the Brochure was not available and she was not held entitled to refund of earnest money paid by her. It was held that her case would be covered by Clause 4 of the Brochure as per which the earnest money of successful applicants shall not be refunded in any case. Against the aforesaid orders she also preferred an SLP which was dismissed on 1.5.2018 (Annexure P-6).

Meanwhile, due to status quo order passed by this Court in CWP-3559-2011 titled as *Arjan Singh and others Versus State of Punjab and others*, the area remained un-developed. On 22.12.2015, the said writ petition was dismissed.

Due to status quo orders, possession of the plots could not be handed over to the allottees even though they had deposited substantial amounts and in some cases even the entire amount had been deposited. Many of such allottees including the petitioner filed complaints before the

District Consumer Disputes Redressal Forum seeking directions to respondent-Trust to refund the amount deposited by them. The litigation reached National Consumer Disputes Redressal Commission which vide its order dated 28.8.2020 (Annexure P-8) ordered the refund of the amount deposited alongwith interest at the rate of 9 per cent per annum.

The mother of petitioner filed a complaint before the District Consumer Disputes Redressal Forum, Jalandhar seeking refund of earnest money deposited by her on the ground that the Scheme floated by respondent-Trust was *void ab initio* as at the time of floating of the Scheme, the land was disputed and the High Court had granted status quo regarding possession. The complaint was dismissed vide order dated 21.11.2018. It was held to be time barred as the cause of action had accrued to her on 1.10.2012 when her prayer for refund of earnest money had been declined by respondent-Trust. No appeal was preferred against said order by the mother.

The mother of petitioner died on 17.5.2021. Before her death, she had executed a Will dated 20.1.2021 bequeathing her entire movable and immovable property to the petitioner. It is asserted that pursuant to the Will, the petitioner is entitled to pursue any legal remedy qua movable and immovable property bequeathed to him by his mother.

The petitioner sent a legal notice dated 25.2.2022 to respondent No.2 - Trust claiming refund of earnest amount deposited by his mother on the ground that the Scheme has not been implemented and there was no development at all in the area. As no response has been received to the said legal notice, this petition has been filed claiming the aforesaid

directions.

Mr. Deepak Girotra, Ld. counsel for petitioner has argued that the earnest money was deposited by the mother of the petitioner in 2011. Neither has the Scheme been developed nor the earnest money refunded. As the fault is wholly on the part of respondent No.2, the earnest money is liable to be refunded to the petitioner alongwith interest. In the alternative, plot be allotted as per allotment letter dated 2.4.2012 issued in favour of his mother.

In our view, there is no merit in the petition.

The mother of petitioner, in whose favour the allotment letter dated 2.4.2012 was issued, had herself applied for surrender of the plot and that the amount of earnest money deposited by her be refunded. When the amount was not refunded, she filed a complaint before the District Consumer Disputes Redressal Forum, Jalandhar. Her complaint was dismissed on the ground that her case was not covered by Clause 9 of the Scheme which was applicable only in case a dependent family member was also successful in the draw of lots. It was held that the earnest money had been rightly forfeited in terms of Clause 4 of the Scheme. That finding has attained finality in as much her appeal, Revision and even SLP has been dismissed. In the light thereof, it is not open to the petitioner to re-agitate the same issue. The alternative prayer for allotment of the plot is also not maintainable as the mother of the petitioner had herself surrendered her plot. Moreover, her subsequent complaint to the District Forum was dismissed on 21.11.2018 as being time barred. No appeal was filed there against.

It is not open to the petitioner to re-agitate the same claim through a writ petition filed four years thereafter.

The cases, where refund was ordered by the National Commission, were of those allottees who had deposited substantial and even the entire amount. They had been interested in that allotment unlike the mother of the petitioner who had herself applied for surrender and the earnest money deposited by her had been forfeited in terms of the Scheme which action had been upheld up to the Supreme Court.

Accordingly, this petition is dismissed.

(HARINDER SINGH SIDHU)
JUDGE

(GURBIR SINGH)
JUDGE

December 16, 2022

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No