

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

107

2023:PHHC:132143-DB

CWP-9832-2022

Date of Decision: 11.10.2023

Ram Avtar Sharma

.....Petitioner(s)

Versus

Haryana Urban Development Authority and another

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. A.S. Bhatti, Advocate,
for the petitioner.

Mr. Vishal Garg, Advocate,
for the respondents.

G.S.SANDHAWALIA, J. (Oral)

1. The petitioner, in the present writ petition filed under Articles 226 and 227 of the Constitution of India, seeks refund of the balance payment alongwith interest against Plot No.85, Sector 78, Urban Estate, Faridabad on the account that the respondent has failed to deliver the possession of the said plot as per allotment letter dated 26.08.2016 (Annexure P-1).

2. It is the case of the petitioner that against the allotment of the said plot, possession was to be offered within a period of three years from the date of allotment after completion of development work. The respondent-authority was to pay interest @ 9% per annum on the amount deposited after the expiry of three years till the date of offer of possession and the allottee was not required to pay further installment and the payment of the balance installment was to start after the possession of the plot was offered to the said person. The said clause reads as under:-

“7. The possession of the plot will be offered within a period of 3 years from the date of allotment after completion of development work in the area. In case possession of the plot is not offered within the prescribed period of 3 years from the date of allotment, HUDA will pay interest @ 9% (or as may be fixed by Authority from time to time) on the amount deposited by you after the expiry of 3 years till the date of offer of possession and you will not be required to pay the further installments. The payment of the balance installments will only start after the possession of the plot is offered to you.”

3. It is further the case of the petitioner that he paid the entire amount of Rs.92,47,284/- alongwith interest and late payment and thereafter requested to execute the Deed of Conveyance as per Clause No.13 of the allotment letter. It is his case that he had visited the plot on 12.06.2020 alongwith Supervisor/Junior Engineer and he came to know that his plot alongwith adjacent plots were occupied by farmers and farming was being done and, therefore, he had asked for refund of the full amount of the plot. Reliance was placed upon the letter dated 15.06.2020 (Annexure P-6) wherein, the demand as such was made for the refund of Rs.94,23,008/- alongwith interest from the date of last payment. The said letter was accompanied with photographs of the plot and the video of the area on C.D. It is his case that sum of Rs.50,00,000/- was refunded on 12.02.2021, Rs.34,80,872/- was refunded on 12.03.2021 and the balance amount of Rs.9,42,226/- was not refunded despite repeated requests. Resultantly, he served legal notice dated 16.03.2022 (Annexure P-8) and then filed the present writ petition.

4. The respondents, in their reply, have admitted that the allotment

was done of the 14 marlas plot at a tentative price of Rs.76,78,800/- and taken the plea that the earnest money was liable to be forfeited. Reliance has been placed upon the surrender application dated 05.10.2020 (Annexure R-4) which was done on the ground as noticed on account of encroachment by the farmers. Admission is there that the amounts were refunded but a deduction of Rs.9,42,226/- has been done as per policy dated 14.12.1995 and another policy dated 07.05.1999, which is annexed as Annexure R-5 with the written statement.

5. A perusal of the policy dated 14.12.1995 (Annexure P-9), which has been attached with the writ petition, would go on to show that there is an exception provided that the forfeiture of the 10% of the amount of the consideration money alongwith interest and other dues payable was not liable to be done provided four exigencies existed. The said exigencies read thus:-

“a) Surrender of the residential plots may be allowed by the Estate officer concerned after forfeiting an amount up to 10% of the total amount of the consideration money, surrender without forfeiture of any amount may be accepted with the permission of the chief Administrator.”

i) Where HUDA could not deliver the possession of plots due to litigation pending in the court by the original land owners;

ii) Where plot is not actually available on the ground as per layout plan;

iii) Where the land is under unauthorized encroachment which can not be easily removed and HUDA can not deliver the possession; and

iv) Where the allottee could not pay the remaining amount of the cost or could not undertake construction on account of death of dependent of the allottee.”

6. The same policy was modified on 07.05.1999 (Annexure R-5) wherein, the permission of the Administrator was required whereas in the earlier policy, the permission of Chief Administrator was required and in principle, the four exigencies continued whereby the forfeiture of 10% was not to be done. Specific averments are made in Para No.8 of the writ petitioner regarding the reason for surrendering the plot on account of the encroachment, which have not been categorically denied in the written statement which reads thus:-

“8. That the content of Para no. 8 of petition are wrong and denied. In reply to the above para, it is submitted that the it is oft repeated story by the Petitioner having no semblance of truth in it rather the real facts are as enumerated above being not repeated for brevity's sake.”

7. A perusal of the above paragraph would go on to show that there is no specific denial that the encroachment was not present at the spot. We have also noticed that the petitioner, alongwith his representation, has appended photographs and C.Ds. in proof of his claim. Even in the preliminary objection, the respondents have also admitted the fact that the surrender was being done on account of the encroachment by the farmers and not taken any specific plea that the said factual position on the spot was different.

8. In such circumstances, since the claim of the petitioner is based on the policy itself, the forfeiture as such of 10% was wrongly done. Resultantly, we allow the writ petition and direct the refund of the amount which has been kept back to the tune of Rs.9,42,309/-, which will be refunded alongwith interest from the date of deposit @ 9% per annum. The necessary

exercise of refunding the amount be done within a period of 4 weeks from the date of receipt of certified copy of the judgment.

(G.S. SANDHAWALIA)
JUDGE

11.10.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes
Yes