

RSA-2701-2019 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2701-2019 (O&M)
Reserved on : 10.05.2023
Date of decision : 29.05.2023

Haryana Shehri Vikas Pradhikaran ... Appellant(s)

Versus

Apeejay Education Society ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Anil Chawla, Advocate for the appellant.

Mr. H.L. Tiku, Senior Advocate with
Mr. Manav Bajaj, Advocate for the respondent.

ALKA SARIN, J.

CM-7471-C-2019

This is an application for condonation of delay of 29 days in
filing the appeal.

For the reasons stated in the application, delay of 29 days in
filing the appeal is condoned. CM stands disposed off.

RSA-2701-2019

1. The present appeal has been preferred by the defendant-
appellant against the judgments and decrees dated 06.08.2018 and
20.12.2018 passed by the Courts below whereby the suit of the plaintiff-
respondent was partly decreed.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondent, which is a Society registered under the Societies Registration Act, 1860, is running, managing and controlling schools and educational institutions. The defendant-appellant announced an open auction of lands for shopping malls, nursing homes/colonies and schools. One of the sites offered for establishing a high school was situated at Sector 21-D, Faridabad measuring 5 acres. The auction took place on 26.08.2004. The plaintiff-respondent participated in the auction and was the successful bidder for the site admeasuring 21300 sq. mtrs. The sale consideration was Rs.7,50,00,000/- i.e. Rs.3521.127 per sq. mtr. In accordance with the terms of the auction, the plaintiff-respondent deposited an amount of Rs.80,00,000/- vide two bank drafts. Defendant No.2, on 13.09.2004, issued a provisional letter of intent in favour of the plaintiff-respondent and informed the plaintiff-respondent that the allotment of the site for high school in Sector 21-D, Faridabad admeasuring 21300 sq. mtrs. approximately for a sum of Rs.7,50,00,000/- was accepted and the site was allotted to the plaintiff-respondent on free hold basis. In the said letter, receipt of 10% advance was acknowledged and further the plaintiff-respondent was directed to deposit 15% of the bid amount of Rs.7,50,00,000/- i.e. Rs.1,07,50,000/- within 30 days from the date of issue of the letter of intent. The balance 75% of the bid amount i.e. Rs.5,62,50,000/- was directed to be paid in 8 six monthly installments with interest the first installment being payable within 30 days of issue of the regular allotment letter. On 09.10.2004 an amount of Rs.1,07,50,000/- was

deposited towards 15% of the bid amount as per the letter of intent. The regular allotment letter was issued on 24.12.2004 informing the plaintiff-respondent that the bid had been accepted and the site at Sector 21-D, Faridabad admeasuring 21300 sq. mtrs. for the purposes of high school was allotted on free hold basis. Vide the said letter the plaintiff-respondent was also informed that the balance 75% i.e. Rs.5,62,50,000/- can be paid either within 60 days without interest or in 8 six monthly installments with interest @ 11% per annum. The possession of the site was offered to the plaintiff-respondent in terms of Clause 6 of the said allotment letter. Vide a letter dated 17.02.2005 the plaintiff-respondent complained that despite a lapse of six months, neither the possession had been handed over nor the zoning and demarcation plan was given, thus, the entire school project was delayed. The plaintiff-respondent also deposited 75% of the sale consideration amounting to Rs.5,62,50,000/- under cover letter dated 18.02.2005 along with a cheque. The payment was duly acknowledged by the defendant-appellant vide letter dated 18.02.2005. Yet again vide letters dated 29.03.2005, 02.12.2005, 18.08.2006 and 13.09.2006, the defendant-appellant was requested to hand over the vacant possession, however, to no avail. Vide letter dated 18.09.2006 the plaintiff-respondent was informed that the possession of the plot free from all encumbrances would be handed over on any working Monday between 9.00 a.m. to 11.00 a.m. The possession was delivered on 25.09.2006 i.e. after a delay of 1 year and 7 months. The area of which the possession was delivered measured 19,807.036 sq. mtrs. instead of 21300 sq. mtrs. i.e. short of 1492.964 sq. mtrs. whereas the entire

sale consideration for land measuring 21300 sq. mtrs. had been received by the defendant-appellant way back on 18.02.2005. The representatives of the plaintiff-respondent are stated to have visited the defendant-appellant a number of times for refund of a sum of Rs.52,56,915/- alongwith interest @ 18% per annum from the date of deposit till payment. However, the defendant-appellant failed to pay the amount. On 26.09.2008 a cheque of Rs.52,55,675/- was issued in favour of the plaintiff-respondent. However, before encashing the cheque, vide letter dated 07.10.2008 the defendant-appellant was informed that the amount was being accepted and adjusted towards interest and then balance towards principal. The plaintiff-respondent filed the present suit for recovery of interest @ 12% per annum on excess amount of Rs.52,56,915/- from the date of full payment of bid amount i.e. 18.02.2005 upto 29.09.2008 and interest @ 12% per annum on an amount of Rs.6,97,43,085/- from the date of payment i.e. 18.02.2005 till handing over the possession i.e. 25.09.2006. The suit was contested by the defendant-appellant on the grounds of maintainability, cause of action, concealment of true and material facts. On merits, it was stated that delay in handing over the possession was because of variations in dimensions and the dimensions in the zoning plan had to be re-verified. Further, the stand taken was that refund of Rs.52,55,775/- had already been given on 26.12.2008. No replication was filed.

3. On the basis of the pleadings of the parties, the following issues were framed by the Trial Court :

1. Whether plaintiff is entitled to recovery of

Rs.1,56,93,666/- from the defendant alongwith future interest @ 12% per annum from the date of institution of suit till date of realization alongwith costs of the suit ? OPP

2. Whether suit of the plaintiff is not maintainable in present form ? OPD
3. Whether Civil Court has no jurisdiction to try and entertain the present suit ? OPP
4. Whether plaintiff has no cause of action or locus standi to file the present suit ? OPD
5. Whether suit of plaintiff is bad for concealment of material facts ? OPD
6. Relief.

4. The Trial Court vide judgment and decree dated 06.08.2018 decreed the suit for recovery of Rs.1,56,93,666/- alongwith *pendente lite* and future interest @ 6% per annum from the date of filing of the suit till realization. Aggrieved by the said judgment and decree, an appeal was preferred by the defendant-appellant before the First Appellate Court. Vide judgment and decree dated 20.12.2018 the appeal was dismissed. Aggrieved by the same, the present regular second appeal has been filed by the defendant-appellant.

5. Learned counsel for the defendant-appellant has contended that the jurisdiction of Civil Court was barred since the matter was an arbitral matter. However, the counsel did not press the argument further when a

pointed query was put by the Court as to whether any application was filed for referring the matter to Arbitration and the counsel admitted in the negative. Learned counsel has further contended that the approach of the Courts below in granting interest on the amount of Rs.52,56,915/- was also illegal. It is further the contention that the suit is barred by the provisions of Section 50 of the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as 'HUDA Act').

6. *Per contra*, learned senior counsel appearing on behalf of the plaintiff-respondent has contended that the plaintiff-respondent originally paid a sum of Rs.7,50,00,000/- for a plot admeasuring 21300 sq. mtrs. on 18.02.2005. The possession was handed over on 25.09.2006 but of an area admeasuring 19807.036 sq. mtrs. valued at Rs.6,97,43,085/-. The defendant-appellant enjoyed the interest component on the amount deposited by the plaintiff-respondent. It is further the contention that the excess amount of Rs.52,55,675/- was returned only on 29.09.2008 i.e. after a period of 3 years and 7 months and hence the interest has rightly been awarded. It is further the contention of learned senior counsel for the plaintiff-respondent that the present case is not covered by Section 50(1) of the HUDA Act as the plaintiff-respondent has not questioned any order or direction issued by the State Government or order or notice passed by the Authority or its officers.

7. I have heard learned counsel for the parties.

8. In the present case, admittedly, none of the arguments raised by learned counsel for the defendant-appellant before this Court were raised before the Courts below. It is an admitted position that no objection qua

Section 8 of the Arbitration and Conciliation Act, 1996 was raised by the defendant-appellant in the written statement filed. As noticed above, no application in this respect was filed by the defendant-appellant before the Trial Court. The objection of learned counsel for the defendant-appellant that the suit is barred by Section 50 of the HUDA Act is also liable to be rejected inasmuch as in the present case the plaintiff-respondent has not challenged any order or notice issued by HUDA (defendant-appellant herein). The grievances of the plaintiff-respondent were two fold. First is the delay in handing over the possession because of which the entire school project was delayed and the second that though an amount of Rs.7,50,00,000/- was paid for a plot admeasuring 21300 sq. mtrs. on 18.02.2005, however, possession of a plot admeasuring 19807.036 sq. mtrs. was handed over on 25.09.2006. The excess amount of Rs.52,55,675/- was held by the defendant-appellant for a period over 3 years and 7 months. This Court also during the course of hearing made an attempt so that an amicable solution could be found, however, the officers of the defendant-appellant did not seem interested in reaching any amicable solution. There is no dispute as far as the factual position is concerned that the complete amount of Rs.7,50,00,000/- stood paid by 18.02.2005 and possession of a lesser area was handed over to the plaintiff-respondent on 25.09.2006. A perusal of the terms and conditions of the allotment letter dated 24.12.2004 (Ex.P11) indicates that the possession was offered to the plaintiff-respondent on 24.12.2004. Subsequently, correspondence took place between the parties whereby the plaintiff-respondent demanded demarcation, zoning and

possession of the site and the same was delivered only on 25.09.2006. As per the provisional letter of allotment (Ex.PW1/3), regular allotment and possession was to be delivered within a period of 6 months from the date of completion of all formalities regarding payment of the bid amount. Despite all formalities having been completed, there was a delay of 1 year and 7 months in handing over the possession. Hence, the findings of the Courts below awarding an interest of 12% per annum on the delayed handing over the possession cannot be faulted.

9. There is also no dispute that an amount of Rs.52,56,915/- was paid in excess by the plaintiff-respondent keeping in view the fact that the area the possession of which was handed over measured 19807.036 sq. mtrs. whereas an amount of Rs.7,50,00,000/- had been paid for a plot admeasuring 21300 sq. mtrs. and hence the findings of the Courts below awarding interest on the amount of Rs.52,56,915/- held by the defendant-appellant for a period of 3 years and 7 months cannot be faulted with.

10. Learned counsel for the defendant-appellant has not been able to convince this Court that any interference is called for in the concurrent findings of fact recorded by both the Courts below. No material irregularity or illegality in the findings recorded by the Courts below has been highlighted.

11. In view of the above, I do not find any illegality or infirmity in the judgments and decrees passed by both the Courts below. No question of law, much less any substantial question of law, arises in the present case.

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The appeal, which is devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

29.05.2023
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO