GIANENDER KUMAR
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.23641 of 2021(O&M)
Date of decision : February 17, 2023

Sunil Kapoor and another **... Petitioner**

Versus

State of Haryana and others **... Respondents**

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU
HON'BLE MR. JUSTICE LALIT BATRA

Argued by: Mr.Ram Kumar Saini, Advocate for the petitioners.

Ms.Tanisha Peshawaria, DAG, Haryana.

Mr.P.S.Chauhan, Advocate for respondent – HSVP.

HARINDER SINGH SIDHU, J.

The present petition has been filed seeking quashing of letter dated 19.10.2021 (Annexure P-2), whereby, it has been decided to recover interest from the date of allotment of plot on the additional price chargeable on account of the Plot No.284 Sector 45, Gurugram, allotted to the petitioners being a preferential Plot (`P' Plot)

It is prayed that the interest be charged on the amount payable only from the date of intimation to the petitioners.

The petitioners were allotted residential plot No.284 (measuring 648 sq. metres), Sector 45, Gurugram, vide allotment letter dated 19.11.2004. The tentative price of the plot was Rs.42,62,540.00. The petitioners paid the entire amount as per the allotment letter. Conveyance deed was executed in favour of the petitioners on 22.03.2012.

In 2018, the petitioners wanted to transfer the plot. They moved an application for permission to transfer. While considering said application, respondent No.4 - Estate Officer-II, Gurugram, observed that the plot in question is a preferential plot. Accordingly, allottee was liable to pay 10% extra cost of the plot.

In terms of the letter dated 29.08.2018, the petitioners deposited Rs.4,26,254/- being 10% of the cost of the plot. They submitted representation that the interest on this amount can only be claimed from the date of intimation to the petitioners and not from the date of allotment. The Estate Officer forwarded the representation along with his comments (Annexure P-1) to the Chief Administrator for decision. It was pointed out that both at the time of allotment and the execution of the conveyance deed it was not mentioned that the plot was preferential. In reply to the said letter, the Chief Administrator conveyed that it had been decided to recover the arrears with effect from the date of allotment. This communication has been assailed in the petition.

Ld. Counsel for the petitioners has argued that neither in the allotment letter nor at the time of execution of the conveyance deed it was mentioned that the plot is a preferential one. This fact is also borne out from the communication Annexure P-1 sent by the Estate Officer to the Chief Administrator. It was only when they applied for permission to transfer then it was intimated that the plot was preferential. With a view to avoid litigation the petitioners have deposited additional 10% of the price of the plot. There is no justification for the respondents in charging interest on the said amount from the date of allotment. The petitioners cannot be made

to suffer for the fault of the respondents. He has relied on the instructions dated 29.06.2004.

The instructions dated 29.06.2004 (Annexure P-4) are reproduced below:

(i) "As and when the offer of possession is given to the allottee, an intimation regarding increased area, if any may also be given. The offer of possession may be given strictly as per the approved demarcation plan. Any laxity on this account will be viewed, seriously and if the increased area is not intimated along with the offer of possession, loss of interest on this account shall be recovered from the defaulting officer/official.

(ii) In respect of past cases where increased area has not been intimated along with the offer of possession but it was known/ intimated only at the time of taking over physical possession of the plot, the rate for the increased area may be worked out and after updating the price of the plot at which it was allotted by HUDA as per HUDA policy i.e. to be reckoned from the date of offer of possession till the date of actual intimation of excess area to the allottee. No extension area shall however be charged for this period."

In the reply filed on behalf of the respondents, it has been stated that the layout plan of Sector 45, Gurugram, was approved by the competent authority vide DRG No.DTP(G) 1110/2003 dated 01.05.2003. Plot No.284, Sector 45, Gurugram (allotted to the petitioners) and all the plots in the block where this plot is situated were 'P' plots except corner Plots No.280 and 292 which were 'SP' plots (Special Preferential Plots) as all these plots were situated on a 30 meters wide road. A copy of the approved layout plan showing location of road and location of Plot No.284P Sector 45, Gurugram has been annexed as Annexure R-1.

The petitioners applied for allotment of 1.5 kanal plot vide application dated 7.4.2004. Their application was put in draw of lots. The plot in question was allotted to the petitioners on 19.11.2004 with tentative area of 648 square meters. The possession of the site was offered in the allotment letter dated 19.11.2004 itself vide clause 7 thereof, which reads thus :

"The possession of the site is hereby offered to you."

The petitioners applied for taking possession on 5.6.2008. The actual area at the time of possession came to be 660.60 square meters as indicated in the possession certificate dated 16.10.2008 (Annexure P-7). It was specified in the possession certificate that area is as per DTP drawing No.1110/03 dated 1.5.2003. This clearly indicates that the area was of 'P' plot as per layout plan. Hence, contention of the petitioners that the plot was not specified as 'P' (Preferential) in that allotment letter or conveyance deed is not tenable as reference to the layout plan in the possession certificate indicates that the reference is to the plot as it is shown in layout plan which was 'P' plot.

It is further stated that the petitioners accepted the allotment and gave an affidavit dated 10.12.2004 (Annexure R-5), whereby, they undertook to make payment of all the dues. Para No.2 of the affidavit is reproduced hereunder :

> *"That we further undertake to make payment of all the outstanding dues or such amount as may be due or become liable/due against this plot at any later stage."*

The petitioners while applying for allotment had submitted an

undertaking dated 7.4.2004 (Annexure R-6) to abide by the terms and conditions as contained in HUDA (*now HSVP*) Act 1977 and Rules and Regulations applicable thereunder.

It is further stated that petitioner No.2 Smt. Anju Kapoor submitted a letter dated 28.8.2018 (Annexure R-7) in the Estate Office-II, HSVP, Gurugram, informing that she is owner of Plot No.284P, Sector 45, Gurugram, and requested to update her file in computer system. Hence, the petitioners were well aware of the fact that the plot was a 'P' plot.

It has been submitted that non-mentioning of 'P' in the allotment letter was an inadvertent omission. It is clear from the allotment letter that allotment has been made under the HSVP Act 1977, Rules and Regulations framed thereunder and the petitioners had agreed to abide by the terms and conditions of the allotment. There is no denial of the fact that the petitioners purchased the plot after knowing the layout of the area. The plot in question was shown as 'P' plot alongwith other plots in the block except corner plots which were 'SP' plots in approved layout plan. After verifying the site conditions, petitioners participated in the draw and in view of their affidavit dated 10.12.2004 and conveyance deed dated 14.3.2012, the petitioners are liable to pay the said charges for preferential plot.

It is further asserted that under the head 'Note' in Brochure (Annexure R-8) following clause was inserted :

> *"Possession of plots to successful applicants shall be given as per approved demarcation plan."*

It is clear on record that plot in question was 'P' plot as per approved demarcation and possession was given to petitioners as per

approved drawings.

Reference has also been made to Clause 2 of the conveyance deed 14.3.2012 which is as under :

> *"The 'Vendor' shall have a first and paramount charge over the said site for the unpaid portion of the same price and the 'Transferee' shall have no right to transfer by way of sale, gift, mortgage or otherwise the site or any right, title or interest therein (except by way of lease on monthly basis) without previous permission in writing of the Estate Officer. The Estate Officer while granting such permission may impose such conditions as may by the Chief Administrator from time to time."*

It is contended that the amount demanded is a part of the unpaid portion of the price and hence, the Vendor i.e. the answering respondents have the first and paramount charge over the same. Hence, demand of the amount is absolutely legal.

It is stated that Memo dated 29.6.2004 (Annexure P-4) is not relevant as in the present case increase in area is not the basis for raising demand of amount rather the basis of raising the demand is that plot was 'P' plot and additional 10% premium was payable as per regulations/policy for the same.

This amount is payable as per Regulation 4 of the Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978 dealing with "Fixation of Tentative Price/Premium", which is as under :

> *"(2) An extra 10% and 20% of the price/premium shall be payable for "preferential" and "Special Preferential" plots respectively."*

Mr. Chauhan, Ld. Counsel for the respondent- HSVP has made his submissions in the light of the aforesaid reply. He has contended that

the plot is actually a preferential one, the petitioners were aware of this fact from the very beginning, they were liable to pay this amount at the time of allotment and merely because in the allotment letter and the Conveyance Deed the term `P` was not mentioned and inadvertently this additional amount was not included, thus, they cannot evade their liability to pay the interest on the unpaid amount from the date of allotment.

Ld. Counsel for the parties were heard and record perused.

From the layout plan of Sector 45, Gurugram (Annexure R-1) it is clear that Plot No.284, Sector 45, Gurugram (allotted to the petitioners) and all the plots in the block where this plot is situated were marked as 'P' plots except corner Plots No.280 and 292 which were 'SP' plots as all these plots were situated on a 30 meters wide road.

As per Regulation 4(2) of the Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978 an extra 10% of the price/premium shall be payable for “preferential” plots.

At the time of the allotment the tentative price for the plot did not include the 10% extra chargeable for a preferential plot. In the conveyance deed also in the description of the Plot as 'Preferential' (P) was not mentioned. The price mentioned also did not include the 10% extra payable in respect of preferential plots. It was only when the petitioners sought permission to transfer the plot that they were intimated on 28.08.2018 about the additional 10% amount (Rs.4,26,254/-) payable as the plot was preferential. They have paid this amount. They have also been asked to pay interest @ 15% per annum on this additional amount for the period from 19.11.2004 till payment.

As the petitioners were intimated about the additional amount payable only on 28.08.2018, the respondents are not justified in charging interest on this amount @ 15% per annum from the date of allotment. However, we cannot lose sight of the fact that the amount was admittedly payable at the time of allotment and the petitioners have had the benefit of the use of the amount which would otherwise have to be paid at the time of allotment.

Thus, in our opinion, it would be just and proper that the petitioners are required to pay interest @ 6% per annum (simple interest) on the amount of Rs.4,26,254/- from the date of allotment i.e. 19.11.2004 till the date of intimation i.e. 28.08.2018.

Accordingly, the ends of justice would meet if the respondents charge interest @ 6% per annum (simple interest) on the 10% amount i.e. Rs.4,26,254/- from the date of allotment i.e. 19.11.2004 till the date of intimation i.e. 28.08.2018. Ordered accordingly.

The petitioners have not disputed the interest chargeable after the date of intimation till payment.

Petition stands disposed of in the above terms.

(LALIT BATRA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

February 17, 2023
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No