

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

**RSA-1773-2017 (O&M)**

**Date of Decision : 31.01.2023**

Chandigarh Housing Board

....Appellant

VERSUS

Girija S.Nair

....Respondent

**CORAM : HON'BLE MRS. JUSTICE ALKA SARIN**

Present : Ms. Aakanksha Sawhney, Advocate for the appellant.

Mr. Brijeshwar Singh Kanwar, Advocate for the respondent.

**ALKA SARIN, J. (Oral)**

The present appeal has been preferred by the defendant-appellant against the judgment and decree dated 21.12.2016 passed by the first Appellate Court decreeing the suit for recovery filed by the plaintiff-respondent. The Trial Court had dismissed the suit.

The brief facts relevant to the present lis are that the plaintiff-respondent was residing in Chandigarh for about a period of 20 years. In 2006 a scheme known as One Bedroom Flats under Self Financing Housing Scheme - 2006, Sector 49, Chandigarh was floated by the defendant-appellant (Chandigarh Housing Board) on free hold basis. The plaintiff-respondent applied for allotment of a flat in the above said scheme along with the requisite documents vide application Form No.30265. Both the plaintiff-respondent and her husband applied for allotment of flats in the above scheme through separate application forms. However, the husband of plaintiff-respondent was not successful in the draw of lots. The name of the

plaintiff-respondent was, however, successful in the draw of lots and was selected for allotment. The total consideration for the flat was Rs.11,90,000/- and an amount of Rs.1,90,000/- was deposited by the plaintiff-respondent at the time of filing the application form. On 14.08.2007, when the plaintiff-respondent visited the office of the defendant-appellant, she was informed that her application for allotment had been cancelled on the ground that only one member of the family could apply and she could apply only for one floor and only in one category and she was handed over the cancellation order dated 02.08.2007. Aggrieved by the said order, the plaintiff-respondent approached the Permanent Lok Adalat (Public Utility Services), UT Chandigarh under Section 22(C)(1) of the Legal Services Authorities Act, 1987 for issuing necessary directions to the respondents for allotment of a flat in favour of the plaintiff-respondent and vide order dated 06.07.2009 (Ex.P/3) the claim of the plaintiff-respondent was accepted. The concluding part of the order dated 06.07.2009 reads as under :

*“We accordingly accept the application and direct the respondent Board to allot the applicant a flat under the Scheme. The order be complied with without any further delay and preferably within a period of one month from the passing of the order. The petitioner, of course, will deposit the amount as may be required as well as comply with such other requirements as the Board may deem appropriate.”*

Subsequently, aggrieved by the order passed by the Permanent

(Chandigarh Housing Board) being CWP-15727-2009. The said writ petition was dismissed by this Court vide order dated 13.10.2009 (Ex.P/4). Aggrieved by the said order, SLP No.5414 of 2010 was preferred by the present defendant-appellant (Chandigarh Housing Board) which SLP was also dismissed vide order dated 19.03.2010 (Ex.P/5). It was only after the dismissal of the SLP by the Supreme Court that the acceptance-cum-demand letter was issued for the first time on 29.07.2010 (Ex.P/6) wherein a demand of Rs.15,37,100/- was made against the balance amount of Rs.10,71,000/-. On 13.08.2010 (Ex.P/9) the plaintiff-respondent paid the said amount and was issued a receipt (Ex.P/10). Since an amount in excess of the amount due had been charged by the defendant-appellant, a suit for recovery was filed by the plaintiff-respondent. The Trial Court dismissed the said suit vide judgment and decree dated 29.05.2015. Aggrieved by the said judgment and decree, an appeal was preferred by the plaintiff-respondent which was allowed vide judgment and decree dated 21.12.2016. Hence, the present regular second appeal by the defendant-appellant.

Learned counsel for the defendant-appellant has contended that the Permanent Lok Adalat vide order dated 06.07.2009 had directed the plaintiff-respondent to deposit the amount within a period of 30 days of the passing of the order which was not done by her. The further argument is that the calculation along with penal interest comes to Rs.22,02,146/- and that the defendant-appellant has foregone the penal interest and charged only the cost of the flat with interest @ 10% per annum and after deducting the amount already paid, the amount of Rs.15,37,100/- was demanded.

Per contra, learned counsel for the plaintiff-respondent has pointed out that as per the Scheme, in Clause-VIII (Price & Mode of Payment) Note (iii) it has been mentioned that in case of full payment of the Dwelling Unit is made within 30 days from the issuance of acceptance-cum-demand letter, no interest shall be charged. It is further the contention that an amount of Rs.1,90,000/- was paid by the plaintiff-respondent along with the application form and thereafter on 02.08.2007 the allotment was unilaterally cancelled vide Ex.P/2. The said order was challenged by the plaintiff-respondent before the Permanent Lok Adalat and the cancellation letter was set aside. The matter was taken upto the Supreme Court by the present defendant-appellant (Chandigarh Housing Board) and it was only on 29.07.2010, after the dismissal of the SLP by the Supreme Court, that the acceptance-cum-demand letter (Ex.P/6) was issued demanding a payment of Rs.15,37,100/-. Learned counsel would further contend that in view of Clause VIII Note (iii) of the Scheme, no interest was to be levied since the amount stood paid within a period of 30 days i.e. on 13.08.2010 (Ex.P/9) against a receipt (Ex.P/10).

Heard.

In the present case the defendant-appellant had taken a stand that an amount of 10% interest has been charged on the balance amount due for the period for which the amount remained with the plaintiff-respondent as per the Brochure of the Scheme. A perusal of the Scheme (Ex.P/1) clearly reveals that interest was to be paid in case the entire amount was not paid within a period of 30 days from the issuance of acceptance-cum-demand letter. In the present case the acceptance-cum-demand letter was issued for

the first time on 29.07.2010. Once the allotment stood cancelled vide letter dated 02.08.2007 (Ex.P/2), no demand for interest could be made from the plaintiff-respondent for the period which was spent in litigation by the present defendant-appellant (Chandigarh Housing Board). The order by the Permanent Lok Adalat was passed on 06.07.2009 (Ex.P/3), the present defendant-appellant instead of complying with the said order preferred a writ petition, which was dismissed on 13.10.2009 (Ex.P/4). Thereafter, still dissatisfied, the present defendant-appellant filed a SLP, which was also dismissed on 09.03.2010 (Ex.P/5). It is only thereafter that in the month of July i.e on 29.07.2010 that the acceptance-cum-demand letter was issued to the plaintiff-respondent. The plaintiff-respondent, who had been waiting for the allotment since 2006, paid the amount as demanded on 13.08.2010 (Ex.P/9) i.e. well within the period of 30 days. It is not in dispute that the said amount covered the entire cost of the dwelling unit. That being so, Clause VIII Note (iii) of the Scheme would come into play and no interest could have been charged on the balance amount. It is not a case where the plaintiff-respondent was dragging the matter before various Courts and was not depositing the money despite the demand having been raised. Rather, it is the case where the present defendant-appellant, dissatisfied with the orders passed by the Permanent Lok Adalat and by this Court, had challenged the same in SLP. Further still, much reliance has been sought to be placed by the learned counsel for the defendant-appellant on certain documents, which were only marked documents, to justify the recovery of interest. Admittedly, the same were not duly proved as per the provisions of the Evidence Act, 1872 and were not exhibited. There is no other explanation forth coming for

charging the interest component from the plaintiff-respondent. Regarding the contention that the Permanent Lok Adalat vide order dated 06.07.2009 had directed the plaintiff-respondent to deposit the amount within a period of 30 days which was not done by her, it is to be noted that it has been admitted by the defendant-appellant in it's written statement that the demand letter was issued on 29.07.2010 (Ex.P/6) asking the plaintiff-respondent to deposit an amount of Rs.15,37,100/-. Thus, there was no occasion for the plaintiff-respondent to deposit the amount before any demand being raised.

In view of the above, I do not find any illegality or infirmity in the judgment and decree passed by the first Appellate Court. No question of law, much less any substantial question of law, arises in the present appeal. The present regular second appeal, which is devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

**January 31, 2023**  
tripti

**(ALKA SARIN)**  
**JUDGE**

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