

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****121****RSA-623-2023 (O&M)****Date of decision: 01.04.2026****Jai Kumar Kaushik****...Appellant(s)****Vs.****Chandigarh Colonizers Pvt. Ltd.****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Madan Pal, Advocate
for the appellant.

NIDHI GUPTA, J.**CM-2414-C-2023**

Prayer in this application filed under Section 151 CPC is for
condonation of delay of 197 days in refiling the appeal.

2. Heard.

3. For the reasons mentioned in the application which is
supported by an affidavit of the applicant/appellant, the same is allowed
and delay of 197 days in refiling the appeal is condoned.

RSA-623-2023 (O&M)

Present Second Appeal has been filed by the
defendant/counter claimant against the concurrent judgments and
decrees of the learned District Courts; whereby counter claim filed by the
appellant, has been dismissed with costs by both the District Courts.



2. Brief facts of the case are that the plaintiff/respondent herein had filed a Civil Suit with the averment that the plaintiff is a Company duly incorporated under the Companies Act. It was pleaded that the defendant/counter-claimant/appellant had submitted an application alongwith booking money through cheque to the plaintiff for provisional registration of the apartment in the property developed under the name of "Opera Garden". After accepting the booking amount, the flat was booked in the name of the defendant. However, defendant had failed to make the payments as mentioned in the application form. Thus, defendant being defaulter, did not have any claim, title, or interest in any of the apartment in pursuance of his application for provisional registration of the flat at the sole responsibility of the defendant in light of clauses 'C' and 'H' and last unnumbered clause of the said application. Accordingly, plaintiff had filed the instant suit on 02.09.2008 seeking mandatory injunction that plaintiff is free to allot/sell the plot to any other person.

3. Defendant had filed counter claim stating therein that plaintiff Company had played fraud with the defendant as before inviting the application, plaintiff Company did not obtain various "No Objections Certificates" as required; and/or permission for construction of apartments was not taken. It was averred that by making representation to innocent people like the defendant by showing them a rosy picture, plaintiff had played fraud upon the defendant. It was further stated that defendant is entitled to return of Rs.3 lacs paid by the defendant vide



Receipt No. 1403 dated 04.08.2006, which was sent to the plaintiff Company vide pay order No. 101139 dated 14.06.2006 alongwith interest @ 18% per annum. With these pleadings, counter claim was filed.

4. Upon appraisal of the pleadings and the evidence led by the parties, the Additional Civil Judge (Senior Division), Dera Bassi dismissed the counter claim of the appellant vide judgment and decree dated 22.03.2018. The Civil Appeal filed by the appellant was dismissed with costs by the Additional District Judge, SAS Nagar (Mohali) vide judgment and decree dated 24.11.2021. Hence, present second appeal by the appellant.

5. It is *inter alia* submitted by learned counsel for the appellant that the learned District Courts were in error in not appreciating the fact that the appellant was entitled to refund of Rs.3 lacs deposited by the appellant vide Receipt No. 1403 dated 04.08.2006. It is submitted that the appellant had led sufficient evidence to prove his claim before the learned District Court. Appellant had submitted his Affidavit and stepped himself into the witness box as CW1. The courts below committed manifest error both on facts and in law and the clinching material evidence which was positively in favour of the appellant had been ignored by the courts below. Thus, on this ground also impugned judgment and decree dated 22.3.2018 passed by learned Civil Judge and impugned judgment and decree dated 24.11.2021 passed by the learned Additional District Judge, S.A.S. Nagar are not sustainable and liable to be set aside.



6. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of District Courts be set aside.

7. No other argument is raised by learned counsel for the appellant. I have heard Id. counsel and perused the case filed in detail. I find no merit in the submissions advanced on behalf of the appellant.

8. A perusal of the record of the case shows that although the appellant/counter claimant has stated that he had made his provisional booking in the Opera Garden in the year 2006 however, no Agreement/contract was entered into between the parties. Appellant had admitted in his evidence that no such Agreement was executed between the parties in which the respondent Company was bound to pay the principal amount alongwith interest @ 18% per annum. Appellant has admitted that he had only been verbally informed by the respondent Company that possession was to be handed over by the end of 2008. Appellant in his evidence has also admitted that he had never raised any demand from the respondent Company to refund his principal amount alongwith interest through any letter or legal notice. Appellant also admitted that the respondent Company has sent reminder vide letter dated 12.02.2007 asking the appellant to make payment of 20% of the basic price for the allotment of the flat, which was never deposited by the appellant. Appellant further admitted that he had received letters dated 12.07.2008, 23.05.2007, 26.06.2007, 19.07.2007 and 02.08.2007 from the respondent Company to which he had never replied.



9. Thus, from the aforesaid admissions made by the appellant in his cross-examination, it was established that appellant had failed to prove his case before the District Courts.

10. On the other hand, learned counsel for the respondent had stated that appellant had not complied with terms of payment and, therefore, the amount paid by the appellant stood forfeited. Appellant failed to demonstrate or give any reason as to why he had failed to make further payments. Appellant had failed to examine any other witness except himself. In his evidence, appellant had only proved Receipt Ex.C1 in respect of Rs.3 lacs which was admitted by the plaintiff Company. Appellant failed to prove the application form Mark CA on the basis of which, he had set out his claim, which was a photocopy of the application form. Even otherwise, a perusal of the clause G as mentioned in the photocopy of the application form Mark CA, it is stated that appellant has to pay basic price per square feet to the plaintiff Company apart from PLC, car parking charges, club membership and all other charges like maintenance etc.; and further, as per clause H of the said document, appellant had also agreed that in the event of default in making payment of any amount as demanded by the Company or any other terms and conditions agreed in Mark CA, his provisional registration shall be treated as cancelled and he will be left with no right, lien or interest herein save and except to claim refund of the actual amount paid by him. It is also admitted fact on record that the appellant has miserably failed to comply with all the terms and conditions as mentioned in Mark CA. He abjectly



failed to prove on record that any payment as agreed as per the application form Mark CA has been made by him to the plaintiff Company. Thus, default on the part of the appellant to comply with the terms and conditions of Mark CA was established on record as a result of which, he was not entitled to refund of the amount of Rs.3 lacs paid by him. Rather in his cross-examination, appellant has admitted that he had never raised any demand from the respondent Company to refund his principal amount alongwith interest through any letter or legal notice. It is for the above said reasons that both the District Courts have rejected the Case of the appellant.

11. Even otherwise, present Second Appeal is liable to be dismissed on the short ground that this Court in Regular Second Appeal has limited jurisdiction to interfere in the concurrent findings of facts returned by the learned Courts below. The Hon'ble Supreme Court in ***M/s. Shivali Enterprises v. Godawari (Deceased) (SC): Law Finder Doc Id # 2034559*** has held that no matter howsoever incorrect or grossly erroneous the concurrent findings of the learned courts below may be, this Court in the Second Appeal can interfere in the concurrent findings only where there is an error in law or procedure. In the present case, no such error in law and procedure has been made out by learned counsel for the appellant.

12. Learned counsel for the appellant is unable to dispute or controvert the above said facts and findings.

13. In view of the above, no ground is made out to interfere in the concurrent judgments and decrees, and findings of fact of the learned Courts below. The present Second Appeal stands **dismissed**.
14. Pending applications, if any, stand disposed of.

01.04.2026

Divyanshi

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No

(NIDHI GUPTA)

JUDGE