

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 418 of 2011 (O&M)
Date of decision: 31.01.2011

Haryana Urban Development Authority FaridabadAppellant

Versus

N.R.AroraRespondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr.Rahul Garg, Advocate for the appellant.

SABINA, J.

Plaintiff filed a suit for declaration with consequential relief of permanent injunction and mandatory injunction.

The case of the plaintiff in brief was that he was an allottee of a residential site bearing No. 742 measuring 500 sq.yards situated in Sector 12, Part II Faridabad. The site was allotted to the plaintiff vide letter dated 5.7.1985 by Estate Officer Haryana Urban Development Authority, Faridabad (for short 'HUDA'). The total sale consideration was ₹ 99,590/-. Plaintiff had paid full consideration towards site in question. At the time of allotment, the plaintiff had paid 25% of the total sale consideration. The balance amount of ₹ 74,692.50 was to be paid in lump sum without interest within 60 days of issuance of allotment letter or in six annual installment with interest

@ 10% per annum. The amount of interest would accrue from the date of offer of possession. The defendants had not completed the development work in the Sector. Defendant No.3 issued a show cause notice dated 31.8.2001 asking the plaintiff to deposit ₹ 6,64,790/- failing which the penalty of ₹ 56,928/- would be imposed against the plaintiff. The said order was illegal, null and void.

Defendants in their, written statement, averred that the plaintiff had not deposited the full consideration of the plot in question. After the completion of development work in the area, possession of the plot in question was offered to the plaintiff on 2.11.1989. Plaintiff had failed to take possession of the site in dispute. As per the terms and conditions of the allotment, plaintiff was required to deposit installments alongwith interest @ 10% per annum but in case of delay in payment of installments, compound interest @ 18% per annum was liable to be charged in terms of latest HUDA policy upto 31.8.2000 and thereafter simple interest was liable to be charged.

On the pleadings of the parties, following issues were framed by the trial Court:-

“1.Whether plaintiff is entitled for a decree of declaration in his favour and against the defendant as prayed for?OPP

2.Whether the plaintiff is entitled for a decree of permanent injunction in his favour and against the defendant as prayed for?OPP

3.Whether the plaintiff is entitled for a decree of mandatory injunction in his favour and against the defendant as prayed for?OPP

- 4.Whether this Court has no jurisdiction to entertain and try the present suit as barred under Section 50(2) of HUDA Act?OPD
- 5.Whether plaintiff has no locus standi to file the present suit against the defendant?OPD
- 6.Whether plaintiff has no cause of action to file the present suit?OPD
- 7.Whether plaintiff has concealed the material facts from this Court?OPD
- 8.Whether plaintiff has not furnished the proper court fee?OPD
- 8.Relief."

The trial Court decreed the suit of the plaintiff vide judgment and decree dated 9.10.2009. It was ordered that the show cause notice dated 31.8.2001 and imposition of penalty by the defendants was illegal, null and void. The plaintiff was liable to pay interest @ 18% per annum from 15.1.1987 till 14.11.2002 and @ 14% per annum with effect from 15.11.2002 till 31.12.2005 and,thereafter, @12% per annum from 1.1.2006 till the date of realization. A decree for permanent injunction was also passed restraining the defendants from realloiting the suit property to anybody else and from dispossessing the plaintiff from the suit property. The defendants were directed to recalculate the amount due from the plaintiff within one month and the plaintiff was directed to pay the said amount within a period of three months from the date of decree. Aggrieved by the said judgment and decree, defendant no.1 preferred an

appeal and the same was dismissed by the District Judge, Faridabad vide judgment and decree dated 17.8.2010. Hence, the present appeal by defendant No.1.

After hearing the learned counsel for the appellant, I am of the opinion that the instant appeal deserves dismissal.

Admittedly, the plot in question was allotted to the plaintiff. Plaintiff had paid 25% of the allotment price at the time of allotment. In case the plaintiff had made the entire remaining payment within 60 days, then no interest would have been charged from the plaintiff, but in case, he had opted to pay the remaining amount in six annual installments, interest @ 10% per annum was liable to be charged from the plaintiff. Plaintiff opted to pay the remaining amount in installments. However, the plaintiff made a default qua the remaining payment of the sale price. Both the Courts below, after appreciating the evidence led by the parties on record, have given a finding of fact that the compound interest @ 18% per annum was not permissible. As per the allotment letter, the defendants could not charge compound interest @ 18% per annum. Learned counsel for the appellant has failed to convince me that the appellant could charge compound interest @ 18% per annum on delayed payment of installments in the absence of mention in this regard in the allotment letter. No substantial question of law arises in this appeal.

Dismissed.

(Sabina)
Judge

January 31, 2011

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