

(2013) 11 P&H CK 0282
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 25244 of 2013

Jagroop Singh and Another	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 18-11-2013

Acts Referred:

Citation : (2013) 11 P&H CK 0282

Hon'ble Judges : Mehinder Singh Sullar, J;Ajay Kumar Mittal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mehinder Singh Sullar, J.—Concisely, the relevant facts, which are essential for deciding the instant writ petition are that, in the wake of open auction, the petitioners-allottees had jointly purchased the Booth bearing No. 79, situated at Urban Estate-2, Part-2, Pocket-B, Bathinda, on 23.04.2008, for a total sale price of Rs. 12,02,040/- from Bathinda Development Authority (for brevity "the BDA"). Initially, they had paid 10% and subsequently deposited 15% of the total amount within the stipulated period of 30 days. As per terms & conditions of the allotment letter dated 13.06.2008 (Annexure P-1), the balance amount of 75% was to be deposited in four yearly equal installments. The allotment was governed by the provisions of Punjab Regional and Town Planning & Development Act, 1995 (hereinafter to be referred as "the Act") and the relevant Rules framed thereunder. Thereafter, the petitioners-allottees did not deposit a single installment and moved an application(Annexure P-2) for surrender/cancellation of the Booth on 14.05.2012, after the expiry of period of payment of the installments. The Estate Officer accepted the surrender and cancelled the allotment of Booth. At the same time, he forfeited 10% of the total price of the indicated Booth including interest, by means of impugned order dated 30.05.2012(Annexure P-3). The appeal filed by them was also dismissed by way of impugned order- dated 24.08.2012(Annexure P-4) by the Appellate Authority and the revision petition was dismissed as well, vide impugned order dated

28.12.2012 (Annexure P-5) by the Revisional Authority. Aggrieved thereby, the petitioners-allottees have preferred the present writ petition, to challenge the impugned orders(Annexures P-3 to P-5), invoking the provisions of Articles 226/227 of the Constitution of India.

2. After hearing the learned counsel for the petitioners, going through the record with his valuable assistance and after considering the entire matter, in our opinion, there is no merit in the instant writ petition in this context.

3. As is evident from the record that, having deposited the initial amount of 10% auction money + 15% subsequent amount by the petitioners, allotment letter dated 13.06.2008(Annexure P-1) was issued to them. As per terms & conditions of the allotment letter, balance amount of 75% was to be deposited in four yearly equal installments due on 23.04.2009, 23.04.2010, 23.04.2011 and 23.04.2012. Instead of making the payment of a single installment, the petitioners-allottees moved an application (Annexure P-2) for surrender/cancellation of the Booth in question on 14.05.2012, after the expiry of period of payment of all the installments. The Estate Officer cancelled the allotment and forfeited 10% of the pointed amount. The forfeiture of the amount was upheld by the Appellate as well as Revisional Authorities, in the manner depicted herein-above.

4. Ex facie, the argument of the learned counsel that the impugned action of the respondents-Authorities under the Act, imposing a maximum penalty of 10%, was arbitrary and illegal, is neither tenable nor the observations of the Division Bench of this Court in cases Punjab Urban Planning and Development Authority Vs. Revisional Authority, (for brevity "the 1st case") and Estate Officer, Greater Mohali Area Development Authority, SAS Nagar, Sector 62, Estate Officer, Greater Mohali Area Development Authority, Sas Nagar, Sector 62, Mohali Vs. Harpal Singh and another, (for short "the 2nd case"), are at all applicable to the facts of the present case. In 1st case, the Estate Officer, PUDA vide letter dated 18.10.2011 had informed the allottee that as per terms & conditions contained in the Information Brochure, he was entitled to retain only one plot and was required to surrender the remaining two plots, for which, he was asked to exercise the option. He retained one plot of his choice, surrendered other two plots and requested for refund of the earnest money deposited by him towards the surrendered plots.

5. Sequelly, in 2nd case, the allottee could not deposit the remaining installments due to economic crunch and on account of suffering heavy loss in the business. Then, he moved an application, well before the due date of payment of first installment, for surrender of the site and refund of 25 % amount paid by him. The Estate Officer forfeited 10% of the amount(in both the cases). Ultimately, the revision petitions filed by the allottees were accepted and the amount of forfeiture of 10% was reduced to 5% in the 1st case and from 10% to 4% in the 2nd case by the Revisional Authorities. While deciding the Civil Writ Petitions preferred by Punjab Urban Planning & Development Authority and Estate Officer, Greater Mohali Area Development Authority"s cases (supra) and on the peculiar

facts and special circumstances of the indicated cases, the reduction of penalty from 10% to the extent of 5% and 4% by the Revisional Authorities was upheld by this Court. Possibly, no one can dispute with regard to the aforesaid observations, but the same would not come to the rescue of the present petitioner- allottees.

6. As indicated here-in-above, in the instant case, the petitioners-allottees did not deposit a single installment due on 23.04.2009, 23.04.2010, 23.04.2011 and 23.04.2012. After the expiry of period of payment of installments, they approached the Estate Officer for cancellation of the Booth jointly purchased by them, by moving an application on 14.05.2012. Meaning thereby, it stands proved on record that the petitioners have purchased the Booth only with the intention to earn profit and not for running their business. Perhaps, they were waiting for speculative increase in the price, in order to earn profit by selling the Booth. Subsequently, the rate did not increase and they requested the Estate Officer to cancel the Booth. Likewise, since, the impugned orders were passed on the application, appeal and revision of the petitioners allottees, so, the question of issuing them show cause notice did not arise at all, as contrary urged on their behalf. Moreover, learned counsel did not point any kind of prejudice, having been caused to the petitioners or otherwise any legal infirmity, much less cogent, to warrant any interference in the matter, in exercise of writ jurisdiction of this Court. Keeping in view the financial loss to BDA on account of non-payment of any installment by the allottees, the Estate Officer appears to be within his power and jurisdiction to forfeit 10% of the indicated amount in this respect, as contemplated u/s 45 of the Act and the relevant Rules. The Appellate Authority as well as the Revisional Authority have examined the matter in the right perspective as well and negated the claim of the petitioners-allottees in this relevant connection. Therefore, the impugned orders deserve to be and are hereby maintained in the obtaining circumstances of the case. In the light of aforesaid reasons, as there is no merit, therefore, the instant writ petition is hereby dismissed as such.