
(2017) 02 P&H CK 0191
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No.5437 of 2015

Mina Kala

APPELLANT

Vs

Haryana Urban Development Authority

RESPONDENT

Date of Decision : 14-02-2017

Acts Referred:

Citation : (2017) 02 P&H CK 0191

Hon'ble Judges : Mr. Surya Kant and Mr. Sudip Ahluwalia, JJ.

Bench : Division Bench

Advocate : Mr. F.K. Jha, Advocate, for the Petitioner; Mr. Deepak Balyan, Additional AG, Haryana, for the Respondent; Ms. Ankita Bajaj, Advocate, for Mr. Amar Vivek, Advocate, for the HUDA

Final Decision : Allowed

Judgement

Surya Kant, J . (Oral) - Short controversy involved in this case pertains to the petitioner's liability to pay interest on additional allotment price, extension fee and/or the due instalments.

2. The petitioner was allotted Plot No.433, Sector-39, Gurgaon, measuring 1 kanal, vide allotment letter dated 02.03.1995.

3. Clauses 6 & 7 of the allotment letter (P-1) have a direct bearing on the controversy and the same read as follows:-

"....6. The balance amount i.e. Rs.480371/- of the above tentative price of the plot/building can be paid in lump sum without interest within 60 days from the date of issue of this allotment letter, or in 6 (six) annual instalments. The first instalment would be recoverable together with interest on the balance price @15% P.A. on the remaining amount. The interest shall however, accrue from the date of offer of possession.

7.(i) The possession of the site will be offered to you on completion of the development works in the area.

(ii) The possession of the site can be obtained on any working day...."

(emphasis applied)

4. It may be seen that liability to pay interest was to accrue "from the date of offer of possession". It may be further seen from clause-7 of the allotment letter that possession of the site was to be "offered" to the petitioner on completion of development works in the area. Upon such offer, the petitioner could take possession on any working day.

5. It is an admitted fact that no letter offering possession was sent to the petitioner who is a resident of Lucknow. The petitioner has further taken a categorical stand that possession of the site was never offered to her.

6. To resolve the controversy, nothing else is required except to produce para No.12 of the written statement dated 06.12.2016 filed by HUDA and it reads as follows:-

"...12. That the contents of the para No.12 is totally wrong and denied as the technical staff of the respondent has reported to the department that the development work in the area was completed by 31.01.2000 and the said date was legally treated as the date of Offer of Possession and it was always open for the petitioner to seek the possession for which she was informed. However, the date of Offer of Possession was intimated to the allottee/petitioner on 16.05.2012....."

(emphasis applied)

7. It stands crystalized from the above reproduced averments that the development works are claimed to have been completed in January, 2000 yet the possession of the plot was offered to the petitioner only on 16.05.2012.

8. Learned counsel for the petitioner also fairly acknowledges the offer of possession on 16.05.2012. Prior thereto, there is no communication whatsoever sent to the petitioner re: offer of possession. In this view of the matter, HUDA authorities cannot be permitted to apply their self-serving rule to say that the date of completion of development works is to be "treated as date of offer of possession". The allottees are settled in different parts of the country. They cannot expect to frequently visit the site to find out that development works are complete. It is obligated on the Authority as per the binding terms of allotment letter to inform the allottee that development works have been completed and possession of the site is ready to be offered. It is only after receipt of such information that the presumption of informed knowledge of the allottee can be drawn and the communication can be treated as the date of offer of possession.

9. In the instant case, the date of offer of possession to the petitioner for all intents and purposes is thus 16.05.2012. The resultant effect would be that no interest can be levied on the petitioner on any component prior thereto.

10. In the light of the above discussion, the writ petition is allowed and the

respondents are directed to re-calculate the petitioner's liability towards interest under different permissible recoveries. The complete statement of accounts after such an exercise shall be conveyed to the petitioner whereupon she will be liable to pay the interest amount.

11. Ordered accordingly.

12. Dasti.