
(2012) 07 P&H CK 0048
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 13278 of 2011

Smt. Sushma Bakshi @ Susham Bakshi	APPELLANT
Vs	
Haryana Urban Development Authority and another	RESPONDENT

Date of Decision : 16-07-2012

Acts Referred:

Consumer Protection Act, 1986 — Section 12, 17

Citation : (2012) 07 P&H CK 0048

Hon'ble Judges : Rajiv Narain Raina, J; Hemant Gupta, J

Bench : Division Bench

Advocate : G.C. Shahpuri, for the Appellant; Ajay Nara, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—Challenge in the present petition is to the communication dated 12.03.2004 (Annexure P-4), whereby the petitioner was conveyed that the booth allotted to her stands cancelled on account of non-deposit of 15% of the amount within 30 days. The petitioner was the highest bidder of booth No. 196 in Tau Devi Lal Sub Centre, Yamuna Nagar, when she gave a bid of Rs. 4,65,000/- . The petitioner deposited 10% of the total amount on 30.07.2003, as earnest money. As a highest bidder, the letter of allotment was issued to the petitioner on 20.10.2003 and sent to House No. 293, Sarojani Colony, Yamuna Nagar i.e. the address given by the petitioner at the time of auction. In terms of the letter of allotment, the petitioner was to deposit a sum of Rs. 69,750/- within 30 days to make 25% of the total amount. The balance amount could be deposited in half yearly installments. However, she did not deposit the said 15% of the total amount within the time granted, but deposited a sum of Rs. 76,140/- on 04.02.2004. The petitioner was informed vide communication dated 12.03.2004 (Annexure P-4) that the allotment letter issued on 20.10.2003 is cancelled and 10% of the bid amount deposited by the petitioner stands forfeited.

2. Thereafter, the petitioner filed a complaint before the District Consumer Disputes Redressal Forum, Yamuna Nagar u/s 12 of the Consumer Protection Act,

1986. The said complaint was said to be not maintainable vide order dated 14.06.2010. It is, thereafter, the petitioner submitted a representation to the Chairman, Haryana Urban Development Authority to condone delay in depositing the amount. It was asserted by the petitioner that she has not received the letter of allotment, as her husband delivered possession of the said house in pursuance of the agreement to sell. It was in February, 2004, she went to her previous house and found the letter of allotment. No decision was communicated on such representation dated 09.08.2010 and the subsequent representation dated 18.04.2011, which led the petitioner to file the present petition before this Court.

3. Admittedly, the petitioner has not communicated her change of address to the respondents. The letter of allotment has been sent by the respondents on the address given by the petitioner at the time of auction. Therefore, the respondents have not failed to perform their part of obligations. The fact remains that the petitioner was the highest bidder. It was her responsibility to deposit 15% of the total amount within 30 days of the issuance of the letter of allotment. In the absence of deposit of 15% of the amount, no concluded contract came into existence. Such is the view of Hon'ble Supreme Court in Chaman Lal Singhal Vs. Haryana Urban Development Authority and Others, wherein it has held that the non compliance of the terms of the letter of allotment does not give rise to binding contract. It was observed:

19. While it is true that an allotment letter was issued to the appellant by the respondent Authority, but the said allotment was subject to the conditions as mentioned in the terms and conditions of the allotment letter, some of which have been extracted hereinabove. In terms thereof the appellant was required to send a communication to the respondent Authority by registered post that he is accepting the aforesaid allotment made in his favour alongwith an amount of Rs. 1,14,436/- within 30 days from the date of issue of allotment letter. That amount was supposedly 15% of the price payable for the plot of land allotted to him. The said amount together with the amount of Rs. 65,392/- which was paid by the appellant applicant along with his application form would, therefore, have constituted 25% of the total tentative price of the land. If the appellant refused to accept the offer of allotment he was required to communicate his refusal by a registered letter within 30 days from the date of issue of allotment letter failing which it was made clear that the aforesaid allotment would stand cancelled and that the earnest money deposited by him would be forfeited by the Authority and the appellant would have no claim for damages thereafter.

20. A bare perusal of the aforesaid relevant clauses of the allotment letter would indicate that the balance amount of the cost price i.e. Rs. 5,39,484/- could be paid either in lump sum without interest within 60 days from the date of issue of allotment letter or in six annual installments which were recoverable in terms of the schedule given in Clause 6 of the aforesaid allotment letter. Clause 10 provides that in case the installment which is payable is not paid by the 10th of the month following the month in which it falls due or in the case the additional

price is not paid within time, the Estate Officer shall proceed to take action for imposition of penalty and resumption of plot in accordance with the provisions of Section 17 of the Act. Clause 11 of the said terms and conditions also makes a reference of Section 17 of the Act.

21. In our considered opinion, the appellant failed to comply with the aforesaid clauses of the letter of allotment and, therefore, his allotment stood cancelled and the earnest money deposited by him could be forfeited by the Authority. The order of cancellation came to be passed by the competent authority after 500 days. Be that as it may, the aforesaid allotment of plot of land in favour of the appellant came to be cancelled because of non-payment of the amount as stipulated in clause 5 and, therefore, the earnest money deposited by him could be forfeited by the Authority.

22. Since the case of the appellant comes within the ambit of clauses 4 and 5 of the allotment letter, the provisions of Section 17 of the Act would have no application and would not apply. It is thus established that there was no agreement/contract between the appellant and the respondent-Authority and there being no such agreement/contract and because of non-compliance of requirement of clause 5, the issue with regard to violation of principles of natural justice also would not arise. Therefore, the contentions that provisions of Section 17 of the Act are violated and that there is non compliance of the principles of natural justice have no merit.

4. Recently, in Greater Mohali Area Development Authority and Another Vs. Manju Jain and Others, , the Hon''ble Supreme Court allowed an appeal, wherein the allotment made to the petitioner stood cancelled for failure to deposit 25% of the amount within 60 days of the receipt of the allotment letter. The Hon''ble Court held that mere draw of lots/allocation letter does not confer any right to allotment. It was held to the following effect:

21. Mere draw of lots/allocation letter does not confer any right to allotment. The system of draw of lots is being resorted to with a view to identify the prospective allottee. It is only a mode, a method, a process to identify the allottee i.e. the process of selection. It is not an allotment by itself. Mere identification or selection of the allottee does not clothe the person selected with a legal right to allotment.

x x x

25. Clause 4 of the allotment letter reads as under:

In case you accept this allotment, you should send your acceptance by registered post along with amount of balance of twenty-five per cent of price within sixty days from the date of receipt of the allotment letter.

In the instant case, an acceptance letter had not been sent by respondent 1. Thus, the allotment in her favour remained of no significance.

x x x

29. If the instant case is examined in the light of the aforesaid settled legal propositions, it becomes clear that Respondent 1 did not make any response whatsoever after applying for allotment. No explanation could be furnished by Respondent 1 for why she kept quiet for 41/2 years after receiving the allocation letter and why she did not make any attempt to find out what had happened to her application. Respondent 1 did not send her acceptance of the allotment; did not deposit the amount which became due in 1999 itself; and did not execute the required hire-purchase agreement with the appellant Authority. Thus, it is solely for her that no concluded contract came into existence between the parties. In such a fact situation, Respondent 1 could not be handed over the possession of the flat. The forfeiture of the earnest money is in terms of the statutory provisions.

In view of the binding precedents as mentioned above, the failure of the petitioner to convey acceptance in pursuance of letter of allotment issued by depositing 15% of the balance amount, does not lead to a concluded contract. Therefore, we do not find any merit in the present writ petition. The same is accordingly dismissed.