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Status Dismissed

DP No.-

W-10

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

Receipt No. 470-H
Date 18/9/14
O.P. F.C. T.C.P.

To,

- 1) The State of Haryana, Department of Urban Estate, Civil Secretariat, Chandigarh.
- 2) The Principal Secretary, Department of Urban Estate, Government of Haryana, Civil Secretariat, Chandigarh.
- 3) The Chief Administrator -cum- Appellate Authority, Haryana Urban Development Authority, HUDA Office, Panchkula, Haryana.
- 4) The Estate Officer, HUDA, Urban Estate, Panipat.

Subject:- Civil Writ Petition No. 16580 of 2014
Harbhajan Singh

ACSTEP
18-09-2014

Petitioners

Versus

The State of Haryana and others

Respondent(s)

CA 19.9.14
update CCTNS J
DA
19-9-14

DAN D 1177
19-9-14

Sir,

In continuation of this Court's order dated _____ I am directed to

forward herewith a copy of Order dated 03.09.2014 passed by this Hon'ble High Court in the above noted Civil Writ Petitions, for immediate strict compliance alongwith copy of

BY ORDER OF HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Given under my hand and the seal of this Court on this 11th day of September 2014.



Superintendent (Writ)
For Assistant Registrar (Writ)

12/9/14

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No. 16580 of 2014

Harbhajan Singh son of Tara Singh, Panipat through his
attorney Kailash Kumar Chalia, B-11, G.F. South
Extension Part-I, New Delhi.

Petitioner.

Versus:

1. The State of Haryana, Department of Urban Estate
, Civil Secretariat, Chandigarh
2. The Principal Secretary, Department of Urban Estate
Government of Haryana, Civil Secretariat,
Chandigarh
3. The Chief Administrator - Cum Appellate Authority,
Haryana Urban Development Authority,
HUDA Office, PANCHKULA-HRY.
4. The Estate Officer, HUDA, Urban Estate, Panipat

Respondents.

Civil Writ Petition under Articles 226/227 of the Constitution of India praying for issuance of an appropriate writ, especially in the nature of writ of Certiorari for quashing the order dated 22.7.2014 (**Annexure P-13**), and order dated nil whereby the allotment in favour of the petitioner has been cancelled without affording any opportunity and without passing any speaking order, in the interest of justice.

AND

Any other writ, order or direction which this Hon'ble Court deems fit in the facts and circumstances of the case, may kindly be passed in favour of the Petitioner.

It is further prayed that during the pendency of the present writ petition, the respondent is restrained to allot or sale of plot no. 779 in sector 13-17, Panipat .

Respectfully Showeth:-

1. That the Petitioner is the resident of State of Haryana and thus the petitioner is entitled to invoke the

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.16580 of 2014

Date of Decision : September 03, 2014

Harbhajan Singh

..... Petitioner

Versus

The State of Haryana and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE KULDIP SINGH**

Present:- Mr. Mandeep K. Sajjan, Advocate for the petitioner.

HEMANT GUPTA, J. (ORAL)

Challenge in the present writ petition is to an order passed by the Principal Secretary to Government of Haryana, Town & Country Planning & Urban Estates Departments, Chandigarh, on 22.07.2014, whereby the revision petition under Section 30 of Haryana Urban Development Authority Act, 1977 (for short the HUDA) was decided in terms of directions issued by this Court in CWP No.1144 of 2014 on 23.01.2014.

The land of petitioner Harbhajan Singh was acquired for establishment and development of Urban Estate, vide Notification dated 23.02.1989 published under Section 4 of the Land Acquisition Act, 1894 (in short 'the Act'). The Notification under Section 6 of the Act was published on 22.02.1990. The petitioner as a land owner was entitled to a residential plot in terms of the rehabilitation and re-settlement policy of the State Government. In CWP No.3225 of 1992, a direction was issued on 07.07.1994, to allot the plot to the present petitioner within three months

from the date of the passing of the order but it was on 30.12.2009, a letter of allotment was issued to the petitioner allotting plot of 220 sq. metres in Panipat. The conditions of the allotment are as under:

“4. In case you refused to accept this allotment, you shall communicate your refusal by a registered letter within 30 days from the date of allotment letter failing which this allotment shall stand cancelled and the earnest money deposited by you shall be forfeited to the authority and you shall have no claim for damages.

5. In case you accept this allotment, please send your acceptance by registered post along with an amount of Rs.3,46,500/- within 30 days from the date of issue of the allotment letter which together with an amount Rs.----- paid by you along with your application from as earnest money, will constitute 25 percent of the total tentative price.”

The petitioner did not communicate acceptance nor sent an amount of ₹3,46,500/- within thirty days as stipulated in the letter of allotment. However, on 26.02.2010, the petitioner was informed that 25% of the amount be deposited within 90 days along with surcharge and interest, as per policy. Thereafter, the petitioner communicated on 06.06.2012 (Annexure P-4) requesting for extension of time for the reason that general power of attorney holder of the petitioner had died, therefore, he could not deposit the allotment money in time. It is thereafter, an order was passed by the Secretary in terms of the directions issued by this Court.

The learned Secretary has found that as per Clause 4 of the allotment letter as well as Regulation 5(5) of Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978, the allotment would stand cancelled automatically. Thus, a legally enforceable contract has not come in existence. Reference was made to Chaman Lal Singal vs. Haryana Urban Development Authority and others, 2009 (4) SCC, 369.

Learned counsel for the petitioner vehemently argued that due to unavoidable circumstances i.e. death of power of attorney holder, the petitioner could not deposit 25% of the amount. However, the petitioner is now ready and willing to deposit the entire amount along with interest.

We have heard learned counsel for the petitioner and find no merit in the present petition.

Only cause given in the communication (Annexure P-4) is the death of attorney holder. The death of attorney holder has no relation with the deposit of the amount by the allottee i.e. present petitioner Harbhajan Singh. The attorney is to act on behalf of the petitioner. An attorney is an agent of the Principal. The petitioner has neither conveyed acceptance nor deposited the amount within 30 days. Even after the communication (Annexure P-3), the petitioner has not deposited 25% of the amount along with surcharge and interest. Therefore, in terms of judgment passed in Chaman Lal's case (supra), the letter of allotment has been rightly cancelled. In "Greater Mohali Area Development Authority and others vs. Manju Jain and others", (2010) 9 SCC 157, again reiterated that failure of deposit of 25% does not create any binding condition, the Court held as under:

"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.

29. If the instant case is examined in the light of the aforesaid settled legal propositions, it becomes clear that Respondent No.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 4½ 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 could come into existence between the parties. In such a fact situation, Respondent 1 could not be handed over possession of the flat. The forfeiture of the earnest money is in terms of the statutory provisions."

Thus no concluded contract has come into existence. The established principle is that failure to deposit 25% of the amount does not confer any right in favour of the allottee.

In view of the above, we do not find any illegality in the impugned order passed by learned Principal Secretary to Govt. of Haryana. Accordingly, the present writ petition is dismissed.

sd -
(HEMANT GUPTA)
JUDGE



sd -
(KULDIP SINGH)
JUDGE

September 03, 2014

Varita

Respectfully
16/9/14

D. Prasad
May 2014

sd -
12/9/14
12/9/14

PUNJAB AND HARYANA HIGH COURT