

H. U. D. A. and Another

Vs

Kewal Krishan Goel and Others

Civil Appeal No. 7849 with 7850 and 7851 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

09.05.1996

JUDGEMENT

PATTANAİK, J.:-

1. Leave granted.

2. In these three appeals directed against the judgment of the Punjab and Haryana High Court the common question of law is involved and as such are heard together and are being disposed of by this common judgment.

3. The short question that arises for consideration is, where a land is allotted and the allottee deposits some instalments but thereafter intimates the authority about his incapacity to pay up the balance instalments and requests for refund of the money paid, is the allotting authority entitled to forfeit the earnest money deposited by the allottee or could be only entitled to forfeit 10% of the total amount deposited by the allottee till the request is made, as directed by the High Court?

4. Haryana Urban Development Authority issued an advertisement inviting applications for allotment of residential plots at Karnal. The price of plots was different for different sizes. In accordance with the advertisement 10% of the total price was required to be deposited along with the application from as earnest money and where the plot was a preferential one an extra price of 10% of the total price was required to be deposited. In the letter of allotment that had been issued by the Estate Officer of the Haryana Urban Development Authority to the allottee, it was indicated that if the allottee refuses to accept the allotment then the same may be communicated within 30 days from the date of allotment letter failing which the allotment would stand cancelled and the earnest money deposited shall be forfeited to the authority and the allottee can have no claim for damages. It was also stipulated in the letter of allotment that the balance amount of the tentative price indicated in the letter of allotment could be deposited either in lump sum without any interest within 60 days from the date of issue of the allotment letter or on 6 annual installments and each installment would be recoverable together with interest at 15%. On receipt of the letter of allotments the allottees who are the respondents in these appeals accepted the allotment and made the initial deposits as required and thereafter chose to deposit the balance amount in installment. Each of the allottee-respondent did deposit some instalment and thereafter intimated the authority that they will not be in a position to take the land allotted and requested for refund of the amount. In some cases the authority replied that their prayer for cancellation of allotment cannot be acceded to and in some other cases even before any considerations made by the authority to the request of the allottees, the

allotees approached the High Court. The High Court having directed the authority to refund the balance after deducting 10% of the amount deposited by each of the allottee, the Haryana Urban Development Authority as well as the State of Haryana have preferred these appeals.

5. Mr. Arun Jaitley, the learned senior counsel appearing for the appellants contended that in view of the fact that the allottee was required to deposit 10% of the purchase price as earnest money while the application for allotment was made and having accepted the allotment in question with the terms and conditions stipulated in the letter of allotment, when the transaction falls through by reasons of default or failure on the part of the allottee, the authority would be entitled to forfeit the entire earnest money deposited and not the 10% of the amount deposited till then as directed by the High Court, Mr. Jaitley contends 'earnest' represents a guarantee that the contract will be fulfilled and is given to bind the contract and, therefore, the same is forfeited when the transaction falls through on account of failure on the part of the purchaser. According to the learned counsel in view of the special clauses of the letter of allotment the High Court committed gross error in directing forfeit of only 10% of the amount deposited. Mr. Mahabir Singh, learned counsel appearing for the respondent on the other hand contended that the forfeiture of earnest money in terms of clause 4 of the allotment letter can be made if the allottee does not communicate his refusal by registered letter within 30 days from the date of allotment but once the allotment is accepted and, thereafter, the allottee makes deposits on instalments and opts out a contrary by expressing his inability to take the land, there is no provision in the allotment letter or under the rules entitling the authority to forfeit the earnest money. Since the power of forfeiture of the earnest money has to be found out specifically either from the letter of allotment or from the rules, if any, governing the allotment and since there is no such provisions, the High Court was entitled to decide the question on equitable consideration and has rightly directed that the authority could deduct 10% of the amount deposited and there is no error of law therein requiring interference by this Court.

6. In view of the rival stand of the parties, the first question that arises for consideration is whether under their terms of allotment the allottees were required to deposits any amount as earnest money and if so when that earnest money could be forfeited by the authority? From the material on record there is no dispute that an application for allotment, pursuant to the advertisement made by the authority, has to be made with a deposit of 10% of the tentative price as the earnest money. After consideration of the application when letter of allotment is issued clause (4) thereof stipulates that an allottee if refuses to accept the allotment shall communicate the same by registered letter within 30 days from the date of allotment letter. If no such refusal is communicated within 30 days then it would not be open for the allottee to refuse it later and further the earnest money deposited by the allottee would be forfeited to the authority and an allottee can claim no damages. The allotment letter further stipulated that in case the allottee accepts allotment then letter of acceptance should reach the authorities by registered post together with an additional amount as indicated in the letter, which deposit along with the earnest money deposited already would constituted 25% of the total tentative price. Clause (6) of the allotment letter also indicates that the balance amount of the tentative price of the plot could be paid either in lump-sum without interest within 60 days from the date of issue of the allotment letter or in six annual instalments, the first instalment would fall due after expiry of one year of the date of issue of the letter. Clauses 4, 5 and 6 of the letter of allotment are extracted hereinbelow in extensor for better appreciation of the point in issue :

"(4) In case you refuse 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. 34, 505/- within 30 days from the date of issue of this allotment letter, which together with an amount of Rs. 23, 020/- paid by you along with your application from as earnest money, will constitute 25 per cent. of the total tentative price.

(6) The balance amount i. e. Rs. 1, 72, 575/- of the above tentative price of the plot can be paid in lump-sum without interest within 60 days from the date of issue of the allotment letter or in six annual instalments. The first instalment will fall due after the expiry of one year of the date of issue of this letter. Each instalments would be recoverable together with interest on the balance price of 10% interest on the remaining amount. The interest shall, however, accrue from the date of offer of possession. Interest @ 18% will be charged on the delayed payment."

7. A combined reading of the aforesaid three clauses of letter of allotment together with the advertisement issued indicates that the scheme of allotment was that an applicant could make an application along with 10% of the tentative price of the land as earnest deposit. On receipt of the letter of allotment he is required to indicate either his letter of acceptance or letter of refusal within 30 days from the date of the receipt of the allotment letter. In case of acceptance he would be further required to make an additional deposit which deposit together with the earnest money already deposited would constitute 25% of the total tentative price. If he fails to accept the allotment within 30 days from the date of receipt of the letter then the authority was entitled to forfeit the earnest money. Further the balance amount could be deposited in instalment. Thus under the allotment in question an allottee was required to deposit 10% of the tentative price of the land as earnest money which is given to bind the contract and the said earnest money could be forfeited by the authority in case the allottee does not communicate the letter of refusal within 30 days from the date of receipt of the allotment order.

8. The next question that arises for consideration is that, where the allottee accepts the allotment and indicates the same within the stipulated period and makes additional deposits on instalment basis and thereafter intimates the authority that he will not be in a position to pay up the balance amount and makes a request for refund of the money deposited, would the authority be justified in forfeiting the earnest money which had been deposited along with the application from ? The answer to this question depends upon the basis concept of 'earnest'. In the case of *Shri Hanuman Cotton Mills v. Tata Air Craft Limited*, (1969) 3 SCC 522 : (AIR 1970 SC 1986), this Court laid down the following regarding 'earnest' :

"(1) It must be given at the moment at which the contract is concluded.

(2) It represents a guarantee that the contract will be fulfilled or, in other words, "earnest" is given to bind the contract.

(3) It is part of the purchase price when the transaction is carried out.

(4) It is forfeited when the transaction falls through by reason of the default of failure of the purchaser.

(5) Unless there is anything to the contrary in the terms of the contract, on default committed by the buyer, the seller is entitled to forfeit the earnest."

9. The earnest money is a part of the purchase price when the transaction gets through and the same is forfeited when the transaction falls through by reason of the default or failure on the part of the vendee.

10. Wright, J. in the case of Farr, Smith and Co. v. Messers, Ltd., LR (1928) 1 KBD 397, quoted the observations of Hamilton, J., in Summer and Leivesley v. John Brown & C. (1909) 25 Times LR 745, with regard to the meaning of 'earnest' as thus :

"Earnest'..... meant something given for the purpose of binding a contract, something to be used to put pressure on the defaulter if he failed to carry out his part. If the contract went through, the thing given in earnest was returned to the given, If the contract went off through the giver's fault the thing given in earnest was forfeited."

11. The law on the subject has been discussed fully in a recent case of Delhi Development Authority v. Grishthapana Co-operative Group Harding Society Ltd., 1995 Supp (1) SCC 751 : (1995 AIR SCW 1235).

12. This being the legal position and the allottee having accepted the allotment and having made some payment on instalment basis then made the request to surrender the land, has committed default on his part and, therefore, the competent authority would be fully justified in forfeiting the earnest money which had been deposited and not the 10% of the amount deposited as held by the High Court. The High Court was totally in error in issuing the direction in question on the ground that the respondents were not in a position to deliver the possession of the land to the allottee. It may be stated that in the letter of allotment no period was stipulated within which the possession of the land was to be delivered. The land in question was required to be developed and then to be delivered and in absence of any period in the letter of allotment, it was required to be delivered within a reasonable period. In the fact and circumstances, it cannot be said that the reasonability had lapsed particularly when the allottees had not paid up the entire instalment due and merely paid a part thereof.

13. In the premises as aforesaid the impugned judgment and direction of the High Court in each of the appeals are set aside and it is held that the appellant would be entitled to forfeit the earnest money which had been deposited along with the application from and on deducting the said 'earnest' the balance amount may be refunded to allottees - respondents who had made application for refund in question. The appeals are allowed to the extent indicated above but in the circumstances there will be no order as to costs. Appeals allowed.