

Before Daya Chaudhary & Sudhir Mittal, J.
RAJESH KUMAR AND OTHERS—Petitioners

versus

STATE OF HARYANA AND OTHERS—Respondents

CWP No.5771 of 2018

November 21, 2019

A) *Haryana Urban Development Authority Act, 1977—Applications invited for free hold residential plot in Pehowa—Petitioners submitted applications and deposited earnest money for inclusion of names in the draw of lots—On being successful, for personal reasons the petitioner requested for surrender of plots—Request for issuance of surrender of plot and refund of earnest money sent prior to issuance of letter of allotment by HUDA—HUDA rejected the request for refund of earnest money on the ground that the policy dated 30.11.2017 does not permit any refund—Action challenged by the petitioners in the Civil Writ Petition.*

B) *Haryana Urban Development (Disposal of Land and Building) Regulations, 1978—Regl. 5(5)—Haryana Urban Development Authority Act, 1977—Refund of earnest money—Interest thereon—Petitioners entitled to payment of interest @ 6% per annum from the day following 30 days after issuance of allotment letter till date of payment—Held, that executive instructions contrary to the Statutory Regulations Act cannot be allowed to operate—Writ petitions allowed.*

Held that, Regulation 5(5) of the Regulations is reproduced below:-

‘(5) The applicant to whom the land/building has been allotted shall communicate his acceptance or refusal in writing within 30 days of the date of allotment, by registered post to the Estate Officer. In case of acceptance, the letter shall be accompanied by such amount as intimated to him in the allotment letter. In case of refusal, he shall be entitled to the refund of the money tendered with the application. In case he fails to either accept or refuse within the stipulated period, allotment shall be deemed to be cancelled and the deposit made under sub-regulation (2) may be forfeited to the Authority and the applicant shall have no

claim for damages.’

(Para 6)

Further held that, a perusal of the aforementioned Regulation leaves no manner of doubt that the applicant could communicate his acceptance or refusal of allotment in writing within 30 days of issuance of the allotment letter. In case of refusal, he was entitled to refund of the money tendered with the application i.e. earnest money.

(Para 7)

Further held that, policy dated 30.11.2017 provides for partial modification of format of allotment letter issued in case of sale of residential plots by allotment circulated vide letter dated 2.3.2017. The modification is as given below:-

‘Wherever an allottee surrenders the site at any time within a period of 60 days for residential plots from the date of issuance of allotment letter, the concerned Estate Officer, HUDA will refund the amount after deducting 10% of the total consideration money including interest and penalty if any due upto the date of application for such surrender. However, no interest shall be payable on such amount to be refunded.’

(Para 8)

Further held that, by virtue of the aforementioned policy instructions, an allottee may surrender his plot any time within 60 days from the date of issuance of allotment letter subject to deduction of 10% of the total consideration money including interest and penalty, if any, is due.

(Para 9)

Further held that, the HUDA has thus, issued policy instructions, which are in the nature of executive instructions contrary to the terms of Regulation 5(5). The Regulations are statutory in nature having been framed in exercise of power conferred by Section 54 of the Haryana Urban Development Authority Act, 1977 and no executive instructions can be issued contrary to the statutory regulations. Thus, the modification of the format of the allotment letter made in terms of Policy instructions dated 30.11.2017, is without jurisdiction. HUDA is duty bound to act in accordance with Regulation 5(5) and accordingly, the petitioners are entitled to refund of the earnest money.

(Para 10)

Further held that, the writ petitions are accordingly allowed. Impugned orders Annexures P-6 to P-13 are quashed. Amendment to

the format of the allotment letter made vide instructions dated 30.11.2017, is also quashed. The petitioners would be refunded their earnest money within a period of four weeks from the date of receipt of certified copy of this order. They would also be entitled to payment of interest @ 6% per annum from the day following 30 days after issuance of allotment letter till date of payment. In case application for surrender was made prior to date of issuance of allotment letter, the interest would be payable after 30 days of the date of receipt of the application. It is further clarified that only those petitioners, who had made an application for surrender before issuance of allotment letter or within 30 days of issuance thereof, shall be entitled to the relief.”

(Para 11)

Sandeep Sharma, Advocate and
H.S. Sethi, Advocate
for the petitioners.

Lalit Rishi, Advocate
for the petitioner in CWP-17784-2019.

Manmohan Saroop, Advocate
for the petitioners in CWP-16336-2018.

Sudarshan Kumar, Advocate for
Deepak Balyan, Advocate, for HUDA.

Deepak Sabherwal, Advocate
for HUDA in CWP-17326 of 2018.

Sanjeev Majra, Advocate
for respondents No.2 and 3

in CWP Nos.24055, 21826 and 23483 of 2018 and
for respondents No.1 to 3 in CWP-24489-2019.

SUDHIR MITTAL, J.

(1) This judgment shall dispose of aforementioned writ petitions as common questions of fact and law are involved therein. The facts are being extracted from CWP-5771-2018 titled as ***Rajesh Kumar and others*** versus ***State of Haryana and others***.

(2) In the year 2016, Haryana Urban Development Authority (hereinafter referred to as ‘HUDA’) invited applications for free hold residential plots in Sector-1 (Part), Pehowa. Bookings were to commence w.e.f. 21.9.2016 and the last date for receipt of

applications was 21.10.2016. The petitioners submitted their applications alongwith earnest money and their names were included in the draw of lots. The draw was held on 6.3.2017 and the petitioners were successful. Thereafter, according to the averment of the petitioners requests for surrender of plots were sent to HUDA prior to issuance of letters of allotment. These were rejected vide letters of different dates issued in January, 2018 on the ground that Policy dated 30.11.2017 did not permit any refund. This action is under challenge in the present writ petition.

(3) In reply filed on behalf the respondents, it has been averred that there was no provision for refund of the earnest money in the advertisement/brochure issued in the year 2016. On the contrary, condition No.1(ii) prescribed that 25% of the tentative sale price was to be deposited within 30 days of issuance of allotment letter and the remaining 75% of the tentative sale price was to be deposited in lump-sum within 60 days of issuance of allotment, failing which the allotment letter could be cancelled without any notice and the earnest money forfeited. The petitioners have not made the deposit in accordance with conditions and thus, their allotments stand cancelled and earnest money forfeited. Moreover, according to the Clause 8 of the brochure any dispute was to be referred to the sole arbitration of the Chief Administrator and therefore, the present petition is not maintainable. Reliance has also been placed upon Policy dated 30.11.2007 to argue that surrender was subject to deduction of 10% of the total consideration money. The earnest money deposited was equivalent to 10% of the total consideration and therefore, the petitioners are not entitled to any refund.

(4) Learned counsel for the petitioners have argued that Policy dated 30.11.2017 has been framed after the draw of lots and thus, the same cannot apply to the petitioners. Moreover, the said policy is contrary to Regulation 5(5) of the Haryana Urban Development (Disposal of Land and Building) Regulations, 1978 (for short 'the Regulations') and thus, the same is illegal.

(5) Learned counsel for the respondents has opposed the writ petition by placing reliance upon the contents of the written statement. According to him, the writ petition is not maintainable on account of existence of arbitration clause. He also argues that according to Clause 1(ii) of the brochure, the allotments stand cancelled for non-payment. Surrender could not be permitted as there was no condition in the brochure in this regard. Policy dated 30.11.2017 provides for surrender

subject to payment of 10% of the total sale consideration and this policy does not permit the petitioners to seek any refund.

(6) Regulation 5(5) of the Regulations is reproduced below:-

‘(5) The applicant to whom the land/building has been allotted shall communicate his acceptance or refusal in writing within 30 days of the date of allotment, by registered post to the Estate Officer. In case of acceptance, the letter shall be accompanied by such amount as intimated to him in the allotment letter. In case of refusal, he shall be entitled to the refund of the money tendered with the application. In case he fails to either accept or refuse within the stipulated period, allotment shall be deemed to be cancelled and the deposit made under sub-regulation (2) may be forfeited to the Authority and the applicant shall have no claim for damages.’

(7) A perusal of the aforementioned Regulation leaves no manner of doubt that the applicant could communicate his acceptance or refusal of allotment in writing within 30 days of issuance of the allotment letter. In case of refusal, he was entitled to refund of the money tendered with the application i.e. earnest money.

(8) Policy dated 30.11.2017 provides for partial modification of format of allotment letter issued in case of sale of residential plots by allotment circulated vide letter dated 2.3.2017. The modification is as given below:-

‘Wherever an allottee surrenders the site at any time within a period of 60 days for residential plots from the date of issuance of allotment letter, the concerned Estate Officer, HUDA will refund the amount after deducting 10% of the total consideration money including interest and penalty if any due upto the date of application for such surrender. However, no interest shall be payable on such amount to be refunded.’

(9) By virtue of the aforementioned policy instructions, an allottee may surrender his plot any time within 60 days from the date of issuance of allotment letter subject to deduction of 10% of the total consideration money including interest and penalty, if any, is due.

(10) The HUDA has thus, issued policy instructions, which are in the nature of executive instructions contrary to the terms of

Regulation 5(5). The Regulations are statutory in nature having been framed in exercise of power conferred by Section 54 of the Haryana Urban Development Authority Act, 1977 and no executive instructions can be issued contrary to the statutory regulations. Thus, the modification of the format of the allotment letter made in terms of Policy instructions dated 30.11.2017, is without jurisdiction. HUDA is duty bound to act in accordance with Regulation 5(5) and accordingly, the petitioners are entitled to refund of the earnest money.

(11) The writ petitions are accordingly allowed. Impugned orders Annexures P-6 to P-13 are quashed. Amendment to the format of the allotment letter made vide instructions dated 30.11.2017, is also quashed. The petitioners would be refunded their earnest money within a period of four weeks from the date of receipt of certified copy of this order. They would also be entitled to payment of interest @ 6% per annum from the day following 30 days after issuance of allotment letter till date of payment. In case application for surrender was made prior to date of issuance of allotment letter, the interest would be payable after 30 days of the date of receipt of the application. It is further clarified that only those petitioners, who had made an application for surrender before issuance of allotment letter or within 30 days of issuance thereof, shall be entitled to the relief.

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