



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-4879-2001 (O&M)

Reserved on :-23.09.2025

Date of Pronouncement:-26.09.2025

HIG Residents Welfare Association

... Appellant

Versus

Housing Board Haryana and Another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Pankaj Bains, Advocate
for the appellant.

Mr. Deepak Sabherwal, Advocate and
Mr. Jasdeep Singh Salooja, Advocate
for the respondents.

VIRINDER AGGARWAL, J.

1. The appellant has invoked the jurisdiction of this Court under Section 41 of the Punjab Courts Act laying challenge to the concurrent findings of fact and law recorded by the Courts below. The judgment and decree dated 16.04.2001 rendered by the learned Civil Judge (Junior Division), Faridabad in Civil Suit No.RBT-131-1998 titled as 'HIG Residents Welfare Association vs. Housing Board Haryana and Another', whereby the suit instituted by the plaintiff/appellant came to be dismissed with costs, and the impugned judgment and decree dated 26.09.2001 passed by the learned Additional District Judge, Faridabad in Civil Appeal No.RBT-195 of 14.05.2001, affirming the findings of the learned Trial Court, are



under assail in the present appeal. The appellant/plaintiff contends that the Courts below have fallen into error in appreciating the pleadings, evidence, and settled principles of law.

2. To provide a clear background, the facts of the present case are that the plaintiff-HIG Residents Welfare Association, is a society registered under the Societies Registration Act, 1860, represented through its General Secretary, Shri H.L. Arora, who is duly authorised to institute the suit and conduct legal proceedings. Defendant No.1-Housing Board Haryana, is a statutory body corporate empowered to acquire, hold and transfer property, enter into contracts and sue or be sued in its own name. In June 1991, the defendants issued a brochure-cum-application inviting applications for allotment of High Income Group ('HIG' for short) double-storey flats in Housing Board Colony, Sector-23, Faridabad, on a hire-purchase basis. The brochure set out the terms and conditions of allotment and payment schedule, while also stating that the cost of the flats was tentative and subject to variation. Members of the plaintiff Association applied for the flats, deposited the requisite registration amounts, and were informed in January 1992 of their success in the draw of lots held in December 1991. They were further directed to deposit ₹32,500/- as per the payment schedule contained in the brochure, which they duly did. It is the case of the plaintiff that there was no escalation in the cost of land or construction up to the said date, yet the defendants subsequently issued letters demanding substantially enhanced costs of the flats as well as higher monthly installments, far exceeding the figures mentioned in the 1991 brochure. The plaintiff and its members repeatedly sought clarification through several representations



between 1995 and 1996, but the defendants neither provided any explanation nor granted them an opportunity of being heard. The plaintiff further alleged discrimination, citing the example of one allottee, an employee of the Housing Board, who was charged a significantly lower total cost and monthly installment than other allottees.

2.2. Terming the unilateral enhancement of cost and installments as arbitrary, unreasonable, illegal, discriminatory, and contrary to the terms and conditions of the original brochure, the plaintiff Association prayed for a declaration that the revised demands were illegal and unenforceable, and sought consequential relief restraining the defendants from recovering the enhanced amounts. Hence institution of the suit.

3. The defendants contested the suit raising preliminary objections regarding maintainability of the suit, want of cause of action, jurisdiction, *locus standi*, limitation, non-service of statutory notice, and bar under Sections 72-A and 72-B of the Haryana Housing Board Act, 1971, contending that remedies under the special Act exclude the jurisdiction of civil court.

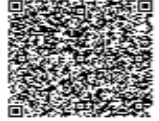
3.1. On merits, the defendants admitted holding of the draw of lots on 12.12.1991, deposit of ₹32,500/- by successful applicants, and issuance of allotment letters. However, they maintained that the brochure mentioned only tentative prices based on rough estimates, which were subject to variation depending on actual expenditure. Since construction was ongoing, escalation could not be assessed in January 1992. The enhanced costs and revised installments were rightly reflected in allotment letters issued after completion of construction. It was further pleaded that the allottees



voluntarily accepted the terms of allotment, signed the Hire-Purchase Tenancy Agreement (HPTA), and agreed to bear future escalation. Having accepted the conditions without protest, they are now estopped from challenging the revised demands. The defendants asserted that the increased cost was legal, valid, fair, reasonable, and in conformity with the brochure, allotment letters, and agreements, and thus binding upon the allottees. Accordingly, dismissal of the suit was sought.

4. The appellant/plaintiff filed a replication, in which it reiterated and reaffirmed all the material allegations contained in the plaint, specifically traversing and refuting the various pleas and defenses raised by the respondents in their written statement. Having carefully considered the pleadings, documents, and contentions advanced by both sides, the Court proceeded to frame the following issues for determination, so as to effectively and comprehensively adjudicate the rival claims and defenses raised in the present dispute, which are as under:-

1. Whether the enhanced demand of costs of flats by the defendants from the plaintiff and enhanced monthly installment vide letters dated 10.3.1995, 23.3.95, 27.3.95, 4.4.95, 14.8.95, 1.8.95 or of any other dates are illegal, arbitrary, unauthorised and against the terms and conditions of the brochure cum application form as alleged in the plaint? OPP.
2. Whether the plaintiff has no cause of action? OPP
3. Whether the Civil Court has no jurisdiction? OPD
4. Whether the suit is bad for want of service of notice as alleged? OPD
5. Whether the suit is bad for mis-joinder of parties, as alleged? OPD
6. Whether the suit is not maintainable? OPD



7. Whether the plaintiffs are estopped by their own act and conduct as alleged? OPD.
 8. Whether the suit is barred by time? OPD.
 9. Relief.
5. Both sides were granted adequate opportunity to lead evidence in support of their respective stands. Upon conclusion of the trial and after hearing learned counsel for the parties, the learned Civil Judge (Junior Division), Faridabad, dismissed the suit with costs. The appellant, being aggrieved by the said judgment and decree, preferred an appeal before the learned Additional District Judge, Faridabad, which also came to be dismissed, thereby affirming the judgment and decree of the Trial Court.”
6. Challenging the judgments and decrees rendered by the Courts below, the appellant has instituted the present appeal, which was admitted for hearing. Notice was duly issued to the respondents, who entered appearance through their learned counsel, and the records of the lower Courts were requisitioned for meticulous examination and consideration by this Court.
7. I have heard learned counsel for the parties at considerable length. Their submissions have been duly considered in light of the pleadings, the evidence on record, and the findings rendered by the Courts below. The record has been thoroughly scrutinized to assess the rival contentions and to determine whether the impugned judgments and decrees suffer from any legal infirmity, error, or perversity that would justify interference in the present appeal.
8. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are



to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of **Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157**, followed by the judgments in the case of **Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317** and **Satender and others V/s Saroj and others, 2022(12) Scale 92**. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

9. Learned counsel for the appellant contended that the Courts below erred in law and on facts in dismissing the suit. It was argued that reliance on the calculation sheet (Ex. DW3/1) was wholly misplaced, as the figures therein were arbitrary, inflated, and accepted without scrutiny. The demand of interest @16.5% even for periods prior to 01.04.1994, when HUDCO itself charged only 12.5%, was unjustified and resulted in an unwarranted escalation of cost.

9.1. It was further urged that the imposition of administrative charges under multiple heads and levy of interest thereon, as also the charging of interest upon interest, amounted to arbitrariness and unjust enrichment by a statutory authority. The inclusion of 10% profit in the cost of flats, particularly on inflated elements such as administrative charges and interest, was said to be impermissible in law, as the respondent-Board could not legally engage in profiteering.

9.2. Learned counsel further argued that the finding of estoppel was unsustainable, as the allottees had accepted the allotments and signed the agreements under compulsion, on pain of cancellation and forfeiture of



deposits. Repeated protests and representations demonstrated the *bona fides* of the appellant. The discriminatory treatment accorded to one of the Board's own employees, Smt. Saroj Sharma, who was charged a significantly lower cost for an identical flat, was also highlighted as a violation of Article 14.

9.3. Lastly, it was urged that dismissal of the suit for want of notice was untenable, as notice dated 08.03.1996 was admittedly served and, in any case, continuous correspondence disputing the enhanced demands amounted to sufficient compliance with Section 80 CPC and Section 67 of the Housing Board Act and prayed that appeal be allowed.

10. Learned counsel for the respondents submitted that the appeal is liable to be dismissed, as the Courts below had rightly appreciated the facts and law. It was contended that the appellant's suit was not maintainable since the remedies available under Sections 72-A and 72-B of the Haryana Housing Board Act, 1971, had not been exhausted, and the requirement of prior notice had not been fully complied with. As a settled legal position, where a remedy is provided under a special enactment, a civil suit seeking the same relief is barred. It is further argued that the draw of lots for HIG flats was held on 12.12.1991, and the successful applicants were informed in January 1992 to deposit ₹32,500/- each as per the tentative prices indicated in the brochure. The brochure clearly provided that the prices were subject to revision, and as construction was then in progress, the final cost could not be determined at that stage. The subsequent enhancement in cost and installments reflected actual expenditure incurred on construction and



development and was fully in accordance with the brochure, allotment letters, and Hire Purchase Tenancy Agreement executed by the allottees.

10.1. It was further submitted that the allottees had voluntarily accepted the allotment letters and acknowledged the revised costs in writing. Any plea of estoppel was therefore unsustainable, as the appellant and its members had acted in accordance with the terms of the agreement, which expressly allowed revision of costs based on actual expenditure. Representations made by the appellant in 1995 were under consideration by the competent authority when the suit was filed, and filing the suit prematurely was improper. It is further contended that the increased costs and revised installments were fair, reasonable, and legally justified. No arbitrariness, discrimination, or *mala-fide* conduct was involved in the fixation of costs, and the Courts below correctly found that the enhanced demands were binding on the allottees. In conclusion, it was urged that the appellant's contentions were devoid of merit, both on preliminary and substantive grounds, and that the judgments and decrees of the Courts below were lawful, proper, and liable to be upheld.

11. During the pendency of the present appeal, this Court, in order to ensure a fair and expeditious consideration of the grievances raised, was pleased to issue directions to the competent Authority vide order dated 05.01.2007, requiring it to decide the representation submitted by the appellant–plaintiff on 03.08.1995. For ready reference and completeness of record, the said order is extracted here-in-below :-

“While hearing RSA No 4879 of 2001, the Hon'ble High Court ordered on 15th January, 2007 as under:-



It has been brought to the notice of this Court that representation dated 3rd August, 1995 and subsequent reminders made by the appellant are still pending with the Housing Board, Haryana-respondent No. 1. If the representation is decided, that can clinch the matter involved in this appeal. This fact is also admitted in para 12 of the written statement. If it is so, respondent No. 1 is directed to take a decision on the representation already made by the appellant within a period of one month from the date of the receipt of the certified copy of this order. The representation shall be disposed of with reasoned order after hearing both the parties.

Adjourned to 8th May, 2007 to await the decision of the representation.”

11.1. Pursuant to the directions issued by this Court, the Chief Administrator, Housing Board, Haryana, after affording full opportunity of hearing to both parties, undertook a detailed consideration of the rival submissions and meticulously examined the grievances articulated by the appellant–plaintiff. The matter was thereafter disposed of by means of a comprehensive and reasoned speaking order, a copy whereof has been duly brought on record as **Annexure O-2**. The salient findings and reasons recorded therein, being germane to the adjudication of the present appeal, are reproduced hereunder:-

“1. The scheme for HIG houses at Faridabad sector 23 was sanctioned by HUDCO during 1992. At that time of sanctioning of scheme the rate of interest for HIG houses was 15%. However, the rate of interest was revised by HUDCO as 16.5% w.e.f. 1st April, 1993 and loan was released by HUDCO at revised rate. The rate of interest were also revised by HUDCO w.e.f. 1 April, 1994 but there was no change in interest rate of HIG category. On the basis of revised



interest rate by HUDCO, the price of houses was fixed carrying interest @ 16 5% during 1/1995. While floating registration of these houses during 1991, the interest rate was taken @ 16% and the installments for the recovery of balance price were calculated @ 165% including 0.5% collection charges. Thus interest @ 12 5% was no where applicable in this scheme The action taken by the Board is based on the basic loan agreement executed with HUDCO.

- 2. The administrative charges @ 2% on land acquisition cost and @ 10% on development/construction cost alongwith interest thereupon has been charged in the costing as per pricing policy of the Board.*
- 3. As per pricing policy of the Board, the interest is charged till the completion of development work and accordingly action was taken in costing of these houses.*
- 4. As per terms and conditions of HUDCO, from whom the scheme was got financed, atleast 5% profit is required to be added while fixing the sale price of MIG/HIG houses. Accordingly, keeping in view the above as well as pricing policy of the Board, the compulsory profit @ 10% included in sale price of these HIG houses.*
- 5. Unforeseen charges @ 5% on the land cost, development cost and construction cost has been added as per pricing policy of the Board. Similarly, collection charges @ 0.5% has been included in interest rate for fixing the rate of monthly installments for the recovery of balance price as per pricing policy of the Board*

The Board is within its right to increase the price keeping in view the terms and conditions of registration/clause 2(w) of HPTA as referred above. The costing sheet was supplied to the association at the time of filing written statement in the Civil Court



in response to Civil Suit filed by them. The cost was finalized in the year 2001 on the basis of actual figures which was less than the allotment price & conveyed to the individual allottees.

The allottees at the time of taking possession have also given consent to the cost and mode of payment informed to them vide allotment letter which was more than the advertised cost and allottees also agree to pay the enhanced cost/ELC which the Board may demand in future.

So far as payment of interest is concerned, the Estate Manager HBH Faridabad I as confirmed that interest on registration money has already been credited in the account of allottees in the month of January, 1996 as per terms of registration and they were informed by the Estate Manager about the credit of interest in their accounts individually also.

The association has also raised another issue of allotment of houses to HBH employees on lesser rates in their letter dated 8.02.07. I have considered this issue a so The Board has decided to allow relief to the employees of the Board in the price of the houses by not charging the component of Administrative Charges/profit Accordingly the price of the house has been charged from the employees of the Board as per the decision of the Board & as such there is no discrimination.

It has also been brought to my notice by the departmental representatives during hearing that 36 allottees of HIG houses have submitted affidavits that they have no concern with the court case filed by the Welfare Association and they are depositing the price of the houses as per allotment/final price determined by the Board.



In view of the above, the representation dated 3rd August, 1995 reiterated in the representation dated 8th February, 2007 are hereby disposed off accordingly.”

12. The Chief Administrator, Housing Board, Haryana, through the speaking order placed on record, has comprehensively addressed each of the grievances advanced by the appellant–plaintiff; significantly, that order has attained finality as it has not been assailed by the appellant till date. A perusal of **Clause ‘W’** of the Hire Purchase Agreement (Ex. DW1/3) leaves no manner of doubt that the defendant-Board was expressly empowered to determine the final price payable by the hirer upon the receipt of final bills of construction, or in consequence of enhancement of land cost arising out of awards, arbitration proceedings, or on any other account. The appellants, having consciously executed the said agreement without demur, are estopped from resiling from its binding stipulations. The Courts below, therefore, committed no error in holding that the appellants are bound by the contractual obligations voluntarily undertaken under Ex. DW1/3.

12.1. The Chief Administrator has further clarified that the claim of the appellant regarding fixation of interest at 12% per-annum is misconceived, inasmuch as no such rate was ever stipulated. The interest demanded by the respondents–defendants is in strict consonance with HUDCO rates, which were revised from time to time, and the defendant-Board was justified in passing on such revision to the allottees.

12.2. As regards the plea of discrimination, premised on the allegation that employees of the Housing Board were allotted flats at a lesser price, it has been rightly explained that employees of the Board constitute a distinct and separate class, standing on a footing altogether different from that of



ordinary allottees. Any concession or rebate extended to them is in the nature of an incentive linked to their employment and cannot be claimed as a matter of right by the appellant. The classification so drawn is founded upon intelligible differentia and bears a rational nexus with the object sought to be achieved. The plea of parity, therefore, is misconceived, and the charge of arbitrariness is wholly unsustainable in law.

13. Since the objection petition preferred by the appellant-plaintiff has already been adjudicated upon by the Chief Administrator, Housing Board, Haryana through a detailed and reasoned speaking order, wherein all grievances raised by the appellant-plaintiff stand duly examined and addressed, and further, as the judgments and decrees rendered by both the Courts below rest on sound reasoning and a proper appreciation of the pleadings and evidence available on record, no ground for interference is made out. Consequently, the appeal, being bereft of merit, stands dismissed.

14. As the main appeal itself has now been adjudicated and stands finally decided on merits, all pending miscellaneous application(s), if any, which are ancillary or incidental to the present proceedings, shall also stand disposed of accordingly, without requiring any separate order.

26.09.2025
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No