

A HARYANA FINANCIAL CORPORATION & ANR.

v.

RAJESH GUPTA

(Civil Appeal No. 829 of 2003)

DECEMBER 15, 2009

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**[J.M. PANCHAL AND SURINDER SINGH NIJJAR, JJ.]**

*Contract:*

C *Auction sale – Forfeiture of earnest money – Highest bidder depositing earnest money for auctioned industrial plot of defaulting unit – Later it transpired that the premises did not have an independent passage – Issue of independent passage having not been resolved bidder did not pay the*  
D *further amount – Earnest money forfeited by State Financial Corporation – HELD: The bidder has not failed to comply with conditions of sale – It is the Corporation which, though being the instrumentality of State, acted unfairly – It was incumbent upon the Corporation to disclose to the buyer about non-*  
E *existence of independent passage to the premises – Corporation acted in breach of ss.55(1)(a) and (b) of the Transfer of Property Act – Buyer being an auction purchaser, s.29 of State Financial Corporation Act has no application to the case – High Court rightly concluded that action of*  
F *Corporation in forfeiting the earnest money of the buyer was wholly arbitrary and unfair – Forfeited amount would be refunded to buyer with 12% interest – Transfer of Property Act, 1882 – ss. 55(1)(a) and (b) – State Financial Corporation Act, 1951 – s.29 – Constitution of India, 1950 – Article 12*

G **The respondent, pursuant to an advertisement issued by the appellant- Haryana Financial Corporation, for sale of land of a defaulting company, made an offer and he being the highest bidder deposited Rs. 2.5 lakhs by way of earnest money. After a visit having been made**

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by the respondent to the factory premises, he wrote to the appellant-Corporation that the land in question did not have an independent passage and requested for supply of copy of the approved building plan of the premises, but his request remained unanswered. In spite of this, the Corporation issued a letter dated 18.5.1998 to the respondent asking him to deposit balance amount of 25 per cent of the bid amount within fifteen days, failing which the earnest money deposited by him would be forfeited. Since the issue of independent passage was not resolved, the respondent did not pay the balance amount and the Corporation by its order dated 30.9.1998 forfeited the earnest money deposited by him. The respondent approached the High Court, which quashed the order dated 30.9.1998 and directed the Corporation to refund the amount along with 12 % interest. Aggrieved, the Corporation filed the appeal.

Dismissing the appeal, the Court

HELD: 1. Factually the appellants have accepted that on 28.1.1998 the respondent had in no uncertain terms informed the appellants/Corporation about the non-existence of the independent passage. There is a categorical assertion that premises do not have an independent appropriate passage from the road. The appellants were merely relying on the documents submitted by the defaulting unit. No independent inquiries were made by the appellants to verify the authenticity of the statements made by the management of the defaulting unit which had availed of the loan, by mortgaging the assets of the unit. The entire issue seems to be concluded against the appellants/Corproation by letter dated 30.4.1998 whereby its Branch Manager has informed the head office in unequivocal language that the independent passage shown in the sale deed is not

A connected directly with the defaulting unit. [Para 14 and  
16] [466-C-D; 467-G-H; 468-A-B]

B 1.2. Taking into consideration the facts, the Division  
Bench of the High Court rightly concluded that the action  
of the Corporation in forfeiting the amount deposited by  
the respondent was wholly arbitrary and unfair. The High  
C Court was justified in further concluding that in law the  
Corporation undoubtedly has the power to forfeit the  
earnest money provided there was a failure on the part  
of the respondent to make the deposit. The Division  
D Bench, however, observed that the respondent was  
dealing with an instrumentality of State, which would act  
fairly. He deposited the sum of Rs.2.5 lakhs on the clear  
understanding that there would be an independent  
approach road to the Unit. Without any independent  
passage the plot of land would be not more than an  
agricultural plot, not suitable for development as a  
manufacturing unit. [Para 16 and 17] [468-E-H; 469-A-C]

E 1.3. Clause 5 of the advertisement, undoubtedly,  
permits the forfeiture of the earnest money deposited.  
But this can only be, if the auction purchaser fails to  
comply with the conditions of sale. The respondent has  
not failed to comply with the conditions of sale. Rather,  
it is the Corporation which has acted unfairly. The  
F appellants, cannot be given the benefit of Clause 5 of the  
advertisement, and cannot be permitted to take advantage  
of their own wrong. [Para 18] [469-D-E]

G 1.4. In terms of ss.55(1)(a) and (b) of the Transfer of  
Property Act, 1882 it was incumbent upon the appellants/  
Corporation to disclose to the respondent about the non-  
existence of the independent passage to the Unit, and  
that the passage mentioned in the revenue record was  
not fit for movement of vehicles. The appellants failed to  
disclose to the respondent the material defect about the

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non-existence of the independent 3 'Karam' passage to the property. The appellant also failed to produce to the buyer the entire documentation as required by s.55(1)(b) of the Transfer of Property Act. Therefore, the appellants clearly acted in breach of ss.55(1)(a) and (b) of the Transfer of Property Act. In any event, the facts of the instant case clearly indicate that the respondent had made all necessary inquiries. It was the Corporation that failed to perform its obligations in giving a fair description of the property offered for sale. [Para 19-20 and 23] [469-E-G; 470-C-E; 471-F]

*U.T. Chandigarh Administration and Anr. Vs. Amarjeet Singh and Ors.* 2009 (4) SCR 541=(2009) 4 SCC 660, held inapplicable.

1.5. Section 29 of the State Financial Corporations Act, 1951 is not applicable in the instant case, as the said section pertains to action which the Corporation can take against the defaulting Unit. The respondent is an auction purchaser and therefore cannot be confused with the defaulting unit. [Para 21] [470-F-G]

*United Bank of India vs. Official Liquidator and Ors.* 1993 (3) Suppl. SCR 1 = (1994) 1 SCC 575, held inapplicable.

1.6. The forfeited amount be refunded to the respondent with 12 per cent interest w.e.f. 1.2.1998 till payment. In the event the amount is not paid within the stipulated period, the respondent shall be entitled to interest at the rate of 18 per cent per annum till payment. [Para 24] [472-B-C]

Case Law Reference :

1993 (3) Suppl. SCR 1 held inapplicable para 21

2009 (4) SCR 541 held inapplicable para 23

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 829 of 2003.

From the Judgment & Order dated 26.11.2001 of the High Court of Punjab & Haryana in Civil Writ Petition No. 5752 of 2001.

B Amit Dayal for the Appellants.

Vimal Chandra S. Dave for the Respondent.

The Judgment of the Court was delivered by

C **SURINDER SINGH NIJJAR, J.** 1. This appeal is directed against the Judgment and Order dated 26.11.2001 in C.W.P.5725/2001 of the High Court of Punjab and Haryana at Chandigarh.

D 2. The respondent had approached the High Court with a prayer that the order dated September 30, 1998 by which the Haryana Financial Corporation (hereinafter referred to as the appellants/Corporation), had forfeited, amount of Rs.2.5 lakhs, deposited by the respondent by way of earnest money, be quashed. The respondent had also prayed that the appellants  
E /Corporation be directed to refund the amount illegally forfeited along with interest.

3. Shorn of unnecessary details, we may notice here only the relevant facts.

F 4. On 8.1.1998, the appellants/Corporation issued an advertisement for sale of various units, including the land of M/  
s. Unique Oxygen Private Limited(hereinafter referred to as the defaulting unit), Old Hansi Road, Jind. On 28.1.1998 respondent initially made an offer of Rs.25,00,000/-, which was  
G subsequently during negotiations enhanced to Rs.50,00,000/- . On that very day the respondent deposited an amount of Rs.2.5 lakhs by way of earnest money. On 29.1.1998 the respondent wrote a letter to the Managing Director of the appellants/  
Corporation as follows:

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"RAJESH GUPTA 578, AUTO MOBILE MARKET HISAR A

Phone: 28221 – 3 Lines

Fax No.01662 – 31084

January 29, 1998

The Managing Director B  
Haryana Financial Corporation  
17, 18, 19 Sector 17-A  
Chandigarh 160017

Kind Attention: Sh.Raj Kumar Ji, M.D. C

Sub: Offer to purchase assets of Unique Oxygen Private Limited Jind.

Dear Sir,

With reference to your advertisement in D  
'ECONOMIC TIMES' dated 08.01.98, we are inclined to submit our bid for purchase of assets of the above mentioned company. With this purpose we visited the factory premises on 21.01.1998. On our visit, it was noticed that the premises do not have an independent appropriate passage from the road. On further inquiry from the concerned Branch office, the copy of site plan/ building plans were not available and we were told that the same are available at Head office only. Therefore you are requested to kindly apprise us in this matter so that we do not face any problems, if we acquire the unit as per your offer. E F

We hope to hear soon in this regard.

Thanking you, G

Yours faithfully

Sd/-

Rajesh Gupta"

No response was given by the appellants/Corporation to the H

A respondent. However by letter dated 19.2.1998 the appellants/ Corporation called the respondent for negotiations. These negotiations resulted in enhancement of the bid from Rs.25 lakhs to Rs.50 lakhs. Again in the letter dated 7.3.1998, the respondent stated as follows:

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"FAX NO.1072-70266 578, AUTO MOBILE  
MARKET HISAR  
Phone: 28221 (3 Lines)  
Fax No.01662 - 31084  
07-03-1998

C

The Managing Director  
Haryana Financial Corporation  
Chandigarh.

D Sub: Offer to purchase unit of Unique Oxygen Private Limited Jind

Dear Sir,

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With reference to the negotiation held on 6.3.98 at your Head Office for the sale of assets of said concern. We are the highest bidder and understand that our bid will be accepted. However, the matter regarding approved/ authorised passage for smooth functioning of the factory was discussed in the meeting and the unit holder, who was also present in the meeting confirmed that such passage exist, at the factory.

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In this regard, it is submitted that we have come to know that there is no approved/authorised passage to factory sufficient to pass a truck through it. The gate/ passage presently being used is unauthorized.

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In the light of above you are requested to kindly apprise us in this matter and supply us the copy of approved building plan, site plan for the building mortgaged

by H.F.C. so that we may not face any problem in future in running the unit. A

Kindly treat it as most urgent.

Thanking you,

Yours faithfully  
Sd/- Rajesh Gupta" B

5. It would appear that by letter dated 3.4.1998, the Branch manager brought the objection of the respondent to the notice of the head office of the appellants/Corporation. In response to this communication the Branch Manager was informed by the head office of the appellants/Corporation, by letter dated 7.4.1998 that clear cut passage/rasta has been provided to the unit as per documents submitted by the defaulting unit at the time of availing loan. Reference in this letter was also made to the Sale Deed, dated 8.9.1994, Mutation No.5172, Mutation No.9896, Search Report and sale deed, Rasta, wherein it is mentioned that there is an approach road to the factory site. The Branch Manager was directed to satisfy the respondent with the aforesaid documents. On 13.4.1998, the Branch Manager addressed a letter to the head office of the appellants/ Corporation clearly informing as follows: C  
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"However, the actual Rasta which is of 3 Karams and appeared in the papers particularly shown in the sale deed is not connected directly with the unit and to connect the Rasta with the Rasta of the revenue record party purchased some land where the movement of the vehicles is not possible at all." F

6. In fact the letter further pointed out as follows: G

"It is further stated that the area mentioned in the map approved by the M.C. is 1130 sq. yd. whereas the total area in the sale deed and is mortgaged to the Corporation is 1210 sq. yd. It is also not out of place to mention that the land on which the office building is constructed is also H

A not mortgaged to the Corporation and if that area is excluded the main gate of the factory will go behind from the existing place and then the unit will be stripped of independent Rasta.”

B 7. In spite of the aforesaid factual position, the appellants/  
Corporation issued the letter dated 18.5.1998 to the respondent  
advising him to deposit balance amount of 25 per cent of the  
bid amount within 15 days from the date of issue of the letter  
failing which the amount of the earnest money deposited would  
C be forfeited without further notice. The respondent, however,  
again raised the issue regarding the passage at the open  
house held by the appellants/Corporation at Hissar on  
12.6.1998. According to the appellants/ Corporation, as per the  
revenue record and the demarcation report of the revenue  
officials dated 27.6.1998, therein 16.5 ft. rasta is provided in  
D the west of the Unit. However, not satisfied, the respondent did  
not pay the balance amount. Therefore the appellants/  
Corporation invited fresh tenders for sale of land. On 30.9.1998  
the appellants/Corporation forfeited the sum of Rs.2.5 lakhs  
E which had been deposited by the respondent as earnest  
money.

8. It was this action of the appellants/Corporation that was challenged by the respondent by way of a Writ Petition in the Punjab and Haryana High Court.

F 9. The aforesaid writ petition has been allowed by the  
Division Bench. The order dated 30.9.1998 by which the  
earnest money had been forfeited has been quashed and set  
aside. A further direction has been issued to the appellants/  
Corporation to refund the amount along with interest at the rate  
G of 12 per cent per annum w.e.f. 1.2.1998 to the date of  
payment. The High Court also imposed costs on the appellants/  
Corporation assessed as Rs.5,000/-. Further directions were  
issued to release the amount to the respondent within two  
months from the receipt of a copy of the order of the High Court.

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It is this order which is challenged in the present appeal. A

10. We have heard the learned counsel for the parties at length.

11. Mr. Amit Dayal, learned counsel for the appellants / Corporation submits that the respondent accepted the plots on "as is where is basis". Therefore, the appellants/ Corporation cannot now permit the respondent to wriggle out of a confirmed bid, on the ground that there is no independent approach road to the Unit. Learned Counsel further submitted that it was for the respondent to make necessary enquiry with regard to the existence of the 3 Karams rasta, with the Revenue and other authorities. According to the learned counsel the entire documentation which had been provided at the time when the loan was sanctioned clearly indicated that there is a 3 Karams rasta leading from the road to the Unit. Learned counsel further pointed out that the respondent had visited the site on 21.1.1998. Therefore he would have known the exact situation of the "rasta". The respondent was aware of the exact nature of the land being purchased by him. In support of his submission learned counsel relies on Section 55 of The Transfer of Property Act, 1882. Learned counsel further submitted that the appellants /Corporation are entitled to forfeit the security amount in view of Clause 5 of the terms and conditions for the sale of property as contained in the advertisement dated 8.1.1998. Learned counsel also sought to justify the action of the appellants/Corporation by placing reliance on Section 29 of The State Financial Corporation Act, 1951. B  
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12. On the other hand, Mr. Vimal Chandra S. Dave, learned counsel for the respondent, submits that the judgment of the High Court is self-speaking and is not open to challenge on any of the grounds pleaded by the appellants. He submitted that the appellants cannot be permitted to take advantage of their own wrong. They have misled the respondent into making G  
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A a huge deposit for a plot of land which was not suitable. Without an independent passage the land could not have been used as a manufacturing unit. The appellants /Corporation ignored all the objections raised by the respondent with regard to the non-existence of the independent approach road.

B 13. We have considered the submissions made by the learned counsel. We have also perused the judgment of the Division Bench of the High Court.

C 14. Factually the appellants have accepted that on 28.1.1998 the respondent had in no uncertain terms informed the appellants/Corporation about the non-existence of the independent passage. No denial could possibly be made in the face of the letter dated 29.1.1998 which makes a reference to the visit of the respondent to the factory premises on 21.1.1998.

D There is a categorical assertion that premises do not have an independent appropriate passage from the road. When enquiries were made from the branch office, the respondent, was simply informed that copy of the site plan and building plan were not available, and would be available at the Head Office only. Thereafter, there is a studious silence from the appellants/ Corporation with regard to the aforesaid grievance made by the respondent. Again, on 7.3.1998 the respondent informed the appellants/Corporation as follows:

F "In this regard, it is submitted that we have come to know that there is no approved/authorised passage to factory sufficient to pass a truck through it. The gate/ passage presently being used is unauthorized.

G In the light of above you are requested to kindly apprise us in this matter and supply us the copy of approved building plan, site plan for the building mortgaged by H.F.C. so that we may not face any problem in future in running the unit."

H 15. It appears that the aforesaid request of the respondent

was also never specifically answered by the appellants/ Corporation. In view of the protests of the respondent, the issue was raised by the Branch Manager of the appellants / Corporation through letter dated 3.4.1998 addressed to the Head Office. The Branch Manager was informed by the Head Office, through letter dated 7.4.1998 that as per the documents submitted by the defaulting unit at the time of availing loan, clear cut passage/rasta has been provided to the concerned Unit. The letter dated 7.4.1998 reads as follows:

“Please refer to your letter No. HFC\BO\JD\98\7 dated 3.4.98 on the subject cited above.

In this connection, you are advised that clear cut Passage / Rasta has been provided to the concern as per documents submitted by the concern at the time of availing loan.

Enclosed herewith please find photocopy of the Sale Deed No.1494 dated 8.9.94 and photocopy of the Mutation No.5172, another Mutation No.9896 and Search Report and Sale Deed, Rasta, wherein it is clear cut mentioned that there is an approach road the factory site. So, you may please satisfy the Auction Purchaser with these documents and inform us the latest position of the case. It is also added here that you may make clear to the auction purchaser that the unit has been sold by the Corporation as and where basis.”

16. A perusal of the aforesaid letter makes it apparent that the appellants/Corporation were merely relying on the documents submitted by M/s. Unique Oxygen Private Limited, Old Hansi Road, Jind i.e., the defaulting unit. The appellants/ Corporation had been informed by the management of the defaulting unit at the time of availing of the loan facility that the Unit had the necessary independent approach road. The letter however does not indicate, that any independent inquiries were made by the appellants/ Corporation to verify the authenticity

A of the statements made by the management of the defaulting  
 unit which had availed of the loan, by mortgaging the assets of  
 the unit. The entire issue seems to be concluded against the  
 appellants/ Corporation by letter dated 30.4.1998, the relevant  
 parts of which have already been reproduced in the earlier part  
 B of this judgment. A perusal of the extracts, reproduced earlier,  
 would clearly show that the Branch Manager has informed the  
 head office in unequivocal language that the independent  
 passage shown in the sale deed is not connected directly with  
 the defaulting unit. It also indicates that the defaulting unit had  
 C merely purchased some land to connect the rasta with the  
 revenue record on which movement of the vehicle is not  
 possible at all. This land was not even mortgaged with the  
 appellants/Corporation. The letter also clearly states that by  
 exclusion of the aforesaid land the size of the plot would be  
 D reduced from 1210 sq. yards to 1130 sq. yards. That would  
 mean that the main gate of the factory would be out side the  
 land offered for sale. Taking into consideration the aforesaid  
 facts the Division Bench concluded as follows:

E "Taking the totality of circumstances into  
 consideration, we are satisfied that the petitioner was not  
 at fault. He was entitled to withhold the money as the  
 respondents had failed to provide a proper passage. Still  
 further, the factual position having been admitted in the  
 letter dated April 30, 1998, a copy of which is at Annexure  
 F P6, and nothing to the contrary having been produced on  
 the file, we find that the action of the respondent/  
 Corporation in forfeiting the amount deposited by the  
 petitioner was wholly arbitrary and unfair."

G 17. We see no reason to take any different view. We are  
 also of the opinion that the Division Bench was justified in  
 further concluding that in law the appellants/Corporation  
 undoubtedly has the power to forfeit the earnest money provided  
 there was a failure on the part of the respondent to make the  
 deposit. The Division Bench, however, observed that the  
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respondent was dealing with an instrumentality of state. He was entitled to legitimately proceed on the assumption that the appellants, a Statutory Corporation, an instrumentality of the State, shall act fairly. The respondent could not have suspected that he would be called upon to pay the amount of Rs.50 lakhs without being given even a proper passage to the Unit that he was buying. We are of considered opinion that the respondent had deposited the sum of Rs.2.5 lakhs on the clear understanding that there would be an independent approach road to the Unit. This is understandable. Without any independent passage the plot of land would be not more than an agricultural plot, not suitable for development as a manufacturing unit. We therefore don't find any substance in the submission made by the learned counsel for the appellants/ Corporation.

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18. In our opinion, the appellants cannot be given the benefit of Clause 5 of the advertisement. The appellants / Corporation cannot be permitted to take advantage of their own wrong. Clause 5 undoubtedly permits the forfeiture of the earnest money deposited. But this can only be, if the auction purchaser fails to comply with the conditions of sale. In our opinion the respondent has not failed to comply with the conditions of sale. Rather, it is the appellants/Corporation which has acted unfairly, and is trying to take advantage of its own wrong.

19. In view of the aforesaid, we are of the considered opinion that the appellants/Corporation cannot be permitted to rely upon Section 55 of The Transfer of Property Act, 1882. The appellants/Corporation failed to disclose to the respondent the material defect about the non-existence of the independent 3 'Karam' passage to the property. Therefore, the appellants/ Corporation clearly acted in breach of Section 55 (1) (a) and (b) of The Transfer of Property Act, 1882. The aforesaid Section provides as under:

- A (1) The seller is bound—
- B (a) to disclose to the buyer any material defect in the property [or in the seller's title thereto] of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;
  - C (b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;

C 20. A mere perusal of the aforesaid provision will show that it was incumbent upon the appellants/Corporation to disclose to the respondent about the non-existence of the independent passage to the Unit. It was also the duty of the appellants/ Corporation to inform the respondent that the passage mentioned in the revenue record was not fit for movement of vehicles. The appellant also failed to produce to the buyer the entire documentation as required by Section 51 (1) (b) of the aforesaid Section. We are therefore satisfied that the appellants/Corporation cannot seek to rely on the aforesaid provision of The Transfer of Property Act, 1882.

D 21. In our opinion, the reliance on Section 29 of the State Financial Corporations Act, 1951 is wholly misplaced. The aforesaid Section pertains to action which the Corporation can take against the Unit which had defaulted in payment of loan. In such circumstances the Corporation has the power to sell the property that has been hypothecated or mortgaged with the Corporation. Respondent herein is an auction purchaser and therefore cannot be confused with the defaulting unit. We are also of the considered opinion that the reliance placed on the judgment of this Court by the counsel for the appellants in the case of *Union Bank of India vs. Official Liquidator and Ors.* (1994) 1 SCC 575 is wholly misconceived. The aforesaid judgment relates to sale of the property and assets of a company in liquidation by the official liquidator under the orders

of the Court. Therefore it is observed that the official liquidator cannot and does not hold any guarantee or warranty in respect of the property sold. That is because the official liquidator proceeds on the basis of what the records of the company in liquidation show. Therefore it is for the intending purchaser to satisfy himself in all respects as to the title and encumbrances and so forth of the immovable property that he proposes to purchase. In those circumstances it is held that the purchaser cannot after having purchased the property on such terms then claim diminution in the price on the ground of defect in the title or description of the property. The judgment clearly goes on to further hold as follows:

“The case of the Official Liquidator selling the property of a company in liquidation under the orders of the Court is altogether different from the case of an individual selling immovable property belonging to himself.”

22. The aforesaid observation would be clearly applicable to the Corporation as it is exercising the rights of an owner in selling the property. The appellants/Corporation is not selling the property as an official liquidator.

23. In any event, the facts of this case as narrated above would clearly indicate that the respondent had made all necessary inquiries. It was the appellants/Corporation that failed to perform its obligations in giving a fair description of the property offered for sale. Learned counsel had also relied on another judgment in the case of *U.T. Chandigarh Administration and Anr. vs. Amarjeet Singh and Ors.* (2009) 4 SCC 660. In our opinion, the aforesaid judgment is wholly inapplicable to the facts and circumstances of this case as it relates to the duties of a developer who carries on activities of development of land and invites application for allotment of sites in a developed layout. In our opinion the aforesaid judgment is not applicable to the facts of this case. We see no merit in any of the submissions, or the grounds of appeal. The appeal is accordingly dismissed.

- A 24. It appears that the judgment of the High Court had been stayed by this Court on 2.9.2002. In view of the dismissal of the appeal, we direct that the forfeited amount be refunded to the respondent with 12 per cent interest w.e.f. 1.2.1998 till payment. The amount be paid to the respondent within a period
- B of two months of producing the certificate copy of this order. We also direct that in the event the aforesaid amount is not paid within the stipulated period the respondent shall be entitled to interest at the rate of 18 per cent per annum till payment. We also direct the respondent shall be entitled to costs which are
- C assessed as Rs.50,000/-.

R.P.

Appeal dismissed.