

(2019) 10 P&H CK 0110

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 18025 Of 2015

Bhupesh And Others

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 03-10-2019

Acts Referred:

Citation : (2019) 10 P&H CK 0110

Hon'ble Judges : Daya Chaudhary, J;Sudhir Mittal, J

Bench : Division Bench

Advocate : Jagdish Manchanda, Ankur Mittal, Abhay Gupta, Amar Vivek

Final Decision : Partly Allowed

Judgement

Daya Chaudhary, J

The petitioners are aggrieved by the action of respondent-authorities, whereby, they have been held liable to pay simple interest @ 15% per annum and penal interest @ 4% per annum to be calculated from the date of allotment till the date of depositing the same and also to pay extension fee.

The petitioners have also prayed for waiving off interest as basic amenities/facilities were not provided and interest cannot be imposed upon them.

Briefly, the facts of the case as made out in the present petition are that the petitioners were allotted plots in the year 2002. There were certain terms and conditions as mentioned in the allotment letters. As per condition No.4 of the allotment letter, the allottees were having two options in making payment i.e. (i) 25% of the amount at the time of issuance of allotment letter and remaining 75% within a period of 30 days of the allotment; (ii) 25% of the amount at the time of issuance of allotment letter and remaining 75% in six half yearly installments @ 15% interest. As per condition No.5 of the allotment letter, in case, the allottee failed to deposit the installments within the stipulated period, then penal interest @ 4% per annum was to be charged. As per condition No.14

of the allotment letter, the allottees were to construct the building as per the approved plan/design within a period of two years from the date of possession of plot, which could be extended further by the Chairman, Market Committee upto the maximum period of three years on payment of extension fee of Rs.10,000/-, Rs.15,000/- and Rs.20,000/- for first, second and third year of extension, respectively.

The petitioners opted to make payment as per condition No.4 of the allotment letter but the payments were not made as per schedule on the ground that basic amenities were not provided. Only petitioner No.1 paid full principal amount. The petitioners being aggrieved with the action of respondent-authorities have approached this Court for waiving off interest as claimed in orders (Annexures P-11 to P-15) on the ground that the Chief Administrator of Marketing Board vide letter dated 17.04.2001 had approved waiving off interest to the allottees of other Market Committee under the similar circumstances.

Learned counsel for the petitioner while arguing his case has also relied upon judgment rendered by the Division Bench of this Court in CWP No.18237 of 2001 titled as Rajesh Kumar vs. State of Haryana and others decided on 15.05.2002 and other instances whereby the amount of interest has been waived off on the ground that the basic amenities were not provided. Learned counsel also submits that the petitioners are entitled for waiving off the interest as construction was completed within a period of two years but basic amenities were not provided.

Learned State counsel has opposed the submissions made by learned counsel for the petitioners and submits that the petitioners cannot claim parity with those allottees, in whose case, the interest was waived off. The answering respondent provided all the basic amenities but it was only the petitioners, who failed to construct the shops within the stipulated period, due to which, they were held liable to pay interest as well as the extension fee. Learned State counsel further submits that the orders passed by the competent authority were legal and the present writ petition is liable to be dismissed as it was the fault of the petitioners in not making payment of installments. Learned State counsel has also submitted the details of providing amenities/facilities. At the end, learned State counsel submits that various opportunities were granted to the petitioners to deposit the defaulted amount with interest and penal interest as per terms and conditions of the allotment letter as they failed to raise construction within the prescribed period. The petitioners were also granted last opportunity to complete their construction on or before 31.03.2014.

Heard arguments of learned counsel for the parties. We have also perused the impugned orders as well as other documents available on the file.

The facts relating to allotment of plots and terms and conditions of the allotment letter are not disputed.

The question for consideration by this Court is as to whether the basis amenities/facilities were provided to the allottees within the period as mentioned in terms

and conditions of the allotment letters and also that in case, the amenities/facilities were not provided, the respondent-authorities can charge the interest from them.

As per case of the petitioners, basic amenities like water connection, electricity and sewerage line, approached road and infrastructures in New Anaj Mandi were not provided. Even the shops were constructed by the allottees by arranging water at their own expenses. A detailed representation was sent by the Vyapar Mandal Association, Hodal to provide basic facilities but still nothing was done. Thereafter, a legal notice was also sent. Even in spite of filing a number of writ petitions by the petitioners still amenities were not provided. There are many communications on record to show that the Chief Administrator directed the Executive Officer to find out whether the amenities were provided in the extended New Grain Market. In the letter written by the Executive Engineer, it was mentioned that sewerage line was not there and in absence thereof, there was no disposal of water. The Zonal Administrator, Gurgaon was also directed to visit the Grain Market and after visiting the spot to submit his report vide letter dated 16.03.2012 wherein it was mentioned that the work relating to water pipe line and sewerage pipe line was completed on 18.02.2012 and 25.01.2011, respectively. Thereafter, the Chief Administrator passed the order to charge the simple interest till availability of basic amenities. In the revision filed by the petitioners, there was direction not to charge the interest/penal/compound interest in absence of basic amenities.

Admittedly, the construction was to be raised within a period of two years from the date of allotment of plot, which was made in the year 2002. Some of the allottees completed the construction and applied for completion certificate and also for waiving off interest. The sewerage pipe line and water line were provided in the year 2011-12.

The Revisional Authority while passing order dated 23.05.2013 mentioned that the basic amenities were not provided to the petitioner, which clearly shows that upto passing of the order by the Revisional Authority, no document was there with the Appellate Authority/Revisional Authority to prove that the basic amenities were provided to the petitioners within a period of two years. A plea has been raised by learned counsel for the respondents that the petitioners did not complete their construction within a period of two years and they were liable to pay interest as well as extension fee.

It is a common knowledge that an allottee cannot enjoy his right over the property in absence of basic amenities. It is not possible that the full development of an area is done in a short period but it takes time.

It is clear from order dated 23.10.2012 passed by the Chief Administrator while relying upon notification dated 05.03.2002 that the possession could not be given till the basic amenities were provided. Under such circumstances and in absence of basic amenities, no construction fee can be charged. It was also

ordered that no extension fee would be charged from the petitioners as the construction had already been started before providing the basic amenities. The Revisional Authority has admitted that the basic amenities were not provided to the allottees but the order passed by the Appellate Authority has been modified only on the ground that construction was raised by the petitioners and penal interest @ 4% per annum has been imposed from the date of allotment till deposition of amount.

The Appellate Authority considered the report submitted by the Zonal Administrator along with Execution Engineer, Palwal and Secretary, Market Committee, Hodal, who visited the spot, wherein it was mentioned that the work relating to laying down of the water pipe line and sewerage pipe line was completed on 18.02.2012 and 25.01.2011, respectively. The appeal was disposed of with a direction to respondent-Market Committee to charge simple interest instead of compound interest till the availability of the basic amenities with further direction not to charge compound interest in view of terms and conditions of the allotment. It was also further directed not to charge extension fee as shops were already constructed. The Revisional Authority has not taken into consideration all these facts and passed the impugned order, which is contrary to facts and finding recorded by the Appellate Authority and the same deserves to be set-aside.

Moreover, the petitioners cannot say that they are not liable to pay the simple interest for delayed payments as per terms of allotment letters. It has also come on record that the construction was completed by the allottees in absence of basic amenities. It is also correct that for running the business properly, all basic amenities are required to be provided. The allotment was made on "As is where is" basis and the respondent-authorities promised to provide basic amenities in due course of time. It cannot be said that it was a condition precedent . It was not a condition of the auction or lease that the basic amenities would be provided initially, even before the payment of installments.

The judgments and instances relied upon by learned counsel for the petitioners are not applicable in the present case.

Accordingly, by considering all these factors, the present writ petition is partly allowed and impugned order dated 23.05.2013 (Annexure P-10) passed by the Revisional Authority is set-aside. However, order dated 23.10.2012 (Annexure P-9) passed by the Appellate Authority is upheld.