(2010) 03 P&H CK 0130

In the Punjab And Haryana At Chandigarh

Chopra Towers Pvt. Ltd. APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 15-03-2010

Acts Referred:

Citation : (2010) 03 P&H CK 0130

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.—The issue involved in the writ petition is the entitlement of the Haryana Urban Development Authority to claim interest for alleged delay in payment of the price of industrial plot allotted to the petitioner.

2. The petitioner had been allotted with a commercial plot on free-hold basis bearing SCF No. 64-65 at Sector 12, Faridabad for a price of Rs. 34,81,500/- by the proceedings of the Estate Officer on 05.09.1998. The petitioner admittedly had paid 25% of the price immediately as per the terms of allotment and the balance of Rs. 26,11,125/- had not been paid within 60 days from the date of issue of allotment or in eight half yearly installments, which option was also available to an allottee. The petitioner''s justification for non-payment of the amount within the time was that the petitioner had not been issued with an offer of possession and the liability for payment arose only for delayed payment after the offer of possession. According to the petitioner, possession was not offered and no development works had been done and order of resumption was purported to have been made on 11.07.1995 but it did not come into effect since the respondent themselves were aware that the necessary infrastructural developments had not taken place and they had not offered the property to the petitioner. The demand was made on 08.03.2002 for payment of Rs. 2.39 crores and odd for delay in payment with interest. This was challenged in successive tiers till the dispute was finally adjudicated by the Commissioner and Secretary to Government of Haryana, Town and Country Planning Department, the 2nd

respondent, finding that there had been no development work at all nor was possession of the site offered to the allottee. However, taking note of the fact that the petitioner had deposited a sum of Rs. 26.12 lacs, which was balance of price and taking further note of the fact that the petitioner had made an offer to make an update payment along with interest, he had directed a payment of interest @12% p.a. from the date of initial allotment. The 2nd respondent observed by his order dated 12.11.2007 that the offer of the petitioner to make an update payment was a fair one and the resumption order passed on 11.07.1995 was liable to be withdrawn. The petitioner had been granted a 60 days time to make the payment.

3. The petitioner appears to have filed an application for review of this order dated 12.11.2007 stating that possession of the site had been offered only on 18.01.2008 and the possession had been handed over to him only on 29.05.2008. He had also paid the entire amount as directed by the Authority-the 2nd respondent. The petitioner sought for review not on the ground that he did not make any such offer of payment but contended that in the original order of allotment, the liability to pay interest itself arose only from the date of offer of possession and since the possession had been offered only on 18.01.2008, the liability to interest did not arise.

4. The particular Clause 5 relating to liability of payment of balance of interest is reproduced as under:

The balance i.e. Rs. 26,11,125/- of the above price of the plot can be paid in lump-sum without interest within 60 days from the date of issue of allotment letter or in 8 half yearly installments. The first installment will fall due after the every of six months of the date of issue of this letter. Each installment would be recoverable together with interest on the balance price at 10% interest on the remaining amount. The interest shall, however, accrue from the date of offer of possession.

5. According to the learned Counsel for the petitioner, the direction contained in the order for payment of interest is against the terms of the contract of allotment and hence, it could not have been imposed on the petitioner.

6. Learned Counsel appearing for the respondent would contend that an order of resumption made in the year 1995 was being recalled only as a measure of concession to the petitioner to make the offer of payment of the entire balance and interest and having given such an undertaking, the petitioner was not entitled to resile from the same. Interpreting Clause 5, the learned Counsel would contend that the payment of balance of Rs. 26,11,125/- was unexceptional with reference to the period before when it was to be done. It ought to have been paid either within 60 days without interest or in eight half yearly installments if such option had been exercised. The payment of balance of principal had nothing to do with the offer of possession. Only as regards the payment of interest @10%, such liability would arise only after the offer of

possession is made. In this case, the petitioner was bound to have made the payment within either 60 days or within 8 half yearly installments. In both situations, the petitioner would not have been liable for any interest. If that amount itself had not been paid, for non-payment of such amount, the claim for interest @12% cannot be defeated. The 10% interest, which is stipulated in Clause 5 is over and above any claim for non-payment within the time. Learned Counsel also refers to a decision of this Hon''ble Court in Smt. Kanta Devi Budhiraja v. State of Haryana 2001(3) RCR (Civil) 276. The Hon''ble Division Bench was dealing with the similar case of default of payment of balance of purchase price and when the challenge to levy of interest was made, HUDA contended that the petitioner had himself offered to make the payment to stave off the attempts of HUDA to make resumption of the plot for non-payment. The Bench was considering an admitted default in the payment of price when the allottee expressed his willingness to deposit the whole amount with interest. The Court observed that an allottee, who had made the offer of payment of interest to make a favourable order could not later resile from the undertaking and the principle of estoppel would clearly govern the situation.

7. In my view, the contention in defence is well founded. It should be noticed that even at the time when a review application was filed, it was not the contention of the petitioner that he had not given an undertaking before him for payment of interest. On the other hand, he wanted to contend that he shall not be liable for interest as per a clause in the letter of allotment. At the time of his submissions, the petitioner definitely knew the existence of a clause. He had also been apprised of the fact that there was already an order of resumption, although he contended later that he did not receive the resumption order. The order of resumption however became meaningless in view of a letter issued subsequently demanding a payment of Rs. 2.39 crores and odd, which included the principal as well as interest. He was interested in securing possession of the property without any difficulty and actually took the possession of the property subsequent to the order passed by the 2nd respondent. Having made such an offer with eyes fully open to what the terms of allotment were, he is estopped from contending that he is not liable for payment of interest. Clause 5 is definitely not happily worded. The first portion of the Clause stipulates a date before when the balance of amount was to be paid. The second portion of the Clause adds a liability for payment of interest @10% on every installment and states that the interest shall accrue from the date of offer of possession. If 10% interest would arise only from the date of offer of possession, it could have been clearly stipulated that this will be in addition to any other demand of interest for non-payment of amount within 60 days or even eight half yearly installments. If any claim over and above this 10% interest could be as existing independently, by virtue of Clause 5 itself it could have come only through an express demand for non-payment of the same within the stipulated period. That demand was made on 08.03.2002 when a claim of Rs. 2.39 crores was being made. Such a claim would be tenable as an interest which is not specifically provided under a

contract but which occurs on a demand, in the manner provided under the Interest Act. The offer to make the payment of interest by the petitioner at the time when the order of cancellation of resumption was made on 12.11.2007 must, therefore, be understood only in the context of how the demand had been made on 08.03.2002 for interest. The only consideration shall be that the award of interest will have to be reasonable, which the Court is entitled to award on a due consideration of all other relevant facts. The demand of 10% interest on the remaining amount would arise only after the offer of possession. It is not in doubt that the payment had been made immediately after the possession was offered and property was subsequently delivered as per the orders of the 2nd respondent. However, the claim for additional interest independently @10% could arise only from 08.03.2002 till the date of actual payment on the principal amount of Rs. 26,11,125/-. I fix the rate of interest @12% from the date of demand viz., 08.03.2002 till the actual date of payment by the petitioner. Any other sum paid in excess by the petitioner shall be refunded to the petitioner with counter interest @12% from the date when the petitioner paid the amount after the order of 2nd respondent till the date of payment. The petitioner is entitled to make a calculation of the amount and make a demand on the respondent for refund of the same and the respondent shall refund the excess amount collected from the petitioner with counter interest as provided above.

8. The writ petition is, therefore, allowed on the above terms.

