
(2019) 10 P&H CK 0152

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 25115 Of 2016, 4531, 7533, 27888, 27123 Of 2017, 20965, 21062 Of 2018

Gurpreet Singh Bhullar And Others

APPELLANT

Vs

State Of Punjab And Others

RESPONDENT

Date of Decision : 17-10-2019

Acts Referred:

Citation : (2019) 10 P&H CK 0152

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

Bench : Division Bench

Advocate : Manish Kumar Singla, Shikha Singla, Khushpal Singh Dhonjo, Amarpreet Singh, R. S. Randhawa, L. K. Singla, Balwinder Singh, Sahil Sharma, Rupinder K. Khosla, Sarvesh Malik

Final Decision : Disposed Of

Judgement

Daya Chaudhary, J

By this judgment, all the seven writ petitions, detailed above, shall be disposed of as common question of law and facts are involved in these petitions. However, the facts are being extracted from CWP No.25115 of 2016.

Petitioners have approached this Court with the grievance that despite depositing requisite amount of 25% of the total value of the plots in dispute, possession has not been handed over to them within the specified period, whereas as per the condition of the brochure, the possession was to be handed over after depositing 25% of the allotment price. The draw of lots was held on 23.02.2016 and result thereof was uploaded upon the website on 25.02.2016. The successful applicants were to pay 25% of the allotment price of the plot i.e. 10% price as earnest money along with application and remaining 15% price along with 2% cancer cess within a period of 30 days from the date of issuance of letter of intent (LOI). Petitioners are stated to have deposited the requisite amount of 25% of the total price of plot + 2% cancer cess within the specified period but still possession was

not handed over to them. Petitioners had to file the writ petition before this Court and during pendency of the petition, the possession was handed over to them on 10.04.2018.

The prayer in the present petition is two fold i.e. for issuance of direction to respondents to give possession of the plots and not to charge any interest on remaining payment as there was delay on the part of the respondent-authorities in not handing over the possession of the plots.

At the very outset, learned counsel for the petitioners submits that the prayer qua handing over of possession of the plots has become infructuous as possession of the plots has been handed over to the petitioners during pendency of this petition on 10.04.2018.

Learned counsel for the petitioners further submits that no interest or penalty can be imposed upon the petitioners as possession was not handed over to them within the period as specified in the brochure. There was no fault on the part of the petitioners and there is no violation of the terms and conditions of the brochure. Learned counsel also submits that petitioners have already deposited 25% of the total price of the plots within the prescribed period and thereafter the remaining amount was to be paid in 6 equated half yearly instalments and delay has occurred due to fault of the respondent-authorities in not handing over the possession of the plots well in time. Learned counsel also submits that penal interest as well as penalty cannot be imposed upon the petitioners as basic amenities were not provided and no development activities were undertaken. At the end, learned counsel for the petitioners submits that the act and conduct of the respondents is not only illegal and arbitrary but against the principle of natural justice, fair play and equity. Petitioners have invested their hard earned money but the possession of the plots have not been handed over to them, which has resulted into not only loss of time but money also. In support of his arguments, learned counsel for the petitioners has relied upon judgment of this Court in case Shri Jaswant Singh and others Vs. State of Punjab and others CWP No.9989 of 2018 decided on 24.04.2018. Learned Senior Counsel for the respondent-PUDA has opposed the submissions made by learned counsel for the petitioners. He submits that as per the terms and conditions of the allotment letter, the possession was to be handed over to the allottees on completion of the development works at the site or 18 months from the date of issuance of allotment letter, whichever is earlier. The petitioners were issued allotment letters in the month of October, 2016 and possession was handed over to them within a period of 18 months from the date of issuance of the allotment letters. Learned Senior Counsel also submits that an affidavit was filed stating that major development activities had already been completed and the remaining would be completed shortly as is clear from order dated 13.03.2018 passed in the present petition. Learned Senior Counsel also submits that there is no condition in the brochure or in the allotment letter that the instalments were to be paid only on completion of the development activities. The plots were allotted to the

petitioners on "as is where is" basis and as per the condition mentioned in Para No. 6 (II) of the allotment letter, the authority was not responsible for levelling site or removing structures, if any, thereon. Petitioners themselves accepted the allotment of plots with these conditions and subsequently, grievance has been raised by them, which is not a part of the terms and conditions of the allotment. Learned Senior Counsel further submits that there was a specific schedule of payment of the amount as in case of non-payment of instalments by the due date, the allottees were liable to pay penalty on the amount due, due to delayed period. In case of delay upto 1 year, normal rate of interest + 3% per annum was to be paid; in case of delay upto 2 years, normal rate of interest + 4% per annum was to be paid and in case of delay upto 3 years or more, normal rate of interest + 5% per annum was to be paid.

Heard arguments of learned counsel for the parties. We have also perused the documents available on the file including the letters dated 02.09.2015 (Annexure P-10) as well as letter dated 15.02.2017 (Annexure P-11).

Facts of the case relating to the allotment of plots, handing over of possession thereof and terms and conditions as mentioned in the brochure are not disputed.

Petitioners were allotted plots on 10.10.2016 and possession thereof was handed over on 10.04.2018. As per the brochure, the possession of the plots was to be handed over to the allottees on depositing 25% of the total price of the plot, which had already been deposited by the petitioners by 24.05.2016. As per the schedule for payment of amount by the allottees, 10% of the total price of plot was to be deposited along with application. Thereafter, 15% of the total price of the plot along with 2% cancer cess was to be deposited within a period of 30 days from the date of issue of letter of intent. The total amount comes to 25% of the price of the plot. It is not disputed that 25% of the price was deposited well in time. As far as depositing of balance payment of 75% is concerned, it was to be deposited within a period of 60 days without any interest from the date of issuance of allotment letter or in 6 half yearly instalments along with an interest at the rate of 12% per annum. First instalment became due after one year from the date of issuance of allotment letter. In the present case, the date of allotment letter is 10.10.2016. Meaning thereby, the first instalment became due on completion of one year after date of allotment i.e. in the month of October, 2017. As per the payment schedule, in case instalment is not paid by the due date, the allottee is to pay penalty on the amount with interest for the delayed period i.e. in case of delay upto 1 year, normal rate of interest + 3% per annum; in case of delay upto 2 years, the normal rate of interest + 4% per annum and in case of delay upto 3 years or more, the normal rate of interest + 5% per annum.

Admittedly, the possession was handed over on 10.04.2018 and till the date of handing over the possession, the petitioners are not liable to pay any interest or penalty. As per instructions/letter dated 02.09.2015 (Annexure P-10), in case an undeveloped site is sold through auction and where possession cannot be handed over immediately, then no interest shall be charged from the allottee of

residential plots and booths sites during the period of development. In the present case, the site in dispute was not developed as has been admitted by the respondents in their affidavit as mentioned that 90% development activities were completed and the remaining were likely to be concluded. It can safely be said that all development activities were not completed and basic amenities were not available to the allottees.

Keeping in view the facts as mentioned above, the petitioners are liable to pay the interest on delayed payment of instalments only after handing over possession of plots in dispute i.e. 10.04.2018 and not prior to that, as per the schedule given in the brochure as well as letter dated 02.09.2015 (Annexure P-10).

Accordingly, the respondents are directed to calculate amount of interest as per the schedule on delayed payment by taking into consideration the date of handing over the possession i.e. 10.04.2018 and by considering the rate of interest as mentioned in the brochure as well as letter dated 02.09.2015 (Annexure P-10) within a period of one week from the date of receipt of certified copy of this order and convey it to the petitioners. In case the petitioners or their representatives are required to be associated at the time of the calculation or clarification, they be given opportunity. The petitioners are also directed to pay the amount as per calculation within a period of one week thereafter.

The present petitions stand disposed of accordingly.