

(2002) 03 P&H CK 0042
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4936 of 2001

Haryana Builders Limited

APPELLANT

Vs

The Haryana Urban Development Authority and Others

RESPONDENT

Date of Decision : 08-03-2002

Acts Referred:

Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978 — Regulation 5(5) , 5(6) , 5(7), 6(2)(3)(4)
Haryana Urban Development Authority Act, 1977 — Section 15, 17(4)

Citation : AIR 2003 P&H 48 : (2002) 3 RCR(Civil) 101

Hon'ble Judges : G.S. Singhvi, Acting C.J.;Jasbir Singh, J

Bench : Division Bench

Advocate : R.S. Mittal and Sudhir Mittal, for the Appellant; Raminder Gadhok, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—Whether an allottee of the land belonging to Haryana urban "Development Authority (for short, HUDA) can avoid payment of the price in accordance with the conditions of allotment read with Haryana Urban Development Authority Act, 1977 (hereinafter described as the Act) and Haryana Urban Development Authority (Disposal of Land and Buildings) Regulations, 1978 (for short, the Regulations) is the question which arises for determination in this petition filed by the petitioner for quashing notice Annexure P.13 dated 22.1.2001 Issued by the Estate Officer, HUDA, Gurgaon (respondent No. 4) and order Annexure P.17 dated 9.3.2001 passed by the Administration HUDA, Gurgaon (respondent No. 3).

2. For the purpose of deciding the above noted question, we may notice the relevant facts.

3. On the basis of highest bid given by its representative in the auction held in November, 1996, the petitioner was allotted SCO site No. 24, Sector 14, Gurgaon at a price of Rs. 1,25,15,000/-. This was subject to the terms and

conditions embodied in allotment letter Annexure P.1 dated 27.11.1996. After paying 25% of the price which included bid money of Rs. 13,00,000/-, the petitioner's representative took possession of the site on 31.12.1996 and constructed multi-storeyed building in a period of over 2 years. In the course of construction, certain deviations were made from the sanctioned building plan which were got compounded by the petitioner's representative by paying Rs. 3,50,733/- as compounding fee apart from Rs. 20,082/- which were paid as extension fee. However, no attempt was made to pay the instalments of price in accordance with Clause 2 read with Clause 5 of the conditions of allotment despite notice issued by respondent No. 4 u/s 17(1) of the Act and penalty of Rs. 1,53,687/- imposed vide order dated 24.8.2000 passed u/s 17(2) of the Act. (Copy of this order has not been placed on the record of the writ petition).

The petitioners failure to pay the instalments of price resulted in the initiation of proceedings for resumption of the site. Respondent No. 4 issued notice dated 13.9.2000 to the petitioner u/s 17(3) of the Act proposing resumption of the site and/or building and forfeiture of whole or part of the amount already paid. In response to the said notice, the Director of the petitioner submitted reply dated 22.9.2000 in which he acknowledged the receipt of order dated 24.8.2000 and expressed the desire to pay Rs. 93,86,250/- towards the total cost of the site subject to the condition that interest and penalty may be waived. He asserted that the development works including covering of nala in front of the site had not been undertaken and there were encroachments by residential dwellings bordering the rear service roads. After one month, he submitted representation dated 11.10.2000 in which he reiterated the request for waiver of penalty and interest but, at the same time, tendered two demand drafts of Rs. 9,00,000/- and Rs. 2,73,280.25 towards the payment of instalment of principal. This was followed by two more drafts dated 28.11.2000 representing a total amount of Rs. 11,73,741.25. thereafter, the Director of the petitioner submitted representation dated 19.12.2000 to the Commissioner and Secretary to Government, Town and Country Planning Department for waiver of interest and penalty. A similar communication was addressed to respondent No. 4. However, neither the Commissioner and Secretary to Government, Town and Country Planning Department nor respondent No. 4 responded to the request made on behalf of the petitioner and this can be treated as implied rejection thereof.

4. In the meanwhile, respondent No. 4 issued notices Annexures P.13 and P.14 dated 19.1.2001 u/s 17(4) of the Act for resumption of the site on account of nonpayment of Rs. 1,53,46,873/-. soon thereafter, he passed order dated 22.1.2001 for resumption of the site because the petitioner's representative failed to pay the amount specified in notices dated 19.1.2001. The appeal filed on behalf of the petitioner u/s 17(3) of the Act was dismissed by respondent No. 3 vide order dated 9.3.2001 by assigning the following reasons;

"I have heard both the parties and examined the record placed before me. From the perusal of the record, it reveals that the appellants committed the default in

making the payment of due instalments despite issue of notices u/s 17 of HUDA Act 1977. Allotment letter was issued on 27.11.1996. Possession of the site was also offered which was taken by the appellant on 31.12.96 and constructed the building on the site. As per condition No. 5 of the allotment letter, the appellant was required to deposit balance amount of Rs. 93,86,250/- in 8 half yearly instalments alongwith the interest. But the appellant did not deposit the due instalments so notice u/s 17(i) and (2) of HUDA Act, 1977 for Rs. 1,53,46,553/- alongwith interest was issued by the Estate Officer, HUDA, Gurgaon, vide memo No. 01834, dated 19.6.2000 at the correct address available in the file. But this notice was received back undelivered so the same got pasted on the building at site. Since the amount was not deposited, so the penalty amounting to Rs. 15,34,687/- was imposed vide letter No. 2235, dated 24.8.2000 with the directions to deposit the due amount alongwith penalty within 7 days. This letter was received undelivered in the office which was also pasted on the building at site. Thereafter, show cause notice u/s 17(3) on 13.9.2000 and notice u/s 17(4) for personal hearing vide No. 5001, dated 17.10.2000 were issued wherein the appellant was directed to appear before the Estate Officer, HUDA, Gurgaon, vide his letter No. 134, dated 19.1.2001, afforded final opportunity to the appellant for personal hearing to appear before him within 48 hours, but none appeared till 22.1.2001 upto 1.50 P.M. Therefore, the SCO No. 24, Sector 14, Gurgaon was resumed for non-payment of dues on 22.1.2001 by the Estate Officer, HUDA, Gurgaon and the orders were issued vide his officer memon No. 157 dated 24.1.2001. I have gone through the facts of the case on record and also heard the pleadings of the appellant carefully. It has been observed that as per Clause 5 of the allotment letter, the first instalment was due in May, 1997 and thereafter same were to be deposited after every six months but the appellant failed to do so, therefore, notices u/s 17 of HUDA Act, 1977 were issued and penalty of Rs. 15,34, 687A was imposed in due course. Before passing resumption orders, the Estate Officer has observed all the statutory provisions under HUDA Act, 1977. Moreover, the appellant has not come in appeal with clean hands. I have given a considered thought to the entire matter. The appellant is now ready to deposit the due amount alongwith interest. Hence, the resumption orders dated 24.1.2001 passed by the Estate Officer, HUDA Gurgaon is hereby set aside and the appellant is directed to deposit the entire due amount alongwith interest and penalty etc. within two months failing which resumption orders will come into force."

5. The petitioner has questioned the legality of orders dated 22.1.2001 and 9.3.2001 on the ground of violation of the rules of natural justice, arbitrary exercise of power and also on the ground that resumption of the site is ultra vires to the provisions of the Act and the Regulations. It has relied on the decision of the Division Bench in Smt. Kanta Devi Budhiraja v. State of Haryana and Ors. (2000) 125 PLR 698 and averred that the decision of the respondents to charge compound interest and penalty be declared as nullity because the provisions contained in the Act and the Regulations do not provide for levy of

compound interest etc. It has further averred that the respondents cannot levy interest of any kind because the development works had not been completed before handing over possession of the site.

6. The respondents have controverted the petitioner's plea about lack of development. In the written statement filed on behalf of the respondents, it has been averred that all the development works had been completed much before the offer of possession and the petitioner's plea of lack of development must be treated as an after-thought because no such objection was raised by its representative at the time of taking possession. According to them, service lane was very much in existence in front of all the sites including the one belonging to the petitioner and there could be on question of encroachment at the back of the site because there exists a pucca road on the rear side, The respondents have further averred that after having constructed the building without any hindrance or obstruction from any quarter, the petitioner is estopped from raising the plea of lack of development. They have justified resumption of the site by stating that the action was taken against the petitioner because of its persistent failure to pay the dues of instalments in accordance with the conditions of allotment.

7. Shri R.S.Mittal argued that the decision of the respondents to charge compound interest should be declared illegal because there is no provision in the Act and the Regulations for levy of compound interest on the delayed payment of instalments. He relied on the judgment of the Division Bench in Smt. Kanta Devi Budhiraja's case (supra) and submitted that in view of the dismissal of SLP by the Supreme Court, the view expressed by the High Court on the legality of the HUDA's decision to charge compound interest must be treated as final and binding on the respondents.

8. Learned counsel for the respondents candidly conceded that the SLP filed against the High Court's order in Kanta Devi Budhiraja's case (supra) has been dismissed by the Supreme Court, but she tried to justify the levy of compound interest by arguing that the petitioner had deliberately defaulted in the payment of instalments in accordance with the conditions of allotment.

9. We have considered the respective submissions and have gone through the judgment in Kanta Devi Budhiraja's case (supra). In our opinion, the levy of compound interest on the instalments of the balance price is liable to be declared as void because the Act and the Regulations do not provide for the same.

10. In Kanta Devi Budhiraja's case (supra), the Court referred to the two decisions in Ram Kishan Gulati v. State of Haryana and Ors. (2000)125 PLR 1119 and Aruna Luthra Vs. State of Haryana and Others, and upheld the decision of HUDA to charge 18% interest on the delayed payment of instalments of price but declared that in the absence of any statutory provision, the respondents cannot charge compound interest.

11. There is no dispute between the parties that the SLP filed by HUDA in Kanta Devi Budhiraja's case (supra) was dismissed by the Supreme Court. Therefore,

the order passed by the High Court will have be deemed to have become final. Consequently, the levy of compound interest on the amount due from the petitioner is liable to be declared illegal and quashed.

12. The second argument of Sh.Mittal is that the levy of penalty and interest on the delayed payment of instalments of the balance price should be declared illegal and quashed because the concerned authorities had not carried out development before handing over the possession of the site to the petitioner. He referred to the averments contained in the writ petition and the representations made by the petitioner's representative to respondent No. 4 and the Commissioner and Secretary to Government of Haryana, Town and Country Planning Department to substantiate his plea regarding lack of development. He then referred to the definition of amenity contained in Section 2(a) of the Act and argued that failure of the respondents to provide all the amenities at the site should be treated as sufficient to nullify the levy of penalty and interest. In support of this submission, Sh. Mittal relied on the decision of this Court *M/s Shanti Kunj Investment (Pvt.) Ltd. v. U.T. Administration, Chandigarh and Ors.* (2001)127 P.L.R. 838.

13. For the purpose of deciding whether the petitioner could have avoided payment of instalments of the price on the pretext of lack of development in the area, it will be useful to notice the relevant provisions of the Act and the Regulations. Section 15(1) of the Act empowers the HUDA to dispose of any land acquired by it or transferred to it by the State Government without undertaking or carrying out any development thereon or after undertaking or carrying out such development as it thinks fit. Section 15(4) provides that consideration money for any transfer under Sub-section (1) shall be paid to the authority in the manner to be provided by the Regulations. Section 15(5) contains a non-obstante clause. It declares that notwithstanding anything contained in any law, for the time being in force, any land or building or both, as the case maybe, shall continue to belong to the authority until the entire consideration money together with interest and other amount, if any, due to the authority, on account of sale of such land or building or both is paid. Regulation 3(a) of the Regulations lays down that the authority may dispose of any land belonging to it in the developed or an undeveloped form. Regulation 5 contains the procedure for sale or lease of land or building by allotment. Sub-clause (5), (6) and (7) of Regulation 5 lay down the mode of payment of the price and recovery thereof. Regulations 6(1) lays down that in the case of sale or lease by auction, the price/premium to be charged shall be such reserve price/premium as may be determined after taking into consideration various factors enumerated in Regulation 4(1), Clauses (2),(3) and (4) of Regulation 6 provide for the mode of payment of price in such cases. Regulation 7 lays down that the lease shall commence from the date of sale or auction, as the case may be and shall be for a period of 99 years with a provision for renewal. Regulation is provides for delivery of possession to the transferee or lessee as soon as the development works are completed in the area where the land is situated.

14. A conjoint reading of the provisions referred to hereinabove shows that HUDA can dispose of land without undertaking or carrying out any development or after undertaking or carrying out such development, as it thinks fit and the allottee is required to pay the price in accordance with the mode prescribed under Regulation 6(2), (3) and (4) read with Regulation 5(5) to (7). There is nothing in the Act and the Regulations from which it can be inferred that the allottee can avoid, refuse or delay the payment of price on the ground that all the amenities have not been provided at the site.

15. At this stage, we may also notice Clauses 2,4,5,6,15,16 and 21 of the conditions of allotment embodied in letter Annexure P. 1. The same read as under:

"2. Your bid for plot/building No. 24 in Sector 14, at Gurgaon has been accepted and the plot/building, as detailed below, has been allotted to you on freehold-basis as per the following terms and conditions and subject to the provisions of the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as the Act) and the rules/regulations applicable thereunder and as amended from time to time including terms and conditions as already announced at the time of auction and accepted by you.

Sector No.

Name of Urban Area

Plot/Building No.

Appr.dimension or description as notified at the time of auction.

Area in sq.mts.

Price of the plot/building

14.

Gurgaon

SCO Site 4 storey with basement No. 24.

9.15x36.58

334.70

Rs. 1,25,15,000

4. You are requested to remit Rs. 18,28,750/- in order to make the 25% price of the said plot/building within 30 days from the date of issue of this letter. The payment shall be made by a bank draft payable to the Estate Officer, Gurgaon and drawn on any scheduled Bank at Gurgaon. In case of failure to deposit the said amount, within the above specified period, the allotment shall be cancelled and the deposit of 10% bid money deposited at the time of bid shall stand forfeited to the Authority against which you shall have no claim for damages.

5. The balance amount i.e., Rs. 93,86,250/- 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 instalments. The first instalment will fall due after the expiry of six months of the date of issue of this letter. Each instalment would be recoverable together with interest on the balance price at 15% interest on the remaining amount. The interest shall, however, accrue from the date of offer of possession.

6. The possession of the site will be offered to you on completion of the development works in the area. In the case of building or undeveloped land, the possession shall, however, be delivered within 90 days from the date of this letter.

15. The authority will not be responsible for levelling the uneven sites.

16. You will have to complete the construction within two years of the date of offer of possession after getting the plans of the proposed building approved from the competent authority in accordance with the regulations governing the erection of building. This time limit is extenable by the Estate Officer if he is satisfied that non-construction of the building was due to reasons beyond your control, otherwise this plot is liable to be resumed and the whole or part of the money paid, if any in respect of it forfeited in accordance with the provision of the said Act. You shall not erect any building or make any alternation addition without prior permission of the Estate Officer. No fragmentation of any land or building shall be permitted.

21. All disputes and differences arising out of or in any way touching or concerning this allotment whatsoever shall be referred to the sole arbitration of the Chief Administrator or any other officer appointed by him. It will not raise an objection to such appointment that the arbitrator so appointed is a Government servant or an officer of the Authority that he had to deal with the matter to which this allotment relates and in the course of his duties as such government servant or offer as the case may be, he has expressed his views on all or any of the matters in disputes or difference. The decision of such arbitrator shall be final and binding on the concerned parties.

16. An analysis of the conditions embodied in allotment letter Annexure P.1 shows that the petitioner was required to pay 25% price within 30 days of the issue of allotment letter (Clause 4). The balance amount could be paid either within 60 days from the date of issue of the allotment letter without interest or in eight half yearly instalments with interest at the rate of 15% per annum. The first instalment was payable after expiry of 6 months of the date of issuance of the allotment letter. In terms of Clause 6, possession of the site was to be offered on completion of development works. By virtue of Clause 15, it was made clear to the allottee that HUDA will not be responsible for levelling the uneven sites. The petitioner was required to raise construction within 2 years in terms of Clause 16 of the allotment letter. The disputes of differences arising out of or in any way touching or concerning the allotment were to be decided by arbitration

(Clause 21).

17. If the facts of the case in hand are considered in the light of the above analysis of the relevant provisions and the conditions of allotment, we do not have any hesitation to hold that the petitioner's plea regarding lack of development and/or non-availability of amenities is nothing but an after-thought and deserves to be rejected as such. A recapitulation of the facts shows that at the time of auction, the petitioner's representative did not raise the issue of lack of development. Even at the time of taking possession, he did not make a mention about the lack of particular development or non-availability of particular amenity. The letter of possession (annexure P.2) is conspicuously silent about the non-development of the area or lack of amenities. Therefore, the plea raised by the petitioner for the first time in September, 2000, i.e., much after completion of the construction of building cannot but be treated as a ploy to delay the payment of instalments of price and cannot be accepted. If the area had not been developed, as claimed by the petitioner, it is difficult to comprehend as to how it could have constructed multi-storied building at the site. The petitioner has not explained this fallacy in his plea and, therefore, we have no hesitation to reject its grievance about the lack of development.

18. We are further of the view that the petitioner could not have delayed payment off instalments on the ground of non-availability of particular amenity at the site. Section 2(a) of the Act defines the term "amenity" in the following terms:

"2(a) "amenity" includes roads, water supply, street lighting, drainage, sewerage, public works, tourist spots, open spaces, parks, landscaping and play fields, and such other conveniences as the State Government may, by notification, specify to be an amenity for the purposes of this Act."

19. The petitioner has not averred that the amenities, like approach road, water, electricity, sewerage, drainage were not available at the site. In fact, any such plea would have been rejected because in the absence of such amenities, it was impossible for the petitioner to construct the building at the site. In view of the above, we do not find any justification to entertain the petitioner's plea that the site had not been developed at the time of delivery of possession and on that account, it was not liable to pay the balance price.

21. We may now refer to some of the judicial precedent on the subject including the judgment relied upon by Shri Mittal. In *Defender Singh Pannu and Ors. v. Chandigarh Administration and Ors.* C.W.P. No. 10937 of 1996 decided on 20.12.1996. In that case, a Division Bench dealt with a case arising under the Capital of Punjab (Development and Regulation) Act, 1952. The petitioner had challenged the resumption of the site and relied on some observations made by the Full Bench in *Shri Ram Puri Versus Chief Commissioner, Chandigarh and Ors.* (1982)84 PLR 388 (F.B.). After noticing the judgment of the Full Bench, the Court held as under:

"We respectfully agree with Sandhawalia, J., as he then was, that the power of resumption should not be resorted to lightly. However, we do not find anything in the above quoted observations which may support the case of the petitioner. Rather, we are of the view that the Court must take notice of a pernicious tendency which has grown over the years amongst the haves of the society to grab public property by hook or by crook. Those who get lease etc. of public property by allotment through draw of lots or auction have developed the habit of not paying their dues, The Court can legitimately take notice of huge difference between the rate of interest which one is required to pay under the Act of 1952 and the rules framed there under and similar statutes on the one hand and the interest which one gets on investment in the market on the other hand. People getting allotment of public land do not pay the instalments of lease, rent etc. with the hope that ultimately they will pay the dues along with some penalty and interest after many years and thereby make huge profits. Remedies of appeal and revise provide sufficient time cushion to multiply money but raise constructions over the allotted piece of land and earn substantial rental income. Thus, the gain of individuals is a direct loss to the public exchequer. In our considered opinion, the Estate Officer will be fully justified to exercise of power of resumption in cases of persistent default in the payment of instalment money etc. and the Courts will not readily interfere with the exercise of discretion by the competent authority in suchlike matters. Time has come when the Courts must not show any compassion towards those who want to enjoy public property without fulfilling their duty in terms of the conditions of allotment. Indulgence of the Court in such like matters will be contrary to public interest."

22. The question as to whether an allottee or transferee of a plot can withhold payment of balance price/premium was considered by a Division Bench in *Atma Parkash and Others Vs. Roshan Lal and Others*, . In that case, the Court interpreted the provisions of the Capital of Punjab (Development and Regulation) Act, 1952 and the rules framed thereunder, including the definition of the word "amenity" contained in Section 2(b) of that Act and rejected the plea similar to the one raised in this case. Paragraphs 6, 8 and 9 of that judgment, which have direct bearing on the decision of the present case, read as under:

"6. We have thoughtfully considered the respective submissions and, in our opinion, there is no merit in the argument of S/Shri M.L. Sarin, P.S. Patwalia and other learned counsel that possession of the sites cannot be treated to have been legally transferred until all the amenities are made available by the respondents because it is based on a wholly erroneous assumption that the respondents are obliged to auction fully developed sites. Section 3 of the Act and Rule 4 of the 1973 Rules do not speak of the transfer of the fully developed land/sites only. Thus, the statute does not cast duty on the respondents to undertake development so as to provide all the amenities specified in Section 2(b) of the Act before transferring the land/sites. We also do not find anything in the rules from which it can be inferred that the administration of Union Territory is under an implied obligation to auction fully developed sites. The auction notices and the

general terms and conditions, which were made known to the bidders at the time of auction did not postulate transfer of sites with all amenities. As a matter of fact, by virtue of Clause 12 of the general terms and conditions of auction and Clause 20 of the letter of allotment, it was made clear to the prospective lessees that the government does not own the responsibility for levelling the uneven sites. It is, thus, clear that the respondents did not invite bids for the sites by making representations to the public that fully developed sites will be auctioned. The petitioners have not disputed the factum of physical transfer of sites to them after the payment of 25% premium. The averments made in the writ petitions and the uncontested assertion made in the affidavits of the Assistant Estate Officer show that the petitioners have not only erected multi storeyed buildings on the sites but most of them have also leased out the same to third parties. Therefore, it is not possible to accept the argument of the learned counsel that possession of the sites cannot be treated to have been transferred to them.

8. We are also of the opinion that in view of the express provisions contained in Rule 6, the lease of the site will be deemed to have commenced from the date of auction and the petitioners were duty bound to pay the instalments of premium along with the amount of ground rent in terms of Rules 12 and 13 of the 1973 Rules and their failure to do so fully justified the initiation of proceedings under Rules 12 and 13 for recovery of the dues of instalments of premium and ground rent. The petitioners have not challenged the general terms and conditions of auction and the letter of allotment. Therefore, they are estopped from challenging the proceedings initiated by the respondents to recover the amount of premium and ground rent in accordance with Clauses 1 and 4 of the general terms and conditions and Clauses 4 and 5 of the letter of allotment.

9. The, argument of the learned counsel that the respondents are estopped from making recovery of the instalments of premium etc. because they have violated the terms and conditions of contract entered into with the petitioners by not providing the amenities is wholly untenable. At the cost of repetition, we deem it appropriate to observe that neither in the conditions of auction nor in the terms of allotment any indication was given to the petitioners that the respondents will be giving possession of the fully developed sites or that the availability of amenities like approach roads, street lights, parking places etc. would constitute a condition precedent for payment of instalments. Therefore, the petitioners cannot avoid their liability to pay the instalments of premium and ground rent. That apart, after having taken part in the auction with full knowledge of the terms and conditions notified by the respondents and having accepted the leases of the sites on the basis of terms and conditions incorporated in the letters of allotment without any protest, the petitioners will be deemed to have agreed to pay the amount of premium along with interest and ground rent in terms of Rules 12 and 13 of the 1973 Rules. In our considered opinion, the petitioners cannot seek intervention of the Court for getting themselves relieved of their obligation to pay the amount due to the respondents in accordance with the terms of contract."

23. The Court then took notice of the status of the amenities available at the sites and proceeded to observe as under:-

"Even a cursory look at the dates on which facilities like water, electricity, sewerage, storm water drainage, street lights, parking sites and pucca roads were made available shows that on their part, the respondents did take necessary steps to provide facilities much before the expiry of 3 years period stipulated in the letters of allotment for completion of construction of the buildings. Therefore, it is not possible to entertain the accusation levelled against the respondents that they have been lax in providing amenities at the sites and facilities to the buildings of the petitioners. It is rather surprising that some of the petitioners approached the Court within one year of the auction of sites and secured stay orders against the payment of instalments of premium and ground rent. Others followed the suit and got interim orders against the payment of dues. This must have put the respondents to a serious financial handicap in undertaking the remaining development activities. We also find it reasonable to accept the statement of Shri Aggarwal that the pucca roads constructed at the sites have been got damaged because of the on going construction activities in the area. Therefore, we are unable to agree with the learned counsel that the petitioners were justified in not making the payment of instalments of premium and ground rent in accordance with the contract entered into between the parties."

24. In *M/s Shanti Kunj Investment (Pvt.) Ltd. v. Chandigarh Administration* (supra), another Division Bench held that Chandigarh Administration is bound to provide basic amenities at the site and unless it is done, interest on instalments cannot be charged. A reading of that judgment shows that a bunch of seven writ petitions (C.W.P. Nos. 959, 960, 5874, 9481 of 1999, 1339 and 5009 of 1998 and 1049 of 2000) was decided by the Court. In C.W.P. No. 9481 of 1999, the petitioner and his brother gave a bid for a premium of Rs. 22,10,000/- in respect of godown site No. 291, Sector 26, Chandigarh in the auction held on 12.2.1989. After depositing 25% of the bid money, the letter of allotment was issued on 16.3.1989. The petitioner could not raise construction due to the fact that high voltage electric wires were passing over the site, sewerage system had not been laid, approach road had not been constructed and the site was being used by Jhuggi dwellers as open lavatory. The petitioner represented to the Estate Officer to provide facilities and remove unauthorised Jhuggis, but no action was taken. Instead, notice under Rule 12(3) of the Rules was issued for payment of first instalments with ground rent and interest and penalty of Rs. 46684/- was levied. The appeal filed by it against the order of the Estate Officer was partly allowed and the penalty was reduced to half. In the written statement filed on behalf of the respondents, it was averred that the building had already been constructed and occupied by the petitioner. However, it was acknowledged that there is no approach road or payment and Jhuggis are existing near the site in question. The respondents also alleged that Rs. 8,80,745/- were outstanding against the petitioner. In the replication, it was reiterated that sewerage line did not exist near the site. In

view of the replication, the respondents were directed to explain the factual position and to show cause as to why proceedings may not be initiated for filing an inaccurate affidavit. In pursuance of the Court's order, Shri S.P. Arora filed affidavit dated 21.11.2000 in which it was stated that sewerage connection was refused due to certain building violations and after removal thereof, sewerage connection was granted in August, 1995. In another case, the Municipal Corporation admitted that the parking, street light etc. had not been provided. In yet another case, it was stated that sewerage had not been laid.

25. The Division Bench referred to the definition of "amenity" contained in Section 2(b) of the Act and held as under:-

"On a cumulative consideration of the provisions of the rules etc., it is clear that the Administration is under a duty to provide the amenities as defined in Section 2(b) of the Act. The roads, water supply, street lighting, drainage, sewerage, public building, horticulture, land scaping and other public utility services are the amenities contemplated under the Statute. These are essential for an effective enjoyment of the property. These have to be provided.

Accordingly, the first question is answered in the affirmative. It is held that the Administration is under a duty to provide the amenities to the allottee of the site."

26. The Court further held that the Administration was under an obligation to remove encroachments, like Jhuggis or unauthorised occupants, like rehariwalas in and around the site.

27. The Division Bench then referred to the judgment of the Supreme Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, and held that the Administration cannot charge ground rent and interest. Paragraphs 40 and 41 of the judgment which contain conclusion recorded on this issue read as under:-

"This principle is fully attracted in the case of allotment of sites. The Administration insists upon the performance of duty by the allottee even when it has itself failed to carry out its own part of the obligation. In cases like the present one, where the Administration has failed to provide the amenities and/or to remove the encroachments for more than a decade, it would be unfair to allow it to claim that the allottee is bound to pay the ground rent as also the interest on account of the delay in paying the instalment of the premium and the amount fixed as ground rent. In our view, when the Administration fails to provide conditions where the enjoyment of property is possible and the allottee is not to blame in any manner whatsoever, its rights to recover the money in the form of ground rent and interest is not enforceable. Otherwise, the contract itself shall suffer from the criticism of being unconscionable.

Even the Administration appears to realise the real ethics of the issue. Vide letter No. 8435/M-777/G-V dated 16.6.1986, the Estate Officer had written to the Finance Secretary that:-

"The Co-op. House Building Societies to whom plots have been allotted have represented that payment be deferred till plots are developed. The civil amenities have not been provided at site by the Engineering Department. It is, therefore, requested that the payment of instalment of premium may be deferred without interest on late payment till the land is developed. It is worthwhile to mention that we do not charge ground rent and interest on instalment in cases where land is not developed and we cannot offer possession.

A copy forwarded to the Chief Engineer, Union Territory, Chandigarh. He is requested to develop plots."

A copy of this letter is on record as Mark "A". It is clear from the contents of the letter that the Administration does not charge interest and ground rent till the and is developed. Why should it treat the petitioners differently? we find no reason to justify its action.

Thus, even the third question is answered against the respondents."

28. In paragraph 61 of the judgment in M/s Shanti Kunj Investment Pvt. Ltd 's case (supra), the Division Bench did notice the judgment of Sukhpal Singh Kang's case (supra), but without examining the ratio thereof, held that the respondents cannot take advantage of the same. This is borne out from the following portion of the said para-graph:-

"Counsel for the respondents had referred to the decision of a Division Bench of this Court in Sukhpal Singh Kang and Others, Vs. Chandigarh Administration and Another, to contend that the petitioners are bound to make the payment. We have examined the judgment. A perusal thereof shows that relief was declined to the petitioners who had not only constructed the buildings but had even leased them out at substantial rates of rent. However, in the case where the amenities had not been fully provided, directions as contained in paragraph 27 were given. It was observed as under:-

"Before concluding, we deem it appropriate to take cognizance of one submission made by Shri Chahal that due to the special situation of sector 41 namely the absence of metaled approach road an the carrying on of illegal business activities by the habitants of the colony of Housing Board, the allottees in CWP No. 4655 of 1993 have been deprived of the opportunity to make use of the buildings constructed by them. We find some substance in his submission and deem it appropriate to observe that the petitioners may approach the competent authority for exempting it from payment of interest at higher rate in terms of Rule 12(3-A) of the 1973 rule by making appropriate application."

Thus, the respondents can derive no advantage from this decision."

29. In C.W.P. No. 13695 of 2001- D.L.G. Builders Pvt. Ltd, v. Advisor to the Administrator, Chandigarh Administration and Ors., decided on 18.2.2002, this Court again considered a similar issue. After referring to the two decisions, i.e., Sukhpal Singh Kang's cases (supra) and M/s Shanti Kung Investment (Pvt.) Ltd.

"s case (supra), the Court held as under:-

"In our opinion, the judgment in M/s Shanti Kunj Investment Pvt. Ltd."s case (supra) has to be read in the light of the peculiar facts brought before the Court and the same cannot be read as laying down the proposition that the allottee is not required to pay the instalments of premium with interests and ground rent in accordance with the terms and conditions of allotment and Rule 12 of the Rules till each and every amenity enumerated in Section 2 (a) is made available at the site. The obligation of the Administration to provide approach road, water supply, electricity, sewerage, storm water drainage can be read as implicit in the scheme of the act and the Rules, but it cannot be said that the allottee is entitled to withhold the payment of instalments on the ground of lack of particular amenity at the site. If the basic amenities, like water, electricity and approach road are not available at the site and on that account it is not possible to construct the building, the allottee can represent to the Administration that he may not be burdened with the liability of ground rent and may not be penalised for non-construction within the specified time. After completion of building, he can represent for waiver of ground rent in case facility of sewerage has not been provided. However, after taking possession of the site and constructing the building, he cannot avoid his obligation to pay the balance of the premium along with interest and ground rent in accordance with the conditions of allotment and the provisions of Rule 12 of the Rules on the pretext that land-scaping has not been done or pavement has not been tiled (as averred in the present case) or the particular public utility service has not been provided. In our considered view, the allottee is bound to pay the balance premium and other charges in accordance with the conditions of allotment. If the judgment of M/s Shanti Kunj Investment Pvt. Ltd (supra) is read as laying down a proposition that the allottee is not obliged to pay the balance of premium even after raising construction of the building and occupying it on the pretext that beautification of the site has not been done or land-scaping has not been provided or pavement of the tiles has not been done, extremely anomalous consequences would follow in-as-much as, the allottee would construct building and utilise the same by renting out or otherwise and thereby reap huge benefits, but would not pay a single penny towards balance of premium and ground rent etc. Therefore, while examining the complaint of the allottee about the lack of amenities, what the Court is required to consider is whether the basic amenities, like water, electricity, approach road, sewerage and drainage have been provided in the area so as to facilitate construction of the building within the specified time. If such amenities have been provided, the Court will not interdict in the matter and facilitate withholding of the balance of premium, ground rent etc. Rather, it would insist that all the dues of public money are paid by the allottee in accordance with the relevant rules/regulations and conditions of allotment.

We are further of the view that the ratio of the decision of Sukhpal Singh Kang"s Case (supra) is directly attracted in the present case because, as noted, above, the basic amenities, like approach road, water and electricity lines sewerage

system, storm water, drainage system, parking etc. had been provided in the area much before the auction of the site and street lights have also been commissioned in the year 2001. Water, electricity, sewerage connections were made available to the petitioner within shortest possible time after submission of the application and deposit of the requisite charges. Therefore, the petitioner cannot complain of lack of basic amenities and avoid its obligation to pay the instalments in accordance with Clause 5 of the conditions of allotment."

30. In view of the law laid down in the afore mentioned decisions and particularly in the case of M/s DIG Builders Pvt.Ltd (supra), we hold that the petitioner was not entitled to withhold payment of the balance price on the pretext of non-development of the area or lack of amenities.

31. No other point has been argued.

32. For the reasons mentioned above, the writ petition is dismissed subject to the conditions that the respondents cannot charge compound interest on the amount payable by the petitioner. They shall furnish fresh calculation to the petitioner so as to enable it to pay the amount due. The Chief Administrator, HUDA is directed to ensure that the revised calculation of the amount due from the petitioner by way of interest and penalty is served upon it within a period of two weeks from the date of receipt of copy of this order. The petitioner shall pay the amount within next six weeks. If the petitioner pays the total amount, then the order of resumption shall be treated as inoperative and ineffective, else the same shall get automatically revived. In that event, the concerned authority shall be entitled to recover possession of the site along with building.

33. We further direct that while making the calculation of the amount due from the petitioner, the concerned authority shall take into consideration the amount already deposited by it after allotment of the site.

34. Copy of the order be given dasti on payment of the fee prescribed for urgent applications.

Sd/- Jasbir Singh, J.