
(1996) 11 P&H CK 0108
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6320 of 1995

R.S. Builders (India) Pvt. Ltd.

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 07-11-1996

Acts Referred:

Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978 — Regulation 13

Haryana Urban Development Authority Act, 1977 — Section 15(2)

Citation : (1997) 116 PLR 67 : (1997) 2 RCR(Civil) 504

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : Sanjeev Bansal, for the Appellant; R.C. Setia and Sidarth Sarup, for the Respondent

Final Decision : Allowed

Judgement

V.K. Bali, J.—By this order, two connected writ petitions bearing Nos. 6320 and 6319 of 1995 are being disposed of as common questions of law and fact are involved in both these petitions. The facts have, however, been extracted from Civil Writ Petition 6320 of 1995.

2. Petitioners - M/s R.S. Builders (India) Pvt. Ltd. seeks writ in the nature of certiorari so as to quash impugned order dated December 22, 1994 passed by the Estate Officer imposing penalty as also the show cause notice issued to resume the site as also order dated April 17, 1995 passed by the Administrator exercising the powers of Appellate Authority vide which the appeal preferred by the petitioner was accepted only to a limited extent.

3. The Administrator, Haryana Urban Development Authority (for short HUDA) - respondent No. 2 herein issued an auction notice u/s 15(2) of the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as, the Act) and offered to auction various commercial sites at Faridabad in auction to be held on May 30, 1989 at 11 AM. It was stipulated in the auction notice that the

participants in the auction would pay 10% of the bid money at the fall of hammer whereas 15% of the amount shall have to be paid within 30 days from the date of allotment letter and balance 75% in lump sum without interest or in eight half yearly/annual equal instalments with 10% interest. Petitioner participated in the auction and gave highest bid for commercial site, S.C.O. No. 31 situated in Sector 16, Faridabad for Rs. 13,90,000/- . He paid 10% of the amount i.e. 39,000/- and Rs. 1,00,000/- on May 30, 1989 and May 31, 1989 respectively. Petitioner was issued allotment letter and confirmation of auction in which it was mentioned that the plot/site has been allotted to it on free hold basis and the possession of the same will be delivered on payment of 15% of the total amount within 30 days of the issue of allotment letter. It was mentioned in the allotment letter that the petitioner would pay balance amount of Rs. 10,28,250/- in eight half yearly/annual instalments at usual rate of interest i.e. 10%. It was further mentioned in the allotment letter that the petitioner would be entitled to take possession after payment of 25% of the auction money as also that interest on the instalments shall accrue from the date of offer of possession by the respondents. A copy of the allotment letter dated July 12, 1989 has been placed on records. At this stage, it shall be useful to extract Clauses 5 and 6, based upon which the contentions requiring adjudication by this Court, have been raised by learned counsel for the parties. The same read thus:-

"5. The balance amount i.e. Rs. 10,42,500/- of the above price of the plot/building can be paid in lumpsum without interest within 60 days from the date of issue of the allotment letter or in 8 half yearly instalments. The first instalment will fall due after the expiry of six month/ one year of the date of issue of the letter. Each instalment 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.

6. The possession of the plot/building may be taken immediately after making payment of balance 15% amount as demanded in para 4 above." After depositing an amount of Rs. 1,39,000/-, in the manner referred to above, petitioner further deposited the balance of 15% of the bid amount i.e. Rs. 2,08,500/- on August 11, 1989 vide receipt of the even date. It is the case of the petitioner that thereafter it made several requests to the respondents for delivering possession of the site in question but the respondents failed to deliver actual physical possession.

4. Regulation 13 of the Haryana Urban Development Authority (Disposal of plots) Regulations, which has also some relevance in determining the controversy in hand and which deals with delivery of possession, reads thus:-

"The possession of the land shall be delivered to the transferee or lessee as soon as the development works in the area where the land is situated are completed.

Provided that in case of sale/lease of undeveloped land/building, possession thereof shall be delivered within 90 days of the date of allotment."

As mentioned above, as per allotment letter dated July 12, 1989, petitioner was required to deposit the remaining amount in eight half yearly/annual instalments to the respondent-authority. In paragraph 7 the petitioner has detailed the payments made by it on various dates. It is the case of the petitioner that instalments were paid almost as mentioned in the allotment letter; even though while making some payments, there was delay of one to six months. All that is required to be mentioned here is that by July 6, 1993 an amount of Rs. 12,17,063/- had been deposited, thus, leaving balance amount that the petitioner was required to deposit to the tune of about Rs. 3,00,000/-. This remaining amount was deposited by the petitioner on April 11, 1994.

5. In as much as the petitioner had not deposited all the instalments within the stipulated period, he was issued a show-cause notice for payment of penalty and thereafter a show-cause notice for resumption of the site that has been allotted to the petitioner. The petitioner filed replies to both the show-cause notices and canvassed before the concerned authority that penalty of 10% as proposed in the show-cause notice in the facts and circumstances of the case was highly excessive in as much as the default on his part has been only of not depositing the instalments as per schedule and being late for a period of only one month to one year. The petitioner further canvassed before the concerned authority that there had been no development and the department was incapable to deliver possession as per Clause 5 of the allotment letter and therefore, there was no question for the department to ask for interest. It was further canvassed by it that in any case it has been demanding possession from the department by writing various letters which were put in a cold storage and the request made by the petitioner on that behalf fell on deaf ears. The Estate Officer vide his order dated 2-12-1994 imposed a penalty of 10% on the delayed instalments by calculating 10% interest. Aggrieved petitioner carried an appeal before the Administrator who vide impugned order (Annexure P-14) dated 17-4-1995 reduced the penalty from 10% to 2%. It required to be mentioned here that petitioner had filed written arguments taking all points but the Appellate Authority i.e. the Administrator dealt only the extent of penalty on delayed payments. The contention of the petitioner with regard to payment of interest on the instalments due was not even remotely discussed. It is these orders referred to above which have been challenged in the present writ.

6. Written statement opposing the cause of the petitioner has been filed. In so far as the basic facts are concerned, there is no dispute and therefore, the contents of the written statement in so far as these are relevant shall be noted later. Mr. Sanjiv Bansal, learned counsel appearing for the petitioner contends that there was no offer of possession as envisaged under Clause 5 of the allotment letter and therefore, till such an offer was made to the petitioner under the agreement arrived at between the parties as envisaged in Clause 5 itself, no interest can at all be charged on half yearly instalments mention whereof was made in the allotment letter. With a view to pre-empt the plea of the respondent that has been taken in the written statement that it is Clause 6 which is

applicable to the present case and not Clause 5, learned Counsel for the petitioner contends that if Clause 6 was to apply where an allottee has to make a request for possession of an allotted site, then the words, " The interest shall, however, accrue from the date of offer of possession," in Clause 5 would be wholly meaningless. In fact, there was no necessity at all to mention the words quoted above as there was no question of an allottee being offered the possession as per Clause 6 contends the learned Counsel. This Court after giving its thoughtful consideration to the contention of the learned Counsel, however, finds no substance in it the allotment letter has given details of the instalments both towards principal and interest and dates on which the said amount i.e. principal and interest is payable has also been mentioned. If payment of interest was contingent i.e. dependent upon an event i.e. delivery of possession, then there was no question of mentioning the instalments payable inclusive of interest. In that case the column interest ought to have been left blank. The matter does not rest there as there has to be distinction between a person who makes payment by way of a lumpsum and the one who makes payment by way of instalments. Concededly, no interest is chargeable from an allottee who makes lumpsum payment. If a person who was to make payment by way of instalments, no interest is chargeable, then it is quite natural to presume that no one would ever pay the money in lumpsum. Seen in this light if the contention of the learned Counsel with regard to some words in Clause 5 as superfluous is noted, it would be apparent that clauses 5 and 6 are applicable in different situations and this is how these clauses can be reconciled.

7. After going through the pleadings of the parties and after hearing the learned Counsel for the parties, this Court is of the view that Clause 5 with regard to offer of possession shall apply for an allottee who is making payments by way of instalments, if on the date of allotment the respondent-authority has not developed the area where site is located. It is not unknown that the allotting authorities sometime resort to allotment of undeveloped areas. It is in that situation only that they have to offer possession because it shall be known to an allottee as to when the development schemes should complete so that they may be able to construct the house or a commercial unit as the case may be. Where, however, the site offered for possession is capable of being put into construction, it is the allottee who has to ask for possession. That being the situation, the only question that needs determination is as to whether development had taken place on the date when petitioner was issued the allotment letter. Whereas it is the positive case of the petitioner that no development had taken place in the area and petitioner was prevented from constructing the building on the site allotted to it, it is so pleaded and argued by equal vehemence by the Counsel for respondent-authority that the development activities had taken place prior to when the allotment was made to the petitioner. In as much as the pleadings on an earlier occasion when the matter came before this Court were not specific the Court vide its order dated May 29, 1996, directed a responsible officer of the respondents, who may be of minimum rank of Superintending Engineer to file

affidavit giving details of the development activities carried out at the site. It was specifically mentioned that the Court would like to know as to on what date/dates basic amenities, like sewerage, approach roads, water supply and electricity were provided. The respondent-authority was also directed to keep records with regard to activities carried out at the site ready so that the same can be perused by the Court.

8. In pursuance of the order of the Court dated May 29, 1996, an additional affidavit of D.R. Mehta Superintending Engineer has been filed wherein it has been mentioned that approach road of 18 mtr. was completed before 1977 whereas parking in front of S.C.O. No. 30 & 31, Faridabad was completed by 30.4.1987. Work with regard to water supply was executed and completed by December 1987 against an agreement amount of Rs. 2.20 lacs. Despite the contents of the affidavit as has been noted above, the learned counsel for the petitioner contends that no development activity has taken place at the site even as on today. A Civil Misc. controverting the facts has been filed. This Court would, however, not like to go into this disputed question of fact. It cannot be expected that an officer of the rank of Superintending Engineer would state facts on affidavit which may be totally false. The first contention of the learned Counsel as has been noted above is, thus, rejected.

9. Even though petitioner has failed on his main plank it yet appears to this Court that he deserves the relief asked for on his alternative contention that assuming Clause 6 was applicable and the allottee i.e. petitioner herein had to make request for possession the said request having been repeatedly made in writing, the respondent-department has cold shouldered such letters by not giving any reply and not telling him to take possession by way of demarcation of plot, the petitioner should not be foisted with the burden of interest. It appears that the pleadings in the writ that repeated requests were made for delivering the possession are fortified by the documentary evidence and that such pleadings have gone totally un rebutted. A finding of fact has, thus, to be recorded that the petitioner made number of requests for delivery of possession of the site in question but the respondent-authority failed to do so. On the strength of the finding recorded above, this Court is of the view that respondent-authority is not entitled to charge interest from the petitioner either in law or on the basis of terms of allotment or in equity. Let us first see the pleadings on the point. In paragraph 7 of the writ petition it has been averred that after having paid the amount of 25% to the respondents within the stipulated period, the petitioner made several requests to the respondents for delivering the possession of the site for further necessary action. However, the respondents failed to deliver the actual physical possession to the petitioner. In corresponding para of the written statement it has been stated that physical possession of the plot was offered to the petitioner on 12th July, 1989 as per terms and conditions of the allotment letter Annexure P-1. It may be mentioned that what is being referred to by the respondent-authority in paragraph 7 is only contents of Clause 6 of the allotment letter and nothing else. In paragraph 12 of the petition it has been pleaded that

the petitioner had deposited the full amount of the auction money alongwith interest @ 10% on the instalments to the respondent-authority and yet the possession of the site was not delivered/offered. In fact the possession of the site has not been delivered to the petitioner till date by the respondent-authority despite the petitioner having paid the full amount as due to the respondents. In reply to this paragraph also the respondent-authority has relied upon the contents of the allotment letter itself. Again in paragraph 15 it has been mentioned that the petitioner further requested the respondents to hand over the possession of the said site. It has further been pleaded that it was mandated by Clause 5 of the allotment letter which forms the contract between the parties that interest shall accrue only after the delivery of possession/offer was given by the respondents. When the petitioner filed his appeal before the Administrator in that also he stated that there was neither any offer for giving possession nor physical possession was given. As mentioned above, this factual position was asserted in the written arguments that were filed by the Administrator i.e. Appellate Authority. The fact that the petitioner had asserted on various dates that possession should be handed over is also made out from letters Annexure P-1/A dated 15.12.1989, Annexure P-2 dated 23.1.1990 and Annexure P-6 dated 12.9.1994. Authenticity of these letters has not been questioned in the written statement filed on behalf of the respondent-authority. All these letters do manifest that the petitioner had been craving for possession. Concededly no reply to these letters was ever given which further strengthens the opinion of this Court no possession was given to the petitioner even though he demanded the same. Therefore, even if Clause 6 is to apply that it was a case where the development had taken place and the allottee was to make request for possession, the respondent-authority failed to deliver possession. It may be mentioned here that Mr. R.C. Setia, learned Counsel representing the respondent-authority in the context of letter Annexure P-1 only stated that it was a conditional letter asking for possession. Inasmuch as the petitioner had mentioned therein that he will take possession only if development activities had taken place. Be that as it may, the fact remains that no reply to these letters was given. Assuming it was the case of respondent-authority that development activities had already taken place, it was not difficult for it to have replied to the petitioner that he could come to take possession by demarcation on a particular date. Nothing like that was concededly done.

10. That apart, if it was a case where development activities had since already been carried out either before the time when allotment letter was issued to the petitioner, it is natural to presume that the allottee would have been anxious to get possession as only then he could put the site to any use. No citizen would like to keep the plot vacant unless he had in his mind an element of profiteering by further selling of the site allotted to him. There is no material on record to saddle the petitioner with the intention of reselling the plot on profit and, in fact, the plot has not been sold. It may be mentioned here that it is not possible for an allottee to take possession himself as concededly possession has to be given

by demarcating the plot by the authorities.

11. For the reasons recorded above, this petition is allowed. There is no need to set aside order Annexure P-14 as that envisaged imposition of penalty on the petitioner to the extent of 2% interest only for the reason that instalments were deposited by the petitioner beyond the stipulated period. However, the amount of penalty shall be worked out after the respondent-authority would be entitled to recover from petitioner interest on principal amount on account of delayed payments. However, while calculating the interest on delayed payment 10% interest would be excluded. It is the positive case of the petitioner that so far as possession has not been given to it. Mr. Setia stated that the petitioner can get possession of the site on any working Monday. The respondent-authority would intimate to the petitioner date and time that may be convenient to it on which the petitioner should come at site to take possession may be by way of demarcation or any other method which is prevalent.