**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 11467 of 2001

Date of Decision:-06.02.2015

Inderjeet Singh Grewal ...Petitioner

Versus

Chandigarh Administration and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Ashok Sehgal, Advocate, for the petitioner.

Mr. Vivek Chauhan, Advocate, for the respondents.

HEMANT GUPTA J. (ORAL)

The petitioner has invoked the writ jurisdiction of this Court for directing the respondents to refund the amount after deducting the amount in terms of the order dated 7.3.1995 (Annexure P-4) in respect of Quiet Office site No.3, Sector 40-B, Chandigarh passed by the Adviser to Administrator, Chandigarh Administration.

The petitioner was successful bidder in an auction for the purchase of Quiet Office site No.3, Sector 40-B, Chandigarh on a total price of Rs.28,50,000/- The letter of allotment was issued to the petitioner on deposit of 25% of the total allotment price i.e. Rs.7,13,125/- on 4.4.1990. The petitioner was required to deposit remaining 75% of the allotment price either in lump sum or in three years equated installments along with interest.

However, the petitioner could not deposit the amount of installments, leading to an order of cancellation of lease. An order of cancellation of lease was passed on 15.07.1992 forfeiting 10% of the premium of the site i.e. Rs.2,85,000/- plus ground rent and interest calculated up to the date of cancellation. The petitioner filed an appeal against the order of cancellation, which was dismissed, but in further revision, the learned Adviser to the Administrator, passed the following order:

> "This revision petition has been filed against the order of the Chief Administrator dated 13.9.1994 vide which order of the Estate Officer dated 15.7.1992 was upheld vide which site No.3, Sector 40-B, Chandigarh, which was allotted to the petitioners, was cancelled and forfeited 10% of the premium, ground rent and interest.
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> Today, this revision petition was placed before me in the Lok Adalat, Counsel of the petitioners requested that forfeited amount be reduced to 5%. In view of this compromise, I partly accepted this appeal and order that instead of 10% of the premium amount, 5% is forfeited to the State alongwith ground rent and interest.
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> Parties be communicated."

Since the petitioner had deposited a sum of Rs.7,13,125/- only, the petitioner sought refund of the remaining amount. But the respondents claimed an amount of Rs.2,45,371/- towards the non-payment of ground rent, interest and penal interest etc. as recoverable from the petitioner over and above the amount paid by the petitioner. Such calculations have been given along with the written statement as Annexure R-3.

Learned counsel for the petitioner has vehemently argued that in terms of the order of the Adviser, the amount of forfeiture is to the extent of 5% along with ground rent and interest. It is the said amount alone, which can be retained by the Administration, but the remaining amount is liable to be returned to the petitioner. Learned counsel for the petitioner also relies upon a Division Bench Judgment of this Court rendered in CWP No.1460 of 1999 titled '<u>Urmil Bansal Vs. Union Territory, Chandigarh & another</u>' decided on 12.02.2001 (Annexure P-10), wherein referring to Rule 12(3) of the Chandigarh Lease Hold of Sites and Buildings Rules, 1973, the amount of forfeiture to include the amount of penalty was set aside.

We have heard learned counsel for the parties and find that the claim of the petitioner merits acceptance partly. A perusal of the calculations given in reply as Annexure R-3 shows that the interest @ 7% has been claimed on the amount of 75% of the premium amount. In addition thereto, interest @ 15% per annum is claimed on account of non-payment of installments, but thereafter penalties have been imposed on the first and second installments amounting to Rs.1,77,100/-. Learned counsel for the petitioner has disputed the calculations *inter alia* on the ground that the interest @ 15% per annum and penalties cannot be claimed on account of non-payment of the installments.

We find that the amount of penalty imposed upon the petitioner alone cannot be claimed from the petitioner. The petitioner became liable to pay the whole of the amount of the premium when the letter of allotment was issued. However, there was an option to pay the balance 75% of the premium alongwith interest @ 7% in three equated installments. Such rate of interest is on account of deferred payment of 75% of the premium. In terms of the conditions in the letter of allotment, further interest @ 12% is payable in case the installment of premium and ground rent are not paid on due dates. Therefore, such rate of interest is on account of non-payment of installments. Similar levy of interest was examined by the Division Bench of this Court in LPA No.933 of 2009 titled as Haryana Urban Development Authority and another Vs. Vinod Mittal and others, decided on 16.10.2012. The relevant extract from the judgment reads as under:

> "42. The letter of allotment is based upon model letter of allotment as contained in the Regulations. In terms of Section 15(5) of the Act, the Authority continues to be the owner of the plot or building, until the entire consideration money together with interest and other amount, if any due to the Authority, is paid. The Regulation 5 of the Regulations framed in exercise of powers conferred under Section 54 of the Act, contemplates that the payment of the balance of the

price/premium shall be payable either in lump sum or in such number of annual or half yearly installments, as may be decided by the Authority (*see Regulation 5(6)*). Each installment of the remaining 75% of the sale consideration is recoverable together with interest on the balance price/premium at the rate as may be decided by the Authority at the time of allotment (*see Regulation 5(7)*). Such interest is charged for deferred payment of the balance sale consideration, which is evident from the fact that no interest is payable if whole of the balance price/premium is made in full, within sixty days of the offer of possession. The letter of allotment contemplates that if any installment or the additional price is not paid, the Estate Officer shall proceed to take action for imposition of penalty and resumption of plot in accordance with the provisions of Section 17 of the Act (*see condition No.10*). In the event of breach of any other condition of transfer, the Estate Officer may resume land in accordance with the provisions of Section 17 of the Act (*see condition No.11*).

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45. The rate of interest of 10% p.a. is the rate for deferred payment of the balance sale consideration. The rate at which the balance price or premium is payable is to be decided by the Authority at the time of allotment. Though Regulation 7A has been inserted on 29.11.2004, but even prior to insertion of such Regulation, the Authority could charge interest *dehors* any specific provision for claim of interest on delayed payment of the installments of the balance sale consideration.

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54. In view of the above, though in the letter of allotment, there was no clause for charging interest on delayed payment of the balance sale consideration, but the consequences of non-payment i.e. resumption of site, forfeiture of the amount paid and imposition of penalty are still available to the Authority. Therefore, it cannot be said as an established legal principle that the Authority is not competent to charge interest so as to ensure timely payment of the installments where payment of price/premium/sale consideration is deferred. There is always a public law element involved in ensuring return of public money deferred only for the convenience of the allottee to a future date to enable him to enjoy property in the present. Towards this end, that is, timely return of money but staggered at convenient fixed future dates of maturity by the

Authority itself is interest chargeable for non-payment of balance dues. The Authority acts as a custodian of public property and when it parts with ownership of land or building in favour of an allottee the public interest commands that it should be seen possessed of such inherent rights as to levy of interest as a sacred duty enjoined upon it for enforcement of return of public money. The levy of interest at 18% ought to be seen in the nature of a sanction against private dereliction traceable to the provisions of Sections 16, 17, 54 & 55 of the Act.

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61. In view of the discussion above, we hold that:

(i) xx xx xx xx

(ii) In the event of non-payment of installments along with interest thereon, the Authority is justified in charging interest as the rate of 18% p.a. Such interest is to ensure the timely payment of the installments and is aimed at mitigating the extreme hardship which may result from resort to the last measure of resumption of land or building. However, the rate of interest at the rate of 18% cannot be compounded, as there is no provision either in the Act or in the Regulations or in the Circular for compounding of such interest....."

In fact, the provisions of the Haryana Urban Development Act, 1997 takes colour and guidance from the provisions of the Capital of Punjab (Development and Regulation) Act, 1952 and the Rules framed thereunder. Both sets of Rules have pari materia provisions.

Therefore, the Administration can claim interest @ 7% being interest on deferred payments; interest @ 12% for delay in deposit of the amount of installments and ground rent payable alongwith interest in terms of the order passed by the Adviser and in terms of the Rule 12(3) of the Rules as interpreted by this Court in Urmil Bansal's case (supra), which stipulates that penalty cannot be imposed in addition to forfeiture.

Consequently, we dispose of the present writ petition with a direction to the respondents to re-calculate the amount due and payable by deleting the amount of penalties imposed on the first & second installments.

The respondents shall re-calculate the amount of refund, if any, due to the petitioner within a period of three months.

(HEMANT GUPTA)
JUDGE

February 06, 2015
Vijay Asija/Vimal

(HARI PAL VERMA)
JUDGE