

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

Date of Decision:-27.01.2015

1. CWP No. 17226 of 2000

Prem Grover and another

...Petitioners

Versus

Union Territory, Chandigarh and another

...Respondents

2. CWP No. 17227 of 2000

Sunit Gulati

...Petitioner

Versus

Union Territory, Chandigarh and another

...Respondents

3. CWP No. 17228 of 2000

Des Raj Real Estate Pvt. Ltd.

...Petitioner

Versus

Union Territory, Chandigarh and another

...Respondents

4. CWP No. 17229 of 2000

Smt. Rekha Goel and another

...Petitioners

Versus

Union Territory, Chandigarh and another

...Respondents

5. CWP No. 17230 of 2000

Sukhpal Singh and another

...Petitioners

Versus

Union Territory, Chandigarh and another

...Respondents

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

Present:- Mr. Rajiv Kataria, Advocate
for the petitioners.

Mr. Sanjiv Ghai, Advocate
for the respondents.

HEMANT GUPTA J.(Oral)

This order shall dispose of all the aforesaid five writ petitions based on identical facts raising similar questions of law.

The petitioners are the purchasers of a godown sites in Grain Market, Chandigarh in an auction on 5.3.1999. The petitioners were the highest bidders of the site measuring 110 square yards. The initial payment was paid at the time of auction and the balance 75% was to be paid in three annual installments. A letter of allotment to this effect was issued on 17.5.1999.

The petitioners did not make the payment of the balance 75% for the reason that the administration has failed to provide amenities and also to remove the jhugies dwellers from the neighbourhood of the site in question. The jhugies were removed from the site in question but the jhugies from rest of the area were not removed, which created problem in parking and effective use of the area purchased by the petitioners. It is also pleaded by the petitioners that they have completed the construction of the building and sought Completion Certificate. Since the amenities were not provided for effective use of the site purchased by the petitioner, therefore, the respondents are not entitled to claim interest, penalty and ground rent for the period complete amenities are not provided.

The issue regarding providing of basic amenities so as to defer the payment of ground rent, interest and penalty has been examined

by the Supreme Court in a judgment reported as ***U.T. Chandigarh Administration and another vs. Amarjeet Singh and others*** 2009(4)

SCC 660. It has been held that:-

“ XXX XXX

14. Where there is a public auction without assuring any specific or particular amenities, and the prospective purchaser/lessee participates in the auction after having an opportunity of examining the site, the bid in the auction is made keeping in view the existing situation, position and condition of the site. If all amenities are available, he would offer a higher amount. If there are no amenities, or if the site suffers from any disadvantages, he would offer a lesser amount, or may not participate in the auction. Once with open eyes, a person participates in an auction, he cannot thereafter be heard to say that he would not pay the balance of the price/premium or the stipulated interest on the delayed payment, or the ground rent, on the ground that the site suffers from certain disadvantages or on the ground that amenities are not provided. With reference to a public auction of existing sites (as contrasted from sites to be ‘formed’), the purchaser/lessee is not a consumer, the owner is not a ‘trader’ or ‘service provider’ and the grievance does not relate to any matter in regard which a complaint can be filed. Therefore, any grievance by the purchaser/lessee will not give rise to a complaint or consumer dispute and the fora under the Act will not have jurisdiction to entertain or decide any complaint by the auction purchaser/lessee against the owner holding the auction of sites.

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18.3 The decision of the High Court in Shantkunj Investments was challenged by the Chandigarh Administration and Municipal Corporation of Chandigarh. The decision in DLG Builders was challenged by the allottees. They were disposed of by this Court by a common judgment reported in Municipal

Corporation, Chandigarh v. Shantikunj Investments Pvt. Ltd., 2006 (4) SCC 109. This Court noted that the conflict between the two decisions of the High court were in regard to the question whether providing of amenities as defined in Section 2(b) of the Development Act was a condition precedent for payment of installments and charging interest. After examining the provisions of the Act and the relevant rules, this Court rejected the contentions of the lessees and held that the High Court's view in Shantikunj could not be sustained.

Therefore, it is evident that a lessees/successful bidder cannot seek rescheduling of the installments of premium or postponement of accrual of the interest payable as per rules.”

Following the said judgment, a Division Bench of this Court dismissed the writ petition in respect of purchasers of site in Sector 41-D, Chandigarh by order dated 13.2.2013 in CWP No.15768 of 2001.

In view of the aforesaid decision, we find that the petitioners cannot be granted any benefit of deferment of ground rent, interest and penalty. The relief to that extent stands declined.

The petitioners have also claimed that the first and second floor of the building should be permitted to be used for commercial purpose. Learned counsel for the respondents states that such request has been declined by the Administration on 20.5.2010.

We find that the request that the first and the second floors should be permitted to be used for the commercial purpose or that the godown sites can be used for other purposes, is required to be examined by the Administration in the light of the judgment of this Court reported as Sham Lal Sharma v. Union of India, 2012(2) RCR (Civil) 4. In the said case, the amendments in the Chandigarh (Sales of Sites and Building) Rules, 1960 were examined to return a finding that the trades mentioned in

Schedule-II, Category (B) alone required permission, whereas all other uses are permissible in the commercial sites.

Thus, the present writ petitions are disposed of with liberty to the petitioners to submit a representation within one month for permitting the construction on the first and second floors and the use thereof in the light of the amended Rules. If such representation is submitted, the same shall be decided by the Administration within a period of six months, in accordance with law.

(HEMANT GUPTA)
JUDGE

January 27, 2015
Vijay Asija

(HARI PAL VERMA)
JUDGE