IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 13130 of 2015
Date of Decision: 29.09.2015

Gautam Munjal ..Petitioner

Versus

Union Territory, Chandigarh and another ..Respondents

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

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

Present : Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Amandeep Chhabra, Advocate, for the petitioner.

Mr. Indresh Goel, Advocate, for the respondents.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

The petitioner has sought a writ of mandamus directing the respondents to include his name in the draw of lots. The draw of lots was to be held on 04.07.2015 under category-A for General Self Financing Housing Scheme-2008 of Sector 63, Chandigarh after acceptance of interest according to an acceptance-cum-demand letter dated 01.12.2011.

2. The letter dated 01.12.2011 informed the petitioner that he had been registered for the allotment of a three bed room flat on the 5th floor of the building under the 'general category' of Sub Scheme "A" on lease hold basis as a result of draw of lots held on 07.04.2010. Under Clause-3, an amount of ₹ 5,93,618/- was to be paid within 30 days and an amount of ₹ 11,10,391/- each were to be paid within 180 days, 360 days and 540 days respectively, from the date of the letter. At the time of handing over the

possession, 100% of the price was to be paid less the price already paid. Clauses 4, 5 and 8 of the letter dated 01.12.2011 read as under:-

> "4. The above said amount alongwith interest, if any, for the delay, to be calculated as prescribed under the scheme, should be deposited with Axis Bank Ltd. Chandigarh on the pay-in-slip available with the said bank. The amount may be deposited either in cash or by means of Account Payee Demand Draft drawn in favour of "Chandigarh Housing Board, Chandigarh" payable at any scheduled Bank at Chandigarh. In case, the amount is deposited through a Demand Draft, **the credit will be allowed from the date of its realization.** You should, therefore, in your own interest deposit the demand draft with the above said Bank well in advance, i.e. at least 3 working days before the due date so as to ensure that the amount is credited to the Board's account before the due date of payment. NO PAYMENT WILL BE ACCEPTED BY CHEQUE OR AT THE RECEPTION COUNTER OF THE BOARD IN CASE THE PAYMENT IS REMITTED TO THE BOARD THROUGH POST OR OTHERWISE AND RECEIVED/ACCEPTED BY IT INADVERTENTLY YOU SHALL DO SO AT YOUR OWN RISK AND SHALL BE LIABLE TO PAY INTEREST FOR THE DELAY, IF ANY, UPTO THE DATE OF ITS CREDIT IN THE PRESCRIBED BANK ACCOUNT OF THE BOARD.
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> 5. **In case, payment of registration mo0ney, or the subsequent installments is not made by the due date of the payment mentioned above, the applicant shall pay interest @ 18% p.a. for the first month, @ 21% for the second month and 24% p.a. for the third month. <u>No extension will be allowed beyond 3 months and the registration shall be liable to be cancelled. However, the Chairman, CHB, may allow extension beyond 3 months, or the revival of registration, if the same has been cancelled</u>, as the case may be, in case(s) of exceptional circumstances, on written request subject to payment of interest @ 30% p.a. beyond the period of 3 months.**
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> **6.** **............**
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> **7.** **.............**

> 8. The schedule of payment shall be strictly adhered to THE INSTALLMENT SHOULD BE DEPOSITED IN FULL ALONGWITH INTEREST AT THE PRESCRIBED RATE, IF ANY, DUE ON ACCOUNT OF DELAYED PAYMENT. No separate letter will be issued for any of the installments to be paid by the allottee. It will not be obligatory on the part of the Board to issue 'Reminder' for making the payment on the due date, as already specified in the schedule of payment mentioned above."

3. The petitioner paid the first installment after a delay of two months. The second installment was paid on time. The respondents contended that there was a delay of 30 months in the payment of the third installment. The shortfall was, however, of only about ₹ 70,000/-. A sum of ₹ 10,42,496/- had been paid on 27.12.2012 which was not taken into account by the respondents. There was, therefore, hardly any shortfall. According to the respondents, the last installment was paid after a delay of 24 months. The respondents contend that an amount of ₹ 7,66,247.84 is still due and payable. The petitioner contends that as on date he has paid the full amount alongwith interest @30% per annum. He in any event agrees and undertakes to pay the shortfall, if any, alongwith interest @ 30% per annum.

4. Admittedly, the respondents have accepted the amounts paid by the petitioner from time to time. The amounts as mentioned were paid with interest @ 30% per annum. The amounts were not accepted without prejudice to the respondents' rights and contentions. There is no bar to the respondents condoning the delay and accepting the amount. The only stipulation is that if the delay is more than three months, interest @ 30% per annum would be payable. This is clear from clauses 4, 5 and 8 mentioned earlier. The clauses clearly contemplate an extension of time in fit cases. A shortfall of ₹ 70000/- out of total demand of over ₹ 11,00,000/- cannot be

said to be a deliberate and conscious attempt to refuse the payment. Accordingly, this is a fit case where the discretion ought to be exercised by permitting the petitioner to pay the balance, if any, with interest @ 30% per annum.

5. Vide interim order dated 03.07.2015, the previous Division Bench recorded that the petitioner was successful in the draw of lots. The Division Bench directed the name of the petitioner to be included provisionally in the draw of lots for allotment. The Division Bench also directed the result of the draw of lots qua the petitioner which was scheduled for 04.07.2015 to be produced in Court in a sealed cover. We have been informed that the petitioner has succeeded.

6. In the circumstances, the writ petition is disposed of with the direction that the petitioner shall be entitled to allotment subject to his paying the amount, if any, demanded by the respondents, after calculating the balance amount due together with interest thereon at the rate of 30% per annum from the date the amount was due till the payment and/or realization thereof.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

29.09.2015

'ravinder'

(TEJINDER SINGH DHINDSA)
JUDGE