

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

**RSA-2248-1988(O&M)**

Date of decision:-23.12.2016

Chintpurni Durga Films LLP

...Appellant

Versus

Haryana Urban Development Authority and anr.

...Respondents

**CORAM: HON'BLE MR.JUSTICE GURMIT RAM**

**Argued by:** Mr. Ashish Aggarwal, Senior Advocate with  
Mr.Govind Chauhan, Advocate  
for the appellant.

Mr. Deepak Sabharwal, Advocate  
for the respondents.

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**GURMIT RAM, J.**

This regular second appeal is preferred by aforementioned appellant, who was plaintiff before the learned trial Court against the judgment and decree dated 13.6.1988 passed by the Court of learned Additional District Judge, Hisar vide which Civil Appeal No.36 of 1986 of the plaintiff and Cross-objection No.63-CA of 1986 of defendants filed against the judgment and decree dated 2.5.1986 passed by the learned trial Court, Hisar were dismissed.

2. The case of the plaintiff before the learned trial Court, in brief, was that Sh.Rajender Pershad Goel, Sh. Shyam Sunder and Smt.Chander Kala had purchased a cinema plot at Hisar through bid on 24.6.1984 (1983) in auction

conducted by the defendants which was advertised in newspaper 'Indian Express' dated 19.6.1983. In this advertisement, it was clearly stated that the development shall be made by the defendants. The plaintiff deposited 10% of the total amount at the time of auction vide receipt dated 24.6.1984 (1983) and 15% amount was deposited by them within one month after the acceptance of bid which was accepted on 24.6.1983, vide a receipt. Then aforesaid Shyam Sunder etc. formed a private limited company namely "Chintpurni Durga Films Pvt. Ltd." and requested defendant No.2 to transfer said cinema plot in the name of plaintiff-company. Demand of Rs.4,30,909.10 paisa as annual installment on account of cost of plot vide letter dated 23.7.1984 by defendant No.2 was alleged to be premature since the defendants did not carry out its own obligation of development of plot in question before raising this demand. But anyhow plaintiff deposited this annual installment along with interest on 1.8.1984 vide cheque dated 20.7.1984 under protest and the said cheque was duly honoured.

Reference was also made to the provisions of Section 2(G) of Haryana Urban Development Authority Act No.13 of 1977 ("HUDA Act, 1977 in short"). It was also the plea of the plaintiff that according to the rules known as Punjab, Urban Estate (Sale of Sites), Haryana Rules, 1976, the charge of interest by the defendants accrued only after the development works were completed at the site. In this regard, it was also pleaded that this development work was not completed by the defendants. There was no electricity, street light, telephone lines and pavement as advertised in the newspaper. Sewerage line was also even stated to be defective one. The defendants issued a letter No.6751 dated 30.8.1983 to the plaintiff that possession of the plot could be

obtained by visiting the office of defendants personally. Shyam Sunder, Director of the plaintiff - company, accordingly attended the office of defendant No.2 and signed on the paper possession certificate on 30.9.1983 as a symbolic possession. Actual possession of the cinema site in dispute was never delivered to the plaintiff. It was also plea of the plaintiff that the possession of the site in dispute was to be given to the plaintiff after developing of the area i.e. after development of the works in accordance with the rules above mentioned. Even in the month of December 1983, a circus was also found running on the land of abovesaid site with the permission of the defendants. Then legal notice was served on the defendants whereby requiring them to seek redressal of the grievance of the plaintiff but to no effect and hence was the instant suit for declaring the abovesaid demand letter No.5674 dated 23.7.1984 as illegal, null and void, ineffective etc. etc. and for a decree of mandatory injunction thereby directing the defendants to adjust the abovesaid amount which was deposited by them under protest and further to pay interest @ 18% per annum to the plaintiff on the amount already deposited by the plaintiff with the defendants till the development works were carried out at the site by the defendants according to specifications, rules etc. etc.

3. Notice of the suit was given to the defendants. Defendants in their written statement took preliminary objections that Civil Court has no jurisdiction to entertain this suit in view of the provisions of Section 50 of the HUDA Act, 1977; that suit is not maintainable in the present form and that since the possession was handed over to the plaintiff after the completion of the development work and the plaintiff did not raise any protest or objection at the time of taking its possession, so he is bound to pay the installments along with

the interest as per the terms and conditions of the allotment letter. On merits, it was admitted that Shyam Sunder etc. had purchased the cinema site at Hisar in an auction as alleged in the plaint. Then it was also admitted that Shyam Sunder, Rajender Pershad and Smt. Chander Kala had formed a private limited company namely Chintpurni Durga Films Pvt. Ltd. of which Sh. Shyam Sunder was one of the Directors. Then it was the plea of the defendants that except the pavement, the remaining development of the area was almost complete. Reference was also made to the report of local commission dated 28.2.1985. Demand of Rs.4,30,909.10 paisa raised by the defendants was stated to be perfectly justified and legal one. Then it was also admitted that plaintiff had deposited annual installment vide cheque dated 20.7.1984, which was deposited by the plaintiff under protest. Then it was also pleaded that the Rules known as Punjab Urban Estate (Sale of sites) Haryana Rules, 1976 are not applicable to the case in hand, since the allotment in the present case was made in accordance with the provisions of HUDA Act, 1977 and the rules/regulations made thereunder as amended from time to time. Rest of the averments were denied by the defendants.

4. From the pleadings of the parties, following issues were framed:
1. Whether the plaintiff is a Private Ltd. Company under the name and style of Chintpurni Durga Pvt. Ltd. and Sh. Shyam Sunder is one of its director? OPP.
  2. Whether the defendant was bound to make development of the site before offer of possession? OPP.
  3. If issue No.2 is proved, whether defendants have made complete and proper development of the site in dispute? If so when and to what effect?

OPD.

4. Whether the defendants are not entitled to charge interest so long as development of site is not completed by the defendants? OPP.
5. Whether the offer of possession given by the defendant to the plaintiff was before actually developing site in dispute, if so its effect? OPP.
6. Whether only symbolic possession was given to the plaintiff on 30.8.81 (30.09.1983) and it was not actual possession? If so, its effect? OPD.
7. Whether a circus was run on the land of the site in dispute with permission of defendant and its benefit has been obtained by the defendants? If so its effect? OPD.
8. Whether the Civil Court has no jurisdiction to entertain and try the present suit? OPD.
9. Whether the suit is not maintainable in the present form? OPD.
10. Relief.

5. Learned trial Court after going through the record and hearing the counsel for both the parties, recorded its findings on issue Nos.1 to 5, 8 and 9 in favour of the plaintiff, on issue Nos.6 and 7 in favour of the defendants and decreed the suit to the extent that defendants cannot charge interest from the plaintiff so long as they do not complete the balance development work i.e. providing of street lights, electricity and telephone lines etc. for the plot in dispute and constructing pavements and dismissed the suit for the remaining relief vide judgment and decree dated 2.5.1986.

6. The plaintiff preferred an appeal whereas defendants also preferred cross-objections against the abovesaid judgment and decree of learned trial Court which were dismissed by the Court of learned Additional District Judge,

Hisar vide the impugned judgment and decree dated 13.6.1988.

7. The appellant – herein (plaintiff) being dissatisfied with the judgments and decrees passed by both the Courts below has come up before this Court vide the instant appeal, notice of which was given to the respondents – herein (defendants). Record of both the Courts below was also requisitioned.

8. Counsel for both the parties were heard and record was also perused with their able assistance.

9. At the very outset of the arguments of this appeal, the learned counsel for the appellant has submitted that he presses his relief qua the interest on the amount which the appellant had deposited under protest on the demand of respondents raised vide letter Ex.PD dated 23.7.1984 and nothing-else in this appeal. So the scope of this appeal for its disposal is limited to this extent only.

10. Some of the admitted facts in this case are that the cinema site in question was purchased by the appellant in an auction conducted by the respondents (defendants) through bid dated 24.6.1983 which was advertised in newspaper 'Indian Express' dated 19.6.1983. It is also admitted that the appellant deposited 10% of the total amount of price of this site at the time of auction against the receipt. Then it was also admitted that 15% of the total amount was deposited by the appellant within one month against the receipt from the date of the acceptance of the bid. Balance amount of 75% was to be paid either in lump sum without interest within 60 days from the date of the issuance of allotment letter or in 10 half yearly installments with interest @ 10% on the remaining amount.

11. Dispute in this case arose between the parties when the respondents issued demand letter Ex.PD dated 23.7.1984 whereby directing the appellant to

deposit the amount of first annual installment of Rs.4,23,909.10 paisa alongwith interest by 2.8.1984. The appellant protested this demand of the respondents being as premature, illegal etc. on the plea that the respondents did not carry out their own obligation of completion of development work of plot in dispute before raising the demand. But on the other hand, the respondents took the plea that since the area in which the site in dispute was situated had already been developed and possession of this site had also been delivered to the appellant, so the respondents were justified in raising the demand of first annual installment vide letter Ex.PD aforementioned. So this is the crucial point upon which the fate of this appeal hinges.

12. Before proceeding further to record finding on this crucial point, I deem it essential to discuss the findings as recorded by both the Courts below on this point. The learned trial Court under issue No.2 recorded finding that defendants were bound to make development of the site in dispute before the offer of possession and decided this issue in favour of the plaintiff. On issue No.3, the learned trial Court came to the conclusion that offer of possession was made to the plaintiff by defendants without completing the development work and accordingly this issue was also decided in favour of the plaintiff. Then while recording its findings on issue No.6, the learned trial Court held that actual possession of the site in dispute was handed over to the plaintiff on 30.9.1983 and resultantly decided this issue against the plaintiff.

13. In the appeal, the learned Ist Appellate Court, Hisar under issue No.3 recorded its finding that offer of possession was of course given to the plaintiff by the defendants, but the possession was not at all delivered to the plaintiff. It was also held that only symbolic possession was delivered to the

plaintiff on 30.8.1983. Except this slight variation in the finding qua the possession of the site in dispute, the learned 1<sup>st</sup> Appellate Court concurred with the findings recorded by the learned trial Court on all the issues and dismissed the appeal as well as the cross-objections instituted at the instance of the plaintiff and defendants, respectively.

14. For dealing with the above bone of contention as mentioned in para No.11 (supra) of this judgment, it is deemed expedient to see the relevant terms and conditions of allotment letter Ex.PC dated 28.7.1983 and the provisions of the HUDA Act, 1977 and its regulations.

Clause 5 and 6 of the said allotment letter Ex.PC are found to be relevant for the purpose above mentioned, which are as under:

5. *The balance amount i.e. Rs.19,51,500/- of the above price of the plot/building can be paid in lump-sum without interest within 60 days from the date of issue of the allotment letter or in ten half yearly installments. The first installment will fall due after the expiry of one year of the date of issue of this letter. Each installment 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 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.*

The combined reading of these two clauses makes it crystal clear that actual physical possession of the site in dispute was to be given effectively only after the completion of development works in the area wherein this site was situated.

Then Regulation 13 of the Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978 which deals with delivery of possession also justifies this stand. This regulation reads as follows:

***Delivery of possession:-*** *The possession of the land shall be delivered to the transferee or lessee as soon as the (basic amenities within the area] where the land is situated are completed:*

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

Then Sub-Section (g) of Section 2 of the HUDA Act, 1977 defines development as under:

*“Development” with its grammatical variations means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change, in any building or land and includes re-development.*

Then term 'engineering operations' as defined in Sub-Section (j) of this Section is as under:

*“Engineering operations” include the formation or laying out of*

*means of access to a road or the laying out of means of water-supply, drainage, [sewerage, treatment and disposal of sewage, sullage and storm water] or of electricity cables or lines or of telephone lines;*

Sub-Section (a) and (ai) which were inserted in this section w.e.f. 18.12.2002 describes 'amenity' and 'basic amenities', respectively as detailed below:

*(a) “amenity” includes roads, water supply, street lighting, drainage, [sewerage, treatment and disposal of sewage, sullage and storm water] 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;*

*[(ai) “basic amenities” include metalled roads, wholesome water, sewerage and electrifications;]*

15. Then the evidence of the parties which came on record during trial of the case before the trial Court was as under:

Plaintiff Shyam Sunder as PW1 deposed that possession of the site in dispute was given to him in the office in papers by disclosing him that development works had completed at the site. His signatures were obtained in the office by some Clerk. In the year December, 1983, he came to Hisar to raise the construction of cinema and found that circus was running on this site which was allowed to run on this site without his permission. When he verbally complained in this regard in the office of HUDA, then the office people told him that he had no right to raise any objection since the physical possession of

this site has not yet been delivered to him. Sewerage and water supply lines were passing inside this plot to the extent of 1 ¼ to 7' whereas these lines are ought to be outside this site to the extent of at least 6 feet. Even till date i.e. 5-11-85, when this witness was examined, the development work was not complete at the site.

DW1 Thakar Dass Chopra, SDO, HUDA was examined on 20.2.1986. In his cross-examination, he stated that he could not tell even after seeing the record as to when the electrification towards the site in dispute was done. He also stated that even till that date, street lights were not available at the site. He also admitted that previously sewerage and water supply lines were inside this plot. Later on it was learnt that possession of the cinema site was delivered except the said sewerage and water supply lines. Further, he had shown his ignorance as to whether the telephone lines were there around about this site or not. Then it was further in his cross-examination that pavement work was to be done after raising construction of cinema building at the site. Then he also admitted that in the year December 1983, the circus was running on this site.

DW2 – Rai Singh, Junior Engineer, HUDA in his cross-examination stated that it took about 5-6 hours in delivering the possession of the site in dispute. But no digging work was done at the site in order to ensure as to whether the sewerage and water supply lines were passing inside this site or not.

16. From the above discussed evidence of both the parties, it is quite clear that physical possession of the site in dispute was not delivered to plaintiff as alleged by the defendants and the possession which was allegedly delivered

to the plaintiff was merely symbolic one. Then it is established on the file that sewerage and water supply lines were already passing inside this site which were required to be shifted outside this site since without their said shifting, construction of the cinema building at this site could not be physically possible. Even as above discussed, DW1 admitted in his cross-examination that street lights were still not available at the site.

17. The learned counsel for the appellant has contended that possession of the site in dispute has been delivered to the allottee / authorized person during the pendency of this appeal on 7.1.2008 and certificate Annexure-A to this effect has been issued by Junior Engineer on behalf of the Estate Officer, HUDA, Hisar. In order to bring this certificate on record, the learned counsel for the appellant filed one Civil Miscellaneous application No.8435-C of 2013 which was ordered to be listed for hearing along with the main appeal. Respondents in reply to this C.M., denied its contents and took the plea that this certificate Annexure-A has been issued in favour of allottee after the conversion of the site into commercial one which was formal in nature. This certificate Annexure-A being found to be material to determine the point in issue is taken on record in additional evidence and this CM is disposed of accordingly.

18. Then it is to note that HUDA is the legal entity which mainly deals in carving out new residential colonies including the commercial sites after finding out suitable sites in the sub-urban area of any city. Regarding each of its material proceedings such as acquisition of land, auction of land, allotment of land, delivery of possession to the allottee etc., record is maintained in writing.

It was the specific stand of the respondents – herein (defendants) before the trial

Court that physical possession of the site in dispute was delivered to the plaintiff (allottee) on 30.9.1983. In this regard, it was plea of the plaintiff that possession of this site was delivered to him in the office of HUDA, Hisar by obtaining his signatures on some papers and nothing more. In this connection, respondents – defendants did not bother to place on the record any letter/document vide which possession of this site was allegedly delivered to the allottee/plaintiff in order to enable the Court to know its nature and contents. If as per the plea of the respondents-herein (defendants), the possession certificate Annexure A has been issued to the plaintiff after the conversion of this site into commercial one, so there would have been no hitch or difficulty for the officials of HUDA in issuing the requisite certificate when possession of this site as per respondents was allegedly delivered to the allottee on 30.9.1983. Any such certificate, if for arguments sake was found to be issued, then the same would have certainly been in violation of above discussed provisions of Clause 5 & 6 of the allotment letter Ex.PC, Section 2 of the HUDA Act, 1977 and regulation 13. So in this background, it has been held that the allottee took the physical possession of the site in issue on 7.1.2008 when the possession certificate Annexure A came into its being.

19. Learned counsel for the respondents has also contended that appellant is not entitled to get any amount in this case and prayed for dismissal of this appeal. Herein, he has contended that rather an amount of Rs.5,10,83,324/- is outstanding against the appellant qua the plot in issue and hence a direction may be issued to them to deposit this amount in the office of HUDA. But this plea of learned counsel for the respondents can not be entertained because neither there was any pleading to this effect in the written

statement nor any evidence available on the record to adjudicate this point. Respondents are anyhow at liberty to proceed against the appellant in this connection as per the remedy, if any, available to them under the law.

20. In the light of above discussion, this appeal is accepted to the extent that the appellant is entitled to seek interest from respondents on the amount of Rs.4,23,909.10 paisa which they deposited under protest @ 12% per annum from the date of its deposit till the delivery of physical possession of the site in dispute to the appellant – herein (plaintiff) i.e. 07.01.2008.

So this appeal stands disposed of accordingly.

23.12.2016  
Brij

**(GURMIT RAM)**  
**JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No