IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

357 **Civil Writ Petition No.11767 of 2002**
Date of Decision:25.02.2016

Sandeep Malik ....petitioner

Versus

Haryana Urban Development Authority and others .....respondents

CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI

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

Present: Mr.Sudhir Aggarwal, Advocate
for the petitioner

Mr.Arvind Seth, Advocate
for the respondents

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE (ORAL):

The petitioner has sought a writ of certiorari to quash the orders dated 12.12.2000 and 14.08.2001(Annexures P4 and P6), passed by respondents No.3 and 2, respectively, namely the Estate Officer, HUDA, Jind and the Administrator, HUDA, Hisar. The order passed by respondent No.2-Administrator, Hisar, is in the appeal filed by the petitioner against the order of respondent No.3-Estate Officer, Jind.

(2) The interpretation of the clauses of the letter of allotment calls for consideration. By the letter of allotment dated 01.01.1992, the respondents allotted a booth in favour of the petitioner on free hold basis. Clauses 5,6,23 and 24 of the allotment letter read thus:

5. The balance amount i.e. Rs.2,63,625/- 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 equal instalments. The first instalment will fall due after the expiry of one year of the date of issue of this letter. Each instalment would be recoverable together with interest on the balance price at 15% 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, the possession shall however, be delivered within 90 days from the date of issue of this allotment letter.*

23. *18% extra interest will be charged for the delayed period of instalment.*

24. *Half Yearly instalments of Rs.26362/50 will fall due on 1.1.93 & _____ every as under:-*

Sr.No.	*Due date*	*Principal*	*interest*	*Total*
1.	*1.1.93*	*26362.50*		
2.	*1.7.93*	*-do-*		
3.	*1.1.94*	*-do-*		
4.	*1.7.94*	*-do-*		
5.	*1.1.95*	*-do-*		
6.	*1.7.95*	*-do-*		
7.	*1.1.96*	*-do-*		

8.	*1.7.96*	*-do-*
9.	*1.1.97*	*-do-*
10.	*1.7.97*	*-do-*

(3) The period from which interest is payable under Clause 5 at 15% per annum and the period for which interest is payable under Clause 23 @ 18% per annum of the allotment letter is the question that arises in this case.

(4) Clause 5 is clear. It expressly provides that interest accrues only from the date of the offer of possession. There is, therefore, no question of interest under Clause 5, being payable on the instalments prior to the date of the offer of possession. Thus, after the offer of possession, interest on each instalment is payable @ 15 % per annum from the date of offer of possession, till the date of payment, even if the payment is made on the due dates stipulated in Clause 24. In other words, it cannot be contended that after the offer of possession, interest @ 15% per annum, under Clause 5 will not be payable, if the instalments are paid on the due date.

(5) This brings us to the interpretation of Clause 23. The interpretation of Clause 23 also requires a consideration of the words *"extra interest"* and the word *"delayed"*. In our view, the term *"delayed"* relates to the delay in payment of the instalments as stipulated in clause 24. The liability to pay interest provided in Clause 23, is not dependent upon the offer of possession. Clause 23 makes no reference to the offer of possession. This is in stark contrast to the express provisions contained in Clause 5 which makes the liability of payment of interest, stipulated therein,

dependent upon the respondents' offering possession of the plot allotted. Thus, accordingly, the allottee i.e. the petitioner would be liable to pay interest @ 18% per annum for the delay in payment of instalments, the delayed period being computed from the date on which the instalments fall due, as per Clause 24.

(6) This, interpretation is firstly supported by the fact that even under Clause 24, the liability to pay the instalments is not dependent upon the offer of possession. If the intentions of the parties was otherwise, Clause 24 would have expressly provided that the instalments are payable on the date stipulated therein, provided the allottee is offered possession of the plot. There is no such stipulation. It is not open to us to add to, alter or otherwise amend the contractual terms between the parties. The liability to pay the instalments as per Clause 24 being unconditional, it follows that the interest payable under Clause 23 for the delayed period of instalment, is absolute and not dependent upon the respondents' first offering the possession.

(7) Secondly, this interpretation is also clear from the fact that under Clause 5, parties are entitled to make the payment in one lump sum or in instalments. Thus, if the parties make payment in one lump sum, they are deprived the use of their money till possession is offered. If the petitioner's interpretation is accepted, it would put the parties opting to pay the amount in instalments at a monetary advantage. Such an interpretation would entitle the parties who opt to pay in instalments at an enormous advantage, for, it would be open then for them not to pay any of the instalments till the

possession is offered. This situation is obviously not contemplated by the parties and is contrary to the plain language of all the terms and conditions of the letter of allotment.

(8) Learned counsel appearing on behalf of the petitioner relied upon a judgement of the learned Single Judge of this Court in the case of *"M/s Akash Ganga and another vs. State of Haryana and others" 2009(2) RCR (Civil) 652*. Clause 5,6 and 25 therein corresponds the Clause 5, 6 and 23 in the case before us, which we set out earlier. The learned Single Judge held as under:

> *"8. Admittedly, the petitioners were the highest bidders for the two sites which were allotted to them vide allotment letter dated 12.03.1990 (Annexure P1). As per clause 4 of the allotment letters, the petitioners were liable to pay 25% of the price within 30 days from the date of acceptance of their bid whereas the balance amount could be paid by them in instalments along with interest @ 10% per annum, as provided vide condition No.5 of the allotment letter. It has also been expressly stipulated that "interest shall, however, accrue from the date of offer of possession". Clause 6 further provides that "possession of the site will be offered on completion of the development works in the area."*
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> *9. The orders passed by the revisional authority dated 2.10.2004, relevant part of which has already been extracted above, has taken specific note of the fact that the basic amenities had been provided in the year*

2004, however, the tehbazari shops were still existing in the area due to which possession could not be given. Admittedly, the possession could be offered to the petitioners on 17.01.2008 only. There is no denial to the fact that the possession of the sites could not be delivered to the petitioners on account of some unauthorized structures/shops which were already in existence at the site. The unauthorized constructions were to be removed by the HUDA authorities and thereafter possession was to be delivered. The petitioners, thus have been deprived of the enjoyment of the allotted sites for years together.

10.Both the parties are bound by the terms and conditions of allotment which are to be mutually respected and can be enforced against each other. While the respondents are entitled to claim interest on the due instalments @ 10% and in the case of default @ 18% as provided in clause 18 of the allotment letter, the later liability would accrue only from the date of offering of the possession. Since the possession could be offered to the petitioners on 17.1.2008, interest @ 18% per annum is chargebale from the date of offering of the possession only. If the petitioners had already paid the entire sale consideration even before offering possession to them, in my considered view, no occasion arose for the respondents to invoke clause

24 and demand interest @ 18% as interest when they themselves were unable to offer the possession."

(9) We are, with respect, unable to agree with the learned Single Judge. The learned Judge has not furnished any reasons for the conclusion. In fact from para 10, it appears that the learned Judge has held that the liability to pay the interest under Clause 5 @ 10% per annum, arises even before the possession is offered, which is clearly contrary to the express language of Clause 5 and, in particular, the last sentence thereof. For the reasons, we have already furnished for our interpretation, we are unable to agree with the learned Single Judge.

(10) In the circumstances, the petition is dismissed. It is held that interest under Clause 5 is payable from the date of the offer of possession till the payment, even if the payments are made on the due date, stipulated in Clause 24. It is also held that interest under Clause 23 @ 18% per annum is payable even before the respondents offer possession of the plot allotted. Moreover, the period of interest is to be computed from the date on which the instalments are payable as per Clause 24. However, the respondents shall be entitled to charge compound interest, as there is no provision in law or term in the allotment letter entitling them to do so.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

February 25, 2016 **(ARUN PALLI)**
neenu **JUDGE**