

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 16974 of 2015 (O&M)
Date of Decision: 11.01.2016

M/s Gagan Software Pvt. Ltd.

..Petitioner

versus

Haryana State Industrial and Infrastructure Development Corporation Ltd.
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 judgment?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Aman Arora, Advocate, for the petitioner.
Mr. Deepak Sabharwal, Advocate, for the respondents.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

The petitioner seeks an order directing the respondents to pay interest on the amount deposited by it towards allotment of an industrial plot.

2. The petitioner applied for allotment of an industrial plot admeasuring 4050 sq. meters and deposited ₹ 30,37,500/- as application money. Considerable reliance was placed on behalf of the respondents upon clauses 1 and 2 of an undertaking dated 17.09.2008 furnished by the petitioner which read as under:-

“1. That we want to take physical possession of the said plot on “as is where is basis” as we want to set up the unit/project on the said plot at the earliest possible, without the development work completed by HSIIDC.

2. That in absence of complete development work/infrastructure facilities (like power, road, water supply, sewerage etc.) we would not lodge any claim whatsoever against HSIIDC.”

3. The petitioner was allotted plot No. 64 for a consideration of ₹ 2,88,00,000/-. The petitioner paid an amount of ₹ 71,25,000/- towards 25% of the consideration as required by the letter of allotment. An agreement dated 06.01.2009 was entered into between the parties under which the balance amount was payable in five equal half yearly interest free installments of ₹ 37,44,000/- lacs each commencing from 07.05.2009. The petitioner requested the respondents to reschedule the installments. By a letter dated 07.09.2009 the respondents acceded to this request.

4. The plot allotted to the petitioner was under litigation, as a result whereof the respondents were unable to hand over possession of the plot to the petitioner. The petitioner stated that it had been informed by the respondents' officers that another plot would be allotted and accordingly requested the respondents to allot an alternative plot in lieu of the original plot.

5. The respondents by a letter dated 29.02.2012 stated that an alternate plot being plot No. 80 had been allotted in favour of the petitioner. This plot was larger than the original plot. The petitioner was requested to remit an additional amount of ₹ 43,57,500/- on account of the excess area. The letter stated that all other terms and conditions of the letter of allotment dated 17.12.2008 remained unchanged. The petitioner, however, did not pay the additional amount on account of the excess area.

6. The respondents by a notice dated 30.10.2013 called upon the petitioner to show-cause why action ought not to be taken against it for failure to pay the amount.

7. The petitioner addressed a detailed reply to the show-cause notice dated 30.10.2013. It stated that the possession of the alternate plot had

not been handed over to it. The petitioner did contend that the respondents were not entitled to demand the payment as the essential facilities such as roads, sewerage, drinking water, sanitation and electricity were not available. In the alternative, the petitioner called upon the respondents to refund the entire amount paid by it together with interest at 18% per annum.

6. The respondents appeared before the respondents Anomaly Committee. The Anomaly Committee by an order dated 13.08.2014 cancelled the allotment but, keeping in mind the peculiar circumstances of the case, directed the respondents to refund the entire amount deposited by the petitioner without any deductions. The respondents by a letter dated 30.10.2014 cancelled the allotment and refunded the amount.

7. The petitioner by a letter dated 26.11.2014 demanded interest and accepted the payment under protest. The demand for interest was rejected by a communication dated 14.01.2015.

8. The first question is whether the respondents were in a position to hand over the possession of the plot to the petitioner. Admittedly, the respondents were unable to hand over the original plot inter-alia on account of the litigation. It is for that reason that the respondents at the request of the petitioner allotted an alternate plot.

9. From the correspondence between the parties it appears that the respondents were unable to hand over possession even of the alternate plot. Mr. Aman Arora, learned counsel appearing on behalf of the petitioner relied upon paragraph Nos.7 and 8 of the respondents said letter dated 30.10.2014 which read as under:-

“7. The Committee after hearing the aforesaid conditions and considering the documents placed on record, observed that two issues were involved in this case (i) charging of current rate for the

excess area by the Corporation and (ii) non-payment of price of the plot by the allottee due to non-availability of infrastructure facilities in the area.

- (i) As regards the first issue, the Committee observed that the plot was changed by the Corporation because the earlier allotted plot was under litigation. As such, the Corporation was under obligation to allot a similar size plot and in case the same was not available, the Corporation cannot charge the current rate for the excess area. As such the Committee decided that the excess area would have to be allotted at the original allotment price of Rs.15,000/- per sq. meter.
- (ii) As regards the second issue, the Committee observed that it was well within the knowledge of the allottee that a substantial part of the land was under litigation in the Hon'ble Punjab and Haryana High Court and they had acknowledged the same by furnishing an undertaking in this regard before the allotment. Further, since the possession was not offered by the Corporation due to non-availability of RoW for laying the requisite services and the matter being pending in the Hon'ble High Court, the Corporation had not charged any interest on installments. However, as per the terms and conditions of the allotment, the allottee was bound to make payment of due installments towards principal price of the plot and also interest on delayed payment of such installments."

8. However, since you were not inclined to make payment of balance amount towards the balance allotment price of the plot and the delayed interest, contending that you were not concerned with delays on account of pendency of the litigation before the Hon'ble High Court and the Corporation

was bound to hand over unencumbered industrial plot with all infrastructure facilities and further that no payment shall be made by you till handing over of possession of a fully developed plot by the Corporation, the Committee decided to cancel the allotment. However, keeping in view the peculiar circumstances as far as Sectors 34-35, Gurgaon were concerned, the Committee further decided that the Corporation may refund the entire amount deposited by you towards price of the plot including interest/delayed interest paid by you to the Corporation against the aforesaid allotment.

In view of the aforesaid decision of the Committee, the allotment of captioned plot is hereby cancelled and cheque No. 002825 dated 28.10.2014 for Rs. 1,97,37,123/- (Rupees one crore, ninety seven lakh, thirty seven thousand, one hundred and twenty three only) drawn on Central Bank of India, Sector 10, Panchkula, towards refundable amount as per the decision of the Committee is enclosed.”

10. From paragraphs 7 and 8, it is clear that the respondents were unable to hand over the possession even of the second plot. It is true that in reply to the show cause notice the petitioner had contended that it is not liable to make payment until and unless the development work had been carried out. We will presume that the undertaking referred to earlier applies not merely to the original plot but also to the alternate plot. In that event the petitioner could not have refused to make the payment on the ground that the development work had not been carried out. However, the fact is that the respondents were unable to handover the possession even of the alternate plot either on account of the litigation or on account of question of right to way as is evident from paragraphs 7 and 8 of the said letter.

11. The undertaking would not operate against the petitioner where the respondents were unable to handover the plot on account of the litigation

or on account of the easementary dispute or for any other reason. The undertaking operated irrespective of whether the development work was completed by HSIIDC or not. Thus, if the petitioner had refused to take possession only on the ground that the development work/infrastructural facilities had not been completed, it would not have been entitled to lodge any claim including for interest. However, in the present case, the respondents themselves were unable to hand over possession of the plots for other reasons of their own and for which the petitioner was not responsible. The undertaking, therefore, does not prevent the petitioner from claiming interest.

12. In the circumstances, the impugned order dated 14.01.2015 is quashed and set-aside. The petitioner shall be entitled to interest at 10% per annum from the date on which the amounts were paid till the payment and/or realization. The same shall be paid by 15.04.2016.

The petition is accordingly disposed of.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

11.01.2016
'ravinder'

(ARUN PALLI)
JUDGE