

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 24457 of 2016

Date of Decision: 28.11.2016

M.K. Jain and others

....Petitioners.

Versus

Haryana Urban Development Authority and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE SNEH PRASHAR.**

PRESENT: Mr. Tushar Sharma, Advocate for the petitioners.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioners have prayed for issuance of a writ in the nature of Mandamus directing respondents No.1 to 3 to offer paper possession as well as handover physical possession of SCO No. 80, Sector 5, Panchkula to them in terms of order dated 16.9.2015 (Annexure P-21) passed in CWP No. 11065 of 2014 by this Court. Further, a direction has been sought to the respondents to issue NOC to the petitioners and execute conveyance deed in their favour.

2. In February, 1988, the respondents auctioned commercial showrooms in Sector 5, Panchkula and the petitioners participated in the said auction. The petitioners being the highest bidder were allotted SCO No. 80, Sector 5, Panchkula by the respondents at the price of ₹ 14.86 lacs vide allotment letter dated 4.5.1988 (Annexure P-1). They deposited 10%

of the amount there and then and 15% of the amount was to be paid within 30 days of the issuance of the allotment letter which they also deposited on 7.5.1988. As per the terms and conditions of the allotment letter, the possession of the site was to be offered immediately on deposit of the 15% amount but despite having deposited the said amount, the petitioners were not offered possession. They kept on depositing the amount towards the allotment price and till 16.2.1991, they had already deposited an amount of ₹ 11,77,546/-. The site in question was allotted in May, 1988, but till February 1991, there were no basic amenities available in the area and, therefore, the petitioners did not pay the rest of the amount of the auction price. The petitioners vide letters dated 24.10.1989, 6.11.1989, 25.11.1989, 6.6.1990, 9.1.1991 and 24.2.1992 (Annexure P-2) requested respondent No.3 to complete the development work and to handover the possession of the site in question. Respondent No.3 vide letter dated 3.3.1992 (Annexure P-3) asked the petitioners to pay an amount of ₹ 5,56,950/- towards outstanding dues against the allotment price. The petitioners vide letter dated 6.8.1992 (Annexure P-4) requested the respondents to handover the possession of the site in question, but to no effect. However, the respondents vide notice dated 12.6.1995 (Annexure P-5) asked the petitioners to deposit an amount of ₹ 1152091.69 as outstanding dues and to appear before respondent No.3 on 6.7.1995 for personal hearing. The petitioners filed CWP No. 11048 of 1995 on 4.8.1995 (Annexure P-6) directing the respondents not to charge interest on the outstanding amount of the allotment price till the development works are completed in the area. During the pendency of the said writ petition, in September, 1988, the petitioners deposited the balance amount of allotment price excluding the

interest on the installments as well as the penal interest levied by the respondents on the delayed payment of installments. Various other allottees also filed writ petitions and all the writ petitions were ordered to be heard together. The respondents filed written statement dated 18.11.1995 along with Annexure R-1 (Annexure P-7) to the said writ petitions alleging that the petitioners were offered possession vide letter dated 20.12.1989 but they did not take possession thereof. The petitioners filed replication dated 5.12.1995 (Annexure P-8) controverting the averments made in the written statement and pleaded that the letter dated 20.12.1989 was issued quo possession of SCO No.18, Sector 5, Panchkula and not SCO No.80, Sector 5, Panchkula. The petitioners moved an application for handing over the possession of the site in question but their application was rejected by the respondents vide letter dated 3.9.2008 (Annexure P-9) on the ground that an amount of ₹ 44,71,421/- was outstanding against them. This Court vide order dated 27.4.2009 (Annexure P-10) passed in CWP No. 16664 of 1992, allowed all the writ petitions including the writ petition filed by the petitioners. Against the order, Annexure P-10, the respondents filed LPA No. 933 of 2009 and this Court vide order dated 16.10.2012 (Annexure P-11) partly allowed the appeal. When nothing was done by the respondents after the issuance of directions by this Court, the petitioners vide letter dated 23.2.2013 (Annexure P-12) requested the respondents to apprise them about the amount due and also hand over the possession of the site in question. Again the petitioners vide letters dated 27.2.2013 (Annexure P-13) and dated 18.3.2013 (Annexure P-14) asked the respondents to inform them about the amount due. The petitioners also challenged the order, Annexure P-11 before the Supreme Court vide SLP No. 16425 of 2013 and the Apex

Court vide order dated 23.4.2013 (Annexure P-15) stayed the operation of the said order subject to their depositing interest @ 10% per annum with the respondents within 30 days. In pursuance thereto, the petitioners deposited a sum of ₹ 1,95,000/- vide letter dated 10.5.2013 (Annexure P-16). The Supreme Court vide order dated 30.4.2014 (Annexure P-17) granted leave to appeal to the petitioners and the SLP filed by them was converted to Civil Appeal No. 5472 of 2014. Although the petitioners had already paid the entire allotment price along with interest but till date the possession of the site in question has not been received by them. Petitioners No.1 and 2 vide letter dated 4.9.2015 (Annexure P-18) requested respondent No.3 to hand over the possession of the site in question. Similar request was made by the petitioners vide letters dated 10.9.2015 and 18.9.2015 (Annexure P-19 Colly). Besides this, the petitioners vide letter dated 5.9.2015 (Annexure P-20) also requested the Chief Minister, State of Haryana for handing over the possession of the site in question. This Court in a similar matter bearing CWP No. 11065 of 2014 vide order dated 16.9.2015 (Annexure P-21) directed the respondents to inform the petitioners therein the amount due upto 30.9.2015 in terms of the order dated 16.10.2012 which they should pay by 15.11.2015 and the payment so made shall be without prejudice to the rights and contentions of the petitioners with regard to the interest rate applicable to the case. After the decision of the matters pending before the Apex Court, the respondents would recalculate the amount due as per the order and in case of their being any refund, the same together with interest at the rate of 10% per annum within eight weeks of the receipt of the order. Further, after the petitioners pay the amount as asked by the respondents, the respondents would execute all deeds and documents and do/perform all

deeds, acts, matters and things necessary to perfect the petitioners rights over the property and directed the petitioners to make payment of amount due subject to the decision of the matters pending before the Supreme Court because the said decision would only effect the amount payable by the petitioners to the respondents and the rest of aspects need not to remain pending. Accordingly, the petitioners moved the representations dated 8.10.2015 (Annexure P-22 Colly) to respondents No.1 and 2 for consideration of their cases on the basis of the order, Annexure P-21, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioners submitted that for the relief claimed in the writ petition, the petitioners have sent the representations dated 8.10.2015 (Annexure P-22 Colly) to respondents No.1 and 2, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioners, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.1 to take a decision on the representations dated 8.10.2015 (Annexure P-22 Colly), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioners within a period of three months from the date of receipt of certified copy of the order.

(AJAY KUMAR MITTAL)
JUDGE

November 28, 2016
gbs

(SNEH PRASHAR)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No