

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

CWP No.4229 of 2016

Date of decision : 02.03.2016.

The Arya Bhatt Co-operative Group Housing Society Ltd.

.....Petitioner

Versus

**Haryana State Industrial & Infrastructure Development Corporation
Limited and others**

..... Respondents

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

Present : Mr. Sudhir Aggarwal, Advocate for the petitioner.

ARUN PALLI J.

A writ of certiorari is prayed for to quash the order of resumption dated 21.03.2014 (Annexure P16), rendered by respondent No.2 as also the order dated 16.01.2015 (Annexure P-18), vide which even the appeal preferred against the said order was dismissed by the Appellate Authority. Petitioner also seeks a direction to the respondents to hand over possession of the allotted site so as to enable the petitioner-society to construct the same.

Briefly, petitioner-society applied to the respondents-corporation for a plot under the Group Housing Scheme at Bawal to build residential houses/flats for its members. Petitioner deposited 10% of the tentative price of the site along with the application for allotment. A letter of intent dated 30.03.2007, was issued by the respondents-corporation, vide which petitioner-society was offered a Group Housing Site No. GH-01,

measuring 2000 sq. meter in Growth Centre Bawal. And the petitioner was asked to deposit a further sum of Rs.3,45,600/- i.e. 15% of the tentative price of the site, which too were deposited on 28.05.2007. Balance 75% of the consideration was to be paid either in lump sum, without interest within 60 days from the date of issuance of the letter of allotment or in six half yearly installments with 11% interest per annum. However, interest would accrue only from the date of offer of possession of plot/site. Records show that the petitioner-society defaulted in payment of certain installments and also to meet the demand on account of enhancement in the cost of the site. In terms of clause 13 of the letter of allotment, dated 18.12.2007 (Annexure P-2), petitioner was required to complete construction within 5 years from the date of offer of possession. However, time limit for completion of construction could be extended for a maximum period of two years subject to payment of extension fee and satisfaction of the respondents-corporation that the construction at site could not be completed for the reasons beyond control of the allottee. Concededly, petitioner failed to construct the site within the stipulated period. And, for repeated notices and reminders issued to the petitioner-society, yielded no result, the authorities were choiceless but to order resumption, vide order dated 21.03.2014 (Annexure P-16). Appeal preferred against the said order also failed, for it was dismissed vide order dated 16.01.2015 (Annexure P-18). That is how, as indicated above, petitioner-society is before this Court.

Learned counsel for the petitioner submits that, for the petitioner-society was never offered possession of the allotted site, therefore, it was wholly illogical to still expect the petitioner to construct

the site within time. Therefore, he submits that the orders being assailed are vitiated.

Concededly, site in question was allotted to the petitioner-society pursuant to letter of allotment dated 18.12.2007 (Annexure P-2). Records show that the physical possession of the said site was offered to the petitioner on 18.12.2007 itself. Something, which was never contradicted by the petitioner. Clause 13 of the letter of allotment required the petitioner-society to complete construction within five years from the date of offer of possession. And with one year general extension granted by the authorities, petitioner-society was obliged to complete construction up to 17.12.2013. Respondents-corporation issued numerous notices and reminders i.e. 31.12.2009 (Annexure P-3), 4.8.2010 (Annexure P-5), 6.2.2012 (Annexure P-10) and 6.9.2013 (Annexure P-11) to the petitioner-society to construct the site and clear the outstanding dues. But to no avail. No application was moved for extension of time with requisite fee during this period either. Concededly, petitioner failed to construct the allotted site even within the stipulated period. In fact, it just failed to even obtain the actual physical possession thereof. Nothing has been brought on record which could indicate, even remotely, that the petitioner-society ever asked to be put in possession of the allotted site during this time.

Ex facie, the argument being advanced by learned counsel for the petitioner lacks conviction and thus cannot be countenanced, for the petitioner in its letter, written to the respondents-corporation, dated 6.2.2014 (Annexure P-13) conceded in no uncertain terms; **“Due to financial constraint, we could not take possession of the plot and start**

construction after approval of Building Plan. But we assure you that we will clear the dues in respect of enhanced cost and take the possession of the plot within fortnight. Further we will get the Building Plan approved from the STP office and start the construction of the plot immediately.” Likewise, even the counsel for the petitioner-society, during the course of hearing before the Appellate Authority, maintained; **“Sh. Narinder Singh appeared on behalf of the Society and Informed that delay in taking possession and consequent non-start of construction had happened due to non-remittance of payments on account of enhanced cost by the members of Society and that, now they were agreeable to clear the over dues on account of enhanced cost, take possession and initiate construction on the site.”**

Apparently, the terms and conditions of the letter of allotment were breached. In fact, the very purpose of allotment was lost with efflux of time. Therefore, in the situation the only and the inevitable conclusion the authorities could resort to was to order resumption.

In the wake of the position as sketched out above, we are dissuaded to interfere with the discretion exercised by the authorities, in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. The petition being devoid of merit is accordingly dismissed.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

02.03.2016

Manoj Bhutani

(ARUN PALLI)
JUDGE