

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13105 of 2014 (O&M)

Date of Decision: 31.01.2017

M/s United Breweries Ltd.

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CWP No.9087 of 2015 (O&M)

M/s Icon Investment Ltd.

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE SUDIP AHLUWALIA**

Present: Mr.Arun Jain, Sr.Advocate with
Mr.Aruz Khan, Advocate
for the petitioner in CWP-13105-2014 and
for respondent No.5 in CWP-9087-2015

Mr.Akshay Bhan, Sr.Advocate with
Mr.Alok Mittal, Advocate
for the petitioner in CWP-9087-2015 and
for respondent No.4 in CWP-13105-2014.

Mr.Deepak Balyan, Addl.AG, Haryana.

Mr.Lokesh Sinhal, Advocate for HUDA.

SURYA KANT, J. (Oral)

(1) This order shall dispose of CWP Nos.13105 of 2014; and 9087 of 2015 which are inter-related as in both the cases, the petitioners seek restoration of allotment of institutional plot No.45, Sector 32, Gurgaon, in their respective favour.

Facts common to both the cases:-

(2) M/s Inertia Industries Ltd. applied to Haryana Urban Development Authority (HUDA) on 31.10.1994 for allotment of an institutional plot of 4000 sq. meter in size in Sector 32, Gurgaon for establishing its corporate office.

HUDA accepted its application and vide allotment letter dated 28.06.1995 (P1 in both the cases) allotted plot No.45, measuring 2035 sq.meters in Sector 32, Gurgaon to M/s Inertia Industries Ltd..

(3) The tentative cost of the plot was ₹ 46,80,500/-. The allottee deposited ₹ 9,31,500/-. The balance amount of ₹ 37,49,000/- was required to be paid either in lumpsum without interest within 60 days or “in four half-yearly instalments” i.e. each instalment of ₹ 9,37,250/- approximately. The allottee is said to have subsequently deposited ₹ 2,38,625/-, ₹ 2,66,035/- and again ₹ 2,76,479/-. Not a single instalment of the full amount was thus deposited by the allottee.

(4) It will be useful at this stage to reproduce some of the following relevant terms and conditions of allotment:-

“6. The balance i.e. Rs.3510375.00 of the above tentative price of the plot/building can be paid in lump sum without interest within 60 days from the date of issue of allotment letter or in four half yearly instalments. The first instalment will fall due after the expiry of six months 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. If there is delay in the payment of instalment, interest at the rate of 18% per annum shall be charged.

7. The possession of the site will be offered to you on completion of the development work in the area.

8. The construction of the building on the institutional plots shall have to be completed by the allottees within 5 years from the date of offer of possession. No rebate in the price of land would be given, even if construction is completed before 5 years.

11. In case the instalment is not paid by 10th of the month following the month in which it falls due, the Estate Officer

shall proceed to take action for imposition of penalty and resumption of plot in accordance with the provisions of Section 17 of the Act.

25. No separate notice will be sent for the payment of the instalments. However, the information regarding the instalments, the amount the due dates etc. may be sent as a matter of courtesy.”

[emphasis applied]

(5) It may be seen from the terms and conditions of allotment that the allottee was obligated to pay the balance tentative price in four half yearly instalments along with interest @ 15% per annum. It was also required to construct and complete the building in all respects within five years from the date of offer of possession. In the event of default in payment of instalments, the Prescribed Authority was entitled to impose penalty and even resume the plot in accordance with Section 17 of the Haryana Urban Development Authority Act, 1977 (in short, ‘the 1977 Act’). Similarly, no separate notice was required to be sent to the allottee for payment of instalments.

(6) The HUDA offered possession of the plot on 23.08.1996 which was actually taken by the allottee on 30.08.1996 but according to the petitioners, only ‘symbolic possession’ was delivered and the physical possession could not be given due to non-completion of some of the development works and removal of electric poles as well as a B&R department road passing through the plot towards Village Jharsa. Those obstructions were allegedly brought to the notice of HUDA authorities on 12.08.1997 (P4) and the same were finally removed only in March, 2000. On this premise, the petitioners claim that the period of five years within which construction was required to be completed commenced in March, 2000 only.

(7) From this stage onwards, both the petitioners have a different and contradictory tale to tell. Hence their facts are being noticed separately.

CWP-13105-2014 (M/s United Breweries Ltd. vs. State of Haryana & Ors.)

(8) The petitioner has averred that the original-allottee was engaged in the business of manufacturing and sale of beer from its manufacturing unit located at Dharuhera (Haryana). The said factory had to be closed down in 1996 due to promulgation of Prohibition policy in the State of Haryana. The allottee came under heavy debts payable to various banks, NBFs and other trade creditors. Several Court cases including winding up petitions were also filed against it. The allottee-company too filed a petition under Section 391(1) of the Companies Act, 1956 in the High Court of Delhi for settlement of dues of its creditors. The matter was referred to BIFR. At that juncture, the United Breweries Group, then known as M/s Millennium Beer Industries Ltd., took over the allottee-company in the year 2000-01.

(9) M/s Millennium Beer Industries Ltd. later on changed its name to M/s United Breweries Ltd., namely, petitioner-company (in short, 'the UBL').

(10) HUDA, however, declined to transfer the plot in favour of UBL as there was no policy in vogue at that time for transferring an institutional plot. Nevertheless, it is averred that once the controlling stakes of the allottee-company were taken over by the UB Group, the original promoters of the allottee-company ceased to have any *locus standi* to raise any claim or seek transfer of the plot in question.

(11) The allottee-company was declared a 'sick industry' by BIFR in July, 2006 and it being not in a position to pay the allotment price, submitted a letter dated 20.10.2005 to HUDA expressing its intention to surrender the plot.

(12) The allottee-company then came to know from the daily newspaper, The Tribune dated 26.04.2007 that the subject plot had been transferred in the name of M/s Icon Investment Ltd. (the petitioner in the second case) against which the allottee-company lodged its protest on 20.06.2007 but its objections were turned down on 19.05.2008 (P8).

(13) Meanwhile, the Estate Officer-II, HUDA, Gurgaon issued notice under Section 17(4) of the 1977 Act alleging failure of the allottee to raise construction within a period of five years from the date of offer of possession i.e. 30.08.1996 and as to why the allotment be not cancelled and plot be not resumed. The allottee-company contested the show cause notice but overlooking its objections, the Estate Officer-II passed the order dated 20.02.2009 (P11) whereby the plot in dispute was resumed.

(14) The allottee-company filed statutory appeal before the Administrator, HUDA on 12.03.2009. While its appeal was pending, HUDA is said to have, vide memo dated 09.06.2009, granted extension in time limit for raising construction in respect of all the institutional plots in Sector 32, Gurgaon, whereby, the allottees were permitted to complete the construction by 31.12.2010 subject to payment of double the extension fee.

(15) At this stage, the allottee-company thought of paying the balance allotment price to HUDA and sought the permission of BIFR whereupon BIFR permitted the allottee-company to make payment of ₹ 3 crores to HUDA on 22.07.2009 (P13).

(16) Regardless of the extension of time to raise construction or the allottee's offer to pay ₹ 3 crores towards allotment price, the Administrator HUDA dismissed the statutory appeal on 03.03.2010 (P14).

(17) The allottee-company then filed a revision petition before the State Government and vide the impugned order dated 26.02.2013 (P15) the revision petition was dismissed holding that once the allottee surrendered the allotment on 20.10.2005, there was no necessity either to resume the plot or entertain any appeal or revision petition. The petitioner's application dated 20.10.2005 was thus accepted by the revisional authority and orders of resumption as well as of the appellate authority were declared bad in law.

(18) The petitioner, who asserts itself to be a true representative of the original-allottee, has alleged that the revisional authority could not have *suo motu* invented a new ground to dislodge the allottee's claim ignoring the fact that the request dated 20.10.2005 for surrendering the plot was later on withdrawn by the allottee, well before the revisional order was passed. The petitioner claims that no request for surrendering the plot was pending on the date when the revisional authority at its own decided to entertain such request and passed the impugned order.

(19) The petitioner's case thus is that the plot could neither be resumed for its non-construction as HUDA itself extended the time to complete the construction till 31.12.2010 nor for the non-payment of instalments, for the allottee had during the pendency of appeal offered a payment of ₹ 3 crores. Similarly, allottee's application dated 20.10.2005 could not be used as a shield to dismiss its claim, for the said request already stood withdrawn.

CWP-9087-2015 (M/s Icon Investment Ltd. vs. State of Haryana & Ors.)

(20) Petitioner's case is that the original allottee – M/s Inertia Industries Ltd. applied to HUDA on 17.05.2000 for the change of nomenclature/transfer of the allotment in favour of the petitioner which was a 'group industry' of M/s Inertia Industries Ltd. and was substantially owned, controlled and managed by

the same promoters/shareholders. Estate Officer, HUDA forwarded the said application to Chief Administrator HUDA vide office memo (P3), whereupon the petitioner was asked to submit NOCs from M/s Inertia Industries Ltd. and M/s Intraport India Ltd. for the transfer of subject-plot. Those NOCs were duly submitted (P4 colly). Thereafter the original-allottee entered into an agreement with the petitioner confirming that it had given up its right, title and interest in the subject plot in favour of the petitioner.

(21) Meanwhile, HUDA laid down the policy guidelines on 26.02.2002 for the transfer of institutional plots. After a long correspondence the Chief Administrator, HUDA vide memo dated 23.05.2007 (P11) approved the change of nomenclature and/or transfer of the plot in favour of the petitioner. The said order was, however, withheld on account of certain objections. The Estate Officer was then authorized to decide the matter *re*: transfer of plot in favour of petitioner.

(22) Meanwhile, certain amount of shares of the original-allottee were transferred in favour of United Breweries Group in the year 2001. The name of M/s Inertia Industries Ltd. was got changed to M/s Millennium Beer Industries Ltd. on the strength of those shares and later on M/s Millennium Beer Industries Ltd. stood amalgamated with United Breweries Ltd. (UBL) w.e.f. 02.01.2008 (i.e. petitioner in the first case).

(23) While the petitioner's claim for the transfer of plot in dispute in its favour was yet to be decided by the Estate Officer, the original allottee – M/s Inertia Industries Ltd. was served with a show cause notice under Section 17(4) of Act for non-compliance of condition No.8 of the allotment letter to which the petitioner submitted its objections. Those objections were allegedly not considered while resuming the plot on 20.02.2009.

(24) Subsequently, the petitioner's request for transfer of the plot was turned down on 26.03.2009 on the ground that the same already stood resumed. The petitioner then filed statutory appeal under Section 17(5) of the 1977 Act before the Administrator, HUDA in which no effective proceedings were held though meanwhile the appeal filed by M/s Millennium Beer Industries Ltd. against the resumption order had been dismissed on 03.03.2010.

(25) The appeal filed by petitioner was finally rejected by Administrator, HUDA on 13.05.2014 (P31) against which the petitioner filed the revision petition before the State Government. Its revision petition was turned down on 17.03.2015 (P37) on the ground of maintainability as the matter *re*: resumption of plot already stood decided by the revisional authority on 26.10.2013 vide which the revision petition filed by UBL was dismissed.

(26) It boils down from the facts stated above that both the petitioners are aggrieved by the resumption of plot in question and have sought its restoration in their favour respectively, though most of their pleas are also similar.

(27) We have heard learned counsel for the parties at a considerable length. The records have also been perused.

(28) Having given our thoughtful consideration to the *inter-se* dispute between the two petitioners, we are satisfied that the question as to who is the lawful successor of the original allottee – M/s Inertia Industries Ltd., is essentially a civil dispute which cannot be effectively adjudicated in these proceedings. The petitioners will have to approach an appropriate forum to establish their respective claim of being the true successor of M/s Inertia Industries Ltd. so as to seek restoration of the subject plot in the event of setting

aside the resumption order. We thus do not express any views so far as their *inter-se* dispute is concerned.

(29) The core issue that falls for consideration of this Court is whether the action of HUDA authorities in invoking their powers under Section 17 of the 1977 Act and resuming the subject plot is justified and sustainable in law?

(30) It was vehemently contended on behalf of the petitioners that the show cause notice dated 25.11.2008 (P9 in the first petition) issued under Section 17(4) of the 1977 Act was only for non-compliance of Clause 8 of the allotment letter, namely, failure of the allottee in constructing the plot within five years from the date of offer of possession. It was urged that since HUDA authorities extended the period themselves for completion of the building in Sector 32, Gurgaon by 31.12.2010 [vide memo dated 09.06.2009 (P12)] subject to payment of double the extension fee, the very foundation of the resumption order collapsed, for the plot could not have been resumed before 31.12.2010.

(31) Learned senior counsels strenuously urged that had the Estate Officer accepted the petitioner's request for taking a pragmatic view and extended the time limit to raise the construction, the allottee would have completed the construction well before 31.12.2010. HUDA authorities thus cannot be allowed to take undue advantage of their own wrongs.

(32) On the other hand, learned counsel for HUDA contended that the purpose of granting further extension for a period of 1½ year was to give additional time to those allottees who had commenced construction but due to one or the other unforeseen circumstances could not complete the same. He pointed out that the possession of plot in dispute was offered and taken in the year 1996 and the construction period of five years stood expired in 2001.

There was no extension granted thereafter either to the allottee in specific or by

way of any general order. Once the allottee failed to complete construction within five years from the date of taking possession, Clause 8 read with Clause 12 of the allotment letter became operative whereunder the plot was deemed to have been reverted to HUDA due to the default of the allottee. He further referred to the previous show cause notices to point out that the plot has been resumed not only on the ground of its non-construction but also for the allottee's failure to make payment of due instalments. He urged that it's a case of continuous and repeated defaults in payment of instalments hence the authorities were left with no other choice except to resume the plot as a last resort.

CONCLUSIONS:

(33) It appears from the rival submissions made on behalf of the parties that the first issue which indeed requires determination is whether the subject-plot has been resumed only on the ground of the non-construction within the stipulated period or the non-payment of due instalments is also a ground relied upon by the authorities?

(34) Before adverting to the points in issue, it will be useful to discuss Section 17 of the HUDA Act which empowers "Resumption and Forfeiture for Breach of Conditions of Transfer". Its sub-section (1) provides that where a transferee makes any default in the payment of consideration amount or any instalment on account of the sale of any land or building, the Estate Officer may by notice in writing call upon the transferee to show cause within a period of thirty days, as to why penalty which shall be equal to 10% of the amount due from the transferee, be not imposed upon him.

(35) Its Sub-Section (3) provides that if the transferee fails to comply with the sub-section (1), namely, payment of penalty, the competent authority

will call upon the transferee to show cause as to why the land or building be not resumed and the amount already deposited be not forfeited. Thereafter comes sub-Section (4) of Section 17 which provides that after considering the cause, if any, shown by the transferee, the Estate Officer shall pass a reasoned order whereby he may resume the land or building or both and direct forfeiture as provided in sub-Section (3).

(36) Section 17(1) to (4) of the 1977 Act read as follows:-

“17. Resumption and forfeiture for breach of conditions of transfer. – Where any transferee makes default in the payment of any consideration money, or any installment, on account of the sale of any land or building, or both, under section 15, the Estate Officer, may, by notice in writing, call upon the transferee to show cause within a period of thirty days, why a penalty which shall not exceed ten per cent of the amount due from the transferee, be not imposed upon him.

(2) After considering the cause, if any, shown by the transferee and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded in writing, make an order imposing the penalty and direct that the amount of money due along with the penalty shall be paid by the transferee within such period as may be specified in the order.

(3) If the transferee fails to pay the amount due together with the penalty in accordance with the order made under sub-section (2), or commits a breach of any other condition of sale, the Estate Officer may, by notice in writing, call upon the transferee to show cause within a period of thirty days, why an order of resumption of the land or building, or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in

respect of the sale of the land or building, or both, should not be made.

(4) After considering the cause, if any, shown by the transferee in pursuance of a notice under sub-section (3) and any evidence that he may produce in support of the same and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer, may for reasons to be recorded in writing, make an order resuming the land or building or both, as the case may be, and directing the forfeiture as provided in sub-section (3) of the whole or any part of the money paid in respect of such sale.”

(37) It is an admitted fact and is well established on record that the first show cause notice was issued vide memo No.1129 dated 27.01.1997 under Section 17(1) and 17(2) of the 1977 Act and in response thereto the allottee promised to clear all the dues by 28.06.1997. Though the petitioners, for the reasons best known to them, have not appended those show cause notices but the details thereof find mention specifically in the resumption order dated 20.02.2009 as well as in para 5 of the preliminary submissions of the written statement filed by HUDA. These averments have not been controverted by the petitioners in their replications or otherwise.

(38) Further, the show cause notice dated 25.11.2008 issued under Section 17(4) of the 1977 Act (P9) clearly recites as follows:-

“That in spite of the stipulation contained in clause 8 of the allotment letter and in spite of delivery of possession and also approval of building plans you have not raise construction despite elapse of the stipulated period. The inaction on your part was clearly in breach of the conditions of sale within the meaning of Section 17(3) of the Haryana Urban Development Authority Act 1977. I am of the opinion that you have committed willful and deliberate breach of conditions of sale as contained in the allotment letter.

Accordingly, you have rendered yourself liable to an action as per Section 17 of the HUDA 1977. However, before taking action of resumption of land or building or both and issuing any direction for forfeiture of amount paid by you in respect of such sale as per the provisions of Section 17(3) of the Act, I deem it appropriate to call upon you to produce such evidence as you may consider appropriate in support of your submission and make such further submissions as you may desire.”

(39) It may be seen that the Estate Officer explicitly referred to the breach of conditions of sale within the meaning of Section 17(3), namely, the failure of the transferee to pay the due amount together with penalty as levied under sub-Section (1) of Section 17 of the 1977 Act.

(40) The allottee was conscious of the fact that the show cause notice not only accused it of not constructing the plot within a five-year period from the date of offer of possession but also for non-payment of the due instalments. It is in this backdrop that the allottee gave the following explanation in its reply dated 11.12.2010:-

“In view of foregoing you will appreciate that the company was determined to retain the plot and made several payments despite difficult situation. Its only upon the situations slipping out of control of the company, the company was not in a position to pay its balance dues in respect of the plot and carry out construction activities on the plot...

In view of the aforesaid developments and changed business scenario of the company at present, we are willing to retain the plot and start construction on the plot at the earliest. We request you take pragmatic view of facts and events and not to take action against us as contemplated in your notice.”

(41) In the order of resumption, the Estate Officer categorically recited that –

“as against our show cause notice vide memo No.1129 dated 27.01.97 under Section 17(1) and 17(2) of the HUDA Act, 1977, the allottee submitted a reply dated 26.02.1997, wherein the allottee had promised to clear HUDA dues towards the plot by 28.06.1997. However, the allottee again failed to adhere to its commitment.

That after keeping quit for over eight years, the allotted submitted a letter 20.10.05 surrendering the aforesaid plot on account of its inability to make the balance payment to HUDA and stating that the company is financially sick and also registered with Board for Industrial and Financial Reconstruction. A further letter dated 17.01.07 was also received from the allottee for surrender of aforesaid plot on account of the company being in continuous financial sickness.”

[emphasis applied]

(42) The facts emanating out of the proceedings initiated under Section 17(1) to 17(3) of the 1977 Act read with the explanations rendered thereto, coupled with the contents of the final resumption order unequivocally establish that the non-payment of due instalments was also one of the ground taken by the authorities, besides non-construction of the plot within the stipulated period of five years.

(43) We now proceed to determine as to whether HUDA was justified to invoke the power of resumption as a last resort?

(44) The allotment was made way back in the year 1995. After depositing the first instalment, the allottee admittedly did not deposit any full instalment except the meagre amount which was much less than ₹ 8 lacs in three parts. Clause 6 read with Clause 11 and 25 of the allotment letter

obligated the allottee to deposit the balance allotment price in four half-yearly instalments along with interest @ 15% p.a. failing which the Estate Officer was entitled to impose penalty under Section 17(1) and thereafter to resume the plot in accordance with law. It also stands proved on record that show cause notice under section 17(1) was issued to the allottee for non-payment of due instalments and in response thereto, the allottee promised to clear the dues before 28.06.1997. No such payment was made for years till the plot was resumed. Allotment price which ought to have been paid before the end of the year 1997 was actually not paid till 2009. In these circumstances, the action of the authorities in invoking Clause 11 of the allotment letter read with Section 17(4) of the 1977 Act cannot, by any stretch of imagination, be said to be unjustified.

(45) The recovery of sale price in instalments essentially means the deferment of payment of full sale consideration. Unless the sale consideration is paid in lumpsum, the title cannot be passed on to the buyer. The allottee in this case was reminded time and again of clearing its dues and in response, it acknowledged the fact that due to precarious financial conditions it could not deposit the due instalments. Non-payment of instalments is thus an admitted fact, hence the action of resumption as a result of non-compliance of Section 17(3) of the 1977 Act cannot be faulted with.

(46) As regard to the second ground of resumption, namely, non-construction of the plot within the stipulated period of five years, the petitioners are partly right in contending that vide memo dated 20.04.2007 (P5), the Estate Officer, HUDA, for the reasons best known to him, acknowledged the fact that the B&R road was dismantled from the site in March, 2000 and that “*date of offer of possession has been treated as date on which B&R road was dismantled*”

i.e. 3/2000”. It obviously extended the five year term upto March, 2005 but the fact remains that the allottee though got its building plan sanctioned but did not put even a single brick at the site and no construction concededly commenced. There was no extension in time granted to the allottee beyond March, 2005. It is not the petitioners’ case that it commenced construction within the extended period or it could not complete due to some unforeseen circumstances not attributable to it. The subsequent letter dated 09.06.2009 (P12) cannot come to the rescue of petitioner for the simple reason that extension to complete the construction before 31.12.2010 was admissible to those allottees only who had already commenced the construction. The petitioners made no efforts in this direction till the plot was resumed on 29.02.2009, hence the letter dated 09.06.2009 does not advance their case.

(47) In such circumstances when the allottee appears to have kept the concessional allotment intact only for profiteering and for speculative purposes the allotment cannot be allowed to be held for an endless period without utilization for the purpose for which it was allotted. The HUDA authorities were thus justified in resorting to the exceptional power of resumption, keeping in view the facts and circumstances of the case in hand.

(48) It further appears from the conduct of the petitioners that they probably are keeping a vulture’s eye on the subject plot when they assert themselves to be the successors of M/s Inertia Industries Ltd. On one hand, it is claimed that UB Group took over the stakes in M/s Inertia Industries Ltd. and changed its entity to M/s Millennium Beer Industries which was later on amalgamated with UBL but on the other hand, the pitiable financial condition of “M/s Inertia Industries Ltd.” who went for winding up or was declared a “sick industry” by BIFR, is being used as a shield by both the petitioners to

cover up the default period. The petitioners have managed to drag the litigation for more than two decades without paying a penny towards the allotment price. The apparent motive is to seek its restoration at the price of 1995 and thus to have a windfall. Such a dubious object is surely in conflict with the public policy and cannot be countenanced. The fact that the allottee woke up during the pendency of its appeal and offered to pay the due amount does not improve its case as such payment ought to have been made within the stipulated period. As per clause 6 of the allotment letter the default was incurable and bound to have its full effect on the consequences, including resumption of the site especially when the allottee failed to honour the repeated undertakings given to the authorities for depositing the due instalments.

(49) The allotment letter expressly stipulates payment of balance instalments within the specified period and further extension could be granted only on deposit of the 'penalty'. The time period to deposit the balance payment was never extended. The HUDA authorities strictly adhered to the time schedule to which the parties had agreed, which leaves no room to doubt that 'time is the essence of contract'.

(50) Similarly, failure of an allottee in constructing a site in compliance to the specific conditions of allotment can rightly invite the consequences like the resumption as has been explained in (i) **Skyline Contractors Pvt. Ltd. & Anr. vs. State of UP & Ors. (2008) 8 SCC 265**; (ii) **MD HSIDC & Ors. vs. M/s Hari Om Enterprises & Anr. (2009) 16 SCC 208**; and (iii) **State of Punjab & Ors. vs. Dhanjit Singh Sandhu, (2014) 15 SCC 144**.

(51) The petitioner's last ditch effort in contending that the revisional authority ought not to have *suo motu* taken a new plea that the allottee had already surrendered the plot on 20.10.2005, hence there was no legal necessity

to resume the same, is wholly misconceived and misdirected. It is undeniable that the allottee surrendered the plot firstly on 20.10.2005 and again on 17.01.2007. Its request was accepted and after forfeiting 10% of the allotment money, the balance amount was refunded vide cheque dated 26.02.2009 which was duly encashed. The allottee was thereafter surely left with no right, title or interest in the plot. Though the petitioner in the first case claims that the request to surrender the plot was later on withdrawn well before the decision of the revisional authority, but such withdrawal, if any, was mere a delaying tactic adopted by a habitual defaulter to retain the plot for speculative gains. Had there been any *bona fide* re-thinking on not surrendering the plot, the allottee would have paid the entire balance allotment price with interest along with such application. The allottee cannot take the authorities for a ride by surrendering the plot on two occasions and later on saying that those requests were withdrawn as it wanted to retain the plot.

(52) The order passed by the revisional authority to the extent it holds that the resumption and the appellate orders are bad in law or that there was no necessity to pass such orders, in our considered view, is wholly misconceived and deserves to be modified. It is a case where the allottee has been indulging in approbate and reprobate, hence the Estate Officer was justified in passing the formal order of resumption in exercise of its powers under Section 17(4) of the 1977 Act regardless of the fact that the allottee itself had surrendered the plot.

(53) There are different consequences if a plot is 'surrendered' or when it is 'resumed'. In the case of resumption, Section 17(3) and (4) empowers the competent authority to forfeit a part of the amount already deposited by the allottee whereas in the case of surrender, there exists no such power. Owing to the conduct of the allottee and the manner in which the petitioners have been

hoodwinking the process of law or have brazenly violated the terms and conditions of allotment, the Estate Officer was justified in forfeiting a part of the amount deposited by the allottee. Once the site was validly resumed the application moved by the allottee for its surrender had to be treated as infructuous. We order accordingly.

(54) Since we have upheld the resumption of the site on both grounds, namely, non-payment of instalments as well as failure of the allottee to raise construction and have declined to entertain the *inter se* dispute between the writ petitioners, the second writ petition filed by M/s Icon Investment Ltd. must also meet with the same fate as the first case.

(55) For the reasons afore-stated, both the writ petitions are dismissed with costs of ₹ 25000/- each. The petitioners shall deposit the cost amount with the Mediation and Reconciliation Centre of the High Court, within one month of the receipt of copy of this order. The cost amount shall be spent by the Mediation and Reconciliation Centre on the 'Children Court' which is being set up under its supervision.

(56) Ordered accordingly.

(Surya Kant)
Judge

31.01.2017
vishal shonkar

(Sudip Ahluwalia)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes
Yes