IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

1. CWP No.14095 of 2015

Aashiyana Infrastructure Developers (P) Ltd.

...Petitioner

VERSUS

State of Haryana & Ors.

....Respondents

2. **CWP No.14099 of 2015**

Shiriji Land Promoters Pvt. Ltd.

...Petitioner

VERSUS

State of Haryana & Ors.

....Respondents

Date of Decision: 19.1.2017

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

Present:- Mr. Aashish Chopra, Advocate for the petitioners.

Mr. Deepak Balyan, Additional AG Haryana.

Mr. Sukhandeep Singh, Advocate for
Mr. Lokesh Sinhal, Advocate for respondent Nos.2 and 3.

SUDIP AHLUWALIA, J.

The subject matter, facts and relief claimed in these two Writ Petitions are virtually identical. They have therefore, been clubbed together for the purpose of convenience in disposal.

2) The Writ Petitioners in both cases were allotted the commercial plots being Shopping Malls (1) & (2) in an auction sale in City Centre, Urban Estate, Mandi Township, Bhiwani. The total price for the plot allotted in favour of 'Aashiyana Infrastructure Developers (P) Ltd.' (Petitioner in CWP No.14095 of 2015) was ₹ 11.60 crores, while in case of 'Shiriji Land Promoters Pvt. Ltd.' (Petitioner in CWP No.14099 of 2015), it was ₹ 13.52 crores. They deposited 10% of the total purchase price by way of earnest money and another 15% of total price was to be deposited within a month from the date of issuance of their respective allotment letters, which was also duly paid in time. On 31.5.2007, the petitioner (in CWP No.14099 of 2015) requested the Respondent No.2 (Estate Officer, HUDA, Bhiwani) to club the zoning of the sites allotted to the petitioners. There was however, no response to the letter.

3) Now it is the case of the petitioners that no development works had been executed at the allotted sites and there was also encroachment on the same. The petitioners therefore, requested the authorities to complete the development works at the sites so as to enable them to start their construction for which they had already taken steps by having engaged Architectural Service from a Delhi based Firm to whom ₹ 5 lacs had been paid as advance. On 7.3.2008 however, the respondents allegedly offered possession of the plots on completion of development works in the area. Subsequently on 28.7.2008, the petitioners were asked to explain as to why penalty should not be imposed on them under Section 17(1) of the H.U.D.A. Act, 1977 due to their failure to pay the agreed installments. The petitioners replied to the Show Cause Notice showing their readiness and willingness to deposit principal amount of first installment after completion of

development works. Their explanations were however, not acceptable to the authorities. On 18.12.2008, the petitioners intimated the respondents of their inability to proceed with construction due to the respondents' failure to carry out the development works in time, which had caused immense monetary loss to the petitioners. As such, they had decided to shelve the project and requested Respondent No.2 to cancel the allotment and to refund the entire amount with upto date interest, which request was again reiterated on 30.12.2008. The Respondent No.2 however, instead of accepting the petitioners' request, sought their consent for deducting 10% of the consideration amount and 10% of all other dues as per HUDA Policy, but the Petitioners intimated that they were not willing to give consent to such proposal, and sought refund of entire money deposited by them. The Respondent No.2 therefore, on 25.7.2011 refunded only partial amounts to the Petitioners after ostensibly deducting 10% of the consideration money/other dues in either case. The Petitioners preferred appeals against such order of deduction which were allowed by the Administrator (Respondent No.1) by his orders dated 19.10.2011 in which, it was observed that while there were certainly deficiencies on the part of HUDA in the matter of completion of development works in time, yet the petitioners were also partially responsible for the ultimate result. The Administrator therefore, allowed their appeal in part by first treating the date of their request for surrender and refund i.e. 18.12.2008 as reference date for calculation of amount payable towards interest and also by reducing the deduction of 10% of the auction price, interest and other dues to 5%.

4) The Petitioners were still not satisfied and preferred Revision before the Financial Commissioner which was subsequently disposed of by

his order dated 28.1.2013 in which, the decision of the Administrator was substantially upheld, but the deduction amount was further reduced to 2.5% only by directing '*that 7.5% of the money will be refunded to the petitioners. The interest, if any, paid by them will also be refunded*.'

5) Being still dis-satisfied, the petitioners have approached this Court.

6) After going through the material available in record and hearing submissions of the Ld. Counsel for contesting sides, we find no reason to interfere with the final decision of the Financial Commissioner. We say so for the reason that from the Written Statement, it can be made out that while there might have been certain deficiencies in completion of development works in the area initially, but the same was actually completed in stages upto 2009 before the petitioners finally requested for surrender of their plots, after having admittedly failed to deposit the two installments which had undisputedly become due in the meantime. Undoubtedly, the Petitioners had inspected the position of locale before tendering their bids and must have reasonably satisfied themselves about the feasibility of their proposed project in the given circumstances. If at any stage they felt that it was becoming unfeasible to pursue their projects due to passage of time and alleged inaction on the part of HUDA Authorities, they ought to have decided to surrender their allotments promptly and before allowing more unpaid due installments to accrue against them. Had they done so, the Respondent/Authorities would have been able to have the plots re-auctioned promptly. Therefore, we are of the view that there is no perversity or impropriety in the final decision of the Financial Commissioner in his order dated 28.1.2013, who has virtually reduced the

deducted amount to mere 2.5% of the total consideration price, which would appear to be more than sufficient relief to the petitioners considering their overall conduct. These Writ Petitions are therefore, dismissed.

(Surya Kant)
Judge

(Sudip Ahluwalia)
Judge

January 19, 2017
AS

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No