**THE HIGH COURT OF PUNJAB AND HARYANA**
**AT CHANDIGARH**
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**CWP No.16062 of 2015 (O&M)**
**Date of Decision:24.01.2017**

**M/s Centurion Real Estate Developers P. Ltd. .....Petitioner**

**Vs.**

**State of Haryana and others .....Respondents**

**CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN**

Present:- Mr. Arun Jain, Senior Advocate with Mr. Sanjay Vij, Mr. Arnav K. Sood and Mr. Sanjeev Ailawadi, Advocates for the petitioner.

Ms. Tanisha Peshawaria, DAG, Haryana.

Mr. Deepak Balyan, Advocate for respondents No.2 to 4.

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**RAKESH KUMAR JAIN, J.(Oral)**

This petition is filed seeking a writ in the nature of certiorari for quashing the order dated 1.4.2014 by which direction was issued to the Estate Officer by the Principal Secretary to Government of Haryana, Town and Country Planning & Urban Estates Departments to check the amount of extension fee paid prior to 4th November, 2009 and refund the same within 60 days from the date of the order, otherwise, the said amount would also attract the simple interest @ 9% per annum which shall be recovered from the Estate Officer-II, Gurgaon.

The case set up by the petitioner is that the respondent-Haryana Urban Development Authority (HUDA) offered a 5 Star Hotel Site measuring 20234 Sqr. Mtrs. Situated in Sector 47, Gurgaon by way of auction in view of the forthcoming Common Wealth Games which were scheduled to be held from 3.10.2010 to 14.10.2010. The petitioner was the highest bidder for a sum of ₹255.20 crores in the auction held on 5.2.2007. After the acceptance of the bid, letter of allotment was issued on 26.2.2007 and as per the terms and conditions of the allotment, the amount of sale consideration was to be paid in instalments. The first instalment became due on 26.8.2007 which was deposited by the petitioner by demand draft dated 23.1.2008 of an amount of ₹33,71,78,630/- which included the interest @9% per annum for a period of six months and also penal interest @ 12% w.e.f. 27.8.2007 till the date of deposit i.e. 23.1.2008. The said amount was realised by HUDA. The second instalment became due on 26.2.2008 and the same was deposited by way of a demand draft dated 27.2.2008 in the sum of ₹31,46,13,750/- which was also accepted and encashed by HUDA. The possession of the site in question was offered to the petitioner on 28.5.2007. The petitioner applied for sanction of the building plan on 30.5.2008. Before the HUDA authority could have taken any decision sanctioning the building plan, it served a notice under Section 17(2) of the Haryana Urban Development Authority Act, 1977 (for short, `the Act') to show cause as to why the petitioner should not be saddled with the penalty of ₹32,89,73,435/- for not having deposited the due instalment in time in view of earlier show cause notice dated 30.7.2008 issued under Section 17(1) of the Act. Ultimately, the HUDA passed the order dated 10.10.2008, by exercising the powers under Section 17(2) of the Act, imposing the penalty of ₹32,89,73,435/- which was ordered to be paid within a period of 15 days. The order dated 10.10.2008 was challenged by the petitioner by way of a statutory appeal preferred before the

Administrator HUDA exercising the powers of Chief Administrator, HUDA. The said appeal was dismissed on 8.5.2009 with the observations that "The perusal of record reveals that due to non-payment of ₹32,89,73,435/- show cause notice under Section 17(1) & (2) of HUDA Act, 1977 was issued vide Estate Officer-II, HUDA, Gurgaon memo No.6604 dated 30.07.2008 and further directed to appear in person or through duly authorized representative on 22.08.2008. The said notice was sent by Registered post and never received back undelivered, therefore, the Estate Officer imposed penalty of ₹3,28,97,343/- vide his memo No.8496 dated 10.10.2008. The plea taken by the appellant are not tenable. The penalty has been imposed in accordance with the terms and conditions of allotment letter and after the compliance of statutory provisions of HUDA Act, 1977. I do not find any reason to disagree with the orders passed by the Estate Officer, hence appeal is dismissed."

The order dated 8.5.2009, passed in appeal, was challenged by the petitioner by way of statutory revision. While the revision petition was pending, petitioner made a representation as well to the Chief Administrator, HUDA, Panchkula. On the said representation, the Chief Administrator passed an order dated 15.10.2009 and conveyed to the Administrator, HUDA, Gurgaon. The relevant portion of the said letter read as under:-

> "The above 1st and 2nd half yearly instalment which fell due by 30.07.08 already stood deposited on 23.01.2008 and 28.02.2008 respectively. Probably these facts were also not brought to your notice by Estate Officer-II, HUDA, Gurgaon during hearing/ proceedings of appeal preferred by the allottees

> against the imposition of penalty and your orders have been obtained by concealing the facts.
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> In view of above, it shall be in the interest of justice if you recall your orders dated 08.03.09 passed by you in the capacity of designated appellate authority and re-examine the same as the above orders dated 08.05.09 have been managed by Estate Officer-II, HUDA, Gurgaon concealing the facts."
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> You are requested to take further action accordingly. Once the appeal is decided, both the appeal files be also sent to Head Quarters."

It is pertinent to mention that though the revision petition remained pending, however, pursuant to the order dated 15.10.2009, referred to above, the review order was passed by the Appellate Authority, i.e., Administrator HUDA, exercising the powers of the Chief Administrator, HUDA, Panchkula and in the said order, the following observations were made:-

> "After hearing both the parties and before adverting to the objection raised by the Ld. ADA, a thorough appreciation of facts of the case is desirable. After receipt of the orders of C.A., HUDA regarding recalling of the orders of Administrator the entire facts of the case were analysed, examined and appreciated on the office file. As per the report received on the file an amount of Rs.314613750/- as second instalment had already been deposited by the allottees on 28.02.2008 vide receipt no.7438 dated 28.02.2008. The said amount was

verified from the bank and also it stood realized in the account on 29.02.2008. Even the Estate Officer-II, HUDA, Gurgaon confirmed the receipt of the amount to Chief Administrator, HUDA vide memo no.5790 dated 19.05.2009. He has also stated in the aforesaid memo that the imposition of penalty was on account of communication gap and the fault has been attributed to the record keeper who could not place the payment on record. One Sh. Mahender Singh record keeper was proposed to be charge-sheeted for disciplinary action for this lapse as indicated by the Estate Officer in the aforesaid memo. In the subsequent memo no.11285 dated 07.10.2009. Estate Officer-II, HUDA, Gurgaon again intimated to the Chief Administrator, HUDA, Panchkula that amount stood paid and the same was verified by the Sr. Accounts Officer also and the Estate Officer-II recommended to the Chief Administrator, HUDA to waive off the penalty amount unduly imposed on the allottees. Therefore, the entire facts of the case vividly and clearly indicates that this was a lapse on the part of Estate Officer-II, wherein they failed to set their record straight and by sheer negligence on the part of the Estate Officer-II allottee had to suffer un-necessary for such a long period."

Consequently, with the aforesaid observations, the order dated 8.5.2009 was recalled and the appeal was allowed and penalty of ₹3,28,97,343/- imposed on the petitioner was set aside. While the proceedings were pending, the building plan dated 30.5.2008 was sanctioned on 22.5.2009. According to the petitioner, there was hardly any time left with the petitioner to build a 5 Star Hotel before the Common Wealth Games which were to be held in October, 2010. Not only project of the petitioner but the petitioner was also frustrated in the manner in which the HUDA authorities had dealt with its case inasmuch as a huge amount of ₹62 crores deposited by the petitioner in two months, even after encashment, was not accounted for and allegations were made against the petitioner that it had failed to deposit the instalments in time and because of that the building plan was not sanctioned which is evident from the order passed by the Revisional Authority on 1.4.2014 in which the following observations were made:-

> "Regarding the plea of the petitioner's counsel that after the surrender of plot in question, full amount, as per petitioner's calculations, was not refunded, it is observed that the petitioner voluntarily applied for surrender of plot and the respondent had refunded the amount after calculations as per HUDA policy. The petitioner took one more plea for refund of extension fee of Rs.16 lacs, which actually is Rs.12,14,040/- as brought to my notice by the dealing official of Estate Office. This is a reasonable request because on one hand, HUDA had not approved the Building Plans due to outstanding dues against petitioner which were wrongly calculated and on the other hand, demanded the extension fee which was paid in May, 2009."

It was further observed that "Had the calculation of dues been done correctly, the Building Plans of the petitioner would have been approved in time and they might have raised the construction in time. Therefore, till the time a decision was taken to review wrong order passed earlier, there was no justification to levy the extension fees."

Since the respondent- HUDA was reeling under the impression that the refund has to be made only as per the terms of the policy i.e. Annexure P.11 dated 7.5.1999 as per which the amount has been returned to the petitioner after deducting 10% of the amount deposited because it was voluntarily surrender by the petitioner, therefore, the amount of ₹29,18,87,177/- has been deducted out of the total amount paid by the petitioner amounting to ₹1,89,67,37,485/-.

Counsel for the petitioner has submitted that even though the circumstances emerging in the present case are not anticipated by the HUDA at the time of framing the policy dated 7.5.1999 yet the petitioner is entitled to the refund, de-hors the deduction of 10%, as has been done by the respondent- authority, because surrender of the plot of the petitioner was not a voluntary act but it was surrendered in the aforesaid circumstances as the respondents not only denied the receipt of more than ₹62 crores of two instalments in two months but also did not sanction the building plan on a lame excuse that the petitioner did not deposit the said instalment. The project for which the petitioner had purchased the land in question from HUDA had frustrated with efflux of time as the site plan was sanctioned on 22.5.2009 and there was hardly any time left with the petitioner to construct the massive structure of a 5 Star Hotel for the purpose of catering the Common Wealth Games which were held between 3.10.2010 to 14.10.2010.

The petitioner has thus prayed that the respondent may be directed to return the entire amount deducted as the action of the respondent is against equity, justice and good conscience.

It is also submitted that even the policy itself suggests that if the allottee is at fault then he will loose 10% but if the HUDA is at fault then the entire money has to be paid.

On the other hand, learned counsel appearing on behalf of the HUDA did not dispute the findings recorded by the Appellate Authority as well as the revisional authority in regard to the payment made by the petitioner on 23.1.2008 and 28.2.2008 and about the lapse on the part of the Department in not accounting the said amount. It is also not disputed by counsel for HUDA that the penalty imposed upon the petitioner was set aside as soon as it was found that the HUDA was at fault in not accounting for the amount deposited on 23.1.2008 and 28.2.2008 and it was also admitted that the extension fee paid by the petitioner was ordered to be returned vide order dated 1.4.2014 because it was found that there was no fault on the part of the petitioner for not raising the construction within time because the building plans were not sanctioned by HUDA because of the outstanding dues, namely, the instalments dated 23.1.2008 and 28.2.2008. All that has been argued by learned counsel for the HUDA is that the deduction has been made in terms of the provisions of the policy. It is also submitted that the HUDA has not pressurised the petitioner to surrender the plot as it is a voluntary act on its part.

I have heard learned counsel for the parties and perused the available record with their able assistance. The question in this case is "as to whether the petitioner could be made to suffer on account of the lapse of the respondent?

The aforesaid omnibus issue covers the entire controversy. There is no dispute that the plot was auctioned by HUDA for the purpose of construction of a 5 Star Hotel in view of the forthcoming Common Wealth Games. The case set up by the petitioner is also that it had purchased the plot in question for the purpose of construction of a 5 Star Hotel for the purpose of Common Wealth Games. In view of the facts and circumstances of the case, the petitioner has been regularly paying its instalments inasmuch as the first instalment dated 23.1.2008 of more than ₹33 crores was deposited. Similarly, the next instalment dated 27.2.2008 of more than ₹31 crores was also deposited. Both the instalments were encashed by HUDA but despite their own fault and lapses, it started the proceedings against the petitioner of penalty for not depositing the instalment in time. Ultimately, the petitioner agitated the imposition of penalty before the Forum meant for appeal and revision and a finding has been returned that the fault was entirely of HUDA in not accounting both the instalments deposited by the petitioner on 23.1.2008 and 28.2.2008 and the order imposing the penalty was set aside. Although the possession was delivered to the petitioner within three months from the date of auction and the petitioner submitted building plan for sanction for construction of 5 Star Hotel on 30.5.2008 but the said bulding plan was not sanctioned by the HUDA authorities till 22.5.2009, admittedly, on the ground that the petitioner had not deposited first and second instalment. It is the finding recorded by none else than the Secretary of the Department that had the instalment been deposited in time, the building plans of the petitioner would have been approved and they might have raised the construction in time. Since there was hardly any time left between 22.5.2009 to 3.10.2010 and all the plans of the petitioner to construct 5 Star Hotel were shattered, therefore, they applied to the HUDA for refund of their entire amount along with interest etc. Though the amount has been returned, the respondent deducted amount equal to 10% out of the consideration money, interest and other dues payable amounting to ₹29,18,87,177/- on the pretext that the petitioner itself had surrendered the plot and the policy dated 7.5.1999 supports the case of HUDA. This approach of the respondent is totally wrong and inequitable because it is also provided in the same policy dated 7.5.1999 that if HUDA would be at fault, namely, if failed to deliver the possession of the plot due to litigation pending in the Court by the original landowners or where plot is not actually available on the ground as per layout plan or in case of death of allottee then there would be no deduction. It appears that HUDA could only anticipate the aforesaid situation for the purpose of its lapse but it did not anticipate the situation that has emerged in the present case in which the petitioner is totally innocent and there is no fault on its part as the amount deposited by the petitioner was actually not accounted for by the HUDA for the reasons best known to them. Consequently, the entire project of the petitioner got frustrated and as a matter of fact, it appears that the petitioner was also frustrated with the act and conduct of the HUDA. In such circumstances, the equity demands that if the petitioner has been compelled by the circumstances created by HUDA in surrendering the plot, then the petitioner should be refunded the entire amount deposited by it.

Thus, in the given facts and circumstances, the present petition is hereby allowed, answering the question in favour of the petitioner and holding that it is the case in which the HUDA is at fault and is liable to refund the entire amount deposited by the petitioner, instead of deducting 10%, as has been done. With these observations, the present petition is allowed.

**January 24, 2017** **( RAKESH KUMAR JAIN )**
**renu** **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No