

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.22315 of 2015

Date of Decision: March 28, 2017

M/s Prime Banox

...Petitioner

VERSUS

State of Haryana & Anr.

....Respondents

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

Present:- Mr. Akshay Bhan, Senior Advocate with
Mr. A.S.Talwar, Advocate for the petitioner.

Mr. Deepak Balyan, Addl. AG Haryana.

SUDIP AHLUWALIA, J.

The Petitioner-Company seeks issuance of a Writ in the nature of Certiorari for quashing the impugned letter dated 9.9.2015 (Annexure P-20) issued by Respondent No.2, vide which its claim for interest was rejected, along with a Writ of mandamus for directing the said Respondent to pay interest to the Petitioner-Company on the refunded amount of ₹ 2,21,06,865/- wrongly recovered from it as the cost of a plot measuring 4050 Square Meters in Industrial Estate, Bahadurgarh.

2) The Petitioner had applied for allotment of such plot in the Footwear Industrial Area, Bahadurgarh under the NRI Category to set up a Leather Unit with Foreign Collaboration in December 2010. On 20.9.2011, the Respondent

No.2 vide Annexure P-1 informed the Petitioner about such allotment. On 28.10.2011, the Regular Letter of Allotment (In short 'RLA') (Annexure P-2) containing the Payment Schedule and other terms & conditions of allotment was issued. The Petitioner accordingly complied with the requirements including the deposit of 15% of the cost within 60 days and furnishing of requisite documents. On the day of the RLA itself, the Agreement was made between the parties whereby the regular allotment of plot No.31, Sector 17, Footwear Park, Bahadurgarh, measuring 4050 Square Meters was made in favour of Petitioner vide Annexure P-3. However, on 3.1.2012 Respondent No.2 vide its letter (Annexure P-4) informed that in the Letter of Allotment, the plot had been inadvertently described as being located in Sector 17, whereas it was actually in Sector 4-B, Bahadurgarh, although the number of plot remained identical (i.e. 31). The Petitioner accordingly returned the original Letter of Allotment to Respondent No.2 on 18.1.2012 and the modified letter dated 29.2.2012 (Annexure P-6) was issued in favour of the Petitioner. No substantive progress in the matter could however, be achieved in the following two years, since the requisite infrastructure was non-existent, although the Petitioner did not default in making payment of the required instalments from its side. However, on 30.10.2014 when a partner of the Petitioner again visited the site for taking possession, it was found that the allotted plot was much bigger in size than what was covered in the Letter of Allotment. The Petitioner therefore, vide its letter dated 5.11.2014 (Annexure P-12) again requested Respondent No.2 to give possession of plot measuring 4050 Square Meters.

3) The Respondent No.2 however, asked the Petitioner vide its letter dated 22.1.2015 (Annexure P-14) to deposit an amount of ₹ 95,76,000/- towards

the additional area covered in the allotted plot, which was over and above the original size of 4050 Square Meters.

4) The Petitioner was however, not in a position to afford a plot of such big size and therefore, vide letter dated 31.1.2015 (Annexure P-15), requested Respondent No.2 to refund the amount recovered, if it was unable to give possession of the plot of the requisite specification.

5) The Respondent No.2 on 1.4.2015 vide its letter (Annexure P-16) sent a cheque of ₹ 2,17,16,138/- to the Petitioner as the amount recovered from it towards principal amount was refunded, since it had no plot measuring 4050 Square Meters as required. It was however, found that Respondent No.2 had wrongfully deducted an amount of ₹ 3,90,727/- as TDS from the Petitioner. It therefore, also demanded the refund of this amount, which was also refunded by Respondent No.2, vide letter dated 6.7.2015 (Annexure P-18). The Petitioner then asked Respondent No.2 to grant interest on the amount recovered from it from the date of payment till the date of refund, but such claim was rejected by Respondent No.2 on 9.9.2015 vide the impugned letter (Annexure P-20).

6) We may now advert to the Estate Management Procedures (EMP)-2011 devised and followed by Respondent No.2 (HSIIDC) regarding the recourse available in such situation. Item 12.4 in Chapter 12 of the same is the closest procedure applicable to the facts and circumstances of this case. It provides -

“While handing over physical possession of plot, in case, the actual area of the plot on ground is found to be higher than the tentative allotted area, as mentioned in Regular Letter of Allotment (RLA), the excess area upto 10% of the original size shall be handed over to the allottee by charging original allotment rate as mentioned in RLA, alongwith interest @ 11% p.a., from the date of handing over possession. In case the excess area is more than 10% of

the original size, such excess area may be allotted to the allottee on payment of price of excess area at the current allotment rate, applicable on the date of physical possession of the plot.”

7) We therefore, see that the Respondent-Corporation also had contemplated the possibility of the actual ground area of the allotable plots to differ from the size officially to be allocated and that such difference in size could also be upwards i.e. in excess of the specified area. If such excessive area comes upto 10% of the original size, the allottee is competent to take it over by paying the original allotment rate. However, in the event of the area exceeding 10% of the original size, the current applicable price on the date of physical possession is payable. In the present case, the original allotted area was 4050 Square Meters, but the plot sought to be delivered was actually found to be measuring 5418 Square Meters i.e. 1368 Square Meters over and above the allotted area, which comes to about 34% of the original size. The grievance of the Petitioner is that Respondent No.2 acted in a callous manner by offering such a plot, which was unusually larger than the size contemplated in the allotment. Had the excessive area been limited to a reasonable percentage such as 10% as covered in the Item 12.4 quoted above, it might have been in a position to accept allotment of the same, but the unusually excessive area transferable at the prevailing market price, which was substantially higher than the original rate of allotment, was beyond its means on account of which, it had no option but to decline its acceptance and seek refund of its amount. Admittedly, the total money paid by the Petitioner. was refunded *albeit* after some delay concerning the amount initially deducted as TDS.

8) However, the Petitioner has been unable to show us any where from the Original Allotment Letter-cum-Agreement or even the Estate Management

Procedures that the Respondent/Authority was under any obligation to pay interest for the money retained by it till its refund, even though the peculiar circumstances of the case had constrained the Petitioner-Company to surrender its allotment and seek refund. We therefore, do not find it to be a fit case for granting the relief sought for by the Petitioner, which essentially appears to be one in the form of recovery of damages by way of loss of interest on the deposited amount for the period it was retained by Respondent No.2. Such a claim would ideally stand to be mitigated by recourse to normal Civil Proceedings. The Petitioner-Company if so advised, may thus seek an appropriate alternative remedy. But the relief claimed by it is declined in our Writ Jurisdiction, and the Writ petition dismissed.

(Surya Kant)
Judge

(Sudip Ahluwalia)
Judge

March 28, 2017
AS

Whether speaking/reasoned : ***Yes/No***

Whether Reportable : ***Yes/No***