

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

Civil Writ Petition No. 24114 of 2015 (O&M)
Date of Decision: 20.12.2017

Kamal Kumar and anotherPetitioners

versus

State of Punjab and othersRespondents

**CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU, JUDGE.**

Present : Dr. Ashwinie Kumar Bansal, Advocate,
for the petitioners.

Mr. PPS Thethi, Addl. Advocate General, Punjab.

Mr. R.S.Modi, Advocate, for respondent No.2.

S.J.VAZIFDAR, CHIEF JUSTICE

The petitioners have sought a writ of mandamus directing the respondents to pay interest on the amount deposited by them in respect of a plot of land allotted in their favour.

2. The petitioners were successful at the auction held by the respondents on 22.01.2009 of a commercial site at Bathinda. The petitioners' bid of ₹ 2,11,25,990/- was accepted. As per the terms and conditions of the auction, the petitioners deposited an aggregate amount of ₹ 61,26,538/- towards 25% of the total consideration and 4% towards cess. The petitioners' bid was accepted on 28.01.2009. Pursuant thereto, an allotment letter dated 15.07.2009 was issued in favour of the petitioners.

3. The respondents do not contend that there was any default on the petitioners' part. The respondents were unable to hand over the possession of the commercial site and to complete the transaction on account of an interim order dated 25.09.2009 in a Civil Writ Petition No.15190 of 2009 filed by third parties for setting aside the sale and auction of land. The interim order directed the parties to maintain status-quo. By an further order dated 17.04.2012 the respondents were restrained from changing the nature of the land which was being used by the inhabitants as a park. The order, however, stated that the same did not preclude the respondents from amending the scheme. The respondents were unable, therefore, to comply with the petitioners' demand for possession of the plot.

4. The petitioners through their Advocate's letter dated 31.05.2013 inter-alia stated the above facts including the fact that for four years there had been no progress in the matter and that despite the order dated 17.04.2012 the respondents had not made any amendment to the scheme. The respondents were, therefore, called upon to refund an amount of ₹ 61,26,538/- together with interest at 18% per annum from the date of deposit till payment.

5. The petitioners filed a Civil Writ Petition No. 14466 of 2013 for the refund of the said amount which was disposed of by an order and judgment dated 10.07.2013 directing the respondents to decide the petitioners' demand by passing a speaking order.

6. The respondents ultimately refunded the principal amount of ₹ 61,26,538/- but without interest.

The question that falls for consideration is whether the respondents are also liable to pay interest on the said amount of Rs.61,26,538/- from the date of deposit till payment.

7. The issue is covered in favour of the petitioners by the order and judgment of a Division Bench of this Court dated 09.10.1996 in *R.K.Goel v. Haryana Urban Development Authority and another*. In that case the respondents were unable to hand over the possession of the plot for five years. The Division Bench directed the respondents to accept the surrender of the plot by the petitioner and to refund the amount with interest at 18% per annum from the date of deposit.

8. A group of writ petitions the first of which was in the case of *S.K.Khanna v. Haryana Urban Development Authority and another* Civil Writ Petition No. 765 of 1997 was disposed of by an order and judgment of a Division Bench of this Court 19.09.1997. The Division Bench followed the judgment in *R.K.Goel's* case (supra) and granted interest as the respondents had failed and neglected to hand over the possession of the plot. The Division Bench noted the submission that a petition for Special Leave to appeal had been filed against the judgment in *R.K.Goel's* case and made it clear that if the order passed in that case is reversed or modified by the Supreme Court, the petitioner would get the interest in accordance with the order of the Supreme Court.

In *Veena Chug v. Haryana Urban Development Authority, Panchkula and another*, 2013 Law Suit (Pb&Hr) 4781, the Division Bench followed the above judgments.

9. We are bound by the above judgments which apply to the case before us. As we noted earlier, it is not even the respondents' case

that there was any default on the part of the petitioners. The respondents admitted that they were unable to handover the possession of the plot to the petitioners. Even assuming that the respondents were not at fault, it would make no difference for the respondents were unable to hand over the possession of the plot albeit on account of the interim orders passed by this Court. What is more important is the fact that the respondents did not amend the scheme despite the liberty granted to them in the order dated 17.04.2012 to do so. The petitioners could not be expected to wait indefinitely for the respondents to comply with their obligations under the contract. There is nothing to suggest that the petitioners kept their options open with a view to speculate on account of an increase in the prices. The respondents have enjoyed the use of the petitioners' money in the meantime. There is, therefore, no warrant for denying the petitioners' interest.

10. In the circumstances, the petition is disposed of by directing the respondents to pay interest to the petitioners at 12% per annum from the date of deposit till payment and or realization by 31.03.2018 but subject to the same condition as stipulated in S.K.Khanna's case (supra), if applicable.

(S.J. VAZIFDAR)
CHIEF JUSTICE

20.12.2017
ravinder

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned	√Yes/No
Whether reportable	Yes/Nov/