

HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-309-2016

Date of Decision: February 02, 2017

Smt.Mamta Mishra

.....Petitioner

Versus

Haryana Urban Development Authority and others

.....Respondents

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

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| 1. | To be referred to the Reporters or not? | Yes/No |
| 2. | Whether the judgment should be reported in the Digest? | Yes/No. |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |

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Present: Mr.N.K.Vashist, Advocate
for the petitioner.

Mr.Sumit Jain, Advocate
for the respondent-HUDA.

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SURYA KANT, J.

The petitioner was allotted residential Plot No.24, Sector 2, Faridabad, for a consideration of Rs.34,32,660/- vide allotment letter dated 05.06.2007. She had deposited 10% of the allotment price alongwith application form. However, she could not deposit the balance 15% amount as, unfortunately in April 2007, she fell sick and for treatment of her heart and diabetic renal disease, had gone to USA where her daughter resides.

She came back in April 2009 and deposited a sum of Rs.7,30,000/- on

06.04.2009. She again deposited Rs.7,15,497/- on 08.06.2010. While she

wanted to deposit the balance amount of allotment price, the HUDA-authorities cancelled the allotment in Febraury 2013 on the ground that the petitioner failed to deposit 15% allotment price within the stipulated period. The petitioner filed appeal etc. but those have been turned down. The aggrieved petitioner has filed the instant writ petition.

[2] Two-fold contentions are raised on behalf of the petitioner. Firstly it is submitted that delay in deposit of the installments was beyond the control of petitioner as on account of her precarious health conditions she had to go to USA due to which she could not deposit the amount on time. As soon as the petitioner came back, she immediately deposited two installments which were accepted by the authorities. In support of her contention that the petitioner could not deposit the installments on time due to the circumstances beyond her control, her learned counsel has produced the original passport as was directed by this Court on the previous date. We have seen the entries in the passport and it does appear that the petitioner stayed in USA for a long time during the relevant period.

[3] Secondly, the petitioner alleges discrimination, for in an identical case where the allottee of Plot No.708, Sector 27, Panchkula could not deposit 15% of the allotment price within the stipulated period and offered such payment after a delay of more than one year, the revisional Authority accepted the claim of allottee and condoned the delay. The order passed by the Revisional Authority was challenged by HUDA before this Court in CWP No.415 of 2013 (Haryana Urban Development Authority, Panchkula vs The Financial Commissioner and another) which was dismissed by a well reasoned order dated 23.07.2013 (Annexure P-10). The

Coordinate Bench in the cited case held as follows:-

“Even otherwise, while passing the order of cancellation, the Estate Officer, HUDA, Panchkula, completely ignored the various instructions issued by the HUDA, permitting extension of time for payment of 15% of the premium amount. Extension of time for payment of 15% of premium amount could have been granted upto one year or even beyond one year by the authority concerned in view of instructions dated 03.08.2007.

In the present case when order of cancellation was passed on 30.07.2009 (Annexure P-2) by the Estate Officer, the HUDA had already accepted the amount of Rs.8,07,741/- from respondent No.2 towards the annual installments of the plot which includes 10% of the sale price of the plot in question, whereas the 15% amount comes to Rs.1,87,473/- only. The Estate Officer has completely overlooked this fact while passing the order. As aforesaid, even if the payment of 15% was not paid within 30 days, the HUDA instructions/policies clearly provide that the stipulated period to deposit 15% amount can be extended even beyond one year.”

[4] Having gone through the facts of the cited case, we are satisfied that the reasoning given by this Court as reproduced above is applicable with full force to the case of the petitioner also. Since the petitioner is ready and willing to deposit the balance amount alongwith interest and penalty etc., we follow the reasons assigned by this Court in the cited case and allow this writ petition. The cancellation order as well as the appellate and revisional orders are set aside and the respondent-authorities are directed to calculate the dues payable by the petitioner alongwith interest and penalty which shall

be deposited by the petitioner within a period of two months from the date of

receipt of such calculations.

[5] Disposed of.

(SURYA KANT)
JUDGE

February 02, 2017
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(SUDIP AHLUWALIA)
JUDGE

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |