

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

CWP No.5568 of 2016(O&M)
Date of decision: July 21, 2017

Vijender Singh Ahlawat

---Petitioner

Versus

State of Haryana and others

---Respondents

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

Present: Mr.B. S. Rana, Sr.Advocate assisted by
Mr.Harinder Pal Singh Ishar, Advocate and
Mr.Rajwinder Paul, Advocate for the petitioner.

Mr.Deepak Balyan, Addl.AG, Haryana.

Mr.Deepak Sabharwal, Advocate for
respondents No.4 to 7.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash the order dated 26.08.2014 (Annexure P-32) whereby the plot of the petitioner has been resumed and the order dated 03.08.2015 (Annexure P-34) whereby his appeal there against has been dismissed.

The petitioner applied for and was allotted industrial plot No.575, Sector 8, Phase IV, IMT Manesar, measuring 1012.50 sq. meters for setting up an Industrial Project of ready to wear apparels. The terms and conditions of the allotment were specified in the Regular Letter of Allotment (RLA) dated 13.12.2004. As per the RLA, in addition to the sum of ₹ 2,22,715/- being 10% of the price of the plot that had been deposited along with the application, an amount

of ₹ 4,10,063/- towards 15% of the value of the plot was to be deposited within 30 days, making it 25% of the price of the plot. It is the admitted case of the parties that the said amount was paid within time.

As per the RLA the remaining 75% of the price of the plot was to be paid by the allottee in five equal six monthly instalments along with interest @ 11% p.a. on the balance amount starting from the date of the offer of possession. In the event of non-payment of the balance price as specified, the RLA would be cancelled and the plot resumed. In case of default in paying any instalment on due date, the allottee was liable to pay interest @ 14% p.a. on the defaulted amount from the due date till payment. As per clause 8 of the RLA the allottee was required to start construction of the building as per approved building plans within a period of one year of date of offer of possession. Commercial production was to be started within three years from the date of offer of possession. In case of circumstances beyond the control of the allottee, extension for a maximum period of one year could be granted for starting construction. Similarly, two extensions, of one year each, could be granted for starting commercial production, subject to the allottee having completed a certain percentage of construction. Clause 26 is the provision for resumption of plot for failure to comply with the terms and conditions of allotment.

The relevant provisions of the RLA are reproduced below:

SCHEDULE OF PAYMENT OF BALANCE 75% OF THE PRICE OF THE PLOT/SHED

The balance 75% of the price of the plot/shed shall be paid by the allottee through Bank Draft to the HSIDC in its concerned field office in five equal six monthly instalments alongwith interest 11% p.a. on the balance amount starting from the date of offer of

possession. The RLA will be cancelled and the plot will be resumed in the event of non-payment of balance price as laid down above. Further, in case, the allottee defaults in making payment towards any of the instalment(s) of 75% cost of the plot/shed on due dates, the allottee shall be liable to pay interest @ 14% p.a. on the defaulted amount from the due date of instalment till the date of payment. In this regard, a notice will be issued by the Corporation on committance of such default indicating the due amount, which shall be payable by the allottee within a period of 30 days. In case the allottee still continues to be defaulter in making the payment of instalment(s), the allottee will be afforded an opportunity of personal hearing before MD/HSIDC before resumption of the plot. In case, the allottee after the opportunity of personal hearing has been accorded still does not pay the total due amount alongwith interest as discussed above, the plot would become liable for resumption.

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8. *Schedule of Construction & Going into Operations:*

(a) The allottee shall start construction of building as per approved building plans within a period of one year of offer of possession and will be required to start commercial production within a period of three years from the date of offer of possession. However, in case the allottee is not able to start construction within one year, extension can be granted by the HSIDC/Competent authority for a maximum period of one year, if the allottee is able to satisfy the authority that the allottee could not start construction for reasons beyond his control. A further extension of six months can also be allowed to start construction on payment of prescribed extension fee if the allottee has taken any of the following effective steps for implementation of the project:

- i. Approval of building plans.*
- ii. Placement of orders for machinery and other capital goods.*

- iii. *Financial tie up including public offer of shares.*
- iv. *Technical and marketing tie up.*
- v. *Force-Majeure*
- vi. *Any other vagary of circumstances beyond investor's control inflicting a serious handicap on his ability to implement the project i.e. severe sectoral or global recession.*

Similarly, the period of commencement of production can be extended by the HSIDC/Competent authority for a period of one year subject to the allottee satisfying the authority that he could not go into production within three years of the date of offer of possession for reasons beyond his control and he took affective steps for implementation of the project. Extension in such period, for commencement of commercial production beyond three years shall be granted only if 10% of the permissible ground coverage has been constructed and effective steps have been taken by the allottee for the completion of the project. Similarly, second extension of one year for completion of the project i.e. after four years from the date of offer of possession will be allowed in case where the allottee has achieved at least 20% of the permissible ground coverage and machinery has been ordered. Both these extensions i.e. for 4th years and 5th year from the date of offer of possession will be subject to payment of extension fee at the rate as determined from time to time and shall be payable by the allottee to the Corporation.

b) The allottee will be deemed to have completed the project if he constructs minimum 25% of the permissible covered area and start commercial operations within specified period as mentioned above, after installation of the plant and machinery as per project report submitted by him. In case, there is any deviation in respect of installation of plant and machinery, the HSIDC/Competent Authority will be competent to decide whether the plant and machinery which has not been installed has any material bearing on the project. A

certificate of completion of project shall be issued by the HSIDC/Competent Authority on an application by the allottee.

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26 **RESUMPTION OF PLOTS/SHEDS:-**

The HSIDC will be competent to resume plots in its industrial Estates in case an allottee defaults in complying with the terms and conditions of allotment/transfer/leasing etc. The resumption of plot will be approved by the Competent Authority/HSIDC after giving show cause notice. Upon resumption, the principal amount deposited by the allottee will be refunded after deducting 10% of the price of the plot without any interest. The amount of interest paid on installments, if any, shall also stand forfeited. The allottee will be free to remove the structure/debris, if any, within a period of two months of resumption order at his own cost, failing which it shall be removed by the HSIDC at the allottee's cost. It may be clarified that the allottee shall not be entitled to any payment/compensation for building constructed by it on the resumed plot.

27. **RESUMPTION OF PLOTS/SHEDS:-**

No restoration of resumed plot shall be allowed. However, appeal shall lie to Commissioner Industries Govt. of Haryana against the orders of the Competent Authority/HSIDC ordering resumption.

Vide letter dated 30.03.2006 (Annexure P-2), the Deputy General Manager HSIIDC, IMT Manesar (respondent No. 5) intimated the petitioner that infrastructure in Sector 8 would be ready by 31st March, 2006. He was informed that 1st April, 2006 would be the date of offer of possession of the plot. It was intimated that the period of three years for implementation of the project would be reckoned w.e.f. 1st April, 2006. The schedule of balance payment towards 75% of

the cost of plot would be intimated separately. The petitioner was requested to take necessary steps for implementation of the approved project, namely to take paper possession, getting approval of building plan and making financial arrangements for implementation of the project. The petitioner replied vide letter dated 18.04.2006 (Annexure P-3) that he was ready to take paper possession of the plot and requested that he be delivered the paper possession of plot. It is the case of the petitioner that when he visited the site of the plot he could not locate it and that no development, whatsoever, had taken place and no basic amenities provided. He, immediately, addressed letter dated 09.05.2006 (Annexure P-4) to respondent No.5 pointing to the total lack of basic services i.e. water supply, approach road, sewerage and electrification at the site, and stating that, in view thereof, he was withdrawing his application dated 18.04.2006 for taking paper possession, which would be taken only after completion of at least the basic services at the site. It was requested that physical possession of the plot may be given, rather than paper possession without completing basic services at the site, so that necessary steps for implementation of the project could be taken immediately. The petitioner received no response to the said letter. The information received by the petitioner under the RTI Act through letter dated 05.09.2006 (Annexure P-5) confirmed the absence of development. As per this information HT lines in front of the Plot No.575, Sector 8 Phase IV, IMT Manesar, were in the process of being erected, which would be energized by 05.09.2006.

The respondents addressed letter dated 06.09.2006 intimating that since infrastructure at the site was complete, possession of the plot stands offered w.e.f. 01.04.2006 as already conveyed. Schedule of balance payment towards 75%

cost of plot was also given in this letter. It was also intimated that the implementation period of three years as per terms of allotment would be reckoned w.e.f. 01.04.2006. The petitioner vide letter dated 27.09.2006 (Annexure P-7) objected to the offer of physical possession being given retrospectively w.e.f. 01.04.2006. He requested that the offer of possession of plot should be made from the date of actual completion of infrastructure at the site and further requested that a new schedule of payment for the balance of the allotment price be issued without charging interest till the date of completion of infrastructure. Without responding to the letter dated 27.09.2006, the respondent No.5 sent letter dated 21.02.2007 (Annexure P-8) asserting that all the infrastructure facilities were available at the site. The petitioner was asked to visit the office on any working day along with identity proof for taking physical possession of the plot. The petitioner responded vide letter dated 04.05.2007 (Annexure P-9) stating that he had visited the office of the respondents along with the requisite undertaking and requested that physical possession be given to him. The respondents were also requested to supply new/rectified schedule of balance payments so that payment of installment could be made within time and implementation of the project be started at the site. The undertaking on non-judicial stamp paper as per format was also enclosed with this letter. The respondents vide letter dated 09.05.2007 (Annexure P-10) replied to state that the request contained in the letter dated 04.05.2007 has been considered but not acceded to. The petitioner was required to deposit the payment as per schedule already given in the letter dated 06.09.2006.

Respondent No.5 issued a notice dated 09.08.2007 (Annexure P-11)

to the petitioner requiring him to show cause as to why the plot be not resumed

for his failure to deposit the due amount within the prescribed time. It was stated that consequent on the allotment of the plot to the petitioner on 13.12.2004, he was required to pay the balance 75% cost of the plot in five equated half yearly installments along with interest from the date of offer of possession and as on 15.08.2007, a sum of ₹ 10,30,976/- was outstanding against him for the first and second installments. The petitioner submitted his reply dated 05.09.2007 (Annexure P-12) to the show cause notice denying any fault on his part. He asserted that he had requested the respondents several times to deliver actual physical possession and give a rectified schedule of the balance amount due but to no effect. He further stated that in compliance to the letter dated 21.02.2007 an undertaking as required had been given by the petitioner and the letter indicating his willingness to take physical possession had been sent, which was duly received in the office of the respondents. He reiterated that the petitioner has been misled regarding availability of infrastructure at the site. The respondents were requested to withdraw the show cause notice dated 09.08.2007. As the respondents did not respond, the petitioner filed a complaint under Section 12 of the Consumer Protection Act, 1986 before the Consumer Disputes Redressal Forum, Panchkula (for short “the Forum”) on 04.10.2007 pleading deficiency in service on the part of the respondents in offering possession of the site without providing basic amenities. The said complaint was disposed of vide order dated 07.08.2008 (Annexure P-13). The respondents were held guilty of deficiency in service. The Forum noticed that as per letter dated 04.12.2007, the offer of possession had been revised from 01.04.2006 to 05.09.2006. However, the revised pay schedule was issued on 06.02.2008. The Forum held that prior to this date no interest for

penalty of any kind could be charged. The respondents were directed to issue the installment schedule afresh, keeping in mind that the first installment should be shown to have been payable as on 05.03.2008 and that no interest or penalty of any kind was chargeable before 06.02.2008. The petitioner was awarded ₹ 5000/- as compensation. The order was directed to be complied with, within a period of one month from the date of its communication. Instead of complying with direction of the Forum , the respondents issued show cause notice dated 22.04.2009 (Annexure P-14) for resumption of plot for not starting construction within a period of two years from the date of offer of possession as per the terms and conditions of the allotment. The petitioner in his reply dated 21.05.2009 (Annexure P-15) pointed out that the notice was not sustainable as no revised schedule of payment had been issued by the respondents as directed by the Forum. The petitioner undertook to make payment within 10 days of the payment schedule being issued. On 3.2.2010 the respondents issued a revised schedule of payment (Annexure P-16) as under:

Sr. No.	Installments	Due Date	Principal	Interest w.e.f. 06.02.2008 till due date	Total (till Due Date)
1.	1 st	05.03.2008	379688	3318	383006
2.	2 nd	05.09.2008	379688	84218	463906
3.	3 rd	05.03.2009	379688	62134	441822
4.	4 th	05.09.2009	379688	42103	421797
5.	5 th	05.03.2010	379688	20711	400399

Thereby, he was required to deposit, in lumpsum, the balance 75% payment i.e., balance 5 six monthly instalments along with the interest charged thereon retrospectively. Though the petitioner legitimately felt that interest could not have been charged, however, he deposited an amount of ₹ 8,42,912/- on 5.3.2010

towards 1st and 2nd instalment and later ₹ 12,58,210/- on 5.4.2010 (under protest) on account of 3rd, 4th and 5th installments of ₹ 4,41,882/-, ₹ 4,21,797/- and ₹ 4,00,399/- respectively with interest, being the full and final payment (after deduction of ₹ 5,808/-). Thereafter, he requested vide letter dated 5.4.2010 (Annexure P-19), that the physical possession of the plot be given to him, so that he could start construction and implement the project. He wrote yet another letter dated 25.11.2010 (Annexure P-21) requesting the respondents to deliver physical possession of the plot to him. He also referred to the earlier letters dated 04.03.2010 and 05.04.2010. This was followed by yet another letter dated 07.02.2011 (Annexure P-22) sent by registered post with the same request. Instead of getting any response to his requests for handing over physical possession, he was issued notice dated 16.02.2011 (Annexure P-23) to show cause as to why the plot allotted to him be not resumed. The resumption was proposed on the grounds (i) that physical possession of the plot had not been taken; (ii) agreement with the Corporation had not been executed; (iii) construction was not started nor the project implemented within the specified period and even after the expiry of four and half years and (iv) there was default in payment of cost of the plot. The petitioner submitted his detailed reply to the show cause notice on 15.03.2011 (Annexure P-24). Without considering the same, the respondents issued yet another show cause notice dated 10.05.2013 (Annexure P-25) for resumption of the plot. The petitioner submitted his reply dated 05.06.2013 (Annexure P-26) to this as well. The petitioner was afforded personal hearing before the Estate Management Committee on 02.07.2014. In addition to oral submissions the petitioner submitted detailed reply as well. However,

resumption order dated 26.08.2014 (Annexure P-32) was passed. The order stated that physical possession of the plot was offered on 05.09.2006. The petitioner had failed to start construction activity within two years thereof i.e, by 04.09.2008 nor had he started to implement the project within the stipulated three years of offer of possession i.e, 04.09.2009, which was extended upto 04.09.2010 (after including one year general extension). The appeal filed by the petitioner was dismissed by the Appellate Committee vide order dated 03.08.2015(Annexure P-34).

Hence the present writ petition.

Ld. Counsel for the petitioner contended that the Forum had accepted the plea of the petitioner regarding non availability of infrastructure at the site and by its order dated 7.8.2008 the respondents were required to issue the instalment schedule dated 06.02.2008 afresh so that the first instalment should be shown to have been payable as on 05.03.2008. It was also directed that no interest or penalty of any kind is chargeable before 06.02.2008. He argued that instead of complying with direction of the Forum, the respondents issued show cause notice dated 22.04.2009 (Annexure P-14) for resumption of plot for not starting construction within a period of two years from the date of offer of possession as per the terms and conditions of the allotment. The petitioner submitted his reply, but the show cause notice was not dropped. It was only on 3.2.2010 the respondents issued a revised schedule of payment (Annexure P-16). The petitioner deposited the entire amount (under protest) by 5.4.2010 and thereafter sent repeated communications to the respondents to deliver physical possession of the plot to him, but without any response. He argued, that in these circumstances, the petitioner could not be held to have violated the terms and conditions of the allotment letter. And the

action of the respondents in resuming the plot was illegal .

Ld. Counsel for the respondents on the other hand defended the resumption order stating that the petitioner had violated the terms and conditions of the allotment letter. The petitioner was intimated that the date of offer of possession was 1.4.2006, which was later revised to 5.9.2006, but the petitioner deliberately did not take possession nor did he start construction. He argued that on the revised schedule of payments having been intimated vide letter dated 3.2.2010, the earlier show cause notice dated 22.4.2009 would be deemed to have been withdrawn and the petitioner ought to have abided by the terms and conditions of the RLA. He argued that the reliance by the petitioner on the order of the Forum is misplaced as there was no order by Forum to revise the date of offer of possession from dates as already communicated.

We have heard Ld. Counsel for the parties and perused the record.

We are of the view that the decision of the Forum dated 7.8.2008, which has been accepted by both parties, is to be taken as the starting point to determine the claim of the parties in this petition. Before the Forum, the petitioner had pleaded deficiency of service on the part of respondents in not providing basic services at the site of the plot. The respondents, on the other hand, had pleaded, that though initially the date of offer of possession was 1.4.2006, it was later revised to 5.9.2006 vide letter dated 4.12.2007, by which date the infrastructure and facilities had been provided. But the petitioner was deliberately not taking possession. The Forum accepted the plea of the petitioners, held the respondents to be guilty of deficient services and awarded compensation of ₹ 5000/-. It directed the respondents to issue instalment schedule for payment afresh, with the

first instalment to be payable as on 5.3.2008 and no interest or penalty of any kind was to be charged before 6.2.2008. In view of this order of the Forum, the earlier defaults, if any, of the petitioner were to be condoned. The terms and conditions of the RLA, thereafter, had to be read and understood in the light of the directions of the Forum.

The Forum had directed that the order be complied with within a period of one month of the date of its communication. However, the revised schedule of payment was issued by the respondents only on 3.2.2010 i.e., after a delay of about 18 months. As per this schedule, the 1st instalment was shown to be due on 05.03.2008, about two years before the date of issue of this schedule. In fact, the due dates for all the instalments, barring the last one (which was 5.3.2010), were before the date of issue of this letter. It cannot be ignored that this constituted a serious violation of the directions of the Forum. Further, even before the issue of the revised payment schedule, the respondents issued a show cause notice dated 22.4.2009 to the petitioner for resumption of the plot for not starting construction at the site, which the petitioner replied. But no decision thereon was communicated to the petitioner. The petitioner paid (though under protest,) the entire amount as demanded in the revised payment schedule by 5.04.2010. Thereafter, he addressed numerous letters dated 5.4.2010, 25.11.2010 and 7.2.2011 requesting the respondents to revise the date of offer of possession and hand over physical possession of the plot to him. But these letters elicited no response. Instead, respondents issued further show cause notices for resumption which, ultimately, led to the passing of the impugned orders.

We are not impressed with the argument of the Ld. Counsel for the respondents that the Forum had only directed the issuance of a revised schedule for payment and not directed that the date of offer of possession also be revised. The offer of possession cannot be de-linked from the schedule of payment of instalments. As per the terms and conditions of the RLA, the payment of the five equal six monthly instalments commences from the date of offer of possession. The Forum having directed the respondents to issue a revised payment schedule with the first instalment shown to be payable as on 5.3.2008 with other instalments to follow, the earlier date of offer of possession i.e., 5.9.2006 lost all meaning. In the letter dated 4.12.2007, wherein 5.9.2006 was communicated as the revised date of offer of possession, the respondents had clearly stated that the basic infrastructure and facilities had been completed at the site on 5.9.2006. However, the findings of the Forum regarding deficiency of services, belie this stand of the respondents that the infrastructure facilities were complete by 05.09.2006. The basis of this date of offer of possession, that the infrastructure facilities were complete by then, having been found to be not correct, it could no longer be relied on to penalize the petitioner. In our view, after the decision of the Forum, it was incumbent on the respondents to not only communicate a fresh schedule of payment, but also revise the date of offer of possession in line therewith. And the date of completion of construction had to be reckoned accordingly. Thus, we are of the view that the show cause notices and the impugned orders proceed on a wholly erroneous premise by treating 5.9.2006 as the date of offer of possession and concluding that the petitioner had defaulted in taking possession and starting and completing construction within time.

The contention that upon the revised schedule dated 3.2.2010 being furnished the show cause notice dated 22.4.2009 was deemed to have been withdrawn is not well founded and in any event does not support the respondent's case. After 3.2.2010 the petitioner repeatedly sought permission including by his letters dated 5.3.2010, 5.4.2010, 25.11.2010 and 7.2.2011. There was no response to these letters. Also, there is nothing on record to show, that any time thereafter, he was asked to take possession, which he declined.

Further, the petitioner in any event, cannot be expected to assume that the show cause notice dated 22.4.2009 was impliedly withdrawn upon the receipt of the revised schedule contained in the respondent's letter dated 3.02.2010. The respondent itself ought to have stated so specifically and called upon the petitioner to take possession, which it never did.

Accordingly, this writ petition is allowed. The orders dated 26.08.2014 (Annexure P-32) and 04.09.2015 (Annexure P-34) are quashed. The respondents are directed to hand over physical possession of Plot No.575, Sector 8, Phase IV, IMT Manesar measuring 1012.50 Sq. meters to the petitioner. He be also communicated a fresh schedule of construction from the date of delivery of possession.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

July 21, 2017
Atul

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No