

HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-7546-2015

Date of Decision: March 07, 2017

Gaurav Gaur

.....Petitioner

Versus

State of Haryana 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.Vikram Dhakla, Advocate
for the petitioner.

Mr.Pankaj Kundra, Advocate for
Mr.Deepak Sabharwal, Advocate
for the respondents.

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SURYA KANT, J.

The petitioner seeks quashing of orders dated 19.12.2012, 02.07.2013 and 12.08.2014 vide which allotment of commercial booth Site No.13, Sector 31, Faridabad, was cancelled and the appeal and revision petition preferred against the cancellation order have also been dismissed.

The facts are like this:-

[2] The petitioner gave the highest bid for booth Site No.13, Sector 31, Faridabad for a total sum of Rs.54.10 lacs. He deposited a sum of Rs.5,41,000/- as 10% of the bid money at the time of fall of hammer. The petitioner was consequently issued allotment letter dated 27.01.2011

(Annexure P-1), the relevant terms and conditions whereof are as follows:-

“4. You are requested to remit Rs.811500/- in order to make the 15% price of the said plot/building within 30 days from the date of issue of this letter. The payment shall be made by a Bank draft payable to the Estate Officer, HUDA, Faridabad and drawn on any scheduled Bank at Faridabad. In case of failure to deposit the said amount within the above specified period, the allotment shall be cancelled and the deposit of 10% bid money deposited at the time of bid shall stand forfeited to the Authority, against which you shall have no claim for damages.

5. In case you accept the terms and conditions detailed below, kindly send the acceptance letter along with the amount detailed in para 4 above within 30 days of dispatch of this allotment letter.

6. The balance amount i.e. Rs.4057500/- of the above price of the plot/building can be paid in lump-sum without interest within 60 days from the date of issue of the allotment letter or in 10th (sic) half year installments. The first installment will fall due after the expiry of 6 months/one year of the date of issue of this letter. Each installment would be recoverable together with interest on the balance price at 12% simple interest on the remaining amount. The interest shall however accrue from the date of offer of possession. Offer of possession shall constitute the provision of pucca road to approach the market, (metalled parking in case of shopping centres), sewerage, water supply and electricity (to enable electric connection to your building) only. The other amenities like street lights, parks, storm water etc. shall be provided as and when the market gets fully developed. In case installment is not paid within prescribed period, then 15% interest shall be charged on account of delayed payment.

7 and 8

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XXX

XXX

9. In case the installment is not paid on due date of the month which it falls due, the Estate Officer shall proceed to take action for imposition of penalty and resumption of plot in accordance with the provision of Section 17 of the Act. You are informed that Estate Officer can impose a penalty of 10% on the amount due to HUDA in case of default as per the provisions of the HUDA Act, 1977.”

[3] In addition Clause 28 of the allotment letter, furnishes the schedule for payment of balance allotment price which were required to be deposited on the “due dates”, but unfortunately the allotment letter does not mention any due date for deposit of such installments.

[4] Besides 10% of the bid amount, the petitioner as per details given in para 2 of the written statement, made the following payments:

Receipt Number	Date	Amount Deposited	Delay
429113	03.05.2011	Rs.2,00,000/-	65 days
429114	03.05.2011	Rs.5,00,000/-	65 days
43067	13.05.2011	Rs.50,000/-	75 days
436308	27.07.2011	Rs.50,000/-	150 days
442898	16.11.2011	Rs.25,000/-	262 days

[5] It may be seen that more than Rs.8 lacs were further deposited by the petitioner on different dates and in this manner the total amount deposited by him was Rs.13,66,000/-.

[6] The possession of the site was also delivered to the petitioner on 24.08.2011 vide possession Certificate (Annexure P-2).

[7] On 17.05.2012 a letter was sent to the petitioner seeking his explanation for the delay in depositing the above mentioned amount. The petitioner in his reply (Annexure P-6) explained that the delay was caused

due to business loss and he simultaneously moved an application for

condonation of delay. Meanwhile, the due amount had already been deposited by him.

[8] After four months or so, the Chief Administrator, HUDA is said to have declined to condone the delay and consequently allotment was cancelled vide Memo dated 19.12.2012 (Annexure P-3) whereby 10% bid amount of Rs.5,41,000/- was forfeited and the balance amount was ordered to be refunded. The petitioner challenged the cancellation order before the Appellate Authority but his appeal was declined vide order dated 02.07.2013. His revision petition has also been dismissed by the State Government vide order dated 12.08.2014.

[9] The petitioner was returned a sum of Rs.8,25,000/- which has not been accepted by him. The above-stated orders are under challenge in the instant writ petition.

[10] We have heard learned counsel for the parties and gone through the record. It is true that as per Clause 4 of the allotment letter, in the event of failure to deposit 15% of the allotment price within 30 days, the allotment could be cancelled and 10% bid amount could be forfeited. However Clause 6 provides that in the event of delayed payment of installments, HUDA is entitled to levy 15% interest though the installments of balance amount are ordinarily payable with 12% simple interest.

[11] HUDA has also formulated a Policy dated 03.08.2007 (Annexure R-1) whereby delay in deposit of 15% of the allotment price can be condoned and in case of commercial sites the Administrator is competent to condone the delay of 30 days. In addition the Policy provides as follows:-

“In case the period of delay is more than the period for which

condonation can be done by Estate Officer/Administrator and falls within the powers of Authority/Chief Administrator in such genuine cases of hardship the allottee may make an application to the Chief Administrator with a photocopy of bank draft of requisite 15% amount. The cases will be examined on receipt of application after obtaining facts of the case from concerned Estate Officer and put up to the competent authority for orders. Thereafter, in case the competent authority agrees to condone the delay keeping in the mind the circumstances of the case then the Estate Officer will be advised to accept the payment.”[emphasis applied]

[12] It is self evident from the above reproduced Clause of the policy that the delay beyond 30 days can also be condoned by the Chief Administrator keeping in view the genuineness of a case or hardship of the allottee.

[13] Adverting to the facts of the case in hand, there can be no doubt that there was delay on the part of the petitioner but it was not a case of complete failure to pay 15% of the bid amount. The petitioner continued to deposit the amount at different intervals and such payments were duly accepted by HUDA authorities without any objection. The possession of the site was also handed over to the petitioner.

[14] It may be true that the petitioner could not claim condonation of delay in deposit of the due amount as a matter of right but the Policy expressly empowers the Chief Administrator to condone the delay in a genuine case of hardship, if a ground is made out. The petitioner has averred in his application that due to losses suffered by him in the business, delay was caused and we find no valid reason for not accepting such a

reason by the Chief Administrator more so when much before the

application for condonation of delay was considered, the petitioner had already deposited the due amount. Further, once the petitioner had been delivered possession of the site, a limited right had accrued in his favour and the allotment ought not to have been cancelled without issuing a show cause notice under Section 17 of the Act as per Clause 9 of the Allotment Letter. Pertinently, no action to cancel the allotment was taken soon after expiry of maximum period permitted for deposit. Rather the authorities took more than year in passing the cancellation order and well before that petition had already deposited the due amount with interest.

[15] In a case where allottee is inclined to deposit the due installments but has delayed such deposit for the reasons beyond his control or on account of financial hardship, the Allotment Letter itself suggests the recourse to be followed, namely, increase in the rate of interest from 12% to 15%. Such a recourse compensates the HUDA authorities for the delayed payment and would, in a way, penalise the allottee for such delay. Unfortunately, the said recourse has also not been resorted to in the instant case.

[16] We are thus of the view that the petitioner's request for condonation of delay, in the light of the fact that he had already deposited the due amount, requires sympathetic reconsideration at the hands of the Chief Administrator, may be subject to levy of such penal interest and penalty as may be permissible under the Rules/ Regulations.

[17] For the reasons aforesaid, we allow this writ petition in part; set aside the cancellation order and appellate as well as the revisional order

case to the Chief Administrator, HUDA to reconsider the petitioner's prayer for condonation of delay in the light of the observations made hereinabove and give him an opportunity to deposit all the due installments in lump sum alongwith such interest as may be levied keeping in view the principles of fair and just play.

[18] Parties are directed to appear before the Chief Administrator on 03.04.2017.

**(SURYA KANT)
JUDGE**

March 07, 2017
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**(SUDIP AHLUWALIA)
JUDGE**

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