

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

CWP No.2154 of 1994 (O&M)

Date of Decision: 04.07.2018

Madan Mohan

...Petitioner

VS.

HUDA & Anr.

... Respondents

**Coram : Hon'ble Mr.Justice Surya Kant
Hon'ble Mr.Justice Sudip Ahluwalia**

Present: Mr. B.S.Rana , Advocate for the petitioner

Mr. Rajesh Mahajan, Advocate for the respondents

SURYA KANT J. (Oral)

(1) The petitioner was allotted residential plot No.54, Sector NMT, Rewari by HUDA vide allotment letter dated 16.10.1989 (P1). The allotment price of ₹ 1,92,221.15 was required to be deposited in installments within a specified period. Clause (5) of the allotment letter reads as follows:-

“The balance amount i.e. Rs.1,44,165/85 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 allotment letter or in six half yearly installments. The first installment will fall due after the expiry of six months of the date of issue of this letter. Each installment would be recoverable together with interest on the balance price at 10% interest on the remaining amount. The interest shall, however, accrue from the date of officer [sic offer] of possession.”

(2) Similarly, Clause (6) of the allotment letter says that:-

“The possession of the site will be offered to you on completion of the development works in the area. In the case of building or undeveloped land, the possession shall, however, be delivered within 90 days from the date of this letter.”

(3) A show cause notice dated 29.10.1993 (P2) was issued asking the petitioner to pay interest on delayed payment of the instalments as also a penalty of ₹ 9294/-. By that time, possession was admittedly not offered to the petitioner. The aggrieved petitioner challenged the said action before this Court being violative of Clause (5) of the allotment letter.

(4) In the written statement dated 16.04.1994, HUDA has categorically conceded in para 6 as follows:-

“That contents of para 6 of the writ petition are wrong and denied. The offer of possession has to be made after the completion of development work. The offer of possession has been made to the petitioner on 8.4.94. A copy of the offer of possession is annexed as Annexure R-1 to the reply and its true translation is annexed as Annexure R-1/A to the reply.”

(emphasis by us)

(5) It is further clarified in para 9 of the written statement that no penal interest or penalty is being charged from the petitioner.

(6) We find from the record that neither in the show cause notice nor in the written statement, it is explained as to when did the petitioner deposit the due instalments; how much was the delay; and how the interest component has been calculated? While it may be true that in the event of delay in the deposit of instalment(s), consequential interest accrued thereon

can be recovered but such delayed period and amount has to be specified in the show cause notice. It is thus a case where no effective opportunity has been given to the petitioner to controvert the claim of the respondents. Still further, the controversy pertains to the year 1992-1994. The possession was admittedly offered in 1994 and by now the petitioner must have deposited the due amount of interest and raised construction at the site. Be that as it may, if the petitioner has been asked to deposit the amount in excess to what he was liable to pay, refund has to be made to him.

(7) The writ petition is accordingly allowed in part; show cause notice (P2) is set aside and the Estate Officer, HUDA, Rewari is directed to re-determine the petitioner's liability towards interest, if any. If the petitioner has already deposited the amount of interest, the same shall be adjusted and the excess amount, if any, shall be refunded to him within two months.

(Surya Kant)
Judge

04.07.2018
vishal shonkar

(Sudip Ahluwalia)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes
No