

CWP-10713-2018(O&M)

Sr.No.212

IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

CWP-10713-2018(O&M)

Date of Decision: 31.05.2018

Aadarshini Real Estate Developers Pvt. Ltd.Petitioner

versus

State of Haryana and othersRespondents

**CORAM HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present Mr.R.S.Rai, Sr. Advocate
with Mr. Rajeev Anand, Advocate for the petitioner.
Mr.Lokesh Sinhal, Advocate for HSIIDC.

MAHESH GROVER, J(ORAL)

The petitioner has filed this writ petition praying for a mandamus directing the respondents no.2 and 3 HSIIDC to strictly comply with the Estate Management Procedure, 2015 and abide by the terms of the allotment letter dated 09.03.2018.

In response to a notice of e-auction, the petitioner applied and was allotted land measuring 11.76 acres on free hold basis for commercial development. The petitioner has already paid an amount of 149.604 crores and the Regular allotment of letter was issued to him on 09.03.2018. In e-auction, the bid was accepted in February 2018 with a window of 180 days for the HSIIDC to issue the regular allotment letter, which as stated above, was issued on 09.03.2018. A perusal of Annexure P2 states that it is a regular letter of allotment with offer of possession and some of the terms which may be relevant are extracted herebelow:

“2. Size of the site is tentative and subject to actual demarcation at the time of taking physical possession.

ii Allottee is required to remit a sum of Rs.224,40,00,000/- after adjustment of payment made as per clause 5(i) in order to make the 25% tentative cost of the said plot i.e by 08.04.2018 by way of RTGS/NEFT/online in favour of HSIIDC within a period of 30 days from the date of issuance of RLA. In case of failure to deposit the said amount within the above specified, the allotment shall automatically lapse and the 10% amount deposited by allottee shall be forfeited by HSIIDC and allottee shall have no claim over the damages whatsoever.

iii Allottee will be required to deposit additional 25% price (i.e Rs.374, 00,00,000/-) of the plot/site within sixty days (60 days) from the date of issuance of RLA; in case of delay in remittance of payment, delay interest @ 15% pa shall be payable which shall be compounded half yearly on the installment dates towards balance 50% price of the plot.

Iv xxxx

v xxxx

vi xxx

vii The possession of the site is hereby offered, which may be taken from Estate Manager, HSIIDC, Udyog Vihar, Gurugram immediately after deposit of amount detailed in clause 5(iii) & submission of acceptance of terms and conditions enclosed at Appendix-A.

viii xxxx

ix Although physical possession of the aforesaid plot has been offered, it is however, made clear that the physical possession of the plot shall be delivered to the allottee in person at the site. Any delay on your part to take over the possession of the plot shall not exempt your liability to pay the interest on the outstanding amount towards the price as well as qua the non

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*completion of construction within the stipulated period.
Thus, allottee may immediately contact our field office
at Udyog Vihar Gurugram to take the physical
possession of the plot through a letter of possession, in
writing, from the concerned field office.”*

The petitioner, during the course of hearing of the present petition, deposited another sum of 220 crores and 66 lakhs vide cheque No. 888147 dated 01.05.2018 and 3 crores and 74 lakhs vide cheque no.888151 dated 01.05.2018.

The petitioner has, in this manner, deposited 25% of the bid amount. The petitioner's grievance now is that the respondents should issue him a fresh regular allotment letter which will marginally extend the time to pay the remaining amount. He bases his claim on a premise that the respondents themselves are to be blamed for delay by not giving him possession of the site free from all encumbrances though they had promised so.

The respondents, on the other hand, referred to the terms of the regular letter of allotment to contend that no such consideration can be extended to the petitioner because he did not make the requisite payment in terms of the allotment of letter.

Ironically, even though this is the stand taken before us, it is not disputed that a **CWP No. 6087 of 2018 titled Rajneesh Chadha and others v. State of Haryana** was pending in this Court where some portion of the land given to the petitioner was being used as a road and the industrial plot holders in the vicinity of that area had filed this petition. This petition was eventually dismissed on 24.05.2018. That apart, the respondents themselves

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had extended the time for deposit of 15% till 30.04.2018 after conceding that the site had the office of the HSIIDC but they have very conveniently withheld information about the presence of other institutions, a fact that was brought to our notice by the petitioner and not denied by the respondents. The photographs appended to the petition show the presence of the office of HSIIDC, the Electricity Regulatory Commission, banks and may be few others.

Learned counsel for the petitioner further contends that when the e-auction was conducted, the notice clearly said that the site is free from all encumbrances, Annexure P6 is a testimony to that. For the purposes of reference, we reproduce the relevant portion of this document:-

“ Reference your query received through e-mail dated 14.03.2018. In this regard, I am directed to inform you that the Corporation vide clause no.2.3 of Bid Document floated during the period had already conveyed that the site offered is clear and free from all encumbrances. Accordingly, as referred a clause no.2.3 of Bid Document captioned site will be handed over free from all encumbrances.”

If we reconcile this to the conduct of the respondents, then at best, it can be termed to be a fraud on general public if the site was being offered and proclaimed to be free from all encumbrances, then it should have been so particularly when such a huge amount is involved of a project of such magnitude. The respondents have themselves conceded not once but twice over that the site is concededly not free from all encumbrances with their own office, Electricity Regulatory Commission and banks being present which were cleared only after the bid was accepted on 30.04.2018.

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Learned counsel for the petitioner again points out to the dishonest stand of the respondents to contend that even now there is a Cellular Tower located in the premises. This fact too is not denied by the respondent rather it has been said that in case the petitioner makes the balance payment, they will remove the Cellular Tower and in the same breath it is stated that it is in the process of being removed.

We cannot but help comment adversely on the conduct of the respondents where they have willfully misled the auction bidder. Therefore, his demand for issuing of a fresh regular letter of appointment may not be unjustified at all.

On the previous date of hearing, we had heard the matter and expressed our views in the manner that we have recorded today. Where after, learned counsel for the respondents prayed for some time to seek instructions as to whether the prayer of the petitioner could be answered. Today, an affidavit has been filed that the respondents are agreeable to revise the offer of possession w.e.f 30.04.2018 in place of 09.03.2018. This is a partial acceptance of the claim of the petitioner and a confession to their own fault but does not entirely redeem the situation so far as the petitioner is concerned because possession of the site has not been delivered free from encumbrances as was given out. We, therefore, direct that the Cellular Tower or any other structure that may exist on the site be removed so as to rid the site of any encumbrances and the petitioner be handed over the possession and the fresh letter of allotment be issued effective from the date of issue.

Once regular letter of allotment is issued to the petitioner, they would be at liberty to show it to the Registrar Judicial who shall permit the

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HSI IDC to withdraw the amount deposited in their favour.

Disposed of in the above terms.

(MAHESH GROVER)
JUDGE

31.05.2018
mamta

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No