IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 17973 of 2017
Date of decision: 03.04.2018

Rishi Makkar

……Petitioner

Vs.

Haryana State Industrial and Infrastructure Development Corporation Limited

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Rajesh Sehti, Advocate with Mr. Arun Biriwal, Advocate and Ms. Varinder Kumar Warraich, Advocate for the petitioner.

Mr. Deepak Balyan, Advocate for the respondents. .

Ajay Kumar Mittal,J.

1. Prayer in this petition filed under Articles 226/227 of the Constitution of India is for quashing the impugned order dated 22.5.2017, Annexure P.18 passed by the respondents whereby his request for re-schedulement of payment of plot cost by recalculating interest from the date of physical possession actually handed over to him i.e. on 29.9.2015 to the date of payment for the area actually delivered has been rejected. Further prayer has been made for restraining the respondents from charging interest from the petitioner in respect of the period prior to 5.10.2015 when letter dated 29.9.2015, Annexure P.11 sent by the respondents was received by him. Direction has also been sought to the respondents to receive further instalments alongwith interest without insisting for making the payment of interest amount w.e.f 31.7.2014 to 5.10.2015.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. After observance of all procedural formalities, an agreement dated 31.7.2014 was executed between Haryana State Industrial and Infrastructure Development Corporation Limited (HSIIDC) and the petitioner. The offer of HSIIDC to allot an industrial plot No.14-E, in Industrial Estate, Sirsa at a tentative price of ₹ 1,11,33,300/- for setting up an industrial project of seed processing unit was accepted by the petitioner. He furnished bank draft of ₹ 17,91,000/- being 15% of the tentative price in addition to 10% of the tentative price already deposited alongwith application for allotment in order to make 25% of the price of the plot. Balance amount of 75% of the total tentative price was agreed to be paid in eight half yearly installments payable on 31st December and 30th June each year. As per the agreement, Annexure P.1, interest at the rate of 12% per annum was payable from the date of offer of possession by the HSIIDC on the balance unpaid tentative price of the plot as on the date of offer of possession. The petitioner made various requests to the respondents seeking physical possession of the plot in question from 8.8.2014 to 6.8.2015. On 29.9.2015, Annexure P.11, the Corporation finally offered physical possession of the plot to the petitioner which was received by him on 5.10.2015. The petitioner requested the respondent Corporation on 4.12.2015, Annexure P.12, to calculate the amount of interest from 30.9.2015 to be paid alongwith third installment on 31.12.2015. As the Corporation did not care to send any reply to the petitioner, he paid the third installment alongwith interest amount w.e.f 30.9.2015 to 31.12.2015 vide letter dated 4.1.2016, Annexure P.13. In all, a sum of ₹ 12,56,320/- was paid to the Corporation. The petitioner submitted three representations on 11.1.2016, 28.3.2016 and 22.6.2016 to the respondents. When no action was taken, the petitioner on 30.6.2016,

Annexure P.16/A, paid fourth installment amounting to ₹ 13,56,013/-. Thereafter, the petitioner deposited the fifth instalment on 30.12.2016, Annexure P.16/B amounting to ₹ 12,96,305/- including interest. The petitioner appeared before the Managing Director of the respondent Corporation and prayed for not charging the interest prior to the date of offering the physical possession of the plot. When nothing was done, the petitioner sent a reminder, dated Nil, Annexure P.17 to the respondents. Ultimately, the impugned order dated 22.5.2017, Annexure P.18 was passed turning down the request of the petitioner. Hence the instant petition by the petitioner.

3. A written statement has been filed by the Chief Coordinator Industries cum Head of Division (Estate) HSIIDC on behalf of the respondents wherein it has been inter alia stated that an agreement containing terms and conditions of allotment was executed by the petitioner with the respondent Corporation on 31.7.2014. The petitioner made a request for handing over physical possession of the plot vide letter dated 30.12.2014. Physical possession was handed over to the petitioner on 21.9.2015 and possession certificate was issued on 29.9.2015. It was claimed that the interest has been rightly demanded by HSIIDC.

4. We have heard learned counsel for the parties.

5. Undisputedly, as a result of execution of an agreement dated 31.7.2014 between the respondent Corporation and the petitioner, industrial plot No.14-E, Industrial Estate, Sirsa was allotted to the petitioner at a tentative price of ₹ 1,11,33,000/- for setting up an industrial project of Seed Processing Unit. The petitioner deposited 15% of the tentative price in addition to 10% of the said price already deposited alongwith the application in order to make 25% of ₹ 1,11,33,000/-. The balance 75% amount was to be paid in eight equal

half yearly instalments payable on 31st December and 30th June each year. Interest at the rate of 12% per annum was payable from the date of offer of possession by the Corporation on the balance unpaid tentative price of the plot. The petitioner made various requests during the period of about one year from 8.8.2014 to 6.8.2015 to the respondents for seeking physical possession but nothing was done. The petitioner deposited the third, fourth and fifth instalments alongwith due interest. The possession was handed over to the petitioner on 5.10.2015. The petitioner requested the respondents to calculate the amount of interest from 30.9.2015 to be paid alongwith third instalment on 31.12.2015. As per clause 4.4 of the Estate Management Procedures (EMP) 2015, once the Estate Officer has offered the possession of plots, the allottee shall be liable to pay interest at the rate of 12% per annum on the unpaid balance amount of the tentative price of the plot. Clause 4.4 of EMP reads thus:-

> "**Consequences of 'Offer of Possession' by the HSIIDC**:
>
> i) Once the Estate Office has offered the possession of plots, the allottee shall be liable to pay interest @ 12% p.a. on the unpaid balance amount of the tentative price of the plot;
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> ii) Any default in payment of installments in time shall entail a penal interest of 3% p.a. over and above the normal interest on the amount of default for the period of default, compounded half yearly;
>
> iii) The period allowed for completion of each stage of the project and final implementation of the project shall count from the date of 'offer of possession'.

In the present case, physical possession was offered by the respondents on 29.9.2015 which was received by the petitioner on 5.10.2015. Thus, the petitioner is not liable to pay interest with effect from 1.8.2014 to 29.9.2015 i.e. when the possession was offered. Learned counsel for the respondents was unable to controvert the above factual position.

6. In view of the above, the writ petition is allowed and the impugned order dated 22.5.2017, Annexure P.18 is quashed. It is clarified that no interest shall be charged from the petitioner for the period from 01.8.2014 to 29.9.2015 i.e. the date of offer of possession.

7. Receipt dated 7.3.2018 of payment of costs in terms of order dated 16.2.2018 produced by learned counsel for the respondents is taken on record.

(Ajay Kumar Mittal)
Judge

April 03, 2018
'gs'

(Anupinder Singh Grewal)
Judge

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