

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

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**CWP No. 18561 of 2017
Date of Decision: 22.11.2018**

Krishan Gopal

.....Petitioner

v.

Jalandhar Improvement Trust

.....Respondent

**CORAM HON'BLE MR. JUSTICE MAHESH GROVER
 HON'BLE MR. JUSTICE LALIT BATRA**

Present:- Mr. Inderjit Sharma, Advocate
 for the petitioner

Mr. G. C. Garg, Advocate
 for the respondent

MAHESH GROVER, J. (Oral) :

The petitioner was allotted a plot under the scheme floated by the Jalandhar Improvement Trust on 23.12.2011, the possession of which was to be handed over by the Trust uptill 23.1.2014, after completion of all development work. It was not in dispute that the respondent failed to carry out their commitment. The petitioner states that on 15.12.2015, he submitted a request for surrendering the plot but the respondent did not respond leading to another request on 5.5.2016, but instead of acceding to his request, the respondent persisted with the allotment and offered possession on 18.02.2017. Learned counsel for the petitioner contended before us that he is no longer interested in the plot and further stated before us that he would not insist on any interest etc. if the principle amount is refunded to him. As against this, the respondent was insisting on the petitioner to take possession and stated before us that they are willing to waive off the penalty

and other charges, if the petitioner opts to construct a house on the plot in question.

Learned counsel for the respondent has referred to a communication dated 01.12.2015 (Annexure R-2) and conceded that there was no development within the stipulated time, and further offering the possession to the petitioner on completion of development work.

Evidently, the development has not been carried out by the respondent within the stipulated time i.e. within a period of three years, which expired on 23.12.2014. For the first time, the respondent communicated the offer to the petitioner on 01.12.2015 and within a period of two weeks, thereafter, i.e on 15.12.2015, the petitioner expressed his willingness to opt out of the Scheme.

In our considered view, the first default was at the hands of the respondent itself, which would legitimise the claim of the petitioner to opt out of the Scheme and surrender his claim to the plot. We are further of the opinion that once the terms, which binds the parties, have been violated, the other consequences of adhering to the original terms and conditions would then result in a right, accruing to either of the parties to opt out of the agreement altogether. In any eventuality, the respondent cannot insist that the petitioner consume a plot, particularly when he is not insisting on interest etc. and because of the reason that the respondent himself is responsible for the situation, the insistence for forfeiture clause, if any, would not be available to the respondent.

The petition is, therefore, disposed of with a direction to the respondent to refund the principle amount to the petitioner but without any

interest and other consequences.

Needful be done within a period of two months from the date of receipt of certified copy of this order.

(MAHESH GROVER)
JUDGE

(LALIT BATRA)
JUDGE

22.11.2018
Rimpal/Ashwani

Speaking/Reasoned	Yes/No
Reportable	Yes/No