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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-18730-2017 [O&M]

Date of Decision : April 23, 2018

M/s Kamal Encon Industries Limited

.... Petitioner

Versus

State of Haryana and another

.... Respondents

**CORAM : HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SHEKHER DHAWAN**

Argued by Mr. Akshay Bhan, Senior Advocate,
with Mr. Alok Mittal, Advocate,
for the Petitioner.

Mr. Manoj Dhankhar, AAG, Haryana
for respondent No.1-State.

Mr. Lokesh Sinhal, Advocate,
for respondent No.2.

SHEKHER DHAWAN, J.

Petitioner has filed the present writ petition under Articles 226/227 of the Constitution of India for quashing the impugned letters dated 30.1.2014 (Annexure P/6); 05.01.2016 (Annexure P/41) and the impugned order dated 02.08.2016 (Annexure P/52) being illegal and arbitrary and sought directions to the respondents to comply with the provisions of Estate Management Procedures-2011 (for short, "EMP-2011") and Regular Letter of Allotment (Annexure P/4) (for short, "RLA").

2. Facts relevant for the purpose of decision of the present writ petition; that Haryana State Industrial and Infrastructure Development

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Corporation Limited (for short, "HSI IDC") has been entrusted with the task of development of industrial and related infrastructure and growth of the industries in the State of Haryana. As per the industrial policy of the State Government, HSI IDC had framed an internal set of guidelines named as EMP-2011 for management of industrial estates covering industrial, residential, institutional, commercial plots developed by the respondents, prescribing terms and conditions of allotment, transfer, leasing, resumption of plots and all other related processes and procedures to be followed by the respondent and the allottees.

3. On 13.3.2013, the petitioner applied for allotment of an industrial plot at Sector 68, IMT Faridabad, Haryana. The total cost of the plot was Rs.23,08,50,000/-. The petitioner deposited a sum of Rs.1,04,25,000/- alongwith the application. The petitioner was allotted plot No. 917, Sector 68, IMT Faridabad on 30.03.2013 (for short, "the plot") vide letter of allotment (Annexure P/4). The petitioner deposited a sum of Rs.3,68,87,500/- i.e., 15% of the total sale consideration on 27.11.2013 and as such, the total sum of Rs.5,76,87,500/- (i.e., 25% cost of the plot) was deposited. The balance amount was to be paid in eight equal half-yearly installments. Interest was payable from the date of offer of possession on the balance unpaid amount of the plot. Two months' later, i.e., on 30.1.2014, a letter (Annexure P/6) was received from respondent No.2 representing that the requisite infrastructure had already been provided at IMT Faridabad and possession of the plot was thus offered to the petitioner w.e.f. 15.11.2013 under clause 4.1 of EMP-2011. On 21.2.2014, an agreement (Annexure P/7) was executed between the petitioner and respondent No.2. The petitioner was unaware of the status

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of the plot and infrastructure facilities at that time and believing that the respondent's letter was correct that infrastructure facilities had actually been provided, the agreement was signed.

4. On 21.3.2014, the Project Manager of the petitioner-company visited the plot and again on 30.3.2014, the petitioner's official alongwith an Architect inspected the plot site and also the IMT Faridabad and they were shocked to see that the plot site was not at all developed. Photographs of all the three sites meant for Water Treatment Plant, Sewage Treatment Plant, Electrical Distribution System at IMT, Faridabad and Approach Road to the plot were taken which showed that none of them were ready. On 7.4.2014, the petitioner wrote to respondent No. 2 that basic infrastructure facilities as promised in EMP-2011 and RLA were not ready at IMT Faridabad and as such, the petitioner declined to accept the offerer of possession of the plot. However, the petitioner company undertook to pay the balance installments on different dates, but requested respondent No.2 not to charge interest till infrastructure facilities are not ready. Respondent No.2 responded to the said letter on 15.4.2014 thereby denying the said averments. The petitioner's officials visited the site on 23.04.2014 again and sent communication to respondent No.2 pointing out about the survey dated 23.04.2014 alongwith CD containing videos and photographs of the site and sought a joint inspection of the site on 22/23.05.2014 vide letter Annexure P/12.

5. On 27.05.2014, joint inspection of the site was conducted by the petitioner's officials and officials of respondent No.2, but officials of respondent No.2 refused to prepare any joint survey report and few days later, the petitioner received letter dated 03.06.2014 (Annexure P13) with

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incorrect averments. The petitioner responded to the said letter.

6. In the letter dated 04.06.2014 (Annexure P/15), the petitioner offered to take possession of the plot in terms of Clause 4.5 of EMP-2011 on “as is where is basis”, subject to the condition that respondent No.2 shall not charge interest from the petitioner on the outstanding amount till completion of the basic infrastructure facilities at the site. The petitioner had already deposited a sum of Rs.17,65,14,165/- towards the costs of the plot till the date of filing of the petition. As the petitioner wanted to establish its project and did not want to wait till the completion of basic minimum infrastructure facilities at the site, it wrote a letter on 23.07.2014 to respondent No.2 and requested them for giving possession of the plot in question under Clause 4.5 of EMP-2011 on “as is where is basis” which is extracted below:-

“4.5 Suo Motu request for Physical Possession

i) There may be cases where an allottee is in a hurry to establish his project due to his business commitments and he is not in a position to wait for the completion of the basic minimum infrastructure facilities. The allottee can request for taking physical possession of the site at an early stage in such cases, i.e. before completion of basic infrastructure amenities. In such an event, he assumes the risk of undertaking execution of his project and meets all consequential costs on this account. Based on this clear understanding, the Estate Manager may allow physical possession of the plot to the allottee upon receipt of a request from him to this effect and facilitate provision of the Zoning Plan and approval of his building plans from the IPD;

ii) As an incentive to such an allottee, interest shall not be charged from him on the outstanding amount till such time the Estate Office formally offers the possession on completion of basic infrastructure facilities. However, counting of the time period for completion/ implementation of the project shall start from the date the allottee is allowed physical possession of the plot in these case.

Note: *Notwithstanding anything contained in this chapter, the*

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existing allottees who have been allotted plots and offered possession before coming into force of the present EMP-2011, the offer of possession already made shall not be subject to any review/revision under these guidelines.”

7. Respondent No.2 vide letter dated 19.08.2014 (Annexure P/21) informed the petitioner that the size of Plot No.917 has been increased from 20,250 sq. mt. to 21,159.29 sq. mt. and asked the petitioner to give its consent on increased area alongwith payment of increased area at the rate of Rs.11,600/- per sq. mt. On 07.10.2014, petitioner gave its acceptance for the increased area of the plot.

8. The petitioner had also engaged M/s RDA Civil Engineering Systems (P) Ltd. to survey and inspect the plot and gave its report on the status of infrastructure available at the site. The said company conducted the survey on 26.08.2014 and its report dated 23.09.2014 reads as under:-

- i* **Status of approach Road:** The topping/ carpeting of the approach road, i.e., bitumen/ RCC has not been laid for which work was not going on. See photographs at internal page 2 of the report.
- ii* **Status of water supply system:** As evident from the photographs (at ip3 of the report), the water treatment plants are under construction; which shall take minimum six to eight months for becoming functional, hence potable water supply is not available at site. See photographs at internal page 3 of the report. Since bore wells are not allowed the water supplied for construction is inadequate, so water is not even available for construction.
- iii* **Electrical Infrastructure:** There is no electrical distribution system provided at site yet. On surveyor's visit further down the area it was surprising to note the area which has been earmarked for a sub-station is a low lying land and no construction activity was going on. See photographs at internal page 4 of the report.
- iv* **Sewage System:** The sewage line and man-holes for

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sewerage system were constructed at site; one was just in front of Plot No.917 but to surveyor's surprise the same ends at a dead end further down the road. The construction of sewage treatment plant was going on at slow pace. This shows sewer disposable system is not completed and is not made functional yet. See photographs at internal page 5 of the report.

- v **Drainage System:** The drainage system is not completed and only para drains are completed as visible in photographs at internal page 6 of the report.”

9. Thereafter, a long correspondence took place between the petitioner and respondent No.2 with regard to waiver of interest, but the said request was never accepted. Thereafter, the petitioner filed Civil Writ Petition No.11344 of 2016 for issuance of writ of certiorari for quashing letters dated 30.01.2014 and 05.01.2016 and on 01.06.2016, the Division Bench of this Court disposed of the said writ petition in the following terms:-

“We are not inclined at this stage to interfere in the matter except to the extent of requesting the respondents to respond to the various contentions raised by the petitioner in the e-mail dated 31.12.2015. The respondents are requested in particular to deal with the contention that the basic infrastructure facilities were not ready on the date when the possession was taken and are not complete even today. The respondents are requested to do the needful by 31.07.2016 after affording the petitioner an opportunity of being heard.”

10. In compliance thereto, the petitioner made a representation on 13.06.2016 to respondent No.1 and on 17.06.2016, the petitioner received a letter alongwith a Pen-drive containing 14 photographs and 04 videos taken by them with regard to status of infrastructure facilities. As per the

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petitioner, the stand of respondent No.2 remained throughout that temporary electricity connections were being provided by DHBVN and one of the similarly situated allottee i.e. M/s Ecotech Pvt. Ltd. made an application on 19.11.2014 to DHBVN for providing temporary electricity connections. As far as the issue of water line is concerned, though water connections are being claimed to be given, but no water is coming from the said lines. So far as provision of Common Effluent Treatment Plant is concerned, which is one of the basic necessity for running an industrial unit, the same has not been provided till date. As per the petitioner, respondent No.2 by their words "in EMP-2011 and RLA" and by conduct made a clear and unequivocal promise to the petitioner that (i) it shall offer physical possession of the industrial plot only after it had completed the basic infrastructure facilities like motorable access road; water supply system; electricity distribution system; sewage system etc; and (ii) no interest on balance unpaid amount till such date shall be charged, and the petitioner acting on the said representation altered its position.

11. Respondent No.2 is duty bound to provide all the facilities for proper use and enjoyment of the industrial plots sold by it. It is only when the facilities are provided that the industrial plot could be used. The respondents despite receiving substantial payment, have failed to provide amenities, facilities, infrastructure and services for which the allottee cannot be blamed in any manner. There is no lapse on the part of the petitioner and the petitioner prayed that respondents be directed to comply with the provisions of EPF-2011 and RLA and provide all the facilities and amenities at IMT Faridabad and not to charge any interest on the allotment price as the basic infrastructure has not been developed.

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12. In the reply, respondent No.2 admitted the averments of the petitioner to the extent that Sector 68, where the plot in question is situated is of industrial plots. There was no hindrance in the development so far as the plot allotted to the petitioner is concerned. The petitioner has been allotted the plot under EMP-2011 where possession is offered after the basic infrastructure facilities comprising of (i) motorable access road (ii) water supply system (iii) electricity distribution system and (iv) sewerage system are available. So far as motorable access road is concerned, it is submitted that approach road to the plot in question was complete from HUDA bye-pass road at the time of offering the possession vide letter dated 30.01.2014. The approach road from HUDA bye-pass to the plot in question was complete as is clear from the perusal of MB No.16 and RA Bill No.14 of the contractor who had constructed the said road. Respondent No. 2 denied that approach roads were not complete. There was a bridge i.e. Agra Canal at RD 27.214 KM which was complete and functional before the date of offer of possession. It was only the second bridge over Agra Canal at RD 30.118 KM which was under proposal. The said bridge, would cater the need of Commercial Sector 68 and Transport and Communication Sector 67. Eight bridges as pointed out by the petitioner in the writ petition were required for internal connectivity of whole IMT including the Industrial Sector, Commercial and Sector Transport and Communication Sector. The water supply system in both Industrial Sectors 68 & 69 were made functional by connecting the same directly to six tubewells, i.e., Tubewell Nos.25, 16, 15, 7, 8 & 10 for immediate serviceable. Same was done even before the date of offer of possession of plots i.e. 15.11.2013. The fact that water supply in front of plot in question

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was laid on 28.05.2012 would be clear from MB No.16 and RA Bill No.14 of the contract. The internal sewer line has also been laid and was complete. The 66 KV line as pointed out by the petitioner in the writ petition is no where near the plot in question. The electric distribution system for the plot in question and in the adjoining area was fully complete and available. Storm water drainage was also complete. That tender document of CETP was under preparation. The CETP was not required at the moment as there is not enough discharge due to the fact that most of the allottees have not started the commercial production. As such, the issues raised by the petitioner are without any basis. The possession of the plot in question was offered on 15.11.2013 after developing the infrastructure facilities. The possession was delivered on the basis of recommendations of the Committee dated 12.11.2013 on visiting the spot. More so, 14 allottees had taken possession of their plots even before 15.11.2013 on suo-moto basis as per clause 4.5 of EMP-2011 and out of them, 7 had completed construction also and started the commercial operations which prove that basic infrastructure was available in the estate at that time for completion of the project. 24 units had already come into production in the estate. It was also submitted with regard to clause 4.5 of EMP-2011 that the same was not applicable in the present case because the basic infrastructure facilities were already in place before giving offer of possession to the petitioner. Merely change in size of the plot does not show that final plot was not ready. More so, the petitioner itself accepted the increased area of plot. It was prayed that the writ petition is without any merit and the same be dismissed.

13. We have considered the submissions made by learned

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counsel for the parties and have perused the record. On the basis of material and documents available on the file, there is no dispute regarding allotment of plot No. 917 in Sector 68 IMT Faridabad. However, the petitioner had been continuously agitating on the point that infrastructure facilities had not been developed. For that purpose, the petitioner company made various representations to the respondents. A request for joint survey of the site in question and when the desired result could not be achieved, the petitioner approached this Hon`ble Court by way of filing Civil Writ Petition No.11344 of 2016 and the Hon`ble Division Bench of this Court disposed of the writ petition vide orders dated 1.6.2016 (Annexure P/45) with the directions to the respondents to decide the representation of the petitioners after giving it an opportunity of being heard. Though, the petitioner had pointed out certain short-comings regarding the infrastructure facilities on the spot, broadly on the basis of survey report given by M/s RDA Civil Engineering Systems (P) Limited. They same are again extracted below:-

- i* **Status of approach Road:** The topping/ carpeting of the approach road, i.e., bitumen/ RCC has not been laid for which work was not going on. See photographs at internal page 2 of the report.

- ii* **Status of water supply system:** As evident from the photographs (at ip3 of the report), the water treatment plants are under construction; which shall take minimum six to eight months for becoming functional, hence potable water supply is not available at site. See photographs at internal page 3 of the report. Since bore wells are not allowed the water supplied for construction is inadequate, so water is not even

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available for construction.

- iii* **Electrical Infrastructure:** There is no electrical distribution system provided at site yet. On surveyor's visit further down the area it was surprising to note the area which has been earmarked for a sub-station is a low lying land and no construction activity was going on. See photographs at internal page 4 of the report.
- iv* **Sewage System:** The sewage line and man-holes for sewerage system were constructed at site; one was just in front of Plot No.917 but to surveyor's surprise the same ends at a dead end further down the road. The construction of sewage treatment plant was going on at slow pace. This shows sewer disposal system is not completed and is not made functional yet. See photographs at internal page 5 of the report.
- v* **Drainage System:** The drainage system is not completed and only para drains are completed as visible in photographs at internal page 6 of the report."

14. It has come on record that before offering possession of the plot on 15.11.2013 under Clause 4.1 of EMP-2011, some of the infrastructure facilities were made available whereas CEPT was non-functional. In the impugned order dated 2.8.2016 (Annexure P/52), Shri Sudhir Rajpal, Managing Director of respondent No.2 has observed regarding status of infrastructure facilities at IMT, Faridabad as on 15.11.2013 as under:-

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- i) Motorable access road: Complete road network upto DBM level in Sector 68 & 69 was laid and was further connected to the main network of highways. Payment of Rs.116.27 crore had been made by 15.11.13 as per the MB entries in MB No.58/036 against total projected expenditure of Rs.171.61 crore.
- ii) Water supply system: Water supply lines were laid and for immediate serviceability, the water supply system was made functional by connecting the same directly to 6 no. tubewells viz. Tubewell nos.25, 16, 15, 7, 8 & 10. Payment of Rs.28.10 crore was made till 15.11.13 against total projected expenditure of Rs.30.10 crore indicating that the tubewells/ water supply system was operational on that date.
- iii) Electric distribution system: Electricity distribution system was available, 11 KVA network had been laid around most of industrial plots in Sector 68 & 69. Temporary connections were available for start of construction on the plots. 2 No. temporary electric connections were given before Nov, 13. Payment of Rs.11.04 crore was made towards this as per entries on page No.76-105 in MB No.165.
- iv) Sewage System: Internal lines had been laid though construction of sewage pumping station was to be started. Payment of Rs.16.12 crore was made under this head as per entries in MB No.58/036.

15. In the impugned order, Annexure P/52, the Managing Director of the respondent-Corporation has further observed as under :-

“.... The contract of development works in IMT Faridabad was assigned to M/s Ramky Infrastructures Limited, Hyderabad who started the work on 20.04.11 with time limit of 24 months for completion. The fact that payments had been released shows that the physical work to that extent had already been completed. In fact, physical work to a much higher extent would have been completed by 15.11.13 as there is always a delay between physical completion work and payment thereof. The extent of the facilities available was such as would enable the allottee to start construction of the building at the site of allottee. The remaining part of the infrastructure facilities was to be required after construction on the plot for the start

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of commercial operations. The balance infrastructure is now being made available at the site and is being provided in synchronization with the start of industries in the area.”

16. All these facts do indicate that there are disputed questions of facts as to whether complete infrastructure facilities were developed on the spot at the time of delivery of possession. To some extent, even the respondent-Corporation has admitted that the basic infrastructure facilities, especially “Sewage System” was not fully developed at the time of delivery of possession and even remaining part of the infrastructure facilities were being made available on the date of passing of the order dated 02.8.2016 (Annexure P/52). Needless to mention that the same was after strenuous efforts having been made by the petitioner including filing of a writ petition before this Court.

17. In view of the above, when factual issues cannot be definitely and effectively resolved, we dispose of this writ petition with a liberty to the petitioner to file a detailed representation within a period of one month indicating all the alleged short-comings regarding infrastructure made available at the time of delivery of possession and also the present status of the infrastructure development in Sector 68, IMT Faridabad alongwith latest photographs with a request to waive off the interest liability. If the petitioner files such a representation within one month, the respondents shall consider the same sympathetically and if some amount is chargeable on account of interest, the respondents may consider as to what relief in this regard can be granted to the petitioner by taking into account the fact that at least some of the basic infrastructure facilities were not fully developed by the respondent-Corporation at the time of delivery of

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possession. The said representation shall be decided by the respondents within a period of two months after affording an opportunity of hearing to the petitioner.

18. However, it is made clear that the petitioner shall continue to pay the outstanding amount, whatever is due on account of cost of the plot or towards increased area cost, as per the installment-schedule and shall be liable to pay interest on the delayed payment from the due date.

19. The writ petition stands disposed of in the above terms.

**(SURYA KANT)
JUDGE**

**(SHEKHER DHAWAN)
JUDGE**

April 23, 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes