

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

CWP No.641 of 2017 (O&M)

Date of Decision: January 19, 2018

Sunil Bhatia

---Petitioner

Versus

State of Haryana and others

---Respondents

**CORAM:HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Sanjeev Sharma, Sr. Advocate with
Mr. Vikram Vir Sharda, Advocate for the petitioner.

Mr. Deepak Balyan, Advocate
for the respondents-HUDA.

HARINDER SINGH SIDHU, J.

In this writ petition, the petitioner has challenged the demand letter dated 10.10.2016 (Annexure P-8) issued by respondent No.4-Estate Officer, HUDA, Faridabad with respect to booth No.116, Sector 37, Faridabad to the extent that it includes the component of penalty on account of non-construction charges even for the period the booth remained resumed. It has been prayed that respondent No.4 be directed to communicate the entire outstanding dues to the petitioner in respect of the said booth after excluding the element of penalty imposed on account of non-construction from the date of the order of resumption till the resumption order was set aside.

Vide allotment letter dated 18.08.1989 the petitioner was allotted a commercial booth No.116, Sector 37, Faridabad on freehold basis.

The relevant terms and conditions of the allotment letter are as under:

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<i>Sector No.</i>	<i>Name of Urban Area</i>	<i>Plot/Building No. Booth No.</i>	<i>Approx. Dimension as notified at the time of auction</i>	<i>Area of Sq. Meters</i>	<i>Price of the Plot/Building</i>
37	Faridabad	116	9'9x 33'	-	4,60,000/-

5. The balance amount i.e. Rs.3,45,000/- 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 the allotment letter or in 10 half yearly instalments. The first instalment will fall due after the expiry of six month of the date of issue of this letter. Each instalment would be recoverable together with interest on the balance price at 10% interest on the remaining amount. This interest shall, however, accrue from the date of offer of possession.

6. *The possession of the plot/building may be taken immediately after making payment of balance 15% amount as demanded in para 4 above.*

8. *In case the instalment is not paid by 10th of month following the month in which it falls due the Estate Officer shall proceed to take action for imposition of penalty and resumption of plot in accordance with the provisions of Section 17 of the Act.*

9. *In the event of violation of any other condition of allotment/ transfer the Estate Officer may resume the land/ building in accordance with the provisions of Section 17 of the Act.*

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16. *You will have to complete the construction within two years of the date of offer of possession after getting the plans of the proposed building approved from the competent authority in accordance with the regulation governing for the erection of the buildings. This time limit is extendable by the Estate Officer if he is satisfied that non construction of the building was due to reasons beyond your control otherwise the plot is liable to be resumed and the whole or part of money paid/ if any in respect of it forfeited in accordance with the provision of the said Act. You shall not erect any building or make any alteration/additional without prior permission of the Estate Officer. No fragmentation of any land or building shall be permitted.”*

It appears, that after the deposit of the amount as indicated above, the petitioner did not make any further payment to the respondents though as per clause 5 of the allotment letter the balance amount i.e. Rs.3,45,000/- could either be paid in lump-sum without interest within 60 days from the date of issue of the allotment letter or in 10 half yearly instalments. The first instalment fell due after the expiry of six months of the date of issue of the allotment letter.

According to the petitioner, development work was not carried on at the site and even the basic amenities were not provided. Hence, he could not start his business at the said booth. It is averred that the petitioner visited the office of the respondents a number of times to know the factual

position of the development work at the site, but no information was supplied to him. The petitioner finally wrote to the respondents to intimate him the outstanding dues so that he could pay the same and obtain the 'no due certificate' for getting his building plans approved. In response, the petitioner received a letter dated 09.01.2008 from the office of respondent No.4 intimating that the site in question had already been resumed on 07.11.1997 and therefore, 'no dues certificate' could not be issued.

The petitioner filed a consumer complaint on 24.01.2008 before the District Consumer Disputes Redressal Forum, Faridabad (for short "District Forum") but withdrew the same on 11.02.2010 to file an appeal against the resumption order as per Section 17 of the Haryana Urban Development Authority Act, 1977 (for short 'the 1977 Act'). The appeal filed by the petitioner was allowed by the Administrator, HUDA, Faridabad-respondent No.3 vide his order dated 03.12.2010. It was noticed in the order that the petitioner was allotted the commercial booth on 18.08.1989 and that he had deposited 25% of the amount in time. The record of the allotment file revealed that the notice under Section 17 of the 1977 Act had been returned as "undelivered" by the postal authorities. As the petitioner expressed his readiness and willingness to pay all the outstanding dues at one time along with interest and penalty as per HUDA policy, the order of resumption was set aside and the site directed to be restored to the petitioner. He was directed to clear all the outstanding dues within 30 days of the service of the demand notice upon him, failing which the resumption order would come into force automatically.

The Estate Officer -Respondent No.4 filed a revision against the aforesaid order on 06.06.2011, which was decided on 05.01.2016. It was,

inter alia, contended on behalf of the Estate Officer that the site had rightly been resumed vide order dated 07.11.1997 as the petitioner had failed to pay the instalments as per the terms and conditions of the allotment letter. After the resumption, eviction notices were issued on 02.06.2001 and 04.10.2001. But the petitioner ignored these notices and remained in slumber for over ten years evincing no interest in the property. The petitioner executed a GPA in favour of Rajiv Oberoi on 28.12.2007 i.e., more than ten years after the passing of the resumption order. It was only thereafter that the petitioner instituted proceedings by filing a consumer complaint on 24.01.2008. The petitioner on the other hand had urged that the instalments could not be paid as HUDA had failed to complete the development works in the area due to ban imposed by the Supreme Court on construction within 5 km radius of Badkhal lake.

Taking note of the fact that Hon'ble Supreme Court in M.C. Mehta Vs. Union of India had vide its order dated 10.05.1996 banned construction within 5 km radius of Badkhal Lake, which area was reduced to 1 km in its order dated 11.12.1996, the revisional authority opined that the plea with regard to non-development appeared to be reasonable. It also noticed that nothing had been pointed out to show that the notices under Section 17 of the 1977 Act had been delivered to the petitioner and that the finding of the Appellate Authority regarding their non-delivery was incorrect. The revisional authority however noted that as per Clause 5 of the allotment letter, 75% of the price of the plot was required to be paid in 10 half yearly instalments along with interest @ 10% per annum, which was to accrue from the date of offer of possession. The petitioner failed to pay these instalments despite repeated notices and remained silent for more than

10 years after passing of the order of resumption. Thus, restoration of the site by the Appellate Authority without any penalty for default was unreasonable. The resumption order was set aside subject to payment of penalty of Rs.1 lac. The Estate Officer, HUDA was directed to communicate the entire outstanding dues to the petitioner as per HUDA policy within 15 days from the date of receipt of the order. The petitioner was, in turn, required to pay the same by 02.02.2016, failing which the resumption order would stand revived without any further notice. The site was directed to be restored in favour of the original allottee.

As the outstanding dues were not communicated to the petitioner within the time as directed by respondent No.1, the petitioner vide letter dated 29.01.2016 requested respondent No.4 to communicate the dues. Respondent No.4 vide letter dated 10.10.2016 (Annexure P-8) informed the petitioner that outstanding dues were Rs.93,44,493/- (Dues Rs.28,31,214/- + extension fee Rs.65,13,279/-). The petitioner filed an application dated 26.11.2016 before respondent No.1, seeking clarification of order dated 05.01.2016 to the effect that outstanding dues be communicated after excluding the element of penalty on account of non-construction and excluding the interest on outstanding dues for the period from 07.11.1997 (date of resumption order) till 05.01.2016 (date of order whereby the resumption was set aside). The said application was dismissed as being not maintainable. Thereafter, the present writ petition has been filed impugning the demand notice dated 10.10.2016 to the extent indicated above.

Vide interim order dated 17.01.2017 it was ordered that subject to the petitioner depositing a sum of Rs.30 lacs before the next date,

the cancellation of allotment shall remain stayed. Learned counsel states that the amount was deposited on 19.04.2017.

Sh. Sanjiv Sharma, learned Senior Counsel for the petitioner contended that the demand to the extent of charging penalty on account of non- construction during the period the site remained resumed is illegal. He argued that the issue is covered in his favour by a decision of a Division Bench of this Court in **Saryjeet v. State of Haryana, (2016) 4 RCR (Civil) 963.**

In particular, he referred to the paragraph 9 in the aforesaid judgment which is as under:

“9. Concededly, the site in question was allotted to the predecessor-in-interest of the petitioner on 01.02.1988. The actual physical possession of the site was delivered to the allottee on 01.03.1988. Clause 16 of the letter of allotment required the petitioner to construct the site within two years of the date of offer of possession, after getting the plans of the proposed building approved from the competent authority. For, the petitioner failed to furnish the revised price of the site, the authorities, vide order dated 20.03.2002 (Annexure P5), ordered its resumption. Needless to assert, as a consequence, the contract between the parties stood rescinded. Post resumption, neither could the petitioner ask for extension to construct the site nor the authorities would have accorded any such extension. Construction of site, in the face of the order of resumption, was impossible. For, the authorities would never have approved/sanctioned the building plans, which was a pre-requisite to construct the site. Likewise, even the period, envisaged in the relevant policy, upto which the authorities could actually grant extensions also ceased to operate, for the site had re-vested in the authorities. Once that is so, it defies logic that even for the period when the site was under resumption, the authorities would still have expected the petitioner to construct the site, and demand extension fee for non-construction.....”

This judgment also noticed that in a similar situation, in **CWP No.24582 of 2012, Deepak Uppal and another Vs. Haryana Urban Development Authority** decided on 10.04.2013, HUDA had furnished an affidavit before the Court to treat the litigation period in that case from 18.05.1991 to 10.10.2007 as 'zero period', for the purpose of calculating the extension fee. The affidavit was accepted and the matter disposed of. Another case relied on was **Subhash Chander and another Vs. Haryana**

Urban Development Authority and another 2009 (1) PLR 675, where the Court held it would be unjust to not exclude the period during which the plot remained under resumption from the 15 year period which was the maximum period for raising construction as per HUDA policy.

We have heard Ld. Counsel for the parties and perused the record.

It is true that in *Sarvjeet's case (supra)* the Court has held that as a consequence of resumption the contract between the parties stood rescinded and construction thereon would be impossible, as in such a situation the authorities could not approve/ sanction the building plans which was a pre-requisite to construct the site. The Court observed that it defies logic that even for the period when the site was under resumption, the authorities would expect the allottee to construct the site, and demand extension fee for non-construction.

We are, however, of the view that the aforesaid observations in *Sarvjeet's case* about non-levy of the extension fee for the period the plot remained under resumption have to be understood in the context of the facts of that case and cannot be extended to every case where resumption is subsequently set aside, irrespective of the nature of the default resulting in the initial order of resumption and irrespective of the factors/ reasons/ conditions/ other factual considerations/ terms imposed for setting aside the resumption in appeal or revision by the statutory authorities or by the Courts.

In *Sarvjeet's case*, the allottee had paid the entire original sale consideration. The plot was resumed on account of his failure to pay the enhanced price of the site owing to enhancement in the compensation

awarded to the landowners by the reference Court. The resumption order was upheld in appeal and revision. On a writ petition filed by the allottee the High Court being satisfied by the allottee's explanation regarding his inability to pay as a result of a combination of circumstances namely the extreme illness of his minor daughter, the illness of his mother, the original allottee having passed away, the notices having remained unserved, held that the authorities ought to have taken a pragmatic view of the situation and granted opportunity to the petitioner to pay the amount along with interest and penalty instead of resorting to resumption. Accordingly, the resumption order was set aside. Thereafter, the respondents raised a demand by including the component of extension fee for the period when the property was under resumption. It was this demand which was quashed in the aforesaid case.

The default in that case was only regarding payment of enhanced price. The allottee's inability to pay was because of circumstances beyond his control. The default did not appear to be wilful and intentional. There was no intention to profiteer or speculate. Hence resumption order was set aside and in a separate writ petition filed by him the demand of extension fee for the period the site remained resumed was also quashed with the observations as aforesaid.

As against *Sarvjeet's case* this Court in some other cases has upheld the demand of extension fee even for the resumption period.

In CWP No.5914 of 2016 - *Puneet Kumar Sood and another Versus Haryana Urban Development Authority and another* decided on 07.02.2017, a Division Bench of this Court repelled a challenge to the demand of extension fee during the period the shop cum office (SCO)

allotted to the petitioners therein remained under resumption. The petitioners therein had filed a civil suit challenging the resumption. The suit was substantially decreed in their favour. While setting aside the resumption the Civil Court directed that the extension fee was chargeable from plaintiffs only w.e.f. January 1995 i.e. after the expiry of two years from the date of possession. The plaintiffs were directed to deposit the amount in question with 10% interest. HUDA challenged the judgment and lost upto the Supreme Court.

The allottees filed the writ petition impugning the demand of extension fee. They contended that no 'extension fee' is leviable during the period when the parties were litigating and the litigation period as per HUDA's own policy was to be treated as 'zero period'. Reliance was placed on two decisions of this Court in (i) ***CWP No.24582 of 2012*** titled as “***Mr. Deepak Uppal and another Vs. Haryana Urban Development Authority***” and (ii) ***LPA No.133 of 2010*** titled as “***HUDA and another Vs. Ashok Kumar Chadha and another***” where such a stand was taken by HUDA. They also contended that the site having been resumed, it was not possible for the petitioners to have occupied the same and raised construction thereon. Hence, it was argued that the 'extension fee' which was levied for non-construction could not have been imposed.

The Division Bench rejected their arguments primarily on the ground that the Civil Court decree permitted HUDA to impose 'extension fee' after expiry of two years from the date of taking possession. The Civil Court decree to this extent having not been challenged by the allottees had attained finality and was binding on them. It was also held that the plea regarding the non levy of extension fee was available to the allottees and if

such a plea was not taken or accepted it must be deemed to have been rejected.

Significantly, regarding the plea that HUDA had decided to treat the litigation period as 'zero period' for the purpose of charging 'extension fee', the Court held that from the decisions relied upon, it was difficult to draw even an inference that there was any policy decision taken by HUDA to treat the litigation period as 'zero period'.

Another recent case where a challenge to the charging of extension fee for the period the plot remained under resumption and proceedings challenging the resumption remained pending was repelled is a judgment of a Division Bench of this Court in **Civil Writ Petition No.2663 of 2015 Subhash Chander versus The State of Haryana and others** decided on 28.07.2017.

In this case, the resumption was ordered on account of failure to construct within the time stipulated in the allotment letter. The resumption of the plot was set aside by the revisional authority but it directed the Estate Officer to charge extension fee as per policy. The order of the revisional authority to the extent of directing the charging of extension fee was challenged. The Court rejected the challenge by holding that as the resumption order had been set aside only in view of the policy of HUDA dated 12.04.2013 which dispensed with the time limit for construction, the petitioner could not choose to only derive the benefits of the policy but reject the liability thereunder. It was observed as under:

“10. This brings us to the order passed by the revisional authority dated 26.08.2014. It referred to a policy dated 12.04.2013 granting extension in time to raise the construction on the plot. The policy dispensed with the time limit subject to payment of the extension fee prescribed therein. The revisional authority held that the petitioner’s case was covered by the policy and treated 29.04.1994 as the date of offer of possession. This was

indeed a liberal view in favour of the petitioner. It is only in view of this policy that the revisional authority set aside the order of resumption and directed the Estate Officer to raise a demand for extension fee in terms of the policy. This is precisely what the Estate Officer did.

11. But for the policy dated 12.04.2013, the resumption order could not have been faulted for any reason whatsoever. As we noted earlier, the petitioner had, in fact, accepted the change in the plot and, in any event, had not raised any objection thereto for almost 13 years. The refusal to raise construction on the substituted plot is, therefore, a breach of the terms and conditions of the allotment letter which requires the construction to be completed within two years. The petitioner consciously refused to put up the construction. There was no justification for the same.

12. The policy of 12.04.2013 is a concession granted to an allottee. The petitioner cannot seek to derive the benefit under the policy, namely, extension of time to put up the construction on the one hand and reject the conditions stipulated for the same in the policy on the other. It is a composite policy and an allottee cannot seek to derive the benefit therefrom and reject the liability thereunder. The petitioner must accept the policy as a whole.

13. Lastly, it was submitted that the extension fee ought not to be charged for the period during the pendency of the revision petition.

14. We are not inclined to agree. The policy of 12.04.2013 was a major concession extended by the respondents. But for the policy, the order of resumption would have stood. The petitioner has had the benefit of increase in prices from the year 1994. It would be unjust, in these circumstances, to grant the relief which would, in fact, amount to our re-writing the policy of 12.04.2013.”

Thus, it is not that in every case or situation that extension fee cannot be charged for the litigation period. Further, though in some cases HUDA may have conceded not to charge extension fee for the litigation period, but it was clearly held in ***Puneet Kumar Sood's case*** (supra) that there is no policy decision taken by HUDA to treat the litigation period as 'zero period'. In the absence of such a policy, we are of the view that it would not be proper to hold that regardless of the grounds of resumption, in all cases where resumption orders are subsequently reversed, the intervening period should be excluded for the purposes of charging extension fee. For, there may be any number of situations where on considerations of equity, hardship, or on a balancing of interests or as a measure of concession or indulgence that orders of resumption, otherwise justifiable, may be reversed. To deny to the respondents the legitimate levy of extension fee in

all such cases, by judicially construing and treating the litigation period as 'zero period' for purposes of charging extension fee may not be justified and may result in a loss to the public exchequer and unjust enrichment to the allottees, specially speculators among them, and/or property dealers who in the guise of being holders of powers of attorney may have actually purchased such plots/sites.

In **SLP (Civil) No.31841 of 2011 Ved Parkash Kathuria vs. Haryana Urban Development Authority and another** decided on 14.11.2011, the Hon'ble Supreme Court took judicial notice of the fact that in large number of cases of resumption for non payment the property dealers pay certain amounts to the allottees, get the power of attorney executed in their names and then pursue the matters with HUDA or other similar authorities with the hope that they may succeed in persuading the higher administrative authorities to give relief to the allottees. Thus, in the name of the original allottee they are able to secure a windfall.

Ordinarily, in cases of auction where resumption is for failure to pay a substantial number of instalments, and the plot/site is restored with a condition of paying the entire outstanding amount with penalty, interest etc., if there are no genuine compelling extenuating circumstances for non payment, the allottee cannot claim that the plot, the price whereof may have meanwhile gone up manifold, be restored to him without him having to pay the extension fee.

Dealing with case of auction purchases the Supreme Court in **Municipal Corporation Chandigarh and others v. Vipin Kumar Jain, (SLP No.12968 of 2006, decided on 20.9.2007)**, noted that time is the essence of the contract in such matters. Property prices increase by the day

and if within stipulated period contractual obligations are not fulfilled then the State suffers losses which cannot be compensated in terms of interest or penalty for the delay. It was emphasized that when the allottee offers to pay interest and principal after years it amounts to pegging of the price which cannot be allowed.

The relevant observations of the Supreme Court as under:-

"Auction is a price-discovery mechanism which falls in the contractual realm. In the present case, we are concerned with commercial sites. Auction is basically an exercise in raising revenues for the Government. When the price is not paid within time it results in loss of revenue to the State. Time is the essence of the contract in matters concerning auction. Property prices rise by the day.

In the present case there was no illegality in the holding of auction. Despite repeated notices issued to the respondent calling upon him to make payment, respondent failed to pay within the stipulated period. Despite repeated indulgence being shown to the respondent by the competent authorities payments were not made. Property prices increase by the day and if within stipulated period contractual obligations are not fulfilled then in that event the State suffers losses which cannot be compensated in terms of interest or penalty after four years. Ultimately auction is an exercise for detecting or discovering the price prevalent in the particular area in a particular year and if time overruns are to be allowed on flimsy excuses for not paying the money in time then the entire exercise would fail.

We are therefore, of the view that the High Court should not have interfered in the process in which the Corporation was fully justified and entitled to forfeit 10% of the amount and to invite fresh offers on new terms and conditions.

It has been submitted on behalf of the respondent that during the aforesaid period he had to undergo bypass operation and financial difficulties and therefore, delay in depositing be condoned. In our view ample opportunities were given to the respondent to make payment and therefore there was no question of condoning the delay. It is important to bear in mind that when the respondent offers to pay interest and principal after years it amounts to pegging of the price which cannot be allowed."

As against speculators or auction purchasers there may be cases of allottees of small residential or even commercial plots where the default may be minor and there may be mitigating circumstances for non payment. In such cases, if the litigation has remained pending for a prolonged period, the extension fee may even turn out to be many times the original price or the amount of default. In such cases the burden of extension fee may turn out

to be beyond the meagre means of the allottee who may be faced with the unenviable choice of either having to give up the fruit of litigation or pay an exorbitant amount of extension fee.

Thus, it would all depend on the facts of each case. No uniform principle can be laid down. In the absence of any legislative measure or policy framed by HUDA the principle will have to evolve and be developed like many other judicially evolved principles over a period of time through successive judicial precedents.

Though, there are administrative and judicial precedents to guide the authorities in deciding appeals and revisions against resumption, yet still they exercise a fair degree of discretion in deciding cases of resumption and the terms on which the restoration is ordered. It is expected that the respondents would frame broad guidelines on the question of charging of extension fee or waiver thereof so that the authorities while deciding on restoration would also specifically address the question of the obligation regarding payment of extension fee.

Coming to the facts of the present case, though the order of resumption is not on record, it is accepted that the plot was resumed on 7.11.1997 for failure of the petitioner to pay any instalment after the deposit of 25% of the price. As per clause 6 of the letter of allotment dated 18.8.1989 the possession of the plot could be taken immediately on payment of balance 15% of the amount, the initial 10% of the bid amount having already been deposited at the time of the bid. The 15% amount was deposited by the petitioner within 30 days of the issue of the allotment letter. As per clause 16 of the allotment letter the construction was to be completed within two years of the date of offer of possession. This two year

period was to expire in August, 1991. The plot was resumed vide order dated 07.11.1997. The petitioner is any way liable to pay the extension fee from August, 1991 to 7.11.1997 when the plot was resumed. This fact has not even been disputed by the learned Senior Counsel appearing for the petitioner. The petitioner did not challenge the order of resumption till 24.01.2008 when he filed a complaint before the District Forum, Faridabad which was eventually withdrawn on 11.02.2010 to file an appeal against the order of resumption. Though, the petitioner claims that it was only on receipt of letter dated 09.01.2008 that he got to know about the passing of the order of resumption, but it is not possible to accept the bald assertion of the petitioner in this regard. It had been argued on behalf of the Estate Officer in the revision petition that after the resumption order the petitioner was issued eviction notices on 02.06.2001 and 04.10.2001. There is nothing on record to indicate that the petitioner disputed the receipt of these notices. In these circumstances, it is not possible to believe that the petitioner who was allotted the plot in the year 1989 would not even care to find out the status thereof for nearly two decades. Hence, the petitioner would also be liable to pay the extension fee for period from 07.11.1997 till 24.01.2008.

This brings us to the question whether the extension fee is also chargeable for the litigation period from 24.01.2008 (when he filed the complaint before the Consumer Forum) till 05. 01.2016 (when the resumption was set aside by the revisional authority). The petitioner had been allotted the site after his bid was accepted. Apart from depositing 25% of the amount he did not deposit any amount. As per the schedule in the allotment letter the balance amount of Rs.3,45,000/- was to be either paid without interest within 60 days of the issue of the allotment letter i.e.,

18.8.1989 or in 10 half yearly instalments, the first instalment falling due after expiry of six months of the date of the allotment letter which would be February 1990. It is not denied that the petitioner has not paid any single instalment. The plea of the petitioner is that no development work was carried out as there was a stay on construction by the Hon'ble Supreme Court. It has been held by a Division Bench of this Court in **Ajay Kumar Jain v. State of Haryana 2016(3) R.C.R.(Civil) 345** that in case where a plot is purchased in open auction, the allottee cannot withhold payment of instalments on the ground that the authorities have not carried out development works in the area. The relevant observations are as under:

*“6. The issue as to whether an allottee, who has purchased a plot in an open auction, can withhold the price of the plot as may be payable in instalments as also the interest accruing thereupon on the plea that development works have not been undertaken by the authority concerned came to be considered by the Hon'ble Apex Court in **U.T Chandigarh Administration and Anr. v. Amarjeet Singh and others, 2009 (2) R.C.R (Civil), 401** and it was observed as follows:-*

*"19. In **Lucknow Development Authority v. M.K. Gupta, (1994) 1 SCC 243**, it was held that where a developer carries on the activity of development of land and invites applications for allotment of sites in a developed layout, it will amount to 'service', that when possession of the allotted site is not delivered within the stipulated period, the delay may amount to a deficiency or denial of service, and that any claim in regard to such delay is not in regard to the immovable property but in regard to the deficiency in rendering service of a particular standard, quality or grade. The activity of a developer, that is development of land into layout of sites, inviting applications for allotment by assuring formation of a lay out with amenities and delivery of the allotted sites within a stipulated time at a particular price, is completely different from the auction of existing sites either on sale or lease. In a scheme for development and allotment, the allottee has no choice of the site allotted. He has no choice in regard to the price to be paid. The development authority decides which site should be allotted to him. The development authority fixes the uniform price with reference to the size of plots. In most development schemes, the applications are invited and allotments are made long before the actual development of the lay out or formation of sites. Further the development scheme casts an obligation on the development authority to provide specified amenities. Alternatively the developer represents that he would provide certain amenities, in the Brochure or advertisement. **In a public auction of sites, the***

position is completely different. A person interested can inspect the sites offered and choose the site which he wants to acquire and participate in the auction only in regard to such site. Before bidding in the auction, he knows or is in a position to ascertain, the condition and situation of the site. He knows about the existence or lack of amenities. The auction is on 'as is where is basis'. With such knowledge, he participates in the auction and offers a particular bid. There is no compulsion that he should offer a particular price.

20. Where there is a public auction without assuring any specific or particular amenities, and the prospective purchaser/lessee participates in the auction after having an opportunity of examining the site, the bid in the auction is made keeping in view the existing situation, position and condition of the site. If all amenities are available, he would offer a higher amount. If there are no amenities, or if the site suffers from any disadvantages, he would offer a lesser amount, or may not participate in the auction. Once with open eyes, a person participates in an auction, he cannot thereafter be heard to say that he would not pay the balance of the price/premium or the stipulated interest on the delayed payment, or the ground rent, on the ground that the site suffers from certain disadvantages or on the ground that amenities are not provided."

7. In view of the observations reproduced herein above the justification offered on behalf of the petitioners that the instalments were not deposited on account of development works having not been carried out and that the plot in question suffering from certain disadvantages, cannot be accepted. If there had been any bona fide intention on the part of the petitioners to retain the property, it was always open for them to have deposited the instalments under protest and thereafter sought redressal of their grievance, if any, by taking out appropriate proceedings. Petitioners on the other hand chose not to deposit even a single penny after the initial deposit of 25% of the premium in the year 1988. The action of HUDA authorities to initiate and finalise resumption proceedings, as such, cannot be faulted."

Thus, there was no justification for the failure of the petitioner to deposit even a single instalment in respect of the 75% balance amount. The revisional authority no doubt had held that the plea with regard to non development appears to be genuine. But taking into consideration the fact that the petitioner failed to pay the instalments despite repeated notices and he remained silent for more than 10 years after passing of the resumption order it set aside the resumption order subject to payment of Rs.1 lac as

penalty. The Estate Officer was to communicate the entire outstanding dues (including penalty of Rs.1 lac) to the respondent as per HUDA policy which was to be paid by him by 02.02.2016 failing which the resumption order would stand revived.

The present petition in our view is one where both considerations which would militate against the non charging of extension fee are present. The petitioner is an auction purchaser. He did not deposit even a single instalment qua the 75% balance amount. There is no extenuating or compelling circumstance pleaded or proved for the non payment. The only justification against non payment was that development work was not carried out which as held in **Ajay Kumar Jain's case (supra)** cannot be a ground to withhold payment of instalments. Even regarding non development there is nothing on record to indicate that he raised this issue with the respondents. The plot was resumed vide order dated 07.11.1997. Though from the record it is clear that the Section 17 notices sent to him were received back unserved, which is the primary ground for setting aside the resumption order but it also cannot be ignored as rightly noted by the revisional authority that the petitioner remained silent even for ten years after the resumption. He executed a power of attorney in favour of one Rajiv Oberoi on 28.12.2007. It was thereafter that he, through the GPA initiated legal steps to have the resumption order set aside. This sudden activity by the petitioner, about ten years after the resumption order and that too only after the execution of the power of attorney also raises suspicion about the true nature of the GPA as noticed by the Supreme Court **Ved Parkash Kathuria's case (supra)**.

The revisional authority while ordering restoration of the plot

had directed that the entire outstanding dues (including penalty of Rs.1 lac) that were payable as per HUDA policy be paid. This would obviously include extension fee.

In these circumstances, we do not feel that there is any reason or justification for the petitioner to be held not liable to pay the extension fee even for the litigation period from 28.12.2008 to 5.01.2016.

Accordingly, there is no merit in this petition and the same is dismissed.

In view of the dismissal of the petition, it is for the petitioner to pay as per the order of the revisional authority or suffer the revival of the resumption order. The revisional authority had directed that the amount be paid by 02.02.2016. If he pays the amount together with further interest to be payable by 31.03.2018, the resumption order shall be set aside. The payment of this amount would however be without prejudice to the rights and contentions of the petitioner with regard the correct calculation of the amount. Pursuant to the interim orders of this Court the petitioner has deposited Rs.30 lacs on 19.04.2017. If the petitioner chooses to pay the amount then this amount may be adjusted against the amount due.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

January 19, 2018

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Whether Speaking / Reasoned	Yes	Whether Reportable	Yes / No