

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

CWP No.6633 of 2017 (O&M)

Date of Decision: 10.09.2018

Jitender Kumar Aggarwal & Anr.

...Petitioners

VS.

HUDA & Anr.

... Respondents

**Coram : Hon'ble Mr.Justice Surya Kant
Hon'ble Mr.Justice Sudip Ahluwalia**

Present: Mr. Manoj Kumar Sood, Advocate for the petitioners

Mr. Deepak Balyan, Advocate for the respondents

SURYA KANT J. (Oral)

(1) A Nursing Home site measuring 500 sq.yards bearing No.1, Sector 28, Urban Estate, Faridabad was allotted to SK Verma and SK Singhal on 29.08.2008 through open auction at the total cost of ₹ 2,25,00,000/-. As per the terms and conditions contained in the allotment letter dated 04.04.2008 (P2), the allottee after payment of 25% of the allotment price was required to pay the balance 75% in the following terms:-

“Mode of Schedule of Payment:

The balance 75% amount i.e. Rs.1,68,75,000/- shall be payable within 60 days from the date of issue of regular allotment in lump sum without interest or in eight six month installments from the date of issue of letter of intent. However first installment of 75% shall be payable within 30 days from the date of issue of Regular allotment letter. The interest on installment @ 9% p.a. shall however be charged from the date of offer of possession.”

(2) Clause 25 of the allotment letter further says “*You may take the possession of the site on any working Mondays*”.

(3) The petitioners purchased the above-stated Nursing Home site from the original allottees and re-allotment letter dated 24.06.2008 (P3) was issued in their favour on the same terms and conditions.

(4) The original allottees or the petitioners have admittedly not paid any instalment. According to the petitioners, physical possession of the site has not been offered so far though they sent legal notice dated 10.02.2010 (P4) and thereafter filed Civil Suit also which was dismissed.

(5) Counsel for HUDA, on the other hand, refers to the following averments made in the written statement:-

“12. That it is submitted that the Nursing Home site re-allotted to the petitioners is fully developed and clear at site and the petitioners have failed to take physical possession and to raise construction on the same. Baseless ground of encroachment has been concocted by the petitioners to avoid their contractual obligations regarding payment of outstanding amount as well as setting up of Nursing Home Site. It is submitted that the other three sites auctioned from time to time at the nearby area where the site in question is located are running without any hindrance. A copy of the occupation certificate of such sites is attached herewith as Annexure R-3.”

(6) He further points out that in the written statement filed before the Civil Court also, a categorical stand was taken by HUDA authorities that possession of the site was offered but neither the original allottees nor the petitioners have taken the same and that the plea of alleged encroachment

over the site is a lame excuse to avoid payment of due instalments. It is also the case of HUDA authorities that the nearby sites have been fully constructed and there is no impediment against the petitioners from taking physical possession or to raise construction at the site.

(7) Learned counsel for the petitioners, however, maintain that the site is fully developed and HUDA authorities are not giving physical possession.

(8) It bears out from the rival contentions that the writ petition involves disputed question of facts which cannot be effectively adjudicated in these writ proceedings. There appears to be no rhyme or reason for HUDA authorities to deny possession when according to them the site is free from all encumbrances.

(9) The writ petition is accordingly disposed of with liberty to the petitioners to seek physical possession of the site which shall be handed over to them after carrying out necessary measurements at the site to enable the petitioners to raise construction in a time bound manner, however, subject to payment of all due charges by them.

(10) Ordered accordingly.

(Surya Kant)
Judge

10.09.2018
vishal shonkar

(Sudip Ahluwalia)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes
No