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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 11389/2016 & CM No. 44652/2016, 23556/2017 & 26614/2018

P D GUPTA

..... Petitioner

Through: Petitioner in person.

versus

HSIIDC LTD

..... Respondent

Through: Mr Anil Grover and Ms Noopur
Singhal, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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19.07.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

- “(a) To direct the Respondent to execute the Conveyance Deed of the plot no. 28, G.C. Bawal in favor of the petitioner forthwith,
- (b) Hold that the extension fee already paid to the Respondent for the 9th year i.e. upto 29.09.2016, is actually for the 9th year upto 29.09.2017 counted as per the provisions of EMP-2015.
- (c) To strike down the prescribed rates for grant of extensions for completing the construction at the residential plot as prescribed in the EMP-2015, which are contrary and discriminatory to such rates prescribed by HUDA. And after striking the same to direct the Respondent to adopt such prescribed rates of HUDA for grant of extensions to complete the construction on the plots.

- (d) To strike down the condition imposed by the Respondent for completing minimum construction on the freehold residential plot and obtaining occupation certificate for transfer of the said plot allottees of the free hold residential plots, including that of the Petitioner, as unreasonable, arbitrary, discriminatory and against the principles of Natural Justice.
- (e) To direct the respondent to pay compensation / damages of Rs. 5,00,000/- or any other amount to the petitioner as may be deemed fit and proper by the Hon'ble Court.”

2. On 25.03.2002, the petitioner applied for allotment of a freehold residential plot, admeasuring 450 sq. meter, located at G.C. Bawal, Haryana, with the New Delhi office of the respondent (hereafter ‘HSI IDC’). The said application was made pursuant to a scheme advertised by HSI IDC offering free hold residential plots. The petitioner’s application was accepted. Accordingly, HSI IDC issued an allotment letter dated 19.06.2002 allotting a plot of land – plot no. 28, Sector 2, G.C. Bawal – for a consideration of ₹3,56,400/-.

3. Plot no. 28, Sector 2, G.C. Bawal (hereafter ‘the Plot’) was a corner plot and HSI IDC sought to charge an additional premium on account of the same. This was disputed by the petitioner and led him to file a complaint under the Consumer Protection Act, 1986, before the District Forum. The petitioner prevailed before the District Forum and the additional premium charged by HSI IDC was struck down by an order dated 14.07.2009. Both, the petitioner as well as HSI IDC, filed first appeals against the said order before the State Consumer Dispute Redressal Commission, which were

dismissed by an order dated 10.02.2016. HSIIDC filed revision petition before the National Consumer Disputes Redressal Commission against the order dated 10.02.2016, which was also dismissed by an order dated 06.06.2016.

4. The allotment letter dated 19.06.2002 expressly provided that the petitioner would 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.

5. The petitioner did not complete the construction within the time specified. He sought extensions from HSIIDC from time to time, and the same were granted on payment of the prescribed fee. The petitioner applied for extension for the ninth year by a letter dated 22.09.2015 and also submitted a bank draft for ₹67,500/- along with his application. The said amount was computed at the rate of ₹150/- per sq. meter.

6. HSIIDC considered the petitioner's request and sent a letter dated 06.10.2015, which reads as under:-

“Regd.
Sh. P.D. Gupta,
501 A/4A/HIG Flats, Rani Jhansi Road,
D.D.A. Complex, New Delhi-110055

Re: Residential Plot no. 28, Sector: 2, Phase-I, HSIIDC
IMT, Bawal- Request for extension in time period.

Dear Sirs,

This is in reference to your request dated 22.09.2015

received on 28.09.2015 for further extension in time period for completing the building at the captioned plot. In this regard we thankfully acknowledge the receipt of your letter along with Demand Draft No. 000461, Dated: 22.09.2015 for Rs.67500/- drawn on HDFC Bank towards payment of 9th year extension fee as regard to the captioned plot. In this regard this is to inform you that after adjustment of payment made by you along with service tax @ 14% p.a. towards extension fees, Rs.9450/- is still balance against the extension fees towards 9th year as on 30.09.2015. You are therefore advised to deposit the above said amount along with interest @12% p.a. from 30.09.2015 till the date of deposit as well as to clear the maintenance charges as demanded vide letter dated 01.10.2015 so that you request for further extension can be considered as per norms.

The above is without prejudice to the rights of the Corporation.

Thanking you,
Yours truly
For HSIIDC LTD.
Sd/-
Estate Manager
IMT, Bawal”

7. Thereafter, HSIIDC issued the Estate Management Procedures - 2015 (hereafter ‘EMP-2015’). Paragraph 15.6 of the EMP-2015 contemplated that the allottee would complete the construction of a residential plot within a period of three years. The relevant extract of Clause 15.6 of EMP-2015 is set out below:-

“15.6 Construction on Residential Plots:

i. The allottee shall complete the construction of the residential plot within a period of three 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 regulations governing the erection of buildings.

ii. Extension in period for completion of construction beyond the period of three years will be granted on year to year basis, on payment of extension fee. The fee for the 9th extension onwards will be double the extension fee for previous year as detailed hereunder without any cap for the extensions:

Sr. No.	Area/ Block	1 st & 2 nd Year	3 rd & 4 th Year	5 th & 6 th Year	7 th & 8 th Year	9 th Year	10 th year	11 th Year	& so on
1	Category 'A' Estates	40	60	100	150	300	600	1200	--
2.	Category 'B' & 'C' Estates	20	30	50	75	150	300	600	--
Note 1. There will be no limit on the number of extensions, however, in case the allottee doesn't deposit the extension fee for two consecutive years, plot shall be liable to be resumed. 2. Applicable service tax and interest 12% per annum from due date shall be payable.									

8. The petitioner contends that since EMP-2015 was applicable from 16.10.2015 and would also apply to pending applications, his application for extension for the ninth year ought to have been considered in accordance with EMP-2015. It is his case that since EMP-2015 enlarged the initial period for completing the construction from two years (as provided in the allotment letter) to three years as provided in Clause 15.6 of EMP-2015, the petitioner ought to have been granted extension till 29.09.2017 instead of 29.09.2016.

9. The petitioner further contends that he is also entitled to conveyance

of the Plot without HSIIDC insisting on the condition that the petitioner complete the construction on the Plot. He further states that Haryana Urban Development Authority (HUDA) follows a policy of unlimited extension and HSIIDC also follows the policies adopted by HUDA; therefore, failure of HSIIDC to adhere to HUDA's policy for grant of extension of time to complete construction, is arbitrary and unreasonable.

Reasons and Conclusion

10. The preliminary issue to be examined is whether this Court has the jurisdiction to entertain the present petition. The learned counsel appearing for HSIIDC contended that the petition concerns allotment of land which is located in the State of Haryana and the principal office of HSIIDC is also situated in Panchkula in the State of Haryana. Therefore, the present petition ought not to be entertained on the principle of *forum conveniens*. She stated that although HSIIDC did have an office in New Delhi, the same did not entitle the petitioner to proceed against HSIIDC in this Court. The petitioner countered the aforesaid submission and submitted that the petitioner had applied for the Plot with HSIIDC's office at New Delhi and, further, also deposited the cost of the Plot in New Delhi. He submitted that since part of the cause of action had arisen within the territorial jurisdiction of this Court, the present petition is maintainable.

11. The contention advanced by the petitioner is merited. It would have been apposite for the petitioner to have filed the present petition before the High Court of Punjab & Haryana, Chandigarh. However, this Court is not inclined to reject the petition at this stage. This is, principally, for the reason

that the petition has been pending before this Court since past two years. Further, since part of the cause of action had arisen in Delhi, this Court is not precluded from exercising its jurisdiction in the matter.

12. Coming to the merits of the present matter, the foremost issue which falls for consideration of this Court is whether the petitioner was entitled to extension of time to complete the construction till 29.09.2017 pursuant to his application for extension for the ninth year.

13. At the outset, it would be relevant to refer to the petitioner's application dated 22.09.2015 for extension for the ninth year. The said application reads as under:-

“To
The Estate Manager
HSI IDC Ltd. IMT
BAWAL-123501

Subject:- Grant of Extension for completing the building in respect of residential plot no. 28, Sector-2, IMT, Bawal for 9th year.

Sir,

I may be granted extension for completing the building in respect of residential plot no. 28, sector-2, IMT, Bawal for 9th year, as per EMP-2011 at the rate Rs. 150 per sq. mtr. I was granted 8th year extension up to 29.09.2015 vide your letter dated 13.11.2014. Copy of this letter is enclosed for ready reference. I am submitting herewith a bank draft for Rs.67,500/-. This is all without prejudice to my rights.

Encl.:-

- 1) Copy of letter dated 23.11.2014
- 2) Bank draft for Rs.67,500/-”

14. It is apparent from the above that the petitioner had applied for extension of only for one year (9th year). The petitioner had also paid the extension fee at the prescribed rate. It is not disputed that the extensions are granted annually and there is no provision for granting extension for two years at a time. Clause 15.6 (ii) of EMP-2015 also indicates that extensions on annual basis can be granted on the payment of the fee as prescribed therein. There is no provision for readjustment of the extensions on the basis of the change in the policy, which would entitle the petitioner three years for completion of construction instead of two years as stipulated in the allotment letter issued to the petitioner.

15. Pursuant to the letter dated 06.10.2015, the petitioner paid the balance amount as demanded by HSIIDC and, by a letter dated 09.11.2015, HSIIDC had extended the time for completion of the building from 30.09.2015 to 29.09.2016. This was inconformity with the request made by the petitioner by his letter dated 22.09.2015.

16. It is seen that the petitioner was granted possession of the Plot on 30.09.2004. In terms of Clause 14 of the Allotment Letter dated 19.06.2002, the petitioner was required to complete the construction on the plot within the period of two years of the date of offer of possession. Clause 14 of the allotment letter is set out below for ready reference:-

“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 regulations governing the erection of buildings. The time limit is extendable by the Estate Officer,

HSIDC, if he is satisfied that non-construction of the building was due to reasons beyond your control, otherwise this plot is liable to be resumed and the whole or part of the money paid, if any, in respect of it forfeited in accordance with the terms and conditions of this letter. You shall not erect any building or make any alteration/ addition without prior permission of HSIDC. No fragmentation of any land or building shall be permitted.”

17. As observed herein before, the petitioner applied for extensions from time to time, which were granted by HSIIDC. In its counter affidavit, HSIIDC has set out a table indicating various extensions granted to the petitioner. The said tabular statement is set out below:-

Period	Extensions
30.09.2006 -29.09.2007	1 st extension
30.09.2007-29.09.2008	2 nd extension
30.09.2008-29.09.2009	General Extension
30.09.2009-29.09.2010	3 rd extension
30.09.2010-29.09.2011	4 th extension
30.09.2011-29.09.2012	5 th extension
30.09.2012-29.09.2013	6 th extension
30.09.2013-29.09.2014	7 th extension
30.09.2014-29.09.2015	8 th extension
30.09.2015-29.09.2016	9 th extension

18. The learned counsel appearing for HSIIDC had explained that the third extension – that is 30.09.2008 to 29.09.2009 – was granted as a general extension to all the allottees and the petitioner was not called upon to make the payment for the same. It is apparent from the tabular statement that the petitioner had applied and was granted the first extension to complete the construction till 29.09.2007. The initial period of two years for completing the construction had expired on 29.09.2006. The question of now

recalculating the initial period does not arise. EMP-2015 also expressly clarifies that “*all cases decided in the past as per earlier Estate Management Procedures (EMPs)/Policies, shall not be re-opened.*” Thus, the question as to the period of initial extension stood finally concluded with the petitioner applying for extension for the first time, which was for the period 30.09.2006 to 29.09.2007.

19. The contention, that HSIIDC was precluded from withholding execution of the conveyance deed on account of non-completion of construction of the building on the Plot, is also unmerited. However, the said issue does not survive as pursuant to the order dated 15.05.2017 passed by this Court, HSIIDC had executed the conveyance deed in favour of the petitioner.

20. The petitioner has stated that he had applied for further extension of time for completion of building and the same has been granted till 29.09.2018.

21. The petitioner’s contention that HSIIDC is obliged to follow the HUDA’s policies is also unpersuasive. HSIIDC is a separate organization and it is not bound to adopt policies of any other organization. There is also no fetter on HSIIDC to adopt any of HUDA’s policy.

22. In view of the above, the present petition is unmerited and, accordingly, dismissed. The pending applications are also disposed of.

VIBHU BAKHRU, J

JULY 19, 2018/pkv