

RSA-1971-2018 (O&M)

Reserved on : July 26, 2022

Date of Decision : August 02, 2022

.....Appellant

Personality Care Apparels Private Limited

...Respondent

Present: Mr. Lokesh Sinhal, Advocate
for the appellant.

Mr. V.K. Jindal, Senior Advocate with
Mr. Akshay Jindal, Advocate and
Mr. Gopal Soni, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J.

Challenge In this appeal is to the judgment and decree dated 15.11.2016 passed by the Civil Judge (Senior Division), Karnal vide which the suit of the respondent-plaintiff was partly decreed as well as the judgment and decree dated 23.3.2017 passed by the lower Appellate Court vide which the appeal filed by the respondent-plaintiff qua partial dismissal of the suit was allowed, whereas the appeal filed against the same judgment by defendant-appellant Haryana Urban Development Authority (hereinafter referred to as '**the HUDA**') was dismissed.

Brief facts of the case, as noticed in the plaint, are as under:-

"The plaintiff is a Private Limited Company duly registered with the Registrar of Companies, Delhi and Board of Directors resolved to file the present suit against the defendants and authorized Sh. Sunil Bindal, who is one of the Directors of the Company and Sh. Navrit Goel, General Manager of the Company to file the suit before the Trial court jointly and severally and to pursue the same on behalf of the Company. Defendant No.1 HUDA is a body corporate constituted under the Haryana Development Authority Act, 1971. The plaintiff purchased a Restaurant building and site situated in Sector-12, Karnal in an open auction conducted by HUDA authorities on 23.12.2003. The plaintiff had given the highest bid, which was accepted by HUDA. Before auction, the plaintiff approached the Estate Officer, HUDA for inspection of the Restaurant building and site in order to understand completely and correctly its topography. The Estate Officer, HUDA deputed his J.E. Mr. Pathak to accompany the plaintiff to the site and show the restaurant building and site as constructed by HUDA as existing on the spot and land around it, was duly fenced by angle irons supported by barbed wire. Mr. Pathak further assured the plaintiff that the concrete passage existing from restaurant parking situated towards North-East of the restaurant site including the building therein shall also be a part of the deal, since it was exclusively meant to be used as an approach road to the restaurant site and shall be transferred to the purchaser of the site. The area which is part and parcel

of the restaurant building i.e. land around it stands fully demarcated and delineated at the spot. Taking into consideration the constructed restaurant and also the land/lawn around it, which was encircled by barbed wire, the plaintiff had decided to offer a bid for whole site at the time of auction and being the highest bidder the offer of plaintiff was accepted vide allotment letter No. 2910 dated 04.2.2004. After receipt of allotment letter, a suspicion arose in the mind of the plaintiff in respect of property since only the building was specified in the *Allotment Letter* and not the land or lawns around it, therefore, to further clarify the situation, plaintiff approached E.O, HUDA immediately for necessary correction in the allotment letter so as to include land around the constructed building which had been shown to plaintiff before auction by Mr. Pathak. However, Estate Officer, HUDA postponed the matter concerning correction in the allotment letter. The plaintiff after meeting the Estate Officer, HUDA demanded the Zoning Plan, Structural Drawings and Building Plans, since the time for depositing 15% of the bid amount was fast approaching, therefore, plaintiff again requested the Estate Officer, HUDA that land around the building was part and parcel of the *Restaurant Building* and to clarify the situation and to carry out the necessary corrections and to extend, at the time of depositing 15% of the total bid amount, the matter was sought to be clarified. The appellant/plaintiff had sufficient amount in his bank i.e. State Bank of India, Ambedkar Chowk, Karnal and it had a credit balance of Rs.69,63,464.55ps in his account. During this span the defendants cancelled the allotment of the plaintiff without taking any decision on the

representations on the ground that the plaintiff could not deposit the balance amount i.e. 15% of the bid amount within 30 days from the date of issuance of allotment letter. The plaintiff then preferred an appeal before the Chief Administrator, HUDA against the order of cancellation of allotment. The Chief Administrator, HUDA set aside the order of cancellation of plot and forfeiture of 10% of earnest money and directed the Estate Officer, HUDA, Karnal to accept 15% amount on payment of surcharge and penal interest as per HUDA policy within 30 days of issuance of the order. The Estate Officer, HUDA vide memo No.3087 dated 09.3.2005 informed the plaintiff that restaurant building stands restored to it and directed the appellant/plaintiff to deposit amount of Rs.66,31,170/- as per calculation sheet appended therewith. Perusal of the calculation sheet revealed that Estate Officer had made out the amount of interest w.e.f. 04.2.2004 to 14.4.2004 at the rate of 18% P.A with surcharge at the rate of 5% and further interest w.e.f 18.2.2005 to 19.3.2006 amounting to 96675/- and thus total amount of Rs. 66,31,170/- was payable. The amount as worked out by HUDA was absolutely unwarranted and was in violation to the agreement. However, plaintiff deposited an amount of Rs.65,34,496/- (*under protest*). The plaintiff requested defendant No.2 to provide physical possession of the building, but possession was not delivered despite various reminders. The plaintiff also informed Estate Officer about continuous deteriorating condition of the building vide separate letters. Estate Officer, HUDA instead of providing possession of *restaurant building* issued show cause notice bearing memo No.8585 dated

27.6.2005 u/s 17(i) of HUDA Act to pay Rs.1,10,87,275/- on or before 18.7.2005 and in case of failure of plaintiff was called upon to show cause as to why penalty of Rs.11,08,727/- at the rate of 10% of the amount due should not be charged from him. After receiving this notice, plaintiff again requested the defendant to deliver physical possession and apprised him about deteriorating condition of the building and to take coercive action in this regard. After long time, ultimately, HUDA delivered *Paper Possession On 12.07.2005* though the plaintiff was repeatedly requesting the defendant No.2 to provide physical possession after necessary repairs. Although, Estate Officer had assured to take corrective action in order to repair the building to the same shape and condition as it existed at the time of auction, but no action was taken and plaintiff had to spend huge amount to start business in the site because of the worst condition of building. Instead of rectifying the defects of building, defendant started issuing show cause notices dated 29.05.2006 demanding an amount of Rs.2,13,27,609/- and another notice dated 05.01.2007 demanding an amount of Rs.2,80,93,775/-. Plaintiff again requested the defendant to provide details of calculation with complete break up of Principal amount possession interest etc, but no reply was sent by the department. The aforesaid notices are illegal, invalid and not binding upon the rights of the plaintiff for certain reasons, such as, possession of the site was to be offered after completion of entire development work in the area, but the defendants failed to complete development work in the area till date. According to Clause 5, interest on the installment amount had to

accrue from the date of *offer of possession*, but in the present case, possession was delivered on 12.7.2005. The entire building was in a bad shape and plaintiff carried out extensive repairs and renovations in order to put the building in use. Thus, defendants could not have demanded interest on the installment prior to the date of offer and delivery of possession and it has been pleaded that plaintiff was not bound to pay interest on the amount of installments as demanded through the above mentioned notices. The major portion of land covered by Sector-12 is in illegal possession of Juggi dwellers, who keep pigs, cows, goats, sheep, buffaloes, stray animals including dogs which keep on wandering around the restaurant building and area in the vicinity of the building which gives an ugly look. The plaintiff was not provided possession within stipulated period by the defendants for which plaintiff has demanded unliquidated damages on account of loss of business and amount spent on repairs and renovations. Clause 5 of the allotment letter further proves that amount can be paid without interest within 60 days from issuance of allotment letter or in half yearly eight installments with rate of interest 11% per annum. The interest shall accrue from the date of offer of possession. Further, according to the order of Chief Administrator, payment schedule for payment of installments was to be re fixed by defendant No.1 and after fixing time schedule for payment, installment could be demanded and not otherwise and thus show cause notices had not been issued as per the provisions of statute and terms and conditions of allotment letter and plaintiff was not liable to pay interest on the amount of installments for period

from 15.04.2004 to 15.04.2005. Hence, the suit was filed.”

The defendants filed the written statement and contested the suit.

The trial Court framed the following issues :-

- (i) Whether the plaintiff is entitled for declaration along with consequential relief of permanent injunction, as prayed for ? OPP
- (ii) Whether the present suit is misuse of judicial process ? OPD
- (iii) Whether the plaintiff has not come to the court with clean hands and has concealed true and material facts from the Court ? OPD
- (iv) Whether the suit is not legally maintainable? OPD
- (v) Whether the suit is pre-mature ? OPD
- (vi) Whether the plaintiff was estopped from filing the present suit by his own act and conduct ? OPD
- (vii) Whether the jurisdiction of the civil Court is barred under Section 50 of the HUDA Act ? OPD
- (vii) Relief.

Issues No.1 and 7 were hotly contested between the parties.

The respondent-plaintiff produced as many as 11 witnesses apart from producing various communications between the parties. Similarly, the appellant-defendant also examined 03 witnesses and

exhibited certain documents, including a pamphlet Mark-D1 and closed the evidence.

The trial Court, while deciding Issue No.1 observed that in terms of Clauses IV and V of the letter of allotment Ex.D2, after the allotment was issued and 10% bid money was paid by the plaintiff, it failed to deposit the balance amount within 30 days. As a clarification was sought from HUDA regarding the opening space adjoining constructed building as to whether the land/lawn existing and surrounded the constructed building of the restaurant is part and parcel of the building or not. It was also held by the trial Court that without deciding the various representations filed by the plaintiff, the Estate Officer, HUDA issued cancellation order under Section 17 of the HUDA Act and passed an order of resumption, which was challenged by the plaintiff by way of filing an appeal before the Administrator exercising the power of Chief Administrator. The appeal filed by the plaintiff was allowed vide order dated 15.2.2005 and the Estate Officer was directed to accept the amount of 15% of the bid amount along with surcharge a penal interest as per the HUDA policy within 30 days and when the plaintiff deposited the said amount on 12.7.2005, the possession of the property was handed over to the plaintiff as per possession certificate Ex.D4.

The trial Court also recorded the finding that there is nothing on record to suggest that prior to 12.7.2005 the possession was handed over to the plaintiffs and therefore, partly decreed the suit to the extent

that the defendant-appellant-HUDA is entitled to charge interest only from the date of offer of possession @ 14% per annum in view of Clauses V and VI and XXIII of the allotment letter and as no calculation was made, the impugned show causes notices Ex.P24, Ex.P33 and Ex.P35 were declared *null and void*.

However, with regard to the relief of the plaintiff that the adjoining open space/lawn was also allotted to the plaintiff, the trial Court declined that relief.

Two separate appeals were filed before the lower Appellate Court, one by the present appellant-HUDA challenging the finding recorded by the trial Court and the second by the respondent-plaintiff also challenging the finding qua parcel dismissal of the suit. The lower Appellate Court vide impugned order dated 23.3.2017 allowed the appeal filed by the respondent-plaintiff and dismissed the appeal filed by the appellant-defendant.

Since the primary contest between the parties with regard to the second issue in controversy, it would be relevant to refer to the finding recorded by the lower Appellate Court, which reads as under:-

“18. The Second issue in controversy is that, plaintiff had been chasing the department, for providing him with a passage leading to his *restaurant building and site*. This issue has already been decided by the Chief Administrator HUDA vide Ex. P7 & Ex.P8, as the plaintiff has already been provided with a passage to reach his

premises vide Ex. P7 & Ex. P8, hence this prayer of the plaintiff also stands decided in his favour.

19. Further, the plaintiff has sought a declaration to the effect that the restaurant's double storied building was allotted to him along with a site, which was fenced with the barbed wire, measuring 232ft. X 209 ft., as depicted by him in Ex.PX. In order to prove this fact, the plaintiff has submitted various representations to the department from the very beginning, which are placed on record and all the representations are duly proved and validly exhibited, not only this the plaintiff has also proved these documents in the evidence of the defendant as DW1 Shri Ashok Kumar has admitted that these representations are placed on the file in their record. At the same time, the plaintiff took a stand that the JE Shri Pathak of HUDA Department went with him to show, the restaurant building and site, before the allotment and the said JE had told him that the land surrounded by barbed wire was a part and parcel of the restaurant double storied building. In order to controvert this fact, the respondent department has not led any evidence, even Shri Pathak, JE has not been examined as DW to falsify the stand taken by the plaintiff. Not only this, there is no evidence as to how the land, which is adjoining the restaurant building would be utilized for the purpose of SCOs. At this stage, the argument of Mr. B.K. Jindal, Advocate gains weight that Ex. D4, i.e. the possession letter issued by the respondent-department bears recitals as "*Restaurant Building and Site*", he submits that since this document has been placed on record by the respondent-department, therefore, they are ousted to claim otherwise. Not only this, no

explanation in this regard has been submitted by the respondent-department as to what does "the restaurant building and site" means. On the other hand, the claim of the plaintiff-appellant from the very beginning is the same that the property which was allotted to him, is the restaurant building and site. The respondent-department since has not specifically challenged this fact in their appeal, therefore, it has to be seen by this court as to whether this property, measuring 232' X 209' can be declared in favour of the plaintiff or not. In this regard the evidence of DW1 gains importance, he specifically stated that the possession certificate, placed on record by their department bears *Restaurant Building and Site*. At the same time the plaintiff has examined his twelve witnesses, who on oath, have stated that when the double storied building was shown and auctioned, it was comprising of a vacant space/area which was fenced with barbed wire. Not only this, it cannot be denied that the plaintiff is occupying the same area i.e. 232ft. X 209ft. from the very first day, and thus declaration and injunction is being sought. On the other hand the respondent-department has not filed any counter claim, nor any resistance has been shown for the utilization of property, occupied by the plaintiff in any other manner. In these circumstances especially, keeping in view Ex. D4 this court is of this opinion that the restaurant building was comprised of a site, which is being possessed by the plaintiff, and shown by him in Ex.PX site plan since the contrary has not been proved.

20. So far as the calculation of interest is concern, this fact cannot be denied that Ex. P3 agreement between the parties had been entered upon with open eyes. The

agreement is self speaking and deals with every aspect. Clause Nos. 5, 6 & 23 are relevant to decide the present controversy. As per clause No. 5 it had been agreed upon that each installment would be recoverable together with interest on the balance price at 11% interest on the remaining amount, "*the interest shall however accrue from the date of offer of possession*". Clause No. 23 stipulates that 14% simple interest will be charged for delayed payment. Learned Trial Court vide the impugned judgment has maintained the recitals of the agreement, and has opined that "*the defendants HUDA are entitled to charge interest only from the date of offer of possession and that to @ 14%, interest*". This court slightly disagrees with the observation so made by the learned Trial Court, because allotment and delivery of possession initially frustrated, when the plaintiff had to seek the indulgence of the Chief Administrator, HUDA, Panchkula by filing an appeal, but later, vide order dated 15.02.2005, though the said appeal was accepted, yet the situation became more complexed as at page No. 3, it has been mentioned by the CA that "*the condonation is allowed on payment of Surcharge and penal interest @18% per annum*". Since the officials of the HUDA department mis-construed this observation and vide Ex. P16 demanded the payment @18% interest and made out an exorbitant amount. This further deteriorated the circumstances as the order of Chief Administrator HUDA had no authority to super-seed the core recitals of the agreement Ex. P3, hence the arrangement agreed upon by both the parties in the agreement has to prevail. The department is directed to recalculate the outstanding payment of the plaintiff, as per the terms and conditions

of the agreement and to send a fresh demand notice to the plaintiff, within a period of one month from the receiving the copy of this judgment and consequent thereupon the plaintiff shall make the payment to the respondent-department within a period of three months after receiving the demand notice. Hence the findings recorded by the Id. trial court are hereby modified.

21. So far as the claim of the plaintiff qua demand of un-liquidated damages are concerned, the learned Trial Court has rightly observed that the plaintiff did not place on record any evidence documentary or oral to establish the fact, that he had spent the amount of Rs.75Lacs. There is no evidence of the plaintiff as to how much amount was spent by him in re-modifying the same for his use. In the lack of any evidence, the finding recorded by the learned Trial Court are hereby affirmed and upheld. The plaintiff is not held to be entitled for un-liquidated damages as claimed for and his claim is rejected.”

The lower Court record is requisitioned and the entire evidence is re-appreciated.

Counsel for the appellant has argued that both the Courts below have wrongly interpreted the order dated 15.5.2005 passed by the appellate Authority, i.e. Administrator-HUDA exercising the power of Chief Administrator HUDA, wherein the direction was issued to the Estate Officer, HUDA to accept the amount of 15% of the bid along with surcharge, penal interest as per HUDA policy within 30 days. Counsel for the appellant argued that the Courts below have not appreciated that as

per HUDA policy the interest was payable at the rate of 11% of the remaining installments and the interpretation of this order would mean that over and above 11% of the interest payable, the plaintiff was required to pay 14% of additional interest on account of delayed payment charges.

Counsel for the appellant has next argued that as per the pamphlet Mark-X and the letter of allotment, the open area/lawn area abutting the building was never allotted to the respondent-plaintiff and the lower Appellate Court has wrongly assumed that the same is also allotted to the appellant.

Counsel for the appellant has referred to the letter of allotment Ex.D3, wherein it is stated that the residential/restaurant building/double storey was allotted having ground floor area of 820.51 sq. meters and first floor area of 749.79 sq. meters.

Counsel for the appellant has further referred to a pamphlet which was circulated prior to the auction proceedings showing at serial No.5 that the proposed building is a restaurant/build up double storey having ground floor area of 820.21 sq. meter and the first floor area of 749.79 sq. meters 'Mark-A'.

Counsel has further referred to the proceedings of the auction Ex. D13 to submit that the same area was reflected in the bid sheet as well.

Counsel for the appellant has, thus, submitted that the trial Court as well as the lower Appellate Court has recorded erroneous findings of fact and, therefore, the present appeal be allowed.

Counsel for the respondent has given a written synopsis describing the brief description of the Exhibits which reads as under :-

1.	ON THE DATE OF AUCTION (RESTAURANT BUILDING EXISTED ON THE SPOT WITH OPEN SPACE AROUND IT AS IT WAS FENCED WITH IRON ANGLES GRILLS IN SOUTH AND NORTH AND WITH BARBED WIRE IN NORTH AND EAST THERE WAS ALSO A FOUNDATION STONE IN THE OPEN SPACE ON WHICH IT WAS WRITTEN THAT "THE FOUNDATION STONE OF THE RESTAURANT LAID BY SH SHASHI PAL MEHTA, HON'BLE INDUSTRY MINISTER, HARYANA" WHICH STILL EXISTS ON THE SPOT AS ON DATE AS A CONCLUSIVE PROOF OF OPEN SPACE WITH THE BUILDING. THERE WAS ALSO A HUGE IRON BOARD IN THE OPEN SPACE, ON WHICH IT WAS CLEARLY WRITTEN-"SITE FOR RESTAURANT" WHICH AGAIN CLEARLY SHOWS THE AVAILABILITY OF THE OPEN AREA WITH THE BUILDING THIS WAS THE ACTUAL AND FACTUAL POSITION BEFORE THE DATE OF AUCTION WHEN WE VISITED THE SPOT ALONG WITH WITH J.E. MR. LALIT PATHAK. TAKING INTO CONSIDERATION THE OPEN AREA AND OPEN SPACE PLAINTIFF HAD GIVEN THE HIGHEST BID FOR THE SAME.	23.12.2003
2.	ON RECEIPT OF ALLOTMENT LETTER, 30 DAYS TIME WAS PROVIDED TO DEPOSIT 15% i.e. BY 04 03.2004 (THE ALLOTMENT LETTER CONSISTS ONLY DETAIL OF BUILDING & NOT THE AREA OF PLOT)	04.02.2004
3.	1st LETTER TO HUDA TO PROVIDE THE ZONING PLAN IN ORDER TO HAVE CLARITY AND CONFIRMATION OF OPEN AREA AROUND THE BUILDING.	19.02.2004 (Ex.P-2)
4.	2nd LETTER TO HUDA TO PROVIDE ZONING PLAN, BUILDING PLAN AND STRUCTURAL	27.02.2004

	DRAWING AGAIN IN ORDER TO HAVE CLARITY ON ABOVE SUBJECT.	(Ex.P-3)
5.	3rd LETTER TO HUDA TO ESTATE OFFICER THAT 15% AMOUNT TO BE DEPOSITED IS ABSOLUTELY READY WHICH CAN BE DEPOSITED IMMEDIATELY ON THE CLARITY OF OPEN SPACE AND REQUEST FOR EXTENSION OF TIME LIMIT OF 30 DAYS TILL THE CLARITY ON THE ABOVE SUBJECT.	02.03.2004 (Ex.P-4)
6.	REPRESENTATION BEFORE CHIEF ADMINISTRATOR PANCHKULA ON ABOVE SUBJECT REQUEST FOR EXTENSION OF TIME LIMIT OF 30 DAYS AND PROVIDE THE CLARITY ON THE SUBJECT OF OPEN AREA, SINCE LAST DAY OF DEPOSIT OF 15% WAS 04.03.2004 .	03.03.2004
7.	A CERTIFICATE FROM STATE BANK OF INDIA KARNAL REGARDING SUFFICIENT FUNDS OF RS. 70 LAKHS (APPROX) IN PLAINTIFF'S BANK ACCOUNT. THE COPY WAS ALSO HANDED OVER TO HUDA AUTHORITIES.	04.03.2004 (Ex.P-5)
8.	ORDER OF FORFEITURE PASSED WITHOUT REPLY TO LETTERS DATED 19.02.2004, 27.02.2004 and 03.03.2004.	12.03.2004 (Ex.P-7)
9.	FILING OF APPEAL BEFORE HON'BLE CHIEF ADMINISTRATOR HUDA PANCHKULA AGAINST ORDER OF ESTATE OFFICER, KARNAL FOR FORFEITURE AND CANCELLATION.	12/15.04.2004 (Ex.P-9)
10.	AFFIDAVIT- FROM SH. KRISHAN LAL GARG AND ASHOK KUMAR WHO WERE THE 2nd AND 3rd BIDDER IN OPEN AUCTION THAT OPEN AREA WAS THE PART OF THE RESTAURANT BUILDING AND THEY HAVE ALSO GIVEN THE BID BY KEEPING IN VIEW THE OPEN LAND AROUND THE BUILDING.	07.06.2004
11.	A IRON BOARD WHICH WAS EXISTED ON THE SITE IN OPEN AREA AROUND THE BUILDING AND ON WHICH IT WAS CLEARLY MENTIONED SITE FOR RESTAURANT. REMOVAL OF BOARD FROM THE SITE BY HUDA KARNAL AND FILING OF ORECTION THROUGH LETTER DATED 17.08.2004 TO E.O. HUDA.	17.08.2004 (Ex.P-10)

12.	LETTER TO C.A. HUDA, PANCHKULA BUT NO RESPONSE WAS EVER RECEIVED.	17.08.2004 (Ex.P-11)
13.	INFORMATION TO ESTATE OFFER KARNAL REGARDING DETERIORATING CONDITION OF RESTAURANT BUILDING DUE TO LACK OF MAINTENANCE AND MISUSE OF RESTAURANT BUILDING. BUT NO RESPONSE WAS RECEIVED.	04.02.2005 (Ex.P-12)
14.	WHEN NO ACTION WAS TAKEN BY ESTATE OFFICER KARNAL A REMINDER ON ABOVE SUBJECT AND AGAIN REQUESTED TO TAKE A COERCIVE ACTION IMMEDIATELY IN THIS REGARD BUT NO ACTION WAS EVER TAKEN.	11.02.2005 (Ex.P-13)
15.	LACK OF MAINTENANCE AND MISUSE OF BUILDING WAS ALSO HIGHLIGHTED BY A NEWSPAPER ALONG WITH PICTURES OF DETERIORATING CONDITION AND MISUSE OF THE RESTAURANT BUILDING. BUT NO RESPONSE.	15.02.2005
16.	PENDING APPEAL BEFORE THE C.A. PANCHKULA WAS DECIDED TO THE EXTENT THAT E.O. KARNAL HAS TAKEN THE DECISION IN UTMOST HASTE IGNORING THE POLICY AND WITHOUT PROVING THE OPPORTUNITY OF EXTENSION OF TIME AND WITHOUT DECIDING THE REPRESENTATION PENDING BEFORE HIM DATED 02.03.2004, HENCE ORDER OF E.O. DATED 12.03.2004 CANCELLATION AND FORFEITURE OF MONEY WAS SET ASIDE AND RELIEF OF LITIGATION PERIOD WAS PROVIDED- IN TERMS OF PAYMENT AND DELAYED WAS CONDONED.	15.02.2005 (Ex.P-14)
17.	LETTER TO E.O. HUDA KARNAL REGARDING DUES AMOUNT	28.02.2005 (Ex.P-15)
18.	REPLY RECEIVED FROM E.O. HUDA TO DEPOSIT RS.6631170.00 AS INTEREST HAS BEEN CALCULATED@18% INSTEAD OF 11%.	09.03.2005 (Ex.P-16)
19.	PAYMENT WAS DEPOSITED THROUGH A PAY ORDER NO. 356179 DATED 15.03.2005 UNDER PROTEST.	16.03.2005 (Ex.P-17)
20.	REQUEST FOR PHYSICAL POSSESSION OF THE RESTAURANT BUILDING AND SITE ALONG WITH BUILDING PLAN, STRUCTURAL DRAWINGS, ELECTRICAL DRAWINGS,	16.03.2005 (Ex.P-18)

	ZONING PLAN AND PLUMBING AND SANITARY DRAWINGS. BUT NO RESPONSE.	
21.	REMINDER NO. 1 ON ABOVE SUBJECT. BUT NO RESPONSE.	21.03.2005 (Ex.P-19)
22.	REMINDER NO. 2 ON ABOVE SUBJECT. BUT NO RESPONSE.	30.03.2005 (Ex.P-20)
23.	REMINDER NO. 3 ON ABOVE SUBJECT. BUT NO RESPONSE.	21.04.2005 (Ex.P-21)
24.	LOAN OF RS. 3 CRORE WAS SANCTIONED FROM STATE BANK OF INDIA IN ORDER TO CLEAR ALL THE DUES OF HUDA, WHICH ALSO SHOWS BONA FIDE AND THE SANCTIONED LETTER STATE BANK OF INDIA WAS HANDED OVER TO HUDA AUTHORITIES IMMEDIATELY TO REQUISITE AMOUNT IN LUMP-SUM.	20.04.2005
25.	REMINDER NO. 4. AGAIN REQUEST FOR PHYSICAL POSSESSION AND REGARDING MISUSE OF BUILDING, TO TAKE 16.05.2005 CORRECTIVE ACTION. BUT NO RESPONSE.	16.05.2005 (Ex.P-22)
26.	REMINDER NO. 5 ON ABOVE SUBJECT. BUT NO RESPONSE.	15.06.2005 (Ex.P-23)
27.	INSTEAD OF PROVIDING THE POSSESSION OF RESTAURANT BUILDING AND SITE HUDA ISSUED US A SHOW CAUSE NOTICE UNDER SECTION 17(1) OF HUDA ACT, 1977 TO PAY RS.11087275.00 LATEST BY 18.07.2005.	27.06.2005 (Ex.P-24) (Impugned Order)
28.	REMINDER NO. 6 REQUEST FOR PHYSICAL POSSESSION AND REGARDING NON-MAINT AND MISUSE OF BUILDING TO TAKE CORRECTIVE ACTION. BUT NO RESPONSE.	05.07.2005 (Ex.P-25)
29.	REPLY OF SHOW CAUSE NOTICE DATED 27.06.2005 REQUEST FOR PROPER IMPLEMENTATION OF ORDER OF LD. C.A. DATED 15.02.2005 AND RESCHEDULING OF INSTALLMENTS IN THE INTEREST OF JUSTICE. BUT NO RESPONSE.	07.07.2005 (Ex.P-26)
30.	DESPITE REPEATED REQUEST FOR PHYSICAL POSSESSION AND NECESSARY REPAIR AND MAINTENANCE WORK ONLY PAPER POSSESSION WAS PROVIDED IN HUDA	12.07.2005 (Ex.P-27)

	OFFICE WITH A VERBAL COMMITMENT THAT "A CORRECTIVE ACTION IN ORDER RESTORE THE BUILDING IN SAME CONDITION AS IT WAS EXISTED AT THE TIME OF AUCTION WILL BE TAKEN VERY SOON". BUT NO ACTION WAS EVER TAKEN.	
31.	REMINDER NO. 1: THE BUILDING WAS ABSOLUTELY NOT IN POSITION TO RUN THE BUSINESS REQUESTED FOR REPAIR AND MAINTENANCE OF THE BUILDING IMMEDIATELY. BUT NO RESPONSE.	15.07.2005 (Ex.P-28)
32.	LETTER FROM E.O. HUDA KARNAL TO ADMINISTRATOR HUDA REGARDING GUIDELINES ON OUR REPRESENTATION DATED 07.07.2005 REGARDING RESCHEDULING OF INSTALLMENTS.	01.08.2005 (Ex.P-29)
33.	REMINDER NO.2-AGAIN REQUEST FOR REPAIR AND MAINTENANCE OF THE BUILDING. BUT NO RESPONSE.	12.08.2005 (Ex.P-31)
34.	WHEN NO RESPONSE WAS RECEIVED FROM HUDA DESPITE REPEATED REQUEST NECESSARY REPAIR AND MAINTENANCE WORK WAS DONE AND SAME WAS CONVEYED TO EO. KARNAL THOUGH LETTER DATED 28.10.2005 MENTIONING THAT THE HUDA WILL BE RESPONSIBLE FOR THE COST OF REPAIR AND MAINTENANCE AND COST OF TIME BUT NO RESPONSE.	28.10.2005 (Ex.P-32)
35.	WITHOUT AWAITING THE RESPONSE FROM CHIEF ADMINISTRATOR, PANCHKULA TO THE ESTATE OFFICER KARNAL'S LETTER DATED 01.08.2005 ON THE ISSUE OF RE-SCHDULEMENT OF INSTALLMENTS THE ESTATE OFFICER KARNAL ISSUED US THE SHOW CAUSE NOTICE U/S 17(1) OF HUDA ACT 1977 DATED 29.05.2006 RECEIVED ON 02.06.2006 TO PAY RS. 21327609.00 LATEST BY 29.05.2006.	29.05.2006 (Ex.P-33) (Impugned Order)
36.	REPLY OF ABOVE NOTICE DATED 29.05.2006 TO GIVE CALCULATION OF OUTSTANDING PAYMENT.	29.06.2006 (Ex.P-34)
37.	NOTICE U/S 17(1) OF HUDA ACT ,1977 TO DEPOSIT RS. 28093775.00 (NOTICE DATED 29.12.2006 WAS RECEIVED ON 05.01.2007)	05.01.2007 (Ex.P-35) (Impugned Order)

38.	FILING OF REPLY AGAINST HUDA NOTICE U/S 17(1) ACT 1977, DATED 29.12.06 THAT PROVIDE THE BREAK UP OF PRINCIPAL AMOUNT, POSSESSION INTEREST ETC TAKING INTO THE CONSIDERATION THE DATE OF POSSESSION AND THE CONDITION OF THE BUILDING AND SITE AT THE TIME TO DELIVERY OF POSSESSION.	15.01.2007 (Ex.P-36)
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It is argued on behalf of the plaintiff that, in fact, the auction took place on 23.12.2003 and immediately, thereafter the plaintiff wrote repeated letters/representations to HUDA to provide a zoning plan in order to enable the plaintiff to form an opinion qua open area around the building. The plaintiff also representing to provide building plan/zoning plan and structural drawing plan for the purpose of clarity of the constructed building. However, no action was taken though the letters Exs.P2 to P3 were written to the Estate Officer and the Chief Administrator HUDA, Panchkula. It is argued that when the Estate Officer passed the order of forfeiture on 12.3.2004 vide Ex.P7 the plaintiff filed an appeal on 13.4.2004 vide Ex.P9 in which the affidavit of the 2nd and 3rd bidder who participated in the auction proceedings was also filed the restaurant building comprised of the open area being part of the same.

It is argued on behalf of the plaintiff that presuming that open area is part of the entire premises, the plaintiff has offered a huge amount of Rs.04 crores in the year 2004 which was much more than the reserved price fixed by HUDA.

Counsel further submitted that even subsequently representation was given for providing the building plan as the building condition was deteriorating due to lack of maintaining and misuse of the same and no response was received. Counsel further argued that on 15.2.2005 vide order Ex.P14, the appeal was allowed by the CA holding that the Estate Officer, Karnal has taken the decision in haste including the policy and without providing opportunity of extension of time to the plaintiff and even without deciding the representation pending before him. Accordingly, the cancellation of forfeiture of the earnest money was set aside.

Counsel has submitted that, thereafter, the Estate Officer, HUDA submitted a reply calculating the outstanding amount along with interest @ 18% per annum, instead of 11 % per annum vide letter Ex.P16 and the payment was deposited on 16.3.2005 vide Ex.P17. It is the candid case of the plaintiff that the order dated 15.2.2005 passed by the appellate authority/CA Panchkula was never challenged by HUDA and attained finality and, therefore, at a subsequent stage, the respondent cannot charge interest much more than what was directed by the Appellate Authority.

Counsel then submitted that even for obtaining the physical possession a number of letter were written from 15.5.2005 onwards and it was informed that a loan of Rs.03 crores was sanctioned by the State Bank of India and, therefore, the possession was delivered immediately and despite the subsequent reminders Ex.P19 to Ex.P23, the possession

was not offered. Rather, impugned notice under Section 17 of the HUDA Act i.e. Ex.P24, P33 and Ex.P35 were issued for depositing the balance amount as per the due installments.

Counsel has argued that the plaintiff filed reply to the show cause notices and submitted that till the time the possession is not delivered the installments should be rescheduled and on 12.7.2005, the possession was handed over, in which the building was not offered in running condition as it required lot of repair and maintenance and again a notice was given.

Learned Senior Counsel has further submitted that offering the possession by the Lalit Kumar Pathak, Junior Engineer on behalf of the Estate Officer, HUDA recorded that the possession of the building is constructed as per the approved building plan and approved drawings and the possession was given to Sunil Kumar Bindal, Director of the plaintiff with a clear note that the "possession is of restaurant building and site" at Sector 12, Urban Estate, Karnal is handed over.

It is argued on behalf of the plaintiff that even subsequently, when the plaintiff requested HUDA for the repair and maintenance of the building and site, no objection was raised with regard to the site which included open space, passage and greenbelt. Rather, the impugned notices were issued.

Learned Senior Counsel has referred to the bid sheet Ex.D1 to submit that on the right side at the top of the corner, the area is

mentioned and it is not mentioned on all the pages of the bid sheet, which reflects that the same is incorporated later on.

It is argued on behalf of the respondent that the pamphlets which were circulated to general public, in fact are only an information and do not reflect privity of contract between the parties, therefore, the same cannot be relied upon and even the same were only marked.

Learned Senior counsel has further argued that both the Courts below have rightly appreciated even the oral statement led by the parties in this regard as it has come in the statement of PW12 Lalit Kumar Pathak, who has handed over the possession plaintiff vide Ex.P27 and has appeared as a witness on behalf of the plaintiff.

Learned Senior counsel submits that this witness has handed over the possession of the said to the plaintiff. The defendant cannot contest that the possession of the restaurant along with site was not handed over to the plaintiff.

Learned Senior Counsel has also referred to the statement of PW1-plaintiff, who has deposed on the line of the plaint and has stated that the possession of the restaurant along with site was handed over. Learned Senior Counsel further submitted that a perusal of the statement of the other plaintiffs witnesses who have seen the spot it is clear that when the building was auctioned it was surrounded by barbed wire, and the entire area was offered included the open space.

Learned Senior Counsel has also referred to the cross-examination of the defendant witnesses, i.e. Ashok Kumar, Assistant, HUDA, who appeared as DW1 and has admitted that the various documents Ex.P2 to Ex. P36 which were issued by the Estate Officer, HUDA, Karnal. This witness was cross-examined on Ex.P27 wherein he admitted that it is correct that in possession letter the description of the building is given as "restaurant building and site". Learned Senior Counsel has also referred to the cross-examination of DW2 Subhash Jangra, Junior Engineer, who has stated that the zoning plan and MB of the constructed building is in the office and, therefore, he cannot explain how much area is meant for the parking, passage, etc. However, this witness admitted that in the site plan produced by the plaintiff on the East-West side of the building, 11 meter pavement is there, which is as per approved drawings. However, on further cross-examination this witness has stated that he has not brought the record.

The cross-examination was deferred and on the next date of hearing when this witness came up with the record in further cross-examination, this witness has admitted "it is correct that except the entry which is concrete paved, there is no other entry or exit of the building". It is, thus, argued that the entire area including the passage are exclusively part of restaurant building.

Learned Senior Counsel has further submitted that even the pendency of the suit and appeal, the appellant has deposited the

balance amount of a fact which could not be disputed by the counsel for the defendant-HUDA.

Learned Senior for the respondent has referred to 2010(2) RCR (Civil) 700, **Haryana Urban Development Authority Vs. Kedar Nath** to submit that HUDA cannot charge interest @ 18% and can charge only 10% interest. It is also argued in the light of the same, the Courts below have rightly interpreted the order passed by the Chief Administrative, HUDA, while decreeing the suit. Learned Senior counsel has also referred to 2009(2) RCR (Civil) 342, **Sushil Kumar and another Vs. Haryana Urban Development Authority (HUDA) and another** and 2009(32) RCR (Civil) 656, **Haryana Urban Development Authority and another Vs. Om Parkash Sharma**, wherein a similar view has been taken by this Court.

Learned Senior Counsel has, thus, argued that both the Courts below have interpreted the order passed by the Chief Administrator, HUDA in right prospective and there is no illegality or irregularity in the case.

In reply, learned counsel for the appellant-HUDA has reiterated the argument that the charging of the interest is in terms of the order passed by the appellate authority and secondly, the area which was allotted to the plaintiff was only the constructed building and not the portion which was open space outside the same.

Counsel has relied upon the judgment of this Court passed in LPA No.933 of 2009 **HUDA Vs. Vinod Mittal** to submit that the HUDA is justified in charging 18% interest on the delayed payment as the plaintiff has not adhered to the scheduled as per the letter of allotment.

After hearing learned counsel for the parties and on re-appreciation of the pleadings and evidence, I find no merit in this appeal.

The findings with regard to the resumption of the plot and the subsequent order dated 15.2.2005 passed by the Chief Administrator, HUDA setting aside the resumption order are properly appreciated by both the Courts below in the light of well settled principles of law and this Courts is not in agreement with the arguments raised by the counsel for the appellant that the appellate authority order interprets that HUDA can charge a part of the order Ex.D10, which reads as under :-

“In view of the above facts, the appeal is accepted to the extent that the orders of cancellation and forfeiture are incorrect, hence, the order of cancellation and forfeiture are set aside. The Estate Officer is directed to accept the 15% amount on payment of surcharge and penal interest as per HUDA policy within 30 days of issue of this order, in case the appellant submits the 15% amount. The period from filing of the appeal i.e.

15.4.2004 upto the date of decision will not be counted as a delay period.

Announced in open Court 15.2.2005.

Administrator
HUDA, Panchkula
(Exercising the powers of CA HUDA)"

Therefore, both the Courts below have rightly held that the HUDA is entitled to charge interest only from the date of offer of possession @ 14% interest in view of clauses V, VI and XXIII of the allotment letter Ex. D2.

The argument of the counsel for the appellant that the Courts below have not appreciated that interest is chargeable as per "HUDA Policy" is without any basis as no such policy is either exhibited on record or proved by any of the defendant's witnesses.

Even otherwise, once the order of forfeiture passed by the Estate Officer, HUDA was set aside by the appellate authority, the impugned show cause notices are rightly quashed by the Court below.

The Courts below have also recorded correct finding of fact on Issue No.7 that the Civil Court has jurisdiction to decide the suit in view of the pleadings and prayer in the suit.

In **Kedar Nath's** case (*supra*) it is held that the Civil Court jurisdiction is not barred in such suits.

The arguments raised by the counsel for the appellant regarding the issue for open space and providing the passage leading to the restaurant building and site, the lower Appellate Court has dealt the same on the basis of the two letters Ex.P7 and Ex.P8, issued by the Chief Administrator, HUDA.

The primary dispute between the parties is with regard to the declaration that the plaintiff was allotted a double storey building meant for restaurant along with the site which was fenced with a barbed wire as depicted in Ex.PX. The counsel for the appellant has referred to pamphlet Ex.Mark 'X' that only a restaurant building was offered for allotment as well as the auction proceedings wherein on some pages the aforesaid area is reflected. However, the lower Appellate Court has rightly relied upon the two letters Ex.P7 and Ex.P8 issued by the Chief Administrator, HUDA as well as the possession letter Ex.D4 vide which the HUDA has handed over the possession with a recite (restaurant building and site).

This letter was issued by the Estate Officer and the possession was delivered at the spot by the JE of the Department. The case of the plaintiff is that one Mr. Pathak, Junior Engineer had handed over the possession of the entire area which was fenced with a barbed wire, however, the HUDA did not examine him as one of the defendants witness is to rebut the case of the plaintiff. Rather, a perusal of the

statement of PW1, Junior Engineer show that he has handed over the possession as per the record vide Ex.PW12/A.

Even a perusal of cross-examination of DW2 Subhash Jangra, Junior Engineer of Estate Office, HUDA further reveals that this witness did not produce the zoning plan of the adjoining area or the lay out plan and these documents were never exhibited before the trial Court. He, however, stated that the open space is a common area. In cross-examination, this witness clearly stated that the parking area meant for shop-cum-office is after 11 meters pavement by leaving a corridor and further stated that lay out-cum-demarcation of Sector 12, Part-A was provided by CA, HUDA. In further cross-examination, this witness has admitted that except the existing concrete path, there is no entry or exit for the building.

Though in the statement of the DW2, Junior Engineer HUDA orally it is stated about the zoning plan, however, no such document is proved on record or exhibited.

In the statement of DW1 Ashok Kumar, Assistant in the office of Estate Officer, HUDA, it is admitted that in the possession letter, it is mentioned as 'restaurant building and site'.

Rather, the evidence led by the respondent-plaintiff by examining as many as 12 witnesses it has come on record that PW1 Ashok Kumar, who had participated in the auction proceedings along

with the plaintiff has stated that the existing site was fenced with the barbed wire which was fixed on the iron angles were offered for the sale as restaurant and even he participated for purchasing the same.

Therefore, this Court finds no illegality or infirmity with the judgment passed by the Courts below, with regard to awarding of interest at the rate of 14% per as well as the findings recorded by the lower Appellate Court that the plaintiff was given possession of restaurant/building and site on the basis of the letters of the Chief Administrator, HUDA Ex.P7 and Ex.P8.

The lower Appellate Court has further rightly held that in the absence of any challenge to the order dated 15.2.2005 passed by the Chief Administrator, HUDA; as per the letters Ex.P7 and Ex.P8 issued by the Chief Administrator, HUDA; in the absence of any challenge to the possession letter, bearing a recital restaurant building and site, the plaintiff is entitled to relief on second issue as well and the finding of fact recorded by the lower Appellate Court is affirmed and upheld.

Accordingly, finding no merit in the present appeal as no substantial question of law is involved, the same is dismissed.

August 02, 2022
satish

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO