IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION
WRIT PETITION NO.5619 OF 2021

	Narayani Trexim Pvt. Ltd. Office No.101, Real Tech Park, Plot No.39/2, Sector 30A, Vashi, Navi Mumbai-400 703	))))… Petitioner
	VERSUS	
1.	State of Maharashtra Having it's office at Mantralaya, Madam Cama Road, Hutatma Rajguru Square, Nariman Point, Mumbai-400 032	)))))
2.	City and Industrial Development Corporation of Maharashtra Ltd., Having it's office, CBD Belapur, Navi Mumbai-400 614	))))
3.	Marketing Manager-I, CIDCO, Having its office at CIDCO Bhavan, Navi Mumbai-400 614	)))
4.	Managing Director, CIDCO, Having its office at CIDCO Bhavan, Navi Mumbai-400 614	)))... Respondents

Appearances

Mr. Rajiv Chavan, *Sr. Advocate i/b. Mrs. Priyanka Brahmdev Chavan for the Petitioner*

Mr. R. P. Kadam, *AGP for State – Respondent No.1.*

Mr. Ashutosh Kulkarni, *a/w. Mr. Siddharth Shitole for Respondent No.2 to 4 (CIDCO).*

CORAM : S. V. Gangapurwala, ACJ &
Sandeep V. Marne, J.

RESERVED ON : 5th April 2023.
PRONOUNCED ON : 19th April 2023.

JUDGMENT : (*Per - Sandeep V. Marne, J.*)

1. **Rule**. Rule made returnable forthwith. With the consent of the parties, petitions are taken up for final hearing.

2. By this petition, petitioner challenges latter dated 27th June 2022 by which City and Industrial Development Corporation of Maharashtra Ltd. (**CIDCO**) has terminated the allotment letter and forfeited the earnest money deposit in respect of Plot No.3-1C, Sector 18, Vashi, Navi Mumbai. Cancellation of allotment of plot is owing to Petitioner's failure to pay the agreed installments of lease premium and Delayed Payment Charges (**DPC**) within the permissible period. During pendency of the Petition, Petitioner has paid the entire lease premium together with DPC. It now wants to retain the allotment by seeking condonation of delay in payment of amount of lease premium.

3. Brief facts of the case are that a tender was floated by CIDCO bearing scheme No. MM-II/05/2019-2020 for lease of various plots including Plot No. 3-1C admeasuring 3846.3200 sq. mtr. situated at Sector 18, Vashi, Navi Mumbai. Petitioner submitted its bid and paid Earnest Money Deposit (EMD) of Rs. 3,56,79,618/-. Petitioner quoted rate of Rs. 1,36,000/- per sq. mtr. and the total lease premium came to Rs. 52,30,95,520/-.

4. Petitioner was selected as the highest bidder and an allotment letter dated 13th February 2020 was issued in its name. After adjusting the amount of EMD, Petitioner was called upon to pay the balance lease premium of Rs.48,74,19,902/- in two equal installments. The first installment of Rs. 24,37,09,951/- was payable on 28th March 2020 and second installment was of Rs.24,37,09,951 was payable on 27th April 2020. Petitioner could not pay either of the installments within the stipulated time, apparently on account of outbreak of Covid-19 pandemic. Petitioner applied for extension of time to pay the first installment vide letter dated 8th June 2020. CIDCO granted extension till 28th June 2020 for payment of first installment. It was informed that failure to pay the installment alongwith DPC would result in cancellation of the allotment letter. On 26th June 2020, petitioner once again applied for extension relying upon various orders issued by the Government of India and State Government. On 29th June 2020, CIDCO communicated to Petitioner that it had committed default and necessary action was being initiated.

5. In the meantime, some of the allottees filed various writ petitions before this court seeking extension of time for payment of installments of lease premium. This court disposed of those writ petitions vide order dated 1st October 2020 directing the Managing Director of CIDCO to decide representations. In compliance with the order passed by this court, the Managing Director of CIDCO passed order dated 4th December 2020 granting extension of time for payment of installments by 9 months. Waiver of DPC was also granted during the period from 25th March 2020 to 24th December 2020. After 25th December 2020, full DPC rates as per prevailing policy of CIDCO were made applicable. The Board of Directors of CIDCO as well as the State Government approved the decision taken by the Managing Director. CIDCO

thereafter issued letter dated 1st June 2021 to petitioner conveying it that the online payment gateway was opened and that it would be at liberty to deposit the lease premium with DPC within one month, failing which the allotment letter would be canceled. Petitioner however did not make the payment even within the period up to 30th June 2021. Instead, it addressed letter dated 28th June 2021 (received by CIDCO on 7th July 2021) seeking extension of time up to 90 days. Petitioner did not receive any response and therefore filed the present petition on 3rd September 2021 seeking extension of time for payment of lease premium. During pendency of the present petition, CIDCO passed order dated 27th June 2022 canceling the allotment letter and forfeiting EMD. The petition was moved before this court on 8th July 2022 and amendments in the petition was sought to challenge the letter dated 27th June 2022. This court allowed the amendment and permitted petitioner to make payment of Rs.25 crore on or before 29th July 2022. This court further granted liberty to petitioner to deposit balance amount alongwith DPC computed by CIDCO on or before 22nd August 2022. Upon deposit being made, this court stayed the letter dated 27th June 2022. It appears that petitioner has paid entire amount of lease premium alongwith DPC as calculated by CIDCO.

6. The issue that now arise is whether allotment letter issued to petitioner can be restored or whether allotment stands determined alongwith forfeiture of EMD on account of its failure to deposit the lease premium and DPC within the extended time. Before we proceed to record submissions of the learned counsels, it may be necessary to refer to few additional events that has taken place during pendency of the petition. Another scheme bearing No.28/2022-2023 was floated by CIDCO on 13th July 2022 *inter alia* for Plot No. 3-1B, Sector 18, Vashi, adm. 3870.20 sq. mtr. Plot No. 3-1B is adjacent to the Writ Plot

(3-1C). Petitioner submitted its bid in respect of plot No.3-1B and came to be declared as successful bidder and issued allotment letter at the quoted price of Rs.2,43,627/- per sq. mtr.

7. Appearing for Petitioner, Mr. Chavan the learned senior advocate would submit that petitioner has been permitted by this Court to pay the entire amount of lease premium alongwith DPC and that therefore now there is no question of cancellation of allotment letter. That petitioner could not pay the installments of lease premium on account of unprecedented event of Covid-19 outbreak. That taking note of the extraordinary circumstances CIDCO extended time limits for payment of installments of lease premium up to December 2020. Not only extension was granted, but DPC was also waived. Even though Managing Director of CIDCO had extended time only up to 24th December 2020, CIDCO, on its own volition, granted extension of time up to 30th June 2021. That petitioner immediately requested for 90 days' extension on 28th June 2021 and filed the present petition on 3rd September 2021. That CIDCO erroneously canceled the allotment letter during pendency of the present petition by letter dated 27th June 2022.

8. Mr. Chavan would further submit that even though CIDCO's Managing Director has waived DPC during the period from 25th March 2020 to 24th December 2020, petitioner has paid DPC in respect of entire period to show it's *bona fides*. That petitioner was under legitimate expectation that time would be extended. That the principle of promissory estoppel would apply on account of extensions granted by CIDCO from time to time. That extension of time granted by CIDCO would amount to novation of contract within the meaning of Section 62 of the Indian Contract Act, 1872. So far as price quoted for Plot No.3-1B is concerned Mr. Chavan would submit that the price quoted

for that plot is irrelevant as the plot is situated at corner of two roads and has residential cum commercial potential whereas Plot No.3-1C is not only situated on an internal road but can only be commercially exploited. That Plot No.3-1C would therefore bound to fetch far lesser price than plot No.3-B. That as per CIDCO's Board Resolution, corner plot will have to be sold at 25% higher price than other plots.

9. *Per contra* Mr. Kulkarni the learned counsel appearing for CIDCO would oppose the petition. He would submit that petitioner's allotment in respect of plot No.3-1C stood terminated on account of failure to pay lease premium by 30th June 2021 as directed in letter dated 1st June 2021. That petitioner consistently failed to deposit any amount towards lease premium despite grant of repeated extensions. That Petitioner was initially granted the extension on 17th June 2020 up to 28th June 2020, but it did not pay any amount towards lease premium. That petitioner was once again granted extension up to 30th June 2021 by letter dated 1st June 2021. But again, petitioner failed to make any payment towards lease premium. Though present petition was filed on 3rd September 2021 petitioner did not prosecute it diligently thereby exhibiting lack of readiness or willingness to make any payment. That petitioner started pressing for allotment of plot No.3-1C only after the market price of the plot rose substantially in the year 2022. He would compare rate of the adjacent plot No. 3-1B of Rs.2,43,627 psm to the rate of 1,36,000/- psm at which plot No.3-1B was allotted to petitioner. That petitioner started making efforts only after bagging allotment of adjacent plot No. 3-1B and after noticing escalation in market price. He would submit that no rights were crystalized in favour of petitioner only on account of allotment letter.

10. Mr. Kulkarni would further submit that the order dated 8th July 2022 was

passed by this court without examining the merits of the matter and without prejudice to the rights and contentions of both the parties. That therefore mere deposit of earnest money towards lease premium with DPC would not save petitioner from cancellation of allotment letter. So far as adjacent plot No.3-1B is concerned Mr. Kulkarni would submit even if 25% premium was to be added for Plot No. 3-1C (if it was a corner plot) the rate would be 1,70,000/- per sq. mtr. whereas the petitioner himself has quoted the rate of Rs.2,43,000/- per sq. mtr for corner plot No.3-1B. This would indicate the escalation in market price of the plots. That if CIDCO now auctions Plot No. 3-1C, the same would fetch far higher price.

11. In support of his contentions Mr. Kulkarni would rely upon judgments of Division Bench of this court in **Shanti Commercial Premises Ltd. Vs. State of Maharashtra**, (2012) 5 Mh.LJ 147 and **Malpani Gruha Nirman Pvt. Ltd. Vs. CIDCO**, Writ Petition No.8389 of 2017 decided on 23rd September 2019.

12. Rival contentions of the parties now fall for our consideration.

13. Undoubtedly petitioner has failed to adhere to the payment schedule prescribed in the allotment letter. The allotment letter dated 13th February 2020 envisaged payment of first installment of Rs.24,37,09,951/- by 28th March 2020 and second installment of Rs.24,37,09,951/- by 27th April 2020. Both the installments have been paid by petitioner together after passing of order dated 8th July 2022 by this court. However now the dates for payment specified in the allotment letter are no longer sacrosanct. The payment schedule stands altered/modified *inter alia* on account of order dated 4th December 2020 passed by the Vice Chairman and Managing Director (**VC & MD**) of CIDCO. By that order, extension of time for payment of installments

came to be granted by a period of 9 months up to 24th December 2020. Not only time was extended, waiver of DPC amount was also permitted during the period from 25th March 2020 to 24th December 2020. Though the order was passed by CIDCO's VC & MD on 4th December 2020, it took some time for approval of same by the Board of Directors of CIDCO which approved the same on 19th December 2020. Apparently, approval of the State Government was also required and accordingly matter was referred to the State Government by letter dated 7th January 2021. State Government communicated its approval to the Board's Resolution vide letter dated 12th March 2021. CIDCO took some time to convey the decision so taken to the allottees. The communication dated 1st June 2021 was addressed to petitioner conveying it that the online payment gateway for payment of lease premium for plot No.3-1C was opened and it was called upon to pay lease premium alongwith DPC within one month. This is how, time up to 30th June 2021 was granted to make payment of lease premium and DPC.

14. In the manner aforesaid, the payment schedule envisaged in the allotment letter dated 13th February 2020 came to be modified by virtue of VC & MD's order dated 4th December 2020 and CIDCO's letter dated 1st June 2021.

15. Provisions of Section 62 of the Indian Contract Act 1872 read thus:

> **"62. Effect of novation, rescission, and alteration of contract.** - If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed."

16. Since the terms and conditions of the payment as well as the schedule of payment got altered by order dated 4th December 2020 and letter dated 1st June 2021, performance of original contract (concerning schedule of payment)

was not required. Therefore, consequences flowing out of breach of allotment letter dated 13th February 2020 could no longer be enforced in view of Section 62 of the Contract Act. The original terms of contract got altered by new terms stipulated in the order dated 4th December 2020 and letter dated 1st June 2021.

17. The order dated 4th December 2020 would have relevance for determination of amount of DPC whereas letter dated 1st June 2021 would be relevant for determining period by which lease premium and DPC is required to be paid. Thus, combined effect of the order dated 4th December 2020 and letter dated 1st June 2021 is that Petitioner had time till 30th June 2021 to pay lease premium and DPC and the period during 25th March 2020 to 24th December 2020 would be excluded for computing the DPC. Therefore, Petitioner's conduct in not paying lease premium before 30th June 2021 now is irrelevant.

18. It is common ground that petitioner failed to make the payment of lease premium and DPC by 30th June 2021. Instead, it requested for extension of time by 90 days vide it's letter dated 28th June 2021. Petitioner did not receive any response to its request dated 28th June 2021 and therefore filed the present petition on 3rd September 2021. The lease premium is ultimately paid in pursuance of interim order of this Court dated 8th July 2022. The issue that remains now is about Petitioner's failure to pay the lease premium for about one year from July 2021 to July 2022.

19. The factors appearing against the petitioner are that:

i) It has consistently failed to make any payment towards lease premium or DPC until interim order dated 8th July 2022 was passed by this court.

ii) It was specifically made aware by letter dated 1st June 2021 that the allotment would stand canceled on failure to make payment by 30th June 2021.

iii) From 1st June 2021 to 30th June 2021, petitioner failed to deposit any amount with CIDCO.

It is on account of these factors that CIDCO has proceeded to terminate the allotment and forfeited the EMD by its communication dated 27th June 2022.

20. Now we consider factors in favour of petitioner. They are:

i) CIDCO altered the terms of allotment/ contract by passing order dated 4th December 2020 and issuing letter dated 1st June 2021 thereby showing that the payment schedule in the allotment order was not sacrosanct;

ii) Even though petitioner was communicated possible termination of allotment letter on failure to make payment by 30th June 2021, no letter/ order was issued by CIDCO terminating the allotment for about one year;

iii) In the meantime, petitioner not only requested for extension of time by letter dated 28th June 2021 but filed present petition on 3rd September 2021.

iv) Petitioner has already deposited the entire amount of lease premium alongwith DPC with CIDCO in pursuance of order dated 8th July 2022 passed by this court.

v) Even though petitioner could claim waiver of DPC during the period 25th March 2020 to 24th December 2020, it has paid to CIDCO the amount of DPC even during that period.

vi) The adjacent plot No. 3-1B is also purchased by the petitioner from Respondent and petitioner had pid the amount as per Schedule.

21. As rightly contended by Mr. Kulkarni, the order passed by this court on 8th July 2022 was without prejudice to the rights and contentions of the parties and without examining merits of the respective claims. However, the fact remains that the entire amount of lease premium with DPC has already been deposited by petitioner with CIDCO. The CODCO itself has varied/ altered the schedule of payment from time to time. CIDCO did not communicate decision of cancellation of allotment immediately after 30th June 2021 till filing of present petition on 3rd September 2021.

22. It is strenuously contended by Mr. Kulkarni that petitioner's conduct has not been *bona fide* and that it started pursuing allotment of Plot No. 3-1C only after noticing escalation in the market prices. It is also contended that after allotment of adjacent Plot No.3-1B, petitioner realized possible opportunity of amalgamation of both plots and started pursuing allotment of Plot No.3-1C. Mr. Kulkarni contends that if CIDCO now advertises Plot No.3-1C, it will fetch higher price than the one offered by the Petitioner. True it is that petitioner has paid substantially higher rate of Rs.2,43,627/- in respect of adjacent plot No.3-1B as compared to the rate of 1,36,000/- for plot No.3-1C. Petitioner has however pointed out two major factors for higher price in respect of plot No.3-1B, viz. situation of plot at corner of two roads and combined potential of residential-cum-commercial use in respect of plot No.3-1B. We are not experts

in the field of valuation and are not in a position to decide whether petitioner has derived any substantial benefit by delaying payment of lease premium in respect of plot No.3-1C. Suffice it to observe that CIDCO itself was willing to continue allotment of plot No.3-1C to petitioner if payment was to be made by 30th June 2021. CIDCO was thus not bothered about any possible escalation in the price of plot No.3-1B up to 30th June 2021. The time gap during advertising plot No. 3-1B (January/February 2020) and extended date for payment of 30th June 2021 is substantially long. Ignoring the length of that period and possible escalation of prices, CIDCO was willing to continue with allotment of plot No.3-1C if payment of lease premium was made by 30th June 2021. Even though the order passed by CIDCO's VC & MD envisaged extension of time only up to 24th December 2020, CIDCO, on its own volition, extended the said time by further period of about 7 months till 30th June 2021. Therefore, CIDCO would not now be justified in citing the pretext of escalation in market price of plot No.3-1C by comparing the same with the price of plot No.3-1B.

23. On a query being raised by this Court about silence on the part of CIDCO during the period from 30th June 2021 till 27th June 2022, Mr. Kulkarni has placed on record following list of dates and events to justify the delay:

Date	**Events**
1st June 2021	Letter by CIDCO to the Petitioner giving one month time to pay both the instalments, delayed payment charges and Miscellaneous expenses.
30th June 2021	One month expired
---	File went for audit to the external auditor – Accountant General, Maharashtra State.
3rd September 2021	Present petition was filed
26th October 2021	Report from external auditor (as the query was raised as to why the EMD was not forfeited despite petitioner default).

22nd November 2021	CIDCO reply to Accountant General.
22nd November 2021	Immediately cancellation process was started and note was moved by Marketing Manager, CIDCO.
30th November 2021	Jt. managing Director referred the case to legal section.
20th January 2022	Legal Consultant CIDCO expressed his view to obtain opinion from panel advocate.
24th January 2022	Jt. Managing Director directed legal consultant to discuss the case.
13th May 2022	Opinion by legal consultant to proceed for cancellation.
24th May 2022	Jt. Managing director directed to put up for cancellation as per the opinion of legal consultant.
27th May 2022	Note by Marketing Manager to cancel the allotment and forfeit the EMD.
13th June 2022	Jt. Managing Director approved the same and sent to Managing Director for final approval.
27th June 2022	After obtaining the final approval of Managing Director, termination notice was issued.

24. Once a decision was conveyed to Petitioner that allotment would be canceled upon failure to make payment by 30th June 2021, it is incomprehensible as to what was the occasion for CIDCO to consult auditors and legal experts, that too for 1 long year, before issuing termination letter. Be that as it may, it appears that CIDCO itself was not sure that the letter dated 1st June 2021 was self-operational would entail automatic cancellation of allotment. CIDCO thus believed that a separate and conscious decision would be required for cancellation of allotment. This again would seem to suggest that even the altered / modified schedule of payment specified in letter dated 1st June 2021 was not strictly adhered to by CIDCO, which, by its conduct, waived of the condition of automatic cancellation of allotment upon failure on the part of Petitioner to adhere to the time schedule. Reference in this regard can be made to provisions of Section 39 of the Contract Act, which provides

thus:

> **39.** When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

CIDCO has undoubtedly signified its acquiesce in continuation of contract both by extending time for payment upto 30th June 2021 as well as by not terminating the allotment immediately after 30th June 2021.

25. We are also not satisfied with the justification offered by CIDCO for waiting for almost 1 year to issue termination letter. Petitioner has claimed legitimate expectation that CIDCO would grant further extension as sought by it vide letter dated 28th June 2021. We are not impressed by the contention of Petitioner of legitimate expectation as well. However, this delay of 1 year in issuing termination letter would assume some importance vis-à-vis CIDCO's contention of price escalation. CIDCO could have cancelled the allotment immediately after 30th June 2022 and readvertised the plot. Such prompt action on the part of CIDCO could have demonstrated its concern about possibility of fetching higher price due to escalation. It however spent almost a year in deciding whether to terminate the allotment or not. In the light of this conduct of CIDCO, we are not inclined to accept its contention that CIDCO is deprived of opportunity to realize higher price for the plot solely due to Petitioner's conduct in delaying payment of lease premium. We do not know what price CIDCO would have secured if Plot was to be auctioned post 8th July 2022, when this Court granted liberty to Petitioner to pay lease premium. On account of Petitioner paying DPC even during 25th March 2020 to 24th December 2020, CIDCO has been able to realise some additional amount from Petitioner. In this regard, provisions of Section 55 of the Contract Act would be

relevant. Section 55 provides:

> **Section 55: Effect of failure to perform at fixed time, in contract in which time is essential.**
> When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.
> **Effect of such failure when time is not essential.—**If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.
> **Effect of acceptance of performance at time other than that agreed upon**.—If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.

Even assuming time was essence of contract, the same was waved in as much as time was extended by CIDCO on more than one occasion. From conduct of parties, it appears that time was not the essence of contract as CIDCO kept on extending the time for payment. If time was not the essence of contract, CIDCO would at best be entitled to compensation for delayed performance on the part of Petitioner. Petitioner has paid to CIDCO DPC for entire period and loss, if any, caused to CIDCO has been compensated. This would balance the equites at least to some extent. It is on account of these peculiar facts and circumstances of the case that we are of the view that interference by this court would be warranted.

25. What remains now is to deal with the judgments relied upon by Mr. Kulkarni:

(i) In ***Shakti Commercial Premises Society*** (supra) Division Bench of this court has held in paragraph No.13 as under;

> **"13.** The foremost question that needs to be answered is: Whether the change of user permitted by the Planning Authority or modification of the Regulations by the State Government would create any higher right in favour of lessee, other than the condition specified in the allotment of land by CIDCO? There is no dispute that the said land is vested in CIDCO. The petitioner-Society is only lessee of CIDCO. The petitioner-Society, therefore, can enjoy the land in question only in consonance with the lease conditions, in terms of the Allotment Letter and the Agreement executed by CIDCO in its favour. No more and no less. The fact that the Planning Authority perceives that the land can be used for some other purpose cannot create any right in favour of the lessee of CIDCO, unless CIDCO also agrees to that change of user of the land by relaxing the lease conditions. Similarly, merely because the State Government decides to change the Regulation permitting charging premium amount for change of user of the land, that will be of no avail to the lessee of CIDCO so long as the condition specified in the Allotment Letter and the Lease Agreement remains unchanged or modified. For, the right of the lessee springs only from the Letter of Allotment and the Lease Agreement. In other words, the Letter of Allotment as well as the Lease Agreement is the source of contractual right created in favour of the lessee to enjoy the land allotted to it on lease. The lessee is obliged to comply with and adhere to the conditions of Letter of Allotment and Lease Agreement. The lessee cannot compel the lessor, i.e. CIDCO, to allow it to use the land for some other purpose than specified in the Letter of Allotment and Lease Agreement, as the case may be."

The judgment is relied on in support of contention that Petitioner was obliged to comply with the stipulations in the allotment letter and CIDCO cannot be compelled to extend time in breach of stipulations in the allotment letter. However, the facts in the case appear to be distinguishable. In that case, petitioner Society had applied for allotment of 32 shops, 3 offices and one canteen and CIDCO had separate issued letters of allotment for each unit. After securing the allotment, petitioner society filed application for grant of permission to use all units for commercial use and for grant of unconsumed FSI on the basis of Development Control Regulations of Municipal Corporation. CIDCO accepted the request. However subsequently, inquiry was initiated by

State Government about allotment and therefore CODCO did not accept the balance payment of lease premium nor executed the lease agreement. In the light of this factual background, the issue before the court was whether the change of user permitted by the Planning Authority or modification of the Regulations by the State Government would create any higher right in favour of the lessee, other than the condition specified in the allotment of land by CIDCO. This issue has been answered by this court in the judgment holding that rights and obligations of parties flow out of lease deed and not from DCRs. Facts in ***Shakti Commercial*** (supra) are thus entirely distinguishable and the said judgment would nave no application to the present petition.

(ii) ***Malpani Gruha Nirman Pvt. Ltd.*** (supra) involved issue of payment of additional lease premium for grant of NOC for delayed commencement and completion of construction. This court held in paragraph 7 as under:

> “Had the CIDCO exercised this option and terminated the lease of the original lessee in the year 2011, the CIDCO could have allotted the same to a new lessee at the market rate prevailing in the year 2011. Whatever appreciation in the land prices between the year 2001 and 2011 was shared by the original lessee and the petitioner. Having done so, the petitioner must submit to the original lease conditions. He cannot seek a fresh period of six years for completion of constructions from the date of tripartite agreement.

In that case, lease was executed in favour of the original lessee in the year 2001. The original lessee failed to carry out construction on the plot but inducted Petitioner therein as a substituted lessee. CIDCO executed tripartite agreement by accepting petitioner therein as new lessee in the year 2011. The new lessee again failed to carry out any construction for substantially period of time. In the year 2016, petitioner therein applied for NOC for carrying out construction which was refused by CIDCO on the ground that additional lessee premium for delay in commencement of work and completion of construction was required to be paid. This decision of CIDCO was subject matter of challenge before this court in *Malpani* (supra). Thus, the facts in the judgment are entirely different and therefore the judgment would have no application to the present case.

26. Resultantly the Writ Petition succeeds. We proceed to pass following Order:

Order

(i) The communication dated 27th June 2022 seeking to terminate allotment of plot No. 3-1C as well as forfeiting the amount of EMD is set aside.

(ii) Petitioner has already deposited the amount of lease premium alongwith DPC. In the event any further amount being due or payable in respect of Plot No. 3-1C, the same shall be communicated by CIDCO to Petitioner within 2 weeks. Upon receipt of such communication, Petitioner shall deposit such amount with CIDCO within two weeks of date of receipt of communication.

(iii) CIDCO shall proceed to execute lease deed in respect of Plot No. 3-1C in favour of petitioner within a period of 4 weeks from the date of additional payment, if any and if no such additional payment is required to be made then lease deed be executed within three weeks from date of this judgment.

(iv) Writ Petition is accordingly allowed.

(v) Rule is made absolute in the above terms.

SANDEEP V. MARNE, J. **S. V. GANGAPURWALA, ACJ**