

Date of decision: February 21, 2023

1. CR-959-2023 (O&M)

Haryana Urban Development Authority (Now Haryana Shahri
Vikas Pradhikaran – HSVP)

....Petitioner

versus

Raj Nakra and another

....Respondents

2. CR-1000-2023 (O&M)

Haryana Urban Development Authority (Now Haryana Shahri
Vikas Pradhikaran – HSVP)

....Petitioner

versus

Major K.K. Puri

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Pritam Singh Saini, Advocate for petitioner(s).

Mr. Sumeet Goel, Senior Advocate with
Mr. Achin Gupta, Advocate and
Mr. Samir Rathaur, Advocate
for the caveators-respondents in CR-959-2023.

Mr. Rana Gurtej Singh, Advocate for respondent
in CR-1000-2023.

ARUN MONGA, J. (ORAL)

Vide this common order and judgment, above-mentioned two revision
petitions are being disposed of, since the issues and facts raised therein are common.
For brevity, recitals are taken from CR-959-2023.

2. Revision petition arises out of pending execution proceedings before the
learned Additional Civil Judge (Senior Division), Panchkula. Impugned herein is an
order dated 15.10.2022 (Annexure P-6), whereby, respondent-decree-holders have
been directed to pay Rs.1,28,278/- and petitioner-judgment debtor has been directed to
hand over possession of SCO-116, Sector 5, Panchkula, within 7 days.

3. Succinct factual background first, as pleaded in the petition.

3.1. Respondents purchased a commercial plot No.116, Sector 5, Panchkula in an open auction and allotment letter dated 20.04.1989 was issued. However, respondents failed to adhere to the schedule of payment as per allotment letter. Thereafter, site in question was resumed by petitioner vide order dated 30.12.1998. Respondents challenged said resumption order in an appeal before learned Administrator, HUDA, Panchkula. Resumption was set aside vide appellate order dated 26.09.2001. It was ordered that development works should be taken as completed in August-2000 for all intents and purposes and calculation etc. be made accordingly. Aggrieved, respondents filed a revision before learned Financial Commissioner, which was dismissed and respondents were directed to make payment of dues within 30 days from the date of demand, failing which resumption proceedings would revive. Petitioner issued another notice dated 04.09.2002 to respondents. Against said notice, respondents preferred CWP-19098-2002, which was disposed of vide order dated 01.12.2003. Department filed SLP-4517-2004, which was disposed of vide order dated 09.07.2007 modifying order dated 01.12.2003 to the extent that respondents are liable to pay compound interest @ 10% per annum.

3.2 Respondents subsequently filed a civil suit seeking declaration against the petitioner not to recover penalty and challenged the demand raised by the Department, *inter alia*, on the ground that same is not as per Apex Court order dated 09.07.2007 *ibid*. Said suit was disposed of vide order dated 08.10.2007 (Annexure P-1) holding that “*the plaintiff is ordered to make payment from the date of order of possession i.e., August 2000 with interest as per the order of Hon’ble Supreme Court i.e., 10% compound interest along with penalty as per the rules and regulations of the HUDA Act.*”

3.3. Both plaintiffs and Department preferred cross appeals before learned Additional District Judge, Panchkula which were dismissed vide judgment/decrees

dated 24.09.2009 (Annexure P-2) upholding notices dated 04.09.2002 and 09.10.2002 in which demand was raised by the Department. Said judgment/ decree has attained finality having been not challenged further. Instead of depositing the amount calculated by the Department, respondents filed an application for execution of judgment/ decree dated 24.09.2009 (Annexure P-2) before learned Executing Court. Said execution was dismissed vide order dated 01.10.2015 (Annexure P-3) and objections of the Department were accepted. Aggrieved, respondents preferred an appeal before learned Additional District Judge, Panchkula which was allowed vide order dated 08.11.2017 (Annexure P-4) holding that learned Executing Court travelled beyond the decree passed by learned Civil Judge as well as learned Appellate Court and directing learned Executing Court to enforce judgment/ decree dated 08.10.2007 (Annexure P-1) against Judgment Debtor in accordance with law.

3.4. Aggrieved, petitioner preferred CR-6804-2018, which was dismissed vide order dated 22.04.2021 (Annexure P-5). Thereafter, respondent-decree holders filed an application for handing over possession of property in question. Calculations with regard to payment of amount were also filed by both the parties. Vide impugned order dated 15.10.2022 (Annexure P-6), learned Additional Civil Judge (Senior Division), Panchkula directed the petitioner to handover possession of property in question after receipt of an amount of Rs.1,28,278/-. However, as per calculations submitted by petitioner, amount payable is Rs.1,78,85,869/- as on 31.07.2022. Hence, the instant revision petition.

4. I have heard rival contentions of learned counsel for the parties and perused the record.

5. The short controversy involved herein thus is whether or not petitioner-Haryana Shehri Vikas Pradhikaran (HSVP) can impose 10% simple interest on the delayed instalments, which were payable from the year 1989 until August, 2000 which were concededly not paid after payment of initial 15% earnest amount.

6. Before proceeding further what is most apposite here is Clause-5 of allotment letter dated 20.04.1989 (a copy thereof has been tendered in course of hearing, which is taken on record and marked as Mark 'A). *Apropos*, allotment of the Shop-cum-Office in question was made. Clause-5 of allotment letter *ibid* is reproduced herein below:

“5. The balance amount, i.e. Rs.15,42,000/- of the above price of the plot/ building can be paid in lump-sum without interest within 60 days from the date of issue of the allotment letter or in 8 half yearly/ annual installments. The first instalment will fall due after the expiry of six months/ one year of the date of issue of this letter. Each instalment would be recoverable together with interest on the balance price at 10% interest on the remaining amount. The interest shall, however, accrue from the date of offer of possession.”

7. Perusal of the above clause reveals, what can be split up for better understanding as below:

- (i) Total amount payable by the allottee(s) towards sale/ allotment of Shop-cum-Office in question is Rs.20,56,600/- of which 25% was paid as earnest money on allotment including bid money, having unpaid balance of Rs.15,42,000/-;
- (ii) The allottee can either chose to pay the balance in lump-sum within a period of 60 days of the allotment letter or may opt to pay 8 half yearly/ annual instalments;
- (iii) Each instalment is payable with interest on the balance outstanding amount at the rate of 10% per annum;
- (iv) 10% interest shall accrue “not with effect from the date the instalment is due, BUT with effect from the date of offer of possession”.

8. In the light of the aforesaid findings of learned trial Court *qua* date of offer of possession rendered vide judgment dated 08.10.2007 (Annexure P-1), as upheld by learned First Appellate Court, attains significance and the same is reproduced herein below:-

“17. In view of the submissions made by learned counsel on behalf of the plaintiffs, learned counsel on behalf of the defendant on perusal of the statement of plaintiff's witness, on perusal of the documents placed on file by learned counsel for the plaintiffs and on perusal of the citation cited by learned counsel on behalf of both the parties the suit of the plaintiffs is disposed off with the findings that the plaintiffs are liable to pay the interest from the date of offer of the possession which was ordered by the Administrator while accepting the

appeal of the plaintiffs vide Ex.P2. On perusal of the order of Administrator, Panchkula dated 11.09.2001, it is clear that it was ordered that the offer of possession be considered from August, 2000 for all purposes and for all calculations etc. and the order of penalty was set-aside with the directions that Estate Officer, HUDA, Panchkula will calculate the due amount within 15 days and the demand the same vide order Ex.P2, it was held that the respondents are directed to recompute the amount of interest to be paid by the petitioners. The Hon'ble Supreme Court vide order Ex.P4 ordered that the question arising in these cases is as to what is the rate of interest to be paid by the respondents for delayed payment to the petitioner-HUDA. We make it clear that the respondents are liable to pay compound interest @ 10% p.a. in these case. Thus, I find substance in the arguments of learned counsel for the plaintiffs that (sic Hon'ble Supreme Court.) the date of offer of possession was decided by the Administrator, HUDA. Therefore, the plaintiffs are liable to pay the compound interest @ 10% per annum from the date of offer of possession as held by the Administrator, HUDA i.e. August 2000. The relief has already been granted by the Administrator, HUDA by making the order that the offer of possession be considered from August, 2000 and the interest to be calculated from that date and not from the previous date. Thus, the proportionate relief has already been granted. In these circumstances, it cannot be said that the notices issued by the defendant are wrong and illegal because of perusal of the notice placed on file by learned counsel for the plaintiffs, it is clear that the calculation has been made by the HUDA as per the order date 11.9.2001 as ordered by Administrator, HUDA. As the plaintiffs have not made the payment of interest as per the orders of the Hon'ble Supreme Court and even after the date fixed by Administrator, HUDA on offer of possession then in that eventuality the HUDA is entitled to recover the penalty since the date of offer of possession. The authority cited by learned counsel on behalf the defendant Haryana Builders Ltd. Vs. Haryana Urban development Authority and others 2002 (2) PLJ-118 in which it is laid down that HUDA can dispose of land without undertaking or carrying out any development or after undertaking or carrying out such development, as it thinks fit and allottee required to pay the price in accordance with the mode prescribed under Regulation 6(2), (3) and (4) read with Regulation 5(5) to (7) of the Act, applies to the facts of the case in hand. Nothing in the Act and the Regulations from which it can be inferred that the allottee can avoid, refuse or delay the payment of price on the ground that all the amenities have not been provided at the site. Even in the authority cited by learned counsel for the plaintiffs Municipal Corporation Chandigarh & Ors. Etc. Vs. M/s Shantikuni Investment Pvt. Ltd. etc. 2006(2) RCR-26 it is laid down that providing amenities was not a condition precedent but a statutory obligation to provide the amenities. This does not give the plaintiffs a right to make the delay in the payment of installments along with interest as a matter of right. In view of the aforesaid discussion, all the issues are disposed off."

9. The aforesaid findings of learned trial Court were upheld by learned First Appellate Court vide judgment dated 24.09.2009 (Annexure P-2).

10 It is brought to my notice that in course of execution proceedings, in an earlier round of litigation, same dispute arose whether interest was payable by the decree-holder (allottee) prior to the date of offer of possession or w.e.f. the date of instalment, as was sought to be done by HSVP, owing to which physical possession was withheld though way back in August, 2000. Aggrieved, respondents filed an appeal against order of learned Executing Court *ibid*, wherein, the same was set aside and learned Appellate Court of Additional District Judge-I, Panchkula, vide its order dated 08.11.2017 (Annexure P-4) observed as below:

“7. There is no dispute, the judgment and decree dated 08.10.2007 passed by the learned trial court has attained finality. In the objections 28.05.2013 raised by the judgment debtor before the Executing Court, it travelled beyond the crux of the matter, which was raised in the suit filed by the appellant and it also ignored the order dated 11.09.2001 passed by the Administrator, HUDA, which is available as Ex.P2 at page 141 of the record of the trial court and according to this order, the period of offer of possession of the site to the appellant was to be considered from August 2000 for all intents and purposes. However, by filing the objections, the judgment debtor is claiming penal interest prior to August 2000. The version of the appellant has been accepted by the learned trial court as well as the First Appellate Court. It is well settled law, the Executing Court cannot go beyond the decree. The view of this court is fully supported by the law cited (*supra*) by the learned counsel for the appellant. However, in the case in hand, the learned Executing Court went beyond the decree, which is sheer illegality and it has reverted the clock back while considering the objections of the judgment debtor, which is contrary to the operative part of the judgment and decree passed by the learned trial court as well as the First Appellate Court. The learned Executing Court was not required to discuss the observations made by the learned trial court as well as the First Appellate Court, rather, it was to consider only operative part of the judgement. The Executing Court has also failed to consider that the objections filed by the judgment debtor are also contrary to the order dated 11.09.2001. passed by the then Administrator, HUDA being the Appellate Authority, who ordered, the offer of possession to the appellant be considered from August 2000 for all intents and purposes and all calculations etc. and said order is available on the record of the trial court as Ex.P2.”

11. The aforesaid observations/ findings were assailed by the HSVP vide CR-6804-2018, but were affirmed vide order dated 22.04.2021 (Annexure P-5) as the revision petition was dismissed.

11.1 In this background, once again contention of the HSVP is that since decree is silent with regard to charging of interest prior to August, 2000, therefore, same is payable as per allotment letter. Having perused contents of the allotment letter, I am of the view that conduct of the HSVP shows that it is blowing hot and cold in the same breath as the allotment letter itself clearly envisages that interest is payable w.e.f. the date of offer of possession. It was open to the HSVP to have clearly specified in the allotment letter that interest would be payable w.e.f. the date instalment would fall due. But it has consciously chosen to keep itself under self-check so that in case, there is a delay on their part on offering possession, allottee should not be made to suffer to pay interest. Having been benevolent while issuing the allotment letter and conferring benefit to the allottee(s) (that interest was payable from the date of offer of possession), it cannot turn around as a volte face taking advantage of ambiguity, if any, in the order passed by learned trial Court in having remained silent on this aspect. In any case, it was neither agitated by petitioner nor was any issue *qua* the same framed whether or not interest is payable w.e.f. the date of instalment falling due or else w.e.f. the date of offer of possession. In the absence thereof, what has to prevail is terms and conditions of the allotment letter. Needless to say, both the parties are bound by the same as the same is concluded contract and has to be implemented strictly as per terms and conditions contained therein. Since allotment letter clearly reflects that interest was payable from the date of offer of possession, I do not find any ground to interfere in the present revision petition. Being bereft of merits, same is accordingly, dismissed.

12. In the parting, I may hasten to add that calculation sheet has also been handed over, in terms of previous orders dated 13.02.2023/ 20.02.2023, which has been taken on record and marked as Mark 'B'. Learned Senior counsel representing respondents in CR-959-2023, under instructions, submits that he shall make payments as per those calculations, including calculations on the extension fee, which has been

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carried out. Needful shall be done on or before next date of hearing fixed before learned Executing Court. Subject to payment of the same, physical possession be handed over to the allottee/ decree-holders forthwith.

13. Since facts in connected revision i.e., CR-1000-2023 are identical, only difference being variation in amount of interest and extension fee, similar exercise has been carried out and calculation sheet has been tendered, in course of hearing, which is taken on record and marked as Mark ‘X’.

14. On a Court query, as to when would the balance payment be made, learned counsel for respondent in CR-1000-2023 states that he is unable to forthwith react to the same for lack of instructions. Be that as it may, payment be made as per calculations *ibid* in CR-1000-2023 as well. Once needful is done, physical possession property in question in CR-1000-2023 be offered within a period of 7 days thereafter.

15. Pending applications, if any, shall also stand disposed of.

**(ARUN MONGA)
JUDGE**

February 21, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No