

Before Surya Kant, J.

M/S AKASH GANGA AND ANOTHER,—Petitioners

versus

STATE OF HARYANA AND OTHERS,—Respondents

C.W.P. No. 8048 of 2008

6th January, 2009

Constitution of India, 1950—Art. 226—Allotment of SCO sites to petitioners—Default in payment of installments as per terms and conditions—Resumption of sites—State Government setting aside resumption order and remanding case to Administrator—Administrator ordering deposit of outstanding amount along with penal interest for delayed period in making payment of installments—Challenge thereto—HUDA failing to deliver possession of sites on account of some unauthorized structures/shops existing at site—Liability to pay penal interest accrue only from date of offering of possession—Petition partly allowed directing petitioner to pay penal interest from date of offer of possession.

Held, that the orders passed by the revisional authority dated 2nd October, 2004 has taken specific note of the fact that the basic amenities had been provided in the year 2004, however, the tehbazari shops were still existing in the area due to which possession could not be given. Admittedly, the possession could be offered to the petitioners on 17th January, 2008 only. There is no denial to the fact that the possession of the sites could not be delivered to the petitioners on account of some unauthorized structures/shops which were already in existence at the site. The unauthorized constructions were to be removed by the HUDA authorities and thereafter possession was to be delivered. The petitioners, thus, have been deprived of the enjoyment of the allotted sites for years together.

(Para 13)

Further held, that both the parties are bound by the terms and conditions of allotment which are to be mutually respected and can be enforced against each other. While the respondents are entitled to claim interest on the due installments @ 10% and in the case of default @ 18% as provided in clause 18 of the allotment letter, the later liability would accrue only from the date of offering of the possession. Since the possession could be offered to the petitioners on 17th January, 2008, interest @ 18% per annum is chargeable from the date of offering of the possession only. If the petitioners had already paid the entire sale consideration even before offering possession to them, no occasion arose for the respondents to invoke clause 24 and demand interest @ 18% as interest when they themselves were unable to offer the possession.

(Para 14)

Mrs. Sangita Dhanda, Advocate *for the petitioners.*

R.D. Sharma, Deputy Advocate General, Haryana for
respondent No. 1.

Arun Walia and Munish Bansal, Advocates for respondent(s)
No. 2 to 4.

ORDER

SURYA KANT, J. (ORAL) :

(1) The petitioners seek quashing of the orders dated 18th January, 2008 (Annexure P-18), dated 25th February, 2008 (Annexure P-20) and dated 11th March, 2008 (Annexure P-21) whereby they have been directed by the HUDA authorities to pay the balance amount towards sale consideration of SCO Nos. 1-P and 2, Jail Road, Gurgaon.

(2) The facts may be noticed briefly.

(3) The petitioners participated in a public auction held in the year 1990 and were the highest bidders for SCO site No. 1-P and 2 on the Jail Road, Gurgaon, measuring 143.25 sq. meters and 137.50 sq. meters, respectively. Both the sites were allotted to them at the sale price of Rs. 12.05 lacs and 10.31 lacs, respectively. There is no dispute

that the petitioners paid little more than 25% of the sale price as per the agreed terms and conditions of the allotment. They, however, defaulted in payment of the subsequent installments. It is also not in dispute that due to non-payment of the installments as per the terms and conditions of the allotment, the subject sites were resumed on 18th January, 2002 against which the petitioners preferred a statutory appeal before the Administrator, HUDA followed by a revision petition before the State Government. The revision petition was allowed,—*vide* order dated 2nd October, 2003 ((Annexure P-11) in the following terms :—

“I have heard both the parties and gone through the record of the case. It is an admitted fact that the petitioner has already deposited 25% price of the sites along with some more amount. Rest of the dues could not be deposited by him as the same were not calculated as per terms and conditions of the allotment letter. Before taking a final view in the case. it was deemed necessary to call a report from the Estate Officer to find out the date when the structures at site were removed and development works completed in the area so that it may be ascertained when the sites were ready for offer of possession. Vide Memo No. 14123 dated 30th July, 2004 it has been informed by the Estate Officer that as far as services are concerned these have already been completed. However, tehbazari shops are still existing in the area due to which possession cannot be given. From the report, it is clear that the possession of the sites could not have been offered so far. Hence I feel the case needs a detailed examination. The Administrator has only mentioned in his order about non-payment of dues without taking into account the reality on the ground. Consequently, I set aside the resumption order passed by the Estate Officer and confirmed by the Administrator and remand the case to Administrator, HUDA, Gurgaon to find out the date when the sites will be ready for possession and to calculate possession interest accordingly. The petitioner in the meantime is directed to clear all the dues within two months excluding possession

interest. Only thereafter his case could be examined on merit. The parties are directed to appear before Administrator, HUDA, Gurgaon on 20th October, 2004 for further hearing in the case.”

(4) Thereafter, the Administrator, HUDA, Gurgaon passed an order dated 8th June, 2007 (Annexure P-17) to the following effect :—

“Keeping in view all the facts, circumstances and taking realistic approach in the interest of justice and fair play the imposition of possession interest, extension fee etc, is not sustainable till the offer of possession and accordingly the same is hereby waived off. The Estate Officer is directed the tehbazari shops if any still existing at site may be got shifted and occupants may be asked to shift in the alternative already constructed shops on the site allotted by HUDA within one month to avoid further financial loss of HUDA. The outstanding amount be intimated accordingly to the appellant within 7 days and the same shall be deposited within the next one month failing which the Estate Officer shall proceed further as per terms and conditions of allotment letter and HUDA policy.”

(5) In compliance to the above reproduced order of the Administrator, HUDA that the Estate Officer, HUDA, Gurgaon,—*vide* his memo dated 18th January, 2008 intimated the petitioners that they are liable to pay Rs. 39,86,657 and Rs. 34,10,234 respectively towards the full and final payment of the sale consideration of both the sites. As the petitioners represented against the imposition of penal interest on them, the Estate Officer, Gurgaon,—*vide* his order dated 25th February, 2008 (Annexure P-20) has informed them that no ‘possession interest’ has been charged, however, interest on delayed period has been charged as per terms and conditions and HUDA policy.

(6) Aggrieved, the petitioners have approached this Court.

(7) There is also no dispute that the original allotment price of Rs. 12.05 lacs and Rs. 10.31 lacs, respectively, has already been paid by the petitioners before 2004. The only controversy which

remains to be resolved is as to whether or not the HUDA authorities are entitled to any 'penal interest' from the petitioners for the delayed period in making payment of the installments.

(8) The petitioners were allotted the subject sites on the following terms and conditions (relevant extracts only) :—

“4. You are requested to remit Rs. 154650 in order to make the 25% price of the said plot/Building within 30 days from the date of acceptance of your bid. The payment shall be made by a bank draft payable to the Estate Officer Gurgaon and drawn on any scheduled bank at Gurgaon. In case of failure to deposit the said amount within the above specified period, the allotment shall be cancelled and the deposit of 10% bid money deposited at the time of bid stand forfeited to the Authority, against which you shall no claim for damages.

5. The balance amount i.e. Rs. 773250 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 allotment letter or in 8 half yearly/annual installments. The first installment will fall due after the expiry of six months/one year of the date of issue of this letter. Each installment would be recoverable together with interest on the balance price at 10% interest on remaining amount. The interest shall, however, accrue from the date of offer of possession.

6. The possession of the site will be offered to you on completion of the development works in the area.

25. Interest @ 18% p.a. will be charged on delay period of installments.” (emphasis applied)

(9) This is also the conceded position that possession of the subject sites has been offered to the petitioners first time,—*vide* letter dated 17th January, 2008 (Annexure P-16).

(10) While it is urged on behalf of the petitioners that since possession of the subject sites was not offered to them till 17th January,

2008, they are not liable to pay any interest on the delayed payments, Learned Counsel for the Respondent-HUDA authorities contends that the petitioners could seek exemption from payment of ‘possession interest’ only which, in fact, has not been added towards the outstanding dues as only ‘penal interest’ in terms of Clause 26 of the allotment letter has been levied for the reason that the petitioners admittedly failed to deposit the installments on time. He has placed reliance on a judgment of the Supreme Court in case of **Municipal Corporation, Chandigarh and Ors. versus Shantikunj Investment (P) Ltd. and Ors., (1)**.

(11) Having heard Learned Counsel for the parties at some length and on perusal of the record, I am of the considered view that the writ petition deserves to succeed, though in part.

(12) Admittedly, the petitioners were the highest bidders for the two sites which were allotted to them,—*vide* allotment letter dated 12th March, 1990 (Annexure P-1). As per clause 4 of the allotment letters, the petitioners were liable to pay 25% of the price within 30 days from the date of acceptance of their bid whereas the balance amount could be paid by them in installments along with interest @ 10% per annum, as provided,—*vide* condition No. 5 of the allotment letter. It has also been expressly stipulated that “interest shall, however, accrue from the date of offer of possession”. Clause 6 further provides that “possession of the site will be offered on completion of the development works in the area”.

(13) The orders passed by the revisional authority dated 2nd October, 2004 relevant part of which has already been extracted above, has taken specific note of the fact that the basic amenities had been provided in the year 2004, however, the tehbazari shops were still existing in the area due to which possession could not be given. Admittedly, the possession could be offered to the petitioners on 17th January, 2008 only. There is no denial to the fact that the possession of the sites could not be delivered to the petitioners on account of some unauthorized structures/shops which were already in existence at the

site. The unauthorized constructions were to be removed by the HUDA authorities and thereafter possession was to be delivered. The petitioners, thus, have been deprived of the enjoyment of the allotted sites for years together.

(14) Both the parties are bound by the terms and conditions of allotment which are to be mutually respected and can be enforced against each other. While the respondents are entitled to claim interest on the due installments @ 10% and in the case of default @ 18% as provided in clause 18 of the allotment letter, the later liability would accrue only from the date of offering of the possession. Since the possession could be offered to the petitioners on 17th January, 2008, interest @ 18% per annum is chargeable from the date of offering of the possession only. If the petitioners had already paid the entire sale consideration even before offering possession to them, in my considered view, no occasion arose for the respondents to invoke clause 24 and demand interest @ 18% as interest when they themselves were unable to offer the possession.

(15) In **Municipal Corporation, Chandigarh and Ors. versus Shantikunj Investment (P) Ltd. and Ors.**, (*supra*) the terms and conditions of allotment were altogether different inasmuch as the liability to pay interest in that case was not pre-conditioned by the requirement of providing amenities and both the provisions were independent of each other. Contrary to it, in the present case clause 5 of the allotment letter is very much clear, according to which the interest was liable to be accrued only from the date of offer of possession.

(16) For the reasons afore-stated, the writ petition is partly allowed ; the impugned orders are hereby set aside and it is directed that the petitioner shall be liable to pay interest in terms of clause 24 of the allotment letter only from the date when the possession was offered, i.e., 17th January, 2008.

(17) No costs.

R.N.R.