**Sr. No. 305**

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**RSA No. 2879 of 2009(O&M)**
**Decided on: 05.02.2018**

**Haryana Urban Development Authority and another**
**.....Appellants**

**versus**

**Sat Pal and another**
**.....Respondents**

**Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

**Present:** Mr. Padam, Kant Dwivedi, Advocate
for the appellants.

Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma, Advoate
for the respondents.

**Rajbir Sehrawat, J.**

The present appeal has been filed by the defendant Haryana Urban Development Authority(for short, 'HUDA') against the concurrent judgments and decrees passed by both the Courts below; whereby the suit filed by the plaintiffs was decreed and the resumption order dated 08.03.2001 and the subsequent orders were set aside.

The parties herein would be referred to as the plaintiffs and the defendants; as they were described in the original suit.

The brief facts of this case are that the plaintiffs filed the suit for declaration to the effect that the defendant HUDA was entitled to charge interest only @ 10% simple interest and not @18% compound interest on the over-due amount and further for declaration that the action initiated by defendant HUDA under Section 17 of the Haryana Urban Development Authority Act, 1977 (for short, 'the HUDA Act') including the resumption

order dated 08.03.2001, the appellate order dated 13.08.2002 and the subsequent actions are illegal, null and void, being beyond the power vested in defendant No. 2, i.e., Estate Officer, HUDA, under the HUDA Act and the regulation framed there under. Further as a consequential relief; a permanent injunction restraining defendants from forcibly evicting the plaintiffs from the site in question was also prayed for.

It was pleaded in the suit that plaintiffs had purchased SCF No. 58, Sector 8, Panchkula in an open auction held on 29.12.1988. The bid amount was Rs. 8,02,500/-. As per the terms of the allotment, the plaintiffs had deposited 10% of the total consideration on the spot. Thereafter, as per the conditions of allotment letter, an amount of Rs. 1,20,375/- was deposited with the defendants to make up the 25% of the price of the plot. The balance amount of Rs. 6,01,875/- was to be deposited in half yearly installments. As per the letter of allotment each installment was recoverable along with interest on the balance price @10% simple interest. It was further pleaded that due to some unavoidable circumstances the installments could not be paid by the plaintiffs as per the schedule and the payment was delayed. However, there was no condition in the allotment letter regarding charging interest on delayed payment, much less any condition for charging 18% compound interest. However due to delay in payment of the installment, the Estate Officer, HUDA, Panchkula, the defendant No. 2, proceeded to take action under Section 17(1) of the HUDA Act. Accordingly notice dated 26.03.1991 was issued by defendant No. 2 wherein an amount of Rs. 4,71,785/- was shown to be outstanding against the plaintiffs. In this letter it was further mentioned that an amount @ 10% of total amount, i.e., Rs. 47,179/- shall be charged as penalty in case the said

amount was not paid forthwith. It was averred that while arriving at this amount defendant No.2 had calculated the amount by including the interest charged @18% compound interest. Thereafter, defendant No. 2 issued another notice dated 12.11.1991 under Section 17(2) of the HUDA Act where the amount of Rs. 6,18,811.32/- was claimed to be due. Still further another notice was given to the plaintiffs on 14.02.1992, again, under Section 17(2) of the HUDA Act wherein the amount of Rs. 7,32,246.42/- was shown to be outstanding.

Thereafter although, the plaintiffs did not receive any notice under Section 17(3) of the HUDA Act, however, another letter dated 24.07.1992 was issued by the respondents and in this notice an amount of Rs. 7,46,278.54/- was shown as due. This notice was followed by another notice under Section 17(4) of the HUDA Act dated 16.09.1992 wherein the due amount was increased to Rs. 8,53,158.41/-. All these amounts were inflated exorbitantly due to unauthorised charging of 18% compound interest. Hence the amounts could not be paid by the plaintiffs as claimed by the HUDA. Thereafter, realizing the futility of the exercise and in view of the fact that the plaintiffs were paying some amounts from time-to-time, the defendant HUDA stopped issuing any notices to the plaintiffs. However when co-owner of the SCF in question passed away then plaintiffs/legal representatives of the co-owner approached the HUDA to transfer the site in their name. But the defendant refused to do so and asked for payment of the entire amount; along with 18% compound interest. Thereafter, the defendant HUDA again went silent.

But after a lapse of 7 years the defendant HUDA again started issuing notices under Section 17 of the HUDA Act and issued a

notice dated 24.11.2000 straight-away under Section 17(4) of the HUDA Act. In response to this notice, the plaintiffs asked defendant No. 2 to indicate the exact amount payable toward principal and interest. However, the defendant simply did not disclose anything. Rather defendant No. 2 sent another notice, again, under Section 17(4) of the HUDA Act on 10.01.2001. In this notice the amount shown outstanding was Rs. 31.47 lakhs. Since the defendant HUDA was not disclosing the exact amount of outstanding principal and the interest, therefore, the plaintiffs could not deposit the amount demanded by HUDA. However, in the interregnum through the payments made by the plaintiffs from time to time the plaintiff had paid to HUDA an amount of Rs. 6,35,000/- besides the initial 25% already paid. It was further pleaded that the plaintiffs have always been ready and willing to deposit the amount as calculated with 10% simple interest, if calculated and disclosed by the defendant. Still further it was averred that in the meantime, the plaintiffs had also raised construction of the building on the shop site. But the defendants were bent upon illegally dispossessing the plaintiffs from the property. Therefore, defendant No. 2 passed the resumption order endorsed on 08.03.2001.

Against this order the plaintiffs filed appeal under Section 17(5) of the HUDA Act. However, the Administrator HUDA, Panchkula passed a stereo type confirming order dated 13.08.2002, dismissing the appeal filed by the plaintiffs. Thereafter, exercising the powers of the Collector under Section 18 of the HUDA Act, defendant No. 2 issued a notice dated 31.10.2002 and ordered the plaintiffs and the other occupants to vacate the SCF within 30 days. Even this notice was in violation of the procedure laid down in the Act because no prior show cause

notice was issued by HUDA and straightway eviction order was passed. The plaintiffs had filed appeal before Administrator, HUDA, Panchkula under Section 18 (1) (b) of the HUDA Act. However, during the pendency of the appeal itself, defendant No. 2 issued another notice under Section 18 (2) dated 16.12.2002; directing the defendants to vacate the premises within 24 hours. Hence the suit was filed claiming that defendant No. 2 has taken the action in violation of the procedure prescribed under the Act and that the amounts being insisted by the defendants are based on calculations with 18% compound interest; which is not authorised under any Rule, Regulation of HUDA or by the terms of the allotment. Hence setting aside the resumption order and the subsequent orders passed by the statutory HUDA authorities was prayed for.

On being put to notice, the defendant HUDA filed written statement and took preliminary objections in which it was claimed that jurisdiction of the civil court is barred by provision of Section 50 of HUDA Act. Since the plaintiffs have failed to deposit the installments on time, therefore, the resumption order dated 08.03.2001 has been passed and the 10% of the consideration amount deposited by the plaintiffs has been ordered to the forfeited as per Rule and Regulation of HUDA. Hence the plaintiffs are not entitled to any equitable relief. Contesting the suit on merit, it was not disputed that SCO No. 58 in Sector 8, Panchkula was allotted to the plaintiffs and that they had deposited 25% of the amount. However, it was claimed that the plaintiffs have failed to deposit the balance 75% amount in installments as per the schedule along with interest. It was averred in the written statement that as per the policy of HUDA the defendant was entitled to charge interest on delayed payments. Since the

plaintiffs failed to deposit the installments in time, therefore, the Estate Officer has rightly passed the resumption order and the order for imposition of penalty under the HUDA Act. Besides this the details of notices sent to the plaintiffs were also mentioned and the same are given below:-

*i) Notice U/s17(1) vide memoNo.6300 dated 26.03.1991*
*ii) Notice U/s17(2) vide memoNo.15190 dated 12.11.1991*
*iii) Notice U/s17(2) vide memoNo.3595 dated 14.02.1992*
*iv) Notice U/s17(3) vide memoNo.7855 dated 11.05.1992*
*v) Notice U/s17(4) vide memoNo.11475 dated 24.07.1992*
*vi) Notice U/s17(4) vide memoNo.13050 dated 27.08.1992*
*vii) Notice U/s17(4) vide memoNo.13924dated 16.09.1992*
*viii) Notice U/s17(4) vide memoNo.18700 dated 01.12.1992*
*ix) Notice U/s17(4) vide memoNo.23309 dated 24.11.2000*
*x) Notice U/s17(4) vide memoNo.410 dated 10.01.2001*

Therefore, it was claimed by the defendants that several opportunities were given to the plaintiffs to deposit the amount. However, since the plaintiffs failed to deposit the amount, therefore, the plot was rightly resumed and the 10% of the sale consideration was rightly forfeited. However, the fact of depositing Rs.6,35,000/- other than already deposited 25% by the plaintiffs was admitted by the defendants. The raising of construction and occupation of the suit property by the plaintiffs was also

not denied by the defendant HUDA.

On the pleadings of the parties, the Trial Court framed the issues as given below:-

> *1. Whether the resumption order No. 2366 dated 8.3.2001 and upheld in appeal by the Administrator, HUDA vide order dated 13.8.2002and the subsequent action of defendant No.2 exercising the powers of Collector under Section 18 of the HUDA Act are illegal, null and void and is liable to be set aside?OPP*
>
> *2. Whether the defendants are entitled to charge only 10% on the instalments and they are not entitled to charge 18% compound interest?OPP*
>
> *3. Whether the suit is not maintainable in the present form?OPD*
>
> *4. Whether jurisdiction of the Civil Court is barred under Section 50 of the HUDA Act?OPD*
>
> *5. Relief:*

The parties led their respective evidence.

After hearing the parties and considering the record, the Trial Court decreed the suit filed by the plaintiffs. While decreeing the suit, the Trial Court recorded a finding that the defendants have not been able to show on record as on what basis they were charging 18% compound interest. No Rule or policy in this regard was brought on record by them. However, the Trial Court recorded that even if there is any such policy then the same is against the proposition of law laid down by the Hon'ble Supreme Court in ***SCC 2002 (9) 599 Roochira Ceramic vs. HUDA and others***. Therefore, the defendants were entitled to charge only 10% simple interest, as claimed by the plaintiffs. While arriving at this conclusion, the

Trial Court recorded a finding that DW-1, Umesh Sharma, SO, HUDA who was examined by the defendant admitted charging 18% and also admitted that there was no Rule, Regulation or Policy of HUDA authorising HUDA for charging 18% compound interest. While dealing with the objection raised by the defendant that the jurisdiction of the civil court was barred under Section 50 of the HUDA Act, the Trial Court recorded that since the orders were passed by the authorities of the defendants in violation of the provisions of the Act, therefore, the jurisdiction of the Civil Court is not barred and the orders passed by the authorities can not be treated to be final. Hence this objection was also discarded by the Trial Court. Aggrieved against this judgment and decree, the defendants filed appeal before the lower Appellate Court.

The lower Appellate Court dismissed the appeal filed by the defendants. While arguing the appeal before the lower Appeal Court the defendants had made only two fold arguments, namely, *firstly*, that the defendants are entitled to recover 18% compound interest per annum on delayed payment of installments, *secondly,* that the Trial Court had gone wrong in law in not giving any time period within which the remaining payments even with 10% interest were to be made by the plaintiffs. While dealing with these arguments the lower Appellate Court held that as per the Clause V of the allotment letter the specific recital is there that the interest chargeable would be only 10% per annum simple interest. Further the lower Appellate Court held that in view of the judgment of the Hon'ble Supreme Court in ***Roochira Ceramic's case (supra)*** the defendant can not charge compound interest @18%. The lower Appellate Court also recorded that no other argument was raised by the defendants. However, while dismissing

the appeal, the lower Appellate Court stipulated in the judgment/order that the defendants would be at liberty to calculate afresh the amount due from the respondent by charging 10% simple interest on delayed payment and on being conveyed the said calculations, the plaintiffs shall make the remaining payment, if any, within a period of one month. This concluded the second argument raised by defendants/appellants. Accordingly the appeal was dismissed by the lower Appellate Court. Aggrieved against this judgment and decree, the defendant HUDA has filed the present appeal.

One more fact which needs to be noticed here is that earlier this appeal was allowed in favour of HUDA by this Court vide judgment dated 25.04.2011. Thereafter, the plaintiffs approached the Hon'ble Supreme Court against the judgment passed by this Court. The Hon'ble Supreme Court while disposing of the *Civil Appeal No. 2601 of 2012* set aside the judgment passed by this Court and remit the matter back to this Court for fresh disposal. The Hon'ble Supreme Court had observed that while entertaining the appeal on 06.08.2009, this Court had framed substantial question of law. However, while deciding the appeal finally that substantial question of law has not been adverted to at all. Hence the matter was remanded to this Court for disposal of the appeal based on substantial question of law framed earlier; after hearing both the sides. That is how the present appeal is before this Court.

Before proceeding further it is apposite to note that while admitting the present appeal this Court had culled out the substantial question of law as follows:-

> *"Whether the jurisdiction of the Civil Court is barred in terms of Section 50 of the Haryana Urban Development Authority Act, 1977?"*

While arguing the appeal, learned counsel for the defendants/appellants have submitted that since prescribed notices, as contemplated under Section 17 of the HUDA Act, had been served upon the plaintiffs, therefore, the prescribed procedure has been followed by the authorities. It is his further argument that the plaintiffs had availed statutory remedy of appeal. Order passed by the statutory authorities have been declared to be final by Section 50 of the HUDA Act. The Courts would not set in appeal over the orders passed by the statutory authorities. Hence the suit of the plaintiffs was not maintainable. The jurisdiction of the Civil Court stood excluded by Section 50 of the HUDA Act. To substantiate his point, learned counsel has relied upon the decision of this Court rendered in ***RSA No. 2317 of 2009*** titled as ***The Estate Officer and another vs. Parveen Kumar*** decided on 17.09.2009. Hence he prayed for allowing of the appeal.

On the other hand, learned Senior Counsel appearing for the plaintiffs/respondents has submitted that since the defendant HUDA had been wrongly insisting upon payment of the amounts along with 18% compound interest, therefore, the demand itself was beyond the authority of the defendants. Therefore, notices issued by defendant No. 2 were in excess of their authority and so in violation of the procedure prescribed by the law. It is further argued by him that, even the notices issued by defendant are totally stereo type issued in a mechanical manner, without disclosing anything as to the details of payments on account of principal and the interest components. Learned counsel has also argued that, bare fact that the defendants had shown a staggering increase in amount in short durations also shows that the amount sought to be charged by them does not have any

statutory backing and they have been raising the demand in an arbitrary manner. Learned counsel has also argued that the notice under Section 17 (3) of the HUDA Act was never received by the plaintiffs. Therefore, the subsequent proceedings under Sections 17(4) and Section 18 of the HUDA Act are totally violative of the procedure prescribed by the Act. Regarding the judgment relied upon by learned counsel for the appellants, the learned counsel for the plaintiffs/respondents has submitted that the same is not applicable in the facts of the present case because in that case the procedure under the Act was followed by the authorities and in that case the plaintiffs had not paid any substantial amount after the payment of the initial amount pursuant to the notices issued by the defendants. Whereas in the present case there is violation of the statutory procedure and also the plaintiffs in the present case had made payment of Rs. 6,35,000/- in installments from time to time which were duly accepted by defendant without protest. However, since the defendants were not giving clear cut calculations regarding the principal and the interest outstanding against the plaintiffs, despite being so demanded by the plaintiffs, therefore, the insistence of the defendants upon the amount calculated by them was totally arbitrary and not supported by any statutory provisions under which defendants were functioning. Accordingly, learned Senior counsel submits that the substantial question of law framed by the Court deserves to be answered against the appellants/defendants. Civil Court has rightly entertained the suit. The judgment and the decree passed by the Courts below deserve to be upheld.

Having heard learned counsel for the parties and perusing the record with their able assistance, this Court is of the considered opinion that

the argument raised by learned counsel for the appellants/defendants deserves to be negated. To properly appreciate the substantial question of law it is appropriate to have the reference of the relevant statutory provisions; as contained in Sections 15, 17 and Section 50 of the HUDA Act, 1977. The same are reproduced herein below:-

> ***"15.Disposal of Land:***
>
> *(1) to (3) xxxx*
>
> *(4) The consideration money for any transfer under sub-section (1) shall be paid to the Authority in such manner as may be provided by regulations.*
>
> *(5) to (6) xxxx*
>
> ***17. Resumption and forfeiture for breach of conditions of transfer:-***
>
> *(1) Where any transferee makes default in the payment of any consideration money, or any instalment, on account of the sale of any land or building, or both, under section 15, the Estate Officer may by notice in writing, call upon the transferee to show cause within a period of thirty days, why a penalty which, shall [be equal to] ten per cent of the amount due from the transferee, be not imposed upon him.*
>
> *(2) After considering the cause, if any, shown by the transferee and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded in writing, make an order imposing the penalty and direct that the amount of money due along with the penalty shall be paid by the transferee within such period as may be specified in the order.*
>
> *(3) If the transferee fails to pay the amount due together with the penalty in accordance with the*

*order made under Sub-section (2), or Commits a breach of any other condition of sale, the Estate Officer may, by notice in writing, call upon the transferee to show cause within a period of thirty days, why an order of resumption of the land or building,or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the sale of the land or building,or both, should not be made.*

*(4) After considering the cause, if any, shown by the transferee in pursuance of a notice under sub-section (3) and any evidence that he may produce in support of the same and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer, may for reasons to be recorded in writing,make an order resuming the land or building or both, as the case may be, and directing the forfeiture as provided in sub-section(3) of the whole or any part of the money paid in respect of such sale.*

*(5) Any person aggrieved by an order of the Estate Officer under section 16 or under this section may, within a period of thirty days of the date of the communication to him of such order, prefer an appeal to the Chief Administrator in such form and manner, as may be prescribed.*

*Provided that the Chief Administrator may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.*

*(6) The Chief Administrator may, after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such order as he*

*deems fit.*

*(7) The Chief Administrator may, either on his own motion or on an application received in this behalf, at any time within a period of six months from the date of the order, call for the record of any proceedings in which the Estate Officer has passed an order for the purpose of satisfying himself as to the legaIity or propriety of such order and may pass such order in relation thereto as he thinks fit:*

*Provided that the Chief Administrator shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.*

*[(8) Any person aggrieved by an order of Chief Administrator under sub-section (6) may within a period of ninety days of the date of the communication to him of such order, prefer a revision petition to the Secretary to Government, Haryana, Town and Country Planning Department, in such form and manner as may be prescribed :*

*Provided that the Secretary to Government, Haryana, Town and Country Planning Department, may entertain the revision petition after the expiry of the said period of ninety days, if he is satisfied that the petitioner was prevented by sufficient cause from filing the revision petition in time.*

*(9) The Secretary to Government Haryana, Town and Country Planning Department, may, after hearing the revision, confirm, vary or reverse the order appealed from and may pass order as he deems fit.*

*Provided that the Secretary to Government, Haryana, Town and Country Planning Department, shall not pass an order under this section without hearing the parties.]"*

***Section 50:-Finality of orders and bar of jurisdiction of civil courts:-***

*(1) Save as otherwise expressly provided in the Act, every order passed or direction issued by the State Government or order passed or notice issued by the Authority or its officer under this Act shall be final and shall not be questioned in any suit or other legal proceedings.*

*(2) No civiil court shall have jurisdiction to entertain any suit or proceedings in respect of any matter the cognizance of which can be taken and disposed of by any authority empowered by this Act or the rules or regulations made thereunder."*

No doubt there is a provision in the HUDA Act which prevents the Civil Court from entertaining the suit in the matters, regarding which the authorities under HUDA Act are required to take cognizance and to decide the matter and the order of the authorities have been made final by the statutory provisions. However, it is well settled law that wherever the jurisdiction of the Civil Court is specifically excluded; then the Court is to take the jurisdiction of the Civil Court as excluded, but, if the jurisdiction of the Civil Court is sought to be excluded by implication; then the provision has to be construed strictly and the exclusion of the jurisdiction of the Civil Court would not be lightly presumed by the Court. Reliance in this regard can be placed upon the judgment of the Hon'ble Supreme Court rendered in ***2009(1) RCR(Civil)726; United India Insurance Co. Ltd. vs. Ajay Sinha,*** wherein the Hon'ble Supreme Court has held that Section 9 of CPC enjoins upon Civil Court a duty to entertain and adjudicate all suits except as excluded by law. Hence any attempt to exclude the jurisdiction has to be strictly construed. Still further in judgment reported in ***AIR1969***

***SC 78 Dhulabhai etc. vs. State of M.P and another,*** the larger Bench of five Hon'ble judges of the Hon'ble Supreme Court has held that while considering the question of express exclusion of jurisdiction of Civil Court the scheme of the Act would be relevant though not decisive. When the jurisdiction of the Civil Court is sought to be excluded by implication then the scheme of the Act attains more significance. Further it has laid down that if under statutory provisions finality is attached to the orders passed by the statutory authorities then while considering the question of exclusion of jurisdiction the Court has to see whether the authorities have acted by complying with the statutory provisions and further held that if the statutory authorities has not acted in conformity of fundamental principles of judicial procedure then this jurisdiction of the Civil Court is not barred.

Viewed in the above settled legal perspective; it is seen that Section 50 of the HUDA Act contains two portions. Sub Section(2) of HUDA Act prevents the Civil Court from entertaining a suit regarding matters regarding which the statutory authorities are required to take cognizance and to decide. The sub-Section(1) of Section 50 of the HUDA Act attaches finality to the orders passed by the Government and the Statutory HUDA Authorities. A bare perusal of Section 50 (2) of the HUDA Act shows that it is not the jurisdiction of the Civil Court which is barred in absolute terms. What is excluded by this sub-Section is entertaining the Civil suit by the Civil Court in the first instance. However, if a person first avails the statutory remedies and then finds the orders passed by the statutory authorities to be illegal, not in conformity with the procedure prescribed by the Act or otherwise arbitrary then he is not precluded from approaches the Civil Court, *per se*. Like the orders passed

by any other authorities; the orders passed by the HUDA authorities can very well be challenged before the Civil Court subject to the scope of challenge permitted by sub-Section(1) of Section 50 of the HUDA Act. In that situation, Section 50(1) of the HUDA Act only attaches finality to the orders issued by the Statutory HUDA Authority. But such clause attaching finality to the orders passed by the statutory authorities; is not the express exclusion of the jurisdiction of the Courts. It only tries to exclude the judicial review by all the Courts; not only the Civil Court; only by implication. Therefore, Section 50(1) of the HUDA Act has to be construed very strictly. Although the Sub-Section (i) attaches finality to the orders issued by the Statutory Authorities, however, that *per se* can not exclude the judicial review of the orders issued by the Statutory Authorities. As a matter of fact, judicial power is the constituent power of the Courts and therefore, repeatedly the Courts, including the Hon'ble Supreme Court, has held that despite the finality attached to the orders passed by the Statutory Authorities, judicial review of the same is not excluded. Hence the orders passed by the Statutory HUDA Authorities would be very much amenable to the jurisdiction of the Courts including the Civil Court, although, the scope of inquiry by the Court may be restricted to seeing the fact whether the statutory procedure prescribed by the Act has been duly followed or not, whether there exists material to support the decision arrived at by the Statutory HUDA Authorities, whether the material relied upon by the Statutory HUDA Authorities is relevant to the final action taken by the Statutory HUDA Authorities, whether there is any malafide involved in the process of the decision making and whether the decision finally arrived at by the authorities is a rational decision or it suffers from the vice of

arbitrariness. Needless to say, in a system governed by rule of law the Arbitrariness, at any place and in any form; can not be countenance by the Courts of law. Although, if; by following due procedure; by excluding malafide in the process and by excluding irrationality of the decision making process and the irrationality of the decision itself, two views are possible on the basis of relevant record available before the authorities, then the Court would not sit as a Court of appeal and substitute its own conclusion with the conclusion arrived at by the statutory authority. In that situation the opinion of the statutory authority shall prevail. This is the only meaning of Court not sitting in appeal over the decision of statutory authorities. However, this does not mean that citizens have to be left at the mercy of the arbitrariness or irrationality or illegality of the Statutory Authorities; in the process of decision making or irrationality and illegality of the decision itself. On these points the Court has to step in. The Court has to chase the injustice and to rectify the same; wherever it is found.

In view of the above scope of the interference by the Court, reverting to the facts of the present case, this Court finds that the appellant has singularly failed to bring on record anything to suggest that the appellant/defendant HUDA is entitled to charge 18% compound interest in case of default of instalment by the allottee. On the contrary the sole witness examined by the defendant has admitted that there is no such provision either in the Rules, Regulations or in allotment letter authorising HUDA to charge compound interest @18% on the over-due amounts. It is also not denied by the defendant HUDA, rather, it is admitted by the witness of the defendant and even written on the notices sent to the plaintiffs that the calculations which were communicated to the plaintiffs were based on

charging interest @18% compound interest. Hence the very basis of initiation of the action by the appellants/defendants is beyond the scope of legal authority of the appellants/defendants. The appellant can not be permitted to say that even if it serves a notice for payment of an amount 20 times of the actual amount legally due against the allottee; then also their decision can not be questioned in Court simply because they have completed formality of issuing notices as contemplated under Section 17 of the HUDA Act in a stereotype manner. The demand sought to be recovered through the procedure initiated under Section 17 of the HUDA Act has to be regarding an amount which the respondents are legally entitled to charge under Section 15 of the HUDA Act. The Section 15 of the HUDA Act provides for payment of consideration amount as provided under Regulations. The appellants/defendants is not entitled to charge 18% compound interest on the defaulted amounts under any provision of law or of the regulations or of the allotment letter issued to the plaintiffs. Rather the Hon'ble Supreme Court in ***Roochira Ceramic's case (supra)*** has categorically held that the appellant HUDA is entitled only to charge simple interest @10%. Hence the very basis of the initiation of the proceedings under Section 17 of the Act is rendered without any authority of the officers of appellant HUDA.

Even regarding compliance of the procedure envisaged under Section 17 of the Act it is worth mentioning that the appellant started the process by issuing first notice on 26.03.1991 under Section 17(1) of the HUDA Act. Thereafter, notice under Section 17(2) of the HUDA Act was also issued on 12.11.1991. However, without taking the procedure further the defendants again issued the notice only under Section 17(2) of the

HUDA Act on 14.02.1992. Thereafter, although the appellant claims to have sent a notice under Section 17(3) of the HUDA Act dated 11.05.1992, however, the plaintiffs have denied having received any such notice under Section 17(3) of the HUDA Act. The appellants/defendants have not led any evidence to show that this notice under Section 17(3) of the HUDA Act was actually served upon plaintiffs at any point of time. Even the copy of any such notice under Section 17(3) of the HUDA Act is not placed on record by them in evidence. Not only this, thereafter, the defendants kept on issuing notices under Section 17(4) of the HUDA Act only; on various dates upto 01.12.1992. Thereafter, the appellants/defendants stopped issuing any further notice in these proceedings. In the mean time, the plaintiffs were permitted to raise construction by the HUDA Authorities and were even granted the occupation certificate. No further action was taken by the authorities of the appellants under the HUDA Act. This is not even the case of the appellants/defendants that the plaintiffs raised construction and occupied the building unauthorisedly.

However, after a gap of eight years the authorities of the appellant HUDA again started the process of issuing notices to the appellant. But this time instead of starting from issuing notices under Section 17(1) of the HUDA Act; the authorities straightway issued notices under Section 17(4) of the HUDA Act on 24.11.2000 and then again on 10.01.2001. A bare perusal of these notices also shows that the amounts mentioned in these notices do not give any detail as to the demand raised against the plaintiffs. This opacity was maintained by the appellants despite the fact that the plaintiffs, after receipt of notice under Section 17(4) of the HUDA Act on 24.11.2000, had specifically requested the appellants to

inform them regarding the details of the amount outstanding against them so that they can make the payment. One such request made by the plaintiffs is Ex:P-9 dated 27.12.2000. Despite that instead of disclosing the calculations of the amount arrived at by the appellants, notice again under Section 17(4) of the HUDA Act was served on 10.01.2001; demanding an amount of Rs. 31.47 lakhs along with extension fees. A perusal of the last notice under Section 17(4) of the HUDA Act Ex:P-10 shows that this notice has reference only to earlier notices of the year 1992 issued under Section 17(2) &(3) of the HUDA Act. Hence the appellants instead of starting the process afresh in the year 2000, for the reasons best known to them picked up from the Stage where they had left in the year 1992.

There is another reason why the appellants could not have jumped to notice under Section 17(4) of the HUDA Act directly in the year 2000 and 2001 by referring to the earlier notices issued under Section 17(1), 17(2) and 17(3) of the HUDA Act issued in the years 1991 and 1992. That is that, in the mean time, the defendant themselves claimed to have issued some policy Ex:P-7 dated 21.01.1993 giving a fresh chance to the allottees to deposit 25% of the outstanding amount. In any case; by starting issuing notices in the year 2001 under Section 17(4) of the HUDA Act directly, without first issuing notices to the plaintiffs under Section 17(1), 17(2) and 17(3) of the HUDA Act and by relying only upon such notices issued earlier 8 years back; is not the proper and reasonable compliance of the statutory provisions. The earlier notices had lapsed because of in-action on the part of the appellants for 8 years and because of the reason that the appellants themselves claim to have introduced another policy providing for depositing 25% of the defaulted amount by the allottees. In such a situation, if at all

the appellants intended to proceed with the resumption of the site in question under the procedure prescribed by the Act, they were required to start the process afresh by starting from Section 17(1) of the HUDA Act. This is particularly so because after the earlier notices the construction had been raised by the plaintiffs on the site in question and even the occupation of the building was also done by the plaintiffs/respondents. This is not even the case of the appellants/defendants that construction was unauthorisedly raised by the plaintiffs.

Accordingly, the resumption order was not passed by defendant No. 2 by following the statutory procedure prescribed by the Act in an appropriate and rational manner. Hence the order becomes bad due to non-compliance of the statutory procedure. Even the appellate authorities have followed the ipse dixit of the resumption order by passing orders in mechanical manner by mentioning that the notices envisaged by the Act has been given to the plaintiffs and therefore, they have been granted an opportunity of being heard. There is no material as mentioned on records by these authorities as to how the amount due against the plaintiff was arrived at by HUDA and how an amount of Rs.6,01,875/- has swelled to an amount of Rs.31.47 lakhs. In this situation, the statutory finality attached to the orders passed by the Statutory Authorities can not be left unquestioned by the Court. Hence the Civil Court rightly entertained the suit filed by the plaintiffs/respondents. The Civil Court had the jurisdiction to entertain the suit and has rightly passed the judgment and decree in favour of the plaintiffs. The actions of the appellants also do not pass the test laid down by the Hon'ble Supreme Court for exclusion of jurisdiction of Court in so far as they have not followed fundamental principles of judicial procedure.

The entire process adopted by the appellants/the Statutory Authorities appear to be totally unilateral, opaque and saddled with stubbornness not to disclose anything relevant to the claim against the plaintiffs. Except mentioning a particular amount in the notice; no details or documents were supplied by the appellants/defendants to the plaintiffs regarding details of payment; despite demand by the plaintiffs. Hence the approach adopted by the Statutory Authorities is only a formality to undergo the procedure prescribed under the Act; nowhere near to the fundamental principles of judicial procedure. This kind of unilateral and mechanical orders can not be accepted by the Court as sufficent to attach the finality to the orders and to make them immured from judicial scrutiny.

The reliance of the appellants on the judgment passed by the co-ordinate Bench of this Court does not enhance their case. The facts of the present case are totally distinguishable from the facts of the case relied upon by learned counsel for the appellants. In that case notices were issued to the allottees and despite that they had not deposited any significant amount. Although the conduct of a party in not depositing the amount can not be the reference point for exclusion of the jurisdiction of the Civil Court; which is to be decided with reference to the other factors like provisions of statute and conduct of statutory authorities, however, in the present case after initial deposits of 25% of consideration, the plaintiffs had deposited an amount of Rs. 6,35,000/- and the HUDA Authorities had accepted the said amount without any objection even after issuances of notices to the plaintiffs. It deserves to be mentioned here that as per the terms of allotment letter, after the deposit of initial 25% the remaining amount of 75% was only Rs. 6,01,875/- which the plaintiff had defaulted at

the initial stage. However, subsequently they had deposited Rs. 6,35,000/- which has admittedly been accepted by the HUDA Authorities without any murmur. Hence the authorities of the appellants were also insisting only on the point of entitlement of compound interest @18%. Despite basing their claim entirely on the 18% compound rate of interest they have failed to produce any evidence before the Court that they were authorised under any provisions of the Act, Rules or Regulations of HUDA to charge this interest @18%. Hence in the present case the civil court rightly entertained the suit and the jurisdiction of the Civil Court was not excluded at all.

In view of the above, the substantial question of law as framed and reproduced above is answered in favour of the plaintiffs/respondents and against the appellants/defendants; by holding that jurisdiction of the Civil Court is not barred against the appellate orders of the appellate statutory authorities under Section 50 of the HUDA Act. Civil Court has rightly entertained the suit and as per the evidence led before it has rightly decreed the suit filed by the plaintiff.

No other argument raised by learned counsel for the parties.

In view of the above, the present appeal fails and the same is dismissed being devoid of any merits.

**5th February, 2018** **[RAJBIR SEHRAWAT]**
**Shivani Kaushik** **JUDGE**

*Whether speaking/reasoned* *Yes*

*Whether Reportable* *Yes*