

(13) In the light of the aforesaid judgements and in view of the interpretation which can be placed with Item No. 40 of pay revision rules of 1986 the petitioners, if, working on technical posts cannot be deprived of the revised pay scales of Rs. 1200—2040 either on the ground that they are non-matric or that they are III or not or even they are having trade certificate of a different trade. According to the memo No. 6/1988 noticed in Labh Singh's judgement—three years experience in trade was also to be considered as equivalent to III.

(14) These petitions are, accordingly, allowed. Respondents are directed to release the revised pay scale of Rs. 1200—2040 to the petitioners who are working on technical posts from the date of revision i.e. 1st May, 1990.

(15) Copy of this judgement be placed on each connected file.

R.N.R.

Before Surya Kant, J.

VINOD MITTAL AND OTHERS,—Petitioners

versus

STATE OF HARYANA AND OTHERS,—Respondents

C.W.P No. 16664 of 1992

27th April, 2009

Constitution of India, 1950—Art.226—Haryana Urban Development Authority Act, 1977—S.17(1)(2)—HUDA (Disposal of land and buildings) Regulations, 1978—Allotment of SCO site to petitioner in an open auction—Petitioners failing to pay due installments on ground of non-completion of development works—Authorities under a legal obligation to provide 'basic amenities' and to complete development works before possession is offered—Report of Local Commissioner showing basic amenities partly available at time of allotment of sites and completed in June, 1992—Whether respondents are entitled to charge interest/penal interest from petitioners—Report of Local Commissioner showing development works comprising basic amenities completed in June, 1992, thus,

petitioners liable to pay interest with effect from 1st June, 1992 onwards—Petitions partly allowed holding petitioners liable to pay entire balance amount in lump sum along with interest @ 10% p.a. with effect from 1st June, 1992.

Held, that on a combined reading of the relevant provisions of the HUDAA Act and the Regulations, it transpires that the “basic amenities” can be said to have been completed when the metaled roads, wholesome water, sewerage and electrification is completed and made available to the allottees. The “amenity” is a wider expression which includes activities like the tourist sports, open space, parks and play fields etc. Though the expression “development work” has not been defined under the HUDAA Act or the Regulations, however, for the limited purpose of enabling an allottee to utilize the allotted site, it would include the ‘basic amenities’ only and not ‘amenities’ which are to be provided for the entire township and need not be confined to one ‘urban area’ only. The respondent-authorities are, thus, under a legal obligation to provide the ‘basic amenities’ and completes the development works before the possession is offered.

(Para 16)

Further held, that the liability of an allottee to pay interest on the balance allotment price shall accrue from the date of offer of possession only, which in turn can be offered only on completion of development works. It necessarily means that unless the development works consisting of ‘basic amenities’ are completed, the respondent-authorities cannot charge interest from the allottee. The contention raised on behalf of the respondents that the completion of development work comprising basic amenities is not a bilaterally agreed pre-condition for charging interest from the allottee is, thus, totally misplaced and merit rejection. Since the Local Commissioner has found as a matter of fact that the development works comprising the basic amenities were completed in June, 1992, the petitioners are liable to pay interest with effect from 1st June, 1992 onwards and not prior thereto.

(Para 17)

Mohan Jain, Senior Advocate with Dinesh Thakur, Advocate *for the petitioners.*

Ravi Dutt Sharma, Deputy Advocate General, Haryana.

Om Parkash Sharma, Advocate for HUDA.

ORDER

SURYA KANT, J.

(1) This order shall dispose of CWP Nos. 16394 of 1991, 12680, 14419, 14753, 13108, 16750, 15918, 12681, 14078 and 16664 of 1992, 7019, 7009 and 6315 of 1993, 4648, 11408 and 11407 of 1995 and 2771 and 12591 of 1996, as common questions of law and facts are involved in these cases. For brevity, the facts are being taken from CWP No. 16664 of 1992.

(2) The petitioners seek quashing of the show cause notices 3rd April, 1991, 12th December, 1991 and 1st July, 1992 (Annexures P-4, P-7 and P-8) issued under Section 17(1) (2) of the Haryana Urban Development Authority Act, 1977 (in short the HUDAA Act). They also seek a direction to prohibit the respondent-authorities from charging interest till the development of the area, with a further direction to charge interest @ 10% only and not @ 18% as was being demanded allegedly in violation of the HUDA Regulations.

(3) The petitioners were the successful bidders in an open auction held in the months of July/August, 1987 for allotment of S.C.O. No. 27, Sector 11, Panchkula for a sale consideration of Rs. 15,16,000/-. The allotment letter dated 5th October, 1987 (Annexure P-1) was issued in their favour, *inter-alia*, stipulating that :—

“4. You are requested to remit the 2,27,400/- in order to make the 25% price of the said plot/building within 30 days from the date of issue of this letter. The payment shall be made by a Bank draft payable at the Estate Officer, HUDA, Panchkula and drawn on any scheduled bank at Panchkula 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 shall stand forfeited to the Authority, against which you shall have no claim for damages.

5. The balance amount i.e. Rs. 11,37,000/- 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 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 the remaining amount. The interest shall, however, accrue from the date of offer of possession.

8. *In case the installment is not paid by the 10th of month following the month in which it falls due, the Estate Officer shall proceed to take action for imposition of penalty and resumption of plot in accordance with the provisions of section 17 of the Act."*

(4) *Vide* clause No. 23 of the allotment letter, it was further stipulated that eight half yearly installments were to fall due on 5th April and 5th October every year and were to be deposited during the period commencing from 13th May, 1998 (1st installment) to 13th November, 1991 (the last installment).

(5) Since the petitioners failed to pay the due installments, they were served with the notice dated 3rd April, 1991 (Annexure P-4), followed by a show cause notice under Section 17(1) of the HUDAA Act, dated 12th December, 1991 (Annexure P-7) as well as the notice under Section 17(2) of the Act dated 1st July, 1992 (Annexure P-8) calling upon them for personal hearing before resumption of the site. The petitioners were thereafter served with the memo dated 4th November, 1992 (Annexure P-9) whereby "taking a lenient view", the respondent-authorities re-scheduled the payment of balance amount in easy installments.

(6) The petitioners have given their own reasons to justify their failure to pay the due installment as per the agreed terms and conditions. According to them, the auction conditions were read out by the Estate Officer, HUDA, Panchkula at the time of auction, making it clear that all the development works will be completed within four months to enable the allottees to construct their premises within two years of the date of allotment and use the same for commercial purposes. It was also allegedly announced that the unauthorized commercial establishments operating from the residential houses in Sector 11 or other adjoining areas shall not be allowed to run and if they do not shift to the commercial complexes, such residential houses

will be resumed. The allottees were also assured in writing by the Administrator, HUDA, Panchkula *vide* memo dated 17th February, 1988 (Annexure P-2) that the shops in residential premises will be resumed in a month's time and in case action is not taken within the said period, "the interest on the principal shall be waived off for the period the shops are not resumed."

(7) The petitioners have alleged that in total disregard to the assurances given or the conditions announced at the time of auction, no "basic amenities" have been provided in the area and the petitioners were unable to use the site for commercial purposes even when they have spent over Rs. 10 lacs on construction. Similarly, the commercial activities were still operating from the residential areas thereby making the commercial market unviable. The respondents are alleged to have offered possession to the petitioners deliberately in order to charge interest though as per the provisions contained in the HUDA (Disposal of land and buildings) Regulations, 1978 (in short the Regulations), the possession of the site could be offered only on completion of the development works in the area. The petitioners have further alleged that no metaled roads or sewerage facilities were provided in the subject commercial complex. The failure of the respondents to honour their assurances, according to the petitioners, legitimize the non-payment of due installments by them and therefore, no penal action on that count could be initiated.

(8) The respondent-HUDA authorities have filed their reply affidavit. Besides taking preliminary objections like non-maintainability of writ petition or availability of an alternative remedy of appeal, it has been denied that any oral assurance was even given to the bidders at the time of auction. Similarly, the competence of the Administrator, HUDA in assuring the petitioners *vide* letter dated 17th February, 1988 (Annexure P-2), regarding non-charging of interest on the principal amount, has been questioned. It is also averred that the development works were complete in the area even "before the allotment letter was issued to the petitioners". According to the respondents, the petitioners who have failed to pay the substantial part of the bid money, are occupying the show rooms in an unauthorized manner.

(9) The petitioners as well as the respondents have also placed on record various documents, including photographs of the site, in support of their respective pleas.

(10) The record further reveals that this batch of cases pertaining to more than one Urban Estates developed by HUDA, were firstly, taken up for hearing by a Division Bench of this Court in the year 1995-96 and thereafter again in the year 2002. Keeping in view the divergent stands taken by them regarding completion of the development works in the area, on 22nd April, 2002 the parties agreed to appoint Shri B. R. Gupta, Advocate, who is a former member of the Haryana Superior Judicial Service, as local commissioner to visit the subject urban estates/areas and submit a fact finding report regarding status of the development works.

(11) Before advertng to the report of the local commissioner, it may be noticed that Section 2(a) and (ai) of the 1977 Act defines "amenity" and "basic amenities", to the following effect :—

"(a) "amenity" includes roads, water supply, street lighting, drainage, sewerage treatment and disposal of sewage sullage and storm water, public works, tourist spots, open spaces, Parkas, landscaping and play fields and such other conveniences as the State Government may, by notification, specify to be an amenity for the purposes of this Act :

(ai) "basic amenities" include metalled roads wholesome water, sewerage and electrification ;"

(12) The learned local commissioner, after visiting the sites in Sector 11, Panchkula and going through the records of HUDA, submitted his report on 18th December, 2002 concluding that whereas the facilities of 'water supply' and 'sewerage' were made available at the time of allotment itself, the roads in front and back of Pocket-A covering S.C.O. No. 1 to 34 have been constructed in June, 1992 only. The conclusions drawn by the local commissioner are based upon the indepth scrutiny of the office records and are supported with reasons. I have, therefore, no hesitation in accepting the report of the local commissioner, according to which, the basic amenities were partly available at the time of allotment of the sites and were completed in June, 1992 only. One of the grievance of the petitioners that the basic amenities have not been provided in the area, thus, stand effectively redressed.

(13) This takes us to the real controversy, namely, as to whether or not the respondents are entitled to charge interest/penal interest from the petitioners and if so, at what rate and from which date ?

(14) The HUDA Regulations are statutory in character. Regulation 5 lays down the procedure in case of sale or lease of land or building by allotment. Clause (7) thereof reads as follows :—

“(7) Each installment would be recoverable together with interest on the balance price/premium, at the rate as may be decided by the Authority at the time of allotment. The interest shall, however, accrue from the date of offer of possession of land/building. No interest shall be payable if the whole of the balance price/premium is paid in full, within sixty days of the offer of possession. If at any time the transferee opts to make the balance payment in full, he shall be entitled to do so and interest shall be charged on the balance amount only for the period from the date the last installment was due to the date he makes full payment.” (emphasis applied)

Clause 2(2) of the Regulations further provides that allotment letter shall be issued to a successful bidder in “Form CC”, which in turn, stipulates that **the possession of the site will be offered on completion of development work in the area.**

(15) Similarly, Regulation 6 of the HUDA Regulations deals with sale or lease of building by auction. Clause (3) of Regulation 6 provides that **“the payment of balance of the price/premium, rate of interest chargeable and the recovery of interest shall be in the same manner as provided in clauses (6) and (7) of Regulation 5”**. In other words, the respondent-authorities are entitled to charge interest from the date of offer of possession of the land/building and not prior thereto irrespective of the fact that the sale/lease is by means of allotment or auction. Regulation 13 too explicitly provides that the possession shall be delivered on completion of the development work and the same reads as follows :—

“13. Delivery of possession.—The possession of the land shall be delivered to the transferror or lessee as soon as the development works in the area where the land is situated are completed.

*Provided that in the case of sale/lease of undeveloped land/
building, possession thereof shall be delivered within 90
days of the date of allotment."*

(16) On a combined reading of the relevant provisions of the HUDA Act and the Regulations, it transpires that the "basic amenities" can be said to have been completed when the metaled roads, wholesome water, sewerage and electrification is completed and made available to the allottees. The "amenity" is a wider expression which includes activities like the tourist spots, open space, parks and play fields, etc. Though the expression "development work" has not been defined under the HUDA Act or the Regulations, however, for the limited purpose of enabling an allottee to utilize the allotted site, it would include the 'basic amenities' only and not the 'amenities' which are to be provided for the entire township and need not be confined to one 'urban area' only. The respondent-authorities are, thus, under a legal obligation to provide the 'basic amenities' and complete the development works before the possession is offered.

(17) Similarly, the liability of an allottee to pay interest on the balance allotment price shall accrue from the date of offer of possession only, which in turn can be offered only on completion of development works. It necessarily means that unless the development works consisting of 'basic amenities' are completed, the respondent-authorities cannot charge interest from the allottee. The contention raised on behalf of the respondents that the completion of development work comprising basic amenities is not a bilaterally agreed pre-condition for charging interest from the allottee is, thus, totally misplaced and merit rejection. In view of the above referred provisions imposing statutory obligations upon the respondents, the principles laid down by the Hon'ble Supreme Court in a recent decision in **U.T. Chandigarh Administration versus Amarjeet Singh and Others (1)**, also do not come to the rescue of the respondents. The HUDA is a statutory authority constituted to act as an extended hand of the welfare State. It has to act strictly in accordance with its own Regulations. Since the local commissioner has found as a matter of fact that the development works comprising the basic amenities were completed in June, 1992, I have no hesitation in holding that the petitioners are liable to pay interest with effect from 1st June, 1992 onward and not prior thereto.

(18) The next question would be as to at what rate the petitioners are liable to pay interest ?

As per clause 5 of the allotment letter dated 5th October, 1987 (Annexure P-1), the petitioners were required to pay the due installments along with interest @ 10% per annum, however, in the case of any default, they were liable to imposition of penalty or resumption of the plot, as provided in clause 8 of the allotment letter.

(19) In **Roochira Ceramics versus HUDA and others, (2)**, the allottee was allotted an industrial plot on installments payable along with interest @ 10% per annum. Due to non-payment, the plot was resumed. The allotment was, however, directed to be restored by the Supreme Court subject to the allottee paying "the entire arrears as demanded by HUDA within a period of three months". The HUDA authorities claimed the arrears along with interest @ 18% per annum. Setting aside their claim, the Hon'ble Supreme Court observed that in cases of default in payment of installments, HUDA is entitled to charge interest @ 10% per annum only. Following **Ruchira Ceramics's** case (supra), a Division Bench of this Court *vide* order dated 15th May, 2002 in **Kirti Kumar versus State of Haryana and others** also held that the HUDA authorities were entitled to charge interest @ 10% and not 18%. The Special Leave Petition preferred by HUDA against that order was also dismissed by the Apex Court.

(20) In a recent decision in **HUDA versus Raj Singh Rana, (3)**, their Lordships of the Supreme Court have reconsidered the interest-claim raised by the HUDA and it has been held that wherever the rate of interest on delayed payment has been fixed in the allotment letter itself, the HUDA is entitled to charge interest at the said rate. However, if no such rate of interest has been prescribed, there the HUDA shall be entitled to charge interest keeping in view the provisions of Section 3 of the Interest Act, 1978 and not in an unreasonable manner. Following the dictum in **Raj Singh's** case (supra), a Division Bench of this Court in **Ram Gopal versus HUDA**, in CWP No. 17354 of 2007, decided on 6th January, 2009, has explained that the current rate of interest "*means the highest of the maximum rates at which interest may be paid on different classes of deposits by different classes of scheduled banks in accordance with the directions*

(2) (2002) 9 S.C.C. 599

(3) AIR 2008 S.C. 3832

issued to the banking companies by the Reserve Bank of India under the Banking Regulation Act, 1949. It would necessarily exclude the rate of interest on the accounts maintained in saving or those maintained by charitable or religious institutions. The aforementioned calculations shall be in respect of default in payment of instalment as well as in respect of the additional price required to be paid on account of increase of the acquisition cost. However, it is further held that the petitioner shall not be liable to pay any penalty after he has been subjected to payment of interest."

(21) As noticed earlier, the petitioners in the normal course were liable to deposit all the eight installments during the period commencing from 13th May, 1988 till 13th November, 1991. However, they have been held to be not liable to pay any interest till completion of the basic amenities as per the HUDA Regulations, i.e., till 1st June, 1992. Since by that time all the installments had become due and the petitioners are enjoying the fruits of the commercial establishments after completion of the basic amenities in June, 1992 even without paying arrears of the principal amount, in my considered view, the petitioners are liable to pay the entire balance amount in lump sum along with interest @ 10% per annum as per the agreed terms and conditions with effect from 1st June, 1992 till actual realization thereof.

(22) For the reasons afore-stated, the writ petitions are allowed in part; the impugned notices are hereby quashed and it is held that the petitioners are liable to pay interest @ 10% per annum with effect from 1st June, 1992. It is also held that since the period during which the petitioners were required to pay the due installments has already lapsed, the outstanding dues shall be cleared by them in lump-sum. The respondents are accordingly directed to re-calculate the outstanding dues and intimate the same to the petitioners by way of a notice. The petitioners shall be liable to pay the outstanding dues within a period of two months from the date of receipt of such notices, failing which the respondents shall be entitled to impose penalty as per Clause 8 of the allotment letter (s) or any other action as per law.

(23) There shall be no order as to costs.