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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

Reserved on : 24.02.2025
Pronounced on : 17.03.2025

<i>Sr. No.</i>	<i>Case Number</i>	<i>Title of the case</i>
1.	CWP-1202-2019	HARYANA URBAN DEVELOPMENT AUTHORITY (NOW HARYANA SHEHRI VIKAS PRADHIKARAN) VS. STATE OF HARYANA AND OTHERS
2.	CWP-6706-2021	MOHAN LAL GOEL V/S STATE OF HARYANA AND ORS.

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI

Argued by: Mr. Ashwani Chopra, Senior Advocate with
Mr. Pankaj Gupta, Advocate ;
Mr. Damanjeet Singh, Advocate ; &
Mr. Paras Jain, Advocate;
for the petitioner (in CWP-6706-2021) and
for respondent No. 2 (in CWP-1202-2019).

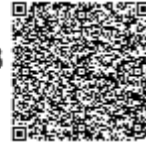
Mr. Deepak Sabherwal, Advocate
for the petitioner (in CWP-1202-2019).
For the respondent – HSVP (in CWP-6706-2021).

Mr. Ankur Mittal, Addl. A.G., Haryana,
Ms. Svaneel Jaswal, Addl. A.G., Haryana,
Mr. P.P.Chahar, Sr. DAG, Haryana,
Mr. Saurabh Mago, DAG, Haryana,
Mr. Gaurav Bansal, DAG, Haryana and
Mr. Karan Jindal, Asstt. A.G., Haryana.

SURESHWAR THAKUR, J.

1. Since both the writ petition(s) involve common questions of facts and law, besides when a similar order is impugned in both the writ petition(s), therefore, they are amenable to be decided through a common order.

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**Factual Backdrop of the case.**

2. The Haryana Urban Development Authority (hereinafter for short called as the HUDA), now known as Haryana Shehri Vikas Pradhikaran (HSVP) in an open auction, allotted on free hold basis for a total consideration of Rs.29,11,000/-, thus a plot bearing No. 88, Sector 5, Panchkula measuring 275 square meters, to one Satinder Singh and Others.

3. 10 % amount was to be deposited at the time of participation in the auction, another 15 % was to be deposited within 30 days of the making of the allotment letter and the balance 75 % was payable in 8 half yearly installments alongwith interest @ 10 % per annum.

4. The allottee deposited 25 % of the total consideration amount within the stipulated time. Further, the original allottee applied for the transfer of the plot in the name of Mohan Lal Goel (petitioner in CWP-6706-2021) and accordingly, the HUDA issued re-allotment letter in his name. The conditions mentioned in the re-allotment letter become extracted hereinafter.

“You shall have to pay the balance _____installment Rs. _____ on the dates given below :-

1. The instalments shall include 10% interest on balance amount from the date of offer of possession in case of default, additional interest as per prevalent policy shall be payable.

2. Each instalment shall be remitted to the Estate Officer and every such remittance shall be accompanied by a letter showing the full particulars of the site, i.e. the number of plot and sector number to which the payment pertains. In the absence of these particulars the amount remitted shall not be deemed to have been received.

3. The above price is tentative to the extent that any enhancement in the cost of land awarded by the competent authority under the Land Acquisition Act shall also be payable proportionately, as determined by the Authority. The additional price determined shall be paid within thirty days of its demand.

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4. *In case any payment is not made by the due date, then additional interest shall be added as per prevalent policy for the permitted period. Thereafter resumption proceedings shall be initiated in accordance with the provision of Section 17 of the Haryana Urban Development Authority Act, 1977.*

5. *In the event of the breach of any other condition of transfer the Estate Officer may resumed the land in accordance with the provision of Section 17 of the Act.*

6. *The land/building shall continue to belong to the authority until the entire consideration money together with interest and other amount, if any, due to the Authority on account of sale of such land or building or both is paid. You shall have no right to transfer by way of sale, gift, mortgage or otherwise the plot/building or any right, title or interest therein till the full price is paid to the Authority, except with the prior permission of the Competent Authority.*

7. *On payment of 100% percent of the tentative price of the plot/building you shall except the deed of conveyance in the prescribed form and in such manner as may be directed by the Estate Officer. The charges or registration and stamp duty will be paid by you.*

8. *The plot/building shall not be used for any purpose other than that for which it has been allotted in accordance with the plans approved by the competent authority. No obnoxious trade shall be carried out in or any land/building.*

9. *You shall have to pay all general and local taxes, rates or assessed on the said land/building by the competent authority.*

10. *You shall have to pay separately for any construction material, trees, structures and compound wall existing in your plot at the time allotment of which compensation has been assessed and paid by the authority, if you want to made use of the same.*

11. *The Authority will not be responsible for leveling the uneven sites.*

12. *The Authority reserves to itself all minerals whatsoever in or under the said site with all such rights and powers as may be necessary or expedient for the purpose of searching for, working obtaining, removing and enjoying the same at all such times and in such manner as the authority shall think fit, with power to carry out any surface or any underground working and to let down in the surface of all or the part of site and to sink pits, erect buildings, construct lines generally appropriate and use surface of said site for the purpose of doing all such things as may be convenient or necessary for the full enjoyment of the exceptions and reservations here in contained.*

Provided that the allottee shall be entitled to receive from the authority such payment for the occupation by the Authority of the surface and for the damage done to the surface or building on the said land by such works or workings or letting down as may be agreed up between the Authority and the allottee of falling such agreement as shall be ascertained by reference to arbitration.

13. *The Authority may be its officers and servants at all reasonable time and in reasonable manners after twenty four hours notice in writing enter in and upon any part of the said land/building erected thereon for the purpose of ascertaining that the allottee has duly performed and observed the conditions to be observed under the Rule/Regulation applicable under the said Act.*

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14. *The Authority shall have full right, power and authority at all times to do through its officers or servants, all acts and things which may be necessary or expedient for the purpose of enforcing compliance with all or any other of the terms conditions and reservation imposed and to recover from you as first charge upon the said land/building the cost of doing all or any such act and things and all cost incurred in connection therewith or in any way relating thereto.*

15. *All disputes and differences arising out of or in any way touching or concerning this allotment whatsoever shall be referred to the sole arbitration of the Chief Administrator or any other officer appointed by him. It will not be an objection to such appointment that the arbitrator so appointed is a Government Servant or an officer of the Authority that he had to deal with the matter to which this allotment relates and in the course of his duties and such Government Servant or officer as the case may be he has expressed his views on all or any of the matters in dispute or difference. The decision of such arbitrator shall be final and binding on the concerned Parties.*

16. *All payments shall be made by means of a demand draft payable to the Estate Officer, Haryana Urban Development Authority Panchkula drawn on any scheduled bank situated at Panchkula.*

17. *No separate notice will be sent for the payment of the instalments. However, the information regarding the installments, the amount, the due dates etc. may be sent as a matter of courtesy.*

18. *You shall abide by the conditions of allotment or (not legible)."*

5. Since the subsequent allottee was liable to pay the balance/outstanding 75 % of the consideration but when he failed to pay any of the said installments. Therefore, the HUDA issued various notices under the provision of Section 17 of the HUDA Act, 1977, for payment of the balance installments. The subsequent allottee Mohan Lal Goel, replied to the said notice taking a plea with regard to failure to provide the basic infrastructure.

6. Thereafter, the subsequent allottee Mohan Lal Goel, filed a civil suit praying for the rendition of a decree of permanent prohibitory injunction, thus, for restraining HUDA from recovering the balance amount and against the resumption of the subject plot, rather owing to lack of basic amenities and development. The learned Civil Court appointed a local commissioner to visit the spot and to report about the

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status of development in the area. Moreover, the learned civil Court only restrained the HUDA from resuming the site on account of non payment of the balance installments. Further, yet the learned Civil Court made it clear that the injunction shall not be operative against the balance amount payable by the allottee in respect of the plot in question.

7. A notice under Section 17 (4) of the HUDA Act was issued to Mohan Lal Goel, to appear before the Estate Officer on 15.04.1993, but neither he personally appeared nor caused his appearance through any representative.

8. The learned Civil Court extended the stay order dated 10.09.1992, with the modification that the plot shall not be resumed till the stay application has been heard and disposed of by the Court. However, vide order dated 25.05.1993, the Estate Officer, HUDA, Panchkula, ordered for the resumption of the plot owing to non payment of the installments by the subsequent allottee.

9. Thereafter, vide order dated 29.11.1996, the learned Civil Court adjourned the case *sine die*, thus on the joint statement made by the Counsel for HUDA, and, the allottee to the effect, that since a similar issue is already pending before the Hon'ble High Court, whereupons, the decision of the High Court will be binding in the present case also.

10. Vide judgment dated 27.04.2009 passed on **CWP No.16664 of 1992**, titled as **Vinod Mittal and Others vs. State of Haryana and Others**, alongwith a batch of 17 similar writ petitions, the learned Single Judge of this Court, quashed the impugned notices

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issued by HUDA, and, held that the allottees are liable to pay the balance amount alongwith interest @ 10% per annum w.e.f. 01.06.1992, i.e. the date on which the basic amenities were completed as per the report submitted by the Local Commissioner appointed by this Court.

11. Feeling aggrieved, the HUDA by way of filing LPA, thus challenged the said judgment passed by the learned Single Judge. The Hon'ble LPA Bench, vide order dated 16.10.2012, allowed the appeals filed by the HUDA and held that the lack of amenities cannot be made a ground for not making the payment of installments and the allottees are liable to pay simple interest on delayed payment of installments @ 18 % per annum. However, the prayer of the HUDA to compound the interest was rejected. The relevant paragraphs as occur in the said judgment become extracted hereinafter.

In view of the discussion above, we hold that:

(1) That lack of amenities cannot be made a ground for not making the payment of installments in terms of the letter of allotment. The interest on installments of the deferred payment of the sale consideration alone is chargeable from the date of offer of possession. Since the possession was offered and construction raised, the allottees are liable to pay interest on the amount of installments from the date of offer of possession itself.

(ii) In the event of non-payment of installments along with interest thereon, the Authority is justified in charging interest at the rate of 18% p.a. Such interest is to ensure the timely payment of the installments and is aimed at mitigating the extreme hardship which may result from resort to the last measure of resumption of land or

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building. However, the rate of interest at the rate of 18% cannot be compounded, as there is no provision either in the Act or in the Regulations or in the Circular for compounding of such interest.

(iii) The Authority is competent to charge interest, as it has the authority to levy penalty under Sections 16, 17 & 55 of the Act apart from the power of resumption of land or building. The charging of interest is a policy adopted by the Authority short of resorting to the extreme remedy of resumption. Therefore, such policy is in fact designed for the benefit of the allottees.”

12. Though vide the common judgment (supra), the Hon'ble Division Bench of this Court disposed of 23 cases, i.e. 18 LPAs filed by HUDA against the judgment passed by the Ld. Single Judge and 5 writ petitions filed by the allottees. **However, the HUDA excepting four cases, where the resumption order had already been passed against the allottees, thus, accepted the judgment passed by the learned Division Bench**, whereupon, thereagainst, the HUDA filed review applications.

13. In the said filed review applications, the HUDA contended that the benefit of payment of balance amount alongwith 18% interest, can be granted only to those allottees where the sites have not been resumed, whereas, in those cases where the sites have already been resumed, thereupon, the said benefit cannot be extended to such allottees. **However, vide order dated 27.09.2013, the said review application(s) were dismissed by the learned Division Bench of this Court.**

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14. Feeling dis-satisfied against the dismissal of the review applications, the HUDA approached the Hon'ble Supreme Court by filing SLPs thereagainst. However, the Hon'ble Supreme Court vide order dated 16.01.2015, dismissed the SLP filed by the HUDA on the ground of delay.

15. Moreover, the allottees concerned, have also challenged the judgment dated 16.10.2012 passed by the Hon'ble LPA Bench of this Court, before the Hon'ble Supreme Court, with regard to the enhancement of interest payable on the balance installments from 10 % to 18 % per annum.

16. The Hon'ble Supreme Court while issuing notice in the said SLP, has stayed the operation of the impugned judgment passed by the Hon'ble LPA Bench of this Court, subject to the condition that the allottees shall deposit interest @ 10% w.e.f. 01.06.1992 within a period of 30 days. The said civil appeal is yet pending before the Apex Court.

17. As the civil suit filed by the subsequent allottee herein, was vide order dated 29.11.1996, adjourned *sine die* by the learned Civil Court, thereupon, the allottee filed an application before the learned Civil Court seeking withdrawal of the civil suit, but with liberty to avail the requisite remedy in accordance with law. The application filed by the allottee was allowed by the learned Civil Court vide order dated 24.03.2014 and the civil suit was withdrawn with liberty to avail the requisite remedy.

18. In pursuance thereto, the allottee approached this Court by filing CWP No. 6951 of 2014, titled as **Mohan Goel vs. State of**

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Haryana and Others for directing the HUDA to consider the case of the petitioner in terms of the judgment dated 16.10.2012 passed by this Hon'ble Court in LPA No.933 of 2009.

19. After hearing the counsel for the allottee as well as the counsel for the HUDA, the aforesaid writ petition was disposed of by the Division Bench of this Court vide order dated 11.04.2014, whereby, directions were passed upon the competent authority, to pass a speaking order on the prayer made by the allottee.

20. In terms of the directions given by this Court, the Administrator, HUDA vide order dated 21.01.2015 (Annexure P-14) allowed the prayer of the allottee and set aside the order of resumption dated 25.05.1993. The Administrator, HUDA further held that the allottee is liable to pay the outstanding dues alongwith simple interest @ 10% per annum, subject to the final outcome of the cases filed by the allottees before the Hon'ble Supreme Court, especially when the Hon'ble Apex Court had also made such a conditional direction. The Administrator, HUDA categorically held, that as the plot in question was illegally resumed on 25.05.1993, therefore, the allottee is not liable to pay the extension fee (for non-construction of the building) from the date of illegal resumption till the site is restored by the Estate Officer, HUDA to the present allottee.

21. The HUDA challenged the afore order passed by the Administrator by filing the apposite revision petition before the Principal Secretary to Government of Haryana, Town and Country Planning Department. Vide impugned order dated 22.02.2017

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(Annexure P-15), the Revisional Authority upheld the decision of the Administrator qua the setting aside of the resumption order. However, it held that the allottee shall pay the extension fee for non-construction of the building.

22. Feeling aggrieved, thus by the decision of the Revisional Authority, both the HUDA and the allottee herein, have respectively filed separate writ petition(s) before this Court, inasmuch as, the HUDA (in CWP-1202-2019) is aggrieved by the finding made by the revisional authority that **the plot in question was wrongly resumed**, whereas, the allottee herein (in CWP-6706-2021) is aggrieved by the finding **that the allottee is liable to pay the extension fee for non-construction of the building.**

Submissions made by the learned counsel for the HUDA/HSVP.

23. The learned counsel for the HUDA/HSVP submits, that the revisional authority failed to take into consideration the fact, that the allottee had never challenged the order of resumption and hence the same had attained finality.

24. The allottee herein had failed to pay even a single installment for a period of more than 20 years after the payment of initial 25 % by the original allottee.

25. Moreover, it has been held in a catena of judgments, that, when in an auction the buyer purchases the plot with open eyes, therebys, he is not justified in claiming that he is not liable to pay the installments till the development work in the area is not complete.

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For the reasons to be assigned hereinafter, the submissions addressed before this Court by the counsel for the HUDA/HSVP are rejected.

26. The ratio of the judgment passed by the Division Bench (LPA Bench) of this Court on 16.10.2012 is pointedly applicable to all the allottees including the present allottee. Fortifying strength to the supra inference is borrowed from the factum that the resumption order, vis-a-vis the subject plot was passed on 25.05.1993, despite the interim orders passed by the learned Civil Court on 10.09.1992 and 12.05.1993, wherebys, the learned Civil Court, rather had restrained the competent authority against resuming the subject plots, whereupon, also the said passed order is, prima facie, in violation to the interim orders (supra) passed by the learned Civil Court.

27. In addition, since the dismissal orders became made upon the review applications filed by HUDA, in the four cases, where the rendered resumption orders, thus became quashed and set aside, whereafters, the SLP filed thereagainst by the HUDA, also has been dismissed by the Hon'ble Supreme Court. Resultantly, when the present allottee's case is squarely covered by the conclusive decision rendered by the learned LPA Bench on 16.10.2012, therebys too, the allottee is entitled to the benefit of making deposit of the balance 75% of the amount alongwith interest @ 10 % w.ef. 01.06.1992.

28. The further sequel thereof, is that, when the said judgment is applicable also to the facts at hand besides when the present allottee is similarly situated to the allottees who were recipients of a common conclusive effective decision rendered by the LPA Bench of this Court

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on 16.10.2012, as such, even if assumingly there was no prayer made by the present allottee for the setting aside of the resumption order, yet the very fact that he is covered by the judgment supra, becomes the underpinning for dispelling, the argument addressed before this Court by the learned counsel for the HUDA/HSVP, that for want of any challenge being made to the resumption order, therebys, the relief as granted through the impugned order, thus annulling the resumption order rather is non-est.

29. Now, since the issue with regard to the rate of interest payable respectively @ 10% or upto 18%, is subjudice before the Hon'ble Supreme Court, but when the Hon'ble Supreme Court had passed a conditional order, that till a decision is made upon the subjudice civil appeal, thereupto, the competent authority shall levy interest on the withheld installments @ 10 %, therebys, also the said percentum of interest is to be conditionally levied on the withheld installments, thus, even on the present allottee.

30. Moreover, the claim of HUDA for payment of extension fee for non-construction of building from the allottee is *ex facie* illegal and unjustified. The reason for concluding so, is that, since evidently the delivery of possession of the subject plot, to the allottee was made on 30.03.1992. Moreover, when in terms of clause 16 of the allotment letter, the allottee was to complete the construction within two years of the date of offer of possession after getting the building plans sanctioned from the competent authority and when the time limit of two years is also made extendable by the Estate Officer, if he is satisfied that

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the non-construction of the building was owing to the reasons beyond the control of the allottee.

31. Since in the present case, the possession of the subject plot was offered to the allottee on 30.03.1992 but when then the actual physical possession of the subject plots was evidently not delivered to the allottee, thereupon, when the present allottee became well deterred to, within the period of two years commencing from 30.03.1992, thus complete the construction. Therefore, no extension fee charges were to be levied upon the allottee rather for any omission on his part to complete the construction within the prescribed period of time.

32. Furthermore, in the instant case, the relevant period of time when the subject plot remained under the possession of the HUDA but is required to be deducted from the ordained period of two years. Resultantly, therebys, no extension fee was leviable on the present allottee.

33. As held by the Division Bench of this Court in case titled as *Sarvjeet Versus State of Haryana and Others*, reported in **2016 (4) RCR (Civil) 963**, since after the making of the resumption of the plot, neither the allottee can ask for extension to construct the site nor the authorities could have afforded any such extension, especially when thereupons the construction on the subject site in the face of the order of resumption but was impossible. The relevant paragraphs as occur in the said judgment are extracted hereinafter, paragraphs whereof are pointedly applicable to the instant factual situation and in terms thereof,

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the raising of demand qua levying of extension fees by the HSVP upon the subject plot is untenable.

8. *Concededly, the site in question was allotted to the predecessor- in-interest of the petitioner on 01.02.1988. The actual physical possession of the site was delivered to the allottee on 01.03.1988. Clause 16 of the letter of allotment required the petitioner to construct the site within two years of the date of offer of possession, after getting the plans of the proposed building approved from the competent authority. For, the petitioner failed to furnish the revised price of the site, the authorities, vide order dated 20.03.2002 (Annexure P5), ordered its resumption. Needless to assert, as a consequence, the contract between the parties stood rescinded. Post resumption, neither could the petitioner ask for extension to construct the site nor the authorities would have accorded any such extension. Construction of site, in the face of the order of resumption, was impossible. For, the authorities would never have approved/sanctioned the building plans, which was a pre-requisite to construct the site. Likewise, even the period, envisaged in the relevant policy, upto which the authorities could actually grant extensions also ceased to operate, for the site had re-vested in the authorities. Once that is so, it defies logic that even for the period when the site was under resumption, the authorities would still have expected the petitioner to construct the site, and demand extension fee for non-construction. In fact, in a similar situation, in CWP No.24582 of 2012, the authorities furnished an affidavit before this court to treat the litigation period from 18.05.1991 to 10.10.2007 as zero period, for the purpose of calculating the extension fee. Accordingly, the matter was disposed of vide order dated 10.04.2013 (Annexure P18), which reads thus:*

"On March 22, 2013, the learned Senior counsel for the respondents requested for a short adjournment to have instructions with regard to sanctioning of the building plan by charging the extension fee of the period excluding the litigation period and the case was adjourned for today.

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In pursuance of the said order, an affidavit of Sh. Narender Yadav, Estate Officer-I, Haryana Urban Development Authority, Gurgaon has been placed on record, stating that the Administrator, HUDA, Gurgaon has decided to treat the litigation period from 18.05.1991 to 10.10.2007 as zero period and petitioners are liable to pay extension fee for non-construction of the plot, amounting to Rs.1,53,734/- as per HUDA rates. It has also been stated that on deposit of the said amount, the building plan submitted by the petitioners would be sanctioned immediately.

Accordingly, in view of the said affidavit, this writ petition is disposed of in the aforesaid terms. If the petitioners deposit the said amount, within one month, the respondent-HUDA is directed to sanction the building plan, in accordance with law, within a period of one month thereafter."

9. *The observations recorded by the Division Bench of this court in Subhash Chander and another v. Haryana Urban Development Authority and another, 2009(1) PLR 675, also fortifies our view:*

"... However, the request of the petitioners for sanctioning of building plan has not been accepted on the ground that the site has not been constructed for more than 15 years, which is the maximum period provided as per policy dated 02.07.2007. It is undisputed that the re-allotment letter was issued on 29.10.2007 and the petitioners could not have raised construction before the aforementioned date as the resumption order dated 23.01.2002 was operating and the same has been set aside by the intervention of the civil court. The policy instructions dated 02.07.2007 would not apply for counting of 15 years from the date of original allotment of 1988. The guidelines dated 02.07.2007 cannot apply retrospectively to the allotment letter issued in the year, 1988. The application of the period of 15 years in accordance with the guidelines dated 02.07.2007, without excluding the period for which the site has remained under resumption, would be wholly unjust and unfair. It is conceded position that the plot of the petitioners was resumed on 23.01.2002 and it could be re-allotted to them only on 29.10.2007. Accordingly, the period from 23.01.2002 to 29.10.2007 is liable to be excluded from counting the period of 15 years. Therefore, the petitioners would obviously be well within time and are entitled to be granted sanction to their building plans. Once the aforesaid legal position emerges for the purposes of granting time for construction then it follows that no extension fee could

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be charged by virtue of the fact that the petitioners could not have raised construction on the site."

10. *In conspectus of the position, as sketched out above, what comes to fore is; the authorities could not demand extension fee w.e.f. 20.03.2002, when the site was resumed, till 16.12.2011, when the Division Bench ordered its restoration. Ex facie, vide letter dated 19.02.2013, after over a year, the authorities for the first time communicated to the petitioner, for it had decided to implement the decision, dated 16.12.2011 (Annexure P8), the names of all the heirs of the deceased (allottee) be furnished so that the site could be restored in their names. It appears that after the Division Bench rendered its decision, the authorities were contemplating to assail the said order, but eventually decided to implement the same. But, in the interregnum, a period of over one year had gone by. Therefore, even for the period i.e. 16.12.2011 to 19.02.2013, the demand for extension fee cannot be sustained. For, the delay to implement the said decision occurred purely at the end of the respondents.*

11. *However, in terms of clause 16 of the allotment letter, the petitioner was required to construct the site within two years from the date of offer of possession. For, the actual physical possession of the site was delivered to the allottee on 01.03.1988, he was required to complete construction upto 1990. Whereas, the petitioner failed to construct the site for a period of 12 years, before it was resumed on 20.03.2002. Thus, the petitioner is under obligation to make good the demand for this period and with interest, in terms of the policies of HUDA.*

Final Order of this Court.

34. In aftermath, **CWP-1202-2019** filed by the HUDA is dismissed being devoid of any merit, whereas, **CWP-6706-2021**, filed by the petitioner-allottee, is allowed.

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35. The relevant part of the impugned order (Annexure P-15), wherebys, the petitioner-allottee is held liable to pay the extension fee towards non-construction of the plot in question, is quashed and set aside.

36. A photocopy of this order be placed on the file of other connected case.

(SURESHWAR THAKUR)
JUDGE

17.03.2025
kavneet singh

(VIKAS SURI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No