NS A DP No.- $\dot{b}$ Haryana Urban Development Authority through its Chief Administrator, C-3, State of Haryana through Financial Commissioner-Principal Secretary, Department of Town and Country Planning, Mini Secretariat, Haryana, Sector 17, Sector 6, Panchkula, Haryana. Chandigarh. Estate Officer, Haryana Urban Development Authority, Sector 12, Faridabad, Haryana. CM 9552 IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH Status Dismissed W102/13

OF [NS SS) Shashi Taneja and another Subject:- Civil Writ Petition No. 2557 of 2013

State of Haryana and others - PI town

Petitioner(s)

विक्र वामाड Raceipt No 1815 CIOF.C.T.C.P.

In continuation of this Court's order dated am directed to

Respondent(s)

PARWW forward herewith a copy of Order dated (2-12-13) in the above noted Civil Writ Petitions, f in the above noted Civil Writ Petitions, for immediate strict compliance along with 19.11.2013 passed by this Hon'ble High Court

M (Night) of momo BY ORDER OF HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH Given under my hand and the seal of this Court on this  $2^{nd}$  day of December 2013.

For Assistant Registrar (W Superintendent (Writ) The same

ALEXA.

PUN 12121)

# IN THE HIGH COURT FOR THE STATES OF PUNJAB AND

## HARYANA AT CHANDIGARH

Civil Writ Petition No.

#### MEMO OF PARTIES

- 'n Sector 19, Faridabad (Haryana). Shashi Taneja wife of R.K Taneja resident of House Number 12, R.K Taneja son of Sh. Bhawani Dass, resident of House Number
- 12, Sector 19, Faridabad (Haryana). .Petitioners

#### Versus

- Secretariat, Haryana, Sector 17, Chandigarh. Secretary, of Haryana through Financial Commissioner-Principal Department of Town and Country Planning, Mini
- Ņ Haryana Administrator, C-3, Sector 6, Panchkula, Haryana Urban Development Authority through ij Chief
- ယ 12, Faridabad, Haryana. Estate Officer, Haryana Urban Development Authority, Sector-Respondents

PLACE: CHANDIGARH

DATED: ಬ:0/.2013

[SHEKHAR VERMA] [BHAVNA JOSHI]

2190/2007

P-1285/02 2190/2007 [VIKRAM-VIR SHARDA] [AMARJIT S. GILL]

P-2903/2007

P-1610/2009

ADVOCATES, COUNSEL FOR THE PETITIONERS



**1**0); dated 31.07.2012 issued/conveyed on 21.11.2012 (Annexure Pcommunication dated 28.07.2008 (Annexure P-6), Order dated dated 21.06.2001 bearing endorsement number disclosed vide the nature India for the issuance of an appropriate writ, order or direction in 31.03.2009 received on 15.11.2010 (Annexure P-8) and Order Civil Writ Petition under Articles 226/227 of the Constitution of of Certiorari for quashing of communication/order

staying the 28.07.2008 (Annexure P-6), Order dated 31.03.2009 received on endorsement Further; writ, order or direction in the nature of Prohibition for communication/order dated 21.06.2001 bearing number disclosed vide communication dated

issued/conveyed on 21.11.2012 pendency 15.11.2010 possession of respondents to not take any coercive steps Faridabad; of the (Annexure the present writ petition Booth Site Number P-8) and (Annexure Order 9, Sector-19, Part-II, and dated for taking over the P-10) 0 directing 6 during 31.07.2012 the

restore the balance amount of sale consideration and other charges Mandamus against the respondents directing them to accept the Further; for issuance in favour of the petitioners Booth Site Number 9, Sector-19, Part-II, Faridabad, of writ, order or direction in the nature and 으

deem appropriate in the facts and circumstances of the present Any other writ, order or directions which this Hon'ble Court may

## RESPECTFULLY SHOWETH:

- citizens of India. Therefore, they are entitled to invoke the extraordinary Constitution of India jurisdiction The Petitioners are residents of of this Honorable Court under Article 226 Faridabad, Haryana and of the
- such, been constituted as a statutory authority under the 1977 common seal. corporate development of urban areas in the of the Department of Urban Estate for ensuring speedy and economic definition of "State" in terms of Article 12 of the Constitution of India. As and by name Constitution of India That the Respondent Haryana = as well as a local authority with perpetual succession and a amenable sue and be sued. It has the power to acquire, hold and dispose property to Writ jurisdiction under Article For all purposes Urban Development Authority has State of Haryana. it qualifies Act, in place is is 226 a body of the ਰ

C.W.P. No.2557 of 2013

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

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C.W.P. No. 2557 of 2013 Date of Decision:19.11.2013

Shashi Taneja and another

....Petitioners

State of Haryana and others

Versus

....Respondents

CORAM: HON'BLE MR. JUSTICE HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN SATISH KUMAR MITTAL

Present: Mr. Sanjeev Sharma, Senior Advocate with Ms. Bhavna Joshi, Advocate,

for the petitioners.

for respondent No.1 Mr. Anjum Ahmed, Additional Advocate General, Haryana

Mr. Manish Bansal, Advocate, for respondent Nos.2 and 3.

### MAHAVIR S. CHAUHAN, J.

balance amount of sale consideration and other dues pertaining to the booth site booth site'); of Booth Site restraining the respondents from taking coercive steps to take over possession  $\infty$ order dated 21.06.2001 (Annexure P-6), order dated 31.03.2009 (Annexure P-Constitution of India, praying for issuance of a Taneja and R.K.Taneja, a wife-husband duo, under Articles 226 and 227 of the and order and Instant Civil Writ Petition has been brought by petitioners, No.9, dated ص<sub>.</sub> writ of Mandamus directing the Sector 31.07.2012 19-II, (Annexure P-10); Faridabad (hereinafter referred to as 'the writ of <u>م</u> respondents writ of Prohibition Certiorari quashing ō accept Shashi

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from the petitioners

the booth site in terms of Section 17 of the Haryana Urban Development allottees deposited an amount of Rs.1,21,000/- (being 10% of the bid money) at site vide letter of allotment dated 10.04.1996 (Annexure P-1). on due date(s) would invite action for imposition of penalty and resumption of allotment or, with interest @ 15% per annum, in 10 half yearly installments letter of allotment to complete payment of 25% of the bid money. the fall of the hammer and Rs.1,81,500/- within 30 days of the date of issue of (hereinafter referred to as the original allottees), being the highest bidders Authority Act, 1977 (hereinafter referred to as 'the Act'). Clause (8) of the letter of allotment stipulated that non-payment of installments be deposited without interest, within 60 days from the date of issue of letter of to Clause Rs.12,10,000/- in an open auction, were allotted, on free hold basis, the booth (5) of letter of allotment the balance amount of Rs.9,07,500/- could It emerges from the record that Amarnath and Hari According

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date rules/regulations/instructions/guidelines allotment that the petitioners would be bound by the terms and conditions of transferred and a letter of re-allotment dated 09.04.1997 (Annexure P-2) was Petitioners took possession of the booth site on 22.04.1997 but did not pay the issued in favour of the petitioners. letter re-allotment On of the allotment application of nine installments as It was specifically stated in the letter of realso original allottees issued thereunder and were due, provisions or say of the remained the booth that as on Act site unpaid. and the

records of the respondents, i.e. House No.12, Sector-19, Faridabad unresponded to, the booth site was resumed vide order dated 21.06.2001, which outstanding was sent to the petitioners under registered cover at the address available in the issued under Section 17 (1), (2), (3) and (4) of the Act failed response from the petitioners. In view of failure of the petitioners Notices dated 11.12.1997, 16.01.1998, 27.04.1998, 13.03.2001 and 11.05.2011 installments towards payment of 75% balance amount of sale consideration. installments and above-stated notices having to to pay the remained

31.03.2009 (Annexure P-8) in the following manner: dated 28.07.2008 (Annexure P-6) which they challenged by way of an appeal. them, Certificate" vide their communication dated 23.06.2008 (Annexure P-5) and to appellate authority, however, acquired knowledge of order of resumption on receipt of communication the petitioners claim Claiming that the order dated 21.06.2001 to have applied for issuance dismissed the appeal was not received vide of a order dated oN, Dues þу

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Was resumption orders cannot extend any benefit to him appellant that the plan was passed subsequent intimated the time of transfer also he was aware of the amount due present appellant has agree with the "After hearing sent through payments notices two by the appellant in the record and the same were wrongs DDA regarding the default in making both the parties, The Registered being office purchased cannot issued Post. record shows make this plot I am inclined 0nThe plea the thing that addressat the

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plea of the appellant cannot be accepted as such. to the change of law and the rules. making the payment for the reasons best known to deliberate any relief under the present appeal and accordingly it him and hence for this willful default he cannot claim is dismissed." facts passes some also if any attempt on the the wrong order, case officer/official of reflect that part of the appellant not it does not amount Therefore, this there was the Estate

dismissed vide Petitioners order dated 31.07.2012 then filed a revision petition which too came (Annexure P-10) with the following to be

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crystal clear that all the notices u,s 17 of HUDA Act were issued and sent through registered post of the record of the case. not received back in the Estate Office undelivered. "I have heard both the parties and gone through the advances by petitioner. resumption Therefore, beyond doubt that resumption order was passed by before passing the resumption order. appeal as well as Revision Petition were filed by the down in Section 17 Estate address of the ty u/s it has to be presumed that notices u/s 17 the Officer order There Ld. Counsel of the petitioner that no Estate were From the perusal of record, it is is no were after following of HUDA Act. petitioners issued by the Officer force duly before and the same in the arguments received Further both the procedure It is established Estate Officer passing ţġ



parties on 31.07.2012. Be communicated to them." given circumstances I find no justification to interfere setting willingness **Estate** 17.07.2012 and was announced in the presence of the Petition. Accordingly, in to the well reasoned order passed by the restored this way as the prices rise by the day. with interest. commercial property have shot up and showed their proper rightly mentioned in the is an admitted fact that the allottees badly failed to were taken up for consideration on merits. Further it petitioners with inordinate deposit the Officer Officer at a stage aside the resumption order passed by opportunity resumed by notices. and The order to deposit the due installments at appropriate time as Commercial/public property cannot be confirmed order The allotment letter. to the Estate Officer after giving was dismissal allottees the petitioners reserved in this case on by delay. when the prices of the outstanding the came forward of Even then, these Administrator. Thethe dues by serving site Revision In the the for

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The revisional authority also noted that:-

stated before passing the petition order. served by the Estate Officer upon the petitioners several time. dates from 06.04.2011 onwards. the petitioner/petitioner counsel the case adjourned 13.09.2011. that notices u/s "The Revision Petition was heard on various Effective hearing of the case was taken The Ld. Counsel, of the petitioner 17 of\_HUDA On the The record of Act were not request of

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order passed revealed that the notices u/s 17(1), (2), (3) and (4) of same 11.12.1997, The order of resumption was sent through registered 13.02.2001 allotment the gained the knowledge of order dated 21.06.2001 Faridabad. petitioner that they gained knowledge of the order **Further** conditions of the allotment letter if the plot is restored dated 31.03.2009 on 15.11.2010 is also not tenable However, to Mrs. address ready to Act the registered the The case was adjourned for further hearing of the parties Ld. counsel for the petitioners letter were and 1603 dated 11.05.2011 respectively: 2008 does not appear to be believable. Hence the assertion of the petitioner that 214 by the Estate notices Shashi Taneja and R.K.Taneja at the order called. which make the payment as per terms and issued vide Memo No.2586 dated i.e. dated post through registered was TheHouse appeal was therefore the plea of the 16.01.1998, alongwith perusal of resumption Officer on 21.06.2001, mentioned No.12, passed the Sector 743 in the post i.e. dispatch dated

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given address which were available on 0/0 brought by the dealing hand which were which shows that the notices were sent on the record. Estate The On 29.11.2011 Sh. calculation of the due Officer, The Estate HUDA, Raghubir Singh Assistant, Officer Faridabad brought the amount were was directed to also also



produce the the notices as mentioned above were duly sent by the Estate Officer. dispatch register so as to ascertain that

notices issued and dispatch register. of the notices as well as proof of dispatch was taken has hearing on 08.05.2012. available for arguments the case was adjourned for arguments on 17.07.2012 and the file pertaining to no.15, Sector 19-II, Faridabad, revisional booth No.15, Counsel of the petitioner pleaded for restoration oj restored on the Thereafter 0/0 As the counsel of the petitioner was ground Sector 19-II, was also called." the site. Faridabad 0nthat ina similar 13.03.2012 On the adjourned date produced The case Sh. was listed for the The photocopy case Ram Krishan Authority of Ld.not

resumption as affirmed by the appellate and revisional authorities be quashed, petitioners outstanding amount, if any. the plot be restored to them and respondents be directed to receive from them have Having thus lost before the appellate and revisional authorities, approached this Court with a prayer that the order of

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due written statement wherein it has been stated that the petitioners did not pay the resumed. opportunity of personal hearing and, therefore, the booth site has been rightly dated 19.07.2001 under installments despite service of various notices upon them and grant of It is also added in the written statement that after issuance of a notice Responding to Section 18(1) of the the notice of motion, Act, order of eviction dated respondents have filed

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suffering huge financial loss that on account of acts and conduct preferred by 06.09.2001 has been passed the petitioners against that order against the petitioners of the petitioners have also and appeal and revision the been dismissed; and respondents are

examined the record very minutely We have heard learned counsel for the parties and have

circumstances beyond their control while the respondent did not raise demand were petitioners could not pay the installments as development work of the market construction on the booth site 13.08.2001 outstanding installments not complete insofar not provided Learned and during and they senior as even basic amenities, such as the even while counsel period were prevented from making for when sanctioning the building the the petitioners petitioners parking area etc., argued were payment that plan raising the on β

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upon the petitioners and, as such, the order of resumption is as required by Section 17 of the Act nor the order dated 21.06.2001 was served Further, P-6) vide which request of the petitioners for grant of "No Dues Certificate" of the order of resumption only on receipt of letter dated 28.07.2008 (Annexure dated 21.06.2001 but the appellate and revisional authorities have failed to take was declined into account these circumstances and have dismissed petitioners' claim with according to the learned senior counsel, the petitioners came to know The learned senior counsel further argued that neither any notice by saying that the booth site had already been resumed vide order bad in law

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closed mind.

accepting the outstanding dues from the allottee thereof but petitioners' claim gravely discriminated against. resumption of Booth No.15, Sector 19-II, Faridabad has been set aside by been rejected without a valid reason and, as such, the petitioners have been Learned senior counsel also argued that in similar circumstances

waiting argued that the petitioners were obliged to deposit the due installments without the petitioners' above-stated address by registered post the records of the respondents, and then filed the statutory appeal after a inspite repeated notices, which were sent to them on the address available in for a demand being raised in this regard, but have failed to do so than seven years even though the order of resumption was also sent to On the contrary, on behalf of the respondents the learned counsel

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decided on its peculiar facts and the petitioners cannot claim parity therewith Faridabad, learned counsel for the respondents argued that each case has to be With regard to restoration of booth site No.15, Sector 19-П,

No other or further point has been urged on either side.

at the bar We have given thoughtful consideration to the submissions made

authority, unambiguous manner that the notices and order of resumption were sent to the authority, in order dated in It needs order dated to be 31.03.2009 (Annexure P-8), have observed pointed out at the very 31.07.2012 (Annexure P-10), outset that the and the revisional appellate in quite



say in the petition that observations of the appellate and revisional authorities the respondents change of their address. the notices and order of resumption, is not correct or that they ever intimated respondents. It is not the case of the petitioners that their address as given in Sector 19, Faridabad. Rather, this is the address of the petitioners in various in this regard are wrong or incorrect. While going through the record of the communications appended by them with the petition and in the petition as resumption were sent to the petitioners at their address, i.e. House No.12 office of the necessary. It reads as under: The situation makes a reference to Section 27 of the General Clauses Act, 1897 petitioners under registered covers to the address available in the records of the respondents we have also found that the notices and order of The petitioners have also avoided to

## "27. Meaning of service by post-

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"give" post, a letter containing the document, and unless the addressing then, unless a different intention appears, the service expression Where any (Central Act) or Regulation made after contrary is proved, the commencement of this Act authorizes of requires course of post. which the letter would be delivered in the ordinary document or "send" or any other deemed "serve" pre-paying to be to have been effected at the time 97 to served either and be posting effected. by of expression in used the post, by registered y where properly the

Therefore, the notices and order of resumption are deemed to have



follow. date, imposition of penalty and resumption of the booth site were bound rules/regulations framed thereunder were to bind them, according to which any effort to deposit the due installments in spite of a very specific mention they respondents what was due against the booth site installments were payable half yearly and failure to pay the installments on due conditions the letter of re-allotment that nine installments remained unpaid and terms and booth site and were anxious to obtain a "No Dues Certificate" but did not make booth site No.15 Falsity of this statement of the petitioners is further confirmed by the fact that notices and order of resumption were not served upon them is found to be false been duly served upon the petitioners and averment of the petitiones that these got the building The petitioners also did not try to find out from the office of the letter in their neighbourhood, could raise construction over the plan of allotment, sanctioned, , could as also provisions of the know what was happening Act and of

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passed presence of the petitioners themselves, but in spite of that it was projected by appeal (Annexure these were sent to the address to which letter dated 28.07.2008 (Annexure P-6) notices and order the truth or say to twist the facts to their convenience. Civil Writ Petition. was sent and which is the address given by the petitioners in memorandum of Ħ. the It seems that the petitioners have developed a habit of not speaking presence P-7) the revision petition of resumption were The appellate order dated 31.03.2009 (Annexure P-8) was of counsel for the never received by them even though (Annexure petitioners, P-9) and They claim that the which amounts the instant



order dated 31.03.2009 only on 15.11.2010. the petitioners before the revisional authority that they gained knowledge of the

petitioners, in paragraph 15 of the petition, have attempted to project that even our strong disapproval of the this order was conveyed to them on 21.11.2012. We cannot help expressing projecting the things authority Similarly, order dated 31.07.2012 was announced manner in the in which the petitioners presence (Annexure of the parties P-10) have been but the of the

of installments on the plea that the respondents had not provided basic not paying the due installments. We may refer to a judgment of the Hon'ble Supreme Court of India rendered in Punjab Urban Planning & Development wherein it has been held as under Authority v. Raghu Nath Gupta, (2012) 8 SCC 197 :(2012) 4 SCC (Civ) 397 viz. Parking area etc. Be that as it may, the petitioners have tried to justify non-payment This, in our opinion, is hardly an excuse for

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commercial commercial plots abovementioned where-is' basis, they cannot be heard to contend that facilities available at the time of auction and after "14. We notice that the respondents had accepted parking, having accepted PUDA had The lights, roads, plots allottees not provided the the were with conditions would commercial allotted on open eyes, water, have sewerage, basic amenities. plots: on Evidently, ascertained subject 'as-is-where-is to 'as-isthe the the



by PUDA when the plots were allotted. lights, roads, water, sewerage, etc. from contending that the basic amenities like parking, accepted the allotment and after having accepted the plots on 'as-is-where-is' basis, allottees were not interested in taking the commercial on 'as-is-where-is' basis, they are estopped they should not have were not provided

Shantikunj contention raised in Municipal Corporation Chandigarh & others dependent upon provision of infrastructural facilities/amenities. able to point out any clause in the letter of allotment or any provision of law Hon'ble Apex Court, as under making Investment Pvt. Ltd., 2006(2) RCR (Civil) 26, was answered by Learned senior counsel representing the petitioners has not been payment of installments, interest and penalty Vs. M/s similar

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appearing in the definition of the word "premium" in the proper linkage is necessary. But to say that this is a condition precedent, that is not the correct approach It is true that in order to fully enjoy the allotment Rules.....It has never been the condition precedent penalty, obligation provided, recourse to say that since all the facilities were not themselves not to pay the lease amount and take construed to mean that the allottees could take upon read with "On a plain reading of the if any, Rule therefore, to pay the as provided under the Act and the 11 (2) and Rule they installment, true are definition the not 12, word, interest it "amenities" cannot and

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whole of the 75 per cent of the amount he can do so. annual equated installments along with interest at the amount to be paid in a staggered manner i.e. in three precedent. This has never been a condition of In that case, rate of 10 per cent. If someone wants to deposit the handed over and rest of the 75 per cent of the leased upon payment of the 25 per cent, possession will be auction or of the lease. As per the terms of allotment promised that the basic amenities will be provided in served on a platter. Allotment of the plot was made that the whole area is developed first and allotment is area it takes years. It is not possible in every case on an as property without those amenities being provided. The common experience that for full development of an payment word "enjoy" here in the present context means that appearing in the present context does not mean that Administration should provide all the basic amenities seriously contended before us that the word, enjoy immovable property under the Rules. It was very enjoying that allotment. Rule 3(2) immovable promised course of time. allottees appearing allottees/lessees cannot enjoy the immovable of premium i.e. which -is-where-is basis and the Administration for of the Rules, property have a right to use the he will not under the has been leased out to them It cannot be made a condition transfer Section 2(b) of the Act for necessarily The expression means be required to pay the of price.... the 2 means right to enjoy price "premium" immovable that the paid or 07

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interest. But if a party wants to make payment within therefore he is not liable to pay the interest" get out of it by saying that the basic amenities have allottee as per the condition of lease and he cannot of installment. This is the obligation on the part of the obligation to pay 10 per cent interest on the amount a period of been provided for three years enjoying then the he allotted land, is under

or in the auction-notice." as there is no obligation contained in the lease deed themselves. It cannot be enforced by any mandamus and with their eyes wide open, under the auction. If the parties have given their bids neither any condition in the lease nor any obligation installments before providing the amenities. There is which says that they will not charge interest on the which is the obligation of the lessor in the lease deed We asked the learned counsel for the parties to tell us they have to blame

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Singh, & others, 2009 (2) RCR (Civil) 401 (supra) has been reasserted in U.T. Chandigarh Administration Vs. Amarjeet Corporation Chandigarh & others Vs. M/s Shantikunj Investment Pvt. Ltd. The proposition of law adumbrated in the case of Municipal

of the controversy by holding thus this Court (of which one of us, Satish Kumar Mittal, J.) was a member disposed No. 15768 of 2001, Satwant Singh versus Chandigarh Administration, U.T., Chandigarh and Others (and a bunch of other petitions). A Division Bench of This Court was also confronted with a similar question in CWP

"Therefore, on the touchstone of the law laid down by



with the Supreme Court, in the case law cited above, read payment of interest on such instalments as per the allotment penal rent for non-payment of instalments and ground instalments, payment amenities. Chandigarh1973 Rules, on the date of auction, in each case" wherever charged, would be as was stipulated in the accordance interest and leased out to them by auction, would be bound by the the is Rules, of allotment. 1973, and of installments and not terms The petitioners, who are allottees of sites and with conditions (Lease as as also payment of ground rent, and penal interest, dependent it per is as and the TheHoldheld the per relevant rules, conditions of interest and penal interest, nodnletters the that the of Sites and Buildings), would have ground rent, allotment letter, provision provisions timely payment of of allotment, read with the the of to as of also and the

petitioners of their liability to pay-the due installments because without insisting upon payment of due installments is not even worth noticing sanctioning of building plan cannot mean to have absolved the The contention that the respondents sanctioned the building plan

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the factum of restoration of plot No.15, Sector 19-II, Faridabad to the allottee secondly because the allottee of that booth is not shown to have exhibited a thereof by the revisional authority is unnecessary and inconsequential firstly because each Even stress laid by the learned senior counsel for the petitioners case has to abide its peculiar facts and circumstances

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then delaying filing of revision petition on the pretext that appellate order came manufactured plea that the order of resumption was to their knowledge late etc. hereinbefore, conduct similar say to the one delaying filing of appeal for more than seven years exhibited by the petitioners not served upon them and as has on a

them. even reply per their own saying, the petitioners constructed the booth and starting earning the petitioners did not make any effort to pay the amount outstanding against 28.07.2008 issue, out of total ten installments nine were unpaid. it fully well that such a certificate could not be issued as they had not paid even dated 23.06.2008 (Annexure P-5) asking for a "No Dues Certificate" invented a methodology to circumvent the provisions of the Act, wrote letter respect employing every tactic, fair or foul, to delay payment of due installments in profits from the business run from that booth in the year 1999 but have been outstanding installments unsuccessfully, for filing the appeal after a long delay. It also transpires that fact that it was clearly stated in the letter of re-allotment that on the day of its single penny since re-allotment of the booth site in their favour in spite of the during dated 28.07.2008 thereof This (Annexure P-6) and disposal of the revision petition on 31.07.2012 From the circumstances appearing on record it comes out that, as also indicates the and when period that (Annexure <del>=</del> that became intervened the P-6) they carved out an excuse, though petitioners difficult to delay receipt did And then, on the basis of of not memorandum it any further intend 'knowing pay they

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The observing: Court and was allowed two months' time to pay the entire outstanding amount. to clear the outstanding dues. remedy of revision. was outstanding against him. approached this Court and deposited Rs.10 lacs. Still an amount of Rs.15 lacs which led to of a commercial site had defaulted in payment of second and third installments Leave to Appeal (Civil) No.12968 of 2006. In that case the auction purchaser in Municiapl Corporation, Chandigarh Versus Vipin Kumar Jain, Special reminds of judgment dated 20.09.2007 of the Hon'ble Supreme Court of India but have paid nothing towards the outstanding nine installments. hereinbefore noticed, are earning profits from the booth site since the year 1999 provide a shelter to the family but it is not so as regards a commercial property, for, it is forfeited. We may also remind ourselves that while dealing with resumption of revenue and very purpose of holding an auction to fetch maximum price, payment of price property sold by way of open auction. residential site consideration may be that it is needed by the allottee matter revenues used resumption of the site. The reached by the allottee case under adjudication, undeniably, relates for the Government and it goes without saying that nonby the purchaser visits the public exchequer with loss The revisional authority allowed one month's time to him the Hon'ble Instead of doing so he again approached this He then withdrew to earn profits. Apex After dismissal of his appeal the allottee Auction Court The present petitioners, as S. basically an exercise writ petition to avail disposed to The situation

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loss of in the contractual realm. an exercise in raising revenues for the Government. concerned with commercial sites. "Auction is a price-discovery mechanism which falls prices rise by the day contract in When the price is not paid within time it results in revenue to the State. matters concerning In the present case we are Time is the essence of the Auction is basically auction. Property

shown to the respondent by the competent authorities payment, issued to the respondent calling upon him to make terms payments were not made. Property prices increase by stipulated period. State suffers losses which cannot be compensated in obligations are not fulfilled then in that event the the day and if within stipulated period contractual in a particular year and if time overruns are to be discovering the price prevalent in the particular area have therefore of the view that the High Court should not in time then the entire exercise would fail. We are allowed on flimsy excuses for not paying the money Ultimately auction is an exercise for detecting or 10% of the amount and to invite fresh offers on new Corporation was fully justified and entitled to forfeit holding In the present case there was no illegality in interfered and conditions." of respondent failed interest of auction. Despite repeated indulgence being in or penalty after the Despite process to pay repeated in four years. within which the

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The Hon'ble Supreme Court also referred to an earlier decision

Bench had observed vide para 57 as follows: in 2004 (2) SCC 130 in which Sinha J, the case of Teri Oat Estates (P) Ltd. vs. U.T.Chandigarh & Ors. reported speaking on behalf of the Division

intend 8-A can be taken recourse to. dishonest view or any dishonest motive, then Section motive and if the allottee does not make any payment intention of the allottee is dishonest or with an ill giving some illustrations where it may not be used resorted to. conferring the right of the respondent should never be "We may, terms cannot to lay down a law that the statutory right of however, We have merely laid down the principle the be any allotment or hasten doubt whatsoever that if the to add that we the statute with a do not

the respondents of the revenue for more than sixteen long years interest etc. and for circumventing the provisions of the Act besides depriving petitioners for their tactful avoidance of payment of due installments with the order of resumption would amount to allowing a premium to the order of resumption as affirmed in appeal and revision because interference different from what is stated in the cited judgments and to interfere with the We have not been able to persuade ourselves to take a view

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In the result, the civil writ petition fails and is dismissed

on Court

which are quantified at Rs.10,000/-

/5 .11.2013 adhikari Demic (SATISH KUMAR MITTAL) JUDGE

SI - (MAHAYIR S. CHAUHAN) JUDGE

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W-10

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
JUDICIAL DEPARTMENT

#### MEMO OF COST

### C.W.P. No. 2557 of 2013

Memo of costs to be incurred by the petitioner (as directed vide order dated 19.11.2013) as assessed by this Hon'ble Court.

| Total    | (Rs. Ten thousand Only) | Miscellaneous | Counsel's Fee | Process Fee | Law Stamps |  | of 2013. | dated 19.11.2013 passed in CWP No. 2557 | only) as assessed by this Court vide order | quantified at Rs. 10,000/-(Ten thousand 10 | and payable to the Respondents which is | Memo of costs to be paid by the petitioner |        |             | To            |
|----------|-------------------------|---------------|---------------|-------------|------------|--|----------|---|--|--|---|--|--------|-------------|---------------|
| 10,000/- |                         |               |               |             |            |  |          | e e                                     |  | 10,000/-                                   |   |  | Rs. P. | Petitioners | To be paid by |
|          |                         |               |               |             |            |  | 20.20    |   |  | States:                                    |   |  | Rs. P. | Respondents | To be paid by |

Row Deputy Registrar (Writs)
For Registrar Judicial

4-12-13



30 - 95 - 95

DP No.-

## IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

To,

1. State of Haryana undergramment of Town and Country Planning, Mini Secretariat, Haryana, Sector 17, State of Haryana through Financial Commissioner-Principal Secretary,

chandigarh.

Haryana Urban Development Authority through its Chief Administrator, C-3, Sector 6, Panchkula, Haryana.

Estate Officer, Haryana Urban Development Authority, Sector 12, Faridabad Haryana.

Res S

Subject:- Civil Writ Petition No. 2557 of 2013 Shashi Taneja and another

Petitioner(s)

State of Haryana and others

Versus

Respondent(s)

Sir,

forward herewith a copy of Order dated 19.11.2013 passed by this Hon'ble High Court in the above noted Civil Writ Petitions, for immediate strict compliance along with In continuation of this Court's order dated I am directed to

\* memo of Cost

BY ORDER OF HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH Given under my hand and the seal of this Court on this  $2^{nd}$  day of December 2013.

# IN THE HIGH COURT FOR THE STATES OF PUNJAB AND

## HARYANA AT CHANDIGARH

Civil Writ Petition No.\_\_\_\_

25 /2013

#### MEMO OF PARTIES

- N Shashi Taneja wife of R.K Taneja resident of House Number 12, Sector 19, Faridabad (Haryana).
- R.K Taneja son of Sh. Bhawani Dass, resident of House Number 12, Sector 19, Faridabad (Haryana). ....Petitioners

Versus

- Secretary, Department of Town and Country Planning, Mini Secretariat, Haryana, Sector 17, Chandigarh. of Haryana through Financial Commissioner-Principal
- N Administrator, C-3, Sector 6, Panchkula, Haryana Urban Development Authority through its Chief
- ယ Estate Officer, Haryana Urban Development Authority, Sector-12, Faridabad, Haryana. Respondents

PLACE: CHANDIGARH

DATED: ಬ.0/.2013

[SHEKHAR VERMA]

2190/2007

[BHAVNA JOSHI]

[VIKRAM-VIR SHARDA] [AMARJIT S: GILL]

P-2903/2007

P-1610/2009

ADVOCATES, COUNSEL FOR THE PETITIONERS



10); the nature of Certiorari for quashing of communication/order India for the issuance of an appropriate writ, order or direction in dated 31.07.2012 issued/conveyed on 21.11.2012 (Annexure P-31.03.2009 received on 15.11.2010 (Annexure P-8) and Order communication dated 28.07.2008 (Annexure P-6), Order dated dated 21.06.2001 bearing endorsement number disclosed vide Civil Writ Petition under Articles 226/227 of the Constitution of

endorsement staying the communication/order dated 21.06.2001 bearing Further; writ, order or direction in the nature of Prohibition for 28.07.2008 (Annexure P-6), Order dated 31.03.2009 received on number disclosed vide communication dated

issued/conveyed on 21.11.2012 (Annexure respondents to not take any coercive steps for taking over the pendency 15.11.2010 Faridabad; possession 으 of the Booth Site Number 9, Sector-19, Part-II, (Annexure the present writ petition and directing P-8) and Order dated P-10) during 31.07.2012 the

Further; for issuance of writ, order or direction in the nature restore the Booth Site Number 9, Sector-19, Part-II, Faridabad Mandamus against the respondents directing them to accept the in favour of the petitioners balance amount of sale consideration and other charges 으

deem appropriate in the facts and circumstances of the present Any other writ, order or directions which this Hon'ble Court may

## RESPECTFULLY SHOWETH:

citizens of India. Therefore, they are entitled to invoke the extraordinary Constitution of India jurisdiction of this Honorable Court under Article 226 of the The Petitioners are residents of Faridabad, Haryana and

3

been constituted as a statutory authority under the 1977 Act, in place common seal. development of urban areas in the State of Haryana. of the Department of Urban Estate for ensuring speedy and economic definition of "State" in terms of Article 12 of the Constitution of India. As and by name sue and be sued. Constitution of India. That the Respondent Haryana = S. as well as a local authority with perpetual succession and a amenable It has the power to acquire, hold and dispose property Q Writ jurisdiction under Article For all purposes it qualifies to the Urban Development Authority has It is a body 226 of the

## IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

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C.W.P. No. 2557 of 2013 Date of Decision: 19.11.2013

Shashi Taneja and another

....Petitioners

State of Haryana and others

Versus

....Respondents

CORAM: HON'BLE MR. JUSTICE HON'BLE MR. JUSTICE SATISH KUMAR MITTAL MAHAVIR S. CHAUHAN

Present:

Mr. Sanjeev Sharma, Senior Advocate with Ms. Bhavna Joshi, Advocate,

for the petitioners.

for respondent No.1 Mr. Anjum Ahmed, Additional Advocate General, Haryana,

Mr. Manish Bansal, Advocate, for respondent Nos.2 and 3.

PUNJAB AND HARYANA HIGH COURT

### MAHAVIR S. CHAUHAN, J.

balance amount of sale consideration and other dues pertaining to the booth site booth site'); of Booth Site restraining the respondents from taking coercive steps to take over possession  $\infty$ order dated 21.06.2001 (Annexure P-6), order dated 31.03.2009 (Annexure P-Constitution of India, praying for issuance Taneja and R.K.Taneja, a wife-husband duo, under Articles 226 and 227 of the and order and a Instant Civil Writ Petition has been brought by petitioners, Shashi No.9, dated 31.07.2012 writ of Mandamus directing the Sector 19-II, Faridabad (hereinafter referred (Annexure P-10); of a writ of D) respondents writ of Prohibition Certiorari quashing to as 'the to accept

from the petitioners

site the booth site in terms of Section 17 on due date(s) would invite action for imposition of penalty and resumption of allotment or, with interest @ 15% per annum, in 10 half yearly installments be deposited without interest, within 60 days from the date of issue of letter of to Clause (5) of letter of allotment the balance amount of Rs.9,07,500/- could letter of allotment to complete payment of 25% of the bid money. the fall of the hammer and Rs.1,81,500/- within 30 days of the date of issue of allottees deposited an amount of Rs.1,21,000/- (being 10% of the bid money) at Authority Act, 1977 (hereinafter referred to as 'the Act'). Clause (8) of the letter of allotment stipulated that non-payment of installments Rs.12,10,000/- in an open auction, were allotted, on free hold basis, the booth (hereinafter vide letter of allotment dated 10.04.1996 (Annexure referred emerges to as the original allottees), being the highest bidders at from the record of the Haryana Urban Development that Amarnath P-1). and The original According

PUNJAB AND HARYANA HIGH COURT

date rules/regulations/instructions/guidelines issued thereunder the allotment that the petitioners would be bound by the terms and conditions of Petitioners took possession of the booth site on 22.04.1997 but did not pay the transferred and a letter of re-allotment dated 09.04.1997 (Annexure P-2) was issued in favour of the petitioners. of letter re-allotment On of the allotment application nine installments as of It was specifically stated in the letter of realso original were provisions due, allottees or say of the and remained unpaid. the booth that as Act site on was and

records of the respondents, i.e. House No.12, Sector-19, Faridabad unresponded to, the booth site was resumed vide order dated 21.06.2001, which was sent to the petitioners under registered cover at the address available in the outstanding issued under Section 17 (1), (2), (3) and (4) of the Act failed response from the petitioners. In view of failure of the petitioners installments dated 11.12.1997, 16.01.1998, 27.04.1998, 13.03.2001 and 11.05.2011 towards installments payment of and 75% above-stated balance amount of sale notices having consideration. ţ to pay the remained

31.03.2009 (Annexure P-8) in the following manner: dated 28.07.2008 (Annexure P-6) which they challenged by way of an have acquired knowledge of order of resumption on receipt of communication Certificate" vide their communication dated 23.06.2008 (Annexure P-5) and to them, appellate the petitioners claim Claiming that the order dated 21.06.2001. authority, however, to have applied for issuance dismissed the appeal was not received vide of order dated oN, appeal Dues Ş

NJAB AND HARYANA HIGH COURT

resumption orders cannot extend any benefit to him appellant that the plan was passed subsequent was sent through present appellant has time of transfer also he was aware of the amount due agree with the "After hearing payments. notices DWI by the appellant in the record and the same were wrongs DDA regarding the default in making both the parties, The Registered being officepurchased cannot issued Post. record make this plot and at the onThe plea shows the thing that address

entire plea of the appellant cannot be accepted as such. to the change of law and the rules. deliberate attempt on the part of the appellant not Otherwise also him and hence for this willful default he cannot claim making the payment for the reasons best known to is dismissed. any relief under the present appeal and accordingly it facts passes some of the if any officer/official of wrong case order, reflect that it does not amouni Therefore, this there the was

observations: dismissed vide Petitioners order dated 31.07.2012 then filed a revision (Annexure P-10) with the following petition which too came ð

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given address of the petitioners and the same were record of the case. crystal clear that all the notices u,s 17 of HUDA Act notices not received back in the Estate Office undelivered petitioner. Therefore,before passing the resumption order. advances by resumption "I have heard both the parties and gone through the beyond doubt that resumption order was passed by appeal as well as Revision Petition were filed by the down in Section 17 the Estate issued and sent through registered post of ty u/s it has to be presumed that notices u/s 17 the Officer order ThereLd. Counsel of the petitioner that no Estate were From the perusal of record, it is is no were after following of HUDA Act. issued Officer duly force by before the in the received Further both the procedure laid It is established Estate passing arguments by

parties on 31.07.2012. Be communicated to them. given circumstances I find no justification to interfere setting Estate rightly Petition. Accordingly, in to the well reasoned order passed by the Estate willingness to deposit the commercial property have shot up and showed their petitioners with inordinate delay. restored this way as the prices rise by the day. In the with interest. proper were taken up for consideration on merits. Further it Officermentioned in the deposit the 7.07.2012 and was announced in the presence of the an admitted fact that the allottees badly failed Officer at a stage aside the resumption order passed by opportunity resumed by notices. and The order was due Commercial/public property cannot be confirmed installments order The allotment letter. to the Estate Officer after giving dismissal of allottees the petitioners reserved by when the prices outstanding at appropriate time as the came forward in Even then, Administrator. the The this dues by serving site case Revision of the the for

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The revisional authority also noted that:-

stated several time. Effective hearing of the case was taken before served by the on 13.09.2011. the petitioner/petitioner counsel the case adjourned dates from 06.04.2011 onwards. that notices passing the petition order. "The Revision Petition was heard on various Estate The u/s Ld. Officer17 Counsel, of the petitioner of\_HUDA upon the petitioners On the The record of Act request of

register order passed HUDA Act were issued vide Memo No.2586 revealed that the notices u/s 17(1), (2), (3) and (4) of same post The order of resumption was sent through registered 13.02.2001 and 1603 dated 11.05.2011 respectively. 11.12.1997, allotment in the year 2008 does not appear to be believable the gained the knowledge of order dated 21.06.2001 Faridabad. petitioner that they gained knowledge of the order presence dated 31.03.2009 on 15.11.2010 is also not tenable he is ready to make the payment as per terms and conditions of the allotment letter if the plot is restored on 29.11.2011 to Mrs. address which were the registered the of the parties The case was adjourned for further hearing Ld.letter Hence the assertion of the petitioner than 214 notices Shashi Taneja and R.K.Taneja at the by the Estate Officer on 21.06.2001, called. order counsel for the petitioners stated that i.e. dated post through was mentioned House The perusal of resumption appeal was therefore the plea of the 16.01.1998, alongwith registered No.12, passed the 743 in the post dispatch in the dated dated 19,

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given address which were available on CP-44, 59 and file which shows that the notices were sent on the brought by the dealing hand which were record. Estate The calculation of the due amount were also On 29.11.2011 Sh. Raghubir Singh Assistant, Officer, The Estate HUDA, Officer Faridabad brought the was directed also taken

produce the dispatch register so as to ascertain that the notices as mentioned above were duly sent by the Estate Officer.

of the notices as well as proof of dispatch was taken notices issued and dispatch register. has available for arguments the case was adjourned for on record. hearing on 08.05.2012. arguments on 17.07.2012 and the file pertaining to no.15, Sector booth No.15, Counsel of the petitioner pleaded for restoration of restored on the Thereafter on 13.03.2012 0% ground As the counsel of the petitioner was Sector 19-II, was also called." 19-II, Faridabad, revisional the site. Faridabad that On the adjourned date Ld. ina similar The produced case Sh. was listed for the case The photocopy Ram Krishan record Authority of Booth

resumption as affirmed by the appellate and revisional authorities be quashed, petitioners outstanding amount, if any the plot be restored to them and respondents be directed to receive from them have Having thus lost before the appellate and revisional authorities, approached this Court with a prayer that the order of

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opportunity of personal hearing and, therefore, the booth site has been rightly due installments despite service of various notices upon them and grant of written statement wherein it has been stated that the petitioners did not pay the resumed. It is also added in the written statement that after issuance of a notice dated 19.07.2001 under Responding to Section 18(1) of the the notice of motion, Act, order of eviction dated respondents have filed വ

suffering huge financial loss preferred by the petitioners against that order have that on account of acts and conduct 06.09.2001 has been passed against the of petitioners the petitioners also been dismissed; and appeal the respondents and revision and

examined the record very minutely We have heard learned counsel for the parties and have

petitioners could not pay the installments as development work of the market was not complete insofar as even basic amenities, circumstances beyond their control while the respondent did not raise demand of outstanding installments construction on the booth site 13.08.2001 not provided Learned and during senior and they were the counsel even while period prevented for when sanctioning the the petitioners from making payment such as parking area etc., petitioners the building argued were that plan on the

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npon as required by Section 17 of the Act nor the order dated 21.06.2001 was served Further, according to the learned senior counsel, the petitioners came to know P-6) vide which request of the petitioners for grant of "No Dues Certificate" of the order of resumption only on receipt of letter dated 28.07.2008 (Annexure dated 21.06.2001 but the appellate and revisional authorities was declined by saying that the booth site had already been resumed vide order into account these circumstances the petitioners and, as such, the order of resumption is bad The learned senior counsel further argued that neither and have dismissed petitioners' have claim with in law

closed mind

gravely discriminated against accepting the outstanding dues from the allottee thereof but petitioners' claim resumption of Booth No.15, Sector 19-II, Faridabad has been set aside by been rejected without a valid reason and, as such, the petitioners have been Learned senior counsel also argued that in similar

waiting of more than seven years even though the order of resumption was also sent to argued that the petitioners were obliged to deposit the due installments without the petitioners' above-stated address by registered post the records of the respondents, and then filed the statutory appeal after a inspite repeated notices, which were sent to them on the address available in for a demand being raised On the contrary, on behalf of the respondents the learned in this regard, but have failed to do so counse delay

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decided on its peculiar facts and the petitioners cannot claim parity therewith. Faridabad, learned counsel for the respondents argued that each case has to be With regard to restoration of booth site No.15, Sector 19-II,

No other or further point has been urged on either side

at the bar We have given thoughtful consideration to the submissions

authority, authority, in order dated 31.03.2009 (Annexure P-8), have observed unambiguous manner that the notices and order of resumption were sent to the Ħ It needs order dated to be 31.07.2012 pointed out at the (Annexure very P-10), outset that the and the appellate revisional in quite

say in the petition that observations of the appellate and revisional authorities respondents. It is not the case of the petitioners that their address as given in The situation makes a reference to Section 27 of the General Clauses Act, 1897 communications appended by them with the petition and in the petition as well. Sector 19, Faridabad. resumption were sent to the petitioners at their address, i.e. House No.12 office of the respondents in this regard are wrong or incorrect. While going through the record of the the notices and order of resumption, is not correct or that they ever intimated necessary. It reads as under: petitioners under registered covers to the address available in the records of the respondents change of their address. Rather, this is the address of the petitioners in various we have also found that the The petitioners have also avoided to notices and

## "27. Meaning of service by post-

**PUNJAB AND HARYANA HIGH** 

shall "give" then, unless a different intention appears, the service the commencement of this Act authorizes of Where any (Central Act) or Regulation addressing expression at which the letter would be delivered in the ordinary contrary is proved, post, a letter containing the document, and unless the course of post. document or "send" or any other deemed "serve" pre-paying to be to have been effected at the time or to served either and be posting effected. ţ of the expression in used, post, by registered by expressions where requires properly

Therefore, the notices and order of resumption are deemed to have

any effort to deposit the due installments in spite of a very specific mention booth site and were anxious to obtain a "No Dues Certificate" but did not make booth site No.15 in their neighbourhood, could raise construction over the the letter of re-allotment that nine installments remained unpaid and terms and date, imposition of penalty and resumption of the booth site were bound to installments were payable half yearly and failure to pay the installments on due rules/regulations framed thereunder were to bind them, according to which the conditions Falsity of this statement of the petitioners is further confirmed by the fact that notices and order of resumption were not served upon them is found to be false respondents what was due against the booth site seen duly served upon the petitioners and averment of the petitiones that these got the building plan sanctioned, The petitioners also did not try to find out from the office of the of the letter of allotment, as also provisions of the could know what was happening Act and

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these presence of the petitioners themselves, but in spite of that it was projected by appeal (Annexure P-7) the revision petition (Annexure notices and order of resumption were the truth or say to twist the facts to their convenience. passed Civil Writ Petition. was sent and which is the address given by the petitioners in memorandum of were sent to the address to which letter dated 28.07.2008 (Annexure P-6) in the presence It seems that the petitioners have developed a habit of not speaking The appellate order dated 31.03.2009 (Annexure P-8) was of counsel for the never received by them even though petitioners, which P-9) and They claim that the amounts the instant to

order dated 31.03.2009 only on 15.11.2010 the petitioners before the revisional authority that they gained knowledge of the

petitioners, in paragraph 15 of the petition, have attempted to project that even this order was conveyed to them on 21.11.2012. revisional authority was announced in the presence our strong disapproval of the manner in which the petitioners projecting the things Similarly, order dated 31.07.2012 We cannot help expressing (Annexure of the parties P-10) have been but the of the

of amenities viz. Parking area etc. not paying the due installments. Supreme Court of India rendered in Punjab Urban Planning & Development wherein it has been held as under installments on the Be that as it may, the petitioners have tried to justify non-payment Raghu Nath Gupta, (2012) 8 SCC 197:(2012) 4 SCC (Civ) 397 plea that the respondents This, in our opinion, is hardly an excuse for We may refer to a judgment of the Hon'ble had not provided basic

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commercial having commercial abovementioned where-is' basis, they cannot be heard to contend that facilities "14. We notice that the respondents had accepted parking, lights, roads, PUDA had not provided accepted the available at the time plots plots were allotted allottees with open conditions would commercial plots water, sewerage, the have eyes, subject basic amenities of auction and after on 'as-is-where-is Evidently, ascertained 0nto 'as-isthe the the

by PUDA when the plots were allotted. lights, roads, water, sewerage, from contending that the basic amenities like parking, accepted the allotment and after having accepted the plots on 'as-is-where-is' basis, they should not allotment on allottees were not interested in taking the commercial 'as-is-where-is' basis, they are estopped etc. were not provided

the Hon'ble Apex Court, as under Shantikunj contention raised in Municipal Corporation Chandigarh & others Vs. M/s dependent upon provision of infrastructural facilities/amenities. able to point out any clause making Investment Pvt. Ltd., 2006(2) RCR (Civil) 26, was answered by Learned senior counsel representing the petitioners has not been payment in the letter of allotment or any provision of law of installments, interest and penalty  $\triangleright$ etc., similar SI

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appearing in the definition of the word "premium" in the condition precedent, that is not the correct approach proper linkage is necessary. But to say that this is a penalty, if any, obligation It is true that in order to fully enjoy the Rules.....It has never been the condition precedent provided, recourse to say that since all the facilities were not themselves construed to mean that the allottees could take upon read with Rule 11 (2) and Rule "On a plain reading of the to therefore, not to pay the lease amount pay as provided under the Act and the the they installment, interest true are definition "amenities" the not 12, word, it cannot under allotment, and take and

promised that the basic amenities will be provided in served on a platter. Allotment of the plot was made property without those amenities being provided. seriously contended before us that the word, enjoy precedent. promised whole of the 75 per cent of the amount he can do so annual equated installments along with interest at the amount to be paid in a staggered manner i.e. in three handed over and rest of the 75 per cent of the leased upon payment of the 25 per cent, possession will be auction or of the lease. As per the terms of allotment due course on an as that the whole area is developed first and allotment is area it takes years. It is not possible in every case common experience that for full development of an payment the allottees have a right to use the immovable word "enjoy" here in the present context means that appearing in the present context does not mean that enjoying that allotment. The expression "premium" Administration should provide all the basic amenities immovable immovable In that case, appearing allottees/lessees cannot enjoy the immovable 3(2) 10 per cent. If someone wants to deposit the of premium which -is-where-is basis and the Administration for of the Rules, means This has never been a condition of the property of time. property he will not be required under the has transfer It cannot be under the Rules. It was very been leased out to necessarily Section i.e. the of 2(b) of price.... the a right to enjoy made means price the to pay a condition It is them on that the Act for paid or

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therefore he is not liable to pay the interest" get out of it by saying that the basic amenities have allottee as per the condition of lease and he cannot of installment. obligation to pay 10 per cent interest on the amount interest. But if a party wants to make payment within period been provided for of three This is the obligation on the part of the years enjoying the allotted land, then he is under the

or in the auction-notice." as there is no obligation contained in the lease deed under the auction. If the parties have given their bids installments before providing the amenities. which says that they will not charge interest on the themselves. and with their eyes wide neither any condition in the lease nor any obligation which is the obligation of the lessor in the lease deed We asked the learned counsel for the parties to tell us It cannot be enforced by any mandamus open, they have to blame There is

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(supra) has been reasserted in U.T. Chandigarh Administration Vs. Amarjeet Singh, & others, 2009 (2) RCR (Civil) 401 Corporation Chandigarh & others Vs. M/s Shantikunj Investment Pvt. The proposition of law adumbrated in the case of Municipal Ltd.

of the controversy by holding thus this Court (of which one of us, Satish Kumar Mittal, J.) was a member disposed Chandigarh and Others (and a bunch of other petitions). A Division Bench of No. 15768 of 2001, This Court was also confronted with a similar question in Satwant Singh versus Chandigarh Administration, U.T., CWP

"Therefore, on the touchstone of the law laid down by

the Supreme Court, in the case law cited above, read wherever charged, would be as was stipulated in the letter interest and penal interest, payment of installments penal rent for non-payment of instalments and ground payment of instalments, Chandigarh allotment 1973 Rules, on the date of auction, in each case" accordance leased out to them by auction, would be bound by the amenities. 1973 Rules, the is of 1973, not allotment. terms The petitioners, who are allottees of sites and conditions with the relevant rules, interest on such instalments as (Lease as also payment of ground rent, as it dependent per is as and TheHoldheld the per conditions interest and ground rent, nodnletters the that of Sites and Buildings), the would have allotment letter, provision timely payment of provisions and of of allotment, penal interest read with the the to of letter as per the be also and and in

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petitioners of their liability to pay-the due installments because without insisting upon payment of due installments is not even worth noticing sanctioning The contention that the respondents sanctioned the building plan of building plan cannot mean to have absolved the

the secondly because the allottee of that booth is not shown to have exhibited a thereof by the revisional authority is unnecessary and inconsequential firstly because factum of restoration of plot No.15, Sector 19-II, Faridabad to the allottee each Even stress laid by the learned senior counsel for the petitioners case has to abide its peculiar facts and circumstances and

then delaying filing of revision petition on the pretext that appellate order came manufactured plea that the order of resumption was to their knowledge late etc hereinbefore, say conduct similar 
 Image: Control of the delaying filing of appeal for more than seven years the one exhibited by the petitioners not served upon them and as has on a

them. reply the petitioners did not make any effort to pay the amount outstanding against 28.07.2008 (Annexure P-6) and disposal of the revision petition on 31.07.2012 even during issue, out of total ten installments nine were unpaid. a single penny since re-allotment of the booth site in their favour in spite of the it fully well that such a certificate could not be issued as they had not paid even per their own saying, the petitioners constructed the booth and starting earning outstanding unsuccessfully, for filing the appeal after a long delay. It also transpires that dated 23.06.2008 (Annexure P-5) asking for a "No Dues Certificate" knowing employing every tactic, fair or foul, to delay payment of due installments profits from the business run from that booth in the year 1999 but have been fact that it was clearly stated in the letter of re-allotment that on the day of its invented respect dated This also indicates thereof a methodology to circumvent the provisions of the Act, wrote letter installments 28.07.2008 From the circumstances appearing on record it comes out that, the and period when (Annexure that # that became intervened the P-6) they carved out an excuse, though petitioners difficult receipt to did delay of And then, on the basis of not memorandum it any intend further they to pay

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observing: Court and was allowed two months' remedy of revision. to clear the outstanding dues. was outstanding against him. approached this Court and deposited Rs.10 lacs. Still an amount of Rs.15 lacs of a commercial site had defaulted in payment of second and third installments which led to Leave to Appeal (Civil) No.12968 of 2006. in Municiapl Corporation, Chandigarh Versus Vipin Kumar Jain, Special reminds of judgment dated 20.09.2007 of the Hon'ble Supreme Court of India but have paid nothing towards the outstanding nine installments. hereinbefore noticed, are earning profits from the booth site since the year 1999 provide a shelter to the family but it is not so as regards a commercial property, revenue and very purpose of holding an auction to fetch maximum price, is for, it is payment of price by the purchaser visits the public exchequer with loss property sold by residential site consideration may be that it is needed by the allottee matter revenues used by the allottee We may also remind ourselves that while dealing with resumption of reached resumption of the site. case for the Government and it goes without saying that nonway of open auction. The revisional authority allowed one month's time to him under adjudication, Hon'ble Instead of doing so he again He then withdrew time to pay the entire outstanding amount earn profits. Apex Court After dismissal of his appeal the allottee Auction is undeniably, In that case the auction purchaser and The present petitioners, as the basically an exercise in was writ petition to avail relates disposed

PUNJAB AND HARYANA HIGH COURT

concerned with commercial sites. Auction is basically in the contractual realm. In the present case we are "Auction is a price-discovery mechanism which falls prices rise by the day. When the price is not paid within time it results in an exercise contract revenue to the State. in matters in raising revenues for the Government. concerning Time is the essence of the auction. Property

payment, issued to the respondent calling upon him to make terms shown to the respondent by the competent authorities stipulated period. Despite repeated indulgence being State suffers losses which cannot be compensated in the day and if within stipulated period contractual payments were not made. Property prices increase by obligations have therefore of the view that the High Court should not allowed on flimsy excuses for not paying the money in a particular year and if time overruns are to be discovering the price prevalent in the particular area Ultimately Corporation was fully justified and entitled to forfeit time then the entire exercise would fail. We are holding of the amount and to invite fresh offers on new In the present case there was no illegality in and conditions." interfered of respondent interest auction are of not fulfilled then auction. in is an exercise for or penalty the failed Despite process to after in that event the pay repeated in which detecting or four within notices years. the

PUNJAB AND HARYANA HIG

The Hon'ble Supreme Court also referred to an earlier decision in

Bench had observed vide para 57 as follows: in 2004 (2) SCC the case of Teri Oat Estates (P) Ltd. vs. U.T.Chandigarh & Ors. 130 in which Sinha J, speaking on behalf of the Division reported

8-A can be taken recourse to dishonest view or motive and if the allottee does not make any payment intention of the allottee is dishonest giving some illustrations where it may not be used. resorted to. conferring the right of the respondent should never be intend "We may, however, terms cannot to of lay We have merely laid down the principle the be down a law that the any dishonest motive, then Section any allotment or hasten doubt whatsoever that if the to addthe statute that we do not statutory right or with an ill with

the respondents of the revenue for more than sixteen long years interest etc. and for circumventing the provisions of the Act besides depriving petitioners with the order of resumption would amount to allowing a premium to the order of resumption as affirmed in appeal and revision because interference different from what is stated in the cited judgments and to interfere with the for their tactful avoidance of payment of due installments We have not been able to persuade ourselves to take a view and

PUNJAB AND HARYANA HIGH COURT

which are quantified at Rs.10,000/-In the result, the civil writ petition fails and is dismissed with costs

15 .11.2013 adhikari (SATISH KUMAR MITTAL) JUDGE



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24927 HC-Item 4-20,000-Govt. Press, U.T., Chd.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH JUDICIAL DEPARTMENT

## MEMO OF COST

## C.W.P. No. 2557 of 2013

Memo of costs to be incurred by the petitioner (as directed vide order dated 19.11.2013) as assessed by this Hon'ble Court.

| to be paid by | To be paid by                          |
|---------------|--|
| Petitioners   | Respondents                            |
| Rs. P.        | Rs. P                                  |
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| 10,000/-      |  |
|               | Petitioners Rs. P.  10,000/-  10.000/- |

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Row Deputy Registrar (Writs)
For Registrar Judicial

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