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

CWP No.1461 of 2015
Date of Order: 26.07.2016

Estate Officer, PUDA

....Petitioner(s)

Versus

Permanent Lok Adalat and another

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Ashish Grover, Advocate for the petitioner.

Mr. Dinesh Mahajan, Advocate for respondent No.2.

RAKESH KUMAR JAIN, J (ORAL)

The petitioner has challenged order dated 22.8.2014 passed by the Permanent Lok Adalat (PUS), Gurdaspur. In brief, respondent No.2 applied for allotment of a plot measuring 143.47 sq. yards in Urban Estate, Gurdaspur on freehold basis by depositing 10% of the tentative price of the plot i.e ₹86,082/- against total tentative price of ₹8,60,820/-. Plot No.686 was allotted to respondent No.2 vide allotment letter dated 26.8.2011. As per the allotment letter, respondent No.2 had to deposit 15% of the price of the plot within 30 days from the date of issuance of allotment letter to complete 25% of the price whereas remaining 75% was to be paid in lumpsum without any interest within 60 days of allotment or in six equated half yearly instalments alongwith interest @10% per annum. However, respondent No.2 failed to make payments as per the terms and conditions of the allotment letter. Vide letter dated 01.12.2011, she was intimated for surrender of the plot and as per clause 9 of the allotment letter, the earnest money deposited by respondente No.2 was forfeited vide order dated 23.2.2012.

It is alleged that due to typographical error, it was mentioned in the order dated 23.2.2012 that 10% of the earnest money has been forfeited though it related to 10% of the total tentative price of the plot to be deposited by respondent No.2.

Respondent No.2 filed an application on 07.4.2014 under Section 22-C of the Legal Services Authority Act, 1987 (for short "the Act") for refund of the earnest money amounting to ₹86082/-. Application has been allowed by respondent No.1 vide order dated 22.8.2014 directing the petitioner to forfeit only 5% of the earnest money and to refund the balance amount. Aggrieved against that order, the present petition has been filed.

Learned counsel for the petitioner has submitted that respondent No.2 was bound by the terms and conditions of the allotment letter. He has specifically referred to clause 9 of the Allotment letter, which read as under:

> *"9. ACCEPTANCE OR REFUSAL OF ALLOTMENT:*
> *In case of refusal to accept the allotment offer, such refusal in writing through a registered post should be received within 30 days from the date of issue of allotment letter and 10% of earnest money deposited shall be forfeited. However, in case such refusal is received after a period of 30 days from the issue of allotment letter entire earnest money deposited shall be forfeited."*

It is submitted that the action has been initiated by the Estate Officer for forfeiture of the earnest money in terms of aforesaid clause No.9, which pertains to the entire amount of earnest money and not to its 10%. It is further submitted that respondent No.1 has committed an error in passing the order of forfeiture of 5% of earnest money while relying upon a Division Bench judgment of this Court rendered in the case of **Punjab Urban Planning and Development Authority Vs. Revisional Authority 2013 (2) PLR 784**, which is not applicable. In addition, learned counsel for the petitioner has relied upon a Division Bench judgment of this Court passed in CWP No.11759 of 2014 titled Makhan Singh Vs. State of Punjab and another, decided on 27.1.2015.

On the contrary, learned counsel for respondent No.2 has submitted that there is no typographical error in the order dated 23.2.2012 in which the Estate Officer has ordered for forfeiture of 10% of earnest money. He has also submitted that respondent No.1 has rightly applied the decision rendered in **Punjab Urban Planning and Development Authority's case (supra)** while passing the impugned order.

I have heard learned counsel for the parties and perused the available record. It is not in dispute that the parties are bound by the terms and conditions of the allotment letter. The plot was allotted to respondent No.2 on 26.8.2011 and at that time, 10% earnest money was deposited by her amounting to ₹86082/-. Respondent No.2 was required to deposit 15% of the price of the plot within 30 days from the date of allotment letter. She failed to make the payment and thus on 01.12.2011, she was intimated to surrender the plot and also vide order dated 23.2.2012, intimation was given about forfeiture of her earnest money.

First of all, it may be pointed out that there is no error in the order of Estate Officer dated 23.2.2012 because the order has been passed in terms of clause No.9, referred to above of the allotment letter, as per which, 10% of earnest money was liable to be forfeited. 10% of the earnest money means the earnest money to the extent of 10% deposited by the allottee of the total tentative price of the plot.

In so far as the award/impugned order is concerned, the Lok Adalat has erred in applying the decision delivered in the case of **Punjab Urban Planning and Development Authority (supra)**. In that case, the allottee had filled three separate application forms for three plots of different sizes, i.e 300 sq. yards, 250 sq. yards and 200 sq. yards in the reserved category. He was successful in draw of lots for all the three applications and was allotted Plot No.19 measuring 300 sq. yards, plot No.125 measuring 250 sq. yards and plot No.68 measuring 200 sq. yards at Shaheed Bhagat Singh Dhandogal Enclave, Amargarh, District Sangrur. On 18.10.2011, the Estate Officer, PUDA informed the allottee that as per the terms and conditions contained in the Information Brochure, he was entitled to retain only one plot and was required to surrender the remaining two. He was asked to exercise his option. Allottee, vide letter dated 19.11.2011, exercised his option informing that he would retain the plot measuring 300 sq. yards and surrendered two other plots. He requested for refund of earnest money deposited towards the surrendered plots. The Estate Officer while refunding the amount of earnest money forfeited 10% of the allotment price on the premise that the allottee did not surrender those plots within 30 days of the allotment as was required as per the terms and conditions contained in the Information Brochure.

In this background, this Court has held that under Section 45 (3) of the Punjab Regional and Town Planning and Development Act, 1995 (for short “the Act”), no forfeiture exceeding 10% of the total sale consideration, interest and other dues payable by an allottee is permissible as in that case, the Estate Officer had imposed penalty of forfeiture to the maximum, namely, 10% despite the fact that the delay in surrendering two plots by respondent No.2 did not cause any severe prejudice like financial loss to PUDA as the earnest money deposited by him for those two plots was retained by PUDA till the refund was made after surrender of those plots. It was also observed that the allottees in waiting list also did not suffer as their liability to pay the due instalments commenced only after the formal allotment. Accordingly, forfeiture of 5% amount was found to be sufficient to compensate PUDA. In **Makhan Singh's case (supra)**, the petitioner had participated in open auction on 29.5.2008 and was held to be the highest bidder for plot measuring 250 sq. yards. He deposited 10% of the sale price at the time of auction and 15% thereafter. Allotment letter was issued to him. He was to deposit balance 75% in six half-yearly equated instalments. He did not deposit first instalment and requested for refund of the amount deposited. The Estate Officer passed the order of resumption of the plot and forfeited 10% of the amount of the total sale consideration in terms of Section 45(3) of the Act. The only reason for withdrawal of the amount was financial constraints in not depositing the amount. This Court held that the property was purchased in open auction fully knowing that the purchaser has to make the payment of instalments. Moreover, it was observed that there is no provision for withdrawal of the amount deposited under the Act and thus it was held that in the absence of any justifiable financial constraints shown by the allottee, objection of forfeiture cannot be said to be arbitrary. Both the cases i.e **Punjab Urban Planning and Development Authority (supra)** and **Makhan Singh**

(supra) are on their own facts whereas in the present case, respondent No.2 had deposited the earnest money on 26.8.2011 to the extent of 10% and was to deposit 15% within 30 days w.e.f 26.8.2011 i.e upto 26.9.2011 but the said amount was not deposited and ultimately respondent No.2 was intimated on 01.12.2011 about the surrender of the plot. The fault in this case squarely lies with respondent No.2 for not depositing the amount of 15% within the prescribed period and herself surrendering the said plot. Thus, in these circumstances, the judgment relied upon by the respondent in the case of **Punjab Urban Planning and Development Authority (supra)** is not at all applicable and there is an error committed by the Permanent Lok Adalat in holding the forfeiture of 5% of earnest money.

Consequently, the present petition is hereby allowed and the impugned award dated 22.8.2014 passed by respondent No.1 is set aside.

July 26, 2016 **(RAKESH KUMAR JAIN)**
manoj **JUDGE**