

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-22493-2015

Date of decision: 27.07.2016

Manoj Gupta

..... Petitioner

Versus

Greater Mohali Area Development Authority and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

PRESENT: Mr. Suman Jain, Advocate for the petitioner.

Mr. Shekhar Verma, Advocate for the respondents.

RAMENDRA JAIN, J.

1. The petitioner has filed the instant petition under Articles 226/227 of the Constitution of India, praying for issuance of a writ in the nature of mandamus directing the respondents to make payment of interest @ 8% compounded annually from the date of deposit till 11.09.2015, when the amount was refunded and further to pay interest @ 12% per annum from 12.09.2015 till payment of the interest amount accumulated till 11.09.2015 i.e., the date of the refund.

2. On 12.12.2011, the respondents floated a scheme named as Purab Premium Apartments, Sector 88, SAS Nagar, Mohali to allot different types of apartments. The petitioner had applied for Type-III apartment and

Intent (for short 'the LOI') dated 22.05.2012 (Annexure P-2) was issued to him. As per terms and conditions of the aforesaid LOI, the petitioner opted Plan-B and deposited a sum of ₹ 13,80,000/- vide receipt dated 22.06.2012 (Annexure P-3) being 20% price of the apartment apart from earnest money to complete 30% of the price and further paid the balance amount of ₹ 78,43,945/- including the principal amount, interest and penal interest towards the cost of apartment. As per terms and conditions of the LOI, the possession of the apartment was to be handed over within three years from the date of allotment. Since, the respondents failed to deliver the possession within the stipulated period of three years, therefore, the petitioner applied for refund of the amount in view of clause 3(ii) of the LOI, according to which respondents were bound to refund the entire amount deposited by the applicant along with interest @ 8% compounded annually. However, the respondents arbitrarily and illegally paid 8% interest w.e.f. 22.05.2015 to 27.08.2015 i.e. from the date of application of the petitioner for refund of the entire deposited amount till the date when the cheque was prepared.

3. Learned counsel for the petitioner submitted that the respondents in utter violation of the terms and conditions of clause 3(ii) of the LOI, did not pay the interest from the date of deposit of the amount rather paid the same from the date of his application for refund in an illegal and arbitrary manner.

4. On the other hand, learned counsel for the respondents contended that since the petitioner had defaulted in payment of second, third and fourth installments which culminated into delay in completion of project within a period of 36 months, therefore, the petitioner by his own act and conduct was not entitled to claim interest as per terms and conditions of

clause 3(ii) of the LOI, because had the petitioner made the payments of aforesaid installments in time, in that eventuality, the project could have been completed within the stipulated time of three years.

5. For brevity, Clause 3(ii) of the LOI (Annexure P-2) is reproduced hereunder:-

3. Ownership and Possession

(i) xxx xxx xxx xxx

(ii) possession of apartment shall be handed over after completion of development works at site in a period of 36 months from the date of issuance of Letter of Intent. In case for any reason, the Authority is unable to deliver the possession of apartments within stipulated period, allottee shall have the right to withdraw from the scheme by moving an application to the Estate Officer, in which case, the Authority shall refund the entire amount deposited by the applicant along with 8% interest compounded annually. Apart from this, there shall be no other liability of the Authority.”

6. From the perusal of the aforesaid clause, it is clearly evident that respondents were liable to make payment of interest @ 8% compounded annually to an allottee in case, the possession of apartment is not delivered within a period of 36 months from the date of issuance of the LOI. Admittedly, the petitioner had paid penal interest on the payment of

second, third and fourth installments. The respondents cannot claim for denying the prayer of the petitioner under clause 3(ii) of LOI that the petitioner was responsible for causing delay in completion of the project. The respondents refunded the amount to the petitioner and paid interest not from the different dates of deposit of the amount of ₹ 78,43,945/- rather have paid the interest from the date of his application for refund in contravention of the aforesaid clause.

7. Consequently, the instant petition is allowed and the respondents are hereby directed to make payment of interest to the petitioner in terms of Clause 3(ii) of the LOI from the respective dates of deposit of installments till the date of final payment i.e. 11.09.2015 @ 8% compounded annually. They are further directed to make payment of interest @ 12% per annum from 12.09.2015 till payment of amount of interest accumulated till 11.09.2015, i.e., the date of the refund.

(RAMENDRA JAIN)
JUDGE

July 27, 2016
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(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No