

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

Date of Decision: May 03, 2017

1) Crl. Misc. No.M-40969 of 2016

Parminder Kaur and others ...Petitioners

Versus

State of Punjab and others ...Respondents

2) Crl. Misc. No.M-10258 of 2015

Parminder Kaur and others ...Petitioners

Versus

State of Punjab and others ...Respondents

3) Crl. Misc. No.M-10256 of 2015

Parminder Kaur and others ...Petitioners

Versus

State of Punjab and others ...Respondents

4) Crl. Misc. No.M-8214 of 2017

Parminder Kaur and another ...Petitioners

Versus

State of Punjab and others ...Respondents

5) Crl. Misc. No.M-7845 of 2017

Navjeet Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

6) Crl. Misc. No.M-15358 of 2017

Satbir Singh Goripuria ...Petitioner

Versus

State of Punjab and others ...Respondents

7) Crl. Misc. No.M-11728 of 2017

Ujagar Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

8) Crl. Misc. No.M-37000 of 2016

Rajiv Kumar @ Rajiv Bansal and others ...Petitioners

Versus

State of Punjab and others ...Respondents

9) Crl. Misc. No.M-8102 of 2017

Gaurav Kaushikg and others ...Petitioners

Versus

State of Punjab and others ...Respondents

10) Crl. Misc. No.M-8106 of 2017

Sarveshwari Devi and others ...Petitioners

Versus

State of Punjab and others ...Respondents

11) Crl. Misc. No.M-8330 of 2017

Anshuman Guleria and others ...Petitioners

Versus

State of Punjab and others ...Respondents

12) Crl. Misc. No.M-11002 of 2017

Amanpreet Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

13) Crl. Misc. No.M-11271 of 2017

Surjit Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

14) Crl. Misc. No.M-14658 of 2017

Prabhmeet Singh and others ...Petitioners

Versus

State of Punjab and others ...Respondents

15) Crl. Misc. No.M-5249 of 2017

Gaurav Puneet ...Petitioner

Versus

State of Punjab and others ...Respondents

16) Crl. Misc. No.M-5257 of 2017

Gaurav Puneet ...Petitioner

Versus

State of Punjab and others ...Respondents

17) Crl. Misc. No.M-6834 of 2017

Davinder Singh ...Petitioner

Versus

State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Puneet Bali, Senior Advocate with
Mr. G.S. Bedi, Advocate,
Mr. Akshay Singh, Advocate for Mr. Hittan Nehra, Advocate,
Mr. Raghav Kapur, Advocate,
Mr. Abhishek Arora, Advocate,
Mr. Vikrant Duggal, Advocate,
for the petitioners.

Mr. Ankur Mittal, Advocate,
for the complainant-Balwinder Kaur and
for the petitioners in CRM-M-Nos.8102, 8106, 8330, 11002,
11271, 14658, 5249, 5257 and 6834 of 2017.

Ms. Jyoti Rani, Advocate

Mr. Athar Ahmed, Advocate,
for the complainant in CRM-M-8214 of 2017.

Mr. R.S. Khosla, Senior Advocate with
Mr. Sarvesh Malik, Advocate for the GMADA.

Mr. Akshay Singh, Advocate,
also for respondents no.4, 5 and 8 in CRM-M-37000 of 2016.

Mr. Amit Gupta, Advocate,
for respondent no.6 in CRM-M-10256/2015

Amol Rattan Singh, J. (Oral)

In these 17 petitions, the first 05 petitions, i.e. CRM-M-40969 of 2016, CRM-M-10258-2015, CRM-M-10256-2015, CRM-M-8214 of 2017 and CRM-M-7845 of 2017, have been filed by the members of the governing body of one M/s Sky Rock City Welfare Society, essentially seeking the quashing of FIRs registered against them, also seeking a direction that they be not harassed at the hands of the police. The remaining 12 petitions have been filed by persons who were seeking allotment of plots/flats in the society of which the petitioners in the first 05 petitions are office bearers.

As per learned counsel for the petitioners in these 12 petitions, the prospective allottees were in fact enrolled as members of the society and the office bearers of the society had told them that they had obtained a licence/permit for change of land user and were to carve out a residential

colony on that land by building houses/flats on it, or would allot them plots in the colony. Contracts were signed with each of the prospective allottees/members of the society, with money stated to have been paid by such members in installments at different points of time, with some of the prospective allottees having paid the entire consideration for the plots/flats to be allotted.

However, despite either the entire or much of the consideration paid by different prospective allottees/members of the society, the plots/flats have still not been allotted, though the advertisement inviting people to join as members of the society as prospective allottees, is stated to have been issued back in 2010, with some of the prospective allottees having paid up the initial amounts in that year itself, with various installments paid in subsequent years.

It is contended by counsel appearing for the prospective allottees, that actually for the number of plots/flats to be allotted, the project needs to be executed on at least 25 acres of land, but the office bearers of the society, i.e. the petitioners in the first 05 petitions listed herein, have actually acquired only about 5 to 7 acres and therefore, with the number of members listed in the society as have been promised, by contract, to be allotted flats/houses, there is a huge overbooking by the office bearers, which they cannot fulfil, despite, as already noticed, money having been taken as part or complete consideration from each prospective allottee/member.

These petitioners essentially seek that directions be issued to the Senior Superintendent of Police, SAS Nagar, Mohali, to act upon the complaints made by the prospective allottees against the office bearers of the society, alleging therein that they have been defrauded.

The contention of the office bearers, i.e. the petitioners in the first 05 petitions herein, on the other hand, is that the project could not be fully executed for various reasons including market depression in real estate and other factors and as such, there is no *mala fide* intent on the part of the office bearers whatsoever.

It has also been contended that earlier some of the prospective allottees approached the Consumer Disputes Redressal Forum, with that litigation having gone up-to the National Consumer Disputes Redressal Commission.

In the above background, it is to be noticed that at two stages even in the last year, a statement had been made on behalf of the petitioners in the first 05 petitions, that either the plots/flats would be allotted to at least some of the prospective allottees, with the money paid refunded to the rest of them.

The petitions having come up for hearing on various dates and the parties thereto having essentially reiterated the aforesaid contentions which have already been noticed, today they were to be heard finally, with even the Chief Administrator of the Greater Mohali Area Development Authority (GMADA), having been called by this Court, so as to try and determine the stand of the said authority, with regard to the entire issue.

A request for an adjournment has been made on behalf of Mr. Hittan Nehra, learned counsel for the petitioners in CRM-M-40969 of 2016, on the ground that he had met with an accident.

The request for adjournment is declined, in view of the fact that this matter is hanging fire for a long time and specifically, the Chief Administrator, GMADA had been summoned today by this Court to know as to the exact stand of GMADA, even though his affidavit is on record, which has been clarified by Mr. Khosla, learned Senior Counsel, through whom the Chief Administrator is appearing.

As per the stand of GMADA, those who are office bearers of the society in question, i.e. the petitioners in some of these petitions, have not come clean at any stage and even GMADA had recommended the registration of an FIR but the police has not acted upon it. It is rather strange that when a Government authority is also making a complaint for registration of an FIR, and the police is not acting upon it, no further action is being taken even by that authority itself to follow up its complaint, other than the fact that the police itself is allegedly not registering an FIR even on the complaint of such authority.

Mr. G.S. Bedi, learned counsel for the petitioners in CRM-M-Nos.10258 and 10256 of 2015, submits that as a matter of fact, as regards the first petition, filed by Parminder Kaur and others, the complainant in the FIR registered in this particular petition, i.e. Balwinder Kaur, has already been refunded the principal amount with 8% interest and as such, as regards the FIR in this petition, the basis of the FIR in any case no longer exists.

However, Mr. Ankur Mittal, learned counsel for the complainant, Balwinder Kaur, refutes the fact that the entire amount has been refunded. He further submits that as a matter of fact, the entire matter pertaining to the society of the petitioner and the alleged fraud committed by them was referred by the Director General of Police, Punjab, to the Crime Branch, enumerating specifically 10 points therein.

The Chief Administrator, GMADA and Mr. Khosla, Senior counsel, have both specifically stated before this Court that as a matter of fact the petitioners do not even have 25 acres of land, and as per GMADA record, the society has only 7.5 acres of land that is actually in its ownership, despite having pre-sold the plots/flats way back in the year 2010, i.e. 7 years ago.

Mr. Bedi further submits that the National Consumer Disputes Redressal Commission, vide its order passed in favour of the society, granted three years time from the date of requisition for refund of the amount taken from the members of the society, i.e. the prospective allottees of the plots/flats.

Mr. Mittal, rebuts that by stating that even the three year period has elapsed. He further draws attention to the order of this Court dated 03.06.2016, passed in CRM-M-10256 of 2015, i.e. prior to the order of the National Consumer Disputes Redressal Commission dated 14.09.2016, though passed in the case of a different member/allottee. As per the said order dated 03.06.2016, learned counsel for the petitioners had undertaken to allot the plots to two persons/allottees within three months, and 9 months

time had been sought to pay back the money to 50 allottees along with interest as per the terms of the agreement.

This Court had however directed that the refund would be made within 6 months, i.e. by 02.12.2016.

Mr. Mittal then submits that this undertaking given before this Court was never brought to the notice of the National Consumer Disputes Redressal Commission.

He further draws attention to the order dated 17.11.2016 passed in CRM-M-40969-2016, wherein it was brought to the notice of the Court by the Senior Counsel that since the outer date for refund of the amount to the allottees/members of the society is 02.12.2016 in terms of the order dated 03.06.2016, registration of the FIR at the instance of another complainant, i.e. another prospective allottee, Vineet Sood, was uncalled for.

This Court had further been assured even at that stage that the petitioners would settle the account of the complainant before the date fixed, i.e. 02.12.2016.

On the aforesaid averments, notice had been issued in CRM-M-40969-2016 and it had been directed that in the meanwhile, no coercive method shall be adopted against the petitioners.

In the post lunch session, Mr. Puneet Bali, learned Senior Counsel appearing in CRM-M-40969 of 2016, submits that the aforesaid statement before this Court was made in this case only, whereas the National Consumer Commission was seized of the proceedings in the case

of one Ramesh Garg, such proceedings arising out of the order passed by the State Consumer Disputes Redressal Commission, Punjab, dated 29.04.2015, and as such, no advantage can be drawn by the other members of the society/allottees, from the order passed in CRM-M-10256-2015, and the undertaking given before this Court would have no bearing on the order passed in that case and consequently it was not referred to in the order.

Having considered the entire issue, it is seen that even if the matter that was there before the National Consumer Disputes Redressal Commission, is to be kept aside, without a doubt, the petitioners in CRM-M-40969-2016 and 10256 of 2015, (i.e. the office bearers of the society in question), had undertaken to allot two plots to two persons and to refund the money given by the remaining members of the society, i.e. to 50 prospective allottees.

Now, with these petitions having come up before this Court many times between 02.12.2016 and today, no money has been refunded till date and no plot also has been allotted to either of the two persons, to whom it had been promised.

Mr. Bali, Senior Counsel, further submits that firstly, the two persons never came forward to get the plot allotted. This was due to the reason that as a matter of fact, a draw of lots was held and nobody turned up to pay the balance consideration even after the draw of lots and therefore, there would be no question of allotment to anybody.

He further reiterates that the one of the petitioners, Navjeet Singh, being behind bars since 23.02.2017, the Society could not have

refunded any amount to others also.

Mr. Mittal has refuted the aforesaid contention by stating that one of those persons, Jaila Ram, filed CRM No.20434 of 2016 in CRM-M-10256-2015, seeking to be impleaded as a party, to contend before this Court that actually he had not been allotted the plot.

Mr. Bali next draws attention of this Court to the application, i.e. CRM No.39681 of 2016 in CRM-M-10258-2015, seeking extension of another 9 months for compliance of the undertaking given before this Court on 03.06.2016.

As regards the application seeking extension of time, considering that a long time has elapsed even after 02.12.2016, with not even an iota of action shown to be taken by the office bearers of the society towards compliance of the undertaking given by them, the application is seen to be another method of avoiding criminal proceedings for a longer period of time.

As regards the other argument raised, I find myself unable to agree with Mr. Bali, in view of the fact that, firstly, even if the aforesaid Navjeet Singh is in custody since the aforesaid date, he is in custody since February, i.e. two months beyond the time within which the petitioners had undertaken to refund the money to the prospective allottees.

As regards the order of the National Consumer Disputes Redressal Commission, it is seen that even in one of the orders produced before this Court, dated 15.09.2016, a copy of which has been annexed as Annexure P-12, with this petition, i.e. CRM-M-40969-2016, it was noticed

by the Commission that even the three year period after requisition for refund was made by the prospective allottees, was to expire in that case on 05.01.2017.

Other than that, Mr. Mittal, learned counsel for the allottees, has pointed out from the contract between the petitioners and the prospective allottees that Clause 4 thereof is to the following effect:-

“4. If the applicant does not want to continue even after paying some installments, he will be refunded the entire amount paid with 8% interest p.a. after three years from the date of requisition.”

He has also pointed to the next clause,i.e. Clause 5, which reads as under:-

“5. The plot possession will be handed over physically not later than two years of registration/requisition; Terms & Conditions will be changed at any point of time (if required).”

In the opinion of this Court, a reading of the two clauses above would show that as regards the refund of the amount, in terms of Clause 4 of the contract, that was in the case of those persons who, after payment of some installments, did not wish to continue the payment of further installments. They were then required to make an application/requisition for refund, which refund would thereafter be made to them three years from the date of requisition, with 8% interest thereupon.

Mr. Mittals' specific contention is that many of the prospective

co-allottees have made full payment and as such, it would not be Clause 4 but Clause 5 which would be operative in their case, and this is specifically to be seen with the undertakings given by the petitioners on 03.06.2016 and 17.11.2016, before this Court.

Mr. Bali, learned Senior Counsel submits that as per his instructions, as a matter of fact only 5% of the prospective allottees had actually made the complete payment.

Mr. Abhishek Arora, learned counsel appearing for the petitioner in CRM-M-11728 of 2017, submits that the petitioner in this petition, was even given provisional allotment after payment, despite which he has never actually been given possession.

Having considered the aforesaid arguments also, it is very obvious that as regards those who may have paid their full installments and have still not been allotted any plot, clause 4 of the agreement would not be applicable to them and it would actually be clause 5 that would operate.

This is to be further seen with what has been submitted on behalf of the Chief Administrator, GMADA, today, to the effect that the petitioners' society actually has only about 7.5 acres of land, though they were issued a CLU permit in respect of 25 acres of land in the year 2011. Thus, prima facie at least it seems to be a case of very heavy overbooking, which, in the opinion of this Court, needs to be investigated and as such the petitions for quashing of the FIR cannot be entertained.

Therefore, considering the entire circumstances and the allegations against the office bearers of the society, with regard to allegedly

having committed a huge fraud of overbooking plots/flats without actually even having anywhere near the acreage of land that would be required to satisfy the contracts of the society with various members, from whom they are alleged to have taken a large number of installments towards consideration for the plots/flats, and in some cases even the complete consideration amount for delivery of plots/flats, I see no reason to keep these petitions pending any longer.

Consequently, all petitions seeking quashing of the FIR are dismissed, with all interim orders vacated. The investigating agency would now go into all issues arising in the case, obviously upon joining all sides concerned in the investigation. Thereafter, it would come to a conclusion with regard to the culpability or otherwise of the office bearers of the society and/or any other persons. Naturally, all parties concerned would be at liberty to avail of all remedies as are available to them as per law, qua any findings of the investigating agency.

In the cases where there is an order operative, in personem, between the parties in a lis that went up to the National Consumer Disputes Redressal Commission, naturally those specific cases would be considered in terms of the order passed by the Commission, such orders not having been challenged.

It is made clear that no comment is being made with regard to the culpability or otherwise of the petitioners who are seeking quashing of the FIRs, in the entire process of inviting applications, taking payment to a lesser or larger extent and thereafter by non-allotment of actual plots/flats.

The entire matter would all be subject matter of investigation, and trial if it comes to that stage.

Accordingly, all petitions seeking quashing of the FIR are dismissed. The petitions filed by the prospective allottees, seeking that their complaints filed with the police be acted upon, are disposed of in the above terms, i.e. with a direction that the investigation would now be carried out by the investigating agency, unhampered by any order of stay passed in these petitions.

May 03, 2017
vcgarg

(Amol Rattan Singh)
Judge

Whether reasoned/speaking: Yes
Whether reportable: Yes