

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

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CWP No. 14282 of 2017 (O&M)
Date of Decision: 27.11.2018

Bharat Bhushan

.....Petitioner

v.

State of Punjab & others

.....Respondents

CORAM HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE LALIT BATRA

Present : Mr. Abhinav Gupta, Advocate, for the petitioner

 Mr. H.S. Sitta, AAG, Punjab

 Mr. Rupinder Khosla, Senior Advocate with
 Mr. Aman Sharma, Advocate, for respondent No.2 and 3

Mahesh Grover, J. (Oral) :

Present petition has been filed for issuance of a writ in the nature of certiorari for quashing the order dated 27.9.2016 (Annexure P-9), passed by respondent No.3, whereby the petitioner has been directed to deposit original documents to seek refund after deduction of 10% of the total consideration amount. Further prayer is made for refund of the whole amount deposited by the petitioner for allotment of flat.

Concededly, a Letter of Intent was issued in favour of the petitioner for allotment of a flat in the year 2012 and one of the stipulation therein was that the possession of the apartment would be handed over after completion of development works at the site within a period of 36 months from the date of issuance of Letter of Intent. The relevant is extracted here

below :-

3. Ownership and Possession

(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.”

Again it is the conceded position that the development works could not be completed within the stipulated time and according to the respondents, the works were completed after 4 years and 2 months of the issuance of Letter of Intent. This fact is disputed by the petitioner, who contends that development works are not complete even today. The petitioner had deposited 95% of the demanded amount in the first instance and when the offer of possession was made to him on 1.7.2016, asking him to take possession within 30 days of the issuance of the said letter, he deposited the remaining 5%, thereby sealing the transaction in so far as allotment is concerned. Clause 5 of the Allotment Letter & Offer of Possession is extracted here below :

“5. The allottee shall be required to take physical possession of the apartment within 30 days of the issue of this allotment letter. The apartment shall be offered on “as is where is” basis and the allottee shall not be entitled to claim any rebate or refund on any ground whatsoever.”

The petitioner, thus, realised that the development works had not been completed and submitted a representation for refund of the entire amount. The respondents responded by passing an order Annexure P-9,

permitting the refund but with a deduction of 10%, which they intended to forfeit. This is, now, the cause of grievance to the petitioner, who contends that initially the respondents were bound to complete the development works within a period of 36 months, which, admittedly, they have not done and therefore, he would have a right to withdraw his request for allotment of the dwelling unit. The respondents justified the deduction of 10% by referring to Clause 7(ii) in the Letter of Intent, which we extract here below :

“7. Acceptance or refusal of allotment

(ii) In case of refusal to accept the allotment offer then such refusal in writing through a registered post should be received within 30 days from the date of issue of this letter. In the event of such refusal to accept the allotment, then 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 this offer, the entire earnest money deposited shall be forfeited.”

The short question that arises before us is whether the respondents would be justified in retaining and forfeiting an amount of 10% while accepting the petitioner's prayer for surrender of the dwelling unit and consequent refund of the amount that he has deposited.

The respondents stand, by placing reliance on Clause 7 (2) is unfounded as this gives them right to retain 10% of the earnest money, if within 30 days of the issuance of Letter of Intent, an allottee refuses in writing to avail of the dwelling unit. The offer of possession does not envisage such a situation, rather Clause 5 of this letter completely binds the allottee to the terms of the allotment with no rebate or refund on any ground whatsoever.

On due consideration of the matter, we are of the opinion that

the situation is of the creation of the respondents themselves. Initially, they did not abide by the period of 36 months, which they had prescribed for themselves to allot the dwelling unit. Nothing has been stated in the Letter of Intent as to what will happen if the development work is not completed within stipulated time. To our minds, completion of development works is completely vague term and the respondents would be well advised to provide the specifics to understand the term of 'development works', which they intend to complete within 36 months.

Having not done so and having overshoot the period stipulated above, they committed a default, which could have given rise to the petitioner of availing his remedies under the Consumer Protection Act or any other law for redressal of his grievance in this regard. However, no steps were taken by the petitioner and eventually, when the possession was offered, he conceded to an acceptance by depositing the remaining 5% of the amount due. This would necessarily bind him to Condition No.5, which does not permit any rebate or refund.

Had the respondents stuck to this condition, they would have been justified but they again committed a wrong by accepting the petitioner's prayer for refund and having done so, they would have to justify the reduction of 10% but have failed to point out any provision, which permits them to do so.

We are, thus, of the opinion that if the respondents had relied on Clause 5 of the offer of possession to deny refund to him, possibly no fault could have been found but after having accepted the plea, they would have no justification to retain 10% of the amount in the absence of any

provision to do so.

We, therefore, direct the refund of the amount to the petitioner without any deduction but make it clear that the respondents should, for the future, be absolutely clear as to what they mean by development works as indicated in the Letter of Intent and if the refund is not permissible, the Authority should be aware of the Clause so as to deny such a prayer altogether.

Needless to say that this order is in personam and not in rem.

Disposed of in above terms.

(MAHESH GROVER)
JUDGE

(LALIT BATRA)
JUDGE

27.11.2018

Ashwani

Speaking/Reasoned
Reportable

Yes/No
Yes/No