IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.6432 of 2018

Date of decision : 15.03.2018

Chandigarh Housing Board

......Petitioner

Versus

Permanent Lok Adalat (Public Utility Services) U.T., Chandigarh and another

...Respondents

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. H. K. Aurora, Advocate for the petitioner.

* * *

DAYA CHAUDHARY, J. (*Oral*)

The prayer in the present petition is for issuance of a writ in the nature of certiorari for quashing of impugned order dated 26.09.2017 (Annexure P-1) passed by respondent No.1-Permanent Lok Adalat (Public Utility Services), U.T., Chandigarh (hereinafter referred to as 'Permanent Lok Adalat').

Briefly, the facts of the case as made out in the present petition are that petitioner-Chandigarh Housing Board invited applications for allotment of 200 two bedroom dwelling units on leasehold basis under Self Financing Housing Scheme, 2016. The Scheme comprised of two Sub Schemes *i.e.* Sub Scheme ‘A’ (150 units through draw of lots) and Sub Scheme ‘B’ (50 units under Assured Allotment Scheme (first floor). As per

Clause III (1) of the Brochure, the eligibility for allotment of a dwelling unit was for one flat to a person or his/her spouse or minor children. Respondent No.2 and her husband applied for allotment of dwelling units in two different Sub Schemes. Respondent No.2 applied in Sub Scheme 'B' (Assured Allotment), whereas her husband applied for allotment of dwelling unit in Sub Scheme 'A' (General Category). In Sub Scheme 'B', the bids were given by the applicants and same was opened on 10.06.2016. Respondent No.2 was declared successful being one of the highest bidders. A specific number of flat was allotted to her on that very day *i.e.* on 10.06.2016. The draw of Sub Scheme 'A' was held on 25.07.2016 and husband of respondent No.2 was also declared successful. The draw for specific floor/number was conducted on the same very day *i.e.* 25.07.2016 and accordingly, a specific number was allotted to her husband. Thereafter, respondent No.2 sought the refund of her initial deposit/earnest money after surrendering the flat allotted to her and the amount was refunded to her after deducting 25% of the same. The husband of respondent No.2 also sought refund of his initial deposit after surrendering his flat vide application dated 06.09.2016 and the earnest money was refunded to him by the petitioner-Board after deducting 10% of the same. The refund with deduction of 25% out of earnest money was contested by respondent No.2 by giving representations dated 16.09.2016 and 19.01.2017 to the petitioner-Board, which were rejected vide order dated 06.03.2017. Thereafter, respondent No.2 filed application under Section 22-C of the Legal Services Authorities Act, 1987 before respondent No.1 - Permanent Lok Adalat for settlement of dispute stating that amount of 25% of the earnest money has wrongly been deducted and same is contrary to provisions of Clause III(4) of the Brochure. Ultimately, the application filed by respondent No.2 was allowed by respondent No.1-Permanent Lok Adalat vide impugned order dated 26.09.2017 (Annexure P-1) by holding that as per Clause III (4) of the Brochure, surrender of flat was to be within 30 days after both the spouse were declared successful and there was no violation on the part of respondent No.2 in surrendering the unit within 30 days. The period was to be reckoned w.e.f. 25.07.2016 *i.e.* the date when her husband was declared successful and not from 10.06.2016 when only applicant/ respondent No.2 was declared successful.

Said order dated 26.09.2017 (Annexure P-1) passed by respondent No.1-Permanent Lok Adalat has been challenged in the present petition by raising various grounds.

Learned counsel for the petitioner submits that Clause III (1) of the Brochure prescribes the eligibility of a person for allotment of a dwelling unit. As per procedure and entitlement, the allotment was to be made only to one member of a family including spouse and minor children. It was also the condition that there should not be any house or plot in the name of spouse or minor children on free hold, lease hold or on hire-purchase basis. Learned counsel also submits that respondent No.2 demanded for refund of her initial deposit/earnest money after surrendering the flat vide application dated 10.08.2016. She had sought the refund after expiry of 30 days from the date of lots, the petitioner-Board refunded her initial amount after deducting 25% of the initial deposit as provided in Clause IV (5) of the Brochure. Learned counsel also submits that the impugned order has been passed in a casual manner as respondent No.2 became successful in Sub Scheme 'B' on 10.06.2016 and the application of her husband for surrender was required to be made within a period of 30 days from that date. The petitioner has no where submitted in its reply that respondent No.2 was required to move her surrender application within a period of 30 days from 10.06.2016, whereas in the order passed by respondent No.1- Permanent Lok Adalat, the provisions of the Brochure have been misinterpreted.

Heard arguments of learned counsel for the petitioner and have also perused the impugned order passed by respondent No.1-Permanent Lok Adalat.

Facts of the case are not disputed as same have neither been denied in the impugned order nor in the application and reply thereto. The relevant portion of the order dated 26.09.2017, passed by respondent No.1-Permanent Lok Adalat is reproduced as under:-

> *"After going through the provisions of III(4) of the Brochure, it is very clear that one of the spouse has to surrender if both the husband and wife are declared successful and this surrender has to be within 30 days from the date of draw of Lots. It is further provided that the initial deposits of such surrendered dwelling units will be refunded without any forfeiture. This provision being very clear that the surrender was to be within 30days after both the spouse were declared successful, there is no violation on the part of the applicant in surrendering the unit on 10.08.2016. It is within 30 days of the draw of lot whereby*

*her husband was declared successful on 25.07.2016. This date of 25.07.2016 is as per the evidence of Sh. Ankit Garg which is on affidavit. From his evidence as para No.1 of the affidavit, it is obvious that the dates of issuance of the Acceptance-cum-Demand letters are the different dates of draw of lots. This can be inferred from the statement made by said Clerk vide Para-7 of his affidavit whereby he has categorically admitted that the draw of Sub-Scheme B was held on 10.06.2016, it is the date of issuance of Acceptance-cum-Demand letter to the applicant. Otherwise also, no-where the date of draw of lot of Scheme-A has been given in the reply or the affidavit of Sh. Ankit Grag but the contention of the respondent as per Para-7 of the affidavit of Sh. Ankit Grag, the applicant was supposed to surrender her unit within 30 days of 10.06.2016, the date of draw of lot pertaining to Sub-Scheme-B. Since, Clause III (4) provides that one of them has to surrender his or her unit only after both have been declared successful in the draw of lots. She was declared successful on 10.06.2016 whereas her husband was declared successful on 25.07.2016.Thus, in this case this period of 30 days within which she was to surrender was to be reckoned w.e.f. 25.07.2016 not from 10.06.2016 when only the applicant was declared successful. It is a misconceived presumption on the part of the respondent that she was to apply within 30 days of 10.06.2016. This in-violation of the provisions of Clause III(4) of the Brochures as on 10.06.2016 both were not declared successful as draw of lots were on different dates, first on 10.06.2016 and second on 25.07.016. Accordingly, the 25% of the earnest money could not be deducted/forfeited by the respondent. In Clause III (4) it has been specifically provided "**the initial deposits of such surrendered dwelling units will be refunded without any forfeiture**". Had both the draw of lots been on 10.06.2016, then of course, the surrender by the applicant on 10.08.2016 would have been time barred and deduction out of the earnest money could have been made by the* *respondent. In these circumstances, Clause IV (5) cannot be applied to the present case of the applicant.*

In view of it, we find that her representations made to the Chief Executive Officer and the Chairman of the CHB vide Annexure-3 and P/2 dated 16.09.2016 and 19.01.2017 respectively were rejected wrongly vide Annexure P/3 dated 06.03.2017 by the CHB. It is strange that the provision of Clause III (4) of the Brochure being so clear and unambiguous, the applicant should have been made to run by the CHB from pillar to post.

In view of it, the rejection of her claim is held to be illegal and therefore, it set aside.

She is ordered to be refunded by the respondent a sum of Rs,1,72,5000/- along with interest @ 9% per annum w.e.f. 10.08.2016 till the date of realization. Also, she is awarded a sum of Rs.10,000/- by way of compensation for the mental agony and harassment, she has suffered. Besides it, she would be paid Rs.5000/- as litigation charges for prosecuting these proceedings before this Court."

Clause III (4) and Clause IV (5) of the Brochure are relevant to decide the controversy in the case in hand and the same are reproduced as under:-

*"**III (4) -** The applicant or his/her spouse can submit one application each in one category or in any of the reserved categories according to his/her eligibility. In case the applicant or his/her spouse are declared successful for more than one dwelling unit, he/she will retain the registration of only one dwelling unit and surrender the registration/ allotment of the other dwelling unit(s) within 30 days from the date of draw of lots. The initial deposits of such surrendered dwelling units will be refunded without any forfeiture.*

The surrendered registration/allotment will be offered to the applicant(s) in the waiting list in the relevant category."

*"**IV (5) -** The applicants for these dwelling units are required to quote the amount, at which they are willing to purchase the dwelling units. However, the price quoted should be higher than the reserve price indicated above. The quoted price should be submitted in a sealed envelope as per the format given along with the Application Form. The quoted price should be in multiples of Rs.50,000. In the Sub Scheme-B there are 50 dwelling units earmarked on the First Floor, which is the lowest floor with stilt parking on the ground floor. The allotment for the dwelling units will be made at the actual price quoted. All remaining applicants shall be included in the draw of lots to be held under the General Category of Sub Scheme-A. In case the applicant withdraws before the opening of the bid, 10% of the initial deposit will be forfeited. In case a successful applicant in this category withdraws/surrenders, 25% of the earnest money will be forfeited. However, if the applicant under the present Sub Scheme withdraws after the second draw of lots the 25% of the earnest money shall be forfeited and the said unit shall be allotted to the person on the waiting list under the General Category."*

As per Clause III (4), the applicant/respondent No.2 applied in Sub Scheme 'B', whereas her husband applied in Sub Scheme 'A'. Both were eligible to file applications. Draw of lots of Sub Scheme 'B' was held on 10.06.2016. Respondent No.2 was declared successful and was allotted dwelling unit under Self Financing Housing Scheme, 2016. The draw of lots of husband of respondent No.2 was of Sub Scheme 'A' and he was declared successful on 25.07.2016. He was allotted dwelling unit under that Scheme.

Meaning thereby, both respondent No.2 and her husband were successful. As per Clause III (4), respondent No.2 surrendered her dwelling unit vide application dated 10.08.2016. The amount initially deposited by her was refunded with deduction of 25% of the same. It is also relevant to mention here that husband of respondent No.2 was declared successful only on 25.07.2016 and unit was surrendered by respondent No.2 on 10.08.2016. The period comes to less than 30 days.

In the present case, the controversy is whether the period of 30 days is to be counted from the date of draw of allotment to respondent No.2 or from the date of allotment to her husband. The provision is very clear as the surrender was to be made within a period of 30 days. The entitlement is of one dwelling unit in case of two persons *i.e.* respondent No.2 or her husband. The decision to surrender by one of those was to be taken after being successful in both the draws. It was so as a condition was there in the Brochure that even in case of allotment to more than one *i.e.* husband and wife and minor children, only one dwelling unit/flat could have been allotted. In the present case, both respondent No.2 and her husband were successful. The application for surrender of the flat was made within a period of 30 days of draw of lots/allotment of husband of respondent No.2. Respondent No.2 was declared successful on 10.06.2016, whereas her husband was declared successful on 25.07.2016. Accordingly, the period of 30 days for surrender of the flat/dwelling unit was to be counted w.e.f. from 25.07.2016 and not from 10.06.2016. As per Clause III(4), the initial deposit of such surrendered dwelling unit was required to be refunded without any forfeiture. Respondent No.1- Permanent Lok Adalat has rightly allowed the application of respondent No.2.

Accordingly, there is no merit in the contentions raised by learned counsel for the petitioner and as such the present petition is dismissed.

Respondent No.2 shall be entitled to refund of the initial deposit without any deduction along with the amount of compensation and litigation expenses awarded by the Permanent Lok Adalat. However, the amount of deduction would be without any interest.

15.03.2018 **(DAYA CHAUDHARY)**
sunil yadav **JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No