IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-2410-2019 (O&M)
Date of Decision: 19.03.2019

M/s Country Colonisers Pvt. Ltd. & another --Petitioners

Versus

Permanent Lok Adalat & others --Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Tejeshwar Singh, Advocate for the petitioners.

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TEJINDER SINGH DHINDSA.J (Oral)

Challenge in the instant petition is to the order dated 9.4.2018 (Annexure P-1) passed by the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar, Mohali vide which an application moved by respondent no.2 has been allowed and the petitioner has been directed to refund an amount of Rs.44,31,262/- along with interest @ 9% per annum.

Brief facts as would emanate from the pleadings on record are that respondent no.2 applied for booking a residential unit with the petitioner on 11.5.2012 in a Group Housing Project under the name of Wave Gardens. In pursuance to such application an Apartment Allottee Arrangement Contract was entered into on 27.8.2012 (Annexure P-3). As per petitioner-Developer, respondent no.2 had failed to make the due payments since 9.12.2013 and accordingly after having issued demand notices/reminders and having afforded almost one year's time to respondent no.2 to discharge his liability under the agreement, his booking was canceled on 16.11.2015 after forfeiting the earnest money paid along with delayed interest penalty etc. It is against such backdrop that respondent no.2 had approached the Permanent Lok Adalat questioning the action of the Developer in canceling the allotment as also forfeiting the earnest money and seeking refund of the entire amount that he had deposited. Application moved by respondent no.2 having been allowed, the petitioner-Developer has filed the instant writ petition.

The award of the Permanent Lok Adalat has been assailed by counsel on the following grounds:-

(i) It is contended that the subject matter of the application moved by respondent no.2 was beyond the pecuniary jurisdiction of the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar, Mohali. In this regard it is submitted that the total price/value of the unit in question was fixed at Rs.1,34,06,875/- and which was beyond the pecuniary jurisdiction of the authority under Section 22-C of the Legal Services Authority Act, 1987.

(ii) It has been urged that the dispute was not maintainable as the subject matter of the application moved by respondent no.2 did not fall under the expression “Public Utility Services” or “Housing Services”. In this regard counsel would submit that respondent no.2 had in addition to the unit in question booked three more units with the petitioner-Developer and which would clearly show that he was a speculator/investor and had no intention of using the unit in question for residential/housing purposes. Under such circumstances, it is argued that the booking of the unit in question had been made by respondent no.2 for “commercial purposes” and not for 'housing purposes” and as such, the application moved by respondent no.2 was not maintainable before the Permanent Lok Adalat.

(iii) It is argued that the Permanent Lok Adalat failed to conduct any conciliation proceedings as per mandate under the Act and right from the outset took upon an adjudicatory role and which is contrary to the scheme of the Legal Services Authority Act.

(iv) Counsel vehemently contends that respondent no.2 himself was a defaulter as he had failed to adhere to the terms of the agreement by not submitting the amounts due as per the construction linked plan. Under such circumstances the petitioner-Developer after having granted sufficient opportunity was vested with a right to cancel the allotment and to forfeit the earnest money equivalent to 15% of the basic sale price as also the delayed interest expenses etc. Another limb of the argument raised is that even if the refund was to be ordered by the Permanent Lok Adalat, the forfeiture of the earnest money, delayed interest amount etc. had to be adjusted and which has not been done while passing the impugned award.

(v) A submission has been raised that as per the Apartment Allottee Arrangement Contract entered into there was no mandatory time for completion of the construction of the unit in question and it was only an endeavor that was to be made by the Developer to complete construction and development of the unit as far as possible within 36 months from the date of execution of the contract or start of construction whichever is later. It is argued that merely because possession of the unit in question had not been offered would not vest in respondent no.2 a right to claim refund.

Having heard counsel for the petitioner/Developer at length and having perused the pleadings on record, this Court is of the considered view that there is no merit in the instant petition and the same deserves to be dismissed.

Perusal of the impugned award at Annexure P-1 would reveal that certain terms of settlement had been framed and had been supplied to the parties respectively. The parties had even been made clear that if they reach any mutual understanding, they should sign the settlement agreement and on the basis of which the award would be passed. The award further reveals that efforts have been made to persuade the parties for a settlement but the parties had failed to reach any settlement and which had left the Adalat with no alternative but to decide the matter on merits. The contention raised by counsel that the wording of the terms of settlement were rather in the form of framing of issues for adjudicating a dispute, is not well founded. The terms of settlement as indicated at page 51 of the paper book cull out the basic claim that had been set up by the applicant/respondent no.2. It was against such backdrop that the parties were to make efforts to arrive at an amicable settlement and for which time had been granted. It is not the case made out by the petitioner that any concrete proposal towards the settlement had been formulated and advanced towards respondent no.2. The contention, as such, raised in this regard is without merit.

In so far as pecuniary jurisdiction is concerned, the application moved by respondent no.2 was for a refund of Rs.44,31,262/- along with interest @ 18% per annum and compensation to the tune of Rs.5 lakh towards harassment, mental tension, suffering and agony and Rs.1 lakh towards costs of litigation. Such claim upon being clubbed comes very well within Rs.1 crore pecuniary jurisdiction vested with the Permanent Lok Adalat.

There would be no dispute that vide notification dated 25.10.2010 issued by the Punjab Govt., Housing Services had been declared to fall within the expression "Public Utility Services". Merely for the reason that respondent no.2 may have booked certain additional units with the petitioner would not alter the end usage and character of the unit in question. Clause 8.1 of the Apartment Allottee Arrangement Contract dated 27.8.2012 clearly mandated as follows:-

> *"The allottee(s) shall use the said "Apartment" only for residential purposes".*

In view of the above, contention raised by counsel that the subject matter of the application moved by respondent no.2 did not fall under "Public Utility Services" or "Housing Services", is rejected.

For this Court to take a view as regards respondent no.2 being termed as a "defaulter" and their being no duty cast upon the petitioner-Developer to finish the project within a stipulated time frame and to deliver possession, clause 4 as also clause 5.1 of the Apartment Allottee Arrangement Contract dated 27.8.2012 entered into between the parties would be relevant and reproduced hereunder:-

> ***"4. PAYMENT***
>
> *4.1 The "BSP" along with payments of other charges mentioned in the Apartment Allottee Arrangement along with interest if any thereon etc. as agreed here to and due and payable in respect of the said "Apartment" is to be paid by the Allottee to the Developer as mentioned herein and as per the payment plan paid by the Allottee and as set out in accordance with the terms of **Annexure II (**the **"Payment Plan")**.*
>
> *4.2 The Allottee agrees to pay an amount equivalent to 15% of the BSP of the said "Apartment" as Earnest Money. The Allottee further agrees and undertakes to pay the "BSP" including all other charges as described in this Apartment Allottee Arrangement in the manner and in accordance with the time schedule provided in the Payment Plan annexed as Annexure II and maintenance charges as per the Maintenance Agreement to be signed prior to handing over the possession of said "Apartment" and failure to pay these sums within the specified dates shall make the Allottee liable to pay simple*

interest @ 18% per annum till the date of actual payment.

4.3. XXX

4.4. It is understood and agreed by the Allottee that making payment of maintenance charges and consideration as aforesaid in accordance with the payment plan and due dates as per the call notices or otherwise together with applicable simple interest at the rate of 18% per annum is the essence of this Apartment Allottee Arrangement. In the event, the Allottee fails to make payment on due dates as aforesaid and is in default for a period exceeding 2 (Two) months, the Developer shall have unfettered right to cancel the allotment and forfeit the earnest money equivalent to 15% of the "BSP" and also recover arrears on account of accrued interest, brokerage and any other expense or tax if so incurred and accordingly refund the balance to the Allottee. The Developer shall have lien on the said Apartment for recovery of its dues, without prejudice to any legal remedy/right available to the Developer."

"5 POSSESSION OF APARTMENT

5.1 Subject to Clauses 5.2 and further <u>subject to all the Allottee of the said "Apartment" in the "Said Project" making timely payment</u>, the Developer <u>shall endeavor</u> to complete the development of "Said Project" in general and the said "Apartment" in particular <u>as far as possible</u> within 30(thirty) months along with an extended period of (6) six months from the date of execution of this Apartment Allottee Arrangement and/or from the date of start of construction of Group Housing named as "Wave Gardens" whichever is later."

On the one hand the petitioner is seeking to advance a submission that respondent no.2 was duty bound to pay and deposit certain amounts of money on a construction linked plan and on which he had defaulted but on the other hand has completely failed to lead any evidence as regards the progress and stage of construction. Such state of affairs do not inspire any confidence. On a specific query having been put, Mr. Tejeshwar Singh learned counsel representing the petitioner-Developer would concede that as per clause 5.1 the time period for completion of the project/apartment had expired in the year 2015 and even today in the year 2019 the project is not complete and the occupation certificate has not been issued by the competent authority. At the cost of reiteration it may be noticed that the date of entering into agreement between the parties was way back on 27.8.2012. The petitioner-Developer will not be permitted to project a case upon a conjoint reading of clauses 4 and 5 of the agreement that the investor/respondent no.2 would be duty bound to keep paying installments pertaining to a construction linked plan inspite of the developer not proceeding with the construction and not apprising the court as regards the precise stage of construction and on the other hand to take advantage of a loosely worded clause 5.1 that only an "endeavor" to complete development of the project/apartment and that too "as far as possible" was to be made. This Court would be inclined to take a view that the time frame stipulated in clause 5.1 i.e. for completion of the project/apartment within 30 months along with an extended period of six months from the date of execution of the contract/date of start of construction of the Group Housing Project named Wave Gardens whichever is later has to be strictly construed.

There being no dispute as regards deposit of installments and in relation to which the refund has been directed and the petitioner-Developer having not delivered the project in time and rather conceding that even till date the project is not complete, no infirmity is found in the view taken by the Permanent Lok Adalat while passing the award dated 9.4.2018 (Annexure P-1).

There is no merit in the petition and the same is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

19.03.2019
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No