

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

**1. CWP No.19117 of 2018
Date of decision: 12.12.2019**

Asheesh Aggarwal ..Petitioner

Versus

**Greater Mohali Area Development Authority
and another ..Respondents**

2. CWP No.19118 of 2018

Krishna Gupta ..Petitioner

Versus

**Greater Mohali Area Development Authority
and another ..Respondents**

**CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. Ankur Mittal, Advocate and
Mr. Harminder Singh, Advocate
for the petitioner(s).

Mr. Rupinder S. Khosla, Sr. Advocate with
Mr. Aman Sharma, Advocate
for the respondents.

Daya Chaudhary, J.

By this judgment of ours, two cases bearing CWP Nos.19117 and 19118 of 2018 shall be disposed of as common questions of law and facts are involved. However, for the sake of brevity, facts are being extracted from CWP No.19117 of 2018.

Respondent i.e. Greater Mohali Area Development Authority (for short 'GMADA') launched a scheme namely, the Purab Premium Apartments in Sector 88, Mohali for allotment of residential flats of

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different sizes. Said allotment was to be made on the basis of draw of lots. Petitioner-Asheesh Aggarwal applied for allotment of type 2 flat and tentative price of said flat was ₹55 lacs. The petitioner deposited the earnest money of ₹ 5.5 lacs on 10.01.2012, which was 10% of the tentative price. The draw of lots was held on 19.03.2012. The petitioner was successful in said draw of lots. A letter of intent (for short 'LOI') for allotment of flat/apartment was issued on 21.05.2012 by respondent-GMADA. As per terms and conditions of the allotment, the allottee was required to deposit an amount of ₹11 lacs, being 20% of the total price of apartment/flat by 22.06.2012 to complete 30% of the price of apartment/flat as 10% had already been paid at the time of submission of application. As per clause 2.2 of the LOI, out of balance 70% price of flat, 65% price amounting to ₹35,75,000/- could be paid either under plan 'A' or under plan 'B'. As per plan 'A', 65% price has to be paid within a period of 60 days from the date of issuance of LOI. The allottee was entitled for rebate of 5% on 65% of the total amount. Accordingly, against 65% amount of ₹35,75,000/-, the allottee was required to deposit an amount of ₹33,96,250/-. As per plan 'B', 65% price could be paid in six half yearly installments along with interest @ 12%. The allottee was required to deposit a sum of ₹43,25,750/- towards 65% price. As per clause 2.3 of the LOI, balance 5% of the tentative price of the apartment/flat was payable at the time of possession. Further as per clause 3(ii) of the LOI, the possession of the apartment/flat was to be handed over to the allottee after completion of development works at the site within a period of 36 months from the date of issuance of LOI. It was

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also the condition that in case for any reason, the GMADA was unable to deliver possession of apartment/flat within the stipulated period, the allottee will have a right to withdraw from the scheme on moving application to the Estate Officer and he/she shall be entitled for refund of total amount with 8% interest compounded annually.

The petitioner deposited a sum of ₹11 lacs with respondent-GMADA on 16.06.2012 by opting plan 'A' and completed 30% of the tentative price of the apartment/flat allotted to him. Thereafter, he deposited a demand draft of ₹33,96,250/- on 23.07.2012, which was balance 65% of the tentative price of the apartment/flat under plan 'A'. In total, the petitioner deposited 95% of the tentative price under plan 'A' within the prescribed period. Balance 5% was required to be deposited at the time of possession.

As per case of the petitioner, neither the work was completed nor possession of the apartment/flat was given to the petitioner within the specified period of 36 months from the date of issuance of LOI. The possession was offered to the petitioner after a period of 36 months. Finding that the development works were not completed and apartment/flat was not ready for possession as per terms and condition of LOI, the petitioner applied for withdrawal from scheme and requested for refund of amount deposited by him along with interest vide letter dated 25.07.2016. Vide letter dated 10.09.2016, the petitioner was informed that allotment letter and offer of possession had already been issued on 30.06.2016 and the petitioner was at liberty to take possession on depositing remaining 5% amount. The possession would be handed over to him within a period of 30 days. The petitioner was also informed vide letter dated 10.09.2016 that the

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proceedings for refund of amount will be initiated as per provisions of Section 45(3) of the Punjab Regional Town Planning and Development Act, 1995 (for short 'the Act, 1995') and 10% of the total amount of consideration money, interest and other dues payable would be kept in favour of GMADA. The petitioner was called upon to submit the original allotment letter and offer of possession as well as LOI in the office of respondent-GMADA.

Said letter dated 10.09.2016 (Annexure P-5) has been challenged before this Court by raising various grounds.

Learned counsel for the petitioner submits that the petitioner is entitled for refund of amount as per clause 3(ii) of the LOI as per which, in case, the respondent-GMADA is unable to deliver the possession of apartment/flat within a period of 36 months from the date of issuance of LOI, the petitioner has a right to withdraw from the scheme by making appropriate application to the concerned Estate Officer and the total amount deposited shall be refunded along with 8% interest compounded annually. Learned counsel further submits that neither the development works were completed at the site nor possession was handed over to the petitioner within the specified period of 36 months from the date of issuance of LOI. The possession was handed over to the petitioner after passing of more than 36 months and the balance 5% amount of total price was to be paid at the time of possession. Learned counsel also submits that Section 45(3) of the Act, 1995 is not applicable in the present case as it is not a case of default in making payment of amount of installments. The fault is of respondent-GMADA and the petitioner is entitled for refund of amount along with

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interest. Learned counsel for the petitioner has also relied upon judgment rendered by the Division Bench of this Court in ***Vikas Goyal vs. Greater Mohali Area Development Authority and another***, CWP No.22500 of 2015 decided on 27.07.2016 in support of his contentions. Learned counsel also submits that SLP was filed against said judgment, which was also dismissed and as such, judgment passed by the Division Bench has attained finality.

Mr. Rupinder S. Khosla, Senior Advocate appearing for respondents No.1 and 2 has opposed the submissions made by learned counsel for the petitioner and submits that the petitioner did not deposit the due amount of 5%, which comes to ₹2,75,000/- with the answering respondent and as such, he did not comply with the terms and conditions of allotment letter. Learned senior counsel further submits that the petitioner himself did not take possession of the apartment/flat rather made a request for cancellation of allotment and to refund the amount. The petitioner is not entitled for refund of amount with interest as per terms and conditions of the allotment letter and also in view of provisions of Section 45(3) of the Act 1995. At the most, the petitioner is entitled for refund of amount after deducting 10% of the total amount of consideration without any interest. Learned senior counsel has also relied upon judgment rendered by the Division Bench of this Court in ***Rajiv Arora vs.State of Punjab and others***, CWP No.16153 of 2014 decided on 21.07.2015.

Heard arguments of learned counsel for the parties and we have also perused the documents available on the file including impugned letter dated 10.09.2016 (Annexure P-5).

The facts of the case including terms and conditions of the

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allotment and the amount deposited by the petitioner are not disputed. The application filed for refund of amount by the petitioner is also not disputed.

The controversy in the present case is regarding refund of amount and interest thereupon.

Clause 3(ii) of the LOI is relevant in the present case, which is reproduced as under: -

“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.”

On perusal of the aforesaid clause of LOI, it is apparent that the possession of apartment/flat was to be delivered on completion of development works within a period of 36 months from the date of issuance of the LOI. In case, the possession is not handed over within the aforesaid period, the allottee is entitled for refund of amount deposited along with 8% interest compounded annually after making an application for withdrawal

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from scheme.

Admittedly, the petitioner had paid 95% of the tentative price of the apartment/flat within the stipulated period and remaining 5% was to be paid at the time of possession but possession was not handed over to the petitioner within a period of 36 months. Meaning thereby, the petitioner complied with the terms and conditions of the LOI. The fault was there of respondent-GMADA in not offering the possession within the stipulated period. There was no lapse on the part of the petitioner in making payment of the amount. Accordingly, the petitioner is entitled for refund of amount along with interest as per terms and conditions of the LOI.

Same controversy was there before the Division Bench of this Court in ***Vikas Goyal's case (supra)***. In that case also, the possession of flat was not handed over within a period of 36 months from the date of issuance of LOI and allottee in that case, paid the entire amount within the stipulated period. Said petition was allowed and respondent-GMADA was directed to pay interest in terms of clause 3(ii) of LOI from the date of deposit of installments till the date of final payment @ 8% compounded annually. A further direction was also issued to make payment of interest @ 12% per annum till the date of refund.

The judgment relied upon by learned senior counsel appearing for respondents-GMADA is not applicable to the facts and circumstances of the case as in that case, there was fault on the part of the allottee in making payment whereas in the present case, there was no fault on the part of the allottee and the 95% amount of apartment/flat was paid within the stipulated period. Moreover, judgment rendered by the Division Bench of this Court

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in *Vikas Goyal's case (supra)* has attained finality as SLP filed against said judgment by respondent-GMADA had also been dismissed.

Accordingly, in view of facts and law position as discussed above, the present petitions are allowed and impugned letter dated 10.09.2016 (Annexure P-5) is set-aside. Respondent-GMADA is directed to release the amount deposited by the petitioner within a period of one month. The respondent is also directed to pay interest from the date of deposit of installments till the date of making payment to the petitioner.

(DAYA CHAUDHARY)
JUDGE

12.12.2019
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes