

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

CWP No.25658 of 2018

Date of decision:-14.01.2019

M/s RKM Housing Limited, SAS Nagar, Mohali through its Managing
Director Kanwaljit Singh Ahluwalia

.....Petitioner

versus

Permanent Lok Adalat and another

.....Respondents

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

Present:- Mr. J.P.S. Sidhu, Advocate for the petitioner.

TEJINDER SINGH DHINDSA, J.(ORAL)

Challenge in the instant petition is to the order dated 28.03.2017
(Annexure P-1) passed by the Permanent Lok Adalat (Public Utility
Services) SAS Nagar, Mohali.

Briefly it may be noticed that respondent No.2 herein filed an
application under Section 22-C of the Legal Services Authority Act, 1987
(herein after referred to as the 'Act') for settlement of the dispute with the
petitioner company through conciliation and in the event of failure of the
parties to effect settlement through conciliation, pass an award on merits
directing the petitioner company to refund the amount of Rs.60,00,000/-
alongwith interest @10% per annum as per terms and conditions of the
Memorandum of Understanding (MOU) entered between the parties.
Respondent No.2 further claimed an amount of Rs.10,00,000/- towards
compensation and Rs.50,000/- as litigation costs. Vide impugned order
dated 28.03.2017, the petitioner herein has been directed to refund a sum
of Rs.60,00,000/- to respondent No.2 alongwith interest @ 10% per annum
w.e.f. the date of deposit till realization. An amount of Rs.2,00,000/- has
been awarded as compensation for causing harassment and mental agony.

Rs.10,000/- has been assessed towards litigation costs.

Learned counsel representing the petitioner company has argued that letters Exhibit R1, Exhibit R2 and Exhibit R3, had been duly adduced on record which clearly demonstrate that it was a default on the part of respondent No.2 in not having paid the external development charges inspite of a specific demand having been raised and as such respondent No.2 has failed to adhere to the terms and conditions of the Memorandum of Understanding and under such circumstances he was not entitled to any refund of the money. In support of such contention counsel has relied upon the letter dated 26.09.2011 (Annexure P-4) that had been addressed by the petitioner company to respondent No.2, raising a demand of Rs.5,00,000/- to be deposited by 05.10.2011 towards external development charges. It is urged that inspite of receipt of such letter the EDC charges were never deposited. Further submitted that the amount of Rs.60,00,000/- that had been paid by respondent No.2 was in the nature of an investment and since there was a recession in the real estate market, respondent No.2 has filed the application seeking refund and which under such circumstances was not even maintainable. Counsel submits that the petitioner company is otherwise ready and willing to carry on with the project and to reserve in favour of respondent No.2 a developed plot measuring 500 sq.yards provided the terms and conditions of the Memorandum of Understanding are carried out and obligations on the part of the vendee are fulfilled. A submission with regard to maintainability of the application under Section 22-C before the Permanent Lok Adalat, has been raised by adverting to the Memorandum of Understanding which contained a clause that in case of any difference and dispute between the parties, the same has to be resolved by resorting to arbitration under the

Arbitration and Conciliation Act, 1996. It is argued that respondent No.2 instead of resorting to arbitration proceedings had rushed to the Permanent Lok Adalat (Public Utility Services) by filing the application under Section 22-C of the 1987 Act. One additional submission raised by counsel is that proper terms of settlement had not been framed by the Permanent Lok Adalat (Public Utility Services) and as such the scope of an effective settlement through conciliation was defeated and rather an award has been passed on merits.

Having heard counsel for the petitioner 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.

In the present case there is no dispute with regard to respondent No.2 having paid to the petitioner company a sum of Rs.8,00,000/- vide cheque dated 15.11.2010 and another amount of Rs.52,00,000/- vide cheque dated 30.12.2010. Entering into a Memorandum of Understanding between the parties dated 28.11.2010 is also admitted. The aforementioned payment was made by respondent No.2 to the petitioner company for purchase of a plot measuring 500 sq.yards.

The validity of the impugned award dated 28.03.2017 at Annexure P-1 would have to be examined in the backdrop of the terms and conditions contained in the MOU. Copy of the MOU dated 28.11.2010 has been placed on record and appended as Annexure P-7. It is recited in the MOU that the petitioner company has acquired land situated at Sector 112, SAS Nagar, Mohali and it proposes to develop a residential colony/township thereupon after obtaining requisite licenses or other permissions and sanctions from the concerned authorities under GMADA. Under Clause 3 of the MOU, the party of the First Part i.e. petitioner herein

was obligated to develop the future project and reserve developed plot(s) measuring about 500 sq.yards (approximately) or in the category and sizes and location as may be possible or available out of the plotted component of the proposed residential colony for the party of the Second Part (respondent no.2 herein) for allotment on priority basis. Total cost of the plot was mentioned as rupees sixty lakhs, excluding development charges etc.

Clause 7 of the MOU would be crucial and reads as under:-

“That in case the future project is abandoned or is not undertaken due to any unwanted or statutory objections or the party of the First Party is not in a position to reserve the developed plots as referred in Clause 4 hereinabove, for any reasons whatsoever, within a period of 18 months, the party of the Second Part shall be entitled to get refund of the amount deposited/contributed with simple interest @ 10% p.a. payable from the date of this M.O.U. or from the date of encashment of cheques as may be applicable.”

What clearly emerges is that the petitioner company was liable to develop the future project of a residential colony/township in terms of reserving developed plots measuring 500 sq.yards approximately and for allotment on priority basis. Such obligation was in favour of respondent No.2 who had concededly paid the entire cost of the plot up-front i.e.rupees sixty lakhs by way of two cheques. The petitioner company is resisting refund of the amount in question on the plea that respondent No.2 had not paid/deposited the external development charges. Such plea will not be tenable. It is only upon reserving a plot towards allotment in favour

of an allottee who has paid the entire costs thereof that the question of deposit of external development charges would arise. Counsel concedes that no specific plot had been reserved/allotted in favour of respondent No.2 inspite of rupees sixty lakhs having been paid. Under such circumstances Clause 7 of the MOU as reproduced hereinabove would come into operation. As per Clause 7 if the party of the First Part i.e. the petitioner company was not in a position to reserve the developed plot within a period of 18 months from the date of entering into the MOU and for any reason whatsoever, the party of the Second Part i.e. respondent No.2 was entitled to refund of the amount deposited alongwith simple interest @ 10% per annum. The directions issued by the Permanent Lok Adalat (Public Utility Services) for refund of rupees sixty lakhs alongwith interest is strictly as per terms of the MOU.

A feeble attempt was made by counsel to suggest that the terms of settlement had not been framed by the Permanent Lok Adalat and as such no concrete steps had been taken towards a settlement by way of conciliation. Such submission is not well-founded.

Para 6 of the impugned award would show that the following terms of settlement had been framed:-

- 1. Whether the respondents have handed over the possession of the plot to the applicant in terms of memorandum of understanding Ex-C1?*
- 2. Whether the applicant is entitled to refund of Rs.60,00,000/-alongwith interest @ 10% P.A.?*
- 3. Whether the applicant is entitled to refund of Rs.10 lacs towards harassment and compensation alongwith Rs.50,000/- as litigation charges?*

Undoubtedly, the terms afore-reproduced crystallized the dispute between the parties. They would serve as terms of adjudication as well. Perusal of the award would show that prior to proceeding to adjudicate in the matter, opportunity had been granted to the parties to reach an amicable

settlement so that an award could be passed in terms of such settlement. The award further recites that efforts have been made to persuade the parties for a settlement but which did not bear any fruit. It is under such circumstances that the Permanent Lok Adalat was left with no other option but to proceed and decide the case on merits.

The submission raised by counsel that the dispute between the parties ought to have been taken up for arbitration under the Arbitration and Conciliation Act, 1996, is also without merit. A sum of Rs.60,00,000/- had been deposited by respondent No.2 in October 2010. As per Clause 7 of the MOU dated 28.11.2010, the petitioner company was obligated to reserve and allot a plot measuring 500 sq. yards within a period of 18 months. Even such time frame expired in May 2012. It is only in the month of October 2015 that the respondent No.2 had filed the application under Section 22-C of the Legal Services Authorities Act 1987 before Permanent Lok Adalat (Public Utility Services) SAS Nagar, Mohali. Counsel would admit that during all this time no effort has been made by the petitioner company to resort to arbitration proceedings and to take steps for appointment of an arbitrator to resolve the dispute. Such objection clearly was taken by the petitioner company only to delay the proceedings before the Permanent Lok Adalat.

For the reasons recorded above, this Court does not find any infirmity in the impugned award dated 28.03.2017 (Annexure P-1).

Writ petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

14.01.2019

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No