

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

101

**CWP No.21943 of 2020
Decided on : 24.02.2021**

Ansal Landmark Townships (Pvt.) Ltd.

... Petitioner

Versus

Permanent Lok Adalat for Public Utility Services, Karnal and another

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Adarsh Jain, Advocate for the petitioner.

(The proceedings have been conducted through
video conferencing, as per instructions.)

G.S. Sandhawalia, J.

The petitioner-Company in the present writ petition filed under Articles 226/227 of the Constitution of India seeks quashing of the Award dated 30.09.2020 (Annexure P-15) passed by the respondent No.1- Permanent Lok Adalat for Public Utilities Services, Karnal, wherein directions have been issued for returning Rs.2,03,550/- to respondent No.2, the allottee alongwith 9% interest from 13.12.2006 till 31.12.2020 and, thereafter, @ 12% till the payment is made. Similarly, to compensate the said respondent No.2, Rs.50,000/- as compensation on account of mental agony, harassment and inconvenience caused and Rs.10,000/- as litigation expenses, have been awarded, being executable as a decree of Civil Court.

2. The reasons given by the respondent No.1, for directing refund is that an Apartment No.301 on the Second Floor in Tower No. 'J' of Sushant Royale belonging to Ansal Landmark Township had been booked,

vide receipt No.12673 dated 13.12.2006 and the said Tower never came into existence. The stand of the petitioner-Company is that there is a breach of agreement regarding the compliance of terms and conditions of the agreement and payment schedule and in pursuance to that the said allotment of the apartment had been cancelled, as per Clause 6 of the agreement. The same was rejected, on the ground that after a passage of more than 10 years, the said Tower was never erected and neither any alternative apartment had been allotted to him.

3. Counsel for the petitioner-Company has vehemently submitted that the allotment as such was in Tower 'K' and the agreement between the parties was also dated 02.06.2005 (Annexure P-1), which referred to allotment in Tower 'K'. Therefore, the reasoning itself is misplaced. Counsel has also referred to the initial receipt dated 03.12.2006 (Ex.P1) now placed on record as Annexure P-2, to submit that it is referred to Tower 'K' and Apartment No.301. It is submitted that as per the terms of schedule of the payment, as per Annexure P-1, total basic price of the said apartment was Rs.20,35,500/-, which had a super area of 1380 square ft. Reference is made to the communication dated 11.02.2008 (Ex.R15), now placed on record as Annexure P-3, to submit that due amount was Rs.8,14,199/- and the first booking amount had been received and payment of Rs.6,78,149/- had been asked for, which was followed by the reminder dated 25.04.2008 (Ex.R11) now placed on record as Annexure P-4 and 22.08.2008 (Ex.R6) now placed on record as Annexure P-5. Similarly, reference is made to demand notices dated

30.08.2010 and 30.09.2010 (Ex.R7 & R8) now placed on record as Annexures P-6 and P-7, respectively, wherein Rs.9,38,826.42 had been asked for and which was followed up on 29.11.2010 (Ex.R5) now placed on record as Annexure P-8, for Rs.11,06,451.41. Thereafter, cancellation was done on 16.08.2011 (Ex.R4) now placed on record as Annexure P-9, subject to the condition that payment be made within 30 days. Similarly, a demand of Rs.23,80,205/- was made on 24.01.2013 (Ex.R3) now placed on record as Annexure P-10.

4. A perusal of the paper-book would go on to show that on 27.03.2014 (Annexure P-11), the application under Section 22C of the Legal Services Authorities Act, 1987, was filed taking the plea that the allotment had been done on account of the receipt dated 13.12.2006 and though there is a mention of Tower 'J' being allotted. It is the categorical case of respondent No.2 that there is a dispute as such regarding the building plan not being approved and the said tower had not been given necessary sanction. A request had also been made to the respondents for allotment of same apartment in Tower 'K', but they had replied that as and when Tower 'K' is erected, possession would be given. It was specifically averred that nothing was done regarding erection of Tower 'J' or in the alternative Tower 'K' and from the year 2006 upto the year 2013.

5. In the reply filed by the petitioner-Company, there is no specific averment made regarding any defence taken that the allotment was of Tower 'K' and only stand is that there was a default in the schedule of payment of installments. Demand notices and reminders were sent

alongwith cancellation notice and, thereafter, cancellation was done on 25.04.2014, which is after the filing of the petition before the Permanent Lok Adalat. It was denied that there was any terms held out that the Tower would be constructed within 2 years and no definite time was given. The payment of Rs.2,03,550/- being 10% of the price was admitted. The applicant having visited the office of respondent and incident having taken place, was denied or that the allotment was changed from Tower 'J' to Tower 'K'.

6. Apart from the allottee, who submitted his affidavit as Ex.PW1/A, the petitioner-builder examined Dheeraj Malik, the Authorized Representative, who submitted his affidavit Ex.RW2/A and, therefore, only two witnesses were examined before the Authority.

7. On 21.01.2021, when the matter was first argued and it was put to counsel for the petitioner that whether any specific defence was taken in the written statement that the allotment was of Tower 'K' and not of Tower 'J'. Counsel, however, could not point out the said stand taken by the petitioner-Company, but only however referred to the documents, wherein reference was also made of Tower 'K'. It was also put to the counsel that whether Tower 'K' at any point was built up and allotment offered and the answer was in the negative as such by the counsel for the petitioner-Company.

8. Thus, it is apparent that against the amount of Rs.2,03,550/-, which was received by the petitioner-Company for purchasing of an apartment, none of the Towers J & K came up for construction from the

time of the booking on 30.12.2006 till 27.03.2014. It was in such circumstances that the refund has been directed of the amount by the respondent No.1-Permanent Lok Adalat for Public Utilities Services, Karnal. As per Clause 12 of the agreement (Annexure P-1), the petitioner-Company would endeavour to offer possession of the apartment within 30 months from the date of the sanction of the building plans. The petitioner-Company on completion of the construction was to issue final call notice to the allottee, who within 30 days thereof was to remit all dues and take possession of the apartment. Nothing has been brought on record that Tower 'J' or Tower 'K' were duly sanctioned or they had been completed and possession offered to the respondent No.2.

9. It is, thus, apparent that the petitioner-Company initially had taken the earnest money, but no effort had been made to construct the said tower, which was allotted to the petitioner, in spite of having the requisite License dated 15.02.2006 for developing and constructing a Group Housing Complex in 11.239 acres of land situated in the revenue estate of Kasba Karnal, District Karnal.

10. In such circumstances, it does not lie in the mouth of the counsel for the petitioner-company to submit that on account of the delay in payment, it was entitled to forfeit the allotment money, once they themselves have taken no action to initiate any construction of the tower for which allotment money was received.

11. The respondent No.1-Lok Adalat, has, thus, rightly directed

the refund, on the ground that the tower was not erected and, therefore, no illegality can be found in the impugned order, as the petitioner-Company had failed to raise any construction. Resultantly, there is no merit in the present writ petition and the same is dismissed in limine.

FEBRUARY 24, 2021
Naveen

(G.S. SANDHAWALIA)
JUDGE

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