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

**CWP No.2177 of 2019
Date of Decision: 19.04.2022**

M/S GPM DEVELOPERS PVT LTD

.....Petitioner

Vs

DHARMENDER CHAUDHARY AND ANOTHER

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ashwani Talwar, Advocate
for the petitioner.

Mr. Kunal Dawar, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

Petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of certiorari, quashing the impugned award dated 04.12.2018 passed by respondent No.2, whereby the petitioner was directed to refund the amount of Rs.6,91,973/- deposited by respondent No.1 along with interest @ 9% per annum.

Learned counsel for the petitioner submits that respondent No.1 had opted for construction link plan and was required to pay the amount at eleven intervals depending upon the status of construction. The basic sale price of the flat was

Rs.33,56,160/- and respondent No.1 deposited only an amount of Rs.6,91,973/- despite repeated attempts made by the petitioner. According to the petitioner, the flat was complete for which an offer of delivery of possession was given on 20.11.2017.

Learned counsel for the petitioner further submits that as per terms and conditions of the allotment in respect of non-payment of installments, 25% of the amount of cost of the flat is liable to be forfeited and the balance, if any, is liable to be refunded without interest. Respondent No.1 did not even deposit 25% of the cost of the flat in terms of conditions of contract and, therefore, money deposited by him to the tune of Rs.6,91,973/- has to be forfeited. The award passed by the Permanent Lok Adalat is not legally sustainable.

Per contra, learned counsel for respondent No.1 submits that the petitioner was indulging in malpractice and unfair trade practice and, therefore, respondent No.1 was forced to initiate legal proceedings against the petitioner. Respondent No.1 relied upon RTI information and also produced photographs on record before the Permanent Lok Adalat.

Learned counsel for respondent No.1 further submits that petitioner has failed to offer possession of the unit booked by respondent No.1 despite lapse of more than five years. No completion certificate is obtained by the petitioner in respect of

construction at the spot. The construction raised at the spot is of very poor quality and construction of the project is not complete and occupancy certificate has also not been issued by the office of Town and Country Planning. Without occupancy certificate, the possession of the unit cannot be offered by the petitioner to the allottee like respondent No.1.

The Permanent Lok Adalat took notice of the fact that construction was not completed within the stipulated time. Petitioner kept on waiting for the payments along with interest on delayed payments, but no steps were taken by the petitioner to cancel the booking and allotment in favour of respondent No.1 on account of his failure to make further payments for such a long time i.e. from 26.09.2013 till November, 2018, when offer of possession letter was issued. Respondent No.1 filed an application under Section 22(C) of the Legal Services Authority Act on 31.07.2015 when the petitioner failed to complete the construction within the stipulated period. Petitioner has not placed on record any builder buyer agreement, defining the terms and conditions of the agreement between the parties, therefore, no action has been taken by the petitioner against respondent No.1 for his alleged failure to pay the amount against different demands raised by the petitioner.

Admittedly, in the instant case, no builder buyer agreement has been placed on record by the petitioner, nor has

the occupancy certificate been obtained regarding construction. In the absence of aforesaid documents, petitioner cannot have deliberated upon terms and conditions between the parties and resultantly could not have delivered the possession. Faced with this disqualification, even petitioner could not cancel the allotment in favour of respondent No.1, owing to any default in making good the balance installments on demand.

Taking into consideration the aforesaid facts, I find that the impugned award passed by the Permanent Lok Adalat thereby directing the petitioner to refund an amount of Rs.6,91,973/- along with interest @ 9% from the due date till finalization in favour of respondent No.1 is justified. This writ petition is found to be devoid of merits and is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

April 19, 2022

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No