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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-4846-2020

Date of decision : 2.8.2022

Arun Kumar Johar

..... Petitioner (s)

Versus

Chandigarh Housing Board, Chandigarh and others Respondent (s)

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Ajey Bishnoi, Advocate
for petitioner.

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HARINDER SINGH SIDHU, J.

In this petition, the petitioner has assailed the order dated 29.11.2019 (Annexure P-15) whereby the petitioner has been refunded an amount of Rs. 5,77,225/- instead of refunding Rs. 8,16,148/-. Directions have been sought to respondents to calculate the correct date of cancellation and the refundable amount as per Scheme Brochure (Annexure P-1).

The Chandigarh Housing Board, Chandigarh (respondent No. 1) floated a scheme i.e. 'Two Bedroom Flats – Self Financing Housing Scheme 2006, Sector 49, Chandigarh Allotment on Freehold Basis' on 31.1.2006. The Scheme comprised three Sub-Schemes 'A', 'B' and 'C'. The petitioner was an applicant in Sub-Scheme 'C'. This scheme comprised 10 units reserved (Five units each on the Ground Floor and 1st Floor). The petitioner was allotted a two Bedroom Flat under this sub-scheme at a sale price of Rs. 35,00,000/-. He was issued an Acceptance-cum-Demand letter (for short “ACD Letter”) dated 1.12.2006. He deposited an amount of Rs. 6,15,000/- on 18.7.2007 which after adding initial deposit

of Rs. 2,60,000/- was 25 per cent of the sale price. As per the letter, the remaining 75 per cent of the price of flat i.e. Rs. 26,25,000/- was to be deposited with interest in 3 six monthly equated installments of Rs. 9,63,922/-. The first installment was payable within 180 days of the date of issue of the ACD letter. The second and third installments were payable within 360 days and 540 days of its issue.

The petitioner could not deposit any of these installments as his father was undergoing cancer treatment. The petitioner received a letter dated 14.7.2009 from respondent No. 2 calling upon him to deposit Rs. 28,91,766/- on or before 22.7.2009. Respondent No. 2 then issued a notice dated 7.6.2010 calling upon the petitioner to appear on 18.6.2010 to show cause as to why the registration and allocation should not be cancelled for non payment of outstanding amount which was calculated at Rs. 52,17,363/-. The petitioner submitted a reply dated 18.6.2010 expressing his readiness to make full and final payment immediately. He however disputed the amount calculated in the show cause notice dated 7.6.2010. This was followed by other communications dated 18.6.2010 and 23.6.2010, to which the petitioner received no response. Thereafter, the petitioner received a communication dated 12.7.2010 (Annexure P-8) informing him that the allocation had been cancelled because of non payment of the installments by him.

The petitioner, vide communication dated 30.11.2012, requested respondent No. 2 to refund the amount of Rs. 8,75,000/- that he had deposited. This was followed by reminders dated 13.5.2013, 10.7.2013 and 28.3.2014. As he received no response petitioner filed CWP-24678-2015 titled as 'Arun Kumar Johar Versus Chandigarh Housing Board and others'

which was disposed of vide order dated 27.11.2015, by directing respondents to take a decision as to whether the amount paid by petitioner ought to be refunded or not whether with or without interest. The relevant part of the order dated 27.11.2015 is reproduced below :

“ The allotment in favour of the petitioner was cancelled on account of his not having paid the entire amount as per the letter of allotment. The petitioner does not challenge the order of cancellation of the allotment. He merely seeks refund of the amount of 25% paid by him together with interest. The order cancelling the allotment is silent in this regard. The petitioner's representation dated 13.5.2013 Annexure P-9 (collectively) has not been responded to. Although, the petitioner does not challenge the order of cancellation per se he would be entitled to challenge it for the purpose of contending that there ought to be no forfeiture of the amount paid by him and for the refund thereof together with interest.

2. The petition is disposed of by directing the respondents to take a decision as to whether the amount paid by the petitioner ought to be refunded or not whether with or without interest within eight weeks from the date of receipt of a copy of this order.”

In compliance of the directions issued in CWP-24678-2015, respondents passed order dated 4.2.2016, as per which Rs. 14,73,035/-, were to be recovered from petitioner. The petitioner assailed that order by filing CWP-1983-2017 titled as 'Arun Kumar Johar Versus Chandigarh Housing Board and others'. Vide interim order dated 15.11.2019, the petitioner was directed to appear before respondent No. 2 i.e. Chief Executive Officer, Chandigh Housing Board on 22.11.2019 so that the correct amount that was to be refunded to petitioner could be worked out. Thereafter, respondents passed order dated 29.11.2019, as per which an amount of Rs. 5,77,225/- was calculated as being refundable to petitioner. The writ petition was

disposed of vide order dated 19.12.2019 by passing the following order :-

“ Learned counsel for respondent-Chandigarh Housing Board submits that in pursuance of order of this Court passed on 15.11.2019, the decision has been taken on 29.11.2019 and calculation has also been made. The cheque amounting to Rs. 5,77,225/- on account of refund of registration was also sent to the petitioner. On the other hand learned counsel for petitioner submits that the amount has not correctly been calculated. In case, the petitioner is aggrieved by order dated 29.11.2019, he is at liberty to avail the appropriate remedy. A copy of the order has been placed on the record.

The petition stands disposed of.”

The primary ground of petitioner in assailing the order dated 29.11.2019 is that the same has been passed ignoring the provisions of Clause XI (iii) and (iv) of the Scheme Brochure. The clauses are reproduced as under :-

“XI. SURRENDER/CANCELLATION

i) xxxxxxxx xxxxxxxx

ii) xxxxxxxx xxxxxxxx

iii) In case payment of registration money or the subsequent installment is not made by the due dates of the payment prescribed in the Acceptance-cum-Demand letter, the applicant shall have to pay interest @ 18% per annum for the first month, @ 21% for the 2nd month and @ 24% p.a. for the 3rd month. No extension will be allowed beyond three months and the registration shall be cancelled. However, the Chairperson CHB may allow extension beyond three months, or revive registration if the same has been cancelled as the case may be, in case(s) of exceptional circumstances, on written request subject to payment of interest @ 30% p.a. beyond the period of 3 months.

iv) If the registration is cancelled either on the applicant's own request or for non payment of registration money or any of

the subsequent installments with interest, if any, or due to any other reason, the amount deposited with the Board shall be refunded after forfeiting 10% of the initial deposit to the Board. However, where the surrender or cancellation is made after expiry of 1, 2 and 3 months from the due date, in addition, interest calculated @ 18%, 21% and 24% p.a. respectively shall be charged on the due amount remaining unpaid from the due date till the date of surrender or cancellation or for 120 days whichever is earlier. Where the surrender/cancellation is made beyond 3 months, interest @ 30 % p.a. shall be charged further for the period beyond 3 months.

v) xxxxxxxxxxxx xxxxxxxxxxxx”

Relying on Clause XI (iii), learned counsel for petitioner contends that the registration is to be automatically treated as cancelled after 3 months of non payment of any installment. Accordingly, the cancellation date of flat allocation is 31.3.2007 whereas refund has been calculated by treating 12.7.2010 as the date of cancellation on which date the formal order of cancellation was passed by Chandigarh Housing Board.

It is not possible to accept the aforesaid contention of learned counsel for petitioner. It has been recorded in the impugned order that when the petitioner defaulted in paying his installments, the Chandigarh Housing Board, vide letters dated 13.9.2007, 5.12.2007, 9.5.2008, 25.7.2009 and 14.7.2009, asked him to deposit the installments. Thereafter as a last resort, respondent No. 2 issued show cause notice dated 7.6.2010 calling upon the petitioner to appear on 18.6.2010 to show cause as to why registration and allocation of the flat be not cancelled for non payment of the outstanding amount. The petitioner, vide his reply dated 18.6.2010, expressed his readiness to make full and final payment immediately subject to correct calculation of the amount due being furnished to him. He

thereafter also visited the office of respondent No. 2 on 23.6.2010. In view of this, neither petitioner nor respondents treated the allotment as having been cancelled automatically.

The communications exchanged between petitioner and respondents clearly indicated that respondent-Chandigarh Housing Board was ready to accept the payment beyond the prescribed period. The willingness of petitioner to pay the amount indicated that he also did not treat the allocation as having been automatically cancelled. In view thereof, 12.7.2010 the date when the formal order of cancellation was passed has been been rightly treated as the date of cancellation.

It is not disputed by learned counsel for petitioner that if 12.7.2010 is treated to be the date of cancellation then the amount deducted has been correctly worked out in the impugned order. Accordingly, there is no merit in the petition. This petition is dismissed.

(HARINDER SINGH SIDHU)
JUDGE

(LALIT BATRA)
JUDGE

2.8.2022
sjks

Whether reasoned order : Yes / No

Whether reportable : Yes / No