

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
126**

LPA-421-2022

Date of Decision: July 26, 2022

M/S GPM DEVELOPERS PVT. LTD.

...APPELLANT

Versus

DHARMENDER CHAUDHARY AND ANOTHER

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

**Present: Mr. Jeetender Gupta, Advocate,
for the appellant.**

AUGUSTINE GEORGE MASIH, J.

In this Intra Court appeal, challenge is to the order dated 19.04.2022 (Annexure A-1) passed by the learned Single Judge vide which writ petition preferred by the appellant (petitioner therein) challenging the Award dated 04.12.2018 passed by the Permanent Lok Adalat for Public Utility Services, Faridabad allowing the petition filed under Section 22 (C) (1) of the Legal Services Authorities Act, 1987 preferred by respondent No. 1 directing refund of the amount of ₹6,91,973/- deposited by the said respondent along with interest @9% per annum from the due date of depositing till realization of the amount, stands dismissed.

Learned counsel for the appellant has submitted that the learned Single Judge has failed to appreciate that the Permanent Lok Adalat could not decide the case on merits. He submits that the Permanent Lok Adalat once finds that the compromise or settlement has not been entered into between the parties, it should have relegated the parties to the remedy of

arbitration as provided for in the contract agreement especially Clause 44. Since there is an arbitration clause, the Permanent Lok Adalat could not have proceeded to pass the impugned Award.

Learned Counsel for the appellant has also argued the case on merits to contend that the Award dated 04.12.2018 (Annexure P-8) passed by the Permanent Lok Adalat is not sustainable in the light of the fact that respondent No. 1 had failed to deposit the instalments which he was supposed to pay at fixed intervals as per the agreement entered into between the parties. Because of non-deposit of the amount, the amount so deposited by respondent No. 1 i.e. ₹6,91,973/- stood forfeited and he was not entitled to refund of the said amount, what to say of interest. It has also been asserted that when the possession has been offered by the appellant, the requirement was that respondent No. 1 should have paid the remaining amount along with interest thereon to the appellant and taken possession thereof. Prayer has, thus, been made for allowing the present appeal by setting aside the order passed by the learned Single Judge as well as the Award of the Permanent Lok Adalat.

Having considered the submissions made by the counsel for the appellant and on going through the pleadings, the impugned Award passed by the Permanent Lok Adalat as also the judgment passed by the learned Single Judge, we are of the considered view that the present appeal has no merit and deserves dismissal.

The basic question, which has been raised and dealt with by the Permanent Lok Adalat, is that the appellant was claiming shelter of the terms and conditions of the builder buyer agreement, which had been entered into between the parties. The said agreement having not been

placed on record, there was no occasion for the Permanent Lok Adalat to take the said terms and conditions into consideration. Mere statement on the part of the appellant would not be enough when the same had been controverted by respondent No. 1.

It is also not in dispute that the offer of possession, which has been made to respondent No. 1, is in November, 2017. Petition under Section 22 (C) (1) of the Legal Services Authorities Act, 1987 had been preferred by respondent No. 1 on 31.07.2015 when the appellant had failed to complete the construction within the stipulated time. The prayer of the respondents, therefore, for refund of the amount deposited along with interest had been made. Nothing has come on record which would indicate that any steps were ever taken by the appellant for cancellation of the booking and allotment made in favour of the respondents on account of failure to make further payments for a long period of time i.e. from 26.09.2013 till November, 2017.

Further more, counsel for the appellant could not dispute the fact that as of now, neither completion certificate nor the occupancy certificate have been issued by the Town and Country Planning Department. In the absence of these two certificates and approvals by the competent authority, even if possession is offered by the appellant, the same cannot be used by the respondents. In any case, the deposit of the amount by the appellant, the utilization of the said amount and the claim for refund having been made much prior to the offer of possession and that too, in the absence of the completion and occupancy certificates from the competent authority entitles respondent No. 1 for the refund of the amount deposited by him along with interest.

As regards the plea of the counsel for the appellant that the Permanent Lok Adalat did not have the jurisdiction to decide the case on merits, suffice it to say that none of the parties had put forth the said objection at any stage but had proceeded to put forth their respective stands on merits not only in the pleadings but also at the time of hearing of the counsel before the Permanent Lok Adalat.

As regards the plea of arbitration clause available in the contract, suffice it to say that the said plea was also not pleaded or pressed into service before the Permanent Lok Adalat. Even, as has been stated above, the buyer builder agreement, which defined the terms and conditions of the agreement between the parties, having not been placed on record, the said plea cannot be accepted as in the absence of the said agreement, it cannot be asserted as to whether there was such a clause of arbitration or not.

In view of the above, finding no merit in the present appeal, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

(SANDEEP MOUDGIL)
JUDGE

July 26, 2022
pj

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