

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

103

**CWP-34630-2019
Date of decision: 10.01.2023**

PARSAVNATH DEVELOPERS LIMITED

.....Petitioner

VERSUS

PRESIDING OFFICER, PERMANENT LOK ADALAT & OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Suvir Kumar, Advocate
for the petitioner.

VINOD S. BHARDWAJ, J. (Oral)

The instant petition has been filed under Articles 226/227 of the Constitution of India, 1950 seeking issuance of a writ in the nature of Certiorari for setting aside the award dated 07.05.2019 passed by the Permanent Lok Adalat (Public Utility Services), Patiala.

2. Briefly summarized, the facts of the present case are that the respondents No.2 & 3-applicants had agreed to purchase a flat of 1580 square feet (equivalent to 146.70 square yards) with a car parking facility on the 5th Floor of Tower No. T-9 (now T-10) consisting of three bedrooms, drawing and dinning room alongwith kitchen, toilet, Varandah and Balconies for a basic price of Rs. 19,53,275/-. The respondents-applicants had purchased it at a total amount of Rs. 16,46,281.30 from the petitioner-Parsavnath Developers Limited. An amount of Rs. 50,000/- was paid at the

time of submission of the application and the remaining amount of Rs. 15,96,218/- was transferred through the Bank Account. It was settled between the parties that in the event of the respondents-applicant depositing the entire amount in advance, they would get a discount/rebate of seven and a half percent (7.5%). It was also settled amongst the parties that 5% amount of the total cost of the flat will be paid at the time of delivery of possession of the said flat. The respondents-applicants opted Plan-A for payment as per the agreement (Annexure P-3). The possession of the flat was to be provided within a period of 03 years i.e. till 2010, however, even at the time of institution of the application before the Permanent Lok Adalat (Public Utility Services), Patiala under Section 22 (C) of the Legal Services Authorities Act, 1987 i.e. on 07.08.2018, possession of the flat had not been delivered. Resultantly, the application was preferred by the respondent-applicant before the Permanent Lok Adalat (Public Utility Services), Patiala.

3. Reliance was placed by the respondents-applicants on Clause 10 (C) of the agreement which clearly stipulates that in the case of delay in construction of the flat beyond the period as stipulated, subject to force majeure and other circumstances, the developer shall pay the buyer compensation @ Rs. 53.80 per square meter or at the rate of Rs. 5 per square feet of the super area of the flat per month. The relevant clause 10 (C) of the Agreement reads thus:-

"In case of delay in construction of the flat beyond the period of stipulated subject to force majeure and other circumstances as aforesaid under sub clause (a) above, the Developer shall pay the Buyer compensation @Rs. 53.80 (Rupees Fifty three and Paise eighty only) per sq. meter or @ Rs. 5/- per sq. feet of the super area of the Flat per month for the period of delay. Likewise, if the Buyer fails to settle the final

account, execute sale deed and take possession of the Flat within 30 days of the final call notice by the Developer, the Buyer shall be liable to pay to the Developer charges @Rs. 53.80/- per sq. meter or @ Rs. 5/- per sq. feet of the super area of the Flat per month on expiry of 30 days notice."

4. It was also claimed in the aforesaid application preferred before the Permanent Lok Adalat (Public Utility Services), Patiala that as the petitioner-developer did not deliver possession of the flat to the respondent-applicants, hence, they are also entitled compensation as per the contractual provision of Clause 10 (C) of the Agreement which worked out to a total of Rs. 7,58,400/- for the delayed period of 08 years. When the petitioner-developer failed to refund the amount and/or deliver the physical possession of the flat. The petitioner then preferred an application under Section 22 (C) before the Permanent Lok Adalat (Public Utility Service), Patiala to claim compensation as contemplated in the Agreement. The applicant also sought refund of Rs. 16,46,281.30/- alongwith interest and a sum of Rs. 7,58,400/- as compensation in accordance with Clause 10 (C) of the Agreement. A further compensation of Rs. 5,00,000/- was claimed towards unfair trade practice and Rs. 55,000/- was claimed towards litigation expenses.

5. Upon notice issued by the Permanent Lok Adalat (Public Utility Services), Patiala, the petitioner-developer submitted its reply wherein it was stated that the construction of the flat was likely to be completed within a period of 36 months and the same was extendable by another 06 months from the date of commencement of the construction on receipt of sanction of building plan/revised building plans. The stand taken by the petitioner-developer was that on account of global recession, the economy was badly hit and the Real Estate sector was one of the worst effected. As a result of

the said circumstances that were beyond the control of the petitioner-developer, the liquidity of funds became a severe problem and the construction of the project could not be completed within the agreed time. The receipt of the payment as claimed by the respondents-applicants was not disputed and Clause 10 (C) of the Flat Buyer Agreement was also not denied.

6. Upon consideration of the rival submissions, the Permanent Lok Adalat (Public Utility Services), Patiala came to a conclusion that the petitioner did not dispute the receipt of the above amount towards sale consideration and also the Clause 10 (C) of the Flat Buyer Agreement stipulating payment of compensation in the event of delay in handing over possession of the flat. Besides, it was also noticed that the petitioner-developer could not point out any circumstance as would justify the developer to not abide by its contractual obligation to deliver possession and/or to not transfer compensation for the delay in completion of the project. Accordingly, the application was allowed and the petitioner-developer was directed to refund the entire amount of Rs. 16,46,218/- alongwith compensation of Rs. 7,58,400/- within two months from the date of the award. A further compensation of Rs. 10,000/- towards unfair trade practice and Rs. 5,000/- as litigation expenses were also awarded. Aggrieved of the said award dated 07.05.2019, the present petition has been filed.

7. Learned counsel appearing on behalf of the petitioner contends that Permanent Lok Adalat (Public Utility Services), Patiala had not taken recourse to the conciliation proceedings as per Section 22 (C)(4) of the Legal Services Authority Act, 1987 and hence could not have proceeded to

adjudicate the dispute on merits. He further contends that the award has been passed without taking into consideration the defence raised by the petitioner.

8. I have heard learned counsel appearing on behalf of the petitioner and have gone through the documents appended alongwith the instant petition.

9. Perusal of the award clearly shows that the Permanent Lok Adalat (Public Utility Services), Patiala has specifically mentioned that the requirements of sub-section (3) to (7) of Section 22 (C) were duly complied with and efforts to bring about the settlement amongst the parties were initiated, however, the parties failed to arrive at a settlement. Upon a pointed query raised to the petitioner, he could not refer to any material available on file to controvert or dispute the aforesaid finding recorded by Permanent Lok Adalat (Public Utility Services), Patiala. In the absence of reference to any specific evidence, there can be no presumption regarding falsehood of the court records maintained in due course. The petitioner was at liberty to refer to the relevant zimni orders to substantiate his above argument and his failure to lead best evidence on record leaves this Court with no option but to draw an adverse inference and to presume that terms of settlement was duly put forth to both the parties and that such terms of settlement could not fructify into a mutually acceptable resolution. High Court would not assume existence of a fact recorded in an award passed by the quasi judicial authority, to be incorrect, unless some tangible evidence or material is brought on record to dispute the said proceeding so recorded.

10. Having held above, the next arguments of the petitioner as to the whether the defence raised by him had been duly considered by the

Permanent Lok Adalat (Public Utility Services), Patiala or not is being considered.

11. It is not disputed by the petitioner that the sale consideration with respect to the flat had been paid by the respondent-applicant in the year 2007 and a total period of 03 years was prescribed under the Flat Buyer Agreement to hand over possession of the land. A further grace period of 06 months was available to the developer, in the event of occurrence of any force majeure. It is also not in dispute that possession of flat had not been offered by the petitioner-developer even till 2018. The counsel for the petitioner also failed to refer to any completion/occupation certificate having been granted to the petitioner developer and to demonstrate that the unit in question is fully complete and due for handing over possession. Be that as it may, after having waited for a period of more than 08 years, the application under Section 22 (C) was filed by the buyer. It is also not in dispute that Clause 10 (C) of the Land Buyer Agreement stipulated compensation @ Rs. 53.80 per square meter or at the rate of Rs. 5/- per square feet of the super area of the flats per month. The calculation of Rs. 7,58,400/- for the delay of 08 years at the rate as agreed upon Flat Buyer Agreement is also not in dispute. Thus, directing refund of the entire amount deposited alongwith the compensation as agreed in the Flat Buyer Agreement cannot be said to be inequitable or unjust. The petitioner also could not refer to any provision of the Flat Buyer Agreement that would create any equity in favour of the developer and justify the developer's act of not complying with his obligation under the Agreement. The purported defence of the global melt down and the liquidity crunch cannot lay foundation for the developer not

complying with his obligation under the Agreement and retaining the hard earned money of the flat owners/buyers.

12. I do not find that there is any illegality, perversity, impropriety or mis-appreciation of the evidence and documents on record by the Permanent Lok Adalat (Public Utility Services), Patiala. In the absence of any such perversity, the conclusions drawn by Permanent Lok Adalat (Public Utility Services), Patiala cannot be substituted by the High Court in exercise of its power under judicial review. All the arguments of the petitioner have been duly taken into consideration by the Permanent Lok Adalat (Public Utility Services), Patiala in Para No.14 & 15 of the order alongwith the undisputed terms and conditions of the agreement. Once the factual aspect is not in dispute and the default on the part of the petitioner remains uncontroverted, the award of the Permanent Lok Adalat (Public Utility Services), Patiala cannot be faulted with.

The present writ petition is accordingly dismissed in *limine*.

(VINOD S. BHARDWAJ)
JUDGE

JANUARY 10, 2023

Vishal Sharma

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