IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

233 (15 Cases)

CWP-5873-2020,
CWP-5874-2020 (O&M)
CWP-5880-2020,
CWP-5884-2020,
CWP-5886-2020,
CWP-5889-2020,
CWP-5891-2020,
CWP-5892-2020,
CWP-5893-2020,
CWP-5895-2020,
CWP-5900-2020,
CWP-5939-2020,
CWP-5941-2020,
CWP-5943-2020 and
CWP-5946-2020

Date of Decision: 01.03.2024

M/S ANSAL HOUSING AND CONSTRUCTIONS LIMITED AND ANOTHER

… Petitioners

VERSUS

THE PERMANENT LOK ADALAT FOR PUBLIC UTILITY SERVICES AND ANOTHER

... Respondents

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

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Present: Mr. Ashish Verma, Advocate
for the petitioner(s).

Mr. J.S. Chahal, Advocate
for respondent No.2.

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VINOD S. BHARDWAJ, J. (ORAL)

Involving identical issues, the present writ petitions are being decided by a common judgment, with the consent of counsel for the respective parties. Facts of the case are, however, extracted from CWP-5873 of 2020 titled as 'M/s Ansal Housing and Construction Ltd. Vs. Permanent Lok Adalat (Public Utility Services), Jagadhri and another'.

Challenge in the above petition is to the Award dated 01.10.2019 passed by respondent No.1, whereby the application filed by the respondent/ allottee has been allowed and it has been held that the demand of EDC (External Development Charges) to the tune of Rs.8,25,391/- and the extra demand of Rs.2,95,203/- were liable to be set aside and that the same ought to be refunded to the applicant-allottee alongwith the interest @ 9% per annum from the date of its deposit till final disbursement. Additionally, a compensation of Rs.50,000/- towards mental agony has also been imposed.

The facts of the said case are that the respondent-applicant who is resident of House No.193, Jagadhari, Yamuna Nagar and that on an application submitted by the applicant, a plot No.C-030 measuring 503.76 Sq. Yards was allotted to him against a fixed price by the petitioner-builder in its developed residential area named Ansal Town, Sector 20, Ambala Road, Yamuna Nagar. Vide letter No.855 dated 23.02.2012, the possession of the residential plot was offered to the respondent-Applicant. Alongwith the said offer, a sum of Rs.2,149/- towards EDC; Rs.380/- per sq. yard towards utility charges; Rs.50/- per sq. yard as staking charges; Rs.75/- as interest free security charges; Rs.25/- per sq. yard as water for construction charges and Rs.41/- as STP charges were demanded. Besides, the petitioner Developer has also made a demand of misc. charges of Rs.2,500/- + 1% of the plot value, watch and ward charges @ Rs.2.5/- per sq. yard per month and common maintenance charges @ Rs.2.5/- per sq. yard per month. Counsel for the respondent-Applicant claimed that the aforesaid demands are without any legal or contractual force and amounts to an unfair trade practice. It is further contended that as per the calculation sheet an illegal demand of Rs.8,25,391/- and Rs.2,95,203/- was consequently raised by the petitioner-developer. A refund of the said amount was accordingly sought for through the abovesaid application.

The abovesaid application was opposed by the petitioner-developer by raising preliminary objections regarding maintainability, locus standi, jurisdiction and concealment of material facts. On merits, it was contended that the amount in question had been demanded at the rate of Rs.2149/- per sq. yards against enhanced EDC as per circular notification dated 14.07.2011 and the other charges are being demanded as per the agreement with the respondent-applicant at the time of booking of the unit. It is also averred that even though the recovery of enhanced EDC had been stayed by this Court, however, keeping in view the interest of the allottees, the abovesaid amount was decided to be received from the allottees, with an option that in case Court quashes the notification and sets aside the recovery of enhanced EDC, the same shall be refunded alongwith the interest. It was pointed out that it would be difficult for the petitioner-developer to recover the said amount from the allottees after the delivery of the possession and as such, the same was collected in advance. Reference was made to the justification behind the demand towards enhanced EDC, utility charges, staking charges, interest free security charges, water for construction charges, STP charges and registration charges etc. as per Clauses VII, IX, X, XI, XII and XV of the agreement executed between the petitioner-developer and the respondent-applicant.

Efforts for amicable resolution of the dispute failed in any settlement whereupon adjudication in terms of Section 22-C(8) of the Legal

Services Authorities Act, 1987 was undertaken by the Permanent Lok Adalat (Public Utility Services), Jagadhri at Yamunanagar.

Upon consideration of the case and evidence adduced by the respective parties, the said application was allowed by the Permanent Lok Adalat (Public Utility Services), Jagadhri at Yamunanagar and the petitioner-developer was directed to refund the EDC as well as enhanced EDC and other charges that had been collected.

Aggrieved thereof, present writ petitions have been filed.

Written statement has been filed by the contesting respondents wherein they have raised various objections and the stand as noticed earlier about demand being illegal above has been reiterated alongwith the claim that the basic sale price of the plots specifically included all charges and all other infrastructure required to be created. All internal development works and their construction was to be carried out from the basic sale prices that had already been recovered by the petitioner-developer. In this regard, reference is also made to the detailed report on services work submitted by the petitioner-developer. Relevant part of the same is reproduced hereinafter below:

> *"The cost per gross acre for the project works out to Rs.45.65/- lacs/acre which covers the provision of services like water supply, sewerage, storm water drainage, roads, street lighting, plantations and maintenance charges."*

Reference has also been made to the final abstract of cost referred thereunder and reproduced hereinafter below:-

"ANSAL TOWN, SECTOR-20, YAMUNA NAGAR
FINAL ABSTRACT OF COST

		Amount in lacs
Sub Work No.I	Water Supply	Rs.428.49/-
Sub Work No.II	Sewerage	Rs.170.34/-
Sub Work No.III	Storm Water Drain	Rs.229.90/-
Sub Work No.IV	Road Works	Rs.787.43/-
Sub Work No.V	Street Lighting	Rs.77.44/-
Sub Work No.VI	Horticulture Work	Rs.95.28/-
Sub Work No.VII	Maintenance Charges for 10 years including Resurfacing of Road after 1st 5 years and 2nd 5 Years of mta. (As per HUDA norms)	Rs.921.47/-

Total Amount Rs.2710.34/-

Say Rs.2710.35 Lacs

Dev. Cost per acre – 2710.35 = 45.6

-------- lacs

59.36"

A further objection is raised with respect to the mode and manner in which the charges have been determined and collected by the petitioner-developer notwithstanding as to whether the services in question are being made available to the residents of the locality. It is contended that the present writ petitions have been filed by the petitioner-developer only to harass the allottees of the plots and by taking advantage of his position vis-a-vis the allottee.

During the course of arguments, Learned counsel for the petitioner-developer submitted that insofar as the question of enhanced EDC and collection thereof at the rate of Rs.2,149/- per sq. yard is concerned, since the said claim is already a subject matter of challenge before this Court wherein recovery of the enhanced EDC has been stayed, the petitioner-developer is ready and willing to refund the same alongwith interest subject to the allottees furnishing an undertaking that in the event the enhanced EDC are held to be leviable by this Court, the respondent-allottees shall make good the deposit. The abovesaid offer of the petitioner-developer is accepted by the respondent-allottees.

The same thus now leaves the issues only with respect to the remaining charges that have been collected/demanded by the petitioner-developer. Reliance of the counsel for the petitioner-developer, for justifying levy and collection of said charges, is on the following clauses of the letter of allotment/agreement executed between the parties:

> *"7. It is hereby made clear that the basic sale price of the said Plot does not Include EDC External Development Charges, IDC (Infrastructure Development Charge) and/or any other charge of similar nature levied by the Government Authority(s) The Allottee(s) hereby agree that he/she will pay such Charges, if any, as and when demanded by the Developer or its nominee or any authority.*
>
> *8. XXX XXX XXX XXX*
>
> *9. The cost of External Electrification, Electric connection, Water Service Connection, Sewer Connection as applicable in the Project are not included in the basic sale price of the said Plot and shall be payable by the Allottee(s) in addition to the price of the Plot. Further the Allottee(s) shall pay on demand to the Developer all amounts to be determined at the time of providing necessary connections to make arrangements for providing sewer and water*

connections from the mains laid along the road serving the Project.

10. The cost of installing running and maintenance of Sewerage/Effluent Treatment Plant Pollution Control Devices, if any, shall be paid in addition to Basic sale price by Allottee(s) on proportionate basis as and when demanded. Similarly if, either by statutory requirement or otherwise, it becomes necessary to provide for any further equipment/facilities etc. then the cost of installing running and maintenance shall be additionally and proportionately paid by the Allottee(s).

11. The Electricity, water supply shall be obtained from appropriate authority/body by Allottee(s) for his/her own consumption at his/her own cost. The Cost of installation running and maintenance of sub-station/power house/ transformers/ pumping station shall be paid extra by the Allottee(s) on Proportionate basis, the quantum of which shall be decided by the Developer or nominated agency at its sole discretion and the same shall be conclusive and binding on the Allottee(s).

12. Charges for Installation, running and maintenance of Fire fighting system, if any, are also to be paid extra proportionately as and when demanded by the Developer. Fire Fighting equipment and prevention measures which are required within the, Plot and which become necessary on account of any interior decoration/partition or heat load created by the Allottee(s) shall be installed by him/her at his/her own cost after obtaining necessary permission by him from the authority(ies) concerned.

13-14. XXX XXX XXX XXX

15. Payment of installments due towards the basic sale price and preferential location charges, club membership fees or other dues, if any, will be made by the Allottee(s) at intervals as per the payment plan opted by him/her or as demanded by the Developer. Timely payment of installments is the essence of the terms of the

Application and Allotment Letter if payment of installment other dues are not received within the stipulated period given in the opted payment plan and/or in the event of breach of any of the terms and conditions of the Application and Allotment Letter by the Allottee(s), the Allotment can be cancelled at the sole discretion of the Developer and The Developer shall be entitled to sell the said Plot at such price and on such terms and conditions to such other person or party (new Allottee(s)) as the Developer may in its absolute discretion deem fit. On the realization of the entire sale consideration from the new Allottee(s) of the said Plot the Developer shall refund to the Allottee(s) the amount paid by the Allottee(s) to the Developer in pursuance of this Allotment after receiving the original documents from the Allottee(s) and after compliance of necessary formalities by the Allottee(s) but after deducting there from:-

A. 20% of the basic sale Price of Plot which constitute the earnest money and which is to stand forfeited by the Developer.

B. The taxes and outgoings, if any, due and payable by the Allottee(s) in respect of the said Plot up to the date of cancellation of the Allotment

C. The amount of interest payable by the Allottee(s) to the Developer in terms of the Allotment from the dates of default in payment till the date of cancellation of the Allotment

D. In the event of the said resale price being less than the Plot price mentioned herein, the amount of such deficit and

E. The costs incurred by the Developer in finding a new Allottee(s) for the said Plot.

The Developer shall, in the event of any shortfall after making above deductions, be entitled to recover the said amounts from the Allottee(s). The Developer shall not be liable to pay to the Allottee(s) any interest, compensation, damages, costs, otherwise. The amount so refunded shall be accepted by the Allottee(s) in full satisfaction of all his/her claim under the Allotment of the said Plot.

However, in exceptional circumstances, the Developer may in its absolute discretion condone the breaches including delay in making payment by charging an interest @24% compounded quarterly on the delayed payments/outstanding and restoration charges at such rates as may be decided by the Developer in its sole discretion provided that the said Plot has not been allotted to any third party and/or disposed off in any manner whatsoever at the absolute discretion of the Developer pursuant to such cancellation. In such a situation, an alternate Plot, if available, may be offered by the Developer in lieu of the same.

Placing reliance on the abovesaid clauses, counsel for the petitioner-developer had averred that the basic sale price, at which the plots/property had been offered to the respondents-allottees, did not include the additional charges and the cost/services referred thereunder and they were to be charged extra.

Responding to the above, counsel for the respondent-allottees has placed reliance upon the project report (Annexure R-2/7) as per which the cost for laying and maintenance of the abovesaid infrastructure comes to Rs.45.65/- lacs per gross acre.

Counsel for the petitioner-developer rebutted the same by averring that the abovesaid report is not an assessment of the services/work to be installed in the proposed residential colony at Sector 20 by petitioner-developer but the same has been undertaken by the respondent-State itself. The abovesaid cost is the costs for development of the abovesaid infrastructure and its maintenance for per gross acre and the same is not the cost or price of the development of the project. Besides, the cost of the project is at variance than the price at which the property may be sold. The petitioner-developer would thus not be bound by the cost that has been assessed by the Executive Engineer of the respondent-Department before granting approval to the project of the petitioner-developer.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

The execution of the allotment letter/agreement is not a subject matter of dispute herein. Even though an attempt has been made by the counsel for the respondent-allottees to contend that the abovesaid agreement is unconscionable and runs contrary to the interest of the respondents-allottees, however, he is not in a position to controvert the fact that the abovesaid agreement was executed between the parties in the year 2011 and that at no point of time, the abovesaid agreement and/or the terms and conditions thereof were challenged by the respondents-allottees before any competent Court/Forum/Tribunal on the ground of the same being unconscionable or being severely prejudicial to the interest of the respondents-allottees. Further, it is also not in dispute that even at the stage of filing of the application before the Permanent Lok Adalat (Public Utility Services), Jagadhri at Yamunanagar, there was no such challenge to the terms and conditions of the allotment letter/agreement executed between the parties. Hence, legality of the said Clauses cannot be gone into at this stage and that too without any challenge to the same by the allottees.

The issue thus boils down to whether the charges, collected by the petitioner-developer at the time of making offer of possession, were valid or not.

Insofar the issues pertaining to enhanced EDC are concerned, the petitioner-developer has already made a statement that he is ready to refund the said amount alongwith interest as awarded by the Permanent Lok Adalat (Public Utility Services), Jagadhri at Yamunanagar subject to the undertaking referred to above, which such offer has been accepted by the respondents-allottees as well, hence, this Court needs not delve further into the said issue. The dispute which now survives is as regards the demand towards maintenance/operations charges of various other services including the electricity connection, water service connection, sewerage connection etc. as applicable.

A perusal of the abovesaid clauses of the agreement shows that the petitioner-developer has made a disclaimer that the basic sale price of the plot/premises does not include the cost of external electrification, electric connection, water service connection, sewerage connection and also does not include the cost of installing, running and maintenance of sewerage/connection etc. Further, there is also a disclaimer that the electricity, water supply and other services shall be at the own cost of the respondents-allottees and that the charges towards installation, running and maintenance of fire fighter systems or any other special price in relation to club membership etc. are separate and independent from the basic sale price.

A perusal of the clauses of the agreement shows that the petitioner is entitled to the cost towards connection and external electrification. The cost and maintenance or proportionate basis was provided for at their own cost.

Without disputing that the said clauses of the agreement provided for the petitioner-developer to raise and demand such charges from an allottee, it is seen that the said charges have been circumscribed to be recovered on proportionate basis as per cost incurred. The petitioner-developer has instead raised a fixed demand against the abovesaid services/utilities rather than a proportionate demand as stipulated in the agreement executed between the parties, which is required to be ascertained on the basis of actual expenses to be divided proportionately. No such details have been furnished by the developer to establish that the charges demanded had been calculated on valid basis and as per agreement. The petitioner cannot tend to profiteer from operations of the systems that have undisputedly been created at the cost of allottees and stake a claim or title over the amenities. It is bound to disclose the actual expenses incurred before demanding the same. The formula for proportionate division may be variable depending on nature of the service/amenity.

Insofar as the detailed report submitted by the Executive Engineer (Headquarter) for Chief Engineer-II, Panchkula is concerned, the same is indicative of the total cost towards creation of the infrastructure and its maintenance including resurfacing worked out by the State to Rs.45.65/- lacs per gross acre. The abovesaid factors may, however, be relevant for the purpose of determining not only the proportionate cost to be recovered by the petitioner-developer of the project but also to see that the total cost recovered under the garb of cost and running of operation and maintenance does not exceed even beyond the total project cost that may have been assessed by the Competent Authority for its entire duration. The project in question is, thereafter, required to be handed over to the local Authorities as per law.

Evidently, the Permanent Lok Adalat (Public Utility Services), Jagadhri at Yamunanagar has failed to call for the record/ accounts of the petitioner-developer on the basis whereof, it could have determined as to whether the levy of charges was justified and if so, to what extent and as to whether a flat rate could have been determined especially when the agreement itself stipulated a proportionate cost to be paid by an allottee.

Under the given circumstances, I am of the opinion that the Permanent Lok Adalat (Public Utility Services), Jagadhri at Yamunanagar failed to call for the requisite records and to carry out the requisite assessment, before passing a speaking order and to hold that the abovesaid collection was unjustified and was unsustainable. The said aspect having not been gone into by the Permanent Lok Adalat (Public Utility Services), Jagadhri at Yamunanagar, the impugned Award deserves to be set aside.

The matter is remanded to the Permanent Lok Adalat (Public Utility Services), Jagadhri at Yamunanagar to re-examine the claim made from the respondents-allottees vis-a-vis various charges that have been collected by the petitioner-developer and to examine the leviability of the abovesaid charges on the basis of the specific clauses of the agreement executed between the parties and as to whether the said collection of cost and expenses is made on a proportionate basis rather than a flat rate being charged.

The petitioner-developer shall, however, remain bound by the statement to refund the enhanced EDC that have been collected by him subject to the undertaking to be furnished by the respondent-allottees.

Let the parties appear before the Permanent Lok Adalat (Public Utility Services), Jagadhri at Yamunanagar on 08.04.2024. The Permanent Lok Adalat (Public Utility Services), Jagadhri at Yamunanagar shall re-examine the issues as regards assessment and collection of the cost and pass the Award afresh in accordance with law.

The petition(s) are allowed. The impugned Awards are set aside. Matter is remanded on issues referred to above and subject to petitioner refunding EDC with interest as undertaken.

All other misc. application(s), if any, also stand(s) disposed of accordingly.

Photocopy of this order be placed on the files of other connected cases.

(VINOD S. BHARDWAJ)
JUDGE

MARCH 01, 2024
rajender

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No