

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

213 and 215

Date of decision: 12.03.2024

CWP-16637-2021 (O&M)

GREATER MOHALI AREA DEVELOPMENT AUTHORITY

.....Petitioner

VERSUS

PERMANENT LOK ADALAT AND ANOTHER

.....Respondents

CWP-7955-2018

GREATER MOHALI AREA DEVELOPMENT AUTHORITY THROUGH
ITS ESTATE OFFICER

.....Petitioner

VERSUS

PERMANENT LOK ADALAT AND ANOTHER

.....Respondents

CWP-8011-2018

GREATER MOHALI AREA DEVELOPMENT AUTHORITY THROUGH
ITS ESTATE OFFICER

.....Petitioner

VERSUS

PERMANENT LOK ADALAT AND ANOTHER

.....Respondents

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

Present: - Ms. Munisha Gandhi, Senior Advocate with
Ms. Manveen Narang, Advocate
for the petitioner in CWP-16637-2021.

Mr. Aman Sharma, Advocate for the petitioner(s) in
CWP-7955-2018 and CWP-8011-2018.

Mr. Parampreet S. Bajwa, Advocate,
Mr. Inderjit Singh Saru, Advocate,
Mr. Manjit Singh Khaira, Advocate
for respondent No.2.

Mr. Munish Goel, Advocate
for respondent No.2 in CWP-8011-2018.

VINOD S. BHARDWAJ, J. (Oral)

1. Since a similar question arise in these three writ petitions, they are being decided by a common judgment. Facts are however being extracted from *CWP-16637-2021* titled as “*Greater Mohali Area Development Authority versus Permanent Lok Adalat and another*”.

2. Challenge in the said petition is to the award dated 25.02.2021 passed by Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar, Mohali whereby an application under Section 22-C of the Legal Services Authorities Act, 1987 filed by the respondent No.2-applicant-allottee has been allowed and the petitioner-GMADA has been directed to refund the amount deposited with the petitioner alongwith interest @ 9% from the date of its deposits till realization alongwith a cost of Rs. 1,20,000/- towards mental agony and harassment and Rs. 11,000/- towards litigation expenses. In the event of failing to deposit the awarded amount within a period of 45 days of passing of the award, interest was payable @ 15% per annum.

3. Briefly summarized the facts of the present case are that the respondent No.2-applicant-allottee had applied for and was a successful applicant for allotment of Flat in the Purab Premium Apartment, Sector-88, SAS Nagar, Mohali. The said scheme has been floated by the petitioner GMADA on 12.12.2011 and closed on 12.01.2012, for allotment of Type-1, Type-2 and Type 3 Apartments. As per the terms and conditions mentioned

in the Brochure, an applicant desirous of Type-3 Apartment had to deposit a sum of Rs. 6.90 lacs with the GMADA. In the draw of lots held on 20.03.2012, the respondent No.2-applicant-allottee was allotted a Type-3 Apartment Vide GMADA office letter No. GMADA-EO/2012/2559 dated 21.05.2012 against application form No. 12753. The cost of the above said apartment was Rs. 69 lacs and the respondent No.2-applicant-allottee selected Plan B for payment of the price of the apartment. Five installments alongwith penalties were deposited by the respondent No.2-applicant-allottee as on 30.03.2015 to a total amount of Rs. 79,24,981/-. According to the Brochure the possession of the said apartment was to be handed over within a period of 36 months from the date of draw of lots i.e. 20.03.2012 after completion of all documents. It was contended that the possession of the said apartment was not offered by the GMADA till the date of filing of the application before the Permanent Lok Adalat. It was further averred that despite obtaining penal interest from the applicant-allottees, the possession was not being offered and that an amount of Rs. 7,47,500/- i.e. the last installment had not been deposited alongwith interest which was due on 21.05.2015. The ledger of account was also produced by respondent No.2-applicant-allottee before the Permanent Lok Adalat. It is contended that the above said cost of the apartment had been deposited by respondent No.2-applicant-allottee after arranging loan of Rs. 47 lacs from the State Bank of India, Chandigarh and the respondent No.2-applicant allottee was also required to pay regular interest on the loan amount availed by him from the Bank. Hence, there was dual cost imposed upon the respondent No.2-applicant-allottee firstly in the form of payment of interest on the loan amount already availed and secondly on account of unexplained delay in

completion of the project and possession of the apartment. A representation was submitted by the respondent No.2–applicant-allottee on 08.01.2016 which was duly received by GMADA alongwith a reminder for seeking refund of the amount, however, the same was to no avail. It is averred that the GMADA was guilty of deficiency in service and unfair trade practices, Thereafter, the application was preferred before the Permanent Lok Adalat.

4. On notice, the petitioner-GMADA entered its appearance and file its reply raising various objections with respect to the maintainability of the proceedings before the Permanent Lok Adalat. Without disputing the factum of allotment letter and other factual aspects pointed out by the respondent No.2-applicant-allottee, it was submitted that the allottee made consistent default in payment and as a result of such default, a show cause notice dated 17.11.2014 was served upon him and a demand notice dated 05.03.2015 was also addressed to him. In response to the communication dated 17.11.2014, the respondent No.2-applicant-allottee sent a reply on 24.12.2014 wherein he stated that he did not pay the due amount on account of unavoidable circumstances and submitted that he was ready and willing to deposit the amount alongwith interest and penalty. It was further stated that the respondent-applicant is still in default and was served with a communication dated 28.11.2016 calling upon him to bring the receipts of the deposit made and that in the event the amount had not been deposited, action shall be taken as per the letter of intent and under the provisions of the Punjab Regional and Town Planning and Development Act, 1995. It was further stated that the letter and offer of possession had not been issued to the respondent No.2-applicant because of the default committed by him.

The requisites documents had been appended alongwith the reply furnished.

A reference was also made to various statistics as per which there were 1075 eligible allottees and that as many as 400 allottees had defaulted in making due payments and nearly 100 allottees opted for refund of their money due to which the entire planning for raising construction of the project had to be redrawn and that the GMADA was not in voluntary default in fulfilling its promise of delivery of possession within the time specified as per letter of allotment. It was further submitted that a letter of possession dated 28.11.2016 had already been issued to the respondent No.2-applicant-allottee and he could seek possession after making payment of the balance amount.

5. Proceedings for an amicable resolution of the issue were initiated however, since no amicable settlement could be arrived at between the parties, hence, adjudication of the lis was undertaken by the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar, Mohali.

6. Upon consideration of the evidence led by the respective parties, the application filed by the respondent No. 2-applicant-allottee was allowed by observing as under:-

“13. We have given due consideration to the intention raised by the learned counsel for the parties. Admittedly in this case the applicants were allotted Type 3 apartment in draw of lots on 20.3.2012 and later on issued letter of intent Ex-A2 on 21.5.2012. The applicants made payment of Rs. 79,24,981/- up to 30.3.2015 i.e. 95% of the total cost of (this amount include penalty also) amount of Rs. 69 lacs. As per brochure Ex-A1 the possession was to be delivered within 36 months from the draw of lots i.e. up to 20.3.2015. However as per Letter of intent the possession was to be delivered from the issuance of letter of intent Ex-A2 dated 21.5.2012. The letter dated 28.11.2016 Ex-A6 dated 25.11.2016 was written by Divisional Engineer (PH-

2) Gmada, SAS Nagar to The Project Manager, M/s Simplex Infrastructure Limited, C/o PURAB PREMIUM APARTMENTS Sector 88, SAS Nagar (who was constructing the project) mentioning therein that external development is yet to be made. Another letter Ex-A7 dated 29.11.2016 was written by Divisional Engineer (PH-2) Gmada, SAS Nagar to The Project Manager, M/s Simplex Infrastructure Limited, C/o PURAB PREMIUM APARTMENTS Sector 88, SAS Nagar mentioning therein that due to unfurnished work there could be delay in giving the possession to the allottee and as per letter Ex-A8 various defects have been pointed out by the Divisional Engineer (PH-2) Gmada, SAS Nagar to The Project Manager, M/s Simplex Infrastructure Limited, C/o PURAB PREMIUM APARTMENTS Sector S8, SAS Nagar. As per Ex-A9 dated 20.9.2016 various grievances regarding the construction have been pointed out. The aforesaid letters reveal that the Gmada has not completed the work So far as this argument of the learned counsel for the respondents that these letters cannot be relied upon as they have not come from authentic sources. In this regard, respondents have not denied that these letters are forged, thus these letters cannot be thrown away and thus are admissible in evidence. So far as the photographs Ex- R6A to Ex-R6Y are concerned it cannot be said after looking these photos that the Gmada has completed the project. Thus the arguments of the learned counsel for the respondent is devoid on merit. Under these circumstances the applicants are entitled for refund of Rs. 79,24,981/- alongwith interest @ 9% from the date of deposits plus compensation and litigation charges.

14. In view of our above discussion the applicant has been able to substantiate his case and his application is liable to succeed and the same is hereby allowed and the respondent is directed:-

(a) to refund Rs. 79,24,981/- to the applicant alongwith interest @ 9% from the date of deposit till realization.

(b) to pay Rs. 1,20,000/- on account of mental agony and harassment apart from Rs. 11,000/- towards litigation charges to the applicant.

These amounts shall be paid by the respondents to the applicant within 45 days from the date of receipt of order, failing which the respondents shall be liable to pay interest @ 15% P.A. till its realization.”

7. Aggrieved thereof, the present writ has been filed.
8. Learned Senior Counsel appearing on behalf of the petitioner has vehemently argued that the respondent No.2-applicant-allottee was in default in payment of the instalments and even as per the table extracted in the writ petition, there was an outstanding amount to the tune of Rs. 8.18 lacs after May, 2015. She further contends that the offer of possession could not be issued since the respondent-applicant was in breach of its own obligations and that the show cause notice has already been issued by the GMADA to the respondent in November, 2014 to which response has been furnished by the respondent No.2-applicant-allottee to the effect that he could not make the payment on account of personal hardships and exigencies. She thus contends that the default was on the part of the respondent in failing to make the payment as per the payment schedule and as such, the petitioner-GMADA could not be held liable. In CWP-7955-2018 and CWP-8011-2018, learned counsel appearing on behalf of the petitioner(s) has additionally argued that the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar has awarded an interest @ 8% to be compounded annually not only on the amount already refunded but also on the amount forfeited.

9. Responding to the above, counsel for the respondent contends that the contentions of the petitioner are misconceived inasmuch as the GMADA was undisputedly in default in completion of the project and handing over possession within a period of 36 months of the issuance of letter of intent/allotment. The said period came to an end on 19.03.2015 and there is nothing on record on the basis whereof it can be assumed that the project had been completed as on the said date and an offer of possession has been made. He contends that as per the case of the petitioner-GMADA itself the completion certificate was obtained by them in July, 2016. He submits that even the above said stand is disputed since the said completion certificate relied upon by the petitioner-GMADA was not issued by the competent authority and was by a Subordinate Official of their own Department as had been noticed by the Permanent Lok Adalat, however, notwithstanding that the said completion certificate had been obtained in July 2016 for the sake of argument, yet, much prior to the issuance of the completion certificate, an application for refund of the amount had been sent by the respondent No.2-applicant. Further, the show cause notice would have no bearing or consequence inasmuch as the petitioner-GMADA had claimed penal interest from the petitioner and had accepted the amount even in May, 2015. He further submits that even as per the undertaking offered by the petitioner-GMADA in November, 2016, they were willing to offer possession of the said unit. It is thus evident that there was thus no order directing cancellation of the allotted unit or order passing forfeiture of the amount. Hence, the undertaking was not justified in directing forfeiture of 10% from the amount deposited by them.

10. Attention is drawn to Clause 2.3 (ii) of the letter of allotment which contains provision relating to forfeiture and necessitates cancellation of allotment of a unit before a penalty of forfeiture could be imposed.

11. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present writ petition.

12. Since the factual aspects are not disputed, the issue only pertains as to whether the petitioner-GMADA was entitled to refund the amount after forfeiture of 10% of the amount on a purported delay in deposit of the installments by the allottees.

13. It is undisputed that the forfeiture was a power vested with the Developer in the event of exercising a right of cancellation of the unit allotted in favour of an applicant-successful allottee. It is also not in dispute that even the show cause notice had been issued by the GMADA to some of the allottees, however, no order directing cancellation of the allotment had been issued and instead, by their act and conduct, they had accepted the amount deposited by the allottees even thereafter and after adjusting the penal interest as stipulated in the letter of allotment. The respondents have by their act and conduct specifically condoned the delay and have drawn benefit in the form of levy of interest/penal interest on an allottee for delayed deposit of the installment amount. It is also not in dispute that as against the price of Rs. 69 lacs against a Type-3 plot, an amount of more than Rs. 74 lacs had been deposited by the respondent No.2-applicant-allottee in the case in hand. Thus, the petitioner-GMADA cannot yet portray itself as a victim on account of a delay in deposit of the installments. Further, it cannot be accepted as an excuse that as against 1600 allotments made, there was a

default by nearly 400 allottees and 100 of them have sought a refund of the said amount. Every developer is required to be conscious of the fact that there would be a default by various allottees in payment of money and yet the project is required to be completed in time. Appropriate resource mobilization is required to be done and the developer is incentivized on account of the interest/penal interest which he is entitled to claim from an allottee in the event of delay/default in payment of the instalments in time. Once a mode has been agreed upon, the petitioner-GMADA cannot read the offer/allotment document through its convenience at faces where it favours then and try to apply the hard provisions against allottee notwithstanding that the clauses may inure in favour of an allottee. Such leeway cannot be extended to the developer.

14. It is also seen that once the agreed contractual period within which the possession was required to be offered has come to an end, a right gets accrued in favour of an allottee to receive refund of the said money since the occurrence of a default is established after coming to an end of the period within which the offer of possession was required to be made. Any delay or default thereafter by an allottee cannot be read as disadvantage or to hold that exercise of an option is an act of default by the respondent-allottee himself.

15. Considering it from either of the perspectives it is not in dispute that the entitlement for directing forfeiture of 10% of the amount would accrue only in the event of cancellation of allotment. Once the petitioner-GMADA has chosen not to exercise its option for cancellation of an allotment and had instead preferred to levy a penal charge on a defaulting allottee, it commercially exercised an option of not cancelling the plot, yet, it

would not be entitled to invoke the said clause for effecting forfeiture and seeking enforcement in an event where an allottee seeks refund of the money.

16. All the aspects have been considered by the Permanent Lok Adalat (Public Utility Services), S.A.S, Nagar Mohali and a considerate and just decision has been passed. The Permanent Lok Adalat (Public Utility Services) is governed by Principles under Section 22 (d) of the Legal Services Authorities Act, 1987 while discharging/adjudication of its functions and the said guiding principles are objectivity, fairness, equity, principle of natural justice and other principle of justice. Hence, once a view has been taken by the Permanent Lok Adalat (Public Utility Services) and which such view is not found to be illegal, perverse or suffers from impropriety or gross misappreciation of the evidence available on record, such view would not normally be interfered with by the High Court in exercise of its powers of judicial review under Article 226/227 of the Constitution of India.

17. There is however some merit in the contention of the petitioner where the Permanent Lok Adalat (Public Utility Services), has directed refund of the service tax deposited and has also imposed compensation for mental harassment and agony. The Hon'ble Supreme Court in the judgment of ***"Vijay Gupta versus Estate Officer, GMADA, Mohali"*** in Civil Appeal No. 6060 of 2016 vide order dated 20.02.2019 has already held that when the agreement stipulates damage is in the form of an interest or the amount to be refunded, no separate amount could be awarded towards harassment and mental agony. It was further held that service tax cannot ordered to be refunded since it's a statutory dues.

18. The said legal aspect has not been taken note of by the Permanent Lok Adalat (Public Utility Services). The award in question would thus be hit by the judgment of the Hon'ble Supreme Court in the matter of Vijay Gupta (Supra) and has to be modified to be in conformity.

19. Accordingly, the award passed by the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar, Mohali is modified to the extent that the petitioner would be liable to refund the amount as deposited by the allottees alongwith the interest @ 8% compounded annually in terms Clause 3 (II) of the letter of allotment from the date of deposit till its refund to the allottee. The award with respect to the refund of service tax and towards compensation for harassment and mental agony are however alleged to be bad. Litigation expenses as awarded are however retained since the petitioner-GMADA has forced the allottees to undergo a litigation which ought not to have been thrust upon an allottee since the petitioner itself was in default.

20. For the foregoing reasons, the present petitions are partly allowed and the award passed by the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar Mohali is modified in terms of aforesaid.

21. A photocopy of this order be placed on the file of connected cases.

(VINOD S. BHARDWAJ)

JUDGE

MARCH 12, 2024

Vishal Sharma

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