IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101+203

Date of decision: 24.10.2024

(1) **CWP-17474-2015 (O&M)**

THE PUNJAB STATE COOPERATIVE HOUSE BUILDING SOCIETIES FEDERATION LTD.

......Petitioner

VERSUS

THE PERMANENT LOK ADALAT & ANOTHER

.......Respondents

(2) **CWP-17475-2015**

THE PUNJAB STATE COOPERATIVE HOUSE BUILDING SOCIETIES FEDERATION LTD.

......Petitioner

VERSUS

THE PERMANENT LOK ADALAT & ANOTHER

.......Respondents

(3) **CWP-17476-2015**

THE PUNJAB STATE COOPERATIVE HOUSE BUILDING SOCIETIES FEDERATION LTD.

......Petitioner

VERSUS

THE PERMANENT LOK ADALAT & ANOTHER

.......Respondents

(4) **CWP-17477-2015**

THE PUNJAB STATE COOPERATIVE HOUSE BUILDING SOCIETIES FEDERATION LTD.

......Petitioner

VERSUS

THE PERMANENT LOK ADALAT & ANOTHER

.......Respondents

(5) **CWP-17478-2015**

THE PUNJAB STATE COOPERATIVE HOUSE BUILDING SOCIETIES FEDERATION LTD.

......Petitioner

VERSUS

THE PERMANENT LOK ADALAT & ANOTHER

.......Respondents

(6) **CWP-17479-2015**

THE PUNJAB STATE COOPERATIVE HOUSE BUILDING SOCIETIES FEDERATION LTD.

......Petitioner

VERSUS

THE PERMANENT LOK ADALAT & ANOTHER

.......Respondents

(7) **CWP-22125-2015**

THE PUNJAB STATE COOPERATIVE HOUSE BUILDING SOCIETIES FEDERATION LTD.

......Petitioner

VERSUS

THE PERMANENT LOK ADALAT & ANOTHER

.......Respondents

(8) **CWP-22132-2015**

THE PUNJAB STATE COOPERATIVE HOUSE BUILDING SOCIETIES FEDERATION LTD.

......Petitioner

VERSUS

THE PERMANENT LOK ADALAT & ANOTHER

.......Respondents

(9) **CWP-22187-2015**

THE PUNJAB STATE COOPERATIVE HOUSE BUILDING SOCIETIES FEDERATION LTD.

......Petitioner

VERSUS

THE PERMANENT LOK ADALAT & ANOTHER

.......Respondents

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

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Present: - Mr. Tushar Sharma, Advocate
for the petitioner(s).

Mr. Sandeep Khunger, Advocate and
Mr. Saksham Khunger, Advocate
for respondent No.2.

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VINOD S. BHARDWAJ, J. (Oral)

CM-17524-CWP-2024 in CWP-17474-2015

For the reason mentioned in the application, the same is allowed and the applicant-petitioner is permitted to place on record the bye law of the Society as Annexure P-10.

MAIN CASES

Raising identical issues, the instant batch of 09 petitions is being decided by a common judgment with the consent of the parties. Facts are, however, being enumerated from ***CWP-17474-2015*** titled as ***"The Punjab State Cooperative House Building Societies Federation Ltd. versus the Permanent Lok Adalat (Public Utility Services), Rupnagar*** *and another.*

2. Briefly summarized the facts of the above case are that the petitioner-Punjab State Cooperative House Building Federation Ltd. (hereinafter referred to as "Housefed, Punjab") had floated a scheme for the allotment of residential flats under the name and style of Cooperative Housing Scheme of built up flats at Banur now in District, S.A.S, Nagar Mohali. The respondent-applicant applied for Category-II Flat and upon being found successful, a letter of allotment dated 23.06.2009 was issued by the petitioner-Housefed, Punjab in his favour. The tentative cost of the built up flat was conveyed as Rs. 14.92 lacs. A sum of Rs. 75,000/- was paid by the respondent alongwith the application whereas 45% of the cost was to be paid in 08 equated instalments and the remaining 40% amount was to be paid in 120 equated monthly installments along with interest @ 15% per annum. The difference between the final cost and tentative cost of the flat, as above, was to be paid at the time of handing over of the actual physical possession of the flat. The respondent-applicant claimed to have deposited an amount of Rs.8.95 lakhs in accordance with the schedule of payment and was conveyed the final cost of the flat to be to the tune of Rs. 23,96,000.00,

vide letter dated 22.10.2014. The respondent-applicant approached the Permanent Lok Adalat (Public Utility Services) against the exorbitant un-explained increase in the final cost and alleging that there was an unfair trade practice and that the said enhanced demand was unsustainable. Compensation was also claimed for the delay in handing over possession of the flat resulting in undue escalation in the cost of construction. The respondent-applicant also claimed interest on the already deposited amount, from the date of its deposit till delivery of possession alongwith claiming compensation for mental agony, harassment and litigation charges as well. A roll-back of price and allotment of flat at original tentative cost was also prayed.

3. On notice, the petitioner-Housefed, Punjab entered appearance and raised objection to the maintainability of the proceedings and also the claim raised by the respondent-applicant on various grounds. It was also stated that there was an arbitration clause as per brochure and dispute must be referred to arbitration. It was not disputed that the flat was allotted to the respondent on the terms and conditions mentioned therein but as per the condition No.8, final cost was to be worked out after completion of construction and before handing over possession. The delay in completion of the project was attributed to various reasons beyond control of Housefed including flooding of site on numerous occasions due to rain water, scarcity of construction material due to mining problems; NOC not being issued by PSPCL unless construction of 66 KV Sub Station by Housefed leading to filing of petition No. 46/2013 before the Punjab State Electricity Regulatory Commission and also the execution proceeding under Section 142 of the

Electricity Act, 2003 to protect the interests of allottee. It was also averred that draw of lots was held on 30.07.2014 and flat No. 3124/6; 6th Floor was allotted to respondent and no objection was raised at that time. It was thus prayed that the application deserved dismissal.

4. As the conciliation proceedings amongst the parties failed to fructify in any amicable resolution of the dispute, adjudication under Section 22 (C)(8) of the Legal Services Authorities Act, 1987 was undertaken by the Permanent Lok Adalat.

5. Parties led their respective evidence and advanced arguments.

6. On consideration of the contentions as well as the evidence adduced by the parties, the Permanent Lok Adalat partly allowed the application filed by the respondent-applicant and directed the petitioner-Housefed, Punjab to pay interest @ 8% per annum on the deposited amount of Rs. 8.95 lakhs for the period commencing from 01.01.2012 to 25.02.2014. The respondent-applicant was further permitted to pay the sum of Rs. 5.97 lakhs in 120 equated monthly instalments spread over a period of 10 years with interest @ 15% p.a. Additionally petitioner-Housefed was directed to make payment of Rs. 10,000/- towards litigation charges. It, however, declined to interfere in the enhancement of cost. The operative part of the Award passed by the Permanent Lok Adalat reads thus:-

> *15. The Ld. Counsel for the respondent also argued that the applicant is challenging the letter Ex. A3 vide which the cost of the flat was fixed at Rs. 23.96 lakh and in addition to that he has demanded interest @ 15% p.a. on the amount of Rs. 8.95 lakh, Rs. 5.00 lakh as compensation for harassment and Rs. 10,000/- as*

litigation expenses, the total of it comes out to Rs. 29.46 lakh. According to him the jurisdiction of the Permanent Lok Adalat (PUS) is to decide the dispute upto the value of Rs. 25 lakh and therefore the dispute cannot be entertained or adjudicated by this Adalat. We do not find any merit in this argument. In fact the applicant has not challenged the initial amount of Rs. 14.92 lakh which he had agreed to pay and Rs. 8.95 lakh has already been paid out of the said amount. He has challenged only the excess amount of Rs. 9,04,036/- now been demanded from him and in addition to that he has asked for Rs. 5.00 lakh as compensation 15% interest on the deposited amount of Rs. 8.95 lakh which comes out to Rs. 6,71,250/- along with Rs. 10,000/- as cost of litigation. The entire claim of applicant comes out to Rs. 20,85,286/ which is below Rs. 25 lakh. We are of the opinion that the amount demanded by the applicant is the property in dispute regarding which the present dispute has arisen. The flat is not in dispute nor the amount of Rs. 14.92 lakh is in dispute. We are therefore of the opinion that the jurisdiction value of the Permanent Lok Adalat is to be determined from the amount of relief claimed by the applicant which is disputed by the respondent comes out to Rs. 20,85,286/. The Permanent Lok Adalat therefore has the pecuniary jurisdiction to entertain the dispute between the parties.

16. Otherwise also the Central Government vide notification No. 803-E dated 20.03.2015 has increased the limit of pecuniary jurisdiction of the Permanent Lok Adalat (PUS) to pass an award in a dispute from Rs. 25 lakh to Rs. One Crore. This Adalat therefore has the pecuniary jurisdiction to pass an award regarding the dispute because the value of the property is below Rs. One Crore.

17. The contention of Ld. Counsel for the applicants is that as per letter Ex. A4 dated 28.07.2009 the respondent had intimated to deliver the possessions during the last quarter of the year 2011. According to him it is otherwise also in consonance with the established principle that where date of delivery of possession has not been given by the builder in the allotment letter (as is the fact in this case because the allotment letter Ex. A2 does not mention within what period the possession would be given to the allottees), the reasonable period of construction would be taken as two years. It is an admitted case that the construction was not completed within the aforesaid period of 2 years or upto 31.12.2011. The respondent has give some reasons in para No. 5 of their written statement and the Ld. Counsel for the applicants has argued that none of those reasons is proved on record nor do they justify the delay in completing construction of the flat within the agreed period of 2 years.

18. The first ground taken by the respondent is that the site located on Zirakpur Patiala Highway was a low lying area by 8/9 feet below the National Highway Road level, the completion of project was delayed due to the site being flooded a number of times as the rain water had to be drained out. Besides the bald statement of Sewa Singh, Superintending Engineer in his affidavit Ex. R1, there is no evidence to prove the same. Otherwise also if it was a low lying area it would have been apparent to the respondent and being in the construction field they would have very well anticipated that in rainy season the area was going to be flooded, they should have therefore taken measures in advance to protect the area from being flooded. In our opinion this allegation that the area was *flooded or there was any hindrance in raising construction though not proved yet is not a justification to excuse the delay in completing construction within the prescribed period.*

19. The next ground taken in para No. 5 of the reply is the scarcity of the building material due to ban on mining due to which the sand, gravel and bricks were alleged to be not available. Again no evidence has been produced by the respondent to prove if there was any ban on mining in Punjab. The respondent has produced a newspaper report Ex. R-2 in which the Congress political party leveled allegations that the rates of sand and gravel have increased a lot in the SAD Regime and there was shortage of it but it was immediately refuted by the Minister of the Revenue Department. This report cannot be taken to be evidence either to prove the ban on mining or to prove any shortage of building material. No specific evidence has been led by the respondent as to on which date what was the requirement of the respondent and what was the supply they received, to show that they did not get enough material for the construction of the flats. Otherwise also the shortage of building material could not be a ground to delay construction because the respondent could store the building material in advance in view of the fact that they had no undertake the construction of the project. In any case the building material was available, it was used by the respondent and therefore it cannot be said to be a sufficient ground to delay construction.

20. The next argument of the respondent is that electric layout was submitted to the Punjab State Power Corporation Ltd. (in short PSPCL) on 15.7.2009 and they delayed the issuance of NOC. It is also contended that the

PSPCL asked them to construct 66 KV Sub Station which was opposed by the respondent, petitions had to be filed and ultimately they succeeded in opposing the construction of 66KV Sub Station and in its place a 11 KV supply line, as desired by the respondent, was constructed. When we go through the record, we find that there is no such letter issued by the respondent to the PSPCL in 2009 for obtaining the NOC. The respondent very well knew that electricity supply would be needed in these flats they should have therefore taken up the matter in 2009 to get the formalities completed for the electricity connection which is not proved to have been done by them in the present case. It is also the contention of the respondent that they were asked to construct 66 KV Sub Station at the site but there is no letter by the PSPCL produced on record to prove the same. Their further contention is that they filed a petition challenging the said decision of the PSPCL before the Punjab State Regulatory Commission (hereinafter referred to as Commission) but neither the copy of the said petition nor the order dated 24.10.2013 passed therein by the Commission has been placed on record. It is next the contention of the respondent that as per order dated 24.10.2013 the Commission had directed that instead of 66 KV Sub Station the 11KV supply line be installed to provide electricity to these flats and when this order was not complied with by the PSCPL, they filed a petition before the said Commission to enforce the said order. Ex. R-2 is the copy of the order vide which the petition was filed in 2014 (it was admitted on 26.2.2014) and was decided on 29.4.2014. In our opinion this is the only serious effort made by the respondent in getting the electricity supply to these flats. The efforts to get the *matter settled before 2011 were necessary to have been taken in advance but were not taken by the respondent which is grave negligence on their part. It is argued by the respondent that it was due to this reason of non supply of electricity that the possession has been delayed. However, we are of the opinion that the possession has been delayed not only due to this reason but also due to the fact that there was delay in raising construction of the flats. The respondents have not been able to produce on record as to when the construction was completed by them. In any case there is no dispute about it that they did not complete the construction by the end of last quarter of 2011 as promised by them and there was therefore deficiency in service on their part in this regard.*

21. The Ld. Counsel for the applicant has also argued that the tentative cost of the flat was initially fixed at Rs. 14.92 lakh and the applicant has already deposited Rs. 8.95 lakh but now the value of the flat has been increased by Rs. 9,04,036/-. The applicant has challenged the increase in the price of the flat. When we go through the allotment letter Ex. A-2, we find terms and condition No. 8 through which the applicant was informed that the exact/final cost of the flat shall be worked out after the completion of the flat but before handing over the possession of the flat. The respondent therefore issued the letter Ex. A3 on 22.10.2014 intimating to the applicant the final cost of the flat as Rs. 23.96 lakh and asked him to deposit the remaining amount. Since initially the tentative price of the flat was intimated and the respondent has the right to fix the final cost of the flat, the issuance of letter Ex. A3 demanding the enhanced amount cannot be said to a deficiency in service on their part. The respondent is well within its right to recover this *amount from the applicant as the price of the flat. The contention of the applicant challenging the increase in price cannot be accepted.*

22. It is also argued by the Ld. Counsel for the applicant that as per para No. 4 of the allotment letter Ex. A2, 40% of the cost of the flat i.e. Rs. 5.97 lakh is payable in 120 equated monthly installments spread over a period of 10 years with interest @ 15% p.a. This amount could also be deposited by the allottee without interest within 30 days from the date of offer of possession. His contention is that while issuing the letter Ex. A3 the respondent has done away with this right of the applicant to deposit Rs. 5.97 lakh in monthly installments in a period of 10 years with interest @ 15% p.a. which cannot be done away without the consent of the applicant. The applicant had accepted terms and conditions conveyed to him through letter Ex. A2 which had become a binding contract between the parties. The respondent therefore could not do away with these conditions of the contract. In this manner the applicant would have the right to deposit Rs. 5.97 lakh in 120 equated monthly installments spread over a period of 10 years with interest 15% p.a. or a lesser rate of interest as determined by the respondent or pay the amount within 30 days without interest.

23. In view of the above discussion, we are of the opinion that the possession of the flat which was to be given to the applicants in the last quarter of December 2011 was not given and the delay in delivery of possession starts w.e.f. 01.01.2012. As mentioned above, the first effective step for delivery of possession was taken by the respondent on 26.2.2014 when they filed a petition before the Commission with respect to the laying of 11

KV transmission line to these premises.

a) The respondent is therefore, liable to pay interest on the deposited amount of Rs. 8.95 lakh for the period from 1.1.2012 to 25.2.2014. The rate of interest would be @ 8% p.a. and the amount on this score comes out to Rs. 1,53,875/-.

b) The applicant would be permitted to pay Rs. 5.97 lakh in 120 equated monthly installments spread over a period of 10 years with interest 15% p.a. (or at the reduced rate of interest as decided by the respondent) and shall have the discretion to pay this amount in lump sum without interest within 30 days from the date of offer of the possession of flat.

c) The respondent would issue a fresh letter to the applicants in this respect in place of Ex. A3 dated 22.10.2014 modifying the terms and conditions of the letter of possession in accordance with the order mentioned above.

d) The applicant would also be entitled to Rs. 10,000/- as litigation fee.

e) The amount of interest and cost shall either be paid to the applicant in cash within 30 days from the receipt of copy of this order or shall be adjusted towards the cost of the flat regarding which a fresh letter in lieu of Ex. A3 dated 22.10.2014 shall be issued within the aforesaid period of 30 days failing which the respondent would be liable to pay interest on this amount @ 12% p.a. w.e.f. today till the allotment letter is issued or the amount is paid to the applicant.

7. Aggrieved thereof, the present writ petition has been filed.

8. Learned Counsel appearing on behalf of the petitioner has argued that the Award passed by the Permanent Lok Adalat (Public Utility Services), Rupnagar in the above said application suffers from non-appreciation of the evidence. He contends that there was no time frame specified in the letter of allotment about the period within which the possession of the flat was to be delivered. He contends that the Permanent Lok Adalat fell in an error in deeming a date of delivery of possession and to thereafter award interest w.e.f. 01.01.2012 till 25.02.2014. He has also submitted that the delay in handing over possession actually occurred on account of various factors but primarily due to a dispute which the Housefed, Punjab had with Distribution Licensee-PSPCL for release of electricity supply. He contends that the petitioner-Housefed had to litigate upto the Appropriate Commission (PSERC) for securing a more cost effective and efficient release of electricity supply from the respondent-distribution licensee. He submits that once the genuineness of the dispute raised by the petitioner-Housefed, Punjab has been accepted by the authorities, the benefit of the delay in completion of the project and delivery of possession ought to have been extended to the petitioner Housefed. He, however, does not raise any dispute with respect to the other claims that have been awarded in favour of the respondent-allottees and confines his challenge only to the extent of award of interest @ 8% per annum to the respondent-allottee w.e.f. 01.01.2012 till 25.02.2014.

9. Learned Counsel for the respondent on the other hand contends that the Permanent Lok Adalat (Public Utility Services) had taken into consideration the communication sent by the respondents themselves dated

28.07.2009 as per which the physical possession of the flat was likely to be handed over in the last quarter of the year 2011. He submits that the Permanent Lok Adalat thus accepted the last date for handing over the possession of the flat as 31.12.2011 and thus awarded interest on delayed handing over of possession w.e.f. 01.01.2012. He further argues that the contention of the petitioner that there was a *bona fide* dispute with the PSPCL should not be read against the allottee as it is in no way an exoneration on the part of the petitioners in seeking an exemption from delivery of possession in a time bound manner. The said petition came to be filed only in the year 2013, hence, much after the date of delivery of possession. It is also submitted that there is no evidence on record on the basis whereof it could be assumed that the tentative cost of the flat at the time of issuance of brochure was based upon a calculation assuming service connection charges based upon the nearest Sub Station from where the service was to be catered to. It is thus contended that a reasonable indulgence has been granted by the Permanent Lok Adalat (Public Utility Services) in construing the reasonable period for delivery of possession and on noticing that the communication by the petitioner itself about handing over possession by the last quarter of the year 2011 which establishes that Housefed was seized of all the aspects and still assured to deliver possession at that time. He contends that a period of nearly 30 months had been deemed by the Permanent Lok Adalat (Public Utility Services) as a reasonable period for delivery of possession of the flat and that the said period cannot be said to be calculated without any basis but is based after taking into consideration the communication dated 28.07.2009.

10. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents available on record. Since the limited challenge made in the present writ petition is to the award of compensation by way of interest on delayed offer of possession w.e.f. 01.01.2012 to 25.02.2014, hence, other aspects that were agitated by the respondent/applicant before the Permanent Lok Adalat (Public Utility Services) are not required to be gone into.

11. While the contention of the petitioner has been that the period of 30 months approximately in delivery of possession has been wrongly considered reasonable by the Permanent Lok Adalat (Public Utility Services), failing to take into consideration the *bona fide* dispute that the Housefed, Punjab had with PSPCL resulting in delay in release of the electricity supply to the petitioner and the delay in handing of physical possession which was for reasons beyond the control of the petitioner and that the said reasons have already been accepted by the respondent Permanent Lok Adalat (Public Utility Services) as valid and reasonable, the same is vehemently opposed by the respondent-applicant.

12. I find that the aforesaid contention of the petitioner is not sufficient to persuade this Court to find a fault in the Award passed by the Permanent Lok Adalat (Public Utility Services). Undisputedly, the letter of allotment was issued by Housefed in favour of the respondent-applicant in June, 2009 and assurance to deliver possession by last quarter of 2011.

13. The contemporaneous evidence brought on record was duly considered by the Permanent Lok Adalat (Public Utility Services) and it was categorically recorded that while no evidence was led about water logging

and mining problem, other than a news paper report, which also was not established, the issue about condition of establishing 66 KV Sub Station imposed by PSPCL was also considered. It was specifically recorded by the Permanent Lok Adalat (Public Utility Services) that possession was required to be delivered by 31.12.2011 while the petition before Punjab State Electricity Regulatory Commission was filed in 2013 i.e. much after expiry of the period by which possession was to be delivered. It was also noticed that possession was not delayed due to non-release of electricity connection but on account of construction being incomplete. The Housefed never established that the flats were otherwise ready for delivery of possession and that the delay occurred due to non-release of electricity connection by PSPCL. A subsequent event cannot be cited as the basis to find an excuse for the failure that already stood committed.

14. Nonetheless, it was a matter that was to be resolved *inter se* between the petitioner as well as distribution licensee. In case an illegal but adamant stand was taken by the distribution licensee, the remedy lay with the Housefed, Punjab to seek compensation from the distribution licensee for non-compliance of the statutory obligation and to ensure electricity supply in a time bound manner and cost effective manner. The same cannot *ipso facto* be accepted as a valid ground for delaying performance of obligation on the part of the petitioner-Housefed, Punjab.

15. Even otherwise, for seeking an extension of time period for delivery of possession, the exclusion clause as contained in the letter of allotment has to be examined. The same refers to existence of *Force Majeure.* There is nothing on record on the basis whereof it can be construed

that any delay by any other statutory authority in performance of its obligations and/or release of service amenities/connectivity is a sufficient cause, construed as an exclusion clause-*force majeure* so as to claim an extension. Hence, the petitioner cannot claim an indefinite extension in the period for delivery of possession merely because it was in litigation with the respondent-distribution licensee over the connection or conditions of sub station. The same did not preclude the petitioner from completion of the project and to seek release of the electricity supply from the Sub Station subject to its rights to contest for a better relief for itself. The argument also appears to be farfetched as the price originally conveyed was tentative and the increase in the project cost on account of enhanced cost could not have been collected from the transfree/allottee. There has already been a more than 60% enhancement in the tentative cost. No evidence of any impact assessment has been led by the petitioner even to ascertain whether any significant impact had occurred or not. The petitioner has also failed to place on record any such documents as would establish that there was a meticulous/aggressive persuasion by the petitioner-Housefed to expeditiously resolve the matter pertaining to release of the electricity supply in favour of the project in question.

16. Further, the provisions of the Legal Services Authorities Act, 1987 provides that the Permanent Lok Adalat, while adjudicating a matter, is guided by the Principles as enshrined under Section 22 (D) of the Legal Services Authorities Act, 1987 i.e. the Principles of Natural Justice, fairness, objectivity, equity and other principles of Justice. Unless an Order/Award passed by the Permanent Lok Adalat suffers from an illegality, impropriety,

perversity or gross misappreciation of the facts, the High Court, in power of its judicial review would not ordinarily interfere with such an Award.

17. The conclusion drawn by the Permanent Lok Adalat about the date by which physical possession of the flat was required to be delivered as 31.12.2011 cannot be said to be based on no material. I do not find that the conclusion so drawn by the respondent- Permanent Lok Adalat to Award interest w.e.f. 01.01.2012 till 25.02.2014 (when the actual physical possession was to be delivered) can be said to be illegal, arbitrary or suffering from non-appreciation of the evidence adduced on record.

18. For the foregoing reasons, the present writ petitions are dismissed. The Award dated 04.07.2015 in case No. 1333/17.12.2014 passed by the Permanent Lok Adalat (Public Utility Services), Rupnagar is upheld.

(VINOD S. BHARDWAJ)
JUDGE

OCTOBER 24, 2024
Vishal Sharma

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