

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

209

CWP-16509-2017 (O&M).
Date of Decision: 22.02.2024.

M/S LANDMARK APARTMENT PVT. LTD. GURGAON

... Petitioner

Versus

SUPREET SINGH GREWAL AND ANOTHER

.. Respondents

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

Present: Mr. S.S. Bedi, Advocate, for the petitioner.

Mr. Animesh Sharma, Advocate, for respondent No.1.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present writ petition is to the award dated 20.10.2015 passed by the Permanent Lok Adalat (Public Utility Services), Gurgaon, whereby the application preferred by the respondent No.1-applicant has been allowed and the petitioner has been directed to refund the amount deposited by the respondent No.1-applicant along with interest @ 12% per annum w.e.f. 16.05.2012 till its actual disbursement.

2 Learned counsel for the petitioner contends that the petitioner-Developer obtained a license for development of IT Park at village Badshahpur, Sector 67, Gurgaon. He submits that the respondent No.1-applicant had approached the petitioner-Developer and deposited an amount of Rs.7,50,000/- on 20.11.2007 for booking 1000 sq. feet of super area in

the project of Landmark Cyber Park vide receipt No.1417. The respondent No.1-applicant, however, failed to pay the subsequent installments, to a minimum of 45% of the total cost of the area booked by him, required to enter into a Builder Buyer Agreement (hereinafter referred to as 'BBA'). The real estate market underwent a downward slide whereafter the respondent No.1-applicant stopped paying the future installments. The petitioner-Developer sent various demand notices to the respondent No.1-applicant for remittance of the subsequent installments/dues, however, no heed was paid to the said demand. It is also contended that on account of continuous default and non-payment of the subsequent installments, the booking of the unit in Landmark Cyber Park was cancelled vide communication dated 29.01.2012 and the amount deposited was forfeited. He submits that notwithstanding that the default was entirely and unilaterally at the end of the respondent No.1-applicant, however, he preferred the application No.595 of 2013 before the Permanent Lok Adalat (Public Utility Services), Gurgaon, for seeking refund of the said money. He further submits that without considering the objections raised by the petitioner-Developer and also the fact that the construction of Landmark Cyber Park was duly completed and occupation certificate had also been issued and that possession of the unit could not be offered to the respondent No.1-applicant on account of his own default, the application has been allowed by the Permanent Lok Adalat (Public Utility Services), Gurgaon and the petitioner-Developer has been directed to refund the said amount along with interest @ 12% per annum.

3 Learned counsel for the respondent No.1-applicant, on the other hand, contends that the amount of Rs.7,50,000/- was deposited by the respondent No.1-applicant in the year 2007 and space was required to be allotted within a period of 36 months. In the event of failure on the part of the company to deliver physical possession of the allotted Unit, the respondent No.1-applicant was at liberty to withdraw the money advanced by him and the company was under an obligation to refund the same within a period of 30 days from the receipt of request along with simple interest @ 12% per annum. He submits that there was no sign of any development at the site for a period of 05 years despite having received the booking price of Rs.7,50,000/- from the respondent No.1-applicant. The attempts on the part of respondent No.1-applicant to know about the status of the license and/or the layout plans; the stage of construction and tentative schedule of possession were put off on one pretext or the other. Even though there was no commencement of construction even till 2011, yet the booking was cancelled by the petitioner on 29.01.2012 and not due to default on the part of the respondent No.1-applicant. He submits that there was no authority with the petitioner-Developer to forfeit the amount of Rs.7,50,000/- and the same was required to be returned.

4 No other argument has been raised.

5 I have heard learned counsel appearing for the respective parties and have also gone through the documents appended along with the present petition with their able assistance. It is evident from a perusal of the impugned order that efforts for an amicable resolution of the dispute were undertaken by the Permanent Lok Adalat (Public Utility Services),

Gurgaon, however, the same failed to culminate in a settlement. Adjudication under Section 22 C (8) of the Legal Services Authorities Act, 1987 was hence initiated by the Permanent Lok Adalat (Public Utility Services), Gurgaon.

6 The Permanent Lok Adalat (Public Utility Services), Gurgaon, considered the respective submissions of the parties and passed its award.

The relevant part of the same reads thus:-

“4. We have heard learned counsel for the parties and have gone through the record on the file.

5. It is admitted by the respondent that the applicant paid Rs. 7,50,000/- as the booking amount of a space of 1000 sq ft/ in the new project of the respondent named "Land Mark Cyber City Park" on 20.11.2007.

6. At the time of booking the applicant wrote a letter annexure 'C' to the respondent for purchase of the space of 1000 sq. ft. in the above named project and as per condition 'D' of that letter the respondent company was required to allot the space measuring 1000 sq. ft. to the applicant within 36 months and on failure of the respondent company to do so the applicant was given the privilege to withdraw his amount and the respondent company was under an obligation to refund the same within 30 days from the date of receipt of request for refund with 12% simple interest per annum. From 2007 till January 2012 the respondent did not communicate with the applicant. It was on 29 January 2012 that the respondent company wrote a letter annexure 'D' to the applicant informing him about the cancellation to his unit on the ground that as per payment schedule the installment was due but despite repeated reminders and follows up, there was no response from the

side of the applicant and so the respondent was forced to cancel his booking and forfeit the booking amount. On receiving this letter the applicant wrote back a letter that the respondent had failed to complete the project within the agreed period of 36 months and even after a lapse of 51 months only 25% of the construction was complete and he was eager to take possession of commercial space and to make payment if the required information was supplied to him. In response to this letter of the applicant the respondent only mentioned that the commitment made by the respondent company was to allot a space within the stipulated time and not to complete the project and they have nothing more to say in this regard and the case stands closed.

7. It will be relevant to mention here that except the letter annexure 'C' which has been given the name MOU/agreement, no other agreement was executed between the parties. As per this letter the applicant had given Rs. 7,50,000/- to the respondent who was required to allot him a space within 36 months and on failure of the respondent to make the allotment, the respondent company was under an obligation to refund the amount of the applicant with 12% simple interest. Neither the respondent company furnished any schedule of payment nor any letter of allotment in favour of the applicant in respect of any space at any time nor sent any letter of demand before sending the letter of cancellation dated 29.01.2012. Even in the letter of cancellation the respondent company did not mention a word as to what was the stage of construction or what was the progress of the project. There was also no clause in the letter/MOU of the year 2007 as to under what circumstances the booking amount is to be forfeited. So there was absolutely no justification for the respondent company to cancel the booking and to forfeit the amount of the applicant.

8. *It was argued by the counsel for the respondent that the applicant was required to show his readiness and willingness for getting the space at all times and since he failed to show that he offered any amount to the respondent beyond an amount of Rs. 7,50,000/- after 2007, he was not entitled to the allotment of any space and the respondent company was justified in cancelling the allotment. But this argument of the counsel for the respondent is totally devoid of merit. After the respondent company received an amount of Rs. Rs. 7,50,000/- from the applicant as the booking amount, the applicant did not get any correspondence from the respondent about the payment or the allotment or the progress of the project. The applicant applied for refund of his booking amount by his letter dated 16.5.2012 when the period of more than 4½ years has already passed and no letter of allotment was given to him. So he was very much entitled to refund of his amount as per clause 'D' of the letter/MOU annexure 'C'.*

9. *The respondent company is, therefore, directed to refund an amount of Rs. 7,50,000/- to the applicant with interest @ 12% per annum from the date of his reminder i.e. 16.5.2012, till the date of payment. The application is disposed off accordingly. File be consigned to record room."*

7 It is undisputed that the booking amount of Rs.7,50,000/- had been received by the petitioner-Developer and that no Builder Buyer Agreement had been executed between the parties. The counsel for the petitioner has also failed to refer to any provision under which the petitioner developer could have forfeited the booking amount. In the absence of any substantive provision, which allowed the petitioner-Developer to forfeit the booking amount on cancellation of booking, the petitioner-Developer was

not entitled to pass the order for forfeiture and claim retention of the booking amount. It is also noticed that as per letter issued to the respondent No.1-applicant at the time of booking of the Unit, the space was required to be allotted within a period of 36 months and on failure of the obligation to make offer of allotment in the said duration, the liability to refund the amount enured against the petitioner-Developer along with simple interest @ 12% per annum. The Permanent Lok Adalat (Public Utility Services), Gurgaon, also noticed that the petitioner-Developer failed to furnish any schedule or any letter of allotment in favour of the respondent No.1-applicant with respect to any offer of possession of space in time nor provided any letter of demand raised by it before sending the letter of cancellation dated 29.1.2012. It was also noticed that even the letter of cancellation failed to mention about the stage of construction or the progress of the project. Thus, the contention of the petitioner-Developer, to the extent that various demand notices were raised, had not been established by placing on record any cogent documents before the Permanent Lok Adalat (Public Utility Services), and there was nothing on record to show that any progress had been made in the project and the same was at any advanced stage or that any payment schedule had been furnished to the respondent No.1-applicant.

8 I find that there is no document/evidence adduced by petitioner-Developer before the Permanent Lok Adalat (Public Utility Services), Gurgaon or before this Court, on the basis whereof it can be said that there was any illegality, impropriety, perversity or mis-appreciation of law or facts by the Permanent Lok Adalat (Public Utility Services),

Gurgaon. The finding arrived at by the Permanent Lok Adalat (Public Utility Services), thus cannot be said to be bereft of merit. No clause entitling forfeiture has been relied upon by the petitioner-developer.

9 The present writ petition is accordingly dismissed. The award dated 20.10.2015 passed by the Permanent Lok Adalat (Public Utility Services), Gurgaon, is affirmed.

February 22, 2024

raj arora

Whether speaking/reasoned

Whether reportable

(VINOD S. BHARDWAJ

JUDGE

: Yes/No

: Yes/No