



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

109

CWP-18690-2024
Date of decision: 16.10.2024

PATIALA URBAN PLANNING AND DEVELOPMENT AUTHORITY,
(PDA)

.....Petitioner

VERSUS

PERMANENT LOK ADALAT AND ANOTHER

.....Respondents

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

Present: - Mr. Ashish Grover, Advocate
for the petitioner.

VINOD S. BHARDWAJ, J. (Oral)

Challenge in the present writ petition is to the Award dated 09.02.2023 (Annexure P-8) passed by the Permanent Lok Adalat (Public Utility Services), Patiala whereby the application No. 369 of 2019 filed by respondent No.2 under Section 22 (C) of the Legal Services Authorities Act, 1987 for refund of his money alongwith interest due to delay in delivery of possession has been allowed.

2. Briefly summarized, the facts of the present case are that respondent No.2-applicant had filed the aforesaid application before the Permanent Lok Adalat (Public Utility Services), Patiala claiming that a flat bearing No. SF-2, Block Sun Flower, Cluster-J, in the residential township project known as PDA-OMAXE City at Sirhind Road, Baran, Patiala was allotted by the respondents therein i.e. the petitioner-Patiala Urban Planning and Development Authority as well as the co-developer OMAXE under the

economically weaker section scheme to one Manjit Singh Bhatia vide memo No. 3078 dated 24.12.2010. Respondent No.2 is a subsequent purchaser of the said flat and the same was transferred in her favour by the petitioner herein vide a letter dated 01.04.2011. All the subsequent installments of the flat were paid/deposited by her as per the payment schedule given by the petitioner. In addition thereto, the additional amount, as demanded by the developers from time to time, were also deposited. As per condition No.6 (a) of the allotment letter, possession of the flat was to be offered within a period of three years from the date of allotment. On failure of the Developer to do the needful, a letter dated 01.03.2016 was sent by her to the petitioner to which reply dated 08.04.2016 was sent. It was informed vide the said reply that possession of the flat could be offered only after the completion of the project. Hence, even upto the month of April, 2016 i.e. after 06 years, the construction had not been completed. Repeated enquiries were made by the applicant-respondent No.2 from the petitioner from time to time regarding delivery of possession, however no effective date/satisfactory response was furnished. Instead of offering possession, the petitioner demanded an additional amount of Rs. 43,697/- vide letter dated 04.07.2019 for the flat. Under compelling circumstances, she somehow made arrangement of this additional amount but seeing no fixed timeline for delivery of possession and considering her immediate housing requirements, she desired to seek her refund. The application for refund was accordingly filed in the year 2019 i.e. after 09 years of the allotment and more than 08 years after it was purchased by her.

3. On notice, both the parties initially entered appearance before the Permanent Lok Adalat (Public Utility Services), Patiala, however, later on vide order dated 03.08.2022, co-developer respondent No. 2-OMAXE was deleted from the array of the parties.

4. The petitioner-Patiala Urban Planning and Development Authority contested the matter and filed its response. It was averred in the said reply that the respondent No.2-applicant was not the original allottee of the EWS flat and as the same was purchased by her in the resale from the original allottee, she cannot be termed as a “consumer”. It was also pointed out that the petitioner-Patiala Urban Planning and Development Authority had only a 15% share in the total sale consideration to be received in the project and that 85% of the revenue share was to go to the co-developer OMAXE. The development work was to be undertaken solely by the said Co-Developer and not by the petitioner-Patiala Urban Planning and Development Authority. Delay in completion of the construction was thus on the part of OMAXE since actual physical possession of the site already had been handed over to OMAXE by the petitioner, as per the agreement between them. It was also averred that as per the terms and conditions agreed between the parties, it was the responsibility of the co-developer OMAXE to complete the construction in a time bound manner and on it having failed to do so, the claim against the petitioner-Patiala Urban Planning and Development Authority could not have been initiated. They had already sought an explanation from Co-developer OMAXE about the delay in construction of the project and non-compliance of the commitments made in the Joint Development agreement. It was further averred that the petitioner had already initiated the process to dissolve the joint development agreement, on account of the lapses committed by OMAXE, however in view of the conditions under the joint development agreement, it cannot be held liable for any amount beyond 15%, i.e. the share of the petitioner-Patiala Urban Planning and Development Authority being limited to that.

5. The factum of receipt of payment and failure to deliver possession of the flat within the time as prescribed under Condition 6 (a) of the letter of allotment was however not disputed or denied.

6. A further reference is made to existence of an arbitration clause in the letter of allotment to contend that the proceedings before the Permanent Lok Adalat (Public Utility Services) were not maintainable.

7. On the completion of the pleadings, efforts were made by the Permanent Lok Adalat for an amicable resolution of the dispute, as per the mandate of Section 22-C (4) to (7) of the Legal Services Authorities Act, 1987 and on failure of a successful resolution of the dispute, adjudication of Section 22 (C) (8) of the Legal Services Authorities Act, 1987 was undertaken by the Permanent Lok Adalat (Public Utility Services).

8. Parties led their respective evidence and on consideration thereof alongwith condition No.6 of the letter of allotment relied upon by the Counsel for the petitioner, the application filed by the applicant-respondent No. 2 was allowed and the petitioner was directed to refund the sum of Rs. 4,20,208/- alongwith interest @ 9% per annum from the date of application till its actual payment/realization. An additional compensation to the tune of Rs. 25,000/- towards harassment and Rs. 5,000/- towards legal expenses was also awarded.

9. Aggrieved thereof, the instant writ petition has been filed.

10. Counsel for the petitioner has reiterated his arguments noticed by the Permanent Lok Adalat (Public Utility Services) and has contended that as per the condition No.6 (a) of the letter of allotment, the possession was to be delivered within a period of three years from the date of allotment and subject to certain force majeure conditions and/or any other reason beyond the control of the authorities/OMAXE, and the said clause also contained that no claim by

way of damages/compensation shall lie against the authorities/OMAXE in case

of delay in handing over the possession. He thus contends that the Permanent Lok Adalat (Public Utility Services) failed to taken into consideration the aforesaid condition incorporated in the letter of allotment. It is further submitted that the responsibility for indemnification was to be discharged by the Co-developer-OMAXE, in terms of the joint developer agreement executed between the parties, on Public Private Partnership basis. He contends that notwithstanding the petitioner being entitled only to a 15% share in the sale proceeds under the joint development agreement, the respondent No.2-applicant pursued no claim against the co-developer i.e. OMAXE and chose to pursue the matter only against the petitioner-Patiala Urban Planning and Development Authority and the entire liability has been wrongly fastened upon the petitioner. He further argues that an arbitration clause was incorporated in the letter of allotment and that in view of the said arbitration clause, the proceedings before the Permanent Lok Adalat (Public Utility Services), Patiala were not maintainable.

11. I have heard learned Counsel appearing on behalf of the petitioner and have gone through the documents appended alongwith the present petition.

12. Before proceeding further into the matter, it would be expedient to make a reference to the condition of the letter of allotment dated 24.12.2010.

The same is extracted as under:-

“6. (a) Possession of the house / flat to the allottee will be offered with in 3 (three) years from the date of allotment, subject to force majeure conditions [as mentioned hereunder] and subject to various House Allottee(s) making timely payment or subject to any other reasons beyond the control of the Authority/ Omaxe. No claim by way of damages/compensation shall lie against the Authority/ Omaxe in case of delay in handing over the possession on account of any of the aforesaid reasons and

the Authority/ Omaxe shall be entitled to a reasonable extension of time for the delivery of possession of the said Flat to the Allottee(s).

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30. Subject to the provision of the Act, all the disputes and/ difference arise in any manner touching or concerning this allotment shall be refer to the sole Arbitrator, Chief administrator, Patiala Urban Planning and Development Authority (PDA) or any person appointed/ nominated by him in this behalf. The award of such arbitrator shall be final and binding on the parties. The Court at Patiala shall have jurisdiction in all the matters arising out of /or touching upon and/or in connection with this Allotment."

13. Reference is also required to be made to the indemnity clause contained in Article 22 of the joint development agreement executed between the petitioner-Patiala Urban Planning and Development Authority as well as the co-developer OMAXE, the same is reproduced as under:-

"Patiala Urban Planning and Development Authority, a Government of Punjab undertaking and having its registered office at Urban Estate, Phase II, PUDA Complex, Patiala (hereinafter referred to as "PDA", which expression shall include its permitted assigns and successors-in-interest) of the One Part;

AND

M/s Omaxe Limited (formerly. Omaxe Construction Ltd.) a company incorporated under the provisions of the Companies Act, 1956, and having its registered office at 7, Local Shopping Centre, Kalkaji, New Delhi 110019 (hereinafter referred to as the "Developer" which expression shall unless repugnant to the confext include its permitted assigns and the successors-in-interest) of the Other Part.

Xxx xxx xxx xxx xxx xxx xxx xxx xxx

ARTICLE 22: LIABILITY AND INDEMNITY

22.1 General Indemnity

The Developer shall indemnify and keep indemnified and otherwise hold harmless, PDA, its agents and employees, from and against, all claims, demands made against and/ or loss caused and/or damages suffered and/ or cost, charges/ expenses incurred to and/ or penalty levied and/ or any claim due to injury to or death of any person and/or loss or damage caused or suffered to property owned or belonging to PDA, its agents and employees or third party as a result of any acts, deeds or things done or omitted to be done by Developer or as a result, of failure on the part of the Developer to perform any of its obligations under this Agreement or on the Developer committing breach of any of the terms and conditions of this Agreement or on the failure of the Developer to perform any of its statutory duty and/or obligations or as a consequence of any notice, action, suit or proceedings, given, initiated, filed or commenced by consignee or owner of goods or vessel owner/agent or its employees or any third party or Government Authority or as a result of any failure or negligence or default of the Developer or its Contractor (s), sub-contractor (s), or employees, servants, agents of such Contractor (s) and/or sub-contractor (s) and/or invitees as the case may be, in connection with or arising out of this Agreement and/or arising out of or, in connection with the Developer's use and occupation of PDA's Asset and/or construction, operation and maintenance of the Project Facilities and Services.

22.1.1 Without limiting the generality of Article, 22.1 the Developer shall fully indemnify and defend PDA including its officers, servants and agents (the "PDA Indemnified Persons") from and against any and all losses and damages

arising out of or with respect to (a) failure of the Developer to comply with Applicable Laws and Approvals, (b) payments of taxes relating to the Developer, Developers, suppliers and representatives, income or other taxes required to be paid by the Developer without reimbursement hereunder, or (c) non-payment of amounts due as a result of materials or services furnished to the Developer or any of its Contractors which are payable by the Developer or any of its Contractors.

22.1.2 Without limiting the generality of the provisions of this Article 22, the Developer shall fully indemnify, and defend PDA indemnified persons from and against any and all damages which PDA Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Developer or by the Developer's Developers in performing the Developer's obligations or in any way incorporated in or related to the Project. If in any such suit, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Developer shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraint order. If, in any such suit claim or proceedings, the Project, or any part, thereof or comprised therein is held to constitute an infringement and its use is permanently enjoined, the Developer shall promptly make every reasonable effort to secure for PDA a license, at no cost to PDA, authorizing continued use of the infringing work. If the Developer is unable to secure such license within a reasonable time, the Developer shall, at its own expense and without impairing the specifications and standards either replace the affected work, or part, or process thereof with non-infringing work or parts or

process, or modify the same so that it becomes non-infringing.

22.2 Claim of Third Party

In the event that PDA receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 22 ('Indemnified Party') it shall notify the Developer ("Indemnifying Party") within 14 (fourteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest to dispute the claim, it may conduct the proceedings in the name of the Indemnified Party subject the Indemnified Party being secured against any costs involved to its reasonable satisfaction.

22.3 Defence of Claims

22.3.1 *The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder and their reasonable costs and expenses shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the person indemnified in respect of loss to the full extent provided by this Article 22, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding liabilities, payments and obligations at its expense and through counsel of its choice provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled*

to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnified Party unless the indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure, the loss to be indemnified hereunder to the extent so compromised or

22.3.2 If the Indemnifying Party has exercised its rights under Article 22.3.1, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

22.3.3 If the Indemnifying Party exercises its sights under Article 22.3.1 then the indemnified Party shall nevertheless have the right to employ its own counsel and such counsel may participate in such action, but the Price and expenses of such counsel shall be at the expense of such Indemnified Party, when and as incurred, unless:

- 1. The employment of counsel by such party has been authorized in writing by the Indemnifying Party; or*
- 2. The Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or,*
- 3. The Indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the indemnified Party to assume the defence of such action and shall have been so notified by the Indemnified Party; or*
- 4. The Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either.*

- i. *That there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or*
- ii. *That such claim, action, suit or proceeding involves or could have a Material Adverse Change upon it beyond the scope of this Agreement;*

Provided that if Articles 2, 3, or 4 of Article 22.3.3 shall be applicable, counsel for the Indemnified Party shall have the right to direct the defense of such claim, action, suit or proceeding on behalf of the Indemnified Party and the reasonable Price and disbursements of such counsel shall constitute legal or other expenses hereunder.

14. First adverting to the argument of the petitioner with regards to the jurisdiction of Permanent Lok Adalat to entertain the application in view of the arbitration clause contained in the letter of allotment, in this regard, this Court has already held in a judgment in the matter of ***“Greater Mohali Area Development Authority though its Estate Officer versus Permanent Lok Adalat and another”*** in CWP-2626 of 2018 dated 12.03.2024, that existence of an arbitration clause in a letter of allotment does not take away the jurisdiction of the Permanent Lok Adalat (Public Utility Services) to examine the disputes before it under the Legal Services Authorities Act, 1987. I find that the said argument is already covered against the petitioner in view of the aforesaid judgment passed by this Court. Operative part of the said judgment reads thus:-

The same now leads to an objection as regards the existence of an arbitration clause and an objection raised by the respondent No.2-Applicant to the said effect.

For reference of the said Clause, existence of a dispute is a pre- requisite. A mere denial to pay, without

any valid cause or dispute, cannot be cloaked as a dispute. There has to be an element of bonafide act and conduct of the parties, when a matter can be said to be disputed. A malicious attempt by a developer in wrongfully withholding legitimate dues of an allottee by an evident misreading of the clause would not ordinarily be protected to the prejudice of the consumer/allottee.

Besides, the Arbitration Clause, in its said form in the contract, cannot even otherwise be given effect to on account of the amendment in the Act of 1996.

Still further, the proceedings before the Permanent Lok Adalat (Public Utility Services) are more in the nature of Conciliation and Arbitration/Adjudication. Hence, conciliation proceedings to be explored before passing of an award, it cannot be said that petitioner has suffered any prejudice.

Hence, invocation of Arbitration Clause as a mean to deprive the allottee of an easy access to justice and dispute resolution would defeat the object behind the Arbitration and Conciliation Act, 1996 as well as the Legal Services Authorities Act, 1987.

I am thus not inclined to accept the above objection at this stage.

15. Adverting to the second argument as regards no claim by way of damages/compensation to lie against the petitioner in case of delay in handing over their possession on account of any reason is concerned, I am afraid that the above said argument does not advance the case of the petitioner.

16. It is evident from the said clause that the delay in delivery of possession and indemnity against claim was contingent upon a force majeure clause. The same has however not been mentioned in the letter of allotment but finds a mention in the Joint Development Agreement under Article 16 and pertains to act of God, war or prevention from complying with obligation under

the Contract. As against the duration of 3 years to deliver possession under the Letter of Allotment, the period for completion of the project was 48 months from commencement of the Joint Development Agreement which was executed between the parties on 16.11.2006. Hence the said period had already come to an end on 15.11.2010 when letter of allotment was issued in 24.12.2010. Hence a ruse is being created by the petitioner to escape its obligation. Once the Joint Development Agreement had already lived its full term at the time of allotment, the petitioner is deemed to be fully aware of the entire dispute and pace of the project when allotment was made.

17. Still further, once such a clause is being invoked as a defence, the petitioner was required to establish existence of the force-majeure events. In the absence of establishing the contingency, the exemption cannot be availed when such exemption is linked to the happening of the contingency.

18. A perusal of the aforesaid clause also shows that the same takes into consideration of force majeure event or any other reason beyond the control of an authority/OMAXE. Hence, “any other reason beyond the control” also has to be read in light of the force majeure clause. The petitioner-Patiala Urban Planning and Development Authority has failed to point out any circumstances of force majeure or as to how and under what circumstances the construction of the project was delayed for reasons beyond the control of the authorities as well as the OMAXE. In the event of failure on the part of the petitioner to establish existence of force majeure clause, which could come to its aid, I find that the argument is devoid of merit. There can be no presumption of existence of an exigency(ies) as would justify delay in completion of the project. There can be no presumption of the fact required to established against an allottee. Since the petitioner pleads exemption from being held liable to make that payment, the burden lies upon it to establish the existence of the

circumstances as would bring the petitioner-Patiala Urban Planning and Development Authority within the ambit of the said clause and insulation against any claim/damages that may be asked for by any allottee.

19. Now adverting to the third argument as regards the petitioner's claim that it is liable only to the extent of 15% of the liability since the same was their share, as per the revenue sharing model, under the joint development agreement executed by the petitioner-Patiala Urban Planning and Development Authority with the Co-developer –OMAXE. I find that the said argument cannot be read against an allottee. So far as the allottee is concerned, the project in question was being co-developed by the petitioner-Patiala Urban Planning and Development Authority and it was only in discharge of its obligation that the petitioner-Patiala Urban Planning and Development Authority had entered into the development agreement. The 'developer' in the 'development agreement' would not extend to the context of an allottee and the same is restricted to the parties to the agreement only. For an allottee, even Patiala Urban Planning and Development Authority is a 'developer' of the project, irrespective of their revenue sharing. The Letter of Allotment was jointly issued by the petitioner and there is no reference to any limited liability of the petitioner in the same or to the revenue sharing. The revenue sharing model was an arrangement made to compensate the entity executing the development projects for and on behalf of petitioner-Patiala Urban Planning and Development Authority and is binding only amongst the parties that are signatory.

20. Besides, Article 22 of the joint development agreement specifically provides for an indemnity. In a joint development contract the parties are always aware that an allottee/an individual may opt to pursue its remedy/claims against either or both the developers and that in the event of any

liability having been met by the petitioner-Patiala Urban Planning and Development Authority, the obligation to indemnify the said loss/damages suffered by the petitioner-Patiala Urban Planning and Development Authority is on the part of the co-developer OMAXE. The *inter se* agreement between the parties i.e. the Patiala Urban Planning and Development Authority and OMAXE cannot create any binding obligation against the allottee. No such arrangement or limitations were ever conveyed to the allottee and term of Joint Development Agreement were not a part of the Letter of Allotment. Hence, the rights and obligations under the Joint Development Agreement cannot be applied against an allottee. It is hence at the pleasure and discretion of the allottee as to which party he intends to sue. The liability is thus joint and several and the terms and conditions/obligations and rights as agreed to between the parties under the joint development agreement are enforceable *inter se* between them against each other and as per the procedure prescribed thereunder and cannot be read to the detriment of an allottee. The award thus cannot be held to be bad solely on that account.

21. Besides, the award does not in any manner preclude the petitioner from seeking recourse to the indemnification of the loss, that has so occasioned to it, as a result of indemnifying the allottee or making the payment in terms of the Award.

22. Having held so, the petitioner comes to his last argument, where he contends that the Permanent Lok Adalat (Public Utility Services), Patiala has not only directed the refund of the amount alongwith interest @ 9% per annum but has also directed the payment of Rs. 25,000/- as compensation for harassment and Rs. 5,000/- towards legal expenses. He contends that the above said aspect had been considered by this Court in the aforementioned judgment of ***Greater Mohali Area Development authority through its Estate Officer***

(*supra*) and it was held that in cases where compensation in the form of interest has been awarded, separate compensation towards harassment ought not to be granted, by making a reference to the judgment of the Hon’ble Supreme Court.

23. I find that the aforesaid argument does carry some weight, however, taking into consideration that the total amount of compensation awarded was only Rs. 25,000/-. I am not inclined at this juncture to issue any notice to the respondent-allottee as a mere summoning of the allottee before this Court may entail incurring higher litigation expenses.

24. Even though ordinarily, in case any order is to be modified, a Court is required to issue notice to the party likely to be prejudiced, however, for the reasons noticed above, I deem it just and appropriate, at this stage, not to issue any notice and leave it open to the respondent No.2-applicant to seek revival of the present writ petition, in case he sanguinely is interested in seeking the said compensation awarded towards harassment or not. The **present writ petition is accordingly partly allowed** and the awarded compensation to the extent of Rs. 25,000/- towards harassment is set aside. All other direction issued in the Award. The rest of the Award remain intact.

25. Ordered accordingly.

(VINOD S. BHARDWAJ)
JUDGE

OCTOBER 16, 2024
Vishal Sharma

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