

2024:PHHC:035490

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

213 (five cases)

CWP-2626-2018 (O&M),
CWP-2627-2018,
CWP-2628-2018
CWP-28196-2018 &
CWP-2625-2018

Date of Decision: 12.03.2024

GREATER MOHALI AREA DEVELOPMENT AUTHORITY THROUGH
ITS ESTATE OFFICER

... Petitioner

VERSUS

PERMANENT LOK ADALAT PUS AND ANR

... Respondents

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

Present: Mr. Aman Sharma, Mr. Sital Sharma and
Mr. Chirag Suri, Advocates for the petitioner(s).

Mr. Ajay Kumar Sharma, Advocate
for respondent No.2 in CWP-2627-2018.

Mr. S.S. Rangi, Advocate
for respondent No.2 in CWP-2625-2018.

Mr. Ajay Bhardwaj, Advocate for respondents
No.2 in CWP-2626 of 2018.

Mr. Manoj Vashishtha, Advocate for respondent
No.2 in CWP-28196-2018. (*through video conferencing*)

None for respondent No.2 in CWP-2628-2018.

VINOD S. BHARDWAJ, J. (ORAL)

Since similar question of law and fact arise, this bunch of writ
petitions, with the consent of the parties, is being decided by a common
judgment. For the facility of reference, facts are, however, extracted from

CWP-2626 of 2018 titled as 'Greater Mohali Area Development Authority through its Estate Officer Versus Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar (Mohali) and another.'

Challenge in the said petition is to the Award dated 10.08.2017 passed by the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar (Mohali), whereby an application filed by respondent No.2-Applicant under Section 22-C of the Legal Services Authorities Act, 1987 had been allowed and the petitioner-GMADA has been directed to refund the amount deposited by the respondent No.2-applicant alongwith interest @ 8% per annum, to be compounded annually. Additionally, the petitioner-GMADA has also been directed to refund the service tax and to pay compensation to the tune of Rs.50,000/- on account of harassment and mental agony and Rs.8,000/- towards litigation cost.

The respondent No.2-Applicant had applied for Residential Apartment Type-I in the Purab Premium Apartments under a General Category in the scheme floated by the petitioner-GMADA, at Sector 88, Mohali vide application/form No.69347. A draw of lots was held, wherein the respondent No.2-Applicant remained successful and her name figured at Sr. No.145. A letter of intent/allotment bearing No.EO/2012/345 dated 18.05.2012 was issued in favour of respondent No.2-Applicant. The tentative price of the apartment was Rs.37 lacs and the respondent No.2-Applicant had deposited a sum of Rs.26,20,000/- within the stipulated period. The possession of the apartment was required to be handed over to the respondent No.2-Applicant within a period of 36 months and on completion of all the development works. The

respondent No.2-Applicant, however, claimed that the possession of the apartment could not be delivered within the stipulated period. The petitioner-GMADA was thus liable to refund the entire amount deposited by the respondent No.2-Applicant alongwith interest to be compounded annually. However, petitioner-GMADA failed to do the both i.e. hand over the possession or to refund the amount deposited by the respondent No.2-Applicant. An application was thereafter moved by the respondent No.2-Applicant on 16.03.2016, through her counsel, to seek refund of the total amount deposited by her alongwith interest, as agreed under the letter of allotment, with all statutory charges. However, instead of refunding the amount in question, the petitioner-GMADA issued an office order bearing endorsement No.E.O./2016/4871 dated 01.02.2016 cancelling the letter of intent/allotment and forfeiting 10% of the total amount on account of non-payment of installments in the prescribed time. Aggrieved thereof, the application under Section 22-C of the Legal Services Authorities Act, 1987 was filed by the respondent No.2-Applicant.

On issuance of notice, the petitioner-GMADA entered appearance before the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar (Mohali) and filed its reply raising various preliminary objections including an absence of deficiency in service or unfair trade practice on its part. It was also contended that the respondent No.2-Applicant was entitled to refund of the amount as per the terms and conditions of the letter of allotment, which have been accepted by her. It was further prayed therein that the application was liable to be dismissed for the said reasons.

On merits, without disputing the factum of allotment of apartment in favour of the respondent No.2-Applicant and deposit of the amount of Rs.26,20,000/- as extracted above, it was stated that refund of an amount of Rs.21,03,889/-, after deduction of Rs.11,433/- on account of service tax and 10% as forfeiture from the amount deposited, was ordered vide office letter dated 01.02.2016. The service tax having been paid to the Central Government by the petitioner-GMADA, the respondent No.2-Applicant is not entitled to refund thereof.

It was further averred by the counsel for petitioner-GMADA that there was an arbitration clause which was incorporated in the letter of allotment and that in the event of any dispute, the matter was required to be referred for adjudication by an Arbitrator to be nominated by the Chief Administrator.

Copy of possible terms of settlement was supplied to the parties for their consideration, on completion of pleadings, and they were called upon to explore the possibility of an amicable resolution of the dispute. The efforts to persuade the parties for settlement failed to yield any amicable resolution of the dispute between the parties; whereupon, adjudication under Section 22-C (8) of the Legal Services Authorities Act, 1987 was undertaken by the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar (Mohali).

Parties led their respective evidences in support of their cases and upon consideration of the respective contentions and evidences, the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar (Mohali) held as under:

“13. It is admitted fact that the applicant was successful in draw of plots in the Purab Premium Apartments and he was allotted plot in general category residential apartment type 1 in the said scheme

of the respondent. It is also an admitted fact that letter of intent Ex-A1 was issued to the applicant and this letter of intent is dated 18.5.2012. It is also an admitted fact that under clause 3(ii) of letter of intent Ex-A1 under the head of ownership and possession the respondents undertook that possession of the apartment shall be handed over after completion of the development at site in a period of 36 months from the date of issuance of letter of intent and in case for any reason the authority is unable to deliver the possession of the apartment within the stipulated period, allottee shall have the right to withdraw from the scheme by moving an application to the Estate Officer in which case the authority shall refund the entire amount deposited by the applicant alongwith 8% interest compounded annually. It is also an admitted fact that the applicant has deposited a sum of Rs.26,20,000/- as is clear from categorical statement of the applicant that as and when there was delay in depositing the amount the same was deposited by her alongwith interest alongwith penalty if any and same was accepted by the respondents and no such letter was ever written by the respondent to the applicant that the amount deposited which was due on a particular date was not deposited under rules. Even otherwise there is no such evidence led by the respondent to rebut this fact which proves that the respondent admitted this version of the applicant it is also an admitted fact that the possession of the apartment was to be delivered within 36 months from 18.5.2012 i.e. possession was to be delivered on or before 17.5.2015. Meaning thereby that this application for refund was to be made after expiry of 36 months as was agreed by the respondents through letter of intent Ex-A1. Although the learned counsel for the respondent has vehemently argued that the amount of Rs.5,04,678/- was calculated in accordance with the rules and also that he is not entitled for refund of this amount and also relied upon in Civil Writ Petition no.16153 of 2014 Rajiv Arora Vs. state

of Punjab and others decided on 21.7.2015 by the Hon'ble High Court yet this authority is of no help to the applicant for the simple reason that in this case application for refund was made before expiry of 36 months. But here is a case where the request for refund was made after expiry of period of 36 months agreed vide letter of intent of allotment Ex-A1 and even all the installments if any were delayed in making payment by the applicant, was deposited by the applicant with the respondent alongwith interest and penalty. The nonpayment of refund money alongwith interest @ 8% compounded annually amounts to unfair trade- practice as well as deficiency in service. When no service has been provided then certainly the respondents cannot deduct service tax as well.

14. In view of our above discussion the applicant has been able to substantiate his case and the application of the applicant is allowed and consequently he is entitled for refund of Rs.5,40678/- alongwith interest 8% P.A. compound annually as per clause 3 (ii) of letter of intent Ex-A1. He is also entitled to recover service tax deducted by the respondent. The applicant is also entitled to compensation to the tune of Rs.50,000/- on account of harassment and mental agony apart from Rs.8000/- as litigation costs. These amounts shall be paid by the respondents to the applicant within 45 days from the date of receipt of copy of award, failing which the respondents shall be liable to pay interest @ 15% per annum till its realization. Copy of Award be supplied free of costs to the parties. File be consigned to record.”

Aggrieved thereof, the present writ petition has been filed.

Since the writ petitions have arisen on account of the proceedings initiated before the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar (Mohali), the respondent No.2-Applicant in CWP-2626-2018 chose not to file his reply, whereas replies have been filed in other petitions.

Counsel for the parties have been heard at length.

Learned counsel for the petitioner has emphatically argued that the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar (Mohali) has directed refund of the service tax which is a statutory obligation to be discharged and that the same could not be ordered to be refunded in terms of the judgment passed by the Hon'ble Supreme Court in the matter of **Vijay Gupta Versus The Estate Officer (H), Greater Mohali Area Development Authority** bearing **Civil Appeal No.6060 of 2016** and **decided on 20.02.2019**. He further contends that the Hon'ble Supreme Court has held that the service tax could not be ordered to be refunded since it is a statutory due and that the buyer stands compensated on account of interest at the rate of 8% per annum to be compounded annually. Thus, there was no occasion for payment of compensation as the same is inherent in the interest component which has been awarded. He further submits that there had been a delay in depositing the installments by the allottees and that the petitioner-GMADA cannot be stated to be at lapse and as against cost of Rs.37 lakh, a sum of Rs.26 lakh approximately had been deposited. It is also argued that the refund has been given by the petitioner as per the request of the respondent No.2-Applicant and after deduction as per terms and conditions of the letter of allotment. The petitioner having acted as per the conditions, cannot be burdened with any liability more so when conditions in the letter of allotment were not a subject matter of challenge in any proceedings. Further, the dispute, if any, was required to be settled by way of Arbitration. No other judgment or law has been cited before this Court.

Counsel for respondent No.2-Applicant, on the other hand, has contended that the actual physical possession of the allotted apartment was to be delivered within a period of 36 months i.e. on or before 17.05.2015 and that the petitioner-GMADA failed to fulfill its obligation. It is further contended that in the event of the delay on the part of an allottee in making a deposit, the letter of allotment contained appropriate clauses including penal interest to be charged on delay installment. There has been an inordinate delay on the part of the petitioner-GMADA in delivery of possession and thereafter, once the refund is sought by the allottees, the petitioner-GMADA could not have directed forfeiture to the extent of 10% of the total amount even as per the letter of allotment.

Reference in this regard has been made to Clause 2.3 of the letter of allotment which entitles for charging interest @ 18% for the period of delay. It is contended that the petitioner-GMADA being at default itself, could not have capitalized in multiple ways i.e. by non-completion of the project on time; charging penal interest for delay in deposit of installment and also by way of forfeiture of the 10% of the amount already deposited by the parties concerned, where a refund is sought. .

I have heard the learned counsel for the respective parties and have also gone through the documents appended alongwith the present petition with their able assistance.

It is not in dispute that the letter of allotment was issued in favour of the respondent No.2-applicant on 18.05.2012 as per which the possession of the apartment was to be delivered on or before 17.05.2015. It is also not in

dispute that the possession of the apartment could not be offered/delivered by the petitioner-GMADA within the stipulated time period and that an application for refund had been submitted by the respondent No.2-Applicant (allottee). The said application was accepted and a refund was directed to be made but after certain deductions.

I am of the opinion that once the petitioner-GMADA was in default in completion of its obligations and that the refund was being sought for failure on the part of the petitioner-GMADA to fulfill its obligation as per terms of the letter of allotment, it could not have, thereafter, imposed a further penalty upon the allottees in the form of forfeiture of 10% of the total amount deposited by them (the allottees). The same would amount to drawing a benefit and capitalizing on a lapse committed by the petitioner-GMADA itself.

The entitlement of the petitioner for ordering forfeiture is stipulated only in Clause 2.3(ii) of the letter of allotment. The same is extracted as under:

“2.3 For Balance Payment of 5%”

- (i) The balance amount of Rs.185000/- (One Lakh Eighty Five Thousand Only) being 5% of the tentative price of apartment shall be payable at the time of possession.*
- (ii) Delays in payment of instalments shall result in cancellation of the allotment. However, on request establishing genuine grounds, delays up to 12 months can be condoned by the Estate Officer, by charging 18% interest for the period of delay. Delays beyond 12 months shall not be condoned under any circumstances and shall result in cancellation of*

allotment and refund of the amounts paid, after forfeiture of 10% of the amount. Possession shall not be handed over till all dues are cleared. ”

It is evident from a perusal of the above clause that the allotment could be cancelled on account of delay in payment of installments. On existence of valid grounds and request by allottee, delay up to a period of 12 months could be condoned subject to 18% interest for the period of delay. Any delay beyond the same could not be condoned and allotment would result in cancellation and refund after forfeiture of 10% of the amount.

The entitlement to forfeiture was conferred upon the petitioner-GMADA only in an event of cancellation. The said clause would not be attracted in an eventuality where the allottee himself/herself seeks refund of his/her amount on account of failure on the part of the petitioner-GMADA to offer/deliver possession of the apartment in question. The same cannot be equated as cancellation of allotment on account of a default committed by an allottee justifying forfeiture to the extent of 10% of the total amount deposited. The petitioner-GMADA has failed to lead any evidence to establish that there was a delay of more than a year in payment of the dues or that an order of cancellation had been passed by it. Rather, the specific case of the petitioner is that the refund was ordered on an application by the allottee himself. Since the basic condition of Clause 2.3(ii) of the letter of allotment is not met, the deduction of 10% by way of forfeiture was not justified.

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.

I do not find that there is any sufficient material available on record, on the basis whereof, it can be said that the conclusion drawn by the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar (Mohali) is perverse or suffers from any material illegality or impropriety on other accounts

except to the extent whereby the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar (Mohali) has directed the refund of the service tax and has also ordered payment of compensation towards harassment and mental agony.

Taking into consideration that the Hon'ble Supreme Court has already ruled in the matter of *Vijay Gupta (Supra)* that the statutory dues cannot be ordered to be refunded and that no additional compensation can be awarded once the agreement/letter of allotment stipulated interest @ 8% per annum to be compounded annually in the eventuality of delay in offering possession, the same being deemed as sufficient compensation, the Award needs to be modified. However, so far as the litigation expenses are concerned, I am not inclined to set aside the said charge, since the allottees have been forced to undergo and incur unnecessary litigation expenses despite failure on the part of the petitioner-GMADA to perform its obligation and by exercise of a power not conferred upon it as a display of its status and stature vis-a-vis the developer.

For the foregoing reasons, the present petitions are partly allowed. The Award(s) passed by the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar (Mohali) are modified to the extent that the direction for refund of the statutory dues (service tax) and compensation on account of harassment and mental agony in all the cases are set aside. The interest has already been awarded @ 8% per annum compoundable annually in terms of Clause 3(ii) of the letter of allotment. The litigation expenses, as awarded, shall remain intact.

Petitions stand partly allowed in above terms.

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.

MARCH 12, 2024
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No