IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP-23340-2024 (O&M)
Date of decision: 13.09.2024

Bathinda Development Authority ...Petitioner

VERSUS

Sunish Gupta and another ...Respondents

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CWP-23342-2024 (O&M)
Date of decision: 13.09.2024

Bathinda Development Authority ...Petitioner

VERSUS

Shivani Gupta and another ...Respondents

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

Present :- Mr. Vijay Kumar Agarwal, Advocate for the petitioner(s).

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VINOD S. BHARDWAJ, J. (Oral)

1. Both these writ petitions have been filed by Bathinda Development Authority against the orders dated 28.02.2023 (in CWP-23340-2024 and order dated 03.05.2023 in CWP-23342-2024) raising identical issues. Learned counsel for the petitioner(s) contends that the said petitions can be decided by a common judgment. For facility of reference, the facts are however being extracted from **CWP-23340-2024** titled **Bathinda Development Authority Vs. Sunish Gupta and another**.

2. Briefly summarized, facts of the case are that the petitioner-Bathinda Development Authority had issued a notification for allotment of residential plots at Urban Estate, Phase 4 and 5 Bathinda Development Authority Enclave, Bathinda. Respondent No.1-complainant applied for

allotment of residential plot measuring 400 sq. yards on 30.10.2010 against tentative price of the plot i.e. Rs. 44 lakhs. 10% of the total price was to be paid as earnest money, which was duly deposited with the application by Respondent No.1-complainant.

3. On being successful in the draw of lots on 18.03.2011, plot No.202 measuring 400 sq. yards was allotted to Respondent No.1-complainant whereafter a Letter of Intent dated 09.05.2011 was issued to him. It is averred that as per clause 5 of the Letter of Intent, the allottee was supposed to pay 15% of the total price of the plot within a period of 30 days. The said deposit to the tune of Rs.6,60,000/- was also made on 18.07.2011. Further, as per the Letter of Intent, two schemes were proposed for making further payments and an allottee could opt for either. The same are extracted as under:-

> ***"6***. *As per your payment plan (Option A) you are required to deposit the amount given against each option as under:*
>
> *<u>Option-A</u>*
>
> *A sum of Rs. 27,72,000/-, being 70% of the total price of the plot after giving 10% rebate on balance principle amount to be deposited within 60 days from the date of issue of this letter of intent i.e. on or before-07-Jul-2011.*
>
> *<u>Option-B</u>*
>
> *Balance 70% of the total price of the plot is to be deposited in 7 half yearly instalments along with interest @*

12% per annum."

4. Respondent No.1-complainant is undisputedly admitted to have opted for plan B for payment. The first installment of Rs.6.248 lakhs fell due on 09.11.2011 which was deposited on 11.11.2011. Thereafter, no further installment was paid. Four notices were stated to have been issued by the petitioner, including the last notice on 20.03.2013, for payment of the pending installment(s) but the needful was not done. The petitioner later also issued Letter of Allotment to respondent No.1-allottee/complainant on 16.04.2014 and as per clause 3 of the said letter, he was given a timeline for paying the balance 5% of the price of plot. Clause 3 of the said letter reads thus:-

> ***"3. A sum equivalent to 5% (Rs. 2,20,000/-) of price of plot i.e. total of Rs.2,20,000/- is to be made within 30 days from the date of issue of this letter"***

5. The above said demand was not deposited despite repeated notice(s) issued by the petitioner. It is also admitted by the petitioner that due to certain technical defects, the possession of plot No.202 could not be handed over to respondent No.1-applicant and alternative plot. Thereafter, respondent No.1-complainant was called-upon to remain present in the office of Additional Chief Administrator, Bathinda Development Authority on 21.10.2015 for allotment of an alternate plot No.241 instead of plot No. 202.

6. Aggrieved of the said proposal sent to respondent No.1-complainant vide communication dated 21.10.2015, he approached the State

Consumer Disputes Redressal Commission, Punjab for seeking the following relief:-

"**xxx**

Principal amount of		***Rs. 17,24,800/-***
Interest on sum of Rs. 17,24,800/- till date of realization.		***To be calculated as per Letter of Intent.***
Harassment charges for not making the payment as per agreement.		***Rs. 10,00,000/-***
Litigation charges		***Rs. 2,50,000/-***
Total		***Rs. 29,74,800/-***

xxx"

7. A refund was accordingly sought for by respondent No.1-complainant.

8. The petitioner filed its written statement controverting the contents of the complaint and pointing out the defects/defaults on the part of respondent No.1-complainant in not depositing the subsequent installments with respect to the plot allotted to him.

9. That vide its order dated 25.09.2018, the complaint was partly allowed by State Consumer Disputes Redressal Commission directing the petitioner to refund the sum of Rs.12,84,000/- along with the interest @10% per annum from the request letter dated 06.06.2017 for seeking refund till its realization as well as compensation of Rs.15,000/- for mental agony and harassment and Rs.5,000/- as litigation expenses. The operated part of the relief granted to respondent No.1-applicant is extracted as under:-

"***17. Sequel to the above, we hereby partly allow the complaint of the complainant and following directions are issued to the opposite party:***

i) to refund a sum of 12,84,800/- along with interest at the rate of 10% per annum from request letter dated 06.06.2017, Ex. C-3 till realization;

ii) to pay compensation of ₹15,000/- for mental agony and harassment;

iii) ***to pay ₹5,000/- as litigation expenses.*** "

10. Aggrieved thereto, First Appeal No.10 of 2019 was filed by the petitioner whereas First Appeal No.14 of 2019 was filed by respondent No.1-complainant before the National Consumer Disputes Redressal Commission. Both these appeals were decided by a common judgment dated 28.02.2023 wherein the appeal filed by the petitioner was dismissed while the appeal filed by respondent No.1-complainant was accepted and the award passed by the State Consumer Disputes Redressal Commission was modified to the extent that the petitioner was directed to make refund of the amount of Rs.12.848 lakhs to respondent No.1-complainant along with interest @10% per annum with effect from 10.07.2013, instead of 06.06.2017, as awarded by the State Consumer Disputes Redressal Commission. The operative part of the order dated 28.02.2023 reads thus:-

"13. Sequel to the above, the award made by the State Commission is modified to the effect that the development authority shall make refund of an amount of Rs. 12.848 lakh to

the complainant with interest at the rate of 10% per annum from 10.07.2013 till actual realisation along with compensation of Rs. 15 thousand and cost of litigation of Rs. 5 thousand."

11. Aggrieved thereof, the present writ petitions have been filed by the petitioner-Bathinda Development Authority.

12. Learned counsel appearing on behalf of the petitioners submits that he is on instructions from his clients to propose that (i) the petitioner-Bathinda Development Authority is ready and willing to offer possession of the plots to the respondents-complainant/applicants; and (ii) it is submitted that the modification of the award granting interest to the respondents-complainants on the deposited amount w.e.f. 10.07.2013 as against 06.07.2017 awarded by the State Consumer Disputes Redressal Commission was erroneous and ought not to have been granted.

13. I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents available on record as also the award passed by the Consumer Fora.

14. It is evident from a perusal of the undisputed facts brought on record that plot No.202 had been originally allotted to respondent No.1-complainant and the Letter of Intent in this regard was issued on 09.05.2011. The letter of allotment was eventually issued by the petitioner-Bathinda Development Authority on 16.04.2014. The dispute in the present case initially arose with respect to non-payment of a differential amount of 5%. The Letter of Intent mandated the allottee to make a deposit of 10% along with the application while 15% within a period of 30 days of the issuance of

Letter of Intent. The same were duly deposited. Further, as per the option chosen by the respondent-allottee, the option B provided the mode of payment of balance 70% of the amount in equated installment along with the interest. One such installment was also paid. The total of the above said payment plan summed up to the extent of 95% of the sale price. The Letter of Intent did not specify the timeframe in which the 5% differential amount was to be paid by an allottee. The detail with respect to the aforesaid payment was mentioned for the first time in the letter of allotment on 16.04.2014.

15. It is also established from the perusal of the documents that the petitioner-Bathinda Development Authority could not carry out any further development of the plot, at the relevant point in time, and possession of plot No.202 which was allotted to respondent No.1-complainant, could not be offered. An alternate plot was offered to him which he refused to accept which is further strengthened in his moving of an application before State Consumer Disputes Redressal Commission. The prayer made in the complaint by respondent No.1-complainant was only for seeking refund and compensation for mental agony as well as the litigation expenses and no prayer for seeking possession of the plot was ever made by him. Hence, a conscious option for refund of money was exercised by the allottee where he showed disinclination in seeking allotment of plot No.241, which is still being offered to respondent No.1-complainant. This Court does not exercise the powers to substitute the choice of an allottee even if the Court may feel that the other option may be viable or more beneficial to the allottee-

complainant. Thus, the offer of the petitioner-Bathinda Development Authority to deliver the possession plot No. 241, at this juncture is rejected on the said ground alone.

16. Now adverting to the second argument with respect to the modification of the award granting interest w.e.f. 10.07.2013 instead of 06.07.2017. The National Consumer Disputes Redressal Commission has taken into consideration all the aspects and the arguments advanced by the respective parties. It was specifically recorded by the National Consumer Disputes Redressal Commission that as per the terms and conditions of Letter of Intent, the possession of the plot was to be handed over to respondent No.1-complainant after completion of development works at site within one and half years of the date of issuance of Letter of Intent. The petitioner-Bathinda Development Authority, even though issued notices demanding the payment, however, no further decision was taken in conformity with powers conferred upon the Bathinda Development Authority, to cancel the allotment because of non-payment of the amount as demanded or as payable in terms of the Letter of Intent. It was also noticed by the National Consumer Disputes Redressal Commission that the State Consumer Disputes Redressal Commission awarded interest w.e.f. 06.07.2017 solely because the complainant sent a formal letter of request for seeking refund on that date but no repayment was made by the petitioner-Bathinda Development Authority. However, on considering that the first notice for demand of payment was made on 11.07.2012 against which the payment had not been made and noticing that there was failure on the part of

Bathinda Development Authority in not taking appropriate steps for cancellation of allotment in exercise of powers as per the terms and conditions incorporated in the Letter of Intent and instead they resorted to issue subsequent notices later in point of time as well, it was held that there was no such necessity for sending demand notices for deposit of the amount and that appropriate steps as per the powers conferred ought to have been taken by the petitioner-Bathinda Development Authority. It was thus under these circumstances, the National Consumer Disputes Redressal Commission held that a period of one year from the date of issuance of initial notice dated 11.07.2012 for seeking the balance installments was a sufficient period to enable the petitioner-Bathinda Development Authority to take a decision as to whether the allotment of the plot was to be cancelled and the amount to be forfeited in term of the Letter of Intent or the refund was to be made. In having chosen not to take a decision, the Bathinda Development Authority was not entitled to retain the said benefit merely because it continued to issue reminder notice(s) and delayed its own decision making. A period of one year from the date of issuance of the first notice demanding payment was deemed appropriate for taking a decision as per the terms and conditions of the Letter of Intent that were binding between the parties. The same having not being taken hence, the National Consumer Disputes Redressal Commission modified that award and directed the petitioner-Bathinda Development Authority to pay interest w.e.f. 10.07.2013 instead of 06.06.2017 as awarded by the State Consumer Disputes Redressal Commission. The relevant part of the same reads thus:-

"8. We may first observe that as has already been mentioned in para 3 above the LoI gave the timelines for payment of total 95% of the price. It was silent on the timeline for payment of the residual 5%. Though this was taken care of in the subsequent allotment letter, but it was required and expected of the development authority to get its basic essential arithmetic correct in the initial LoI itself.

Though this does not have a bearing on the facts of this present case, since the stage of the payment of the residual 5% was never reached, but the development authority shall be better advised to provide the timelines for payment of the entire 100% in the LoI itself.

We note that in clause 3 of the allotment letter the timeline of making payment of the balance 5% was within 30 days of its issue. That being so, at the very least the tentative period within which the allotment letter would be issued ought to have been given in the LoI and it also ought to have been made explicit therein that the balance 5% will be payable within 30 days of the issuance of the allotment letter.

Whatever be the mechanics the development authority may wish to adopt, the objective is that the timelines for payment of the entire 100% price ought to be clear ab initio in the LoI itself.

9. We agree with the argument made by the learned counsel for the development authority that once an allotment letter is made its conditions prevail over the conditions mentioned in the earlier LoI. This is a general principle. But in this regard we would like to observe that, firstly, there ought to be, to the extent feasible and desirable, consistency between the conditions mentioned in the initial LoI and those mentioned in the subsequent allotment letter, and, secondly, as a matter of diligent responsible functioning, it ought to be made explicit in the LoI itself that when the allotment letter is issued subsequently the conditions contained therein will prevail. If the tentative period of making the allotment letter is given in the LoI and it is also made clear that subsequently the conditions mentioned in the allotment letter will prevail, it will enable the allottees to have an informed choice in order to exercise their discretion to act on the conditions of the LoI if they so wish within the foreseeable period available with them. The development authority shall be well advised to examine and remove the ambiguity and unfairness in this regard.

10. Though we agree in principle with the learned counsel for the complainant that in case satisfactory development is not going on at the site then the allottee is well within his rights to watch his interests and not make further payment(s), but in the facts of the instant case at hand it is admitted that the

complainant did not make payments of even the second and third instalments which were due within the 1.5 year committed period itself and he was also given notice within the said period itself. That being so, it is not logical to accept that in the present case the complainant was not a defaulter, more so when it was a self-financing scheme of a government development authority functioning for public good.

The State Commission in para 14 of its Order, for reasons given, has concluded that "- - - the complainant was reluctant to accept the plot and became a wilful defaulter". We find no good reason to take a different view of the facts and evidence.

11. We may see that the chronology of notices issued to the complainant was: LoI on 09.05.2011; then notices on 11.07.2012, 28.08.2012 and 23.10.2012; then expiry of commitment period of 1.5 years on 08.11.2012; then notice on 20.03.2013; then allotment letter on 16.04.2014; then notices on 27.10.2014 and 17.04.2015.

As many as 04 notices were issued even before the allotment letter. In the notice dated 28.08.2012 it was mentioned that "This amount should be deposited within 30 days including penalty if it is not done the process of cancellation of plot or forfeit of deposited amount will be done. In that case under Puda Act rules deposited amount of the Plot/cancellation of the allotment will be done". As such the complainant had been

explicitly put to notice for cancellation of his allotment. At that time the LoI was prevailing and the allotment letter was not even in existence. Had the development authority acted within a reasonable timeframe on its own notice it would have cancelled the allotment and could have forfeited the earnest money in accordance with clause 14 of the LoI. However it only kept on sending repeated notices but took no further tangible action for a considerable period of time. To put it differently, had the development authority been efficient enough to act on its notice(s) it would have disposed of the complainant's case while the LoI was still applicable. By delaying the matter, dallying it till the allotment letter was made, it cannot plead that the stringent condition in the allotment letter will now come into force. The allottee cannot be the victim of the erratic or whimsical level of efficiency or inefficiency of the development authority. Hypothetically, after notice, if in one such case it shows efficiency enough and disposes the case within reasonable period and before the allotment letter is made, and in another case it shows scarce efficiency and procrastinates the case till the allotment letter is made, to argue that in the latter case the stringent condition of the allotment letter will be applicable is untenable and unacceptable.

Thus, in the conspicuous circumstances of the present case, clearly, the condition in the LoI i.e. clause 14 ought to and will

be applicable since the notice had been issued for "cancellation of allotment" when the LoI was well in place and the allotment letter was not even made and the case was not disposed of within any reasonable period.

This also calls for introspection by the development authority for removing unpredictable anomaly as also the capricious unfairness in decision-making so that similarly situate cases are similarly treated and the one or the other is not dependent on the case-to-case level of efficiency or inefficiency of its concerned functionaries. So advised.

In the present case, though our reasoning is different, we agree with the State Commission that the deduction ought to be made in accordance with clause 14 of the LoI.

12. In the light of the above examination, we find no good reason to interfere with the principle per se of the award of the State Commission, that after deduction of the earnest money the complainant's deposited amount be refunded with interest at the rate of 10% per annum. The deduction is in accordance with clause 14 of the LoI. The rate of interest is the same as is given in clause 15 and appears to be a good yardstick to adopt for the instant purpose. However, we do not agree with the State Commission that the interest ought to be from the date of the request letter dated 06.06.2017 of the complainant. Disconcertingly enough, no refund at all has been made by the

development authority to the complainant till date. Even its own case argued today is that refund ought to be made after making deduction as per clause 27 of the allotment letter. Howsoever right or wrong its stand may be, even the refund due by its own calculations, tenable or untenable, has not been made. Another disturbing aspect is that the complainant was first issued notice on 11.07.2012. But no action was taken to decide the case. Repeated further notices were sent, self-evidently in rote. As such, taking full 01 year as a most liberal period for taking decision and making the refund on its own, the refund ought to have been made by 10.07.2013. We feel that in the present case equity requires that the interest be paid from this date i.e. 10.07.2013, making it admissible from the most belated request letter of 06.06.2017 might be something less than justice. It bears emphasis that if action for cancellation of allotment is undertaken, in the normal wont, as per the rules, the refund admissible after the deduction is not dependent on the allottee's request, while the development authority is well within its rights to make the (rightful) deduction as may be due but it has the concomitant responsibility too of making the balance refund within reasonable period.

13. Sequel to the above, the award made by the State Commission is modified to the effect that the development authority shall make refund of an amount of Rs. 12.848 lakh to

the complainant with interest at the rate of 10% per annum from 10.07.2013 till actual realisation along with compensation of Rs. 15 thousand and cost of litigation of Rs. 5 thousand.

The awarded amount shall be made good within eight weeks from today, failing which the State Commission shall undertake execution, for 'enforcement' and for 'penalty', as per the law.

We may add that we have not per se added to or subtracted from any of the conditions or rules of the development authority. The advice given in paras 8, 9 and 11 above is essentially for inculcating systemic improvements for future for the (rightful) benefit of consumers at large.

So disposed.".

17. Learned counsel for the petitioners has failed to point out any illegality or impropriety or a flaw in the reasoning given by the respondent(s)-applicant(s)/complainant(s).

18. This Court, while sitting in judicial review over the orders where the merits have already been examined not only by the State Consumer Disputes Redressal Commission but also in the first appeal by the National Consumer Disputes Redressal Commission, does not substitute the opinion recorded by the Consumer Fora. Unless the final conclusion drawn by the authority is based upon non-appreciation of the facts or the settled position of law resulting in any illegality, impropriety or perversity, the award so passed would ordinarily not be interfered. No such grounds have

been pointed out or argued by the learned counsel for the petitioners. A judicious discretion has been exercised, by giving reasons based on objectivity, which such reasons cannot be said to ill-founded or devoid of any logic.

19. **The writ petitions are accordingly dismissed in *limine***. The awards as modified by the National Consumer Disputes Redressal Commission in favour of the respondents-allottee are **affirmed**.

(VINOD S. BHARDWAJ)
JUDGE

13.09.2024
Mangal Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No