



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

2024:PHHC:106649



(216)

CWP-1637-2019

Date of Decision: 20.08.2024

Pankaj Nandwani

--Petitioner

Versus

Permanent Lok Adalat & others

--Respondents

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

Present:- Mr. C.K. Singla, Advocate with
Ms. Kavita Joshi, Advocate and
Ms. Tarranum Madan, Advocate for petitioner.

Dr. (Ms.) Malvika Singh, Advocate
(Legal Aid Counsel for respondents no.2 and 3.
(already proceeded ex parte vide order dated 17.03.2023.)

VINOD S. BHARDWAJ.J (Oral)

The present petition challenges the award dated 15.11.2018 (Annexure P-1) passed in case no.168 by the Permanent Lok Adalat (Public Utility Services), Sonipat, whereby the application under Section 22C of The Legal Services Authorities Act, 1987 (for short the 1987 Act) filed by the petitioner has been partly allowed and the respondent developer has been directed to allow the petitioner to choose a plot from the available plots, of same size and in the same location, at the initially agreed price instead of directing a refund of the entire deposited amount, along with interest.

2. Learned counsel for the petitioner contends that the petitioner had booked a residential plot at TDI City, Kundli, District Sonipat in the project developed by respondents no.2 and 3 in the name and style of Tuscan Royale, measuring 250 sq. yards bearing plot no.A-1 Block, Tuscan

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City in Tuscan Royale City at the basic sale price of Rs.37,500/- per sq. yard. Registration form was submitted by the petitioner on 14.05.2012 and a sum of Rs.18,75,000/- was duly deposited. A letter of allotment dated 05.02.2013 for plot no. A-1-104 was stated to have been issued to the petitioner but the same was actually never delivered to the petitioner. The same was actually collected by the petitioner only in November, 2013. While raising objections to the said letter of allotment, having been issued with terms and conditions at variance that what had been agreed to, the petitioner none-the-less deposited an additional amount of Rs.14,06,250/- on 05.12.2013 in compliance of the conditions of the letter of allotment. Learned counsel for the petitioner further contends that even though, as per the registration form, the letter of allotment was to be issued within a period of six months from the date of application, however, the above said ante dated letter of allotment was actually delivered to the petitioner only on 02.11.2013, i.e. much after the said period.

3. The petitioner waited for a further period of four years for the progress to be made and possession to be offered by the developer, however, no such development took place but a communication dated 20.06.2016 was sent to the petitioner, as per which the respondents expressed their inability to hand over possession of the plot to the petitioner and gave him the following options:-

“offer of taking over an alternate ready for possession unit in the same project and registration of sale deed within 15 days of completion of all formalities;

Or

Adjustment of entire deposit in any of our other projects, in a unit of your choice.”

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4. On receipt of the said letter, the petitioner inquired whether the respondents are in a position to offer possession of the plot of a choice of the petitioner or else, the amount deposited by him be refunded to him along with interest. No action was however initiated on the said request, whereupon an application under Section 22(C) of the 1987 Act was filed by the petitioner before the Permanent Lok Adalat.

5. In the reply filed before the Permanent Lok Adalat, the respondents admitted that they were unable to complete the development works as some miscreants had filed a suit and therefore they were unable to offer the possession to the petitioner. The relevant extract of the reply filed by the respondents reads as under:-

“4-5. That in reply to paras No.4-5 of the application it is submitted that the development work at the site could not be carried out due to hindrance caused by some local miscreants who are obstructing in the development work of project. There is also litigation pending between the respondent /company and above said miscreants of the village Nangal Kalan District Sonapat. However said suit has been dismissed but an appeal is still pending in the court of Sh. Ajay Tewtia Ld. Addl. District Judge, Sonapat, however there is no injunction order prevailing but despite that said miscreants of village are causing hindrance in the development work at the site. In this regard the respondent/company has also moved several representations to the Local Authorities and higher authorities but of no avail. Such miscreants are local inhabitants of village Nangal Kalan and they are very strong headed persons. In this regard the respondent/company has also got lodged FIR. In such circumstances the respondent/company is unable to do the development work. Copy of Judgement passed by the court of Ld. Civil Judge, Jr. Divn. Sonapat, copy of appeal, copies of representations made



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by the respondent to various authorities including C.M.Window and copy of FIR lodged against said miscreants is enclosed.

In those representations the answering respondent has urged to various authorities that a prompt legal action may please be taken against those miscreants so that the respondent/company may complete its project within time because the company had allotted Plots/Flats to numerous applicants and possession was to be delivered within stipulated time frame.

The respondent/company also made numerous representations to various authorities to prevent the said miscreants from causing any hindrance in the peaceful construction/development work at the site but of no use.

Keeping in view the relations between the respondent /company and customers including the applicant, the respondent/ company made numerous correspondence besides telephonic conversation (out of which some of letters including Annexure A-8 have been produced by the applicant himself in support of his application) vide which the respondent /company made clear the things that the company was unable to offer the unit to the applicant due to reasons beyond our control and further stated that said correspondence was being made to reassure the applicant of our commitment to the completion of the project and ensuring the satisfaction of our customers and further offered:-

“offer of taking over an alternate ready for possession Unit in the same project and registration of sale deed within 15 days of completion of all formalities: OR adjustment of his entire deposit in any of our other projects in a unit of your choice”.

But the applicant did not give any positive response rather insisted for possession of same Plot, which was not feasible due to prevailing circumstances beyond the control of respondent/company.



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Lastly the respondent/company issued a letter dated 19.9.2016 (produced by applicant as Ann. A-10) stating therein that as per Clause 2 of our allotment letter we are offering you plot Number A-A/16/6 instead of plot Number A1-104. The applicant was asked to complete the formalities/Registration of the above said unit in his name within 30 days from the date of receipt of said letter but the applicant yet did not give any positive response.

Now the applicant is wrongly insisted for refund of his deposited amount along with interest and compensation etc. whereas the parties are bound with the terms and conditions of allotment letter, more specifically by clause No.2, and in pursuance thereof, the respondent /company has already offered alternative Plot bearing no. A-A16/6 to the applicant (Ann.A-10).

There is no deficiency in service on part of the answering respondent. The applicant is not entitled for refund of his deposited amount, interest, compensation whatsoever as alleged.”

6. Terms of settlement were drawn as per the provisions of Section 22 C(4) to (7) of the Legal Services Authorities Act, 1987, wherein it was proposed that either the respondents no.2 and 3 offer the possession of the original plot or refund the said amount but the same could not be fructified. The adjudication was thereafter done by the Permanent Lok Adalat and the following order was passed:-

“Hence, the respondents are directed to allow the applicant to choose a plot from the available plots of same size in the same location at the initially agreed price. The applicant may express his choice to the respondents within a period of one month of offer and make balance payment after adjustment of amount already paid along with interest calculated @ 10% p.a from the date of deposit. The respondents will hand over actual possession of the plot and

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arrange registration of sale deed within 1 month of final payment by the applicant. Award is passed directing both the parties with some conditions. A copy of this award be supplied to the parties free of cost and file be consigned to the records after due compliance.”

7. Aggrieved thereof, the present writ petition has been filed.
8. Despite service, the respondents chose not to appear in the present proceedings and thereafter they were ordered to be proceeded against ex parte vide order dated 17.03.2023. The matter was still adjourned to enable to file any application(s) for restorations by the respondents but as no one opted to appear, Dr. (Ms.) Malvika Singh, Advocate was nominated as Legal Aid Counsel to represent the said respondents and to put forth their version and arguments.
9. The Legal Aid Counsel appearing on behalf of respondents no.2 and 3 has argued that it was clearly informed to the petitioner that the allotment would be provisional till the sale consideration is paid in full and that the applicant shall not claim any right/title till the full and final payment. Learned Legal Aid Counsel further contends that the petitioner, however, committed a default in paying the due price and as such, he cannot stake any claim on the specific plot. She further contends that a specific offer was also made to the petitioner, whereby he was offered an alternative plot in lieu of the original number, which could not be developed for the circumstances beyond the control of the respondents. She further contends that the prayer for refund of the amount along with interest, could have been entertained by the company only in an eventuality where the company is not able to provide allotment within a period of one year from the date of the application and that as the allotment has been specifically offered to be provided by the respondent company and there has been no default on its

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part. The respondents have not cancelled the allotment, hence, the instant case being one of an option exercised by the petitioner to withdraw from the allotment of the plot, he cannot claim the refund of the money along with interest. The claim for refund of the entire amount could be asked for only if the respondent was not in a position to offer an allotment/possession or has cancelled the allotment. In the absence of existence of any of the said condition, the refund could not be asked for. She, however, clearly concedes that an allottee cannot be made bound to opt/accept for the alternate plot that may be so offered by the developer as it would amount to a novation of the initial terms and conditions on which a proposal was submitted. Consent of both the parties to such an alternative offer (which becomes a counter offer by the developer) would, thus, be a pre-requisite for change of conditions of allotment.

10. I have heard learned counsel for the parties at length.

11. The factual aspect having not been disputed, the core controversy is only as to whether an allottee can exercise his option not to seek an alternate plot and instead to seek refund of the money deposited by him.

12. In view of the fair submissions made by learned Legal Aid Counsel, an allottee/applicant cannot be compelled to seek any other plot as the same would be in the nature of a novation of the contract, hence, I am of the opinion that exercise of discretion/choice by an allottee cannot be made subject to a counter offer made by the developer and such counter offer cannot be accepted in law to give rise to a binding obligation on the applicant to seek such an allotment. Such renewed offer has to be seen in the law of contract as a fresh counter offer to which acceptance by the

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applicant, is a pre-requisite to create any obligation. The willingness of one cannot be thrust upon the other. It is not in dispute that even after a period of more than a decade, the actual physical possession of the plot has not been given to the petitioner. The fate of the applicant cannot be kept under suspension indefinitely and merely for the convenience of the developer.

13. Under such circumstances, the applicant cannot be compelled to accept the offer of any other alternative plot. The present writ petition is, accordingly, allowed. The award dated 15.11.2018 (Annexure P-1) passed in case no.168 by the Permanent Lok Adalat (Public Utility Services), Sonipat, is hereby set aside. The respondent developer is directed to refund the entire deposited amount along with interest @ 10% per annum from the date of its deposit till its actual refund.

14. Petition is allowed in the aforesaid terms.

(VINOD S. BHARDWAJ)
JUDGE

20.08.2024

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