

WP(C) 440/2017
BEFORE
HON'BLE MR. JUSTICE AJIT BORTHAKUR

JUDGMENT AND ORDER(ORAL)

Heard Mr. Kemo Lollen, learned counsel, appearing on behalf of the petitioners in both writ petitions. Also heard Ms. Riyum Basar, learned Government Advocate, for the State Respondents.

2. Synopsis of WP(c) 125(AP)2017

Mr. Lollen, learned counsel for the petitioners, submits that in the year 2010, the Government of Arunachal Pradesh represented by the Secretary (Housing), Itanagar, introduced a proposal for construction of 1000 flats with affordable homes in the genesis of "River View Apartments" at Lower Jollang(Paga Taraq), at Capital Complex, Itanagar, Arunachal Pradesh, under various categories of flats, which was categorized from 'A' to 'E' with area(in Sq. fit) fixing its basic prices. According to learned counsel, as per instructions, the prospective buyers have to pay the cost of the flats on installments basis against each categories of flats, in favour of the Director(Housing), Government of Arunachal Pradesh, Itanagar and accordingly, the petitioners, altogether 73 in nos., booked their flats under different categories, vis-à-vis., petitioners No. 1 to 28 booked their flats under Category-E, petitioners No. 29 to 43 booked their flats under Category-D, petitioners No. 44 to 59 booked their flats under Category-C, petitioners No. 60 to 64 booked their flats under Category-B and petitioners No. 65 to 73 booked their flats under Category-A.

Mr. Lollen, learned counsel, further submits that the petitioners were paying their installments as advance installments, however, from the first part of 2015, the respondent authorities declined to accept further payments/ installments from the petitioners without assigning any reasons.

According to the learned counsel, as per the Memorandum of Agreement(MoA) dated 03.09.2010 which was entered in between the State Government and the Builder, namely, M/s Ishvakoo(India) Pvt. Ltd., the construction of 3000 flats was to be completed within 3 (three) years from the date of execution of the Agreement but he contends that even after a lapse of more than 7 years, the authorities concerned have failed to allot flats to the present petitioners. Highly aggrieved, they submitted a joint representation on 03.09.2016 before the respondent no. 2 viz.

Secretary, Department of Urban Development, requesting him either to allot the flats or to repay back the advance installment payments made by them so far in case they failed to allot flats. But such a representation was not acted upon by the authorities concerned. Mr. Lollen, learned counsel, also submits that though the respondent authorities accepted installments payments from the petitioners but they were neither allotted with flats nor their installment payments were refunded to them which is a clear violation of fundamental right enshrined under Article 21 of the Constitution of India to have shelter and also violation of consequential civil right of the petitioners which remedy lies under Article 226 of the Constitution of India. Hence, the present writ petition being WP(c) 125(AP) 2017, has been filed by the petitioners for redressal of their grievances.

3. Synopsis of WP(c) 440(AP)2017

Mr. Lollen, learned counsel for the petitioner, submits that as in the case of WP(c) 440(AP)2017, the instant petitioner had booked flat under Category-C and paid upto 3rd installment on various dates and her name has also been reflected at Sl. No. 20 of Category-C. Thereafter, on the request of respondents authorities, she enhanced her booking of flats from Category-C to E and paid 4th installments through DD/cheque No. 885130 dated 29.04.2014 amounting to Rs. 2,06,500/- which was acknowledged by the authorities concerned vide receipt dated 29.04.2014. The petitioner, accordingly, paid an amount of Rs. 5,19,750/-. However, from the first part of 2015, the authorities concerned declined to accept further installment payments from the petitioner without assigning any reasons which is against the Memorandum of Agreement (MoA) dated 03.09.2010 entered in between the State Government and the Builder, namely, M/s Ishvakoo(India) Pvt. Ltd.. Highly aggrieved, the petitioner along with other similarly situated persons, submitted a joint representation on 03.09.2016 before the respondent no. 2 viz. Secretary, Department of Urban Development, requesting him either to allot the flats or to repay back the advance installment payments made by them so far in case they failed to allot flats. As in the earlier case, such a representation was not acted upon by the authorities concerned. According to Mr. Lollen, learned counsel, though the respondent authorities accepted installments payments from the petitioner but she was neither allotted with flats nor her installment payments was refunded to her which is a clear violation of fundamental right enshrined under Article 21 of the Constitution of India to have shelter and also violation of consequential civil right of the petitioners which remedy lies under Article 226 of the Constitution of India. Hence, the present writ petition being WP(c) 440(AP)2017, has been filed by the petitioner for redressal of her grievances.

4. According to Mr. Lollen, learned counsel for the petitioners in both cases, most of the petitioners belong to poor family background and does not have any private residences/flats within the Capital complex, Itanagar. Apart from that, some of them are serving in Group-C & D posts and some are petty contractors. However, in pursuance to an Advertisement floated by the State Government for booking of flats, the petitioners procured advance/ provisional registration forms and application forms from the office of Director(Housing), Government of Arunachal Pradesh, Itanagar, by paying the requisite fees. Mr. Lollen, learned counsel, submits that in the said advance registration form, it was clearly stipulated, inter alia, that the allotment of flat shall be made to the applicants as far as possible within 4 (four) months from the date of registration failing which, the applicants shall be entitled to refund the advance registration amount and if flat is allotted, then the advance registration amount will be adjusted against the booking amount payable by the applicants.

Furthermore, according to the learned counsel, the indicative terms and conditions forming a part of the application for allotment of a residential Flat, Clause-12 of the said terms and conditions provides that 15 % of the total sale consideration on the total super area of the flat shall constitute the "Earnest Money". Timely payment of each instalment of the total sale consideration i.e. basic sale price and other charges as stated herein is the essence of the transaction/agreement. In case, payment of any instalment, as may be specified, is delayed, then the Applicant(s) shall pay interest on the amount due @ 18 % p.a. compounded at the time of every succeeding installment or three months, whichever is earlier. However, if the Applicant(s) fails to pay any instalments with interest within 3 (three) months from the due date of the outstanding amount, the Government of Arunachal Pradesh may, at its sole option, forfeit the amount of Earnest Money (advance booking money) and other charges including late payment charges and interest deposited by the Applicant(s)....etc.,.

Accordingly, petitioner No. 52 in WP(c) 125(AP)2017 and the lone petitioner of WP(c) 440(AP)2017, submitted the advance registration form and application form to the respondent no. 2 along with provisional registration amount of Rs.

90,000/- (10% of the total cost of the flats), each, through DD/Cheques in favour of Director, Housing, Itanagar. Likewise, all the petitioners have submitted an advance registration form along with 10% amount of the total cost of the flats on the basis of category of flats.

5. Mr. Lollen, learned counsel for the petitioners, further submits that on the basis of advance registration forms and application forms received from the petitioners and other applicants, the department concerned prepared an accurate data/list of applicants, as on 15.01.2015, for allotment of flats under various categories of flats which sums up to 114 applicants which included all the applicants of both the petitions except the names of petitioners No. 25, 26, 27, 28 & 29 though they had submitted their registration form along with 10% of the cost of flats.

6. Mr. Lollen, learned counsel, submits that while the installment payments were going on (some of them have already paid upto 6th, 7th/8th installments) towards booking of flats but shockingly, as stated above, from the first part of 2015, the authorities concerned declined to accept further installments payment from the petitioners without assigning any reasons. On such sudden denial, the petitioners made inquiry with the authorities concerned as to why they were being denied of paying remaining installment which, however, evoked no proper response. Situated thus, as stated earlier, the petitioners had submitted joint representation dated 03.09.2016 before the respondent no. 2, for, either allotment of flats or refunding of their hard-earned money. Since nothing has come out after filing of the joint representation dated 03.09.2016, the petitioners had approached this Court for redressal of their grievances.

7. In addition to above, Mr. Lollen, learned counsel, submits that in view of the operation of Clause-12 of the Indicative terms and conditions of application for allotment of a residential Flat which provides that if payment of any installment, as may be specified, is delayed, then the applicant(s) shall pay interest on the amount due @ 18% P.A. compounded at the time of every succeeding installment or three months, which is vice-versa, therefore, the same law must be applicable on the respondents authorities on their failure to allot flats to the petitioners and since they are unable to allot flats to the petitioners, hence, they ought to return the installments payment money to the petitioners along with 18% interest P.A. as compensation as the said interest amount would have been accrued to the petitioners, if the said money would have been deposited in their respective bank accounts.

8. Mr. Lollen, learned counsel for the petitioners, have also placed before this Court, a copy of order dated 11.04.2014 passed in Writ C. No. 65085 of 2012, which is stated to be of Allahabad High Court, wherein it has been reflected as under:-

"iv). The respondent-Company shall refund the consideration received from the private parties, who have booked apartments in Apex & Ceyane (T 16 and 17) along with 14% interest compounded annually within four months from the date of filing of certified copy of this order."

9. In response to the contentions of the petitioners in both petitions, the State Respondents by way of filing an affidavit-in-opposition in WP(c) 125(AP) 2017, have basically made an averment to the extent that collection of further installment payments were discontinued because the builders had stopped construction of the Buildings, abruptly, in the month of May, 2014, and fled away along with construction workers from the site without any reason.

10. In the said counter affidavit, the State Respondents did not offer any comments as regards the petitioners' claim for 18% interest P.A. as compensation along with refunding of their installment payments. However, they had contended that they had directed the builders to repay the petitioners with some nominal i

nterest. According to the State Respondents, the Builders have decided to close the project and have authorized State Urban Development Agency(SUDA) under the Director of Housing, Government of Arunachal Pradesh, to auction the fixed assets to repay the petitioners and other buyers. As per the averment made by the State Respondents in the said counter affidavit, payment received less than 15% of the sale price of the flats will be forfeited by SUDA as agreed upon by the buyers.

11. The State Respondents, in their counter affidavit, have, in fact, pleaded for sufficient time for making payment to the petitioners, their respective installment amount.

12. By filing the affidavit-in-reply to the counter affidavit of the State Respondents, the petitioners have strongly contended that they have nothing to do with the Builder, in question, and/or as to whether they had abruptly stopped the construction or not.

13. According to Mr. Lollen, learned counsel for the petitioners, it is the State Respondents No. 2 and 3 who had assured the petitioners of allotting their respective flats they had applied for and as such, the Respondents No. 2 and 3 are liable to repay the advance amount along with 18% interest P.A. as compensation to the petitioners within a short period. The petitioners have also strongly refuted the averment of the State Respondents that some of the petitioners had accepted forfeiting of their installment amount since they had paid less than 15% of the sale price of the flats.

14. I have duly considered the rival contentions of the contesting parties as well as taken into account, the various pleadings/affidavits made available before this Court.

15. Upon lending my anxious consideration of the matter, at hand, in its entirety; in the interest of justice, it is hereby directed that the State Respondents, more particularly, Respondent No. 2 viz. Secretary, Department of Urban Development, Government of Arunachal Pradesh, Itanagar, and Respondent No. 3 viz. State Urban Development Agency(SUDA) represented by the Director, Department of Housing, Government of Arunachal Pradesh, Itanagar, shall repay the respective installment amounts/consideration against advance booking of their respective categories of flats to all the present petitioners of both writ petitions, along with 14% P.A., within a period of 3(three) months from the date of receipt of a certified copy of this order.

16. With the above directions, both these writ petition stand disposed of.

JUDGE

Bikash