

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 1778/2019
CM No. 3397/2019

Reserved on: 12.09.2024

Pronounced on: 26.09.2024

Tanveer Ahmad Malik
S/O Haji Ghulam Rasool Malik
R/O Sumbal Sonawari Bandipora.

...Petitioner(s)

Through: Ms. Insha Bhat, Advocate vice
Mr. M.S.Reshi, Advocate.

Vs.

- 1. State of J&K through
Commissioner/Secretary to Government,
Housing & Urban Development Department,
Civil Secretariat Srinagar/Jammu.**
- 2. Srinagar Development Authority through its
Vice Chairman, Bemina Bye Pass Srinagar**
- 3. Director Land Management,
Srinagar Development Authority,
Bemina Bye Pass Srinagar.**

...Respondent(s)

Through: Mr. Bikramdeep Singh, Dy.AG.

CORAM: HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE

JUDGMENT

- Petitioner, through the medium of the present writ petition, filed under Article 226 of the Constitution of India, has prayed for a direction in the name of respondents to release/refund an amount of Rs.3.00 lacs in favour of the petitioner, which amount has been deposited by the petitioner as premium for allotment of Flat of 3BHK (Type-B) 2nd Phase of residential apartment at Shahjar

Apartments, Bemina Srinagar, advertised by the respondent-Srinagar Development Authority.

2. The grievance of the petitioner, as projected, is that he had applied for the allotment of the residential flat at the aforementioned Shahjar Apartments, Bemina Srinagar, and respondent No.3-Director Land Management, Srinagar Development Authority, Bemina Bye Pass Srinagar, in terms of Communication No. SDA/DLM/2320-33 dated 13.12.2018, informed the petitioner that his application for allotment of said flat was considered, as such, petitioner was requested to deposit the premium amount, as per the following Payment Schedule:-

1. *15% within 45 days after issuance of letter of intent.*
2. *15% after 9 months from the date of issuance of letter of intent.(within 15 days)*
3. *15% after 18 months from issuance of letter of intent (within 15 days).*
4. *15% after 24 months from the issuance of letter of intent (within 15 days).*
5. *20% after 33 months from the issuance of letter of intent (within 15 days).*
6. *20% before the execution of documents/handing over of the possession.*

3. According to the petitioner, he had deposited Rs.3,00,000/- (Rupees Three Lacs only), as premium, so that the allotment of flat is made in favour of the petitioner, however, despite depositing the said premium amount, respondents failed to allot the flat, therefore, the petitioner repeatedly requested the respondents to refund the said amount, which the respondents failed to do so.

4. To controvert the pleas raised by the petitioner in the writ petition, respondents have filed their objections, wherein it is stated that the

present petition is not maintainable, as none of the rights of the petitioners have been violated or infringed. It is stated that the petitioner was issued letters of intent, vide No. SDA 2320-23 dated 13.12.2018, No. SDA/DLM/744-45 dated 29.6.2019, and No. SDA /DLM/1232 dated 22.10.2019, for depositing the premium amount as per the Schedule, however, the petitioner failed to deposit the premium amount, despite the above referred communications. It is further submitted that as the petitioner failed to deposit the premium amount, the earnest money deposited by the petitioner stands forfeited and the petitioner was informed about the same vide public notice bearing No. SDA/DLM/1299 dated 6.11.2019 issued vide No. DIPK:0976/NB/M dated 13.11.2019, which was published in local daily newspaper "Kashmir Images" vide its publication dated 14.11.2019.

5. Learned counsel for the petitioner, while making submissions, argued that since the respondents have failed to allot the flat in favour of the petitioner, it is, therefore, incumbent upon the respondents to refund the premium amount of Rs.3.00 lacs in favour of the petitioner. He further argued that right to hold the property in the shape of the said premium amount has been denied by the respondents, as such, respondents have violated fundamental rights of the petitioner, inasmuch as, the petitioner has been deprived use of the said amount without any justification. Furthermore, learned counsel for the petitioner submitted that the action of the respondents, in not releasing the payment in favour of the petitioner, smacks of not only arbitrariness on behalf of the respondents but also violates the fundamental rights of the petitioner.

6. Learned counsel for the respondents, in order to controvert the arguments of learned counsel for the petitioner, argued that despite several letters of intent issued to the petitioner informing him to deposit the premium of the residential flat as per Payment Schedule, petitioner failed to fulfil the requirements, as required vide terms and conditions contained in the letter of intent dated 13.12.2018. He further submits that the amount of Rs.3.00 lacs had been deposited by the petitioner as 'earnest money', to be adjusted towards the premium, however, in not making payments as per Payment Schedule, this amount of 'earnest money' was liable to be forfeited; that the respondents by issuance of repeated notices, had requested the petitioner to deposit the instalments of premium as per agreed schedule of payments, however, he failed to deposit the payments, as such, his earnest money was forfeited and cannot be released in his favour.
7. Heard, perused the record produced by learned counsel for the respondents and considered the same.
8. Perusal of the record reveals that the Registration Form for booking of the aforementioned flat has been filled up by the petitioner putting his signatures on it, meaning thereby that he had accepted the Schedule, reproduced hereinabove, contained in the letter of intent No. SDA/DLM/2320-23 dated 13.12.2018 and the conditions of registration form. Perusal of the record further reveals that the registration form also contains price of the advertised apartments, whereby the basic price of the apartment, applied for by the petitioner i.e., apartment (Type-B), is Rs. 60,00,000/- (Rupees Sixty Lacs only). As per the Schedule contained in letter of intent dated

13.12.2018, 15% of total amount was to be deposited within 45 days after issuance of the letter of intent, which comes to Rs.9,000,00/- (Rupees Nine Lacs only), while-as, the petitioner has deposited only Rs.3,000,00/- (Rupees Three Lacs) as 'earnest money', and had failed to deposit the remaining premium amount so far.

9. The conditions, under the name and style 'Note', contained in the Registration Form, reads as under:-

- I. *The earnest money will be adjusted in the first installment.*
- II. *Stamp duty, registration charges and legal/miscellaneous expenses etc., shall be borne by the allottee.*
- III. *The Prices are subject to revision/withdrawal at any time without any notice at the sole discretion of SDA.*
- IV. *Government Taxes as applicable from time to time shall payable by the allottee.*
- V. *The allottee/s shall have no right to specify their preference for any particular apartment/floor as the same shall be decided by draw of lots. However ground floor preference will be given to severely disabled persons as per norms.*
- VI. *Payment of installments is the essence of contract and for delay in payment: the allottee is liable to pay the interest @ 18%, however in case delay is more than four months in 1st installment, the allotment would be cancelled without any notice with forfeiture of the earnest money.*
- VII. *The allottee in addition to payment of the cost/premium of the apartment shall have to pay annual ground rent of Rs. 500/- per annum.*
- VIII. *The allottee can also transfer payments of installment/s through online banking.*

- 10.** Note-VI of the Registration Form, is crystal clear that payment of installments is the essence of contract and for delay in payment, the allottee shall be liable to pay the interest @ 18%, however, in case of delay of more than four months in depositing the 1st instalment, the allotment shall stand cancelled without any notice with forfeiture of the earnest money.
- 11.** Petitioner has miserably failed to deposit the premium amount in terms of the conditions of intent letter dated 13.12.2018 and the conditions contained in Registration Form, within the stipulated time period, as such, in terms of Note-VI of the Registration Form, the earnest money deposited by the petitioner, is deemed to be forfeited.
- 12.** Petitioner, while applying registration for flatted accommodation in Shahjar Apartments at Bemina, raised by the respondent-SDA, had deposited Rs.3.00 lacs as earnest money on 18.07.2018, through Demand Draft, in response to Advertisement Notice dated 14.07.2018. He was intimated the schedule of payment by SDA vide letter No. SDA/DLM/2320-23 dated 13.12.2018, to make payment in a time bound manner for a 3BHK (Type-B) 2nd Phase at Shahjar Apartments, subject to the other terms and conditions contained in the Advertisement Notice/Broacher.
- 13.** Respondent-Srinagar Development Authority, in response to Paras 4 and 5 of the petition has stated in Para-4 of the objections that the petitioner was issued letter of intent vide No. SDA/DLM/2320-23 dated 13.12.2018 and that he was subsequently also informed vide letter No. SDA/DLM/744-45 dated 29.6.2019 and No. SDA /DLM/1232 dated 22.10.2019 for depositing the premium amount. It is alleged that despite notices, the petitioner failed to deposit

premium amount and on his failure to do so, his earnest money was forfeited and the petitioner was informed about the same through public notice bearing No. SDA/DLM/1299 dated 6.11.2019, which was published in a local daily newspaper “Kashmir Images” on 14.11.2019. Respondents have also placed on record the copies of various communications made to the petitioner, impressing upon him to deposit the premium amount, and also the final notice which was issued to him, as public notice, published in a local daily newspaper, stating that payment of installment was essence of the contract and for delay in payment, the allottee is liable to pay the interest @ 18%, however, in case of delay is more than four months in 1st installment, the allotment would be cancelled without any notice with forfeiture of the earnest money and vide public notice dated 6.11.2019, the petitioner was notified that the letter of intent dated 13.12.2018 stands cancelled and withdrawn the earnest money of Rs.3.00 lacs against the flat shall also stand forfeited and the flat was being re-advertised.

- 14.** The petitioner, through the medium of this petition, had not challenged the cancellation of allotment of Flat in his favour or forfeiture of the earnest money, instead prayed that the respondents be directed to release/refund the amount of Rs.3.00 lacs in favour of the petitioner without any further delay.
- 15.** It seems that the petitioner had filed the present case simply to claim the refund of the earnest money of Rs.3.00 lacs, deposited with the application form for booking of the flat with the respondents and has not questioned the cancellation of his allotment order and forfeiture of the earnest money. He has projected his case as if the amount of

Rs.3.00 lacs was deposited as premium, which was not the case, as it is simply the earnest money, which was adjustable in the 1st instalment amounting to Rs.9.00 lacs, as 15% of the total amount of Rs.60.00 lacs. Therefore, it was not the case of depositing of premium amount, which he may seek to be refunded in case of cancellation of his allotment of the flat.

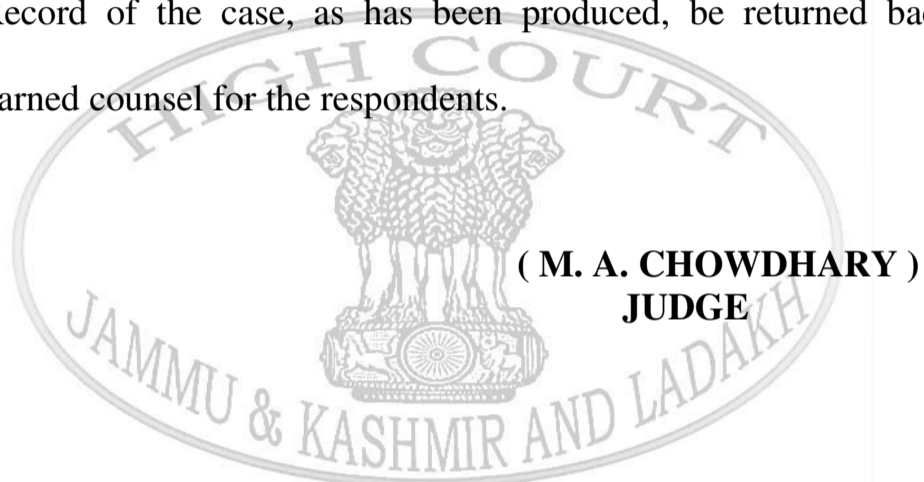
16. On perusal of the original record, produced by the respondents, the petitioner had registered booking of Flat at Shahjar Apartments opposite Hajj House National High Way Bye Pass Bemina Srinagar, developed by the respondent-Srinagar Development Authority on 16.07.2018 along-with the amount of Rs.3.00 lacs as registration fee/earnest money, with undertaking in the form itself; that the allottee will be liable to pay the interest @ 18% for delay in payment, however, in case of delay of more than four months in 1st instalment, the allotment would be cancelled without any notice and forfeiture of the earnest money, as contained in Note-VI of the registration form.

17. It appears from the repeated notices issued to the petitioner, as allottee, to deposit the amount of instalments as per the Payment Schedule, the petitioner had failed even to deposit the 1st instalment within the prescribed time period and it is also the fact that the petitioner had at no point of time asked for extension of time to pay the 1st instalment, from the respondents. It also appears that the petitioner, after booking a residential flat, had left the idea midway and did not proceed in the matter further by not depositing the instalments and now is interested only in refund of Rs.3.00 lacs, which has been forfeited in terms of the aforesaid condition.

18. Viewed thus, the petitioner has failed to make out a case for refund of the earnest money, which has been legally forfeited in view of the contractual terms and conditions between the petitioner and respondent-SDA (Srinagar Development Authority). The petition is, thus, found devoid of any merit and substance and is liable to be dismissed, which, is, accordingly, dismissed along-with all connected application(s).

19. Record of the case, as has been produced, be returned back to learned counsel for the respondents.

Srinagar
26.09.2024
Muzammil. Q



Whether the Judgment/Order is reportable: Yes / No