

2024:PHHC:085236



ARB-445-2022

-1-

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(106-1)

ARB-445-2022

DATE OF DECISION:- 10.07.2024

SURESH KUMAR AND ANOTHER

...PETITIONERS

V/S

THE CHIEF ADMINISTRATOR, PUDA AND ANOTHER

...RESPONDENTS

ARB-446-2022

SURESH KUMAR AND ANOTHER

...PETITIONERS

V/S

THE CHIEF ADMINISTRATOR, PUDA AND ANOTHER

...RESPONDENTS

ARB-448-2022

SURESH KUMAR AND ANOTHER

...PETITIONERS

V/S

THE CHIEF ADMINISTRATOR, PUDA AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Namit Gautam, Advocate
for the petitioners (in all the cases).

Mr. Harsh Aggarwal, Advocate
for the respondents (in all the cases).

...



ARB-445-2022

-2-

SUVIR SEHGAL, J. (Oral)

1. This common order shall dispose of the above noted three petitions, as they involve common questions of law and facts. For the sake of convenience, factual position is being taken from [ARB-445-2022](#).
2. By way of the present petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short “the Arbitration Act”), petitioners have approached this Court for appointment of an Arbitrator to resolve the disputes between the parties.
3. Counsel for the petitioners submits that SCO No.27, PUDA Market, Kohara, District Ludhiana, was originally allotted to Shri Harjeet Kumar, Shri Daljit Singh, Shri Vipin and Shri Subash Jain, vide allotment letter dated 09.09.2010, and they sold the premises to the petitioners. Re-allotment letter dated 27.10.2010, Annexure P-1, was issued by respondent No.2, and it contains a provision for reference of a dispute to an Arbitrator in Clause 15. Counsel submits that as respondent No.2, failed to complete the development works, petitioners did not make the payment of the installments and by order dated 08.12.2014, Annexure P-3, respondent No.2 cancelled the allotment and impounded 10% of the consideration amount. He asserts that the balance amount was not refunded to the petitioners, who submitted a representation and by order dated 05.08.2021, Annexure P-5, after making a deduction of 10%, i.e., Rs.6,01,137/-, out of the total paid consideration of Rs.20,00,000/-, respondent No.2 refunded an amount of Rs.13,98,863/-. Counsel asserts that as respondent No.2 failed to refund the entire amount, a dispute arose between the



parties, and the petitioners served a legal notice dated 16.09.2022, Annexure P-6, invoking the arbitration clause.

4. Upon notice by this Court, petition has been contested by respondent No.2, by filing a short written statement, wherein, it has been submitted that vide letter dated 09.09.2010, Annexure R-1, plot was allotted to the original allottees as they given the highest bid in an auction. It has been submitted that the auction amount had to be paid in installments, and after it was re-allotted to the petitioners, they failed to make the deposit of the installments along with interest. Various notices were issued to them under Section 45 of the Punjab Regional & Town Planning and Development Act, 1995 (for short “the Punjab Act”) giving them an opportunity to file reply before the plot was cancelled, vide order, Annexure P-3.

5. Counsel for the respondents has contended that the instant petition is barred by limitation, as it has been filed more than six and a half years after the passing of the cancellation order, Annexure P-3. Another argument has been raised by him that the petitioners have a remedy of filing an appeal and revision under Section 45 of the Punjab Act, but as they have failed to do so, they are barred from invoking the arbitration clause.

6. I have heard counsel for the parties and considered their respective submissions.

7. Undisputedly, on a representation submitted by the petitioners, a fresh order dated 05.08.2021, Annexure P-5, was passed by respondent No.2, whereby, after making a deduction, an amount of Rs.13,98,863/-, was refunded



to them. The notice, Annexure P-6, invoking the arbitration clause was served soon thereafter. It, therefore, does not lie in the mouth of the respondents to urge that the petition is barred by limitation.

8. In *EMAAR MGF Land Limited Versus Aftab Singh (2019) 12 SCC 751*, in para 63, Supreme Court has held as under:-

“63. We may, however, hasten to add that in the event a person is entitled to seek an additional special remedy provided under the statutes does not opt for the additional/special remedy and he is a party to an arbitration agreement, there is no inhibition in disputes being proceeded in arbitration. It is only the case where specific/special remedies are provided for and which are opted by an aggrieved person that judicial authority can refuse to relegate the parties to the arbitration.”

9. In view of the legal position as settled by the Supreme Court in EMAAR MGF’s case (supra), the second argument raised by the counsel for the respondents also does not hold in the water.

10. Merely because the petitioners have an alternative remedy under section 45 of the Punjab Act, does not preclude them from invoking the arbitration clause as they never approached the Appellate or the Revisional Authority established under the Punjab Act.

11. Accordingly, the prayer made in the petition deserved to be acceded to. Petition is allowed. **Sh. Deepak Sharma, Advocate, House No.2461,**

**ARB-445-2022****-5-**

Sector 23-C, Chandigarh (9814104423), is appointed as a sole Arbitrator to adjudicate the dispute between the parties, subject to declaration to be made by him under Section 12 of the Arbitration Act with regard to his independence and impartiality to adjudicate the dispute.

12. Parties are directed to appear before the Arbitrator on 12.08.2024, at 11:00 A.M., at address mentioned above or at any other place to be fixed with the consent of the parties.

13. The arbitrator shall be paid fee in accordance with the Fourth Schedule of the Arbitration Act, as amended.

14. The arbitrator is requested to complete the proceedings as per the time limit specified under Section 29 of the Arbitration Act.

15. Needless to mention, all the questions arising between the parties in this matter shall remain open for determination in the arbitral proceedings and any observation made herein will not be binding on the learned Arbitrator.

16. Copy of the order be sent to the appointed arbitrator.

(SUVIR SEHGAL)
JUDGE

10.07.2024
Pardeep

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes