

Reserved on:-27.11.2024

Delivered on:-24.02.2025

Court No. 42

Case :- WRIT - C No. - 41880 of 2019
Petitioner :- M/S Gaursons Sportswood Private Limited
Respondent :- State of U.P. and Another
Counsel for Petitioner :- Nikhil Agrawal, Sanjay Kumar Mishra
Counsel for Respondent :- C.S.C., Kaushalendra Nath Singh

WITH

Case :- WRIT - C No. - 17836 of 2020
Petitioner :- Rewant Mal Gaggar
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Kartikeya Saran
Counsel for Respondent :- C.S.C., Kaushalendra Nath Singh

Hon'ble Mahesh Chandra Tripathi, J.
Hon'ble Prashant Kumar, J.

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1. Since both the petitions have arisen out of same cause of action, hence both the petitions have been heard together and being decided by a common judgement.

2. Heard Sri Nikhil Agrawal, learned counsel for the petitioner in the leading petition, Sri Ujjawal Satsangi, Advocate holding brief of Sri Kartikeya Saran, learned counsel for the petitioner in the connected petition, Sri Devesh Vikram, learned Additional Chief Standing Counsel and Sri Mohan Srivastava and Sri Fuzail Ahmad Ansari, learned Standing Counsel for State-respondents and Sri Manish Goyal, learned Senior Advocate assisted by Sri Kaushalendra Nath Singh and Ms. Anjali Gokhlani, learned counsel for the respondent- New Okhla Industrial Development Authority.

A. FACTUAL MATRIX OF WRIT C NO.41880 OF 2019

3. In the year 2010-2011, New Okhla Industrial Development Authority¹ framed a policy to develop Sports City in Sector Nos. 78, 79, and 150. The scheme was launched on 03.03.2011 and closed on 24.03.2011. As per the scheme, a Sports City was to be developed on a land parcel of 72.75 hec. in Sector 78, 79 and another 80.00 hec. in Sector 150. The reserve price for the scheme was set at Rs.11,500/- per square metre. The price was purposely kept low as the developer was supposed to create sports facilities over 70% of the entire land allotted to them, which was not marketable, and on top of it, the developer had to infuse his funds to develop the same. To set off the expenses of the

¹ NOIDA

developer 30% of the total land was allowed to be constructed. In the 30% land, 28% was meant to be a Group Housing and 2% was meant for commercial purpose. And a total of 1.5 Floor Area Ratio² was given on the entire land. The scheme clearly stated that the population density in this Sports City would be 1650 persons per hectare. The open/green area recreational component (included sports activities such as Golf course, stadium open spaces etc.) for the entire land.

4. Pursuant to the application invited, a Consortium headed by M/s. Xanadu Estates Private Limited had applied for the Sports City Plot No. SC- 01-01, in Sector 78 & 79 under Sports City Scheme 2010-11. Being a successful bidder the same was allotted to it on 28.03.2011. The entire project was for an area admeasuring 7,27,500 sqm., out of which 5,92,300 sqm. land was immediately allotted to the Consortium on 04.05.2011. Pursuant to allotment made and on the request of the allottees, NOIDA executed a registered lease deed in respect of 80000 sqm. of land in favour of the members of the Consortium and handed over possession of the land to M/s Xanadu Realcon Pvt. Ltd. on 11.11.2011.

5. Thereafter, an application was moved by one of the consortium member M/s Xanadu Realcon Pvt. Ltd. to NOIDA, requesting therein to further sub-divide the land which was allotted to it. The request was accepted, and NOIDA in turn thereof allowed the sub division of land on 03.10.2012, and 80,000 sq. metres land, which was allotted to M/s. Xanadu

² F.A.R.

Realcon Pvt. Ltd. being Plot No. SC-1/E in Sector 79, was sub-divided into three parts, namely:-

(i). 1st Part i.e. 40,000 sq. metres of land was allotted to M/s Xanadu Realcon. Pvt. Ltd. being Plot No. SC-1/E1.

(ii) 2nd Part i.e. 20,000 sq. metres of land was allotted to M/s Golfgreen Infra Pvt. Ltd. being Plot No. SC-1/E2.

(iii) 3rd Part i.e. 20,000 sq. metres of land was allotted to M/s Golfgreen Superstructures Pvt. Ltd being Plot No. SC-1/E3.

6. Subsequent to the sub division, a correction Lease Deed was executed between NOIDA and M/s Xanadu Realcon Pvt. Ltd. Thereafter, the petitioner herein took over the shares of M/s Xanadu Realcon Pvt. Ltd. and after taking over the Company, the petitioner made an application for change of name of the Company of M/s Xanadu Realcon Pvt. Ltd. to M/s Gaursons Sportswood Private Limited. This permission was granted by the Assistant General Manager (Commercial), NOIDA vide its letter dated 27.03.2014.

7. The original allottee (Consortium of the Company) moved an integrated plan for development of the entire Sports City on Plot No. SC-01 in Sector 78, 79. This plan was sanctioned by the C.E.O. vide order dated 16.06.2014. As per the plan, the role of the Companies were divided separately, wherein two Companies i.e. M/s Three C Green Developers Pvt. Ltd. and M/s Xanadu Infratech Pvt. Ltd. were supposed to develop all the Sports facilities, whereas other companies were assigned with the job of developing residential and commercial units only. The Chart

showing the division of Development of Sports City, residential and commercial, which is part of approved Map, is as follows:-

Plot No. SC-01, 01, Sector 78, 79 & SC -01/A&B, Sector-101, NOIDA (U.P.)

S.No .	Company, Their Plot No. & (Plot area given to each company in sq. mtr.)	FAR to be developed by each company in sq. mt.	PROPOSED GROUND COVERAGE (SQ.M.)				PROPOSED FAR (SQM)		
			SPORTS (IN SQM)	RESIDENTIAL (IN SQM) (A)	COMMERCIAL (IN SQM) (B)	SPORTS (IN SQM) (C)	RESIDENTIAL (IN SQM) (P)	COMMERCIAL (IN SQM) (Q)	SPORTS (IN SQM) (R)
1	M/S SEQUEL BUILDCON PVT. LTD. SC-01/A1, SEC-79 (50,000.00)	1,37,500.00	35000.00	15000.00	0.00	0.00	137500.00	0.00	0.00
3	M/S ARENA SUPERSTRUCTURES PVT. LTD. SC-01/A2, SEC-79, (50,000.00)	1,37,500.00	35000.00	15000.00	0.00	0.00	137500.00	0.00	0.00
4	M/S SEQUEL BUILDING CONCEPT Pvt. Ltd. SC-01/B1, SEC-79, (24,000.00)	66,000.00	16800.00	6735.00	465.00	0.00	65340.00	680.00	0.00
5	M/S GOLFGREEN BUILDCON PVT.LTD. SC-01/B2, SEC-79, (24,000.00)	0.00	16800.00	7200.00	0.00	0.00	0.00	0.00	0.00
6	M/S THREE C GREEN DEVELOPERS PVT. LTD. SC-01/C1, SEC-79, (3,04,209.30)	2,57,256.95	198390.51	101101.78	417.01	4300.00	250856.95	400.00	6000.00
9	M/S ROBUST INNOVATIONS PVT.LTD. SC-01/C2, SEC-79, (8000.00)	12,000.00	5600.00	2400.00	0.00	0.00	12000.00	0.00	0.00
10	M/S KINDLE DEVELOPERS PVT.LTD. SC-01/D1, SEC-79, (40,000.00)	78,714.00	28000.00	11740.00	260.00	0.00	77814.00	900.00	0.00
11	M/S GOLFGREEN RESIDENCY PVT. LTD. SC-01/D2, SEC-79, (10,000.00)	22,500.00	7000.00	2830.00	170.00	0.00	22330.00	170.00	0.00
12	A/S GOLFGREEN ESTATES PVT. LTD. SC-01/D3, SEC-79, (25,000.00)	56,250.00	17500.00	7250.00	250.00	0.00	55750.00	500.00	0.00
13	M/S GOLFGREEN MANSIONS PVT. LTD. SC-01/D4, SEC-79, (25,000.00)	62,500.00	17500.00	7175.00	325.00	0.00	61812.50	687.50	0.00
14	M/S XANADU REALCON PVT. LTD. SC-01/E1, SEC-79, (40,000.00)	1,10,000.00	28000.00	11680.00	300.00	0.00	108998.00	1002.00	0.00
15	M/S GOLF GREEN INFRA PVT.LTD. SC-01/E2, SEC-79, (20,000.00)	55,000.00	14000.00	5795.00	205.00	0.00	54795.00	205.50	0.00
16	M/S GOLFGREEN SUPERSTRUCTURES PVT. LTD. SC-01/E3, SEC-79, (20,000.00)	55,000.00	14000.00	5000.00	400.00	0.00	54450.00	550.00	0.00
17	M/S XANADU INFRATECH PVT.	4,281.75	9990.75	0.00	0.00	4781.75	0.00	0.00	4281.75

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	LTD. SC-01, SEC-78, (14,272.50)								
18	M/S THREE C GREEN DEVELOPERS PVT. LTD. SC-01/A, SEC-101, (19,170.00)	0.00	19170.00	0.00	0.00	0.00	0.00	0.00	0.00
19	M/S THREE C GREEN DEVELOPERS PVT. LTD. SC-01/B, SEC-101, (29,350.00)	0.00	29330.00	0.00	0.00	0.00	0.00	0.00	0.00
PROPOSED DEVELOPMENT 7,03,001.80		10,54,502.70	-----	-----	-----	28.38	-----	5074.00	-----
PERMISSIBLE DEVELOPMENT 7,03,001.80		10,54,502.70	492161.26	198840.50	14060.01	5881.75	852038.18	5624.01	-----
SPORTS FACILITIES									
SUBSIDIARIES			PLOT NO.	FACILITIES TO BE IN LAND PARCEL				MIN. AMOUNT TO BE SPENT (IN CRORE)	
M/S THREE C GREEN DEVELOPERS PVT. LTD.			SC-01/C1	GOLF COURSE (9 HOLE)				40.00	
M/S ARENA SUPER STRUCTURE PVT. LTD.			SC-01/A2	MULTIPURPOSE PLAYFIELD				10.00	
M/S THREE C GREEN DEVELOPERS PVT. LTD.			SC-01/C1	TENNIS CENTRE				35.00	
M/S THREE C GREEN DEVELOPERS PVT. LTD.			SC-01/C1	SWIMMING CENTRE				50.00	
M/S THREE C GREEN DEVELOPERS PVT. LTD.			SC-01/C1	PRO-SHOPS/FOOD AND BEVERAGE				30.00	
M/S THREE C GREEN DEVELOPERS PVT. LTD.			SC-01/C1	IT CENTRE/ADMINISTRATION/MEDIA CENTRE				65.00	
M/S THREE C GREEN DEVELOPERS PVT. LTD.			SC-01/C1	INDOOR MULTIPURPOSE HALL, SPORTS HALL INCLUDING GYMNASTIC, TABLE TENNIS, SQUASH, BASKET BALL, VOLLEY BALL, BADMINTON, ROCK CLIMBING				30.00	
M/S THREE C GREEN DEVELOPERS PVT. LTD.			SC-01/C1	CRICKET ACADEMY				50.00	
ALL			-	INTERNAL ROADS AND PARKS				25.00	
M/S XANADU INFRATECH PVT. LTD.			SC-01, SEC-78	HOSPITAL/SENIOR LIVING/MEDICINE CENTRE				60.00	
ALL			-	CIRCULATION SPACES, CARPETING, UTILITIES ETC.				15.00	

8. After the integrated Map was approved by the C.E.O., the petitioner herein applied for the sanction of its Map for the development of the residential block on the area allotted to it. NOIDA Authority sanctioned the individual Map submitted by the petitioner on 21.06.2016.

9. As per this sanctioned Map, the petitioner was permitted to construct 800 residential flats and also commercial area of 1001.85 sq. metre for which the petitioner immediately started construction.

10. Petitioner completed 1st phase of construction of 400 flats and after completion of the 1st phase, the petitioner moved an application to the NOIDA Authority to carry out the necessary verification and grant completion certificate. On this application, NOIDA Authority carried out detailed verification and found that the construction was completed as per the norms. The NOIDA granted temporary occupancy certificate on 17.08.2018.

11. The petitioner continued to carry out the construction and in the meanwhile, after getting all the approval, has sold the flats to various flat owners.

12. After completion of 2nd phase of additional 304 flats, the petitioner again applied for occupancy certificate but NOIDA again granted temporary occupancy certificate on 01.03.2019.

13. It is claimed that by now petitioner had already constructed 704 flats out of 800 sanctioned flats. Thereafter, the petitioner also completed the remaining 96 flats and submitted an application on 19.01.2021 for issuance of final completion/occupancy certificate for entire project and also requested the NOIDA to execute tripartite deed in favour of the subsequent allottees/buyers.

14. The petitioner again wrote a letter on 26.04.2021 requesting NOIDA that, since the project has been completed as per the sanctioned Map, and since 90 days have passed by and no action has been taken, hence deemed permission may be granted to them.

15. In the meanwhile, there was some report of large scale bungling in the allotment and development of the Sports City, so the matter was referred to the Controller and Auditor General of India³ for audit. After the audit, CAG tabled a report, wherein it pointed out various irregularities in the allotment and development of the Sports City, which resulted in a loss of almost Rs.9000/- crores to the State Exchequer.

16. As a knee jerk reaction to the CAG report, NOIDA convened its Board meeting on 18.01.2021 (201st Board Meeting), in which it has been resolved that a Committee should be formed, which would look into the irregularities pointed out, and place a report in the next Board meeting and stayed any further steps to be taken in the Sports City including revalidation of the maps. In the next Board Meeting (202nd Board Meeting) held on 26.07.2023 it was resolved that the issue may be placed before the State Government for its necessary direction and guidance. It was further resolved that only after getting direction from the State Government, NOIDA will take a call on all the issues related to the Sports City.

3. CAG

17. Since the NOIDA was not taking any decision on the pending applications of the petitioner, hence M/s Gaursons Sportswood Private Limited had preferred the leading writ petition under Article 226 of the Constitution of India with the following prayers:-

“a). to issue a suitable writ or direction in the nature of certiorari quashing Condition no.3 of the Communication Letters dated 17.10.2018 and 01.03.2019 (contained as Annexure Nos.11 and 12 respectively to the writ petition) in so far as it states that the lease deeds can be executed only after grant of Permanent Completion Certificate;

b). to issue a suitable writ or direction in the nature of prohibition restraining/ prohibiting the respondents, their officers, servants and agents to enforce Condition no.3 of the Communication Letters dated 17.10.2018 and 01.03.2019;

c). to issue a suitable writ or direction in the nature of mandamus commanding the respondents to enforce Clause 1 of the brochure relating to completion and grant of Completion Certificate to the petitioner;

c-1). to issue a suitable writ, order or direction in the nature of mandamus commanding the respondent authority to grant final completion certificate in respect of the project of the petitioner situated at plot no.SC-01/E-1, sector-79 Noida, and to direct the authority to execute tripartite lease deeds in favour of the subsequent allottees/buyers.

d). any other suitable writ, order or direction be issued as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

e). to award the cost of the writ petition throughout to the petitioner.”

B. FACTUAL MATRIX OF WRIT C NO.17836 OF 2020

18. One Mr. Rewant Mal Gaggar has filed the present writ petition, being one of the home buyer, who had booked an apartment in M/s Gaursons Sportswood Pvt. Ltd. (petitioner in the main petition) being Flat No. -524, 5th floor, Block-F, Sector 79, NOIDA of the Sports City, and paid Rs.75,67,989/- towards the cost of flat. It is claimed that for this he had taken a loan from HDFC Bank and ended up paying interest on the same. After completion of the tower, the builder applied for completion certificate but was only issued a temporary completion certificate. Meanwhile, the physical possession of the flat was handed over to him, but thereafter, neither the occupancy certificate was granted to the builder nor transfer deed was registered by the NOIDA Authority in favour of the petitioner.

19. Aggrieved by the inaction, the petitioner has filed the instant writ petition with following prayer:-

“(i). Issue a suitable writ order or direction commanding the respondent no.2 to forthwith issue permanent completion certificate to the Respondent no. 3 in respect of Commercial/ Group Housing Plot no. SC-01/ E-01, Sector 79, NOIDA, District Gautam Budh Nagar;

(ii). Issue a suitable writ order or direction commanding the Respondent no. 3 to execute a registered deed to transfer the rights of Apartment No. 524, 5th floor, Block-F, Sector-79 in the Project "Gaur Sports Wood" situated at Sports city plot No.SC-01/ E-1, Sector-79, Noida in favour of the Petitioner forthwith;

(iii). Issue any other suitable writ, order or direction be issued as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

C. ARGUMENTS ON BEHALF OF THE PETITIONERS

20. Learned counsel for the petitioner company in leading Writ- C No. 41880 of 2019 submitted that the petitioner has paid entire premium and other dues of NOIDA Authority without default and there was no arrears at all payable by the petitioner. The building has been completed as per the approved plan and as per the norms of NOIDA Authority. Hence, NOIDA Authority cannot hold back/deny issuance of permanent completion certificate.

21. To buttress his arguments, learned counsel for the petitioner further made the following submissions:-

22. The petitioner has booked and allotted the flats and other accommodations in favour of prospective allottees with commitment to complete the construction within a time schedule, which the petitioner has already completed, and on such commitment, the prospective allottees have paid the complete costs of the flats.

23. The terms and conditions mentioned in the brochure of the scheme contained clear provision for issuance of completion certificate on completion of project or part thereof.

24. After all the approval and sanction of the map for construction of residential apartment, the petitioner, who is a serious Real Estate Developer, completed the construction. Once the NOIDA Authorities are satisfied with regard to completion of project of the petitioner, they have issued a temporary certificate.

Since the project is complete in all aspects, the NOIDA Authority cannot withhold or delay issuance of completion certificate. The condition of imposition of obtaining completion certificate only after the development of internal amenities and development of entire Sports City, runs contrary to Clause-1 of the brochure.

25. In absence of grant of completion certificate by the NOIDA Authorities, restriction has been put on the petitioner company for execution of tripartite deeds in favour of the allottees. The condition imposed in the letter dated 17.10.2018 as well as communication letter dated 01.03.2019, whereby the petitioner has been granted temporary completion certificate, creates a hindrance in execution/registration of lease deeds in favour of the allottees, and thereby creates an unprecedented situation, wherein the petitioner, even though having completed its part of construction in the allotted plot, is unable to execute the final deed in favour of the allottees.

26. The entire construction of the project has been carried out well within time and as per the scheme/brochure of the Sports City, and during the subsistence of the validity of the map, the petitioner had paid the entire dues of the NOIDA in respect of the said plot towards premium and other out standings, hence there is no reason for the NOIDA to hold back/deny the occupancy certificate.

27. The entire project was completed as per the norms by the petitioner and the NOIDA was fully satisfied with the work, however, temporary certificate was issued in favour of the

petitioner. To cover the lapses of the NOIDA Authority in allotting and implementation of the Sports City project, when the same was pointed out by the CAG, a fresh objection has been taken by the NOIDA, for the first time, stating that since the Sports City facilities have not been developed, hence occupancy certificate cannot be granted to the petitioner.

28. Learned counsel for the petitioner vehemently submitted that this objection was absolutely baseless as the NOIDA himself has sanctioned the integrated map of the entire Sports City. While sanctioning the map, NOIDA itself has bifurcated the role of the companies for development of sports facility as well as for development of the residential and commercial part of the project.

29. The first integrated approved map dated 16.06.2014, clearly shows that M/s Xanadu Realcon Pvt. Ltd., which was the earlier name of the petitioner's company, was not supposed to make any sports facility but was only supposed to make residential and commercial complexes. Going as per the integrated sanctioned plan, the petitioner company was only obliged to construct residential and commercial apartments for which the NOIDA had sanctioned the map of the petitioner on 21.06.2016 and the petitioner had carried out the development as per the sanctioned map by the Noida Authority.

30. Since neither the sanctioned map has been set aside nor it has been cancelled, even the development was carried out as per the sanctioned map, it will not be open for the NOIDA Authority now, to say that they will not grant occupancy certificate just

because some other companies, which were supposed to develop the sports facilities, (as divided and approved by the NOIDA) has not carried out their part of obligation.

31. Learned counsel for the petitioner further submitted that the scheme is regulated by the terms and conditions mentioned in the brochure of the scheme. So far as the brochure is concerned, it has clearly been mentioned that the completion certificate will be issued by the NOIDA on the completion of the project or part thereof in phases and on the submission of the necessary documents required for certifying the completion of the project or part thereof. For ready reference, the relevant Clause of the Sports City Brochure, upon which he had placed reliance, is being quoted hereinbelow:

"Completion - The 'Completion Certificate' will be issued by the NOIDA on the completion of the project or part thereof in phases and on the submission of the necessary documents required for certifying the completion of the project or part thereof."

32. In view of the clear provision in the brochure to the effect that on completion of project or part thereof, completion certificate will be issued by the NOIDA. Any condition mentioned in the sanctioned map contrary to the said provision is not binding and the NOIDA is bound to issue completion certificate to the petitioner, particularly, when his entire construction is complete as per norms.

33. While floating the scheme, NOIDA Authority with all consciousness had made a provision for issuance of completion certificate, wherein it was clearly provided that completion

certificate will be issued by the NOIDA on completion of project **or part thereof**. Hence, any condition laid down in subsequent correspondences contrary to the provisions of brochure is illegal and the NOIDA cannot enforce any such contrary condition.

34. Even the Sports City Scheme/Brochure provides for the binding nature of the provisions of the U.P. Industrial Area Development Act, 1976⁴, and rules and regulations framed thereunder. As such, the NOIDA authorities cannot withhold the grant of final completion certificate and refrain from executing tripartite lease deed in favour of subsequent allottees/buyers.

35. Any terms and conditions of the contract, contrary to and inconsistent with regulations framed in legitimate exercise of power under Section 9 (2) of the Act, 1976 is liable to be ignored, being contrary to the provisions of Section 23 of "The Indian Contract Act 1872⁵", as per established law.

36. Section 23 of the Act 1872 deals with lawful objects and consideration and the said Section is reproduced below for ready reference as under:-

"23. What considerations and objects are lawful, and what not-

*The consideration or object of an agreement is lawful, unless---
The consideration or object of an agreement is lawful, unless--" it
is forbidden by law, or is of such a nature that, if permitted, it
would defeat the provisions of any law; or is fraudulent; or
involves or implies, injury to the person or property of another; or
the court regards it as immoral, or opposed to public policy. In
each of these cases, the consideration or object of an agreement*

4. Act, 1976

5. Act, 1872

is said to be unlawful. Every agreement of which the object or consideration is unlawful is void."

37. Section 23 of the Act, 1872 provides that the consideration or object of an agreement is lawful, unless it is forbidden by law or unless they are such a nature that if permitted, they would defeat the provision of any law; or are fraudulent; or involve or imply, injury to the person or property of another; or the court regards it as immoral or opposed to public policy. The last clause in Section 23 thus declares that no man can lawfully do that which is opposed to public policy. It comprehends the protection and promotion of public welfare. It is a principle of law under which freedom of contract or private dealings are restricted by the law for the good of the community.

38. Learned counsel for the petitioners next submitted that for issuing the occupancy certificate, NOIDA has framed a regulation under the Act, 1976. The relevant provisions of the Act, 1976 are as follows:-

"Section 9. Ban on erection of buildings in contravention of regulation:-

(1). No person shall erect or occupy any building in the industrial development area in contravention of any building regulation made under sub-section (2).

(2) The authority may by notification and with the prior approval of the State Government make regulations to regulate the erection of buildings and such regulations may provide for all or any of the following matters:-

(h) any other matter in furtherance of the proper regulation of erection completion and occupation of buildings, and

(l) The certificates necessary and incidental to the submission of plans amended plans and completion reports.

14. Pursuant to the above statutory powers under Section 9(2) of the Act.

"The New Okhla Industrial Development Area Building Regulation 2010" has been notified vide Notification No. 2213/77-4-10-158N/185 dated 30th November, 2010"

The relevant regulation for grant of occupancy certificate /completion certificate are reproduced below:-

"Regulation 20

20.0 Notice for issue of occupancy certificate -

Every owner shall have to submit a notice of completion of the building to the Authority regarding completion of work described in the building permit as per Appendix-9 accompanied by the documents as per checklist annexed with Appendix-9.

20.1.2 Issue of occupancy certificate regarding Multi Storey Buildings-

Without prejudice to the provision of regulation 20.1.1, in case of multi storey building the work shall also be subjected to the inspection of the Chief Fire Officer, Uttar Pradesh Fire Service and the occupancy certificate shall be issued by the Chief Executive Officer only after the clearance from the Chief Fire Officer regarding the completion of work from the fire protection point of view. Other certificates such as fees, structural safety, water harvesting, etc also have to be submitted alongwith the completion drawings.

20.4 "Temporary occupation" - Where the Chief Executive Officer on the certificate of the technical personnel is satisfied that the temporary occupation of a building or any portion thereof before its completion does not adversely affect public welfare may permits temporary occupation in the Form given in Appendix-11A of such building or portion thereof as the case may be, for such period as he deems fit."

39. The issuance of occupancy certificate is completely governed by the Act, 1976. Once the conditions laid under the Regulation are met, Noida Authority cannot hold back or deny the occupancy certificate.

40. Learned counsel for the petitioner placed reliance on a Division Bench judgement of this Court in the case **Mahesh Chandra Vs. Zila Panchayat, Mainpuri**⁶ wherein in paragraph 15 at page 253 it has been inter alia held as under:

“.....It is settled law that the parties cannot confer jurisdiction to a court that has no jurisdiction to try a matter nor can they take away such jurisdiction. The same rule will by analogy apply to statutory authority. No one can confer on a statutory authority the authority to do what the statute does not authorise or to do what it is statutorily authorised to do. Such an agreement would be hit by Section 10 of the Indian Contract Act as no one has the authority to enter into an agreement which is not competent to contract and which if permitted would defeat the provisions of law.....”

41. The grant of final completion certificate/final occupancy certificate, are governed by the provisions of "The New Okhla Industrial Development Area Building Regulation 2010"⁷. No deviation from the statute is permissible in view of the law laid down by Hon'ble Supreme Court of India in the case of **Dhananjaya Reddy Vs. State of Karnataka**⁸ in paragraph in 26 wherein it has inter-alia held as under:-

*“26. Relying upon **Nazir Ahmad vs. King Emperor** reported in AIR 1936 PC 253 (2) case and applying the principles laid down in **Taylor v. Taylor** report in (1876) 1 CH D 426, this Court in **State of U.P. vs. Singhara Singh** report in AIR 1964 SC 358 cases held: (AIR p. 361, para 8)*

"8. The rule adopted in Taylor v. Taylor is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted.

6. AIR 1997 (AIID) Page 248

7. Regulation, 2010

8. (2001) 4 SCC page 9

A Magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164. The power to record the confession had obviously been given so that the confession might be proved by the record of it made in the manner laid down. If proof of the confession by other means was permissible, the whole provision of Section 164 including the safeguards contained in it for the protection of accused persons would be rendered nugatory. The section, therefore, by conferring on Magistrates the power to record statements or confessions, by necessary implication, prohibited a Magistrate from giving oral evidence of the statements or confessions made to him."

42. He further submitted that Hon'ble Supreme Court in the case of **Mehsana District Central Cooperative Bank Ltd. And others Vs State of Gujrat and others**⁹ in paragraph 16 at page 468 has inter-alia held:

".....The Acts and Rules are made to be followed and not to be violated. When the statute prescribes the norms to be followed, it has to be in that fashion. Converse would be contrary to law. If there is any allegation of violation of statutory rules which have been brought to the notice of the authorities and if the authorities concerned do not perform their statutory obligation, as in the present case, any aggrieved citizen can always bring to the notice of the High Court the inaction of the statutory authorities and in such event it would always be open to the High Court to pass an appropriate order as deemed fit and proper in the facts and circumstances of the case. In the present case, the facts as alluded above, would clearly reveal that the High Court was clearly justified in issuing a writ of mandamus, which cannot be faulted."

43. A perusal of the scheme of Sports City and grant of completion certificate as contained in the brochure issued by NOIDA would make it amply clear that different time line has been prescribed for completion of sports facility and that for construction of residential/ commercial components of the sport city project. Whereas the sports city facility was to be completed

⁹. (2004) 2 SCC 463

in phases in five years, the residential, commercial construction was to be completed in phases in seven years.

44. Under the brochure itself it has been contemplated that completion certificate can be granted in respect of the entire project **or part thereof**.

45. Learned counsel for the petitioners submitted that the Government of India had constituted an expert committee for rehabilitation of stalled real estate projects. After detailed study on all the issues relating to real estate sector in July, 2023, the expert committee gave a report, wherein they addressed the issues of the stalled real estate projects. The Committee recommended on seven issues out of which issue number two was execution of sub-lease deed for all occupied units and the third issue was occupancy/possession of the completed projects. The recommendation of the Committee on these two issues are as follows:-

"II. Execution of Registration/Sub Lease Deeds for All Occupied Units

a. The Committee has examined the status of the pending Registration/Sub Lease Deeds. The prevalent delay in the execution of Registration/subleases, despite project completion, is largely attributable to instances of builders defaulting on their dues to the relevant authorities. This has adversely affected genuine home buyers, who have fulfilled their obligations but are yet to receive their legitimate rights.

b. In light of these findings, the Committee strongly recommends immediate registration/execution of subleases in favour of these rightful home buyers. This should not be contingent on the recovery of dues from the builders. This would benefit approximately about one lakh home buyers.

c. Simultaneously, rigorous and strict proceedings should be initiated to recover the outstanding dues from the defaulting builders. This should be done by invoking Revenue Recovery Act/ Provision of the Industrial Authority Act and all other provisions of Law. This dual-pronged approach will ensure that genuine home buyers are not penalized for the shortcomings of the builders while holding the latter accountable for their financial obligations.

d. Additionally, in scenarios where homebuyers are expected to remit outstanding dues to the builders, the Committee suggests a modification in the current procedure. RERA should directly collect these payments from homebuyers, bypassing the builders. This amount can be paid based on the waterfall mechanism suggested in paragraph VI(c) of the Report.

e. This streamlined approach would not only expedite the registration /sublease process for homebuyers but also ensure that creditors and authorities are able to secure some revenue from these transactions. This strategy would be doubly beneficial, as it would assist authorities in revenue collection and simultaneously enable homebuyers to gain rightful possession of their houses.

III. Occupancy/ Possession of all substantially completed projects

a. The Committee has noted numerous instances where construction projects are substantially completed, yet possession remains undelivered due to varied administrative hurdles, like the procurement of No Objection Certificates (NOCs), Completion certificates, and similar necessary approvals. The Committee recommends that RERA should identify such projects on a crash basis for resolution within a period of the next thirty (30) days.

b. The allottees may be given the option to take possession of these units on 'as is where is' basis. The allottees could get the interiors of their home finished from balance funds which they have not paid. Once identified, efforts should be undertaken to expedite the clearance process including Occupation and Completion certificates for these projects, ensuring that the necessary approvals are granted promptly and efficiently. This should not be contingent on the recovery of dues from the builders. This process should be completed within six months to avoid any further delays. Once units are handed over, registration/sub-lease should be done.

c. In case the allottees do not want to take possession, this project can be dealt with recommendations as in IV or V below.

d. Simultaneously, rigorous proceedings should be initiated to recover the outstanding dues from the defaulting builders under the provisions of Revenue Recovery Act, the Industrial Authority

Act and all other provisions of Law. This recommendation aims to facilitate the smooth handover of properties to their rightful owners without unnecessary hold-ups due to administrative bottlenecks.”

46. Learned counsel for the petitioner submitted that the relief claimed by the petitioner has already been dealt with in this expert committee report extensively. The Expert Committee headed by Mr. Amitabh Kant has suggested solution for the problems in the stalled real-estate projects, keeping the interest of all the stakeholders in mind. The Noida Authority is bound by the recommendations of this Committee. Even as per the recommendation of this Committee the occupancy certificate has to be issued as the projects have been completed and sub-lease deeds has to be executed in favour of the home buyers.

47. He lastly submitted that due to non-issuance of the completion certificate, the petitioner's are not able to transfer the property to the home buyers and neither the home buyers are in position to have ownership of the flats. In fact some of the home buyers have moved to Uttar Pradesh Real Estate Regulatory Authority¹⁰ seeking direction for execution of the Tripartite Deed. Because of inaction of NOIDA, the petitioner's are being slapped with heavy penalties for not being able to provide completion certificate and execution of Tripartite Deed.

48. In the connected Writ Petition No.17836 of 2020, learned counsel for the petitioner argued that the petitioner herein is one of the homebuyer, who has booked an apartment in M/s Gaursons

10. U.P. RERA

Sportswood Pvt. Ltd. Being Flat No.524, 5th Floor, Block-F, Sector 79, NOIDA.

49. The petitioner had already paid the amount of Rs.75,67,989/- towards the cost of the flat by taking loan from the bank and paying interest thereupon but even after completion of the tower, the transfer deed in his favour has not been registered only due to non-issuance of permanent completion certificate to be issued by NOIDA in favour of the respondent no.3 (petitioner in the leading writ petition).

50. In pith and substance, the submission of learned counsel is that the petitioner is worst affected individual, who had invested his lifetime savings and also taken a bank loan dreaming that he will be having a house of his own. The petitioner, being bonafide purchaser had no reasons to doubt that even after paying the entire cost of the flat, the ownership of the same will be mirage for him.

D. ARGUMENTS OF RESPONDENT- NOIDA AUTHORITY

51. Shri Manish Goyal, learned Senior Advocate appearing on behalf of the NOIDA submitted that the lease deed in favour of the main company was executed in which it was clearly laid down that the entire development would be in proper proportion and the same will be as per the implementation of scheme of the project. In this backdrop, learned Senior Advocate made the following submissions:-

52. A separate lease deed was executed between NOIDA and the petitioner. The relevant conditions of the lease deed, which were flouted, were as follows :-

“i). Clause II. (a) prescribed that the lead member should be the single largest shareholder having at least 30% shares in the consortium. The percentage of shareholding of the lead member shall remain minimum of 30% till the temporary occupancy/completion certificate of at least one phase of the project is obtained from the Lessor.”

However the lessee flouted this condition and 30% share of the lead member was given a go-bye.

“ii). The Lessee shall be required to complete the construction of minimum 15% of the permissible area earmarked for sports, institutional & other facilities within a period of 3 years from the date of execution of Lease Deed and shall complete the project in phases within 5 years.”

This was also not carried out within the stipulated time.

“iii). The lessee has to develop residential and commercial component in the project in proportion to area earmarked for recreational uses.”

This condition was also flouted and no recreational/sports facility was developed proportionally.

“iv) As per the clause II (j) of the lease deed, the lessee was wholly and solely responsible for the implementation of the Project. The project may be implemented by lessee through Special Purpose Company and/or through its subsidiaries.”

It was the duty of the lessee to implement the project, whether it was done by itself or through any of its subsidiaries. The petitioner being a subsidiary was responsible for the completion of the project, and its obligation cannot be brushed aside on the ground that by a mutual understanding between the allottees all the responsibilities were given to some other subsidiary company.

“(v) The lessee can transfer the whole plot and the buildings constructed thereon with the prior permission of the LESSOR, after payment of transfer charges as the prevailing policy of the LESSOR. However, the lessor reserves the right to reject any such transfer application without assigning any reason whatsoever.”

However, from the ROC website filed by the respondent authority it is clear that some of the company has been sold by transferring the shares without the permission of the authority.

“(vi) All the terms and conditions of the brochure, the allotment, the permission for grant of transfer, lease deed etc. shall be binding on the lessee as well as the transferee(s).”

With this condition the lessee cannot get away their proportionate responsibility of developing the sports city.

“(vii) Change in Constitution will be permitted as per prevailing policy of the Lessor and as per terms and conditions of the brochure of the scheme.”

However, the permission of the change of constitution was to be applied and approved.

“(viii). The lessee will be permitted to transfer the built-up space on the fulfilment of the following conditions:-

(i). The lessee has made full payment of the plot premium alongwith interest thereon and the up-to-date lease rent alongwith interest, if any, due thereon.

(ii). The lease deed as per rules has been duly executed.

(iii). The lessee has obtained the building completion certificate from the LESSOR.

(iv). The sub-lessees/transferees undertake to put to use the premises for the original permissible use only and the premises being transferred are as per completion certificate and are not part of any common area.

(v). The lessee shall also execute a sub-lease deed between lessor, lessee and proposed transferees (sub-lessees). The lessee/sub-lessees shall also ensure adherence to the building regulations and directions. All the terms and conditions of the allotment and lease deed shall be applicable and binding on transferee/sub-lessees as well.

(vi). The transferees/sub-lessees shall also be required to pay pro-rata lease rent as applicable. The transferees/sub-lessees shall be required to make the built-up space functional within one year from the date of sub-lease and submit sufficient documents to the LESSOR in proof thereof. Thereafter, extension charges, as applicable, shall be payable.

(vii) All the terms and conditions of the brochure, allotment, permission for grant of transfer, lease deed etc. shall be applicable on the lessee as well as the transferees (sub-lessees).

(viii) The lessee, sub-lessee are not eligible for any preferential allotment of the residential plot or house under various scheme of NOIDA."

These conditions were also not followed.

"(viii) The lessee and sub-lessees (transferees) shall not use the Sports City plot for any purpose other than for which the plot is allotted. In case of violation of any allotment condition, the allotment shall be liable to be cancelled and the possession of the premises alongwith the structures thereon, if any, shall be resumed by the LESSOR."

The allotment conditions were blatantly flouted.

53. He further submitted that the way the allotment was carried out, sub divisions were made, the way map was sanctioned, the allottees were allowed to start construction on the residential areas even without starting development of sports facilities, were not in accordance with the scheme or the rules.

54. Normally, a Consortium is a group of different companies/builders/ developers, who come together to complete a project, but here a number of companies were incorporated by the promoters of a company called M/s Three-C Developers and all the companies, which were a newly incorporated company, and all the shareholdings of these new companies were held by the same set of people. Though, instead of a comprehensive lease deed in favour of the lessee Consortium, individual lease deeds were executed in favour of members of the Consortium. This exercise was undertaken on the request of Lead Member of the Consortium stating that it was an internal arrangement between

the members. This sub-division was mere allocation on the request of allottees for proper implementation of the project and does not constitute a fresh transaction/ allotment.

55. He further submitted that, the power to allocate a lease deed by sub-dividing it into further sub-leases is available to the Authority under section(2)(f) read with Section 6(2)(h) of the Uttar Pradesh Industrial Area Development Act, 1976.

56. He further submitted that on the basis of aforesaid analysis it can be concluded that the sub-division in favour of the subsidiary is fully binding on the subsidiary company and the subsidiary company is to perform the obligations, as are contained in the original terms of the lease and to develop the Sports City Project and cannot claim any independent existence for an independent project.

57. Noida Authority has been castigated for sanctioning the layout plan in favour of the sub-lessees individually and has been targeted that these plans do not contain any stipulation to the effect that any sports facilities were to be developed by the sub-lessee, inasmuch as, no sports facility has been specified in the sanctioned layout plan of the petitioner.

58. No indefeasible right can be claimed by the sub-lessees on the basis that a plan has been sanctioned in their favour. The way the plan were submitted and approved were quite questionable, it was approved contrary to the terms of the scheme, brochure and the lease deed. Moreover in the plans prepared by the sub-

lessee, deliberately Sports facilities were excluded keeping 70% ground coverage vacant. Any plans approved illegally will not have a legal sanctity.

59. Sanction of the map, even if it exists, has to be read along with the scheme and the lease deed as well as the statutory provisions. Any sanction contrary to the provisions of the Act, brochure, allotment and lease deed will by itself be a deviation and this deviation being not recognized under the law. Hence, the Grundnorm Principle would be applicable.

E. INTEGRATED PROJECT

60. The Sports city was to be developed as an integrated project. Since, sub-lessees were all 100% subsidiaries of regular members of the Consortium and were bound by the terms and conditions in the brochure, allotment letter and terms of the lease. Hence, all the subsidiaries were under an obligation to develop the Sports City Project and they are bound by the original terms and conditions mentioned in the Lease Deed.

61. To buttress his argument he has placed reliance on a judgment passed by Hon'ble Supreme Court in the matter of **Nand Kishore Gupta and others vs. State of U.P. and others**¹¹ wherein while dealing with a matter relating to allotment of five land parcels alongside the Yamuna Expressway, the Supreme Court upheld the acquisition and allotment of the five land parcels

11. 2010(1) SCC 282

treating them to be an integral part of the development of the Yamuna Expressway.

62. The sub-lessee, therefore, in the light of the law laid down by this Court as well as by Hon'ble Supreme Court, cannot claim to be created only for development of Group Housing Project as this will be an antithesis to the integrated project scheme under which the allotment was done.

63. Since, Group Housing does not come in the category of project on a stand alone basis under the Sports City Scheme it cannot be considered to be a complete project without development of the sports facilities, inasmuch as, sports facility is the primary project and Group Housing is complimenting the sports facility project and in that sense Group Housing becomes an integral part of the project.

F. NON-DEVELOPMENT OF THE SPORTS FACILITIES

64. Non development of sports facilities frustrated the Sports City Project. Leaving of open space does not satisfy the object of developing Sports facilities, it has to be developed as per the Scheme and the Brochure.

65. The lessee as a Consortium never submitted any plan to develop the Sports facility. There was no layout plan submitted by the Consortium for development of the sports facilities. The layout plan was submitted by the so-called Special Purpose Company¹² that consisted of only four companies and was not a SPC for the

12. SPC

Consortium. This SPC had with it only 2.5 lacs sq. metre land but yet submitted a layout for 7.27 lacs sq. metre of land, which was approved.

66. In the last ten years, none of the member of the Consortium or their sub-lessee had developed any Sports facility in the entire Sports City Project. This shows their intention and seriousness in developing the Sports facility.

67. Learned Senior Advocate submitted that even along with this petition, no layout plan has been placed to show as to how the petitioner will be using the open space for development of the Sports facility nor any proposed layout plan has been placed before the Court. This clearly shows that there is no intention to use the open space for developing the Sports facilities.

68. A small Sports facility has been created by the petitioner. However, these Sports facilities so created are exclusively restricted for the residents or the proposed residents of the Group Housing constructed by the petitioner and is not meant for the public at large. Hence, this Sports facility cannot be considered as a Sports facility for the Sports City. This approach negates the purpose for which the bid was submitted by the petitioner and runs counter to the lease executed in their favour.

G. INTEREST OF HOMEBUYERS

69. As regards the arguments made in Writ C No.17836 of 2020 filed by the Homebuyers, Sri Manish Goyal, learned Senior

Advocate submitted that NOIDA cannot be held responsible for interest of the homebuyers as there is no privity of contract between them, and it is only the allottee, who can be held responsible, for not delivering the promised flats and NOIDA Authority cannot be fastened with any liability towards Homebuyers.

70. He further submitted that in the lease deed it has been categorically stated that all the conditions of the brochure and allotment letter shall be treated as a part of lease and will be binding upon the lessee. Hence, the petitioner cannot take advantage of an approved map, which was carried out at the behest of the allottee, as an internal arrangement of the allottees.

71. The implementation of the project of the entire Sport City will be in proportion that means the residential and commercial development will be in proportion to the area earmarked for Sport facilities and the same is binding to all the members of the Consortium or the sub lessees, and they are also bound by the terms of the lease deed and the brochure, therefore, the part completion can only be issued once the recreational facilities/Sport facilities are also developed in proportion.

72. He further submitted that if the petitioner is granted a permanent completion without Sport facilities the innocent flat buyers will suffer, and the entire projects in NOIDA will also be effected as every builder will only focus on the residential or commercial portion and will not complete the remaining project for which the entire land was allotted for.

H. ANALYSIS BY THE COURT

73. We have carefully considered the submissions advanced by learned counsel for the respective parties. With the able assistance, we have perused the pleadings, grounds taken in the petition, affidavits and Annexures thereto and the reply filed by concerned parties.

74. In this case, Noida Authority, came up with the scheme of developing Sports City and accordingly, a brochure was issued for development of Sports City in Sector - 78, 79 of NOIDA. As per the Scheme around 7,27,500 sq. metre land was earmarked for development of Sports City, whereas, 70% of the land was left open for Recreational (Sports, institutional & other Facilities), further 28% of the land was for residential including group housing and 2% for commercial. The maximum permissible FAR was 1.5.

75. This project was allotted to consortium of five Companies in which M/s Xanadu Estate Pvt. Ltd. was a Lead Member. NOIDA issued an allotment-cum-reservation letter on 04.05.2011 and thereafter, the SPC was incorporated for the development. The Lead Member on 24.10.2011 made a request to divide entire Sports City in five parts and one of the member being M/s Xanadu Realcon Pvt. Ltd. was allotted 80,000 sq. metres of land.

76. Later on, an application was made on behalf of the M/s Xanadu Realcon Pvt. Ltd. to further sub-divide 80,000 sq. metres land into three parts. First 40,000 sq. metre land was retained by M/s Xanadu Realcon Pvt. Ltd. and rest 20,000 sq. metre each

was allotted to other subsidiary Companies, which were M/s Golfgreen Infra Pvt. Ltd. and M/s Golfgreen Superstructures Pvt. Ltd.

77. Thereafter, SPC had submitted integrated plan for development of the entire Sports City Plot No. SC-01 in Sector 78, 79. This Map was sanctioned on 16.06.2014, wherein as an internal arrangement of allottees, the obligation of various Companies was divided and entire Sports facilities was to be developed by two companies M/s Three C Green Developers Pvt. Ltd. and M/s Xanadu Infratech Pvt. Ltd. However the obligation of the rest of the Companies, was to develop residential and commercial facilities without the Sports facility.

78. Thereafter, the petitioner company applied for the sanction of the Map for construction of Residential and Commercial Complex in 40,000 sq. metre land which was allotted to them. After evaluating the Map, NOIDA Authority sanctioned the Map of the petitioner on 21.06.2016. As per the Map, the petitioner was supposed to construct 800 flats.

79. It is claimed that the petitioner company immediately started the construction and had constructed 400 flats in its 1st phase. After construction of the flats, the petitioner applied for occupancy certificate and the NOIDA after evaluating the construction, found that the entire construction was carried out as per the sanctioned Map. Accordingly, granted temporary occupancy certificate. Thereafter, the petitioner developed another 304 flats and again applied for the occupancy certificate. NOIDA Authority once again

evaluated and inspected the entire construction and after being found that the same has been done as per the norms had granted temporary occupancy certificate for those 304 flats as well.

80. It has been specifically stated and argued that the petitioner was the only company in the entire Sport City project, which had paid all the dues of the NOIDA, and nothing was outstanding. In the interregnum, the petitioner had sold the flats to the various home buyers and after getting the temporary occupancy certificate had handed over the possession to the respective purchasers and the home buyers have started staying in it. After completing 3rd phase of construction of 96 flats, the petitioner again applied for the occupancy certificate.

81. There were some serious allegations of bungling in the allotment of the Sports City and the implementation and development of the project. An Audit was carried out by the CAG, which found large scale bungling and the reported the scam (of around Rs.9000 crores). After the scam was reported, all hell broke loose and NOIDA Authority as a knee jerk reaction (in 201st Board Meeting held on 18.01.2021) decided that a Committee should be formed to look into the allegation and would table their report in the next board meeting, however, further sub division of the Sport City as well as the revalidation of Map were put on hold.

82. In the next Board Meeting held on 26.07.2021, it was decided to refer the matter to the State Government for necessary direction and guidelines. The State Government referred the

matter to the Public Account Committee¹³ and the same is still pending.

83. This Court finds that the case of the petitioner herein is although on a different footing from the rest of the petitioners filed before this Court regarding the Sports City, as the petitioner is the only company which has not applied for revalidation of map and has completed the entire project in time during the subsistence of the sanctioned map. The construction was carried out as per the norms and petitioner had applied for completion certificate in part and two temporary occupancy certificates have been granted to the petitioner. The flats have been sold to home buyers, possession were given to them and they were just waiting for the formal occupancy certificate and to execute tripartite deed between the petitioner, NOIDA and home buyers.

84. It is not in dispute that the power to allocate a lease deed by sub-dividing it into further sub-leases is available to the Authority under Section (2) (f) read with Section 6 (2) (h) of the Act, 1976.

85. However, this Court is of the firm view that the sub-division in favour of the subsidiary is fully binding on the subsidiary company and the subsidiary company is to perform the obligations as are contained in the original terms of the lease and to develop the Sports City Project and cannot claim any independent existence for an independent project.

13. PAC

86. The entire Sports City was to be developed by the consortium in proportion and the sub lessee is also bound by the terms of the lease deed and the brochure therefore the part completion can only be issued once the recreational facilities/sport facilities are also developed in proportion. That means the Residential and Commercial Development will be in proportion to the area developed for Sport facilities and the same is binding to all the members of the consortium or the sub lessees.

87. The approval of the map of the petitioner is nothing but an offshoot of the connivance of the officials of Noida Authority as well as builders/allottees. Once the Scheme clearly laid down that the residential portion is to be developed in proportion to the Sports City, then it is not open for the petitioner to say that they are not obligated to develop any Sports facility.

88. The sanction of the map, even if it exists, has to be read along with the scheme and the terms of the lease deed as well as the statutory provisions. Any sanction contrary to the provisions of the Act, brochure, allotment and lease deed will by itself be a deviation and this deviation being not recognized under the law. Hence, the Grundnorm Principle would be applicable.

89. Since the map was sanctioned but not as per the norms of the Scheme, the petitioner company cannot take advantage of this fact. The petitioner cannot get away from its obligation to develop the proportionate Sports facility while developing the residential part of the project.

90. The entire project of Sport City has to be looked as one **integrated project** even though the sub leases have been executed in favour of petitioner and others, but that do not absolve them from their obligations of providing sports facilities.

I. INTEREST OF THE HOMEBUYERS

91. As far as the homebuyers are concerned, they are the worst effected individuals, they had booked their flats, investing their lifetime savings/or have taken a bank loan with a dream that one day, they will have a roof on their head. Since the maps were duly approved by Noida Authority, they had no reasons to suspect a foul play and that they will fell in a trap. After paying for the flats, the completion and bankable title is still a mirage for them.

92. Hon'ble Supreme Court in a catena of judgments has emphasized the need to protect the home buyers from undue hardship caused by the actions or omissions of builders and the development authority.

93. The Hon'ble Supreme Court the matter of **Bhupinder Singh v. Unitech Ltd. (Civil Appeal No.10856 of 2016)** decided on 26.04.2024 has held that:-

"9. This is most unfair to the homebuyers. In the absence of the grant of approvals to the layout plans and building plans, the construction to meet the needs of the homebuyers of Unitech cannot commence. This Court has been monitoring the entire issue pertaining to the homebuyers of Unitech for over four years in order to ensure that the homebuyers, who have invested funds in the expectation that they would receive the flats which were purchased in the foreseeable future, are not left in lurch. Unfortunately, both Noida and Greater Noida and their officials

have stone-walled the process. They have failed to extend their cooperation.

10. Despite the succession of orders of this Court, it appears that no resolution has been found. Unless the Court were to interfere, at this stage, the matter would lie in limbo and there is a real danger that the homebuyers would lose all interest out of a sense of frustration. The homebuyers have undertaken financial liabilities towards the flats which were purchased and it is a matter of public interest that their concerns should be duly protected.”

94. Hon’ble Supreme Court in the case of **Bikram Chatterji & ors vs. Union of India & ors**¹⁴ emphasized the role of Government agencies in ensuring the completion of projects within the stipulated time.

95. The Hon’ble Supreme Court also echoed the same view in the matter of **Jaypee Orchard Resident Welfare Society v. Union of India & ors. (Writ Petition (Civil) No.854/2017)** wherein it was held that the Supreme Court will endeavour to do all in its power to safeguard interest of the home buyers.

96. In **Chitra Sharma v. Union of India**¹⁵ Hon’ble Supreme Court protected the interest of the home buyers in project floated by Jaypee Infratech Limited and directed the CoC to be constituted afresh in accordance with the provisions of the Insolvency and Bankruptcy (Amendment) Ordinance, 2018.

97. The constitutional validity of the inclusion of allottees as financial creditors was tested in the matter of **Pioneer Urban Land And Infrastructure vs Union Of India**¹⁶ wherein Hon’ble Supreme

14. (2019) 19 SCC 161

15. 2018 (18) SCC 575

16. 2019 (8) SCC 416

Court rejected the challenge and upheld the Insolvency and Bankruptcy (Amendment) Ordinance, 2018. Hon'ble Supreme Court further held that the interest of allottees in the matter of Insolvency in the real-estate company must be protected.

98. It is well settled by Hon'ble Supreme Court in a series of judgements that the interest of the home buyers has to be given precedence. The Noida Authority was well aware of the judgements but still took no action to protect the interest of the home buyers. The Noida Authority/development authority has a statutory duty to ensure planned and systematic development. This includes statutory duty to monitor the progress of real-estate projects and ensure their timely completion. The Authority had repeatedly failed to exercise due diligence in supervising the projects and also had failed to ensure proper implementation of the Sports City project.

99. To look into the issues of the stalled projects in the real-estate projects, an Expert Committee headed by Mr. Amitabh Kant had been constituted by the Ministry of Housing and Urban Affairs, which gave a report in which it has also recommended that where the projects are completed, the occupancy certificates may be issued and the lease deed may be executed.

100. Another reason why the Authority should not be allowed to penalise the home buyer is because the current stage of the sports city is due to the dereliction of statutory duty by the officers of the Authority, and their failure to (a) Monitor the progress of the project; (b) Take timely action against defaulting builders; (c)

Enforce completion timelines; and (d) ensure that Tender Guidelines are scrupulously followed. Home buyers cannot be made to suffer because of dereliction of their duties and failure of builders to complete their obligations.

101. It is true that the development plan was sanctioned by the Noida Authority on 16.6.2014, wherein all the liabilities of developing the Sports facilities were fastened on two companies, and whereas all the cream of the project was kept in other smaller companies, this division was nothing but a part of well thought design to cheat the Noida authority by not developing the sports facilities, and making a huge profit by selling the residential part.

102. The sub-lessees (petitioner herein) is bound by the conditions of the Sports City, which specifically states that 70% of the land has to be developed for the sports facility, and as such, the sub-lessee has to ensure the development in strict compliance of the scheme and brochure conditions of the Sports City. Any benefits extended, which are contrary to the scheme of the sports facility and condition of the brochure, cannot be sustained. The entire project is an integrated project and the division and the sub-division was an internal issue of the allottees, the allottees cannot get away by fastening the liability on some other company, all are jointly and severally responsible for the implementation and the completion of the project. As far as the development of the Sports facilities are concerned, the responsibility of each allottee is in proportion to the residential development which they were supposed to do.

J. DIRECTIONS

103. No doubt, Noida Authority is bound by the provisions of the U.P. Act, 1976 and the rules and the regulations framed therein, and is bound to issue Occupancy certificate, if all the allotment and development parameters are met. Here the entire sub-division, allotment and sanction of Map is in question. However since enough water has flown and the third party rights have been created, so we are not commenting on the sanctioning of the map and development of the project.

104. The allottees cannot hide behind the smoke screen created by them, by allowing sub-division of the sports city, which is an integrated project whereby all the liability of the development of the sports city was fastened on two companies, which have not carried out any development and one has gone into insolvency. All the sub-lessees are jointly and severally liable for the development of the sports facilities. Keeping 70% land vacant in their part is not an option. The sports facilities need to be developed as per the guidelines of the Sports City Scheme and its brochure. In case the development already carried out is in such a way in this project that the Sports facilities cannot be developed then in that case the sub-lessee/allottee has to pay proportionately for the development of the Sports facilities as prescribed in the brochure.

105. The Court is conscious of the fact that the amount as mentioned in 2010-2011 in lieu of the Sports facilities cannot be accepted now. The prices mentioned in the Brochure for providing the Sports facilities was of 2011. The same Sports facilities, which were to be provided in 2011, cannot be provided for that price now due to inflation; escalation of raw material and other factors. The sub-lessees cannot take an advantage of the same. The petitioner company has to proportionately provide the same Sports facilities or in the alternative to pay for these sports facilities as per the current market price, which may now be indicated by the Noida Authority.

106. Once the proportionate sports facilities are developed or the proportionate value of the Sports facility is fixed and the petitioner pays the same, or develop the Sports facilities, Noida Authority will immediately grant occupancy certificate to the three towers already built by the petitioner expeditiously preferably within two weeks, thereafter, subject to petitioner completing all the formalities and getting all the NOCs. The NOIDA Authority is directed to execute tripartite deed with the home buyers.

107. With the direction aforesaid, the writ petitions stands disposed off.

Order Date :- 24.02.2025

Bhanu

(Prashant Kumar, J.) (Mahesh Chandra Tripathi, J.)