

Court No. - 42

Case :- WRIT - C No. - 26640 of 2021

Petitioner :- M/s Xanadu Estates Private Limited

Respondent :- State of U.P. and 2 Others

Counsel for Petitioner :- Prateek Sinha

Counsel for Respondent :- Kaushalendra Nath Singh

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

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1. Heard Sri Amit Shukla, Advocate holding brief of Sri Prateek Sinha, learned counsel for the petitioner, 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-NOIDA.

FACTS OF THE CASE

2. New Okhla Industrial Development Authority¹ sometime in the year 2011 floated a scheme known as “Sports City-II” which was to be

¹ Noida

developed in Sectors 78, 79 and 150 of NOIDA. 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 in Sector 150 of NOIDA. 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. In the remaining 30% of the land, (28% was meant for Group Housing and 2% for commercial purpose). The scheme clearly stated that the population density in this Sports City would be 1650 people per hectare. In this scheme, maximum permissible Floor Area Ratio² of the total land was 1.5. The open/green area of the recreational component (i.e. sports activities such as Golf course, stadium etc. and open spaces) was to be considered as open green areas for the entire land. The brochure of the Sports City laid down conditions for the development of Sports City. The relevant part of the brochure is as follows:-

“ The shareholding of the lead member in the consortium shall remain at least 30% till the temporary occupancy/completion certificate of at least one phase of the project is obtained from the Noida.

In case of Consortium, the members shall submit a Memorandum of Agreement (MOA) conveying their intent to jointly apply for the scheme(s), and in case the plot is allotted to them, the MOA shall clearly define the role and responsibility of each member in the consortium,

SPCs that will subsequently carry out all its responsibilities as the allottee, and will have to construct on their own a minimum of 30% of the total permissible FAR on allotted area.

The “Lead Member” shall continue to hold at least 30% of the shareholding in the SPC till the temporary

2 FAR

occupancy/completion certificate at least one phase of the project is obtained from the NOIDA

In case of default in depositing the installments or any payment, interest @ 14% compounded half yearly shall be leviable for defaulted period on the defaulted amount.

The Lessee shall be required to complete the construction of minimum 15% of the permissible area earmarked for sports, institutional and 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. However, the residential and commercial development/construction may be completed in phases within 7 years.

Further more, the lessee has to develop residential and commercial component in the project in proportion to area earmarked for recreational uses.

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.

The lessee shall execute an Indemnity bond Indemnifying the NOIDA against all disputes arising out of non-completion of the project.

Without obtaining the completion certificate the lessee shall have the right to sub-divide the allotted plot into suitable smaller plot as per the planning norms of the NOIDA only for the area available for residential and commercial use and to transfer the same to the interested parties, if any, with the prior approval of the NOIDA on payment of transfer charges at the rate prevailing on the date of transfer.

After the written approval of the Lessor/NOIDA Authority, the lessee can implement/develop the project through its multiple subsidiary companies in which the allottee/lessee company shall have minimum 90% equity share holdings
Choose an account

Sub lease of land/built-up area shall be allowed on the basis of approved layout and building plans by NOIDA.

NOIDA will monitor the implementation of the project. Applicants who do not have a firm commitment to

*implement the project within the time limits prescribed are
advised not to avail the allotment.”*

3. In response to the advertisement, only two companies applied for this project first being M/s Wave Pvt. Ltd, which had applied at the reserved price and the second was a consortium of petitioner-company namely M/s Xanadu Estates Pvt. Ltd., (Lead Member) and 8 other companies (being the Relevant Members). The consortium members and their shareholdings in the consortium were as follows-

Sl.No.	Members	Status	% of share holding of lead and relevant member in the consortium
1	M/S Xanadu Estates Pvt. Ltd.	Lead	30%
2	M/S Meriton Infotech Pvt. Ltd	Relevant	5%
3	M/S Suttlej Agro Products Ltd	Relevant	5%
4	M/S Xanadu Infradevelopers Pvt. Ltd.	Relevant	10%
5	M/S Xanadu Infatech Pvt. Ltd.	Relevant	10%
6	M/S Xanadu Realcon Pvt. Ltd	Relevant	10%
7	M/S Sequel Buildcon Pvt. Ltd	Relevant	10%
8	M/S Sequel Building concept Pvt. Ltd.	Relevant	10%
9	M/S Kindle Developers Pvt. Ltd	Relevant	10%
	Total:		100%

4. M/s Xanadu Estates Pvt. Ltd., which was the Lead Member of the consortium, was incorporated on 10.03.2011, wherein the promoters were Mr. Nirmal Singh, Mr.Vidur Bhardwaj and Mr. Surpreet Singh Suri. The shareholdings of the petitioner's company was with M/S Three C Universal Developers (99.99 per cent share) and Mr. Supreet Singh Suri was nominee of M/S Three C Universal Developers (.01%).

5. After the evaluation of the bids, the bid of the consortium led by the petitioner company was found to be compliant. An Acceptance Letter was issued by the Noida Authority on 28.03.2011 and thereafter, the Allotment-

cum-Reservation Letter was issued on 04.05.2011 in favour of the consortium, wherein 7,27,500 square metres of land in Plot No. SC-01-01, Sector 78 and 79 were reserved for the development of the Sports City by the consortium.

6. The petitioner company being a Lead Member of the Consortium moved a letter on 11.10.2011 requesting the NOIDA authorities to sub-divide the entire sports city in favour of the relevant members of the consortium.

7. The request was accepted by the Noida Authority vide letter dated 24.10.2011 and the project was allotted to the members of the consortium. The letter dated 24.10.2011 is reproduced below for ready reference:

***“ New Okhla Industrial Development Authority
Main Administrative Building, Sector-VI, NOIDA-201301***

No. NOIDA/Commercial/2010

Dated : 24 October, 2011

M/s Xanadu Estates Pvt. Ltd. (Consortium)

C-23, Greater Kailash Enclave, Part-I,

New Delhi-48

***Sub : Sub-Division of Sports City Plot No. SC-01-01 Sector – 78 & 79
under Scheme No. 2010-11 (Sports City-II)***

Dear Sir,

With reference to your letter dated 11th October, 2011 on the above subject, I have been directed to inform you that in view of the terms and conditions of the brochures of the scheme, your request has been accepted by the competent authority to sub divide the aforesaid plot in six (6) parts in the following manner ;

Sub division of plot No. SC-01 Sector 79 in 5 parts & Plot No. SC-01 Sector 78 which is the part allotted area total 712981.00 sqmts of plot no.SC-01 Sector 79 Noida i.e.

(1) SC-01/A admeasuring 1,00,000 Sqm.

(2) SC-01/B admeasuring 48,000 Sqm.

(3) SC-01/C admeasuring 2,50,027 Sqm.

(4) SC-01/D admeasuring 1,00,000 Sqm. and

(5) SC-01 Sector-78 14,272.50 Sqm. which is the part allotted area total 14,519.00 sqmts of plot no.SC-01 Sector -78 Noida Simultaneously in view of the terms and conditions of the brochures of the scheme, the SPC for Plot No.SC-01/C, Sector-79 measuring 2,50,0207.50 Sqm. Namely M/s Three C Green

Developers Pvt. Ltd. Consisting of consortium member (1) M/s Xanadu Estates Pvt. Ltd. - 62.5% (2) M/s Meriton Infotech Pvt. Ltd.-18.50% (3) M/s Sutej Agro Products Ltd.-9.5% (4) M/s Xanadu Infra Developers Pvt. Ltd.-9.50%-2,50,027 Sqm., is approved for execution of lease deeds.

Execution of lease deeds of sub divided plot No. SC-01/A Sector -79 in favour of relevant member namely M/s Sequel Buildcon Pvt. Ltd. - 1,00,000 Sqm is approved.

Execution of lease deeds of sub divided plot No. SC-01/B Sector -79 in favour of relevant member namely M/s Sequel Buildcon Pvt. Ltd. - 48,000 Sqm is approved.

Execution of lease deeds of sub divided plot No. SC-01/D Sector -79 in favour of relevant member namely M/s Kindle Developers Pvt. Ltd. - 1,00,000 Sqm is approved.

Execution of lease deeds of sub divided plot No. SC-01/E Sector -79 in favour of relevant member namely M/s Xanadu Realcon Pvt. Ltd. - 80,000 Sqm is approved.

Execution of lease deeds of sub divided plot No. SC-01 Sector - 78 in the name of relevant member M/s Xanadu Infratech Pvt. Ltd. - 14,272.50 Sqm, which is the part allotted area total 14519.00 sqmts of plot no. SC-01 Sector -78 Noida is approved.

Accordingly the calculation details of above plots are being enclosed.

Yours faithfully,

Sd/-

Manager (Commercial)”

8. Separate lease deeds were executed by the Noida authority with these six sub-lessees on 24.10.2011. However, one of the condition of the lease deed was that the lead member should have at least 30 per cent share in the consortium and the percentage of shareholding till the temporary occupancy or completion certificate of at least first phase, is granted to the lessors.

9. The Noida Authority for some reason could not hand over the possession of the entire land of 7,27,500 square metres, hence, the allottee made a representation to the authority to grant the benefit of Zero period. The possession of the entire land was given except 48,520 square metres, as there was some encroachment.

10. The Noida Authority in its 177th meeting of the Board held on 27.05.2013 resolved that the balance land of which possession could not be given in lieu thereof, 48,520 square meters of land of the adjacent sectors may be allotted to the allottee. Thereafter, 48,520 square meters of land in the adjacent Sector 101 was allotted and a notice for allotting the same was also issued to the allottees on 21.06.2013. With this allotment 80 per cent of the area offered in the sports city project has been achieved with the effect that the minimum requirement for project was achieved.

11. The allottees/SPC collectively applied for the approval of a master layout plan for the development of the sports city in Sectors 78 and 79. The plan was approved on June 16, 2014.

12. However, the Noida Authority vide its letter dated 30.12.2016 granted benefit of Zero period upto 31.01.2017 for an area of 3,24,729.30 square metres. While granting the benefits, the Noida Authority made it clear that no further benefit would be accorded to the allottees. The Noida Authority further issued a revised payment plan for the plot allotted to the sub-lessee. The effect of the shifting was that the date of making payment of the dues were shifted and the payment schedule started w.e.f. 31.07.2017 to 31-01-2025.

13. It is claimed by the petitioner company that after the land was allotted in Sector 101, the representatives went to take possession of the land and found that the land was still in possession of the farmers and there was large scale agitation, hence the possession could not be handed over to the petitioner company.

14. The petitioner submitted a revised Master Plan for the sports city project with an FSI of 2.0, along with a letter dated October 17, 2018, and

payment for the additional FSI is also stated to have been made. However, the approval of this plan is still pending with the Noida Authority.

15. It transpires that there was some report of scam in development of sports city, hence, the entire issue was referred to Comptroller and Auditor General³ for evaluation. The CAG submitted a report, which was shocking and revealed the entire scam. It mentions as to how the Noida Authority and the State Government had suffered a huge loss amounting to Rs.9000 crores, as Noida Authority while making the scheme had done wrong pricing of the Sports City. As per the brochure only residential and commercial plots could have been divided but the Noida Authority sub-divided entire plots, which were earmarked for Sports City as well. Bids of the allottees were not screened and the turnover of the candidates were also not considered before allotting the plot. The Lead Member having the highest share was ousted from the project completely and thereafter, the allotment was done to various other companies, which individually could not have qualified in the financial bid evaluation. By adopting such dubious methodology, the Noida Authority had resultantly allotted the plots to those, who were not even entitled to apply individually.

16. On receipt of the report of the CAG, the Board of Noida had a meeting on 18-01-2021 (201st Board Meeting) in which it was resolved that in order to complete the sports facilities in the Sports City, a Committee should be formed, which would look into the situation and put a report in the next Board meeting and stayed any further steps to be taken in the Sports City including revalidation of the maps. After the CAG report, NOIDA froze all the activities in the Sports City and referred the matter to the State Government for direction and guidance as to what has to be done.

3 CAG

17. The Committee made a report and on the basis of the report, the 202nd meeting was held on 26.07.2021 in which it was resolved that there was no further sub-division in the sports city and no revalidation of the map until further orders and referred the matter to the State Government for its guidance and directions.

18. After the CAG report, looking into the gravity of the situation, a Public Accounts Committee comprising of members of Legislative Assembly was constituted to look into the issue.

19. The petitioners once again made a representation on 11.08.2021 for approval of the revised Master-Plan and grant benefit of Zero period. Since no action has been taken on the representation made by the petitioner neither revised master plan was sanctioned nor the benefit of zero period was granted. Hence, aggrieved by the inaction of the Noida Authority, the petitioner has filed the instant writ petition seeking the following reliefs:-

“i. To issue a writ order or direction in the nature of mandamus directing the Respondent No. 3 to declare the zero period from 01.02.2017 till the date of handing over the actual, vacant & complete physical possession with regards to land admeasuring 3,24,729.30 sq. mtrs. out of the total subject land admeasuring 3,63,409.80 sq. mtrs, situated at Sector 78, 79 and 101, Noida, for which Zero Period has been granted only from 04.05.2011 to 31.01.2017 by the Respondent No. 3;

ii. To issue a writ order or direction in the nature of mandamus directing the Respondent No. 3 to declare the zero period from 04.05.2011 till the date of handing over the actual, vacant & complete physical possession with regards to land admeasuring 38,680 sq. mts. out of the subject land admeasuring 3,63,409.80 sq. mtrs. situated at Sector 78, 79 and 101, Noida for which, no Zero Period has been granted by the Respondent No. 3;

iii. To issue a writ order or direction in the nature of mandamus directing the Respondent No. 3 to expedite the approval of the revised Master Plan with original FAR of 1.5 with respect to the Sports City filed vide Application dated 10.09.2020 by the Petitioner and also to provide such other approvals/sanctions/clarifications in respect of our Sports City as may be required from

time to time under law for the construction and development of the projects;

iv. To issue a writ order or direction in the nature of mandamus directing the Respondent No.3 to grant additional FS1 of 2.00 to the Petitioner with respect to Sports City Project in terms of letter dated 17.10.2018 by the Petitioner and subsequently add the same to the revised Master Plan of the Sports City Project.

v. To issue a writ order or direction in the nature of mandamus directing the Respondent No. 3 to extend the period of construction and completion of the Project by equivalent period of such Zero Period without any payment of the extension fees/charges in respect of the development of recreational/ residential/ commercial area on the Subject Land till date of grant of actual & complete physical possession of the Subject Land;

vi. To issue a writ order or direction in the nature of mandamus directing the Respondents not to levy or collect any lease rent and interest on lease premium from the date of the lease/ allotment on account of grant of Zero Period approval till the date of grant of actual & complete physical possession of the Subject Land;

vii. To issue, a writ order or direction in the nature of mandamus directing the Respondent No. 3 to adjust the principal and interest amount deposited by the Petitioner during 04.05.2011 till date, against future installments in respect of the Subject Land;

viii. To issue a writ, order or direction in the nature MANDMUS directing the respondents to provide to the Petitioner, a restructuring of the repayment schedule so that amount is paid to Noida Authority in terms of reported order dt. 10.06.2020 and 10.07.2020 by the Hon'ble Supreme Court in CWP 940/2017 in the Amrapali Batch matters as against the allotment of the Subject Land in question;

ix. To issue a writ, order or direction in the nature of CERTIORARI preventing the Respondent Authorities from taking any coercive action against the Petitioner with respect to the legal right of the Petitioner over the Subject Land in question;

x. To issue a writ, order or direction in the nature MANDAMUS. directing the Respondents to pay punitive damages and compensation to the tune of Rs.200 Crores to the Petitioner which includes the interest cost paid by the Petitioner(borrower) on the loan taken from the lender and also for loss of business on account of avoidable litigation and the consequent loss of reputation and goodwill on account of failure of Respondents to hand over the entire vacant physical possession of the land is question to the Petitioner for competition of the project.

xi. To issue a writ, order or direction in the nature MANDAMUS, directing the Respondent No. 1- State of U.P. to constitute an Enquiry Committee comprising of three members to conduct an enquiry into the illegalities, violations and abdication of statutory duties by the Respondent No. 3, Noida Authority and to submit a report to this Hon'ble Court during the pendency of the present writ petition,

xii. To issue any other order of direction which the Hon'ble Court may deem fit and proper in the circumstances of the case.

xiii. To award the cost of the petition to this Petitioner.”

ARGUMENTS ON BEHALF OF THE PETITIONER

20. Learned counsel for the petitioner submitted that right from the inception there was a problem with the development of sports city. The Noida Authority had not acquired the land and were not in possession of the land. Still they announced the sports city project and after the petitioner being allotted, the possession of the land could not be given in time. With the result the project got delayed and because of the delay the petitioner had suffered huge financial loss.

21. At the time of execution of sale deed, no physical possession was handed over to the petitioner company and only paper possession was given. When the petitioner company went to take the possession of the land, they had to face the agitation of the farmers. Apart from it, a number of petitions were filed in the High Court qua the acquisition of the land by the farmers, which were pending adjudication.

22. The petitioner company further submitted that the entire sports city was an integrated project and such a large scale development cannot happen in a piece meal unless and until the entire vacant possession was handed over to the petitioner; the development of the Sports City could not commence.

23. The learned counsel submitted that even the land allotted in Sector 101 in lieu of the encroached land of Sectors 78 and 79 was also not free from encumbrances.

24. The Zero period policy of the Noida Authority was applicable for all those land, where the Noida Authority had failed to carry out its obligations like handing over the physical possessions or in providing the necessary infrastructures, which they were supposed to provide by them or in cases where there was any such injunction or stay granted by the Court.

25. Further, the development of a large spread project cannot happen in piece-meal unless entire vacant physical possession of the land in question is granted to the petitioner company for completion of the project, and as such, the possession of small portions of land in fragments out of the allotted land granted to the petitioner, is of no use and is actually inconsequential and a mere eye-wash, until the entire vacant physical possession of the land in question is granted to the petitioner, the project cannot be initiated.

26. Learned counsel for the petitioner submitted that the land was allotted in three different locations. When the representatives of the petitioner company went to take physical possession in Sector 101, it was revealed that the respondent no.3 did not have possession, and the land still remained with the farmers. A mass-scale agitation was taking place at the site, with the result nothing could be done on the site.

27. The benefit of the Zero period was only granted until January 31, 2017. However, proper physical possession was not handed over, nor was the promised infrastructure and road by the Noida Authority was provided even after that. Therefore, the benefit of the Zero period should be extended in accordance with the Zero period policy of the State Government.

28. The petitioner company, which was the lead member of the consortium, applied for, in terms of the policy for increase in FSI from 1.5 to 2.0. A payment of Rs.25 crores was made towards the additional FSI, but it was never granted by the Noida Authority.

29. The development of the project was halted due to several issues, including the non-approval of the master plan, the unavailability of appropriate infrastructure, the absence of a connecting road to the project, and a lack of decision by the Noida Authority following the CAG report.

30. Since there was a delay on the part of the Noida Authority in handing over possession. Hence, the delay cannot be attributed to the petitioner and the petitioner is entitled to the benefit of the Zero period policy.

ARGUMENTS ON BEHALF OF THE RESPONDENTS

31. Sri Manish Goyal, learned Senior Counsel for the Noida Authority submitted that before proceeding in the matter it is worthwhile to mention about the petitioner herein. He submitted that no doubt, the petitioner was a lead member of the consortium which had applied for the project, but as soon as the project was allotted as per the scheme, the lead member was required to hold a 30 per cent stake in the project. However, on the request of the petitioner, the lease was executed by the Noida Authority with the other relevant members of the consortium, and the name of the petitioner was found to be missing. The leases executed by the officials of the Noida Authority at that point of time were contrary to the conditions outlined in the brochure of Sports City, and the petitioner could not have walked out of the project. However, the consortium members, as well as the Noida Authority, allowed the petitioner to walk away, and the entire project was allotted to the other relevant members.

32. He further submitted that an application was made by the Consortium in which Lead Member was M/s Xanadu Estates Pvt. Ltd. along with other Consortium Members. A chart showing the composition of the Consortium and their date of registration, list of Directors and shareholdings, are as follows:-

Sl.No.	Name of the Company	Lead Member/Relevant Member	Percentage	Date of Incorporation	Directors	Holding of the Company
1.	M/s Xanadu Estates Pvt. Ltd.	Lead Member	30%	10.03.2011	Nirmal Singh Vidur Bharadwaj Surpreet Singh Suri	
2.	M/s Meriton Infotech Pvt. Ltd.	Relevant Member	05%	19.10.2005	Surpreet Singh Suri Vidur Bharadwaj Nirmal Singh Mayank Chaurasia Anand Kumar Chaurasia Hari Veerapaneni Krishna	
3.	M/s Sutej Agro Products Limited	Relevant Member	10%		Nirmal Singh Vidur Bharadwaj Supreet Singh Suri	
4.	M/s Xanadu Infradevelopers Pvt. Ltd.	Relevant Member	10%	10.03.2011	Nirmal Singh Vidur Bharadwaj Surpreet Singh Suri	
5.	M/s Xanadu Infratech Pvt. Ltd.	Relevant Member	10%	10.03.2011	Nirmal Singh Vidur Bharadwaj Surpreet Singh Suri	
6.	M/s Xanadu Realcon Pvt. Ltd.	Relevant Member	10%	10.03.2011	Nirmal Singh Vidur Bharadwaj Surpreet Singh Suri	
7.	M/s Sequel Buildcon Pvt. Ltd.	Relevant Member	10%	10.03.2011	Nirmal Singh Vidur Bharadwaj Supreet Singh Suri	
8.	M/s Sequel Building Concepts.	Relevant Member	10%	10.03.2011	Nirmal Singh Vidur Bharadwaj Surpreet Singh Suri	
9.	M/s Kindle Developers Pvt. Ltd.	Relevant Member	10%	10.03.2011	Nirmal Singh Vidur Bharadwaj Surpreet Singh	

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33. Learned Senior Advocate submitted that out of nine companies of the consortium, seven of them were incorporated on 10.03.2011, even the Lead Member was incorporated on 10.03.2011, after the scheme was launched with the same set of Directors. This shows that all the companies were incorporated by same set of Directors, which were the actual promoters.

34. Bid of this consortium company was the most compliant and the Consortium was allotted the Sports City Project in Sector-78 and 79, which was for area ad-measuring 7,27,500 sqm. Accordingly, allotment letter was issued on 04.05.2011 in favour of M/S Xanadu Estates Pvt. Ltd. (Consortium).

35. Mr. Goyal, Senior Counsel submitted that the scheme for development of Sports City in Sector-78 & 79 was launched on 03.03.2011 and the same was closed on 24.03.2011. The main feature of the Sports City Scheme was sports facilities, which is an integrated project and has to be developed as a whole. Even if a Consortium Company applied for the project, it was the Consortium as a whole which is assumed to be the lessee and not any individual company.

36. He further submitted that the way the allotment was carried out, sub divisions were made, due instalments were never asked for and not even paid; the way map was sanctioned, the allottees were allowed to start construction of the commercial and residential areas even without starting development of sports facilities were not in accordance with the scheme or the terms of the brochure of the lease conditions.

37. He next submitted that M/s Xanadu Estates Pvt. Ltd. (Lead Member of the Consortium) vide letter dated 11.10.2011 requested NOIDA to execute separate Lease Deeds in favour of the Relevant Members of the Consortium.

It was in pursuance of the aforesaid request that NOIDA executed Lease Deeds in favour of the Relevant Members of the Consortium on 24.10.2011

38. The entire division was made based on a letter provided by the petitioner. Surprisingly, the petitioner itself opted out of the consortium and did not retain any parcel of the land as the lead member.

39. At the petitioner's request, the land was sub-divided into six parts, after which the Noida Authority executed lease deeds with all six companies. The lease deed clearly indicated that Sports City is an integrated project, which must be developed as a whole.

40. The petitioner, as the lead member of the consortium, wrote a letter to the Noida Authority stating that M/s Three C Green Developers Pvt. Ltd. would serve as a Special Purpose Company responsible for developing the sports facility in Sports City, along with M/S Xanadu Infratech Pvt. Ltd.

41. All the allottees collectively submitted a master layout plan for the development of the entire Sports City. As an internal arrangement, they divided the obligations among themselves, wherein two companies were tasked with developing the entire Sports City according to the brochure. Meanwhile, the other smaller companies took on the responsibility of developing the residential and commercial portions of the Sports City.

42. He further submitted that this division was an internal arrangement between the consortium members. Regarding the Noida Authority, Sports City was an integrated project that needed to be developed by the consortium as per the scheme. The Noida Authority never bifurcated the project or assigned the responsibilities of developing the residential and commercial portions to individual companies.

43. A simple perusal of the brochure and the lease deed executed between the consortium members clearly shows that the project was an integrated one. In developing Sports City, it was evident that the primary objective was the development of Sports City, while the commercial and residential components were ancillary parts of the project.

44. He further submitted that there were encroachments and challenges in handing over the entire portion of the project. In the 177th meeting of the Board, it was decided to provide an alternative plot in Sector 101, ensuring that 80% of the project land, as envisaged in the brochure, is handed over to the consortium for the development of Sports City. Based on the representation made by consortium members, the Noida Authority, on its own accord, granted benefits of a Zero period up to 31.01.2017 and subsequently, rescheduled the payment schedule to prevent any adverse impact on the authority due to late possession of the project. However, while providing the Zero period benefit, it was explicitly stated that no further benefits of the Zero period would be awarded to the consortium members/allottees.

45. After four years of enjoying the benefits of the Zero period, the petitioner company once again is seeking an extension of the Zero period. However, no further benefit can be granted, as possession of the land has been handed over to them. The delay in the execution of the project is solely attributable to the consortium members/allottees. Furthermore, some allottees have obtained individual map sanctions for the development of residential and commercial areas and have begun booking and collecting money from home buyers. If these companies did not have possession of the land, how could they have obtained map sanctions and started collecting funds from home buyers? Collecting money from home buyers without possession would constitute an act of fraud with the home buyers.

46. The petitioner company is seeking an increase in FAR from 1.5 to 2.0, which is not feasible. The Sports City was conceptualized with an FAR of 1.5 in mind, and the allotment was made accordingly. It is not permissible for the petitioner to request an FAR of 2.0, as it was not part of the scheme or policy of the Sports City.

47. All consortium members have failed to pay premium instalments on time. The lease deed explicitly states that if instalments are not paid on time, they will be subject to an 11% interest, plus a 3% penal interest on the delayed payment of instalments. Hence, they are liable to pay the due premiums along with contractual interest and other dues, which are outstanding.

48. He further submitted that in this petition, the petitioner is seeking damages of Rs.200 crores. However, the delay is due to the inaction of the consortium members, and there is no question of paying any compensation. Further no compensation can be claimed in a writ petition.

49. The learned Senior Advocate vehemently submitted that the petitioner company has no locus to file the instant writ petition. While it was the lead member of the consortium during the initial application, it later opted out of the project on its own accord. Subsequently, the project was divided among six companies, and as of now, the petitioner company holds no interest in the project.

50. He lastly submitted that the present writ petition filed by the petitioner is nothing but a gross abuse of process of law and the same is a frivolous petition as the petitioner has no locus to file the instant writ petition.

ANALYSIS & CONCLUSIONS

51. We have carefully considered the submissions advanced by the learned counsels for the respective parties. With their able assistance, we have

proceeded to peruse the pleadings, grounds taken in the writ petition, annexures appended thereof, the reply filed by the opposite party and also the rejoinder affidavit filed by the appellants.

52. NOIDA having been declared to be an Industrial Township is obligated to, not only develop industries but also to develop a complete township by virtue of Article 243Q of the Constitution of India. The sports city scheme having been widely publicized on 03.03.2011 was to fulfil laudable object. This is evident that the object of the scheme was to develop, state of the art sports facilities to be enjoyed by the public. This scheme was launched for developing Sports City at two different places in Noida, first in Sectors 78 & 79, admeasuring about 7,27,500 square metres and the other sports city in Sector 150 in Noida.

53. It was a mandatory condition that only the lead member would be authorized to correspond with the NOIDA Authority. Additionally, the lead member was required to be the single largest shareholder in the consortium, holding a minimum of 30% stake.

54. Soon after the allotment, the lead member proposed that the entire Sports City project be divided among six consortium members. However, the petitioner-company, which was initially required to hold a 30% share in the consortium, opted out, and the entire project was subsequently transferred to other companies. This transfer was made on the representation given by the petitioner and on its request the individuals sub-leases were executed by the Noida Authority.

55. The brochure explicitly mandated that the lead member's shareholding in the consortium must remain at least 30% until the temporary occupancy or completion certificate for at least one phase of the project was obtained from Noida. However, immediately after the allotment, the lead member's

shareholding was reduced to Zero even before the commencement of the project.

56. After the initial allotment of the project, the available land with the Noida Authority was allocated to the consortium. For the remaining land, as it became available, separate allotment letters were issued. For the shortage in the area, the Board of NOIDA, in its 177th meeting, decided to allot the balance land from the adjacent Sector 101. This land was contiguous with the Sports City, and it was subsequently allotted to the consortium. With this allotment, the minimum mandatory requirement of land was met. The possession was handed over to the allottees. After availing the benefits, petitioner cannot challenge the same.

57. Certain portions of the land allotted to the consortium were subject to litigations and encroachments. Upon a representation made by a member of the consortium, the Noida Authority granted a Zero period benefit until 31.01.2017. However, it was made explicitly clear that no further Zero period benefits would be awarded to the consortium. The consortium members accepted this letter without any objections.

58. The consortium members/allottee of the Sport City project miserably failed to develop the sports facilities in the area allotted to them, infact, nothing has been done towards development of sports facilities and neither the outstanding dues of the Noida Authority was paid nor the additional compensation of the farmers and the other dues were paid. The members of the consortium were only interested in developing the residential sector, which was secondary part of the project. None of the members were interested in developing sports city, which was the primary part of the project.

59. After some time, to address the lapses, the petitioner company again requested the grant of benefits for a Zero period. However, the petitioner has

failed to provide any substantial reason for granting this benefit. On one hand, the petitioner seeks the benefit of the Zero period claiming that they do not have possession, and on the other hand, consortium members were engaged in constructing residential apartments and collecting money from home buyers, continuing with the ancillary project.

60. As far as the locus of the petitioner-company is concerned, the petitioner was the lead member of the consortium, it chose to opt out of the Sport City project soon after the project allotment. It has no involvement in the project and holds no stake or interest in the development of the Sports City. Additionally, its rights have not been adversely impacted by the inaction of the Noida Authority. Therefore, the petitioner does not have any locus to file the instant writ petition seeking the reliefs mentioned therein.

61. Regarding the rescheduling of outstanding payments, there is no justification for rescheduling. It transpires that the officers of the Noida Authority have provided undue benefits to sub-lessees till now. The officers of the Noida Authority have failed to take any serious steps to collect the outstanding dues against the allottees. While a few notices may have been sent to the allottees as a formality, no genuine efforts have been made to recover the dues.

62. The consortium members are bound by the terms of the lease, which requires them to pay interest and penal interest on the outstanding dues as per the lease agreement.

63. Considering the entire facts and circumstances of the case, we are of the firm opinion that since the entire delay is on the part of the sub-allottees, there is no question of restructuring or rescheduling the payment schedule.

64. In this petition, the petitioner has although claimed damages of Rs.200 crores. However, this prayer is thoroughly misconceived, as damages cannot be awarded in the present proceedings.

65. In the given facts and circumstances of the case, this Court finds that the petitioner company itself opted out of the Sports City project. The petitioner company could not demonstrate as to how and in what manner its rights are affected and therefore, no relief can be granted to the petitioner in the instant writ petition.

66. The writ petition sans merit and is, accordingly, **dismissed**.

67. Parties to bear their own cost.

Order date : 24.02.2025
pks/Manish Himwan

(Prashant Kumar, J.) (M.C. Tripathi, J.)