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Court No. - 7

Case :- WRIT - C No. - 8858 of 2024

Petitioner :- M/S Adore Infrasmith Pvt. Ltd. Thru. Authorised Representative Mr. Amit Kumar Sharma And Another

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Infrastructure Industrial Development Lko And Another

Counsel for Petitioner :- Alok Kumar Mishra, Apoorva Tewari

Counsel for Respondent :- C.S.C., Prashant Kumar Singh

Hon'ble Pankaj Bhatia, J.

1. Heard Shri J. N. Mathur, learned Senior Advocate assisted by Ms. Priyadarshini Dewan, Ms. Aishvarya Mathur and Shri Deepak Agarwal appearing on behalf of the petitioners and Shri Prashant Chandra, learned Senior Advocate assisted by Shri Prashant Kumar Singh, Advocate appearing on behalf of the respondents.

Shri Apoorva Tewari, Advocate represents for intervenor and Shri Shobhit Saxena and Shri Vikram Soni, Addl. Chief Standing Counsel appear for respondent no.1.

2. The present petition has been filed by the petitioners challenging the order dated 20.06.2024 passed by the respondent no.1 in Revision Petition No.3262/77-4-24/09 Appeal/24 under section 41(3) of the Uttar Pradesh Urban Planning and Development Act, 1973 read with Section 12 of the U.P. Industrial Area Development Act, 1976 whereby the respondent no.1 had dismissed the revision petition and upheld the order dated 01.02.2012 by which the land/plot allotted to the petitioners has been cancelled by the respondent no.2.
3. The facts, in brief, leading to filing of the present petition are that the respondent no.2 introduced a Scheme for allotment of Residential Township at Greater Noida bearing Scheme Code No.YEA-RT-02. In terms of the said Scheme, sealed tender was invited in two bid system for allotment of Residential Township Plots in Sector 22-A

and Sector 22-D. The said allotment of the plot was proposed to be given on a lease period of ninety years. The said allotment letter, contained the following particulars :

Plot No./ Sector	Area in Sq.mtrs. (Approx)	Reserve Price (Rs. Per sqm)	Registrati on Earnest Money (Rs. in Crores)	Processing Fee (Non- Refundable and Non- Adjustable	Remarks
TS-3/ Sector 22 D	400000	4500/-	10	10 lacs	Section- 4/17 done, land acquisition in process.

The conditions specified under the said allotment letter were relevant for the present dispute are as under :

G.3. The successful bidder shall be required to pay 10% of the total premium of the plot as reservation money after adjusting registration/earnest money within 30 days from the date of issuance of Reservation Letter, otherwise the claim for allotment will be treated as deemed cancelled. No correspondence will be entertained in this regard. After confirming the receipt of 10% amount as mentioned above and after the land has been acquired and possession taken by YEA, the formal Allotment Letter will be issued.

G.4. The allottee on issue of formal Allotment letter shall be required to pay 20% of the total premium of the plot allotted as allotment money within 60 days from the date of issuance of such Allotment Letter.

N.1 Possession of allotted land will be handed over to the Lessee after execution and registration of lease deed.

N.2 Execution and registration of lease deed can be done only after a minimum payment of 30% of premium and payment of one year lease rent in advance.

Z.8 The Lease Deed/allotment will be governed by the provisions of the U.P. Industrial Area Development Act, 1976 (U.P. Act No.6 of 1976) and by the rules and/or regulations made or directions issued, under this Act.

4. It has been also been argued and placed on record that the power conferred upon the respondent no.2 authorities is by virtue of Section

7 of the U.P. Industrial Area Development Act, 1976 which is reproduced herein below :

Power to the Authority in respect of transfer of land

"7. The authority may sell, lease or otherwise transfer whether by auction, allotment or otherwise any land or building belonging to the authority in the industrial development area on such terms and conditions as it may, subject to any rules that may be made under this Act think fit to impose."

5. In terms of the said proposal floated by the respondent no.2, the petitioner no.1 formed a Special Purpose Company (SPV) which was also required in the same Tender Document. In the said SPV, (Petitioner No.1) the petitioner no.2 had subscribed to the share capital in stages.
6. The petitioners submitted a tender form for Plot No.TS-3, Sector 22-D for an area approximately 100 acres on 08.12.2010. The petitioners qualified in the pre-qualifying bid and thereafter the financial bid was to be opened on 14.12.2010. In terms of the acceptance of pre-qualifying bid, the respondent no.2 issued a reservation letter dated 27.12.2010 for township YEA-RT-02, Plot No.TS-3 Sector 22 D for an area approximately 100 acres which was specified in the said reservation letter, which is contained in Annexure no.5 to the writ petition. The total premium amount payable as indicated in the reservation letter was Rs.192,00,00,000/- (Rupees One Hundred Ninety Two Crores Only), out of which the petitioners were called upon to pay an amount of rupees ten per cent of the total premium of the plot within thirty days. It was also indicated that the petitioners had also deposited an earnest money of Rs.10.00 crores and the balance reservation money payable was Rs.9,20,000,00/- which was required to be deposited within thirty days from the date of the issuance of the said letter. It was also indicated that after the deposit is made within thirty days, a formal letter can be issued as per Clause G(3) of the bid document.

7. It is stated that the petitioners deposited the amount as was required in terms of the reservation letter and the petitioners were issued an allotment letter dated 20.06.2011 by the respondent no.2 informing that the plot in question has been allotted and in addition thereto, an excess area of 5869 sq. mtrs has also been allotted at the same rate i.e. Rs.4800/- per sq.meter. It was further informed to the petitioners that the 100% excess area premium, works out to Rs.2,83,00,800/- and the petitioners were called upon to deposit the entire amount of the excess area within thirty days. The petitioners were also directed to deposit 20% of the total premium amount of Rs.38,40,00,000/- for the remaining area within sixty days i.e. by 18.08.2011.
8. It is the case of the petitioners that in terms of the stipulation contained in Clause G(3) of the tender document, the allotment letter could be issued only after the entire land, proposed to be transferred, has been acquired and the possession has been taken by the respondent no.2 which according to the petitioners was not done. The petitioners wrote a letter expressing apprehension that the entire land, as proposed to be allotted to the petitioners, was not available with the respondent no.2, based upon the information received by the petitioners. The petitioners through their letter dated 19.07.2011 sought queries with regard to the availability of the land and the possession, as it was common knowledge that on account of farmers' agitation, the development authorities could not have access to the land leave alone possession. The said letter was given by the petitioners on account of the judgment passed by the Supreme Court and the High Court questioning the acquisition proceedings taken out and the various restraint orders passed by the High Court. The said letter was duly received by the respondent no.2 on 19.07.2011. The petitioners also deposited 100% of the premium amount of the extra area amounting to Rs.2,83,00,800/- (Annexure no.9).
9. It is thus, stated that on the one hand the petitioners had paid an amount of about Rs.23.00 crores to the respondent no.2, however,

they were not clear with regard to the acquisition of the land, the possession of the same being with the respondent no.2 and the practical ability of the respondent no.2 to execute the lease deeds, as such, the petitioners once again gave a letter dated 04.08.2011 (Annexure no.10) expressing their apprehensions. The petitioners also requested vide their letter dated 16.08.2011 to extend the period of depositing the allotment money pending clarifications sought from the respondent no.2.

10. It is claimed that the respondent no.2 never responded to any of the two communications and thereafter again request was made seeking clarifications. It is claimed that the respondent no.2 instead of disclosing the facts, as sought by the petitioners, issued a letter dated 08.09.2011 extending the time to pay the instalments and also imposed interest on the outstanding instalments. It is further pleaded that not only the petitioners, the other allottees also raised similar apprehension, as such, a board meeting was convened on 25.11.2011 wherein the factual situations were considered/discussed and Agenda No.43 of 2024 was passed granting blanket extension to all the allottees till 31.01.2012.
11. It is stated that on one hand, the Board Meeting had resolved to extend the time up to 31.01.2012, however, the respondent no.2 imposed a burden of interest against the petitioners and the petitioners were called upon to give an undertaking to pay the amount in future along-with the interest. The petitioners once again through their letter dated 25.01.2012 sought similar clarifications with regard to the acquisition of the land, the possession with the respondent no.2 and the agitations of the farmers as well as the guidelines laid down by the Allahabad High Court in judgment dated 19.07.2011 passed in Writ Petition No.17068 of 2009. The petitioners also stated that they were ready and willing to furnish a cheque to protect the interest of the authority. It is claimed that the respondent no.2 instead of clarifying the issue with regard to

possession and the farmers' agitation proceeded to pass an order dated 01.02.2012 cancelling the allotment / reservation of the Plot No.TS-3 and along with the said, also forfeited the moneys deposited by the petitioners. As the said cancellation was contrary to Clause G(3) and G(4) of the Tender Document as well as contrary to the decision dated 25.11.2011 passed in 43rd Board Meeting, the petitioners, to seek further clarification, sought the clarification with regard to possession of the land proposed to be allotted to the petitioners from the Tehsildar and a communication was also received vide letter dated 25.02.2012, which is contained in Annexure no.16 (Colly). The petitioners have also placed on record that on the basis of enquiries made by the petitioners on the principle of *buyer beware*, information was received that several writ petitions were filed by the farmers against the acquisition and the orders had been passed by the High Court, some of the orders are on record as Annexure no.17, in which status-quo was directed to be maintained.

12. It is further pleaded that concealing the pendency of the writ petition at the High Court by the farmers and original landowners, demands were being raised from the petitioners, even no demarcation of the land had been made, no development work had been carried on the one hand and on the other hand, penal interest was being sought to be recovered from the petitioners.
13. The petitioners, on account of the attitude of the respondent no.2, challenged the cancellation order dated 01.02.2012 by filing a Writ Petition No.9959 of 2012 in which an interim order was granted by the High Court restraining the respondent no.2 from allotting the land to any other person. It is also pleaded that during the pendency of the writ petition no.9959 of 2012, the respondent no.2 acquired and took possession on the parts of the land in the year 2011 to 2017 subsequent to the passing of the cancellation order and it was also pleaded that the entire land proposed to be allotted to the petitioners

was still not available for disposal with the respondent no.2, as such, the petitioners filed a Revision under section 41(3) of the Urban Planning and Development Act 1973 read with section 12 of the U.P. Industrial Area Development Act, 1976 before the respondent no.1. Along with the said, an undertaking was given to withdraw the writ petition no.9959 of 2012, which has been withdrawn. The revision petition filed by the petitioners, without even considering the facts, came to be dismissed by means of the impugned order dated 20.06.2024, which is challenged in the present writ petition.

14. It is also pleaded that the petitioners had filed a representation dated 01.07.2024 before the Additional District Magistrate, Land Acquisition, Gautam Buddh Nagar for gaining information regarding the land acquisition and the present status of the land forming part of Plot No.TS-3, Sector 22-D and a reply was received on 04.07.2024 indicating the said two orders in relation to the land falling under Plot No.TS-3 which continued from 06.01.2012 to 2017. This has been pleaded to indicate that at the time of cancellation, the respondent no.2 did not have the possession of the land, proposed to be allotted to the petitioners. It has also been pleaded in the information received under RTI informing that the acquisition in respect of the properties comprising property no.TS-3 continued till 2015 and the last notification itself is dated 16.04.2015.
15. In the light of the said facts, Sri J. N. Mathur learned Senior Counsel appearing on behalf of the petitioners strenuously argues that the reservation letter, which is starting point of the allotment, was issued to the petitioners after the petitioners having qualified for the bids and the petitioners had deposited 10% of the amount as per the reservation letter and the allotment letter thereafter had to be issued after the events as indicated in Clause G(3) of the bid document had happened, which according to the petitioners never happened and the respondent no.2 on the one hand did not clarify the facts by responding to any of the letters and on the other hand, insisted on the

deposit of 20%, which was to be done after the formal allotment letter was to be issued after acquiring the land and not only the allotment letter sans possession was issued, the petitioners were also saddled with burden of interest. He further argues that in terms of the provisions of the Contract Act, particularly Section 54, it was a contract of reciprocal promises and once the respondent no.2 could not perform the promise made, they could not have claimed the performance of promise from the petitioners.

16. It is further argued by Sri J. N. Mathur, that on the one hand, the respondent no.2 which is a 'State' and is bound to act in a fair and reasonable manner, even in the contractual matters, has failed to act fairly and legitimately inasmuch as they started the process of allotment even without having the actual physical possession of the land in question. He draws my attention to the general directions issued by the High Court in Writ Petition No.26687 of 2022 that the Industrial Development Authorities should not take steps for allotment of plots unless they have the physical possession of the land proposed to be allotted. It is argued that even the said order has been accepted and a general order has been issued on 01.05.2023 (Annexure No.35) restraining the development authorities from taking any steps for allotment without having the possession of the land.
17. In the light of the said, it is argued that on the one hand, the respondent never had the possession of the land in question and on the other hand the allotment of the petitioners was cancelled, which is not only arbitrary and illegal but is also against the principle of fair decision making and thus violative of the contract and also Article 14 of the Constitution of India.
18. During the course of hearing the petition, on the basis of the pleadings, an order came to be passed on 18.10.2024 calling upon the respondents to file a counter affidavit specifically stating that whether the entire land proposed to be allotted was in the occupancy

of the respondent no.2 prior to the issuance of the allotment letter in the year 2012 or not and also inform the current status of the possession of property and whether, the respondent no.2 was in effective control of the property free from encumbrances.

19. In terms of the said order, a counter affidavit was filed, however, the same was lacking in material in particular as sought by this Court vide its order dated 18.10.2024, as such, a supplementary better counter affidavit was filed on 23.11.2024 by the respondents. In the said affidavit, it has been stated as under with regard to the information sought in para-5 :

S.No.	Particulars	Area (in sq. m.)
A.	As on date of issuance of the Allotment Letter	
1.	Total area of the Plot (TS-03, Sector 22D) under YEIDA's possession	3,91,386
2.	Total area of the Plot (government land) under resumption process	14,510
3.	Total area of the Plot affected by stay order of the Hon'ble Courts	NIL
B.	Status as of today	
4.	Total area of the Plot currently under possession of YEIDA (including the area affected by stay orders by the Hon'ble Courts)	4,05,896 (Total area of land at Serial No.1 and 2 above)
5.	Total area of the Plot currently affected by the stay order of the Hon'ble Court.	30,880
6.	Total area of the Plot which is currently subject matter of litigation before the Hon'ble Courts, but no stay has been granted	53,320

20. Along with the said supplementary better counter affidavit, the annexure has been filed indicating the dates on which the property falling in the area under Plot No.TS-03 were acquired and the possession was taken, dates range from 31.01.2011 up to 12.12.2017.
21. In response to the said supplementary better counter affidavit filed

by the respondent no.2, the submission of the counsel for the petitioners is that the respondents have admitted that they never had the possession as is clear from the details disclosed in the affidavit and they are still not in possession of the land free from encumbrances.

22. It is also argued by Sri J. N. Mathur, learned Senior Advocate that in terms of the brochure which is on record containing bid conditions, it can be clearly discerned that the entire scheme was floated by the respondent no.2 for development of residential township. The brochure itself indicated that the proceedings under section 4/17 of the Land Acquisition Act were in progress and in that context, Clause G(3) was incorporated to state that after the land has been acquired and the possession taken by the respondent no.2, the formal allotment letter shall be issued. He argues that admittedly as per the supplementary affidavit, the land was never acquired till the year 2017 at least and even till date, the entire land is not in actual physical possession of the respondent no.2 and thus, the occasion for issuance of a formal allotment letter has not even arrived as yet, whereas, the respondent no.2 have not only cancelled the allotment but have raised demands which are contrary to their own documents. He further argues that the contract in question has to be interpreted keeping in view the intention of the parties, that being the development of the township over the allotted land and it is not conceivable as to how, the township could be developed without the allotment of the land along with a clear title. He further argues that the petitioners participated in the bid, for developing the township and not for raising any personal constructions and in case, the petitioners had taken steps for allotment or had received any money from the proposed home buyers, the same would have been in contempt of the various orders passed by the High Court and would have also been hit by the doctrine of *lis pendens*.

23. In the light of the said, it is argued that the petitioners are ready and

willing to take the land, which is available with the respondent no.2 in terms of their admission contained in the supplementary affidavit and also undertakes to pay the amount as per the reservation order and with regard to the balance land, which is still not in the actual physical possession of the respondent no.2, he argues that the same can be deferred and the steps for allotment be taken after the land is actually acquired and the actual physical possession is taken by the respondent no.2.

24. Learned counsel for the petitioner also argues that the benefit of zero period policy extended by respondent no.2 authority from time to time on account of exigencies should also be extended to the petitioners as there was no fault of the petitioners.
25. Shri J.N. Mathur further draws my attention to the specific pleading of Paragraph No.7(S), which are to the following effect:

“7(S). That the Petitioners subsequent to the impugned order of cancellation made enquiries from the Revenue Records for the agricultural land comprising in the plot allotted to the petitioner. As per the information derived by the Petitioner from the revenue records, the land allotted to the Petitioner comprises in the following villages Niloni Shahpur, Kherli Bhaw & Mirjapur. The copy of the details of the revenue records and the khasra numbers comprising in the said land as provided by the Tehsildar vide its letter dated 25.02.2012 and the site plan are being collectively annexed herewith and marked as ANNEXURE -16 (COLLY) to this writ petition.”

And the reply of the respondents to the said paragraph is contained in Para – 97 of the counter affidavit, which is as under:

“97. That the contents of Paragraph 7(R) and (S) are denied and disputed. The Petitioner was making unnecessary queries about the land acquisition process and the possession of land in order to avoid depositing of the allotment money within the prescribed time. It is apparent that the Petitioner was not interested in depositing the allotment money but was only interested in delaying the deposit of the money. It is submitted that making unnecessary queries will not entitle the Petitioner not to deposit the allotment money. When the Petitioner was aware of the terms and conditions of the Scheme of Allotment, raising doubts or making queries about the land acquisition process was unnecessary exercise. It is apparent that the Petitioner was not interested in depositing the allotment money. Therefore, the queries made by the Petitioner, had no relevance. The Respondent Authority seeks leave of this Hon'ble Court to refer and rely on the submissions made in preliminary submissions above.”

26. He also draws my attention to Paragraphs 55 and 56 of the counter affidavit filed by the respondent no.2 which is to the following effect:

“55. It is apparent from the conjoint reading of all the clauses that the acquisition of land including was underway when the Scheme of Allotment was launched, and the Allotment Letter was issued. It is submitted that the majority of the land forming part of the Plot allotted to the Petitioner was already in possession of the Respondent Authority prior to the issuance of the Allotment Letter.

56. This fact is corroborated by the documents annexed to the Writ Petition by the Petitioner, which include:

a. Information received from the office of the Tehsildar on 25 February 2012, showing that, except for a few khasras, the entire Plot stood acquired and was in possession of the Respondent Authority (@Pg. 136-157 of the Writ Petition). Further, the land portions shown to be not acquired are that of Gram Sabha, which had to be resumed by the State Government.

b. The list of litigations and interim orders annexed by the Petitioner (@Pg. 318-323), which demonstrates that no interim order or stay was in operation at the time the Allotment Letter was issued.”

27. In the light of the said, it is proposed to be argued that even the factual assertions made by the Tehsildar who is a functionary of the government has not been specifically denied and to that extent should be treated as admitted.
28. Shri Prashant Chandra, learned Senior Advocate appearing for respondent no.2 strenuously argues that the points as canvassed by the counsel for the petitioners merits rejection inasmuch as in the scheme of allotment, there was a reference that the allotment letter shall be issued after the possession is obtained and the possession was well with the respondent authority as narrated in the supplementary affidavit filed and specifically disclosed in Annexure – SCA1 which indicates the date of possession. He argues that it is the date of possession and not actual physical possession as claimed by counsel for the petitioners which was relevant as per the scheme. He submits that the Respondents always had paper possession and thus had rightly issued allotment letter. He further submits that the words used in the tender document is possession and not actual physical possession as is being argued on behalf of Petitioners. He

further argues that the petitioners have admittedly not paid 20% of the amount after the issuance of the allotment letter and thus, have failed to honour the conditions and thus, respondent no.2 was well within its right to cancel the allotment. It is further argued that it is clearly well settled that judicial review on contractual matters is very limited and is available only to the extent of there being arbitrariness, irrationality, unreasonableness, bias and malafides, and in the absence of any such allegation, it is not open for this Court to judicially review the order of cancellation as has been passed by respondent no.2. He further argues that the issue whether actual physical possession was taken or not cannot be raised in petition under Article 226 of the Constitution. He further draws my attention to various clauses specifically Clause G(10) of the scheme which states that in case of default, the allotment will be cancelled without any further notice. It is further argued that Clause H of the scheme provides that a maximum of 120 days extension will be provided to deposit the reservation money/allotment money subject to payment of interest @ 15% per annum on pro-rata basis. He further argues that the petitioners have defaulted in payment of the allotment money as indicated in the allotment letter. It is further stated that despite various explanation sought, the deposits were not made and he draws the reference to the market conditions as pleaded by the petitioners in his communications. He further states that the demarcation of the land and the construction of the approach road etc., are to be done by the authority when the allottee deposits the allotment money and thereafter process of demarcation is done and the physical possession is given to the allottee and development works are undertaken by the authority, and as the petitioners have failed to deposit the allotment money, there was no reason for carrying out the development work. He further argues that the petitioners have not come with clean hands and have failed to fulfil its part of the contractual obligation and are not entitled to equitable relief from this Court. He further argues that the petitioners having

failed to deposit the money after issuance of allotment letter are not entitled to Zero benefit policies as claimed and states that the money forefieted was wholly justified.

29. As regards the certificate issued by the Tehsildar, he argues that it is not the Tehsildar who is entitled to give any certificate with regard to possession. It is further argued that in terms of the scheme of allotment it was particularly stated in Clause A of the scheme that Section 4/17 has been done and the land acquisition is in process. It was also indicated in Clause F(7) that the size of plot may be increased and decreased. It was further stated in Clause J that the plot will be accepted "As is where is basis". It was further stated in Clause N that the possession of the allotted land would be entitled only after execution and registration of the lease deed which is dependant on payment of 30% of the premium amount and one year lease rent in advance. It is essential to refer to Para – 7 of the supplementary affidavit filed by the respondent authority which is to the following effect:

"7. In this background, had the Petitioner fulfilled its obligations and paid the allotment money in the timely manner, it would have obtained possession of entire allotted land except for such portions for which status quo order has been granted, as stated above. Having not fulfilled its obligation to pay the allotment money, the Petitioner cannot approach this Hon'ble Court for an equitable relief."

30. In the light of the said observation, Shri Prashant Chandra, learned Senior Advocate argues that the petition deserves to be dismissed.
31. It is essential to notice that when the petition was filed, an application was filed by one intervenor on 16.10.2024 seeking to intervene in the said proceedings. The claim of the intervenor was that in terms of a Memorandum of Understanding (MoU) entered on 07.12.2010, the companies namely Anova Infracon Private Limited, Prismatic Developers Private Limited, Indo Infracon Private Limited and Vipul Limited were the consortium members which has formed its Special Purpose Vehicle (SPV) for the purpose of applying for the

allotment of the residential plot and the name of the SPV created was Adore Infrasmith Private Limited, the petitioner herein.

32. It is further stated that in the year 2011 some dispute arose among the consortium members for which a petition was filed under Section 397-398 of the Companies Act alleging oppression and mismanagement in relation to affairs of Adore before the Company Law Board, Delhi bearing Company Petition No.41(N/D)/2012 where allegations were levelled of mismanagement and oppression.
33. It was also stated that during the pendency of the said company petition, applicant no.2 was introduced and his application was also allowed by National Company Law Tribunal, New Delhi. It was stated that in terms of the MoU entered into in between the parties on 19.07.2019, an agreement was reached to settle the ongoing dispute and in terms of the settlement, the company petition was disposed off on 31.10.2019 by the Tribunal. It is stated that in terms of the order passed by the Tribunal on 31.10.2019, an amount of Rs.3.5 Crores was paid by applicant no.2. It is stated that despite payment of certain money, the dispute continued and the shares which were agreed to be transferred were never transferred. It is further stated that the MoU entered into in between the parties was amended by two addendums namely agreement dated 16.01.2020 and agreement dated 25.01.2024 where the amount payable was enhanced. It is stated that substantial amount as agreed in the amended agreements has been paid. It was also stated that as the terms of the MoU were not being complied with, a legal notice was sent and an application was filed before the Tribunal seeking execution of the terms of MoU on 15.10.2024 contained in Annexure – 5. The prayers made in the said application are as under:

“(a) Pass an order directing the Respondents to execute the Share Purchase Agreement (SPA) as per the terms of the MOU/Decree;

Alternatively, this Hon'ble Tribunal may be pleased to draw up the Share Purchase Agreement (SPA) in accordance with the Memorandum of Understanding (MOU)/Decree, and have the same executed by the parties in the interest of justice;

(b) Pass an order directing the Respondents to take necessary steps to transfer the shares of Respondent No. 2 and Respondent No. 3 in favour of the Petitioner in terms of provisions under law and also to do all such acts as may be required to effectuate the same;

(c) If for any reason whatsoever, the MOU/Decree is not implemented or cannot be implemented, the proceedings in the CP No. 41(ND)/2012 be revived, and the Respondent(s) be directed to refund all amounts paid by the Petitioners along with interest from the date of such payment until realization;

(d) Pass any other order and/or direction that the Hon'ble Tribunal may deem fit in the interest of justice.”

34. In the light of the said, it is proposed to be argued that the applicant has a right to intervene. Some arguments were also raised with regard to pendency of writ petition filed by the petitioner at Allahabad, however, the said contention was given up by Shri Apoorva Tiwari, Advocate after the writ petition was withdrawn, thus, based upon the reliefs claimed for execution of the MoU before the Tribunal, it was claimed that the applicant should also be heard.
35. The said application filed by the intervenor was seriously opposed by the counsel for the petitioner by arguing that no rights have accrued to the said applicant in the MoU and the rights claimed by the applicant are yet to be adjudicated by the Company Law Tribunal. It was also pleaded that in the same relief, the applicant has prayed for refund of the money also and thus, beyond the claim of refund of money, no further rights accrue in favour of the applicant to participate in the present proceedings as the MOU already stands terminated due to alleged non payment. He further argues that even in terms of the initial MoU, it was the lead member alone who was authorized and entitled to enter into any agreement with respondent no.2 and thus, no such intervention should be allowed. It is further argued that shareholding of the MoU itself reveals that the applicant has shareholding of 0.019% and thus, in any case, he has no claim whatsoever. He, thus, argues that the applicant should not be permitted to intervene and should be relegated to seek his remedy of refund in accordance with law.

36. In the light of the factual arguments raised and recorded above, this Court is to decide the issues that arise in terms of the pleadings and in between the petitioner and respondent no.2 on one hand and the petitioner and the applicant intervenor on the other hand.
37. While dealing with the issues that arise in view of the pleadings in between the petitioner and respondent no.2, it is to be seen whether in terms of the reservation letter and the conditions of the tender which are relevant for adjudication.
38. In terms of the brochure as floated by respondent no.2, the entire Scheme was for construction of group housing on the lands to be allotted by respondent no.2 and the constructions were to be carried out by the allottees. The relevant conditions as specified in the brochures are contained in Annexure – 23. The salient features which are relevant in the present case are quoted herein below:

“A. DETAILS OF PROPERTY:

<i>Plot No./ Sector</i>	<i>Area in Sq.Mtrs. (Approx.)</i>	<i>Reserve Price (Rs. Per Sqm.)</i>	<i>Registration/ Earnest Money (Rs. in crores)</i>	<i>Processing Fee (Non- Refundable and Non- Adjustable)</i>	<i>Remarks</i>
<i>TS-1/ Sector-22A</i>	<i>400000</i>	<i>4500/-</i>	<i>10</i>	<i>10 lacs</i>	<i>Land acquired and in possession of YEA</i>
<i>TS-1/ Sector-22D</i>	<i>400000</i>	<i>4500/-</i>	<i>10</i>	<i>10 lacs</i>	<i>Section -4/17 done, land acquisition in progress.</i>
<i>TS-2/ Sector-22D</i>	<i>400000</i>	<i>4500/-</i>	<i>10</i>	<i>10 lacs</i>	<i>Section -4/17 done, land acquisition in progress.</i>
<i>TS-3/ Sector-22D</i>	<i>400000</i>	<i>4500/-</i>	<i>10</i>	<i>10 lacs</i>	<i>Section -4/17 done, land acquisition in progress.</i>
<i>TS-4/ Sector-22D</i>	<i>400000</i>	<i>4500/-</i>	<i>10</i>	<i>10 lacs</i>	<i>Section -4/17 done, land acquisition in progress.</i>
<i>TS-5/</i>	<i>400000</i>	<i>4500/-</i>	<i>10</i>	<i>10 lacs</i>	<i>Section -4/17</i>

Sector-22D					done, land acquisition in progress.
TS-6/ Sector-22D	400000	4500/-	10	10 lacs	Section -4/17 done, land acquisition in progress.
TS-7/ Sector-22D	400000	4500/-	10	10 lacs	Section -4/17 done, land acquisition in progress.

The allotment is subject to their land use changes for residential township purposes by the State Government.

B. NORMS OF DEVELOPMENT

A. The land use breakup for the total residential township plot shall be as follows:

PERMISSIBLE LAND USAGE	
Institutional & Facilities	Minimum 05%
Roads, Parks & Open spaces	Minimum 35%
Commercial	05% Maximum
Residential (Plotted and Flatted)	55% Maximum
PERMISSIBLE FAR (Maximum)	
Commercial	2.0
Residential 1. Plotted 2. Flatted	As proposed for individual plot size according to Building Bylaws 3.0
Institutional	As per bye-laws.
PERMISSIBLE DENSITY	
Max. Density	Max. Permissible Density shall be 1650 PPHa for the ‘Residential Area’ only.

B. FAR, Ground Coverage and Density shall be as per bye-laws of the Authority.

G. MODES OF PAYMENT AND PAYMENT PLAN

1. The successful bidder shall be issued an allotment letter for the whole area.
2. All payment should be made through a demand draft/pay order drawn in favour of "YAMUNA EXPRESSWAY INDUSTRIAL DEVELOPMENT AUTHORITY" and payable at any scheduled bank located in New Delhi/NOIDA/Greater NOIDA. The applicant/ allottee should clearly indicate his name and details of plot applied for/allotted on the reverse of the demand draft/ pay order.

3. *The successful bidder shall be required to pay 10% of the total premium of the plot as reservation money after adjusting registration/ earnest money within 30 days from the date of issuance of Reservation Letter; otherwise the claim for allotment will be treated as deemed cancelled. No correspondence will be entertained in this regard. After confirming the receipt of 10% amount as mentioned above and after the land has been acquired and possession taken by YEA, the formal Allotment Letter will be issued.*
4. *The allottee on issue of formal Allotment Letter shall then be required to pay 20% of the total premium of the plot allotted as allotment money within 60 days from the date of issuance of such Allotment Letter.*
5. *The allottee shall also deposit due stamp duty, for lease deed of the acquired and allotted land, in treasury of District Gautam Budh Nagar and should produce a certificate to that effect in YEA within 90 days. from the issue of formal Allotment.*
6. *The balance 70% premium of the plot along with 12% interest will be paid in 16 half yearly installments along with Interest.*
7. *In case of default in depositing the installments or any payment, interest @ 15% compounded half yearly shall be leviable for defaulted period on the defaulted amount.*
8. *Premium referred to in this document means total amount payable to the YEA for the allotted and/ or reserved land.*
9. *All payments should be remitted by due date. In case the due date is a bank holiday then the allottee should ensure remittance on the previous working day.*
10. *In case of default, the allotment and/ or reserved offer will be considered as cancelled without any further notice and the amount equivalent to registration money shall be forfeited. No interest will be paid on such amounts. However, this is subject to clause 'H' of this document.*
11. *The payment made by the allottee will first be adjusted towards the interest due, if any, and thereafter the balance will be adjusted towards the premium due and the lease rent payable.*
12. *The Lease Rent prevalent at the time of execution of lease deed shall be payable.*
13. *In case of allotment of any additional land, the payment of the premium of the additional land shall be made in lump sum within 30 days from the date of communication of the said additional land.*

H. EXTENSION OF TIME

1. *Normally extension for depositing the reservation money, and allotment money shall not be allowed. However, on receipt of request from the allottee in writing and on being satisfied with the reasons mentioned, the YEA may grant a maximum of 120 days extension to deposit the reservation money/ allotment money, subject to the payment of interest @ 15% (12% normal interest +3% penal interest) per annum on pro-rata basis. Thereafter, ordinarily no extension of time will be granted and the allotment will be cancelled along with the forfeiture of the earnest money.*

2. In exceptional circumstances, the time for the payment of balance due amount may be extended by the YEA. However, in such cases of time extension, Interest @ 15% per annum compounded half yearly shall be charged on the outstanding amount for such extended period.

3. For the purpose of arriving at the due date, the date of issuance of allotment letter will be reckoned as the date of allotment.”

39. It is essential to notice Clause J, which is as under:

“J. AS IS WHERE IS BASIS/LEASE PERIOD

The plot will be accepted by the allottee on an “As is where is basis” on a lease for a period of 90 years starting from the due date of execution of the lease deed.”

40. As the lis involves interpretation of contract in view of conflicting arguments that word possession written would mean physical possession free from encumbrances or paper possession /symbolic possession as argued by the respondent it is essential to notice precedents on construction /interpretation of the tender documents.

41. Supreme Court in case of **Transmission Corporation of Andhra Pradesh & Ors. vs. GMR Vemagiri Power Generation Limited and Anr.; (2018) 3 SCC 716** held as under:

“19. In Khardah Co. Ltd. v. Raymon & Co. (India) (P) Ltd. [Khardah Co. Ltd. v. Raymon & Co. (India) (P) Ltd., (1963) 3 SCR 183 : AIR 1962 SC 1810] , on interpretation of a contract it was observed as follows : (AIR p. 1820, para 30)

“30. ... We agree that when a contract has been reduced to writing we must look only to that writing for ascertaining the terms of the agreement between the parties but it does not follow from this that it is only what is set out expressly and in so many words in the document that can constitute a term of the contract between the parties. If on a reading of the document as a whole, it can fairly be deduced from the words actually used therein that the parties had agreed on a particular term, there is nothing in law which prevents them from setting up that term. The terms of a contract can be express or implied from what has been expressed. It is in the ultimate analysis a question of construction of the contract. And again it is well established that in construing a contract it would be legitimate to take into account surrounding circumstances.”

21. In the event of any ambiguity arising, the terms of the contract will have to be interpreted by taking into consideration all surrounding facts and circumstances, including correspondence exchanged, to arrive at the real intendment of the parties, and not what one of the parties may contend subsequently to have been the intendment or to say as included afterwards, as observed in Bank of India v. K. Mohandas [Bank of India v. K. Mohandas, (2009) 5 SCC 313 : (2009) 2 SCC (Civ) 524 : (2009) 2 SCC (L&S) 32] : (SCC p. 328, para 28)

“28. The true construction of a contract must depend upon the import of the words used and not upon what the parties choose to say afterwards.

Nor does subsequent conduct of the parties in the performance of the contract affect the true effect of the clear and unambiguous words used in the contract. The intention of the parties must be ascertained from the language they have used, considered in the light of the surrounding circumstances and the object of the contract. The nature and purpose of the contract is an important guide in ascertaining the intention of the parties.”

24. The present was a contract for purchase of power generated from fuel which was reasonably priced so as to keep in check the cost of power generated from the same, in the interest of the consumer. Undoubtedly, cost of fuel was a primary consideration in the mind of the appellant. The contextual background in which the PPA originally came to be made, the subsequent amendments, the understanding of the respondent of the agreement as reflected from its own communications and pleadings make it extremely relevant that a contextual interpretation be given to the question whether RLNG was ever intended to be included within the term “natural gas”, as observed in *Bihar SEB v. Green Rubber Industries* [*Bihar SEB v. Green Rubber Industries*, (1990) 1 SCC 731] : (SCC p. 740, para 23)

“23. ... Every contract is to be considered with reference to its object and the whole of its terms and accordingly the whole context must be considered in endeavouring to collect the intention of the parties, even though the immediate object of enquiry is the meaning of an isolated clause. ...”

26. A commercial document cannot be interpreted in a manner to arrive at a complete variance with what may originally have been the intendment of the parties. Such a situation can only be contemplated when the implied term can be considered necessary to lend efficacy to the terms of the contract. If the contract is capable of interpretation on its plain meaning with regard to the true intention of the parties it will not be prudent to read implied terms on the understanding of a party, or by the court, with regard to business efficacy as observed in *Satya Jain v. Anis Ahmed Rushdie* [*Satya Jain v. Anis Ahmed Rushdie*, (2013) 8 SCC 131 : (2013) 3 SCC (Civ) 738] , as follows : (SCC pp. 143-44, paras 33-35)

*“33. The principle of business efficacy is normally invoked to read a term in an agreement or contract so as to achieve the result or the consequence intended by the parties acting as prudent businessmen. Business efficacy means the power to produce intended results. The classic test of business efficacy was proposed by Bowen, L.J. in *Moorcock* [*Moorcock*, (1889) LR 14 PD 64 (CA)] . This test requires that a term can only be implied if it is necessary to give business efficacy to the contract to avoid such a failure of consideration that the parties cannot as reasonable businessmen have intended. But only the most limited term should then be implied—the bare minimum to achieve this goal. If the contract makes business sense without the term, the courts will not imply the same. The following passage from the opinion of Bowen, L.J. in the *Moorcock* [*Moorcock*, (1889) LR 14 PD 64 (CA)] sums up the position : (PD p. 68)*

‘... In business transactions such as this, what the law desires to effect by the implication is to give such business efficacy to the transaction as must have been intended at all events by both parties who are businessmen; not to impose on one side all the perils of the transaction, or to emancipate one side from all the chances of failure, but to make each party promise in law as much, at all events, as it must have been in the contemplation of both parties that he should be responsible for in respect of those

perils or chances.’

34. *Though in an entirely different context, this Court in United India Insurance Co. Ltd. v. Manubhai Dharmasinhbhai Gajera [United India Insurance Co. Ltd. v. Manubhai Dharmasinhbhai Gajera, (2008) 10 SCC 404] had considered the circumstances when reading an unexpressed term in an agreement would be justified on the basis that such a term was always and obviously intended by and between the parties thereto. Certain observations in this regard expressed by courts in some foreign jurisdictions were noticed by this Court in para 51 of the Report. As the same may have application to the present case it would be useful to notice the said observations : (SCC p. 434)*

‘51. ... “... ‘Prima facie that which in any contract is left to be implied and need not be expressed is something so obvious that it goes without saying; so that, if, while the parties were making their bargain, an officious bystander, were to suggest some express provision for it in their agreement, they would testily suppress him with a common “Oh, of course!”’ (Shirlaw v. Southern Foundries (1926) Ltd. [Shirlaw v. Southern Foundries (1926) Ltd., (1939) 2 KB 206 (CA)] , KB p. 227.)

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‘... An unexpressed term can be implied if and only if the court finds that the parties must have intended that term to form part of their contract : it is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them : it must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, although tacit, formed part of the contract which the parties made for themselves.’ (Trollope and Colls Ltd. v. North West Metropolitan Regional Hospital Board [Trollope and Colls Ltd. v. North West Metropolitan Regional Hospital Board, (1973) 1 WLR 601 : (1973) 2 All ER 260 (HL)] , All ER p. 268a-b.)” [Ed. : As observed in Carna Foods Ltd. v. Eagle Star Insurance Co. (Ireland) Ltd., (1997) 2 IR 193.] ’

(emphasis in original)

35. *The business efficacy test, therefore, should be applied only in cases where the term that is sought to be read as implied is such which could have been clearly intended by the parties at the time of making of the agreement. ... ”*

42. Supreme Court took a similar view in the case of **Mangala Waman Karandikar v. Prakash Damodar Ranade; (2021) 6 SCC 139** which is to the following effect:

“10. Having heard both the parties at some length, at the outset before we analyse this case, we need to observe some principles on contractual interpretation. Unlike a statutory interpretation, which is even more difficult due to assimilation of individual intention of lawmakers, contractual interpretation depends on the intentions expressed by the parties and dredging out the true meaning is an “iterative process” for the courts. In any case, the first tool for interpreting, whether it be a law or contract is to read the same.

11. It is usual that businessmen often do not sit over nitty-gritty in a

contract. In a document the language used by the parties may have more than one meaning. It is ultimately the responsibility of the courts to decipher the meaning of the words used in a contract, having regard to a meaning reasonable in the line of trade as understood by parties. [Investors Compensation Scheme v. West Bromwich Building Society, (1998) 1 WLR 896 (HL)] It may not be out of context to state that the development of rules of contractual interpretation has been gradual and has taken place over a century. Without going into extensive study of precedents, in short, we may only state that the path and development of law of interpretation has been a progress from a stiff formulism to a strict rationalism. [Wigmore, J.H., 'Wigmore on Evidence, Vol. 4', (1915) 25 The Yale Law Journal 163.] “

43. Supreme Court once again in case of **Maharashtra State Electricity Distribution Co. Ltd. v. Ratnagiri Gas & Power (P) Ltd.; (2024) 1 SCC 333** held as under:

“36. A commercial document cannot be interpreted in a manner that is at odds with the original purpose and intendment of the parties to the document. A deviation from the plain terms of the contract is warranted only when it serves business efficacy better. The appellant's arguments would entail reading in implied terms contrary to the contractual provisions which are otherwise clear. Such a reading of implied conditions is permissible only in a narrow set of circumstances. This Court in Transmission Corpn. of A.P. Ltd. v. GMR Vemagiri Power Generation Ltd. [Transmission Corpn. of A.P. Ltd. v. GMR Vemagiri Power Generation Ltd., (2018) 3 SCC 716 at p. 729, para 26 : (2018) 2 SCC (Civ) 624] held as follows : (SCC p. 729, para 26)

“26. A commercial document cannot be interpreted in a manner to arrive at a complete variance with what may originally have been the intendment of the parties. Such a situation can only be contemplated when the implied term can be considered necessary to lend efficacy to the terms of the contract. If the contract is capable of interpretation of its plain meaning with regard to the true intention of the parties it will not be prudent to read implied terms on the understanding of a party, or by the court, with regard to business efficacy.”

37. In the present context, bearing in mind the background of the establishment of the first respondent, and the shortfall of domestic gas for reasons beyond the control of the first respondent, such a deviation from the plain terms is not merited and militates against business efficacy as it has a detrimental impact on the viability of the first respondent.”

44. In the light of law as explained with regards to construction of contracts as noted above it is essential to test the arguments of the parties in relation to the contract.
45. In terms of the said brochure which is a promise, there was acceptance on part of the petitioners when they applied for allotment of the plot in question which resulted in the issuance of a reservation

letter dated 20.06.2011 contained in Annexure – 7. There is no dispute in between the parties that 10% of the amount as mentioned in the reservation letter has already been paid.

46. The issue that arises is whether respondent no.2 had the property available with them for allotment in terms of Clause G(3). The genesis of the issue in the present case is the said issue as to whether they had the possession. The actual possession admittedly in terms of the supplementary affidavit was not available with the respondent authority as has been admitted by them in Para 5 of the supplementary affidavit and even on the date of filing of the said affidavit, the respondent no.2 did not have the possession of the land to the extent of 20.74 % of the total area of the land proposed to be allotted to the petitioners. It is also admitted in the same supplementary affidavit that 20.74 % of the land or 53,320 sq.m. of the land is currently subject matter of allotment before the Hon'ble Court but no stay order has been granted and 30,880 sq.m. of the land which works out to be approximately 12 % is currently affected by the stay order of the Hon'ble Court.
47. In the light of the said admission coupled with Annexure – SCA1 to the supplementary affidavit, it is inconceivable as to how the respondent no.2 was in possession of the property prior to the issuance of the allotment letter. It is inconceivable that the possession is not transferred and the demand for the balance money is made which is on the face of it contrary to Clause G(3). It is normally expected that a person who has to purchase the property for further construction and development and is paying the amount as agreed in between the parties, would want a clear title and clear possession of the properties failing which there is always a threat of the builder facing prosecution and also contempt at the instance of the allottees/the owners/the farmers which has happened in various cases.
48. In any case, in terms of the brochure and the agreement, the intention

of the parties was development of the land into group housing and its further allotment to various home owners for the holistic development of the area. In the absence of there being a clear title and possession in favour of respondent no.2, free from all encumbrances, it is inconceivable as to how the builder could have created any third party right over the property in question. The submission of Shri Prashant Chandra to that extent that the word “possession’ referred to in the brochure of the reservation letter is the “possession simplicitor” and cannot be treated as actual physical possession merits rejection for the sole reason that the property intended to be purchased was for the commercial benefit and was for creating third party rights in future after development which was not possible in the event a cloud was cast upon the title or the possession. This is easily discernable from the Brochure issued by the Opposite Part No 2 and the reservation letter.

49. It is also common knowledge that owing to the agitation of the farmers as also admitted by respondent no.2, various interventions happened before the Hon’ble Court which itself is accepted by respondent no.2 to the extent that 30% of the land is subject matter of litigation - any third party right created on the said land which is subject to litigation would be asking the doctrine of *lis pendens* besides the other prosecutions that may be faced by any person who creates any third party rights, in the present case the builder.
50. In the light of the said, the contention of learned counsel for respondent no.2 merits rejection.
51. Once it has been concluded that on the basis of pleadings and the admission, respondent no.2 did not have the actual physical possession free from all encumbrances of the property proposed to be allotted, the Clause G(3) of the brochure would get triggered and no allotment letter could have been issued by respondent no.2, as was done. In short, the issuance of the allotment letter and the expectation of the respondent no.2 that the amounts indicated in the

allotment letter shall be paid was contrary to the mandate of Section 54 of the Indian Contract Act. The demand of money to the extent of 20% after the payment of 10% reservation money is simply asking the petitioner to fulfil the reciprocal promise without the respondent no.2 fulfilling its part of promise. It is essential to notice to judgment of the Supreme Court in the case of ***National Insurance Company Limited vs. Seema Malhotra & Ors.; (2001) 3 SCC 151***, wherein in Para 15, the following was held:

“15. Sections 51, 52 and 54 of the Indian Contract Act can profitably be referred to for the purpose of deciding the point. They are subsumed under the sub-title “Performance of reciprocal promises” in the said Act. Section 51 deals with a contract concerning reciprocal promises to be simultaneously performed and in such a contract the promisee is absolved from performing his promise unless the promisor is ready or willing to perform his part of the promise. Section 52 says that where the order in which reciprocal promises are to be performed has not been expressly provided in the contract such promise shall be performed in that order which the nature of the transaction warrants it. Illustration (b) given to Section 52 highlights the utility of the provision. That illustration is as follows: A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of transaction requires that A should have security before he delivers his stock.”

52. There is another aspect to the matter wherein the respondent no.6 which is a State within the meaning of Art. 12 of the Constitution is expected to act in a reasonable and fair manner even in contractual matters. It was the duty of the respondent no.2 to act in a manner so that the aims and object of contract could be acted upon by the parties. In the present case, the respondent no.2 despite being State, insisted on issuance of the allotment letter without having possession of the properties proposed to be allotted and if the contention of respondent no.2 is to be accepted, it would have lead to multiple litigations.
53. It is strange that, on the one hand, the respondent no.2 accepts that it did not have the actual physical possession of the property free from encumbrances at the time of issuance of allotment letter and it still

does not have the actual possession of the entire land, on the other hand, the respondent no.2 is insisting on fulfilment of reciprocal promise by the petitioners. Thus, I have no hesitation in holding that the petitioners could not have been issued an allotment letter without respondent no.2 having possession of the land with them which was essential for achieving the objective of the entire scheme, in terms of the intention as can be gleaned from the terms of the agreement and the brochure. Once they could not have issued an allotment letter, the cancellation on account of non-payment of the money indicated in the allotment letter was wholly unjustified.

54. The contention of Shri J N Mathur with regards to the benefits of Zero policy deserves to be rejected as the conditions for grant of said benefits never arose in the present case.
55. Now coming to the relief that can be granted in the case. It is admitted that there was an interim order operating in the case as such the property is available for allotment and as the petitioners have paid about Rs.23 crores which is lying with the respondents, to balance the equities, this Court is of the view that the petitioner should be directed to pay the amount in terms of the reservation letter in instalments as fixed in the allotment letter, and over and above the said amount, the petitioner should pay simple interest @ 12% on the delay in payment of the principal amount i.e. from the date of issuance of the allotment letter up to the actual payment/realisation. The interest at the rate of 12% shall be paid for the period 20.06.2011 (the date when the allotment letter was issued) up to 18.12.2024.
56. These aspects as discussed above have not been considered in the revisional order at all. The revisional order noticed the argument of the petitioners that the respondent never had the possession of the property, however, it did not deal with the same at all and thus, the revisional order to that extent cannot be justified in view of the directions proposed to be given and the issue that is being decided by

this Court.

57. Thus, the revisional order dated 20.06.2024 deserves to be quashed and is accordingly quashed. The cancellation order dated 01.02.2012 is also quashed with the following directions:

(i) On payment of 20% of the amount, the respondent no.2 will execute and register lease deed in favour of the petitioners within one month of the deposit and handover the possession of the land.

(ii) The respondent no.2 shall issue a fresh allotment order to the petitioner within two weeks from today indicating the amount of 20% on the amount as indicated in the reservation letter in the instalments as were fixed in the earlier allotment letter dated 20.06.2011.

(iii) The petitioner shall pay the said amount of 20% within a period of 60 days from the date of issuance of the allotment order; the balance amount of premium and the interest shall be paid by the petitioner to the respondent no.2 in terms of the newly issued allotment order.

(iv) The award of interest by this Court @ 12%, as recorded above, shall be divided into instalments to be paid along with 70 % balance amount to be paid by the petitioners in terms of the newly issued allotment order.

(v) The Petitioners would also be liable to pay any additional compensation paid /payable to the land owners in terms of directions given by any court of Law.

(vi) No other charges in terms of the allotment letter/brochure shall be levied on the Petitioner.

58. Present petition stands **allowed** in above terms.

59. As regards the claim of the intervenor, the same is disposed off by observing that as admittedly the applicant did not make payment of the entire consideration as pleaded by the petitioner in paragraphs

10 of the reply to intervention application have pleaded that the MOUs and Addendums were terminated and sent a cheque of refund of the amounts received, to which there is no dispute by the intervenor as no affidavit in rebuttal has been filed, thus, the intervenor would be entitled to recover any amount paid to the petitioners in accordance with law. No relief can be granted to the intervenor as the lis in between the intervenor and the petitioners is not pending before this Court.

Order Date:- 18.12.2024

VNP/-
nishant

[Pankaj Bhatia, J.]