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Court No. - 42

Case :- WRIT - C No. - 8483 of 2023
Petitioner :- M/S Esthetic Buildtech Pvt. Ltd. and 2 others
Respondent :- State Of U.P. and 5 others
Counsel for Petitioner :- Abhishek, Himadari Batra,Sr. Advocate
Counsel for Respondent :- Ankur Agarwal,C.S.C.,Kaushalendra Nath Singh,Manish Trivedi

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

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1. Heard Ms. Himadari Batra, learned counsel for the petitioners, learned Standing Counsel for the State respondents and Sri Manish Goyal, learned Senior Advocate assisted by Sri Kaushlendra Nath Singh, learned counsel for New Okhla Industrial Development Authority.

FACTUAL MATRIX OF THE CASE

2. New Okhla Industrial Development Authority¹ floated a Scheme on 03.03.2011 for developing a commercial/group housing in the proposed Sports City in Sectors 78, 79 & 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 80 hec. 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 its 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 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.

3. A group of companies in a consortium headed by one M/s Logix Infradevelopers Pvt. Ltd participated in the bidding process for the Sports City SC-01/150 in Sector-150, Noida. It was declared as the successful bidder and was allotted the project for the development of Sports City (SC-01) in Sector 150 on a plot area of 8,00,000 square meters on 04.05.2011. The NOIDA

1. NOIDA Authority

2. FAR

Authority specifically mentioned that out of this 8,00,000 square meters land, 6,67,800 square meters land was handed over to the consortium and the remaining 1,32,200 square meters land was to be acquired and handed over later on. The consortium members formed a Special Purpose Company³ by the name of M/s Logix Infradevelopers Pvt. Ltd, which was also a lead member of the Consortium.

4. M/s Logix Infra Developers Pvt. Ltd, lead member of the consortium, wrote to the NOIDA Authority on 28.12.2011 seeking permission for the sub-division of plot in Sector 150 into two parts in terms of the brochure of the scheme. The request was accepted by the Noida Authority on 17.01.2012 and the plot was divided into two parts. One plot being SC-1/A admeasuring 2,69,430 square meters was allotted to M/s Logix Builders & Promoters Pvt. Ltd and the other Plot No.SC-1/B admeasuring 2,78,761.8431 square meters was retained by M/s Logix Infra Developers Pvt. Ltd.

5. The lessee M/s Logix Infra Developers Pvt. Ltd again requested the NOIDA Authority to further sub-divide the plot allotted to them to its 100% subsidiaries. The request was accepted and the NOIDA Authority was pleased to grant permission to further sub-divide the allotted plot in the Sports City Project in Sector-150, in the following manner in view of the terms and conditions of brochure of the scheme and lease deed. Payment schedule and the other terms of allotment of and lease deed remained the same. The division of the plots was as follows:-

3. SPC

“(i). **Plot No. SC-01/A Sector-150 (M/s Logix Builders & Promoters Pvt. Ltd.)**

a) 5388.6 Sqm. for commercial.

b) 57,664.30 Sqm. for Residential, Housing sporting facilities & Sports facilities.

(Sports facilities to be developed-Housing Facilities - Milk Booth, 1 Police Chowky, Golf Course Internal Roads & Park, Circulation Space, Carpeting, Utilities etc.)

(ii) **Plat No. SC-1/A-1-M/s Assertive Infrastructure Pvt. Ltd.-93072 Sqm.** (for residential, housing sporting facilities & sports facilities.

(Sports Facilities to be developed -Swimming Pool/Center, Indoor multipurpose Hall, including Gymnastic, Table Tennis, Squash, Basket Ball and Volley Ball Internal Roads & Park, Circulation Space, Carpeting, Utilities etc.)

(iii). **Plot No. SC-1/A-2- M/s Neo Infrastructure Pvt. Ltd. 28,326.30 Sqm.** (for residential, housing sporting facilities & sports facilities.

(Sports Facilities to be developed-Pro shops/food & Beverages, Indoor Multipurpose Hall, including Badminton and rock climbing – Internal Roads & Park, circulation Space, Carpeting, Utilities etc.)

(iv) **Plot No.SC-1/A-3 – M/s Logix Height Pvt. Ltd. - 28326.30 Sqm.** (for residential housing sporting facilities & sports facilities.

(Sports facilities to be developed -Multipurpose Play Fields, Golf Course – Internal Roads & Park. Circulation Space, Carpeting, Utilities etc.)

(v) **Plot No.SC-1/A-4 – M/s Esthetic Builder Pvt. Ltd. -56652.50 Sqm.** (for residential, housing sporting facilities & sports facilities/

(Sports Facilities to be developed- Tennis Center, Nursery School, Golf Course Internal Roads & Park, Circulation Spaces, Carpeting Utilities etc.)”

6. One of the condition was that the share holding of the original allottee/lessee shall be maintained as minimum 90% in the subsidiary companies and the Sports City project in Sector-150 shall be developed in accordance with the terms and conditions of allotment and lease deed. The NOIDA Authority gave a fresh calculation of the details along with the details of the instalments and due date.

7. The details of the lease deed of M/S Esthetic Buildtech Pvt. Ltd. are as follows:-

“Calculation details of Commercial Plot No.SC-01A/4, Sector-150, NOIDA

1.	Plot No./Sector	:	SC-01A/4, Sector-150
2.	Area of Plot in sqm	:	56652.5 sqm
3.	Tender/bid price Per Sqm.	:	Rs.12050
4.	Total Premium of plot	:	Rs.601001015
5.	Earnest Money Deposited alongwith tender form (proportionate)	:	Rs.7418281
6.	Reservation Money equivalent to 5% of the total premium	:	Rs. 34133132
7.	Reservation Money deposited (after adjustment of earnest money deposited along with tender form)	:	Rs. 26714851
8.	Allotment money equivalent to 5% of the premium the plot	:	Rs.34133132
9.	Payment mode	:	Instalment basis.
10.	Balance 90% premium	:	Rs.614396363
11.	One year lease rent @ 1/- per sqm. From 1 st to 3 rd year.	:	Rs.56653
12.	One year lease rent @ 1.0% of total premium (from 4 th to 10 th year)-thereafter the same may be increased as per terms of scheme.	:	Rs.6826627
13.	Legal documentation charges	:	Rs.50
14.	Stamp duty @ 5% as applicable as on date (the same may be got verified from Sub-Registrar, Sector-33, Noida)	:	Rs.37887800

Details of each instalment and due date

Instalment No.	Due date	Principal amount	Interest @ 11%	Total
Moratorium interest for 1 st half yearly	04-11-2011		33791800	33791800
Moratorium interest for 2 nd half yearly	04-05-2012		33791800	33791800
Moratorium interest for 3 rd half yearly	04-11-2012		33791800	33791800
Moratorium interest for 4 th half yearly	04-05-2013		33791800	33791800
1 st	04-11-2013	38399773	33791800	72191573
2 nd	04-05-2014	38399773	31679813	70079586
3 rd	04-11-2014	38399773	39567826	67967599

4 th	04-05-2015	38399773	27455838	65855611
5 th	04-11-2015	38399773	25343851	63743624
6 th	04-05-2016	38399773	23231863	61631636
7 th	04-11-2015	38399773	21119876	59519649
8 th	04-05-2017	38399773	19007888	57407661
9 th	04-11-2017	38399773	16895901	55295674
10 th	04-05-2018	38399773	14783913	53183686
11 th	04-11-2018	38399773	12671926	51071699
12 th	04-05-2019	38399773	10559938	48959711
13 th	04-11-2019	38399773	8447951	86847724
14 th	04-05-2020	38399773	6335963	44735736
15 th	04-11-2020	38399773	4223976	42623749
16 th	04-05-2021	38399773	2111988	40511761

Identical sub-leases were executed with other allottees as well.

8. On the basis of the permission of respondent no.2, another Sub-Lease deed dated 15.04.2013 was executed between Noida Authority the original lessor, the lessee Logix Builders & Promoters Pvt. Ltd and the petitioner herein, M/s Esthetic Buildtech Pvt. Ltd. for plot no.SC-1/A-4, Sector 150 for residential, housing sporting facilities and sports facilities. After execution of sub-lease deed dated 15.04.2013, the petitioner got the possession of the plot.

9. It is claimed that after getting the allotment of the plot in its favour the petitioner launched its project in the name and style of 'Sethi Venice', which is a project of 3 & 4 BHK Homes with golf course and latest state of art amenities and facilities. The project of the petitioner was duly registered with RERA.

10. The petitioner, thereafter, took financial assistance from ICICI Bank of Rs.55 lacs. The permissible FAR of the property so leased to the petitioner was 1.5 and the project had a development potential of 90,000 square meters. Respondent no.2, Noida Authority offered increased FAR and to avail the benefit of the increased FAR, the petitioner approached ICICI Prudential Venture Capital Fund for the purposes of Investment to avail the benefit of increased FAR & for the general purposes of the company. The ICICI Prudential Venture Capital Fund agreed to invest an amount of Rs.57,49,89,500/- by way of subscription to the debentures of the company. The petitioner entered into a debenture subscription cum purchase agreement dated 06.02.2016 with ICICI Prudential Venture Capital Fund.

11. It is claimed that the petitioner no.1 (which is a company) had applied for the sanction of building plan, which was duly approved & revised in 2016. The sanctioned plan had 50% green area and in the remaining plot, the petitioner company was allowed to build 13 towers (ground plus 26 floors). This plan was valid for a period of five years.

12. The petitioner company approached the respondent development authority to consider their prayer for the grant of Zero Period from 04.05.2011 to 07.08.2015 on the ground that petitioners got the portion of additional land in lieu of surrendered portion of land in the year 2015, and therefore, the petitioner company is not liable to pay interest for a period between 04.05.2011 to 07.08.2015.

13. Since no affirmative response was received from the development authority for the grant of Zero Period, the petitioner company filed Civil Misc. Writ Petition (C) No.4999 of 2020 (M/s Esthetic Buildtech Pvt. Ltd v. State of U.P. & others) and the matter is still pending.

14. The building plans approved by the authority on 31.03.2016 were valid for a period of five years and the same had expired on 31.03.2021. Thereafter, the petitioner company had approached the respondent authority for revision and re-validation of the building plan.

15. The development authority vide letter dated 11.02.2022 informed that the application of the petitioner for sub-division of the plot cannot be considered because of the resolution of the 201st Board Meeting of Noida held on 18.01.2021, in respect of sports city project in Sectors 78, 79, 101, 150 & 152. It was informed that due to non-development of sports facility, the Board had taken a decision to hold back any decision in respect of Building Plans, Sub-Division, correction/revalidation/review renewal of the maps & occupancy certificate till the next meeting. Thereafter, vide subsequent decision of the Board, the matter has been referred to the State Government for a decision on the above aspect.

16. It is claimed by the petitioner company that the issuance of revised/revalidated building maps only would allow the petitioners to construct and develop the project and resultantly, the homebuyers, who have booked their Units in the Project, could get the possession of their respective Units. Therefore, due to

inaction of NOIDA Authority, several homebuyers in the project are suffering delayed possession, paying hefty rent and EMI for their Units.

17. Aggrieved by the inaction of Noida Authority, the petitioner company has moved the instant Writ Petition with the following prayer:-

“(a) Issue a writ, order or direction in the nature of mandamus directing the respondent authority to decide the application of the petitioner dated 23.02.2023 & to approve the sanction/revision/revalidation of building plans and also to provide such other approvals/ permissions/ clarifications as may be required to enable the petitioner to commence construction in the subject plot from time to time under law for the construction and development of the projects.

(b) Issue a writ, order or direction in the nature of mandamus directing respondent no.4, respondent no.5 and respondent no.6 from taking any coercive steps against them till the time the development authority approves and grants the sanction/revision/revalidation of building plans.

(c) Issue a writ, order or direction in the nature of mandamus directing the respondents to maintain status quo viz enforcement of debt by respondent no.4, respondent no.5 and respondent no.6, grant a prohibitory injunction against/restraining them from continuing proceedings before any Court/Authority.”

ARGUMENTS ON BEHALF OF THE PETITIONER

18. Ms. Himadri Batra, learned counsel for the petitioner company submitted that the decision taken by the respondent authority in its Board Meeting is illegal, arbitrary and discriminatory. Further, respondent authority has defaulted in its obligations under the brochure and sub-lease deed in putting the building plan approval application of the petitioner on hold.

19. She further submitted that the inaction on the part of the respondent authority in not granting approval of building plans and other approvals in respect of the sports city plots in Noida and holding it back for indefinite period has caused and continues to cause grave prejudice and monetary loss to the petitioner.

20. Learned counsel for the petitioner company asserted that the Real Estate Sector had suffered a huge set back in addition to its incremental launches and slow sales, which has further escalated the problem with the result the bank could not be repaid back. Due to various factors the market had taken a downtrend and the project was stalled and the petitioner was unable to pay the Financial Creditor, hence it sought for sub-division of the plot.

21. Learned counsel submitted that the main aim of the petitioner company is to arrange funds so that the project can be completed and the dues of the authority and the investors and lenders can be settled and once the project has new cash flow the buyers will again have trust in the petitioner and will come forth with their investment in the project.

22. She submitted that the petitioner company to keep afloat and complete the project and also to pay the dues of the Noida Authority approached Birla Estates Pvt. Limited, which had agreed for the entire acquisition and development of the petitioner's plot and has also agreed to pay all the pending dues of Noida, which shall include lease premium, lease rent, including interest, penal interest & time extension charges, & if re-schedulement is applied for the cost associated with the same, shall be borne by Birla Estates Pvt. Ltd and as per the term sheet,

Birla Estates Pvt. Ltd agreed to infuse around 349 crores against the development rights. The petitioner vide letter dated 17.12.2022 had again approached the authority for revision and revalidation of the building maps and had even deposited a challan with the Noida Authority on 17.12.2022.

23. The decision on the building plan approvals and other approvals with regard to sports city plots in Noida have been put on hold on account of report submitted by the Comptroller and Auditor General of India⁴ highlighting the deficiencies in the sports city scheme. She, therefore, submitted that assuming that the CAG Report has highlighted deficiencies in the sports city scheme as envisaged by respondent authority then in that event, the officers who have conceptualized the sports scheme should be held accountable and appropriate actions should be taken in accordance with law against such officers.

24. She next submitted that the bonafide third party purchasers, end users and customers, who have acquired plots for valuable consideration cannot be made to suffer for the alleged fault or mistakes of the officers of the respondent authority.

25. The learned counsel for the petitioner further submitted that the Noida Authority had vide order dated 03.07.2020 revalidated the plans of other similarly situated people like M/s Logix Infra Developers Pvt. Ltd. and few others. Hence, after revalidating plan of few of the allottees it is not open to the Noida Authority to refuse revalidation of the plan of the petitioner.

4. CAG

26. She submitted that it is not open for the Noida Authority to pick and choose and act arbitrarily by revalidating the plans of similarly situated persons and at the same time refuse to revalidate the plan of the petitioner.

27. The petitioner had once again, on 23.02.2023, moved an application to the respondent authority for the revision and revalidation of the building plans and have also intimated the Noida Authority about the investment to be done by Birla Estates Pvt. Ltd in the project of the petitioner & how he will remit and pay the balance dues of the authority at the earliest but the respondent authority is sitting on the application of the petitioner for the revision and re-validation of the building plans without any valid reason whatsoever.

28. The learned counsel for the petitioner submitted that the petitioner has already paid Rs.25 crores to the Noida Authority toward premium and is ready and willing to deposit the balance once the map is revalidated. The Noida Authority has sanctioned the map wherein they have allowed the petitioner to construct 13 towers. In Phase-I four towers were to be constructed and all the sports facilities were supposed to be constructed in Phase-II. In these four towers, the petitioners have already made four flats and collected money from the home buyers.

29. She further argued that the petitioner is only obliged to develop proportionate sports facilities such as tennis centre, nursery school, golf course, internal roads and park, circulation space, carpeting, utilities etc. in the subject plot as per sub-lease

deed dated 15.04.2013, approved Master Plan dated 04.03.2016 and approved building plans dated 31.03.2016.

30. The learned counsel vehemently submitted that the petitioner has given a serious proposal by which the dues of the Noida Authority can be paid, the project can be completed and the home buyers will get the flats, but due to inaction of Noida Authority the whole project is about to fail. She apprehended that due to stoic inaction, the proposed investor might walk away because of inflation and increase in cost and that will be detrimental to all the stakeholders.

ARGUMENTS ON BEHALF OF NOIDA AUTHORITY

31. Sri Manish Goyal, learned Senior Advocate appearing for NOIDA Authority has placed the scheme of Sports City, and made the following submissions:-

THE SPORTS CITY SCHEME

32. The NOIDA Authority invited sealed 'Technical Qualification Bids' and 'Financial Bids' from interested eligible parties for development of two sports cities (one in Sector 78 & 79 and another in Sector-150 of NOIDA). The bidder had to submit sealed tender in the prescribed forms for development and construction of the Sports City. The land was offered on lease for ninety years basis. Certain important conditions stipulated in the scheme document for the development of Sports City are being enumerated below:-

“The scheme opened on 03.03.2011 and applications were accepted from the aforesaid date till 24.03.2011.

Development of Sports City: *The development of Sports City to be carried out by the successful applicant shall be planned for sports and institutional facilities as per the specifications laid out by NOIDA along with other activities to support the development of the Sports City as a whole.*

Land use of the Sports City

The permissible broad break-up of the total area under Sports City for different land uses shall be as under:

A.	Recreational (Sports, Institutional & Other Facilities and open areas)	Not less than 70%
B.	Commercial	Not more than 2%
C.	Residential including Group Housing (1650 persons per hect. on residential/group housing area only)	28%

Considering the above land use pattern following planning norms shall be applicable:-

- 1. Maximum permissible ground coverage of the entire land shall be 30%.*
- 2. Maximum permissible FAR on total land shall be 1.5.*
- 3. FAR & Ground Coverage in recreational land uses shall be as per prevailing bye-laws.*
- 4. Permissible FAR for land use shall be allowed in the entire area within set back lines.*
- 5. There shall not be any restrictions on the ground coverage and FAR in residential including Group Housing and Commercial land use within the overall permissible limit of 30% ground coverage and 1.5 FAR on total land.*

Eligibility

- 1.*
- 2.*
- 3.*
- 4. If a company wants to apply through a subsidiary company, then it should have a minimum of 51% share holding in the subsidiary company. It*

is clarified that in this case the applicant will be the subsidiary company who will have to qualify the minimum requirements of net worth, solvency and turnover. However, in case the tenderer/consortium member is a company, then the qualifications of its holding company (ies) of the lead member and the relevant members or their subsidiary companies shall also be considered as the qualifications of the applying company/consortium member.

5.

6.

7.

8. *In case the tenderers have formed a consortium:-*

*(a) Members of consortium will have to specify **one Lead Member** who alone shall be authorized to correspond with the NOIDA. Lead member should be the single largest shareholder having at least 30% share in the consortium. **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.** Each member of the consortium with equity stake of at least 05% will be considered as the 'relevant member'. **The Lead Member of the consortium must necessarily be a Firm/Company registered in India with the appropriate statutory Authority.***

*(b) The lead member and the relevant members should jointly qualify the minimum requirement of **net worth, solvency, turnover and experience.** In case the tenderer is a consortium, then the qualifications of the holding company(ies) of the lead member and the relevant members or their subsidiary companies shall also be considered as the qualifications of the tenderer.*

(c) 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, particularly with regard to arranging debt and equity for the project and its implementation. MOA should be submitted in original duly registered/notarized with appropriate authority.

*(d) The members shall submit a registered/notarized Memorandum of Agreement (MOA) conveying their intent to jointly apply for the scheme, and in case the plot is allotted to them, to form Special Purpose Company(ies), hereinafter called SPCs that will subsequently carry out all its responsibilities as the allottee. The registered MOA must specify the equity shareholding of each member of the Consortium in the proposed SPCs. The SPCs must necessarily be Firm(s)/Company(ies) registered in India with the appropriate statutory Authority. The allottee and in the case of consortium, the lead member and/or the relevant member and/or SPC(s) incorporated by them, put together, **will have to construct on their own a minimum of 30% of the total permissible FAR on allotted area.** In case of a consortium, the responsibility of construction of this 30% of the total permissible FAR shall be clearly specified in the MOA submitted by the consortium alongwith bid document. The allottee and the members of the consortium shall have the*

option to sub lease a maximum of 70% of land allotted to them as per the arrangements specified by them in the MOA.

(e) Execution of more than one lease deeds can be made by sub dividing the plot in favour of the lead member and/or the relevant member(s) and/or Special Purpose Company(ies) (SPCs) formed by them, which should be firm(s) or incorporated company(ies) registered in India. However, the area of each of such sub-divided plot proposed for execution of lease deed, as described above, should not be less than 8,000 sq. mtrs. and the said sub-division should be in accordance with the planning norms of the NOIDA.

10. However, the lessee/Sub-lessee(s) will be allowed to transfer upto 100% of its shareholding, subject to the condition that **the "Lead Member"** (on the date of submission of the tender) **shall continue to hold at least 30% of the shareholding in the SPC till the temporary occupancy/completion certificate at least one phase of the project is obtained from the NOIDA.** In compliance with the Govt. Order No. 5007/11-5-2010500(50)/10 DATED 11 th October, 2010, issued by the Department of Tax & Registration, Government of Uttar Pradesh, the change in the name of shareholders does not amount to transfer of the property of the Company. The Change in Constitution Deed regarding change in the shareholders as a result of transfer of share in the Companies is not mandatory to be registered under Section 17 of the Registration Act, 1908. In addition to this, no stamp duty of leviable on this CIC deed under Clause 23 of Schedule 1b of the Stamp Act, 1899. No transfer charges shall be leviable on the transfer of shares in the Companies and no prior approval of the NOIDA shall be required for transferring the shares.

HOW TO APPLY

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7.(v) List of Shareholders certified by the statutory auditors/Chartered Accountant. In case the numbers are large, list should contain details of major shareholding i.e. promoters, Institutions, corporates and the public.

MODE OF PAYMENT AND PAYMENT PLAN

1. The successful bidder shall be issued an allotment letter for the acquired area and reservation letter for the balance unacquired area. Allotment letter(s) of the area(s) contiguous to the already acquired and allotted land shall be issued as and when the balance land (in full or parts) is acquired and available for handing over possession to the successful bidder.

7. 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.**

POSSESSION

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

IMPLEMENTATION & COMPLETION OF PROJECT

IMPLEMENTATION

1. 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. However, extension in exceptional circumstances can be granted by NOIDA, on payment of extension charges applicable as per prevailing policy at the time of granting such extension. Delays due to encroachment, force majeure, legal issues like stay orders etc. shall be considered for extension.

2. The construction on the land shall have to be done as per the prescribed under these Terms and Conditions and the building regulations and directions of the NOIDA.

(emphasis supplied)

33. The allotment and the Shareholding of the Consortium was as follows:-

Sport City: Plot No. SC-01 Sector-150

Name of Allottee	M/s. Logix Infradevelopers Pvt. Ltd. (Consortium)
Alloted Area	80,00,000 SqMtr.
Rate of Allotment	Rs. 12,050 (Per Square Meter)
Date of Allotment	04-05-2011

Consortium: M/S Logix Infradeveloper Pvt. Ltd.

Members of Consortium:-

S.No.	Members	Status	% of Shareholding of Lead and Relevant Member in the Consortium
1.	M/s. Logix Soft Tel Pvt Ltd	Lead	40%
2.	M/s. Logix Builders & Promoters Pvt Ltd	Relevant	20%
3.	M/s. V C Solutions Pvt Ltd	Relevant	25%
4.	M/s. IT Infraservices Pvt Ltd	Relevant	5%
5.	M/s. Noida Cyber Park Pvt Ltd	Relevant	5%
6.	M/s. Lakshmi Constructions	Relevant	5%
Total :		100%	

Shareholding- Members of Consortium:

S. No.	Plot & Sector No.	Areas (Sqm)	Name of Allottee	Date of Allotment	Directors
1.	SC-01 Sector-150 Rate of Allotment Rs.12050/-Sqm (For 8 Lac Sqm)	90798781	M/s Logix Infra developers Pvt. Ltd (consortium) 1. M/s Logix Infra developers Pvt. Ltd	22.07.2011	M/s Logix Infra developers Pvt. Ltd Directors- 1.Sh. Shakti Nath 2-Smt. Meena Nath 3. Vikram Nath Shareholders- 1. Logix Soft tel Pvt Ltd (40% shares) 2. V C Solutions Pvt. Ltd. (25%) 3. Noida Cyber Park Pvt Ltd (5%) 4. IT Enfraservices Pvt Ltd (5%) 5. Lakshmi Constructions (5%) 6. Logix Developers & Infrastructures Pvt Ltd (20%)
			2. Logix Soft tel Pvt Ltd (40% Member)		M/s Logix Soft tel Pvt Ltd- Director- 1.Sh. Shakti Nath 2-Smt. Meena Nath 3. Vikram Nath Shareholder- 1- Sh. Shakti Nath (13476400 Shares) 2- Smt. Meena Nath (510000 Shares) 3- Sh. Vikram Nath (13600 Shares)
			3.Logix Builders & Promoters Pvt. Ltd. (Member-20%)		1. Sh. Shakti Nath 2. Smt. Meena Nath 3. Vikram Nath Shareholders- 1- Sh. Shakti Nath (50%) 2- Meena Nath (50%)
			4. V C Solution		V C Solution Pvt.

			Pvt. Ltd. (Member 25%) 5. IT Enfraservices Pvt Ltd (Member-05%)		Ltd. Directors- 1. Sh. Karan Israni 2. Smt. Chandni Nat Shareholders- 1. Logix Soft tel Pvt Ltd (99.99%) 2. Chandni Nath (0.01%)
			6. M/s Noida Cyber Park Pvt Ltd (Member-05% Share) 7. M/s Lakshmi Constructions (Member-05%)		M/s Noida Cyber Park Pvt Ltd Directors- 1. Sh. Karan Israni 2. Smt. Chandni Nath 3. Sh. Peter James Succosso 4. Sh. Pui Kei chung Shareholders- 1. Sh. Shakti Nath (30.34%) 2. Logix Soft tel Pvt Ltd (16.88%) 3. CPI India Ltd (52.78%) M/s IT Enfraservices Pvt Ltd - Directors- 1- Sh. Shakti Nath 2- Smt. Meena Nath 3- Sanjay Lal 4- Sh. Gopal Lohiya Shareholders - 1- Logix Soft tel Pvt Ltd (50.52%) 2- Noida IT Park Ltd (49.48%)

34. The sub-division of the Sports City SC-01/150 was as follows:-

IV THE SUB-DIVISIONS

Details of Sub-divisions in the ares allotted to the Consortium are being enumerated below:

S.N O.	PROPERTY NO. / Area (in sqmt)	Name of Allottee	Date of Lease/ Sublease
1	SC-01/A/150-5188.6 sqmt	M/S LOGIX BUILDER & PROMOTERS PVT.LTD.	17.1.2012
2	SC-01/A-1/150 93072 sqmt	M/S ASSERTIVE INFRASTRUCTURE PVT.LTD. (100% Subsidiary Company)	9.4.2013
3	SC-01/A-2/150-28,336.30 sqmt	NEO INFRASTRUCTURE PVT LTD (100% Subsidiary Company)	15.4.2013
4	SC-01/A-3/150 28326.3 sqmt	M/S LOGIX HEIGHTS PVT. LTD. (100% Subsidiary Company)	15.4.2013
5	SC-01/A-4/150 56652.00 sqmt	M/S ESTHETICS BUILDTECH PVT LTD. (100% subsidiary company)	15.4.2013
6	SC-01/A-5/150 7,650.00 sqmt	Transferred through M/S Logix Builders & Promoters Pvt. Ltd in favour of M/S ACE INFRACITI' DEVELOPERS PVT. LTD. On 27.8.2013	10.9.2013
7	SC-01/A-6/150 34814.3 sqmt	M/S INVENTIVE INFRACON PVT. LTD. (100% Subsidiary Company)	21.5.2014
8	SC-01/B/150 40880.51 sqmt	M/S LOGIX INFRASTRUCTURE PVT. LTD.	17.1.2012
9	SC-01/B-1/150 32372.9 sqmt	M/S CONTEND BUILDERS PVT.LTD. (100% Subsidiary Company)	3.5.2013
10	SC-01/B-2/150 80932.2 sqmt	M/S CONTEND INFRASTRUCTURE PVT.LTD. (100% Subsidiary Company)	03.05.2013
11	SC-01/B-3/150 20333.1 sqmt	M/S CONSORTIUM INFRASTRUCTURE PVT.LTD. (100% Subsidiary Company)	3.5.2013
12	SC-01/B-4/150 29545.8 sqmt	M/S IMPLEX INFRASTRUCTURE PVT.LTD. (100% Subsidiary Company)	3.5.2013
13	SC-01/B-5/150 24280 sqmt	M/S ABOUND INFRASTRUCTURE PVT.LTD (100% Subsidiary Company)	3.5.2013
14	SC-01/B-6/150 17600 sqmt	M/S APACE BUILTECH PVT.LTD. (100% Subsidiary Company)	3.5.2013
15	SC-01/B-7/150 17600 sqmt	M/S IMPEL INFRASTRUCTURE PVT.LTD. (100% Subsidiary Company)	3.5.2013
16	SC-01/B-8/150 45,603.64 sqmt	M/S ACE INFRACITY DEVELOPERS PVT. LTD.	16.4.2014
17	SC-01/C/150 18000 sqmt	LOGIX INFRADEVELOPERS PVT LTD	28.3.2014
18	SC-01/CA-1/150 80937.13	M/S NOBILTY ESTATES PVT.LTD. (100% Subsidiary Company)	21.5.2014

	sqmt		
19	SC-01/C,C-A2 CA4,CA6/150 12000.00 Sqmt	M/S CELERITY INFRA PVT.LTD. (100% Subsidiary Company)	
20	SC-01/CA- 3/150 13,356 sqmt	M/S EXPLICIT ESTATES PVT. LTD. (100% Subsidiary Company)	8.7.2014
21	SC-01/CA- 5/150 20,000 sqmt	M/S AUGUR REALTORS PVT.LTD. (100% Subsidiary Company)	8.7.2014
22	SC-01/CA- 7/150 13,000.00 sqmt	M/S ELICIT REALTECH PVT.LTD. (100% Subsidiary Company)	7.6.2014
23	SC-01/CA- 8/150 12,000.00 sqmt	M/S ABET BUILDCON PVT.LTD. (100% Subsidiary Company)	7.6.2014
24	SC-01/CA- 9/150 44515.42 sqmt	M/S ARISING ESTATES PVT.LTD. (100% Subsidiary Company)	21.5.2014
25	SC-01/CA- 10/150 16,000.00 sqmt	M/S HALE REALTORS PVT.LTD. (100% Subsidiary Company)	8.7.2014
26	SC-01/CA- 11/150 22,400.84 sqmt	M/S CELERITY INFRASTRUCTURE PW.LTD. (100% Subsidiary Company)	7.6.2014
27	SC-01/CA- 12/150 55300.97 sqmt	M/S CELERITY INFRASTRUCTURE PVT.LTD. (100% Subsidiary Company)	11.9.2015

(Emphasis supplied)

35. He further submitted that the sub-divisions were made in favour of various companies, which were 100% subsidiaries and owned by the relevant member of the consortium

36. The sub-leases, which were executed in favour of the subsidiary companies of relevant member, clearly stipulated that the sub-leasees will be bound by the terms and conditions contained in the brochure, allotment letter and the lease, which contained the obligation to develop the Sports City Project and there are clear stipulations in the sub-lease deed to that effect.

The subsidiaries have even indemnified the authority through sub-lease deed against non-completion of the project.

37. The sub-division of the plot was not done on accord of the respondent authority but was done on the request made by the relevant member/lead member of the Consortium. This was a permissible exercise under the brochure inasmuch as the sub-division was granted in favour of Subsidiary Company and not in favour of a third party. Accordingly, sub-division was permitted and sub lease deed was executed in favour of the relevant member/lead member of the Consortium.

38. The subsidiary company is bound not only by its sub-lease but is also bound by the terms of the original lease and, therefore, it is under the same obligation as the Consortium and becomes a part of the chain to develop Sports City Project in the same proportion as has been fixed in the brochure, allotment letter and the principal lease deed.

39. The sub-division is a mere allocation of an already executed lease deed and does not constitute a fresh transaction. No new rights flow in favour of the sub-lessees as the sub-lessees were hundred percent subsidiary of the relevant member and were created to perform the same obligation as stipulated in the lease deed of relevant member/lead member, which was allocated to facilitate the development of the Sports City Project.

40. He further submitted that the method of implementation has also been provided for in the brochure inasmuch as 15% of the sports facilities are to be developed within three (3) years of the

execution of the lease deed and the development for residential purpose can take place proportionately in other phases ranging from 5-7 years from the date of execution of the lease deed.

41. The entire scheme of the sports city project discloses that group housing/residential purpose is complimentary to the principal objective of development of the sports facilities.

42. Learned Senior Counsel placed reliance upon the judgement in the case of **Nand Kishore Gupta and others Vs. State of U.P. and others**⁵ wherein Hon'ble Supreme Court was dealing with a matter relating to allotment of five (5) land parcels alongside the Yamuna Expressway. The Supreme Court upheld the acquisition and allotment of 5 land parcels treating them to be an integral part of the development of Yamuna Express-way.

43. He submitted that the sub-lessee, therefore, in light of the law laid down by Hon'ble Supreme Court, cannot claim to be created only for development of group housing project as this will be an antithesis to the integrated project scheme under which the allotment was done. There cannot be any independent planning of group housing, which is only complimentary to the sport facilities.

44. In the absence of such sports facility being available to the public at large, the entire Sports City Scheme stood frustrated on account of non-development of sports city which has happened on account of the ill motive of the consortium members.

5. 2010 (1) SCC 282

45. The alleged leaving of the open space by the developer does not fulfil the object of developing the sports facilities. The sports facilities, which were required to be developed, have been duly enumerated in the lease deed. However, none of those sports facilities have been developed. There is explicitly no will of any member of the Consortium by infusing funds to develop the left out open space as a sports facility.

46. Even along with the writ petition, the petitioners have not placed any layout plan to substantiate as to how they will be using the open space for development of the sports facility nor any proposed layout plan has been placed for the kind consideration of this Hon'ble Court. This clearly shows that there is no intention to use the open space for developing the sports facilities.

47. Mr. Goyal, learned Senior Advocate for NOIDA Authority submitted that though Section 14 of the U.P. Industrial Area Development Act, 1976⁶ empowers the Authority to cancel the lease on account of non-payment of lease rent or the premium payable, however, instead of cancelling the lease, the authority has only decided not to revalidate any map or to permit any further sub-division. The authority even though did not proceed to cancel the lease, however, they have sent reminders for payment of outstanding dues. This is because of the principle of proportionality attached in the instant case.

48. He lastly submitted that it is the larger public interest that will outway and override the individual interest of the relevant member, lead member or their sub-lessee. It is the interest of

6. Act, 1976

public at large that is suffering on account of non-development of the sports city rather than the interest of these individual members, who are only concerned with their group housing and not with the sport facilities.

ANALYSIS BY THE COURT

49. We have carefully considered the submissions advanced by the learned counsel 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 petitioner.

50. This case exposes a significant nexus of corruption between builders and the officials of the NOIDA Authority, resulting in gross violations of public trust, fraudulent practices, and financial loss amounting to Rs.9000/- crores to the Noida Authority as per the CAG report. The following analysis, conclusions and our subsequent directions are aimed to address the malfeasance and provide relief to the affected stakeholders.

SCHEME OF SPORTS CITY

51. 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. A sports city project for developing a state of art sports city of international standard was conceptualized and then launched. The sports city scheme was to fulfil laudable object. The object of

the scheme was to develop, state of art sports facilities to be enjoyed by the public. This scheme was launched for developing Sports City in NOIDA and the instant matter is of a sports city in Sector -150 in NOIDA.

52. After the formulation of the scheme of sports city, the brochure was issued with certain conditions. Thereafter, allotment of sports city was made to the successful applicant. The allotment letter also had certain terms and conditions. A separate lease deed was executed between NOIDA and the allottees which laid down further conditions for execution of the project. However, the conditions have been openly flouted to extend undue benefit to the allottees/builders. Some of the relevant conditions of the lease deed which were flouted are as follows :-

** The lead member was supposed to be the single largest shareholder having at least 30% shares in the consortium, and the shareholding of the lead member was to remain minimum of 30% till the temporary occupancy/completion certificate of at least one phase of the project is obtained from the Lessor.*

But no such share holding was maintained by the lead member.

** The Lessee was required to complete the construction of minimum 15% of the permissible area earmarked for sports, institutional & other facilities within a period of 3 years from the date of execution of Lease Deed and complete the project within 5 years.*

This was also not carried out within the stipulated time, in fact nothing was done towards the development of the Sports City.

** The lessee was to develop residential and commercial component in the project in proportion to area earmarked for recreational uses.*

However, no proportional recreational / sports facility were ever developed proportionally.

** The lessee was wholly and solely responsible for the implementation of the Project, which could have been implemented by lessee through Special Purpose Company and/or through its subsidiaries.*

Though subsidiaries were formed but the project was not implemented as per the scheme.

** The transfer of the whole plot and the buildings constructed thereon, was allowed that too with the prior permission of the lessor, after payment of transfer charges.*

However, the sports city was illegally fragmented and transferred to various small builders who were not even eligible to participate in the bid, and that too without the permission of the lessor.

** All the terms and conditions of the brochure, the allotment, the permission for grant of transfer, lease deed etc. was binding on the lessee, as well as the transferee(s).*

Still the conditions were violated.

** The lessee could have transferred the built-up space on the fulfilment of the following conditions :-*

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

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

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

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

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

deed shall be applicable and binding on transferee/sub-lessees as well.

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

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

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

53. These conditions were openly flouted and not followed. Though the lessee was permitted to transfer only the built-up space on the condition that full payment of the plot premium along with interest thereon and also the payment of the up-to-date lease rent but in the instant case, instead of the transfer of the built up area, the open area marked for recreation, was also transferred without paying the dues (premium and lease rent). The transfer was supposed to be affected subject to completion of the project and after obtaining the building completion certificate from NOIDA, but here the transfer was made much prior to the construction having been started. The lessee/sub-lessees did not follow the mandatory conditions of the allotment and lease deed, which was to be followed prior to the transfer. Though non-payment of dues immediately calls for cancellation of the project, but the same was not done.

54. The way allotment was carried out, sub divisions were made, maps were sanctioned and the allottees were allowed to start construction on the residential areas without developing

anything towards sports facilities, raises a question on the working of NOIDA Authority to ensure that the sports facilities are developed, though as per the Scheme it was to be developed first.

55. Further, in the lease deed, payment plan was mentioned in which there was a moratorium period, thereafter, the allottee had to pay the entire premium in 16 half yearly instalments along with interest and other dues. The allottees had defaulted in paying instalments in time. It was very clear in the lease deed that in case of default in payment of instalments, an interest at the rate of 14% was to be charged compounded half yearly for defaulted period on the defaulted amount. No such demand was strictly made by the NOIDA. Only as a formality few notices were sent in the last 10 years and no serious action has been taken against the defaulters. The stoic silence by the officers of the NOIDA Authority turned out to be detrimental for the NOIDA Authority as well as for the development of the sports city.

56. In the instant case, the consortium was allotted the sports city project. However, instead of developing the sports city project they have chosen to divide the entire sports city into smaller plots and then sold it off to various other companies. The original allottees, who have only paid 10% of the total allotment amount and thereafter, chose to pay pittance and did not pay any further dues, taking advantage of the increase of the value of land over a period of time, has sold it off to the other builders at a very high premium. The fraud mechanism was put into motion by transferring the share and changing the Directors and shareholding of the subsidiary companies, though this was not the

object of the scheme to allow sub-division of the plots and to sell it off to other entities, who were not even eligible to apply for the sports city. Hence, it transpires that the original allottee right from the inception had no intention of developing the project and was only interested in making money by selling the companies incorporated by the promoters.

57. The division, sub division of sports city was a part of the nefarious design of the developers/promoters. Their intention, right from the day one, was not to develop the Sports City but to sub-divide the entire Sport City into plots and sell them off at a high price for their personal benefits. The *mens rea* of these promoters and directors of the Consortium Members of the company was writ large.

58. The sub-leases were executed on an understanding that the companies are the 100% subsidiaries of the original allottees. The transfer of the residential part could only happen after completion of 15% of the sports facilities, however, in this case without even completing the sports facilities certain transfers have happened. The NOIDA Authority was well aware of these transfers but chose not to take any action.

59. The main plank of argument of NOIDA Authority was that sports city was an integrated project and has to be developed as one by all the consortium member to whom the project was allotted. If the allottees had managed to illegally get some sub lease executed or got a map sanctioned and divide the integrated project illegally, then allottees cannot seek benefit of such an illegal

act which was an outcome of connivance of the Builders and the officials of the NOIDA Authority.

60. After the allotment of the project, time and again the condition in the Brochure and the scheme were breached by the allottees/ sub-leasees, in connivance with the officers of the NOIDA Authority. However, no explanation was called from the concerned officers of NOIDA Authority nor any action was taken against them.

61. This is the case where every action of the NOIDA Authority smacks of corruption and scam. The entire process of development of the Sports City including conceiving the scheme, allotment, execution of the lease deed, sanction of Map, and implementation of the sports city smacks of fraud and corruption. The allottees /builder in connivance with the NOIDA officials had played a huge fraud and the victims are NOIDA Authority, State of U.P. and the home buyers.

62. What is more shocking is that even after CAG pointed out in its report regarding the scam and fraud played by the builder and connivance of the officer of NOIDA Authority, no action has been taken by the NOIDA Authority and the State Government against such delinquent officials till date.

63. Though the instant writ petition was filed with a limited prayer, but after going through the records and the pleadings, we are of the view that there is a big scam played by the builders and officials of the NOIDA Authority, which has costed a loss of almost Rs.9000/- crores to the State exchequer. Though this Court is

aware and conscious of the fact not to exceed its jurisdiction in normal cases and not to take issues, which have not been pleaded but we would be failing in our duty, if we keep our eyes closed and limit the petition to the prayers.

64. Therefore, in the interest of justice we proceed to expand the scope of the instant writ petition following the principle of substantial justice, where the Court can intervene to correct brazen illegalities for proper administration of justice. It is important that the rule of law is upheld and the people's rights are protected, even if there are some mistakes made during the legal process of such points are not raised by the parties.

65. The Constitutional Court, in addition to upholding the sanctity of writs, serves as a bulwark against potential encroachments on constitutional rights. The commitment to judicial activism is evidenced by landmark decision that have expanded the scope of individual liberties and reinforced the principles of equality and justice.

66. Furthermore, the institutional integrity of the Constitutional Courts is bolstered by stringent standards of judicial conduct and ethics, ensuring impartiality and fairness in its proceedings. The judiciary's role in safeguarding writ jurisdiction extends beyond individual cases. It encompasses broader societal concerns, public interest issues, systemic injustices and ensures accountability in governance. By providing substantial justice, the constitutional courts fosters inclusivity and promotes the ideals of transparency.

67. We understand that the constitutional courts are duty bound to operate within a framework of checks and balances, maintaining a delicate equilibrium between the powers of the executive and legislature and at the same time reinforce adherence to the rule of law by protecting the citizen's rights, justice, equality and democracy.

68. Normally, this Court would not have intervened in the administrative decisions, but since in the instant matter, the action of the NOIDA Authority, right from the inception of the sports city project was marred with, unfairness, irrationality and illegality and fraud, hence in order to do substantial justice we had no option but to intervene in the instant matter.

69. In this case, the officers of the NOIDA Authority have failed to demand the outstanding dues, only few letters were sent in last so many years asking for the outstanding dues. The allottees are enjoying the project, and not paying the outstanding dues, It is quite apparent that the officers of the NOIDA Authority are hand in gloves with the builders/developers and have extended undue favour to them by not asking them to pay the outstanding dues and neither taken any penal action against them for the default. On the other hand, they have allowed the builders to collect money from the home buyers and start construction without even completing the contractual obligations of developing the Sports City first.

70. A comprehensive and inclusive analysis of the present situation reveals that a bunch of allottees got the project allotted,

after paying a small amount of the land premium. Thereafter, instead of discharging their obligation towards integrated development of the Project, a set of individuals, who were effectively behind all the members of the Consortium, only focussed on residential development and completely ignored their responsibility for the development of sports facilities. They have divided the entire project land, and have sold off or are trying to sell the land to entities, which were not even eligible to even participate in the tender process.

71. The instant case is a clear case of fraud played by the promoters of the consortium companies, wherein they have cheated the NOIDA Authority, by not paying its dues, by getting the sub division done, and getting the map sanctioned contrary to the conditions of the scheme and brochure conditions of the sports city. All this has been done in connivance of the officials of the NOIDA Authority, hence prima-facie a case is made out for committing criminal conspiracy with an intention of doing fraud and cheating.

72. In this case, as far as the homebuyers are concerned, they are the worst affected individuals. They had booked their flats investing their lifetime savings/or have taken a bank loan with a dream that one day they will have a roof on their head. Since the maps were duly approved by NOIDA Authority, they had no reasons to suspect a foul play and they fell in the trap. After paying the entire cost of the flat, the completion and bankable title is still a mirage.

73. It is a well settled law that the interest of the home buyers has to be given the precedence. Hon'ble Supreme Court in the matter of **Bikram Chatterji vs. Union of India**⁷ and in **Chitra Sharma v. Union of India**⁸ protected the interest of the home buyers. Identical view was taken by the Supreme Court in the matter of **Pioneer Urban Land And Infrastructure vs Union Of India**⁹ and in the matter of **Jaypee Orchard Resident Welfare Society v. Union of India & ors.**¹⁰ wherein Hon'ble Supreme Court has held that it will endeavour to do all in its power to safeguard the interest of the home buyers.

CBI INQUIRY

74. We would be remised in our duty, if we ignore the illegalities committed by the builders (sub-lessees) in connivance with the officials of NOIDA Authority which has snow balled into a major land scam and which, according to CAG, has led to significant loss to the NOIDA Authority and the State Government. We are constrained to record the total lack of concern shown by the NOIDA Authority and State Government on the report of the CAG and we wonder as to why no action has been taken against the builders (sub-lessees) and the officers of the NOIDA Authority, who were involved in this scam.

75. This case can be a case study of the dirty nexus of the builders and the officials of the NOIDA Authority, where benefits after benefit were doled out to the builders, which was completely

7. 2019 (19) SCC 161

8. 2018 (18) SCC 575

9. 2019 (8) SCC 416

10. (Writ Petition (Civil) No.854/2017)

contrary to the Scheme, MOA and in the implementation of the Sports City Scheme. In last so many years, in the NOIDA Authority, numerous officers must have come and gone but surprisingly, no one took any action against the builders/promoters and did no efforts to recover the outstanding dues. They all continued to extend undue benefits/favours to the allottee/sub-lessees of the sports city in contravention to the interest of NOIDA Authority/Bank and the State Government.

76. What is most shocking to note is that the CAG unearthed the scam in 2021, but till date NOIDA Authority or the State Government have not lodged a single FIR against any of the erring officials, who were involved in the scam. No effort has been made to retrieve the losses. This shows how influential they are, and how well entrenched they are in the government system.

77. The Court also realises that all the investigations cannot be entrusted to CBI. This Court is conscious that the Courts should be reluctant in straight-away referring the matters to CBI.

78. However, we may refer to certain authorities of Hon'ble Supreme Court in the matter of **State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal**¹¹, **Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram**¹², wherein Hon'ble Supreme Court has held that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion

11. 2010 SCC OnLine SC 297,

12. (2002) 5 SCC 521,

that such material does disclose a prima facie case calling for an investigation by CBI.

79. In the matter of **K.V. Rajendran v. Superintendent of Police, CBCID**¹³ Hon'ble Supreme Court has held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having "**a fair, honest and complete investigation**", and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. Similar view had been taken by Hon'ble Supreme Court in the matter of **Sakiri Vasu v. State of U.P.**¹⁴.

80. Hon'ble Supreme Court in the matter of **Rubabbuddin Sheikh v. State of Gujarat**¹⁵ has held that when the accused are very senior officers of the State then, the investigation by the State investigating agency may not be satisfactorily held. Thus, in order to do justice and instil confidence in the minds of the victims as well of the public, the State police authority could not be allowed to continue with the investigation when allegations and offences were mostly against top officials. Then the investigation should be handed over to any other independent investigating agency.

81. Looking into the entire conspectus, the seriousness of the fraud, impact on the State Exchequer, the involvement of high

13. 2013 (12) SCC 480

14. 2008 (2) SCC 409

15. 2010 (2) SCC 200,

officials of NOIDA, the caucus of builders, and the pivotal fact that till date no action has been taken against them, shows how deep the rot runs, and how influential are the people, who are involved in the entire scam. Such a major scam cannot be enquired into by any officer lower in the rank. Hence, without a CBI enquiry, impartial and fair investigation is not possible.

CONCLUSIONS

82. Since very senior officers of the NOIDA Authority, State, and other influential persons seems to be involved and because of them no inquiry has yet been conducted for this reason, the Court does not inspire any confidence in referring the matter for investigation to any of the State agencies, hence, this is a fit case where the inquiry should be instituted by the Central Bureau of Investigation¹⁶.

83. We, therefore, Firstly direct the CBI to thoroughly investigate against all the stakeholders regarding the entire affairs of the allotment and development of the sports city SC- 01 sector 150.

84. Secondly, considering the peculiar facts and circumstances of the case and also taking note of plight of homebuyers we further issue the following directions:-

- (I) The NOIDA Authority is directed to raise a fresh demand on all the lease holders according to the contract including the interest and penal interest and other dues which are outstanding as on date. Thereafter, further three

16. CBI

months time shall be granted to the allottees/sub-allottees to pay the same.

(ii) Needless to say that in case, the petitioner company deposits the dues of the NOIDA Authority and undertakes steps to complete the project, as per the norms of the sports city scheme, then only after completing the sports facilities, which were assigned in its share, the petitioner company can apply for the occupancy certificates of the residential/ commercial block built by the petitioner.

(iii) We make it clear that the petitioner company would not take any further booking and create any third party rights in the said project before completing the sports facilities. After completing the sports facilities the petitioner company would be allowed to proceed further with the construction and selling of the residential facilities.

(iv) If the allottees are unable to develop the project, then they can surrender the land back to the Noida Authority as provided in the scheme /brochure but certainly they will not be allowed to sell the project/ company/ land or transfer in any manner to any third party.

(v) In case, the allottees fail to deposit the outstanding dues including the interest and the allotment is cancelled and the amount is forfeited. In that case, the forfeited amount along with bank rate of interest would be paid to the genuine home buyers, who have made investment in the projects. In that eventuality, the NOIDA Authority is not going

to suffer any loss as it would be open for the NOIDA Authority to re-advertise the plots at the current market rate, and undoubtedly, the NOIDA Authority will fetch far much more (from the forfeited amount and the fresh allotment) even after paying back the homebuyers their principal and interest on their deposit.

(vi) The development of the sports city has to be carried out strictly as per the scheme and the brochure, and the terms of the allotment letter and the lease deed. We direct that the CEO of NOIDA Authority would personally monitor the implementation of the sports facilities and the development of the sports city in toto.

85. With the aforesaid directions, the instant writ petition stands ***disposed off.***

86. Registrar (Compliance) is directed to send a copy of this judgment to the Central Bureau of Investigation for information and necessary compliance forthwith.

Order date:-24.02.2025

S.P./Bhanu

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