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Court No. - 42

Case :- WRIT - C No. - 26129 of 2022

Petitioner :- M/s Golfgreen Estate Pvt. Ltd.
Respondent :- State of U.P. and another
Counsel for Petitioner :- Amit Shukla
Counsel for Respondent :- Aditya Bhushan Singhal, C.S.C.,
Kaushalendra Nath Singh, Sanjeev Kumar Rai

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

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1. Heard Sri Amit Saxena, learned Senior Advocate assisted by Sri Amit Shukla, learned counsel for the petitioner, Sri M.C. Chaturvedi, learned Additional Advocate General assisted by Sri Devesh Vikram, learned Additional Chief Standing Counsel and Sri Mohan Srivastava, learned Standing Counsel for the State-respondent no.1 and Sri Manish Goyal, learned Senior Counsel assisted by Sri Kaushalendra Nath Singh and Ms. Anjali Gokhlani, learned counsel for New Okhla Industrial Development Authority (respondent no.2).

FACTS OF THE CASE

2. On 03.03.2011 New Okhla Industrial Development Authority¹ conceived a Scheme 2010-11 known as “Sports City-II” which was supposed to be developed in Sectors 78, 79 and 150 of NOIDA. The scheme was opened on 03.03.2011 and closed on 24.03.2011. As per the scheme, a Sports City was to be developed in Sector 78, 79 and 80 and another sports city 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 facility over 70% of the entire land allotted to them, which was not marketable, and on top of it the developer had to spend his funds to develop the same. The only way to recover the cost and profit from the project, was by developing the sports city in the remaining 30% (28% of the land was meant for Group Housing and 2% for commercial purpose). The scheme clearly stated that the population density in the sports city would be 1650 per hectare. In this scheme maximum permissible, Floor Area Ratio² on the total land was 1.5. The open/green area of the recreational component (i.e. sports activities such as Golf course, stadium etc. and open spaces) was to be considered as open green areas for the entire land. The relevant conditions of the Brochure were as follows:-

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

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

** The members shall submit a registered/notarized MOA conveying their intent to jointly apply for the scheme, and in case the plot is allotted to them, to form Special Purpose Companies (SPCs). The allottee and in the case of consortium, the lead member and/or the relevant member and/or*

1 NOIDA
2 FAR

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.

** The "Lead Member" 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 case of default in depositing the installments or any payment, interest @ 14% per annum compounded half yearly shall be leviable for defaulted period on the defaulted amount.*

** The Lessee shall be required to complete the construction of minimum 15% of the permissible area earmarked for sports, institutional & other facilities within a period of 3 years from the date of execution of Lease Deed and shall complete the project in phases within 5 years. However, the residential and commercial development/construction may be completed in phases within 7 years.*

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

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

** The lessee shall execute an indemnity bond, indemnifying the NOIDA against all disputes arising out of non-completion of the project.*

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

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

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

** NOIDA will monitor the implementation of the project. Applicants, who do not have a firm commitment to implement the project within the time limits prescribed, are advised not to avail the allotment."*

3. In response to the said Scheme, only two companies applied for the allotment of Sports City, first being M/s Wave Pvt. Ltd., which had applied at

the reserved price, and the second was a Consortium of companies led by M/s Xanadu Estates Pvt. Ltd. (Lead Member) along with 8 other companies being the Relevant Members. The bid of the Consortium led by M/s Xanadu Estates Pvt. Ltd. was found to be the most compliant for the development of the Sports City, and consequently, NOIDA vide its Acceptance Letter dated 28.03.2011 informed the Lead Member about the allotment. Thereafter, NOIDA had issued an Allotment-cum-Reservation Letter dated 04.05.2011 and called upon the Consortium to deposit the allotment money of Rs.35,76,01,125/- within 60 days, failing which action as per terms and conditions of the brochure shall be taken. In the allotment letter, it was informed to the Consortium that total land parcel admeasuring 7,27,500 sqm. in Plot No.SC-01, Sector 78 & 79, NOIDA was reserved in favour of the Consortium as per the terms and conditions mentioned in the brochure of the Scheme.

4. Vide letter dated 11.10.2011, the Consortium requested the authorities to make sub division of the allotted plot in favour of the Consortium members, who have together applied as a Consortium. The request of the Consortium was accepted by the Noida Authority on 24.10.2011 for division of the entire sports city project into six parts. The contents of the acceptance letter were as follows:-

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

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

- (1) SC-01/A admeasuring 79 1,00,000 Sqm.*
- (2) SC-01/B admeasuring 48,000 Sqm.*
- (3) SC-01/C admeasuring 2,50,027 Sqm.*
- (4) SC-01/D admeasuring 1,00,000 Sqm. and*

(5) SC-01/E admeasuring 80,000 Sqm. (total 5,78,027.50 Sqm.)

(6) SC-01 Sector-78 14,272.50 Sqm. which is the part allotted area total 14,519.00 sqmts of plot no.SC-01 Sector -78 Noida.

Simultaneously in view of the terms and conditions of the brochures of the Scheme, the SPC for Plot No.SC-01/C Sector-79 measuring 2,50,0207.50 Sqm. namely M/s Three C Green Developers Pvt. Ltd. consisting of consortium member (1) M/s Xanadu Estates Pvt. Ltd. - 62.5%, (2) M/s Meriton Infotech Pvt. Ltd. - 18.50%, (3) M/s Sutej Agro Products Ltd. - 9.5% (4) M/s Xanadu Infra Developers Pvt. Ltd. - 9.50%-2,50,027.50 Sqm., is approved for execution of lease deeds.

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

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

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

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

Execution of lease deeds of sub divided plot No.SC-01 Sector – 79 in the name of relevant member M/s Xanadu Infratech Pvt. Ltd. - 14,272.50 Sqm. Which is the part allotted area total 14519.00 sqmts of plot no.SC-01 Sector 78 Noida is approved”

5. Thereafter, separate lease deeds were executed between Noida Authority and different members of the Consortium. The Noida Authority executed a lease deed in favour of one of its member, M/s Kindle Developer Pvt. Ltd. on 24.10.2011 for development of Sports City. The relevant provisions of the lease deed were as follows:-

LEASE DEED

This Lease Deed is made on the day of October in the year 2011 between the New Okhla Industrial Development Authority a body corporate constituted under Section 3 of the Uttar Pradesh Industrial Area Development Act 1976 (U.P. Act No.6 of 1976) (hereinafter called the Lessor) which expression shall unless the context does not so admit, include its successor assigns on the one part and M/s Kindle Developers Pvt. Ltd. having its Regd. Office at C-23, Greater Kailash Enclave, Part I, New Delhi - 110 048 through its authorized signatory Shri Dinesh Pahwa s/o Late Shri H.R. Pahwa R/o 104, Street No.2, Thapar Nagar, Meerut

(U.P.) duly Authorized vide Board Resolution dated 11th October, 2011 (hereinafter called the 'Lessee' which expression shall, unless context does not so admit, include his/her/their/its heirs, executors, administrators, representatives and permitted assigns on the other part.

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LAND USE OF 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.
6. Ground coverage and FAR permissible for commercial use can be utilized for recreational and residential (group housing activities).
7. Unutilized portion of FAR or recreational component or component of sports institutional other facilities and open areas can be utilized towards residential developments.
8. The open/green areas on the recreational component (i.e. sports activities such as Golf Course stadium etc. and open spaces) will be considered as open/green areas for entire land.

NOW THIS LEASE DEED WITNESSETH AS FOLLOWS:

That in consideration of the premium of Rs.120,75,00,000/- (Rupees one hundred twenty crores seventy five lacs only) out of which Rs.12,07,50,000/- (Rupees twelve crores seven lacs fifty thousand only) have been paid by the Lessee to the Lessor (the receipt thereof the Lessor hereby acknowledges) and the balance Rs.108,67,50,000/- (Rupees one hundred crores sixty seven lacs fifty thousand only) which is to be paid by the Lessee in the manner hereinafter provided in instalments on dates specified below alongwith interest @ 11% per annum or as amended by the Lessor from time to time compounded every half yearly from the date of allotment, on the balance outstanding on timely payment. Schedule of payment of instalments is as given below :-

Instalment No.	Due date	Principal amount	Interest @ 11%	Total
Moratorium interest for 1 st half yearly	04-11-2011		59771250	59771250
Moratorium interest for 2 nd half yearly	04-05-2011		59771250	59771250
Moratorium interest for 3 rd half yearly	04-11-2012		59771250	59771250
Moratorium interest for 4 th half yearly	04-05-2012		59771250	59771250
1 st	04-11-2013	67921875	59771250	127693125
2 nd	04-05-2013	67921875	56035547	123957422
3 rd	04-11-2014	67921875	52299844	120221719
4 th	04-05-2014	67921875	48564141	116486016
5 th	04-11-2015	67921875	44828438	112750313
6 th	04-05-2015	67921875	41092735	109014610
7 th	04-11-2016	67921875	37357032	105278907
8 th	04-05-2016	67921875	33621329	101543204
9 th	04-11-2017	67921875	29885625	97807500
10 th	04-05-2017	67921875	26149922	94071797
11 th	04-11-2018	67921875	22414219	90336094
12 th	04-05-2018	67921875	18678516	86600391
13 th	04-11-2019	67921875	14942813	82864688
14 th	04-05-2019	67921875	11207110	79128985
15 th	04-11-2020	67921875	7471407	75393282
16 th	04-05-2020	67921875	3735704	71657579

No separate notices for deposit of the installment/lease rent shall be issued by Lessor. The LESSEE shall ensure that the due installments along with interest are deposited on the due date or the previous working day if the due date is a bank holiday.

In case of failure to deposit the due installment by the due date, the LESSOR may cancel the allotment. However, in exceptional circumstances, an extension of time for payment of an installment can be permitted subject to payment of interest @ 14% p.a. (11% normal interest + 3% penal interest) compounded half yearly on the defaulted amount and for the defaulted period.

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To hold the said plot (hereinafter referred to as 'the demised premises') with their appurtenances unto the Lessee to the term of Ninety years on "AS IS WHERE IS BASIS" commencing from, 24th October, 2011 on the terms and conditions as given below:-

(a)

(i)

(ii)

(iii) In case of failure to deposit the due lease rent by the due date, interest will be charged @ 14% p.a. (11% normal interest + 3% penal interest) compounded half yearly, on the defaulted amount and for the defaulted period.

(iv) For the purposes of this document, the date of issue of the allotment letter shall be treated as the date of allotment and the date of execution of the lease deed shall be treated as the date of taking over of possession.

II. AND THE LESSEE DOTH HEREBY DECLARE AND COVENANT WITH THE LESSOR IN THE MANNER FOLLOWING:

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

(b).

(c).

(d).

(e).

(f).

(g).

(h) The construction of the building and development on the plot shall have to be done as per development norms, controls prescribed under the scheme/building regulations & directions of the Lessor and only after the prior approval of the building plans by the Lessor.

(a) All the infrastructural services shall have to be provided by the lessee within the plot area only.

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(i) The Lessee shall be required to complete the construction of minimum 15% of the permissible area earmarked for sports, institutional & other facilities within a period of 3 years from the date of execution of Lease Deed and shall complete the project in phases within 5 years. 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. The construction on the land shall have to be done as per the controls prescribed under these Terms and Conditions and the building regulations and directions of the NOIDA.

(j) The lessee shall be wholly and solely responsible for the implementation of the Project and also for ensuring the quality of development/constructions, subsequent maintenance of the building and services, till such time as the alternate agency for such work is identified and legally appointed by the Lessee after prior written approval of the LESSOR. The project may be implemented by lessee through Special Purpose Company and/or through its subsidiaries. The relationship between Special Purpose Company & its subsidiaries would be governed by the prevailing law, rules and regulations. However, mortgage permission can be accorded to Special Purpose Company for implementation of project as per prevailing rules & regulations of Lessor.

(k)...

(l) The lessee can transfer the whole plot and the buildings constructed thereon with the prior permission of the LESSOR, after payment of transfer charges as the prevailing policy of the LESSOR. However, the lessor reserves the right to reject any such transfer application without assigning any reason whatsoever. In addition to the transfer charges as per prevailing policy of the LESSOR, the lessee shall also pay an amount of Rs.10,000/- towards the processing fees.

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

No transfer charges shall be payable in case of transfer between son, daughter, husband, wife, mother, father and vice-versa. However, processing fee of Rs.10,000/- will be payable on such transfer.

Change in Constitution will be permitted as per prevailing policy of the Lessor and as per terms and conditions of the brochure of the scheme.

No transfer charges shall be applicable if built up space of commercial plot is transferred within two years from the date of issuing of the completion certificate by the LESSOR. Thereafter, the transfer charges shall be payable on a pro-rata basis as applicable. In addition to the transfer charges, an amount of Rs.10,000/- shall also be payable against the processing fee. The lessee will be permitted to transfer the built-up space on the fulfillment 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.

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

(n) The lessee and sub-lessee(s)/Transferee(s) will be liable to pay all rates, taxes, charges and assessment of every description imposed by any authority empowered in this behalf from time to time, in respect of the plot and the buildings constructed thereon.

(o) If the lessee and/or sub-lessee(s)/Transferee(s) fail to deposit the due money/installment within the given time or such extended period as is allowed by the LESSOR or commit any breach of the terms and conditions as laid down in this brochure, allotment letter, lease deed, the allotment/lease may be cancelled/determined and 30% of the total premium of the plot or the premium/installments deposited till then alongwith lease rent, interest, extension charges etc. deposited, whichever is less, shall be forfeited in favour of the LESSOR. Balance amount, if any, after forfeiting the amount as indicated above, will be refunded without interest. Possession of the plot, along with the structures, if any, thereon, shall be resumed in favour of the LESSOR and the lessee shall not be entitled to claim any compensation for the same.

(p) The allotment is found to be obtained by any misrepresentation, concealment, suppression of any material facts by the lessee, the allotment of plot will be cancelled and/or lease will be determined, as the case may be. In addition, the entire money deposited by the lessee and sub-lessee(s)/Transferee(s) shall be forfeited and legal action for such misrepresentation, concealment, suppression of material facts shall be taken.”

6. M/s Kindle Developers Pvt. Ltd. decided to implement the said project in four phases and sought permission from Noida authority on 28.08.2012 to further sub-divide aforesaid plot No.SC-01/D admeasuring 100,000.00 sqm. in four parts numbered as:-

“i. Plot No.SC-01/D1 admeasuring 40,000 Sqm. in favour of Kindle Developers Pvt. Ltd.

ii. Plot No.SC-01/D2 admeasuring 10,000 Sqm. in favour of Golfgreen Residency Pvt. Ltd.

iii. Plot No.SC-01/D3 admeasuring 25,000 Sqm. in favour of Golfgreen Estates Pvt. Limited (petitioner).

iv. Plot No.SC-01/D4 admeasuring 25,000 Sqm. in favour of Golfgreen Mansions Pvt. Ltd.”

7. It was claimed by M/s Kindle Developers Pvt. Ltd. that all the other three companies are 100% subsidiary companies owned by M/s Kindle Developers Pvt. Ltd. and the division was only as an internal arrangement to develop the area allotted to them. Accordingly, the Noida Authority vide its letter dated 03.10.2012 accorded permission to M/s Kindle Developers Pvt. Ltd. to sub-divide the said plot in four parts and also gave permission to sub lease of sub divided Plot No.SC/01 was retained by M/s Kindle Developer Pvt. Ltd., Plot No.SC-1/D2 in favour of M/s Golfgreen Residency Pvt. Ltd., sub divided plot No.SC-1/D3 in favour of M/s Golfgreen Estates Pvt. Ltd., and sub divided plot No.SC-1/D4 in favour of M/s Golfgreen Mansions Pvt. Ltd. The letter of the NOIDA Authority dated 3.10.2012 is reproduced herein below:-

“Please refer to your letter dated 28th August, 2012 regarding permission to sub divide the Sports City Plot No.SC-1/D Sector-79 in four parts (1. Plot No.SC-1/D1 measuring 40,000 Sqm. and 2. Plot No.SC-1/D2 measuring 10,000 Sqm., 3. Plot No.SC-1/D3 measuring 25,000 Sqm. and 4, Plot No.SC-1/D4 measuring 25,000 Sqm.) and also to permit sub lease of sub divided plot No.SC-1/D2 in favour of your 100% subsidiary company M/s Golfgreen Residency Pvt. Ltd., sub divided plot No.SC-1/D3 in favour of your 100% subsidiary company M/s Golfgreen Estates Pvt. Ltd., and sub divided plot No.SC-1/D4 in favour of your 100% subsidiary company M/s Golfgreen Mansions Pvt. Ltd.

In this connection, I have been directed to inform you that on the basis of documents submitted by you, Authority is pleased to sub divide the above plot in 4 parts and also to grant permission to sub lease of sub divided plot No.SC-1/D2 in favour of your 100% subsidiary company M/s Golfgreen Residency Pvt. Ltd., sub divided plot No.SC-1/D3 in favour of your 100% subsidiary company M/s Golfgreen Estates Pvt. Ltd., and sub divided plot No.DC-1/D4 in favour of your 100% subsidiary company M/s Golfgreen Mansions Pvt. Ltd., in principle in view

of the terms and conditions of brochure of the Scheme and lease deed. The other terms of allotment and lease shall remain the same.”

8. Thereafter, on 19.10.2012 a fresh sub lease was executed between NOIDA authority and the petitioner (M/s Golfgreen Estate Pvt. Ltd.) as the petitioner company was 100% subsidiary of M/s Kindle Developers Pvt. Ltd. The fresh payment schedule for the petitioner company was also mentioned in the said sub lease deed. Relevant part of the sub lease dated 19.10.2012 is reproduced herein below:-

“SUB-LEASE DEED

This Sub Lease deed made on the 19th day of October, 2012 (Two thousand and Twelve).

BETWEEN

The New Okhla Industrial Development Authority, a body corporate constituted under section 3 read with 2 (d) of the Uttar Pradesh Industrial Area development Act, 1976 (UP Act No.6 of 1976) hereinafter called the “Lessor” (which expression shall unless the context does not so admit, include its successors and assigns) of the first part.

AND

M/s Kindle Developers Pvt. Ltd, a Relevant Member of M/s Xanadu Estate Pvt. Ltd (Consortium) Company, within the meaning of Companies Act, 1956, having its registered office at C-23, Greater Kailash Enclave, Part-I, New Delhi-48, through its authorized signatory Mr. Pratap Singh Katoch S/O Shri J.S. Katoch R/o Flat No.A-116, Plot No.B-9/1, Sector-62, NOIDA-201301 duly authorized by the Board of Directors vide Resolution dated 21st August, 2012, hereinafter called the “Lessee” (which expression shall unless the context does not so admit, include executors, representatives, administrators and permitted assigns) of the second part.

AND

M/S Golfgreen Estates Pvt. Ltd. (100% owned subsidiary of M/s Kindle Developers Pvt. Ltd.), a Company within the meaning of Companies Act having its registered office at C-23, Greater Kailash Enclave, Part-1, Delhi-48, through its authorized signatory Shri Vikas Anand S/o Shri Deepak Anand, Rio D-1133, Sector-49, Faridabad (Haryana), duly authorized by the Board of Directors vide resolution dated 21st August, 2012, hereinafter called the "Sub - Lessee" (which expression shall unless the context does not so admit, include executors, representatives, administrators permitted assigns) of the third part.

AND whereas the Lessor has through a sealed two bid tender system Sport City Plot No. SC-01-01 Sector-78 & 79 ad-measuring 7,27,500 Sqm, awarded to the M/

s Xanadu Estates Pvt. Ltd (Consortium) vide allotment letter No. NOIDA/Commercial/2011/478 dated 4th May, 2011 mentioning therein that an area of 5,92,300 sqm. is acquired and in possession of Lessor & subsequent corrigendum letter no. NOIDA/Commercial/2011/702 dated 24th June, 2011.

AND WHEREAS above said allotted area was sub divided into 6 parts, numbering as SC-01 Sector-78 (measuring 14,272.50 Sqm.), SC-01/A Sector-79 (measuring 1,00,000 Sqm.), SC-01/B Sector-79 (measuring 48,000 Sqm.), SC-01/C Sector-79 (measuring 2,50,027.50 Sqm.), SC-01/D Sector-79 (measuring 1,00,000 Sqm.) and SC-01/E Sector-79 (measuring 80,000 Sqm.) vide letter NOIDA/Commercial/2011/1537 dated 24th October, 2011.

AND WHEREAS above said allotted area was sub divided into 6 parts, numbering as SC-01 Sector-78 (measuring 14,272.50 Sqm.), SC-01/A Sector-79 (measuring 1,00,000 Sqm.), SC-01/B Sector-79 (measuring 48,000 Sqm.), SC-01/C Sector -79 (measuring 2,50,027.50 Sqm.), SC-01/D Sector-79 (measuring 1,00,000 Sqm.) and SC-01/E Sector-79 (measuring 80,000/- Sqm.) vide letter NOIDA/Commercial/2011/1537 dated 24th October, 2011.

AND WHEREAS in compliance of the approval granted vide letter dated 24th October, 2011 lease deed of sub divided sports city plot No. SC-01/D Sector - 79 was executed on 24/10/2011 and registered in the office of the Sub- Registrar- III, vide Book No1 Volume No. 2975 Page No 166-215 documents No. 8583 dated 24/10/2011 (hereinafter called as the "Lease") between the Lessor, a body corporate constituted under section 3 of the UP Industrial development Act 1976 (UP Act No 6 of 1976) and the Lessee. The Lessor had demised on leasehold basis which is a part of Sports City Plot No. SC-01-01 Sector-78 & 79 and more fully detailed and described in the schedule hereüinto for 90 years commencing from 24th October, 2011.

AND whereas the Lessee of the sub divided plot No.SC-01/D Sector-79 admeasuring 1,00,000 Sqm. has requested for sub division of the said plot Into 4 parts as, Plot No. SC-01/D1 Sector-79 measuring 40,000 Sqm., SC- 01/D2 Sector-79 measuring 10,000 Sqm., SC-01/D3 Sector-79 measuring 25,000 Sqm., and SC-01/D4 Sector-79 measuring 25,000 Sqm., to be developed by (1) M/s Kindle Developers Pvt. Ltd. itself and (2) M/s Golfgreen Residency Pvt. Ltd. (100% owned subsidiary company of M/s Kindle Developers Pvt. Ltd.), (3) M/s Golfgreen Estates Pvt. Ltd. (100% owned subsidiary company of M/s Kindle Developers Pvt. Ltd. and (4) M/s Golfgreen Mansions Pvt. Ltd. (100% owned subsidiary of M/s Kindle Developers Pvt. Ltd.), respectively.

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And whereas the Lessor approved the sub division of Sports City Plot No. SC-01/D Sector-79 measuring 1,00,000 Sqm. into 4 parts numbering as SC-01/D1 Sector-79 measuring 40,000 Sqm., SC-01/D2 Sector 79 measuring 10,000 sqm., SC-01/D3 Sector 79 measuring 25,000 sqm, M/s Kindle Developers Pvt. Ltd, itself and (2) M/ s Golfgreen Residency Pvt. Ltd (100% owned subsidiary company of M/s Kindle

developers Pvt. Ltd.), (3) M/s Golfgreen Estates Pvt. Ltd (100% owned subsidiary company of M/s Kindle Developers Pvt. Ltd. and (4) M/s Golfgreen Mansions Pvt. Ltd), respectively and allowed the Lessee to sub lease as per the terms and conditions of the Brochure for the development of sports city for recreational, commercial and residential including group housing of the scheme vide letter no.Noida/Commercial/2012/1182 dated 3rd October, 20.

That in consideration of the premium of Rs.30,18,75,000/- (Rupees thirty crores eighteen lakhs seventy five thousand only) out of which Rs.3,01,87,500/- (Rupees three crores one lakh eighty seven thousand five hundred only) have been paid by the sub lessee to the Lessor (the receipt thereof the Lessor hereby acknowledges) and the balance Rs.27,16,87,500/- (Rupees twenty seven crores sixteen lakhs eighty seven thousand five hundred only) which is to be paid by the Sub-Lessee in the manner hereinafter provided in installments on dates specified below along with interest @ 11% per annum as amended b y the Lessor from time to time compounded every half yearly from the date of allotment, on the balance outstanding on timely payment. Schedule of payment of installments is as given below:-

Sl.No.	Due Date	Principal amount Rs.	Interest @ 11% p.a. Rs.	Total (Rs.)
Moratorium interest for 1 st half yearly	04.11.2011		14942813	14942813
Moratorium interest for 2 nd half yearly	04.05.2012		14942813	14942813
Moratorium interest for 3 rd half yearly	04.11.2012		14942813	14942813
Moratorium interest for 4 th half yearly	04.05.2013		14942813	14942813
1.	04.11.2013	16980469	14942813	31923282
2.	04.05.2014	16980469	14008887	30989356
3.	04.11.2014	16980469	13074962	30055431
4.	04.05.2015	16980469	12141036	29121505
5.	04.11.2015	16980469	11207110	28187579
6.	04.05.2016	16980469	10273184	27253653
7.	04.11.2016	16980469	9339258	26319727
8.	04.05.2017	16980469	8405333	25385802
9.	04.11.2017	16980469	7471407	24451876
10.	04.05.2018	16980469	6537481	23517950
11.	04.11.2018	16980469	5603555	22584024

9. The Noida Authority vide its letter dated 16.11.2012 approved Master Layout Plan in favour of Three C Green Developers Pvt. Ltd.³ (which

3 Master Developer

interalia included Plot No.SC-01/D3 admeasuring 25,000 sqms of the present petitioner). Thereafter, the Master Developer applied for revision of the Master Layout Plan and the same was approved/sanctioned by the Noida Authority on 16.06.2014. This revised master layout plan clearly demarcated plots of each consortium members and Master Developer/SPC with their respective plot areas, the FAR to be developed by Consortium Companies and SPC and the responsibilities of each of the Consortium Companies and/SPC to construct and develop Sports Facilities.

10. In terms of the revised Master Layout Plan (duly sanctioned by Noida Authority), the petitioner was sanctioned an FAR of 56250 sqm. on its plot admeasuring 25000 square meters comprising of both commercial and residential purpose. Further, the Master Developer and others took upon themselves the responsibility to develop Recreation/Sports facilities including development of Golf Course, multi-purpose play field, tennis centre, swimming centre, etc.

11. It was then the petitioner company applied for the sanction of layout plan, for the development in its area, in which it had left 70% of the land as open area for recreational/sports purpose and for remaining 30% it has applied for sanction of the map and for the construction of the project. During pendency of the lay out plan, shares of petitioner's company were taken over by some other entity. The petitioner claims to have paid the entire premium without default.

12. By the order dated 02.02.2021, NOIDA authority has refused to sanction the building plan on the ground that the building plan of the petitioner's plot will only be sanctioned after completion of the recreation/sports facilities. Thereafter, NOIDA authority had issued a letter on 07.09.2021 asking the petitioner to pay Rs.7,32,29,272/-, which was outstanding towards installment money and other charges.

13. Aggrieved by order/letter dated 02.02.2021, whereby the sanction of map was refused and demand was raised by NOIDA, the petitioner has filed the instant writ petition seeking following reliefs:-

- “a. To issue a writ, order or direction in the nature of mandamus commanding the respondents to sanction Building Plan pertaining to Plot No. SC-01/D-3 admeasuring 25,000 Sqm. With allocated FSI/FAR of 70,021 Sqm.;*
- b. To issue a suitable writ or direction in the nature of certiorari thereby quashing the Letter dated 02.02.2021 (Contained in Annexure 16) in so far as it imposes a pre-condition on the petitioner to sanction Building Plan of the petitioner’s plot after completion of sports facility by Master Developer.*
- c. To pass an order or direction thereby holding that the petitioner is not liable to construct the Recreation/Sports Facility and is only liable to construct Residential and commercial facilities on Petitioner’s Plot;*
- d. To issue a suitable writ or direction in the nature of mandamus commanding the respondents not to charge any lease rent/interest/any other charges including penalty till such time the Building Plan pertaining to petitioner’s plot is sanctioned by the respondents;*
- e. To issue a suitable writ or direction in the nature of certiorari thereby quashing the Letter dated 02.02.2021 & 07.09.2021 issued by respondents thereby demanding payment of lease rent/interest/penalty;”*

14. Initially, the matter was taken up on 20.09.2022 and on the said date, a Division Bench of this Court directed to the learned counsel for the respondent no.2 to file an affidavit of Chief Executive Officer disclosing the steps taken by the Authority against the Master Developer to ensure that sport facilities are developed by it as per the object of the lease and also file specific reply to para 7 of the supplementary affidavit and other pleas raised in the writ petition. In response of the said order, NOIDA has filed a detailed counter affidavit on 12.10.2022, in response to which a rejoinder has also been filed by the petitioner on 02.11.2022.

15. Thereafter the Division Bench vide its order dated 22.11.2022 had allowed the impleadment application filed on behalf of M/s Three C Green (Master Developer), M/s Arena Super Structures Pvt. Ltd. and M/s Xanadu Infratech Pvt. Ltd. and they have been arrayed as respondent nos.3, 4 and 5 to

the writ petition. Further, the State Government was directed to submit its response and apprise the Court of the decision, if any, taken by it in pursuance of the reference made to it by the Noida Board. The order dated 22.11.2022 is reproduced hereinafter:-

“Order on the Impleadment Application

Heard Sri Amit Saxena, learned Senior Counsel, assisted by Sri Amit Shukla, for the petitioner and Sri Manish Goyal, learned Additional Advocate General for the respondents, assisted by Sri Kaushalendra Nath Singh and Sri Aditya Bhushan Singhal.

The impleadment application is allowed.

Let necessary amendments be made in the cause title within three days.

Issue notice to the newly impleaded respondents. Steps be taken by speed post within three days.

The newly impleaded respondents shall file their counter affidavits on or before the next date.

Order on the Writ Petition

Learned counsel for the petitioner has invited our attention towards the stand taken by the Noida Authority in paragraph nos. 22, 23 and 24 of the counter affidavit, which is as follows: -

"22. That the matter of Sports Cities was put up before the Noida Authority Board on 18.01.2021 and the Board took the decision that wherever sports facilities have not been developed, the process of renewal, revision, new building plan and issue of occupation certificate should be postponed. That the Authority has also taken a decision in this meeting not to sub-divide any plot and further not to create any third party interest. A true copy of the relevant portion of the Board Meeting is being filed herewith and marked as Annexure No. CA-5 of this affidavit.

23. The matter was again put up before the Board on dated 25.6.2021 and the Board took the decision to get the direction of Government of Uttar Pradesh. A true copy of the relevant portion of the Board Meeting is being filed herewith and marked as Annexure No. CA-6.

24. That the Noida Authority has written letter dated 26.7.2021 to the Additional Chief Secretary, Department of Infrastructure and Industrial Development, Government of Uttar Pradesh to seek their guidance. A true copy of the letters written by the Authority to the Additional Chief Secretary with regard to the Sports City are collectively filed herewith and marked as Annexure No. CA-7 to this affidavit."

It is pointed out that the matter is pending at the level of State Government and no decision has been taken by it so far.

We accordingly require the State Government (respondent no. 1) to submit its response and apprise the Court of the decision, if any, taken by it in pursuance of the reference made to it by Noida Board.

List as a fresh case on 20.12.2022."

16. Again the matter was taken up on 11.01.2023 and learned counsel for the NOIDA was accorded ten days' time to file supplementary affidavit. The order dated 11.1.2023 is reproduced herein below:-

“Sri Sanjeev Kumar, learned Advocate has put in appearance on behalf of respondent no.3, he has also filed his vakalatnama, which is taken on record.

Sri Varad Nath, learned Advocate submits that he has received oral instructions on behalf of the respondent no.4.

Sri Manish Goyal, learned Senior Advocate assisted by Sri Kauslendra Nath Singh and Sri Aditya Bhushan Singhal, learned Advocates appear for NOIDA-respondent no.2.

In the counter affidavit of NOIDA, it is admitted that the lay out/building plan submitted by the eleven developers/members of the consortium have been sanctioned between the year 2013-2016. The original lease of the plots in question was in the name of the consortium for the scheme namely, Sports City-II for development of the Sports city in NOIDA. It is, however, sought to be submitted therein that steps for non-sanctioning of the plan and non-issuance of the completion certificate have been taken by the Board to ensure that the developers (who are members of the consortium) shall first develop sports facilities and do not run away by completing Group Housing or Commercial Area, which is only to the extent of 28% and 2%; respectively.

A perusal of the original lease deed of the scheme namely, Sports City-II for development of the Sports city in NOIDA shows that 70% of the allotted plot to the respondent no.5 is to be developed as recreational (Sports, institutional and other facilities and open area). However, there is no clarity as to the sanction plan for development of 70% of the area, which was to be developed by the consortium. There is no clarity as to whether the building plan submitted by the members of the consortium from time to time, pursuant to the sub-lease deeds executed in their favour, sanctioned by NOIDA would fall within the permissible limit of development, as per the percentage of Sports, residential and commercial activities, permitted in the original lease deed.

The contention is only this much that the master developer has not taken any interest in development of the allotted area as sports facility which was required to be completed in the first phase within five years i.e. upto the year 2016. The master developer was required to complete the development of 70% of the total area allotted to it for sports, recreational and other facilities. The contention is that the residential and commercial constructions to the extent of 28% and 2%; respectively, as per original lease deed could only be made after completion of the development of 70% of the area in the first phase.

However, a categorical stand of NOIDA about the percentage of the area allotted to members of the consortium covered by the sub-lease deeds executed by NOIDA is missing. The NOIDA has not come out with a categorical stand as to the building plans sanctioned by it to different sub-lessees between 2013 to 2016 would constitute how much area of the total plot allotted for development of the integrated Sports City. The submission in the counter affidavit that master developer has not developed 70% of the total area for sports recreational activity, therefore, are incomplete.

Sri Manish Goyal, learned Senior Advocate appearing for NOIDA prays for and is granted ten days' time to file supplementary counter affidavit to bring on record details to answer the queries of the Court, to substantiate their stand that the development work of the first phase in the Sports City-II as per the original lease deed has not been carried out.

Put up this matter as fresh on 23.1.2023.”

Thereafter, the affidavits were filed and the pleadings were completed.

ARGUMENTS ON BEHALF OF THE PETITIONER

17. Sri Amit Saxena, learned Senior Advocate assisted by Sri Amit Shukla, learned counsel for the petitioner company submitted that the petitioner company is a bonafide purchaser of 25,000 square metre of land in the Sports City. NOIDA had executed a lease deed on 19.10.2012 and as per the norms of the Sports City, the petitioner had applied for sanction of map, wherein it has left 70% of the land for construction of recreational/sports facilities and applied for construction on only 30% land, on which they were allowed to construct residential and commercial complex. It was submitted that the application filed by the petitioner is completely in sync and in line with the Sports City policy, brochure and agreement executed between the petitioner and NOIDA.

18. Learned counsel for the petitioner further submitted that the petitioner would not be punished for the inaction/wrongs done by other allottees, who chose not to develop the sports facilities. The petitioner is a law abiding company and since the map was not sanctioned, it had not even started the construction in spite of the fact that it had paid more than Rs.28 crores

towards land premium and still waiting for the approval of the map. He submitted that the petitioner company could not be made a scapegoat because of the irregularities committed by the other builders. The petitioner company is ready and willing to abide by each and every condition of the Sports City, hence, there is no reason that the map of the petitioner should be held back.

19. Sri Saxena, further pointed out from the supplementary affidavit filed by NOIDA, in which it shows that the petitioner namely, M/s Golfgreen Estates Pvt. Ltd. was allotted 25,000 square metre land, out of which on 30% i.e. 7500 square metre land, the construction was allowed and as per the permissible FAR, they are allowed to construct residential portion upto 56,250 sqm. He further submitted that the petitioner has already left open area for the sports activities. However, further development can only be carried out when the map is approved and sanctioned.

20. He further submitted that the petitioner is not shying away from his responsibility and is ready and willing to complete the development of recreational/sports facilities over 75% of the allotted land and also develop the residential and commercial portion over the said land.

21. He further submitted that as per plan approved by the Noida Authority on 16.04.2014, the petitioner's liability was strictly fixed to the extent of construction of residential/commercial building only and no obligation was casted on the petitioner to develop any sports/recreational facility on any parcel of land, which was sub-leased in favour of the petitioner. After taking over possession of the land, the petitioner company on 08.09.2014 applied for sanction of the building plan of the petitioner's plot and also paid a sum of Rs.500,000/- followed by another sum of Rs.12,20,000/- as building permit fee.

22. He further submitted that Noida Authority in response to the petitioner’s request to sanction building plan of the petitioner’s plot, vide its letter dated 24.09.2014 demanded compliance including Fire NOC, Pollution NOC, Airport NOC, Structure Stability Certificate, Soft copy of the proposed building plan etc., though all relevant NOC’s were already submitted by the petitioner at the time of submission of application for sanction of the building plan of the petitioner’s plot.

23. He further submitted that sanctioning the building plan of the petitioner would only lead to some contribution by the petitioner in development of the Sports City in terms of the Scheme. The NOIDA Authority cannot halt the entire development only on the ground that Master Developer could not develop certain sports facilities, especially when the petitioner is ready and willing to perform its obligation within its plot.

24. Learned Senior Counsel next submitted that Noida Authority vide the impugned order dated 02.02.2021 has rejected the sanction of building plan of the petitioner, but on the other hand taken crores of rupees from the petitioner, the details of which are as follows:-

Particular	Amount Spent
Land Premium and interest thereupon	Rs. 25,59,75,540/- (Twenty-Five Crore Fifty-Nine Lakh Seventy- Five Thousand Five Hundred and Forty Only)
Lease Rent	Rs. 2,00,11,115/- (Two Crore Eleven Thousand One Hundred and Fifteen Only)
Additional FAR	Rs. 2,00,00,000/- (Two Crore Only)
Building Permit Fee and Processing Fee	17,30,000/- (Seventeen Lakh Thirty Thousand Only)
Total	Rs. 29,77,16,695/- (Twenty-Nine Crore Seventy-Seven Lakh Sixteen Thousand Six Hundred and Ninety Five Only)

25. He submitted that on 16.01.2020, the balance instalments payable in future on account of land premium on the petitioner’s plot was

Rs.14,42,24,172/- out of which the petitioner paid a sum of Rs.3,00,00,000/- on 23.05.2022, thereby leaving a balance of Rs.11 crores approx. as on such date. Further, Noida Authority vide letter dated 26.11.2024 has demanded a sum of Rs.20,99,61,843/- for balance installments and interest thereupon.

26. Learned counsel for the petitioner lastly submitted that the entire premium for the land has been paid by the petitioner without default and there is no default on its part. The map applied by the petitioner was completely in sync with the Sports City Scheme and he had only asked for construction on 30% of the land, keeping 70% for the sports facilities, still NOIDA is holding back the plan. The identically situated allottee had applied for the sanction of map and the same were approved, but in a most arbitrary manner, the sanction of the map of the petitioner has been declined. Hence, it is a clear case of discrimination with the petitioner.

ARGUMENTS ON BEHALF OF THE RESPONDENT

27. Sri Manish Goyal, learned Senior Counsel assisted by Sri Kaushlendra Nath Singh and Ms. Anjali Goklani, learned counsel for the Noida Authority submitted that before proceeding in the matter, it is worthwhile to mention the connection of the petitioner-company along with the Consortium and also their antecedents. He submitted that the scheme for development of Sports City in Sector-78 & 79 was formulated and launched on 03.03.2011 and the same was to close on 24.03.2011. The main feature of the Sports City Scheme was sports facilities, which is an integrated project and has to be developed as a whole.

28. He further submitted that an application was made by the Consortium in which Lead Member was M/s Xanadu Estates Pvt. Ltd. along with other Consortium Members. The bid of this Consortium company was most compliant and it was allotted the Sports City Project in Sector-78 and 79,

which was for admeasuring area 7,27,500 sqm. Accordingly, allotment letter was issued on 04.05.2011 to M/s Xanadu Estates Pvt. Ltd. (Consortium). M/s Xanadu Estates Pvt. Ltd. (Lead Member of the Consortium) vide letter dated 11.10.2011 requested NOIDA to execute separate Lease Deeds in favour of the Relevant Members of the Consortium. In pursuance of the aforesaid request, the NOIDA authority executed Lease Deeds in favour of the Relevant Members of the Consortium on 24.10.2011. The original allottee representing all the allottees filed a Master Development Plan, which was approved on 16.06.2014.

29. He submitted that an audit was conducted by Comptroller and Auditor General of India⁴, who pointed out certain deficiencies in the allotment, implementation and development of the Sports City, vide its report, which was tabled in September 2020. Thereafter, the Board Meeting of NOIDA was held on 18.01.2021 (201st Board Meeting) in which it was resolved that recommendation should be made to Public Accounts Committee to look into the deficiencies pointed out by CAG and give a report. As an interim measure, it was further resolved that no action should be taken towards development of sports city nor any maps should be revalidated. Further, on the basis of the report submitted, in the next Board meeting (202nd) held on 25.06.2021, it was resolved that the matter may be referred to the State Government for necessary guidance and direction.

30. He further submitted that on the basis of aforesaid analysis it can be concluded that the sub-division in favour of the subsidiary is fully binding on the subsidiary company and the subsidiary company is to perform the obligations as are contained in the original terms of the lease and to develop the Sports City Project and cannot claim any independent existence for an independent project. The entire scheme of the Sports City Project discloses that group housing/ residential purpose is complimentary to the principal

4. CAG

objective of development of the sports facilities. The residential purpose and the commercial purpose being complementary to the development of sports facility, it can only be viewed to be an integrated project.

31. He submitted that since, Group Housing of the petitioner does not come in the category of project on a stand alone basis under the Sports City Scheme it cannot be conceived to be a complete project without development of the sports facilities, inasmuch as, sports facility is the primary project and group housing is complimenting the sports facility project and in that sense Group Housing becomes an integral part of the project. Non- development of sports facilities frustrated the Sports City Project. Leaving of open space does not satisfy the object of developing sports facilities, and it has to be developed as per brochure. There is no assertion in the writ petition to the fact that open space has been left out for developing the sports facilities to be utilized by the members of the public.

32. He submitted that the lessee as a Consortium never submitted any plan to develop the sports facility. There was no layout plan submitted by the Consortium for development of the sports facilities. The layout plan was submitted by the so-called Special Purpose Company⁵, which consisted of only four companies and was not a SPC for the Consortium. This SPC had with it only 2.5 lacs sqm of land but submitted a layout for 7.27 lacs sqm of land, which was also approved, though could not have been approved.

33. Learned Senior Counsel next submitted that in the last 10 years M/s Three C Green Developer Pvt. Ltd., and any other member of the Consortium or their sub-lessee had not developed any sports facility in the entire Sports City Project, which was due to the ill motive of the Consortium lessee, who had no intention to develop the sports facility right from the beginning. Though as per the Brochure, the implementation of the project was the duty

5. SPC

of Noida Authority, but since development was not carried out and sports facilities were not developed as obligated under the scheme and the lease deed, hence no relief can be granted to the petitioner.

ANALYSIS BY THE COURT

34. 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 appellants.

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

36. Surprisingly, again a sub-lease deed was executed between Noida and the petitioner, M/s Golfgreen Estates Pvt. Ltd., on 19.10.2012 and a separate payment plan was given to the petitioner herein. Clause 42 and 43 of the original lease deed executed between M/s Kindle Developers Pvt. Ltd and Noida Authority clearly states that the project was an integrated project and the allottees along with the sub-division would file a consolidated layout plan and the same would be developed in accordance to the scheme. The same clauses were also mentioned in the lease deed executed between the petitioner and the Noida Authority as clauses (dd) and (ee), which are as follows:-

“(dd). प्राधिकरण द्वारा स्पोर्ट सिटी योजना के लिए सैक्टर-79 में आबंटित भूमि पर स्पोर्ट सिटी योजना का नियोजन एवं क्रियान्वयन एकीकृत (Integrated) रूप में करने के लिए आबंटि संस्था द्वारा समस्त आबंटित भूमि पर (उप विभाजित भूखण्डों को भी एक साथ सम्मिलित करते हुए) एक साथ भूविन्यास मानचित्र प्राधिकरण से स्वीकृत कराना होगा। इस मानचित्र में भूमि के आबंटन की शर्तों के अनुसार विभिन्न क्रियाओं का नियोजन प्रस्तावित किया जायेगा।

(ee). प्राधिकरण द्वारा अनुमोदित भू-विन्यास मानचित्र के क्रम में ही आबंटि संस्था द्वारा योजना का क्रियान्वयन किया जायेगा। प्राधिकरण द्वारा भू-विन्यास मानचित्र स्वीकृत किये जाने तक आबंटि संस्था के सदस्य उप विभाजित भूखण्डों को किसी भी दशा में किसी अन्य को हस्तान्तरित नहीं करेंगे।”

FORMULATION OF THE SCHEME

37. The way the scheme was formulated was also not upto the mark. If the object of the scheme was for a proper development of the sports city, the division and subdivision of plots, and the transfer without the permission of Noida authority, and that too without paying the stamp duty, would not have been the part of the scheme as it was antithesis to its objects. Some of the examples were as follows:-

*“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.**”*

(Emphasis supplied)

IMPLEMENTATION OF THE SCHEME

38. As per the scheme, a Brochure was issued which had the following conditions and the same were breached by the allottees/sub-leasee, in connivance with the officers of the Noida Authority. Some of the conditions and their glaring breaches were as follows :-

*“(i). **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.**”*

Individual sub leases were executed by the Noida authority and treating them as a separate allottees their payment plan was fixed and the map was sanctioned. The condition of shareholding of the lead member was given a go by.

“(ii) 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.”

This condition was also flouted and the shareholding of the lead member was drastically reduced, even much prior of getting a temporary occupancy/competition certificate of first phase of the project.

“(iii) 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.”

No such MOA was executed which defined the role and responsibility of each members.

39. After the scheme was launched and the allotment was made, the lease deeds were executed, and the allottees/sub-lessees in connivance with the officers of the Noida Authority breached various conditions of the scheme as well as the lease deed to provide undue benefit to the builders. Some of the glaring examples are that the lead members of the consortium was supposed to hold 30% of the shares in the consortium till date the first phase of the sports city was developed. However, soon after the allotment, the lead member was taken out and the lease was signed by various other companies, who were consortium members. The lead member was found missing when the lease was signed.

40. Hence, it is clear that even the execution of separate lease-deed would be a comprehensive lease-deed and as such, subsequent execution of the deed would be contemporaneous and would constitute as one lease-deed.

41. As per the provisions of the lease deed the consortium as a whole applied to the Noida Authority for approval of the layout plan and accordingly, a layout plan was approved on 16.06.2014, wherein as an internal arrangement the entire facilities of Sports City was divided into 16 companies, out of which only two had taken on themselves the responsibility of completing the sports city, whereas the rest were given the benefit of developing the residential project.

42. As per this approved layout plan the petitioner M/s Golfgreen Estates Pvt was supposed to develop on the plot no.SC-01/D-3, Sector 79 on 25,000 sqm and was permitted to construct 56250 sqm of residential, however, the petitioner was not been given a task of developing anything towards the sports facilities.

43. Though the project was an integrated project but the Noida Authority had executed individual sub-lease deeds with various sub-allottees and gave them a fresh payment plan. All the consortium members were supposed to execute a memorandum of agreement conveying the intent to jointly apply for the development of the project, however, no such agreement was ever executed by the members.

44. The consortium members were supposed to form a SPC, who was to carry out the responsibilities of the development of the project. Though the SPC was there but was never given any such responsibility. Noida Authority divided the entire sports city project in a number of plots, and allotted to various companies. Each of these companies were assigned with specific roles, which were approved by sanctioning the master lay out map. Whereas all the 21 companies got the advantage of developing the residential/commercial project, and the entire responsibility of completing the sports city was assigned to only two companies, this division was done with the sole intention of taking the cream out in smaller companies, which was

later on sold to other builders (who were not even qualified to apply), by transferring the shares of the sub-lessee companies at a very high profit. All the profits were siphoned off, and nothing was ploughed back for the development of the sports facilities and leaving the responsibility of developing the sports facility on just two companies.

45. The allottees were supposed to make payment as per the payment schedule given in the lease deed, however, most of the allottees including the petitioner had defaulted to make the payment and for the reasons better known to the Noida Authority, they never asked the petitioner to make the payment or charge the contractual interest.

46. The lessees were supposed to complete the construction of minimum 15% of the permissible area earmarked for sports facilities within three years of the date of execution of the lease deed and complete the project in phases within five years, however, the residential and commercial constructions was to be completed in seven years. This timeline has also not been complied with.

47. The sub-division of the plot was allowed only for the residential area and that too after completing the first milestone, however, in this case right from the beginning the entire plot including the recreational area was divided (which could not have been divided) as per the scheme of the sports city.

48. In the scheme and the lease deed, time for completion of the project was clearly mentioned. It was mentioned that 30% of the sports facilities has to be developed in three years and the remaining within five years, however, residential part was to be completed within seven years of the execution of the lease deed.

49. Though there were certain problems regarding handing over possession of land, hence, the Noida Authority had granted the benefit of Zero Period and extended the period of payment as well as execution of the project. The

benefit of Zero Period was till 31.01.2017. The effect of this was that the first phase of the aforesaid facilities was to be completed by 30.01.2020 and the entire sports facilities were to be completed by 31.01.2022, whereas the residential portion could have been completed by January, 2024. No such development was carried out by the consortium members of the allottees. Nothing was developed towards sports facilities, however, some of the members/sub-lessees had gone ahead and constructed some residential portion on their plot.

50. In spite of the land been allotted to them, master plan been approved, the petitioner did nothing to develop the said land, no sports facilities were developed, neither any residential facilities were developed.

51. Right from the inception, the allotment, the sub-division, the approval of map and the implementation was marred with fraud. The consortium members had no intention to develop the sports facilities right from the beginning. The land was sub-divided, and all the liabilities of developing the sports facilities in 70% of the total area of almost eight lac square meters were fastened on just two companies. Both the companies did nothing in the last one decade towards the development of the sports facilities. Shockingly one of the companies has also gone into insolvency and no sports facilities have ever been developed, however, the sub-lessees got the map approved and started construction.

52. The sports city was to be developed as an integrated project. The entire sports facilities were to be developed earlier and, thereafter only, the residential portion could have been developed. There was a big scam in the allotment and development of the sports city. Infact during an audit the Comptroller and Auditor General, who has conducted an audit, found that the scam was of almost nine thousand crore rupees and the same was planned and

executed by the builders/allottees in connivance of the Noida officials. The CAG after auditing pointed out certain deficiencies, which are as under:

- “(I) As Noida Authority has done a wrong pricing of the Sports City.*
- (II) As per the brochure only residential and commercial plots could have been divided but the Noida Authority sub-divided entire plots, which were earmarked for Sports City.*
- (III) Bids of the allottee were not screened and the turnover of the candidates were also not considered before allotting the plot.*
- (IV) The Lead Member having the highest share were ousted from the project completely.*
- (V) The allotment was done to various other companies, who individually could not have qualified in the financial bid evaluation with the result, by adopting such dubious methodology, the Noida Authority had allotted the plots to those, who were not even entitled to apply individually.*
- (VI) The Noida Authority did not even bother to collect the installments dues and no effort was ever made by them giving an undue and illegal advantage to the allottees.*
- (VII) The finance department has issued a fresh payment plan considering each allottee company as a fresh allottee. The transfer charges for second and third transfer were not even collected.*
- (IX) The lease rent was also not recovered.*
- (X) Separate payment plans were issued to all the allottees treating them as individual allottees.”*

53. The Board of Noida Authority in its 201st Board Meeting, has kept the entire development of the Sports City on hold and had made a committee to look into the illegalities. The Committee tabled the report in the next board meeting. The Noida Authority had referred the matter to the State Government and sought guidance and direction for the further development of the Sports City. Thereafter, the State Government referred the matter to the Public Accounts Committee⁶. The PAC is hearing the matter but the directions are still awaited and the Noida Authority in absence of any direction is not taking any steps towards the development of the sports facilities.

6 PAC

54. The intention of the sports city scheme was not to allot small plots to small builders/fly by night operators, then why did Noida Authority divided the plots into smaller holdings and allotted to various companies. The sub division of the sports city was carried out and sub-leases were granted to companies, which were not even eligible to bid for the project.

55. In this backdrop, this Court is of the view that the petitioner company cannot claim any independent rights even if the sub-lease is executed by the Noida Authority without original allottee, however, in both the lease deeds it is specifically stated that it is an integrated project and has to be completed in an integrated form. The petitioner company cannot have any better right than that of its parent company, M/s Kindle Developers Pvt. Ltd.

56. The petitioner company is a subsidiary company of the main company, M/s Kindle Developers Pvt. Ltd, the obligation of the parent company, who was a member of the consortium to whom the project was allotted, has to be fulfilled, and further, the petitioner is bound by the terms of the lease deed and the provisions of the scheme of the sports city.

57. The brochure of scheme clearly laid down a Memorandum of Agreement would be signed between all the consortium members depicting their responsibilities in the development of the sports city. This agreement was never signed or placed before the Noida Authority, and in absence of it, the allottees/sub-allottees cannot claim separate obligations.

58. The entire project of sports city was an integrated project. The development of the sports facilities was the primary object of the project and the residential part was an ancillary part. The brochure made it clear that the sports facilities to be developed earlier and the residential premises, which was an ancillary part of the sports city, was to be developed later. The first phase of the sports facilities was to be completed in three years, the entire sports facilities were to be completed in 5 years, and 7 years time was given

to complete the residential part of the project. However, the timeline given in the brochure was completely given a go-bye and the consortium members/allottees of the project had failed to develop both the sports city as well as the residential part within the stipulated time.

59. The petitioner in this writ petition are seeking relief in the ancillary part of the project without developing the principal/main part (i.e. sports/recreational part, which was 70% of the project). Since the project was an integrated project and cannot be divided, hence, no direction can be issued to the respondents for development of the ancillary part of the project.

60. Though in the brochure the sub-division of the project was allowed but this sub-division also comes with a rider that only a residential part of the project to be sub-divided that too after completion of the first phase of project. However, in this case in clear contravention of the scheme of the sports city and the lease deed, the Noida Authority had executed the sub-lease and divided the entire project including the recreational part, which could not have been divided. This division was illegal and was an outcome of the fraud been committed by the builders of the allottee in connivance with the officers of the Noida Authority. No allottee or the sub-lessee can take advantage of a fraud, which had been played by them.

61. Undoubtedly, the sub-division had been carried out and sports facilities were executed by the Noida Authority as well as the sub-lessees. However, these sub-lessees were nothing but a 100% subsidiary owned by the original allottee and the same was carried only for the internal arrangement by the allottees. As far as the Noida Authority is concerned, the project was allotted to the consortium and it is the duty of the consortium members to complete the project as per the scheme. It cannot be inferred that the sub-division is a separate allotment and it gives separate rights to the sub-lessees.

62. After the sub-division of the plot and sub-lessees were executed, the consortium members together got a master plan approved on 16.06.2014. This master plan was applied by the consortium members. The sub-division and the responsibility of developing the sports city was an internal arrangement of the consortium members. The approved plan has to be as per the lease deed and the terms of the lease deed specifically mentioned that it is an integrated project. Hence, the sub-allottees cannot take benefit of the fact that the map was sanctioned and individual responsibility is given to the other companies, as such the petitioner was not obliged to develop anything towards sports facilities, as such, no responsibility of developing the sports facilities can be fastened on the petitioner. The stand of the petitioner that he is not liable to construct sports facility is also not correct.

63. Evidently, there was an internal division among the consortium members where the liability of completing the sports facilities was taken over by two companies among themselves, who have failed to develop the sports facilities.

64. When a project is allotted to a consortium it is a duty of the consortium members to ensure that the project is completed. One of the parties cannot come-forward and allege that since the other member has not completed its part of obligation, but benefits, which were supposed to accrue to the other members, should be allowed to be extended over to them. The project is an integrated project, which was allotted to the Consortium. All the members of the consortium are jointly and severally responsible to complete the obligation of the consortium and are also responsible for the liabilities of the consortium.

65. The petitioner company has defaulted in making payments to the Noida Authority and as on 31.10.2024, the dues of the petitioner is Rs.20.99 crores.

66. The petitioner company itself is responsible for the delay as its lease deed was executed in 2012, the master layout plan was sanctioned in 2014 and the period of 7 years for the completion of residential part came to an end in 2021. However, even giving the benefit of the Zero period, the petitioner company is still responsible for the delay in completion of the project.

67. The petitioner by means of this writ petition has made a prayer for quashing the demand letters dated 02.02.201 and 07.09.2021 and not to charge any lease rent, interest or any charge including penalty till such time the building plan pertaining to petitioner's plot is sanctioned by the respondents. The petitioner is not entitled for the relief as delay is solely attributed to the petitioner company itself. Hence, the demand letters dated 02.02.2021 and 07.09.2021 cannot be quashed.

68. Since this project is an integrated project, wherein the petitioner company has to develop the sports facilities first and, thereafter, complete the residential part of the project. The development of the residential/sports facility has not even been started as yet. The residential part can only be sanctioned when the proportionate development of the sports facilities has been carried out.

69. The brochure and the scheme of the sports city, lease deeds have to be read as one document and has to be considered together. The petitioner cannot be extended any benefit of the fraud played by the consortium members in connivance with the Noida Authority.

70. The provisions of the scheme of the sports city as well as the terms of the lease deed has to be followed in toto. The petitioner company cannot claim any rights or benefits on the basis of some fringe development, which has fraudulently been carried out.

71. The Hon'ble Supreme Court in the matter of **Infrastructure Leasing and Financial Services Ltd. v. HDFC Bank Ltd and another** reported in 2023 SCC OnLine SC 1371 has held that one document is styled or described in a certain manner or that it uses a certain expression, or term is not conclusive; it is the effect of all the terms, of the document, which bring out the true purport and intention of the parties. Likewise, principle of contractual interpretation, is that where the transaction is not the subject of one document, but several, which refer to each other, reading of all, describes the entire contract, then, it is open to the court to consider all of them together.

72. Since the project was applied and was allotted to a consortium, it is duty of the consortium to develop the project and no matter whatever is the internal arrangement. If one of the parties failed to carry out its obligation, it will be a duty of the other members of the consortium to cooperate and complete the obligations, which remained pending. The principle of composite performance would be applied in this case.

73. Since conjoint reading of the sports city scheme, lease deed and sub-lease deed shows that in the integrated project the consortium members are bound by the principle of composite performance. On this issue, Hon'ble Supreme Court in the matter of **Cox and Kings Limited v. SAP India Pvt. Ltd. and another**⁷ has held that the general position of law is that parties will be referred to arbitration under the principal agreement if there is a situation where there are disputes and differences "in connection with" the main agreement and also disputes "connected with" the subject-matter of the principal agreement.

74. In **Chloro Controls v. Severn Trent Water Purification Inc.**⁸ the Hon'ble Supreme Court clarified that the principle of "composite performance" would have to be gathered from the conjoint reading of the

⁷ (2024) 4 SCC 1
⁸ (2013) 1 SCC 641

principal and supplementary agreements on one hand, and the explicit intention of the parties and attendant circumstances, on the other hand. The common participation in the commercial project by the signatory and non-signatory parties for the purposes of achieving a common purpose could be an indicator of the fact that all the parties intended the non-signatory party to be bound by the arbitration agreement. Thus, the application of the Group of Companies doctrine in case of composite transactions ensures accountability of all parties, who have materially participated in the negotiation and performance of the transaction and by doing so have evinced a mutual intent to be bound by the agreement to arbitrate.

75. It is not in dispute that the project was allotted to a consortium. Whatever be the internal arrangement between the members of the consortium, but if one of the members fails to fulfil its obligation, it will be the duty of the other members in the consortium to complete the same. Since no individual rights have been assigned to any of the sub-lessees, hence, the failure to perform any part by any member of the consortium would amount to failure on the part of the consortium.

76. Considering the totality of the facts and circumstances mentioned above, this Court is of the opinion that no relief or reprieve can be accorded to the petitioner.

77. Accordingly, the instant writ petition is **dismissed**.

Order date : 24.02.2025
Manish Himwan

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