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Court No. - 42

Case :- WRIT - C No. - 33408 of 2022
Petitioner :- M/S Golfgreen Buildcon Pvt. Ltd.
Respondent :- State of U.P. and Another
Counsel for Petitioner :- Pankaj Dubey
Counsel for Respondent :- Kaushalendra Nath Singh

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

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1. Heard Sri Pankaj Dubey, learned counsel for the petitioner, Sri Devesh Vikram, learned Additional Chief Standing Counsel, Sri Mohan Srivastava & Sri Fuzail Ahmad Ansari, learned Standing Counsel for State-respondents and Sri Manish Goyal, learned Senior Advocate assisted by Sri Kaushalendra Nath Singh and Ms. Anjali Gokhlani, learned counsel for the respondent-NOIDA.

FACTUAL MATRIX

2. New Okhla Industrial Development Authority¹ sometime in the year 2011 floated a scheme known as “Sports City-II” which was to be developed in Sectors 78, 79 and 150 of NOIDA. The scheme was launched on 03.03.2011 and closed on 24.03.2011. As per the scheme, a Sports City was to be developed on a land parcel of 72.75 hec. in Sector 78, 79 and another in Sector 150 of NOIDA. The reserve price for the scheme was set at Rs.11,500/- per square metre. The price was purposely kept low as the developer was supposed to create sports facilities over 70% of the entire land allotted to them, which was not marketable, and on top of it, the developer had to infuse its own 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 person per hectare. In this scheme, maximum permissible Floor Area Ratio² of the total land was 1.5. The recreational component (i.e. sports activities such as Golf course, stadium etc. and other open spaces) was to be considered as open green areas for the entire land. The relevant conditions in 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,*

** SPCs that will subsequently carry out all its responsibilities as the allottee, and*

will have to construct on their own a minimum of 30% of the total permissible FAR on allotted area.

**The “Lead Member” shall continue to hold at least 30% of the shareholding in the SPC till the temporary occupancy/completion certificate of at least one phase of the project is obtained from the NOIDA*

¹. NOIDA

². FAR

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

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

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

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

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

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

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

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

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

3. In response to aforesaid 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 composition of the Consortium was as under:-

“(i). Xanadu Estates Pvt. Ltd. ('Lead Member') [30% Shareholding].

(ii). Meriton Infotech Pvt.. Ltd. (Relevant Member) [5% Shareholding].

(iii). Sutlej Agro Products Pvt. Ltd. (Relevant Member) [5%Shareholding].

(iv).Xanadu Infradevelopers Pvt. Ltd. (Relevant Member) [10% Shareholding].

- (v). Xanadu Infratech Pvt. Ltd. (Relevant Member) [10% Shareholding].*
- (vi). Xanadu Realcon Pvt. Ltd. (Relevant Member) [10% Shareholding].*
- (vii). Sequel Building Pvt. Ltd. (Relevant Member) [10% Shareholding].*
- (viii). Sequel Building concepts Pvt. Ltd. (Relevant Member) [10% Shareholding].*
- (ix). Kindle Developers Pvt. Ltd. (Relevant Member) [10% Shareholding].”*

4. The bid of the Consortium of M/s Xanadu Estates Pvt. Ltd. was found to be the most compliant for the development of the sports city, and hence, the project was allotted to them. The NOIDA Authority issued an Acceptance Letter on 28.03.2011 and informed the Lead Member about the allotment. Thereafter, Noida Authority 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-01-01, Sector 78 & 79, NOIDA was reserved in favour of the Consortium as per the terms and conditions mentioned in the brochure of the Scheme.

5. 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 and the entire sports city project was divided in six parts as under:-

- “(i). Plot No. SC-01/A admeasuring 100,000 Sq. metres in favour of M/s Sequel Buildcon Pvt. Ltd. Relevant Member.*
- (ii). Plot No. SC-01/B admeasuring 48,000 Sq. Metres in favour of M/s Sequel Building Concepts Pvt. Ltd. Relevant Member.*
- (iii). Plot No. SC.-01/C admeasuring 2,50.027.50 Sq. Metres in favour of M/s Three C Green Developers Pvt. Ltd.- Special Purpose Company.*
- (iv). Plot No. SC-01/D admeasuring 1,00,000 Sq. Metres in favour of M/s Kindle Developers Pvt. Ltd.- Relevant Member.*

(v). Plot No. SC-01/E admeasuring 80,000 Sq. Metre in favour of M/s Xanadu Realcon Pvt. Ltd:- Relevant Member.

(vi). Plot No. SC-01 admeasuring 14,272.50 Sq. Metre in favour of M/s Xanadu Infratech Pvt. Ltd. Relevant Member.”

6. One of the relevant member of the Consortium i.e. M/s Sequel Building Concepts Pvt. Ltd., which was allotted 48,000 Sq. Metres land, again requested the NOIDA Authority to further bifurcate the land into two equal parts of 24,000 Sq. Metres each. The bifurcation was as follows:-

“(i). Plot No. SC-1/B1 measuring 24,000 Sq. Metres of land in favour of M/s Sequel Building Concepts Pvt. Ltd.

(ii). Plot No. SC-1/B2 measuring 24,000 Sq. Metres of land in favour of M/s Golfgreen Buildcon Pvt. Ltd.”

7. It was claimed that both the companies were 100% subsidiary of Ms. Sequel Building Concepts Pvt. Ltd. Thereafter, separate lease deeds were executed by NOIDA Authority in favour of both M/s Sequel Building Concepts Pvt. Ltd. and M/s Golfgreen Buildcon Pvt. Ltd. for their respective parts on 19.10.2012. In the lease deed it is specifically mentioned that SC-01/B1 admeasuring 24,000 sqm. was to be developed by M/s Sequel Building Concepts Pvt. Ltd. and SC-01/B2 admeasuring 24,000 sqm. was to be developed by M/s Golfgreen Buildcon Pvt. Ltd. The relevant provisions of the lease deed were as follows:-

“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.

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)(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.

(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.

(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.

(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.

(dd). प्राधिकरण द्वारा स्पोर्ट सिटी योजना के लिए सैक्टर-79 में आबंटित भूमि पर स्पोर्ट सिटी योजना का नियोजन एवं क्रियान्वयन एकिकृत (Integrated) रूप में करने के लिए आबंटी 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 भूविन्यास मानचित्र के क्रम में ही आबंटी संस्था द्वारा योजना का क्रियान्वयन किया जायेगा। प्राधिकरण द्वारा भूविन्यास मानचित्र स्वीकृत किये जाने तक आबंटी संस्था के सदस्य उप विभाजित भूखण्डों को किसी भी दशा में किसी अन्य को हस्तान्तरित नहीं करेंगे।"

8. Thereafter, M/s Three C Green Developers Pvt. Ltd. had filed a master layout plan for development of Sports City, which was approved by the NOIDA Authority on 16.11.2012, wherein the Plot No. SC-01/B2 of the petitioner admeasuring 24,000 sq. mtr. was also included.

9. After the execution of the separate lease deed dated 19.10.2012, M/s Golfgreen Buildcon Pvt. Ltd.³ applied for sanction of map for its residential/commercial project namely "HILSTON URBETECH". The petitioner's map was also individually sanctioned vide letter no.2013/IV-1409-692 on 04.09.2013 and the petitioner company was granted five years' time from the date of its approval. As per the sanctioned plan by the NOIDA Authority, on the plot of the petitioner (SC-01/B2), nine Residential Towers were sanctioned.

10. Soon after the sanction of the nine Towers, the petitioner started construction and Tower E, F and G were completed.

³ Petitioner Company

11. Thereafter, the SPC Company filed revised master layout plan and the same was sanctioned by the NOIDA Authority on 16.06.2014. This revised master layout plan contained details of obligation of each Company as to what was to be individually developed by them. The approved Chart by NOIDA Authority is as follows:-

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

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

15	M/S GOLF GREEN INFRA PVT.LTD. SC-01/E2, SEC-79, (20,000.00)	55,000.00	14000.00	5795.00	205.00	0.00	54795.00	205.50	0.00
16	M/S GOLFGREEN SUPERSTRUCTUR ES PVT. LTD. SC-01/E3, SEC-79, (20,000.00)	55,000.00	14000.00	5000.00	400.00	0.00	54450.00	550.00	0.00
17	M/S XANADU INFRATECH PVT. LTD. SC-01, SEC-78, (14,272.50)	4,281.75	9990.75	0.00	0.00	4781.7 5	0.00	0.00	4281. 75
18	M/S THREE C GREEN DEVELOPERS PVT. LTD. SC-01/A, SEC-101, (19,170.00)	0.00	19170.00	0.00	0.00	0.00	0.00	0.00	0.00
19	M/S THREE C GREEN DEVELOPERS PVT. LTD. SC-01/B, SEC-101, (29,350.00)	0.00	29330.00	0.00	0.00	0.00	0.00	0.00	0.00
PROPOSED DEVELOPMENT 7,03,001.80		10,54,502.70	-----	-----	-----	28.38	-----	5074.00	-----
PERMISSIBLE DEVELOPMENT 7,03,001.80		10,54,502.70	492161.26	198840.50	14060.01	5881.75	852038.18	5624.01	-----
SPORTS FACILITIES									
SUBSIDIARIES			PLOT NO.	FACILITIES TO BE IN LAND PARCEL			MIN. AMOUNT TO BE SPENT (IN CRORE)		
M/S THREE C GREEN DEVELOPERS PVT. LTD.			SC-01/C1	GOLF COURSE (9 HOLE)			40.00		
M/S ARENA SUPER STRUCTURE PVT. LTD.			SC-01/A2	MULTIPURPOSE PLAYFIELD			10.00		
M/S THREE C GREEN DEVELOPERS PVT. LTD.			SC-01/C1	TENNIS CENTRE			35.00		
M/S THREE C GREEN DEVELOPERS PVT. LTD.			SC-01/C1	SWIMMING CENTRE			50.00		
M/S THREE C GREEN DEVELOPERS PVT. LTD.			SC-01/C1	PRO-SHOPS/FOOD AND BEVERAGE			30.00		
M/S THREE C GREEN DEVELOPERS PVT. LTD.			SC-01/C1	IT CENTRE/ADMINISTRATION/MEDIA CENTRE			65.00		
M/S THREE C GREEN DEVELOPERS PVT. LTD.			SC-01/C1	INDOOR MULTIPURPOSE HALL, SPORTS HALL INCLUDING GYMNASTIC, TABLE TENNIS, SQUASH, BASKET BALL, VOLLEY BALL BADMINTON, ROCK CLIMBING			30.00		
M/S THREE C GREEN DEVELOPERS PVT. LTD.			SC-01/C1	CRICKET ACADEMY			50.00		
ALL			-	INTERNAL ROADS AND PARKS			25.00		
M/S XANADU INFRATECH PVT. LTD.			SC-01, SEC- 78	HOSPITAL/SENIOR LIVING/MEDICINE CENTRE			60.00		
ALL			-	CIRCULATION SPACES, CARPETING, UTILITIES ETC.			15.00		

12. Since the NOIDA Authority was not in a position to handover the entire plot to the Consortium, therefore NOIDA Authority granted benefit of Zero period upto 30.01.2017 (vide letter no. Noida/commercial 2016/1111 dated 30.12.2016) with the rider that no further benefit would

be extended to the allottees/builders and thereafter the payment schedule was also rescheduled.

13. The petitioner company moved an application to the NOIDA Authority on 06.03.2019 and requested for extension of validity of the map and renew the same for next five years from the date of Zero period letter. The reminder for the same was also sent on 18.02.2020 to the General Manager (Planning), NOIDA. In this letter, it was further submitted that the petitioner company had already commenced the construction of three towers in the year 2017, immediately after resolution of litigation and delivery of possession of project land by the NOIDA Authority and these towers are also duly registered with Uttar Pradesh Real Estate Regulatory Authority⁴ as per provisions of Real Estate (Regulation and Development), Act, 2016.

14. After completion of three towers, the petitioner company requested for issuance of completion certificate vide application dated 21/22.06.2021, and also after getting all the ancillary NOCs including fire, lift, water, sewer etc.

15. In the interregnum, the Comptroller and Auditor General of India⁵ had audited the allotment, implementation and development of the Sports City, wherein it was found that there was a large scale bungling in allotment and development of the Sports City. As a knee jerk reaction, NOIDA in its 201st Board Meeting held on 18.01.2021 had resolved to freeze all the activities of the Sports City. A committee was formed to look into the issue, which gave a report to stop any further action in the Sports City specially the revalidation of the map and sub-division of plots. In the next Board Meeting (i.e. 202nd Board Meeting held on 25.06.2021), the Board of NOIDA referred the matter to the State Government for necessary direction and guidance.

⁴ UP RERA

⁵ CAG

16. It is claimed that due to the CAG report, the NOIDA was not ready to take any decision in Sports City project or to issue occupancy certificate, although the project of the petitioner company was entirely complete and the possession were also handed over to the home buyers. The petitioner as well as the home buyers were only waiting for the occupancy certificate and for the execution of the tripartite deed.

17. It is claimed that due to non-issuance of the completion certificate, neither the petitioner company was able to transfer the property to the home buyers, nor the home buyers are in position to have ownership of the flats.

18. Aggrieved by the inaction of the NOIDA Authority, the petitioner company has moved the instant writ petition seeking the following relief:-

“(i) To issue a writ, order or direction in the nature of Mandamus commanding the respondent NOIDA Authority to grant completion certificate in respect of petitioners project situated at plot no. SC-01/B-2, Area 24,000 Sq. Metres, Sector 79, NOIDA.

“(ii). To issue any other order or direction which the Hon’ble Court may deem fit and proper in the circumstances of the case.”

ARGUMENTS OF THE PETITIONER

19. Learned counsel for the petitioner company vehemently submitted that after the Sports City was allotted to the Consortium, on the request of the Lead Member, the lease deed was executed in favour of the member of the Consortium.

20. He submitted that one of the Consortium member (M/s Sequel Building Concepts Pvt. Ltd. with 48,000 Sq. Metres of land), requested the NOIDA Authority for sub-division of land, which was approved on 03.10.2012, whereby the Plot No.SC-01/B was divided into two equal parts i.e. Plot No. SC-01/B1, which remained with the M/s Sequel Building Concepts Pvt. Ltd. and other 24,000 Sq. Metres land was

allotted to M/s Golfgreen Buildcon Pvt. Ltd., for which the NOIDA Authority has executed separate lease deeds on 03.10.2012 along with the separate payment plans.

21. Thereafter, the SPC- M/s Three C Green Developers Pvt. Ltd. had filed an integrated master plan, in which Plot No.SC-01/B2 was also included, wherein the petitioner's plot was shown as a part of residential development of the project. However, after the execution of the fresh lease deed in favour of the petitioner, the petitioner again applied for sanction of its map, wherein it was supposed to develop the residential towers. This Map was approved on 04.09.2013 and was valid for 5 years from the date of its approval. As per the approved Map, the petitioner company was allowed to construct nine towers. The petitioner company immediately launched the project in the name of 'HILSTON URBETECH' with nine residential towers. After getting all the approval and sanction, the petitioner company started marketing and booking the flats and collected the money. Soon thereafter, the petitioner company started construction and out of nine towers, actually constructed three towers and the same was complete in all respects, as per the norms and as per the sanctioned map. The petitioner company thereafter sought completion/occupancy certificate from the NOIDA Authority.

22. In the meantime, since the validity of the approved map of the petitioner had come to an end, so the petitioner had moved an application for revalidation of the map, which is still pending with the NOIDA Authority.

23. The petitioner further submitted that the remaining allotted land of the petitioner is still lying vacant and the construction can only be carried out after the revalidation of the map.

24. Learned counsel for the petitioner further submitted that the terms and conditions mentioned in the brochure of the scheme contained a clear provision for issuance of completion certificate on completion of project

‘or part thereof’. After all the approval and sanction of the Map for construction of Residential Apartment, the petitioner completed the construction as per the sanctioned map and as per the norms and has all the valid NOCs. After completion of the project by the petitioner, NOIDA Authority cannot withhold or delay issuance of completion certificate.

25. It was submitted that in absence of grant of completion certificate by the NOIDA Authorities, the petitioner company cannot execute the tripartite deeds in favour of the allottees, and the Home buyers, who have although paid the entire money, cannot get the title of their flats.

26. Learned counsel for the petitioner company assertively argued that to cover the lapses of the NOIDA Authority in allotting and implementation and development of the Sports City project, (when the same was pointed out by the CAG,) a fresh objection has been taken by the NOIDA Authority for the first time, stating that since the Sports City facilities have not been developed, hence occupancy certificate cannot be granted to the petitioner. This objection was absolutely baseless as the NOIDA Authority itself had sanctioned the integrated map of the entire Sports City. While sanctioning the Map, NOIDA Authority had bifurcated the role of the companies for development of Sports facility as well as for development of the residential and commercial part of the project.

27. As per the first approved map dated 16.11.2012, which was filed by the SPC, the plot of the land allotted to the petitioner was earmarked to be developed as residential project and subsequently, the map of the petitioner company was also sanctioned on 04.09.2013, wherein it was obliged only to develop residential complex in that area. The SPC had given a revised integrated map of development of Sports City, which was approved on 16.6.2014, wherein two Companies had been given the obligation to complete the entire Sports facility of the Sports City, and they are M/s Three C Green Developers Pvt. Ltd. and M/s Xanadu Infratech Pvt. Ltd., however, the rest of the Companies were only to

develop residential/commercial parts and no Sports facilities were assigned in their part of the development.

28. He submitted that since there was a delay in grant of the possession of land to the petitioner company due to which it could not start the construction, it was only after 2017 (when the issue of the possession was sorted by the Noida Authority) the petitioner could start the construction, hence the validity period of five years for the construction should start from 2017 when actual physical possession was handed over to the petitioner company.

29. He next submitted that since the development was carried out during the subsistence of the sanctioned map, and as per the sanctioned map. It will not be open for the NOIDA Authority now to say that they will not grant occupancy certificate just because some other companies, which were supposed to develop the Sports facilities, (as bifurcated and approved by the NOIDA Authority), have not carried out their part of obligation.

30. He further submitted that the development is regulated by the terms and conditions mentioned in the brochure of the Sports City Scheme. So far as the brochure is concerned, it has clearly been mentioned in it, that the completion certificate will be issued by the NOIDA Authority on the completion of the project or part thereof in phases and on the submission of the necessary documents required for certifying the completion of the project or part thereof. For ready reference, the relevant Clause of the Sports City Brochure is being quoted hereinbelow:

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

31. He submitted that in view of the clear provision in the brochure to the effect that on completion of project or part thereof, completion

certificate will be issued by the NOIDA Authority. Any condition mentioned in the sanctioned map contrary to the said provision is not binding on the petitioner and the NOIDA Authority is bound to issue completion certificate to the petitioner, particularly, when its entire construction is complete as per norms.

32. Learned counsel for the petitioner company further submitted that even the Sports City Scheme/ Brochure provides for the binding nature of the provisions of the U.P. Industrial Area Development Act, 1976⁶, and rules and regulations framed thereunder and as such, the NOIDA authorities cannot withhold the grant of final completion certificate and refrain from executing tripartite lease deed in favour of subsequent allottees/buyers.

33. He submitted that any term or condition of the contract, contrary to and inconsistent with regulations framed in legitimate exercise of power under section 9(2) of the Act, 1976 is liable to be ignored, being contrary to the provisions of Section 23 of "The Indian Contract Act 1872"⁷, as per established law. Section 23 of the Act 1872 provides as under:-

“Section 23-What considerations and objects are lawful, and what not- The consideration or object of an agreement is lawful, unless-

It is forbidden by law or

Is of such nature that, if permitted, it would defeat the provisions of any law; or
Is fraudulent; or

Involves or implies, injury to the person or property of another, or the court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.”

34. It was submitted that for issuing the occupancy certificate, NOIDA has framed a regulation under the Act, 1976. The relevant provisions of the U.P. Industrial Area Development Act, 1976 are as follows:-

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

⁶. Act, 1976

⁷. Act, 1872

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

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

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

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

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

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

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

Regulation 20 provides as under:-

20.0 Notice for issue of occupancy certificate -

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

20.1.2 Issue of occupancy certificate regarding Multi Storey Buildings-

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

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

35. He lastly submitted that issuance of occupancy certificate is completely governed by the provisions of the Act, 1976. Once the conditions laid under the Regulation are met, NOIDA Authority cannot hold back the occupancy certificate.

36. Learned counsel for the petitioner placed reliance on a judgement of Hon'ble Supreme Court of India in the case of **Mehsana District**

Central Cooperative Bank Ltd. And others Vs State of Gujrat and others reported in (2004) 2 SCC 463 wherein paragraph 16 at page 468 Hon'ble Supreme Court has inter-alia held:

“.....The Acts and Rules are made to be followed and not to be violated. When the statute prescribes the norms to be followed, it has to be in that fashion. Converse would be contrary to law. If there is any allegation of violation of statutory rules which have been brought to the notice of the authorities and if the authorities concerned do not perform their statutory obligation.

ARGUMENTS OF RESPONDENT NOIDA AUTHORITY

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

38. The Lease deed executed between the petitioner clearly stated the LESSEE shall ensure that the due installments along with interest are deposited on the due date. 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. In this case, the Lessee failed to deposit the due premium in time and neither the penal interest was paid.

39. Sri Goyal, learned Senior Advocate submitted that a separate lease deed was executed between NOIDA and the petitioner company. He referred to the relevant conditions of the lease deed, which were flouted were by the petitioner. The said conditions alongwith the violations, as argued by Sri Goyal, are mentioned below:-

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

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

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

This was also not carried out within the stipulated time.

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

This condition was also flouted as no proportional recreational/sports facility were developed proportionally.

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

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

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

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

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

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

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

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

“(viii) The lessee will be permitted to transfer the built-up space on the 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.”

These conditions were also not followed.

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

The allotment conditions were blatantly flouted.

41. He further submitted that in the way the allotment was carried out, sub-divisions were made, due instalments were never asked for and not even paid; the way map was sanctioned, the allottees were allowed to start construction on the commercial and residential areas even without

starting development of Sports facilities were not in accordance with the scheme or the rules.

42. Normally, a Consortium is a group of different companies/builders/ developers, who come together to complete a project, but here a number of companies were incorporated by the promoters of a company called M/s Three-C developers and all the companies, which were a newly incorporated company, and shareholdings were held by the same set of people. Though, instead of a comprehensive lease deed in favour of the lessee consortium, individual lease deeds were executed in favour of members of the Consortium. This exercise was undertaken on the request of Lead Member of the Consortium stating that it was an internal arrangement between the members. This sub-division was mere allocation on the request of allottees for proper implementation of the project and does not constitute a fresh transaction/ allotment.

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

44. He further submitted that on the basis of aforesaid analysis, it can be concluded that the sub-division in favour of the subsidiary company is fully binding on the subsidiary company and the subsidiary company is to perform the obligations as 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.

45. Learned Senior Counsel vehemently submitted that NOIDA Authority has been castigated for sanctioning the layout plan in favour of the sub-lessees individually and has been targetted that these plans do not contain any stipulation to the effect that any Sports facilities were to be developed by the Sub-lessee, inasmuch as, no Sports facility has been specified in the sanction layout plan of the petitioner, the layout plan submitted by them was on the basis of the internal arrangement of the

consortium members. Since it is an integrated project, it has to be completed as a whole. The failure of an individual will definitely effect the other members.

46. He submitted that no indefeasible right can be claimed by the sub-lessees on the basis that a plan has been sanctioned in their favour. The way the plan was submitted and approved was quite questionable, it was approved contrary to the terms of the scheme, brochure and the lease deed. Moreover in the plans prepared by the sub-Lessee, deliberately Sports facilities were excluded keeping 70% ground coverage vacant. Any plans approved illegally will not have a legal sanctity.

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

INTEGRATED PROJECT

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

49. To buttress his argument, he has placed reliance on a judgment passed by Hon'ble Supreme Court in the matter of **Nand Kishore Gupta and others vs. State of U.P. and others**⁸ wherein while dealing with a matter relating to allotment of five land parcels alongside the Yamuna Expressway, the Apex Court upheld the acquisition and allotment of the

⁸.2010(1) SCC 282

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

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

51. Since, Group Housing 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 happens to be an ancillary part of the Sports facility project and in that sense Group Housing becomes an integral part of the project.

NON-DEVELOPMENT OF THE SPORTS FACILITIES

52. Sri Goyal submitted that non-development of Sports facilities frustrated the Sports City Project. Leaving of open space does not satisfy the object of developing Sports facilities, it has to be developed as per brochure.

53. 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 SPC that consisted of only four companies and was not a SPC for the Consortium. This SPC had with it only 2.5 lacs Sq. Metres but submitted a layout for 7.27 lacs Sq. Metres of land, which was wrongly approved. The petitioner company cannot take any advantage of such an approval which was on their behalf and was not in accordance to the Scheme and the Policy.

54. In the last 10 years none of the member of the Consortium or their sub-lessee had developed any Sports facility in the entire Sports City Project. This shows their lack of intention and seriousness in developing the Sports facility.

55. Referring to the present petition, Sri Goyal submitted that even along with this petition, the petitioner company has not placed any layout plan as to how petitioner 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 Court. This clearly shows that there is no intention to use the open space for developing the Sports facilities.

56. 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. In fact, the petitioner had tried to convey that he had developed certain Sports facilities. However, these sports facilities are restricted for the residents or the proposed residents of the group housing constructed by them. This approach negates the purpose for which the bid was submitted by the petitioner and runs counter to the lease executed in his favour.

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

NOTICES FOR PAYMENT OF INSTALLMENTS

58. Learned Senior Advocate vehemently submitted that NOIDA had served notices on the SPC (M/S Three C Green Developers Pvt. Ltd.) dated 01.11.2017, 26.12.2017, 06.10.2021 and 30.11.2022 for payment of dues, hence, it cannot be said that NOIDA Authority had not taken any

steps for recovering the outstanding dues. The petitioner was well aware of the date of instalments but still defaulted. In fact notices were sent to the petitioner on 24.9.2019, 29.3.2023 and on 31.10.2024 for the outstanding amount, which was Rs.58,45,36,163/-.

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

60. The entire Sports City has to be developed in proportion and the sub lessee is also bound by the terms of the Lease Deed and the Brochure, therefore, the part completion can only be issued once the recreation facilities/sport facilities are also developed in proportion.

61. The implementation of the project of the entire Sport City will be in proportion that means the Residential and Commercial Development will be in proportion to the area earmarked for Sport facilities and the same is binding in all the members of the consortium or the sub lessees.

62. Mr. Manish Goyal, learned Senior Counsel urged that if petitioner is granted a permanent completion without Sport facilities, the innocent flat buyers will suffer and the entire projects in NOIDA will also be effected as every builder will only focus on the residential or commercial portion and will not complete the remaining project for which the entire land was allotted for.

ANALYSIS BY THE COURT

63. We have carefully considered the submissions advanced by learned counsel for the respective parties. With the able assistance, we have

perused the pleadings, grounds taken in the petition, affidavits and Annexures thereto and the reply filed by concerned parties.

64. It transpires from the record that the NOIDA Authority came with the scheme of developing Sports City and accordingly, a Brochure was issued for development of Sports City in Sector 78, 79 and 150 of NOIDA. As per the Scheme around 7,27,500 Sq. Metres land was earmarked for development of Sports City, whereas, 70% of the land was left open for Recreational (Sports, institutional & other Facilities), further 28% of the land was for residential including group housing and 2% of the land was for commercial purpose. The maximum permissible FAR⁹ was 1.5.

65. This project was allotted to a consortium of Companies in which M/s Xanadu Estate Pvt. Ltd. was a Lead Member. NOIDA issued an allotment-cum-reservation letter on 04.05.2011 and thereafter, a SPC was incorporated for the development. The Lead Member on 24.10.2011 made a request to divide entire Sports City in five parts and one of the member being M/s Sequel Building Concepts Pvt. Ltd. was allotted 48,000 Sq. Metres of land.

66. Later on, an application was made on behalf of M/s. Sequel Building Concepts Pvt. Ltd. to divide 48,000 Sq. Metres land into two parts. One part was retained by allottee M/s Sequel Building Concepts Pvt. Ltd. and other part was allotted to its 100% subsidiary Company namely M/s Golfgreen Buildcon. Pvt. Ltd.

67. The SPC had submitted an integrated plan for development of Sports City, which was approved on 16.11.2012. In this approved Map, the area allotted to the petitioner was shown as Residential Plot for which nine towers were approved, however, after the execution of the sub-lease deed of the petitioner, the petitioner applied for the sanction of the Map or development of the nine Residential Towers. This Map of petitioner

⁹ FAR

was approved on 04.09.2013 and had validity of five years. Thereafter, the SPC Company M/s Three C Green Developers Pvt. Ltd. again applied for revision of the Master Layout Plan and the same was approved/sanctioned on 16.06.2014. While sanctioning the plan NOIDA Authority had segregated the development of the Sports City to various Companies. Two Companies M/s Three C Green Developers Pvt. Ltd. and Ms. Xanadu Infratech Pvt. Ltd. were supposed to develop entire Sports facility, however, other companies were only obligated for development of Residential and Commercial towers. In this approved Map, no Sports facility was to be developed by the petitioner.

68. As per the approved Map of the petitioner, the petitioner company was allowed to construct nine Towers, however, the petitioner failed to construct all the nine Towers, but completed three Towers and applied for occupancy certificate. The rest of the area of the land allotted to the petitioner is still lying vacant.

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

70. In the next Board Meeting held on 26.07.2021, it was decided to refer the matter to the State Government for necessary direction and guidelines. The State Government referred the matter to the Public Account Committee¹⁰ and the same is still pending.

¹⁰. PAC

71. On the request of the allottee, a separate lease deed was executed by NOIDA Authority in favour of M/s Golfgreen Buildcon Pvt. Ltd. on 19.10.2012. However, the petitioner grossly flouted the terms of the lease deed.

72. The sub-division, sanction of map and the entire development were done completely contrary to the conditions of the scheme and the lease deed. Shockingly, everything was done in connivance with the officials of the NOIDA Authority.

73. In the lease deed it has been categorically stated that all the conditions of the brochure and allotment letter shall be treated as a part of lease and will be binding upon the lessee.

74. The entire Sports City has to be developed in proportion and the sub lessee is also bound by the terms of the Lease Deed and the Brochure, therefore, the part completion can only be issued once the recreation facilities/Sport facilities are also developed in proportion. That means the Residential and Commercial Development will be in proportion to the area developed for Sport facilities and the same is binding to all the members of the consortium or the sub-lessees.

75. 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 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.

76. The entire project of Sport City has to be looked as one **integrated project** even though the sub leases have been executed in favour of petitioners and others, the clause of sub lease specifically mentions that it is an integrated project and not an independent lease between the petitioner and Noida Authority. Hence, it will not absolve them from their obligations of providing Sports facilities.

INTEREST OF THE HOME BUYERS

77. As far as the homebuyers are concerned, they are the worst effected individuals, they had booked their flats, investing their lifetime savings/or has 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 reason to suspect a foul play and that they will fell in a trap. After paying for the flat, the completion and bankable title is still a mirage for them.

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

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

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

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

80. Hon'ble Supreme Court in the matter of **Amrapali Group of Companies** emphasized the role of Government Agencies in ensuring the completion of projects within the stipulated time.

81. Hon'ble Supreme Court echoed the same view in the matter of **Jaypee Orchard Resident Welfare Society v. Union of India & ors. (Writ**

Petition (Civil) No.854/2017) wherein it was held that the Supreme Court will endeavour to do all in its power to safeguard interest of the home buyers.

82. In **Chitra Sharma v. Union of India** reported in 2018 (18) SCC 575 Hon'ble Supreme Court protected the interest of the home buyers in project floated by Jaypee Infratech Limited and directed the CoC to be constituted afresh in accordance with the provisions of the Insolvency and Bankruptcy (Amendment) Ordinance, 2018.

83. The constitutional validity of the inclusion of allottees as financial creditors was tested in the matter of **Pioneer Urban Land And Infrastructure vs Union Of India**¹¹ wherein Hon'ble Supreme Court rejected the challenge and upheld the Insolvency and Bankruptcy (Amendment) Ordinance, 2018. Hon'ble Supreme Court further held that the interest of allottees in the matter of Insolvency in the real-estate company must be protected.

84. From a series of judgments of Hon'ble Supreme Court, it is well settled that the interest of the home buyers has to be given the precedence. The NOIDA Authority being well aware of the judgements, still took no action to protect the interest of the home buyers. The NOIDA Authority/development authority has a statutory duty to ensure planned and systematic development. This includes statutory duty to monitor the progress of real-estate projects and ensure their timely completion. The Authority had repeatedly failed to exercise due diligence in supervising the projects. However, the authority had miserably failed to ensure implementation of the project.

85. To look into the issues of the stalled projects in the real-estate projects the Committee headed by Mr. Amitabh Kant had given a report in which the Committee had also recommended that where the projects

¹¹. 2019 (8) SCC 416

are completed, the occupancy certificates may be issued and the lease deed may be executed.

86. Another reason why the NOIDA Authority should not be allowed to penalise the home buyer is because the current state of the Sports City is due to the dereliction of statutory duty and failure of the Authority to Monitor construction progress, take timely action against defaulting builders, enforce completion timelines. Noida Authority, cannot be allowed to penalized the home buyers for their own fault.

CONCLUSIONS AND DIRECTIONS

87. No doubt, NOIDA Authority is bound by the provisions of the U.P. Act, 1976 and the rules and the regulations framed therein, and is bound to issue Occupancy certificate, if all the allotment and development parameters are met. Here the entire sub-division, allotment and sanction of map is in question. However, since enough water has flown and the third party rights have been created, so we are not commenting on the sanctioning of the map and development of the project. Where ever the projects are complete, the completion certificate may be issued, but that does not mean that the allottee has been absolved of its obligations of providing the proportionate Sports facilities and implementing the project as per the Scheme. It is incumbent on the allottee to parallelly develop the Sports facilities.

88. The allottee cannot hide behind the smoke screen created by them, by allowing sub-division of the sports city, which is an integrated project whereby all the liability of the development of the sports city was fastened on two companies, which have not carried out any development and one has gone into insolvency. All the sub-lessees are jointly, and severally liable for the development of the sports facilities. Keeping 70% land vacant in their part is not an option. The sports facilities need to be developed as per the conditions of the Sports City Scheme and the

Brochure of the Sports City. In case, the development already carried out is in such a way that the sports facilities cannot be developed, then in that case the sublessee/allottee has to pay proportionately for the development of the sports facilities as prescribed in the brochure.

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

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

91. The petitioner herein had failed to pay the instalments in time and there was huge outstanding against the petitioner. The NOIDA Authority is directed to make a fresh demand of the outstanding dues as per the contract including interest, penal interest and other dues.

92. The petitioner company is directed to pay the entire amount within three months, failing which NOIDA Authority will take suitable action as provided under the lease deed and the Brochure conditions. However, it

is provided that the NOIDA Authority while taking any adverse action will protect the interest of the Homebuyers.

93. The future development of the remaining part of the project, with the petitioner would strictly be completed in terms of the Scheme of Sports City and as per the terms of the brochure and the lease deed.

94. With the direction aforesaid, the writ petition stands ***disposed off***.

Order Date :- 24.02.2025

Bhanu/S.P.

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