

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 15199 of 2016

Date of Decision: 1.8.2016

The Swarnjyoti EWS Cooperative Group Housing Society Ltd., Gurgaon

....Petitioner.

Versus

The Additional Chief Secretary-cum-Principal Secretary, Department of Town and Country Planning and Urban Estates, Government of Haryana, Chandigarh

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. S.D. Bansal, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus directing the respondent to decide its representation dated 17.6.2016 (Annexure P-4) regarding sanction of the building plan.

2. The petitioner having 44 members had applied for allotment of land for the construction of Group Housing Society under the EWS Scheme. An agreement dated 19.5.1999 was executed by the petitioner-Swaranjyoti EWS Group Housing Society Ltd. with the Haryana Urban Development Authority (HUDA). As per Clause 10 of the said agreement, the society shall ensure the completion of all formalities under the Haryana Apartment Ownership Act, 1983 (in short "the 1983 Act") under which the flats/dwelling units would be transferred by the Society to its members.

Plot No.76, Sector 56, Gurgaon admeasuring 4852 square meters was allotted by the HUDA to the petitioner on 16.2.2000 and the possession thereof was handed over to the petitioner on 12.12.2000. The construction commenced in the year 2001 and was completed in 2004. The conveyance deed dated 6.3.2007 (Annexure P-1) was executed in favour of the petitioner by the Estate Officer of the HUDA. The occupation certificate was granted by the HUDA to the petitioner on 23.3.2007. The petitioner constructed 44 flats for their respective members and subsequently handed over the possession to them. The sale deeds were executed in their favour and all the members were residing in their freehold units. A comprehensive policy dated 2.1.2009 was framed by the State of Haryana through the Chief Administrator, HUDA regarding grant of permission for changing the number and sizes of dwelling units, transfer of membership, increase in FAR etc. It was specifically mentioned therein that any change in the ownership after the grant of occupation certificate to the society, shall be only under the 1983 Act and no permission would be required to be obtained from HUDA in this regard. A new item appeared in the newspaper "Hindustan" dated 18.1.2012 regarding the cracks having appeared in the balconies of the building, raising the increasing fear of an impending catastrophe with the residents of the petitioner. The Administrator, HUDA, Gurgaon vide letter dated 25.1.2012 wrote to the Estate Officer-II, HUDA, Gurgaon to take the structure report from the management of the Society. The Architects ARCEE Associates vide their report dated 27.4.2012 stated that the building was unsafe and inhabitable as it had developed cracks due to leakage and poor maintenance which was affecting the structure of the building and recommended the vacation of the premises with immediate

effect. The petitioner made a representation dated 15.5.2012 to the Chief Administrator, HUDA, inter alia, allowing to increase in the number of its original members from 44 to 126; to increase the size of dwelling units from 35 square meters to 67.38 square meters and to increase FAR from 150% to 175%. The Chief Administration, HUDA informed the Estate Officer-II, HUDA, Gurgaon vide letter dated 5.11.2012 regarding the 'in principle' granted to the petitioner. The in principal approval was granted to the petitioner on 31.10.2012 subject to payment of requisite charges of ₹ 281.30 lacs. In pursuance thereto, the petitioner submitted revised Building Plans for construction of 126 flats with the Estate Officer-II, HUDA, Gurgaon who vide letter dated 5.9.2013 wrote to the Administrator, HUDA, Gurgaon for fixing the date of the meeting for approving the building plan/drawings of the petitioner. However, respondent No.1 vide letter dated 6.11.2013 (Annexure P-2), on a verbal complaint of the petitioner, summoned the records from the Estate Officer-II, Gurgaon and the Administrator, Gurgaon and ordered that no fresh building plans would be approved for the construction of 126 dwelling units and in case the building plans have been approved then no construction would be allowed at site. On 16.5.2014, the Chief Administrator, HUDA submitted detailed comments regarding 44 registry holding members and 82 newly inducted increased members and fees taken for increasing the members but despite that, respondent No.1 ordered for resumption of the plot. The petitioner challenged the orders dated 6.11.2013 and consequential order dated 10.10.2014 passed by respondent No.1 in CWP No. 26764 of 2014. This Court vide order dated 24.2.2016 (Annexure P-3) allowed the said writ petition. Thereafter, the petitioner made a representation dated 17.6.2016 (Annexure P-4) to the

respondent for sanction of drawings, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has made a representation dated 17.6.2016 (Annexure P-4) to the respondent, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing the respondent to take a decision on the representation dated 17.6.2016 (Annexure P-4), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of one month from the date of receipt of certified copy of the order.

(AJAY KUMAR MITTAL)
JUDGE

August 1, 2016
gbs

(RAMENDRA JAIN)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No