

**Sr.No.208 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 22265 of 2015(O&M)

Date of decision:24.03.2017

M/s TRIF Amritsar Projects Ltd.

.....Petitioner

versus

State of Punjab and others

.....Respondents

Coram: Hon'ble Mr.Justice Rakesh Kumar Jain

Present: Mr. Ashwani Kumar Chopra, Sr., Advocate with
Ms. Rupa Pathania, Advocate
for the petitioner.

Mr. Suresh Singla, Addl.AG, Punjab.

Mr. Rupinder S.Khosla, Sr. Advocate with
Ms. Ishrat Phulka, Advocate
for respondents No. 2 and 3.

Rakesh Kumar Jain, J.(Oral)

This petition is filed for seeking a writ in the nature of certiorari to quash the demand notice dated 3.10.2012 and 12.12.2012 issued by the Punjab Urban Planning and Development Authority(for short, 'PUDA') by which the petitioner has been asked to pay a sum of ₹ 3,72,77,203/- on account of non-construction of the building within the prescribed period.

In short, the petitioner was allotted a Retail site(C-4) by the PUDA at Amritsar in an auction held on 26.8.2008 measuring 26791.20 Sq. Yds. for an amount of ₹1,79,50,10,400/-. The relevant conditions in the allotment letter in regard to possession and ownership, construction of building and extension fee are as under:-

“4. POSSESSION AND OWNERSHIP:-

*(i) The possession of the site will be given within
90(ninety) days from the date of issue of allotment*

letter. In case the allottee fails to take possession of the site within the stipulated period. It shall be deemed to have been handed over on the due date. The allottee shall be allowed to undertake construction after the possession of site is given subject to the sanction of building plans by PUDA.

5. CONSTRUCTION OF BUILDING:-

(i) The allottee will have to complete the construction on the plot within three years from the date of issue of allotment letter after getting the proposed building plans approved by the Competent Authority of PUDA in accordance with the building byelaws and policy framed by Punjab Urban Planning Dev. Authority from time to time in this regard.

(ii) Construction shall be carried out as per sanctioned building plans and as per the provisions of PUDA(Building) Rules, 1996 as amended from time to time.

(iii) Any construction carried out in violation of sanctioned Building plan/Building Rules shall be deal as per policy laid down in this regard from time to time.

(iv) Before occupying the building allottee would be required to obtain completion certificate/occupation certificate from the Estate Officer, PUDA, Amritsar.

7. EXTENSION FEE:-

(i) If the construction on the plot is not completed within the time extension in construction period would be granted subject to payment of extension fee as may be determined from time to time. However, extension in period of completion of building shall be subject to the satisfaction of the Estate Officer that the failure to complete the building within stipulated period was due to a cause beyond the

control of allottee.

(ii) to (xxi) -----xxxxx----

(xxii) Before occupying the building allottee would be required to obtain completion/occupation certificate from the Estate Officer, Amritsar.

(xxiii) -----xxxxx----

(xxiv) -----xxxxx----

(xxv) The bidder shall not subdivide or fragment the site unless he obtains license from the Competent Authority under Punjab Apartment and Property Regulation Act, 1995. In case of sale and transfer of apartment, if any, the same shall be governed by the Punjab Apartment Property Act, 1995 and Punjab apartment Ownership Act, 1995 and the rules and regulations made there under from time to time. The construction shall be regulate by the Zoning Plan and PUDA Building Rules 1996 as amended from time to time. All benefits of a Mega Project would be extended to the purchaser.”

According to clause 5(i) of the allotment letter, the petitioner was to complete the construction of the plot within a period of three years from the date of issuance of allotment letter after getting the proposed building plans approved by the Competent Authority of PUDA in accordance with the byelaws and policy framed by PUDA from time to time. The allotment letter was issued on 18.12.2008 and petitioner applied for possession on 28.01.2009 which was delivered on 22.04.2009. The petitioner submitted the building plan to PUDA on 18.05.2009 but the Estate officer, PUDA, Amritsar vide its letter No.1186 dated 26.05.2009 asked the petitioner to get the concept plan approved from the office of Addl. Chief Administrator, PUDA, Amritsar. Thereafter, vide letter dated 19.01.2010, the concept plan of the petitioner company was approved and

the petitioner company was asked to submit the detailed building plan to the Competent Authority. On 10.05.2010, vide letter no. 1212-14, the building plan was approved conditionally as the NOC Certificate from the Airport Authority of India regarding the height of the building was not submitted by the petitioner. Ultimately the final report was made vide letter No.PUDA/AA/Amritsar/2010/2893 in which the remaining floor maps of the site of the petitioner was granted. According to the petitioner, the construction of the building completed as per the sanctioned plan on 22.12.2011 and the respondent was informed accordingly by way of a letter in which reference was specifically made of both the building plans dated 10.05.2010 and 27.08.2010. In this letter the petitioner requested to issue occupancy certificate of the project and also made a separate application on 7.08.2012 on a printed FORM 'B' in terms of Rule 10(1) of the Punjab Urban Planning & Development Authority(Building) Rules, 1996(for short, 'the Rules 1996') for seeking completion/occupancy certificate. In the letter dated 7.08.2012, the petitioner had specifically mentioned that the said application was filed in continuation of letter dated 22.12.2011 i.e. the day on which the petitioner had informed the respondent about the completion certificate. In response to this letter, the respondent wrote a letter to the petitioner on 3.09.2012 informing them that they have submitted a photocopy of the completion certificate issued by the Architect/Engineer and the Plumber which should have been in original and also the affidavit as per performa prescribed by the PUDA was not submitted. The petitioner immediately responded vide letter dated 11.09.2012 stating therein that the certificates appended with the letter dated 7.08.2012 of the Architect/Engineer and Plumber were the original copies and that the

affidavit required was not relevant as the construction of the project has been completed. Rather the petitioner also attached the documents of NOC obtained from the Fire Department, consent obtained from the Pollution Control Board and copy of the latest receipts received from the Punjab State Power Corporation Ltd. The petitioner again made a request for grant of occupancy certificate. However, according to the petitioner, the respondent, without taking into consideration the averments made in the letter dated 11.09.2012 and without affording an opportunity of hearing served a demand notice dated 3.10.2012 on the premise asking the petitioner to pay the non-construction fee of ₹ 3,72,77,203/-because of the non-completion of the project within a period of three years from the date of allotment. In response, the petitioner wrote a letter dated 11.10.2012 while referring to clauses 4(1) & 5(1) of the allotment letter and also informed that the construction was completed within the prescribed period, from the date of the approval of the building plans. However, the respondent vide its letter 12.09.2012 informed the petitioner, in response to their letter dated 28.08.2012, that the site allotted to them has not been found completely constructed and directed them to immediately complete the same otherwise, the constructed provisional structures would be removed. The petitioner was also served with another letter dated 13.09.2012 in regard to boundary wall fee and followed by another letter dated 5.10.2012 that the petitioner has not obtained completion/occupation certificate within a period of three years and therefore, they should deposit the extension fee. Ultimately, vide impugned letter dated 12.12.2012, the petitioner was asked to pay the amount which has already been referred earlier. It was mentioned therein that the process of issue of completion certificate will be initiated only after

deposit of extension fee.

Counsel for the petitioner has submitted that the petitioner deposited the amount demanded by respondent under protest and has challenged the demand notices by way of the present petition. It is argued that the petitioner has completed the construction of the site in question within the period of three years from the date of allotment and referred to the letter dated 21.12.2011 attached as Annexure P-5 in which reference has been made to both the approved building plans of 10th of May and 27th of August, 2010. The petitioner has also pleaded discrimination by referring to the case of Bharti Realty Mall in Ludhiana who has been given additional two years time for construction without charging any extension fee. It is submitted that the Bharti Realty Mall had also purchased the plot under the Optimum Utilisation of Vacant Government Land(O.U.V.G.L.) scheme. The said company did not construct within time but the Greater Ludhiana Area Development Authority, Ludhiana(GLADA) in its 32nd meeting of Empowered Committee held on 23.09.2011 under Agenda Item No. 32.09 granted two years time for construction without charging the additional fee though the same terms and conditions were applicable to them.

In reply, filed by the respondent, they have denied discrimination only on the ground that the other company i.e. Bharti Realty Mall had applied for the extension of time, therefore, it was granted the same whereas the petitioner did not apply, therefore, no time was granted and they are liable to pay the extension fee.

In this regard, the petitioner has referred to the unamended provisions of Rule 13 of the Punjab Regional and Town Planning and Development (General) Rules, 1995(for short, 'the Rules 1995') which

provides that *“for removal of doubts it is hereby declared that fee prescribed under this Rule shall be payable (by transferee who, has failed to complete the building within the prescribed) irrespective of the fact whether the plot holder applies or does not apply for extension under this rule.”* It is submitted that Rule 13 refers to the time within which the building is to be completed and has come into existence in terms of the Section 43(2) and 180(2)(i) of the Act, of 1995. Counsel for the petitioner has further submitted that since there is no effect of applying for seeking the waiver of extension fee, the plea taken by the respondent in order to deny the allegation of discrimination with the petitioner is without any substance.

The consistent stand taken by the respondent is otherwise that since the petitioner has failed to obtain completion/occupancy certificate within the period of three years, therefore, the extension fee has been charged. In this regard, counsel for the petitioner has argued that completion and occupancy are two different aspects. The petitioner has to inform the respondent that he has completed the building as per the sanctioned site plan, thereafter, after inspection, it is for the respondent to issue completion certificate in case there are still some deficiencies. It is also submitted by him that at no point of time, the respondents has issued any notice in terms of prescribed Form D of Rule 10(2) of the Rules 1996.

I have heard both the learned counsel for the parties and after examining the record, am of the considered opinion that there is merit in the present petition which deserves to be allowed. The facts are not in dispute. The only issue which is to be decided is *“as to whether the petitioner had completed the construction of the building within a prescribed period of three years as stated?”* The petitioner has placed on record letters dated

21.12.2011, informing the respondent that it had completed the building as per the sanctioned building plans dated 10.05.2010 and 27.08.2010 and requested for the issuance of occupancy certificate. He also submitted Form B in terms of the Rules 1996, submitting certificate of Architecture and the Plumber regarding the completion of the building specifying the date of completion of the building. There is no rebuttal by the respondent to the application by way of an order on Form D prescribed under Rule 10 of the Rules 1996 in which power has been given to the respondent to not to grant the occupancy certificate by giving the reason. In this regard, it would be relevant to refer to Form 'B' and Form 'D' of the Rules 1996 which are reproduced as under:-

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FORM B

[See rule 10(1)]

**NOTICE OF COMPLETION AND FOR
PERMISSION TO OCCUPY**

From

To The Competent Authority

Sir,

I/We hereby give you notice that the building...../a part of the building described below and sanctioned with your order No.....datedhas been completed on.....in all respects according to the provisions of the Punjab Regional and Town Planning and Development Act, 1995 and the rules made thereunder and sanctioned plans and the suggested modifications have been carried out.

2. Completion Certificate from the registered architecture/engineer who supervised the construction of the building and a completion certificate from the registered plumber are submitted herewith.

3. Kindly permit me/us to occupy the building as required by rule 11 of the Punjab Urban Planning and Development Authority(Building) Rules, 1996.

Description of Building

Area.....Name of the road.....Site
No.....House No.(if any).....

Signature of the applicant”

“

FORM D

[See rule 10(2)]

**PERMISSION FOR OCCUPANCY OR USE OF
THE BUILDING**

From The Competent Authority

To

Memorandum No..... Dated

Whereashas given notice of
completion of the building described below;

I hereby:-

(1) grant permission for the occupation and/or use
of the said building; or

(2) refuse permission for the occupation and/or use
of the said building for reasons given below:-

Description of Building

Area.....Name of the road.....Site
No.....House No.(if any).....

Competent Authority”

There is a fallacy in the approach of the respondent asking the petitioner about the occupancy certificate vis-a-vis the application made by the petitioner informing about the completion of the project. Once the project is completed, the petitioner is only required to inform the respondent on Form 'B' of Rule 10 of the Rules 1996 with the aid of the certificate issued by his Architect/Plumber, which was supplied by the petitioner in original. The petitioner had also submitted the NOC from the Fire

Department, consent obtained from the Pollution Control Board and copy of the latest receipts received from the Punjab State Power Corporation Ltd. to show that the building is complete and occupancy certificate is only required. Counsel for the petitioner has rightly submitted that the petitioner would be at loss if it do not take occupancy certificate in time because in that matter, the petitioner would not be in a position to use the premises for which it has been constructed.

Thus, from the aforesaid discussion, the irresistible conclusion which can be drawn by this Court is that the respondents have issued the demand notice illegally especially without affording an opportunity of hearing, looking into the reply filed by the petitioner and the documents submitted. Hence the present petition is hereby allowed and impugned orders Annexures P-8 and P-10 are hereby set aside and a direction is issued to the respondent to refund the amount of the petitioner deposited by them under protest along with the interest @ 9% which shall be calculated from the date of deposit till the date of payment. The payment shall be made to the petitioner within a period of two months from the date of receipt of certified copy of this order.

24th March, 2017

Shivani Kaushik

**[Rakesh Kumar Jain]
Judge**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No