

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CWP No.28844 of 2019 (O&M)

Date of Decision: 09.12.2019

Aerik Sharma and others

....Petitioners

Versus

State of Haryana and others

....Respondents

**CORAM :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present:- Mr. Vipul Joshi, Advocate
for the petitioners.

DAYA CHAUDHARY, J.

C.M. No.18334 of 2019

This application has been moved for placing on record
Annexures P-17 to P-21.

C.M is allowed and Annexures P-17 to P-21 are taken on
record.

CWP No.28844 of 2019

Petitioners have approached this Court by way of filing the
present petition under Article 226 of the Constitution of India for issuance
of a writ in the nature of *mandamus* for cancellation of licenses granted to
respondent No.3 for the projects launched by him but the development and
construction of which has not been commenced till date and also to conduct
an inquiry into the functioning of the Town and Country Planning
Department, Haryana, whereby, the license has been granted to respondent
No.3 in an arbitrary and illegal manner.

As per case of the petitioners, respondent No.3 i.e EMAAR
MGF Land Limited through its Director has launched the project in the
name and style of "Emerald Estate" in Gurgaon, Haryana for construction

and development of a group housing colony on a land measuring 25.499 acres situated in the revenue estate of Village Maidawas, Tehsil and District Gurgaon. The license was granted by respondent No.2 i.e the Director, Department of Town and Country Planning, Government of Haryana in view of provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 (here-in-after called as 'the Act, 1975). Petitioners no.1 and 4 booked a Residential Apartment in the project of respondent No.3 for an amount of Rs.54,43,255/-. They were allotted flats vide Allotment letter dated 30.12.2010. An agreement was executed between the petitioners and respondent No.3. As per terms and conditions of the agreement, the possession of the flat was to be handed over to the petitioners within a period of 36 months from the date of starting of construction. A period of six months was given as a concession.

The petitioners are aggrieved by action of respondent No.3 stating therein that the possession has not been handed over to them, whereas, the huge amount has been paid. There is a violation of terms and conditions of the agreement entered into between the petitioners and respondent No.3.

Learned counsel for the petitioners submits that the possession of flats has not been handed over to the petitioners in spite of making requests time and again. There is a connivance between respondent No.2 and respondent No.3. Learned counsel also submits that there is a clear cut violation of the terms and conditions of the agreement and no action is being taken on the representations filed by the petitioners. Learned counsel also submits that respondent No.2 has taken over a number of projects and there is no intention to complete the present project. The details of the

projects were sought under the Right to Information Act but the request of the petitioners has been rejected on the ground that the same cannot be supplied being in question form. At the end, learned counsel for the petitioners submits that at the time of submission of application for granting license, the capacity of the developer is to be considered. In case, the developer is in the capacity to develop a colony then by considering some other factors, the license is to be granted but in the present case, the capacity of the developer has not been judged and the license has been granted, whereas, he has taken over a number of projects which have not been completed.

Learned counsel for the petitioners has relied upon the judgment of this Court in case ***M/s Fondant Propbuild Private Limited and others vs State of Haryana and others 2016(1) RCR (Civil) 204*** in support of his arguments.

Heard the arguments of learned counsel for the petitioners and we have also perused the documents available on the file.

The only grievance of the petitioners in the present case is that the developer i.e respondent No.3 has taken over a number of projects but he is not in a position to complete the projects including the project, in dispute, in the present case. The list of projects taken over by respondent No.3 has not been placed on record. As per submission made by learned counsel for the petitioners, respondent No.3 is hand-in-gloves with respondent No.2 i.e the Director, Department of Town and Country Planning, Government of Haryana as in spite of making various representations, no action has been taken so far and without assessing the capacity of respondent No.3, the license has been granted.

As per Section 3 of the Act, 1975, in case, an application is made by any person to the Director for the grant of license to develop a colony in the prescribed form with prescribed fee and conversion charges, the Director is to consider the application moved by such persons by making inquiry into the title of the land; extent and situation of the land; capacity to develop a colony; the layout of a colony; plan regarding the development works to be executed in a colony and conformity of the development schemes of the colony land to those of the neighbouring areas and thereafter, the license is to be granted.

The prayer in the present petition is for cancellation of license granted to respondent No.3 as the capacity of the developer has not been taken into consideration and he has taken over number of projects. The status of those projects, which have been taken over by respondent No.3, is not known to the petitioners. Nothing has been placed on record with regard to those projects as to whether those have been completed or not. By placing on record the list of projects from the website, no relief can be granted. The allegations of connivance between the Director and the Developer is a matter of evidence and for that, no direction can be issued being disputed question of facts. Moreover, the petitioners are having remedy to file an appeal, in case, the relevant information has not been supplied to them but no such appeal has been filed. The petitioners are having remedy to approach the Director for cancellation of license as provided under Section 8 of the Act, 1975. A specific provision is there as to under what circumstances, the license granted to a party can be cancelled. The judgment relied upon by learned counsel for the petitioners is not relevant to the facts and circumstances of the present case as well as the relief sought for in the

present petition. In said case, the allegations were of fraud for obtaining license and it was held by the Division Bench of this Court that the writ petition was not maintainable, in case of allegations of fraud. The question of maintainability is not an issue in the present case as the allegations have been levelled against the Director as well as the Developer stating therein the connivance between the two in obtaining license but how the fraud has been played, no such allegations have been specified and no representation has been made. Only the representation addressed to Hon'ble the Prime Minister of India on 14.09.2019 is annexed as Annexure P-16 with an endorsement of sending copies thereof to various authorities.

The petitioners have approached this Court without availing remedy as provided under the terms and conditions of the agreement entered into between the petitioners and the developer. There is an arbitration clause in the agreement entered into between both the parties. The writ petition has been filed with vague averments without having complete information. Moreover, the allegations of connivance/fraud are matter of evidence which cannot be decided in the present writ petition.

Accordingly, no interference is required by this Court at this stage. The Writ Petition is accordingly dismissed.

However, the petitioners are at liberty to avail the appropriate remedy.

(DAYA CHAUDHARY)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

09.12.2019

gurpreet

Whether speaking/reasoned

Whether Reportable

Yes/No

Yes/No