

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Civil Writ Petition No. 19768 of 2020 (O&M)
Date of Decision: 23.11.2020**

Carlton Estate Condominium Association,
through its President, Mr. Pawan Tharwani, aged 47 years,
Carlton Estate, DLF 5, Near Gold Course Road,
Gurugram (Haryana)

..... Petitioner

Versus

State of Haryana and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present: S/Sh. Akhil Aggarwal and Anupam Singla, Advocates
for the petitioner-Carlton Estate Condominium Association .

Mr. Raman Sharma, Additional Advocate General, Haryana
for respondent Nos. 1 & 2 / State.

Mr. Randeep S. Rai, Sr. Advocate, assisted by
Mr. Rajeev Anand, Advocate
for respondent No. 3 – DLF Universal Ltd., New Delhi.

*[The aforesaid presence is being recorded through video conferencing
since the proceedings are being conducted in virtual court]*

JASWANT SINGH, J.

1. The instant Civil Writ Petition is filed by ***Carlton Estate Condominium Association***, which is an Association of Apartment Owners (485 Allottees) constituted under Haryana Apartment Ownership Act 1983 (hereinafter referred to as “**1983 Act**”) in a Group Housing residential Complex namely Carlton Estate (hereinafter referred to as “**Complex**”) on land measuring **5.979 acres** which comprises of **two residential towers Carlton I & Carlton IV** and a **Shopping Block of two shops SH1 and SH2** alongwith the declared common areas and facilities within the said Complex out of the total 13.33 acres of land on which five Residential towers were

proposed as per the Apartment Buyers Agreement. The Carlton Estate is developed by respondent No. 3 - DLF Universal Limited after sanctions and approvals from respondent No. 2 - Department of Town and Country Planning Haryana.

2. In nutshell, the Petitioner-Association by way of the present writ petition is seeking :

- (i) a writ of *mandamus* against the respondents for handing over of complete possession and maintenance of all the common areas and facilities of the Carlton Estate Complex to the Petitioner-Association as per the provisions of 1983 Act;
- (ii) quashing of the amended Deed of Declaration dated 30.05.2008 **(P-9)**;
- (iii) directions for amendment of original Deed of Declaration dated 16.04.2003 **(P-4)** in compliance with 1983 Act;
- (iv) quash any registration of Conveyance Deed / deed of apartment in respect of sale / purchase of Shopping Block SH-1 and SH-2 and Parking Area mentioned in the amended Deed of Declaration dated 30.05.2008 **(P-9)**.

3. The grievance of the Petitioner-Association is that the private respondent No 3-Colonizer (DLF Universal Limited, New Delhi), in connivance with the official respondent No. 2- Department of Town and Country Planning, Haryana, had amended vide **(P-9)** the original Deed of Declaration (hereinafter referred to as “**DoD**”) executed on 16.04.2003 **(P-4)** to reduce the area of the Complex as also the Shops have been made on the common area but diverted to the ownership of Respondent No. 3, DLF.

Further, the parking has been excluded from the common areas against the norms and sold by the colonizer. Reliance in this regard is placed on the provision of Section 6 (2) of the 1983 Act as also Clause XII of the DoD, to support the submission that the common areas and facilities are having permanent character and are frozen after being so declared.

4. The perusal of the pleadings alongwith supporting documents reveal that as per the Apartment Buyers Agreement dated 18.06.2001 **(P-1)** {hereinafter referred to as “**Agreement**”}, which is the document relied by the Petitioner-Association towards the terms and conditions for the sale of the Apartments in the Complex, wherein the ‘Carlton Estate’ is represented to be consisting of five multi-storied residential apartment buildings to be constructed on a portion of land admeasuring 13.33 acres in Zone-7, Phase-V developed by the DLF stating that the Plans so shown in the Agreement are tentative and liable to change (Recital ‘F’ Page 36-37). The ‘Agreement’ **(P-1)** also provides for the super area **(Annexure-II in the Agreement at Page 65)** and the common areas and facilities **(Annexure-IV in the Agreement at Page 68)** and both these **Annexures-II and IV** shows as to what has been sold to the Allottee and computed towards the sale price of the Apartment. The Agreement refers to the Shops to be constructed in the Complex as also the parking units to be excluded from the Apartment / super area sold to the Allottee / Apartment Owner. Out of the five residential buildings in the “Complex”, two Buildings i.e. Carlton –I and Carlton-IV have been constructed and the DoD dated 16.04.2003 **(P-4)** was executed in respect of the said development (Carlton-1 and Carlton-IV) upon the receipt of the Occupation Certificate. Later upon the receipt of the

Occupation certificate for the Shops SH-1 and SH-2, the final DoD dated 30.05.2008 **(P-9)** was executed freezing the common areas and facilities of two residential Buildings Carlton- I and Carlton –IV alongwith the shopping block having two utility shops SH-1 and SH-2 and the Complex was insulated from any further change by the future development.

5. We have heard the counsel for the Petitioner-Association at length and looking at the controversy at hand, we have gone through each submission and document relied by the Petitioner-Association and in the nature of the pleadings, the issues being legal and facts apparent on record of Writ Petition, no detailed pleadings of the rival parties are required.

Counsel for the petitioner has relied on the original DoD dated 16.04.2003 **(P-4 at Page 120)** and the Final DoD dated 30.05.2008 **(P-9 at Page 201)** to show and argue that the declared land of 6.857 acres in DoD dated 16.04.2003 **(P-4)** has been reduced to 5.979 acres in final DoD dated 30.05.2008 **(P-9)**. Further reliance is placed on the Apartment Buyers Agreement **(P-1)** to show that the Carlton Estate Complex was represented to be of 13.33 acres. It is also argued that the Shopping Block with two Shops SH-1 and SH-2 were not mentioned in any document earlier to Final DoD - 2008 **(P-9)** and have been constructed on the organized green of the Carlton Estate Complex which was declared as a common area in the DoD dated 16.04.2003 **(P-4)**. Regarding the parking areas it is argued that the Parking is included in the definition of the ‘common areas and facilities’ under Section 3 (f) of the 1983 Act while Respondent No. 3-Developer DLF Universal Limited is selling said parking to the Allottee / Apartment Owners for a price over and above declared in the DoD.

Sh. Randeep Singh Rai, Senior Advocate and Rajeev Anand Advocate have appeared for the contesting Respondent No. 3, DLF Universal Ltd. on the advance copy being supplied to them and have raised the issue that the Writ Petition is hit by inordinate delay and latches and that the Petitioner Association has concealed material terms of the DoD dated 16.04.2003 **(P-4)** which clearly shows that the DoD so executed was tentative and not final as contended.

6. In the DoD dated 16.04.2003 **(P-4)**, the land details of the Apartment Buildings is given with total area of 6.857 acres with two apartment buildings Carlton I and IV and at *Serial a) & b)* of the land details provides as under :

“The land details of the Apartment Buildings are as follows:

a)	<i>The land on which the Apartment buildings namely I & IV, the lawns, walkways, driveways, Open Car Parking and services have been erected, admeasure (10511.57 SQM + 11454.14 SQM)</i>	21965.71 SQM.
b)	<i>Open area to be shared by the Apartment Buildings I & IV with the future buildings planned to be constructed on balance area of Zone-7</i>	5782.60 SQM.
	<i>Total</i>	<i>27748.31 SQM Or 6.857 Acres</i>

While Final DoD dated 30.05.2008 **(P-9)**, the land details of the Apartment Buildings is given with an area of 5.979 acres with two apartment buildings Carlton I and IV and shops and at *Serial a) & b)* provides as under :

“The land details of the Apartment Buildings are as follows:

a)	<i>The land on which the Apartment buildings namely I & IV, and shops have been erected admeasure</i>	<i>5281.415 SQM</i>
b)	<i>the balance area outside buildings comprising of lawns, walkways, driveways, open car parking and services etc.</i>	<i>18915.794 SQM.</i>
	<i>Total</i>	<i>24197.209 SQM Or 5.979 Acres</i>

A bare perusal of the 2003 DoD in contrast to the final 2008-DoD would apparently show:

- (i) The DoD dated 16.04.2003 **(P-4)** and 30.05.2008 **(P-9)** are both executed for Carlton I and Carlton IV i.e. the two residential buildings in the Complex with corresponding declared area out of the five residential buildings planned and proposed on 13.33 acres.
- (ii) The land details in respect of the Complex declared as 6.857 acres in DoD dated 16.04.2003 **(P-4)** included the Open area **to be shared** by the Apartment Buildings Carlton I & Carlton IV **with the future buildings** i.e. rest of the three towers whereas in the DoD dated 30.05.2008 **(P-9)**, the declared area of the Complex as 5.979 acres **does not include any area to be shared** beyond the Apartment Towers Carlton-I, Carlton –IV and Shopping Bloch with two shops.

The open area to be shared by the Apartment Buildings Carlton-I & Carlton-IV with the future buildings planned to be constructed on balance area of Zone-7 in DoD dated 16.04.2003 **(P-4)** has been excluded so as to bring permanence and exclusivity to the common areas and facilities in tune with the provisions of Section 6 (2) rather than in contravention of the same. Infact, it appears that with the total development of five Apartment Buildings on land measuring 13.33 acres, it appears by proportion area for two Apartment Buildings (Carlton I and IV) more area 5.979 acres has been given to the Carlton Estate Complex (as each apartment Building are comes to 2.66 acres and for two apartment buildings come to 5.33 acres).

Thus the argument raised by the Petitioner- Association regarding the reduction of area in this regard seems to be utterly misplaced and hence rejected.

7. Regarding the argument that the Shops and Parking units are part of the common area and the Colonizer / Developer (respondent No. 3) has illegally diverted said to his own ownership is to be seen in context of the terms and conditions of sale as given in Apartment Buyers Agreement **Annexure P-1** as relied by the Petitioner Association.

7.1 In **Annexure P-1** (Apartment Buyers Agreement), Annexure-II **Page 65** relates to the '*Super Area*' being sold to the Allottees and clarifies that the computation of the super area (apartment area plus common area) **does not include** site for shops and shops, car parking area within the Complex - Carlton Estate. **Annexure II** of Apartment Buyers Agreement **(P-1)** refers to '*Super Area*' as sold to the Allottee as under :

“

Annexure –II

Definition of Super Area

Super Area for the purpose of calculating the sale price in respect of the Said Apartment shall be the sum of Apartment area of the said Apartment and its pro-rata share of Common Area in the entire said building.

Whereas the ***Apartment area*** of the said Apartment, shall mean the entire area enclosed by its periphery walls including area under walls, columns, balconies, cupboards and lofts etc. and half the area of common walls with other premises/apartments, which form integral part of said Apartment and ***Common areas shall mean all such parts / areas in the entire said building which the allottee shall use by sharing with other occupants of the said building*** including entrance lobby at ground floor, lift lobbies, lift shafts, electrical shafts, fire shafts and walls of plumbing shafts on all floors, common corridors and passages, staircase, munties, services areas including but not limited to, lift machine room, Overhead water tank, maintenance office / stores etc., architectural features, if provided and security / fire control rooms.

Super Area of the apartment provided with exclusive open terrace(s) shall also include area of such terrace(s), Apartment allottee however, shall not be permitted to cover such terrace(s) and shall use the same as open terrace only and in no other manner whatsoever.

It is specifically made clear that ***the computation of Super Area does not include:***

1. ***Site(s) for shops and Shop(s)***
2. ***Xxxxxx***
3. ***Xxxxxx***
4. ***Car Parking area within Carlton Estate:***

- a) ***Covered car parking area allotted to Apartment Allottee, for exclusive use, at stilt level.***

b) Open car parking area allotted to Apartment Allottee, for exclusive use around buildings.

It is further clarified that the super area mentioned in the Agreement is tentative and for the purpose of computing sale price in respect of said Apartment only and that the inclusion of common area within the said building, for the purpose of calculating super area does not give any right, title or interest in common areas to Apartment Allottee except the right to use common areas by sharing with other occupants/allottees in the said building subject to timely payment of maintenance charges.

Tentative percentage of Apartment area to super area of apartment is 86% approximately, presently, Super Area and the percentage of Apartment Area to Super Area may undergo changes till the completion of the Building / Complex and final super area shall be intimated upon Completion of Construction of said building(s). ”

(Emphasis Supplied)

7.2 In **Annexure-IV (Page 68)** of the Apartment Buyers Agreement **(P-1)**. **‘Common Areas & Facilities’** have been provided. For the sake of brevity only the relevant portion of the said Annexure IV are reproduced herein below as the said Annexure runs into 3 pages and except for the issue of parking and shops other areas / facilities mentioned therein are not relevant for adjudication of the issue in controversy in the present case.

Part –A of Annexure IV **“Common Areas and Facilities”** provides as under :

“ **Part-A**

*List of Common Areas and facilities for use of Apartment Allottees within the said Building **proportionate Area of which is included in the computation of super area** of the said Apartment in the manner*

as comprehensively defined in Annexure-II.”

In the various areas and facilities mentioned in Part-A, the shops and Parking has not been included so as to indicate that the area of Parking / Shops is included in the computation of Super Area.

Similarly, in **Part –B** of Annexure IV “*Common Areas and Facilities*” provides as under :

“ *Part-B*

*List of **General commonly used Areas and facilities** within the Carlton Estate for use of all Apartment Allottees in Carlton Estate **excluded from the computation of super area** of the said Apartment, (Plan attached to this Annexure).*”

In **Part-B** also, the shops and Parking have not been included so as to indicate that the Parking / Shops are the general facilities for the use of all Apartment Owners or included in the computation of Super Area of their Apartment.

In **Part-C**, the Parking has specifically been excluded from the computation of super area and right of exclusive use only in respect of the individually allotted parking has been granted as under :

“ *Part C*

*Reserved covered / open car parking space within Carlton Estate in / and around Building No. I, II, III, IV & V **individually allotted to Apartment Allottees for his / her exclusive use and excluded from the computation of super area of the said Apartment** (Parking Plan attached in Annexure VI)*

1. *Covered car parking spaces on stilt floor level of building(s)*
2. *Open car parking spaces around building(s).*”

In **Part-D**, shops are specifically excluded from the scope of the Agreement with the following condition :

“ *Part D*

*It is specifically made clear by the Company and agreed by the Apartment Allottee that **this agreement is limited and confined in its scope only to the said apartment, areas, amenities and facilities as described in Part-A, Part-B and Part-C of this agreement**, the land underneath the said building.The Apartment Allottee agrees and confirms that **the ownership of such other lands, areas, facilities and amenities shall vest solely with the Company**, its associate companies, its subsidiaries companies and the Company shall have the absolute discretion and the right to decide on their usage, manner and method of disposal etc. A tentative list of such other lands, areas, facilities and amenities is given below which is merely illustrative and is not exhaustive in any manner:*

1. ***Shops*** within the said Building, if any, and/or ***within the said portion of Land*** / Zone-7.

X x x x x”

(Emphasis Supplied)

The ‘*super area*’ is stated to include the Apartment Area (entire area enclosed by the periphery walls) and the common areas (all such parts / areas in entire building which the Allottee shall use by sharing with other occupants). The Common areas and facilities are specified in Annexure IV (**Page-68**) of Apartment Buyers Agreement more specifically in Part-A, Part-B and Part-C and does not include the shops or the parking area which have not been included and rather specifically excluded towards the computation of the ‘Super Area’ on which the sale price of the Apartment is based.

7.3 The DoD dated 30.05.2008 (P-9) shows that the two shops SH-1 and SH-2 and the Car Parking have been declared as Units and have not been declared as common areas. The mere depiction of Shops / Parking as Units show that these have not been loaded in the Common area so as to constitute the super area of the Apartment on which the sale price of the Apartment has been based.

The common areas and facilities are defined under Section 3 (f) of the 1983 Act which under the provisions of Clause (7) of Section 3 (f) deals with the such community and commercial facilities as may be provided for in the Declaration as under :

“ 3. (f) ‘common areas and facilities’ Unless otherwise provided in the declaration or lawful amendments thereto, means—

- (1) the land on which the building is located;*
- (2) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes and entrances and exits of the building;*
- (3) the basements, cellars, yards, gardens, parking area and storage spaces;*
- (4) the premises for the lodging of janitors or persons employed for management of the property;*
- (5) installation of central services such as power, light, gas, hot and cold water, heating refrigeration, air conditioning and incinerating;*
- (6) the elevators, tanks, pumps, motors, fans compressors, ducts and in general all apparatus and installations existing for common use;*
- (7) such community and commercial facilities as may be provided for in the declaration; and*
- (8) all other parts of the property necessary or convenient to its existing maintenance and safety or normally in common use;”*

A perusal of Section 3 (f) shows that the provision gives precedence to the grantor of the Declaration by providing unless otherwise provided for in the Declaration, thus giving discretion to the grantor of declaration (Colonizer) to provide for the common areas and facilities with

respect to the Buildings and the complex in question.

In this regard reference is made to judgment of the Hon'ble Supreme Court involving the interpretation of the provisions relating to *common areas and facilities* under the 1983 Act in ***DLF Ltd. v. Manmohan Lowe, (2014) 12 SCC 231***, wherein in Para 62, in respect of the parking areas, it was held as under :

62. *First of all, the judgment Nahalchand case [Nahalchand Laloochand (P) Ltd. v. Panchali Coop. Housing Society Ltd., (2010) 9 SCC 536] is not at all dealing with the community and commercial facilities in a group housing society with reference to the provisions of Section 3(3)(a)(iv) of the Development Act. The abovementioned judgment was delivered in the context of the Maharashtra Ownership of Flats Act, 1963 (MOFA) and the Development Control Regulations (DCR) framed under the Maharashtra Regional Town Planning Act, 1966. In that case this Court was required to examine as to whether a stilt parking can be considered to be a garage under the definition of "flat" under MOFA. As per the format provided under MOFA only a "flat" or "dwelling unit" or "shop" or "garage" can be sold by a developer. **Stilt parking could not be separately sold in terms of the provisions of MOFA, a statutory format of the agreement and the provisions of the DCR. Such a restriction is not there either under the 1975 Regulation Act or the Apartment Act and there is no occasion to consider whether stilt parking can be sold along with the apartment.** In any view, the present case is not concerned with the question of stilt parking. We are in this case, pointedly concerned with the facilities provided under Section 3(3)(a)(iv) of the Development Act, consequently, the reasoning of Nahalchand Laloochand (P) Ltd. [Nahalchand Laloochand (P) Ltd. v. Panchali Coop. Housing Society Ltd., (2010) 9 SCC 536] is inapplicable to the facts of this case, if examined in the light of the Regulation Act and the Apartment Act.*

Regarding the commercial / community facilities including the **shops, Manmohan Lowe's case** (*supra*) in relevant paras 55 & 63, it is held as under :

“ Ownership versus user

55. We have clearly indicated that the ownership right over the land earmarked for schools, hospitals, community centres and other community buildings referred to in Section 3(3)(a)(iv) of the Development Act vests in the coloniser. That ownership can be divested, as already indicated, by the coloniser through a declaration under Sections 11 to 13 read with Section 3(f) of the Apartment Act. The coloniser has to provide those facilities in discharge of its legal obligations under the Development Act and the Act itself has recognised its or his legal ownership over the area set apart for those facilities under Section 3(3)(a)(iv) of the Act. All the same, the right to enjoy those facilities referred to in Section 3(3)(a)(iv) of the Development Act, whether shown in the declaration or not, under the Apartment Act, cannot be restricted or curtailed and the **apartment owners have no other right, except the right of “user”**. Community centres, nursery schools, **shops**, etc., therefore, being part of the approved layout plans by DTCP, can be used by the apartment owners and, being part of the larger colony, are intended for independent use of all the apartment owners having direct exit to common areas, to the public street, road, etc. **All those facts would indicate, so far as apartment owners are concerned, they have only a right of user, so far as the facilities provided under Section 3(3)(a)(iv) of the Development Act are concerned. ”**

“Competent authority

63. We are also of the view that the High Court has committed an error in directing DTCP to decide the objections of the

*apartment owners with regard to the declaration made by the coloniser. The competent authority is defined under Section 3(i) of the Apartment Act. Section 11(2) provides for filing of declaration in the office of the competent authority. Section 24-A of the Act prescribes penalties and prosecution for failure to file a declaration and Section 24-B permits the prosecution only with the sanction of the competent authority. In a given case if the developer does not provide common areas or facilities like corridors, lobbies, staircases, lifts and fire escape, etc. the competent authority can look into the objections of the apartment owners **but when the statute has given a discretion to the coloniser to provide or not to provide as per Section 3(f)(7) of the Apartment Act the facilities referred to in Section 3(3)(a)(iv) of the Development Act, in our view no objection could be raised by the apartment owners and they cannot claim any undivided interest over those facilities except the right of user. In the instant case the apartment owners have raised no grievance that they are being prevented from using the community and commercial facilities referred to in Section 3(3)(a)(iv) of the Regulation Act, but they cannot claim an undivided interest or right of management over them.***

(Emphasis Supplied)

In the present case also, in both the DoDs dated 16.04.2003 (P-4) and 30.05.2008 (P-9), **each car Parking have been declared as unit** and in the DoD dated 30.05.2008 (P-9), **the shops being small utility booths for commercial activity have also been declared as independent units** and not included in the common area thus Parkings and shops **have not been loaded on the super area of the Apartment**, ruling out the element of any charge included towards the sale price of the Apartment in the Complex.

It is not the case of the Petitioner-Association that the size / dimension of

any Apartment or even the Apartment Building has been revised or reduced during the period of grievance i.e. 2003-2008 during the construction / development phase.

In view of the above, factual and legal position, even the arguments regarding shops / parking is totally baseless and unfounded on any statutory, legal or contractual basis as none has been pleaded in the writ petition or demonstrated before the Court during the course of hearing. Hence the argument in this regard is also rejected.

The prayer regarding the handing / taking over of the complete possession and maintenance of all the common areas and facilities of the Carlton Estate Complex to the Petitioner-Association is kept open as no argument regarding the same are addressed by the Counsel for the Petitioner while raising the issue of shops and parking qua the DoD.

8. Further argument raised by the counsel for the Petitioner is regarding the provisions of Section 6 (2) of the 1983 Act to submit the area declared in the DoD was conveyed to the Apartment Owners and cannot be changed and revised thereafter, thus, challenging the Final DoD-2008 (P-9).

8.1 Before adverting to the provisions of Section 6(2), it would be advantageous to consider object, purpose and the applicability of the 1983 Act. In the Preamble of 1983 Act, it provides :

“ An Act to provide for **the ownership of an individual apartment in a building** and to **make such apartment heritable and transferable property** and matters connected therewith. ”

The ‘Statement of Objects and Reasons’ are as under :

“ Housing is a basic human necessity and the quality of the

house as well as of its environment plays an important role in the growth of individuals, both physically and mentally. One of the root cause, of the present day discontent and unrest in the working force as well as the students, in our society, is the lack of proper quality of life and the living environment in the settlements. The widening gap between the rising population and the housing stock added every year has gradually reached such a critical stage that the problem of providing proper shelter and desirable standard of living seems to be beyond solution. The efforts made by the Government as well as different agencies have not made much dent into the problem

*Haryana is predominantly an agricultural State, it is not advisable to use fertile lands more and more for housing purposes which ultimately will tell upon the production of foodgrain. **It is essential that for solving the housing problem economy in the use of land as well as in the use of Capital Investment should be observed, for which Group Housing will have to be promoted.** Therefore, for the promotion of Group Housing will have to be promoted. **Therefore, for the promotion of Group Housing, it is necessary that the State should have some statute to control the building activities as well the ownership right.***

Hence this Bill.”

(Emphasis supplied)

The 1983 Act was enacted for the promotion of Group Housing while it was deemed necessary that the State should have some statute to control the building activities as well the ownership right in respect of the ‘Apartment’ in high rise buildings and make the Apartment a heritable and transferable property.

8.2 The application of the 1983 Act comes in after the Apartments have been developed by the Colonizer / Developer after necessary License, permissions and sanctions under the provisions of Haryana Development

and Regulation of Urban Areas Act 1975 and Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963.

By the amendment in Section 2 of the 1983 Act on 19.04.2002, it was provided as under :

2. *Application of Act.-*

*The provisions of this Act shall apply to **every apartment lawfully constructed** for residential purposes, integrated commercial complexes, flatted factories, Information Technology Industrial Unit, Cyber Park and Cyber City **for the purpose of transfer of ownership of an individual apartment in a building** whether constructed before or after the commencement of this Act. In case of licences issued under the Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975), the owner of such property/building **shall duly execute and get registered a declaration within a period of ninety days after obtaining part completion/completion certificate** under the rules framed under the Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975), or occupation certificate under the rules framed under the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (41 of 1963), whichever is earlier, in case of property/building falling in the area developed by the Haryana Urban Development Authority, the owner of such property/building shall duly execute and get registered a declaration within a period of ninety days after obtaining occupation certificate of the building under regulations framed under the Haryana Urban Development Authority Act 1977 (13 of 1977) . In case of property/building where the owner has already obtained part completion/completion certificate or occupation certificate under the rules and regulations framed under the said Acts, the period of ninety days shall take effect from the commencement*

of this Act.

Explanation – *For the purpose of this section “Information Technology Industrial Units”, “Cyber Park” and “Cyber City” shall have the same meaning as assigned to them in the Zoning Regulations of Development Plans of various cities published under Section 5 of the Punjab Scheduled Roads and Controlled Areas Restrictions of Unregulated Development Act, 1963, (41 of 1963)*

(Emphasis supplied)

The mandatory ‘***Declaration***’ mentioned in aforesaid Section 2 of the 1983 Act is in respect of the DoD to be executed by the Owner of the Property / Colonizer in terms of Section 11 (***Contents of Declaration***) of the 1983 Act and regarding which the statutory format is provided for under Rule 3 read with Form “A” of the Haryana Apartment Ownership Rules 1987 (hereinafter referred to as “**1987 Rules**”). Rule 3 of the 1987 Rules provides as under :

“ 3. Form of Declaration (Section 25)

The Declaration to be executed and registered under Section 2 of the Act by the Sole Owner or all the owners shall be in Form A. ”

From the above, it is apparent that the main object of the 1983 Act is to make the Apartment a heritable and alienable property for the Apartment Owners and towards the regulation of the areas necessary and inherent to the enjoyment of the Apartment which is for the exclusive use and inheritance / alienation of apartment are held commonly with undivided interest by all the apartment Owners.

It is towards this intent and purpose that the provision of DoD is incorporated in the 1983 Act. In the DoD, which is a mandatory obligation on the part of the Colonizer / grantor to be executed within specified period of 90 days upon receipt of Occupation Certificate, the Apartment as a separate entity / unit is identified & declared wherein the exclusive right of ownership is given to the Apartment Owner and the areas and facilities (to be shared with other Apartment Owners), within the building and the Complex, which are necessary for the existence & unhindered enjoyment of that Apartment upto the public street are also declared.

8.3 Adverting to the argument of the counsel for the petitioner, we take up the relevant provision of Section 6 (2) of the 1983 Act, which provides as under :

“ 6. Common areas and facilities.-

- (1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration. Such percentage shall be computed by taking as a basis the value of the apartments in relation to the value of the property; and such percentage shall reflect the limited common areas and facilities.*
- (2) **The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration shall have a permanent character and shall not be altered without the consent of all of the apartment owners and expressed in an amended declaration duly executed and registered as provided in this Act. The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with the apartment even though such interest is***

not expressly mentioned in the conveyance or other instrument.

(3)-(6) x x x x x”

(Emphasis supplied)

The purport of Section 6 (2) of the 1983 Act from its plain and simple interpretation is that the percentage of undivided interest of each apartment owner in the common areas and facilities as loaded on the Apartment area (to become super area) as expressed in the declaration (DoD) is frozen and cannot be changed without the consent of the Apartment Owners. It also implies that in the cases where by any amendment in the DoD, the percentage of the undivided interest of each apartment owner remains unaltered or is not effected, then no consent of the apartment owners is required.

In the present writ petition, it is nobody's case as pleaded or argued that the percentage of undivided share in the common areas and facilities as expressly declared in 16.04.2003 Declaration (DoD) (P-4) has been altered. Rather, it was expressly mentioned in the 2003 DoD that the area so declared in the said DoD is to be shared with future towers and area as declared is tentative in nature.

8.4 It is the matter of common knowledge and established fact that the development of the Group Housing Complexes as a Colony or within a Colony, consisting of multiple towers, in its introductory period in late 1990s / early 2000s (as in present case) and even today, is made in a phased manner. In a phased development, normally some of the towers are launched and sold by the Colonizer and further towers in the Complex are developed

backups to carry out expansive development activities, covering the land cost, need / demand basis as also the payment of the Government charges and dues. After a phase / some of the towers are completed and the internal services have been laid, upon the grant of Occupation Certificate, the DoD is mandatorily required to be executed (inspite of the further / future development of towers / infrastructure in entire Complex being pending) within 90 days so that the Allottee / Apartment Owner can possess its Apartment and enjoy / use the apartment alongwith its common areas (which upto this stage of partial development of Complex are not frozen qua the Complex of multiple towers as awaiting the further rights of subsequent Allottees in future development / constructions to be created in due course of development of future towers). Thus, at this stage, by the execution of the DoD (which are tentative & towards mandatory compliance), the rights of the Apartment owners are frozen qua his apartment which in tune with the object of the 1983 Act becomes an alienable and transferable entity awaiting the freezing of rights (percentage of undivided interest) qua common areas and facilities upon completion of future development in the Complex and the execution of the final DoD upon completion of the entire Project. It is also common knowledge that as and when Occupation Certificate for further towers in the Complex is received, the revised Deed of Declaration for towers in a Phase / Complex is executed by including the earlier and later towers of the Complex till the time the entire development is complete.

8.5 To our mind, the provision of Section 6 (2) of the 1983 Act cannot be interpreted to be mandatory to hold that the percentage of

undivided interest in the common areas and facilities is frozen as soon as Deed of Declaration is executed in respect of part development of some towers in the Project and cannot be changed except by the consent of **all of the apartment owners**, because such interpretation would render the application of the other provisions of the 1983 Act, unworkable and impracticable. The situation can be demonstrated in respect of the development in phased manner in the remaining areas of the Complex / Project and / or change for implementation of infrastructure / use or diversion of common areas for disaster management / emergency evacuations or some facility catering to disabled persons even after the final DoD. In the above illustrative situations, even when change is genuinely needed to cater to rights of allottees of future developments / subsequent phases in the common areas / general facilities of the Complex; common decision to cater to general well being of the Group Housing Complex after entire completion; then such change would become inexecutable and liable to be abandoned even if one recalcitrant resident opposes such change due to his own personal reasons or motives. Even otherwise, it is not conceivable that each one will agree on proposed changes unanimously. The very scheme of the 1983 Act is to regulate and promote among the members / shareholders of the Group Housing Complex the common interest / common wellbeing and not to permit abandoning of it. Keeping in view the scheme of the 1983 Act, it cannot be accepted, by any stretch of reasoning, that the provision of Section 6 (2) were / are meant to be mandatory, as the intention of the legislature was and can never be that one obstinate apartment owner will hold the future development / general good and

common welfare of the Complex to ransom. The principle that has been ingrained by consistent judicial precedents is that individual interest or, for that matter, smaller public interest must yield to the larger public interest. Inconvenience of some should be bypassed for a larger interest or cause of the society/community.

In our considered opinion, Section 6 (2) of the 1983 Act is having its intent and limited purpose to protect and safeguard the rights of each apartment owner qua any action that affects his right in respect of his apartment and the common areas and facilities attached to that apartment, which are core to its meaningful existence. The apartment owner qua any prejudice shown due to infringement of his individual rights and the rights in the common areas and facilities or any alteration in the percentage of undivided interest in the common areas and facilities as declared in the tentative or final DoD is not remediless and has his remedy to approach the 'competent authority' as defined under Section 3(i) of the 1983 Act, when in a given case if the developer does not provide common areas or facilities like corridors, lobbies, staircases, lifts and fire escape, etc. or **tamper** with the same then the competent authority can look into the objections of the apartment owners as has been held by the Hon'ble Supreme Court in Manmohan Lowe's case (refer Para 63). Apart from the above, in the Real Estate (Regulation and Development) Act 2016, the Allottee / apartment owner has been provided remedies against the action of the promoter / developer in respect of the infringement of allottee rights in respect of the common areas as defined in the Real Estate (Regulation and Development) Act 2016 and the rules made thereunder, as and where applicable.

8.6 In the backdrop of aforesaid discussion, going by the provisions of Section 6 (2) read in contrast to the provision of Section 2 which requires as a mandate to execute the DoD of the Tower(s) within 90 days of receipt of its Occupation Certificate irrespective that the other Towers / construction development is yet to be completed, the provision of Section 6 (2) of the 1983 Act cannot be said to be mandatory but is directory in nature.

In this regard in “*Sangram Singh v. Election Tribunal Kota*”, *AIR 1955 SC 425*, the Hon’ble Supreme Court held that while dealing with the non-compliance of a procedural requirement, it has to be kept in view that such requirement is designed to facilitate justice and further the ends of justice. Hence, if consequences of non-compliance are not provided, **the requirement may be held to be directory.**

Further, in “*DrigrajKuer (Rani) v. Amar Krishna Narain Singh (Raja)*”, *AIR 1960 SC 444*, it was specifically stated that if a provision is mandatory, an act done in the breach thereof will be invalid, but if it is directory, the act will be valid although the non-compliance may give rise to some other penalty if provided by the statute.

Similarly, “*K. Kamaraja Nadar v. Kunju Thewar*”, *AIR 1958 SC 687*, Section 82 of People’s Representation Act, 1951 which requires certain candidates to be joined in as respondents to an election petition was held to be directory before amendment of the Act by Act 27 of 1956 as no consequence of non-joinder was till then provided by the Act.

No consequences have been provided for non-compliance of Section 6(2) rather there is mandatory legal requirement under Section 2 of the 1983 Act, to execute the DoD within 90 days on the receipt of the

Occupation Certificate for a Building / Tower and non compliance of not executing the DoD as mandated has been made a penal offence under Section 24-A of the 1983 Act (inserted by: Act No. 10 published in Haryana Government Gazette on 19.04.2002 when the statutory mandate of executing the DoD within 90 days of the receipt of the Occupation Certificate was incorporated in Section 2 by amendment) which provides that if the DoD is not executed within the prescribed time as provided under Section 2 then the penal consequences follow. The provisions of Section 24-A of the 1983 Act are as under :

“ 24-A Penalties

*Any owner of property / building, **who does not file declaration within the period specified under section 2, shall be punishable with imprisonment** of either description for a term which may extend to three years and shall also be liable to a fine of not less than Rs. 50,000 and Rs. 10,000 for each day of continuing offence. ”*

The aforestated provisions, amendment in Section 2 and insertion of Section 24-A shows that the legislature intent was clear and explicit that the onus and duty to execute the DoD on the owner of the property being developed and having received the Occupation Certificate is mandatory and there are no riders or exemptions provided for the development of Group Housing being carried out in phases or the construction of some buildings / towers in the Complex having achieved completion prior to the other buildings / future developments in the Complex. The aforementioned provisions substantiate / conclusively denote and compel us to hold that the provisions of Section 6 (2) are only directory qua the consent of each apartment owner to bring permanence of tentative

percentage arrived at the earlier stages and rights to the common areas and facilities (when only some of the Buildings in the Complex are completed) on the completion of all developments in the Complex.

8.7 Even if the provision of Section 6 (2) of 1983 Act are held to be mandatory, for the sake of argument, then, *in the facts of the present case*, the same stands waived off by the waiver / acquiescence of the Allottee / Apartment Owners. The Shops, constructed before the year 2008, are small utility shops for daily need purposes raised for the convenience and the benefit of the Apartment Owners and are not a Shopping Complex as has been alleged by the Petitioner. The same being leased out in the year 2008 by the Colonizer is an undisputed fact as averred by the Petitioner in Para 26 of the Writ Petition. The Petitioner-Association has failed to raise any objection whatsoever in the past 12 years when the DoD dated 30.05.2008 (P-9) was executed that too inspite of the fact that the Association has been taken over by the elected representatives of the Apartment Owners since the year 2013 onwards. Therefore, the objection, if any, as per the general principles of law or otherwise stands waived off by the principle of acquiescence. The consent requirement under Section 6 (2), is merely directory and by virtue of principle of waiver and principle of acquiescence stands waived off as per the settled law as enumerated below.

The Hon'ble Supreme Court in ***GM, Sri Siddeshwara Co-operative Bank Ltd. Vs. SriIkbal & Ors., (2013) 10 SCC 83***, wherein the Hon'ble Court has held as under: (Para 23, 24)

“ **23.** *There is no doubt that Rule 9(1) is mandatory but this provision is definitely for the benefit of the borrower. Similarly, Rule 9(3) and Rule 9(4) are for the benefit of the*

secured creditor (or in any case for the benefit of the borrower). It is settled position in law that even if a provision is mandatory, it can always be waived by a party (or parties) for whose benefit such provision has been made. The provision in Rule 9(1) being for the benefit of the borrower and the provisions contained in Rule 9(3) and Rule 9(4) being for the benefit of the secured creditor (or for that matter for the benefit of the borrower), the secured creditor and the borrower can lawfully waive their right. These provisions neither expressly nor contextually indicate otherwise. Obviously, the question whether there is waiver or not depends on facts of each case and no hard and fast rule can be laid down in this regard.

- 24.** *The letter dated 13.11.2006 sent by the borrower to the Bank leaves no manner of doubt that the borrower had waived his right under Rule 9(1) or for that matter under Rule 9(3) and Rule 9(4) as well.”*

(Emphasis Supplied)

Further in ***Commissioner of Customs, Mumbai Vs. M/s Virgo Steels, Bombay &Anr., (2002) 4 SCC 316***, Hon’ble Court has held as under:-

- “ 9. *The next question for our consideration is: can a mandatory requirement of a statute be waived by the party concerned? In answering this question, we are aided by a catena of judgments of this Court as well as of the Privy Council. We will first refer to the judgment of the Privy Council which has been consistently followed by the Supreme Court in a number of subsequent cases involving similar points. In VellayanChettiar v. Government of Province of Madras (AIR1947 PC 197), the Privy Council held that even though Section 80 C.P.C. is mandatory, still non-issuance of such notice would not render the suit bad in the eye of law because such non-issuance of notice can be waived by the party concerned. In the said judgment, the Privy Council held that the protection provided under Section 80 is a protection given*

to the person concerned and if in a particular case that person does not require the protection he can lawfully waive his right.

10. *In the case of Dhirendra Nath Gorai and Subal Chandra Shaw and Ors. v. Sudhir Chandra Ghosh and Ors. (1964(6) SCR 1001), this Court followed the judgment of the Privy Council in VellayanChettiar (supra) and held that If certain condition or requirement is provided by a statute in the interest of a particular person, the requirement or condition although mandatory may be waived by him if no public interests are involved and in such a case the act done will be valid even if requirement or condition has not been pre-performed.*

Thus, even though the requirement of Section 35 of the Bengal Money Lenders' Act is mandatory in nature, such mandatory requirement could be waived by the party concerned. On a true construction of Section 35 of that Act, this Court held that the said Section is intended only for the benefit of the judgment- debtor and, therefore, he can waive the right conferred on him under the said Section.

11. *In the case of Raghbir Singh Gill v. S. Gurcharan Singh Tohra&Ors. (1980 Supp SCC 53), this Court negative an argument that the requirement of Section 94 of the Representation of The People Act, 1951 cannot be waived. This argument was based on the principle that public policy cannot be waived. Rejecting the said argument, this Court held that the privilege conferred or a right created by a Statute, if it is solely for the benefit of an individual, he can waive it. It also held that where a prohibition enacted is founded on public policy, courts should be slow to apply the doctrine of waiver but if such privilege granted under the Act is for the sole benefit of an individual as is the case under Section 94 of the Representation of The People Act, the person in whose benefit the privilege was enacted has a right to waive it because the very concept of privilege inheres a right to waiver.*

12. *In KrishanLal v. State of J&K, 1994(3) S.C.T. 662 : (1994(4) SCC 422), this Court while considering the requirement of furnishing copy of inquiry proceedings under Section 17(5) of the J & K (Government Servants) Prevention of Corruption Act, 1962 held following the judgment in V. Chettiar's case (supra) and D.N. Gorai (supra) that though the requirement mentioned in Section 17(5) of the Act was mandatory, the same can be waived because the requirement of giving a copy of the proceedings of the inquiry mandated by Section 17(5) of the Act is one which is for the benefit of the individual concerned.*
13. *In Martin & Harris Ltd. v. 6th Additional Distt. Judge &Ors., (1998(1) SCC 732), this Court while considering the provision of Section 1(1)(a) first proviso of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 negatived a contention advanced on behalf of the appellant therein that the said provision was for public benefit and could not be waived. It held that it is true that such benefit enacted under the said proviso covered a class of tenants, still the said protection would be available to a tenant only as an individual, hence, it gave the tenant concerned a locus poenitentiae to avail the benefit or not. **It also held that the benefit given under the said section was purely personal to the tenant concerned, hence, such a statutory benefit though mandatory, can be waived by the person concerned.***
14. ***From the ratio laid down by the Privy Council and followed by this Court in the above-cited judgments, it is clear that even though a provision of law is mandatory in its operation if such provision is one which deals with the individual rights of person concerned and is for his benefit, the said person can always waive such a right.***
15. *Bearing in mind the above decided principle in law, if we consider the mandatory requirement of issuance of notice under Section 28 of the Act, it will be seen that the requirement is provided by the Statute solely for the benefit of*

the individual concerned, therefore, he can waive that right. In other words, this Section casts a duty on the Officer to issue notice to the person concerned of the proposed action to be taken. This is not in the nature of a public notice nor any person other than the person against whom the proceedings are initiated has any right for such a notice. Thus, this right of notice being personal to the person concerned, the same can be waived by that person.

16. *If the above position in law is correct, which we think it is, M/s. Virgo Steels, having specifically waived its right for a notice, cannot now be permitted to turn around and contend that the proceedings initiated against them are void for want of notice under Section 28 of the Act, so as to frustrate the statutory duty of the Revenue to demand and collect customs duty which M/s. Virgo Steels had intentionally evaded.”*

(Emphasis Supplied)

From the aforestated discussions, it is amply clear that the provisions of Section 6 (2) of the 1983 Act are directory and not mandatory and in the given facts and circumstances the Petitioner Association have waived of their right to question the amendment in the DoD rendered at the incomplete stage of Complex awaiting the future development to be completed. In the facts of the present case, no pleading has been raised that any change has been made in the building, apartment or their easementary right so as to cause any inconvenience to the Apartment Owners or to their prejudice.

8.8 Another very relevant aspect in the facts of the present case is that an amendment notified on 19.04.2002 was carried out in Section 2 of the 1983 Act making it mandatory for the owner of property to execute the DoD within 90 days. The Respondent – colonizer in the present case having completed two towers and received Occupation Certificate in respect thereof

executed the DoD on 16.04.2003 (P-4) with assumptive Note given with the Declaration as under :

“Note 1. This declaration is filed in view of the amendment in Section 2 of the Haryana Apartment Ownership Act, 2002. Since a part of entire scheme Carlton Estate Condominium in Zone – 7, DLF City, Phase-V, is yet to be constructed, the Grantor reserves its rights to suitably amend / alter this declaration as and when such area is constructed under Haryana Development and Regulation of Urban Areas Act, 1975 and Punjab Scheduled Road and Controlled Areas (Restriction of Unregulated Development) Act, 1963 and the Apartment / Building Owners / Members of Association shall not object to any such amendment / alteration notwithstanding and irrespective of the powers / rights conferred on the apartment owners / building owners under this Declaration.”

(Emphasis Supplied)

The Assumption being part of DoD dated 16.04.2003 **(P-4)** (supplied to the Court by the counsel Rajeev Anand Advocate, for the Respondent No. 3) has not been filed by the Petitioner-Association along-with the DoD dated 16.04.2003 **(P-4)** though forming part of it and it is argued on behalf of respondent No. 3 that the aforementioned fact is very material / relevant consideration towards the issue in controversy but has been willfully and intentionally concealed from the Court. Be that as it may, we take note of the document and clearly establish that the Owner of the property Respondent No. 3 in order to comply with mandatory provision of law (*Section 2 of 1983 Act*) executed the DoD with the note clarifying the tentativeness in the Declaration and the amendment required on completion of further construction.

In view of the above discussion of statutory provisions, settled law and the facts of the case, the argument of the Petitioner – Association regarding the infringement of Section 6 (2) of the 1983 Act by executing the Final DoD dated 30.05.2008 **(P-9)** is unfounded and is thus rejected and the Final DoD dated 30.05.2008 **(P-9)** is held to be legal and valid.

9. On the last aspect of the matter raised during the course of hearing regarding the Writ Petition being hit delay and laches, the facts are undisputed by the Petitioner – Association in their pleadings itself that any cause of action that arose to the Petitioner – Association was on 30.05.2008 when the disputed amendments were made in the DoD **(P-9)**. The Petitioner – Associations concedes that the amendment in DoD **(P-9)** was executed on 30.05.2008 wherein the alleged wrong declaration regarding the parking / shops was made and the lease money on the shops is being taken by the Respondent – Colonizer since 2008. Undoubtedly, the members of the petitioner-Association were fully conscious and aware of all the developments since 2008 but never raised any question on the same and disputed any such development as challenged in the present Writ Petition. The elected body of the Petitioner-Association took over in 2013 and came to the helm of the affairs wherein no question was raised or any representation made to any quarter in last seven years while all this while since 2008 onwards the area is stated to have been developed in the vicinity.

Regarding the delay and laches, the Hon'ble Supreme Court in ***“Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu”***, (2014) 4 SCC 108 at page 117, held that:

“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh

the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the court would be under legal obligation to scrutinise whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the court. Delay reflects inactivity and inaction on the part of a litigant — a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis”.

(Emphasis Supplied)

Further in *State of M.P. vs. Nandlal Jaiswal (1986) 4 SCC 566*

@ 594, Para 24, the Hon’ble Court observed:

“24. ... it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic.....

... If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction.”

(Emphasis Supplied)

In *Maharashtra SRTC vs. Balwant Regular Motor Service* [AIR 1969 SC 329] the Hon'ble Supreme Court referred to the principle that has been stated by Sir Barnes Peacock in *Lindsay Petroleum Co. v. Hurd* [Lindsay Petroleum Co. v. Hurd, (1874) LR 5 PC 221]:

“11. ... ‘Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted in, either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.’ (Lindsay Petroleum Co. case [Lindsay Petroleum Co. vs. Hurd, (1874) LR 5 PC 221], PC pp. 239-40)”

(Emphasis Supplied)

In the facts of the present case, the Petitioner-Association did not take any step to ventilate their purported grievance with the Respondent Colonizer or before the Authorities, and after 12 years have raised such a issue for the first time in the present Writ Petition before this Court. Applying the aforesaid principles on delay and laches, we find that the petition also suffers from the vice of **delay** and **laches**, apart from being

barred by law of **limitation** being beyond the period of three years from the occurrence of the purported cause of action.

10. In view of the aforesaid discussion, the **writ petition** is accordingly **dismissed**.

No order as to costs.

(JASWANT SINGH)
JUDGE

November 23, 2020
'dk kamra'

(SANT PARKASH)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No