

CWP No.6558 of 2021

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

CWP No.6558 of 2021

Date of Decision:-22.03.2021

Smt. Swarnpreet Kaur &Ors.

.....Petitioners.

Versus

State of Haryana & Ors.

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present:- Mr. Aman Pal, Advocate for the Petitioners.

JASWANT SINGH, J.

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

1. The Petitioner No. 1 & 2-residents of USA, through their power of attorney holder and Petitioner No. 3-resident of Dwarka New Delhi have collectively, as allottees of Residential Group Housing Complex, The Primus at Gurugram, have filed the present writ petition against the State Authorities - Department of Town and Country Planning, Haryana Urban Development Authority, State Registrar Firms and Society Haryana, the developer / Colonizer etc. challenging the grant of Occupation Certificate dated 19.06.2017 (**P-13**) and the Completion Certificate dated 28.11.2019 (**P-21**) by the DTCP Haryana (Respondent No. 3) in respect of the Project

developed by Colonizer / Developer DLF Home Developers Limited (Respondent No. 12); seeking directions to the concerned officials to conduct an enquiry into management of Project undertaken by Builder; as also seeking further directions for providing civic amenities and facilities to the Petitioners at the Project.

2. The Petitioners have relied on various documents regarding the permission for occupation / completion of the Project in question which reveal that the Occupation Certificate in respect of the development of Residential Buildings in the Complex was granted on 07.10.2016 (**P-12**) after considering NOC issued by Director Fire Services Haryana, NOC regarding Environment Clearance, Structure Stability Certificate, Public Health Functional Report from SE HUDA and Certificate of Registration of Lifts. In the Certificate (**P-12**) it was mentioned that the colonizer will be responsible for the supply of water as per norms till such time the colony is handed over after final completion or the supply is made available to the colony by HUDA and till then the potable water will be brought by the colonizer through tankers, to be charged from the allottees at HUDA rates.

Thereafter, on 19.06.2017 (**P-13**), the impugned order was passed wherein Occupation Certificate for community building, shops in community building, shops and kiosk in the Complex was granted on the same considerations, for the remaining area of the Complex as admitted by the petitioners in Para 12 of the Writ Petition. The Occupation Certificate dated 07.10.2016 (**P-12**) for the occupation of Residential buildings is not under challenge in present Writ Petition.

3. The Petitioners have also raised the issue regarding the non completion of 24 metre sector road outside the Complex and the approach

being provided for the Complex through a private road.

The issue regarding the Condominium Association constituted in respect of the Complex has been raised with reference to the proceedings before the District Registrar Firms and Societies Gurugram wherein favorable orders are stated have been passed by the District Registrar in favour of the Allottees which have been reversed by the State Registrar and the matter has been remanded to the State Registrar for fresh consideration after giving opportunity to the parties. The petitioners further mention that an Administrator has been appointed in the complex for running the condominium by the District Registrar Firms and Societies Gurugram, though they are not satisfied even with the appointment of the administrator referring to the grievances raised by some other allottee. The above orders by District Registrar / State Registrar Firms and Societies being dealt with under the provisions of Haryana Registration and Regulations of Societies Act 2012 in the ordinary process of law are not the subject matter of the present writ petition.

The Completion Certificate (**P-21**) is being impugned on the grounds that there is no approach road by means of sector road, water supply by HUDA, civic facilities which are stated to be the responsibility of the private builder till the time the external services are provided by the Government. The petitioners are questioning the site visits and the satisfaction recorded by the field officers regarding the development works present in the complex.

4. During the course of proceedings reference was also made to the mechanism provided under the ‘Haryana Development and Regulation of Urban Areas Act, 1975’ (for short “**the Act**”) wherein any order passed

by the Director Town and Country Planning can be appealed against by any aggrieved person under Section 19 of the said Act. The petitioners admittedly have not preferred any appeal against the impugned order passed by the Director Town and Country Planning (Respondent No. 3) towards the issuance of impugned Occupation Certificate and the impugned Completion Certificate.

5. In the present case, in the detailed writ petition and the volume of Annexures annexed therein, the petitioners have not referred to any deficiency or shortcomings in respect of the execution of the layout plan within the complex & the execution of the internal development works by the Colonizer. Whereas, the impugned occupation certificate is a step preceding the grant of completion certificate wherein the permission to occupy the buildings based on the site reports rendered by the expert officials fully aware of the norms and specifications as also the no objection from the departments like Fire, Environment, Public Health etc. stand testimony to the satisfaction arrived by the Respondent No. 3 to grant permission to occupy the building and grant the completion of the project. No challenge is made to the above reports / NOCs and it is also not disputed that in terms of above condition, the Colonizer is providing the potable water through tankers.

6. A reference in this regard to the provisions of relevant Rule 16 of the Haryana Development and Regulation of Urban Areas Act 1976 reveals that the completion certificate, so far as the Colonizer is concerned, refers to the laying of the Colony as per the layout plan and the execution of the internal development works according to the approved design and specifications. Rule 16 of the 1976 Rules provides as under :

16. Completion certificate / part completion certificate [Section 24].–

(1) After the colony has been **laid out according to approved layout plans and internal development works have been executed according to the approved design and specifications**, the coloniser shall make an application to the Director in form LC-VIII alongwith a demand draft on account of Infrastructure Augmentation Charges as per the rates prescribed in the Schedule-B of these rules if not paid earlier in accordance with the provision of Section 3(7) of the Act.

(2) After such scrutiny, as may be necessary, the Director may issue a completion certificate/part completion certificate in form LC-IX or refuse to issue such certificate stating the reasons for such refusal :

Provided that the coloniser shall be afforded an opportunity of being heard before such refusal.

The provision of Rule 16 of the 1976 also does not come to the support of the Petitioners to press for the onus of the external services and the civic amenities on the Colonizer so as to stall the grant of the Completion Certificate once the Colony has been laid as per the layout Plans and the internal development works have been completed. The said Rule rather negates the argument of the Petitioners.

7. The petitioners except for the non execution of the external services have failed to flaw the completion of the colony as per layout plan and the execution of the internal development works by the Colonizer which forms the basis for the grant of the Occupation and the Completion Certificate.

8. The Group Housing Project, “The Primus” pertains to development on 12.531 acres (P-13 refers) consisting of various towers and will be having hundreds of allottees. The entire project, its functioning and development cannot be kept at ransom through a few disgruntled allottees

by invoking the extraordinary writ jurisdiction by disputing the factum of

development by norms and specifications certified by the Competent Authority DTCP Haryana Respondent No. 3 based on on-ground site inspection reports and NOCs from other competent authorities.

We cannot be unmindful of the fact that the grant of occupation certificate / completion certificate entails the handing over of the possession of the apartments, the occupation of the apartments by the allottees, the conveyance of the title of the apartments to the allottees. The occupation certificate issued by consideration of the reports of different authorities / departments cannot be easily interfered with upon the allegations of the purported or actual violations as it results in serious and grave prejudice to the settled rights of the residents / apartment owners (running into hundreds) in their absence, and who perhaps are not even aggrieved by the alleged / imagined violation, as canvassed by disgruntled elements in equitable Writ jurisdiction under Article 226 of the Constitution of India, 1950.

9. The counsel for the Petitioners has referred to the judgment of the Hon'ble Supreme Court in "**Balkrishna Ram versus Union of India and others**" (2020) 2 SCC 442, regarding the power of the Judicial Review of the High Court inspite of the availability of alternative remedy. The issue in the referred case pertained to the jurisdiction of the High Court under Article 226 against the decisions of the Armed Forces Tribunal and the facts as such of the said judgment in the facts of the present case are clearly distinguishable. Furthermore, the question of adequacy and efficacy of the alternative remedy would also depend upon the nature of issues involved and the requirement to go into establishing of facts *(as in present case to establish by intricate and technical aspects if the construction /*

development has been completed with approved norms and specifications as certified by the competent authority) as against the complex questions of law and statutory interpretation being involved. The former has bearing on the present case in hand as also towards the efficacy and adequacy of the alternative remedy.

The reliance of the petitioners further on the judgment of this Hon'ble Court in "**Dr Amitabha Sen and Anr versus Raj Singh Gehlot and others**" 2020 (3) RCR (Civil) 145 is on entirely different facts wherein the alteration of the layout plan of the Colony was questioned and delicensing of the part of the Complex for another use was held to be without statutory power and authority. No such issue is being raised or argued in the present Writ Petition.

10. Faced with the afore-stated observations, the counsel for the petitioners do not press the present writ petition in respect of the impugned Occupation and the Completion Certificate granted to the project and sought liberty to approach the Respondent Authority DTCP and HUDA for the external services, civil amenities i.e. in respect of the external development works around the Complex.

11. The oral prayer is accepted and the Writ Petition is disposed of with liberty to the petitioners in the aforementioned terms. The Petitioners shall be at liberty to approach the DTCP Haryana, Respondent No. 3 / HUDA Respondent No. 4 regarding their grievances of the external services, civil amenities in the general area in question. In case the petitioners approach said authorities with their aforementioned grievances, the Respondent No. 3 & 4 authorities are directed to look in the grievances and consider the same expeditiously, preferably, within a period of four

months from the receipt of such representation.

12. **Disposed of** in the above terms. No orders as to the costs.

(JASWANT SINGH)
JUDGE

(JASGURPREET SINGH PURI)
JUDGE

March 22, 2021
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>