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

**CWP No. 1923-2022 (O&M)**

**Date of Decision: 20.04.2022**

**Shubhan Enclave Resident Welfare Association**

**.....Petitioner**

**Vs.**

**State of Punjab and others**

**.....Respondents**

**CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH  
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. V.K. Sandhir, Advocate,  
for the applicant-petitioner.

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**AMOL RATTAN SINGH, J. (ORAL)**

**CM-5538-CWP-2022**

Vide this application, the applicant (petitioner in the accompanying petition) seeks to place on record some copies of letters and notings as Annexures P-7 to P-9 with the accompanying petition.

No notice having been issued in the petition, none is required to be issued in this application, which is consequently allowed subject to all just exceptions, without any comment at this stage made on the relevance of the documents as regards the petition.

**CWP No. 1923 of 2022**

By this petition, the petitioner seeks issuance of a writ in the nature of '*mandamus*' directing respondents no. 1 to 3 to take action under the provisions of Sections 36/37/38/39 of the Punjab Apartment and Property Regulation Act, 1995, as also under the provisions of Sections 269/270 of the Punjab Municipal Corporation Act, 1976, for (alleged) violation of the

original approved site plan (copy Annexure P-2), by respondent no. 4 herein, i.e. M/s Satish Estate Private Limited, by carving out a shopping complex at the entrance gate of a mega housing project ('*Shubam Enclave*'), at Sultanwind, G.T. Road, Doburji, Amritsar, allegedly without any approval from respondents no. 2 and 3, thus creating hindrances and obstructions of ingress to residents.

The petitioner association further seeks a direction to respondents no. 3 and 4 to consider the representation/complaint dated 05.12.2021 (copy Annexure P-6), given by the petitioners against the illegal construction being started by respondent no. 4 at the entrance gate, and conversion of plot no. 526 by respondent no. 5 into a banquet hall, without any sanction from respondents no. 2 and 3.

Though, as per Annexure P-7 which has been taken on record today, the Punjab Real Estate Regulatory Authority (hereinafter referred to as the "Authority"), has stated that the registration certificate of the project would be issued to the petitioner subsequently in accordance with the provisions of the Real Estate (Regulations and Development) Act, 2016, and the rules made thereunder by the Government of Punjab, and learned counsel for the petitioner submits that since the completion certificate has been granted to the developer by the concerned authority (Punjab Urban Development Authority as per learned counsel for the petitioner), and therefore the Authority has no jurisdiction to look into the matter, we do not agree with that contention, in view of the fact that Section 3 of the Act of 2016 reads as follows:-

***"Prior registration of real estate project with Real Estate***

***Regulatory Authority"***

*(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:*

*Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.*

*(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required-*

*(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:*

*Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;*

*(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;*

*(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.*

***Explanation.***-For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.”

Obviously clause (b) of sub-section (2) of the aforesaid provision stipulates that it is only when the completion certificate has been received by a developer prior to commencement of the Act, (01.05.2017 as regards Section 3, for Punjab), that the developer would not be required to register with the Authority. Hence, such registration would have been compulsory for the promoter, i.e. respondent no. 4, immediately after 01.05.2017, with the completion certificate having been granted only on 21.07.2017.

Consequently, the Punjab Real Estate Regulatory Authority is ordered to be impleaded as respondent no. 6 in the petition, with the Registry directed to carry out necessary correction in the memo of parties.

Notice of motion is issued to respondents No.1 and 2 and the newly added respondent No.6 only, with Mr. P.S. Bajwa, Additional Advocate General, Punjab, who is also counsel for respondent no.6, accepting notice at the asking of the court.

A copy of the petition be handed over to him by learned counsel for the petitioner today itself.

Upon query, Mr. Bajwa submits that he has taken instructions to the effect that in fact the project in question, i.e. Shubhan Enclave as has been developed by respondent no.4, has now been registered with the said Authority under the provisions of sub-section (2) (b) of Section 3 of the aforesaid Act of 2016 and consequently, the grievance of the petitioner at least qua respondent No.4, would lie with the Authority.

Mr. V.K. Sandhir, learned counsel for the petitioner, however submits that other than violations by respondent No.4, violations have also been made by respondent No.5, i.e. Sukhwinder Singh, who is not otherwise in any way connected with respondent No.4 but who has misused the premises to construct a banquet hall and thereby has converted a residential part of the complex/project into a commercial one.

Having considered the matter, we consider it appropriate to relegate the petitioner to its remedy before respondent No.6, i.e. the Punjab Real Estate Regulatory Authority.

Naturally, the authority would go into the issue of whether or not respondent No.5 is also amenable to the jurisdiction of the Authority and if not, it would relegate the matter to the Amritsar Development Authority/Municipal Corporation, Amritsar, as the case may be, for action to be taken by that Authority/Corporation, if any such action is required to be taken for any violation by respondent No.5, as per law.

Naturally, any construction undertaken by respondents No.4 and 5 in violation of the statutory provisions, would be at their own risk.

The petition is disposed of accordingly.

(AMOL RATTAN SINGH)  
JUDGE

April 20, 2022  
jatinder/nitin/dv

(LALIT BATRA)  
JUDGE

Whether speaking/reasoned  
Whether Reportable

Yes  
Yes