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

1. CWP-14927-2015(O&M)
Reserved on: 21.9.2023
Date of Decision : December 16, 2023

VISHRANTI CITY RESIDENTS WELFARE SOCIETY
.....Petitioner

VERSUS

STATE OF PUNJAB & ORS
.....Respondents

2. CWP-4396-2016(O&M)

M/S SAI APARTMENTS AND INFRASTRUCTURE LTD
.....Petitioner

VERSUS

STATE OF PUNJAB & ORS
.....Respondents

3. CWP-73-2016(O&M)

PARAMJIT KAUR
.....Petitioner

VERSUS

STATE OF PUNJAB & ORS
.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Mr. R.S. Kalra, Advocate
for the petitioner(s) (in CWP-14927-2015).

Mr. Arun Bansal, Advocate and
Mr. Anubhav Bansal, Advocate
for the petitioner(s) (in CWP-73-2016).

Mr. Anand Chibber, Sr. Advocate with
Mr. Surjeet Bhadu, Advocate and
Mr. Veer Singh, Advocate and
Ms. Srishti Verma, Advocate and
Mr. Agam Bansal, Advocate

for the petitioner(s) (in CWP-4396-2016) and
for respondent No. 6 (in CWP-14927-2015).

None for the applicant (in RA-CW-39-2013).

Ms. Monika Jalota, Sr. DAG, Punjab and
Mr. Maninder Singh, DAG, Punjab.

Mr. Vikramjit Kaur Soni, Advocate for
Mr. Sanjeev Soni, Advocate for respondent No. 2-GMADA.

Mr. Vikas Chatrath, Advocate
for respondent No. 5 (in CWP-14927-2015).

Mr. G.S. Attariwala, Senior Advocate with
Mr. Vansh Chawla, Advocate
for respondent No. 4-M.C., Zirakpur (in all cases).

Mr. Arvind Thakur, Advocate
for respondent No. 7 (in CWP-14927-2015).

Mr. Aman Bansal, Advocate
for respondent No. 12 (in CWP-14927-2015).

Ms. Sukhvir Gill, Advocate for
Dr. Surya Parkash, Advocate
for respondents No. 8 and 9.

Mr. Vivek Suri, Advocate and
Mr. Vishal Jassal, Advocate
for applicant (in CM-20653-CWP-2022).

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SURESHWAR THAKUR, J.

1. Since the issues involved in all the above writ petitions are similar, therefore, the same are taken up together for decision.

2. Vishranti City Residents Welfare Society (RAW), has knocked the door of this Court seeking the making of a mandamus, upon, the official respondents No.1 to 5 thus for providing electricity connection, to the society, in view of the order dated 28.4.2015 (Annexure P-3) passed by respondent No.3.

3. These petitions are pending since 2015 and various interlocutory orders were passed during the pendency of the instant petitions, which were also assailed before the Hon'ble Supreme Court, therefore, to give quietus to the instant issue, it is imperative for this Court to deal with the facts in detail.

4. In the present case, vide order dated 8.10.2012, the licence for development was granted to respondent No.6, by respondent No.3, rather for development of Vishranti City, in the Municipal Committee limits of Zirakpur, vis-a-vis, a total area of 24.50 acres. The licence was valid w.e.f. 8.10.2012 to 7.10.2015. Thereafter, the developer-respondent No.6 carved about 800 plots from the above licensed lands. The members of the petitioner(s)-Society purchased the plots in that colony, which in fact, then was an approved colony.

5. The licence to develop the colony was granted in view of the provisions of Section 5 of the Punjab Apartment and Property Registration Act, 1995 (hereinafter referred to as '**the PAPRA Act'**). It was alleged by the petitioner(s) that at the time of publishing an advertisement, the promoter(s) made promise(s) therein that, it/they would provide the facilities of one underground sewerage, water tank supply, street lights, boundary walls, 24 hours security, park facilities etc. However, the said promise(s) became breached, inasmuch as, after selling the plots to the alienees concerned, no internal or external activities were carried out by respondent No.6-developer, thus leading the petitioner(s) to approach this Court, through its/theirs filing CWP No.15273 of 2014, thus for issuance of a mandamus upon the authority concerned, to provide the electricity connections vis-a-vis their respective households. The above

writ petition was disposed of by a Co-ordinate Division Bench of this Court vide order dated 18.12.2014 with a direction to the authority concerned, to consider the application, as filed by the members of the society, for providing electricity connections, in accordance with law, through passing a speaking order but within a period of 3 months. The matter was considered by the authority concerned i.e. respondent No.5-PSPCL and during the hearing of the matter, the developer did not cause an appearance, and, finally the matter was disposed of vide order dated 14.3.2015, by observing that as soon as, the developer or the Deputy Director, Local Government, fulfills the conditions laid down in the final NOC issued by the PSPCL on 25.3.2014, thus the Corporation will proceed further in releasing the electricity connections (**emphasis supplied**). Similarly, the Regional Deputy Director, Local Bodies Department-cum-competent authority, Patiala/respondent No.3 in compliance of the directions issued by a Co-ordinate Bench of this Court, also considered the matter. During proceedings before the authority (supra), the developer did not cause appearance, which led the authority concerned, to pass the order dated 28.4.2015, thus with the hereinafter extracted directions being carried thereins:-

> *"A. That the promoter i.e. Sai Apartments have violated the terms and conditions envisaged of the license and not provided the electric connection and other amenities in the colony as per the Punjab Apartment and Property Regulations Act 1995 and did not appear in this office despite the notices and public notice in the newspaper. Therefore the license to this company vide its office memo No. LDC/CA-DDLG/PTA-2012/106 dated 08/10/2012 is hereby cancelled as per Section 5 (12) of the Punjab*

Apartment and Property Regulations Act 1995. So that the orders passed by the Hon'ble Punjab & Haryana High Court be complied in letter and spirit.

B. The Executive Municipal Council, Zirakpur is directed to deposit the necessary amount with the Punjab State Power Corporation Limited for releasing the Power Connection to the Colony and also make necessary arrangement to carry out the other deficiencies and expenses incurred on this work be recovered from the present partners i.e. Shri Sushil Bindal son of Late Sh. Gian Chand, resident of House No.58, Sector 9, Panchkula, Sh. Vinod Goyal son of Sh. Des Raj, resident of House No. 325, Sector 9 Panchkula and Sh. Naveen Bansal son of Sh. Dharam Kumar Bansal resident of House No. 257, Sector 21, Panchkula as arrears of Land Revenue.

C. This office is directed to put up the case immediately for registration of FIR against the present partners whose names are mentioned in para No. B above."

6. A perusal of the above directions makes it clear, that the Regional Deputy Director concerned, instead of complying with the provisions of Section 5 of the PAPRA Act, rather directed the Municipal Council, Zirakpur, to deposit necessary amount with the PSPCL, besides directed the latter to make necessary arrangements to carry out other deficiencies in the development activities and recover the same from the partner of respondent No.6-firm. Not only that by invoking the provisions of Section 5 of the PAPRA Act, the licence granted to respondent No.6 was cancelled. The Municipal Council, Zirakpur, did not comply with the order passed by the Regional Deputy Director/respondent No.3, rather the Municipal Council, Zirakpur, has decided, to take up this issue with the appropriate authority. Since in consequence thereof, mutual correspondences were underway, but since no affirmative action was

taken on the directions issued by respondent No.3, thereby grievances became encumbered upon the petitioner(s), thus leading them to access this Court, for thereby constraining this Court to make the above alluded mandamus, upon, the authority concerned.

7. Thereafter during the pendency of the instant writ petitions, this Court passed the following directions on 16.11.2015:-

> *“In continuation of the order dated 02.11.2015, it is urged by learned counsel for the builder-cum-developer that the 'External Development Charges' have been demanded from the allottees at the rate as determined by the State Government Agency much after the execution of sale/conveyance deeds in favour of such allottees. The petitioners are thus not right in contending that 'External Development Charges' have been recovered from them while executing the sale/conveyance deeds. He further submits that the builder-cum-developer has no objection if such 'External Development Charges' are deposited by the allottees directly to the Competent Authority. He has also no objection if the actual amount of charges recoverable from the allottees is determined by the Arbitrator as per the terms and condition of the allotment.*
>
> *Mr.Bali, learned counsel for the builder-cum-developer further submits that there is a commercial site, free from all encumbrances, available with the builder, the details whereof are mentioned in the valuation report dated 07.10.2015 (R-6/5) appended with the written statement and approximate market value of that property is Rs.4,92,84,000/-. He submits that the said commercial property may be auctioned under the direct supervision of the Deputy Director, Local Bodies Department-respondent No.3 and the sale-proceeds can be deposited with that Authority as a 'security' till the matter is determined by the Arbitrator between the builder-cum-developer and the allottees. It is stated that if the Arbitrator holds that 'External Development Charges' are to be borne by the builder-cum-developer, the sale-proceeds of commercial property can be appropriated to that*

extent. However, if it is held that it is the allottees who are liable to deposit such charges, the auctioned amount alongwith interest accrued meanwhile, can be refunded to the builder-cum-developer.

Since the above made offer appears to fair and just compliance of para-4 of the order dated 02.11.2015, we direct the Deputy Commissioner, SAS Nagar Mohali to verify the status of the land given herein-below as to whether it is free from all encumbrances and is not subject-matter of any civil dispute.

"Details of the land:-

Khewat/Khatauni No.55/139, Khasra No.39//16/1(2-10), 25(3-2), 24 (0-15), 40//11 (4-0), 12 (4-0), 13 (4-0), 14 (4-0), 18 (4-0), 20 (3-0), 21 (0-5), 23 (0-13), 48//5 (0-5), kite 12. Total land (30-12), Part 375½/12200, Land Measuring 938.75 square yards, owned by M/s Sai Apartment and Infrastructure".

On such verification, the respondent-builder-cum-developer and the Deputy Director, Local Bodies Department, Punjab would jointly fix the date of auction and give wide publicity. If the said property can be sold broadly keeping in view its evaluation as per the report dated 07.10.2015 (R-6/5), the Deputy Director, Local Bodies Department shall be at liberty to approve the auction and keep the sale proceeds in a fixed deposit with a nationalized bank.

The compliance report be submitted on the next date of hearing.

List on 26.11.2015."

8. Thereafter some of the promoters of respondent No.6 approached the Hon'ble Supreme Court against the interlocutory order (supra), as became passed by this Court, and, the Hon'ble Supreme Court finally disposed of the matter vide order dated 29.11.2017, thus with the following observations:-

"11. Per contra, Mr. J.P. Dhanda, learned counsel for the first respondent-Society submitted that the allottees have paid all the charges as per the terms of the agreement and in spite of several

orders passed by the High Court, the developer firm has not taken steps to complete the internal development work and make arrangement for the external development work.

12. There is dispute between the parties as to who has to bear the charges of external development and the charges for electricity, water and sewerage and as contended by the first respondent whether the said charges have already been paid by the purchasers.

13. We do not propose to go into the dispute between the parties. We are conscious that in spite of many orders passed by the High Court for one reason or other, efforts were not taken by the developer to complete the remaining external and internal development work or even if efforts taken, they did not fructify. The High Court, therefore, had to come down heavily upon the developer firm. When the matter was pending before this Court, as pointed out earlier, the developer has taken certain steps to ensure supply of electricity by selling one of the properties. In our view, further opportunity has to be afforded to the parties to resolve the dispute between the parties and facilitate completion of the project.

14. Hence, without going into the merits of the dispute between the parties, we set aside the impugned order and remit the matter to the High Court for consideration of the matter afresh after affording sufficient opportunity to both the parties. This appeal is accordingly allowed. We express no opinion on the merits of the matter. No order as to costs.

9. Thereafter, this Court finally heard the matter on various dates and vide order dated 2.8.2023, the following issues became framed for determination:-

"(i) Whether the builder-developer concerned, is to be fastened with a liability to pay the development charges ?

(ii) If this Court makes a conclusion that liability is to be fastened as such, upon the builder-developer concerned, thereupon, whether on deposit of such development charges by the builder-developer concerned, the State of Punjab can proceed to

regularize the purported illegal colony, whose regularization has not been done till now merely for the reason that the development charges have not been paid either by the petitioner(s)(s), and/or by the builder-developer concerned ?

(iii) Whether charging of commercial tariff for electricity being purveyed by the Punjab State Power Corporation Limited (PSPCL) to the homesteads concerned, can as a matter of fact, be legitimized merely for the reason of non-payment of development charges either by the petitioner(s) or by the builder developer concerned ?

(iv) Whether the act of the State to on the above account fail to regularize the colony concerned, is arbitrary, capricious and unreasonable?"

10. On 4.9.2023, the learned counsel for the respondent No.6, who has filed CWP-4396-2016, challenging therein, the order of cancellation of licence, was directed to seek instructions, whether with the petitioner(s) showing willingness to withdraw the said writ petition, but only with co-respondent No.6, making an undertaking before this Court, that it is yet ready and willing to execute the incomplete developmental works at the site concerned.

11. However, rather in compliance of the above directions, thus a conciliatory affidavit becoming filed, yet an evasive reply was filed, therefore, this Court proceeds to decide the writ petition(s) on its merits.

12. Before we proceed further to decide the instant *lis*, it is apt to first deal with the legal propositions, which are necessary to decide the same.

13. Initially, it is relevant to allude to the uncontested fact that, a licence became granted to co-respondent No.6 by the authority concerned, but also it is not contested that, the said licence became revoked by the

authority concerned, through the drawings of an order on 28.04.2015. The said revocation order has also been challenged at the instance of co-respondent No.6, through its instituting CWP-4396-2016. Therefore, it is necessary to analyze Section 5 of the PAPRA Act, wherein, contemplations occur qua the issuance of a licence to the licensee concerned.

14. Section 5 of the PAPRA Act, prescribes the procedure for filing application, thus seeking the purveyings of licence, to the developer for thereby, the latter developing the apposite colony. Sub-section 6 of Section 5 of the PAPRA Act, imposes a statutory obligation, upon, the developer(s) to pay charges for external work to be carried out by the Government or by the local authority. Sub-section 10 of Section 5 of the *ibid* Act, further imposes a statutory obligation, upon, the promoter(s) to construct, at his own costs, school, hospital buildings, community centres and other buildings as per the terms and conditions of the licence. Sub-section 13 of Section 5 of the *ibid* further imposes a statutory obligation upon the promoter(s) to ensure upkeepings of the roads, open space, public park and public health service until the date of transfer thereof, free of costs to the Government or the local authority. Section 5 of the PAPRA Act is reproduced hereinafter:-

> *[**5. Development of land into colony.** - (1) Any promoter, who desires to develop a land into a colony having the prescribed qualifications, shall make an application in the prescribed form alongwith his title of minimum twenty five per cent of project land and irrevocable consent for the rest of land, if it is owned by other persons, permission for conversion of land use from the competent authority and the prescribed information, with the prescribed fee and charges, to the competent authority for grant*

of permission for the same and separate permission shall be necessary for each colony.

(2) On receipt of the application under sub-section (1), the competent authority, after making enquiry into the title of the land, extent and situation of the land, capacity of the promoter to develop the colony, layout of the colony, conformity of the development of the colony with the neighboring areas, plan of development works to be executed in the colony, and in case of apartment buildings, design, specification of material to be used, common areas and facilities to be provided, structural safety and fire safety and such other matters as it may specify, and after affording the applicant an opportunity of being heard and also taking into consideration the opinion of the prescribed authority, shall pass an order, in writing recording reasons either granting or refusing to grant such permission.

(3) Where an order is passed granting permission under sub-section (2), the competent authority shall grant a license in the prescribed form after the promoter has complied with the following conditions, namely: -

> *(i) the promoter shall acquire the title of land not owned by him, within the time period given in the terms and conditions of the licence, and shall not make any sale or transfer of land which is not under his title;*
>
> ***(ii) furnish a bank guarantee equal to thirty five percent of the estimated cost of the development works certified by the competent authority, or mortgage plots falling in the same project equal to thirty five percent value of estimated cost of development by equitable mortgage deed to the satisfaction of the competent authority in the manner prescribed, which shall be marked on the layout plan and entered in the revenue record;***
>
> *(iii) has entered into an agreement with the competent authority in the prescribed form for carrying out the development works in accordance with the conditions of the licence;*
>
> *(iv) has paid, subject to the provisions of sub-section (6),*

the Change of Land Use Charges, External Development Charges and such other charges, as may be notified by the Government from time to time.

(4) In case, a promoter intends to revise the layout plan or zoning plan of the approved colony or building plan, he shall be required to obtain a revised permission, subject to fulfilment of all liabilities created due to prior permission, on payment of such charges and such fee and on such terms and conditions, as may be specified after giving due notice to the plot or apartment holders. However, the said revision shall not extend the period of validity of the license granted under sub-section (3).

(5) The license granted under sub-section (3), shall be valid for a period of five years and shall be renewable for a further period of two years on payment of such fee and charges, and on such terms and conditions, as may be specified by the competent authority.

(6) The promoter shall enter into agreement give undertaking to pay development charges for external development works carried out or to be carried out by the Government or a local authority.

(7) The State Government shall determine the development charges and the time within which such development charges as referred to in subsection (6), shall be paid to the State Government or to such authority, as may be notified by the State Government.

(8) The Government may allow payment of external development charges and other charges mentioned in such installments, as may be notified by it from time to time. In such case, the first installment shall be deposited before the grant of licence and the promoter shall furnish and give undertaking to pay the balance installments as per notified schedule supported by such additional bank guarantee or mortgage of such additional property, as may be necessary to secure payment of the balance installments.

(9) The promoter shall carry out and complete the development of the land in accordance with the provisions of the Punjab Regional and Town Planning and Development Act, 1995 (Punjab Act 11 of 1995).

(10) The promoter shall construct or get constructed at his own cost, schools, hospitals, parks, community centers and other community buildings, on the land set apart for this purpose or promoter may sell or transfer land meant for schools and hospital etc. on such terms and conditions, as may be specified by the Government. Further, the area under roads, open spaces, parks and other public utilities shall be transferred to the local authority before issue of completion certificate.

(11) The promoter shall, reserve five percent area of the gross project area in the case of colony and ten percent of the apartments in the case of apartments in the manner, as may be specified by the Government for reservation and disposal of such plots/apartments for economically weaker section of the society.

(12) The promoter shall carry out all directions issued by the competent authority for ensuring due compliance of the execution of the layout and the development works therein and to permit the competent authority or any officer authorized by it to inspect such execution.

(13) The promoter shall be responsible for the maintenance and upkeep of all roads, open spaces, public parks and public health services for a period of five years from the date of issue of completion certificate or till the date of transfer the same, free of cost to the State Government or the local authority:

Provided that after the completion of development works in the colony, in all respects, the competent authority, may allow the promoter to hand over the maintenance of the infrastructure and services mentioned in this sub-section to an association of residents formed under section 17-A, which shall be responsible for management, maintenance, upkeep of common areas, infrastructure and common services of the colony.

(14) In the event of the promoter contravening any provisions of this Act, or rules made thereunder or any conditions of the licence granted under sub-section (3), the competent authority may, after giving an opportunity of being heard, suspend or cancel the licence and enforce the bank guarantee or mortgage property furnished by the promoter under subsection (3).

(15) When a licence is suspended or cancelled under sub-section (14), the competent authority may itself carry out or cause to be carried out the development works, and after adjusting the amount received as a result of enforcement of bank guarantee or by disposal of mortgaged property, recover such charges, as the competent authority may have to incur on the said development works from the promoter and the allottees in the manner prescribed as arrears of land revenue.

(16) The liability of the promoter for payment of development charges referred to in sub-section (15), shall not exceed the amount the promoter has actually recovered from the allottees less the amount actually spent on such development works, and that of the allottees shall not exceed the amount, which they would have to pay to the promoter towards the expenses of the said development works under the terms and conditions of the agreement of the sale or transfer entered into between them:

Provided that the competent authority may, recover from the allottees with their consent, an amount in excess or what may be admissible under the aforesaid terms of agreement of sale or transfer.

(17) Notwithstanding anything contained in this Act, after development works have been carried out under sub-section (15), the competent authority may, with a view to enabling the promoter, to transfer the possession of, and the title of, the land to the allottees within a specified time, authorize the promoter by an order to receive the balance amount, if any, due from the allottees after adjustment of the amount which may have been recovered by the competent authority towards the cost of the development works and also transfer the possession of, and the title of, the land to the allottees within aforesaid time and if the promoter fails to do so, the competent authority shall on behalf of the promoter transfer the possession of, and title of, the land to the allottees on receipt of the amount which was due from them.

(18) After meeting the expenses on development works under subsection (15), the balance amount shall be payable to the promoter.]

15. The statutory provision of dire importance, which requires consideration, is the one embodied in Section 5(14) of the PAPRA Act, whereby, an authorization becomes conferred, upon, the authority to cancel the licence, upon, evident breaches being made of the conditions of licence, as granted under Section 5(3) of the *ibid* Act, thus to the developer(s) concerned. Evidently, the order for cancellation of the licence as granted to the co-respondent No.6, appears to become well premised on the reflected therein earmarked breaches being made vis-a-vis the apposite condition of licence, as became issued to the co-respondent No.6.

16. Be that as it may, in case, the licence is cancelled, thereby the provision of Section 5(14) of the PAPRA Act, which become extracted hereinabove, thus empowers the competent authority, to revoke the bank guarantee furnished by the promoter(s) at the time of furnishing the licence fee. Resultantly, therebys in terms of provisions, as carried in Section 5(15) of the *ibid* Act, the competent authority becomes empowered to, on its own carry out, or, cause to be carried out, the pending developmental works at the site concerned, but obviously after adjusting the amount received, as a result of enforcement of bank guarantee, and, recover such charges as the competent authority may have to incur, in the said development works, from the promoter(s) and the allottees, in the manner prescribed, as arrears of land revenue.

17. Irrefutably, the statutory requirement, as contemplated in Section 5(3)(ii) of the PAPRA Act, and, as became encumbered upon the licensing authority to therebys ensure that, the licensee or the developer furnishes a bank guarantee equal to thirty five percent of the estimated

cost of the development works certified by the competent authority, or, mortgage plots falling in the same project equal to thirty five percent value of estimated cost of development by equitable mortgage deed to the satisfaction of the competent authority in the manner prescribed, which shall be marked on the layout plan and entered in the revenue record, thus did not become complied with. **(emphasis supplied)**. The resultant effect thereof, is that, the competent authority becomes disempowered to recourse the provisions of Section 5(15) of the PAPRA Act, nor thereby the incomplete developmental works at the site concerned, can become completed, so that thereafters the relevant no objections, can be issued either by the local body concerned or by the electricity board concerned. The cascading telling effect thereof, is that, thereby excruciating trauma becoming beset on the inhabitants of the colony concerned, especially in the wake of cancellation of licence, but ensuing from the developmental works therein remaining incomplete, whereupon, the authority concerned through the above made order, thus became constrained to revoke the licence issued to co-respondent No.6.

18. Though for the purpose of purveying the writ relief(s) to the petitioner(s), they have an efficacious alternative remedy to the writ remedy, inasmuch as, through theirs invoking the jurisdiction of the authority constituted under the RERA Act. Nonetheless, it is only in the face of breach of the above statutory condition being made by the licensing authority that, this Court deems it fit and appropriate, to not only entertain the writ petition(s), but also to make the hereinafter directions upon the authority(ies) concerned.

19. The reason for making the hereinafter directions, becomes

stemmed, from the imperative factum, that the statutory requirement (supra), as contemplated in the statutory provision (supra), is to ensure that, the promise(s) as made by the developer concerned to the allottees, thus in the advertisement, does not become breached. If breach thereto is made by the developer concerned, thereby the amounts enclosed in the bank guarantee, upon, encashment thereof, being made by the licensing authority, thus would facilitate the authority concerned to proceed to, in terms of Section 5(13) of the PAPRA Act, rather complete the unfinished developmental works at the site concerned, so that thereby, the purchasers of the developed or undeveloped sites, do not face the agony of theirs becoming duped by the developer concerned, besides thereby the alienees concerned do not become driven to indulge in unnecessary litigation, thus for seeking purveyings to them of the basic amenities by the local body(ies) concerned or the other authority(ies) concerned.

20. However, since the said provision has been breached, thereby in terms of Section 5(15) of the PAPRA Act, the authority concerned becomes handicapped to, after encashing the bank guarantee, undertake the unfinished or incomplete development works at the site concerned. Resultantly thereby, for non-completion of the requisite developmental activities at the site concerned, as has happened here, on account of wants of deposit of development charges, by the builder/developer concerned, thereby the colony concerned has remained unregularized. Moreover, as a sequel thereto, electricity purveyed to the homesteads concerned, is being so purveyed, not on domestic tariffs, but on commercial tariff, thus by the PSPCL.

21. As stated (supra), the breach of promise(s) by the developer

concerned, to the allottees concerned, thus has become engendered, from breach, being made to the provisions carried in 5(3)(ii) of the PAPRA Act. In case, the said provision became not breached by the authority concerned, thereby from the amounts realized from encashment of bank guarantee, as furnished by the developer concerned, rather the outstanding or pending developmental works, could therefroms become finished by the authority concerned. Consequently, thereby neither a situation would have arisen, whereby, for wants of complete developmental activities being carried at the site concerned by the developer concerned, thus the latter's licence being revoked or cancelled, nor an ill predicament would have become sparked, whereby, for lack of furnishing of development charges, or, for any deficit in the development work at the site concerned, thereby the colony concerned remaining unregularized, thus by the competent statutory body(ies) concerned. Resultantly, thereby the petitioner(s) become denied the basic amenities by the statutory body concerned, which would otherwise accrue to them, in case, complete development had taken place at the site concerned, thus either at the instance of the developer concerned, or, at the instance of the authority concerned, after the latter, upon, the developer concerned rather not completing the development at the site concerned, thus completing the unfinished developmental works but from the proceeds of the encashed bank guarantee(s) furnished by the developer.

22. The ire *res controversia*, which requires the same being resolved, for thereby this Court relieving the agony of the petitioner(s), to receive all the basic amenities and facilities, which otherwise would accrue to them, thus from the statutory body concerned, thus appertains to

the manner of realization of developmental charges, from the promoter(s)/builder(s) concerned, so that therebys, the authority concerned, can proceed to complete the outstanding developmental works, at the site concerned, so that on the said completions being made, thereby the statutory body concerned, can proceed to regularize the colony, or, the authority concerned, can proceed to rescind the order, whereby, the licence granted to co-respondent No.6 can become revived, with all consequential beneficent effects to all concerned.

23. In the above endeavour, this Court had made concerted efforts, through its asking for a compliance report from the Director, Local Bodies, Punjab. The said compliance report dated 6.1.2016, as became submitted by the Director (supra), unraveled, that the land of the builder(s)/developer(s) concerned, or, of the licenser(s) concerned, as become ascertained by the Regional Deputy Director, Local Bodies, thus is encumbrance free, or, is free from any legal hassle.

24. Moreover, the Municipal Council, Zirakpur, also through its making a compliance report dated 24.10.2016, made an intimation to this Court that, the external development charges to the tune of ₹ 4 crores are pending to be deposited by the promoter(s) concerned, besides therein it became also unfolded, that the promoter(s) concerned are required to pay a sum of ₹2,03,29,399/- to the electricity board, towards installation of transformers, for electricity therefroms being fed, to the homesteads concerned.

25. Thereafter, through an order made by this Court, on 29.08.2018, a three members' committee was constituted, and, the apposite report, as, given by the said committee, thus on its reading

reveals, that the hereinafter extracted work(s) is still pending for completion:-

> *"(i) Pavement of street work is pending.*
> *(ii) Parks have been demarcated in the approved lay out plan, but construction is pending.*
> *(iii) No water supply distribution system functional, requirement of installation of new tubewell and on the area of water works in the approved lay out plan, nothing has been constructed.*
> *(iv) Sewerage treatment plant yet to be constructed. Further sewer lines are missing in the internal sewerage system.*
> *(v) Storm water drainage system not there.*
> *(vi) Internal electrical work pending as not done by promoter."*

26. In addition, the Committee (supra) further held, that the builder(s)/developer(s) concerned is required to pay ₹6,23,75,550/- plus 10% interest alongwith 3% penal interest for the external and internal development work and further held that the promoter(s) are liable to pay a sum of ₹333.30 lacs for carrying out the pending work.

27. Therefore, the liability towards all pending works at the site is exorbitant, besides the liability towards the electricity board concerned, but fastenable either upon the developer(s) concerned, or, upon the consumers is also exorbitant. Resultantly, for failure of liquidation of the liability(ies) (supra), neither the statutory body concerned is legalizing the colony concerned, nor the electricity board concerned is releasing electricity to the homesteads concerned, thus on domestic rates, nor the transformers for feeding therefrom electricity to the dwelling units, are made fully functional. Resultantly, thereby the licence issued to the developer(s) concerned, became cancelled, through an order made by the competent authority on 28.04.2015. Though a challenge to the revocation

of the licence has been made by the developer(s) concerned, but the said challenge is a frail challenge, as there is no assurance yet on the part of the developer(s) concerned to mitigate the agony of the petitioner(s), through completing the incomplete developmental works, for therebys the requisite clearances being made by the statutory body concerned, inasmuch as, respectively by the Municipal Council, Zirakpur, and, by the electricity board concerned, and/or, on completion of the pending development works, the rescinded licence becoming revived.

28. Therefore, it appears that the developer concerned is completely uninterested in paving way for an able resolution of the crisis besetting the petitioner(s). Obviously its uninterestedness ensues, from its already profiting from alienating properties to the inhabitants of the homesteads, which exist within the incompletely developed colony. Therefore, to mitigate the agony, though in compliance report dated 6.1.2016, as became furnished by the Director, Local Bodies, Punjab, this Court was intimated, that the land ascertained by the Regional Deputy Director, Local Bodies, is encumbrance free. Consequently, the said compliance report be forthwith galvanized into fullest effective action and the properties detailed therein, be forthwith put to public auction, so that from the auction proceeds, thus the authority concerned can complete the incomplete development works at the site concerned, for thereby the Municipal Council, Zirakpur according the requisite approvals, besides the electricity body concerned purveying electricity but at the domestic tariff to the homesteads, which exist in the colony concerned, besides therebys the cancelled licence thus becoming revived.

29. Though the making of the above mandamus became resisted

by co-respondent No.6, thus on the plank that, with Clause 8(c)(iii) of the agreement, which became drawn inter se the alienees concerned with the developer concerned, thus containing the hereinafter extracted covenant, whereby, the purchasers concerned undertook to pay extra charges, if any, on account of external electrification, as demanded by the Punjab Govt./PSEB.

> *"That, the Purchaser undertakes to pay extra charges, if any, on account of external electrification as demanded by Punjab Govt./PSEB."*

30. Though the hereinabove extracted covenant, as carried in the relevant agreement, is binding upon the purchasers also, however, the said undertaking is only in respect of extra charges, if any, on account of external electrification, as demanded by Punjab Govt./PSEB. Therefore, prima facie, the said undertaking could make the purchasers liable to pay extra charges, if any, as incurred on external electrification works, as done by the entity concerned. However, the said liability would become fastened upon the purchasers concerned, only when the developer had placed, on record the statements of accounts in respect of each of the household concerned, thus revealing therein, that some part of the said charges has been paid, and thereafter, also the apposite statement of accounts becoming filed before this Court, by the respondent No.6, thus revealing therein, that beyond the amounts already received for the purpose (supra), yet there is an additional demand by the electricity board concerned, and that, such additional demands towards external electrification works, is to be, in terms of the undertaking (supra), thus borne by the purchasers concerned.

31. For want of the said apposite statement of accounts being filed, besides when on account of elapse of time, the costs for installation of external electrification works thus would have naturally thereby escalated, thereby de-facilitating the electricity board concerned, to install adequate number of load catering transformers at the site concerned, thus in commensuration to the needs of the homesteads concerned. Therefore, the undertaking (supra), as embodied in Clause 8(c)(iii) of the relevant agreement, cannot be fully enforced against the purchasers concerned. In addition, the failure of earliest completion of external electrification works by the developer(s) concerned, which resulted in the apposite escalation of costs, thereby qua the costs in addition to the ones, as was to be incurred at the earliest, thus by the developer concerned, thus the liability(ies) towards such additional costs, but, cannot be encumbered upon the purchasers concerned, rather is to be borne by the developer concerned, rather his being derelict and negligent in prompt execution of external electrification work, on ground of his not tendering the relevant financial liability(ies) in respect thereof, to the electricity board concerned.

32. In consequence, initially the outstanding sums of money, as demanded for the relevant purposed by the electricity board, be forthwith tendered therebefore, if not already tendered, by the co-respondent No.6. However, if the said sums of money are already tendered, the said tendered amount shall be forthwith utilized by the electricity board concerned, thus for ensuring the completion of all external electrification works, inclusive of installing OF functional transformers for theirs fully catering to the needs of the dwelling units, as are raised in the colony

concerned. Furthermore, in case, apposite statement of accounts audited by a Chartered Accountant, is tendered to the consumers concerned, thereby in terms of the covenant (supra), after deducting the sums of money already received in respect thereof, by the co-respondent No.6, from the consumers concerned, the remainders thereof shall be, after excluding the escalation costs, which are but attributable to the elongated delays made for the relevant purpose by co-respondent No.6, thus most promptly liquidated by the consumers concerned to the co-respondent No.6, yet only on such orders, as become passed by the competent authority.

33. Be that as it may, the cost of installation of external feeder line is stated to be approx. ₹ 49.50 lacs. It appears that on the directions of the Hon'ble Supreme Court, the developer(s) concerned has deposited ₹ 50 lacs, under protest, with PSPCL, so that thereby the said feeder line can become laid, thus facilitating domestic electricity tariff becoming charged for the electricity connections from the allottees concerned. Therefore, it appears that thereby the electricity board concerned, can proceed to make installation of external feeder line, involving cost of approx. ₹ 49.50 lacs. If costs more than the amount deposited by the developer concerned with PSPCL are required for the relevant purpose, thereupon, the said additional cost shall be deposited, within two weeks, by the co-respondent No.6 with the PSPCL and subsequently, within three weeks thereafter, the PSPCL shall complete all the external developmental works, including installation of functional transformers at the site concerned.

34. Moreover, the internal electricity infrastructure to be installed in the homesteads concerned, is to be yet completed in respect of dwelling

units raised, on approx. 700 plots. To make completions of the said internal electricity infrastructure, the developer(s) concerned, has shown his willingness to provide bank guarantee of 150% of the cost of remaining internal electrical work, in respect of uninhabited dwelling units, raised on 700 plots. The said willingness be forthwith put into action by the developer(s) concerned, inasmuch as, within a month from today, and, within two months hereinafter, the internal electricity infrastructure in the semi-developed uninhabited dwelling units raised on 700 plots, thus be completed and thereafter, possessions thereof, if not already delivered, be forthwith delivered to the allottees concerned.

35. In the above manner, the semi-developed dwelling units raised on 700 plots would be completed. However, yet a mechanism, is to be evolved for resolving the issue relating to completion of other incomplete developmental works, as mentioned in the apposite report (supra) given by the three members' committee, whereby, there is a handicap working upon the statutory body concerned to regularize the colony. The above resolution can be done through auction monies, thus becoming fetched, from auctioning being made of unsold commercial property(ies) measuring 938 sq. yards, which occurs in the same colony. Though the developer concerned has shown readiness qua the above, but, it is hedged with a condition, that the other properties of the partners, which includes theirs residential houses, being released from attachment.

36. However, the relief, vis-a-vis, the other properties of the partners concerned being released from attachment, is not accepted at this stage, as yet the auction proceeds of the commercial properties measuring 938 sq. yards, which occurs in the same colony, is not known. If the value

of the auction price, of said commercial properties, is equivalent to the costs of the incomplete developmental works, wherefrom, the said incomplete developmental works can become carried out, but, at the instance of the licensing authority concerned, resultantly thereby, the other attached properties of the co-respondent No.6, inclusive of their residential houses, can then be ordered to be de-attached. However, if the proceeds of auction of said commercial properties, is not co-equivalent to the costs of the pending developmental works, excepting the external electrification works, thereupon, commensurate to the costs of the yet outstanding developmental works at the site concerned, thus the attached properties of the partners, which includes their residential houses, be then forthwith subjected to public auction, so that therebys, the yet outstanding developmental works are completed at the site concerned. Accordingly, the attached properties concerned can then be ordered to be de-attached.

37. The electricity board concerned is charging commercial tariff for the electricity purveyed to the homesteads in the colony concerned. The above is a sequel of breach being made by the licensing authority to the statutory provisions, as become recorded in Section 5(3)(ii) of the PAPRA Act. The consequence of the said breach cannot be made to fall upon the consumers, as has been made to fall upon them, through the electricity board concerned, charging commercial tariff for the electricity supplied by it, to the consumers concerned. If so and emphatically, when right to life, as contemplated in Article 21 of the Constitution of India, invests a sacrosanct right in the consumers concerned, to receive all basic amenities, inclusive of electricity, but on domestic tariff, being purveyed to them by the electricity board concerned, whereas, the same not being

purveyed. Therefore, to ensure that the said sacrosanct Article 21, of the Constitution of India, is enlived, that this Court is constrained to make a mandamus upon the latter to ensure that electricity, but on domestic tariff, is hereafters supplied to the homesteads concerned, in the apposite colony.

38. In view of the above, after completion of the developmental works (supra), the authorities concerned, including the licensor, may in terms of the relevant statutory provisions, thus revoke the order, thus rescinding the licence, as earlier granted to the co-respondent No.6. Moreover, the other local body(ies) concerned may also then proceed to, if required, thus regularize the colony. Furthermore, the local body(ies) concerned may also proceed to thus ensure, that all amenities, as are enjoined, under the relevant statute, to be purveyed to the inhabitants of the colony concerned, are thus purveyed to the latter, but, within a period of one month, from completion of the pending developmental works at the site concerned.

39. All these writ petitions are disposed of accordingly.

40. Pending application(s), if any, stand disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

December 16, 2023
ajay-1/devinder

Whether speaking/reasoned. : Yes/No
Whether Reportable : Yes/No