IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : 05. 01.2023

CWP-22104-2022 (O/M)
Kunal Kumar and others ....... Petitioners

Versus

State of Haryana and others ........ Respondents

CWP-22744-2022 (O/M)
Krish Puri and others ....... Petitioners

Versus

State of Haryana and others ........ Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU
HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. Akshay Chadha, Advocate
for petitioners in CWP-22744-2022.

Mr. Ravinder Singh Randhawa, Advocate
for petitioners in CWP-22104-2022.

Ms. Tanisha Peshawaria, DAG Haryana.

Mr. Ashok Aggarwal, Senior Advocate with
Mr. Mukul Aggarwal, Mr. Hari Pal, Advocates
for respondents No. 4 and 5.

HARINDER SINGH SIDHU, J.

This order shall dispose of both the above petitions as the issues raised therein are the same. For convenience the facts are being referred to from CWP No. 22104 of 2022.

The petitioners are allottees of the 'Affordable Group Housing Project' floated by respondents No. 4 to 6 by the name Mahira Homes, situated in Sector 63 A and Sector 95, village Bhrampur, Gurugram.

They have filed this petition praying for quashing the order dated 26.8.2022 (Annexure P-9) passed by the Director Town and Country Planning, Haryana ("the Director"). By this order which is purportedly in continuation of the earlier order dated 21.7.2022 (Annexure P-7) the request of the colonizer (respondents No. 4 to 6) to allow raising demand as per the original payment plan in respect of their ready launched projects was accepted subject to fulfilment of certain conditions.

Directions have also been sought to respondents No. 1 to 3-the official respondents to take over the projects of respondents No. 4 to 6, situated in Sector 63 A and Sector 95, Gurugram, Haryana on account of their failure to develop and start the projects despite having received more than 50 per cent payment.

It is the case of the petitioners that they have already paid more than 50 per cent of the basic sale price of their respective units. Despite having received that amount, respondents No. 4 to 6 have failed to start developing the project. The entire project is lying barren except for the basement and first floor of one tower. As per the report of the Senior Town Planner, the overall construction in all the projects is between 0 to 5 per cent though Rs. 407 crores have been collected from the petitioners.

On the basis of various complaints against respondents No. 4 to 6, vide order dated 17.5.2022 (Annexure P-5) the Director had cancelled the licences granted to them on account of grave violations including submitting forged and fabricated bank guarantees and forged signatures of the bank officials/officers on the bank guarantees. It was also decided to blacklist the developer companies-respondents No. 4 and 5 and its directors, shareholders and other authorized signatories from granting any new licence under the Haryana Development and Regulation of Urban Areas Act, 1975 (in short 'the Act').

On 7.7.2022 (Annexure P-6), respondent No. 3-Senior Town Planner, Town and Country Planning Department, Gurugram, Haryana issued instructions restraining respondents No. 4 and 5 from collecting installments and charging interest penalty for the balance installments from the allottees in the projects situated in Sector 63 A, Sector 95, Sector 103 and Sector 104, Gurugram. Respondents No. 4 and 5 were also restrained from cancelling any unit till construction of the project was completed as per the construction linked plan policy.

Respondents No. 4 and 5 filed an application for review of the order dated 17.5.2022 (Annexure P-5). On that application, the Director-respondent No. 2, passed order dated 21.07.2022 whereby he withdrew the order dated 17.5.2022 subject to the following conditions :

> *"1. The colonizer shall follow construction linked payment to all these projects and shall not demand any additional installment till proportional constructions against payments already received by it is completed at site to the satisfaction of STP, Gurugram.*
> *2. The cancellation of allotment made by the colonizer against non-payment by allottees on account of disproportionate demands made by, it shall be withdrawn by the colonizer within a week and an ATR in this regard shall be filed with STP, Gurugram.*
> *3. The colonizer shall install a sign board at the site showing the detail of flats mortgaged in favour of DTCP."*

In terms of order dated 21.7.2022 (Annexure P-7), respondent No. 4 submitted an undertaking that it shall follow construction linked payment plan in the projects in question and shall not demand any additional installment till proportionate construction against payment already received has been made. It further undertook that no cancellation of allotment shall be made and if any cancellation had been made, it shall be withdrawn.

Thereafter, respondent No. 2 passed order dated 26.8.2022 which was issued on 29.8.2022 (Annexure P-9) in continuation of the order dated 21.7.2022 (Annexure P-7) allowing the request of the colonizer to raise demand as per the original payment plan in their ready launched projects i.e. LC-4498, LC-3759, LC-3772 and LC-4178 subject to following conditions :

> *"1. To submit the detailed construction status report of the above said projects as and when the review meeting will be called by the department.*
> *2. To submit the details of cancellation of the allottees due to non-payment of the demand as and when called by the department.*
> *3. To deliver the above said projects within the stipulated time period as per the affordable group housing policy 2013 amended time to time.*
> *4. To strictly follow the guidelines of the affordable housing policy 2013 amended time to time."*
>
> This order has been impugned.

The challenge to this order primarily is on the ground that while passing the order dated 26.08.2022 the Director has reviewed his earlier order dated 21.07.2022. The order has been passed without granting opportunity of hearing to the petitioners. Such hearing is mandated as per clause (c) of the proviso to Section 21 of the Act.

Section 21 of the Act deals with the power of review which reads as under :

> *"**Section 21**.*
> *Review:- The Director may, either of his own motion or on an application of any party interested, review, and on so reviewing modify, reverse or confirm any order passed by himself or by any of his predecessors in office :*
> *Provided that -*
> *(a) When the Director proposes to review any order passed by his predecessor in office, he shall first obtain the sanction of the government ;*
> *(b) no application for review of an order shall be entertained unless it is made within a period of*

> *ninety days from the date of passing of the order, or unless the applicant satisfies the Director that he had sufficient cause for not making the application within that period ;*
> *(c) no order shall be modified or reversed unless the parties concerned have been afforded a reasonable opportunity of being heard ;*
> *(d) no order against which an appeal has been preferred shall be reviewed."*

As per clause (c) of the proviso, no order shall be modified, reversed or confirmed unless parties concerned have been afforded reasonable opportunity of being heard.

It is contended that vide earlier order 21.7.2022, it had been directed that the colonizer shall follow a construction linked payment plan in the projects and shall not demand any additional installment till proportional constructions against payments received by it have been completed. In the impugned order, the colonizer has been allowed to raise the demand as per the original payment plan. This order is prejudicial to the interest of allottees. The allottees are persons concerned within the meaning of clause (c) of the proviso Section 21 of the Act and were required to be heard before passing such order. No hearing having been granted, the order is against the provisions of law and is thus unsustainable.

When the case came up for hearing on 9.11.2022, Sh. Ashok Aggarwal, Ld. Senior Counsel for respondents No. 4 to 6 raised a preliminary objection regarding the maintainability of the petition. It was contended that against the impugned order, the petitioners have a remedy of appeal under Section 19 of the Act. The case was thereafter adjourned to hear the parties on the question of maintainability of the petition in view of the alternative statutory remedy provided under the Act.

Mr. Chadha and Mr. Randhawa appearing for petitioners in their respective cases while not denying that the impugned order is appealable under Section 19 of the Act, have contended that the Hon'ble Supreme Court has consistently held that notwithstanding the availability of an alternative remedy, the High Court may exercise its writ jurisdiction in at least three contingencies i.e., (i) where enforcement of Fundamental Rights is sought (ii) where there is violation of principles of natural justice or (iii) where the order passed is without jurisdiction.

The impugned order admittedly having been passed without granting opportunity of hearing to the petitioners, which is clearly mandated under Proviso (c) of Section 21 of the Act, the present petition is maintainable and ought to be entertained. They have referred to various decisions of Hon'ble Supreme Court.

Mr. Aggarwal on the other hand contended that, in the first place, the impugned order is not an order which can be termed as a Review of the earlier order dated 21.7.2022. This order has not been passed in exercise of the powers of Review under Section 21 of the Act. He has referred to sub-section (3A) of Section 3 of the Act which was inserted by the Haryana Act No. 17 of 2020 which is as under:

> *"(3A) Where, by virtue of any section of this Act, power to grant any licence or issue any notification, order, rule or direction is conferred, then that power shall include power exercisable in like manner and subject to terms and conditions, as may be prescribed, to add to , amend, vary, suspend, withdraw or rescind such licence or such notification, order, rule or direction or to de-licence."*

He argued that as stated in the impugned order itself, it is in continuation of the earlier order dated 21.07.2022. It has been passed in exercise of the powers under sub-section (3A) of Section 3 of the Act. The petitioners were not required to be given an opportunity of hearing before passing the order. Moreover the order dated 21.7.2022 had not been passed on the application of allottees, hence they were not interested parties.

Further order dated 21.7.2022 directing the colonizer to follow the construction linked payment plan had been passed in ignorance of the factual position that the projects in question have been launched under the 'Affordable Group Housing Policy 2013' which has been notified under the provisions of Section 9 A of the Act. This policy does not envisage a construction linked payment plan. The payment schedule is provided for in the policy. It was not open to the Director the change the same. Vide impugned order, the Director has only corrected his earlier order which appears to have been passed without taking into consideration the statutory policy. He stressed that the earlier order dated 21.07.2022 had been passed on the application of the respondents No. 4 to 6, and hence there was no requirement to hear the petitioners before modifying that order only to correct an error that had crept in . In any case, as the order of the Director is appealable under Section 19 of the Act, the petition is not maintainable. The petitioners be relegated to avail their statutory remedy. A large number of decisions of Hon'ble Supreme Court and High Courts have been referred to.

Ms. Peshawaria, learned DAG Haryana, on instructions, states that a representation dated 13.9.2022 filed by one of the petitioners is pending before the Director, Town and Country Planning, Haryana. The Director, Town and Country Planning, Haryana would consider the said representation as also any other representation that the petitioners may file and pass orders thereon. Any order passed on those representations will be in continuation of the earlier orders.

In view of the aforesaid statement of Ms. Peshwaria, we need not to go into any of the contentions raised by the Ld. Counsel.

Accordingly, this petition is disposed of giving liberty to petitioners to file an appropriate representation before the Director, Town and Country Planning, Haryana against order dated 26.8.2022. The Director would consider such representation as also earlier representation dated 13.9.2022 and pass appropriate orders thereon expeditiously.

In their representation, it would also be open to the petitioners to seek any interim directions pending the final disposal of their representations. The same would also be considered by the Director on its own merits.

We make it clear that we have not expressed any opinion regarding the claim of the parties.

(HARINDER SINGH SIDHU) (LALIT BATRA)
JUDGE JUDGE

05 .01.2023
sjks

Whether speaking/reasoned : Yes

Whether reportable : Yes / No