



IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

Reserved on 18.07.2024  
Pronounced on: 17.09.2024.

1. CWP No.5532 of 2018 (O&M)

Lt. Col. Raghbir Singh Manak and others

....Petitioners

Versus

State of Punjab and others

....Respondents

WITH

2. COCP No.1555 of 2019

M/s BEE GEE Builtech and another

...Petitioners

Versus

Lt. Col. Raghbir Singh Manak and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI  
HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Sanjeev Sharma, Advocate  
for the petitioners.

Mr. Jastej Singh, Deputy Advocate General, Punjab.

Dr. Puneet Kaur Sekhon, Advocate for  
respondents No.6 and 7.

Mr. Ankur Mittal, Advocate,  
Ms. Kushaldeep Kaur, Advocate  
Mr. Sakal Sikri, Advocate,  
Ms. Saanvi Singla, Advocate,  
for respondents No.12, 13 and 16 (in CWP-5532-2018)  
for the petitioners (in COCP-1555-2019).

Ms. Nitika Sharma, Advocate for respondent No.14.

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VIKRAM AGGARWAL, J.

1. The petitioners pray for the issuance of a *mandamus* directing the respondents to remove the building violations as also the deficiencies in Palm Village, Sector 126, Desu Majra, SAS Nagar. They also pray for the issuance of a direction to the respondents to provide the common

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facilities/amenities to the residents of Palm Village, being the statutory duty of the developer/builder to provide the amenities till the completion certificate is obtained by the developer/builder as also for restraining the respondents to charge maintenance amount from the residents for the common areas including roads, lifts etc. They further pray for the issuance of a *mandamus* directing respondents No.12 to 15 to provide proper road/way for entrance and exit to the residents of Palm Village through the entry gate of Paras Panorama which is a Project of respondents No.14 & 15. They also pray for the issuance of a *mandamus* directing respondents No.12 and 13 to obtain completion certificate and occupation certificate from the official respondents as they had handed over the possession of the flats in violation of the statutory provisions of law without obtaining the completion certificate and occupation certificate.

2. The petitioners claim to be residents of Palm Village, Sector 126, Desu Majra, SAS Nagar, Punjab. As per the petitioners, respondents Nos.12 and 13 advertised the Project "Palm Village". As per the brochure, the builders were to provide top class facilities and amenities. The petitioners purchased flats for the purpose of their residence and paid amounts bearing from Rs.35 lacs to Rs.55 lacs to respondents No.12 and 13.

3. As per the petitioners, they had been assured Dubai Style living and high class facilities which included Landscaping, three acres of landscaped gardens, Pavilions and sit outs for the elderly, Separate childrens' area, water bodies, Mood lighting in landscaped areas, Automated irrigation, Club house for rejuvenation, Utility shops with landscaped sit out areas and Professional facility management services (Annexure P-1).

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4. As per the project, there were five towers, namely, A, B, C, D and E. In four towers, there were 12 storeys in the front and 8 storeys at the back of the building thereby having 40 flats on each floor. In the 5<sup>th</sup> tower namely the E tower, there were 12 floors each consisting of three flats. Tower F was stated to be under construction at the time of filing of the writ petition. As per the petitioners, allotment letters were issued to them and various other residents (Annexure P-2). As per the allotment letters, after the completion of the project, the letter of possession was to be issued along with no dues certificate. Buyer agreement form (Annexure P-3) was also executed in which it had been stated that the project had been got approved by the developer from the Chief Town Planner, Department of Local Bodies, Punjab through the Executive Officer NAC, Kharar for setting up a Group Housing Scheme/Complex along with convenient commercial shops. It was also stated in the agreement that the purchaser shall have to enter into a separate maintenance agreement with the maintenance agency appointed or nominated by the developer for the maintenance of common areas in the complex. The rate of Rs.1 per sq. ft. was fixed as maintenance charges but the said amount was made variable with different allottees and different rates were fixed.

5. In 2014, offer of possession (Annexure P-5) was issued where it was specifically mentioned that the project was nearing completion and the possession would be ready in few months. It also stated that the allottees were required to execute maintenance agreement at the time of possession. As per the petitioners, the purchasers were also compelled to execute separate maintenance agreements with the maintenance agency wherein it

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was stated that it was being executed for a period of two years. The maintenance amount to be charged in the said agreements was mentioned as Rs.1.50 per sq. fit. Ultimately, possession letters regarding handing over the actual possession was issued to the petitioners/allottees (Annexure P-7). It was stated that the allottees would have to execute and register the sale deed within a period of 30 days failing which a penalty of Rs.5000/- per month would be charged by the builder. Sale deeds were accordingly registered (Annexure P-8). The petitioners claim that the sale deeds were executed between respondents No. 14 and 15 and BEE GEE Builtech which was only a power of attorney holder and respondents No.14 and 15 were the owners.

6. An Adhoc Committee of some of the residents is stated to have been formed to look after the day to day grievances of the residents of Palm Village. Reference has also been made to communications addressed by the said Adhoc Committee as regards the inconveniences being faced by the residents and the response given to the same by the builder as also the subsequent response by the association (Annexures P-9 to P-13).

7. It is the case of the petitioners that without providing proper facilities, maintenance charges were being levied. Reference to various other communications between both sides has been made in the writ petition. It is claimed that respondents No.12 and 13 have violated the provisions of the Punjab Apartment and Property Regulation Act, 1995 (hereinafter referred to as the PAPRA) as also the Punjab Apartment Ownership Act, 1995 (hereinafter referred to as the PAOA). It has been averred that as per the provision of PAPRA, the builder/developer/promoter is bound to provide all

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the documents to the allottees/purchasers which had not been done. Reference has been made to various provisions of the PAPRA and PAOA. Specific reference has been made to Section 5 (13) and 17 of the PAPRA Act) and it has been alleged that the said provisions have been violated. The violations and deficiencies i.e., no provision of fresh water, no supply of hot water, non-completion of work of roads, installation of a genset very near to tower A, the exit pipe of which is causing discomfort, the same being of low height, no ample parking space having been provided, no facility regarding security personnel having been provided etc., have been pointed out in the writ petition.

8. Respondent No.4 has filed a short affidavit wherein the basic stand taken is that the license had not been granted by respondent No.4 and that the colony had been built up under the Group Housing Scheme and the site plan had been approved by the Executive Officer of the Municipal Council, Kharar, after seeking technical sanctioned of Chief Planner Department of Local Government Punjab. It has been averred that under the circumstances the writ petition against respondent No.4 is not maintainable.

9. A separate written statement has been filed by respondent Nos.12 and 13 wherein all averments made in the writ petition have been denied and the details of various facilities have been given. The basic stand which has been taken is that the petitioners are in arrears of maintenance charges, the details of which have been given in the written statement. It has also been averred that shops for daily needs, sit out garden and play area for children, Club House, two lifts in each tower, 24 hours Water and Power back up, CCTVs, internal roads made of concrete, Wi-Fi facilities, stilt

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parking, visitor parking and multitier security have been provided. It has been averred that 140 persons have already taken possession of the flats including the petitioners and several appreciation letters have been issued by the residents and that the petitioners are the only persons who have raised grievance against the answering respondents.

10. In the short reply filed on behalf of respondent Nos.1 to 3 it has been averred that in fact as per the provisions of the Punjab Municipal Act, 1911, the concerned Executive Officer of the Municipal Council is the competent authority to control and regulate the building activities within the municipal limits and, therefore, it is the Municipal Council, Kharar who will be the contesting respondent. No response was, however, filed by the Municipal Council, Kharar.

11. Learned counsel for the parties were duly heard.

12. It was submitted by learned counsel representing the petitioners that the petitioners have in fact been duped by the private respondents because after having purchased flats in Palm Village, the petitioners have not been given the requisite facilities which had been promised to them. Reference was made to various averments made in the writ petition and it was essentially submitted that action needs to be initiated against respondents No.12 to 15 and directions as sought in the writ petition are also required to be issued to them to provide various facilities/amenities as had been promised.

13. *Per contra*, learned counsel for the respondents vehemently opposed the writ petition. It was submitted that the petitioners are in fact defaulters who are not paying the maintenance amount, the details of which

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have been given in the written statement. It was submitted that on account of non-payment of maintenance charges, certain complaints were also filed by the private respondents against the defaulters before the Real Estate Regulatory Authority and directions were issued by the said authority to many of the allottees to pay the maintenance amount. Learned counsel also submitted that there has been a willful defiance of the order dated 31.01.2019 passed by the Co-ordinate Bench vide which the petitioners had been directed to pay the maintenance amount. It was submitted that an application was filed for recalling the said order but the same was also ordered to be heard with the main case for the Co-ordinate Bench was not convinced with the stand taken by the applicants/petitioners. It was also submitted that though petitioner No.2 had paid the maintenance charges, petitioners No.1, 3 and 5 were still in default and in fact petitioner No.5 had expired. COCP No.1555 of 2019 had been filed by the private respondents in which notice of motion was issued on 07.05.2019 but the petitioners did not file any reply. Learned counsel made pointed reference to the conduct of the petitioners and submitted that the writ petition deserves to be dismissed on this ground alone.

14. Learned counsel for the respondents has further submitted that during the pendency of the present petition, apart from approaching the Real Estate Regulatory Authority for payment of maintenance charges, a petition had been filed by respondent Nos.12 and 13 before the Competent Authority-cum-SDM, Kharar under the provisions of PAOA and vide order dated 04.07.2019, the Court of the SDM, Kharar, as an interim measure directed the residents of Palm Village to pay maintenance charges @

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Rs.1.25 per sq. ft. w.e.f. 01.07.2019 till finalization of the order. A final order was passed on 31.01.2020 directing the residents of Palm Village including the RWA officials to clear the maintenance charges and take over the work of maintenance within a period of 30 days. Learned counsel submitted that the maintenance of services had been transferred to the RWA w.e.f. 12.09.2022 and that no maintenance is being charged after 15.02.2020.

15. Having heard learned counsel for the parties and having perused the record, we are of the opinion that the petition is completely devoid of merit and even the *bona fides* of the petitioners are in serious dispute. Firstly, petitioners have an efficacious alternate remedy in the form of filing an appropriate petition before the Real Estate Regulatory Authority under the relevant provisions of the Real Estate (Regulation and Development) Act, 2016. Not only this, there are claims raised by the petitioners and counter-claims by the respondents which are largely factual. Such factual issues cannot be adjudicated upon in writ jurisdiction and, as observed, the petitioners, if so advised, may avail such remedies as shall be admissible to them in law. Further, as has been pointed out by learned counsel representing respondents No.12 and 13 and not controverted by learned counsel representing the petitioners, the maintenance has already been handed over to the RWA since the year 2022 and the dispute is with regard to payment of maintenance amount till the year 2020 only.

In view of the aforesaid facts and circumstances, we do not find any merit in the instant writ petition and the same is accordingly dismissed.

All pending applications stand disposed of.



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Respondents No.12 and 13 had filed the instant petition against four petitioners in the writ petition, i.e., petitioner No.1 to 3 and 5 for willful defiance of the order dated 31.01.2019 passed by the Co-ordinate Bench vide which the petitioners had been called upon to pay the maintenance amount. Admittedly, the petitioners had shortly thereafter, filed CM No.3241 of 2019 for recalling of the said order and, vide order dated 06.03.2019, the same was ordered to be heard with the main case. The writ petition has been pending since then and has now been disposed of today itself. It cannot, therefore, be said that there was some willful defiance of the order dated 31.01.2019 passed by the Co-ordinate Bench. Under the circumstances, the petitioners are not liable to be proceeded against for contempt of Court.

Accordingly, the contempt petition is dismissed.

A photocopy of this order be placed on the file of connected case.

**(ARUN PALLI)**  
**JUDGE**

**(VIKRAM AGGARWAL)**  
**JUDGE**

**Pronounced on: 17.09.2024**  
Rekha

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |