

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

C.W.P. No. 22761 of 2010

Date of Decision:- 19.02.2013.

Ardee City Residents' and Flat Buyers' Association and another
.....Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Ms. Munisha Gandhi and Mr. Vaibhav Sharma, Advocates
for the petitioners.

Mr. Paramjit Batta, Addl. AG Haryana
for respondents No. 1 and 3.

Mr. Gitish Bhardwaj, Advocate
for HUDA-respondent No. 2.

Mr. Lokesh Singhal, Advocate
for respondents No. 4 to 6.

Mr. Anurag Chopra, Advocate
for respondents No. 7 to 19.

SATISH KUMAR MITTAL, J. (Oral)

Petitioners-Ardee City Residents' and Flat Buyers' Association has filed the instant writ petition for quashing of the public notice dated 11.5.2010 issued by the respondents notifying the names of all those allottees/occupants of the flats, who have occupied the same without obtaining occupation certificates, would be proceeded against under the Punjab Scheduled Roads and Controlled Areas (Restriction of Unregulated Development Act), 1963.

It is the case of the petitioners that some of the licensees/builders from whom the members of the association have purchased the flats, had applied for issuance of occupation certificate but

the same have not been issued or have been wrongly rejected. Therefore, a direction has been sought to be issued to respondents to forthwith issue the requisite occupation certificate to them. It has also been stated that due to non-issuance of the occupation certificate, the conveyance deed/sale deed could not be executed by the licensees/builders to the purchasers of those flats.

During the course of arguments, it has been pointed out that while constructing the plot some of the licensees/builders have raised the construction in violation of the sanctioned building plan and allotted/sold these flats to the members of the petitioner's Association and because of those violations, they are not being issued the occupation certificate.

Vide order dated 24.9.2012 this Court directed the respondents to conduct a survey to ascertain the quantum of violation of the building bye laws and to devise a scheme vide which the violations could be regularized/compounded and action taken against the erring builders, who have committed non-compoundable violations. Accordingly, the respondents conducted the said survey and filed affidavits. Vide affidavit dated 15.10.2012 certain details were supplied and subsequently a direction was issued to file additional affidavit. In pursuance of the said direction another affidavit dated 11.2.2013 was filed in which it was stated that STP Gurgaon has carried out detailed measurement of these premises to find out the quantum and nature of violation and as to whether these violations are compoundable or non-compoundable under the existing composition policy of the Department.

According to the said survey, it has been revealed that out of 372 plots, 204 plots are fit for grant of occupation certificate under existing composition policy of the Department, as the violation of building byelaws committed on these plots are compoundable. In remaining 168 plots, violations of building byelaws are non-compoundable and need to be rectified. To get the possibility of rectification examined, Senior Town Planner, Gurgaon has sought report from Shri Pradeep Kumar Kulshreshtha, Structural Engineer, Engineering Associate-Consulting Engineer, New Delhi, who has stated that, based on preliminary observations, they are of the opinion that the violations referred in premises (42/126) are rectifiable without any damage to the safety of structure with proper engineering intervention and structural retro-fitting as explained in the letter.

In order to redress the grievance raised by the petitioners' association, it has been stated that Government has approved a scheme for grant of occupation certificate to the premises occupied by allottees in the aforesaid society. A copy of the scheme has been annexed as Annexure R-2 with the said affidavit.

After hearing learned counsel for the parties and in the peculiar facts and circumstances of the case, instead of considering the submissions raised here in this petition, we dispose of this petition with direction to private respondents, i.e. Builders/licensees, to move a requisite application under rules for obtaining occupation certificates from the authority, irrespective of the fact whether they have earlier filed

applications which may be pending or rejected; they can file fresh application within a period of one month. Senior Town Planner, Department of Town and Country Planning, is directed to consider those applications with a positive attitude to resolve these problems of the thousands of allottees in the light of latest policy decision taken by the Government, copy of which has been annexed as Annexure R-2. During the course of hearing of those applications if it is pointed out that the violation has been done by the allottees after purchase of plots, in that case, notice must be issued to those allottees and they may also be heard and given an opportunity to remove un-authorized construction/violation. As far as violation committed by the builders/licensees is concerned, the Department will get those violations cleared from them (builders/licensees), on charging the compoundable fee or if non-compoundable, direct them to remove those violations and in case there is violation in the structure designing, the builders/licensees can be imposed penalty after getting the revised plan, in preference to demolition. In case the builders/licensees are liable to pay the compoundable fees or other penalty and charges, and they do not pay the same amount, the same be recovered as arrears of land revenue. In case some builders/licensees have committed gross, non-compoundable violation of the structure designing/zoning plan and sold plots to various persons without getting the occupation certificate, it will be open for the DTP/Competent authority to blacklist them for the future and to register criminal cases against those persons.

The entire exercise be done within a period of six months and each and every individual case be separately decided by passing a speaking order after providing an opportunity of hearing to builders/licensees and all the allottees, in case it is necessary. While passing the necessary order, the report obtained by the respondents from Structure Designing Engineer, be kept in mind.

Disposed of accordingly.

**(SATISH KUMAR MITTAL)
JUDGE**

19.02.2013
reema

**(AMOL RATTAN SINGH)
JUDGE**