

Reserved on 28.05.2025

Delivered on 13/06/2025

Neutral Citation No. - 2025:AHC:96738

Court No. - 50

Case :- WRIT - C No. - 16306 of 2023

Petitioner :- M/S Kinetic Buildtech Pvt. Ltd.

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Sudhanshu Kumar, Swapnil Kumar

Counsel for Respondent :- Anjali Upadhyay, C.S.C., Shivam Yadav

Hon'ble Prakash Padia, J.

1. Heard Sri learned counsel for the petitioner, learned Standing Counsel for the respondent no.1 and Sri M.C. Chaturvedi, learned Senior Counsel assisted by Sri Shivam Yadav, learned counsel for the respondent no.2.

2. The petitioner has preferred present writ petition inter-alia with the following prayers :-

"(I) Issue a writ, order, or direction in the nature of certiorari quashing order dated 17.04.2023 (Annexure No. 21) passed by respondent no. 1.

(II) Issue a writ, order, or direction in the nature of certiorari quashing order dated 05.06.2017 (Annexure No. 9) passed by respondent no. 2.

(III) Issue a writ, order, or direction in the nature of mandamus directing the respondent no. 2 to sanction the building plan submitted by the petitioner company in respect to Plot No. GH-3B, Sector 10, Greater Noida admeasuring 22,000 sq mts.

(III-A) To issue a writ, order, or direction in the nature of mandamus directing Respondent no. 2 to execute the necessary correction/surrender deed to amend the original lease deed dated 09.04.2015 as per the site plan annexed with the letter dated 09.07.2015 (Annexure no. 22 to the writ petition).

(III-B) To issue a writ, order, or direction in the nature of mandamus directing Respondent no. 2 to revise the payment schedule of the premium amount in accordance with the correction/surrender deed to be executed after adjusting the earlier deposited amount without imposing any interest and penalty.

(III-C) To issue a writ, order, or direction in the nature of mandamus directing Respondent no. 2 to extend the period of approval of building plan and construction as per the correction/surrender deed."

3. The facts as argued by the learned counsel for the petitioner and appears from the writ petition are that the group of companies, including the petitioner's company was allotted group housing Plot No. GH-03, Sector-10, Greater Noida having an area of 64,000 square meters by letter dated 7.8.2014. Subsequently, by letter dated 13.11.2014, respondent no. 2 allotted plot No. GH-3B, Sector-10, Greater Noida having an area of 22,000 square meters to petitioner. A lease deed in pursuance of the aforesaid letter of allotment was executed between the Greater Noida Industrial Development Authority (hereinafter referred to as "development authority") and the petitioner on 09.04.2015. The total premium payable by the petitioner was calculated at Rs. 53,24,00,000/- (fifty three crore twenty four lacs only). As per the terms of letter of allotment, 20% of the aforesaid amount being Rs. 10,64,80,000/- (ten crore sixty four lacs eighty thousand only) was paid by the petitioner before execution of the lease deed.

4. It is argued by learned counsel for the petitioner that the possession of the aforesaid plot was shown to handed over to the petitioner in accordance with the site plan annexed with the lease deed, but infact the physical possession of the aforesaid plot was not handed over to the petitioner. Learned counsel for the petitioner further submits that the petitioner from very beginning, has claiming for physical possession of the plot. The petitioner even before the Revisional Authority has submitted that the possession of the plot has

not been handed over to the petitioner. During course of hearing before the respondent no. 1- Additional Chief Executive Officer of Development Authority, obtained, on whatsapp, a possession certificate and the copy of the possession certificate was for the first time provided to the petitioner. The said possession certificate, as provided, during the course of hearing of the revision before the respondent no. 1 has been annexed as Annexure-22 of the writ petition.

5. It is stated in paragraphs 53 to 56 of the writ petition that the changes shown in the alleged possession letter dated 9.7.2015 was never communicated to the petitioner and the site plan annexed in the said possession letter dated 9.7.2015 is different to the site plan annexed along with the lease deed. The averment made in paragraphs 53 to 56 of the writ petition has not been specifically denied by the respondents in their counter affidavit, but only this much has stated that the averments are not admitted and full facts already been stated in other paragraphs of the counter affidavit.

6. It is further argued that in the entire counter affidavit, there is no denial of fact that the site plan annexed with the letter dated 9.7.2015 is different to the site plan annexed along with the lease deed. It is further argued that in the document, alleged possession memo provided at the time of hearing of the revision, did not contain the signature of person taking over the possession, i.e., allottee of plot. Thus, it is established that the possession of plot has not been handed over to the petitioner.

7. Enlarging the argument, learned counsel for the petitioner has further argued that as the changes were made unilaterally by the respondent no. 2 in the site plan, it was obligatory in part of the respondent no. 2 to execute the correction deed/supplementary deed

as per the actual site plan annexed along with the letter dated 9.7.2015. It is also argued that in view of the correction in the site plan, the liability of premium will change and liability of payment of dues will recon from the date of execution of the supplementary/correction deed. Learned counsel for the petitioner has argued that the development authority has acted arbitrarily and discriminatory manner. It is argued that the development authority had executed the supplementary/correction deed dated 4.10.2018 in favour of M/s Shirja Real Estate Solutions Pvt. Ltd., another member of group to whom the plot No. GH-3C was allotted and layout plan was changed, vide letter dated 9.7.2015. The supplementary/correction deed executed by the development authority in favour of M/s Shirja Real Estate Solutions Pvt. Ltd. has been filed along with the supplementary affidavit and this fact has not been disputed by the development authority and no counter affidavit to the said supplementary affidavit has been filed.

8. Learned counsel for the petitioner has argued that since the actual physical possession was not handed over to the petitioner and no supplementary/correction deed as per the changed site plan was executed, as such, there is no liability of installment/premium, as the liability for payment of installment/premium will begin from the date of actual physical possession. Thus, first ground of cancellation of allotment is contrary to law and fact.

9. In so far as the second ground of cancellation of allotment, i.e., non-construction of building within stipulated period is concerned, it is argued by the learned counsel for the petitioner that the petitioner has submitted building plan initially on 10.6.2015 and after removal of defects, as pointed out by the development authority, the correction plan was again submitted on 18.3.2016 and accordingly a

sum of Rs. 38,01,318/- (thirty eight lac one thousand three hundred eighteen) as processing fee was also deposited by the petitioner with the development authority. It is further argued that till date, the development authority has neither approved the plan nor has rejected the application of the petitioner for grant of sanction for construction. It is further argued that due to non-approval of building plan, the construction work could not be initiated and the proposed flats could not be floated in market to generate any revenue and on account of this reason also, the petitioner was unable to pay installment. It is also argued that on account of inaction in part of the development authority in sanctioning the building plan, payment could not be made.

10. Learned counsel for the petitioner further submits that the letter dated 4.5.2016 issued by the development authority mentioning the defects, on the map submitted by the petitioner, the said letter has neither been tendered nor served upon the petitioner. The petitioner before the respondent nos. 1 & 2 has categorically stated that the said letter contain objection in building plan submitted by the petitioner was never tendered or served upon the petitioner, but neither before the respondent no. 1 nor before this Court any documentary evidence have been brought on record to establish that the letter dated 4.5.2016 was served upon the petitioner or upon his authorized representative. In the entire counter affidavit, the manner by which the objection letter dated 4.5.2016 was sent to the petitioner, has not been mentioned and once the objections were not communicated to the petitioner, there was no occasion with the petitioner to remove the objection raised by the development authority, vide letter dated 4.5.2016. It is further argued that assuming without admitting that the petitioner failed to remove the objection, it was open for the development authority to reject the

application for sanction of map but the development authority has neither approved the application for sanction of map nor has rejected the sanction to the aforesaid map.

11. It is further argued that the respondents themselves were in default in delivering the physical possession of the plot, executing correction/surrender deed and communicating the objection to the sanction map, as such, once the development authority itself was in default, the order of cancellation of allotment is too harsh and excessive, in as much as after cancellation, the entire amount of Rs. 10,64,80,000/- (ten crore sixty four lacs eighty thousand only) has been forfeited arbitrarily.

12. It is argued by learned Senior Counsel appearing on behalf of respondent no.2 that the petitioner has defaulted in making payment of premium amount as per the lease deed and no amount except the initial 20% amount has been paid by the petitioner and no construction, as per the terms of the lease deed and letter of allotment has been carried on by the petitioner within stipulated time, hence the development authority has rightly cancelled the allotment and has rightly forfeited the amount as per the terms and conditions of the lease. It is further argued that the possession of the land was handed over to the petitioner. The defect pointed out by the development authority in application for sanction of map was communicated to the petitioner by letter dated 4.5.2016, but the petitioner has not removed the defects pointed out by the development authority. It is further argued that as no construction as per the terms and conditions of the lease and letter of allotment has been carried on by the petitioner, hence the allotment has rightly been cancelled and amount has rightly been forfeited.

13. Rebutting the argument made by the counsel for the respondents, counsel for the petitioner has submitted that despite specific averment in paragraph 45 of the writ petition, as reiterated in paragraph 5 of the rejoinder affidavit, no material has brought on record by the respondent to establish that the letter dated 4.5.2016 raising objection to the application submitted for sanction of map was served upon the petitioner, therefore, it is established that the letter dated 4.5.2016 was not served upon the petitioner. Reiterating the argument regarding change in site plan and physical possession of the plot as per changed site plan, the learned counsel for the petitioner reiterated the averment made in paragraphs 53 to 56 of the writ petition and further reiterated that no correction/surrender deed has been executed as has been done in the case of other party, as such, the allegation of non-payment of lease premium is wrong and payment of lease premium will start when the lease premium is re-calculated as per the changed site plan and execution of correction/surrender deed.

14. Heard learned counsel for the parties and perusal of record.

15. This much is established that actual layout plan prepared by Building Development annexed with the letter dated 9.7.2015 was admittedly provided to the petitioner at the time of hearing of the revision, is different to the site plan annexed along with the lease. It is alleged that the actual physical possession was handed over on 9.7.2015, but the possession letter did not contain the signature of person taking over the possession i.e. allottee. Thus, it is established that the possession of changed site plan was not handed over to the petitioner. No correction/supplementary deed has been executed by the development authority in accordance with the amended/corrected layout plan dated 9.7.2015. The averment of the petitioner that the

letter dated 9.7.2015 was not served and communicated to the petitioner, prior to hearing of the revision before the respondent no. 1, has not been denied by the respondent in the counter affidavit, despite specific averment made in the writ petition. Thus, it is established that the respondent-development authority has failed to communicate the change in layout plan to the petitioner and delivered the actual physical possession as per the changed layout plan. The development authority has failed to execute the correction/supplementary deed in favour of the petitioner, as per the changed layout plan, whereas in similar circumstances, the correction deed has been executed by the development authority in favour of M/s Shirja Real Estate Solutions Pvt. Ltd., another member of the same consortium.

16. The contention of the development authority is that the actual physical possession was delivered to the consortium before subdivision of plot and possession was with the petitioner even before execution of the lease deed is incorrect and contrary to record. The document annexed as annexure-5 to the writ petition established that the alleged possession was given on 24.4.2015, i.e. after execution of the lease deed. The contention of the petitioner that no actual physical possession was handed over to the petitioner also establishes from the aforesaid document, as in the said document annexed as annexure-5 to the writ petition did not contain the signature of person handing over the possession. Thus, it is established that the said letter is only a paper work and no actual physical possession was handed over to the petitioner.

17. The letter dated 9.7.2015 provided to the petitioner during hearing of revision established that there had been changes in the site plan and as per the changed site plan, no physical possession

has been handed over, though the map and possession letter annexed along with the said letter contains column to be signed by the person taking possession and by person handing over the possession.

18. It is also established that as per the changed site plan, no correction/surrendered deed has been executed by the development authority.

19. The copy of the site plan appended along-with the lease deed executed by the respondent no.2 dated 09.04.2015 is all together a different site plan as has been provided by the respondent no.2 along-with the letter dated 09.07.2015 at the time of hearing in the matter before the respondent no.1 for the convenience and perusal. The site plan of lease deed (page-56 of paper book) is reproduced hereinbelow :-

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PRODUCED BY AN AUTODESK EDUCATIONAL PRODUCT

PLOT NO:- GH-3-B

PLOT NO.-GH-3-A

24 MT. WIDE ROAD

126.75

180.33

204.52

180.28

27.63

29.61

GREEN BELT

PLOT NO.-GH-3-C

TOTAL AREA =22000.00 SQM.

SIGN.

Director

POSESSION TAKEN OVER

SIGN.

POSESSION HANDED OVER

LEASE PLAN FOR

PLOT NO-GH-3-B

OF SECTOR-10

GREATER NOIDA

PROJ. DEPTT.

LAND DEPTT.

LAW DEPTT.

PLNG. DEPTT.

ASS. MANAGER

MANAGER

SR. MANAGER

ASS. MANAGER

MANAGER

SR. EXECUTIVE/MGR

SR. MANAGER

SR. EXECUTIVE/MGR

GREATER NOIDA INDUSTRIAL

OATH COMMISSIONER

Advocate

Reg. No. 10761/2/16

OATH COMMISSIONER

High Court, Allahabad

Sl. No. 23/104/23

Date

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20. In this letter also there is no signature of person handing over the possession. Thus, it is clear that no actual physical possession even as per above site plan was handed over to the petitioner.

21. At the time of hearing before the respondent no.1 while placing the letter dated 09.07.2015 another site plan was provided by the respondent no.2 before the respondent no.1, which has been annexed at page-117 of writ petition is as under :-

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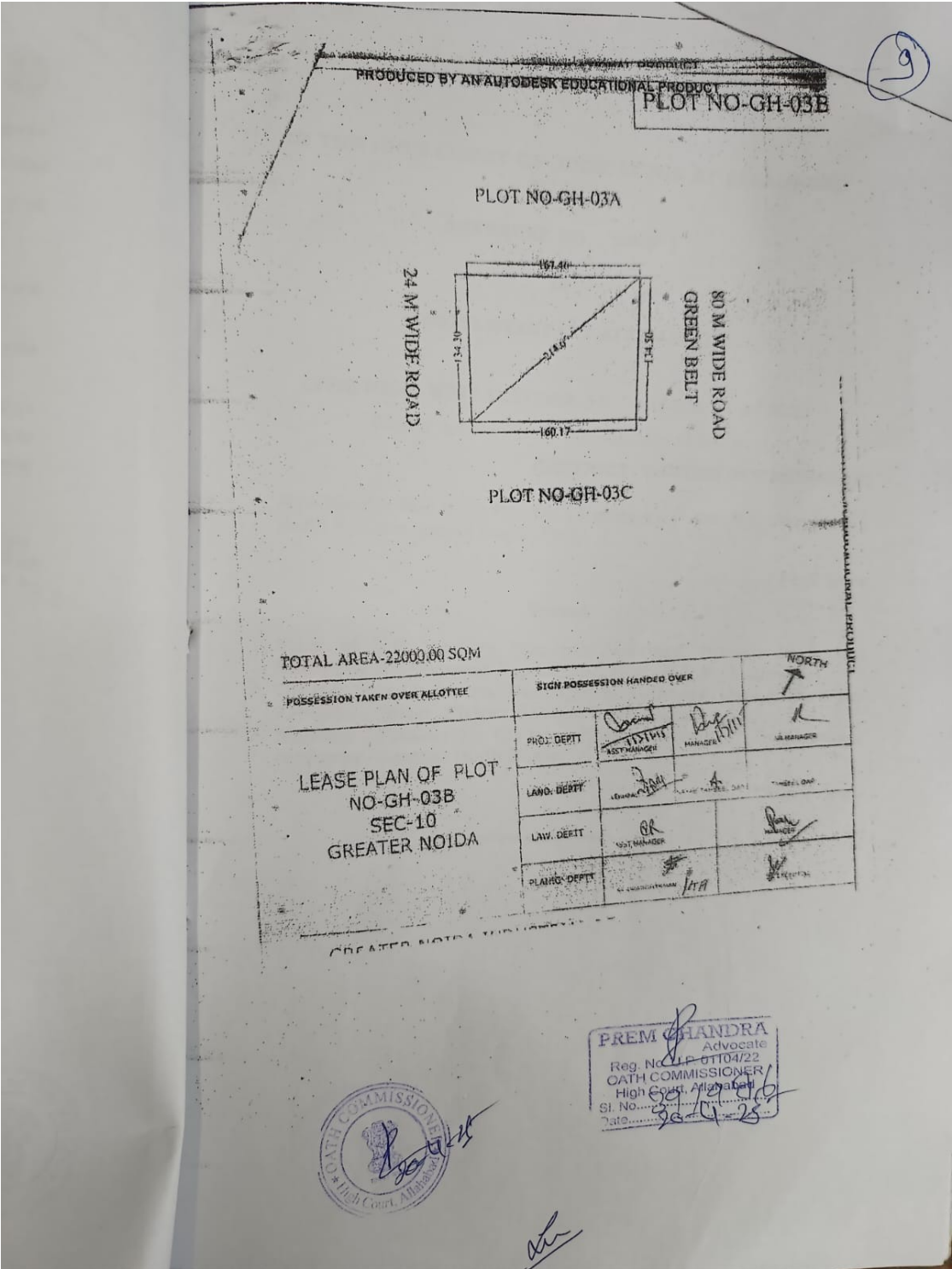
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22. From perusal of aforesaid site plan it is clear from naked eyes that the original site plan provided by the respondent no.2 along-with the lease deed was changed while providing the letter dated 09.07.2015. From perusal of the same, it is clear that the aforesaid site plan is a different site plan, which was provided to the petitioner along-with the lease deed as stated above. It is further clear from perusal of the aforesaid site plan that neither the possession was taken over by the allottee nor the same has been handed over by the respondent no.2 to the allottee.

23. As the physical possession of the plot, as per the amended site plan has not been handed over and in absence of correction/surrender deed executed between the parties making liability upon the petitioner to make payment of premium is contrary to the terms and conditions of the lease deed and thus, cannot be a ground for cancellation of the allotment. So far as the construction within stipulated period by the petitioner over allotted land is concerned, it is not disputed that an application for sanction of building plan was submitted by the petitioner initially on 10.6.2015 and after removing the defects on 18.3.2016 fresh building plan was submitted and the deposit of Rs. 3801318/- is also accepted by the development authority. The only dispute is with regard to service of letter dated 4.5.2016, by which the development authority has raised objection in the building plan.

24. The petitioner has made specific averment in paragraph 45 of the writ petition that the letter dated 4.5.2016 has not been served upon the petitioner. The respondent no. 2 in his counter affidavit has neither submitted any specific reply to the aforesaid averment nor has brought on record any evidence, by which the letter dated 4.5.2016 was served to the petitioner. No evidence of service of

aforesaid letter has been brought on record. Thus, it is established that the letter dated 4.5.2016 was not served upon the petitioner. The application of sanction of building plan was neither rejected nor accepted by the development authority. Unless and until the application filed by the petitioner for sanction of building plan is accepted, the petitioner cannot raise constructions. In view of inaction on part of the development authority in deciding the application for grant of permission for construction, the petitioner could not float the construction plan and could not collect the funds from the market to be paid to the development authority.

25. The development authority kept the application for grant of permission for construction pending with him, as such, it cannot be blamed that petitioner has not carried on the construction within the stipulated period.

26. Thus, as the development authority has kept the application for grant of permission for construction pending with him, the petitioner neither float the flats in the market and realized the funds and make payment to the development authority and also could not carry on construction within stipulated period. Thus, the petitioner cannot be blamed and charged for the same.

27. The Hon'ble Supreme Court in case of ***Municipal Committee Katra & others Vs. Ashwani Kumar***, reported in ***AIR 2024 SC 2855*** has held as under:

"19. It is beyond cavil of doubt that no one can be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, a

wrong doer ought not to be permitted to make profit out of his own wrong."

28. Thus the development authority itself had faulted in not delivering the physical possession of the plot as per the changed layout plan, by not executing the correction/surrender deed and not taking final decision on the application for grant of permission for construction. The failure has been on part of the development authority for which the petitioner cannot be penalized.

29. In view of the above, the order dated 17.4.2023 passed by the respondent no.1-Additional Chief Secretary, Industrial Development Department, Govt. of U.P., Lucknow and the order dated 5.6.2017 passed by the respondent no. 2-Chief Executive Officer, Greater Noida Industrial Development Authority, cancelling the allotment of the petitioner are hereby quashed.

30. Further mandamus is issued to the respondents specially respondent no.2 to execute the necessary correction/surrender deed to amend the original lease deed dated 09.04.2015 as per site plan annexed along-with letter dated 09.07.2015 (annexure-22 of the writ petition). A further mandamus is issued directing the respondent no.2 to extend the period for construction as per the correction/surrender deed.

31. The writ petition is accordingly allowed with all consequential reliefs. No order as to costs.

Order Date :- 13.6.2025

Pramod Tripathi