

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (C) NO.876 OF 1996

**OKHLA ENCLAVE PLOT HOLDERS'
WELFARE ASSOCIATION**

...Petitioner(s)

VERSUS

UNION OF INDIA AND OTHERS

...Respondents

ORDER

**Re: Directions sought for by the learned Arbitrator Justice
Vikramjit Sen, former Judge of the Supreme Court of
India.**

R. BANUMATHI, J.

The present dispute pertains to claim of number of allottees who have not been allotted plots on land owned by respondent No.6-Colonizer and not paid the amount to the Town and Country Planning for internal and external development. As per respondent No.6-Colonizer, in the year 1985, it purchased approximately 235 acres tract of land for the purpose of large-scale settlement in Section 91 of Faridabad-Ballabgarh Complex, Haryana. At that time, there was no State policy in place to regulate the colonization of land for settlement purposes. Respondent No.6-Colonizer entered into agreement with number of allottees who approached respondent No.6-Colonizer for the purpose of purchasing plots of land. In the year 1991, the State of Haryana enforced its colonization policy and respondent No.6-Colonizer accordingly

obtained seven colonization licences. In the year 1996, writ petitions under Article 32 of the Constitution of India were filed by the members of the petitioner-Association before the Supreme Court contending that respondent No.6-Colonizer had not adhered to the terms of the agreement in allotment of plots to the allottees who had booked the plots with respondent No.6-Colonizer. In the writ petition, number of orders came to be passed. Vide order dated 02.12.1999, the Court noted that there seems to be a dispute as to the amount payable by each allottee to respondent No.6-Colonizer as well as to the government. Stating that it is not possible to fix the exact figure payable by each allottee to the government and to respondent No.6-Colonizer, the Court directed each allottee to pay a sum of Rs.50/- per sq. yd. towards development charges to the Director, Town and Country Planning within four weeks. The balance amount, if any, was to be worked out and fixed later.

2 Pursuant to the order dated 02.12.1999, the allottees are said to have deposited the amount with Director, Town and Country Planning, Haryana (DTCP). Some of the allottees have not complied with the order of the Court by depositing the amount with DTCP. On 15.11.2013, the Director, Town and Country Planning (DTCP) has filed affidavit to the effect that whatever Internal Development Work has been done has become defunct with passage of time. It was also submitted that an estimate of the cost likely to be incurred on execution of remaining Internal Development Work will have to be worked out afresh and will have to be borne by the plot holders or licensee. It was also categorically stated that such cost cannot be borne by the government since public funds cannot be diverted for this purpose.

3. The Court vide order dated 13.01.2015 appointed Mr. Raju Ramachandran, senior advocate as amicus curiae to go into the detailed facts of the case and prepare a report. The Supreme Court vide order dated 27.01.2016 referred the matter to arbitration. Justice Vikramajit Sen, former Judge of the Supreme Court was appointed as the sole Arbitrator for resolving the terms of reference and the dispute between the parties. The learned Arbitrator held around twenty-two hearings in the matter to resolve the dispute among the parties. The learned Arbitrator has completed the mammoth task of identifying the eligible allottees. The learned Arbitrator noted that there are three categories of allottees for the purpose of allotment which are as under:-¹

- I. General
- II. Economically Weaker Sections (EWS)
- III. No profit no loss (NPNL)

4. The Scrutiny Committee consisting of Senior Town Planner, Faridabad (Chairman), District Town Planner, Faridabad (Member), Representative of Deputy Commissioner, Faridabad (Member), Representative of the Colonizer of Durga Builders Pvt. Ltd. (Member) and representatives of concerned associations were appointed to identify number of claimants in all the three abovementioned categories. Accordingly, the Scrutiny Committee prepared its report wherein the number of persons were identified as under:-

¹ (Pg. No.44D and 55(4) of Proceedings of the Supreme Court dated 13.01.2015 and 27.01.2016 and Pg.20 of the paperbook regarding Letter dated 21.03.2018 by Arbitrator)

I. General	...	470²
II. Economically Weaker Sections (EWS)	... ...	350 (out of which 106 applied for allotment) ³
III. No profit, No loss (NPNL)	... ...	1932⁴

5. As per the Scrutiny Committee Report, a total of 1928 claimants in the NPNL category were categorised in five categories as under:-

- (i) First List - The claimants who have paid full land cost/development charges before cut-off date.
- (ii) Second List - The claimants who have paid full land cost and part development charges before cut-off date.
- (iii) Third List - The claimants who have paid full land cost only and no development charges have been paid
- (iv) Fourth List – The claimants who have paid part land cost only and no development charges have been paid.
- (v) Fifth List – The claimants who could not produce any evidence/documents with regard to booking of plot and payment of development charge before cut-off date and got executed sale deed from the developer directly or through resale.⁵

6. After referring to the procedural order No.21 dated 31.08.2018, the learned Arbitrator sought for direction on the following questions:-

- (i) In light of the fact that Durga Builders Private Limited is claiming succession only with respect to two licences (out of total seven licences) making it necessary to also determine

2 (Pg.5 of Scrutiny Committee Report qua EWS and General allottees)

3 (Pg.6 of Scrutiny Committee Report qua EWS and General allottees)

4 (Pg.23 of Scrutiny Committee Report dated 28.10.2017)

5 (Pg.23-24 of Scrutiny Committee Report dated 28.10.2017)

which portions of the land compositely held by seven licences falls to its share?

- (ii) Given that the State of Haryana has categorically stated that it cannot take over the project and make allotments, even in view of the fact that the Colonizer has intentionally not paid the Licence Fee, who will undertake the development of the Project and subsequently make allotments?
- (iii) In view of the fact that around 2690 claims were received in the NPNL category, the State of Haryana will have to devise a policy for relaxing density norms for the Project.
- (iv) The Hon'ble Supreme Court may pass appropriate directions for converting these proceedings to that of a Special Committee.⁶

7. By order dated 16.01.2019, we requested the learned senior counsel Mr. Raju Ramachandran, learned *amicus curiae* to assist the court in answering the directions sought for by the Arbitrator. Ms. Rashmi Nandakumar, advocate was required to assist the learned *amicus curiae*.⁷

8. We have heard Ms. V. Mohana and Mr. Basant, learned senior counsel appearing for the petitioner-Association, Mr. Maninder Singh, learned Senior counsel appearing for the State of Haryana along with Ms. Monika Gusain, learned counsel, Mr. Satvik Varma, learned counsel appearing for respondent No.6-Colonizer and all other parties at length on various date of hearings.

9. In order to appreciate the contentions of the parties, on 14.02.2019, we have directed the parties to submit their response on the following details:-

⁶ (Pg.3-4 of Letter dated 11.10.2018 by the Arbitrator)

⁷ (Pg. No.62(2) of Proceedings of the Supreme Court dated 16.01.2019)

- (i) How much is the total extent of land procured by respondent no.6-coloniser/developer, for the purpose of developing the project in question. The details are to be furnished along with the survey numbers/plot numbers of the land. It is also brought to our notice, a portion of the land is encroached by the third parties. A rough sketch is to be supplied showing the entire land of the project and the encroached area.
- (ii) Respondent No.6-coloniser, as well as the learned counsel for the State of Haryana, shall file the approved map/layout of the project. The map/layout shall show the position of the plots and the actual physical features of the land as on today.
- (iii) What is the total amount of money collected by the 6th respondent-coloniser from the plot owners towards the cost of the land and also towards development charges, for internal and external.
- (iv) What is the total amount of money actually deposited by respondent no.6-coloniser before the competent authority, for the purpose of internal and external development out of the money collected from the plot owners.
- (v) The total amount of money which has been paid by the plot owners before the competent authority towards development charges, pursuant to orders of this Court dated 07.04.1997 and 02.12.1999.
- (vi) The estimate of the amount which is required to complete the project in question including internal and external development charges.
- (vii) State of Haryana to file detailed report as to actual physical features of the land including the extent of internal development and external development, if any, already done. The State of Haryana shall obtain instructions and make further submissions and/or suggestions with regard to the development and other relevant issues for resolution of dispute in question.⁸

10. In response to the above order, all concerned parties have filed their responses and State of Haryana filed status affidavit. So far as the licences granted to respondent No.6-Colonizer, the DTCP, Haryana in its counter affidavit/Status Report stated as under:-

“Details of licences and layout – Phase I and Phase II⁹

That M/s Durga Builder Pvt. Ltd. and its associate companies were granted the following licences, for a total area measuring 234.674 acres, under Section 3 of the Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter called as Act of 1975):-

Sl. No.	Name of the Licencee	Land Owner	Licence No.	Area (in acres)
1.	M/s Durga Builders (Main Developer)	M/s Durga Builders	1/91 and 65/92	114.075 6.19
2.	Ravindra Promoters Pvt. Ltd.	Ravinder Promoters Pvt. Ltd.	2/91 and 66/92	0.918 1.82
3.	Sh. Ravinder Kumar Nanda	Sh. Ravinder Kumar Nanda	3/91	11.731
4.	Rajdhani Housing Syndicate Pvt. Ltd.	Rajdhani Housing Syndicate Pvt. Ltd.	67/92	84.54
5.	Panchsheel Co-operative House Building Society	Panchsheel Co-operative House Building Society	68/92	15.40
			Total	234.674

11. The above said licensed areas are in two pockets i.e. Okhla Enclave Phase-I (Area 126.724 acres) and Okhla Enclave Phase-II (Area 107.95 acres). Copy of the revised layout plan of Phase-I and Phase-II, as revised and approved on 24.09.1997 have been filed by the DTCP, Haryana. Out of the total extent of 234.674 acres, an extent of 46.85 acres is under encroachment and 187.825 acres land is available for planning. In the report filed by the DTCP dated 19.08.2019, it is stated that out of the above 187.825 acres area, 43.68 acres area was reserved for general category plots, 23.475 acres area was reserved for community-infrastructure sites.

⁹ (Para No.2 at Pg. 3 of Status Affidavit filed by DTCP, Haryana on 07.03.2019)

Balance, 120.67 acres was planned for EWS and NPNL category plots.¹⁰ In this regard, reference be made to layout plan of OKHLA Enclave, Phase-I, Delhi-Haryana Border, Faridabad and Layout plan, Phase-II, Sector-91, Faridabad, Haryana filed by the DTCP. In the layout plans, alleged encroached areas are also shown in red ink.

Question No.1: In light of the fact that Durga Builders Private Limited is claiming succession only with respect to two licences (out of total seven licences) making it necessary to also determine which portions of the land compositely held by seven licences falls to its share?

12 Before we consider the claim of M/s Durga Builder Pvt. Ltd., it is necessary to point out that M/s Durga Builder Pvt. Ltd. had not renewed the licence by paying necessary fee. The above seven licences i.e. licence Nos.1-3 of 1991, 65 of 1992 to 68 of 1992 were not renewed after 1999. In its reply, the State of Haryana stated that an amount of Rs.21,86,97,901/- is outstanding against the licence renewal fee.¹¹ This amount is payable by the sixth respondent-Colonizer to DTCP, Haryana. There are also other charges payable by the sixth respondent-Colonizer to the DTCP, Haryana. DTCP, Haryana has spent about Rs.1.25 crores in keeping watch and ward over the property and this amount is also payable by the sixth respondent. The claim of the sixth respondent-colonizer could be considered only if respondent No.6-Colonizer pays the licence renewal fee of Rs.21.89 crores and other amount

10 (Point No.5 at Pg.12 of Reply filed by DTCP, Haryana on 19.08.2019)

11 (Under Point No.1 at Pg. 2 of reply filed by DTCP, Haryana on 19.08.2019)

spent by DTCP, Haryana towards keeping watch and ward of the licensed area and other charges.

13. **Status of the Companies:-** So far as the status of the above companies, in its reply filed on 19.08.2019, the State of Haryana stated as under:-

- That Sh. Ravinder Kumar Nanda and Smt. Promila Nanda were the Directors of **M/s Durga Builder Pvt. Ltd.** (as per the information available on the website of Ministry of Corporate Affairs, the status of the company is strike off), as per the Memorandum of Article dated 29.01.1985. However, Sh. Divij Mehra and Sh. Saurabh Kapoor are the present Directors since 24.03.2014 and 15.04.2015 respectively.
- That Sh. Ravinder Kumar Nanda and Smt. Promila Nanda are the Directors of **M/s Ravindra Promoters Pvt. Ltd.** since, 10.07.1989 (as per the information available on the website of Ministry of Corporate Affairs, the status of the company is strike off).
- That Sh. Ravinder Kumar Nanda and Smt. Promila Nanda are the Directors of **M/s Rajdhani Housing Syndicate Pvt. Ltd.** since, 13.09.1989 and 22.12.1989 (as per the information available on the website of Ministry of Corporate Affairs, the status of the company is strike off).
- That the information regarding the Directors of **M/s Panchsheel Co-operative House Building Society**, is not available on the website of MCA.¹²

The DTCP, Haryana stated that there is no record available in the office regarding change in the ownership of land of Sh. Ravinder Kumar Nanda bearing licence No.3 of 1991 to some other entity. Further, it is stated that no representation regarding change of

12 (Under Point No.1 at Pg. No.3 of Reply filed by DTCP, Haryana on 19.08.2019)

Directors of M/s Durga Builder Pvt. Ltd. was received by the Director, Town and Country Planning, Haryana up to 17.07.2014.¹³

14. Issue of Ownership:- As per the report of Sh. H.P. Sharma, Court Commissioner, appointed by the Supreme Court, Sh. Arun Mehra father of Sh. Divij Mehra, on behalf of M/s Hindustan Commercial Investment Trust Ltd. and M/s Class Sales Pvt. Ltd. had filed claim for 87 plots (65 plots + 22 plots), which he claimed to have purchased from M/s Durga Builder Pvt. Ltd. This claim of plots was rejected by Court Commissioner.¹⁴ Sh. Arun Mehra filed an application of impleadment in WP(C) No.113 of 1996 in the Supreme Court on behalf of M/s Rajdhani Housing Syndicate Pvt. Ltd. in January, 2014. In its reply, the State of Haryana has stated that it has received an e-mail dated 18.07.2014 from Advocate Deepak Khosla mentioning that as per the decision of the Company Law Board dated 11.03.2014, Sh. Arun Mehra and Sh. Divij Mehra are the present Directors of M/s Durga Builder Pvt. Ltd. It is stated that one Sh. R.K. Nanda claims to have become the Director of M/s Durga Builder Pvt. Ltd. who attended the proceedings before the Director General, Town and Country Planning, Haryana at Chandigarh as Director of M/s Durga Builder Pvt. Ltd. It was submitted that by the Gazette Notification dated 24.09.2018, the name of M/s Durga Builder Pvt. Ltd. has been struck off from the Registrar of Companies and dissolved by the Government of India, Ministry of Company Affairs, New Delhi. On behalf of the Colonizer, an order dated 24.01.2019 passed by the National Company Law Tribunal has been produced to show that in the Gazette Notification **13** (Under Point No.1 at Pg. 3-4 of reply filed by DTCP, Haryana on 19.08.2019)

14 Pg.No.4 of the reply dated 19.08.2019 filed by DTCP, Haryana

dated 24.08.2018 qua M/s Durga Builder Pvt. Ltd. has been kept in abeyance.¹⁵

15. Stand of the Sixth Respondent-M/s Durga Builder Pvt. Ltd. – The Colonizer:- Though the present sixth respondent-M/s Durga Builder Pvt. Ltd.-Colonizer claims that all assets of the Company M/s Durga Builder Pvt. Ltd. were purchased by Mr. Arun Mehra from Sh. R.K. Nanda, the same could not be verified. Members of the petitioner association/allottees purchased the plots from the Colonizer who held the above seven licences and therefore, they are entitled to the entire extent of land as per the layout without going into the question of which is the portion of the land M/s Durga Builder Pvt. Ltd. is claiming succession. As per the report of Sh. H.P. Sharma, Court Commissioner, appointed by the Supreme Court, Sh. Arun Mehra father of Sh. Divij Mehra, on behalf of M/s Hindustan Commercial Investment Trust Ltd. and M/s Class Sales Pvt. Ltd. had filed claim for 87 plots (65 plots + 22 plots), which he claimed to have purchased from M/s Durga Builder Pvt. Ltd. This claim of plots was rejected by Court Commissioner.

16. The learned *amicus curiae* submitted that as per the affidavit dated 19.08.2019 filed by DTCP, Haryana and e-mail dated 18.07.2014 received by the Department from the advocate Deepak Khosla mentioning that as per the decision of the Company Law Board dated 11.03.2014, Mr. Arun Mehra and Divij Mehra are the present Directors of M/s Durga Builders Pvt. Ltd. The learned amicus submitted that when Mr. Arun Mehra is claiming to be the Director of M/s Durga Builders Pvt. Ltd. of which he is a Director, the claim of Mr. Arun Mehra need not be considered as it has been

15 (Under Point No.1 at Pg. No.4-5 of Reply filed by DTCP, Haryana on 19.08.2019)

rejected by the Court Commissioner. So far as the claim of Mr. Arun Mehra in respect of 87 plots, liberty is granted to Mr. Arun Mehra to work out his remedy in accordance with law by agitating the matter before the competent court. However, it is made clear that the claim of Mr. Arun Mehra in respect of 87 plots shall not come in the way of the claim of the beneficiaries identified by the Scrutiny Committee.

17. Though the Commissioner rejected the claim of the sixth respondent-Colonizer, the correctness of the same shall be examined with reference to documents. The area claimed by the Colonizer can be considered by the arbitrator by considering the layout plan now produced by DTCP, Haryana.

18. The claim of the sixth respondent can be considered by the arbitrator only subject to the condition that he is paying the licence renewal fee of Rs.21,86,97,901/- (as on 28.02.2019) payable with interest @ 6% from 28.02.2019 plus Rs.1.25 crores borne by DTCP, Haryana in maintaining the security as per the order of the Court dated 18.07.2013. The area claimed by the sixth respondent-Colonizer shall be considered by the learned arbitrator only after examining by the rightful claim of the beneficiaries identified by Scrutiny Committee (to be finalised and approved by the learned arbitrator).

Question No.2: Given that the State of Haryana has categorically stated that it cannot take over the Project and make allotments, even in view of the fact that the Colonizer has intentionally not paid the License Fee, who will undertake the development of the Project and subsequently make allotments?

19. In terms of Section 5 of the Haryana Development and Regulation of Urban Areas Act, 1975, the Colonizer shall deposit 30% of the amount realised from time to time from the plot holders within a period of ten days of its realisation in a separate account to be maintained in a scheduled bank. That amount shall only be utilised by him towards meeting the cost of internal development works in the colony. The remaining amount shall be deemed to have been retained by the Colonizer *inter alia* to meet the cost of land and external development works. In the present case, the Colonizer has not complied with the requirement under Section 5 of the said Act. In the reply filed by the Director, Town and Country Planning, Haryana (on 19.08.2019), it is stated that the licensee M/s Durga Builder Pvt. Ltd. has not complied with Rules 24, 26(2), 27 and 28 of Haryana Development and Regulation of Urban Areas Rules, 1976, as per which the licensee shall have to maintain separate ledger account of each plot holder, intimate the account number and full particulars of the scheduled bank wherein he deposits 50% of the amount realised by him from the plot holders for meeting the cost of internal development works.¹⁶

20. **Vide order dated 07.04.1997** on the question of the cost of land, the court noted that as far as the cost of the land is concerned, the Colonizer has agreed to abide by the rate which it contracted for, namely Rs. 100/- to Rs. 200/- per square yard depending upon the size of the plots. As far as the development charges are concerned, the court noted that the parties are governed by the orders of the Department. As regards the internal development charges, the court in its order dated 07.04.1997 noted that the Government has fixed Rs. 878/- for the plots of the size 135 sq.

16 (Point No.2 at Pg. 6-7 of Reply filed by DTCP, Haryana on 19.08.2019)

yards to 170 sq. yards and Rs. 975/- for plots of 171 to 220 sq. yards. As to the external development, it was worked out at Rs. 4,70,000/- per acre which was to be borne by the allottees.¹⁷ However, it is stated only some of the allottees (according to the Colonizer, only 143 of the allottees) have complied with the order of the Supreme Court. But according to the petitioners that in compliance of the order of the Supreme Court, they have paid the amount. This has to be verified; those of them who have not complied with the order of the Supreme Court shall be directed to pay the amount with 6% interest on the amount payable from 01.01.1998.

21. **Vide order dated 02.12.1999**, the court observed that it is not possible to fix the exact figure payable by each allottee to the Government and to the Colonizer. All the same, the court directed each allottee to pay a sum of Rs. 50/- per square yard within four weeks from the date of this order to the Government of Haryana in the account of the Colonizer. The court directed that the balance amount if any, payable by each allottee will be worked out and fixed up later. To avoid further complications, the court directed the allottees to send the amount by draft by registered post to the Director, Town and Country Planning, if personal delivery is not feasible. The remittance of the amount was directed to be immediately sent to respondent No.6 by the remitter.¹⁸ However, it is stated that only some of the allottees (according to Colonizer, only 143 of the allottees) have complied with the order of the Supreme Court.

17 (Para No.8 of Proceedings of the Supreme Court dated 07.04.1997)

18 (Para No.1 of Proceedings of the Supreme Court dated 02.12.1999)

22 Submissions on behalf of Respondent No.6-Colonizer:- It has been submitted by respondent No. 6 that the rate for development stood at Rs. 550/- per sq. yard plus the cost of land in the year 1995. The Supreme Court revised these charges upwards vide its orders dated 07.04.1997 and 02.12.1999. A complete scrutiny of all the claims has revealed that out of the eligible 1708 NPNL claimants in the scrutiny committee report, only 143 have paid development charges @ Rs. 600/-, in compliance of order dated 02.12.1999 passed by this court; the rest 1565 have failed to comply with the said order and have shied away from paying the requisite development charges, thereby being no longer entitled for allotment of a plot. Further, according to respondent No.6, many plot claimants have also defaulted in making payment of cost of land as stipulated by order dated 07.04.1997. According to respondent No.6-Colonizer, the petitioners falling short on the land and development charges have jeopardised the development of plots allotted to them.¹⁹

23 Submissions on behalf of the Petitioners:- On the other hand, the petitioners contend that it has been falsely alleged by the builder-respondent No.6 that the petitioners have not paid the amount as directed by this Court vide orders dated 07.04.1997 and 02.12.1999. It has been submitted by the petitioners that they have deposited the amount with the DTCP, Haryana. The petitioners averred that they are ready to deposit the amount whatever is the amount now payable for internal and external development as estimated by the Government of Haryana.²⁰

¹⁹ (Point No.6 at Pg. 4 of submission on behalf of R-6 filed on 22.07.2019)

²⁰ (Para No.4 at Pg. 1 of submission on behalf of petitioners filed on 13.03.2019 in terms of order dated 14.02.2019).

24. The petitioners further submitted that the cost of internal development of the land is inclusive of the land cost. As such, the petitioners have already made the agreed payment of internal and external development charges. It has been claimed by respondent No. 6 that it has deposited a total amount of Rs. 18.90 crores with the Government for external development charges out of which only a sum of Rs. 2.30 crores has been spent by the DTCP, Haryana. This fact has also been admitted by the Government of Haryana/Town and Country Planning in their affidavit dated 09.09.2008. According to the petitioners, there is still a sum of Rs. 16.70 crores lying with the Government. However, it has been stated by the petitioners that whatever amount is due and payable to DTCP, Haryana towards internal and external development charges, they are ready and willing to deposit the said amount as is estimated by the Govt. of Haryana.²¹

25. In the light of our direction dated 14.02.2019, the Director, Town and Country Planning, Haryana has filed status affidavit containing the details as to (i) amount so far deposited towards the external development charges; (ii) estimate of the internal and external development works and other details.

26. **Stand of Director, Town and Country Planning:-** The State of Haryana has filed detailed status report stating that an amount of Rs.19,76,69,127/- has been deposited with the Department towards the external development charges:-Rs.17,17,72,000/- by the Colonizer + Rs.1,75,00,000/- by the petitioners). The DTCP has stated that respondent No.6, in the written submission dated

²¹ (Point No. (V) at Pg. 15-16 of submission on behalf of petitioners filed on 13.03.2019 in terms of order dated 14.02.2019)

22.07.2019 stated that they have collected Rs.15,79,90,433/- from “No Profit, No Loss” and “General Category” plot claimants and further submitted that the DTCP, Haryana has spent Rs.8,60,00,000/- on the internal development works and deposited Rs.17,17,00,000/- with the State of Haryana for external development works. The State of Haryana has also taken the stand that in response to the show cause notice dated 23.04.2013 issued by the Department to M/s Durga Builder Pvt. Ltd. and its associate companies, reply dated 25.06.2013 signed by Sh. Ravinder Kumar Nanda was filed stating that M/s Durga Builder Pvt. Ltd. has collected Rs.28,13,91,183/- i.e. Rs.17,00,99,128/- in Phase-I and Rs.11,12,92,055/- in Phase-II and spent Rs.21.39 crores on the internal development works. According to the State of Haryana, the stand of DBPL is totally contradictory to its stand taken in the written submission filed in the court.²²

27. Amount so far deposited towards external development charges:- So far as the amount deposited towards External Development Charges, in the Status Report, the State of Haryana has stated as under:-

“That, as per the terms and conditions of the licence, the internal development works are to be executed by the colonizer, so no amount on account of Internal Development Charges has been deposited by the colonizer to the Department. It is further submitted that the colonizer has deposited Rs.17.17 crores. That as per order of this Hon’ble Court dated 07.04.1997 and 02.12.1999, the petitioners have deposited a total sum of **Rs.1.75 crores @ Rs.50/- per sq. yd.** with the Department which has adjusted by the

²² (Under Point No.2 at Pg.7-8 of Reply filed by DTCP, Haryana on 19.08.2019)

Department against outstanding dues of external development charges.

Sl. No.	Detail of External Development Charges	Total amount deposited (in Rs.)
1.	Deposited by the licensee	17,17,72,000/-
2.	Deposited by the petitioners directly in the Department	1,75,00,000/-
	Total	19,76,69,127/-

However, it is submitted that an amount of **Rs.37.739 crores** is outstanding against External Development Charges. As per rough estimate given by the Superintending Engineer, HSVP Circle, Faridabad, about Rs.47.00 crores would be required for completion of the external development works around the colony area and connecting the services with the internal works to be executed in the colony.²³

28. Estimate of the Internal Development Works:- So far as the internal development works in the licensed colony, the DTCP in the status report has stated as under:-

“That the Department requested Haryana Shahari Vikas Pradhikaran to give estimate against internal development works in the licenced colony. As per information supplied by the Superintending Engineer, HSVP Circle, Faridabad vide letter dated 01.03.2019 (Annexure-VI), rough cost estimate for execution of the internal development works in the above said colony would be as under:-

- (a) Approximately **Rs.17 crores** would be required for providing internal water supply, sewerage, storm water drainage and construction of roads (balance work) of Okhla Enclave, Phase-II, Sector 91, Faridabad.
- (b) Approximately **Rs.22.10 crores** would be required for providing internal water supply, sewerage, storm water

23 (Para No.2 at Pg.4-6 of Status Affidavit filed by DTCP, Haryana filed on 07.03.2019)

drainage and construction of roads (balance work) of Okhla Enclave, Phase-I, Sector 91, Faridabad.

(c) Approximately **Rs.20.86 crores** would be required for providing storm water drainage for Phase-I and II.

(d) Approximately **Rs.3.98 crores** would be required for laying of RCC pipe and construction of disposal (sewer). This is in addition to expenditure of **Rs.1.92 crores** incurred till date.

(e) Approximately **Rs.5.09 crores** would be required for providing electrification and street light.²⁴

Thus, total amount of **Rs.70.00** crores would be required to complete the internal development works in the colony.²⁵

29. Estimate of the External Development Works:- For execution of the external development works, Superintending Engineer, HSVP Circle, Faridabad has informed that approximately **Rs.8.00 crores** have already been spent on External Development works of the licensed area. As per rough cost estimates given by the Superintending Engineer, HSVP Circle, Faridabad about **Rs.47.00 crores** would be required for completion of the external development works around the licensed colony area and connecting the services with the internal development works to be executed in the colony. Thus, a total amount of Rs.117,00,00,000/- (Rs.70,00,00,000/- Plus Rs.47,00,00,000/-) is required for the internal development and external development works.²⁶

30. So far as the actual physical features including the extent of internal development and external development works executed, the Status Report states as under:-

²⁴ (Para No.2 at Pg.5 of Status Affidavit filed by DTCP, Haryana on 07.03.2019)

²⁵ (Para No.2 at Pg.6 of Status Affidavit filed by DTCP, Haryana on 07.03.2019)

²⁶ (Para No.2 at Pg. 6 of Status Affidavit filed by DTCP, Haryana on 07.03.2019)

“Regarding external development it is submitted that it includes city level infrastructure such as master plan roads, hospital, college, public health services etc. which are executed as per the provision of Development Plan. As per Superintendent Engineer, Haryana Shahari Vikash Pradhikaran (HSVP), master sewer line from Durga Builder to Palla Chowk, road from bye-pass to Okhla Enclave, connecting sewer of Okhla Enclave disposal have already been executed and the work of master water supply is being undertaken.”²⁷

So far as existing water supply (shown in green colour) and existing sewerage lines (shown in red colour), reference be made to the layout plans of OKHLA Phase-I at Delhi-Haryana Border, Faridabad filed by the State of Haryana along with its status report dated 07.03.2019.

31. As discussed above, a total of Rs.117,00,00,000/- is required for completion of internal and external development works. Since the completion of internal and external development works would take some time, suitable provision has to be made for increase in cost of internal and external development works and other incidental expenses. In our view, in addition to Rs.117,00,00,000/- (Rs.70,00,00,000/-plus Rs.47,00,00,000/-) for internal and external development works, another 10% i.e. Rs.11,70,00,000/- is to be added to the total cost of internal and external development works. Thus, the amount of Rs.128,70,00,000/- (Rs.117,00,00,000/- + Rs.11,70,00,000/-) is payable to the Director General, Town and Country Planning (DGTCP), Haryana for undertaking and completing the internal and external development works. Mr. Maninder Singh, learned Senior counsel appearing for the Director,

²⁷ (Para No.2 at Pg. 6 of Status Affidavit filed by DTCP, Haryana dated 07.03.2019)

Town and Country Planning, Haryana submitted that at least 90% of the amount has to be deposited to enable the Department to undertake the works. The question is as to how this amount is to be paid to DTCP, Haryana.

32 Apportionment of the total cost for internal and external development charges:- The learned senior counsel appearing for the petitioners submitted that the members of the petitioner association are ready to proportionately bear the cost of the internal and external development works. Taking the total amount as Rs. 128,70,00,000/- and the total extent of area to be allotted to the eligible allottees, the Arbitrator shall determine the cost for the square meter and proportionately apportion the total cost amongst the eligible plot owners. Each one of the eligible plot owners shall file individual affidavit undertaking to make the payment before the DTCP within the time frame fixed by the Arbitrator. If the proportionate amount so apportioned to the individual plot owners is not paid within the stipulated time frame, they shall forfeit the right over the plot. The format of the affidavit shall be finalised by the learned Arbitrator. In case if any of the eligible allottees are having difficulty in paying the amount, two or three eligible allottees are at liberty to join together depending upon the size of the plot and pay the development charges and share their proportionate right over the plot. It is made clear that the payment of the development charges will have to be time bound and in case, the amount is not paid within the time bound, the said allottee shall forfeit the right for the plot.

33 From out of the above amount of Rs.1,28,70,00,000/-, Rs.70 lakhs to be kept apart to enable the Director, Town and Country

Planning, Haryana to adjust the expenditure so far borne by DTCP in issuing various advertisements and other such incidental expenses. The details of such expenditure so far made by DTCP along with necessary bills/vouchers be produced before the learned Arbitrator and the learned Arbitrator to pass appropriate orders for adjustment of the expenditure amount so far borne by DTCP, Haryana.

34. On behalf of the petitioners, it was stated that the General Secretary of petitioners' association has been duly authorised by its members in the general meeting held on 15.09.2019 to state that its members shall pay the development charges within the stipulated time frame fixed by the State of Haryana. In the response filed by the petitioners' association, it is stated that in case if any plot holder does not pay the amount on demand by DTCP, Haryana within the stipulated time frame, the plot holder may be levied interest at the rate of 18% by giving one more opportunity to the plot holder for payment. The request for one more opportunity to deposit the apportioned amount payable cannot be accepted since the matter is pending for more than two decades. The payment of apportioned amount should be a time bound one. In case if any of the plot owner (who has already obtained the sale deed) does not pay the apportioned external and internal development charges within the time frame, the developments/amenities like sewerage, water connection, electricity and other developments shall not be extended to him.

35. The learned Senior counsel Mr. R. Basant repeatedly submitted that as many as about 450 members of petitioners' association have obtained the sale deed and they would definitely

pay the apportioned development charges. Since there are number of beneficiaries, it is necessary to clarify the consequence **if the claimants do not pay the amount stipulated within the prescribed time frame.** In case the claimants express unwillingness to pay the proportionate development charges or fail to give an undertaking within the given time frame, the land allotted to them will revert to the Colonizer on certain conditions viz. – colonizer will pay the claimant the amount paid towards the cost of land with interest from the date on which such payment was made at a rate which may be considered appropriate by the arbitrator. The Colonizer in addition to the above, shall also pay the proportionate amount towards development works payable for the said plot to the government of Haryana. On the order passed by the arbitrator, such payment shall be made within six weeks from the date of failure of payment by the claimant.

36. Insofar as the other categories of allottees who have not been identified and who are yet to have the sale deed, in case if they do not pay the development charges within the time frame, as discussed earlier, they shall forfeit the right over the plot. The Colonizer has undertaken to refund the amount to the allottees in case of failure to pay the apportioned amount by the individual plot owners. The Colonizer has also undertaken to refund the amount to the allottees who cannot pay the due amount to DTCP, Haryana. In case of the plot owner who cannot pay the apportioned development charges or committed default in payment of the apportioned amount, the colonizer shall pay the consideration amount paid by the allottee along with the reasonable interest.

Additionally, the Colonizer shall also pay the apportioned amount of the development charges qua those plots.

37. Number of claimants settled by the Scrutiny Committee appointed by the learned Arbitrator – Report signed by all the parties:- Shri H.P. Sharma, Court Commissioner was appointed by the Supreme Court vide order dated 21.10.2008. As per order dated 18.07.2013 of the Supreme Court, it was directed that fresh exercise to prepare a final list of claimants be undertaken by the Director General, Town and Country Planning. This was accordingly done and 3002 eligible plot holders were identified. This information was submitted to the Supreme Court through affidavit dated 15.11.2013. The Arbitrator vide order dated 07.05.2016 set the following conditions to determine the entitlement of each plot holder:-

- a) Plot holders should have made bookings alongwith entire payments towards cost of land prior to 07.04.1997.
- b) Such plot holders should have paid/deposited the entire development charges with the Haryana Government upto 31.12.1999, in terms of the order of the Supreme Court dated 02.12.1999.
- c) The plot holders who have made bookings alongwith the entire payment towards cost of land prior to 07.04.1997 but had not made payments towards the development charges in terms of the order of the Supreme Court dated 02.12.1999, can be considered provided they are willing to pay the development charges as would be required on the date of carrying out the actual development.
- d) Multiplicity and duplicity of claims, i.e. more than one claim from one family will not be considered as eligible. Further, if any person is already in occupation of a plot illegally or by encroachment, he will similarly not be considered for any further allotment.²⁸

28 (Para Nos.3-5 of the Order dated 07.05.2016 of Arbitrator)

38. The exercise of deciding eligible candidates was started with the NPNL category. The Director, Town and Country Planning, Haryana issued a public notice on 18.08.2016 in the newspaper inviting applications to file claims accompanied with supporting documents regarding allotment/booking of plot in NPNL category. The Scrutiny Committee decided that an amount of Rs. 550/- be taken as development charge for scrutiny of claims.²⁹ The Scrutiny Committee received 2690 applications for the purpose of scrutiny before the cut-off date. However, 523 applicants did not appear before the Committee for the purpose of scrutiny. After scrutiny of applications, the Committee found total 1932 NPNL category applicants, 73 general category applicants, 165 commercial category applicants and 2 EWS category applicants.³⁰

39. **NPNL Category** were divided into five categories as under³¹:-

Those who have paid full land cost/development charges before cut-off date	.....	1155
Those who have paid full land cost and part development charges before cut-off date	.....	457
Those who have paid full land cost only and no development charges	.....	86
Those who have paid part land cost only and no development charges	.....	17
Those who got sale deed executed directly from developer or through re-sale	.....	220

²⁹ (Under Point No.6 at Pg 4 of submission of R6 dated 22.07.2019).

³⁰ (Pg 23 of vol. 1 of scrutiny committee report dated 28.10.2017)

³¹ (Under Point No.3 at Pg.9 of the Reply filed by DTCP, Haryana on 19.08.2019)

40. Thereafter, scrutiny qua general and EWS category claimants was started. Vide order No.20 dated 13.07.2018, the Arbitrator directed the State to again give state-level advertisements inviting representation from all parties alongwith documents supporting their allotment in General and EWS category by 31.07.2018. The cut-off date for submitting application/claims was four weeks from the date of advertisement. In compliance of this order, public notice was advertised on 04.08.2018 in Amar Ujala, Dainik Jagran (Hindi) and Tribune (English). The last date for receipt of application was 03.09.2018 but since 03.09.2018 being a gazetted holiday, the applications received upto 04.09.2018 were considered by the Committee.³² Under the **EWS category**, draw was held on 30.07.1994 and 18.11.1995 where 350 persons were successful. **Only 106 applicants applied for allotment.**³³

41. **General Category:-** During scrutiny of documents, it was observed that in the general category plots where Builder Buyer Agreement has been executed, the rate for plot size more than 263 sq. yards had been fixed @ 425 per sq. yards. Following categorisations were made with respect to general category claimants³⁴:-

Claimants who paid land cost @ 425 with development charge at the rate of 550 per sq. yard	.....	52
Claimants who paid part land cost/development charge	.....	16
Claimants who could not produce any evidence/documents with regard to booking/payment of development charge before cut-off date and got sale	.....	402

³² (Pg 3 of scrutiny committee report qua general and EWS category).

³³ (Pg.6 of scrutiny committee report qua general and EWS category)

³⁴ (Pg.5 of scrutiny committee report qua general and EWS category)

deed/conveyance deed executed from
developer

Note:- The report of the general category plots was not signed by Sh. Ashok Aggarwal, the authorised representative of Durga General Plot Holders Welfare Association as he was not satisfied with the scrutiny procedure/comments of the scrutiny committee.³⁵

Note:- In above 402 cases, 86 numbers of cases are claimed by M/s Hindustan Commercial Investment Trust & M/s Class Sales Pvt. Ltd., wherein the Directors are Sh. Divij Mehra etc. only who are now claiming to be the Director of M/s Durga Builder Pvt. Ltd. in the Supreme Court.³⁶

42 The Scrutiny Committee consisting of Senior Town Planners and others have thus identified the number of eligible plot owners. The number of eligible allottees have to be decided by the Arbitrator applying the parameters as set out in the order of the Arbitrator dated 07.05.2016 and the learned Arbitrator to determine the final list of eligible plot owners in all the categories – NPNL, Economic Weaker Sections (EWS) and General and also commercial.

43. Once the number of allottees are identified, as discussed earlier, the amount of internal and external development cost has to be proportionately apportioned amongst each one of the eligible allottees. It is seen from the Scrutiny Committee Report and the status report filed by the State of Haryana, about 452 plot owners have got the sale deed from the Colonizer; some of the allottees are yet to get the sale deed. Section 8 of the Haryana Development and Regulation Urban Areas Act, 1975 (HDRA Act) inter alia provides for cancellation of licences if the Colonizer contravenes any of the conditions of the licence or the provisions of the HDRA Act and also

35 (Under Point No.3 at Pg.10 of the Reply filed by DTCP, Haryana on 19.08.2019)

36 (Under Point No.3 at Pg.10 of the Reply filed by DTCP, Haryana on 19.08.2019)

provides for mode of carrying out the development works in the colony. Section 8(4) of the HDRA Act enables the Director to transfer the possession and title of the land to the plot owners. Section 8 (4) of the HDRA Act reads as under:-

“8. Cancellation of licence –

.....

(4) Notwithstanding anything contained in this Act, after the colony has been fully developed under sub-section (2), the Director may with a view to enabling the colonizer, to transfer the possession of and the title to the land to the plot-holders within a specified time, authorise the colonizer by an order, to receive the balance amount, if any, due from the plot-holders, after adjustment of the amount which may have been recovered by the Director towards the cost of the development works and also transfer the possession of or the title to the land to the plot-holders within aforesaid time. If the colonizer fails to do so, the Director shall on behalf of the colonizer transfer the possession of and the title to the land to the plot-holders on receipt of the amount which was due from them.

.....”

Once the allottees are identified and the allottees pay the apportioned development charges, the learned Arbitrator shall direct the Director to execute necessary documents in favour of the allottees in terms of Section 8(4) of the HDRA Act.

Question No.3:- In view of the fact that around 2690 claims were received in the NPNL category, the State of Haryana will have to devise a policy for relaxing density norms for the Project.

44. Out of the total 234.675 acres licensed land under seven licences, 46.85 acres land is under encroachment/unauthorised construction and 187.825 acres land is stated to be available for planning. In the report filed by the DTCP, Haryana dated 19.08.2019, it is stated that out of the above 187.825 acres area,

43.68 acres area was reserved for general category plots, 23.475 acres area was reserved for community/infrastructure sites. Balance, 120.67 acres was planned for EWS and NPNL category plots. As per the layout plan of Phase-I and Phase-II, details of the plots like category, plot area and the number of plots are as under:-

Phase-I

Total – 1502 plots ^{*37}

Sl. No.	Size of the Plot	Number of Plots	Category	Total (category wise)
1.	200 sq. Mtrs	272 plots	Category D – reserved for NPNL	427 plots
2.	148.75 sq. Mtrs	155 plots	Category E – reserved for NPNL	
3.	101.25 sq. Mtrs	163 plots	Category F – reserved for EWS	746 plots
4.	50 sq. Mtrs	255 plots	Category G – reserved for EWS	
5.	112 sq. Mtrs	328 plots	Category H – reserved for EWS	
6.	420 sq. Mtrs	101 plots	Category A – reserved for General	329 plots
7.	350 sq. Mtrs	78 plots	Category B – reserved for General	
8.	242 sq. Mtrs	150 plots	Category C – reserved for General	

Phase-II

Total – 1424 plots^{*38}

Sl. No.	Size of the Plot	Number of Plots	Category	Total (Category wise)
1.	200 sq. Mtrs	163 plots	NPNL	356 plots
2.	148.75 sq. Mtrs	176 plots	NPNL	
3.	128 sq. Mtrs	17 plots	NPNL	
4.	101.25 sq. Mtrs	425 plots	EWS	857 plots
5.	50 sq. Mtrs	268 plots	EWS	
6.	112 sq. Mtrs	164 plots	EWS	
7.	420 sq. Mtrs	96 plots	General	211 plots
8.	350 sq. Mtrs	24 plots	General	
9.	242 sq. Mtrs	91 plots	General	

37 Revised lay-out plan submitted by DTCP, Haryana in its status affidavit dated 07.03.2019 at Pg. 26.

38 Revised lay-out plan submitted by the DTCP, Haryana in its status affidavit dated 07.03.2019 at Pg. 27.

45. On behalf of the Director, Town and Country Planning, Haryana, it is stated that as per the revised layout plan of Phase-I and Phase-II, the plotted area shall not exceed 55% of the net planned area of the colony. The commercial area shall also be included in this plotted area for calculations of the area under the plots. In Phase-I, the total area under the scheme is 126.724 acres out of which the area under the residential plot is 61.64 acres. In Phase-II, the total area under the scheme is 107.95 acres out of which 51.03 acres is the area in residential plots.^{*39}

46. Insofar as the question raised by the learned Arbitrator that whether the present density norms can be relaxed for the project, Mr. Maninder Singh, learned Senior counsel appearing for the State of Haryana has submitted that the density norms like the area reserved for roads, common purposes, etc. cannot be reduced. Insofar as the density of the plots, the learned Arbitrator if need be, shall make appropriate adjustments of the plots in conformity with the existing rules. The adjustments of the plot area will have to be done from amongst the plot owners. The State of Haryana shall render its co-operation in adjustment of the plot sizes in the approved layout of course, subject to the conformity with the existing rules and governing sanction of the scheme.

Licence fee payable by the Colonizer, issue of encroachment and the expenses met by the Director, Town and Country Planning, Haryana in engaging the watch and ward of the licensed area and other issues.

47. **Licence fee:-** As discussed earlier, seven licences were issued to M/s Durga Builders Private Limited and its associate

³⁹ Under Point No.2 at Pg. 3 in the status affidavit filed by DTCP, Haryana dated 07.03.2019.

companies for the total area measuring 234.674 acres under Section 3 of the Haryana Development and Regulation of Urban Areas Act, 1975 (HD&RUA Act). The above said licensed areas are in two pockets i.e. as Okhla Enclave Phase-I (Area 126.724 acres) and Okhla Enclave Phase-II (Area 107.95 acres). The copies of the approved layout plans of Okhla Enclave Phase-I and Phase-II are revised on 24.09.1997. In terms of the provisions of the Act and as per the conditions of the licence, the Colonizer has to pay the licence fee and the licence renewal fee. In the status affidavit filed by the Director, Town and Country Planning, Haryana in March, 2019, it is stated that an amount of Rs.21,86,97,901/- (as on 28.02.2019) is outstanding from the Colonizer. As per the terms and the conditions of the licence, the Colonizer/Developer is bound to bear the expenses to carry out the internal development works in the colony and to clear the government dues of fee for renewal of licence and other expenses borne by the State of Haryana. However, with a view to move forward with the development, the allottees of the plots have undertaken to pay the cost of the internal and the external developments. But the Colonizer cannot be allowed to go scot free. The sixth respondent-Colonizer is bound to pay the licence fee of Rs. 21,86,97,901/- (as on 28.02.2019) towards the fee for renewal of licence which is payable with interest @ 6% per annum from 28.02.2019. If the amount is not paid by the sixth respondent, it is for the State of Haryana to proceed against the sixth respondent to recover the amount as if it is a land revenue. For the said amount of 21,86,97,901/- (as on 28.02.2019), there would be a charge on the properties of the sixth respondent-Colonizer.

48. Issue of encroachment and the expenses met by the Director, Town and Country Planning, Haryana in engaging the watch and ward of the licensed area:- In the counter affidavit filed by the Director, Town and Country Planning, Haryana, it is stated that an extent of 46.85 acres land was under encroachment/unauthorised construction. By the order dated 18.07.2013, the Supreme Court has directed the Department for watch and ward of the licenced area till the matter is resolved. In this regard, in the affidavit filed by the Director on 19.08.2019, it is stated that:-

*The Department has hired a private security agency at the expense of Rs.2.5 lakh per month, which has deputed twelve number of security guards for twenty-four hours to keep a watch and ward of this licensed area. The Department has already paid approximately Rs.1.25 crores to the security agency. Due vigilance on the licensed area is being kept and demolition of encroachment/unauthorised construction is being done by the Enforcement Wing of Town and Country Planning, Department. A whatsapp group of the officials of police department, enforcement wing of this department and hired security guards has been created to update the time to time status of unauthorised constructions, if any. For the awareness of general public, the flex boards have been displayed on prominent places of this colony clearly mentioning that matter of this colony is *subjudice* and no person can do sale, purchase of plots and raise unauthorised construction in this colony till the matter is resolved. Whenever any new illegal construction activity comes to the notice, the same are immediately removed.*⁴⁰

49. In the affidavit, it is further stated that there was a big demolition drive in the colony on 11.04.2017 during which, newly erected thirty-five residential structures and fifteen numbers of DPC/boundary wall were removed. It is further stated that even if any small construction activity like wire fencing, DPC, boundary wall, etc. occurs in the colony, the same is removed by the security guards at the initial stage and the Department has taken sincere efforts to ensure that no new encroachment or unauthorised construction has taken place on the licensed area. It is stated that

~~40 Point No.4 at Page No.11 of reply filed by DTCP, Haryana on 19.08.2019.~~

however, the already existing encroachment over an area of 46.85 acres could not be removed due to Law and Order problem.

50. In this regard, DTCP, Haryana has pointed out that an amount of Rs.1.25 crores already spent by the Department towards the watch and ward and the same is also payable by the sixth respondent-Colonizer. Thus, the total amount payable by the Colonizer to the Department is Rs.21,86,97,901/- (as on 28.02.2019) which is payable with interest @ 6% per annum from 28.02.2019 Plus Rs.1.25 crores borne by the Department to the security agency till August, 2019-the date of filing of the affidavit before the Supreme Court and further expenses borne by the Department for watch and ward of the licensed area and other incidental expenses. If the above amount is not paid by the sixth respondent-Colonizer, it is for the State of Haryana to proceed against the sixth respondent to recover the amount as fee which is a land revenue.

51. **Surplus plots, if any, left – Entitlement of respondent No.6-Colonizer:-** It has been submitted by Respondent No.6-Colonizer that a joint technological survey was conducted by the State and the Colonizer as per order dated 07.05.2016 of the Arbitrator. In this survey, electoral and electricity records of the encroached area were taken and tallied with the names in the scrutiny report to determine the genuineness of plot holders. It was found that a considerably large number of petitioners before this Court are already living on the licensed land^{*41}. Respondent No.6 is required to submit a final list of such claimants before the Arbitrator. It is clarified that if it is found that any allottee is already living on the

⁴¹~~Under Point No.4~~ at Pg.3 of submissions on behalf of R6 to clarifications sought by the Supreme Court vide order dated 14.02.2019.

encroached land, they would not be entitled from claiming any further allotment in their favour.

52 Surplus plot if any – Entitlement of Respondent No.6-Colonizer:- One last issue as to the entitlement over the surplus land, if any, left after allotment of land to eligible allottees has to be settled. In this context, it is observed that though there are various claims as to who is the present Director of M/s Durga Builders Private Limited, there is no serious dispute that the land in question was owned by said M/s Durga Builders Private Limited and its associate companies. Licenses were also granted to them by the State of Haryana. These licenses have long since expired and have not been renewed after 1999. However, till date no action has been taken against these companies on account of non-renewal of license. According to the State of Haryana, an amount of Rs. 21,86,97,901/- (as on 28.02.2019) is outstanding against licence renewal fee. On payment of this outstanding amount against the license renewal fee with interest from 28.02.2019 and also on payment of expenses borne by DCTP in engaging the security agencies for watch and ward of the licensed area, M/s Durga Builders Private Limited and its associate companies would be entitled to claim the surplus plots.

53. Additionally, in case, if any of the allottees are not in a position to pay the apportioned internal and external development charges and expresses willingness to quit and consequently the plot falls vacant, the same shall be considered being allotted to the sixth respondent-Colonizer, of course, striking a balance between the allottee of the plot and the Colonizer. The Arbitrator shall determine the compensation payable by the sixth respondent-Colonizer and

direct the sixth respondent-Colonizer to compensate the allottee of the plot by directing the sixth respondent-Colonizer to pay adequate compensation in lieu of the claim for the plot falling vacant. In order to make a claim for such plots falling vacant, the sixth respondent-Colonizer is to pay:- (i) the compensation to allottee as directed by the learned arbitrator; and (ii) to pay the apportioned amount of internal and external development charges.

Question No.4:- The last direction as sought by the Arbitrator is to pass appropriate directions for converting these proceedings to that of a Special Committee:-

54. In this context, we may usefully refer to the order of appointment of the Arbitrator dated 27.01.2016 wherein, this Court provided that all the parties shall submit their respective proposed terms of reference before the Arbitrator who shall first settle the terms of reference and thereafter, resolve the disputes involved between the parties. On completion of the arbitral proceedings, the Arbitrator was directed to submit a report to the Supreme Court.

55. Arbitration is a mechanism to settle the disputes of the parties on the basis of the terms of arbitration agreement between the parties. In the present case, there is no agreement between the parties. The matter was referred to Justice Vikramjit Sen only as a remedial measure to solve the grievance of the petitioners who were aggrieved by the non-allotment of the plots by Colonizer and to resolve the lengthy issue involved in such allotment. Thus, the instant arbitration proceedings cannot be strictly called so and the term 'arbitration' in this context is a misnomer and the proceedings actually are one of a Special Committee.

56. In his letter dated 23.01.2018, the Arbitrator has also observed that *"these proceedings are not in the nature of arbitration and*

essentially, in the nature of a Special Committee of the Hon'ble Supreme Court of India.” We fully agree with the views expressed by Justice Vikramjit Sen. It is made clear that the present proceedings are not in the nature of arbitration within the meaning of the Arbitration and Conciliation Act, 1996; but essentially, in the nature of a Special Committee constituted by the Hon'ble Supreme Court of India.

Other observations relevant for determination of the issue:-

57. Remuneration payable to the Arbitrator:- As to the question of remuneration payable to the Arbitrator, reference can be made to the order dated 27.01.2016 wherein, it was provided that the fee shall be decided by the Arbitrator and be borne equally by all the parties. Accordingly, the Arbitrator shall decide his fee to be payable by the parties as directed by the learned arbitrator.

58. Summary of Conclusion:-

Number of claimants settled by the Scrutiny Committee:-

- The number of eligible allottees are to be decided by the Arbitrator applying the parameters as set out in the order of the Arbitrator dated 07.05.2016 and the learned Arbitrator to determine the final list of eligible plot owners in all the categories – NPNL, Economic Weaker Sections (EWS) and General and also commercial.
- Once the allottees are identified and the allottees pay the apportioned development charges, the learned Arbitrator shall direct the Director to execute necessary documents in favour of the allottees in terms of Section 8(4) of the HDRA Act.

Question No.1:

- Members of the petitioner association/allottees purchased the plots from the Colonizer who held the above seven licences and therefore, they are entitled to the entire extent of land as per the layout without going into the question of which is the portion of the land M/s Durga Builder Pvt. Ltd. is claiming succession.
- The claim of the sixth respondent can be considered by the arbitrator only subject to the payment of licence renewal fee of Rs.21,86,97,901/- (as on 28.02.2019) with interest @ 6% from 28.02.2019 plus Rs.1.25 crores borne by DTCP, Haryana in maintaining the security as per the order of the Court dated 18.07.2013.
- The claim of the sixth respondent-colonizer could be considered only if respondent No.6-Colonizer pays the licence renewal fee of Rs.21.89 crores and other amount spent by DTCP, Haryana towards keeping watch and ward of the licensed area and other charges.
- On payment of this outstanding amount against the license renewal fee with interest from 28.02.2019 and also on payment of expenses borne by DCTP in engaging the security agencies for watch and ward of the licensed area, M/s Durga Builders Private Limited and its associate companies would be entitled to claim the surplus plots.
- **Claim of Mr. Arun Mehra qua 87 plots:-** So far as the claim of Mr. Arun Mehra in respect of 87 plots, liberty is granted to Mr. Arun Mehra to work out his remedy in accordance with law by agitating

the matter before the competent court. However, it is made clear that the claim of Mr. Arun Mehra in respect of 87 plots shall not come in the way of the claim of the beneficiaries.

Question No.2:

- The Town and Country Planning Department has stated that only after payment of at least 90% of the total amount, they will undertake the work.
- A total amount of Rs.128,70,00,000/- (Rs.117,00,00,000/- on account of internal and external development work + Rs.11,70,00,000/- as 10% additional cost) is payable to the DTCP, Haryana. The total amount of Rs.128,70,00,000/- is payable by the members of the petitioners' association and eligible plot owners to the Director General, Town and Country Planning (DGTCP), Haryana for undertaking and completing the internal and external development works.
- Out of the above amount of Rs.128,70,00,000/-, Rs.70 lakhs to be kept apart to enable the Director, Town and Country Planning, Haryana to adjust the expenditure so far borne by DTCP in issuing various advertisements and other such incidental expenses.
- As regards the internal development charges, the court in its order dated 07.04.1997 noted that the Government has fixed Rs. 878/- for the plots of the size 135 sq. yards to 170 sq. yards and Rs. 975/- for plots of 171 to 220 sq. yards. As to the external development, it was worked out at Rs. 4,70,000/- per acre which was to be borne by the allottees.⁴² However, it is stated only some of the allottees (according to the Colonizer, only 143 of the

42 (Para No.8 of Proceedings of the Supreme Court dated 07.04.1997)

allottees) have complied with the order of the Supreme Court. But according to the petitioners that in compliance of the order of the Supreme Court, they have paid the amount. This has to be verified; those of them who have not complied with the order of the Supreme Court shall be directed to pay the amount with 6% interest on the amount payable from 01.01.1998.

Apportionment of the amount and consequence of failure to pay:-

- The Arbitrator shall determine the cost for the square meter and proportionately apportion the total cost amongst the eligible plot owners depending on their respective plot size.
- The General Secretary of petitioners' association has undertaken that its members shall pay the development charges within the stipulated time frame fixed by the Arbitrator/State of Haryana.
- The payment of apportioned amount should be a time bound one. In case if any of the plot owner (who has already obtained the sale deed) does not pay the apportioned external and internal development charges within the time frame, the developments/amenities like sewerage, water connection, electricity and other developments shall not be extended to him.
- In case the claimants who have not so far got the sale deed executed express unwillingness to pay the proportionate/apportioned development charges or fail to give an undertaking within the given time frame, the land allotted to them will revert to the Colonizer on certain conditions viz. – (i) colonizer will pay the claimant the amount paid towards the cost of land with interest from the date on which such payment was made at a rate

which may be considered appropriate by the arbitrator; and(ii) in addition to the above, the Colonizer shall also pay the proportionate amount towards development works payable for the said plot to the government of Haryana.

- Insofar as the other categories of allottees who have been identified and who are yet to get the sale deed, in case if they do not pay the development charges within the time frame, as discussed earlier, they shall forfeit the right over the plot. The Colonizer has undertaken to compensate such allottees and pay the amount to such allottees as refund the amount to the allottees in case of failure to pay the apportioned amount by the individual plot owners.

Question No.3:-

- Insofar as the question raised by the learned Arbitrator that whether the present density norms can be relaxed for the project, Mr. Maninder Singh, learned Senior counsel appearing for the State of Haryana has submitted that the density norms like the area reserved for roads, common purposes, etc. cannot be reduced.
- Insofar as the density of the plots, the learned Arbitrator if need be, shall make appropriate adjustments of the plots in conformity with the existing rules. The adjustments of the plot area will have to be done from amongst the plot owners. The State of Haryana shall render its co-operation in adjustment of the plot sizes in the approved layout of course, subject to the conformity with the existing rules and governing sanction of the scheme.

Question No.4:-

- It is made clear that the present proceedings are not in the nature of arbitration within the meaning of the Arbitration and Conciliation Act, 1996; but essentially, in the nature of a Special Committee constituted by the Hon'ble Supreme Court of India.

Other observations relevant for determination of the issue:-

- The sixth respondent-Colonizer is bound to pay the licence fee of Rs. 21,86,97,901/- (as on 28.02.2019) towards renewal of licence with interest @ 6% per annum from 28.02.2019. If the amount is not paid, it is for the State to proceed against the sixth respondent to recover the amount as if it is a land revenue. For the said amount of 21,86,97,901/- (as on 28.02.2019), there would be a charge on the properties of the sixth respondent-Colonizer.
- Upon the payment of Rs.21,86,97,901/- as licence fee, respondent No.6-Colonizer is at liberty to work out his remedy qua the encroached area of 46.85 acres in accordance with law and also the surplus plots as determined by the learned arbitrator.
- Pursuant to the order passed by the Supreme Court, DTCP, Haryana has stated that it has spent an amount of Rs.1.25 crores towards watch and ward and the same is payable by the Colonizer. Thus, the colonizer shall pay Rs.1.25 crores to DTCP, Haryana till August, 2019-the date of filing of the affidavit before the Supreme Court and further expenses borne by the Department for watch and ward of the licensed area and other incidental expenses. If the above amount is not paid by the sixth respondent-Colonizer, it is for the State of Haryana to proceed against the sixth respondent to recover the amount as land revenue.

- On payment of licence fee and other dues, the Colonizer would be entitled to make a claim for the surplus plots, if any, left over.

59. We place on record the valuable assistance rendered by learned Senior counsel, Mr. Raju Ramachandran, learned *amicus curiae* who is assisted by Ms. Rashmi Nandakumar, Advocate. We also place on record the co-operation rendered by Mr. R. Basant and Ms. V. Mohana, learned senior counsel appearing for the petitioner-Association; Mr. Maninder Singh, learned Senior counsel and Dr. Monika Gusain, learned counsel appearing on behalf of State of Haryana and DTCP; and Mr. Satvik Varma and Mr. Mohit Mudgal, learned counsels appearing on behalf of the sixth respondent-Colonizer.

60. Accordingly, the clarifications sought by the Learned Arbitrator are answered.

61. All pending applications shall stand closed.

.....J.
[R. BANUMATHI]

.....J.
[A.S. BOPANNA]

**New Delhi;
October 03, 2019**