

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

INDEX

IN

COUNTER AFFIDAVIT

**TO THE AFFIDAVIT OF COMPLIANCE DATED 14.12.2022 FILED
BY RESPONDENT NO. 13.12.2022 OR 5TH SUPPLEMENTARY
AFFIDAVIT**

(On behalf of the Impleaded Respondents/Homebuyers)

IN

CIVIL MISC. WRIT PETITION NO.6049..... OF 2020

(Under Article 226 of the Constitution of India)

DISTRICT- GAUTAM BUDDH NAGAR

M/s Jaiprakash Associates Ltd.Petitioner

Versus

State of Uttar Pradesh and anotherRespondents

Sl.No.	Particulars	Dates	Annexure No.	Pages
1.	Rejoinder Affidavit.			
2.			SA-1	
3.			SA-2	

Dated: ___ / 01 / 2023

(Abhinav Gaur)

Advocate

Counsel for the Impleaded Respondents/Homebuyers

Roll No: A/A0353/18

Chamber No.71, High Court, Allahabad

Mob: 8860264935

*Please Note: Sri Anoop Trivedi, Senior Advocate has consented to appear
and argue on behalf of the Impleaded Respondents/Homebuyers.*

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(Under Article 226 of the Constitution of India)

DISTRICT- GAUTAM BUDDH NAGAR

M/s Jaiprakash Associates Ltd.

Being a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at Sector 128, NOIDA-201304, Uttar Pradesh, through its Authorized Signatory Mr. Manmohan Sibbal**Petitioner**

Versus

1. State of Uttar Pradesh

Through Principal Secretary, Department of Industrial Development at UP Civil Secretariat.

2. Yamuna Expressway Industrial Development Authority,

Through its Chief Executive Officer, At First Floor, Commercial Complex, P-2, Sector Omega 1, Greater NOIDA, Gautam Budh Nagar, Uttar Pradesh-201308

.....**Respondents**

Affidavit of Ram Pukar Maurya,
Aged about 54 years
S/o Shri R. L. Maurya,
R/o- 803, Tower 8 Zen Spire Ramprastha
Green Sector 9, Vaishali, i.e., Sahibabad,
Ghaziabad, Uttar Pradesh, PIN:- 201010
Religion- Hindu
Occupation- Home Buyer

(DEPONENT)

I, the deponent, abovenamed, do hereby solemnly affirm and state on oath as under:

1. That the deponent is one of the home buyers who have been impleaded as respondents in the instant writ petition and he has been duly authorized by the other home buyers to file the instant affidavit on their behalf. He is filing a copy of his Adhaar Card alongwith this affidavit and as such he is fully acquainted with the facts of the case deposed herein below.
2. That the deponent has understood the contents of the affidavit of compliance dated 13.12.2022 filed by respondent no. 2 and he is in a position to reply to the same.
3. That vide an order dated 12.12.2022 this Hon'ble Court had directed the Respondent Authority to serve a copy of the affidavit of compliance on all the parties to enable them to file their objections to the same, if any. As such in terms of the order dated 12.12.2022 passed by this Hon'ble Court the deponent is filing the instant affidavit bringing on record its objections to the decision taken by the Respondent Authority on the Revised Composite Settlement Proposal filed by the petitioner by means of the 5th Supplementary Affidavit dated 10.11.2022.
4. That it is stated that the instant writ petition has been filed by the petitioner challenging the order dated 12.2.2020 passed by respondent Authority cancelling the allotment of land to the petitioner in Sector 25 under Special Development Zone Scheme vide six allotment letters of different dates.
5. That the respondent authority had executed lease deeds of a huge chunk of land spread in 965.7390 hectares in favour of the petitioner for development of Sport City. The petitioner lured the public at large for investing in its projects by assuring that a dream home will be developed and delivered within stipulated time. Based on the assurances of the petitioner and trusting the bona fides of the project since it was introduced by the State Government, several thousand

home buyers including the answering respondents booked residential flats and plots and invested their hard earned money in the project.

6. That, however, the petitioner miserably failed to complete the construction of the project within the stipulated time and kept on making false promises to deliver the same but to no avail.
7. That while the home buyers were being made to run from pillar to post for getting the possession of their residential units or refund of their hard earned money, the order impugned in the instant writ petition came to be passed by the respondent Authority by which the lease of the entire land was cancelled without even considering that hard earned money of thousands of home buyers was already invested in the project.
8. That when the answering respondents got to know about the filing of the instant writ petition, they filed the Impleadment application which came to be allowed by this Hon'ble Court vide an order dated 8.2.2021 and a total of 227 allottees/homebuyers were impleaded as party respondents to the instant writ petition.
9. That the allottees/homebuyers comprises of the allottees of residential flats, villas and plots in the project of the petitioner company who have paid substantial amount of their hard earned money to the tune of approximately 2000 Crore, however, till date projects has not been completed because of which they are suffering irreparably.
10. That as regards the allottees of the "residential flats" in the project of the petitioner, it is stated that there are four projects which were to be developed by the petitioner - namely (i) Budh Circuit Studio-I, (ii) Kassia-I, (iii) Kassia II & III and (iv) Kove. In so far as the "Villas" are concerned there are three projects - namely (i) Sportsville, (ii) Villa Expanza County Homes-II and (iii) Villa Expanza Greencrest Homes.

11. That on 14.02.2022 the petitioner submitted before this Hon'ble Court that it is willing to settle the dues of the respondent Authority and with respect to the home buyers, the petitioner undertook to provide a road map indicating the manner in which the project is likely to be completed and how much time the same would take. As such vide an order dated 14.02.2022 the matter was adjourned on the assurance of the petitioner that it would make all efforts to resolve the dispute even outside the Court.
12. That, however, the petitioner did not make any endeavor to get the dispute resolved amicably so that the interest of the allottees could also be taken care of. Rather one Supplementary Affidavit dated 20.02.2022 was filed by the petitioner before this Hon'ble Court in which an alleged roadmap for completing construction of **projects** was brought on record. However, the said roadmap was merely an eye wash and no concrete plan was made by the petitioner in the interest of the allottees to complete the construction of the residential flats and villas.
13. That as such on 6.4.2022 when the instant writ petition was heard, **and proposal in Supplementary Affidavit was rejected by all parties before court and** the petitioner sought further time to come up with a revised proposal. Thereafter, when the matter was listed on 29.9.2022, petitioner sought some time to **bring on record the revised** proposal for revival of the project for liquidation of its liabilities qua respondent authority and the homebuyers.
14. That thereafter vide a Third Supplementary Affidavit dated 30.09.2022 the petitioner brought on record revised proposal for completing of housing projects launched by the petitioner. However, the said proposal was merely an eye wash **and repetition of the earlier proposal qua homebuyers** and no concrete plan **with viable financial commitments** was made by the petitioner in the interest of the allottees to complete the construction of the residential flats and villas. The said proposal was a conditional proposal without **any and sufficient** upfront

infusion of capital in the residential projects rather it was contingent on availability of funds in future **and approval of its plans by respondent 2 and UP RERA**. The aforesaid proposal submitted by the petitioner was a farce and showed no genuine intent **and efforts of the petitioner to get approvals of projects and definite funding to complete the residential project**.

15. That it is stated that in supersession of the earlier proposal, the petitioner submitted another revised proposal before the respondent Authority on 27.10.2022. However, it was also substituted and revised by another proposal dated 8.11.2022 which was filed by the petitioner by means of its 5th Supplementary Affidavit dated 10.11.2022 before this Hon'ble Court.
16. That the petitioner filed a revised composite settlement proposal dated 8.11.2022 before this Hon'ble Court, however, **this proposal qua homebuyers was again full of promises only** and the petitioner acting in a most surreptitious manner stated incorrect figures of the residential projects launched and residential units promised by it and which were also **registered with Uttar Pradesh** Real Estate Regulatory Authority.
17. That the petitioner has not stated the correct number of residential towers and units for the residential group housing project which were promised to the homebuyers. For the sake of ease of reference, the answering respondent is bringing on record the detail available on the official website of Uttar Pradesh Real Estate Regulatory Authority showing the number of residential towers and units **registered with** Real Estate Regulatory Authority to be constructed and delivered by the petitioner and the same are collectively annexed herewith and marked as **Annexure No. SA-1** to this affidavit.
18. That it is stated that in respect of **Residential Group Housing Project - Budh Circuit Studios-I**, the petitioner had registered 8 residential

towers comprising of total 1824 residential units and the same were sanctioned by the Real Estate Regulatory Authority. However, in its 5th supplementary affidavit dated 10.11.2022, the petitioner has stated that only 4 towers having 844 residential units were to be constructed by it. Similarly, in respect of Residential Group Housing Project -Kassia-I the petitioner was required to construct 23 towers comprising of 69 residential units as per the records available with the Real Estate Regulatory Authority, however, the petitioner has stated that only 49 units were to be delivered by it. As regards Residential Group Housing Project - Kassia-II and III, the petitioner was to develop 71 towers having 1036 residential units, however, the petitioner has stated that it has to deliver only 722 residential units.

19. That this interpolation and under disclosure of residential units to be constructed and delivered by the petitioner was also made in respect of Residential Group Housing Project - Kove which as per data available with the Real Estate Regulatory Authority is that the petitioner **is** required to deliver 18 towers comprising of 1245 residential units, however, the petitioner has stated the same to be only 10 towers comprising of 725 residential units in its 5th supplementary affidavit.
20. That from the aforesaid, it is quite evident that insofar as the residential flats/units in Residential Group Housing Project are concerned, the petitioner was required to deliver a total of 4174 residential units, however, it is only stated that the said units to be 2340 units in its 5th supplementary affidavit dated 10.11.2022. **Petitioner has gone ahead with submitting proposal without justifying the fate of allottees in remaining towers of residential flat and villa projects and also not proposing a remedy for those allottees whose towers are not proposed to be constructed even after allotments has been made in all registered towers in all projects.**

21. That insofar as the Residential Plots/Villas are concerned as per the data available on the official website of the Real Estate Regulatory Authority, the petitioner was required to develop 218 residential villas in the project namely Sportville, 20 villas in project Villa Expanza County Homes-II and 62 villas in Villa Expanza Greencrest Homes. However, in its 5th Supplementary Affidavit dated 10.11.2022, the petitioner has stated the same to be only 55, 13 and 28 respectively. The answering respondent brings on record the data available on the Real Estate Regulatory Authority's official website showing that the number of residential villas to be developed and delivered by the petitioner was 300 villas and the same is annexed herewith and marked as Annexure No. SA-2 to this affidavit.
22. That it is quite evident that the petitioner was required to deliver 300 residential villas as per the project approved by the Real Estate Regulatory Authority, however, the petitioner has only stated the same to be 96 residential villas in the 5th supplementary affidavit dated 10.11.2022.
23. It is pertinent to mention here that in proposal for Homebuyers, after reducing the size of projects, petitioner has placed on record projected the cost of construction as Rs. 708.99 Crore out of which 546.32 Crore Rs. are projected to come from homebuyers from future sale of unsold inventory in hived off towers, which they have not submitted to be constructed and cost of same.
24. Petitioner has proposed to infuse just approximate 160 Crore Rs and passing of the liability again to homebuyers without placing on record the liability of delay penalty as per law to existing homebuyers who have paid their hard earned money and are waiting for their homes for more than a decade. This plan places additional burden on homebuyers and exposing them to further unjustified demands from existing allottees.

25. As per current estimated average construction cost of Rs 2500 per square feet and as per UP RERA Records of project petitioners is required to construct 48 Lakh Square Feet of Area and estimated cost of construction is around 1200 Crore Rs, which shows intent of Petitioner to hide its liability.
26. Petitioner has failed to provide a comprehensive plan for development of all projects by each project and tower, as well as any bonafide to arrange funds for construction of this scale, specially in view that at present petitioner is facing several cases in NCLT Allahabad Bench, where it has defaulted on loans of thousands of crores of rupees.
27. That, similarly, the residential plots were to be carved out and allotted by the petitioner to the home buyers in five projects namely: -
 - i. Bougainvilleas,
 - ii. Country Homes-I,
 - iii. Country Homes-II,
 - iv. Greencrest Homes, and
 - v. Krowns.
28. That as per the records available on the official Website of Real Estate Regulatory Authority, the petitioner was required to deliver 38 residential plots for Bougainvilleas, 862 plots for Country Homes-I, 645 plots for Country Homes-II, 437 plots for Greencrest Homes, and 501 plots for the project Krowns.
29. That, however, the petitioner has not mentioned anywhere in the writ petition or in any of the supplementary affidavits filed by it about the number of plots that were required to be delivered by it. There has been a complete blind eye of the petitioner to the allottees of the residential plots who have invested their hard earned money in the project launched by the petitioner and till date **have not received Completion**

Certificate from concerned authority of these 5 projects of residential plots.

30. It is pertinent to mention here Petitioner has fraudulently offered the possession of these plots to innocent homebuyers by promising to complete the infrastructure such as road, street lighting, sewer, power and water supply in short time but till date no such infrastructure and amenities has been provide to almost 2500 such plot buyers and 51 of such allottees of plots are before this court seeking protection of their hard earned money.
31. That thereafter an Affidavit of Compliance dated 13.12.2022 has been filed by the Respondent Authority taking a decision on the proposal dated 8.11.2022 of the petitioner. However, from bare perusal of the same it is quite evident that that there is no whisper of homebuyers in the said affidavit. The Respondent Authority has not even considered the proposal of the petitioner to ensure that the interest of the allottees/homebuyers is also taken care of. Rather the allottees/homebuyers have been left at the mercy of the petitioner and the decision has been taken by the Respondent Authority as if the allottees/homebuyers who are thousands in number do not even exist.
32. That this Hon'ble Court in various orders passed in the instant writ petitioner has time and again directed that the interest of allottees/homebuyers be also protected and a reasonable proposal be made by the petitioner and decision be taken by the Respondent Authority. However, from the aforesaid it is evident that neither the petitioner nor the Respondent Authority have any seriousness for resolution of the grievances of the hundreds of the allottees/homebuyers who have paid thousands of crores to the petitioner. The residential project launched by the petitioner has not been completed till date and in the present situation, there does not seem to be any foreseeable future when the same would be completed.

33. That from bare perusal of the decision taken by the Respondent Authority it is evident that it is interested in creating more hurdles than building bridges and taking affirmative steps in getting the dispute of the petitioner and grievances of the allottees/homebuyers resolved.
34. That the petitioner has proposed to sell some parts of land and liquidate its value to pay the demand raised by the respondent Authority and commence the project work **after approvals of its building plans**, however, in its affidavit of compliance, the respondent authority has put onerous conditions rather than facilitating the same so that the dispute maybe brought to an end. With this kind of approach of the petitioner and the respondent authority this matter will remain pending and disputes and grievances unresolved for several years.
35. That the respondent authority has decided that the proceeds of sale of land would be first adjusted towards 64.7% additional compensation as “No Litigation Incentive” payable to the farmers and no decision as to the fate of the hundreds of allottees/homebuyers has been taken. It appears that for the respondent authority the allottees/homebuyers do not even exist.
36. That even if the proposal dated 8.11.2022 of the petitioner is accepted, it will not yield any result since there is no **upfront and sufficient** payment proposed by the petitioner for resumption of the development of project rather the entire proceeds of payment / sale of **underlying land** will go to the respondent authority and the farmers. Allottees/homebuyers despite having paid thousands of crores will be left **at mercy of petitioner** without a penny and without their respective homes.
37. That the petitioner has not even disclosed in its proposal if it even has adequate funds to resume and complete the residential project.

38. That there is no whisper of any proposal for securing the money already paid by the allottees/homebuyers to the petitioner for their respective homes and plots.
39. That building plans of homebuyer's project are not approved by respondent authority since inception of the projects and both petitioner and respondent authority are playing blame game among themselves.
40. That the allottees/homebuyers need to be kept on topmost priority since they have already paid thousands of crores to the petitioner since the project was backed and introduced for development as "Sports City" by the State Government.
41. That the allottees/homebuyers interest need to be prioritized over payments to authority and farmers, as authority has collected almost 2800 Crore Rs from petitioner and farmers has been already paid actual compensation of their land and this amount is only "No Litigation Cost", while homebuyers even after paying thousands of crores of rupees to petitioner has not received anything in lieu even after waiting of more than 12 years.
42. Prioritizing the payment towards discharge of liability of the petitioner to Respondent Authority and farmers by means of selling the project land shall jeopardize the interest of homebuyers, unless there are other means to secure funding for cause of homebuyers.
43. That if the land allotted for development of the project is permitted to be sold and valued realized therefrom be allowed to be adjusted for payment of "No Litigation Incentive" to farmers and Respondent Authority on priority, the allottees/homebuyers would suffer irreparably.

That the contents of para nos.

of this affidavit are true to my personal knowledge, contents of para nos.

of this affidavit are based on perusal of records, contents of para nos.
of this affidavit are based on information received and contents of para
nos.

of this affidavit are based on legal advise which I believe to be true that
no
part of it is false and nothing material has been concealed in it.

SO HELP ME GOD.

(DEPONENT)

I, R.K. Sahu, Clerk to Sri Abhinav Gaur, Advocate, High Court,
Allahabad do hereby declare that the person making this affidavit and
alleging himself to be the deponent is known to me from the perusal of
papers produced by him in his case before me and he is the same person.

Date.

(CLERK)

Solemnly affirmed before me on this day of
2023 at a.m\p.m by the deponent who is identified by the aforesaid
persons.

I have satisfied myself by examining the deponent that he has
understood the contents of this affidavit which have been read over and
explained to him.

Date:

(OATH COMMISSIONER)