



HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 21821 of 2025

Suresh Chander And 10 Others

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	: Manjari Singh, Rahul Jain
Counsel for Respondent(s)	: Abhinav Gaur, C.S.C., Manu Ghildyal, Tejasvi Misra, Vibhu Rai

Court No. - 40

**HON'BLE SARAL SRIVASTAVA, J.
HON'BLE SUDHANSHU CHAUHAN, J.**

1. Supplementary affidavit filed today on behalf of the petitioners and the affidavit filed on behalf of respondent no. 1 in compliance with the order of this Court dated 14.09.2026 are taken on record.

2. Heard learned counsel for the parties.

3. The case of the petitioners is that without complying with the provisions of Section 4(5) and Section 5(3) of the U.P. Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010, the respondent-builder has started raising construction in several towers, which, according to the petitioners, are occupied by residents. It has further been stated in the supplementary affidavit filed on behalf of the petitioners that the respondent-builder has raised several additional floors in some of the towers. Paragraph Nos. 2 and 3 of the said affidavit are reproduced hereinbelow:-

"2. That the present writ petition has been filed against the order dated 18.12.2024 by which the respondent no.2 had issued compounding order by which additional 112 units of flats have been compounded and permitted to be constructed. In the aforesaid compounding two floors have been added in Tower no.16 to 19 (a total of 32 units) and towers 27 & 28 (a total of 80 units). In all 112 units (32+80=112 units) have been illegally added vide the III'd compounding order dated 18.12.2024 passed by the respondent no.2. The said compounding is in violation of the U.P. Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 because no consent has been taken from the apartment owners which is mandatory as per section 5(3) (a) of the U.P. Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010.

3. That the petitioners are filing this supplementary affidavit to show the extent of additional construction carried out in tower no.16, 17, 18 and 19 which can be seen from the photographs attached to this supplementary affidavit. The construction in the aforesaid towers is undertaken while people are residing which is dangerous to their life and liberty. Copies of the photographs are attached as ANNEXURE-SA-1."

4. The respondents have disputed the facts stated in the supplementary

affidavit. Therefore, in order to ascertain the correct factual position, we have asked learned counsel for the petitioners to take instructions as to whether the petitioners are ready and willing to bear the expenses for appointment of an Advocate Commissioner to verify the correctness and authenticity of the facts stated in the affidavit filed on behalf of the petitioners.

5. Sri Shashi Nandan, learned Senior Advocate, assisted by Sri Tejasvi Mishra, learned counsel, as well as Sri Shivam Yadav, learned counsel appearing for the respondents, have stated that they have no objection to the survey of the project being conducted by an Advocate Commissioner duly appointed by this Court. Besides, Sri Shivam Yadav, learned counsel for the respondent no.3 has informed this Court that the respondent no.3 has agreed to bear half of the cost to be incurred during the inspection.

6. Since the parties are in agreement with regard to the appointment of an Advocate Commissioner by this Court for verifying the actual factual position of the project, which is a multistoried group housing known as "Gulmohur Greens" situated 95, Katori Mill, Mohan Nagar, Ghaziabad (hereinafter referred to as, "the project") and in respect of additional floors that have already been raised in Tower Nos. 16, 17, 18 and 19, wherein it has been stated that residents are residing, hence, we deem it appropriate to appoint Advocate Commissioners for the said purpose.

7. Accordingly, Sri Sanjay Kumar Om, learned Advocate, and Sri Prakhar Kumar Srivastava, learned Advocate, are appointed as Advocate Commissioners to conduct the inspection of the project on 19.09.2026 and 20.09.2026.

8. The parties shall make arrangements for the travelling of both the learned Advocate Commissioners, which shall not be below First Class AC by train or by air. The parties shall also make arrangements for the stay and local conveyance of the Advocate Commissioners at their own cost to be borne equally by the petitioners and respondent no.3.

9. The fees of Sri Sanjay Kumar Om, learned Advocate Commissioner, is fixed at Rs.1,00,000/- and that of Sri Prakhar Kumar Srivastava, learned Advocate Commissioner, is fixed at Rs.50,000/-. The aforesaid fees shall be paid through account transfer or by demand draft on or before Friday, i.e. 18.09.2026, the petitioners and respondent no.3 shall pay half of the amount of the fees, in the manner prescribed.

10. The learned Advocate Commissioners shall carry out spot inspection of all the towers and flats existing under the project more particularly in respect of :-

a. The total number of towers existing under the project, including unfinished/under construction towers,, if any.

b. The number of floors in each tower.

c. The number of flats on each floor in each tower

d. The number of finished flats and the number of unfinished/under construction flats on each floor.

e. The number of unfinished flats in respect of which builder-buyer agreement or the sale deed, as the case may be has been executed by the builder-respondent no.3. A copy of each sale deed/builder-buyer agreement shall be provided by the builder-respondent no.3 to the Advocate Commissioners.

f. The location of flats in terms of floor number and tower number to be identified by the parties sanctioned during the second compounding sanctioned vide order dated 13.01.2015.

g. The location of flats in terms of floor number and tower number to be identified by the parties sanctioned during the third compounding sanctioned vide order dated 18.12.2024.

h. The condition of construction on top two floors of tower nos. 16, 17, 18 and 19 in terms of, as to whether the same is finished or unfinished/under construction.

i. Identification of floor, tower number and the area of unfinished construction in the project.

j. Any other aspect, which according to the Advocate Commissioners is relevant in respect of the controversy involved.

11. The videography and photography of the proceedings of commission as well as the project is to be carried out during the inspection on both the days and the videography and photographs are to be provided to the respective Advocate Commissioners in a pen drive and a soft copy to be sent on the e-mail of the respective Advocate Commissioner at the end of the proceedings on each day. The cost of videography and photography shall be borne equally by the petitioners and the builder-respondent no.3. The joint survey report to be submitted by Advocate Commissioners shall include the videography and relevant photographs of the project.

12. The respondent no.3 shall provide a clear and legible copy of the compounding map sanctioned vide order dated 18.12.2024 to the Advocate Commissioners and the same shall be used as reference to identify the towers and other structures under the project.

13. The Advocate Commissioners are free to determine the manner in which inspection is to be carried out and also to fix the time for carrying out the inspection on each of the two days. The Advocate Commissioners shall inform the counsel of the respect parties regarding the programme of inspection 24 hours prior to the commencement of the same.

14. The learned Advocate Commissioners shall provide a copy of the survey report to the parties on or before 25.09.2026 and submit the same before this Court on or before the next date fixed in the case. In case either of the parties wishes to file any objection(s) to the said report, the same shall be filed on or before the next date fixed in the matter.

15. We further direct the Ghaziabad Development Authority as well as the Commissioner of Police, Ghaziabad to provide all necessary assistance and

adequate security to the learned Advocate Commissioners for carrying out the aforesaid inspection.

16. List this matter on 30.09.2026 immediately after fresh cases.

17. On the next date, the entire record of the case shall be produced before this Court by the Ghaziabad Development Authority.

September 16, 2026

Gaurav

(Sudhanshu Chauhan,J.) (Saral Srivastava,J.)