

BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONAL BENCH AT CHENNAI
ORIGINAL APPLICATION NO. 205 OF 2021 (SZ)

IN THE MATTER OF:

Environmental Protection & Research Council Applicant

Versus

MoEF&CC and Ors

Respondents

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DATE: 25.05.2022

PLACE: CHENNAI



DRAWN AND FILED BY:

S.KAMALESH KANNAN

S. SAI SATHYA JITH

**BEFORE THE NATIONAL GREEN TRIBUNAL
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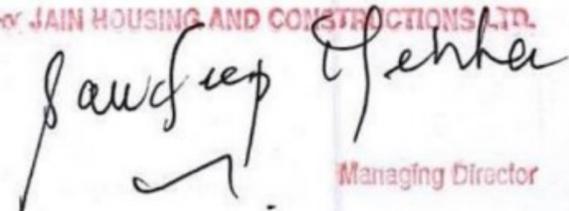
Respondents

**REPLY TO THE ORIGINAL APPLICATION NO. 205/2021 (SZ) ON
BEHALF OF THE RESPONDENT NO. 6, JAIN HOUSING &
CONSTRUCTIONS LTD**

Most Respectfully Sheweth:

- A. That the present Reply is being filed on behalf of Respondent No. 6, Jain Housing & Constructions Ltd (hereinafter "Answering Respondent"). The Answering Respondent has read the contents of the present Original Application and has understood the same and seeks to submit a Reply thereto.
- B. That the contents of the Application are denied in totality as the Applicant has made unsubstantiated and bald allegations without any basis or valid supporting documents. It is submitted that the Answering Respondent has responded to the adverse observations, allegations, contentions or statements set out in the Application, in the present Reply and nothing contained in the Application ought to be admitted by the Hon'ble Tribunal merely on ground of non-traversal.

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- C. That the Answering Respondent craves leave of this Hon'ble Tribunal to file additional submissions and/or response as may be deemed necessary to support this reply.
- D. That at the outset, the Answering Respondent submits that the present Application, which has been filed primarily to challenge the Environment Clearance (hereinafter "EC") dated 24.05.2011 granted to the Answering Respondent for its project "Tuffnell Garden" at Kakkanad, Kerala, by way of an Original Application, is not maintainable, severely barred by limitation and is based on unsubstantiated grounds and also a case of *res judicata* as the same issues have been raised in the Hon'ble High Court of Kerala and dismissed and therefore must be dismissed in limine by this Hon'ble Tribunal.

PRELIMINARY SUBMISSIONS:

1. That the Answering Respondent is a housing and construction company which was established 34 years ago and was incorporated way back in year 1987 and is engaged in residential developments. Its headquarters are located in Chennai, Tamil Nadu.
2. That this Hon'ble Tribunal vide Order dated 22.09.2021, in the present matter, observed that the Applicant cannot now challenge the EC dated 24.05.2011 before this Hon'ble Tribunal by way of an application under Section 14 & 15 of the NGT Act, 2010 after lapse of nearly ten years. That the scope of the present Application is limited as this Hon'ble Tribunal has admitted the matter only to the extent of the allegations

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regarding the environmental violations and damages allegedly caused due to carrying out the expansion of the building without obtaining EC.

I. CASE BARRED BY RES JUDICATA

3. That the Answering Respondent humbly submits that the Original Application is barred by res judicata. Admittedly, a case titled Christopher Joseph & Ors vs State of Kerala & Ors (W.P.(C) No. 26935/2019) was filed through the same Advocate as in the present Application on 09.10.2019 before the Hon'ble High Court of Kerala alleging that, among other things, that the Answering Respondent did not obtain an Environment Clearance for its building project "Tuffnell Gardens". (kindly see para 12 on pg 16 of the OA No. 205/2021)
4. That the Petitioners therein had made the same prayer before the Hon'ble High Court as it has made before this Hon'ble Tribunal for a direction to the Kerala State Environment Impact Assessment Authority (KSEIAA) to send a field inspection team and submit a report on the extent of damage caused to the environment and take appropriate actions under the Environment (Protection) Act, 1986.
5. That subsequently, the Petitioners therein sought permission to withdraw W.P.(C) No. 26935/2019. Accordingly, the Hon'ble High Court vide its Judgment dated 23.01.2020, dismissed the Writ Petition as withdrawn without any liberty as such.
6. That the Applicant has raised the issue before this Hon'ble Tribunal that the construction started in 2008 allegedly without obtaining prior EC as per the EIA Notification, 2006. Although the Applicant has mentioned

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that the homebuyers had approached the Hon'ble High Court of Kerala in W.P.(C) No. 26935/2019 raising the issue of EC, the Applicant has concealed the fact that similar prayers had already been made earlier before the Hon'ble High Court as have been made in the present Original Application, and therefore this clearly amounts to forum shopping.

7. That the Hon'ble Supreme Court in Kamini Jaiswal vs Union of India and Anr vide Judgment dated 14.11.2017 [(2018 1 SCC 156)] held that a "a classic example of forum shopping is when a litigant approaches one Court for relief but does not get the desired relief and then approaches another Court for the same relief". Upon not obtaining the desired relief from the Hon'ble High Court of Kerala, this Hon'ble Tribunal has been approached for the same relief, which is clearly not permissible in law.
8. That the Hon'ble Supreme Court in Gangai Vinayagar Temple and Ors vs Meenakshi Ammal and Ors [(2009) 9 SCC 757 vide Judgment dated 03.09.2009] held that res judicata is an ancient doctrine of universal application and permeates every civilised system of jurisprudence. The doctrine encapsulates the basic principles in all judicial systems which provide that an earlier adjudication is conclusive on the subject matter between the same parties.
9. That the present Application is barred by res judicata because the same cause of action against the building project of the Answering Respondent has already been raised by the same Advocate before the Kerala High Court, which was dismissed as withdrawn, and cannot be raised again by the Applicant in two different proceedings before two different forums on the same cause of action. The Ld. Counsel for the Applicant also cannot

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therefore plead ignorance as he was the counsel in the matter before the said High Court too.

II. NUMEROUS LITIGATIONS INSTITUTED BY COUNSEL FOR THE APPLICANT AGAINST THE PROJECT OF THE ANSWERING RESPONDENT

10. The Ld. Counsel for the Applicant, has filed over 65 cases before various forums against the projects of the Answering Respondent, including before the State Consumer Redressal Forum, Kerala Real Estate Regulatory Authority, Munsif Court, National Consumer Redressal Forum, Kerala High Court, Kerala Real Estate Appellate Forum, and Human Rights Commission. Out of these, 45 cases have been disposed and 21 cases are still pending. Notwithstanding the right of a counsel to appear in any number of cases before any forum for anybody, here it appears that there is a design to these numerous litigation and there is something more than meets the eye.

PARA-WISE REPLY:

1. That the contents of Para 1 merits no response. The Answering Respondent submits that the Applicant claims to be a Public Trust registered in Thiruvananthapuram District while the project of the Answering Respondent is located in Ernakulam District thereby raising a question on the interest and locus standi of the Applicant with respect to the said project. Moreover, as submitted above, in light of the numerous litigations filed by the Counsel for the Applicant before various forums against the project of the Answering Respondent, the Applicant is put to

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strict proof to validate its bona fide. It is submitted that the Applicant herein does not fit within the meaning of person aggrieved under Section 18 of the NGT Act, 2010.

2. That the contents of Para 2 merit no response.
3. That the contents of Para 3 are not relevant for the present dispute and have no bearing on the same. The present dispute is pertaining to the project of the Answering Respondent called "Tuffnell Garden" at Kakkanad, Kerala which has no relation whatsoever to any other project. The Applicant's oblique reference to other project shows an attempt to mislead this Hon'ble Tribunal and it is common knowledge and established law that every case has to be ascertained on its own merit.
4. That the contents of Para 4 merit no response. However, it is submitted that the answering Respondent is well aware of its environmental obligations and has carried out its activities in accordance with the environmental law of the land.
5. That the contents of Para 5 are vehemently denied as wrong, false, irresponsible, biased, neither based on law nor facts and devoid of any merit whatsoever. It is reiterated that the case before the Hon'ble Supreme Court was for a different project of the Answering Respondent and has nothing to do with the present dispute which pertains to the project called "Tuffnell Garden" at Kakkanad, Kerala. The Applicant has made bald allegations with respect to the business model of the Answering Respondent without any specific averments to that end. It is humbly submitted that the Applicant is only trying to cast aspersions on

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the legal business activities of the Answering Respondent by linking two unrelated projects with each other, which itself shows the oblique motives and bias with which the Applicant has approached this Hon'ble Tribunal. It is well established in law that every case has to be judged on its own merits and such references of other projects is nothing short of creating unnecessary bias against the answering Respondent without any factual basis or understanding of the law itself. Further, the conversion of paddy land/wetland for any other purpose in the State of Kerala is governed under the Kerala Conservation of Paddy Land and Wetland Act, 2008. The said Act came into effect only on 12.08.2008. The Answering Respondent humbly submits that the Panchayat NOC was issued on 31.08.2006 by the Thrikkakara Gram Panchayat prior to the commencement of the Kerala Conservation of Paddy Land and Wetland Act, 2008. The said Act does not apply retrospectively which means that the Answering Respondent was not required to take permission before converting the said paddy land for residential purposes and initiating the construction itself. The Hon'ble High Court at Kerala has passed several decisions such as in *Shahanaz Shukkoor vs Chelannur Grama Panchayat* [2009 SCC OnLine Ker 3828], *Kaipadath Property Development Company (Pvt) Ltd vs State of Kerala & Ors* [2011 SCC OnLine Ker 4005], and *Cheranelloor Grama Panchayat vs Joe Thattil* [2020 (5) KHC 669] wherein it has held that the Kerala Conservation of Paddy and Wetland Act, 2008 is prospective in its operation and cannot be applied retrospectively. The Applicant is no one to comment on the business model of the answering Respondent and such brazen statements are not corroborated with any facts or bases in law.

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6. That the contents of Para 6 are matter of record. However, it is important to submit that the NOC was issued on 31.08.2006 by the Thrikkakara Gram Panchayat for construction of residential apartment at Survey Nos. 483/14, 484/7, 485/1 at Kakkanad Village, Kerala. The Answering Respondent not long after, entered into an Agreement for Sale on 06.12.2006 for purchasing the said property and a Power of Attorney was also executed on 28.02.2007 in favour of the Answering Respondent. The NOC dated 31.08.2006 was therefore legally transferred to the Respondent No. 6, the effect of which is that the NOC in all respects has been legally accorded to the Answering Respondent.
7. That the contents of Para 7 are denied as wrong, false and devoid of any merit. The Answering Respondent reiterates the contents of Paras 5 and 6 above which are not being repeated for the sake of brevity. However, it is important to clarify that the Panchayat NOC places no restrictions on the construction of the residential project and has been legally transferred to the Answering Respondent in accordance with law. Any misleading and false allegations made in this regard before the Hon'ble High Court in another matter which is sub judice have no bearing on the present dispute.
8. That the contents of Para 8 are denied as wrong, false and devoid of any merit. The Answering Respondent reiterates the contents of Para 5 with respect to the non-requirement of conversion of the paddy land under the Kerala Conservation of Paddy Land and Wetland Act, 2008 owing to its non-applicability to the project of the Answering Respondent for the reasons already mentioned above which are not being repeated herein for

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the sake of brevity. The project of the Answering Respondent, "Tuffnell Garden" as mentioned above was accorded a No Objection Certificate (hereinafter "NOC") by the Thrikkakara Panchayat on 31.08.2006. Further, on 09.09.2008, a Certificate was issued by the Thrikkakara Gram Panchayat to the Answering Respondent certifying that the said NOC is in compliance with the terms of the Circular dated 03.04.2008. On 22.06.2011, a Circular was also passed for the Thrikkakara Municipality regarding sanctioning/completion certificates for NOC related projects issued by the State of Kerala. The NOC dated 31.08.2006 was granted before the Environment Impact Assessment Notification, 2006 (hereinafter "EIA Notification") came into effect on 14.09.2006. The said project was not covered within the ambit of the EIA Notification, 2006 and did not require an Environment Clearance (hereinafter "EC") at the time it was granted the NOC. The satellite images from the year 2006 as well as those taken during the period of 2008-2010 show that there was no construction at the site. Moreover, the MoEF&CC in its Report dated 03.03.2020 has stated that as per the Google Images, construction commenced only in 2010. The Google Images annexed in the Report dated 09.12.2021 of the Committee constituted by this Hon'ble Tribunal also depict the same. The Answering Respondent for the sake of abundant precaution applied to the MoEF&CC for EC on 03.11.2010 and was granted the EC on 24.05.2011 for an area of 1,39,885.78 sq m. It is pertinent to add that the said EC was not challenged by the Applicant herein, in any judicial forum. This case was primarily to challenge the EC in a roundabout way, which is not permissible in law, after the enactment of the NGT Act, 2010, or even before, under the National Environmental

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Appellate Authority Act, 1997, Which was effective till the NGT Act, 2010 was made operational. It is also imperative to submit that besides the NOC dated 31.08.2006 issued by the Thrikkakara Gram Panchayat and the Environment Clearance dated 24.05.2011, the Answering Respondent has obtained various other requisite statutory clearances as well, including Clearance from the Thrikkakara Gram Panchayat dated 09.09.2008, Naval Height Clearance NOC dated 18.07.2008, Airport Authority Height Clearance dated 25.08.2008 which has been renewed from time to time including on 25.02.2016, and Naval Height Renewal Clearance dated 14.03.2012. The NOC for the construction project of the Answering Respondent has been extended further from time to time including on 18.09.2017 and 26.09.2017 by the Southern Naval Command, Kochi. Two Schindler lifts were commissioned on 17.12.2013. The Deputy Chief Electrical Inspector has sanctioned licenses on 14.02.2018 to work the lift. The Building Permit has also been regularized by the Municipal Council, Thrikkakara on 15.06.2016. A Partial Occupancy Certificate was also obtained by the Answering Respondent on 26.07.2016. The Answering Respondent made payments to the Kerala State Electricity Board on 05.07.2018 towards electricity connection charges. Water Connection Provisional Approval Notices have been issued by the Kerala Water Authority on 13.09.2018 and 27.09.2018. Sanction has been granted by the Public Works Department on 11.10.2018. Land tax receipt was generated on 27.05.2019 and 06.11.2021. Possession Certificate dated 04.06.2019 has been issued. None of these clearances have been challenged by the Applicant, clearly

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proving that the Applicant is non-serious and not diligent and hopelessly barred by time.

9. That the contents of Para 9 are denied as wrong, false and devoid of any merit. The Answering Respondent has provided the correct details in its EC application dated 03.11.2010 for an area of 1,39,885.78 sq m. Therefore, since the project of the Answering Respondent is less than 1,50,000 sq m, it will be covered under Item 8(a) of the EIA Notification, 2006 dealing with Building and Construction projects. In any case, if the Applicant was aware of these facts, then it is surprising why he has wilfully and deliberately approached any judicial forum to contest any of the points raised in the said paragraph, including the classification itself. In any case, it is reiterated that the said project comes under Item 8(a) of the EIA Notification, 2006 and has been granted EC in accordance with law, and this entire Application is an after-thought.

10. That the contents of Para 10 are denied as wrong, false and devoid of any merit. It is reiterated that the Answering Respondent for the sake of abundant precaution applied to the MoEF&CC for EC on 03.11.2010 and was granted the EC on 24.05.2011 for an area of 1,39,885.78 sq m by the MoEF&CC in accordance with the EIA Notification, 2006. In any case, if the Applicant had any grievance against the EC granted on 24.05.2011, it ought to have challenged it in an appropriate forum within the period of limitation.

11. That the contents of Para 11 are denied as wrong, false and devoid of any merit. When the area in question came under the municipal limits, the Building Permit dated 15.06.2016 was issued by the Municipal Council,

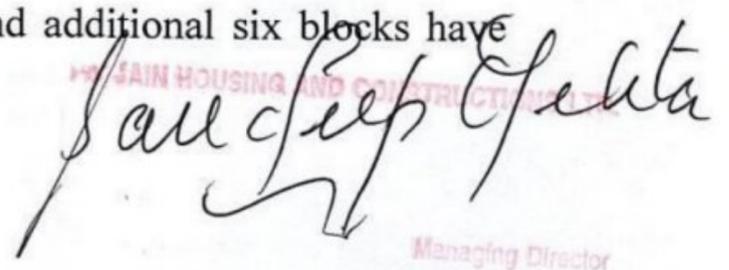
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Thrikkakara. The Answering Respondent has not concealed that it has obtained a valid EC. The allegations made by the Applicant about their conversations have no bearing either on fact, or on the law relating to EC.

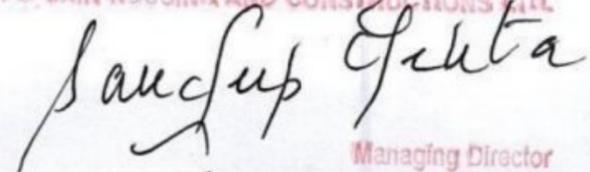
12. That the contents of Para 12 are denied as wrong, false and devoid of any merit. The Answering Respondent reiterates the contents of Para 8 above which are not being repeated herein for the sake of brevity. Although the Applicant has mentioned that the homebuyers had approached the Hon'ble High Court of Kerala in W.P.(C) No. 26935/2019 raising the issue of EC, the Applicant has concealed the fact that similar prayers had already been made earlier before the Hon'ble High Court as have been made in the present Original Application, and therefore the present Original Application is barred by res judicata. In this regard, the contentions made in the Preliminary Submissions made above may be read as part and parcel of the reply to the present Para and are not being repeated herein for the sake of brevity. In any case, the alleged aberrations ought to have been brought before an appropriate forum within appropriate time lines and it cannot be agitated at this belated stage, which in any case, is neither true in facts nor in law. The allegations of collusion etc, are at best, the imagination of the Applicant or their advisers and no shred of evidence has either been produced or can be a subject matter of this Hon'ble Tribunal.

13. That the contents of Para 13 are denied as wrong, false and devoid of any merit. The Answering Respondent humbly submits that the status of construction as of now is that, out of the total eight blocks, construction of only two blocks has been completed and additional six blocks have


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been partially constructed. The total Built-up Area (hereinafter "BUA") constructed within the validity period is for 40,930.28 sq m which amounts to 29% of the total permitted construction area of 1,39,885.78 sq m. Out of the two completed blocks, only one block is operational. The EC granted to the Answering Respondent on 24.05.2011 was initially valid for a period of five years i.e., till 23.05.2016. However, subsequently after the Notification dated 29.04.2015 was issued by the MoEF&CC, the validity of the said EC was extended to seven years i.e., till 23.05.2018. It is imperative to emphasise that no construction whatsoever has been carried out by the Answering Respondent after the expiry of the EC granted. The Building Permit was issued by the Municipal Council, Thrikkakara to the Answering Respondent on 15.06.2016 for a BUA of 1,92,637.80 sq m. Further, the proposal regularized in 2016 is the same proposal which was approved in 2006. The proposal was for construction of 8 residential towers with a total FAR area of 1,39,885.78 sq m and the BUA of 1,92,637.80 sq m. Hence, no expansion has been carried out by the Answering Respondent beyond the EC granted. That it is pertinent to note that at the time the application for EC was made by the Answering Respondent on 03.11.2010, there was ambiguity regarding the definition of Built Up Area vis-à-vis the EIA Notification, 2006. The definition of Built Up Area has undergone considerable change subsequent to the EC Application made by the Answering Respondent on 03.11.2010, owing to which the Built Up Area was later mentioned as 1,92,637.80 sq m, albeit without carrying any expansion. Even the Hon'ble Supreme Court has affirmed such ambiguity in its Judgment dated 03.12.2010 in *In Re: Construction of*

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Managing Director

Park at NOIDA near Okhla Bird Sanctuary [(2011) 1 SCC 744]. The Hon'ble Court held that:

“The projects/activities under Items 8(a) and 8(b) need to be described with greater precision and clarity and the definition of built-up area with facilities open to the sky needs to be freed from its present ambiguity and vagueness. The question of the application of the general condition to the projects/activities listed in the Schedule also needs to be put beyond any debate or dispute.” It was for the first time on 04.04.2011 that a Notification No. S.O. 695(E) was issued by the MoEF&CC for defining ‘Built Up Area’ as “the built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects”. Prior to this, the original EIA Notification as on 14.09.2006 simply mentioned that “built up area for covered construction; in the case of facilities open to the sky, it will be the activity area” which provided no clarity whatsoever on what actually comprised of built up area. On 02.04.2012, MoEF wrote a letter to the SEIAA, Gujarat clarifying that, “(i) The built up area as per the amendment dated 4th April, 2011 to the EIA Notification is, the built-up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction project; (ii) Area which is not covered or any area which is open to sky/cut out/duct should not be counted in the calculations of built up area. The open to sky and the cut out/ducts are required for proper light and ventilation of a building; and (iii) Atrium i.e., open portion of a building which is not covered at intermediate floor levels but covered at the top level like any shopping malls or hotels can be taken into account

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Managing Director

for calculation of the built up area but it should not be calculated for each floor". In the meanwhile, in *M/s Saumya Buildcon Pvt Ltd vs Union of India & Ors* [2013 SCC OnLine Bom 405], the Hon'ble Bombay High Court vide Judgment dated 06.03.2013 has observed that what was earlier known as non-FSI area was not included in the definition of built up area but by the aforesaid Notification dated 04.04.2011, the definition of built-up area was expanded to include construction of not only covered area, but also basement and other service areas which were earlier not included in the definition of built-up area. Vide Notification dated 22.12.2014, the EIA Notification was amended to the effect that inter alia the applicability of General Conditions was removed for Item 8(a) of the Schedule to the EIA Notification which deals with Building and Construction Projects. Thereafter, the MoEF&CC vide an Office Memorandum dated 07.07.2017 has stipulated that the definition provided of Built Up Area in the abovementioned Notification dated 04.04.2011 shall have prospective effect. The projects which are not covered in the period of the said notification should be assessed as per the definition of built up area provided in the building bye-laws or Development Control Regulation (DCR) of the local authorities in the States. However, as per the Certificate dated 31.08.2006 issued by the Thrikkakara Gram Panchayat to the Answering Respondent, the then Kerala Building Rules, 1984 had not been enforced within the Panchayat area.

That it is also prudent to add in the scenario it is considered that the Answering Respondent has carried out any expansion, Para 7(ii)(c) of the EIA Notification, 2006 dealing with Prior EC process for expansion or

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Saugrup Jaita
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modernization or change of product mix in existing projects specifies that “any change in configuration of the plant or activity from the environment clearance conditions during execution of the project after detailed engineering, in respect of projects or activities, falling in any item of the Schedule to this notification, shall not require prior environment clearance, if there is no change in production capacity and there is no increase in pollution load subject to furnishing particulars of such changes on PARIVESH portal in the format as may be provided by the Government from time to time, before implementing such changes whereupon a system generated acknowledgement will be issued by the concerned Regulatory Authority”.

It is clarified that the EC granted is for an area of 1,39,885.78 sqm and as of today, there has been no expansion whatsoever and therefore there is no question of any change of classification. As stated earlier, since the existing EC has expired any new construction would require fresh EC which will be taken in case the project has to continue. So any conclusion on expansion at this stage is totally premature.

14. That the contents of Para 14 are denied as wrong, false and devoid of any merit. The allegations made in the legal notice dated 10.01.2020 sent by the homebuyers referred to by the Applicant have been refuted in detail in the present Reply. Further, no action is required on the part of the Respondent No. 1, MoEF&CC in light of the baseless allegations made in the said letter.

15. That the contents of Para 15 are denied as wrong, false and devoid of any merit. The Answering Respondent reiterates the submissions made in

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Para 5 above which are not being repeated herein for the sake of brevity. Sufficient to add that the permission obtained was before even the enactment of the said legislation and it is established law that an Act cannot have an retrospective effect unless so specified.

16. That the contents of Para 16 are denied as wrong, false and devoid of any merit. The Answering Respondent reiterates the submissions made in Para 5 above which are not being repeated herein for the sake of brevity. In any case the said legislation is not within the jurisdiction of this Hon'ble Tribunal as it is not mentioned in the said Schedule 1 of the NGT Act, 2010. The Applicant has alternative remedies and may exercise the same if so advised.

17. That the contents of Para 17 are denied as wrong, false and devoid of any merit. The Answering Respondent reiterates that the present Application is barred by res judicata in light of the decision of the Hon'ble High Court of Kerala in W.P.(C) No. 26935/2019, which has been elucidated in detail in the Preliminary Submissions above. It is further submitted that out of the two completed blocks, only one block is operational and the submissions made in Para 13 above are reiterated and are not being repeated herein for the sake of brevity. The issue of RERA compliance is not a subject matter of this Hon'ble Tribunal and adequate reply shall be furnished in the appropriate forum as and when required, in accordance with law. Be that as it may, the Answering Respondent had duly applied for registration with the Kerala Real Estate Regulatory Authority (hereinafter "RERA") on 30.09.2020 and 21.10.2020. The reason for the inability of the Answering Respondent to pay fees to the RERA was the

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paucity of funds due to its properties having been attached in another legal proceeding. The Answering Respondent has given an undertaking that it would be obtaining permission from RERA before any sale/marketing. In any case, there is no wilful non-compliance and the complainant is in possession and ownership of the apartment.

18. That the contents of Para 18 are denied as wrong, false, and devoid of any merit. The Answering Respondent vehemently denies any allegations made against it vis-à-vis violation of environmental laws and has made submissions refuting the same in the present Reply. Therefore, no environmental compensation is required to be levied on the Answering Respondent. Not a shred of evidence has been produced for damage of environment by the Applicant. In fact this case needs to be dismissed with huge costs for concealment and misleading this Hon'ble Tribunal on various facts enumerated above. If arguendo, in the scenario that the project of the Answering Respondent is considered as a violation case under the EIA Notification, 2006, the period for such violation, if any, shall be only between 2010-2011. Furthermore, the environmental compensation, if any, shall not be calculated as per the *Goel Ganga case*. The Notification dated 14.03.2017 along with the Office Memorandum dated 07.07.2021 lay down the procedure to be followed for considering violation cases. The MoEF&CC vide its Office Memorandum dated 07.07.2021 has laid down the Standard Operating Procedure (hereinafter "SOP") to be followed while considering violation cases. In this regard, it is humbly submitted that with respect to the penalty cases of new projects where operations have not commenced, the penalty is 1% of the total project cost incurred up to the date of filing of application along with

Signature of the Answering Respondent
 Managing Director

EIA/EMP Report. Furthermore, on 28.01.2022 the Ministry issued an Office Memorandum wherein it has stated that the Hon'ble Supreme Court vide Judgment dated 09.12.2021 in *Electrosteel Steels Limited vs Union of India & Ors* [2021 SCC OnLine SC 1247] has held that the interim stay dated 15.07.2021 passed by the Hon'ble Madras High Court in the case titled *Fatima vs Union of India* on the application of the SOP dated 07.07.2021 can have no application to operation of the SOP to projects in territories beyond the territorial jurisdiction of the Hon'ble Madras High Court.

19. That the contents of Para 19 are denied as wrong, false, and devoid of any merit. The submissions made in the foregoing paragraphs are reiterated and are not being repeated herein for the sake of brevity. However, it is crucial to note that the Answering Respondent has not carried out any construction after the expiry of the EC valid till 23.05.2018. Any further construction would be done only after obtaining due permission. The Applicant should not create any sense of misgivings about likely demolition etc. of the existing buildings which has been constructed totally in accordance with law. In so far as the fire safety norms are concerned, an Application was submitted by the Answering Respondent for obtaining Fire NOC in 2015. On 22.08.2015, the Application for final Fire NOC was forwarded by the Thrikkakara Municipality. A fees of Rs. 6,15,930/- (Six lakhs fifteen thousand nine hundred and thirty only) was paid on 20.11.2015 for obtaining the Fire NOC. Subsequently, the Fire Divisional Office, Gandhi Nagar intimated that since the project was constructed on an NOC issued by the Thrikkakara Gram Panchayat, Fire NOC was not necessary for the

project of the Answering Respondent. Even in response to the Letter dated 25.09.2017 in which the Divisional Officer, Office of Fire and Rescue Service has raised certain objections, the Answering Respondent replied in its Letter dated 07.12.2017 that since the construction NOC was received on 31.08.2006, the Building Rules were not applicable to the then Thrikkakara Gram Panchayat and therefore it was not possible to provide a fire escape staircase outside. Once the area in question came under municipal limits, the Municipality on 25.05.2018 revised the plan according to the site requirements for clearing the final Fire NOC and re-forwarded the file to the Station Officer. A Certificate of Remittance was submitted by the Answering Respondent on 10.10.2018 to the Fire Office for a Challan of Rs. 3,82,845/- (Three lakhs eighty two thousand eight hundred and forty five only). Therefore, a payment of Rs. 9,98,775/- (Nine lakhs ninety eight thousand seven hundred and seventy five) has been made by the Answering Respondent for obtaining the final Fire NOC. In response to the Letter dated 05.11.2018 sent by the Regional Fire Office to the Secretary, Thrikkakara Municipality, questioning about the initial Fire NOC and Construction NOC, the Secretary, Thrikkakara Municipality on clarified on 14.11.2018 that the Kerala Municipality Building Rules, 1999 had been made applicable to the Thrikkakara Gram Panchayath only from 06.11.2006 whereas the building construction NOC was given on 31.08.2006. The location sketch was sought by the Fire Department on 07.12.2018 which was again attested by the Thrikkakara Municipality. The file containing the Application of the Answering Respondent was forwarded multiple times to the concerned officials within the Fire Department. The Regional Fire Office on

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19.03.2019 inspected the completion/provision of facilities in the apartment complex and re-forwarded the inspection report to the Director Technical. However, the Director Technical rejected the file due to three reasons on 30.04.2019. It is imperative to note that on 03.01.2020, an Affidavit was sworn by the authorised person of the Answering Respondent wherein inter alia it was sworn on Affidavit that the Answering Respondent will provide firefighting systems. It is therefore evident from the above that constant efforts have been made in all earnest by the Answering Respondent to obtain the Fire NOC. Besides this, at the time the Construction NOC was issued by the Thrikkakara Gram Panchayat on 31.08.2006, the Kerala Municipality Building Rules were not applicable to the said area in question and were only extended on 06.11.2006, which means that the prior Fire NOC was not required. This has also been stated by the Secretary, Thrikkakara Municipality in its Letter dated 01.12.2021 to the Environment Engineer, Pollution Control Board, District Office, Ernakulam.

20. That the contents of Para 20 need no response and the answering Respondent does not need any legal advice from the Applicant as to how to proceed for future development of the Project.

21. That the contents of Para 21 are matter of law and needs no response from the Answering Respondent as this is not a case of a violation. The answering Respondent is well aware of the legal developments of violation cases and the Notifications that have been issued after 14.03.2017. The same has no relevance in the instant case as this is not a

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case of violation and neither the EC granted has recorded any violation or as a case of post facto EC.

22. That the contents of Para 22 are denied as wrong, false, and devoid of any merit. The Answering Respondent reiterates the submissions made in Paras 5 and 21 above which are not being repeated herein for the sake of brevity.

23. That the contents of Para 23 are denied as wrong, false, and devoid of any merit. The allegations made in the letter dated 03.10.2019 referred to by the Applicant have been refuted in detail in the present Reply.

24. That the contents of Para 24 are denied as wrong, false, and devoid of any merit. The submissions made in the foregoing paragraphs especially the non-retrospective nature of the legislation in question are reiterated and are not being repeated herein for the sake of brevity.

REPLY TO THE GROUNDS:

25. That the contents of Para 25 are specifically denied as wrong, false, and devoid of any merit as follows:

A. That the contents of Ground A are denied. Further, no action is required on the part of the Respondents in light of the bald allegations made by the Applicant which have been refuted above.

B. That the contents of Ground B are matter of law and hence need no response. However, it is important to note that no destruction of the environment has taken place nor there is any finding, nor any assessment has been brought on record in the present case.

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- C. That the contents of Ground C are matter of law and hence need no response. It has no applicability in the present case.
- D. That the contents of Ground D are matter of law and hence need no response. Needless to add that it has no implication on the present case.
- E. That the contents of Ground E are denied. The Answering Respondent reiterates the contents of Para 13 submitted above which are not being repeated herein for the sake of brevity. There is no expansion of the current project. In fact, the project has been completed only about 29% of its original size as stated above. Therefore Keystone Realtor case as mentioned is not applicable in the present case.
- F. That the contents of Ground F are matter of law and hence need no response and in any case is not applicable in the present case.
- G. That the contents of Ground G are denied. Further, no action is required on the part of the Respondents in light of the bald allegations made by the Applicant which have been refuted above.
- H. That the contents of Ground H are denied. Further, the allegations made do not pertain to the Answering Respondent and may be dealt with by the concerned Respondents.
- I. That the contents of Ground I are matter of law and hence need no response. Its application is however denied in the present case.
- J. That the contents of Ground J are matter of law and hence need no response.

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Managing Director

26. That the contents of Para 26 are denied as wrong, false, and devoid of any merit. However, it is important to reiterate that the present Original Application is barred by res judicata in light of the decision of the Hon'ble High Court of Kerala in W.P.(C) No. 26935/2019, which has been elucidated in detail in the Preliminary Submissions above.

27. That the contents of Para 27 are denied as wrong, false, and devoid of any merit. The Answering Respondent reiterates the contentions put forth the Preliminary Submissions made above with respect to the present case being barred by res judicata in light of the decision of the Hon'ble High Court of Kerala in W.P.(C) No. 26935/2019 as well as over 65 litigations initiated by the Ld. Counsel for the Applicant against the project of the Answering Respondent before various forums. The Ld. Counsel for the Applicant cannot therefore plead ignorance regarding the same.

REPLY TO LIMITATION:

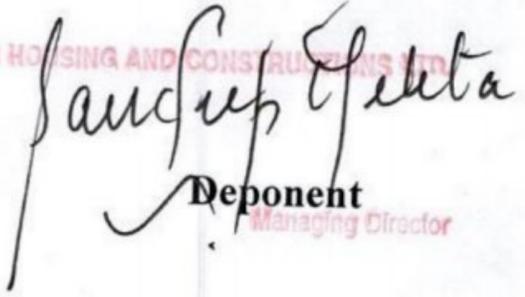
28. That the contents of Para 28 are denied as wrong, false, and devoid of any merit. Section 14(3) of the National Green Tribunal Act, 2010 mandates that no application for adjudication of dispute shall be entertained by this Hon'ble Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose. (Reliance placed upon: Forward Foundation vs State of Karnataka & Ors [2015 SCC OnLine NGT 5]) Further, Section 15(3) of the NGT Act, 2010 mandates that no application for grant of any compensation or relief or restitution of property or environment shall be entertained by this Hon'ble Tribunal unless it is made within a period of

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five years from the date on which the cause for such compensation or relief first arose. The alleged cause of action in the present Original Application, if at all, arose in 2008. Therefore, the Original Application is hopelessly barred by limitation under both, Sections 14 and 15 of the NGT Act, 2010 and deserves to be dismissed in limine. In fact, even if one considers the date of grant of EC on 2011, the instant case is hopelessly barred by limitation. It has been held by the Hon'ble Tribunal in DV Girish versus Secy Environment, Karnataka (OA No. 154 of 2014) and is also established law that once an Appeal does not lie before the Tribunal against a given Order, it will not be appropriate for the Tribunal to exercise judicial jurisdiction under Section 14 or any other provisions of the NGT Act, 2010.

29. That the contents of Para 29 do not merit any response.

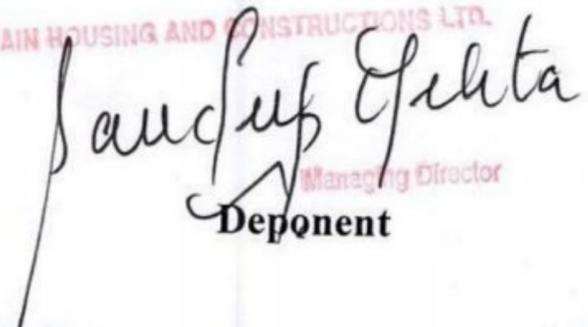
30. That in light of the above, the Answering Respondent most respectfully prays that this Hon'ble Tribunal may kindly be pleased to dismiss the present Original Application with exemplary costs.

for JAIN HOUSING AND CONSTRUCTIONS LTD.

Deponent
 Managing Director

VERIFICATION:

I, the above named deponent do hereby verify that all the facts mentioned in the affidavit are true to my knowledge and no part thereof is false and nothing material has been concealed therefrom.

Verified at Chennai on this 25th day of May 2022.

for JAIN HOUSING AND CONSTRUCTIONS LTD.

Deponent
 Managing Director

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONAL BENCH AT CHENNAI
ORIGINAL APPLICATION NO. 205 OF 2021 (SZ)**

**REPLY ON BEHALF OF RESPONDENT NO. 6,
JAIN HOUSING AND CONSTRUCTIONS
LTD TO THE ORIGINAL
APPLICATION NO. 205/2021 (SZ)**

**COUNSEL FOR THE 6TH RESPONDENT
S.KAMALESH KANNAN
S. SAI SATHYA JITH**