BEFORE THE NATIONAL GREEN TRIBUNAL (SZ) CHENNAI

(filed under section 19 of the National Green Tribunal Act, 2010)

in

Original Application No. 21/2021(SZ)

IN THE MATTER OF

Dr. Anupkrishnan.V
Flat 7173, Tower 7, Prestige Bella Vista
Ayyappanthangal Village, Mount Poonamallee Road
Kanchipuram District, Chennai- 600056
mobile no: 9445727579, 9447527579
email: anupkrishnanviswanath@gmail.com **……. Applicant**

Versus

1. Ministry of Environment, Forest and Climate Change
Represented by its Director, MOEF&CC RO(SEZ)
HEPC Building, No.34, Cathedral Garden Road
Nungambakkam, Chennai-600034
Phone: 044 28222325
Email: ro.moefccc@gov.in

2. State Level Environment Impact Assessment Authority
Represented Member Secretary
3rd Floor, Panagal Maligai, No.1, Jeenis Road, Saidapet
Chennai- 600015
Phone: 044 24359974
Email: mstnseiaa@yahoo.com

3. CMDA
Represented by its Member Secretary

Thalamuthu Natarajan Building
NO.1, Gandhi Irwin Road, Chennai-600008
Phone no: 044 28414355
Email: mscmda@tn.gov.in

4. M/s Prestige Estates Projects Ltd
Represented by Chairman & Managing Director
Falcon House, No.1 Main Guard Road
Bangalore-1 Karnataka, PIN: 560001
Phone: 080 25591080, 080 25591945
Email: irfan@prestigeconstructions.com

5. M/s Prestige Estates Projects Ltd, Chennai
Represented by Head of Business Operations
Prestige Polygon- top floor, #471, Anna Salai
Nandanam, Chennai-600035
Phone: 044 42924000
Email: nagaraj.c@prestigeconstructions.com

6. TAMIL NADU POLLUTION CONTROL BOARD
Represented by its Member Secretary
Corporate Office, 76, Mount Salai, Guindy
Chennai- 600032
Phone: 044 22353145
Email: tnpcb-chn@gov.in

7.Managing Committee of
Prestige Bella Vista Flat Owners Welfare Association
Represented by Mr. Balachander. B as Secretary
Flat No. 181210, Tower 18C, Prestige Bella Vista
Ayyappanthangal Village, Mount Poonamallee Road
Kanchipuram District, Chennai – 600056
Cell No: 94443 98557

Email: secretary@prestige-bella-vista.com,

bbala1962@gmail.com

8. Managing Committee of

Prestige Bella Vista Flat Owners Welfare Association

Represented by Mr. Balakrishnan. S.S as President

Flat No. 181012, Tower 18C, Prestige Bella Vista

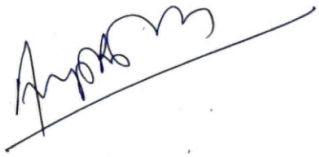
Ayyappanthangal Village, Mount Poonamallee Road

Kanchipuram District, Chennai – 600056,

Cell No: 9987377654

Email: president@prestige-bella-vista.com ……. Respondents
ssbalki13@gmail.com

INDEX



13	ANNEXURE-11 RBI CIRCULAR RBI/2013-14/ 217 DBOD.BP.BC.No. 51 /08.12.015/2013-14 dated 03/09/2013	354-355
14	ANNEXURE-12 TRIPARTITE AGREEMENT WITH SBI	356-360
15	ANNEXURE-13 RTI QUERY TO CPCB DATED 21/07/2021	361-380
16	ANNEXURE-14 REPLY FROM CPCB DATED 14/09/2021	381-383
17	ANNEXURE-15 REPLY FROM MOEF-INFRA 2 DATED 13/09/2021	384-385
18	ANNEXURE-16 PHOTOS OF ENCROACHMENT INSIDE PBV	386-394
19	ANNEXURE-17 RTI REPLY FROM CMWSSB DATED 22/09/2021	395-397
20	ANNEXURE-18EMAIL TO RESPONDENTS 4,5,7,8 DATED 14/09/21	398
21	ANNEXURE-19 OM OF MOEF&CC DATED 02/11/2018	399-400
22	ANNEXURE-20 RTI REPLY FROM TNPCB DATED 15/09/2021	401-402

REJOINDER FILED BY THE APPLICANT TO THE COMMON COUNTER AFFIDAVIT OF RESPONDETS 4&5 IN OA No. 21/2021(SZ).

THE APPLICANT NAMED ABOVE MOST RESPECTFULLY SHOWETH:

1) That this instant rejoinder is being filed by the applicant to the common counter affidavit filed by Respondents 4&5 dated 07-10-2021 in compliance with the Hon'ble Tribunal order dated 23-09-2021.

POINT BY POINT OBJECTION TO THE COUNTER AFFIDAVIT BY R4 & R5:-

2) That the applicant strongly object to the statement of Fourth and Fifth Respondents **(hereafter called the Respondents)** that *"Answering respondents deny each and every allegation and averment made by the applicant in the aforesaid original application as false, incorrect and baseless"*. Respondents failed to produce even a single document to support their averments in the counter affidavit submitted on 7/10/2021.

3) That the Applicant raises objections to the statement made by the Respondents that the *"Applicant should not be permitted to raise any allegations pertaining to violations concerning planning permission, car parking, built up areas etc., before this Hon'ble*

Tribunal". Any violations of the Environmental Clearance conditions will be dealt by Honorable National Green Tribunal. The role of NGT in environmental issues is reinforced by the recent Supreme Court Judgment in civil appeal no 12122-12123/2018 dated 07/10/2021. **Supreme Court reiterated in its landmark judgment that "We must therefore adopt an interpretation which sustains the spirit of public good and not render the environmental watchdog of our country toothless and ineffective"**. **(Refer Annexure-1).** The planning permission of Prestige Bella Vista violated The Environmental Clearance stipulations issued to them. EC stipulated construction of 20 blocks of residential buildings and one block of club house with total built up area of 4,78,003 sq.m and provision of 3769 car park spaces. But Respondents obtained planning permission for 33 blocks of buildings and one block of club house with a built up area of 4,43,738.16 sq.m and a provision of 2215 car park spaces which is a blatant violation of EC stipulations.

4) a. That the Applicant reminds the Respondents that being a reputed real estate company incorporated under Companies Act, 1956 will not give them licence to commit violations and non-compliance with planning permit and EC stipulations. Supreme Court recently ordered demolition of two high rise buildings constructed by the M/s Supertech Builders, India's leading Real Estate Developer in National Capital, citing violations of planning permission in civil appeal no.5041/2021 dated 31/08/2021**(Refer Annexure-2).**

d. That the Applicant objects to the statement by Respondents that *"The Project was to be constructed as residential complex comprising of 20 blocks/towers ("Towers"). As stipulated in the EC, there are only 20 Towers that have been constructed within the Project. Each of these towers comprises of one or more blocks (to a maximum of 3 blocks), aggregating to a total of 33 blocks("Blocks") as false and misleading.* There is no mention of "Tower" anywhere in the planning permission and Environmental Clearance. The EC stipulates ***"that The proposal involves construction of 20 blocks of residential buildings and one block of club house"(Please refer OA 21/2021 page 21).***

Planning Permission states "proposed construction of 33 blocks of residential buildings(type A-18 nos, type B-8 nos, type C-4 nos and type D-3 nos) with 2610 dwelling units and common lower basement floor + upper basement floor and clubhouse block with basement floor + 2 floors"(please refer OA 21/2021 page 18).

The definition of types of building block based on design and height as per model building bylaws- 2016 published by Ministry of Urban Development is (1) **"Detached Building"**- Includes a building with walls and roofs independent of any other building and with open spaces on all sides within the same plot, (2)**"Multi-Storeyed Building or High Rise Building"**- A building above 4 stories, and/or a building exceeding 15 meters or more in height (without stilt) and 17.5M (including stilt) and (3) **"Semi-detached Building"**- A building detached on three sides with open space as specified in these regulations **(Refer Annexure-3).**

As per Developmental Regulations of CMDA Para 2(23), the definition of group development is "accommodation for residential or Commercial or combination of such activities housed in two or more blocks of buildings in a particular site irrespective of whether these structures are interconnected or not. Any inter link between the structures in terms of connecting corridors shall not be construed as making any two structures into one block. However, if these blocks are connected solidly at least for one-third the width of any one block on the connecting side, then such blocks shall be construed as a single block" **(Please refer Annexure-4 page 3, para 2.23).** None of the semi-detached blocks in the PBV project are interconnected at all. Hence they should be considered as separate 33 blocks of buildings, not 20 blocks/towers("Towers") as was alleged by Respondents.

f. That the Applicant objects to Respondents' statement that the residents are living in Prestige Bella Vista peacefully with an enhanced quality of life as false and misleading. Annexures-19 to 26 from page 130 – 157 of the OA No. 21/2021 clearly highlighted the hardships of the residents and agitations waged by them including applicant himself against the water problems and car parking issues prevalent in Prestige Bella Vista from

December 2016 onwards. Respondents conveniently omitted these facts while making claims of enhanced quality of life in Prestige Bella Vista.

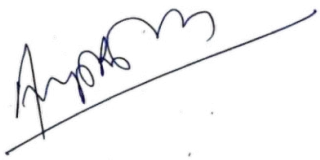
g. That the Applicant strongly objects to the statement made by Respondents that ***"the Applicant has initiated the instant proceedings on totally false and vexatious grounds after a lapse of 5 years from taking possession of the unit intending to cause harm to the Respondents' reputation and to enrich himself" as false and misleading.*** Any Indian citizen can file complaint against project proponent of any large residential project with the National Green Tribunal for alleged environmental violations. The cause of action is recurrent as long as the project is incomplete and environmental violation continues.

Actually the issues between Applicant and the Respondents started from 9th March 2015 itself when Respondents sent a wrong mail to Applicant informing that the Applicant's apartment is completed and allotted the date 15/04/2015 for UDS registration **(Please refer page 44 of the OA No. 21/2021).** Finally, the UDS alone without conveyance Deed of the Apartment was registered in the Applicant's name on 26/10/2015 and the Respondents falsely declared in the UDS that the applicant's apartment 7173 was completed on 31/03/2015 **(refer page 138, para 4 of the Statement of Affidavit submitted to Joint Committee on 25/04/2021). The encumbrance certificate obtained from TN Registration department on 28/08/2021 clearly prove the duplicity committed by Respondents (Refer Annexure 5).**

After the alleged possession of the apartment on 25/08/2016, Applicant was not issued the Completion Certificate and was informed that it was in process and will be issued after 2 weeks. Applicant had sent altogether 9 emails to the Prestige Builders requesting them to provide CC (one email in 2016, 5 in 2017, one email in 2018 and two in 2019). But Respondents didn't reply to any of Applicant's emails. Applicant had sent a registered letter on 06/05/2017 demanding compensation from the Respondents. Applicant sent a legal notice asking for compensation on 24/07/2017 and a self notice on

25/07/2017 asking for compensation. Applicant managed to obtain a RTI reply from Respondent 3 on 19/08/2019 which proved beyond doubt that the final completion certificate of PBV project is still pending **(refer page 115 &116 of OA 21/2021).** Moreover, Respondents had admitted in their request letter to "**Respondent 1"** dated 13/10/2017, that Prestige Bella Vista Project was not having Completion Certificate then **(refer page 174 of the Rejoinder filed by Applicant to JC Report)**. Applicant sent another self notice by email and by speed post on 28/11/2019 asking the builders to complete the project & obtain CC and pay delay compensation. Finally Applicant filed a consumer complaint with State Consumer Disputes Redressal Commission on 04/12/2019 which is still pending for registration.

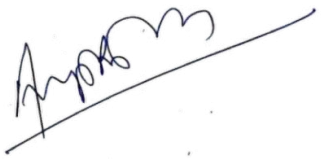
Applicant obtained copies of the Environmental Clearance letter, Certified copy of Compliance Report and 6 monthly compliance Report (April 2016 to March 2019) of Prestige Bella Vista Residential project through RTI reply from MOEF&CC SEZ Chennai, in May 2020 and thus came to know about the environmental violations committed by Respondents 4&5 **(refer pages 21-41 & 46-68 of OA 21/2021).** Applicant wrote an email complaint dated 17-05-2020 to 'Respondent No.1' enumerating the environmental violations committed by Respondents 4&5 in detail **(refer page 39 & 40 of the Rejoinder filed by the applicant to JC Report)** and the 'Respondent 1' sent a reply by email on 26/05/2020 defending and supporting all actions of Respondents 4&5 **(refer page 41-44 of the Rejoinder filed by the applicant to JC Report).** But 'Respondent 1' promised to conduct a re-inspection at Prestige Bella Vista after the lock down period is over. Applicant waited till December 2020 but 'Respondent 1' failed to conduct a re-inspection. 'Respondent 1' didn't respond to any further email from the Applicant. Applicant filed an RTI with MoEF&CC on 01-01-2021**(refer page 45-47 of the Rejoinder filed by the applicant to JC Report)** to know the outcome of the inspection at PBV and the PIO replied on 18/01/2021 that MoEF&CC, RO, Chennai hasn't taken any decision regarding the re-inspection at PBV **(refer page 48-50 of the Rejoinder filed by the applicant to JC Report). Applicant filed the complaint with Hon'ble Tribunal on 18-01-2021 as a desperate attempt to get justice.**



5. That the paragraph 5 doesn't require any specific objections.

6. That the Applicant objects to the statement of Respondents that they received Planning permission letter on 26/02/2013 only as false and misleading. The Applicant was made to believe by the Respondents in 2012 that they had obtained planning permission letter on 28/05/2012 and they managed to enter into a Sale Agreement with the Applicant on 26/03/2013. Page no. 3 of the Sale Agreement of the Applicant with Respondents says, **"WHEREAS pursuant to the above, the Developer has obtained the necessary permissions, no objection certificates for development of the Schedule 'A' Property into high rise apartment building/s and the CMDA has approved the Development Plan vide No. C/PPlMSB-IT/38 A to AC/2O12, dated 29/05/2O12, Planning Permit No:7115; and the Developer has obtained all other sanctions and licenses from the statutory authorities for construction of residential apartment building/s on the Schedule 'A' Property" (Please refer Annexure-6 page). So the Respondents actually lied to the Applicant in 2012 and made false declaration in the Sale Agreement with the Applicant in 2013 that they had obtained planning permit no. 7115 on 29/05/2012.**

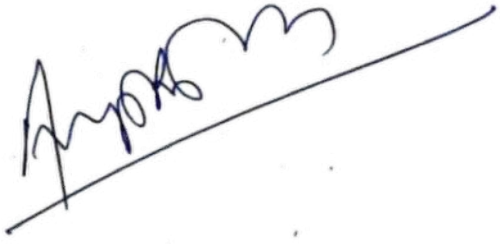
7. That the Applicant strongly objects to the averment by the Respondent that they didn't start the Project in 2012 January as false and misleading. Respondents can't argue that they did only Bhumi pooja in January 2012 and therefore the 'Data sheet' of the Compliance Report appears to have erroneously considered this as the commencement date. The 'Data sheet' of the Compliance report is a legal document issued by Government of India and the Respondents should have produced valid documents to prove their claim that the 'Data Sheet' was wrong. Actually Bhoomi pooja is synonymous with the start of the construction of any construction of residential project. More over, the Annual Report of Prestige Estates Projects Pvt Ltd for FY 2011-2012 clearly mentioned that Respondents started the Prestige Bella Vista Project before March 31st, 2012 **(Please refer Annexure-7 page 39, 43, 60).** So, construction of Prestige Bella



Vista project started way before obtaining Environmental Clearance. The 'Data Sheet' along with the certified copy of the compliance report is actually part of the letter no.F.No.EP/12.1/2012-13/SEIAA/16/ TN/0255 dated 15/02/2019 issued to Respondents 4&5 by 'Respondent No.**1'**. Respondents 4&5 can't say that page no.2&3 alone was missing in the letter issued to them by Respondent No.1.

8. That the Applicant objects to the statement by Respondents that they didn't force the buyers to register and occupy the apartments as false and misleading. National Consumer Disputes Redressal Commission, in the First Appeal No. 109 of 2015 ordered that "*the possession of the apartments should not have been handed over to the members of the complainant society without obtaining occupancy certificate and this is a clear unfair trade practice"*. Please refer the Supreme Court Judgment in CIVIL APPEAL NO 5699 OF 2019.**(Annexure-8 page).** *Supreme Court in its Judgment in Civil Appeal no. 5785/2019 dated 11/01/2021 said that "When possession of property is not delivered within stipulated period, the delay so caused is denial of service. Such disputes or claims are not in respect of immovable property as argued but deficiency in rendering of service of particular standard, quality or grade. Such deficiencies or omissions are defined in sub-clause (ii) of clause (r) of Section 2 as unfair trade practice"* (**Annexure-9 section 19.3).** *National Consumer Disputes Redressal Commission in its judgment in First appeal no. 202/2019 dated 10/12/2019 said that physical possession of an apartment would only mean the delivery of actual physical possession after getting occupancy certificate. So, Respondents 4&5 can't argue that the registration of UDS of Prestige Bella Vista was voluntary on free will and consent of the buyers.*

The Respondents actually registered the Conveyance Deed of UDS alone without registering the Conveyance Deed of the Apartment in the Applicant's name on 26/10/2015. Respondents 4&5 sent emails on 21/08/2016 and 25/08/2016 coercing the Applicant to take physical possession of the said apartment **(Refer Annexure 10).**



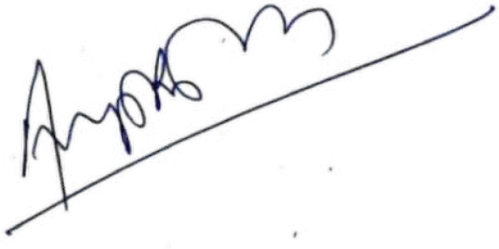
Applicant makes strontg objections to the statement made by Respondents 4&5 which is as follows, **“In addition, the averment that the No Objection Certificate were issued by the Banks in violation of RBI circulars and tripartite agreement are also denied as false and erroneous”.**

SBI violated the RBI circular, RBI/2013-14/ 217 DBOD.BP.BC.No. 51 /08.12.015/2013-14 dated 03/09/2013 by releasing the last and final installment of the loan amount to the Builder without obtaining a copy of Completion Certificate from the Builder **(Refer Annexure 11).** SBI issued NOC for the registration of the Conveyance of Deed in the Applicant’s name without obtaining a copy of the Completion Certificate of the Project from the Builder. Builder didn't transfer the Conveyance Deed of the Apartment in the Applicant’s name and the SBI didn't insist the builder to do so even now **(Refer Annexure 12, section 6, 7 & 16).**

Section 6 of the Tripartite Agreement says that “The Builder/Owner(s) shall not transfer the said flat to any other person without the proper written consent of the SBI”.

Section 7 of the Tripartite Agreement says that “On the receipt of entire consideration of the amount, the Builder along with the Owner(s) shall execute a proper Conveyance Deed/Sale Deed/Lease Deed in favour of the Borrower(s). The Builder/Owner(s) undertake to deliver the same along with original registration fee receipt directly to SBI and not to the Borrower(s). Before execution of the Sale Deed/Conveyance Deed/Lease Deed, the Builder shall inform SBI about the Same on the completion of the Project”.

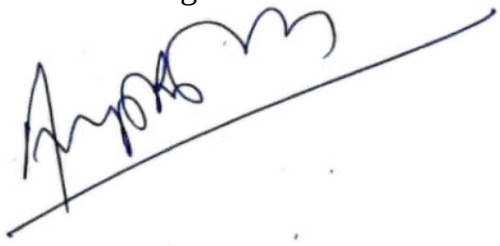
Section 16 of the Tripartite Agreement says that “The Builder assures SBI that the construction shall be completed as per schedule and as per the sanctioned plan and on completion of the construction and receipt of entire consideration from the Borrowers, the title of the flat with the proportionate UDS in the land shall be conveyed in the name of the Borrower(s).



9) That the Applicant objects to the statement by Respondents 4&5 that they started submitting the half yearly compliance report of Prestige Bella Vista Project from October 2013 onwards and continue to submit even as on date as false and misleading. Respondents 4&5 quoted the observations of the "Joint Committee report" as the proof of submission of half yearly compliance report. **Strangely, Joint Committee relied on the acknowledgment of submission of half yearly compliance report by Respondents 4&5, to reach the conclusion rather than inspecting the Diary register of receipt of all 6 monthly compliance report kept in the Office of MOF&CC SEZ. Joint Committee failed to observe that the validity of the EC of PBV Project is expired on 16/10/2019 and continuation of six monthly report after expiry of EC doesn't have any relevance at all without extending the validity period.**

The Joint Committee report contradicted an RTI reply sent by PIO, Dr. M T Karuppiah, MOE&FCC RO Chennai dated 09/05/2020 which stated that the ROSEZ did not receive half yearly compliance reports from Prestige Bella Vista Project from 2012 to June 2016. He further stated that they received half yearly compliance report from PBV Project from December 2016 to June 2019 only **(refer page 52-53 of OA 21/2021).**

Applicant sent another RTI to CPCB with registration no. CPCBD/R/E/21/00446 dated 21/07/2021 with the following queries **whether the Project Proponent of the Prestige Bella Vista residential project has been regularly sending six monthly compliance report of the stipulated EC conditions from 2012 to 2016 to the respective office of Central Pollution Control Board in hard copies as well as by email.** RTI complaint was received at Central Pollution Control Board, Delhi first. It was then transferred to Ministry of Environment, Forest and Climate Change, IA-infra 1division. It was subsequently transferred to MOEF&CC ROSEZ(ROSEZ/R/T/21/00016) and then to CPCB Regional Office Chennai (CPCBD/R/T/21/ 00097). It was further transferred to CPCB Regional Office Bangalore Finally, the complaint was transferred back to MOEF&CC Infra-2 division wide registration no.MOENF/R/T/21/ 00217 **(Annexure 13).**



CPCB Bangalore and Chennai office replied that they didn't receive six monthly compliance report from Project Proponent of Prestige Bella Vista Residential Project either through email of by registered post (Refer Annexure 14). MOEF&CC infra-2 division replied that Ministry of Environment, Forest and Climate Change is not having copies of compliance reports of PBV from 2012 to 2016. (Refer Annexure 15).

10) That the Applicant objects to all averments made by the Respondents 4&5 in Para 10 as false. The applicant strongly objects to the Respondents' argument that 25 blocks out of 33 blocks were completed in all aspects and only 8 blocks were not complete and a few of incomplete blocks were occupied. Respondents didn't get Completion Certificate for 11 blocks on 08/01/2016 and for 14 blocks on 16/03/2016 as alleged by them. Applicant reaffirm that Respondents No.3 issued two illegal partial completion certificates violating the revised Completion Certificate norms issued by CMDA vide office order no.01/2010. Applicant had sent a RTI query on 12/01/2021 to Respondent No.3 to explain on what grounds those two illegal partial completion certificate were issued to Respondents 4&5 but Respondent No.3 didn't bother to reply till now ***(Please refer to page 97-107 of the Written Statement submitted to Joint Committee).*** As per the revised norms dated 21/01/2010, "1/3 rd area of the total terrace area to be reserved for erecting Solar Photo Voltaic Panels. The approximate space required for erecting Solar Voltaic Panel is **10 sq.mt** for generating 1 KW of electricity for HRBS, NHRBS and Public Buildings".

Recent press release by CMDA dated 31/08/2021 cautioned that "the occupants / owners of the buildings are hereby instructed to ensure provision of Solar Energy System in their roof top as per the Planning Permission issued without fail. The Enforcement Cell of CMDA will inspect the premises of such buildings to check whether Solar Voltaic Panel System have been installed and effectively used to generate power supply for their own use or to a grid. Any violation in non provision of Solar Voltaic Panel system in

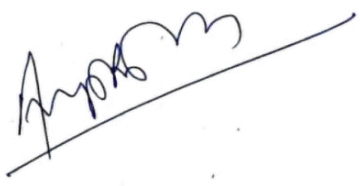
HRB/NHRB as well as public buildings will be viewed seriously and enforcement action will be taken in this regard under Section 56 & 57 of TNT&CP Act.1971".

Checklist for filing Completion Certificate applications(CCA) for special buildings, group development, multi storeyed buildings and institutional buildings include authenticated copy of NOC from EIAA. It may be noted that only after submission of the NOC/clearance (Certified Complianc Report from MoEF&CC/SEIAA), the Completion Certificate Applications will be considered for final approval. Respondents 4&5 applied for Certified Compliance Report on 13/10/2017**(please refer page 174 of the Rejoinder filed by Applicant to the JC Report).** Respondents 4&5 applied for Completion Certificate of the Project Prestige Bella Vista on 15/06/2017 only ***(Refer page 117 of the OA 21/2021).*****So, based on these revised CC norms issued by CMDA, those two partial completion certificate issued to 25 blocks of PBV are considered illegal.**

11) That the Applicant strongly objects to the averments made by Respondents in the para 11 as false. Prestige Bella Vista residential project is an ongoing project as defined under rule 2(h) of the TNRERA rules and is required to be registered with the Authority under TNRERA Act according to the judgment pronounced by RERA Adjudicating Officer on 04/12/20 **(Refer page 14, Para 7(d) of the Affidavit of Written Statement Submitted by Applicant to JC).**

12) That the averment in Para 12 doesn't require any traversal.

13) The Applicant denies the averments made in the Para 13 as false. The Certified Compliance report indeed overlooked several noncompliance with EC stipulations. The Applicant has already highlighted proof in Para 4f that the violations happened in PBV have had serious impact on the residents of PBV.



14) That the Applicant objects to the averments made in the para 14 as false. 25 blocks in PBV Project were issued only partial completion certificate in January and March 2016 **(Please refer page 106-109 in OA 21/2021).** It is very clearly documented in the Partial Completion Certificate that building has been completed as per approved plan and satisfies the norms for issue of partial completion certificate approved by the Monitoring Committee. Respondent 3 has made it very clear in its RTI reply dated 19/08/2019 and 13/01/2021 that Prestige Bella Vista Project doesn't not have the final Completion Certificate. Respondent No.3 categorically said that the final CC application was pending for remittance of balance of premium FSI and other charges and required particulars which included (1)NOC and planning permission for swimming pool (2) Consent to Operate as per applicable rules from TNPCB and (3) revised plan as site condition showing correct building and set back measurements duly signed by Registered Architect, Structural Engineer and Owner **(Refer page 110-116 & 162-174 of OA 21/2021). Prestige Bella Vista Project is an ongoing project as per the judgment made by RERA Adjudicating Officer in his judgment in the complaint CCP No. 258/2019 (Refer page 10-20 of the Affidavit of written Statement submitted by Applicant to JC).**

The Respondents 4&5 obtained CTO for 25 blocks fraudulently in 26/11/2018. The detailed manufacturing process for each product along with detailed process flow chart and details of material balance for each products and process were different in CTE and CTO of Prestige Bella Vista. Prestige Bella Vista Project obtained CTE for Construction of Residential apartment in the total land area of 1,00,199 sqm with total built up area 4,58,341sqm comprising of 33 blocks in 20 tower of residential buildings with two basements and 1 block of club house, Each tower having 2 basement plus ground plus16 floor. But the Respondents 4&5 obtained CTO for Residential Building Complex "Prestige Bella Vista" Comprising of 25 Blocks in 17 Towers (Each tower having 2 basements, Ground plus 16 floors) with 2083 Dwelling units & 1 Block of Club House having Double Basement floor + Ground floor + 1 floor) with total builtup area (Phase - I) of 338361 Sq.m. The TNPCB refused to renew the CTO for 25 blocks citing violation

of General Conditions No. 6 of Environmental Clearance Stipulations. In fact, they have sent directions under section 33A of Water Act and 31A of Air Act to Respondents 4&5 on 08/04/2021 to obtain CTO for the entire Project and to resume operation of the activities inside the project only after obtaining necessary consent from the TNPCB **(Refer Joint Committee Report).**

15) That the averments in the Para 15 doesn't require traversal except that the issue of completion certificate to Prestige Bella Vista is not sub judice.

16) That the averments in the Para 16 is false and mischievous. The issue of Completion Certificate to the PBV Project was not discussed in any of the Civil Courts So far. The SLP No. 31274-31275/2014 & Civil Appeal No.5642-5643/2019 in SC between Respondents 4&5 vs Respondent No.3 arise from the Judgment of a Division bench of the High Court of Judicature at Madras in a Writ Appeal, affirming the judgment of a learned Single Judge in proceedings under Article 226 of the Constitution. The High Court set aside a demand raised by the 'Respondent No.3' for revised charges on account of (I) Infrastructure and Amenities and (ii) Premium Floor Space Index. **The Hon'ble Supreme Court gave verdict that The Respondent No.3 was justified in demanding Premium FSI charges at the revised rates and would be entitled to enforce its demands. However, SC maintain the order of the High Court insofar as the demand for I & A charges is concerned.** So, issue related to compliance with TNT&CP Act was never sub judice except the payment for the revised charges for Infra structure & Amenities and Premium Floor Space Index. The Applicant has every right to raise issues related to environmental violations of EC stipulations in Hon'ble Tribunal. The prayer clause 3 of the applicant pertaining to Completion Certificate is very specific, ie., **"To instruct Respondent No.3 to stop issuing Completion Certificate to PBV Project till the Compliance with the stipulations in Planning Permit and EIA Clearance Letter are met with".**

17) That the Applicant objects to the averment made by Respondents in the Paragraph 17 which is completely false. Planning Permission issued by Respondent No.3 violated EC stipulations as it insisted 2215 car park spaces instead of 3769 as was stipulated by EC. Respondents didn't provide even 2215 car parks as was planned in the CMDA approved site plan. Out of 369 surface car park spaces provided in the approved site plan, 168 car park areas were converted to swimming pool and additional ramps illegally. Out of remaining 201 car park spaces, 188 are earmarked over road width margin in the approved site plan which is a major EC violation. Please refer section 6, page 4 of the written statement with affidavit submitted to Joint Committee. Applicant had clearly shown these areas to the members of the joined committee during the inspection, but they did not mention it in their inspection report **(Please refer page 20 & 122 of the OA No. 21/2021 showing the site plan with deviations marked).** Respondents 4&5 did not disclose the building plan with 1846 basement car park spaces ear marked nor submitted the same to the Joint Committee till now.

18) That the Applicant strongly objects to the averments made by Respondents in the Paragraph 18 as false and misleading. There was rampant encroachment of open spaces and road width margin by car parking, WTP construction, DG outlet construction, piped gas bank construction, tennis court construction and unauthorized Avin Milk Booth construction. Applicant pointed out these violations one by one during the Joint Committee inspection on 20-04-2021 but the members of Joint Committee failed to take note of it in their Joint Committee report. Applicant is attaching photos of blatant encroachment of road width margin by illegal car parking, gas banks, Avin Milk booth, illegal WTP, and illegal TNEB Asst Engineer (O&M) Office **(Refer Annexure-16).**

19) That the Applicant objects to the averments made by Respondents 4&5 in the paragraph 19 as completely wrong and fictitious. EAC of MoEF&CC evaluated this project in its 114th meeting held at New Delhi on 10 July 2012 **(Refer page 115-117 of the Rejoinder filed by the Applicant to JC Report).** Total land area of the project proposal was 1,00,199 Sqm (24.76 Acres). The proposal involves construction of 20 blocks of

residential buildings and 1 block of club house with a total built up area of 4,58,341 Sq.m. The total water requirement during operation phase of the project is estimated to be 1,524 KLD and the fresh water requirement is about 806 KLD which will be sourced from bore wells and metro water supply. The wastewater generation from the project is estimated to be about 1,133 KLD, which will be treated in a sewage treatment plant of capacity 1,610 KLD. So the argument by Respondents 4&5 that the total requirement of water for the Project would be 800 – 1000 KLD is totally erroneous. **The estimated built up area in the project was stipulated to be 4,78,003 sq.m as per the Environmental Clearance issued to the Respondents 4&5. Any change in the TOR and scope of the project which includes the change in the total built up area from 4,78,003 sq.m to 4,49,971 sq.m should have been submitted in the Ministry of Environment for fresh appraisal. Respondents violated the General Condition No.6 of the Environmental Clearance stipulations by not applying for fresh appraisal.**

20) That the Applicant strongly objects to the statement of Respondents 4&5 in Para 20 that there is sufficient water supply mechanism functioning in Prestige Bella Vista Apartment Complex as false. It was based on the alleged submission of a copy of approval letter from CMWSSB for supply of fresh water of 2000 MLD vide letter dated 15/06/2016 by Respondents 4&5. Respondents 4&5 argued that 600 KLD water is being supplied by CMWSSB and remaining 200 KLD water being supplied by tanker lorries. But the Respondents 4&5 failed to attach the copy of the CMWSSB Water bill for water supply at PBV from 2017 to 2021 as proof of their argument. The approval letter will not guarantee sufficient quantity of water being delivered to Prestige Bella Vista Project. Respondents 4&5 should have furnished details of the total amount of Metro Water supplied to Prestige Bella Vista from 2016 to 2021 and the amount incurred for the procurement of Metro Water.

Applicant is in possession of an RTI reply from the PIO, EE(530), CMWSSB dated 22/09/2021 saying that 95,086 Kilolitres of water (393 KLD) was delivered to Respondents 4&5 from during the water abundant season, January 2021 to August

2021**(Refer Annexue-17)**. Applicant got another RTI reply from CMWSSB dated 13/08/2021 saying that the amount of metro water supplied to Prestige Bella vista for the year 2019 was 102163 KL (280 KLD) and for 2020 was 120934 KL (331 KLD) respectively and the total amount collected from respondents 4&5 from 2017-2020 was Rs 5,16,87,028/- **(Refer page 80-84 of the Rejoinger by Applicant to the JC Report).**

Respondents 4&5 failed to record the daily water consumption from the installed water meter recordings maintained to assess the average consumption of metro water at PBV. Joint Committee failed to inspect the monthly water consumption returns with water meter readings in Form-1 which was sent to the District TNPCB Office every month by the Respondent 4&5. (As per the special condition 8 of the CTE order and special conditions 5 of CTO, respondents 4&5 should install water meters in the WTP to record the daily consumption of water. Respondents 4&5 are required to send monthly water consumption returns of each of the purposes with water meter readings in Form-I on or before 5th of every month to District TNPCB Office as per general condition no. 16 of CTO).

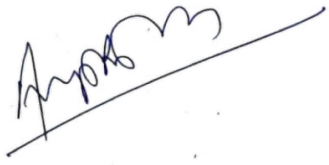
Applicant had requested for copies of (a) Monthly water consumption returns of each of the purposes with water meter readings in Form-I from April 2015 to March 2021 which was filed on 5th of every month, (b) Yearly return on Hazardous wastes generated and accumulated for the period from 1st April 2015 to 31st March 2021and (c) Yearly Environmental Statement for the period from 1st April 2015 to 31st March 2021 in Form –V(General conditions 16 of CTO) from Respondents 4,5,7& 8 vide email dated 14/09/2021 but none of the Respondents obliged to provide the information which is actually a public document **(Refer Annexure 18).**

Metro water bill at Prestige Bella Vista for the financial year 2017-18 was Rs 1,42,86540/- according to the unaudited maintenance budget circulated by respondents 4&5 which means the average metro water supply is 296 KLD only ***(refer page 187 of***

written statement submitted to Joint Committee). Commercial Tariff of Metro Water being Rs 132/KLD. Tanker water charges for the year 2019-20 budget was a whopping 3.9 crores ***(refer page 189 of the written statement submitted to Joint Committee)*** and for the year 2020-21 was 3.95 crores as per the email communication from the respondents 4&5 **(Refer page 85-88 of the Rejoinder filed by Applicant to the JC Report).** So, the rest of 600 KLD water was procured from Tanker lorries and the statement of Respondents 4&5 is totally and arbitrary and illegal. Neither the TOR of Environment Clearance nor that of CTE/CTO allowed Respondents 4&5 to procure water from Tanker Lorries. Respondents 4&5 should have submitted application to EAC of Ministry for change in TOR and Scope of the Project before getting Tanker Lorry Water.

Respondents 4&5 admitted to the Joint Committee that they did not obtain NOC for the ground water abstraction which is a major non compliance of the specific condition no. 27 of EC stipulations and special condition no.5 of CTE stipulations. Joint Committee didn't give any importance to this major non compliance of EC and CTE stipulations. MoEFCC actually sent an Office Memorandum on 02/11/2018 asking state Pollution Control Board to not to issue Consent to Operate (CTO) to projects where ground water is proposed as water source, till the Project Proponent obtains permission to draw ground water for project activities **(Refer Annexure-19)**.

21) That the averments in Para 21 is false and misleading. It has been proven beyond doubt that supply of 280 – 390 KLD of Metro Water is grossly insufficient to cater the basic needs of 10,000 odd residents inside this huge apartment complex. The definition for surface water is water coming from streams, river, lakes and wells. But Private Tanker Lorry water doesn't come under the definition of surface water. More over, procurement of water from Private Tanker Lorry was never discussed in the 114th EAC meeting conducted at New Delhi on 10th July 2012 for the Environmental Clearance for the proposed residential complex Prestige Bella Vista **(Refer page 115-117 of the Rejoinder filed by the Applicant to the JC Report).**



The EAC used the quality of water that is prevailing at the site as the basis of Water Treatment Plant (WTP) design at the Project. The water sample obtained from a bore well at the site was tested and the characteristics observed were used for designing the WTP. It was noticed from the test results that the TDS of the water was on the higher side of 1100ppm. Apart from TDS, TSS, iron and Hardness were also found to be slightly on the higher side of the potable limits. The treatment scheme comprises of a multi-media sand filter followed by activated carbon filter and a reverse osmosis membrane filter treatment. EAC proposed RO treatment for the portion of water that is used for cooking and drinking. Other domestic applications will be provided with the raw water subjected to filtration and treatment for iron. The same stipulation was incorporated into the Environmental Clearance issued to respondents 4&5. Respondents 4&5 can't change the TOR and scope of the project without the appraisal from EAC of MoEF&CC. **The Respondents 4&5 should have submitted the change of TOR to the Ministry of Environment for appraisal if they decided to use Private Tanker Lorry water instead of ground water from bore wells.**

22) That the averments in the Para 22 is incorrect and misleading. Water from Private Tanker Lorries should not be used without appraisal from the Ministry as it violated the EC stipulations. Moreover, the supply of water from illegal Private Tanker Lorries are erratic and dangerous as it is not standardized. If the Respondents 4&5 do not want RO plant in PBV, then they should have submitted application to Ministry for appraisal of the change of TOR rather than violationg the EC stipulations by not installing RO plant.

23) That the averments in the Para 23 is incorrect and misleading. The EAC analyzed the report of the ground water sample from the project site and arrived at the conclusion that RO water plant is necessary in this project. Applicant reiterate that Respondents should have submitted application to EAC, Ministry of Environment for change in TOR for discarding RO treatment facility citing the judgment of Principal Bench of Hon'ble

NGT, New Delhi in OA No. 134/2015 rather than resorting to violations of EC stipulations.

24) **That the Applicant strongly objects to the averment by Respondent 4&5 that "the Joint Committee has not received any instances of complaints from the residents regarding the quality of drinking water provided". In fact, the Joint Committee and Respondents 4,5,7&8 kept the date of inspection of PBV Project a closely guarded secret. Even the Applicant was informed about the proceedings just 20 minutes before the start of the inspection. Respondents 7&8 did not inform the Members of the Association about the date of inspection of the Joint Committee at all. There was no prior public announcement of the commencing inspection by Joint Committee or Respondents 4,5,7&8 at all.** ***(Please refer page 8 of the Affidavit of statement submitted to the Joint Committee. Also please refer page 3&24 of the Rejoinder filed by the Applicant to the JC Report).***

25) That the Applicant strongly disagree with the averment of the Respondents 4&5 that the facility provided is sufficient to meet the waste water that will have to be treated in effective manner to protect environment. The sewage generated from the project site (33 blocks +1 club house) is actually 1133 KLD but the CTO permitted only 829 KLD of waste water generation. Though Respondents 4&5 reported that treated water is being used of toilet flushing, green belt development and the remaining treated sewage water being sent to the Nesapakkam decanting point for disposal, they haven't actually disposed the excess treated sewage at Nesapakkam Decanting Point as was observed by TNPCB during their inspection on 19-02-2021. Respondents 4&5 reported to TNPCB that the entire treated sewage generated from the residential complex is being utilized for toilet flushing and Green belt development in their premises. But the TNPCB officials noted that there was no sufficient area available for gardening within the premises during their inspection on 19-02-2021. Moreover, the STPs installed in the apartment complex are defective and unsafe according to the inspection conducted by the Water Management Task Force of the Managing Committee of PBV Flat Owners

Welfare Association **(Refer page 157-173 of Rejoinder filed by Applicant to JC Report).**

The TNPCB had observed that the respondents 4&5 have not obtained authorization under Hazardous and other waste (Management & Trans boundary Movement) Rules 2016, for disposal of hazardous waste generated from this residential complex. The attached photograph of waste dumped in the premises of PBV is ample proof that there is no proper treatment facility for waste disposal existing in this residential complex **(Refer page 228-229 of Rejoinder to RC Report).**

26) That the applicant strongly objects to the statements of Respondents 4&5 in Para 26 that Adequate numbers of DG sets were provided to meet out the back up power supply. Total energy requirement during the operation of the project was 16 MVA as stipulated by EC as well as CTE, which would be sourced from the nearby TNEB power grid. As per the brochure of PBV and Electricity Board guidelines, the 4BHK houses require 10KVA power, 3BHK require 7.5KVA, 2.5/2BHK require 5KVA and 1BHK require 3.5 KVA power which would be sourced from the nearby TNEB power grid.

268 4BHK will require 2.68MVA of power
842 3BHK will require 6.315 MVA of power
298 2.5BHK will require 1.49 MVA of power
602 2BHK will require 3.010 MVA of power
603 1BHK will require 2.11 MVA of power.

The average of 2613 apartments will require 15.6 rounded off to 16MVA of power. **(Refer page 223 & 225 of Rejoinder filed by Applicant to JC Report).**

For emergency power back up, 26 nos. of 750 KVA DG sets were proposed as per the EC and the CTE stipulations. The respondents 4&5 fraudulently obtained a CTO for 25 blocks with total built up area of 338,661 sq.m instead of 33 blocks with total built up area of 458,341 sq.m as was stipulated in the CTE. On record, Respondents connected 25 blocks to the TNEB power grid thus reducing the power requirements to 12.0 MVA only, for which the substation and transformer yard has been installed within the project

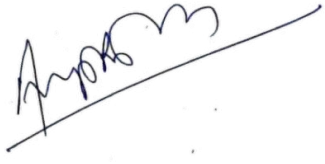
site after obtaining approval from TNEB. They installed 20 DG sets (10 nos. Of 725 KVA + 5 nos. of 600 KVA + 5 nos. of 500 KVA) with a total capacity of 12.75 MVA for emergency back up as was stipulated in the CTO. But Respondents 4&5 connected entire 33 blocks to the 12 MVA power grid and the 20 DG sets of 12.75 MVA illegally.

27) That the Applicant objects to all averments in the Para 27 as false. Provision of car parking spaces in public spaces and road width margin is a serious environmental violation and Applicant has already attached proof of the encroachments in Annexure-16.

28) That the Applicant deny all averments in Para 28 as false and misleading. The respondents 4&5 failed to provide solar energy for illumination of common areas, lighting for gardens and street lighting and solar water heating in PBV violating the stipulations laid down in the EIA Clearance letter. They provided solar water heating for only top two floors of 30 towers (240 apartments out of 2613) but 80% of them are now non functional. Physical inspection alone will prove the dilapidated condition of the installed solar water heaters. Applicant requested the Joint Committee members to inspect the solar water heating system of all 30 towers to assess the condition on 20/04/2021 but they didn't oblige.

Respondents 4&5 have submitted false declaration in the Compliance Certificate that solar panels are installed to meet the power requirements of water heaters of all apartments. Respondents 4&5 have submitted false declaration in the Compliance Certificate that solar energy is incorporated for illumination of common areas, lighting for gardens and street lighting. They failed to install a hybrid system or fully solar system for a portion of the apartment. RTI reply from TANGEDCO dated 06/03/2021 states that respondents 4&5 haven't registered with TANGEDCO online portal for installation of roof top solar photo voltaic cells and for net metering **(refer page 196 of Affidavit of written statement submitted to JC).**

29) That the Applicant objects to the averments made by Respondents in Para 29 as false. Respondents failed to produce any proof of their claim that Environmental Management Cell was formed in the project and is functional. Respondents failed to produce the Minutes of the Meeting of the EMC so far.



30) That the Applicant objects to the statement by the Respondents 4&5 "it is reiterated that there were no non compliance/violation of the EC conditions/planning permit caused by Answering Respondents" as false and misleading. Joint Committee and Respondent No.6 have observed unambiguously that Respondents violated major environmental stipulations and recommended environmental compensation already.

31) That the Applicant denies all averments made by Respondents 4&5 in the Para 31 as false. The two partial completion certificates were issued when the project was under construction and not having certified compliance report from Respondent No.1. PBV Project obtained Certified Compliance Report on 05/02/2019 only. The Respondents 4&5 applied for Certified Compliance Report on 13/10/2016 only.

32) That the Applicant objects to the averments made by Respondents 4&5 in the para 32 as false and misleading. Respondent No.3, in its letter No.EC/C-I/4841/2015 dated 14-09-2020 directed Respondents 4&5 to remit balance of premium FSI and other charges and required particulars which included (1)NOC and planning permission for swimming pool failing which existing swimming pool within the campus shall be closed and caution board to be erected (2) Consent to Operate as per applicable rules from TNPCB and (3) revised plan as site condition showing correct building and set back measurements duly signed by Registered Architect, Structural Engineer and Owner. Respondents failed to produce copy of their response to the aforementioned notice issued by Respondent No.3, as their defense.

33) That the Applicant vehemently objects to the statements made by Respondents in the Para 33 as false, baseless and mischievous. Applicant reiterate his statements with unshakable proof, backed by Joint Committee Report and TNPCB report that Respondents 4&5 committed serious violations of the EC stipulations and continue to violate EC stipulation even now, which may warrant even closure of this residential project in the present condition.

As per the Supreme court and national commission judgment, handing over of apartment to buyers without completion certificate is considered unfair trade practice and Respondents 4&5 can't argue that buyers voluntarily chose to take possession of the apartment.

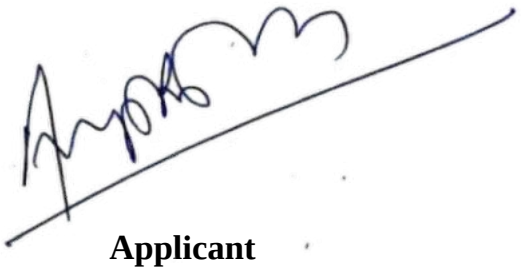
34) That the Applicant objects to the statements made by Respondents in Para 34 as false. The Respondents obtained CTO for 25 blocks fraudulently in 2018. That is why it was not renewed in 2020. TNPCB refused to renew it and asked Respondents to obtain CTO for entire projects. MoEFCC actually sent an Office Memorandum on 02/11/2018 asking state Pollution Control Board to not to issue Consent to Operate (CTO) to projects where ground water is proposed as water source, till the Project Proponent obtains permission to draw ground water for project activities **(Refer Annexue-19)**.

35) That the Applicant denies the statement made by Respondents 4&5 in Para 35 as false and illegal. TNPCB replied to a RTI query stating that Respondents 4&5 have applied for CTO expansion through online application no. 38788041 dated 05/08/2021 for construction of the residential building complex "Prestige Bella Vista" comprising of 33 blocks in 20 towers with 2613 dwelling units & 1 block of club house with a total built up area of 449971.58 sq.m. The application was returned to Respondents 4&5 for want of additional particulars. Respondents 4&5 haven't resubmitted the application so far **(Refer Annexure-20).**

36) That the Applicant denies all the averments made by Respondents 4&5 in Para 36 as false and mischievous. The original application is not barred by limitation as the residential project is still incomplete and the environmental violations are happening unabated as on date.

PRAYER

It is humbly prayed that the Hon'ble National Green Tribunal(SZ) may kindly be pleased to pass appropriate further orders as the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case and thus render justice.



Applicant

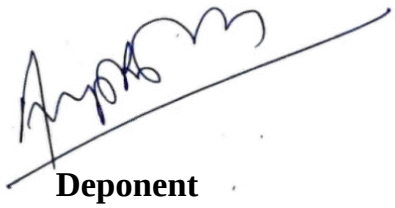
Party in Person

AFFIDAVIT

I, Dr. Anupkrishnan. V, aged 57 yrs, son of Late K. Viswanathamenon, resident of Flat No. 7173, Tower 7, Prestige Bella Vista, Ayyappanthangal Village, Chennai-600056, do hereby solemnly affirm and declare under:-

1. **That I am the Applicant in the OA No. 21/2021(SZ) and I am well conversant with the facts and circumstances of the case and is competent to swear the present affidavit.**

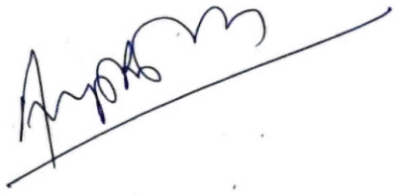
2. **That I have read the contents of the Rejoinder to the Common Counter Affidavit of the Respondents 4&5 and the same are true and correct and is drafted by my own instruction.**



Deponent

VERIFICATION:-

Verified at Ayyappanthangal, Chennai-56 on the 19th October 2021, that the contents of the affidavit are true and correct. No part of it is false and nothing material has been concealed therefrom.



Deponent

[REPORTABLE]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 12122-12123 OF 2018

MUNICIPAL CORPORATION OF GREATER MUMBAI …

APPELLANT(S)

VERSUS

ANKITA SINHA & ORS. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 86/2019

CIVIL APPEAL NO. 5902/2019

CIVIL APPEAL NO. 6273 OF 2021
(Arising out of SLP(C) No. 6732/2021)

CIVIL APPEAL NO. 6274 OF 2021
(Arising out of SLP(C) No. 5930/2021)

CIVIL APPEAL NO. 6275 OF 2021
(Arising out of SLP(C) No. 6733/2021)

CIVIL APPEAL NO. 6276 OF 2021
(Arising out of SLP(C) No. 16448 OF 2021)
Diary No. 11655/2021

CIVIL APPEAL NO. 6277-6278 OF 2021
(Arising out of SLP(C) No.16449-16450 OF 2021)
Diary No. 13789/2021

CIVIL APPEAL NO. 6279 OF 2021
(Arising out of SLP(C) No. 16451 OF 2021)
Diary No. 13811/2021

CIVIL APPEAL NO.6280-6281 OF 2021

(Arising out of SLP(C) No.16452-16453 OF 2021)
Diary No. 13890/2021

CIVIL APPEAL NO. 2897/2021

CIVIL APPEAL NO. 6282 OF 2021
(Arising out of SLP(C) No. 11426 OF 2021)

CIVIL APPEAL NO. 6283 OF 2021
(Arising out of SLP(C) No. 11427 OF 2021)

CIVIL APPEAL NO. 6262 OF 2021
Diary No. 16948 OF 2021

CIVIL APPEAL NO. 6284 OF 2021
(Arising out of SLP(C) No. 11798 OF 2021)

CIVIL APPEAL NO. 6285 OF 2021
(Arising out of SLP(C) No. 12669 OF 2021)

CIVIL APPEAL NO. 6286 OF 2021
(Arising out of SLP(C) No. 16454 OF 2021)
Diary No. 19534/2021

J U D G M E N T

Hrishikesh Roy, J.

"Estragon: Let's go.
Vladimir: We can't.
Estragon: Why not?
Vladimir: We're waiting for Godot." [1]

1. Leave granted in the Special Leave Petitions.

2. The consideration to be made in these matters is whether the National Green Tribunal (for short "the

1 **Beckett, S. (1954).** ***Waiting for Godot: Tragicomedy in 2 Acts.***

NGT") has the power to exercise S*uo Motu* jurisdiction in discharge of its functions under the National Green Tribunal Act, 2010 (for short, "the NGT Act 2010").

3. In the lead case in this group, i.e. the Civil Appeal No. 86 of 2019, the NGT noticed an article titled "*Garbage Gangs of Deonar: The Kingpins and Their Multi-Crore Trade*" in the online news portal, *The Quint.* The article spoke of how mismanagement of solid waste had an adverse impact on the environment, public health and lives of individuals living in the vicinity of the dumping ground in Mumbai city.

4. The NGT took *suo motu* cognizance of the above article vide order dated 07.08.2018 and directed that the article writer Ankita Sinha be the applicant in the case OA No. 510 of 2018, registered at the NGT's instance. Thereafter, steps were taken for inspection of the Deonar Dumping site by the representative of the Central Pollution Control Board, Maharashtra Pollution Control Board, the District Collector of the area and also the representative of the Municipal Corporation of

Greater Mumbai (for short "the MCGM"). Pursuant to the Report of the inspecting team which highlighted that the landfill site failed to comply with the provisions of the Solid Waste Management Rules, 2016, the NGT vide order dated 30.10.2018 noted that '*damage to the environment and public health is self-evident'* and ordered MCGM to pay compensation to the tune of Rs. 5 crores.

5. This Court while entertaining the Civil Appeal No. 86/2019 of MCGM, ordered stay on the operation of the order passed by the NGT and thereafter arranged for analogous consideration of the related cases where the common threshold jurisdictional issue arises on whether the NGT has the power to exercise *suo motu* jurisdiction.

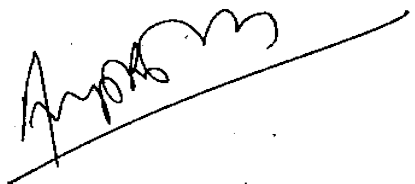
6. Mr. Mukul Rohatgi, Mr. Dushyant Dave, Mr. Jaideep Gupta, Mr. Dhruv Mehta, Mr. Atmaram Nadkarni, Mr. Krishnan Venugopal, Mr. V. Giri, Mr. Sajan Poovayya and Mr. Sidhartha Dave, learned Senior Counsel together with Mr. E.M.S Anam, Ms. Amrita Sharma, Mr. S.

Thananjayan have taken a common stand. They have argued that the NGT is a Tribunal and a creature of statute and as such, it cannot act on its own motion or exercise the power of judicial review or act *suo motu*, in discharge of its function. Being a creature of the statute, the forum cannot assume inherent powers as under Article 32 and Article 226 and its domain is circumscribed by the limitations so imposed. The learned counsel also argue that the NGT has an adjudicatory role to decide disputes which necessarily mean involvement of two or more contesting parties. Therefore, the NGT by acting *suo motu* cannot transpose itself to the shoes of one such party. The absence of general power of judicial review with the NGT (which is available with superior courts) is highlighted to keep away *suo motu* power from the NGT. Various judgments relating to the Tribunal's power and role are cited by the counsel and those would be discussed in later part of this order.

7. Projecting the contrary view, Mr. Nidhesh Gupta, the learned Senior Counsel appearing for the aggrieved

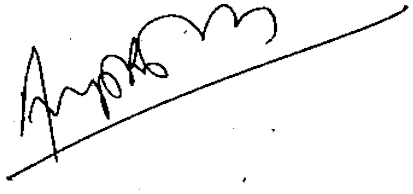
party in SLP(C) No. 6732/2021, Mr. Sanjay Parikh, learned Senior Counsel for the Intervener in C.A. No.86/2019 and Mr. Gopal Sankaranarayanan, learned Senior Counsel appearing for the Impleader I.A. No.71482/2021 in the SLP(C) No. 6732/2021, by referring to the special role envisaged for the NGT and the history of its incorporation, make equally powerful submission in support of exercise of *suo motu* jurisdiction, by the NGT.

8. Mr. Anand Grover, the learned Senior Counsel was appointed as the *Amicus Curiae* to assist the Court and he was heard at length. The counsel acknowledges the NGT's role and position under the Act and its wide jurisdiction over environmental matters but Mr. Grover is of the view that the NGT is incapable of triggering action on its own. In other words, the NGT cannot act *suo motu* without someone moving the Forum as otherwise the forum then would be perceived to be judging its own cause. Since *suo motu* power is not conferred under the NGT Act, the specialized tribunal has to be moved by an outside party. But the format of the application is not



important and even a letter addressed by an interested party, will clothe the NGT with power to take action is the concessional submission of Mr. Grover.

9. Representing the Central Government, Ms. Aishwarya Bhati, the learned Additional Solicitor General of India submitted that *Suo Motu* power is not exercisable by the NGT since the same has not been conferred on the forum under the NGT Act, unlike the situation in the now repealed *National Environment Tribunal Act, 1995* (hereinafter referred to as the "NET Act"). The counsel refers to the provisions of the NGT Act and submits that the concept of *locus standi* was expanded for NGT's intervention under Section 18(2)(e) but the tribunal is not vested with *suo motu* power to take action on its own unlike the High Courts and the Supreme Court. The learned ASG, however, submits that even on receipt of a letter, the NGT can commence action on environmental matters. Thus, on exercise of epistolary jurisdiction by the NGT, the ASG is on the same page as the *amicus curiae* but as earlier noted



both counsel argue for keeping away the *suo motu* power from the NGT.

10.1 Having summarized the positions taken by the respective Counsel, we may now refer to the specific grounds of challenge to keep away *suo motu* power from the NGT. The concerned counsel project that NGT is a creature of the statute and just like other such statutory tribunals, the NGT is also bound within statutory confines. They have relied upon *Standard Chartered Vs. Dharminder Bhohi*[2] wherein, provisions of the *Recovery of the Debts Due to Banks and Financial Institutions Act, 1993* were analysed to note the limitations of the Debt Recovery Tribunal and Appellate Tribunal. From the analysis of Justice Dipak Misra (as his Lordship then was) for the Division Bench, it can be inferred that the Tribunal was given power under the statute to pass such other orders and give such directions to give effect to its orders or to prevent abuse of its process or to secure the ends of justice but in discharge of its functions the Tribunal was

2 **(2013) 15 SCC 341**

required to confine itself to within the statutory parameters. Thus, Section 19(25) conferred limited powers and the submission thus is that the Tribunal does not have any inherent powers.

10.2 Similarly, Justice S.H. Kapadia (as his Lordship then was) in *Transcore Vs. Union of India*[3], opined on behalf of a Division Bench that,

> " 67. ...The DRT is a tribunal, it is the creature of the statute, it has no inherent power which exists in the civil courts."

10.3 The counsel also projects that in the context of Consumer Forums, Justice Dalveer Bhandari (as his Lordship then was) speaking for a three judge bench in *Rajeev Hitendra Pathak Vs. Achyut Kashinath*[4], observed as under : -

> " 34. On a careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the statute and derive their power from the express provisions of the statute. The District Forums and the State Commissions have not been given any power to set aside ex parte orders and the power of review

3 **(2008) 1 SCC 125**
4 **(2011) 9 SCC 541**

> and the powers which have not been expressly given by the statute cannot be exercised."

11.1 The second limb of contention is that the Act is applicable to '*disputes*' as, necessarily referring to a *lis* between two parties. The counsel has relied upon *Techi Tagi Tara Vs. Rajendra Singh Bhandari & Ors*.[5] wherein the term '*substantial question relating to environment*' was interpreted in an attenuated fashion to mean a question arising as part of a dispute. The submission therefore is that a dispute must necessitate a claimant or an applicant. Further, this dispute must also be capable of settlement by the NGT. In the cited case the proposition is articulated in the following fashion,

> "**19.** On a combined reading of all these provisions, it is clear to us that there must be a substantial question relating to the environment and that question must arise in a dispute – it should not be an academic question. There must also be a claimant raising that dispute which dispute is capable of settlement by the NGT by the grant of some relief which could be in the nature of compensation or restitution of property damaged or

5 **(2018) 11 SCC 734**

> restitution of the environment and any other incidental or ancillary relief connected therewith.
>
> **20.** ...In *Prabhakar* v. *Deptt. of Sericulture* [*Prabhakar* v. *Deptt. of Sericulture*, (2015) 15 SCC 1 : (2016) 2 SCC (L&S) 149] the following definition of "dispute" was noted in paras 34 and 35 of the Report: (SCC p. 21)
>
> "*34*. To understand the meaning of the word "dispute", it would be appropriate to start with the grammatical or dictionary meaning of the term:
>
> ' "*Dispute*".—to argue about, to contend for, to oppose by argument, to call in question — to argue or debate (with, about or over) — a contest with words; an argument; a debate; a quarrel;'
>
> *35*. *Black's Law Dictionary*, 5th Edn., p. 424 defines "dispute" as under:
>
> '*Dispute*.—A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a suit is brought and upon which issue is joined, and in relation to which jurors are called and witnesses examined.' "

11.2 The *amicus curiae* has also addressed this issue, by defining a dispute as necessitating an assertion and a denial. By this reasoning, it is submitted that function of Section 14 of the NGT Act is available only to adjudicate upon disputes, as in an adversarial

system but not for any other ameliorative, restorative or preventative functions.

12.1 Thirdly, the lack of general power of Judicial Review has been argued to show legislative intent to curb *suo motu* powers. Counsel have stated that the NGT, as a Tribunal with prescribed authority under a statute, does not have any general power of judicial review. Thus, it is not within the category of Writ Courts as under Article 226 and Article 32 of the Constitution of India. In the relied upon judgment *Tamil Nadu Pollution Control Board v. Sterlite Industries (I) Ltd.,*[6] Justice R.F. Nariman speaking about the NGT for a Division Bench of this Court has observed the following,

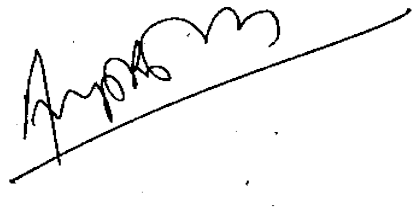
> "41. ...Suffice it to say that the NGT is not a tribunal set up either under Article 323-A or Article 323-B of the Constitution, but is a statutory tribunal set up under the NGT Act. That such a tribunal does not exercise the jurisdiction of all courts except the Supreme Court is clear from a reading of Section 29 of the NGT Act……

6 **(2019) 19 SCC 479**

43. ...In the present case, it is clear that Section 16 of the NGT Act is cast in terms that are similar to Section 14(*b*) of the Telecom Regulatory Authority of India Act, 1997, in that appeals are against the orders, decisions, directions, or determinations made under the various Acts mentioned in Section 16. It is clear, therefore, that under the NGT Act, the Tribunal exercising appellate jurisdiction cannot strike down rules or regulations made under this Act. Therefore, it would be fallacious to state that the Tribunal has powers of judicial review akin to that of a High Court exercising constitutional powers under Article 226 of the Constitution of India. We must never forget the distinction between a superior court of record and courts of limited jurisdiction that was, in the felicitous language of Gajendragadkar, C.J., in *Powers, Privileges and Immunities of State Legislatures, In re* [*Powers, Privileges and Immunities of State Legislatures, In re*, (1965) 1 SCR 413 : AIR 1965 SC 745] , made in the following words: (SCR p. 499: AIR p. 789, para 138)

"*138*. We ought to make it clear that we are dealing with the question of jurisdiction and are not concerned with the propriety or reasonableness of the exercise of such jurisdiction. Besides, in the case of a superior court of record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior court is entitled to determine for itself questions about its own jurisdiction.

'Prima facie', says Halsbury, 'no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within



> the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court [*Halsbury's Laws of England*, Vol. 9, p. 349] '. "
>
> For this reason also, we are of the view that the State Government order made under Section 18 of the Water Act, not being the subject-matter of any appeal under Section 16 of the NGT Act, cannot be "judicially reviewed" by the NGT. Following the judgment in *BSNL* [*BSNL* v. *TRAI*, (2014) 3 SCC 222] , we are of the view that the NGT has no general power of judicial review akin to that vested under Article 226 of the Constitution of India possessed by the High Courts of this country. Shri Sundaram's strong reliance on the NGT judgment dated 17-7-2014 in *Wilfred J.* v. *Ministry of Environment & Forests* [*Wilfred J.* v. *Ministry of Environment & Forests*, 2014 SCC OnLine NGT 6860] must also be rejected as this NGT judgment does not state the law on this aspect correctly. This contention is also without merit, and therefore, rejected."

12.2 The argument has been that the superior Courts exercising discretionary powers under Article 32 and Article 226, to safeguard fundamental rights, can venture into judicial review. But such a power not being expressly conferred on the NGT would suggest the limited nature of the Forum's powers, which would exclude any *suo motu* exercise.

I. THE BACKDROP OF THE NATIONAL GREEN TRIBUNAL

13.1 In order to understand the contours of jurisdiction of the NGT, we have thought it necessary to refer to the history of the legislation and also the Preamble and the Statement of Objects and Reasons of the NGT Act. The parliamentary intent which shaped the creation of the NGT and the broad issues that they sought to address through the specialized institution should now be brought to the fore.

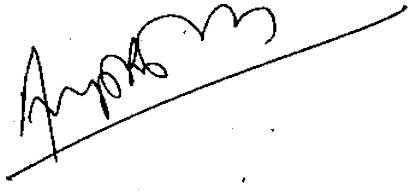
13.2 The precursor to the NGT Act was the 186th Report of the Law Commission of India dated 23.9.2003 where the Law Commission had made the following pertinent observation espousing the case for the creation of a specialized Court to deal with environmental issues:-

> "It is true that the High Court and Supreme Court have been taking up these and other complex environmental issues and deciding them. But, though they are judicial bodies, they do not have an independent statutory panel of environmental scientists to help and advise them on a permanent basis. They are prone to apply principles like the Wednesbury Principle and refuse to go into the merits. They do not also make spot inspections or receive oral evidence to

see for themselves the facts as they exist on ground. On the other hand, if Environmental Courts are established in each State, these Courts can make spot inspections and receive oral evidence. They can receive independent advice on scientific matters by a panel of scientists.

These Environmental Courts need not be Courts of exclusive jurisdiction. However, the High Courts, even if they are approached under Art. 226 either in individual cases or in PIL cases, where orders of environmental authorities could be questioned, may refuse to intervene on the ground that there is an effective alternative remedy before the specialist Environmental Court. As of now, when we have consumer Courts at the District and State level, the High Courts have consistently refused to entertain writ petitions under Art. 226 because parties have a remedy before the fora established under the Consumer Protection Act, 1986. We have also the example of special environmental courts in Australia, New Zealand and in some other countries and these are manned by Judges and expert commissioners. The Royal Commission in UK is also of the view that if environmental courts are established, the High Courts may refuse to entertain applications for judicial review on the ground that there is an effective alternative remedy before these Courts.

It is for the above reasons we are proposing the establishment of separate environmental courts in each State. In Chapter IX, we propose to give the details of the constitution, power and jurisdiction of these Courts."



13.3 The above would suggest that the Law Commission was of the opinion that it is not convenient for the High Courts and the Supreme Court to make local inquiries or receive evidence. Moreover, the superior courts will not have access to expert environmental scientists on permanent basis to assist them. Therefore, NGT was conceived as a complimentary specialized forum to deal with all environmental multi-disciplinary issues both as original and also as an appellate authority, which complex issues were hitherto dealt with by the High Courts and the Supreme Court.

13.4 The NGT, therefore, was intended to be the competent forum for dealing with environmental issues instead of those being canvassed under the writ jurisdiction of the Courts. It was explicitly noted that the creation of the NGT would allow for the Supreme Court and High Court to avoid intervening under their inherent jurisdiction when an alternative efficacious remedy would become available before the specialized forum. The 186th Law Commission Report provided the following reasoning,

> "Likewise, we have not thought it fit to enable the Environmental Courts, to have judicial review powers exercised by the High Court under Art. 226 of the Constitution of India. We have felt that it is sufficient to vest original civil jurisdiction as exercisable by a Civil Court, in the Environmental Courts. If we vest powers of Judicial review as under Art. 226, then there may be need to subject the orders to the writ jurisdiction of High Courts as held in L. Chandra Kumar vs. Union of India, 1997 (3) SCC 261.
>
> No doubt, the Environment Court exercising powers of a Civil Court or as an appellate Court in civil jurisdiction, may be technically amenable to writ jurisdiction of the High Court but inasmuch as we are providing an appeal to the Supreme Court, the High Courts may decline to interfere on the ground that there is an effective alternative remedy of appeal on law and fact to the Supreme Court, as explained later in this Chapter."[7]

Thus, the power of judicial review was omitted to ensure avoidance of High Courts' interference with the Tribunal's orders by way of a mid-way scrutiny by the High Court, before the matter travels to the Supreme Court where NGT's orders can be challenged. The streamlining of the mechanism was to arrest the growing

7 **Chapter II, 186th Law Commission Report.**

tide of litigation before High Courts and the Supreme Court and shift such issues to the domain of the NGT.

13.5 This is how the proposed forum was made free from the rules of evidence and the NGT was permitted to lay down its own procedure to entertain oral and documentary evidence, consult experts etc. The observance of the principles of natural justice was however mandated.

II. PREAMBLE & STATEMENT OF OBJECTS AND REASONS

14.1 The Statement of Objects and Reasons of the NGT Act will now require attention. Paras 2,3,4,5 and 6 of the Statement of Objects and Reasons being relevant are extracted hereinbelow: -

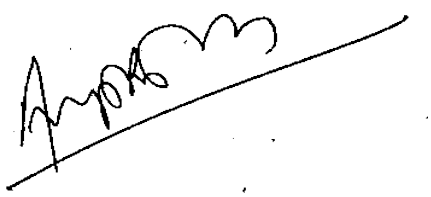
> "2. India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, calling upon the States to take appropriate steps for the protection and improvement of the human environment. The United Nations Conference on Environment and Development held at *Rio de Janeiro* in June, 1992, in which India participated, has also called upon the States to provide

effective access to judicial and administrative proceedings, including redress and remedy, and to develop National laws regarding liability and compensation for the victims of pollution and other environmental damage.

3. The right to healthy environment has been construed as a part of the right to life under article 21 of the Constitution in the judicial pronouncement in India.

4. The National Environment Tribunal Act, 1995 was enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environmental Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment. However, the National Environment Tribunal, which had a very limited mandate, was not established. The National Environment Appellate Authority Act, 1997 was enacted to establish the National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986. The National Environment Appellate Authority has a limited workload because of the narrow scope of its jurisdiction.

5. Taking into account account the large number of environmental cases pending in higher courts and the involvement of multidisciplinary issues in such cases, the Supreme Court requested the Law



> Commission of India to consider the need for constitution of specialized environmental courts. Pursuant to the same, the Law Commission has recommended the setting up of environmental courts having both original and appellate jurisdiction relating to environmental laws.
>
> 6. In view of the foregoing paragraphs, a need has been felt to establish a specialized tribunal to handle the multidisciplinary issues involved in environmental cases. Accordingly, it has been decided to enact a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment."

14.2 A reading of the Statement of Objects and Reasons shows that paragraph 4 thereof refers to the *National Environmental Tribunal Act, 1995 (NET)* which provided for strict liability and damages arising out of accidents occurring while handling hazardous substances. In the same context it was observed that the NET had a very limited and narrow mandate and jurisdiction. Thereafter, in Para 5 it has been recorded that a large number of environmental cases are pending in higher Courts which involve multi-

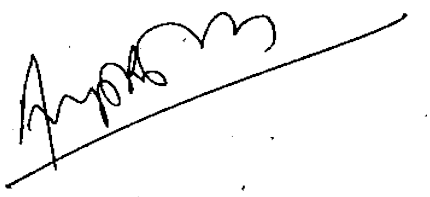
disciplinary issues and, in such cases, the Supreme Court had requested the Law Commission of India to consider the need for constitution of specialized environmental Courts.

14.3 Significantly, the Statement of Objects and Reasons also refers to right to a healthy environment being a part of the right to life under Article 21 of the Constitution of India. This was consistent with the earlier mentioned 186th Law Commission Report highlighting that the body so created, would aim to *"achieve the objectives of Article 21, 47, 48A, 51A (g) of the Constitution of India by means of a fair, fast and satisfactory judicial procedure".* An institution concerned with a significant aspect of right to life necessarily should be given the most liberal construction.

14.4 The paragraph 2 of the Statement of Objects and Reasons refers to the United Nations Conference on the Human Environment held at Stockholm in June 1972 which called upon governments and peoples to exert common

efforts for the preservation and improvement of the human environment when it involved people and for their posterity. Therefore, the municipal law enacted with such a laudatory objective of not only preventing damage to the environment but also to protect it, must be provided with the wherewithal to discharge its protective, preventive and remedial function towards protection of the environment. The mandate and jurisdiction of the NGT is therefore conceived to be of the widest amplitude and it is in the nature of a *sui generis* forum.

14.5 The United Nations Conference on Environment and Development held at Rio De Janeiro in June, 1992 where India participated, impressed upon the States to provide effective access to judicial and administrative proceedings, lay out redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage. The Preamble of the Act significantly emphasized on construing the right to healthy environment as a part of the Right to Life under



Article 21 of the Constitution which was accepted by various judicial pronouncements in India. The National Green Tribunal was born in our country with such lofty dreams to deal with multi-disciplinary issues, relating to the environment.

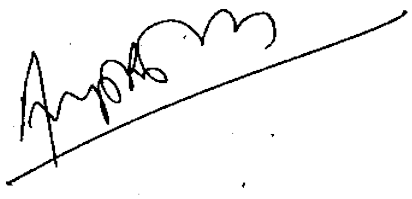
14.6 The limited mandate conferred on the earlier forum i.e. the NET and the narrow scope of jurisdiction of the National Environment Appellate Authority along with the involvement of multi-disciplinary issues arising in environmental cases, were intended to be addressed through the constitution of the NGT.

III. THE NEED FOR PURPOSIVE INTERPRETATION_

15.1 While adequate clarity is discernible in the phraseology that is employed under Section 14 and other provisions of the NGT Act, as shall be discussed in later parts of the judgement, the intention behind the statute should receive our careful attention. Tracing the legislative history for creation of the NGT it is seen that the NGT is intended to address wide ranging

societal concerns and these have prompted us to opt for purposive interpretation. The Statue will have to be read in its entirety and each provision of the Act must be given its due meaning by comprehending the mischief it intends to remedy. The chosen interpretive exercise is best understood from the treatise *Interpretation of Statutes,* authored by Justice G.P. Singh who explained thus,

> "When the question arises as to the meaning of certain provision in statute, it is not only legitimate but proper to read that provision in its context. The context here means, the statute as a whole, the previous state of the law, other statutes in pari materia, the general scope of the statute, and the mischief that it was intended to remedy. This statement of the rule was later fully adopted by the Supreme Court.
>
> It is a rule now firmly established that the intention of the Legislature must be found by reading the statute as a whole. The rule is referred to as an 'elementary rule' by Viscount Simonds: a compelling rule by Lord Sommervell of Harrow; and a "settled rule" by B.K. Mukherjee J. "I agree" said Lord Halsbury, "that you must look at the whole in order to give effect, if it be possible to do so, to the intention of the framer of it."



15.2 The mischief that the NGT Act attempted to remedy were underscored in the legislative history, and the pronouncements of the constitutional Courts flagging their environmental concerns.

15.3 The application of the *Heydon's Rule* could adequately aid us here as the Rule directs adoption of that construction which *"shall suppress the mischief and advance the remedy"* as was pertinently observed by Justice S.R. Das, for a seven judge bench in *Bengal Immunity Co. vs. State of Bihar*[8],

> "...the office of all judges is to make such construction as shal suppresses the mischief and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief; and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*."

15.4 Francis Bennion in his book *Statutory Interpretation* described 'purposive interpretation' as under:

8 **1955 (2) SCR 603; AIR 1955 SC 661**

> ‘A purposive construction of an enactment is one which gives effect to the legislative purpose by—
> (*a*) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose, or
> (*b*) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose.’

15.5 Justice Frankfurter of US Supreme Court in ‘*Some Reflections on the Reading of Statutes*’, has elucidated on the principles to ascertain the contextual meaning of statutes in the following manner,

> ‘The purpose of construction being the ascertainment of meaning, every consideration brought to bear for the solution of that problem must be devoted to that end alone.
>
> ...
>
> Judge Learned Hand speaks of the art of interpretation as ‘the proliferation of purpose’.”[9]

Eventually, Justice Frankfurter relied upon Justice Benjamin Cardozo’s phraseology in *Panama Refining Co. Vs. Ryan*, and the same is taken as a lodestar in our quest,

> “the meaning of a statute is to be looked for, not in any single section, but in all

9 **47 Columbia Law Review 527**

> the parts together and in their relation to the end in view"[10].

15.6 The laudatory objectives for creation of the NGT would implore us to adopt such an interpretive process which will achieve the legislative purpose and will eschew procedural impediment or so to say incapacity. The precedents of this Court, suggest a construction which fulfills the object of the Act.[11] The choice for this Court would be to lean towards the interpretation that would allow fructification of the legislative intention and is forward looking. The provisions must be read with the intention to accentuate them, especially as they concern protections of rights under Article 21 and also deal with vital environmental policy and its regulatory aspects.

IV. SALIENT STATUTORY FEATURES OF NGT ACT -

16.1 Applying the chosen tool of interpretation to the statutory layout of the NGT Act, following provisions

---

10 **293 U.S. 388 (1935) (dissenting)**

11 ***Sarah Mathew v. Institute of Cardio Vascular Diseases*** **(2014) 2 SCC 62,** ***New India Assurance Co. Ltd. Vs. Nusli Neville Wadia*** **(2008) 3 SCC 279.**

will require the Court's attention. Section 2(1)(c) of the NGT Act defines the term "environment"; Section 2(1)(m) defines "substantial question relating to environment". Chapter III relates to jurisdiction, power and proceedings of the Tribunal. The Section 14 gives original jurisdiction to the NGT to decide a substantial question relating to environment; Section 15 deals with relief, compensation and restitution whereby besides providing relief to the victims of pollution, the NGT can direct restitution of property damage and restitution of environment for such area(s) *"as the Tribunal may think fit".* Section 16 gives appellate jurisdiction to the Tribunal against the orders passed under various enactments. Section 17 provides for liability to pay relief or compensation in certain cases, Section 18 specifies who can move application/appeal before the Tribunal. It includes, among others, 18(2)(d) *"any person aggrieved including any representative body / organization"* and the *locus standi* is not limited only to the aggrieved party. Section 19 provides for procedure and powers of the

Tribunal. Section 19(1) significantly says that the Tribunal shall not be bound by procedures laid down in the CPC and shall be bound by the Principles of Natural Justice. Section 19(2) provides that subject to the provisions of the Act, the Tribunal shall have powers to regulate its own procedure. Section 19(3) mentions that the Tribunal shall not be bound by the rules of evidence contained in the Evidence Act, 1872. While discharging functions under Section 19(4), besides summoning, enforcing attendance, examining persons on oath, requiring discovery and production of documents, receiving evidence on oath, the NGT also has powers to review its decision, to pass interim orders as well as pass cease and desist orders. Section 20 says that while adjudicating issues, the Tribunal shall apply the environmental principles, namely, sustainable development principles, precautionary principles and polluter pays principle. Under Section 25, the Tribunal can execute its order/decision as a decree of the Civil Court and for that purpose shall have all the powers of a Civil Court. Section 29 bars the jurisdiction of the

Civil Court to entertain all environmental matters covered by the Tribunal. Under Section 33, the NGT Act has an overriding effect over other laws.

16.2 While on the statutory provisions, it is seen that the Central Government has framed the *National Green Tribunal (Practice & Procedure) Rules, 2011* (for short "the NGT Rules"). For our purpose, Rule 24 is important which reads thus:

> *"24. Order and directions in certain cases – The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice."*

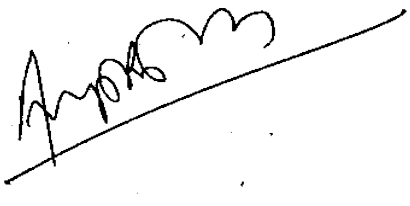
16.3 The said Rules make it clear that the NGT has been given wide discretionary powers to *secure the ends of justice*. This power is coupled with the duty to be exercised for achieving the objectives. The intention understandably being to preserve and protect the environment and the matters connected thereto.

16.4 By choosing to employ a phrase of wide import, i.e. *secure the ends of justice*, the legislature has

nudged towards a liberal interpretation. Securing justice is a term of wide amplitude and does not simply mean adjudicating disputes between two rival entities. It also encompasses *inter alia*, advancing causes of environmental rights, granting compensation to victims of calamities, creating schemes for giving effect to the environmental principles and even hauling up authorities for inaction, when need be.

16.5 Moreover, unlike the civil courts which cannot travel beyond the relief sought by the parties, the NGT is conferred with power of moulding any relief. The provisions show that the NGT is vested with the widest power to appropriate relief as may be justified in the facts and circumstances of the case, even though such relief may not be specifically prayed for by the parties.

16.6 Another distinguishing feature of the environmental forum is on the aspect of *locus standi* which was made as wide as is available to the High Courts and the Supreme Court. Thus, any person or

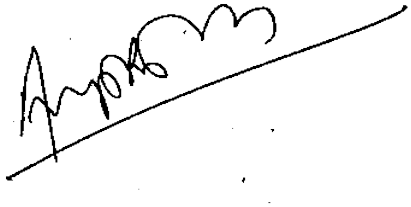


organization who may be interested in the subject matter is permitted to approach the NGT.

16.7 The provisions of the NGT Act and the NGT Rules demonstrate that myriad roles are to be discharged by the NGT, as was encapsulated in the Law Commission Report, the Preamble and the Statement of Objects and Reasons. This is also forthcoming from the international obligation and commitment by India to implement the decision taken at the Stockholm and the Rio De Janeiro Conventions towards protection of the environmental rights under Article 21 of the Constitution.

V. NON-ADJUDICATORY ROLES OF NGT

17.1 As can be seen, the Parliament intended to confer wide jurisdiction on the NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by the High Courts under Article 226 of the Constitution or by the Supreme Court under Article 32 of the Constitution. The Tribunal is also expected to proceed with such



matters with the understanding that environment and environmental principles are part of Article 21 of the Constitution. *[See Vellore Citizens' Welfare Forum vs. UOI*[12]*; M.C. Mehta vs. UOI*[13] etc.]

17.2 The Schedule I of the NGT Act is concerned with implementation of few environmental related enactments such as the Water Act, the Air Act, the Environment Act, the Forest Conservation Act etc. As one looks at these enactments, an expanded role for the NGT is clearly discernible. The activities of the NGT are not only geared towards the protection of the environment but also to ensure that the developments do not cause serious and irreparable damage to the ecology and the environment. These would suggest a broad canvas for the NGT Act as also its creation.

17.3 For the environmental forum, tasked with implementation of the statutes mentioned in Schedule I of the NGT Act, the concept of *lis,* would obviously be beyond the usual understanding in civil cases where

12 **(1996) 5 SCC 647**
13 **(1997) 2 SCC 353**

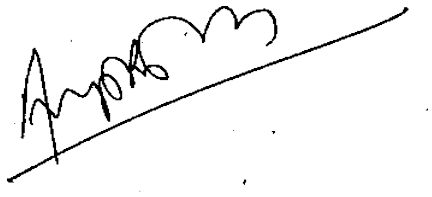
there is a party (whether private or government) disturbing the environment and the other one (could be an individual, a body or the government itself), who has concern for the protection of environment. Therefore, the NGT is primarily concerned with protection of the environment and also preservation of the natural resources. As the specialized forum, the NGT would be expected to take preventive action, besides settling and adjudicating disputes and pass orders on all environment related questions.

17.4 The NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration. This aspect was specifically flagged in the 186th Law Commission Report,

> "The Environment Court, in our view, must have power to frame schemes and monitor them and also have power to modify the schemes from time to time. If one looks at the problems raised in several cases and the directions issued by the Supreme Court, it will be observed that such a power is necessary to be vested in these Courts. .... The Environment Court must be able to provide an "environmental solution" to grave problems like the one mentioned above and unless it has power to frame comprehensive schemes which will

> involve issuing directions to various departments, the solution cannot be implemented. Such a comprehensive jurisdiction is now being exercised both by the Supreme Court and High Courts. In our view, the proposed Courts must have similar powers. They will also have to monitor the schemes till they are successfully implemented on ground and, if necessary, modify the schemes from time to time."

18. We have earlier discussed that the NGT is empowered to carry out restitutive exercise for compensating persons adversely affected by environmental events. The larger discourse which informs such functions is related to distributive and corrective justice, as will be elaborated in later paragraphs. Even in the absence of harm inflicted by human agency, in a situation of a natural calamity, the Tribunal will be required to devise a plan for alleviating damage. An inquisitorial function is also available for the Tribunal, within and without adversarial significance. Importantly, many of these functions do not require an active *"dispute",* but the formulation of *decisions*.



19.1 With the constitution of the NGT, many cases pending before the High Courts were transferred to the NGT. Apprehending the possibility of conflict between the High Courts and the NGT (in matters concerning environment and the statutes mentioned in Schedule I of the NGT Act), Justice Swatanter Kumar speaking for the three Judge Bench in *Bhopal Gas Peedith Mahila Udyog Sangathan vs. Union of India*[14], highlighted the NGT's role in the context, in the following words: -

> "40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short "the NGT Act") particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short "NGT"). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialised justice in the field of environment to all concerned.

14 **(2012) 8 SCC 326**

> 41. We find it imperative to place on record a caution for consideration of the courts of competent jurisdiction that the cases filed and pending prior to coming into force of the NGT Act, involving questions of environmental laws and/or relating to any of the seven statutes specified in Schedule I of the NGT Act, should also be dealt with by the specialised tribunal, that is, NGT, created under the provisions of the NGT Act. The courts may be well advised to direct transfer of such cases to NGT in its discretion, as it will be in the fitness of administration of justice."

19.2 In the above case, this Court mandated transfer of all cases concerning the statutes mentioned in Schedule I of the NGT Act to the specialized forum as otherwise there can be conflicts with the High Courts. Notably, some of those cases were originally registered *suo motu* by the Courts.

VI EXERCISE OF *SUO MOTU* POWER BY NGT

20. Let us now explore whether the NGT in discharge of its functions, should also have *suo motu* power. The specialized tribunal's exercise of *suo motu* powers is somewhat distinct from those exercised by the constitutional Courts. The Supreme Court and High

Courts can foray into any issues under their constitutional mandate but the NGT cannot naturally travel beyond its environmental domain in reference to the scheduled enactments. However, As long as the sphere of action is not breached, the NGT's powers must be understood to be of the widest amplitude.

21.1 Explaining the purpose for constituting the special court to deal with environmental issues, in *Mantri Techzone (P) Ltd. vs. Forward Foundation*[15], Justice S. Abdul Nazeer writing for the three Judge Bench, made the following pertinent observations on the status of the NGT:-

> "40. The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution of India, to implement the decision taken at the United Nations Conference on Environment and Development. The Tribunal is a specialised judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to the environment. The right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements.

15 **(2019) 18 SCC 494**

> Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights."

21.2 As can be seen from the quoted passage, this Court recognized that the NGT is set up under the constitutional mandate in Entry 13 of List I in Schedule VII to enforce Article 21 with respect to the environment and in the context observed that the Tribunal has special jurisdiction for enforcement of environmental rights.

21.3 Elaborating further, in paragraphs 44-46, the Supreme Court expressed that the interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction. It was specifically noted that,

> "46. ... As stated supra the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring

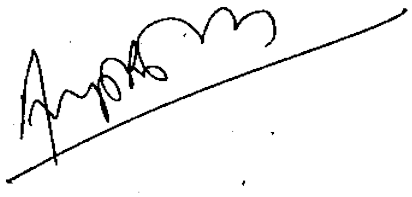
> jurisdiction should be preferred rather than one taking away jurisdiction."

21.4 Such being the wide contour of the NGT's powers, the exposition in *Rajeev Suri* vs. *DDA*[16] was not to constrict the *suo motu* powers of the NGT. To appreciate the implication of the ratio in *Rajeev Suri*, it must be noticed that it was in the specific context of *'Merits Review'* and the NGT transgressing beyond its environmental mandate. This is why, one of us, Justice A.M. Khanwilkar observed that,

> "503. NGT is not a plenary body with inherent powers to address concerns of a residuary character. It is a statutory body with limited mandate over environmental matters as and when they arise for its consideration. In a cause before it, NGT cannot directly go on to adjudicate on concerns of violation of fundamental rights and once the contours of a subject matter traverse the scope of appeal from a grant of EC, the merits review by tribunal cannot traverse beyond the scope of jurisdiction vested in it by the statute."

21.5 Thus, the ratio in *Rajeev Suri* to the quoted extent will not clash with the view propounded here as

16 **2021 SCC Online SC 7.**



the exposition is not to allow any inherent power of residuary character for the NGT. In its own domain, as crystalized by the statute, the role of the NGT is clearly discernible.

21.6 The need for an expert body with extensive functions and the sources of inspiration behind it was articulated in *Andhra Pradesh Pollution Control Board v. Prof. M. V. Nayudu (Retd.) and Ors.*[17] where Justice M. Jagannadha Rao speaking for a Division Bench referred to a comparable court in Australia and noted the following,

> "The Land and Environment Court of New South Wales in Australia, established in 1980, could be the ideal. It is a superior court of record and is composed of four Judges and nine technical and conciliation assessors. Its jurisdiction combines appeal, judicial review and enforcement functions. Such a composition in our opinion is necessary and ideal in environmental matters."

The above would show that from the very inception, the role of the NGT was not simply adjudicatory in the nature of a *lis* but to perform equally vital roles which are preventative, ameliorative or remedial in

17 **(1999) 2 SCC 718**

nature. The functional capacity of the NGT was intended to leverage wide powers to do full justice in its environmental mandate.

VII. UNIQUENESS OF NGT *VIS-A-VIS* OTHER TRIBUNALS

22.1 While we see many tribunals functioning within their specified domains, variances do exist in the manner in which they are designed to function. The statutory Tribunals were categorized to fall under four subheads; Administrative Tribunals under Article 323A; Tribunals under Article 323B; Specialized sector Tribunals and most prominently; Tribunals to safeguard rights under Article 21. As already noted, the duties of NGT brings it within the ambit of the fourth category, creating a compelling proposition for wielding much broader powers as delineated by the statute.

22.2 The ideal was to create a fairly proactive and responsive Institution which could step into varying roles, as the situation demanded. Commenting on the specialized and unique role of the NGT, Justice Ashok

Bhushan in *State of Meghalaya vs. All Dimasa Students Union*[18], fittingly observed thus:-

> "163. The object for which the said power is given is not far to seek. To fulfil the objective of the NGT Act, 2010, NGT has to exercise a wide range of jurisdiction and has to possess wide range of powers to do justice in a given case. The power is given to exercise for the benefit of those who have right for clean environment which right they have to establish before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. In this regard reference is made to the judgment of this Court in L. Hirday Narain v. CIT [L. Hirday Narain v. CIT, (1970) 2 SCC 355] , wherein this Court was examining provision empowering authority to do something. This Court laid down in para 14: (SCC p. 359)
>
> "14. The High Court observed that under Section 35 of the Indian Income Tax Act, 1922, the jurisdiction of the Income Tax Officer is discretionary. If thereby it is intended that the Income Tax Officer has discretion to exercise or not to exercise the power to rectify, that view is in our judgment erroneous. Section 35 enacts that the Commissioner or Appellate Assistant Commissioner or the Income Tax Officer may rectify any mistake apparent from the record. If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and

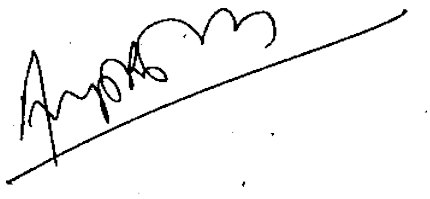
18 **(2019) 8 SCC 177**

> circumstances for exercise of authority are shown to exist. Even if the words used in the statute are prima facie enabling, the courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right—public or private—of a citizen."

22.3 Reflecting on the expanded role of NGT unlike other Tribunals, this Court so appositely observed that the forum has a duty to do justice while exercising "*wide range of jurisdiction*" and the "*wide range of powers*", given to it by the statute.

23. During the course of its functioning, the NGT has been recognized as one of the most progressive Tribunals in the world. This jurisprudential leap has allowed our country to enter a rather exclusive group of nations which have set up such institutions with broad powers. To understand how the NGT is perceived globally, we may usefully refer to the views of Chief Justice Brian Preston of the Land and Environment Court of NSW Australia,

> "The NGT is an example of a specialized court to better achieve the goals of ensuring access to justice, upholding the



> rule of law and promoting good governance."[19]

VIII. THE SUI GENERIS ROLE OF NGT

24.1 The NGT being one of its own kind of forum, commends us to consider the concept of a *sui generis* role, for the institution. The structure of *Sui generis* institutions was explained in *Paramjit Kaur Vs. State of Punjab*[20], wherein Justice S. Saghir Ahmad spoke thus for a Division Bench,

> "14. The concept of sui generis is applied quite often with reference to resolution of disputes in the context of international law. When the conventions formulated by compacting nations do not cover any area territorially or any subject topically, then the body to which such power to arbiter is entrusted acts sui generis, that is, on its own and not under any law."

24.2 In *DG NHAI vs. Aam Aadmi Lokmanch*[21], Justice S. Ravindra Bhat commenting on the *sui generis* role of the NGT, so appropriately stated as follows:-

---

19 **GILL, G. (2020). Mapping the Power Struggles of the National Green Tribunal of India: The Rise and Fall? *Asian Journal of Law and Society, 7*(1), 85-126.**

20 **(1999) 2 SCC 131**

21 **2020 SCC Online SC 572**

"38. A conjoint reading of Sections 14, 15 and the Schedules would lead one to infer that the NGT has circumscribed jurisdiction to deal with, adjudicate, and wherever needed, direct measures such as payment of compensation, or make restitutionary directions in cases where the violation (i.e. harm caused due to pollution or exposure to hazards, etc.) are the result of infraction of any enactment listed in the first schedule. Yet, that, interpretation, in the opinion of this court, is not warranted.

**** **** **** ****
**** **** **** ****

76. The power and jurisdiction of the NGT under Sections 15(1)(b) and (c) are not restitutionary, in the sense of restoring the environment to the position it was before the practise impugned, or before the incident occurred. The NGT's jurisdiction in one sense is a remedial one, based on a reflexive exercise of its powers. In another sense, based on the nature of the abusive practice, its powers can also be preventive.

77. As a quasi-judicial body exercising both appellate jurisdiction over regulatory bodies' orders and directions (under Section 16) and its original jurisdiction under Sections 14, 15 and 17 of the NGT Act, the tribunal, based on the cases and applications made before it, is an expert regulatory body. Its personnel include technically qualified and experienced members. The powers it exercises and directions it can potentially issue, impact not merely those before it, but also state agencies and state departments whose views are heard, after which general directions to prevent

> the future occurrence of incidents that impact the environment, are issued."

24.3 In that case, this Court repelled the argument for a restricted jurisdiction for the NGT, and fittingly observed in paragraph 76 that the powers conferred on the NGT are both reflexive and preventive and the role of the NGT was recognized in paragraph 77 as "*an expert regulatory body*", which can issue general directions also *albeit* within the statutory framework.

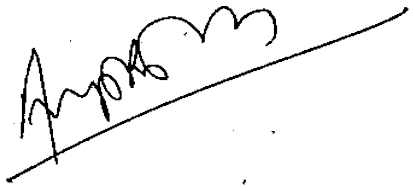
24.4 The above discussion would advise us to say that the NGT was conceived as a specialized forum not only as a like substitute for a civil court but more importantly to take over all the environment related cases from the High Courts and the Supreme Court. Many of those cases transferred to the NGT, emanated in the superior courts and it would be appropriate thus to assume that similar power to initiate *suo motu* proceedings should also be available with the NGT.

24.5 The NGT is a Tribunal with *sui generis* characteristic, with the special and all-encompassing

jurisdiction to protect the environment. Besides its adjudicatory role as an appellate authority, it is also conferred with the responsibility to discharge role of supervisory body and to decide substantial questions relating to the environment. The necessity of having a specialized body, with the expertise to handle multi-dimensional environmental issues allows for an all-encompassing framework for environmental justice. The technical expertise that may be required to address evolving environmental concerns would definitely require a flexible institutional mechanism for its effective exercise.

IX. AUTHORITY WITH SELF-ACTIVATING CAPABILITY

25.1 Given the multifarious role envisaged for the NGT and the purposive interpretation which ought to be given to the statutory provisions, it would be fitting to regard the NGT as having the mechanism to set in motion all necessary functions within its domain and this, as would follow from the discussion below, should necessarily clothe it with the authority to take *suo*

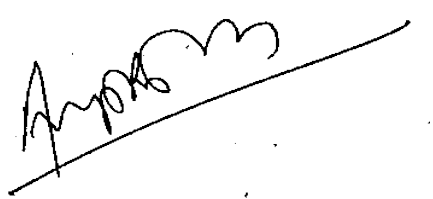


motu cognizance of matters, for effective discharge of its mandate.

25.2 The analysis for this segment should commence with Section 14 of the NGT Act and the same being of great relevance is being extracted hereunder,

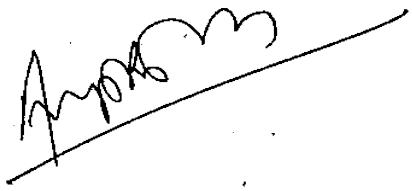
> " 14. Tribunal to settle disputes. - (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.
>
> (2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.
>
> (3) No application for adjudication of dispute under this section shall be entertained by the 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: Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days."

25.3 The Section 14(1) of the NGT Act deals with jurisdiction, and the jurisdictional provision



conspicuously omits to specify that an application is necessary to trigger the NGT into action. In situations where the three prerequisites of Section 14(1) i.e., Civil cases; involvement of substantial question of environment; and implementation of the enactments in Schedule I are satisfied, the jurisdiction and power of the NGT gets activated. On these material aspects, the NGT is not required to be triggered into action by an aggrieved or interested party alone. It would therefore be logical to conclude that the exercise of power by the NGT is not circumscribed by receipt of application. When substantial questions relating to the environment arise and the issue is civil in nature and those relate to the enactments in Schedule I of the Act, the NGT in our opinion even in the absence of an application, can self-ignite action either towards amelioration or towards prevention of harm.

25.4 In the same spirit, we find merit in the arguments that Section 14(1) exists as a standalone feature, not constricted by the operational mechanism



of the subsequent subsections. The sub Section (2) of Section 14 functions as a corollary and comes into play when a dispute arises from the questions referred to in Section 14(1). Likewise sub Section (3) thereafter, refers to the period of limitation concerning applications, when they are addressed to the NGT. Where adjudication is involved, the adjudicatory function under Section 14(2) comes into play. When it is a case warranting NGT's intervention, or may be a situation calling for decisions to meet certain exigencies, the functions under Section 14(1) can be undertaken and those may not involve any formal application or an adjudicatory process. However, the later provisions may not work in similar fashion. Therefore, care must be taken to ensure unrestricted discharge of the responsibilities under Section 14(1) and that wide arena of NGT's functioning.

25.5 The other pertinent provisions relating to, *inter-alia*, jurisdiction, interim orders, payment of compensation and review, do not require any

application or appeal, for the NGT to pass necessary orders. These crucial powers are expected to be exercised by the NGT, would logically suggest that the action/orders of the NGT need not always involve any application or appeal. To hold otherwise would not only reduce its effectiveness but would also defeat the legal mandate given to the forum.

25.6 It may also be relevant to bear in mind that while dealing with contested cases, the NGT is required to pass *"award"* and *"order"* and the statute repeatedly uses the word *"decision".* Therefore, it is appropriate to correlate the word *"decision"* to the NGT, in its non-adversarial or inquisitorial role, as was suggested by the Law Commission and recognized in *DG, NHAI* (supra).

25.7 The duty to safeguard Article 21 rights cannot stand on a narrow compass of interpretation. Procedural provisions must be allowed to fall in step with the substantive rights that are invoked in the environmental domain, in larger public interest. The

specialized forum is bestowed with the responsibility to ensure protection of the environment. To be effective in its domain, we need to ascribe to the NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application. In the context, Justice V.R. Krishna Iyer speaking for a Division Bench in *State of Punjab & Anr. Vs. Shamlal Murari & Anr.*[22] has so correctly prioritized the substantive rights and observed succinctly,

> "8. ...We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."

25.8 While discussing the NGT's power and responsibility, it is essential to keep in mind the *Principle 10* of *the Rio Declaration* which speaks of three fundamental rights i.e., access to information,

22 **(1976) 1 SCC 719**

access to public participation and access to justice, as key pillars of environmental governance. Access to justice, may however be curtailed by illiteracy, lack of mobility, poverty or even the lack of technical knowledge on the part of citizens. Another deterrence is the likelihood of polluters/violators being powerful entities with adequate wherewithal to skirt regulations. Thus, it may not always be feasible for individuals to knock on the doors of the Tribunal, and NGT in such exigencies must not be made dysfunctional.

X. THE PRECAUTIONARY PRINCIPLE

26.1 Tracing the origin of the *Precautionary Principle,* Scott Lafranchi in his treatise[23] has expounded on the proactive role of the authorities in the following passage: -

> "Many consider the German development of *Vorsorgeprinzip* to signify the true creation of the precautionary principle, in light of the attention it focuses on "long term planning to avoid damage to the environment, early detection of dangers to health and environment through

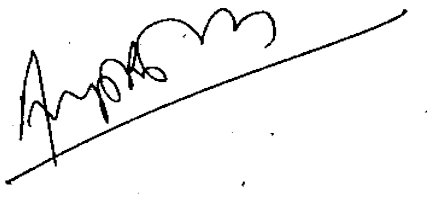
23 **Scott LaFranchi, *Surveying the Precautionary Principle's Ongoing Global Development: The Evolution of an Emergent Environmental Management Tool*, 32 B.C. Envtl. Aff. L. Rev. 679 (2005)**

> comprehensive research, and acting in advance of conclusive scientific evidence of harm."16 The precautionary foundation of Vorsorgeprinzip has been described as an "action principle" that holds public authorities responsible for protecting the natural foundations of life and preserving the physical world for the present and future generations, and "'can therefore be used to counter the short-termism endemic in all democratic, consumption oriented societies.'"

26.2 The origin of the *Precautionary Principle* itself is rooted as an institutional obligation, by holding them primarily responsible for the environmental concerns and remedies.

26.3 As earlier seen, S.20 of the NGT Act which includes the term *"decision",* in addition to *"order"* and *"award"*, also require the Tribunal to apply the *'Precautionary Principle'* and the statutory mandate being relevant is extracted: -

> "20. Tribunal to apply certain principles. - The Tribunal shall, while passing any order or decisions or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle."



26.4 The principle set out above must apply in the widest amplitude to ensure that it is not only resorted to for adjudicatory purposes but also for other *'decisions'* or *'orders'* to governmental authorities or polluters, when they fail to *"to anticipate, prevent and attack the causes of environmental degradation"*[24]. Two aspects must therefore be emphasized i.e. that the Tribunal is itself required to carry out preventive and protective measures, as well as hold governmental and private authorities accountable for failing to uphold environmental interests. Thus, a narrow interpretation for NGT's powers should be eschewed to adopt one which allows for full flow of the forum's power within the environmental domain.

26.5 It is not only a matter of rhetoric that the Tribunal is to remain ever vigilant, but an important legal onus is cast upon it to act with promptitude to deal with environmental exigencies. The responsibility is not just to resolve legal ambiguities but to arrive

---

24 **Vellore Citizens (supra),** ***S. Jagannathan v. Union of India*** **(1997) 2 SCC 87, Karnataka Industrial Areas Development Board v. C Kenchappa and Ors** ***(2006)*** **6 SCC 371.**

at a reasoned and fair result for environmental problems which are adversarial as well as non-adversarial. It would be apposite here to refer to Justice Benjamin Cardozo, of the United States Supreme Court, who in his seminal treatise, *'The Nature of the Judicial Process'*, stated thus,

> "It is true that codes and statutes do not render the judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are doubts and ambiguities to be cleared. There are hardships and wrongs to be mitigated if not avoided."

The above could be a pointer towards the preemptive functions of the NGT as a *sui generis* body.

XI. ENVIRONMENTAL JUSTICE AND ENVIROMENTAL EQUITY

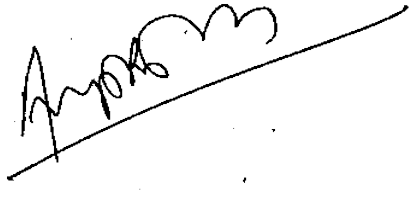
27.1 The conceptual frameworks of environmental justice and equity should merit consideration vis-à-vis the NGT's domain and how its functioning and decisions can have wide implications in socio-economic dimensions of people at large. The concept of environmental justice is a trifecta of distributive justice, procedural justice

and justice as recognition.[25] Environmental equity as a developing concept has focused on the disproportionate implications of environmental harms on the economically or socially marginalized groups. The concerns of human rights and environmental degradation overlap under this umbrella term, to highlight the human element, apart from economic and environmental ramifications. Environmental equity thus stands to ensure a balanced distribution of environmental risks as well as protections, including application of sustainable development principles.

27.2 Voicing concerns about the disproportionate harm for the poor segments, Lois J. Schiffer (then Assistant Attorney General, Environment & Natural Resources Division (ENRD), U.S. Department of Justice) and Timothy J. Dowling (then Attorney at ENRD) in their *Reflections on the Role of the Courts in Environmental Law,* wrote the following evocative passage on the concept of environmental justice,

---

25 **Schlosberg D, *Defining Environmental Justice: Theories, Movements, and Nature* (Oxford University Press 2009)**



> “Environmental Justice, which focuses on whether minorities and low-income people bear a disproportionate burden of exposure to environmental harms and any resulting health effects. In the past ten to fifteen years, this issue has crystallized a grass-roots movement that combines civil rights issues with environmental issues, with a goal of achieving "environmental justice" or "environmental equity," which is understood to mean the fair distribution of environmental risks and protection from environmental harms.”[26]

27.3 There is also a need to focus on the interconnection between principles of procedural justice and distributive justice. The concern is to create a system which is affirmative enough to balance the disproportionate wielding of power between polluters and affected people.

> “Environmental justice starts with distributive justice, or more accurately, distributive injustice. The rich and powerful derive the most benefit while suffering the least harm from environmentally harmful activities; conversely, the poor and minorities derive the least benefit but suffer the most harm.Further, those who benefit cause harm to the places where people “live, work, play, and go to school,” whereas the people who reside there do little or nothing to harm their community.” [27]

---

26 **Schiffer, L. J., & Dowling, T. J. (1997).** ***Reflections On The Role Of The Courts In Environmental Law. Environmental Law, 27*****(2), 327–342.**

27 **Jeff Todd, A “Sense of Equity” in Environmental Justice Litigation, 44 HARV. ENVTL. L. REV. 169, 193 (2020).**

When substantive justice is elusive for a large segment, disengaging with substantive rights at the very altar, for a perceived procedural lacuna, would surely bring in a process, which furthers inequality, both economic and social. An *"equal footing"* conception may not therefore be feasible to adequately address the asymmetrical relationship between the polluters and those affected by their actions. Instead, a recognition of the historical experience of marginalized classes of persons while accessing and effectively using the legal system, will allow for necessary appreciation of social realities and balancing the arm of justice.

27.4 The law must be interpreted in such a manner as to foster further development of existing legal concepts by incorporating this sense of equity. The issues which this Court has had the occasion to examine have highlighted the limitations of the mechanisms to reach to the heart of environmental concerns. This Court has previously moulded the jurisdictional jurisprudence in favour of larger societal interest, whether that be in

the form of 'Public Interest Litigation' or widening the scope of *locus standi*.

> "The identification of potential environmental justice issues is very important in determining how our enforcement efforts are working in minority and low-income communities, and whether they are comparable to the enforcement efforts in other communities."[28]

27.5 In the backdrop of the above weighty concerns, this Court should advert to what Schiffer and Dowling have stated on the *'Blindfold of Lady Justice'*, which symbolizes *"the ideal of administering equal justice to everyone who comes to our Courts, regardless of race, creed, or economic class."*[29] The relevance of this concept is particularly apposite when we consider the inability of most marginalized communities, to access the legal machinery.

IX. ENVIRONMENTAL JURISPRUDENCE IN INDIA

28.1 Proceeding with the above understating, we can comfortably place the NGT within the rubric of the

28 **Supra Note 26.**
29 **Ibid**

larger environmental jurisprudence which has been informing this unique institution. The role of this Court in establishing the legal connect between matters of environmental concern and fundamental rights of citizens, has produced much academic literature. Amongst others, Armin Rosencranz and Shyam Divan in their writing- *Environmental Law And Policy In India,* have noted that the field of laws pertaining to environmental concerns has been a fairly fertile ground for judicial innovations by this Court; moving the concept of Environmental law from the realm of torts to interlink it with fundamental rights[30], liberalizing the concept of *locus standi* in environmental matters, exercising *suo motu* powers to reign in polluters, using expert committees to monitor implementation of Court orders, etc.[31]

28.2 By expanding the scope of Articles 21, 32, 48A, 51A(g), this Court has guaranteed the right to a

---

30 ***Rural Litigation And Entitlement Kendra & Ors V. State Of U. P. & Ors*** **AIR 1985 SC 652,** ***Charan Lal Sahu Vs. Union of India*** **(1990) 1 SCC 613,** ***Virender Gaur Vs. State of Haryana*** **(1995) 2 SCC 577**

31 **See M.A.A. Baig,** ***Environmental Law And Justice(1996)*****. Domenico Amirante,** ***Environmental Courts In Comparative Perspective: Preliminary Reflections On The National Green Tribunal Of India (2012)*****. M.K. Ramesh,** ***Environmental Justice: Courts And Beyond*****, Indian Jo. Of Envtl. L. 20(2002).**

pollution free environment for a holistic existence.[32] Most crucially, the expansion of Right to Life under Article 21 by this Court has become a touchstone to determine many environmental concerns. In *Subhash Kumar Vs. State of Bihar*, this Court explicitly held the following,

> "Right to life is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life."[33]

28.3 Adopting international principles and moulding them to Indian realities also became a focal concern, given the lacunae in regimes which may be exploited by those who may not have much concern for environmental degradation. Creation of the *'Absolute Liability Principle'* [34] by this Court is a well recognized testament for this. It would thus be appropriate to state that much of the principles, institutions and

---

32 **Maheshwara Swamy, N. Law Relating to Environmental Pollution and Protection. India, Thompson Reuters, Vol.I, Ed.5.**
33 **(1991) 1 SCC 74.**
34 **M.C. Mehta vs. Union of India, 1987 SCC (1) 395.**

mechanisms in this sphere have been created, on account of this Court's initiative.

> "The constitutionally-protected fundamental right to life and liberty has been extended through judicial creativity to cover unarticulated but implicit rights such as the right to a wholesome environment. . . .The right was recognized as part of the right to life in 1991. . . . The court has since fleshed out the right to a wholesome environment by integrating into Indian environmental jurisprudence not just established but even nascent principles of international environmental law."[35]

28.4 It has been noted that the Supreme Court adopted the role of an "amicus environment" by threading together human rights and environmental concerns, resultingly developing a *sui generis* environmental discourse.[36] There were both procedural and substantive innovations made, by entertaining PIL petitions, seeking remedies, including guidelines and directions in the absence of legislation. Many of the landmark cases which hold the fort to this day, were in recognition of the '*at risk*' nature of some

35 **Rajamani, Lavanya. 2007. *Public Interest Environmental Litigation in India: Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability*. Journal of Environmental Law**

36 **Supra, Note 19.**

populations. The creation of the NGT itself was due in large part to the need expressed by this Court for such a forum.[37]

28.5 Justice T.S. Doabia in *Environmental & Pollution Laws in India,* has highlighted the larger societal concerns which have informed this Court's deliberation when dealing with environmental matters,

> "The Supreme Court of India, in its interpretation of Article 21 of the Constitution of India, has facilitated the emergence of an environmental jurisprudence in India, while also strengthening human rights jurisprudence.
>
> ...The Courts have successfully isolated specific environmental law principles upon the interpretation of Indian statutes and the Constitution, combined with a liberal view towards ensuring social justice and the protection of human rights. The principles have often found reflection in the Constitution in some form, and are usually justified even when not explicitly mentioned in the statute concerned." [38]

28.6 Environmental jurisprudence in India has therefore been intrinsic to advancing a democratic,

---

37 ***M.C. Mehta vs. Union of India*** **(1986) 2 SCC 176,** ***Indian Council for Environmental-Legal Action v. Union of India*** **(1996) 3 SCC 212,** ***A.P. Pollution Control Board vs. M.V. Nayudu*** **(1999) 2 SCC 718,** ***A.P. Pollution Control Board II vs. M.V. Nayudu*** **(2001) 2 SCC 62.**

38 **Justice T.S. Doabia,** ***Environmental & Pollution Laws in India,*** **3rd Ed., Vol 2 (2017).**

welfare oriented legal regime. Issues affecting the ecology and the environment must have a broad perspective and should have a society centric approach. Furthermore, the very nature of ecological and environmental issues has the propensity for rapid deterioration. Many such sensitive matters, as has been noted, stood transferred to the NGT, with the aim that those would be dealt with expediently with the required technical expertise and legal sophistication. The proactiveness of the superior Court was surely expected to be seen in the Tribunal's approach.

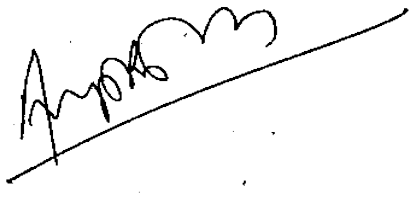
28.7 Analyzing the concept of the functioning of the NGT and its role within the broader concept of the environmental rule of law, Justice D.Y. Chandrachud speaking for a three judges Bench in *H.P. Bus Stand Management & Development Authority vs. Central Empowered Committee*[39] so succinctly said that,

> "40. The environmental rule of law, at a certain level, is a facet of the concept of the rule of law. But it includes specific features that are unique to environmental governance, features which

39 **(2021) 4 SCC 309**

> are sui generis. The environmental rule of law seeks to create essential tools – conceptual, procedural and institutional to bring structure to the discourse on environmental protection. It does so to enhance our understanding of environmental challenges – of how they have been shaped by humanity's interface with nature in the past, how they continue to be affected by its engagement with nature in the present and the prospects for the future, if we were not to radically alter the course of destruction which humanity's actions have charted. The environmental rule of law seeks to facilitate a multi– disciplinary analysis of the nature and consequences of carbon footprints and in doing so it brings a shared understanding between science, regulatory decisions and policy perspectives in the field of environmental protection. It recognizes that the 'law' element in the environmental rule of law does not make the concept peculiarly the preserve of lawyers and judges. On the contrary, it seeks to draw within the fold all stakeholders in formulating strategies to deal with current challenges posed by environmental degradation, climate change and the destruction of habitats. The environmental rule of law seeks a unified understanding of these concepts."

28.8 It is this environmental rule of law that has been encapsulated with the NGT's creation at this Court's behest. Professor Domenico Amirante in a comparative analysis of similar bodies across the world, notes that,



> "With reference to the judicial enforcement of environmental law – which as we have seen should be considered an important condition not only for sustainable development but also for the sustainability of the legal environmental order – the National Green Tribunal of India seems to be the most comprehensive and promising among the specialized environmental Courts created in Asia over the last decade." [40]

The NGT therefore, is the institutionalization of the developments made by this Court in the field of environment law. These progressive steps have allowed it to inherit a very broad conception of environmental concerns. Its functions therefore, must not be viewed in a cribbed manner, which detracts from the progress already made in the Indian environmental jurisprudence.

X. CONCLUSION:

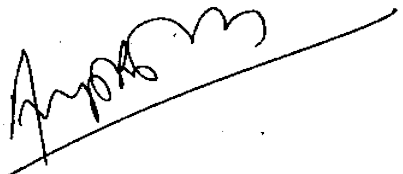
29. Before we set out our conclusion, we acknowledge the able contribution of Mr. Anand Grover as *amicus curiae*, assisted by Ms. Astha Sharma, AOR who were requested to assist the Court on the central issue of *suo motu* jurisdiction of NGT.

---

40 **Domenico Amirante, *Environmental Courts in Comparative Perspective: Preliminary Reflections on the National Green Tribunal of India*, 29 Pace Envtl. L. Rev. 441 (2012)**

30. The NGT Act, when read as a whole, gives much leeway to the NGT to go beyond a mere adjudicatory role. The Parliament's intention is clearly discernible to create a multifunctional body, with the capacity to provide redressal for environmental exigencies. Accordingly, the principles of environmental justice and environmental equity must be explicitly acknowledged as pivotal threads of the NGT's fabric. The NGT must be seen as a *sui generis* institution and not *unus multorum,* and its special and exclusive role to foster public interest in the area of environmental domain delineated in the enactment of 2010 must necessarily receive legal recognition of this Court.

31. The environmental impacts on climate change are gaining increasing visibility in the shape of uncertain rains, species extinction, loss of natural habitat and so on. These also have the propensity to diminish fresh water resources, reduce agricultural yields and impact public health, particularly in the cities. The flooding and erosion in riverine and coastal areas are matters of serious concern. Governmental assessment of



India's increased vulnerability to such changes in the near future also exists[41] with many countries declaring climate emergencies and many others being urged to follow suit[42].

32. Therefore, the nature of ecological imbalance which is visible even in our own times may cascade, and the unforeseen injustice of the future may not be capable of being handled within the frontiers set forth today. The long term and very often irreparable environmental damage which are expected to be arrested by the NGT, urge this Court to advert to what is termed as *the 'Seventh Generation' sustainability principle,* or the *'Great Law of the Iroquois'* (as it originates from the Iroquois Tribe) which requires all decision making to withstand for the benefit of seven generations down the line.

---

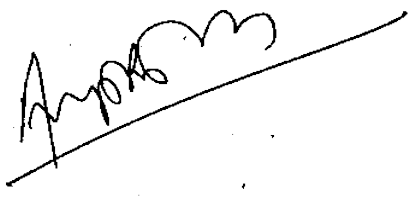
41 **Indian Network for Climate Change Assessment, Climate Change and India: A 4X4 Assessment - A sectoral and regional analysis for 2030s, Ministry of Environment and Forests, Government of India, 16 November 2010**

42 **Secretary-General's Remarks at the Climate Ambition Summit. United Nations. United Nations, December 12, 2020.**

33. It is vital for the wellbeing of the nation and its people, to have a flexible mechanism to address all issues pertaining to environmental damage and resultant climate change so that we can leave behind a better environmental legacy, for our children, and the generations thereafter.

34. In circumstances where adverse environmental impact may be egregious, but the community affected is unable to effectively get the machinery into action, a forum created specifically to address such concerns should surely be expected to move with expediency, and of its own accord. The potentiality of disproportionate harm imposes a higher obligation on authorities to preserve rights which may be waylaid due to such restrictive access. It is also noteworthy that the *"global impacts of climate change will fall disproportionately on minority and low-income communities"*.[43] Thus, an affirmative role, beyond mere adjudication at the instance of applicant, is certainly required for *serving the ends of environmental justice*, as the statute itself

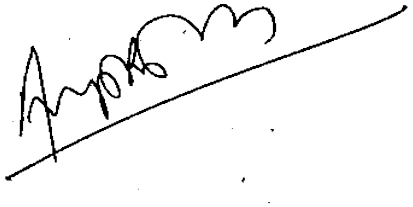
43 **Supra Note 23.**



requires of the NGT. We cannot validate an argument which furthers uncertainty to justify the role of a spectator, if not inaction, and would most assuredly result in injustice.

35. The NGT, with the distinct role envisaged for it, can hardly afford to remain a mute spectator when no-one knocks on its door. The forum itself has correctly identified the need for collective stratagem for addressing environmental concerns. Such a society centric approach must be allowed to work within the established safety valves of the principles of natural justice and appeal to the Supreme Court. The hands-off mode for the NGT, when faced with exigencies requiring immediate and effective response, would debilitate the forum from discharging its responsibility and this must be ruled out in the interest of justice.

36. It would be procedural hairsplitting to argue (as it has been) that the NGT could act upon a letter being written to it, but learning about an environmental exigency through any other means cannot trigger the NGT



into action. To endorse such an approach would surely be rendering the forum procedurally shackled or incapacitated.

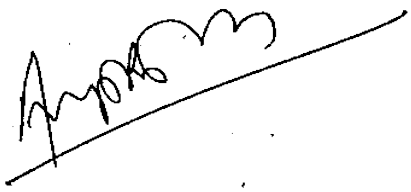
37. When the Registry of the NGT does indeed receive a communication or letter, including matters published in media, it may cause to initiate *suo motu* action by inviting attention of NGT to such matters in the form of office report. Such circumstances would however require a notice to be given to the sender of the communication or author of the news item, as the case may be, to assist the NGT in the course of hearing and to substantiate the factual matters. It must also be said that the exercise of *suo motu* jurisdiction does not mean eschewing with the principles of natural justice and fair play. In other words, the party likely to be affected should be afforded due opportunity to present their side, before suffering adverse orders.

38. One could admit to the argument of danger of *suo motu* jurisdiction, if the NGT was acting outside its domain. But when it is legitimately working within the

contours of its statutory mandate and with procedurals safeguards clarified above in play, the nature of the trigger itself viz. a letter or a '*suo motu*' initiation, cannot be the basis to curtail the role and responsibility of the specialized forum.

39. Institutions which are often addressing urgent concerns gain little from procedural nitpicking, which are unwarranted in the face of both the statutory spirit and the evolving nature of environmental degradation. Not merely should a procedure exist but it must be meaningfully effective to address such concerns. The role of such an institution cannot be mechanical or ornamental. We must therefore adopt an interpretation which sustains the spirit of public good and not render the environmental watchdog of our country toothless and ineffective.

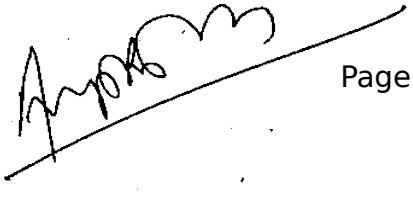
40. Let us now hark back to the dialogues of the two protagonists, in *Waiting for Godot*, the play written by Samuel Beckett with which, we started this judgment. At the end of the deliberations, we find ourselves saying



that the National Green Tribunal must act, if the exigencies so demand, without indefinitely waiting for the metaphorical *Godot* to knock on its portal. The preceding discussion advises us to answer the pointed question in the affirmative. It is accordingly declared that the NGT is vested with *suo motu* power in discharge of its functions under the NGT Act.

41. Having answered the common legal issue involved in all these cases regarding the *suo motu* jurisdiction of NGT, we direct delinking of these cases for now being heard separately on merits. Indeed, if the cases(s) emanate from same/common order of NGT, such case(s) be heard together. Registry may do the needful and post the matters on 25.10.2021 for direction and fixing date of hearing, before the Bench presided over by one of us (Justice A.M. Khanwilkar). For the purpose of further hearing, the respective cases shall not be treated as part-heard before this Bench.

.....J.
[A.M. KHANWILKAR]



……J.
[HRISHIKESH ROY]

……J.
[C.T. RAVIKUMAR]

NEW DELHI
OCTOBER 7, 2021

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. 5041 of 2021
(Arising out of SLP (C) No. 11959 of 2014)

Supertech Limited **...Appellant**

Versus

Emerald Court Owner Resident Welfare Association & Ors. **...Respondents**

With
Civil Appeal No. 5042 of 2021
(Arising out of SLP (C) No. 14314 of 2014)
With
Civil Appeal No. 5043 of 2021
(Arising out of SLP (C) No. 12470 of 2014)
With
Civil Appeal No. 5044 of 2021
(Arising out of SLP (C) No. 14262 of 2014)
With
Civil Appeal No. 5045 of 2021
(Arising out of SLP (C) No. 21035 of 2014)
With
Civil Appeal No. 5046 of 2021
(Arising out of SLP (C) No. 31117 of 2014)
With
Civil Appeal No. 5047 of 2021
(Arising out of SLP (C) No. 12427 of 2015)

With

Civil Appeal No. 5048 of 2021

(Arising out of SLP (C) No. 12947 of 2015)

With

Civil Appeal No. 5049 of 2021

(Arising out of SLP (C) No. 12948 of 2015)

With

Civil Appeal No. 5050 of 2021

Arising out of SLP (C) No. 12191 of 2021

(Diary No. 28571 of 2018)

With

Contempt Petition (C) No. 380 of 2021

In

Special Leave Petition (C) No. 14314 of 2014

With

Contempt Petition (C) No. 381 of 2021

In

Special Leave Petition (C) No. 14314 of 2014

With

Contempt Petition (C) No. 382 of 2021

In

Special Leave Petition (C) No. 14314 of 2014

With

Contempt Petition (C) No. 383 of 2021

In

Special Leave Petition (C) No. 14314 of 2014

And With

Contempt Petition (C) No. 384 of 2021

In

Special Leave Petition (C) No. 14314 of 2014

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

INDEX

D.2 Violation of NBC 2005

D.3 Violation of Fire Safety Norms

E Consent of the RWA

E.1 Applicability of UP 1975 Act

E.2 Applicability of the UP Apartments Act 2010

E.3 Requirement of RWA's Consent

F Collusion and Illegal Construction

G Conclusion

H Interlocutory Applications

1 Leave granted.

A Factual and procedural history

A.1 The appeals

2 These appeals have arisen from a judgment of a Division Bench of the High Court of Judicature at Allahabad dated 11 April 2014, upon a writ petition[1] instituted by the first respondent, the Residents' Welfare Association[2] of Emerald Court Group Housing Society[3].

3 By its judgment, the High Court directed:

(i) The demolition of Towers -16[4] and 17[5] by the third respondent, New Okhla Industrial Development Authority[6], in Emerald Court situated on Plot No 4, Sector 93A, NOIDA constructed by the appellant, Supertech Limited[7];

(ii) The cost of demolition and removal would be borne by the appellant, failing which NOIDA shall recover it as arrears of land revenue;

(iii) Sanction for prosecution under Section 49 of the Uttar Pradesh Urban Development Act 1973[8], as incorporated by Section 12 of the Uttar Pradesh Industrial Area Development Act 1976[9], shall be granted for the prosecution of the officials of the appellant and the officers of NOIDA for possible

[1] Writ Petition (Civil) No 65085 of 2012
[2] "**RWA**"
[3] "**Emerald Court**"
[4] "**T-16**"/"**Ceyane**"
[5] "**T-17**"/"**Apex**"
[6] "**NOIDA**"
[7] "**Supertech**"
[8] "**UPUD Act 1973**"
[9] "**UPIAD Act 1976**"

violations of the UPIAD Act 1976 and Uttar Pradesh Apartment (Promotion of Construction, Ownership & Maintenance) Act 2010[10]; and

(iv) Refund by the appellant of amounts invested by purchasers who had booked apartments in T-16 and T-17, with interest at fourteen per cent, compounded annually.

4 The correctness of these directions is challenged before this Court in the present appeals.

A.2 The Emerald Court project

5 On 23 November 2004, NOIDA allotted to the appellant a plot of land admeasuring 48,263 sq. mtrs., which was a part of Plot No 4 situated in Sector 93A. This plot of land was allotted for the development of a group housing society, by the name of Emerald Court.

6 The first deed of lease was executed on 16 March 2005 between the appellant and NOIDA. A possession certificate was issued on 17 March 2005.

7 On 20 June 2005, NOIDA sanctioned the building plan for the construction of Emerald Court consisting of fourteen towers, each with ground and nine floors (G+9). This sanction was granted under the New Okhla Industrial Development Area

[10] "**UP Apartments Act 2010**"

Building Regulations and Directions 1986[11]. The construction commenced for these fourteen towers.

A.3 First Revised Plan

8 On 21 June 2006, a supplementary lease deed was executed by NOIDA in favour of the appellant for an additional land area of 6556.51 sq. mtrs. in the same plot of land in Plot No 4. Adding to the existing holding allotted under the first lease deed, the total leased area allotted to the appellant increased to 54,819.51 sq. mtrs. The supplementary lease deed noted that:

(i) The demised premises shall be deemed to be part of Plot No 4, Sector 93A, NOIDA as already leased to the appellant;

(ii) All other conditions of the original lease deed and allotment shall remain unchanged and would be applicable to the newly demised premises, and bind the appellant;

(iii) The period of lease shall commence from 16 March 2005; and

(iv) The total area of Plot No 4, Sector 93A, NOIDA is 54,819.51 sq. mtrs.

The possession certificate in respect of the additional land was issued to the appellant on 23 June 2006.

9 On 5 December 2006, the New Okhla Industrial Development Area Building Regulations and Directions 2006[12] were notified. Under the NBR 2006, the Floor-

[11] "**NBR 1986**"
[12] "**NBR 2006**"

Area-Ratio[13] was increased from 1.5 to 2 for new allottees after 2006. Regulation 33.2.3(i) provided as follows:

> "33. 'Floor area ratio' Floor Area Ratio. Ground coverage and height limitations.
>
> […]
>
> 33.2.3 Any other utilities as decided by Chief Executive Officer depending on its requirement.
>
> i. Distance between two adjacent building blocks shall not be less than half of the height of the tallest building."

10 On 29 December 2006, NOIDA sanctioned the first revised plan for Emerald Court under the NBR 2006, by which two additional floors were envisaged in addition to the already sanctioned G+9 floors in the original fourteen towers, thereby bringing all of them to ground and eleven floors (G+11). Furthermore, additional buildings were also sanctioned, namely: *(i)* Tower-15 (comprising of ground and eleven floors (G+11)); *(ii)* T-16 (comprising of a cluster of wings including 1 wing of ground and eleven floors (G+11) and 3 wings of ground and four floors (G+4)); and *(iii)* a shopping complex (comprising of ground and first floor (G+1)). As a consequence, under the first revised plan, NOIDA permitted a total of sixteen towers (G+11) (which would each be 37 mtrs. in height) and one shopping complex (G+1). It is important to note that the appellant was able to have this additional construction due to the area that was made available to it under the supplementary lease deed, and further, when the appellant had allotted flats to the purchasers, only a small

[13] "**FAR**"

building on the additional leased area was sanctioned. Pertinently, it is also necessary to highlight that the first revised plan contemplated a green area in front of Tower- 1[14]. According to the purchasers, when the flats were sold, the brochure of the appellant contained information in accordance with the first revised plan dated 29 December 2006, which shows the area in front of T-1 as a green area.

11 On 10 April 2008, a completion certificate was granted in relation to the first eight towers (G+11). Thereafter, various owners of flats were granted possession by the appellant. Crucially, the completion map also indicated a green area in front of T-1, where currently T-16 and T-17 are being constructed.

A.4 Second Revised Plan

12 On 28 February 2009, a notification was issued by the State of Uttar Pradesh enhancing the FAR from 2 (as provided under the NBR 2006) to 2.75 for new allottees. Further, the notification also provided for "purchasable FAR", according to which old allottees (such as the appellant) could purchase FAR to the maximum extent of thirty-three per cent of their base existing FAR of 1.5.

13 On 3 July 2009, NOIDA decided that the stipulation to purchase thirty-three per cent FAR of the existing base FAR for old allotees under the notification dated 28 February 2009, should be brought at par with other allotees. As a consequence, the purchasable FAR for old allotees would be enhanced to 2.75. However, the notification by the State of Uttar Pradesh in this regard was still awaited. The

[14] "**T-1**"/ "**Aster 2**"

appellant states that, in any case, based on the decision of NOIDA, it planned the construction of T-16 and T-17 in a way that catered to the additional FAR which may be available for purchase at a later date.

14 On 19 November 2009, relying on the notification dated 28 February 2009, the appellant purchased thirty-three per cent of its existing base 1.5 FAR at the cost of Rs eight crores, increasing its available FAR to 1.995.

15 However, it appears from the record that the appellant had already started construction of the disputed towers – Apex and Ceyane – prior to the grant of this sanction by NOIDA. On 16 July 2009, the appellant informed the flat owners that:

> "1. That we have bought two separate plots measuring approximately 48000 square meter and 6500 square meter and got them registered separately in March 2005 & May 2006 respectively.
>
> 2. That the new towers which are being constructed will have altogether separate entry, exit, swimming pool, club & basic infrastructure. We will also construct boundary wall separating two structure i.e. existing 15 towers & Apex Ceyane."

16 The above communication of the appellant indicates that:

(i) The construction of T-16 and T-17 had already commenced on 16 July 2009;

(ii) According to the appellant, these new towers would have separate entry-exit, amenities and infrastructure; and

(iii) The new towers would be separated from the existing fifteen towers by the construction of a boundary wall.

The appellant represented to the flat-owners that a revised building plan for replacing the existing T-16 (G+11) and the shopping complex (G+1) was sanctioned, with twin towers T-16 and T-17, each of G+24 floors and a height of 73 mtrs., replacing them.

17 On 11 September 2009, the Chief Fire Officer of Gautam Budh Nagar[15], the fourth respondent, issued a report to the In-charge (Building Cell) NOIDA, Sector 6 for the grant of the provisional Non-Objection Certificate[16] for T-16 and T-17. The provisional Fire NOC was made subject to compliance with the requirements of the National Building Code, 2005[17].

18 On 16 September 2009, a completion certification was granted in relation to another six towers (G+11). The completion map accompanying this certificate again showed the green area in front of T-1, where presently T-16 and T-17 are being constructed.

19 On 26 November 2009, NOIDA sanctioned the second revised plan for Emerald Court under the NBR 2006. In this plan, the earlier T-16 (G+11) was replaced with a T-16 consisting of ground and twenty-four floors (G+24). Similarly, the shopping complex (G+1) was replaced with T-17 consisting of ground and twenty-four floors (G+24). T-16 and T-17 would each be of a height of 73 mtrs. According to the plan, T-17 was to be at a distance of 9 mtrs. from T-1, and there

[15] "**CFO**"
[16] "**NOC**"
[17] "**NBC 2005**"

was a provision for their connection through a space-frame at the upper level. This plan was sanctioned by NOIDA on the basis of the appellant having purchased thirty-three per cent of the purchasable FAR (27,135.657 sq. mtrs.), in addition to the permissible 1.5 FAR (82,229.265 sq. mtrs.), totalling to 1.995 FAR (1,09,364.922 sq. mtrs.). The second revised plan expressly provided for the following, among other conditions:

> "2. Due to this sanction of the building plan, the right and ownership of any government authority like (municipality, NOIDA) any other person will not get affected.
>
> […]
>
> 8. **A set of sanctioned building plan shall be kept at the construction site so that it can be checked at the site at any time and the construction work shall be done as per the sanctioned building plans specifications as per the rules of Noida Building Rules.** The allottee shall start the construction work of the ground floor only after getting the inspection of the basement done upon completion of the work of basement from building section department, Noida. Otherwise sanctioned map deemed to be cancelled."
>
> (**emphasis supplied**)

A.5 Third Revised Plan

20 On 20 February 2010, a notification was issued by the State of Uttar Pradesh enabling old allotees to purchase FAR of up to 2.75 and, as a consequence, the limit of a maximum purchasable FAR of thirty-three per cent of the existing base FAR was removed. The notification contemplated that "the purchasable FAR shall be

allowed up to the maximum limit of applicable FAR". The notification also amended the NBR 2006, which expressly provided that:

> "Purchasable FAR is an enabling provision. It shall not be allowed to any allottee as a matter of right."

21 On 19 March 2010, the UP Apartments Act 2010 came into force. Section 4(4) and Section 5 of this Act provide for the consent of the owners of flats before any change in the sanctioned plans is effected and also envisage that the percentage of undivided common interest of the owners of the flats cannot be changed without their consent.

22 On 30 November 2010, the New Okhla Industrial Development Area Building Regulations 2010[18] came into force. Regulation 24.2.1.(6) contains the following stipulations:

> "(6). Distance between two adjacent building blocks
>
> Distance between two adjacent building blocks shall be minimum 6 mtrs. to 16 mtrs, depending on the height of blocks. For building height up to 18 mts., the spacing shall be increased by 1 metre for every addition of 3 mtrs. as per National Building Code 2005. If the blocks have dead-end sides facing each other, than the spacing shall be maximum 9 mtrs. instead of 16 mtrs. Moreover, the allottee may provide or propose more than 16 mtrs space between two blocks."

[18] "**NBR 2010**"

23 On 18 August 2011, the CFO granted a temporary NOC in respect of T-16 and T-17, for a height of 121.5 mtrs. with proposed ground and thirty-eight floors (G+38). It was noted that once the buildings were constructed and proper fire safety equipment was installed, they would be inspected in order to assess whether a permanent NOC should be granted.

24 On 25 October 2011, in view of the notification dated 20 February 2010, the appellant purchased an additional FAR at a cost of Rs 15 crores, so as to enhance the available FAR from 1.995 to 2.75 (1,50,753.652 sq. mtrs.). On the same date, NOIDA issued a letter to the appellant in relation to the purchase of the FAR, imposing several requirements, including compliance with the provisions of the UP Apartments Act 2010.

25 On 2 March 2012, the third revised plan was sanctioned by NOIDA for Emerald Court. Through this sanction, the height of T-16 and T-17 was permitted to be raised from 24 floors to 40 floors (*i.e.*, G+40), resulting in the building's height being 121 mtrs. Further, T-16 and T-17 would also consist, *inter alia*, of two basements and open space for parking beneath the towers. The third revised plan also contained a requirement of compliance with the UP Apartments Act 2010, along with similar requirements which were present in the second revised plan.

A.6 Complaints against the Revised Plans

26 On 9 March 2012, the appellant addressed a communication to the first respondent intimating that the flat purchasers of T-16 and T-17, which were under

construction, would have altogether separate entry-exit, amenities and infrastructure.

27 On 29 March 2012, the office of the CFO, on the basis of a complaint by the first respondent, issued a notice to the appellant in regard to certain deficiencies and violations in complying with fire safety requirements.

28 On 24 April 2012, the CFO, on the basis of another complaint by the first respondent, addressed a communication to NOIDA in regards the violation of the minimum distance between T-1 and T-17. The letter, *inter alia*, states:

> "When record was perused in respect of the above, it was found that:
>
> […]
>
> 2. There should be a minimum distance of half of the height of building in between two building blocks as per Clause No. 33.2.3. of Building Construction Regulations, 2006 and there should be a distance of 16 meters in between the buildings whose height is more than 50 meters as per Noida Regulations, 2010.
>
> 3. There should be a distance of 16 meter in between two buildings situated side by side as per National building Code of India – 2005.
>
> Therefore, you are requested that in the light of above kindly inform that license was granted for construction of building after providing relaxation to the building in question in Special Category or construction is being carried out by the concerned is contrary to the standards."

29 On 3 May 2012 and 22 May 2012, the first respondent filed an RTI application with NOIDA for obtaining the sanctioned plans in relation to Plot No 4 of Sector 93A. Though under the terms of the sanctioned plans the appellant was required to

display the sanctioned map at its site, NOIDA still wrote to the appellant to verify whether the sanctioned plans and maps could be made available to the first respondent. The appellant in response refused to grant its consent to release sanctioned plans and maps to the first respondent. Hence, NOIDA refused to provide the sanctioned plans to the first respondent.

30 On 19 June 2012, a show cause notice was issued by NOIDA to the appellant stating that: *(i)* the construction was not in accordance with the third revised plan since, *inter alia*, T-1 and T-16/17 were not joined by a space frame; and *(ii)* a copy of the plan had not been exhibited at the site office. The appellant replied to the show cause notice on 26 June 2012 stating that T-16 and T-17 were still under construction and the space frame would be built at the time of construction.

31 On 26 June 2012, NOIDA issued a completion certificate to the appellant in respect of Tower-15 (G+11).

32 On 28 June 2012, the first respondent addressed a communication to NOIDA complaining of violations and misrepresentations made to the owners by the appellant, and sought cancellation of the layout plan of the two new towers, T-16 and T-17. The first respondent followed up its earlier communication with letters dated 9 and 29 August 2012 demanding information, and intimating that the construction was being carried out by the appellant in violation of the norms.

A.7 Proceedings before the Allahabad High Court

33 On 10 December 2012, the first respondent filed a writ petition under Article 226 of the Constitution before the High Court seeking *inter alia* the following reliefs:

> "i. Issue a writ, order or direction quashing the revised plan approved by respondent 2 for construction of new towers namely Tower 'APEX' and 'CEYANE' in plot no. 4, Sector 93-A, and issue further directions for demolishing of aforesaid towers, the approval and construction being in complete violation of provisions of U.P. Apartments Act of 2010.
>
> ii. Issue a writ, order or direction directing the Respondent 2 not to sanction amendments to any further building plans in respect of the Group Housing Society being developed by respondent 5 without obtaining consent of all the residents.
>
> iii. Issue a writ, order or direction quashing the permission granted to respondent 5 to link Tower T-1 and T 'APEX' / 'CEYANCE' through space frame.
>
> iv. Issue a writ, order or direction directing respondents 2 and 3 to ensure that fire safety equipment and infrastructure is installed at the expenses of respondent 5 within a specified period.
>
> v. Issue a writ, order or direction directing respondent 2 to demolish illegal construction made in the basement and setback area as per notice dated 19.06.2012 and 17.07.2012.
>
> vi. Issue a writ or direction directing respondent no. 2and 5 to provide car parking spaces (both aboveground and in the basement) as per the provisions of the NBC 2005 to all the legal allottees/residents of Supertech Emerald Court Complex, plot 4, Section 93-A NOIDA."

34 The first respondent only pressed reliefs i and iii, seeking a direction to quash the revised plan which approved the construction of T-16 and T-17, and to demolish them. The first respondent also sought the quashing of the permission granted to link T-1 and T-16/T-17 though a space frame. During the pendency of the writ

proceedings, in pursuance of a specific order of the High Court, the RWA was provided with the sanctioned maps together with related information and documents in respect of the construction at the site. Pleadings were subsequently exchanged between the parties.

35 The appellant filed a counter affidavit on 27 January 2013 submitting that:

(i) The first respondent is not recognised by the appellant under the UP Apartments Act 2010;

(ii) The first respondent should have first approached the Chief Executive Officer of NOIDA, who is the competent authority under the UP Apartments Act 2010, and then the State Government, before approaching the High Court under the writ jurisdiction;

(iii) Construction of T-16 and T-17 was approved on 26 November 2009, but the writ petition had been filed after three years in December 2012, when the building is in an advanced stage of construction. Hence, the writ petition is barred by delay and laches; and

(iv) T-16 and T-17 were sanctioned in 2009 under the NBR 2006. The final sanction given on 2 March 2012 only increased the height of the towers from twenty-four floors to forty floors, after the appellant purchased the additional FAR. Under the NBR 2006, there is no provision with regard to the minimum distance between two "building blocks". Since the NBR 2006 did not incorporate the NBC 2005, the mandatory requirement of 16 mtrs. between two building blocks for buildings higher than 55 mtrs. need not be followed.

The distance requirement between two building blocks was only mandated by NBR 2010, which is not applicable since the initial sanction for T-16 and T-17 was given under NBR 2006.

36 NOIDA in its counter affidavit dated 7 February 2013 stated that:

(i) It allotted the plot to the appellant by complying with the NBR 2010. The sanction was also given with the specific condition that the UP Apartments Act 2010 must be complied with;

(ii) Plot No 4 is not divided into two projects. It is unified and belongs to a single project; and

(iii) The permission for the construction of a space frame connecting T-1 with T-16/T-17 was granted only after the design was approved by IIT Roorkee.

37 The High Court allowed the writ petition on 11 April 2014 and directed the demolition of T-16 and T-17, with the expenses of the demolition being borne by the appellant. It further directed the Competent Authority to grant sanction for the prosecution of NOIDA's officials as required under the UPUD Act 1973, within a period of three months. The High Court also directed the appellant to refund the consideration received from flat purchasers who had booked apartments in T-16 and T-17, with fourteen per cent interest compounded annually. While allowing the writ petition, the High Court made the following observations:

(i) The first respondent had the *locus* to institute proceedings under Article 226 of the Constitution. The flats were handed over to the purchasers by

September 2009. The RWA was formed and registered with the Registrar of Societies in the same year. The Model Bye-Laws under the UP Apartments Act 2010 were notified by the Government on 16 November 2011. However, the Deputy Registrar Firms, Societies and Chits, Meerut, Uttar Pradesh issued a letter on 14 December 2012 stating that pending instructions from the Registrar, no decision could be taken in respect of the Model Bye-Laws and registration. The Registrar by a circular dated 5 December 2013 issued instructions for registration of the first respondent under the UP Apartments Act 2010. On 20 October 2013, the first respondent by its resolution adopted the Model Bye-Laws and conducted its elections. Further, in any case, the appellant had recognized the first respondent since its inception and had corresponded with it continuously. The appellant had never raised objections on its competence to represent the flat purchasers. The grant of sanction by NOIDA in violation of the relevant building regulations affects the rights of every apartment owner, who is represented through the first respondent. Hence, the first respondent is a 'person aggrieved' and was entitled to initiate the writ proceedings;

(ii) The first respondent under Article 226 was not barred by the available remedy of approaching either the CFO, NOIDA under the UP Apartments Act 2010 or the State under Section 27 of the UPIAD Act 1976. Though the first respondent raised its grievance before NOIDA, no notices were issued and there was no follow up. Only if NOIDA had issued an order, could the first respondent have approached the State Government under Section 27 of the

UPIAD Act 1976. Thus, there was no other alternative remedy that was available to first respondent but to initiate writ proceedings;

(iii) The appellant must have submitted a declaration in the office of the competent authority with regard to the construction of the building under the UP Apartments Act 2010. Rule 4 of the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Rules 2011 states that when the competent authority receives an application for amendment of the declaration, it shall issue a written notice to the association of the building owners and an order shall be passed by the competent authority only after the association is given the opportunity of being heard. Since no such notice was given to the association, it is an 'aggrieved person' and thus has the locus to initiate writ proceedings;

(iv) The original building plan was sanctioned when NBR 2006 was in force. However, the approval for purchase of additional FAR was made in 2011. It is a settled principle of law that the rules and regulations applicable on the date of the sanction would determine the rights of the parties. The sanction given on 2 March 2012 further imposed a condition of applicability of the UP Apartments Act 2010. Therefore, both the NBR 2010 (and NBC 2005, since NBR 2010 makes it applicable) and the UP Apartments Act 2010 shall be applicable;

(v) The contention of appellant that the project was in two phases is not borne out from the record since NOIDA has permitted the purchase of additional FAR and granted the subsequent sanction treating the project as a single

project. The plans submitted and sanctioned were for a single project, and an attempt has been made by the appellant to mislead the court;

(vi) Regulation 24.2.1(6) of the NBR 2010 states that for buildings up to the height of 18 mtrs., the spacing between two adjacent building blocks shall be 6 mtrs. and the spacing shall be increased by 1 mtr. for every 3 mtrs. above 18 mtrs., but subject to a maximum distance of 16 mtrs. Para 8.2.3.1 of the NBC 2005 states that for buildings higher than 55 mtrs., 16 mtrs. open space must be left in the sides and rear.. Since the height of T-17 is 121 mtrs., the distance between the building blocks must at least be 16 mtrs. However, the distance is only 9 mtrs. and is deficient by 7 mtrs.;

(vii) The appellant, in collusion with NOIDA, obtained sanctions for the layout map in violation of the mandatory requirement for space to be maintained between building blocks and clear space;

(viii) The provisions of the UP Fire Prevention and Fire Safety Act 2005[19] were required to be complied with, according to which the minimum distance of 7.5 mtrs. between building blocks and a clear space must be provided, which has been violated in the third revised plan of 2012;

(ix) The submission of the appellant that the expression 'building blocks' having not been defined in the NBR 2010, would mean the entire set of buildings on Plot No 4 is contrary to the NBR 2006 and NBR 2010. The sanctioned plans show that the appellant got the layout approved, consisting of separate

[19] "**Fire Safety Act**"

blocks. The nomenclature of the blocks was subsequently changed in each successive plan, and finally the buildings were numbered as T-1 to T-17. The sanctioned plans clearly show that T-1 and T-16/17 are separate building blocks; and

(x) The plan sanctioned by NOIDA was contrary to: (a) the building regulations; (b) the mandatory distance between building blocks; and (c) the movement space required, as a result of which the rights of the apartment owners and the safety of their apartment blocks have been seriously affected.

A.8 Proceedings before this Court

38 The appellant filed a Special Leave Petition under Article 136 of the Constitution on 28 April 2014 assailing the judgment of the High Court. On 5 May 2014, this Court directed the maintenance of *status quo* in respect of T-16 and T-17, directing that neither the builder nor the purchaser shall alienate the property or create third party rights. During the course of the hearings on 19 July 2016 and 27 July 2016, the appellant and NOIDA submitted that the Court may have the view of an expert agency on the issue and engage an expert for this purpose. On the submission of the Additional Solicitor General, the National Buildings Construction Corporation Limited[20], a government owned enterprise, was appointed to examine various facts in relation to the dispute, particularly those having a bearing on whether the two towers (T-1 and T-17) have dead-end sides facing each other. By its report dated 13 October 2016, the NBCC concluded that the two towers are not

[20] **"NBCC"**

compliant with Regulation 24.2.1.6 of the NBR 2010. Apart from the report which has been submitted by the NBCC, the first respondent had commissioned IIT Delhi and IIT Roorkee to report on the disputed issue of 'dead ends'. Reports by them have been placed on the record.

39 By its interim orders dated 6 September 2016 and 11 January 2017, this Court directed that a group of applicants be given ten per cent per month towards return of investment[21]. On 22 September 2017, this Court directed Mr Gaurav Agarwal, *Amicus Curiae*, to create a portal link to coordinate with the appellant and the flat purchasers on issues relating to refund. Further, this Court directed that the principal amount along with interest of fourteen per cent shall be provided to the flat purchasers who have opted not to wait for the decision of this Court in the present Special Leave Petition.

40 By an order dated 30 July 2018, this Court with the assistance of the *Amicus Curiae* classified the home buyers into the following groups, based on the refund option chosen by them:

(i) Refund of principal amount along with twelve per cent simple interest per annum (one hundred and one home buyers);

(ii) Home buyers who still insist on getting interest at the rate of fourteen per cent (twenty-four home buyers) - since a substantial number of home purchasers

[21] **"ROI"**

have agreed to twelve per cent interest, these twenty-four purchasers were also directed to accept the twelve per cent interest rate;

(iii) Home buyers through the Subvention Scheme – in such cases, the EMIs shall be paid by the appellant until the possession is handed over; and

(iv) Disputed cases - Mr Sanjeev Agrawal and Ms Rashmi Arora have paid Rs 38,51,009 and Rs 17,43,162 respectively by cheque. The said amount shall be refunded with a simple interest at twelve per cent per annum.

B Submissions by Counsel

41 Mr Vikas Singh, learned Senior Counsel appearing on behalf of the appellant urged the following submissions:

(i) The sanction and construction of T-16 and T-17 is not violative of the distance rule under NBR 2010:

a. NBR 2010 does not apply to T-16 and T-17, since they were first sanctioned in the second revised plan issued under the NBR 2006. Under the NBR 2006, the distance provision in Regulation 33.2.3(i) was not mandatory and it was open to the CEO to stipulate the distance requirement depending upon the exigencies of a lay out plan. In any case, the Regulation applies to the distance between two building blocks and does not govern the distance between the T-1 and T-17, which form a part of the same block. Further, if this provision was mandatorily applied, then it would also affect the first revised plan, in which the heights of the fifteen

other towers is 37.5 mtrs. while the distance with the adjacent blocks was less than half the height, *i.e.*, less than 18.75 mtrs.;

b. Even if NBR 2010 was to apply, T-16 and T-17 are part of the same building block consisting of T-1, Tower-2, Tower-3 and T-17, which is connected by a space frame to T-1. Hence, Regulation 24.1.2(6) of the NBR 2010, which provides for a distance to be maintained between "adjacent building blocks" ("Bhawan Samuh"/cluster of buildings), is not applicable in respect of the distance between T-17 and T-1;

c. The concept of a building block has been explained in a note submitted by NOIDA to the High Court. While using the FAR, the only requirement is to maintain a certain percentage as an open/green area. Instead of scattering the buildings over the total project area, group housing projects can envisage adjacent towers or even a block of towers so as to ensure a large open green space rather than scattered small spaces all over the project;

d. In the alternative, even if the they are not part of the same building block, T-17 being a "tower like structure", para 8.2.3.2 of the NBC 2005 is attracted in terms of Regulation 24.2.1(6). In accordance with para 8.2.3.2, the minimum distance for buildings of a height of less than 37.5 mtrs. is 9 mtrs., while for buildings of a greater height, it is 12 mtrs. Further, in accordance with para 8.2.3.2(d), the deficiency of this distance at the ground level can be made good at the upper levels. Hence, maintaining a

minimum distance of 16 mtrs. between “tower like structures” is not an inviolable requirement;

e. In the present case, the minimum distance between T-1 and T-17 varies from 9.88 mtrs (at the ground level) to 25.75 mtrs (at the upper level), since the total height of T-1 is 27.61 mtrs. while that of T-17 is 84.5 mtrs. As such, it is in compliance with NBC 2005; and

f. The Model Bye-Laws 2016 issued by the Ministry of Urban Development, Government of India prescribe a 9 mtrs. space around any building irrespective of the height beyond 40 mtrs.;

(ii) The sanction to construct T-16 and T-17 is not violative of the UP Apartments Act 2010:

a. T-16 and T-17 were sanctioned on 26 November 2009, and hence the requirement of prior consent did not arise, since the Act was not in force then;

b. The flat owners of T-1 to T-15 who already had possession of their flats would not be “intended purchasers” under the proviso to Section 4(4) of UP Apartments Act 2010, and their consent was not required for the construction of additional floors in T-16 and T-17;

c. The consent of all flat owners would be impractical, and at best the consent of the RWA would suffice. On 2 March 2012, when the third revised plan was sanctioned, the RWA was not functional and it was only

on 20 October 2013 that the RWA adopted the Model Bye-Laws under the UP Apartments Act 2010;

d. There has been no violation of the common area facilities of the flat owners of T-1 to T-15 by the creation of T-16 and T-17, since they have been planned with separate entries and exit facilities together with infrastructure; and

e. A majority of the flat owners of T-1 to T-15 was fully aware of the sanction to construct T-16 and T-17 since: *(i)* 245 flats were booked till the first revised plan in 2006; *(ii)* between 2006 and until the second revised plan in 2009, 141 flats were booked; *(iii)* after the second revised plan and until the third revised plan in 2012, 114 flats were booked; and *(iv)* after the third revised plan in 2012 till 2 August 2021, 159 flats have been purchased;

(iii) There has been no violation of fire safety norms:

a. A provisional Fire NOC was received on 11 September 2009, prior to the sanction on 26 November 2009. The fire department thereafter granted another temporary NOC for T-16 and T-17 on 18 August 2012, prior to the sanction dated 2 March 2012; and

b. Under NBR 1986 and NBR 2006, buildings were required to be compliant with fire safety norms prescribed in Part-IV of the NBC 2005. Para 4.6(b) of the NBC 2005 provides that for high rise buildings, open spaces on all sides up to a width of 6 mtrs. shall be available for free movement of fire

tenders. In the present case, there is a clear space of 9 mtrs. between T-1 and T-17, which allows a free movement of fire tenders;

(iv) The Uttar Pradesh Ownership of Flats Act 1975[22] is not applicable:

a. Under Section 2, the Act applies only to properties, the owners of which submit to the provisions of the Act by executing a declaration. As such, the Act does not automatically apply to all properties and none of the flat owners have made executed any such declaration presently;

b. Clause II(h) of the lease deed dated 26 March 2005 deals with maintenance, and cannot be construed to incorporate the application of the UP 1975 Act; and

c. If the contention of the first respondent is accepted, the changes made by the first revised plan in T-1 to T-15, involving an increase in the height of all towers from nine to eleven floors, would also to be illegal;

(v) There is no green area violation in the sanctioning of T-16 and T-17:

a. A triangular green space in the first revised plan was planned for the newly proposed T-16 (G+11) and shopping complex (G+1). This area was over and above the mandatory green area (soft landscape) required to be maintained on the plots under the NBR 2006;

b. The central green area was sanctioned in the original plan of 2005. The required green area under Regulation 38 of the NBR 2006 was twenty-five per cent of the open area, which would be 11,538,02 sq. mtrs. whereas

[22] "**UP 1975 Act**"

the appellant had provided a green area of 12,064.91 sq. mtrs. in the form of a central park;

c. T-1 was not sold on the promise of a green space area in front of it and none of the buyers were charged preferential location charges; and

d. Only eleven flats in T-1, out of a total of 44, were booked after the sanctioning of first revised plan and before the second revised plan. Out of these eleven, only seven flats were facing towards T-17. Even in these seven, there were no windows/balconies facing T-17, but only small bathroom windows;

(vi) The sanction of T-16 and T-17 is based on a valid certificate as regards the structural design of the towers;

(vii) The appellant has not collected the entire lease rent payable to NOIDA only from the flat owners of T-1 to T-15. It has only collected around Rs 7.5 crores, while it itself has paid around Rs 14 crores; and

(viii) The order for demolition of T-16 and T-17 is liable to be set aside on ground of equity:

a. The construction was carried out with the sanction of the authorities;

b. 600 persons had purchased flats in these towers;

c. Construction began in December of 2009, and third-party rights in favour of the purchasers have been crystalized;

d. The petition was filed before the High Court in December 2012; and

e. 28 floors in T-17 and 26 floors in T-16 were constructed as on 20 December 2013 when arguments were concluded before the High Court, and by the time that the judgment was delivered, 32 floors had been constructed.

Hence, the order of demolition would be harsh and inequitable.

42 Supplementing the submissions of Mr Vikas Singh, Mr Ravindra Kumar, learned Counsel appearing on behalf of NOIDA, made the following submissions:

(i) Para 8.2.3.2 of NBC 2005 provides that for buildings of heights between 24 mtrs. to 37.5 mtrs. with one setback, the open space at the ground level shall not be less than 9 mtrs. Since the height of the existing tower Aster-2 (T-1) is less than 37.5 mtrs., the minimum space required between this tower and T-17 is only 9 mtrs. Further, the deficiency of open space can be made good through set-backs at the upper level. However, since the height of T-1 is not proposed to be increased and the tower is open from all three sides, this requirement need not be fulfilled;

(ii) The various NOIDA Building Regulations have not been violated as they do not prescribe the minimum distance between two towers. It only refers to the distance between 'building blocks', with reference to the NBC 2005;

(iii) If building blocks have dead end sides facing each other, then the space between two building blocks shall be a maximum of 9 mtrs. as per the NBR 2010. Similar provisions are found in other building bye-laws such as Delhi

Building Bye Laws, Bhubaneshwar Development Authority Building Byelaws, and Model Building Byelaws prepared by the Ministry of Urban Development;

(iv) The Fire Safety Act has also been adhered to, as it requires a minimum distance of 6 mtrs. between two towers to provide space for movement of fire tenders;

(v) The construction of the buildings was not stayed by the High Court, which has now jeopardized the rights of third-parties, who will now be aggrieved by the order of demolition;

(vi) At the time of sanction of the second revised plan dated 26 November 2009, the UP Apartments Act 2010 had not been enacted. With respect to grant of sanction to the third revised plan, the power to sanction the plans or revisions vests with NOIDA and is not curtailed by the UP Apartments Act 2010;

(vii) UP Apartments Act 2010 does not mandate the taking of any consent or NOC from the RWA prior to sanction of plans. In spite of this, an obligation was placed on the appellant to abide by the provisions of UP Apartments Act 2010, while sanctioning the third revised plan dated 2 March 2012;

(viii) While sanctioning the third revised plan, there was no change in the ground coverage area of T-16 and T-17 and only their proposed heights were increased; and

(ix) There is no factual foundation to conclude that there had been any collusion between the appellant and NOIDA.

PART B

43 Mr Jayant Bhushan, learned Senior Counsel appearing on behalf of RWA urged that the members of the RWA purchased their flats after being shown a layout which included a limited number of flats and gardens, including a garden in front of T-1. Many of the allottees are retired persons who have suffered as a result of the unilateral changes made by the appellant, which resulted in an increase in the number of flats from 689 to 1573. The garden area in front of T-1 has been completely removed and instead of a complex of 11 storeyed buildings, two long and tall structures have been sanctioned without the consent of the existing allottees obliterating their right to light, air, view and garden area, thereby endangering their safety. Mr Bhushan submitted that:

(i) The sanctions of 2009 and 2012 are in violation of the minimum distance criteria required to be maintained between two buildings. Under Regulation 32.3.1(i) of the NBR 2006, the distance required is half the height of the tallest building. The tallest building, T-17, under the second revised plan of 2009 is 73 mtrs. and hence, the minimum distance of 36.5 mtrs. was required between T-1 and T-17. Even the existing T-1 is of 37 mtrs. height and therefore, even a building smaller than T-1 could come up only at a distance of at least 18.5 mtrs from T-1;

(ii) Regulation 24.2.1(6) of the NBR 2010 requires a minimum distance of 16 mtrs. between T-1 and T-17, as opposed to 9 mtrs. at the side;

(iii) Under para 8.2.3.1 of NBC 2005, the distance required between buildings would be 16 mtrs. plus ten per cent of the building length minus 4 mtrs. The

length of the proposed tower is 84.5 mtrs., and hence the distance required would be (16 + (10 per cent of 84.5) – 4), which is equal to 20.45 mtrs.;

(iv) The requirement of complying with NBC 2005 is prescribed by NBR 2010 and the NOC issued by the CFO in 2009. In this regard, on 24 April 2012, the CFO inquired from NOIDA how the new buildings were sanctioned in violation of the distance criteria prescribed in NBR 2006 and 2010, and NBC 2005, which was not responded to by NOIDA;

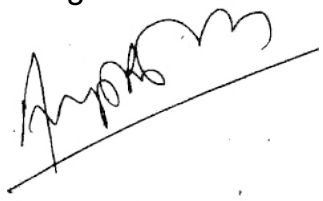
(v) NBCC, which was appointed by this Court at the request of the appellant, has stated in its report that the distance requirement has been violated;

(vi) In response to the argument of the appellant that T-1, T-16 and T-17 form part of one building block, obviating the requirement of minimum distance, it was submitted that:

a. NBC 2005 refers to the distance between buildings and not building blocks;

b. The expression “building block” though used in NBR 2006 and 2010, has not been defined in either of the regulations. The rationale for the distance between building blocks is to ensure fire safety evacuation, light and ventilation. It cannot be left to the builder to designate groups of buildings as one building block since the purpose of maintaining the minimum distance would be seriously compromised. The expression must take its colour from NBC 2005 and every building must be a building block; and

c. The reports submitted by the IITs of Delhi and Roorkee specify functional requirements of distance between buildings including:



i. fire separation to avoid transmission between buildings;

ii. safe escape and rescue during fire;

iii. ventilation; and

iv. daylight access.

These requirements have been severely compromised due to the lack of the minimum distance between T-1 and T-17;

d. Regulation 24.2.1(6) of NBR 2010 refers to NBC 2005 as the source of the distance requirement. The interpretation of the phrase 'building block' in NBR 2010 and 2006 must be consistent with NBC 2005;

e. The first revised plan of 2006 shows that each building was intended to be a separate block;

f. The initial argument of the appellant was that T-1 and T-17 are on separate plots and were never intended as the same block. Subsequently, the appellant claimed that they were constructed in separate phases and were to have separate facilities. Later, it introduced a false and unapproved map showing T-1, T-2, T-3, T-16 and T-17 as one block;

g. The affidavit of the appellant dated 4 August 2021 before this Court states that T-16 and T-17 will have separate facilities including entry and exit;

h. T-1, T-16 and the shopping complex as sanctioned in the first revised plan of 2006 were distanced and were different blocks altogether;

i. The construction of T-1 was completed in April 2008 and possession was granted to allottees. It was not legally possible to construct T-17 in 2008 since it was first sanctioned only in November 2009;

j. The road between T-1 and T-17 is the main road for the society and leads into the basement and parking;

k. The basement of T-1 has one level while T-17 has two levels;

l. The foundation of T-1 is made to bear a load of only eleven floors. The appellant has claimed that though the foundation of T-17 was laid in 2009, when only twenty-four floors were sanctioned, it was meant to bear a load of forty floors, which were sanctioned only in 2012;

m. The connection of two building blocks with the space frame would not make it one building block; and

n. The appellant itself was unconvinced by the building block argument and raised the 'dead end' side issue, which led to the appointment of NBCC by this Court to verify the facts. After a negative report from NBCC, the appellant has once again fallen back on the building block argument to assert that blocks can be defined at the discretion of the developer;

(vii) In response to the submission of the appellant that the buildings are "tower like structures" under the NBC 2005 and thus, meet the minimum distance mandated, it was submitted that:

a. Requirements of NBR 2006 and 2010 and NBC 2005 are independent and hence, the defence of a tower like structure under the NBC 2005 cannot cure violations of the NBRs;

b. T-17 does not have any set-backs and has the same width throughout;

c. At least 12 mtrs. distance is required at the ground level even for tower like structures; and

d. The deficiency of the mandated open space of 16 mtrs. under the NBC 2005 in tower-like structures can be cured by set-backs on upper levels. However, the distance of 12 mtrs. at the ground level is still mandatory;

(viii) Possession of flats in T-1 was given to purchasers in 2008. The second and third revised plans of 2009 and 2012 respectively proposed a space frame connecting T-1 and T-17 when the residents had already started living in T-1. This is illegal and a safety hazard;

(ix) Under the lease, the undivided interest in common areas stood transferred to the respective allottees. The owners of the existing flats had paid the entire lease amount and more. While the appellant paid Rs 13 crores as onetime lease rent, the buyers of existing flats (other than those in T-16 and T-17) were charged over Rs 16 crores;

(x) Consent of flat owners was required under UP Apartments Act 2010 before an alteration in the sanctioned plan:

a. Sections 4(4) and Section 5(3) of the UP Apartments Act 2010 requires the consent of all allottees before a change in the sanctioned

plan/undivided interest in the common area is made. The removal of the green area reduced the common areas and, with an increase in the flats from 689 to 1573, the proportionate undivided interest in the common areas has been reduced substantially;

b. The UP Apartments Act 2010 is applicable irrespective of whether or not a society is formed. The rights are vested with the apartment owners and not the association; and

c. Gardens as well as land are included in the definition of common areas over which all residents have rights;

(xi) Consent of flat owners ought to have been obtained before obtaining an alteration of the sanctioned plan, under UP 1975 Act:

a. Under Sections 5(2) and 5(3), undivided interest cannot be altered without the consent of all owners of flats;

b. Clause II(h) of the lease deed stipulates the applicability of the UP 1975 Act. This is not confined only to maintenance. The tripartite sub-lease between NOIDA, the appellant and the allotees also mandates the applicability of the UP 1975 Act; and

c. The appellant was responsible to ensure that the declaration under the UP 1975 Act was made. It cannot take advantage of its own wrong in failing to submit a declaration;

(xii) The appellant and NOIDA have colluded to by-pass the Building Regulations:

a. Despite the revised plans violating the distance criteria, NOIDA granted sanction to the said revisions. The plans were not cancelled despite repeated reminders from the RWA;

b. Despite the letter of the CFO dated 24 April 2012 highlighting the violation of the distance criteria, NOIDA did not take any action;

c. The appellant was aware in advance that its plan would be sanctioned in the future, and hence built a stronger foundation in 2009 to support forty storey buildings for T-16 and T-17, which received sanction only in 2012;

d. Under the terms of approval, the sanctioned plan had to be kept at the site for display. In spite of this, there was a failure of the appellant to display the plans. When a request was made by the RWA to NOIDA to provide a copy of the plans, NOIDA asked the appellant whether it could supply the plans. Upon the refusal by the appellant, NOIDA declined to provide the plans; and

e. No action was taken by NOIDA after issuing a show cause notice for violation of the minimum distance requirement to the appellant based on a complaint by the flat owners;

(xiii) No part of the second revised plan of 2009 can be saved as it is in violation of the distance criteria contained in the NBR 2006, and is also contrary to the UP 1975 Act;

(xiv) The appellant cannot make any further constructions without the consent of the existing flat owners under the UP Apartments Act 2010 and the Real Estate Regulation and Development Act 2016;

(xv) There is no equity in favour of the flat buyers in the new buildings (T-16 and T-17) who have decided to retain their flats, particularly when this Court had through several orders granted an opportunity to the purchasers to seek refund;

(xvi) T-16 and T-17 can safely be demolished; and

(xvii) False and misleading statements have been made by the appellant in the course of its pleadings before the High Court and this Court.

C Prefatory observations

44 At the outset, it must be noted that:

(i) The area which was originally leased to the appellant admeasured 48,263 sq. mtrs.; and

(ii) As a result of the supplementary lease, the area stood increased to 54,816 sq. mtrs.

In order to bring clarity to the issues raised, the dates of sanction and details of the construction are tabulated below:

Title	Date of Sanction	Buildings	Details
Original Plan	20 June 2005	Towers 1-14	G+9 floors
First Revised Plan	29 December 2006	Towers 1-15	G+11 floors, height of each tower is 37 mtrs.
		Tower 16	T-16 was to comprise of a cluster of wings comprising

			of 1 (G+11 floors) and 3 (G+4 floors) with a height of 37 mtrs.
		Shopping Complex	G+1 floor
Second Revised Plan	26 November 2009	Towers 1-15	G+11 floors, height of each tower is 37 mtrs.
		Towers 16-17*	G+24 floors, height of each tower increased to 73 mtrs.
Third Revised Plan	2 March 2012	Towers 1-15	G+11 floors, height of each tower is 37 mtrs.
		Towers 16-17ϕ	G+40 floors, height of each tower is increased to 121 mtrs.

The plan for the construction was originally sanctioned on 20 June 2005. Thereafter, three revisions were sanctioned on 29 December 2006, 26 November 2009 and 2 March 2012.

45 The sanctioning of the revised plans and the construction of T- 16 and T- 17 have been challenged on the ground of a violation of:

(i) NBR 2006;

* The earlier G+1 shopping complex is numbered as T-16, while the original T-16 is numbered as T-17. Further, T-1 and T-17 were to be connected by a space frame at the upper level.

ϕ As per the third revised plan dated 2 March 2012, the proposed floors for T-16 and T-17 were G+40. We note however, that in the details of sanctioned plans submitted by Mr Vikas Singh, learned Senior Counsel, the number of floors envisaged for T-17 were G+39 and T-16 were G+40. Further, as per the provisional Fire NOC dated 18 August 2011, the proposed construction for T-16 and T-17 was for G+38 floors.

(ii) NBR 2010;

(iii) NBC 2005;

(iv) UP 1975 Act;

(v) UP Apartments Act 2010; and

(vi) Fire safety norms.

The appellant disputes the applicability of the UP 1975 Act. This will be considered in the course of the judgment.

46 It becomes necessary to clear the ground in regard to the reliefs which were sought before the High Court. The reliefs sought before the High Court in the petition were for:

(i) Quashing the revised plan for the construction of T-16 (Ceyane) and T-17 (Apex) and the demolition of the structures constructed pursuant to the plan;

(ii) Directing NOIDA to not sanction any further building plans in respect of Emerald Court without obtaining the consent of all residents;

(iii) Quashing the permission granted to link T-1 with T-16/ T-17;

(iv) Directing the installation of fire safety equipment and infrastructure;

(v) Directing the demolition of the illegal construction in the basement and the setback area; and

(vi) Directing NOIDA and the appellant to provide car parking spaces in accordance with NBC 2005.

Of the above reliefs, the High Court recorded that only prayers (i) and (iii) were pressed.

47 The above narration establishes that there was a challenge to the revised plans by which the construction and increase in the height of T-17 (Apex) and T- 16 (Ceyane) were envisaged. As the tabulation set out above indicates, in the first revised plan of 29 December 2006, T-16 was to partially comprise of G+11, the rest being G+4. A shopping complex was envisaged comprising of G+1 floors. A triangular green area is indicated in the first revised plan of 29 December 2006 in front of T-1. In the second revised plan of 26 November 2009, T-17 (Apex) and T-16 (Ceyane) came to be envisaged with twenty-four floors and of a height of 73 mtrs. each. In the third revised plan of 2 March 2012, the number of floors of T-16 and T-17 was increased further from twenty-four to forty floors (for T-16) and thirty-nine floors (for T-17), and the height of each of the towers was increased from 73 mtrs. to 121 mtrs. In this backdrop, the relief which was sought in prayer (i) was for quashing the revised plan for the construction of the two new towers – T-17 (Apex) and T-16 (Ceyane). This clearly implicates a challenge both to the second revised plan of 26 November 2009 as well as the third revised plan of 2 March 2012.

48 A brazen attempt at stonewalling the first respondent was made by the appellant and NOIDA before the High Court. The sanctioned plans incorporate the condition that a copy of each plan would be made available at the site. Despite this, when the first respondent sought copies of the sanctioned plans and other information, NOIDA wrote to the appellant asking for their consent to provide the

plans to the first respondent. When the appellant refused, NOIDA's refusal to the RWA followed suit. It was only pursuant to the interim directions of the High Court that the sanctioned plans and documents were provided to the first respondent. The reliefs which have been sought encompass a challenge to the validity of the second and third revised plans, under which the two towers, T- 17 (Apex) and T-16 (Ceyane), were being constructed.

D Violation of distance requirement under Building Regulations

49 The first issue we shall address is whether the sanction for the construction of T-16 and T-17 by NOIDA is in violation of the distance requirement under applicable building regulations.

Original sanction dated 20 June 2005

50 When the plan was originally sanctioned on 20 June 2005, the NBR 2006 was yet to come into force. The sanction of 20 June 2005 was under the regime of the NBR 1986. NBR 1986 envisaged a 15 mtrs. set back from the front and 9 mtrs. on all sides. Since the original plan did not envisage construction of T-16 and T-17, the said plan is not under challenge for violation of the relevant building regulations.

First revised sanction dated 29 December 2006

51 NBR 2006 came into force on 16 December 2006. The sanctioned plan for the project was first revised on 29 December 2006, and it covered a total area of 54,819 sq. mtrs., leased to the appellant under the Lease Deed and the

Supplementary Lease Deed. The first revised plan provided for the construction of two additional towers (T-15 and T-16) and one shopping complex (G+1 floors). All 16 towers were to comprise of G+11 floors and were to be 37 mtrs. in height.

52 The first revised plan was governed by the NBR 2006. Regulation 33 provided for permissible FAR, ground coverage and height of buildings. Regulation 33.2 dealt with the group housing. The table appended to it is as follows:

> **"**33.2 **Group Housing**

GROUP HOUSING				
		Max Ground Coverage	FAR	Height
1	Coverage	30	200	No limit
2	Density	As mentioned in the section layout plan or scheme		

Regulation 32 deals with set-backs, which is defined as the line parallel to the plot boundaries, beyond which nothing can be constructed towards the plot boundaries. Regulation 32.3 stipulates that where a plot size exceeds 40,000 sq. mtrs., there has to be a front setback of 25 mtrs., while setbacks on the rear and on all sides will be 9 mtrs. Regulation 33.2.3 is relevant for the dispute in the present case and it stipulates as follows, insofar as is relevant:

> "i. **Distance between two adjacent building blocks shall not be less than half of the height of tallest building."**
>
> (**emphasis supplied**)

PART D

Second revised sanction dated 26 November 2009

53 The second revision to the original plan was sanctioned on 26 November 2009, under the NBR 2006. The second revised plan envisaged that instead of the construction of T-16 (comprising of G + 11 floors and G+4 floors), and a shopping complex (G + 1 floor), two towers, T- 16 and T-17, would be constructed, each comprising of G+24 floors and of 73 mtrs. height. According to the revision, a 9 mtrs. distance was to be maintained between T-17 and T-1 at the ground level, and T-1 and T-17 were to be connected through a space frame at the upper level. The second revised plan provided that a front set back of 15 mtrs., and a rear and side set-back of 9 mtrs. each was approved.

54 The issue is whether the second revised plan for construction of T-16 and T-17 each of a height of 73 mtrs. and at a distance of 9 mtrs. from T-1, is in compliance with the applicable regulation at the time, that is NBR 2006. We shall advert to this in the next section.

Third revised sanction dated 2 March 2012

55 The third revision to the plan was sanctioned on 2 March 2012, by which the height of T-16 and T-17 was increased from 73 mtrs. to 121 mtrs., and the number of floors in T-16 and T-17 was increased from twenty-four to forty floors.

56 At the time of the sanction of the third revised plan, the NBR 2010 had come into force. Regulations 1.6 and 1.7 of the NBR 2010 are in the following terms:

> "1.6 The plot on which map has already been sanctioned and construction has already started or completed, **the allottee may be allowed to revise the same building plan or submit the new plan as per the prevailing regulations for that part of the building where construction has not started** or any new addition is required in the building.
>
> 1.7 F.A.R, Ground coverage, setbacks and density as indicated in the regulations shall not be applicable in respect of those plots which were allotted on auction or tender basis and group housing prior to the coming into operation of these regulations. **However, the calculation of FAR and Ground Coverage in the new buildings in such plots shall be done as per these regulations.** The purchasable F.A.R and Ground coverage as per applicability may be allowed."
>
> (**emphasis supplied**)

57 Under Regulation 24.2, the following stipulations have been provided for Group Housing:

> (II) Maximum permissible-
>
(i)	Ground coverage	35 per cent to 40000 sq. mtrs and 40% above 40000 sq. mtrs
(ii)	Floor Area Ratio	2.75
(iii)	Height	No limit. For buildings above 30 metres in height, clearance from Airport Authority shall have to be taken.
(iv)	Density (Family size 4.5)	As mentioned in the sector Layout Plan or decided by the Authority for a particular scheme.

Table No 2 of the NBR 2010 prescribes the set-back requirement in relation to Regulation 24. For all plots measuring above 40,000 sq. mtrs., the set-backs in the front are 16 mtrs. and at the rear and on the sides are 12 mtrs.

PART D

58 Regulation 24.2.1(1)(vi) provides that a distance of 6 mtrs. is to be left open for fire tenders. The said regulation is extracted below:

> "The following features shall be permitted after leaving minimum 6 mtrs. open corridor for fire tenders.
>
> (a) Meter room as per norms of Electricity Authority.
>
> (b) Open transformers without any permanent enclosure keeping in view the necessary safety requirements.
>
> (c) Other features as mentioned in Table 3.
>
> (d) Rockery, well and well structures, water pool, swimming pool (if uncovered), uncovered platform around tree, tank, fountain, bench, chabutra With open top and unenclosed by side walls, compound-wall, gate, slide- swing, culverts on drains.
>
> (e) Any other feature, primarily ornamental in nature, not enclosing or covering space of commercial use may be permitted by the Chief Executive Officer on case to case basis.
>
> (f) Open generator set, filtration plant, Electrical distribution equipment, feeder pillars, telephone distribution equipments may be permitted in open setback as a service utility provided after leaving clear space for fire tender."

With respect to the distance between two adjacent building blocks, Regulation 24.2.1.6 provides:

> "**Distance between two adjacent building blocks**
>
> Distance between two adjacent building blocks shall be minimum 6 mtrs. to 16 mtrs. depending on the height of blocks. For building height up to 18 mtrs, the spacing shall be 6 mtrs and thereafter the spacing shall be increased by 1 metre for every addition of 3 mtrs in height of building subject to a maximum spacing of 16 mtrs as per National Building Code – 2005. If the blocks have dead-end sides facing each other, th[e]n the spacing shall be maximum 9 mtrs. instead of

16 mtrs. Moreover, the allottee may provide or propose more than 16 mtrs. space between two blocks."

59 The above regulation indicates that:

(i) The distance between two "adjacent building blocks" is to be a minimum of 6 mtrs. going up to 16 mtrs., depending upon the height of the blocks;

(ii) For a building height upto 18 mtrs., the spacing would be 6 mtrs., to be increased by 1 mtr. for every addition of 3 mtrs. to the height of the building (subject to a maximum spacing of 16 mtrs. under the NBC 2005);

(iii) If the blocks have dead-end sides facing each other, the spacing shall be a maximum of 9 mtrs. instead of 16 mtrs.; and

(iv) The allottee may, however, propose more than a 16 mtrs. space between two blocks.

60 Regulation 24.2.1.6 of NBR 2010 refers to the NBC 2005 for the minimum distance requirement. The NBC 2005 contains the following stipulations in para 8.2.3.1:

"8.2.3.1 For buildings of height above 10 m, the open spaces (side and rear) shall be as given in Table 2. The front open spaces for increasing heights of buildings shall be governed by 9.4.1(a).

Table 2 Side and Rear Open Spaces for Different Heights of Buildings

(*Clause* 8.2.3.1)

Si No.	Height of Buildings	Side and Rear Open Spaces to be Left Around the Building

(1)	m (2)	m (3)
i)	10	3
ii)	15	5
iii)	18	6
iv)	21	7
v)	24	8
vi)	27	9
vii)	30	10
viii)	35	11
ix)	40	12
x)	45	13
xi)	50	14
xii)	**55 and above**	**16**

NOTES

1 For buildings above 24 m in height, there shall be a minimum front open space of 6 m.

2 Where rooms do not derive light and ventilation from the exterior open space, the width of such exterior open space as given in col 3 may be reduced by 1 m subject to a minimum of 3 m and a maximum of 8 m. No further projections shall be permitted.

3 If the length or depth of the building exceeds 40 m, add to col (3) 10 percent of length or depth of building minus 4.0 m."

(**emphasis supplied**)

Para 8.2.3.2 provides as follows:

"8.2.3.2 **For tower like structures**, as an alternative to 8.2.3.1, open spaces shall be as below:

(a) Up to a height of 24 m, with one set-back, the open spaces at the ground level shall be not less than 6 m;

(b) For heights between 24 m and 37.5 m with one set-back, the open spaces at the ground level, shall be not less than 9 m.

(c) For heights above 37.5m with two set-backs, the open spaces at the ground level, shall be not less than 12m; and

(d) The deficiency in the open spaces shall be made good to satisfy 8.2.3.1 through the set-backs at the upper level;: these set-backs shall not be accessible from individual rooms/flats at these levels."

(**emphasis supplied**)

61 Para 8.2.3.1 of NBC 2005 indicates that where the height of the building is 55 mtrs. and above, the side and rear open spaces to be left around the building must be 16 mtrs. Note 3 indicates that if the length or the depth of the building exceeds 40 mtrs., in addition to the height which is specified in column 3, ten per cent of the length and the depth of the building minus 4 mtrs. has to be added to the distance required. Thus, in the case of a height (as in the present case) of 55 mtrs. and above, an additional 8.45 mtrs. (10 per cent of 84.5 mtrs.) is added to the 16 mtrs. and 4 mtrs is to be deducted, arriving at a 20.45 mtrs. distance requirement. However, an alternative is provided by para 8.2.3.2 for "tower like structures". For heights above 37.5 mtrs., open spaces at the ground level shall not be less than 12 mtrs. Further, deficiencies in open space as required under Para 8.3.2.1, can be met through set-backs at the upper levels, subject to the condition that the set-back shall not be accessible from the individual rooms/flats at these levels.

PART D

D.1 Violation of NBR 2006 and 2010

D.1.1 Interpretation of "building blocks"

62 The first aspect which needs to be considered is whether T-17 and T-1 are two adjacent building blocks or form part of a single building block as claimed by the appellant. Regulation 33.2.3 of the NBR 2006 stipulates that the distance between the two adjacent building blocks shall not be less than half of the height of the tallest building.

63 The submission of Mr Vikas Singh, learned Senior Counsel, as well as of Mr Ravindra Kumar, appearing on behalf of NOIDA, is that Regulation 33.2.3 of the NBR 2006, which was in force when the second revised plan was sanctioned on 26 November 2009 (contemplating the construction of T-16 and T-17), stipulates a distance between "two adjacent building blocks". Mr Vikas Singh submitted that it is entirely the discretion of the developer to determine as to whether one or more buildings should be treated as a building block, there being no definition of the expression "building blocks" in NBR 2006. It has been urged that the appellant is entitled to assert that the sanctioned plan consists of building blocks, and that T-16 and 17 are part of a building block along with T-1, T-2, and T-3. Thus, it has been submitted that all these towers (T-1, T-2, T-3, T-16 and T-17) constitute one single building block. To buttress this submission, the space frame connecting T-1 and T-17 is referred to. It has been urged that there is no necessity of maintaining the minimum distance provided by Regulation 33.2.3, which applies only to the distance

between two adjacent building blocks, and since T-1 was to be connected to T-17 by a space-frame, the two new towers (T-17 and T-16) would constitute a part of the same building block, thus obviating the need of maintaining a minimum distance between them. This argument was sought to be supported by adverting to the original Hindi version of Regulation 33.2.3, which uses the expression "दो भवन समूहों के बीच की दूरी". In this context, it has been submitted that after the NBR 2010 came into force, there was an increase in the height of T-16 and T-17 from twenty-four to forty floors. Regulation 24.2.1.(6) of the NBR 2010 has also used the expression "two adjacent building blocks". Thus, based on both the NBR 2006 and 2010, it has been urged that the appellant was entitled to treat T-16 and T-17 as forming a part of a cluster which would include T-1. Therefore, the submission is that since all of them constitute a single building block, the minimum distance requirement need not be maintained.

64 The submission which has been urged on behalf of the the appellant finds support in the arguments of Mr Ravinder Kumar, learned Counsel appearing on behalf of NOIDA. The submissions which have been made on behalf of NOIDA highlight the following features:

(i) Apart from the English version of Regulation 24.2.1.(6) of the NBR 2010, which uses the expression building blocks, the Hindi version uses the terms "भवन समूह", which emphasises the concept of a cluster of buildings;

(ii) When the Regulations speak of a "भवन समूह", it is not the distance between the towers but the distance between blocks which is implicated;

(iii) T-1, T-16 and T-17 form part of one cluster or block and hence there is no need of maintaining a distance between buildings forming part of a block;

(iv) The absence of a minimum distance between the T-1 and T-7 would be of no consequence;

(v) Apart from the alleged breach of the minimum distance requirement, all parameters have been maintained, in terms of:

a. Ground coverage;

b. FAR;

c. Open area; and

d. Green area; and

(vi) An explanatory note was submitted by NOIDA before the High Court, concerning the issue of building blocks, and is extracted below:

> "Building Block in a Group Housing Project
>
> Main Points:
>
> 1. Noida Building Regulations, 2010: A "Bhavan Samuh" which is translated in English as a "Building block" is the combination or a group of buildings in any given area/Plot.
>
> 2. The Section 3(g) of The Uttar Pradesh Apartment (Promotion of Construction, Ownership, Maintenance) Act, 2010 defines building. As per the Act, "building" means a building constructed on any land, containing four or more apartments, or two or more buildings in any area designated as a block, each containing two or more apartments with a total of four or more apartments in all such buildings; Provided that an independent house

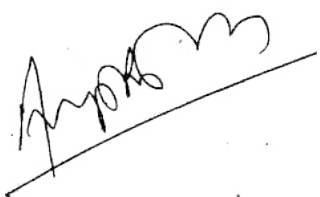
constructed in a row with independent entry and exit, whether or not adjoining to other independent houses, shall not constitute a building.

Therefore, it is clear that the Block is designated as “two or more buildings in any area” and the building is defined as “four or more apartments on any land”.

3. As per Zoning Glossary of New York City Planning; *"A Block" is defined as a tract of land bounded on all sides by streets by a combination of streets, public parks, railroad rights of way, pierhead lines or airport boundaries. Building is defined as a structure that has one or more floors and a roof, is permanently affixed to the land and is bounded by open areas or the lot lines of a zoning lot*.

4. The buildings in a block may not be connected, may be partially connected or may be fully connected, as is clear from the aforesaid provisions.

5. It is a common practice in all the metropolitan cities of India and all over the world to construct high rise buildings for different purposes to make optimum utilization of land. In any given area, more open & green space can be provided only with a provision of high rise buildings which enable to accommodate high density comparatively with less ground coverage and more open space. Large size projects generally have many buildings which are planned, arranged & designed, keeping in view the requirement of common space, common facility & amenities, natural light, ventilation, open space and maximum possible exit routes for early evacuation in event of any emergency. In view of all these considerations generally different building blocks or groups of buildings having interconnected accessibility, facilities and services are designed, which give better living environment than having a system of all buildings situated in isolation within the project area. It is common practice in all the metropolitan cities of India and over world to construct high-rise building for different purpose to make optimum utilization of land. In any given area more open & green space can be provided only within a provision of high-rise building which enable to



accommodate high density comparatively within less ground coverage and more open space. Large size projects generally have many building which are planned, arranged & designed, keeping in view the requirement of common space, common facility & amenities, natural light, ventilation, open space and maximum possible exit routes for early evacuation in the event of any emergency. In view of all these considerations generally different building blocks or cluster of building having inter connected accessibilities & facilities are decided, which give better living environment than having a system of all building situated in isolation within the project area.

6. Isolated buildings are more prone to safety, security, provision and maintenance of common services related problems. In case of a fire accident in any isolated building having no extra exit routes, chances of danger to human lives is more.

7. Generally, a group of buildings in a project is constructed with the provision of common basement i.e. One basement for all the buildings. This is done for better accessibility and movement and provision of common facilities. It is also a very common practice in India and abroad to connect the high rise buildings by way of space frame bridges giving additional exit routes for early evacuation in the event of emergency. This practice has increased after the occurrence of incident of fire in Gopal tower in Connaught Place, New Delhi and the temporary space frame was made connecting the said tower at the Height with nearby tower for evacuation of cornered persons saving many lives.

8. NBC OF INDIA OF 2005: Side and rear open space for different height of building is governed as per Para 8.2.3.1 of NBC 2005 which states that for height of building.

Height	Side and Rear Open Space
35 Mtr	11 Mtr
40 Mtr	12 Mtr

55 Mtr & above	16 Mtr

But as per Para 8.2.3, tower like structures as an alternative to Para 8.2.3.1 open space as below:

For height between 24 Mtr nd 37.50 Mtr with one set back the open space

At the ground level, shall not be less than 9 Mtr.

9. It is stated that NOIDA Building Regulations intends to provide the distance between two adjacent building blocks to be between 6 meter to 16 meter depending upon the height of the building blocks. It does not provide any specific requirement of distance between two buildings. The concept of minimum distance required between two High Rise building of a block may not necessarily be the same as required between the two building blocks. For Example a building block may have three or four stories for the entire block area and few towers of different height and different upper stories designed at different places in the same block.

10. The concept of minimum distance between the two building blocks is for the purpose of free fire tender movement (Minimum 6 meters setback as per regulation), air ventilation, sunlight etc. The minimum distance requirement is in no way connected with the structural safety of the building.

11. It is stated here that the new building under construction is having perimeter of approx. 230 meter the entire building is surrounding by enough open area i.e. more than 16 meter except at one place where the building is made a part of block of adjoining building by way off a proposed connecting bridge to provide an extra exit route for the purpose of emergency evacuation. Here also the minimum gap between old building and new building is 9 meter for 6.80 meter length with satisfies the requirements of fire safety provisions. It does not violate any provision with regards to fire safety and air circulation."

PART D

65 Essentially, the plea both on behalf of the appellant and NOIDA is that the requirement of maintaining a minimum distance applies only to adjacent building blocks, which is not equivalent to adjacent buildings. To put it differently, the arguments proceed on the basis that where there is a cluster of buildings the requirement of a minimum distance cannot be observed as between buildings forming part of the cluster, but only as between two adjacent building blocks/clusters. Each building block in this line of argument may consist of a collection of buildings, and it is argued that neither NBR 2006 nor NBR 2010 mandates the maintenance of a minimum distance as between buildings in a cluster.

66 The expression 'building block' has not been defined either in NBR 2006 or in NBR 2010. The construction which is placed upon the content of the expression must advance the object and purpose of the said Regulations. The purpose of stipulating a minimum distance is a matter of public interest in planned development. The residents who occupy constructed areas in a housing project are entitled to ventilation, light and air and adherence to fire safety norms. The purpose of stipulating a minimum distance comprehends several concerns. These include safeguarding the privacy of occupants and their enjoyment of basic civic amenities including access to well-ventilated areas where air and light are not blocked by the presence of close towering constructions. Access to these amenities is becoming a luxury instead of a necessity. The prescription of a minimum distance also has a bearing on fire safety. In the event of a fire, there is a danger that the flames would rapidly spread from one structure to adjoining ones. Moreover, the presence of

structures in close proximity poses serious hurdles to fire-fighting machinery which has to be deployed by the civic body.

67 If a developer is left with the unbridled discretion to define the content of the expression “building block”, this will defeat the purpose of prescribing minimum distances, leaving the health, safety and quality of life of flat buyers at the mercy of developers. Before this Court, an argument has been advanced that four towers out of the seventeen towers in the plot are a part of one “building block” and do not require maintenance of a minimum distance. Before the High Court, the appellant attempted to argue that all the buildings (that is all seventeen towers) on Plot No 4 of Sector 93A NOIDA would comprise of one “building block”. The inconsistency of the appellant’s argument on building blocks before the High Court and this Court points out the obvious flaw in it – that the designation of how many buildings constitute a “building block” by the developer would undermine the requirements prescribed by Building Regulations. As a matter of first principle, we are not inclined to adopt the construction proposed by the appellant. It will deprive the residents of urban areas of the amenities of light, air and ventilation which are essential to maintaining a basic quality of life. It will also have serious ramifications on fire safety. The developer cannot be allowed to subvert the requirement of maintaining minimum distances prescribed in the Building Regulations by unilaterally designating independent towers as building blocks, in the manner which the appellant has suggested before this Court. Setting up a space frame or providing for a common entry or exit would not make two otherwise separate buildings as one consolidated block.

PART D

68 Regulations 33.2.3 of the NBR 2006 refers to the distances between adjacent 'building blocks' which shall not be less than half of the height of the tallest building. The purpose of this regulation is not to apply it only as between building blocks as distinguished from buildings within a block. Clause (1) of Regulation 33.2.3 has used the expression 'building blocks' and 'height of tallest building' in the same sentence. These expressions must be given a meaning which accords with common sense and in furtherance with the object and the purpose of the said Regulation. The plain meaning of the expression is that when there are two adjacent blocks, the height of the tallest building will determine the distance required to be observed, with the distance being not less than half the height of the tallest building. Consequently, when two or more buildings exist in proximity together, they comprise of a building block within the meaning of Clause (1) of Regulation 33.2.3. In such an eventuality, the distance between each of the buildings comprised in the block shall also not be less than half of the height of the tallest building. The reference to the height of the tallest building is evidently made because this kind of a building will likely overshadow the buildings of a lesser height in a cluster of proximate construction. Therefore, the regulation has defined the minimum distance required with reference to half the height of the tallest building. Any other construction will defeat the purpose of Regulation 33.2.3 and cannot be accepted.

69 Applying the NBR 2006 to the facts of the present case, the construction of T-16 and T-17 was envisaged in the second revised plan dated 26 November 2009. The height of the said towers was to be 73 mtrs., while the height of other towers,

including T-1, was to be 37 mtrs. Thus, as per Regulation 33.2.3 of the NBR 2006, the minimum distance between T-17 and T-1, should be half of the height of the tallest building, that is, half of the height of T-17 which is 36.5 mtrs. It is evident from the record that the distance between T-1 and T-17 is 9 mtrs. only. Thus, clearly the second revised plan was violative of the NBR 2006.

70 We shall now come to the NBR 2010. Regulation 24.2.1(6) has prescribed the requirement of maintaining varying distances between two adjacent blocks from a minimum of 6 mtrs. extending up to 16 mtrs., depending on the height of blocks. The content to the first sentence of this regulation is further amplified by what follows it. The next part of the regulation stipulates that for a building of height up to 18 mtrs., "spacing" shall be 6 mtrs. The expression "spacing" in its plain terms means the observance of a stipulated distance. Where the height of the building is up to 18 mtrs., "the spacing" shall be 6 mtrs. Thereafter, for a height above 18 mtrs., the minimum distance has to be increased by one meter for an additional height of three mtrs. subject to a maximum distance or spacing of 16 mtrs. "as per National Building Code – 2005".

71 Mr Ravindra Kumar, learned counsel appearing on behalf of NOIDA, has particularly laid emphasis on the Hindi version of the NBR 2010 to argue that it used the term "भवन समूह", which must mean that a separate meaning is accorded to it than the term "भवन". The Hindi text of Regulation 24.2.1.(6) (Regulation 24.2.1 (V) in the Hindi version) is as follows:

PART D

(V) दो अगल बगल के भवन खंडों के बीच की दूरी

दो अगल बगल के भवन खंडों के बीच की दूरी न्यूनतम 6.00 मीटर से 16.00 मीटर तक रखी जाएगी, जो भवन समूह की ऊँचाई पर निर्भर होगी । 18.00 मीटर ऊँचे भवनों की बीच की दूरी 6.00 मीटर रखी जाएगी तथा हर तीन मीटर की ऊँचाई पर भवनों की दूरी 1.00 मीटर रखी जाएगी । तथापि अधिकतम दूरी नेशनल विल्डिग कोड.-2005 के अनुसार 16.00 मीटर रखी जाएगी । यदि भवन खंडों के बन्द हिस्से वाले भाग आमने समाने हो तो भवन खंडों के बीच की दूरी अधिकतम 16.00मीटर के स्थान पर 9.00 मीटर रखी जाएगी । तथापि आबंटी द्वारा दो भवन खंडों के बीच की दूरी 16.00 मीटर से अधिक रखी जा सकती है ।

As is evident, the Hindi version of the NBR 2010, uses three different terms "भवन खंडो", "भवन समूह", and "भवन". A purely textual interpretation, as is suggested by Mr Ravindra Kumar, would lead us to ascribe three different meanings to each of these terms. Extending this argument would then imply that the first sentence, which states that two adjacent building blocks require a minimum distance of 6 mtrs. to a maximum distance of 16 mtrs., will depend on the height of the blocks. The second sentence, which in English simply reads, "for building height upto 18 mtrs, the spacing shall be 6 mtrs…", does not clarify what the term "spacing" denotes – does it imply spacing between buildings *inter se* the block, or spacing between adjacent 'building blocks'. Mr Ravindra Kumar suggests that it implies the latter. However, looking at the Hindi version of the Regulations from a purely textual standpoint, it would appear that it states that the spacing between the buildings of height 18 mtrs. should be 6 mtrs., that is, "18.00 मीटर ऊँचे भवनों की बीच की दूरी 6.00 मीटर रखी जाएगी …". The term used here is "भवनों" and not ""भवन खंडो" or "भवन समूह". Thus, overemphasis on the text of the NBR 2010, while losing sight of the context and the purpose of the regulation, would lead to an absurd interpretation. Where the initial

part of Regulation 24.2.1.6 provides for distance between building blocks, the latter part stipulates the distance between buildings of height above 18 mtrs. Accordingly, we reject the argument of Mr Ravindra Kumar that Regulation 24.2.1.6 only provides for the distance between 'building blocks' and not buildings within the blocks.

72 The latter part of Regulation 24.2.1.6 of the NBR 2010 provides that the maximum spacing between buildings of a height above 18 mtrs. shall be 16 mtrs. as per the NBC 2005. In the third revised plan dated 2 March 2012, the height of T-16 and T-17 was increased to 121 mtrs. In accordance with Regulation 24.2.1.6, the spacing between a building of height 121 mtrs. and another building would be 16 mtrs. (the maximum limit as per NBC 2005). Thus, the distance between T-1 and T-17 should have been 16 mtrs., as opposed to 9 mtrs. Consequently, we find that the third revised plan dated 2 March 2012 was in violation of NBR 2010.

73 NOIDA, before it granted sanction for enhancing the height of T-16 and T-17 from G+24 to G+40 (or 39, as the case may be), was duty bound to apply its mind to whether there was a compliance with the provisions of Regulation 24.2.1.6. The third revised plan which was sanctioned on 2 March 2012 has evidently glossed over the clear deficiency of open space with reference to the NBR 2010, the consequence of which would have been to reject the proposal for a further increase in the height of the towers from twenty-four floors to forty floors. Yet NOIDA has chosen to lend its support to the appellant in clear defiance of the provisions of law.

PART D

74 The issue as to whether T-1, together with T-16 and T-17, form one cluster can be looked from another perspective to test the hypothesis of Mr Vikas Singh. The original sanctioned plan dated 20 June 2005 provided that:

"Total area of plot : 48263.00 Sq. mt
Permissible coverage 35 % : 16892.05 Sq. mt
Sanctioned coverage 14.03% : 6773.25 sq. mt
Permissible FAR 1.50 : 72394.50 Sq. mt
Sanctioned FAR 134.28 : 64810.04 Sq. mt.
Sanctioned height of building : 30.00 meter

SET BACK

SET BACK OF BUILDING

	Permissible ·	Sanctioned
Front	9.66 Mt	15.00 Mt
Back	9.66 Mt	09.70 Mt.
Side	9.66 Mt	09.70 Mt.
Side	9.69 Mt	09.70 Mt."

75 The original sanctioned plan covered a total plot area of 48,263 sq. mtrs. Subsequently, an additional area of 6556.61 sq mtrs. was leased out to the appellant by a Supplementary Lease Deed dated 21 June 2006, so as to enhance the total area of the plot to 54,819.51 sq. mtrs. As a consequence, the first revised plan was sanctioned on 29 December 2006, where the sanctioned area was enhanced from 64,810.04 sq. mtrs. to 81,943.216 sq. mtrs., the calculations being as follows:

"Sanctioned area

Total area of plot : 54819 Sq. Mt

Floor	Existing	Addition	Total

Ground Floor	6773.25 Sq. Mt.	1025.313 Sq Mt	7798.563 Sq. Mt
First Floor	6672.17 Sq. Mt	1010.673 Sq Mt	7682.843 Sq. Mt
Second Floor	6672.17 Sq. Mt	1010.673 Sq Mt	7682.843 Sq. Mt
Third Floor	6672.17 Sq. Mt	1010.673 Sq Mt	7682.843 Sq. Mt
Fourth Floor	6672.17 Sq. Mt	778.737 Sq Mt	7450.907 Sq. Mt.
Fifth Floor	6672.17 Sq. Mt	- 177.574 Sq Mt	6494.596 Sq. Mt
Sixth Floor	6672.17 Sq. Mt	- 177.574 Sq Mt	6494.596 Sq. Mt
Seventh Floor	6672.17 Sq. Mt	- 177.574 Sq Mt	6494.596 Sq. Mt
Eighth Floor	6522.89 Sq. Mt	- 28.294 Sq Mt	6494.596 Sq. Mt
Ninth Floor	4808.71 Sq. Mt	1685.886 Sq Mt	6494.596 Sq. Mt
Tenth Floor		6312.410 Sq Mt	6312.410 Sq. Mt.
Eleventh Floor		4448.677 Sq Mt	4448.677 Sq Mt
Commercial		411.15 Sq Mt.	411.15 Sq Mt.
Total	64810.04	17133.176	81943.216
Basement			: 32352.71 + 8189.67 = 40542.38
Total	97162.75	25528.41	122485.60

76 The first revised plan dated 29 December 2006 relating to 6556.61 sq. mtrs. indicates that in the south-west corner of the plot, an additional construction comprising of one tower and a shopping facility would be put up and directly opposite T-1 was a green area, which has been depicted on the sanctioned plan.

77 On 26 November 2009, there was a second revised sanction, consequent upon the acquisition of purchasable FAR of thirty-three per cent of the permissible 1.5 FAR. The area calculations of the second revised sanction were indicated as follows:

PART D

"Area of plot : 54819.510 Sq. Mt.
Permissible FAR 1.50% : 82229.265 Sq. Mt.
Purchasable FAR 33% : 27135.657 Sq. Mt
Total FAR 82229.265 + 27135.657 = 109364.922 Sq. Mt
Area of utilization issued earlier: 78019.956 Sq. Mt

Area of upper basement issued earlier:

40542.380 sq Mt. (3397.0990 with demolished upper basement)

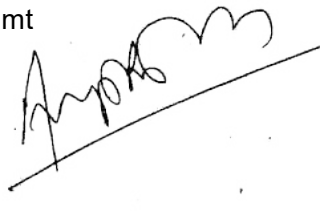
Floor	Permissible area (Sq. Mt.)	Proposed Area (Sq. Mt.)
Ground Floor	19186.82	1751.320
First Floor	Rest FAR	228.230
Second Floor		2249.220
Third Floor		2249.220
Fourth Floor	…….	2249.220
Fifth Floor	…….	2249.220
Sixth Floor	…….	2249.220
Seventh Floor	…….	2249.220
Eighth Floor	…….	2249.220
Ninth Floor	…….	2249.220
Tenth Floor	…….	1358.786
Eleventh Floor	…….	1186.914
Twelfth Floor	…….	740.162
Thirteenth Floor	…….	740.162
Fourteenth Floor	…….	740.162
Fifteenth Floor	…….	740.162
Sixteenth Floor	…….	447.955
Seventeenth Floor	…….	447.955
Eighteenth Floor	…….	447.955

Nineteenth Floor	…….	447.955
Twentieth Floor	…….	447.955
Twenty first Floor	…….	383.168
Twenty second Floor	…….	383.168
Twenty third Floor	…….	383.168
Twenty fourth Floor	…….	383.168
TOTAL FAR	…….	31312.081
Upper basement	…….	3397.090
Lower basement	40542.38	3397.090
Total Area		43939.470

Set back	Permissible	Sanctioned
Front	15.00 Mt	15.00 Mt
Back	9.00 Mt	9.00 Mt
Side	9.00 Mt	9.00 Mt
Side	9.00 Mt	9.00 Mt

78 As the second revised plan indicates, the existing towers now envisaged twenty-four floors instead of eleven floors. The third revised plan of 2 March 2012 further envisaged an enhancement in the constructed area consequent upon a purchasable FAR, together with the sanctioned FAR of 2.75. The number of floors was further increased to forty floors in T-16 and T-17, the relevant calculations being as follows:

"Total area of plot : 54819.510 Sq. mt
Permissible coverage 35% : 19186.828 Sq. mt
Sanctioned coverage 14.03% : 6773.25 sq. mt



PART D

Permissible FAR @ 1.5% : 82229.265 Sq. mt
at the time of allotment
Purchasable FAR on 25.10.10: 150753.652 Sq. mt
With Sanctioned FAR @ 2.75

Floor wise Description of Proposed area of different floors are as under

Floor	Permissible area (Sq. Mt.)	Built up area (tower 1 to 14) on 16.10.09 utility certificate issued. Sq. Mt	Previous sanctioned area tower 15, 16 & 17 date 26.11.09	Proposed FAR tower 15, 16 & 17 (Sq. Mt.)	Revised area tower 15, 16 & 17 (Sq. Mt.) (3 +4)	Total area (Sq. Mt.) (2 +5)
	1	2	3	4	5	
Space frame	--	--	--	24.00	24.00	24.00
Podium (T-1 to T-14)	--	288.983	--	--	--	--
Ground Floor	19186.825	6823.429	1751.320	1125.302	2876.622	9700.051
1st Floor	Rest FAR	6722.349	2288.230	78.075	2366.305	9088.654
2nd Floor	--	6722.349	2249.220	58.555	2307.775	9030.124
3rd Floor	--	6722.349	2249.220	58.555	2307.775	9030.124
4th Floor	--	6722.349	2249.220	38.400	2287.620	9009.969
5th Floor	--	6722.349	2249.220	38.400	2287.620	9009.969
6th Floor		6722.349	2249.220	-12.397	2236.823	8959.172
7th Floor		6722.349	2249.220	-12.397	2236.823	8959.172
8th Floor		6722.349	2249.220	-12.397	2236.823	8959.172
9th Floor		6722.349	2249.220	-12.397	2236.823	8959.172
10th Floor		6423.737	1358.786	878.037	2236.823	8660.560
11th Floor		3982.669	1186.94	910.301	2097.215	6079.884
12th Floor			740.162	851.205	1591.367	1591.367
13th Floor			740.162	851.205	1591.367	1591.367
14th Floor			740.162	851.205	1591.367	1591.367
15th Floor			740.162	851.205	1591.367	1591.367
16th Floor			447.995	1162.568	1610.523	1610.523
18th Floor			447.995	1162.568	1610.523	1610.523

19th Floor			447.995	1162.568	1610.523	1610.523
20th Floor			447.995	1165.568	1610.523	1610.523
21st Floor			383.168	1610.523	1610.523	1610.523
22nd Floor			383.168	1610.523	1610.523	1610.523
23rd Floor			383.168	1610.523	1610.523	1610.523
24th Floor			383.168		1610.523	1610.523
25th Floor				1610.523	1610.523	1610.523
26th Floor				1610.523	1610.523	1610.523
27th Floor				1610.523	1610.523	1610.523
28th Floor				1610.523	1610.523	1610.523
29th Floor				1610.523	1610.523	1610.523
30th Floor				1610.523	1610.523	1610.523
31st Floor				1610.523	1610.523	1610.523
32nd Floor				1610.523	1610.523	1610.523
33rd Floor				1610.523	1610.523	1610.523
34th Floor				1610.523	1610.523	1610.523
35th Floor				1610.523	1610.523	1610.523
36th Floor				1610.523	1610.523	1610.523
37th Floor				1610.523	1610.523	1610.523
38th Floor				1610.523	1610.523	1610.523
39th Floor				859.055	859.055	859.055
40th Floor				439.106	439.106	439.106
Total FAR	150753.652	78019.956	31312.105	41132.600	72444.705	150464.664
Basement Upper basement Lower basement Total area		After leaving set back, rest area (for parking, services) 40542.38 40542.38	 3397.09 3397.09	 1511.144 41.680 1552.824		 42053.524 3438.770 45942.294
Services	15% services	Zero	Zero	6396.896		6396.896
Total area (including		118562.336	34709.195	49082.32	83791.515	202353.854

basement and services)						

Proposed land coverage area = 10648.503 Sq. Mt. (19.425%)

Revised FAR (Built + Revised) = 150464.664 Sq Mt."

79 On 24 April 2012, the CFO drew the attention of the In-Charge of the Building Cell, NOIDA to the violation of the minimum distance which was required to be maintained in the construction which was being carried out by the appellant. The subject of the letter reads thus:

> "Regarding distance between the under construction (Tower No. 17) situated at Plot No. 4, Sector-93A NOIDA being constructed by M/s Supertech Limited and old constructed buildings"

The letter (which has been extracted above para 28 of Part A.5) has a crucial bearing on these proceedings. The CFO made a clear reference to the distance requirements which were to be observed in terms of NBR 2006, NBR 2010 and NBC 2005. The CFO queried NOIDA as to whether the license for construction was granted after granting a relaxation to the builder in a "special category" or whether the construction was being carried out contrary to the standards. This letter evinced no response from NOIDA.

80 When the construction of two towers in the newly acquired leasehold area commenced in July 2009, a communication dated 16 July 2009 was addressed on behalf of the appellant (by its Director) to the Group Co-coordinator of Emerald Court (the letter has been extracted in para 15 of Part A.4). Evidently, the residents

were concerned about the construction of the new towers. The said letter clearly demonstrates that in 2009, the appellant was of the view that the new towers which were being constructed would have separate entries and exits, amenities and infrastructure and that the developer would construct a boundary wall separating the existing 15 towers from Apex and Ceyane. This representation was reiterated in a letter dated 9 March 2012 from the appellant to the President of the RWA.

81 The first paragraph of the above letter indicates that the appellant had obtained two separate plots admeasuring approximately 48,650 sq. mtrs. and 6556.61 sq mtrs., and had got them registered separately in March 2005 and May 2006. The representation to the residents that these were separate plots which were leased out to the developer was clearly contrary to the provisions of the supplementary lease deed which stipulated that the newly demised area of 6556.61 sq. mtrs would form a part of the original plot which had been allotted to the appellant. The supplementary lease deed contains the following covenants:

> "[…]
>
> That the Lessor has agreed to demise on lease in additional place of land measuring 6556.61 Sq. mtrs. Against consideration of Rs.14,48,98,871/- (Rupees Fourteen Crores forty eight lacs ninety eight thousand eight hundred seventy one only) which has been already been paid by the lessee to the lessor and also in consideration of the yearly lease rent @1 % of the total premium per year Rs.1,59,38,876 for enhanced area has been paid by the Lessee to the Lessors as one time lease rent (equal to 11 year's lease rent). That the demised premises shall be deemed to be part of the Plot No.04, Sector 93-A, Noida already leased to the lessee.
>
> That all other conditions of the original lease deed and allotment shall remain unchanged and shall be equally

applicable to this demised ·premises and binding upon the lessee.

That the period of 90 years lease shall commence from16.03.2005.

That the demised premises shall be part of the original allotted Plot No. 04 Sector Noida. Necessary addition or alterations in the structure can be subject to the building byelaws of the lessor and terms of the transfer lease deed.

That total area of Plot No. 94, Sector 93-A, Noida is 54819.51 Sq. mtrs.

That the total premium of Plot No. 04, Sector 93-A is Rs.1,21, 15,11,171/- (Rupees One hundred Twenty one crores fifteen lacs eleven thousand and one hundred and seventy one only) instead of Rs.1,06,66,12,000/-.(Rupees One hundred six crores sixty six lacs twelve thousand and three hundred).

The lessee shall construct the building on the demised premises according to the building bye laws of the Lessor."

Despite the clear terms of the supplementary lease deed in terms of which the additional land allotted under it is to form a part of the original plot, the communication addressed to the flat buyers of the existing towers was that the new towers were completely disconnected from and independent of the earlier developed fifteen towers. This letter cannot be glossed over because a similar position was affirmed before the High Court in paragraph 32 of the counter affidavit filed by the appellant, which reads as follows:

"32. That the contents of para 12 so far it relates to matter of record are need no reply and other contents are wrong and denied. The letter dated 16.07.2009 and 09.03.2012 given by respondent no. 5 contains the same stand, that "Apex and Ceyane" is Phase II of the project as in the present counter affidavit. Similarly, letter dated 31.01.2012 and 13.02.2012 filed by respondent no.5 before police authorities can be relied upon in support of the stand of respondent no.5."

82 The only reasonable hypothesis which emerges from the above disclosures is that the argument which has now sought to be advanced – that Towers 1, 16 and 17 are part of a cluster of buildings comprised within a block, thus obviating the need to maintain the minimum distance between them – is an afterthought. It is contrary to the stated position which has been adopted by the appellant in its affidavit before the High Court. The record before this Court also indicates that the appellant has taken liberties with the truth in making the submission that a cluster of towers in the project constitutes a block which allows the appellant to subvert the minimum distance requirement.

83 The above conclusion is clearly evident from the record from IA No 54807 of 2021 for the production of additional documents. Annexures A-1, A-2, A-3 and A-4 are:

(i) A true copy of the first revised plan dated 29 December 2006 showing various blocks as sanctioned by NOIDA;

(ii) A true copy of an allotment letter dated 17 March 2007 issued by the appellant in favour of a flat purchaser;

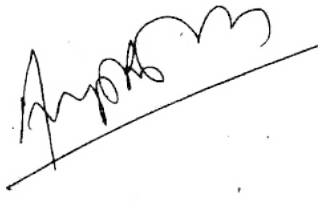
(iii) A true copy of the completion map dated 10 April 2008 in relation to T- 1 to 8; and

(iv) A true copy of the completion map dated 16 September 2009 in relation to T- 9 to 14.

PART D

84 Annexure A1 above, which is part of the first revised plan of 2006, clearly indicates that each block comprises of a cluster of two buildings. Annexure A2, which is the letter of allotment, makes it clear that what is meant by a block was the Tower comprised of Aster II. Moreover, the letter also indicates the recovery of lease rent at Rs 190 per sq. foot. Annexure A-3, the completion drawing of 2008, indicates that each tower is depicted to have four wings. In other words, the tower itself is a block comprising of four wings and the towers have been specified distinctly with reference to numbers. During the course of the proceedings before the High Court, the appellant filed a document purported to be the second revised plan of 2009 where a depiction of several blocks was made. The plan which was filed before the High Court bears no signature of the competent officer of NOIDA. In the counter affidavit filed by the appellant in the High Court, it was stated that:

> "3. That Noida Building Bye-laws talks about building blocks. Even the mandatory distance is provided only between the two building blocks in the said bye-laws. It is stated that Cluster of buildings from one building block, provided these buildings are connected with each other to form one building block. Further number of buildings within one building block depends upon various factors like the theme of the project its Architecture features surrounding, plot dimensions etc.
>
> 4. The Emerald Court (phase I) has five building block each comprising of three buildings. After acquisition of additional land, admeasuring 6556 sq.mt. Apex & Ceyane (phase II) was envisaged and the same was sanctioned by NOIDA. With the provision of space frame between tower Apex and Aster-2 as per sanction plan dated 26.11.2009 by NOIDA, the Apex & Ceyane were connected within the existing building block comprising of towers Aster-2, Aspire-1 and Aster-1 as per Architecture feature of the project. The sanction dated 26.11.2009 was granted by NOIDA only after structural safety certificate was issued by the IIT-Roorkee.



Copy of the sanctioned plan showing the Building block is annexed herewith as ANNEXURE SCA-1."

(**emphasis supplied**)

85 In the rejoinder filed to the above affidavit on behalf of the RWA, the contents of the above plan were seriously disputed and it was averred:

"5. That the contents of paragraph 4 of the supplementary counter affidavit are incorrect as Aster Type-A was already envisaged on the additional land measuring 6556 sq. mtrs. along with certain green area as is evident in the plan approved by NOIDA in Dec. 2006 (Annexures 2 of WP) on total area of the plot viz. 54800sq. mt.

The respondent has submitted a document marked as SCA-1 which is called the sanctioned building plan. This is altogether a new document submitted by respondent 5 and is a shocking surprise to the petitioner as this has never ever been disclosed nor advertised in the past. The documents has glaring deviations as compared to the document shared and submitted in the past. For the first time respondent 5 has submitted a plan which contains reference to "BLOCKS". In the past such a document was never shared. Also now each tower is given only a tower number and the nomenclature used in title documents and popular usage has been deleted viz Aspire/Aster/ Emperor etc. This is an alarming misnomer being created by respondent 5. Also, nowhere this bears the sanctioning endorsement by NOIDA (Respondent No. 2) terming as BLOCK 1 to 5. It is amply clear that respondent 5 is using false representation and documents and trying to create confusions on flimsy ground. They are trying to buy time and attention of this Court and using these as delaying tactics, which is against the interest of petition. With the delaying tactics respondent 5 is rapidly proceeding with unauthorized construction of APEX and CYNE towers day and night, especially after filing of writ petition by the petitioners, as no injunction has been issued so far. Respondent 5 has been and will be using the public interest plea of investors and financial institutions/banks to

> cover up illegal and unauthorized construction as is evident from Para 19 of the supplementary counter affidavit."
>
> (**emphasis supplied**)

86 Significantly, it must be noted that the second revised plan of 2009, which has been placed on record, does not show the existence of blocks and is duly endorsed by NOIDA. Similarly, the third revised plan of 2012, which is also on the record, does not embody any description of blocks. Therefore, we have no manner of doubt in finding that the argument sought to be developed in the course of these proceedings that there were separate blocks in the plan is an afterthought. It is contrary to the stated position which has been adopted by the appellant on affidavit before the High Court. It is contrary to the sanctioned plans. What is worse is that an effort was made to place on the record before the High Court a purported plan of dubious origin by seeking to pass it of as the second revised plan of 2009.

87 In its affidavit before the High Court, the appellant stated that:

> "9. **That it is pertinent to mention here that the Phase II of the project by the name of "Apex and Ceyane" has been planned to have provision of altogether separate facilities like swimming pool, gymnasium, separate power backup, separate L.T. Panels and separate entry and exits gates etc**. Therefore the members of petitioner society of Emerald Court (Phase I) does not have any locus to challenge any issue relating to the towers of "Apex and Ceyane" (Phase II)."
>
> (**emphasis supplied**)

88 The above averments would belie the submission sought to be advanced before this Court that Apex and Ceyane are parts of a cluster of buildings comprised within one block. The High Court, while rejecting the submission, observed:

> "Learned counsel for the respondent-company finally made an attempt to argue that the phase "building blocks" is not defined under the byelaws and according to the learned senior advocate building blocks would mean the entire building on plot no. 4 of Sector 93A NOIDA. The said argument is farfetched and against the provisions of the Building Regulation of 2006 as well as 2010. Building blocks means group of building on the plot/site. The sanctioned maps clearly shows that the respondent company has got the layout approved consisting of separate blocks. The nomenclature of the blocks was subsequently changed by the respondent company, in each successive plan and finally the buildings were numbered as towers (1-17). The maps sanctioned clearly shows that the buildings in dispute Aster II (tower 1) and Apex and Ceyane (tower 16 and 17) are separate building blocks. The argument has been advanced without there being any foundation in the pleadings. Without pleadings argument cannot be advanced."

89 Based on the interpretation of 'building blocks' in the Building Regulations as discussed above, and the inconsistency in fact and in the argument of the appellant, we affirm the above conclusion of the High Court.

D.1.2 Interpretation of "dead end sides of buildings"

90 An alternative argument has been advanced by Mr Ravindra Kumar, counsel for NOIDA, that Regulation 24.2.1.6 of the NBR 2010 provides for an exception to the 16 mtrs. minimum distance requirement if the building blocks have dead-end sides facing each other. It stipulates that if the blocks have dead-end sides facing each other, then the spacing shall be a minimum of 9 mtrs. instead of 16 mtrs. Mr

Ravindra Kumar submitted that T-1 and T-17 have dead-end sides facing each other and thus, the distance requirement of 16 mtrs. was not applicable. The "dead-end" argument has met a dead-end in the submissions of the appellant as during the proceedings. Mr Vikas Singh, learned Senior Counsel for the appellant, has specifically clarified that he is not pressing the submission. We will however deal with it as the counsel appearing for NOIDA has raised it before this Court.

91 Regulation 24.2.6 of the NBR 2010 stipulates that if the blocks have dead-end sides facing each other, then the spacing shall be a maximum of 9 mtrs. instead of 16 mtrs. The question of dead-end sides arises only between blocks, in which case the minimum distance required is 9 mtrs.

92 This Court on 27 July 2016 directed the NBCC to ascertain if the dead-end sides of T-1 and T-17 are facing each other, in order to decide if the towers can be brought within the exception in Regulation 24.2.1(6) of NBR 2010. The terms of reference were as follows:

> "To ascertain whether the two towers- Tower-1 (Aster 2) and Tower-17 have dead end sides facing each other for the purpose of Reg. 24.2.1(6) of Noida Building Regulations 2010."

NBCC was tasked with the job of determining the meaning of the phrase 'dead end sides facing each other', and whether T-1 and T-17 could be brought within the exception. This Court also specifically directed that NBCC shall not travel beyond the issue that was referred to it.

PART D

93 The appellant filed its submissions before NBCC on the meaning of the phrase 'dead end side of a building'. It was submitted that:

(i) Model Bye-Laws 2004, Model Bye-Laws 2016 and the Delhi Development Authority Building Byelaws 2016 have relaxed the 16 mtrs. distance rule to 9 mtrs. if there are 'no habitable rooms in the front', irrespective of the height of the building. A similar provision has been incorporated in NBR 2010 as well. However, instead of using the phrase "no habitable rooms in the front", the phrase "dead end" has been used. Therefore, the phrase "dead end" must take color from the bye-laws and will have to be interpreted to mean absence of 'habitable rooms'; and

(ii) Clause 3.46 of NBR 2006 defines 'habitable room' as "a room occupied or designed for occupation by one or more persons for study, living, sleeping, eating, kitchen if it is used as a living room but not including bathrooms, water closet, compartments laundries, serving and storage pantries, corridors, cellars, attics and spaces that are not used frequently or during extended periods".

94 The term 'dead-end sides of a building' has not been defined in NBR 2006, NBR 2010, and NBC 2005. Regulation 3 of NBR 2010 states that words that are not defined in the Regulations shall have the meanings assigned to them in the UPIAD 1976. If no meaning is assigned to the word in UPIAD 1976, then the meaning assigned to the word in the Master Plan/Development Plan, Development Plan, National Building Code, Indian Standard Institution Code shall be referred to.

However, none of the above mentioned authorities define the phrase 'dead end sides of a building'. Though, NBC 2005 uses the phrase in reference to dead end situation of road, corridor, water supply etc., no reference with respect to 'dead end sides of a building' is made.

95 Therefore, NBCC wrote to the Bureau of Indian Standards[23] and NOIDA on 3 September 2016 and 30 August 2016 respectively, seeking a clarification on the meaning of the phrase 'dead end sides of a building'. BIS through a letter dated 9 September 2016 stated that the phrase was only used in NBR 2010 and not the NBC 2005 that was brought by BIS, and therefore, it was not best suited to provide an interpretation on the phrase. NOIDA vide a letter dated 30 August 2016 stated that it refers to "[a]n area/side of a building or a residence having no access/entrance or exit becomes a dead end area/side of the building, though it may have openings for ventilation".

96 NBCC submitted its report on 13 October 2016. The report discusses the structure of T-1 and T-17, the meaning of the phrase 'dead end side of a building' and concludes that the sides of T-1 and T-17 facing each other are not dead end sides of the buildings. NBCC made the following observations on the structure of T-1 and T-17 after site verification:

(i) The ground floor of T-17 is allocated for commercial shops. The remaining floors in T-17 will have residential flats with windows/balconies/ventilators on

[23] **"BIS"**

all sides. Except for one opening for a fire exit, there will be no opening on the ground floor on the side that faces T-1. However, all other floors (*i.e.*, except the ground floor) will have an opening on the side that faces T-1;

(ii) The entry to T-17 is on the side that is perpendicular to the side that is facing T-1;

(iii) The entry to the residential flats of T-1 is from the side facing T-17;

(iv) T-1 has offsets. Therefore, the space between T-1 and T-17 varies from 9.3 mtrs. to 25 mtrs.;

(v) The habitable rooms with balconies in T-1 and T-17 face each other; and

(vi) T-1 and T-17 do not taper at the higher floor. None of the tower wings have different heights.

97 Since there is no clarity on the meaning of 'dead end side of a building', NBCC interpreted the phrase by referring to the use of the phrase 'dead end' in NBC 2005 in the context of roads, water supply network etc. where the passage is limited. The report stated that "a dead end exists in the corridor or passageway where there is only one direction to travel to an exit". Using this meaning as a reference, NBCC interpreted the phrase of 'dead end side of building' to hold that T-1 and T-17 do not have dead end sides facing each other. Further, NBCC also observed that the distance between T-1 and T-17 does not comply with the distance rule specified in NBC 2005:

> "6. The dead end sides, as per regulation 24.2.1 (6) of NBR 2010 would mean **where habitable rooms of the building do not face each other** and the distance between two

adjacent building blocks shall be 9 mtrs and otherwise it shall be 16 mtrs as per NBC 2005. **In the present case both the buildings i.e T-1 & T-17 have habitable rooms (with balconies) facing each other so these are not dead ends".**

7. Whether the side of T-17 which is facing T-1 is its dead-end side:

(a) The T-17 has entry & exit routes on the sides perpendicular to the side facing T-1. Therefore, the side of tower T-17 which faces T-1 is not the front-side, and therefore, the 'Building Separation' between T-1 & T-17 should be guided by those clause(s) in NBC 2005 that guide(s) open spaces to the sides of a building.

(b) On the ground floor, tower T-17 has commercial space/shops which would be always busy/occupied with people for most of the time during a normal dat.

(c) On higher floors it has balconies & terraces anchored to habitable rooms on all sides.

Inference: From (i), (ii) & (iii) above, the side of T-17 which faces T-1 would naturally have frequent human use & activity both during daytime and nighttime, every day of the year, for however short the durations, both on ground and on higher floors (balconies & terraces anchored to habitable rooms) on any normal day. Therefore, it may be safe to conclude it is not a dead-end side of T-17.

8. Whether the side of T-1 which faces T-17 is its dead-end side: The side of T-1 facing T-17 has three sections, and its middle section is offset further away from Tower T-17 while the two sections at the ends are in the same line. However, that section is the main entry/exist to the Tower. **The remaining portion of the side facing Tower T-17 is also not inactive since it has balconies & terraces anchored to habitable rooms and/or toilets.**

Inference: **The entry to tower T-1 is from the side facing Tower-17**. This the side of tower 1 facing tower-17 cannot be treated as dead end side of tower-1."

(**emphasis supplied**)

PART D

98 The appellant filed its objections to the report of NBCC, contending the following:

(i) The scope of enquiry was restricted by this Court to the issue whether T-1 and T-17 have dead end sides facing each other for the purpose of Regulation 24.2.1(6) of the NBR 2010. However, NBCC has widened the scope of enquiry and determined if the sanction is in compliance with the distance rule in NBC 2005;

(ii) The entry to the ground floor of T-17 is provided on both sides. For the commercial shops, the entry is on the side perpendicular to the side facing T-1, and for the other facilities it is on the other side opening towards the side of T-16 and the open space;

(iii) The passage between T-1 and T-17 is used only to enter into the parking space allotted for the houses in T-1 toT-15. To enter the parking space of T-17, another passage is used;

(iv) Four out of the five external sides of the apartments in T-1 facing T-17 are dead ends (two plumbing shafts, toilet dead wall, bedroom dead wall). Only the fifth external side of T-1, which is a balcony attached to the living room, faces towards T-17;

(v) Though the entry in T-1 is facing T-17, the entry is 20 mtrs. away from T-17;

(vi) NBCC has failed to consider the different line positions with respect to T-1 and T-17. There are sixteen line positions of the sides of T-1 and T-17 that

are facing each other and they are predominantly dead end sides. Of the sixteen line positions:

a. Eleven line positions have dead walls facing each other;

b. Two line positions have dead walls of T1 facing windows of T-17. However, there is a 16 mtrs. open space between them;

c. Two line positions have the railings of common lift lobbies of T-1 facing the bed room window of T-17. However, there is a 3 mtrs. open space between them; and

d. One line position where the dead wall of shaft of T-1 faces the railing of balcony in T-17, there is 9.30 mtrs. of open space between them. The open space between the walls of both the buildings in this line space is 10.80 mtrs.

99 The first respondent also sought an expert opinion on whether T-1 and T-17 have dead end sides facing each other from IIT Delhi. The report was submitted on 6 September 2016 to this Court, and concluded that the sides of T-1 and T-17 that face each other cannot be considered as 'dead end sides of the building'. It was observed that when balconies and windows (or any other egress) are provided, the functional performance will be compromised if the minimum distance as prescribed is not adhered to. Elaborating further, it was stated that the minimum distance can be reduced when there is no egress on the concerned side of the building because then there would be no possibility of a functional compromise. The reasoning in the report is summarized below:

(i) The dictionary meaning of 'dead end' is '"no exit", *i.e.*, no egress or without openings. Therefore, the presence of any opening in the form of windows of balconies renders the building side not a dead end;

(ii) The purpose of prescribing a minimum distance requirement between two buildings is to prevent transmission of fire for safe escape during calamities, minimum ventilation, and to receive natural day light. In case the minimum distance requirement between buildings with egress facing another building is not complied with, then the function of the egress (through window or balcony) will be compromised due to the following reasons:

a. <u>To avoid transmission of fire</u>: According to NBC 2005, fire separation is defined as the distance from the 'external wall' of a building to the 'external wall' of another building. There is an increased possibility for fire to be transmitted to the adjacent building through windows. However, if the walls have no openings, then the distance between the buildings can be less since there is a lesser chance for transmission of fire;

b. <u>Safe escape and rescue</u>: As the height of the building increases, there is an increased difficulty to rescue residents in case of emergency situations. In such cases, open balconies can be used to facilitate rescue operations provided that the street has sufficient width. As the height of the building increases, for maximum safe inclination of the ladder, the street has to be wider;

c. Minimum ventilation: Minimum natural ventilation is required for hygienic ventilation (*i.e.*, the removal of CO2, body odour, etc.), for heat exchange and cooling of the building; and

d. Natural day light: When the distance between two buildings is high, the building receives direct sunlight;

(iii) The main entry/exit of T-1 is facing T-17. This entry is the only one that abuts the road and will in all probability be used for rescue operations if the need arises. The balconies of habitable rooms in T-1 and T-17 also face each other. Therefore, the concerned building sides (of T-1 facing T-17 and vice versa) cannot be considered as dead ends since the sides have egress. Moreover, a reduction in the minimum distance requirement would severely compromise the purpose of providing such egress.

100 The first respondent by a letter dated 6 October 2016 also sought an expert opinion from IIT Roorkee on whether T-1 and T-17 have dead end sides facing each other. A report was submitted in October 2016 to this Court holding that the building sides of T-1 and T-17 facing each other cannot be termed as 'dead ends' for the following reasons:

(i) The scientific basis of providing the distance requirement is to enhance fire safety, provide sufficient day light and ventilation, visual privacy and air flow;

(ii) The Merriam Webster Dictionary defines 'Dead End' as a street that ends instead of joining with another street so that there is only one way in and out of it. 'Dead wall' is defined as a wall without openings such as doors, windows

and ventilators. Therefore, evidently, openings for fenestration and the presence of balconies and windows would mean that the 'side' is not a dead end side;

(iii) When the side of the building facing another building has egress, the minimum distance specified under the Regulations must be complied with. Otherwise, the functional performances of the egress (*i.e.*, balcony, window, etc.) will be compromised; and

(iv) The main entry, the doors, windows, and balconies of T-1 face T-17. Since the side of T-1 facing T-17 has egress, it is not a 'dead end side'.

101 The appellant approached Design Forum International[24], an architectural and design firm, requesting their assistance in the ongoing case. DFI through its report made the following observations on NBCC's report regarding the dead end issue:

(i) T-1 and T-17 vary in design. T-17 has nearly three times the length when compared to T-1. Moreover, the portion of T-17 that overlaps T-1 is not constant along the whole length. Therefore, it is necessary that the sides of the towers facing each other are examined in a more detailed manner;

(ii) The entry of T-1 and T-17 is perpendicular to each other;

(iii) The sides of T-1 and T-17 can be classified into the following three categories: (a) dead end facing dead end (*i.e.*, a wall facing a wall); (b) dead end facing a non-dead end (*i.e.*, a wall facing a window); and (c) non-dead end facing a non-dead end (*i.e.*, a window facing a window);

[24] **"DFI"**

(iv) The position is clear under Regulation 24.2.1(6) of NBR 2010 that for cases falling under (a), the distance between the buildings must be 9 mtrs. and for cases falling under (c), the distance must be 16 mtrs. However, for cases that fall under (b), there is no clarity on the distance that must be maintained between the buildings;

(v) There are thirteen unique line positions between T-1 and T-17. Of the thirteen line positions, in six line positions the dead end side of T-1 faces the dead end side of T-17 (Type (a)); in four line positions, the dead end side of T1/T-17 faces the non- dead end side of the other (Type (b)); in three line positions, the non-dead end side of T-1 and T-17 face each other (Type (c));

(vi) For the line positions falling under type (a), the distance varies from 9.88 mtrs. to 15.11 mtrs. complying with the 9 mtrs. requirement; for the line positions falling under type (b), the distance varies from 10.8 mtrs. to 15.3 mtrs.; for the line positions falling under type (c), the distance varies between 14.62 mtrs. to 15.5 mtrs., which is 'very slightly lesser' than the required 16 mtrs.;

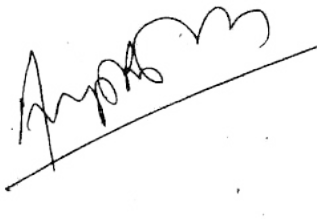
(vii) Since the distance between the sides of T-1 and T-17 facing each other differ widely and is not uniform, this Court will have to undertake an in depth analysis of the issue keeping in mind the unique situation; and

(viii) The minute deficiency in case of type (c) and type (b) (if this Court declares the distance to be deficient) can be rectified by making structural alterations in the buildings by shifting the position of the egresses.

PART D

102 The NBR 2010 does not provide any definition of the phrase 'the dead end side of the block.' NBR 2006, NBC 2005 and the UPIAD Act 1976 also do not define the phrase. The Court while interpreting the expression will have to attribute a contextual meaning to the phrase 'dead end side of the block'. The above reports adopt two different meanings of the phrase. The NBCC report and the appellant in its objections before the NBCC state that the dead end sides of the building would mean where 'habitable rooms' of a building do not face each other. Though it is not specified that only habitable rooms with 'windows/balconies' will not be considered as dead ends, it is evident that the argument is that it is only if a habitable room with egress faces the side of the adjacent building, that it should not be considered as a dead end side. The corollary is that if the store room or the bathroom or corridor with a window/vent faces the side of the adjacent building it must still be considered as a dead end. Whereas, the reports by IIT Delhi and IIT Roorkee take another approach by defining a dead end side of a building as a side with egress (*i.e.*, windows, balconies or vents) without any reference to 'habitable rooms'.

103 Two other contentions on the interpretation of the phrase have also been raised. It is contended that the phrase is ambiguous to the extent that it does not provide clarity on whether an egress of a building facing a dead wall of the adjacent building would fall within the exception. It is also contended that since the height of T-1 and T-17 is not the same, two egresses in adjacent buildings face each other only in a few line positions, and the requirement of minimum distance between the



adjacent buildings must differ with each line position depending upon whether those specific line positions are dead ends.

104 We are therefore faced with three questions while interpreting the phrase 'dead end sides of the buildings':

(i) whether only habitable rooms with egress in any part of the building must be excluded from the ambit of the phrase 'dead end sides of the buildings';

(ii) whether both sides of the buildings must be dead end sides, or whether it is sufficient if one side of the building is a dead end side; and

(iii) whether the direct line position must be used for the determination of 'dead end sides of the building' and the distance between two adjacent buildings.

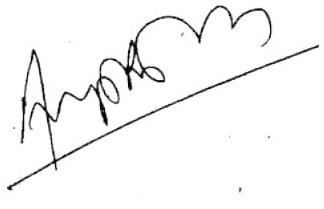
105 We are unable to accept the contention that only habitable rooms with egress (that is, windows or balconies) will fall outside the ambit of 'dead end side of the buildings'. 'Dead end' in common parlance means no exit or absence of access. NBR 2010 does not provide any indication to classify between habitable and non-habitable rooms in the context of the phrase 'dead end side'. The argument that the classification between habitable and non-habitable rooms has been made in the Model Bye-Laws with specific reference to the distance requirement and therefore, it must be imported for the interpretation of the phrase 'dead end sides of the building' is unsatisfactory. It is a settled principle of statutory interpretation that words must be given their plain and ordinary meaning unless such an interpretation leads to an ambiguity or absurdity or when the object of the statute indicates otherwise. The use

of the phrase ‘dead end side of the building’ in NBR 2010, in spite of the other bye laws using the phrase ‘habitable rooms’, makes it evident that the intent was to restrict the ambit of the exception. Interpreting the phrase in the context of the ordinary meaning of the word ‘dead end’ does not lead to any ambiguity; rather it is in pursuance of the intent and purpose behind the provision. As stated by the reports submitted by IIT Delhi and IIT Roorkee, the purpose of prescribing a higher minimum distance between adjacent buildings in case the side of the building facing another has egress is so that the functional utility of the egress (either a window or balcony) is not diminished. Windows/balconies, irrespective of whether they are attached to a habitable or a non-habitable room, perform functions which will be greatly diminished if the adjacent building is closer and thereby restricting the air flow and increasing the chance of transmissibility in the event of a fire. Moreover, the privacy of the flat dwellers would be severely compromised. The expansion of the meaning of the phrase ‘dead end side of the building’ to include non-habitable rooms with windows would thus amount to rewriting the regulation, when no such indication can be construed from NBR 2006 or NBR 2010.

106 The contention that the dead end exception will be applicable, even if one side of the two adjacent buildings has a dead end is erroneous. Regulation 24.2.1(6) of NBR 2010 states “*If the blocks have dead end sides facing each other, then the spacing shall be maximum 9 meters instead of 16 meters”.* The words ‘blocks’ and ‘sides’ in the plural form find place in Regulation 24.2.1(6) of NBR 2010. The Regulation does not state ‘if the block having a dead end side’. When the phrases or

words are free from ambiguity and when there is only one meaning that the phrase would take when fairly construed, it will have to be literally construed, and courts must not resort to a liberal interpretation which will defeat the intent, purpose and object of a provision in a planning regulation.

107 The report submitted by DFI refers to the variant heights of T-1 and T-17. The contention is that since the structure of T-1 and T-17 are different, and since the towers horizontally overlap with each other only to the extent of the height of the shorter tower (T-1), the distance between T-1 and T-17 must be measured in the direct line positions. These direct line positions are then classified into three categories (Category (a) - dead end facing dead end; Category (b) - dead end facing a non-dead end; Category (c) - a non-dead end facing a non-dead end). The distances between T-1 and T-17 with respect to each of these types have been measured to argue that for lines falling in category (a), it is enough if the distance is 9 mtrs; for those falling under category (b), there is no clarity on the distance required; and for lines in category (c), a minimum distance of 16 mtrs. is required. This argument rests on two premises: *(i)* the minimum distance requirement prescribed under Regulation 24.2.1(6) of NBR 2010 is not the distance between two buildings but is rather the distance between the different direct line positions between two adjacent buildings; and *(ii)* it is necessary for the entire adjacent blocks to have non-dead end sides facing each other for the 16 mtrs. distance rule to be applied uniformly.

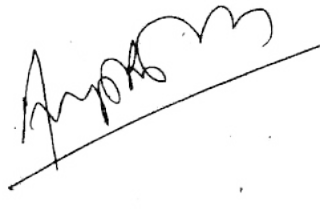


PART D

108 The phrase which is used in Regulation 24.2.1(6) of NBR 2010 is 'block' and not 'flat'/'unit'. The unit of consideration is thus not individual 'units' in the block but the entire block itself. The side of the block would not be a dead end side if there are even few egresses. If the direct line position argument is accepted, then the intent behind providing the minimum distance requirement would become nugatory. The purpose of imposing the minimum distance requirement as stated in the reports of IIT Delhi and IIT Roorkee is to provide ventilation, direct sun light, means of rescue and prevent the spread of fire. If particular 'flats'/'units' in the block have a vent according to the construction plan, the minimum distance would have to be complied with, not just with respect to the direct line but with respect to the 'entire block'.

109 The reports of IIT Delhi and IIT Roorkee clearly elucidate the difficulty in evacuation of occupants in high rise buildings. The report states that the distance between adjacent buildings needs to be greater for taller buildings since the street has to be wider for the maximum safe inclination of the ladder. The reports also mention the reduction in ventilation, sunlight and privacy in case the distance between the buildings is less. Therefore, irrespective of whether all or some of the units in the block have an egress facing the adjacent building, the minimum distance of 16 mtrs. will have to be complied with, otherwise the purpose of providing the vent would be functionally compromised

110 In view of the above discussion, the principles that would guide the interpretation of the phrase 'dead end sides of the blocks' are as follows:



(i) The phrase ‘dead end side of the block’ would mean that any building does not have an egress;

(ii) An egress in a non-habitable room like the bathroom or the storeroom will be considered as a non-dead end side;

(iii) For the ‘dead end’ exception to be applicable, it is necessary that the sides of both the buildings facing each other must not have any egress;

(iv) It is not necessary that all the units in the building facing the other building must have an egress. Even if some of the units have an egress, that side of the block will not be considered as a ‘dead end side’; and

(v) The minimum distance required between two adjacent blocks must not be measured through direct line positions of the units but along the ground.

111 On application of the principles deduced above on the interpretation of the expression ‘dead end side of the building’, the sides of T-1 and T-17 facing each other are held not to be dead end sides for the following reasons:

(i) The windows/corridors of T-17 on all floors except the ground floor have an opening on the side that faces T-1. Though this is contested by the appellant, it has been conceded that there are at least a few windows/balconies in T-1 facing T-17 and vice versa;

(ii) The entries of T-1 and T-17 do not face each other but are perpendicular to each other. However, the entry to T-1 is from the side facing T-17;

(iii) Four out of five external sides of T-1 that face T-17 are dead end sides. However, the fifth side is a balcony of the living room facing T-17. The

distance between points of the buildings cannot be selectively measured to argue its compliance with the distance rule; and

(iv) Even though the entry of T-1 facing T-17 is 20 mtrs. away, the distance rule is not complied with since a selective measurement from the dead end points cannot be undertaken. The distance must be measured along the ground.

Thus, we find that the revised plans were in violation of NBR 2010 and do not fall under the exception provided in Regulation 24.2.1.6 for blocks having dead end sides.

D.2 Violation of NBC 2005

112 We shall now address the question of whether the third revised plans violated the NBC 2005. As we have seen above, NBC 2005 is referenced in Regulations 24.2.1.6 of the NBR 2010. NBC 2005 has two parts in regard to the maintenance of open spaces – para 8.2.3.1 and para 8.2.3.2. Para 8.2.3.1 provides for open spaces for buildings above the height of 10 mtrs., which are specified in Table 2. Table 2 indicates that the side and rear open spaces correspond to the height of the building and increase accordingly, beginning with 3 mtrs. for a building of a height of 10 mtrs. and up to 16 mtrs., where the height of the building is 55 mtrs. and above. In addition, Note 3 clarifies that where either the length and depth of the building exceeds 40 mtrs., the minimum distance which is prescribed must be further increased by ten percent of the length and depth of the building minus 4 mtrs. Thus,

the calculation for the side and rear open spaces to be left around the building would be as follows:

	(third revision)	(second revision)
Height of the Building	84.5 m[25]	73 m
Minimum distance prescribed in Col 3 of Table 22 (for buildings above 55 mtrs)	16 m	16 m
Distance to be maintained as per Note 3:		
Distance in col (3) + 10% of the length or depth of building – 4.0 mtrs	16 + 10% (84.5) – 4 = 20.45 mtrs	16 + 10% (73) – 4 = 19.3 mtrs

Thus, according to the NBC 2005, the spacing between T-1 and T-17 should be 20.45 mtrs. Evidently then, the second and third revised plans were not in accordance with the NBC 2005. This conclusion is fortified by the report of the NBCC, which in para 5 reaches the conclusion that the minimum open space around T-17 is to be 20.45 mtrs. and thus, the distance between T-1 and T-17 does not comply with para 8.2.3.1 of the NBC 2005.

113 An alternative to para 8.2.3.1 has been provided in para 8.2.3.2 for 'tower like structures'. Para 8.2.3.2 stipulates that for a structure of a height up to 24 mtrs. with one set-back, the open spaces at the ground level should not be less than 6 mtrs.; if

[25] The total actual length of T-17 as noted in the NBCC Report is 84.5 m as against the envisaged 121 m.

the height is between 24 mtrs. and 37.5 mtrs. with one set-back, the open space at the ground level must be not less than 9 mtrs.; and for heights above 37.5 mtrs. with two set-backs, the open space at the ground level should not be less than 12 mtrs. Additionally, under (d) of para 8.2.3.1, the deficiency in open spaces of tower like structures (as compared to all building of height above 10 mtrs. in para 8.2.3.1) can be made good by providing set-backs at the upper levels, so long as the set-backs are not accessible from individual rooms or flats at these levels.

114 A reading of para 8.2.3.2 indicates that this exception is only applicable if the deficiency in open spaces can be made good by set-backs at the upper level. Clause (d) of para 8.2.3.2 of the NBC 2005 is *ex facie* not attracted for the reason that there are no set-backs at the upper levels within the contemplation of the disputed constructions. In any case, even para 8.2.3.2 provides that for tower like structures higher than 37.5 mtrs. with two setbacks, the open space should be not less than 12 mtrs. Thus, the exception is of no aid to the appellant and NOIDA which has issued the third revised plan envisaging a distance of 9 mtrs. between T-1 and T-17.

D.3 Violation of Fire Safety Norms

115 The appellant requested for a fire NOC for the construction of T-16 and T-17. On 11 September 2009, a report was submitted to the CFO observing that the road is wide enough for vehicles of the Fire Brigade Department to reach the spot in case of emergency situations. However, clause 10 of the report states that Part III and

PART D

Part IV of NBC 2005 will have to be complied with during the construction of the building and in case of non-compliance, the NOC shall stand cancelled. Para 8.2.3.1 of NBC 2005 prescribes a minimum of 16 mtrs. for the side and rear open spaces of buildings which are 55 mtrs. high and above.

116 On 18 August 2011, the CFO issued a temporary fire NOC for the construction of T-16 and T-17. This letter also stated that the applicant will have make arrangements for fire safety compliant with the NBC 2005. On 29 March 2012, the CFO issued a notice to the appellant highlighting various shortcomings in fire security provisions. On 24 April 2012, the CFO wrote to NOIDA stating that the distance between T-1 and T-17 is only 9 mtrs. which is violative of NBR 2006, NBR 2010 and NBC 2005 and asking if NOIDA had provided any exemption to the distance rule to appellant. The CFO issued a show cause notice to the appellant on 17 July 2012 directing that T-16 and T-17 that are under construction be physically separated from the 'old towers'.

117 A complaint was made by the first respondent to the CFO on the non-compliance of the conditions stipulated for the grant of the NOC for the complex (for T1 to T-15). A committee was constituted to look into the complaint and the following observations were made by the committee:

(i) A show cause notice was issued for the construction of a second staircase. The stair case has still not been built;

(ii) People are living in quarters constructed in the basement which is not in accordance with the NBC 2005 provisions;

(iii) Set back is used as a parking, so the effective set back in certain places is reduced by 2 mtrs. and is thus less than the required 9 mtrs.;

(iv) On the rear side of the tower, 6 mtrs. set back is not available.

118 These suggestions given by the committee were required to be complied with within six months. Since they were not complied with, a show cause notice was issued on 30 May 2014 for not remedying the deficiencies.

119 Regulation 76 of NBR 2006 states that the building must be planned and constructed in accordance with Part IV of National Building Code 1970, amended as of that day. Para 4.6 of NBC 2005 states that the approach to the building and the open spaces on all the sides of a high rise building shall be 6 mtrs. and that the layout of the building must be made in consultation with the CFO. However, para 8.2.3.1 of NBC 2005 prescribes a minimum of 16 mtrs. side and rear spaces for buildings that are higher than 55 mtrs. Therefore, on reading NBC 2005 as a whole, the side and rear space around the building must be 16 mtrs. The distance between T-1 and T-17 is only 9 mtrs., which is less than the required 16 mtrs.

120 The temporary NOC that was given by the CFO clearly states that the NBC 2005 must be complied with. However, as shown above, the provisions of NBC 2005 have not been complied with. Therefore, given that the rear distance requirement under NBC 2005 has not been complied with, the NOC given by the CFO stands

automatically cancelled in terms of the report dated 11 September 2009 and letter dated 18 August 2011.

E Consent of the RWA

121 Having held above that the sanction for the construction of T-16 and T-17 were given by NOIDA in contravention of the minimum distance requirement provided by the Building Regulations, we will advert to the next issue. It has been contended by RWA that the sanction could not have been revised without the consent of the flat purchasers in the original fifteen towers. While analyzing this issue, it is first important to consider the appellant's preliminary objection that the UP 1975 Act is not applicable to the present case. After addressing the preliminary objection, we shall analyze whether the consent was actually required under the UP 1975 Act and UP Apartments Act 2010.

E.1 Applicability of UP 1975 Act

122 The UP 1975 Act has been described in its long title as "an Act to provide for matters connected with the ownership and use of individual flats in buildings consisting of four or more flats". Section 2 of the Act states that the Act shall apply only to owners who submit to the provisions of the Act by executing a declaration. Section 2 reads as follows:

> "**2. Application of the Act.** — This Act applies only to property, the sole owner or all the owners of which submit the same to the provisions of this Act by duly executing and registering a Declaration setting out the particulars referred to in section 10:

> Provided that no property shall be submitted to the provisions of this Act, unless it is actually used or is proposed to be used for residential purposes:
>
> Provided further that the sole owner or all the owners of the land on which building is situated may submit such land to the provisions of this Act with a condition that he or they shall grant a lease of such land to the owners of the flats, the terms and conditions of the lease being disclosed in the declaration either by annexing a copy of the instrument of lease to be executed to the declaration or otherwise."

123 Section 3(d)[26] contains the definition of common area and facilities. Section 4[27] stipulates that a flat shall be transferable and heritable property. Each owner of a flat is entitled to exclusive ownership and possession of their flat in accordance with the declaration. Moreover, a flat together with its undivided interest in the common areas and facilities shall be heritable and transferable immoveable property. Further, a flat together with its undivided interest in the common areas and facilities shall not be partitioned or sub-divided for any purpose.

---

[26]" (d) "common areas and facilities" includes—
(1) the land on which the building is located and all easements, rights and appurtenances belonging to the land and the building;
(2) the foundations, columns, girders, beams, supports, main wall, roofs, halls, corridors, lobbies, stairs, stair-way, fire-escapes and entrances and exits of the building;
(3) the basements, cellars, yards, gardens, parking areas and storage spaces;
(4) the premises for the lodging of janitors or persons employed for the management of the property;
(5) installations of common services, such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and sewerage;
(6) the elevators, tanks, pumps, motors, expressors, pipes and ducts and in general all apparatus and installations existing for common use;
(7) such other common facilities as may be specially provided for in the Declaration;
(8) all other parts of the property necessary or convenient to its existence, maintenance and safety or normally in common use;"

[27] "4**. Flat to be transferable and heritable property.**—(1) Each owner of a flat shall be entitled to the exclusive ownership and possession of his flat in accordance with the Declaration.

(2) Subject to the provisions of the second proviso to section 2, a flat, together with its undivided interest in the common areas and facilities, shall constitute heritable and transferable immovable property within the meaning of any law for the time being in force:
Provided that no flat and the percentage of undivided interest in the common areas and facilities appurtenant to such flat shall be partitioned or sub-divided for any purpose whatsoever."

124 Section 5 provides for common areas and facilities in the following terms:

> "**5. Common areas and facilities.** — (1) Each owner of a flat shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the Declaration.
>
> (2) **The percentage of the undivided interest of each owner of a flat in the common areas and facilities as expressed in the Declaration shall not be altered without the consent of all the owners of the flats** expressed in an amended Declaration duly executed and registered as required by this Act.
>
> (3) The percentage of the undivided interest in the common areas and facilities shall not be separated from the flat to which it appertains, and shall be deemed to be conveyed or encumbered with the flat even though such interest is not expressly mentioned in the conveyance or other instrument.
>
> (4) The common areas and facilities shall remain undivided, and no suit shall lie at the instance of any owner of the flat or other person for partition or division of any part thereof, unless the property have been withdrawn from the provisions of this Act.
>
> (5) Each owner of a flat may use the common areas and facilities for the purpose for which they are intended without hindering or encroaching upon the lawful rights of the owners of other flats.
>
> (6) The work relating to the maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvement thereto shall be carried out in accordance with the provisions of this Act and the bye-laws.
>
> (7) The Association of Owners of flats shall have irrevocable right to be exercised by the Manager or the Board of Managers on behalf of the Association with such assistance as the Manager or the Board of Managers, as the case may be, considers necessary to have access to each flat from time to time during reasonable hours, for the maintenance, repair and replacement of any of the common areas and facilities therein or accessible therefrom or for making emergency

repairs therein to prevent any damage to the common areas and facilities or to other flats."

(**emphasis supplied**)

Under sub-Section (2) of Section 5, the percentage of the undivided interest of each owner of a flat in the common areas and facilities, as expressed in the Declaration, shall not be altered without the consent of all the owners of the flats expressed through an amended Declaration which shall be executed and registered under the Act. Section 10[28] provides for the contents of such a Declaration. Further, Section 11[29] envisages that all the owners of flats may withdraw a property from the provisions of the Act by an instrument executed to that effect, following which it shall be deemed to be owned in common by the owners of flats wherein the share of each

[28] "10. Contents of Declaration.—(1) The declaration referred to in section 2 shall be submitted in such form and in such manner as may be prescribed and shall contain the following particulars, namely:—

(a) description of the property, namely the description of the land on which the building is or is to be located, whether the land is freehold or leasehold and whether any lease of the land is to be granted in accordance with the second proviso to section 2, and description of the building or proposed building stating the number of storeys and basements and the number of flats;
(b) nature of interest of the owner or owners in the property;
(c) existing encumbrance, if any, affecting the property;
(d) description of each flat containing its location, approximate area, number of rooms, immediate common area to which it has access, and any other data necessary for its proper identification;
(e) description of the common areas and facilities;
(f) description of the limited common areas and facilities, if any, stating to which flats their use is reserved;
(g) value of the property and of each flat, and the percentage of undivided interest in the common areas and facilities appertaining to each flat and its owner for all purposes, including voting."

[29] "11. Withdrawal from the provisions of the Act.— (1) All the owners of flats may withdraw a property from the provisions of this Act by an instrument executed to that effect.

(2) Upon the property being withdrawn from the provisions of this Act, it shall be deemed to be owned in common by the owners of flats and the share of each such owner in the property shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.

(3) Any encumbrance affecting any of the flats shall be deemed to be transferred in accordance with the existing priority to the percentage of the undivided interest of the owner of the flat in the property as provided therein.

(4) The withdrawal provided for in sub-section (1) shall in no way bar the subsequent resubmission of the property to the provisions of this Act."

such owner shall be the percentage of undivided interest previously owned in the common areas and facilities.

125 The submission urged on behalf of the appellant is that the UP 1975 Act has no application to the present case, in view of the provisions of Section 2. Section 2, as we have seen, specifies that the Act applies only to a property, the sole owner or all the owners of which, submit it to the provisions of the Act by duly executing and registering a Declaration setting out the particulars as contained in Section 10.

126 Undoubtedly, in this case there was no declaration in terms of Section 2. However, significantly, the lease deed which was executed by NOIDA in favour of the appellant on 16 March 2005, contains a stipulation in clause II(h) in the following terms:

> "II) **AND THE LESSEE DOTH HEREBY DECLARE AND COVENANTS WITH THE LESSOR IN THE MANNER FOLLOWING:**
>
> […]
>
> h) The Lessee/sub-lessee shall make such arrangement as are necessary for maintenance of the building and common services and if the building is not maintained properly the Chief Executive Officer, Noida or any officer authorized by him will have the power to get the maintenance done through the Authority and recover the amount so spent from the Lessee/Sub-Lessee. The Lessee/Sub-Lessee will be individually and severally liable for payment of the maintenance amount. **The rule/regulation of U.P. Flat Ownership Act, 1975 shall be applicable on the lessee/sub-lessee."** (**emphasis supplied**)

PART E

127 Mr Ravindra Kumar, learned Counsel appearing on behalf of NOIDA, advanced a submission that the last sentence of clause II(h) must be read together with the entirety of the clause, which relates to the maintenance of the building and common services. Clause II(h) states that in the event the building or common services are not maintained properly, NOIDA would be entitled to ensure the maintenance and recover the amount from the lessee/sub-lessee.

128 However, the application of clause II(h) cannot be brushed away on this basis, particularly since the sentence imposing the application of the UP 1975 Act on the lessee/sub-lessee must bear some meaning and content. In this context, during the course of his submissions, Mr Jayant Bhushan, learned Senior Counsel appearing on behalf of the RWA, has placed on the record a copy of the registered sub-lease executed on a tripartite basis by NOIDA, with the appellant as the lessee and the flat buyer as the sub-lessee. Some important provisions of this deed of sub-lease are:

(i) Clause 16 contemplates that the occupant of the ground floor would be entitled to use a "sit-out area but the right of user shall be subject to the provisions of the UP Ownership Flat Act 1975";

(ii) Clause 17 recognizes the right to user of the occupant of the dwelling unit on the top floor, subject to the provisions of the same enactment; and

(iii) Clause 27 envisages that all clauses of the lease executed by NOIDA in favour of the appellant on 16 March 2005 shall be applicable to the sub-lease deed as well.

129 In the backdrop of this provision, more particularly, clause II(h) of the lease deed which was executed by NOIDA in favour of the appellant on 16 March 2005, the appellant was duty bound to comply with the provisions of the UP 1975 Act. By submitting before this Court that it is not bound by the terms of its agreement or the Act for want of a declaration under Section 2, the appellant is evidently attempting to take advantage of its own wrong.

E.2 Applicability of the UP Apartments Act 2010

130 In 2010, the State legislature enacted the UP Apartments Act 2010. The long title describes the legislation as:

> "An Act to provide for the ownership of an individual apartment in a building of an undivided interest in the common areas and facilities appurtenant to such apartment and to make such apartment and interest heritable and transferable and for matters connected therewith or incidental thereto"

131 Section 2 of the Act is in the following terms:

> **"2. Application.-** The provisions of this Act shall apply to all buildings having four or more apartments in any building constructed or converted into apartment and land attached to the apartment, where freehold, or held on lease excluding shopping malls and multiplexes."

Thus, in contrast with Section 2 of the UP 1975 Act, the corresponding provision of the UP Apartments Act 2010 stipulates that the Act shall apply to all buildings with four or more apartments in any building and land attached to the apartment whether

freehold or held on lease. Further, unlike Section 2 of the UP 1975 under which the Act was to apply only when a declaration in terms of Section 10 was submitted, this Act does not require a declaration for it to apply.

132 The expression 'apartment owner' is defined by Section 3(d) of the Act as follows:

> "(d) "apartment owner" means the person or persons owning an apartment or the promoter or his nominee in case of unsold apartments to and an undivided interest in the common areas and facilities appurtenant to such apartment in the percentage specified in the Deed of Apartment and includes the lessee of the land on which the building containing such apartment has been constructed, where the lease of such land is for a period of thirty years or more;"

133 The Act contains a definition of common areas in Section 3(i) and of limited common arears in Section 3(s):

> "(i) "common area and facilities" means—
>
> (i) the land on which the building is located and all easements, rights and appurtenances belonging to the land and the building;
>
> (ii) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire-escapes and entrances and exits of the building;
>
> (iii) the basements, cellars, yards, parks, gardens, community centers and parking areas of common use;
>
> (iv) the premises for the lodging of janitors or persons employed for the management of the property;
>
> (v) installations of central services, such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, incinerating and sewerage;

(vi) the elevators, tanks, pumps, motors, fans, cable pipe line (TV, gas, electricity etc.) rain water harvesting system, compressors, ducts and in general all apparatus and installations existing for common use;

(vii) such other community and commercial facilities as may be specified in the bye-laws; and

(viii) all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use;

[…]

(s) "limited common areas and facilities" means those common areas and facilities which are designated in writing by the promoter before the allotment, sale or other transfer of any apartment as reserved for use of certain apartment or apartments to the exclusion of the other apartments;"

134 The general liabilities which have been cast upon promoters intending to sell an apartment are set out in Section 4(1), which reads as follows:

"**4. General liabilities of promoter.—** (1) Any promoter who intends to sell an apartment, shall make a full and true disclosure in writing of following to an intending purchaser and the Competent Authority:

(a) rights and his title to the land and the building in which the apartments have been or proposed to be constructed;

(b) all encumbrances, if any, on such land or building, and any right, title, interest or claim of any person in or, over such land or building;

(c) the plans and specifications approved by or submitted for approval to the local authority of the entire building of which such apartment forms part;

(d) detail of all common areas and facilities as per the approved lay-out plan or building plan;

(dd) built-up area and common area of an apartment.

(e) the nature of fixtures, fittings, and amenities, which have been or proposed to be provided;

(f) the details of the design and specifications of works or and standards of the material which have been or are proposed to be used in the construction of the building, together with the details of all structural, architectural drawings, layout plans, no objection certificate from Fire Department, external and internal services plan of electricity, sewage, drainage and water supply system etc. to be made available with the Association;

(g) all outgoings, including ground rent, municipal or other local taxes, water and electricity charges, revenue assessments, maintenance and other charges, interest on any mortgage or other encumbrance, if any, in respect of such land, building and apartments;

(h) such other information and documents as may be prescribed."

Sub-Section (4) of Section 4 contains the following stipulations:

"(4) After plans, specifications and other particulars specified in this section as sanctioned by the prescribed sanctioning authority are disclosed to the intending purchaser and a written agreement of sale is entered into and registered with the office of concerned registering authorities. The promoter may make such minor additions or alterations as may be required by the owner or owners, or such minor changes or alterations as may be necessary due to architectural and structural reason's duly recommended and verified by authorized Architect or Engineer after proper declaration and intimation to the owner:

Provided that the promoter shall not make any alterations in the plans, specifications and other particulars without the previous consent of the intending purchaser, project Architect, project Engineer and obtaining the required permission of the prescribed sanctioning authority, and in no case he shall make such alterations as an not permissible in the building bye-laws."

PART E

Under clause (c) of sub-Section (1) of Section 4, a promoter who intends to sell an apartment is required to make a full disclosure in writing to an intending purchaser and to the competent authority of the plans and specifications approved or submitted for approval to the local authority, of the building of which the apartment is a part. Similarly, under clause (d), a disclosure has to be made in regard to the common areas and facilities in accordance with the approved lay-out plan or building plan. Once such a disclosure has been made, sub-Section (4) stipulates that upon the execution of a written agreement to sell, the promoter may make minor additions or alterations as may be required or necessary due to architectural and structural reasons duly authorized and verified by authorized Architects or Engineers. Apart from these minor additions or alterations which are contemplated by sub-Section (4), the proviso stipulates that the promoter shall not make any alterations in the plans, specifications and other particulars "without the previous consent of the intending purchaser". Mr Vikas Singh's submission, that this provision will apply to intending purchasers of Apex and Ceyane and not to the persons who had purchased apartments in the existing fifteen towers, cannot be accepted. The above proviso is evidently intended to protect persons to whom the plans and specifications were disclosed when they were the "intending purchasers". Further, a construction to the contrary will run against the grain of the intent and purpose of the statute as well its express provisions.

135 Section 5 of the Act provides for the rights of apartment owners in the following terms, insofar as is relevant:

> "**5. Rights of Apartment Owners.—** (1) Every person to whom any apartment is sold or otherwise transferred by the promoter shall subject to the other provisions of this Act, be entitled to the exclusive ownership and possession of the apartment so sold or otherwise transferred to him.
>
> (2) Every person who becomes entitled to the exclusive ownership and possession of an apartment shall be entitled to such percentage of undivided interest in the common areas and facilities as may be specified in the Deed of Apartment and such percentage shall be computed by taking, as a basis, the area of the apartment in relation to the aggregate area of all apartments of the building.
>
> (3)(a) The percentage of the undivided interest of each apartment owner in the common areas and facilities shall have a permanent character, and shall not be altered without the written consent of all the apartment owners and approval of the competent authority.
>
> (b) The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with apartment, even though such interest is not expressly mentioned in the conveyance or other instrument."

136 It is important to clarify at this stage that the UP Apartments Act 2010 will not apply with retrospective effect to the second revised plan, which was sanctioned on 26 November 2009. However, the legislation, which came into force upon publication in the UP Gazette on 19 March 2010, will have consequences for the third revised plan sanctioned on 2 March 2012, as analysed below.

E.3 Requirement of RWA's Consent

137 In terms of the third revised plan which was sanctioned on 2 March 2012, the height of T-16 and T-17 was sought to be increased from twenty-four to forty (or thirty-nine, as the case may be) floors. As a result, the total number of flat

purchasers would increase from 650 to 1500. The clear implication of this would be a reduction of the undivided interest of the existing purchasers in the common areas. As a matter of fact, it has also been submitted on behalf of the first respondent that the additional lease rent paid to NOIDA was also sought to be collected from the existing flat purchasers at the rate of Rs 190 per sq. foot. A statement to that effect was also contained in an affidavit filed before the High Court on behalf of the first respondent. The purchase of additional FAR by the appellant cannot be used to trample over the rights of the existing purchasers.

138 Flats were sold on the representation that there would be a garden area adjacent to T-1. The garden adjacent to T-1 is clearly depicted in the first revised plan of 29 December 2006. It is this garden area which was encroached upon when the second revised plan was sanctioned on 26 November 2009.

139 However, according to the appellant, T-16 and T-17 form part of Phase II of Emerald Court, which had not encroached on any part of the common areas of Phase I, under which all the other towers fell. In this context, it would be material to note a letter dated 13 February 2012 addressed to the Circle Officer, City 3rd NOIDA, Gautam Buddh Nagar, by the Director of the appellant, in which it has been stated that:

> "Kindly, refer to your Letter Dt. 10.02,2012, received by us on 11.02.2012, regarding which written statement on behalf of M/s. Supertech Limited is presented as under:
>
> 1. That, [A]pex and [Ceyane] multi storey residential tower is being constructed over plot measuring nearly 6500 sq. meter which was acquired by the Company M/s. Supertech Limited

from NOIDA Development Authority in the year 2006, regarding which its supplementary lease deed was registered in the office of Sub-Registrar, Second, Gautam Buddh Nagar…

2. **That, right from the beginning there was a pan for constructing separate complex viz. Apex and [Ceyane] and provisions have been separately made in both towers viz. swimming pool, car, club, parking and gym etc. The facilities of other old towers as shown in the brochure have been published by mistake, but concerned amendment was made in the brochure upon the company being informed by the residents residing in old towers**…

[…]

4. That, company has erected wall for the expansion of basement and above wall was erected by the company over its land and this basement area was not sold to any resident of old tower over which company has complete ownership. No adverse effect is there on the interests of any resident in erecting above wall, rather the residents of old tower have been removed from the allotted basement area by it. Company has full right to make construction over its land.

5. That, construction carried out earlier or being carried out by the company is completely legal and in accordance with Rules and company has not affected the interest of anybody and no fraud was committed by the company with anybody.

Therefore, it appears that the complainant having presented this false complaint inspired by mala fides wants to harass the company and wants to earn undue advantage by not making payment of an amount which is payable to the company. Therefore, it is requested that complaint presented by the complainant is liable to be dismissed. In addition, it is also requested that any personal name be not used in any correspondence or inquiry, rather name of company through its Director be used."

(**emphasis supplied**)

The above letter puts forth the case that T-16 and T-17 have been constructed as a separate project over the area which was obtained under the supplementary lease deed, and that it has separate provisions for all amenities and infrastructure. In fact, it indicates that the facilities of the older buyers were shown in the brochure but that representation was 'clarified' to be a 'mistake', which had been amended.

140 As such, it becomes important to refer to the supplementary lease deed, which was granted in favour of the appellant on 21 June 2006. The supplementary lease deed makes it clear that the demised premises admeasuring 6556.51 sq. mtrs. would form a part of the originally allotted plot. In the course of its affidavit before the High Court, the appellant contended that:

> "7. The Office bearers/members of the petitioners society has the right title & interest only in its flat and undivided interest in the common areas of the Emerald Court (phase I). He has the right to challenge if somebody is trying to encroach in his flat or in the Common area are intended to be used for the purpose of the residents. However, here this is not the case. It is stated that the "Apex & Ceyane" (Phase II) comprising of two towers has not encroached any area of the common of the Emerald Court (Phase I). Therefore the petitioner society does not have the locus to challenge the issues related with "Apex & Ceyane" (Phase- II)."

In other words, the case which was sought to be set up was that the flat purchasers had an undivided interest in the common areas of Phase I of the Emerald Court, but since T-16 and T-17 formed a part of Phase II, it did not affect the rights of the original flat purchasers of T-1 to T-15. This contention is expressly contrary to the clear terms governing the supplementary lease deed, which indicates that the area

comprising of the demised premises would form part of the original plot. Furthermore, the appellant having utilized the FAR of the entire plot, including the area which forms the subject matter of the original lease and the supplementary lease, cannot be allowed to assert to the contrary.

141 Hence, it is abundantly clear that the construction of T-16 and T-17 in accordance with the second revised plan and the third revised plan reduced the value of the undivided interest held by each individual flat owner in the common areas and facilities, thereby violating Section 5 of the UP 1975 Act and Section 5 of the UP Apartments Act 2010, since the flat owners' consent was not sought. Further, the third revised plan encroached upon the garden area in front of T-1, thereby resiling from the representation that had been made to the flat owners at the time when they purchased the apartments in T-1, without their consent. Therefore, it constituted a violation of Section 4(1) read with the proviso to Section 4(4) of the UP Apartments Act 2010.

142 Finally, the appellant has also tried to argue that: *(i)* the consent of each individual flat owner could not be taken and it had to be taken from the RWA, as a collective body; *(ii)* the RWA only came into existence on 20 October 2013, when it adopted the Model Bye-Laws under the UP Apartments Act 2010l *(iii)* that this was after the third revised plan was sanctioned; and *(iv)* hence, there existed no association to take consent from. The High Court has dealt with this argument in the impugned judgment by observing:

> "As per the averments of the respondent/company, the flats were handed over to the apartment owners by September 2009. The owners immediately formed Resident Welfare Association (RWA) and got it registered with the Registrar Societies, in the very same year. Adopting the model bye-laws, did not arise, as it was not enforced until 2011. After notification of Model bye-laws, the Deputy Registrar Firm, Societies and Chits, Meerut vide letter dated 14.12.2012 informed, that pending instructions from the Registrar Firm Societies and Chits Uttar Pradesh, no decision in the matter can be taken in respect of Model bye-laws and its registration. The Registrar Firm, Societies and Chits Uttar Pradesh vide circular dated 5.2.2013 addressed to all Deputy Registrars/District Registrars issued instructions for registration under Apartment Act, 2010 and directed that bye laws of existing RAW be accordingly amended. The petitioner/society vide resolution dated 20.10.2013 adopted the Model bye-laws and conducted elections and thereafter informed the Deputy Registrar.
>
> The respondent/company has recognized the petitioners society as RWA of the Apartment owners since inception and has continuously corresponded with the petitioner society as RWA. Letter dated 9.10.2012, 27.9.2012, 4.9.2012 and January, 2013 addressed to the petitioner society regarding redressal of their grievance is on record…"

Therefore, it is clear that: *(i)* the RWA came into existence in 2009 itself, when the first lot of apartment owners moved in; *(ii)* the appellant was communicating with the RWA ever since; and *(iii)* the RWA adopted the Model Bye-Laws under the UP Apartments Act 2010, as soon as it was practicable. These averments have not been challenged before this Court during the oral submissions by the appellant, and hence, it will be held bound by its own conduct. In any case, rights under the UP 1975 Act and UP Apartments Act 2010 have been provided to individual flat owners, and not to collective bodies like the RWA. Hence, even the non-constitution of the RWA will not extinguish the rights of individual flat owners. Indeed, however, when

such RWAs do exist, developers may use them to seek a common consent from all the flat owners instead of approaching them all individually.

F Collusion and Illegal Construction

143 The record of this case is replete with instances which highlight the collusion between the officers of NOIDA with the appellant and its management. The case has revealed a nefarious complicity of the planning authority in the violation by the developer of the provisions of law. The complicity of NOIDA has emerged, *inter alia*, from the following instances:

(i) The sanctioning of the second revised plan on 26 November 2009 in clear breach of the NBR 2006;

(ii) The refusal by NOIDA to disclose the building plans to the first respondent, in spite of a clear stipulation consistently in all the sanctioned plans that the plan would have to be displayed at the construction site of the appellant;

(iii) NOIDA's referral of RWA's request to access the sanctioned plans to the appellant to seek its consent and upon the refusal of the latter, a continuous failure to disclose them to the RWA;

(iv) Even when the CFO addressed a communication to NOIDA in regard to the violation of the minimum distance requirements in Emerald Court, it evinced no response and no investigation from them;

(v) In pursuance of the second revised plan of 26 September 2009, the appellant would appear to have built a foundation to support two buildings of forty and

thirty-nine floors, while the sanction for the extension from twenty-four to forty or thirty-nine floors came about only on 2 March 2012 through the third revised plan; and

(vi) The construction for T-16 and T-17 commenced in July 2009 by the appellant, five months before the sanction was received for the second revised plan on 26 November 2009, in spite of which NOIDA chose to take no action.

144 The High Court has dealt with the collusion between the officials of NOIDA and the appellant. This is writ large from the facts as they have emerged before this Court as well. The High Court has in these circumstances correctly come to the conclusion that there was collusion between the developer and the planning authority.

145 Condition 15 of the third revised plan dated 2 March 2012 stipulated that:

> "15. Compliance of provisions of Uttar Pradesh Apartment (promotion of construction, ownership & maintenance) Act 2010, and directions issued thereunder shall be ascertained.
>
> Sanctioned site plan/map is enclosed with this letter. Application for utility certificate would be made after completion of building work within validity of map/site plan, and without permission and certification building shall not be used…"

In spite of this condition, NOIDA made no effort to ensure compliance of the UP Apartments Act 2010, as a result of which the rights of the flat purchasers have been brazenly violated. This cannot point to any conclusion, other than the collusion between NOIDA and the appellant to avoid complying with the provisions of the

applicable statutes and regulations for monetary gain, at the cost of the rights of the flat purchasers.

146 The rampant increase in unauthorized constructions across urban areas, particularly in metropolitan cities where soaring values of land place a premium on dubious dealings has been noticed in several decisions of this Court. This state of affairs has often come to pass in no small a measure because of the collusion between developers and planning authorities.

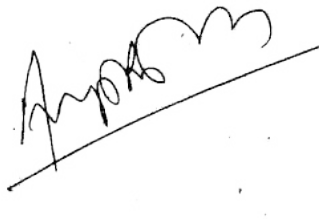
147 From commencement to completion, the process of construction by developers is regulated within the framework of law. The regulatory framework encompasses all stages of construction, including allocation of land, sanctioning of the plan for construction, regulation of the structural integrity of the structures under construction, obtaining clearances from different departments (fire, garden, sewage, etc.), and the issuance of occupation and completion certificates. While the availability of housing stock, especially in metropolitan cities, is necessary to accommodate the constant influx of people, it has to be balanced with two crucial considerations – the protection of the environment and the well-being and safety of those who occupy these constructions. The regulation of the entire process is intended to ensure that constructions which will have a severe negative environmental impact are not sanctioned. Hence, when these regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards.

Hence, illegal construction has to be dealt with strictly to ensure compliance with the rule of law.

148 The judgments of this Court spanning the last four decades emphasize the duty of planning bodies, while sanctioning building plans and enforcing building regulations and bye-laws to conform to the norms by which they are governed. A breach by the planning authority of its obligation to ensure compliance with building regulations is actionable at the instance of residents whose rights are infringed by the violation of law. Their quality of life is directly affected by the failure of the planning authority to enforce compliance. Unfortunately, the diverse and unseen group of flat buyers suffers the impact of the unholy nexus between builders and planners. Their quality of life is affected the most. Yet, confronted with the economic might of developers and the might of legal authority wielded by planning bodies, the few who raise their voices have to pursue a long and expensive battle for rights with little certainty of outcomes. As this case demonstrates, they are denied access to information and are victims of misinformation. Hence, the law must step in to protect their legitimate concerns.

149 In **K. Ramadas Shenoy** v. **Chief Officer, Town Municipal Council**[30], Chief Justice AN Ray speaking for a two judge Bench of this Court observed that the municipality functions for public benefit and when it "acts in excess of the powers conferred by the Act or abuses those powers then in those cases it is not exercising

[30] (1974) 2 SCC 506



its jurisdiction irregularly or wrongly but it is usurping powers which it does not possess". This Court also held:

> "27…The right to build on his own land is a right incidental to the ownership of that land. Within the Municipality the exercise of that right has been regulated in the interest of the community residing within the limits of the Municipal Committee. If under pretence of any authority which the law does give to the Municipality it goes beyond the line of its authority, and infringes or violates the rights of others, it becomes like all other individuals amenable to the jurisdiction of the courts. If sanction is given to build by contravening a bye-law the jurisdiction of the courts will be invoked on the ground that the approval by an authority of building plans which contravene the bye-laws made by that authority is illegal and inoperative. (See Yabbicom v. King [(1899) 1 QB 444])."

This Court held that an unregulated construction materially affects the right of enjoyment of property by persons residing in a residential area, and hence, it is the duty of the municipal authority to ensure that the area is not adversely affected by unauthorized construction.

150 These principles were re-affirmed by a two judge Bench in **Dr G.N. Khajuria** v. **Delhi Development Authority**[31] where this Court held that it was not open to the Delhi Development Authority to carve out a space, which was meant for a park for a nursery school. Justice BL Hansaria, speaking for the Court, observed:

> "10. Before parting, we have an observation to make. The same is that a feeling is gathering ground that where unauthorised constructions are demolished on the force of the order of courts, the illegality is not taken care of fully

[31] (1995) 5 SCC 762

> inasmuch as the officers of the statutory body who had allowed the unauthorised construction to be made or make illegal allotments go scot free. This should not, however, have happened for two reasons. First, it is the illegal action/order of the officer which lies at the root of the unlawful act of the citizen concerned, because of which the officer is more to be blamed than the recipient of the illegal benefit. It is thus imperative, according to us, that while undoing the mischief which would require the demolition of the unauthorised construction, the delinquent officer has also to be punished in accordance with law. This, however, seldom happens. Secondly, to take care of the injustice completely, the officer who had misused his power has also to be properly punished. Otherwise, what happens is that the officer, who made the hay when the sun shined (sic), retains the hay, which tempts others to do the same. This really gives fillip to the commission of tainted acts, whereas the aim should be opposite."

151 In **Friends Colony Development Committee** v. **State of Orissa**[32], this Court dealt with a case where the builder had exceeded the permissible construction under the sanctioned plan and had constructed an additional floor on the building, which was unauthorized. Chief Justice RC Lahoti, speaking for a two judge Bench, observed:

> "24. Structural and lot area regulations authorise the municipal authorities to regulate and restrict the height, number of storeys and other structures; the percentage of a plot that may be occupied; the size of yards, courts and open spaces; the density of population; and the location and use of buildings and structures. All these have in our view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk,

[32] (2004) 8 SCC 733

> inconvenience and hardship which is posed to the occupants of the building."

Noting that the private interest of land owners stands subordinate to the public good while enforcing building and municipal regulations, the Court issued a caution against the tendency to compound violations of building regulations:

> "25…The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into underhand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilised for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions."

152 In **Priyanka Estates International (P) Ltd.** v. **State of Assam**[33], Justice Deepak Verma, speaking for a two judge Bench, observed:

> "55. It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multistoreyed buildings. To some extent both parties can be said to be equally responsible for

[33] (2010) 2 SCC 27

> this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder."

The Court lamented that the earlier decisions on the subject had not resulted in enhancing compliance by developers with building regulations. Further, the Court noted that if unauthorized constructions were allowed to stand or are "given a seal of approval by Court", it was bound to affect the public at large. It also noted that the jurisdiction and power of Courts to indemnify citizens who are affected by an unauthorized construction erected by a developer could be utilized to compensate ordinary citizens.

153 In **Esha Ekta Apartments Coop. Housing Society Ltd.** v. **Municipal Corpn. of Mumbai**[34], Justice GS Singhvi, writing for a two judge Bench, reiterated the earlier decisions on this subject and observed:

> "8. At the outset, we would like to observe that by rejecting the prayer for regularisation of the floors constructed in wanton violation of the sanctioned plan, the Deputy Chief Engineer and the appellate authority have demonstrated their determination to ensure planned development of the commercial capital of the country and the orders passed by them have given a hope to the law-abiding citizens that someone in the hierarchy of administration will not allow unscrupulous developers/builders to take law into their hands and get away with it."

The Court further observed that an unauthorized construction destroys the concept of planned development, and places an unbearable burden on basic amenities

[34] (2013) 5 SCC 357

provided by public authorities. The Court held that it was imperative for the public authority to not only demolish such constructions but also to impose a penalty on the wrongdoers involved. This lament of this Court, over the brazen violation of building regulations by developers acting in collusion with planning bodies, was brought to the fore-front when the Court prefaced its judgment with the following observations:

> "1. In the last five decades, the provisions contained in various municipal laws for planned development of the areas to which such laws are applicable have been violated with impunity in all the cities, big or small, and those entrusted with the task of ensuring implementation of the master plan, etc. have miserably failed to perform their duties. It is highly regrettable that this is so despite the fact that this Court has, keeping in view the imperatives of preserving the ecology and environment of the area and protecting the rights of the citizens, repeatedly cautioned the authorities concerned against arbitrary regularisation of illegal constructions by way of compounding and otherwise."

Finally, the Court also observed that no case has been made out for directing the municipal corporation to regularize a construction which has been made in violation of the sanctioned plan and cautioned against doing so. In that context, it held:

> "56…We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The courts are also expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas."

154 These concerns have been reiterated in the more recent decisions of this Court in **Kerala State Coastal Zone Management Authority** v. **State of Kerala**[35], **Kerala State Coastal Zone Management Authority** v. **Maradu Municipality, Maradu**[36] and **Bikram Chatterji** v. **Union of India**[37].

155 In the present case, once this Court has determined that the sanctioned plan for Apex and Ceyane (T-16 and T-17) breached the NBR 2006, NBR 2010, NBC 2005, UP 1975 Act and the UP Apartments Act 2010, it becomes its duty to take stock of the violations committed by the appellant in collusion with NOIDA. The appellant has raised false pleas and attempted to mislead this Court, while the officials of NOIDA have not acted *bona fide* in the discharge of their duties. The appellant has stooped to the point of producing a fabricated sanctioned plan. Therefore, we confirm the directions of the High Court including the order of demolition and for sanctioning prosecution under Section 49 of the UPUD Act, as incorporated by Section 12 of the UPIAD Act 1976, against the officials of the appellant and the officers of NOIDA for violations of the UPIAD Act 1976 and UP Apartments Act 2010.

[35] (2019) 7 SCC 248
[36] 2018 SCC OnLine SC 3352
[37] (2019) 19 SCC 161

G Conclusion

156 To summarize our findings, the documentary materials referred to and analyzed in this judgment indicate that:

(i) The land allotted to appellant under the original lease agreement and the supplementary lease deed constitute one plot;

(ii) The land which was allotted through the supplementary lease deed forms a part of original Plot No 4, and would be governed by the same terms and conditions as the original lease deed;

(iii) The sanction given by NOIDA on 26 November 2009 and 2 March 2012 for the construction of T-16 and T-17 is violative of the minimum distance requirement under the NBR 2006, NBR 2010 and NBC 2005;

(iv) An effort was made to get around the violation of the minimum distance requirement by representing that T-1 together with T-16 and T-17 form one cluster of buildings in the same block. This representation was sought to be bolstered by providing a space frame between T-1 and T-17. The case that T-1, T-16 and T-17 are part of one block is directly contrary to the appellant's stated position in its representations to the flat buyers as well as in the counter affidavit before the High Court. The suggestion that T-1, T-16 and T-17 are part of one block is an after-thought and contrary to the record;

(v) After realizing that the building block argument would not pass muster, another false case was sought to be set up with the argument that T-1 and T-17 are dead end sides, thereby obviating the need to comply with the

minimum distance requirements. This argument is belied by the comprehensive report submitted by NBCC. The sides of T-1 and T-17 facing each other are not dead end sides since both the sides have vents/egresses facing the other building;

(vi) By constructing T-16 and T-17 without complying with the Building Regulations, the fire safety norms have also been violated;

(vii) The first revised plan of 29 December 2006 contained a clear provision for a garden area adjacent to T-1. In the second revised plan of 26 November 2009, the provision for garden area was obliterated to make way for the construction of Apex and Ceyane (T- 16 and T – 17). The common garden area in front of T-1 was eliminated by the construction of T-16 and T-17. This is violative of the UP Apartments Act 2010 since the consent of the flat owners was not sought before modifying the plan promised to the flat owners; and

(viii) T-16 and T-17 are not part of a separate and distinct phase (Phase–II) with separate amenities and infrastructure. The supplementary lease deed stipulates that the they are part of the original project. Hence, the consent of the individual flat owners of the original fifteen towers, individually or through the RWA, was a necessary requirement under the UP Apartments Act 2010 and UP 1975 Act before T-16 and T-17 could have been constructed, since they necessarily reduced the undivided interest of the individual flat owners in the common area by adding new flats and increasing the number from 650 to 1500; and

(ix) The illegal construction of T-16 and T-17 has been achieved through acts of collusion between the officers of NOIDA and the appellant and its management.

157 For the reasons which we have indicated above, we have come to the conclusion that:

(i) The order passed by the High Court for the demolition of Apex and Ceyane (T-16 and T-17) does not warrant interference and the direction for demolition issued by the High Court is affirmed;

(ii) The work of demolition shall be carried out within a period of three months from the date of this judgment;

(iii) The work of demolition shall be carried out by the appellant at its own cost under the supervision of the officials of NOIDA. In order to ensure that the work of demolition is carried out in a safe manner without affecting the existing pleadings, NOIDA shall consult its own experts and experts from Central Building Research Institute Roorkee[38];

(iv) The work of demolition shall be carried out under the overall supervision of CBRI. In the event that CBRI expresses its inability to do so, another expert agency shall be nominated by NOIDA;

(v) The cost of demolition and all incidental expenses including the fees payable to the experts shall be borne by the appellant;

[38] "**CBRI**"

(vi) The appellant shall within a period of two months refund to all existing flat purchasers in Apex and Ceyane (T-16 and T -17), other than those to whom refunds have already been made, all the amounts invested for the allotted flats together with interest at the rate of twelve per cent per annum payable with effect from the date of the respective deposits until the date of refund in terms of Part H of this judgment; and

(vii) The appellant shall pay to the RWA costs quantified at Rs 2 crore, to be paid in one month from the receipt of this judgment.

H Interlocutory Applications

158 Mr Vikas Singh, learned Senior Counsel, has during the course of the hearing tendered an additional affidavit to indicate the following position:

(i) The contention of RWA that the appellant has collected the onetime lease rent at the rate of Rs 190 per sq. foot from all the flat owners in T-1 to T-15 and that though an amount of Rs 16.75 crores was collected, only Rs 13.32 crores was payable to NOIDA is incorrect;

(ii) The appellant did not collect the lease rent payable to NOIDA from all allotees of T-1 to T-15. An amount of Rs 7.54 crores was received from some allotees;

(iii) The lease rent paid to NOIDA was in the amount of Rs 14.49 crores;

(iv) A total of 659 units were booked in T-1 to T-14; and

(v) Of these units 245 flats were booked till 28 December 2006; 141 flats were booked between 29 December 2006 and 25 November 2009, 114 flats were

booked between 26 November 2009 and 1 March 2012, while 159 units were booked after 2 March 2012.

On this basis, it has been submitted that 518 units were booked either before 28 December 2006 (before the first revised plan) or after 26 November 2009 (after the second revised plan). The figures which have been indicated by the appellant demonstrate that between the first revised plan on 29 December 2006 and the second revised plan on 25 November 2009, 141 flat purchasers had booked flats. They did so on the clear representation contained in the sanctioned plans.

159 During the pendency of these proceedings, two interim orders were passed by this Court on 6 September 2016 and 22 September 2017. By the order dated 6 September 2016, this Court directed the appellant to pay a return of ten per cent to those flat purchasers who continue to stay in the project. By the order dated 22 September 2017, an exit option was granted to those who sought refunds to take the amounts invested with interest at the rate of twelve per cent per annum.

160 The position as indicated to this Court by Mr Ravindra Kumar, learned Counsel, in respect of flats in Apex and Ceyane (T-16 and 17) is as follows:

(i) Number of flats: 915;

(ii) Number of shops: 21

(iii) Number of bookings: 633;

(iv) Persons who have reinvested in other projects of the developer: 133;

(v) Purchasers to whom refund has been granted: 248; and

(vi) Remaining purchasers: 252.

161 The above position indicates that following the opt-out which was provided in terms of the order of this Court, 248 purchasers have opted for refunds while 252 purchasers in T-16 and T-17 remain committed to the project.

162 Mr Gaurav Agarwal, learned *Amicus Curiae* has rendered comprehensive assistance to the Court. Apart from urging his submissions in an objective and dispassionate manner, the *Amicus Curiae* has painstakingly complied the pleadings, documents and statutory provisions to facilitate the convenience of arguing Counsel and the Court. We record our appreciation for the assistance which has been rendered by the *Amicus Curiae*. The *Amicus Curiae* has also prepared a note for the purpose of segregating the applications which have been filed by home buyers into distinct categories, and suggesting reliefs to each category based on the outcome of the proceedings. These categories are:

Category I

163 Buyers who have received ROI payments:

(i) By its orders dated 6 September 2016 and 11 January 2017, this Court directed that those home buyers who have chosen to stay on with the project and do not desire refund should be paid ROI at ten per cent per annum; and

(ii) Thirteen persons filed applications before this Court claiming that ROI payments were not made by the appellant. The appellant has intimated the payments which are due till July 2021. Though, the home buyers claim higher

amounts, the *Amicus Curiae* has proceeded on the figures furnished by the appellant which are tabulated as follows:

Sr. No.	Name	IA no.	Interest due till 1st July, 2021 as per email received from Supertech	Name of AOR
1	Aarti Puri	55556/2021	Rs. 16,78,720	Nishe Rajen Shonker
2	Divay Puri	80599/2021	Rs. 16,78,548	Do
3	Jatin Vardi	55562/2021	Rs. 11,65,686	Do
4	Amit Khanna	56228/2021	Rs. 11,65,686	Do
5	Narinder Thakur	55550/2021	Rs. 10,41,578	Do
6	Manju Kohli	142969/2014	Rs. 6,78,524	Do
7	Namrata Tuli	142975/2018	Rs. 8,26,616	do
8	Mahesh Jaura	80916/2019	Rs.1,11,160	do
9	Kavita Jaura	80875/2019	Rs. 2,01,299	do
10	Hemendra Varshney	80879/2019	Rs. 1,33,980	do
11	Shachi Varshney	80881/2019	Rs. 1,31,988	do
12	Bandana Kedia	80918/2019	Rs. 1,31,700	do
13	Sapna Ahluwalia	43555/2021	Rs. 19,87,020	do

164 The submission of the *Amicus Curiae* is that if the buildings were to stand, the home buyers may be paid the above ROI. On the other hand, if the buildings are to be demolished, the home buyers should receive refund with interest and the amounts would be subsumed in the interest to be paid. Since this Court has come to the conclusion that the buildings are to be demolished, the general directions in regard to refund together with interest will subsume the claims of the above home buyers.

Category 2

165 Homebuyers to whom principal has been paid but interest payments have remained:

PART H

(i) By an order dated 30 July 2018, this Court directed that homebuyers who had registered on the portal and were willing to take twelve per cent simple interest per annum from the date of deposit till the date of payment towards full and final payment would be refunded the principal sum together with interest at the above rate on filing affidavits to that effect; and

(ii) The registry has refunded the principal sum to thirteen homebuyers but since their affidavits were not received by the *Amicus Curiae* within time, interest remained to be paid. The details have been tabulated by the *Amicus Curiae* as follows:

Sr. No.	Name	Interest payable	IA no.	Name of AOR
1	Anuj Goyal	Rs. 31,40,704	69916-69917 of 2019	Abhijeet Sinha
2	Sumit Goel	Rs. 28,97,199		
3	Priya Goel	Rs. 28,97,199		
4	Mukta Jain	Rs. 30,10,253		
5	Subhash Chand Jain	Rs. 29,05,957		
6	Abhishek Jain	Rs. 30,42,129		
7	Abhishek Jain	Rs. 30,22,785		
8	Herbinder Singh	Rs. 32,84,789		
9	Vineet Kapoor	Rs. 28,90,491		
10	Vishal Maheshwari	Rs. 22,45,399	24823/2020	Nishe Rajen Shonker
11	Shipli Maheshwari	Rs. 15,30,585	24834/2020	do
12	Poonam Lata Kushwaha	Rs. 29,22,513	120666/2019 & 120669/2019	Sweta Rani
13	Paramita Ray	Rs. 40,65,228		In-person

166 The *Amicus Curiae* has submitted that irrespective of the fate of the pleadings, the appellant should be directed to refund the interest as computed above since the above homebuyers have exited from the project. We accept the

submission and direct the appellant to refund interest payments to the thirteen homebuyers as tabulated above within two months.

Category 3

167 Home buyers under a 'subvention scheme':

(i) Under the subvention scheme, a home loan is taken in the name of the homebuyer but EMIs are to be paid by appellant till possession is granted. Certain homebuyers are governed by the subvention scheme. There is a default by the appellant in paying the EMIs;

(ii) By an order dated 30 July 2018, this Court directed the appellant to continue paying the EMIs. Sixteen homebuyers have moved this Court for a direction for payment of the balance EMIs due;

(iii) The *Amicus Curiae* has tabulated the interest payable to the homebuyers (as computed by them and by the appellant separately):

Sr. No.	Name	Interest as indicated by **homebuyer**	Interest as indicated by **Supertech**	IA no.	Name of AOR
1	Parvinder Singh	Rs. 11,71,110	Rs. 8,81,847	24814, 24825, 24839, 24848, 24972, 24973, 24974, 24978, 24984, 24985, 24989, 24992, 24996,	Khaitan & Co.
2	Amit Mangla	Rs. 12,09,052	Rs. 12,09,052		
3	Binod Kumar	Rs. 11,73,902	Rs. 8,43,073		
4	Shailesh Kr Singh	Rs. 11,69,640	Rs. 8,51,310		
5	Dev Verma	Rs. 11,73,919	Rs. 8,58,311		
6	Naveen Kumar	Rs. 16,08,467	Rs. 11,07,792		
7	Vaibhav Mishra	Rs. 11,66,778	Rs. 8,37,666		
8	Mandar Hastekar	Rs. 11,66,826	Rs. 8,53,381		

9	Ashish Sharma	Rs. 11,73,092	Rs. 8,25,030	24997, 29374 & 29386/2020	
10	Hrisikesh-Kshitiza Bawa	Rs. 11,73,919	Rs. 8,39,984		
11	Babneet Singh	Rs. 11,74,308	Rs. 8,40,383		
12	Romit Agarwal	Rs. 11,66,182	Rs. 8,59,768		
13	Bhupinder-Puran Das Pruthi	Rs. 11,51,855	Rs. 9,43,782		
14	Nilay Ashmi	Rs. 11,67,529	Rs. 8,29,579		
15	Manoj Kr Pamneja (*)	Rs. 8,10,866	Nil	25950/18	Krishnamohan K
16	Sandeep Jain (*)	Rs. 8,10,866	nil	67854 & 67856/2020	Arjun Garg

The *Amicus Curiae* submits that the amounts calculated above be paid.

168 The *Amicus Curiae* submitted that if the buildings are ordered to be demolished, the appellant may close the home loans and refund the amounts contributed by the homebuyers with such interest as this Court may determine. On the other hand, if the buildings stand, the appellant may be directed to clear the outstanding EMIs and continue paying them until possession. Since the buildings have been ordered to be demolished under the directions of this Court in the present judgment, the appellant shall close the home loans and refund the amounts contributed by each of the above home buyers with interest at the rate of twelve per cent per annum within two months.

PART H

Category 4

169 There are two IAs in which the homebuyers have a dispute with the appellant relating to the amounts due to the homebuyers:

(i) In IA No 56187/2021, Mr DP Tripathi was allotted Flat No 1105 in Apex. A total amount of Rs 31,70,410 was paid for the flat. Out of this amount, Rs. 14,25,000 was funded by loan. The appellant paid the loan pursuant to an order of this Court. However, the applicant has paid the balance amount of Rs 17,45,410 out of his own funds towards the flat, and Rs 6,58,700 as loan repayments before it was ultimately settled by the appellant. ROI payments for 27 months amounting to Rs 5,20,315 have been received from the appellant. Thus, the case of the applicant is that a sum of Rs 18,83,795 remains invested by the applicant, which may be ordered to be refunded. In contrast, the appellant has stated that this dispute has been settled by the Debt Recovery Tribunal and nothing is payable; and

(ii) In IA No 67028/2017, Mr Raj Kishore had purchased Flat No 3507, in respect of which the amount has been refunded along with interest. A cheque of Rs 67,319 bearing no 213233 for the last payment remained to be encashed due to oversight. The *Amicus Curiae* has suggested that the appellant may be directed to issue a fresh cheque pertaining to this payment.

170 With regards to IA No 56187/2021, since the underlying dispute regarding payment is pending in this IA, it is de-linked and will be heard separately. In IA No

67028/2017, the appellant is directed to provide a fresh cheque for an amount of Rs 67,319 to the applicant within one month.

Category 5

171 Application of homebuyers which have been rendered infructuous. The *Amicus Curiae* has tabulated applications which have been rendered infructuous, indicating the reasons for the same:

Applications of home buyers which are rendered infructuous

Sr. No.	Name of homebuyers	IA no.	Name of AOR	Reasons
1	Leo VIII Films Pvt. Ltd.	18211/2018 18217/2018	Nitish Massey	Refund received with interest
2	Raj Kishore	67028/2017	Mahima Gupta	Refund received with interest
3	Sajeev Katarya	24785/2017	Rajeev Singh	Refund received with interest
4	Girish Arun Singpote	175122 & 175124 of 2018	UNUC Legal LLP	Applicants have not applied in portal
5	Darpan Bhargav	137549/2018	Gopal Jha	Applicant has not applied in portal
6	1)Arvind Kaur Sodhi 2) Amarjit Singh Rana & Jasjit Kaur	18064-18066/2020	Gopal Jha	Applicants have not applied in portal
7	Poonam Kulbir Krishnan	6919/2018	Aparna Bhat	This does not relate to this project, but it relates to the project in Gurgaon
8	Sanjay Bahl	24785/17	Rajeev Singh	Refund already paid @12%
9	Mini Kohli & Ors.	68049/17	PK Jain	Refund already paid with interest
10	Vibhav Bindal	96289/17	Pinky Behera	Refund already paid with interest
11	Sayed Asad Ahmad	11/15 in SLP	Shantanu	Applicant has not

PART H

		14314/14	Krishna	applied in portal
12	Vivek Sharma & others	12/2015 in SLP 14314/14	Rajeev Singh	Applicant has not applied in portal
13	Usha Rani & others	14/16 in SLP 14314/14	Rajeev Singh	There are number of applicants in this application. Some of them got refund with interest. Others did not apply.
14	Vishal Raj Singh	IA 15/2016 in SLP 14314/14	Rajeev Singh	Applicant has not applied in portal
15	Ishwar Kumar Singh	IA 16/2016	Amit Anand Tiwari	Refund already paid with interest
16	Sanjeev Katariya	IA 17/2016 in SLP 14314/14	Rajeev Singh	Refund already paid with interest
17	Ms. Raj Kishore & another	IA 18/2016 in SLP 14314/14	Mahima Gupta	One applicant has already paid refund with interest and other did not apply in portal
18	Mini Kohli & others	IA 21/17 in SLP 14314/14	PK Jain	Some applicants have already paid refund with interest and other did not apply in port.
19	Rashmi Arora	121826,121828/17	MC Dhingra	Refund already paid with interest
20	Jitendra Kumar Sabharwal & others	IA 121085/17	Rajeev Singh	Some applicants have already paid refund with interest and other did not apply in port.
21	Poonam Kulbir Krishan	14898/18	Aparna Bhat	This does not relate to present project.
22	Usha Rani & others	35845/21	Avjit Mani Tripathi	Most of the applicants have get refund of with 12%. Now they want 14% interest.
23	Manprit Kaur	IA 20/18 & 95793/16 in SLP	Anupam Lal Das	Refund already paid with interest

		14314/14		
24	Sajeev Aggrawal	IA 121841/17 & 121842/17	MC Dhingra	Refund already paid with interest

172 The above applications are disposed of as infructuous.

173 The appeals shall stand disposed of in the above terms. The contempt petitions are disposed of accordingly.

174 Pending application(s), if any, stand disposed of.

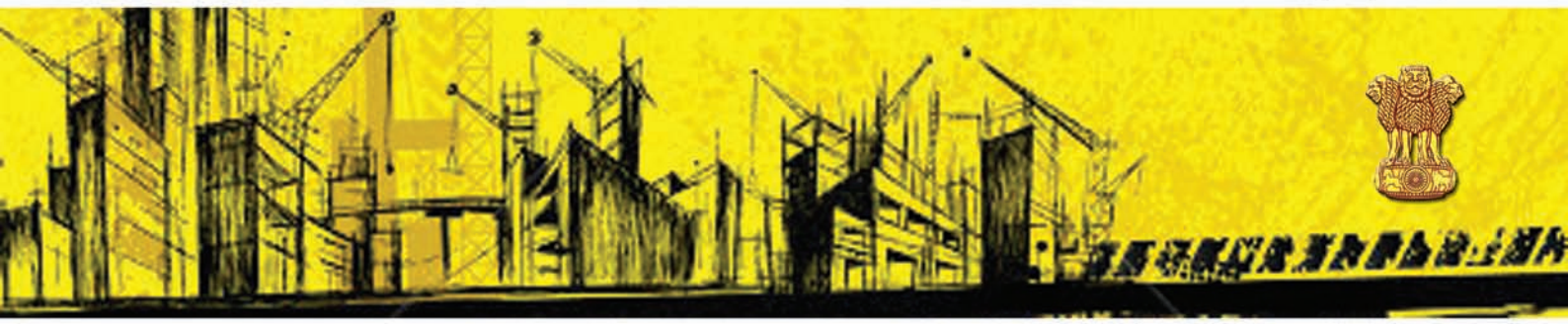
……J
[Dr Dhananjaya Y Chandrachud]

……J
[MR Shah]

New Delhi;
August 31, 2021

ANNEXURE-3

Model Building Bye-Laws,2016



Town and Country Planning Organisation
Ministry of Urban Development

Model Building Bye-Laws,2016

Town and Country Planning Organisation
Ministry of Urban Development

Revised and Published in 2016.

Overall guidance
Sh. Neeraj Mandloi, IAS. Joint Secretary, Ministry of Urban Development, Govt. of India

Technical Team
TCPO

Late Sh. J.B. Kshirsagar.	Former Chief Planner
Sh. R. Srinivas	TCP (Head), MUT Division
Sh. Sudeep Roy	Assistant TCP
Ms. D Blessy	Assistant TCP

Stakeholders in Consultative Workshop
Central Governments agencies/ Institutes:
National Disaster Management Authority
Bureau of Indian Standards
National Building Construction Corporation
National Remote Sensing Centre
Delhi Development Authority
National Capital Region Planning Board
Indian Institute of Public Administration
Municipal Corporation of Delhi (South)
Housing and Urban Development Corporation
Schools of Planning and Architecture

State Government Departments
State Town and Country Planning Departments
Selected Urban Development Authorities
Selected Urban Local Bodies.
Associations like CREDAI and NAREDCO

Expert Review

Prof. Dr. PSN Rao	Chairman, Delhi Urban Arts Commission. New Delhi

1. DEFINITIONS

1.0 General

In these Bye-Laws, unless the context otherwise requires the definition given shall have the meaning indicated against each term.
All mandatory Master Plan/Zonal Plan regulations regarding use, land use, coverage, FAR, set- back, open space, height, number of stories, number of dwelling units, parking standards etc. for various categories of buildings including modification therein made from time to time shall be applicable mutatis mutandis in the Building Bye-Laws regulations under this clause. All amendments / modifications made in the aforesaid regulations shall automatically stand deemed to have been included as part of these Bye-laws.

1.1 Definitions

1. **"Access"** - A clear approach to a plot or a building.
2. **"Act"**- The Act of the Local Body/Authority concerned.
3. **"Addition and/or Alteration"**- A change from one occupancy to another, or a structural change including an addition to the area or change in height or the removal of part of building, or any change to the structure, such as the construction or removal or cutting into of any wall or part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to fixtures or equipment" as provided in these Bye-Laws.
4. **"Advertising Sign"**- Any surface or structure with characters, letters or illustrations applied thereto and displayed in any manner whatsoever outdoors for the purpose of advertising or giving information or to attract the public to any place, person, public performance, article, or merchandise, and which surface or structure is attached to, forms part of, or is connected with any building, or is fixed to a tree or to the ground or to any pole, screen, fence or hoarding or displayed in space, or in or over any water body included in the jurisdiction of the Authority.
5. **"Air-conditioning"**- The process of treating air so as to control simultaneously its temperature, humidity, purity, distribution and air movement and pressure to meet the requirements of the conditioned space.
6. **"Amenity"**- Includes roads, street, open spaces, parks, recreational grounds, play grounds, gardens, water supply, electric supply, street lighting, sewerage, drainage, public works and other utilities, services and conveniences.
7. **"Application"**- An application made in such form as may be prescribed by the Authority from time to time.
8. **"Approved"**- As approved/sanctioned by the Authority under applicable Bye-Laws.
9. **"Architect"**- A person holding a graduate degree in Bachelor of Architecture from any institute recognized by the Council of Architecture (COA) and has his/her name entered in the register of COA for the time being, with a valid COA Registration number. (Please see Appendix "E"- Qualification and Competence of Technical Personnel for Preparation of Schemes for Building Permit and Supervision).
10. **"Architect/Professional on record"**- An architect/Competent professional who is brought on record to represent his/her client for a construction project, to act on their behalf regarding building permits and process of construction (as detailed at Section

6.3.8 and competence given as per Appendix 'E'). He/She may be registered with the Authority for the cause.

11. **"Area"**- In relation to a building means the superficies of a horizontal section thereof made at the plinth level inclusive of the external walls and of such portions of the party walls as belong to the building

12. **"Authority"**- The Authority which has been created by a statute and which, for the purpose of administering the Code/Part, may authorize a committee or an official or an agency to act on its behalf; hereinafter called the 'Authority'. Authority can be any Urban Local Body/Urban Development Authority/Industrial Development Authority or any other authority as notified by the State Government as the case may be.

13. **"Balcony"**- A horizontal projection, cantilevered or otherwise including a parapet" handrail, balustrade, to serve as a passage or sit out place.

14. **"Barsati"**- A habitable room/rooms on the roof of the building with or without toilet / kitchen.

15. **"Basement or Cellar"**- The lower storey of a building, below or partly below the ground level, with one or more than one levels.

16. **"Building"**- A structure constructed with any materials whatsoever for any purpose, whether used for human habitation or not, and includes:-

i) Foundation, plinth, walls, floors, roofs, chimneys, plumbing and building services, fixed platforms etc.

ii) Verandahs, balconies, cornices, projections etc.

iii) Parts of a building or anything affixed thereto;

iv) Any wall enclosing or intended to enclose any land or space, sign and outdoor display structures; etc.,

v) Tanks constructed or fixed for storage of chemicals or chemicals in liquid form and for storage of water, effluent, swimming pool, ponds etc.,

vi) All types of buildings as defined in (a) to (q) below, except tents, shamianas and tarpaulin shelters erected temporarily for temporary purposes and ceremonial occasions, shall be considered to be "buildings".

Types of Buildings based on use of premises or activity:

a. **"Residential Building"**- includes a building in which sleeping and living accommodation is provided for normal residential purposes, with cooking facilities and includes one or more family dwellings, apartment houses, flats, and private garages of such buildings.

b. **"Educational Building"**- Includes a building exclusively used for a school or college, recognized by the appropriate Board or University, or any other Competent Authority involving assembly for instruction, education or recreation incidental to educational use, and including a building for such other uses as research institution. It shall also include quarters for essential staff required to reside in the premises, and building used as a hostel captive to an educational institution whether situated in its campus or outside.

c. **"Institutional Building"**- Includes a building constructed by Government, Semi-Government Organizations or Registered Trusts and used for medical or other treatment, or for an auditorium or complex for cultural and allied activities or for an hospice, care of persons suffering from physical or mental illness, handicap, disease or infirmity, care of orphans, abandoned women, children and infants, convalescents,

destitute or aged persons and for penal or correctional detention with restricted liberty of the inmates ordinarily providing sleeping accommodation and includes dharamshalas, hospitals, sanatoria, custodial and penal institutions such as jails, prisons, mental hospitals, houses of correction, detention and reformatories etc.

d. **"Assembly Building"**- A building or part thereof, where groups of people (not < 50) congregate or gather for amusement, recreation, social, religious, patriotic, civil, travel and similar purposes and this includes buildings of drama and cinemas theatres, drive-in-theatres, assembly halls, city halls, town halls, auditoria, exhibition halls, museums, "mangal karyalayas", skating rinks, gymnasia, restaurants, eating or boarding houses, places of worship, dance halls, clubs, gymkhanas and road, railways, air, sea or other public transportation stations and recreation piers.

e. **"Business Building"**- Includes any building or part thereof used principally for transaction of business and/or keeping of accounts and records including offices, banks, professional establishments, court houses etc., if their principal function is transaction of business and/or keeping of books and records.

f. **"Mercantile Building"-** Includes a building or part thereof used as shops, stores or markets for display and sale of wholesale and or retail goods or merchandise, including office, storage and service facilities incidental thereto and located in the same building

g. **"Industrial Building"**- Includes a building or part thereof wherein products or material are fabricated, assembled or processed, such as assembly plants, laboratories, power plants, refineries, gas plants, mills, dairies and factories etc.,

h. **"Storage Building"**- A building or part thereof used primarily for storage or shelter of goods, wares, merchandise and includes a building used as a warehouse, cold storage, freight depot, transit shed, store house, public garage, hanger, truck terminal, grain elevator, barn and stables.

i. **"Hazardous Building"**- Includes a building or part thereof used for-

   i. Storage, handling, manufacture of processing of radioactive substances or highly combustible or explosive materials or of products which are liable to burn with extreme rapidity and/or producing poisonous fumes or explosive emanations.

   ii. Storage, handling, manufacture or processing of which involves highly corrosive, toxic or noxious alkalis, acids, or other liquids, gases or chemicals producing flame, fumes and explosive mixtures etc. or which result in division of matter into fine particles capable of spontaneous ignition

j. **"Mixed Land Use Building"**- A building partly used for non-residential activities and partly for residential purpose.

k. **"Wholesale Establishment"**- An establishment wholly or partly engaged in wholesale trade and manufacture, wholesale outlets, including related storage facilities, warehouses and establishments engaged in truck transport, including truck transport booking agencies.

Types of buildings based on design and height:

a. **"Detached Building"**- Includes a building with walls and roofs independent of any other building and with open spaces on all sides within the same plot.

b. **"Multi-Storeyed Building or High Rise Building"**- A building above 4 stories, and/or a building exceeding 15 meters or more in height (without stilt) and 17.5M (including stilt).

c. **"Semi-detached Building"**- A building detached on three sides with open space as specified in these regulations.

Types of buildings based on other features:

a. **"Special Building"**- Includes all buildings like assembly, industrial, buildings used for wholesale establishments, hotels, hostels, hazardous, mixed occupancies with any of the aforesaid occupancies and centrally air conditioned buildings having total built up area exceeding 500 sq m.

b. **"Multi Level Car parking"**- A building partly below ground level having two or more basements or above ground level, primarily to be used for parking of cars, scooters or any other type of light motorized vehicle.

Types of buildings based on safety due to use/ maintenance level:

a. **"Slum"** – Buildings that are in poor condition of maintenance or have compromised habitability due to poor ventilation, sanitation or otherwise are termed slums. These are generally declared or notified as slums under relevant legislation by competent authority

b. **"Unsafe Building"**- Includes a building which:

i) Is structurally unsafe, or

ii) Is insanitary, or

iii) Is not provided with adequate means of ingress or egress or

iv) Constitutes a fire hazard or

v) Is dangerous to human life or

vi) In relation to its existing use, constitutes a hazard to safety or health or public welfare by maintenance, dilapidation or abandonment.

Note: *All unsafe buildings /structure will require to be restored by repairs, demolition or dealt with as directed by the Authority. The relevant provisions of the Act shall apply for procedure to be followed by the Authority in taking action against such buildings.*

17. **"Building Height"**- The vertical distance measured

i) In the case of flat roofs from the average level of the front road and continuance to the highest point of the building.

ii) In case of pitched roofs upto the point where the external surface of the outer wall intersects the finished surface of the sloping roof and

iii) In the case of gables facing the road midpoint between the eaves level and the ridge.

Architectural features serving no other function except that of decoration shall be excluded for the purpose of measuring heights. The height of the building shall be taken upto the terrace level for the purpose of fire safety requirement.

18. **"Building Envelope"** - The horizontal spatial limits up to which a building may be permitted to be constructed on a plot.

19. **"Building Line"**- The line upto which the plinth of building adjoining a street or an extension of a street or on a future street may lawfully extend and includes the lines prescribed, if any, in any scheme and/or development plan. The building line may change from time-to-time as decided by the Authority.

20. **"Cabin"**- A non-residential enclosure constructed of non-load bearing partitions.

21. **"Canopy"**- shall mean a cantilevered projection from the face of the wall over an entry to the building at the lintel or slab level provided that:

i) It shall not project beyond the plot line.

ANNEXURE-4

SECOND MASTER PLAN
FOR
CHENNAI METROPOLITAN AREA, 2026

Volume II
Development Regulations

(Originally approved by the Government of Tamil Nadu in G.O.Ms. No. 190 H&UD Dept., dated 2.9.2008, and notified in the Tamil Nadu Government Gazettee Extraordinary No.266, Part II-Section 2 dated September 2, 2008)

Amendments incorporated upto May, 2013

Chennai Metropolitan Development Authority
Thalamuthu - Natarajan Building,
No.1 Gandhi - Irwin Road, Egmore, Chennai - 600 008.

Contents

Annexures

Development Regulations for Chennai Metropolitan Area

1. Short title:

(1) These regulations may be called Development Regulations for Chennai Metropolitan Area.

(2) It extends to the whole of Chennai Metropolitan Area.

2. Definition

(1) **Access** means way to a plot or a building.

(2) **Accessory Use** means any use of the premises subordinate to the principal use and customarily incidental to the principal use.

(3) **Act** means the Tamil Nadu Town and Country Planning Act 1971 (Tamil Nadu Act 35 of 1972) as amended from time to time.

(4) **Alteration** means a change from one occupancy to another, or a structural change, such as an addition to the area or height, or the removal of part of a building, or any change to the structure, such as the construction of, cutting into or removal of any wall, partition, column, beam, joist, floor or other support, or a change to or closing of any required means of ingress or egress or a change to the fixtures or equipment.

(5) **Assembly Building** means any building or part of a building, where 50 persons or more congregate or gather for amusement, recreation, social, religious, patriotic, civil, travel and similar purposes. These shall include theatres, motion picture houses, assembly halls, auditoria, exhibition halls, museums, skating rinks, large gymnasiums, places of worship, dance halls, club rooms, passenger stations and terminals of air, surface and marine, public transportation services, stadia, etc.,

(6) **Authority** means the Chennai Metropolitan Development Authority constituted under the Act.

(7) **Balcony** – A cantilever projection, with a handrail or balustrade or a parapet, to serve as sitting out place.

(8) **Basement or Cellar** – The lower storey or storeys of a building below or partly below ground level with majority of its headroom below ground level.

(9) **Building** includes

- a house, out-house, stable, latrine, godown, shed, hut, wall (other than a boundary wall) and any other structure whether of masonry, bricks, mud, wood, metal or any other material whatsoever;
- a structure on wheels or simply resting on the ground without foundation;
- a ship, vessel, boat, tent, van and any other structure used for human habitation or used for keeping or storing any article or goods; and
- the garden, grounds, carriages and stables, if any, appurtenant to any building.

(10) **Building Line** means a line behind the street-alignment and to which the main wall of a building abutting on a street may lawfully extend

(11) **Security cabin** means a non-residential enclosure constructed of non-load bearing partition.

(12) **Canopy/ portico/porch**-means cantilever projection at lintel level or ground floor roof level over an entrance of a building.

(13) **Chimney** - An upright shaft containing one or more flues provided for the conveyance to the outer air of any product of combustion resulting from the

operation of heat production appliance or equipment employing solid, liquid or gaseous fuel.

(14) **Competent Authority** means the Chennai Metropolitan Development Authority or a local authority concerned to whom the Chennai Metropolitan Development Authority has delegated the powers for issue of Planning Permission.

(15) **Corridor** means a common passage or circulation space within a building.

(16) **Continuous building** means buildings constructed without any side set back. Row type housing also falls in to this category.

(17) **Covered Area** – Ground area covered by the building above the plinth level and includes parts of the building projecting out in other storey (including basement floor levels).

(18) **Development** means the carrying out of all or any of the works contemplated in a regional plan, master plan, detailed development plan or a new town development prepared under Town and Country Planning Act 1971, [as defined in clause 13 of section 2 of the Tamilnadu Town and Country Planning Act 1971 including subdivision, layout, reconstitution or amalgamation of land] and shall include the carrying out of building, engineering, mining or other operations in, or over or under land, or the making of any material change in the use of any building or land:

Provided that for the purpose of the Town and Country Planning Act 1971, the following operations or uses of land shall not be deemed to involve development of the land that is to say,

i. the carrying out of any temporary works for the maintenance, improvement or other alteration of any building, being works which do not materially affect the external appearance of the building;

ii. the carrying out by a local authority of any temporary works required for the maintenance or improvement of a road, or works carried out on land within the boundaries of the road;

iii. the carrying out by a local authority or statutory undertaker of any temporary works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;

iv. the use of any building or other land within the cartilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such; and

v. the use of any land for the purpose of agriculture, gardening or forestry (including afforestation) and the use for any purpose specified in this clause of this provision of any building occupied together with the land so used.

(19) **Drain** – A conduit or channel for the carriage of storm water, sewage, wastewater or other water borne wastes.

[20] **Dwelling Unit** – An independent housing unit with separates facilities for living, cooking and sanitary requirements, and may be a part of a building.

(21) **Floor Space Index (FSI)** means the quotient obtained by dividing the total covered area (plinth) on all floors excepting the areas specifically exempted under these regulations (given in Annexure XVIII) by the plot area which includes part of the site used as exclusive passage.

$$\text{FSI} = \frac{\text{Total covered area on all floors}}{\text{Plot area}}$$

(22) **Farm House** - means a building constructed as an incidental use to an agriculture or horticulture farm. Any building constructed not associated with farm activities shall not be construed as a "farm house" for the purposes of these Regulations.

(23) **Group Development means** accommodation for residential or Commercial or combination of such activities housed in two or more blocks of buildings in a particular site irrespective of whether these structures are interconnected or not. Any inter link between the structures in terms of connecting corridors shall not be construed as making any two structures into one block. However, if these blocks are connected solidly atleast for one-third the width of any one block on the connecting side, then such blocks shall be construed as a single block.

(24) **Height of the Building** means the height measured generally from the formed ground level abutting the road / passage [excluding ramp if any within the plot] provided that stair-case head rooms, lift rooms, elevated tanks and also WC (with floor area not exceeding 10sq.m.) above topmost floor, and also architectural features, and parapet walls of height up to 1 meter shall not be included in calculating the height of building. In cases where earth filling is made/proposed within the site above the average level of the abutting street/road, then the height of building shall be reckoned from the filled up ground level around the building provided such filling does not exceed 1 meter above the average level of the abutting street/road. If the height measured from the top of such filling is 15.25 metres, such building shall not be construed as a Multi-storeyed building.

(25) **Layout means** division of land into plots exceeding eight in number**.**

(26) **Local Authority** or **Local Body** means a Municipal Corporation of Chennai, Municipality, Town Panchayat, Panchayat Union or Village Panchayat within the Chennai Metropolitan Area.

(27) **Mezzanine floor** is an intermediate floor between two floors above ground level subject to the following:-

a) the area of mezzanine is restricted to 1/3rd area of that floor;

b) the height of the mezzanine floor shall be minimum 2.2 metres for non-habitable purposes and 2.5 metres for habitable purposes; and

c) the head room height of the remaining part of the said floor shall be the total of the height of the mezzanine floor and the space below the mezzanine floor.'

(28) **Multi-storeyed Buildings** means buildings exceeding 4 floors and or 15.25 meters in height. [However in cases of hospitals, buildings not exceeding 4 floors and or 17metres in height will be construed as non multi-storeyed buildings.]

(29) **Ordinary building** means a residential or commercial building, which does not fall within the definition of special building, group development or multi-storeyed building;

(30) **Parking space** means an area covered or open, sufficient in size to park vehicles together with a driveway connecting the parking lot with road or street and permitting ingress or egress of the vehicles.

(31) **Passage** means circulation space on land leading from a street/road to the plot/site.

(32) **Plinth Area** - The built up covered area measured at the floor level of the basement or of any storey

(33) **Plot/site Area** - means the area of contiguous parcel of land enclosed by definite boundaries over which the applicant has legal right for development. If the extent of plot differs as per site conditions, PLR extract/patta and registered ownership document, then for application of FSI and plot coverage regulations, lowest of the same (excluding any encroachment) will be counted. For application of setback regulation the inner boundary arrived excluding any encroachment or the part of the land for which the applicant/developer do not have the right over it will be the basis.

(34) **Plot coverage-** means the extent to which the plot is covered with a building or structure (12-noon shadow) and this is expressed as percentage of the ratio of the

தமிழ்நாடு அரசு
பதிவுத்துறை

சொத்து தொடர்பான வில்லங்கச் சான்று

சா.ப.அ: 1 எண் இணை சார்பதிவாளர் தென் சென்னை	சான்று எண்: EC/Online/51879580/2021	மனு எண்: ECA/Online/51879580/2021	நாள்: 18-Aug-2021

திரு/திருமதி/செல்வி. ANUPKRISHNAN VISWANATHAMENON Tamil Nadu, India கீழ்க்கண்ட சொத்து தொடர்பாக ஏதேனும் வில்லங்கம் இருப்பின் அதன் பொருட்டு வில்லங்கச் சான்று கோரி விண்ணப்பித்துள்ளார்.

கிராமம்	சர்வே விவரம்
அயப்பன்தாங்கல்	49/3

மனு சொத்து விவரம்: உரிமை மாற்றப்பட்ட விஸ்தீர்ணம்: 641.1

1 புத்தகம் மற்றும் அதன் தொடர்புடைய அட்டவணைகள் 1 ஆண்டுகளுக்கு 26-Oct-2015 முதல் 26-Oct-2015 வரை இச்சொத்தைப் பொறுத்து பதிவு செய்திட்ட நடவடிக்கைகள் மற்றும் வில்லங்கங்கள் குறித்து தேடுதல் மேற்கொள்ளப்பட்டது.

வ. எண்	ஆவண எண் மற்றும் ஆண்டு	எழுதிக் கொடுத்த நாள் & தாக்கல் நாள் & பதிவு நாள்	தன்மை	எழுதிக் கொடுத்தவர்(கள்)	எழுதி வாங்கியவர்(கள்)	தொகுதி எண் மற்றும் பக்க எண்
1	13092/2015	26-Oct-2015 26-Oct-2015 26-Oct-2015	உரிமை மாற்றம் - பெருநகர்	1. M/S. ESTRA ENTERPRISES PRIVATE LIMITED 2. M/S. PRESTIGE ESTATES PROJECTS LTD.	1. DR.V.. அனுப்கிருஷ்ணன் 2. தீபா அனுப்கிருஷ்ணன்	-
	கைமாற்றுத் தொகை: ரூ. 32,05,500/-		சந்தை மதிப்பு: ரூ. 32,05,500/-		முந்தைய ஆவண எண்: 802/07.807/07.2382/07, 3227-3228/07	
	அட்டவணை A விவரங்கள்: சொத்தின் வகைப்பாடு: பிரிபடா பாகம்			சொத்தின் விஸ்தீர்ணம்: 25.18 ஏக்கரில் 641.1 சதுரடி பி.பாகம்		
	கிராமம் மற்றும் தெரு: அயப்பன்தாங்கல், NOTKNOWN			புல எண் : 1/1, 1/2, 2, 3/1, 3/2, 3/3, 35, 42, 43, 44, 45, 46/1, 46/2, 46/3, 47/1A, 47/1E, 48/1A, 48/1B, 49/1, 49/2, 49/3, 5, 50, 50/1A, 50/1B, 51, 5/1, 51/1APART, 51/1B1, 52, 53, 54, 8/2A		
	பிளாக் எண்: 1					
	எல்லை விபரங்கள்: கிழக்கில்- ரோடு மற்றும் தனியார் சொத்து,வடக்கில்-ரோடு மற்றும் தனியார் சொத்து,மேற்கில்- ரோடு மற்றும் தனியார் சொத்து,தெற்கில்-			சொத்து தொடர்பான குறிப்புரை: மவுண்ட் பூந்தமல்லி ரோடு		

	தனியார் சொத்து,	

பதிவுகளின் எண்ணிக்கை : 1

இந்த உறுதிமொழிச் சான்றிதழில் குறிப்பிடப்பட்டுள்ள விவரங்களும், வில்லங்கங்களும், மனுதாரரால் தெரிவிக்கப்பட்ட சொத்துக்களின் விவரத்தின் அடிப்படையில் கண்டறியப்பட்டவையாகும். மனுதாரர் குறிப்பிட்டுள்ள விவரங்கள் அல்லாமல் பதிவு செய்யப்பட்ட ஆவணங்களில் அதே சொத்துக்கள் வேறு மாதிரியான விவரங்களைக் கொண்டிருக்குமாயின் அப்படிப்பட்ட ஆவணங்களால் புலப்படுத்தப்பட்ட விவரங்கள் இச்சான்றிதழில் சேர்க்கப்படமாட்டாது.

பதிவுச் சட்டத்தின் 57 ஆம் பிரிவிற்கேற்பவும், 137(1) ஆம் விதிக்கேற்பவும், பதிவேடுகளிலும், அட்டவணைகளிலும் உள்ள பதிவுகளைப் பார்வையிட விரும்புவோரும், அவற்றின் படிகளை அல்லது குறிப்பிட்ட சொத்துக்களுக்குரிய வில்லங்கச் சான்றிதழ்களைப் பெற்றுக் கொள்ள விரும்புவோரும், பதிவேடுகளையும், அட்டவணைகளையும் தாங்களே சரிபார்த்துக் கொள்ள வேண்டும். அதற்கென அறுதியிடப்பட்ட கட்டணங்களைச் செலுத்திய பின்னர் பதிவேடுகளும் அட்டவணைகளும் அவர்கள் பார்வைக்கு வைக்கப்படும்.

ஆனால் குறிப்பிடப்பட்ட நேர்வில் மனுதாரர் தாமே சரிப்பார்க்கவில்லை என்பதால், இந்த அலுவலகத்தில் போதிய கவனத்துடன் தேவையான அளவில் சரிபார்க்கப்பட்டது. ஆனால் இந்தச் சான்றிதழில் உள்ள முடிவுகளில் பிழைகள் ஏதேனும் இருப்பின் அவற்றுக்கு இத்துறை பொறுப்பேற்காது.

தேடுதல் மேற்கொண்டு சான்று தயாரித்தவர் : yuvaraj D, இளநிலை உதவியாளர்

தேடுதலை சரிபார்த்து சான்றினை ஆய்வு செய்தவர் : ரவிச்சந்திரன் பழனிச்சாமி, இளநிலை உதவியாளர்

பதிவு அலுவலரின் கையொப்பம்

1 எண் இணை சார்பதிவாளர் தென் சென்னை

கைபேசியில் QR code படிப்பான் மூலம் படித்து, அதில் வரும் இணையதள முகவரிக்கு சென்று வில்லங்க சான்றின் உண்மைத்தன்மையை சரிப்பார்த்துக் கொள்ளவும்.

தரவிறக்கம் செய்த சான்றில், பதிவு அலுவலரால் இடப்பட்ட இலக்க கையொப்பத்தைச் சரிபார்க்க, Adobe Reader-ல், Signature Properties Option-ஐ தெரிவு செய்து, "Add to Trusted Certificates" என்ற Option-ஐ தெரிவு செய்யவும்.

பதிவு விதிகள், 1949, விதி 147 (ஏ)-க்குட்பட்டு வழங்கப்படுவதால் உரிய சட்ட அங்கீகாரம் பெற்றுள்ளது. இச்சான்றிதழ் மின்கையொப்பம் இடப்பட்டதால் கையொப்பம் தேவையில்லை

ஏதேனும் சந்தேகங்கள்/குறைகள் இருப்பின் கீழ்க்கண்ட வழிமுறைகளில் தெரிவிக்கலாம்	
கட்டணமில்லா தொலைபேசி எண்	1800 102 5174
மின்னஞ்சல்	helpdesk@tnreginet.net

Certification signature by Ramakrishnan Seeyalan <abishekramakrishn877@gmail.com>, Validity Unknown

Digitally signed by Ramakrishnan Seeyalan
Date: 2021.08.18 17:52:04 IST

भारतीय गैर न्यायिक

एक सौ रुपये Rs. 100

रु. 100 ONE HUNDRED RUPEES

सत्यमेव जयते

भारत INDIA

INDIA NON JUDICIAL

தமிழ்நாடு तमिलनाडु TAMILNADU

AL 499745

50008

22.3.13

PRESTIGE ESTATES PROJECTS LTD

A. ROUFBASHA, B.A.
STAMP VENDOR LIC No. 8/B3/
NEW No. 17, OLD No. 9,
P.P.V. KOIL STREET, MYLAPOR
CHENNAI - 600 004. Ph : 2498 2

AGREEMENT TO SELL

THIS AGREEMENT TO SELL IS MADE AND EXECUTED ON THIS THE TWENTY SIXTH DAY OF MARCH, TWO THOUSAND THIRTEEN (26/03/2013) AT CHENNAI CITY BETWEEN:

ESTRA IT PARK PRIVATE LIMITED, a company registered under the (Indian) Companies Act, having its registered office at No. 37, TTK Road, Alwarpet, Chennai – 600 018, represented herein by its by Power of Attorney Holder **PRESTIGE ESTATES PROJECTS LTD,** a company incorporated under the Companies Act, having its Registered Office at "The Falcon House", No.1, Main Guard Cross Road, Bangalore - 560 001 represented by its Authorised Signatory/ Director, hereinafter referred to as the **"SELLERS"** (which expression wherever it so requires shall mean and include its successors-in-interest and assigns) **OF THE FIRST PART;**

For PRESTIGE ESTATES PROJECTS LTD.

Authorised Signatory

AND

PRESTIGE ESTATES PROJECTS LTD., a Company incorporated under Companies Act, having its registered office at "The Falcon House" No.1, Main Guard Cross Road, Bangalore -560 001 and branch office at the 7th Floor, City Towers, No:117, Thagayara Road, T.Nagar, Chennai -600 017 represented by its duly Authorised Signatory/Director, hereinafter called the **"DEVELOPER"** (which expression wherever it so requires shall mean and include all its successors-in-interest, and assigns etc.) **OF THE SECOND PART**

AND

Name: **Dr.ANUPKRISHNAN.V** aged about **48 YEARS** S/o. **K.VISWANATHAMENON** Residing at: **FLAT 1 B, NUTUECH SHREYA, 8th CROSS STREET, WEST, SHENOY NAGAR, CHENNAI – 600 030.**	Name: **DEEPA ANUPKRISHNAN** aged about **39 YEARS** W/o. **Dr.ANUPKRISHNAN.V** Residing at: **FLAT 1 B, NUTUECH SHREYA, 8th CROSS STREET, WEST, SHENOY NAGAR, CHENNAI – 600 030.**

hereinafter referred to as the **"PURCHASER"** (which expression shall wherever the context so requires or admits, mean and include all his/her/their legal heirs, representatives, executors administrators and permitted assigns) **OF THE OTHER PART:**

WHEREAS the Sellers herein are the absolute owners of, and well and sufficiently entitled to, all that piece and parcel of immovable property totally admeasuring an extent of **25.18 Acres** and situated in Survey Nos. 1/1, 1/2, 2, 3/1, 3/2, 3/3, 5/1, 8/2A, 50/1A, 50/2, 50/3, 50/4, 51/1A (Part), 51/1B1, 51/1B3, 51/1C1, 51/1C3, 51/1D, 51/1E, 52/1, 52/2, 53, 54/1 (Part), 35, 42/1, 42/2, 42/3A, 42/3B, 42/4, 42/5, 43/1, 43/2, 44/1A, 44/1B, 44/2, 44/3, 45/1A, 45/1B, 45/2, 45/3, 45/4A, 45/4B, 46/1, 46/2, 46/3, 47/1E, 48/1A, 48/1B, 48/2, 48/3, 48/4, 49/1, 49/2, 49/3 and 50/1B at Ayyappanthangal Village, Sriperumbudur Taluk, Kancheepuram District, Tamil Nadu, more fully described in the Schedule 'A' hereunder written and hereinafter referred to as the **"SCHEDULE A PROPERTY"**, having purchased the same in terms of several sale deeds detailed in Annexure 1 hereto;

WHEREAS the Sellers, being desirous of getting the Schedule 'A' Property developed into residential apartment buildings, entered into a Joint Development Agreement dated 15.07.2010 with the Developer herein;

For PRESTIGE ESTATES PROJECTS LTD.

Authorised Signatory

WHEREAS the Developer in terms of the aforesaid Joint Development Agreement has agreed to develop the Schedule 'A' property into residential apartment buildings by obtaining all sanctions, no objection certificates, permissions, approvals and licenses from the concerned authorities and deliver to the Sellers, after construction, 40% of the Total Developed Area including the saleable super built up area in the form of residential apartments; and the Sellers, in consideration thereof, agreed to transfer and convey in favour of the Developer and/or their transferees 60% undivided share, right, title and interest in the land comprising the Schedule 'A' Property, in order to enable the Developer and/or transferees to hold, own and posses the remaining 60% of the Total Developed Area including the saleable super built up area in the form of residential apartments;

WHEREAS pursuant to the above, the Developer has obtained the necessary permissions, no objection certificates for development of the Schedule 'A' Property into high rise apartment building/s and the CMDA has approved the Development Plan vide No. **C/PP/MSB-IT/38 A to AC/2012**, dated **29/05/2012**, Planning Permit No:**7115**; and the Developer has obtained all other sanctions and licenses from the statutory authorities for construction of residential apartment building/s on the Schedule 'A' Property;

WHEREAS the Sellers and the Developer have agreed to name the development on the Schedule 'A' Property as "**PRESTIGE BELLA VISTA"** and also have mutually agreed and identified the apartments/ built-up areas falling to their respective shares by entering into an Area Sharing Agreement dated 03.03.2012. In terms of the said Joint Development Agreement and the Area Sharing Agreement, the Developer is entitled to dispose of the apartments/ built-up areas falling to its share together with proportionate undivided share of land in Schedule 'A' Property; and the Sellers had empowered the Developer to sell the Developer's share of built-up area and the proportionate undivided share of land vide Power of Attorney dated 15.07.2010, registered on 17.08.2010 as Document No. 1286/2010, Book-IV, in the office of the Joint Sub-Registrar – I, Chennai South and realise the sale consideration thereof in their own name;

WHEREAS the Developer and Sellers have formulated a scheme of ownership of apartments in Prestige Bella Vista being developed on the Schedule 'A' Property, in terms of which any person desirous of owning an apartment in Prestige Bella Vista is required to purchase from the Sellers, the proportionate undivided interest in the Schedule 'A' Property by entering into an Agreement to Sell with the Sellers and the Developer, by virtue of which, such purchaser derives a right to get constructed the corresponding apartment in Prestige Bella Vista selected by the purchaser exclusively through the Developer, for which purpose the purchaser has to enter into a separate Construction Agreement with the Developer. In the overall scheme, each of the owners of the apartments in Prestige Bella Vista will be proportionately holding undivided ownership right, title and interest in the Schedule 'A' Property, absolute ownership over the apartment got constructed, common joint ownership over all the common areas and facilities and the right to use the car parking space in the basement/ surface level in the development; and the scheme as stated above forms the basis of the sale and the Sellers and Developer have, based on the proposed construction, worked out the proportion of undivided share to be sold/ transferred;

For PRESTIGE ESTATES PROJECTS LTD.

Authorised Signatory

Prestige GROUP
Add Prestige to your life

ANNUAL REPORT 2011-12

DIVERSE STRUCTURES. UNIFORM SUCCESS.

PRESTIGE ESTATES PROJECTS LTD

In a Challenging **2011-12**, compared to its previous year, Prestige reported:

Record sales of Rs. 21,127 mn, a growth of **53%**

Area sold - 4.91 mn sft, an increase by **164%**

Leased 3.12 mn sft, a growth of **61%**

Cash Collections of Rs. 13,354 mn, an increase of **85%**

Reclaimed the prestigious **DA1- the Highest Developer Rating** by Crisil, India's leading credit rating agency

Reinforcing what our stakeholders have always believed

... if it is Prestige, it must be different

Disclaimer: In this annual report, we have disclosed forward-looking information to enable investors to comprehend our prospects and take informed investment decisions. This report and other statements – written and oral – that we periodically make contain forward-looking statements that set out anticipated results based on the management's plans and assumptions. We have tried wherever possible to identify such statements by using words such as 'anticipates', 'estimates', 'expects', 'projects', 'intends', 'plans', 'believes' and words of similar substance in connection with any discussion of future performance. We cannot guarantee that these forward-looking statements will be realised, although we believe we have been prudent in our assumptions. The achievement of results is subject to risks, uncertainties and even inaccurate assumptions. Should known or unknown risks or uncertainties materialise, or should underlying assumptions prove inaccurate, actual results could vary materially from those anticipated, estimated or projected. We undertake no obligation to publicly update any forward-looking statements, whether as a result of new information, future events or otherwise.

Plotting more projects

In 2011-12 we launched 7 new projects, spanning over 12.89 million sft of developable area. That's a growth of 55% over last year! This includes Prestige Bella Vista our first residential development in Chennai, which saw phenomenal sales. The foreseeable future thus presents a picture of uninhibited growth.

BUSINESS SEGMENT REVIEW – 1

Residential	2011-12	2010-11
Revenues - Standalone	Rs. 4,474 million	Rs. 7,802 million
Proportion of total revenues	62%	63%
Area of on-going residential projects	18.27 msf	8.88 msf
Area of upcoming residential projects	9.75 msf	28.69 msf
Residential area sold during the year	4.57 msf	1.20 msf
Amount of residential area sold	Rs. 19,250 million	Rs. 10,844 million

Overview

The Company entered the business of residential development in 1986 and has since developed and delivered 26.59 msf of residential space. The Company's competence in this genre is reflected in its ability to develop a range of residential projects: luxury apartments, villas, townships and plotted development catering to the all income segments equipped with all amenities such as swimming pools, gardens, gymnasiums and recreational supports. The residential space encompases developements ranging from mid income developements to high end villas and apartments.

Segment strategy

- The Company markets substantial portion of its mid-income projects during launch and deploys proceeds for funding project completion; it retains remaining stock for sale in the later years and uses it as a hedge to absorb cost increases, if any.

Differentiating factor

- The Company focuses on the development of iconic buildings reflecting unique and world-class architectural styles
- The Company invests in uniqueness across projects based on design, features, specifications and aesthetics giving importance to landscaping, greenery and lifestyle amenities resulting in a premium over the prevailing average.
- The Company possesses the capability to develop units ranging from Rs. 3 mn to Rs. 300 mn
- The Company provides property management services to maintain quality across time

Highlights, 2011-12

- Average realisation per square feet decreased from Rs. 7,465 psf in 2010-11 to Rs. 4,300 psf as the Company increased its focus on mid-income residential projects
- Launched its maiden residential project (Prestige Bella Vista) in Chennai with a developable area of 5 mn sq ft with 2,613 units (Prestige share 60%), which achieved sales of more than 35% within three months of launch.

Projects completed in 2011-12

	Name of project and location	Developable area (in sq ft)	Share	No of units	Units sold as on 31 March 2012
1.	Prestige Neptune's Courtyard, Kochi	1,080,156	100.00%	374	287
2.	Prestige Southridge, Bangalore	856,966	100.00%	264	263

Landmark projects

Completed : * Prestige Ozone * Prestige Exotica * Prestige Acropolis * Prestige Elgin * Prestige Shantiniketan * Prestige Neptune's Courtyard

On-going : * Prestige Golfshire-Villas * Prestige White Meadows * Kingfisher Towers * Prestige Tranquility * Prestige Bella Vista

Outlook

The Company has 13 on-going residential projects with a total developable area of 18.27 mn sq. ft. (of which Prestige's share is 13.04 mn sq ft.). The Company will focus on the large mid-income residential segment and target timely completion.

Prestige Bella Vista

The Prestige Group marks its foray into the Chennai Residential Market, with its newest development - Prestige Bella Vista. Located on Mount Poonamallee Road, Porur - Bella Vista is touted to be one of Chennai's most lavish and serene Residential Developments.

Spread across 25.18 acres with a total developable area of 5.04 msf (Prestige share: 60%), Prestige Bella Vista offers a tranquil green recluse for compact and relaxed urban living. This development comprises of 2613 Residences that include 1, 2, 3 & 4 bedroom units that have been designed to suit the most exclusive urban living standards, created through a network of soothing water bodies and gardens. Bella Vista offers its occupants, an experience of urban lifestyle combined with a fusion of contemporary design and traditional architecture.

Artist's Impression

(a) The Year 2011-12 – Financial Performance

Standalone Results

During the year, your Company has achieved a total income of Rs. 79,923 Lakhs and Profit After Tax (PAT) of Rs. 12,907 Lakhs for the year ended March 31, 2012 against the total income of Rs. 146,148 Lakhs and Profit After Tax of Rs.20,355 Lakhs for the previous financial year ended March 31, 2011. The total income reduced by 45% and PAT by 37%. The EBITDA for the current year stands at Rs. 29,065 Lakhs as compared to Rs.40,027 Lakhs for the previous year. The decline is primarily on account of lower recognition as per accounting guideline.

The expenses reduced from Rs. 117,316 Lakhs to Rs.61,754 Lakhs in the current financial year due to reduction in recognition of revenues from ongoing projects. As a percentage of total income, it is decreased from 80% to 77%.

Consolidated Results

The consolidated income of the Company is Rs. 108,646 Lakhs and PAT is Rs. 8,840 Lakhs for the financial year ended March 31, 2012 as compared to consolidated income of Rs.161,134 Lakhs and PAT of Rs. 16,666 Lakhs for the financial year ended March 31, 2011. The income is reduced by 33% and PAT is reduced by 47%.

(b) Utilisation Of Issue Proceeds

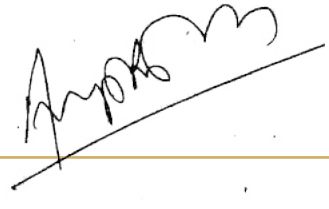
The funds of Rs.114,768 Lakhs (excluding issue expenses), raised in the Initial Public Offering (IPO) in October 2010, have been utilised as per the statement shown below:

(Rs. In Lakhs)

Expenditure items	Amount approved by share holders in the AGM held on July 28, 2011	Amount utilised till March 31, 2012
Finance our ongoing projects and projects under development	39,860	34,223
Investment in our existing subsidiaries for the construction and development of projects	7,399	7,399
Financing for the acquisition of land	7,728	7,728
Repayment of loans	37,348	37,348
General corporate purposes	22,433	22,433
TOTAL	114,768	109,131

The amounts unutilised are invested/held in:	
a) Fixed deposit and Mutual Funds	5,000
b) Balance with banks in current accounts	637
Total	5,637

The Shareholders of the Company in the Fourteenth Annual General Meeting held on July 28, 2011 have given their approval under Section 61 of the Companies Act, 1956 for varying, modifying, revising the purpose of utilisation of IPO proceeds in consideration of business prospects and funding requirements of the Company.



2. REVIEW OF OPERATIONS

During the year under review, the Company has been successful in maintaining the tempo of growth. Two residential projects comprising of 19.37 Lakh square feet and four commercial projects consisting of 9.50 Lakh square feet and one hospitality project of 1.57 Lakh square feet were completed and delivered. The details are as below:

Name of the Project	Number of Apartments	Developable Area in lakh square feet	Location
Residential projects:			
Prestige Neptune's Courtyard	374	10.80	Kochi
PrestigeS outhridge	264	8.57	Bangalore
TOTAL	**638**	**19.37**	
Commercial projects:			
Prestige Dynasty II	N.A.	1.44	Bangalore
Prestige Atrium	N.A.	1.72	Bangalore
Prestige Palladium	N.A.	2.99	Chennai
Cessna Business Park - B5 Block	N.A	3.26	Bangalore
TOTAL		**9.50**	
Hospitality projects:			
Prestige Golfshire - Clubhouse	N.A.	1.57	Bangalore

The Prestige Neptune's Courtyard is a marina condominium development on Marina Drive, Kochi, designed with modern architectural techniques, have unique features like 'Sky Club' on the 13th floor of each of the 7 towers, housing a lounge, party hall and small theatre.

Prestige Southridge is a residential project spread over 9.60 acres of land at South Bangalore, with an exceptional feature of using only 14% of land for construction and the balance area being used for landscaping.

During the year, the Company has launched 7 projects aggregating to 128.89 lakh sft including 4 residential projects, 2 commercial projects and 1 retail project that have received overwhelming response. They are:

Project	Location	Segment	Developable Area in Lakh Sqft	Number of Units	Economic Interest
Prestige Tranquility	Bangalore	Residential	45.65	2,368	100.00%
Prestige Park View	Bangalore	Residential	9.27	376	65.00%
Prestige Sunny Side	Bangalore	Residential	9.76	395	100.00%
Prestige Bella Vista	Chennai	Residential	50.43	2,613	60.00%
Prestige Trade Towers	Bangalore	Commercial	6.13	N.A.	45.00%
Excelsior	Bangalore	Commercial	2.20	N.A.	32.46%
Forum Mysore Mall	Mysore	Retail	5.45	N.A.	50.99%

With Prestige Bella Vista, the Company has forayed into the residential market of Chennai. The project has been well received by the people in Chennai. Within three months of launch, around 900 units were sold.

The Company has been pioneer in introducing mall concept in Bangalore. It is now spreading the mall concept to Mysore, a Tier II city with high growth potential in Karnataka.

3. DIVIDEND

Your Board of Directors has recommended a dividend of Rs.1.20 per equity share (last year also recommended and paid Rs.1.20 per equity share) for the year ended March 31, 2012 amounting to pay-out of Rs. 4,578 Lakhs (inclusive of dividend distribution tax of Rs. 641 Lakhs) for consideration and approval by the shareholders at the ensuing Annual General Meeting.

The Company proposes to transfer Rs. 323 Lakhs to General Reserve out of the amount available for appropriation and an amount of Rs. 8,006 Lakhs is retained in the Profit and Loss Account.

4. FIXED DEPOSITS

During the year, the Company has not accepted any deposits from the public.

5. SUBSIDIARIES

The Company presently has 20 subsidiary companies all of which are operating from India. During the year 2011-12, the Company has increased/(diluted) its stake in the below companies:

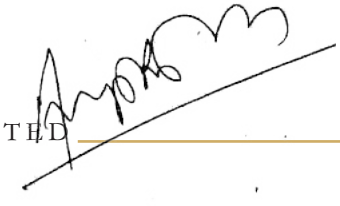
Name of the Company	Shareholding in % as at 1 April 2011	% of stake acquired / (disinvested) during the year	Current holding in %
Prestige Amusements Private Limited	45.45	5.57	51.02
Valdel Xtent Outsourcing Solutions Private Limited	91.65	8.35	100.00
Westpalm Developments Private Limited	53.50	7.50	61.00

The Company has also subscribed for 25,39,980 Optionally Fully Convertible, Non-cumulative, Redeemable Preference Shares (OFCNRPS) of Rs.10 each of Prestige Leisure Resorts Private Limited at a premium of Rs.72.68 per share.

Further, in one of the associate company, namely Vijaya Productions Private Limited, the Company has increased its stake by 2.30% i.e. from 47.70% to 50% as per the Agreement entered by the Company in 2006.

As per the General Circular No. 2/2011 dated February 8, 2011, issued by Ministry of Corporate Affairs, the Balance Sheet, Profit and Loss Account Statement and other such documents of the subsidiaries are not being attached to the Balance Sheet of the Parent Company. However, as per the Circular, the consolidated financials of the Company and its subsidiaries have been inserted as part of the Annual Report. Further, statement pursuant to Section 212 of the Companies Act, 1956, relating to Subsidiary Companies is attached herewith as Annexure to the Report.

The annual accounts of the subsidiary companies are kept open for inspection by any shareholder in the Registered Office of the Company. The Company shall provide a copy of annual accounts of subsidiaries to the shareholder on demand.



REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO 5699 OF 2019
(Arising out of SLP(Civil) No. 13984 of 2018)

M/s Treaty Construction & Anr. **APPELLANT(S)**

Vs.

M/s Ruby Tower Co-op. Hsg. Society Ltd. **RESPONDENT(S)**

JUDGMENT

Dinesh Maheshwari, J.

Leave granted.

2. This appeal by special leave is directed against the judgment and order dated 07.03.2018, as passed by the National Consumer Disputes Redressal Commission ('the National Commission' hereafter) in First Appeal No. 109 of 2015, whereby the National Commission has modified the order dated 17.12.2014, as passed by the State Consumer Disputes Redressal Commission, Maharashtra, Mumbai ('the State Commission' hereafter) in Complaint Case No. 120 of 2005; and has issued directions to the effect that: (i) the appellants shall pay a sum of Rs. 28,00,000/- to the respondent-society (the complainant) within a period of 45 days, failing which the amount

shall carry interest @ 8% per annum from the date of passing of the order till the date of payment; (ii) a sum of Rs. 1,000/- per day shall further be paid by the appellants after 60 days from the date of order till the time full Occupancy Certificate is obtained; (iii) the appellants shall convey the title of the property in question by executing a registered Deed in terms of the order passed by the State Commission within a period of 4 months after obtaining the Occupancy Certificate. The National Commission has also upheld costs of Rs. 50,000/-, payable by the appellant No.1 herein.

3. The background aspects of the matter, so far relevant for the present purpose, may be noticed, in brief, as follows:

3.1. The appellants had evolved the scheme of constructing a building consisting of 64 flats and 13 shops on a plot bearing Survey No. 22, Hissa No. 7 [C.T.S. Nos. 99, 99 (1 to 16) and 114] at Sahakar Road, Off. S.V.Road, Jogeshwari (West) Mumbai. The persons who agreed to purchase respective flats and shops in the said project eventually formed a Co-operative Housing Society, who is the respondent in this appeal ('the respondent-society' hereafter). In relation to the project in question, several disputes ensued between the members of respondent-society on one hand and appellants-builders on the other, leading to a complaint before the State Commission, being Complaint No. 120 of 2005 by the respondent-society[1].

1 Apart from the present appellants, several other persons were also joined as opposite parties in the said complaint case who have since been deleted from the array of parties.

3.2. The respondent-society submitted before the State Commission, *inter alia*, that several sale deeds were executed between the period 1994 to 2002 whereby, its members purchased certain apartment units as also commercial units of varied sizes but, despite making payment over and above the agreed sale consideration, the appellants failed to discharge their part of the contract inasmuch as the interior works remained incomplete; and the appellants also failed to obtain the Completion Certification as also the Occupancy Certificate. It was also alleged that pending completion of the building works, the appellants borrowed and collected varied sums of money from the members of the respondent-society, on the pretext that the money would be used towards finishing the incomplete works; and this aspect was recorded in the minutes of the meeting held on 12.07.1998.

3.2.1. It was further alleged that after some time, the respondent-society demanded reimbursement of the amount given by its members; and though the appellants agreed to reimburse a lump sum of Rs. 25,00,000/- on 17.12.2003 but, even after a lapse of about a decade, the appellants had failed to reimburse the amount; failed to obtain the Occupancy Certificate; and also failed to complete the pending works to the satisfaction of respondent. It was yet further alleged that as an added burden, upon taking possession of their individual units, the members of respondent-society had to spend additional sums of money to complete the interior works in their respective flats and the building; and had also to pay excess of taxes under various heads. Thus, according to the respondent, there was a clear

deficiency of services on the part of appellants and there was a clear violation of Sections 4 and 11 of The Maharashtra Ownership Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Act, 1963. ('MOFA').

3.2.2. With the submissions aforesaid, the respondent-society sought the following reliefs before the State Commission in the complaint:

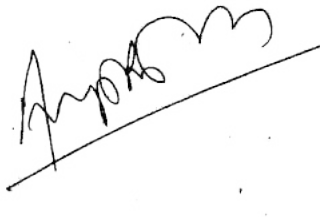
> "*a) To hold and declare the Opposite Parties guilty of deficiency in service as well as unfair trade practice under the provision of the said Act.*
>
> *b) To direct the Opposite Parties to convey the said land/property in favour of the Complainant's Society by completing all requisites formalities at their own expenses.*
>
> *c) To direct the Opposite Parties to handover the Completion Certificate, Occupation Certificate, to the Complainants' realization of the same.*
>
> *d) To refund the amount collected towards temporary loan to the tune of Rs. 35,16,820/- to the Complainants' Society along with the interest @ 21% from the date of payment till the realization of the same.*
>
> *e) To refund the amount collected toward possession Charges to the tune of Rs. 26,25,000/- to the Complainants' Society along with the interest 21% from the date of payment till the realization of the same.*
>
> *f) To direct the opposite parties to reimburse the expenses incurred by the Complainant's Society 'to the tune of Rs. 46,40,000/- towards the completion of interior civil work along with the interest 21% from the date of payment till the realization of the same.*
>
> *g) To direct the Opposite Parties to develop the garden on the plot reserved for the same.*
>
> *g) (*sic) *That the Hon'ble Forum may be pleased to direct the Opposite Party to pay an amount of Rs. 2,00,000/- towards compensation mental agony and cost of the above numbered*

Complaint and further an amount of Rs. 1,00,000/- towards incidental expenses incurred by the Complainant.

h) For such other and further reliefs as the nature and circumstances of the case may deem fit and proper."

3.3. The appellants filed their separate counter versions to the complaint aforesaid. Apart from stating that the claim of the respondent was exaggerated, they also contended that there was a clear admission of the fact that the appellants had undertaken to reimburse a sum of Rs. 25,00,000/- towards full and final settlement of the grievances raised by the respondent, and the said amount was to be realized by consuming the unconsumed FSI available on the said plot of land, as per the stipulations incorporated in the registered agreement for sale, which fact had been concealed by respondent. The appellants further submitted that the delay was not on their part but had been due to the obstruction caused and created by the respondent and its members who, after purchasing their respective flats, had made illegal constructions/alterations, which had clearly been brought out in the show-cause notices issued by the Municipal Corporation. The appellants also denied the contention of the respondent that the members completed their respective interior civil works.

3.4. During the course of hearing of the matter and pending disposal of the complaint, the respondent-society filed an application dated 21.03.2013 before the State Commission with the submissions that the prayer (d) of the complaint was not pressed; the amount claimed in prayer (f) was restricted to Rs. 25,00,000/-; and that although there was no illegal alteration by the flat



purchasers, yet the complainant was agreeable to remove the same as required by the Municipal Corporation. The respondent-society stated in this application as under:

> "1) *That the complainant is not pressing the prayer of Rs. 35,16820/- [claimed in prayer (d) i.e. temporary loan] alongwith interest 21% interest.*
>
> *2) That the complainant is restricting the prayer 10(f) to amount of Rs. 25,00,000/- as per the minutes of meeting dtd 17/12/03 & 14/12/03 which was signed by both the parties.*
>
> *3) That the complainant says that there is no illegal alteration made by the flat purchasers. However, the complainant consent to remove the same (if any) as required by BMC."*

3.4.1. At this juncture, for their relevance, we may also take note of the minutes of the aforesaid meetings dated 14.12.2003 and 17.12.2003 as under:-

> *"Minutes of meeting held with Ruby Tower Members on 14/12/03*
>
> *1. It was discussed that BMC expenses upto procuring of Occ. Certificate will be that of the Builders which the Builders have agreed.*
>
> *2. Regarding the settlement of accounts for which the Builders had offered Rs. 15,00,000/- in the last meeting held, the members offered Rs. 25,00,000/-, subject to the above condition as full and final settlement towards all loans, liabilities, etc of the Builder.*
>
> *3. It was finalized that another meeting would be held on Wednesday i.e. 17/12/03 after Namaz-e-Isha at 9:00 p.m.*
>
> *4. It is agreed that henceforth transfer charges of Ruby Tower will be of the Ruby Tower Soc. (Prop).*
>
> *5. The meeting held was concluded in a cordial atmosphere and all present Society members have happily agreed to this proposal."*

"Date: 17.12.2003

Minutes of the meeting held with members of Ruby Tower

01. As decided on 14.12.03, the meeting for finalizing the settlement of all pending dues/liabilities of the Builder was conducted at 9.30 p.m. at the Builder's office.

2. The Builders agreed to the demand of Rs. 25,00,000.00 raised by the members in the last meeting. However, it was clarified that the first priority would be that of regularizing 'Ruby Tower' with respect to BMC.

3. Regarding payment of the agreed amount of Rs. 25,00,000/-, it was proposed by the Builder that he would arrange for the same within six to nine months, which the members agreed.

4. It was clarified by the present members that their decision was binding on all the members and all had authorized the members present to finalize the matter in the meeting held among themselves on 16.12.03.

5. The meeting concluded in a cordial atmosphere. "

3.5. On consideration of the material on record, the State Commission observed that the Municipal Corporation had raised the alleged objections by their letter/notice dated 09.07.1993 whereas the flat owners were put in possession somewhere between 1995 to 2002; that the Society was established in the year 2005; and the frantic efforts made by the owners/members of respondent-society for execution of the Deed of Conveyance and for obtaining Occupancy Certificate was just and legitimate. The State Commission further observed that the respondent had produced certain sample receipts to show that charges amounting to Rs. 26,25,000/- were collected for handing over possession of the flats and such charges were collected beyond the stipulated agreed consideration. The State

Commission, however, found that there was no documentary evidence to show that the additional amount of Rs. 46,40,000/- was spent to complete the interior civil works.

3.6. In view of its findings, the State Commission partly allowed the complaint while directing the appellants to execute the Deed of Conveyance of the property in question after obtaining the Completion Certificate and Occupancy Certificate within 90 days and else, to pay Rs. 1,000/- per day until the date of compliance. The State Commission also observed that the complainants had not pressed for refund of the loan amount of Rs. 35,16,820/- and, therefore, the respondent-society was held entitled only for the refund of the amount of Rs. 26,25,000/-, which was given to obtain possession of the flat, together with interest @ 9% p.a. from the date of filing of the complaint and payable within 90 days, failing which the said amount shall bear an interest @ 12% p.a.

3.7. The State Commission, *inter alia*, observed and directed as under:-

> *"[8]. On going through the record and documentary evidence relied upon by parties, we find that the prayer for refund of Rs. 26,25,000/- which was extended as loan by the complainant society members is justified as few sample receipts showing the charges collected for handing over the possession of flats. On carefully going through the terms and conditions of the registered agreement, it appears that the opponents have collected these charges under the guys* (sic) *of possession of the flats beyond the stipulated agreed consideration. Therefore, we find that complainants are entitled to get refund of an amount of Rs. 26,25,000/- since it was illegally collected by the opponents from the flat buyers of the complainant society. Complainants have not pressed refund of Rs. 35,16,820/- allegedly extended as temporary*

loan to the opponents for completion of balance work. Therefore, we do not want to comment further. There is not documentary evidence to demonstrate that Rs. 46,40,000/- were incurred by the complainant society to complete the interior civil works. Therefore, we are not inclined to consider this monetary claim. The registered agreement does not provide for development of garden. Therefore, prayer beyond the stipulations of agreement cannot be considered as pleaded by the learned counsel of the opponents.

[9]. Considering facts and circumstances of the case, opponents have failed to comply their statutory obligations u/s. 11 of the MOFA Act to execute the deed of conveyance and obtain Completion Certificate and Occupation Certificate. Therefore, the complainant's prayer seeking directions to the opponents to fulfill statutory obligations are just and proper. Complainant society has discharged initial burden to prove deficient service rendered by the opponents. Therefore, complaint must succeed for issue of directions to the opponents to fulfill the statutory obligations and refund of illegally collected excess amount from the members of the complainant society.

ORDER

(1) Complaint is partly allowed.

(2) Opponents, jointly and severally, are directed execute Deed of Conveyance, by obtaining completion certificate and occupation certificate for transferring rights, interest and title of building and piece of land bearing Survey No. 22, Hissa No. 7, and bearing C.T.S. Nos. 99, 99(1 to 16) and assessed by Municipal Corporation of Greater Bombay in Ward No. KN 150512-00 No. K-5125 (1-2) 89A, 90, K-5125 (3) 898, K-5126 (1), 88 and K-5126 (3) 8890, in favour of complainant society within period of 90 days from date of the this order, failing which opponent shall pay Rs. 1,000/- per day to the complainant society from the date of this order till compliance.

(3) Opponents, jointly and severally, are directed to pay Rs. 26,25,000/- [amount illegally collected for hading over the possession of the flats] along with interest @ 9% p.a. effective from the date of filing of complaint i.e. 04/10/2005 within period of 90 days from the date of this order, failing which the rate of interest shall be payable @ 12% p.a. from 04/10/2005 till its realization.

(4) Opponents shall bear their own costs and pay costs of Rs. 50,000/- to the complainant society within period of 90 days from the date of this order.

(5) Certified copies of this order be furnished to the parties".

3.8. In appeal against the order of the State Commission before the National Commission, the appellants denied the receipt of loan amount of Rs. 26,25,000/- and argued that the deletion of the name of the then President of the respondent-society, who was a signatory to all the receipts, was not warranted, as his presence would have clarified all the issues which formed the subject-matter of the complaint; and that due to the failure on the part of the respondent-society to remove the changes/alterations made to the building, the Municipal Corporation refused to issue the Occupancy Certificate. It was also argued that the State Commission had no pecuniary jurisdiction in relation to the complaint in this matter.

3.9. The National Commission rejected the contention that the State Commission had no pecuniary jurisdiction for the reason that the same was not urged before the State Commission and the matter was decided on merits. The National Commission examined the record and found that there was absolutely no evidence on record to show that the alleged money was taken by the appellants for the purpose of completing the pending works in the building. The National Commission, however, observed that having agreed to pay a sum of Rs. 25,00,000/- to the respondent-society, the appellants were bound by the admission so made by them and were liable

to that extent. As regards the arguments relating to Occupancy Certificate, the National Commission was of the view that the appellants were negligent and there had been deficiency in service inasmuch as the appellants should not have handed over possession of the flats without obtaining the Occupancy Certificate. However, for the purpose of regularizing and legalizing the title of the members of respondent-society, it was preferred that a time bound order be made and, accordingly, the National Commission upheld the order passed by the State Commission with certain modifications.

3.10. The National Commission, *inter alia*, observed, held and directed as under:-

> *"10. I have carefully considered the arguments of both the learned counsel and have examined the material on record. Basically I agree with the contention of the learned counsel for the appellant that all the receipts were issued by the President of the Society and he has been deleted from the array of the parties on the request of the complainant and therefore, there is no proof that the money has been paid to the appellant. The State Commission has ordered only on presumption. Thus, the OP/appellant herein cannot be saddled with the responsibility to refund the amount of Rs. 26,25,000/- to the complainant as loan repayment. However, this is also true that the appellant has admitted that he had agreed in the meeting dated 17.03.2003 to pay Rs. 25 lakhs to the complainant for the deficiency in service. Clearly this amount has not been paid by the OP to the complainant and therefore, the appellant No. 1 is liable to pay Rs. 25 lakhs to the complainant as per his own admission in the list of dates filed along with the present appeal.*
>
> *11. So far as the question of obtaining the Occupancy Certificate is concerned, as per the provisions of MOFA the possession should not have been handed over to the members of the complainant society without obtaining*

occupancy certificate and this is a clear unfair trade practice. It is being argued on behalf of the OP that there are additions and modifications in the building and therefore, it is difficult to obtain the certificate and the matter is getting delayed. This argument is not tenable as the situation has been created by the OPs themselves as they offered possession without the occupancy certificate. Clearly, not obtaining occupancy certificate is the deficiency on the part of the OP/appellant.

12. Coming to the question of FSI, though there is a provision in the agreement in condition no. 42 that the allottees/purchasers shall not object to OP utilizing additional FSI, which may be available at the time of agreement or being made available even in a future date. However, this provision goes against the spirit of MOFA as this Commission in Vaibhav Development Corporation and others (supra) has held that it is obligatory upon the builder to obtain a full Occupancy Certificate, without which a Conveyance Deed in favour of the complainant society cannot be executed. However, there has to be a reasonable time for execution of conveyance deed in favour of the Society and this according to the said Rule has to be within four months if no period of conveying the title to the Society is mentioned in the Sale Agreement.

13. As the OP has given possession to the members of the Society without obtaining Occupancy Certificate, the possession of allottees has become illegal. As the purchasers have paid full consideration of the flats, they are entitled to have legal possession and legal right and title. It is also seen from the observation of the State Commission that the appellants/opposite parties have not replied to the queries raised by the Municipal Corporation and therefore, they themselves were negligent and deficient in taking steps for getting the Occupancy Certificate. As complaint has been filed by the society, it is essential that the possession of its members is regularized and title of the members as well as of the Society is legalized. This can only be legalized if OP obtains Occupancy Certificate.

Therefore, it is necessary to direct the OP to obtain the Occupancy Certificate in a time bound manner. In this respect, the order of the State Commission is perfectly valid so far as it relates to directing the OP to obtain Occupancy Certificate within 90 days. Once the Occupancy Certificate is obtained the title has to be conveyed to the Society within four months. From this point of view, the condition No. 42 is

against the provisions of MOFA. Hence, this condition will not be a binding on the other party. Therefore, the existence of this condition in the agreement shall only be seen as unfair trade practice. As the OP has not obtained the occupancy certificate and thereby the OP is not able to register the conveyance deed in favour of the complainant Society, the continuing deficiency on the part of the appellant/OP is evident. Therefore, I do not find any error in the order of the State Commission in respect of the OP obtaining occupancy certificate and then executing the conveyance deed in favour of the Society. The penalty of Rs. 1,000/- per day was effective from 17.03.2015, however, looking at the difficulties of the appellant in getting the occupancy certificate due to some modifications, additions and alterations in the building, I deem it appropriate to put a lump sum compensation of Rs. 3 lakhs to be paid to the Complainant Society by the appellant for not obtaining occupancy certificate till today. It is further ordered that the order of the State Commission for paying Rs. 1,000/- per day shall be applicable now from the expiry of 60 days from the date of this order. This amount shall be paid regularly at every month to the complainant society till the occupancy certificate is obtained and conveyance deed is executed in favour of the Society.

14. As regard the objection of the appellants regarding pecuniary jurisdiction of the State Commission, it appears that this objection has not been taken before the State Commission specifically. As the matter has now been decided by the State Commission on merits, the technical objection of pecuniary jurisdiction cannot be raised at this stage. This view gets support from the decision of the Hon'ble Supreme Court in Harshad Chiman Lal Modi Vs. DLF Universal and Anr., AIR 2005 SC 4446, wherein the Hon'ble Apex Court has held as follows:-

> *"So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be taken at a subsequent stage."*

15. Based on the above discussion, the appellants are directed to pay Rs. 28,00,000/- (rupees twenty eight lakhs only) to the respondent No. 1 Society within a period of 45 days, failing which this amount shall carry an interest @ 8%

p.a. from date of this order till actual payment. Appellants are further directed to pay Rs. 1,000/- (rupees one thousand) per day after 60 days from date of this order to the Complainant Society till obtaining of the full Occupancy certificate. It is further directed that appellants shall convey the title of the property as detailed in the order of the State Commission in favour of the complainant Society by registered deed within a period of four months after obtaining the Occupancy Certificate. The impugned order of the State Commission stands modified accordingly. The cost of Rs. 50,000/- is also upheld. First Appeal No. 109 of 2015 stands disposed of accordingly."

4. Assailing the order aforesaid, learned counsel for the appellants has argued that as per the admitted position on record, the members of the respondent-society had carried out additional constructions/alterations to the building due to which, the Municipal Corporation was not issuing the Occupancy Certificate and hence, the National Commission ought not to have issued directions for obtaining the Occupancy Certificate. The learned counsel has referred to the reply letter dated 01.10.2002 by one Shri Nazeer H. Kadri in support of the contention that the members of respondent-society did carry out alterations to their respective flats/shops. The learned counsel has further submitted that the respondent-society violated the terms of undertaking as mentioned in the pursi dated 21.03.2013 filed before the State Commission, wherein they had undertaken to remove the illegal alteration, if so required by the Municipal Corporation. The learned counsel has further pointed out that removal of additional structures/changes/additions put up by the members of respondent-society was the subject-matter of a writ petition, being W.P. No. 970 of 2015, filed

before the High Court of Judicature at Bombay, which was disposed of by the order dated 12.06.2017 with directions that a designated officer of the concerned ward shall visit the property in question so as to ascertain whether there were illegal constructions/unauthorized changes/additions/ alterations; and if such violations were found, then to intimate the necessary parties prior to taking of any action for demolition or removal[2].

4.1 Learned counsel has also contended that when the State Commission had rejected the prayer for payment of Rs. 25,00,000/- to the respondent-society and the same was not the subject-matter of appeal, the National Commission has gravely erred in awarding this amount to the respondent. Learned counsel has further submitted that even if handing over possession of flats to the members of the respondent-society in the absence of the Occupancy Certificate was being questioned, fact of the matter remains that illegal/unauthorized construction/alterations were carried out by the members of respondent-society; and in these circumstances, the responsibility for delay in completion of all other requirements could not have been fastened on the appellants.

5. *Per contra,* learned counsel for the respondent-society has supported the order passed by the National Commission as regards holding the appellants responsible for the deficiency in services as also for the delay in obtaining the Occupancy Certificate. The learned counsel would submit that

2 The learned counsel for the appellants has further pointed out that the Municipal Corporation has initiated necessary proceeding, as noticed by the High Court in its order dated 07.01.2019 in Notice of Motion No. 221 of 2018 moved in W.P. No. 970 of 2015.

the appellants handed over the flats/commercial units not only without Occupancy Certificate but also without providing basic facilities such as water, electrical meter etc.; and in any case, non-compliance with the conditions to obtain Occupancy Certificate speaks volumes about the deficiency of services on the part of the appellants. According to the learned counsel, the building is in the same condition as it was on the day of handing over possession to the members of respondent-society; in other words, the members of respondent-society have not carried out any alterations/constructions in the said premises. While further refuting the contention of appellants that the Occupancy Certificate was not issued for unauthorized construction or alteration by the members of respondent-society, the learned counsel has contended, with reference to the correspondence with the Municipal Corporation, that Occupancy Certificate was not issued for want of compliance by the appellants of various requisites and the attempt to shift the burden in that regard on the members of the respondent-society was entirely unjustified. According to the learned counsel, the appellants had attempted to amend the plan of the building which was resisted by respondent; and there exists a dispute between the parties in relation to a portion of a property demarcated for Recreational Ground inasmuch as the said portion is being used by one garage owner as a parking space at the behest of the appellants, which has resulted in harassment of the members of respondent-society.

6. Having heard learned counsel for the parties and having perused the material placed on record, we are satisfied that in the given set of facts and circumstances, directions by the National Commission as regards payment of a sum of Rs. 25,00,000/ by the appellants to the respondent-society calls for no interference but then, other parts of the order impugned call for suitable modification.

7. The contention on the part of appellants as regards pecuniary jurisdiction has only been noted to be rejected. The National Commission has observed, and rightly so, that such a plea was not specifically raised before the State Commission at the earliest opportunity; and the State Commission having already decided the matter on merits, such a technical objection as regards pecuniary jurisdiction could not have been countenanced before the National Commission. We find no error in the National Commission rejecting this plea as being wholly untenable at the given stage.

8. As regards merits of the case, to put it in a nutshell, the respondent-society, while filing their complaint, sought for reimbursement of the amount of: (i) Rs. 35,16,820/- that was borrowed by appellants; (ii) Rs. 26,25,000/- collected towards possession charges; and (iii) Rs. 46,40,000/- towards the amount spent by the members for completing the interior works in their respective units. By way of the application dated 21.03.2013[3] the respondent-society did not press on prayer (d) concerning the said amount

3 Reproduced hereinbefore in paragraph 3.4.

of Rs. 35,16,820/- towards temporary loan and at the same time, restricted their claim in prayer (f) to the extent of Rs. 25,00,000/- with reference to the minutes of the meetings dated 17.12.2003 and 14.12.2003[4]. The State Commission, while issuing directions for executing the Deed of Conveyance by obtaining Completion Certificate and Occupation Certificate, also directed the appellants to pay Rs. 26,25,000/- with interest, being the amount illegally collected towards possession charges. The State Commission, however, held that there was no documentary evidence to establish that the amount of Rs. 46,40,000/- was incurred by the members of the respondent-society to complete the interior civil works. On the other hand, the National Commission agreed with the submissions of the appellants that the directions regarding refund of Rs. 26,25,000/- could not have been issued when there was no cogent proof and when the President of the society, who had issued the receipt in question, was deleted from the array of the parties on the request of the complainant. However, the National Commission ordered payment of Rs. 25,00,000/- by the appellants as agreed by them in the meeting dated 17.12.2003.

9. When the prayers made in the complaint are read along with the contents of the application dated 21.03.2013 as also with the findings of the State Commission and the National Commission, it may appear at the first blush that the amount claimed towards temporary loan in prayer (d) was given up by the respondent-society whereas no proof was found in relation

4 Reproduced hereinbefore in paragraph 3.4.1.

to amounts claimed in prayers (e) and (f) towards possession charges and interior civil works respectively. However, fact of the matter remains that there had been long drawn disputes between the parties on several issues, including those regarding monetary claims made by the respondent-society and its members; and meetings were held for resolution of such disputes. The prayers (d) to (f) for money recovery in the complaint and the submissions made in the application dated 21.03.2013 are required to be viewed in the context of such claims and the resolutions adopted in the meetings. In our view, it would be wholly inappropriate and unjustified to consider the prayers as made in the complaint and as modified in the application *de hors* the context and disjointed from the decisions taken in the meetings aforesaid.

10. Indisputably, in the application dated 21.03.2013 as moved before the State Commission, the respondent-society restricted its prayer for money recovery to a sum of Rs. 25,00,000/- with reference to the aforesaid minutes dated 17.12.2003 and 14.12.2003. It is at once clear that the aforesaid sum of Rs. 25,00,000/- was agreed to be paid by the appellants in full and final settlement of the claim of the respondent-society. The appellants having agreed to make such payment, in our view, the National Commission has rightly put them to the terms of honouring their unequivocal commitment/promise. In the given set of facts and circumstance, we are unable to accept the contention that a particular part of order of the State Commission having not been challenged by the respondent-society, the

National Commission could not have granted the relief otherwise available on the face of record. In an overall view of the matter, when such a relief emanates from the very commitment made by the appellants in the meetings aforesaid, the National Commission had been fully justified in granting the same to the respondent-society. Therefore, we find no reason to consider any interference in this part of direction by the National Commission (as contained in paragraph 10 of the order impugned).

11. Even when we find no reason to interfere with the above-mentioned parts of the order impugned, it appears difficult to approve the directions in the remaining parts thereof, particularly those relating to other pecuniary reliefs. The National Commission has saddled the appellants with a liability to pay compensation to the tune of Rs. 3,00,000/- for not obtaining Occupancy Certificate and has issued further directions to the appellants to obtain such certificate as also to execute the requisite Deed and to pay Rs. 1,000/- per day for every day of delay. True it is that Occupancy Certificate was not obtained by the appellants but then, fact of the matter remains that the members of respondent-society chose to take over possession without such certificate; and then, several questions have arisen as regards the alteration allegedly carried out by them for which, the Municipal Corporation has the objections to raise. In any case, there appears nothing on record to find the basis for holding the appellants liable for compensation and then, for assessing the quantum of compensation, if at all there be any liability of the appellants. In other words, there is no material on record to find if the

respondent-society or its members suffered any loss; and if so, the extent thereof. Therefore, this part of the order impugned, directing the appellants to pay compensation to the tune of Rs. 3,00,000/-, cannot be approved.

12. As regards direction to appellants to convey the title of the property in question by executing a registered Deed within a period of four months after obtaining Occupancy Certificate, in our view, though the appellants cannot avoid their legal obligation to execute the requisite Deed but then, having regard to the facts and circumstances of the case and more particularly the facts relating to the issuance of notices by the Municipal Corporation; and the dispute/objection regarding alterations by the members of the respondent-society having not been settled as yet with the High Court having issued directions for inspection of the building and for necessary follow-up steps, awarding of Rs. 1,000/- per day for every day of delay seems rather unwarranted. In the given situation, where the Municipal Corporation had been of the view that there were visible illegal constructions made by the members of respondent-society because of which the Certificate cannot be issued; and in view of the orders dated 12.06.2017 and 07.01.2019 passed by the High Court in W.P. No. 970 of 2015, the penalty of Rs. 1,000/- per day deserves to be waived at present but with the requirements on the parties to complete the respective requisites, while leaving it open for them to take recourse to appropriate remedies, in case of any grievance arising in future.

13. Having regard to the fact and circumstances of this case and looking to the nature of dispute, we find no justification for saddling the appellants with cost of Rs. 50,000/- either. The cost deserves to be made easy in this case.

14. In the result:

(i) The impugned order dated 07.03.2018 is not interfered with, to the extent it relates to the payment of Rs. 25,00,000/- by the appellants to the respondent-society. The appellants shall make payment of this amount of Rs. 25,00,000/- within 45 days from today failing which, this amount shall carry interest @ 8% p.a. from today until payment.

(ii) The other part of the order impugned, saddling the appellants with liability to pay compensation to the tune of Rs. 3,00,000/- is set aside.

(iii) Yet another part of the order impugned, requiring the appellants to pay Rs. 1,000/- per day after 60 days of the order and until obtaining full Occupancy Certificate, is also set aside.

(iv) As regards obtaining of Occupancy Certificate and execution of the Deed of Conveyance by the appellants, it is provided that: (a) the appellants shall complete all the requisites on their part for obtaining Occupancy Certificate within three months from today; and (b) the respondent-society and its members shall also ensure compliance of the requisites on their part (with reference to the orders passed by the High Court in W.P. No. 970 of 2015) within three months from today and for that

matter, they may seek necessary directions from the High Court, if so required. Within two months of completion of all the requisites by the parties, the appellants shall execute the Deed of Conveyance in favour of the respondent-society after obtaining the necessary Occupancy Certificate. As regards this part of the matter, it is also left open for the parties to take recourse to appropriate remedies in accordance with law, in case of any grievance arising in future.

(v) The cost imposed on the appellants is waived and parties are left to bear their own costs of this litigation.

15. This appeal is partly allowed and the impugned order dated 07.03.2018 as passed by the National Commission stands modified to the extent and in the manner indicated above.

.....J
(Abhay Manohar Sapre)

.....J
(Dinesh Maheshwari)

New Delhi,
Dated: 19th July, 2019.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5785 OF 2019

IREO GRACE REALTECH PVT. LTD. … Appellant

Versus

ABHISHEK KHANNA & OTHERS … Respondents

with

CIVIL APPEAL NO. 7615 OF 2019
CIVIL APPEAL NO. 7975 OF 2019
CIVIL APPEAL NO. 8454 OF 2019
CIVIL APPEAL NO. 8480 OF 2019
CIVIL APPEAL NO. 8482 OF 2019
CIVIL APPEAL NO. 8785-94 OF 2019
CIVIL APPEAL NO. 9139 OF 2019
CIVIL APPEAL NO. 9216 OF 2019
CIVIL APPEAL NO. 9638 OF 2019
CIVIL APPEAL NO. 3064 OF 2020

J U D G M E N T

INDU MALHOTRA, J.

1. The present batch of Appeals has been filed by the Appellant-Developer, to challenge the judgment passed by the National Consumer Disputes Redressal Commission ("National Commission") directing refund of the amounts deposited by the Apartment Buyers in the project "The Corridors" developed in Sector 67-A, Gurgaon, Haryana, on account of the inordinate delay in completing the construction and obtaining the Occupation

Certificate. Aggrieved by the said Judgment, the Appellant-Developer has filed the present batch of Appeals under Section 23 of the Consumer Protection Act, 1986 ("Consumer Protection Act").

Since common issues have arisen for consideration, they are being decided by a common Judgment.

For the sake of brevity, the facts in Civil Appeal No. 5785 of 2019 are being referred to as the lead matter.

2. The Department of Town and Country Planning granted a license to Respondent No.3 – Precision Realtors Pvt. Ltd. and Respondent No.4 – Blue Planet Infra Developers and Madeira Conbuild Pvt. Ltd. for developing a group housing colony on a vast tract of land admeasuring about 37.5125 acres where multiple towers comprising of 1356 apartments were to be constructed. Subsequently, the license for construction was transferred to the Appellant - Developer.

3. On 23.07.2013, the Building Plans of the project were sanctioned by the Directorate of Town and Country Planning, Haryana. Clause 3 of the sanctioned Plan stipulated that NOC/ Clearance from the Fire Authority shall be submitted within 90 days from the date of issuance of the sanctioned Building Plans.

4. The Developer opened booking for the apartments in 2013. On 07.08.2013, the Respondent No.1- Apartment Buyer was allotted a 2 BHK apartment in Tower-C of the project. Similar allotment letters were issued to various other Apartment Buyers in the housing project.

5. On 23/24.10.2013, the Developer applied for issuance of an NOC for the Fire Fighting Scheme of the group housing colony to the Commissioner, Municipal Corporation, Gurgaon.

The Commissioner, Municipal Corporation vide letter dated 30.12.2013 raised 16 objections with respect to the proposed Fire Fighting Scheme submitted by the Developer.

The Developer replied to the said objections vide letter dated 22.01.2014, stating that the objections raised by the Commissioner had been rectified. The Developer sought approval of the Fire Fighting Scheme on priority.

The Municipal Corporation vide letter dated 28.03.2014 informed the Developer that the deficiencies in the application for Fire NOC had not been cured. The Developer was granted 15 days' time to cure the defects, failing which, the application would be deemed to be rejected.

Ultimately, on 27.11.2014, the Director, Haryana Fire Service granted approval to the Fire Fighting Scheme subject to the conditions mentioned therein.

6. On 12.12.2013, Respondent No.3 obtained environmental clearance for setting up the group housing project from the State Environment Impact Assessment Authority. Clause 39 of the said clearance stipulated that the project proponent shall submit a copy of the Fire Safety Plan duly approved by the Fire Department before the start of construction.

Under Part-B of the General Conditions in Clause (vi), it was stipulated that the project proponent would obtain all other statutory clearances, such as the approval for storage of diesel from the Chief Controller of Explosives, Fire Department, Civil Aviation Department, Forest Conservation Act, 1980 and Wildlife (Protection) Act, 1972, Forest Act, 1927, PLPA 1900 etc. from the concerned authorities, prior to the construction of the project.

7. The Apartment Buyers vide letter dated 25.03.2014 received a copy of the Apartment Buyer's Agreement with a construction linked payment plan, which is extracted hereunder :

INSTALLMENT PAYMENT PLAN			
S. No.	LINKED STAGES	%	TOTAL
1	AT THE TIME OF BOOKING	10% OF BASIC	1727851.60
2	WITHIN 45 DAYS OF BOOKING	10% OF BASIC	1727851.60
3	COMMENCEMENT OF EXCAVATION	10% OF BASIC+50% OF DEVELOPMENT CHARGES	2029223.85
4	CASTING OF LOWER BASEMENT ROOF SLAB	10% OF BASIC+50% OF DEVELOPMENT CHARGES	2029223.85
5	CASTING OF 2ND FLOOR ROOF SLAB	10% OF BASIC	1727851.60
6	CASTING OF 5TH FLOOR ROOF SLAB	10% OF BASIC	1727851.60
7	CASTING OF 8TH FLOOR ROOF SLAB	10% OF BASIC+50% OF CLUB MEMBERSHIP	1852851.60
8	CASTING OF 11TH FLOOR ROOF SLAB	10% OF BASIC	1727851.60
9	CASTING OF TOP FLOOR ROOF SLAB	10% OF BASIC	1727851.60
10	ON COMPLETION OF STONE/TILE FLOORING IN APARTMENT	50% OF BASIC+50% OF CLUB MEMBERSHIP	988925.80
11	ON OFFER OF POSSESSION	50% OF BASIC+100% OF IFMS+100% OF IBRF	1139646.80
	TOTAL		18406981.50

8. On 12.05.2014, the Developer executed the Apartment Buyer's Agreement in favour of Respondent No.1 – Apartment Buyer for a total consideration of Rs.1,45,22,006/-.

The relevant terms of the Apartment Buyer's Agreement are set-out hereinbelow :

Clause 6 pertains to payment of Earnest Money, and reads as :

"6. EARNEST MONEY

The Company and the Allottee hereby agree that 20% (Twenty percent) of the Sale Consideration of the Apartment shall be deemed to constitute the "Earnest Money"."

(emphasis supplied)

Clause 7 pertains to payment of instalments, and provides that :

"7. PAYMENT OF INSTALLMENTS

7.1 The Allottee has opted for the Payment Plan annexed herewith as Annexure-IV. The Allottee understands that it shall always remain responsible for making timely payments in accordance with the Payment Plan Annexure-IV. Only in the case of a construction linked Payment Plan, the Company shall be obliged to send demand notices for installments on or about the completion of the respective stages of construction. The demand notices shall be sent by registered post/courier and shall be deemed to have been received by the Allottee within 05 (five) days of dispatch by the Company or receipt thereof, whichever is earlier.

7.2 It shall not be obligatory on the part of the Company to send any reminders for any payments whatsoever. Although the Company shall not be obliged to send demand notices other than for the construction linked Payment Plan, or any reminders whatsoever for payments of the instalment, in the event that any such notices or reminders are sent by the Company to the Allottee, as a gesture of courtesy, these shall not, under any circumstances, be construed or deemed to be a waiver of the obligations and responsibility of the Allottee to itself make timely payments in accordance with the Payment Plan or in response to such demand notices in the case of a construction linked Payment Plan.

7.3 If the Allottee prepays any installments(s) or part thereof to the Company before it falls due for payment, the Allottee shall be entitled to pre-payment rebate on such prepaid amounts at the interest rate declared by the Company for this purpose from time to time. The interest on such prepaid installment(s) shall be calculated from the date of prepayment uptill the date when such amount would actually have become due. The credit due to the Allottee on account of such pre-payment rebate shall however be adjusted/paid only at the time of final instalment for the said Apartment.

7.4 The Allottee shall be liable to pay simple interest on every delayed payment, at the rate of 20% per annum from the date that it is due for payment till the date of actual payment thereof. In case the Allottee defaults

in making payment of the due installment (including partial default) beyond a period of 90 days from the due date, the Company shall be entitled, though not obliged, to cancel the Allotment and terminate this Agreement at any time thereafter in accordance herewith. However, the Company may alternatively, in its sole discretion, instead decide to enforce the payment of all its dues from the Allottee by seeking Specific Performance of this Agreement. Further, in every such case of delayed payment, irrespective of the type of Payment Plan, the subsequent credit of such delayed installments(s)/payments along with delayed interest in the account of the Company shall not however constitute waiver of the right of termination reserved herein and shall always be without prejudice to the rights of the Company to terminate this Agreement in the manner provided herein.

7.5 Save and except in the case of any bank, financial institution or company with whom a tripartite agreement has been separately executed for financing the said Apartment, or where the Company has given its permission to mortgage to any bank, financial institution or company for extending a loan to the Allottee against the said Apartment, the Company shall not be responsible towards any other third party, who has made payments or remittances to the Company on behalf of the Allottee and any such third party shall not have any right against the said Apartment or under this Agreement whatsoever. The Company shall issue the payment receipts only in favour of the Allottee. Notwithstanding the above, the Allottee is and shall remain solely and absolutely responsible for ensuring and making all the payments due under this Agreement on time.

7.6 The Allottee may obtain finance/loan from any financial institution, bank or any other source, but the Allottee's obligation to purchase the said Apartment pursuant to this Agreement shall not be contingent on the Allottee's ability or competency to obtain such finance. The Allottee would remain bound under this Agreement whether or not it has been able to obtain finance for the purchase of the said Apartment. The Allottee agrees and has fully understood that the Company shall not be under any obligation whatsoever to make any arrangement for the finance/loan facilities to the Allottee from any bank/financial institution. The Allottee shall not omit, ignore, delay, withhold, or fail to make timely payments due to the Company in accordance with the Payment Plan opted by the Allottee in terms of this Agreement on the grounds of the non-availability of bank loan or finance from any bank/financial institution for any reason whatsoever and if the Allottee fails to make the due payment to the Company within the time agreed herein, then the Company shall have right to terminate this Agreement in accordance herewith.

7.7 Furthermore, in every case where the Allottee has obtained a loan/finance from a bank, financial institution or any other source and for which a tripartite agreement has also been executed by the Company, it is agreed by the Allottee that any default by the Allottee of the terms and conditions of such loan/finance, shall also be deemed to constitute a default by the Allottee of this Agreement, whereupon or at the written request of such bank, financial institution or person from whom such loan has been obtained the Company shall be entitled to terminate this Agreement."

(emphasis supplied)

Clause 13 of the Agreement provides for handing over possession of the Apartments and reads as :

"13. POSSESSION AND HOLDING CHARGES

13.1. Upon receipt of the Occupation Certificate under the Act pertaining to the said Apartment, the Company shall notify the Allotee in writing to come and take over the possession of the said Apartment ("Notice of Possession"). In the event the Allottee fails to accept and take the possession of the said Apartment within the time indicated in the said Notice of Possession, the Allottee shall be deemed to have become the custodian of the said Apartment from the date indicated in the Notice of Possession and the said Apartment shall thenceforth remain at the sole risk and cost of the Allottee itself.

13.2. Notwithstanding any other provisions of this Agreement, the Allottee agrees that if it fails, ignores or neglects to take the possession of the said Apartment in accordance with the Notice of Possession sent by the Company, the Allottee shall be liable to pay additional charges equivalent to Rs. 7.5 (Rupees Seven & Half only) per sq. ft. on the Super Area per month of the said Apartment ("Holding Charges"). The Holding Charges shall be a distinct charge in addition to the maintenance charges and not related to any other charges/consideration as provided in this Agreement.

13.3 Subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total Sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said Apartment to the Allottee within a period of 42 (Forty Two) months from the date of approval of the Building Plans and/or fulfilment of the preconditions imposed thereunder ("Commitment Period"). The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 180 days ("Grace Period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company.

13.4. Subject to Clause 13.3, if the Company fails to offer possession of the said Apartment to the Allottee by the end of the Grace Period, it shall be liable to pay to the Allottee compensation calculated at the rate of Rs. 7.5 (Rupees Seven & Half only) per sq. ft. of the Super Area ("Delay Compensation") for every month of delay until the actual date fixed by the Company for offering possession of the said Apartment to the Allottee. The Allottee shall be entitled to payment/adjustment against such 'Delay Compensation' only at the time of 'Notice of Possession' or at the time of payment of the final installment, whichever is earlier.

13.5. Subject to Clause 13.3, in the event of delay by the Company in offering the possession of the said Apartment beyond a period of 12 months from the end of the Grace Period (such 12 month period hereinafter referred to as the "Extended Delay Period"), then the Allottee shall become entitled to opt for termination of the Allotment/Agreement and refund of the actual paid up installment(s) paid by it against the said Apartment after adjusting the interest on delayed payments along with Delay Compensation

for 12 months. Such refund shall be made by the Company within 90 days of receipt of intimation to this effect from the Allottee, without any interest thereon. For the removal of doubt, it is clarified that the Delay Compensation payable to the Allotee who is validly opting for termination, shall be limited to and calculated for the fixed period of 12 months only irrespective of the date on which the Allottee actually exercised the option for termination. This option may be exercised by the Allottee only up till dispatch of the Notice of Possession by the Company to the Allottee whereupon the said option shall be deemed to have irrevocably lapsed. No other claim, whatsoever, monetary or otherwise shall lie against the Company and/or the Confirming Parties nor be raised otherwise or in any other manner by the Allottee.

13.6. If, however, the completion of the said Apartment is delayed due to Force Majeure as defined herein, the Commitment Period and/or the Grace Period and/or the Extended Delay Period, as the case may be, shall stand extended automatically to the extent of the delay caused under the Force Majeure circumstances. The Allottee shall not be entitled to any compensation whatsoever, including Delay Compensation for the period of such delay.

13.7. Under no circumstances shall the possession of the said Apartment be given to the Allottee and the Allottee shall not be entitled to the possession of the said Apartment unless and until the full payment of the Sale Consideration and any other dues payable under the Agreement have been remitted to the Company and all other obligations imposed under this Agreement have been fulfilled by the Allottee to the complete satisfaction of the Company.

13.8. The Allottee hereby agrees and affirms that upon taking possession of the said Apartment, the Allottee shall be deemed to have waived all claims against the Company/Confirming Parties, if any, in respect of the area, specifications, quality, construction and/or any item, amenity or provision in the said Apartment or The Corridors Project."

(emphasis supplied)

Clause 21.3 reads as under:

"21. TIME IS OF ESSENCE; TERMINATION AND FORFEITURE OF EARNEST MONEY

21.1 Notwithstanding anything contained in this Agreement, timely performance by the Allottee of all its obligations under this Agreement or exercise of any options wherever and wherever and whenever indicated herein this Agreement including without limitation its obligations to make timely payments of the Sale Consideration, maintenance charges and other deposits and amounts, including any interest, in accordance with this Agreement shall be of essence under this Agreement. If the Allottee neglects, omits, ignores, or fails in the timely performance of its obligations agreed or stipulated herein for any reason whatsoever or acts in any manner contrary to any undertaking assured herein or fails to exercise the options offered by the Company within the stipulated period or to pay in time to the Company any of the instalments or other amounts and charges due and payable by the Allottee as described in Clause 7.7 herein, the Company shall be entitled to cancel the allotment and terminate this Agreement in the manner described hereunder.

> 21.1.1 In case any failure or breach committed by the Allotee is incapable or rectification or is in the opinion of the Company unlikely to be rectified by the Allottee or where the Allottee is a repetitive defaulter or such failure or default is continuing despite the Allottee being given an opportunity to rectify the same, then this Agreement may be cancelled by the Company with immediate effect at its sole option by written notice ("Notice of Termination") to the Allottee intimating to the Allottee the decision of the Company to terminate the Agreement and the grounds on which such action has been taken.
>
> …..
>
> 21.3 The Allottee understands, agrees and consents that upon such termination, the Company shall be under no obligation save and except to refund the amounts already paid by the Allottee to the Company, without any interest, and after forfeiting and deducting the Earnest Money, interest on delayed payments, brokerage/commission/charges, service tax and other amounts due and payable to it, only after resale of the said Apartment. Upon termination of this Agreement by the Company, save for the right to refund, if any to the extent agreed hereinabove, the Allottee shall have no further right or claim against the Company and/or the Confirming Parties which, if any, shall be deemed to have been waived off by the Allottee and the Allottee hereby expressly consents thereto. The Company shall thenceforth be free to deal with the said Apartment in any manner whatsoever, in its sole and absolute discretion and in the event that the Allottee has taken possession of the said Apartment and everything whatsoever contained therein and in such event, the Allottee and/or any other person/occupant of the said Apartment shall immediately vacate the said Apartment and otherwise be liable to immediate ejectment as an unlawful occupant/trespasser. This is without prejudice to any other rights available to the Company against the Allottee."
>
> (emphasis supplied)

9. On 27.12.2017, Respondent No.1 filed a Consumer Complaint being Consumer Case No.3823 of 2017 before the National Commission, wherein it was *inter alia* prayed that the Developer be directed to refund the amount of Rs.1,44,72,364/- paid by the Apartment Buyer alongwith interest @ 20% per annum compounded quarterly till realization, and compensation towards damages on account of harassment, mental agony and litigation charges.

The Apartment Buyer *inter alia* submitted that the Developer had invited applications from the public for booking flats in the housing complex "The Corridors", by misrepresenting that all necessary approvals/pre-clearances

with respect to the and constructions had already been obtained from the office of the Director, Town and Country Planning, Haryana, and other civil authorities. The Developer had misrepresented at the time of booking that the project would have a 90-meters motorable access road approaching the project from Junction 63A to 67A which was shown in the Apartment Buyer's Agreement in the layout plan. However, there was no access road of 90-meters to the project, and/or 24-meters in the revised plans. The Apartment Buyers were induced to book apartments on false representations made by the Developer that construction of the project would be completed the project within 42 months from the collection of the initial booking amount.

As per Clause 13.3 of the Agreement, possession was to be handed over within a period of 42 months from the date of approval of the Building Plans, with a Grace Period of 180 days. Despite the aforesaid terms, the Developer had not offered possession to the Apartment Buyers till the date of filing the complaint, even though the "Commitment Period" for handing over possession had expired on 22.01.2017, and also the Grace Period had lapsed on 22.07.2017. The Apartment Buyers had regularly paid instalments as per the demands raised by the Developer. As on December 2016, a total sum of Rs.1,44,72,364/- had been paid by the Respondent No. 1 to the Developer. To date, no offer of possession has been made to Apartment Buyers.

The Apartment Buyers submitted that the Building Plans were revised in 2017, when the entire layout was changed which led to the scrapping of some of the residential towers, so that the same could be converted to commercial towers in the project. It was further mentioned that the office of the District

Town Planner (Enforcement), Gurgaon, Haryana, vide a restraint order dated 20.02.2017 issued Memo No.525-526 to the Developer to immediately stop the construction with respect to Tower-A and Tower-B for causing harassment to the buyers.

10. The Developer filed its reply to the Consumer Complaint submitting that there was no delay in offering possession of the flats, since as per Clause 13.3 of the Agreement, possession was to be handed over to the allottees within 42 months from the date of approval of the Building Plans, which included fulfilment of the conditions imposed thereunder. The Building Plan approval had been granted on 23.07.2013, which stipulated compliance with several pre-conditions, including obtaining Fire Safety Scheme approval. This approval was granted only on 27.11.2014. Consequently, the 48 months' time period for delivery of possession of the apartment would commence only on 27.11.2014, and expire on 27.11.2018. Consequently, there was no delay in offering possession of the apartments. Hence, the complaint was premature and liable to be dismissed.

11. The National Commission in another case titled as ***"****IREO Grace Realtech Pvt. Ltd.* v. *Ritu Hasija****"*** being CC No.190 of 2017 and connected matters, decided on 18.09.2018, held that clause 44 of that Agreement was wholly unfair and one-sided, which gave only a limited right to the Apartment Buyers to terminate the agreement, and seek refund of the amount paid by them. Clause 21.3 of the Flat Buyers Agreement read in conjunction with the other Clauses of the Agreement would result in a situation where a flat buyer, despite the failure of the builder to offer possession within the time stipulated,

would be practically left remediless for 1½ years from the date of default, with no interest or compensation payable to him, even though the money was utilized by the builder. Even the principal amount would be refunded at an uncertain future point, after the builder had sold the apartment allotted to the complainant. Such a term was wholly unfair and unjust since the Developer had the right to terminate the agreement even if a single default occurred on the part of the Buyers, and forfeit the earnest money, and deduct other charges specified in Clause 21.3 of the Buyers Agreement. Clause 44 postponed the right of the flat buyer to terminate the agreement and seek compensation even after the Grace Period had expired, which was wholly unfair and one-sided. The contract could be terminated after a delay of 12 months, and would be entitled to only delay compensation, without interest.

The Commission held that since the Developer had failed to deliver possession of the allotted flats to the Apartment Buyers, it amounted to deficiency in service, and the complainants were entitled to refund of the amount alongwith appropriate compensation.

The Developer has filed SLP (C) No.40286 of 2019 against this judgment, which has been tagged to the present batch of appeals.

12. This judgment was followed by the National Commission in the case of *Subodh Pawar* v. *IREO Grace Realtech Pvt. Ltd. & Others***,** decided on 24.09.2018. The SLP filed by the Developer against this judgment, was dismissed by the Supreme Court vide order dated 28.01.2019, on the statement made by the Counsel for the Developer that the amount due and

payable as per the order of the National Commission, shall be refunded within a period of four weeks with interest @ 10% p.a. w.e.f. 27.05.2018 till the date of payment.

A similar order was passed by this Court in *IREO v. Surendra Arora* Civil Appeal (Diary) No. 48101 of 2018 on 28.01.2019.

13. With respect to the same project, an Apartment Buyer filed a complaint under Section 31 of the Real Estate (Regulation & Development) Act, 2016 ("RERA Act") read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 before the Haryana Real Estate Regulatory Authority, Gurugram ("RERA"). In this case, the Authority vide order dated 12.03.2019 held that since the environment clearance for the project contained a pre-condition for obtaining Fire Safety Plan duly approved by the Fire Department before starting construction, the due date for possession would be required to be computed from the date of Fire Approval granted on 27.11.2014, which would come to 27.11.2018. Since the Developer had failed to fulfil the obligation under Section 11(4)(a) of this Act, the Developer was liable under the proviso to Section 18 to pay interest at the prescribed rate of 10.75% p.a. on the amount deposited by the complainant, upto the date when the possession was offered. However, keeping in view the status of the project, and the interest of other allottees, the Authority was of the view that refund cannot be allowed at this stage. The Developer was directed to handover possession of the apartment by 30.06.2020, as per the Registration Certificate for the project.

14. The present batch of consumer complaints was decided by the National Commission vide judgment and order dated 28.03.2019, which has been impugned herein. The National Commission has allowed the consumer complaints in terms of the earlier order passed in the *Subodh Pawar case (supra).* The National Commission recorded the statement of the counsel for the complainants that in order to avoid any further litigation, the complainants were restricting their claim for refund of the principal amount paid to the Developer, alongwith compensation @ 10% S.I. p.a. w.e.f. from 10.07.2017, which was awarded by this Court to another allottee in the same project as per Consent Order dated 28.01.2019 passed in Civil Appeal Diary No.48101 of 2018.

15. We have heard the learned Counsel for the parties. The issues which have arisen for consideration are :

(i) Determination of the date from which the 42 months period for handing over possession is to be calculated under Clause 13.3, whether it would be from the date of issuance of the Fire NOC as contended by the Developer; or, from the date of sanction of the Building Plans, as contended by the Apartment Buyers;

(ii) Whether the terms of the Apartment Buyer's Agreement were one-sided, and the Apartment Buyers would not be bound by the same;

(iii) Whether the provisions of the Real Estate (Regulation and Development) Act, 2016 must be given primacy over the Consumer Protection Act, 1986;

(iv) Whether on account of the inordinate delay in handing over possession, the Apartment Buyers were entitled to terminate the agreement, and claim refund of the amounts deposited with interest.

16. The counsel for the Appellant – Developer *inter alia* submitted that :

(a) On the first issue, it was submitted that the period of 42 months for handing over possession would commence only after the conditions mentioned in the Building Plans were fulfilled. The Apartment Buyer's Agreement in Clause 13.3 provides that the 42 months period would commence from "the date of approval of the Buildings plans and/or fulfilment of the pre-conditions imposed thereunder".

Clause 17(iv) of the Building Plans duly sanctioned on 23.07.2013 issued by the Directorate of Town and Country Planning, stipulated that:-

> "17(iv). That the Coloniser shall obtain the clearance/NOC as per the provisions of the Notification No.SO 1533(E) dated 14.09.2006 issued by the Ministry of Environment & Forests, Government of India before starting the construction/execution of development works at site."
>
> (emphasis supplied)

This stipulation has been affirmed by the RERA, a specialised fact-finding authority in respect of real estate projects, while interpreting the starting point of the 42 months period from the date of fire safety approval. Since the fire safety approval was obtained on 27.11.2014, the period of 42 months would commence from this date.

The due date for handing over possession of apartments must be taken to be 27.11.2018 i.e. 42 months from the date of obtaining the Fire Safety NOC on 27.11.2014, and a Grace Period of 6 months. In this view of the matter, the complaint filed before the National Commission was premature and liable to rejected.

(b) The Apartment Buyers were bound by the terms of the Apartment Buyer's Agreement, which clearly states that the "Commitment Period" would start only after fulfilment of the pre-conditions under the Building Plan, and must be given effect to by any adjudicatory body.

(c) Under Sections 15(2) and (3) of the Haryana Fire Service Act, 2009, it is the duty of the Authority to grant a provisional NOC within a period of 60 days from the date of submission of the application. The delay/failure of the Authority to grant a provisional NOC cannot be attributed to the Developer.

(d) The Apartment Buyers was not required to pay the entire consideration amount at the commencement of the agreement, in a lump sum amount, since the consideration was linked to the construction plan, and was payable in instalments at various stages of the construction.

The Developer had not taken any instalment prior to 27.11.2014, when the Fire Safety NOC was granted. The first instalment was taken on 27.01.2015, when a demand for casting the lower roof slab was

made from the allottees. All substantial payments of the project were based on milestones linked to construction.

(e) It was submitted that in large development projects, where multiple towers are being constructed, delays are inevitable. The Agreement contemplated a reasonable Grace Period of 180 days, which is a standard clause in the construction industry. The Apartment Buyer is not entitled to seek refund unless the Extended Delay Period is over. In any event, the Apartment Buyer is being paid Delay Compensation for the period of delay which has occurred during the course of construction.

(f) The finding recorded by the National Commission that the clauses of the Apartment Buyer's Agreement were one-sided and unfair was illegal and without jurisdiction, under the Consumer Protection Act, 1986. It was only under the Consumer Protection Act, 2019, which came into effect from 20.07.2020, that the State Consumer Forum and the National Commission were conferred with the power to declare contractual terms that were as unfair to consumers as null and void. Such power did not exist under the 1986 Act.

(g) It was further submitted that the National Commission was not justified in passing the impugned order by directing a full refund of the principal amount with interest @ 10% S.I. p.a. as compensation from 10.07.2017 till the refund was made within four weeks, failing which,

interest would be payable from the date of each deposit to the Developer, till the entire amount was refunded.

(h) It was submitted that the Respondents in Civil Appeals No.7615, 7975, 8454, 8480, 8482, 8785-8794, 9139, 9216 and 9638 of 2019; and the Appellant in Civil Appeal No.3064 of 2020, are defaulters since they had paid only between 30 to 40% of the total consideration. These buyers had breached their obligation to make payments as per the construction linked payment plan. Despite this, the Developer had made an alternate offer of similar units in the completed towers in Phase 1 of the project where the Occupation Certificate had been granted, before the expiry of the Extended Delay Period.

(i) It was contended that the decision of the RERA must be given primacy over the National Commission. The impugned judgment passed by the National Commission was in direct conflict with the judgment passed by the RERA, Haryana since the National Commission had assumed the due date for offer of possession as 23.01.2017. The RERA had correctly held that the due date for delivery of possession of apartments under the Agreement was 27.11.2018. RERA had directed the Developer to hand over possession by 30.06.2020, as mentioned in the Registration Certificate filed before the RERA. In view of the conflicting views taken by the two Fora which exercise original jurisdiction, it is the order of RERA which ought to be upheld. Particularly, since RERA is a specialized fact-finding authority with respect to real estate projects, it is the special law which must

prevail over the general law. RERA has been established under the Real Estate (Regulation & Development) Act, 2016 ("RERA Act"), for regulation and promotion of the real estate sector.

(j) It was submitted that by 21.07.2017, the construction of Phase I of the project had been completed, which comprised of Towers A6 – A10, B1 – B4, and C3 – C7, for which the Occupation Certificate was issued on 31.05.2019, and an offer of possession was made to the apartment buyers.

With respect to the remaining Towers in Cluster-A comprising of buildings A1 to A5; Cluster-B comprising of buildings B5 to B8; and, Cluster-C comprising of buildings C8 to C11, the application for grant of part Occupation Certificate was submitted on 10.09.2019, which is pending approval.

The Developer made an alternate offer to the apartment buyers whose allotments were in Phase-II of the project, where the Occupancy Certificate has yet to be obtained, to transfer their allotment to a ready to move-in apartment in Phase-I of the project, where the Occupation Certificate had been issued.

The construction and development of "The Corridors" group housing project has now been completed, with Occupation Certificate having been issued with respect to 700 apartments, out of a total of 1356 apartments in Towers A6 to A10, B1 to B4, and C3 to C7.

(k) The Consent Order passed in *IREO Grace Realtech Pvt. Ltd.* v. *Surendra Arora* could not be relied upon to grant relief in this batch of cases, since it was a Consent Order passed by the Court, and could not be treated as a precedent.

17. In response, the Apartment Buyers have *inter alia* submitted as under :-

(a) The building plans were approved on 23.07.2013, and the Developer was required to hand over possession of the apartments within a period of 42 months from the date of approval, which expired on 22.01.2017. If the Grace Period of 6 months under Clause 13.3 was added, the Developer was required to give possession by 22.07.2017. The Developer received the Occupation Certificate for certain Towers of the Project on 31.05.2019. Possession was offered to the Apartment Buyers in Phase I of the project in 2019, after a delay of 1 ½ years.

Assuming that the date for possession would begin from the date of issuance of the Fire NOC i.e. 27.11.2014, the Developer was required to offer possession by 27.11.2018. The Developer offered possession in Phase I of the Project to certain Apartment Buyers only after it received the Occupation Certificate in 2019.

With respect to the majority of the apartment buyers before this Court, their allotments were in Towers which were in Phase II of the project, where O.C. is yet to be obtained even as on date. Consequently, there has been a delay of over 3 ½ years.

(b) The grant of Fire NOC was not a pre-condition for commencement of construction work. In fact, the Developer had started the construction before the grant of Fire NOC. Therefore, it could not be contended that the delay in issuance of the Fire Safety clearance had impeded the construction of the units allotted to the respondents.

(c) The Developer had sought payment of the first three instalments prior to receiving the Fire NOC. The third instalment was paid on 18.03.2014, before the grant of Fire NOC.

(d) It was further submitted that neither the Building Plan Approval nor Section 15 of the Haryana Safety Act, 2009 places any restriction on the commencement of construction, which would be evident from the fact that the Developer had started the construction before the grant of the Fire NOC.

(e) The sanctioned Building Plans stipulated that the NOC for Fire Safety (Provisional) was required to be obtained within a period of 90 days from the date of approval of the Building Plans, which expired on 21.10.2013. The Developer applied for the Provisional Fire Approval on 24.10.2013 after the expiry of the mandatory 90 days' period got over. The application filed was deficient and casual and did not provide the requisite details. The appellant submitted the corrected sets of drawings as per the NBC-2005 Fire Scheme only on 13.10.2014, which reflected the laxity of the Developer in obtaining the Fire NOC.

The approval of the Fire Safety Scheme took more than 16 months from the date of the Building Plan approval i.e. from 23.07.2013 to 27.11.2014. The Builder failed to give any explanation for the inordinate delay in obtaining the Fire NOC.

(f) The Respondents placed reliance on the order passed in the case of *IREO Victory Valley Pvt. Ltd.* v. *Shamshul Hoda Khan*,[1] wherein the National Commission held that the Fire NOC was not a pre-condition for commencement of the construction work. The Appeal of the Developer was rejected by this Court vide order dated 03.05.2019, and the Review Petition was dismissed on 15.10.2019.

(g) The Agreement contained one-sided clauses, which were not final and binding on the apartment buyers, and would constitute an unfair trade practice. Reliance was placed on the judgment of this Court in *Pioneer Urban Land and Infrastructure Ltd* v. *Govindan Raghavan.*[2]

(h) The respondents submitted that they had availed of loans to pay the instalments, on which interest @ 7.90% was being paid. On account of the inordinate delay which had occurred, they were unable to pay further instalments, and insisted on refund of the amounts paid.

[1] Civil Appeal No.4801 of 2019 decided on 03.05.2019.
[2] (2019) 5 SCC 725.

DISCUSSION & ANALYSIS

18. **Determination of the date for handing over Possession**

The first issue which has been raised by the Appellant - Developer as also the Apartment Buyers, is the relevant date from which the 42 months' period is to be calculated for handing over possession. Clause 13.3 of the Agreement states that the Developer proposed to offer possession of the apartment to the allottee within a period of 42 months from the date of approval of the Building Plans and/or fulfilment of the pre-conditions imposed thereunder, referred to as the "Commitment Period". The Company would be entitled to a further "Grace Period" of 180 days' after the expiry of the Commitment Period for unforeseen delays beyond the reasonable control of the Company. This would work out to 42 + 6 months i.e. 48 months.

18.1 The point of controversy is whether the 42 months' period is to be calculated from the date when the Fire NOC was granted by the concerned authority, as contended by the Developer; or, the date on which the Building Plans were approved, as contended by the Apartment Buyers.

18.2 Section 15 of the Haryana Fire Safety Act, 2009 makes it mandatory for a Builder/Developer to obtain the approval of the Fire Fighting Scheme conforming to the National Building Code of India, and obtain a No Objection Certificate before the commencement of construction. Section 15 is extracted hereinbelow for ready reference:

> "15. **Approval of Fire Fighting Scheme and issue of no objection certificate.**—(1) Any person proposing to construct a building to be used for any purpose other than residential purpose or a building proposed to be used for residential purpose of more than 15 meters in height, such as group housing, multi-storeyed flats, walk-up apartments, etc. **before the**

> **commencement of the construction, shall apply for the approval of Fire Fighting Scheme conforming to National Building Code of India**, the Disaster Management Act, 2005 (53 of 2005), the Factories Act, 1948 (Act 63 of 1948) and the Punjab Factory Rules, 1952, and issue of no objection certificate on such form, alongwith such field as may be prescribed.
>
> (2) The Director or any officer duly authorised by him in this behalf, may take cognizance of any application and issue such instructions and orders regarding the building plan and for construction by issuing a provisional no objection certificate before the construction is taken up.
>
> Explanation. –In case any person proposes to increase the number of floors on any building already constructed in such a manner that it shall qualify for being termed as a high rise building, shall before construction, apply for no objection certificate.
>
> (3) The provisional no objection certificate shall be issued within 60 days of submission of application along with such fee, as may be prescribed, giving all the details of the construction being undertaken as well as the rescue, fire prevention and fire safety details required to be incorporated during the period of construction.
>
> (4) During the process of construction, the inspection of the construction may be conducted and the advice about any additions, deviations, modifications that are required to be carried out from the precaution and prevention point of view, may be tendered. Such advice shall be made on a prescribed proforma and handed over to the party concerned.
>
> (5) On completion of the construction of the high-rise building, a no objection certificate shall be obtained. In the absence of such certificate, the owner shall not occupy, lease or sell the building."
>
> (emphasis supplied)

18.3 Clause 13.3 of the Apartment Buyer's Agreement provides that the 42 months' period has to be calculated from the date of approval of the Building Plans and/or fulfilment of the pre-conditions imposed thereunder.

18.4 The Building Plans sanctioned by the Directorate of Town and Country Planning, Haryana contained the Terms & Conditions of Approval, which included a provision for Fire Safety contained in Clause (3). The Developer was directed to submit Fire Safety Plans indicating the complete Fire Protection Arrangements, and means of escape/access for the proposed building with suitable legend and standard signs.

Clause 3 of the Building Plans contained a provision for Fire Safety, which reads :

> "3. FIRE SAFETY
>
> On receipt of the above request the Commissioner, Municipal Corporation, Gurgaon after satisfying himself that the entire fire protection measures proposed for the above buildings are as per NBC and other Fire Safety Bye Laws, and would issue a NOC from Fire safety and means of escape/access point of view. This clearance/NOC from Fire Authority shall be submitted in this office along with a set of plans duty signed by the Commissioner, Municipal Corporation, Gurgaon within a period of 90 days from the date of issuance of sanction of building plans. Further, it is also made clear that no permission for occupancy of the building shall be issued by Commissioner, Municipal Corporation, Gurgaon unless he is satisfied that adequate fire fighting measures have been installed by you and suitable external fire fighting infrastructure has been created at Gurgaon, by Municipal Corporation, Gurgaon. A clearance to this effect shall be obtained from the Commissioner, Municipal Corporation, Gurgaon before grant of occupation certificate by the Director General."

18.5 On receipt of the Fire Plans, the Commissioner, Municipal Corporation, Gurgaon, after satisfying himself with the entire fire protection measures as in conformity with the National Building Code, 2005 ("NBC") and the Fire Safety Bye-Laws, would issue an NOC for Fire Safety. This NOC/Clearance was required to be submitted before the Municipal Corporation, within a period of 90 days' from the issuance of the sanctioned Building Plans.

18.6 Clause 17(iv) of the sanctioned Plan stipulated that the Developer shall obtain an NOC from the Ministry of Environment & Forests, before starting the construction/execution of development works at site.

> "17 (iv) That the Developer shall obtain the clearance/NOC as per the provisions of the Notification No. S.O. 1533(E) dated 14.09.2006 issued by Ministry of Environment and Forest, Government of India before starting the construction/execution of development works at site."
>
> (emphasis supplied)

18.7 The Environmental Clearance granted by the Ministry of Environment & Forest Government of Haryana on 12.12.2013 required the Developer to

submit a copy of the Fire Safety Plan approved by the Fire Department, before commencing construction of the project.

General Condition (vi) under Part B of the Environmental Clearance stipulated that the Developer shall obtain all other statutory clearances, including the approval from the Fire Department, prior to construction of the project.

Clause (vi) provides that :

> **"(vi)** All other statutory clearance such as the approvals for storage of diesel from Chief Controller of Explosive, Fire Department, Civil Aviation Department, Forest Conservation Act, 1980 and Wildlife (Protection) Act, 1972, Forest Act, 1927, PLPA 1900 etc. shall be obtained as applicable by project proponents from the respective authorities prior to construction of the project."
>
> (emphasis supplied)

18.8 We are of the view that it was a mandatory requirement under the Haryana Fire Safety Act, 2009 to obtain the Fire NOC before commencement of construction activity. This requirement is stipulated in the sanctioned Building Plans, as also in the Environment Clearance.

18.9 The 42 months' period in Clause 13.3. of the Agreement for handing over possession of the apartments would be required to be computed from the date on which Fire NOC was issued, and not from the date of the Building Plans being sanctioned.

18.10 In the present case, the Developer obtained approval of the Building Plans from the Directorate, Town and Country Planning, Haryana, on 23.07.2013. The Developer applied for issuance of Fire NOC for the Fire Fighting Scheme of the Group Housing Colony within the 90 days period before the Director, Fire Service, Panchkula.

The Commissioner vide letter dated 30.12.2013 raised 16 objections with respect to the proposed Fire Fighting Plan.

The Developer vide letter dated 22.01.2014 responded to the objections, submitting that the objections had been cured, and requested that the approval of the Fire Fighting Scheme be granted on a priority basis.

The Fire Department informed the Developer vide letter dated 28.03.2014 that the deficiencies in the application for Fire NOC had not been cured. The Developer was granted a further period of 15 days' to cure the defects, failing which, its application would be deemed to be rejected.

The Developer submitted revised drawings as per the NBC Fire Scheme alongwith its letter dated 18.08.2014. This letter was received in the office of the Municipal Corporation on 13.10.2014, as per endorsement on the said letter.

18.11 On 27.11.2014, the Director, Haryana Fire Service granted approval to the Fire Fighting Scheme subject to the conditions mentioned therein. The computation of the period for handing over possession would be computed from this date. The Commitment Period of 42 months plus the Grace Period of 6 months from 27.11.2014, would be 27.11.2018, as being the relevant date for offer of possession.

The aforesaid chronology for obtaining Fire NOC would indicate a delay of approximately 7 months in obtaining the Fire NOC by the Developer.

19. **Whether the terms of the Apartment Buyer's Agreement are one-sided?**

The second issue which has been raised by the Apartment Buyers is that the Agreement in this case, contains wholly one-sided clauses, and would not be bound by its terms.

19.1 We have carefully perused the terms of the Agreement, and an analysis of the same reveals that :

a) Under the construction-linked plan, Clause 6 provided that the apartment buyers would be required to deposit 20% of the sale consideration within 45 days of booking of the apartment.

b) Clause 7.4 of the Agreement provides that if there is a delay in payment of an instalment, the apartment buyer would be required to pay Interest on every delayed payment of such instalment @ 20% S.I. p.a.

c) Clause 13.2 of the Agreement provides that if the allottee fails, ignores or neglects to take possession of the said Apartment in accordance with the Notice of Possession, the allottee shall be liable to pay "Holding Charges" on the super area @ Rs.7.5 per sq. ft. per month.

d) In contrast, Clause 13.3 of the Agreement provides that if the Company fails to offer possession by the end of the Grace Period i.e. 42+6 months, it would be liable to pay Delay Compensation @ Rs.7.5 per sq. ft. of the super area for every month of delay.

Delay compensation at Rs. 7.5 per sq. ft. works out to approximately 0.9% to 1 % Interest per annum. The price per sq. ft of an apartment under the Apartment Buyer's Agreement was Rs. 10,350/- per sq. ft. The compensation payable for delay was Rs. 7.5 per sq. ft. The compensation payable by the Developer for delay in offering possession works out to :

$$\frac{7.5}{10,350} \times 100 \times 12 = 0.9\ \%\ \text{to}\ 1\%\ \text{p.a.}$$

e) Clause 13.5 provides that the allottee may opt for termination, only after 42 months from the date of issuance of Fire NOC + 6 months' Grace Period, plus a further period of 12 months.

The Delay Compensation would be payable to the allottee only if the termination was "validly opted". The compensation was limited to a fixed period of 12 months only, and that no other claim whatsoever, whether monetary or otherwise, was payable by the Developer.

f) Clause 13.8 of the Agreement provides that the allottee shall be deemed to have waived all its claims in respect of the area, specifications, quality, construction, any other provision in the apartment against the Developer upon taking possession of the apartment.

g) Clause 21 provides for termination of the Agreement and forfeiture of earnest money by the Developer, if the allottee neglects or fails to make timely payments as stipulated in the Agreement, or fails to exercise the options offered by the Developer.

Clause 21.3 provides that upon such termination, the Appellant Company shall be under no obligation, except to refund the amounts already paid by the allottee, without any interest, and after forfeiting and deducting the earnest money, interest on delayed payments, brokerage / commission / charges, service tax and other amounts due and payable to it. The principal amount after the aforesaid deductions are made, would be refunded at an uncertain future date i.e. after the Developer had sold the apartment allotted to the complainant.

In contrast, the allottee is given a very limited right to cancel the Agreement solely in the event of the clear and unambiguous failure of the warranties of the Company, which leads to frustration of the Agreement on that account. In such case, the allottee will be entitled to a refund of the instalments actually paid, along with interest @ 8% p.a. within a period of 90 days from the date of determination to this effect. No other claim, whatsoever, monetary or otherwise shall lie against the Company.

19.2 The aforesaid clauses reflect the wholly one-sided terms of the Apartment Buyer's Agreement, which are entirely loaded in favour of the Developer, and against the allottee at every step.

The terms of the Apartment Buyer's Agreement are oppressive and wholly one-sided, and would constitute an unfair trade practice under the Consumer Protection Act, 1986.

19.3 Section 2(1)(c) of the Consumer Protection Act, 1986 defines a 'complaint' as :

> "**2.(1)(c)** "complaint" means any allegation in writing made by a complainant that –
> (i) any unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;
> (ii) the goods bought by him or agreed to be bought by him suffer from one or more defects.
> …. "
>
> (emphasis supplied)

Section 2(1)(g) of the Act defines the expression "deficiency" to include any fault, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained under law, or in pursuance of a contract, or in relation to a 'service'.

The term "service" has been defined by S. 2(1)(o) to include a service of any description which is made available to potential users.

S. 2(1)(o) was amended by Act 50 of 1993 w.e.f. from 18.06.1993 to include "housing construction" within the purview of "service". The amended Section 2(1)(o) reads as follows :-

> "2(1)(o) "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, **housing construction**, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;"
>
> (emphasis supplied)

In *Lucknow Development Authority* v. *M.K. Gupta*,[3] this Court discussed the legislative intent of including "housing construction" within the ambit of 'service' as :

[3] (1994) 1 SCC 243.

"**2**. …. A scrutiny of various definitions such as 'consumer', 'service', 'trader', 'unfair trade practice' indicates that legislature has attempted to widen the reach of the Act. Each of these definitions are in two parts, one, explanatory and the other explanatory. The explanatory or the main part itself uses expressions of wide amplitude indicating clearly its wide sweep, then its ambit is widened to such things which otherwise would have been beyond its natural import. Manner of construing an inclusive clause and its widening effect has been explained in Dilworth v. Commissioner of Stamps [1899 AC 99 : 15 TLR 61] as under:

> "'include' is very generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute, and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural, import, but also those things which the definition clause declares that they shall include."

It has been approved by this Court in Regional Director, Employees' State Insurance Corpn. v. High Land Coffee Works of P.F.X. Saldanha and Sons [(1991) 3 SCC 617] ; CIT v. Taj Mahal Hotel, Secunderabad [(1971) 3 SCC 550] and State of Bombay v. Hospital Mazdoor Sabha [AIR 1960 SC 610 : (1960) 2 SCR 866 : (1960) 1 LLJ 251] . The provisions of the Act thus have to be construed in favour of the consumer to achieve the purpose of enactment as it is a social benefit oriented legislation. The primary duty of the court while construing the provisions of such an Act is to adopt a constructive approach subject to that it should not do violence to the language of the provisions and is not contrary to the attempted objective of the enactment.

6….. As pointed out earlier the entire purpose of widening the definition is to include in it not only day to day buying and selling activity undertaken by a common man but even such activities which are otherwise not commercial in nature yet they partake of a character in which some benefit is conferred on the consumer. Construction of a house or flat is for the benefit of person for whom it is constructed. He may do it himself or hire services of a builder or contractor. The latter being for consideration is service as defined in the Act. Similarly when a statutory authority develops land or allots a site or constructs a house for the benefit of common man it is as much service as by a builder or contractor. The one is contractual service and other statutory service. If the service is defective or it is not what was represented then it would be unfair trade practice as defined in the Act. Any defect in construction activity would be denial of comfort and service to a consumer. When possession of property is not delivered within stipulated period the delay so caused is denial of service. Such disputes or claims are not in respect of immoveable property as argued but deficiency in rendering of service of particular standard, quality or grade. Such deficiencies or omissions are defined in sub-clause (ii) of clause (r) of Section 2 as unfair trade practice.

….

A person who applies for allotment of a building site or for a flat constructed by the development authority or enters into an agreement with a builder or a contractor is a potential user and nature of transaction is covered in the expression 'service of any description'. It further indicates that the definition is not exhaustive. The inclusive clause succeeded in widening its scope but

not exhausting the services which could be covered in earlier part. So any service except when it is free of charge or under a constraint of personal service is included in it. Since housing activity is a service it was covered in the clause as it stood before 1993."

19.4 Clause 2(1)(r) of the Consumer Protection Act, 1986 defines "unfair trade practice" as follows :-

> "2(1)(r) "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:-
>
> … …. … "
>
> (emphasis supplied)

The said definition is an inclusive one, as held by this Court in *Pioneer Urban Land & Infrastructure Ltd.* v*. Govindan Raghavan,*[4] wherein this Court speaking through one of us (J. Indu Malhotra) held :-

> "**6.1** …. The inordinate delay in handing over possession of the flat clearly amounts to deficiency of service. In Fortune Infrastructure v. Trevor D'Lima [Fortune Infrastructure v. Trevor D'Lima, (2018) 5 SCC 442 : (2018) 3 SCC (Civ) 1] , this Court held that a person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek refund of the amount paid by him, along with compensation.
>
> **6.2.** The respondent flat purchaser has made out a clear case of deficiency of service on the part of the appellant builder. The respondent flat purchaser was justified in terminating the apartment buyer's agreement by filing the consumer complaint, and cannot be compelled to accept the possession whenever it is offered by the builder. The respondent purchaser was legally entitled to seek refund of the money deposited by him along with appropriate compensation.
>
> **6.3** The National Commission in the impugned order dated 23-10-2018 [Geetu Gidwani Verma v. Pioneer Urban Land and Infrastructure Ltd., 2018 SCC OnLine NCDRC 1164] held that the clauses relied upon by the builder were wholly one-sided, unfair and unreasonable, and could not be relied upon. The Law Commission of India in its 199th Report, addressed the issue of "Unfair (Procedural & Substantive) Terms in Contract". The Law Commission inter alia recommended that a legislation be enacted to

[4] (2019) 5 SCC 725.

> counter such unfair terms in contracts. In the draft legislation provided in the Report, it was stated that:
>
> > "… a contract or a term thereof is substantively unfair if such contract or the term thereof is in itself harsh, oppressive or unconscionable to one of the parties."
>
> **6.8.** A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The contractual terms of the agreement dated 8-5-2012 are ex facie one-sided, unfair and unreasonable. The incorporation of such one-sided clauses in an agreement constitutes an unfair trade practice as per Section 2(1)(*r*) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling the flats by the builder."

19.5 In a similar case, this Court in *Wg. Cdr. Arifur Rahman Khan* & Others v*. DLF Southern Homes Pvt. Ltd.*,[5] affirmed the view taken in *Pioneer* (supra), and held that the terms of the agreement authored by the Developer does not maintain a level platform between the Developer and the flat purchaser. The stringent terms imposed on the flat purchaser are not in consonance with the obligation of the Developer to meet the timelines for construction and handing over possession, and do not reflect an even bargain. The failure of the Developer to comply with the contractual obligation to provide the flat within the contractually stipulated period, would amount to a deficiency of service. Given the one-sided nature of the Apartment Buyer's Agreement, the consumer fora had the jurisdiction to award just and reasonable compensation as an incident of the power to direct removal of deficiency in service.

19.6 Section 14 of the 1986 Act empowers the Consumer Fora to redress the deficiency of service by issuing directions to the Builder, and compensate

[5] 2020 SCC Online SC 667.

the consumer for the loss or injury caused by the opposite party, or discontinue the unfair or restrictive trade practices.

19.7 We are of the view that the incorporation of such one-sided and unreasonable clauses in the Apartment Buyer's Agreement constitutes an unfair trade practice under Section 2(1)(r) of the Consumer Protection Act. Even under the 1986 Act, the powers of the consumer fora were in no manner constrained to declare a contractual term as unfair or one-sided as an incident of the power to discontinue unfair or restrictive trade practices. An "unfair contract" has been defined under the 2019 Act, and powers have been conferred on the State Consumer Fora and the National Commission to declare contractual terms which are unfair, as null and void. This is a statutory recognition of a power which was implicit under the 1986 Act.

In view of the above, we hold that the Developer cannot compel the apartment buyers to be bound by the one-sided contractual terms contained in the Apartment Buyer's Agreement.

20. **Whether primacy to be given to RERA over the Consumer Protection Act**

20.1 The Consumer Protection Act, 1986 was enacted to protect the interests of consumers, and provide a remedy for better protection of the interests of consumers, including the right to seek redressal against unfair trade practices or unscrupulous exploitation.

The Statement of Objects and Reasons of the Consumer Protection Bill, 1986 reads as :

"STATEMENT OF OBJECTS AND REASONS

> The Consumer Protection Bill, 1986 seeks to provide for better protection of the interests of consumers and for the purpose, to make provision for the establishment of Consumer councils and other authorities for the settlement of consumer disputes and for matter connected therewith.
>
> 2. It seeks, inter alia, to promote and protect the rights of consumers such as:—
>
> (a) the right to be protected against marketing of goods which are hazardous to life and property;
>
> (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;
>
> (c) the right to be assured, wherever possible, access to an authority of goods at competitive prices;
>
> (d) the right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;
>
> (e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and
>
> (f) right to consumer education.
>
> 3. These objects are sought to be promoted and protected by the Consumer Protection Council to be established at the Central and State level.
>
> 4. To provide speedy and simple redressal to consumer disputes, a quasi-judicial machinery is sought to be set up at the district, State and Central levels. These quasi-judicial bodies will observe the principles of natural justice and have been empowered to give relief of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of the orders given by the quasi-judicial bodies have also been provided."
>
> (emphasis supplied)

20.2 Section 3 of the Consumer Act provides that the remedies under the Act are in addition to, and not in derogation of any other law applicable. Section 3 reads as :

> "**3. Act not in derogation of any other law.**—The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force."

In *Secretary, Thirumurugan Cooperative Agricultural Credit Society* v. *M. Lalitha (dead) through LRs and others*,[6] this Court held that:

> "**11**. From the Statement of Objects and Reasons and the scheme of the 1986 Act, it is apparent that the main objective of the Act is to provide for

[6] (2004) 1 SCC 305.

> better protection of the interest of the consumer and for that purpose to provide for better redressal, mechanism through which cheaper, easier, expeditious and effective redressal is made available to consumers. To serve the purpose of the Act, various quasijudicial forums are set up at the district, State and national level with wide range of powers vested in them. These quasi-judicial forums, observing the principles of natural justice, are empowered to give relief of a specific nature and to award, wherever appropriate, compensation to the consumers and to impose penalties for non-compliance with their orders.
>
> **12**. As per Section 3 of the Act, as already stated above, the provisions of the Act shall be in addition to and not in derogation of any other provisions of any other law for the time being in force. Having due regard to the scheme of the Act and purpose sought to be achieved to protect the interest of the consumers better, the provisions are to be interpreted broadly, positively and purposefully in the context of the present case to give meaning to additional/extended jurisdiction, particularly when Section 3 seeks to provide remedy under 19 the Act in addition to other remedies provided under other Acts unless there is a clear bar."

In *National Seeds Corporation Limited* v. *M. Madhusudhan Reddy,*[7] the jurisdiction of the District Consumer forum was challenged on the ground that there was an arbitration clause in the Agreement between the parties. It was contended that the provisions of the Seeds Act, 1966 would prevail over the Consumer Protection Act. Relevant extracts of the ruling are extracted hereinunder :

> "**57**. It can thus be said that in the context of farmers/growers and other consumers of seeds, the Seeds Act is a special legislation insofar as the provisions contained therein ensure that those engaged in agriculture and horticulture get quality seeds and any person who violates the provisions of the Act and/or the Rules is brought before the law and punished. However, there is no provision in that Act and the Rules framed thereunder for compensating the farmers, etc. who may suffer adversely due to loss of crop or deficient yield on account of defective seeds supplied by a person authorised to sell the seeds. That apart, there is nothing in the Seeds Act and the Rules which may give an indication that the provisions of the Consumer Protection Act are not available to the farmers who are otherwise covered by the wide definition of "consumer" under Section 2(1)(d) of the Consumer Protection Act. As a matter of fact, any attempt to exclude the farmers from the ambit of the Consumer Protection Act by implication will make that Act vulnerable to an attack of unconstitutionality on the ground of discrimination and there is no reason why the provisions of the Consumer Protection Act should be so interpreted.

[7] (2012) 2 SCC 506.

….

62. Since the farmers/growers purchased seeds by paying a price to the appellant, they would certainly fall within the ambit of Section 2(1)(d)(i) of the Consumer Protection Act and there is no reason to deny them the remedies which are available to other consumers of goods and services."

….

64. According to the learned counsel for the appellant, if the growers had applied for arbitration then in terms of Section 8 of the Arbitration and Conciliation Act the dispute arising out of the arbitration clause had to be 23 referred to an appropriate arbitrator and the District Consumer Forums were not entitled to entertain their complaint. This contention represents an extension of the main objection of the appellant that the only remedy available to the farmers and growers who claim to have suffered loss on account of use of defective seeds sold/supplied by the appellant was to file complaints with the Seed Inspectors concerned for taking action under Sections 19 and/or 21 of the Seeds Act.

66. The remedy of arbitration is not the only remedy available to a grower. Rather, it is an optional remedy. He can either seek reference to an arbitrator or file a complaint under the Consumer Protection Act. If the grower opts for the remedy of arbitration, then it may be possible to say that he cannot, subsequently, file complaint under the Consumer Protection Act. However, if he chooses to file a complaint in the first instance before the competent Consumer Forum, then he cannot be denied relief by invoking Section 8 of the Arbitration and Conciliation Act, 1996. Moreover, the plain language of Section 3 of the Consumer Protection Act makes it clear that the remedy available in that Act is in addition to and not in derogation of the provisions of any other law for the time being in force."

Subsequently, the judgments in *Thirumurugan Cooperative Agricultural Society* (Supra) and *National Seeds* were followed in *Virender Jain* v. *Alaknanda Cooperative Group Housing Society Limited and others*.[8]

20.3 Various judgments of this Court have upheld the applicability of provisions of Consumer Protection Act as an additional remedy, despite the existence of remedies under special statutes, including the Arbitration and Conciliation Act, 1996. In *Emaar MGF Land Ltd.* v. *Aftab Singh,*[9] this Court has held that the remedy under the Consumer Protection Act, 1986 is

[8] (2013) 9 SCC 383.
[9] (2019) 12 SCC 751.

confined to the Complaint filed by a Consumer as defined by the Act, for defects and deficiency caused by the service provider. The existence of an arbitration clause was not a ground to restrain the Consumer Fora from proceeding with the consumer complaint.

20.4 We will now consider the provisions of the RERA Act, which was brought into force on 01.05.2016.

The Statement of Objects and Reasons of the RERA Act, 2016 read as follows :

> "THE STATEMENT OF OBJECTS AND REASONS
>
> The real estate sector plays a catalytic role in fulfilling the need and demand for housing and infrastructure in the country. While this sector has grown significantly in recent years, it has been largely unregulated, with absence of professionalism and standardisation and lack of adequate consumer protection. Though the Consumer Protection Act, 1986 is available as a forum to the buyers in the real estate market, the recourse is only curative and is not adequate to address all the concerns of buyers and promoters in that sector. The lack of standardisation has been a constraint to the healthy and orderly growth of industry. Therefore, the need for regulating the sector has been emphasised in various forums.
>
> In view of the above, it becomes necessary to have a Central legislation, namely, the Real Estate (Regulation and Development) Bill, 2013 in the interests of effective consumer protection, uniformity and standardisation of business practices and the transactions in the real estate sector. The proposed Bill provides for the establishment of the Real Estate Regulatory Authority (the Authority) for regulation and promotion of real estate sector and to ensure sale of plot, apartment or building, as the case may be, in an efficient and transparent manner and to protect the interest of consumers in real estate sector and establish the Real Estate Appellate Tribunal to hear appeals from the decisions, directions or orders of the Authority.
>
> (emphasis supplied)

20.5 Section 18 of the RERA Act, 2016 provides the remedy of refund with interest and compensation to allottees, when a Developer fails to complete the construction or give possession as per the Agreement of Sale. The remedies under Section 18 are "*without prejudice to any other remedy available*".

20.6 Section 71 of the RERA Act empowers the RERA Authority to determine compensation payable under Sections 12, 14, 18 and 19 of the Act. The proviso to Section 71 provides that a consumer has the right to withdraw its complaint before the consumer fora in respect of matters covered under Sections 12, 14, 18 and 19 of the Act, and file the same before the RERA.

Section 71 reads as :

> "**71**. **Power to adjudicate. –** (1) For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint, in consultation with the appropriate Government, one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard:
>
> Provided that any person whose complaint in respect of matters covered under sections 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986 (68 of 1986), on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act".

20.7 Section 79 of the RERA Act bars the jurisdiction only of civil courts in respect of matters which an authority constituted under the RERA Act is empowered to adjudicate on.

Section 79 reads as :

> **"79**. **Bar of jurisdiction**: No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

20.8 Section 88 of the RERA Act is akin to Section 3 of the Consumer Protection Act, and provides that the provisions of the RERA Act shall apply in

in addition to and not in derogation of other applicable laws. Section 88 reads as :

> "**88. Application of other law not barred**: The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force."

20.9 An allottee may elect or opt for one out of the remedies provided by law for redressal of its injury or grievance. An election of remedies arises when two concurrent remedies are available, and the aggrieved party chooses to exercise one, in which event he loses the right to simultaneously exercise the other for the same cause of action.

20.10 The doctrine of election was discussed in *A.P. State Financial Corporation* v. *M/s GAR Re-rolling Corporation,*[10] in the following words :

> "**15**. The Doctrine of Election clearly suggests that when two remedies are available for the same relief, the party to whom the said remedies are available has the option to elect either of them but that doctrine would not apply to cases where the ambit and scope of the two remedies is essentially different. To hold otherwise may lead to injustice and inconsistent results. …. Since, the Corporation must be held entitled and given full protection by the Court to recover its dues it cannot be bound down to adopt only one of the two remedies provided under the Act. In our opinion the Corporation can initially take recourse to Section 31 of the Act but withdraw or abandon it at any stage and take recourse to the provisions of Section 29 of the Act, which section deals with not only the rights but also provides a self-contained remedy to the Corporation for recovery of its dues. If the Corporation chooses to take recourse to the remedy available under Section 31 of the Act and pursues the same to the logical conclusion and obtains an order or decree, it may thereafter execute the order or decree, in the manner provided by Section 32(7) and (8) of the Act. The Corporation, however, may withdraw or abandon the proceedings at that stage and take recourse to the provisions of Section 29 of the Act. A 'decree' under Section 31 of the Act not being a money decree or a decree for realisation of the dues of the Corporation, as held in Gujarat State Financial Corpn. v. Naatson Mfg. Co. P. Ltd. [(1979) 1 SCC 193, 198 : AIR 1978 SC 1765, 1768] recourse to it cannot debar the Corporation from taking recourse to the provisions of Section 29 of the Act by not persuing the decree or order under Section 31 of the Act, in which event the order made under Section 31 of the Act would serve in aid of the relief available under Section 29 of the Act

[10] (1994) 2 SCC 647.

> 16. The doctrine of election, as commonly understood, would, thus, not be attracted under the Act in view of the express phraseology used in Section 31 of the Act, viz., "without prejudice to the provisions of Section 29 of this Act". While the Corporation cannot simultaneously pursue the two remedies, it is under no disability to take recourse to the rights and remedy available to it under Section 29 of the Act even after an order under Section 31 has been obtained but without executing it and withdrawing from those proceedings at any stage. The use of the expression "without prejudice to the provisions of Section 29 of the Act" in Section 31 cannot be read to mean that the Corporation after obtaining a final order under Section 31 of the Act from a court of competent jurisdiction, is denuded of its rights under Section 29 of the Act. To hold so would render the above-quoted expression redundant in Section 31 of the Act and the courts do not lean in favour of rendering words used by the Legislature in the statutory provisions redundant. The Corporation which has the right to make the choice may make the choice initially whether to proceed under Section 29 of the Act or Section 31 of the Act, but its rights under Section 29 of the Act are not extinguished, if it decides to take recourse to the provisions of Section 31 of the Act. It can abandon the proceedings under Section 31 of the Act at any stage, including the stage of execution, if it finds it more practical, and may initiate proceedings under Section 29 of the Act."

The doctrine of election is based on the rule of estoppel. In *P.R. Deshpande* v. *Maruti Balaram Haibatti*,[11] it was held that :

> **"8**. The doctrine of election is based on the rule of estoppel — the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppel in pais (or equitable estoppel) which is a rule in equity. By that rule, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. (vide Black's Law Dictionary, 5th Edn.)"

In *National Insurance Co. Ltd.* v. *Mastan & Ors*.,[12] claims for compensation were filed both under the Workmen's Compensation Act, 1923 and the Motor Vehicles Act, 1988. This Court held that the doctrine of election was incorporated in Section 167 of the Motor Vehicles Act. The relevant extract from the judgment reads as follows :

> '**23**. The "doctrine of election" is a branch of "rule of estoppel", in terms whereof a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. The doctrine of election postulates that when two

[11] (1998) 6 SCC 507.
[12] (2006) 2 SCC 641.

remedies are available for the same relief, the aggrieved party has the option to elect either of them but not both. Although there are certain exceptions to the same rule but the same has no application in the instant case.

….

27. The first respondent having chosen the forum under the 1923 Act for the purpose of obtaining compensation against his employer cannot now fall back upon the provisions of the 1988 Act therefor, inasmuch as the procedure laid down under both the Acts are different save and except those which are covered by Section 143 thereof.

33. On the establishment of a Claims Tribunal in terms of Section 165 of the Motor Vehicles Act, 1988, the victim of a motor accident has a right to apply for compensation in terms of Section 166 of that Act before that Tribunal. On the establishment of the Claims Tribunal, the jurisdiction of the civil court to entertain a claim for compensation arising out of a motor accident, stands ousted by Section 175 of that Act. Until the establishment of the Tribunal, the claim had to be enforced through the civil court as a claim in tort. The exclusiveness of the jurisdiction of the Motor Accidents Claims Tribunal is taken away by Section 167 of the Motor Vehicles Act in one instance, when the claim could also fall under the Workmen's Compensation Act, 1923. That section provides that death or bodily injury arising out of a motor accident which may also give rise to a claim for compensation under the Workmen's Compensation Act, can be enforced through the authorities under that Act, the option in that behalf being with the victim or his representative. But Section 167 makes it clear that a claim could not be maintained under both the Acts. In other words, a claimant who becomes entitled to claim compensation under both the Motor Vehicles Act, 1988 and the Workmen's Compensation Act, because of a motor vehicle accident has the choice of proceeding under either of the Acts before the forum concerned. By confining the claim to the authority or the Tribunal under either of the Acts, the legislature has incorporated the concept of election of remedies, insofar as the claimant is concerned. In other words, he has to elect whether to make his claim under the Motor Vehicles Act, 1988 or under the Workmen's Compensation Act, 1923. The emphasis in the section that a claim cannot be made under both the enactments, is a further reiteration of the doctrine of election incorporated in the scheme for claiming compensation. The principle “where, either of the two alternative Tribunals are open to a litigant, each having jurisdiction over the matters in dispute, and he resorts for his remedy to one of such Tribunals in preference to the other, he is precluded, as against his opponent, from any subsequent recourse to the latter” (see R. v. Evans [(1854) 3 E & B 363 : 118 ER 1178]) is fully incorporated in the scheme of Section 167 of the Motor Vehicles Act, precluding the claimant who has invoked the Workmen's Compensation Act from having resort to the provisions of the Motor Vehicles Act, except to the limited extent permitted therein. The claimant having resorted to the Workmen's Compensation Act, is controlled by the provisions of that Act subject only to the exception recognised in Section 167 of the Motor Vehicles Act.”

(emphasis supplied)

In *Transcore* v. *Union of India,*[13] this Court considered the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 ("*SARFAESI Act*") and the Recovery of Debts due to Banks and Financial Institutions Act, 1993 ("*RDDB Act*"), wherein it was held that there are three elements of election *viz.* existence of two or more remedies, inconsistencies between such remedies, and a choice of one of them. If any one of the three elements is not there, the doctrine will not apply.

The judgment in Transcore was subsequently followed in *Mathew Varghese* v. *M. Amritha Kumar,*[14] where it was held that :

> **"46**. A reading of Section 37 discloses that the application of the SARFAESI Act will be in addition to and not in derogation of the provisions of the RDDB Act. In other words, it will not in any way nullify or annul or impair the effect of the provisions of the RDDB Act. We are also fortified by our above statement of law as the heading of the said section also makes the position clear that application of other laws are not barred. The effect of Section 37 would, therefore, be that in addition to the provisions contained under the Sarfaesi Act, in respect of proceedings initiated under the said Act, it will be in order for a party to fall back upon the provisions of the other Acts mentioned in Section 37, namely, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, or any other law for the time being in force."

20.11 In a recent judgment delivered by this Court in *M/s Imperia Structures Ltd.* v. *Anil Patni and Anr*,[15] it was held that remedies under the Consumer Protection Act were in addition to the remedies available under special statutes. The absence of a bar under Section 79 of the RERA Act to the initiation of proceedings before a fora which is not a civil court, read with

[13] (2008) 1 SCC 125.
[14] (2014) 5 SCC 610.
[15] (2020) 10 SCC 783.

Section 88 of the RERA Act makes the position clear. Section 18 of the RERA Act specifies that the remedies are "without prejudice to any other remedy available". We place reliance on this judgment, wherein it has been held that :

> **"31.** Proviso to Section 71(1) of the RERA Act entitles a complainant who had initiated proceedings under the CP Act before the RERA Act came into force, to withdraw the proceedings under the CP Act with the permission of the Forum or Commission and file an appropriate application before the adjudicating officer under the RERA Act. The proviso thus gives a right or an option to the complainant concerned but does not statutorily force him to withdraw such complaint nor do the provisions of the RERA Act create any mechanism for transfer of such pending proceedings to authorities under the RERA Act. As against that the mandate in Section 12(4) of the CP Act to the contrary is quite significant.
>
> **32.** Again, insofar as cases where such proceedings under the CP Act are initiated after the provisions of the RERA Act came into force, there is nothing in the RERA Act which bars such initiation. The absence of bar under Section 79 to the initiation of proceedings before a fora which cannot be called a civil court and express saving under Section 88 of the RERA Act, make the position quite clear. Further, Section 18 itself specifies that the remedy under the said section is "without prejudice to any other remedy available". Thus, the parliamentary intent is clear that a choice or discretion is given to the allottee whether he wishes to initiate appropriate proceedings under the CP Act or file an application under the RERA Act."

21. Whether the Apartment Buyers are entitled to terminate the Agreement, or refund of the amount deposited with Delay Compensation.

21.1 The issue which now arises is whether the apartment buyers are bound to accept the offer of possession made by the Developer where the Occupation Certificate has been issued, along with the payment of Delay Compensation, or are entitled to terminate the Agreement.

The factum of delay in completing the construction and making the offer of possession is an undisputed fact in this case.

21.2 In the present case, the allottees before this Court in the present batch of appeals, can be categorised into two categories:-

i) Apartment Buyers whose allotments fall in Phase 1 of the project comprised in Towers A6 to A10, B1 to B4, and C3 to C7, where the Developer has been granted occupation certificate, and offer of possession has been made, are enlisted in **Chart A**;

ii) Apartment Buyers whose allotments fall in Phase 2 of the project, where the allotments are in Towers A1 to A5, B5 to B8, C8 to C11, where the Occupation Certificate has not been granted so far, are set out in **Chart B** below.

CHART A

APARTMENTS WHERE O.C. OBTAINED BY DEVELOPER

S. No.	Cause Title & Civil Appeal No.	Particulars of Allotment Sale Consideration	Amount Paid by the Apartment Buyer on the date of filing of Complaint	Possession of Flat offered on	Status
1	C.A. No.5785/2019 IREO Grace Realtech Private Ltd. v. Abhishek Khanna	Unit CD-C4-04-402 **Tower C4** **Rs.1,45,22,006/-**	**Rs. 1,44,72,364/-**	Possession offered on 28.06.2019	
2	C.A. No.8480/2019 IREO Grace Realtech Private Ltd. v. Promila Kashyap & Another	Unit CD-B3-09-904 **Tower B3** **Rs.1,73,06,088.42/-**	**Rs. 1,70,32,041/-**	Possession offered on 28.06.2019.	
3.	C.A. No.3064/2020 Parvesh Maggoo v. IREO Grace Realtech Pvt. Ltd.	Unit CD-A6-02-203 **Tower A6** **Rs.1,70,08,0261.56/-**	Rs.1,59,29,016/-	Possession offered on 14.06.2019	An Affidavit dt.16.09.2019 was filed by the Developer before the National Company Law Tribunal undertaking to refund the principal amount of Rs.1,59,29,016/ to the Apartment Buyer. However, the Developer has not refunded the amount so far.

CHART B

APARTMENTS WHERE NO O.C. AVAILABLE EVEN AS ON DATE

S. No.	Cause Title & Civil Appeal No.	Particulars of Allotment Sale Consideration	Amount Paid by the Apartment Buyer on the date of filing of Complaint	Status of construction
1.	C.A. No. 7615/2019 IREO Grace Realtech Private Ltd. vs Daraksha Khan	Unit CD-A2-03-301 **Tower A2** **Rs. 1,96,01,772/-**	Rs. 60,60,828/- on 28.10.2016	After filing the Complaint, the 4th demand for casting of Lower Basement Slab was demanded on 1.2.2017. **No O.C. even on date.**
2.	C.A. No.8482/2019 IREO Grace Realtech Private Ltd. v. Gunish Chawla	Unit CD-C9-03-303 **Tower C9** **Rs. 1,55,72,177/-**	Rs. 1,43,07,009/- on 28.02.2017.	**No O.C. even on date.**
3.	C.A. No.7975/2019 IREO Grace Realtech Private Ltd. v. Amit Arora	Unit CD-A3-06-603 **Tower A3** **Rs. 1,92,17,760/-**	Rs. 1,80,50,068/- on 10.03.2017	Instalment No.10 for casting of Top Floor Roof Slab was raised on 07.03.2017 **No O.C. even on date.**
4.	C.A. 8785-8794/2019 IREO Grace Realtech Private Ltd. v. Pradeep Kumar Gupta	Unit CD-A1-06-601 **Tower A1** **Rs. 1,99,20,649/-**	Rs. 61,22,733/- on 20.01.2017	The 4th demand for casting of Lower Basement Slab was raised on 10.01.2017. **No O.C. even on date.**
5.	C.A. 8785-8794/2019 IREO Grace Realtech Private Ltd. v. Monica Khuller	Unit CD-A2-11-1102 **Tower A2** **Rs. 2,01,86,365/-**	Rs. 62,05,441 as on 24.01.2017	The 4th demand for casting of Lower Basement Slab was raised on 10.01.2017. **No O.C. even on date.**
6.	C.A. 8785-8794/2019 IREO Grace Realtech Private Ltd. v.	Unit CD-A1-08-802 **Tower A1** **Rs. 1,99,20,649/-**	Rs. 61,22,738/-	The 4th demand for casting of Lower Basement Slab was raised on 10.01.2017.

	Neelam Mittal			**No O.C. even on date.**
7.	C.A. 8785-8794/2019 IREO Grace Realtech Private Ltd. v. Shiladitya Gangopadhya	Unit CD-A1-04-401 **Tower A1** **Rs. 2,02,71,389/-**	Rs. 62,09,828/- On 24.01.2017	The 4th demand for casting of Lower Basement Slab was raised on 10.01.2017. **No O.C. even on date.**
8.	C.A. 8785-8794/2019 IREO Grace Realtech Private Ltd. v. Kartik Ahuja	Unit CD-A2-03-302 **Tower A2** **Rs. 2,01,86,365/-**	Rs. 62,05,440/- On 23.02.2017	The 4th demand for casting of Lower Basement Slab was raised on 10.01.2017. **No O.C. even on date.**
9.	C.A. 8785-8794/2019 IREO Grace Realtech Private Ltd. v. Gagan Preet Singh	Unit CD-A1-12-1201 **Tower A1** **Rs. 2,02,92,883/-**	Rs. 62,38,594/- On 23.02.2017	The 4th demand for casting of Lower Basement Slab was raised on 10.01.2017. **No O.C. even on date.**
10.	C.A. 8785-8794/2019 IREO Grace Realtech Private Ltd. v. Raman Narula	Unit CD-A2-09-903 **Tower A2** **Rs. 1,89,41,277/-**	Rs. 58,55,695/- On 23.02.2017	The 4th demand for casting of Lower Basement Slab was raised on 10.01.2017. **No O.C. even on date.**
11.	C.A. 8785-8794/2019 IREO Grace Realtech Private Ltd. v. Priyanka Gupta	Unit CD-A2-05-501 **Tower A2** **Rs. 1,84,06,981/-**	Rs. 56,88,308/- On 23.02.2017	The 4th demand for casting of Lower Basement Slab was raised on 10.01.2017. **No O.C. even on date.**
12.	C.A. 8785-8794/2019 IREO Grace Realtech Private Ltd. v. Raj Sethi	Unit CD-A2-03-303 **Tower A2** **Rs. 1,89,41,277/-**	Rs. 58,55,696/- On 23.02.2017	The 4th demand for casting of Lower Basement Slab was raised on 10.01.2017. **No O.C. even on date.**
13.	C.A. 8785-8794/2019 IREO Grace Realtech Private Ltd. v. Kunal Wadhwa	Unit CD-A1-11-1102 **Tower A1** **Rs. 2,02,92,883/-**	Rs. 62,38,595/- On 23.02.2017	The 4th demand for casting of Lower Basement Slab was raised on 10.01.2017. **No O.C. even on date.**
14.	C.A. 8454/2019	Unit CD-B7-07-704	Rs. 1,16,87,089/-	**No O.C. even on date.**

	IREO Grace Realtech Private Ltd. v. Vishal Dua	**Tower B7** **Rs. 1,38,83,798.04/-**		
15.	C.A. 9139/2019 IREO Grace Realtech Private Ltd. v. Mukesh Makkar	Unit CD-C11-06-602 **Tower C11** **Rs. 1,56,79,491.91/-**	Rs. 1,44,87,344/-	**No O.C. even on date.**
16.	C.A. 9216/2019 IREO Grace Realtech Private Ltd. v. Ritu Hasija	Unit CD-A1-01-102 **Tower A1** **Rs. 2,02,71,389.77 /-**	Rs. 63,29,440/-	**No O.C. even on date.**
17.	C.A. 9638/2019 IREO Grace Realtech Private Ltd. v. Prabhat Kumar Swami	Unit CD-A2-06-601 **Tower A2** **Rs. 1,84,06,981.50 /-**	Rs. 57,09,566/-	After filing of complaint, the 4th instalment for casting of lower basement slab was demanded on 01.02.2017. **No O.C. even on date.**

Chart A allottees

(i) We are of the view that allottees at Serial Nos. 1 and 2 in Chart A are obligated to take possession of the apartments, since the construction was completed, and possession offered on 28.06.2019, after the issuance of Occupation Certificate on 31.05.2019. The Developer is however obligated to pay Delay Compensation for the period of delay which has occurred from 27.11.2018 till the date of offer of possession was made to the allottees.

(ii) Insofar as the allottee at Serial No.3 in Chart A is concerned, he has filed Civil Appeal No.3064 of 2020 under Section 62 of the Insolvency and Bankruptcy Code, 2016 before this Court. We were informed by the Counsel

for the allottee that the Developer had filed an affidavit dated 16.09.2019 before the National Company Law Tribunal ("NCLT") stating that it was willing to refund the principal amount of Rs.1,59,29,016/- in four equal instalments, and had produced photocopy of the cheques. The relevant portion of the affidavit filed by the Developer before the NCLT is extracted hereunder :-

> "**3**. Without prejudice to contentions and averments raised during the course of arguments by the Corporate Debtor, the Corporate Debtor explored the possibility of the settlement with the Petitioner and had offered to pay the entire principal amount i.e. 1,59,29,016/- in a time bound manner by way of 4 equal instalments, wherein 1st instalment starting from 16.09.2019. Copy of the Cheques by the Corporate Debtor for payment of the principal amount in full is annexed herewith and marked as Annexure-A."

Despite the said Undertaking given before the NCLT, the Developer has failed to refund even the principal amount so far.

We direct the Developer to refund the amount deposited by the said Appellant within a period 4 weeks from the date of this judgment with interest @ 9% p.a. from 16.09.2019 (date of the affidavit filed by the Developer before the NCLT). If this direction is not complied with, the Developer will be liable to pay Default Interest @12% p.a. on the entire amount.

Chart B allottees

(i) Insofar as the allottees in Chart B are concerned, they have paid part consideration, in most cases up to the 4th instalment till 2017, when they found that there was no progress being made in respect of the Towers in which the apartments had been allotted to them. It is an admitted position that Occupation Certificate for Towers A1, A2, A3, B7, C9 and C11, in which the allotments have been made for this category has not been issued by the Municipal Corporation.

The apartments have not been ready for allotment even as on 30.06.2020, as per the date fixed before the RERA Authority.

(ii) The allottees submitted that they were facing great hardship since they had obtained loans from Banks for purchasing these apartments, and were paying high rates of interest. In 2017, when they realised that there was no construction activity in progress, they were constrained to file consumer complaints before the National Commission, and then discontinued payment of further instalments.

(iii) The Developer made an alternate offer of allotment of apartments in Phase 1 of the project. The allottees are however not bound to accept the same because of the inordinate delay in completing the construction of the Towers where units were allotted to them. The Occupation Certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project. The allottees have submitted that they have taken loans, and are paying high rates of interest to the tune of 7.9% etc. to the Banks.

Consequently, we hold that the allottees in Chart B are entitled to refund of the entire amount deposited by them.

(iv) In so far as award of compensation by payment of Interest is concerned, clause 13.4 of the Apartment Buyer's Agreement provides that the Developer shall be liable to pay the allottee compensation calculated @ Rs.

7.5 per sq. ft. of the Super Area for every month of delay, after the end of the Grace Period. The compensation will be payable only for a period of 12 months.

The Apartment Buyers in their Complaint filed before the National Commission made a prayer for refund of the amount deposited alongwith Interest @ 20% p.a. compounding quarterly till its realisation. The Apartment Buyers, in their submissions have stated that they have obtained home loans on which Interest @ 7.90% p.a. is being paid, even as on date.

We have considered the rival submissions made by both the parties. The Delay Compensation specified in the Apartment Buyer's Agreement of Rs. 7.5 per sq. ft. which translates to 0.9% to 1% p.a. on the amount deposited by the Apartment Buyer cannot be accepted as being adequate compensation for the delay in the construction of the project. At the same time, we cannot accept the claim of the Apartment Buyers for payment of compound interest @ 20% p.a., which has no nexus with the commercial realities of the prevailing market. We have also taken into consideration that in *Subodh Pawar v. IREO Grace*, this Court recorded the statement of the Counsel for the Developer that the amount would be refunded with Interest @ 10% p.a. A similar order was passed in the case of *IREO v. Surendra Arora*. However, the Order in these cases were passed prior to the out-break of the pandemic.

We are cognizant of the prevailing market conditions as a result of Covid–19 Pandemic, which have greatly impacted the construction industry.

In these circumstances, it is necessary to balance the competing interest of both parties. We think it would be in the interests of justice and fairplay that the amounts deposited by the Apartment Buyers is refunded with Interest @ 9% S.I. per annum from 27.11.2018 till the date of payment of the entire amount.

The refund will be paid within a period of three months from the date of this judgment. If there is any further delay, the Developer will be liable to pay default interest @ 12% S.I. p.a.

(v) The Developer shall not deduct the Earnest Money of 20% from the principal amount, or any other amount as mentioned in Clause 21.3 of the Agreement, on account of the various defaults committed by the Developer, including the delay of over 7 months in obtaining the Fire NOC.

(vi) In Civil Appeal No.9139 of 2019, we were informed by the learned counsel that the Respondent had made a request for refund of the amount deposited since his wife was critical and required a lung transplant, to meet the huge expenses of hospitalisation. However, the Developer failed to refund the amount. During the pendency of proceedings, the wife has since expired on 08.12.2020, and there are pending hospital bills to the tune of Rs.50 to 60 lakhs to be cleared.

We direct the Developer to refund the entire amount deposited by this respondent alongwith Interest @ 9% S.I. p.a. within a period of 4 weeks from the date of this judgment. The failure to refund the amount within 4 weeks will

make the Developer liable for payment of default interest @ 12% S.I. p.a. till the payment is made.

The Civil Appeals are accordingly disposed of, with no order as to costs. All pending applications are disposed of.

Ordered accordingly.

….....J.
(Dr Dhananjaya Y Chandrachud)

….....J.
(Indu Malhotra)

….....J.
(Indira Banerjee)

New Delhi;
January 11, 2021

Gmail AKV <anupkrishnanv@gmail.com>

Fwd: VERY URGENT: PRESTIGE BELLAVISTA: YOUR HOME IS READY FOR TAKING OVER

1 message

Deepa Anupkrishnan <deepaanup@gmail.com> Wed, Aug 24, 2016 at 2:30 PM
To: anupkrishnanv@gmail.com

---------- Forwarded message ----------
From: "PBV Inspection" <pdibv2@prestigeconstructions.com>
Date: 21 Aug 2016 18:41
Subject: VERY URGENT: PRESTIGE BELLAVISTA: YOUR HOME IS READY FOR TAKING OVER
To: "deepaanup@gmail.com" <deepaanup@gmail.com>
Cc: "PDI Team" <pdibv@prestigeconstructions.com>

Dear Dr. ANUPKRISHNAN.V

Warm Greetings from Prestige BellaVista Handing over Team.

Hope this e-mail finds your goodself & your beloved family in the pink of Health and Prosperity. Kindly be informed that your Home 7173 in Prestige BellaVista is ready in all respects & can be taken over by your goodself from now on. You are requested to confirm the date on which you intend to take the handing over of keys of your Home upon the receipt of this e-mail.

Kindly note if this e-mail is already sent to you in that case you may have to expedite the process of taking over the keys from the Handing over department at the very soonest possible time because already our Property Management Services (PPMSC) team has been intimating all the owners of the Handed over units about the commencement of Maintenance Charges and now PPMSC had informed us that Maintenance Charges will be made applicable for the units which were declared ready and not yet taken over by the respective owners for quite some time from the date on which the Home is declared ready by us.

Please plan the taking over at the earliest as the Home which is kept locked for a very long time will accumulate lot of dust which needs re-cleaning, in that case we would be requiring an advance intimation of atleast 2 days in prior for us to get the unit in a shined up condition.

You may convey the date of visit for taking over only to the handing over team member assigned for your unit.

Kindly co-operate & do the needful

Thanks & Best Regards,

P. Vijay Sundar Raj,

AVP – Sales & Marketing,

Prestige Group,

Chennai Division

Gmail AKV <anupkrishnanv@gmail.com>

PRESTIGE BELLAVISTA: YOUR HOME IS READY FOR TAKING OVER

1 message

PBV Inspection <pdibv2@prestigeconstructions.com> Thu, Aug 25, 2016 at 10:25 AM
To: "anupkrishnanv@gmail.com" <anupkrishnanv@gmail.com>, "deepaanup@gmail.com" <deepaanup@gmail.com>

Dear Dr. ANUPKRISHNAN.V

Warm Greetings from Prestige BellaVista Handing over Team.

Hope this e-mail finds your goodself & your beloved family in the pink of Health and Prosperity. Kindly be informed that your Home 7173 in Prestige BellaVista is ready in all respects & can be taken over by your goodself from now on. You are requested to confirm the date on which you intend to take the handing over of keys of your Home upon the receipt of this e-mail.

Kindly note if this e-mail is already sent to you in that case you may have to expedite the process of taking over the keys from the Handing over department at the very soonest possible time because already our Property Management Services (PPMSC) team has been intimating all the owners of the Handed over units about the commencement of Maintenance Charges and now PPMSC had informed us that Maintenance Charges will be made applicable for the units which were declared ready and not yet taken over by the respective owners for quite some time from the date on which the Home is declared ready by us.

Please plan the taking over at the earliest as the Home which is kept locked for a very long time will accumulate lot of dust which needs re-cleaning, in that case we would be requiring an advance intimation of atleast 2 days in prior for us to get the unit in a shined up condition.

You may convey the date of visit for taking over only to the handing over team member assigned for your unit.

Kindly co-operate & do the needful

Thanks & Best Regards,

P. Vijay Sundar Raj,

AVP – Sales & Marketing,

Prestige Group,

Chennai Division

भारतीय रिज़र्व बैंक

RESERVE BANK OF INDIA

www.rbi.org.in

RBI/2013-14/217
DBOD.BP.BC.No. 51 /08.12.015/2013-14 **September 3, 2013**

All Scheduled Commercial Banks
(excluding RRBs)

Dear Sir,

Housing Sector: Innovative Housing Loan Products – Upfront disbursal of housing loans

It has been observed that some banks have introduced certain innovative Housing Loan Schemes in association with developers/builders, e.g. upfront disbursal of sanctioned individual housing loans to the builders without linking the disbursals to various stages of construction of housing project, interest/EMI on the housing loan availed of by the individual borrower being serviced by the builders during the construction period/specified period, etc. This might include signing of tripartite agreements between the bank, the builder and the buyer of the housing unit. These loan products are popularly known by various names like 80:20, 75:25 Schemes.

2. Such housing loan products are likely to expose the banks as well as their home loan borrowers to additional risks e.g. in case of disputes between individual borrowers and developers/builders, default/delayed payment of interest/EMI by the developer/builder during the agreed period on behalf of the borrower, non-completion of the project on time, etc. Further, any delayed payments by developers/builders on behalf of individual borrowers to banks may lead to lower credit rating/scoring of such borrowers by credit information companies (CICs) as information about servicing of loans gets passed on to the CICs on a regular basis. In cases where bank loans are also disbursed upfront on behalf of their individual borrowers in a lump-sum to builders/developers without any linkage to stages of construction, banks run disproportionately higher exposures with concomitant risks of diversion of funds.

बैंकिंग परिचालन और विकास विभाग, केन्द्रीय कार्यालय, 12वी मंजिल, केन्द्रीय कार्यालय भवन, शहीद भगतसिंह मार्ग, मुंबई-400001
फैक्स सं. / FAX NO.22705691 टेलीफोन सं./ TELEPHONE No. 22661602

DEPARTMENT OF BANKING OPERATIONS & DEVELOPMENT, CENTRAL OFFICE, 12th Floor, Central Office Building, Shahid Bhagat Singh Marg, Mumbai-400 001 E-mail : cgmicdbodco@rbi.org.in

3. In view of the higher risks associated with such lump-sum disbursal of sanctioned housing loans and customer suitability issues, banks are advised that disbursal of housing loans sanctioned to individuals should be closely linked to the stages of construction of the housing project/houses and upfront disbursal should not be made in cases of incomplete/under-construction/green field housing projects.

4. It is emphasized that banks while introducing any kind of product should take into account the customer suitability and appropriateness issues and also ensure that the borrowers/customers are made fully aware of the risks and liabilities under such products.

Yours faithfully

(Rajesh Verma)
Chief General Manager

தமிழ்நாடு तमिलनाडु TAMILNADU

AM 088876

N.S. VISWANATHAN,
STAMP VENDOR
Lic. 12/44/05/96-30-9-97,
5/14 A, Arcot Road, Porur,
Chennai - 116. Cell : 94443 90808

27102
02/05/13

PRESTIGE ESTATES PROJECTS LTD

This agreement is executed on this 9th day of July 2013 Two Thousand and..... between **Dr.Anupkrishnan.V** son of Mr.K.Viswanathamenon and **Mrs.Deepa Anupkrishnan** wife of Dr.Anupkrishnan.V resident of **Flat 1 B, Nutech Shreya, 8th Cross Street, West Shenoy Nagar, Chennai-600030**. hereinafter referred to as the 'Borrower (s)',which term shall unless repugnant to the context shall mean and include his/her heirs, representatives, successors, executors, attorneys, administrators and assigns, of the party at the 'First Part'.

AND

M/s. PRESTIGE ESTATES PROJECTS LTD, a company incorporated under the provisions of the Companies Act 1956, having its registered office **No.1, Main Guard Cross Road, Bangalore – 560001**, hereinafter referred to as the 'Builder', which term shall unless repugnant to the context shall mean and include its representatives, successors, administrators and assigns, of the party at the 'Second Part'.

M/s. ESTRA IT PARK PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act 1956, having its registered office **No. 37, TTK Road, Alwarpet, Chennai – 600 018** hereinafter referred to as the 'Owner (s)' , which term shall unless repugnant to the context shall mean and include his/her heirs, representatives, successors, executors, attorneys, administrators and assigns, of the party at the 'Third Part'.

For STATE BANK OF INDIA
सहायक महा प्रबंधक/Asst. General Manager
आर ए सी सी अन्ना नगर, चेन्नई
RACPC Anna Nagar, Chennai

State Bank of India
Branch Code : 14140
- 6 JUL 2013
For STATE BANK OF INDIA
Manager
RACPC, Anna Nagar, Chennai

For ESTRA IT PARK PRIVATE LIMITED
Authorised Signatory

For PRESTIGE ESTATES PROJECTS LTD.
Authorised Signatory

AND

State Bank of India, a body corporate, constituted under the State Bank of India Act 1955, having amongst others one of its Branch Office (RACPC) at Chennai, hereinafter referred as the 'SBI', which term shall unless repugnant to the context shall mean and include its representatives, successors, administrators and assigns, of the party at the 'Fourth Part'.

Whereas, the 'Owner (s) is/are the absolute owner in peaceful possession and enjoyment of the residential property situated at **Mount Poonamalle Road, Ayyapanthangal, Chennai - 600056**.

Whereas the 'Builder' and the Owner(s) vide Agreement dated **26th Mar 2013** have entered into an agreement of development and construction of a residential apartment known as **Prestige Bella Vista** on the said property and the builder has been granted Power of Attorney by the owner(s) whereby, the builder is authorized to develop the property and enter into agreement of sale of the undivided share in the land to the prospective purchasers, construction agreement and to receive consideration thereof. Having received possession of the property from the owner (s), the builder has taken up construction of the apartment in the land and obtained sanctioned building plan vide **M.M 16/2013-14** from the competent authority. The builder, on behalf of the owner(s) has executed an agreement of sale dated **26th Mar 2013** in respect of undivided land and/or construction agreement dated **26th Mar 2013** with the borrower(s) for construction of apartment thereon. The owner(s) acknowledge/s and admit/s that the these agreements are binding on him/them and are in accordance with the powers conferred by him/them to the builder.

Whereas, the Builder shall complete the construction of the flats latest by **March 2015** (Date) and is booking sales of the units/apartments. The proposed buyer has to make the payment of the sale consideration to the builder by as per the Payment Schedule in the Agreement dated **26th Mar 2013** and on the payment of the entire sale consideration or completion of the Apartment whichever is later, the owner(s) and the Builder shall hand over the possession of the flat to the said proposed buyer.

Whereas,the Borrower has booked a flat bearing No.**7173**, measuring super area/built-up area **2474** Sqft., together with proportionate undivided right, title and interest in the land (hereinafter referred to as the said flat) agreeing to pay the entire consideration amount by **March 2015** (Date). Whereas, the Borrower (s) has/have approached SBI for availing a loan of Rs. ₹.10,99,000/- (Rupees... one Crore. ten thousand, only) ..... only) to finance the purchase of the said flat. Besides other securities, the Borrower(s) has/have agreed to create the charge over the said flat along with the proportionate undivided share in the land in favour of SBI. In the absence of proper Conveyance Deed/Sale Deed in its favour, the Borrower(s) is/are not in a position to create a valid mortgage over the said flat and proportionate share of land in favour of SBI.

Whereas, the Borrower(s), the builder and the owner(s) have requested SBI to disburse the said loan to the Borrower, notwithstanding the fact that the Conveyance Deed/Sale Deed is not executed in favour of the Borrower(s) at this stage and in consideration of SBI sanctioning the loan to the Borrower(s), the Borrower(s), owner(s) and the Builder have executed this Agreement on the following terms and conditions.

For STATE BANK OF INDIA
सहायक महा प्रबंधक / Asst. General Manager
आर ए सी पी सी, अन्ना नगर, चेन्नई
RACPC, Anna Nagar, Chennai

भारतीय स्टेट बैंक / State Bank of India
आर ए सी पी सी, अन्ना नगर, चेन्नई RACPC, Anna Nagar, Ch-102
Branch Code ...
- 6 JUL 2013
कृते भारतीय स्टेट बैंक
FOR STATE BANK OF INDIA
Authorised Signatory
FOR ESTRA IT PARK PRIVATE LIMITED
Authorised Signatory
For PRESTIGE ESTATES PROJECTS LTD.
Authorised Signatory
सहायक महा प्रबंधक / Asst. General Manager
आर ए सी पी सी, अन्ना नगर, चेन्नई
RACPC, Anna Nagar, Chennai

Now therefore it is hereby agreed by and between the parties that:

I. That the SBI has and shall have the first and paramount lien over the money already paid by the Borrower(s) to the Builder and or whatever amount the Borrower(s) shall pay to the Builder in future for the due repayment of the loan which the SBI shall grant to the Borrower. The charge in favour of SBI shall be first and paramount over the charge which the Builder and the owner(s) may have over the said flat.73

2. That the Builder and the owner(s) agree that they have no objection to the Borrower(s) mortgaging the said flat with proportionate share in land to SBI as security for the said loan agreed to be advanced by SBI for the purpose of purchase/construction of the said flat. In the event of default in the repayment of loan and/ or the Borrower(s) committing any other default which makes the Borrower(s) liable for the repayment of the entire amount outstanding in the said loan as per the terms of the Loan Agreement executed between the Borrower(s) and the SBI, the Builder and the owner(s) shall, at the call of SBI, be under obligation to cancel the booking and pay all the amounts received from the Borrower(s) or on behalf of the Borrower(s) to the SBI.

3. That if for any reason there is any increase/escalation in the cost of the said flat, the increase shall be paid and borne by the Borrower(s) without any reference to SBI and until such payment is made, the SBI shall have the right to suspend further disbursement of the said loan.

4. That in the event of the Builder/owner(s) cancelling the said booking for any default committed by the Borrower(s) or the project is shelved or for any other reason whatsoever, the Builder/owner(s) shall pay the entire amount received from Borrower(s) to SBI

5. That in the event of failure of the Builder to complete the project, the Builder/owner(s) shall pay the entire money so received by it from the Borrower(s) to the SBI.

6. That the Builder/owner(s) shall note in its records the charge and lien of SBI over the said flat. The Builder/owner(s) shall not transfer the said flat to any other person without the prior written consent of the SBI.

7. That on the receipt of the entire consideration amount, the Builder along with the owner(s) shall execute a proper Conveyance Deed/Sale Deed/Lease Deed in favour of the Borrower. The Builder/owner(s) undertake/s to deliver the same along with original registration fee receipt directly to SBI and not to the Borrower(s). Before the execution of the Sale Deed/Conveyance Deed/Lease Deed, the builder shall inform SBI about the same on the completion of the project.

8. That the builder/borrower(s) agree that the loan amount may be credited to the account no. **050098211915** with **ALLAHABAD BANK, MOUNT ROAD BRANCH, CHENNAI 600002**

9. That the Borrower(s) shall also keep informed SBI about the developments in the project. The Borrower(s) shall notify SBI the date of taking over the possession of the said flat. In case the Borrower(s) comes into possession of the Lease Deed/Conveyance Deed/Sale Deed, he/she shall immediately deliver the same to SBI.

10. That the Borrower(s) assures that he/she will not avail finance from any other Bank or Financial Institution in respect of the property or further mortgage/charge the said flat to be allotted to him/her in any manner whatsoever.

FOR STATE BANK OF INDIA

सहायक महा प्रबंधक / Asst. General Manager
आर ए सी पी सी, अण्णा नगर, चेन्नई
RACPC, Anna **Nagar**, Chennai

भारतीय स्टेट बैंक / State Bank of India
आर ए सी पी सी, अण्णा नगर, चेन्नई RACPC, Anna Nagar, Chennai
Branch Code ... 10
- 6 JUL 2013
भारतीय स्टेट बैंक
STATE BANK OF INDIA
ID : 80024
अंतरण/TRANSFER

सहायक महा प्रबंधक / Asst. General Manager
आर ए सी पी सी, अण्णा नगर, चेन्नई
RACPC, Anna Nagar, Chennai

For ESTRA IT PARK PRIVATE LIMITED

Authorised Signatory

For PRESTIGE ESTATES PROJECTS LTD.

Authorised Signatory

11. That the Borrower(s) shall pay all charges, duties, taxes in respect of the said flat imposed or payable to the Builder and or to Corporation or any other Government Department/Authority in respect of the said flat and the SBI shall not be liable or responsible in any manner whatsoever or howsoever for the same.

12. That the Borrower(s) agrees and acknowledges to keep the SBI indemnified against any loss or damage incurred by it in the event of failure of the Borrower(s) to honour or to meet any of its obligations under this Agreement in connection with the sanctioning of the loan in respect of the said flat.

13. That during the currency of the loan, the Borrower(s) shall not transfer the said flat to any other person, without the prior written consent of SBI. The Builder shall not issue the duplicate allotment letter/possession letter to the Borrower(s) without the prior written consent of SBI.

14. It is understood that the term 'loan' mentioned herein shall include interest, penal interest and all other sums payable by the borrower(s) to SBI.

15. That in the event of any default by the Borrower(s), SBI may at its discretion enforce the security by the sale and the Builder/owner(s) shall accept the Purchaser of the said flat in place of the Borrower(s), after the Purchaser complies with the necessary requirements of the Builder in this respect.

16. That the Builder assures SBI that the construction shall be completed as per schedule and as per the sanctioned plans and on completion of construction and receipt of the entire consideration from the Borrowers, the title of the flat with proportionate undivided share in the land shall be conveyed in the name of the Borrower(s).

17. That it is further made clear and understood by all the parties that the noncompletion of the project or the happening of any event shall not affect the obligations of the Borrower(s) to repay the loan availed from the SBI.

18. That the said flat is free from all encumbrances, charges, liens, attachments, trusts, prior agreements, whatsoever or howsoever. The Borrower(s), owner(s) and the builder will not do any act or deed which will affect the security of the flats/ or charge created in favour of SBI in any manner whatsoever.

19. That there is no order of attachment by the Income Tax Authorities or any other authority under any law for the time being in force nor any notice of acquisition or requisition has been received in respect of the said property,

20. That this Agreement shall not affect in any manner whatsoever the duties and obligations of the Borrower(s) and the terms and conditions agreed to by the Borrower(s) in the Loan Agreement and other documents executed in favour of SBI shall remain binding upon the Borrower(s),

21. That in case of acquisition, forfeiture/resumption of the said property, the SBI shall be entitled to get the compensation settled in respect of the said flat and to appear and act before the Collector/Revenue Officer/Estate Officer or any other concerned authorities, to sign any form, to give any statement, affidavit, application on Borrower's behalf, to receive the compensation in its own name and on the Borrower's behalf, to file appeal in any court for the enhancement of the compensation amount, to get the compensation amount enhanced and to receive the same.

भारतीय स्टेट बैंक / State Bank of India
आर ए सी पी सी, अण्णा नगर, चेन्नई RACPC, Anna Nagar, Ch-102
Branch Code : 15440
- 6 JUL 2013
कृते भारतीय स्टेट बैंक
For STATE BANK OF INDIA
अंतरण / TRANSFER

For PRESTIGE ESTATES PROJECTS LTD.

For ESTRA IT PARK PRIVATE LIMITED

Authorised Signatory

कृते भारतीय स्टेट बैंक
For STATE BANK OF INDIA

सहायक महा प्रबंधक / Asst. General Manager
आर ए सी पी सी, अण्णा नगर, चेन्नई
RACPC, Anna Nagar, Chennai

Authorised Signatory

सहायक महा प्रबंधक / Asst. General Manager
आर ए सी पी सी, अण्णा नगर, चेन्नई
RACPC, Anna Nagar, Chennai

22. The responsibilities of the Builders/Owners under this agreement will be extinguished only after delivering the duly registered Conveyance Deed/Sale Deed directly to the Bank and handing over the possession of the residential unit to the borrower(s) and thereafter the validity of the Quadri-partite Agreement will come to an end.

In witness whereof the parties hereto have signed this Agreement on the day, month and year first herein above written.

Signed and delivered by the:

Named Borrower (s)

i) Shri/Smt/Ms ANUPKRISHNAN.V

ii) Shri/Smt/Ms MRS. DEEPA ANUPKRISHNAN.

iii) Shri/Smt/Ms

Signature of Borrower (s)

i) Shri/Smt/Ms

ii) Shri/Smt/Ms

iii) Shri/Smt/Ms

Signature POA of Owner (s)

Authorized signatory of Builder
M/s PRESTIGE ESTATES PROJECTS LIMITED

Signature

State Bank of India, Retail Assets Central Processing Centre (RACPC),
Chennai,
represented by its authorized official

Witness:

Name & Address

India
Branch Code : 15440
- 6 JUL 2013
ID : 6084438
TRANSFER
कृते भारतीय स्टेट बैंक/
For STATE BANK OF INDIA
सहायक महा प्रबंधक/Asst. General Manager
आर ए सी पी सी, अन्ना नगर, चेन्नई
RACPC, Anna Nagar, Chennai

1. Shri/Smt/Ms

Signature

2. Shri/Smt/Ms

Signature

Select Language: English

Public Authorities Available

RTI Online

Version 2.0

An Initiative of Department of Personnel & Training, Government of India

Home Submit Request Submit First Appeal View Status View History new User Manual FAQ

Your RTI Request filed successfully.

Please note down the following details for further references.

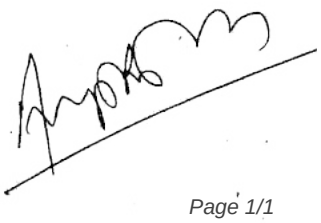
Registration Number	CPCBD/R/E/21/00446
Name	ANUPKRISHNAN VISWANATHAMENON
Date of Filing	21-07-2021
RTI Fee Received	₹ 10
Payment Mode	Credit or Debit Card / RuPay Card
SBI Reference number	202120232436676
Transaction Status	SUCCESS
Request filed with	Central Pollution Control Board, Delhi
Contact Details	
Telephone Number	0120-4310236
Email Id	thiru.cpcb@nic.in

Save Print

Your RTI Request filed successfully.

Registration Number	CPCBD/R/E/21/00446
Name	ANUPKRISHNAN VISWANATHAMENON
Date of Filing	21-07-2021
RTI Fee Received	10
Payment Mode	Credit or Debit Card / RuPay Card
Payment Reference Number	202120232436676
Transaction Status	SUCCESS
Request filed with	Central Pollution Control Board, Delhi

Telephone Number	0120-4310236
Email Id	thiru.cpcb@nic.in



Online RTI Request Form Details

RTI Request Details :-

RTI Request Registration number	CPCBD/R/E/21/00446
Public Authority	Central Pollution Control Board, Delhi

Personal Details of RTI Applicant:-

Name	ANUPKRISHNAN VISWANATHAMENON
Gender	Male
Address	Flat 7173, Tower 7, Prestige Bella Vista , Ayyappanthangal, , Mount Poonamallee Road
Pincode	600056
Country	India
State	Tamilnadu
Status	Rural
Educational Status	Literate
	Above Graduate
Phone Number	Details not provided
Mobile Number	+91-9447527579
Email-ID	anupkrishnanviswanath[at]gmail[dot]com

Request Details :-

Citizenship	Indian
Is the Requester Below Poverty Line ?	No

(Description of Information sought (upto 500 characters)

Description of Information Sought
Respected Sir, I would like to obtain certain details in public domain about Prestige Bella Vista Residential Complex with prior Environmental Clearance letter issued by MOEF&CC in Ref. F.No.SEIAA/F430/ 2011- IA-III dated 16-10-2012 situated at Ayyappanthangal village, Sriperumbudur Taluk, Kanchipuram District, Chennai-600056. 1. Please let me know if the Project Proponent of the Prestige Bella vista residential project has been regularly sending six monthly compliance report of the stipulated EC conditions from 2012 to 2016 to the respective office of the Central Pollution Control Board in hard copies as well as by email. 2. Please send me soft copies as well as hard copies of all half yearly compliance report of Prestige Bella Vista Residential Project starting from 2012 to 2016. Please let me know the fee so that I can remit the amount on time. Thanking You, Yours faithfully, Dr.Anupkrishnan.V

Concerned CPIO	Nodal Officer
Supporting document *(only pdf upto 1 MB)*	Supporting document not provided

Print Close

Gmail ANUPKRISHNAN VISWANATH <anupkrishnanviswanath@gmail.com>

RTI Online - Request Transferred To Other Public Authority

RTI-Online <rticall-dopt@nic.in> Fri, Jul 23, 2021 at 11:59 AM
Reply-To: RTI-Online <rticall-dopt@nic.in>
To: ANUPKRISHNAN VISWANATHAMENON <anupkrishnanviswanath@gmail.com>

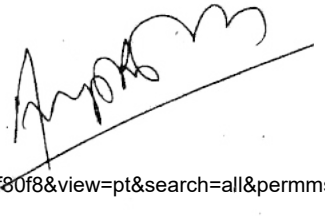
Dear Sir/Madam,

This is with reference to your request registered vide Registration number CPCBD/R/E/21/00446.

Your RTI application has benn transferred to :
Ministry of Environment, Forest and Climate Change
vide new registration number(s)
MOENF/R/T/21/00192
respectively.

Please log on to https://rtionline.gov.in to check the status of your request.

Note:-This is a system generated mail. Please do not reply it.



Select Language: English

Public Authorities Available

RTI Online

Version 2.0

An Initiative of Department of Personnel & Training, Government of India

Submit Request | Submit First Appeal | View Status | User Manual | FAQ | My Account | Login History

Online RTI Status Form

Note:Fields marked with * are Mandatory.

Enter Registration Number	CPCBD/R/E/21/00446
Name	ANUPKRISHNAN VISWANATHAMENON
Date of filing	21/07/2021
Public Authority	Central Pollution Control Board, Delhi
Status	REQUEST TRANSFERRED TO OTHER PUBLIC AUTHORITY
Date of action	23/07/2021
Details of Public Autority :- Ministry of Environment, Forest and Climate Change. vide registration number :- MOENF/R/T/21/00192 respectively. Note:- Further details will be available on viewing the status of the above-mentioned new request registration number. View Status of MOENF/R/T/21/00192	
Nodal Officer Details :-	
Telephone Number	0120-4310236
Email Id	thiru[dot]cpcb[at]nic[dot]in

Print RTI Application | Print Status | Go Back

Online RTI Request Form Details

RTI Request Details :-

RTI Request Registration number	MOENF/R/T/21/00192
Public Authority	Ministry of Environment, Forest and Climate Change

Personal Details of RTI Applicant:-

Name	ANUPKRISHNAN VISWANATHAMENON
Gender	Male
Address	Flat 7173, Tower 7, Prestige Bella Vista , Ayyappanthangal, , Mount Poonamallee Road
Pincode	600056
Country	India
State	Tamilnadu
Status	Rural
Educational Status	Literate
	Above Graduate
Phone Number	Details not provided
Mobile Number	+91-9447527579
Email-ID	anupkrishnanviswanath[at]gmail[dot]com

Request Details :-

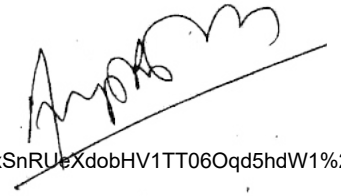
Citizenship	Indian
Is the Requester Below Poverty Line ?	No

(Description of Information sought (upto 500 characters)

Description of Information Sought
Respected Sir, I would like to obtain certain details in public domain about Prestige Bella Vista Residential Complex with prior Environmental Clearance letter issued by MOEF&CC in Ref. F.No.SEIAA/F430/ 2011- IA-III dated 16-10-2012 situated at Ayyappanthangal village, Sriperumbudur Taluk, Kanchipuram District, Chennai-600056. 1. Please let me know if the Project Proponent of the Prestige Bella vista residential project has been regularly sending six monthly compliance report of the stipulated EC conditions from 2012 to 2016 to the respective office of the Central Pollution Control Board in hard copies as well as by email. 2. Please send me soft copies as well as hard copies of all half yearly compliance report of Prestige Bella Vista Residential Project starting from 2012 to 2016. Please let me know the fee so that I can remit the amount on time. Thanking You, Yours faithfully, Dr.Anupkrishnan.V

Concerned CPIO	N. A. Siddiqui
Supporting document *(only pdf upto 1 MB)*	Supporting document not provided

Print Close



Online RTI Request Form Details

RTI Request Details :-

RTI Request Registration number	MOENF/R/T/21/00192/1
Public Authority	Ministry of Environment, Forest and Climate Change

Personal Details of RTI Applicant:-

Name	ANUPKRISHNAN VISWANATHAMENON
Gender	Male
Address	Flat 7173, Tower 7, Prestige Bella Vista , Ayyappanthangal, , Mount Poonamallee Road
Pincode	600056
Country	India
State	Tamilnadu
Status	Rural
Educational Status	Literate
	Above Graduate
Phone Number	Details not provided
Mobile Number	+91-9447527579
Email-ID	anupkrishnanviswanath[at]gmail[dot]com

Request Details :-

Citizenship	Indian
Is the Requester Below Poverty Line ?	No

(Description of Information sought (upto 500 characters)

Description of Information Sought
Respected Sir, I would like to obtain certain details in public domain about Prestige Bella Vista Residential Complex with prior Environmental Clearance letter issued by MOEF&CC in Ref. F.No.SEIAA/F430/ 2011- IA-III dated 16-10-2012 situated at Ayyappanthangal village, Sriperumbudur Taluk, Kanchipuram District, Chennai-600056. 1. Please let me know if the Project Proponent of the Prestige Bella vista residential project has been regularly sending six monthly compliance report of the stipulated EC conditions from 2012 to 2016 to the respective office of the Central Pollution Control Board in hard copies as well as by email. 2. Please send me soft copies as well as hard copies of all half yearly compliance report of Prestige Bella Vista Residential Project starting from 2012 to 2016. Please let me know the fee so that I can remit the amount on time. Thanking You, Yours faithfully, Dr.Anupkrishnan.V

Concerned CPIO	Amardeep Raju
Supporting document *(only pdf upto 1 MB)*	Supporting document not provided

Print Close

Select Language: English

Public Authorities Available

RTI Online

Version 2.0

An Initiative of Department of Personnel & Training, Government of India

Submit Request | Submit First Appeal | View Status | User Manual | FAQ | My Account | Login History

Online RTI Status Form

Note:Fields marked with * are Mandatory.

Enter Registration Number	MOENF/R/T/21/00192
Name	ANUPKRISHNAN VISWANATHAMENON
Date of filing	23/07/2021
Public Authority	Ministry of Environment, Forest and Climate Change
Status	REQUEST FORWARDED TO CPIO
Date of action	26/07/2021
Details of CPIO :- Name:-Prasoon Tripathi (CPCB), Telephone Number:- 011-24695475, Email Id:-prasoon.tripathi76@gov.in	
Your RTI application has been forwarded to multiple CPIOs	Click here to view details
Your RTI application has been forwarded to multiple Public Authory(s)	Click here to view details
Nodal Officer Details :-	
Telephone Number	011-24695302
Email Id	us[dot]rti-mef[at]nic[dot]in

Print RTI Application | Print Status | Go Back

Select Language: English

Public Authorities Available

RTI Online

Version 2.0

Submit Reques

Online RTI Stat

Note:Fields marked w

Status of RTI Request

S.No.	Registration Number	CPIO Details	Current Status	Status Date
1	MOENF/R/T/21/00192	Prasoon Tripathi (CPCB) 011-24695475 prasoon.tripathi76@gov.in	REQUEST FORWARDED TO CPIO	26/07/21
2	MOENF/R/T/21/00192/1	R.P. Rastogi (IA-Infra-I) 011-24695296 adraju@nic.in	REQUEST FORWARDED TO CPIO	26/07/21

Print RTI Application | Print Status | Go Back

Home | National Portal of India | Complaint & Second Appeal to CIC | FAQ

Select Language: English

Public Authorities Available

RTI Online

Version 2.0

An Initiative of Department of Personnel & Training, Government of India

Home Submit Request Submit First Appeal View Status View History new User Manual FAQ

Final Status of MOENF/R/T/21/00192

Applicant Name	ANUPKRISHNAN VISWANATHAMENON
Date of receipt	23/07/2021
Request Filed With	Ministry of Environment, Forest and Climate Change
Text of Application	Respected Sir, I would like to obtain certain details in public domain about Prestige Bella Vista Residential Comple with prior Environmental Clearance letter issued by MOEF&CC in Ref. F.No.SEIAA/F430/ 2011- IA-II dated 16-10-2012 situated at Ayyappanthangal village, Sriperumbudur Taluk, Kanchipuram District Chennai-600056. 1. Please let me know if the Project Proponent of the Prestige Bella vista residential project has be regularly sending six monthly compliance report of the stipulated EC conditions from 2012 to 2016 the respective office of the Central Pollution Control Board in hard copies as well as by email. 2. Please send me soft copies as well as hard copies of all half yearly compliance report of Prestige Vista Residential Project starting from 2012 to 2016. Please let me know the fee so that I can remit amount on time. Thanking You, Yours faithfully, Dr.Anupkrishnan.V
Request document *(if any)*	document not provided
Status	**REQUEST FORWARDED TO CPIO** as on 26/07/2021
Date of Action	26/07/2021
Remarks	**Details of CPIO :-** Name:-Prasoon Tripathi (CPCB), Telephone Number:- 011-24695475, Email prasoon.tripathi76@gov.in

Print

Final Status of MOENF/R/T/21/00192/1

Applicant Name	ANUPKRISHNAN VISWANATHAMENON
Date of receipt	23/07/2021
Request Filed With	Ministry of Environment, Forest and Climate Change
Text of Application	Respected Sir, I would like to obtain certain details in public domain about Prestige Bella Vista Residential Comple with prior Environmental Clearance letter issued by MOEF&CC in Ref. F.No.SEIAA/F430/ 2011- IA-II dated 16-10-2012 situated at Ayyappanthangal village, Sriperumbudur Taluk, Kanchipuram District Chennai-600056. 1. Please let me know if the Project Proponent of the Prestige Bella vista residential project has be regularly sending six monthly compliance report of the stipulated EC conditions from 2012 to 2016 the respective office of the Central Pollution Control Board in hard copies as well as by email. 2. Please send me soft copies as well as hard copies of all half yearly compliance report of Prestige Vista Residential Project starting from 2012 to 2016. Please let me know the fee so that I can remit amount on time. Thanking You, Yours faithfully, Dr.Anupkrishnan.V
Request document *(if any)*	document not provided
Status	**REQUEST FORWARDED TO CPIO** as on 26/07/2021
Date of Action	26/07/2021
Remarks	**Details of CPIO :-** Name:-R.P. Rastogi (IA-Infra-I), Telephone Number:- 011-24695296, Email I adraju@nic.in

Print

Online RTI Request Form Details

RTI Request Details :-

RTI Request Registration number	MOENF/R/T/21/00192
Public Authority	Ministry of Environment, Forest and Climate Change

Personal Details of RTI Applicant:-

Name	ANUPKRISHNAN VISWANATHAMENON
Gender	Male
Address	Flat 7173, Tower 7, Prestige Bella Vista , Ayyappanthangal, , Mount Poonamallee Road
Pincode	600056
Country	India
State	Tamilnadu
Status	Rural
Educational Status	Literate
	Above Graduate
Phone Number	Details not provided
Mobile Number	+91-9447527579
Email-ID	anupkrishnanviswanath[at]gmail[dot]com

Request Details :-

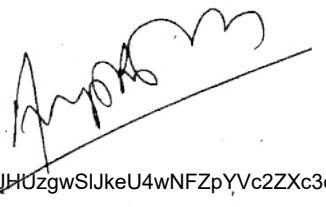
Citizenship	Indian
Is the Requester Below Poverty Line ?	No

(Description of Information sought (upto 500 characters)

Description of Information Sought
Respected Sir, I would like to obtain certain details in public domain about Prestige Bella Vista Residential Complex with prior Environmental Clearance letter issued by MOEF&CC in Ref. F.No.SEIAA/F430/ 2011- IA-III dated 16-10-2012 situated at Ayyappanthangal village, Sriperumbudur Taluk, Kanchipuram District, Chennai-600056. 1. Please let me know if the Project Proponent of the Prestige Bella vista residential project has been regularly sending six monthly compliance report of the stipulated EC conditions from 2012 to 2016 to the respective office of the Central Pollution Control Board in hard copies as well as by email. 2. Please send me soft copies as well as hard copies of all half yearly compliance report of Prestige Bella Vista Residential Project starting from 2012 to 2016. Please let me know the fee so that I can remit the amount on time. Thanking You, Yours faithfully, Dr.Anupkrishnan.V

Concerned CPIO	Rajendra Kumar (IA-Infra-II)
Supporting document *(only pdf upto 1 MB)*	Supporting document not provided

Print Close



Select Language: English

Public Authorities Available

RTI Online

Version 2.0

An Initiative of Department of Personnel & Training, Government of India

Home Submit Request Submit First Appeal View Status View History new User Manual FAQ

Online RTI Status Form

Note:Fields marked with * are Mandatory.

Enter Registration Number	MOENF/R/T/21/00192
Name	ANUPKRISHNAN VISWANATHAMENON
Date of filing	23/07/2021
Public Authority	Ministry of Environment, Forest and Climate Change
Status	REQUEST TRANSFERRED TO OTHER PUBLIC AUTHORITY
Date of action	03/08/2021
Details of Public Autority :- Regional Office, South- Eastern Zone, Chennai (Ministry of Environment, Forest & Climate Control). vide registration number :- MOENF/R/T/21/00192/1, ROSEZ/R/T/21/00016 respectively. Note:- Further details will be available on viewing the status of the above-mentioned new request registration number. View Status of MOENF/R/T/21/00192/1 View Status of ROSEZ/R/T/21/00016	
Your RTI application has been forwarded to multiple CPIOs	Click here to view details
Nodal Officer Details :-	
Telephone Number	011-24695302
Email Id	us[dot]rti-mef[at]nic[dot]in

Print RTI Application Print Status Go Back

Online RTI Request Form Details

RTI Request Details :-

RTI Request Registration number	MOENF/R/T/21/00192/1
Public Authority	Ministry of Environment, Forest and Climate Change

Personal Details of RTI Applicant:-

Name	ANUPKRISHNAN VISWANATHAMENON
Gender	Male
Address	Flat 7173, Tower 7, Prestige Bella Vista , Ayyappanthangal, , Mount Poonamallee Road
Pincode	600056
Country	India
State	Tamilnadu
Status	Rural
Educational Status	Literate
	Above Graduate
Phone Number	Details not provided
Mobile Number	+91-9447527579
Email-ID	anupkrishnanviswanath[at]gmail[dot]com

Request Details :-

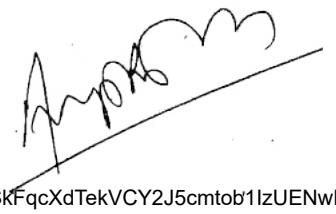
Citizenship	Indian
Is the Requester Below Poverty Line ?	No

(Description of Information sought (upto 500 characters)

Description of Information Sought
Respected Sir, I would like to obtain certain details in public domain about Prestige Bella Vista Residential Complex with prior Environmental Clearance letter issued by MOEF&CC in Ref. F.No.SEIAA/F430/ 2011- IA-III dated 16-10-2012 situated at Ayyappanthangal village, Sriperumbudur Taluk, Kanchipuram District, Chennai-600056. 1. Please let me know if the Project Proponent of the Prestige Bella vista residential project has been regularly sending six monthly compliance report of the stipulated EC conditions from 2012 to 2016 to the respective office of the Central Pollution Control Board in hard copies as well as by email. 2. Please send me soft copies as well as hard copies of all half yearly compliance report of Prestige Bella Vista Residential Project starting from 2012 to 2016. Please let me know the fee so that I can remit the amount on time. Thanking You, Yours faithfully, Dr.Anupkrishnan.V

Concerned CPIO	Amardeep Raju
Supporting document *(only pdf upto 1 MB)*	Supporting document not provided

Print Close



Select Language: English

Public Authorities Available

RTI Online

Version 2.0

An Initiative of Department of Personnel & Training, Government of India

Home Submit Request Submit First Appeal View Status View History new User Manual FAQ

Online RTI Status Form

Note:Fields marked with * are Mandatory.

Enter Registration Number	MOENF/R/T/21/00192/1
Name	ANUPKRISHNAN VISWANATHAMENON
Date of filing	23/07/2021
Public Authority	Ministry of Environment, Forest and Climate Change
Status	REQUEST DISPOSED OF
Date of action	03/08/2021
Reply :- This RTI does not pertains to Infra-1 Division. The response of this RTI has already been given by the CPIO (Infra-II) Division, MoEFCC on 03/08/2021.	
CPIO Details :-	R.P. Rastogi (IA-Infra-I) Phone: 011-24695296 adraju@nic.in
First Appellate Authority Details :-	Amardeep Raju (Infra-I) Phone: 011-24695296 ad.raju@nic.in
Nodal Officer Details :-	
Telephone Number	011-24695302
Email Id	us[dot]rti-mef[at]nic[dot]in

Print RTI Application Print Status Go Back

Online RTI Request Form Details

RTI Request Details :-

RTI Request Registration number	ROSEZ/R/T/21/00016
Public Authority	Regional Office, South- Eastern Zone, Chennai (Ministry of Environment, Forest & Climate Control)

Personal Details of RTI Applicant:-

Name	ANUPKRISHNAN VISWANATHAMENON
Gender	Male
Address	Flat 7173, Tower 7, Prestige Bella Vista , Ayyappanthangal, , Mount Poonamallee Road
Pincode	600056
Country	India
State	Tamilnadu
Status	Rural
Educational Status	Literate
	Above Graduate
Phone Number	Details not provided
Mobile Number	+91-9447527579
Email-ID	anupkrishnanviswanath[at]gmail[dot]com

Request Details :-

Citizenship	Indian
Is the Requester Below Poverty Line ?	No

(Description of Information sought (upto 500 characters)

Description of Information Sought
Respected Sir, I would like to obtain certain details in public domain about Prestige Bella Vista Residential Complex with prior Environmental Clearance letter issued by MOEF&CC in Ref. F.No.SEIAA/F430/ 2011- IA-III dated 16-10-2012 situated at Ayyappanthangal village, Sriperumbudur Taluk, Kanchipuram District, Chennai-600056. 1. Please let me know if the Project Proponent of the Prestige Bella vista residential project has been regularly sending six monthly compliance report of the stipulated EC conditions from 2012 to 2016 to the respective office of the Central Pollution Control Board in hard copies as well as by email. 2. Please send me soft copies as well as hard copies of all half yearly compliance report of Prestige Bella Vista Residential Project starting from 2012 to 2016. Please let me know the fee so that I can remit the amount on time. Thanking You, Yours faithfully, Dr.Anupkrishnan.V

Concerned CPIO	Nodal Officer
Supporting document *(only pdf upto 1 MB)*	Supporting document not provided

Print Close

Select Language: English

Public Authorities Available

RTI Online

Version 2.0

An Initiative of Department of Personnel & Training, Government of India

Home Submit Request Submit First Appeal View Status View History new User Manual FAQ

Online RTI Status Form

Note:Fields marked with * are Mandatory.

Enter Registration Number	ROSEZ/R/T/21/00016
Name	ANUPKRISHNAN VISWANATHAMENON
Date of filing	03/08/2021
Public Authority	Regional Office, South- Eastern Zone, Chennai (Ministry of Environment, Forest & Climate Control)
Status	REQUEST TRANSFERRED TO OTHER PUBLIC AUTHORITY
Date of action	12/08/2021
Details of Public Autority :- Central Pollution Control Board, Delhi. vide registration number :- CPCBD/R/T/21/00097 respectively. Note:- Further details will be available on viewing the status of the above-mentioned new request registration number. View Status of CPCBD/R/T/21/00097	
Nodal Officer Details :-	
Telephone Number	28222325
Email Id	roefccc1[at]gmail[dot]com

Print RTI Application Print Status Go Back

Online RTI Request Form Details

RTI Request Details :-

RTI Request Registration number	CPCBD/R/T/21/00097
Public Authority	Central Pollution Control Board, Delhi

Personal Details of RTI Applicant:-

Name	ANUPKRISHNAN VISWANATHAMENON
Gender	Male
Address	Flat 7173, Tower 7, Prestige Bella Vista , Ayyappanthangal, , Mount Poonamallee Road
Pincode	600056
Country	India
State	Tamilnadu
Status	Rural
Educational Status	Literate
	Above Graduate
Phone Number	Details not provided
Mobile Number	+91-9447527579
Email-ID	anupkrishnanviswanath[at]gmail[dot]com

Request Details :-

Citizenship	Indian
Is the Requester Below Poverty Line ?	No

(Description of Information sought (upto 500 characters)

Description of Information Sought
Respected Sir, I would like to obtain certain details in public domain about Prestige Bella Vista Residential Complex with prior Environmental Clearance letter issued by MOEF&CC in Ref. F.No.SEIAA/F430/ 2011- IA-III dated 16-10-2012 situated at Ayyappanthangal village, Sriperumbudur Taluk, Kanchipuram District, Chennai-600056. 1. Please let me know if the Project Proponent of the Prestige Bella vista residential project has been regularly sending six monthly compliance report of the stipulated EC conditions from 2012 to 2016 to the respective office of the Central Pollution Control Board in hard copies as well as by email. 2. Please send me soft copies as well as hard copies of all half yearly compliance report of Prestige Bella Vista Residential Project starting from 2012 to 2016. Please let me know the fee so that I can remit the amount on time. Thanking You, Yours faithfully, Dr.Anupkrishnan.V

Concerned CPIO	Nodal Officer
Supporting document ***(only pdf upto 1 MB)***	Supporting document not provided

Print Close

Final Status of CPCBD/R/T/21/00097

Applicant Name	ANUPKRISHNAN VISWANATHAMENON
Date of receipt	12/08/2021
Request Filed With	Central Pollution Control Board, Delhi
Text of Application	Respected Sir, I would like to obtain certain details in public domain about Prestige Bella Vista Residential Complex with prior Environmental Clearance letter issued by MOEF&CC in Ref. F.No.SEIAA/F430/ 2011- IA-III dated 16-10-2012 situated at Ayyappanthangal village, Sriperumbudur Taluk, Kanchipuram District, Chennai-600056. 1. Please let me know if the Project Proponent of the Prestige Bella vista residential project has been regularly sending six monthly compliance report of the stipulated EC conditions from 2012 to 2016 to the respective office of the Central Pollution Control Board in hard copies as well as by email. 2. Please send me soft copies as well as hard copies of all half yearly compliance report of Prestige Bella Vista Residential Project starting from 2012 to 2016. Please let me know the fee so that I can remit the amount on time. Thanking You, Yours faithfully, Dr.Anupkrishnan.V
Request document *(if any)*	document not provided
Status	**REQUEST TRANSFERRED TO OTHER PUBLIC AUTHORITY** as on 16/08/2021
Date of Action	16/08/2021
Remarks	**Details of Public Autority :-** Ministry of Environment, Forest and Climate Change. vide registration number :- MOENF/R/T/21/00217 respectively. Note:- Further details will be available on viewing the status of the above-mentioned new request registration number.
Print	

Online RTI Request Form Details

RTI Request Details :-

RTI Request Registration number	MOENF/R/T/21/00217
Public Authority	Ministry of Environment, Forest and Climate Change

Personal Details of RTI Applicant:-

Name	ANUPKRISHNAN VISWANATHAMENON
Gender	Male
Address	Flat 7173, Tower 7, Prestige Bella Vista , Ayyappanthangal, , Mount Poonamallee Road
Pincode	600056
Country	India
State	Tamilnadu
Status	Rural
Educational Status	Literate
	Above Graduate
Phone Number	Details not provided
Mobile Number	+91-9447527579
Email-ID	anupkrishnanviswanath[at]gmail[dot]com

Request Details :-

Citizenship	Indian
Is the Requester Below Poverty Line ?	No

(Description of Information sought (upto 500 characters)

Description of Information Sought
Respected Sir, I would like to obtain certain details in public domain about Prestige Bella Vista Residential Complex with prior Environmental Clearance letter issued by MOEF&CC in Ref. F.No.SEIAA/F430/ 2011- IA-III dated 16-10-2012 situated at Ayyappanthangal village, Sriperumbudur Taluk, Kanchipuram District, Chennai-600056. 1. Please let me know if the Project Proponent of the Prestige Bella vista residential project has been regularly sending six monthly compliance report of the stipulated EC conditions from 2012 to 2016 to the respective office of the Central Pollution Control Board in hard copies as well as by email. 2. Please send me soft copies as well as hard copies of all half yearly compliance report of Prestige Bella Vista Residential Project starting from 2012 to 2016. Please let me know the fee so that I can remit the amount on time. Thanking You, Yours faithfully, Dr.Anupkrishnan.V

Concerned CPIO	Rajendra Kumar (IA-Infra-II)
Supporting document ***(only pdf upto 1 MB)***	Supporting document not provided

Print Close

केन्द्रीय प्रदूषण नियंत्रण बोर्ड
CENTRAL POLLUTION CONTROL BOARD
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय, भारत सरकार
MINISTRY OF ENVIRONMENT, FOREST & CLIMATE CHANGE, GOVT. OF INDIA

F.no. Tech/04/RTI/RDS/2020-21/ 81

September 09, 2021

To

Sh. Anupkrishnan Viswanathamenon
Flat no. 7173, Tower 7, Prestige Bella Vista
Ayyappanthangal
Mount Poonammale Road
Chennai – 600056

Sub: Reply of RTI application no. ROSEZ/R/T/21/00016 seeking information under RTI Act, 2005
Ref: RTI application received in CPCB RD Chennai dated 12.08.2021 transferred from MoEF&CC, Regional Office, Chennai

Sir,

With reference to above RTI application, it is to inform that as per the official record of the Environmental Clearance (EC) of the Prestige Bella Vista residential project compliance report of EC conditions from 2012 to 2016 was scrapped while moving to Regional Directorate, Chennai from Regional Directorate, Bengaluru. CPCB is not involved in the issuing of EC as well as post EC compliance verification.

In regard to the email soft copies of the EC compliance report it was received in Regional Directorate, Bengaluru official email id. Hence, requested Regional Director, Bengaluru to provide the information requested.

Yours faithfully

H.D Varalaxmi

(H. D. Varalaxmi)
Regional Director

Copy to:

RO & CPIO, MoEF&CC
Regional Office- Chennai

For kind information, pls

H.D Varalaxmi

(H. D. Varalaxmi)
Regional Director

केन्द्रीय प्रदूषण नियंत्रण बोर्ड
CENTRAL POLLUTION CONTROL BOARD
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय, भारत सरकार
MINISTRY OF ENVIRONMENT, FOREST & CLIMATE CHANGE, GOVT. OF INDIA

F.no. Tech/04/RTI/RDS/2020-21/ 80 September 09, 2021

To
The Regional Director
Central Pollution Control Board
Regional Directorate (South)
Nisarga Bhavan, Thimmaiah Road
7th D Main Rd, Shivanagar
Bengaluru, Karnataka 560079

Sub: Transfer of RTI application no. ROSEZ/R/T/21/00016 seeking information under RTI Act, 2005

Ref: RTI application received in CPCB RD Chennai dated 12.08.2021 transferred from MoEF&CC, Regional Office, Chennai

Sir,

With reference to above RTI application, regarding information on submission of six monthly compliance report of EC conditions from 2012 to 2016 by the project proponent of the Prestige Bella Vista residential project through email, if any may be sent directly to the applicant with a copy to the Regional Directorate, Chennai. The copy of RTI application is enclosed.

Yours faithfully

H.D Varalaxmi

(H. D. Varalaxmi)
Regional Director

Encl: As above

Copy to:

Sh. Anupkrishnan Viswanathamenon, Flat no. 7173, Tower 7, Prestige Bella Vista, Ayyappanthangal, Mount Poonammale Road, Chennai – 600056

H.D Varalaxmi

(H. D. Varalaxmi)
Regional Director

केन्द्रीय प्रदूषण नियंत्रण बोर्ड
CENTRAL POLLUTION CONTROL BOARD
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय, भारत सरकार
MINISTRY OF ENVIRONMENT, FOREST & CLIMATE CHANGE, GOVT. OF INDIA

SPEED POST

RTI MATTER

F.No. Tech/83/RTI/RD-BLR/2021-22/ 415 14th September, 2021

To

Sh. Anupkrishnan Viswanathamenon
Flat No. 7173, Tower 7
Prestige Bella Vista Ayyappanthangal
Mount Poonamallee Road
Chennai - 600056

Sub: Transfer of RTI application No. ROSEZ/R/T/21/00016 seeking information under RTI Act, 2005

Ref: RTI application received in CPCB RD, Bengaluru dt. 13th September, 2021 transferred from CPCB RD, Chennai

Sir,

With reference to above RTI application, it is to be informed that Regional Directorate, Bengaluru is not having six monthly compliance report of EC conditions for the period 2012 to 2016 furnished by the project proponent of the Prestige Bella Vista Residential Project through email as per office records.

Yours faithfully

S. Suresh
19/9/2022

(S. Suresh)
CPIO & Regional Director

"Documents released under RTI Act 2005 Containing...1 of 1.....Pages"
S. Suresh
Regional Director 19/9/2022
CENTRAL POLLUTION CONTROL BOARD
Regional Directorate (South)
Bengaluru

क्षेत्रीय निदेशालय (दक्षिण) : निसर्ग भवन, ए–ब्लाक, प्रथम एवं द्वितीय तल, तिम्मय्या रोड, 7–डी मैन, शिवनगर, बेंगलूरु – ५६० ०७९.
Regional Directorate (South) : " Nisarga Bhawan ", A-Block, 1st & 2nd Floors, Thimmaiah Road, 7th D - Main, Shivanagar, Bengaluru - 560 079.
दूरभाष / Telephone : 080-23233739. 23233827, 23233996, 23233600, 23232559, 23226002, 23222539, Fax : 080-23234059
ई–मेल / E-mail : cpcbszo@yahoo.com, zobangalore.cpcb@nic.in

प्रधान कार्यालय : परिवेश भवन, पूर्वी अर्जुन नगर, दिल्ली– ११० ०३२.
Head Office : Parivesh Bhawan, East Arjun Nagar, Delhi - 110 032.
दूरभाष / Telephone : 011-43102030, Fax : 22305793, 22307078, 22307079, 22301932, 22304948
ई–मेल / E-mail : cpcb@nic. in वेबसाईट / Website : www.cpcb.nic.in

ANNEXURE-15

सत्यमेव जयते

Select Language: Eng

Public Authorities Available

RTI Online

Version 2.0

An Initiative of Department of Personnel & Training, Government of India

Home Submit Request Submit First Appeal View Status View History new User Manual FAQ

Final Status of MOENF/R/T/21/00217

Applicant Name	ANUPKRISHNAN VISWANATHAMENON
Date of receipt	16/08/2021
Request Filed With	Ministry of Environment, Forest and Climate Change
Text of Application	Respected Sir, I would like to obtain certain details in public domain about Prestige Bella Vista Residential Complex with prior Environmental Clearance letter issued by MOEF&CC in Ref. F.No.SEIAA/F430/ 2011- IA-III dated 16-10-2012 situated at Ayyappanthangal village, Sriperumbudur Taluk, Kanchipuram District, Chennai-600056. 1. Please let me know if the Project Proponent of the Prestige Bella vista residential project has been regularly sending six monthly compliance report of the stipulated EC conditions from 2012 to 2016 to the respective office of the Central Pollution Control Board in hard copies as well as by email. 2. Please send me soft copies as well as hard copies of all half yearly compliance report of Prestige Bella Vista Residential Project starting from 2012 to 2016. Please let me know the fee so that I can remit the amount on time. Thanking You, Yours faithfully, Dr.Anupkrishnan.V
Request document *(if any)*	document not provided
Status	**REQUEST DISPOSED OF** as on 13/09/2021
Date of Action	13/09/2021
Remarks	**Reply :-** Please see the attachment on the subject matter.
Reply Document	

Print

File No. 20-11/2020-IA.III
Government of India
Ministry of Environment, Forest and Climate Change
(IA.III-Division)

Indira Parayavaran Bhawan
Jor Bagh, New Delhi – 110003

September 13, 2021

To,
Shri ANUPKRISHNAN VISWANATHAMENON
Flat 7173, Tower 7, Prestige Bella Vista, Ayyappanthangal,
Mount Poonamallee Road, Pin:600056.
Email: anupkrishnanviswanath@gmail.com

Subject: RTI application with registration No. MOENF/R/T/21/00217- regarding.

Sir,

This is with reference to your online RTI applications received in the Ministry vide application No. MOENF/R/T/21/00217 dated 16.08.2021 providing information under the RTI Act, 2005.

2. In this context, it is to inform that as per the information provided by the IA.III (Infra-2 Sector) that no record(s) is available with them, the required information may be treated as nil.

2. In case, you are not satisfied with the above reply, you may prefer an appeal to Dr. Dharmendra Kumar Gupta, Scientist 'F' and Appellate Authority, MoEF&CC, Indira Paryavaran Bhavan, Jor Bagh, New Delhi-110003 within thirty days from the date of receipt of this letter.

The application stands disposed of.

(Dr. Rajendra Kumar)
CPIO & Scientist C
Phone No.: 24695404
Email: kumar.rajendra@gov.in


TN-10-AR-9459


NO HORN


TN-07
BQ-7684


TN 06
P 0912


aavin ஆவின்
20


NO
PARKING


ASSISTANT ENGINEER / O & M
TANGEDCO/33/11 KV SS

ANNEXURE-17

EXECUTIVE ENGINEER (530 MLD) /
PUBLIC INFORMATION OFFICER

CHENNAI METROPOLITAN WATER SUPPLY AND SEWERAGE BOARD
Urban Administration Building,
R.A.Puram,
MRC nagar, Chennai - 28

Lr.No. CMWSSB/T&T/530 MLD/RTI/03/2021, date. 22.09.2021

To
[redacted]
Prestige Bella Vista,
No. 1/8, Mount Poonamalle Road,
Ayyappanthangal Village,
Chennai - 600 056.

Sir,

Sub: EE (530 MLD) – Chembarambakkam WTP (530 MLD) – Information requested under Section VI of Right to Information Act 2005 – Reply furnished – Reg.

Ref: Your application. dt. 01.09.2021 received in this office on 06.09.2021.

***

With reference to the above, the following information are furnished for S.No.1 and 4

Sl. No	Information Requested by the Petitioner	Information furnished
1)	Please Provide copy of sanction order issued to M/s Prestige Estates Projects Limited with CMC No.40/888/01040/000 for supply of 20 Lakh liters of metro water per day.	Sanction copy has been enclosed
4)	Please provide amount of metro water supplied to Prestige Bella Vista with CMC No. 40/888/01040/000 during the period from Jan-2021 to Aug-2021	95,086 kilolitre of water billed to Prestige Bella Vista during the period from Jan-2021 to Aug-2021.

The above information has been furnished for RTI purpose only.
Details of Appellate authority
Superintending Engineer (WT&T),
CMWSSB,
No 75, Urban Administrative Buildings,
RA Puram, MRC Nagar , Chennai -28

In respect of information, S.No.2 & 3, your letter has been sent to the Superintending Engineer (P&D), CMWSSB for furnishing information directly to you.

22/9/21
Executive Engineer (530 MLD)
Public Information Officer.

Copy to: P&A (RTI) Department

CHENNAI METROPOLITAN WATER SUPPLY AND SEWERAGE BOARD
No. 1, Pumping Station Road, Chintadripet, Chennai-600 002.
SUPERINTENDING ENGINEER (WT&T)

No. CMWSSB/SE(WT&T)/530 MLD/2016, dt. 14.06.2016.

M/s. Prestige Estates Projects Ltd,
City Towers, 7th Floor,
117, Thiyagaraja Road,
T.Nagar, Chennai 600 017

Sir,

Sub: CMWSSB – CE(O&M)II – SE(WT&T) – 530 MLD Chembarambakkam WTP –Providing Water supply to M/s. Prestige Estates Projects Ltd Apartments in Ayyappanthangal - in principle approval obtained - Intimation given Acceptance letter – Requested – Reg.

Ref: 1. Lr.from M/s. Prestige Estates Projects Ltd, dt. 11.12.2013.

2. T.O.Lr.No. CMWSSB/SE(T&T)/S/Chemb/MWSY/Spl [illegible], dt. 14.01.2015 & 22.01.2015.

3. Lr. from M/s. Prestige Estates Projects Ltd, dt. 29.02.2016.

***

In the reference 1st cited, M/s. Prestige Estates Projects Ltd, requested the CMWSS Board to supply 2000 cum (i.e.) 2 ML per day on payment to their ongoing MSB Residential Buildings in Iyyappan Thangal Village at Survey Numbers. 1/1, 1/2, 3/1, 3/2, 3/3, 5/1, 8/2A, 38, 42/1, 42/2, 42/3A, 42/3B, 42/4, 42/5, 43/1, 43/2, 44/A, 44/1B, 44/2, 44/3, 45/1A, 45/1B, 45/2, 45/3, 45/4A, 45/4B, 46/1, 46/2, 46/3, 47/1E, 48/1A, 48/1B, 48/2, 48/3, 48/4, 49/1, 49/2, 49/3, 50/1A, 50/1B, 50/2, 50/3, 50/4, 51/1A, 51/1B1, 51/1B3, 51/1C1, 51/1C3, 51/D, 51/1E, 52/1, 53 to 54/1B of Sriperumpudur Taluk, Kancheepuram District.

In the reference 2nd cited, M/s. Prestige Estates Projects Ltd. remitted the Processing fee of Rs.2.00 Lakh as per norms.

Accordingly, the CMWSS Board have approved in principle to provide water supply to M/s. Prestige Estates Projects Ltd, by tapping from the existing 2000mm dia conveying main from Chembarambakkam Water Treatment Plant up to Porur Water Distribution Station near the apartment in the Right of Way of Metrowater Pipe line.

Hence, it is requested to furnish your acceptance for the following.

1) To supply 20 lakh litre of water per day from the 2000mm dia Transmission Pipe line passing through the premises at prevailing rates i.e. Rs.60/- per KL and will be changed as per the revision in future from time to time to M/s. Prestige Estates Projects Ltd.

2) To execute a MOU with M/s. Prestige Estates Projects Ltd, for supply of 20 Lakh litre of water per day.

3) To execute necessary works related to the proposal as deposited works as requested by M/s. Prestige Estates Projects Ltd.

Hence, you are hereby informed to furnish your acceptance and adherence of the above mentioned conditions, to execute an Agreement with CMWSS Board.

Superintending Engineer (W

Superintending Engineer (WT&T),
C.M.W.S.S. Board,
Pumping Station Road,
Chennai-600 002.

Gmail AKV <anupkrishnanv@gmail.com>

Request to the respondents 4,5,7,8 to provide copies of log book of STP, WTP and DG operations

ANUPKRISHNAN.V <anupkrishnanv@gmail.com> Tue, Sep 14, 2021 at 4:49 AM
To: bbala1962@gmail.com, Secretary PBVFOWA <secretary@prestige-bella-vista.com>, ssbalki13@gmail.com, president@prestige-bella-vista.com, irfan@prestigeconstructions.com, "Nagaraj C (nagaraj.c@prestigeconstructions.com)" <nagaraj.c@prestigeconstructions.com>

Dear Secretary,

I have called you on 20/06/2021 followed by a trailing email dated 22/06/2021 requesting you to send me copy of the log book of the each of the unit operations of STP maintained along with the readings of the Electro Magnetic Flow Meters installed to assess sewage quantity per day.(See special conditions 7).The occupier shall maintain the Electro Magnetic Flow Meters/ water Meters installed at the inlet of the water supply connection for the domestic purposes as per Special conditions 5 of CTO.The occupier shall maintain the Electro Magnetic Flow Meters with computer recording arrangement for measuring the quantity of effluent generated and treated for the monitoring purpose as per special conditions 6. (I have already requested to Mr.Nagaraj, Head of Business Operations, Chennai over the phone but he didn't respond).

I asked for copies of
a) Monthly water consumption returns of each of the purposes with water meter readings in Form-I from April 2015 to March 2021 which was filed on 5th of every month.
b) Yearly return on Hazardous wastes generated and accumulated for the period from 1st April 2015 to 31st March 2021.
c) Yearly Environmental Statement for the period from 1st April 2015 to 31st March 2021 in Form –V. (See General conditions 16 of CTO).

I also requested you to send me a copy of the log book regarding the stack monitoring system/operation of the plant / any other particulars for each of the unit operations of each DG sets from April 2015 to March 2021 to reflect the working conditions of them.(The occupier shall maintain log book regarding the stack monitoring system or operation of the plant or any other particulars for each of the unit operations of air pollution control systems to reflect the working condition as per special conditions 6 of CTO under Air Act.)

But you feigned ignorance about water management and DG sets management at PBV and informed me that the water management task force was dealing with those issues.

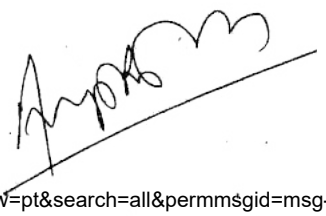
I request you to make available these documents at the earliest as it is required to be filed along with my affidavit in NGT. These documents are mandatorily to be sent to TNPCB by Project Proponent as part of special and general conditions of CTO and one copy needs to be kept in the office for reference.

If you don't make available these copies to me within a week, I will be forced to file my affidavit saying that Respondents 4,5,7,8 haven't complied with special conditions 5,6,7 and general conditions 16 of CTO issued to PBV till now.

You may send me soft copies of these documents by email.

Thanking you,

Yours faithfully,
S/d
Dr.Anupkrishnan.V



F.No.21-103/2015-IA.III
Government of India
Ministry of Environment, Forest and Climate Change
(I.A. Division)

Indira Paryavaran Bhawan
Jor Bagh Road, Aliganj,
New Delhi – 110003
E-mail: sharath.kr@gov.in
Tel: 011-24695319

Dated: 2nd November, 2018

OFFICE MEMORANDUM

Subject: Terms of Reference (ToRs) related to ground water drawl - regarding.

It has been decided by the Competent Authority that the following Terms of References (ToRs) shall be invariably incorporated to address the issue while prescribing ToRs for various developmental projects:

i. In the projects where ground water is proposed as water source, the project proponent shall apply to the Central Ground Water Authority (CGWA)/ State Ground Water Authority (SGWA), as the case may be, for obtaining No Objection Certificate (NOC), if applicable, the MoEF&CC/SEAC may ensure that such an application has been made.

ii. Approval/permission of the CGWA/SGWA shall be obtained before drawing ground water for the project activities. State Pollution Control Board (SPCB) concerned shall not issue Consent to Operate (CTO) till the project proponent obtains such permission.

2. This issues with the approval of the Competent Authority.

(Sharath Kumar Pallerla)
Director/ Scientist 'F'

To

1. Chairman/Member Secretaries of all the Expert Appraisal Committees
2. Chairman/Member Secretaries of all the SEIAAs/SEACs
3. All the Officers of I.A. Division
4. Chairman/Member Secretaries of all SPCBs/UTPCCs
5. The Member Secretary, CGWA, New Delhi.

Copy for information to:

1. PS to Hon'ble Minister for Environment, Forest and Climate Change
2. PS to Hon'ble MoS (EF&CC)
3. PPS to Secretary(EF&CC)
4. PPS to AS(AKJ) / AS (AKM)
5. PPS to JS (VV)/ JS(JT)
6. Website, MoEF&CC
7. Guard file.

(Sharath Kumar Pallerla)
Director/ Scientist 'F'

2

Tamil Nadu Pollution Control Board

From

Er. P. Ravichandran, M. E.,
Public Information Officer/
District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Plot No. CP-5B, Oragadam,
SIPCOT Industrial Growth Centre,
Sriperumbudur Taluk,
Kancheepuram District – 602 105
Email: tnpcboragadam@gmail.com
Ph. No. 8056042173

To

Thiru Dr Anupkrishnan.V
Flat No. 7173, Tower7,
Prestige Bella Vista
Mound Poonamallee Road,
Ayyappanthangal Village,
Kundrathur Taluk,
Kancheepuram District - 600056

Lr.No /DEE/TNPCB/SPR/RTI/F-1180/2021 Dated 15.09.2021

Sir,

Sub: TNPC Board – Sriperumbudur –Certain information furnished under RTI Act, 2005 - Submitted - Regarding.

Ref: 1.Bd's Memo No. TNPCB/RTIA/010308/Appeal-079/2021 dt 07.06.2021.
2.Reply furnished vide T.O Letter dated 23.06.2021
3.Board mail dated 01.09.2021

******

In continuation of this office letter dated 23.06.2021, the following information pertaining to the project of M/s. Prestige Estates Projects Ltd, - Prestige Bella Vista furnished under RTI Act – 2005.

SI No	Information Sought	Information furnished under RTIA - 2005
1.	The Question No.1 already received this office on 23.06.2021 Have the Project proponents applied for obtained "Consent to Operate" Prestige Bella Vista Residential Project as per rules from TNPCB after 14/09/2021?	Consent to Operate was issued to M/s. Prestige Estates Projects Ltd, - Prestige Bella Vista for construction of Residential Building Complex "Prestige Bella Vista" Comprising of 25 Blocks in 17 Towers (Each tower having 2 basements, Ground plus 16 floors) with 2083 Dwelling units & 1 Block of Club House having Double Basement floor + Ground floor + 1 floor) with total built up area (Phase -I) of 338361 Sq.m vide Proc NO.T2/TNPCB/F.1918SPR/RL//SPR/A/2018 DATED: 26/11/2018 valid upto 31.03.2020 and the application was returned to the unit to comply the direction issued by the Board. Renewal of consent was not issued to the developer

2.	The modified question was received from RTI Petitioner through Board mail on 01.09.2021 Have the Project Proponents applied for and obtained "Consent To Operate" Prestige Bella Vista Residential Project (comprising 33 blocks in 20 Towers) as per rules from TNPCB after 14/09/2021?	The unit has applied for CTO-Expansion though online vide application No. 38788041 dated 05.08.2021 for construction of Residential Building Complex "Prestige Bella Vista" Comprising of 33 Blocks in 20 Towers (Each tower having 2 basements, Ground plus 16 floors) with 2613 Dwelling units & 1 Block of Club House having Double Basement +Ground+1 floor) with total buildup are – 449971.58 sq.m. The application was returned to the developer on 15.08.2021 for want of additional particulars. The unit has not resubmitted the application.

Public Information Officer/
District Environmental Engineer,
TNBC Board, Sriperumbudur.