

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE, CHENNAI**

IN

ORIGINAL APPLICATION NO. 205 of 2021(SZ)

Applicant : Environmental Protection & Research Council

Vs

Respondents : The Government of India& Others

VOLUME 2

Index

Sl. No.	Description		Pages
	<u>Particulars</u>	<u>details</u>	
1.	Annexure -1	MoEF Joint Inspection Report No. EP/12.1/2011-12/4/KER dated 03.03.2020	10-16
2.	Annexure -2	True copy of the letter No. TP1-18085/21 dated 01.12.2021 from the Secretary, Thrikkakara Municipality.	17-18
3.	Annexure -3	True copy of the letter No. PCB/EKM/DO-1/OA-205/2021 dated 18.11.2021 issued to M/s Tuffnel Gardens.	19
4.	Annexure -4	True copy of the reply submitted by M/s Jain housing and constructions dated 27.11.2021.	20-22
5.	Annexure -5	Photographs showing google images	23-25

Dated this the 9th day of December 2021

Rema Smrithi, Advocate

ADDITIONAL STANDING COUNSEL FOR THE RESPONDENT 3



भारत सरकार
Government of India
पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय
Ministry of Environment, Forest & Climate Change
क्षेत्रीय कार्यालय (दक्षिणी जोन), बेंगलोर - 560 034
Regional Office (Southern Zone), Bangalore – 560 034

Annexure-1



4th Floor, E & F- Wings, Kendriya Sadan,
17th Main Road, II Block
Koramangala.

March 03, 2020

To

Shri. Subrato Bose (Scientist-F) / Director (IA-III),
Vayu 2nd Floor,
Ministry of Environment, Forest and Climate Change,
Indira Paryavaran Bhawan, Jorbagh Road,
Aliganj, New Delhi-110003

Subject: Construct of Group Housing at Survey No. 483/14, 484/7, 485/1, Village Kakkanad, Panchayat Thrikkakara, Ernakulam District, Kerala, Factual Inspection Report submission—regarding

Reference: F.No. 19-103/209-IA-III dated 14.01.2020

Sir,

With reference to your letter cited above, this Regional Office along with representatives of Kerala State Pollution Control Board (KSPCB) and Kerala State Environmental Impact Assessment Authority (SEIAA), examined the matter through a site visit to the location on February 19, 2020 to ascertain the factual information regarding the project and allegations cited in the received complaint.

Based on the findings of the Committee, a Factual Inspection Report (FIR) has been prepared and is enclosed for your kind perusal and appropriate decision by the Ministry on the above subject.

Regards,

Yours sincerely,

Dr. Murali Krishna

(Dr. Murali Krishna)
Scientist-D/ Joint Director

Encl: as above

File No. EP/12.1/2011-12/4/KER

Government of India
Ministry of Environment, Forest and Climate Change
Regional Office (Southern Zone)
Bangalore- 560 034

Inspection Report of a Project titled "Construction of a Group Housing at Survey No. 483/14, 484/7, 485/1, Village Kakkanad, Panchayat Thrikkakara, Taluk Kanayannur, Ernakulam District, Kerala by M/s. Jain Housing and Construction Ltd

1. PREAMBLE

- 1.1 MoEFCC vide its letter No. 19-103/2019-IA-III dated 14.01.2020 forwarded a complaint and letter requesting the Regional Office, Bangalore to undertake a site visit of the project and to submit a factual report based on receipt of a complaint through email dated 18.12.2019 and letter No. YLS/Litigation/KHC/WPC 26935/1 dated 10.01.2020 from Mr. Yeshwanth Shenoy on behalf of Mr. Reby Thomas and Other home buyers.
- 1.2 Accordingly, the Regional Office, Bangalore decided to constitute a Committee with representatives of Kerala State Pollution Control Board (KSPCB) and Kerala SEIAA to examine the matter in detail and sent a letter to KSPCB and SEIAA seeking nominations from their Departments vide letter No. EP/12.1/2011-12/04/Ker/1543 dated 23.01.2020 and a subsequent reminder on 10.02.2020.
- 1.3 In response to this Regional Office letter's nominations were received from both the agencies and accordingly, the site visit to the project was conducted on 19.02.2020.

2. INSPECTION BY THE COMMITTEE

2.1 Site inspection of the project was conducted by the following:

- A. **Dr. Murali Krishna**, Joint Director/ Scientist-D, MoEFCC Regional Office (Bangalore)
B. **Dr. N. Ajith Kumar**, Director, Centre for Socio-economic and Environmental Studies, Kochi, Kerala and Member, SEAC
C. **Shri. Baiju M.A.**, Chief Environmental Engineer, Kerala State Pollution Control Board

3. BACKGROUND AND STATUS

- 3.1 M/s. Jain Housing and Construction Ltd, was accorded an Environmental Clearance (EC) by Ministry of Environment, Forest and Climate Change (MoEFCC) vide letter No. 21-59/2010-IA.III dated 24.05.2011 for construction of a group housing project on a plot area of 35084.62 Sq.m with a total built up area of 1,39,885.78 Sq.m.
- 3.2 As per the EC, the project was supposed to construct 1216 dwelling units (1 BR-456+ 1 BR+1 study-456 + 2 BR=304 No's) with club area. The proposed project was supposed to have 8 towers (lower ground+ upper ground+19 floors). The total water requirement was 538.30 KLD and a sewage Treatment Plant (STP) of capacity 582 KLD was proposed. The power

requirement of the project was 8000 KVA and the total cost of the project proposed during the time of EC was 112.22 crores.

3.3 The inspection team initially met in the office of KSPCB in Ernakulam and heard the presentation made by the project authorities (Ms. Sujata, Director and Ms. Collen, Manager) along with their consultant Mr. Thomas. Pursuant to presentation, the team visited the project site and gathered additional requisite information and the documents made available to the team by the project authorities were also taken into consideration.

3.4 Pursuant to receipt of EC vide letter No.21-59/2010-IA.III dated 24.05.2011, this project was monitored by the MoEFCC Regional Office, Bangalore on 2.03.2012 for ensuring compliance of EC conditions during construction phase. During the monitoring, several non-compliances to EC conditions were noted and the project proponent (PP) was directed to comply to all the EC conditions and to submit an action taken report (ATR) and also to ensure regular submission of six monthly compliance report to Regional Office, which is one of the EC requirements.

3.5 In response to Regional Office letter for an ATR, PP has submitted a letter without proper details like name, address or contact details of concerned persons/ authorised person etc. informing that compliance would be established for all EC conditions.

3.6 Thereafter, PP did not submit any six-monthly compliance reports nor status of the project was updated to this office (which is a major non-compliance of EC conditions). Regional Office has issued more than 5 reminder letters to PP during the period 2015-2019, but no response was received from the PP, nor half yearly compliance reports were received, which is an indication of habitual non-compliance.

4.0 ANALYSIS OF THE ISSUES RAISED IN THE COMPLAINT

The following issues were raised by the complainants in the complaint made to the Ministry:

- 1) Construction undertaken prior to issue of Environmental Clearance
- 2) Construction work undertaken on Wetland
- 3) Built up area has been increased from what was approved in EC
- 4) NOC not obtained from Fire Department

4.1 KEY FINDINGS/ OBSERVATIONS OF THE INSPECTION

S. No	Complaint/ Issue raised	Response of Project Proponent	Remarks of Committee
1	Construction Work Started Prior to Issue of Environmental Clearance by the Ministry in 2011	PP informed and produced documentary evidence stating that, they have obtained NOC from Thrikkakkara Panchayat on 31.08.2006 i.e., 15 days prior to the issue of EIA Notification, 2006 (14.09.2006). Annexure-1	As per Google Earth Images (Enclosed as Annexure-3) , the Committee is of the view that construction work has not begun in 2008-2009 as alleged by the complainant in his complaint.

		<p>PP responded that at the time of start of the project, the requirement of EC was not there, but subsequently after EIA came to force in 2006, to be on a safer side, PP approached the Ministry for issue of an EC and accordingly obtained the same in 2011. Due to some technical and financial issues, started their construction from 2010 onwards.</p> <p>Annexure-2</p>	<p>Further, it is also clearly evident from the Google Images that construction happened definitely before issue of EC in 2011. <u>As per the Google Images available, construction started in 2010 prior to issue of EC.</u></p>
2	<p>Built up area has exceeded the approved limit from 1,39,885.78 Sq.m to 1,92,637.80 Sq.m</p>	<p>PP responded that the FAR of the project was 1,39,885.78 Sq.m and the total built up area was 1,92,637.8 Sq.m as per EC and initial proposal, which included construction of 8 towers.</p> <p>PP informed that within validity period, PP has constructed only 40,930.28 Sq.m (29%) of the total permitted construction area of 1,39,885.78 Sq.m and of the 8 proposed towers only 2 have been completed and the remaining 6 towers are partially built. The proponent mentioned that the construction work was stopped about 3 years back due to lack of demand for flats</p>	<p><u>The Committee noted that, as per EC granted by the Ministry, the approved built up area for the project is 1,39,885.78 Sq.m on a plot area of 35084.62 Sq.m.</u></p> <p><u>As per the site visit observation, the Committee noted that construction has not been completed fully and out of 8 towers to be constructed only 2 towers are constructed fully and remaining 6 towers are partially constructed and on the day of site visit, no construction work was going on.</u></p>
3	<p>Project is constructed on a Wetland.</p>	<p>PP responded that the Kerala Paddy and Wetland Act, 2008 came on 12.08.2008 and the project site is on a paddy field and not on a wetland.</p> <p>As per the definition of Kerala Paddy and Wetland Act 2008, wetland does not include paddy land) and as per this Act, there was no requirement for project authorities to change the classification of paddy land to residential activity as NOC by Thrikkakara Panchayat was obtained prior to commencement of this Act.</p>	<p><u>The Committee based on discussion with project authorities noted that the project site is classified as paddy land.</u> However, no substantial documentary evidence was made available to the Committee, to ascertain this land classification.</p>
4	<p>NOC not obtained from Fire Department</p>	<p>PP responded that, there were several technical problems with the Fire Department pursuant to submission of their initial application</p>	<p><u>Committee noted that the project authorities have not obtained NOC from Fire</u></p>

		in 2015 and till date several of the issues are not sorted out and rectifications suggested by the Fire Department are practically not possible for the project authorities to implement.	<u>Department till the date of site visit on 19.02.2020.</u>
5	Other Issue noted by the Committee regarding non submission of half yearly compliance reports to Ministry's Regional Office, which is a condition in EC	PP responded that, their office address in Chennai has changed to another location and accordingly, they might not have received the letters sent by the Ministry's Regional Office.	<p><u>The Committee noted that the project authorities have intentionally not submitted the half yearly compliance reports to Regional Office, even after being aware of this EC Condition.</u></p> <p><u>Project authorities till date after receipt of EC, have not submitted any single half yearly compliance reports from 2011 (10 years from issue of EC).</u></p> <p><u>Project authorities even didn't inform the change of their office address nor responded to any of the communications of Regional Office.</u></p>
6	Writ Petition (C) 26935 of 2019 filed by the complainant Mr. Reby Thomas and few home buyers in High Court of Kerala	PP informed that the complainants withdrew the case and accordingly, the writ petition has been dismissed as withdrawn vide its Order dated 23.01.2020. Copy of the final Court Order is enclosed as Anexure-4	<u>The Committee noted that the complainants themselves withdrew the case and accordingly, the Hon'ble Court dismissed the matter.</u>



Figure 1

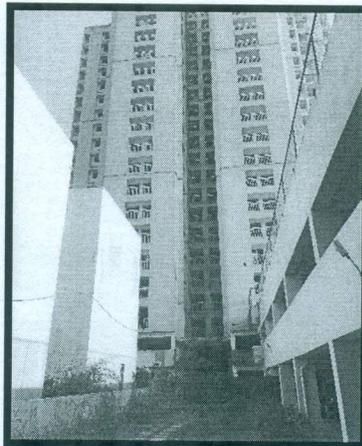


Figure 2

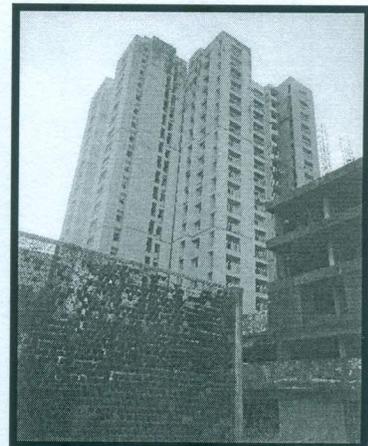


Figure 3

(Figure 1, 2 and 3 are of already constructed 2 towers)



Figure 4

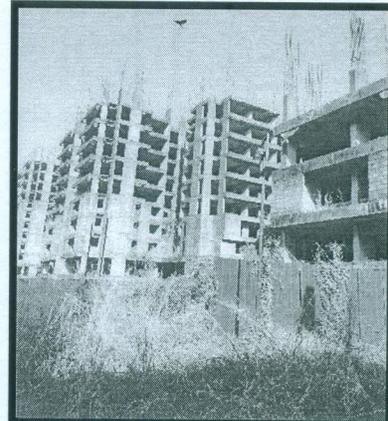


Figure 5

(Figure 4 and 5 are of partially constructed 6 towers)

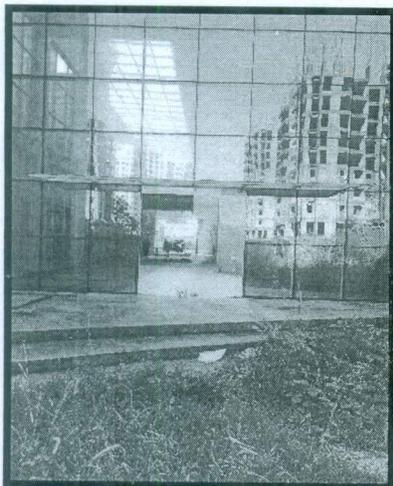


Figure 6 (Proposed Club House)

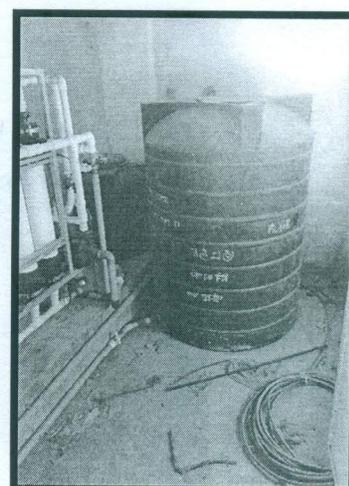
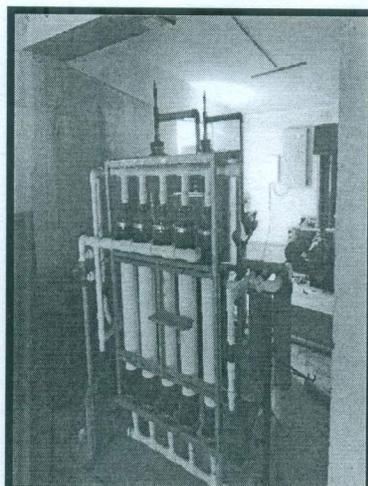


Figure 7 and 8 (Uninstalled Sewage Treatment Plant)

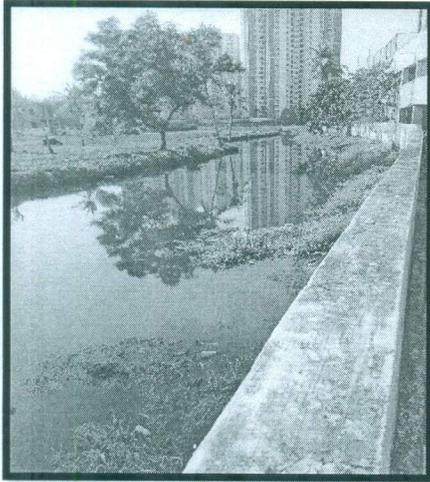
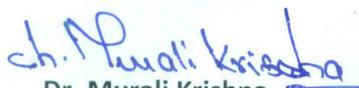


Figure 9 and 10 (Canal Passing adjacent to boundary wall of the project)

5.0 CONCLUSION:

1. **The Project Authorities have not complied to most of the EC conditions and the status of Compliance is Highly Unsatisfactory.**
2. It is also to note that, one of the 4 buildings that were demolished in January 12, 2020 in Kochi for violation of Coastal Regulation Zone (CRZ), included the 55-meter high Jain Coral Cove, of the same construction group, Jain Housing and Construction Pvt. Ltd.
3. Based on the factual status report submitted by the Committee, the Ministry may take an appropriate decision in this matter.


Dr. Murali Krishna
(Scientist-D, MoEFCC)


Dr. Ajith Kumar
(Member, SEAC)


Shri. Baiju M.A
(CEE, KSPCB)



THRIKKAKARA MUNICIPALITY
KAKKANAD, KOCHI -30
PH: 0484-2422383

No.TP1-18085/21

Date: 01.12.2021

From,

Secretary

Thrikkakara Municipality

To,

Environment Engineer

Pollution Control Board District Office

Ernakulam-

Sir,

Sub: M/s Tufnell Garden Reg. Joint inspections report conducted on 09.11.2021

Ref: PCB/EKM/Do.-1/0A-205/021 dated 18.11.2021

I am submitting herewith the details called for vide above reference.

1. Thrikkakara Grama Panchayath had issued Construction NOC No. A4-01/2000 dated 31.08.2006 in Kakkanad Village Survey No.483/14, 484/7 and 485/1 in the name of M J Louis, Sunitha Elizabeth George and Indira Louiz, Mukkadayil to construct 8 towers of total built up area 1,92,634.80 m² for the purpose of residential apartment. While issuing the NOC, The Kerala Municipal Building Rules/Kerala Panchayath Building Rules (KMBR/KPBR) was not implemented in Thrikkakara Grama Panchayath. Kerala Municipal Building rules was implemented in the Panchayath as per G.O.No. 250/2006/LSGD on 06.11.2006. In accordance of the Kerala Government Circular No. 37348/RB1/07/LSGD

dated 03.07.2007 and the order from the Hon'ble High Court of Kerala WP © No. 32316 of 2015, the Municipality regularized the NOC of the Building Permit vide 2/Reg/16-17 dated 15.06.2016 with fee remittance of Rs. 3,73,29,000/-

2. No prior permission is required for any constructions in the Panchayath area till implementation of KMBR. Kerala Municipality building rules got extended to Thrikkakara Grama Panchayath on 6.11.2006. The NOC was regularized on 15.06.2016 vide circular No. 37348/RB1/07/LSGD dated 03.07.2007. It is submitted that, for NOC obtained constructions, no prior clearance certificates from Fire, PCB, MOEF are required. The Ministry of Environment and forest climate notification was issued by the Central Ministry only on 14.09.2006. This notification has been issued by the Ministry after obtaining NOC for the said construction. Ministry of Environment clearance become mandatory in the State of Kerala as per KMBR/KPBR on 05.02.2013 only. Since the construction of the project was ongoing while regularization of NOC, the construction does not fall under KMBR, hence at the time of regularization prior clearances from Fire, PCB, MOEF was not required.

As per the Circular No.3109/R/11/LSGD dated 22.06.2011 issued by the Additional Chief Secretary of Kerala, at the time of NOC issued by the Panchayath, now Thrikkakara Municipality needs to be follow the same rules while issuing the NOC. Changes in such rules are need not to be considered. In this case Municipality received the Final Fire NOC before issuing the Partial Occupancy of one tower considering the provisions of safety as per para 6 of circular No. 37348/RB1/07/LSGD dated 03.07.2006.

The report has been submitted before Kerala State Pollution Control Board.




Municipal Secretary
Thrikkakara Municipality



Annexure-3

Phone : 0484 – 2207783,84,85,86

E-mail: pcbdo1@gmail.com

website-www.keralapcb.nic.in

KERALA STATE POLLUTION CONTROL BOARD

DISTRICT OFFICE -1, ERNAKULAM

GANDHINAGAR, KOCHI- 682 020

കേരള സംസ്ഥാന മലിനീകരണ നിയന്ത്രണ ബോർഡ്

ജില്ലാ ഓഫീസ്-1, എറണാകുളം

ഗാന്ധിനഗർ, കൊച്ചി - 682 020

.PCB/EKM/DO-1/OA- 205/2021

Date:18.11.2021

From

The Environmental Engineer

To

The Branch Head,

M/s Jain Housing and Constructions Ltd

Jain Tuffnel Gardens, Site Office-Flat no: 4082, Rajagiri Valley,

Chittethukara, Nilampathinja mughal Road, Kakkanad-682039

- Ref:- 1.Hon'ble NGT order in OA 205/2021 dated 22.09.2021
2. Inspection conducted by Joint Committee on 09.11.2021

Sir,

The committee constituted by the Hon'ble NGT had inspected the site of "M/s Tuffnel Gardens" on 09.11.2021. You are hereby directed to submit the following documents before the committee.

1. It was informed that the EC which was expired in the year 2016 is extended to 2018. The copy of Environmental Clearance extended upto 2018.
2. The proof showing the date of construction of the project.
3. The details of no of towers in the project with their built up area and status of construction, details of occupancy etc
4. The copy of agreement/joint venture executed between the project proponent and land owner
5. The copy of land tax receipt, possession certificate.
6. The clearances/NOCs obtained from various departments before the year 2016.
7. Documents available if any regarding the conversion of land
8. Compliance report of the EC conditions
9. Copy of the information and plans submitted along with the application for permission to construct a building and copy of the permission granted by Panchayat as per Kerala Panchayat Raj Act 1994 and its amendments

The details shall be submitted **within 5 days** on receipt of the letter. Please treat the matter as most urgent



Yours faithfully

ENVIRONMENTAL ENGINEER

(Nodal officer- OA 205/2021)



Jain Housing & Construction Ltd.

27.11.2021

The Environmental Engineer
Kerala Pollution Control Board
District Office
Ernakulam
Kochi -682020

Respected Sir/Madam,

Sub:- Hon'ble NGT Order in O.A.205/2021 dated 22.09.2021 – Inspection conducted by the Joint Committee on 19.11.2021 – Clarifications sought for – reg.

Ref:- Letter from KSPCB bearing No.PCB/EKM/DO-1/OA – 205/2021 dated 18.11.2021.

We are in receipt of your letter cited under ref. above on 25.11.2021 and via your email dated 23.11.2021 as well.

We once again reiterate to you that we are in the process of preparing our counter statement and submitting documents before the Hon'ble Tribunal in the above O.A.No. 205 of 2021. The same issues as required by you now are also agitated before the Hon'ble Tribunal also. We have always provided all documents as required by all the authorities.

We state here that your queries are largely in the form of obtaining statements and as such we require additional time since all our files are being handed over to the office of our legal counsel to prepare the counter and file documents before the Tribunal. As such, while requesting for further time of 15 days to submit our detailed reply, we offer the following by way of a preliminary reply to your letter :-

1. We would like to clarify that we have obtained the Environmental Clearance on 24.05.2011 which continued to be in force as per the notifications issued with regard to EIA 2006 and as per then existing law.

2. With regard to the proof of construction we have already made our statement which can be taken as our evidence as well. It is not clear as to the manner of proof required and the basis for allegations are also not understood in full by us. The existing records and online tools are very much available to substantiate our claim. Please inform the exact nature of documents as required by you with regard to the query on proof.

Jain Tufnell Garden, Site Office, Flat No. 4082, Rajagiri Valley
Chittethukara, Nilampathinja Mughal Road, Kakkanadu, Cochin - 682 039
www.jainhousing.com

3. Total No. of Towers 8 and the built up area, present status of construction, details of occupancy are as follows :

Block/Tower No.	Built up area in Sq.ft.	Status of construction	Details of Occupancy
1	202502	Upper car parking + 10slab, 6 floors block work completed	Nil
2	225188	Upper car parking + 8 slab, 3 floor block work completed	Nil
3	225188	Upper car parking + 2 slab, 1st floor outer wall completed	Nil
4	202502	Completed , Ready to occupy	approx 30 residents
5	202502	Upper car parking + 21 slab, 19th floor outer wall completed	Nil
6	202502	Upper car parking + 3 slab, 1st floor outer wall completed	Nil
7	202502	Upper car parking + 5 slab, 1st floor outer wall completed	Nil
8	202502	Upper car parking + 9 slab, 4 floor block work completed	Nil

4. We have forwarded the required documents to our legal counsel office in view of the pendency of the case and to file a detailed counter statement in the Tribunal. We have been granted the project by our landowner via power of attorney and thus the nature of documents as required does not arise in our case. Further, the basis of enquiry for this reason and necessity of the documents are not understood by us. Kindly explain the same for us to forward the exact required documents.

5. Copy of the land taxreceipt dated 06.11.2021 and 27.05.2019 and Possession Certificate dated 04.06.2019 are attached.

6. Clearances/NOCs obtained from various Departments before the year 2016:

- a. NOC for construction from then Thrikkakara Grama Panchayth with no:A4-1/2000 dated 31.08.2006.
- b. Clearance from Thrikkakara Grama Panchayath dated 09.09.2008 as per certificate no: A1-1/08.
- c. Naval height clearance NOC dated 18.07.2008.

- d. Airport Authority height clearance dated 25.08.2008.
- e. Ministry Of Environment and Forest and Climate Change NOC dated 24.05.2011
- f. Naval height renewal clearance dated 14.03.2012.

7. Documents available if any regarding the conversion of land:

Does not arise in our case. We will submit our detailed explanation after getting approval from our legal team. We are also addressing the same via our counter statement before the Tribunal.

8. Compliance report filed on 20.02.2020 is annexed. We have also enclosed our response dated 25.05.2021 to the MoEF Committee's letter dated 23.03.2021.

9. The following papers are enclosed herewith:

- (a) NOC for construction from then Thrikkakara Grama Panchayth with no:A4-1/2000 dated 31.08.2006.
- (b) Clearance from Thrikkakara Grama Panchayath dated 09.09.2008 as per certificate no: A1-1/08.
- (c) Copies of Approved Plans in 2006.
- (d) Copy Regularisation approval dated 15.06.2016
- (e) Copies of Regularised plans in 2016

We request you to kindly acknowledge receipt of this letter.

Yours truly

For Jain Housing & Construction Ltd ¹

Jain Housing & Constructions Ltd.
Branch Head - Kochi.

9896404990

Encl. As above.

Google Images showing the construction status of the project



Fig 1:VIEW OF PROPOSED SITE ON JANUARY 2008



Fig 2:VIEWOF PROPOSED SITE ON JANUARY 2010



Fig 3:VIEWOF PROPOSED SITE ON JANUARY 2011



Fig 4:VIEW OF PROPOSED SITE ON NOVEMBER 2011

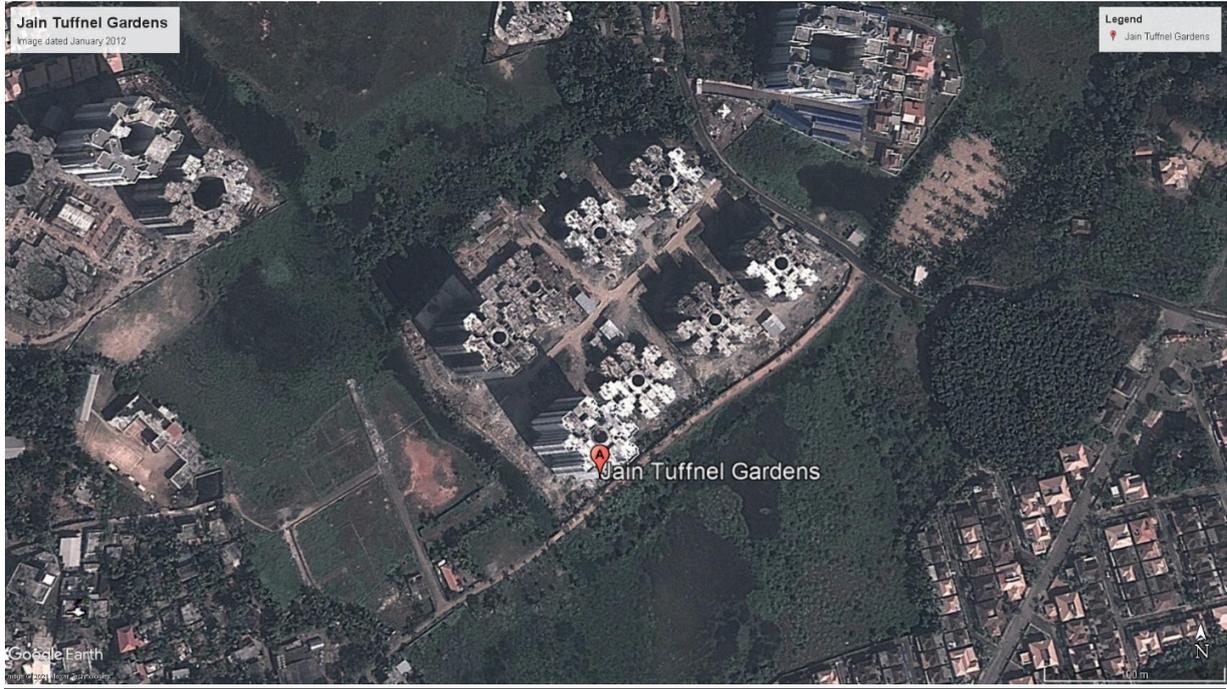


Fig 5:VIEW OF PROPOSED SITE ON JANUARY 2012

PHOTOGRAPHS OF SITE INSPECTION ON 09.11.2021



