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**BEFORE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

APPLICATION NO. 65 / 2019

Ajay Bhosale & Ors. **Applicant**
VERSUS
Union of India & Ors. **Respondents**

AFFIDAVIT BY RESPONDENT NO. 11
M/s. BramhaCorp Ltd.

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LIST OF ABBREVIATIONS USED

Short-form	Full-form
AAQ	Ambient Air Quality
CC	Commencement Certificate
CCTV	Closed-Circuit Television
CGWA	Central Ground Water Authority
CIDCO	City and Industrial Development Corporation
CPCB	Central Pollution Control Board
DC Rules	Development Control Rules
DDA	Delhi Development Authority
EC	Environment Clearance
EDA	Environmental Damage Assessment
EIA	Environment Impact Assessment
EMP	Environmental Management Plan
EPA	Environmental Protection Act 1986
FSI	Floor space index
HUDA	Haryana Shahari Vikas Pradhikaran
JMFC	Judicial Magistrate First Class
LED	Light-Emitting Diode
LEED	Leadership in Energy and Environmental Design
MHADA	Maharashtra Housing and Area Development Authority
MIDC	Maharashtra Industrial Development Corporation
MIHAN	Multi-Model International Passenger and Cargo Hub Airport at Nagpur
MLD	Million Litres Per Day
MPCB	Maharashtra Pollution Control Board
MRTP Act	Maharashtra Regional and Town Planning Act 1966
NAINA	Navi Mumbai Airport Influence Notified Area - Wikipedia
NBC	National Building Code
NOC	No Objection Certificate
PMC	Pune Municipal Corporation
PP	Project Proponent
PVC	Polyvinyl Chloride
R.G.	Recreational Ground
SEAC	State Expert Appraisal Committee
SEIAA	State Environmental Impact Assessment Authority
SEZ	Special Economic Zones
STP	Sewage Treatment Plant
TDR	Transfer of Development Rights
TERI	The Energy and Resources Institute
ULB	Urban Local Body
uPVC	Unplasticized Polyvinyl Chloride

LIST OF PARTIES**BETWEEN****AJAY JAYVANTRAO BHOSALE**

Age: Adult, Occupation: Self-employed,
Nana Peth, Near Y.M.C. Club,
Pune – 411011.

Applicant**VERSUS****1. UNION OF INDIA**

Through Secretary,
Ministry Of Environment and Forest
Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi – 110001
E-mail: secy-moef@nic.in

Respondents**2. CHIEF SECRETARY,**

Government of Maharashtra,
Annex Building, Mantralaya, Mumbai – 400032
E-mail: chiefsecretary@maharashtra.gov.in

**3. THE PRINCIPAL SECRETARY,
ENVIRONMENT DEPT.**

Government of Maharashtra,
Room No. 217, 2nd Floor, Annex Building,
Mantralaya, Mumbai -400032, Maharashtra
E-mail: pscc.env@maharashtra.gov.in

**4. STATE LEVEL ENVIRONMENT IMPACT
ASSESSMENT AUTHORITY – MAHARASHTRA
(SEIAA)**

Through Member Secretary
15th Floor, New Administrative Building,
Mantralaya, Mumbai-400032, Maharashtra

**5. STATE EXPERT APPRAISAL
COMMITTEE (III)- MAHARASHTRA
(SEAC-III)**

Through Member Secretary
15th Floor, New Administrative Building,
Mantralaya, Mumbai-400032, Maharashtra

6. MAHARASHTRA POLLUTION CONTROL BOARD

Through Member Secretary,
Kalptaru Point, 3rd floor, Near Sion Circle,
Opp. Cine Planet Cinema, Sion (E),
Mumbai- 400022, Maharashtra
E-mail: ms@mpcb.gov.in

7. MAHARASHTRA POLLUTION CONTROL BOARD

Through Regional Officer
Jog Centre, 3rd floor, Mumbai-Pune Old Highway,
Wakadewadi,
Pune – 411003, Maharashtra
E-mail: ropune@mpcb.gov.in

8. PUNE MUNICIPAL CORPORATION

Through Municipal Commissioner
Main Building, Shivaji Nagar, Pune-411005
E-mail: pmcmco@gmail.com

9. BUILDING PERMISSION DEPARTMENT – PMC

Through City Engineer, Pune Municipal
Corporation, Shivaji Nagar, Pune – 411005
E-mail: rraut@punecorporation.org

10. COLLECTOR OF PUNE

As Collector and President of District Environment
Protection Committee- Pune, Collector office,
Bund Garden, Pune-411001,
E-mail: rdc.pune-mh@gov.in

11. M/s. BRAMHACORP LIMITED

A Limited Company registered under Indian
Company Act-1952 with (CIN)
U70101PN2012PLC142705,

Having Registered office at

3, Queens Garden,
Residency Club, Pune 411001,
E-mail: admin@bramhacorp.in

Through its Directors

11A. Ramkumar Bramhadutt Agrawal

11 B. Vinodkumar Bramhadutt Agrawal

DIARY OF EVENTS

Date (y-m-d)	Project development stages
2019.06.15	Notice from SEIAA - Proposed direction u/s 5 of the Environmental (P) Act, 1986 r.w. EIA notification – 2006 dated 14.09.2006.
2019.05.24	Notice/Complaint from Ajay Bhosale
2019.10.22	Hon'ble NGT DO for constitution of Joint Committee
2019.12.10	Hon'ble NGT allow MPCB extended time to submit joint committee report
2019.12.15	The Joint Committee visited the site
2020.01.04	Notice/Direction from RO, MPCB, Pune- u/s 33 of the water (Prevention & Control of Pollution) Act, 1974 and u/s 31 A of the Air (Prevention & Control of pollution Act, 1981.)

SYNOPSIS

The OA 65/2019 is filed on 19.08.2019. The OA 65/2019 is unnecessarily tagged with other matters. The project is different and so also the facts. As such they need not be tagged together or heard together. The matters should be de-tagged.

Hon'ble Tribunal had directed by the Daily Order dated **22.10.2019** to form the Committee to verify the facts at site and file the report. Respondent has not received any copy of the report. This is the first Affidavit by time Respondent No.11.

The project (buildings A, B = 4 wings and C,D and E =5 wings) started prior to EIA Notification 14.09.2006.

Layout sanctioned on 30.06.2006 was for FSI area of 21177.33m², as against actual FSI Area construction of 21798.69m². There was total 248 Tenements in the approved layout plan (as against total 249 Tenements now). Earlier refuge area shown in one wing of each building, whereas now it is common between the wings.

Project Buildings A, B, D & E were complete in all respect and the Occupancy Certificate was granted to the project on 04.12.2009. The flats in the premises were sold from year 2005. Society registration was done on 29.08.2011. The possession was handed over the to the buyers' residents' society in the year 2012. The total construction cost of this project was Rs.15 Crore.

The building C (5th wing) started on 15.07.2014 (CC/1169/14). Total covered built-up construction area of

the last building C building was 7395m². As such, it did not need EC. The next project and earlier project have nothing in common environmentally, except that they are on same plot.

As per the Environmental Management Plan and features already incorporated in the project, Respondent No. 11 has taken all the care of environmental issues in construction phase and operational phase. This is without any compulsion OR prescription of law/rule, but voluntarily on its own.

As can be seen from the Monthly Bills issued to occupants,

There is no damage caused to environment or pollution was caused. The construction is done in accordance with the approved building plans and compliant with D.C. Rules under MRTP Act.

THE AFFIDAVIT BY RESPONDENT NO. 11
M/S. BRAMHACORP LTD.

MOST RESPECTFULLY SUBMITTED :

1. I am Alka Mandar Rege, working as Power of Attorney with **Respondent No. 11 M/s. BramhaCorp Limited**, the **Project Proponent (PP)**, having its registered office at Residency Club, 3, Queen's Garden Road, Pune-411001, Maharashtra. (hereafter referred as **PP**, as also referred by Applicant). I have the knowledge of the facts and authority to file this affidavit, for and on behalf of the respondent, which I hereby do, on solemn affirmation and oath.
2. **List of abbreviations used** are given at the beginning of the application.
3. PP has been impleaded by the Applicant as a party to the Application No. 65/2019 as Respondent No. 11. **PP hereby prays to allow for the submission of this Affidavit, as otherwise so far, Respondent No.11 was not heard in the matter by this Hon'ble Tribunal.** This shall be in accordance with the provision of **Section 19 (i)** of the NGTA and also in accordance with the principles of natural justice.
4. In this Original Application and Interlocutory Application No. 102/2019, the Applicant has made various allegations against the PP and has sought many reliefs, which, if granted, will affect the PP and are therefore, opposed in this affidavit by PP.
5. **PP submits that OA 65/2019 is hopelessly time barred and therefore lack jurisdiction to be heard before this Hon'ble Tribunal.** PP mainly objects and opposes grounds of maintainability of both the applications, strictly on the basis of limitation of time

period and also the jurisdiction of this Hon'ble Tribunal to entertain the applications. Though these applications are filed u/s. 14 & 15 of the NGTA, the cause of action pointed in the application does not indicate the cause giving rise to 'substantial question related to environment'.

6. PP hereby denies all the allegations made by the applicant and nothing shall be construed accepted merely because it was not specifically denied by PP hereafter.
7. PP also humbly submits that all the allegations made are false, frivolous and stated with malafide intentions. They are vague in nature, does not point out at any specific 'substantial question related to environment'. Hence all averments shall be decided and based upon the strict proof which needs to be given by applicant, in respect of all the assertions made.

PRELIMINARY OBJECTIONS ON THE GROUNDS OF MAINTAINABILITY

8. **The present application was filed by the Applicant on 19.08.2019** with lodging no. 146/2019. The project at this location was initially sanctioned on 14.09.2005 and even the revised layout plan of all buildings was sanctioned on 30.06.2006. This was consisting of Buildings A and B 4 wings AND building C, D and E with 5 wings. This is all what it stands today on-site, as was sanctioned on 30.06.2006. Layout sanction of 30.06.2006 was for FSI area of 21177.33m², as against actual FSI Area constructed of 21798.69m². [At that time, in the Corporation only FSI area was considered and mentioned. Non-FSI area was not considered OR mentioned in the plans approved]. There was total 248 Tenements in the initial approved layout plan, as against now total 249 Tenements now. Earlier refuge area shown in one wing of

each building, whereas now it is common between the wings.

9. The project in totality was conceived, planned, approved prior to EIA Notification and work commenced on it. **The cause of action mentioned in the application is the revised building plans sanctioned on 21.06.2017.** The delay in filing the Application is of **789 days OR 607 days** from the expiry of even grace period of limitation period of six months, u/s. 14(3) of the NGTA 2010.
10. There is no explanation or application for condonation of delay explaining what **PREVENTED** the Applicant from filing this application within the period of limitation which actually ends on **20.12.2017**. On this ground, alone, Hon'ble Tribunal loses its jurisdiction to entertain the Application and go into merit of the matter.
11. The Applicant created confusion as regards facts, cause of action, remedies and prayers sought and has led the Hon'ble Tribunal astray by these incoherent details.
12. The Applicant humbly submits that **the first ever sanctioned building plan for this project was made on 14.09.2005**. The project started on that date and is ongoing in open, seen and visible to all the local citizens for past 15 years. A person who had sincere concerns would have raised objections immediately **when the cause of action first arose** and not after this long delay. Interestingly, the Applicant claims to be a local resident and ought to have been aware of this ongoing development, over last 15 years. However, the project was/has not been challenged before any Court of law nor before this Hon'ble Tribunal which is in existence since the promulgation of 'National Green Tribunal Act 2010'. This project was also not challenged before the earlier Authority or Hon'ble High Court. As such, now applicant

can't suddenly wake-up after 14 years after commencement of the project on-site.

13. In light of these facts, **PP has serious objections on the maintainability of this present application on following grounds, without prejudice to each other.** PP urges that the same should be first heard and decided before entertaining the application and/or before exercising the original jurisdiction under s.14, 15 by following procedure as per s.17 and 18 of the Act.
14. **That the application must pass the test of maintainability and be within the period of limitation stated in the act,** must fall under the original jurisdiction of the NGTA, i.e. action should be violate the provisions of acts listed categorically in Schedule-I of the NGTA and fall under the definition of 'substantial question related to environment' u/s. **2(m)** which states"
- 2(m) “substantial question relating to environment” shall include an instance where,—**
- (i) there is a **direct violation of a specific statutory environment obligation** by a person by which, —
- (A) the **community at large other than an individual or group of individuals** is affected or likely to be affected by the environmental consequences; or
- (B) the gravity of damage to the environment or property is **substantial**; or
- (C) the **damage to public health is broadly measurable**;
- (ii) the environmental **consequences relate** to a **specific activity** or a **point source of pollution**;
15. Applicant has not shown, or even pleaded to show, as to how the cause of action when **first arose**, by grant of building plan approval under MRTP Act by PMC on

21.06.2017 is direct violation resulting in adverse impact on environment as stated in s. 2(m) (i) (A), (B) or (C).

16. To put it in simple words, law provides that general or minor environmental issues, if any, that do not have '**substantial question related to environment**', should not be brought, dealt with and adjudicated by this Hon'ble Tribunal. This protects PP from frivolous litigation, saving the precious time of the Hon'ble Tribunal and also prevents unnecessary flooding of the Hon'ble Tribunal with Applications that do not raise any '*substantial question related to environment*'.
17. The maintainability, therefore, will have to be tested on the face of it, as preliminary objection, in respect of each allegation, without going into merit OR adjudication. Those preliminary test shall be:
 - a) Which is that one single cause which can be entertained in an application?
 - b) Is this cause raised within the period of limitation, starting from the day it first arose?
 - c) Does this cause raise a '*substantial question related to environment*'?
 - d) What relief has been asked in prayers? Is it compensation or restitution?
 - e) Are all the reliefs sought in the prayer consequential to each other and can be granted under the one single surviving cause of action?
 - f) Does the applicant have locus standi for the relief and compensation sought in the Application?
18. PP humbly submits that this entire application does not survive this test and the mandatory statutory provisions

spelt in detail above. **Surviving portion, if any, of the application ought to be determined after trimming-off the irrelevant causes that are not maintainable.** Only then the remaining application with the one single cause, may be taken up for further adjudication.

ON GROUNDS OF LIMITATION

19. PP sates that the entire application and the causes stated in it, are barred by limitation. Even if one goes by the submissions of the applicant, limitation period was triggered on 21.06.2017 and ended after six months, on 20.12.2017. The application was filed on 19.08.2019.
20. PP submits that approval of building plans by itself can't be cause of action. Cause of action has to raise the substantial question related to environment. Approval of building plans, under MRTP Act per-se is not under Schedule-I and doesn't raise any '*substantial question related to environment*'. This phrase has been specifically and substantively defined in the NGT Act u/s.2(m). As such approval of plan can't be the cause contemplated and eligible under s.14 of the NGTA.
21. PP submits that applicant has unnecessarily invoked s.15 only to take advantage of the limitation period of six months corresponding to that section. Even under this section, which provides for '**relief, compensation and restitution**', there is corresponding eligibility criteria as to who can claim that. Applicant is not claiming any relief in respect of the cause of action. Relief or more reliefs that should be consequential to each other. Mere reading of prayers show that those are not the reliefs consequential to each other. Further they have no bearing to correct the very cause of action, even assuming but not admitting that the same can be the cause.

22. Those reliefs are not for any environmental 'relief, compensation and restitution' but to threaten the PP, terrorise him and create fear to extort.
23. Admittedly there is delay beyond six months from date of cause of action. The delay beyond this time period is not condonable as much as the Hon'ble Tribunal has no such powers to condone the delay.
24. Even the extra period of 60 days beyond limitation, doesn't help in fitting the cause within the period of limitation. Waiver from condonation of the delay also is not the matter of right. Applicant has neither prayed for condonation of any delay nor showed by giving sufficient cause as to how he was 'prevented' from filing the application in time.
25. The cause of action ought to have first arose within the stipulated period of limitation of six months only AND that should be the cause which gives rise to '*substantial question related to environment*'. The Applicants submission that the cause of action arose on sanctioning of the building plan is not acceptable. Also, this act in no way raises '*substantial question related to environment*'. Therefore, this cause stated by the Applicant in itself is flimsy and untenable under s.14 and s.15 of NGTA.

TRIMMING THE AMBIT OF APPLICATION

26. The application has mentioned many facts, which are not the causes giving rise to any '*substantial question related to environment*'. This is categorically defined u/s. 2(m) and is the precondition for invoking either of the s.14 or 15.
27. There was no '*substantial question related to environment*' when building construction plans were

approved under MRTP Act by the PMC Pune. If there was any, it was the statutory duty and function of the PMC to have identified and objected to at the time of granting approval. PMC did not find any such impact on the environment, as the project was old, ongoing and sanctioned prior to EIA Notification. This was not the new project anymore to need an EC. Therefore, the cause of action mentioned a by the Applicant is false, arrived after missing all the important time-lines and dates, and is fictitious. The application u/s.15 too ought to have been filed **within a period of five years from the date on which the cause for such compensation or relief first arose.**

28. PP urges the indulgence of this Hon'ble Tribunal in examining the specific provision of the Act in this regard. Even the specific provision of law of the limitation period of **five years is only in respect of the cause for such compensation and relief; and NOT for restitution.** As such, in any case, the application can't even demand the demolition in the prayer, which is squarely barred by limitation.
29. PP states that the ambit of the application is vague, and the applicant is not the fit person to claim any compensation or relief for himself. He is under obligation by law to quantify the relief or compensation as per s. 15(4) and s. 17(1) in the specific heads under Schedule-II. The declaration and quantification are to be specifically given in Schedule-II. Nothing of this has been done.
30. PP says and submits that none of the Points from (a) to (n) would even apply to this case; except may be point (k)

- (k) Claims including cost of restoration on account of **any harm or damage to environment** including pollution of soil, air, water, land and eco-systems;

31. The prayers should remediate the cause of action and show as to how that will restore environment.
32. PP states that further, there is no application in Form-II or fees paid as per the laid down statutory procedure.

PLURAL CAUSES PROHIBITED

33. PP submits that the application contains many averments as facts. These bundles of facts have been mentioned as the cause of action. But the statutory provision in this regard is very clear as per Rule 14. It says:

The National Green Tribunal (Practices and Procedure) Rules, 2011

- 14. Plural remedies:** - An application or appeal, as the case may be, shall be based upon a single cause of action and may seek **one or more relief** provided that they are consequential to one another.

Thus, there is no provision to allow bundle of facts as one single cause. Moreover, in the present case, **the single cause mentioned to justify the time limit is the building plan sanction dated 26.02.2017**, which as seen earlier is barred by limitation.

34. PP submits that the time limit is counted and said to be triggered from that date, of cause of action first arose. All other facts are even much prior to that date. They can't be treated as a 'cause', as Rules specifically provide that application shall be based upon a single cause of action. One or more reliefs are allowed, that too, if they are consequential to one another; otherwise not. i.e., widely diverse remedies or reliefs are NOT allowed. **Reliefs**

prayed, related to one single cause, must remediate the damage to environment.

35. PP states that the application is full of causes. The averments or the bundle of averments can't make the one single cause. Moreover, terminology and words used in NGTA are very clear. Mere such averments, allegations can't mould the statutory provisions to give altogether new meaning to the words, which are not even remotely there in the statute. **This amounts to re-writing the Act or the provisos of it.**
36. PP says and submits that these various averments and allegations are entirely of different nature, at different place and time, and on altogether different count. They are nowhere similar to the cause of action that first arose to trigger the period of limitation, to file this application. On the other hand, the various sections read together, clearly put the clear-cut entry barrier, as detailed and described at the outset.
37. PP states and submits that the combined reading therefore limits, trims and curtails the ambit of the application, by the various categorical restrictions provided in the Act itself, that is:
- a. There has to be a single cause of action;
 - b. which should give rise to 'substantial question related to environment' as defined in s.2(m);
 - c. the application has to be filed within the period of limitation of **SIX months from the date of cause, that first arose;**
 - d. there can be one relief sought; OR even more reliefs provided that they are consequential to each other;

- e. obviously, the relief has to be to provide the relief, compensation and restoration, from the cause;
- f. the relief and compensation can be claimed under original jurisdiction within period of five years, in respect of the cause of action; but the restitution or restoration must be claimed within six months only.

38. PP submits that therefore unless all these important preliminary objections are heard, deliberated, argued and adjudicated, the application can't be admitted and adjudicated further by this Hon'ble Tribunal on merit, without satisfying itself on the limitation, jurisdiction and ambit of the multiple causes raised in the application.

**VIOLATION, NON-COMPLIANCE AND
SUBSTANTIAL QUESTION RELATED TO
ENVIRONMENT**

- 39. PP says and submits that if the EC is required and has not been obtained, then certainly it would be dealt with as provided under the Notification and the EPA 1986, by following penalties and procedures.
- 40. PP says and submits that each violation, noncompliance, delay, may not cause damage to environment. This would remain a matter of facts, verification at site as related to damage that was caused to environment. The same would have to be at least identified, determined, quantified, the plan for restoration of environment has to be worked out by the experts and the same should be implemented.
- 41. PP says that if there is violation of the letter of law, but the spirit is followed due to prior planning, incorporation of most of the environmental features as the part of the planning, the damage to environment may be minimal.

This too will have to be examined by the third-party experts, deliberated before SEAC/SEIAA for their appraisal and checking by enforcement agencies like by MPCB, CPCB and MoEFCC.

42. PP says that mere fact of violation of letter of law would not *de-facto* mean that the damage to environment was done. The determination of damage as specifically provided u/s. 17(1) under the various heads mentioned in Schedule-II.
43. PP says that the **criminal punishment for the violation** is left to the jurisdiction of the other competent Hon'ble Court in accordance with the Act and laid down procedure. The PP can't be subjected to double jeopardy or "civil punishment" under the guise of cost of restoration of environment, for the criminal act of violation.

CONSTRUCTION DONE WITHOUT OR WITH EC

44. PP submits that EC was not applicable to this project as the project was not a new project. It was same old project as planned and approved on 30.06.2006. There were amendments but that doesn't make it a new project. FSI area and no. of tenements have remained almost same, as stated earlier. All other changes were approved under MRTP Act and DC Rules, for the last building C, which also was started in 15.07.2014. The cause, if at all any, had arose at that time and not in 2017.
45. PP says and submits that EIA Notification 14.09.2006 is only for regulatory purposes. It has not prohibited the building construction activities which fall under the category of permitted activities. Building construction activity is regulated mainly under MRTP Act and by DC Rules, so as to be compliant under local urban bodies

(ULB) zonal planning rules.

46. PP says and submits that in the present case, in case of last building C, there is no drastic change in the construction activities carried out without an EC or with an EC. This is mainly because there are no specific standards, features, essential requirements, issued for building and construction projects, as they are laid down for various other industries. SEAC/SEIAA basically checks for approved building plans, water supply source, sewer line connection NOC of Corporation, width of internal roads, NOC from various departments like NA form Revenue, Fire Department, access road, CGWA NOC (if applicable), adequacy of the pollution control measures etc. All these things can be examined now also, if those are being alleged as raising 'substantial question related to environment'.
47. PP says and submits that what can't be measured now is only the background levels of AAQ, Soil, and Ground Water Quality in the area. However, if these parameters are checked today and if they meet the relevant applicable standards, on-site and off-site, then there remains no 'substantial question related to environment'. What would then remain objectionable is the violation in going ahead with the construction work without having the EC, assuming as alleged but not admitted.
48. PP says and submits that entire construction was done as per building construction plans prepared by a professional Architect. These plans were in accordance with MRTP Act and DC Rules. The permissible FSI was used as allowed.
49. The first project was started in 2005 well before even when the first EIA Notification was there. It was completed in all respect and premises were sold; possession handed over to the buyers. They have formed

their gated community and there is no control of the PP on it, as much as even the access to those premises / societies would be legally prohibited.

50. PP says and submits that the last building of the project started thereafter in year 15.07.2014 (CC/1169/14). As explained, there was time gap of 5 years, after completion of earlier buildings. The last building was started only when it became commercially viable only after change in rates of saleable spaces, availability of floating FSI/TDR.
51. PP says and submits that it was not the expansion of the earlier project or modernization of the earlier project as it is in the case of any industry. It was the part of the plan as shown and sanctioned in layout on 30.06.2006. **When you expand an industry, the decision-making power of production capacities of earlier and expanded industry remain with the same owner of the industry.** Generally, both, the original and expanded unit, carry out their activities as combined unit. When modernization is done, earlier Industry is re-done with improved technology, with capacity addition. None of this was present in this project.
52. PP says and submits that Clause 2(ii) and 2(iii) of the EIA Notification, from the reading of it, do not relate to buildings of a one pre-sanctioned layout, constructed over a period of time. There was no limit on constructing the sanctioned layout plant.
53. PP says and submits that if this would have been the case, entire individual layouts standing on the land owned and leased by CIDCO, MHADA, HUDA, DDA, MIDC, NAINA, SEZ, MIHAN, and, even the smallest stand-alone building, would have been bound to go for the EIA and EC, just because the owner of land is one.

54. PP says and submits that best construction practices were incorporated at the initial planning stage itself. This has now become a contemporary business requirement which is based on the Buyers demand and market competition.
55. PP says and submits that LEED / GREEN Certification are taken voluntarily so as to make the project environment friendly, making best use of natural light, ventilation, etc. Open spaces are kept as per MRTP Act / DC Rules, in the layout plan as well as around buildings. Planning also is governed by definite set of rules and requirements on R.G., Tree plantation, Firefighting provisions, fire tender movement, excavation, parking requirement and provision for that, etc. The National Building Code provides for similar norms and requirements which are incorporated in the building plans and layout under MRTP Act / DC Rules.
56. PP says and submits that there are no overriding rules or standards laid down in the Environment (Protection) Act 1986 OR Rules OR EIA Notification, for the building construction project, apart from and above the DC Rules.
57. PP says and submits that many things like use of recycled material, conservation of top-soil for green plantation in the project area, use of fly-ash bricks, has become cost effective, economical, cheaper, convenient, and thermally insulating. As such, irrespective of any compulsion, these things were already followed by the PP without any external compulsion or pressure.
58. PP says and submits that due to market demand of the residential flat buyers, certain aspects are provided, even when those are costly. This fetches better price for the premises due to improved architecture, aesthetics, comparison with other projects in the nearby locality and convenience.

59. PP says and submits that features like powder coated Al-sliding windows, vitrified tiles, CCTV, concealed copper wiring, PVC or uPVC piping, high-grade pottery for WC-wash basins, lift, fire-fighting system, fire-escape/evacuation area, water geyser, common gas piping, LED lights, solar panels, etc. are provided by the PP due to market demand. These amenities are anyway provided are environment friendly and requirement of LEAD / GREEN Certification. These have been already done voluntarily, even though the project was prior to EIA Notification.
60. PP says and submits that solar power panels for lighting or heating, is matter of preference of the buyers. There is no compulsion under EPA standards. Residents who wish to enjoy the open Terrace for their personal use or ceremonies can do so. LED lighting for street-light, common corridors, staircase etc. is anyway provided by the PP as standard features, without boasting for it OR as environmental compulsion.
61. PP says and submits that, even then, when the project is before the SEAC and SEIAA, **an independent appraisal is done by this Committee and Authority**. If anything is required to be done, over and above what is generally done in compliance with NBC, MRTP Act / DC Rules, then those additional requirements are also incorporated as conditions of the EC and so also in the 'Consent to Establish' OR 'Consent to Operate'. However, EC is required only for NEW PROJECTS and this project was approved prior to EIA Notification.
62. PP says and submits that in this case though there is no need or occasion to go before the SEAC / SEIAA for EC, the project already fulfils the environmental obligations by incorporating almost all features under MRTP Act / DC

Rules. Only those aspects that are not there in other Acts/Rules, and become additionally required when project is above 20000m² area, shall reflect as conditions of the EC and was commenced after EIA Notification.

63. Assuming without admitting that some of the points raised by the Applicant are correct, those have not raised 'substantial question related to environment' as defined in Definition 2(m) of the 'National Green Tribunal Act 2010'. Moreover, the **Applicant has failed to show how these points give rise to any substantial grave issues of environment, by approval of revised sanctioned plan in 2017.**
64. PP says and submits that this is because all EMP was done thoughtfully as per advice of the Architect, environmental engineers, LEAD/TERI certification requirements, NBC, MRTP and DC Rules.
65. PP says and submits that all these submissions above, are for bringing the facts on record and so also presenting the other side of the matter in holistic manner. **PP is not claiming any immunity in case of any criminal violation** and is ready and willing to face the consequences in appropriate court of law, if there is violation. But PP humbly says and submits that the forum for this would be JMFC by filing of the complaint by the appropriate authority, if they come to such conclusion. No civil application can pray and compel or issue directions for filing of the criminal complaint. As per due procedure of law, PP shall be entitled to present the defence and face the consequences in accordance with the law in JMFC.
66. PP says and submits that it should be noted that Environment (Protection) Act 1986, u/s.15 has lays down both, punishment and procedure, to dealing with cases of violation. When legislature has clearly stipulated the

maximum punishment and procedure, Applicant or no one else can vindictively claim for any other action in the form of punishment.

RESPONSE TO ALLEGATIONS ON MERIT

COMMITMENT TO ENVIRONMENT

67. Without prejudice AND not withstanding anything which is submitted hereafter, PP says and submits that he is willing to correct any omissions on environmental front, do improvements and fully bear the cost of it.
68. PP says and submits that this is positive step and commitment. This is not proposed as substitute to findings of this Hon'ble Tribunal based on the submissions before it, by Expert Committee.
69. PP submits that ultimately, the purpose of NGTA and jurisdiction of s.14 dealing with 'substantial question related to environment' and provide for the cost of restoration based on Environment Damage Assessment.

FACTS OF THE CASE

70. This project was granted Commencement Certificate 21.09.2005, which is much prior to EIA Notification of 14.09.2006. As such it did not need the 'Environmental Clearance' and hence PP has not applied for obtaining 'Environmental Clearance' for this project.
71. **PP states that major part of this project (Buildings A, B, D & E) was complete in all respect and the Occupancy Certificate was granted to the project on 04.12.2009.** The flats in the premises were sold from year 2005. **Society registration was done on 29.08.2011.** The possession of the flats and finally the

buildings also, was handed over to the buyers' residents' society in the **year 2012**. Thereafter, PP had no control, possession and ownership of the sold flats and these buildings are with the *bona fide* buyers/occupants, with their own compound and security gate. This building construction project (part) as planned, was executed, completed, and was handed over to the residents/society.

72. The above project was carried out as duly approved under MRTP and in consonance with the zonal plan. Utilization of the plot was in conformity to MRTP and construction was as per approved building plan. The construction therefore is fully legitimate and as per approved plans.
73. PP states that since the conveyance of the total land plot was not done, a part of the land of the said plot of about 3183.83 m² remained with the PP. Property prices increased from year 2005 to 2017. The potential to utilize floating FSI or TDR was available on the total land area to the title owner of the plot. In this changed scenario, the remaining potential of the plot was commercially viable to someone, who can plan the project, invest funds towards the FSI/TDR, and carry out construction and then sell it.
74. PP states that this new separate project within the layout, on the remaining land, was of about 3183.83 m² and the PP developed this separate project named and styled as '**BRAMHA EXUBERANCE ELITE**'.
- 75. This building C was also shown in the old sanctioned layout of the project on 30.06.2006. If this is treated as part of the pre-sanctioned OLD PROJECT, then it won't require the EC as the project was OLD and not NEW. If this project was to be considered as NEW project, then area of the project was <20,000m².**

76. The earlier project started in 2005 and was over in year 04.12.2009 (This is the date of completion Part-III – for D building). The plans for this new separate project were submitted in year 2014, and Commencement Certificate was issued on 15.07.2014. Since the earlier buildings completed were handed over to the buyer and so also the buildings and land with it, this was like a new project.
77. These two projects are totally different, separated by period of over Five years. There is nothing in common, as far as utilization of the earlier assets handed over along with buildings to earlier buyers. PP had lost the physical control over it.
78. PP states and submit that the new separate project building plan was of (Plot area) 3183.83 m² area of year 2017.
79. PP states that the EIA Notification 14.09.2006 is common for the various kind of project categories. It covers projects, manufacturing industry and building construction projects. This new project was not like the addition of capacity to the same industry, which remains with the same owner and/or continues to produce with the total capacity. **Once a project is handed over, PP has no role in it or in its operation. Constructing Residential buildings is not like an ongoing business.** Earlier completed and sold residential construction activity does not generate any profit for the PP (so as to be included in the new project). This could have been alleged to be so, in case of expansion of the Commercial Mall, where the earlier property is still owned by the PP and only rented out to the tenants. This is NOT the case of expansion.
80. The construction of the last building, will have to be either treated as part of the OLD pre-sanctioned project of the

approved layout prior to EIA Notification; simply constructed later as there is no time limit to complete the project.

OR

It has to be treated as new stand-alone project, as the PP has left with no ownership, possession and control over the earlier project buildings, premises, or getting any continuing benefits.

81. PP submits that notwithstanding above submissions, without prejudice to it, building construction activity is permitted activity, subject to providing environmental management safeguards.

SELF ASSESSMENT OF EMP

82. PP has prepared the self-assessment of Environmental Damage Assessment (EDA) and Environment Management Plan (EMP). This is based on the EC Violation Notification of 14.03.2017. **The window for the same is closed, even if PP wants to take the advantage of it. But environment can be allowed to be benefitted from the concepts that have been directed to be implemented in the cases of violation.** Ultimately, the purpose of the litigation before this Hon'ble Tribunal is to benefit the environment and restore the damage to environment, if any, by its identification. The criminal punishment for violation would remain, whatever it is, as per the provisions of the Environment (Protection) Act 1986.
83. PP submit that enclosed Annexure shows the **total project area of the building C constructed from year 2014**, EMP during construction, and (qualitative and quantitative) assessment of environmental impact and EDA arising out of it.

84. PP has already conducted required assessment, as if the project would have been supposedly implemented with EC and according to EMP approved under it. In the contemporary business practices, LEAD certifications and facilities are inherently provided. Also, the requirements under MRTP anyway cover many environmental safeguards as well. But even then, if anything is left out, by inconsistency, overlooking, negligence, omission, oversight, etc., the PP is willing to provide that **irrespective of whether it is giving rise to 'substantial question related to environment'**. Hence, the entire exercise of determination of EDA, if any, has been carried out through third party organization. PP urges to get it examined through MPCB, CPCB or MoEFCC.
85. PP submits that Joint Committee of MPCB and SEIAA, appointed by Hon'ble Tribunal have already submitted the Visit Report dated 07.01.2020 and consequent findings.
86. PP states and submit that all the issues pointed out by the Committee shall be corrected and implemented in addition to the findings related to independent EDA given by the Civil Department and Environment Laboratory, of Government College of Engineering Pune.
87. PP has mentioned the vetted schedule, of deficiencies in EMP to be implemented. These exactly cover all the allegations made by the Applicant. This is without prejudice, to this submission and with a view to take a positive step towards better EMP, a forward step towards correction of EDA.
88. This is subject to technical feasibility and acceptance by the Joint Committee of SEIAA-Maharashtra, MPCB and subject to final approval of this Hon'ble Tribunal.
89. PP says and submits that building construction water was

purchased from the tankers and PMC. It was paid for. Excavated soil was used within the premises for the green areas and tree plantations. It was used for filling-up to the plinth level, and nothing was wasted. Internal roads have been provided as required by Fire Department. However, it is true that as the project was not appraised by SEAC or SEIAA, there might have been few things that can be done additionally. **PP has already said, without contesting on such good environment friendly features, that those can be certainly provided by the PP,** if they raise a 'substantial question related to environment'.

90. PP says and submits that treated sewage is connected to PMC sewer lines. PMC charges Sewerage Tax, in the bills issued to flat owners. **The sewage is treated collectively in Koregaon 130 MLD STP provided for the entire area.** The PMC has the 'Consent to Operate' from the MPCB for the entire city. The STP of the PMC is also supervised by MPCB. Consent Fees are paid by PMC to MPCB for this purpose. Over and above this, samples of STP collected by MPCB are analysed in their own laboratory and the cost of which also is paid by the PMC. The treated water from STP, as per the standards laid down under EPA and 'Consent to Operate', is returned to the river, as per the agreement with Irrigation Department. This water is used by the villages downstream, for their irrigation needs and utilization for other purposes. As such this doesn't give rise to 'substantial question related to environment'.

- 91. In light of the facts and circumstances stated hereinabove, the PP pray and urges that this Hon'ble Tribunal be pleased to:**

A. hear and decide this matter in light of the preliminary

objections raised, on the issue of maintainability, including but not limited to the points of period of limitation, trimming the ambit of the plural cause of actions, issues that have substantial questions related to environment and multiple causes raised in one single application;

- B. adjudicate the matter on merit on whether two projects can be treated as one project, when separated by time, and there being nothing of the nature of expansion or modernization of the first project.
- C. accept the environment damage assessment done by us after vetting through any suitably statutory authority
- D. decide and direct the additional environmental features to be provided
- E. any other order as deemed fit.

AND for this act of kindness, as duty bound shall ever pray.



x

Place: Pune

DEPONENT

Date: 24.10.2021

Respondent No. 11 in OA 65/2019

AFFIDAVIT AND VERIFICATION

I Alka Mandar Rege, age about 65 years, resident of The Residency Club, 3 Queen's Garden Road, Camp, Pune - 411001 do hereby state that I have submitted this Affidavit on solemn affirmation and oath.

I have verified that the facts are true to my personal knowledge. I have not suppressed any material fact known to me and relevant to this matter. Translation of it has been explained to me in brief in the language that I can understand.

Alka Mandar Rege x

Place: Pune
Date: 24.10.2021

DEPONENT
Respondent No. 11 in OA 65/2019

Identified by & before me:
Advocate _____

Advocate M.B. Zende



BEFORE ME

Subhash B. Alhat 24/10/2021

SUBHASH B. ALHAT
NOTARY
GOVT. OF INDIA
NOTED AND REGISTERED
AT SR. NO. 737/2021
DATE 24 OCT 2021

SUBHASH B. ALHAT
ADVOCATE & NOTARY
9, Krishna Kunj, Office No.215,
Near Life Line Hospital,
Wagholi, Tal. Haveli, Dist. Pune,
Pin-412 207.



BEFORE HONOURABLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
APPLICATION NO. 65 / 2019

Ajay Bhosale & Ors Applicant
VERSUS
Union of India & Ors. Respondents

VAKALATNAMA

RESPONDENT NO. 11 M/s. BramhaCorp Ltd.

We hereby appoint **Raghunath Mahabal, Advocate** and/or any Advocate appointed by him to represent us in the above matter. I have authorized them to sign any lawful document on my behalf and I shall ratify it as if it is signed by me.

Place: Pune
Date: 24.10.2021

 ×
Respondent No.11
M/s. BramhaCorp Ltd.

Accepted.
Filed by:





Advocate R. B. Mahabal रघुनाथ भालचंद्र महाबळ
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Email: adv.rbmahabal@gmail.com Cell: 7400116222

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महाबळ, A-2,3,4,5, काकडे आंगण, तालेरा हॉस्पिटल समोर,
तानाजी नगर, चिंचवड गाव, पुणे-४११०३३.
KakadeAngan, Opp. Talera Hospital,
Tanaji Nagar, Chinchwad Gaon, Pune - 411033.

Existing Environmental Status Report

299

Project Name	Bramha-Exuberance : Survey No. 13 hissa No. 1 2 3 at Kondhwa Khurd, Haveli, Pune-411048
Date of report	2021.10.23
Construction status	<p><u>Wing A B C D and E were completed</u></p> <p><u>Wing A (4 wings) – Podium +Stilt + 11</u></p> <p><u>Wing B (4 wings) – Podium +Stilt + 11</u></p> <p><u>Wing C (5 wings) – Lower parking + Podium + 11</u></p> <p><u>Wing D (5 wings) – Podium +Stilt +7</u></p> <p><u>Wing E (5 wings) – Podium +Stilt + 11</u></p>
Facility	<p>✓ Statutory compliance has been completed by Project Proponent Received plan sanctioned, land documents, CFO, Water, Drainage, Garden,</p>
	<p>✓ Air, Water, Noise, Soil and land : Considering all Impact, its mitigation measures has been provided and taken care by Project Proponent</p>
	<p>✓ Green Belt and play area : According to Corporation DCR norms, proper green belt and play area has been provided and well developed by Project Proponent</p>
	<p>✓ Energy Conservation measures : Like LED street light and Solar PV Panels has been provided and well developed</p>
	<p>✓ Waste Management : Composting : Facility of Proper vermin composting pits has been provided and maintained. Drainage : Also sewerage network line well designed and connected to municipal line.</p>
	<p>✓ Water network : Storm water network : well-designed network as per contour slop has been provided Rain water harvesting network : Proper Rain water ground water recharge pits has been provided. Proper water sprinkling also doing to maintain the soil moisture and reduce the dust and air pollution Facility of swimming pool has been provided</p>
	<p>✓ Fire tender Movement : Internal road and fire-fighting movement has been well designed and proper fire-fighting equipment's has been installed. Lift and staircase also provided.</p>
	<p>✓ Parking facility : Provision of 4W Parking designed and developed considering DCR rules.</p>

Environment facilities provided	
1.	✓ <u>Proper entry and exit to project</u>
2.	✓ <u>Sewage Treatment Plant</u>
3.	✓ <u>Sewerage Drainage network</u>
4.	✓ <u>Rainwater Harvesting pits with Ground water recharges pits</u>
5.	✓ <u>Storm water network</u>
6.	✓ <u>Provision of Solar PV Panels</u>
7.	✓ <u>Provision of Street light - LED</u>
8.	✓ <u>Internal driveway</u>
9.	✓ <u>Road connectivity</u>
10.	✓ <u>Water Facility</u>
11.	✓ <u>Tree Plantation</u>
12.	✓ <u>Amenities like Club house, swimming pool and play area</u>
13.	✓ <u>Green area</u>
14.	✓ <u>Provision of parking area</u>
15.	✓ <u>External road connectivity</u>
16.	✓ <u>Provision of DG set and transformer</u>
17.	✓ <u>Provision of transformer</u>
18.	✓ <u>Provision of Fire Fighting system</u>
19.	✓ <u>Utilization of Recycled water as well as Ground water</u>
20.	✓ <u>Approval plan and sanctioned</u>
21.	✓ <u>Contour slop – hill area</u>
22.	✓ <u>Solid waste management</u>

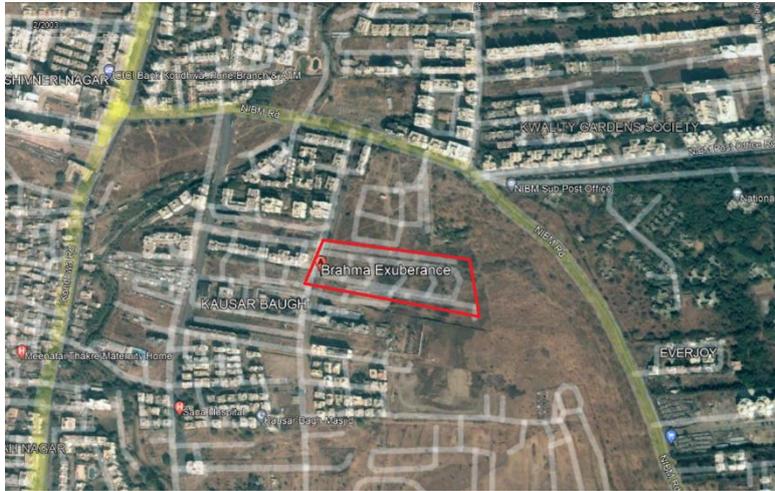
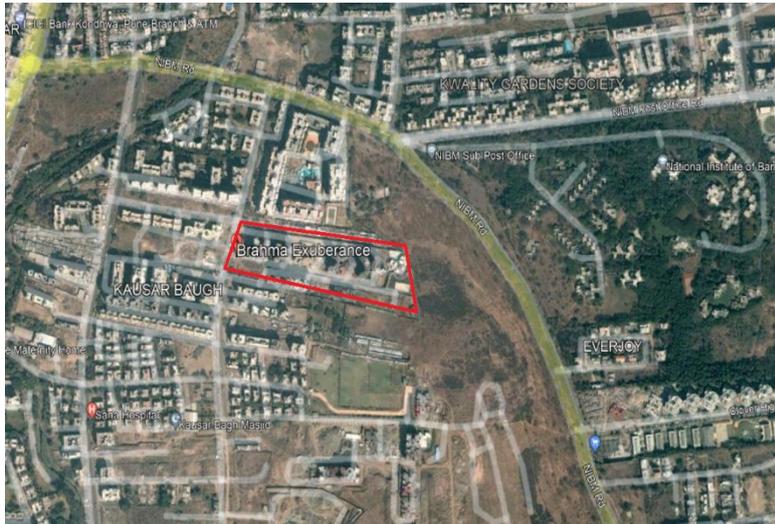
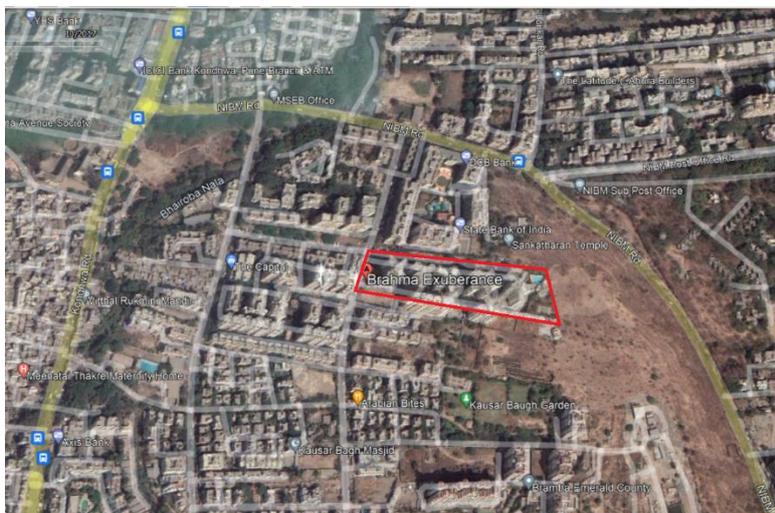
Photo	Remark
	<p>Latitude: 18° 28' 31.20" N and Longitude : 73° 53' 37.46" E</p> <p>Project Site on Google Map dated 2003.05.02</p>
	<p>Google Map dated 2007.02.04</p>
	<p>Google Map dated 2017.03.01</p>

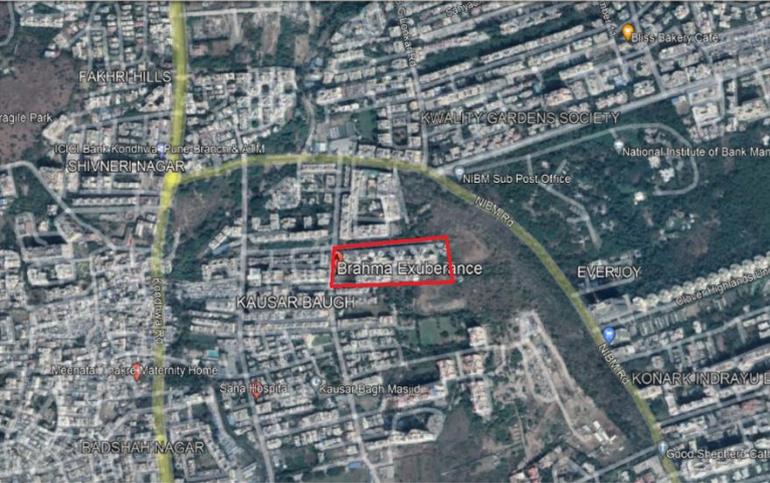
Photo	Remark
	<p>Google Map dated 2021.10.23</p>
	<p>Project Entry Gate</p>
	<p>Project Exit Gate</p> <p>Underground collection tank near exist gate with nearly capacity 380 m³</p> <p>Water Consumption actual quantity- 168 KLD on sanctioned plan on 31.06.2017</p>

Photo	Remark
	<p>External Road has well road connectivity</p>
	<p>Surroung area - well developed</p>
	<p>Project Site Construction completed</p>

Photo	Remark
	<p>Completed wing</p>
	<p>Completed wing Fly ash bricks are used for construction work at project site</p>
	<p>Completed wing with parking facility with proper ventilation</p>

Photo	Remark
	<p>Corporation water supply network has been provided - for fresh water line network for all wing</p>
	<p>Proper Parking arrangement and proper fighting system</p>
	<p>Parking area at Ground / Stilt level</p> <p>Natural ventilation and fire-fighting system has been provided</p>

Photo	Remark
	<p>Parking area at Ground / Stilt level</p> <p>Proper natural ventilation provided as per slope</p>
	<p>Parking area at Ground / Stilt level</p>
	<p>Internal driveway</p> <p>6 m road width</p> <p>Natural ventillation and lighting has been provided</p>

Photo	Remark
	<p>Solid Waste Management Facility (Vermin composting pits)</p> <p>7 no of pits provided for each wing</p> <p>Non-biodegradable waste handed over to PMC authority</p>
	<p>Ground water recharge with RH</p> <p>Ground water is used for gardening purpose, from 1 borewell located in South East direction of project site</p>
	<p>STP in parking Area of Building-A : having capacity of 70 CMD (Not is operational)</p> <p>Total STP capacity as per norms to be required-158 KLD</p>

Photo	Remark
	<p>Fire Pumping Station</p> <p>Fire system is provided with fire pump room, fire extinguishers, fire hydrants, Firefighting hose, fire hose reels etc.</p>
	<p>Provision of proper Fire-fighting system</p>
	<p>Provision of proper Fire firefighting system near parking area</p>

Photo	Remark
	<p>Internal Driveway and firefighting movement</p> <p>Turning radius 9 m</p>
	<p>Internal Driveway and firefighting movement</p> <p>6m width of internal driveway</p>
	<p>Internal Driveway and firefighting movement</p> <p>6 m and 9 m turning radius</p>

Photo	Remark
	<p>Internal Driveway and firefighting movement - 6 m and 9 m turning radius</p>
	<p>Proper manhole, storm water network and RWH pits has been provided</p>
	<p>Club House</p>

Photo	Remark
	<p>Play area</p>
	<p>Play area - Basketball Court and plantation</p>
	<p>Tree Plantation- Total 392 no has been done on site Top Soil is used for landscaping purpose on project site</p>

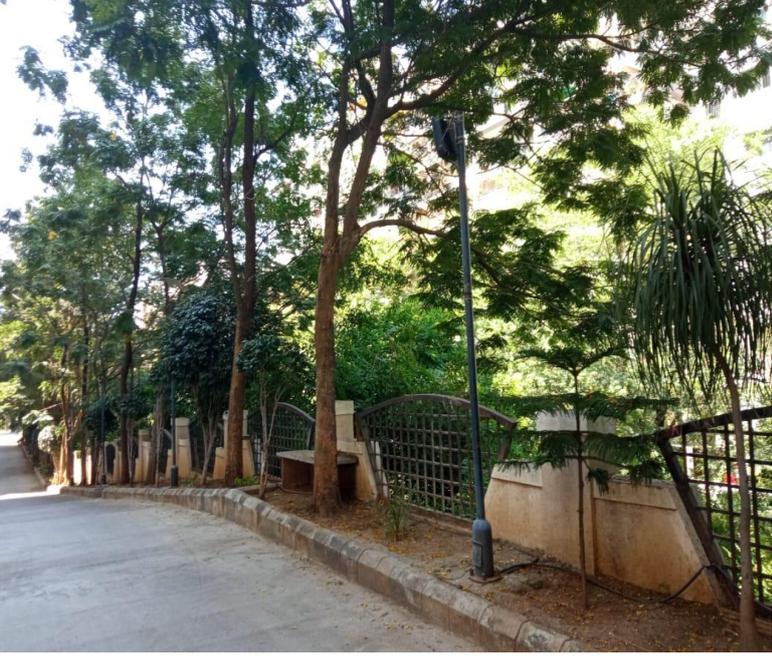
Photo	Remark
	<p>Tree Plantation - near plot boundary</p>
	<p>Shrub plantation - green area</p>
	<p>DG Set</p>

Photo	Remark
	<p>Proper DG Set with proper Stack</p> <p>1 no. DG Set with capacity 82.5 kVA is provided with Chimney facility at height 3m</p>
	<p>STP Tank - below the ground</p>
	<p>Borewell Water used for gardening</p>

Photo	Remark
	<p>Internal Drainage network - Sewerage network</p> <p>Sewage line directly connected to Corporation Drainage line.</p>
	<p>Internal Drainage chamber network</p>
	<p>LED street Lighting</p>

Photo	Remark
	<p>Solar PV Panels</p> <p>Having capacity 90 kW</p> <p>Providing Hot water to Building C and Solar PV panels provide to buidnf A B D & E</p>
	<p>Swimming Pool facility has been provided</p>
	<p>Lift Provison in each wing</p>