

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH PUNE

ORIGINAL APPLICATION NO. 33 OF 2019

IN THE MATTER OF:

MR. TANAJI BALASAHEB GAMBHIREAPPLICANT

VERSUS

UNION OF INDIA & ORS.RESPONDENTS

Compilation of judgments relied upon by Respondent nos. 18 and 19

<u>Sr.No.</u>	<u>Judgment</u>	<u>Page No.</u>
1.	Hon`ble Supreme Court of India. [2018] 10 S.C.R. 1005 M/S. Goel Ganga Developers India Pvt. Ltd. Vs. Union Of India Through Secretary Ministry Of Environment And Forests & Ors.	1-34
2.	Hon`ble Supreme Court of India. [2021] 13 S.C.R.976 Supertech Limited Vs. Emerald Court Owner Resident Welfare Association & Ors.	35-154
3.	Tanaji Balasaheb Gambhire Vs. Union of India & Others (OA No.28 of 2019 (WZ)) decided on 22-02-2023	155-220

Pune

Date: 05/08/2023


ADVOCATE FOR RESPONDENT

NOS.18 AND 19

[2018] 10 S.C.R. 1005

M/S. GOEL GANGA DEVELOPERS INDIA PVT. LTD. A

v.

UNION OF INDIA THROUGH SECRETARY MINISTRY OF
ENVIRONMENT AND FORESTS & ORS.

(Civil Appeal No. 10854 of 2016) B

AUGUST 10, 2018

[MADAN B. LOKUR AND DEEPAK GUPTA, JJ.]

*National Green Tribunal Act, 2010 – s.19(4)(f) – National
Green Tribunal (Practices and Procedure) Rules, 2011 – r.22(2) – C
Application for review – Original applicant claimed that the project
proponent had raised construction in violation of the Environmental
Clearance granted for the project and also in violation of the
various municipal laws – NGT directed the project proponent to
pay environment compensation cost – Appeal against the order –
Meanwhile, Project Proponent filed a review application against D
the order of the NGT, which was decided by a different Bench –
Original applicant contended that certain arguments raised by him
were not heard by the original Bench – Held: A review petition
should not be heard by any other Bench unless it is impossible or
totally impracticable for earlier Bench to hear the matter – If a E
party urges that some of the contentions urged by it were not taken
into consideration then it filed a review application, then the
application should be heard by the same Bench which had originally
heard the matter – According to sub-rule(2) the matter should
ordinarily be heard at the same place of sitting where it was F
originally decided – However, this is not a mandatory direction
because sub-rule(2) itself contemplates that the matter shall
ordinarily be heard at the same place – In tribunals like NGT where
members may be transferred from one Bench to another, these issues
could be resolved by resorting to the latest technology and if
necessary the arguments in such cases can be heard by video G
conferencing – Thus, the normal rule is that the same Bench should
hear the review application and it should not be disturbed – Besides,
Project Proponent had violated law with impunity by raising
constructions, and by manipulating the officials and authorities –
Supreme Court in number of cases awarded 5% of the project cost*

H

A *as damages and this is followed as a general law – However, in the instant case, project proponent directed to pay damages of Rs.100 crores or 10% of the Project – Code of Civil Procedure, 1908 – Or.XLVII.*

Disposing of the appeals, the Court

B **HELD: 1.** A review petition should normally be heard by the same Bench which originally decided the matter. A review petition should not be heard by any other Bench unless it is impossible or totally impracticable for the earlier Bench to hear the matter. In a review petition, like in the present case, where
 C the review petitioner contends that certain arguments raised by him have not been considered then it is only the judges who originally heard the matter who can decide whether such point was urged or not. [Para 33] [1025-C-D]

D **2.** It is well known that parties raise various contentions in their pleadings or in their evidence. On many occasions when arguments are heard many of the pleas are not urged. Any judicial authority including the NGT which is presided over by a judicial member who may be a retired judge of this Court or of a High Court is expected to deal with all contentions raised before it. There is a presumption that judicial authorities must have dealt
 E with all the contentions raised before them. If a party urges that some of the contentions urged by it have not been taken into consideration then it has to file a review application and it is but obvious that such review application should be heard by the same Bench which had originally heard the matter. [Para 34] [1025-E-
 F F]

G **3.** Sub-rule (3) of Rule 22 of the National Green Tribunal (Practices and Procedure) Rules, 2011 clearly lays down that a review application shall be disposed of by circulation. If the review application is to be disposed of by circulation then there is no problem in the matter being circulated before the very same Bench which had earlier heard the matter. This can be done even at a place which may be different from the original place of hearing. It is only if the Bench decides to give oral hearing in the review application and notice is issued to the opposite party that sub-rule(2) of Rule 22 will come into operation. According
 H to sub-rule(2) the matter should ordinarily be heard at the same

M/S. GOEL GANGA DEVELOPERS v. U.O.I.THR. SECY. 1007
 MINISTRY OF ENVIRONMENT

place of sitting where it was originally decided. However, this is not a mandatory direction because sub-rule(2) itself contemplates that the matter shall 'ordinarily' be heard at the same place. In tribunals like the NGT where members may be transferred from one Bench to another or may be attending a Bench on circuit then problems can sometimes arise. These issues can be easily resolved by resorting to the latest technology and if necessary the arguments in such cases can be heard by video conferencing. The normal rule that the same Bench should hear the review application should not be disturbed unless it is virtually impossible for the original Bench to hear the matter or the members of the Bench themselves opt not to hear the matter. [Para 35] [1025-G-H; 1026-A-C]

4. The power of review is not like appellate power. It is to be exercised only when there is an error apparent on the face of the record. Therefore, judicial discipline requires that a review application should be heard by the same Bench. Otherwise, it will become an intra court appeal to another Bench before the same court or tribunal. This would totally undermine judicial discipline and judicial consistency. [Para 36] [1026-D-E]

5. In terms of Order XLVII Rule 5 of CPC, a review should normally be heard by the same Bench which passed the original order. The reasons are:

1) The judges who heard the matter originally have applied their mind and would know best the facts and legal position;

2) They will be in the best position to appreciate the matter in issue when a review is filed;

3) If the matter goes before another Bench that Bench will have to virtually hear the matter afresh;

4) Most importantly, when the matter goes to a new Bench the members of the new Bench may go by their own perspective and philosophy which may be totally different to that of the Bench which originally heard the matter.

Further, judicial discipline, judicial traditions and consistency in pronouncements require that the Bench which heard the matter originally should hear the review petition unless it is virtually

1008

SUPREME COURT REPORTS

[2018] 10 S.C.R.

- A **impractical for the original Bench to hear the matter, or where the members of the original Bench recuse. [Para 38] [1028-E-H; 1029-A]**

Malthesh Gudda Pooja v. State of Karnataka and Ors.
(2011) 15 SCC 330 : [2011] 11 SCR 870 – relied on.

- B *Common Cause v. Union of India (2017) 9 SCC 499; Northern India Caterers India Ltd. v. Lt. Governor Of Delhi (1980) 2 SCC 167 : [1980] 2 SCR 650 – referred to.*

Case Law Reference

- | | | | |
|---|-------------------|-------------|---------|
| C | (2017) 9 SCC 499 | referred to | Para 20 |
| | [1980] 2 SCR 650 | referred to | Para 36 |
| | [2011] 11 SCR 870 | relied on | Para 37 |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10854 of 2016

- D From the Judgment and Order dated 27.09.2016 of the National Green Tribunal (Western Zone) Bench, Pune in Application No. 184 of 2015 (WZ).

WITH

C.A. Nos. 10901/2016, 5157-5158/2018

- E A.N.S. Nadkarni, ASG, Ranjit Kumar, R.P. Bhatt, Kavın Gulati, Jayant Bhushan, Sr. Advs., Venkita Subramoniam T.R, Rahat Bansal, Braj K. Mishra, Vijay Kumar, Rohit Gupta, Ms. Aparna Jha, Ms. Kriti Sondhi, Shriram P. Pingle, Ms. Rashmi Dhongde, Nitin Lonkar, Ms. Sonali Suryavanshi, Nilesh Bhandari, Ashok Jain, Gurmeet Singh Makker, Divya
- F Prakash Pande, Salvador Santosh Rebello, Niraj Kumar, Rahul Garg, Ridhi Kaackkar, Ranjesh Kumar Sinha, Gaurav Rawal, Mukesh Verma, Pawan Kumar Shukla, Ms. Vasudha Zutshi, Yash Pal Dhingra, Shriram P. Pingle, Ms. Rashmi Dhongde, Nitin Lonkar, Ms. Sonali Suryavanshi, Nilesh Bhandari, Ashok Jain, Kunal Cheema, Nishant Ramakantrao
- G Katneshwarkar, Ninad Laud, Kush Chaturvedi, Ms. Anshula Grover, Anjuman Tripathy, Somay Kapoor, Ms. Priyashree Sharma, Parth Singh Chaudhry, Aman Verma, Advs. for the appearing parties.

The Judgment of the Court was delivered by

- H **DEEPAK GUPTA, J.** 1. Applications for intervention/impleadment are allowed. Application for amendment of grounds of appeal in Civil Appeal No.10854 of 2016 allowed.

M/S. GOEL GANGA DEVELOPERS v. U.O.I.THR. SECY. 1009
 MINISTRY OF ENVIRONMENT [DEEPAK GUPTA, J.]

2. These matters are being decided by one judgment since they all arise out of one original application filed by Shri Tanaji Balasaheb Gambhire (hereinafter referred to as 'the original applicant') before the National Green Tribunal ('the NGT' for short) being Application No. 184 of 2015. A

3. The original applicant filed an application before the NGT claiming that the project proponent i.e. M/s. Goel Ganga Developers India Pvt. Ltd., had raised construction in violation of the Environmental Clearance ('EC' for short) granted for the project and also in violation of the various municipal laws. It was prayed that the illegal structures be demolished; the State Level Environment Impact Assessment Authority (SEIAA) and the Maharashtra State Pollution Control Board be directed to initiate appropriate action against the project proponent for violation of the Environment Impact Assessment (EIA) Notification, 2006; the Union of India be directed to take action against the SEIAA; and lastly it was prayed that the project proponent be directed to pay/ deposit a heavy amount of compensation in the environment relief fund. The NGT vide its order dated 27.09.2016 allowed the application in the following terms: B
 C
 D

"54. For the aforesaid reasons, the Applicant succeeds in his legal pursuit to challenge the noncompliance of EC conditions by the Respondent-9 and obtain certain directions. Hence the Application is allowed and we issue following directions: E

1. The Respondent No.9-PP shall pay environmental compensation cost of Rs. 100 crores or 5% (Five percent) of the total cost of project to be assessed by SEAC whichever is less for restoration and restitution of environment damages and degradation caused by the project proponent by carrying out the construction activities without the necessary prior environmental clearance within a period of one month. In addition to this, it shall also pay a sum of Rs. 5 crores for contravening mandatory provision of several Environmental Laws in carrying out the construction activities in addition to and exceeding limit of the available environment clearance and for not obtaining the consent from the Board. F
 G
2. In view of our finding that there has been manifest, deliberate or otherwise suppression of facts of illegality in the project activity of Respondent No. 9-PP by the officer of PMC, we H

1010 SUPREME COURT REPORTS [2018] 10 S.C.R.

A impose fine of Rs. 5 Lakhs upon the PMC and direct Commissioner PMC to take appropriate action against the erring officers. The amount of Rs. 5 Lakh shall be paid within one month.

B 3. We direct the Chief Secretary, State of Maharashtra and the competent authority to take notice of the conduct of the officers concerned who have misled the Department of Environment in the matter relating to interpretation of F.S.I and BUA in terms of which order dated 31st May, 2016 has been issued in particular the Principal Secretary, Department of Environment who has authored the order dated 31st May, 2016.

C 4. PMC, DoE and SEIAA are directed to pay cost of Rs. 1 lakh each to the Applicant within 4 weeks.”

D 4. Aggrieved by the aforesaid order of the NGT, the project proponent filed Civil Appeal No. 10854 of 2016. The Pune Municipal Corporation (‘PMC’ for short) also challenged the said order in so far as it adversely affects the PMC by filing Civil Appeal No. 10901 of 2016.

E 5. Review application being Application No. 35 of 2016 was filed by the original applicant before the NGT. This application was partly allowed on 08.01.2018 and direction No. 1 in the original order dated 27.09.2016 was modified and substituted as under:

F “1. The Respondent No.9-PP shall pay environmental compensation cost of Rs.190 crores or 5% (Five percent) of the total cost of project to be assessed by SEAC, whichever is more, for restoration and restitution of environment damage and degradation caused by the project proponent by carrying out the construction activities without the necessary prior environmental clearance within a period of one month. In addition to this, it shall also pay a sum of Rs. 5 crores for contravening mandatory provision of several Environment Laws in carrying out the construction activities in addition to and exceeding limit of the available environment clearance and for not obtaining the consent from the Board.”

G 6. Thereafter, the project proponent filed I.A. No. 8000 of 2018 for permission to amend its appeal permitting it to challenge the order passed in review application dated 08.01.2018, which we have allowed.

H

M/S. GOEL GANGA DEVELOPERS v. U.O.I.THR. SECY. 1011
 MINISTRY OF ENVIRONMENT [DEEPAK GUPTA, J.]

7. Appeal being Diary No. 3911 of 2018 was filed by the original applicant challenging the original order dated 27.09.2016 as well as the order dated 08.01.2018 passed in review application praying that demolition of the illegal structures be ordered and the compensation be enhanced to Rs.500 crores. A

The Factual Matrix B

8. The facts briefly stated are that the project proponent purchased 79,100 sq. mtrs. or 7.91 hectare of land comprised in six Survey Nos. 35, 36, 37, 38 39 and 40 in Vadgaon, Pune. These survey numbers were amalgamated in accordance with the rules and the plot became one plot of 79,100 sq. mtrs. From the documents placed on record it is apparent that as per the Development Control Plan for the city of Pune, 3 roads of the width of 36 mtrs., 30 mtrs. and 18 mtrs. bisected this plot into two which for the sake of convenience were referred to as Plot No. 1 and Plot No. 2. As per the Development Plan, there are certain statutory reservations in addition to the roads and some land has to be left out or reserved for schools, cultural centres, open areas etc.. The remaining area is referred to as the 'Balance Plot Area' which in this case works out to 46,993.79 sq. mtrs.. Out of this 'Balance Plot Area' 15% is to be reserved for amenity space and another 10% area is to be compulsorily left out as open space leaving 'Net Plot Area' of 41,455.21 sq. mtrs.. *Prima facie* these calculations do not appear to be correct. However, this will not impact the merits of the case. Be that as it may, the undisputed fact is that FSI has to be calculated on the 'Net Plot Area'. We may, at this stage, point out that the aforesaid figures are based on the written submissions submitted on behalf of the Union of India by the learned Additional Solicitor General and these figures have not been disputed before us. C
D
E
F

9. On 12.03.2007, the project proponent applied for sanction of lay out and building proposal plan on an area of 15,141.70 sq. mtrs., originally depicted as Plot No. 3 and the sanctioned FSI was 15313.16 sq. mtrs.. Thereafter, on 05.09.2007, revised lay out plan was submitted for an area measuring 28,233.23 sq. mtrs. and the sanctioned FSI was 39,526.54 sq. mtrs.. The project proponent applied for EC for the project and in the proposal dated 27.06.2007, he had shown that he would be erecting/constructing 12 buildings having 552 flats, 50 shops and 34 offices. The 12 buildings were to have stilts with basement and 11 floors. The total built up area was indicated as 57,658.42 sq. mtrs.. The G
H

1012 SUPREME COURT REPORTS [2018] 10 S.C.R.

A EC was granted to the project proponent on 04.04.2008. Paras 2 and 3 of the communication granting EC read as under:

B “2. The project proponent is proposing for construction of group housing project at S.No.35 to 40, village Vadgaon Budruk, Singhad Road, Pune, Maharashtra at a cost of Rs. 10,737.14 lakh. The project involves construction of 12 Building with Stilt, Basement plus 11 floors for 552 flats, 50 shops and 34 offices. The total plot area is 79,100.00 sq. m. Total built up area as indicated is 57,658.42 sq. m. Total water requirement will be 745 KLD and 400 KLD of waste water will be generated from the buildings which will be treated in sewage treatment plant. The treated waste water will be used for landscaping, DG set cooling and Horticulture purpose. The solid waste generated from the buildings will be 1500 Kg/day and disposed as per the MSW Rules, 2000. The parking space is proposed for parking of 1072 cars.

D “3. The EAC after due consideration of the relevant documents submitted by the project proponent and additional clarifications furnished in response to its observations have recommended the grant of environmental clearance for the project mentioned above subject to compliance with the EMP and other stipulated conditions. Accordingly, the Ministry hereby accords necessary environmental clearance for the project under category 8 (a) of EIA Notification 2006 subject to the strict compliance with the specific and general conditions mentioned below:”

E 10. The EC was granted subject to certain conditions. We may refer to certain relevant conditions which read as under:

F “PART A- SPECIFIC CONDITIONS

I. Construction Phase

xxx xxx xxx

G v. sPermission to draw and use ground water for construction work shall be obtained from competent authority prior to construction/operation of the project.”

“5. In the case of any change(s) in the scope of the project, the project would require a fresh appraisal by this Ministry.”

H

M/S. GOEL GANGA DEVELOPERS v. U.O.I.THR. SECY. 1013
 MINISTRY OF ENVIRONMENT [DEEPAK GUPTA, J.]

Concept of ‘Built up Area’ under the notification dated 14.09.2006: A

11. It is not disputed that the EC was granted for built up area of 57,658.42 sq. mtrs.. The main dispute is with regard to the interpretation of the term ‘built-up area’. The case of the project proponent is that the term ‘built up area’ is synonymous with ‘Floor Space Index’ or FSI and that the constructed area, which is exempted from FSI area or is a non-FSI area is not a part of the ‘built up area’. On the other hand, the submission made by the original applicant as well as by the learned Additional Solicitor General appearing for the Ministry of Environment, Forest and Climate Change is that the built up area will cover all constructed area and the concept of FSI area or non-FSI area is totally alien to environmental laws. Learned senior counsel for the project proponent has drawn our attention to the Development Control Rules for Pune Municipal Corporation, Pune, 1982 (‘DCR’ for short). Under the DCR, no building can be constructed without grant of building permission/commencement certificate by the Pune Municipal Corporation. There is a detailed procedure for obtaining the building permission/commencement certificate wherein lay out plans, building plans etc. have to be submitted. The main emphasis was on Rule 2.13 of the DCR, which defines built up area as follows:-

“2.13 **Built-up Area** – Area covered immediately above the plinth level by the building or external area of any upper floor whichever is more excepting the areas covered by Rule No. 15.4.2.” E

Rule 2.39 defines Floor Area Ratio as follows:-

“2.39 **Floor Area Ratio (F.A.R.)** – The quotient obtained by dividing the total covered area (plinth area) on all floors excluding exempted areas as given in Rule No. 15.4.2 by the area of the plot. F

F.A.R. = Total covered area on all floors

Plot Area G

NOTE – The term F.A.R. is synonymous with Floor Space Index (F.S.I.)”

H

1014

SUPREME COURT REPORTS

[2018] 10 S.C.R.

A Strong reliance is placed on Rule 15.4.2 which reads as under:-

“15.4.2 In addition to Rule No. 15.4.1.1 (a) (b) and (c) and 17.7.3 the following shall not be included in covered area or F.A.R. and Built-up Area calculations.”

B

(a) A basement or cellar space under a building constructed on stilts and used as parking space, and air-conditioning plant rooms used as accessory to the principal use;

C

(b) Electric cabin or substation, watchman’s booth of maximum size of 1.6 sq.m. with minimum width or diameter of 1.2 m, pump house, garage shaft, space required for location of fire hydrants, electric fittings and water tanks;

D

(c) Projections as specifically exempted under these rules.

(d) Stair case room and/or lift rooms above the top most storey, architectural features, chimneys, elevated tanks of dimensions as permissible under these rules.

Note: The shaft provided for lift shall be taken for covered area calculations only on one floor upto the minimum required as per these rules.

E

(e) One room admeasuring 2m x 3m on the ground floor of co-operative housing societies or apartment owners/co-operative societies buildings and other multistoreyed building as office-cum-letter box room.

F

(f) Rockery, well and well structures, plant, nursery, water-pool, swimming pool, (if uncovered) platform round a tree, tank fountain, bench, chabutra with open top and unenclosed sides by walls, ramps, compound wall, gate, slide, swing, overhead water tank on top buildings;

G

(g) Deleted.

(h) Sanitary block subject to provision of rules no. 15.4.1 (a) and Built-up area not more than 4 sq. m.”

H

12. The contention of learned senior counsel appearing for the project proponent is that while calculating the built up area the constructions mentioned in Rules 15.4.1.1 (a), (b) and (c) and Rule 17.7.3 in addition to the areas specifically exempted under Rule 15.4.2 are to

M/S. GOEL GANGA DEVELOPERS v. U.O.I.THR. SECY. 1015
 MINISTRY OF ENVIRONMENT [DEEPAK GUPTA, J.]

be excluded. He submits that if the built up area is calculated in accordance with the DCR then the project proponent has till date not constructed the built up area of 57,658.42 sq. mtrs., which it was permitted to construct under the EC granted to it on 04.04.2008. On the other hand, the stand of the Union of India and the original applicant is that built up area means all area which is covered regardless of the area being FSI or non FSI in terms of the EIA Notification of 2006. The Building/Construction projects are covered by Item No. 8 of the Schedule to the EIA Notification dated 14.09.2006. Construction of a project which is covered under the schedule can be commenced only after obtaining EC in terms of Para 2 of the said notification. The schedule itself categorises the various projects and activities into two categories being 'Category A' and 'Category B'. 'Category A' projects require clearance by the Central Government in the Ministry of Environment, Forest and Climate Change on the recommendation of the Expert Appraisal Committee to be constituted by the Central Government whereas those activities which form 'Category B' of the schedule including modernization and expansion of such projects require EC from the State/Union Territory Environment Impact Assessment Authority (SEIAA) and such authority is required to base its decision on the recommendation of the State/Union Territory Level Expert Appraisal Committee (SEAC). There is further division of 'Category B' into B1 and B2. B1 projects require Environmental Impact Assessment (EIA) report to be prepared and scoping to be done whereas B2 projects do not require any Environmental Impact Assessment report. Item No. 8 of the Schedule, with which we are concerned, reads as follows:

(1)	(2)	(3)	(4)	(5)
8		Building/Construction projects/Area Development projects and Townships		
8(a)	Building and Construction projects		≥20000 sq. mtrs. And <1,50,000 sq. mtrs. Of built-up area#	#(built up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
8(b)	Townships and Area Development projects		Covering an area ≥50 ha and or built up area >1,50,000 sq. mtrs. ++	***All projects under Item 8(b) shall be appraised as Category B1.

1016

SUPREME COURT REPORTS

[2018] 10 S.C.R.

A 13. From a bare perusal of the two hash tags (#) in Column 4 and
 5 of Item 8(a), it is apparent that what is shown under Column 5 is
 actually a continuation of Column 4 and basically it describes or defines
 ‘built up area’ to mean covered construction and if the facilities are open
 to the sky, it will be taken to be the activity area. This by itself clearly
 shows that under the notification of 2006, all constructed area, which is
 B covered and not open to the sky has to be treated as ‘built up area’.
 There is no exception for non-FSI area.

C 14. Indeed, the concept of FSI or non-FSI has no concern or
 connection with grant of EC. The same may be relevant for the purposes
 of building plans under municipal laws and regulations but it has no linkage
 or connectivity with the grant of EC. When EC is to be granted, the
 authority which has to grant such clearance is only required to ensure
 that the project does not violate environmental norms. While projects
 and activities, as mentioned in the notification, may be allowed to go on,
 the authority while granting permission should ensure that the adverse
 D impact on the environment is kept to the minimum. Therefore, the authority
 granting EC may lay down conditions which the project proponent must
 comply with. While doing so, such authority is not concerned whether
 the area to be constructed is FSI area or non-FSI area. Both will have
 an equally deleterious effect on the environment. Construction implies
 E usage of a lot of materials like sand, gravel, steel, glass, marble etc., all
 of which will impact the environment. Merely because under the municipal
 laws some of this construction is excluded while calculating the FSI is
 no ground to exclude it while granting the EC. Therefore, when EC is
 granted for a particular construction it includes both FSI and non-FSI
 areas. As far as environmental laws are concerned, all covered
 F construction, which is not open to the sky is to be treated as built up area
 in terms of the EIA Notification dated 14.09.2006.

Notification of 04.04.2011

G 15. Our attention has been drawn to the notification dated
 04.04.2011 issued by the Ministry of Environment and Forests. By means
 of this notification, the words of Column 5 against Item 8(a) have been
 replaced and substituted as under:

H “The built up area for the purpose of this Notification is defined
 as “the built up or covered area on all the floors put together
 including basement(s) and other service areas, which are
 proposed in the building/construction projects”.”

M/S. GOEL GANGA DEVELOPERS v. U.O.I.THR. SECY. 1017
 MINISTRY OF ENVIRONMENT [DEEPAK GUPTA, J.]

This notification clearly defines built up area as all constructed area including basement and service areas without any exception. A

16. Learned senior counsel appearing for the project proponent has submitted that this notification is only prospective in nature and, therefore, will not affect the notification of 2006. On the other hand, it has been submitted by the original applicant that this is only a clarificatory notification and as such it will come into force with effect from 2006. In our opinion, it is not at all necessary to decide whether this notification is clarificatory or is in substitution of the original notification of 2006. We say this because as held by us above, there is no ambiguity with regard to the definition of 'built up area' even under the notification of 2006 and it covers all constructed area not open to the sky. The notification of 2011 only provides that the built up area or covered area shall be the area of all floors put together including basement(s) and other service areas. We may again re-emphasize that this definition also is in consonance with the concept of grant of EC for construction as explained above and it is obvious that the concept of FSI or non-FSI area is alien to environmental laws. B
C
D

Clarification dated 07.07.2017

17. Strong reliance has been placed by the project proponent on the office memorandum dated 07.07.2017 issued by Dr. Ashish Kumar, Joint Director, Ministry of Environment, Forest and Climate Change. The said office memorandum reads as follows:- E

F.No. 22-35/2017-IA.III
 Government of India
 Ministry of Environment, Forest and Climate Change
 (Impact Assessment Division) F

Indira Paryavaran Bhawan
 Jor Bag Road, Aliganj,
 New Delhi-110 003

Dated 7th July, 2017 G

OFFICE MEMORANDUM

Sub: Clarification on the date of applicability of notification S.O.(E) 695 dated 04.04.2011 issued by MoEF & CC defining 'Built Up Area' of the project H

1018 SUPREME COURT REPORTS [2018] 10 S.C.R.

A The Ministry is in receipt of a reference dated 03.04.2017 from Confederation of Real Estate Developers Association of India (CREDAI) seeking clarification on above mentioned subject. The CREDAI has requested that the definition of Built Up Area (BUA) given vide notification S.O.695(E) dated 04.04.2011 should have prospective effect.

B
C 2. The matter has been examined in the Ministry. The BUA defined in the notification S.O. 1533 (E) dated 14th September, 2006 mentions at Item 8 (a) columns 4 and 5 “built up area for covered construction, in the case of facilities open to sky, it will be the activity area”.

D 3. The Ministry has further defined BUA vide its notification S.O.695 (E) dated 04.04.2011 which reads as, “the built up or covered area on all the floors put together including its basement and other service areas, which are proposed in the building or construction project.”

E 4. The definition provided in the Ministry’s notification will have its effect from the prospective date of the notification only. The projects which are not covered in the period of above notifications should be assessed as per the definition of built up area provided in the building bye-laws or Development Control Regulation (DCR) of the local authorities in the States.

5. This issues with approval of Competent Authority.

F Sd/-
(Dr. Ashish Kumar)
Joint Director
Ph:011-24695474
Email:ashish.k@nic.in

All States/UTs/SIEAAs/MoEF & CC Divisions

G It is urged on the basis of the aforesaid memorandum that prior to the notification dated 04.04.2011, the built up area had to be calculated and assessed as per the building bye-laws or the Development Control Regulations of the local authorities in the States. On behalf of the original applicant it has been urged that this memorandum is meaningless and
H that it has been issued when the matter was pending before the NGT, at

M/S. GOEL GANGA DEVELOPERS v. U.O.I.THR. SECY. 1019
 MINISTRY OF ENVIRONMENT [DEEPAK GUPTA, J.]

the instance of one of the Directors of the project proponent, Shri Atul A
 Goel, who was Joint Secretary of Confederation of Real Estate
 Developers Association of India (CREDAI), Pune.

18. Without going into this aspect of the matter, we are clearly of
 the view that such an office memorandum could not and should not have
 been issued. The notification dated 14.09.2006 is a statutory notification B
 issued in terms of Rule 5(3) of the Environment (Protection) Rules, 1986
 which provides that before such a notification is issued the Central
 Government has to give notice of its intention of issuing a notification
 and objections to the same are invited. No doubt the Central Government
 is empowered in public interest to dispense with the requirement of notice C
 but this obviously has to be done in exceptional cases. The notification
 dated 14.09.2006 was issued by the Central Government and published
 in the gazette after inviting objections from the public. The first
 clarification with regard to this notification was issued on 04.04.2011 to
 which we have adverted above. These two decisions of the Central
 Government which were notified as per the provisions of law could not D
 have been set at naught by the Joint Director even if it was issued with
 the approval of a higher authority. We are of the view that since such
 decision has not been notified in the gazette the statutory notification
 dated 14.09.2006 and its subsequent clarification dated 04.04.2011 could
 not have been virtually set aside by this office memorandum. E

19. We are also of the view that the so called office memorandum
 is not at all clarificatory in nature. As held by us above the notification of
 2006 with regard to 'built up area' was absolutely clear and needed no
 clarification. We fail to understand how the concept of built up area as
 understood in the building bye-laws or DCR could be introduced into the
 notification of 2006 by this office memorandum which virtually made F
 the notification of 2006 totally redundant. Therefore, we quash the office
 memorandum dated 07.07.2017.

20. This is not the first time that we have noticed such clarificatory
 communications being issued by the officials of the Ministry of
 Environment, Forest and Climate Change, which virtually have the effect G
 of nullifying the statutory provisions and notifications. We have adverted
 to some of these communications in our judgment in *Common Cause*
 vs. *Union of India*¹. We expect the officials of the Ministry of

¹ (2017) 9 SCC 499

H

1020

SUPREME COURT REPORTS

[2018] 10 S.C.R.

A Environment, Forest and Climate Change to take a stand which prevents the environment and ecology from being damaged, rather than issuing clarifications which actually help the project proponents to flout the law and harm the environment.

B 21. In view of the above, we are clearly of the view that the EC granted to the project proponent on 04.04.2008 was for constructing a total built up area of 57,658.42 sq.mtrs. and this would include all covered construction not open to the sky. No artificial division on the basis of FSI and non-FSI area can be made. Therefore, the NGT was fully justified in coming to the conclusion that the construction raised by the project proponent was in total violation of the EC granted to it.

C **Environmental Clearance dated 20.11.2017**

D 22. The project proponent has drawn our attention to the EC for expansion of the project in question granted to it by the State Level Environment Impact Assessment Authority (SEIAA) on 20.11.2017. We may note that this clearance indicates that the existing construction comprises of 738 flats and 115 shops which have been completed, 69 flats and 2 shops which are under construction, meaning thereby that 807 flats and 117 shops are already in existence and in addition thereto 454 more flats and cultural centre are sought to be constructed. This will take the total number of flats to 1261 and number of shops to 117.

E We may also notice that the SEIAA has laid down general conditions for pre-construction phase and the first condition is as follows :-

F “(1) This environmental clearance (EC) is issued for total built up area of 147219.45 m² as approved by local planning authority. It is noted that the total proposed construction area is 147219.45 m² which includes the area of previous EC (dated 04.04.2008) 57,658.42 m² and the proposed expansion area of 89,561.03 sq.m. However the above area of 147219.45 sq.m. is notional as the NON FSI area component of the previous EC is not included in 1,47,219.45 m². After considering the NON FSI area of the previous EC the total built up area becomes 1,81,230.94 m². SEIAA has also taken note of the clarification issued by MOEF and CC vide office memorandum dated 7th July, 2017, stating the definition of built up area will be assessed as per the building bye-laws or DCR of the local authorities in the states.”

H

M/S. GOEL GANGA DEVELOPERS v. U.O.I.THR. SECY. 1021
 MINISTRY OF ENVIRONMENT [DEEPAK GUPTA, J.]

The aforementioned condition itself clearly shows that the non-FSI area constructed by the project proponent under first EC of 04.04.2008 has not been taken into consideration. The project proponent has raised construction in Plot No. 1 of an FSI area measuring 48,424.66 sq. mtrs., and non-FSI area measuring 46,088.47 sq. mtrs.. Therefore, the total construction raised in Plot No. 1 is 94,513.13 sq. mtrs.. In Plot No. 2 the construction raised on an FSI area is 630.55 sq. mtrs. and on the non-FSI area is 4,858.57 sq. mtrs. and, therefore, the total construction already raised in Plot No. 2 is 5,489.12 sq. mtrs.. The total construction raised by the project proponent is 1,00,002.25 sq. mtrs. against the built up area of 57,658.42 sq. mtrs. mentioned in the EC of 04.04.2008. This could not have been ignored by the SEIAA.

23. In case the total construction raised by the project proponent is taken as 1,00,002.25 sq. mtrs. and if the area of the proposed construction is added then the project will fall in B1 category and, therefore, the SEIAA had no authority to grant EC by treating the project as falling under Category B2. Furthermore, the EC dated 20.11.2017 is also illegal as the same has been granted on the presumption of the order dated 31.05.2016 passed by the Principal Secretary, Environment Department, State of Maharashtra holding that the construction of 18 buildings instead of 12 buildings is permissible. The EC completely lost sight of the fact that the order dated 31.05.2016 was quashed and set aside by the NGT in its order dated 27.09.2016. We may note that the official who passed the order on 31.05.2016 was the same official, who held the office of Member Secretary of SEIAA, which granted environmental clearance on 20.11.2017. Therefore, the EC dated 20.11.2017 was beyond the authority of SEIAA and was granted under a totally false assumption and the same is therefore quashed and set aside.

Allegations made by the original applicant against various officials

24. The NGT in its order dated 27.09.2016, has found that there was suppression of facts by the officers of PMC. The NGT also directed the Chief Secretary to the State of Maharashtra to take notice of the conduct of the officers who were misleading the Department of Environment. Costs were imposed on the PMC, Department of Environment and the SEIAA. This has been challenged before us by the PMC.

A
 B
 C
 D
 E
 F
 G
 H

A 25. The original applicant both in his original application filed before
the NGT and in appeal filed before us as well as in other proceedings
has made serious allegations against individual officers of the PMC as
well as the SEIAA and specially the Principal Secretary, Environment
Department, Govt. of Maharashtra. However, for reasons best known
B to the original applicant none of these individuals has been made a party
in personal capacity in these proceedings. The law is well settled that
no person can be condemned unheard. It would, therefore, not be fair
on our part, to deal with allegations made against individuals who are not
parties to the petition and who have had no chance to reply to the
allegations levelled against them. Therefore, we refrain from commenting
C on the conduct of the officials in their individual capacity.

26. However, as far as their official capacity is concerned, we
are of the view that the NGT was fully justified in coming to the conclusion
that certain officials of PMC were going out of their way to help the
project proponent and we, therefore, uphold the directions given by the
D NGT in its order dated 27.09.2016 in this regard. In view of what we
have discussed above, it is more than apparent that despite notifications
of 2006 and 2011 being clear and unambiguous, the officials of PMC
have given an interpretation which was tailor-made to suit the project
proponent. This was being done even before the clarification of
07.07.2017 was issued. This clearly indicates that some officials of the
E PMC were espousing the case of the project proponent at the cost of
the environment.

27. We may also observe that *prima facie* we are of the view
that the Principal Secretary, Environment Department, Govt. of
Maharashtra has not acted in a fair and transparent manner. The
F allegations made by the original applicant cannot be lightly brushed aside.
In the original order dated 27.09.2016, the NGT held as follows :-

G “42. From the extracted portion of the order dated 31st May,
2016 of Principal Secretary, Environment Department, it is seen
that he has declared construction of 18 buildings on the site instead
of 12 buildings is permissible which, according to him, only a
changes on configuration of buildings. This opinion undoubtedly
is based on his erroneous conclusion that total BUA which is
nothing but F.S.I. consumed i.e. 48617.14 sq.mts which is within
the EC limit as against the actual construction activity which has

H

M/S. GOEL GANGA DEVELOPERS v. U.O.I.THR. SECY. 1023
 MINISTRY OF ENVIRONMENT [DEEPAK GUPTA, J.]

exceeded over 100000 sq.mtrs BUA. Hence we set aside that order/communication dated 31st May, 2016.” A

The official holding the post of Principal Secretary must have been aware of these directions because he was a party to the proceedings before the NGT. Despite that, while granting fresh EC on 20.11.2017, this official noticed that reference to the Environment Department for verification of files was withdrawn vide letter dated 31.05.2016 and the matter has been considered afresh. When the letter dated 31.05.2016 had been quashed the obvious result would be that action had to be taken in accordance with the earlier directions in the 27th meeting of SEAC III (Non-MMR) held from 10th to 13th March, 2015 and the 87th meeting of SEIAA held on 10th to 12th August, 2015. This was not done. His actions need to be looked into and, therefore, we uphold the direction given by the NGT directing the Chief Secretary to the State of Maharashtra to take notice of the conduct of the concerned officers. We further direct the Chief Secretary to file detailed report in respect of the conduct of the then Principal Secretary, Department of Environment to the NGT within 3 months which will thereafter pass appropriate directions in the matter. B
 C
 D

Challenge to the order dated 08.01.2018 passed in Review Application No.35 of 2016:

28. This order has been challenged both by the project proponent by amending the appeal and by the original applicant by filing a separate appeal. E

29. Section 19(4)(f) of the National Green Tribunal Act, 2010 provides that the Tribunal shall have the same powers as are vested in Civil Courts while trying a suit in respect of matters relating to review of its decisions. Therefore, the power of review vested with the NGT is akin to the power vested with the Civil Court. As such, the principles which govern the exercise of review jurisdiction before a Civil Court will apply with equal force to the NGT. F

30. Rule 22(2) of the National Green Tribunal (Practices and Procedure) Rules, 2011 provides that a review application shall ordinarily be heard by the Tribunal at the same place of sitting which has passed the order unless the Chairperson may, for reasons to be recorded in writing, direct it to be heard by the Tribunal sitting at any other place. G

H

1024

SUPREME COURT REPORTS

[2018] 10 S.C.R.

- A Sub-rule(3) of Rule 22 provides that ordinarily review application shall be disposed of by circulation.

31. Since the powers of review which the NGT exercises are akin to those of a Civil Court it would be pertinent to refer to relevant portions of *Order XLVII of Civil Procedure Code, 1908*, which read

- B as follows:-

- C “**1. Application for review of judgment.-** (1) Any person considering himself aggrieved—(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,(b) by a decree or order from which no appeal is allowed, or(c) by a decision on a reference from a Court of Small Causes,and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or
- D for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or
- E when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

xxx

xxx

xxx

- F **5. Application for review in court consisting of two or more Judges.-** Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the court at the time when the application for a review is presented, and is not or
- G are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.”

H

M/S. GOEL GANGA DEVELOPERS v. U.O.I.THR. SECY. 1025
 MINISTRY OF ENVIRONMENT [DEEPAK GUPTA, J.]

32. The project proponent has urged various grounds to challenge the order passed in the review application. The first ground is that whereas the original order was passed by a Bench comprising of Dr. Justice Jawad Rahim and Dr. Ajay A. Deshpande, the review application was heard and decided by a Bench comprising of Justice U.D. Salvi and Dr. Nagin Nanda. It has been urged that Dr. Justice Jawad Rahim continues to be a Judicial Member of the NGT and, in fact, was sitting in the Western Bench at Pune on 08.01.2018 when the impugned judgment in review was pronounced by the NGT.

33. We are clearly of the view that a review petition should normally be heard by the same Bench which originally decided the matter. A review petition should not be heard by any other Bench unless it is impossible or totally impracticable for the earlier Bench to hear the matter. In a review petition, like in the present case, where the review petitioner contends that certain arguments raised by him have not been considered then it is only the judges who originally heard the matter who can decide whether such point was urged or not. In the present case the review application was based mainly on the contention that the affidavit dated 18.05.2016 was not taken into consideration by the Bench.

34. It is well known that parties raise various contentions in their pleadings or in their evidence. On many occasions when arguments are heard many of the pleas are not urged. Any judicial authority including the NGT which is presided over by a judicial member who may be a retired judge of this Court or of a High Court is expected to deal with all contentions raised before it. There is a presumption that judicial authorities must have dealt with all the contentions raised before them. If a party urges that some of the contentions urged by it have not been taken into consideration then it has to file a review application and it is but obvious that such review application should be heard by the same Bench which had originally heard the matter.

35. Sub-rule (3) of Rule 22 of the National Green Tribunal (Practices and Procedure) Rules, 2011 clearly lays down that a review application shall be disposed of by circulation. If the review application is to be disposed of by circulation then there is no problem in the matter being circulated before the very same Bench which had earlier heard the matter. This can be done even at a place which may be different from the original place of hearing. It is only if the Bench decides to give

A
 B
 C
 D
 E
 F
 G
 H

- A oral hearing in the review application and notice is issued to the opposite party that sub-rule(2) of Rule 22 will come into operation. According to sub-rule(2) the matter should ordinarily be heard at the same place of sitting where it was originally decided. However, this is not a mandatory direction because sub-rule(2) itself contemplates that the matter shall ‘ordinarily’ be heard at the same place. In tribunals like the NGT where
- B members may be transferred from one Bench to another or may be attending a Bench on circuit then problems can sometimes arise. These issues can be easily resolved by resorting to the latest technology and if necessary the arguments in such cases can be heard by video conferencing. The normal rule that the same Bench should hear the
- C review application should not be disturbed unless it is virtually impossible for the original Bench to hear the matter or the members of the Bench themselves opt not to hear the matter.

36. In this behalf, we must remind ourselves that the power of review is a power to be sparingly used. As pithily put by Justice V. R. Krishna Iyer, J., “A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon”². The power of review is not like appellate power. It is to be exercised only when there is an error apparent on the face of the record. Therefore, judicial discipline requires that a review application should be heard by the same Bench. Otherwise, it will become an intra court appeal to another Bench before
- D the same court or tribunal. This would totally undermine judicial discipline and judicial consistency.
- E

37. We may refer to the judgment of this Court in *Malthesh Gudda Pooja vs. State of Karnataka and Ors.*³. In that case a writ appeal was disposed of by a Division Bench comprising of Hon. V. Gopala Gowda and L. Narayana Swamy, JJ., at the Dharwad Circuit Bench of the Karnataka High Court. Thereafter, a review petition was filed before a Bench comprising of Hon. K. Sreedhar Rao and Ravi Malimath, JJ.. An objection was raised that the review petition should be heard by the same judges who had originally heard the matter but this objection was
- F overruled and the review petition was allowed and the appeal was ordered to be listed afresh before the Division Bench. This appeal was listed before the Dharwad Circuit Bench consisting of Hon. D.V. Shailendra Kumar and N. Ananda, JJ.. This Bench held that the order of review
- G

² (1980) 2 SCC 167

H ³ (2011) 15 SCC 330

M/S. GOEL GANGA DEVELOPERS v. U.O.I.THR. SECY. 1027
 MINISTRY OF ENVIRONMENT [DEEPAK GUPTA, J.]

passed was a nullity since the judges who had heard the review should not have heard the same especially when the judges of the original Bench were available. The matter came to this Court and this Court after referring to Order XLVII Rule 5 of CPC and Rule 5 of High Court of Karnataka Rules, 1959 and taking note of the fact that the Chief Justice of the Karnataka High Court had passed an order that the review petition be listed as per roster held as follows :-

“18. Order 47 Rule 5 of the Code and Chapter 3 Rule 5 of the High Court Rules require, and in fact mandate that if the Judges who made the order in regard to which review is sought continue to be the Judges of the Court, they should hear the application for review and not any other Judges unless precluded by death, retirement or absence from the Court for a period of six months from the date of the application. An application for review is not an appeal or a revision to a superior court but a request to the same court to recall or reconsider its decision on the limited grounds prescribed for review. The reason for requiring the same Judges to hear the application for review is simple. Judges who decided the matter would have heard it at length, applied their mind and would know best, the facts and legal position in the context of which the decision was rendered. They will be able to appreciate the point in issue, when the grounds for review are raised. If the matter should go before another Bench, the Judges constituting that Bench will be looking at the matter for the first time and will have to familiarise themselves about the entire case to know whether the grounds for review exist. Further, when it goes before some other Bench, there is always a chance that the members of the new Bench may be influenced by their own perspectives, which need not necessarily be that of the Bench which decided the case.

19. Benjamin Cardozo’s celebrated statement in *The Nature of Judicial Process*, (pp. 12-13) is relevant in this context:

“There is in each of us a stream of tendency, whether you choose to call it philosophy or not, which gives coherence to thought and action. Judges cannot escape that current any more than other mortals. All their lives, forces which they do not recognise and cannot name, have been tugging at them—inherited instincts, traditional beliefs, acquired convictions; . . . In this mental

1028

SUPREME COURT REPORTS

[2018] 10 S.C.R.

A background every problem finds its setting. We may try to see things as objectively as we please. Nonetheless, we can never see them with any eye except our own.”

20. Necessarily therefore, when a Bench other than the Bench which rendered the judgment, is required to consider an application for review, there is every likelihood of some tendency on the part of a different Bench to look at the matter slightly differently from the manner in which the authors of the judgment looked at it. Therefore the rule of consistency and finality of decisions, makes it necessary that subject to circumstances which may make it impossible or impractical for the original Bench to hear it, the review applications should be considered by the Judge or Judges who heard and decided the matter or if one of them is not available, at least by a Bench consisting of the other Judge. It is only where both Judges are not available (due to the reasons mentioned above) the applications for review will have to be placed before some other Bench as there is no alternative. But when the Judges or at least one of them, who rendered the judgment, continues to be members or member of the court and available to perform normal duties, all efforts should be made to place it before them. The said requirement should not be routinely dispensed with.”

E 38. A perusal of the above judgment leaves no manner of doubt that this Court has held that in terms of Order XLVII Rule 5 of CPC, a review should normally be heard by the same Bench which passed the original order. We may reiterate the reasons given by this Court. These are :-

- F
- 1) The judges who heard the matter originally have applied their mind and would know best the facts and legal position;
 - 2) They will be in the best position to appreciate the matter in issue when a review is filed;
- G
- 3) If the matter goes before another Bench that Bench will have to virtually hear the matter afresh;
 - 4) Most importantly, when the matter goes to a new Bench the members of the new Bench may go by their own perspective and philosophy which may be totally different to that of the Bench which originally heard the matter.
- H

M/S. GOEL GANGA DEVELOPERS v. U.O.I.THR. SECY. 1029
 MINISTRY OF ENVIRONMENT [DEEPAK GUPTA, J.]

We may again re-emphasize that judicial discipline, judicial traditions and consistency in pronouncements require that the Bench which heard the matter originally should hear the review petition unless it is virtually impractical for the original Bench to hear the matter, or where the members of the original Bench recuse. A

39. Another ground raised is that the statutory appeal was already pending in this Court against the original order when the review application was taken up for hearing. It is contended, on the basis of Order XLVII Rule 1(2) of CPC, that review application should not have been taken up for hearing because the original applicant could have before this Court taken up all the points which he had taken in his review application. It is also contended that this is not a case where there is an error apparent on record and as such the power of review could not have been exercised. As far as the facts of this case are concerned we are clearly of the view that the original applicant could have raised all issues which he raised in review application even by filing a counter affidavit in the appeal filed by the project proponent or by challenging the original order in this Court as he has done now. In this context, once this Court was seized of the matter and all issues were being urged, the NGT should not have proceeded to hear the review application. B C D

40. We may add that on 21.12.2016, the review application itself was listed before the Bench of Dr. Justice Jawad Rahim and Dr. Ajay A. Deshpande, which adjourned the matter to 25.01.2017 to hear it regarding maintainability of the review application in view of the statutory appeal provided under the National Green Tribunal Act, 2010. However, the matter got listed before the other Bench and on 25.07.2017, the said Bench considered this objection raised by the project proponent in terms of Order XLVII Rule 1 of the CPC and the Bench held as follows: E F

“Having perused the record, we find that the Appellant is seeking quashing of the order of compensation in totality and the Review Applicant is seeking enhancement of the compensation granted by the Tribunal. We do not see any commonality in the grounds resorted to by the Applicant and Appellant in the said Appeal. Exception to Sub-clause 2 of Order 47 Rule 1 of Code of Civil Procedure, therefore, does not come to the help of Respondent No.9. We are, therefore, of the considered opinion that the Review Application is maintainable. Plea of non-maintainability of the Review Application is rejected.” G H

1030

SUPREME COURT REPORTS

[2018] 10 S.C.R.

A 41. We are of the view that the aforesaid finding is incorrect. The project proponent had not only challenged the original order of the NGT on the ground that he had not violated the EC but also on the ground that the damages awarded were highly excessive. Therefore, the question that what should be the extent of damages was specifically before this Court. We are therefore, clearly of the opinion that the

B Bench hearing the review application erred in holding that the review application was maintainable despite the appeal pending before this Court.

C 42. We may also note that the Bench which heard the review has rejected all other grounds of review mainly on the ground that there is no error apparent on the face of the record but has only dealt with the issue of enhancement of damages to be imposed on the basis of ‘Carbon Footprint’ relying on the affidavit dated 18.05.2016. The Bench noted that this affidavit had not been taken into consideration by the earlier Bench. How could the latter Bench hearing the review application know whether any reference was made to this affidavit at the time of original

D hearing or not? In fact, the project proponent urges that this affidavit was never filed on 18.05.2016.

E 43. Here, it would be pertinent to mention that according to the original applicant he was given oral permission by the Bench to file such an affidavit on 23.02.2016. We have perused the order dated 23.02.2016 and find that it makes no mention of any such request being made. If there is no such request then the question of issuing an oral direction to file such an affidavit does not arise. We may also add that after 23.02.2016, the matter was listed on numerous occasions i.e. 16.03.2016, 05.04.2016, 18.04.2016, 22.04.2016, 02.05.2016 and 05.05.2016 before the NGT. In none of the orders there is any reference to Carbon Footprint or to any affidavit to be filed by the original applicant. If an oral permission had been given, obviously the original applicant would have either filed an application or would have made a request that he wants to file such an affidavit.

F 44. The affidavit in question is dated 18.05.2016 and it is alleged that it was filed on 18.05.2016. The matter was listed for hearing on 19.05.2016 on which date also there is no reference to any such affidavit. It would be pertinent to note that in between the project proponent had filed an M.A. No. 389 of 2016 before the Principal Bench stating that an interim order dated 23.12.2015 had been passed against it and the matter was not being heard and, therefore, it may be heard by a Bench presided

G

H

M/S. GOEL GANGA DEVELOPERS v. U.O.I.THR. SECY. 1031
 MINISTRY OF ENVIRONMENT [DEEPAK GUPTA, J.]

over by Dr. Justice Jawad Rahim, who apparently was holding Court in A
 the Pune Bench at that time and the Principal Bench allowed the same
 on 02.05.2016 directing that the matter be listed before the Bench presided
 over by Dr. Justice Jawad Rahim. On 19.05.2016, the original applicant
 sought time stating that he had filed review application against the order
 dated 02.05.2016 before the Principal Bench praying that the matter
 should be heard by the earlier Bench presided over by Justice U.D. B
 Salvi and, therefore, the matter could not be heard by Dr. Justice Jawad
 Rahim on that day and was further adjourned to 23.05.2016. There is
 no reference to Carbon Footprint in the order dated 19.05.2016. On
 23.05.2016, the matter was heard by the Bench presided over by Dr. C
 Justice Jawad Rahim and the orders reserved. In this order also there is
 no reference to the affidavit with regard to Carbon Footprint. If the
 filing of the affidavit would have been brought to the notice of the Bench,
 it would have recorded in the order that some fresh affidavit had been
 filed. Subsequently, the project proponent, who is the contesting
 respondent, filed an application on 20.07.2016 praying that in the D
 meantime he had obtained permission of the Environment Department
 and the SEIAA to which we have adverted hereinabove.

45. The original applicant sought time to file counter affidavit.
 The matter was adjourned to 28.07.2016 for re-hearing deleting the same
 from reserved list since there were subsequent developments. On E
 28.07.2016 the matter was got adjourned to 02.08.2016 on which date
 some execution application for implementation of the interim orders was
 taken up and direction was issued to the PMC. The matter was again
 taken up on 08.08.2016, 19.08.2016 and 24.08.2016 when the hearing
 was closed and judgment was pronounced through video conferencing
 on 27.09.2016. In none of these orders any mention was made for F
 Carbon Footprint or to the affidavit on the basis of which the review
 application was filed. On 23.05.2016 the project proponent filed reply to
 the affidavit dated 18.05.2016 filed by the original applicant in which
 they raised objections that such affidavit was not filed on 18.05.2016
 and the copy of the same was handed over to them on 20.05.2016 and G
 the original applicant had no permission to file such an affidavit. All
 these disputed issues as to whether such an affidavit was filed with the
 permission of the Court or it was referred to in the first hearing or in the
 second hearing could only be decided by the Bench which had heard the
 matter on 23.05.2016 or on 24.08.2016 on which dates the original
 application was reserved for orders. H

1032

SUPREME COURT REPORTS

[2018] 10 S.C.R.

A 46. We are of the considered view that the review application should have been heard by a Bench headed by Dr. Justice Jawad Rahim who was admittedly available and in fact continues to be a member of the NGT. Therefore, we are constrained to set aside the order passed in Review Application No.35 of 2016 dated 08.01.2018

B Is Demolition the only answer?:

C 47. The next issue which arises is that what we should do with the construction. A large number of flats are already occupied and a large number of persons have paid money for occupying these flats. Learned counsel appearing for those persons who have purchased the flats urged that the flats should not be demolished otherwise they shall be put to great monetary loss. As pointed out above now there are 807 flats and 117 shops which are either constructed or under construction. These flats are 1, 1.5 and 2 BHK flats and small shops and offices. The project proponent has already taken money from these persons and a large number of flats and shops have already been occupied and even where the remaining flats and shops are not occupied, persons belonging to the middle class have invested their life's earnings in this project. Keeping in view the interest of these third parties who were not parties before the NGT, we are of the view that in the peculiar facts and circumstances of the case, demolition is not the answer. This would put innocent people at loss. Normally, this Court is loathe to legalize illegal constructions but in the present case we have no option but to do so.

F 48. We hasten to clarify that the project proponent cannot be permitted to build any more flats. What we are permitting him to do is to only complete construction of 807 flats, 117 shops/offices and cultural centre including the club house. We make it clear that he shall not be allowed to build the two buildings in which he was to construct 454 tenements, and will obviously have to return the money with interest at the rate of 9% per annum to the individual(s) who have invested in the same. There is no equity in favour of these persons since the plan to raise this construction was submitted only after 2014 when the validity of the earlier EC had already ended. Therefore, though we uphold the order of the NGT dated 27.09.2016 that demolition is not the answer in the peculiar facts of the case, we also make it clear that the project proponent cannot be permitted to build nothing more than 807 flats, 117 shops/offices, cultural centre and club house.

H

M/S. GOEL GANGA DEVELOPERS v. U.O.I.THR. SECY. 1033
 MINISTRY OF ENVIRONMENT [DEEPAK GUPTA, J.]

Whether the Original Applicant is entitled to Special Damages: A

49. On behalf of the original applicant various issues were raised before us which had not been raised before the NGT and find no mention either in the original order or even in the order under review. We are not considering those issues. It was urged that the project proponent has reduced the area of Cultural Centre. This averment is not correct as pointed by senior counsel appearing for the Union of India. The development plan is not only for the area under the project but covers a much larger area where more than one builder and projects may be involved. It is not the responsibility of only one builder to provide the entire community services and these have to be provided pro rata by all developers of projects in the area. It was also alleged that the builder had built 3 basements which are illegal. On the other hand it was contended by the learned senior counsel for the project proponent that one of the basements has already been blocked and the other two basements shall also not be put in use and would be completely blocked off. We make it clear that PMC and SEIAA will ensure that the project proponent blocks the basements in such a manner that they can never be put to any use. Another argument raised by the original applicant was that the project proponent had stated that though he would not use any ground water, however it has utilized the ground water and violated the condition of the EC. Reliance is placed on certain photographs showing water being pumped. On the other hand on behalf of the project proponent it has been urged that this water was being pumped out from the excavated area when the building was built and the water level had risen. We cannot decide this disputed question of fact in these proceedings. B
C
D
E

50. We may also point out that in this case the original applicant has tried to project the case as if he is filing the case in the public interest and has prayed for certain general directions. He has also claimed special damages for himself. The main grievance of the original applicant is with regard to the violation of the EC and according to him these violations started in the year 2009. The original applicant had applied for a flat in the project in question and had issued notice to the project proponent on 21.10.2011 about deficiency in service. This notice was replied to on 17.11.2011. Thereafter, the original applicant filed Consumer Complaint No. 95 of 2012 on 22.02.2012. This complaint was decided on 20.11.2014. Thereafter, the order of the District Consumer Disputes Redressal Forum was challenged before the State Consumer Redressal F
G
H

1034

SUPREME COURT REPORTS

[2018] 10 S.C.R.

- A Commission both by the project proponent and original applicant in February, 2015. It appears that thereafter there were complaints and counter complaints filed by the parties against each other and the project proponent filed a civil suit for defamation against the original applicant on 02.12.2015 and it was only thereafter on 07.12.2015 an application was filed in the NGT by the original applicant. We are highlighting these
- B facts only to emphasize the fact that this litigation is obviously not a Public Interest Litigation. Therefore, the claim of the original applicant to award him special damages cannot be accepted.

Quantification of damages:

- C 51. We need to decide and re-assess the issue of damages since the original applicant has also challenged the original order of the NGT. While assessing the damages we may note certain facts:-
- D 1) The EC was granted on 04.04.2008 but construction commenced after issuance of consent to establish dated 20.06.2009 and the EC would be valid for a period of 5 years from the date of such consent, i.e. upto 19.06.2014;
- E 2) The EC dated 04.04.2008 was granted for construction of built up area 57,658.42 sq.mtrs., whereas admittedly, as of now the constructed built up area is 1,00,002.25 sq. mtrs.. Therefore, there is clear-cut violation of the terms of the EC;
- 3) Any construction raised after 19.06.2014 is without any EC especially since we have held that EC granted on 20.11.2017 is invalid.

Carbon Footprint:

- F 52. The main case of the original applicant is that the damages should be assessed on a scientific basis by calculating the damage caused to the environment by the project proponent on the basis of 'Carbon Footprint'. In the absence of detailed submissions, we find ourselves totally unequipped to go into this aspect of the matter.
- G 53. In the original application filed by the original applicant before the NGT, there is no reference to Carbon Footprint. Even when evidence was initially led, no reference was made to the same. The concept of Carbon Footprint was introduced by the original applicant only in his affidavit dated 18.05.2016. In fact, according to the project proponent this affidavit was not even filed on 18.05.2016. It appears to us that
- H there is no order of the NGT specifically permitting the original applicant

M/S. GOEL GANGA DEVELOPERS v. U.O.I.THR. SECY. 1035
 MINISTRY OF ENVIRONMENT [DEEPAK GUPTA, J.]

to file such an affidavit. The submission of original applicant is that he was orally permitted to file the same. These disputed questions would have been only decided by the Original Bench and, therefore, we have already set aside the order passed in the review application dated 08.01.2018. A

54. Courts cannot introduce a new concept of assessing and levying damages unless expert evidence in this behalf is led or there are some well established principles. We find that no such principles have been accepted or established in the present case. When there are no pleadings in this regard we fail to understand how the concept of Carbon Footprint can be introduced after evidence has been closed, at the stage of arguments. We cannot assess the impact in actual terms and, therefore, we can only impose damages or costs on principles which have been well settled by law. B C

55. We may also note that the method to which the original applicant referred to is not part of any law, rule or executive instructions. This method is no doubt used to compensate and impose damages on nations but we cannot apply this method while imposing damages on a person who violates the EC. We may also add that the calculation made by the original applicant in his affidavit dated 18.05.2016 filed before the NGT are based on assumptions some of which we have not found to be correct namely – (1) use of ground water; (2) reduction of Cultural Centre space; (3) construction of basements etc.. D E

56. We may make it clear that we are not laying down the law that damages cannot be assessed on the basis of Carbon Footprint. In a case where expert evidence in this behalf is led or on the basis of empirical data it is established that by applying the principles of Carbon Footprint damages can be assessed, the Court may, in the facts and circumstances of the case, rely upon such data but, in the present case, there is no such reliable material. F

57. Having held so we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case we feel that damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has maneuvered and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has G H

- A gone upto 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons, residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space,
- B the amount of open area etc.. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs.100 crores or 10% of the project cost whichever is more. We also make it clear that while calculating the project cost the entire cost of the land based on the circle rate of the area in the year
- C 2014 shall be added. The cost of construction shall be calculated on the basis of the schedule of rates approved by the Public Works Department (PWD) of the State of Maharashtra for the year 2014. In case the PWD of Maharashtra has not approved any such rates then the Central Public Works Department rates for similar construction shall be applicable.
- D We have fixed the base year as 2014 since the original EC expired in 2014 and most of the illegal construction took place after 2014. In addition thereto, if the project proponent has taken advantage of Transfer of Development Rights (for short 'TDR') with reference to this project or is entitled to any TDR, the benefit of the same shall be forfeited and if he has already taken the benefit then the same shall either be recovered
- E from him or be adjusted against its future projects. The project proponent shall also pay a sum of Rs. 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws.

58. Normally, this Court is not inclined to grant *ex post facto* EC. However, in the peculiar facts of this case we direct that once the project
- F proponent deposits the amount of damages as directed by us then the project proponent may approach the appropriate authority for grant of EC. The authority may impose such conditions for grant of EC as it deems necessary.

Findings and Directions:

- G 59. We summarise our findings and directions as follows:
- (i) That built up area under the notification of 14.09.2006 means all constructed area which is not open to the sky;
- (ii) Built up area under the notification of 04.04.2011 means all covered area including basement and service areas;
- H

M/S. GOEL GANGA DEVELOPERS v. U.O.I.THR. SECY. 1037
 MINISTRY OF ENVIRONMENT [DEEPAK GUPTA, J.]

(iii) The communication dated 07.07.2017 is totally illegal and accordingly quashed; A

(iv) The original application cannot be treated as a public interest litigation;

(v) We are not taking note of the allegations levelled against the individuals who have not been arrayed as parties; B

(vi) That the order dated 27.09.2016 of the NGT is upheld except in so far as Direction No. 1 is concerned;

(vii) The order in review application passed by the NGT on 08.01.2018 is held to be totally illegal and is accordingly set aside; C

(viii) We uphold the original order dated 27.09.2016 holding that the construction raised by the project proponent was in violation of the environmental clearance granted to it on 04.04.2008. We uphold the fine imposed upon the PMC and the direction given to the PMC to take appropriate action against the erring officials. We also uphold the direction given to the Chief Secretary to the State of Maharashtra and in addition, direct that the Chief Secretary to the State of Maharashtra shall look into the conduct of the official holding the post of Principal Secretary (Environment) to the Government of Maharashtra on 27.09.2016 and will submit his report to the NGT within three months from today; D
E

(ix) We impose damages of Rs.100 crores or 10% of the project cost, whichever is higher on the project proponent and in addition thereto, project proponent will pay Rs.5 crores as levied by the NGT in its order dated 27.09.2016; F

(x) Project proponent shall not be permitted to raise construction of two buildings having 454 tenements;

(xi) We direct that the project proponent shall only be permitted to complete construction of a total 807 flats, 117 shops/offices and cultural centre including club house; G

(xii) The project proponent will only be permitted to seek environmental clearance for completion of the project subject to payment of costs in the aforesaid terms and it may be granted *ex post facto* environmental clearance in the peculiar facts of H

1038

SUPREME COURT REPORTS

[2018] 10 S.C.R.

- A the case, on such terms and conditions as the environmental authority deems fit and proper;
- (xiii) The project proponent is granted six months' time to deposit the amount of damages imposed in terms of direction no. (ix) *supra* in the Registry of this Court. In case the project proponent does not deposit the amount within six months then all the assets of the project proponent i.e. M/s. Goel Ganga Developers India Pvt. Ltd. as well as its Directors shall be attached and the amount of damages shall be recovered by sale of those assets. It is further directed that in case this amount is not deposited within the period of six months then the licence/registration/permission granted to M/s. Goel Ganga Developers India Pvt. Ltd. to develop any "real estate project" within the meaning of the Real Estate (Regulation and Development) Act, 2016 shall be cancelled and the project proponent i.e. M/s. Goel Ganga Developers India Pvt. Ltd. and its Directors shall not be granted permission to develop any "real estate project" under the Real Estate (Regulation and Development) Act, 2016 without permission of this Court.
- B
- C
- D
- (xiv) The matter be listed on 22.10.2018 for issuing appropriate directions as to how the amount of damages are to be utilised;
- E 60. All the appeals are disposed of in the aforesaid terms. Pending application(s) if any, shall also stand disposed of.

Ankit Gyan

Appeals disposed of.

[2021] 13 S.C.R.976

A SUPERTECH LIMITED

v.

EMERALD COURT OWNER RESIDENT WELFARE
ASSOCIATION & ORS.

B (Civil Appeal No. 5041 of 2021)

AUGUST 31, 2021

**[DR DHANANJAYA Y CHANDRACHUD AND
M. R. SHAH, JJ.]**

C *National Building Regulations, 2006 – Regulation 33.2.3 –
National Building Code 2005 – UP Apartment Act 2010 – ss. 4(1),
4(4), 5 – Adherence to minimum distance requirement between
buildings – Collusion and illegal construction – Demolition of two
towers – NOIDA allotted to the appellant a plot of land for the
development of a group housing society and sanctioned the building
D plan for the construction of fourteen towers, each with ground and
nine floors (G+9) – On 05.12.2006, the New Okhla Industrial
Development Area Building Regulations and Directions (NBR 2006)
were notified – On 29.12.2006, NOIDA sanctioned the first revised
E plan by which additional buildings were also sanctioned and two
additional floors were envisaged in addition to already sanctioned
(G+9) – Additional buildings were sanctioned, namely (i) Tower-15
(G+11), (ii) Tower-16 (G+11) and (iii) a shopping complex – In the
second revised plan, the earlier T-16 (G+11) was replaced with a
T-16 (G+24) and similarly, the shopping complex was replaced with
F T-17 (G+24) – T-16 and T-17 would each be of a height of 73 mtrs.
and according to the plan, T-17 was to be at a distance of 9 mtrs.
from T-1 – In the third revised plan, 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. – The first
respondent addressed a communication to NOIDA complaining of
violations – Thereafter, first respondent filed a writ petition in the
G High Court and sought quashing of revised plan of disputed towers
and also prayed that the illegal structure be demolished – The High
Court allowed the writ petition and directed the demolition of T-16
and T-17, with the expenses of the demolition being borne by the
appellant and to refund the consideration received from flat
H purchasers who had booked apartments – It further directed the*

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT
WELFARE ASSOCIATION

977

Competent Authority to grant sanction for the prosecution of NOIDA's officials – On appeal, held: The National Building Construction Corporation Limited (NBCC) concluded that the said two towers are not compliant with Regulation 24.2.1.6 of the NBR 2010 – The purpose of stipulating a minimum distance between buildings 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 – 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 – In the third revised plan the height of T-16 and T-17 was increased to 121 mtrs. – In accordance with Regulation 24.2.1.6 of NBR 2010, the spacing between a building of height 121 mtrs. and another building would be 16 mtrs. however, the distance between disputed towers was 9 mtrs. – Consequently, the third revised plan was in violation of NBR 2010 – 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 s.5 of the UP 1975 Act and s.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 was 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 s.4(1) r/w. the proviso to s.4(4) of the UP Apartments Act 2010 – The case has revealed a nefarious complicity of the planning authority in the violation by the developer of the provisions of law – NOIDA made no effort to ensure compliance of the UP Apartments Act 2010, as a result of which the rights of the flat purchasers was brazenly violated – The illegal construction of T-16 and T-17 was achieved through acts of collusion between the officers of NOIDA and the appellant and its management – The High Court has correctly come to the conclusion that there was collusion between the developer and the planning authority – Therefore, the directions of the High Court including the order of demolition and for sanctioning prosecution

A
B
C
D
E
F
G
H

A *against the officials of the appellant and the officers of NOIDA for violations of the UPIAD Act 1976 and UP Apartments Act 2010 is confirmed – National Building Regulations 2010 – Regulation 24.2.1.6 – Uttar Pradesh Industrial Area Development Act, 1976 – sec. 12 – Uttar Pradesh Urban Development Act, 1973 – sec. 49 – Uttar Pradesh Ownership of Flats Act 1975 – ss. 3(d), 5.*

B

Disposing of the appeals, the Court

C **HELD: 1.** 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. 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. [Para 47][1019-F-H; 1020-A-B]

D

E

F

G

H

2. 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

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION 979

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. [Para 48][1020-C-E] A

Violation of distance requirement under Building Regulations

3. The first issue 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. [Para 49][1020-E-F] B

4. 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. [Para 68][1033-D-H] C D E F G

5. Applying the NBR 2006 to the facts of the present case, the construction of T- 16 and T-17 was envisaged in the second

H

A 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. [Para 69][1034-A-B]

6. Now, coming 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”. [Para 70][1034-C-E]

7. 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. [Para 73][1035-G-H; 1036-A]

8. The only reasonable hypothesis which emerges from the disclosures made is that the argument which was 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

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION 981

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. [Para 82][1043-F-G]

9. 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, this Court is in no manner of doubt 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 off as the second revised plan of 2009. [Para 86][1046-C-D]

Interpretation of “dead end sides of buildings”

10. 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.

H

A **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**

B **(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.**

C **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. [Para 111][1059-E-H; 1060-A-B]**

Violation of NBC 2005

D **11. 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. [Para 112][1061-B-C]**

Violation of Fire Safety Norms

F **12. 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. Given that the rear distance requirement under NBC 2005 has not been complied with, the NOC given by the CFO stands automatically cancelled. [Paras 119-120][1063-B-D]**

H

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION 983

Consent of the RWA

A

13. 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, this Court shall analyze whether the consent was actually required under the UP 1975 Act and UP Apartments Act 2010. [Para 121][1063-E-G]

B

C

Applicability of UP 1975 Act

14. 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. [Para 124][1065-C-D]

D

15. 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. 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. [Paras 125 and 129][1067-B; 1068-E-F]

E

F

Applicability of the UP Apartments Act 2010

G

16. It is important to clarify 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

H

A Gazette on 19 March 2010, will have consequences for the third revised plan sanctioned on 2 March 2012. [Para 136][1073-B-C]

Requirement of RWA's Consent

B 17. 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 2010 (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 had dealt with this argument. 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. [Para 142][1076-C-D; 1077-B-C]

Collusion and Illegal Construction

F 18. 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:

G (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

H

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION 985

all the sanctioned plans that the plan would have to be displayed at the construction site of the appellant; A

(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; B

(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 C
D

(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. [Para 143][1077-D-H; 1078-A-C] E

19. 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 F
G
H

A **misinformation. Hence, the law must step in to protect their legitimate concerns. [Para 148][1079-E-G]**

B **20. 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, 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 is confirmed. [Para 155][1084-C-E]**

Conclusion

21. To summarize findings, the documentary materials referred to and analyzed in this judgment indicate that:

E (i) The land allotted to appellant under the original lease agreement and the supplementary lease deed constitute one plot;

F (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;

G (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

H

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;

A

(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;

B

C

(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

D

E

(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 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 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. [Para 156][1084-F-G; 1085-A-H; 1086-A-C]

F

G

H

A **22. For the reasons indicated above, this Court has 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;**

(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;**

(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. [Para 157][1086-C-H; 1087-A-B]**

K. Ramadas Shenoy v. Chief Officer, Town Municipal Council (1974) 2 SCC 506 : [1975] 1 SCR 680; Dr G.N. Khajuria v. Delhi Development Authority (1995) 5 SCC 762 : [1995] 3 Suppl SCR 212; Friends Colony Development Committee v. State of Orissa (2004) 8 SCC

H

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT
WELFARE ASSOCIATION 989

733 : [2004] 5 Suppl. SCR 818; *Priyanka Estates International (P) Ltd. v. State of Assam (2010) 2 SCC 27 : [2009] 16 SCR 80; Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai (2013) 5 SCC 357 : [2013] 4 SCR 478 – relied on.* A

Kerala State Coastal Zone Management Authority v. State of Kerala (2019) 7 SCC 248; Kerala State Coastal Zone Management Authority v. Maradu Municipality, Maradu 2018 SCC OnLine SC 3352; Bikram Chatterji v. Union of India (2019) 19 SCC 161 – referred to. B

Case Law Reference C

[1975] 1 SCR 680 **relied on** **Para 149**

[1995] 3 Suppl. SCR 212 **relied on** **Para 150**

[2004] 5 Suppl. SCR 818 **relied on** **Para 151**

[2009] 16 SCR 80 **relied on** **Para 152** D

[2013] 4 SCR 478 **relied on** **Para 153**

(2019) 7 SCC 248 **referred to** **Para 154**

(2019) 19 SCC 161 **referred to** **Para 154**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5041
of 2021. E

From the Judgment and Order dated 11.04.2014 of the High Court
of Judicature at Allahabad in Writ Petition (Civil) No. 65085 of 2012.

With

Civil Appeal Nos. 5042, 5043, 5044, 5045, 5046, 5047, 5048, 5049,
5050 of 2021, Contempt Petition (C) No. 380 of 2021 in SLP (C) No.
14314 of 2014, Contempt Petition (C) No. 381 of 2021 in SLP (C) No.
14314 of 2014, Contempt Petition (C) No. 382 of 2021 in SLP (C) No.
14314 of 2014, Contempt Petition (C) No. 383 of 2021 in SLP (C) No.
14314 of 2014 and Contempt Petition (C) No. 384 of 2021 in SLP (C)
No. 14314 of 2014. G

Vikramjit Banerjee, ASG, Vikas Singh, Ms. Meenakshi Arora,
Jayant Bhushan, Raviondra Kumar Raizada, Sr. Advs., R. Chandrachud,
Rajnish Singh, Kapish Seth, Ms. Deepika Kalia, Sandeep Rana, H

- A Ms. Tanya Kalra, Anurag Dubey, Sarvendra Singh, S.R. Setia, T.V.S. Raghavendra Sreyas, Ms. Gayatri Gulati, Siddharth Vasudev, Ms. Mahima Gupta, Ravindra Kumar, Somiran Sharma, M. Shoeb Alam, Faisal Sherwani, Shantanu Krishna, Shubham Saigal, Ashish Rana, Gaurav Agrawal, Abraham Mathew, Nishe Rajen Shonker, Mullapudi Rambabu, S.A. Haseeb, M.K. Maroria, Ms. Aakansha Kaul, Digvijay Dam, Umang
- B Shankar, Rajeev Singh, Ms. Pinky Behera, Mrs. Bina Gupta, Vishwa Pal Singh, Anish Agarwal, Ms. Vanshika Gupta, Kunal Ravi, Ketan Paul, Tushar Bhushan, Amartya Bhushan, Gaurav Kejriwal, Ravi Prakash Mehrotra, Milind Kumar, Bhakti Vardhan Singh, Rajeev Kumar Dubey, Saurav Singh Chauhan, Ashiwan Mishra, Kamendra Mishra, Tarun
- C Gupta, Ms. Prachi Mishra, Chaitanya Bansal, Arjun Garg, M.C. Dhingra, Ms. Trishala Trivedi, Ajay Bhargava, Ms. Vanita Bhargava, Ms. Maithili Moondra, M/s Khaitan & Co., J.B. Mudgil, Ms. Sweta Rani, Sumeet Agarwal, Abhijeet Sinha, Ms. Dania Nayyar, Krishnamohan K., M/s Unuc Legal Llp, Ms. Aparna Bhat, Sumit R. Sharma, Gopal Jha, P.S. Gosain, Shreyash Bhardwaj, Nishant Verma, Mohammed Sadique
- D T.A., Nitish Massey, Advs. for the appearing parties.

Intervenor-in-person.

The Judgment of the Court was delivered by

DR DHANANJAYA Y CHANDRACHUD, J.

E

INDEX

A Factual and procedural history

- A.1 The appeals
- F A.2 The Emerald Court project
- A.3 First Revised Plan
- A.4 Second Revised Plan
- A.5 Third Revised Plan
- G A.6 Complaints against the Revised Plans
- A.7 Proceedings before the Allahabad High Court
- A.8 Proceedings before this Court

B Submissions by Counsel

H

C Prefatory observations

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT
WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 991

D Violation of distance requirement under Building Regulations A

D.1 Violation of NBR 2006 and 2010

D.1.1 Interpretation of “building blocks”

D.1.2 Interpretation of “dead end sides of buildings” B

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 C

E.3 Requirement of RWA’s Consent

F Collusion and Illegal Construction

G Conclusion

H Interlocutory Applications D

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 petition¹ instituted by the first respondent, the Residents’ Welfare Association² of Emerald Court Group Housing Society³. E

3. By its judgment, the High Court directed:

(i) The demolition of Towers -16⁴ and 17⁵ by the third respondent, New Okhla Industrial Development Authority⁶, in Emerald Court situated on Plot No 4, Sector 93A, NOIDA constructed by the appellant, Supertech Limited⁷; F

G

¹ Writ Petition (Civil) No 65085 of 2012

² “RWA”

³ “Emerald Court”

⁴ “T-16”/”Ceyane”

⁵ “T-17”/”Apex”

⁶ “NOIDA”

H

992 SUPREME COURT REPORTS [2021] 13 S.C.R.

- A (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 1973⁸, as incorporated by Section 12 of the Uttar Pradesh Industrial Area Development Act 1976⁹, shall be granted for the prosecution of the officials of the appellant and the officers of NOIDA for possible violations of the UPIAD Act 1976 and Uttar Pradesh Apartment (Promotion of Construction, Ownership & Maintenance) Act 2010¹⁰; and
- B C (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.

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

A.2 The Emerald Court project

E 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.

F 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 Building Regulations and Directions 1986¹¹. The construction commenced for these fourteen towers.

G A.3 First Revised Plan

⁷ “Supertech”

⁸ “UPUD Act 1973”

⁹ “UPIAD Act 1976”

¹⁰ “UP Apartments Act 2010”

¹¹ “NBR 1986”

H

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT
WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 993

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 2006¹² were notified. Under the NBR 2006, the Floor-Area-Ratio¹³ 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

¹² “NBR 2006”

¹³ “FAR”

A 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

B 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 building on the additional leased area was sanctioned. Pertinently,

C it is also necessary to highlight that the first revised plan contemplated a green area in front of Tower- 1¹⁴. 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.

D 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.

E **A.4 Second Revised Plan**

F 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

G as the appellant) could purchase FAR to the maximum extent of thirty-three per cent of their base existing FAR of 1.5.

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

H ¹⁴ “T-1”/ “Aster 2”

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT
WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 995

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. A

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. B

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. C

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.” D

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; E

(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. F

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 Nagar¹⁵, the fourth respondent, issued a report to the In-charge (Building Cell) NOIDA, Sector 6 for the grant of the provisional Non- G

¹⁵ “CFO”

H

A Objection Certificate¹⁶ for T-16 and T-17. The provisional Fire NOC was made subject to compliance with the requirements of the National Building Code, 2005¹⁷.

B 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.

C 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 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
 D 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:

E “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.

[...]

F 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
 G building section department, Noida. Otherwise sanctioned map deemed to be cancelled.”

(emphasis supplied)

¹⁶ “NOC”

¹⁷ “NBC 2005”

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT
WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 997

A.5 Third Revised Plan A

20. On 20 February 2010, a notification was issued by the State of Uttar Pradesh enabling old allottees 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: B

“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. C

22. On 30 November 2010, the New Okhla Industrial Development Area Building Regulations 2010¹⁸ came into force. Regulation 24.2.1.(6) contains the following stipulations: D

“(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 mtrs., 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.” E F

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. G

24. On 25 October 2011, in view of the notification dated 20 February 2010, the appellant purchased an additional FAR at a cost of

¹⁸ “NBR 2010”

H

A 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.

B 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
 C 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

D 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.

E 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.

F 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:

[...]

G 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.

H

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT 999
WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.]

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. A

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.” B

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. C
D

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. E

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

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. G

A.7 Proceedings before the Allahabad High Court

H

1000

SUPREME COURT REPORTS

[2021] 13 S.C.R.

- A 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:
- B “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.
- C 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.
- D 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.
- E 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.
- F 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.
- G vi. Issue a writ or direction directing respondent no. 2 and 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.”
- H 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 through 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.

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT 1001
WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.]

35. The appellant filed a counter affidavit on 27 January 2013 A
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; B
- (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 C
- (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. D
E

36. NOIDA in its counter affidavit dated 7 February 2013 stated F
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; G
- (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. H

- A 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.
- B 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:
- C (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;
- D
- E
- F
- G (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
- H

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 1003

- 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; A
- (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; B C
- (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; D E
- (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; F
- (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., G H

1004 SUPREME COURT REPORTS [2021] 13 S.C.R.

- A 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.;
- B (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;
- C (viii) The provisions of the UP Fire Prevention and Fire Safety Act 2005¹⁹ 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;
- D (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 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
- E (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.
- F

A.8 Proceedings before this Court

- G 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

H ¹⁹ “Fire Safety Act”

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 1005

agency on the issue and engage an expert for this purpose. On the submission of the Additional Solicitor General, the National Buildings Construction Corporation Limited²⁰, 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 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. A B

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 investment²¹. 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. C D

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: E

- (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 have agreed to twelve per cent interest, these twenty-four purchasers were also directed to accept the twelve per cent interest rate; F
- (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 G
- (iv) Disputed cases - Mr Sanjeev Agrawal and Ms Rashmi Arora have paid Rs 38,51,009 and Rs 17,43,162 respectively by

²⁰ “NBCC”

²¹ “ROI”

H

1006

SUPREME COURT REPORTS

[2021] 13 S.C.R.

A 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:

B

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

C

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.;

D

E

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;

F

G

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

H

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 1007

- of towers so as to ensure a large open green space rather than scattered small spaces all over the project; A
- d. In the alternative, even if 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; B C
- 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 D
- 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.; E
- (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; F
- 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; G
- 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, H

1008

SUPREME COURT REPORTS

[2021] 13 S.C.R.

- A 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;
- B 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
- C 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;
- D (iii) There has been no violation of fire safety norms:
- E 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
- F 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;
- G (iv) The Uttar Pradesh Ownership of Flats Act 1975²² 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

H ²² “UP 1975 Act”

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 1009

- 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; A
- 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 B
- 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 be illegal; C
- (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; D
- 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 the appellant had provided a green area of 12,064.91 sq. mtrs. in the form of a central park; E
- 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 F
- 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; G
- (vi) The sanction of T-16 and T-17 is based on a valid certificate as regards the structural design of the towers; H

1010 SUPREME COURT REPORTS [2021] 13 S.C.R.

- A (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:
- B a. The construction was carried out with the sanction of the authorities;
- b. 600 persons had purchased flats in these towers;
- C 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.
- D

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

- E 42. Supplementing the submissions of Mr Vikas Singh, Mr Ravindra Kumar, learned Counsel appearing on behalf of NOIDA, made the following submissions:
- F (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;
- G (ii) The various NOIDA Building Regulations have not been violated as they do not prescribe the minimum distance

H

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 1011

- between two towers. It only refers to the distance between 'building blocks', with reference to the NBC 2005; A
- (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; B
- (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; C
- (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; D
- (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; E
- (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; F
- (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 G
- (ix) There is no factual foundation to conclude that there had been any collusion between the appellant and NOIDA.

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 H

1012

SUPREME COURT REPORTS

[2021] 13 S.C.R.

A 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:

- B
- C
- D
- E
- F
- G
- H
- (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 $(16 + (10 \text{ per cent of } 84.5) - 4)$, 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;

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 1013

- (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; A
 - 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 B C
 - c. The reports submitted by the IITs of Delhi and Roorkee specify functional requirements of distance between buildings including: D
 - i. fire separation to avoid transmission between buildings;
 - ii. safe escape and rescue during fire;
 - iii. ventilation; and E
 - iv. daylight access.

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

1014 SUPREME COURT REPORTS [2021] 13 S.C.R.

- A 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;
- B 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;
- C 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;
- D 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;
- E 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;
- F m. The connection of two building blocks with the space frame would not make it one building block; and
- G 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:
- H

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 1015

- 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; A
- b. T-17 does not have any set-backs and has the same width throughout; B
- 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; C
- (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; D
- (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; E
- (x) Consent of flat owners was required under UP Apartments Act 2010 before an alteration in the sanctioned plan: F
 - 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; G
 - b. The UP Apartments Act 2010 is applicable irrespective of whether or not a society is formed. The rights are H

1016 SUPREME COURT REPORTS [2021] 13 S.C.R.

- A 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;
- B (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;
- C 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 allottees also mandates the applicability of the UP 1975 Act; and
- D 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:
- E 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;
- F 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;
- G d. Under the terms of approval, the sanctioned plan had to be kept at the site for display. In spite of this, there was
- H

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 1017

- 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 A
- 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; B
- (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; C
- (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; D
- (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 E
- (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 F

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. G

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

H

1018

SUPREME COURT REPORTS

[2021] 13 S.C.R.

	Title	Date of Sanction	Buildings	Details
A	Original Plan	20 June 2005	Towers 1-14	G+9 floors
B	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
C	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.
D	Third Revised Plan	2 March 2012	Towers 1-15	G+11 floors, height of each tower is 37 mtrs.
			Towers 16-17 [♠]	G+40 floors, height of each tower is increased to 121 mtrs.

E 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:

- F
- (i) NBR 2006;
 - (ii) NBR 2010;
 - (iii) NBC 2005;

G * 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.

H [♠] 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.

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 1019

- (iv) UP 1975 Act; A
- (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. B

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; C
- (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; D
- (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 E
- (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. F

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 G H

1020

SUPREME COURT REPORTS

[2021] 13 S.C.R.

A 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.

B
C
D 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.

E **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.

F **Original sanction dated 20 June 2005**

G 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

H 51. NBR 2006 came into force on 16 December 2006. The sanctioned plan for the project was first revised on 29 December 2006,

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 1021

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. A

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: B

“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: E

“i. Distance between two adjacent building blocks shall not be less than half of the height of tallest building.” F

(emphasis supplied)

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 G

H

1022

SUPREME COURT REPORTS

[2021] 13 S.C.R.

A 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.

B 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

C 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.

D 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:

E “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.

F 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.”

G **(emphasis supplied)**

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

(II) Maximum permissible-

H

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 1023

(i) Ground coverage	35 per cent to 40000 sq. mtrs and 40% above 40000 sq. mtrs	A
(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.	B
(iv) Density (Family size 4.5)	As mentioned in the sector Layout Plan or decided by the Authority for a particular scheme.	C

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. 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. E

(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. F

(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. G

(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 H

1024

SUPREME COURT REPORTS

[2021] 13 S.C.R.

A 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:

B **“Distance between two adjacent building blocks**

C 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.”

D 59. The above regulation indicates that:

- E (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
- F (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:

G “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).

H

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 1025

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

(Clause 8.2.3.1)

Sl No.	Height of Buildings m (1) (2)	Side and Rear Open Spaces to be Left Around the Building m (3)	
i)	10	3	B
ii)	15	5	
iii)	18	6	C
iv)	21	7	D
v)	24	8	
vi)	27	9	
vii)	30	10	E
viii)	35	11	
ix)	40	12	
x)	45	13	
xi)	50	14	F
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. G

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

H

1026

SUPREME COURT REPORTS

[2021] 13 S.C.R.

A 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.”

B (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:

C (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.

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

E (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)

F 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

H

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT 1027
WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.]

set-back shall not be accessible from the individual rooms/flats at these A
levels.

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- B
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, C
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 D
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 E
(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 F
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 G
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
H

A 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

B 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 “ दो भवन समूहों के बीच की दूरी ”, which emphasises the concept of a cluster of buildings;

C (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;

D (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;

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

a. Ground coverage;

b. FAR;

F 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:

G “Building Block in a Group Housing Project

Main Points:

H 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.

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT 1029
WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.]

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. A
B

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”. C
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. D
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. E
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 F
G
H

1030

SUPREME COURT REPORTS

[2021] 13 S.C.R.

- A 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
- B 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
- C 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
- D 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.
- E
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
- F frame was made connecting the said tower at the Height with nearby tower for evacuation of cornered persons saving many lives.
- G
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.
- H

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 1031

Height	Side and Rear Open Space	A
35 Mtr	11 Mtr	
40 Mtr	12 Mtr	
55 Mtr & above	16 Mtr	B

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 and 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. D E
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. F
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 G H

A the requirements of fire safety provisions. It does not violate any provision with regards to fire safety and air circulation.”

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.

B 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.

C 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.

D 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

H

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 1033

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.

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.

H

1034

SUPREME COURT REPORTS

[2021] 13 S.C.R.

A 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.

B 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”.

C 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:

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 बिल्डिंग 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 16.00 मीटर 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 ।

E As is evident, the Hindi version of the NBR 2010, uses three different terms “भवन समूह”, and “भवन”. A purely textual interpretation,

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT 1035
WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.]

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

A

B

C

D

E

F

G

H

1036

SUPREME COURT REPORTS

[2021] 13 S.C.R.

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.

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
C	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

D SET BACK
SET BACK OF BUILDING

	Permissible	Sanctioned
--	-------------	------------

	Front	9.66 Mt	15.00 Mt
E	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:

G “Sanctioned area

Total area of plot	:	54819 Sq. Mt
--------------------	---	--------------

H

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT
WELFARE ASSOCIATION [DR DHANANJAYA Y CHANDRACHUD, J.]

1037

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.

1038

SUPREME COURT REPORTS

[2021] 13 S.C.R.

A 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:

“Area of plot : 54819.510 Sq. Mt.

B 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

C 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.)
D 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
E 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
F 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
G 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
H Total Area		43939.470

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 1039

Set back	Permissible	Sanctioned	A
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	B

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	D
Permissible FAR @ 1.5%	: 82229.265 Sq. mt	
at the time of allotment		
Purchasable FAR on 25.10.10	: 150753.652 Sq. mt	E
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

F

G

H

1040

SUPREME COURT REPORTS

[2021] 13 S.C.R.

A	1 st Floor	Rest FAR	6722.349	2288.230	78.075	2366.305	9088.654
	2 nd Floor	--	6722.349	2249.220	58.555	2307.775	9030.124
	3 rd Floor	--	6722.349	2249.220	58.555	2307.775	9030.124
	4 th Floor	--	6722.349	2249.220	38.400	2287.620	9009.969
	5 th Floor	--	6722.349	2249.220	38.400	2287.620	9009.969
B	6 th Floor		6722.349	2249.220	-12.397	2236.823	8959.172
	7 th Floor		6722.349	2249.220	-12.397	2236.823	8959.172
	8 th Floor		6722.349	2249.220	-12.397	2236.823	8959.172
	9 th Floor		6722.349	2249.220	-12.397	2236.823	8959.172
	10 th Floor		6423.737	1358.786	878.037	2236.823	8660.560
C	11 th Floor		3982.669	1186.94	910.301	2097.215	6079.884
	12 th Floor			740.162	851.205	1591.367	1591.367
	13 th Floor			740.162	851.205	1591.367	1591.367
	14 th Floor			740.162	851.205	1591.367	1591.367
	15 th Floor			740.162	851.205	1591.367	1591.367
D	16 th Floor			447.995	1162.568	1610.523	1610.523
	18 th Floor			447.995	1162.568	1610.523	1610.523
	19 th Floor			447.995	1162.568	1610.523	1610.523
	20 th Floor			447.995	1165.568	1610.523	1610.523
	21 st Floor			383.168	1610.523	1610.523	1610.523
	22 nd Floor			383.168	1610.523	1610.523	1610.523
	23 rd Floor			383.168	1610.523	1610.523	1610.523
E	24 th Floor			383.168		1610.523	1610.523
	25 th Floor				1610.523	1610.523	1610.523
	26 th Floor				1610.523	1610.523	1610.523
	27 th Floor				1610.523	1610.523	1610.523
	28 th Floor				1610.523	1610.523	1610.523
F	29 th Floor				1610.523	1610.523	1610.523
	30 th Floor				1610.523	1610.523	1610.523
	31 st Floor				1610.523	1610.523	1610.523
	32 nd Floor				1610.523	1610.523	1610.523
	33 rd Floor				1610.523	1610.523	1610.523
G	34 th Floor				1610.523	1610.523	1610.523
	35 th Floor				1610.523	1610.523	1610.523
	36 th Floor				1610.523	1610.523	1610.523
	37 th Floor				1610.523	1610.523	1610.523
	38 th Floor				1610.523	1610.523	1610.523
H	39 th Floor				859.055	859.055	859.055
	40 th Floor				439.106	439.106	439.106

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT
WELFARE ASSOCIATION [DR DHANANJAYA Y CHANDRACHUD, J.]

1041

Total FAR	150753.652	78019.956	31312.105	41132.600	72444.705	150464.664	A
Basement		After leaving set back, rest area (for parking, services)					
Upper basement		40542.38		1511.144		42053.524	B
Lower basement		40542.38	3397.09	41.680		3438.770	
Total area			3397.09	1552.824		45942.294	
Services	15% services	Zero	Zero	6396.896		6396.896	
Total area (including basement and services)		118562.336	34709.195	49082.32	83791.515	202353.854	C

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

1042

SUPREME COURT REPORTS

[2021] 13 S.C.R.

A 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
 B 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
 C 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:

D “[...]”

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
 E 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
 F 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.

G That the period of 90 years lease shall commence from 16.03.2005.

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.

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

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT 1043
WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.]

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). A

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

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: C

“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.” D E

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. F G

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:

H

1044

SUPREME COURT REPORTS

[2021] 13 S.C.R.

- A (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;
- B (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.

C 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:

F “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.

G 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 &

H

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT 1045
WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.]

Ceyane were connected within the existing building block A
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 B
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: C

“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. D
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** E
F
G
H

1046

SUPREME COURT REPORTS

[2021] 13 S.C.R.

A 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
B 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
C 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
D 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 off as the second revised plan of 2009.

87. In its affidavit before the High Court, the appellant stated that:
E
F
“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
G 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:

H
“Learned counsel for the respondent-company finally made an attempt to argue that the phase “building blocks” is not defined

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT 1047
WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.]

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.

A 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:

B “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.”

C 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.

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

D (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

F (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”.

G 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

H

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 1049

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. A

95. Therefore, NBCC wrote to the Bureau of Indian Standards²³ 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”. B C

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: D

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

²³ “BIS”

H

1050 SUPREME COURT REPORTS [2021] 13 S.C.R.

- A (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.

B 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

C 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:

D “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”.**

E 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’

F 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.

G

(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

H daytime and nighttime, every day of the year, for however short

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT 1051
WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.]

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. A

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.** B C

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) 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; E
- (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; F
- (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 to T-15. To enter the parking space of T-17, another passage is used; G
- (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 H

1052

SUPREME COURT REPORTS

[2021] 13 S.C.R.

- A 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;
- B (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:
- C 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;
- D 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.
- E
- F 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
- G 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
- H building side not a dead end;

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 1053

- (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
- a. To avoid transmission of fire: 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 C
- b. Safe escape and rescue: 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; D E
- 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 F
- d. Natural day light: When the distance between two buildings is high, the building receives direct sunlight; F
- (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. G H

1054

SUPREME COURT REPORTS

[2021] 13 S.C.R.

A 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:

- B (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;
- C
- D (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
- E (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’.

F 101. The appellant approached Design Forum International²⁴, 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:

- G (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

H ²⁴ “DFI”

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 1055

- 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); A
- (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; B
- (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)); 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.; D
- (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 E
- (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. F

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 G

H

- A 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.
- B 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
- C 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
- D 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.

- E 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’;
- F (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
- G 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
- H indication to classify between habitable and non-habitable rooms in the

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 1057

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.

A
B
C
D
E
F
G
H

1058

SUPREME COURT REPORTS

[2021] 13 S.C.R.

A 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.

E 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'.

G 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

H

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT 1059
WELFARE ASSOCIATION [DR DHANANJAYA Y CHANDRACHUD, J.]

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 A

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: B

- (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; C
- (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 D
- (v) The minimum distance required between two adjacent blocks must not be measured through direct line positions of the units but along the ground. E

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; F
- (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; G
- (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 H

1060

SUPREME COURT REPORTS

[2021] 13 S.C.R.

A 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.

B 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

C

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:

F		(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
G	Distance to be		

H ²⁵ The total actual length of T-17 as noted in the NBCC Report is 84.5 m as against the envisaged 121 m.

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 1061

maintained as per Note

A

3: $16 + 10\%$ $16 + 10\% (73)$

Distance in col (3) + 10% $(84.5) - 4$ $- 4 = 19.3$

of the length or depth of $= 20.45$ mtrs mtrs

building – 4.0 mtrs

B

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.

C

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 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.

D

E

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.

F

G

D.3 Violation of Fire Safety Norms

H

1062

SUPREME COURT REPORTS

[2021] 13 S.C.R.

A 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 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.

B 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.

C 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,

D 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’.

E 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:

- F (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;
- G (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.

H 118. These suggestions given by the committee were required to be complied with within six months. Since they were not complied with,

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT 1063
WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.]

a show cause notice was issued on 30 May 2014 for not remedying the deficiencies. A

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. B C

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. D

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 F

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 H

1064

SUPREME COURT REPORTS

[2021] 13 S.C.R.

A 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:

B

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:

C

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.”

D

123. Section 3(d)²⁶ contains the definition of common area and facilities. Section 4²⁷ stipulates that a flat shall be transferable and heritable

²⁶ (d) “common areas and facilities” includes—

E

(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;

F

(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;

G

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.

G

(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:

H

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.”

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT 1065
WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.]

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 immovable 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. A

124. Section 5 provides for common areas and facilities in the following terms: B

“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. C

(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. D

(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. E

(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. F

(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. G

(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 H

1066

SUPREME COURT REPORTS

[2021] 13 S.C.R.

A 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.”

B (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 10²⁸ provides for the contents of such a Declaration. Further, Section 11²⁹ envisages

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:—

- D (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;
- E (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;
- F (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.”
- H

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT 1067
WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.]

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 such owner shall be the percentage of undivided interest previously owned in the common areas and facilities. A

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. B
C

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 DO TH HERE BY DECLARE AND COVENANTS WITH THE LESSOR IN THE MANNER FOLLOWING: D

[...]

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) E
F

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. G

H

A 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,
B 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:

- C (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”;
- D (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.

E 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.

F **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:

G “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”

H 131. Section 2 of the Act is in the following terms:

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT 1069
WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.]

“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.” A

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. B C

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;” D E

133. The Act contains a definition of common areas in Section 3(i) and of limited common areas 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; F

(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; G

(iv) the premises for the lodging of janitors or persons employed for the management of the property;

H

1070 SUPREME COURT REPORTS [2021] 13 S.C.R.

- A (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;
- B (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;
- C [...]
- (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;”
- D 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:
- E **“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:
- F (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;
- G (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;
- H

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION [DR DHANANJAYA Y CHANDRACHUD, J.] 1071

(dd) built-up area and common area of an apartment. A

(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; B

(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; C

(h) such other information and documents as may be prescribed.” D

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: E F

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.” G

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 H

A 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

B 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,

C 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.

D

135. Section 5 of the Act provides for the rights of apartment owners in the following terms, insofar as is relevant:

E “**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.

F (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

G 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.

H

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT 1073
WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.]

(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.” A

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. B

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. C D E

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. F

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 Buddha Nagar, by the Director of the appellant, in which it has been stated that: G

H

1074

SUPREME COURT REPORTS

[2021] 13 S.C.R.

A “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:

B 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...

C **2. That, right from the beginning there was a plan 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...**

D [...]

E 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.

F 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.

G 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

H

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT 1075
WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.]

be not used in any correspondence or inquiry, rather name of A
company through its Director be used.”

(emphasis supplied)

The above letter puts forth the case that T-16 and T-17 have been B
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 C
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 D
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 E
“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 F
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 G
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 H
and T-17 in accordance with the second revised plan and the third revised

1076

SUPREME COURT REPORTS

[2021] 13 S.C.R.

- A 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 2010 (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

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT 1077
WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.]

addressed to the petitioner society regarding redressal of their grievance is on record...” A

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. B C

F Collusion and Illegal Construction D

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: E

- (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; F
- (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; G
- (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; H

1078

SUPREME COURT REPORTS

[2021] 13 S.C.R.

- A (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
- B (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.
- C 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.
- D 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.
- E 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...”
- F 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.
- G 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
- H authorities.

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT
WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 1079

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

³⁰ (1974) 2 SCC 506

A 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 its jurisdiction irregularly or wrongly but it is usurping powers which it does not possess”. This Court also held:

B “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]).”

C

D

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.

E

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:

F

G “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 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

H ³¹ (1995) 5 SCC 762

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 1081

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, 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

³² (2004) 8 SCC 733

1082

SUPREME COURT REPORTS

[2021] 13 S.C.R.

A 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.”

B

152. In **Priyanka Estates International (P) Ltd. v. State of Assam**³³, Justice Deepak Verma, speaking for a two judge Bench, observed:

C “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 this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder.”

D

E

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.

F

G 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:

H ³³ (2010) 2 SCC 27

³⁴ (2013) 5 SCC 357

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT 1083
WELFARE ASSOCIATION [DR DHANANJAYA Y CHANDRACHUD, J.]

“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.” A B

The Court further observed that an unauthorized construction destroys the concept of planned development, and places an unbearable burden on basic amenities 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: C D

“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.” E F

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: G

“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 H

1084

SUPREME COURT REPORTS

[2021] 13 S.C.R.

A 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.

E **G Conclusion**

156. To summarize our findings, the documentary materials referred to and analyzed in this judgment indicate that:

- F (i) The land allotted to appellant under the original lease agreement and the supplementary lease deed constitute one plot;
- G (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

³⁵ (2019) 7 SCC 248

³⁶ 2018 SCC OnLine SC 3352

H ³⁷ (2019) 19 SCC 161

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT 1085
WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.]

- violative of the minimum distance requirement under the NBR 2006, NBR 2010 and NBC 2005; A
- (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; B C
- (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; D
- (vi) By constructing T-16 and T-17 without complying with the Building Regulations, the fire safety norms have also been violated; E
- (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 F G
- (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 H

A 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

B (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.

C 157. For the reasons which we have indicated above, we have come to the conclusion that:

D (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;

E (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 Roorkee³⁸;

F (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;

G (v) The cost of demolition and all incidental expenses including the fees payable to the experts shall be borne by the appellant; (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

H ³⁸ “CBRI”

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT 1087
WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.]

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 A

- (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. B

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: C

- (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; D
- (ii) The appellant did not collect the lease rent payable to NOIDA from all allottees of T-1 to T-15. An amount of Rs 7.54 crores was received from some allottees;
- (iii) The lease rent paid to NOIDA was in the amount of Rs 14.49 crores; E
- (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. F

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. G

H

1088

SUPREME COURT REPORTS

[2021] 13 S.C.R.

A 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
B 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:

C (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:
D 133;
(v) Purchasers to whom refund has been granted: 248; and
(vi) Remaining purchasers: 252.

E 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.

F 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
G 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:

H

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 1089

- (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 A
- (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: B

Sr. No.	Name	IA no.	Interest due till 1 st 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.

1090

SUPREME COURT REPORTS

[2021] 13 S.C.R.

A **Category 2**

165. Homebuyers to whom principal has been paid but interest payments have remained:

- B (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
- C (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:

D

E

F

G

H

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

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 1091

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, 24997, 29374 & 29386/2020	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		

1092

SUPREME COURT REPORTS

[2021] 13 S.C.R.

A	9	Ashish Sharma	Rs. 11,73,092	Rs. 8,25,030		
	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		
B	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
C	16	Sandeep Jain (*)	Rs. 8,10,866	nil	67854 & 67856/2020	Arjun Garg

The *Amicus Curiae* submits that the amounts calculated above be paid.

D 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.

F **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:

G (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

H

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION [DR DHANANJAYA CHANDRACHUD, J.] 1093

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:

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

1094

SUPREME COURT REPORTS

[2021] 13 S.C.R.

A

B

C

D

E

F

G

H

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 14314/14	Shantanu Krishna	Applicant has not 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 14314/14	Anupam Lal Das	Refund already paid with interest
24	Sajeev Aggrawal	IA 121841/17 & 121842/17	MC Dhingra	Refund already paid with interest

SUPERTECH LIMITED v. EMERALD COURT OWNER RESIDENT 1095
WELFARE ASSOCIATION [DR DHANANJAY Y CHANDRACHUD, J.]

172. The above applications are disposed of as infructuous. A

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.

Ankit Gyan

Appeals disposed of.

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

ORIGINAL APPLICATION NO. 28 OF 2019 (WZ)

Mr. Tanaji Balasaheb Gambhire,
Age : Adult, Occupation : Self-employed,
R/o Flat No.16, CTS-296, Laxmi Apartment,
Near Shivaji Maratha High School,
White House Lane, Shukrawar Peth,
PUNE – 411 002

.....Applicant

Versus

1. Union of India,
Through Secretary,
Ministry of Environment, Forests and
Climate Change,
Paryavaran Bhawan, CGO Complex,
Lodhi Road, New Delhi – 110 001
2. Chief Secretary,
Government of Maharashtra,
Annex Building,
Mantralaya, Mumbai – 400 032
3. The Principal Secretary,
Environment Department,
Government of Maharashtra,
Room No.217, 2nd Floor, Annex Building,
Mantralaya, Mumbai – 400 032
4. Mr. Satish M. Gavai,
Former Principal Secretary of DoE and
Member Secretary, SEIAA,
Presently Ministry of Industry – Government
Of Maharashtra, Annex Building,
Mantralaya, Mumbai – 400 032
5. State Level Environment Impact Assessment
Authority – Maharashtra (SEIAA), through
Member Secretary,
15th Floor, New Administrative Building,
Mantralaya, Mumbai – 400 032
6. State Expert Appraisal Committee-III
Maharashtra (SEAC-III)
Through Member Secretary,
15th Floor, New Administrative Building,
Mantralaya, Mumbai – 400 032
7. Maharashtra Pollution Control Board,
Through Member Secretary,
Kalpataru Point, 3rd Floor, Near Sion Circle,
Opp. Cine Planet Cinema, Sion (E),
Mumbai – 400 022

8. Maharashtra Pollution Control Board,
Through Regional Officer,
Jog Centre, 3rd Floor, Mumbai-Pune Old Highway,
Wakadewadi, Pune – 411 003
9. The Secretary,
Urban Development Department,
Government of Maharashtra,
4th Floor, Annex Building,
Mantralaya, Mumbai – 400 032
10. Pune Municipal Corporation,
Through Commissioner,
Shivaji Nagar, Pune – 411 005
11. Building Permission Department – PMC
Through City Engineer,
Pune Municipal Corporation,
Shivaji Nagar, Pune – 411 005
12. Mr. Prashant Waghmare-City Engineer,
Pune Municipal Corporation,
Shivaji Nagar, Pune – 411 005
13. Collector of Pune,
As Collector and President of District
Environment Protection Committee, Pune,
Collector Office, Bund Garden,
Pune – 411 001
14. Ministry of Defense,
Through Secretary,
Room No.101-A, South Block, MoD,
New Delhi – 110 011
15. General Officer Commanding-in-Charge,
Southern Command,
Through the Station Commander,
Station Headquarters, Dakshin Maharashtra
Sub Area, Southern Command,
Camp, Pune – 411 001
16. M/s Raviraj Bokadia Creative,
A Partnership Firm registered under the
Partnership Act, 1932, having registered office
At Office No.1 to 5, Second Floor,
Millennium Star, Next to Ruby Hall Clinic,
Dhole Patil Road, Pune – 411 001,
Through its Partners
16A. Ravindra Naupatlal Sakla
16B. Raviraj Abhinandan Associates LLP

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant : Applicant-in-Person

Respondents : Mr. Rahul Garg, Advocate for R1 and R-10 to R-12
Mr. Aniruddha Kulkarni, Advocate for R-3, R-5 & R-6
Ms. Manasi Joshi, Advocate for R-7 and R-8
Mr. Saket Mone, Advocate along with Mr. Abhishek
Salian, Advocate for R-16

=====
Reserved on : 18.01.2023

Pronounced on : 22.02.2023
=====

JUDGMENT

1. This Original Application has been filed to get the Environmental Clearance (for short, "EC") dated 15.06.2018 declared ab initio void as the same is revised/modified/amended version of the EC dated 10.11.2017 granted by Pune Municipal Corporation ("PMC", for short), on the basis of quashed Environmental Impact Assessment (EIA) Notification dated 09.12.2016 by order dated 08.12.2017 passed by this Tribunal in Original Application No.677 of 2016; a direction is prayed to be issued to the respondents to demolish the illegal structures at the site in question and restore the area to its original position; a direction is prayed to be issued to respondent No. 16 – M/s Raviraj Bokadia Creative (Project Proponent) to deposit the amount of compensation in Environment Relief Fund; further it is prayed that respondent No.16 – Project Proponent be directed to deposit the exemplary and deterrent special damages on account of violations of Environment Enactments by doing concretization of space resulting in no plantation of trees;; respondent No. 5 – SEIAA and respondent Nos.7 and 8 – MPCB be directed to initiate appropriate action against respondent No. 16 – Project Proponent, including prosecution for violation of EIA Notification, 2006 and other applicable pollution control laws; direct respondent No.2 – Chief Secretary, Govt. of Maharashtra to conduct inquiry against the officers responsible for not following the mandatory provisions of the EIA Notifications and other applicable environment enactments and take appropriate legal action against them; respondent No.2 – Chief Secretary, Govt. of Maharashtra be directed to take appropriate action against respondent No. 4 – Mr. Satish M. Gavai for recommending, granting the EC in violation of EIA Notification, 2006 and recover the amount of damages/fine/cost from his

2417

salary; further it is prayed that respondent No. 9 – Secretary, Urban Development Department, Govt. of Maharashtra be directed to initiate departmental enquiry against respondent No.12 – Mr. Prashant Waghmare, City Engineer for not having taken action despite notice of environmental violations and recover the amount of damages/fine/cost from his salary.

2. The facts of this, in brief, are as follows:-

This Original Application is filed as per liberty granted vide order dated 11.01.2019 passed by this Tribunal in Original Application No.1 of 2019 as the EC/communication dated 15.06.2018 granted by SEIAA to respondent No.16 – Project Proponent within two days without mentioning the same in Agenda of 132nd Meeting and granting continuation/amending/expansion to the EC dated 10.11.2017 granted by PMC as per the S.O. 3999 (E), EIA Notification, 2016 (which has been quashed by this Tribunal in Original Application No.677 of 2016 vide order dated 08.12.2017). The present application is against the EC/communication dated 15.06.2018 granted by SEIAA without authority and thereby committed gross infringement of provisions of the Environment (Protection) Act, 1986 read with EIA Notification, 2006 along with the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 for carrying out illegal building construction in the Project “93 Avenue” without prior EC and Consent to Establish. The said project is situated in Survey Nos.93A/1A/2, 93A/2, 93A/3, 93A/4 of village Wanwadi, Taluka Haveli, District Pune. The total project land is admeasuring 12,700 sq.mtrs from the above parts of survey numbers but the same is not correct area as encroachment has been made in the adjacent area reserved for other purposes. The Project Proponent has undertaken construction of the commercial building phase-wise from Phase-I to Phase-III. The Project Proponent – respondent No.16 has filed measurement plan dated 08.06.1981 issued by the City Survey Office along with remarks of the Assistant Engineer, Development Plan Division of PMC, which

measurement plan is 21 years old surprisingly done by the Secretary of Indian Christian Cemetery, absolutely not related to this project. It was the duty of the Project Proponent to submit the latest plan revealing the exact site condition and changes occurred therein due to various reasons. The project site is included under "No Development Zone/Agricultural Zone" after deletion of Garden Reservation No.M-324 from Development Plan sanctioned on 05.01.1987 by PMC, but the Project Proponent carried out the construction of Mall. The Project Proponent has relied upon the order dated 15.12.2004 passed by the Additional Collector, Pune granting permission to change the use of said larger land from Agricultural to Non-Agricultural (residential) use. The Project Proponent without change in the Development Plan declared that his land had been converted in residential zone. This conversion from No Development Zone to Residential Zone for construction of commercial structure has been done without obtaining permission from the concerned authority. As per the D.C. Regulations, 1987 of PMC, there is prohibition for construction of shops and other commercial activities on Pune-Solapur road (NH-9) starting from Swargate Chowk to PMC limits at Hadapsar. The PMC officers have conveniently neglected to enforce this prohibition and allowed the Project Proponent to proceed with purely commercial activity in violation of D.C. Rules and provisions of the MR&TP Act, 1966. The DC Regulations were modified on 05.06.1997 and out of 58 restricted roads, 29 roads were allowed to make commercial developments of showrooms having no access to the roads, which has been mentioned in the Proviso. This shows that the present project is in complete violation of clause (i) activity.

3. Further, it is submitted in the Original Application that the Project Proponent – respondent No.16 has filed manipulated measurement plan dated 08.06.1997 issued by the City Survey office, which can be seen as the measurement plan dated 08.06.1997 does not show the specification table pertaining to the land use, which was present in the measurement plan dated 08.06.1981 for development. The

Project Proponent has relied upon the order dated 02.06.2001 passed by the Additional Collector, Pune for payment of Rs.93,98,968/- on account of Nazarana/unearned income towards the change of tenure use from Agricultural to Non-Agricultural (Residential) use. This Non-Agricultural permission ought not to have been granted on “no development zone” unless the Development Plan of the city had been changed. The Additional Collector, without going into this aspect that the land is no development zone, has proceeded to change land use. The Non-Agricultural permissions were issued only for residential buildings but actual development is of commercial mall. The revised Development Plan of 2007 never showed that the land is in Commercial Zone.

4. It is further submitted that the PMC has issued 14 sanctions, which are as follows:-

Sr. No.	Commencement Certificate No.	Date of sanction
1.	DPO/2007/VI/55	03.01.2001
2.	CC/4874/2000	30.03.2001
3.	DPO/4740/VI/78	29.03.2001
4.	DPO/5128/VI38	06.09.2003
5.	DPO/3451/VI/36	07.08.2004
6.	DPO/10023/VI/73	08.03.2006
7.	CC/0005/06	01.04.2006
8.	DPO/SEC6/0051/07/118	08.10.2007
9.	CC/3020/07	04.01.208
10.	CC/2634/16	22.11.2016
11.	CC/0527/17	25.05.2017
12.	CC/3314/17	12.03.2018
13.	CC/3309/17	12.03.2018
14.	CC/0589/18	07.06.2018

5. It is submitted that the Project Proponent – respondent No.16 has obtained sanction on 30.03.2001 for residential development and

thereafter revised the sanction for buildings and layout for 14 times, vide orders dated 01.04.2006, 04.01.2008, 22.11.2016, 25.05.2017 and 07.06.2018. The Project Proponent has procured the revised layout sanctions for substantial changes as per the following dates:-

“DPO/2007/VI/55 dated 03.01.2001, revised vide DPO/4740/VI/78 dated 29.03.2001, further revised vide DPO/5128/vi/38 DATED 06.09.2003, further revised vide DPO/3451/VI/36 dated 07.08.2004, further revised vide DPO/10023/VI/73 dated 08.03.2006, further revised vide DPO/SEC6/0051/07/118 dated 08.10.2007, further revised vide DPO/SEC6/0051/07/118 dated 08.10.2007 and CC/3314/17 dated 12.03.2018”

6. According to the applicant, the Project Proponent has changed his residential proposal to commercial vide revised layout sanction dated 07.08.2004. As per the Commencement Certificate issued under the dC Rules, the CC permission is valid only for one year. Thereafter, the PMC issued revisions vide Commencement Certificate dated 22.11.2016, after lapse of eight years from last permission dated 04.01.2008 without taking any legal recourse under the Maharashtra Regional & Town Planning Act, 1966 (MR&TP Act). The PMC has not issued any revision or permission from 04.01.2008 till 22.11.2016. Therefore, as per Sections 44 and 45 of the MR&TP Act, the sanction issued to the present project became invalid, as the building sanction commencement is valid only for one year.

7. It is submitted by the applicant that the Project Proponent has procured Plinth Check Certificate on 21.07.2007. The net plot area shown by the Project Proponent in various sanctions is as follows:-

Commencement Certificate	Net Plot Area (Sq. Mtrs.)	Permissible TDR	TDR claimed (Sq. Mtrs.)
CC/0005/06 01.04.2006	10938.41	0	0

2421

DPO/SEC6/0051/07/118 08.10.2007	10938.41	40% 4375.36	4375.36
CC/3020/07 04.01.2008	10938.41	40% 4375.36	3370.00
CC/2634/16 22.11.2016	10938.41	40% 4375.36	3370.00
CC/0527/17 25.05.2017	10938.41	1.40 17054.18	3370.00
CC/3314/17 12.03.2018	11504.35	1.40 16106.09	Slum-2100 Reserv-5969.96
CC/0589/18 07.06.2018	11504.35	1.40 16106.09	Slum-2100 Reserv-7418.15

8. It would emerge from the above table that the net plot area is increased from 10938.41 sq.mtrs. to 11504.35 sq.mtrs., which is completely illegal. At the time of calculating the net plot area in Revision dated 07.06.2018, the Project Proponent has not reduced the open space and transformer area from net gross area. Therefore, the net plot area shown to the extent of 11504.35 sq.mtrs is illegal but the same was approved by the PMC overriding the auto-DCR generated only to benefit the Project Proponent.

9. The Transferable Development Rights (TDR) loading is increased from 40% to 140% i.e. from claimed 4375.36 sq.mtrs. to 16106.09 sq.mtrs. The TDR loading shown is 9518.15 sq.mtrs. (Slum 2100 + reservation 7418.15 sq.mtrs.) against illegal TDR claim of 16106.09 sq.mtrs. The Project Proponent has utilized TDR for 45 Mtr. D.P. Road widening on an area 518.44 sq.mtrs. to the extent of 1036.88 sq.mtrs. and further the Project Proponent has utilized TDR for an area of 677.21 sq.mtrs. but road widening areas are not handed over to the PMC, which is totally illegal and in violation of DC Rules. The Project Proponent has claimed net plot area to the extent of 11504.35 sq.mtrs. without excluding recreational open space of 1218.15 sq.mtrs. for the computation of FSI and TDR instead of 10938.41 sq.mtrs. The development started in the year 2000 with the applicability of DC Rules Provisions of 1987 and therefore, the Project Proponent cannot take benefit of new DC Rules, 2017 merely because of non-issuance of

2422

occupancy certificates. The Project Proponent has claimed FSI to the tune of 1.25 and TDR 1.40% of net plot area, which is totally illegal as these loadings will give counterblast to the provisions of occupant load and tenement statements. Moreover, purely commercial development on Pune-Solapur road is totally illegal.

10. It is further submitted in the application that as per the DC Rules, 1987, the ramp slope must be in the form of 1:10 but the Project Proponent has provided only 1:5 ramp slope, which is harmful for smooth vehicle movement up and down and can cause damage to the life of passengers/visitors. Considering the ramp slope of 1:5, it is required to close the basement permanently.

11. It is submitted that the Project Proponent has changed residential proposal to commercial vide revised layout sanction dated 07.08.2004, showing floors B+G+5 having height 25.61 Mtrs. with front and rear margin space 7.5 Mtrs and the side marginal space 9.00 Mtrs. The actual height of the building is more than 25 Mtrs., but the Project Proponent has shown only 23.98 Mtrs., therefore, marginal spaces for the present building should be more than 7.5 Mtrs. The Project Proponent himself in EC dated 17.10.2017 has admitted that the turning radius for fire tender movement is 7.5 Mtrs., but the marginal space to this building is less than 6 Mtrs. The front marginal space is 3 Mtrs, side marginal space and rear marginal space is 6 Mtrs and side marginal space at open space-3 is 3 Mtrs as shown in the sanctioned plan dated 07.06.2018. Therefore, it is apparent that only 3 Mtrs side marginal space is provided at open space-3 instead of 7.5 Mtrs marginal space. The side margin is less than 3 Mtrs at various points of marginal spaces around the buildings, therefore, the fire tender movement cannot be achieved. The calculation of net plot area is flawed, which is revealed from the approved plan dated 07.06.2018 and the condition No.22 of the EC dated 10.11.2017 for maintaining turning radius for easy access for fire tender movement from all around the building, excluding the width for plantation is 7.5 Mtrs, which is not maintainable at all.

12. It is submitted that the project in question is sharing common boundary wall with Defense Establishment but No Objection Certificate has been obtained from the Ministry of Defense as per Section 7 of the Works of Defense Act, 1903. On a complaint made by the applicant on 01.10.2018, the Defense Establishment has initiated action against the Project Proponent. The Project Proponent has submitted false submission in form-1 that there is no Defense installation within 15 kms. The Project Proponent has made excavation on the plot for construction of commercial building. Therefore, it was necessary for him to pay royalty to the Mining Department under Collector, Pune, which has not been done and hence, the Project Proponent has duped the exchequer.

13. It is laid down in EIA Notification, 2006 that the building project having BUA of more than 20,000 sq.mtrs would require EC. The present project has potential of BUA of more than 20,000 sq.mtrs. from the beginning i.e. 04.01.2008, therefore it was mandatory for the Project Proponent to obtain prior EC, but without having procured it, the Project Proponent had carried out construction from 2007 to 2010 and then the construction work was stopped for unknown reasons. The Project Proponent obtained plinth check certificate for construction under violation on 21.07.2007. The MoEF&CC has issued Notification dated 04.04.2011 clarifying the EIA Notification, 2006 for the total built up area for the purposes of obtaining EC under EIA Notification, 2006, which includes all commercial area of all floors. The respondent No.10 – PMC had imposed condition on the Project Proponent to obtain EC and consents from the State Pollution Control Board, which is evident from the following details in tabular chart:-

Sr. No.	Commencement No.	Date	Condition No.	BUA
1	CC/2634/16	22.11.2016		35938.2
2	CC/0527/17	25.05.2017	19	32744.95
3	CC/3314/17	12.03.2018	27	47454.97
4	CC/0589/18	07.06.2018	4	49765.13

14. It is submitted by the applicant that the Project Proponent carried out the construction for total BUA of more than 20,000 sq.mtrs. after revalidation of plans 22.11.2016 and before illegal EC dated 10.11.2017 without caring for causing damage to the environment.

15. The MoEF&CC issued Notification dated 09.12.2016 as a counter blast to original EIA Notification dated 14.09.2006, which was issued to help polluters who had not obtained prior EC and started their scheduled activity. The Project Proponent got an opportunity to get the illegal constructions legalized under the Notification dated 09.12.2016 for grant of EC which has been illegally granted by the PMC. The Project Proponent had already crossed limit of 20,000 sq.mtrs. BUA well prior to year 2017 and it is well admitted fact by the Project Proponent that “#” Item No.7 of EC dated 10.11.2017 note on initiated work showed that the Project Proponent has completed 13,700 sq.mtrs. while in fact at the project site, the Project Proponent had completed 20,000 sq.mtrs. of BUA.

16. An Original Application No.677 of 2016 was filed before this Tribunal (Principal Bench) challenging EIA Notification, 2016 wherein on 21.12.2016 on M.A. No.1298/2016, following order was passed:-

“This is an Application praying for interim stay of the Notification dated 09th December, 2016 since we have fixed the matter for hearing on 04th January, 2017 we do not wish to stay the Notification dated 09th December, 2016. However, all the acts done in the meanwhile will be subject to final orders that would be passed in the matter. Accordingly, M.A. No.1283 of 2016 stands disposed of without any order as to costs.”

17. Thereafter, the NGT passed order dated 15.02.2017 in the same Original Application on M.A. No.148 of 2017 to the following effect:-

“All action taken in the meanwhile including any benefit accruing to any of the stakeholder including private parties will be subject to final orders of the Tribunal.”

18. Thus, the EIA Notification dated 09.12.2016 was partly quashed by NGT vide order dated 08.12.2017 in Original Application No.677 of 2016 with clear direction “2..... (iii) Appendix-XVI relating to constitution

and functioning of Environmental Cell, cannot be sustained and are liable to be quashed for the reasons aforestated....”

19. It is submitted by the applicant that by above judgment of NGT, it is clear that the Environmental Cell created at the level of Authority was declared null and void. Therefore, the present case is a specific case of violation as the local authority has committed intentional negligence.

20. Both the EIA Notifications of 2006 and 2016 do not provide for *ex post facto* EC, which is a concept alien to the environment jurisprudence. Issuing of EC is not a mechanical exercise. It requires meticulous and dispassionate study.

21. According to the applicant, the local authority in the case in hand knowingly issued *ex post facto* EC dated 10.11.2017 for a project which is already in violation and having total constructed BUA potential more than 20,000 sq.mtrs. Therefore, PMC in connivance with the Project Proponent has caused damage to the environment and ecology.

22. The Notification dated 14.03.2017 has been issued by the MoEF&CC to deal with the cases which require *ex post facto* Environmental Clearance (EC) in cases where expansion or modernization of any activity, requiring EC exceeds the existing pollution load. The EIA Notification dated 14.03.2017 has been issued for regularization of the projects under violation but the Project Proponent did not apply under the same. The Project Proponent in order to overcome the illegality of EC dated 10.11.2017 approached with ulterior motive to SEIAA on 13.06.2018 and procured the EC dated 15.06.2018 (impugned herein) without there being any appraisal by SEAC. The Project Proponent applied for EC before SEIAA/SEAC on 13.06.2018 for expansion/modernization and was granted EC within two days on 15.06.2018. There was no mention of a meeting of SEAC having been made in which the project was appraised, nor is there mention of the project in the agenda of 132nd SEIAA meeting in which the project seems to have been considered for assessment. The SEIAA ignored the fact that the work had already been initiated by the Project Proponent without EC.

The amended EC is issued by Mr. Satish M. Gavai, who was facing enquiry pursuant to the order dated 27.09.2016 passed by this Tribunal in Original Application No.184 of 2015 in personal capacity by misusing his powers, therefore, amended EC dated 15.06.2018 is illegal. Mr. Satish Gavai had issued various show-cause notices for having committed violations and for the reasons best known to him, had withdrawn the same and later on issued the EC in question without appraisal of assessment of the proposal.

23. It is further submitted that the Hon'ble Supreme Court in C.A. No.10854/2006 in order dated 10.08.2018 has observed as below:-

“We uphold the original order dated 27.09.2016 holding that the construction raised by the project proponent was in violation of environment clearance granted to it on 04/04/2008. We uphold the fine imposed upon the PMC and the direction given to the PMC to take appropriate action against the erring officials. We also uphold the direction given to the Chief Secretary to the State of Maharashtra shall look into the conduct of the official holding the post of Principal Secretary (Environment) to the Government of Maharashtra on 27.09.2016 and will submit his report to the NGT within three months from today.”

24. The Project Proponent has not obtained Consent to Establish nor has he obtained permission to extract the ground water for construction and is discharging polluted water to the sewer line of PMC. The dust from the project is spreading all around and the sewage generated from construction work camp is directly flowing to the PMC sewer line. The DG sets which are installed are emitting huge pollution in the air. The Project Proponent has procured ex post facto Consent to Establish from MPCB on 07.01.2019. After a complaint was made by the applicant, notice dated 29.10.2018 was issued to the Project Proponent pointing out violation pertaining to the Consent to Establish. The MPCB had issued warning notice dated 16.01.2019 to the Project Proponent for non-compliance of the consent condition and EC.

25. The project is situated on the main road where there is heavy traffic. The PMC, vide letter dated 26.10.2007, had directed the Project Proponent to obtain the NOC from the Traffic Department but the same was not obtained. The Project Proponent has drilled three bore-wells for

extracting water for construction from the authority concerned nor has the Project Proponent tested the ground water. The Project Proponent has not preserved the soil which he has excavated and was required to be used for development of recreational space and plantation of the trees.

26. The BUA potential as per sanction dated 08.10.2007 was 26,556.03 sq.mtrs. and the total BUA potential as per sanction dated 04.01.2008 was 35,806.5 sq.mtrs., which is evident from the following table:-

Sr. No.	Description	Area in Sq.Mtrs.	
		08.10.2007	04.01.2008
01	F.S.I.	14850.00	13700
02	Enclosed Balcony	1633.03	1620.85
03	Staircase		1262.54
04	Passage		2881.29
05	Lift Lobby		1567.28
06	Enclosed Lobby		164.40
07	Atrium		2270.55
08	AHU Room		420.07
09	Lift		54.62
10	Parking Area provided	10073.00	11864.90
	Total	26,556.03	35,806.5

27. The Project Proponent disclosed the total BUA of 35,938.2 Sq.Mtrs against 22.11.2016 sanction, 32,744.95 Sq.Mtrs. against 25.05.2017 sanction, 47,454.97 Sq.Mtrs. against 12.03.2018 sanction and 49,765.13 Sq.Mtrs. against 07.06.2018 sanction of PMC, as shown in the following table:-

Sr. No	Description	Area in Sq.Mtrs.			
		22.11.2016	25.05.2017	12.03.2018	7.06.2018
1.	F.S.I.	13700	14322.51	24089.51	25476.66
2.	Enclosed Balcony	1620.85	1696.13	1696.11	1696.11

2428

3.	Open Balcony			511.01	434.02
4.	Staircase	1262.54	909.76	1355.52	1355.52
5.	Passage	2881.29	5991.04	5977.31	5977.31
6.	Lift Lobby	1567.28	970.76	970.76	970.76
7.	Enclosed Lobby	164.40	159.76	159.76	159.76
8.	Atrium	2270.55	484.86	484.86	484.86
9.	AHU Room	420.07	155.52	155.52	155.52
10.	Lift	54.62	54.61	54.61	54.61
11.	Lift M Room	131.70			
12.	Parking Area provided	11864.90	8000	12000	13000
	Total	35,938.2	32,744.95	47,454.97	49,765.13

28. The Project Proponent procured Plinth Check Certificate on 21.07.2007 and carried out construction till 2010 as per the sanction plan dated 04.01.2008 and completed construction of more than 20,000 sq.mtrs. in the form of B+B+G+1+2+3+4 and 5th floor under construction. The EC in question dated 15.06.2018 is granted for total BUA 51,834.47 sq.mtrs. and the BUA sanctioned by PMC is 49,765.13 sq.mtrs. against last sanction dated 07.06.2018.

29. The Project Proponent has installed one DG set of 180 KVA for electric supply without any permission, which is releasing NOx, Sox, CO, etc. and making noise more than 60 decibel without any acoustic enclosure to control the noise.

30. The Project Proponent had undertaken to plant 158 trees in Form-1A, but there is no space for plantation. As per DC Rules, 1987, 10% open space of area was to be provided after deducting DP roads, which has not been left in one place,. The said area was not to be less than 400 sq.mtrs, which is not done in the present case. The Project Proponent has provided open space at three places viz. Open Space-1, Open Space-2 and Open Space-3, admeasuring 610.01 sq.mtrs, 215 sq.mtrs and 393.52 sq.mtrs, respectively. Out of them, Open Space-2 and Open Space-3 are less than 400 sq.mtrs. Total open space provided by the

Project Proponent is 1218 **2429** sq.mtrs., which is affected by the road widening shown in the DP Plan-2017. Therefore, these spaces are not to be treated as open space but are part of DP road widening.

31. In Form No.1, the Project Proponent has indicated that there is excavation of top soil quantity to 6189.12 cu.mtrs., excavation of quantity of soft rock and hard rock to the tune of 27,851 cu.mtrs. and excavation of quantity of murum to the tune of 12,348 cu.mtrs. and this is done without applying any impact assessment. The Project Proponent is using glass for covering the buildings which is generating huge amount of heat and has suppressed actual quantity of building material required for construction in Form-1. The restoration of this area would require the expenditure of more than Rs.110 Crores.

32. As per EC dated 10.11.2017, the occupant load would be 5473 persons while as per PMC sanction plan dated 07.06.2018, the occupant load would be 3831 persons. Therefore, the Project Proponent has provided false and misleading information. The Project Proponent has provided false information in relation to natural resources for construction or operation of the project such as land, water, materials or energy. Hence, the above prayers.

33. When the matter was first taken up on 27.03.2019 for consideration by this Tribunal (Principal Bench), vide order dated 27.03.2019, it has been recorded that since the impugned order is appealable and no appeal has been preferred and is even time barred, the validity of Environment Clearance (EC) is not proposed to be dealt with. Thereafter, the learned counsel for the applicant pressed the prayer for quashing the EC on account of violation of conditions of EC, which find mention in the order of this Tribunal dated 27.03.2019. It is recorded in the said order that before considering the said violations, it was necessary to have a report of the Joint Committee which was constituted by the Tribunal and accordingly, the said Committee was constituted which has submitted its report dated 25.04.2019 (pages 861 and 862 of the paper-book), wherein it is mentioned that the site was visited by the

2430

Committee on 19.04.2019 and that the Project Proponent was asked to make available various documents. Nothing of consequence is contained in that report.

34. The order-sheet dated 04.07.2019 indicates that the Joint Committee report dated 25.04.2019 was before the Tribunal against which the applicant has raised objections.

35. When the matter was considered by the Tribunal on 05.02.2020, it was recorded that on perusal of the report and exceptions taken to it by the applicant, the Tribunal was satisfied that crucial questions involved in the case have not been addressed by the Committee and found the report to be un-satisfactory. Therefore, the matter was remanded to the Committee for examining the questions afresh based upon the points taken by the applicant. It was further directed that during the examination of the objections and site visit that would be necessary, the applicant was permitted to be present and to participate in order to ensure effective exercise to be undertaken by the Committee. Thereafter, the Joint Committee has, in compliance of the said order, submitted the report on 29.11.2019, which is quoted herein-in-below:-

“REPORT OF THE COMMITTEE IN RESPONSE OF THE REPLY AFFIDAVIT FILED BY THE APPLICANT DATED 07 SEPTEMBER 2019.

A. INTRODUCTION

1. Scope: *The committee wishes to respond to the aforementioned affidavit by the applicant, largely in the confinement of the operative part of the previous Daily Order by the Hon'ble Tribunal dated 27-03-2019, while providing clarification on all the 7 points mentioned therein. Also, the committee wishes to refute the allegations against the Committee and State level Environment Impact Assessment Authority. All these allegations are baseless, derogatory, painful and hence denied in totality.*

2. Limitations: *For judging certain aspects, such as Traffic Analysis the observations over certain time period, viz. whole day, a week, and at different nodes around the site are very useful. Such data is not available.*

3. *The project is going on since 2003-04, as such the correct nature of the soil and the sub-soil water, the manner of soil disposal at that point of time cannot be assessed by the Joint Committee.*
4. *Absence of certificates stating the completion of various stages of building construction, except the plinth stage by the PMC, or the photographic documentation of the building construction progress, makes it difficult to decide if the construction is in lawful-time-limit. The Joint Committee has to rely on the Architect's Certificate to understand the consumption of FSI Area and Total Built up Area [TBA] from time to time. The mere statement of areas on the drawings, those are approved by the PMC and the Commencement Certificate issued thereafter, is not a proof of consumption of the entire specified area.*
5. **Keeping faith with certain Government Organizations:** *The Committee stands by the expertise of SEIAA Maharashtra State, the then Environment Cell of Pune Municipal Corporation [PMC], the PMC, and the office of Chief Fire Officer (CFO) of PMC in granting the Environmental Clearance [EC], permitting the integration of Environmental Conditions in to the project, in permitting and monitoring building construction projects, and in issuing permission to the Fire related Disaster Management respectively.*

B. THE BUILDING

1. *The project proposal "Commercial Building" now called as "93 Avenue" at S. No. 93A/1A/2, 93A/2, 93A/3, 93A/4, Wanwadi, Pune is adjoining Pune — Solapur Road [NH-9]. The project proposal has got approvals several times to function as a Commercial Building by the PMC in the aforesaid vicinity.*
2. *From the drawings shown to the committee, it appears that there is an approval to the basement and parking floor [which is partly below the ground and partly above and is on a sloping ground], vide building permission by the PMC No. 10023/VI/ 73 dated 08-03-2006.*
3. *It is a single building that houses shops, offices, restaurants, theaters and food court, all in single enclosure over a piece of land of 12,700m² area. The project proponent [PP] has developed the project so as to consume all the Floor Space Index [FSI]; within the frame-work of Development Control [DC] rules. As the project progressed the DC rules are modified/amended and the PP got the additional FSI. Thus the building became large (in footprint) & taller. As and when the PP will have to concede the plot area for road widening, the plot will look smaller and relatively the building will look bigger.*
4. *This building has a striking semi-circular recess on its front façade and a large semi-circular canopy at the tall height. This canopy is covered by glass and is at the height of almost 18m, as such it exposes the podium to natural light, rain, etc. The part of the podium below this canopy is largely exposed to the environment.*

C. CHRONOLOGY : **2432**

1. **The chronology of giving the Environmental Clearance [EC] to the "Commercial Building" now called as "93 Avenue" at S. No. 93A/1A/2, 93A/2, 93A/3, 93A/4, Wanwadi, Pune.**
2. Construction started as per Sanction No. DPO/ 5128/ VI/ 35dated 06-092003 and went on to the extent of **13700.00 m² [FSI area]**. It has stopped in 2007-2008 started again in 2017-2018. The exact dates of the stopping and restart of construction activity, are unknown. This time period covers the time, even before the MoEF's EC/EIA Notification 14-09-2006.
3. After the building permission dated 04-01-2008, the next permission is obtained on 22-11-2016; both are for the **FSI area of 13700.10m² [TBA: 35278.17 m². Ref. Architect's Certificate dated 14-04-2019]**. This time period covers the Total Built up Area norms as per the clarification by MoEF Notification dated 04-04-2011.
4. The PP has sought the building permission for the increased **FSI area of 14322.51m²[TBA: 39243.07m². Ref.: Architect's Certificate dated 14-04-2019]**, and got same from PMC on 25-05-2017. The PP sought the Environmental Clearance [EC] on account of increase in the total built-up area due to amendments and the proposed project was in purview of Environmental Clearance vide MOEF&CC amended notification dated 09-12-2016 and Government of Maharashtra, UDD Directives u/s.154 No. TPS-1816/ Cr- 443/ 16/ RP Directives/ UD-13 dated 13-04-2017.
5. The Environment Cell [of 6 experts] of PMC has appraised and assessed every parameter of the EC and recommended the project proposal for the building approval under the Integration of Environmental Conditions for Project Category-2 on 10-11-2017. The proposal was considered as per directives of Government of Maharashtra Notification No. TPS1816/CR443/16/ DP/Pune & Konkan/UD-13 dated 28-06-2017.
6. This was the EC for various environmental considerations. Only the points relevant to this report are as below:

Plot Area:	12700.00m ²
Net Plot Area:	1093 8.40m ²
FSI Area:	22689.18m²
Non-FSI Area:	25795.17m ²
Total BUA:	48484.35m²
Ground Coverage:	5471.71m ²
Building Configuration:	Basement+ Lower Ground+ Ground+4, Total Height:20.98m.

2433

<i>[Lower Ground is the Storey that is embedded in the slope. In this case, there is a slope from contour level 101.40 m to 103.55 m as mentioned in Sr. No. 2. Topography and Natural Drainage of this EC.]</i>	
<i>Users:</i>	5 4 7 3
<i>Sub-soil Quantity:</i>	6189 m ³

Disposal Method of sub-soil:

Site	Quantity in m³
<i>Landscaping of 93 Avenue Site</i>	2000
<i>Citadel, Enclave, S. No. 51/1/6, 51/7/7, 51/1/8, B. T. Kawde Road, Ghorpadi, Pune.</i>	3000
<i>Solace Park, B. T. Kawde Road, Ghorpadi, Pune.</i>	1189
	6189

Green Belt Development

<i>ROS Area:</i>	1218.16 m ²
<i>Tree Plantation:</i>	158
<i>Power Requirement:D.G. Set for Construction Stage AND as back-up power</i>	1No.x 62.5 kVA
<i>Construction Water Requirement:</i>	45 m ³ /day, Source of Water: Tanker

Traffic Management

<i>Cars</i>	<i>Scooters</i>	<i>Cycles</i>
539	1633	643

7' The PP obtained the building permission on 12-03-18 for the **FSI Area:24089.51m²[TBA:49953.12m².** _Ref.: Architect's Certificate dated 14-04-2019].

8. The PP got Revised Fire NOC for Shopping Mall & Multiplex Building for the full height of 23.98 m. on 22-05-2018.

2434

9. The PP has amended the proposal for the addition of one floor and got the building permission vide No. Revised CC/ 0589/ 18 dated 07-06-2018 for the **FSI Area:25476.66 m²**[Total BUA:51834.47 m²]

10. State level Environment Impact Assessment Authority [SEIAA] has assessed the aforesaid amended project proposal in 132th meeting on 14-06-2018 for the expansion[addition of one storey as indicated in the Form-1]. Impact on the environment, on account of increase in the total built up area, was assessed for each parameter of the EC. The SEIAA noted that there is no increase in the Ground Coverage. Out of the 54 points assessed the following points are relevant to this report:

Plot Area:	12700.00 m ²
Net Plot Area:	11504.35 m ²
FSI Area:	25476.66 m²
Non-FSI Area:	26357.81 m ²
Total BUA:	51834.47 m²
Ground Coverage:	5 4 7 1 . 7 1 m ²
<p>The Project Proposal is assessed in the SEIAA meeting for the following Building Configuration: Basement+ Lower Ground+ Ground+ 5 (5th floor is an additional floor), Total Height:23.98m.</p> <p>Ref.:Consolidated Statement: SEIAA-Statement-0000001472, Sr. No. 13, Page 1 of 10 read in conjunction with Sr. No. 22, Page 1 of 10, and Form 1, Sr. No. 5, Page 1 of 16.</p>	
<p>[Lower Ground is the Storey(floor) that is embedded in the slope. In this case there is a slope from contour level 101.40m to 103.55m.]</p>	
Users:	6023
Green Belt Development	
ROS Area:	1218.16 m ²
Tree Plantation:	158
<p>Ref.: Consolidated StatementSEIAA-Statement-0000001472, Sr. No. 44.</p>	
Power Requirement: D.G. Set for Construction Stage and as a power back- up:	1No.x 62.5 kVA -

Traffic Management

Cars	Scooters	Cycles
620	1880	790

11. The EC is granted on 15-06-2018.[The EC is normally granted as soon **as the** minutes are finalized.]

12. The Six Monthly Compliance Report is submitted on 28-06-2018 for TBA: 42600 m².

13. The Six Monthly Compliance Report is submitted on 28-06-2018 for TBA: 51834.47 m².

14. The **Joint Committee has visited the site to inspect the 7 points raised by the NGT in response to the appeal and submitted the report on 25-042019.**

15. The NGT has sought clarification on the aforesaid report.

D. THE CLARIFICATION

Sr.	Issues for clarification	The clarification
1	Junction at exit and entry point of project can cause huge traffic obstacle.	Though no such issue is raised by the Environment Cell of PMC, the Joint committee has applied its own mind. It has observed the complete stretch of 1 km on both the sides of the site, travelled to and fro directions, observed the buildings around for their traffic generation capacity, and also noted the varied users and varied vehicles with respect to the work time. It also looked in to the parking space provision, the access length and entry exit points. The Joint Committee is of opinion that there will not be huge traffic obstacle at the junction of exit and entry points of the project site.
2	No permission for	It is submitted by the PP before Environment

	Ground water extraction.	<p>Department that no ground water will be used for construction of the project and accordingly tanker water issued for the project construction.</p> <p>Reference:</p> <p>Form no. 1, clause no. 1.23 on page no. 6 of 16. Form no. 1, clause no. 2.2 on page no. 7 of 16</p>
3	No ground water test and for construction of basements.	<p>The Project Proponent has tested the water and the results are available for the reference.</p>
4	No soil preservation and no soil test by PP.	<p>Soil Testing has been carried out.</p> <p>Reference:</p> <p>Form no. 1, clause no. 1.4 on page no. 6 of 16.</p> <p>Excavated soil and earth had been transported and used on project site for back-fill and landscaping purposes; and on other projects of the same firm namely, Raviraj Group. The list of projects where soil and earth have been reused are as per clause no. C.6 of this report. It appears that this information has been presented to the Environment Cell of PMC.</p>
5	Total BUA proposed and actual construction.	<p>The entire information on FSI and non-FSI area is in the form of the building permissions by the PMC and the Architect's certificate, respectively. The Joint Committee has observed that the work is being carried out on the site as per the building permission dated 07-06-2018 [the basis of the assessment by SEIAA].</p>
6	Illegal installation and operations of the DG sets.	<p>In the information provided for Environment Clearance, details of DG sets were provided [number and capacity]. The Environment Cell of PMC has already appraised and assessed this parameter. Further it was also assessed by the SEIAA.</p> <p>During the inspection the Joint Committee has</p>

2437

		<p>observed total 3 numbers of D.G. sets, two each of capacity 1010 kVA and one of capacity 250 kVA [total 2270 kVA] as against the sanctioned capacity of 3060 kVA. All are properly installed and are meant for standby/back-up power source.</p>
7	<p>PP and PMC committed scam on account of 10% open space and also there is no space for landscaping and tree plantation and there is damage to the environment and ecology on account of illegal construction.</p>	<p>Open space: Recreational Open Space [ROS] to the extent of 10% of the balance plot area is a mandatory provision under the DC Rules of PMC. The project has received several approvals from PMC. Needless to say, that the PMC has checked for compliance of this mandatory requirement and has approved the plans. On this site, the ROS is in pieces, few are less than 10m length. However, they are approved, probably because they are not meant for playing. [There is no residential area in the project].</p> <p>In the DCPR 2017 norms, there is a provision of developing ROS on podium. Here on this site, such ROSs are observed. The aforesaid norms also encourage provision of some shelters and landscaping features in the ROS.</p> <p>These ROS are affected by newly proposed 60.0m wide D.P. Road and the affected portion is considered as "Differed Area" under the Maharashtra Regional and Town Planning Act, 1966.</p> <p>Details of ROS(s) are available on the approved plans.</p> <p>163 trees planted in the ground [not in pots] are observed on the site, which are more than the statutory requirement.</p>

E. DENIAL OF THE ALLEGATIONS

1. The EC has been granted on two occasions by appraising and assessing the , project proposal by the government organizations viz. the Environment Cell of PMC and SEIAA-Maharashtra State, as per the prevailing rules and regulations. **The grant of the EC has not bypassed the appraisal as alleged.**

2. The grant of the EC as soon as the finalization of minutes of the meeting is not the act of misconduct or the favor. The EC was uploaded to website after Minutes of Meeting (MoM) are finalized.

3. The Joint Committee report is based on the site visit of Members, perusal of all the documents [available and demanded], checking of dimensions, site observation, and reference of the standards/rules, etc. The Committee has to work

under certain limitations (A.INTRODUCTION, Limitation) and has to rely on the certifications of reputed agencies (A.INTRODUCTION, Keeping faith with certain Government Organization) to draw some conclusions. Therefore, in no way the report favors to any party. The Joint Committee stands by its views and refutes all allegations.

4. This particular clarification is also given objectively, without getting carried away by the provocative allegations of the appellant.”

36. This report was placed before the Tribunal on 19.03.2020 to which the applicant raised objections again. The learned counsel for the Maharashtra Pollution Control Board (MPCB) submitted that the project as very old and much of the records were not available and that the report was submitted based on the materials available. It was submitted that the Committee intended to visit the site and will submit a further report for which time was sought. Accordingly, an order was passed to the effect that further report be filed after inspection. In pursuance of the said order, the Joint Committee submitted its report dated 06.10.2021, which is quoted here-in-below:-

“Joint Committee Report in compliance of Orders passed by Hon'ble NGT on 05/02/2020, 19/03/2020 and 17/06/2020

The Orders passed by the Hon'ble National Green Tribunal, dated 05/02/2020, 19/03/2020 and 17/06/2020, directed the Joint Committee to file a fresh report in consideration of objections raised by the Applicant to the earlier report submitted by the Joint Committee with respect to the project - 93 Avenue. Commercial building located at 93A/ 1/2, 93A/2. 93A/3, 93A/4, Wanwadi Pune.

The objections raised by the Applicant are directly related to the authenticity of the approvals given by different departments. and therefore MPCB vide letters dated 02/09/2020 requested to the Chief Fire Officer. Pune Municipal Corporation, the Tree Officer / Dy. Commissioner, Pune Municipal Corporation, the Additional Commissioner of Police, Traffic Department of Police, Pune and The Chief Engineer, Building Approval/Permission Department, Pune Municipal Corporation, to submit the information on the objections raised by the Applicant.

The Joint Committee has verified the reports received from the above Authorities and submitting the consolidated report as under:-

1. Report of Executive Engineer, Zone – 5, Pune Municipal Corporation, Pune

Sr. No.	Points	Reply
------------	--------	-------

1.	<i>Details of the land use pattern of the lot over which the mall is built/ constructed.</i>	<i>The subject property is situated in Residential Zone R-2 (DCR 1987-Rule No. M-2.2.1 & Modified DCR 1993-Rule No. M-2.2.1 and DCPR 2017- Rule No. 16.2.1)</i>
2.	<i>The factual information about the total area of the Recreational Open Space (ROS). The reason for approving such space, in spite of the variation in dimensions (if any), more than the limit stipulated in the DCPR- Pune.</i>	<i>The Open Spaces are provided as per DCR 1987 Rule No. 13.3 & modified DCR 1997 Rule No. 13.3 The details of Creational Ground Open Space as per CC 3020/07 dated 04.01.2008 are as follows: Open Space 1-610.01 sqm Open Space 2- 215.56 sqm Open Space 3- 393.52 sqm</i>
3.	<i>The factual information about the open spaces other than ROS</i>	<i>Open spaces around the building are provided as per the approved plans.</i>
4.	<i>Details of commercial building permitted on land reserved for residential purpose.</i>	<i>The subject property is situated in Residential Zone R-2 category wherein commercial use is permitted (DCR 1987- Rule No. M-2.2.1 & modified DCR 1997- Rule No. M-2.2.1 and DCPR 2017- Rule No. 16.2.1)</i>
5.	<i>Details of area of the plot which will be reduced by road widening, and the location and size of RG open space provided.</i>	<i>Building plans for the subject property were approved in 2004. The said plans were approved after the deduction of area required for the 45m DP road. Recreational Open spaces are provided as per DCR 1987 Rule No. 13.3, after the deduction of area required for the DP Road widening. As per DP 2017, the width of the Pune Solapur Road is proposed as 60.0 M, thus additional area for this road widening is shown as "Differed Road Widening" on the approved plan CC/3309/17 dated 12.03.2018.</i>
6.	<i>The RG Open Space is not of the correct area and dimensions. Some dimensions are less than what are required. It is located in the front open space and will be affect due to the road widening. Please give</i>	<i>As per 2017 Development Plan, the existing 45m wide DP road is widened to 60m width due to which the additional widening area is shown in the approved plans, thus affecting the previously approved Recreational Ground Open Space.</i>

	details.	
7.	Open spaces around the building are not of required dimensions. Please give details.	Open spaces are provided as per the approved plans.

A copy of the Report received from the Executive Engineer, Zone 5, Pune Municipal Corporation is enclosed herewith as an Annexure-1

2. Report of Chief Fire Officer, Pune Municipal Corporation, Pune

The Chief Fire Officer issued the Final Fire NOC for the project in question, vide no. FB/998, dated 03/06/2019 in view of fire prevention, protection and life safety measures of the building.

The building in question is fully occupied with proper fire prevention and life safety measures along with fire-a fighting system. The Fire Officer tested the Hydrant System, Hose Reel System with equipment, portable fire extinguishers and all types of firefighting system and issued Final Fire NOC to the said project.

A copy of the Report and the copy of the Final Fire NOC received from the Chief Fire Officer, Pune Municipal Corporation is enclosed herewith as an **'Annexure - 2'**.

3. Report of Assistant Municipal Commissioner and Tree Authority

The Assistant Municipal Commissioner and Tree Officer submitted that former Assistant Municipal Commissioner and Tree Officer, Pune had issued NOC to Project Proponent, vide letter no. VPJ/7825, dated 02/03/2019. The said NOC was issued based on Commencement Certificate no. CCO589/18 dated 07/06/2018 issued by PMC.

The Tree Officer along with the concerned Tree Inspector i.e. Mr. Vijay Nevase visited the site on Saturday, 5th December, 2020. All trees were checked by the concerned officer and he made a detailed report of these. **As per the said report, the total number of trees which exist and newly planted at site is 166 in numbers** which is more than the minimum requirement. All the plants are in good condition and are well maintained by the developer.

A copy of the report received from the Assistant Municipal Commissioner and Tree Authority along with the NOC is enclosed herewith as an **'Annexure3'** collectively.

4. Report of Assistant Commissioner of Police, Traffic Branch, Pune City

The objections raised by the Applicant have been discussed in detail, and a descriptive technical, scientific analytical and logical explanation is given in the report. It is concluded that after the spot visit, detailed study and inspection. the 9 objections raised by the applicant do not prove the point that the traffic flow on the main road (Pune Solapur Road and Kawade Road) is obstructed by the incoming / outgoing vehicular and pedestrian traffic generated at and by the said establishment '93 Avenue'.

2441

A copy of the report received from Assistant Commissioner of Police, Traffic Branch. Pune City is attached as an **'Annexure — 4'**.

5. Report of Maharashtra Pollution Control Board

1) **Land** — Pune Municipal Corporation has submitted a reply on 15/10/2020 and mentioned that the land use pattern is Residential Zone R-2 category wherein commercial use is permitted.

2) **Water (Quality & Quantity, Conservation, Bore Well)** — As per existing Consent to Operate, the total water consumption is 270.62 CMD and total domestic effluent generation is 243.9 CMD.

The PP has water supply from Pune Municipal Corporation. Water bills of PMC are verified from August 2019 to August 2020. It is found that water consumption is within consented limit.

The PP has provided three nos. of pits for rainwater harvesting. One of the pits was opened during the site visit for verification purposes and it was observed that the rainwater harvesting system was functional.

During the site visit, borewells were not found within the premises.

3) **Waste Water Treatment** —

For treatment of domestic effluent 243.9 CMD, the PP has provided STP of 260 CMD capacity, consisting of MBBR technology and up to tertiary treatment stage.

During the site visit, the STP was found to be operational. Treated effluent is partly recycled and used for gardening; provision is made for discharge of excess treated effluent into the drainage line of PMC.

The PP has provided an online monitoring system for the STP, to measure parameters such as pH, BOD, COD, TSS and Flow Meter.

JVS samples for outlet of STP are collected, analysis results are observed within limit.

Solid Waste Treatment —

PP has provided OVVC for treatment of organic waste of capacity 800 Kg! D. During the site visit, it was found to be operational. Due to low occupancy of tenants, currently the wet waste generated is around 50 Kg! day. Records of the same is verified during the visit.

4) **Energy Conservation** —

The PP has provided four nos of solar heater on the top terrace. A DG set of five numbers with capacities 1000 KVA x 2 nos., 250 KVA x 2 nos. and 365 KVA provided with stack of height above building roof level.

A copy of the MPCB Report is enclosed herewith as an **'Annexure - 5.'**

37. This report came to be considered by this Tribunal on 26.10.2021, which was said to be not in compliance with the order of this Tribunal by the applicant and an adjournment was sought to respond to the said report. The Tribunal also has recorded that cursory perusal of the said report would prima facie disclose that the same was not in compliance with the above order dated 05.02.2020 passed by the Tribunal. However, taking into consideration the plea made by the learned counsel for MPCB, an opportunity was given to file supporting affidavit and supporting documents and the matter was adjourned to 08.12.2021. On that date, the matter was considered in presence of the learned counsel for MPCB and PMC as well as applicant's learned counsel and after hearing the submissions of the learned counsel for PMC and others, it is recorded that in the light of the contents of the affidavit of MPCB dated 07.12.2021, joint inspection would be carried out in the light of averments made in paragraph 3 of the said affidavit before end of December, 2021.

38. In pursuance of the above order, the Joint Committee has submitted its report dated 08.08.2022, which is quoted here-in-below:-

“Joint Committee Report in compliance of order passed by Hon’ble NGT on 08.12.2021

1. Hon’ble National Green Tribunal in O. A. 28/2019 (IA No.81/2021) filed by Tanaji Balasaheb Gambhire vide order dated 08.12.2021 directed Joint Committee comprising of SEIAA and MPCB to carry out the inspection in the presence of Applicant and examine the objections raised by him to the earlier Joint Committee Report dated 06.10.2021 filed in the matter.
2. Accordingly Joint Committee visit was carried out on 29.12.2021 in the presence of the Applicant Shri, Tanaji Balasaheb Gambhire at the Project site 93 Avenue Mall Survey No. 93(P) Village- Wanawadi, Tal.& Dist- Pune at 11am. Following officials were also present-

Sr. No.	Name of the Officials	Designation
1.	Shri. Pankaj Joshi	Member- SEIAA
2.	Shri. Nitin Shinde	I/c RO MPCB Pune
3.	Shri. Pratap Jagtap	SRO, MPCB Pune-1
4.	Smt. Radhika Hawal-Bartakke	Tahsildar Pune City- Representative of Collective Pune

5.	Smt. Harshada Shinde	Executive Engineer Building Permission Department PMC
6.	Shri. Ramesh Kakade	Dy. Engineer Building Permission Department PMC.
7.	Shri. Ratnakar Taru	Tree Authority PMC
8.	Shri. Prashant Ranpise	CFO PMC
9.	Shri. Shyam Taru	AMC, Wanawadi

Site visit was carried out. Issues in the case were discussed at length with the Applicant in presence of his Advocate and concerned Officials as mentioned above. Site inspection was also vide recorded and concluded the visit at 3 pm. Concerned Officials were directed to submit their replies along with necessary documentary evidence about the submissions made/ issues discussed during the site visit.

3. **Report of Executive Engineer, Zone-5 Pune Municipal Corporation-** Executive Engineer, Pune Municipal Corporation submitted a tabular report on 24.003.2022 (Annexure-I). Findings in the PMC report are summarized below:

Sr. No.	Points raised by the applicant	Clarification
1.	<p>i. Project is constructed on development zone as per DP-1987 and construction of commercial building on residential zone (para 8 (A) of OA)</p> <p>ii. Commercial construction on prohibited road (para 8 (B,C &D) of OA)</p> <p>ii. Intentional violation of non agricultural permission: NA order No. PMN/NA/SR/3/2001 dated 02.06.2001 granted for change of tenure use from Agricultural to Non Agricultural (Residential) use, but the land project land demarcate as "no development zone" Actual construction of Commercial mall(Para-10 of OA)</p>	<p>i. As per DP 1987 plot was Agricultural Zone. As per year comprehensive Development plan sanctioned in 2000, the plot is in Residential Zone and fronting 45.0M DP road. Therefore, the plot is in category of Residential-2 Zone. As per DC Rules all commercial users are permitted in residential-2 zone.</p> <p>Reference:</p> <p>i. Zoning Demarcation No. DPO/4677 dated 23.03.2001 (Annexure-II)</p> <p>ii. Government Resolution NO. TPS-1893/1045/CR54/93/UD-13 dated 05.06.1997 Modified DCR 1997 DCR No. Clause M-2 (Annexure-III)</p> <p>iii. DCPR2017 clause 16.2.1</p>

	<p>iv. Revised development plan (2007-2027) for old PMC limit including Wanwadi Village clearly shows, the Project land is marked as residential area zone (Para 16 of OA)</p> <p>v. Permissible land use of the plot over which the mall is constructed.</p>	(Annexure – IV)
2	<p>Open Space Objections</p> <p>i. PP and PMC committed scam on account of 10% open space and there is no space for landscaping and trees plantation.</p> <p>ii. Mandatory to provide 10% open space after deducting DP) roads and reservations.</p> <p>iii. Important to provide 10% open space in one place and shall not be less than 400 Sq. M.s.</p> <p>iv. Open space-1, Open space-2 Open space-3, admeasuring about 610.01 Sq. M, 215 Sq.M and 393.52 Sq. M.s respectively. Open space 2& 3 are less than 400 Sq. M.s.</p> <p>v. Total Open Space to be provided by PP is 1218 Sq. M.s but these open space are affected by the DP plan 2017 and therefore these open spaces are not the open spaces but these are part of DP road widening.</p> <p>vi. PP has committed the scam on account of the open space by providing the 10% space and by showing the open space in DP road widening area and also by showing open spaces less than 400 Sq. Mts. At one place (para 29 of OA)</p>	<p>i. As per Garden NOC No. 7825 dated 02.03.2019 requisite number of trees have been planted at site.</p> <p>ii. Lay-out plan was sanctioned in 2007 in which 10% open space was shown after 45.0 M DP Road widening area. Thereafter in all revised plans area of 10 % open space has not changed. As per 2017 DP width of Pune Solapur road is proposed as 60 M wide. Therefore, subject plot is affected by 60M DP road widening. This road widening area is considered as “differed area”/</p> <p>iii. For Plots having area of more than 5000 Sq.M.s open spaces may be provided in more than one place. But at least one of such places shall not be less than 50% at one place.</p> <p>iv. As per GR No. TPS-893/1045/CR-54/93/UD-13 dated 05.06.1997 Modified DCR 1997 DCR No. 13.3.1 any open space shall not measure less than 200 Sq. M. S.</p> <p>Reference :</p> <p>i. Garden NOC No. 7825 dated 02.03.2019 (Annexure- V)</p> <p>ii. DCPR-2017 clause 17.2.1 Note (Annexure-VI)</p> <p>iii. Govt. Resolution TPS /1893/1045/CR54/93/U D-13 dated 05.06.1997</p>

		DCR NO.13.3.1(Annexure-VII)
3.	45 Mtrs and 60 Mtr. Road widening areas are not handed over to PMC and affected by open spaces 2 & 3	<p>Area under 45.0 M D. P. Road has been handed over to PMC and accordingly updated on 7/12 extract</p> <p>Reference :</p> <ul style="list-style-type: none"> i. Copy of 7/12 Extract (Annexure-VIII) ii. DCPR 2017 No. 1.4, UDCPR 2020 clause No. 1.5 (Annexure- IX) iii. DCPR 2017 clause No. 17.2.2 Note No. 13 (Annexure- VI) <p>As per 2017 DP width of Pune Solapur road is proposed as 60 M wide. Therefore, subject plot is affected by 60M DP road widening. This road widening area is considered 'differed area'.</p>
4.	<p>PMC sanction plan dated 15.01.2019 permits only B+LG+G+1+2+3+4+5 floors. In actual B+B+G+1+2+3+4+5+6 PP has made illegal construction of two basements</p> <p>Jt. Committee is misleading on account of illegal construction of Two basements.</p> <p>JT Committee is misleading on account of illegal construction of 6 floors beyond scope of alleged EC.</p>	<p>As per the approved plan and as per actual site condition found after site visit along with the applicant and his advocate, building is of B+LG+G+1+2+3+4+5 floors only.</p>
5.	<p>The project is sharing common boundary wall with the defense establishment and it is mandatory to obtain the defence NOC through the local authority, but there is no such NOC obtained from Ministry of Defence . As per Section 7 of the Works of Defence Act-1903 and it is quite strange and shocking while seeking the EC dated 15.06.2018 the PP has made false submissions in form 1 stating that there is no Defense installations within 15</p>	<p>In this regard a copy of order dated 04.01.2003 passed by 3rd Jt. Civil Judge, S. D. Pune provided to the Joint Committee is attached (Annexure- X). The defendants (Union of India, through secretary Defence Department, Army school of physical Training etc) are restrained by way of perpetual injunction from entering upon the suit properties or doing any act causing obstruction to the construction and development work upon the suit properties.</p>

	<i>KM when in fact the project is sharing the boundary with the Defense establishment. (Para-15 of OA)</i>	
6.	<i>TDR loading is increased from 40% to 140% i. e. From claimed 4375.36 Sq. Mtrs. to 16106.09 Sq. Mtrs (para-12(i) of OA)</i>	<p><i>As per Government directions and sanctioned UDCPR 2020, plot fronting on roads more than 30.0 M wide, permissible TDR is 1.40 subject plot is fronting 45.0 M DP road.</i></p> <p><i>i. GR No. TPS-1813/3067/CR-122/MCORP/12/UD-13 dated 28.01.2016 (Annexure XI)</i></p> <p><i>ii. GR Addendum GR No. TPS-1813/3067/CR-122/MCORP/12/UD-13 dated 02.05.2016 (Annexure-XII)</i></p>
8.	<i>PP has Provided only 1:5 ramp slope which must be in the form of 1:10 (para -13 of OA)</i>	<i>After measurement at site along with the applicant and his advocate vehicular ramp was found to be 1:9</i>
9	<i>Illegality by issuing Number of building sanctions by Respondent PMC, there are revision for 14 time in the sanction plan and PP changed residential proposal to commercial vide revised layout sanction DPO/345 1/VI/36 dated 07.08.2044 (para 11 of OA)</i>	<i>All the approvals are given in accordance with the then Development Control Regulations, circulars, GRs etc.</i>
10	<i>Illegal increase in Net Plot Area from 10938.41 sq. Mtrs. to 11504.35 Sq. Mtrs. PP has not deducted the Open Space and transformer area from net gross area (para 12 (c) of OA)</i>	<i>Definition of "Net Plot Area" is mentioned in DCR 1987 clauses no. 13.4.4(Annexure - XIII) and as mentioned DCPR 2017 clause No. 15.8 (Annexure- XIV)</i>
11.	<i>Commercial Construction on Prohibited Road (Para8(B,C&D) of OA</i>	<i>As per sanctioned 1997 DC Rules, Pune Solapur Road is not in the list of prohibited road for commercial user, hence permission for commercial user, hence permission for commercial use was granted.</i>

2447

12.	Project had total potential of BUA more than 20,000 Sq. Mtrs. from beginning of the project and it was mandatory to obtain prior EC as per EIA.	Building plans for the commercial building were approved in the year 2007 and 2008. At the time of these approvals FSI Built-up area was below 20,000 Sq. M. The clarification regarding applicability of EC on total FSI and non- FSI area exceeding 20,0000 Sq. M. Was received in 2012. Accordingly every building plan approval after year 2012 is on condition of obtaining EC.
-----	---	--

Excavation

PP has made excavation of plot for construction of commercial building, therefore, it was necessary to pay the royalty to the Mining Department under the Collector Pune. But PP has not paid single rupee towards the royalty and has duped the exchequer. (para 17 of OA)	District Mining Officer, Pune vide letter dated 11.07.2022 after verification of the record has informed that temporary mining permission for plot at S. NO. 93A/1, A/2, 93A/2, 93A/3 and 93A/4 was not given (Annexure – XV)
---	---

Points regarding EC given to Project

Total BUA proposed and actual Construction carried out prior to Ex- post facto EC is more than 20000 sq. M. (Para 27 of OA) pp has completed total BUA of 40000 M2 prior to grant of ex-post facto EC	A copy of the Architect Certificate dated 28.03.2022 submitted by Hirak Shah Associates is attached (Annexure-XVI). From the certificate it is observed that as per approval plan dated 04.01.2008, approved FSI + Non FSI area was 13700.10 +21578.07= 35278.17 Sq. M. However, total construction (FSI+ Non FSI) done as on June 2010 was 31844.35. Thereafter construction work was on hold from November, 2010 to November, 2017 Plan approved on 04.01.2008 was								
<table border="1"> <thead> <tr> <th data-bbox="256 2002 500 2110">Sanction</th> <th data-bbox="500 2002 743 2110">Total BUA</th> </tr> </thead> <tbody> <tr> <td data-bbox="256 2110 500 2217">08.10.2007</td> <td data-bbox="500 2110 743 2217">26,556.03M²</td> </tr> <tr> <td data-bbox="256 2217 500 2325">04.01.2008</td> <td data-bbox="500 2217 743 2325">35,806.5M²</td> </tr> <tr> <td data-bbox="256 2325 500 2416">22.11.2016</td> <td data-bbox="500 2325 743 2416">35,938.2 M²</td> </tr> </tbody> </table>	Sanction	Total BUA	08.10.2007	26,556.03M ²	04.01.2008	35,806.5M ²	22.11.2016	35,938.2 M ²	
Sanction	Total BUA								
08.10.2007	26,556.03M ²								
04.01.2008	35,806.5M ²								
22.11.2016	35,938.2 M ²								

2448

25.05.2017	32,744.95M ²	<p>revalidated on 22.11.2016. This was further revised on 25.05.2017 and approval for FSI area of 14322.51Sq.M+ Non FSI area of 24920.56 Sq. M .= Total (FSI+Non FSI) of 39243.07 Sq. M. was obtained.</p> <p>PP submitted application to Pune Municipal Corporation (PMC) for Environmental Clearance on 30.08.2017 for FSI of 22689.18 Sq. M +Non FSI of 25795.17 Sq. M. = Total 48484.35 Sq. M. Construction done on the date of submission of application for EC i.e. 30.8.2017 was (FSI +Non FSI) 31844.35 Sq. M.</p> <p>EC was granted by the PMC on 10.11.2017 for an area of 22689.18 Sq. M. (FSI) +25795.17 Sq. M (Non FSI)= 48484.35 Sq. M is attached (Annexure-XVII)</p>
12.03.2018	47,454.97 M ²	
07.06.2018	49,765.13M ²	
15.	<p>EIA Notification 09.12.2016 is quashed by order dated 08.12.2017 in OA 677 of 2017 and therefore Environment conditions dated 10.11.2017 obtained under this notification is illegal, PMC has no right to issue such conditions.</p>	
16.	<p>Ex Post facto EC 15.06.2018 is procured from member secretary SEIAA without any appraisal & assessment and therefore it is total illegal.</p> <p>EC Application: 13.06.2018 SEIAA Meeting : 14.06.2018, EC granted on 15.06.2018, No appraisal by SEAC-III, EC granted within one day, Case was not on SEIAA agenda (para 21 of OA) Alleged EC dated 15.06.2018 suppresses the configuration of Building. SEIAA 132nd MoM has assessed only G+5FLRS.</p>	
17.	<p>Mischievousness illegal activity of Mr. Satish M. Gavai, habitual offender NGT order dated 27.09.2016 in OA No. 184/2015 Hon'ble SC order dated</p>	<p>On 09.12.2016 MoEF&CC amended EIA notification 2006 regarding integration of environmental conditions in building bye law. In pursuance of</p>

<p>10.08.2018 in CA No. 2449 10854/2016(Para-22 of OA)</p>	<p>the amended notification, Urban Development Department, Govt. Of Maharashtra vide notification dated 28.06.2017 published the integration of environmental conditions in building bye laws. As per the notification, environment cell of the local body shall carry out the environment appraisal of the proposals with built up area between 20,000 Sq.M. and 1,50,000 Sq. M. Said EC dated 10.11.2017 was issued by the PMC. However, the said notification dated 09.12.2016 was stayed by Hon'ble NGT, Principal Bench, New Delhi in OA No. 677/2016 on 08.12.2017. Thereafter environment Department, Govt. of Maharashtra issued circular dated 29.01.2018, stating that, all Municipal Corporations, Municipal Councils and all special planning authorities in the state shall not process any permission to building and construction projects with BUA between 20,000 M² - 150000 m² by integrating Environment Clearance conditions.</p> <p>EC granted by PMC on 10.11.2017 was in pursuance of Urban Development Department, Govt. of Maharashtra notification dated 28.06.2017 regarding integration of environmental conditions in building bye laws which was in operation on that date and was subsequently stayed on 08.12.2017.</p> <p>Thereafter PP further revised the plan on 12.03.2018 and 07.06.2018 thereby increasing the TBUA from 48484.35 Sq. M.s to 5183.47 Sq. M. i. e. By approx. 3350 Sq. M. S which is 7% more than the are mentioned in EC dated 10.11.2017 given by PMC.</p> <p>After the said revised approval of the plan application was made to SEIA and EC was granted on 15.06.2018 a copy of which is</p>
--	--

		<p>attached. (Annexure-XVIII)</p> <p>From the Architects Certificate dated 28.03.2022 it is observed that EIA notification 2006 has been violated by PP since June 2010 as the constructed TBUA exceeded 20,000 Sq. Mtrs.</p> <p>PP should have applied for EC under window period under amnesty scheme.</p> <p>EC granted by SEIAA was for expansion (TBUA as per EC given by PMC48484.35 Sq. M.s which increased by approximately 7% i. e. 3350 Sq. M. S TBUA 51834.47 Sq. M.s)</p>
--	--	---

MPCB Recommendations regarding Consent to Establish

<p>PP has not obtained prior consent to establish from MPCB. (Para-23 of OA)</p>	<p>PP has obtained EC from local body on 10.11.2017 for TBUA 48484.35 Sq. Mtrs; again PP has obtained EC from SEIAA on 15.06.2018 for TBUA 51834.47 Sq. Mtr. Accordingly, PP has applied for Consent to Establish on 21.05.2018 for TBUA 48484.35Sq. Mtr and Board has granted Consent to Establish on 07.01.2019 on the basis of the EC granted vide dated 15.06.2018. Again, PP has obtained amendment in Consent to Establish from Board on 11.07.2019 for TBUA 51834.47 Sq. Mtr as per EC granted on 15.06.2018 (Annexure-XIX)</p>
--	--

Ground Water Extraction

<p>No permission for ground water extraction, no ground water test and for construction of basements Two Bore wells No permission from CGWA</p> <p>No ground water test (para-25 of OA) PMC warning notice dated 16.01.2019, point No.2 – You have not yet obtained NOC from Central Ground Water Authority (Page 892 to 893j) There is no ground water test attached to the</p>	<p>Site was thoroughly inspected for ground water extraction in presence of application and his advocate, but ground water extraction was not found.</p>
--	--

2451	
Jt. Committee report and committee is misleading.	
Soil Testing and Soil Preservation	
21.	<p>No soil preservation and no soil test by PP condition No. XII & XV of the EC dated 15.06.2018 (para 2B of OA) False statement by Jt. Committee. Plinth check is issued on 21.07.2007. Excavation is done in 2007. Therefore, SEAC has not found any abnormality in report is totally false and misleading statement and SEAC has not appraised this project.</p>
	As project commissioned in 2007, joint committee is unable to comment on this point.

4. **Report of the Chief Fire Officer PMC-** PP himself in EC dated 17.10.2017 admitted that, the turning radius for fire tender movement is 7.52 Mtrs, but marginal spaces to this building is less than 6 Mtrs which are less than 7.5 Mtrs (Para-14 of OA).

Chief Fire Officer who was present during site visit submitted the report dated 12.01.2022 which annexed hereto (Annexure- XX). During site visit, movement of fire Engine was done in presence of Applicant. No difficulty was found which case cause obstruction for fire tender movement. Only at one corner fabricated steps were found to be installed behind the complex for loading and unloading material of one unit holder because of which Fire Engine speed got slower at that point. Instructions were given to remove the fabricated steps to maintain the marginal distances for smoother movement of fire engine in case of emergency. No difficulty was found because of turning radius or margins in the movement of Fire Engine.

5. **Report of the Authority Pune Municipal Corporation:** Shri Sham Taru Tree Authority Pune Municipal Corporation was present during site visit. It has submitted its report on 11.02.2022 (Annexure- XXI). As per the report total 166 number of trees were checked. Trees commonly known as Shirish, raintree and Umber are 15-16 years old and these three trees are well maintained. But the commonly named tree Shirish is in between the side compound wall of Creative 93 Avenue building. The tree is fully grown but in future growth of tree will damage compound wall. Therefore, it is recommended that developer can do fencing in fabrication work which will provide some space from growth of tree. 31 tree mentioned in the report are planted behind the building in pot like structure of cement wall. Due to this trees will not die but growth will be stunted. For full growth of trees it is recommended that developer should leave a space of 1.5 meters from compound wall and replant the trees in a proper pit of 1mx1mx1m with 4meter space between the trees. 5 number of trees commonly known as Kordia planted on compound wall should also be replanted as above.

Recommendations : It is recommended that

1. Maharashtra Pollution Control Board shall initiate:

2452

a. *Action under Section 15 read with Section 19 of the Environment (Protection) Act, 1986.*

b. *Action under water (Prevention and Control) Act 1974 and Air (Prevention and Control) Act, 1981.*

2. *Project Proponent to apply for violations ToR and strictly follow the due process under MoEF&CC O. M. Dated 07.07.2021.”*

39. This Tribunal next considered this matter on 14.09.1011 and recorded service to be sufficient.

40. The stand of respondent No.16 – Project Proponent is as follows:-

. For the present project, the Project Proponent procured the sanctioned lay-out plan from Pune Municipal Corporation (PMC) on 03.01.2001 and obtained commencement certificate. On 06.09.2003, the answering respondent procured the sanctioned amalgamation and lay-out plan from PMC and obtained commencement certificate. On 07.08.2004, it obtained commencement. Thereafter, on 08.03.2006, it obtained further commencement certificate. On 01.04.2006, it obtained further commencement certificate. On 21.07.2007, it obtained plinth checking certificate. On 08.10.2007, it obtained commencement certificate. On 07.12,2007, it obtained plinth checking certificate, on 04.01.2008, it obtained commencement certificate and that all the construction carried out prior to obtaining EC is as per the said commencement certificate dated 04.01.008 wherein total built-up area (BUA) is 13,700 sq.mtrs. (only FSI area). Hence, the same was below 20,000 sq.mtrs. It, therefore, did not require EC to be obtained. On 21.04.2015, the Principal Secretary, Environment Department in furtherance of the order from the Hon'ble High Court of Bombay in Writ Petition No.654 of 2014 issued a certificate giving clarification that the EC was not required to be obtained as long as actual construction carried out is below the threshold limit of 20,000 sq.mtrs. On 22.11.2016, the answering respondent obtained further commencement certificate. On 25.05.2017, it obtained further commencement certificate. On 10.11.2017, it obtained EC with respect to the existing project from PMC under Office Memorandum (OM) issued by the MoEF&CC dated

09.12.2017 for a total built-up area of 48,484.35 sq.mtrs. (FSI 22,689.18 + Non-FSI 25995.17) prior to obtaining the said EC, at no point of time did the answering respondent cross threshold limit of 20,000 sq.mtrs. as per the then existing definition of built-up area under EIA Notification 2006. Therefore, no violation has been committed with respect to carrying out the construction with EC. On 12.03.2018, the answering respondent obtained commencement certificate, on 12.03.2018, it obtained commencement certificate, on 07.06.2018, it obtained further commencement certificate, on 15.06.2018, it obtained revised EC for a total proposed built-up area of 51834.47 sq.mtrs. (FSI 25476.66 sq.mtrs. + Non-FSI 26357.81 sq.mtrs.). The application of the answering respondent for amendment in EC was considered by SEIAA in its meeting dated 14.06.2018 and after due deliberation and considering all the environment aspects, it granted amended EC for the project in question. On 01.11.2018, the answering respondent obtained completion certificate with respect to Part-I of the said project. On 07.01.2019, it obtained Consent to Establish, on 15.01.2019, it obtained further commencement certificate, on 25.02.2019, it obtained completion certificate with respect to Part-II of the said project, on 11.04.2019, it obtained commencement certificate, on 06.05.2019, it obtained Consent to Operate and on 11.07.2019, it obtained Consent to Establish. On 18.02.2020, it obtained commencement certificate, on 06.03.2021, it obtained completion certificate with respect to Part-III of the said project. On 17.03.2020, it obtained Consent to Operate, on 22.06.2022, it obtained commencement certificate with respect to Part-IV of the said project. On 17.05.2021, it obtained renewal of consent for construction of commercial project from MPCB. On 27.10.2021, it obtained commencement certificate. On 21.01.2022, it obtained commencement certificate with respect to Part-V of the project. On 12.07.2022, it obtained final completion certificate with respect to Part-VI of the said project.

41. The answering respondent has completed the said project and sold approximately 310 commercial units to various third party purchasers who are operating out of their respective units and the answering respondent has further executed Deed of Declaration under Section 2 of the Maharashtra Apartment Ownership Act, 1970 and formed the "93 Avenue Condominium". The said declaration is duly registered on 26.05.2022 in the office of Sub-Registrar, Haveli.

42. It is further submitted that the EC is required to be obtained only if construction is made beyond 20,000 sq.mtrs. and not below that. It has been affirmed by the Circular issued by the Environment Department dated 21.04.2015 and various judgments of the Hon'ble High Court of Bombay. By amendment dated 04.04.2011, the EIA Notification 2006 was amended, according to which the built-up area for the purpose of EC included the FSI and non-FSI area. Prior to the said amendment, the custom and common practice was only to take into consideration the FSI area for the purposes of EC and in the case in hand, the FSI of the project was below threshold limit of 20,000 sq.mtrs. Hence, there was no requirement to obtain EC. Around the year 2018, the Hon'ble Supreme Court of India in **Goel Ganga Developers Vs. Union of India; 2018 SCC OnLine SC 930**, while interpreting the term 'BUA', has held that the same would include FSI as well as non-FSI area. However, the Hon'ble Apex Court, while passing the said judgment, did not consider the prior judgment passed by the Bench of three Hon'ble Judges in the matter of **Re:Construction of Park at Noida near Okhla Bird Sanctuary, T.N. Godavarman Thirumulpad Vs. Union of India & Ors.; (2011)1 SCC 744**, wherein the Hon'ble Apex Court had categorically opined that the concept of BUA under the EIA Notification 2006 was vague and ambiguous. The MoEF&CC taking note of the judgment in **Okhla Bird Sanctuary** (supra) for the first time decided to define BUA by Notification dated 04.04.2011 providing completely different regime of calculation of BUA in building construction. The necessary consequence was that residential/commercial building projects which were earlier outside the

2455

purview of the EIA Notification 2006, would get covered by such requirement if the amendment brought about by the Notification dated 04.04.2011 was applied retrospectively. A plain reading of the said amendment would make it indubitably clear that the amendment is prospective in nature and would not affect the projects which were sanctioned between the period 2006 and 2011.

43. The Builders Association of India (BAI) had filed Special Leave Petition No.10078 of 2019 challenging the order dated 29.03.2018 passed by the Hon'ble High Court of Bombay in Writ Petition (L) No.954 of 2019. BAI had initially filed Writ Petition No.24 of 2019 under Article 32 of the Constitution of India before the Hon'ble Supreme Court, taking up the issue of BUA and the amendment dated 04.04.2011 and its applicability. By the order dated 12.02.2019, the Hon'ble Apex Court granted liberty to BAI to approach the High Court and consequently, Writ Petition No.24 of 2019 came to be withdrawn. Thereafter Writ Petition (L) No.954 of 2019 was filed before the Hon'ble High Court of Bombay, which was decided on 29.03.2019 whereby the Hon'ble High Court dismissed the Writ Petition. Feeling aggrieved by the said order, BIA preferred Special Leave Petition No.10078 of 2019, wherein the Hon'ble Apex Court, by order dated 03.05.2019, issued notice and further directed that in the meantime, no coercive steps shall be taken against the members of BAI. The said Special Leave Petition is still pending. Further it is submitted that similar Special Leave Petition was filed by another representative Association – CREDAI, Pune Metro bearing SLP No.23143 of 2019 raising identical issue before the Hon'ble Supreme Court, wherein also, the Hon'ble Apex Court passed order dated 20.09.2019, issuing notice and directing that in the meantime, no coercive action shall be taken against the members of CREDAI – Pune Metro. The said Special Leave Petition is still pending.

44. Further it is submitted that the answering respondent obtained various commencement certificates and sanctions, which have been detailed hereinabove. However, it commenced construction as per

commencement certificate dated 01.04.2006, according to which the FSI area was 11481.84 sq.mtrs. Therefore, there is no requirement to obtain the EC. The answering respondent commenced construction and completed 17262.43 (including FSI as well as non-FSI area). Therefore, till then, there was no requirement of EC. On 04.01.2008, it further obtained commencement certificate for 13700.10 sq.mtrs. (Non-FSI area was about 2158.07 sq.mtrs.). As the FSI area was below the threshold limit of 20000 sq.mtrs., the answering respondent did not obtain EC for carrying out construction. Around the year 2010, the total FSI area constructed was about 13700 sq.mtrs. and the non-FSI area was about 18144.35 sq.mtrs. and as the amendment dated 04.04.2011 had not come into force, the BUA was treated to include only FSI area which was below 20000 sq.mtrs. till then. Hence, the answering respondent did not require to obtain EC. From the year 2010 to November, 2017, the answering respondent did not carry out any construction activity owing to the market conditions. On 22.11.2016, it obtained revalidation of the commencement certificate dated 04.01.2008, which was approved on 25.05.2017. By this time, definition of "Built-Up Area (BUA)" included FSI as well as non-FSI area. Therefore, the the total built-up area of the project exceeded 20000 sq.mtrs. Therefore, prior to carrying out any further construction, the answering respondent duly applied to Pune Municipal Corporation (PMC) for grant of EC under Notification dated 09.12.2016. The PMC granted it EC on 10.11.2017, but the Principal Bench of the NGT had quashed the Notification dated 09.12.2016 in Original Application No.677 of 2017 on 08.12.2017. The EC had been obtained by the answering respondent prior to the Principal Bench of NGT quashing the Notification dated 09.12.2016. The Hon'ble Supreme Court in M/s Saibaba Sales Vs. Union of India & Ors. declared that quashing and setting aside of the Notification dated 09.12.2016 will not affect any EC granted prior to the date of quashing order i.e. 08.11.2017. Admittedly, in the present case, the answering respondent had obtained EC on 10.11.2017, therefore, the same was valid and subsisting. The EC

granted to the answering respondent by the PMC was for total area of 48484.35 sq.mtrs. (FSI 22689.18 sq.mtrs. and non-FSI area 25795.17 sq.mtrs.). The answering respondent on 12.03.2018 and 07.06.2018, further obtained revised commencement certificate. As per the commencement certificate dated 07.06.2018, the total BUA and total FSI area was about 25476.66 sq.mtrs. and non-FSI area was 26357.81 sq.mtrs. Therefore, the approved FSI + non-FSI area was 51834.47 sq.mtrs. Accordingly, it obtained EC from SEIAA prior to commencement of the construction. Therefore, the answering respondent has a valid and subsisting EC and has carried out construction as per the said EC. It is also to be noted that the respondent No.16 has not challenged the EC under Section 16 of the NGT Act. Therefore, it ought not to have been permitted to challenge the same by way of the present Original Application and on this count itself, this Tribunal ought not to have decided the issue with respect to EC dated 15.06.2018.

45. The answering respondent had duly obtained Consent to Operate on 05.06.2019 and 17.03.2020. Therefore, the allegations contrary to that are false.

46. The answering respondent has installed rainwater harvesting pits and the local bye-law already provides for adequate rainwater harvesting which had been duly followed.

47. There are absolutely no borewells existing on the site in question. At the stage of construction, the answering respondent obtained water through water tankers and post completion of the construction, the occupants of the said project use water supplied by the PMC. The answering respondent utilizes the top soil and other excavated material within the same project itself for landfilling and landscaping.

48. The answering respondent has obtained NOC from Tree Authority on 02.03.2019 and carried out plantation and other activities related to the trees strictly as per the terms and conditions of the NOC.

49. The answering respondent has ensured that the DG sets installed at the site is completely complied with as per Rules and regulations and

the sound produced by the DG sets are within the permissible limit by providing acoustic enclosures to the DG sets.

50. The Development Plan of Pune had been sanctioned by Notification dated 05.01.1987 and the Development Control Regulations have been sanctioned as per part of the said plan. As per the Development Plan sanctioned in 2000, the plot in question is in residential zone fronting 45.00 mtr DP road. Therefore, it falls in the category of Residential-2 zone. As per the DC Rules, all commercial users are permitted to raise construction in Residential-2 zone. Building plans of commercial buildings were approved in 2007 and 2008. The Tahsildar, Pune, vide order dated 13.12.2018, directed the owner to pay an amount of Rs.9,09,486/- towards N.A. charges for commercial use and conversion of tax which was deposited on 13.12.2018. There are absolutely no borewells existing on the site. The allegations regarding occupant load, production of solid waste during construction or operation or decommissioning are false.

51. The violation of the provisions of the Maharashtra Regional and Town Planning Act (MRTP Act) and Development Control Regulations (DCR) are not mentioned in Schedule-I of the NGT Act and therefore, this Tribunal does not have jurisdiction to hear this case and that any allegation with respect to MRTP Act and DCR were not be entertained. The project was sanctioned in the year 2007 when there was a 45 mtr. DP road to the front side of the said area. The said 10% area remained constant and construction activities have been carried out accordingly. Around 2017, there was a proposed widening of about 15 mtrs. road on Pune-Solapur road, which has affected the plot in question. The building construction by the answering respondent comprised of basement + lower ground + ground + 1 + 2 + 3 + 4 + 5 floors. No-where the boundary of this project wall is shared with the wall of Defence Establishment. By order dated 04.01.2003, passed by the learned Civil Judge, Senior Division, Pune, perpetual injunction was granted restraining the Defence Department from entering into the plot of the answering respondent. As

2459

per the applicable UCPR 2020, any construction on the road measuring 30 mtrs. or wider is entitled to 1.40 FSI. In the instant case, the project stands over 30 mtrs. road and thus, FSI available to the answering respondent is 1.40. The answering respondent has provided vehicular ramp in the ratio of 1:9. The Pune-Solapur road is not in the list of prohibited roads as per sanction as per the Development Control Rules and therefore, this Original Application deserves to be dismissed.

52. The stand of respondent No.1 – MoEF&CC is that EIA Notification SO 3999 € dated 09.12.2016 was challenged before the National Green Tribunal, Principal Bench in Original Application No.677 of 2016 (Society for Protection of Environment & Biodiversity Vs. Union of India), which has been disposed of on 08.11.2017 wherein MoEF&CC was directed to re-examine its Notification dated 09.12.2016 and take appropriate steps to delete, amend and rectify the clauses of the said Notification in light of the said judgment. Further it was held that the byelaws amended by the DDA vide its Notification dated 22.03.2016 can also not be given effect to unless the Notification dated 09.12.2016 is amended in terms of said judgment. Till the time the Ministry complies with the above directions and notifies the amended provisions of Regulations of 2006, it will not implement the impugned Notification. Further it was held that once the amended regulations are notified, MoEF&CC/SEIAA/Local Authorities can give effect to that, without further reference to the Tribunal. The answering respondent filed Civil Appeal No.2522 of 2018 (Union of India Vs. Society for Protection of Environment & Biodiversity) before the Hon'ble Apex Court against the order dated 08.12.2017, which is pending adjudication. No stay has been granted with respect to the order dated 08.12.2017. However, it was directed vide order dated 23.03.2018 that it is agreed between the parties that there were pending applications before the Environment Cell which may be forwarded to the SEIAA or MoEF&CC.

53. Further it is submitted that another similar case related to Civil Appeal No.595 of 2021 (M/s Saibaba Sales Pvt. Ltd. Vs. Union of India &

Ors.) was filed against the judgment dated 18.01.2021 passed by the National Green Tribunal, Principal Bench in Original Application No.83 of 2019, which pertained to demolition of the illegal structure of a housing complex set up by M/s Saibaba Sales Pvt. Ltd., Pune. M/s Saibaba Sales Pvt. Ltd. had made construction on the basis of EC issued by the Pimpri Chinchwad Municipal Corporation (PCMC) as per the Notification dated 09.12.2016 and the following directions were given in O.A. No.83 of 2019:-

“Accordingly, having regard to the facts of the present case and in endeavor to balance the perceived hardship to the PP for the constructions already carried out on the one hand and the public interest of enforcing the environmental law on the other, we direct that while no coercive action may be called for in respect of construction prior to 08.12.2017 except for enforcing environmental norms, construction thereafter be permitted only after the statutory EC and other requirements as per law.....”

54. Civil Appeal No.595 of 2021 filed by M/s Saibaba Sales Pvt. Ltd. has been disposed of vide order dated 26.11.2021 with the following observations:-

“As seen, the NGT in the impugned judgment has protected the completed construction and, on this aspect, we deem it appropriate to endorse the same, by accepting the submission of the appellant’s Counsel and the learned ASG. The four constructed buildings are resultantly to be treated to be under a valid EC with all legal consequences. It is, however, made clear that if any further construction is proposed by the appellant with the sanctioned layout, the same should not be done on the strength of the EC granted on 28.11.2017 by the PCMC. In other words, if the Project Proponent wishes to construct the remaining buildings, they must secure fresh clearance from the competent authority, as per the currently applicable framework.”

55. It is further submitted that in view of above, it is clear that the version of the applicant that the Project Proponent has obtained EC dated 10.11.2017 in pursuance of quashing Notification dated 09.12.2016 is sub-judice before the Hon’ble Supreme Court. The construction made by M/s Saibaba Sales Pvt.Ltd. was treated by the Hon’ble Supreme Court as valid as the EC was granted on 28.11.2017 by the PCMC with all legal consequences and the Project Proponent must secure fresh clearance from the competent authority as per the applicable framework.

2461

56. The stand of respondent Nos.7 and 8 – MPCB is as follows:-

The Project Proponent has obtained EC from the Local Body on 10.11.2017 for total BUA of 48,484.35 sq.mtrs. and again obtained the EC from SEIAA on 15.06.2018 for total BUA of 51,834.47 sq.mtrs. The answering respondent has granted Consent to Establish to respondent No.16 for total BUA of 48,484.35 sq.mtrs. vide letter dated 07.01.2019 on the basis of EC dated 15.06.2018 granted by SEIAA, which is valid for the period upto commissioning of the project or five years or co-terminus with the validity of EC i.e. upto 15.06.2025, whichever is earlier. The answering respondent has granted amendment to Consent to Establish for total BUA of 51,834.47 sq.mtrs. on 11.07.2019 based on the EC granted on 15.06.2018. The answering respondent has granted renewal of Consent to Operate to Project Proponent on 17.05.2021, which is valid upto 31.10.2022. The Joint Committee of SEIAA and MPCB has submitted detailed report on 08.08.2022.

57. On the above pleadings, the following issues need to be decided by us:-

- (i) When the Environmental Clearance (EC) requirement became applicable to the project ?
- (ii) How-much construction was raised without EC ?
- (iii) When Consent to Establish (CTE)/Consent to Operate (CTO) requirement became applicable ?
- (iv) In case CTE/CTO are not obtained, the effect thereof ?
- (v) What are the environmental damages as per the applicant and the responses thereto of the Joint Committees and our estimate in that regard ?
- (vi) What is the EDC to be imposed ?

FINDING ON ISSUE OF LIMITATION :

58. Before we render our findings on the above issues, it would be appropriate to deal with the issue of limitation first.

The submission made by the learned counsel for respondent No. 16 – Project Proponent is that the present Original Application is filed under Section 14 and/or Section 16 of the National Green Tribunal Act, 2010 (“NGT Act”, for short) and that cause of action first arose on 06.09.2003 with respect to the project in question as it has been filed on 04.02.2019 much beyond the period of limitation. In the meantime, substantial rights have accrued in favour of the answering respondent as well as the third party purchasers. In the present case, there is no delay condonation application filed. According to the averments made by the applicant, cause of action is shown to have arisen on 29.10.2018, when the applicant issued notices to respondent authorities with respect to alleged violations relating to the said project. Section 14 and 15 of the NGT Act categorically provide for calculating the period of limitation from the “date of action when the cause of action first arose”. The cause of action which has been tried to be set up by the applicant will lead to absurd situation wherein it would give an opportunity to revive the period of limitation as per one’s whims by merely issuing a notice. In support of the above contentions, reliance is placed on the following citations:-

- (i) ***Graminee Environment Development Foundation V. Balaji Infrastructure Ltd. and Ors. 2017 SCC OnLine NGT 1098***
- (ii) ***Jai Javan Jai Kisan and Ors. V. Vidarbha Cricket Association and Ords. MANU/GT/0006/2017***
- (iii) ***Surendra Waman Dhavale & Ors. V. Secretary, MoEF & Ors. 2017 SCC OnLine NGT 1581***
- (iv) ***Aradhana Bhargav & Ors. Vs. MoEF & Ors. Application No.11/2013 (P.B.46/2013) decided by the National Green Tribunal, Central Zone Bench, Bhopal on 12.08.2013***
- (v) ***Mr. Ajay Jayvantrao Bhosale Vs. Union of India through MoEF&CC & Ors. Original Application No.63/2019(WZ) Decided by this Tribunal on 01.12.2022***

59. Per contra, the stand taken by the applicant is that the cause of action is bundle of actions. The Project Proponent has made changes in

the capacity or modification in the project lay out by carrying out the changes through subsequent amendments till 07.06.2018 in the sanction, which has given rise to new cause of action, as this is change in the previous sanction. The Project Proponent had carried out construction from 0 sq.mtrs. to 48.00 sq.mtrs. till the date of filing of this application and also had intention to go to raise further construction beyond 52,000 sq.mtrs and civil construction activity is the recurring process. Therefore, it is not the continuous cause action rather it is a recurring cause of action for building construction activity. The Project Proponent has been increasing the project capacity since 2007 till the filing of Original Application. The Project Proponent has procured the EC dated 10.11.2018 from the Environmental Cell of PMC under EIA Notification, 2016, which was quashed by the NGT vide order dated 08.12.2017, pursuant to which the EC dated 10.11.2017 became null and void. Thereafter, the Project Proponent made amendment in the plan vide Commencement Certificates dated 12.03.2018 and 07.06.2018 and procured EC dated 15.06.2018 from SEIAA. Thereafter, the applicant obtained information under the Right to Information Act between 15.06.2018 and 28.10.2018 and thereafter, sent legal notice on 29.10.2018 to the respondents inviting their attention to the violation. Therefore, the cause of action to file this Original Application arose on 29.10.2018. It is, therefore, submitted that the date of filing of the present application being 04.02.2019, the same would stand covered within the limitation as per the provisions of Section 15 of the NGT Act, which is five years.

60. In ***The Forward Foundation & Ors. Vs. State of Karnataka & Ors. (Original Application No.222 of 2014)***, decided by this Tribunal (Principal Bench) on 07.05.2015, it has been observed as follows:-

“24. The expression ‘cause of action’ as normally understood in civil jurisprudence has to be examined with some distinction, while construing it in relation to the provisions of the NGT Act. Such ‘cause of action’ should essentially have nexus with the matters relating to environment. It should raise a substantial question of environment relating to the implementation of the statutes specified in Schedule I of the NGT Act. A ‘cause of action’ might arise during

the chain of events, in establishment of a project but would not be construed as a 'cause of action' under the provisions of the Section 14 of the NGT Act, 2010 unless it has a direct nexus to environment or it gives rise to a substantial environmental dispute. For example, acquisition of land simplicitor or issuance of notification under the provisions of the land acquisition laws, would not be an event that would trigger the period of limitation under the provisions of the NGT Act, 'being cause of action first arose'. A dispute giving rise to a 'cause of action' must essentially be an environmental dispute and should relate to either one or more of the Acts stated in Schedule I to the NGT Act, 2010. If such dispute leading to 'cause of action' is alien to the question of environment or does not raise substantial question relating of environment, it would be incapable of triggering prescribed period of limitation under the NGT Act, 2010. [Ref: Liverpool and London S.P. and I Asson. Ltd. v. M.V. Sea Success I and Anr., (2004) 9 SCC 512, J. Mehta v. Union of India, 2013 ALL (I) NGT REPORTER (2) Delhi, 106, Kehar Singh v. State of Haryana, 2013 ALL (I) NGT REPORTER (DELHI) 556, Goa Foundation v. Union of India, 2013 ALL (I) NGT REPORTER DELHI 234].

Furthermore, the 'cause of action' has to be complete. For a dispute to culminate into a cause of action, actionable under Section 14 of the NGT Act, 2010, it has to be a 'composite cause of action' meaning that, it must combine all the ingredients spelled out under Section 14(1) and (2) of the NGT Act, 2010. It must satisfy all the legal requirements i.e. there must be a dispute. There should be a substantial question relating to environment or enforcement of any legal right relating to environment and such question should arise out of the implementation of the enactments specified in Schedule I. Action before the Tribunal must be taken within the prescribed period of limitation triggering from the date when all such ingredients are satisfied along with other legal requirements. Accrual of 'cause of action' as afore-stated would have to be considered as to when it first arose.

25. In contradistinction to 'cause of action first arose', there could be 'continuing cause of action', 'recurring cause of action' or 'successive cause of action'. These diverse connotations with reference to cause of action are not synonymous. They certainly have a distinct and different meaning in law, 'Cause of action first arose' would refer to a definite point of time when requisite ingredients constituting that 'cause of action' were complete, providing applicant right to invoke the jurisdiction of the Court or the Tribunal. The 'Right to Sue' or 'right to take action' would be subsequent to an accrual of such right. The concept of continuing wrong which would be the foundation of continuous cause of action has been accepted by the Hon'ble Supreme Court in the case of Bal Krishna Savalram Pujari & Ors. v. Sh. Dayaneshwar Maharaj Sansthan & Ors., AIR 1959 SC 798.

26. In the case of State of Bihar v. Deokaran Nenshi and Anr., (1972) 2 SCC 890, Hon'ble Supreme Court was dealing with the provisions of Section 66 and 79 of the Mines Act, 1952. These provisions prescribed for a penalty to be imposed upon guilty, but provided that no Court shall take cognizance of an offence under Act unless a complaint thereof has been made within six months from the date on which the offence is alleged to have been committed or within six months from the date on which the alleged commission of the offence came to the knowledge of the Inspector, whichever is later. The Explanation to the provision specifically provided that if the offence in question is a continuing offence, the period of limitation shall be computed with reference to every point of time during which the said offence continues. The Hon'ble Supreme Court held as under:

“5. A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all.”

27. Whenever a wrong or offence is committed and ingredients are satisfied and repeated, it evidently would be a case of ‘continuing wrong or offence’. For instance, using the factory without registration and licence was an offence committed every time the premises were used as a factory. The Hon’ble Supreme Court in the case of *Maya Rani Punj v. Commissioner of Income Tax, Delhi*, (1986) 1 SCC 445, was considering, if not filing return within prescribed time and without reasonable cause, was a continuing wrong or not, the Court held that continued default is obviously on the footing that non-compliance with the obligation of making a return is an infraction as long as the default continued. The penalty is imposable as long as the default continues and as long as the assessee does not comply with the requirements of law he continues to be guilty of the infraction and exposes himself to the penalty provided by law. Hon’ble High Court of Delhi in the case of *Mahavir Spinning Mills Ltd. v. Hb Leasing And Finances Co. Ltd.*, 199 (2013) DLT 227, while explaining Section 22 of the Limitation Act took the view that in the case of a continuing breach, or of a continuing tort, a fresh period of limitation begins to run at every moment of time during which the breach or the tort, as the case may be, continues. Therefore, continuing the breach, act or wrong would culminate into the ‘continuing cause of action’ once all the ingredients are satisfied. Continuing cause of action thus, becomes relevant for even the determination of period of limitation with reference to the facts and circumstances of a given case. The very essence of continuous cause of action is continuing source of injury which renders the doer of the act responsible and liable for consequence in law.

Thus, the expressions ‘cause of action first arose’, ‘continuing cause of action’ and ‘recurring cause of action’ are well accepted canons of civil jurisprudence but they have to be understood and applied with reference to the facts and circumstances of a given case. It is not possible to lay down with absolute certainty or exactitude, their definitions or limitations. They would have to be construed with reference to the facts and circumstances of a given case. These are generic concepts of civil law which are to be applied with acceptable variations in law. In light of the above discussed position of law, we may revert to the facts of the case in hand.

28. The settled position of law is that in law of limitation, it is only the injury alone that is relevant and not the consequences of the injury. If the wrongful act causes the injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. In other words distinction must be made between

continuance of legal injury and the continuance of its injurious effects. Where a wrongful act produces a state of affairs, every moment continuance of which is a new tort, a fresh cause of action for continuance lies. Wherever a suit is based on multiple cause of action, period of limitation will began to run from the date when the right to sue first accrues and successive violation of the right may not give rise to a fresh cause of action. [Ref: Khatri Hotels Private Limited and Anr. v. Union of India (UOI) and Anr., (2011) 9 SCC 126, Bal Krishna Savalram Pujari & Ors. v. Sh. Dayaneshwar Maharaj Sansthan & Ors, AIR 1959 SC 798, G.C. Sharma v. Municipal Corporation of Delhi, (1979) ILR 2 Delhi 771, Kuchibotha Kanakamma and Anr. v Tadepalli Ptanga Rao and Ors., AIR 1957 AP 419].

29. A cause of action which is complete in all respects gives the applicant a right to sue. An applicant has a right to bring an action upon a single cause of action while claiming different reliefs. Rule 14 of the National Green Tribunal (Practise and Procedure) Rules, 2011, shows the clear intent of the framers of the Rules that multiple reliefs can be claimed in an application provided they are consequential to one another and are based upon a single cause of action. Different causes of action, thus, may result in institution of different applications and therefore, there is exclusion of the concept of the 'joinder of causes of action' under the Rules of 2011. The multiple cause of action again would be of two kinds. One, which arise simultaneously and other, which arise at a different or successive point of time. In first kind, cause of action accrues at the time of completion of the wrong or injury. In latter, it may give rise to cause of action or if the statutes so provide when the 'cause of action first arose' even if the wrong was repeated. Where the injury or wrong is complete at different times and may be of similar and different nature, then every subsequent wrong depending upon the facts of the case may gives rise to a fresh cause of action.

To this general rule, there could be exceptions. In particular such exceptions could be carved out by the legislature itself. In a statute, where framers of law use the phraseology like 'cause of action first arose' in contradistinction to 'cause of action' simplicitor. Accrual of right to sue means accrual of cause of action for suit. The expressions 'when right to sue first arose' or 'cause of action first arose' connotes date when right to sue first accrued, although cause of action may have arisen even on subsequent occasions. Such expressions are noticed in Articles 58 of the Limitation Act, 1963. We may illustrate this by giving an example with regard to the laws that we are dealing here. When an order granting or refusing Environmental Clearance is passed, right to bring an action accrues in favour of an aggrieved person. An aggrieved person may not challenge the order granting Environmental Clearance, however, if on subsequent event there is a breach or non-implementation of the terms and conditions of the Environmental Clearance order, it would give right to bring a fresh action and would be a complete and composite recurring cause of action providing a fresh period of limitation. It is also for the reason that the cause of action accruing from the breach of the conditions of the consent order is no way dependent upon the initial grant or refusal of the consent. Such an event would be a complete cause of action in itself giving rise to fresh right to sue. Thus, where the legislature specifically requires the action to be brought within the prescribed period of limitation computed from the date when the cause of action 'first arose', it would by necessary implication exclude the extension of limitation or fresh limitation being counted from every continuing wrong, so far, it relates to the same wrong or breach and necessarily not a recurring cause of action.

30. Now, we would deal with the concept of recurring cause of action. The word 'recurring' means, something happening again and again and not that which occurs only once. Such reoccurrence could be frequent or periodical. The recurring wrong could have new elements in addition to or in substitution of the first wrong or when 'cause of action first arose'. It could even have the same features but its reoccurrence is complete and composite. The recurring cause of action would not stand excluded by the expression 'cause of action first arose'. In some situation, it could even be a complete, distinct cause of action hardly having nexus to the first breach or wrong, thus, not inviting the implicit consequences of the expression 'cause of action first arose'. The Supreme Court clarified the distinction between continuing and recurring cause of action with some finesse in the case of *M. R. Gupta v. Union of India and others*, (1995) 5 SCC 628, the Court held that:

"The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits. He would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.

*The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See *Thota China**

31. *The Continuing cause of action would refer to the same act or transaction or series of such acts or transactions. The recurring cause of action would have an element of fresh cause which by itself would provide the applicant the right to sue. It may have even be de hors the first cause of action or the first wrong by which the right to sue accrues. Commission of breach or infringement may give recurring and fresh cause of action with each of such infringement like infringement of a trademark. Every rejection of a right in law could be termed as a recurring cause of action. [Ref: Ex. Sep. Roop Singh v. Union of India and Ors., 2006 (91) DRJ 324, M/s. Bengal Waterproof Limited v. M/s. Bombay Waterproof Manufacturing Company and Another, (1997) 1 SCC 99].*

32. *The principle that emerges from the above discussion is that the 'cause of action' satisfying the ingredients for an action which might arise subsequently to an earlier event give result in accrual of fresh right to sue and hence reckoning of fresh period of limitation. A recurring or continuous cause of action may give rise to a fresh cause of action resulting in fresh accrual of right to sue. In such cases, a subsequent wrong or injury would be independent of the first wrong or injury and a subsequent, composite and complete cause of action would not be hit by the expression 'cause of action first arose' as it is independent accrual of right to sue. In other words, a recurring cause of action is a distinct and completed occurrence made of a fact or blend of composite facts giving rise to a fresh legal injury, fresh right to sue and triggering a fresh lease of limitation. It would not materially alter the character of the preposition that it has a reference to an event which had occurred earlier and was a complete cause of action in itself. In that sense, recurring cause of action which is complete in itself and satisfies the requisite ingredients would trigger a fresh period of limitation To such composite and complete cause of action that has arisen subsequently, the phraseology of the 'cause of action first arose' would not effect in computing the period of limitation. The concept of cause of action first arose must essentially relate to the same event or series of events which have a direct linkage and arise from the same event. To put it simply, it would be act or series of acts which arise from the same event, may be at different stages. This expression would not de bar a composite and complete cause of action that has arisen subsequently. To illustratively demonstrate, we may refer to the challenge to the grant of Environmental Clearance. When an appellant challenges the grant of Environmental Clearance, it cannot challenge its legality at one stage and its impacts at a subsequent stage. But, if the order granting Environmental Clearance is amended at a subsequent stage, then the appellant can challenge the subsequent amendments at a later stage, it being a complete and composite cause of action that has subsequently arisen and would not be hit by the concept of cause of action first arose."*

61. From the above ruling, it is absolutely clear that in a case of recurring cause of action, which is complete in itself and satisfies the requisite ingredients, to such composite and complete cause of action that has arisen subsequently, the phraseology of the 'cause of action

first arose' would not affect in computing the period of limitation. The concept of `cause of action first arose' must essentially relate to the same event or series of events which have a direct linkage and arise from the same event. In the above citation, it has also been made clear that if the order granting Environmental Clearance is amended at subsequent stage, then the appellant can challenge the subsequent amendments at a later stage, it being a complete and composite cause of action that has subsequently arisen and would not be hit by the "concept of cause of action first arose." Further it is clarified in the above citation that recurring or continuous cause of action may give a fresh cause of action resulting in fresh right to sue. In such case, subsequent wrong would be independent of first wrong and that the subsequent composite and complete cause of action would not be hit by "cause of action first arose". We do not find this position to have been unsettled by any subsequent ruling and appears to be settled law as on date.

62. In view of above position of law, if we scrutinize the matter at hand, we find that for construction of the present project, commencement certificate was initially taken on 01.04.2006 as is evident from the information given by the applicant in tabular form in paragraph No.12 of the application and thereafter, net plot area, permissible TDR and TDR claimed continued to rise from thereon on different dates upto 07.06.2018. Similarly, in paragraph No.18 of the application at clause (f), the dates of commencement certificates alongwith the BUA have also been mentioned which has been consistently rising from 22.11.2016 to 07.06.2018. It has also come on record that the Project Proponent has also planned to further raise construction in the same project. The last EC which has been obtained by the Project Proponent is dated 15.06.2018. Therefore, this appears to fall in the category of "recurring cause of action" and the cause of action which appears to have arisen on 15.06.2018 as per the grant of fresh EC, from that date and thereafter, under the Right to Information Act, the information is said to have been obtained regarding the same on 15.06.2018 and 20.08.2018 and

thereafter, a legal notice is said to have been issued by the applicant on 29.10.2018, which is a date from which the applicant has claimed to have computed the period of limitation.

63. Much objection was raised by the learned counsel for the Project Proponent that this very Tribunal had in a case decided earlier took the view the computation of limitation to be allowed from the date when the information was obtained by the Project Proponent under the Right to Information Act would be improper holding that it would allow the Project Proponent to make a date relevant for computation of limitation at his own whims. Therefore, in the present case, following the same principle, the applicant should not be allowed to reckon the period of limitation from 29.10.2018 on which he claims to have sent notice after obtaining information under R.T.I. regarding grant of EC to the Project Proponent from SEIAA on 15.06.2018 and thereafter, having sent a notice to the respondents on 20.10.2018.

64. We find substance in the argument of the learned counsel for the Project Proponent in this regard. However, we are of the view that Section 15 of the NGT Act provides period of limitation to be five years from the date when cause of action first arose and further period of 60 days is at the discretion of the Tribunal in case the delay is found to be justifiable. In the present case, there is no specific application made for seeking condonation of delay by the applicant. We find that even if the cause of action be taken to have arisen on 15.06.2018 when SEIAA granted EC to the Project Proponent from that date onwards, five years would expire on 14.06.2023 while the present application has been filed on 04.02.2019 which is well within the prescribed period of limitation i.e. five years.

65. As regards reliance placed by the learned counsel for the Project Proponent on **Graminee Environment Development Foundation** (supra), the facts in the case at hand are totally different from the facts in the said case. In the said case, the EC was taken on 30.09.2005 which permitted Dighi Port Ltd. to carry out reclamation within the sea. The

application to seek quashing of the same was made on 30.07.2016, which was held to be beyond the prescribed period of limitation and therefore, it was held to be barred rightly. But here in case in hand, the EC was granted by SEIAA on 15.06.2018 while the application is filed on 04.02.2019, much within limitation.

66. As far as the decision in ***Jai Javan Jai Kisan and Ors.*** is concerned, the facts of this case are also different from the facts in the case in hand. In the said case, Vidarbha Cricket Association was found to have become functional in the year 2008 against which the reliefs were being sought by filing application under Section 15 of the NGT Act on 11.04.2016, which was rightly found to be beyond limitation of five years. In the instant case, since EC was granted by SEIAA on 15.06.2018 and the application has been filed on 04.02.2019, the same is well within the prescribed period of limitation of five years.

67. Insofar as the decisions in other citations relied on by the learned counsel for the Project Proponent are concerned, those cannot be made applicable to the facts of the present case.

FINDINGS ON ISSUES NOS.(i) to (v) :

68. As far as **Issue no. (i)** is concerned, as per the site plan dated 30.08.2001 approved by the PMC relating to the present project, total BUA is shown as 7053.66 sq.mtrs. and the proposed building was to contain Stilt + First + Second + Third floor, which does not include the balcony i.e. 1054.32 sq. mtrs., passage 188.01 sq.mtrs., lift room 78.508 sq.mtrs, stair case 541.76 sq.mtrs. and parking 3197.96 sq. mtrs. Thus in terms of EIA Notification 2006, the BUA works out in the case of present project to be 12,106.918 sq.mtrs.

69. Since prior to 04.01.2006, BUA of the project in question was less than 20000 sq.mtrs., it did not require EC but the Project Proponent went for further approval in the case in hand on 04.01.2006 from PMC, which shows BUA (Floor area + excess balcony) as 13,700 sq.mtrs, which

includes only FSI area while non-FSI area comprising stair case 1262.54 sq.mtrs., passage 2881.29 sq.mtrs., lift lobby 1567.28 sq.mtrs. The balcony, lobby, lift area, lift machine room, area of AHU and Atrium were not added in the BUA by the Project Proponent, therefore, according to us, the total BUA would be 33,667.95 sq.mtrs, which obviously is above 20,000 sq.mtrs. Hence, it would require the prior EC from the Authority concerned. It would be pertinent for us to mention that the Project Proponent has tried to convince us that till the issuance of Notification dated 04.04.2011, there was no clarity with respect to the fact that BUA would include FSI as well as non-FSI area, therefore, he did not go for obtaining prior EC because on the basis of FSI area only, the area of construction was below 20,000 sq.mtrs. We do not approve of this stand taken by the Project Proponent because it was made very clear in the case of **Goel Ganga Developers** (supra) that BUA would include both FSI and non-FSI area and that the Notification of MoEF&CC of 2011 was only clarificatory. Hence, it is absolutely clear that the EC becomes applicable with respect to the present project very much with effect from 04.01.2008 when the Project Proponent had got its second approval pursuant to its submitting the application for approval on 04.01.2006. The issue no. (i) is accordingly decided.

70. As to **Issue no. (ii)**, we find from the record that as per Form-1 dated 13.06.2018, till that date, the construction which was shown to have already been done was 42,200.0 sq.mtrs. We find that the Project Proponent had applied for EC before PMC, which shows that by then, he had already constructed 13,700 sq.mtrs, which is as per sanction plan No.CC/3020/07 dated 04.01.2008 with total BUA of 33,33,667.95 sq.mtrs. Therefore, it is apparent that between 04.01.2008 and 10.11.2017, the Project Proponent had already constructed 13,700 sq.mtrs. without obtaining prior EC. It is also apparent that this construction which is shown of 13,700 sq.mtrs., does not disclose as to whether the same was including FSI or FSI + non-FSI both. We assume it to be FSI because it was mentioned as FSI in sanction plan dated

2473

04.01.2008. Therefore, total BUA, in our estimation, which had already been done by the Project Proponent till 10.11.2017 after 04.01.2008, stands at 13,700 sq.mtrs., which would be treated to be in violation. We assume that any construction raised by the Project Proponent after 10.11.2017 would have been in accordance with the EC conditions because initially EC was from PMC and thereafter when the said Project Proponent approached the SEIAA as it was held that PMC did not have jurisdiction to grant EC, the EC was granted on 15.06. 2018 for total 51,834.47 sq.mtrs. Although we find that the applicant has raised objections on various counts saying that even pursuant to EC, whatever constructions have been made by the applicant were not made in accordance with the terms and conditions stipulated therein and they committed various violations. This issue is decided accordingly.

71. As regards **Issue Nos. (iii) and (iv)** are concerned, we have to decide as to when requirement of Consent to Establish (CTE)/Consent to Operate (CTO) became applicable in the present project and when the same were obtained and if not, its consequences. We are of the view that CTE and CTO both were required to be obtained from MPCB soon after approval from the PMC before the construction was started i.e. 04.01.2008 but from record, it is revealed that CTE was applied for to on 21.05.2018 and it was granted on 07.01.2019. Therefore, there was no CTE granted in favour of the Project Proponent from 04.01.2008 to 07.01.2019. We find from the record that there was no CTO granted in favour of the Project Proponent till date. For these violations EDC is required to be imposed. This issue is decided accordingly.

72. As to **Issue No. (v)**, according to the applicant following illegalities are said to have been committed by the Project Proponent while making constructions:-

- a. It is submitted that, the PP has used huge quantity of the natural resources for the construction of the project without any impact assessment and caused irreparable damage to the environment and ecology in substantial nature.

- b. It is submitted that GHG emissions especially carbon from the material process and its use during the construction and operation phase is huge and it has adverse impact on the environment and therefore the prior impact assessment is required for the better protection and improvement of the environment due to the activity of the project proponent. But PP intentionally failed to prepare such EIA and further neglected to implement such assessment in his project and caused huge damage to environment.
- c. It is submitted that, the PP has made excavation of two basements and this is one of the major damage to the environment.
- d. It is submitted that, the PP has admitted in Form-1 in item#4.1 there is excavation of top soil quantity to 6,189.12 Cu. Mtrs, excavation of quantity of Soft rock & Hard rock to the tune 2,7851 Cu. Mtrs. and excavation of quantity of Murum to the tune 12,348 Cu. Mtrs. and this is done without applying any impact assessment.
- e. It is submitted that, the PP is using glass for covering the buildings which will generate huge amount of heat.
- f. It is submitted that, the PP is extracting the ground water from bore wells.
- g. It is submitted that, the PP has used traditional clay bricks and PP has not used any scientific construction method.
- h. It is submitted that, the PP has suppressed actual quantity of building material required for construction in Form 1

- i. It is submitted that, the environmental issues are very complex and its restoration is more difficult than complexity. But PP has callous attitude for environmental protection and adopted careless, reckless, attitude with unapologetic behavior and manipulated the government authorities, therefore the amount of environmental damages to be imposed on this PP must be exemplary to teach the deterrent lesson.

73. After having gone through the Joint Committee reports, which have been cited by us, we studied them closely in the light of above objections by the applicant and found as follows:-

SN	Concern Raised	Remark
a.	It is submitted that the PP has used huge quantity of the natural resources for the construction of the project without any impact assessment and caused irreparable damage to the environment and ecology in substantial nature.	EC process / EC conditions do not result in reduction in construction material. Hence, there is no substance in the concern raised.
b.	It is submitted that GHG emissions especially carbon from the material process and its use during the construction and operation phase is huge and it has adverse impact on the environment and therefore the prior impact assessment is required for the better protection and improvement of the environment due to the activity of the project proponent. But PP intentionally failed to prepare such EIA and further neglected to implement such assessment in his project and caused huge damage to environment.	Building construction project of 8(a) category does not require EIA. In any case, EC process / EC conditions do not result in reduction in construction material. Hence, there is no substance in the concern raised.
C.	It is submitted that, the PP has made excavation of two basements and this is one of the	EC process does not reduce quantity of excavation required. However, EC

SN	Concern Raised	Remark
	major damage to the environment.	condition to ask for preservation of top soil. As per JC reports construction was carried out since year 2007. Hence, it is not possible to opine whether top soil was preserved or not.
d.	It is submitted that, the PP has admitted in Form-1 in item#4.1 there is excavation of top soil quantity to 6,189.12 Cu. Mtrs, excavation of quantity of Soft rock & Hard rock to the tune 2,7851 Cu. Mtrs. and excavation of quantity of Murum to the tune 12,348 Cu. Mtrs. and this is done without applying any impact assessment.	Building construction project of 8(a) category does not require EIA. EC process does not reduce quantity of excavation required. However, EC condition to ask for preservation of top soil. As per JC reports construction was carried out since year 2007. Hence, it is not possible to opine whether top soil was preserved or not.
e.	It is submitted that, the PP is using glass for covering the buildings which will generate huge amount of heat.	Use of glass for facilitating natural light is in keeping with standard design process for commercial buildings. In fact, it saves on requirement of electricity for lighting. Hence, there is no substance in the concern raised.
f.	It is submitted that, the PP is extracting the ground water from bore wells.	As per JC reports there were no borewells at the site. Hence, there is no substance in the concern raised.
g.	It is submitted that, the PP has used traditional clay bricks and PP has not used any scientific construction method.	It is not clear what is un-scientific in use of clay bricks. There is no substance in the concern raised.

2477

SN	Concern Raised	Remark
h.	It is submitted that, the PP has suppressed actual quantity of building material required for construction in Form 1	As per EIA Notification, proposals are appraised on the basis of conceptual plan. At that stage requirement of construction material is worked out based on thumb rule calculations. Hence, quantities stated in the Form I are merely indicative. Hence, there is no substance in the concern raised.
i.	It is submitted that, the environmental issues are very complex and its restoration is more difficult than complexity. But PP has callous attitude for environmental protection and adopted careless, reckless, attitude with unapologetic behavior and manipulated the government authorities, therefore the amount of environmental damages to be imposed on this PP must be exemplary to teach the deterrent lesson.	It is generic statement not supported by any data.

74. As to **Issue No. (v)**, the above study by us in the light of the Joint Committee report would indicate that the Joint Committee had failed to render its opinion with respect to preservation of top soil as the construction was carried out long back in the year 2007. Similarly, we also could not get any evidence on record indicating that any violation was there in that regard. Apparently, on rest of the counts, the Joint Committees have not found any infirmity. We dispose of this issue accordingly.

75. As to **Issue No. (vi)**, in this regard, as per our calculation, we have worked out project cost for violation which comes to the tune of Rs.3500/- per sq.feet i.e. Rs.35,000/- per sq.mtr. The total constructed area, which has been raised in violation i.e. without obtaining

2478

Environmental Clearance is 33,667.95 sq.mtrs. i.e. 3,36,679.5 sq.feet. Accordingly, the cost of the project works out to be Rs.117.8 Crores and 5% of the said project cost would be Rs.5.9 Crores. We deem it proper to levy this amount as compensation towards environmental damage from the Project Proponent in this case.

76. As regards the environmental compensation with respect to the violation of Consent to Establish and Consent to Operate for the aforesaid period, we leave it to the Maharashtra Pollution Control Board (MPCB) to calculate as per the law laid down in Paryavaran Suraksha's case.

77. In view of above, we dispose of this Original Application with following directions :-

(i) The Project Proponent is directed to deposit the amount of Rs.5.9 crores as assessed above, with the Maharashtra Pollution Control Board (MPCB) within a period of 2 (two) months from the date of this order.

(ii) The MPCB is directed to calculate the amount of Environmental Compensation with respect to the violation of Consent to Establish and Consent to Operate for the aforesaid period within one month and realize the same from the Project Proponent within a period of next 2 (two) months from the date of this order. MPCB shall also take action against Project Proponent under Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 as recommended by Joint Committee for violations and submit its report to the registrar of this Tribunal within three months.

(iii) The amount of compensation so realized shall be utilized for remediation of environmental damage caused by the project and for improving / restitution of the environment in the area in question within a period of next six months after realisation of amount and report of the same shall be posted on MPCB website.

(iv) Commissioner PMC shall investigate and take action both administrative and criminal against the officers who have granted building plan approvals/ plinth certificates/ completion certificates/ occupancy certificates without ensuring availability of requisite EC and/or compliance of environmental clearance conditions, within 3 months and if found guilty at least adverse ACR may be recorded in their service book and submit report to Registry of this Tribunal. This report shall be posted on PMC and MPCB website.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

February 22, 2023
Original Application No. 28 of 2019
npj