

BEFORE THE NATIONAL GREEN TRIBUNAL, SOUTHERN ZONE,
CHENNAI

APPEAL NO. 70 OF 2024

(Against the Proceeding No. T2/TNPCBd/F.004791/CHN/W&A/2023
dated 13.08.2024 passed by the Tamil Nadu Pollution Control Board)

Between :

M/s Radiance Realty Developers India Limited
Having office at
First Floor, New Door No.111, Old No.110,
33 Feet Road, Anna Salai,
Guindy, Chennai – 600 032.
Represented by its Authorized Signatory
Mr. K. Kannadasan

...Appellant

-Vs-

1)Tamil Nadu Pollution Control Board,
No.950/1, P.H. Road, 2nd Floor
Arumbakkam,
Chennai – 600 106.
Represented by its Chairperson

2)State Level Environmental Impact
Assessment Authority, Tamil Nadu
3rd Floor, Panagal Maaligai,
No.1, Jeenis Road, Saidapet,
Chennai - 600 015.
Represented by its Member Secretary

3)Selvaraju Duraisamy,
Son of P. Duraisamy,
B1701 Radiance Icon,
1167 Poonamallee High Road,
Koyambedu,
Chennai - 600 107.

4)Radiance Icon Owners Association,
Represented by its' President/Secretary,
Radiance Icon
1167 Poonamallee High Road,
Koyambedu,
Chennai - 600 107.

...Respondents



**COUNTER AFFIDAVIT FILED ON BEHALF OF THE 3RD
RESPONDENT, SELVARAJU DURAISWAMY**

I, Selvaraju Duraiswamy, son of P. Duraisamy, aged about 62 years, residing at B1701 Radiance Icon, 1167 Poonamallee High Road, Koyambedu, Chennai - 600 107, do hereby solemnly affirm and sincerely state as follows:

1. I am the 3rd Respondent in the present appeal and am well-acquainted with the facts and circumstances of this case. I have read the Memorandum of Appeal filed by the Appellant and am filing this Counter Affidavit in response thereto. I deny all averments, allegations, and contentions raised in the appeal, save those that are specifically admitted herein, and put the Appellant to the strict proof thereof.

2. It is submitted that the present appeal is devoid of merit, manifestly frivolous, and constitutes a gross abuse of the process of this Hon'ble Tribunal. The appeal is a calculated and disingenuous attempt by the Appellant (hereinafter "the Promoter") to protract litigation and evade statutory responsibilities that were solemnly undertaken as a precondition to securing the Environmental Clearance (EC) for the project "Radiance Icon." The primary grounds of the appeal are predicated on a deliberate falsehood—the denial of a sworn undertaking to operate and maintain the Sewage Treatment Plant (STP) for a period of 10 years—a commitment that is a matter of undisputed record. The Promoter's reliance on a selective reading of an order from the Tamil Nadu Real Estate Regulatory Authority (TNRERA) while conveniently ignoring the parts of the very same order that reaffirm their liability further underscores the frivolous nature of this appeal. This appeal is not a genuine legal grievance but the culmination of a clear strategy to unlawfully shift statutory liabilities onto the residents, thereby wasting the valuable time and resources of this Hon'ble Tribunal.

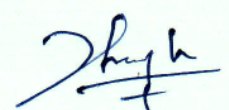
3. It is a settled principle of law that a party seeking equitable relief



must approach the forum with clean hands. The Promoter has failed this fundamental test by actively suppressing material facts and making misleading statements before this Hon'ble Tribunal. The Promoter has consistently and deliberately misrepresented its obligations by denying the existence of its 10-year STP maintenance undertaking, not only in the present appeal but also in prior proceedings. This act of suppressing their own sworn affidavit, the very document that formed the basis for the grant of the EC, demonstrates a pattern of conduct that disentitles them from any relief. Furthermore, as will be detailed, the Promoter has engaged in actions, including the allegedly fraudulent transfer of the Consent to Operate (CTO) to the Owners Association, which further tarnish their standing before this Tribunal. By concealing crucial facts and arguing the contrary, the Promoter is attempting to mislead this Hon'ble Tribunal, and the appeal is liable to be dismissed on this ground alone.

4. The following submissions are made in response to the specific averments in the Memorandum of Appeal, without prejudice to the preliminary objections raised above.

a. Re: Para 5(j), 5(k), 6(f), 6(h), and 6(l): The averments that the project handover was completed on 17.06.2022 and that responsibility for maintenance thereby shifted to the Radiance Icon Owners Association (4th Respondent) are categorically denied. The concept of "handover" is legally contingent upon the Promoter first fulfilling all its statutory obligations. Part C, Clause (i) of the EC dated 14.07.2017 is unequivocal: "The Project Proponent shall ensure compliance with EC conditions related to Pre construction and Construction phases **before the facility is handed over for occupancy...**". The Promoter's admitted failure to secure the committed water and sewer connections from the Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB) is a direct and material breach of a pre-handover condition, rendering any purported



"handover" legally incomplete and invalid. A private construction agreement or a fraudulently obtained CTO cannot supersede or nullify this fundamental statutory precondition.

b. Re: Para 5(h), 5(l), and 6(b): The averments that the Promoter never gave an undertaking to maintain the STP for 10 years are vehemently denied as being patently false and perjurious. This contention is a direct contradiction of the sworn affidavit submitted by the Promoter to the 2nd Respondent (SEIAA) to secure the EC. Point 4 of the said affidavit, titled "Annexure 2- Affidavit," explicitly and unambiguously states: **"We are liable for operation and maintenance of STP for 10 years from the date of operation of the project"**. This was a solemn commitment based on which the EC was granted, and the Promoter is now estopped from denying its existence and enforceability.

c. Re: Para 5(i) and 6(j): The Promoter's reliance on the TNRERA order dated 02.03.2023 is selective and misleading. While the Promoter highlights the portion of the order concerning the Association's responsibility for common area maintenance, it deliberately omits the fact that the very same order directed the Promoter to secure the CMWSSB connections. The Radiance Icon Owners Association, in its representation to the TNPCB, correctly pointed out that the TNRERA order in C Nos. 88 & 90 to 92/2022 explicitly directed the Promoter to file applications and obtain the connections on or before 30.06.2023. This demonstrates that other judicial forums have also affirmed the Promoter's primary liability for fulfilling these crucial EC conditions.

d. Re: Para 5(m), 5(n), and 6(m): The averments regarding the difficulties in obtaining CMWSSB connections are self-serving and an attempt to shift the blame for their own inaction. The Promoter committed to obtaining these connections *before* handover. The CMWSSB has confirmed that as of 21.11.2023, no application was ever



registered by the Promoter for seeking the service connection. The Promoter's failure to even apply for the connection for several years after project completion is a clear breach of their EC commitment, and any subsequent procedural hurdles are a direct consequence of their own prolonged default.

5. The grant of the EC dated 14.07.2017 was not an unconditional privilege. It was a statutory approval granted in exchange for, and in reliance upon, a series of solemn, binding, and irrevocable commitments made by the Promoter in a sworn affidavit before the SEIAA. This affidavit forms the legal bedrock of the Promoter's environmental obligations. The key commitments include:

- **10-Year STP Maintenance:** A direct and unequivocal undertaking stating, "We are liable for operation and maintenance of STP for 10 years from the date of operation of the project".
- **Pre-Handover CMWSSB Connections:** A clear assurance that "the required permission from the competent Authority for supply of fresh water... and for disposal of wastewater... will be obtained **before handing over** of the before obtaining completion certificate from the competent authority, **whichever is earlier**".
- **Acknowledgement of Legal Consequences:** An explicit acknowledgement of the gravity of these commitments, stating, "And also aware that I can be prosecuted under relevant act and rules, if am not ensuring the adherence of the above commitment".

These were not mere procedural statements but the *quid pro quo* for the EC. The Promoter cannot be permitted to benefit from the clearance while disavowing the very conditions that enabled its grant. To allow such a course of action would be to endorse a principle of "approbate and reprobate," fundamentally undermining the integrity of the entire



environmental clearance process established under the EIA Notification, 2006.

6. The Promoter's actions post the receipt of the EC reveal a consistent and willful pattern of violating its core conditions. The project, as it stands today, is a testament to broken promises and environmental neglect, directly attributable to the Promoter's failure to adhere to its own undertakings.

EC Commitment/Condition	Status of Compliance by Promoter
1. Operate & Maintain STP for 10 years	VIOLATED: Abandoned STP maintenance on 15.04.2022. TNPCB inspections found the STP non-operational and causing odor nuisance.
2. Obtain CMWSSB water & sewer connection before handover	VIOLATED: No application was ever filed with CMWSSB. The project relies on private tankers and unapproved borewells.
3. No car parking for Block 'C'	VIOLATED: The Promoter created and sold car parks for Block 'C' residents, directly contravening the EC.
4. Provide solar energy for common areas	VIOLATED: No functional hybrid or full solar system was installed as mandated; only a few token panels were provided.
5. Implement Solid Waste Management	VIOLATED: No provision was made to process the committed 837 kg/day of solid waste as per the undertaking.

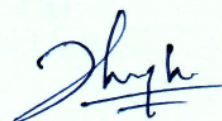


6. Upload periodic EC compliance status reports	VIOLATED: Failed to upload compliance status reports to the authorities during the entire construction and post-construction period.
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This systematic non-compliance demonstrates that the Promoter's current appeal is not an isolated instance of disagreement but part of a larger strategy to externalize its legal and financial responsibilities onto the homeowners, leaving them with a project that is environmentally unsustainable and statutorily non-compliant.

7. The Promoter's central defense—that all responsibilities were transferred to the Owners Association upon "handover"—is legally untenable. As established, the EC itself creates a condition precedent: compliance *before* handover. Since the Promoter failed to meet this condition, particularly with respect to CMWSSB connections, the handover is void *ab initio* and legally incomplete.

8. Furthermore, the very instrument used to create an illusion of transferred responsibility—the CTO in the name of the Association—is alleged to have been obtained through fraudulent means. The Owners Association has formally represented to the TNPCB that the Promoter "fraudulently applied for renewal of the CTO in the name of the Secretary, Radiance Icon Owners Association" to "hoodwink the competent authorities". It is submitted that the application was made without the knowledge or authorization of the Association's office-bearers, and the requisite fees were paid by the Promoter, not the Association. This act was a calculated maneuver to create a "legal shield"—the Association—to hide behind and deflect regulatory scrutiny. If the CTO was obtained by fraud, it is legally invalid, and the responsibility for operating the STP was never lawfully passed from the



Promoter.

9. The impugned order of the 1st Respondent (TNPCB) dated 13.08.2024 is a just, lawful, and necessary regulatory action that correctly pierces the corporate and procedural veil created by the Promoter. The TNPCB's own report demonstrates the due process followed. The Board initially issued a show-cause notice and directions to the Owners Association, the apparent holder of the CTO. However, upon receiving a detailed representation from the Association, which furnished irrefutable evidence of the Promoter's primary and unfulfilled liabilities (including the EC affidavit and the TNRERA order), the TNPCB rightly re-evaluated the matter. After conducting a personal hearing with all stakeholders, the Board correctly identified the party with the ultimate statutory obligation: the Promoter. The impugned order is not an arbitrary act but a reasoned decision that rectifies the Promoter's attempt to subvert its environmental commitments. It is a moment of regulatory clarity that upholds the sanctity of the Environmental Clearance process.

In light of the foregoing submissions, facts, and circumstances, it is most humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the present Appeal No. 70 of 2024 in its entirety as being frivolous, vexatious, and an abuse of the process of this Hon'ble Tribunal and consequently uphold the directions issued by the 1st Respondent (Tamil Nadu Pollution Control Board) in Proceeding No. T2/TNPCBd/F.004791/CHN/W&A/2023 dated 13.08.2024 as being just, legal, and proper and thus render justice.



Solemnly affirmed the contents)(
Of this affidavit at Chennai on)(
This 11th day of September 2025 &)(
Signed his name in my presence)(
S

BEFORE ME

ADVOCATE:: CHENNAI

Sathish
MS: 1304/21
Flat 3E, Dragon Apartment,
T-Nagar, Chennai - 17.

(Against the Proceeding
No.T2/TNPCBd/F.004791/CHN/W&A/2023 dated
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Control Board)

Between :

M/s Radiance Realty Developers India
Limited

Represented by its Authorized Signatory
Mr. K. Kannadasan

...Appellant

-Vs-

Tamil Nadu Pollution Control Board,
No.950/1, P.H. Road, 2nd Floor

Arumbakkam, Chennai – 600 106.

Represented by its Chairperson & others
(Respondents)

COUNTER AFFIDAVIT OF
SELVARAJU DURAISAMY

M/s. RALPH V. MANOHAR (E.No.304/07)
& R.RAMANA (E.No.1887/04)

COUNSEL FOR 1st
RESPONDENT(s)/COMPLAINANT
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