

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,

Principal Bench, New Delhi

In

Original Application No. 238/2015

In the Matter of: -

Anil Uppal & Ors.

Applicant(s)

Vs.

Union of India & Ors.

Respondent(s)

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**(N. K. Gupta)**

Scientist 'E'

Central Pollution Control Board,  
Parivesh Bhawan, East Arjun Nagar,  
Delhi-110032

**Place:** Delhi

**Date:** 03.12.2020

# **Report of the Joint Committee constituted by the Hon'ble NGT (PB) for assessment of compensation in compliance with order dated 09.01.2020 on O.A. No. 238/2015 (in the matter of Anil Uppal & Ors. Vs. Union of India & Ors.)**

## **1. Background**

In simple terms, O.A. No. 238 of 2015 pertains to an application filed by a group of residents of Ambience Lagoon Apartment, a group housing complex located in close proximity to the National Highway No. 8, Gurugram, Haryana, developed by Ambience Developers & Infrastructure Pvt. Limited. Alleging illegal construction of a commercial complex by encroaching and using-up the 'open area' portion of the apartment's original land resulting in blockage of fresh air and sun light and reduction of actual area of Lagoon Apartment from originally sanctioned area of 10.98 acres to 7.93 acres, the residents sought for restoration of the open area and appropriate compensation for deprivation of environmental benefits. This case has been under scrutiny before the Hon'ble Supreme Court, High Court (Chandigarh) and the NGT since 2015. Experts representing the Central Government, State Authorities and Joint Committees also visited the site in question, took stock of the ground realities and assessed the legality of this project. Here, it's pertinent to mention that this case is also under investigation of the Central Bureau of Investigation (CBI) the report of which is expected to be tabled anytime soon. Deliberating further in this matter, the Hon'ble NGT proceeded to pass the following directives (**Para: 16 & 17**) vide its order dated 09.01.2020 as reproduced below:

### **[16 (p-11)]**

*"...The assessment of compensation in the present case, as earlier mentioned, needs to be revised considering the project cost in respect of construction of area which was originally stipulated to be open area, the extent of violation, the extent of loss of ecological services to the applicants and illegal gain by the violator of law".*

*"The Committee appointed by this Tribunal needs to go into the question whether in the light of original Deed of Declaration based on sanctioned plan for housing complex in the area of 10.98 acres complex with stipulated open area, revised plan enforced after allotment of apartments to the applicants illegally deprived the applicants of their right to ecological services as per the original plan as well as liability for compensation on account of violation of law prohibiting change of common area to the detriment of environment only to advance private profit".*

**[17 (p-11)]**

*".....we find it necessary to **constitute a joint Committee** comprising MoEF&CC, CPCB and Indian Institute of Forest Management, Bhopal to assess compensation and furnish a report to this Tribunal by e-mail at [judicialngt@gov.in](mailto:judicialngt@gov.in) before the next date. CPCB will be the nodal agency for coordination and compliance".*

Accordingly, the Joint Committee was constituted and joint inspection of the site was undertaken on 21.09.2020 with the specific aim of taking stock of the ground realities and collecting relevant documents and data for compiling the report as presented in the following sections.

## **2. Constitution of Joint Committee & Tasks Assigned**

In compliance with the NGT order dated 09.01.2020, CPCB, the nodal agency in this case, requested the MoEF&CC and Indian Institute of Forest Management, Bhopal to nominate one officer each for taking up the role and responsibility of esteemed member of the Joint Committee. As per the directives outlined above, Hon'ble NGT constituted this Joint Committee for accomplishing the specific task of assessing compensation and submitting a report to the Tribunal before the next hearing. Clearly, the NGT wants this committee to focus on the all-important compensation/penalty aspect of the project given the fact that this project is in violation of the EC conditions. Thus, this committee focussed mainly on the compensation aspect of the project on account of violation of stipulated EC conditions. Accordingly, the concerned authorities nominated following officers for joining the committee and accomplishing the assigned task of assessment of compensation.

1. Rajesh Debroy, Scientist 'E', CPCB
2. K.K. Garg, Scientist 'C', MoEF&CC and
3. Advait Edgaonkar, Assistant Professor, IIFM, Bhopal

The committee decided to conduct site inspection on 21.09.2020. The representative of IIFM, Bhopal was reportedly diagnosed with COVID-19 but he participated in important deliberations of the committee and provided valuable inputs via video conferencing.

## **3. COMPLIANCE OF DIRECTIONS OF HON'BLE NGT**

**1.1 Whether in the light of original Deed of Declaration based on sanctioned plan for housing complex in the area of 10.98 acres complex with stipulated open area, revised plan enforced after allotment apartments to the applicants illegally deprived the applicants of their right to ecological services as per the original plan as well as liability for compensation on account of violation of law prohibiting change of common area to the detriment of environment only to advance private profit.**

**Committee has considered following court orders during the preparation of the report:**

As mentioned in the **Hon'ble NGT order dated 11.02.2020** at page no. 02 (point-05) that (**Annexure-1**):

*'...The stand of the TCPD in the written statement filed on 07.09.2015 is that originally, on 09.07.1993, license for development of colony was granted on 18.99 acres of land but the building plan was submitted for 10.98 acres of land, leaving 8 acres land for future development. 8 acres land was subsequently de-licensed on 18.10.2010''.*

It is also mentioned in **Hon'ble High Court of Punjab & Haryana at Chandigarh vide order dated 10.07.2020** at page 22 & 23 that (**Annexure-2**):

*"...at the time of initial submission of application sans the layout plan and drastic changes made in the format by the builder, it cannot be disputed that the original idea was to set up group housing complex on entire 18.93 acres. The court thus feels that the rights of the residents of the housing project need to be preserved. The court cannot countenance blatant violation of statutory provisions and erection of buildings, particularly commercial in nature, conceived by a builder for unjust enrichment, at the cost of general public..."*

*"De-licensing orders dated 18.10.2001 (Annexure P-9), orders granting license/permission vide order dated 16.10.2001 (Annexure P-10) and dated 01.09.2010 (Annexure P-13) passed after submission of Deed of Declaration on 25.03.2009 (Annexure P-8) are hereby quashed'.*

Regarding compensation for loss of ecological services, a brief report from, IIFM, Bhopal (enclosed as **Annexure-Z**).

### **3.1.1 OBSERVATIONS OF THE COMMITTEE:**

1. Committee has visited the both sites i.e. Ambiance Lagoon Apartments and Ambiance Island (corporate office tower). **According to PP** total area of lagoon apartment divided as follows: lagoon apartment residential area – 7.93 acres + 3.05 acres approach road area + 0.85 acres EWS area). On the basis of this information **total area of ambiance lagoon apartment became 11.83 acres.**
2. **Residents of the lagoon apartment is claiming** that the total area of the **lagoon apartment is 10.98 acres** including the area of ambiance island (corporate office tower) – 3.05 acres and area of Lagoon residential apartment – 7.93 acres.
3. As per **google images total area of both projects** (Ambiance Lagoon Apartments and Ambiance Island) is **looking around 11.2 acres (Annexure-3)**. Out of 11.2 acres area ambiance lagoon apartment is 7.93 acres and rest of 3.27 acres pertains to

Ambiance Island (commercial complex). **Area of approach road** (as shown in map by PP during the site visit) in google map is looking as **4.53 acres (Annexure-4)**.

4. It is mention in both NGT order dated 11.02.2020 and Punjab & Haryana High court order dated 10.07.2020 that the area of residential colony was 10.98 acres. However, as per information provided by PP and according to google images total area of the project is lagoon apartment area – 7.93 acres + approach road area- 4.53 acres + 0.85 acres EWS = Total-13.31 acres). Therefore, there exists mismatch so far as data provided by the PP is concerned.
5. The Joint Committee is of the view that instead of taking the total area of the approach road leading to lagoon apartment, only the front road area which is 1.87 acres may be considered in this case (**Annexure-5**). The fact that this road is also shared by Catriona apartment should also be considered.
6. Now for consideration of area of lagoon residential colony area under road and EWS may not be the part of original area. The area of lagoon apartments excluding the EWS area and the approach road is 10.98 acres. Now, as per google images the total project area of ambiance lagoon group housing and ambiance island (corporate office tower) is approx. 11.2 acres (Lagoon apartment – 7.93 acres + Commercial complex – 3.27 acres), which adds up to the original area of group housing. (**Annexure-2**)  
It is further matter of discussion that PP has obtained Environmental Clearance from SEIAA Haryana vide letter dated 01.09.2010 for construction of commercial complex at total plot area about 5.80 acres, However as per google map it is showing maximum 2.75 acres. (**Annexure-6**)
7. Now TCPD, in case of both NGT and High Court proceedings indicated that the Project proponent has taken licence for commercial project for area of 08 acres for construction of Hotel and ambiance mall. Now, PP has constructed both commercial projects. The land for office complex is not the part of this project.
8. **Change in built-up area:** As per layout plan the sanctioned built-up area of the project is 79289 m<sup>2</sup>. The PP during the site visit indicated the built-up area of the project around 78000 m<sup>2</sup>. However, total built-up area as mentioned in environmental clearance is 72290 for building height 29 mtrs. PP has also constructed 03 basement instead of 04 basement as mentioned in the environmental clearance and same has already been reported in previous joint committee report vide dated 07.11.2019. Therefore, there is the possibility that PP has increase the build-up area of commercial complex more than mentioned in EC.
9. *It may be noted that Gurugram along with Delhi falls in zone IV which is second most earthquake threatened seismic zone. Therefore, it is dangerous for both during the earthquake (Photo 1).*

10. It has also been observed that **some blocks of lagoon apartment are not getting proper air and sunlight** due to the high rise of office complex.

In view of the above committee has decided following violations in the project and considered for environmental compensation:

- i. Illegal construction of commercial complex at part of the land of housing colony lagoon apartment.
- ii. Regular earning from illegal commercial office complex.
- iii. Violation of EC dated 01.09.2020 and stipulated EC conditions.

## **2. ASSESSMENT OF ENVIRONMENTAL COMPENSATION:**

### **2.1 Illegal construction of commercial complex at part of the land of housing colony lagoon apartment.**

The present case is similar in nature to the M/s Goel Ganga Developers India Pvt. Ltd. v/s UOI through Secretary Ministry of Environment and Forest & Ors. where Hon'ble Supreme Court finally ordered that "*...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*". (Annexure-7)

The present case is similar to the above case, therefore, cost of compensation in present case has been calculated by referring to the above order i.e. 10% of project cost or 100 Cr which is higher.

**Present cost of the project:** Calculation of project cost as per circle rates of 2018-19: The circle rates of Gurugram for the Commercial/Retail (Rs. Per sq. Ft.) for the of year 2018-19 is Rs. 13000/Sq. Ft. (Annexure-8)

#### **The cost of the project as per circle rates of 2018-19:**

- As mentioned at the web link at <https://www.growlandcapital.com/real-estate/gurgaon/ambience-island/ambience-corporate-park-ii/> that total built up area available for rent of office complex is 106,7957 Sq. ft.
- Therefore, cost of the project as per gurgaon circle rates (2018-19) will be =  $1067957 \times 13000 = \text{Rs. } 1,388,34,41000$  (**Rs. One thousand three hundred eighty eight crore thirty four lacks forty one thousand rupees only**).

Therefore, 10% cost of the project will be =  $\text{Rs. } 13883441000 \times 10\% = \text{Rs. } 138,83,44,100$  (**Rs. One thirty eight crore eighty three lacks forty four thousand hundred rupees only**)

## 2.2 Regular earning from illegal commercial complex.

As observed that PP has constructed the whole structure and now it is operational from more than 03 years. It is a good source of income for PP, therefore committee has suggested following provision for this illegal structure:

- a. **The illegal commercial structure immediately may be demolished for development of green area and other activities of housing colony of lagoon apartments.**
- b. **As known that construction of office complex is already completed and in operational from last 03 years. Being a good source of income government may hold some percentage of income for development activities.**

**Following lump-sum amount of earning has been calculated by the committee members:**

**Annual income at present from the project:** The total area of the commercial complex as mentioned at website link given above is 106,7957 Sq. ft. and as per EC it should be 778123.0828 Sq. Ft. The rent of per square ft. area for one month is given at mentioned web link is Rs. 120.

1. Therefore, total rent of the building for a year will be =  $1067957 \times 120 \times 12 =$  Rs. 153,78,58080 (**Rs. One fifty three crores, seventy eight lacks, fifty eight thousand eighty rupees only**).

**Decision of committee:**

2. Government may hold certain proportion of overall profit of the project. This may be 10 % or any proportion within the range of 25-50% profit of the project for development activities. For example, considering 25-50% profit, the amount comes out to be in the range of **38.44 Cr/year to 76.89 Cr/year**.
3. **In the addition of above amount**, PP has obtained 1<sup>st</sup> consent to operate for this project from state pollution control board vide letter dated 31.08.2017. Therefore, **PP is also required to submit additional amount of fine of last three years in addition of above.**

## 2.3 Violation of EC dated 01.09.2020 and stipulated EC conditions.

Multiple violations of EC conditions has been reported in the report of Joint committee submitted by MoEF&CC to Hon'ble NGT vide letter dated 07.11.2019 and **recommended fine of Rs. 68, 51, 250** (Rs. Sixty eight lacks fifty one thousand two hundred fifty rupees only).

Now, In addition to the above, the joint committee has also observed following additional violations related to EC. Thereafter, committee has decided to re-calculate/revise the amount of environmental compensation.

- a. Excavation work prior to EC: As observed from the google images that PP has started excavation work of the project site prior to grant of EC (**Annexure-9 to 12**).
- b. Change in built-up area: As per layout plan (Annexure-x) the sanctioned built-up area of the project is 79289 m<sup>2</sup>. However, total built-up area as mentioned in environmental clearance is 72290 for building height 29 mtrs. PP has also constructed 03 basement instead of 04 basement as mentioned in the environmental clearance and same has already been reported in previous joint committee report vide dated 07.11.2019. Therefore, it may consider that:
  - PP has increased the built-up area of the project or building heights of the project.
  - PP has reduced the 01 basement as per EC and utilised the basement area to increase the building height or construction area of the office complex.

The committee has also observed the height of the office complex more than the residential colony. (**Photo 2**)

In view of above non compliance and violation of EC norms the amount of environmental compensation re-calculated by the joint committee and given as below:

- a. Environmental Compensation has been calculated on the basis of **“Report of the CPCB In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to utilize the fund”** as specified under item (b) of para 1.3 **“Not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.”** under Section 1.3 (Methodology for Assessing Environmental Compensation.

Environmental Compensation has been assessed by using the following formula given under Section 1.3.1 of the CPCB Report, i.e.,

$$\text{EC (Environmental Compensation)} = \text{PI (Pollution Index for Industrial Sector)} \times \text{N (Number of days of violation took place)} \times \text{R (Factor in Rupees for Environmental Compensation)} \times \text{S (Factor for Scale of operation)} \times \text{LF (Location factor)}$$

**Where,**

- **PI (Pollution Index):** It has been decided that for orange category project (Building and Construction) has been taken as 50;
- **N (Number of days violation took place):** It has been decided that the date of violation be considered from the date of issue of Environmental clearance letter i.e. 01.09.2010 to the date of present site visit i.e. 21.09.2020. Therefore, N = 3673 (time elapsed between 01.09.2010 & 21.09.2020 the date of monitoring);
- **R (Factor in Rupees for Environmental Compensation):** Average value R=250 has been suggested in the **“Report of the CPCB In-house Committee on**

***Methodology for Assessing Environmental Compensation and Action Plan to utilize the fund”***

- **S (Factor of scale of operation):** The value of ‘S’ depends on the project cost, which is 1.5 for large scale projects having cost greater than 10 Crores. In the present case, cost of the project is 108 crores, which is greater than 10 crores. Therefore, value of ‘S’ has been taken as 1.5 for calculation of environmental compensation;
- **LF (Location factor):** The population (2011) of Gurugram was 8,76,969. Therefore, value of LF in present case has been taken as 1.5 for calculation of environmental compensation;

b. On the basis of above considerations, the total value of Environmental Compensation has been assessed as:

**Environmental Compensation = 50 x 3673 x 250 x 1.5 x 1.5 = ₹10,33,03,125.0 (Rupees Ten Crore Thirty Three Lacs Three Thousand One Twenty Five Rupees Only).**

**3. CONCLUSION:**

1. Government may impose immediate fine of 10% of project cost i.e. Rs. 13883441000x10% = Rs. 138,83,44,100 (Rs. One thirty eight crore eighty three lacks forty four thousand hundred rupees only)
2. As construction of office complex already completed and in operational from last 03 years, therefore,

The illegal commercial structure immediately may be demolished for development of green area and other activities of housing colony of lagoon apartments.

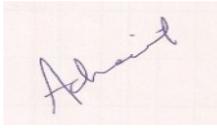
Or

Government may hold 25-50% profit of the project for development activities. This amount may vary from 38.44 Cr/year to 76.89 Cr/year.

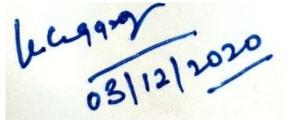
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In the addition of above amount, PP has obtained consent to operate for this project from state pollution control board vide letter dated 31.08.2017 (**Annexure-Y**) Therefore, PP is also required to submit addition amount of fine of last three years in addition of above.

3. Government may impose revised Environmental Compensation = 50 x 3673 x 250 x 1.5 x 1.5 = ₹10,33,03,125.0 (Rupees Ten Crore Thirty Three Lacs Three Thousand One Twenty Five Rupees Only) to the project authority.



**Dr. Advait Edgaonkar,  
Assistant Professor,  
IIFM, Bhopal**



**Dr. K.K. Garg,  
Scientist 'C', MoEF& CC**



**Sh. Rajesh Debroy  
Scientist 'E', CPCB**

Item No. 03

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 238/2015

Anil Uppal &amp; Ors.

Applicant(s)

Versus

U.O.I. &amp; Ors.

Respondent(s)

Date of hearing: 09.01.2020

Date of uploading on the website: 11.02.2020

**CORAM:** HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE S.P WANGDI, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER  
HON'BLE MR. SIDDHANTA DAS, EXPERT MEMBER

**ORDER**

1. This application, in substance, seeks restoration of open areas in terms of Deed of Declaration dated 25.03.2009 for a housing complex on area of 10.98 acres. The project is called 'Ambience Lagoon Apartments' and has been developed by respondent No. 6, Ambience Developers & Infrastructure Private Limited, at NH-8, Gurgaon.
2. Grievance of the applicants is that the project proponent has illegally undertaken construction of a commercial building in the area earmarked in the Deed of Declaration as "open spaces", resulting in blockage of fresh air and sun light for the residences of the applicants. The activity has resulted in reduction of area of the project from 10.98 acres to 7.93 acres, using the remaining open area for commercial complex. This is in violation of judgments of the Hon'ble Supreme Court in *Dr. G.N. Khajuria v. Delhi Development Authority*, (1995) 5 SCC 762,

(para 8) *Pt. Chet Ram Vashist v. Municipal Corporation of Delhi*, (1995) 1 SCC 47 (para 6) and National Building Code of India 2005. The applicants have annexed the Deed of Declaration and photographs of the commercial complex under construction in the open area.

3. The application was admitted on 05.06.2015 and notice issued upon the respondents. Vide order dated 28.07.2015, this Tribunal, after referring to the Deed of Declaration dated 25.03.2009 required the project proponent to explain the status of the open area in terms of the said Deed of Declaration.

4. The project proponent filed written statement dated 18.08.2015. In substance, the stand of the project proponent is that the project is not for 10.98 acres, as alleged, but for 122.06 acres. Requisite open areas have been left out in the integrated colony/ township. Location of open area need not be in 10.98 acres. The commercial complex in question is not on the green land. Environmental Clearance (EC) has been granted for the revised plan on 01.09.2010. Occupancy certificate has been granted by the TCPD on 29.06.2015.

5. The stand of the TCPD in the written statement filed on 07.09.2015 is that originally, on 09.07.1993, license for development of colony was granted on 18.99 acres of land but the building plan was submitted for 10.98 acres of land, leaving 8 acres land for future development. 8 acres land was subsequently de-licensed on 18.10.2010. Revised zoning plan

for 10.98 acres land was sanctioned on 25.10.2001. 15% of the area was to be earmarked for green area. License No. 8/2001 was given for a colony on 8 acres of land and license No. 12/2002 was given for commercial colony on 4 acres of land. Other licenses were for 106.17 for integrated colony. Thereafter, zoning plan, for integrated group housing on 132.06 acres, was approved in 2004. Housing colony on 10.98 acres of land became part of the integrated colony. Master Layout Plan was approved in 2005 and revised in 2013. Building plan for commercial complex was approved on 01.09.2010. The area mentioned in Deed of Declaration dated 25.03.2009 was only for achieving FAR. There was no illegality for achieving FAR for 11.83 acres of land, instead of 7.93 acres or 10.98 acres. The area of 10.98 acres could not be taken as independent colony as the said area became part of integrated colony. Area where commercial complex was being constructed was covered by building plan approved on 01.09.2010.

6. In the rejoinder filed by the applicants on 30.11.2015, it is stated that Deed of Declaration has a permanent character under the Haryana Apartment Ownership Act, 1983 (Section 6). By virtue of the said Deed of Declaration, every apartment owner gets undivided interest in the common area. Thus, any change in the area covered by the Deed of Declaration i.e. 10.98 acres, after allotment of apartments, was in violation of rights of the owners under Section 6 of the Haryana Apartment Ownership Act. The apartment owner acquired right to open area which could not be altered by any subsequent action. The

applicants were allotted apartments prior to 2010 when a revised plan is said to have been sanctioned.

7. The matter was further considered on 16.08.2016 in the light of the status report dated 05.05.2016 filed by the Town and Country Planning Department (TCPD) and the objections of the applicants thereto. The Tribunal observed:-

*“One of the grievance is that the inspection was carried out without actual site visit. Considering these objections and the submissions of the learned Counsel appearing on behalf of the applicant that the controversy would end with correct picture being depicted before us regarding green area nos. 10 and 11 in the sanctioned lay out plan annexure R-1 **it will be expedient to appoint Court Commissioner to visit the site in the presence of the parties and report to us regarding the ground situation obtaining in respect of the said areas.”***

8. Thereafter, vide order dated 09.01.2018, it was observed:-

*“Referring to the status report dated 05<sup>th</sup> May, 2016 and the Court Commissioner’s report dated 09<sup>th</sup> September, 2016 (page no. 554) and the Reply of the Ministry of Environment, Forest & Climate Change dated 10<sup>th</sup> April, 2017 (page No. 575), **learned counsel appearing for the Applicant submits that the Applicants have been deprived of the environmental benefits and the area suffering from the environmental degradation in terms of the loss of environmental benefits needs to be restored, and its restitution be ordered as per Section 15 of the National Green Tribunal Act, 2010.** Alternatively, he submits Applicant needs to be suitably compensated and the Project Proponent – Respondent no. 6 saddled with environmental compensation commensurate with the loss suffered by the Applicant.*

*Learned counsel appearing for the Respondent no. 6 – Ambience Developers and Infrastructure Pvt. Ltd. submits that the present Application is almost a replica of the initial Original Application No. 160 of 2015 which was withdrawn to present the re-modelled Application vide order dated 19<sup>th</sup> September, 2015 (Page No. 39) and the Project Proponent has lawfully integrated the development of the Ambient Lagoon Apartment with the larger Ambience integrated colony called, ‘Ambience Island’; and in the process has made available to the Applicants benefit of green area more than 15% of the total area as*

*per the sanctioned Master Lay out plan of the integrated colony produced at Annexure R – I filed with M.A. No. 968 of 2016. **In these circumstances, an issue arises regarding the quantification of environmental compensation in terms of the loss of environmental benefits/ services, if any. Learned counsel appearing for the Applicant seeks time to make elaborate submissions in that regard.***

9. Vide order dated 29.04.2019, the matter was deferred to enable MoEF&CC to furnish a report on the issue of environmental compensation in terms of order dated 09.01.2018.

10. Vide order dated 09.01.2020, the Tribunal considered the report of MoEF&CC dated 22.11.2019 assessing the compensation @ Rs. 68,51,250/-. It was observed:-

“ xxx

xxx

xxx

3. The report of the local Commissioner which was considered vide order dated 09.01.2018 showed that area No. 10 which was green area as per layout plan was occupied by a nursery school, Sewage Treatment Plant (STP) and electric substation. Area no. 11 which was also shown as green area did not exist. Part of area no. 11 was covered by a road and part of it was occupied by a flat. Ready mix concrete carrying trucks were found plying high decibel noise. The STP was found engulfed in foam. The report of the Local Commissioner further mentioned:-

“(a) As per actual ground conditions, area No 10 and adjoining areas demarcated for Nursery School, Water Treatment Plant and Electric Substation as shown on R-1/C-1 is actually occupied by an Atrium + 12 storey Commercial Building (9 Floors are occupied as informed by representative of R-6) of 42 m height above Ground Level, belonging to R-6. It is separated through a 2m high boundary wall from Lagoon Apartment complex.

A road on Lagoon Apartment side and a set back of 7.88m on other side on the boundary wall lie in between the Lagoon Apartments and the Commercial Building.

Building line of the Commercial Building as at a minimum of 13.5 m away from entrance portico of

32.2 m high Block E of Lagoon Apartments. Maximum distance between building line of Block E and F of Lagoon Apartments and Building line of Commercial building is 19.6m.

Actual site plan as per measurements agreed by all parties present at site and site photo graphs (2 Nos) are enclosed with the Report as Annexure C-3 and C-4 respectively.

- (b) As per actual ground condition, area No.11 as demarcated on R-1, is in fact, part of a Road of 18 m (approx.) ROW (right of Way) between Lagoon Apartments and Caitriona Apartments developed by R-6.

A part of this road is being maintained as open pucca area of undefined use under control of R-6. Yet another part of this road (about 150 sqm green lawn), also shown as part of organised green area No.11, is in fact, under exclusive use of occupier of ground floor flat No.1, Block-B of Lagoon Apartments.

Actual site plan as per measurements agreed by all parties present at site and site photo graphs (3 Nos) are enclosed with the Report as Annexure C-5 and C-6 Colly respectively.”

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xxx

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**8. Learned counsel for the applicant points out that the report is incomplete and has not gone into the question of illegal constructions in area 10-11 which were open areas in the earlier approved plan. The open area could not have been converted into covered area which is in violation of environmental law.**

9. Any approval granted without considering impact on the environmental rights of the persons to whom the flats were allotted is against Sustainable Development and Precautionary Principles required to be enforced by this Tribunal. Powers of regulatory authorities was required to be exercised in accordance with these principles. EIA procedure was required to be duly followed. The Deed of Declaration filed by the builder in 2009 showed the area to be an open area which was the basis on which the flats were allotted prior to 2010. **After allotment of the said flats, the open area was converted into covered area on the ground that open area will be shown at different locations in the integrated project without considering the rights of the allottees. Out of 10.98**

**acre land which was meant for the project in question, only 7.93 acre land was used and remaining 3.05 acre land, which was open area, was converted into covered area for a commercial tower, irreversibly taking away the rights to ecological services of the persons to whom the flats were allotted.**

**10. The applicant has also made a point on the inadequacy of the compensation and about the compensation not covering the issues already raised in these proceedings, particularly loss to ecological services on account of illegal commercial constructions in open areas. Illegal benefit taken by the builder was required to be quantified and recovered which has not been done. Alternatively, the area needs to be restored, after demolishing illegal constructions.**

11. We have also heard other learned counsel.

12. While the recommended environmental compensation may have to be recovered as an interim compensation and may be deposited within one month with the CPCB by Respondent No. 6, **further question whether illegal construction is to be demolished or the compensation quantified may need to be gone into.**

13. We permit the parties to file written submissions specifying questions for constitution of an appropriate Expert Committee to go into the matter with their respective precise submissions. The same may be filed by the applicant within one week from today and by the Respondents within one week thereafter. Oral arguments stand concluded. Further order will be uploaded on the website by 14.02.2020.”

(highlight by us)

9. Accordingly, the parties have filed their respective written submissions which we have gone through.
10. In the written submission filed by the applicants on 17.1.2020, it is stated that commercial tower construction was not part of the Deed of Declaration and the original sanctioned plan which was for 10.98 acres. The subsequent revised plan, based on EC granted on 01.09.2010, could not affect the rights of the allottees of apartments, prior to the said date. The commercial tower affected the environment rights of the allottees.

11. On the other hand, the stand of the project proponent, in the written submissions filed on 01.02.2020, is that requirements of zoning plan have been met and 15% of the open area has been left out. There was no bar to submission of a revised plan. Reference has been made to certain orders and proceedings at other fora to which the applicants are not party. It is further submitted that applicants have not suffered any loss on account of shifting of the green area to larger integrated complex. The application is barred by limitation. As an earlier application raising the same question was withdrawn on 19.05.2015, the present application was barred by *res judicata*.

12. We have given further consideration to the matter in continuation of order dated 09.01.2020. It is clear from the record that the plan as originally approved was on an area of 10.98 acres. The open spaces to be left out was mentioned in the Deed of Declaration and the sanctioned plan approved in the year 2001. On that basis, the project was developed and apartments were allotted prior to the year 2010. Plan was then revised in the year 2010 and occupancy certificate was issued on 29.06.2015. This application was filed on 04.06.2015. As observed earlier, vide order dated 09.01.2020, any approval to a revised plan without considering the vested rights of affected parties, cannot be treated as conclusive, even if there is a right to revision of a plan as such.

13. The compensation assessed does not deal with the loss of ecological services to the applicants who are allottees of

apartments prior to the revised plans. They claim their rights based on Deed of Declaration filed by the builder in the year 2009 based on which they acquired the flats prior to 2010. The Deed of Declaration was as per plan approved in 2001. The basis of compensation formula for industrial pollution is based on a short period i.e. with effect from 31.08.2017 when the consent to operate (CTO) was granted by the PCB under the Water (Prevention and Control of Pollution) Act, 1974 rather than from the date of consent to establish (CTE) consequent to which the construction had started and the applicants were first deprived of their right to use the common area or their environmental rights therein. The period to be considered for compensation is to continue till compensation is paid or violation is stopped. Compensation has been assessed for period from 02.07.2019 only on the basis of violation of law without considering the value of loss of environmental services. The component of compensation is the value of ecological services lost and the violation of law which cannot be the sole basis for determining compensation for loss of environmental services on account of illegal construction in open area. Claim of the applicants is for compensation for being deprived of environmental rights in the common area at the time of allotment of apartment to them based on Deed of Declaration and the sanctioned plan at that time. It is submitted that subsequent revision of plan, without considering their rights, is illegal in view of law laid down by the Hon'ble Supreme Court. Mere leaving of open area in other part of the integrated complex may not be a substitute for the open area which was

required to be left as per plan of the original complex. Doing so does affect the rights of the existing allottees in terms of loss of positive environmental externalities.

14. In *Bangalore Medical Trust v. B.S. Muddappa*, (1991) 4 SCC 54, the question considered by the Hon'ble Supreme Court was that the development authorities in granting any revised plans, affecting open areas, cannot ignore public interest in reservation and preservation of open area, over and above the private interest of an individual seeking to convert open area into covered area<sup>1</sup>. Action of the Bangalore Development Authority in converting park into construction was held to be *ultra-virus* the powers of the said authority.

15. As regards the plea of limitation, the EC for the revised plan was granted on 01.09.2010 and plan was approved in the year 2010. Construction was completed in the year 29.06.2015 when occupation certificate was issued. The application filed on 04.06.2015 cannot thus be held to be time barred. There is adjudication of merits earlier to attract *res judicata*. This Tribunal has passed earlier orders dated 16.08.2016, 09.01.2018 and 29.04.2019 on merits.

16. As held in *Goel Ganga Developers Pvt. Ltd. v. UOI & Ors.* (2018) 18 SCC 257<sup>2</sup>, once flats have been occupied and number of persons have paid the money, even if construction is illegal, it may not be advisable to demolish the same but the project

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<sup>1</sup> Para 27, 29 & 36

<sup>2</sup> Para 53

proponent cannot avoid payment of damages. Damages can generally be 5% of the project cost. In that case, the Hon'ble Supreme Court held the compensation to be Rs. 100 crores or 10% of the project cost whichever is higher. The assessment of compensation in the present case, as earlier mentioned, needs to be revised considering the project cost in respect of construction of area which was originally stipulated to be open area, the extent of violation, the extent of loss of ecological services to the applicants and illegal gain by the violator of law. The Committee appointed by this Tribunal needs to go into the question whether in the light of original Deed of Declaration based on sanctioned plan for housing complex in the area of 10.98 acres complex with stipulated open area, revised plan enforced after allotment apartments to the applicants illegally deprived the applicants of their right to ecological services as per the original plan as well as liability for compensation on account of violation of law prohibiting change of common area to the detriment of environment only to advance private profit.

17. Reference may also be made to order dated 16.01.2020 passed by the High Court of Punjab and Haryana in CWP No. 2147/2012, *Ambience Lagoon Apartment Residents Welfare Association v. State of Haryana & Ors.* showing that the issue of construction over open area has been subject matter of consideration before the said High Court since 2012 and the State has undertaken to reconsider the permission for commercial activity granted on 09.01.2010.

In view of above, we find it necessary to constitute a joint Committee comprising MoEF&CC, CPCB and Indian Institute of Forest Management, Bhopal to assess compensation and furnish a report to this Tribunal by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) before the next date. CPCB will be the nodal agency for coordination and compliance.

A copy of this order be sent by email to MoEF&CC, CPCB and Dr. Madhu Verma, Indian Institute of Forest Management, Bhopal.

List for further consideration on 27.04.2020.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

Dr. Nagin Nanda, EM

Siddhanta Das, EM

February 11, 2020  
O.A. No. 238/2015  
A



CWP-20330-2015

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

CWP-20330-2015

Date of decision : 10.07.2020

Dr. Amitabha Sen &amp; Anr.

...Petitioners

V/s

Raj Singh Gehlot &amp; ors.

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA  
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present: Mr. R.S. Bains, Advocate for the petitioners.  
Mr. Sanjay Kaushal, Sr. Advocate with  
Mr. R. Kartikiya, Advocate for respondents no. 1 to 3.  
Mr. Ankur Mittal, Addl. A.G. Haryana with  
Mr. P.P. Chahar, DAG Haryana.  
Mr. Sudershan Kumar, Advocate for  
Mr. Deepak Balyan, Advocate for respondent no. 9.

**RAJAN GUPTA J.**

The matter pertains to the construction raised in approximately 18.98 acres of land right adjacent to the Delhi-Jaipur National Highway, in Gurgaon, which comprises of residential complex, commercial buildings as well as a Mall, popularly known as Ambience Mall.

The writ petition has been filed alleging that while raising the commercial complex there has been blatant violation of the statutory provisions and rules made thereunder. It has been indicated in the petition that the entire complex could not have come up without collusion of the government authorities who granted various approvals and permissions. At the time of filing of the petition, a prayer was made to restrain construction of commercial complex on Ambience Lagoon Complex (having licence for residential colony) and to seal the commercial building. However, it appears that during the pendency of petition, the entire construction has been completed. It has further been prayed that the illegally constructed commercial complex be demolished and a CBI investigation be ordered for the usurpation of the land by the builder in active connivance with the authorities; as also, to strictly maintain 35% ground coverage area and

maximum FAR prescribed for group housing, as stipulated under the law; and for restoration of peaceful possession of 18.98 acres of land originally reserved for the said residential complex. Petitioner also prayed for interim orders more or less on similar terms. At the outset it is necessary to reproduce hereunder the interim order passed by the 1<sup>st</sup> Division Bench on 23.09.2015:-

*“Issue notice of motion returnable on 08.10.2015.*

*Any third party rights created hereafter shall be subject to further orders.*

*Respondent Nox 1 to 3 shall inform third parties of this order in the event of entering into any agreement.”*

Number of orders were passed thereafter by coordinate Benches seeking information pertaining to licence no. 19 of 1993 originally granted to the builder as also the multiple licences issued thereafter.

It appears earlier the association of residents was litigating before various forums. As per averments made in paras 1 to 3 of the petition, the builder infiltrated into the association thereby compromising the cause being espoused by the association. They had thus no option but to approach the Hon’ble Supreme court under Article 32 of the Constitution. The Writ Petition (Civil) No. 338 of 2015 came to be disposed off on 08.07.2015.

As many as 28 apartment owners had approached the National Consumer Disputes Redressal Commission in the year 2005. Therein the builder filed a reply dated 31.03.2008. As per stand of the petitioners, the builder made a false statement before the Commission that he had already filed a Deed of Declaration. Apartment owners thereafter filed a civil suit in the year 2010 wherein Deed of Declaration came on record, perusal whereof revealed that area of the housing complex had been reduced from 18.98 acres to 11.83 acres. It also transpired that Deed of Declaration was dated 25.03.2009, thus statement made by

the builder before the National Consumer Commission was, in fact, false. The civil suit was ultimately withdrawn by the Association of the apartment owners. Thereafter CWP No. 2147 of 2012 was filed before this court claiming limited relief of quashing of licence dated 01.09.2010 relating to another commercial structure within the same piece of land. The said petition was disposed of as the State readily agreed to reconsider the grievance of the petitioner therein whether commercial building had been raised legally (pursuant to licence 1.9.2010) and to pass a speaking order on the issue. The petition was thus disposed of vide order dated 16.1.2020, in following terms:-

*“Grievance of the petitioner inter alia is that after grant of licence dated July 15, 1993, Annexure P-1 by the Director, there was a declaration to raise a construction of apartments buildings, apartment complex, club building and building for economically weaker sections of the society. There was no mention of any commercial activity to come up. However, vide order dated September 1st, 2010, Annexure P-11, wherein it is mentioned that the Director, Town and Country Planning allowed raising construction of commercial building over the land. This is despite the fact that there is no mention in the licence pursuant to which the builder can be allowed to raise commercial project.*

*At the outset, Mr. Mittal, learned State counsel submits that the matter shall be reconsidered by the Director General, Urban Estates, Department of Town and Country Planning within three months and a speaking order shall be passed which shall be duly conveyed to the petitioner. It is made clear that while reconsidering the issue, order Annexure P-11 shall not stand in the way of the concerned authority.*

*Disposed of.”*

Said writ petition related only to the commercial building raised pursuant to licence dated 1.9.2010. The court had thus no occasion to examine entire issue on merits in view of concession given by the State which was acceptable to the petitioners therein i.e. the Ambience Lagoon Apartment Residents Welfare Association. It will not be out of place to state here that when instant petition came up for hearing before this Court on 16.1.2020, a specific query was put to Mr R.S. Bains, Advocate whether anything survived in this petition in view of disposal of *CWP No.2147 of 2012* filed by the Association, on 28.1.2020, he apprised the court that the order passed in *CWP No.2147 of 2012* had no bearing on facts of the present petition. On the other hand he submitted that the Association was no longer espousing the cause of the residents of the group housing. The case was thus adjourned to 18.2.2020 and final arguments were heard from 2.3.2020 to 4.3.2020. Even during course of arguments, Mr R.S.Bains, the counsel for the petitioner contended that their association had come under the influence of the builder and interest of the residents had been compromised. As *CWP No.1247 of 2012* related only to commercial building raised pursuant to licence dated 1.9.2010 and the said issue is under consideration of the State in view of order dated 16.1.2020 (reproduced above), scope of the present writ petition is being confined to examining the legality of sanction for raising rest of the commercial structures within the area of 18.93 acres. The petitioners had approached Hon'ble Supreme Court vide Writ Petition (Civil) No.338 of 2015 wherein it was directed that it would be proper if petitioners ventilated their grievance before the High Court. In case they do so the High Court would do the needful to prevent the construction activities, if same were found to be in violation of building bye-laws or construction was being raised without getting building plans sanctioned. Hon'ble Supreme Court also observed that if the irregularities

were there, same would be looked into seriously and high court would take action against all persons including the builder and erring officials, as soon as possible. With these directions the petition was disposed of vide order dated 8.7.2015. Hence, the instant writ petition was filed.

During the course of arguments, it was vehemently pleaded by learned counsel for the petitioners that Ambience Lagoon Island Residential Complex as originally conceived had an area of 18.98 acres, however, later in collusion with the authorities said area was reduced to 10.98 acres by de-licensing 8 acres thereof. Another 3.9 acre was taken out reducing the residential area to merely 7.93 acres. According to them, the Deed of Declaration filed by builder on 25.3.2009 was for 11.83 acres which was not as per the licence No.19 originally granted in 1993. Learned counsel also emphasized that even after furnishing this deed of declaration, aforesaid area of 3.9 acre was allowed to be used for raising another commercial complex in the year 2010. As per the counsel, the object of setting up the entire housing project known as Ambience Lagoon Island Residential Complex thus stood defeated. The promises made in the brochure as well as Builder-Buyer agreement were violated. All this illegal exercise was conducted in violation of the statutory provisions of the Haryana Development and Regulation of Urban Area Act, 1975 (hereinafter referred to as the Act of 1975) and rules framed thereunder. The authorities either shut their eyes or acted in collusion with the builder. It was also submitted that the entire statute contains no provision for delicensing a piece of land, once licence is granted for any particular project. Learned counsel also referred to various violations of building norms, provisions of Apartments Act, 1983 etc.

In response, a joint reply was filed on behalf of respondents 1 to 3. As per the State counsel, respondent no.3 and other group companies purchased

about 132.06 acres of land in village Nathupur, Distt. Gurgaon, adjacent to Delhi Gurgaon border during the period 1991-1993. They planned to develop integrated township there. Respondent No.3, then known as HLF Ltd., was granted Licence No.19 of 1993 for development of Group Housing Colony. According to him, the entire project went as per the plan. Though he admitted that in the year 2001, out of 18.98 acres an area of 8.0 acres was delicensed and licence for raising a commercial complex was granted simultaneously, there was no illegality in this exercise. On being asked about the enabling power, if any, in the statute to permit delicensing, he was not able to refer to any provision. He however tried to justify the action of the State by referring to certain provisions of the General Clauses Act.

Counsel for the builder heavily relied upon the Builder-Buyer agreement, referring to stipulations in the same, he contended that it was made clear to the buyers that the housing project was to come up on 10.98 acres only, as rest of the area was reserved for "future development". According to him, even occupation certificate was issued by the authorities on 31.12.2001 on completion of 13 blocks on 10.98 acres. Thus on 14.1.2002 respondent no.2 submitted building plans of construction of two more blocks in residential complex for economically weaker sections.

We heard learned counsel for the parties at length and have given careful thought to the submissions made. Original record was perused with the assistance of State counsel.

At the border or Delhi-Gurgaon village Nathupur is situated. Due to increasing shortage of space in Delhi, builders thronged to Gurgaon with various housing projects. Certain builders, including the present one, floated companies to buy land in village Nathupur and other adjacent villages with the avowed purpose

of developing housing projects. Apparently, this move was welcomed by the State Government as well. It had in fact already enacted a statute known as Haryana Development and Regulation of Urban Areas Act, 1975 within the framework of which such housing projects could be set-up/developed. This enactment was with a view to regulate the use of land in order to prevent ill-planned and haphazard urbanization in or around the towns and for development of infrastructure.

The builder identified a piece of land measuring 18.93 acres in village Nathupur and submitted an application for establishing a group housing project thereon. The firm HLF Enterprises made an application in form LC-1 under rule 3(1) of the Haryana Development and Regulation of Urban Areas Rules, 1976 (hereinafter referred to as the 1976 Rules). A copy of the application is on record. Surprisingly, perusal thereof shows that builder at the outset made certain changes/ interpolations in the application dated 17.2.1992 itself. The format for the application is provided in rule 3(1) of the 1976 rules. The application was required to be filled in form in LC-1. Clause 2(v) whereof reads as under:-

*“(v) Layout plan of the colony on a scale of 1 centimetre to 10 metre showing the existing and proposed means of access to the colony, the width of streets, sizes and types of plots, site reserved for open spaces, community buildings and schools with area of each and proposed building lines on the front and sides of plots.”*

However, in the application the builder made changes as per his will and submitted an application which was not in the prescribed format. This would be evident by plain reading of the various clauses of the actual application submitted by the builder. Form LC-1 is reproduced hereunder:-

*“Form LC-I [see rule 3 (1)]*

*Registered*

To

The Director,

Town and Country Planning, Haryana,

Chandigarh.

Sir,

I/ We beg to apply for grant of licence to set up a residential/ industrial /Commercial colony at \_\_\_\_\_ at tehsil \_\_\_\_\_ and district \_\_\_\_\_.

The requisite particulars are as under:-

1. to 10

xxx

xxx

2. I/We enclose the following documents in triplicate:—

(i) Copy or copies of all title deeds and/or other documents showing the interest of the applicant in the land under the colony, along with a list of such deeds and/or other documents.

(ii) a copy of the shajra plan showing the location of the colony along with the names of revenue estate, Khasra number of each field and the area of each field.

(iii) A guide map on a scale of not less than 10 centimetres to 1 Kilometre showing the location of the colony in relation to surrounding geographic features to enable the identification of the site.

(iv) A survey map of the land under the colony on a scale of 1 centimetre to 10 metres showing the spot levels at distance of 30 metres and where necessary, contour plans. The survey will also show the boundaries and dimensions of the said land, the location of streets, buildings, and premises within a distance of at least 30 metres of the said land and existing means of access to if from existing roads.

(v) Layout plan of the colony on a scale of 1 centimetre to 10 metres showing the existing and proposed means of access to the colony, the width of streets, sizes and types of plots, sites reserved for open spaces, community buildings and schools with area under each and proposed building lines on the front and sides of plots.

(vi) An explanatory note explaining the salient feature of the proposed colony, in particular the sources of water supply arrangement for disposal and treatment of storm and sullage water and site for disposal & treatment of storm and sullage water.

(vii) Plans showing the cross-sections of the proposed roads showing in particular the width of the proposed carriage ways, cycle tracks and footpaths,





*least 30 metres of the said land and proposed building lines on the front and sides of plots.*

*(v) An explanatory note explaining the salient feature of the proposed colony, in particular the sources of water supply arrangement for disposal and treatment of storm water and sullage water.*

*(vi) Plans showing the cross-sections of the proposed roads showing in particular width of the proposed carriage ways, cycle tracks and footpaths, green verges, position of electric poles and of any other works connected with such roads.*

*(vii) Plans as referred to in clause*

*(viii) above indicating in addition the position of sewers, storm water channels, water supply and other public health services.*

*(ix) Detailed specifications and designs of road works shown in clause (vii) above and estimated cost thereof.*

*(x) Detailed specifications and designs of storm-water and water supply schemes with estimated cost of each.*

*(xi) Detailed specification and design for disposal and treatment of storm and sullage water and estimated cost of works.*

*(xii) Detailed specification and designs for electric supply including street lighting.”*

A comparison of the prescribed format in LC-1 and the application submitted by the builder purportedly in form LC-1 shows that he omitted clause (v) from the application which provides for submission of a lay out plan of the colony on a scale of 1 centimetre to 10 metre showing the existing and proposed means of access to the colony, the width of streets, sizes and types of plots, site reserved for open spaces, community buildings and schools with area of each, besides proposed building lines on the front and sides of plots. He made changes in clause (iv) and omitted the line “..... and existing means of access to it from existing roads” and instead substituted the same by “....proposed building lines on the front and sides of plots.” In a clever move he projected as if the application contained all (xii) clauses envisaged by rule 3(1). A careful perusal, however, shows that one para i.e. para 2(v) with regard to lay out plan is missing which was

mandatory. Strangely, this application was accepted by the authorities as such and licence was granted. It is inconceivable that concerned authorities failed to notice the stark omissions, interpolations and tampering with the basic document required for purpose of initiation of a project. This is fortified from the fact that during the course of hearing when we asked the authorities to produce the original record they straightway referred to licence No.19 granted on 9.7.1993 to M/s HLF Enterprises. Para 3(a) thereof reads as under:-

*“3. Licence is granted subject to the conditions:-*

*(a) That the colony is laid out to conform to the approved layout plan and development works are executed according to the designs and specifications shown in the approved plan accompanying this licence.”*

On being asked to refer to the lay out plan stated to be accompanying the licence, the State counsel showed his inability. He sought instructions from the officials of the department, who were present in court, they had no option but to admit that there was no lay-out plan available on record either with the licence or with the application submitted by the builder. It is thus not a matter of chance that in the initial application submitted by the builder that very para was omitted which referred to the lay out plan. It appears, the builder never intended to submit the lay out plan as his intention from the very beginning was just not to establish a housing project but other commercial buildings within the area sanctioned for group housing. We find it difficult to accept that all these clever tactics went unnoticed by the department. On the other hand, it points to their active connivance from the very initiation of the project. Needless to say that this fraudulent exercise had a cascading effect on the project resulting into non-adherence to FAR, lack of open spaces, reduced width of streets and absence of community buildings and schools etc. This was a result of omission of clause 2(v) from the application which was not submitted as per format LC-1 (under rule

3 of the 1976 rules). We are constrained to draw a conclusion that the possibility of builder acting in collusion with the authorities and duping innocent buyers of apartments cannot be ruled out. It appears they were made to sign on the dotted line in the Builder-Buyer Agreement, oblivious of the probable mischief by the builder in connivance with State officials.

In this context it is apposite to refer to section 3(2) of the 1975 Act which is as below:-

3. [(I)

xxx

xxx

*(2) On receipt of the application under sub-section (I), the Director shall, among other things, enquire into the following matters, namely:-*

*(a) title to the land;*

*(b) extent and situation of the land;*

*(c) capacity to develop a colony*

*(d) the layout of a colony*

*(e) plan regarding the development works to be executed in a colony; and*

*(f) conformity of the development schemes of the colony land to those of the neighbouring areas.”*

A perusal of the aforesaid section shows that a duty is cast on the Director to enquire into the title of the land, extent and situation thereof, capacity to develop a colony and layout of the colony, plans of the works to be executed in the colony and conformity of the development scheme of the colony land to those of neighbouring areas. It is inexplicable how the Director conducted the enquiry in the absence of the layout plan of the colony which was admittedly not submitted by the builder. Even other related aspects could not have been enquired into as the builder interpolated form LC-1 as per his convenience. Needless to say that this appears to be a result of pre-conceived design and deceit.

A perusal of record further shows that on 6.5.1996, the Director, Town & Country Planning granted approval to erect building on 18.98 acre for

group housing scheme in phase I in accordance with the building plan submitted by the builder. On the basis of this letter the builder issued a brochure in 1998 promising following amenities to the buyers:-

***“Amenities and Facilities***

*24 hour water supply with 100% power back-up. Round-the-clock 3 Tier Security System with CCTVs and intercom. Cables, internet and Telephone wiring. One live telephone line with connection in every apartment. Club House with recreational facilities including indoor Badminton, Squash & TT courts, Gym, Billiard Room & Swimming Pool. Recreation space even for drivers. High speed elevators. Multi-level covered parking. More than 80% area reserved for open and community services. Total landscape surrounded by water falls, fountains and lagoons. Fully developed water body/channel for recreational facilities and recycling of water. Hassle-free property management services. Optimum space utilisation.”*

Prominent amongst the above promises made to the buyers was that 80% areas shall be reserved for open and community services out of 18.98 acres. It is pertinent to point out here that it is the requirement of rule 4 of 1976 rules as well. As per said rule 45% area is otherwise required to be kept as open area for roads, schools, community buildings etc. Same is reproduced as under:-

***“4. Percentage of area under roads, open space etc. in layout plans [Sections 3(3) 4 and 24]—(1) In the layout plan of a colony, other than an industrial colony [or low-density-eco friendly colony], the land reserved for roads, open spaces, schools, public and community buildings and other common uses shall not be less than forty five percent of the gross area of the land under the colony;***

*Provided that the Director may reduce [after recording reasons therefor] this percentage to a figure not below thirty-five where in his opinion the planning requirements and the size of the colony so justify.”*

However, things did not stop here as suddenly an application came forth from builder seeking delicensing of 8 acres of land out of 18.98 acres with further permission for erection of commercial complex thereon. Ignoring all statutory provisions and throwing caution to winds, the authorities acted more promptly than expected. The order granting permission on 8 acres of land to establish a commercial complex out of 18.98 acres was passed on 16.10.2001 while the order to delicense the same area was passed on 18.10.2001 i.e. two days before the order of delicensing, showing a preconceived plan for a commercial complex to be raised within the area licenced for residential complex. This led to a situation that almost every statutory provision contained in the Act and the Rules was violated resulting in a cascading effect compromising open spaces, roads, parks, community buildings and schools etc.

At this juncture the State counsel was asked to refer to the provisions under which the order of delicensing was passed by the authorities. He, however, candidly admitted that there was no such provision in the Act. He tried to justify this act by referring to clause 21 of the General Clauses Act that power to grant a licence also contains implied power to delicense as well. We, however, find the argument bereft of any merit or logic. The Act contains a specific provision for cancellation of licence in case the builder fails to comply with specific conditions of licence. If any such situation had arisen the only option with the authorities was to have invoked powers under section 8 of the Act and cancel the licence. In this context the term 'delicensing' is a misnomer. Besides, provisions of the statute have to be strictly interpreted as they exist. Reference to clause 21 of General Clauses Act is only an *ex post facto* justification and an after-thought. Law is settled on the point that State affidavit/plea cannot augment or add to the orders passed by the authority. The reasons, if any, have to be contained in the order itself

as same would only be subject to judicial review. No authority by adopting a circuitous route can circumvent the settled legal position.

This court finds equally absurd the stand of the State as spelt out in response to information sought under RTI (supplied vide memo No.RTI-648/613 dated 15.1.2010) by the office of Director, Town & Country Planning, Annexure P-43, same reads as under:-

*“Since the Director is empowered under the Act to grant a license and undertake regulatory functions for development of a colony, it is an implied function of the Director to allow an exit route to a developer who is not interested to pursue the development of a project and wishes to withdraw from its obligations. The Director after ensuring that no public interest is harmed, allow such withdrawal after forfeiture of scrutiny fees, licence fees, conversion charges etc. Though at times the same land can be again considered or grant of separate licence. The entire process of grant of licence or change of project is at times referred as **“delicensing” though such item does not exist in the Act/Rules.**”*

The aforesaid stand of the Department which aims to provide exit plan to the builder by delicensing part of the housing project (8.0 acre) out of total 18.98 acres for establishing commercial complex is clearly in derogation to the object of the 1975 Act. Such a plea is preposterous in view of provisions of Section 8 which confer enough power on the State to deal with a situation in which a builder is unwilling to complete the project as sanctioned.

It is noteworthy that in the reply dated 15.1.2010, Annexure P-43, the State has clearly admitted that no item such as ‘delicensing’ exists in the Act/Rules. Thus, origin of power, if any, can be traced to Section 8, which, however, does not deal with delicensing. It contemplates only cancellation of licence and obligations of the Director, Town & Country Planning, thereafter.

There is no dispute about the fact that the provisions of Haryana Apartments Ownership Act, 1983 are also attracted to a group housing project sanctioned under 1975 Act. This finds mentioned in clause 27 of the Builder-Buyer Agreement as well. As per section 6(1) and (2) thereof, the undivided interest of each apartment owner in the common area would be in the percentage expressed in the Deed of Declaration. The percentage of undivided interest of each apartment owner as expressed in the Deed of Declaration has to have a permanent character and cannot be altered without consent of the apartment owners expressed in an amended declaration duly executed and registered as provided. By resorting to delicensing and sanction of the commercial project the authorities completely ignored the vested right of the apartment owners and acted in flagrant violation of section 6 (1) and (2) of 1983 Act. Section 6(1) and (2) read as under:-

***“6. Common areas and facilities-***

*(1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration. Such percentage shall be computed by taking as a basis the value of the apartments in relation to the value of the property; and such percentage shall reflect the limited common areas and facilities.*

*(2) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration shall have a permanent character and shall not be altered without the consent of all of the apartment owners and expressed in an amended declaration duly executed and registered as provided in this Act. 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 the apartment even though such interest is not expressly mentioned in the conveyance or other instrument.”*

This apart as per section 2 of the 1983 Act, the builder had to submit a Deed of Declaration within 90 days of being granted part completion under the rules framed under 1975 Act and in case of failure to do so, penalties as provided under section 24-A would be attracted. The said section lays down that builder

who does not file Deed of Declaration within the period specified under section 2 would be punished with imprisonment which may extend to three years and also fine of not less than Rs.50,000/- and Rs.10,000/- for each day of continuing offence. From the record it is evident that part completion certificate was granted to the builder vide memo no.5DB-2002/927 dated 10.01.2002 under rule 16 of 1976 Rules. However, Deed of Declaration was submitted by the builder on 25.3.2009. It is inexplicable as to why authorities did not resort to the provisions of Section 24-A of the 1983 Act forthwith on expiry of the prescribed period which would be considered as date of offence under section 24-A of the Act. Said provision leaves no room for doubt that failure to submit the Deed of Declaration within the period prescribed attracts a penalty of Rs.50,000/- straight-way whereafter it is considered a continuing offence inviting a penalty of 10,000/- per day.

The conclusion is inescapable that the submission of Deed of Declaration was intentionally delayed for so many years as there appears to be dishonest intention of the builder from the very inception of project to dupe the buyers by raising a commercial complex within the space sanctioned for group housing project. The design to develop a commercial complex was never divulged either by the builder or State authorities to the innocent buyers at any stage. An ambiguous term was used in the Builder-Buyer agreement that 8.0 acre was reserved for "future development". It is beyond comprehension how builder himself could reserve a part of the area (8.0 acres) out of 18.98 acres for future development. The builder acted in a manner as if he was not governed by any Enactment/Rules. In view of same, the reliance placed by the counsel for the builders repeatedly on Builder-Buyer agreement is absurd. An agreement between parties cannot override the law lay down to regulate urbanization and to prevent ill-planned and haphazard development.

As regards delimiting of an area of 3.9 acres vide order dated 1.9.2010 this court does not intend to give any finding on the same, it being subject matter of CWP No.2147 of 2012 wherein the matter is pending before the concerned authority. The petitioners, in the instant petition, however, maintained that they were left with 7.9 acres out of 18.93 acres meant for housing project.

The probability of connivance between the builder and the Department cannot be ruled out in view of delimiting of area meant for residential purposes and allocating the same to commercial projects. Entire sequence of events points to a prior meeting of minds between the builder and the officials who dealt with the matter. Apart from above, the fact that there has been undue enrichment of the builder perhaps with the active involvement of the State officials, cannot be ignored by this Court. Such enrichment is not just in violation of various enactments but also a loss to public exchequer at the cost of general public, the apartment buyers in particular. However, this aspect needs to be investigated by an expert agency.

The entire record leaves no room for doubt that various authorities, builders and probably some facilitators got unnatural gains with impunity making the entire scheme contained in Acts and Rules with respect to setting up a group housing project a mockery. Unjust enrichment has been defined by the Courts as retention of benefit by one to the loss of another or retention of money or property of another against the fundamental principles of justice, equity and good conscience. A person is enriched if he has received a benefit and is unjustly enriched if retention of benefit would be illegal. Such enrichment occurs if he has retained money for benefits which actually belonged to another (*See Indian Council for Enviro-Legal Action v. Union of India, (2011)8 SCC 161*).

As regards the action of the authorities in “delicensing” area meant for housing project, the same can be termed as nothing but a colourable exercise of power. It is settled position that when a custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested, such exercise amounts to colourable exercise of power (*see State of Punjab v. Gurdial Singh, (1980)2 SCC 471*). It is settled proposition of law that fraud on power vitiates the State action. If State seeks to do some action indirectly though it has no power to do it directly, such action cannot be sustained. In other words, fraud vitiates all actions (*see Uddar Gagan Properties Ltd. v Sant Singh, (2016)11 SCC 378*).

In *Kerala State Coastal Zone Management Authority Vs State of Kerala Maradu Municipality & Ors., (2019)7 SCC 248*, setting up of a resort was challenged as the same was set up within 200 meters of the High Tide Line, construction activities whereof are strictly restricted under the provisions of Coastal Regulations Zones. Permission from Kerala State Coastal Zone Management Authority was not sought. The resort was set up on the basis of permission granted by local Panchayat. Kerala High Court found the action illegal and directed demolition of the resort. It rejected the argument that resort would promote tourism in Kerala and it had immense potential for creation of jobs. It held that notification issued under the Environment Protection Act was meant to protect the environment and bring about sustainable development. It held that the law of the land was meant to be obeyed and enforced. The *fait accompli* of the construction made in teeth of notification was unsustainable. Hon’ble Supreme Court upheld the view of the Kerala High Court.

In the case in hand, no justification whatsoever is forthcoming for delicensing of part of the area meant for housing project for commercial purpose

and a huge mall (Ambience Mall) having been allowed to be raised thereon. We are, thus, faced with a similar situation as in Kerala case (supra) due to flagrant violation of provisions of 1975 Act which are meant to prevent ill-planned and haphazard urbanization in or around towns.

In *Rameshwar & Ors Vs State of Haryana & Ors (2018)6 SCC 215*, Hon'ble Supreme Court found that State sought to acquire land issuing notification by the process contemplated under Land Acquisition Act. Certain private builders, however, purchased the land from land owners at higher price post issuance of notification and thereafter State denotified the same. It is thus observed that this action led to unjust enrichment of individuals and revealed unholy nexus between the builder and the State authorities. It found that where power is conferred to achieve a particular purpose, same has to be exercised reasonably and in good faith. Where power is exercised for extraneous or irrelevant considerations, it would unquestionably be a colourable exercise of power. It further held that State had enabled the builder to enter the field after initiation of acquisition to seek colonization of the land covered by acquisition defeating the objective for which the land was acquired. The Supreme Court thus declared the action of State illegal and also ordered CBI investigation into the matter.

It would be relevant to reproduce the order of Hon'ble Supreme Court passed while disposing of Writ Petition (Civil) No.338 of 2015 on 8.7.2015 filed by the instant petitioners, which is as below:-

*“Upon hearing the learned counsel for the petitioners and upon perusal of the papers, we find that the main allegation, along with other allegations, in the petition is that the respondent-Builder has put up construction in violation of the Building Bye-laws and without having proper sanction from the concerned authority.*

*In the aforesaid circumstances, it would be proper if the petitioners ventilate their grievance before the High Court. If the petitioners approach the High Court, the High Court will do the needful to prevent the construction activities if the same are in violation of the Building Bye-laws or if the construction is being put up without getting building plans sanction.*

*We are sure that if the High Court finds that the irregularities are committed, the same will be looked into quite seriously and shall take appropriate action against all persons including the builders and erring officers as soon as possible.*

*With the above directions, the writ petition stands disposed of.”*

Though irregularities, as pointed out above, at the time of initial submission of application sans the layout plan and drastic changes made in the format by the builder, it cannot be disputed that the original idea was to set up group housing complex on entire 18.93 acres. The court thus feels that the rights of the residents of the housing project need to be preserved. The court cannot countenance blatant violation of statutory provisions and erection of buildings, particularly commercial in nature, conceived by a builder for unjust enrichment, at the cost of general public. It cannot turn a blind eye to such illegal actions and possible collusion between private builder and State authorities. The interpolations and/or tampering with the application form and record is, however, a matter of investigation. We thus have no option but to hold that the order delicensing part of residential area for commercial purpose is without authority of law and needs to be quashed. As regards, the illegal actions and offence, if any, made out, and possible collusion between the builder and State authorities, a separate investigation is necessary by an independent agency.

We thus hold as under:-

- (a) Delicensing orders dated 18.10.2001 (Annexure P-9), orders granting license/permission vide order dated 16.10.2001 (Annexure P-10) and dated 01.09.2010 (Annexure P-13) passed after submission of Deed of Declaration on 25.03.2009 (Annexure P-8) are hereby quashed;
- (b) In view of our findings in the foregoing paragraph, the State shall take necessary consequential steps forthwith;
- (c) In view of the fact that the responsibility has to be fixed it is further directed that the Central Bureau of Investigation would investigate the entire issue after registering a formal FIR by a team of Officers to be chosen by the Director, CBI within six weeks from today. An effort shall be made to complete the entire investigation within six months and a status report be submitted in sealed cover within three months.

The original record of HUDA be retained in the safe custody of Registrar (Judicial). CBI shall be at liberty to move an application for obtaining the record after it begins its proceedings.

(RAJAN GUPTA)  
JUDGE

July 10, 2020

*Ajay*

(KARAMJIT SINGH)  
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No



**Total Area of both projects**

Sq meter : approx. 45344

Hectare : 4.53

Acre : 11.2



Total Area of Road

Sq meter : approx. 18336

Hectare : 1.83

Acre : 4.53

## Annexure-5

Total Area of Road in front  
Laggon Apartment is:-

**Sq meter** : approx. 7562

Hectare : 0.76

Acre : 1.87

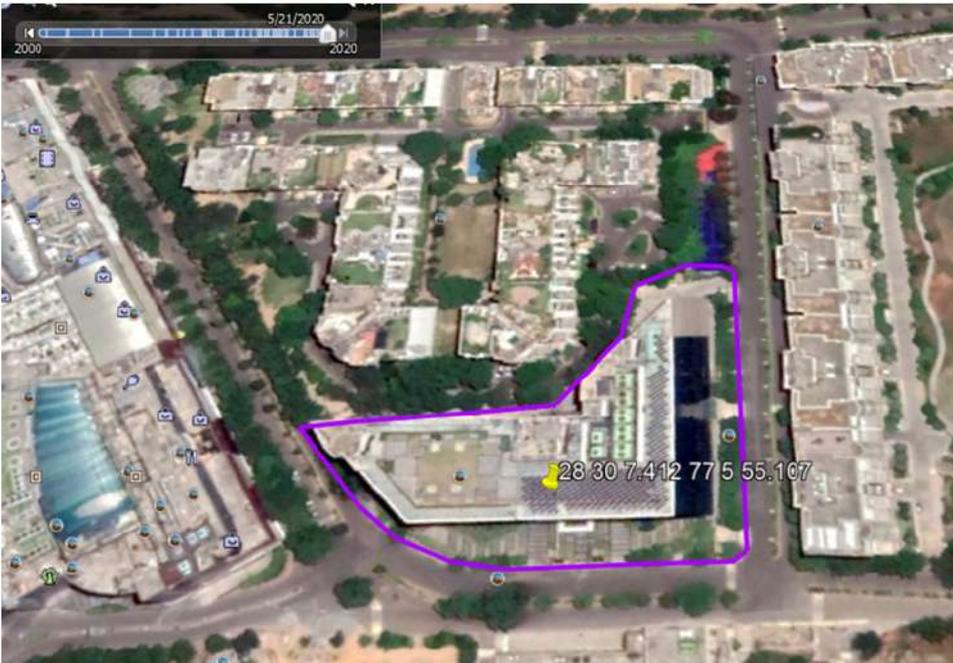


Total Plot Area of office Complex boundary is :-

**Sq meter** : 11114

Hectare : 1.11

Acre : 2.75



**REPORTABLE**

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

**CIVIL APPEAL NO. 10854 OF 2016**

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

... Appellant (s)

Versus

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

...Respondent(s)

With

**CIVIL APPEAL NO. 10901 OF 2016**

**CIVIL APPEAL NO. 5157-5158 OF 2018**

**J U D G M E N T**

**Deepak Gupta, J.**

Applications for intervention/impleadment are allowed.  
Application for amendment of grounds of appeal in Civil Appeal  
No.10854 of 2016 allowed.

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.

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:

“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:

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.
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 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.
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 31<sup>st</sup> May, 2016 has been issued in particular the Principal Secretary, Department of Environment who has authored the order dated 31<sup>st</sup> May, 2016.
4. PMC, DoE and SEIAA are directed to pay cost of Rs. 1 lakh each to the Applicant within 4 weeks.”

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.

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:

“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.”

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.

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.

### **The Factual Matrix**

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.

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

“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.

“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:”

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

“PART A- SPECIFIC CONDITIONS

I. Construction Phase

xxx                      xxx                      xxx

v. Permission 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.”

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

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.”

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.

$$\text{F.A.R.} = \frac{\text{Total covered area on all floors}}{\text{Plot Area}}$$

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

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.”

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

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 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)
<b>8</b>		<b>Building/Construction projects/Area Development projects and Townships</b>		

<b>8(a)</b>	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)
<b>8(b)</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.

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 covered and not open to the sky has to be treated as 'built up area'. There is no exception for non-FSI area.

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 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 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 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**

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:

“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”.”

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

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.

**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:-

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

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

Dated 7<sup>th</sup> July, 2017

**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**

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.

2. The matter has been examined in the Ministry. The BUA defined in the notification S.O. 1533 (E) dated 14<sup>th</sup> 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”.

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.”

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.

Sd/-  
(Dr. Ashish Kumar)  
Joint Director  
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All States/UTs/SIEAAs/MoEF & CC Divisions

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 that it has been issued when the matter was pending before the NGT, at the instance of one of the Directors of the project proponent, Shri Atul 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 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 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 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.

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 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 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***<sup>1</sup>. We expect the officials of the Ministry of 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.

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.

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<sup>1</sup> (2017) 9 SCC 499

### **Environmental Clearance dated 20.11.2017**

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

“(1) This environmental clearance (EC) is issued for total built up area of 147219.45 m<sup>2</sup> as approved by local planning authority. It is noted that the total proposed construction area is 147219.45 m<sup>2</sup> which includes the area of previous EC (dated 04.04.2008) 57,658.42 m<sup>2</sup> 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 m<sup>2</sup>. After considering the NON FSI area of the previous EC the total built up area becomes 1,81,230.94 m<sup>2</sup>. SEIAA has also taken note of the clarification issued by MOEF and CC vide office memorandum dated 7<sup>th</sup> 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.”

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.

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 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 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 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 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 allegations made by the original applicant cannot be lightly brushed aside. In the original order dated 27.09.2016, the NGT held as follows :-

**“42.** From the extracted portion of the order dated 31<sup>st</sup> 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

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

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 27<sup>th</sup> meeting of SEAC III (Non-MMR) held from 10<sup>th</sup> to 13<sup>th</sup> March, 2015 and the 87<sup>th</sup> meeting of SEIAA held on 10<sup>th</sup> to 12<sup>th</sup> 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.

**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.

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.

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. 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 as follows:-

**“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 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 when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

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**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 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.”

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 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 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.

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”<sup>2</sup>. 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.

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<sup>2</sup> (1980) 2 SCC 167

37. We may refer to the judgment of this Court in ***Malthesh Gudda Pooja vs. State of Karnataka and Ors.***<sup>3</sup>. 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 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 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

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<sup>3</sup> (2011) 15 SCC 330

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 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.”

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 :-

- 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.

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.

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.

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:

“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.”

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

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

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.

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 over by Dr. Justice Jawad Rahim, who apparently was holding Court in 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. 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. 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 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 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 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 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.

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

**Is Demolition the only answer?:**

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.

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.

**Whether the Original Applicant is entitled to Special Damages:**

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.

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 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 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:**

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:-

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;

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:**

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.

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 there is no order of the NGT specifically permitting the original applicant 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.

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.

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..

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.

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 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, 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 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. 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 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 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:**

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;

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

*(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;

(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;

(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;

(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;

(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;

(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 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.

(xiv) The matter be listed on 22.10.2018 for issuing appropriate directions as to how the amount of damages are to be utilised;

60. All the appeals are disposed of in the aforesaid terms. Pending application(s) if any, shall also stand disposed of.

.....**J.**  
**(Madan B. Lokur)**

.....**J.**  
**(Deepak Gupta)**

New Delhi  
August 10, 2018

Rate List of Sub Tehsil Wazirabad District Gurugram for the Year 2018-2019 (w.s. 17/07/18)													
Sr. No	Plots in Licensed Colonies	Rates for the Year of 2016-2017				Rates for the Year of 2017-2018				Rates for the Year of 2018-2019			
		Residential (Rs. Per Sq. Yards)	Commercial (Rs. Per Sq. Yards)	Commercial/Retail (Rs. Per Sq. feet)	Office/IT Space (Rs. Per Sq. Feet)	Residential (Rs. Per Sq. Yards)	Commercial (Rs. Per Sq. Yards)	Commercial/Retail (Rs. Per Sq. feet)	Office/IT Space (Rs. Per Sq. Feet)	Residential (Rs. Per Sq. Yards)	Commercial (Rs. Per Sq. Yards)	Commercial/Retail (Rs. Per Sq. feet)	Office/IT Space (Rs. Per Sq. Feet)
1	Sushant Lok-I (Kanehi, Wazirabad, Jharsa)	65450	140250	9000	6600	65500	140300	9000	6600	77000	165000	9000	6600
2	Dlf Phase-V, Greenwood City, Nirvana -I	61200	140250	8900	6500	61200	140300	8900	6500	72000	165000	9000	6600
4	South City-II, Suncity (Sec-54), Rosewood City	51000	140250	8400	6200	51000	140300	8400	6200	60000	165000	9000	6600
5	Mayfield Garden, Ardee City, Sushant Lok-II & III (Adampur, Fatehpur)	42500	119000	7100	5200	42500	119000	7100	5200	50000	140000	9000	6600
6	Licensed Colonies in Sec- 58, 59, 60, 61, 62, 63, 63A	25500	85000	3825	2550	25500	85000	3900	2600	30000	100000	5000	4500
7	Shopping Mall on Mehrauli Gurugram Road	Na	Na	Na	Na	Na	Na	9000	6600	Na	Na	12000	7300
8	Shopping Mall on Golf Course Road	Na	Na	Na	Na	Na	Na	9000	6600	Na	Na	11000	7000
9	Shopping Mall on Golf Course Extn. Road	Na	Na	Na	Na	Na	Na	9000	6600	Na	Na	10000	6300
10	Shopping Mall on NH 48	Na	Na	Na	Na	Na	Na	9000	6600	Na	Na	13000	7500
11	Other area in Sub Tehsil Wazirabad	NA	NA	NA	NA	NA	NA	9000	6600	NA	NA	9000	6600

Joint Sub Registrar  
Sub- Tehsil Wazirabad

SDO (C) North  
Gurugram

DRG  
Gurugram

Deputy Commissioner-cum-  
Registrar, Gurugram

Status of Land Image through Google Earth on 03/05/2008



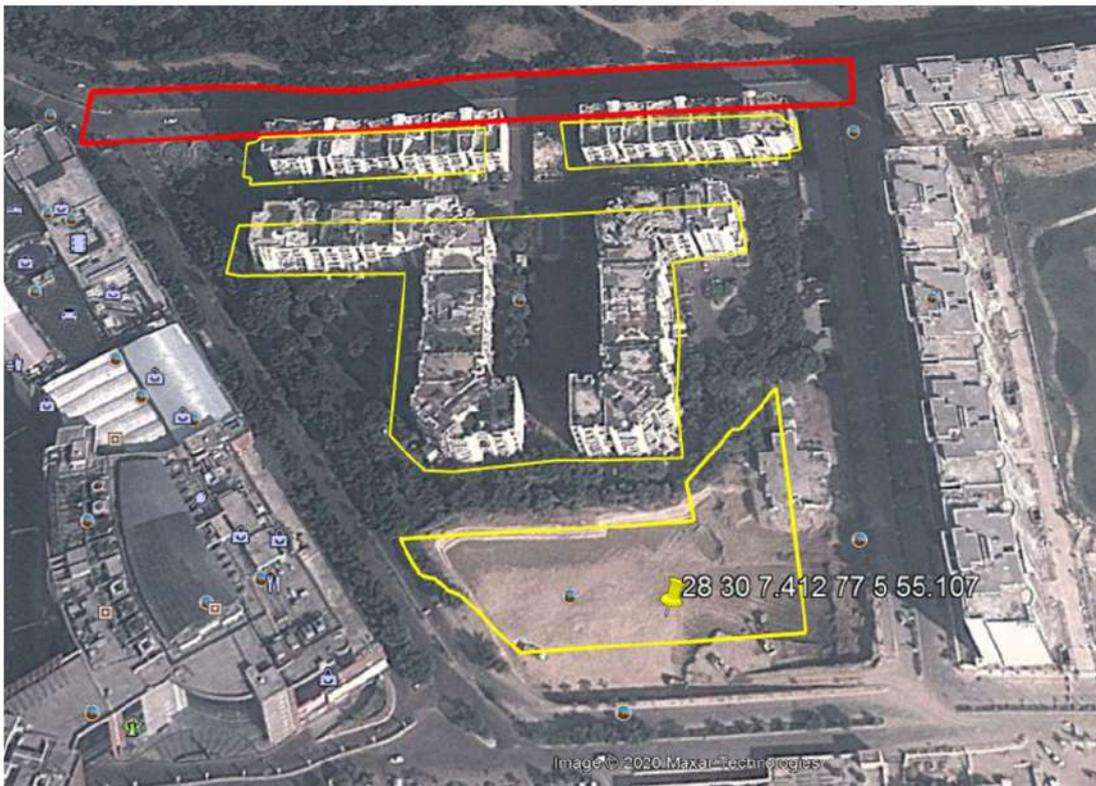
Status of Land Image through Google Earth on 11/04/2009

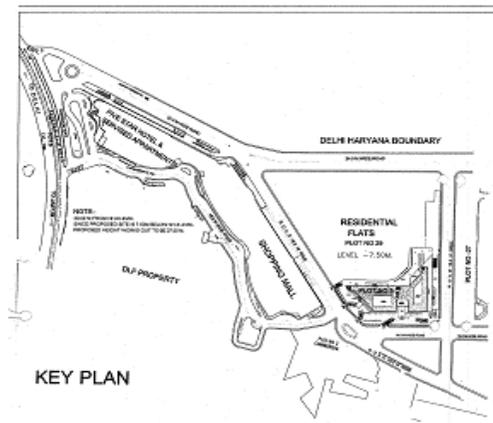


Status of Land Image through Google Earth on 13/06/2010

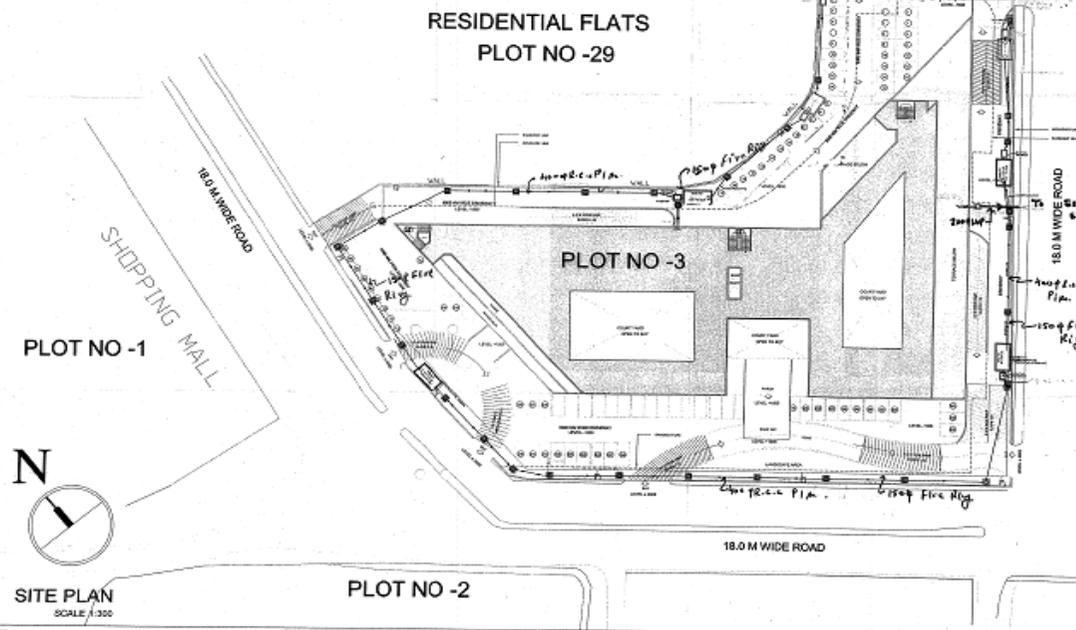


Status of Land Image through Google Earth on 14/12/2011





KEY PLAN



RESIDENTIAL FLATS PLOT NO -29

PLOT NO -1



SITE PLAN SCALE: 1/300

PLOT NO -2

AREA STATEMENT FOR PLOT NO.- 3

S/NO	DESCRIPTION	PERMISSIBLE AREA IN SQ.M.	PROPOSED AREA IN SQ.M.
01	TOTAL AREA OF PLOT	2800.00	
02	PERMISSIBLE GROUND COVERAGE (49%)	940.00	4003.061
03	PERMISSIBLE BUILT-UP AREA OR F.A.R. (1.75)	41125.00	41074.654
04	PERMISSIBLE BUILDING HEIGHT	33.000 M.	30*7.50 M.

NOTE: 1. 50.00 M FROM NH-4 LEVEL SINCE PROPOSED SITE IS 7.50 M BELOW NH-8 LEVEL PROPOSED HT. WORKS OUT TO BE 37.500 M.

PROPOSED AREA STATEMENT

05	COVERED AREA OF STILL LEVEL	277.345
06	COVERED AREA OF GROUND LEVEL	4993.061
07	COVERED AREA OF 1ST LEVEL	4542.199
08	COVERED AREA OF 2ND LEVEL	4542.199
09	COVERED AREA OF 3RD LEVEL	4542.199
10	COVERED AREA OF 4TH LEVEL	3306.288
11	COVERED AREA OF 5TH LEVEL	3306.288
12	COVERED AREA OF 6TH LEVEL	3306.288
13	COVERED AREA OF 7TH LEVEL	3306.288
14	COVERED AREA OF 8TH LEVEL	3306.288
15	COVERED AREA OF 9TH LEVEL	3306.288
16	COVERED AREA OF 10TH LEVEL	2993.031
17	COVERED AREA OF 11TH LEVEL	2993.031
TOTAL (05 TO 16)		41074.654

BASEMENT AREA STATEMENT

18	1ST BASEMENT LEVEL	9553.894
19	2ND BASEMENT LEVEL	8553.924
20	3RD BASEMENT LEVEL	9553.864
21	4TH BASEMENT LEVEL	9553.764
TOTAL		38215.850

PROPOSED PARKING

FLOORS	PROPOSED	TWO WHEELAR
GROUND LEVEL	50	
STILT LEVEL	229	
1ST BASEMENT FLOOR	220	15
2ND BASEMENT FLOOR	255	15
3RD BASEMENT FLOOR	255	15
4TH BASEMENT FLOOR	255	15
TOTAL	1270	60

PARKING CALCULATIONS

PARKING REQUIREMENT = 1 P.C.U./75 SQ.M. OF COVERED AREA  
 TOTAL COVERED AREA = 41074.654 SQ.M.  
 PARKING REQUIREMENT = 41.74 8541.75 SQ.M.  
 = 547.86 NOS  
 SAY 548ECS  
 REQUIRED SURFACE CAR PARKING @ 20% OF 548 ECS = 110 ECS

NOTE: THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROVISION OF PARKING FOR THE PROPOSED DEVELOPMENT AS PER THE PROVISIONS OF THE DLP.

1. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROVISION OF PARKING FOR THE PROPOSED DEVELOPMENT AS PER THE PROVISIONS OF THE DLP.

2. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROVISION OF PARKING FOR THE PROPOSED DEVELOPMENT AS PER THE PROVISIONS OF THE DLP.

3. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROVISION OF PARKING FOR THE PROPOSED DEVELOPMENT AS PER THE PROVISIONS OF THE DLP.

4. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROVISION OF PARKING FOR THE PROPOSED DEVELOPMENT AS PER THE PROVISIONS OF THE DLP.

5. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROVISION OF PARKING FOR THE PROPOSED DEVELOPMENT AS PER THE PROVISIONS OF THE DLP.

6. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROVISION OF PARKING FOR THE PROPOSED DEVELOPMENT AS PER THE PROVISIONS OF THE DLP.

7. THE DEVELOPER SHALL BE RESPONSIBLE FOR THE PROVISION OF PARKING FOR THE PROPOSED DEVELOPMENT AS PER THE PROVISIONS OF THE DLP.

DATE: 15-01-2018  
 SCALE: 1:100  
 DRG. NO. 181/13

OWNER SIGN: [Signature]  
 ARCHITECT SIGN: [Signature]

DATE: 15-01-2018  
 SCALE: 1:100  
 DRG. NO. 181/13

OWNER SIGN: [Signature]  
 ARCHITECT SIGN: [Signature]

DATE: 15-01-2018  
 SCALE: 1:100  
 DRG. NO. 181/13

OWNER SIGN: [Signature]  
 ARCHITECT SIGN: [Signature]

DATE: 15-01-2018  
 SCALE: 1:100  
 DRG. NO. 181/13

OWNER SIGN: [Signature]  
 ARCHITECT SIGN: [Signature]

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To.

M/s :Ambience DevelopersInfrastructure PvtLtd  
Corporate Office Tower, Nathupur, Ambience Island, NH8, Gurugram

Subject: Grant of consent to operate to M/s Ambience DevelopersInfrastructure PvtLtd.

Please refer to your application-no. 4428596 received on dated 2017-08-11 in regional office Gurgaon North. With reference to your above application for consent to operate, M/s Ambience DevelopersInfrastructure PvtLtd is here by granted consent as per following specification/Terms and conditions.

<b>Consent Under</b>	BOTH
<b>Period of consent</b>	09/08/2017 - 30/09/2021
<b>Industry Type</b>	Building and construction project-more than 20,000 sq.m built up area having waste water generation more than 100 KLD
<b>Category</b>	RED
<b>Investment(In Lakh)</b>	10790.0
<b>Total Land Area(Sq. meter)</b>	23500.0
<b>Total Builtup Area(Sq. meter)</b>	67089.0
<b>Quantity of effluent</b>	
1. Trade	0.0 KL/Day
2. Domestic	78.0 KL/Day
<b>Number of outlets</b>	1.0
<b>Mode of discharge</b>	
1. Domestic	reuse/recycle
2. Trade	
<b>Domestic Effluent Parameters</b>	
1. BOD	30 mg/l
2. COD	250 mg/l
3. TSS	100 mg/l
<b>Trade Effluent Parameters</b>	
1. NA	0 mg/l
<b>Number of stacks</b>	1
<b>Height of stack</b>	
1. Stack to DG set	7 meter (Above building)
<b>Emission parameters</b>	
1. NA	0 mg/m3

Product Details	
1. NA (commercial complex)	0 Metric Tonnes/day
Capacity of boiler	
1. NA	0 Ton/hr
Type of Furnace	
1. NA	0 0
Type of Fuel	
1. Diesel	0.7 KL/day
Raw Material Details	
NA	0 Metric Tonnes/Day

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Regional Officer, Gurgaon North  
Haryana State Pollution Control Board.

**Terms and conditions**

1. The applicants shall maintain good house keeping both within factory and in the premises. All hose pipelines, valves, storage tanks etc. shall be leak proof. In plant allowable pollutants levels, if specified by State Board should be met strictly.
2. The applicant/company shall comply with and carry out directive/orders issued by the Board in this consent order at all subsequent times without negligence of his-/its part. The applicant/company shall be liable for such legal action against him as per provision of the law/act in case of violation of any order/directives. Issued at any time and or non compliance of the terms and conditions of his consent order.
3. The applicant shall make an application for grant of consent at least 90 days before the date of expiry of this consent.
4. Necessary fee as prescribed for obtaining renewal consent shall be paid by the applicant alongwith the consent application.
5. If due to any technological improvement or otherwise this Board is of opinion that all or any of the conditions referred to above required variation (including the change of any control equipment either in whole or in part) this Board shall after giving the applicant an opportunity of being heard vary all or such condition and there upon the applicant shall be bound to comply with the conditions so varied.
6. The industry shall provide adequate arrangement for fighting the accidental leakages, discharge of any pollutants gas/liquids from the vessels, mechanical equipment etc. which are likely to cause environment pollution.
7. The industry shall comply noise pollution (Regulation and control) Rules, 2000.
8. The industry shall comply all the direction/Rules/Instructions as may be issued by the MOEF/CPCB/HSPCB from time to time.
9. The industry shall ensure that various characteristics of the effluents remain within the tolerance limits as specified in EPA Standard and as amended from time to time and at no time the concentration of any characteristics should exceed these limits for discharge.
10. The industry would immediately submit the revised application to the Board in the event of any change in the raw material in process, mode of treatment/discharge of effluent. In case of change of process at any stage during the consent period, the industry shall submit fresh

consent application alongwith the consent to operate fee, if found due, which may be on any account and that shall be paid by the industry and the industry would immediately submit the consent application to the Board in the event of any change during the year in the raw material, quantity, quality of the effluent, mode of discharge, treatment facilities etc.

11. The officer/official of the Board shall reserve the right to access for the inspection of the industry in connection with the various process and the treatment facilities. The consent to operate is subject to review by the Board at any time.

12. Permissible limits for any pollutants mentioned in the consent to operate order should not exceed the concentration permitted in the effluent by the Board.

13. The industry shall pay the balance fee, in case it is found due from the industry at any time later on.

14. If the industry fails to adhere to any of the conditions of this consent to operate order, the consent to operate so granted shall automatically lapse.

15. If the industry is closed temporarily at its own, they shall inform the Board and obtain permission before restart of the unit.

16. The industry shall comply all the Directions/ Rules/Instructions issued from time to time by the Board.

#### Specific Conditions :

1. The unit will submit the analysis reports of trade effluent/air emissions/ noise, from all sources as applicable within 30 days this year and before 30th June every year and will keep all parameters within standards prescribed under Environment (Protection) Rules, 1986. 2. The unit will submit the Annual Report under HWM Rules by 30th June and Environment Statement by 30th September every year. 3. Unit will submit fresh balance sheet/ CA certificate regarding capital investment cost of the unit on land, building, plant and machinery without depreciation and will also deposit balance consent fee if any found due as per latest balance sheet/ CA certificate, by 30th September every year. 4. Unit will apply for renewal of consent/Authorization at least 90 days before expiry date of the consent/Authorization. 5. The hazardous waste generated by the unit in the form of used/spent oil will be sold only to authorized recyclers / Refiners of hazardous waste.

Jai Bhagwan

Digitally signed by Jai Bhagwan  
Date: 2017.08.31 11:24:33 +05'30'

Regional Officer, Gurgaon North  
Haryana State Pollution Control Board.

(Letter from IIFM, Bhopal regarding ecological services)

### Compensation for loss of ecological services to the residents of Lagoon Apartments

#### Introduction

The ecosystem services framework has primarily been thought of as a means of promoting nature conservation. Valuation of provisioning ecosystem services, like food, water, fuelwood and grass can be done by physical quantification and using market prices. Valuation of ecosystem services that are nonphysical is a challenging task. This is because the values are subjective, context-specific and contingent on specific circumstances. Human aesthetic perception is a complex behaviour where socio-economic and cultural background plays a central role.

The ecosystem services that have been impacted in the present case are primarily claimed to be:

- a. Loss of sunlight to the individual owner of the apartment
- b. Loss of scenic view from the apartment to the owner, and
- c. Loss of open green space to all the residents used for recreational, health and aesthetic purposes.

#### Approach to valuation

The approach to valuing these losses of ecosystem services is suggested to be the 'Hedonic Pricing Method'. Using this method, the price of individual apartments in the same complex and neighboring complexes would be calculated as a function of various attributes, viz apartment size, floor, and other amenities including the ecosystem service attributes (amount of sunlight, view and green space available). Once this relationship has been established, the variability in price associated with the availability of ecosystem services may be calculated.

This variability can be used as an input to value the ecosystem services that have been lost due to the commercial complex, as a percentage of the market price of the apartment.

#### Recommendation

It is recommended that:

1. A survey be conducted to quantify the percentage loss of each ecosystem service in each affected apartment depending on the apartment block and the height (floor) of the apartment in the building.
2. A database of the prices of apartments sold in Ambience Lagoon and nearby comparable housing societies be obtained. This would include historical differential prices based on amenities offered before the loss of the green space.

3. The hedonic pricing method be used to estimate that part of the price of the apartment that is contributed by the ecosystem services to calculate the loss caused.
4. The cost of the study be funded by the Project Proponent.
5. A consultant may be hired with the appropriate experience and expertise to do the study. The institutions that could be approached to do such a study are The Institute of Economic Growth in New Delhi, the Indira Gandhi Institute of Development Research, Mumbai, and the Madras School of Economics in Chennai.

Advait Edgaonkar

Asst Professor

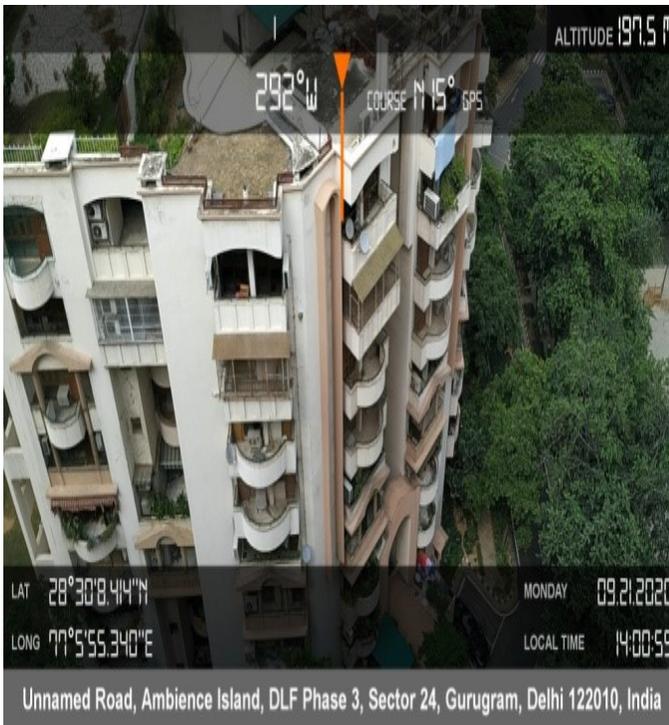
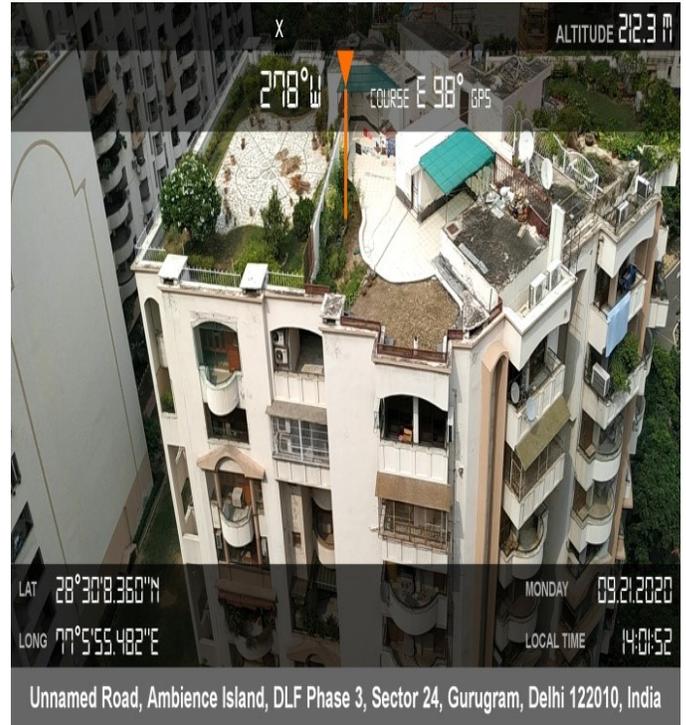
IIFM, Bhopal

# Photo-1



**Photo 1:** Bend and cracks at lagoon residential building

## Photo 2



**Photo 2:** View of lagoon apartment from the roof of commercial complex