

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

IN

OA NO. 238 OF 2015

IN THE MATTER OF :-

ANIL UPPAL & ORS.

...APPLICANTS

VERSUS

STATE OF HARYANA & ORS.

...RESPONDENTS

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| 1. | Objections limited to parts of the report dated 03.02.2020 of the joint committee constituted by the Hon'ble NGT, New Delhi on behalf of the Applicants | 1-14 |

REPRESENTED BY :

PLACE : NEW DELHI

DATE : 14.12.2020

Ameel Vaid

**KANIKA AGNIHOTRI
VAIBHAV AGNIHOTRI
SKV ASSOCIATES
A-118, IIIrd FLOOR,
DEFENCE COLONY,
NEW DELHI 110024**

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**OBJECTIONS LIMITED TO PARTS OF THE REPORT DATED
03.02.2020 OF THE JOINT COMMITTEE CONSITUTED BY THE
HON'BLE NGT, NEW DELHI ON BEHALF OF THE APPLICANTS**

MOST RESPECTFULLY SHOWETH :

1. The instant objections are being preferred by the Applicants to the Report dated 03.02.2020 of the Joint Committee constituted by the Hon'ble NGT, New Delhi ('Report' hereinafter for the sake of brevity).
2. At the outset it would be apposite to note that the Applicants are only objecting to certain conclusions of the Report, and are otherwise in agreement/satisfied with the findings of the Report, unless specified to the contrary. The Report is premised on the order of this Hon'ble Tribunal dated 09.02.2020, whereby this Hon'ble Tribunal was pleased to observe that "*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.”

3. Accordingly, the Committee visited the Ambience Lagoon Residential Complex (‘ALRC’ hereinafter for the sake of brevity) on 21.09.2020, and came to the following conclusions (reproduced verbatim) :-

“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.”*

4. Premised on their findings, the Committee has assessed the Environmental Compensation primarily on the three grounds mentioned above.

4.1 Illegal Construction of commercial complex at part of the land of

housing colony lagoon apartment – The committee has assessed a compensation amounting to Rs. 138,83, 44,100/- (Rupees One

Hundred Thirty Eight Crore Eighty Three Lakh Forty Four Thousand and One Hundred only). Without prejudice to the fact, that the principal relief of the Applicant in the instant Original Application is for demolition of the illegally constructed tower and consequential restoration, on the issue of compensation whilst the Applicants are in agreement with the mode and formula of calculation premised on the judgement in *Goel Ganga Developers Pvt. Ltd. v. UOI, (2018) 18 SCC 257*; the Applicants object to the fact that the said compensation should be in the form of a fine imposed by the Government i.e Respondent No.1 or its instrumentalities.

4.2 It is apposite to note that by virtue of the judgment of the Hon'ble High Court of Punjab and Haryana dated 10.07.2020, titled *Dr Amitabha Sen & Anr .v.Raj Singh Gehlot & Ors CWP 20330/2015*, the Hon'ble High Court of Punjab and Haryana, has already struck down the order of granting permission for construction of commercial tower dated 16.10.2001 as well as order of de-licensing dated 18.10.2001 both of which permitted the builder to construct the commercial tower that is the sub stratum of the instant lis.

4.3 By virtue of several judgements of the Hon'ble Supreme Court, and specifically *Goel Ganga Developers (supra)* the purpose and object of environmental compensation is restitution of the environment due to the damage caused by the project proponents. In the instant case, the

Committee has held that Respondent No.6, has clearly violated the deed of declaration whereby areas earmarked for green and open spaces, have been illegally utilised for inter alia, the construction of a commercial tower. Therefore, any restitution for the damage caused by the project proponents can be via demolition of the commercial tower along with compensation. In fact a perusal of the judgement of *Dr. Amitabha Sen & Anr. v. Raj Singh Gehlot & Ors. (supra)*, would reflect that the Hon'ble Court has taken a view that the Respondent authorities have been hand in glove qua the violations committed by Respondent No.6. The Court observed that *“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.” Therefore, whilst agreeing with the findings of the Committee with respect to the environmental and statutory violations committed by the Respondent No.6 (while maintaining demolition as the principal relief) , it would be in the interest of justice, that the compensation so assessed should be in the form of damages payable to the applicant residents of the ALRC. It does not stand to reason why the compensation is any must be paid to the government wherein – there is a finding of the Hon’ble High Court holding them partially responsible for the sufferings of the Applicant/ residents supplemented by the fact that no sufferance has been caused to them, thus, presenting no cause/ opportunity for restitution. It is further prayed that the Hon’ble Tribunal may kindly decide and impose the quantum of compensation as on account of having acted in connivance with the Project Proponent, the authorities have lost all rights to adjudicate on any matter of the instant lis.

4.4 Regular earning from illegal commercial office complex- The committee has come to a conclusion that the commercial tower

*illegally*¹ constructed by the Respondent No.6, in place of the areas earmarked for green and open spaces, is huge source of income/earning of the Respondent No.6. As per the estimates of the committee, the Respondent No.6 is earning approximately Rs. 153, 78, 58,080 (Rupees One Hundred Fifty-Three Crore Seventy-Eight Lakh Fifty-Eight Thousand and Eighty). However, whilst agreeing with the prayer of the Applicant- demolition of the commercial tower, the Committee has instead suggested that this Hon'ble Tribunal may direct the Respondent Authorities to retain a certain proportion of the annual income so as to undertake development activities. Therefore, the Applicants while accepting the recommendation of demolition, object to the alternative relief suggested by the Committee, with respect to the retention of annual profits by the Respondent Authorities. The said relief would in no way compensate for the environmental loss due the construction of the illegal commercial tower on the areas earmarked for green and open spaces. Instead, based on the established principles of restitution and environmental jurisprudence it is would be in the interest of justice, that the commercial tower is demolished in toto, and the Respondent No.6 is directed to develop green and open spaces instead.

¹ Emphasis supplied

4.5 Further, the applicants pray that there any and all compensation or fine should be computed from the date that the said illegal tower got its completion certificate/consent to operate (whichever is earlier) and should be awarded to the applicant/ residents with a direction to use a certain percentage (as directed by the Hon'ble Tribunal) towards development of green areas in the complex.

4.6 Violation of EC dated 01.09.2020 and stipulated EC conditions-

The Applicants do not object to the findings and conclusions of the Committee under this head, and accordingly are in agreement with the committee that the Respondent No.6 ought to pay a fine of Rs. 10,33,03,125 (Rupees Ten Crore Thirty-Three Lakh Three Thousand and One Hundred and Twenty-Five). The said quantification is in consonance with established norms, and as such is well within the expertise of the committee.

5. Further, the Committee has observed that “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 objections highlighted above, and if this Hon'ble Tribunal were to direct that the compensation be paid in the form of damages to the residents of the ALRC, it is prayed that the formula for compensation placed on record as ANNEXURE Z in the Report, be

applied, so as to highlight the pronounced adverse consequences faced by the residents of certain blocks over the others. The builder has deliberately constructed the tower in a manner that the loss of positive environmental externalities and benefits of the residents, particularly those of Tower E & F were denuded to an extent that they have become non-existent.

6. The Applicants herein have preferred the said objections to the Report with a bona fide intent to indicate that the restitution of environment should be the foremost guiding principle of the Committee, and the only way to achieve the same would be through demolition of the commercial tower.
7. The instant objections have been filed at the earliest.

PRAYER

In view of the facts and circumstances, this Hon'ble Tribunal may be pleased to :

- i. Direct the Respondent Authorities to demolish the commercial tower as indicated by the judgment of Hon'ble High Court of Punjab and Haryana , dated 10.07.2020 and the Committee in its conclusions;
- ii. Direct the Respondent No.6 to pay damages payable as environmental compensation amounting to Rs. 138,83,44, 100 (Rupees One Hundred and Thirty Eight Crore Eighty Three Lakh Forty Four Thousand and One Hundred only) to the applicant/ residents of ALRC;

- iii. Direct that any and all compensation/fines computed on the basis of generation of profits from the tower be calculated from the date that the said tower was granted Consent to operate/ Completion Certificate, whichever is earlier;
- iv. Any other order as this Hon'ble Tribunal may deem fit in the interest of justice.

REPRESENTED BY :

**KANIKA AGNIHOTRI
VAIBHAV AGNIHOTRI
SKV ASSOCIATES
A-118, IIIrd FLOOR,
DEFENCE COLONY,
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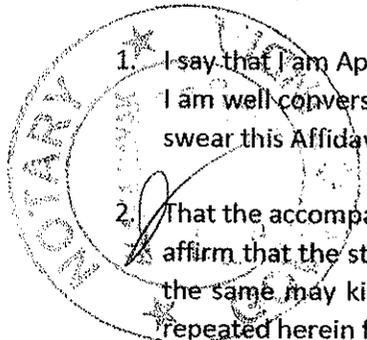
STATE OF HARYANA & ORS

___ RESPONDENTS(S)

AFFIDAVIT

I, Rajeev Adlakha, aged about 45 years, son of Late Sh. R.K. Adlakha, residing at D-702, Ambience Island Lagoon Apartments, NH 8, Gurugram, Haryana presently in New Delhi do hereby solemnly affirm and declare as under:-

1. I say that I am Applicant in the instant matter and as such I am authorized to swear this affidavit. I am well conversant with the facts and circumstances of the case and as such am competent to swear this Affidavit.
2. That the accompanying objections have been drafted by the counsel under my instructions and I affirm that the statements of the fact made therein are true to my knowledge. The contents of the same may kindly be read as a part and parcel of this Affidavit as the same are not being repeated herein for the sake brevity.



DEPONENT

VERIFICATION

4 DEC 2020

I identified the deponent who has signed in my presence

Verified at Delhi on this 13th day of December 2020 that the contents of my Affidavit are true and correct and no part of it is false and nothing material has been concealed therefrom.

CERTIFIED THAT THE DEPONENT
 Shri / Smt / Km
 S/o, W/o
 I declare
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 Delhi
 That
 have been
 are true & correct to his knowledge

IDENTIFIED
Anil Uppal

4 DEC 2020

D/5894/2015

DEPONENT

NOTARY

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IN THE MATTER OF:

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___APPLICANTS(S)

VERSUS

STATE OF HARYANA & ORS

___RESPONDENTS(S)

AFFIDAVIT

I, Anil Uppal, aged about 57 years, son of Sh. S.K. Uppal, residing at E-204, Ambience Island Lagoon Apartments, NH 8, Gurugram, Haryana presently in New Delhi do hereby solemnly affirm and declare as under:-

1. I say that I am Applicant in the instant matter and as such I am authorized to swear this affidavit. I am well conversant with the facts and circumstances of the case and as such am competent to swear this Affidavit.
2. That the accompanying objections have been drafted by the counsel under my instructions and I affirm that the statements of the fact made therein are true to my knowledge. The contents of the same may kindly be read as a part and parcel of this Affidavit as the same are not being repeated herein for the sake brevity.

DEPONENT

VERIFICATION 16 DEC 2020

Verified at Delhi on this 13th day of December 2020 that the contents of my Affidavit are true and correct and no part of it is false and nothing material has been concealed therefrom.

IDENTIFIED
Anil Uppal
I identified the deponent who
has signed in my presence
15894/2019

CERTIFIED THAT THE DEPONENT
Sri / Shri / Km
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That the
have been
him are true & correct to n/s knowledge

DEPONENT

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...RESPONDENTS(S)

AFFIDAVIT

I, Rupinder Kaur, aged about 66 years, wife of Mr. Premjit Singh, residing at F-104, Lagoon Apartments, Ambience Island Gurugram, Haryana 122002 presently in New Delhi do hereby solemnly affirm and declare as under: -

1. I say that I am Applicant in the instant matter and as such I am authorized to swear this Affidavit. I am well conversant with the facts and circumstances of the case and as such am competent to swear this Affidavit.

2. That the accompanying objections have been drafted by the counsel under my instructions and I affirm that the statements of fact made therein are true to my knowledge. The contents of the same may kindly be read as a part and parcel of this Affidavit as the same are not being repeated herein for the sake of brevity.

Rupinder Kaur
DEPONENT

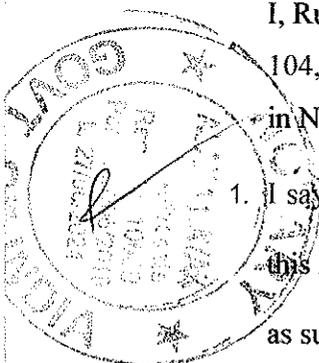
DEC 2020
VERIFICATION

Verified at Delhi on this 14th day of December 2020 that the contents of my above Affidavit are true and correct and no part of it is false and nothing material has been concealed there from.

VERIFIED THAT THE DEPONENT...
Signature of Verifier
DEC 2020

Rupinder Kaur
DEPONENT

DEC 2020



Handwritten notes: (CA/ind), UP/5146/2000, I identified the deponent who has signed in my presence.

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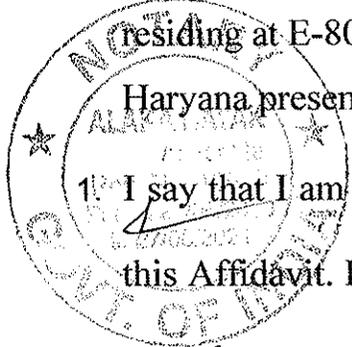
VERSUS

STATE OF HARYANA & ORS.

...RESPONDENTS(S)

AFFIDAVIT

I, Jatin Khetarpal, aged about 49 years, son of Late. Shri. Raj Kumar Khetarpal, residing at E-804, Ambience Lagoon Apartments, Ambience Island, NH-8, Gurugram, Haryana presently in New Delhi do hereby solemnly affirm and declare as under: -



1. I say that I am Applicant in the instant matter and as such I am authorized to swear this Affidavit. I am well conversant with the facts and circumstances of the case and as such am competent to swear this Affidavit.

2. That the accompanying objections have been drafted by the counsel under my instructions and I affirm that the statements of fact made therein are true to my knowledge. The contents of the same may kindly be read as a part and parcel of this Affidavit as the same are not being repeated herein for the sake of brevity.

Jatin Khetarpal
DEPONENT

4 DEC 2020

IDENTIFIED

Identified the deponent who has signed in my presence

VERIFICATION
Verified at Delhi on this 13th day of December 2020 that the contents of my above Affidavit are true and correct and no part of it is false and nothing material has been concealed there from.

[Signature]
[Signature]

4 DEC 2020

Jatin Khetarpal
DEPONENT