

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

**ORIGINAL APPLICATION NO. 74 /2019**

IN THE MATTER OF:

MR. TANAJI BALASAHEB GAMBHIRE ...APPLICANT

VERSUS

THE PRINCIPAL SECRETARY-DoE &

OTHERS ...RESPONDENTS

FILE-A  
[VOLUME-\_\_\_\_]

REJOINDER AFFIDAVIT & ANNEXURES

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**FILE-A**

**VOLUME-\_\_\_\_\_**

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Date: 11.10.2021

Bombhise

APPLICANT



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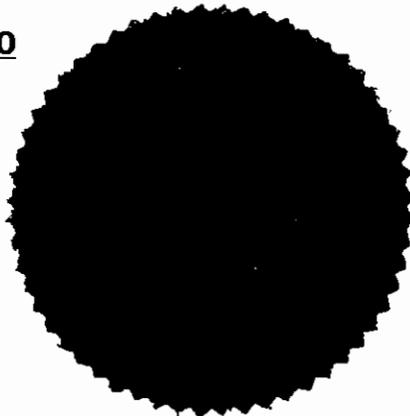
THE PRINCIPAL SECRETARY, DoE & ORS.

...RESPONDENTS

REJOINDER AFFIDAVIT BY ORIGINAL APPLICANT TO THE  
REPLY AFFIDAVIT OF RESPONDENT NO. 11-M/S. NYATI  
BUILDERS PVT. LTD-PP DATED 29.07.2020 AND  
RESPONDENT NO. 8-METROPOLITAN COMMISSIONER &  
CEO, PMRDA DATED 09.11.2020:

I, Tanaji Gambhire S/o Balasaheb Gambhire, Aged: 38,  
Occupation: Service, R/O: CTS-296, Shukrawar Peth, Laxmi  
Apartment, Near Shivaji Maratha High School, White House  
Lane, Pune-411002, do hereby solemnly affirm and state on  
oath as follows:

**PART-A: REJOINDER AFFIDAVIT TO THE REPLY  
AFFIDAVIT OF RESPONDENT NO. 11-PP DATED  
29.07.2020**



I have read the reply affidavits filed on behalf of Respondent No.11-PP (M/s. Nyati Builders Pvt. Ltd.) dated 29.07.2020 in reply thereto, I state as under: -

1. At the outset, I state that, the contents of reply affidavit filed by Respondent No.11-PP M/s. Nyati Builders Pvt. Ltd. dated 29.07.2020 are totally false, baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are denied by this Applicant in totality.
2. I state that, the Original Application No. 74/2019 (WZ) filed on 30.08.2019 by Original Applicant with principal contention that, the "PP has completed BUA of 35643.14 Sq. Mtrs., proposed construction BUA is 9841.74 Sq. Mtrs. and total BUA is 45484.88 Sq. Mtrs. comprising of 8 buildings 379 flats without obtaining any prior Environment Clearance from SEIAA, without obtaining any prior Consent to Establish and without obtaining any prior Consent to Operate from MPCB" and the allegations of Original Applicant are definite and Original Applicant have not approached to this Hon'ble Tribunal with question of requirement of EC for illegal construction for



consideration. Therefore, the present Application is filed under Section-15, 18 and 20 of NGT Act, 2010 for restitution & restoration of public property and public health and environmental compensation on account of damage caused by Respondent No. 11-PP due to his illegal construction.

3. I state that, apart from the above principal contentions, Original Applicant have ancillary violations of non-obtaining of mandatory prior Environment Clearance, Consent to Establish, Consent to Operate, CGWA permission for ground water extraction, Non-installation of pollution control devices, Non-plantation of tree, Non-installation of STP, Non-installation of Solid waste treatment & OWCS unit, illegal ground water extraction, illegal operation of DG Sets at site, 10% recreational space of is not developed as per norms, no soil preservation, no soil and ground water test, no use of eco-friendly building material for construction etc.

4. I state that, the OA No. 74/2019 was listed for admission on 06.03.2020 before Hon'ble NGT through Video Conferencing and Hon'ble NGT pleased to pass



an Order issuing notice to all Respondents and also appointed Joint Committee comprising of Respondent No. 2-SEIAA, Respondent No. 4-MPCB & Respondent No. 9-PMC for site inspection to verify the factual aspects and to submit a report.

5. I state that, the Joint Committee filed their cursory, casual, unscientific, false, baseless, misleading report vide dated 28.07.2020 in compliance of the above Order of this Hon'ble Tribunal.
6. I state that, this Applicant pointed out the falsehood, suppressions & illegalities from the report during the course of hearing conducted on 30.07.2020 and considering the illegality on part of Joint Committee, this Hon'ble Tribunal again constituted a Joint Committee comprising of CPCB, MPCB & SEIAA and directed to submit a factual and action taken report on point no. 2 with regard to two bore wells and point as raised by the Executive Engineer, Pune Municipal Corporation in paragraph 5 of this report. The applicant may file objection, if any.
7. I state that, this Applicant has filed his affidavit cum objections vide dated 10.09.2020 to the Joint



Committee report. And report of this newly constituted Joint Committee was supposed to file before next date of hearing i.e. 20.11.2020. However, Joint Committee failed to file the Report as per direction of this Hon'ble NGT and committed non-compliance of the Order and this illegal act on part of the Government Authorities is the crime under section 25 & 27 of the NGT Act, 2010.

8. I state that, this rejoinder affidavit is filed in continuation of affidavit cum objections of this Applicant vide dated 10.09.2020 to Joint Committee Report dated 28.07.2020 to avoid the repetition of contentions.
9. I state that, the Respondent No. 11-PP has filed his reply affidavit dated 29.07.2020 for rebuttal of contents of Original Application. That the contents of Joint Committee Report as well as Rely affidavit of Respondent No. 11-PP shows that both of these documents are prepared, pleaded, drafted and settled by Respondent No. 11-PP in collusion with his Architect M/s. Dasnurkar Associates through Mr. Shirish Dasnurkar dated 28.07.2020 and so called



Experts of MPCB, SEIAA & PMC and same are false, baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are doubtful for authenticity and reliance on such reply affidavit will be miscarriage of the justice.

- 10.** Following events and dates are important to understand the collusion between the Government Authorities and Respondent No. 11-PP and tactics, favouring practices adopted by the Joint Committee Members and Respondent No. 11-PP;

Sr.	Event	Date
1.	Filing of OA	30.08.2019
2.	First Order of NGT	06.03.2020
3.	Second Order of NGT	29.06.2020
4.	Architect Certificates prepared on	28.07.2020
5.	Joint Committee Visited Site on	28.07.2020
6.	Joint Committee Report prepared on	28.07.2020
7.	PMC Report submitted to Joint Committee	29.07.2021
8.	Respondent No. 11-PP Reply Affidavit Sworn on	29.07.2020
9.	Respondent No. 11-PP filed IA No. 58/2020, but not mentioned in the hearing	29.07.2020



10.	Affidavit cum Objections by Applicant to Joint Committee Report	10.09.2020
11.	Third Order of NGT	30.07.2020
12.	Respondent No. 11-PP filed IA No. 43/2021, but not mentioned in the hearing	19.06.2021 Not served to Applicant on time or not mention before NGT till date

**11.** I state that, the Report of Joint Committee is of dated 28.07.2020 and PMC Report is of dated 29.07.2020, then how Joint committee is aware of false & baseless Report of PMC in early of one day. Joint Committee is not allowed to accept the interference of the any third party like Architect of PP while preparing their report and there was no such order passed by the Hon'ble NGT.

**12.** I state that, after going through the report of Joint Committee dated 28.07.2020, the Hon'ble NGT vide its Order dated 30.07.200 has directed to submit the detailed report as below and also to file objections of the Original Applicant;



*“4. In light of above report, Central Pollution Control Board (CPCB) and the Maharashtra State Pollution Control Board (SPCB) and the SEIAA, Maharashtra are directed to submit a factual and action taken report on point no. 2 with regard to two bore wells and point as raised by the Executive Engineer, Pune Municipal Corporation in paragraph 5 of this report. The applicant may file objection, if any.”*

- 13.** I state that, the Original Applicant has filed his affidavit cum objections dated 10.09.2020 to the Joint Committee Report and further, the Joint Committee of CPCB, MPCB, SEIAA & PMC have not filed detailed their report with respect to the Order of Hon'ble NGT vide dated 30.07.2020 even after the Objections of this applicant till date and it is lapse of more than 15 months (i.e. 425 days).
- 14.** I state that, the Respondent No. 11-PP filed IA No. 43/2021 vide dated 19.06.2021, but not mentioned in the hearing and also not served to Applicant on time or not mention before NGT till date and due to this delay, tactics of Respondents, this Applicant is not in state to file his rejoinder and counters to the Reply



Affidavit & Interlocutory Application. Further, despite service of notice to all respondent, none of the Respondent No. 1 to 10- Government Authorities has filed their reply except PMRDA reply to IA No. 120/2019.

**15. CONSTRUCTION BEING CARRIED OUT WITHOUT ANY ENVIRONMENTAL CLEARANCE AND CONSENT TO ESTABLISH IN BLATANT VIOLATION OF THE ENVIRONMENTAL LAWS, POLLUTION CONTROL ACT AND EIA NOTIFICATION-2006.**

- a.** I state that, as per the EIA notification 2006 dated 14.09.2006, it is mandatory to obtain the prior environment clearance from SEIAA and consent to establish from MPCB before commencement of any construction work on part of PP. But the PP has started and completed most of the construction activity.
- b.** I state that, the Application dated 03.06.2019 for EC filed before SEIAA clearly shows that PP is seeking expansion in the Nyati Ethos-I phase of the project by **7,379.18 M<sup>2</sup>** in two building for 96 flats in addition to



the existing BUA **41656.85** M<sup>2</sup> of project comprising of Nyati Ethos-I & Nyati Ethos-II phase with six buildings & 293 flats and therefore the project is ongoing and yet to complete.

- c. I state that, after filling of the Joint Committee Report the following details of the project are classified for ready reference in brief;

Table No.1: Actual Construction carried out at site without Environmental Clearance and Consent to Establish.

Description	Existing	Proposed	Total
BUA of Nyati Ethos-I	23,316.59 M <sup>2</sup>	7,379.18 M <sup>2</sup>	30,695.77 M <sup>2</sup>
BUA of Nyati Ethos-II	18340.26 M <sup>2</sup>	0	18340.26 M <sup>2</sup>
Total BUA	<b>41656.85</b> M <sup>2</sup>	<b>7,379.18</b> M <sup>2</sup>	<b>49036.03</b> M <sup>2</sup>
Buildings	<b>6</b>	<b>2</b>	<b>8</b>
Flats	<b>293</b>	<b>96</b>	<b>379</b>

- d. Therefore, it is mandatory to stop the project construction permanently and this illegal construction either be demolished or government to take over this structure for public purposes without providing any benefits to PP.



**16. PRINCIPAL CONTENTIONS OF RESPONDENT NO. 11-PP RAISED IN HIS REPLY AFFIDAVIT DATED 29.07.2020 SEEKING DISMISSAL OF ORIGINAL APPLICATION:**

**16.1** As per **Para-6, 6.1, 6.1.1 to 6.1.14, 6.2 & 6.2.1 to 6.2.9** of Reply affidavit of Respondent No. 11-PP dated 29.07.2020 has sought dismissal of OA on account of; construction carried out in the name and style of 'Nyati Ethos-I' being carried out at Survey No. 21/1A/1B/3A/1/3A/2/3A/3/3A/4 and 'Nyati Ethos-II' being carried out at Survey No. 19/5 at Village Undri, Taluka Haveli, Dist. Pune. That the two projects are separate, different and distinct projects and cannot be considered as one project by any stretch of imagination. The land with regards the aforesaid two projects were purchased during different time lines. Furthermore all the aforesaid two projects have their independent building layout, building plans, sanctions, amenity space, ingress and egress, recreational area, societies inter-alia other aspects. And therefore, as per Para: 6.1.1 to 6.2.9



Original Application is misconceived and misplaced, as it can be safely concluded that by no stretch of imagination can the aforesaid two projects be considered to be one project and OA fails.

**16.2** As per **Para-7, 7.1, 8, 9, 10 & 11** of Reply affidavit of Respondent No. 11-PP dated 29.07.2020 has sought dismissal of OA on account of; As per the Orders passed by the Bombay High Court in Writ Petition (L) No. 470 of 2013 vide dated 06.03.2013 and Writ Petition No. 655 of 2014 vide dated 24.03.2014. Which reiterated that no EC is required for residential and commercial project where construction is below 20000 sq. mtrs. with reliance of circular of Principal Secretary-DoE vide dated 21.04.2015. That the all the projects are within the threshold of 20000 sq. mtrs. and the architect certificate provide conclusive proof that the construction with all the aforesaid five construction is below 20000 sq. mtrs.

**16.3** As per **Para-12 & 13** of Reply affidavit of Respondent No. 11-PP dated 29.07.2020 has sought dismissal of OA on account of; Therefore, as per extant laws the Respondent No. 11-PP is not required to obtain



Environment Clearance for carrying out construction upto 19787.45 sq. mtrs., out of maximum development potential 27095.01 sq. mtrs. for Nyati Ethos-I and for carrying out construction upto 15040 sq. mtrs., out of maximum development potential 18180 sq. mtrs. for Nyati Ethos-II and it is less than 20000 sq. mtrs. and has not committed any violation with respect to obtaining Environment Clearance as per EIA notification, 2006 as regards to Nyati Ethos-I & Nyati Ethos-II aforesaid two projects.

**16.4** As per **Para-14 & 15** of Reply affidavit of Respondent No. 11-PP dated 29.07.2020 has sought dismissal of OA on account of; the Respondent No. 11-PP is not required to obtain Consent to Establish or Consent to Operate and the provisions of Water (P&CP) Act, 1974 and Air (P&CP) Act, 1981 would not applicable to such a residential project which is not an industry, operation and/or process within the meaning of the above-mentioned act with support of Order dated 23.01.2012 passed by the Hon'ble Delhi High Court in Splendor Landbase Ltd. v/s. Delhi Pollution Control Board.



**16.5** As per **Para-16 to 22** of Reply affidavit of Respondent No. 11-PP dated 11.08.2021 has sought dismissal of OA on account of; that the Respondent No. 11-PP has installed all necessary Environment Infrastructures like No ground water extraction, ground testing, Installation of Rain Water Harvesting System (RWH), Soil Preservation & Soil Testing, Installation of Water Treatment Plant (WTP) & Installation of Sewage Treatment Plant (STP), Installation & Operation of DG Sets, Installation of Solar Water Panels and Tree Plantation etc. and same is in place and separate installation for two projects is completed, except common sharing of STP for both project.

**16.6** As per **Para-23 & 24** of Reply affidavit of Respondent No. 11-PP dated 29.07.2020 has sought dismissal of OA on account of; that the Original Applicant suffers from the lacuna of non-joinder of necessary party and valuable third party right have been created and third party purchasers are occupying their respective units.



**17. ACTUAL CASE OF ORIGINAL APPLICANT AND REJOINDER TO THE PRINCIPAL CONTENTIONS OF RESPONDENT NO. 11-PP:**

**17.1 ADMITTED FACTS BY RESPONDENT NO. 11-PP BY WAY OF EX-POST FACTO EC APPLICATION DATED 03.06.2019:**

- a.** I state that, the Respondent No. 11-PP has filed application for Environment Clearance on 03.06.2019 before SEAC-III, Maharashtra under EIA (Violation) Notification dated 14.03.2017 seeking ex-post facto environment clearance for "Nyati Ethos-I" situated on Survey No. 21 (P). Said Application for EC is containing undated Covering Letter of PP, Form-1, Form-1A and Consolidated Statement. PP himself has admitted that the project is under violation and as noted in consolidated statement, "Is a violation Case: Yes".
- b.** I state that, the Form-1, Form-1A and consolidated statement clearly admits that PP has completed the construction of total BUA 23316.59 Sq. Mtrs. and proposed construction BUA is 7379.18 Sq. Mtrs. out of Project total BUA 30695.77 Sq. Mtrs., Therefore the



total BUA completed by the Respondent No.11-PP in “Nyati Ethos-I” is 23316.59 Sq. Mtrs. and same is more than 20000 Sq. Mtrs.

<b>APPENDIX I</b>			
<b>(SEE PARAGRAPH - 6)</b>			
<b>FORM 1</b>			
<b>(I). Basic Information</b>			
Sr. No.	Item	Details	
3.	Proposed capacity/ area/ length/ tonnage to be handled/comman d area / lease area/ number of wells to be drilled.	<b>Total plot area - 16,150 sq.mt.</b> <b>FSI area - 17,234.48 sq.mt</b> (Proposed-4,499.86 sq.mt + Existing-12,734.62 sq.mt.) <b>Non FSI area - 13,461.29 sq.mt</b> (Proposed-2,879.32sq.mt+Existing-10,581.97 sq.mt.) <b>Total BUA area (FSI+ Non FSI) - 30,695.77 sq.mt</b> (Proposed-7,379.18 sq.mt + Existing-23,316.59 sq.mt.) Area statement is enclosed as <b>Annexure-I.</b>	
<b>(II) Activity</b>			
Sr.	Information/Checklist confirmation	Yes/ No	Details thereof (with approximate quantities /rates, wherever possible) with source of information data
1.5	Construction works?	<b>Yes</b>	Total constructed work (FSI area + Non FSI area) -23,316.59sq.mt. FSI area -12,734.62 sq.mt. Non FSI area - 10,581.97 sq.mt.

**ANNEXURE-I**  
**CONSTRUCTION AREA STATEMENT**

Particulars	Area (sq.mt)



Sr. No.		Proposed	Existing	Total
1	FSI area	4,499.86	12,734.62	17,234.48
2	Non FSI area	2,879.32	10,581.97	13,461.29
3	Total (1+2)	7,379.18	23,316.59	30,695.77

- c. I state that, it is clear from the above admission of Respondent No. 11-PP himself the total completed BUA is 23316.59 Sq. Mtrs., proposed BUA is 7379.18 Sq. Mtrs, and total BUA of the "Nyati Ethos-I" is 30695.77 Sq. Mtrs. Therefore the completed BUA of 23316.59 Sq. Mtrs. is more than 20000 Sq. Mtrs. which attracts mandatory prior environment clearance and consent to establish. And PP himself has admitted violation by way of filing of Application dated 03.06.2019 seeking ex-post facto Environment Clearance. {Ref: Page-786 to 848}

**17.2 ADMITTED FACTS BY RESPONDENT NO. 3-SEAC-III BY WAY OF ITS 95<sup>TH</sup> MEETING HELD ON 04.10.2019:**

- a. I state that, the proposal for ex-post facto EC dated 03.06.2019 for Nyati Ethos-I phase was considered by



SEAC-III in its 95<sup>th</sup> meeting held on 04.10.2019 and PP has further admitted following parameters in the said SEAC-III meeting:

Sr.	Description	Existing	Proposed	Total
1.	Note on the Initiated Work#13	23316.59 M <sup>2</sup>		23316.59 M <sup>2</sup>
2.	Total Plot Area	16150 M <sup>2</sup>		16150 M <sup>2</sup>
3.	Deductions	3443 M <sup>2</sup>		3443 M <sup>2</sup>
4.	Net Plot Area	12707 M <sup>2</sup>		12707 M <sup>2</sup>
5.	Proposed BUA #18(a)			
	a. FSI	12734.62	4499.86	17234.48
	b. Non-FSI	10581.97	2879.32	13461.29
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	c. Total	23316.59	7379.18	30695.77
6.	Total Ground Coverage#19	3464.03 M <sup>2</sup>		3464.03 M <sup>2</sup>
7.	Estimated Cost of the Project#21	428700000		428700000
8.	<b>Buildings</b>	Existing Floors	Proposed Floors	
	<b>A1</b>	P+6 Completed	+5	5 Floors Proposed
	<b>A2</b>	P+12		Completed
	<b>B1</b>	P+12		Completed
	<b>B2</b>	P+12		Completed
	<b>B3</b>	P Completed	+11	11 Floors Proposed
	<b>Club House</b>	G+1		Completed
9.	No. Tenements	165	62	227



10.	Total Users	825	310	1135
11.	Fresh Water Requirement	75 KLD	28 KLD	103 KLD
12.	Recycled Water	37 KLD	14 KLD	51 KLD
13.	Total Water Requirement	<b>164 KLD</b>		
14.	Ground water level	Below 9 Mtrs. on an average		
15.	Sewage and Waste Water	101 KLD	38 KLD	139 KLD
16.	STP	210 KLD	210 KLD	210 KLD
17.	Dry Waste	227 Kg/Day		227 Kg/Day
18.	Wet Waste	341 Kg/Day		341 Kg/Day
19.	STP Sludge	20 Kg/Day		20 Kg/Day
20.	Total RG Area	1615 M <sup>2</sup>		1615 M <sup>2</sup>
21.	No. of trees to be Planted	158 Nos.		
22.	Power Requirement	686 KW		686 KW
23.	DG Sets	1 X 200 KVA		1 X 200 KVA
24.	Stilt Parking Area	4698 M <sup>2</sup>		4698 M <sup>2</sup>

- b. SEAC-III have observed that, the total BUA completed for "Nyati Ethos-I" till dated 23316.59 Sq. Mtrs. and Proposed Expansion is 7379.18 Sq. Mtrs.
- c. SEAC-III have observed that, the project is under violation as per his own application dated 03.06.2019 under EIA Notification-2017 for EC before SEAC-III.



- d. SEAC-III in its 95<sup>th</sup> meeting held on 04.10.2019 have observed that, the

*“PP had submitted application for prior Environmental clearance for total plot area of 16,150 m<sup>2</sup>, FSI area of 17,234.48 m<sup>2</sup>, Non FSI area of 13,461.29 m<sup>2</sup> and total BUA of 30695.77 m<sup>2</sup>.*

*The PP informed that they have carried out 23,316.59 m<sup>2</sup> construction work amounting to violation of Environment (Protection) Act, 1986 r.w. EIA Notification 2006, amended till date.*

*The Committee noted that the PP has not applied within the prescribed period as per the MoEF&CC Notification dated 14/03/2017, 8/03/2018 and concerned office memoranda issued from time to time.*

*PP also concealed the information that Proposed Directions u/s 5 of Environment (Protection) Act, 1986 were issued to him by Environment Department vide No.Comp-2019/CR-17/SEIAA dt. 15.06.2019 based on the Complaint/Notice of Mr. Tanaji B. Gambhire through Advocate Nilesh Bhandari.”*



- e. Therefore, it is clear that PP himself has admitted the violation and SEAC-III decided to refer the proposal to SEIAA for further decision. {Ref: Page-849 to 861}

**17.3 ADMITTED FACTS BY RESPONDENT NO. 2-SEIAA BY WAY OF ITS 183<sup>RD</sup> MEETING HELD ON 12.12.2019:**

- a. I state that, the proposal for ex-post facto EC dated 03.06.2019 was considered by SEIAA in its 183<sup>rd</sup> meeting held on 12.12.2019
- b. I state that, the Wherein SEIAA decided to defer the proposal as PP was absent. {Ref: Page-862 to 871}

**17.4 JOINT COMMITTEE MEMBERS, RESPONDENT NOS. 6 TO 10 & RESPONDENT NO. 11-PP ARE GUILTY OF SUPPRESSIO VERI AND SUGGESTIO FALSI AS FALSE & MISLEADING STATEMENT ARE MADE ON THE FACE OF HON'BLE TRIBUNAL:**

- a. I state that, as per directions of Hon'ble NGT the Joint Committee Comprising of Ar. Dr. Mukund Athawale Member SEIAA & Dr. Y. B. Sontakke Jt. Director Water MPCB, Respondent No. 5-MPCB, Respondent



Nos. 9 to 10-PMC & Respondent No. 11-PP visited site on 28.07.2020 and filed misleading report on account of total completed BUA, STP installation, tree plantation, Waste Disposal System, Soil Preservation, Solar System Installation etc. by suppressing many important facts, events, permissions, documents causing irreparable environmental damage and degradation and therefore are guilty of ***suppressio veri and suggestio falsi***.

- b. I state that, the Joint committee has intentionally recorded the false observed against the conclusion of Sr. No. 1 that,

**SUMMARY / CONCLUSION**

Sr.	Point examined	Conclusion
1.	The project proponent has not complied with environmental norms by non-obtaining of mandatory prior Environmental Clearance, Consent to Establish, Consent to operate	M/s. Nyati Ethos I & M/s. Nyati Ethos II are two separate and distinct projects constructed on different lands pieces situated opposite each other. The said land pieces have different 7/12 extracts and government demarcations. Both project have separate open spaces, separate amenity spaces.



As per Architect Certificate it's observed that for the project Nyati Ethos I, PP has carried out the construction for total built up area 19787.45 SQM. It is in accordance with the revised building plan sanctioned by District Collector (order No. PMH/FSI/SR/61/2013 dated 15/10/2013). As per this sanction, PP has completed construction activity and thereafter obtained the occupation certificate also.

As per Architect Certificate it's observed that for the project Nyati Ethos I, PP has carried out the construction of 18340.26 SQM which is in accordance with the revised building plan sanctioned by District Collector vide order bearing No. PMH/NA/SR/714/14 dated 28/08/2014. The said project is completed and granted completion certificate

From the above discussion it is clear that M/s. Nyati Ethos I & M/s. Nyati Ethos II are **two separate and distinct projects**. The total construction carried out by each project is below 20000 SQM, and therefore does not attract prior Environment



		<u>Clearance as per EIA Notification 2006,</u> <u>nor the Consent to establish and operate</u> <u>under Water (P &amp; CP) Act, 1974 and Air</u> <u>(P&amp;CP) Act, 1981.</u>
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- c. I state that, the PP himself has admitted that the total completed construction BUA of Ethos-I is 23316.59 SQM in his own EC application dated 03.06.2019.
- d. I state that, the Joint Committee itself has admitted in conclusion of item No. 3 of Report that the project is interconnected due common sharing of STP between two phases i.e. Ethos-I & Ethos-II. Therefore, the conclusion of the joint committee on account of “M/s. Nyati Ethos I & M/s. Nyati Ethos II are **two separate and distinct projects**” is totally false and baseless. Moreover the entire project have single & only one entry gate.
- e. I state that, the final conclusion of the report is also doubtful as the words “might” have used, it means the committee is not sure.

*“By perusing the Architect certificate and the report submitted by the Executive Engineer of Building Permission, Pune Municipal*



*Corporation (Annexure-I) it is concluded that the construction of both the projects might not have gone beyond 20000 SQM."*

- f. I state that, the entire report is prepared on the basis of false and misleading report provided by the Architect of the PP and there is no application of mind by these Joint Committee Members.
- g. I state that, the One of the Joint Committee Member Ar. Dr. Mukund Athawale is an architect and he seems to be well aware of the building construction, even then interference of Project Proponent Architect is shocking and surprising and moreover, Joint Committee has relied on Architect of PP.
- h. I state that, the PP & PMRDA has intentionally suppressed the sanction copy of the Plan dated 25.07.2010 granted to Nyati Ethos-I situated on Survey No. 21 (P).
- i. I state that, the PP & PMC has intentionally suppressed the revised sanction copy of the Plan dated 15.10.2013 granted to Nyati Ethos-I situated on Survey No. 21 (P).



- j. I state that, the PP & PMC has intentionally suppressed the revised sanction copy of the Plan dated 24.09.2014 granted to Nyati Ethos-I situated on Survey No. 21 (P).
- k. I state that, the PP & PMC has intentionally suppressed the sanction copy of the Plan dated 12.07.2012 granted to Nyati Ethos-II situated on Survey No. 19/5.
- l. I state that, the PP & PMRDA has intentionally suppressed the revised sanction copy of the Plan dated 26.09.2013 granted to Nyati Ethos-II situated on Survey No. 19/5.
- m. I state that, the PP & PMRDA has intentionally suppressed the revised sanction copy of the Plan dated 28.08.2014 granted to Nyati Ethos-II situated on Survey No. 19/5.
- n. I state that, the Joint Committee has suppressed the show cause notice dated 15.06.2019 issued to the Respondent No. 11-PP and action taken report of Respondent No. 1-PS-DOE & Respondent No. 2-MS-SEIAA.
- o. I state that, the Joint Committee is relied on the false and misleading report dated 28.07.2020 of the



Architect M/s. Dasnurkar Associates through Mr. Shirish Dasnurkar of Respondent No. 11-PP.

- p. I state that, the PP has intentionally suppressed the quantity of building material in item#2.4 of the Form-1 of EC application dated 03.06.2019
- q. I state that, the Joint Committee has intentionally suppressed minutes of 95<sup>th</sup> SEAC-III meeting held on 04.10.2019.
- r. I state that, the Joint Committee has intentionally suppressed minutes of 183<sup>rd</sup> SEIAA meeting held on 12.12.2019.
- s. I state that, the PP & PMRDA have intentionally suppressed the total completed BUA of project, which is more than 20000 Sq. Mtrs, as per his own statement in EC Application dated 03.06.2019.
- t. I state that, the PMC has intentionally misled on account of Built-up Area and FSI, despite there being clear cut findings of Hon'ble Supreme Court in Civil Appeal No. 10901/2016 vide its Order dated 10.08.2018 & 11.09.2019 distinguishing BUA & FSI, Wherein Hon'ble Tribunal and Hon'ble Supreme Court has passed stricture against PMC officer &



Respondent No. 9 & 10-PMC and specific direction of enquiry and action with imposition of Rs. 5 lack fine for filling false affidavits.

- u. I state that, the PS-DOE, SEIAA, SEAC-III, MPCB & PMC has intentionally avoided to take action against the PP, despite there being clear cut violation and these authorities are seating in line with the Polluter-PP to protect their vital interests best known to them.
- v. I state that, the Joint Committee, MPCB, PMC and PP is misleading on account of two different project on account of separate sanctions, separate Open Spaces and separate Amenity Spaces, But on other hand, Joint Committee has observed that, PP has installed common STP of 210 KLD for both Project "Nyati Ethos-I & II". Therefore these are not two separate project in fact these are two phases viz. I & II of one single Project "Nyati Ethos" having same project proponent, same beneficiary, and cumulative impact on environment must be considered. In the present case, project is partly completed and party proposed.
- w. I state that, this conduct of Joint Committee, SEIAA, MPCB, PMC and PP is unapologetic and Hon'ble



Tribunal may kindly pass strict Order to give clear and unambiguous message to the community of violators and polluter.

- x. I state that, the Joint Committee has not provided any photograph or electric meter details or installation details of the STP.
- y. I state that, the Joint Committee has not provided any photographs or installation details of for Vermicomposting Pits for the treatment of organic waste.
- z. I state that, the Joint Committee has not provided any photographs or installation details of for rainwater harvesting system.
- aa. I state that, the Joint Committee has not provided any photographs or installation details of for Solar Energy system.
- bb. I state that, the Joint Committee has not provided any details of for tanker water supply.
- cc. I state that, any lenient view towards environment protection will defiantly increase the confidence of the Polluters & errant bureaucrats.



- dd. I state that, the Joint Committee is acting in bias manner and against the law to protect the illegality of their own superiors from DoE, SEIAA & MPCB and further to cover-up their own misdeed and misconduct. So the cursory, casual, unscientific, false, baseless, misleading reports are filed to mislead this court.
- ee. I state that, the Joint Committee has been field on behest of Project Proponent and his nexus with bureaucrats.
- ff. I state that, the Area Statement of the Joint Committee, SEIAA, MPCB, PMC and PP is incorrect, false and misleading, therefore Joint Committee, SEIAA, MPCB, PMC and PP deserves strict punishment for lying on the face of Hon'ble Tribunal.

**17.5 ADMITTED FACTS LEADING TO THE SERIOUS ACTION ON JOINT COMMITTEE, PS-DOE, SEIAA, SEAC-III, MPCB, PMRDA, PMC AND PP:**

- A) I state that, the PP himself has admitted in his EC Application dated 03.06.2019 that the total completed BUA of Ethos-I phase is more than 23316.59 Sq. Mtrs.



and further proposed expansion of 7379.18. Therefore the total BUA of the Ethos-I phase is more than 30695.77 Sq. Mtrs.

B) I state that, the PP himself has admitted through his architect certificate that the total Completed BUA of Ethos-II phase is more than 18340.26 Sq. Mtrs.

C) I state that, the Joint Committee has admitted that the Ethos-I & Ethos-II have common STP, so these are two phases of One "Nyati Ethos Project" And M/s. Nyati Builders Private Limited is the Project Proponent and beneficiary. Therefore this is only one project with two phases viz. I & II, even though there are two different sanctions. Therefore, the total completed BUA of the project is equals to 41656.85 Sq. Mtrs. (Ethos-I = 23316.59 Sq. Mtrs. plus Ethos-II = 18340.26 Sq. Mtrs.) and this is admitted position that, all the two phases are part and parcel of unisolated single project "Nyati Ethos" developed on continuing land by single project proponent i.e. M/s. Nyati Builders Private Limited as owned by NYATI GROUP of Mr. Nitin D. Nyati and it is single beneficiary making



- money at the cost of Mother Nature. Also entire land holding is owned by Nyati Builders Private Limited.
- D) I State that, the Joint Committee has admitted that there are two bore wells and PP has not obtained CGWA permission for the extraction of ground water.
- E) I state that, it is admitted position that the Nyati Ethos is a project having total BUA more than 20000 Sq. Mtrs. mandating prior EC and Consents. However, PP failed to obtain the prior EC & Consents and therefore, installation of DG Sets and its operations is itself illegal and the permissions obtained from the Electrical Inspector mandates the NOC form MPCB as stipulated in condition no. 7 of the said permission. That, the Joint Committee has admitted that PP has installed two DG sets of 200 KVA capacity for each project. It means there are two DG Sets installed at project site in illegal manner.
- F) I state that, the Joint Committee & PP has provided false figure of the trees planted at site. In actual trees planted at site are very less in numbers.
- G) I state that, the Joint Committee & PP has failed to give details of disposal of solid waste. Basically solid



waste is directly dumped to PMC garbage area without any segregation and composting pits are not in functioning.

- H) I state that, the Joint Committee & PP has provided false information on rain water harvesting pits. In actual, manholes for sewer lines are counted as Rain Water Harvesting pits. And there is no rain water harvesting system, no rain water collection tank, no piping for rain water collection. Rain water runoff area of terrace is not provided, rain water treatment system details are not given. Therefore, Joint Committee has clearly lying on the issue of rain water harvesting.
- I) I state that, the Joint Committee & PP has not provided any information of Solar Energy Generation for common area lighting. In fact, there is no Solar Energy Generation System for common area lighting.
- J) I state that, the Joint Committee & PP has intentionally prepared false and misleading Architect certificates dated 28.07.2020 with help of the Architect M/s. Dasnurkar Associates through Mr. Shirish Dasnurkar of Respondent No. 11-PP.



- K) I state that, the PP, PMC, MPCB & SEIAA have intentionally suppressed various covered structures & building components while calculating total completed BUA of project, which is more than 20000 Sq. Mtrs.
- L) I state that, the Joint Committee & PP has intentionally suppressed the copies of sanction Plan vide no. PMA/NA/SR/259/10 dated 25.07.2010 & PMH/FSI/NA/SR/61/2013 dated 15.10.2013 situated on Survey No. 21(P) granted to Nyati Ethos-I phase.
- M) I state that, the Joint Committee & PP has intentionally suppressed the copies of sanction Plan vide no. PMA/NA/SR/83/2012 dated 12.07.2012, PMA/NA/FSI/778/13 dated 29.09.2013 & PMH/NA/SR/714/14 dated 28.08.2014 situated on Survey No. 19/5 granted to Nyati Ethos-II phase.
- N) I state that, the Joint Committee & PP has intentionally suppressed the copy of the plinth Check Certificates & Occupancy Certificates granted to various buildings from Nyati Ethos-I & II phases.



- O) I state that, this conduct of Joint Committee, SEIAA, MPCB, PMC and PP is unapologetic and Hon'ble Tribunal may kindly pass strict Order to give clear and unambiguous message to the community of violators and polluter.
- P) I state that, any lenient view towards environment protection will defiantly increase the confidence of the Polluters & errant bureaucrats.
- Q) I state that, the Joint Committee is acting in bias manner and against the law to protect the illegality of their own superiors from DoE, SEIAA & MPCB and further to cover-up their own misdeed and misconduct. So the cursory, casual, unscientific, false, baseless, misleading reports are filed to mislead this Hon'ble court.
- R) I state that, the Area Statement of the Joint Committee, SEIAA, MPCB, PMC and PP is incorrect, false and misleading, therefore Joint Committee, SEIAA, MPCB, PMC and PP deserves strict punishment for lying on the face of Hon'ble Tribunal.
- S) I state that, Joint Committee & PP has misled on account of above important points in protecting



environments, human life and giving them right to decent life and failed to make sustainable development and with these objections I state that, Joint Committee has misled on account of two different projects against single project, ground water test, top layer of fertile soil preservation, solid & dry waste treatment, energy conservation by installing solar panels for common lighting & solar water heaters, rain water harvesting systems, tree plantation, swimming pool construction giving burden on ground water, non-operation & installation of scientific STP, fire tender movement, Marginal Spaces around buildings and fire hydrant system etc.

- T) I state that, in view of the above this is the perfect case of the intentional infringement and Respondent No. 11-PP have caused Carbon footprint impact to the tune of Rs. 200 Crore Rupees till filing of this application due to these illegal construction activities of PP and PP shall be charged with environment compensation more than Rs. 200 Crores for exemplary and deterrent effect by sending clear



message in the community of violators, that compliance to the environmental norms is supreme.

- U) Thus, it is mandatory to stop the project construction permanently and this illegal construction either be demolished or government to take over this structure for public purposes without providing any benefits to PP.
- V) Therefore, the Respondent No. 11-PP has committed serious violation causing irreparable damage to the environment and ecology thereby not obtaining mandatory prior environment clearance and prior consents from competent authorities.
- W) I state that, the Joint Committee has admitted that all buildings are already constructed; as such the committee is unable to comment on the soil preservation for both the projects. Soil test report is not made available at the time of site inspection.
- X) I state that, these two Phases are internally connected being single project having no separations from each other and common sharing of infrastructures. However Joint Committee has intentionally not recorded these sharing of important aspects in detail.



- Y) I state that, In actual Entire development is undertaken on adjoining land area admeasuring to 26250 M<sup>2</sup> by single Respondent No. 11-PP, which is admitted position. That the Respondent No. 11-PP has carried out entire building construction activity/project within single boundary connected with internal roads having no separate compound wall and with sharing of common amenities like STP, Club House, Gym, Swimming Pool. Therefore, the stand taken by Joint Committee is on behest of Respondent No. 11-PP and no application of mind by the Joint Committee Members being so called experts. It is just toeing of line marked by Respondent No. 11-PP.
- Z) I state that, the Joint Committee being mute spectator have supressed various constructed covered areas and just forwarded the area calculations of Architect of Respondent No. 11-PP like postman.
- AA) I state that, the EIA (Amended) Notification dated 07.07.2004 has defined the Project as, *“(iii) Any project proponent intending to implement the proposed project under sub-paras (g) and (h) in a phased manner or in modules, shall be required to submit the details of the*



*entire project covering all phases or modules for appraisal under this notification*"; Therefore, project can be either carried out in Phased manner or in modules.

- BB) I state that, the alien concepts are not binding on the environmental jurisprudence established in India as such concepts are irrelevant to the EIA Notification, 2006 issued under Environment (Protection) Act, 1986 mandating prior Environment Clearance for the building construction projects or activities as stated in clause no. 2 of the said notification.
- CC) I state that, the Respondent No. 11-PP himself has admitted that the Respondent No. 3-MS-SEAC-III has observed the violation in its 95<sup>th</sup> meeting held on 04<sup>th</sup> October, 2019. There is no challenge to the said observation till date.
- DD) I state that, the Respondent No. 11-PP himself has admitted that the Respondent No. 2-MS-SEIAA has observed the violation in its 183<sup>rd</sup> meeting held on 12<sup>th</sup> December, 2019. There is no challenge to the said observation till date.



EE) I state that, the Respondent No. 11-PP himself has admitted that the Respondent No. 1-PS-DoE has issued proposed directions dated 15.06.2019 to the entire project "Nyati Ethos" including all land survey numbers at S. No. 19/5, 21/1A, 21/1B, 21/3A/1, 21/3A/2, 21/3A/3 & 21/3A/4 Village: Undri, Tal.: Haveli, Dist.: Pune. There is no challenge to the said directions till date.

FF) I state that, the Respondent No. 1-PS-DoE vide circular dated 17.01.2014 of PS-DoE clearly permits building construction activity only for redevelopment projects wherein rehabilitation of tenants in SRA/Dilapidated/CESS buildings was involved and allowed to carry out construction upto 20000 Sq. Mtrs. considering that it would not be amount of violation of EIA Notification, 2006. Further PS-DoE issued circular dated 21.04.2015 with respect to the decision of Hon'ble Bombay High Court in W. P. No. 655 of 2014 vide Orders dated 24.03.2014 and in this Order Hon'ble High Court has mentioned that the "environment clearance for the purpose of construction of buildings below 20000 sq. mtrs. is not



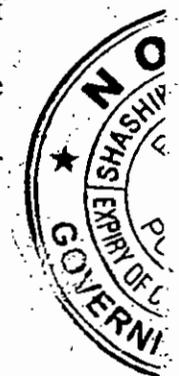
required" and it is including free sell component. However, actual fact is that the circular dated 21.04.2015 has issued for clarifying that the construction of project wherein project proponent has undertaken total construction below 20000 m2 may not be considered as violation of EIA Notification of 2006 and allowed the construction upto 20000m2 for sell component, even in residential and commercial projects. It is important to note here, that the project must be SRA/Dilapidated/CESS buildings having total construction below 20000 m2. In present case of subject matter project is general residential & commercial project and not concerned with SRA/Dilapidated/CESS buildings and total potential of the project is more than 20000 m2. Further it is important to note that, the Orders dated 24.03.2014 & 18.12.2014 passed by Hon'ble High Court in WP (L) No. 655 of 2014 are per incuriam in view of the Judgments passed by the Hon'ble Supreme Court of India in (2017) 9 SCC 499 Common Cause Vs UoI, (2018) 18 SCC 257 in the case of Goel Ganga Developers India Pvt. Ltd. v UOI, 2020 SCC OnLine SC



347 in the case of Alembic Chemicals v Rohit Prajapati, (2020) 2 SCC 666 in the case of Keystone developers v. Anil Tharthare. **{PP Reply Page: 647 to 649, Exhi: O Colly.}**

GG) I state that, the Respondent No. 11-PP has not obtained any specific order of Hon'ble Supreme Court, Hon'ble Bombay High Court, or this Hon'ble Tribunal in respect of his project and therefore, the Orders passed by Hon'ble Bombay High Court in the WP No. 655/2015, WP (L) No. 470/2013 are not applicable to this Respondent No. 11-PP and Circular dated 21.04.2015 is not the statute to nullify the force of EIA Notification, 2006.

HH) I state that, the Joint Committee, MPCB, PMC and PP is misleading on account of Two different project on account of separate 7/12 extract, separate sanctions, separate Open Spaces and separate Amenity Spaces. But on other hand, Joint Committee has intentionally avoided to record the internal connection of Phases without any boundary wall & common sharing of infrastructure between the phases. Therefore these are not two separate project in fact these are four



phases viz. I & II of one single Project "Nyati Ethos" having same project proponent, same beneficiary, and cumulative impact on environment must be considered out of the building construction activity carried out on total adjoining land irrespective of alien concepts of separate 7/12 extract, separate sanctions, separate Open Spaces and separate Amenity Spaces, separate procurement of building sanction, plinth check certificates, occupancy certificates, society certificates. In the present case, project is partly completed in Phase I & II and partly proposed for Phase-I is under construction.

**18. PARAWISE REJOINDER AFFIDAVIT TO THE  
REPLY AFFIDAVIT OF RESPONDENT NO. 11-PP  
DATED 29.07.2020:**

**18.1** I state that, the contents of **Para-1** of reply affidavit of Respondent No. 11-PP dated 29.07.2020 is regarding internal allotting of duties of their office for swearing and authorizing as signatory. It is important to note here that, the Respondent No. 11-PP is the private limited company incorporated under Companies Act-



1956 and as per this act alleged authorised person has not submitted any resolution passed by boards of directors of company. Therefore, submission made by the affiant are not legal in the eyes of law.

**18.2** I state that, the contents of **Para-2** of reply affidavit of Respondent No. 11-PP dated 29.07.2020 is nothing but paradox statement and the entire reply affidavit of Respondent No. 11-PP is nothing but based on false and baseless theory and apart from the reality & facts.

**18.3** I state that, the contents of **Para-3, 4 & 5** of reply affidavit of Respondent No. 11-PP dated 29.07.2020 in respect of the preliminary objections to the maintainability of the original application and Respondent No. 11-PP have filed separate Interlocutory Application No. 58/2020, to which this Original Applicant have filed separate reply.

*“3.1 Limitation with regards filing of the captioned Original Application,*

*3.2 Non-maintainability of the Original Application under section 15 of the NGT Act,*

*3.3 Locus Standi of the Original Applicant,*

*3.4 Plural remedies”*



**18.4** I state that, the above preliminary objections are false, baseless, misleading, misconceived and misinterpretations and denied by original applicant in totality. Further I state that, the Original Application is well maintainable in the four corners of NGT Act-2010, submissions of the PP in his reply affidavit are intentionally made to create nuisance in the proceedings with help of non-applicable imaginary issues and to divert the proceedings from actual issues in reality.

**REPLY TO BRIEF BACKGROUND OF THE RESPONDENT NO. 11:**

**18.5** I state that, the contentions of the **Para-5.1 to 5.7** of the reply affidavit of Respondent No. 11-PP dated 29.07.2020 are totally false, baseless and misleading. Further I state that, entire story narrated by PP in Para-4 and sub-paras there under does not support his so called innocence against the violation committed by him in the present project under challenge. This Original Applicant have no knowledge regarding the reputation, respect, forefront realtor, his



work for two decade and here is no occasion of come across these things, but as per knowledge of this applicant, every defaulter brought before the court of law uses this words, might be for having some soft corner. But PP is not liable for any soft corner or sympathy or any relief as PP has damaged public at large intentionally.

**18.6** Further I state that, the Respondent No. 11-PP should return the awards obtained by him from various organizations mentioned in his reply, as he did not deserve it. Respondent No. 11-PP has alleged his social responsibility, his use of eco-friendly building material etc. are the falsehood.

**18.7** Therefore, the self aggrandize by Respondent No. 11-PP against the blatant violations and intentional non-compliance towards the environmental norms are null and void.

**REJOINDER TO THE REPLY OF PP ON ISSUE OF  
DETAILS OF THE PROPERTY OF THE SAID  
PROJECT AND REQUIREMENT OF PRIOR  
ENVIRONMENT CLEARANCE:**



**18.8** I state that, the contentions of the **Para-6, 6.1.1 to 6.2.9 and 7, 7.1, 8 to 13** of the reply affidavit of Respondent No. 11-PP dated 29.07.2020 are baseless, false, misleading on account of two different projects and total BUA of the construction. In fact, the construction of this project has been carried out in phase wise manner i.e. Ethos-I is the Phase-I and Ethos-II is the phase-II. It is important to note that, the Respondent No. 11-PP is sharing the infrastructures for these two phases in common like STP, vermicomposting pits and bore wells for ground water extraction. Joint Committee Report dated 28.07.2020 filed on behest of the Respondent No. 11-PP clearly mentions of the common STP, However, Respondent No. 11-PP and Joint committee has played the jugglery of words creating the wrong portrait of two different projects.

*“PP has provided common STP of capacity 210 KLD of MBBR technology for both projects in the Nyati Ethos II premises.”*

**18.9** I state that, the Respondent No. 7- Collector of Pune with assistance of Respondent No. 6-Assistant



Director, Town Planning Department granted various sanctions to the Phase-I & Phase-II as below;

Sr.	Phase No.	Commencement No.	Date
<b>Ethos-I</b>			
1	Phase-I	PMH/FSI/NA/SR/259/10	25.07.2010
2	Phase-I	PMH/FSI/NA/SR/61/013	15.10.2013
3	Phase-I	PMH/NA/SR/713/14	29.09.2014
<b>Ethos-II</b>			
4	Phase-II	PMH/NA/SR/83/12	12.07.2012
5	Phase-II	PMH/NA/FSI/778/13	26.09.2013
6	Phase-II	PMH/NA/SR/717/14	28.08.2014

**18.10** I state that, the MoEF issued the EIA Notification-2006 dated 14.09.2006 mandating prior environmental clearance for the building construction activity for new projects as well as any expansion there under schedule item (8) of the notification having total built up area (total covered area) more than 20000 Sq. Mtrs. Also, the MoEF & CC has also issued notification vide dated 04.04.2011 clarifying the EIA Notification-2006 for the term built up area is nothing but all covered area on all floors including basement.

**18.11** I state that, the said project had proposed total BUA more than 20,000 Sq. Mtrs. in sanction No. PMH/NA/SR/713/14 dated 29.09.2014 granted by



Collector Pune to the Ethos-I and therefore, it was mandatory to obtain prior EC. But Respondent No.11-PP neglected to obtain the prior EC intentionally and has shown careless and reckless attitude towards the environment and proceeded with the illegal construction and Respondent No. 11-PP carried out the construction for total BUA of more than 20,000 Sq. Mtrs. after sanction of plans on 29.09.2014.

**18.12** Further I state that, the Respondent No.11-PP obtained revised the sanction for additional construction of project vide commencement no. PMH/NA/FSI/778/13 dated 26.09.2013 & PMH/NA/SR/713/14 dated 29.09.2014, wherein total BUA of project also exceeds more than 20000 Sq. Mtrs. and Collector Pune specifically imposed condition no. 26 & 29 in these commencement for obtaining of prior environment clearance before commencement of any additional construction, but PP did not applied for the prior environmental clearance and prior consent to establish and PP has neither obtained EC nor Consent to Establish till today. It is important to note here that, the Respondent No. 11-



PP has obtained Phase wise/plot wise sanctions of the Layout & building plans for more than 4 times to overcome the requirement of prior EC & Consent to show the BUA of each plot is less than 20000 Sq. Mtrs. and did not give any heads to the serious issue of necessity of prior EC and prior Consents and shown his careless attitude towards environment and ecology, but Respondent No. 11-PP never worried about the damage to the environment.

**18.13** I state that, the construction of building project is the recurring activity enlarging its scope from land preparation to the full potential construction of Built up area and Respondent No. 11-PP has increased the scope of project from excavation of land for foundation to **35643.14** Sq. Mtrs. till today and PP has further sought permission for additional proposed construction of BUA **9841.74** Sq. Mtrs.. Therefore total potential of BUA is **45484.88** Sq. Mtrs. and it is more than double the threshold limit given in the EIA Notification-2006.

**18.14** I state that, the Collector Pune has imposed the condition no. 21 for development of land on survey



no. 21 (P) for obtaining environmental clearance vide its commencement certificate No. PMH/NA/SR/259/10 dated 25.07.2010 with;

*"21. It is necessary to obtain environment clearance certificate from state environment impact assessment authority in case use of land for more than 20000 Sq. Mtrs for this said project area included under this proposal and proposed construction area."*

**18.15** I state that, the PP proposed expansion of project on adjacent land admeasuring 10100 Sq. Mtrs. bearing survey no. 19/5 by obtaining sanction vide commencement certificate No. PMH/NA/SR/83/12 dated 12.07.2012 from Collector of Pune.

**18.16** I state that, the Collector Pune has imposed the condition no. 26 for development of land on survey no. 19/5 for obtaining environmental clearance vide its revised commencement certificate No. PMH/NA/FSI/778/13 dated 26.09.2013 with;

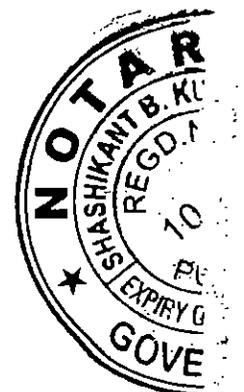
*"26. In this said proposal of land proposed construction area is 14999.31 Sq. Mtrs. said area is less than 20000 Sq. Mtrs. but it is necessary to obtain the environment clearance*



*from State Level Environment Impact Assessment Authority for carrying out construction more of than 20000 Sq. Mtrs. in future."*

**18.17** I state that, the Collector Pune has imposed the condition no. 29 for development of land on survey no. 21 (P) for obtaining environmental clearance vide its commencement certificate No. PMH/NA/SR/713/14 dated 29.09.2014 with;

*"29. In the said land proposal, total construction area sanctioned is 27095.01 Sq. Mtrs. which is more than 20000 Sq. Mtrs. therefore It is first necessary to obtain environment clearance certificate from state environment impact assessment authority as per the Principal secretary Environment Department, Government of Maharashtra letter No. SEIAA-2014/CR-02/TC-3, dated 30.01.2014 before commencement of any further construction. Said plans are sanctioned subject to obtaining environment clearance. At actual no construction/development is permitted except the previously approved construction without obtaining prior environment clearance. Indemnity bond dated 12/8/2014 submitted by applicant is binding on him."*



**18.18** I state that, the construction is recurring activity as it increases the scope of the project from excavation to the consumption of full potential construction and despite there being clear cut condition to obtain the EC, PP has not obtained the EC intentionally and consents too.

**18.19** I state that, the wrong picture of separate project is created by PP with tactics of making constructing in plot wise manner to get escape from his liability and mandatory duty of obtaining prior environment is not going to save PP and therefore such tactics should not be allowed in any circumstances. However in case of separate plot development also total BUA is exceeding limit of 20000 Sq. Mtrs. stipulated under EIA Notification and so PP has committed intentional violation.

**18.20** I state that, the admitted position on the total BUA of the construction and proposed construction is as below:



Sr.	Phase	Completed BUA	Proposed BUA	Total BUA	Remark

1.	Ethos-I	23316.59 M <sup>2</sup>	7379.18 M <sup>2</sup>	30695.77 M <sup>2</sup>	EC Application
2.	Ethos-II	18340.26 M <sup>2</sup>	---	18340.26 M <sup>2</sup>	Joint Committee Report
3.	Total	41656.85 M <sup>2</sup>	7379.18 M <sup>2</sup>	49036.03 M <sup>2</sup>	

**18.21** Therefore, the total BUA of project is 49036.03 M<sup>2</sup> Sq.

Mtrs. comprising total no. of independent buildings are eight (8) and total flats are 379, which is more than 20000 Sq. Mtrs. and it is mandatory on part of the PP to obtain prior EC and Consents from MPCB.

**18.22** Thus, Respondent No. 11-PP has committed infringements for environmental laws in force and caused substantial damage.

**18.23** I state that, the Respondent No. 11-PP have obtained the occupancy certificate from the concern local authority in following manner;

Sr.	Phase	Completed Building	Completed units	Date of OCC
1.	Ethos-I	B1 (P+12) B2 (P+12)	47 47	05.04.2013
2.	Ethos-I	A2 (P+12)	47	03.04.2014
3.	Ethos-I	A1 (P+6)	24	31.08.2015
4.	Ethos-II	Not Provided	Not Provided	10.03.2015
5.	Total			



**18.24** I state that, the occupancy certificate dated 31.08.2015 for Ethos-I clearly states that the construction is carried out as per the sanction vide dated 29.09.2014. Therefore, the Respondent No. 11-PP has made false statement that the construction is carried out on the basis of 15.10.2013.

**18.25** I state that, the judgments & Order dated 06.03.2013 in Writ Petition No. 470/2013, judgments & Order dated 24.03.2014 in Writ Petition No. 655/2014, passed by Hon'ble Bombay High Court are not supporting the contention of Respondent No. 11-PP and on the contrary Hon'ble Bombay High Court has clearly stated that, the if project is going to cross the total BUA of more than 20000 Sq. Mtrs. and its proposed BUA is more than 20000 Sq. Mtrs. then it is mandatory on part of the Respondent No. 11-PP to obtain prior Environment Clearance.

**REJOINDER TO THE REPLY OF PP ON ISSUE OF NOT HAVING OBTAINED PRIOR CONSENT TO ESTABLISH (CTE) AND CONSENT TO OPERATE (CTO):**



**18.26** I state that, the contentions of the **Para-14 and 15** of the reply affidavit of Respondent No. 11-PP dated 29.07.2020 are totally false and misleading.

**18.27** I state that, the section 25 of the Water (P&CP) Act, 1974 defines that; "25. Restrictions on new outlets and new discharges.—1. Subject to the provisions of this section, no person shall, **without the previous consent of the State Board**, .....". and the section 21 of the Air (P&CP) Act, 1981 defines that; "21. Restrictions on use of certain industrial plants.—(1). Subject to the provisions of this section, **no person shall, without the previous consent of the State Board**, establish or operate any industrial plant in an air pollution control area:.....". in these section words "shall & previous consent" showing previous mandates are occurred.

**18.28** I state that, the Respondent No. 11-PP has carried out the EHOS project in phase wise manner and he is the only beneficiary of this entire project. While carrying sale of units and undertaking the development, all propagation is of single project and common infrastructure is provided to all these phase. Further,



entire development is in single premises on survey numbers 19(P) & 21(P) sharing their boundaries. It is admitted position that, the construction carried out in Phase-I (Ethos-I) is 23316.59 Sq. Mtrs. with expansion of 7379.18 Sq. Mtrs. and whereas construction carried out in Phase-II (Ethos-II) is 18340.26 Sq. Mtrs. Therefore, total construction carried out in this Ethos Project is 41656.85 M<sup>2</sup>.

**18.29** It is important to note here that, the final judgment and Order dated 23.01.2012 passed by Hon'ble Delhi High Court in LPA No. 895/2010 is has not reviewed the central legislation on Air Act & Water Act and the facts of the case are different and not applicable to the present case. Moreover, Respondent No. 11-PP has not given undertaking on challenge to this judgment before Hon'ble Supreme Court.

**18.30** I state that, the Respondent No. 11-PP failed to obtain mandatory prior consents from the MPCB, even the threshold limit of the project was exceeding the total BUA of 20000 Sq. Mtrs. and thereby committed the violation of Water (P&CP) Act, 1974 and Air (P&CP) Act, 1981 and allegations leveled in Para-13 of the



Original Application No. 74/2019 are true and correct.

**REJOINDER TO THE REPLY OF PP ON ISSUE OF NOT HAVING OBTAINED PRIOR NOC FROM CGWA AND ILLEGAL GROUND WATER EXTRACTION:**

**18.31** I state that, the contentions of the **Para-16, 16.1 and 16.2** of the reply affidavit of Respondent No. 11-PP dated 29.07.2020 are totally false and misleading. That the item no. 2 of Joint committee report dated 28.07.2020 clearly mentions of ground water extraction and no CGWA permission;

*"There are two bore wells in the premises. PP has not obtained CGWA permissions for the extraction of ground water"*

**18.32** I state that, the water tanker bills of amount Rs. 2766831/- at Page-688 for Ethos-I and Rs. 1000653/- at Page-689 for Ethos-II at Annexure-Q are bogus CA Certificates and these bills are raised for tax evasion and to make black money transactions. Therefore, Respondent No. 11-PP shall be specially charged to an



amount of more than Rs. 50 Lakhs on account of the ground water extraction.

**18.33** I state that, the Respondent No. 11-PP is extracting ground water from two bore wells, not carried out ground water test and failed to obtain mandatory prior permission from CGWA and allegations leveled in Para-14 of the Original Application No. 74/2019 are true and correct.

**REJOINDER TO THE REPLY OF PP ON ISSUE OF  
NON-INSTALLATION OF RAIN WATER  
HARVESTING SYSTEM:**

**18.34** I state that, the contentions of the **Para-17 and 17.1** of the reply affidavit of Respondent No. 11-PP dated 29.07.2020 are totally false and misleading. This Applicant has specific allegations, that the Respondent No. 11-PP needs to provide 12 rain water harvesting pits and entire plot is concretized and no space for rain water seepage is left. Against this allegations, item no. 7 of Joint committee report dated 28.07.2020 cursorily mentions installation of rain water harvesting system; "PP has installed rain water

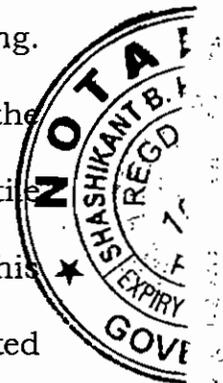


harvesting system to all buildings". Further, Certificates annexed at Annexure-R and Photographs annexed at Annexure-S by the Respondent No. 11-PP are bogus and same has nothing to do with the present site. Joint Committee also not supported the detail count of rain water recharge pits and photographs are nothing but the drainage water chambers.

**18.35** I state that, the Respondent No. 11-PP has not provided rain water harvesting system and allegations leveled in Para-15 of the Original Application No. 74/2019 are true and correct.

**REJOINDER TO THE REPLY OF PP ON ISSUE OF PRESERVATION AND TEST OF SOIL:**

**18.36** I state that, the contentions of the **Para-18, 18.1 and 18.2** of the reply affidavit of Respondent No. 11-PP dated 29.07.2020 are totally false and misleading. This Applicant has specific allegations that the Respondent No. 11-PP needs to preserve the top fertile soil and needs to carry its test. Against this allegations, item no. 7 of Joint committee report dated



28.07.2020 clearly mentions; "All buildings are already constructed; as such the committee is unable to comments on the soil preservation for both the projects. Soil test report is not made available at the time of site inspection". Further, Respondent No. 11-PP has replied the Para- 16 of Original Application in typical polluter way, Original Applicant has pointed out the quantity of Top Soil to the tune of 10500 Cu. Mtrs., quantity of Murum to the tune of 21000 Cu. Mtrs. and quantity of Hard Rock / Basalt to the tune of 10500 Cu. Mtrs.. Therefore, the top soil is not used in development of recreational open spaces and failed to conduct soil tests.

**18.37** I state that, the Respondent No. 11-PP has not preserved top fertile soil and not conducted soil test for its contamination and allegations leveled in Para- 16 of the Original Application No. 74/2019 are true and correct.

**REJOINDER TO THE REPLY OF PP ON ISSUE OF  
INSTALLATION OF STP AND WTP:**



**18.38** I state that, the contentions of the **Para-19, 19.1 to 19.3** of the reply affidavit of Respondent No. 11-PP dated 29.07.2020 are totally false and misleading. Joint committee in its report dated 28.07.2020 at item no. 3 has mentioned the installation of common STP having capacity of 210 KLD with MBBR technology and further mentioned the its ongoing operations. Further, joint committee has mentioned the installation of WTP for treatment of water supplied from tanker and 6 tankers for each phase are provided on daily basis. Joint Committee has not conducted any test for the STP treated water and not disclosed the source of tanker water. Providing the water from tanker does not mean the water is not provided from ground water. Basically, damage to the ground water table is caused due to illegal operations of this project is important. No details information, on purchase of STP, its design, permission from MPCB for its operation and commissioning is not provided by the Joint Committee and also by the Respondent No. 11-PP.



**18.39** I state that, the documents provided by the Respondent No. 11-PP at Annexure-T from page no. 695 to 703 containing commissioning certificate and STP water analysis are bogus documents purchased by PP afterthought. As alleged by Respondent No. 11-PP, the STP is commissioned on 14.12.2013 and inlet / outlet water test reports are provided for 22.11.2019 to 27.11.2019, 24.12.2019 to 30.12.2019, 22.01.2020 to 27.01.2020, 20.02.2020 to 25.02.2020, which clearly shows that, the reports are bogus and afterthought as the Respondent No. 11-PP not provided the quantity of total waste generation with scientific calculation.

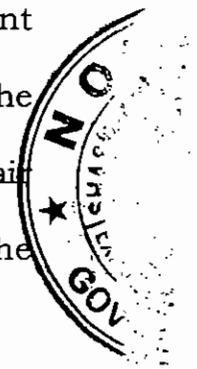
**18.40** I state that, the Respondent No. 11-PP has not provided detailed of total solid waste generated from the project and details of total vermiculture pits and joint committee also in its report at item no. 4, has mentioned cursorily that the vermiculture pits are provided. No photographs, not pits size, not details of segregations, not vendor details for dry waste treatment.



**18.41** I state that, the Respondent No. 11-PP has provided the STP with scientific operations and allegations leveled in Para-17 of the Original Application No. 74/2019 are true and correct.

**REJOINDER TO THE REPLY OF PP ON ISSUE OF  
ILLEGAL INSTALLATION OF DG SETS:**

**18.42** I state that, the contentions of the **Para-20, 20.1 & 20.2** of the reply affidavit of Respondent No. 11-PP dated 29.07.2020 are totally false, baseless, misleading. It is important to note that, the PP has obtained the permission for the installation of DG Sets from Electric Inspector of Government of Maharashtra on 23.05.2013 & 01.08.2014 and Condition No. 7 of the said permission at Annexure-U clearly speaks about the responsibility of PP to obtain the permission from MPCB for such operations of DG Sets. Therefore it is mandatory to obtain the prior consent (permission) of MPCB for its operations, as the operation of the DG sets has direct impact on the air quality due to the release of pollutants from the combustion of the diesel.



**18.43** I state that, the Respondent No. 11-PP has illegally installed the DG Sets of 2 X 200KVA and allegations leveled in Para-18 of the Original Application No. 74/2019 are true and correct.

**REJOINDER TO THE REPLY OF PP ON ISSUE OF  
NON INSTALLATION OF SOLAR PANELS:**

**18.44** I state that, the contentions of the **Para-21 & 21.1** of the reply affidavit of Respondent No. 11-PP dated 29.07.2020 are totally false, baseless, misleading.

**18.45** Against this allegations, item no. 7 of Joint committee report dated 28.07.2020 cursorily mentions; "PP has installed solar power generation system in all buildings". Further, Respondent No. 11-PP has replied the Para-19 of Original Application in typical polluter way. That, the Project is having average monthly energy consumption of 84200 KW and energy generation in Maharashtra is from Coal based power plants and these plants emits huge CO & other greenhouse gases in air and it releases tremendous heat in the air causing pollution and also these power plants consumes huge water for power generation.



Therefore, EIA Notification-2006 provides impact assessment on energy requirement and then it should have alternative remedial measures by way of solar panels for common lighting and solar water heaters, but Respondent No.11-PP have not done any impact assessment and have not taken any remedial measures.

**18.46** Further I state that, the Photographs annexed at Annexure-X by the Respondent No. 11-PP are bogus and same has nothing to do with the present project site. Joint Committee also not supported the detail count of Solar System and its total capacity of water heating and it is clear that, there is no solar energy generation for common area lighting.

**18.47** I state that, the Respondent No. 11-PP has not provided Solar Panel system and allegations leveled in Para-19 of the Original Application No. 74/2019 are true and correct.

**REJOINDER TO THE REPLY OF PP ON ISSUE OF  
NON TREE PLANTATION:**



**18.48** I state that, the contentions of the **Para-22 & 22.1** of the reply affidavit of Respondent No. 11-PP dated 29.07.2020 are totally false, baseless, misleading.

Against this allegations, item no. 8 of Joint committee report dated 28.07.2020 cursorily mentions; "PP has carried out tree plantation. In Ethos-I project there are 179 trees and in Ethos-II projects there are 195". Further, Respondent No. 11-PP has replied the Para-20 of Original Application in typical polluter way and tree count of 374 is nothing but bogus.

**18.49** Further I state that, the List annexed at Annexure-Y and Photographs annexed at Annexure-Z by the Respondent No. 11-PP are bogus and same has nothing to do with the present project site. Joint Committee has filed the tree count at the behest of the Respondent No. 11-PP.

**18.50** I state that, the Respondent No. 11-PP has not planted the trees to the tune of 328 and photograph annexed at Annexure-Z is totally misleading and allegations leveled in Para-20 of the Original Application No. 74/2019 are true and correct.



**REPLY TO THE ISSUE OF THIRD PARTY RIGHTS  
CREATED IN THE PROJECT AND NON JOINDER  
RAISED BY RESPONDENT NO. 11-PP**

**18.51** I state that, the contention of the **Para-23 & 24** of the reply affidavit of Respondent No. 11-PP dated 29.07.2020 are totally false, baseless, misleading. That the Original Application is filed for the white collar defaults of the Respondent No. 11-PP and therefore, Respondent No. 11-PP being profit making company at the cost of mother nature will be responsible for any damage to would cause to the flat purchasers. Respondent No. 11-PP is duty bound to disclose the true facts to their customers, but filing of this Application is not disclosed by the Respondent No.11-PP to the flat purchasers and Moreover, for the worry of flat purchasers, this Respondent No. 11-PP can file the intervention application to get them protected.

**18.52** I state that, the prayers sought in the Original Application are against the Respondent No.11-PP and he will be responsible for any loss that would be occur to the flat purchaser. Contention of PP on account of



so called purchasers are not arrayed as party respondent is totally baseless and misleading and this stand is taken only to create the nuisance in the litigation.

**18.53** Therefore, flat purchasers are not important party to the litigation as the stand taken by the Respondent No. 11-PP is that there is no violation committed by PP and such dictatorship of the Respondent No. 11-PP should not be tolerated by this Hon'ble Tribunal.

**REJOINDER TO THE ISSUE OF INTERLOCUTORY APPLICATION NO. 120/2019 FILED BY THE PETITIONER FOR INTERIM-RELIEF:**

**18.54** I state that, the contention of the **Para-25, 25.1.1 to 25.1.3** of the reply affidavit of Respondent No. 11-PP dated 29.07.2020 are totally false, baseless, misleading. That, the Respondent No. 11-PP has carried out the total construction of 41656.85 M<sup>2</sup> and have sought further expansion of 7379.18 M<sup>2</sup> in Ethos-I and therefore, total construction will be 49036.03 M<sup>2</sup>. This entire construction is carried out without prior EC and CTE and Respondent No. 11-PP



has proposed further expansion without EC & CTE, which is totally against the environmental norms.

**18.55** I state that, the Applicant has satisfied all three ingredients of "1. Prima facie case is made out, 2. Balance of convenience & 3. Irreparable loss to the environment & ecology", Original Application is filed for the violations of Respondent No. 11-PP are causing public at large property i.e. Air, Water, Soil, Burden on social infrastructures due to illegal construction and illegal operations of project under violation. Therefore, it is important to stop any further illegal development that is going to cause further damage to the environment, public health etc. Factor of construction is carried out from since 2010 & 2012 and further so called third party right with vehemently representation of Respondent No. 11-PP are just to divert the attention of this Hon'ble Tribunal by creating emotional blackmail to get escape the liability created public at large. Therefore, the Interlocutory Application No. 120/2019 may kindly be allowed and Respondent No. 11-PP need to be prohibited from going ahead with construction.



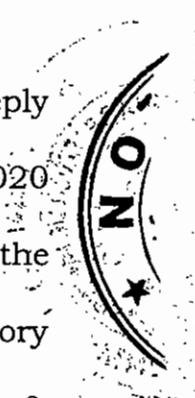
**18.56** I state that, the contention of the **Para-26**, of the reply affidavit of Respondent No. 11-PP dated 29.07.2020 are misleading. That the Respondent No. 11-PP himself has admitted that Original Application is replied and answered by him and therefore, its further right is now freezed in view to proceed in the matter. No further opportunity should be given to avoid the delay in the adjudication in the matter. It is important to note that, the PP have rebutted the allegations raised in original application in his reply with false, baseless and misleading answers and deserve no liberty to have an additional opportunity as violations committed by the PP are admitted by himself in his EC application dated 03.06.2019 filed before SEIAA. In para-27 of his reply affidavit PP himself has admitted that, he have fully answered the Original Application. Therefore, there should not be sadistic pleasure to the PP.

**18.57** I state that, the contention of the **Para-27** of the reply affidavit of Respondent No. 11-PP dated 29.07.2020 are totally false, baseless, misleading. That, the Respondent No. 11-PP has obtained the Joint



Committee Report dated 28.07.2020 to support his false contentions and even cursory perusal of report will indicate the same. Original Applicant has made out the cogent and genuine case and have exposed Respondent No.11-PP and SEIAA Members, MPCB, Collector Pune for their illegal practices. It is important to note that, the allegations made in the original application are admitted by PP in his own Application dated 03.06.2019 for ex-post facto EC. Therefore, Original Applicant have made out a genuine, realistic and true case for grant of all prayers sought. In view of statement of PP in this para, he is not entitle for opportunity to file additional affidavit and Original Applicant is entitle for the reliefs sought in Application.

**18.58** I state that, the contention of the **Para-28** of the reply affidavit of Respondent No. 11-PP dated 29.07.2020 are totally false, baseless, misleading. That the Respondent No. 11-PP has filed the Interlocutory Application No. 58/2020 for creating nuisance & hurdles in the smooth proceedings of the matter and just to prolong the proceedings. That the preliminary



NO

objections raised by the Respondent No. 11-PP are nothing but the jugglery of words and Respondent No. 11-PP himself has admitted the violation in its Application dated 03.06.2019. This Interlocutory Application No. 58/2020 filed by Respondent No. 11-PP shall be decided with final disposal of Original Application and Respondent No. 11-PP cannot detect this Hon'ble Tribunal for its adjudication. This habitual PP being luxurious litigant is playing these illegal tactics to overcome the violations with help of Professionals. Therefore, Interlocutory Application No. 58/2020 filed by Respondent No. 11-PP may kindly be dismissed with heavy cost.

**18.59** I state that, the contention of the **Para-29** of the reply affidavit of Respondent No. 11-PP dated 29.07.2020 are totally false, baseless, misleading. It is important to note that, admittedly the PP have carried out the construction of total BUA of 41656.85 M<sup>2</sup> (23316.59 M<sup>2</sup> in Ethos-I, 18340.26 M<sup>2</sup> in Ethos-II) and have sought further expansion of 7279.59 M<sup>2</sup> and which is above 20000 Sq. Mtrs. mandating prior Environment Clearance as per the EIA Notification-2006. In this



case, Respondent No.11-PP has not obtained the mandatory prior Environment Clearance, prior Consent to Establish and Consent to Operate from the Competent Authorities. Further it is submitted that, the allegations in this Original Application are exhaustive, broad with support of documents and well known to PP with his own admitted facts. Moreover, PP himself have admitted the allegation of non-obtaining prior EC and applied for the prior EC, which is rejected by the SEIAA. Therefore, Applicant have made out the good case and also case have supported with evidences, annexures and facts admitted by Respondent No. 11-PP, SEIAA and MPCB etc. Thus, this is the best case for grant of all the prayers sought under this application and it is humble request to Hon'ble NGT for grant of prayers in larger interest of the Environmental Protection.

**18.60** I state that, the contention of the **Para-30** of the reply affidavit of Respondent No. 11-PP dated 29.07.2020 is the prayer, which is not tenable and illegal in the eyes of the law and this Hon'ble NGT may kindly reject the contention of the Respondent No.11-PP and payers in



Original Application may kindly be granted by demolition of structure or by handing over it to the government for public use along with imposition of exemplary environment compensation for restitution & restoration of environment, ecology, exploitation of natural resources & social infrastructure damaged by Respondent No. 11-PP in view to have deterrent effect on Respondent No. 11-PP to send clear & loud message in the society, that the environmental compliance is supreme and no one is above the law.

**NON-ACTIONS BY RESPONDENT ON  
NOTICE/COMPLAINT DATED 05.08.2018 OF  
ORIGINAL APPLICANT:**

**18.61** I state that, this original applicant filed complaint dated 05.08.2018 to the government authorities for the serious environmental violations and send notice to the PP intimating him for legal proceedings are initiated against him for his environmental defaults.

**18.62** I state that, the Respondent No. 11-PP has not rebutted factum of allegations raised in the notice and



accepted the allegation without remorse as there is no reply to the notice till date.

**18.63** Further I state that, as usual Respondent No. 1- Secretary DoE of GoM and Respondent No. 2- Member Secretary of SEIAA have issued show cause notice dated 15.06.2019 and thereafter not taken any action on the complaint of this applicant and misused the complaint. Therefore, heavy cost may kindly imposed on both of these Respondent.

**18.64** Further I state that, the Respondent No.3-Member Secretary SEAC-III, Respondent No. 4-Member Secretary MPCB, Respondent No.5-RO MPCB, Respondent No.6-Assistant Director Town Planning, Respondent No.7-Collector Pune, Respondent No.8-PMRDA, Respondent No.9-Commissioner PMC and Respondent No.10-City Engineer PMC has acted as mute spectators.

**PART-B: REJOINDER TO THE REPLY OF**  
**RESPONDENT NO. 8-PMRDA DATED 09.11.2020:**



I have read the reply affidavits filed on behalf of Respondent No.8-PMRDA dated 09.11.2020 in reply thereto, I state as under: -

**18.65** I state that, the contents of reply affidavit filed by Respondent No.8 dated 14.01.2020 is totally baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are denied by this Applicant in totality.

**18.66** I state that, the contents of reply affidavit filed by Respondent No. 8 dated 09.11.2020 shows that the affidavit is prepared by Respondent No. 11-PP and to get regularisation his illegal construction, under table solution of EIA Notification (Regularisation of Violation Cases) dated 14.03.2017 is provided by Respondent No. 8-PMRDA and seems to be on account of benefits other than remuneration. Otherwise, Respondent No. 8-PMRDA being responsible sanctioning authority established under MRTP Act, 1966 should not make such statements which will encourage the Respondent No. 11-PP to cause damage to environment and ecology due to his illegal construction.



**18.67 SUBSTANTIAL DAMAGE CAUSED TO ENVIRONMENT AND ECOLOGY ON ACCOUNT OF ILLEGAL CONSTRUCTION OF PP:**

- a.** I state that, the PP have carried out the construction of total BUA of 41656.85 M<sup>2</sup> (23316.59 M<sup>2</sup> in Phase Ethos-I, 18340.26 M<sup>2</sup> in Phase Ethos-II) and have sought further expansion of 7279.59 M<sup>2</sup> and which is above 20000 Sq. Mtrs. mandating prior Environment Clearance as per the EIA Notification-2006 by consuming huge quantity of the building material prepared from natural resources like Cement, metal/ aggregates, steel, timber, water, fuel, bricks, sand, aluminium, copper for wirings, marble, stainless steel, PCV etc. for the construction of the project without any impact assessment and caused irreparable damage to the environment and ecology in substantial nature.
- b.** I state that, the GHG emission especially carbon from the material process and its use during the construction and operation phase is huge and it has adverse impact on the environment and therefore the



prior impact assessment is required for the better protection and improvement of the environment due to the activity of the PP. But PP intentionally failed to prepare such Impact Assessment and further neglected to implement such assessment in his project and caused huge damage to environment.

- c. I state that, the PP is extracting the ground water from two (2) number of bore wells.
- d. I state that, the PP is not doing any treatment on the solid waste and it is directly dumped to the PMC dumping location by overburdening the PMC infrastructure.
- e. I state that, the PP has used traditional clay bricks and PP has not used any scientific construction method.
- f. I state that, the environmental issues are very complex and its restoration is more difficult than complexity. But PP has callous attitude for environmental protection and adopted careless, reckless, attitude with unapologetic behaviour and manipulated the government authorities, therefore



exemplary damages having deterrent effect must be imposed on this PP to teach lesson.

- g.** I state that, the consumption of the building material obviously for prepared from the natural resources for present project is calculated from the sanction plan / drawing, actual site conditions and civil engineering manual is as below.

Sr.	Description	Quantity
1.	Excavation and Refilling of Footing Area	77840 Cu. Mtrs.
2.	Quantity of total back soil fill material (Stone)	35725 Cu. Mtrs.
3.	Quantity of stone	153.38 Cu. Mtrs
4.	Quantity of Slab Concrete	7619 Cu. Mtrs.
5.	Quantity of Footings & Bed, Columns and Beams Concrete	17855 Cu. Mtrs.
6.	Total quantity of the Concrete slab for the ground coverage apart from the ground coverage of buildings	5965 Cu. Mtrs.
7.	Steel(kg)	4015000
8.	Cement(Kg)	11701000
9.	Sand(Kg)	30330000
10.	Aggregates(Kg)	60660000
11.	Water (Ltr)	13200450
12.	Quantity Of Brick Work	16956 Cu. Mtrs.
13.	Quantity Of External Plaster	405 Cu. Mtrs.
14.	Quantity Of Internal Plaster	604 Cu. Mtrs.



15.	Quantity Of External Paint	39.8 Cu. Mtrs.
16.	Quantity Of Internal Paint	99.02 Cu. Mtrs.
17.	Quantity of Steel for Railing Shutters for Shops & Main entrance gate	4.99 Cu. Mtrs.
18.	Total steel for the lifts	29900 Kg
19.	Total steel for the Terrace & Staircase	17650 Kg.
20.	Quantity of Aluminum	16305 Kg
21.	Quantity of Glass for Doors and Windows	58.15 Cu. Mtrs.
22.	Quantity of Wood	99.48 Cu. Mtrs.
23.	Quantity of Concrete Frame	247.38 Cu. Mtrs
24.	Total copper used for wiring	17000 Kg.
25.	Total Weight of Stainless Steel used for Wash Basin, Kitchen, Bathroom and Toilet	9404 Kg.
26.	Quantity of the Flooring	395.58 Cu. Mtrs
27.	Quantity of the Kitchen marble	160.64 Cu. Mtrs
28.	Quantity of the Kitchen wall tiles	54 Cu. Mtrs.
29.	Quantity of the Window Marble	85 Cu. Mtrs.
30.	Quantity of the black soil that is not preserved	35920 Cu. Mtrs

- h.** Therefore, considering the serious violations of non-obtaining of Environment Clearance, Consent to Establish, Consent to Operate, CGWA permission, Non-installation of pollution control devices, Non-plantation of tree, Non-installation of STP, Non-installation of Solid waste treatment unit, illegal



ground water extraction, illegal operation of DG Sets etc., the amount of environmental damage required to be imposed on PP for restoration of this area should be more Rs. 200 Crores.

- i.** I state that, the above conduct of the PP towards intentional environmental compliance shows that, PP is unapologetic and PP have adopted careless and reckless methods in environment protection, as PP has not obtained any EC, not obtained any consent to Establish, not availed benefits of EIA 14.03.2017, expanded project without obtaining EC & Consent and operated project without consent to operate.
- j.** Therefore, Respondent No. 11-PP is liable for imposition of heavy, exemplary & deterrent environment compensation.

**19. APPLICABLE CASE LAWS BY APPLICANTS:**

- 19.1** I state that, this is the worst case of environmental damage therefore PP has crossed the principles laid down by the Hon'ble Supreme Court of India and Hon'ble NGT in various case and PP should be charged



with exemplary damages to have deterrent effect on him to send clear message in the polluters lobby.

**19.2** In the case of M. C. Mehta and Ors. Vs Union of India, (1987) 1 SCC 395, Hon'ble Supreme Court Observed that;

*"32. We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise".*

**19.3** In the case of Vellore Citizens Welfare Forum Vs. Union Of India & Ors (1996) 5 SCC 647, Hon'ble Supreme Court Observed that;

*"(11) SOME of the salient principles of "Sustainable Development", as culled out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary*



*Principle, Polluter Pays Principle, Obligation to Assist and Cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that "The Precautionary Principle" and "The Polluter Pays Principle" are essential features of "Sustainable Development". The "Precautionary Principle" - in the context of the municipal law - means:*

*(I) Environmental measures - by the State government and the statutory authorities - must anticipate, prevent and attack the causes of environmental degradation.*

*(II) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*

*(III) The "onus of proof is on the actor or the developer/industrialist to show that his action is environmentally benign.*

**(12) "THE Polluter Pays Principle"** has been held to be a sound principle by this court in *Indian Council for Enviro-legal Action v. Union of India*. The court observed "... we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country".

**THE court ruled that**



"... once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on".

**CONSEQUENTLY** the polluting industries are "absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas". The "Polluter Pays Principle" as interpreted by this court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

**(13)** THE Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life



and personal liberty. Articles 47, 48-A and 51-A(g) of the Constitution are as under:

**"47.** *Duty of the State to raise the level of nutrition and the standard of living and to improve public health.-The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.*

**48-A.** *Protection and improvement of environment and safeguarding of forests and wildlife.- The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.*

**51-A.(g)** *to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures."*

*Apart from the constitutional mandate to protect and improve the environment there are plenty of post-independence legislations on the subject but more relevant enactments for our purpose are: the Water (Prevention and Control of Pollution) Act, 1974 (the Water Act), the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment (Protection)*



Act, 1986 (the Environment Act). The Water Act provides for the constitution of the central Pollution Control Board by the central government and the constitution of the State Pollution Control Boards by various State governments in the country. The Boards function under the control of the governments concerned. The Water Act prohibits the use of streams and wells for disposal of polluting matters. It also provides for restrictions on outlets and discharge of effluents without obtaining consent from the Board. Prosecution and penalties have been provided which include sentence of imprisonment. The Air Act provides that the central Pollution Control Board and the State Pollution Control Boards constituted under the Water Act shall also perform the powers and functions under the Air Act. The main function of the Boards, under the Air Act, is to improve the quality of the air and to prevent, control and abate air pollution in the country. We shall deal with the Environment Act in the latter part of this judgment.

**(14)** IN view of the above-mentioned constitutional and statutory provisions we have no hesitation in holding that the Precautionary Principle and the Polluter Pays Principle are part of the environmental law of the country.



**(15)** *EVEN otherwise once these principles are accepted as part of the Customary International Law there would be no difficulty in accepting them as part of the domestic law. It is almost an accepted proposition of law that the rules of Customary International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law. To support we may refer to Justice H.R. Khannas opinion in A.D.M. v. Shivakant Shakla, Jolly George Varghese case and Gramophone Co. case.*

**(16)** *THE constitutional and statutory provisions protect a persons right to fresh air, clean water and pollution-free environment, but the source of the right is the inalienable common law right of clean environment. It would be useful to quote a paragraph from Blackstones commentaries on the Laws of England (Commentaries on the Laws of England of Sir William Blackstone) Vol. III, fourth edition published in 1876. Ch. XIII, "Of Nuisance" depicts the law on the subject in the following words:*

*"ALSO, if a person keeps his hogs, or other noisome animals, or allows filth to accumulate on his premises, so near the house of another, that the stench incommodes him and makes the air unwholesome, this is an injurious nuisance,*



as it tends to deprive him of the use and benefit of his house. A like injury is, if ones neighbour sets up and exercises any offensive trade; as a tanners, a tallow-chandlers, or the like; for though these are lawful and necessary trades, yet they should be exercised in remote places; for the rule is, *sic utere tuo, ut alienum non leadas*; this therefore is an actionable nuisance. And on a similar principle a constant ringing of bells in ones immediate neighbourhood may be a nuisance.

... With regard to other corporeal hereditaments; it is a nuisance to stop or divert water that used to run to anothers meadow or mill; to corrupt or poison a watercourse, by erecting a dye-house or a lime-pit, for the use of trade, in the upper part of the stream; to pollute a pond, from which another is entitled to water his cattle; to obstruct a drain; or in short to do any act in common property, that in its consequences must necessarily tend to the prejudice of ones neighbour. So closely does the law of England enforce that excellent rule of gospel-morality, of doing to others, as we would they should do unto ourselves."

**(17)** OUR legal system having been founded on the British common law the right of a person to a pollution-free environment is a part of the basic jurisprudence of the land.



**(18)** *THE Statement of Objects and Reasons to the Environment Act, inter alia, states as under:*

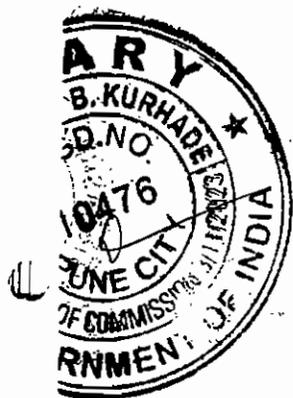
*"THE decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food-chains, growing risks of environmental accidents and threats to life-support systems. The world communitys resolve to protect and enhance the environmental quality found expression in the decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June 1972. The government of India participated in the Conference and strongly voiced the environmental concerns. While several measures have been taken for environmental protection both before and after the Conference, the need for a general legislation further to implement the decisions of the Conference has become increasingly evident.*

*EXISTING laws generally focus on specific types of pollution or on specific categories of hazardous substances. Some major areas of environmental hazards are not covered. There also exist uncovered gaps in areas of major environmental hazards. There are inadequate linkages in handling matters of industrial and environmental safety. Control mechanisms to*



guard against slow, insidious build-up of hazardous substances especially new chemicals in the environment, are weak. Because of a multiplicity of regulatory agencies, there is need for an authority which can assume the lead role for studying, planning and implementing long-term requirements of environmental safety and to give direction to, and coordinate a system of speedy and adequate response to emergency situations threatening the environment.

IN view of what has been stated above, there is urgent need for the enactment of a general legislation on environmental protection which inter alia, should enable coordination of activities of the various regulatory agencies, creation of an authority or authorities with adequate powers for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents threatening the environment and deterrent punishment to those who endanger human environment, **safety and health.**"



**19.4** In the case of M. I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu & Ors. 1999 (6) SCC 464, Hon'ble Supreme Court Observed that;

*“74. High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to the exercised has to be in accordance with law and set legal principles. As will be seen in moulding the relief in the present case and allowing one of the blocks meant for parking to stand we have been guided by the obligatory duties of the Mahapalika to construct and maintain parking lots.”*



19.5 In the case of M. C. Mehta Vs. Kamal Nath, (2002) AIR (SC) 1515, Hon'ble Supreme Court Observed that;

"9. THE question remaining for further consideration relating to the award of exemplary damages is only as to the quantum. The various laws in force to prevent, control pollution and protect environment and ecology provide for different categories of punishment in the nature of imposition of fine as well as or imprisonment or either of them, depending upon the nature and extent of violation. The fine that may be imposed alone may extend even to one lakh of rupees. Keeping in view all these and the very object underlying the imposition of imprisonment and fine under the relevant laws to be not only punish the individual concerned but also to serve as a deterrent to others to desist from indulging in such wrongs which we consider to be almost similar to the purpose and aim of awarding exemplary damages, it would be both in public interest as well as in the interests of justice to fix the quantum of exemplary damages payable by Span Motels Pvt. Ltd. at rupees ten lakhs only. This amount we are fixing keeping in view the undertaking given by them to bear a fair share of the project cost of ecological restoration which would be quite separate and



*apart from their liability for the exemplary damages. The question relating to the said quantum of liability for damages on the principle of "polluter pays", as held by this Court against the Span Motels Pvt. Ltd. and undertaken by them, will be determined separately and left open for the time being. ...."*

**19.6** In the case of Dipak Kumar Mukherjee Vs. Kolkatta Municipal Corporation and Ors. 2013 (5) SCC 336, Hon'ble Supreme Court Observed that;

*"8. What needs to be emphasised is that illegal and unauthorised constructions of buildings and other structure not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-*



storied structure raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors."

9. We have prefaced disposal of this appeal by taking cognizance of the precedents in which this Court held that there should be no judicial tolerance of illegal and unauthorized constructions by those who treat the law to be their sub-servient, but are happy to note that the functionaries and officers of Kolkata Municipal Corporation (for short, the Corporation) have been extremely vigilant and taken steps for enforcing the provisions of the Kolkata Municipal Corporation Act, 1980 (for short, the 1980 Act) and the rules framed thereunder for demolition of illegal construction raised by respondent No. 7. This has given a ray of hope to the residents of Kolkata that there will be zero tolerance against illegal and unauthorised constructions and those indulging in such activities will not be spared.



**19.7** In the case of Sterlite Industries (I) Ltd. Etc Vs Union of India & Ors. Etc, 2013 (4) SCC 575, Hon'ble Supreme Court Observed that;

*“(D) Environmental Law--Damage to Environment by pollution--Quantum of Compensation--Running of Copper Smelter Plant--Damage caused by pollution through emission and discharge of effluents-- Constitution Bench of Supreme Court in M .C. Mehta and Another vs. Union of India and others, (1987) 1 SCC 395, observed that quantum of compensation must be co-related to magnitude and capacity of the enterprises, because such compensation must have a deterrent effect and larger and more prosperous the enterprises, the greater must be the amount of compensation--As per NERI Reports of 1998, 1999, 2003 and 2005, appellants plant did pollute the environment through emission and discharge of effluents which did not conform to standards laid down by TNPCB under Air Act and Water Act – For these deficiencies, TNCPB also did not renew its consent for some period, yet, appellant continued to operate its plants without such renewal – Thus, appellant company is liable to pay compensation by paying damages -- Considering the magnitude, capacity and prosperity of appellant-company, a*



compensation of Rs. 100 crores for having polluted the environment in the vicinity of the plant and having operated the plant without renewal for a fairly long period -- No less amount would have the desired deterrent effect on appellant -- That amount initially to remain in five years Fix Deposit and interest thereon to be utilized for improving environment in the vicinity of the plant, as directed".

"39. ... ."The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part."

The Constitution Bench in the aforesaid case further observed that the quantum of compensation must be co-related to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect and the larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it. ....



"PBDIT for the financial year 2010-11 was Rs. 1,043 Crore, 40% higher than the PBDIT of Rs. 744 Crore for the financial year 2009-10. This was primarily due to higher LME prices and lower unit costs at Copper India and with the improved by-product realization."

**Considering the magnitude, capacity and prosperity of the appellant-company,** we are of the view that the appellant-company should be held liable for a compensation of Rs. 100 crores for having polluted the environment in the vicinity of its plant and for having operated the plant without a renewal of the consents by the TNPCB for a fairly long period and according to us, **any less amount, would not have the desired deterrent effect on the appellant-company.** The aforesaid amount will be deposited with the Collector of Thoothukudi District, who will invest it in a Fixed Deposit with a Nationalized Bank for a period of five years. The interest therefrom will be spent for improving the environment, including water and soil, of the vicinity of the plant after consultation with TNPCB and approval of the Secretary, Environment, Government of Tamil Nadu."

**41.** Before we part with this case, **we would like to put on record our appreciation for the writ petitioners before the High Court and the**



intervener before this Court for having taken up the cause of the environment both before the High Court and this Court and for having assisted this Court on all dates of hearing with utmost sincerity and hard work. In Indian Council for Enviro-Legal Action and Others v. Union of India and Others [(1996) 3 SCC 211], this Court observed that voluntary bodies deserve encouragement wherever their actions are found to be in furtherance of public interest. Very few would venture to litigate for the cause of environment, particularly against the mighty and the resourceful, but the writ petitioners before the High Court and the intervener before this Court not only ventured but also put in their best for the cause of the general public."



**19.8** In the case of Goa Foundation Vs Union Of India & Ors, 2014 (6) SCC 590, Hon'ble Supreme Court Observed that;

**"62.** Regulatory and monitoring measures enforced by the Departments of Mines and Geology, the Goa State Pollution Control Board and the Regulator appointed by the Central Government under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 cannot, however, restore entirely the environment that is damaged in course of mining operations. The

*Expert Committee has, therefore, recommended that a permanent fund for inter- generational equity and sustainability of mining for all times to come named as Goan Iron Ore Permanent Fund be created and an expert group may be constituted by the State for working out the details of this fund. Mr. Harish Salve, learned Amicus Curiae, submitted that as the lessees of mining leases earn out of the sale proceeds of the iron ore excavated by them, they should be directed to contribute 10% of the sale proceeds of all iron ore excavated in the State of Goa and sold by them towards the Goan Iron Ore Permanent Fund. He cited the judgment of this Court in Samaj Parivartana Samudaya and Ors. v. State of Karnataka and Ors. (supra) in which this Court has similarly directed for creation of a Special Purpose Vehicle out of 10% of the sale proceeds of the ore sold by e-auction. There is a lot of force in the aforesaid submission of Mr. Salve.*

- 19.9** In the case of Krushn Kant Singh & Ors. Vs. National Ganga River Basin Authority & Ors. In Application No. 299/2013 Decided on 16.10.2014, Hon'ble NGT (PB) held that;



"51. It is not possible to assess exact environmental damage and the cost of restoration thereof in view of the long period involved in the present case and the fact that the statutory Boards empowered to prevent and control pollution have not performed their statutory duties in accordance with the spirit and object of the environmental Acts and jurisprudence. This unit is responsible for causing great environmental pollution of different water bodies including Phuldera drain, the Syana Escape canal, the River Ganga and even the groundwater in and around the area of this industrial unit. Besides scientific data of inspection by the Expert teams, officers of the Pollution Control Board, analysis report and the fact that the water in the Phuldera drain had turned brown, even to the naked eye, demonstrates the extent of pollution caused by this unit. Considering the magnitude of the pollution caused by unit, its capacity and prosperity, responsibility of the unit to pay compensation cannot be disputed on any plausible cause or ground. The Supreme Court in the case of Sterlite Industries (India) Ltd. v. Union of India & Ors. (2013) 4 SCC 575, enunciated the principle that a company which has caused the damaged to the environment and for operating the plant without valid



renewal of consent for a fairly long period would obviously be liable to compensate by paying damages. while relying upon the judgment of the Constitution Bench of the Supreme Court in the case of *M.C. Mehta v. Union of India* (1987) 1 SCC 395, the court further stated that the plea of reasonable care and that the damage to environment occurred without specific negligence on the part of the unit is not a sustainable defence to a direction for payment of compensation for causing environmental damage. The court further held that magnitude, capacity and prosperity of the unit are the relevant considerations for determining the extent of the liability in such case. Applying these principles to the facts of the present case, there can hardly be any dispute that it is a polluting unit. It is also beyond controversy that this unit has operated without consent of the Boards from 1974 till the year 1991, thereafter, it committed default in compliance of the conditions of the consent right up to the year 2000. Even thereafter, it did not strictly comply with the conditions and directions issued by the respective Boards. This unit is a direct source of polluting River Ganga.

The PP is a profit making unit. No record has been produced before the Tribunal to establish anything to the contrary. Though, it may not be



possible to determine with exactitude the exact amount of compensation payable on account of damage to environment because of the long period involved and also for the reason that even scientifically the extent of damage and amounts required for restoration and restitution thereof cannot be determined at this stage now. Cleaning and removal of sludge from Phuldera drain, treatment of other pollutants flowing in the said drain, preventing any discharge into the Syana Escape Canal and making River Ganga pollution free are the basic needs which require attention of the Expert bodies particularly, in the facts and circumstances of this case. We fix a compensation of Rs 5 crores which shall be deposited with the UPPCB and shall be spent for that purpose alone by and joint team of CPCB, UPPCB, MoEF including for removal of sludge and all pollutants in the Syana Escape Canal till it joins river Ganga. This amount shall also be used for preventing ground water pollution.

The unit has caused serious pollution persistently. There is sufficient material before the Tribunal to establish both direct and indirect pollution being caused by this unit. The unit has even intentionally failed to comply with the directions and conditions of the consents order passed by the respective boards. Not even



submitting an application to the board for obtaining consent to operate and shows complete disregard towards law and its statutory obligations by the unit. It is not only case where it is a threat to cause environmental pollution but is a case of causing environmental pollution. Right to carry on business cannot be permitted to be misused or to pollute the environment so as to reduce the quality of life of others. Risk to harm to environment or to human health is to be decided in the public interest according to 'a reasonable person's test'. The man's perception with reference to the facts of this case cannot return a finding any different than the one recorded by us.".....

"59. Reverting to the case of Simbhaoli sugar and distillery unit which has been a serious polluter for all this time and has damaged the ground water as well as polluted the River Ganga through Phuldera Drain, now for years. This unit has failed to take all remedial measures despite service of show cause notices, closure orders and directions issued by the CPCB. The trade effluent discharged by the unit had often been found to be in violation of the prescribed standards. The unit had also failed to dismantle the underground pipeline through which the effluent containing the pollutants was being discharged into the Phuldera drain,



despite specific directions issued by the respective Boards. Large extent of sludge which could only be generated from a sugar and distillery unit was found in the Phuldra drain and on its banks. The inspections on different occasions even noticed that the unit was bypassing the ETP and throwing untreated effluent into the drain and/or on the land. This Unit, on the one hand violated the conditions of the consent order from time to time while on the other, it even operated without consent of the Board for short duration subsequent to 1991, till which year it operated totally without consent. These are the few circumstances which fully establish the fact that this unit is a seriously polluting unit and has been polluting the different water bodies including the groundwater now for a considerable time. There can hardly be any doubt in inspecting the case advanced on behalf of the respective Boards that this unit has continuously failed to comply with the requirements of law and discharge its statutory obligations on the one hand while on the other it has also failed to fulfil its corporate social responsibilities. Therefore, the unit is liable to make good and to restore damage, degradation and pollution of environment caused by its activity particularly, the water bodies and with greater emphasis, the River



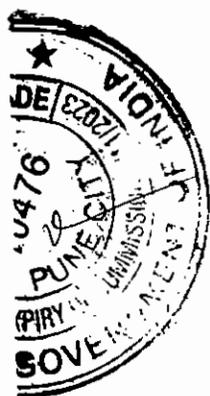
*Ganga. Thus, in our considered view, this unit must be held liable to pay heavy compensation for restitution, restoration, prevention and control of pollution of various water bodies and more emphatically River Ganga. Consequently, in exercise of the powers conferred upon this Tribunal under Section 15 and all other enabling provisions of the NGT Act and the legislative mandate contained under Section 20 of the said Act,*

**19.10** In *Indian Council for Environ Legal Action Vs Union of India and Ors*, (1996) 5 SCC 281, Hon'ble Supreme Court of India Observed that:

*"Enactment of a law, but tolerating its infringement, is worse than not enacting a law at all. The continued infringement of law, over a period of time, is made possible by adoption of such means which are best known to the violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the enforcement authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. Law should not only be meant for the law-abiding but is meant to be obeyed by all for whom it has been enacted. A law is*



usually enacted because the legislature feels that it is necessary. It is with a view to protect and preserve the environment and save it for the future generations and to ensure good quality of life that Parliament enacted the anti-pollution laws, namely, the Water Act, Air Act and the Environment (Protection) Act, 1986. These Acts and Rules framed and notification issued thereunder contain provisions which prohibit and/or regulate certain activities with a view to protect and preserve the environment. When a law is enacted containing some provisions which prohibit certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then, it has to be enforced. Otherwise, infringement of law, which is actively or passively condoned for personal gain, will be encouraged which will in turn lead to a lawless society. Violation of antipollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse effect of which will have to be borne by the future generations."



**19.11** In the case of Indian Council For Enviro Legal Action Vs. Union Of India 1996 (3) SCC 212, Hon'ble Supreme Court Observed that;

*“(71) RESPONDENTS 4 to 8 shall pay a sum of Rupees fifty thousand by way of costs to the petitioner which had to fight this litigation over a period of over six years with its own means. Voluntary bodies, like the petitioner, deserve encouragement wherever their actions are found to be in furtherance of public interest. The said sum shall be deposited in this court within two weeks from today. It shall be paid over to the petitioner.”*

**19.12** In the case of M/s. Goel Ganga Developers (I) Pvt. Ltd Vs. Union Of India & Ors. **(2018) 18 SCC 257**, Hon'ble Supreme Court Observed that;

*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.

....

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.



**20. THEREFORE, IT IS PRAYERS THAT:**

- a. Hon'ble NGT may kindly grant prayers in Original Application.
- b. Any other prayers in the interest of environmental justice.

NOTARIAL



NOTARIAL

Whatever stated above is true and correct to the best of my knowledge, belief and information, hence, to verify the same I have signed hereunder at Pune.



*Bombhise*  
AFFIANT

NOTARIAL

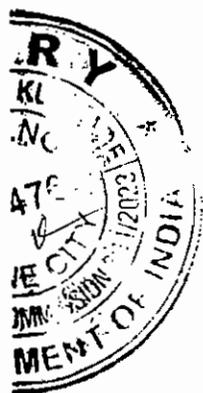


(TANAJI BALASAHEB GAMBHIRE)

**BEFORE ME**

*Shashikant B. Kurhade*  
Shashikant B. Kurhade  
Notary Govt. of India

Noted and Registered  
at Sr. No. 428/2021  
Date: 1 OCT 2021



# ANNEXURE-A-1

### BUILT UP AREA STATEMENT

BLDG.	FIRST FL. AREA SQ.M.	SECOND FL. AREA SQ.M.	THIRD FL. AREA SQ.M.	FOURTH FL. AREA SQ.M.	FIFTH FL. AREA SQ.M.	SIXTH FL. AREA SQ.M.	SEVENTH FL. AREA SQ.M.	EIGHTH FL. AREA SQ.M.	NINTH FL. AREA SQ.M.	TENTH FL. AREA SQ.M.	ELEVENTH FL. AREA SQ.M.	TWELFTH FL. AREA SQ.M.	TOTAL FL. AREA SQ.M.	NO.OF FLOORS	HT. OF BLDG.
C1	279.26	279.26	279.26	279.26	279.26	279.26	279.26	201.24	279.26	279.26	279.26	279.26	3273.10	P+12	37.80 M.
C2	278.76	278.76	278.76	278.76	278.76	278.76	278.76	202.02	278.76	278.76	278.76	278.76	3268.38	P+12	37.80 M.
D	212.91	212.91	212.91	212.91	212.91	212.91	212.91	134.11	212.91	212.91	212.91	212.91	2476.12	P+12	37.80 M.
<b>TOTAL</b>	<b>770.93</b>	<b>770.93</b>	<b>770.93</b>	<b>770.93</b>	<b>770.93</b>	<b>770.93</b>	<b>770.93</b>	<b>537.37</b>	<b>770.93</b>	<b>770.93</b>	<b>770.93</b>	<b>770.93</b>	<b>9017.60</b>	-	-

### TENEMENT STATEMENT

BLDG.	TENEMENT NOS.
C1	47 NOS.
C2	47 NOS.
D	58 NOS.
<b>TOTAL</b>	<b>152 NOS.</b>

G.NO.	AREA SQ.M.
19/5	10100.00
<b>TOTAL</b>	<b>10100.00</b>

### TENEMENT AREA CALCULATIONS FOR EWS (L.I.G. & M.I.G.)

REQUIRED TENEMENTS OF AREA 30-40 SQ.M.  
 20% 9017.60 = 1803.52 SQ.M.  
 NO. OF TENEMENTS REQUIRED = 1803.52 / 40 = 45 Nos.  
 NO. OF TENEMENTS PROPOSED = 46 Nos  
 ALL TENEMENTS PROPOSED IN D BLDG

REQUIRED TENEMENTS OF AREA 40-60 SQ.M.  
 10% 9017.60 = 901.76 SQ.M.  
 NO. OF TENEMENTS REQUIRED = 901.76 / 60 = 15 Nos  
 NO. OF TENEMENTS PROVIDED IN C1 = 24 NOS



### BALCONY AREA STATEMENT

BLDG.	FIRST SQ.M.	SECOND SQ.M.	THIRD SQ.M.	FOURTH SQ.M.	FIFTH SQ.M.	SIXTH SQ.M.	SEVENTH SQ.M.	EIGHTH SQ.M.	NINTH SQ.M.	TENTH SQ.M.	ELEVENTH SQ.M.	TWELFTH SQ.M.	TOTAL SQ.M.
C1	41.09	41.09	41.09	41.09	41.09	41.09	41.09	30.11	41.09	41.09	41.09	41.09	482.10
C2	41.09	41.09	41.09	41.09	41.09	41.09	41.09	30.11	41.09	41.09	41.09	41.09	482.10
D	31.36	31.36	31.36	31.36	31.36	31.36	31.36	18.55	31.36	31.36	31.36	31.36	363.51
<b>TOTAL</b>	<b>113.54</b>	<b>78.77</b>	<b>113.54</b>	<b>113.54</b>	<b>113.54</b>	<b>113.54</b>	<b>1327.71</b>						

### PARKING STATEMENT

BLDG.	CAR NOS.	SCOOTER NOS.	CYCLE NOS.
C1	52	104	104
C2	52	104	104
D	12	70	70
<b>TOTAL</b>	<b>116</b>	<b>278</b>	<b>278</b>
PARKING SHOWN IN BLDGS.	49	104	186
PARKING SHOWN IN LAYOUT	67	174	92

### CARPET & BUILT UP AREA STATEMENT FOR 'LIG' FLATS IN BLDG. 'D'

FLAT NO.S	CARPET AREAS SQ.M.	BUILT-UP AREAS SQ.M.	TENEMENT NOS
102,302,502, 702,902,1102, 103,303,503, 703,903,1103, 104,304,504, 704,904,1104, 105,305,505, 705,905,1105, 802,803	35.25	39.21	24
202,402,602, 1002,1202, 203,403,603, 1003,1203, 204,404,604, 1004,1204, 205,405,605, 1005,1205	35.25	39.21	20
<b>TOTAL</b>	-	-	<b>46</b>

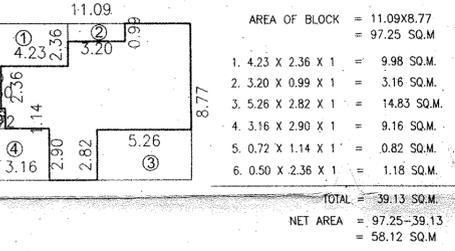
### CARPET & BUILT UP AREA STATEMENT FOR 'MIG' FLATS IN BLDG. 'C1'

FLAT NO.S	CARPET AREAS SQ.M.	BUILT-UP AREAS SQ.M.	TENEMENT NOS
101,301,501, 701,901,1101, 104,304,504, 704,904,1104	52.63	58.12	12
201,401,601, 801,1001,1201, 204,404,604, 804,1004,1204	52.63	58.12	12
<b>TOTAL</b>	-	-	<b>24</b>

24 NOS. OF TENEMENTS ARE PROPOSED FOR MIG.  
 TENEMENTS AREA CALCULATIONS  
 TENEMENTS AREA BETWEEN 40-60 SQ.M.

### 46 NOS. OF TENEMENTS ARE PROPOSED FOR LIG.

TENEMENTS AREA BETWEEN 30-40 SQ.M.  
 1. 3.66 X 1.37 X 1 = 5.01 SQ.M.  
 2. 3.35 X 4.57 X 1 = 15.31 SQ.M.  
 3. 3.58 X 3.35 X 1 = 11.99 SQ.M.  
 4. 2.74 X 2.52 X 1 = 6.90 SQ.M.  
**TOTAL = 39.21 SQ.M.**

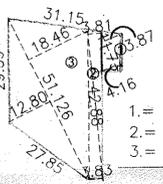


### PREMIUM STATEMENT

BLDG.	STAIRCASE AREA SQ.M.	LIFT AREA SQ.M.	PASSAGE AREA SQ.M.	TERRACE AREA SQ.M.	ENCL. BALC. AREA SQ.M.	DRY BALC. AREA SQ.M.	LIFT M/C. RM. AREA SQ.M.
C1	239.52	9.23	296.76	604.03	482.10	181.76	29.60
C2	239.52	9.23	296.76	604.03	482.10	181.76	29.60
D	246.24	9.35	382.20	364.57	363.51	176.80	22.80
<b>TOTAL NEW</b>	<b>725.28</b>	<b>27.81</b>	<b>975.72</b>	<b>1572.63</b>	<b>1327.71</b>	<b>540.32</b>	<b>82.00</b>
PREMIUM PAID PREVIOUSLY	725.28	27.81	982.92	1572.63	1327.71	500.36	82.00
PREMIUM TO BE PAID	-	-	7.20	-	-	39.96	-

### AMENITY AREA CALCULATIONS

① 0.5 X 41.29 X 9.87 = 203.77 SQ.M.  
 ② 0.5 X (14.97+27.78) X 61.344 = 1311.23 SQ.M.  
**TOTAL = 1515.00 SQ.M.**

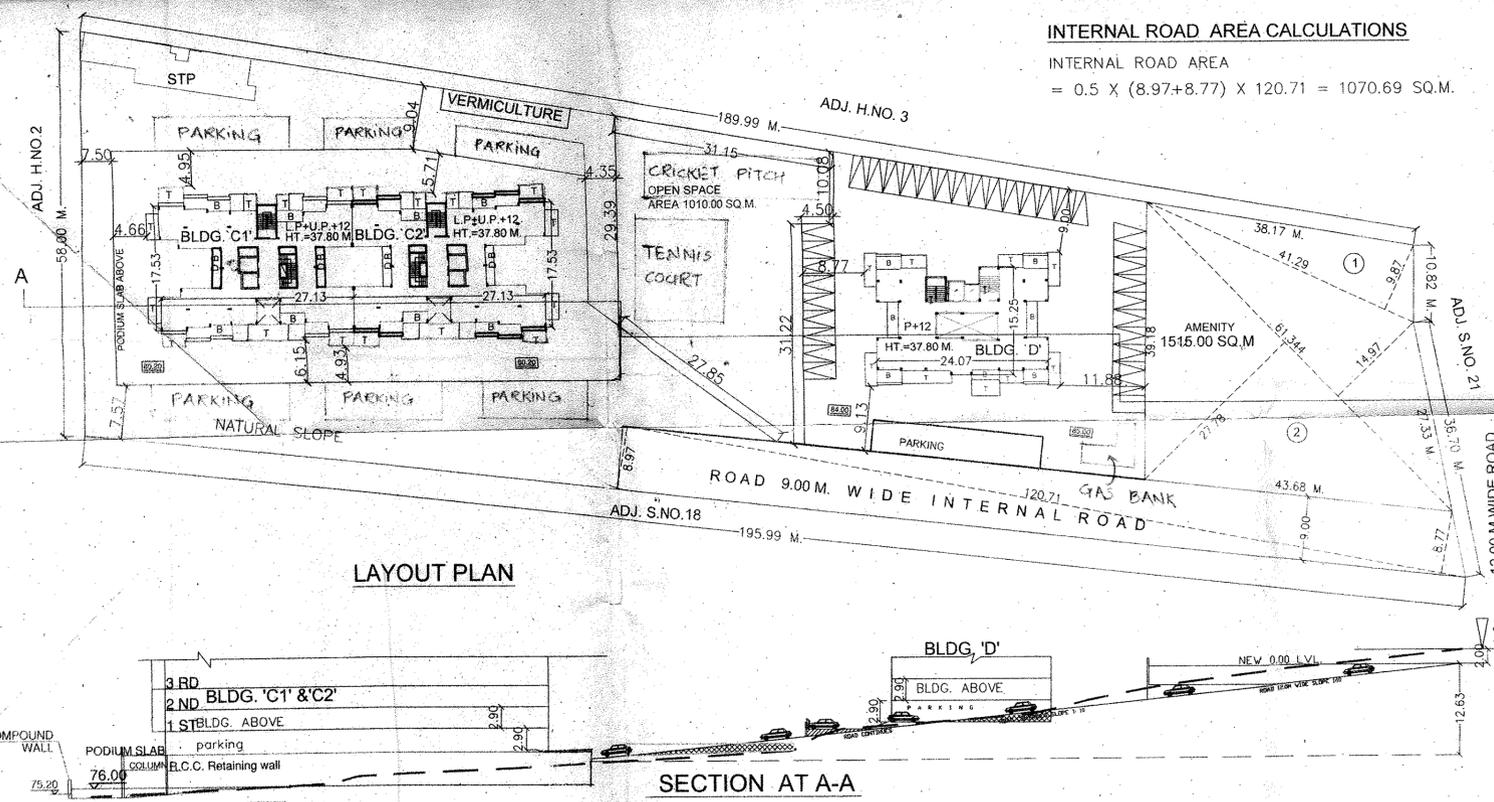


### OPEN SPACE AREA CALCULATIONS

1. 0.5 X (3.87+4.16) X 11.73 = 47.10 SQ.M.  
 2. 0.5 X (3.81+3.83) X 42.88 = 163.80 SQ.M.  
 3. 0.5 X (18.46+12.80) X 51.126 = 799.10 SQ.M.  
**= 1010.00 SQ.M.**

### INTERNAL ROAD AREA CALCULATIONS

INTERNAL ROAD AREA = 0.5 X (8.97+8.77) X 120.71 = 1070.69 SQ.M.



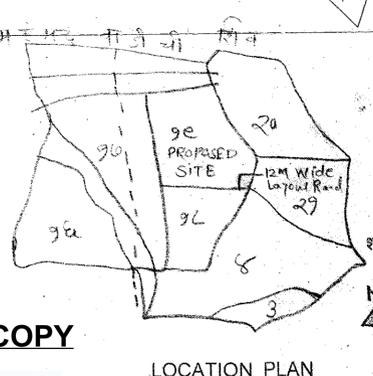
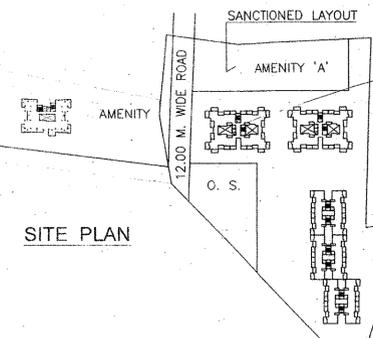
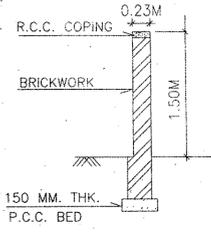
Original Building Plans signed by Collector Pune.



### PLOT AREA CALCULATIONS

PLOT AREA =  
 1. 58.00 X 192.00 X 0.5 = 5568.00 SQ.M.  
 2. 11.72 X 192.00 X 0.5 = 1125.12 SQ.M.  
 3. 195.99 X 37.00 X 0.5 = 3625.82 SQ.M.

AREA OF PLOT AS PER TRIANGULATION = 10318.94 SQ.M.  
 AREA OF PLOT AS PER 7/12 EXTRACT = 10100.00 SQ.M.  
 CONSIDER MINIMUM AREA = 10100.00 SQ.M.



AREA STATEMENT	Sq.M.
a AREA OF PLOT BY 7/12	10100.00
b AREA OF PLOT BY TRIANGULATION	10318.94
1. AREA OF PLOT TAKEN (MINIMUM)	10100.00
2. DEDUCTIONS FOR:	
(a) R.P. ROAD AREA	
(b) PROPOSED ROAD	
(c) ANY RESERVATION	
3. NET GROSS AREA OF PLOT (1-2)	10100.00
OPEN SPACE 10%	1010.00
4. DEDUCTIONS FOR:	
(a) AMENITY AREA 15%	1515.00
(b) ROAD WIDENING	
(c) INTERNAL ROAD	1070.69
(d) TOTAL DEDUCTIONS	
5. NET AREA OF PLOTS (3-4)	7575.00
6. NET AREA DEDUCTING ONLY AMENITY	8585.00
7. F.A.R. PERMISSIBLE	0.99
8. PREVIOUS PERMISSIBLE F.S.I.	1726.50
9. ADD AMENITY	1515.00
10. ADD INTERNAL ROAD	
11. TOTAL PERMISSIBLE F.S.I.	3241.50
12. EXISTING FLOOR AREA	
13. PROPOSED FLOOR AREA	9017.60
14. EXCESS BALCONY AREA TAKEN IN F.A.R.	
15. TOTAL BUILT-UP AREA (12+13+14)	9017.60
16. F.A.R. CONSUMED (15/11)	0.99
17. PERMISSIBLE BUILT UP	
18. PROPOSED BUILT UP	

TENEMENT STATEMENT	
(D) TENEMENTS PERMISSIBLE	161 NOS.
(E) TENEMENTS PROPOSED	152 NOS.
TOTAL TENEMENTS (D+C)	

- ### BRIEF SPECIFICATIONS
- \* R.C.C. STRUCTURE WITH 6" THICK BLOCK MASONRY.
  - \* ALUMINIUM WINDOWS & T.W. FRAMED FLUSH DOORS.
  - \* EXTERNALLY SAND FACED GEMENT PLASTER & INTERNALLY NEERU FINISHED PLASTER.
  - \* M.M. TILES FLOORING & GLAZED CERAMIC TILES IN TOILETS.

### SCHEDULE OF OPENINGS

W	V	D
W1		D1
W3		D2
W4		D3

- ### LEGEND
- PLOT BOUNDARY
  - PROPOSED WORK
  - ROAD WIDENING
  - WATER LINE
  - DRAINAGE LINE
  - EXISTING TO BE DEMOLISHED
  - THICK BLACK
  - RED SMUDGED
  - GREEN DOTTED
  - RED DOTTED
  - THIN BLACK DOTTED
  - YELLOW HATCHED

### CERTIFICATE OF AREA

Certified that the plot under reference was surveyed by me on / / and the dimensions of side etc. of plot stated on plan are as measured on site and the area so worked out tallies with the area stated in documents of Ownership / T. P. schemes records / Land Records Deptt. / City Survey records.

Signature of Licensed Architect: SHIRISH DASNURKAR & ASSOCIATES ARCHITECTS & DESIGNERS

### DESCRIPTION OF PROPOSAL & PROPERTY

PROPOSED REVISED LAYOUT OF GROUP HOUSING BLDGS. AT S.NO.19/5, UNDRI, PUNE.

NAME & SIGN. OF OWNER: SHARISH DASNURKAR

NAME & SIGN. OF ARCHITECT: SHIRISH DASNURKAR

NORTH	JOB NO.	DRAWN BY	DEALT BY	COMPUTER FILE

TURE COPY

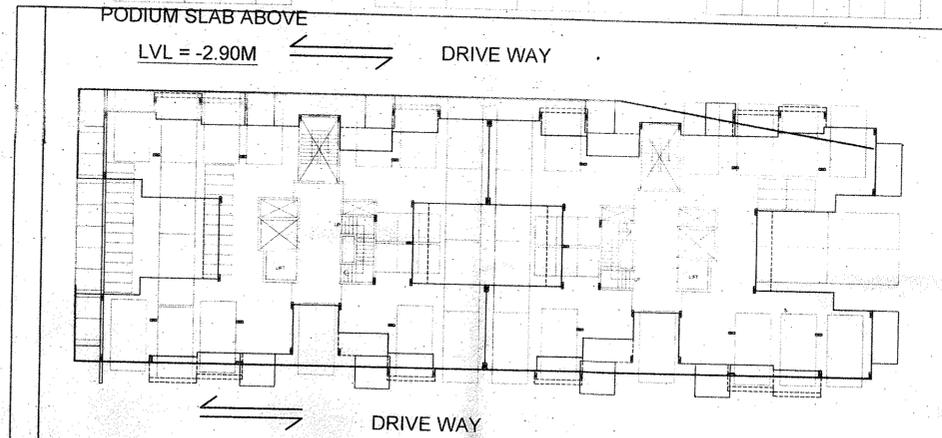


PARKING STATEMENT

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C1	52	104	104
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PARKING SHOWN IN BLDGS.	49	104	186
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ADJ. H.NO.2

58.00 M



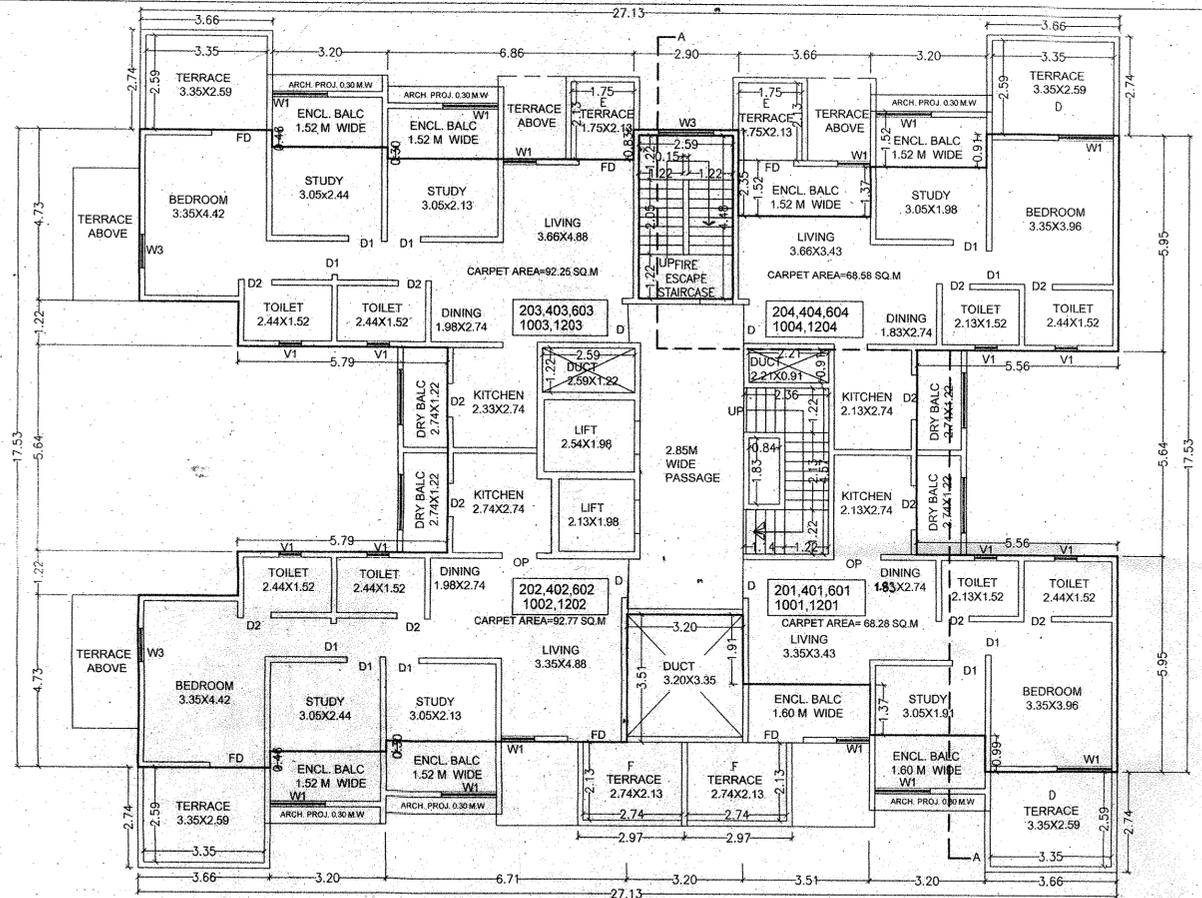
SEAL OF APPROVAL OF PLANS 2 11

No. PRM / NASR / 717 / 2014  
Dt: 28/8 / 2014  
Sanctioned as shown in plan  
Subject to the conditions mentioned  
in this office order No. even Dt: 28/8/2014  
Collector Pune

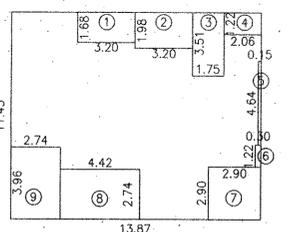


Recommended for approval as amended in vide A. D. T. P. Pune's Letter No. 200/2014/15/16/17/18/19/20/21/22/23/24/25/26/27/28/29/30/31/32/33/34/35/36/37/38/39/40/41/42/43/44/45/46/47/48/49/50/51/52/53/54/55/56/57/58/59/60/61/62/63/64/65/66/67/68/69/70/71/72/73/74/75/76/77/78/79/80/81/82/83/84/85/86/87/88/89/90/91/92/93/94/95/96/97/98/99/100/101/102/103/104/105/106/107/108/109/110/111/112/113/114/115/116/117/118/119/120/121/122/123/124/125/126/127/128/129/130/131/132/133/134/135/136/137/138/139/140/141/142/143/144/145/146/147/148/149/150/151/152/153/154/155/156/157/158/159/160/161/162/163/164/165/166/167/168/169/170/171/172/173/174/175/176/177/178/179/180/181/182/183/184/185/186/187/188/189/190/191/192/193/194/195/196/197/198/199/200/201/202/203/204/205/206/207/208/209/210/211/212/213/214/215/216/217/218/219/220/221/222/223/224/225/226/227/228/229/230/231/232/233/234/235/236/237/238/239/240/241/242/243/244/245/246/247/248/249/250/251/252/253/254/255/256/257/258/259/260/261/262/263/264/265/266/267/268/269/270/271/272/273/274/275/276/277/278/279/280/281/282/283/284/285/286/287/288/289/290/291/292/293/294/295/296/297/298/299/300/301/302/303/304/305/306/307/308/309/310/311/312/313/314/315/316/317/318/319/320/321/322/323/324/325/326/327/328/329/330/331/332/333/334/335/336/337/338/339/340/341/342/343/344/345/346/347/348/349/350/351/352/353/354/355/356/357/358/359/360/361/362/363/364/365/366/367/368/369/370/371/372/373/374/375/376/377/378/379/380/381/382/383/384/385/386/387/388/389/390/391/392/393/394/395/396/397/398/399/400/401/402/403/404/405/406/407/408/409/410/411/412/413/414/415/416/417/418/419/420/421/422/423/424/425/426/427/428/429/430/431/432/433/434/435/436/437/438/439/440/441/442/443/444/445/446/447/448/449/450/451/452/453/454/455/456/457/458/459/460/461/462/463/464/465/466/467/468/469/470/471/472/473/474/475/476/477/478/479/480/481/482/483/484/485/486/487/488/489/490/491/492/493/494/495/496/497/498/499/500/501/502/503/504/505/506/507/508/509/510/511/512/513/514/515/516/517/518/519/520/521/522/523/524/525/526/527/528/529/530/531/532/533/534/535/536/537/538/539/540/541/542/543/544/545/546/547/548/549/550/551/552/553/554/555/556/557/558/559/560/561/562/563/564/565/566/567/568/569/570/571/572/573/574/575/576/577/578/579/580/581/582/583/584/585/586/587/588/589/590/591/592/593/594/595/596/597/598/599/600/601/602/603/604/605/606/607/608/609/610/611/612/613/614/615/616/617/618/619/620/621/622/623/624/625/626/627/628/629/630/631/632/633/634/635/636/637/638/639/640/641/642/643/644/645/646/647/648/649/650/651/652/653/654/655/656/657/658/659/660/661/662/663/664/665/666/667/668/669/670/671/672/673/674/675/676/677/678/679/680/681/682/683/684/685/686/687/688/689/690/691/692/693/694/695/696/697/698/699/700/701/702/703/704/705/706/707/708/709/710/711/712/713/714/715/716/717/718/719/720/721/722/723/724/725/726/727/728/729/730/731/732/733/734/735/736/737/738/739/740/741/742/743/744/745/746/747/748/749/750/751/752/753/754/755/756/757/758/759/760/761/762/763/764/765/766/767/768/769/770/771/772/773/774/775/776/777/778/779/780/781/782/783/784/785/786/787/788/789/790/791/792/793/794/795/796/797/798/799/800/801/802/803/804/805/806/807/808/809/810/811/812/813/814/815/816/817/818/819/820/821/822/823/824/825/826/827/828/829/830/831/832/833/834/835/836/837/838/839/840/841/842/843/844/845/846/847/848/849/850/851/852/853/854/855/856/857/858/859/860/861/862/863/864/865/866/867/868/869/870/871/872/873/874/875/876/877/878/879/880/881/882/883/884/885/886/887/888/889/890/891/892/893/894/895/896/897/898/899/900/901/902/903/904/905/906/907/908/909/910/911/912/913/914/915/916/917/918/919/920/921/922/923/924/925/926/927/928/929/930/931/932/933/934/935/936/937/938/939/940/941/942/943/944/945/946/947/948/949/950/951/952/953/954/955/956/957/958/959/960/961/962/963/964/965/966/967/968/969/970/971/972/973/974/975/976/977/978/979/980/981/982/983/984/985/986/987/988/989/990/991/992/993/994/995/996/997/998/999/1000/1001/1002/1003/1004/1005/1006/1007/1008/1009/1010/1011/1012/1013/1014/1015/1016/1017/1018/1019/1020/1021/1022/1023/1024/1025/1026/1027/1028/1029/1030/1031/1032/1033/1034/1035/1036/1037/1038/1039/1040/1041/1042/1043/1044/1045/1046/1047/1048/1049/1050/1051/1052/1053/1054/1055/1056/1057/1058/1059/1060/1061/1062/1063/1064/1065/1066/1067/1068/1069/1070/1071/1072/1073/1074/1075/1076/1077/1078/1079/1080/1081/1082/1083/1084/1085/1086/1087/1088/1089/1090/1091/1092/1093/1094/1095/1096/1097/1098/1099/1100/1101/1102/1103/1104/1105/1106/1107/1108/1109/1110/1111/1112/1113/1114/1115/1116/1117/1118/1119/1120/1121/1122/1123/1124/1125/1126/1127/1128/1129/1130/1131/1132/1133/1134/1135/1136/1137/1138/1139/1140/1141/1142/1143/1144/1145/1146/1147/1148/1149/1150/1151/1152/1153/1154/1155/1156/1157/1158/1159/1160/1161/1162/1163/1164/1165/1166/1167/1168/1169/1170/1171/1172/1173/1174/1175/1176/1177/1178/1179/1180/1181/1182/1183/1184/1185/1186/1187/1188/1189/1190/1191/1192/1193/1194/1195/1196/1197/1198/1199/1200/1201/1202/1203/1204/1205/1206/1207/1208/1209/1210/1211/1212/1213/1214/1215/1216/1217/1218/1219/1220/1221/1222/1223/1224/1225/1226/1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TYPICAL SECOND, FOURTH, SIXTH TENTH & TWELFTH FLOOR PLAN [SCALE 1:100]



REFUGE AREA CALCULATIONS

AREA OF BLOCK = 13.87 X 11.43  
= 158.53 SQ.M.

- 1. 3.20 X 1.68 X 1 = 5.38 SQ.M.
- 2. 3.20 X 1.98 X 1 = 6.34 SQ.M.
- 3. 1.75 X 3.51 X 1 = 6.14 SQ.M.
- 4. 2.06 X 1.22 X 1 = 2.51 SQ.M.
- 5. 0.15 X 4.64 X 1 = 0.70 SQ.M.
- 6. 0.30 X 1.22 X 1 = 0.37 SQ.M.
- 7. 2.90 X 2.90 X 1 = 8.41 SQ.M.
- 8. 4.42 X 2.74 X 1 = 12.11 SQ.M.
- 9. 2.74 X 3.96 X 1 = 10.85 SQ.M.

TOTAL = 52.81 SQ.M.  
NET AREA = 158.53 - 52.81  
= 105.72 SQ.M.

TERRACE AREA CALCULATIONS

FOR TYPICAL 1ST, 3RD, 5TH, 7TH, 9TH, 11TH FLOOR

- (A) 2.06 X 2.29 X 2 NOS. = 9.43 SQ.M.
- (B) 1.83 X 3.66 X 2 NOS. = 13.39 SQ.M.
- (C) 2.44 X 2.29 X 2 NOS. = 11.17 SQ.M.

39.99 SQ.M.

FOR TYPICAL 2nd, 4th, 6th, 10th & 12th FLOOR

- (D) 3.66 X 2.74 X 4 NOS. = 40.11 SQ.M.
- (E) 2.06 X 2.29 X 2 NOS. = 9.43 SQ.M.
- (F) 2.97 X 2.29 X 2 NOS. = 13.60 SQ.M.

63.14 SQ.M.

FOR 8th FLOOR

- (D) 3.66 X 2.74 X 3 NOS. = 30.08 SQ.M.
- (E) 2.06 X 2.29 X 1 NOS. = 4.71 SQ.M.
- (F) 2.97 X 2.29 X 2 NOS. = 13.60 SQ.M.

48.39 SQ.M.

BALCONY AREA CALCULATIONS FOR 8TH FLOOR

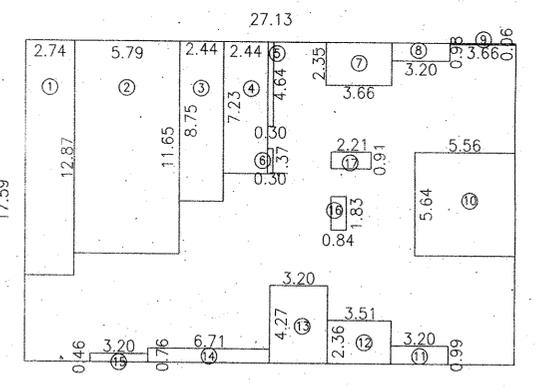
- A BALCONY AREA CALCULATIONS = (3.20X1.60)+(0.15X0.61)+(3.66X1.37) X 1 NOS  
= (5.12+0.09+5.01) X 1 NOS  
= 10.22 SQ.M.
- B BALCONY AREA CALCULATIONS = (3.20X1.60)+(0.15X0.61)+(3.51X1.37)  
= 5.12+0.09+4.80  
= 10.01 SQ.M.
- C BALCONY AREA CALCULATIONS = (3.20X1.52)+(3.20X1.52)+(1.07X0.15)  
= 4.86+4.86+0.16  
= 9.88 SQ.M.

REFUGE AREA STATEMENT

REQUIRED REFUGE AREA = 333.18 X 25%  
= 83.30 SQ.M.  
PROVIDED REFUGE AREA = 105.72 SQ.M.

Original Building plans signed by collector Pune.

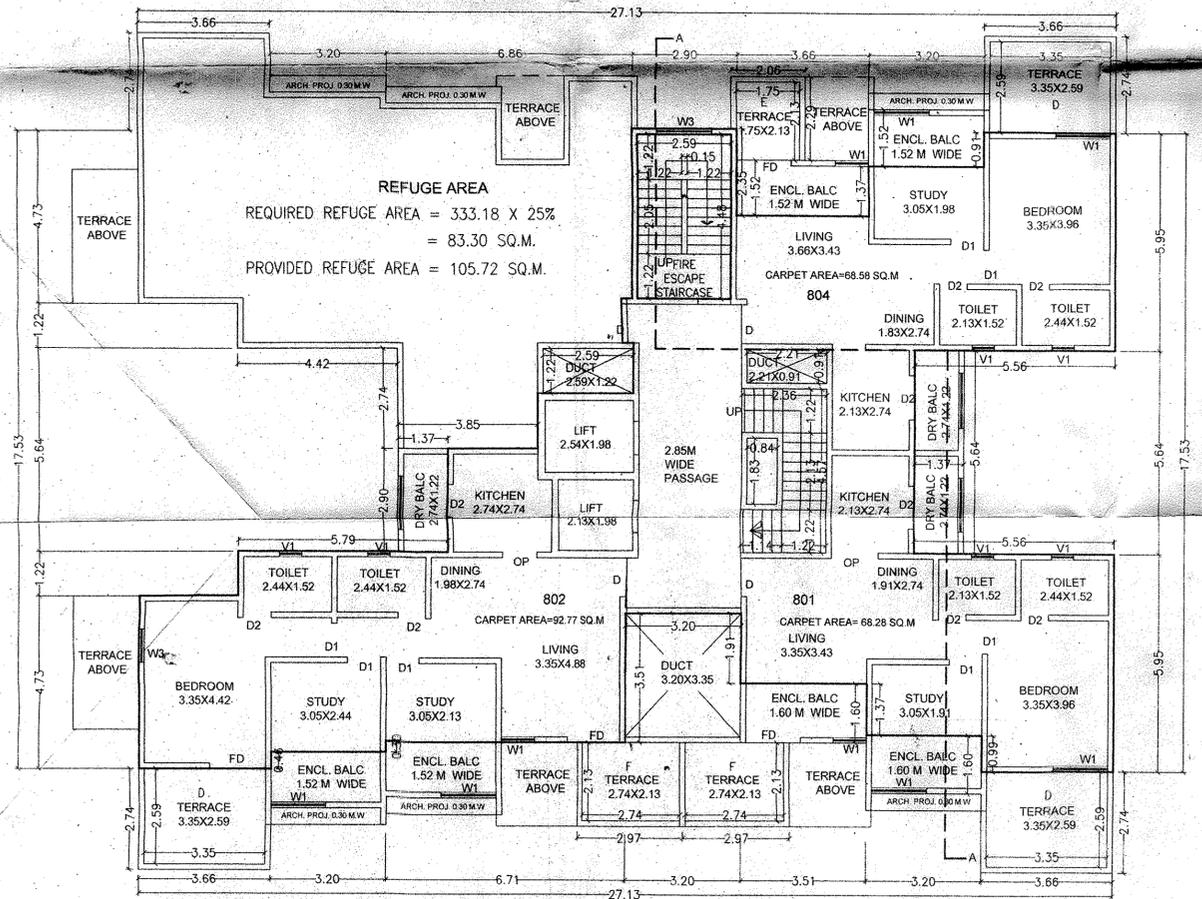
BUILT UP AREA CALCULATIONS FOR FOR 8TH FLOOR



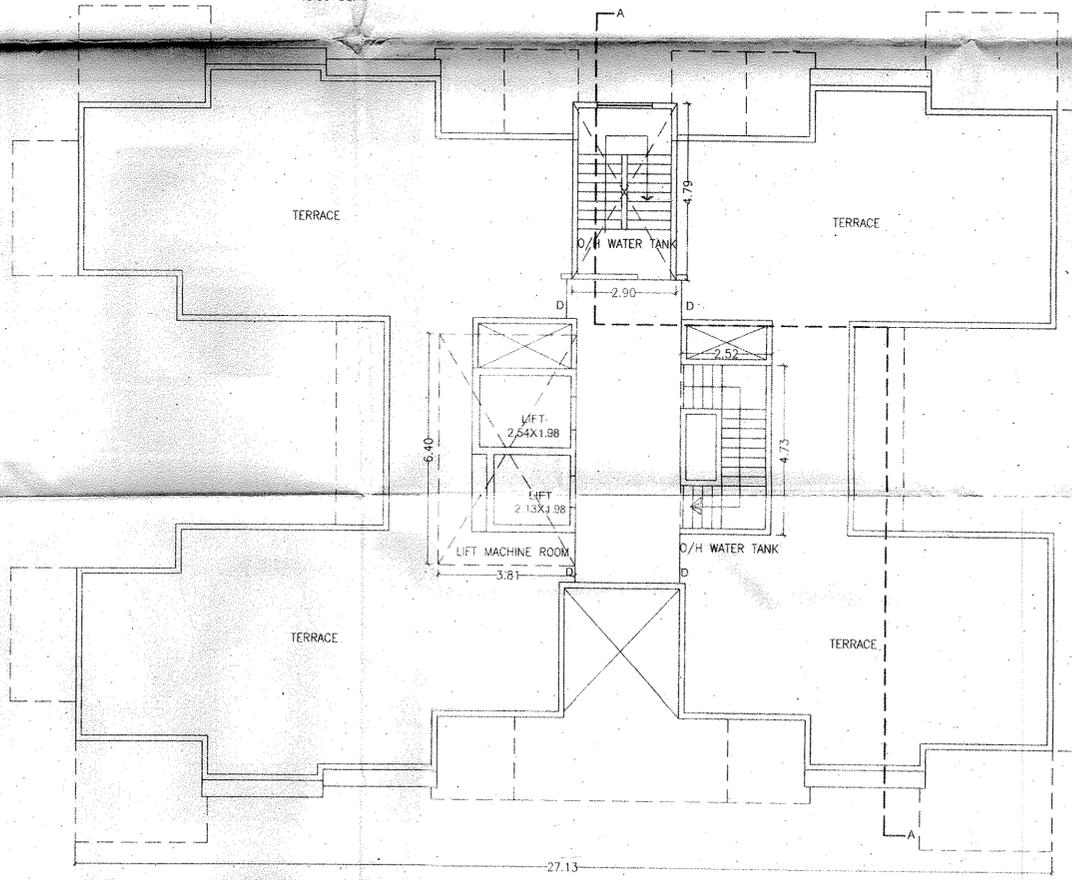
AREA OF BLOCK = 27.13 X 17.59  
= 477.21 SQ.M.

- 1. 2.74 X 12.87 X 1 = 35.26 SQ.M.
- 2. 5.79 X 11.65 X 1 = 67.45 SQ.M.
- 3. 2.44 X 8.75 X 1 = 21.35 SQ.M.
- 4. 2.44 X 7.23 X 1 = 17.64 SQ.M.
- 5. 0.30 X 4.64 X 1 = 1.39 SQ.M.
- 6. 0.30 X 1.37 X 1 = 0.41 SQ.M.
- 7. 3.66 X 2.35 X 1 = 8.60 SQ.M.
- 8. 3.20 X 0.98 X 1 = 3.14 SQ.M.
- 9. 3.66 X 0.06 X 1 = 0.22 SQ.M.
- 10. 5.56 X 5.64 X 1 = 31.36 SQ.M.
- 11. 3.20 X 0.99 X 1 = 3.17 SQ.M.
- 12. 3.51 X 2.36 X 1 = 8.28 SQ.M.
- 13. 3.20 X 4.27 X 1 = 13.66 SQ.M.
- 14. 6.71 X 0.76 X 1 = 5.10 SQ.M.
- 15. 3.20 X 0.46 X 1 = 1.47 SQ.M.
- 16. 0.84 X 1.83 X 1 = 1.54 SQ.M.
- 15. 2.21 X 0.91 X 1 = 2.01 SQ.M.

TOTAL = 222.05 SQ.M.  
NET AREA = 477.21 - 222.05



EIGHTH FLOOR PLAN [SCALE 1:100]



TERRACE FLOOR PLAN [SCALE 1:100]

Recommended for approval as amended in vide A. D. T. P. Pune's Letter No. 227/2004/111 dated 27.01.2004. Dated 8/10/2004. Assistant Director of Town Planning Pune, Br. Pune



DESCRIPTION OF PROPOSAL & PROPERTY

PROPOSED RESIDENTIAL BLDG. 'C1' AT S.NO.19/5, UNDRY, PUNE.

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NAME & SIGN. OF OWNER NAME & SIGN. OF ARCHITECT

MR. NITIN NYATI  
SHIRISH DASNURKAR  
ARCHITECT TRUE COPY

SHIRISH DASNURKAR & ASSOCIATES architects & designer  
35, LAXMIPARK COLONY, NAVI PETH, PUNE-411030.  
PH: 020-24530461/62/63 E-MAIL: dsnurkar@eth.net/asnurkar@eth.net

SCALE: 1:100  
JOB NO.: RASHMI  
DRAWN BY: 10/12/2004  
DEALT BY: COMPUTER FILE  
E ON PG: 12/MAIN/ETH02/WCS005/NO.19/5/2014/111/2004/111

No. PR / NASR 77/2004  
 Dt. 28/8/2004  
 Sanctioned as shown in plan  
 Subject to the conditions mentioned  
 in this office order No. even Dt. 28/8/2004  
 Sd/-  
 Collector-Pune



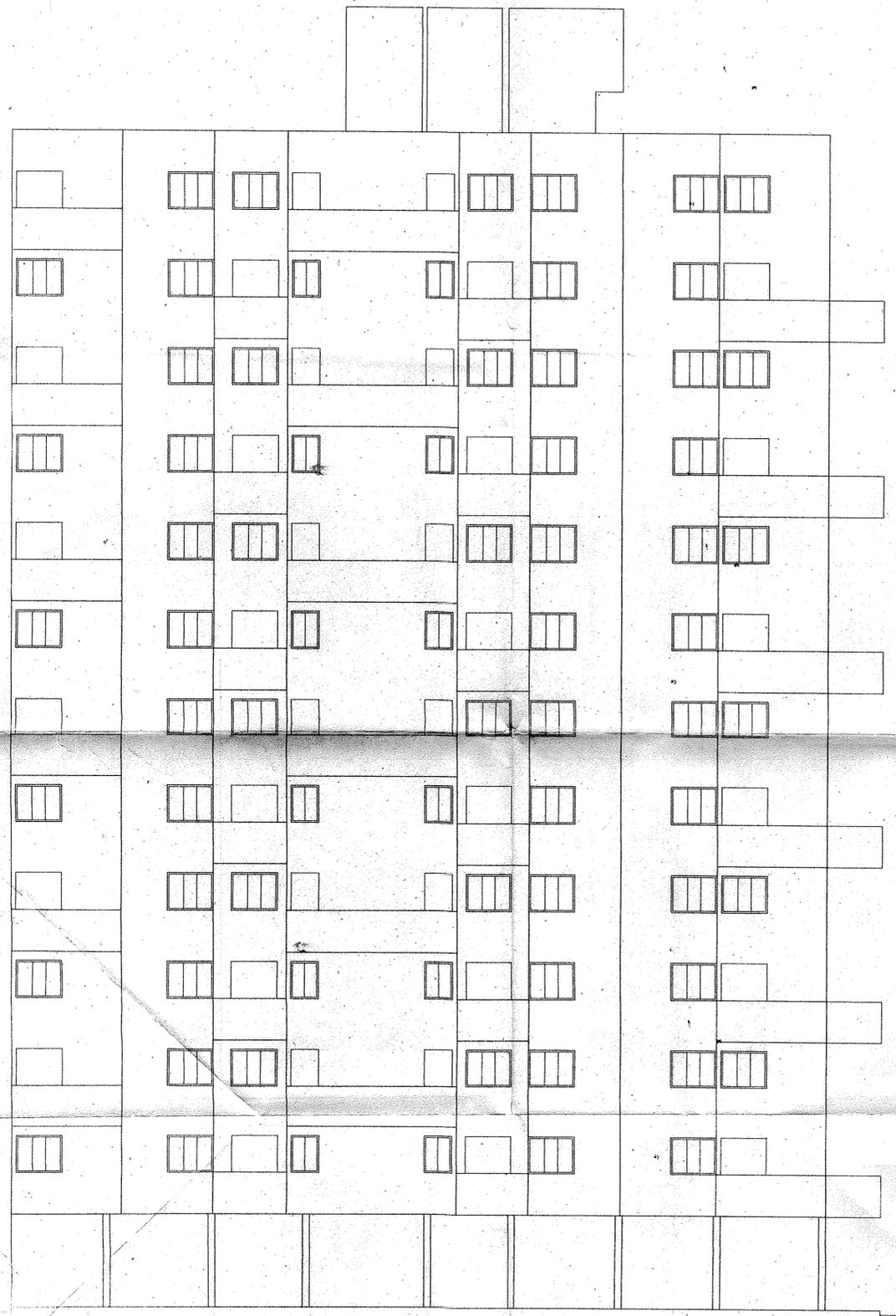
SECTION AT AA, SECTION AT BB,  
 FRONT ELEVATION

'C1' TYPE BUILDING

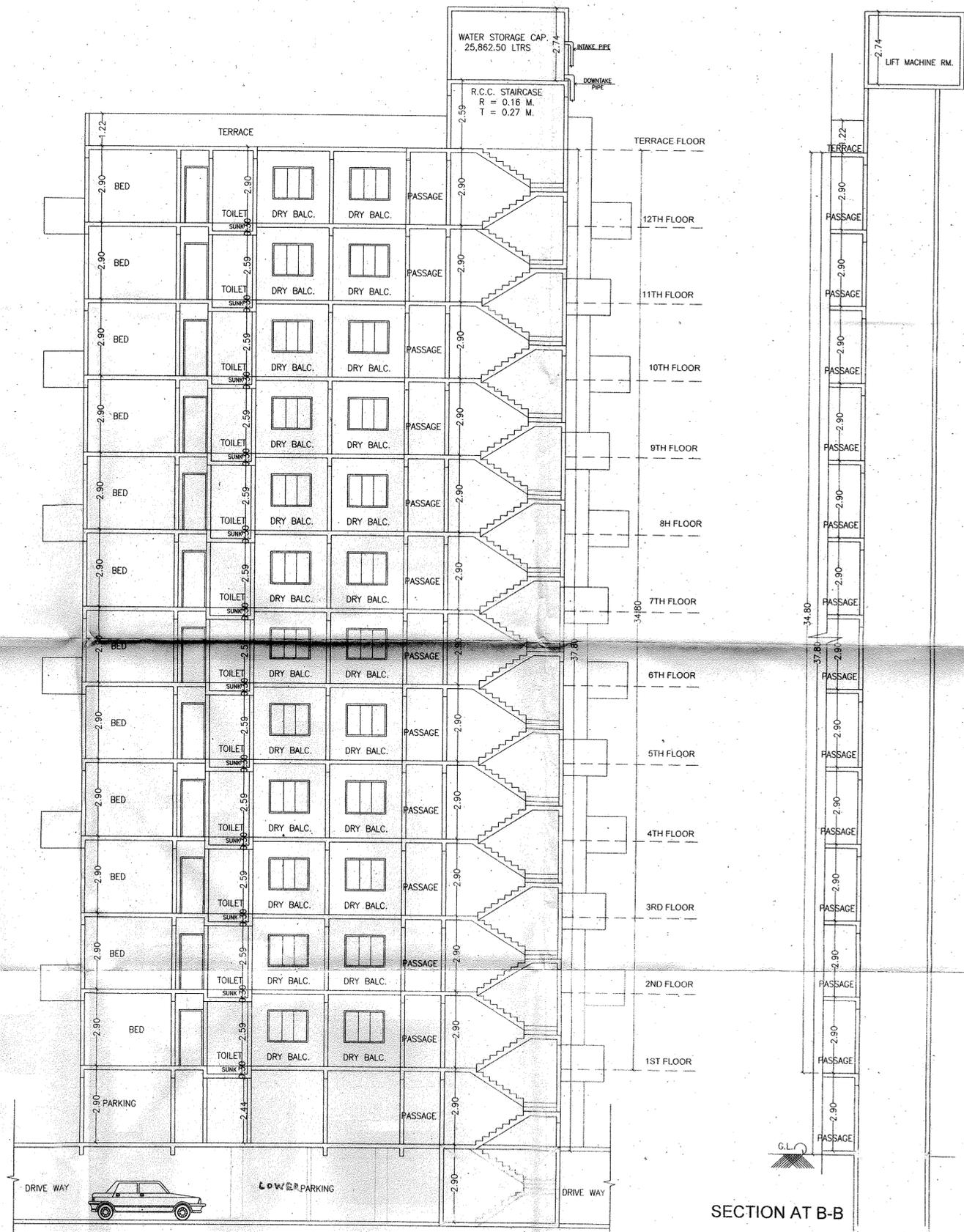
Recommended for approval as  
 amended in  
 vide A. D. T. P. Pune's Letter  
 No. 223/16/1/2004/14/28/2  
 dt. 28/6/2004  
 Dated: 8/10/2004  
 Sd/-  
 Assistant Director of  
 Town Planning Pune, Br. Pune



Original Building  
 Plans signed  
 by Collector, Pune.



FRONT ELEVATION



SECTION AT A-A

SECTION AT B-B

DESCRIPTION OF PROPOSAL & PROPERTY

PROPOSED LAYOUT OF GROUP HOUSING BLDGS. AT S.NO.19/5,  
 UNDRY, PUNE.

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NAME & SIGN. OF OWNER NAME & SIGN. OF ARCHITECT

शारदाश्रम वास्तवी नगर-अधिनियम 2004

MR. NITIN NYATI



SHIRISH DASNURKAR

SHIRISH DASNURKAR & ASSOCIATES  
 architects & designer  
 35, LAXMPARK COLONY, NAVI PETH, PUNE-411030.  
 Ph: 020-24530461/62/63 E-MAIL: dsnar@eth.net/dasnar@vsnl.net

SCALE 1:100 JOB NO. DRAWN BY DEALT BY COMPUTER FILE



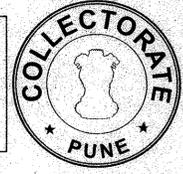
LOW RISE PARKING



LIFT WELL

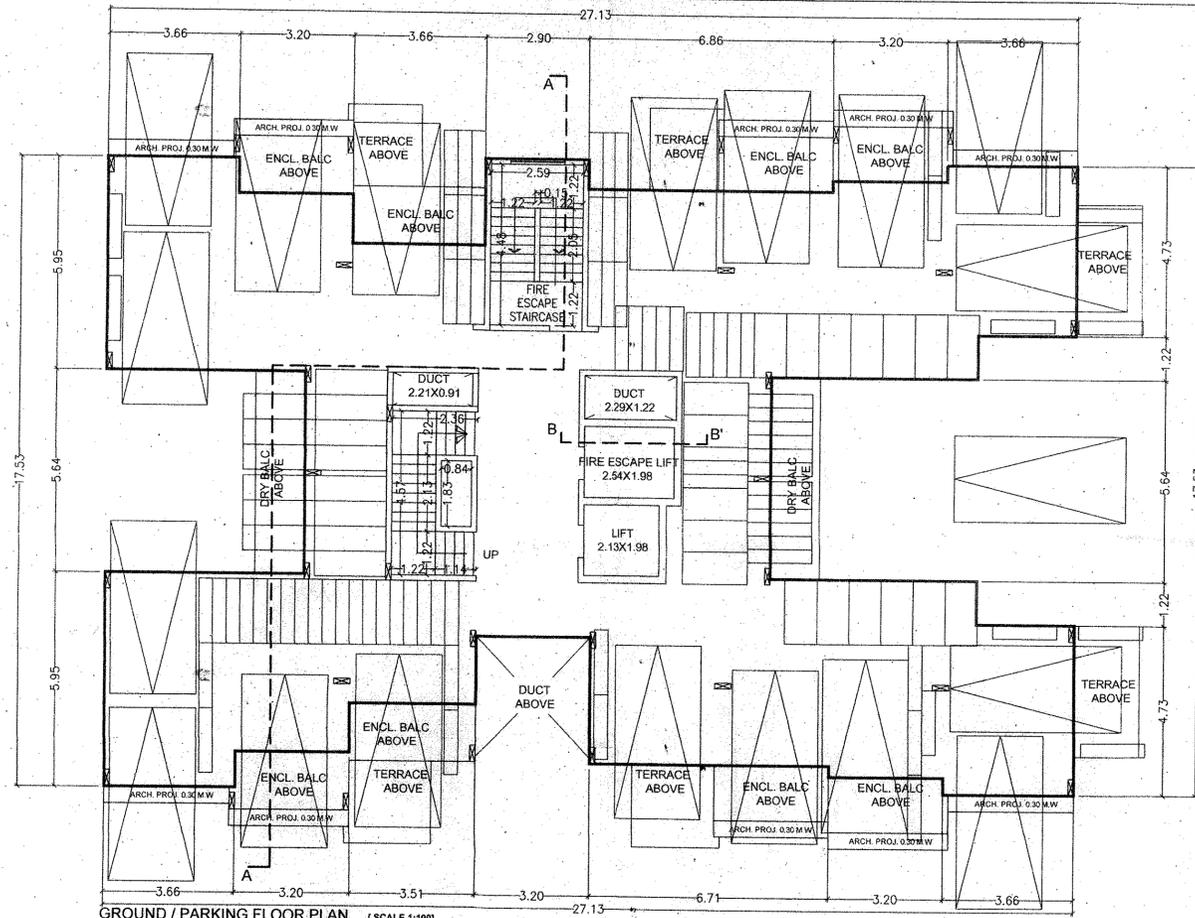


No. PRH/NASR/7/17/2004  
 Dt: 28/08/2004  
 Sanctioned as shown in plan  
 Subject to the conditions mentioned  
 in this office order No. even Dt: 28/08/2004  
 -S.R.K.-  
 Collector Pune

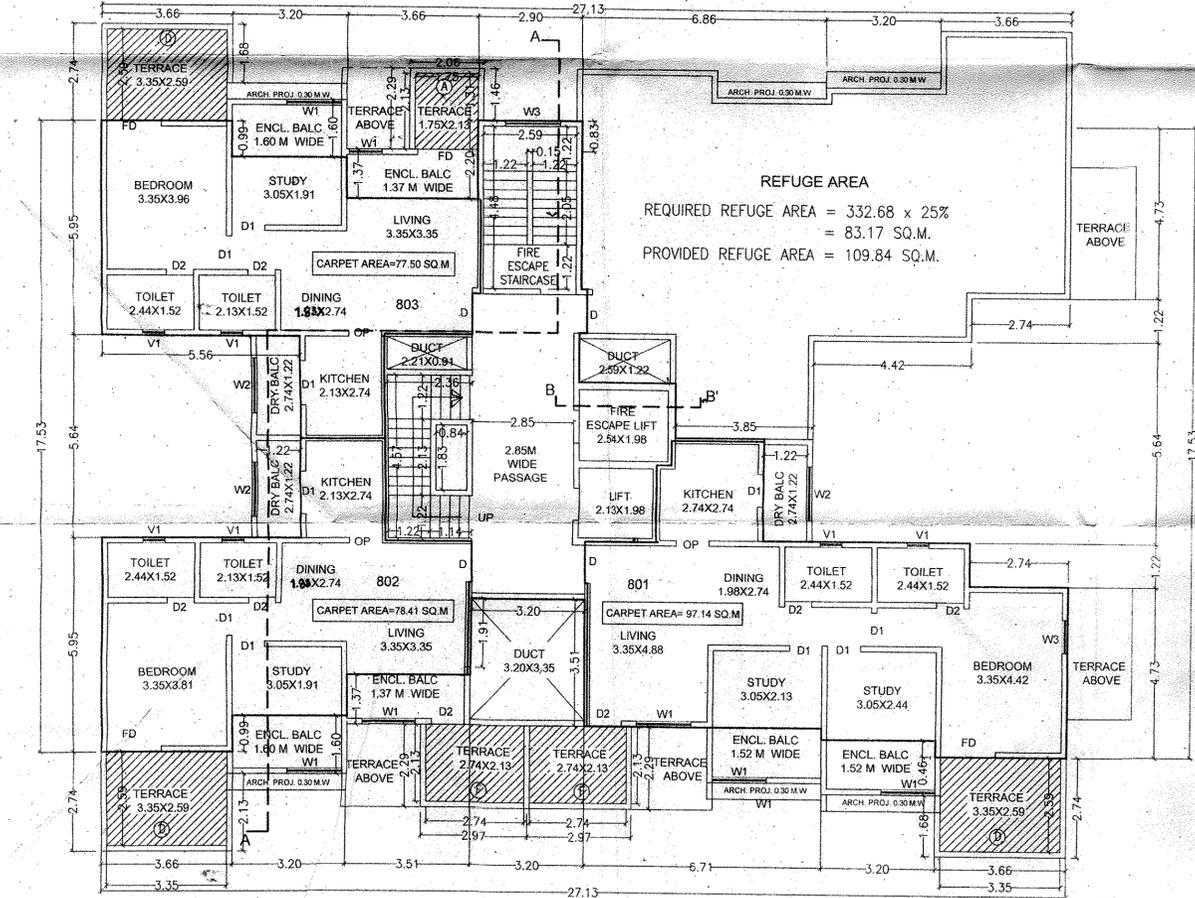


PARKING FLOOR PLAN  
 EIGHTH FLOOR PLAN  
 TERRACE FLOOR PLAN

'C2' TYPE BUILDING



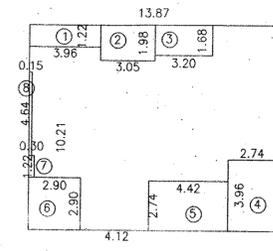
GROUND / PARKING FLOOR PLAN [SCALE 1:100]



TYPICAL EIGHTH FLOOR PLAN [SCALE 1:100]

REFUGE AREA STATEMENT

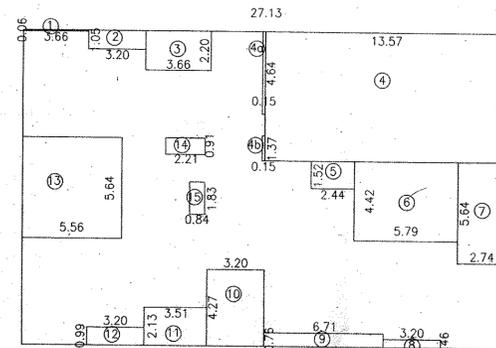
REQUIRED REFUGE AREA = 332.68 x 25%  
 = 83.17 SQ.M.  
 PROVIDED REFUGE AREA = 109.84 SQ.M.



REFUGE AREA CALCULATIONS

AREA OF BLOCK = 13.87 X 11.43  
 = 158.53 SQ.M  
 1. 3.96 X 1.22 X 1 = 4.83 SQ.M.  
 2. 3.05 X 1.98 X 1 = 6.04 SQ.M.  
 3. 3.20 X 1.68 X 1 = 5.38 SQ.M.  
 4. 2.74 X 3.96 X 1 = 10.85 SQ.M.  
 5. 4.42 X 2.74 X 1 = 12.11 SQ.M.  
 6. 2.90 X 2.90 X 1 = 8.41 SQ.M.  
 7. 0.30 X 1.22 X 1 = 0.37 SQ.M.  
 8. 0.15 X 4.64 X 1 = 0.70 SQ.M.  
 TOTAL = 48.69 SQ.M.  
 NET AREA = 158.53 - 48.69  
 = 109.84 SQ.M.

BUILT UP AREA CALCULATIONS FOR 8TH FLOOR



AREA OF BLOCK = 27.13 X 17.59  
 = 477.21 SQ.M

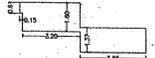
1. 3.66 X 0.06 X 1 = 0.21 SQ.M.  
 2. 3.20 X 1.05 X 1 = 3.36 SQ.M.  
 3. 3.66 X 2.20 X 1 = 8.05 SQ.M.  
 4. 13.57 X 7.23 X 1 = 98.11 SQ.M.  
 4a. 4.64 X 0.15 X 1 = 0.70 SQ.M.  
 4b. 1.37 X 0.15 X 1 = 0.21 SQ.M.  
 5. 2.44 X 1.52 X 1 = 3.71 SQ.M.  
 6. 5.79 X 4.42 X 1 = 25.59 SQ.M.  
 7. 2.74 X 5.64 X 1 = 15.45 SQ.M.  
 8. 3.20 X 0.46 X 1 = 1.47 SQ.M.  
 9. 6.71 X 0.76 X 1 = 5.09 SQ.M.  
 10. 3.20 X 4.27 X 1 = 13.66 SQ.M.  
 11. 3.51 X 2.13 X 1 = 7.48 SQ.M.  
 12. 3.20 X 0.99 X 1 = 3.17 SQ.M.  
 13. 5.56 X 5.64 X 1 = 31.36 SQ.M.  
 14. 2.21 X 0.91 X 1 = 2.01 SQ.M.  
 15. 0.84 X 1.83 X 1 = 1.54 SQ.M.  
 TOTAL = 221.27 SQ.M.  
 NET AREA = 477.21 - 221.27  
 = 255.94 SQ.M

BALCONY AREA CALCULATIONS

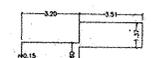
FOR 8TH FLOOR

A BALCONY AREA CALCULATIONS = (3.20X1.60)+(0.15X0.61)+(3.66X1.37) X 1 NOS  
 = (5.12+0.09+5.01) X 1 NOS  
 = 10.22 SQ.M  
 B BALCONY AREA CALCULATIONS = (3.20X1.60)+(0.15X0.61)+(3.51X1.37)  
 = 5.12+0.09+4.80  
 = 10.01 SQ.M  
 C BALCONY AREA CALCULATIONS = (3.20X1.52)+(3.20X1.52)+(1.07X0.15)  
 = 4.86+4.86+0.16  
 = 9.88 SQ.M  
 TOTAL BALCONY AREA = A TYPE BALC+B TYPE BALC  
 +C TYPE BALC  
 = 10.22+10.01+9.88  
 = 30.11 SQ.M

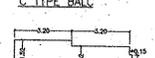
A TYPE BALC



B TYPE BALC



C TYPE BALC



Original Building Plans signed by collector, Pune.

Recommended for approval as amended in T.P. Pune's Letter No. 5571 dated 21/08/2018. Dated: 8/10/2018  
 -S.R.K.-  
 Assistant Director of Town Planning Pune, Br. Pune

DESCRIPTION OF PROPOSAL & PROPERTY

PROPOSED RESIDENTIAL BLDG. 'C2' AT S.NO.19/5, UNDR1, PUNE.

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NAME & SIGN. OF OWNER NAME & SIGN. OF ARCHITECT

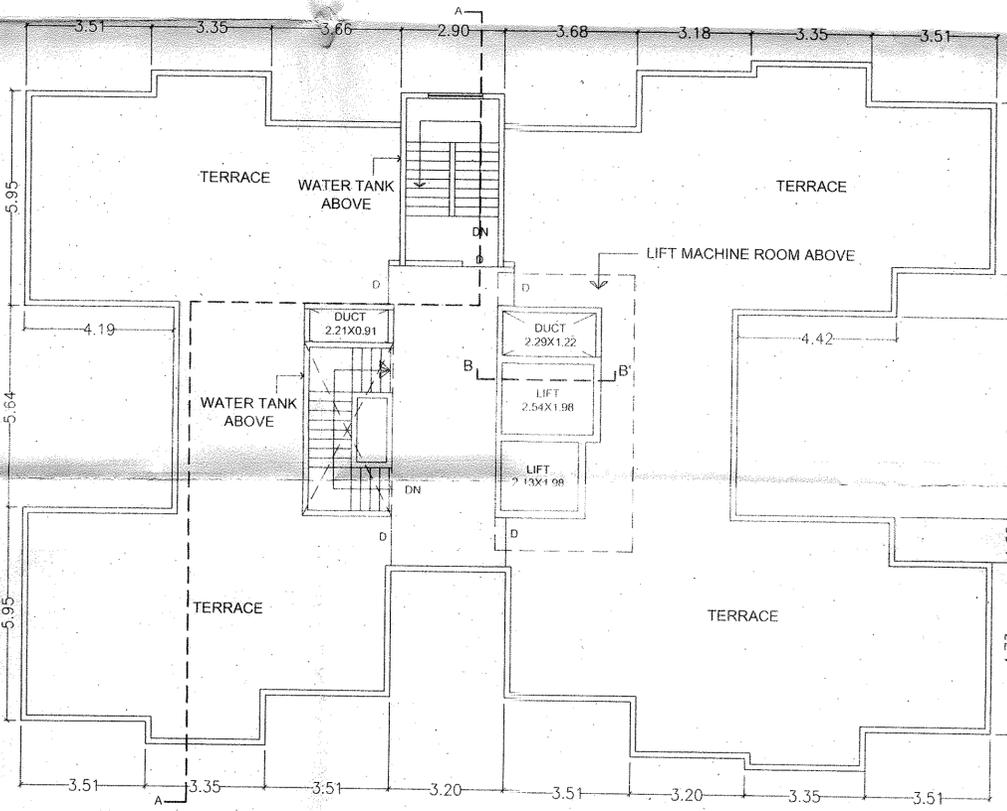
MR. NITIN NYATI SHIRISH DASNURKAR

SHIRISH DASNURKAR & ASSOCIATES architects & designer

35, LAXMPARK COLONY, NAVI PETH, PUNE-411030.  
 PH: (020)-24530461/62/63 E-MAIL: dason@eth.net/dason@vsnl.net

SCALE 1:100 JOB NO. DRAWN BY DEALTY COMPUTER FILE

TERRACE FLOOR PLAN SCALE [1:200]



शासकीय माहिती अधिकार-जपानियम 2004

No. PR / NASR 717/2004  
 Dt. 28/7/2004  
 Sanctioned as shown in plan  
 Subject to the conditions mentioned  
 in this office order No. even Dt. 28/7/2004.  
 Collector Pune



SECTION AT AA, SECTION AT BB,  
 FRONT ELEVATION

'C2' TYPE BUILDING

Recommended for approval as  
 amended in  
 vide A. D. T. P. Pune's Letter  
 No. 2004/132 Dt. 28/7/2004  
 Dated 8/02/2004  
 Assistant Director of  
 Town Planning Pune, Br. Pune



Original Building Plans  
 signed By collector, Pune.

DESCRIPTION OF PROPOSAL & PROPERTY

PROPOSED LAYOUT OF GROUP HOUSING BLDGS. AT S.NO.19/5,  
 UNDRI, PUNE.

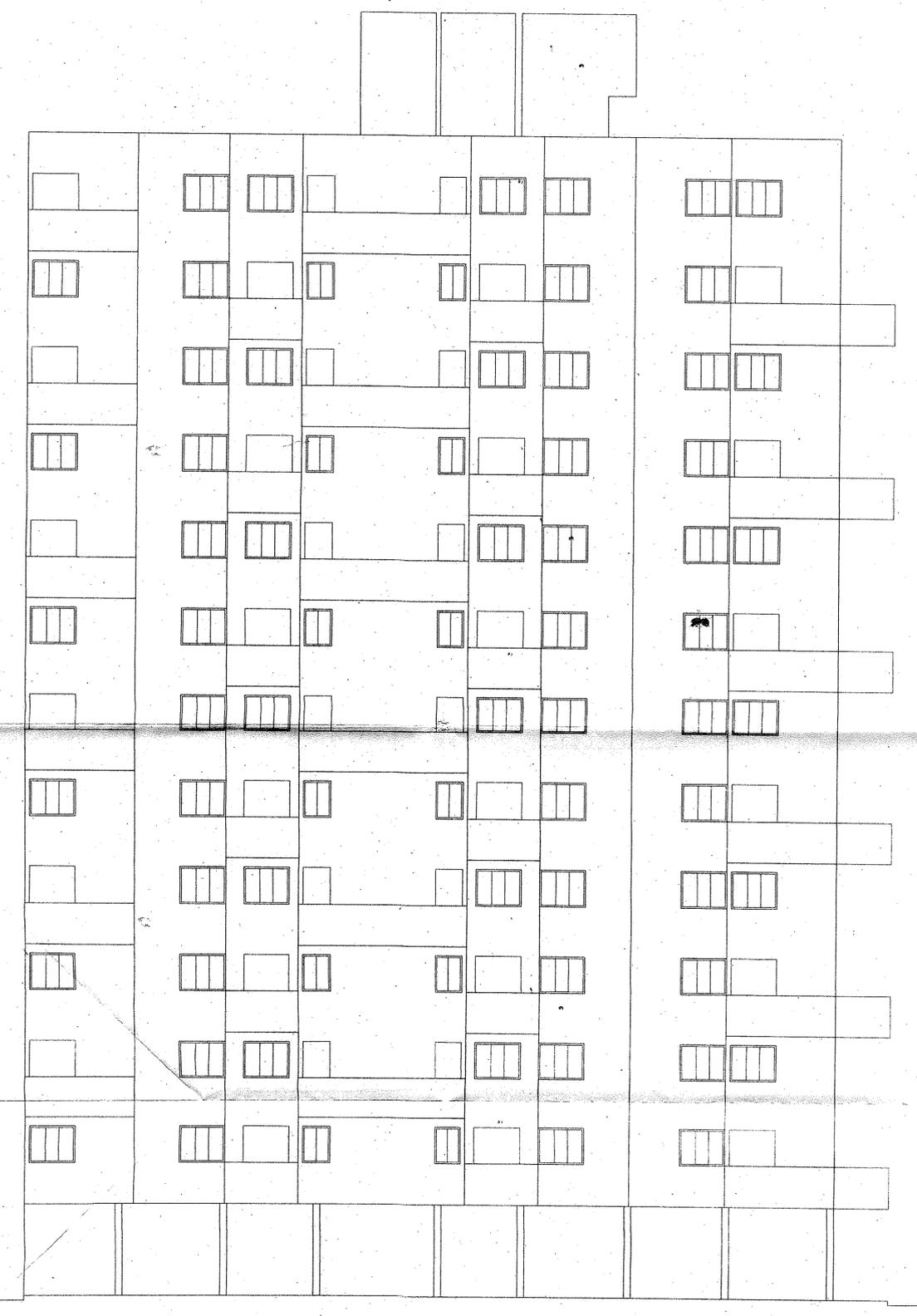
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 Architect do not bear any responsibility of documents authenticity and validity, accompanying this drawing.*

NAME & SIGN. OF OWNER NAME & SIGN. OF ARCHITECT

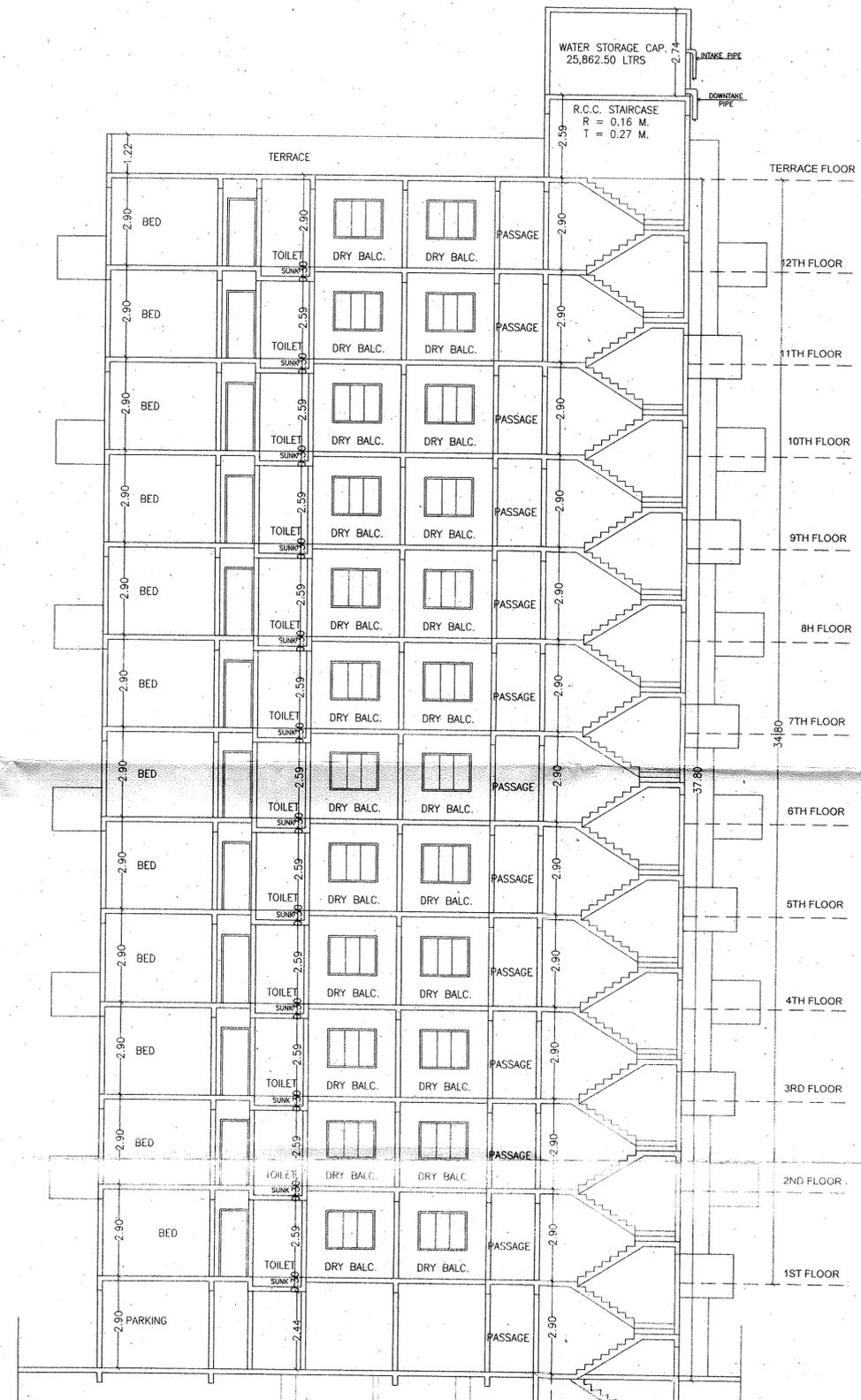
MR. NITIN NYATI SHIRISH DASNURKAR

SHIRISH DASNURKAR & ASSOCIATES  
 architects & designer  
 35, LAXMIPARK COLONY, NAVI PETH, PUNE-411030.  
 PH: 020-24530461/62/63 E-MAIL: dason@eth.net/asson@eth.net

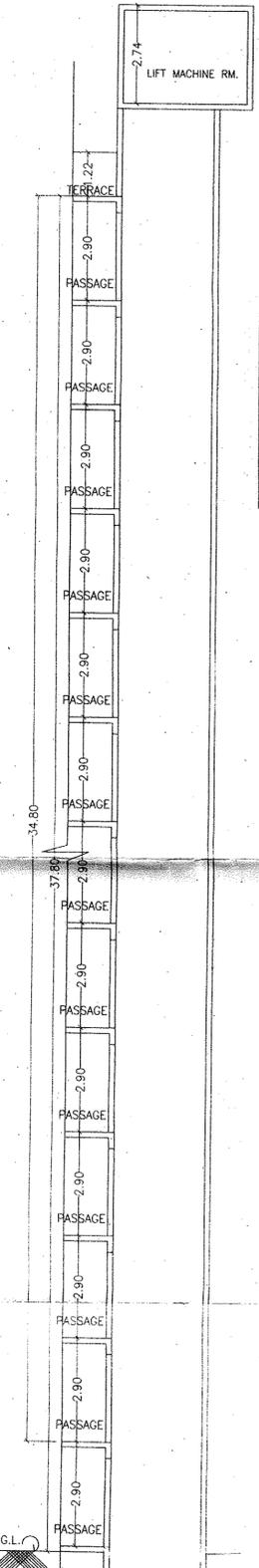
SCALE 1:100 JOB NO. DRAWN BY DEALY BY COMPUTER FILE



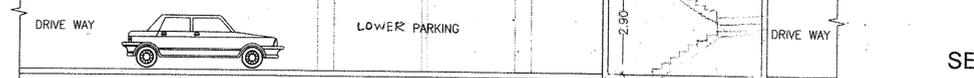
FRONT ELEVATION



SECTION AT A-A



SECTION AT B-B



DRIVE WAY LOWER PARKING DRIVE WAY



N



Original Building Plans signed by collector, Pune.

No. PR / NASR / 717/2004  
Dt. 25/8/2004  
Sanctioned as shown in plan  
Subject to the conditions mentioned  
in this office order No. even Dt. 25/8/2004  
Sd/-  
Collector Pune



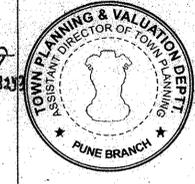
**BUILDING 'D'**  
2ND, 4TH, 6TH, 10TH, 12TH FLOOR PLAN  
8TH FLOOR PLAN  
TERRACE FLOOR PLAN

**REFUGE AREA CALCULATIONS**

- 1. 3.51 X 4.73 X 2 = 33.20 SQ.M.
  - 2. 3.51 X 6.40 X 2 = 44.92 SQ.M.
  - 3. 4.27 X 5.03 X 1 = 21.48 SQ.M.
- TOTAL = 99.60 SQ.M.

REQUIRED REFUGE AREA = 274.63 x 25%  
= 68.66 SQ.M.  
PROVIDED REFUGE AREA = 99.60 SQ.M.

Recommended for approval as amended in vide A. D. T. P. Pune's Letter No. 228/कां/एच/ए/सी/1/1/1/2013 dated 8/10/2013  
Sd/-  
Assistant Director of Town Planning Pune, Br. Pune



**DESCRIPTION OF PROPOSAL & PROPERTY**

PROPOSED RESIDENTIAL BUILDING 'D' AT S.NO. 19/5, UNDRY, PUNE FOR NYATI GROUP.

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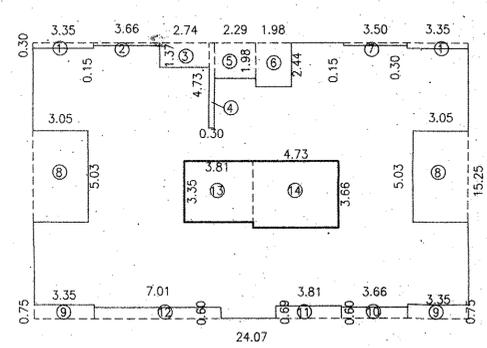
NAME & SIGN. OF OWNER NAME & SIGN. OF ARCHITECT

SHIRISH DASNURKAR ARCHITECTS & DESIGNER  
TRUE COPY

SHIRISH DASNURKAR & ASSOCIATES architects & designer  
35, LAXMIPARK COLONY, NAVI PETH, PUNE-411030.  
PR: 020-24530461/02/03 E-MAIL: dsnurkar@shirishdasnurkar.com

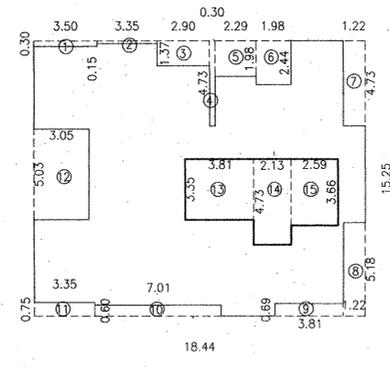
NORTH  
SCALE 1:100  
JOB NO. SUPRIYA  
DRAWN BY 10/12/2013  
DEALT BY ANS  
COMPUTER FILE  
E ON PC:17/NYATI/2004/NO.19/5/2013/DEC.2013/D. BLOCK

**TYPICAL AREA KEY PLAN FOR 1ST, 2ND, 3RD, 4TH, 5TH, 6TH, 7TH, 8TH, 9TH, 11TH & 12TH FLOOR**

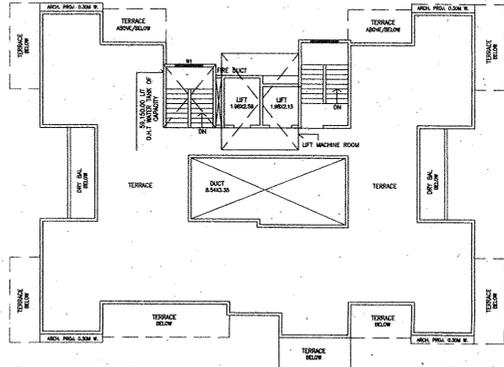


AREA OF BLOCK = 24.07 X 15.25  
= 367.07 SQ.M.  
DEDUCTIONS :-  
1. 3.35 X 0.30 X 2 = 2.01 SQ.M.  
2. 3.66 X 0.15 X 1 = 0.55 SQ.M.  
3. 2.74 X 1.37 X 1 = 3.75 SQ.M.  
4. 0.30 X 4.73 X 1 = 1.42 SQ.M.  
5. 2.29 X 1.98 X 1 = 4.53 SQ.M.  
6. 1.98 X 2.44 X 1 = 4.83 SQ.M.  
7. 3.50 X 0.15 X 1 = 0.53 SQ.M.  
8. 3.05 X 5.03 X 2 = 30.68 SQ.M.  
9. 3.35 X 0.75 X 2 = 5.03 SQ.M.  
10. 3.66 X 0.60 X 1 = 2.20 SQ.M.  
11. 3.81 X 0.69 X 1 = 2.63 SQ.M.  
12. 7.01 X 0.60 X 1 = 4.21 SQ.M.  
13. 3.81 X 3.35 X 1 = 12.76 SQ.M.  
14. 4.73 X 3.66 X 1 = 17.31 SQ.M.  
TOTAL = 92.44 SQ.M.  
NET AREA OF BLOCK = 367.07 - 92.44  
= 274.63 SQ.M.

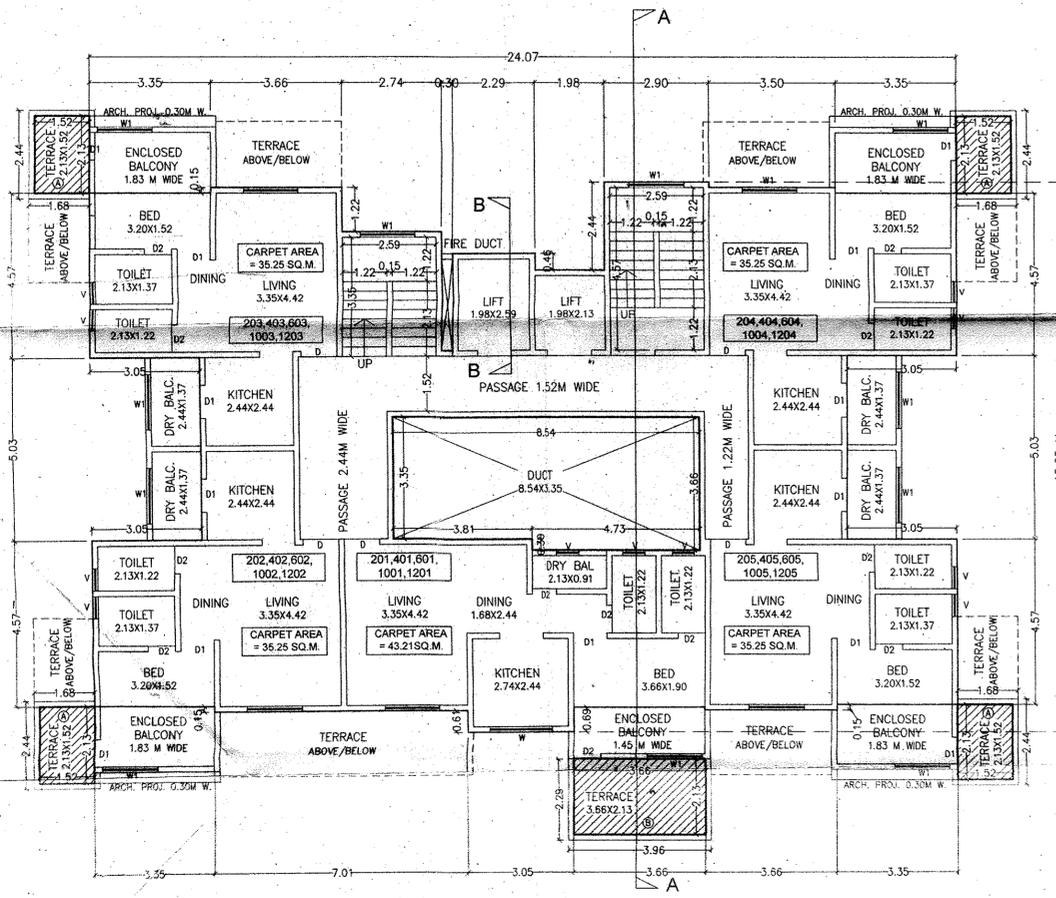
**AREA KEY PLAN FOR 8TH FLOOR**



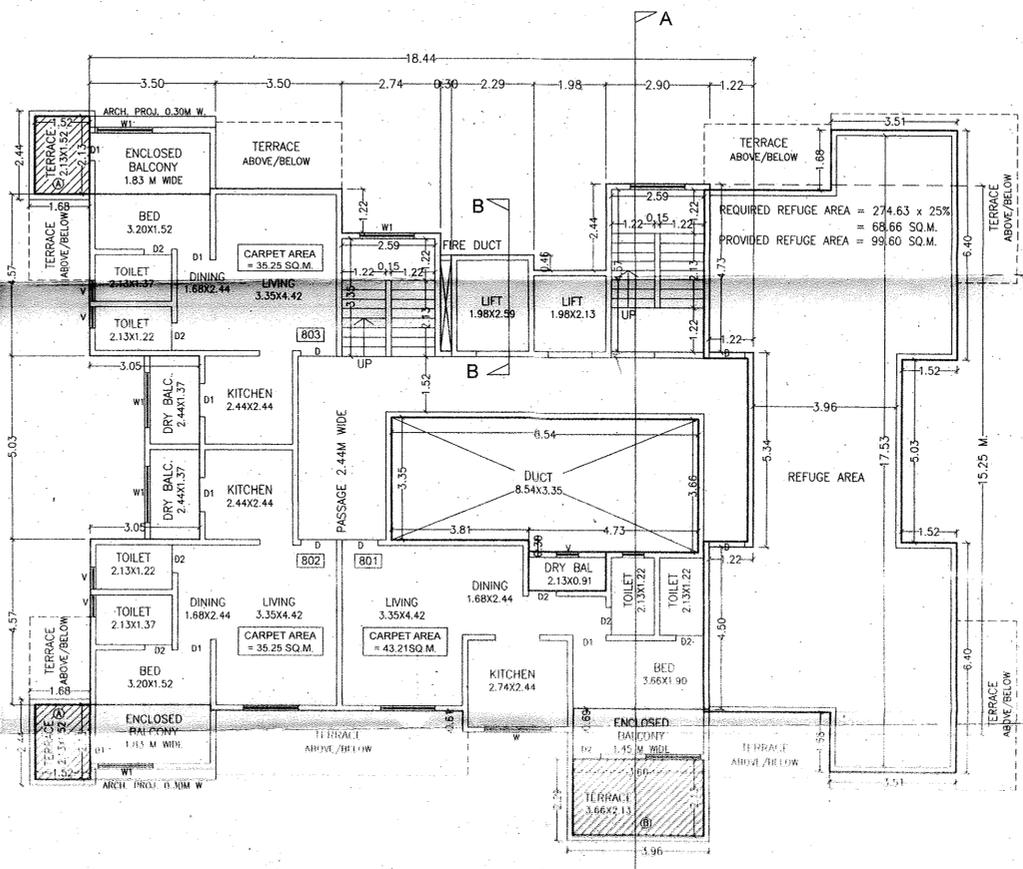
AREA OF BLOCK = 18.44 X 15.25  
= 281.21 SQ.M.  
DEDUCTIONS :-  
1. 3.50 X 0.30 X 1 = 1.05 SQ.M.  
2. 3.35 X 0.15 X 1 = 0.50 SQ.M.  
3. 2.90 X 1.37 X 1 = 3.97 SQ.M.  
4. 0.30 X 4.73 X 1 = 1.42 SQ.M.  
5. 2.29 X 1.98 X 1 = 4.53 SQ.M.  
6. 1.98 X 2.44 X 1 = 4.83 SQ.M.  
7. 1.22 X 4.73 X 1 = 5.77 SQ.M.  
8. 1.22 X 5.18 X 1 = 6.32 SQ.M.  
9. 3.81 X 0.69 X 1 = 2.63 SQ.M.  
10. 7.01 X 0.60 X 1 = 4.20 SQ.M.  
11. 3.35 X 0.75 X 1 = 2.51 SQ.M.  
12. 3.05 X 5.03 X 1 = 15.34 SQ.M.  
13. 3.81 X 3.35 X 1 = 12.76 SQ.M.  
14. 2.13 X 4.73 X 1 = 10.07 SQ.M.  
15. 2.59 X 3.66 X 1 = 9.48 SQ.M.  
TOTAL = 85.38 SQ.M.  
NET AREA OF BLOCK = 281.21 - 85.38  
= 195.83 SQ.M.



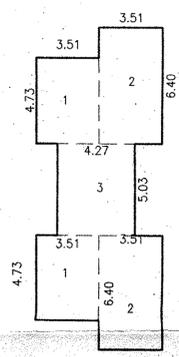
TERRACE FLOOR PLAN



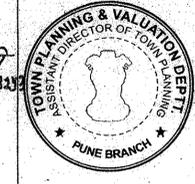
TYPICAL 2ND, 4TH, 6TH, 10TH, 12TH FLOOR PLAN



8TH FLOOR PLAN



Recommended for approval as amended in vide A. D. T. P. Pune's Letter No. 228/कां/एच/ए/सी/1/1/1/2013 dated 8/10/2013  
Sd/-  
Assistant Director of Town Planning Pune, Br. Pune



**DESCRIPTION OF PROPOSAL & PROPERTY**

PROPOSED RESIDENTIAL BUILDING 'D' AT S.NO. 19/5, UNDRY, PUNE FOR NYATI GROUP.

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NAME & SIGN. OF OWNER NAME & SIGN. OF ARCHITECT

SHIRISH DASNURKAR ARCHITECTS & DESIGNER  
TRUE COPY

SHIRISH DASNURKAR & ASSOCIATES architects & designer  
35, LAXMIPARK COLONY, NAVI PETH, PUNE-411030.  
PR: 020-24530461/02/03 E-MAIL: dsnurkar@shirishdasnurkar.com

NORTH  
SCALE 1:100  
JOB NO. SUPRIYA  
DRAWN BY 10/12/2013  
DEALT BY ANS  
COMPUTER FILE  
E ON PC:17/NYATI/2004/NO.19/5/2013/DEC.2013/D. BLOCK



**ANNEXURE-A-2****BEFORE THE NATIONAL GREEN TRIBUNAL  
(WESTERN ZONE) BENCH, PUNE****APPLICATION No.184/2015 (WZ)  
[M.A. No.77/2016, M.A. No.194/2016, M.A.  
No.186/2016]****CORAM:****HON'BLE DR. JUSTICE JAWAD RAHIM  
(JUDICIAL MEMBER)****HON'BLE DR. AJAY A.DESHPANDE  
(EXPERT MEMBER)****In the Matter of:****Mr. Tanaji Balasaheb Gambhire**Age : Adult, Occupation : Service  
R/o. Flat No.16, CTS-296, Laxmi  
Apartment, Near Shivaji  
Maratha High School, White  
House Lane, Shukrawar Peth,  
Pune - 411 002.**.....APPLICANT****VERSUS****1. The Union of India,**Through the Ministry of Environment & Forest,  
Government of India,  
Paryavaran Bhawan, CGO Complex,  
Lodhi Road, New Delhi-110 003.**2. The Principal Secretary,  
Environment Department,**Government of Maharashtra,  
15<sup>th</sup> Floor, New Administrative Building,  
Mantralaya, Mumbai - 400 032.**3. State Level Environment Impact  
Assessment Authority**Through Member Secretary  
15<sup>th</sup> Floor, New Administrative Building  
Mantralaya, Mumbai - 400 032.**TRUE COPY**

**4. Maharashtra Pollution Control Board**

Through its Member Secretary,  
Kalptaru Point, 3<sup>rd</sup> Floor, Near Sion Circle,  
Opp. Cine Planet Cinema, Sion (E),  
Mumbai.

**5. Maharashtra Pollution Control Board**

Through its Regional Officer, SRO-1  
Jog Centre, 3<sup>rd</sup> Floor, Mumbai-Pune Road,  
Wakadewadi, Pune – 411 003.

**6. Pune Municipal Commissioner**

PMC Building, Shivajinagar,  
Pune – 411 005.

**7. City Engineer**

Pune Municipal Corporation,  
PMC Building, Shivajinagar,  
Pune – 411 005.

**8. District Collector – Pune**

President – District Environment Committee,  
Pune.

**9. M/s. Goel Ganga Developers India Pvt. Ltd.**

3<sup>rd</sup> Floor, San Mahu Complex,  
Opp. Poona Club, 5, Bund Garden,  
Pune – 411 001.

.....**RESPONDENTS**

**Counsel for Applicant(s):**

**Mr. Shriram P. Pingle, Advocate**

**Counsel for Respondent(s):**

**Mr. S.S. Sanyal, Advocate a/w Mrs. Supriya Dangare,  
Advocate for Respondent Nos.4 and 5**

**Mr. P.S. Suryavanshi, Adv. for Respondent Nos.6 & 7**

**Mr. S.V. Mishra, Senior Advocate a/w Mr. Sachin S.  
Bhalerao, Advocate for Respondent No.9**

---

**Date: 27<sup>th</sup> September, 2016**

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**ORDER/JUDGMENT**

1. This Application, numbered as 184/2015 invoking jurisdiction of this Tribunal, is under Section 14 and 15 of the National Green Tribunal Act, 2010

(for short 'NGT Act'). The Applicant Tanaji Balasaheb Gambhire has sought certain directions against the 9<sup>th</sup> Respondent – Project Proponent (PP) M/s Goel Ganga Developers India Private Limited who is said to have envisaged construction venture to construct a commercial and residential complex.

**2.** In the Application, the Applicant has sought following directions:

- A. Direct the Respondents to demolish the illegal structures at the site in question and restore the area to its original position.
- B. Direct the State Level Impact Assessment Authority and the Maharashtra State Pollution Control Board to initiate appropriate action against the project proponent for violation of the provisions of EIA notification, 2006 and other applicable laws.
- C. Direct Respondent No.2 to take appropriate action against the State Level Impact Assessment Authority for granting environment clearance in violation of the provisions of EIA Notification, 2006.
- D. Direct the State Level Impact Assessment Authority and the Maharashtra State Pollution Control Board to disclose all such projects which have been granted post facto clearance or have been constructed without taking prior environment clearance.
- E. Having regard to the damage to the public health, property and environment, principles of sustainable development and polluter pays principles and direct the Respondent No.9 to

deposit a heavy amount of compensation to the environment relief fund.

**3.** In support of the reliefs so sought, he has averred factual and legal aspects to which we shall refer briefly now.

a. The 9<sup>th</sup> Respondent obtained Environmental Clearance (for short 'EC') for its project at Survery Nos.35 to 40 in Village Vadgaon Budruk, Sinhagad Road, Pune. The project conceived and approved by said EC is to construct 12 buildings with stilt, basement plus 11 floors vertically for 552 flats, 50 shops and 34 offices. The total plot area is 79,100 sq.mts while the total built-up area is to 57,658.42 sq.mtrs.

b. The EC was obtained by the 9<sup>th</sup> Respondent-PP on 4<sup>th</sup> April, 2008 and thereafter, PP has commenced construction activity. The Applicant has not brought in question the EC dated 4<sup>th</sup> April, 2008 but has other serious grievances.

c. The Applicant would contend that after the project of 9<sup>th</sup> Respondent-PP has sufficiently progressed, the Member Secretray of Maharashtra Pollution Control Board (MPCB) caused inspection of the construction activity on 31<sup>st</sup> August, 2015 and thereafter, granted a personal hearing to the Respondent No.9-PP in respect of MPCB findings. The Minutes of the Meeting held on 31<sup>st</sup> August, 2015 show that the Regional Officer of the MPCB had reported non-compliance of the terms on which EC was granted to the 9<sup>th</sup> Respondent. In that, there is clear statement that though the EC was for construction of 12 buildings but the Respondent No.9-PP has built 15 buildings and increased

number of flats from 552 to 738 as also the number of shops was increased from 84 to 111.

d. The Minutes of the Meeting further show that the representative of PP had accepted the non-compliance to the conditions of EC in increasing the construction of number of buildings, number of flats, offices and shops.

e. The Minutes of the Meeting would also record that consent for additional building of Ground plus 30 Floor was not taken though the civil work of its construction was in progress.

**4.** The Applicant relies on such material information recorded in the Meeting to contend that there was clear finding on inspection by the competent authority i.e. MPCB that the Respondent No.9-PP had not complied with the conditions of the EC granted. Reference is also made to the fact that MPCB having noticed such non-compliance had directed the Respondent No.9-PP to voluntarily stop construction activity till modified EC is obtained. Consequently, having noticed deliberate violation of the conditions of EC and non-compliance of its voluntary closure directions, MPCB had issued direction not only for stopping further construction activity but directed disconnection of electricity to the project by its Order dated 30<sup>th</sup> September, 2015.

**5.** The Applicant further points out that despite such lapses on the part of the Respondent No.9-PP, it

managed to get the Occupancy Certificate for part of the project which is complete and has virtually occupied it. This, according to the Applicant, is in total violation of the legal mandate that mandatory consent of operate should be obtained before the project activity is undertaken.

**6.** Amongst other issues raised he points out to the fact that building plan for construction activity of the project was revised by Respondent No.9-PP nine times. This, according to him, illustrates the significant modification in the scale of construction in terms of area, plinth area and floor heights, besides change in lay-out scheme. Referring to condition No.5 of the EC. It is alleged that the scope of the project in terms of built up area has changed. Moreover, the project lay-out as well as number of buildings also has substantially changed. Thus, the Respondent No.9-PP was obliged to obtain modified EC before undertaking such activity which is in total deviation to the original EC. Citing numerous statistical data, the Applicant would further claim that the construction activity carried out by the Respondent-9 PP has grossly exceeded the scope of the project as approved by EC in terms of built up area and configuration of project.

**7.** Based on these facts, he would contend that the project activity is not as per the proposal which

was considered and approved by Ministry of Environment and Forest while granting the original EC on 4<sup>th</sup> April, 2008 and therefore there is gross violation of EC condition.

**8.** The other contention urged by the Applicant is to indicate failure on the part of the Statutory Authorities like Pune Municipal Corporation (PMC), State Level Environment Impact Assessment Authority (SEIAA), Department of Environment, State of Maharashtra (DoE) in discharge of its statutory functions. In this regard, he contends that Pune Municipal Corporation (for short 'PMC') was well aware of such violations but granted Completion Certificate. Reference was made to page-36 of the Rejoinder where it is stated that violation of non-compliance of EC was well within the knowledge of the concerned officer of PMC. He then refers to the action taken by Deputy Engineer of Building Construction Department of PMC who having realised the blanket violation of EC then, had directed Respondent No.9-PP on 20.2.2015 not to continue construction activity without obtaining amended EC. It is alleged, despite such clear direction of the Deputy Engineer, the Respondent No.9-PP continued construction as per its revised approved lay-out by PMC which depended totally on the validity of the EC. Thus, he contends

that grant of revised lay-out plan by PMC itself is not tenable and consequently the construction activity being illegal needs to be restrained.

**9.** In this regard he would refer to the order passed by PMC imposing fine of Rs.1,57,00,000/- for illegal occupancy of part of the project building which Respondent No.9-PP without remorse has accepted and deposited on 23<sup>rd</sup> October, 2015.

**10.** The Applicant has further alleged total inaction on the part of SEAC and SEIAA and to substantiate his contention refers to the material on record which shows that SEAC sub-committee visited the project site on 29<sup>th</sup> February, 2014 with an object to verify compliance of the 2008 EC conditions. During such visit, it noticed non-compliance of the EC by Respondent No.9-PP but conveniently failed to record that Respondent No.9-PP had increased the project activity in terms of buildings, built-up area, etc. The report of SEAC Committee is described as cursory, casual, unscientific and against realities. It is only later that SEIAA on the basis of query/complaint of Applicant, on 3<sup>rd</sup> August, 2015 took action and in this regard proposed directions were issued under provisions of Section 5 of Environment (Protection) Act, 1986, by State Department of Environment (DOE) in August 2015 and thereafter, no follow up action

was taken in terms of the directions. SEIAA which is competent to take independent decision and action against the violators of EC conditions and Project Proponents has failed to initiate any action. What he tries to say is that SEIAA, being specialised body, should have used its conferred power to take action rather than referring or depending on the action taken by Department of Environment. Thus, he contends that SEAC, SEIAA and DOE have jointly and severally failed to discharge its statutory function in taking appropriate legal permissible action against Respondent No.9-PP restraining such illegal activity for non-compliance thereby enabling the Respondent No.9-PP to further violate the EC mandate. He would contend that by keeping the proceedings before it, SEIAA has virtually allowed the Project Proponent to proceed with the illegal construction thereby wandering DoE direction issued on 3<sup>rd</sup> August, 2015.

**11.** On above set of facts, he has sought certain reliefs as recorded by us in the para supra.

**12.** On admission of this Application, Notice was caused to all the Respondents who are total nine in numbers. Amongst them Union of India through Ministry of Environment and Forest -1<sup>st</sup> Respondent, The Principal Secretary, Environment Department – 2<sup>nd</sup> Respondent, State Level Environment Impact

Assessment Authority – 3<sup>rd</sup> Respondent, Maharashtra Pollution Control Board – 3<sup>rd</sup> Respondent, Regional Officer, Maharashtra Pollution Control Board – 5<sup>th</sup> Respondent, Pune Municipal Corporation – 6<sup>th</sup> Respondent, City Engineer, Pune Municipal Corporation – 7<sup>th</sup> Respondent, District Collector, Pune – 8<sup>th</sup> Respondent, M/s. Goel Ganga Developers India Pvt. Ltd. – 9<sup>th</sup> Respondent. Amongst all, initially the Respondent No.9-PP resisted the proceedings but we have noticed a very strange conduct of the Secretary of Department of Environment falling in line with the Respondent No.9-PP as could be seen from the conduct.

**13.** The record would show that all the Respondents have responded to the Notice in this Application as recorded by us on 23<sup>rd</sup> December, 2015. Certain observations made in the preamble of that Order at paragraph Nos.1 and 2, would itself show that this Tribunal had taken a note of the manner in which the Respondents reacted to initiation of the action by the Applicant. In para No 2-3 at page-2 of the Order and the last para on the same page, we have summarised what we noticed. Ultimately being convinced that the Applicant had made out prima facie case for grant of interim relief, lest, the Respondent No.9-PP emboldened by the inaction on

the part of Statutory Authorities as likely to proceed with the construction activity which was shown by the Applicant to be legally impermissible if restrained, orders were passed against Respondent-9 PP. We had also simultaneously directed PMC to ensure that no further construction of whatsoever nature is carried out and called for report from it regarding what is the status of construction at the site within 10 days. As is expected, Respondent No.9-PP entered contest and sought vacating the Interim Order but when confronted with certain factual aspects, made a statement that no construction activity is going on and it has stopped the construction. We feel it will be worth to record that we have taken into consideration contention urged on behalf of the Respondent No.9-PP to seek vacating of the order but we opined that let the pleadings be completed to allow all stakeholders who virtually prosecute and defend action through this Application. We also see from proceeding, considering the urgency, this Application was initially heard on merit in part. This is exactly what the Respondent No.9-PP also submitted on 16<sup>th</sup> March, 2016 persuading us to expedite the hearing.

**14.** We have thus heard substantially the learned Counsel for the Applicant, Respondent Nos.1 to 8 and

the learned Senior Counsel Mr. Mishra assisted by Mr. Sachin Bhalerao for the Respondent No.9-PP.

**15.** We have given our careful consideration to all the legal and factual contentions urged by learned Advocates. While the learned Counsel for the Applicant relies mainly on the original EC dated 4<sup>th</sup> April, 2008 and present factual aspect showing there is marked difference in the project itself and the project has virtually changed from what it was originally conceived in terms of increase of number of buildings, plinth area, shops and other commercial activities. We have summarized the contentions of the Applicant and would like to repeat it as the same is relied upon by the Applicant.

**16.** Now, we need to refer to contentions of Mr. Mishra, the learned Senior Counsel for Respondent No.9-PP who in his persuasive eloquence asserted that project as conceived itself was legally permissible and during construction activity they have ensured there is absolutely no violation of any statutory regulations. He would contend that present construction activity, in terms of the FSI i.e BUA, is within the legally permissible limit and thus, refers to the numerical numbers by which the extent is measured. The affidavit filed in this case by Mr. Atul Jaiprakash Goel representing Respondent No.9-PP contains a

statement in para-14 to the fact that EC dated 4<sup>th</sup> April, 2008 issued by MoEF was to allow construction activity comprising of the utilization of the F.S.I (Floor Space Index)/BUA, to the extent of 57,658.42 sq.mtrs., based on the conceptual plan prepared by Respondent No.9. He further states that granting of permission to utilize FSI to the extent of 57,658.42 sq.mtrs was will within the EC limits.

**17.** On the basis of such statement, Mr. Mishra would submit that at any stretch of imagination, the contention of the Applicant cannot be sustained because he is trying to allege violation when the constructed structure is well within sanctioned FSI/BUA of 57,658.42 sq.mtrs.

**18.** He would further rely on an order passed by Secretary, Department of Environment on 31<sup>st</sup> May, 2016 No.C.A.-2015/CR-6/TC-3 which is produced before this Tribunal after this case was reserved for judgment on 23<sup>rd</sup> May 2016. Relying on it, he would submit that SEIAA who had issued direction on 30<sup>th</sup> August, 2015 to stop construction activity had referred the matter to Department of Environment for considering explanation of Respondent No.9-PP and pass appropriate order. He submitted that such an exercise by DOE/SEIAA was in terms of the Order

passed by this Tribunal on 23<sup>rd</sup> February, 2016 in M.A. No.21/2016 to the following effect:

*“Heard. Perused record.*

*Service of Notice is waived on behalf of MoEF&CC. Replies have been filed by Respondent Nos.2, 3, 4, 5,6, 7 & 9. Law Officer appearing on behalf of Respondent No.8 submits that reply filed by Respondent No.5 MPCB is adopted as the reply of Respondent No.8. Rejoinder dated 22nd February, 2016 to the reply of Respondent No.9 is tendered. Copies of the rejoinder have been furnished to the Respondents.*

**M.A. No.21/2016**

*This Application has been moved for a mandate not to issue ex-post facto environmental clearance to Project Proponent Respondent No.9. Learned Counsel appearing on behalf of Authorities Respondent Nos.2 and 3 makes a statement that they will be dealing with the application moved by Respondent No.9 for grant of environmental clearance strictly in accordance with law. In view of the statement made, we do not wish to interfere in the process of law.*

*Learned Counsel appearing for the Applicant submits that the Application be disposed of in terms of the statement made by the concerned Authorities Respondent Nos.2 and 3. Accordingly, this Applications stands disposed of with no order as to costs.*

***M.A. No.21/2016 thus stands disposed of.***

**E.A.No. 5/2016**

*As regards Execution Application No.5/2016, learned counsel appearing on behalf of Applicant seeks liberty to carry out amendment in the Application so as to bring into focus the violation of the interim order dated 23rd December 2015, in relation to specific building construction and remedy available under the National Green Tribunal Act, 2010, before this Tribunal. Liberty granted to the Applicant to make necessary amendment in E.A.. Amendment shall be made within a week. Copies of the amended Application shall be furnished to the learned counsel appearing on behalf of Respondents. Respondents may file replies to the amended Application within a week thereafter. Advance copies of the replies be furnished to the Applicant who may file re-joinder thereto, if any, within three (3) days thereafter.*

***List this case for further consideration on 16th March 2016.”***

**19.** Thus he contends that this Tribunal itself had directed the SEIAA to consider request of the Respondent No.9-PP for modification of the EC and

thus SEIAA being competent authority in that process thought fit to refer the case of the Respondent No.9-PP to Environment Department to take a decision about the violation before considering the request of the Respondent No.9-PP for modification of the EC to allow a larger construction activity.

**20.** He would submit that extent of 57,658.42 sq.mtrs structure cannot be described as being in excess of the permissible limit of the EC dated 4<sup>th</sup> April, 2008.

**21.** With reference to what transpired later, he would submit that Respondent No.9-PP having satisfied the PMC has received the Completion Certificate in respect of part of the building that itself is sufficient to establish its project is assessed as valid, permitting grant of Completion Certificate.

**22.** At this juncture, we would emphasise that the Applicant had seriously challenged the order passed by Secretary, Environment Department on 31<sup>st</sup> May, 2016 describing the order as a result of direct collusion between the officer concerned and Respondent No.9-PP to defeat any order that would be passed in this proceedings. He had through his Counsel sought opportunity to file an affidavit against the affidavit of the Respondent No.9-PP who wanted this Tribunal to take note of the order dated 31<sup>st</sup> May, 2016.

**23.** We have perused the proceedings with reference to the relevant date on which the arguments were heard on merit and date of posting of case reserved for judgment. The application was heard on merit on 23<sup>rd</sup> May, 2016 and reserved for judgment. During such period the order dated 31<sup>st</sup> May, 2016 has been passed by the Officer referred to above. Besides, the Learned Counsel Mr. Misra on behalf of project proponent requested us to take on record the order dated 31<sup>st</sup> May, 2016 before passing the Judgment. We took notice of the said order. In these circumstances the Learned Counsel for the applicant took opportunity to file counter to the affidavit filed by the project proponent producing the order dated 31<sup>st</sup> May, 2016. It is quite evident that the officer concerned who has passed the order in question is representing the respondent no. 2 in this case. Thus, he is deemed to have knowledge of all the stages which this case has passed and the fact that the case was reserved for judgment by the Tribunal. It is in this context the order dated 31<sup>st</sup> May, 2016 passed during the period case is pending final decision generates questionable circumstances. Further, it is seen that this order i.e. 31<sup>st</sup> May, 2016 has been passed several months after the DoE issued directions to the project proponent to stop constructions activity on the basis that the project

activity is contravening the conditions of EC dated 4<sup>th</sup> April, 2008. In these circumstances we have heard the case again on merit with reference to order passed by Principal Secretary, DoE dated 31<sup>st</sup> May, 2016 as desired by the project proponent himself.

**24.** We had allowed sufficient opportunity to Respondent No.9-PP and also Department of Environment and PMC represented by Mr. D.M.Gupte, learned Counsel respectively.

**25.** It is material to incorporate the relevant portion of the order dated 31<sup>st</sup> May, 2016 passed by Secretary DoE, Government of Maharashtra for clarity which reads thus:

*“ We also refer to the clarification issued by the MoEF, G.O.I. by amendment in EIA Notification 2006 dtd. 4-4-2011, wherein the BUA was defined. Prior to the amendment in EIA Notification 2006 dtd. 4-4-2011 there was an ambiguity in definition of BUA. The EC granted by the MoEF, GOI vide letter dtd. 4-4-2008 for construction of total BUA 57658.42 sq.m. at site was prior to clarification issued by the MoEF, GOI dtd. 4-4-2011 and on the basis of the conceptual plan. Therefore, the same will apply prospectively and not with the retro-prospective effect.*

*Therefore, it reveals that even though you have constructed 18 buildings at site instead of 12 buildings by changing configuration of buildings, the total BUA (i.e.FSI) constructed at site is 48617.14 sq.m. which is within E.C. limit. It also reveals from the inspection report of the Pune Municipal Corporation dtd. 2-1-2016 that the actual construction carried out at site is 99416.72 sq.m. at plot No.1 and 2 (i.e. FSI-48617.14 sq.m. + Non-FSI – 50799.58 sq.m.) but the FSI constructed at site is 48617.14 sq.m. which is less than the total BUA admeasuring 57658.42 sq.m. permitted in the previous EC granted by the MoEF, GOI dtd. 4-4-2008. Hence, it is hereby concluded that there is no case of violation as prescribed in the EIA Notification, 2006 and accordingly the Proposed Directions issued vide above referred (1) is hereby withdrawn.”*

**26.** From the extracted portion of the order it is clear that Secretary, DOE as virtually declared the activity of the Respondent No.9-PP has wholly legal, permissible and in support thereof has virtually granted a clean chit and certified the project as of now to be well within the permissible limits. It is material to note that the officer concerned has referred to FSI and BUA being same synonym of one aspect. How far this assertion in the order of the officer is legal and factually correct. Hence it needs to be dealt with in detail for the reason, the decision as to whether the construction activity of the Respondent No.9-PP is legal or contravenes any of the environment clearance depend upon clear definition of FSI and BUA in terms of its extent. We had thus called upon PMC to file a statement explaining the distinction between the extent of area covered under BUA (built-up area). We are dismayed at the fact that neither the PMC nor the Environment Department has seriously examined what is F.S.I and BUA. Thus, we gave one more opportunity to which PMC responded through its affidavit dated 17<sup>th</sup> August, 2016 to which we shall refer.

**27.** The Deputy Engineer, PMC report which has been relied by Principal Secretary, DOE contains the present level of construction, the comparison of the

F.S.I and Non F.S.I area gives startling factual information. It needs reference and as is extracted herein:

PMC report. Dy. Engineer (BP) dated. 19-12-2015.	PMC Report dt. 17-08-2016		
Total BUA (i.e. FSI) = 48617.14 sq.m.	Built-up Area		
	Plot	F.S.I.	Non F.S.I
	1	48424.66	46088.47
	2	630.55	4858.57

**28.** We shall now refer to what the term Built-up area and Floor Spacing Index (F.S.I.) would mean in the domain of assessment of permissibility of the project activity with reference to the environment clearance certificate granted. It would be therefore pertinent to refer to the provisions of Development Building Rules of PMC and the project activity approved by the EC of 2008.

**29.** The Environment Clearance dated 4<sup>th</sup> April 2008, has clear project description which unambiguously set the project limits.

*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 502 flats, 50 shops and 34 offices. The total plot area is 79,100.0 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 wastewater 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. (Emphasis provided)*

**30.** It is manifest from the above referred EC that while granting the EC, the authority had appraised the project with certain configuration and more pertinently, the Total Built up area. There is no reference to the term FSI area i.e. floor space index area. There is no ambiguity in the contents of EC and therefore, what can be seen from the plain reading of the EC is that the EC granted is circumscribed by the project description including its configuration and the Total built up area.

**31.** The term built up area has been well established in the parlance of Civil Engineering and Town Planning. The MRTP Act, which regulate Regional and Town Planning in the state, authorise Municipal Corporation to have its own Rules, and PMC has notified the development control rules under the MRTP act in order to regulate the development activities in the corporation area. In order to clarify the existing position and the understanding of the terms, Built-up area and F.S.I., it would be pertinent to refer to the 'Development Control Rules of the PMC, Pune, 1982'. Undoubtedly, both Respondent No.9-PP and PMC are required to comply with the Environment Clearance Regulations in terms of the building permissions granted by PMC to Respondent No.9-PP under the powers conferred upon PMC by the above

said rules. The said Rules define 'built up area' and FAR/FSI and the relevant definitions from these rules are abstracted below :

**2.1.3 : Built up area** - Area covered immediately above the plinth level by the building or external area of upper floor whichever is more accepting the areas covered by Rule 15.4.2.

**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.

Total covered area on all floors.

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

**Note : The term F.A.R. is synonymous with floor Space Index (F.S.I.)**

**32.** From these definitions it is manifestly clear that the terms "built up area" and FSI/FAR are distinct and have different interpretation altogether. This would further negate the contention of Respondent No.9-PP that the term "built up area" was not clarified until the clarification issued by MoEF on 4<sup>th</sup> April, 2011. There could be ambiguity in calculation of built up area as per earlier Environment Clearance Regulations, but this cannot be stretched under any circumstances to take a plea that the built up area and FSI are synonymous and interchangeable terminologies. We cannot accept but reject in totality the submissions made by PMC and the Respondent No.9-PP in this regard.

**33.** Though, much has been claimed by Respondent No.9-PP regarding the clarificatory notification of MoEF dated 4<sup>th</sup> April 2011, wherein the term built up area has been clarified, we do not find any confusion or contradiction in definition of terms BUA and FSI. The Respondent No.9-PP is a major developer and must be well versed with these terminologies.

**34.** From the material referred to above, it leaves no scope for doubt that F.S.I. and BUA are two terms which apply with a distinction defining different extent of area.

**35.** It will shake the conscious of all concerned when we see a deliberate attempt on the part of DoE, SEAC and SEIAA to confuse the issue virtually falling in line with misleading statements of Respondent No.9-PP and Deputy Engineer, PMC. It is astonishing that both Respondent No.9-PP and Deputy Engineer, PMC refer to BUA as F.S.I. Despite such clear distinction in definitions and interpretations of BUA and FSI, they had attempted to mislead DoE, SEAC and SEIAA in believing that BUA and F.S.I are same. We expect an officer conferred with professional duty as 06 an engineer in the Department of Building Permission of PMC to be very meticulous in at least understanding the terms which make lot of difference

to the fact of construction. We least expected 06 him as to know the distinction between BUA and FSI, as administration of Corporation would depend upon his professional advice and technical expertise to take action against the erring parties who contravene the mandate of law for safeguarding the interest of citizens which the Corporation is required to protect. We are also constrained to observe that the higher authorities of Building permission department had closed their eyes even when such incorrect affidavits are filed before the Tribunal and such misleading reports are sent to state authorities like DoE, SEAC and SEIAA.

**36.** Therefore, un-hesitatingly we could observe that the report dated 19<sup>th</sup> December, 2015 of the Deputy Engineer is a compromised statement to paint a wrong picture of the project firstly to suppress deviation and secondly to create ambiguity in definition of the terms of F.S.I. and BUA to help Respondent No.9-PP to obtain orders from the other authorities. This is unveiled from the affidavit filed by PMC dated 17<sup>th</sup> August, 2016 in pursuance to our Order dated 2<sup>nd</sup> August, 2016. The details mentioned therein are as follows:

	Built-up Area	
Plot	F.S.I.	Non F.S.I

1	48424.66	46088.47
2	630.55	4858.57

**37.** We have also taken a judicial note of the fact that considering such complexity in Environment issues, MoEF had constituted Multi-disciplinary SEAC/SEIAA and had authorised it to take action against violation. SEAC and SEIAA have the necessary experience and expertise to identify violations independently by expert advice and application of mind, based on inputs from field authorities. What we observe here is that Principal Secretary of DoE just relied upon a report filed by junior most official of PMC and without any independent appraisal PS, DoE has held that construction of 18 buildings at site instead of 12 buildings, is allowed within the allowable BUA as per Environment Clearance. We do not find any environment impact appraisal or reasoning for such a finding. When openly excavation of the soil and damage to underground water is being impating the environment. No independent assessment or appraised is done.

**38.** We are, therefore clear in our mind that Applicant has substantiated that the original project conceived by Respondent No.9-PP had to confine to what was sanctioned under the EC dated 4<sup>th</sup> April, 2008 and any extra construction or increase in

building, plinth commercial structures, shops and flats should have support of modified EC. As of now, since no modified EC has been granted, the extent of project activity cannot increase beyond the limit circumscribed by EC dated 4<sup>th</sup> April, 2008. Any such activity or construction beyond permissible limits cannot be saved by jugglery of words, misinterpreting against the statutory definition of F.S.I. and BUA.

**39.** We are further satisfied that the Principal Secretary, Environment Department who has authored the order dated 31<sup>st</sup> May, 2016 has lot to explain for the reason the ultimate declaration made by him in the order declaring construction activity of Respondent No.9-PP to be in permissible limit of F.S.I. is result of his mis-interpretation of the terms F.S.I. and BUA and reflects non-application of mind.

**40.** The prime issue that arises for consideration in this case is as to whether the construction activity of Respondent No.9-PP, is exceeding the sanction accorded by the EC. Could the Respondent No.9-PP proceed with construction without obtaining modified EC. The answer is obviously No.

**41.** For the reasons aforesaid, we answer the above issue in the negative hold that the construction activity of Respondent No.9-PP to the extent it exceeds the permissible limits as per EC cannot be saved and

shall stop, subject to the grant of modified EC by competent authority.

**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.

**43.** Besides, another issue which confronts us based on these violations is what should be the consequence of such violation. Un-hesitatingly, it can be held that the consequences of such contravention and illegal construction will be adverse on the environment and ultimately it will lead to several incidental causes of action. That will follow if the Respondent No.9-PP is allowed to continue the illegal activity as has been done by order dated 31<sup>st</sup> May, 2016. The complexity in environmental issues therefore requires a meticulous examination and dispassionately conclusion and finding.

**44.** Apart from the legal issues, we further notice that if not illegality in the order of PS DoE in question, it is certainly impropriety because the officer is deemed to have been informed of the fact that this Tribunal is seized of the matter and has reserved the case for judgment on 23.5.2016 after giving full opportunity to Department which the officer in question represents as Respondent No.2. Hence, he cannot plead ignorance of the fact that the case was posted for judgment in the circumstances he should have allowed adjudication by the Tribunal to take final decision on the main issue about the violation of the EC conditions based on the alleged enlarged construction activity. We also do not find merit in contention of learned Sr. counsel Shri. Mishra that such an order is line with the liberty given to SEIAA by Tribunal on 23.2.2016 to deal the application of PP for expansion of project on merit because the order in question is not related to EC but a decision of the proceedings of proposed directions under Environment (Protection) Act, 1986, which were issued by department in August 2015.

**45.** With these findings, it is now necessary to consider the reliefs sought by the Applicant in this Application. He has sought demolition of the illegal structures and other consequential reliefs. Learned

counsel appearing for the Applicant has strenuously argued that all these violations have been done by the respondent-9 PP in total connivance with the authorities mainly the PMC and DoE. He has even cited a visit report of SEAC expert committee to suggest the gross inadequacy in the visit report the committee.

**46.** It is now a matter of record that the construction of the project in question is near completion and even the occupancy certificate is granted partially. We need to consider the fact that the project in question is primarily a residential project and many individuals have invested their money in the project for meeting need for residential accommodation by having a house in city like Pune. Any order to demolish structure would also adversely affect them. The Respondent-9 has already created 3<sup>rd</sup> party rights. Though the Respondent-9 has blatantly violated the conditions of EC, we also note the total lack of supervision and enforcement at PMC level has resulted in such illegal activity.

**47.** The Tribunal is expected to apart on the principles of Sustainable Development and Polluter pays principle. We are conscious of the fact that Polluter pays Principle shall not be construed as 'pay and pollute principle', and the payment has therefore

to be exemplary and deterrent in order to pass a clear message that environmental compliance is supreme and the party which is non-complying the environmental standards shall be at economic disadvantage.

**48.** In this regard, we would like to refer to approach taken by the Hon'ble Principal Bench of National Green Tribunal, New Delhi in Original Application No.24/2011 "Samir Mehta Vrs. Union of India & Ors." Where the Bench has noted that :

*"The Supreme Court of India, in the case of Sterlite Industries India Ltd. V. Union of India 2013 (4) SCC 575 had held that where the industry had violated the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and had operated without obtaining consent, it was liable to pay damages of Rs.100 crores for the default period. The Court applied the Rule of Strict Liability but did not strictly compute the damages with exactitude. It only enforced the liability on general principle for awarding of damages for non-compliance to the law in force. In fact, any other approach would run contra to the Principle of Strict Liability. This judgment has been followed by the Tribunal in a large number of cases. Reference can be made to the cases of S.P. Muthuraman 2015 ALL (I) NGT Reporter (2) (Delhi) 170, Krishan Kant Singh V. National Ganga River Basin Authority (2014) ALL (I) NGT Reporter 3 (Delhi) 1 and M.C. Mehta V. Kamal Nath & Ors. AIR 2002 SC 1515. Thus, we are of the considered view that the determined damages of Rs.100 crores should be paid by and recovered from Respondents No.5, 7 and 11, jointly and severally while Respondent No.6 is held liable to pay Rs.5 crores as environmental compensation for dumping of the cargo in the sea and then failing to take any precautionary or preventive measures. The consignment of 60054 MT of coal has caused marine pollution and continues to be a cause and concern for environmental pollution. The Respondents are defaulting entities which have not complied with law and have adopted a most careless and reckless attitude in relation to protecting the marine environment."*

**49.** We also refer to the judgment of Hon'ble Principal Bench in the matter of Krishnlal Gera Vrs.

State of Haryana (Appeal No.22 of 2015 dated 25<sup>th</sup> August 2015) wherein the Tribunal has dealt with a matter regarding construction activities without the necessary prior environmental clearance. In para 58 and 59 of the judgment after discussing the legal framework, the Tribunal has imposed environmental compensation cost of 5 % (percent) of the total cost for restoration and restitution of the environment, in addition to payment of Rs.5 crores for violating the Law and starting and completing the project without obtaining environmental clearance, on the project proponent. These directions were issued in consonance with the dictum of Hon'ble Supreme Court.

*“Since the Project Proponent may not be directed to demolish the structure at this stage, but, shall strictly comply with the directions that we propose to pass in the present case. The scope and ambit of such directions has to be in terms of the Act of 1986 circumscribed by the statutory jurisdiction of this Tribunal. Upon detailed discussion of the laws in force, the Tribunal in the case of S.P. Muthuraman (supra) has clearly held that such directions can be issued by the Tribunal.”*

**50.** The Principal Bench in “*Appeal No.7/2015 in the matter of Jalbiradari and Others Vrs. MoEF*” pronounced on 31<sup>st</sup> May 2016, has also considered the legal consequences in case of quashing the environmental clearance for construction project, particularly with regard to the “*fate accompli*” situation.



*90 per cent of the projects were has already been completed except some other parts of the project. There can be proper regulations on these projects, as otherwise it will only lead to colossal waste of public funds. It will result in dual disadvantage, firstly, wastage of public funds and secondly, and more importantly the demolition of the project itself would generate so much of waste and other materials that this will become a huge environmental hazard itself. The cases are not one, which are incapable of reprisal or re-appreciation. Damage to the environment and ecology to some extent has already been caused. It will be more useful to take remedial and restorative steps. They have acted in breach of the law and carried on with their activity in an unauthorized and illegal manner. -----  
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-----*

**51.** We are also inclined to adopt the approach taken by the Bench in the interest of justice and fair play and based on the facts and circumstances of the case. The construction activity is not a prohibited activity in the subject, but a regulated activity. We also take a judicial note of the fact that the demolition of structures in question would also result in further environmental damage and generation of construction waste. Other option which could have been explored is asking the government to take over the additional construction and use it for public purpose but as noted above, already third party rights have been created, may be partially.

**52.** The purpose and object of the law including Environmental Clearance is to strictly regulate the

development so as to prevent causing of damage of the environment and ecology. Though in the present case substantial damage has been caused to the environment and ecology, it will be more useful to take remedial and restorative steps.

**53.** The Respondent-9 is a defaulting entity which has not complied with law and has adopted a most careless and reckless attitude in relation to protecting the environment. The other Respondents, particularly the PMC and DoE have been the either the mute spectator or have not performed their statutory duties. However, we would note with appreciation that it is only MPCB that has acted on the complaints of the Applicants and have diligently taken legal actions besides bringing on record the non-compliances by Respondent-9 PP.

**54.** For the aforesaid reasons, the Applicant succeeds in his legal pursuit to challenge the non-compliance 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 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.

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.

55. The Application alongwith connected Misc. Applications and Execution Application is therefore disposed accordingly.

.....,JM  
(Dr. Justice Jawad Rahim)

.....,EM  
(Dr.Ajay A. Deshpande)

**PUNE.**

**DATE: 27th September, 2016**

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*Bombhise*

**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.

**TRUE COPY**



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)
8		<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  
Ph:011-24695474  
Email:ashish.k@nic.in

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.

**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

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**ANNEXURE-A-4****REPORTABLE**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**I.A. NO.64665 OF 2019****IN****CIVIL APPEAL NO. 10854 OF 2016**M/S. GOEL GANGA DEVELOPERS  
INDIA PVT. LTD.

... Applicant (s)

Versus

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

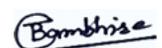
...Respondent(s)

**ORDER**

The only issue involved in this application is whether non-consideration of a judgment delivered by a three-Judge Bench in ***Re: Construction of Park at Noida Near Okhla Bird Sanctuary & Ors.<sup>1</sup>***, hereinafter referred to as 'NOIDA Park case', has led to

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<sup>1</sup> (2011) 1 SCC 744

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wrong conclusions by this Court with regard to the interpretation of built up area in terms of Item No. 8 of the Schedule of the Environment Impact Assessment (EIA) Notification dated 14.09.2006. The relevant portion of the notification 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.

While interpreting this clause, one of us (Deepak Gupta, J.) held as follows:

**“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.”

The contention raised on behalf of the applicant is that since the three-Judge Bench had in Para 84 of the judgment in the **NOIDA Park case** observed that the EIA Notification dated 14.09.2006 calls for a close second look by the authorities concerned especially in respect of the projects/activities falling

within the ambit of Items 8(a) and 8(b) of the Schedule to the Notification which need to be described with greater precision and clarity and the definition of built up area with facilities open to the sky needs to be freed from its present ambiguity and vagueness, the two-Judge Bench which delivered the judgment was bound by this judgment of three-Judge Bench and could not have held that the Notification dated 14.09.2006 clearly shows that all constructed area which is covered and not open to the sky, has to be treated as built up area.

Though the observations in Para 84, at first blush, support the contention of the applicant, one has to appreciate the factual background in which these observations were made. In the **NOIDA Park case**, this Court was asked to intervene and halt a project in which a huge park was being constructed. As far as Item 8(a) of the Schedule to the EIA Notification, 2006 is concerned, the contentions in this regard start from Para 38. The MoEF took the stand that no environmental clearance was required because the project area was 33.43 hectares, which was less than 50 hectares

and the built up area was 9542 sq. mtrs., which was less than 20,000 sq. mtrs.

It was contended on behalf of the petitioners and the amicus curiae that the project would fall under Section 8(a) because though the covered construction of the project was only 6999.50 sq. mtrs., the project by its very nature provided facilities open to the sky and the whole of this open area, which was activity area, should be treated as the built up area. The park consisted of certain constructed structures like pathways, walkways, statues, fountains, etc. which were open to the sky and treated as activity area. The contention of the amicus curiae and the petitioners who were objecting to the project was that the construction which was open to the sky and was to be treated as activity area should also be considered as part of the built up area.

The main dispute in the **NOIDA Park case** was whether the project was a building and construction project or a township and area development project. This Court held that this was a township and area development project. While considering this dispute the

Court felt that there was some ambiguity. This issue did not arise in the case in hand. The second point urged before the Court was that the facilities open to the sky i.e. the activity area should also be included in the built up area and it was this confusion which the court wanted the Central Government to settle. No party had raised any contention in the **NOIDA Park case** about the covered area being built up area. All the parties were *ad idem* that covered construction was built up area and the Court also held so.

This Court in this judgment has only held that all covered construction shall be deemed to be built up area and that the municipal laws regarding Floor Space Index (FSI) or Floor Area Ratio (FAR) have no relevance. This issue did not arise in the **NOIDA Park case**.

Therefore, in our opinion, the earlier judgment will have no impact on the present case.

Reference was also made to Notification dated 04.04.2011 and the Clarification dated 07.07.2017. These have already been dealt with in the judgment dated 10.08.2018 and those were not points of

issue in the **NOIDA Park case**. Therefore, we find no merit in the application and the same is dismissed accordingly.

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

.....**J.**  
**(Aniruddha Bose)**

**New Delhi**  
**September 11, 2019**

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