

**IN THE HON'BLE NATIONAL GREEN TRIBUNAL, NEW
DELHI**

OA No. 68 of 2022

IN THE MATTER OF:

Raman Sharma

...Applicant

Vs

State of Haryana and Others

...Respondents

**REPLY ON BEHALF OF RESPONDENT No. 2 i.e. HARYANA
STATE POLLUTION CONTROL BOARD**

1. That the grievance in the complaint is regarding running of 10 DG sets in the green belt of integrated residential colony of Malibu Town, Gurugram by M/s Malibu Estate Pvt. Ltd., Gurugram and regarding flouting the directions and provisions of C&D Waste Management Rules, 2016 and also carrying out the construction in violations of the Air and Water Pollution Act. Hon'ble NGT vide order dated 02.02.2022 constituted a joint committee of HSPCB, SEIAA, HSVP, DFO Gurugram and District Magistrate Gurugram for submission of factual action taken report in the matter. The joint committee submitted interim action taken report before Hon'ble NGT on 05.09.2022 and final action taken report on 10.10.2022. Thereafter, Hon'ble NGT vide order dated 11.10.2022 directed that:-

In view of the averments in the application and observations/recommendations in the report of the joint committee, we consider it appropriate to have response of (1) State of Haryana through Chief Secretary, Government of Haryana, (2) State PCB, (3) Municipal Corporation, Gurugram, (4) Director,

Department of Town and Country Planning, Government of Haryana (5) Estate Officer, Haryana Shahari Vikas Pradhikaran, (6) District Magistrate, Gurugram and (7) Project proponent -Malibu Federation through Mr. Niranjana Yadav, Chairman, RWA, Office Opposite PKD 12, Malibu Town, Gurugram, who stand impleaded as respondents No. 1 to 7. The Registry is directed to prepare and attach memo of parties to the application and issue notices to respondents No. 1 to 7 requiring them to file their reply/response to the averments made in the application and observations/recommendations made in the report of the Joint Committee within two months.

2. That the answering respondent is filing the present reply dealing with said issue and liberty is being craved to file additional reply/affidavit as and when need arise, with the permission of this Hon'ble Tribunal.
3. That contents of OA may be treated as denied unless those have been admitted specifically.
4. That the answering respondent by way of present reply wishes to place on record the updated status in the succeeding paragraphs.
5. That site in question is a plotted colony including group housing component spread over the area of 204.796 acres developed by M/s Malibu Estate Pvt. Ltd. in sector 47 and sector 50, Gurugram against 32 Nos. of licenses (License No.71-75 of 1992, 04-08 of 1993, 15-19 of 1994, 04-08 of 1995, 36-46 of 1997, 15 of 2008). Details described is as below:-

Sr. No.	License No.	Year	Licensed Area (Acre)	Area in acres -Part completion granted	Date of grant of part completion	Remarks
1.	71-75	1992	107.682	97.282	23.02.1996	Occupation certificate obtained on 10.03.2017 from DTCP for 31061.622 Sqm
2.	4-8	1993	16.18	16.08	03.05.1996	
3.	15-19	1994	14.962	10.332	03.05.1996	
				2.94	06.06.2003	
4.	4-8	1995	26.83	26.83	05.02.2003	
5.	36-46	1997	14.461	14.461	05.02.2003	
6.	15	2008	24.681	24.681	27.09.2016	Part completion certificate obtained by M/s Bloom Field Properties & Holding Private Limited & others C/o MEPL
		Total	204.796	192.606		

The details of occupation certificate obtained for community buildings is given as below:-

Sr. No.	Type of community building	Land area (Acres)	Built-up area (Sqm)	Name of company obtained Occupation certificate	Date of grant of occupation certificate by Town & Country Planning Deptt.
1.	Nursery school	0.39	2020.788	Malibu Kidstop Nursery School Pvt Ltd.	11.03.2019
2.	Primary School	1.09	4395.108	Malibu Flowering Birds Primary School Pvt Ltd.	13.02.2019
3.	Nursery School	0.318	1981.281	Malibu Paradise Nursery School Pvt Ltd.	27.06.2018
4.	Primary School	-	5664.558	Inlead Education & Consulting Pvt Ltd.	14.06.2018
5.	Nursery School	0.467	68.84	Malibu Estate Pvt Ltd.	05.09.2018
6.	Crèche Building	0.20	70.269	Malibu Estate Pvt Ltd.	05.09.2018
7.	Primary School	1.146	-	Malibu Little Star Primary School Pvt Ltd.	09.02.2017
8.	High School	5.09	7590.566	Dhanat Rai Memorial Bal Vikas Shiksha Samiti	19.05.2018
9.	Dispensary Building	1.053	9096.149	Malibu Estate Dispensary Pvt Ltd.	19.09.2018
10.	Nursery School	0.20	1259.741	Malibu Wonderland Nursery School Pvt Ltd.	15.05.2018
11.	Club Building	-	2833.752	Malibu Estate Pvt Ltd.	22.06.2009

6. That project proponent had obtained revised layout plan of 204.796 acres on 31.01.2008 from DTCP, Haryana and part completion certificate as mentioned above in table was obtained on 27.09.2016 in reference to license No. 15 of 2008 for area 24.681 acres from DTCP, Haryana and occupation certificate was issued by DTCP, Haryana for 31061.622 Sqm.

(Built-up area) on 10.03.2017 in respect of other licenses mentioned therein in addition to occupation certificate obtained for community buildings as described above from 2009 to 2019. The revised layout plan for an area of 204.796 acres comprised of licenses in respect of Residential Plotted Colony including group housing component being developed by Malibu Estate Pvt. Ltd., in Sector-47 & 50, Gurugram was approved by Town & Country Planning vide drawing No.DTCP-5626 dated 28.09.2016.

7. That project proponent have not obtained Environmental Clearance for expansion carried out by way of constructing said building & other construction and revised plans, zonings / expansion after cut of dated EIA notification 07.07.2004/14.09.2006 or modernization of Malibu Town (204.796 Acres) under the provision of EIA notification 07.07.2004/14.09.2006 till date as construction was carried out after EIA Notification 07.07.2004/14.09.2006 which is evident from building plans, revised building plans, layout plans, revised layout plans and occupation/completion certificates obtained time to time after 14.09.2006.
8. That project proponent was also required to obtain Environmental Clearance under the provisions of EIA Notification dated 14.09.2006, as last License No. 15 of 2008 dated 01.02.2008 for 24.681 acres was granted after 14.09.2006, cutoff date of requiring EC & carried out construction /development activity without obtaining prior Environmental Clearance & Consent to Establish (CTE). Thus, violated the provisions of EIA Notification 14.09.2006, Water (Prevention & Control of Pollution) Act, 1974 & Air (Prevention & Control of Pollution) Act, 1981.
9. That Show Cause Notices vide Letter No. HSPCB/GRN/2020/435 dated 15.07.2020, No. HSPCB/GRN/2020/439 dated 15.07.2020, No.

HSPCB/GRN/2020/728-769 dated 14.08.2020, No.
HSPCB/GRN/2020/771-812 dated 14.08.2020, No.
HSPCB/GRN/2020/1948 dated 16.10.2020, No. I/68610/2021
dated 02.10.2021 & No. I/114390/2022 dated 19.05.2022 were
issued to M/s Malibu Estate Pvt Ltd & others in reference to
the violation committed by the project proponent by making
construction /development of the project without obtaining
prior Environmental Clearance in term of the EIA notification
dated 07.07.2004/14.09.2006, Consent to Establish
(CTE)/Consent to Operate (CTO) under the provisions Water
(Prevention & Control of Pollution) Act, 1974 & Air
(Prevention & Control of Pollution) Act, 1981 and failing of
samples of outlet of STPs. Replies submitted by the project
proponent in response to Show Cause Notices were not found
satisfactory as project proponent were required prior
Environmental Clearance in term of the EIA notification and
CTE/CTO under the provisions Water (Prevention & Control
of Pollution) Act, 1974 & Air (Prevention & Control of
Pollution) Act, 1981.

10. That Haryana State Pollution Control Board (hereinafter referred as Board) has refused renewal of Consent to Operate (CTO) application dated 04.08.2020 for the period 01.10.2020 to 30.09.2021 under Section 25 of the Water (Prevention & Control of Pollution) Act, 1974 and under section 21 of Air (Prevention & Control of Pollution) Act, 1981 vide letter No. HSPCB/Consent/: 329962320GUNOCTO7846102 Dated: 02/09/2020.
11. That Board has filed prosecution under Environment (Protection) Act, 1986 before Hon'ble Special Environment Court, Faridabad for violation of the provisions of EIA Notification 14.09.2006 amended till date for not obtaining mandatory Environmental Clearance.

12. That Board has filed prosecution under Water (Prevention & Control of Pollution) Act, 1974 & Air (Prevention & Control of Pollution) Act, 1981 before Hon'ble Special Environment Court, Faridabad for violation of the provisions of Water (Prevention & Control of Pollution) Act, 1974 & Air (Prevention & Control of Pollution) Act, 1981 for not obtaining Consent to Establish (CTE), Consent to Operate (CTO) & failing of samples of outlet of STPs.
13. That Board has issued closure direction against M/s Malibu Estate Pvt. Ltd, Malibu Town, Sohna Road, Gurugram vide Endst. No. HSPCB/GUR/2022/INS/31601738CONCO001-004 dated: 23-Dec-2022 (**Annexure-1**) with the following directions:-
- "(a) The project proponent shall stop all construction activities related to the project with immediate effect till it obtains environment clearance under EIA Notification dated 14.09.2006 and Consent to Establish (NOC)/Consent to Operate from the Board under Water Act, 1974 and the Air Act, 1981.*
- (b) The project proponent shall not allow any new occupancy and shall not allow any new possession in the premises of the project with immediate effect.*
- (c) Town & Country Planning Department/concerned authorities that have issued the license/ LOI and approved the building/layout plans for the development of the project shall take necessary action to stop further construction activities relates to the project till the project proponent obtains Environment Clearance under EIA Notification dated 14.09.2006 and Consent to Operate from the Board under the Water Act, 1974 and the Air Act, 1981.*
- (d) The Revenue Authorities shall not register any sale deed relates to any plot/flat/house/shop/any other component of this project with immediate effect.*
- (e) The DHBVN authorities shall not release any new electric connection for this project or to any of its components with immediate effect."*
14. That case for imposition of Environmental Compensation against the project proponent is under process and will be concluded to the logical end soon.

In view of the submissions made herein above, present reply may kindly be taken on record. Additional information and document, as and when directed by this Hon'ble Tribunal shall be placed on record.

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Regional Officer, 09.01.2023
Gurugram Region (N)
On behalf of the Respondent No. 2
Haryana State Pollution Control Board

Verification:

Regional Officer
Haryana State Pollution Control Board
GURGAON (North)

Verified at Gurugram on 9th day of January, 2023 that contents of the above reply are true and correct as per information derived from the official record and legal submissions are being made as per legal advice.

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Regional Officer, 09.01.2023
Gurugram Region (N)
On behalf of the Respondent No. 2
Haryana State Pollution Control Board

Regional Officer
Haryana State Pollution Control Board
GURGAON (North)



Closure Order/ Directions

Whereas, M/s Malibu Estate Pvt. Ltd, Malibu Town, Sohna Road, Gurgaon has established and operating a Residential Plotted Colony along with Group Housing Component, which is polluting in nature and is covered under Red Category;

Whereas, the above said unit was visited by the Field Officer of the Board on 08.09.2020 and complaint received from Sh. Raman Sharma, CW - 58, F.F, Malibu Town, Sector47, Gurugram-122018 through e-mail dt. 08.07.2020 and reported that following deficiencies were found during inspection:-

1. Not obtained Consent to Establish/ Consent to operate from the Board.
2. Not obtained Environmental Clearance under the provision of EIA Notification.
3. Legal Samples were collected from 3 Nos. of Sewage Treatment Plant (STP), 01 No. Rain Water Harvesting, Sewage line going directly HUDA/GMDA sewer, underground water tank in presence of representative of M/s Malibu Estate Pvt Ltd i.e. Sh. Ajitesh Jha, Civil Engineer and Sh. Onkar Singh, Manager Purchase and as per analysis report No. W-3/2020-21/03 dated 05.10.2020, W-4/2020-21/04 dated 05.10.2020, W-5/2020-21/05 dated 05.10.2020, W-6/2020-21/06 dated 05.10.2020 & W-8/2020-21/08 dated 05.10.2020 released by Government Analyst, Department of Environment & Climate Change, Haryana, the results are exceeding the prescribed limits.
4. A FIR No. 628 dated 16.10.2020 was lodged against licenses (including licenses No. 71-75 of 1992 in which said site of dispensary is also a part) by DTP (E) Town and Country Planning Gurugram in Police Station Sadar Gurugram which comprises irregularities of community sites, which is under investigation and pending for challans before District Court, Gurugram.
5. COMA-02 of 2020 titled as Raman Sharma Vs MEPL and others and CS-934 of 2020 titled as Raman Sharma V/s State of Haryana and Ors is pending before Session Court, Gurugram and District Court, Gurugram respectively for various issues including issue of illegal sale, creating third party right without any prior permission from DTCP, commercial use of community land/sites/buildings and construction without prior Environmental Clearance.
6. Special Investigation Team (SIT) constituted by Commissioner of Police, Gurugram vide letter dated 02.02.2021 with regard to FIR No. 628 dated 16.10.2020, COMA-02 of 2020 titled as Raman Sharma Vs MEPL and others and complaints filed by Sh. Raman Sharma against the MEPL and Ors. and matter is under investigation.

Whereas, the samples of effluent were collected by the field officer of the Board during the inspection of the above said unit on 08.09.2020 and legal sample were collected from 3 Nos. of Sewerage Treatment Plants released by Govt. Analyst, Department of Environment & Climate Change, Haryana and as per analysis reports of the said samples, the following parameters were found exceeding the prescribed limits as per detail given below:-

Sr. No.	A/R No. and Date	Parameters	Results	Limits
1	03 dt. 05.10.2020	Oil & Grease mg/l	15	10
2	03 dt. 05.10.2020	Biological Oxygen Demand mg/l	48	30
3	03 dt. 05.10.2020	Sulphide mg/l	3.20	2.0
4	04 dt. 05.10.2020	Total Suspended Solids mg/l	200	100
5	04 dt. 05.10.2020	Oil & Grease mg/l	20	10
6	04 dt. 05.10.2020	Chemical Oxygen Demand mg/l	260	250
7	04 dt. 05.10.2020	Biological Oxygen Demand mg/l	63	30
8	05 dt. 05.10.2020	Total Suspended Solids mg/l	550	100
9	05 dt. 05.10.2020	Oil & Grease mg/l	23	10
10	05 dt. 05.10.2020	Chemical Oxygen Demand mg/l	1100	250
11	05 dt. 05.10.2020	Biological Oxygen Demand mg/l	200	30
12	05 dt. 05.10.2020	Sulphide mg/l	24	2.0
13	06 dt. 05.10.2020	Total Suspended Solids mg/l	650	100
14	06 dt. 05.10.2020	Oil & Grease mg/l	28.57	10
15	06 dt. 05.10.2020	Chemical Oxygen Demand mg/l	900	250
16	06 dt. 05.10.2020	Biological Oxygen Demand mg/l	320	30
17	06 dt. 05.10.2020	Sulphide mg/l	12.80	2.0

Whereas, Show Cause Notice for closure was issued to the above said unit by Regional Officer, Gurgaon North vide his letter HSPCB/GRN/2020/1948 dated 16.10.2020 and the Regional Officer has reported that the unit has submitted reply vide letter dated 02.11.2020 but it is not satisfactory because unit has not complied with the above observations;

Whereas, the Regional Officer, Gurgaon North vide his letter no. HSPCB/ GUR/ 2022/ RO/ INS/ 31601738CONCR001 dated 14.12.2022 has recommended taking closure action to stop the construction activity against the unit under section 33-A of the Water (Prevention & Control of Pollution) Act, 1974 and under section 31-A of the Air (Prevention & Control of Pollution) Act, 1981;

Therefore, in exercise of the powers conferred under section 33-A of the Water (Prevention & Control of Pollution) Act, 1974 and under section 31-A of the Air (Prevention & Control of Pollution) Act, 1981, the following directions are issued:-

- (a) The project proponent shall stop all construction activities related to the project with immediate effect till it obtains environment clearance under EIA Notification dated 14.09.2006 and Consent to Establish (NOC)/Consent to Operate from the Board under Water Act, 1974 and the Air Act, 1981.
- (b) The project proponent shall not allow any new occupancy and shall not allow any new possession in the premises of the project with immediate effect.
- (c) Town & Country Planning Department/concerned authorities that have issued the license/ LOI and approved the building/layout plans for the development of the project shall take necessary action to stop further construction activities relates to the project till the project proponent obtains Environment Clearance under EIA Notification dated 14.09.2006 and Consent to Operate from the Board under the Water Act, 1974 and the Air Act, 1981.
- (d) The Revenue Authorities shall not register any sale deed relates to any plot/flat/house/shop/any other component of this project with immediate effect.
- (e) The DHBVN authorities shall not release any new electric connection for this project or to any of its components with immediate effect.

In addition to above, it is also intimated that non- compliance of the directions issued under section 33-A of Water (Prevention & Control of Pollution) Act, 1974 is an offence.

**Dated Panchkula, the
22nd December, 2022**

Chairman

Endst. No. HSPCB/GUR/2022/INS/31601738CONCO001-004

Dated:23-Dec-2022

A copy of the above is forwarded to the following for information and necessary action:-

1. The Deputy Commissioner, Gurugram.
2. Executive Engineer (Operation Division), DHBVN, Gurugam. He is directed to not to issue electric connection to any new occupant of this project and submit acknowledgement in this regard within 03 days.
3. The District Revenue Officer, Gurugram for information and compliance of the above directions and ensure that any sale deed related to any plot/flat/house/shop/any other components of this project is not registered.
4. DTP, Gurugram. He is directed to ensure that the construction activities are stopped by the project proponent.
5. Executive Engineer, GMDA, Gurugram. He is directed not to issue any new water connection in this project.
6. The Regional Officer, Gurugram. He is directed to ensure compliance of this order and to submit compliance report in this regard within 03 days. He will also intimate legal action against the unit for filing prosecution case for the above said violations and will submit the proper and complete case with reasoned recommendation and submit case for Environment Compensation.
7. M/s Malibu Estate Pvt. Ltd, Malibu Town, Sohna Road, Gurgaon.

JATIND
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Singh Engineer (WC)
For Chairman

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