

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
ORIGINAL APPLICATION NO.28 OF 2023 (WZ)**

Santosh Daundkar

... Applicant

versus

SEIAA, Environment Department

Govt. of Maharashtra & Ors.

... Respondents

**SHORT AFFIDAVIT IN REPLY
ON BEHALF OF RESPONDENT NO.12**

I, Dinesh Nigudkar, an adult and Indian Inhabitant, authorised signatory of the Respondent No.12 and having my office address Commerz, 3rd floor, International Business Park, Oberoi Garden City, Off Western Express Highway, Goregaon (E), Mumbai 400063, am fully conversant with the facts in the captioned Application and I do hereby solemnly affirm and state as under:-

1. This present Affidavit ("**this Affidavit**") is filed by Respondent No.12 Incline Realty Private Limited ("**IRPL**") to place on record certain preliminary objections to the maintainability of the present Original Application No.28 of 2023 ("**OA**") and to the jurisdiction of this Hon'ble Tribunal to entertain and hear the OA. This Affidavit is not a detailed response to the OA. I crave leave to file further more detailed affidavits as I may be advised.
2. At the outset, I deny all and singular the contents of the OA as are contrary to what is stated herein and/or inconsistent herewith and nothing contained in the OA should be deemed to be admitted for want of specific traverse.



2

3. No cause of action qua IRPL:

3.1 At the further outset, it may be noted that the OA does not disclose any cause of action against IRPL or any offence/violation of any nature whatsoever committed by IRPL, that would warrant exercise of jurisdiction by this Hon'ble Tribunal. In the entire OA, the lone purported 'cause of action' (if it can even be called that) qua IRPL, may be found at page 25 of the OA where at Serial No.12 of the Table, it is mentioned "*RG has been placed on the top of the basement slab for plantation*". Apart from this solitary, bald sentence, the OA does not talk about or refer to IRPL at all. The OA is totally devoid of any substance and material that disclose any violation of any provision of law by IRPL.

3.2 It is settled law that the jurisdiction of tribunals in the nature of this Hon'ble Tribunal cannot be exercised on mere whims or suspicions, but, require cogent data and material to be placed before it. The present OA is a fishing enquiry conducted by the Applicant in the hope of unearthing some material qua IRPL and the other respondents. If the Applicant really did not have any substantive cause of action with respect to IRPL, there is no reason why the same would not find place in the OA. The very fact that the only purported allegation qua IRPL is the solitary sentence reproduced above, is itself demonstrative that there is no cause of action against IRPL, no case is made out to pass any orders against IRPL, and, no case is made out for this Hon'ble Tribunal to exercise jurisdiction qua IRPL. The OA is replete with vague allegations and extremely academic and hypothetical grounds that ought not to be entertained by this Hon'ble Tribunal.



3.3 It is respectfully submitted that the Applicant is inviting this Hon'ble Tribunal to exercise its jurisdiction in an unheard of manner viz. make vague cryptic allegations against IRPL in the hope that material and information is submitted for subsequent analysis by the Applicant. It is respectfully submitted that for the sole reason that the OA does not disclose any violations committed by IRPL, the OA is not maintainable qua IRPL and ought to be dismissed *in limine*.

4. **The Hon'ble Supreme Court of India is in seisin of the issue:**

4.1 Another reason for dismissing the OA *in limine*, is that the Applicant has invited this Hon'ble Tribunal to adjudicate on a matter that is directly, substantially and materially under consideration of the Hon'ble Supreme Court of India in ***Sagar Devre & Anr. v. NAREDCO West Foundation & Ors.*** [SLP (Civil) Diary No.11843 of 2023]. A brief background to recapitulate the events that led to the institution of the petition in ***Sagar Devre*** supra is appropriate.

4.2 In ***Anil Tharthare v. Secretary, Environment Department of the State of Maharashtra & Ors.*** [Appeal No.22 of 2016 (WZ)], this Hon'ble Tribunal while considering an issue of violation of the provisions of the Environment Certificate by the project proponent in respect of a project being developed under the provisions of the DCR, 1991 and also to which the directions contained in the Judgement of the Apex Court in the matter of Kohinoor CTNL applied, passed an order dated 13th September 2022 holding that recreation ground has to be provided at the ground level which should not only be open to the sky, but must also enable plantation



of trees and directed that if the project proponent fails to provide recreational ground as per norms, the project may not be allowed to proceed. As such, the Order passed in the matter of *Anil Tharthare* supra was on the touchstone of the judgement of the Apex Court rendered in the Kohinoor CTNL matter. The Order passed by this Hon'ble Tribunal is an order passed in personam and not in rem. It is not and cannot be treated as an order / judgement in rem and be construed as general direction that in all developments that recreation ground has to be provided at ground level. Thereafter the records indicate that this order was communicated to the Respondent No.1 SEIAA and resultantly, the SEIAA deferred numerous proposals received by it for environmental clearance.

- 4.3 Being aggrieved by the inaction of the SEIAA, NAREDCO West Foundation filed Writ Petition (Lodging) No.35671 of 2022 before the Hon'ble Bombay High Court. By an order dated 27th January 2023, the Hon'ble High Court allowed the petition with the following relevant and material ratio and observations,-

"17. Perusal of the order of NGT would indicate that the same has squarely followed the judgment of the Apex Court in Kohinoor (supra), in which the Apex Court has held in paragraph 32 of the judgment as under:

"32. Therefore, after reflecting upon the legal position, we are clearly of the opinion that having 15%, 20% or 25% of the area (depending upon the size of the layout) as the recreational/amenity area at the ground level is a minimum requirement, and it will have to be read as such. We



therefore, answer Issue (i) by holding that it is not permissible to reduce the minimum recreational area provided under DCR 23 by relying upon DCR 38(34). However, if the developers wish to provide recreational area on the podium, over and above the minimum area mandated by DCR 23 at the ground level, they can certainly provide such additional recreational area."

18. We have gone through the judgment of the Apex Court in *Kohinoor (supra)*, in which the Apex Court was essentially concerned with interpretation of provisions of DCR 1991. After interpreting the provisions of DCR 23 dealing with recreational/amenity open spaces, the Apex Court held that the recreational/amenity area is required to be provided at the ground level. It appears that DCR 23 did not contain any specific provision for providing recreational/amenity open spaces at podium level and on the contrary it provided that the recreational space shall be kept permanently open to sky and trees shall be grown as per the requirements specified therein. It is on account of such provisions of the DCR 1991, that the Apex Court held that the recreational/amenity area is required to be provided at ground level.

19. The provisions of DCR 1991 came to be superseded/replaced by the provisions of the DCPR 2034 for areas within Greater Mumbai and some of the principles enunciated in Regulation 23 of DCR 1991 prima facie appear to have been deviated in some of the provisions in Regulation 27 of DCPR 2034. While we do not propose to interpret the provisions of Regulation 27 of DCPR



6
2034, it would be apposite to reproduce Note 2 appended to Regulation 27 which reads thus:

“2. The minimum 60% of the required LOS shall be provided exclusively on the ground and at least 50% of this shall be provided on mother earth to facilitate the percolation of water and balance 40% of required LOS may be provided on podium area extending beyond the building line. The LOS on mother earth shall not be paved and all LOS shall be accessible to all the occupants of the plot/layout. Rest of the compound pavement other than stated above shall be paved with perforated paving having adequate strength, in order to facilitate percolation of rain water into the ground.”

21. Thus, both under the DCPR 2034 as well as in UDCPR there appears to be change in the provision relating to provision of recreational open spaces.

22. Thus there appears to be a deviation in the provisions of the Development Control Regulations applicable at the time of delivery of the judgment by the Apex Court in Kohinoor and the one which are prevalent now. This aspect is required to be considered by the concerned authorities.

23. .. Suffice it to say at this juncture that there appears to be some change in the provisions relating to the manner in which recreational open spaces are to be provided in the earlier Development Control Regulations as considered by Apex Court



in case of Kohinoor (supra) and the one which are prevalent now...

25. From perusal of comparative chart of the provisions of DCR 1991 and DCPR 2034 as well as UDCPR, prima facie there appears to be deviation in the exact location at which open recreational spaces is to be provided. Therefore, SEIAA is required to take into consideration the provisions of DCPR 2034 or UDCPR as applicable, in order to determine permissibility of provision of open recreational spaces on podium level in a particular project. The judgment and order dated 13 September 2022 of NGT in case of Anil Tharthare vs. The Secretary, Environment Dept. State of Maharashtra & Ors. cannot be construed to mean a blanket prohibition to consider the proposals of the projects governed by DCPR 2034 or UDCPR.

29. We, therefore, proceed to pass following order:

O R D E R

- i) We direct that the judgment and order dated 13 September 2022 passed by the National Green Tribunal in Appeal No.22 of 2016 shall not be an impediment for SIEAA to decide various proposals submitted by members of Petitioner No.1-Association for grant of environmental clearances on its own merits.*
- ii) SIEAA, shall consider and decide each of the proposals for grant of an environmental clearance by applying provisions of DCPR 2034 or UDCPR, as the case may be.*



- iii) *All questions on merits relating to permissibility of providing recreational open spaces at podium level in a particular project are left open to be decided by SIEAA on its own merits.*
- iv) *Considering the fact that the proposals submitted by Petitioner No.1 Association are pending since long, SIEAA shall proceed to take a final decision thereon as expeditiously as possible preferably within a period of eight weeks from today.*
- v) *With the above directions, the Writ Petition is partly allowed. Rule made partly absolute in the above terms. No costs.”*

4.4 It is thus clear that the Hon’ble High Court’s order in **NAREDCO West** supra, has recognised and held that there is a material difference between Regulation 23 of DCR 1991 (which did not envisage provision of mandatory R.G. at any location other than mother earth as interpreted by the Hon’ble Apex Court in **Kohinoor CTNL**) and Regulation 27 of DCPR 2034 (which permits provision of a portion of mandatory R.G. at podium levels). It is equally clear that with these observations, the Hon’ble High Court directed SEIAA to consider proposals for grant of environmental clearances on its own merits by applying the provisions of DCPR 2034.

4.5 The Hon’ble High Court’s order was assailed in **Sagar Devre** supra wherein by an order dated 8th May 2023, the Hon’ble Apex Court has stayed the directions contained in the Hon’ble High Court’s



order dated 27th January 2023 and to the best of my knowledge, such stay has continued till date.

- 4.6 In this backdrop, this Hon'ble Tribunal may appreciate that the order dated 27th January 2023 of the Hon'ble High Court has only been stayed and has not been set aside. It is settled law that an order of interim stay does not result in quashing of the impugned order and that it only means that the order will not be operative from the date of the order of the stay. The Apex Court has in the case of ***Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association*** [(1992) 3 SCC 1] conclusively held that mere passing of an interim order staying the portion of the order does not wipe out its existence and its authority or precedential value is not undermined. Paragraph 10 of ***Shree Chamundi Mopeds*** supra is reproduced below for ready reference,-

“While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate



Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending”

4.7 It is therefore respectfully submitted that (a) the *dicta* decided in the impugned judgment remains operative and is binding until the judgment itself is set aside by the superior court, (b) mere passing of an interim order staying the portion of the interim order does not wipe out its existence and its authority or precedential value is not undermined, (c) unless the decision is actually set aside, it remains effective as a precedent. In these circumstances, I submit that Regulation 27 of DCPR 2034 continues to be vires and valid and has not been set aside by any competent Court of Law and therefore, the prayers sought in the OA cannot be granted. The principles of law laid down in *Chamundi Mopeds* supra have been subsequently followed in numerous judgments and I crave leave to refer to and rely upon the same.

4.8 Furthermore, it may be appreciated that the OA essentially invites this Hon’ble Tribunal to pass broad sweeping orders, with respect to points of law and issues that the Hon’ble Supreme Court of India is already in seisin of in *Sagar Devre* supra. It is a settled proposition of law that tribunals in the nature of this Hon’ble Tribunal ought not to pass orders and hear matters that are already under consideration of the constitutional courts. A past instance of the Hon’ble National Green Tribunal, Principal Bench proceeding



to hear and pass orders in a matter of which the High Court was in seisin, was deprecated by the Hon'ble Supreme Court of India in its order dated 11th January 2024 in *State of Himachal Pradesh & Ors. v. Yogendra Mohan Sengupta & Anr.* [2024 INSC 30], relevant paragraphs whereof are reproduced below for ready reference,-

"100. It could thus be seen that when the second order of NGT was passed, the writ petition challenging the interim order dated 12th May 2022 was very much pending before the High Court. Not only that, two other writ petitions being CWP Nos. 23 and 37 of 2022, challenging the draft development plan, were also pending before the High Court. It is thus clear that the High Court was in seisin of the matter related to finalization of the draft development plan.

101. A Constitution Bench of this Court in the case of L. Chandra Kumar v. Union of India and Others was considering the issue regarding ouster of jurisdiction of this Court and the High Courts under Articles 32 and 226 of the Constitution of India as was provided under the Administrative Tribunals Act, 1985 (for short, "AT Act"). The AT Act was constituted under the enabling provisions of Article 323-A of the Constitution of India. Sub-clause (d) of Clause (2) of Article 323-A specifically enables the Parliament to legislate a law for establishment of AT Act and also provides for exclusion of jurisdiction of all the Courts except jurisdiction of this Court under Article 136 with respect to disputes or complaints referred to in Clause (1). This Court after scanning the entire law on the question



12
as to whether the powers of this Court and High Courts of judicial review as could be found in Articles 32 and 226 respectively amounts to basic structure or not, observed thus in paragraph nos. 78 & 79:-

“78. The legitimacy of the power of Courts within constitutional democracies to review legislative action has been questioned since the time it was first conceived. The Constitution of India, being alive to such criticism, has, while conferring such power upon the higher judiciary, incorporated important safeguards. An analysis of the manner in which the Framers of our Constitution incorporated provisions relating to the judiciary would indicate that they were very greatly concerned with securing the independence of the judiciary. These attempts were directed at ensuring that the judiciary would be capable of effectively discharging its wide powers of judicial review. While the Constitution confers the power to strike down laws upon the High Courts and the Supreme Court, it also contains elaborate provisions dealing with the tenure, salaries, allowances, retirement age of Judges as well as the mechanism for selecting Judges to the superior courts. The inclusion of such elaborate provisions appears to have been occasioned by the belief that, armed by such provisions, the superior courts would be insulated from any executive or legislative attempts to interfere with the making of their decisions. The Judges of the superior courts have been entrusted with the task of upholding the



Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence. The constitutional safeguards which ensure the independence of the Judges of the superior judiciary, are not available to the Judges of the subordinate judiciary or to those who man Tribunals created by ordinary legislations. Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Articles 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded. 79. We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective



14

jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided."

102. It could thus be clearly seen that this Court, even when a provision in the Constitution enabled the Parliament to make a law thereby excluding the powers of judicial review except under Article 136 of the Constitution, held that the power of judicial review vested in the High Courts under Articles 226 and in this Court under Article 32 of the Constitution, is an integral and essential feature of the Constitution, constituting part of its basic structure and, therefore, the power of High Courts and this Court to test the constitutional validity of legislations can never be ousted or excluded. This Court further goes on to observe that the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution.

106. It could thus clearly be seen that it is a settled position of law that the High Courts exercise the power of judicial review over all the Tribunals which are situated within its jurisdiction.

108. It could thus be seen that this Court in unequivocal terms held that no Court or Tribunal and for that matter any other authority can ignore the law stated by this Court. It



held that such obedience would also be conducive to their smooth working, otherwise there would be confusion in the administration of law and the respect for law would irretrievably suffer. It has been held that the law declared by the higher court in the State is binding on authorities and tribunals under its superintendence and they cannot ignore it. This Court expressed a caution that it had become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the credibility of judicial institution and encourages chance litigation. This Court further held that predictability and certainty are important hallmarks of judicial jurisprudence developed in this country, as discipline is sine qua non for effective and efficient functioning of the judicial system.

109. *In view of the settled legal position, we are of the view that the continuation of the proceedings by the NGT during the pendency of the writ petitions before the High Court was not in conformity with the principles of judicial propriety. Needless to state that the High Court of Himachal Pradesh, insofar as its territorial jurisdiction is concerned, has supervisory jurisdiction over the NGT. Despite pendency of the proceedings before the High Court including the one challenging the interim order dated 12th May 2022 passed by NGT, the NGT went ahead with the passing of the second order impugned herein.*

110. *It will also be relevant to refer to the observations of this Court in the case of Raghu Ramakrishna Raju*



16

Kanumuru (Member of Parliament) (supra), which read thus:

“13. We are, therefore, of the considered view that it was not appropriate on the part of the learned NGT to have continued with the proceedings before it, specifically, when it was pointed out that the High Court was also in seisin of the matter and had passed an interim order permitting the construction. The conflicting orders passed by the learned NGT and the High Court would lead to an anomalous situation, where the authorities would be faced with a difficulty as to which order they are required to follow. There can be no manner of doubt that in such a situation, it is the orders passed by the constitutional courts, which would be prevailing over the orders passed by the statutory tribunals.”

111. It can be seen from the perusal of the orders of the NGT itself that though the NGT was informed about the High Court being in seisin of the proceedings, it went on to hold that the judgment given by it was binding and therefore, the draft development plan, which in its view, was not in conformity with its judgment, was liable to be set aside..

112. In any case, the second order of NGT is passed basically on the basis of the first order of NGT. Since we have held the first order of NGT itself to be not tenable in law, the second order of NGT which is solely based on the first order of NGT, is liable to be set aside, on the short ground. This, apart from the fact that as discussed



hereinabove, on the ground of judicial propriety, the NGT ought not to have continued with the proceedings after the High Court was in seisin of the matter and specifically when it was informed about the same."

4.9 It is an equally settled principle of law that lower courts ought not to continue with proceedings before it when a higher court / authority is seized of the matter. I crave leave to refer to and rely upon the relevant authorities in this regard.

4.10 The OA invites this Hon'ble Tribunal to transgress its jurisdiction and to cross all established norms of judicial propriety. I respectfully submit that this should not be countenanced.

5. **The construction of this Respondent's project being a subject matter of the captioned Application, is governed *inter-alia* by Regulation 27 of DCPR 2034 and not Regulation 23 of the DCR, 1991:**

5.1 It is respectfully submitted that Regulation 27 of the DCPR 2034 governs the provision of RG / AOS Area for construction, which is presently in force and is vires and valid and has not been set aside by any competent Court of Law.

5.2 The first para of Note 2 to Regulation 27 of DCPR 2034 *inter-alia* permits the provision of 60% of the required AOS / R.G Area on mother earth and the balance 40% of the required AOS / R.G Area on podium area extending beyond the building line. The second para of Note 2 to Regulation 27 of the DCPR 2034 also permits the provision of the LOS / RG Area on the topmost podium subject to



18 the conditions set out therein. Note 2 of Regulation 27 of DCPR 2034 is reproduced hereinbelow for ready reference,-

"2. The minimum 60% of the required LOS shall be provided exclusively on the ground and at least 50% of this shall be provided on mother earth to facilitate the percolation of water and balance 40% of required LOS may be provided on podium area extending beyond the building line. The LOS on mother earth shall not be paved and all LOS shall be accessible to all the occupants of the plot/layout. Rest of the compound pavement other than stated above shall be paved with perforated paving having adequate strength, in order to facilitate percolation of rain water into the ground.

The entire LOS may be provided on top most podium / open to sky subject to condition that 1.5 m. unpaved distance shall be kept for planting of trees and thereafter marginal open space required as per these Regulations 47(1) for the maneuvering of fire fighting engine (& other equipment's) on site from where light & ventilation is derived shall be provided on two sides. The area of said 1.5 m. wide strip shall not be counted in required LOS. If LOS is proposed on podium, then no parking shall be allowed on the same and rain water harvesting shall be provided on podium."

- 5.3 The latest amended plan approval dated 2nd November 2023 approved by the MCGM sets out that the plot area of the larger land on which this Respondent is undertaking development of its projects is 97,819.32 square meters and the required R.G. Area is 24,454.83 square meters. This Respondent has however proposed



42,924.57 square metres of RG Area (that is more than 44% of the required RG Area). As permissible under Regulation 27 of the DCPR 2034, this Respondent has proposed RG area in the following manner,-

- | | | |
|-------|---------------------------|---------------|
| (i) | RG Area on top of podium: | 24,463.03 sqm |
| (ii) | RG area on mother earth: | 11,926.56 sqm |
| (iii) | RG area on basement: | 6,534.98 sqm |

This Respondent craves leave to refer to and rely upon the Amended Plan Approval and other approvals in this regard.

- 5.4 Thus, this Respondent has in accordance with and as permissible under Regulation 27 of DCPR 2034, proposed to provide the required RG / LOS area. Thus, there is no alleged violation by this Respondent as alleged by the Applicant.

6. **Regulation 27 of DCPR 2034 is in full force and effect. The OA challenges Regulation 27 of DCPR 2034, which is impermissible:**

- 6.1 Through vague statements and loose drafting, the OA attempts to obfuscate the Applicant's real challenge i.e. to Regulation 27 of DCPR 2034. It is respectfully submitted that Regulation 27 of DCPR 2034 permits provision of the mandatory R.G. in the manner as stated therein. The said regulation and DCPR 2034 itself, are in full force and effect and have not been set aside by any competent Court of Law. Inasmuch as the OA prays for demolition of portions of podium on which R.G. is provided (which is permissible in Regulation 27 of DCPR 2034), it is clear that the OA is really a challenge to Regulation 27 of DCPR 2034.



20

- 6.2 This Respondent's development and provision of Recreation Ground is in compliance of Regulation 27 of DCPR 2034. The said regulation is in full force and effect and is binding law and is duly complied with by this Respondent.
- 6.3 Further, challenge to Note 2 to Regulation 27 of DCPR 2034 is also the subject matter of Public Interest Litigation (Lodging) No.24112 of 2021 filed by one Yogesh Pratap Singh against the Government of Maharashtra and others before the Hon'ble Bombay High Court. The Hon'ble Bombay High Court has till date not passed any orders in respect of the validity of Note 2 to Regulation 27 of DCPR, 2034 nor has the same been set aside till date. During the pendency of this Public Interest Litigation supra. As already stated above, this Hon'ble Tribunal ought not to adjudicate on a matter that is directly, substantially and materially under consideration of the Hon'ble Bombay High Court.
- 6.4 Thus, the challenge in the OA viz. to Regulation 27 of DCPR 2034, is not maintainable before this Hon'ble Tribunal. It is settled law that this Hon'ble Tribunal does not have jurisdiction to adjudicate upon the vires of any statutory provisions or of any subordinate legislation and I crave leave to refer to and rely upon the authorities in this regard. It is equally settled that the DCR/DCPR are framed by the State in exercise of its powers under Section 22(m) MRTP Act 1966 and form part of the 'Development Plan' and hence are not amenable to judicial review. The issues emanating from regulations of DCPR/DCR and their implementation, cannot be considered or adjudicated by this Hon'ble Tribunal.



7. Prayers in the OA cannot be granted since it is contrary to the judgment of the High Court:

- 7.1 At para 4 of the OA, the Applicant has admitted that he seeks general directions to implement the order dated 13th September 2022 passed by this Hon'ble Tribunal in *Anil Tharthare* supra. However in *NAREDCO West* supra, the Hon'ble High Court has held that *Anil Tharthare* supra was evidently a case considering DCR 1991 and not DCPR 2034. It has also held at para 25 that,-

“The judgment and order dated 13 September 2022 of NGT in case of Anil Tharthare vs. The Secretary, Environment Dept. State of Maharashtra & Ors. cannot be construed to mean a blanket prohibition to consider the proposals of the projects governed by DCPR 2034 or UDCPR”

- 7.2 As mentioned above, the order dated 27th January 2023 of the Hon'ble High Court has only been stayed and has not been set aside and the ratio and observations thereof continue in force. Therefore, inasmuch as the OA seeks implementation of an order (that the High Court found applicable only to DCR 1991) even to projects that are being developed under DCPR 2034, the same is not maintainable and such prayers cannot be granted by this Hon'ble Tribunal.

8. OA is barred by limitation and suffers from delay and laches:

- 8.1 The OA in effect, seeks to challenge Regulation 27 of DCPR 2034. The said regulation was brought into effect on 8th May 2018. The OA is thus hopelessly barred by the law of limitation.



22

- 8.2 The OA also suffers from delay and laches and ought to be dismissed on this ground. This Respondent has completed 70% of the work in the project known as 'Sky City' and has received occupation cum building completion certificate from the MCGM in respect of Wings A to E of residential building. This Respondent has sold 1477 out of 1560 apartments in residential wings A to D and possession of 905 apartments has been handed over to the allottees / purchasers of the apartments in residential wings A to D.
- 8.3 This Respondent has undertaken construction of the project in compliance of the applicable law and rules and regulations. As per the latest sanctioned plans, the required R.G. is 4,680.62 square meters which has been provided by this Respondent on the top of the podium as per Note 2 of Regulation 27 of DCPR, 2034 and the additional R.G. area is provided on mother earth. Therefore, this Respondent has provided R.G. area in compliance of the applicable rules and regulations.
9. For the above reasons, I reiterate that the OA is not maintainable and ought not to be entertained by this Hon'ble Tribunal and ought to be dismissed with exemplary costs. The OA is a roving and fishing expedition that should not be permitted or countenanced. IRPL is undertaking construction and development on its land in full compliance of all applicable law and the approvals and sanctioned accorded to it till date. IRPL has invested enormous monies into the acquisition and development of the project and has created numerous third-party rights, all of whom would be vitally and drastically affected in case any reliefs are granted to the Applicant.



Solemnly affirmed at Mumbai)
this 4th day of March 2024)

4 MAR 2024

Before me,

For M/s. Wadia Ghandy & Co.

Bhakt Mehta

Partner

Advocates for Respondent No.12

For Incline Realty Pvt. Ltd.

[Signature]



Authorised Signatory

(Respondent No.12)

BEFORE ME

[Signature]

SHANE CARDOZ

Advocate & Notary (Govt. of India)
Reg. No. 16388 B Com, LL B
G3, Clifford House, Kadeshwari Mandir Road
Next to Ganesh Mandir Chowk, Bandra (W)
Mumbai - 400 050, Mob 88205 17020
MAH / 3457 / 2002



Notary Register Serial No.	1185/24
Date:	4 MAR 2024

ORIGINAL SEEN & VERIFIED							
AADHR	PAN	ELECTION ID	DRIVING LICENCE	PASSPORT	POA	RESOLUTION	
2388 3953 1131							

21/11/2024 dtd 4/03/2024
&




INCLINE REALTY PRIVATE LIMITED

Commerz. 3rd Floor, International Business Park,
Oberoi Garden City, Off Western Express Highway,
Goregaon (East), Mumbai - 400 063
Tel: +91 22 66773333 Fax: +91 22 66773334
CIN : U45400MH2014PTC255010

Authority Letter

I, Mr. Vikas Oberoi, Managing Director of Incline Realty Private Limited (the "**Company**") hereby individually authorize Mr. Saumil Daru, Mr. Arunkumar Kotian, Mr. Deepak Salunkhe and Mr. Dinesh Nigudkar to represent and undertake following activities on behalf of the Company and others in Original Application No. 28/2023 filed by Santosh Daundkar against the Company before the National Green Tribunal, Western Zone Bench, Pune ("**said Matter**") and also for the purpose of proceedings in the said Matter before any court, judicial authority, including the Hon'ble Supreme Court of India, whether of original, appellate, revision and/or review jurisdiction and/or otherwise:

- (a) to sign, affirm, swear, declare, verify and/or re-verify and file all applications, complaints, written statements, replies, counter claims, affidavits, pleadings, petitions, defenses, appeals, writ petition, special leave petitions, reviews, revisions, authorities, vakalatnama, note of appearance, notice of motion, chamber summons, interim applications or any other pleadings or documents as may be required;
- (b) to sign and verify writings of every description for the purposes mentioned herein;
- (c) to lead and adduce evidence, sign and produce documents;
- (d) to defend, answer, oppose on behalf of the Company in the said legal proceedings;
- (e) to accept service of Writ of Summons or of any other process;
- (f) to appoint, engage, discontinue, remove advocates, solicitors, counsel, pleader, lawyers and to settle and pay their fees and cost; and
- (g) to take such actions and do such things as may be required from time to time in the said Matter.

For Incline Realty Private Limited


Vikas Oberoi
Managing Director

Date: March 4, 2024
Place: Mumbai

TRUE COPY


Partner
Wadia Ghandy & Co.
Advocates, Solicitors & Notaries
N. M. Wadia Building,
123, Mahatma Gandhi Road,
Fort, Mumbai - 400 023.



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

ORIGINAL APPLICATION NO.28 OF 2023 (WZ)

Santosh Daundkar

... Applicant

versus

SEIAA, Environment Department
Govt. of Maharashtra & Ors.

... Respondents

SHORT AFFIDAVIT IN REPLY
ON BEHALF OF RESPONDENT NO.12

Dated this 4th day of March, 2024

4 MAR 2024



M/S. WADIA GHANDY & CO.
Advocates for Respondent No.12
N.M. Wadia Building
123, M.G. Road, Fort
Mumbai 400 001