

IN THE HON'BLE NATIONAL GREEN TRIBUNAL, NEW DELHI

OA No. 68 of 2022

IN THE MATTER OF:

Raman Sharma

...Petitioner

Versus

State of Haryana and Others

...Respondents

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Place: Panchkula

Dated: 09.01.2024


Member Secretary
Haryana State Pollution Control Board

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Status report by Sh. Pardeep Kumar, IAS, Member Secretary, Haryana State Pollution Control Board.

Respectfully showeth

1. The Hon'ble NGT issued order dated 28.03.2023 and dated 25.07.2023, the relevant portions are reproduced as under:-

"13. In view of importance of protection and proper maintenance of open spaces, parks, green belts and having the factual background of the present case as reminder of one of countless such instances of conversion of part or whole of open spaces, parks, green belts in the entire State of Haryana coming up before this Tribunal, we consider it appropriate to widen the scope of the present proceedings and constitute a Joint Committee comprising of representatives of (i) MOEF&CC, (ii) CPCB, (iii) ACS/Principal Secretary, Department of urban Planning Government of Haryana, (iv) ACS/Principal Secretary, Department of Local Bodies, Government of Haryana (v) Director General, Town and Country Planning, Haryana, (vi) Chief Administrator, HSVP and (vii) HSPCB with the directions to (1) compile/catalogue information regarding all green areas/parks/green belts reserved in the respective areas of all the Municipal Bodies in the State of Haryana with requisite details as to (a) location, revenue number, boundaries, measurements etc.; (b) present status regarding plantation/green vegetation, user, maintenance, and agency deputed for

maintenance; and (c) encroachments (including encroachments made by unauthorizedly constructing religious structures) made on the same with requisite details as to who made the encroachments, when and in which manner and what action has been taken/is to be taken for removal of such encroachments specifically mentioning Court cases decided/pending regarding the same; (2) to get entire such information uploaded on the website of the District Administration and Municipal Bodies for seeking public participation for protection of green areas/parks/green belts reserved in the respective areas of all the Municipal Bodies in the State of Haryana against any encroachment and also for ensuring proper use and maintenance thereof; and (3) to verify factual position of per capita green cover and assess its adequacy in view of the number of residents and give suggestions for remedial measures required to be taken for proper user, development, maintenance, protection, and improvement of such green areas/parks/green belts reserved in the respective areas of all the Municipal Bodies in the State of Haryana.

14. xxxxxxxx *The Member Secretary, HSPCB shall be the Nodal Officer for coordination and compliance and all necessary expenses including travel, boarding, lodging expenses shall be borne by HSPCB. Report may be submitted by the Joint Committee within three months by email at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR supported PDF and not in the form of Image PDF.*

19. xxxxxxxx *The HSPCB is directed to revisit the closure order and clearly specify for which project the EC was required and to which the closure order applies and clearly mention the projects to which the closure order does not apply. The HSPCB is also directed to ascertain third party rights already created and take appropriate action for protection of the same. State and its instrumentalities have adequate powers of securing compliance by such builders with the statutory provisions, environmental norms and terms and conditions of the approvals granted and the bona fide third party investors cannot be made to suffer due to inaction/negligence/connivance of the concerned Administrative Officers.*

25. xxxxxxxx *The C&D Waste was removed after more than six months even after filing of the present case and remained lying for almost two years within the knowledge of the Municipal*

Corporation, Gurugram which was bound to get the same removed and processed immediately in discharge of its statutory obligations and Municipal Corporation, Gurugram is itself liable to pay environmental compensation but no proceedings for imposition of environmental compensation on Municipal Corporation, Gurugram have been initiated by the HSPCB ..xxxxxxx...”.

Hon'ble NGT has issued order dated 25.07.2023 and relevant portion is reproduce as under:-

“6. We direct the SEIAA and State PCB to submit a report on the above points and compliances of conditions and to ensure in case of non-compliances necessary action must be initiated against the Project Proponent according to the rules.

17. State Environment Impact Assessment Authority, Haryana vide its letter dated 14.06.2023 had issued notice with the facts that project proponent is required to obtain environmental clearance and the project was constructed without any Environmental Clearance and State Pollution Control Board with SEIAA failed to perform their duty sincerely and fairly and failed to act in accordance with law. 18. Accordingly, we direct the State Pollution Control Board and the SEIAA to dispose of the matter and take a decision according to rules after giving an opportunity of hearing to the person concerned within a reasonable time”.

Based on latest status of various activities the report is given in the coming paras.

2. That a meeting of Joint Committee constituted by Hon'ble NGT vide order dated 28.03.2023 was held on 20.07.2023 and detailed report regarding all Green Areas/Parks/Green Belts reserved in the respective areas of all the Municipal Bodies in the State of Haryana has been asked from stakeholders. The Joint Committee also decided for constitution of sub-committees for each district to assist the Joint Committee for compliance of the orders of Hon'ble NGT.

The information regarding all Green Areas/Parks/Green Belts reserved in the respective areas of all the Municipal Bodies in the State of Haryana

received from Sub-Committees and stakeholder Departments has been compiled and detail is mentioned as under:-

Sr. No.	Information regarding Parks/Green Belts/Green areas	Number
1	No. of parks/green belts/green areas	2591
2	No. of parks/green belts/green areas not developed/ plantation	194
3	No. of parks/green belts/green areas in which agencies not deputed for maintenance	259
4	No. of parks/green belts/green areas in which encroachment has been made	33
5	No. of parks/green belts/green areas in which revenue details not provided	2412

The direction regarding to develop the parks/green belts/green areas, to engage agencies for maintenance, to submit action taken report regarding encroachments and to submit revenue details of all parks/green belts/green areas have been issued to all stakeholders. A meeting has also been proposed at State level in this month.

3. That as per direction of Hon'ble NGT to revisit the closure order, closure order/directions has again been issued by HSPCB vide order dated 21.04.2023 (copy enclosed as **Annexure-R-I**) , in which it has been now clarified that the directions issued vide closure order dated 23.12.2022 are applicable only to the property of project proponents and do not apply to the property of bonafide third party investors as well as to other persons to whom the rights in the properties have been/ to be transferred by third party investors.

However, the Appellate Authority vide order dated 21.09.2023 (**copy enclosed as Annexure-R-II**) set aside the closure direction issued by the Board vide order dated 22.12.2022 and clarification order dated 19.04.2023. HSPCB has filed an appeal vide filing no. 0701116317972023 dated 19.12.2023 before Hon'ble NGT titled as Haryana State Pollution Control Board & Anr. Vs M/s Malibu Estate Pvt. Ltd. & Anr. against the order issued by Appellate Authority on 21.09.2023.

4. That HSPCB has imposed Environmental Compensation of Rs. 6,84,37,500/- vide order dated 24.03.2023 on M/s Malibu Estate Pvt. Ltd., Malibu Town, Sohna Road, Gurugram. Further, HSPCB has imposed Environmental Compensation of Rs. 1,02,65,625/- vide order dated 27.09.2023 on Commissioner Municipal Corporation, Gurugram for non compliance of C&D Waste Rules. Copy of Environment Compensation orders are enclosed as **Annexure R-III & IV**.

5. That the hearing was given to Federation of residents of Malibu Township by HSPCB. It has come out that they are ready to take up the environmental issues and apply for Environmental Clearance from State Environment Impact Assessment Authority (SEIAA). They are also ready to take CTE/CTO from HSPCB. HSPCB proposes to come up with a policy, wherein for the projects where the builder is not coming forward to ensure the compliance of Environmental norms and run away/died/in jail/not available, the residents can be granted CTE/CTO. But without grant of Environmental Clearance, the HSPCB can not grant CTE/CTO to such projects. In this regard, MoEF&CC was requested to provide necessary guidance to HSPCB or arrange to make some provisions in norms for grant of Environmental Clearance for such cases, so that compliance of Environmental norms be ensured. Copy of communication sent to MoEF&CC is enclosed as **Annexure-R-V**. MoEF&CC vide their letter dated 04.08.2023 (**copy enclosed as Annexure-R-VI**) has submitted that the proposal involves substantial policy changes at the end of MoEF&CC. As the matter is still under judicial consideration, and Hon'ble NGT has passed directions for compliance to HSPCB and SEIAA Haryana, it would be appropriate that the proposal may first be placed before the Hon'ble NGT for consideration, examination and assessment. If required, the MoEF&CC shall provide its view before the Hon'ble NGT.

6. That as per direction of Hon'ble NGT, opportunity of hearing was given to the project proponent, M/s Malibu Town Pvt. Ltd., on dated 19.09.2023.

The representatives of M/s Malibu Town Pvt. Ltd. had requested that they will submit a detailed reply in reference of this hearing. A personal hearing was again given to the project proponent on 20.12.2023 but the project proponent has not attended the hearing project proponent submitted a reply through email on dated 15.12.2023 that as per decision dated 21.09.2023 of Appellate Authority and the fact that the issue of applicability of Environment Clearance is sub judice before the SEIAA.

7. Hon'ble Tribunal may take this report on record please.

Place: Panchkula

Dated: 09.01.2024


Member Secretary
Haryana State Pollution Control Board



HSPCB

962
HARYANA STATE POLLUTION CONTROL BOARD
C-11, SECTOR-6, PANCHKULA

Website – www.hspcb.gov.in E-Mail: hspcbwatercell@gmail.com

Ph: 0172-2577870-873

Annexure R-1

Closure Order/ Directions

Whereas, M/s Malibu Estate Pvt. Ltd, Malibu Town, Sohna Road, Gurugram is a company engaged in the business of Real Estate and developing/ building townships and other building projects and has established and operating a Residential Plotted Colony along with Group Housing Component situated at Sohna Road, Gurugram which is polluting in nature and is covered under Red Category according to the policy of the Board;

Whereas, directions were issued vide letter No. **HSPCB/GUR/2022/INS/ 31601738CONCO001- 004 dated 23.12.2022** in exercise of 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;

Whereas, after issuance of the directions, same were produced before Hon'ble NGT in OA No. 68 of 2022 titled as Raman Sharma Vs State of Haryana for consideration in addition to other issues pending before the Hon'ble NGT raised by the applicant therein;

Whereas, an order dt. 28.03.2023 was passed by Hon'ble NGT, wherein, Hon'ble NGT was pleased to issue directions to the HSPCB to revisit the closure order in terms of that the bonafide third party investor may not be made to suffer due to inaction / negligence / connivance of the concerned Administrative Officer. Before proceedings further, it is appropriate to reproduce the relevant paras of the order dt. 28.03.2023.

" Para No. 19-

*It appears that before passing the closure order the HSPCB has not taken into consideration the third party rights already created by the respondent No.8 in favour of those aspiring to find shelter for good living (which is universally acknowledged as **the basic human need**) who may have made investment of their life time earnings in ongoing projects.*

Environmental compensation has also been imposed without giving opportunity of being heard to the Respondent No.8 and such order for imposition of environmental compensation, which may not be legally sustainable on scrutiny for violation of principles of natural justice, which is also not likely to be immediately recovered and which is not part of any action plan based on assessment of actual damage to environment in the area for taking of remedial measures for restoration thereof, serves no meaningful purpose. The HSPCB is directed to revisit the closure order and clearly specify for which project the EC was required and to which the closure order applies and clearly mention the projects to which the closure order does not apply. The HSPCB is also directed to ascertain third party rights already created and take appropriate action for protection of the same. State and its instrumentalities have adequate powers of securing compliance by such builders with the statutory provisions, environmental norms and terms and conditions of the approvals granted and the bona fide third party investors cannot be made to suffer due to inaction/negligence/connivance of the concerned Administrative Officers."

Whereas, perusal of the observations of the Hon'ble NGT reflect that there is need to pass an order in continuation to the earlier order **HSPCB/GUR/2022/ INS/ 31601738CONCO001- 004 dt. 23.12.2022**, hence, the present order;

Whereas, at this juncture, it is appropriate to recapitulate the relevant facts, which go to the roots of the present matter, the above said unit was visited by the Field Officer of the Board on 08.09.2020 on the basis of the complaint received from Sh. Raman Sharma, CW - 58, F.F, Malibu Town, Sector-47, Gurugram-122018 through e-mail dt. 08.07.2020 and Field Officer reported the following deficiencies:-

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, during inspection, samples of effluent were also collected by the Field Officer of the Board from 3 Nos. of Sewerage Treatment Plants by following due process as mentioned in the Water (Prevention and Control of Pollution) Act, 1974. After examination of the sample by Govt. Analyst, Department of Environment & Climate Change, Haryana, the report was prepared 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, keeping in view of the violations, show cause notice for closure was issued by Regional Officer, Gurugram North vide his letter No. HSPCB/GRN/2020/1948 dated 16.10.2020 and in response to the SCN reply vide letter dated 02.11.2020 was received, but after analysis of all the facts and circumstances Regional Offices reached at the conclusion that reply is not satisfactory as concerned failed to comply with the observation;

Whereas, the Regional Officer, Gurgaon North vide his letter no. HSPCB/ GUR/ 2022/ RO/ INS/ 31601738CONCR001 dated 14.12.2022 had 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 and after considering all the facts, circumstances, inspection reports, analysis reports and reply received in response to show cause notice, an order dt. 23.12.2022, containing directions in following terms was passed;

“(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."

Whereas, now in view of the order dt. 28.03.2023 passed by Hon'ble NGT, it is hereby ordered that the above directions from (a) to (e) mentioned in the order dt. 23.12.2022 are applicable only to the property of project proponents and do not apply to the property of bonafide third party investors as well as to other persons to whom the rights in the properties have been/ to be transferred by third party investors, as mentioned in the order of Hon'ble NGT.

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 and under section 31-A of the Air (Prevention & Control of Pollution) Act, 1981 is an offence.

Dated Panchkula, the
19th April, 2023

Chairman

Endst. No. HSPCB/GUR/2022/INS/31601738CONCO005-08

Dated:21.04.2023

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/ increase load of electric connection to project proponent 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 as per above orders.
4. DTP, Gurugram. He is directed to ensure that the construction activities are stopped by the project proponents.
5. Executive Engineer, GMDA, Gurugram. He is directed not to issue any new water connection in this project as per above orders.
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.

Digitally signed
JATINDERPAL SINGH
AL SINGH
Date: 2023.04.21
12:39:56 +05'30'
Sr. Env. Engineer (WC)
For Chairman

Before the Appellate Authority constituted under the Air (Prevention and Control of Pollution) Act 1981 and Water (Prevention and Control of Pollution) Act, 1974, New Civil Secretariat, Haryana, Sector 17, Chandigarh

Appeal No.20 of 2023

Date of Decision: 21.09.2023

M/s Malibu Estate Pvt. Limited, 38 DDA, Commercial Complex, Kailash Colony, Extension, Zamrudpur, New Delhi-110048, through representative Subhash Raghav, aged 45 years, Son of Ompal Singh Raghav resident of Ward No.08, VPO Ghamroj, Gurgaon, Haryana.

.....Appellant

Versus

1. Haryana State Pollution Control Board, through its Chairman, Plot No.C-11, Sector 6, Panchkula, Haryana
2. Regional Officer, Haryana State Pollution Control Board, Gurugram, Haryana
3. Municipal Corporation Gurugram, District Gurugram through Commissioner

.....Respondents

Present: Sh.Abhishek Sanghi, Advocate counsel for the appellant.
Shri Ramesh Chahal, Advocate counsel for the respondent.

ORDER

1. The case of the appellant, in brief, is that it is a private limited company engaged in business of constructing building/colonies, dealing, selling, purchasing, acquiring, providing consultancy in civil construction etc. A project under the name of Malibu Town was undertaken by the appellant for which license was obtained from Town and Country Planning Department, Haryana. It has challenged the impugned order dated 23.12.2022 whereby it was issued directions as follows:-

(a) *The project proponent shall stop all construction activities related to the project with immediate effect till it obtains environment clearance under EIA*

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- 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 plan for the development of the project shall take necessary action to stop further construction activities related 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 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.

2. The above order was clarified under the directions of Hon'ble NGT on 02.03.2023 as follows:-

"...Sub:- Clarification regarding regulatory directions issued by HSPCB to M/s Malibu Estate Pvt. Ltd., Malibu Town, Sohna Road, Gurgaon.

The HSPCB has issued directions Endst No. HSPCB/GUR/2022/INB/31801738CONCO001-004 dated 23-Dec-2022 which are reproduced as under:-

- (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 plan for the development of the project shall take necessary action to stop further construction activities related 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 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.

The president of Malibu Federation along with other representatives have been given personal hearing by Chairman, HSPCB on 21.02.2023 at C-11, Sector-

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6. HSPCB, Panchkula. It was informed by them that all constructions activities such as even repair of roads, sewerage system, STPs etc. have been stopped which is creating hurdle in the betterment of environment.

In view of above, it is clarified that directions were issued to save the environment and any act/activity which promotes or is for betterment of Environment, do not come in ambit of above regulatory directions of HSPCB. The activities such as repair of roads, sewerage system, STPs etc., can be carried out by the concerned agencies. ..."

3. The order dated 23/12/2022 was further modified on 19/04/2023 as follows: -

"whereas, now in view of the order dated 28/03/2023 passed by Hon'ble NGT, it is hereby ordered that the above directions from (a) to (e) mentioned in the order dated 23/12/2022 are applicable only to the property of project proponent and do not apply to the property of bonafide third-party investors as well as to other person's to whom the rights in the properties have been/to be transferred by third-party investors, as mentioned in the order of Hon'ble NGT"

4. The appellant has alleged that the project was completed and part completion was issued from time to time as follows:-

License no. 71-75 of 1992 dated 28.10.1992 in respect of area measuring 107.682 acres	Part completion of the project was issued on 23.02.1996 which was renewed upto 27.10.2024
License no. 4-8 of 1993 dated 18.10.1993 in respect of area measuring 16.181 acres	Part completion of the project was issued on 03.05.1996 which was renewed upto 17.03.2025
License no. 15-19 of 1994 dated 03.12.1994 in respect of area measuring 14.962 acres	Part completion of the project was issued on 03.05.1996/06.06.2003 which was renewed upto 07.12.2024
License no. 4-8 of 1995 in respect of area measuring 26.83 acres dated 15.11.1995	Part completion of the project was issued on 05.02.2003 which was renewed upto 14.11.2024
License no. 36-46 of 1997 in respect of area measuring 14.461 acres dated 21.07.1997	Part completion of the project was issued on 05.02.2003 which was renewed upto 20.07.2024

5. The above data shows that part completion for all the above projects was granted by the department concerned prior to the year 2006. The environmental impact assessment (EIA) notification was notified on 14.09.2006. The appellant obtained license no.15

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dated 31.01.2008 in respect of land measuring 24.681 acres for which part completion was issued on 27.09.2016 which has been renewed upto 30.01.2025. This license covered separate zone unrelated to earlier zoning which covered an area of 180.115 acres for which part completion had already been issued prior to the year 2006. The condition of obtaining NOC from Ministry of Environment and Forest or the environment clearance is to be seen for the land of license no. 15 of 2008 of which built up area is less than 1,50,000 sq. meter and this fact has also been stated by department of Town and Country Planning in their minutes of meeting dated 27.01.2014. For this license the appellant had also obtained CTO from time to time and the same had been granted without raising any objection about requirement of environment clearance. The appellant has annexed the copy of CTO from 2011 to 2020 as **Annexure A-3(colly)**.

6. One Raman Sharma filed complaint before Lok Ayukta raising various issues including the issue of not obtaining the NOC by the appellant company in reference to license no. 15 of 2008. In the meeting dated 01.10.2013 attended by Senior Town Planner, Gurugram, HUDA officials and the complainant, it was recorded that the contention of appellant that no environment clearance was required for land of license no. 15 of 2008 was found correct. On land of this license, no construction activity was carried on and the land was developed for carving plots. The appellant keep a strict check on effluent discharge and the results in analysis report from time to time were found within parameters. The application of appellant for grant of CTO was declined vide order dated 02.09.2020 (**Annexure A-8**) on technical grounds. The respondent no. 1 collected sample on 08.09.2020 from 3 STPs, one rain water harvesting pit and sewerage line going directly in HUDA/GMDA sewer. The appellant also sent samples for analysis

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from a lab approved by MOEF and got analysis report showing the results within parameters which was conveyed to the respondent with a request to get the samples tested again but the request was not considered. The analysis report (**Annexure A-10**) dated 05.10.2020 shows some parameters were exceeding and the respondent no. 2 issued a show cause notice i.e. 16.10.2020 (**Annexure A-11**) which was duly replied on 02.11.2020 (**Annexure A-12**) with request (**Annexure A-13**) for recollection of sample. The respondent without looking into the documents got an FIR No. 628 (**Annexure A-14**) registered against the appellant. Raman Kumar who is a habitual complainant and blackmailer also filed civil suits and complaints against the appellant and various departments heads.

7. Despite settled legal position that environment clearance was not required for the project of appellant, the respondent issued a show cause notice under Section 15 of the Environment (Protection) Act, 1986 which was duly replied. The respondent also filed a complaint case no. 50 of 2021 in Special Environment Court, Faridabad against the appellant and its directors in which they were summoned.
8. The department of Town and Country Planning, Haryana and MC, Gurugram issued an order dated 09.05.2022/07.06.2022 (**Annexure A-22**) directing all the licensee to transfer possession of all roads, open spaces, public parks and public health services in these colonies to Municipal Corporation Gurugram on "as is where is" basis and the appellant has complied with these orders. The roads, open spaces, public parks and public health services including STPs and services on license no. 15 of 2008, have been transferred to Municipal Corporation, Gurugram.

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9. The appellant received closure order/directions dated 22.12.2022 passed by Chairman, HSPCB wherein reference have been to the FIR No. 628 dated 16.10.2020, complaint no. 02 of 2020, civil suit no. 594 of 2020 and other complaints filed by Raman Kumar which were pending adjudication/investigation. No adverse order in these cases have been passed against the appellant. The Resident Welfare Association of Malibu Town send samples to Government Accredited Laboratory vide report dated 17.02.2023 (Annexure A-25) and all samples were found within parameters. The order dated 22.12.2022 has been passed without affording any opportunity of hearing to the appellant. This order has been passed in utter haste without application of mind, in an arbitrary manner, without jurisdiction and against the principle of natural justice. The respondents have not taken note of the fact that the appellant company has handed over the group housing project to residents welfare association vide register handing over deed dated 23.05.2022 and remaining entire common area to Municipal Corporation Gurugram on 15.06.2022 i.e. much before the passing of the impugned order. The impugned order dated 23.12.2020 and the clarification order dated 02.03.2023 are illegal arbitrary, against the provisions of law, as such, liable to be quashed.
10. In reply the respondents have referred to complaint filed against the appellant under the provisions of Environment (Protection Act), Water and Air Act and pendency of O.A No. 68 of 2022 titled as Raman Sharma Vs State of Haryana. It has been alleged that Director and CPIO, Ministry of Environment & Forest intimated the Principal Secretary to Government of Haryana vide letter dated 27.01.2012 that appellant is constructing Malibu Township Project at Gurgaon without valid environmental clearance. The State

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Government was requested to initiate action against the appellant after verifying the violations.

11. It has been alleged that the project of appellant was inspected by AEE of respondent on 14.07.2020 in the presence of representatives of appellant who were present during inspection and sampling but willfully absented from the site during process of signing of documents. Mr. Ajitesh Jha, Civil Engineer and Mr. Omkar, Manager Purchase, who were present on behalf of the appellant were duly served with notice of intention in form no. XII which they refused to sign but their presence was visible in the photographs. Land of license no. 15 of 2008 is part and partial of Malibu Town residential plotted colony spread over 204.796 acres as per the revised layout of 2008 and 2016 (**Annexure R-4 and R-5**). The revised layout plan of 204.796 acres was obtained from DTCP Haryana on 23.01.2008 and part completion certificate was obtained on 27.09.2016 for land measuring 24.681 acres of license no. 15 of 2008. DTCP Haryana issued occupation certificate for 31061.622 sqm. on 10.03.2017 in respect of other license of appellant and revised plan of 204.796 acres of land developed by appellant was approved on 28.09.2016. The District Town Planner, Gurugram vide letter dated 18.08.2011 directed the appellant to complete construction of 8 community sites i.e.5 nursery school, 2 primary school and 1 high school. The appellant obtained the occupation of these projects, dispensary building, cre'che building during the period 2018 and 2019. The occupation certificate of club building was obtained on 22.06.2009. The project of the appellant was found violating the environmental norms and CTO was refused vide letter dated 02.09.2020. The request of appellant for re-sampling was duly considered and re-sampling will be carried out in due course of time by Field Officer. In the order dated

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22.12.2022 directions were rightly issued after giving opportunity of hearing to the appellant and it calls for no interference in this appeal.

12. I have heard the Learned Counsel for the parties and have gone through the file of the case very carefully with their assistance.
13. The impugned order dated 22/12/2022 (this order was endorsed on 23/12/2022 and has been referred as order dated 23/12/2022 in subsequent clarifications by HSPCB) is based on show cause notice dated 16th of October 2020 issued by Regional Officer, Gurugram Region (N). The operative part of the notice reads as follows: -

"whereas the site of your unit was inspected by consent for officer on 08/09/2020 and the legal samples were collected from 3 numbers of Sewage Treatment Plant (STP) 01 number Rain Water Harvesting Pit, Sewage line going directly HUDA/GMDA Sewer underground water tank in presence of are presented of M/s. Malibu Estate Private Limited i.e. Sh. Ajitej Jha, Civil Engineer and Sh. Onkar Singh, Manager Purchase and as per analysis report number 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 and Climate Change, Haryana, results found exceeding the prescribed limit.

Whereas details regarding source of water supply, water consumption, treatment, mechanism of disposal since its establishment to till date was not provided during the inspection.

From the above it is clear that you are discharging its partially/untreated sewage effluent partially on land for percolation/gardening/horticulture and partially into public sewer and is thus causing water pollution and contamination of underground water table of nearby area.

The Hon'ble NGT, principal bench New Delhi in OA No. 196 of 2014 titled as Krishan Kant Singh and Anr. Versus National Ganga River Basin Authority &ors. has directed that no STP shall be allowed to discharge their effluent directly or indirectly into river Ganga or any its tributaries.

Whereas the SPCBs are also required to ensure installation and regular operation of the requisite pollution control facilities in the polluting industries/STP's,

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In view of the above you are liable to pay an environmental compensation in terms of directions of the board issued by the order no. 6043 - 6075 dated 29/04/2019 as assessed by the board as per the methodology defined therein

In view of the above, you are hereby directed to show cause notice within 15 days as to why closure & prosecution action under section 33 - A & 43/44 of Water Act, 1974 may not be initiated for non-compliance of the above mentioned observations/incompletion/deficiencies.

In case you fail to comply with the observations/incompletion's/deficiencies mentioned within the above-mentioned stipulated time period, it will be presumed that you have nothing to say in this regard and accept the status as above, which will warrant action under section 33-A of Water (Prevention and Control of Pollution) Act, 1974 besides taking prosecution action under section 43/44 of Water Act 1974 without giving any further notice."

14. From this Show Cause Notice, it is evident that action against appellant was proposed on 3 grounds, Firstly, that the result of the samples taken on the day of inspection dated 08/09/2020 were found exceeding prescribed limit. Secondly, the appellant was discharging the untreated effluent on land and public sewer and thereby causing water pollution etc. Thirdly, no record was produced regarding source of water supply, water consumption, treatment, mechanism of disposal. All these issues are covered under section 25 & 27 of Water (Prevention and Control of Pollution), Act 1974 and the order dated 22.12.2022 is virtually under there provisions, conferring jurisdiction to this authority - which has not been disputed by respondents and no plea to this effect has been taken in reply.
15. The appellant had submitted reply to the show cause notice raising objections regarding mode of taking sample.
16. Before proceeding further it is required to take note of the fact that the Director, Town and Country Planning, Haryana, Chandigarh vide order dated 9th may 2022 (annexure A-22) had directed the appellant and other project owners:-

Appeal No.20 of 2023 M/s. Malibu Estate Pvt. Ltd. Versus HSPCB

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"to transfer the possession of all such roads, open spaces, public parks & public health services in these colonies to Municipal Corporation, Gurugram on 'as is where is basis'. It is hereby clarified that this transfer shall not be construed as grant of completion certificate accept to colonies namely Rosewood City and Greenwood City under the provisions of act No. 8 of 1975. The colonizers except two colonies namely Rosewood City and Greenwood City shall thus continue to be responsible for the compliance of various terms and conditions of the license, including, but not limited to the following....."

17. As per the order of the DTCP, Haryana the handing over and taking over took place on 15th of June 2022 whereby the roads, water supply, sewerage system, storm water drains, streetlights, Control Panel for streetlights, electricity meter for street light, parks and green belts were handed over to Municipal Corporation, Gurugram meaning thereby that the appellant was not in control of the services/infrastructure handed over to Municipal Corporation, Gurugram after 15/06/2022. The copy of the order dated 9th may 2022 (annexure A-22) was also endorsed to HSPCB. The inspection by an official of HSPCB was conducted on 08/09/2020 i.e. much prior to the handing over of project of STP to Municipal Corporation, Gurugram but the impugned order dated 22/12/2022 was passed after the STP had been taken over by municipal Corporation, Gurugram.
18. After the passing of impugned order dated 22.12.2022, the deficiencies, as mentioned therein are to be complied by Municipal Corporation, Gurugram and not by the appellant. It appears that the order of the DTCP, Haryana dated 9th of may 2022 and handing over of the services, as per order of DTCP, Haryana by appellant to The Corporation was not brought to the notice of the authorities of HSPCB while passing the impugned order dated 22/12/2022.
19. The appellant has alleged that the samples of STP were got tested from government approved laboratories and the results were found within parameters. Even if the above plea of the appellants is given no weight, the question for consideration in this appeal is

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as to who had to remove the deficiencies pointed out in the impugned order. Once, the appellant is not in control of STP etc., it does not fall within its domain to initiate any action to rectify the deficiencies in impugned order. The control of STP is with the Municipal Corporation, Gurugram and the appellant cannot take steps to improve the quality of effluent. Ld. counsel for the respondent was requested to clarify as to how the appellant can be bound to do the needful regarding the deficiency in the STP and other services which have been handed over to Municipal Corporation, Gurugram, and his attention was drawn towards handing over/taking over proformas which are file but he could not come up with any submission in this regard. The Municipal Corporation, Gurugram, which is in control of STP and other public health services is not party to this order and is not supposed to take any steps to rectify the deficiencies in the impugned order.

20. The closure order has been passed on the ground of not obtaining CTE/CTO and environmental clearance under the provisions of EIA notification **but these issues were not raised in the show cause notice dated 16/10/2020 and the appellant was not given any opportunity to explain in this regard.** The point No. 4 to 6 in the order relating to registration of FIR, filing of a complaint by Raman Sharma and investigation by Special Investigation Team are in no way relevant facts for consideration while passing order on the basis of show cause notice dated 16/10/2020 (Annexure R - 6).
21. In view of the above discussion, it is evidently clear that while passing the impugned order dated 22/12/2022, the extraneous factors beyond the scope of show cause notice dated 16/10/2021 were taken into consideration. The competent authority has neither

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looked into nor discussed the handing over of STP and other public services by the project proponent to Municipal Corporation, Gurugram on 15/06/2022 and its effect.

22. It has been argued by Ld. counsel for the respondent that at the time of inspection dated 8th of September 2020 and issuance of show cause notice dated 16/10/2020, the STP and other public services in the project were under the control of the appellant and the order was to be passed on the show cause notice by taking into consideration the facts and circumstances as prevailing on the day of issuance of show cause notice.
23. The above argument is without any substance or call for detailed discussion. The order dated 22/12/2022 is prospective and not retrospective. While passing this order, the competent authority had to take into consideration the facts/circumstances as prevailing on the date of order. It cannot pass order by ignoring or closing its eyes towards the facts and circumstances on the day of passing of the order. The competent authority while passing the order has also to take note of the party/persons who will be affected by the order and who could take a remedial measure to rectify the lacunas/deficiencies in the maintenance of service(s) which have been found deficient. As already discussed, the appellant could not take any remedial measures to seek withdrawal or suspension of impugned order by rectifying the issues in operation of STP. This does not mean that the act of appellant relating to deficiencies in the maintenance of STP, discharging effluent on the ground or public sewer etc. got justified with passage of time and handing over public services to M.C. Gurugram. The appellant has been issued notice of environmental compensation and the respondent could certainly proceed to initiate action on that show cause notice in accordance with law, subject to the right of appellant to have legal remedies.

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24. Ld. Counsel for the respondent has tried to raise the issue of not obtaining the environment clearance for the project of appellant. This fact has been admitted that the matter in this regard is before the competent authority i.e. SEIAA where it will be decided as to whether the appellant need to seek an environmental clearance for its project. The appellant has raised the plea that no environment clearance is required for the project of Malibu Town. The HSPCB is not an authority to decide this issue, as such, it will be appropriate to wait for the order passed by the competent authority in this regard before taking any action against the appellant. As per the decision of competent authority, the respondents, notwithstanding anything observed in this order, may proceed further in the matter, in accordance with law.
25. In view of the discussion above, I am of the considered opinion that the impugned order dated 22/12/2022 (Annexure - A 23) and clarification orders dated 02.03.2023 and 19.04.2023, are not legally sustainable and liable to be set aside. Consequently, this appeal is accepted and the impugned order dated 22/12/2022 along with clarification orders are set aside.
26. Keeping in view the facts and circumstances of the case, the parties are left to bear their own cost.
27. Copy of this order be supplied to the parties free of cost.

Dated: 21-09-2023

Sd/-
Justice Surinder Gupta
Former Judge
Appellate Authority

Appeal No.20 of 2023 M/s Malibu Estate Pvt. Ltd. Versus HSPCB



HARYANA STATE POLLUTION CONTROL BOARD
C-11, SECTOR-6, PANCHKULA
Ph-0172-577870-73, Fax No. 2581201
E-mail: hspcbwatercell@gmail.com

ORDER

Whereas, M/s Malibu Estate Pvt. Ltd., Malibu Town, Sohna Road, Gurugram is a Residential Plotted Colony, along with Group Housing component and is covered under the Red category, which is polluting in nature;

Whereas, on the directions of Hon'ble NGT in the matter of OA No.593/2017 (WP (CIVIL) No. 375/2012, Paryavaran Suraksha Samiti & Anr. Vs. Union of India &Ors, CPCB has prepared methodology for assessing Environmental Compensation. The methodology prepared by the CPCB has been accepted by Hon'ble NGT vide orders dated 28.08.2019, in the same case;

Whereas, Hon'ble Supreme Court of India in matter of Indian Council for Enviro Legal Action & Ors. Vs. Union of India &Ors., (1996) 3 SCC 212 Para 16 and in matter of Vellore Citizens Welfare Forum Vs. Union of India &Ors. (1996)5 SCC 647 Para 12-18 – holding that "Polluter Pays" principle is an 'accepted principle and part of environmental law of the country, even without specific statute';

Whereas, it has been ordered vide Head office order Endst. No. HSPCB/PLG/2019/6043-50 dated 29.04.2019 and No. HSPCB/PLG/2021/2343-2381 dated 22.12.2021, to adopt the modalities/methodology suggested by the CPCB for assessment, imposing, collection and utilization of environmental compensation from the polluting units in the state of Haryana and the same has been approved by the Board in its 184th meeting. The modalities/methodology of environmental compensation of the HSPCB placed on website of Board for transparency and for accessibility of concerned stakeholders;

Whereas, a committee was constituted at head office level vide order Endst. No. I/138645/2022 dated 20.10.2022 to examine and finalize case of the environment compensation submitted by the Regional officers so as to maintain the uniformity among all the cases. The report submitted by the committee is placed before the competent authority for approval;

Whereas, in compliance of above quoted orders of Hon'ble NGT, this case falls under the cases to be considered for levying environmental compensation for operating without CTE/ CTO from the Board, and as per the Analysis Report No. W-3/2020-21/03 dated 05.10.2020, No. W-4/2020-2021/04 dated 05.10.2020, W-5/2020-21/05 dated 05.10.2020, W-6/2020-21/06 dated 05.10.2020 and W/7/2020-21/07 dated 05.10.2020 the parameters were exceeding/non-confirming with the standards laid down by the Board for discharge of effluent and further, not obtaining Environmental Clearance.

Whereas, the Regional Officer vide letter 22.02.2023 has sent the calculation of environment compensation against the unit for above said violations and the Environment Compensation Assessment Committee examined the recommendations of environmental compensation submitted by Regional Officer in case of said unit, in its meeting held on 21.03.2023 as per provisions of above said modalities/methodology. After deliberations, the committee recommended environmental compensation as under:-

$EC = PI \times N \times R \times S \times LF = 80 \times 1825 \times 250 \times 1.5 \times 1.25 = \text{Rs. } 6,84,37,500/-$ where, PI = Pollution Index, N = No of days of violation, R = Factor in Rupees, S = Factor for scale of operation, LF = Location Factor.

The above recommendations of the committee have been accepted by the Competent Authority.

In view of above, it is hereby ordered with the directions to the unit M/s Malibu Estate Pvt. Ltd., Malibu Town, Sohna Road, Gurugram to deposit Environment compensation of Rs. 6,84,37,500/- (Six Crore, Eighty Four Lakhs, Thirty Seven Thousand, Five Hundred Rupees only) with the Haryana State Pollution Control Board as Environment Compensation within 07 days on account of the damage caused by the unit to the Environment.

In case of failure, the Board will be constrained to initiate action as deemed necessary in due course of law.

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Dated Panchkula, the

Chairman, HSPCB

21th March, 2023

Endst. No. HSPCB/WC/2023

Dated: 24/03/2023

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

1. Regional officer, Gurugram North. He is directed to pursue the matter for payment of environmental compensation as stated above and to submit the compliance report in this regard within the prescribed time period.
2. Sr. Accounts Officer, HSPCB, Panchkula.
3. M/s Malibu Estate Pvt. Ltd., Malibu Town, Sohna Road, Gurugram with direction to deposit above amount of EC in saving Bank Account of HSPCB with INDUSIND Bank, Sector-9, Panchkula in Account Number- 100053543757 having IFSC Code: INDB0000164.

Signed by Jatinder Pal
Singh

Date: 24-03-2023 17:24:51
Sr. Environmental Engineer (HQ)
Reason: Approved

For Chairman



HARYANA STATE POLLUTION CONTROL BOARD
C-11, SECTOR-6, PANCHKULA
Ph-0172-577870-73, Fax No. 2581201
E-mail: hspcbwatercell@gmail.com



ORDER

Whereas Commissioner Municipal Corporation, Gurugram was found in violation of C & D waste Management Rules, 2006 and delay in disposal of C & D waste of dispensary site of Malibu Town, Sohna Road, Gurugram;

Whereas, on the directions of Hon'ble NGT in the matter of OA No.593/2017 (WP (CIVIL) No. 375/2012, Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors, CPCB has prepared Methodology for Assessing Environmental Compensation. The Methodology prepared by CPCB has been accepted by Hon'ble NGT vide orders dated 28.08.2019 in same case;

Whereas, Hon'ble Supreme Court of India in matter of Indian Council for Enviro Legal Action & Ors. Vs. Union of India & Ors., (1996) 3 SCC 212 Para 16 and in matter of Vellore Citizens Welfare Forum Vs. Union of India & Ors. (1996)5 SCC 647 Para 12-18 – holding that "Polluter Pay" principle is 'accepted principle and part of environmental law of the country, even without specific statute;

Whereas, it has been ordered vide Head office order Endst. No. HSPCB/PLG/2019/6043-50 Dated 29.04.2019 and No. HSPCB/PLG/2021/2343-2381 dated 22.12.2021 to adopt the modalities/methodology suggested by CPCB for assessment, imposing, collection and utilization of environmental compensation from the polluting units in the state of Haryana and same has been approved by the Board in its 184th meeting. The modalities/methodology of environmental compensation of HSPCB placed on website of Board for transparency and for accessibility of concerned stakeholders;

Whereas, a committee was constituted at head office level vide order Endst. No. I/138645/2022 dated 20.10.2022 and No. I/173740/2023 dated 20.09.2023 to examine and finalize case of the environment compensation submitted by Regional officers so as to maintain the uniformity among all the cases. The report submitted by committee placed before competent authority for approval;

Whereas, in compliance of above quoted orders of Hon'ble NGT, this case falls under the cases to be considered for levying environmental compensation for violation that the Municipal Corporation, Gurugram was found in violation of C&D Waste Management Rules,2016 and delay in disposal of C&D waste of Dispensary site of Malibu Town, Sohna Road, Gurugram.

Whereas, Regional Officer vide letter dated 30.06.2023, 18.07.2023 and letter dated 21.07.2023 has sent the calculation of environment compensation against the unit for above said violations and accordingly the Environment Compensation Assessment Committee had finalized environmental compensation of Rs. 1,02,65,625/- and competent authority had issued order with the directions to the unit to deposit Environment compensation of Rs. 1,02,65,625/-.

Whereas, the Environment Compensation Assessment Committee examined

the recommendations of environmental compensation submitted by Regional Officer in case of said unit, in its meeting held on 25.09.2023 as per provisions of above said modalities/ methodology. After deliberations, the committee finalized environmental compensation as under:-

$EC = PI \times N \times R \times S \times LF = 30 \times 730 \times 250 \times 1.5 \times 1.25 = \text{Rs} 1,02,65,625/-$
where, PI =Pollution Index, N = No of days of violation, R = Factor in Rupees, S = Factor for scale of operation, LF = Location Factor.

In view of above, it is hereby ordered with the directions to the Commissioner, Municipal Corporation, Gurugram to deposit Environment compensation of Rs. 1,02,65,625/- (One Crore, Two lakh, Sixty Five Thousand, Six Hundred Twenty Five Rupees Only) with the Haryana State Pollution Control Board as Environment Compensation within 07 days on account of the damage caused by the unit to the Environment.

In case of failure, the Board will be constrained to initiate action as deemed necessary in due course of law.

Dated Panchkula, the

Chairman, HSPCB

27/09/2023

Endst. No. HSPCB/WC/2023

Dated: 27/09/2023

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

1. Regional officer, Gurugram North. He is directed to pursue the matter for payment of environmental compensation as stated above and to submit the compliance report in this regard within the prescribed time period.
2. Sr. Accounts Officer, HSPCB, Panchkula.
3. Commissioner, Municipal Corporation, Gurugram with direction to deposit above amount of EC in saving Bank Account of INDUSIND Bank, Sector-9, Panchkula in Account Number- 100053543757 having IFSC Code: INDB0000164.

Digitally Signed by

Jatinder Pal Singh

Date: 27-09-2023 10:09:32
Sr. Environmental Engineer (HQ)
Reason: Approved

For Chairman



HSPCB/WC/8081

Dated: 21.07.2023

To

The Secretary,
Ministry of Environment, Forests & Climate Change,
Indira Paryavaran Bhawan, Jorbag Road New Delhi- 110003

Sub:- Regarding compliance of Environmental norms by M/s Malibu Estate Pvt. Ltd, Malibu Town, Sohna Road, Gurugram in matter of OA No. 68 of 2022- titled as Raman Sharma Vs State of Haryana & Others.

Kindly refer to the subject noted above

M/s Malibu Estate Pvt Ltd, Malibu Town, Sohna Road, Gurugram is a housing/township project of 204 acres having individual plots and Group Housing. The project proponent has not obtained Environmental Clearance and consent from the HSPCB

There are violations of EP Act, Water Act and Air Act by the above said project. HSPCB has already filed prosecution case in Environment Court under EP Act, Water Act and Air Act against the project proponents. The HSPCB had also issued closure directions (**copy enclosed**) under provisions of Water Act / Air Act and the directions are reproduced as under -

- (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/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 related 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 related 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.*

HSPCB had submitted the above compliance before Hon'ble NGT in matter of OA No. 68 of 2022 titled as Raman Sharma Vs State of Haryana & Ors. It is submitted that vide order dated 28/03/2023 (**copy enclosed**), the Hon'ble NGT had directed to modify the closure order and accordingly, the order was modified on dated 21/04/2023 (**copy enclosed**) and residents/ 3rd party were given relief as per NGT directions.

The hearing was also given to Federation of residents of Malibu Township by HSPCB. It has come out that they are ready to take up the environmental issues and apply for Environmental Clearance from State Environment Impact Assessment Authority (SEIAA). They are also ready to take CTE/CTO from HSPCB. By this way, the compliance of Environmental norms can be ensured.

But as per norms of SEIAA, the Environmental Clearance cannot be granted without payment of Environmental Compensation and any modification in the norms is required at level of MoEF&CC.

It is worth to mention that without Environmental Clearance, HSPCB can't grant CTE/CTO to any project

So, HSPCB proposes to come up with a policy wherein for the projects where the builder is not coming forward to ensure the compliance of Environmental norms and run away/died/in jail/not available, the residents can be granted CTE/CTO without taking punitive actions against them for past violations though they shall be responsible for future violations. But without grant of Environmental Clearance, the HSPCB can't grant CTE/CTO.

Therefore, I have been directed to request that necessary guidance in this regard may be provided to this office or arrange to make similar provisions in norms for grant of Environmental Clearance, so that compliance of Environmental norms be ensured.
DA/As above.

Env. Engineer (HQ)
For Member Secretary

Endst. HSPCB/WC/8082-8083

Dated: 21.07.2023

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

1. Additional Chief Secretary to Govt. of Haryana, Environment Department
Chandigarh
2. Charman SEIAA Haryana Panchkula

DA/As above.

Env. Engineer (HQ)
For Member Secretary

Ministry of Environment, Forest and Climate Change
(HSM Division)

Indira Paryavaran Bhawan
Jorbagh Road, Aliganj
New Delhi-110003

Dated- 04.08.2023

To,
The Member Secretary
Haryana State Pollution Control Board
C-11, Sector-6,
Panchkula, Pin code- 134109

Sub: Hon'ble NGT Matter related to O.A. No. 68 of 2022 in the matter Raman Sharma vs. State of Haryana & Ors. On compliance of environmental norms by M/s Malibu Estate Pvt. Ltd. Sohna Road, Gurugram - reg.

Sir,

This has reference to the case O.A. No. 68 of 2022 titled as Raman Sharma vs State of Haryana & Ors. regarding compliance of environmental norms w.r.t. running of 10 DG sets in the green belt of integrated residential Colony at Gurugram, Haryana; dumping of construction waste in violation of environmental norms, and raising construction by M/s Malibu Estate Pvt. Ltd.

2. In this regard, the MoEFCC is in receipt of a communication from the HSPCB dated 21.07.2023 wherein a request has been made to provide guidance on grant of EC to interested parties, other than Occupier, in cases where the occupier has run away/ died/ in jail/ not available. The communication further mentions that HSPCB intends to come up with a policy to grant CTE/ CTO to 'interested parties' in above-stated cases, however, it cannot grant the same until EC is issued in the name of 'interested parties' by SEIAA/ MoEFCC. However, the communication also mentions that SEIAA Haryana cannot grant EC without payment of environmental compensation for past violation as the existing provisions mandate so.

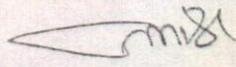
3. The matter has been examined in MoEFCC, it is observed that the proposal involves substantial policy changes at the end of MoEFCC (by Impact Assessment Division - IA Policy and IA Infrastructure). As the matter is still under judicial consideration, and Hon'ble NGT has passed directions for compliance to the HSPCB and SEIAA Haryana, it would be appropriate that the proposal may first be placed before the Hon'ble NGT for their consideration, examination and assessment. If required, the MoEFCC shall provide its view before the Hon'ble NGT.

4. This issues with the approval of Competent authority

Encl: As Above

Copy for information to:

1. The Additional Secretary (IA Division), MoEFCC
2. Sh. Jatinder Pal, Sr. Env. Engineer (WC), HSPCB


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