

Item No. 03

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**(BY HYBRID MODE)**

Original Application No.884/2022  
(I.A. No. 70/2023)

Sanjeev Kumar

Applicant

Versus

Uttar Pradesh Pollution Control Board & Ors

Respondent(s)

Date of hearing: 03.05.2023

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER  
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**

Applicant: Mr. Chetan Jadon, Advocate

Respondent(s): Mr. Pradeep Misra & Mr. Daleep Dhyani, Advocates for UPPCB  
Mr. Mukesh Verma, Advocate for UP Awas Vikas Parishad  
Mr. Deepak Dahiya & Mr. Mohit Yadav, Advocates for M/s  
Gaursons India Pvt. Ltd.  
Ankur Khandelwal, Advocate for M/s Apex Heights Pvt. Ltd.  
Mr. Aman Bhalla, Advocate for M/s Prateek Realtors India Pvt.  
Ltd.

**ORDER**

1. Grievance in this application is against violation of environmental norms by the project proponents (PPs) - Uttar Pradesh Aawas & Vikas Parishad (**UPAVP**), M/s Prateek Realtors India Pvt. Ltd. (**Prateek**), M/s Apex Heights Pvt. Limited (**Apex**) and M/s Gaur & Sons India Pvt. Limited (**Gaur**) in developing construction projects at Ghaziabad, U.P. Main violations alleged are inadequacy of plantations and sewage treatment plants resulting in continuing damage to environment and public health.
2. Vide order dated 06.12.2022, the Tribunal sought a factual report in the matter from a joint Committee comprising State PCB and District Magistrate, Ghaziabad.

3. Report dated 11.01.2023 has been submitted by the joint Committee. The matter came up for consideration on 12.01.2023 but was deferred at the instance of the project proponents (PPs) to today. In the meanwhile, supplementary report has been filed by the joint Committee on 18.02.2023 and response has been filed by the PPs to which reference will be made hereafter.

### **The Issue**

4. We have heard learned counsel for the parties and perused the record and proceed to deal with the issue whether there are violations, extent of violations and how accountability of the PPs is to be determined and remedial measures taken.

### **Report of joint Committee dated 11.1.2023**

5. The joint Committee report is that UPAVP has developed Siddharth Vihar Yojna, Ghaziabad and allotted plots to private promoters for housing projects including Prateek, Gaur and Apex. Inspection was carried out on 10.01.2023 and factual position was found to be as follows:-

#### ***“a. Apex-The Kremlin, Plot no. 4/BS-02/03, Siddharth Vihar***

*M/s Apex-The Kremlin has been developed by M/s Apex Heights Pvt. Ltd. on bulk sale plot on developed land at plot no. 4/BS-02/03 having an area of 26,000 sq.m. The registry of said plot was done in favour of M/s Apex Heights Pvt. Ltd. in December, 2016 and maps/drawings were duly approved by U.P. Awas evam Vikas Parishad on 12.04.2017. Copy of sanctioned map is annexed as Annexure IV(a)*

*Subsequently, environmental clearance for development on said plot has been obtained from Ministry of Environment, Forest and Climate Change, Government of India on 06.11.2017 and Consent to Establish has been obtained on 09.05.2018. Copy of environmental clearance and CTE is annexed as Annexure IV (b) and Annexure IV(c) respectively.*

*Project Proponent has completed construction on said site in 2021 and applied for obtaining Completion Certificate from U.P. Awas Evam Vikas Parishad for 6 out of proposed 7 towers on 08.02.2021 and the remaining one tower on 17.08.2021 after construction of 1172 units. Copy of application annexed as Annexure IV (d). However, the completion certificate has not been issued by U.P. Awas Evam Vikas Parishad as **the developer has not constructed 118 EWS units and 118 L.I.G. units as per***

**approved map. Project Proponent has given possession without having requisite Completion Certificate from U.P. Awas Evam Vikas Parishad. Parishad has lodged an FIR under relevant sections against the Project Proponent for said violation.** Copy of FIR is annexed as Annexure IV (e). Project Proponent has submitted its proposals for rectification of issues raised by U.P. Awas Evam Vikas Parishad in its rejection letter for completion certificate on 21.12.2022 and 03.01.2023. Copy of said proposals is annexed as Annexure IV(f).

Presently, around **780 families are residing in the said group housing society.** With regards to environmental compliances, it is submitted that the Project Proponent has obtained Consent to Operate on 14.07.2021 from the State Board and installed sewage treatment plant of 760 KLD(380 x 2). At the time of inspection, the estimated flow at the inlet of STP was around 350 KLD and the STP was found operational. Samples have been collected from inlet and outlet of the sewage treatment plant and deposited at Regional Laboratory, UPPCB, Ghaziabad for further analysis. Analysis report is awaited.

With regards to green belt development, it is submitted that as per approved plan, the Project Proponent was supposed to plant 130 trees and cover around 2600 sq.m of area as green belt. At the time of inspection more than 400 trees were found planted within the project premises and the green belt was found developed in area more than that required as per approved map.

For purpose of solid waste management, project proponent has installed an organic waste convertor of capacity 500 kg/day within the premises. Rest of the waste is being disposed through M/s J.J. Waste Solution Pvt. Ltd. Copy of letter annexed as Annexure IV(g).

**b. Gaur Siddhartham, Plot no. 8/BS-01, Siddharth Vihar**

Gaur Siddhartham has been developed by M/s Gaursons India Pvt. Ltd. on bulk sale plot on developed land at plot no. 8/BS-01 having an area of 48,750 sq.m. The registry of said plot was done in favour of M/s Gaursons India Pvt. Ltd. in January, 2016 and maps/drawings were duly approved by U.P. Awas evam Vikas Parishad on 24.03.2017. Copy of sanctioned map is annexed as Annexure V(a)

Subsequently, environmental clearance for development on said plot has been obtained from Ministry of Environment, Forest and Climate Change, Government of India on 31.05.2018 and Consent to Establish has been obtained on 09.05.2018. Copy of environmental clearance and CTE is annexed as Annexure V(b) and Annexure V(c) respectively.

Project Proponent has completed construction of nine towers having total of 2476 units and one tower having 225 EWS and 225 L.I.G. units in August, 2022. Project Proponent has applied for obtaining part completion certificate from U.P. Awas Evam Vikas Parishad on 26.03.2021 for two towers (B&H) having 496 units, on 29.09.2021 for two more towers (G&I) having 492 units, on 01.03.2022 for one tower (F) having 248 units and on 07.05.2022 for remaining five towers (A, C, D, E and EWS & LIG tower) having 1690' units (including EWS & LIG tower). Copy of application annexed as Annexure V(d). Further,

**Project Proponent has written to U.P. Awas Evam Vikas Parishad on 23.08.2022 stating that the project proponent has completed the project and is starting to give possession to flat owners considering deemed possession. Copy of said letter is annexed as Annexure V(e).**

However, the **application for obtaining completion certificate has not been issued by U.P. Awas Evam Vikas Parishad and detailed letter along with reasoning has been sent to Project Proponent on 16.08.2022**, copy of same is annexed as Annexure V(f). Besides this, matter regarding allotment of land under exchange deed is sub-judice at Allahabad High Court (Writ C No. 29931/2022 and Writ C No. 19048/2022). Project Proponent **has given possession without having requisite Completion Certificate from U.P. Awas Evam Vikas Parishad. Parishad has lodged an FIR under relevant sections against the Project Proponent for said violation.** Copy of FIR is annexed as Annexure V(g).

Presently, around 550 families are residing in the said group housing society. With regards to environmental compliances, it is submitted that the **Project Proponent had applied for Consent to Operate but same has been rejected by Board on 05.01.2023 as reply to online clarifications was not received from the Project Proponent.** Application for CTO has been resubmitted online. Two independent Sewage treatment plants were found installed at the time of inspection. **STP of 200 KLD for EWS and LIG units was found non-operational as there was no occupancy in said tower.** Another STP of 550 KLD was found installed and operational and had influent of around 150 KLD. Samples have been collected from inlet and outlet of the sewage treatment plant and deposited at Regional Laboratory, UPPCB, Ghaziabad for further analysis. Analysis report is awaited.

With regards to green belt development, it is submitted that as per approved plan, **the Project Proponent was supposed to plant 250 trees and cover around 7787.03 sq.m of area as green belt. At the time of inspection it was observed that the Project Proponent is still in process of developing and maintaining requisite green belt cover as per sanctioned plan.**

For purpose of solid waste management, project proponent has installed an organic waste convertor of capacity 300 kg/day within the premises. Rest of the waste is being disposed through M/s Bhavya Construction. Copy of letter annexed as Annexure V(h).

**c. Prateek Grand City, Plot no. 4/BS-01 & 4/BS-05, Siddharth Vihar**

Prateek Grand City has been developed by M/s Prateek Realtors India Pvt. Ltd. on bulk sale plot on developed land at plot no. 4/BS-01 & 4/B5-05 having an area of 1,54,916.51 sq.m. The registry of said plot was done in favour of M/s Prateek Realtors India Pvt. Ltd. in March, 2014 and maps/drawings were duly approved by U.P. Awas Evam Vikas Parishad on 28.08.2014 and further amended on 24.03.2017. Copy of sanctioned map is annexed as Annexure VI(a)

*Subsequently, environmental clearance for development on said plot has been obtained from the State Level Environment Impact Assessment Authority, Uttar Pradesh on 11.11.2014 and Consent to Establish has been obtained on 30.04.2015. Copy of environmental clearance and CTE is annexed as Annexure VI(b) and Annexure VI(c) respectively.*

*Project Proponent has completed construction of 16 towers out of 39 having total of 3008 units in February, 2021. Project Proponent has applied for obtaining part completion certificate from U.P. Awas Evam Vikas Parishad on 01.02.2021 for 16 towers (C1, C2, C3, C4, C5, C6, C7, C8, C9, C10, C12, C14, C15, C16 and P5 & P6) having 3008 units, copy of application annexed as Annexure VI(d).*

*U.P. Awas Evam Vikas Parishad has issued part completion certificate to the above-mentioned project on 16.06.2021 to four towers (C1, C2, C3 & C4) and on 06.10.2022 for eight towers (C5, C6, C7, C8, C12, C14, P5 & P6). Copy of said Completion Certificates is annexed as Annexure VI(e) and Annexure VI(f) respectively. Presently, around 1250 families are residing in the said group housing society.*

*With regards to environmental compliances, it is submitted that the Project Proponent has obtained Consent to Operate on 12.02.2021 from the State Board and installed sewage treatment plant of 2000 KLD in four modules of 500. **At the time of inspection, the estimated flow at the inlet of STP was around 450KLD and only one module of the STP was found operational.** Samples have been collected from inlet and outlet of the sewage treatment plant and deposited at Regional Laboratory, UPPCB, Ghaziabad for further analysis. Analysis report is awaited.*

*With regards to green belt development, it is submitted that as per approved plan, the Project Proponent was supposed to plant 388 trees and cover around 53267.34 sq.m of the total area as green belt as per environmental clearance. At the time of inspection more than 700 trees were found planted within the project premises and the green belt was found developed in areas earmarked as green belt in the sanctioned map. **Project should ensure that green belt area as per environmental clearance is ensured in complete project.***

#### **Supplementary report dated 18.2.2023 regarding UPAVP**

6. Supplementary report has been filed by the joint Committee on 18.02.2023 which mentions the factual position with regard to construction of UPAVP as noticed in inspection done on 13.02.2023 as follows:-

- a) *Besides private Group Housing Societies, 1984 EWS homes under Gokuldham and Vrindavan Enclave have been developed by U.P. Awas Evam Vikas Parishad in Sector 9, Siddharth Vihar, of these 1844 have been sold and have been inhabited.*

- b) 1376 homes have been built under Manyavar Kanshiram Ji Shahri Garib Yojna in the year 2010 and handed over to Municipal Corporation, Ghaziabad.
- c) **U.P. Awas Evam Vikas Parishad has built 1292 homes under Ganga, Yamuna and Hindon Apartments Scheme in Sector 7, Siddharth Vihar, of these 550 have been sold and have been inhabited.**
- d) **That none of the above-mentioned schemes have a captive STP and presently the sewage from these schemes is being carried by the trunk sewer line and its eventually disposed in open areas and low lying areas within the Siddharth Vihar Yojna.**
- e) **That small parks under Manyavar Kanshiram Ji Shahri Garim EWS Scheme and Ganga, Yamuna and Hindon Apartments scheme have been developed by U.P. Awas Evam Vikas Parishad but the Master Plan Zonal Park in an area of 20.5338 acre and green belt in an area of 24.71 acre near private group housing societies has not been developed yet. At the time of inspection, the said area was being used for agricultural purpose. Also, in some areas, construction and demolition waste was found in the said green area and stagnant domestic waste water was also found in a pocket near the mazar in the green belt as can be seen in the photograph below.**
- f) **That with regards to encroachments, it was observed that temporary vending shops have come up in areas near under construction projects.**
- g) **That the sewer line laid by U.P. Awas Vikas Parishad is presently not connected to the terminal STP which is still under construction due to which issue of water logging, more so in monsoon season cannot be ruled out. The State Board has issued a show cause notice for imposition of environmental compensation of Rs. 50,000/- per day since the day possession has been given in Siddharth Vihar Yojna/upto five years, copy of same is annexed as Annexure VIII. Photograph of under construction STP and water logging in the area is as below.**
- h) **That the road infrastructure in the area is dilapidated and almost all major roads needs to be black topped. Though anti-smog guns and tankers are being used for purpose of water sprinkling but the dust generation due to broken roads and vehicular movement on these roads is adding to dust pollution in the region. The State Board has already issued notice to U.P Awas Evam Vikas Parishad on said issue on 20-10-2022, copy of said notice is annexed as Annexure IX. Also, the State Board has issued a show cause notice to U.P. Awas Evam Vikas Parishad for imposition of environmental compensation of 13,50,000/- for dust emissions and air pollution due to broken roads, copy of same**

*is annexed as Annexure X. Some of the photographs of dilapidated roads are presented hereunder.”*

**Stand of the PPs**

7. Response has been filed by UPAVP as well as APEX, GAUR and PRATEEK.

8. **Stand of UPAVP** is that it has developed Siddharth Vihar Yojna at Ghaziabad on 703.72 acres, divided in 10 sectors. It has different segments and plans. Steps have been taken for development of green areas, sewer lines, water supply, roads, etc. Sewerage projects are to be developed by developers. Kanshiram Housing Project has been transferred to Nagar Nigam, Ghaziabad on which sewerage has to be provided by Nagar Nigam.

9. **Stand of Apex** is that the land was allotted to it on 28.10.2006. EC was granted on 06.11.2017 by the MoEF&CC subject to conditions mentioned therein. STP of 760 KLD capacity has been installed but 350 KLD of sewage is generated. Treated water is utilized within the premises of the project. Its plan was to construct 7 towers with 33 floors on 6 and 34 on 7. The same was re-worked and 4 towers now have 29 floors while 3 have 30 floors. EC dated 06.11.2017 (annexure-2 to the said reply) provides for installation of STP and a report being submitted to the Ministry before project is commissioned and made operational. Extent of construction mentioned in the EC is 1.19.959.6 sqm.

10. **Reply of Prateek** is that it was allotted land by UPAVP on 20.06.2014 and granted EC on 11.11.2014 by SEIAA, followed by the consents by the State PCB. It has set up STP with capacity of 2000 KLD.

11. Stand of **Gaur** (in I.A No. 70/2023) is that land was allotted to it on 24.03.2017. EC was granted by MoEF&CC on 31.05.2018, followed by

consents by the State PCB. Project has been occupied. Responsibility of providing STP is wrongly attributed to it.

### **Our findings and directions**

12. On consideration of rival versions and reports of joint Committee, we find that there are violations which need to be remedied and accountability needs to be fixed on polluter pays principles and amount of compensation needs to be duly utilised for restoration of environment.

13. However, before doing so, we may deal with contention of one of learned Counsel for the PP that there is judgement of Delhi High Court under which requirement of consents under the Water and Air Acts does not apply to construction projects being judgment dated 23.01.2012 in LPA No. 895 of 2010, DPCC vs. Splendor Landbase. The Tribunal has already negated the contention vide order dated 23.3.2022 in O.A No. 64/2019(WZ), *Mr. Tanaji Balasaheb Gambhire v. Union of India Through Secretary & 12 Ors.* and held:-

*“The judgment of Delhi High Court<sup>1</sup> is not applicable to the present fact situation which is governed by statutory notification dated 14.9.2006, which was not the situation in the case before Delhi High Court.”*

14. We now proceed to deal with individual matters.

15. **UPAVP** has constructed and sold 1844 EWS homes - 1376 homes are under Kanshi Ram Scheme and 1292 homes in Ganga, Yamuna and Hindon Apartments Scheme. **None of the said schemes have captive STPs and sewage is being carried by trunk sewer line and disposed of in open areas. Sewer line laid by UPAVP is not connected to terminal STP which is still under construction. This is resulting in water logging. Before handing over the project to the Nagar Nigam, it was**

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<sup>1</sup> Judgment of Delhi High Court dated 23.01.2012 in LPA No. 895 of 2010, DPCC vs. Splendor Landbase.



**mandatory for it to set up requisite sewage treatment facility which it has not done** State PCB has proposed compensation of Rs. 50,0000/- per day vide notice dated 08.02.2023 which mentions continuing damage to the environment by dust pollution on account of dilapidated roads and absence of mechanism for solid waste management. There are also violations about adequacy of green belt and uncontrolled dust from roads. We accept findings about violations but find the compensation proposed to be inadequate which we propose to enhance so as to cover the estimated cost of restoration. It is not clear whether it has requisite EC and consents.

16. In respect of **Prateek**, though the report mentioned that STPs have been set up by them and are operational at the time of inspection in January, 2023, it has not been mentioned as to whether at that time of occupation by the inhabitants, STPs were in operation. Occupation, as per report, was in Feb/June, 2021, as noted in the report. Area of the project is 1.54 lac sq meters with 3008 units. Green belt does not cover the area in terms of EC. Such violations require levy of compensation on polluter pays principle proportionate to the nature and extent of violations to cover the cost of restoration.

17. With regard to **Gaur**, the project has been operationalized without requisite CTO and completion certificate. Possession has been given and 550 families are residing. STP was found non-operational which is in violation of EC conditions. Green belt is not in terms of EC. Area of the project is 48760 sq meters with 2476 units. Such violations require levy of compensation on polluter pays principle proportionate to the nature and extent of violations to cover the cost of restoration.

18. With regard to **Apex**, STPs have been set up by them and are operational at the time of inspection in January, 2023, it has not been

mentioned as to whether at that time of occupation by the inhabitants, STPs were in operation. Occupation, as per report, was in February, 2021 without completion certificate due to failure to construct LIG/EWS houses, as required. Such violations require levy of compensation on polluter pays principle proportionate to the nature and extent of violations to cover the cost of restoration. Area of the project is 26000 sq meters with 1172 units.

19. We now come to the amount of compensation required to be levied. The nature and extent of violations have been noted above. The compensation has to be levied on the principle of 'Restitution' and has to be noted as cost of restoration involved. As per judgment in Goel Ganga (2018) 18 SCC 257, scale of compensation can extend to 10% of turnover depending on extent of violation and cost of restoration. The compensation proposed by the State PCB at the rate of Rs. 50,000/- per day against UPAVP is not adequate as it does not factor in the cost of restoration nor the extent of damage nor paying capacity of the PP so that the compensation is deterrent. Having regard to the magnitude of the project and violations – inadequacy of green belt, absence of sewage treatment, not preventing dust pollution, pending further consideration, we estimate cost of restoration to be not less than Rs. 20 crores. Cost of restoring damage to the environment by violations by the remaining three projects is estimated at minimum of Rs. 10 crores each, having regard to the fact that the projects are big in size with turnover of more than Rs.500 crore each. Thus, total estimated cost of restoration of Rs. 50 crores be deposited with the State PCB to be utilised for restoration of environment as per action plan to be prepared by CPCB, State PCB and District Magistrate with association of concerned stakeholders including the PPs. Restoration measures may be in the direction to upgrade solid waste management systems, including reuse of treated water. Further, in view of dilapidated

condition of roads leading to increased PM10/PM2.5 levels and contamination of water due to discharge of waste, remedial measures be planned for improving air quality and overall environment.

20. The said joint Committee may verify further facts about the date of functionality of STPs and date of occupation and period of default in respect of green belt. The Committee may also verify the source of water during construction and operational phase. Such report may be furnished within two months by e-mail at [judicial-ngt@gov.in](mailto:judicial-ngt@gov.in) preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF. The State PCB will be nodal agency for coordination and compliance. If estimated cost of restoration is found to be higher, compensation fixed may have to be revised.

List for further consideration on 10.08.2023.

A copy of this order be forwarded to CPCB, State PCB and District Magistrate, Ghaziabad by e-mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

May 3, 2023  
Original Application No.884/2022  
(I.A. No. 70/2023)  
AB