

Environment Norms Silences Construction Experts

In the wake of various environmental disasters witnessed in the past few decades, there has been a growing consciousness to ensure that all real estate projects are developed in accordance with prescribed safety standards and consistent with environmental so that they do not lead to any environmental hazard. Given the magnitude of environmental liabilities, real estate players must be mindful of legal implications right from its planning stage.

The United Nation Conference held in Stockholm in 1972 was the first global initiative concerning the environment and sustainable development, which recognised principles of ecological management, and issued an Action Plan with 109 recommendations following which the Government of India, by 42nd Amendment Act, 1976 made an express provision for the protection and promotion of the environment, and introduced Articles 48-A and 51-A (g) in the Directive Principles of State Policy and the Fundamental Duties respectively. Article 48-A of the Indian Constitution states that "*the State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country*". Article 51-A (g) of the Constitution of India states that "*It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures*".

The government came out with many such legislations concerning real estate development like Wildlife (Protection) Act, 1972 (Wildlife Act), Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, Forest (Conservation) Act, 1980 (Forest Act), Environment (Protection) Act (EPA), 1986 etc. There are many authorities which deal with the real estate development in India are the Ministry of Environment & Forests (MoEF) - MoEF is the apex administrative body responsible for the regulation, planning, promotion and coordination of environmental and forestry plans in India. The National Green Tribunal (NGT) was established in 2010 and handles environmental disputes involving multi-disciplinary issues. Inevitably, the emphasis was laid on implementing Environmental Impact Assessment in India (EIA). Various Acts have been enforced and notifications have been by the Ministry of Environment, Forests and Climate Change (MoEFCC) to curb the gradual devastation caused to nature by real estate kingpins. Additionally, quiet a few Safety Standards and Compliance. Guidelines have also been issued were prescribed to prevent any further environmental hazards especially in projects near natural resources, coastal areas, forests etc.

Under the provisions of EPA, the Central Government has regularly released Environment Impact Assessment Notification (Notification), the first of which was issued by MOEF on 27 January 1994 (1994 Notification) which, inter alia, stated that, no new project, or the expansion or modernization of any existing project listed in Schedule-I, shall be undertaken unless it has been accorded with an environmental clearance (EC) by the Central Government. This notification did not contain any entry for construction projects and therefore EC was not required to be obtained for the same.

By virtue of Notification dated 7 July 2004 (2004 Amendment Notification) for amending certain provisions of the 1994 Notification, any construction project for more than 1,000 persons or discharging sewage of more than 50,000 litres per day or with investment of Rs 5 crore or more, would require prior EC.

Thereafter, MoEF issued a fresh Notification dated 14 September 2006 (2006 Notification) which superseded the 1994 Notification. The 2006 Notification prescribed definitive thresholds for obtaining prior EC for construction projects. In case a project is falling under Category 'A' of the schedule to 2006 Notification, then the project proponent is required to obtain prior EC from the Central Government

(i.e. MoEF) and in case a project is falling Category 'B' of the schedule to 2006 Notification, then the project proponent is required to obtain prior EC from the State Government (i.e. State Environment Impact Assessment Authority (SEIAA)).

As per the 2006 Notification, in case where the built up area of a construction project is more than 20,000 square meters but less than 1,50,000 square meters, then the project would fall under Category 'B' and the project proponent is required to obtain a prior EC from SEIAA, and if the built up area of a construction project is more than 1,50,000 square meters, then the project would fall under Category 'A' and the project proponent is required to obtain a prior EC from MoEF.

The 2006 Notification also lays down a General Condition (GC) which states that any project or activity specified in Category 'B' will be treated as Category A and permission of MOEF would be required, if located in whole or in part within 10 km from the boundary of :-

- (i) Protected Areas notified under the Wild Life Act,
- (ii) Critically Polluted areas as notified by the Central Pollution Control Board,
- (iii) Notified Eco-sensitive areas, and
- (iv) inter-State boundaries and international boundaries.

Environment damage had reached an alarming peak in 2014, which triggered further amendments focusing primarily on the diversification of construction projects and laid down itemised guidelines, as enumerated below:

1. Construction projects comprising of industrial shed, schools, colleges, hostels for educational purpose, will not be required to obtain an EC subject to their compliance with sustainable environmental management, solid and liquid waste management, rain water harvesting, and they may use recycled material such as fly ash bricks; and
2. The GC mentioned above will not apply. This means, construction projects located within 10 km from the boundary of the areas mentioned above, will not be treated as Category 'A' project and would not be required to approach MoEF for prior EC.

In a recent case, Save Aravali Trust, where violations were made under provisions of Section 40 read with Section 29 of the NCR Planning Board Act, 1985. It was observed that the information, facts and data provided by the Municipal Corporation of Faridabad and Deputy Conservator of Forests, Faridabad, Department of Forests, Govt. of Haryana to Ministry of Environment and Forests were wrong/hidden, manipulated and misrepresented. Ironically, Government agencies have been regularly seen violating Environmental laws in the Aravalis, some of which include Municipal Solid Waste (Management & Handling) Rules (2000), Plastic Waste (Management & Handling) Rules (2011), Bio-Medical Waste Handling Rules (1998), Water (Prevention and Control of Pollution) Act (1974), and Forest Act (2006). In its quest to prevent further environmental damage, the National Green Tribunal (NGT) has successfully detained such acts with imposition of heavy penalty on violaters.

In an attempt to introduce stringent measures and effective deterrent policies to ensure compliances with provisions of the EPA, the Central Government published a draft of the Environment Laws (Amendment) Bill, 2015 and the National Green Tribunal Act, 2010 (Draft Bill) for inviting objections and suggestions from any person interested. The Draft Bill, inter alia, *is with the objective of providing for an effective deterrent penal provisions and introducing the concept of monetary penalty for violation and contraventions. Substantial damage will continue to attract penal provisions besides*

stiff monetary penalty besides ensuring compliance to environmental norms due to deterrent provision. The amount collected as penalty could be used for remediation and reclamation of polluted sites and improvement of environment.

Environmental violations are classified into 3 categories, 'minor violation', 'non-substantial damage' and 'substantial damage' to the environment. Depending upon the extent of substantial damage caused, penalty ranges from Rs 5crore to Rs 2 crore. Also, imprisonment for a term ranging from 7 (seven) years to life imprisonment has been prescribed in case of substantial damage. Penalties for minor violations and non-substantial damage ranges from Rs 1,000 to Rs 5 crore.

Thus, it is evident that encouraging measures are being taken to protect our environment and the NGT's dedicated jurisdiction plays a major role in meting out justice by upholding environmental rights. It is also essential to undertake measures by relevant authorities to spread awareness about the various rules that aims towards protecting the environment. Once the rules are adhered to, the foundation of a healthy nation can finally be laid.