

# CAPE TOWN ASSOCIATION OF APARTMENTS OWNERS

PLOT 01/A, SECTOR 74, NOIDA, DISTT- GAUTAM BUDH NAGAR, U.P

ARUN SHARMA  
President  
9717596746

Mahesh Chandra Yadav  
Vice President  
9650208690

Krishna Kumar Sharma  
Secretary  
9891315949

Praveen Bhardwaj  
Treasurer  
9811136974

## Members

Ajai Kumar Tandon  
9936529111

Krishnendu Aditya  
8527344322

Manish Srivastava  
9650500325

DrManjula Kiran  
9990434930

Sunil Dangwal  
9971854226

To,

Dated: 10.05.2019

Chief Architect (Town Planning Department).  
New Okhla Industrial Development Authority (NOIDA),  
Sector-6, Administrative Block,  
Noida – 201301 (U.P.).

Dear Sir,

***Sub: Seeking cancellation of the increase in Floor Area Ratio ("FAR") and Request for No Restoration of FAR without my consent to M/s SUPERTECH LIMITED For their Capetown Scheme Plot No GH01A Sector -74 Noida.***

### 1. BACKGROUND

1.1 The undersigned is an Office Bearer of Association of apartment Owners and also an allottee of Cape Town Apartment in the Cape Town Project Plot No. GH 01/A, Sector 74 Noida ("Project") constructed by M/s Supertech Ltd. ("Developer"), of which building plans were originally sanctioned by New Okhla Industrial Development Authority ("NOIDA") vide Sanction Letter नोएडा/वरि0न0नि0/III/227/301 dated 04.11.2010.

1.2 It has come to our knowledge that pursuant to the original sanction of the building plans and layouts on the basis of which we had entered into an agreement with the Developer to purchase apartments in the Project, the Developer without our consent as required under the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 ("Apartment Act" UPAA 2010) had applied for purchase of additional Floor Area Ratio ("FAR") of 0.50 on 7<sup>th</sup> December 2015.

M/s Supertech has given undertaking to submit the consent of all buyers (100% Buyers) within 90 days to the NOIDA Authority while getting his revised plan approved on 30.09.2014 with additional FAR. However the developer has not submitted any consent letter till date to NOIDA Authority. And I have never given any consent for additional FAR and revision of layout plan.

M/s Supertech has been sanctioned plan in contravention of The New Okhla Industrial Development Area Building Regulation 2010 reproduced below.

**"Distance between two adjacent building blocks shall be minimum 6 mtrs. to 16 mtrs depending on the height of blocks. For building height up to 18 mtrs., the spacing shall be 6mtrs.and thereafter the spacing shall be increased by 1metre for every addition of 3 mtrs. in height of building subject to a maximum spacing of 16 mtrs."**

1.3 You are requested to please don't give this extra FAR of 0.75 to the builder without our consent in writing. If any extra FAR is being given to builder without our consent then only NOIDA will be responsible for this illegal sanction and you will be liable for this under UPAA 2010 and the same will

Cape Town Association of Apartments Owners

President

*A. Ash*

President

Association of Apartments Owners

# CAPE TOWN ASSOCIATION OF APARTMENTS OWNERS

PLOT 01/A, SECTOR 74, NOIDA, DISTT- GAUTAMBUDHNAGAR, U.P

ARUN SHARMA  
President  
9717596746

Mahesh Chandra Yadav  
Vice President  
9650208690

Krishna Kumar Sharma  
Secretary  
9891315949

Praveen Bhardwaj  
Treasurer  
9811136974

## Members

Ajai Kumar Tandon  
9936529111

Krishnendu Aditya  
8527344322

Manish Srivastava  
9650500325

DrManjula Kiran  
9990434930

Sunil Dangwal  
9971854226

be challenged in Allahabad High Court.

## 2. SUBMISSIONS / OBJECTIONS

2.1 It is submitted that the proposal to increase FAR by the Developer and the consequent approval of the same by the NOIDA is bad in law in as much as the same has been done without obtaining the consent of the apartment owners in accordance with the Apartment Act and the judgment of the Hon'ble High Court of Allahabad delivered on November 14, 2013 in a batch of petitions by Justice Sunil Ambwani and Justice Bharat Bhushan ("Apartment Act Judgment"). The said FAR Increase Approval is therefore, liable to be cancelled on this ground alone as the same is in total disregard of the applicable laws.

2.2 Any increase in the FAR of the Project or any change in the original building plan and layout is likely to affect the interest and rights of the intended buyers of the apartments and accordingly their consent is required for any such major change. It is therefore, submitted that we strongly object to the increase in FAR of the Project on the following grounds, which are without prejudice and in addition to each other:

- (i) Prior permission of the intending purchasers was not obtained for purchase of additional FAR in accordance with the Apartment Act and hence, the same is in violation of the Apartment Act.
- (ii) Any increase in FAR without the consent of the intending purchasers is a contempt of the directions issued by the Hon'ble High Court in the Apartment Act Judgment.
- (iii) The increase in the FAR is likely to have adverse effects on the population density of the plot thereby straining the common amenities in the plot, which was not intended at the time of the booking by the intending purchasers. At the time of booking 53 amenities were shown in the plan and now the amenities has been reduced to 27. Where unapproved construction of Multi story building is being done by the Developer in place of Villas lane of original approved plan.

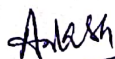
*Increase in FAR without prior consent of intending purchasers is in violation of the U.P. Apartment Act 2010*

2.3 The Apartment Act which was notified by the State Government on March 19, 2010 has completely changed the legal status of apartment owners, giving them inalienable rights in the common areas and facilities appurtenant to the apartments. Section 5 of the Apartment Act which sets out the rights of the apartment owners is reproduced below for your convenience:

*"5. Rights of Apartment Owners.—(1) Every person to whom any apartment is sold or otherwise transferred by the promoter shall subject to the other provisions of this Act, be entitled to the exclusive ownership and possession of the apartment so sold or otherwise transferred to him.*

*(2) Every person who becomes entitled to the exclusive ownership and possession of an apartment shall be entitled to such percentage of undivided interest in the common areas and facilities as may be specified in the Deed of Apartment and such percentage shall be computed by taking, as a basis, the area of the apartment in relation to the aggregate area of all apartments of the building.*

Cape Town Association of Apartments Owners



President

# CAPE TOWN ASSOCIATION OF APARTMENTS OWNERS

PLOT 01/A, SECTOR 74, NOIDA, DISTT- GAUTAM BUDH NAGAR, U.P

ARUN SHARMA  
President  
9717596746

Mahesh Chandra Yadav  
Vice President  
9650208690

Krishna Kumar Sharma  
Secretary  
9891315949

Praveen Bhardwaj  
Treasurer  
9811136974

## Members

Ajai Kumar Tandon

9936529111

Krishnendu Aditya

8527344322

Manish Srivastava

9650500325

Dr Manjula Kiran

9990434930

Sunil Dangwal

9971854226

(3)(a) The percentage of the undivided interest of each apartment owner in the common areas and facilities shall have a permanent character, and shall not be altered without the written consent of all the apartment owners and approval of the competent authority.

(b) The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with apartment, even though such interest is not expressly mentioned in the conveyance or other instrument.

(4) The common areas and facilities shall not be transferred and remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof, and any covenant to the contrary shall be void.

(5) Each apartment owner may use the common areas and facilities in accordance with the purposes for which they are intended without hindering or encroaching upon the lawful rights of the other apartment owners.

(6) The necessary work relating to maintenance, repair and modification or relocation of the common areas and facilities and the making of any additions or improvements thereto, shall be carried out only in accordance with the provisions of this Act and the bye-laws.

(7) The Association of Apartment Owners shall have the irrevocable right, to be exercised by the Board or Manager to have access to each apartment from time to time during reasonable hours for the maintenance, repairs or replacement of any of the common areas or facilities therein, or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to any other apartment or apartments

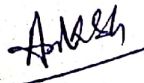
2.4 In light of the aforesaid provision, it is clear that every person who is entitled to exclusive ownership and possession of an apartment is also entitled to a percentage of undivided interest in the common areas and facilities and that such percentage of undivided interest of each apartment owner in the common areas is of a permanent character, which cannot be altered without the consent of all the apartment owners. Any change in the FAR is likely to effect the rights and interests of the apartment owners in the common facilities, which cannot be done without the consent of such owners.

2.5 In addition to conferring rights to apartment owners, the Apartment Act has also fixed duties and liabilities of promoters, including general liabilities in Section 4 of the Apartment Act. While Section 4(1) of the Apartment Act provides that a promoter who intends to sell an apartment should make full and true disclosure in writing to the intending purchaser of the information set out in Section 4(1) which *inter-alia* includes the plans and specifications approved by or submitted for approval to the local authority of the entire building of which such apartment forms part, etc., Section 4(4) of the Apartment Act deals with the obligations of the promoter in case of a change in the buildings plans, specifications, etc. Relevant provisions of Section 4 of the Apartment Act are extracted below for ease of reference:

**"4. General liabilities of promoter.—(1) Any promoter who intends to sell an apartment, shall make a full and true disclosure in writing of following to an intending purchaser and the Competent Authority:.....**

**(c) the plans and specifications approved by or submitted for approval to the local authority of the entire building of which such apartment forms part;**

Cape Town Association of Apartments Owners



President

# CAPE TOWN ASSOCIATION OF APARTMENTS OWNERS

PLOT 01/A, SECTOR 74, NOIDA, DISTT- GAUTAM BUDH NAGAR, U.P

ARUN SHARMA  
President  
9717596746

Mahesh Chandra Yadav  
Vice President  
9650208690

Krishna Kumar Sharma  
Secretary  
9891315949

Praveen Bhardwaj  
Treasurer  
9811136974

## Members

Ajai Kumar Tandon  
9936529111

Krishnendu Aditya  
8527344322

Manish Srivastava  
9650500325

DrManjula Kiran  
9990434930

Sunil Dangwal  
9971854226

(d) detail of all common areas and facilities as per the approved lay-out plan or building plan;.....  
.....

(4) After plans, specifications and other particulars specified in this section as sanctioned by the prescribed sanctioning authority are disclosed to the intending purchaser and a written agreement of sale is entered into and registered with the office of concerned registering authority, the promoter may make such minor additions or alterations as may be required by the owner or owners, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by authorized Architect or Engineer after proper declaration and intimation to the owner:

Provided that the promoter shall not make any alterations in the plans, specifications and other particulars without the previous consent of the intending purchaser, project Architect, project Engineer and obtaining the required permission of the prescribed sanctioning authority, and in no case he shall make such alterations as are not permissible in the building bye-laws."

2.6 A bare perusal of the aforesaid provisions clearly indicate that any change in the building plans, specifications including FAR without the consent of the intending purchaser is in violation of the Apartment Act.

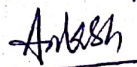
Any increase in FAR without consent of the intending buyers is in contempt of the U.P. Apartment Act 2010 and Judgment dated 14.11.2013 passed in C.M.W.P. 33826 of 2012 by hon'ble Allahabad High Court.

2.7 With thousands of buildings under construction in the State of Uttar Pradesh specially in the National Capital Region falling within the State, and the ongoing disputes in relation to such construction between the developers and the intending purchasers, a Division Bench of the Hon'ble Allahabad High Court in a batch of petitions which sought interpretation of various provisions of the Apartment Act, has interpreted such provisions to throw light *inter-alia* on rights of the apartment owners and obligations of developers. For the purposes of the issue in question, conclusion 14 of the Apartment Act judgment is set out below for your perusal:

"The FAR or any additional FAR is a property, appended to rights in the property on which the building is constructed, and is thus a property in which the apartment owners have interest by virtue of the provisions of the UP Apartment Act, 2010. The purchase of additional FAR is not permissible to be appropriate by the promoter without any common benefits to the apartment owners. The consent of the apartment owners obtained by resolution in the meeting of the apartment owners by majority will be necessary for purchasing additional FAR. Its utilization will also be subject to the consent of the apartment owners."

2.8 In light of the above clarification issued by the Hon'ble High Court, it is evident that the FAR is also a property in which the apartment owners have an interest and accordingly any purchase of additional FAR and its utilization thereof is subject to the consent of the apartment owners. In the case at hand, the Developer has not obtained the requisite consent of the apartment owners and any order by NOIDA which grants the purchase of additional FAR in the absence of the consent of the majority of the apartment owners will be a blatant violation of the Apartment Act Judgment delivered by the Hon'ble High Court, for which the Developer as well as the NOIDA may be liable for contempt of court.

Cape Town Association of Apartments Owners



President

# CAPE TOWN ASSOCIATION OF APARTMENTS OWNERS

PLOT 01/A, SECTOR 74, NOIDA, DISTT- GAUTAM BUDH NAGAR, U.P

ARUN SHARMA  
President  
9717596746

Mahesh Chandra Yadav  
Vice President  
9650208690

Krishna Kumar Sharma  
Secretary  
9891315949

Praveen Bhardwaj  
Treasurer  
9811136974

## Members

Ajai Kumar Tandon  
9936529111

Krishnendu Aditya  
8527344322

Manish Srivastava  
9650500325

Dr Manjula Kiran  
9990434930

Sunil Dangwal  
9971854226

- 2.9 In this behalf, we would like to draw your attention to the order dated November 26, 2014 passed by the Hon'ble High Court of Allahabad in Contempt Application (Civil) No.6651 of 2014, wherein the Court issued notice to the officers of NOIDA and Manager/Director, Earth Infrastructure Ltd for flouting the directions of the Hon'ble High Court at conclusion no. 14 of the Apartment Act Judgement insomuch as the additional FAR was purchased by the developer without obtaining the consent of the majority of the apartment owners at a meeting of such owners..

### *Additional FAR will strain common amenities*

- 2.10 It is submitted that we had consented to purchase the flats in the Project on the basis of the original plans and layouts provided to us by the Developer. We were assured of modern and technically superior architecture and amenities. It is further submitted that the amended plan with additional FAR will enable the Developer to encroach upon common undivided open areas. The Developer has overshot the original FAR thereby taking advantage of valuation of the land and subsequent costing of the flats. These changes are likely to put the life and property of the apartment owners at risk. The additional FAR will also affect the density of the population at the Project and accordingly common amenities will be strained. It is also not clear if the adjoining roads and other infrastructure of the Project is capable of handling such density of population.

- 2.11 As stated above, an apartment owner has certain percentage of undivided interest in the common areas and facilities and accordingly any increase in the FAR is likely to affect his interests. Hence, the law does not permit purchase of additional FAR without the consent of the apartment owners. The Developer should have in accordance with the applicable law approached the apartment owners for their consent before submitting its application to the NOIDA.

- 2.12 Housing is a basic human necessity and the quality of the house as well as its environment plays an important role in the growth of individuals, both physically and mentally, which comes within the mandate of Article 21 of the Constitution. Any interference with such a right will be against the principles of Article 21. In this regard it is submitted that even Hon'ble Supreme Court comes down with iron hands against such constructions where permissions are granted without following the due process of law and buildings are ultimately demolished.

## **3. PRAYER**

- 3.1 In light of the aforesaid submissions, we request you to pass the following orders:
- (a) Not to grant any further approval for purchase of additional FAR by the Developer in the absence of my consent in accordance with the directions of the Hon'ble High Court in the Apartment Act.
- (b) Cancel the approval for purchase of additional FAR if any granted by New Okhla Industrial Development Authority to the Developer.
- (c) Direct the Developer to seek prior consent of the apartment owners for any change in the original buildings plans, layouts, specifications, etc.

Cape Town Association of Apartments Owners

*Anish*

President

# CAPE TOWN ASSOCIATION OF APARTMENTS OWNERS

PLOT 01/A, SECTOR 74, NOIDA, DISTT- GAUTAM BUDH NAGAR, U.P

ARUN SHARMA  
President  
9717596746

Mahesh Chandra Yadav  
Vice President  
9650208690

Krishna Kumar Sharma  
Secretary  
9891315949

Praveen Bhardwaj  
Treasurer  
9811136974

## Members

Ajai Kumar Tandon

9936529111

Krishnendu Aditya

8527344322

Manish Srivastava

9650500325

DrManjula Kiran

9990434930

Sunil Dangwal

9971854226

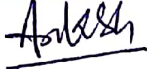
(D) Direct the developer to stop any additional construction without prior approved plan.

We would be pleased to furnish any clarifications or additional information you may require in support of representation. Any request for further information may be addressed to the undersigned.

We sincerely trust that the above information/representation meets your requirements and would greatly appreciate your urgent consideration of this matter.

Thanking you,

For Cape Town Association of Apartments Owners  
Cape Town Association of Apartments Owners



President

President

Enclosure : as above

# CAPE TOWN ASSOCIATION OF APARTMENTS OWNERS

PLOT 01/A, SECTOR 74, NOIDA, DISTT- GAUTAM BUDH NAGAR, U.P

ARUN SHARMA  
President  
9717596746

Mahesh Chandra Yadav  
Vice President  
9650208690

Krishna Kumar Sharma  
Secretary  
9891315949

Praveen Bhardwaj  
Treasurer  
9811136974

## Members

Ajai Kumar Tandon  
9936529111

Krishnendu Aditya  
8527344322

Manish Srivastava  
9650500325

DrManjula Kiran  
9990434930

Sunil Dangwal  
9971854226

To,

Dated: 10.05.2019

Chief Architect (Town Planning Department).  
New Okhla Industrial Development Authority (NOIDA),  
Sector-6, Administrative Block,  
Noida - 201301 (U.P.).

Dear Sir,

*Sub: Seeking cancellation of the increase in Floor Area Ratio ("FAR") and Request for No Restoration of FAR without my consent to M/s SUPERTECH LIMITED For their Capetown Scheme Plot No GH01A Sector -74 Noida.*



## 1. BACKGROUND

- 1.1 The undersigned is an Office Bearer of Association of apartment Owners and also an allottee of Cape Town Apartment in the Cape Town Project Plot No. GH 01/A, Sector 74 Noida ("Project") constructed by M/s Supertech Ltd. ("Developer"), of which building plans were originally sanctioned by New Okhla Industrial Development Authority ("NOIDA") vide Sanction Letter नोएडा/वरि0न0नि0/III/227/301 dated 04.11.2010.
- 1.2 It has come to our knowledge that pursuant to the original sanction of the building plans and layouts on the basis of which we had entered into an agreement with the Developer to purchase apartments in the Project, the Developer without our consent as required under the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 ("Apartment Act" UPAA 2010) had applied for purchase of additional Floor Area Ratio ("FAR") of 0.50 on 7<sup>th</sup> December 2015.
- M/s Supertech has given undertaking to submit the consent of all buyers (100% Buyers) within 90 days to the NOIDA Authority while getting his revised plan approved on 30.09.2014 with additional FAR. However the developer has not submitted any consent letter till date to NOIDA Authority. And I have never given any consent for additional FAR and revision of layout plan.
- M/s Supertech has been sanctioned plan in contravention of The New Okhla Industrial Development Area Building Regulation 2010 reproduced below.
- "Distance between two adjacent building blocks shall be minimum 6 mtrs. to 16 mtrs depending on the height of blocks. For building height up to 18 mtrs., the spacing shall be 6mtrs.and thereafter the spacing shall be increased by 1metre for every addition of 3 mtrs. in height of building subject to a maximum spacing of 16 mtrs."
- 1.3 You are requested to please don't give this extra FAR of 0.75 to the builder without our consent in writing. If any extra FAR is being given to builder without our consent then only NOIDA will be responsible for this illegal sanction and you will be liable for this under UPAA 2010 and the same will

Cape Town Association of Apartments Owners

President

*Arjun*

President

Association of Apartments Owners

# CAPE TOWN ASSOCIATION OF APARTMENTS OWNERS

PLOT 01/A, SECTOR 74, NOIDA, DISTT- GAUTAM BUDH NAGAR, U.P

ARUN SHARMA  
President  
9717596746

Mahesh Chandra Yadav  
Vice President  
9650208690

Krishna Kumar Sharma  
Secretary  
9891315949

Praveen Bhardwaj  
Treasurer  
9811136974

## Members

Ajai Kumar Tandon  
9936529111

Krishnendu Aditya  
8527344322

Manish Srivastava  
9650500325

DrManjula Kiran  
9990434930

Sunil Dangwal  
9971854226

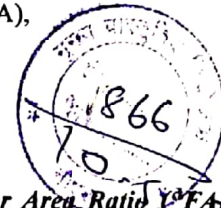
To,

Dated: 10.05.2019

Chief Architect (Town Planning Department).  
New Okhla Industrial Development Authority (NOIDA),  
Sector-6, Administrative Block,  
Noida – 201301 (U.P.).

Dear Sir,

*Sub: Seeking cancellation of the increase in Floor Area Ratio (FAR) and Request for No Restoration of FAR without my consent to M/s SUPERTECH LIMITED For their Capetown Scheme Plot No GH01A Sector -74 Noida.*



## 1. BACKGROUND

- 1.1 The undersigned is an Office Bearer of Association of apartment Owners and also an allottee of Cape Town Apartment in the Cape Town Project Plot No. GH 01/A, Sector 74 Noida ("Project") constructed by M/s Supertech Ltd. ("Developer"), of which building plans were originally sanctioned by New Okhla Industrial Development Authority ("NOIDA") vide Sanction Letter नोएडा/वरि0न0नि0/III/227/301 dated 04.11.2010.
- 1.2 It has come to our knowledge that pursuant to the original sanction of the building plans and layouts on the basis of which we had entered into an agreement with the Developer to purchase apartments in the Project, the Developer without our consent as required under the Uttar Pradesh Apartment (Promotion of Construction, Ownership and Maintenance) Act, 2010 ("Apartment Act" UPAA 2010) had applied for purchase of additional Floor Area Ratio ("FAR") of 0.50 on 7<sup>th</sup> December 2015.
- M/s Supertech has given undertaking to submit the consent of all buyers (100% Buyers) within 90 days to the NOIDA Authority while getting his revised plan approved on 30.09.2014 with additional FAR. However the developer has not submitted any consent letter till date to NOIDA Authority. And I have never given any consent for additional FAR and revision of layout plan.
- M/s Supertech has been sanctioned plan in contravention of The New Okhla Industrial Development Area Building Regulation 2010 reproduced below.
- "Distance between two adjacent building blocks shall be minimum 6 mtrs. to 16 mtrs depending on the height of blocks. For building height up to 18 mtrs., the spacing shall be 6mtrs.and thereafter the spacing shall be increased by 1metre for every addition of 3 mtrs. in height of building subject to a maximum spacing of 16 mtrs."**
- 1.3 You are requested to please don't give this extra FAR of 0.75 to the builder without our consent in writing. If any extra FAR is being given to builder without our consent then only NOIDA will be responsible for this illegal sanction and you will be liable for this under UPAA 2010 and the same will

Cape Town Association of Apartments Owners

President

*Arjun*

President

Association of Apartments Owners