

# The Real Estate Ezine

(April-June, 2014)

Courtesy:

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## Significant Developments:

### BUDGET 2014: REFORMS IN REAL ESTATE SECTOR

The Union Budget 2014 has brought positive measures for the real estate sector. The biggest move has been the grant of pass-through status to Real Estate Investment Trust (REIT) where there will be no double taxation of income. Contribution of assets to REIT has also been made tax neutral. In another significant move the government eased FDI norms for real estate by bringing down minimum development area to 20,000 sq metres from 50,000 sq metres and minimum capitalization requirement for wholly owned subsidiaries to \$5 million from \$10 million.

[indiabudget.nic.in](http://indiabudget.nic.in)

### NATIONAL GREEN TRIBUNAL (“NGT”) ISSUE ORDER TO NOT ISSUE COMPLETION CERTIFICATES TO CONSTRUCTIONS WITHIN 10 KMS RADIUS OF OKHLA BIRD SANCTUARY

The NGT had issued interim direction saying that all the building constructions made within 10 km radius of the Okhla Bird Sanctuary or within distance of eco-sensitive zone as may be prescribed by the notification issued by the Ministry of Environment and Forests shall be subject to the decision of the National Board of Wild Life (“NBWL”) and till the time the clearance of NBWL is obtained, the authority concerned shall not issue completion certificates to projects. The Supreme Court has refused to

interfere with the order and has asked the Central Government to intervene in this matter.

*Before The National Green Tribunal, Principal Bench, New Delhi, Application No. 158/2013*

## In the Pipeline:

### HIKE IN CIRCLE RATES IN NOIDA

Uttar Pradesh registry and stamp department is planning to hike circle rates from August 1<sup>st</sup> in Noida by 10-15%. Circle rates are not realistic and Registry and stamp department is conducting a survey of all categories of properties. The department is also studying recent hike in allotment rate in Noida and Yamuna Expressway area and then the rates will be hiked accordingly.

*Courtesy: Times of India, June 24, 2014*

## Judgments:

### Emerald Court Owner Resident Welfare Association Vs. State of U.P.

The Resident Welfare Association (RWA) of Emerald Court Group Housing Society was the petitioner and it filed a writ petition in the HC of Allahabad, essentially asking for quashing of the revised plan approved by respondent no. 2, that is New Okhla Industrial Development Authority (NOIDA Authority), for construction of new towers and a request for their demolition in a group housing society called Emerald Court by Supertech Limited. The petitioners also pleaded for quashing of the permission granted to respondent no. 5, namely Supertech Ltd. for the construction of the said towers.

The petitioner was aggrieved by the sanction granted by NOIDA Authority, in violation of Building Regulations, to raise the heights of Towers 16 + 17 (APEX & CEYANE), without maintaining the mandatory distance of 16 meters between their building block Aster-2 (G + 11) and Towers 16 and 17 (APEX & CEYANE), as required by New Okhla Industrial Development Area Building Regulations and Directions, 2010, making their block unsafe, apart from blocking light and air.

The sanction violated Apartment Act, 2010, as no permission was taken from the petitioner society, before getting the revised map sanctioned. The petitioner alleged that

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the distance between the two building blocks is only 9 meters, as against 16 metres, required under Building Regulations, 2010.

The Court found it to be evident that the map sanctioned by NOIDA Authority was in teeth of the Building Regulation, and the mandatory distance had not been maintained between building blocks and movement space. The violation has seriously affected the rights of the apartment owners and safety of their block.

The court emphasized on the fact that illegal and unauthorized constructions of buildings and other structure will not be tolerated by the courts as it not only violates the municipal laws and the concept of planned development of a particular area but also affects various fundamental and constitutional rights of other persons.

The ultimate aim is planned development and the flat owners should not fall prey to such activities as the ultimate desire of the family of common man is to have a shelter of his own. Unlawful constructions in violation of building regulation is definitely against public interest and hazardous to the safety of occupiers and residents of multistoried buildings/group housing.

The Court was not in the least impressed by the plea of financial loss or proposed sale in respect of the flats being constructed. The court found that builders were continually colluding with officers of the development authorities, and together, openly flout every conceivable rule, including building regulations. Further, the court found Supertech to have pleaded falsely and destroyed facts to non-suit the petitioner and mislead the Court. The then official of NOIDA Authority have not acted bona fide in discharge of their duties, the map has been sanctioned and is being executed in violation of Building Regulations. The officials cannot claim protection under section 50 of the U.P. Urban Development Act, 1973 as incorporated under section 12 of the 1976 Act. The court has ordered among other things-

- 1.) The Towers 16 & 17 (Apex & Ceyane) situated on Plot No. 4, Sector 93A NOIDA shall be demolished by the NOIDA Authority within period of four months from the date of filing of the certified copy of this order.
- 2.) The respondent-company shall refund the consideration received from the private parties, who have booked apartments in Apex & Ceyane (T 16 and 17) along with 14% interest compounded annually within four months from the date of filing of certified copy of this order.

[Supertech Ltd, in response to the HC order directing the demolition of the towers, approached the Supreme Court. The Supreme Court, in its order dated 05/05/2014, had](#)

ordered sealing of Tower Nos. 16 and 17, and further directed "status quo in all respects, of these two towers (Tower Nos. 16 and 17) shall be maintained by all concerned." It also mandated the builder and flat purchasers to not alienate, transfer or create any third party interest of any nature in the property (Tower Nos. 16 and 17).

Writ-C No.-65085 of 2012

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