Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

Diminishing Values

Two of the Tata Group's Housing Projects Are Mired in Controversy

ABIR DASGUPTA

Vol. 52, Issue No. 28, 15 Jul, 2017

Abir Dasgupta (abir@epw.in) is with the *Economic and Political Weekly*.

The Tata Group, which claims to be among India's most prestigious and ethical corporate conglomerates, has become embroiled in controversies relating to two housing projects. The projects being set up by Tata Value Homes and Tata Housing in north India diminish the group's claim to the moral high ground.

The Tata Group is one of India's oldest and most prestigious corporate conglomerates. It is seen as a group that seeks to operate ethically, within the law, and for the betterment of society and the country. Approximately, 66% of the equity capital of Tata Sons, one of the group's promoter holding companies, is claimed to be held by various philanthropic trusts endowed by members of the Tata family (Tata Trusts). Every employee of the Tata Group is required to pledge their adherence to the Tata code of conduct which is supposed to serve as the "ethical road map for Tata employees and companies, and provide the guidelines by which the group conducts its businesses" (Tata Group). However, two recent cases involving Tata Value Homes and Tata Housing, both Tata Group companies, diminish the group's claim to the ethical and moral high ground.

The first instance relates to Tata Camelot Housing Colony, a project that the Tata Housing Development Company Limited (Tata HDCL) was to set up in the outskirts of Chandigarh. This project was cancelled by the Delhi High Court in a judgment pronounced on 12 April. The court held the project illegal on multiple grounds. First, the court said, the land that had been allocated for the project formed a part of the catchment area of the Sukhna Lake and the project risked causing irreversible damage to a fragile ecosystem. The court further found that the project had been granted permission by the local *nagar panchayat* (urban local body) on the basis of a development plan that failed to take into account the duty of the state government under the Punjab Reorganisation Act, 1966 to preserve the catchment area of Sukhna Lake and its duty to control urban development in the periphery of Chandigarh imposed by the Punjab New Capital Periphery (Control) Act, 1952. Lastly, the court found that the project had been erroneously granted environmental clearance by the Punjab State Level Environment Impact Assessment Authority when it did not have the authority to do so.

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

The second case involves a Tata Value Homes Limited (TVH) project named "New Haven" that is being set up in Bahadurgarh, Haryana, in the National Capital Region (NCR). TVH is a fully-owned subsidiary of Tata HDCL and specialises in building "affordable homes" for the middle class. In this case, a former employee of a TVH subsidiary directly involved in setting up the project raised allegations of impropriety on the part of TVH in March 2016. Specifically, he alleged that TVH was manipulating its calculations of sale area, to defraud its customers into effectively paying inflated prices. Here is an account of these two cases.

The Camelot Story

Tata HDCL first got involved with the Camelot housing project in Punjab in 2007 when it signed an agreement with the Punjabi Cooperative House Building Society, Mohali and the Defence Services Society (Khanna 2010a). The first is a society of 129 members including some 90 serving (at the time) or former members of the legislative assembly (MLAs) of Punjab and several members of parliament (Khanna 2010a) that owned a 21-acre part of a 53-acre plot of land in the village of Kansal, Mohali district, just north of Punjab's border with the union territory (UT) of Chandigarh (Khanna 2010b). The second group which owns the rest of the land in the plot includes several bureaucrats, politicians, police officers and members of the defence services (Khanna 2010a). The former group is a who's who of Punjab politics, including former state Deputy Chief Minister Sukhbir Singh Badal, former Finance Minister Manpreet Badal, former Minister for Local Bodies Manoranjan Kalia, former speaker of the Punjab Vidhan Sabha Nirmal Singh Kahlon, Chhattisgarh Governor B D Tandon, and former Union Minister of State for External Affairs Praneet Kaur, who is also current Chief Minister Amarinder Singh's wife (Khanna 2010d). The group was bipartisan as well. Almost every important family and political party in the state—the Shiromani Akali Dal, the Indian National Congress, the Bharatiya Janata Party, the Bahujan Samaj Party and the Communist Party of India—were represented in the group (Khanna 2010d; Malik 2017; Singh 2013).

The MLAs' society had acquired the land dirt cheap. The society had been formed in 1998 when its members were seeking a plot to build a high-end housing complex near Chandigarh. A 22-acre plot, nestled at the foot of the scenic Shivalik Hills, in Kansal village was identified which was not very far from the Chandigarh Capitol Complex which houses the Punjab and Haryana assembly buildings, the Punjab and Haryana High Court and other government institutions. When the society sought to buy the plot, a large part of it was found to be *shamlat deh* land, that is, part of the village commons (Khanna 2010b). The plot was, however, divided among the landowners in the village and sold individually to the members of the society. At that time, the going rate was ₹15 lakh per *kanal* (approximately 500 square metres). The entire plot was sold for ₹3.3 crore (Khanna 2010b). The Defence Services Society was also given similar rates; its plot went for ₹4.65 crore (Khanna 2010b). Significantly, the plot was 1,500 metres away from Sukhna Lake and a mere 123 metres away from the Sukhna Wildlife Sanctuary.

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

In the deal with the cooperative society, Tata HDCL (in collaboration with Hash Builders, a local partner) was to build 19 towers, each between seven and 28 floors, comprising a total of 1,734 "luxury" apartments. The proposed project includes a clubhouse, indoor and outdoor sports facilities, an amphitheatre and even a helipad and golf driving range. For parting with their land, members of the cooperative societies were promised payment of ₹82.5 lakh and an apartment worth upwards of ₹1.5 crore (Khanna 2010d). In turn, members of the cooperative contributed a token investment of ₹5 lakh each. The total project cost was estimated at ₹1,800 crore (Jolly 2017).

Environmental Clearance

The high court's judgement laid out in detail the sequence of events concerning the project. First, it was necessary for Tata HDCL to seek environmental clearances from the relevant authority. It first sought environmental clearance for the project on 25 March 2009. It did so by submitting Form 1 and supplementary Form 1A under the terms of a notification by the Ministry of Environment, Forests and Climate Change (hereafter, environment ministry) dated 14 September 2006 which added to a regulatory framework prescribed by the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1996. The 2006 notification mandated prior environmental clearance from the central government (for category "A" projects as listed in the schedule to the notification) or from the State Level Environment Impact Assessment Authority (SEIAA) (for category "B" projects) for the construction of new projects or activities (Ministry of Environment and Forests 2006).

For category B projects, the notification mandated a "screening" process, whereby the information supplied by the project proponent in the application would be scrutinised and it would be determined if it was necessary to prepare an Environment Impact Assessment (EIA). Those projects in need of an EIA are then classified as category "B1" projects, and the others are classified as category "B2" projects. For category B1 projects (and for category A projects), the next stage in the processing of applications is "scoping" where the terms of reference by which an EIA is to be prepared are determined taking into consideration the terms of reference proffered by the project proponents themselves, further information as may be considered necessary, and through a site visit if determined to be necessary.

The environment ministry notification had appended to it a schedule prescribing how various projects were to be classified as category A or B. Item 8 in the schedule concerned building and construction projects under 8(a), and area development and township projects under 8(b). It was mandated that projects under 8(b) were to be appraised as category B1 projects, which required the preparation of an EIA. The notification specified that scoping would not be necessary for category B projects under item 8 of the schedule. This was at odds with the specification that projects under 8(b) be treated as category B1 for which scoping was mandatory. The confusion was resolved through an amending notification issued on 4 April 2011, clarifying that scoping would not be required for category B projects under 8(a) only, and the terms of reference specified by the project proponents would be

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

accepted.

The notification also specified a "general condition" where, if a category B project was within 10 kms of (i) protected areas notified under the Wildlife (Protection) Act, 1972, (ii) critically polluted areas as notified by the central pollution control board, (iii) notified eco-sensitive areas, and (iv) interstate boundaries, then it was automatically to be treated as a category A project. Further, the notification specified that if a duly constituted SEIAA or its expert committee was unavailable, all category B projects would be considered by the environment ministry.

Tata HDCL's initial application described the project as a category B project under item 8(a) of the schedule appended to the 2006 notification, and it accordingly applied for environmental clearance from the Punjab SEIAA. The Punjab SEIAA forwarded the application to the State Expert Appraisal Committee (SEAC) for its report having considered the documents submitted along with the application. On 6 June 2009, the SEAC awarded a "gold grading" to the proposed project and recommended that the SEIAA grant the environmental clearance after receiving the approved building plan from Tata HDCL. It got the building plan approved by the Naya Gaon Nagar Panchayat and submitted it to the SEIAA on 31 October 2010. At that time, both the SEIAA and the SEAC were non-functional and the case went to the environment ministry for further consideration according to the terms of the 2006 notification.

The environment ministry responded to a report in the press which described the project's potential environmental impact by asking for a site inspection and a report from its Northern Regional Office in Chandigarh via a letter dated 14 October 2010. The ministry's own expert appraisal committee meanwhile recommended the project for clearance in its meeting held on 9 and 10 November 2010, before the site inspection report was available. It is not clear from the record why the environment ministry's expert committee did not take into account the pending site inspection report. In the minutes of its November 2010 meeting in which the Tata HDCL environmental clearance is recommended, no mention is made of this request for a site visit. It is only noted that the proposal had been considered and recommended for approval by the SEAC.

When the environment ministry's team visited and ascertained the aforementioned distances of the project site from Sukhna Lake and the wildlife sanctuary, it included in its report the fact that the site fell within the lake's catchment area, at least as per a map drawn by the Survey of India during an older case (*Dr B Singh v Union of India,* 2003). Tata HDCL attempted to argue the point with the ministry, saying that there was a physical barrier between its project site and the lake preventing any flow of water. Meanwhile, however, environmental activist Aalok Jagga filed Civil Writ Petition number 20425/2010 in the High Court of Punjab and Haryana, challenging the proposed project. The first hearing in the case was on 17 November 2010. In this case, the court restrained Tata HDCL from all construction activity at the site through an interim stay order dated 20 October 2011,

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

pursuant to a final order.

The Blow-up and the First Challenge

By October–November of 2010, the Tata HDCL application for environmental clearance had already been recommended for approval by the Punjab SEAC as well as by the environment ministry. Confident that the final approval was not far, a pre-launch booking was conducted by a local broker on behalf of Tata HDCL (Khanna 2010d). Reports about the project began to appear in the press. A multi-part investigation by the Chandigarh edition of *Tribune* set off a storm, as it alleged that a powerful group of politicians had bent the rules to expedite clearances for the project.

Most of all, the residents of Chandigarh city were concerned about the effect that the project would have on the pristine skyline of the city. Designed by renowned French architect Le Corbusier, the city had been built in such a way that the Shivalik Hills in the north were visible from just about every point of the city, forming an impressive backdrop for the Capitol Complex (a UNESCO world heritage site). No high-rise buildings were permitted to be built within the city limits to ensure that this was maintained, and Le Corbusier's master plan for the city, immortalised through his Edict of Chandigarh, held that no construction was to be permitted north of the Capitol Complex. The Camelot project would erase all of that, not to mention the devastating impact it was likely to have on the fragile ecosystem around Sukhna Lake.

It was with these fears in mind that Aalok Jagga filed his petition at the Punjab and Haryana High Court arguing against the project. His contentions were that the project was: (i) in violation of the Punjab New Capital (Periphery) Control Act, 1952, (hereafter, the Periphery Control Act) as the location of the project was in a "controlled area," as defined by that act, where construction was supposed to be restricted; (ii) in violation of the Environment (Protection) Act, 1986 as it was in an eco-sensitive and protected area; (iii) in close proximity to the Sukhna Wildlife Sanctuary and therefore, requiring permission under the terms of the Wildlife (Protection) Act, 1972; and (iv) a risk to Chandigarh's claim to the status of a heritage city, an application for which was pending before the concerned world body.

The issue before the court was: (i) whether the Periphery Control Act was applicable to the project site when the area was notified as a part of the Naya Gaon Master Plan under the Punjab Regional Town Planning and Development (PRTP&D) Act, 1995 and thereby, whether the builder needed to seek permission under the terms of the Periphery Control Act, (ii) whether the project was permissible under the Environment (Protection) Act, and (iii) whether the project was permissible under the Wildlife (Protection) Act. The court declined to go into the latter two issues, stating that the applications for permission by Tata HDCL were under consideration by the relevant authorities under the two acts and any order by the court could prove to be prejudicial to issues that were rightly under the

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

jurisdiction of those authorities. It was on the issue of the applicability of the Periphery Control Act that the high court considered arguments.

The petitioner argued that as the project site was in the periphery control area of the Chandigarh city, as under the Periphery Control Act, the project would have to comply with the terms of that act and accordingly seek permission from the competent authority. The Chandigarh UT administration agreed, and added further that the development master plan which the Punjab government had notified for the Naya Gaon area was a "mala fide exercise of power" as the Chandigarh administration had not been taken into confidence during its preparation. It further alleged that as Punjab MLAs were beneficiaries of the project, the area of the project site had been shown as a residential area in the master plan despite its proximity to the Sukhna Wildlife Sanctuary and its location within the catchment area of the Sukhna lake. The Punjab government disagreed, arguing that: (i) a development plan bore the force of a statute and thus, could not be construed as mala fide, (ii) the Chandigarh administration had not objected to the plan when it was published as a draft open to comment, and (iii) crucially, that this plan would over-ride the Periphery Control Act as the plan had been prepared in accordance with the government's Punjab Periphery Policy, 2006. Tata HDCL agreed with the Punjab government and argued further that the project site did not fall in the Sukhna lake's catchment area.

As mentioned, the high court initially stayed all construction activity at the project site in October 2011. Even before this order though, the society of MLAs wanted out. On 15 June 2011, it was reported that the society had decided in a meeting to revoke the power of attorney that it had granted Tata HDCL, seeking to terminate the agreement entirely (*Indian Express* 2011). This did not prove to be an entirely straightforward negotiation, as some of the land had already been registered to Tata HDCL, and the MLAs had already been paid a part of the money due to them in the deal. Negotiations towards annulling the agreement would drag on over the following years and are yet to be completed, but as early as then it appears that the society did not see the project coming to fruition (Singh 2013).

However, in its final order pronounced on 26 March 2012, the high court ruled in favour of Tata HDCL. It agreed with the petitioner's argument that the Periphery Control Act did indeed apply to the project site, but accepted the respondents claim that the act did not constitute a complete embargo on construction in the periphery of the city of Chandigarh, and that the development master plan was valid under the PRTP&D Act. The court held that the Periphery Control Act was to be read as complementary to the PRTP&D Act. Thus, the court concluded that the provisions of both statutes would apply to the project and accordingly, allowed the construction of the project to go ahead subject to it obtaining the relevant permissions from the appropriate authorities. Aalok Jagga appealed the high court's decision at the Supreme Court (Special Leave Petition (C) No 32660/2013, taken up by the Court as Civil Petition number 4848/2014).

The Environmental Clearance: Continued

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

While Aalok Jagga's case proceeded at the high court, the SEIAA of Punjab became active and the Tata HDCL application was considered once again. The SEIAA deferred a decision on the application in successive meetings through the winter of 2011–12 on the grounds that the matter was sub-judice and that the interim stay order was in operation. It simultaneously asked the environment ministry whether it was the competent authority to consider the Tata HDCL application in view of the findings of the ministry's Northern Regional Office report. Before the ministry responded to the question though, the Punjab and Harayana High Court passed its final order in the Aalok Jagga case on 26 March 2012. As mentioned above, the court found in favour of Tata HDCL, permitting it to continue work on the project after obtaining clearances from the competent authorities under the terms of the Periphery Control Act, the Environment (Protection) Act and the Wildlife (Protection) Act.

Considering the high court's order, on 26 April, the SEIAA decided to send the application back to the SEAC to reconsider. In this order, the SEIAA crucially decided that it was competent to consider the application, interpreting the 2006 notification by the environment ministry to read that the Camelot project did not need consideration by the central government as it qualified as a category B project. Specifically, the SEIAA held that according to the notification and subsequent orders by the environment ministry the "general condition" mentioned in the notification did not apply to projects under schedule items 8(a) and 8(b).

When considering the application, the SEAC held that since the environment ministry's expert committee as well as the SEAC had both accepted the EIA report originally appended to Tata HDCL's application, and that since EIA had been prepared in accordance with the environment ministry's model terms of reference, it was not necessary to issue fresh terms of reference to appraise the project's environmental impact. This acceptance of the terms of reference of Tata HDCL's EIA by the environment ministry was, of course, before the site visit conducted by the Northern Regional Command office, however that was not a fact that the newly constituted SEAC took into account. Duly, it directed Tata HDCL to submit certain additional information/data to be included in the EIA for the project to be re-appraised.

In Tata HDCL's revised application which it submitted on 8 March 2013, however, there was a significant change. Now the project was described by Tata HDCL itself as coming under schedule item 8(b). This would have implied that the project would have necessarily required classification as a category B1 project, and called for a fresh process of scoping and determination of terms of reference for the EIA, and the subsequent preparation of a fresh EIA. In its revised application, Tata HDCL also admitted that it lay within close proximity to the Sukhna wildlife sanctuary and the Sukhna lake, citing the distances determined by the environment ministry's team. If this fact had been considered, the project should have automatically been classed as a category A project, notwithstanding its potential classification in that category due to its proximity to the inter-state boundary. The SEAC, however, decided that there was no need to reclassify the project or appraise it

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

afresh. Accordingly, the SEAC proceeded with the terms of reference provided by Tata HDCL themselves in their original 2009 application, and having sought some additional information, granted the project a "silver grading" and recommended on 14 August 2013 that the environment clearance be granted. The clearance was accordingly granted by the SEIAA on 17 September 2013.

This clearance, and the process by which it was granted, was challenged by Sarin Memorial Legal Aid Foundation (hereafter "Sarin") in the Supreme Court through Civil Writ Petition number 994 of 2013. Sarin argued that the project should have been classified as a category A project, and Tata HDCL's application for environmental clearance should have been processed by the central government, at the level of the environment ministry. Further, it argued that the SEAC failed to follow the mandated procedure by accepting Tata HDCL's terms of reference and not conducting a fresh EIA and corresponding appraisal, appearing to have conducted proceedings designed to favour Tata HDCL.

Permission under Periphery Control Act

Tata HDCL applied for permission to construct the project to the Nagar Panchayat Naya Gaon on 9 April 2012, days after the Punjab and Haryana High Court had ruled in the Aalok Jagga case. The required permission was mandated under the terms of the Periphery Control Act and the rules made thereunder read with the PRTP&D Act.

The Periphery Control Act was enacted by the (undivided) Punjab government in 1952 in order to regulate future development on the borders of the city of Chandigarh which was being constructed at the time. The act defines an area adjacent to and within a distance of five miles of the boundary of Chandigarh as a "controlled area" where construction is restricted to only those categories permitted by the government under the terms of the land use plan. Section 2 of the act defines the duties of the "deputy commissioner" (or any person appointed by the government to fulfil those functions), who is the competent authority to enforce the prohibitions on land use that were defined in the act. The deputy commissioner under Section 4 of the act is to see to the preparation of a plan for land use in a controlled area, and is mandated under Section 5 to prohibit all construction activity or land use which did not adhere to the land use plan. Under Section 6, the procedure for how a deputy commissioner could permit a particular project is laid out.

In 2008, the Naya Gaon nagar panchayat was granted the power by the Punjab government to clear projects under the Periphery Control Act. It is pertinent here to consider the background of the constitution of the Naya Gaon nagar panchayat as well as the development plan that had been notified for the Naya Gaon area, of which Kansal village, the location of the Tata HDCL project, is a part; as this background formed the context in the proceedings of Aalok Jagga's case on the question of whether the nagar panchayat was indeed the right authority to grant permission to the Tata HDCL project, whether statutory procedures had been followed, and whether the permission that was ultimately granted was

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

in accordance with all relevant laws and rules, including those under the Punjab Reorganisation Act, 1966 and the Environment (Protection) Act, 1986.

The Nagar Panchayat Naya Gaon was constituted by the Punjab government via a notification in October 2006. Crucial to the background of the establishment of the body was a 2001 case (*Dr B Singh v Union of India*) in the Punjab and Haryana High Court where an earlier attempt to set up the nagar panchayat had been struck down. The 2006 notification which constituted the body, thus, had to take into account the orders of the court, as well as objections raised by the public and finally, the nagar panchayat was constituted, subject to the conditions that all existing forest and land preservation areas (as mandated by various laws, notifications and court orders) under the nagar panchayat's jurisdiction would continue to be so. Thus, in a sense, protecting the eco-sensitive areas under its jurisdiction was written into the founding notification of the Naya Gaon nagar panchayat.

A month after the nagar panchayat was constituted, on 3 November 2006, a meeting was held by the principal secretary, local government, Punjab where it was decided that no building plans were to be approved in the nagar panchayat area since no area master plan for the area had been approved yet. However, in what has been termed a "U-turn" in the press (Sedhuraman 2017), the Punjab government, on 20 December 2007, granted exemptions to the November 2006 decision to allow construction of residential, commercial, institutional and other projects and authorised the Naya Gaon nagar panchayat's executive officer to regularise already existing constructions. Note that this was soon after the deal was struck between the Punjab MLAs and Tata HDCL. Effectively, through this step, a long deliberative process to regulate the development of the Chandigarh periphery was co-opted by the government of Punjab, apparently in order to push through permission for the Tata HDCL project. The next month, on 29 January 2008, the government declared the Naya Gaon panchayat to be a part of the "Greater Mohali Development Area" and thus, granted the Greater Mohali Area Development Authority (GMADA) the authority to prepare development plans for the panchayat area.

On 28 February 2008, two simultaneous developments occurred. An order was passed by the Punjab government granting the Naya Gaon nagar panchayat the authority under Section 5 of the Periphery Control Act to give permission to new projects in the panchayat area. The same order also sanctioned a "Part Regional Plan" for the Naya Gaon nagar panchayat area, under Section 5 of the Periphery Control Act. Alongside this, the Punjab department of town and country planning invited public comment on the existing land use pattern that had been annexed to the regional plan. The government appeared to have been in a hurry at this stage and thus, neglected the need to cover all legal bases, as was pointed out in the objections sent by the principal secretary to the state of Punjab which stated that there was no provision in the law—specifically in the PRTP&D Act—to formulate such a Part Regional Plan.

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

The problem was that while the nagar panchayat had been effectively declared to act as the "deputy commissioner" under the Periphery Control Act and was, thus, the correct authority to oversee the implementation of the restrictions on land use to planned uses under the terms of the act. However, for a plan to be formulated specifically for the Naya Gaon area, it needed to be notified as a "regional plan area" or a "local plan area" under the terms of the PRTP&D Act. At that point, it was merely a part of the Greater Mohali area, which had been notified as a regional plan area but had not been notified as a plan area itself. The problem was solved through a series of subsequent orders. First, the part regional plan was withdrawn on 28 March 2008. Then, by a notification dated 24 July 2008, the department of local government of the Punjab government declared the nagar panchayat area to be a "local plan area." Thereafter, following the process as stipulated in the PRTP&D Act, an "existing land use plan" and a "draft master plan" for the Naya Gaon nagar panchayat area were published, opened to the public for comments and subsequently, finalised and notified in January 2009. A regional plan for the entire GMADA area was also notified in the same month.

Significantly, the preparation of such plans to regulate land use in the periphery of Chandigarh city had been recommended by a state level committee of the government of Punjab that had been set up in 2003. The committee had been mandated by the government to develop a Punjab Periphery Policy to regularise the unauthorised structures that had already come up in the areas around the city of Chandigarh, and to suggest a policy framework to ensure planned development of those areas. The committee produced recommendations after considering the various issues in the periphery areas and on the basis of those recommendations, the Punjab Periphery Policy was notified by the Punjab government in 2006. The drawing up of land use plans, both existing and proposed, was one of the recommendations adopted in the policy.

The Tata HDCL project was granted permission by the Naya Gaon nagar panchayat on 5 July 2013, a little over a year after the application. At this stage, Tata HDCL faced a different obstacle. The Punjab and Haryana High Court had, in 2009, taken up a case on its own motion (Civil Writ Petition no 18253/2009) as a public interest litigation against the Chandigarh UT administration in order to ensure action on protection and restoration of the Sukhna lake and its catchment area. In this case, on 14 May 2012 the court had issued an order instructing the governments of Punjab and Haryana and the UT administration of Chandigarh to stop all construction activity in the catchment area of the Sukhna lake as specified in the map that had been prepared by the Survey of India in the aforementioned B Singh case.

Following the grant of permission to construct the project by the Naya Gaon nagar panchayat, Tata HDCL sought clarification from the Punjab and Haryana High Court on whether the 14 May 2012 order applied to the Camelot project as well. The court replied via an order dated 21 August 2013 that since the issue had been settled in the Aalok Jagga case in favour of Tata HDCL, the 14 May 2012 order had no effect, and the permission granted

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

by the nagar panchayat was upheld. Sarin objected to this decision by the court, and filed a special leave petition contesting it in the Supreme Court (Special Leave Petition (C) No 32659/ 2013, taken up in the Supreme Court as Civil Petition No 4847/2014).

At the Supreme Court

The Supreme Court considered the three petitions relating to the project together, and pronounced its final order on 22 April 2014. On the Aalok Jagga case, the Court set aside the high court's final order, reverting back to the interim stay order that the high court had issued in 2011, and transferred the case to the Delhi High Court for fresh consideration and adjudication. On Sarin's petition against the high court's 21 August 2013 order, the apex court decided that since it had set aside the high court order in the Aalok Jagga case, the order that Sarin was challenging was also automatically rendered ineffective pending a decision by the Delhi High Court. Specifically, the Supreme Court ordered that the issue of whether the Tata HDCL project fell in the catchment area of the Sukhna lake was not to be decided by the Punjab and Haryana High Court. On Sarin's challenge of the environmental clearance, the apex court produced no ruling, simply transferring the petition along with the Aalok Jagga matter to the Delhi High Court.

At the Delhi High Court

Proceedings started at the Delhi High Court with fresh arguments being added to both cases by the respective petitioners. To the Aalok Jagga case, aside from the original contention that the project violated the Periphery Control Act, the permission granted by the Naya Gaon nagar panchayat on 5 July 2013 was challenged. Jagga argued that the high-rise buildings would completely obstruct the view of the Shivalik Hills from the Chandigarh Capitol Complex, going against the vision for the city spelt out by Le Corbusier in the edict of Chandigarh. He argued that the project site was in the catchment area of the Sukhna lake and in close vicinity of the Sukhna wildlife sanctuary, aspects that were not considered by the Punjab government in granting permission to the project.

Jagga pointed to the aforementioned B Singh case in which the Punjab and Haryana High Court had a map of the lake's catchment area prepared by the Survey of India. According to that map, the site of the Camelot project was clearly a part of the lake's catchment area. He pointed to orders in that case which took the Survey of India map on record, then restrained the Haryana government from authorising construction close to the lake, and subsequently banned all construction activity in the lake's catchment area. He also pointed to the case in which the court had on its own motion taken up an effort to preserve and restore the Sukhna lake, pursuant to which it had banned housing colonies or construction activities of any type in the lake's catchment area as demarcated by the Survey of India map and ordered any structures built in violation of its order to be demolished without notice.

He raised the point that the area to the north of the Capitol Complex, extending to the foothills of the Shivalik Hills, had been approved the status of "Heritage Zone-I" by the

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

central government in December 2011 acting on the recommendation of the government's Expert Heritage Committee. The natural backdrop of the Shivalik Hills and its uninterrupted view from the Capitol Complex were themselves approved for heritage status. The same area had also been designated a "protected forest" and a "no development zone" by interstate working groups under direction of a co-ordination committee set up by the central government for coordinating the development of Chandigarh. The Chandigarh UT administration had, in May 2013, prepared a draft notification declaring an eco-sensitive zone around the Sukhna wildlife sanctuary, and the draft notification was pending before the central government (Nagarkoti 2015).

Finally, he argued, that under the terms of the Punjab Reorganisation Act, 1966, certain lands had been acquired by the UT administration for the purpose of preserving the catchment area of Sukhna lake; with the demarcation of the catchment area by the Survey of India, control of the entire area had been vested with the central government and thus, the state government of Punjab had no authority to grant permission for the project.

In Sarin's case against the environmental clearance, the petitioner argued that the Camelot project should have been classified as a category A project under the environment ministry's 2006 notification. It argued that under the "general conditions" specified in the 2006 notification, the project warranted category A status by virtue of being within 10 kms of the interstate boundary and of the Sukhna Wildlife Sanctuary. Further, it argued that the SEIAA had failed to take into account various environmental impacts the project would have when appraising the application for environmental clearance. Finally, it noted that there had been a clear difference of opinion between the Punjab government and the UT administration of Chandigarh on the matter, and given that the project was situated territorially in Punjab but would have its entire environmental impact on the city of Chandigarh, it was all the more necessary that the application for environmental clearance was considered by the central government.

The Delhi High Court had three substantive issues to decide on. The first issue concerned the extent of the Sukhna lake catchment area, and who had statutory authority over it. Secondly, was the Survey of India map demarcating the catchment area of the Sukhna lake, prepared in the B Singh case, binding on the state of Punjab? Thirdly, did the Camelot project site fall under the catchment area of the Sukhna lake? And if it did, did that mean that according to the Punjab Reorganisation Act the area came under central government control?

On these questions, the Delhi High Court perused the records of the B Singh case to determine the validity of the Survey of India map. It found that the Survey of India, the Punjab government, the Chandigarh UT administration, the Haryana government, and various experts had taken part in a series of meetings and deliberations to produce the said map of the lake's catchment area. The map was then placed on record, subject to objections by any party, at which stage no objections were raised. The Delhi High Court also observed

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

how, in the case taken up by the Punjab and Haryana High Court on its own motion in 2009, the same map had been taken to be the correct demarcation of the catchment area and no further challenge was permitted by the Punjab government, as it had been a part of the proceedings that produced the map and had raised no objections at the time. Having considered these two points, the Delhi high court concluded that the map was indeed the correct demarcation of the lake's catchment area.

Following this, the court determined that the Camelot project site fell within this catchment area according to the map. Tata HDCL attempted to make the same argument that it had before the environment ministry, claiming that the topographic characteristics of the specific site meant that it was not possible for water to flow from the site to the Sukhna lake. The Delhi High Court rejected this argument, leaning on the site inspection report by the environment ministry for its decision. It noted the report's findings that the project site *was* a part of the lake's catchment area, and noted that even Tata HDCL's own representatives had accepted before the SEAC that this was the case.

Finally, on the question of jurisdiction, the court perused the record of land acquisition for the purpose of preserving Sukhna lake's catchment area. Under the Punjab Reorganisation Act, all this acquired land was vested with the central government. The court found that the project site was in an area that had not in fact been acquired, and despite coming under the lake's catchment area, continued to be legitimately under the Punjab government's jurisdiction.

The second issue the court had to decide on was whether the permission granted by the Naya Gaon nagar panchayat on 5 July 2013 violated the Periphery Control Act. To answer this question, the court looked in detail into the background of how the nagar panchayat was established, what powers it legitimately had, and how the development plan for the nagar panchayat region was drawn up and notified. Following this background examination, the court examined whether the granted permission was valid. In its discussion, the court determined that while the PRTP&D Act, under which the development plan was drawn up, did cover all of the state of Punjab, including the areas protected by the Periphery Control Act, the plans prepared and implemented under it could not be read as permitting what was prohibited under other laws, such as the Periphery Control Act and the Punjab Reorganisation Act. Despite having found that the Camelot project site was not controlled by the centre as it had not been acquired for conservation efforts at the time of the enactment of the Punjab Reogranisation Act, the very fact that the catchment area of the Sukhna lake found mention in that act as well as in the Periphery Control Act indicated to the court that the terms of those two acts could not be violated by the regional or local development plan.

The court then went through the deliberations of the state level committee that produced the Punjab Periphery Policy, on whose recommendation the land use plans had been prepared. Examining the record, the court found that the committee had not considered the

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

fact that the concerned area was in an eco-sensitive zone and was in close proximity to the Sukhna wildlife sanctuary. In view of this fact, the court ordered that the Punjab government must "reconsider the matter." While the court did not spell out what such a reconsideration would entail, taken to its logical conclusion it would mean that the Punjab government would have to reconsider its periphery policy itself, and prepare fresh development plans on the basis of that reconsidered policy, and only then would it be able to hypothetically reconsider the application for the project.

The final issue that the court had to decide on was whether the environmental clearance granted to Tata HDCL by the SEIAA was valid or not. Here, additional arguments were raised by the UT administration, pointing out that the SEIAA failed to insist on the preparation of a new EIA after Tata HDCL submitted its revised application on 8 March 2013 and it was clear that the project belonged to category B1. Here, the court had no hesitation in accepting this contention and striking down the environmental clearance granted to Tata HDCL. Further, the court also accepted the petitioners' contention that the project should have been classified as category A throughout, seeing as it is located within 10 kms of the interstate boundary and of the Sukhna wildlife sanctuary which is a protected area under the Wildlife (Protection) Act. The court noted that the SEIAA had itself expressed doubt about its authority to grant the clearance, and had sought clarification from the environment ministry. With this known, the court held that the SEIAA had erred in deciding for itself that it was the competent authority, and that the matter needed to be considered and decided by the environment ministry at the level of the central government. Accordingly, the court set aside the environmental clearance.

The Role of Chandigarh

Throughout the cases at the various courts, it was apparent that the Chandigarh UT administration and the Punjab government did not see eye to eye on a number of issues. The UT administration took the side of the petitioners in every case, despite technically being respondents in the cases, and often added arguments to bolster the petitioners' points.

In the Aalok Jagga case at the Punjab and Haryana High Court for instance, Chandigarh argued that the Naya Gaon regional master plan itself was a "mala fide" effort by "influential persons" to prepare a plan to zone the area of the Camelot project site as a residential area. The UT administration accused the Punjab government of deliberate manipulation in the Naya Gaon master plan, where a prohibition was imposed on high rises within a one kilometre area of the Punjab and Haryana Secretariat building. However, that one kilometre was to be measured from the east wall of the secretariat and the Camelot project site was conveniently located 900 metres outside the one kilometre boundary. The UT administration called this prohibition an "eyewash" and a "conscious decision… keeping in mind the location of the project." This contention was not accepted by the court, however, here Chandigarh came just short of accusing the Punjab government of the practice of "re-zoning" where an area was deliberately designated a residential area to increase the value

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

of the land there and to benefit certain individuals. *Tribune* made similar suggestions, pointing out that the Punjab government had also announced its intention to construct a road connecting the Camelot project to major areas of Chandigarh city, including the secretariat, and of drawing its route to specifically pass by land parcels owned by various politicians. At the Delhi High Court, Chandigarh argued that the efforts by the Government of Punjab to develop the Naya Gaon nagar panchayat township were "ruining the very essence and concept of the original master plan of Chandigarh."

Tribune in its series of articles in 2010 hailed the role of the UT administration as the only government body that was speaking out against the Camelot project. It is possible though that the UT administration could have done more. When the Naya Gaon master plan was published as a draft inviting public comment, the Chandigarh administration registered no response. The plan was finalised and notified in January 2009, however, the UT administration only expressed its objections through a letter sent in March (*Economic Times* 2017).

The UT administration's inaction was questioned in the parliamentary standing committee on urban development in 2016. The committee issued a report criticising the administration, saying that it had "ducked the issues and violat[ed] the master plan and interstate regional plan." Various other actions by the Punjab government, to seemingly facilitate the project should have also come up on the Chandigarh administration's radar. In 2010, for instance, the Punjab government expressed its desire to the UT administration to build the aforementioned road passing through both territories (Khanna 2017). The narrative seems to be that the clout of the powerful Punjab politicians prevented any government body from taking action until it fell to the civil society organisations to challenge the project in court. However, Chandigarh's inaction prior to that case, and its aggressive advocacy during it, bears some sort of explanation.

The Role of Tata Housing

For Tata HDCL, and more generally for the Tata group, the case does not reflect well. Tata HDCL was a loss-making company up until 2005. In 2005–06, the managing director (MD) and chief executive officer (CEO) Brotin Banerjee claimed that the company only had ₹10 crore in an interview to DNA in 2011 (Tiwari and John 2011). In 2006, it went through a "turnaround" according to its own company profile on its website, and in 2007, it saw an infusion of equity of ₹100 crore from its parent holding company—Tata Sons. Since then the company has grown from strength to strength, completing a series of high value projects across the country and launching an affordable homes subsidiary—Tata Value Homes—in 2010.

This timeline, however, suggests that one of the earliest projects for the newly revived Tata HDCL in 2007 was the Camelot project. Seen from Tata HDCL's perspective, there are many positives that it may have seen in the deal. The Chandigarh real estate market was a

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

lucrative one, and the Camelot project had the company dealing with some of the state and the region's highest profile individuals. The clout of the Tata's clients may have seemed at the time to make it likely that permits and clearances, notoriously difficult to obtain in India's economy, would not have been too much of a problem in this case. Quite simply, the group of MLAs and other very important persons (VIPs) wanted the project built at least as much as Tata HDCL did, and appeared to have done their best to facilitate it until the project garnered negative publicity in the media.

Now, however, with the project effectively ruled out by the Delhi High Court ruling, and unlikely to revive due to the court having ruled on the environmental risks posed by construction projects in the area, the project may be prove to be a decade-old regret for Tata HDCL. It has paid out two instalments of ₹33 lakh of the promised ₹82.5 lakh to each of the MLAs, and only received in transfer a small parcel of land not more than seven acres, which it has lost the permits to develop (Singh 2013). In the event that the agreement with the MLA society is eventually cancelled, it will get back this money but will have to return the land, whose market value will be worth much more than Tata HDCL will get for it. It could choose to not return the land, to hold on to it for a potential future development, or it could seek out a buyer who would pay market price. But the problem for real estate developers of the Tata HDCL's kind is that a seven-acre plot is not one with which too much can be done. With the court's orders ruling out any large-scale construction projects, even an affordable homes project is effectively ruled out. However, Tata HDCL chooses to deal with its seven-acre headache, it represents an unfortunately toxic asset at the moment. All of this is, of course, notwithstanding the sunk investment that Tata HDCL has already committed towards the project. No buildings were built of course, but securing the series of permissions that Tata HDCL did is not something one can do for free. Architects and other firms would have been commissioned to draw up the building plans, to prepare the EIAs to submit to the government and for a variety of other tasks. Examples like these can only add up. And this is not to mention the legal fees of nearly a decade-long struggle in court, and the money that Tata HDCL will have to return to the investors who subscribed to its pre-launch for the project.

Did Tata HDCL fail to anticipate the potential risks going into the project? It has been reported that crucial to facilitating the deal and the contact between the MLAs' society and Tata HDCL was the role of Hash Builders Private Limited, the local builder that Tata HDCL had taken on as its partner for the project. It is unknown what processes of due diligence Tata HDCL did prior to joining the project, or whether the environmental and other legal risks associated with the project came up in any such exercise.

In the course of reporting this story, the EPW sent a detailed questionnaire to Brotin Banerjee, MD and CEO Tata HDCL, asking whether it planned to seek new clearances for the Camelot project from the environment ministry as a category A project, what, if any, were the financial repercussions on the company of the Delhi High Court's order, and what processes of due diligence had been conducted prior to joining the project. Tata HDCL

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

chose not to answer these questions, merely citing in response the Delhi High Court order as one that the company was "reviewing… [in order to] decide on a further course of action." At present, it is unclear what that course of action could be.

The Story of New Haven

If the case of Tata HDCL's Camelot project in Chandigarh raises a concern about the kinds of projects Tata HDCL is willing to take part in, the allegations that have been raised against its subsidiary's "New Haven" project in Bahadurgarh in the National Capital Region (NCR) cast it in a much more sinister light.

The company concerned here is Tata Value Homes (TVH), a fully-owned subsidiary of Tata HDCL, which was incorporated in September 2009. The company is set in contrast to Tata HDCL's usual projects. Where Tata HDCL focuses on luxury and high-end housing, TVH is involved in affordable housing. Specifically, TVH is one among several major developers that are now involved in setting up projects in far-flung suburbs outside major cities, in what has come to be known as the "retirement homes" segment of the real estate and housing market. The TVH New Haven project in Bahadurgarh is a prototypical example of such development in the outskirts of a major city.

Unfortunately, if the allegations against TVH are to be believed, the New Haven project may also be typical of another aspect of India's real estate market, that of developers routinely taking advantage of the asymmetry of information between a buyer and a developer to raise their bottom line. In this instance, TVH has been accused by a former high-ranking employee, involved in the New Haven project, of cheating its customers. According to the employee's allegations, TVH is alleged to be selling its housing units in the project in Bahadurgarh at inflated prices, by surreptitiously increasing the proportion of the infamous "saleable" area component commonly known as the "super built-up" area.

How Much Home Can We Really Buy?

The manipulation of measures of floor space is a time-tested tactic by Indian developers to increase their margins through arbitrary and possibly fraudulent means. In fact, specific measures have been included in the recently enacted Real Estate (Regulation and Development) Act (RERA), 2016, intended to deal precisely with this problem. This practice is at the heart of the allegations against TVH in the New Haven project.

"Carpet" area is the typically intuitive concept by which buyers understand measures of floor space presented to them by developers. It refers to the area of the floor space contained within the walls of an apartment, inclusive of internal walls but excluding structures like verandahs, balconies and exclusive terraces. Quite literally, it is meant to refer to the area that the buyer of a new home could cover with a carpet. In the world of real estate though, the intuitive and easy to grasp and verify is the enemy of profit.

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

A crucial measure for a developer, for instance, is not the carpet area, but the "built-up" area. This includes the carpet area as well as the floor space covered by the exterior walls and balconies, verandahs, and so on. If one were to measure the dimensions of a house by measuring the lengths of the exterior walls on each floor, including balconies, verandahs and subsequently calculate the total area from those measures, one would typically be measuring the built-up area. The built-up area is crucial to a developer because of a statutory technical limitation on any project called the floor space index (FSI). It refers to the ratio of the total permissible built-up area of a building to the area of the plot of land that it sits in. The government mandates FSI limits for different kinds of buildings in different zones through the various departments of town and country planning in the states, and it is a measure that is closely regulated and crucial to the fortunes of individual developers as well as to the real estate market as a whole. FSI concessions, for instance (that is, permitting a builder to construct a project with a higher ratio of built-up area to plot size than is specified by the generally applicable regulation in the area) are a routine policy instrument used by governments to incentivise builders to enter areas and markets that they find unattractive for whatever reason.

Further complicating matters are the concepts of super built-up area and "saleable" area. The first refers to the floor space occupied by common amenities and spaces in a building such as a lobby, an elevator, a staircase, a basement and so on. These common amenities are not owned by any individual buyer, but collectively by all the buyers of a project. In large projects which typically involve multiple apartment buildings with intervening roads, lawns, and a multitude of possible amenities such as club houses, play grounds, swimming pools, sports facilities and others, the total super built-up area can come to quite a significant amount.

Often, the super built-up area is added to individual built-up areas and sold to buyers. Here, the super built-up area aggregates all such collectively-owned floor space and it is allocated proportionately among all the home units in a project, with a certain resultant amount of floor space being added to the built-up area of an individual home unit. The final number that is arrived at is known as the saleable area, which is the amount of floor space that the buyer actually pays for when they buy a home. The super built-up area is often referred to as the "loading" area to signify, literally, the additional load a buyer must bear over the actual area of their home. The ratio of the saleable area to the carpet area is known as the loading factor.

It has been a common practice for developers in India to inflate the price of a home by padding the super built-up area of a project through a range of items that buyers never realise they paid for, and never verify the actual areas of. Such padding can be quite arbitrary and abstract, and often quite dubious in the claim that the areas being referred to are actually available to and partly the property of the buyer. Thus, buyers end up paying for floor space that they never see and never really use. Under the RERA, this practice is sought to be discouraged by demanding that builders explicitly state the exclusive areas

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

being sold to buyers and leave out all common areas from price calculations. Or, to use the jargon once again, the saleable area has been specifically defined in the act as the carpet area plus the exclusive areas that are sold to the buyer, and no developer is permitted to charge for floor space beyond that.

The New Haven Project

TVH announced in May 2015 that it was going to set up a proposed project titled New Haven, in the town of Bahadurgarh in the Jhajjar district of Haryana (which is adjacent to New Delhi and for planning purposes is in the NCR). It intended to offer for sale a total of 1,215 apartments, across 19 towers to be built and sold in two phases. The reported investment by TVH in the project was ₹600 crores (*Economic Times* 2015).

The 21-acre plot of land in which the proposed project was to be built was jointly owned by three companies—HL Promoters, HLT Residency, and SAS Realtech. HLT Residency is a fully-owned subsidiary of TVH, and HL Promoters is a venture jointly owned by TVH and SAS Realtech, with TVH holding a controlling stake of 51%. HL Promoters is the company that is responsible for executing the project.

The first phase of the New Haven project was licensed by the Haryana department of town and country planning on 30 June 2014 (License No 60 of 2014). The building/layout plans for Phase I were approved on 26 February 2015 (ZP- 985/AD(RA)/2015/3235). It was on the basis of this approval that the project was advertised and opened for booking in May 2015. For the approval of building/layout plans the developer has to submit detailed architectural drawings. In such drawings, the measurements of floor space area are indicated, and these are calculated and finalised by the architect of the project.

Bookings in the project continued through 2015, and a draft buyers' agreement was prepared by the developers in December 2015 and posted on the TVH website. In March 2016, however, Nityanand Sinha, a former general manager at HL Promoters, filed a complaint with the Economic Offences Wing (EOW) police station in New Delhi, alleging that TVH had inflated the saleable area of the apartments on offer in the project, and was seeking to defraud customers for profit. Sinha was the project head for the New Haven development until June 2015 when his employment was terminated.

This is not the first time that Sinha's name appears on the public record. In October 2015, the Bombay High Court had issued an interim injunction against Sinha in a defamation case that had been filed against him by TVH. TVH had filed the case in response to a series of postings on various social media platforms by Sinha in September 2015 in which he had made the same accusations against TVH as in his complaint to the police. The high court had ex parte ad interim ordered Sinha to take down the posts and refrain from making any further public allegations either on social media, or in communications to journalists, political leaders, company officials and investors, and any other persons. It is a different matter that reports on his allegations appeared only in three Hindi-language outlets, and the

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

story hardly picked up any steam (Kumar 2016; *Aaj Samaj* 2016; *Chamakta Aina* 2016).

Reports on the high court's order in the press had painted Sinha as a "disgruntled ex-employee" (Baghel 2015). Those reports contained no description of Sinha's allegations though. What was the substance of Sinha's allegations against TVH?

The Alleged Fraud

According to Sinha's police complaint in New Delhi, TVH had allegedly changed the saleable area of the apartments in the New Haven project by changing the loading factor as per directions of the TVH management. As proof, Sinha attached to his complaint internal emails of the company in which he had been marked.

In the first email (attached to the complaint) sent by one Umesh Goel, General Manager, Design Coordination at Tata HDCL, dated 24 February 2015, the area statement finalised by the architects and designers of the project was circulated, which was ostensibly on the basis of drawings finalised by the town and country planning department. In the attachment to that email, the carpet areas and saleable areas of different types of flats in the New Haven project were listed. For the "small" two bedroom, hall and kitchen (BHK) flats, the carpet area and saleable area were 911 square feet (sq ft) and 1,185 sq ft respectively. For the "large" 2 BHK flats, the values were 1,067 sq ft and 1,390 sq ft respectively, and for the "small" 3 BHK flats, the values were 1,356 sq ft and 1,750 sq ft respectively. As per the email, these saleable areas were each arrived at by architects and a loading factor of 29–30% to the carpet areas was evident on calculation.

As per documents available with the EPW on 3 March 2015, a presentation was sent to Sinha through an email from one Sanjeev Suri. Suri is a vice president in Tata HDCL, the regional head of engineering at TVH and listed as director/signatory for HL Promoters and HLT Residency in their respective company data as listed on the website for the Ministry of Corporate Affairs (MCA). In that presentation by the "Pricing Task Force," the pricing strategy for the New Haven project was detailed. The presentation contained detailed drawings of the flats, with their areas marked and loading factors mentioned. Here too, the loading factor for arriving at the saleable area from the carpet area was noted as 30%.

Also on 3 March though, an email was sent by one Khiroda Jena, the deputy general manager for corporate planning at Tata Housing, asking for the area statements to be sent to them. Jena is also listed as a director/signatory for TVH, HL Promoters, and HLT Residency on the MCA website. Crucially, in that email a line was included that the "loading for 2 BHK decided @41% and for 3 BHK @39%." This email was appended to Sinha's police complaint.

In response to this latest email, on 4 March, the detailed area statement was circulated once again, with the areas recalculated according to the new loading factors. Now the carpet areas for the small 2 BHK flats, the large 2 BHK flats, and the 3 BHK flats had been revised

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

to 916 sq ft, 1,074 sq ft, and 1,357 sq ft respectively, which was a negligible change. However, the saleable areas had increased significantly, to 1,292 sq ft, 1,514 sq ft and 1,886 sq ft respectively, apparently in line with the new loading factors that had been mentioned as "decided" in the 3 March email.

At the time of writing, this author checked the carpet areas and saleable areas for the apartments in the New Haven project on the TVH website. At present, the small 2 BHK flats are listed at 918 sq ft (carpet area) and 1,296 sq ft (saleable area), the large 2 BHK flats at 1,074 sq ft (carpet area) and 1,521 sq ft (saleable area), and the small 3 BHK flats at 1,357 sq ft (carpet area) and 1,917 sq ft (saleable area) respectively (Tata Value Homes 2017). Here, too, the loading factors appear to be in line with the 3 March email.

It is this discrepancy in loading factor that Sinha alleges represents a fraud on TVH's customers. In his police complaint, he states that "the company decided to cheat customers by increasing sale area to the choice of their management … instead of using the genuine calculated sale area by the architects." This, he states "would be causing wrongful gain from innocent intending customers." Further, he highlights that "it is ordinarily not possible for customers to check the sale area as it includes area of all common facilities being constructed in the housing colony by the developer, which varies for each building/various floors in addition to the other facilities."

Sinha's complaint also summarises the wrongful financial gains that he alleges TVH is seeking to gain by raising the saleable area values. In the case of the small 2 BHK flats, the discrepancy is of 111 sq ft, for the large 2 BHK flats it is 131 sq ft, and for the small 3 BHK flats it is 167 sq ft. Taking a rate of ₹4,000/sq ft, Sinha calculates that the wrongful charge to the customer would be to the tune of ₹4.44 lakh, ₹5.24 lakh, and ₹6.68 lakh per flat for the three respective types of flats. According to the appended details to Sinha's complaint, the project (in the first phase) is to include a total of 378 small 2 BHK flats, 270 large 2 BHK flats and 176 small 3 BHK flats. A back of the envelope calculation leads to a total figure of ₹42.68 crore wrongful gain for TVH in the first phase itself. Sinha has alleged that across the two phases of the project, the total wrongful gain could be to the tune of ₹60 crore. In his police complaint, Sinha states that he raised the issue with the management of TVH on various occasions, but they "did not respond to [his] appeals to mend [their] ways."

A Gradual Escalation

Sinha's complaint was forwarded by the eow police station to New Delhi's Barakhamba Road police station, under whose jurisdiction lies the registered office of HL Promoters. A notice was sent to the company on 5 April 2016 to respond to the allegations made in the complaint. In its response filed on 13 April, the representative of the company denied all the allegations, stating that,

The variations of Carpet Area to Built-Up-Area (BUA) and BUA to Saleable in

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

> done for internal calculations only. The customer is not charged as per the Saleable Area in the Agreement for Sale entered into between the Customer and the Company and therefore, there is no element of breach or fraud involved. The calculations taken for BUA and Carpet Area are for purely internal business reasons wherein financial calculations are done (on the) basis (of) the Project cost and the Sale component available with the developer for sale. In view thereof, there is no breach and/or cheating or unethical practice or adopted or fraud committed by the Company upon the customers. The customers are given complete transparency. (sic)

Based on this response, the obvious question one could ask is why the saleable area is prominently listed alongside the carpet area on TVH's website, if the carpet area is the only measure used to determine the cost of the apartment for customers. The word "saleable" does suggest that it is a measure of what the customer is buying and thereby, paying for.

The company's response to the police also gave a detailed list of the interactions between Sinha and the company from early 2015 onwards. First, it lists cross complaints filed by both Sinha and the company against each other at Sadar police station in Bahadurgarh on 17 July 2015 (sic—this appears to be a typographical error on the company's part, with the complaints referred to in fact having been filed on 17 June and not 17 July). The company's complaint against Sinha was of illegal and criminal trespass, as well as data theft, stating that he had "landed at Bahadurgad Project site without any authorisation" (sic). Sinha's complaint, on the other hand, alleges manhandling by the officers of the company.

A Beating?

The EPW has obtained a copy of Sinha's police complaint of 17 June 2015. In it, he narrates an alleged sequence of events from March 2015 onwards. He states that he wrote to the managing director of TVH, Brotin Banerjee on 27 May 2015 via email, detailing his concerns about the New Haven project and the change in the area statements. In response, he says, he was told that the issue will be enquired into and action taken. Then, he alleges, on 16 June 2015 he was summoned to the Delhi office of the company and served a termination letter which, he states, he refused to accept. He says that further emails were exchanged on the same day, which he found unsatisfactory and thus, he wrote to the Cyrus Mistry, the then Chairman of Tata Sons, via email on the night of 16 June, stating that he would not accept his termination until the issue was resolved. Thus, Sinha held, he was still employed by the company on 17 June 2015.

On that day, while at work on the project site, he alleges that seven men entered his room seeking to confiscate his laptop and papers. He alleges that the men manhandled him and hit him when he refused to comply with their directions. He alleges that at that point he contacted Atul Narang, one of the listed directors of SAS Realtech and HL Promoters, over the phone, and was informed that Narang had been told over the phone Suri and Vachan

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

Singh, Corporate Head of Projects at Tata HDCL that Sinha was no longer an employee at the company and was unauthorised to be at the project site. At this point, the police were called for, and counter complaints were filed. The company's response to the Barakhamba Road police station states that on 20 July 2015 a closure report was filed on Sinha's complaint. The company's response also notes that Sinha filed a criminal complaint before the Judicial Magistrate First Class, Bahadurgarh in the court of Kapil Rathi under section 156 (3) of the Code of Criminal Procedure on 9 October 2015. This Section mandates how an aggrieved person may approach a magistrate if a first information report (FIR) is not filed by the police on a complaint received by them. Hence, it appears from this record that no FIR was filed on Sinha's complaint, and he approached the magistrate for the same.

The Defamation Case

Meanwhile, on 24 September 2015, Sinha made the aforementioned social media posts on his Facebook profile, as a "review" on the Facebook page for TVH and on his own Twitter profile, alleging fraud on the part of TVH. TVH filed for defamation on the basis of these posts in multiple courts, seeking damages and an injunction against Sinha circulating his comments. The cases were filed at the Bombay High Court and at the District and Sessions Court, Gurgaon. In both cases, injunctions against Sinha were granted on the same day, on 8 October 2015. Alleging that Sinha failed to take down his posts, the company served him several legal notices, following which it filed another petition at the Bombay High Court, this time arguing that Sinha was in contempt for failing to comply. In fact, the offending post by Sinha on the company's Facebook page has been removed, and the only review currently standing is one written on 4 November 2015, by an individual who states that he has observed that TVH is removing negative reviews from its page. Sinha replied in the contempt case that while he was waiting for an order from the Bombay High Court, the company wrote in parallel to Facebook and got all but one post removed and subsequently filed its contempt petition. Sinha further said in his reply that he had complied with the court's order and he should be discharged of the charges. On the website of the high court, the case is shown as not having been listed since 6 January 2016.

The company, in the meanwhile, filed a complaint before the Cyber Crime Investigation Cell and the Metropolitan Magistrate's Court in Mumbai claiming that anonymous posts had begun to appear on social media carrying the same allegations, and accused Sinha of being behind the anonymous posts. Sinha, meanwhile, filed a complaint before the labour court in the district and sessions court in Delhi, arguing wrongful termination. In that case, a settlement was attempted and some negotiations held, however, as recorded in the Bombay High Court's order, those negotiations were unsuccessful. Sinha has also filed a request before the Supreme Court that his defamation cases be moved from Bombay to Gurgaon. With the list of court cases and TVH's denial before it, the Barakhamba Road police concluded that no cognisable offense had been committed and disposed of the inquiry with no further action.

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

Tata Forced to Respond

However, by this time, the office of the Director General, Town and Country Planning Department, Haryana had forwarded the same complaint (which had also been marked to them by Sinha) to the office of the Deputy Commissioner (DC), Jhajjar on 25 April 2016. The DC Jhajjar forwarded the complaint to the District Town Planner, Jhajjar who subsequently sent a letter on 22 August 2016 to HL Promoters seeking a response. In their response, HL Promoters were asked to file all the relevant documents, including copies of the license, the plans, the detailed area statements mentioning the carpet area, saleable area and any other relevant material, along with their detailed comments. The matter was taken up again in a meeting conducted by the Jhajjar Deputy Commissioner on 11 January 2017 in which both Sinha's representatives and representatives of HL Promoters took part. The company was instructed once again to submit the relevant documents, and to mark the area calculations on the plan. After some more reminders, the company finally responded on 20 February 2017.

In its response, the company did not comply with the directions to the letter, submitting an excel file with area numbers, instead of marking them on the plan as they had been directed to. However, the data sheet itself is revealing. In it, the company revealed that in calculating the extent of common areas of the project in order to determine the loading factor, the company had taken into account some unreasonable and arbitrary areas. These included areas termed "top terrace projection," "overall terrace," "entrance porch pergola," "ground floor area stilts," and a clutch of items listed under "site services." If these areas were to be excluded, the loading factor would come down by 11%, close to the original level that had been circulated as the "genuine area statement" in February 2015. It is also to be noted that the reference to super area/sale area in the Supreme Court's ruling in an unrelated case (DLF *Limited v Manmohan Lowe* 2013) also suggests that these areas should not be taken into account in calculating saleable area.

Tata's Responses

It is only in the proceedings at the office of the district town planner of Jhajjar that TVH were forced to submit a factual response, albeit partial, after initially attempting to have the allegations against it dismissed on the strength of its claim of defamation. In its reply to the police, TVH offered no factual counter. At the district town planner's office, it has offered a partial factual explanation, not entirely along the lines that it has been directed to provide facts. What strikes this writer is if TVH was convinced of the correctness of its claim, why the delay and hesitation in providing facts? Why not counter Sinha's allegations with definitive facts placed before the public to settle the matter?

Instead, TVH has sought to make it difficult for Sinha to pursue his claim by filing simultaneous defamation charges in two separate courts, across the country from each other. A letter was sent to N Chandrashekaran, the newly-appointed chairman of Tata Sons,

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

by the prominent lawyer Prashant Bhushan on 27 March 2017, which is in the possession of the EPW. In it he accused TVH of having made "efforts to muzzle transparency and discussion." He called it "shocking" that the company chose to file defamation suits instead of answering on facts. He wrote, I believe that the many defamation cases filed by corporates like you especially those filed in inconvenient locations, against common people, whistleblowers and activists are designed to stifle all discussion and transparency so that people do not become aware of the truth.

While reporting for this article the EPW sent a detailed questionnaire to Brotin Banerjee, MD and CEO of Tata HDCL, laying out the detailed facts that we have described above, and seeking their response on a number of points. In response, not a single factual point was answered. Instead, we were reminded that Sinha is being sued for defamation, and it was implied that the EPW might be liable to get involved in the case if this article were published. The response is reproduced here in full:

> Tata Housing is totally committed to safeguard the interests of all stakeholders, be transparent in all its dealings with customers, and conduct business in compliance with the law of the land. The allegations made by a former employee, whose services were terminated in June 2015 due to performance related issues, are completely untrue & the subject of judicial proceedings initiated by Tata Housing against the individual for defamation & contempt.
>
> We would like to inform you that one of our ex-employees, Mr Nityanand Sinha's services were terminated in June 2015 due to his performance related issues. Subsequently, he started posting/writing misleading, false information and defamatory statements against our Bahadurgadh project and officials of the Company. We requested him to retrain from publishing/posting such misleading, false and defamatory statements and also to tender an unconditional apology, but he failed to adhere to our requests. In view of this, we were constrained to initiate defamation proceedings, suit for damages and criminal case against him. We would further like to inform you that the Hon'ble Bombay High Court and the Hon'ble Gurgaon District Court by their orders dated 8th October 2015 have restrained Mr Sinha from publishing/posting/writing such misleading information. Inspite of the aforesaid orders, Mr Nityanand Sinha continued posting/writing defamatory statements, constraining us to take out contempt proceedings against him. The aforesaid matters are pending before the respective courts for adjudication.
>
> As the matter is subjudice & pending before the Hon'ble Courts we request you to consider the above before publishing any article on any unproven allegations and which may not be in keeping with the principle of presenting a balanced

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

> perspective to the esteemed readers of EPW. It will not only just have a huge impact on our reputation, but it may also be considered as interference with an on-going judicial process.

Conclusions: Ethical Housing?

As the proceedings in the various forums mentioned above inch forward, it is unclear how the legal battle over the New Haven project will end. Will TVH be indeed found to have violated rules, and overcharged its customers? Or will Sinha be held guilty of defamation and ordered to pay damages?

It is also significant that now the RERA regulating the real estate sector has come into force. While Haryana is yet to set up a real estate regulator, under the terms of the act it must do so sooner or later, and following that TVH will have three months to register New Haven with the regulator. If due procedure is followed, at that stage all permissions and approvals obtained by the project will have to be submitted to the regulator, and available freely for the scrutiny of the public. Then, all wrongdoing, if there indeed has been any, will be laid bare before the world.

The two cases of Camelot and New Haven projects, however, raise questions about the Tata group's stated commitment to ethical and transparent operation in the real estate sector. Banerjee, in the aforementioned interview to DNA, had described why Tata entered the housing space in the first place, stating "sometime in 1984, the late JRD Tata thought the group should enter the real estate sector and make a difference by bringing in transparency" (Tiwari and John 2011). He stated that the Tata Housing projects were attractive to buyers because it ensures that "customers [are] not short-changed." Further, he described how each of the projects that Tata HDCL has worked on, are "sustainable green building projects."

The Tata group's code of conduct, which all of its employees and group companies are expected to adhere to, also affirms the same values. Under section F of the code of conduct available on the Tata group's website it states that "we engage with the community and other stakeholders to minimise any adverse impact that our business operations may have on the local community and the environment." Under section E, it states "our dealings with our customers shall be professional, fair and transparent." Its operations in these two projects may belie these claims. Ratan Tata is once reported to have remarked, after a failed attempt to launch an airline in the mid-1990s that "I just want to go to bed at night knowing that I haven't got the airline by paying [a bribe] for it" (Beckett 2010). This author is forced to wonder in what light he sees the current allegations against the group that he steered for many decades.

One may also interpret these cases in the light of the larger real estate sector that has been repeatedly exposed to be one of the country's largest contributors to the grey/black

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

economy. The RERA has been designed, in part, to address the lacunae in the Indian real estate law, and increase transparency between builders, customers, regulators and the market, and reduce the scope for unsavoury and potentially illegal business practices. Perhaps, it was impossible for Tata Housing to have established a strong foothold in the real estate sector without "playing the game" as it were. However, as these cases demonstrate, to do so means it has had to indulge in questionable business practices.

Cases Cited

Aalok Jagga v Union of India (2010): Civil Writ Petition No 20425 of 2010 at the Punjab and Haryana High Court.

Aalok Jagga v Union of India (2014): Civil Appeal No 4848 of 2014 at the Supreme Court.

Aalok Jagga v Union of India (2014): Civil Writ Petition No 2999 of 2014 and Civil Motion No 9439 of 2014 at the Delhi High Court.

Court on Its Own Motion v Union Territory of Chandigarh (2009): Civil Writ Petition No 18253 of 2009 at the Punjab and Haryana High Court.

DLF Limited v Manmohan Lowe (2013): Civil Appeal Number 10930 of 2013 at the Supreme Court.

Dr B Singh v Union of India (2001): Civil Writ Petition No 18597/2001 at the Punjab and Haryana High Court.

Dr B Singh v Union of India (2003): Civil Writ Petition No 7649 of 2003 at the Punjab and Haryana High Court.

Sarin Memorial Legal Aid Foundation v State of Punjab (2014): Civil Appeal No 4847 of 2014 at the Supreme Court.

Sarin Memorial Legal Aid Foundation v State of Punjab (2013): Civil Writ Petition No 994 of 2013 at the Supreme Court.

Sarin Memorial Legal Aid Foundation v State of Punjab (2014): Civil Writ Petition No 2924 of 2014 at the Delhi High Court.

References

Aaj Samaj (2016): "Ghar Dene Ke Naam Par Laakho Ki Thagi Ka Aarop" (Fraud Worth Lakhs Alleged in the Name of Selling Homes), 6 July.

Baghel, Sunil (2015): "Bombay High Court Bars Ex-Tata General Manager from Boss Bashing on Facebook," *Times of India*, 15 November, http://timesofindia.indiatimes.com/city/mumbai/Bombay-high-court-bars-ex-Tata-general-ma

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

nager-from-boss-bashing-on-Facebook/articleshow/49790044.cms.

Beckett, Paul (2010): "Ratan Tata Clarifies His 'Corruption' Remarks," *Wall Street Journal*, 16 November, https://blogs.wsj.com/indiarealtime/ 2010/11/16/ratan-tata-clarifies-his-%E2%80% 98corruption%E2%80%99-remarks/.

Chamakta Aina (2016): "Ratan Tata se Tata Value Homes Ke Graahako Ki Ummeed" (Tata Value Homes Customers Place Their Faith in Ratan Tata), 15 December.

Economic Times (2015): "Tata Housing to Invest ₹600 Crore on New Bahadurgarh Project," 9 May, http://realty.economictimes.indiatimes.com/news/residential/tata-housing-to-invest-rs-600-crore-on-new-bahadurgarh-project/47210533.

— (2017): "Despite HC Order against Tata Camelot project in Chandigarh, Challenge Looms," 14 April, http://realty.economictimes.indiatimes.com/news/regulatory/despite-hc-order-against-tata-camelot-project-in-chandigarh-challenge-looms/58176357.

Indian Express (2011): "Tata Camelot Project Hangs in Balance as Punjab MLA Society Revokes Pact," 16 June, http://indianexpress.com/article/cities/chandigarh/tata-camelot-project-hangs-in-balance-as-punjab-mla-society-revokes-pact/.

Jolly, Asit (2017): "A Reprieve for Chandigarh," *India Today*, 27 April, http://indiatoday.intoday.in/story/chandigarh-tata-camelot-sukhna-lake-delhi-high-court/1/939691.html.

Khanna, Ruchika (2010a): "Chandigarh Skyline in Danger," *Tribune*, 17 November, http://www.tribuneindia.com/2010/20101117/main1.htm.

— (2010b): "How the Land Was Hawked," *Tribune*, 18 November, http://www.tribuneindia.com/2010/20101118/main1.htm.

— (2010c): "This Is How the Rules Were Bent," *Tribune*, 19 November, http://www.tribuneindia.com/2010/20101119/main1.htm.

— (2010d): "See Who Profited," *Tribune*, 20 November, http://www.tribuneindia.com/2010/ 20101120/main1.htm.

Kumar, Sanjiv (2016): "Graahako se Dhokhaghadi Karti Tata Value Homes" (Tata Value Homes is Cheating Customers), *Yathayat*, 15 July.

Malik, Saurabh (2017): "Court Ruling Spoils Camelot Plans," *Tribune*, 12 April, http://www.tribuneindia.com/news/chandigarh/court-ruling-spoils-camelot-plans/391251.htm

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

l.

Ministry of Environment and Forests (2006): Notification No S O 1533, 14 September.

Nagarkoti, Rajinder (2015): "UT to Take ESZ Issue With Centre," *Tribune*, 25 September, http://www.tribuneindia.com/news/chandigarh/ut-to-take-up-esz-issue-with-centre/138078.html.

Singh, Jangveer (2013): "MLAs Want Tata Camelot Housing Project Pact Annulled," *Tribune*, 13 June, http://www.tribuneindia.com/2013/ 2130613/main4.htm.

Sedhuraman, R (2017): "Tata Camelot Project Falls in Sukhna's Catchment Area, Rules Delhi High Court," *Tribune*, 12 April, http://www.tribuneindia.com/news/chandigarh/courts/tata-camelot-project-falls-in-sukhna-s-catchment-area-rules-delhi-high-court/390926.html.

Tiwari, Ashish and Satish John (2011): "Tata Housing Will Be Among Top Three Realty Firms in Five Years," *DNA*, 11 April, http://www.dnaindia.com/money/interview-tata-housing-will-be-among-top-three-realty-firms-in-five-years-153043.

Tata Group (nd): "Tata Code of Conduct," http://www.tata.com/aboutus/articlesinside/Tata-Code-of-Conduct.

Tata Housing (nd): "Corporate Profile," http://www.tatahousing.in/corporate_profile.php.

Tata Trusts (nd): "About Tata Trusts," http://www.tatatrusts.org/article/inside/About-Tata-Trusts.