



**Asian Development Bank Accountability Mechanism
Compliance Review Panel**

REPORT ON ELIGIBILITY

**To the Board of Directors
on
Compliance Review Panel Request No. 2022/1
on the
Shapoorji Affordable Housing Project in India
(Asian Development Bank Equity Investment 7452)**

11 May 2022

This is a redacted version of the document, which excludes information that is subject to exceptions to disclosure set forth in ADB's Access to Information Policy.

CURRENCY EQUIVALENTS

(as of 11 May 2022)

Currency unit	–	Indian rupee/s (₹)
₹1.00	=	\$0.0129412145
\$1.00	=	₹77.272500

ABBREVIATIONS

ADB	–	Asian Development Bank
AMP	–	Accountability Mechanism Policy
CRP	–	Compliance Review Panel
OM	–	Operations Manual
PSOD	–	Private Sector Operations Department
SPCPL	–	Shapoorji Pallonji and Company Private Ltd
SPS	–	Safeguard Policy Statement

NOTE

In this report, "\$" refers to United States dollars.

In preparing any country program or strategy, financing any project, or by making any designation of or reference to a particular territory or geographic area in this document, the Asian Development Bank does not intend to make any judgments as to the legal or other status of any territory or area.

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(Note: The following Appendixes are not disclosed in accordance with the Exceptions to Disclosure of ADB's Access to Information Policy, namely: (i) information provided in confidence; and (ii) security and safety)

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I. BACKGROUND

1. A request for compliance review (complaint) was forwarded by the Complaint Receiving Officer of the Asian Development Bank (ADB) Accountability Mechanism to the Compliance Review Panel (CRP) on 3 March 2022 in respect of private sector investment, ADB Equity No. 7452: Shapoorji Affordable Housing Project (Project) in India.¹
2. In accordance with para. 178 of the Accountability Mechanism Policy (AMP) read with para. 71 of Operations Manual (OM) section L1/Operating Procedures (OP),² the CRP carried out an initial assessment of the complaint and concluded that it fell within the mandate of the compliance review function.
3. Following its initial assessment, the CRP proceeded to assess the eligibility of the complaint in accordance with paragraphs 179 and 180 of the AMP read with paras. 72 and 73 of the OM section L1/OP. This report summarizes the findings and analysis of the CRP on the eligibility of the complaint for compliance review in accordance with the AMP.

II. THE PROJECT

4. ADB provided equity investment to the borrower which will develop several affordable housing projects in various cities throughout India. The client, following a change of name, is Joyville Shapoorji Housing Private Limited (formerly Drashti Developers Private Limited) and the project sponsor is Shapoorji Pallonji and Company Private Ltd (SPCPL). Project documentation indicates that Drashti Developers Private Limited was incorporated by SPCPL “as the entity under which all future affordable housing projects under the Shapoorji brand will be developed.”³ SPCPL, a large Indian conglomerate which also has a presence abroad, includes 18 major companies engaged in engineering and construction, infrastructure, real estate, water, energy and financial services and was established in 1865.⁴ Based on the Report and Recommendation of the President to the ADB Board of Directors, SPCPL approached ADB “to invest in a housing platform to develop a portfolio of affordable housing projects” and which is “considered to be one of the best opportunities for ADB to support affordable housing in India because of its high development impact and its strong and experienced sponsor.”⁵ Total equity investment of up to ₹2,170.00 million (equivalent to \$35 million) was approved by the ADB Board of Directors on 7 July 2015, with drawdown of ADB funds to be staggered against different sub-project development timelines.
5. Through a series of sub-projects, the Project aims to build a total of about 20,000 residential housing units, directly creating around 9,000 jobs for unskilled and semiskilled workers during construction,⁶ and providing affordable housing for working class, salaried, service sector households in the upper part of the lower income group and the middle-income group segment,⁷

¹ Asian Development Bank (ADB). India: Shapoorji Affordable Housing Project. <https://www.adb.org/projects/48341-001/main>.

² ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. <https://www.adb.org/documents/accountability-mechanism-policy-2012>; and ADB. 2012. *Accountability Mechanism. Operations Manual*. OM L1/BP. Manila. <https://www.adb.org/sites/default/files/institutional-document/31483/om-l1.pdf>.

³ ADB. 2015. *Report and Recommendation of the President to the Board of Directors: Proposed Investment Drashti Developers Private Limited Shapoorji Affordable Housing Project (India)*. Manila. <https://www.adb.org/sites/default/files/project-document/162043/48341-001-rrp.pdf>.

⁴ Shapoorji Pallonji. <https://www.shapoorjipallonji.com/about>.

⁵ Footnote 3, p. 1.

⁶ Footnote 3, p. 3.

⁷ Footnote 3, p. 1.

targeting working class, salaried, service sector households. ADB sees the Project as supporting the government of India's priority of promoting affordable housing, and the call in the country's Twelfth Five Year Plan 2012–2017 for private sector involvement in housing.⁸ Six (6) sub-projects to be located in several cities in India are expected to be completed between June 2024 and March 2026.⁹ The complaint focuses on one of these subprojects.

6. The ADB Safeguard Policy Statement (SPS),¹⁰ requires ADB to categorize projects according to the significance of their potential impacts. ADB classified the Project as category B for environmental impacts and explained that sites to be considered for the sub-projects are to be within “municipal boundaries of the metropolitan areas, subject to a development control plan and zoned for residential development”. The Project is not anticipated to be associated with significant environmental disturbances as screening criteria for site selection will avoid environmentally sensitive areas.¹¹ The Project was classified as category C for both involuntary resettlement and impacts to indigenous peoples. To ensure that the Project avoids involuntary resettlement, sub-projects are to be developed in “already aggregated lands, free of land disputes or encumbrances”, and sourced through: “(i) lands already owned by SPG in the metropolitan cities, (ii) a network of reputed land aggregators and realtors with access to suitable lands, and (iii) international property consultants and reputed brokers.”¹²

III. THE COMPLAINT

7. The complaint concerns the Manjri sub-project in Pune, in Maharashtra, India. The complainants have requested non-disclosure of their identities, as they are entitled to do under the AMP. In substance, they assert that land that properly belonged to them was illegally sold to third parties and was then transferred again for inclusion in the gross area acquired for the sub-project. The complainants explain that they are family members and heirs of a former tenant farmer of a disputed part of the total land acquired for the sub-project, and that the former tenant farmer had a right to ownership of the disputed land under certain statutory provisions applicable in the state of Maharashtra. The complainants have explained that this right had been established in the course of court proceedings, and that some relevant court proceedings to reclaim the land are still in progress. Their relative (i.e., the former tenant farmer) had also built a house on part of the land. This house and the plot of land that it stood on were not included in the purported sale, but the house was subsequently demolished and family possessions in and around the house were disposed of. The plot on which the house stood was also included within the area of the overall development site for the sub-project, together with land that had earlier been sold, illegally in the complainants' view. The complainants consider that ADB has been noncompliant with its responsibilities regarding the land acquisition process. They have provided the CRP with various legal and other official documents in support of their claimed right to cultivate the disputed land; and to ownership of some or all of the land and the house that stood on part of the land. The complainants also assert that a natural stream crosses the disputed land. In the complainants' view, this makes the land unsuitable for housing development or for inclusion in calculation of the sub-project's floor space index (FSI); and it also means that the sub-project could be associated with destruction of the environment.

⁸ Footnote 3, p. 3.

⁹ Footnote 1, p.1.

¹⁰ ADB. 2009. *Safeguard Policy Statement*. Manila. <https://www.adb.org/sites/default/files/institutional-document/32056/safeguard-policy-statement-june2009.pdf>.

¹¹ Footnote 3, p. 6.

¹² Footnote 3, p. 6.

IV. ADB MANAGEMENT'S RESPONSE

8. As required by para. 178 of the AMP, ADB Management's Response was submitted on 8 April 2022. (Appendix 2) The ADB Management's Response discussed: (i) the Project and ADB's involvement in it; (ii) ADB's due diligence in relation to the Project; (iii) ADB's compliance with relevant provisions of the SPS, particularly its environment and involuntary resettlement requirements; and (iv) steps taken by the relevant operations department to address issues raised to them by means of several communications in 2020 and 2021. The issues raised in these communications were similar to those included in the complaint filed with the CRP, which had been shared with the project team only in redacted form to preserve the anonymity of the complainants. The Management Response also sets out why in the view of Management the complaint should not be eligible for compliance review. It incorporated a matrix which summarized how in ADB Management's view each relevant SPS requirement had been met, and also included an explanatory timeline of legal events and court and tribunal decisions relating to the issues raised in the 2020/2021 communications with the Project team.

9. ADB Management's Response asserted that prior to investment approval of the overall Project, the client's environment and social management system (ESMS) had been audited, and a corrective action plan had been agreed. A Project ESMS was prepared to guide screening of later sub-projects. This provides that each sub-project must follow local and national laws/policies and SPS and other investor requirements, including those set out in a Joint Action Plan which covers "a range of time bound actions to ensure mitigation of E&S risks and compliance with the SPS..." notably: (i) the employment of a Company Health, Safety and Environment ("HSE") Manager, (ii) a sub-contractor selection procedure, (iii) development of a consultation procedure as part of the environmental impact assessment preparation process, (iv) preparation of a generic construction environmental management plan ("EMP"), (v) submission of annual E&S performance reports; (vi) construction practices compliance reviews by an external consultant; and (vii) development of a community grievance mechanism.¹³ ADB Management's Response also described due diligence undertaken in connection with land acquisition for the Manjri subproject.

V. ELIGIBILITY

10. Para. 179 of the AMP provides that to find a complaint eligible, the CRP must be satisfied that the complaint meets all the eligibility criteria, satisfies the scope, and does not fall within the exclusions (para. 142 and paras. 145–149 of the AMP). The CRP must also be satisfied that: (i) there is evidence of noncompliance; (ii) there is evidence that the noncompliance has caused, or is likely to cause, direct and material harm to project-affected people; and (iii) the noncompliance is serious enough to warrant a compliance review.

11. The Private Sector Operations Department (PSOD), which is responsible for the Project in ADB, provided the CRP with evidence of steps that it had taken to follow up internally at ADB as well as with the client and external advisors on the issues that had been raised with it in 2020 and 2021. The Management further informed the CRP that its earlier correspondence in 2020/2021 on the issues did not include substantial response on issues now brought to the CRP for compliance review. This is regrettable, and the CRP encourages timely response to grievances, complaints and concerns raised with PSOD regarding SPS implementation. In the present instance, certain issues raised in the 2020/2021 correspondence with the operations team

¹³ Private Sector Operations Department. 2022. Management's Response to the Compliance Review Panel on the Request for India: Shapoorji Affordable Housing Project. Manila: ADB.

that did not fall within the scope of the SPS were also under consideration in another ADB office. The Management informed the CRP that based on their understanding of internal advice, they decided to hold a substantive response to the 2020/2021 correspondence until that office's investigation report had been released. In the CRP's view, this delay was not warranted because the subject matter of the other ADB office's investigation was distinguishable from concerns raised with PSOD that fell within the scope of the SPS. The existence of a complaint that is under consideration in another ADB office should not unduly delay ADB operations team's responses to complainants on issues or concerns that are subject to compliance review under the AMP.

12. The CRP notes that the complainants share common concerns regarding adverse impacts of the Manjri sub-project. However, in the course of its eligibility assessment, it has become clear to the CRP that the factual and potential legal basis of each complainant's interest in the disputed land and house is distinct; but that PSOD is not yet aware of this.

13. The CRP has no doubt that there have been good faith efforts to raise issues with the operations department concerned (PSOD). However, these have thus far centered on the claim of one of the complainants on the disputed land and property. On balance, following review of the available evidence, the CRP accepts that PSOD was not aware that there was more than one complainant. In consequence, it did not have an opportunity to consider, or respond to, additional issues of legal rights and impacts that are also reflected in the complaint brought to the CRP by more than one complainant.

14. The CRP has determined that at this stage, there is evidence that the AMP exclusion from eligibility established in para. 142(ii) is applicable to the facts. This is an exclusion from eligibility for "*matters that complainants have not made good faith efforts to address with the operations department concerned.*" The CRP encourages the complainants to address their distinct concerns with PSOD, and should they wish to do so, the CRP then encourages PSOD to consider its responsibilities under the SPS in relation to the complainants' distinct legal rights and shared concerns.

15. Para. 180 of the AMP notes the responsibility of the CRP, as part of the eligibility determination, to review and determine whether the complainants made prior good faith efforts to resolve issues with the operations department concerned. It also states that the CRP will forward the complaint to the operations department concerned if the complainants did not make such efforts. In this case, where the complainants have requested identity confidentiality, the CRP has not physically forwarded the complaint in unredacted form to PSOD.

16. The CRP wishes to emphasize that because complainants have asked that their identities be kept confidential, it is appropriate for the complainants themselves to determine whether and if so, how, they would like to provide PSOD with additional information.

17. The CRP notes that it is clear from the AMP that if any one of the exclusions is applicable, the CRP must conclude that the complaint is ineligible for compliance review. In light of its finding on the relevance of the exclusion set out in para. 142(ii), it is not necessary for the CRP to set out its determination on other exclusions and eligibility requirements.

VI. CONCLUSION

18. Following the eligibility review detailed in this report, the CRP is not satisfied that in accordance with paragraph 179 of the AMP the complaint meets all the eligibility criteria, satisfies the scope, and does not fall within the exclusions set out in paras. 142 and 145–149 of the AMP.

In the specific circumstances of the case, the CRP has determined that the exclusion provided in para. 142(ii) is applicable and that the complaint falls within one of the exclusions referred to in para. 179 of the AMP.

19. Pursuant to paragraph 179 of the AMP, the CRP determines that the complaint is ineligible for compliance review.

20. The CRP wishes to emphasize that its finding on eligibility is based on the exclusion provided in para. 142(ii). Consequently, it has not been necessary for the CRP to make a finding on other exclusions and eligibility criteria. Neither has the CRP made any finding on whether as provided in para. 179 of the AMP: (i) there is evidence of noncompliance with ADB policies; (ii) there is evidence that the noncompliance has caused, or is likely to cause, direct and material harm to project-affected people; and (iii) the noncompliance is serious enough to warrant a compliance review.

21. Paras. 137 (vi) and 195-196 of the AMP require the operations department concerned to track resolution of the complaint, and at the end of the process, “produce a report summarizing the complaint, issues, actions taken to address the problems or issues, decisions or agreements by parties concerned, results, and lessons”. In accordance with para. 24 of OM section L1/OP, this report should be filed with the complaint receiving officer for posting on the Accountability Mechanism website. The CRP wishes to note the importance, in the present instance, of respecting the complainants’ wishes regarding confidentiality of their identities.

22. The CRP notes that the complainants may bring a new complaint to the Accountability Mechanism if further good faith efforts to resolve issues with PSOD are unsuccessful.

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