IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.454 OF 2018
ALONG WITH
CIVIL APPLICATION NO.602 OF 2018

Shrinivas West Side County Sahakari	]	
Graharachna Sanstha Maryadit,	]	
A Society registered under the provisions	]	
of the Maharashtra Co-operative Societies	]	
Act, 1960, bearing No.PNA/PNA/(3)HSG/	]	
(TC) 15455/ Year 2014. Having Registered	]	
Office at Survey No.72/1A+3, Pimple Gurav,	]	
Sadguru Jangali Maharaj Nagar, Tal. Haveli,	]	
Dist. Pune.	]	
Through its Chairman,	]	
Shri Bhaskar Maruti Bhalerao and	]	
Secretary Shri Naim Rafikoddin Shaikh	]	
jointly and / or severally	]	.... Appellant-Applicant

Versus

1. Darode Jog Builders Pvt. Ltd.,	]	
A Company incorporated under the	]	
Companies Act, 1956,	]	
Having Office at : Darode Jog House,	]	
1212, Apte Road, Pune – 411 004.	]	
PAN : AAACD 6436 G,	]	
Process be served on	]	
Shri Sudhir Chandrakant Darode	]	
Age : 56 Years, Occupation : Business	]	
2. Jagadguru Vishwaradya Simhasan,	]	
PAN : AADTS 4721 R,	]	
Office at : D-35/77, Jangamwadi Math,	]	

Varanasi – 221001 (Uttar Pradesh)]
Through its sole - "Peethadhipati"]
Shri Jagadguru Chandrashekhar]
Shivacharya Mahaswami, Age : 69 Years]
Occupation : Dharam Prachar,]
Aadhar No.525865103858]
Pune Office at : 876/877, Sadashiv Peth,]
Pune – 411 030.]

3. Smt. Vasundhara Dinkar Shirole,]
Age : about 72 Years, Occ.: Well to do]
Residing at 886, Dinkarwas,]
Shivaji Nagar, Pune – 411 005.]
Formal Respondent, being owner, may not]
appear, if she so desire.] .... Respondents

Mr. Sudhir V. Sadavarte for the Appellant-Applicant.

Mr. Saket Mone, a/w. Mr. Subit Chakrabarti, I/by M/s. Vidhi Partners, for Respondent No.1.

Mr. P.S. Dani, Senior Counsel, a/w. Mr. Nikhil Wadikar, I/by Mr. Nandu Pawar, for Respondent No.2.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

RESERVED ON : 28TH AUGUST 2018.

PRONOUNCED ON : 11TH SEPTEMBER 2018.

JUDGMENT :

1. Heard Mr. Sadavarte, learned counsel for the Appellant-Applicant; Mr. Mone, learned counsel for Respondent No.1; and Mr. Dani, learned Senior Counsel for Respondent No.2.

2. This Appeal takes an exception to the order dated 8th March 2018 passed by the 3rd Joint Civil Judge, Senior Division, Pune, thereby rejecting the application, at 'Exhibit-5' in Special Civil Suit No.1566 of 2017, filed by the present Appellant-Society, seeking the relief of interim injunction, restraining the Respondents from creating any third party interests or carrying out any construction over the suit property, as described in paragraph No.1(B) of the plaint.

3. Brief facts of the case can be stated to the effect that, Respondent No.3 is the original owner of the entire property, as described in paragraph No.1(A) of the plaint. It is totally admeasuring 18,239.89 Sq.Mtrs., inclusive of Amenity Space, admeasuring 1,638.21 Sq.Mtrs., and Open Space, admeasuring 1,711.78 Sq.Mtrs., along with the area under D.P. Road, admeasuring 3,196.54 Sq.Mtrs., and along with the area under the Internal Road, admeasuring 909.39 Sq.Mtrs., out of the sanctioned Lay-Out of Survey No.72, Hissa No.1A+3 at Mauje Pimple Gurav, Taluka Haveli, District Pune.

4. The subject-matter of the Suit is this 'Amenity Space', which, as stated above, is admeasuring about 1,695.56 Sq.Mtrs., out of the total area admeasuring 18,239.89 Sq.Mtrs.

5. According to the Appellant, Respondent No.1 has acquired the 'Development Rights' over the said plot of land and got sanctioned the

'Plan' for construction of totally 9 buildings, comprising of 423 flats. Out of those 423 flats, Respondent No.1 has executed 'Agreement of Sale' in respect of 421 flats and remaining 2 flats are retained by him. All the 421 flats are now occupied by the 'Purchasers'. The 'Completion Certificate', along with the 'Occupancy Certificate', is also accorded for these 423 flats. These 'Agreements of Sale' are executed under the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, *(for short, **"the MOFA"**)*. The Society of the flat-purchasers is, accordingly, formed and it is registered on 2nd April 2014. After formation of the Society, it was incumbent upon Respondent No.1 to convey the said land as well as the buildings standing thereon in favour of the Society within a period of four months therefrom. Respondent No.1 failed to do so and, therefore, the Appellant-Society had approached the Deputy Registrar of Co-operative Societies and by the order dated 29th September 2017, the 'Deemed Conveyance' is directed to be registered in favour of the Appellant-Society, as shown in the original Lay-Out. The plot area of the suit property, as described in the said Lay-Out, is totally admeasuring 18,239.89 Sq.Mtrs., inclusive of the 'Amenity Space' of 1,638.21 Sq.Mtrs. and 'Other Open Spaces', as described in the 'Agreement of Sale'.

6. The grievance of the Appellant-Society is that, in the year 2013, Respondent No.1 has, without knowledge of the Appellant-Society, revised the 'Sanctioned Plan' and added 10th building named as Wing "J",

where he has proposed to construct two flats. According to the Appellant, the earlier 'Sanctioned Plan', dated 24th October 2011, shows Building “J” as of 16.88 Sq.Mtrs. (FSI area), without any tenement. However, the 'Revised Plan', dated 30th July 2013, shows the Building Wing “J” and its calculations submitted to the Municipal Corporation for approval show two tenements proposed in “J” Building. It is submitted that, the 'Report' dated 12th January 2013 of the Municipal Corporation states that, Building “F” has 45 tenements. In contrary to this, 'Completion Certificate', dated 13th August 2013 is for 47 tenements in Building Wing “J”.

7. Not only that, as per the contention of the Appellant-Society, Respondent No.1 has also unilaterally executed a 'Correction Deed', dated 21st July 2017, with the original owner through the Constituted Attorney, i.e. Respondent No.1 himself, and by that 'Correction Deed', the area of 'Amenity Space' and 'Open Space' is tried to be altered and varied, which, according to the Appellant, Respondent No.1 cannot do without their consent. Thereafter, Respondent No.1 has executed an 'Agreement of Sale' in favour of Respondent No.2 on 4th August 2017, thereby agreeing to sell to Respondent No.2, the property described in para No.1(B), namely, the 'Amenity Space', admeasuring 1,695.56 Sq.Mtrs. According to the Appellant, the said 'Agreement of Sale' is totally bad in law, *void ab initio* and against the provisions of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale,

Management and Transfer) Act, 1963, and Rules. It is submitted that, the 'Open Space' and the 'Amenity Space' are forming part of the 'Lay-Out' and the 'Sanctioned Building Plans' and the said 'Open Space' is already handed over to the Appellant-Society, while handing over possession of their respective flats. It is also forming part of the order of 'Deemed Conveyance' passed by the Deputy Registrar of the Co-operative Societies. It is submitted that, Respondent No.1 has not obtained express or implied consent of the members of the Appellant-Society in regard to the 'Revised Plan' and at the same time, trying to deprive the Appellant from its right over the 'Amenity Space', which is not permissible under the law, and hence, it is urged that, Respondent Nos.1 and 2 be restrained by the order of temporary injunction from creating any third party interest in the said 'Amenity Space' and also from carrying out any construction thereon till the decision of the Suit.

8. Both, Respondent Nos.1 and 2, have strongly denied and controverted all the contentions of the Appellant-Society, raising a specific plea that, 'Amenity Space' is not forming part and parcel of the plot, which is to be sold to the Appellant-Society, as per the 'Agreement of Sale' executed with the flat-purchasers. According to Respondent Nos.1 and 2, the Respondent No.1 has registered the Appellant-Society for, in all, 10 buildings. It was a composite project. Out of that, the construction of 9 buildings is completed and, accordingly, 'Part Completion Certificate' is obtained. The construction of the 10th building,

namely, “J” Building, is yet to be completed. Only after the completion of the said building, the 'Conveyance' was to be executed within one year from the date of receipt of 'Full and Final Completion Certificate'. Without waiting for the same, the Appellant has filed proceedings before the Deputy Registrar of Co-operative Societies and has obtained the order of 'Deemed Conveyance'; however, the 'Final Conveyance' is yet to be executed.

9. It is submitted that, as per the 'Lay-Out' of 10 buildings, a separate space is reserved for School, Hospital etc., as per the Rules of the Pimpri-Chinchwad Municipal Corporation and this space is called as 'Amenity Space'. The Appellant cannot have any right over the said area. It is submitted that, the area, which is to be used for the amenity and facility for 'Lay-Out' of larger areas, is separately carved out, as per the Pimpri-Chinchwad Municipal Corporation Rules and Regulations. Respondent No.1, being the Developer-Promoter, has right to develop the said area for the purposes of School, Hospital etc. and as per the Rules, he is also permitted to get the said area developed through some other person. Accordingly, Respondent No.1 has entered into an 'Agreement' with Respondent No.2 for the development of this area reserved for the 'Amenity' and Respondent No.2 is going to construct a School thereon, for which the area is reserved. It is submitted that, neither there is any express, nor any implied bar against the transfer of 'Amenity Space', carved out within the 'Lay-Out' by the Developer to another person,

either under the provisions of MOFA or under the provisions of Maharashtra Municipal Corporation Act or Maharashtra Regional and Town Planning Act or the applicable Development Rules therefor.

10. As regards the 'Sale-Deed' executed by Respondent No.1 in respect of the correction of the area, it is submitted that, as the area mentioned in the earlier 'Sale Deed' was not correct, now the necessary correction is carried out. Appellant should not have any grievance about the same. Thus, it is submitted that, there is absolutely no substance in the application for temporary injunction, as filed by the Appellant. Appellant is confusing itself over its right in respect of the 'Open Space' and the 'Amenity Space'. As regards the 'Open Space', the Appellant is having the right and the Respondent No.1-Developer cannot create any third party interest in the said 'Open Space', which is reserved for internal roads etc. However, as regards the 'Amenity Space', Respondent No.1-Developer alone, being in his capacity as the 'Developer', has exclusive right over it and he can transfer the same to some third person, like Respondent No.1, for the purpose of development of School, Hospital etc., for which it is reserved in the 'Lay-Out Plan'.

11. In the light of these rival contentions of both the parties and on consideration of documentary evidence produced on record, the Trial Court was pleased to reject the application for interim injunction filed by the Appellant, thereby accepting the contention of Respondent Nos.1

and 2 that, as regards the 'Amenity Space', which is reserved for the public purpose, the Appellant cannot have any right or claim over it and there is no bar to transfer the said area to some third party, like Respondent No.2, for the purpose of its development as School, Hospital etc. The Trial Court, therefore, held that, the Appellant has failed to make out a prima facie case; the balance of convenience lies in favour of Respondent Nos.1 and 2 and Respondent Nos.1 and 2 will suffer irreparable loss, if they are restrained from carrying out construction of the School thereon.

12. This order of the Trial Court is challenged in this Appeal by learned counsel for the Appellant by submitting that, in the first place, Respondent No.1-Developer cannot revise the 'Sanctioned Lay-Out Plan' without the consent of the flat-purchasers; secondly, he also cannot enter into a 'Correction Deed' in respect of the area of the suit plot; and, thirdly, Respondent No.1-Developer cannot transfer the 'Amenity Space' to Respondent No.2, when the 'Amenity Space' formed part and parcel of the suit plot, in respect of which the 'Conveyance' is ordered.

13. As against it, according to learned counsel for Respondent Nos.1 and 2, the Trial Court has rightly appreciated all the submissions and also considered the provisions of the MOFA, the Development Rules under the MRTP Act and thereafter rejected the Appellant's application for interim injunction. The view taken by the Trial Court being just, legal

and correct, no interference is warranted in the same within the limited scope of the jurisdiction of this Court in the appeal against that order.

14. As stated above, the dispute in the present case is necessarily confined only to the 'Amenity Space', which was shown in the 'Lay-Out Plan' also, to the extent of 1,638.21 sq.mtrs. According to the Appellant, it is forming part of the Plot No.A, admeasuring 18,239.89 sq.mtrs., which is agreed to be sold to the Appellant on completion of the construction and after forming of the Society; therefore, the flat-purchasers can alone have the right over the said 'Amenity Space'; whereas, according to Respondent Nos.1 and 2, the 'Amenity Space' is shown separately in the 'Building Plan' dated 24th October 2011 and 13th August 2013, making it abundantly clear that this 'Amenity Space' has been segregated and it is to be used only for the purposes like the School, Nursery, Hospital etc., as per the D.C. Rules. It is submitted, therefore, that, if Respondent No.1 is acting as per the D.C. Rules, which requires 5% of the total area to be kept open as 'Amenity Space' and it is to be used exclusively for the public purpose and there is no express or implied bar for transfer of the said 'Amenity Space' for using it for the same public purpose, then Appellant cannot have any right to restrain Respondent Nos.1 and 2 from developing the said 'Amenity Space'.

15. The entire reliance of learned counsel for the Appellant is on the 'Agreement of Sale' executed by Respondent No.1-Developer with the

various flat-purchasers, which gives the description of the suit plot in the Schedule, as admeasuring 18,239.89 sq.mtrs. and it includes the 'Amenity Space', admeasuring 1,638.21 sq.mtrs. and 'Open Space', admeasuring 1,711.78 sq.mtrs. It is undisputed that, as regards the 'Open Space', the Appellant can alone have the right thereupon. Respondent No.1-the Developer cannot transfer or create third party interest therein. However, as regards the 'Amenity Space', the question of consideration is, *'whether the Appellant can claim any right over the said 'Amenity Space'?'*

16. In this respect, learned counsel for Respondent No.1 has relied upon the same 'Agreement of Sale' executed with the flat-purchasers; especially Clause No.59 thereof, which states that the 'Amenity Space' in the 'Lay-Out' shall solely belong to the Promoter, who shall have the right to develop or transfer the same or to deal with the same at the Promoter's discretion. If required, the Promoter may give the 'Amenity Space' to the Government / Corporation or concerned Authority and avail off benefits / compensation thereof. The flat-purchasers or Appellant-Society shall not be entitled to claim any interest therein. The owners or the holders of the 'Amenity Space' shall be entitled to avail off the benefits of all or any one or more of the common areas of the facilities in the 'Lay-Out', such as, road, open space, use of common drainage, water and electricity lines etc., as may be given by the Promoter at its discretion, subject to liability of payment of contribution

towards maintenance thereof. Thus, it is urged that, even in the 'Lay-Out Plan', when the 'Amenity Space' was separately carved out and in the 'Agreement of Sale' executed with the flat-purchasers also, it was stated that, the 'Amenity Space' in the 'Lay-Out' shall solely belong to the Promoter, who shall have right to develop or transfer the same, the Appellant cannot claim any right thereto.

17. In this respect, learned counsel for Respondent No.1-Developer has also relied upon the order of 'Deemed Conveyance' passed by the Deputy Registrar of Co-operative Societies, wherein also it is pointed out that, as per the said order, only the area admeasuring 16,544.33 sq.mtrs., and not the area admeasuring 18,239.89 sq.mtrs., is directed to be transferred to the Appellant-Society, along with the internal roads and open space. It clearly shows that, some area is consciously excluded from even the 'Deemed Conveyance' and in such situation, according to learned counsel for Respondent No.1, there is absolutely no basis for the Appellant to claim any right over the said area.

18. Learned counsel for Respondent No.1 has in this respect also relied upon the 'Development Control Rules' of the Pimpri-Chinchwad Municipal Corporation, which provide that, the 'Amenity Space' can be either transferred to the Municipal Corporation / Planning Authority or can be developed with a prior approval of the Commissioner of the Municipal Corporation for the purposes like Dispensaries, Nurseries,

Police Stations, Schools or other permissible purposes. It is submitted that, these 'Development Control Rules' do not entitle the flat-purchasers or the Organization of the flat-purchasers, like the Appellant-Society, to claim any right or title over the 'Amenity Space'. The 'Development Control Rules' also entitle the Developer to transfer the said 'Amenity Space'; provided, it is used for the above-said purposes stipulated in the 'Development Control Rules'. Here in the case, it is submitted that, Respondent No.1-Developer, therefore, being entitled to transfer the 'Amenity Space', no fault can be found in the execution of the 'Sale Deed' of the said 'Amenity Space' by Respondent No.1 in favour of Respondent No.2, when it is transferred only for the purpose of construction of the School, which is a stipulated purpose provided under the 'Development Control Rules'. As regards the area of 'Amenity Space', which was reserved in the 'Lay-Out' and also in the 'Sanctioned Plan', it is submitted that, in the 'Plan', after sub-division, the 'Amenity Space' was shown at three places, (I) on the western side, adjoining or abutting 12 Mtrs. wide road, out of the Plot Nos.A+A1+A2, i.e. Survey No.72, Hissa No.3; (ii) area (X3), admeasuring about 743.74 Sq.Mtrs., was shown on the southern side; (iii) whereas the 'Amenity Space' (X1), admeasuring about 964.66 Sq.Mtrs was shown in Survey No.72, Hissa No.1A. Thus, according to learned counsel for Respondent No.1, total 'Amenity Space', is, since beginning, specifically segregated and carved out separately in the 'Lay-Out Plan' and also in the 'Sanctioned Plans'. In such situation, it is submitted that, the Appellant cannot claim any right in respect of this 'Amenity Space', which, as per the 'Development Control Rules', Respondent No.1-Developer is entitled to develop either himself or by transferring the same to any other person. Accordingly, Respondent No.1 has transferred the same to Respondent No.2 for carrying out construction of the School. Hence, there is no breach of any of the terms and conditions of the 'Agreement of Sale', executed under the MOFA, with the flat-purchasers, neither there is breach of the order of the 'Deemed Conveyance' passed by the Deputy Registrar of the Co-operative Societies, nor there is breach of the 'Development Control Rules and Regulations'. According to learned counsel for Respondent Nos.1 and 2, therefore, the Trial Court has rightly rejected the relief of interim injunction, which, if granted, would cause irreparable loss and hardship to Respondent No.2, who has purchased the said 'Amenity Space' for the construction of the School by investing huge amount therefor.

19. Per contra, according to learned counsel for the Appellant-Society, in order to carve out this 'Amenity Space', Respondent No.1-Develper has executed the 'Correction Deed' and that too, unilaterally, being as a 'Power of Attorney' of the original owner – Respondent No.3. This 'Correction Deed' has made the changes in the area of 'Open Space' and 'Amenity Space' and, therefore, it could not be done by Respondent No.1, which is against the 'Lay-Out Plan' and the 'Building Plan' sanctioned

when the 'Agreements of Sale' were executed with the flat-purchasers. In this respect, learned counsel for the Appellant-Society has relied upon various Judgments of this Court, including the Judgment in the case of *Dosti Corporation and Another V/s. Sea Flama Co-operative Housing Society Limited and Others, 2016 DGLS(Bom.) 394*, which takes note of all the earlier Judgments, including the Judgment in the case of *Ravindra Mutenja and Others Vs. Bhavan Corporation and Others, 2003(3) ALL MR 521*, on which also the reliance is placed in this case.

20. In the case of *Ravindra Mutenja (Supra)*, it was held that,

> *"Once the building shown in the 'Approved Plan' submitted in terms of the regulations under an existing scheme filed before the Authorities under MOFA Act, have been completed and possession handed over, the builder/owner cannot contend that, because he has not formed the Society and/or not conveyed the property by 'Sale Deed' under the Act, he is entitled to take advantage of any additional F.S.I. that may become available because of subsequent events."*

21. It was further held that,

> *"It would be so, at the stage the building is under construction or the building is not completed and/or purchasers are not put in occupation, provided such building forms part of the 'Development Plan' and/or 'Lay Out Plan' already approved. Subsequent amendment of the 'Lay Out Plan', after the 'Building Plan' is registered under MOFA, without the consent, prima facie, of the flat-purchasers, would not be permissible."*

22. Whereas, in the case of *Dosti Corporation (Supra)*, it was held that,

> *"If there is no disclosure about likely availability of additional FSI and commercial construction to the flat-purchasers at the time of execution of the 'Agreement', then the blanket consent in the 'Agreement for Sale' cannot be of any help to the Builder-Promoter to carry out further construction, as such consent is obtained without full disclosure and hence it is contrary to the provisions of MOFA and, therefore, cannot be enforced by the Developer."*

23. Learned counsel for the Appellant-Society has then relied upon the Judgment in the case of *Madhuvihar Co-operative Housing Society, Mumbai and Others Vs. Jayantilal Investments, Mumbai and Others, 2011(1) Mh.L.J. 641*, also, wherein it was held that,

> *"If the Promoter wants to make additional construction, which is not a part of the 'Lay Out', which was placed before flat-taker at the time of 'Agreement', the consent, as required under Section 7 of the MOFA, would be necessary.*
>
> *Such prior consent of the flat-owner would not be required, if the entire project was placed before the flat-taker at the time of 'Agreement' and that the Builder puts an additional construction in accordance with the 'Lay Out Pan', 'Building Rules' and 'Development Control Regulations'."*

24. It was further held that,

> *"The blanket consent or authority obtained by the Promoter, at the time of entering into 'Agreement of Sale' or at the time of*

handing over possession of the flat, is not a consent within the meaning of Section 7(1) of the MOFA, inasmuch as, such a consent would have effect of nullifying the benevolent purpose of beneficial legislation. 'Consent', as contemplated under Section 7(1) of the MOFA, has to be an informed consent, which is to be obtained upon a full disclosure by the Developer of the entire project and that blanket consent or authority obtained by the Promoter at the time of entering into 'Agreement of Sale' would not be a consent contemplated under the provisions of the MOFA."

25. Here in the case, it is submitted by learned counsel for the Appellant-Society that, Respondent No.1-Developer is relying on the blanket consent, contained in Clause 59 of the 'Agreement', in respect of user of the 'Amenity Space'; however, such consent cannot be of any help to Respondent No.1, as full disclosure was not made to the Appellant-Society at the time of execution of the 'Agreement of Sale' with the flat-purchasers. It is submitted that, Respondent No.1 has executed the 'Correction Deed' in respect of the area of the plot and it is done in the year 2017, thereby necessarily implying that the re-arrangement of the 'Amenity Space' is done and the area is changed after the Appellant-Society was formed and the flats were sold, which, according to learned counsel for the Appellant-Society, cannot be upheld in any way.

26. It is submitted that, the 'Correction Deed', which changes the area of the 'Open Space' and 'Amenity Space' of the suit property, is illegal and

hence, Respondent No.1-Developer needs to be restrained from allowing Respondent No.2 to put up any construction thereon; may be of the School.

27. In my considered opinion, in order to appreciate the rival contentions advanced by learned counsel for both the parites, it would be essential to consider the 'Development Control Rules and Regulations'. The term 'Amenity Space' is defined in Regulation “2.9” of the 'Standardised Development Control and Promotion Regulations for Municipal Councils and Nagar Panchayats in Maharashtra', relied upon by learned counsel for the Respondents, as follows :-

> ***“Amenity Space :-***
> *For the purpose of these Regulations, 'Amenity Space' means a statutory space kept in any layout to be used for any of the amenities, such as open spaces, parks, recreational grounds, playgrounds, sports complex, gardens, convenience shopping, parking lots, primary and secondary schools, clinics, dispensaries, nursery, health club, sub post-office, police station, electric sub-station, ATM of Banks, electronic cyber library, open market, garbage bin, water supply installation, electricity supply installation, sewage treatment plant and includes other utilities, services and conveniences.”*

28. Clause “2.2(1)” of the 'Development Control Regulation for Pune Region' provides for reservation of certain area as 'Amenity Space'. It lays down that;

“Amenity Space :-

In any layout or sub-division of land for residential purposes in the planning areas, specified above, including sub-division under Group Housing Schemes, an area admeasuring not less than 15% of the total land area, shall be reserved for 'Amenity Space' at suitable locations. <u>This shall be in addition to usual 10% required as 'Open Space' in the layout/sub-division. Such reserved lands/plots can be sold by the Developer to appropriate Public Authorities or Institutions, or may be used by the Developer</u>, for one or more of the following appropriate community purposes :- nursery, primary and secondary schools, colleges, public dispensaries and hospitals, community hall for social welfare and cultural purposes, club, sport activities, garden, vegetable market, library, post and telecommunication facilities, but bay and bus stands; and other public purposes for the benefit and use of general public at large as would be approved by Director of Town Planning, Maharashtra State, Pune.

Provided further that, the approving Authority shall lay down suitable conditions and time limit for protection, use and development of such reserved 'Amenity Spaces' , and in case of breach of such conditions, the Authority shall take suitable penal action. No such 'Amenity Space' would, however, be required to be left when the area of the existing land holding or the area under sub-division or layout of Group Housing Scheme is less than 0.4 Hectare.” *[Emphasis Supplied]*

29. “Rule No.11.8” of the 'Development Control Rules', for application in Pimpri-Chinchwad Municipal Corporation area, then lays down the 'Amenities and Facilities for Lay-Out of Large Areas', which reads as under :-

“Amenities and Faciliites for Lay-Out of Large Areas :-
For large layouts, admeasuring more than 3 Ha., provision at not less than 5% of the total area shall be made in the layout for nursery schools, police posts and such other public purposes, as may be directed by the Authority.”

30. Thus, these provisions make it clear that, 'Amenity Space' is over and above the 'Open Space' and it is required to be left for a particular purpose of public utility. As per the 'Pimpri-Chinchwad Development Control Rules', Respondent No.1-Developer is at liberty to use the ‘Amenity Space’ himself or he can also transfer the same; provided, it is used only for any of the public purposes, like the School, Dispensary, Police Station etc. However, once the 'Lay-Out' and the 'Plan' is sanctioned, he cannot change the area of the 'Amenity Space' to the detriment of the flat-purchasers. Here in the case, the area of the ‘Amenity Space’ is changed, by virtue of the ‘Correction Deed’, and it is done without the consent of the flat-purchasers, then it becomes necessary to restrain Respondent Nos.1 and 2 from using the said ‘Amenity Space’, as it will amount to breach of the provisions of Section 7-A of the MOFA and also of the law laid down by this Court in the above-said Judgments.

31. In this case, Clause No.'D' of the 'Correction Deed' shows that, the areas of the 'Open Space' and 'Amenity Space' are changed. In the original 'Agreement', the area of the 'Open Space' was shown as '1,711.70

Sq.Mtrs.', which is corrected to "1,654.73 Sq.Mtrs."; whereas, the area of 'Amenity Space' is corrected from '1,638.21 Sq.Mtrs.' to "1,695.56 Sq.Mtrs.". Thus, the area of the 'Amenity Space' is increased, thereby reducing the area of the 'Open Space'. If it was merely an inadvertent error, as contended by Respondent No.1, that survey numbers or their areas were not mentioned correctly in the 'Agreement', Respondent No.1 should have taken the flat-purchasers in confidence. Instead of doing so, if Respondent No.1 has reduced the area of the 'Open Space', which was for the common use of Society members, for increasing the area of 'Amenity Space' and it was done unilaterally, then, naturally, there is some substance in the grievance of the Appellant.

32. In my considered opinion, the Trial Court should have considered this aspect of the case in its proper perspective. If there was no change in the area of the 'Amenity Space' and the 'Plans' were not revised subsequently, nor the 'Correction Deed' executed, then one would not have restrained Respondent Nos.1 and 2 from carrying out construction of the School. But, having regard to the 'Revised Plan' submitted without the consent of the flat-purchasers and also the area of the 'Amenity Space' being changed by executing such 'Correction Deed', it has become necessary to grant the relief of interim injunction, restraining Respondent Nos.1 and 2 from creating any third party interests or developing the suit property viz. 'Amenity Space'.

33. The Appeal is, therefore, allowed. The impugned order passed by the Trial Court, rejecting the Appellant-Society's application for interim injunction, is set aside. As a result, the application (Exhibit-5), filed by the Appellant-Society in Special Civil Suit No.1566 of 2017, is allowed. Respondent Nos.1 and 2, by way of an interim injunction, are restrained from creating any third party interests in the suit property, namely, the 'Amenity Space' or permitting the development of the suit property.

34. In view of the above, Civil Application No.602 of 2018 pending in the Appeal does not survive and the same stands disposed off as infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]