

decree, I restrain myself from referring to them.

2. At the stage of execution, the objection, which was raised by the judgment debtor was whether the area that has been described of the flat and the shop in the decree is to be considered as a 'built up area' or 'carpet area'. This issue came to be settled by filing a draft sale deed on record and on 28/01/2021, it is clearly recorded by the learned Judge that there is no dispute that the decree of the suit flat and suit shop is about the built up area and the court has directed to execute the sale deed of the suit flat of built up area of 1050 sq. ft. and the sale deed of the suit shop of built up area of 750 sq. ft. and the sale deeds have to be executed by mentioning the said area as built up area of the shop and the flat.

3. Two Commissioners came to be appointed for measuring the properties and two reports came on record at Ex-149 and at Ex-150. The two reports though set out the areas with reference to carpet area/built up area, the court has recorded that in both the reports, there is difference in built up area of the suit shop and the suit flat. The parties, therefore, agreed to argue on the legality and validity of the Commissioners' reports.

4. Thereafter, on 11/02/2021, it is recorded that since both the Commissioners have found the areas of suit shop and suit flat to be deficit on the basis of the built up area, the judgment debtor is

directed to pay compensation to the decree holder at the market rate. The parties are directed to argue on the point of rate of square feet of the said area and the matter is scheduled for hearing.

5. The submission of learned counsel for the petitioners is that the learned Judge has fallen back on the provisions of the Real Estate (Regulation and Development) Act, 2016 and it is on the basis of this calculation, deficit area has been arrived at in the order dated 11/02/2021.

6. *Prima facie*, I am of the opinion that the learned Judge has only referred to the said enactment for borrowing the concept of 'carpet area', 'built up area' and 'super built up area'. The learned Judge has particularly recorded that there is no much difference in the carpet area of the suit flat and suit shop in the reports at Ex-149 and Ex-150. In the report at Ex-150, while calculating the built up area, the area of elevator and other common areas have been considered and, therefore, the report at Ex-150 is not found to be in terms of the built up area, but it is as per the super built up area and, therefore, the said report has been rejected. In contrast, the order record that the judgment debtor has not shown any ground to discard the report at Ex-149. In the said report, the built up area of the suit shop is shown as 535.08 sq. ft. and of the suit flat is shown as 800.51 sq.ft. Recording that this area is lesser than the one mentioned in the

decree i.e. 750 sq. ft. for the suit shop and 1050 sq. ft. for the suit flat, the parties are permitted to argue on the point of rate of per square feet. Once the learned Judge has discredited the Commissioner's report, Ex-150 and fallen back to Ex-149, it is open for the parties to argue before learned Judge about the rate per square feet and whether it is applicable as per the provisions of RERA. This will have to be restricted to Commissioner's report at Ex-149 and since the learned Judge has not foreclosed the issue and the matter is kept for hearing today, the parties are at liberty to advance their submissions including the applicability of rate of per square feet in terms of the RERA, which came into force in 2016. No further observations are necessary and it is for the learned Judge to determine the question of rate to be applied for the deficit area.

7. The writ petition is disposed of in the aforestated terms.

[SMT. BHARATI DANGRE, J.]