

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.726 OF 2023.

Professor Gurdial Singh Sokhi & 7 Ors.

...Petitioners

Versus

Neel Shantiniketan Co-operative Housing Society
Limited and Anr.

...Respondents

...

Mr. Mayur Khandeparkar i/by Mr. Amardev J. Uniyal a/w Mr. Anand S. Oka
for the Appellant.

Mr. Naushad Engineer a/w Mr. Amar Ahamed i/by Mr. Aditya Lele for
Respondent No.1.

Mr. Hardik J. Desai, for Respondent No.2.

...

CORAM : SANDEEP V. MARNE, J.

DATE : NOVEMBER 08, 2023.

JUDGMENT :

1. By this Appeal, Appellants challenge order dated 30 June 2023 passed by the City Civil Court rejecting Notice of Motion No.1278 of 2022 filed by the Appellants seeking temporary injunction to restrain the Defendants from acting on various clauses of the Development Agreement, restraining Defendant No.1 from handing over suit property to Defendant No.1 before completion of process of sub-division and to restrain Defendant

No.2 from getting plans approved without rectification of the Development Agreement.

2. There are total 88 Flats/Commercial Units in the building which has been demolished in January 2022 after issuance of Notice under Section 354 of the Mumbai Municipal Corporations Act, 1888 issued by the Municipal Corporation for Greater Mumbai. Members of the Society have chosen Defendant No.2 as a Developer for carrying out redevelopment of the building in pursuance of the resolutions adopted by the General body of the Defendant No.1-Society. It is undisputed position that out of 88 members, 80 members have signed Development Agreement with Defendant No.2. Only 8 members, (Plaintiffs/Appellants) are averse to execution of Development Agreement on account of various objections raised in the Suit. It is in this background that 8 members of the Society have instituted S.C. Suit No.830 of 2022 before the City Civil Court seeking execution of Supplementary Agreement for provision of 35% extra area for shops of Plaintiff Nos.2, 6 & 7 and to provide terrace admeasuring existing terrace area + 25% extra area to Plaintiff No.4 in addition to corpus, rent and other benefits. Plaintiffs have also sought an injunction against Defendant No.1 from handing over the suit property to Defendant No.2 before completion of process of sub-division and

other compliances like IOD. In their Suit, Plaintiffs filed Notice of Motion No.1278 of 2022 seeking temporary injunction against the Defendants. By order dated 30 June 2023, the City Civil Court has proceeded to reject the Motion, which has led to filing of the present Appeal.

3. I have heard Mr. Khandeparkar, the learned counsel appearing for the Appellants. He would submit that mere majority of members of the Society cannot validate invalid decisions of General Body of the Society or the Development Agreement which is an outcome of misrepresentation and against statutory provisions. Mr. Khandeparkar would broadly raise the following objections to the entire redevelopment process leading to passing of General Body Resolution and execution of Development Agreement by 80 out of 88 members:

- (i) That majority of residential flat owner members is being misused for the purpose of granting additional area to them counted on the basis of illegal extensions done by them to their flats, at the cost of the entitlements of commercial shop owners,
- (ii) That the Development Agreement does not envisage allotment of statutorily grantable 35% fungible area plus 15% incentive area,

- (iii) That there is variance in the final Development Agreement signed by the members in comparison to the draft Development Agreement circulated for perusal of the members,
- (iv) The Development Agreement does not contain one of the most basic documents in the form of Annexure-F, which is supposed to specify the exact area that would be allotted to each member in the reconstructed building,
- (v) only 34 parking spaces are agreed to be provided for 88 Units constructed in rehab portion by misrepresenting the members that the project is being executed under Regulation 33(6) when in fact the FSI benefits are being reaped by the Developer under DCR 33(7)(B).

4. Mr. Khandeparkar has taken me through various documents as well as statutory provisions to elaborate his submissions in respect of the five broad concerns of the Plaintiffs with regard to the entire redevelopment process. He would submit that the residential flat owner members have constructed extensions to their flats, which is not the case with the commercial shop owners. That this has resulted in a situation where the Developer has calculated 35% fungible area on extended areas in residential flats, thereby resulting in commensurate reduction in the entitlement of area of shop

owners. That therefore the additional area offered by the Developer to each member (residential and commercial) is only 25%. Though, this additional area of 25% may satisfy the requirement of residential flat owners (on account of computation on unauthorized extensions), the same falls short of the entitled area of shop owners. According to Mr. Khandeparkar, there is a variation in the concept of carpet area in the Draft and Final Development Agreement and that the reply filed by the Developer makes it abundantly clear that RERA carpet area would ultimately be provided, when in fact the Draft Development Agreement envisaged allotment of MCGM carpet area, excluding areas of external and internal walls, chazzas, windows silts etc.

5. He would take me through the FSI Calculation Sheet prepared by the Developer to demonstrate that the Developer has claimed benefits of fungible area of 35% as well as incentive FSI of 15% by showing the project under DCR 33(7)(B). That however in the General Body Meeting of the Society, the Developer misrepresented the members that the parking would be provided by treating the project under DCR 33(6). He would submit that the Plaintiffs are essentially aggrieved by the manner in which the entire redevelopment process is undertaken by misleading the members. He would take me through the list of deviations in the Development Agreement which

need corrective action as pleaded in Paragraph-26 of the Plaint. That upon taking such corrective action in the form of execution Supplementary Agreement, Plaintiffs are willing to sign the Development Agreement and cooperate with redevelopment of the project. In support of his contention that mere majority of members cannot be a reason for passing illegal and arbitrary resolutions, Mr. Khandeparker would rely upon the Judgment of the Single Judge of this Court in *Venus Cooperative Housing Society and Anr. Vs. Dr. J.Y. Datwani & Ors*¹.

6. Mr. Engineer, the learned counsel appearing for Respondent-Society would oppose the Appeal and submit that 8 Plaintiffs are unnecessarily attempting to delay the redevelopment project of the building which is demolished in January 2022. That this is the 8th attempt on the part of Plaintiffs to create hurdles in the redevelopment process. That the Agreement with the earlier Developer was required to be terminated on account of hurdles created by Plaintiffs. That the Draft Development Agreement was kept for perusal of members for two weeks but the Plaintiffs did not bother to go through the same. He would submit that Annexure-F is deliberately not attached to the Development Agreement as the members were not sure about

1 2002 SCC Online Bom 1457.

the exact additional area which they wished to purchase at the time of execution of the Development Agreement. That mere non-inclusion of Annexure-F to the agreement would not invalidate the same and in this regard Mr. Engineer would rely upon the Judgment of this Court in *M/s. Maya Developers V/s. Rajkumar L. Nagda*².

7. Mr. Engineer would further submit that all 8 Plaintiffs are not commercial shop owners and that their composition is three shop owners, four residential flats owners and one residential flats owner with terrace. That out of the 11 commercial shop owners, 8 are agreeable to redevelopment PROCESS and have signed the Development Agreement. That total 80 individual flat/shop owners out of total 88 members have individually signed the Development Agreement after being satisfied about various covenants therein and that therefore there is no question of any misrepresentation. That the Notice of Motion filed by another flat owner with terrace demanding higher area in the reconstructed project has been rejected by City Civil Court and Appeal against that order is rejected by this Court.

8. Mr. Engineer would further submit that there are no extensions by residential flat owners as falsely sought to be suggested. That the area taken

2 (2016) 6 Bom CR 629

into consideration by the Developer for grant of 25% additional area is the actual area found in possession of members by the MCGM before demolishing building. That the entire argument of denial of 35% fungible area is factually incorrect as what is being actually provided by the Developer is far more than 35% fungible area. That in addition, the Developer has agreed to provide for corpus and transit rent. So far as the parking is concerned, the Developer has agreed to provide parking as per the policy of MCGM by taking into consideration provisions of DCR 44. Mr. Engineer would submit that the decision taken by majority of members of a cooperative housing society would prevail and that this Court cannot go into the correctness of the decision taken by the General Body. He would rely upon the Judgment of the Apex Court in *Bengal Secretariat Co-operative Land Mortgage Bank and Housing Society Ltd. Vs. Alope Kumar and Another*³ and *Hari Om Sayaji Properties LLP Vs. Yoga Yog Co-op. Housing Society and Others*⁴.

9. I have considered the submissions canvassed by the learned counsel appearing for the parties. There is no dispute to the position that out of the total 88 society members, 80 have already signed the Development Agreement. Only 8 members (Plaintiffs) have refused to sign the

3 2022 SCC Online SC 1404

4 2016 SCC Online Bom 11877

Development Agreement and have instead filed S.C. Suit No.830 of 2022. Out of the 8 Plaintiffs, Plaintiff Nos.2, 6 & 7 owned commercial shops and rest of the Plaintiffs owned residential Flats. Again between the residential flat owners, there is sub-division in that Plaintiff No.4 has a different demand as his flat consists of an open terrace and he desires provision of similar terrace area with addition of 25% area in the newly constructed building. Thus, it appears that about 90% of the members of the Society are agreeable to the redevelopment process and are signatories to the Development Agreement. Before I proceed to examine various objections sought to be raised by Mr. Khandeparkar, it would be appropriate to consider the scope of interference in matters where majority of members of the Society have taken a particular decision. In *Bengal Secretariat Co-operative Land Mortgage Bank and Housing Society Ltd.* (supra) the Apex Court has held in Paragraph Nos.56, 57, 58, 59 & 60 as under:

“ 56. It is not in dispute that the General Body of the Appellant Society, which is supreme, has taken up a conscious decision to redevelop the administrative building. The General Body of the Appellant Society has also resolved to appoint the Hi-Rise as the developer. Those decisions having not been challenged at all, the Respondent No. 1 being a member of the Appellant Society is bound by the said decisions. The General Body of the Appellant Society has approved the terms and conditions of the development agreement by overwhelming majority. Merely because the terms and conditions of the development agreement are not acceptable to the Respondent No. 1, who could be said to be in minuscule minority cannot be the basis of not to abide by the decision of the overwhelming majority of the

General Body of the Appellant Society. The redevelopment of the property is necessitated in view of the fact that the building is in a dilapidated condition with passage of time. The redevelopment thus, in our view, would be a requirement and a necessity and cannot be termed as business. The Appellant Society in such circumstances did not even require to carry out any amendment to the bye-laws or to include the "redevelopment of the buildings" as one of the objects of the Society before taking any decision to redevelop its property.

57. By now it is well established position that once a person becomes a member of the Co-operative Society, he loses his individuality with the Society and he has no independent rights except those given to him by the statute and bye-laws. The member has to speak through the Society or rather the Society alone can act and speaks for him qua the rights and duties of the Society as a body (see : Daman Singh v. State of Punjab, reported in (1985) 2 SCC 670 : AIR 1985 SC 973). This view has been followed in the subsequent decision of this Court in the case of State of U.P v. Chheoki Employees Co-operative Society Ltd., reported in (1997) 3 SCC 681 : AIR 1997 SC 1413. In this decision, this Court further observed that the member of a Society has no independent right qua the Society and it is the Society that is entitled to represent as the corporate aggregate. This Court also observed that the stream cannot rise higher than the source. Suffice it to observe that so long as the Resolutions passed by the General Body of the Appellant Society are in force and not overturned by a forum of competent jurisdiction, the said decisions would bind the Respondent No. 1. He cannot be permitted to take a stand alone position but is bound by the majority decision of the General Body. Notably, the Respondent No. 1 has not challenged the Resolutions passed by the General Body of the Appellant Society to redevelop the property and more so, to appoint the Hi-Rise as the Developer to give him all the redevelopment rights.

58. It was also argued on behalf of the Respondent No. 1 that the property is in a good condition and there is no need to redevelop the existing building. In the first place, as noted earlier, the decision of the General Body of the Society to redevelop the subject property has not been challenged at all. Besides, no provision in the Co-operative Societies Act or the rules or any other legal provision has been brought to our notice which would curtail the right of the Society to redevelop the property when the General Body of the Society intends to do so. Essentially, that is the commercial wisdom of the General Body of the Society. It is not open to the Court to sit over the said wisdom of the General Body as an Appellate Authority. Merely because one single member in minority disapproves of the decision, that cannot be the

basis to negate the decision of the General Body, unless it is shown that the decision was the product of fraud or misrepresentation or was opposed to some statutory prohibition. That is not the grievance made before us. In the present case, the General Body took a conscious decision after due deliberations for many years to redevelop its property. Even with regard to the appointment of the "Hi-Rise" as the Developer, the record shows that it was decided by the General Body of the Society after examining the relative merits of the proposals received from the developers.

59. The object of the provision has to be borne in mind. The entire legislative scheme goes to show that the Co-operative Society is to function democratically and the internal democracy of a society, including resolutions passed in accordance with the Act, the Rules, and the bye-laws have to be respected and implemented. The Co-operative Movement is both a theory of life and a system of business. It is a form of voluntary association where individuals unite for mutual aid in the production and distribution of wealth upon principles of equity, reason and common good. It stands for distributive justice and asserts the principle of equality and equity ensuring to all those engaged in the production of wealth a share proportionately commensurate with the degree of their contribution. It provides as a substitute for material assets, honesty and a sense of moral obligation and keeps in view the moral rather than the material sanction. The movement is thus a great Co-operative movement.

60. The basic principles of co-operation are that the members join as human beings and not as capitalists. The Co-operative Society is a form of organization wherein persons associate together as human beings on the basis of equality for promotion of economic interest of its members. This movement is a method of doing the business or other activities with ethical base. "Each for all and all for each" is the motto of the co-operative movement. This movement not only develops latent business capacities of its members but produces leaders; encourages economic and social virtues, honesty and loyalty, becomes imperative, prospects of better life, obtainable by concerted effort is opened up; the individual realises that there is something more to be sought than mere material gains for himself. So, in fact, it being a business cum moral movement, and the success of the Co-operative Society depends upon the reality with which one of the members work for the achievement of its objects and purpose. The Committee on Co-operation in India emphasized the moral aspect of co-operation, to quote the words:-

"The theory of co-operation is very briefly that an isolated and

powerless individual can, by association, with others and by moral development support, obtain in his own degree the material advantages available to wealthy or powerful persons and thereby develop himself to the fullest extent of his natural abilities. By the Union of forces, material advancement is secured and by united action self reliance is fostered and it from the inter-action of these influences that it is hoped to attain the effective realisation of the higher and more prosperous standard of life which has been characterised as better business, better arming and better living; we have found that there is a tendency not only among the outside public but also among supporters of the movement to be little its moral aspect and to regard this as superfluous idealism. Cooperation in actual practice must often fall short of the standard aimed at and details inconsistent with co- operative ideals have often to be accepted in the hope that they may lead to better things. We wish clearly to express that it is the true co-operation alone, that is, to a co-operation which recognises the moral aspect of the question that Government must look for the amelioration of the masses and not to a pseudo co-operative edifice, however imposing, which is built in ignorance of co- operative principles. The movement is essentially a moral one and it is individualistic rather than socialistic. It provides as a substitute for material assets honesty and a sense of moral obligation and keeps in view the moral rather than the material sanction. Pages 5 and 6 of Theory and Practice of Co-operation in India and Abroad by Kulkarni, Volume 1. Co-operation is a mode of doing business, is at present applied as the solution of many economic problems. Co-operation is harnessed to almost all forms of economic activity. Though co-operation was introduced in this country as a remedy for rural indebtedness, it has been applied successfully in a wide range of activities such as production, distribution, banking, supply, marketing, housing and insurance. See Theory and Practice of Co-operation in India and Abroad by Kulkarni Volume 1 Page 2". "

10. A Single Judge of this Court in ***Hari Om Sayaji Properties LLP*** (supra) has held that Court cannot sit over wisdom of the General Body merely because some members in minority disapproved the decision of the General Body. This Court held in Paragraph 34 as under:

34. No provision in the Co- operative Societies Act or the Rules or any other legal provisions has been brought to my notice which would curtail the right of the Society to redevelop the property when the General Body of the Society intends to do so. Essentially, that is the commercial wisdom of the General Body of the Society. It is not open for the Court to sit over the wisdom of the General Body as an Appellate Body/Appellate Authority, merely because some members in minority disapprove of the decision of the General Body, unless it is shown that the decision was the product of fraud or misrepresentation or was opposed to some statutory prohibition. The aforesaid view has consistently been taken by this Court in (i) Girish Mulchand Mehta v. Mahesh S. Mehta 1 , (ii) Akash Pruthvi Lifestyle v. Akash Co-op. Hsg. Soc. Ltd. 2 and (iii) Maya Developers v. Neelam R. Thakkar 3 . In the present case the General Body took a conscious decision after due deliberations to redevelop its property. It is now well settled in the case of Maya Developers (supra) that the 2009 direction is not mandatory when there is substantial compliance. Moreover, 34 out of 37 occupants have vacated the said building without any demur or protest showing that the majority overwhelmingly supported the development by the Plaintiffs, amendment of the Bank Guarantee clause and execution of the Supplementary Deed as well as the Deed of Assignment. Defendant Nos. 2 to 4 have also addressed a letter dated 27th May, 2016 (Exhibit-SS to the Complaint) wherein they have stated that they were ready for an amicable solution so that the redevelopment process goes as per schedule and that they were not against redevelopment. I find that in the present case there is substantial compliance and the actions of the Society are supported by all its members save and except Defendant Nos. 2, 3 and 4.”

11. Having considered the scope of interference by this Court in majority decisions of General Body of Co-operative Society, I now proceed to examine various objections raised by Mr. Khandeparkar to the entire redevelopment process. The first objection is with regard to failure on the part of the Developer to grant 35% fungible area mandated under Fourth Proviso

to DCR 31(3), which deals with "Fungible Compensatory Area". The Fourth Proviso reads thus:

"Provided further that such Fungible Compensatory Area for rehabilitation component shall not be used for free sell component and may be used to give additional area over and above the eligible area to the existing tenants/occupants. Fungible Compensatory Area admissible to one rehabilitation tenement cannot be utilized for another rehabilitation tenement"

12. It is relying on the above Proviso that Mr. Khandeparkar has contended that 35% Fungible Compensatory Area is a statutory entitlement which cannot be deprived to the shop owners on account of majority decision taken by the Society. He submits that since the decision by majority members of the Society to accept only 25% additional area is in violation of statutory provision, the majority decision is bad-in-law and cannot be acted upon. This objection of Mr. Khandeparkar appears to be attractive in first flush, however on a deeper scrutiny, is completely unfounded. Firstly, DCR 31(3) uses the words "*not exceeding 35%*". Thus it is not that in every case 35% Fungible Compensatory Area is to be statutorily provided. In a given case, a developer may opt for less than 35% fungible compensatory area on account of circumstances of a particular case like height restriction, etc. Therefore, grant of 35% Fungible Compensatory Area cannot, in each case, be treated as a

statutory right as sought to be suggested by the Plaintiffs. It may depend on facts of each case. I am fortified in my view that 35% fungible compensatory area cannot be utilized in every building on account of Division Bench Judgment of this Court in ***Estella Fernandes Nee Estella Fernandes Vs. Swarna Highrise Constructions & Anr.*** in Writ Petition No.2329 of 2019 along with other connected Petitions on 04 May 2023, wherein this Court held in Paragraph Nos.36 & 37 are as under:

“36. Insofar as Mr.Anturkar’s contention in regard to respondent No.1 being under a mandatory obligation to make available only to the petitioners’ benefit of the fungible FSI, we are far from being persuaded to accept such contention. It may be observed that the redevelopment scheme not only concerns the minority of the tenants, but all the tenants who are 29 in number. In the present case, majority of the tenants have agreed to whatever has been provided for in the PAA agreements as entered by respondent No.1 with such majority members. It is not possible to accept such contention of the minority members that only for their benefit the building plans are required to be changed and special adjustments are required to be made. This would disturb the entire redevelopment scheme that too at the behest of such handful of tenants who are putting up a case opposed to the majority interest in the redevelopment. In this view of the matter, it is not possible for us to accept the petitioners’ contention that barring other tenants who have already entered into the PAA agreements with respondent No.1, special treatment needs to be accorded by respondent No.1 to the petitioners by changing the plans and giving the benefit of fungible FSI, which in fact on respondent no.1’s showing cannot be utilized in the manner as desired by the petitioners.

37. We may also observe that it is for respondent No.1 owner to undertake redevelopment as may be permissible in law. The contention as urged by the petitioners militates against what has been provided for in the regulations that each tenant shall be rehabilitated and given the carpet area

occupied by him for residential purposes in the old building subject to the minimum fixed carpet area of 27.88 sq. m (300 sq. ft) and/or maximum carpet area up to 70 sq. m (753 sq. ft) free of cost. It is not the case that respondent No.1 is confining the permanent alternate accommodation being offered to the tenants to a lesser area than the stipulated of 300 sq. ft. in fact respondent no.1 is offering an area of more than 300 sq. ft. In this view of the matter, it cannot be conceived that Clause 13 of the Appendix below Regulation 33(7)(A) can be pressed into service by the petitioners to canvass that their entitlement would be to avail of tenements having 35% more area. Certainly, such is not the purport of Clause 13 of the Appendix below Regulation 33(7)(A). As to what extent respondent No.1 would offer the benefit of fungible FSI to all the tenants considering the other technical parameters, is completely the lookout of respondent No.1. This more particularly when respondent No.1 is on record to submit that it is not possible for respondent No.1 to use the full fungible FSI given the restrictions not only whereby the height of the building is required to be restricted due to limited access, but there are other issues as set out in the reply affidavit which appears to be not in dispute. Be that as it may, these are all technical issues and certainly cannot be the subject matter of adjudication in the proceedings of the present writ petition.”

13. In the present case, it appears that the Developer has actually sought FSI by taking into consideration 35% fungible compensatory area. Therefore, let me proceed by accepting Mr. Khandeparkar’s contention that grant of 35% fungible compensatory area is a right of Plaintiffs. The Area and FSI Calculation Statement prepared by the Architect of the Developer shows that fungible compensatory area for rehab component is shown as 1678.72 Sq. Mtrs. by adding 35% area on existing ‘built up area’ of 4796.35 Sq. Mtrs. However, Mr. Engineer has demonstrated that the existing ‘carpet area’ as per sanctioned plan was 41,581 Sq.Ft. and considering 35% Fungible

Compensatory Area (which according to Mr. Engineer is grantable only on area reflected in sanctioned plan) the total area (carpet area as per sanctioned plan + 35% fungible area) comes to 56,135 Sq.ft. According to Mr. Engineer, the 25% additional area sought to be granted by the Developer on the area found to be actually in possession of the members (47,813 Sq.Ft.) is 59,864 Sq.Ft. According to Mr. Engineer this total area being offered to Society members of 59,864 Sq.Ft. is higher than the area of 56,135 Sq.Ft. computed by adding 35% fungible area to the carpet area as per sanctioned plan. Mr. Khandeparkar has sought to dispute the above figures presented by Mr. Engineer by pointing out that 35% area sought by Developer is not on 51,581 Sq.Ft. but on area of 4796.35 Sq.Mtrs (51,608 Sq.Mtrs.). He would further submit that the total fungible area received by the Developer is 1678.72 Sq.Mtrs. (18068 Sq.Ft.) in addition to 15% incentive area of 920 Sq.Mtrs (9899 Sq.Ft.). However, the existing area taken into consideration in the area statement by Developer's Architect is "built up area" whereas the statement prepared by Mr. Engineer is by taking into consideration "carpet area". Therefore, the doubts sought to be expressed by Mr. Khandeparkar cannot lead to any definite conclusion that the Society members are deprived of any substantial area statutorily grantable to them.

14. Also of relevance is the fact that Mr. Khandeparkar's complaint about grant of lesser area to commercial shop owner actually creates competing claims amongst Plaintiffs themselves as there are three Plaintiffs who own commercial shops as against five Plaintiffs who own residential flats. Thus in a jointly filed Suit, 3 Plaintiffs object to grant of excess area to their co-plaintiffs. Again, amongst Plaintiffs who won flats, there is debate between terrace flat owner and non-terrace flat owners. If demand of Plaintiff owning flat with terrace is met with, it might further reduce the area grantable to Plaintiffs owing shops as the developer will have to meet the area demands of different members through fixed area permitted by the Planning Authority. In such a Suit jointly filed by such Plaintiffs having competing claims against each other, whether any injunctive relief can be granted becomes debatable. Such Suit in fact seem to suggest the real intention behind filing the same is to indefinitely delay the redevelopment process by raising some or the other technical points, ignoring that raising one point actually hurts some of the Plaintiffs themselves.

15. The complaint of one of the Plaintiffs is about non provision of entire area of terrace (with 25% additional area) in the reconstructed building. It appears that a similarly placed member having terrace flat had instituted Suit before the City Civil Court *inter alia* raising objection about non-provision of

terrace in the alternate accommodation. The Notice of Motion was rejected and Appeal from Order No.328 of 2022 was filed before this Court, which also came to be rejected by order dated 8 April 2022. This Court held that the demand of 35% Fungible Compensatory Area on the terrace area is something which is required to be decided at the time of trial of the Suit. Following the order passed by this Court on 8 April 2022 in Tafseer Chaudhary s/o Md. Sadil Chaudhary, no injunction could have been granted in favour of the Plaintiff No.4, who has filed the suit mainly for the purpose of securing terrace + 25% additional area in the alternate accommodation. Here it must be highlighted that Plaintiff No.4 has raised a prayer demanding '25%' additional area on existing terrace and not '35%', which may defeat the prayer of shop owners 35% additional area is a statutory right.

16. The next concern highlighted by Mr. Khandeparkar is about Annexures-F being not appended to the Development Agreement. It is sought to be contended that in absence of Annexure-F, the members do not know the exact area that would be allotted to them in the reconstructed building. Mr. Engineer has countered this submission by contending that Annexure-F is deliberately not appended to the Agreement on account of several members of the Society proposing to purchase additional area from the

Developer. That since the exact area to be allotted to each member was not certain at the time of execution of Development Agreement, Annexure-F could not be attached to the same. The issue in this regard is no more *res integra* and is covered by direct Judgment of this Court in ***Maya Developers V/s. Rajkumar L. Nagda*** (supra) wherein similar issue of Annexure-F not being attached to the Development Agreement was sought to be raised. This Court held in Paragraph 82 as under:

“82. It is true that Annexure ‘F’ to the Development Agreement is missing. This was because at the time of the Development Agreement, the additional area requirements, and Annexure F pertains to flat sizes, had not been finalized. The proposal from Maya Developers went through three iterations. The 2009 proposal was of two sizes of flats; these were slightly reduced in 2011, and then changed again in 2012. Then the additional 2000 sq.ft to the society proposed. This additional area was for the Society to allot or allocate between its members. On 29th September 2012, the Society pasted a notice on its board saying that a 5% discount would be given on purchase of additional area by the Society (for buying an additional 100–150 sq.ft.). The notice called for written intimation by 14th October 2012, i.e., at the General Body Meeting to be held on that day. This deadline was extended to the General Body Meeting of 7th December 2012. Rates were finalized; the 5% discount was to apply to the rate of Rs.12,600/-. The Society’s members confirmed the layout in February 2013. Moreover, the Society had not till then decided whether to allot the new premises by drawing lots or going by flat/serial number. I do not see how even this is of assistance to Mr. Pai. The issue remains of what it is that the majority did, for the contesting Defendants were not the only ones to have faced this situation. This is a question that remains almost entirely unanswered.”

17. Thus, mere missing of Annexure-F in the Development Agreement cannot be a reason for grant of any temporary injunction in favour

of the Plaintiffs.

18. Another issue sought to be highlighted by Mr. Khandeparkar is about allotment of lesser parking than statutory requirement. According to him only 34 parking spaces are being made available for 88 Units by misrepresenting the members of the Society that the project is executed under DCR 33(6). Reliance is placed on the Minutes of the General Body meeting held on 7 May 2022, when Mr. Ankit Sheth on behalf of the Developer sought to suggest that the project could be treated under DCR 33(6) (Redevelopment of buildings destroyed by fire or demolished). Mr. Khandeparkar does not appear to be right in placing reliance on the minutes of General Body Meeting held on 7 May 2022 where the Developer's personnel also referred to the provisions of DCR 33(7)(B). Therefore, it cannot be said that there is any misrepresentation. Mr. Engineer has invited my attention to Clause 14 of the Development Agreement dealing with car parking spaces and a commitment given by the Developer for provision of car parking spaces as per approval by the MCGM. Mr. Engineer has placed reliance of DCR 44 which lays down various norms for provision of car parking spaces. Thus, from the covenants of the Development Agreement, it is nowhere stated that only 34 car parking spaces would be provided to the rehab component of the

building. On the contrary clause 14.1 of the Agreement provides that car parking spaces would be provided "as approved by MCGM for the flat areas". Thus the concerns sought to be expressed about car parking spaces is therefore totally misplaced.

19. The issue with regard to variance in the covenants of Draft Development Agreement and Final Development Agreement sought to be raised by Mr. Khandeparkar also appears to be totally unfounded. This objection is raised by comparing the definition of the term 'carpet area' in the draft development agreement and final agreement executed. I do not see any such variance as both Draft as well as final Development Agreement defined carpet area to mean a carpet area approved by MCGM excluding areas external/internal walls, chazzas, window sills etc. The rights and entitlements of the members with regard to carpet area would be governed by the covenants of the agreement and not by the stand taken by the Developer in the reply. Therefore, this objection sought to be raised by Mr. Khandeparkar also deserves rejection.

20. Considering the overall conspectus of the case, it is seen that 90% of the members have agreed to the proposal for redevelopment of the building,

which has been demolished in January 2022. In addition to 25% additional area over and above the area in occupation of each flat/shop owners, the Developer has also agreed to pay hardship compensation amount of Rs.6,69,38,200/-, additional consideration of Rs. 1,11,000/- in addition to liability to pay transit rent. It is therefore not necessary for the Society or Developer to demonstrate before the Court that the exact area allotted to each member matches 35% fungible area and/or 15% incentive area. It is permissible for the society or members to monetise some or all of the additional area grantable under the DCPR. Broadly, it is seen that there is no irrationality or arbitrariness in the decision taken by the General Body of the Society. Its resolution is not found to be in contravention of any statutory provision. Reliance of Mr. Khandeparkar on Judgment of this Court in ***Venus Cooperative Housing Society and Anr.*** (supra) would have no application to the present case. The issue in that case was with regard to the society's decision to charge maintenance commensurate to the area of each flat ignoring the fact that many flats were using same common facilities irrespective of the sizes of the flats. The observations made by the Single Judge of this Court are made in the context of the said issue raised before it. The Judgment in my view therefore would have no application to the facts of the present case.

21. I am therefore of the view that no *prima facie* case exists for Plaintiffs to seek any temporary injunction. Grant of any injunctive relief would result in stalling the redevelopment of process of building which has been demolished in January 2022. It is in interest of every member of the Society that redevelopment of the building is carried out as early as possible. Plaintiffs cannot be permitted to put a spoke in the redevelopment process by raising unfounded and technical objections.

22. In my view therefore, the order passed by the City Civil Court does not suffer from any palpable error for this Court to interfere in the discretion exercised by it. The scope of the Appellate Court to interfere in discretion exercised by the trial Court is extremely narrow. Since no patent error is traced in the approach of the trial Court, no interference is warranted in exercise of Appellate jurisdiction by this Court. In my view, the Appeal is devoid of merits. It is accordingly rejected. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)