

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.4679 OF 2025
IN
SUIT NO.147 OF 2025

Indiaideas.com LimitedApplicant
IN THE MATTER BETWEEN
Indiaideas.com LimitedPlaintiff

V/S

1 Supreme Chambers Condominium &
2 Supreme Industries LimitedDefendants

WITH
INTERIM APPLICATION NO.3624 OF 2025
IN
SUIT NO.147 OF 2025

Indiaideas.com LimitedApplicant
IN THE MATTER BETWEEN
Indiaideas.com LimitedPlaintiff

V/S

1 Supreme Chambers Condominium &
2 Supreme Industries LimitedDefendants

Mr. Karl Tamboly with Mr. Tushad Kakalia, Mr. D.J. Kakalia,
Mr. Paresh Patkar and Ms. Bhakti Chandan i/b M/s. Mulla & Mulla &
Craigie Blunt & Caroe, *for the Applicant/Plaintiff.*

Mr. Zal Andhyarujina, Senior Advocate i/b Ms. Aparna Devkar, *for
Defendant No.1.*

CORAM : SANDEEP V. MARNE, J.

**RESERVED ON : 12 SEPTEMBER 2025.
PRONOUNCED ON : 16 SEPTEMBER 2025.**

JUDGMENT

1. The Interim Application No. 3624 of 2025 is filed seeking temporary injunction during pendency of the suit for restoration of the Plaintiff's possession of the suit property and for restraining Defendant No.1 from obstructing Plaintiff's use of the Segment-A terrace. Plaintiff further seeks temporary injunction to restrain Defendant No.1 from selling, alienating and disposing of the Segment A terrace and from carrying out any repairs, maintenance or construction work thereat.

2. By order dated 14 July 2025, this Court has passed ad-interim relief in favour of the Plaintiff in terms of prayer clauses (a), (b) and (d) of the Interim Application. Plaintiff has alleged breach of ad-interim injunction granted vide order dated 14 July 2025 and has accordingly filed Interim Application No.4679 of 2025 under provisions of Order XXXIX, Rule 2A of the Code of Civil Procedure, 1908 (**the Code**). Interim Application No.3624 of 2025 is not on board. With consent of learned counsel appearing for the parties, the same is taken on board. Since pleadings in both the Applications are complete, the same are taken up for hearing and disposal with the consent of learned counsel appearing for rival parties.

3. Plaintiff's case as pleaded in the plaint, in brief, is that Defendant No.2 has constructed a commercial building known as "Supreme Chambers" comprising of basements, part stilts at ground-floor and 10 upper floors and an open terrace on the 11th floor. The open terrace on the 11th floor is divided into two parts viz. Segment-A and Segment-B. Defendant No.2-Developer executed Declaration dated 29 October 2009 by submitting the land and the building under the provisions of

Maharashtra Apartment Ownership Act, 1970 (**Apartment Ownership Act**). The Declaration *inter alia* designated Segment A terrace on 11th floor as appurtenant to Unit Nos. 1001 and 1002 located on the 10th upper floor whereas Segment B terrace having utilities such as chiller-room, platforms, pumps etc. was designated as common areas and facilities. According to Plaintiff, designation of Segment A terrace as appurtenant to Unit Nos.1001 and 1002 made the owner of the said two units entitled to exclusive use of the same.

4. Plaintiff purchased Unit Nos.1001 and 1002 in the building vide registered Deed of Apartment dated 4 September 2018 together with exclusive right to use Segment A terrace and 25 car parking spaces alongwith 7.28% in common areas and facilities appurtenant to the units for total consideration of Rs.55 crores. Plaintiff was put in possession of Segment A terrace on the 11th floor alongwith Unit Nos.1001 and 1002 upon execution and registration of the agreement. An Association of Apartment Owners in the building Supreme Chambers was formed, who is Defendant No. 1 to the suit. Plaintiff addressed letter dated 12 September 2018 to the first Defendant-Association informing it that Segment A terrace formed part of the units purchased by the Plaintiff. According to Plaintiff, Defendant No.1 never objected to Plaintiff's exclusive use of Segment A terrace and acknowledged that the same belong to the Plaintiff. For the first time in the Annual General Meeting held on 21 November 2023, Defendant No.1 passed a resolution for taking over possession of 'Segment B terrace' (*according to Defendant No.1 there is a typographical error in the resolution and that Defendant No.1 resolved to take over by way of resolution dated 21 November 2023 was Segment A terrace*). In pursuance of resolution dated 21 November 2023, Defendant No.1 issued notice dated 23 November 2023 to the Plaintiff calling it upon to handover keys of

Segment A terrace. Defendant No.1 convened Annual General Meeting of the Association on 27 November 2024, which included agenda for water proofing and creation of washroom in the terrace area. Plaintiff sent letter dated 23 November 2024 objecting to the claim of Defendant No.1 in respect of Segment A terrace.

5. Plaintiff claims that the representatives of Defendant No.1 visited Segment A terrace on 25 November 2024, changed the locks on the doors therein and proceeded to lock the same thereby illegally claiming possession thereof. Plaintiff accordingly claims that it was dispossessed by Defendant No.1 in respect of Segment A terrace on 25 November 2024. Plaintiff received letter dated 7 January 2025 from the Advocate of Defendant No.1 in response to Plaintiff's letter dated 23 November 2024. Plaintiff responded on 4 February 2025. Defendant No.1 replied to Plaintiff's Advocate by letter dated 25 February 2025. On 29 April 2025, Defendant No.1 commenced excavation work on Segment A terrace purportedly for addressing leakage issues that had arisen. Defendant No.1 addressed email to the Plaintiff on 7 May 2025, which was responded to by the Plaintiff on 9 May 2025.

6. In the above background, Plaintiff has instituted the present suit seeking a mandatory injunction against Defendant No.1 for restoration of Plaintiff's exclusive possession of Segment A terrace and for restraining Defendant No.1 from obstructing Plaintiff's access thereto. Plaintiff has also sought inquiry for determination of mesne profits in respect of first Defendant's use of Segment A terrace from 25 November 2024.

7. In its suit, Plaintiff has filed Interim Application No.3624 of 2025 seeking temporary injunction for restoration of possession of Segment A

terrace and for restraining Defendant No.1 from obstructing Plaintiff's access thereto. Plaintiff has also sought temporary injunction to restrain Defendant No.1 from alienating, disposing of or dealing with or creating third party rights in respect of Segment A terrace and from carrying out any repairs, maintenance or construction work thereat. The Interim Application No.3624 of 2025 was moved before the Court by Plaintiff on 14 July 2025 after issuing private notice to the Defendants. Since none appeared on behalf of Defendants, this Court considered Plaintiff's Application for ad-interim injunction on 14 July 2025 *ex-parte* and was persuaded to grant ad-interim injunction in terms of prayer clauses (a), (b) and (d) of Interim Application No. 3624 of 2025.

8. Plaintiff served copy of order dated 14 July 2025 on Defendant No.1 vide letter dated 17 July 2025. According to Plaintiff, despite service of order of *ad-interim* injunction dated 14 July 2025, Defendant No.1 has failed to restore possession of Segment A terrace and has accordingly filed Interim Application No.4679 of 2025 alleging breach of order of temporary injunction and seeking various reliefs under Order XXXIX Rule 2A of the Code.

9. Defendant No.1 has filed its Affidavit-in-Replies to both Interim Applications. It is contended by Defendant No.1 that the *ad-interim* order dated 14 July 2025 was not continued beyond 28 July 2025 and that therefore, there is no question of committing any breach thereof.

10. Mr. Tamboly, the learned counsel appearing for Plaintiff would submit that under the terms and conditions of the Declaration dated 29 October 2009, Segment A terrace has been designated for exclusive use

for Unit Nos.1001 and/or 1002 located on the 10th floor, which are purchased by the Plaintiff. That such designation of Segment A terrace as 'limited common areas and facilities' has been done in accordance with provisions of Section 3 (n) and Section 11 (1) (e) of the Apartment Ownership Act. That the bye-laws of the Condominium also provide for Segment A terrace to be designated solely for use by owners of Unit Nos.1001 and 1002. That Plaintiff is thus not only entitled to exclusively use Segment A terrace but also maintain and repair the same. That there is conscious distinction between Segment A terrace and Segment B terrace in the Declaration as well as the bye-laws of the Condominium. That while Segment B terrace has been designated as common areas and facilities for all apartment owners, Segment A terrace has exclusively been designated for use of owners of Unit Nos.1001 and 1002. That therefore Segment A terrace cannot be treated as common areas and/or facilities by Defendant No.1-Association. He would submit that Segment A terrace has been sold to the Plaintiff by Defendant No.2 vide registered Deed of Apartment dated 4 September 2018 and Plaintiff has been put in exclusive possession thereof. That Plaintiff has been possessing Segment A terrace without any obstruction since the year 2018. That Defendant No.1-Association has acknowledged Plaintiff's exclusive use of Segment A terrace in various correspondence and there have been tacit admissions on the part of Defendant No.1 that Segment A terrace is that of the Plaintiff. That the requisition by Defendant No.1 for handing over keys of Segment A terrace contains an admission that the same was in possession of the Plaintiff. That Defendant No.1-Association has taken law into their hands by illegally dispossessing Plaintiff in respect of Segment A terrace. That they have adopted a false stand that the Plaintiff has voluntarily handed over possession of Segment A terrace in absence of any document on record to indicate handing over of possession of Segment A terrace by Plaintiff. That Defendant No.1 has unauthorizedly changed

locks of Segment A terrace, which is evident from the photographs placed on record. He would therefore submit that Plaintiff is entitled to restoration of possession of Segment A terrace. He would rely upon judgment of this Court in *Sachin Malpani and Ors. vs. Nilam Patil and Ors.*¹ in support of his contention that Declaration being a registered instrument, needs to be followed in view of statutory provisions of the Apartment Ownership Act and stipulations therein cannot be violated unless the same are altered and modified by way of another registered Declaration.

11. In support of Interim Application No.4679 of 2025 Mr. Tamboly would submit that Defendant No.1 has committed breach of *ad-interim* order dated 14 July 2025 by not restoring possession of Segment A terrace. That it has adopted a false stand that *ad-interim* order dated 14 July 2025 got discontinued on 28 July 2025. That the matter did not reach on 28 July 2025 and was adjourned merely on mentioning and non-reflection of direction for continuation of *ad-interim* relief does not mean that the same got vacated. That the Court did not hear the matter on 28 July 2025 nor directed vacation of *ad-interim* relief. That therefore there is clear breach on the part of the first Defendant of *ad-interim* order dated 14 July 2025 making it liable for action under Order XXXIX, Rule 2A of the Code. He would therefore submit that Interim Application No.4679 of 2025 be made absolute in terms of the prayers therein.

12. Mr. Andhyarujina, the learned Senior Advocate for Defendant No. 1 would oppose both the Interim Applications. He would submit that the statutory scheme of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (MOFA) as well as the Apartment Ownership Act does not

¹ Writ Petition No.9179 of 2022, decided on 4 August 2025

recognize the principles of sale or conveyance of common areas in the building. That terrace of the building is for common use and occupation by all the unit purchasers and the same cannot be exclusively sold to any particular unit owner. That therefore the statutory scheme of MOFA and Apartment Ownership Act would prevail over any stipulation in the Declaration. That even otherwise, the Declaration dated 29 October 2009 does not confer ownership right on the Plaintiff in respect of Segment A terrace. Even registered Deed of Apartment dated 4 September 2018 executed in favour of the Plaintiff does not make him owner thereof. That the Declaration as well as Deed of Apartment merely make Plaintiff entitled to use the Segment A terrace and that there is nothing in both the documents to make him exclusive user thereof. This would mean that all apartment owners are entitled to make use of Segment A terrace. That Section 3 (n) of the Apartment Ownership Act recognizes 'limited common areas and facilities' either for use by certain apartments or for use by apartment to the exclusion of other apartments. That there is nothing in either Declaration or the Deed of Apartment to indicate that other apartment owners are excluded in the matter of use of Segment A terrace. That even bye-laws of the Condominium do not permit purchase/ conveyance of Segment A terrace. That Deed of Apartment is a document executed between developer and Plaintiff to which Defendant No.1 or other apartment owners are not privy. He would rely upon definition of the term 'flat' under MOFA and of Apartment Ownership Act in support of the contention that the same does not include terrace of the building.

13. Mr. Andhyarujina would further submit that Plaintiff has approached this Court with a false case of being forcibly dispossessed. He would submit that Plaintiff's representative attended the Annual General Meeting held on 21 November 2023 and consented for resolution for

handing over possession of Segment A terrace for common use by all apartment owners. That it has voluntarily handed over possession of Segment A terrace in pursuance of letter dated 23 November 2023. That there is express admission in Plaintiff's letter dated 4 February 2025. That after receipt of notice dated 23 November 2023, Plaintiff had kept Segment A terrace open for use by other apartment owners. That therefore the entire theory of forcible dispossession is patently false. That Plaintiff has secured *ad-interim* relief dated 14 July 2025 by suppressing facts and by presenting false picture before this Court. That it got dispossessed in respect of Segment A terrace on 25 November 2024. By suppressing the position that it had handed over possession thereof in November 2023 itself. That since possession was voluntarily handed over in November 2023, Plaintiff did not respond to first Defendant's notice dated 23 November 2023 and belatedly claimed rights in respect thereof a year later on 23 November 2024, that too through advocate's notice. That the whole theory of replacement of locks on 25 November 2024 is false as Plaintiff had installed electronic locks on Segment A terrace, which was accessible only through its server. That therefore mere replacement of locks by Defendant No.1 does not mean that the act of dispossession has taken place on 25 November 2024. Mr. Andhyarujina would therefore submit that no case is made out for grant of any interim injunction in favour of Plaintiff. He would accordingly pray for dismissal of Interim Application No.3624 of 2025.

14. So far as Interim Application No.4679 of 2025 is concerned, Mr. Andhyarujina submits that the *ad-interim* order dated 14 July 2025 was not continued by this Court on 28 July 2025. That Plaintiff did not seek continuation of *ad-interim* order on 28 July 2025, which was again not continued on 3 September 2025 and 10 September 2025. He would therefore submit that there was no question of restoration of possession

of Plaintiff in respect of Segment A terrace. He would accordingly pray for dismissal of Interim Application No. 4679 of 2025.

15. Rival contentions of the parties now fall for my consideration.

16. The moot issue that arises for consideration while deciding Plaintiff's entitlement for temporary injunction is whether in law Plaintiff can use Segment A terrace by virtue of its ownership in respect of Unit Nos. 1001 and 1002 to the exclusion of other apartment owners in the building. To decide this issue, it would be necessary to refer to the statutory framework of the legislations governing the sale of flats/units in a building and collective management thereof.

17. MOFA regulates the activities of construction, sale, management and transfer of flats and commercial units. Once flats/units in a building are sold, the purchasers thereof are required to form an entity for collective management of the building. The purchasers have option of forming either a cooperative society, an association of apartments or a company for collective management of the land and building. Section 10 of the MOFA imposes an obligation on the part of the Promoter to form a co-operative society or a company. The Promoter also has an option of subjecting the land and the building to the provisions of Apartment Ownership Act under Section 10(2) of MOFA. Thus once minimum specified number of flats/units in a building are sold by the Promoter and collective body in the form of a co-operative society, company or association of apartment is formed, the regulation of such collective body would then get governed by provisions of either Maharashtra Co-operative Societies Act, 1960 in respect of a cooperative society, by Companies Act, 1956/2013 in respect of company or Apartment

Ownership Act in respect of association of apartments. Since Defendant No.2/Developer has subjected the building to the provisions of Apartment Ownership Act by executing and registering Declaration dated 29 October 2009, it would be relevant to refer to the provisions of the Apartment Ownership Act.

18. The statutory scheme of Apartment Ownership Act is such that an Apartment, as defined under Section 2(a), together with undivided interest in common areas and facilities appurtenant to such apartment, constitutes a heritable and transferable immovable property under provisions of Section 4 of the Apartment Ownership Act. Every apartment owner becomes entitled to exclusive ownership and possession of his apartment in accordance with the Declaration executed and registered under Section 2 of the Apartment Ownership Act. The apartment owner is required to execute a Deed of Apartment in relation to his apartment. Thus unlike, a cooperative society, which becomes owner of land and building, an association of apartment does not become owner of the building and ownership in the land and building continues with the individual apartment owners in percentage specified in the Declaration and Deed of Apartment.

19. The Apartment Ownership Act distinctly recognizes 'common areas and facilities' and 'limited common areas and facilities' in a building governed by provisions of the Act. Section 2(f) of the Apartment Ownership Act defines the term 'common areas and facilities' as under:

“(f) “common areas and facilities”, unless otherwise provided in the Declaration or lawful amendments thereto, means—

- (1) the land on which the building is located ;
- (2) the foundations, columns, girders, beams, supports, main

walls, roofs, halls, corridors, lobbies, stairs, stair-ways, fire-escapes and entrances and exists of the building ;

(3) the basements, cellars, yards, gardens, parking areas and storage spaces ;

(4) the premises for the lodging of janitors or persons employed for the management of the property ;

(5) installations of central services, such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating ;

(6) the elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use ;

(7) such community and commercial facilities as may be provided for in the Declaration ; and

(8) all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use ;”

20. Every apartment owner becomes entitled to an undivided interest in the common areas and facilities in the percentage expressed in the Declaration under Section 6 of the Apartment Ownership Act.

21. As contradict from 'common areas and facilities', the term “limited common areas and facilities” is defined under Section 3 (n) of the Apartment Ownership Act as under:

“(n) “limited common areas and facilities” means those common areas and facilities designated in the Declaration as reserved for use of certain apartment or apartments to the exclusion of the other apartments”

22. Thus those common areas and facilities, which are designated in the Declaration as reserved for use by certain apartment or apartments to the exclusion of other apartments becomes 'limited common areas and facilities' under Section 2(n) of the Apartment Ownership Act. Section 11 of the Apartment Ownership Act provides for contents of the Declaration. Section 11 reads thus:

“11. Contents of Declaration.— (1) The Declaration shall contain the following particulars, namely :—

(a) Description of the land on which the building and improvements are or are to be located; and whether the land is freehold or leasehold [and whether any lease of the land is to be granted in accordance with the second proviso to section 2 of this Act] ;

(b) Description of the building stating the number of storeys and basements, the number of apartments and the principal materials of which it is or is to be constructed ;

(c) The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, and immediate common area to which it has access, and any other data necessary for its proper identification ;

(d) Description of the common areas and facilities ;

(e) Description of the limited common areas and facilities, if any, stating to which apartments their use is reserved ;

(f) Value of the property and of each apartment, and the percentage of undivided interest in the common areas and facilities, appertaining to each apartment and its owner for all purposes, including voting ; and a statement that the apartment and such percentage of undivided interest are not encumbered in any manner whatsoever on the date of the Declaration ;

(g) Statement of the purposes for which the building and each of the apartments are intended and restricted as to use ;

(h) The name of a person to receive service of process in the cases hereinafter provided, together with the residence or place of business of such person which shall be within the city, town or village in which the building is located ;

(i) Provision as to the [percentage of majority of votes] by the apartment owners which shall be determinative of whether to rebuild, repair, restore, or sell the property in the event of damage or destruction of all or part of the property ;

(j) Any other details in connection with the property which the person executing the Declaration may seem desirable to set forth consistent with this Act ;

(k) The method by which the Declaration may be amended, consistent with the provisions of this Act.

(2) A true copy of each of the Declaration and bye-laws and all amendments to the Declaration or the bye-laws shall be filed in the office of the competent authority.”

(emphasis added)

23. Thus, under Section 11 of the Apartment Ownership Act, every Declaration need to separately describe 'common areas and facilities' under sub section (1)(d) and 'limited common areas and facilities' together with the exact apartment for which their use is reserved under Section 11(1)(e) of the Apartment Ownership Act.

24. Thus, the scheme of Apartment Ownership Act recognizes a concept where it is lawful to designate specified areas and facilities and to reserve the same for exclusive use by certain apartment or apartments. Once limited common areas and facilities are designated in the Declaration for any particular apartment(s), the other apartment owners stand excluded from use of such limited common areas and facilities. It is therefore lawful for a developer/owner of land and building to execute a registered Declaration for the purpose of designating any particular area or facility for exclusive use by any particular apartment owner. The areas and facilities so exclusively declared and designated for use by a particular apartment owner is distinct from the common areas and facilities in which every apartment owner has undivided interest in the percentage expressed in the Declaration. Though an apartment owner for which a specified area or facility is exclusively designated may not be the owner thereof, but he has exclusive right to use the same and other apartment owners do not have right to claim usage thereof.

25. Having examined the statutory scheme of MOFA and Apartment Ownership Act, it is now necessary to consider the covenants of the Declaration made under Section 2 of Apartment Ownership Act on 29 October 2009. The relevant clauses of the Declaration are as under:

“(C)(a)(x) There are two commercial units on the 10th upper floor namely, Unit No. 1001 (with appurtenant Pocket-terrace abutting thereon) and Unit No. 1002 each separately shown bounded red on Plan D11 hereto annexed.

(C)(a)(xi) There is an open terrace at the 11th floor level. Segment A of this open terrace shaded blue on the plan D12 is appurtenant to the Unit Nos. 1001 and/or 1002 located on the 10th upper floor. Segment B shown hatched red on plan D12 has utilities such as Chiller-room and platforms, pumps etc. Segment B is part of the Common Areas and facilities.

(B) GENERAL / COMMON AREAS AND FACILITIES

(i)

(ii)

(iii)

(iv)

(v) Segment "B" of the open terrace at the top floor (i.e. the 11th upper floor level of the building (shown bounded Blue on the said Plan D12) shall be used for common purposes like putting up antennae and other similar purposes by the persons owning Units in the said building and for the installation of the utilities and the maintenance thereof but not for putting up any construction or as a play area or for pounding or any such objectionable use.

(D) SPECIAL AMENITIES AND FACILITIES

(i) As specified in clause (B)(v) above, Segment B of the terrace at the 11th floor level of the building, is a Common Area and Facility.

(ii) The Grantor is, and shall be, entitled to designate Segment A of the terrace at the 11th floor level of the building (which is shown bounded Red on the abovesaid Plan D12) as appurtenant to the Unit Nos. 1001 and No. 1002 located on the 10th upper floor of the said building as a Special amenity / facility to such Unit/s. The Owner / Occupant of such Unit/s shall

(A) be entitled to use this Segment A of such terrace for any purposes whatsoever and howsoever permissible by law and/or not prohibited by law.

(B) be liable at its / their cost, to maintain, repair, renovate (including re-water proof and re-surface) the rea of such Segment A of the terrace.

(C) The Owner for the time being of the Unit/s to which such Segment A of the terrace is made appurtenant, shall pay to the Condominium, a sum of Rs.5,000/- (Rupees Five Thousand) per year as the yearly contribution pertaining to the use of the Segment A of such terrace.

(E)The provisions of clause D above are essential, vital and integral parts of this Declaration and a condition binding on the Owners and Occupants (present and future) of all the Units of Supreme Chambers. Injunctive relief will be available against any person violating and/or objecting to the above provisions and/or objecting to or causing hindrance in the implementation thereof.”

26. Thus, perusal of the Declaration *prima facie* shows that Segment A terrace has not been included in common areas and facilities in clause B of the Declaration, where only Segment B terrace has been included. Thus, Segment B terrace is a part of common areas and facilities. As contradistinct from Segment B terrace, the Declaration includes Segment A terrace as being designated for use by owner/occupant of Unit Nos.1001 and 1002. Clause D(ii) of the declaration not only designates Segment A terrace as appurtenant to Unit Nos.1001 and 1002, but makes the owners/occupants thereof (i) entitled to use Segment A terrace for lawful purpose, (ii) liable to maintain, repair and renovate Segment A terrace, and (iii) pay to the Condominium a sum of Rs.5,000/- per year for use of Segment A terrace. Clause E of the Declaration makes the provisions of clause-D as essential, vital and integral part of the Declaration, which would remain binding on owners and occupants (present and future) of all units of the building. The Declaration thus designates Segment A terrace as ‘limited common areas and facilities’ within the meaning of Section 3(n) and 11 (1) (e) of the Apartment Ownership Act. *Prima facie* therefore, Plaintiff is entitled to exclusive use of Segment A terrace to the exclusion of other apartment owners in the building.

27. Even the Bye-laws of the first Defendant-Association contains bye-law No.48 (v) as under:

“48. MAINTENANCE AND REPAIR:

- (v) Segment A of the terrace at the 11th floor level (appurtenant to Commercial Unit No. 1001 and 1002) shall be kept un-built upon but may be used for any purpose permitted / not prohibited by law. It shall be the obligation of the Owner of the Commercial Unit/s, to which such area of Segment A, is appurtenant, at his / its own cost, to maintain and repair the same, including the water-proofing thereof.”

28. Thus, even under the Bye-laws, Segment A terrace has been designated as appurtenant to Unit Nos.1001 and 1002. The owner thereof is made liable to maintain and repair the same at its own costs including the activity of water proofing. If other apartment owners had any right to use Segment A terrace, the Bye-laws would not have made owner of Unit Nos.1001 and 1002 exclusively liable for maintaining and repairing Segment A terrace.

29. The Deed of Apartment executed in favour of Plaintiff on 4 September 2018 makes it further clear that Segment A terrace is designated for Plaintiff's exclusive use. The relevant stipulations in the Deed of Apartment read thus:

“(f) The Vendor represents and confirms to the Purchaser that pursuant to D (ii) of the **Fifth** paragraph of the Declaration of the Vendor is in exclusive use possession of **Segment A** of the terrace, as appurtenant to the Commercial Units as a Special Amenity / Facility to the Commercial units and the Vendor is enjoying its rights and complying with its obligations as the Owner of the Commercial Units to whom Segment A of the terrace is designated as being appurtenant thereto.

(m) The Parties hereto confirm that the Vendor agreed to sell and the Purchaser agreed to purchase the said 2 Commercial Units (No.1001 admeasuring 505.31 sq. mtrs. carpet area (with pocket terrace admeasuring 185.81 sq. mtrs. carpet area) and Unit No.1002 admeasuring 601.53 sq. mtrs.) together with the 25 appurtenant car-parking spaces (13 (Thirteen) bearing Nos. 35 to 43 and 93 to 96 in the Lower Basement and 12 (Twelve) bearing Nos. 29 to 33 and 89 to 95 in the Upper Basement) located in the building, (along with, and as appurtenant thereto, the Segment Terrace A admeasuring

765.51 sq.mtrs. carpet area, being the Special Amenity and Facility, and undivided 7.28% percentage in the Common Areas and Facilities as specified in Statement P-1 of the Declaration), at the lump sum price /consideration of Rs.55,00,00,000/-Rupees Fifty-five Crore).;

(n) The Purchaser has by now paid to the Vendor in full the aforesaid agreed lump sum price / consideration of Rs.55,00,00,000/- (Rupees Fifty-five Crore) subject to tax deduction at source ("**TDS**") in accordance with the provisions of the Income Tax Act, 1961 and the Vendor has this day handed over to the Purchaser vacant possession of the aforesaid Commercial Unit Nos. 1001 (with pocket terrace) and 1002 together with the 25 car-parking spaces appurtenant thereto and also all rights to the Segment Terrace A, in accordance with the Declaration;"

“ ALONG WITH and as appurtenant thereto the Segment terrace A admeasuring 765.51 sq. mtrs. carpet area, being the Special Amenity and Facility shown coloured in green on the Plan “D”.

30. Thus, perusal of the stipulations in the Declaration dated 29 October 2009 and Deed of Apartment dated 4 September 2018 together with Bye-laws of the Condominium leaves no manner of doubt that Segment A terrace has been designated as ‘limited common areas and facilities’ within the meaning of Section 3(n) and 11(e) of the Apartment Ownership Act for exclusive use by owner of Unit Nos.1001 and 1002. Plaintiff thus is entitled to exclusive use and occupation of Segment A terrace.

31. Also of relevance is the fact that the Declaration has been executed and registered by second defendant developer on 29 October 2009. All the unit purchasers have purchased their respective units/apartments with their eyes wide open to the covenants of clauses (D) and (E) of the Declaration. They have thus purchased their units/apartments with full knowledge of the fact that Segment A terrace is designated for exclusive use by owners of Unit Nos.1001 and 1002. From 2018 to 2023, they never questioned Plaintiff’s entitlement to exclusively use and occupy the

Segment A terrace. They cannot now be permitted to take a *volte face* and claim right of use of the Segment A terrace.

32. Plaintiff's right to exclusively use and occupy Segment A terrace thus flows not just from the covenants of the Declaration, but also from provisions of Apartment Ownership Act. In this regard reliance by Plaintiff on judgment of this Court in ***Sachin Malpani*** (supra) is apposite in which it is held in paragraph 13 as under:

"13. It is seen that in the Annual General Meeting of the condominium held on 31.07.2022 pursuant to the order passed by the learned Co-operative Court, the condominium has issued maintenance bills on the basis of the percentage share of each apartment owner with respect to the common area and facilities thereby giving effect to the impugned order. The Deed of Declaration being a registered instrument needs to be followed in view of the statutory provisions of the Apartment Act applicable to the condominium apartment purchasers. What is stated in the Deed of Declaration if not agreeable to the Members of the condominium can only be altered and modified by way of another registered instrument."

(emphasis added)

33. Therefore, so long as the Declaration dated 29 October 2009 stands, Plaintiff's statutory right to exclusively use and occupy Segment A terrace cannot be defeated.

34. Once it is *prima facie* held that Plaintiff is entitled to exclusive use and occupation of Segment A terrace, the controversy about the exact date of dispossession of the Plaintiff becomes irrelevant. There is no dispute to the position that the Plaintiff has been dispossessed in respect of Segment A terrace. While Defendant No.1 contends that the Plaintiff voluntarily handed over possession of Segment A terrace on 23 November 2023, it is Plaintiff's contention that there is forcible dispossession by replacement of locks by Defendant No.1 on 25 November 2024. In support of its contention of voluntary handing

over of Segment-A Terrace, Defendant No, 1 has relied on following statements in Plaintiff's advocate's letter dated 4 February 2025:

“(e) The issue concerning use of and access to the Segment A Terrace first arose in November 2023. The Condominium had, by its notice dated 23rd November 2023, objected to the Segment A Terrace being locked by our client. **Following this notice, our client, in the interest of maintaining cordiality in the affairs of the Condominium, thereafter kept the Segment A Terrace open.** Our client did not, as you now wrongfully seek to contend, hand over the keys or possession of the Segment A Terrace to your client. Our client also did not, at any rate, give up its rights to the Segment A Terrace.”

(emphasis added)

Plaintiff contends that mere keeping the terrace open did not mean that the possession thereof was handed over to Defendant No. 1 and that Plaintiff's dispossession occurred, when Defendant No. 1 replaced the locks on 25 November 2024.

35. In my view however it is not necessary to deal with the factual controversy about the exact date of dispossession of Plaintiff in respect of Segment A terrace. Whether Plaintiff is dispossessed in November 2023 or November 2024 becomes irrelevant once it is *prima facie* held that Plaintiff is entitled to exclusive use and occupation of Segment A terrace. The other apartment owners of the building are not entitled to make use of Segment A terrace, which does not form part of common areas and facilities within the meaning of Section 3(f) of the Apartment Ownership Act. Segment A terrace is 'limited common areas and facilities' within the meaning of Section 3(n) and 11 (e) of the Act. Therefore, irrespective of date and manner of dispossession of Plaintiff, the same is *prima facie* illegal and unsustainable.

36. Plaintiff has thus made out a *prima facie* case for grant of temporary injunction. Balance of convenience is heavily tilted in favour

of the Plaintiff as Plaintiff has admittedly possessed Segment A terrace to the exclusion of other apartment owners of the Building from the date of purchase of unit Nos.1001 and 1002 (4 September 2018). It is for the first time on 21 November 2023 that Defendant No.1 started asserting rights in respect of Segment A terrace. Correspondence on record clearly indicates that Defendant No.1 always recognized exclusive right of Plaintiff to use and occupy Segment A terrace. Thus, the balance of convenience clearly lies in favour of the Plaintiff and against Defendant No.1. Plaintiff would suffer irreparable loss if temporary injunction is not granted in its favour. The Suit is likely to take some time for its final adjudication. Plaintiff cannot be prevented from use and occupation of Segment A terrace after its statutory right is *prima facie* proved under the provisions of Apartment Ownership Act.

37. In my view therefore, a perfect case is made out by Plaintiff for grant of temporary injunction.

38. It appears that the Defendant No. 1 association had undertaken the work of waterproofing at the Segment A terrace in pursuance of the AGM Resolution dated 27 November 2024. If the same is incomplete, the same needs to be completed by the Plaintiff, who is made responsible under the Declaration as well as Bye-laws to maintain, repair the same including the work of waterproofing.

39. Coming to the Interim Application No.4679 of 2025 in my view, it is not necessary to decide prayers made by the Plaintiff alleging breach of *ad-interim* order dated 14 July 2025 since Interim Application No.3624 of 2025 is being allowed. It does appear that Plaintiff did not seek continuation of *ad-interim* order dated 14 July 2025 on and after 28 July

2025. Be that as it may. Since this Court is directing restoration of possession of Segment A terrace in favour of the Plaintiff, it is not necessary to decide the allegation of breach of *ad-interim* order dated 14 July 2025.

40. I accordingly proceed to pass the following order:

- i) Interim Application No.3624 of 2025 is made absolute in terms of prayer clauses (a), (b), (c) and (d) which read thus:
 - (a) That this Hon'ble Court be pleased to issue a temporary mandatory order and injunction ordering and directing the Defendant No. 1 to forthwith restore the Plaintiff's exclusive possession of the Segment A Terrace to the Plaintiff, along with the set of the keys to the locks installed on the main door of the Segment A Terrace;
 - (b) That this Hon'ble Court be pleased to issue a temporary order and injunction restraining and prohibiting the Defendant No. 1, by itself or by its servants and/or agents and/or successors, from in any manner whatsoever, directly and/or indirectly, obstructing the Plaintiff's access to the Segment A Terrace and / or the exclusive possession, use and occupation of the Segment A Terrace;
 - (c) That this Hon'ble Court be pleased to issue a temporary order and injunction restraining and prohibiting the Defendant No. 1, by itself or by its servants and/or agents and/or successors, from in any manner selling, alienating, disposing of or otherwise dealing with, or encumbering or inducting into, or creating any third party rights in or entering upon the Segment A Terrace or any part thereof;
 - (d) That this Hon'ble Court be pleased to issue a temporary order and injunction restraining and prohibiting the Defendant No. 1, by itself or by its servants and/or agents and/or successors, from carrying out any repairs, maintenance or construction work of any nature whatsoever or otherwise changing the condition of the Segment A Terrace;"
- ii) Plaintiff shall however complete the work of waterproofing at Segment A terrace, if left incomplete and shall also repair and maintain the same at its costs.

- iii) Interim Application No.4679 of 2025 is disposed of without granting the prayers made therein in the facts and circumstances of the case.

41. With the above directions, both the Interim Applications are disposed of.

(SANDEEP V. MARNE, J.)

After the order is pronounced, the learned counsel appearing for Defendant No.1 prays for stay of the order for a period of four weeks. The request is opposed by the learned counsel appearing for the Plaintiff. Considering the reasons adopted while passing the order, I am not inclined to grant stay to the order. The request is accordingly rejected.

(SANDEEP V. MARNE, J.)

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by
SUDARSHAN
RAJALINGAM
KATKAM
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