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* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **CONT.CAS(C) 647/2024**

VISHWAJEET SINGH AND ORS .....Petitioners

Through: Ms. Maninder Acharya, Sr. Adv. with Ms. Shreya Garg, Mr. Sanjeev Kumar Singh, Ms. Suman Gupta and Mr. Kumar Rajesh Singh, Advocates

versus

SH SUBHASISH PANDA .....Respondent

Through: Ms. Deepika V. Marwaha, Sr. Adv. with Mr. Sanjay Katyal, Standing Counsel, Mr. Nakul Ahuja, Panel Counsel, Mr. Tanishq Sharma, Mr. Akshay Pratap Singh, Advocates for DDA
Mr. Anurag Ahluwalia, CGSC with Mr. Hridyanshi Sharma, Advocate for UOI
Ms. Puja Kalra, Standing Counsel with Mr. Virendra Singh, Advocate for MCD

\+ W.P.(C) 14960/2023 & CM APPL. 59755/2023, CM APPL. 67355/2023, CM APPL. 22037/2024

VISHWAJEET SINGH AND ORS .....Petitioners

Through: Ms. Maninder Acharya, Sr. Adv. with Ms. Shreya Garg, Mr. Sanjeev Kumar Singh, Ms. Suman Gupta, and Mr. Kumar Rajesh Singh, Advocates

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versus

UNION OF INDIA AND ORS .....Respondents

Through: Ms. Deepika V. Marwaha, Sr. Adv. with Mr. Sanjay Katyal, Standing Counsel, Mr. Nakul Ahuja, Panel Counsel, Mr. Tanishq Sharma, Mr. Akshay Pratap Singh, Advocates for DDA
Mr. Bhagvan Swarup Shukla, CGSC with Mr. Sarvan Kumar, Advocate for UOI
Ms. Puja Kalra, Standing Counsel with Mr. Virendra Singh, Advocate for MCD
Mr. Sachin Jain, Advocate and Mr. Ajay Kumar Agarwal, Advocate for R-5

\+ W.P.(C) 3760/2024 & CM APPL. 15454/2024, CM APPL. 42183/2024, CM APPL. 45820/2024, CM APPL. 45821/2024

MAN MOHAN SINGH ATTRI .....Petitioner

Through: Mr. Sachin Jain, Advocate and Mr. Ajay Kumar Agarwal, Adv. with Mr. Man Mohan Singh Atri, Petitioner in person

versus

UNION OF INDIA & ANR. .....Respondents

Through: Ms. Deepika V. Marwaha, Sr. Adv. with Mr. Sanjay Katyal, Standing Counsel, Mr. Nakul Ahuja, Panel

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Counsel, Mr. Tanishq Sharma, Mr. Akshay Pratap Singh, Advocates for DDA
Mr. Anurag Ahluwalia, CGSC with Mr. Hridyanshi Sharma, Advocate for R-1-UOI
Ms. Puja Kalra, Standing Counsel with Mr. Virendra Singh, Advocate for MCD
Mr. Udit Malik ASC (Civil) with Mr. Vishal Chanda, Advocate for GNCTD

\+ W.P.(C) 6850/2024 & CM APPL. 28533/2024, CM APPL. 28534/2024

SHAKUNTALA DEVI & ORS. .....Petitioners

Through: Mr. Pankaj Kumar, Mr. Sandeep Kumar Singh, Mr. Shubhendu Saxena, Mr. Anuvrat, Advocates

versus

UNION OF INDIA & ORS. .....Respondents

Through: Ms. Deepika V. Marwaha, Sr. Adv. with Mr. Sanjay Katyal, Standing Counsel, Mr. Nakul Ahuja, Panel Counsel, Mr. Tanishq Sharma, Mr. Akshay Pratap Singh, Advocates for DDA
Ms. Pratima N. Lakra, CGSC with Ms. Yashika Garg, Ms. Pinky Pawar, Mr. Chandan Prajapati, Advocates for UOI
Ms. Puja Kalra, Standing Counsel with Mr. Virendra Singh, Advocate

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for MCD (M:9312839323)

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T
23.12.2024

MINI PUSHKARNA, J:

PROLOGUE:

1. The present cases are one of their kinds that bring to the fore shocking facts regarding the apathy displayed by the Delhi Development Authority ("DDA") in getting residential towers constructed under the DDA Housing Scheme, which started displaying signs of deterioration within a short span of their disposal and occupation by the residents. Such delinquency and gross negligence by the DDA is unpardonable, as the same has put lives of hundreds of residents therein, to great risk and danger. The residential towers constructed by the DDA have been found to be unfit for habitation by structural experts upon detailed examination and investigation, and have been declared as dangerous. Despite extensive repair work, the degeneration and dilapidation of the structures could not be prevented on account of the poor quality of construction.

2. The facts on record establish structural defects and flaws in the construction of the apartments in question, making them structurally unsafe. Wide and deep cracks have developed in the beams, columns and pillars of the structures. There is corrosion and rusting of the steel bars, with deterioration in the reinforced concrete with heavy corrosion. Incidents of falling of interior ceilings of roofs of the flats, and falling of large lumps of exterior plaster, have been reported continuously. The avid object of Right

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to Life and Right to Live with Dignity, as embodied in Article 21 of the Constitution of India, has been infracted with impunity, on account of the callousness and dereliction of the DDA.

3. The present cases accentuate the disregard shown by the DDA of its welfare purposes, for which it was established for the development of Delhi. The facts on record underscore the laxity by the DDA in discharging its public functions enshrined under the statute, wherein, ordinary citizens have been put in a perilous situation, on account of substandard and inferior construction of residential towers by DDA.

4. Since the residential towers have been declared as unfit for habitation and dangerous, the present cases deal with the various issues *inter-alia* regarding the demolition of the residential towers, their reconstruction and rehabilitation of the residents in the interregnum.

INTRODUCTION:

5. The present petitions pertain to Signature View Apartments, Mukherjee Nagar, New Delhi, a residential complex developed by the DDA over a plot of land measuring 2.83 hectares ("ha") of land.

5.1 *W.P.(C) 14960/2023* has been filed seeking demolition and reconstruction of the flats and blocks (towers) on account of the dilapidated condition of the flats. It is further prayed that the authority, i.e. DDA, not be allowed to construct any extra or additional flats on the existing land.

5.2 *W.P.(C) 6850/2024*, has been filed challenging Clause VII and X of the Rehabilitation Offer Letter dated 26th June, 2023, to the extent that evacuation and demolition will only be conducted if all the residents provide a No Objection Certificate ("NOC") from a bank/financial institution regarding encumbrances on any of the property, and that rent/compensation

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for alternate accommodation shall only be given to the residents only after all residents hand over the possession of the flats. The same is sought on the ground that the conditions in the said Clauses are illegal and arbitrary, and 70% of flat owners, i.e. 250 out of 336 flats, have already given their consent.

5.3 *W.P.(C) 3760/2024* has been filed by one resident of the Signature View Apartments, thereby challenging the authority of the DDA to carry out the demolition and re-construction of the flats in question, and praying for restraining the respondents from demolishing the Signature View Apartments, without following the due process of law.

5.4 *CONT.CAS(C) 647/2024* has been filed alleging non-compliance of the order dated 20th November, 2023, passed in *W.P.(C) 14960/2023*, wherein, it was directed that no coercive action shall be taken against the petitioners. Since, DDA had issued a bid, inviting applications from contractors for razing/demolition of 336 flats of the society in newspapers despite operation of the interim order, the contempt petition came to be filed.

FACTUAL MATRIX:

6. Facts of the case, as canvassed in *W.P.(C) 14960/2023*, are as follows:-

6.1 Signature View Apartments is part of a multi-storey housing scheme of 2010 by DDA comprising of 336 flats, out of which, 224 flats are part of Higher Income Group ("HIG") category and the remaining 112 flats are of the Middle Income Group ("MIG") category. It comprises of 12 blocks, namely blocks A to L. Each block consists of stilt plus 10 floors, except blocks F and G, which consist of stilt plus 6 floors. Each floor has three

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flats, of which two are HIG and one is MIG.

6.2 The housing scheme is divided into three groups. Group I comprising of 150 flats located in blocks H, I, J, K and L, Group II comprising of 96 flats located in blocks D, E, F and G and Group III comprising of 90 flats located in blocks A, B and C. The construction of all the three groups, were completed in/around September/October, 2010.

6.3 The flats were allotted through DDA housing draw of 2010, 2014 and 2017. Last allotment was done in October, 2019. As per the housing scheme of 2010 and terms and conditions of Conveyance Deed, the respondent no. 2 is bound to maintain not only the building constructions comprising of 12 blocks, but also the streets/lanes, roads, parks, lifts, drains, gate valves, roof top gates, marbles and granites fixed on lift walls, overhead tanks, drain pipes etc. for 30 years, as the price of the flats included the maintenance charges for next 30 years. However, DDA has not been discharging their duty in proper manner.

6.4 After 2-3 years of the first allotment of the flats in the year 2010 and possession thereof in the year 2012, the grit wash/plasters of the exterior walls of the buildings of most of the blocks/towers started falling, and pillars and columns had developed cracks. By 2013-2014, the exterior plasters/grit wash of many buildings had fallen, leaving the multi-storey buildings in bare and ugly conditions. Even the interior ceilings of roof of flats started falling in the year 2012.

6.5 The building materials used in construction of the flats are of sub-standard and spurious quality. Even the fixtures, like water pipes, fittings and fixtures, are of poor and sub-standard quality and the works done were not upto the set standard mark. Grit wash and large lumps of concrete started

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falling 2-3 years after the completion of structures/buildings. These incidents of falling of concrete lumps, ceilings and grit wash have continued intermittently and was informed to DDA vide letter dated 10th January, 2014.

6.6 The Resident Welfare Association ("RWA") brought these incidents to the knowledge of the DDA and lodged a complaint dated 10th February, 2014 against the officials of the DDA with the Police Station, Mukherjee Nagar. The residents also made representations dated 11th February, 2014 before the Vice-Chairman, DDA as well as to Municipal Corporation of Delhi ("MCD"), requesting them to get the repair works done in damaged flats and garage, and to get the entire complex inspected by a suitable agency.

6.7 A meeting was convened on 04th April, 2014 between the residents and DDA regarding the structural issues, however, no action for repairs was taken thereafter. Pillars of some of the buildings have developed wide deep cracks and the steel bars have become rusted. Due to corrosion and rusting of steel bars, the cracks have developed in the pillars of all the buildings, which are basic to the strength of the structure of 10 storey buildings. The pillars are not in a condition or have strength to take load of and support the 10 storey buildings. The DDA has compromised with the quality of building materials as well as structural constructions of the multi-storey buildings at every stage.

6.8 There is a persistent threat to life and well-beings of the residents of the society. The residents have paid their lifetime savings as hefty price of the flat to respondent no. 2, and in return they have bought threat to their life.

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6.9 Residents of the society have made several complaints and representations to the DDA individually, as well through the RWA. Repair work is undertaken, only after 2-3 months of the complaint and there is inordinate delay in the execution and completion of the repair work. During the repair work, the residents have to vacate the flat and shift somewhere else in another accommodation, for which the residents have to pay huge amount of rent due to repair works taking more than 7-8 months and on occasion a year.

6.10 Upon complaints and repeated reminders by the residents, the DDA engaged National Council for Cement and Building Materials ("NCCBM") to undertake the work for assessment of quality of the construction material. The NCCBM carried out its investigations by collecting samples and visual inspection on different dates in each tower/block and submitted its report in 2015. The report of NCCBM speaks in volume about the quality of construction of the flats and buildings of the apartment.

6.11 Several other instances occurred wherein ceilings/roofs along with the grit continued to fall and the same was brought to the knowledge of DDA vide letter dated 10th August, 2015.

6.12 Subsequently, owing to the complaints of the residents, respondent no. 2 carried out an inspection of the buildings and flats, which fact is indicated by the inspection note dated 24th August, 2015, and directions were issued for maintenance and repair works. Pursuant thereto, repairs were started. However, the repair works were only cosmetic in nature, as the structure of buildings is fundamentally weak, as sub-standard materials were used at the time of construction. Wide and deep cracks started to be palpably visible in beams and pillars of the structures. The officials of the DDA have

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remained insensitive and indifferent to the problems/issues of the residents. The residents have been living under the constant threat of life and security.

6.13 DDA again approached NCCBM regarding the issue of falling of plaster and lumps of concrete. Thereafter, upon inspection, the NCCBM issued the Preliminary Report on 18th February, 2019 and the Final Report on 8th June 2022.

6.14 There are numerous flats where incidents of falling of roof/ceiling have taken place, towards which another letter dated 18th June, 2019 was sent to the DDA, after which repair works were again undertaken. However, despite repair work, incidents of falling of roof/ceiling kept on taking place.

6.15 A meeting was conducted on 02nd December, 2021 between the residents, office bearers of RWA and DDA, after which direction was issued for expediting the engagement of Indian Institute of Technology ("IIT"), Delhi.

6.16 Structural audit of the buildings was done by the DDA through Shri Ram Institute of Industrial Research ("Shri Ram Institute") and IIT, Delhi. The report from IIT, Delhi was submitted by Professor Shashank Bishnoi on 19th December, 2022 and procured by the petitioners by way of response dated 09th January, 2023 to the RTI application dated 21st December, 2022. The conclusion of the report indicated very clearly that the structures cannot be repaired and the only way out is to demolish them and after demolition, new structures can be built.

6.17 Thus, a General Body Meeting ("GBM") of the residents/members of the petitioner's society was held on 15th January, 2023, wherein, it was decided that re-construction of all the flats needs to be done.

6.18 Several meetings dated 30th January, 2023, 16th March, 2023 and 16th

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May, 2023, were held between the representatives of the residents and the Vice-Chairman of DDA regarding rehabilitation. However, the rehabilitation offers given by the DDA were not acceptable to most of the residents, including, the petitioners.

6.19 In the Final Proposal dated 26th June, 2023, the respondent no. 2 has proposed to construct 168 additional flats by using the additional Floor Area Ratio ("FAR"), which belongs to the petitioners and other co-residents. The petitioners are not only the owners of flats, but also owners of land, as the petitioners have paid land cost to the DDA as per the Conveyance Deed.

6.20 The petitioners and other co-residents are not being paid even appropriate rent as per prevailing rent in well located society or Central Public Works Department ("CPWD") norms, so as to enable them to relocate in an accommodation of similar size and specification.

6.21 Thus, the present writ petition has been filed.

6.22 When the present matter was listed for hearing on 20th November, 2023, it was directed that no coercive action shall be taken against the petitioners till the next date of hearing. Subsequently, on 14th March, 2024, this Court directed the Union of India to carry out inspection of the buildings in question and to specify the status of buildings as regards its habitability, structural safety and course of action with regard thereto, while issuing notice in the connected matter, being *W.P.(C) 3760/2024*.

6.23 The DDA issued a Notice Inviting Tender ("NIT") dated 15th March, 2024, inviting bid applications from contractors for demolition of the 336 flats of the Signature View Apartments, which was published in the newspapers on 28th March, 2024. Thus, contempt petition being *CONT.CAS(C) 647/2024*, has been filed.

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7. Facts of the case, as canvassed in *W.P.(C) 6850/2024*, are as follows:-

7.1 The petitioners, being residents of the Signature View Apartments, are aggrieved by the Final Rehabilitation Offer proposal dated 26th June, 2023 of DDA, for their rehabilitation.

7.2 The RWA met with DDA on 07th February, 2023 and made first quantified proposal on rehabilitation options. The RWA received first concrete Rehabilitation Proposal from the DDA on 10th February, 2023. However, the said Rehabilitation Proposal of the DDA was not acceptable to the residents. Subsequently, the Vice-Chairman, DDA called a meeting with RWA to discuss its demands, on 16th March, 2023. Pursuant thereto, the DDA gave another Rehabilitation Plan. The RWA requested to make certain modifications in the said Rehabilitation Plan.

7.3 Final Rehabilitation Offer of the DDA was supplied to the RWA vide letter dated 26th June, 2023. The RWA raised certain issues as regards the Clause regarding all flats to be vacated before payment of rent for alternate accommodation to the residents, by the DDA. The RWA highlighted the urgent action needed to ensure immediate payment of rent to enable safe evacuation of the residents.

7.4 Thus, being aggrieved by the Final Rehabilitation Offer dated 26th June, 2023, the present writ petition has been filed.

8. Facts of the case, as canvassed in *W.P.(C) 3760/2024*, are as follows:-

8.1 Petitioner and his family members are *bona fide* residents of the housing society, *viz.* Signature View Apartments.

8.2 The petitioner had sought his impleadment and got impleaded as respondent no. 5 in *W.P.(C) 14960/2023*, vide order dated 23rd January, 2024. However, the present petition has been filed by the petitioner in his

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substantive rights, as the petitioners in *W.P.(C) 14960/2023*, have been working towards only one end, i.e., demolition of the flats in question.

8.3 The flats in question were sold by the DDA. For this purpose, the DDA issued brochures for sale of the flats in 2010, under the scheme DDA Housing Scheme, 2010. As per the said brochure, the DDA collected amount for maintenance of common areas and it was stipulated that DDA would provide maintenance of common areas for 30 years. The cost on account has been added as one time maintenance cost @ 12% and @15% of construction cost, in case of flats without lifts/with lifts, respectively.

8.4 The flats were sold on free hold basis, for which free hold charges were collected. Demand notice for collection of cost of the flats shows that the cost of the land and cost of construction were separately collected for each flat and separate maintenance charges @15% of cost of flats, were collected.

8.5 DDA issued a notice dated 06th May, 2019, on the subject of "General Principles of Maintenance of DDA Flats", as per which, the individual flat owners were fully responsible for all internal maintenance of their flats, after they take over the possession. Thus, DDA was not responsible for internal maintenance of the flats.

8.6 Some of the owners/buyers/purchasers of the flats have renovated their flats with good quality of Plaster of Paris ("POP"), using iron mesh, which is rust proof, strong and having long life. The iron mesh can withstand the weight of POP and the attachments. These false ceilings made with iron mesh and good quality of POP etc., have not fallen.

8.7 Signature View Apartments are the only apartments constructed by any government agency or private builders, which are earthquake proof in

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entire National Capital Region. From the year 2010 to the year 2024, i.e., over the period of 14 years, as many as tens of earthquakes have come, but there is no effect of the earthquake on any of the 12 towers.

8.8 Demolition and reconstruction is not in the domain of the DDA in case of dangerous building. Moreover, the Parliament of India has passed an Act to provide for the development of Delhi according to Plan, and for matters ancillary thereto, and passed the Delhi Development Act, 1957 ("DDA Act"). The Parliament has not given any power to the DDA to reconstruct any building, apartments, flats, etc. Therefore, the DDA cannot manoeuvre and reconstruct the flats of Signature View Apartments.

8.9 Some of the members of the RWA have created an atmosphere of terror, putting fear in the minds of the residents/owners, so that they may sell their flats at a throw away price. From January, 2023 to till date, it is learnt that about 25 flats have been sold by the residents at a throw away price.

8.10 The RWA is a voluntary association registered on 16th January, 2014 under the Society Registration Act, 1860 and not as a statutory association, as envisaged under the Delhi Apartment Ownership Act, 1986 ("Delhi Apartment Act"). The main objective of the association, as per its constitution, is to achieve the welfare of the members of the association. The RWA, therefore, does not have any competence to represent or bind all 336 stakeholders, including, the petitioner, in their decision to demolish the free hold property of a private individual.

8.11 The DDA has collected amount to the tune of ₹21 crores as maintenance charges from the owner/purchaser/buyers of the flats. The maintenance charges were collected @15% of the cost of the construction of flats. The DDA published in its brochures that it would provide maintenance

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of common areas for 30 years as per Schedule. The DDA has not performed any duties for the maintenance of common areas, till date.

8.12 Work of detailed testing was awarded to Shri Ram Institute. However, its report is not reliable, as the team of Shri Ram Institute did not observe and follow the provisions stipulated in Manual of Collection of Samples from beams and pillars of the towers. There is likelihood that these samples collected by Shri Ram Institute can be tampered/ changed by a material, which is poor in quality. Therefore, the investigation made on the basis of samples does not appear to be reliable. Further, Shri Ram Institute is not on the panel of the DDA.

8.13 Vide Circular dated 27th January, 2023, Vice-Chairman, DDA formed a Committee, to visit the Signature View Apartments. Upon their first visit, the residents expressed opinion that the buildings in the flats were good and strong enough, and did not require demolition and reconstruction. All the 12 towers/blocks have withstood the after-effects of earthquakes and other calamities for all these years.

8.14 The MCD issued order dated 18th December, 2023 under Sections 348 and 349 of the Delhi Municipal Corporation ("DMC") Act, 1957, from the Office of Executive Engineer (Maintenance)-I, Civil Lines Zone. The said notice issued by MCD is bad in law and due process has not been followed. The Commissioner of the MCD has not undertaken any due diligence before making any order under Sections 348 and 349 of the DMC Act. The Commissioner/his delegate, has apparently failed to record their subjective satisfaction with respect to the condition of the building to be in a ruinous condition or is likely to fall or in any way dangerous to any person. The impugned notice issued by the MCD, is based merely upon the information

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received from the DDA. The information given by the DDA cannot supplant the statutory duties and function of the MCD, to record its own satisfaction under the DMC Act.

8.15 Thus, by way of the present petition, it is prayed that directions should be issued to the DDA to carry out the repair works as envisaged in the letter dated 06th January, 2023 issued by the DDA. The petitioner is also seeking quashing of the Minutes of the Meetings dated 17th May, 2023 and 04th August, 2023 pursuant to which, decision to demolish/reconstruct Signature View Apartments, was taken.

8.16 Thus, the present petition has been filed.

Submissions of the Petitioners:

9. On behalf of the petitioners in *W.P.(C) 14960/2023*, following submissions have been made:

9.1 On account of acts of corruption and mal-administration of the DDA and the MCD in construction of multi-storey buildings, with substandard building materials, the life of the petitioners and other residents of the petitioner-society, has been put to serious threat. Cracks in pillars have developed, and there are incidents of roofs/ceilings of house/flats falling, on account of which, the life and security of the petitioners and other residents has been put at peril, in violation of fundamental rights of the residents, as enshrined in Article 21 of the Constitution of India.

9.2 The DDA has illegally and unlawfully claimed right over the available FAR, which belongs to the petitioners, by virtue of conveyance deed and other applicable laws in force. The DDA has taken arbitrary and unreasonable decision for using the available FAR and constructing additional number of flats, which shall completely spoil the environment and

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the natural boundaries, including, air and open space.

9.3 The petitioners have no faith in the DDA and their integrity and the new construction should be done by an institution/construction company of repute. The new construction works must be under the supervision and scrutiny of the consultant of IIT and engaged agencies must examine the construction quality at every stage. Flats should be handed over to the residents only after obtaining NOC from the IIT Consultant and/or engaged agencies.

9.4 The DDA has not maintained the buildings, roads, drains, water pipelines, lifts, marbles, etc. and have misappropriated the amount of ₹ 21 crores taken by them from the petitioners and other co-residents, against maintenance charges for 30 years. The same amounts to violation of the legal rights and interests of the petitioners.

9.5 The flats allotted to the petitioners by the DDA were not in liveable condition. The petitioners and other co-residents have incurred expenses towards renovation and interior works, to which the petitioners are entitled to be compensated.

9.6 Petitioners are entitled to rental amount as per the prevailing market rate in a well gated society or as per CPWD norms, which has been denied by the DDA in an arbitrary manner, by taking unilateral decision. Additionally, the petitioners are also entitled to one-time expenses to be incurred towards relocating themselves, which has been denied by DDA unreasonably.

9.7 The DDA cannot claim any right of any nature whatsoever, including, ownership of land beneath the freehold flats, common area, community space and road/pathways, etc. which form part of the residential society.

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Thus, the DDA cannot claim any right over additional FAR emerging out of the area of land in question.

9.8 The petitioners have purchased the flats by taking into account the original sanctioned layout plan of the housing society with regard to the parking area, the community space, common area, green area, sunlight and other basic amenities. Thus, the DDA cannot alter/change the layout plan of the commercial plots, which was originally sanctioned/ approved as commercial building. The petitioners have purchased the freehold flats having absolute right not only over the flat and land underneath, but also the common area.

9.9 The DDA has no power to take back the land, land rights or any benefits accruing from the land in terms of FAR under any provision of the DDA Act. The DDA cannot acquire any land rights of the petitioners, without following the procedure as provided under Section 15 of the DDA Act.

9.10 As far as rehabilitation is concerned, the petitioners are entitled to an accommodation, which is equally similar to the accommodation in which the petitioners are residing. According to the CPWD guidelines, the rent should be 7% per annum of the evaluation of the property in question.

9.11 The contention of the DDA that Delhi Apartment Act does not apply to the facts of the present case, is totally wrong. The said Act categorically states the same shall apply to every apartment in a multi-storey building, which was constructed mainly for residential/commercial and other purposes.

9.12 Due to the nefarious acts of the DDA officials, 336 families have been rendered to be homeless. The petitioners have been put under constant threat

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to their life since the possession of the flats was handed over in the year 2012. Instead of being gracious and compensating the petitioners, the DDA is trying to take advantage and earn profit by constructing additional 168 flats, making the society/apartment unliveable. Such action of the DDA is unlawful and contrary to the Delhi Apartment Act and the Master Plan of Delhi, 2021 ("MPD 2021").

9.13 DDA is not doing any charity in the present case, by intending to demolish and reconstruct the buildings completely. Rather, the DDA is liable to be punished for misdeed/mischief and the residents are entitled to reconstruction of their flats. The DDA cannot be permitted to take away even a single inch of land, land rights and/or FAR of the petitioners and other allottees.

9.14 The judgments relied upon by the DDA are not applicable to the facts of the case, as they were delivered in different context. The Delhi Apartment Act is a special and welfare enactment. Law is well-settled that in case of conflict between two enactments, even though both are special, the latter shall prevail. There is no conflict between the provisions of the DDA Act and Delhi Apartment Act.

10. On behalf of the petitioners in *W.P.(C) 6850/2024*, following submissions have been made:

10.1 Given the poor construction quality of the Signature View Apartments, the petitioners and their family members, that includes senior citizens, children and toddlers, are under imminent and perilous threat to their lives. So far there have been several instances of fall of plaster. The pillars of some of the buildings have developed deep cracks and the steel bars are rusted. The pillars are not in a condition and do not have the

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strength to take load of and support multi-storey building.

10.2 The delinquent officials of the DDA have compromised with the quality of building materials, as well as structural constructions of the multi-storey building at every stage. The petitioners have paid their lifetime savings to purchase the flat from DDA, with the hope to have a decent roof over the head of the family. However, on account of the dereliction of duty by the DDA officials, the dream of the petitioners has turned into nightmare of staying in a structure, which is likely to collapse at any point of time.

10.3 The incidents of falling of parts of roof, ceilings and concrete lumps, were continuous, on account of which the RWA followed on the progress of testing of building structures and analysis by the NCCBM and IIT, Delhi. On account of the persistence of the RWA and residents of the society in question, DDA agreed for demolition and reconstruction of the towers and rehabilitation of the petitioners and other residents of the Society. However, the rehabilitation offer of the DDA is impracticable.

10.4 The condition in Clause X of the Final Rehabilitation Offer of the DDA is unreasonable and arbitrary, and in violation of the fundamental rights enshrined in Article 14 of the Constitution of India. The said respondent, as instrumentality of the State, cannot put such an arbitrary condition rendering the rehabilitation programme so vulnerable, as a single flat owner could frustrate it. The entitlement of rent of a willing flat owner who is ready to handover possession, has to wait till every single owner hands over the flat, is arbitrary and impracticable, as to deny the entitlement to even those who are abiding by rehabilitation in its true spirit. This shows the callous and arbitrary attitude and high handedness of the DDA, wherein, in identical situation, the threshold is of 50% not 100% of handing over of

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the possession.

10.5 The DDA in the impugned Rehabilitation Offer, does not mention the enhancement of rate of rent, or compensation to be paid, if the reconstructed flats are not handed over within three years of stipulated time.

10.6 The respondents, under the guise of inaction of all flat owners in handing over the possession of flats, cannot procrastinate the Rehabilitation Programme, as its protraction is putting the residents under imminent danger.

10.7 The petitioners are facing the present situation only on account of corruption and poor construction of the building by the DDA. Whereas, the DDA has inducted such a Clause in the Rehabilitation Offer letter, that it makes the initiation of Rehabilitation Programme impossible in near future, as there is unlikelihood of all flat owners willingly handing over the possession of the flats, which is a condition precedent for initiation of demolition and entitlement of rent, even for those who are willing to hand over the possession.

10.8 The impugned Rehabilitation Letter dated 26th June, 2023 requiring NOC from bank/financial institutions for demolition and rehabilitation is unnecessary, and aimed at making the entire exercise impossible. Each flat owner who has taken housing loan, is responsible for the payment of loan to the banks, and it is the issue between bank and the individual flat owners.

11. On behalf of the petitioners in *W.P.(C) 3760/2024*, following submissions have been made:

11.1 The notice dated 18th December, 2023 issued by the MCD for demolition of the Signature View Apartments, is bad in law, for the Commissioner of MCD has not undertaken any due diligence, before

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making an order, under Section 348 and 349 of the DMC Act. There is no subjective satisfaction of the Commissioner or his delegate with respect to the condition of the building to be in a ruinous condition.

11.2 The impugned notice by the MCD for demolition is based merely upon the information received from the DDA. The information given by the DDA cannot supplant the statutory duties and functions of the MCD to record its own satisfaction under the DMC Act.

11.3 The impugned notice does not give the opportunity to the residents to Show Cause why the order of demolition should not be made, nor gives them the right to file an appeal before the competent authority.

11.4 The entire premises are enclosed by a wall having a height of more than 10 feet. The DDA has collected maintenance charges at the time of sale of the flats to the tune of ₹ 21 crores. However, the petitioners and other owners/buyers of the flats are spending the money on cleaning of roads, etc. from their own pockets. Moreover, the purchasers of the flats have paid cost of the land and cost of the construction separately. Therefore, every inch of the land inside the four walled enclosure of the Signature View Apartments, proportionately belongs to each resident/buyer of the flat.

11.5 DDA ought to be directed to carry out the repair/ reinforcement works in the towers of the society in question. Further, directions be given for initiating investigation by the Central Bureau of Investigation ("CBI") against the builders and the erring employees of DDA, who were involved in the construction of buildings of Signature View Apartments.

11.6 The DDA had earlier hired an agency to carry out the repair work in the society. However, the said agency was stopped from working by guards of the RWA. The petitioners, thus, pray that DDA be directed to take the

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help of Police for carrying out repair work in the flats, if the RWA stops them from doing repair work.

11.7 The RWA is against the repairs, but is in agreement for demolition of flats and reconstruction, because of the ulterior, greedy, profit making motive of certain members of the Managing Committee of the Signature View Apartments. The entire repair work would have been completed long back, but due to high handedness of RWA, the repairs could not be taken up. In the meantime, the owners/buyers have been so terrorized, that about 25 owners have sold their flats at throwaway prices to the relatives and friends of unscrupulous members of Managing Committee of RWA, during January, 2023, till date.

11.8 The petitioner, in his individual capacity, has consulted the report of IIT, with senior architects and civil engineers. They have all pointed out various deficiencies, loopholes and glaring defects in the report of IIT, Delhi. Therefore, there arises a serious doubt against the report of the IIT, Delhi.

11.9 The petitioner and his family members are the *bona fide* residents of the housing society in question. Any directions or decision by the authorities towards demolition of the Apartments, will adversely affect the rights of the petitioner, as enshrined and guaranteed by Articles 14 read with Article 300-A of the Constitution of India.

11.10 From the year 2010 to the year 2024, over the period of 14 years, as many as 12 earthquakes of moderate to heavy magnitude, have come. However, there is no effect of the earthquake on any of the 12 towers. Signature View Apartments are the only Apartments constructed by any government agency or private builders, which are earthquake proof in entire

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National Capital Region.

11.11 The report of Shri Ram Institute cannot be relied upon, as the said institute has not identified the samples extracted from pillars and beams of all the 12 blocks of Signature View Apartments. Therefore, the samples so extracted by the team of Shri Ram Institute, are not as per the norms, rules and laws in extracting the samples. There is likelihood that these samples can be tampered/ changed by a material, which is poor in quality. Thus, the investigation made on the basis of the said samples, does not appear to be reliable.

12. On behalf of the petitioners in *CONT.CAS(C) 647/2024*, following submissions have been made:

12.1 The writ petition being *W.P.(C)14960/2023*, was listed for hearing for the first time on 20th November, 2023, when this Court directed that no coercive steps be taken against the petitioners. The protection as granted by the Court to the petitioners vide order dated 20th November, 2023 has continued till date. However, the petitioners were shocked to read the news about DDA inviting bid applications from contractors for razing/demolishing the 336 flats of the society, in the newspapers on 28th March, 2024. The DDA has issued NIT on 15th March, 2024.

12.2 The act of inviting tender by the DDA for demolition of the flats in question, amounts to overreaching the authority of this Court, and clear violation of the orders dated 22nd November, 2023 and 14th March, 2024, passed by this Court.

12.3 Thus, there is urgent need for restraining the DDA from proceeding any further, to invite tender from contractors to demolish the building and to take necessary action against the DDA for inviting tender.

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Submissions of Delhi Development Authority:

13. On behalf of the DDA, following submissions have been made:

13.1 Due to the various complaints by the RWA and other residents of the Signature View Apartments, the DDA engaged NCCBM and got all the blocks/towers inspected, pursuant to which, repair work was carried out. Subsequently, a structural consultant from IIT, Delhi was engaged who reported about the dilapidated condition of the existing towers. Thereafter, considering the facts and circumstances of the case, decision was taken to demolish the flats in question, and reconstruct the same.

13.2 The present petitions have been filed *mala fidely* by the petitioners to secure their own vested interests and to disrupt the *bona fide* actions of the DDA, in order to secure the safety and security of the residents of the Signature View Apartments.

13.3 There is imminent threat to the residents of the Signature View Apartments, if the entire premises are not vacated at the earliest. Due to a handful of petitioners, the majority of residents are under constant threat.

13.4 The DDA has considered the demolition of towers of Signature View Apartments after detailed interactions with the RWA members and on their assurances that all 336 allottees of the Apartments are agreeable with the redevelopment process. Furthermore, over 100 residents/allottees, have already vacated their flats, and many more are in the process of doing the same.

13.5 Petitioners are trying to misguide and influence the remaining residents for *mala fide* reasons best known to them, for not vacating the premises, and putting everyone's lives at grave risk.

13.6 The DDA has been fully responsive to all the demands raised by the

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residents/allottees through the RWA of Signature View Apartments, as various meetings have been convened to address and discuss at length, all the issues and matters presented on behalf of the residents/allottees of the Apartments, by the RWA representatives.

13.7 The DDA has not indulged in any corruption and it is denied that the building material used, was of substandard and spurious quality. Appropriate action was undertaken by the DDA on the representations of the allottees of the Signature View Apartment. Inquiry was conducted by the DDA on the complaints received and immediate redressal was also provided to the allottees.

13.8 The petitioners contend that there can be a disaster in the premises. However, they are continuing to stay in the premises, despite the DDA having offered a very positive solution to them. The present petitions are liable to be dismissed in view of the contradictory stands taken by the petitioners. The DDA has been repeatedly requesting the RWA to vacate the subject premises at the earliest, which request has been appreciated by majority of the residents. Unfortunately, a handful of residents have approached this Court and have made contradictory submissions.

13.9 The DDA has offered the facilitation amount towards rent of ₹ 38,000/- for MIG and ₹ 50,000/- for HIG, after conducting a proper survey of the surrounding areas, and in consultation with the RWA. The said amounts being agreed to be paid by DDA, are in the nature of facilitation amount towards rent and not compensation for the same. The said amounts, *per se*, are to enable the rehabilitation of the residents at a reasonable place during the construction period.

13.10 The inordinate delay in execution and completion of reconstruction

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work is attributable solely and exclusively to the handful of petitioners, who have become an impediment in the execution of the amicable settlement reached between the RWA and the DDA.

13.11 Unless and until each and every one of the 336 residents/allottees, vacate the premises, the work of demolition of towers and reconstruction work, cannot commence.

13.12 For any new construction, including, group housing scheme, which is to be started or executed, the same has to be as per the norms prescribed in prevailing MPD 2021, Unified Building Byelaws ("UBBL"), 2016 and fire safety. As per the prevailing norms of MPD 2021 and UBBL 2016, a number of enhanced, as well as, additional facilities will be available for the residents. MPD 2021 provides for community facilities, including, multipurpose hall, senior citizen hall, crèche and 8 small shops for fulfilling the day to day needs of the residents.

13.13 Furthermore, to meet the housing requirement for the increasing population of Delhi, the FAR and density norms that were followed earlier, have been enhanced in MPD 2021. In comparison to the FAR available of the 167 in MPD 2001, the MPD 2021 provides for enhanced FAR of 200. It also provides for other enhanced and additional facilities for the residents, for which DDA will not charge any amount as it is being provided as per the revised norms of MPD 2021 and UBBL 2016.

13.14 The DDA has in its possession, un-utilized vacant land measuring 0.67 ha adjacent to these apartments, which DDA, after consultation with RWA of Signature View Apartment, has decided to add in the reconstruction project for making an optimal, comprehensive and viable reconstruction project. Considering the prevailing norms and by further

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utilising the additional vacant plot of 0.67 ha in its possession, the construction of additional flats vide development of the said grouping housing scheme, is essential for optimal utilization of land with additional facilities for residents. Due to integration/ addition of the said 0.67 ha, the central green area within the subject housing green pocket has increased substantially by 66%.

13.15 The DDA Act has an overriding and binding effect and is supreme, in so far as all the activities in Delhi, are concerned. Any construction/re-construction can be done, so long as it emanates out of the DDA Act, the UBBL 2016 and MPD 2021.

13.16 The DDA (Management & Disposal of Housing Estate) Regulations, 1968 ("DDA 1968 Regulations"), define conveyance deed as an agreement between the DDA and the allottee, by which the title in the property is transferred to the allottee on the terms and conditions specified in the said agreement. Regulation 54 and 55 provide for transfer of the property, as effected through the conveyance deed. The binding conveyance deed executed between the parties, does not mention about any fixed proportionate interest in the land or any proportionate interest in the undivided areas. A conjoint reading of the DDA 1968 Regulations and the conveyance deed show that what has been transferred/sold in the instant case, is only the right, title and interest *qua* the specific flat in question, i.e., strictly the area within the flat, and nothing beyond that.

13.17 The Delhi Apartments Act in Section 4(3) specifies that every person becomes entitled to exclusive ownership and possession of such percentage of undivided interest in the common areas and facilities, as may be specified in the deed of apartment. The conveyance deed executed by DDA in favour

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of the allottees, does not make any reference to either the common areas or the FAR. No 'fixed proportionate share of land' has been allotted to the allottees.

13.18 The instant case of Signature View Apartments is one of its kind, where the towers/apartments stood fully constructed, but on account of the supervening circumstances of the structure having been found to be unsafe/dangerous by structural experts, the DDA is undertaking the impugned construction.

13.19 The process of re-construction is being undertaken strictly in public interest out of public exchequer. The user of the apartments is not being changed, in as much as the same shall continue to remain as residential.

13.20 The apartment owners post the reconstruction, will get the benefit of enhanced and additional facilities, such as community facilities, like multipurpose hall, senior citizen hall, crèche, etc.

13.21 The MPD 2021 has an avowed objective of making optimum utilisation of available resources/ land. Accordingly, the DDA is utilising the increased FAR for the construction of additional 168 flats. By virtue of increased FAR, if the DDA seeks to recoup the public exchequer by auctioning the additional 168 flats to be constructed, without depriving the petitioners of any existing benefit/facility, the said exercise is strictly in public interest. There is no violation of Article 300A of the Constitution of India, as the DDA is not depriving anyone from his/her property.

13.22 Both MCD and CPWD have confirmed and corroborated that the decision of the DDA arrived at in consultation with RWA, of demolition and reconstruction of all the towers, is correct.

13.23 Out of 336 flat owners, 159 have approached this Court and only one

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petitioner, i.e., Man Mohan Singh Attri, has sought quashing of order dated 18th December, 2023 issued by MCD under Sections 348 and 349 of the DMC Act. The decision/ opinion of the Commissioner MCD, arrived at after a thorough assessment, after considering opinions of other technical experts and in view of the safety of residents, is on a technical question of structural stability. Therefore, it cannot be in law questioned by one resident, who feels that the opinion is wrong.

13.24 In view of the settled law that the Courts would not step into the shoes of an expert, and render a contrary opinion, especially, when the lives and safety of citizens are involved, it is clear that the petitioners have failed to make out any case on the merits of the matter.

Submissions of Municipal Corporation of Delhi:

14. On behalf of the MCD, following submissions have been made:

14.1 A committee was constituted by the MCD under the Chairmanship of Chief Engineer, Civil Lines Zone, to examine the report of structural consultant of IIT, Delhi and to initiate proceedings as per Section 348 and 349 of the DMC Act. It was considered that the DDA had already made detailed study of the various aspects.

14.2 The competent authority of MCD applied its mind to various reports of detailed study, submitted by the experts. Thus, it came to the conclusion that in larger public interest, order under Sections 348 and 349 of the DMC Act, was required to be issued, as the towers are dangerous and not fit for habitation.

14.3 The order dated 18th December, 2023 under Sections 348 and 349 of DMC Act was passed after proper compliance, thereby, directing the owners/occupier of signature view apartments to vacate the premises for

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appropriate action to be taken with respect to dangerous buildings.

Submission of Union of India:

15. On behalf of the Union of India, following submissions have been made:

15.1 The Ministry of Housing and Urban Affairs, Government of India, constituted a committee of experts. The committee held its meeting on 04th April, 2024 and visually inspected all the 12 blocks of the Signature View Apartments. Thus, the committee has submitted its report that it is not possible to carry out any repair work in the buildings and that the buildings are not habitable, due to significant distress as observed.

15.2 The buildings in question are structurally unsafe, as corrosion in almost all structures has been developed significantly.

Submission of Residents Welfare Association ("RWA"):

16. On behalf of the RWA, following submissions have been made:

16.1 The RWA has actively pursued with the DDA about the problem of falling of ceiling and development of deep cracks in the column and pillars. The RWA demanded to assess the physical strength of the buildings and requested to demolish and reconstruct the buildings if the same was not suitable for habitation.

16.2 Even though extensive repair work was carried out pursuant to report of NCCBM, the problem persisted. Thus, upon recommendation of IIT, Delhi for detailed testing, Shri Ram Institute gave its report recommending demolition and re-construction of the Signature View Apartments.

16.3 DDA has offered rent for alternate accommodation on vacation of 336 flats, i.e., 100% vacation of the flats. Such demand/ condition to pay rent on 100% vacation of flats, is onerous. 75% of the allottees/ owners/ residents

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have given their consent to the proposal of respondent no.2 DDA, subject to payment of rent on evacuation, as many of them cannot afford to continue paying the Equated Monthly Instalments ("EMIs") towards their home loan, and simultaneously also be saddled with the recurring monthly liability of bearing the rent for their alternate suitable accommodation at par with the present one.

Findings and Analysis:

17. I have heard learned counsels for the parties and have perused the record.

Issues Involved:

18. There are broadly five issues which are primarily required to be adjudicated by this Court, in these proceedings. Firstly, considering the deteriorated condition of the construction in the Signature View Apartments, whether, the towers therein are liable to be demolished and reconstructed, or whether the extensive repair work therein should be the course of action. The DDA has already indicated that decision has been taken that the demolition and reconstruction of the towers existing in Signature View Apartments shall be undertaken by the DDA. Secondly, whether the DDA has any authority to demolish and reconstruct the flats in question. Thirdly, whether the DDA is authorized to construct additional 168 flats on account of the increase in the available FAR as per the prevailing norms. Fourthly, whether the demolition notice issued by the MCD is proper and lawful. Fifthly, the ancillary issues regarding the terms of rehabilitation of the residents during the period of demolition and reconstruction of the Signature View Apartments.

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Overview of the matter:

19. A residential complex, i.e., Signature View Apartments, was developed by the DDA over a plot of land measuring 2.83 ha of land. The DDA sold 336 flats through registered conveyance deeds at different points of time, under the housing schemes of the year 2010, 2014 and 2017. The said residential complex comprises of 12 towers of which 10 towers are 10 storied plus stilt, and two towers are 6 storied, plus stilt.

20. There are 336 dwelling units which were constructed by the DDA on 2.16 ha of land, comprising of 224 HIG flats and 112 MIG flats. The DDA also constructed 144 stilt parking, which were also sold separately by way of registered conveyance deed to the respective HIG flat owners.

21. The remaining 0.67 ha of land was marked for commercial purposes, having ground plus three floors, as per the sanctioned plan of the DDA.

22. As per the Housing Schemes of 2010, 2014 and 2017, the DDA also undertook the obligation to maintain the building, and charged additional 15% of the construction amount, which is lying with the DDA.

23. As per the facts on record, in the first year of the allotment itself, i.e., in the year 2012, ceiling of the flats and the grid wash on the exterior walls, started to crumble and columns started developing cracks. Due to various complaints by the residents of the society, the DDA engaged the services of the NCCBM to undertake the work of assessment of the quality of grit wash and Reinforced Cement Concrete ("RCC"). The NCCBM by its report of the year 2015, suggested extensive repair work for prevention of corrosion, in the following manner:

> "*xxx xxx xxx*
>
> ***5. CONCLUSIONS AND RECOMMENDATIONS FOR BLOCK A, B***

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& C

Based on these visual observations and subsequent test conducted, the following conclusions are being drawn:

i) ***Grit wash applied on the RCC members of the towers is found de-bonded at many locations. Although, at some places the grit wash seems to be intact, it may get de-bonded because of the expansion due to corrosion of reinforcements****.*

ii) ***Constant availability of water & oxygen has resulted in electrochemical corrosion. Due to increase in volume of steel in the cover zone, the grit wash is found de-bonded at many locations resulting in its loss of stability which is an alarming situation with regard to safety of the users. Since the grit wash applied on RCC is scattered in larger area any untoward incident/accident can occur****.*

iii) Grit wash applied on Masonry walls are found to be intact at most of the places in these towers.

iv) ***In view of above findings based on corrosion front, all the Dholpur grit wash applied on RCC surface as subsequent application shall be removed completely****.*

v) ***After removal of grit wash, since the corrosion has been initiated at some places, it has become essential to arrest the corrosion by: carrying out extensive repair using following procedure****:*

- ***All cracked and loose concrete from the columns and beams shall be chipped off. Checking of loose concrete can be done by striking the doubtful surfaces with 2 lb hammer****.*
- ***All loose scale and rust around the rebar shall be removed by thoroughly cleaning them with steel wire brush or water jet or sand blasting or by scratching the surfaces using suitable emery paper****.*
- *Additional stirrups bars of an equivalent diameter shall be provided to compensate the complete loss of such stirrups in case of beams. Additional steel bar shall also be provided if reduction in bar dia is more than 10% with laps or welding.*
- *A bonding coat of SBR polymer modified cement slurry in proportions 2:1 (2 cement 1 polymer) shall be applied on the old prepared surfaces of concrete, derusted bars and on additional bars. Such bonding coat shall not be allowed to dry before application of new concrete.*
- *The surface should be made good using Polymer Modified Mortar having a ratio of 1 Cement: 3 Coarse Sand with addition of latex @ 15% by weight of cement and having w/c ratio of 0.33.*
- *The repaired surface shall be further applied with appropriate protective coating to arrest further ingress of water and other harmful ingredients into the concrete.*

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- *To carry out the repair work effectively in the damaged cover portion obtained after the removal of grit wash, we have finalized the description of items of repair as per Annexure A.*
- *The recommendations on the manufacturers & suppliers of the bond coat, anti corrosive treatment including corrosion inhibitor are given in Annexure B.*
- *Only approved brand qualifying the requirements of specifications shall be used at site. During the execution of the major repair/restoration work, suitable Non Destructive Testing shall be carried out to fulfill the quality criteria in the different blocks by independent testing agency.*
- ***Based on the visual inspection done at few panels, grit wash applied on flyash brick masonry is found debonded in some locations of Blocks A, B & C. Also based on the survey carried out by visual inspection & by using light hammering technique, pebbles are found to be loosely bonded. Samples of cores taken randomly at few locations have indicated no loss of bonding between raw fly ash brick masonry and the layer of mortar. The bonding though found intact, it is found to be ineffective in providing durability to the pebbles of grit wash. So the only remedy to support the stability & integrity of the grit wash is to remove entire grit wash. Care should be taken not to remove all the plaster behind the grit wash**.

xxx xxx xxx

5.0 CONCLUSIONS AND RECOMMENDATIONS

Based on these visual observations and subsequent test conducted, the following conclusions are being drawn:

i) ***Grit wash applied on the RCC members of the towers is found de-bonded at many locations. Although, at some places the grit wash seems to be intact, it may get de-bonded because of the expansion due to corrosion of reinforcements***.
ii) ***Constant availability of water & oxygen has resulted in electrochemical corrosion. Due to increase in volume of steel in the cover zone, the grit wash is found de-bonded at many locations resulting in its loss of Stability which is an alarming situation with regard to safety of the users. Since the grit wash applied on RCC is scattered in larger area any untoward incident/accident can occur***.
iii) Grit wash applied on Masonry walls are found to be intact at most of the places in these towers.
iv) In view of above findings based on corrosion front, all the Dholpur grit wash applied on RCC surface as subsequent application shall be removed completely.
v) ***After removal of grit wash, since the corrosion has been initiated at***

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<u>some places, it has become essential to arrest the corrosion by carrying out extensive repair using following procedure</u>:

- ***<u>All cracked and loose concrete from the columns and beams shall be chipped off. Checking of loose concrete can be done by striking the doubtful surfaces with 2 lb hammer</u>.***
- ***<u>All loose scale and rust around the rebar shall be removed by thoroughly cleaning them with steel wire brush or water jet or sand blasting or by scratching the surfaces using suitable emery paper</u>.***
- *Additional stirrups bars of an equivalent diameter shall be provided to compensate the complete loss of such stirrups in case of beams. Additional steel bar shall also be provided if reduction in bar dia is more than 10% with laps or welding.*
- *A bonding coat of SBR polymer modified cement slurry in proportions 2:1 (2 cement: 1 polymer) shall be applied on the old prepared surfaces of concrete, derusted bars and on additional bars. Such bonding coat shall not be allowed to dry before application of new concrete.*
- *The surface should be made good using Polymer Modified Mortar having a ratio of 1 Cement: 3 Coarse Sand with addition of latex @ 15% by weight of cement and having w/c ratio of 0.33.*
- *The repaired surface shall be further applied with appropriate protective coating to arrest further ingress of water and other harmful ingredients into the concrete.*
- *To carry out the repair work effectively in the damaged cover portion obtained after the removal of grit wash, we have finalized the description of items of repair as per Annexure A.*
- *The recommendations on the manufacturers & suppliers of the bond coat, anti corrosive treatment including corrosion inhibitor are given in Annexure B.*
- *Only approved brand qualifying the requirements of specifications shall be used at site. During the execution of the major repair/restoration work, suitable Non Destructive Testing shall be carried out to fulfill the quality criteria in the different blocks by independent testing agency.*
- *Based on the visual inspection done at few panels, grit wash applied on flyash brick masonry is found debonded in some locations of Blocks A, B & C. Also based on the survey carried out by visual inspection & by using light hammering technique, pebbles are found to be loosely bonded. Samples of cores taken randomly at few locations have indicated no loss of bonding between raw fly ash brick masonry and the layer of mortar. The bonding though found intact, it is found to be ineffective in providing durability to the pebbles of grit wash. So the only remedy to support the stability & integrity of the grit wash is to remove entire grit wash. Care should be taken not to*

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remove all the plaster behind the grit wash.

xxx xxx xxx"

(Emphasis Supplied)

24. However, the repair work carried out by the DDA in the year 2015, could not prevent further corrosion, due to which the problem got aggravated *inter alia* of cracks in the column, pillar, beam and ceiling, including, the deep cracks on the outer facade leading to the fall of ceiling and big lumps of concrete endangering the life and property of the residents.

25. Thus, the DDA again approached the NCCBM to advice them in this regard. The NCCBM, after its preliminary site visit, in its letter dated 18th February, 2019, observed distress in terms of cracks and spalling of cover concrete and corrosion of reinforcements in different RCC members. The NCCBM also opined to get the detailed structural evaluation to be done by a structural design expert. The letter dated 18th February, 2019 issued by the NCCBM reads as under:

"Sh Nimesh Kumar
Executive Engineer
Delhi Development Authority
North Division 1, near TV Tower
Pitampura, Delhi-34
Email: ecndldda@gmail.com

Sub: First hand report based on preliminary site visit to Signature View Apartments at Mukherjee Nagar Delhi

Dear Sir

This has reference to preliminary visit carried out by Sh. TVG Reddy, GM along with Sh. Ankit Sharma, PE on 22nd October, 2018.

Signature View Apartments at Mukherjee Nagar consist of 12 blocks, each having stilt floor. Distress in terms of cracks and spalling of cover concrete & corrosion of reinforcement has been noticed in different RCC members during our site visit. At few locations seepage signs were also observed on the walls & RCC members of the building. Cracking &

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Spalling of concrete and corrosion of reinforcement was visually observed in the RCC slab of flat D103. Debonding of plaster from the RCC Slab was observed in flat D603. Spalling of concrete and corrosion of reinforcement was observed in RCC slab of flat 1703. Prima facie it seems that the distress in the building is mainly caused due to corrosion of reinforcement.

By considering the distress of the blocks and existence of stilt floor, it is opined that detailed structural evaluation shall be done by structural design expert duly taking into consideration of actual concrete strength and existing reinforcement condition. Then only repair methodology shall be prepared and executed accordingly.

At present to avoid any untoward incident, a small isolated concrete spalling locations patch repair shall be done as given in Annexure-I which is purely for temporary purpose till the final repair has to be done. It is also advised final repair shall be done as early as possible.

Thanking You

Yours Faithfully
For National Council for Cement and Building Materials

xxx xxx xxx"

26. The NCCBM gave its final report in June, 2022, in the following manner:

"xxx xxx xxx

1.0 INTRODUCTION

Delhi Development Authority (DDA) approached National Council for Cement and Building Materials (NCB) to undertake the work of "Non-Destructive Testing as Initial Testing for Structural Evaluation at 336 MS IDG Houses, Signature View Apartments, Mukharjee Nagar, New Delhi-110009" vide email dated 29th July 2021 and letter ref no. F2 (13)/AE-I/NMD-2/DDA/2021-2022/377 dated 28th July 2021. Accordingly, NCB submitted its proposal vide letter Ref no. CDR/SP-0/SAR-139 dated 18th February 2022. The above proposal was accepted by DDA vide email dated 23rd March 2022. After the discussion with DDA officials, the revised proposal was submitted vide email dated 28th March 2022. Subsequently NCB team carried out the work at site on 05.04.2022 with the following revised scope of work (ref email received from DDA dated 24.03.2022).

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• ***Scope of work****:*

i. To draw samples of concrete and carry out chemical analysis of the samples to determine pH, Chloride Content (Acid Soluble Chloride content), Sulphate Content (Water Soluble Sulphate) (Limited to 12 nos. Locations)
ii. Determination of Surface Electrical Resistivity of concrete using 4-pooint Wenner probe technique after removing surface cladding, plaster etc. (Limited to 03 measurements each at 24 locations)
iii. To assess the corrosion condition of steel in concrete using Half-cell potential testing after removing surface cladding, plaster, etc., as per IS: 516 (Part-5/Sec-2) 2021, on safely accessible RCC members. (Limited to 03 measurements each at 24 locations).
iv. Determination of equivalent cube compressive strength of concrete in RCC Slabs using concrete core extraction & testing technique as per IS: 456-2000 & IS: 516-(Part-4)2018. The concrete cores shall be of 60mm diameter & length up to 120 mm. (Total 03nos. locations and 01 no. core per locations i.e., total 03nos. cores)
v. Determination of equivalent cube compressive strength of concrete in RCC Columns using concrete core extraction & testing technique as per IS: 456-2000 & IS: 516- (Part-4)2018. The concrete cores shall be of 60mm diameter & length up to 120 mm. (Total 03nos. locations and 01 no. core per locations i.e., total 03nos. cores)
vi. Determination of depth of carbonation on freshly extracted concrete cores.
vii. Preparation of detailed report of test results/data obtained in (1) to (6) above along with the procedure followed as per the relevant Standards/literature. Interpretation of the numerical value of the test results as specified in the relevant standards/literature, where available, will be given in the report.

2.0 TESTS CARRIED OUT BY NCB

The methodology adopted for NDT Testing covers two parts,

Site Testing & Sampling *covers identification of sample RCC members by onsite NDT testing such as Concrete Cover Measurement, Concrete Core extraction, Half Cell Potential Measurement, Electrical Resistivity measurement, Carbonation Depth etc.*

Laboratory Testing *covers testing of concrete core strength, slicing & grinding of concrete core for further analytical testing to determine chloride content (Acid soluble Chloride), Sulphate content (Water Soluble Sulphate) & pH.*

NCCBM has carried out testing on locations identified by IIT Delhi Officials. NCCBM's role is limited to testing & sampling at site and laboratory testing and reporting of test results. Site testing was done

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from 05th April 2022 to 08th April, 2022 at 336MS HIG Houses (Signature View Apartments), DDA Mukharjee Nagar.

xxx xxx xxx"

(Emphasis Supplied)

Recommendation for Demolition and Re-Construction by IIT:

27. In consonance with the report of the NCCBM, the DDA engaged IIT, Delhi. Mr. Shashank Bishnoi, Professor and Associate Dean (Infrastructure) from the Department of Civil Engineering, IIT, Delhi was given the assignment. On the recommendation of IIT, Delhi for detailed testing, Shri Ram Institute was engaged.

28. The IIT, Delhi submitted its Final Report dated 19th November, 2022 on structural condition of the Signature View Apartments, recommending demolition and reconstruction. The relevant extracts of the Final Report of IIT, Delhi dated 19th November, 2022, read as under:

"xxx xxx xxx

1 ***Scope of the work***

The scope of this work is:

• To visit the location and to visually inspect the buildings and to peruse through the existing test reports.
• To advice on any further testing work that may be required and to prepare the terms of reference for the testing agency to be engaged.
• To advice the testing agency on the procedures to be followed in testing. The client will have to engage a testing agency to carry out any testing work required.
• To analyse the test results.
• To prepare the terms of reference for the structural designer to be engaged by the client and supervise the work of a structural designer for checking the structural and to ensure that the analysis has been carried out according to the relevant Indian standards.
• To carry out a comparison of the structural analysis with the existing structural design of the building according to the grades of concrete established from the testing work carried out on the site and to identify,
• To supervise the structural designer in the design of any minor repair or strengthening required in the structure to ensure that it meets the

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requirements of the Indian standards and can provide a life of 50 years.
• To visit the site at the time of repair to provide advice on the correctness of the repair work being carried out.
• To provide interim and final reports on the matter, as and when required.

The current report summarises the complete findings and recommendations from various stages of the work and the final recommendations on the matter.

2 ***Observations and information obtained during initial site visit***

The buildings were visited and visually inspected. The main observations made and information obtained during the initial site visit are listed below.

• There are a total of 12 buildings of reinforced concrete frame type in the complex. While ten of the buildings have 10 floors above the ground floor, the remaining two buildings have six floors above the ground floor. The ground floor is of a stilt type and is used for parking, etc. The building blocks are numbered A to L.
• It was informed that the construction of the buildings started in 2007 and was completed around 2007.
• It was informed that the construction was carried out by two contractors. While the one of the contractors carried out the construction of three of the buildings: Blocks A to C, the remaining nine buildings: Blocks D to L, were constructed by the other contractor.
• It was informed that most of the deterioration observed in the buildings was limited to Blocks D to L.
• ***It was informed that signs of deterioration were visible in the buildings within a few years after handing over. Within the first few years, several of the panels of the grit-wash plaster used in the buildings delaminated and fell. The entire grit-wash in the building was replaced by a normal plaster in 2015.***
• ***Signs of seepage and deterioration continued to be observed in the buildings even after replacing of the plaster. Cracking and spalling of concrete and corrosion of reinforcement was observed at many locations. Localised repairs using fibre reinforced composite sheets was carried out at locations where deterioration had been observed.***
• ***Widespread cracks, visibly due to corrosion of reinforcement were visible throughout the blocks D to L. Cracks could be seen in beams, columns, junctions, balconies, sun-shades and slabs.***
• ***Unlike what is usually observed, the cracks were not limited to the external members and the members on the bottom and the top floor. Cracking and spalling of concrete was also observed in internal slabs and beams, including locations that did not readily have access to***

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water. *However, the extent of corrosion was observed to be more in areas where was is readily available, e.g. external members, in and around the kitchens, bathrooms, shafts and expansion joints.*

*• **At locations where spalling was observed, the reinforcement was seen to be heavily corroded. The shear links in the beams were seen to be broken due to corrosion at several locations.***

• At many locations where spalling has occurred, the clear cover to the reinforcement appears to be low.

*• **New cracks were seen to have developed at locations where repairs had been carried out earlier and also in the adjoining structural members.***

In addition to the above, the client informed that detailed drawings of the buildings are available.

3 ***Inferences after visual inspection during initial site visit***

The main inferences and the initial recommendations from the observations made from the visual inspection above are listed below.

*• **Since the deterioration is seen to occur in nine of the towers and not in the remaining towers, it appeared to be due to the presence of a contaminant in the concrete itself and not due to any local environmental or maintenance factor.***

*• **Given that deterioration was visible within 5 to 7 years of the completion of construction, the relatively low age of the structure and the widespread nature of the deterioration, the presence of chlorides in the reinforced concrete members appeared to be the main reason for deterioration. However, the presence of this chloride had to be ascertained with the help of tests.***

• From the observations on the site, the low clear cover to the concrete also appeared to have played a role.

*• **Since the extent of corrosion was quite large, it was seen that the deterioration is occurring at very rapid rate** and the repairs of the buildings were seen to be required to be carried out as soon as possible to prevent further deterioration. Protection measures were also seen to be required to be taken so as to prevent further deterioration in elements where it is not already visible.*

An initial round of testing was recommended as listed in the next section in order to confirm that chlorides were the cause of the deterioration.

xxx xxx xxx

6 Summary after initial testing and recommendations on detailed testing

Based on the results from the initial tests, it was clear that the

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deterioration in the reinforced concrete was due to the high chloride content. The relatively variable level of protection offered by the concrete to the reinforcement along with the variations in the chloride content have led to a variable rate of corrosion in the structures. This is why, although deterioration was visible at some locations, it had not manifested on the surface yet at other locations.

The repair of reinforced concretes containing admixed chlorides is expensive and complex. It is, therefore very important that the locations where chlorides are present be localised in the structures so that the repair effort can be focussed at those locations. Furthermore, since it is the presence of chlorides that appears to be causing the deterioration, the poor protection offered by the concrete, as observed in the low resistivity and pH values, within the range of expected grades of concrete in the structures, appeared to have a secondary role to play. The remaining testing was, therefore, recommended to focus on measuring the distribution of chloride content in the structures.

It was recommended that chloride content in the concrete be measured from samples taken at every floor of the building. It was recommended that care be taken to distribute these samples to different locations in the structure. A similar number of samples must be drawn from the beams, columns and slabs each. The samples were also recommended to be distributed over the entire floor plan of each of the buildings, e.g. taking a similar number of samples from the north side, south side, east side, west side and centre of the plan of the building.

Additionally, since only 6 core strength measurements were earlier carried out and a large distribution in these values was observed, it was recommended that 5 additional cores each be taken from the columns and slabs of each of the buildings for the measurement of compressive strength. The cores were recommended to be spread over the floors of each of the buildings. The core strength values were expected to be useful in assessing the protection provided by the concrete to the reinforcement.

xxx xxx xxx

8 Final visual inspection of towers

A final visual inspection of the towers was carried out so as to correlate the measurements made by SIIR with the visually observed condition of the buildings. It was observed that despite the relatively lower observed chloride content in tower G, the condition of tower G was similar to towers D to L. Heavily corroded reinforcement was seen at several locations in the beams, columns and slabs of tower G. As observed

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during the first visit, the least amount of deterioration was visible in towers A, B and C.

xxx xxx xxx

10 Summary

Based on the observations made on the site and the measurements from the two rounds of testing carried out, the following can be summarised:

- ***The concrete in the structures is, at most locations, of a lower grade than that expected based on the design. Very low values of strength have been obtained in all types of members in most structures. This indicates the use of a high water to cement ratio in the concrete.***
- ***This higher water to cement ratio has led to a faster rate of carbonation and a reduced protection to the reinforcement.***
- ***The presence of chloride ions in the structure has led to a significant rate of corrosion of the reinforcement. This rate of corrosion has further increased due to the lower-than-expected protection provided by the concrete to the reinforcement. Given that the chloride content is sufficiently high in all structures and the grade of concrete is lower than expected in most structures, the high rate of corrosion exists in all structures in the complex.***
- ***The lower-than-expected strength of the concrete may also have contributed to the distress that is visible in the buildings.***

11 Final recommendations

11.1 Towers A, B and C

The physical and chemical parameters in Towers A, B and C, including the compressive strength, chloride content, half-cell potential and carbonation depth, indicate that they suffer from the same deterioration processes related to the corrosion of reinforcement as the other towers, even though visually towers A, B & C appear to be in a better condition than the other towers. *In the case of corrosion of reinforcement due to chlorides, visual appearances can be deceptive.* ***In the experience of the undersigned, corrosion of reinforcement due to chlorides accelerates suddenly, leading to a rapid deterioration of structures without any prior warning. Additionally, since chlorides lead to a deep pitting of the reinforcement, there may be very few signs of deterioration that may be visible on the surface, despite the structure being rendered inadequate. Furthermore, since the chlorides are mixed in the concrete almost throughout the structure, there is little to no chance of achieving the desired life from the structures even if preventive measures or repairs are undertaken.***

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In view of the above, it is the recommendation of the undersigned that towers A, B and C be vacated and dismantled. *In the duration that the process of vacating the towers is ongoing, the structures must be visually monitored periodically so as to identify any signs of acceleration of corrosion that may put the residents at risk.*

11.2 Towers D, E, F, G, H, I, J, K and L

Towers D, E, F, G, H, I, J, K and L in the Signature View Apartments complex suffer from a significant amount of corrosion of reinforcement. This corrosion is due to a combined action of the high chloride content in the concrete, a faster than expected carbonation of concrete and a lower-than-expected strength of concrete. The significantly reduced cross-section of the reinforcement and cracking in concrete at many places due to this corrosion of the reinforcement, in addition to the lower than designed grade of concrete in the structures, makes these towers not safe for habitation. Given the high chloride content in the concrete almost throughout the structure and the large amount of deterioration that has already occurred, a repair of these structures for safe usage is unlikely to be technically and economically feasible.

Towers D. E, F, G, H, I, J, K and L must be vacated as soon as possible due to the extensive deterioration that has already occurred in these towers and must be dismantled as soon as possible to prevent any loss of life. Towers D, E, I and L appear to be especially at a high risk due to which they must be vacated immediately*. While the vacation of these towers is being carried out, a covering must be put around the buildings to protect passers-by from injuries due to falling pieces of concrete.*

xxx xxx xxx"

(Emphasis Supplied)

Consideration by the Lieutenant Governor of Delhi:

29. Upon evaluation of structure of the blocks/towers, the same were not found to be safe for residential purposes by the IIT, Delhi, which categorically recommended that the buildings in question should be demolished, as the same cannot be repaired. The report of the IIT, Delhi was placed by the DDA before the Lieutenant Governor, Delhi, who has

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recommended, amongst other things, reconstruction of all 336 flats, and till the reconstruction takes place, appropriate rent should be paid to the allottees/residents. The recommendation of the Lieutenant Governor, are extracted as below:-

> *"xxx xxx xxx*
>
> ***Hon'ble Lt. Governor, after going through these contentions of the Legal Deptt, has disagreed with the position taken by DDA. It is not right to state that DDA has no responsibility in the instant matter. Viewing all the facts available in the matter, Hon'ble Lt. Governor has taken a considered view that DDA must step in, in this case in larger public interest.***
>
> ***Inspection report of IIT Delhi, clearly highlights structural defects in the buildings which can only be attributed to flawed construction, poor oversight and supervision, which was undoubtedly the responsibility of the DDA. It is surprising that, despite collecting Rs. 20.80 cr from allottees for maintenance for 30 years, DDA is taking recourse to a legal alibi that is infructuous in the first place.***
>
> ***Moreover, identified structural flaws in the construction, that would put thousands at danger are being disowned by DDA in a callous manner, despite the fact that recommendations of the Engineering Member, DDA are available on the file, suggesting a way forward. However, DDA did not bring this out in its final recommendations on the file submitted to Hon'ble Lt. Governor. This has been viewed seriously by the Hon'ble Lt. Governor/Chairman, DDA.***
>
> ***This is a case of gross negligence and apparent criminal misconduct putting people at large in danger. Allottees demonstrated trust in DDA while buying these apartments. As a public organization DDA must own the defects and take urgent remedial measures. If it is not safe for habitation, DDA must own the responsibility for providing feasible alternatives to the allottees and take strictest action against the responsible entity/person(s).***
>
> *In light of the above and after going through the available records on file, Hon'ble Lt. Governor has directed that* ***the following actions be taken urgently to avoid any untoward incidents in the interest of the public safety and responsible governance:***
>
> ***I. Sharing of entire study on structural condition with MCD for***

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initiating proceedings under section 348/349 of DMC Act:
II. Sharing of report on structural condition with RWA/allottees/ residents of the Signature View Apartments, despite the same having already been shared in reply to an RTI;
III. Immediate initiation of Criminal proceedings under the relevant provisions/rules, against the contractors/builders/ construction agencies;
IV. Vigilance enquiry to identify all officers / officials responsible for lapses/ mis-conduct in the construction of said buildings within 15 days and initiation of subsequent criminal action against the defaulting officials accordingly.

Further, as desired by Hon'ble Lt. Governor, a committee consisting of Member Engineering; Commissioner (Housing) and CLA of DDA be constituted to interact with the RWA/allottees/residents concerned and explore options of:

I. Buy back on refund basis along with refund of registration charges; OR
II. Redevelopment of the entire property and provision of rental amount to the allottee/residents till such time as the redevelopment takes place; OR
III. Exploring alternative rehabilitation in equivalent type of available inventory of DDA and provision of rental amount to the allottee/residents till such rehabilitation takes place; OR
IV. Any other feasible option for the rehabilitations of the allottees/residents, offered by RWA to the committee, within 07 days.

Further, for the future, DDA may ensure incorporation of mandatory clauses in its tender documents, that in case of any eventuality of structural defects, due to poor construction/material, comes to light, criminal action along with financial recovery, shall be initiated against the developer/contractor. For this purpose, suitable legal provisions may be incorporated in the rules and acts that govern such contracts/tenders.

Hon'ble Lt. Governor has desired that the compliance of the above directions be submitted to this Secretariat by 31.01.2023.

xxx xxx xxx"

(Emphasis Supplied)

30. Thus, it is apparent that upon considering the report of the IIT, Delhi recommending demolition of the structures in question, the Lieutenant Governor, Delhi directed that the entire study on structural condition of the

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buildings in question, be shared with the MCD for appropriate decision. Further, the DDA was directed to constitute a Committee to interact with the RWA/ allottees/ residents concerned to explore options, *inter alia* of re-development of the entire property and making provision for payment of rental amount to the allottee/ residents till such time, as the development takes place and other feasible options for rehabilitation of the allottees/ residents. Thus, based upon the recommendation of the structural experts and direction of the Lieutenant Governor of Delhi, the DDA took a decision to demolish and re-construct the structures in question.

31. Upon receipt of the report of IIT, Delhi, immediately thereafter, the RWA called an extraordinary general body meeting on 15th January, 2023 to update the members, know their views and further to constitute a committee to take up the matter on behalf of residents. Hence, a committee of four members was constituted to take up the matter on behalf of the residents with the concerned authorities. The said committee and the RWA actively engaged with the DDA for rehabilitation of the residents and for securing the demands of the residents/ allottees/ owners.

32. Ultimately, the DDA gave its final proposal dated 26th June, 2023, wherein, the DDA agreed to rehabilitate the residents during the period of demolition and re-construction of the Signature View Apartments. However, certain conditions of rehabilitation, like payment of rent by the DDA for alternate accommodation only upon vacation of all the flats, and certain other conditions, were not acceptable to the residents, which have been also challenged before this Court.

33. Facts on record show that 75% of the allottees/residents have given their consent to the proposal of DDA for demolition and re-construction,

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subject to payment of rent on evacuation. However, though the residents are agreeable for demolition and reconstruction by the DDA, they have raised objections as regards the proposal of the DDA for construction of 168 extra flats. Further, as per the pleadings on record, 102 flat owners had vacated by 30th April, 2024. One resident, who has filed *W.P.(C) 3760/2024*, is opposing the demolition and reconstruction of the Signature View Apartments on the ground that the buildings therein are strong and repair/ reinforcement works, can be carried out.

Consideration by Municipal Corporation of Delhi:

34. Upon the recommendation of the Lieutenant Governor, the matter was referred by the DDA to the MCD. In order to examine the report of the structural consultant of IIT, Delhi and to form an opinion about the safety of building, the MCD constituted a committee. The Terms of Reference of the said committee, as constituted by the MCD, is extracted as below:

> *"xxx xxx xxx*
>
> ***Subject: Minutes of the Meeting of the committee constituted to form an opinion regarding safety and proceedings under Section 348 & 349 Of the DMC Act in respect of multi-storey DDA SFS Flats (Signature View Apartments), Mukherjee Nagar, Delhi.***
>
> *xxx xxx xxx*
>
> ***TERMS OF REFERENCE**:-It was informed in the above letter that as per the direction of the Addl. Commissioner (Engg.), the committee has been constituted to look into the two aspects; **1. To examine the report of Structural Consultant/HT Delhi and form an opinion about the safety of buildings 2. Initiation of proceedings under Section 348 and 349 of the DMC Act, as requested by DDA in the light of the findings of the reports enclosed with letter dated 27 January, 2023**.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

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35. On analysing and considering the reports of structural experts submitted by the DDA, the MCD came to the conclusion that the towers in question are an imminent danger to life and property and to any person occupying, passing such building and also neighbouring buildings. Thus, the MCD declared the said structures as dangerous vide order dated 18th December, 2023 under Sections 348 and 349 of the DMC Act, which reads as under:

MUNICIPAL CORPORATION OF DELHI
OFFICE OF THE EXECUTIVE-ENGINEER (M)-I
2nd FLOOR 16, RAJ PUR ROAD, CIVIL LINES ZONE
DELHI.-54

No. EE(M)-I/CLZ/2023-24/ 1041 Dated: 19/12/2023

ORDER U/S 348 & 349 OF THE DMC ACT., 1957

Whereas it has been brought to notice vide letter No. F/0065/2020/SE/NCC-1/DDA dated 27.01.2023 of Principal Commissioner (Housing) DDA, Delhi that the flats in building of Signature View Apartment at Mukherjee Nagar were constructed by DDA under turnkey project.

Whereas on the basis of complaints of the residents about poor quality construction, DDA engaged National Council of Cement and Building Material (NCCBM) to suggest remedial measures and on the recommendations of NCCBM, structural consultant of IIT, Delhi, was engaged and samples of material were taken from the Buildings and got tested at Shri Ram Institute of Industrial Research (SIIR), Delhi. The structural consultant suggested that distress in the structure (of the building) appears to be due to chloride in the structure (higher then permissible) which is cause of deterioration of concrete and corrosion of reinforcement and towers be vacated and dismantled as soon as possible.

Whereas, as per communication received from DDA and structural audit report, the towers of Signature View Apartment are dangerous and unfit for human inhabitation.

Whereas, It has been reported that Houses/ Flats in the towers A, B, C & D, E,F, G, H, I, J, K, L are in dangerous condition and in any way dangerous to any person occupying, passing by such building and also in neighborhood of above building. It has been considered absolutely inevitable by the D.D.A. to get the flats in the said towers vacated, considering the same are dangerous, and not fit for habitation or for any purpose, as per proceedings available on record.

Whereas, DDA has undertaken intense exercise for arriving at outcome, as informed by them, which are well within your knowledge.

Whereas, the matter obviously holds gravity and significance, and requires active role and participation / cooperation of residents / owners / occupiers of houses / flats in the said towers in an immediate manner for the reasons already on record.

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Now, therefore, Executive Engineer(M-I)/Civil Lines Zone, in exercise of power of the Commissioner, MCD vested in me under section 348 & 349 read with Section 491 of DMC Act., 1957,

Keeping in view of safety of public at large, hereby declare the Houses/Flats in the towers A, B, C & D, E,F, G, H, I, J, K, L, being dangerous and not fit for habitation or any other use, for the reasons mentioned above and accordingly, direct you i.e. resident/owner/occupier of Signature View Apartment to vacate the aforesaid dangerous structure/building within seven days for appropriate action to be taken with respect to the dangerous building by the appropriate authorities failing which further action u/s 348 (4) & 349 shall be taken at your risk and costs without any further information in this regard.

Issued under my hand and seal on the 18 Dec day of 2023.

Executive Engineer(M-I)
Civil Lines Zone

Owner/Occupier
Flat No. 103 Tower No. A
Signature View Apartment
Mukherjee Nagar
Delhi

36. The affidavit filed by the MCD in this regard, reads as under:

I, R.K. Jain, presently working as Executive Engineer (M)-I in Civil Line Zone, Municipal Corporation of Delhi, do hereby solemnly affirm and declare as under: -

1. That the deponent is presently working as Executive Engineer (M)-I, Civil Lines Zone, Municipal Corporation of Delhi and has acquainted himself with the facts and circumstances of the present case on the basis of the records available and maintained in the office of the respondent /MCD, as such is competent to swear the present affidavit on behalf of answering respondent.
2. That the present writ petition has been filed seeking following reliefs against answering respondent MCD: -

a)Issue a writ in the nature of certiorari, and/or such other writ, order or directions, quashing the order dated 18.12.23 passed by the Respondent no. 4 u/s 348 &349 of the DMC Act 1957 and to declare the same as illegal, void ab-initio and passed without following the due process of law.

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3. That the Hon'ble court vide order dated 14.03.24 was pleased to issue notice and directed MCD to file its affidavit explaining the basis on which the building in question has been declared to be dangerous and the material on the basis of which this decision has been taken, also to be place on record.

4. That as per the records sent by DDA, vide letter dated 27.01.23 received from Principal Commissioner DDA(Housing PMAY, Sports system, CWG)it is mentioned that 336 flats/Apartments in the name of Signature View Apartment situated at Mukherjee Nagarcontaining 12 Towers/blocks(A,B,C&D,E,F,G,H,I,J,K,L)were got constructed by DDA under Trunkey Project.The said letter is Annexed herewith **as Annexure A.**

5. That as per the letter dated 27.01.23, the Principal commissioner desired that the report of the structural consultants along with findings of testing agencies be examined by answering respondent MCD and to form an opinion regarding the safety of the buildings. It was also mentioned that since premises stands de-notified by DDA, the proceedings under section 348 and 349 of the DMC Act 1957 be initiated without any further delay, in light of findings of enclosed reports

6. That as per the said letter and allied proceedings, the project was completed in 2010. The flats were allotted in year 2010 and subsequent years by DDA. That as gathered from the communication dated 27.01.23, the residents/ allottees started raising complaints about poor quality construction and in order to address their grievances, DDA carried out repair works of the buildings/ blocks to the tune of Rs. 5.8 crores.

7. That despite the repair work, the RWA in 2018 made complaint about the cracks in columns, beams of the building and frequent falling of plaster and corrosion of reinforcement.

8. That as per the said letter, on the basis of complaints of the residents about poor quality construction, DDA engaged National Council of Cement & Building Material. (NCCBM) to suggest remedial measures.The report of NCCBM is Annexed herewith as **Annexure B**. The scope of the work as referred by DDA to NCCBM and various tests conducted by NCB and the results of the tests are outlined in the report of NCCBM. The report of NCCBM also entails the photographs showing electric resistivity test, Carbonation depth, concrete core extraction etc. being done on columns. The results of various tests done are entailed from internal page 3 to 13 of the NCCBM report at Annexure B.

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9. That Based on the recommendation of the NCCBM, structural consultant of IIT, Delhi was engaged. A report dated 19.11.22by Prof Shashank Bishnoi Department of Civil Engineering IIT Delhi has been submitted to DDA, which is Annexed herewith as **Annexure C**. The scope of the work is entailed at internal page 1 of the report. The report summarizes the complete findings and recommendations from various stages of work and final recommendations on the matter. Upon perusal of the report by IIT, they had come to a conclusion that "*since the chloride are mixed in the concrete almost throughout the structure, there is little to no chance of achieving desired life from the structures even if preventive measures or repairs are undertaken.* The report finally recommended that *Towers A, B and C be vacated and dismantled. In the duration that the process of vacating the Towers is ongoing, the structures must be visually monitored periodically so as to identify any signs of acceleration of corrosion that may put the residents at risk.* In regards to Towers D,E,F,G,H,I,J,K and L are concerned the findings given by IIT are, "*Given the high chloride content in the concrete almost throughout the structure and the large amount of deterioration that has already occurred, a repair of these structures for safe usage is unlikely to be technically and economically feasible. Towers D, E, F,G,H,I,J,K and L must be vacated as soon as possible due to extensive deterioration that has already occurred in these towers and must be dismantled as soon as possible to prevent any loss of life. Towers D, E, I and l appear to be especially at high risk due to which they must be vacated immediately.*" samples of material were taken from building and got tested at Shri Ram Institute of Industrial Research (SIIR) Delhi.

10. That since the matter in issue regarding Signature View apartments building safety concerns, the issue was already examined by DDA, who has supervised the construction and recommendations have already been made by the structural consultant appointed by DDA, but still as per their communication vide letter dt. 27.01.2023a committee was constituted under the chairmanship of Chief Engineer (CLZ) to examine two main issues: -

i. the report of structural consultant IIT, Delhi and forming an opinion about the safety of building.

ii. Initiation of proceeding u/s 348 & 349 of DMC Act as requested by DDA in the light of findings of the reports enclosed with letter dated

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27.01.23. The meetings of the committee were held on 17.02.23 and 02.03.23.

11. That after detailed deliberations the committee submitted its report to Additional commissioner (Engineering) which is Annexed herewith as **Annexure D**. During the meetings it was also deliberated upon the services of the flats in question. In the instant matter the services of the flats are not with MCD and the area (within complex of DDA flats) is still with DDA having 336 flats. In view of the jurisdictional aspect involved, the services of DDA complex are not yet handed over to MCD. That regarding the examination of reports handed over to MCD by DDA along with communication letter dated 27.01.23, the committee was of view that, *"Since there is no such expertise/ specialization facility available with MCD as required in the case to examine/cross check/ further detailed study , required, if any so as to make /give any opinion on the report of structural condition of DDA Apartments (Signature view) at Mukherjee Nagar submitted by Prof. Shashank Bishnoi, IIT, Delhi as requested by DDA. Therefore, in the light of these facts and circumstances, the DDA authorities may be requested to decide the matter at its own as what further course of action/study is required to be taken by them on this issue/report submitted by IIT, Delhi."*

12. That further more Principal commissioner DDA vide letter dated 09.08.23 bearing no F/0065/2020/-O/OSUPTD.ENGINEER(NCC-1)/119 and enclosing the earlier letter dated 27.01.23 addressed to Worthy commissioner, MCD has intimated that "the DDA authority in its meeting on 14.06.23 has already approved the proposal of buy-back/ reconstruction of the Signature View apartment and we are in process of obtaining consent from individual allottees/owners to opt for buy-back or

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reconstruction." The copy of the letter dated 09.08.23 is Annexed herewith as **Annexure E**.

13. That the DDA has undertaken intense exercise for arriving at such conclusion that House/flat in the Towers A,B,C,D,E,F,G,H,I.J.K and L are in dangerous condition and as demonstrated through reports of Structural consultant IIT , that the Towers are at high risk and they must be vacated immediately. As per the communications received from DDA along with reports, it is considered that Towers are an imminent danger to life and property and also to any person occupying, passing by such building and also neighboring buildings.

14. That in view of the above and urgency as expressed by DDA vide their letter dated 27.01.23, along with reports of NCCBM and structural consultant IIT,the Committee constituted for the purpose, after resolving that there is no expertise to further cross check to give the report on the detailed study conducted on structural aspect of the Buildings, placed a proposal on 12.09.23 for issuing notice u/s 348 & 349 of DMC Act before Competent Authority. The competent authority applied its mind to various reports of detailed study and the committee's opinion and the communications received from DDA, came to the conclusion that,in the larger public interest, Orders under section 348 and 349 of DMC Act, were directed to be issued to owners/occupiers declaring the entire towers A,B,C,D,E,F,G,H,I,J,K and L as dangerous and not fit for habitation or any other use , directing the resident/occupier or owner of the Signature view apartment to vacate the premises within 7 (seven) days for appropriate action to be taken with respect to the dangerous building by the appropriate authorities failing which further action u/s 348(4) and 349 shall be taken at their risk and cost. The Executive Engineer of the Maintenance Division, acting as a delegate of the Commissioner MCD, considered the reports and material on record, came to the conclusion that nothing short of demolition of the entire buildings /Towers could avoid the danger. The orders under section 348 and 349 of DMC Act 1957 were passed after proper compliance with law, and thereafter,issued to owner/occupiers of the Signature View Apartments, to vacate the premises within 7 days for appropriate action to be taken with respect to dangerous building by appropriate authoritiesfailing which action under section 348(4) and 349 would be taken. The orders passed under section 348 and 349 of DMC Act 1957 to owner/occupier of Signature view Apartments are Annexed herewith as **Annexure F**, for the perusal of the Hon'ble court.

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37. In view of the aforesaid, the contention raised by the petitioners that the MCD has passed the order under Section 348 and 349 of the DMC Act mechanically without application of mind, cannot be countenanced. A considered decision has been taken by the MCD on the basis of the material before it. The present is not a case of 'no material' before the MCD and this Court will not go into the sufficiency or otherwise of the material before the MCD, when no arbitrariness or unreasonableness, has been established in the decision taken by the MCD.

Consideration by Union of India:

38. During the course of hearing of these petitions, this Court had directed the Union on India, i.e., the Ministry of Housing and Urban affairs, Government of India to inspect the buildings in question, consult with its structural experts and specify in clear terms, as to whether it is possible to carry out any repair work in the buildings in question. The Union of India was also directed to specify the status of the buildings as regards its habitability, structural safety and as to the course of action with regard thereto.

39. Pursuant to the aforesaid directions, the Government constituted a Committee of Experts, consisting of experts from IIT, Roorkee, CPWD and Delhi Metro Rail Corporation ("DMRC"). The said Committee by its report dated 09th April, 2024, concluded that it is not possible to carry out any repair work in the buildings and that the buildings are structurally unsafe, as corrosion has developed significantly, in almost in all structural members. The affidavit filed by the Ministry of Housing and Urban affairs, Government of India, is reproduced as under:

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"xxx xxx xxx

4) That in compliance with the direction issued by this Hon'ble Court in the order dated 14.03.2024, Respondent No. 1 vide order dated 01.04.2024 constituted a committee of experts consisting of the following experts:

(a) Prof. Rajib Chowdhury Faculty, Department of Civil Engineering, Indian Institute of Technology (IIT) Roorkee.
(b) Shri Nagendra Prasad Chief Engineer Central Design Organization, Central Public Works Department (CPWD), A-wing, Nirman Bhawan, New Delhi
(c) Shri Daljeet Singh Advisor (Special Works) Delhi Metro Rail Corporation (DMRC) Metro Bhawan, New Delhi.

5. That the committee held its meeting on 04.04.2024 and visually inspected all the 12 Blocks of Signature View Apartment on 04.04.2024.

6. That the committee submitted its report to Respondent No. 1 on 09.04.2024 and the same has been annexed herewith as Annexure R-1.

The committee in its report has concluded that:

{i) it is not possible to carry out any repair work in the buildings
(ii) buildings are not habitable due to significant distress observed
(iii) building are structurally unsafe as corrosion in almost all structural members has been developed significantly.

7. That the report submitted by the Committee has been examined in the Ministry and the Ministry agrees with the aforesaid conclusions arrived at by the Committee.

8. Keeping in view the above, it is submitted that:
(I) it is not possible to carry out any repair work in the buildings
(II) Buildings are not habitable
(III) Buildings are structurally unsafe.

xxx xxx xxx"

(Emphasis Supplied)

Outcome of the Various Reports:

40. Considering the various reports as aforesaid, it is apparent that the buildings in question are structurally unsafe. Repair works have been undertaken by the DDA, however, the same proved to be cosmetic, since the very structure of the building was found to be fundamentally weak. Wide

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and deep cracks have become palpably visible in beams and pillars of structure. The repair work carried out by the DDA could not prevent further corrosion. Rather, the problem aggravated over the years leading to building of cracks in columns, pillars, beams and ceilings, including the deep cracks on the outer facade leading to falling of ceilings and big lumps of concrete, endangering the life and property of the residents.

41. Thus, it is evident that the structures of the residential buildings in question are inherently weak, as sub-standard building materials have been used for construction. The IIT, Delhi has stated in clear terms that there is little to no chance of achieving desired life of the structures, even if preventive measures or repairs are undertaken. It has held that given the large amount of deterioration that has already occurred, repair of these structures for safe passage is unlikely to be technically and economically feasible. Its report finally recommended that the towers in question be vacated and dismantled, as soon as possible to prevent any loss of life.

42. The DDA has undertaken intense exercise, including investigation by the expert bodies and referring the matter to the MCD for considering the expert reports. The MCD after considering the various reports has come to a considered decision that the structures in question are in dangerous condition. Considering the material before it, the DDA has concluded that the towers of the Signature View Apartments are at high risk of further deterioration and must be vacated immediately. Accordingly, decision has been taken by the DDA to demolish and reconstruct the flats in question on the basis of the reports of structural analysis by the experts. The Lieutenant Governor, Delhi, has already endorsed the reports of the experts and has approved the recommendation of the experts that the buildings in question,

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ought to be demolished and reconstructed.

43. Upon reference of the matter to the MCD, the MCD through a Committee constituted under the Chairmanship of Chief Engineer, Civil Line Zone, undertook the exercise of examining the report of the Structural Consultant i.e., IIT, Delhi and to form an opinion about the safety of the building. The MCD considered the reports of the NCCBM and IIT, Delhi, and after applying its mind to the various reports, came to the conclusion in the larger public interest that nothing short of demolition of the entire buildings/towers, could avoid the danger. Thus, the MCD declared that the entire towers were dangerous and not fit for habitation. The MCD directed the residents/occupiers of the Signature View Apartments to vacate the premises for appropriate action to be taken with respect to dangerous building in terms of Section 348 and 349 of the DMC Act.

Court Not to Sit in Appeal Over the Policy Matters and Decisions of the Experts:

44. Once considered decision has been taken by the authorities and expert bodies, this Court would not act as an Appellate Court over the decision of the authorities and expert bodies, unless the same are arbitrary, capricious and based on extraneous considerations. Ordinarily, the Court would not interfere in policy matters. On matters affecting policy and requiring technical expertise, the Court would leave the matters for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the constitution or there is abuse of power, the Court will not interfere in such matters.

45. Thus, in the case of ***State of Uttar Pradesh and Others Versus Chaudhari Ran Beer Singh and Another***, ***(2008) 5 SCC 550***, it has been

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held as follows:

> *"xxx xxx xxx*
>
> ***13.*** *Cabinet's decision was taken nearly eight years back and appears to be operative. That being so there is no scope for directing reconsideration as was done in Ram Milan case, though learned counsel for the respondents prayed that such a direction should be given.* ***As rightly contended by learned counsel for the State, in matters of policy decisions, the scope of interference is extremely limited. The policy decision must be left to the Government as it alone can decide which policy should be adopted after considering all relevant aspects from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown, courts will have no occasion to interfere and the court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the court cannot interfere even if a second view is possible from that of the Government.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

46. Likewise, in the case of ***Union of India and Others Versus J.D. Suryavanshi***, ***(2011) 13 SCC 167***, it has been held as follows:

> *"xxx xxx xxx*
>
> ***8.*** *In Federation of Railway Officers Assn. v. Union of India [(2003) 4 SCC 289] this Court was considering a challenge to the Government's proposal to form new railway zones. The appellant therein placed some material to demonstrate that formation of new railway zones may not increase the efficiency of the Railway Administration. This Court refused to interfere and observed: (SCC p. 302, paras 17 & 18)*
>
> > *"17. … Even otherwise, to meet the demands of backward areas cannot by itself be inconsistent with efficiency. When the Railways is a public utility service it has to take care of all areas including backward areas. In doing so, providing service, efficient supervision and keeping the equipment and other material in good and workable condition are all important factors. …*
> >
> > *18. …* ***Further, when technical questions arise and experts in the field have expressed various views and all those aspects have been taken into consideration by the Government in deciding the matter, could it still be said that this Court should re-examine to interfere with the same. The wholesome rule in***

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regard to judicial interference in administrative decisions is that if the Government takes into consideration all relevant factors, eschews from considering irrelevant factors and acts reasonably within the parameters of the law, courts would keep off the same.*"*

9. *In Directorate of Film Festivals v. Gaurav Ashwin Jain [(2007) 4 SCC 737] this Court held: (SCC p. 746, para 16)*

"16. ***The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as appellate authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review….****"***

10. *The following observations of the House of Lords setting the limits of judicial review in Chief Constable of the North Wales Police v. Evans [(1982) 1 WLR 1155 : (1982) 2 All ER 141 (HL)] can be usefully referred: (WLR pp. 1160H-1161A & 1174G)*

"… ***The function of the court is to see that lawful authority is not abused by unfair treatment and not to attempt itself the task entrusted to that authority by the law. … The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the court. …***

Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.*"*

*"****Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power." (WLR p. 1173F)***

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> ***11.*** ***<u>This Court has repeatedly warned that courts should resist the temptation to usurp the power of the executive by entering into arenas which are exclusively within the domain of the executive.</u>*** *How many coaches should be attached, what types of coaches are to be attached, on which lines what trains should run, what should be their timings and frequency, are all matters to be decided by the Railway Administration using technical inputs, depending upon financial, administrative, social and other considerations.* ***<u>This Court has repeatedly held that courts should not interfere in matters of policy or in the day-to-day functioning of any departments of Government or statutory bodies. Even within the executive, the need for separation of roles has been voiced.</u>***
>
> ***12.*** *We may usefully refer to the following observation in the Rakesh Mohan Committee Report (1998) made in a different context:*
>
> > *"With regard to institutional separation of roles, into policy, regulatory and management functions, these roles are currently blurred, which causes confusion about the underlying vision and mission of the Indian Railways. The institutional separation of roles will mean that policy-makers are limited to setting policy; regulators fix competition rules in general and pricing in particular; management manages and is measured against clear performance indicators."*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

47. It is settled law that Courts while exercising their wide writ jurisdiction, should practice self restraint and should not interfere, where the Court lacks expertise, and only administrative authorities are competent to take decision. Otherwise, administrative machinery will come to a standstill, and it would become difficult to run administration. Thus, in the case of ***Vasavi Engineering College Parents Association Versus State of Telangana and Others***, ***(2019) 7 SCC 172***, Supreme Court has held as follows:-

> *"xxx xxx xxx*
>
> *17. In Fertilizer Corpn. Kamgar Union v. Union of India [Fertilizer*

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Corpn. Kamgar Union v. Union of India, (1981) 1 SCC 568], it was observed: (SCC p. 584, para 35)

> *"35. … We certainly agree that judicial interference with the administration cannot be meticulous in our Montesquiean system of separation of powers.* ***The court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the Directorate of a government company has acted fairly, even if it has faltered in its wisdom, the court cannot, as a super-auditor, take the Board of Directors to task. This function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration.****"*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

48. It is equally true that if a decision taken by a public authority is a plausible view, because another view is possible, is no ground for interference under Article 226 of Constitution of India. Judges are not and cannot be experts in all fields, and opinion of experts cannot be supplanted by a Court. Thus, in the case of ***National Board of Examination Versus Association of MD Physicians***, ***2022 SCC OnLine Del 2362***, Division Bench of this Court has held as follows:

> *"xxx xxx xxx*
>
> *17.* ***The foregoing cases cement the finding that Judges are not and cannot be experts in all fields, and the opinion of experts cannot be supplanted by a Court overstepping its jurisdiction. It needs to be demonstrated by a candidate that the key answers are patently wrong on the face of it, and if there is any exercise conducted by the Court wherein the pros and cons of the arguments given by both sides need to be taken into consideration, that will inevitably amount to unwarranted interference on the part of the Court. When there are conflicting views, it is incumbent upon the Court to bow down to the opinion of the experts which, in this case, was the Expert Committee constituted by the NBE.***
>
> *18.* ***The submissions made by the learned Senior Counsel hold weight inasmuch as the Court cannot step into the shoes of the examiner and render an opinion contrary to that of the Expert Committee. If the error***

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in the question is manifest and palpable, and does not require any elaborate argument, then the Writ court may choose to intervene. However, where the errors do not show their heads without a detailed and elaborate probe into the opinions of experts, the Court must stay its hands. It would not be prudent for a Court to conduct itself like an expert in a subject alien to it when an entire body of experts has arrived at a contradictory stand. It is also not for the Courts to interfere in such matters, except in absolutely rare and exceptional cases, especially in view of the fact that the instant examination pertains to the practice of medicine – a field that requires the exercise of utmost care and caution.

xxx xxx xxx"

(Emphasis Supplied)

49. Likewise, a Division Bench of this Court has held that in respect of public projects and policies which are initiated by the governments, the Courts should not become an approval authority and it will not be in public interest to require the Court to go into and investigate those areas which are the function of the executive. Further, it has been underscored that a change in policy by the government can have an overriding effect over private treaties between the government and a private party, if the same was in the general public interest. Thus, in the case of ***Vikash Dahiya and Others Versus Union of India and Others, 2024 SCC OnLine Del 1767***, it has been held as follows:

"xxx xxx xxx

16. We are of the view that the corrigendum is justified, more particularly for the reasons stated in paragraphs 42 to 49 of our judgment dated February 05, 2024 in W.P. (C) 7476/2023. The same are reproduced as under:

xxx xxx xxx

46. Additionally, we may state here, that SO-I, though stipulate that personnel in order to be eligible for being deputed to Indian Mission in Afghanistan, must have minimum three years of service in EHA/HA, but, the said stipulation did not give preference to the personnel, who may have put in more service in EHA/HA, resulting in personnel meeting the eligibility criteria of

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having minimum three years of service in EHA/HA and having the seniority, getting selected, as against those, who may have more years of service in EHA/HA.

47. In other words, by way of the amendment/corrigendum, the preference is sought to be given to those personnel, who have more necessary service in EHA/HA. In this regard, we may refer to the paragraph 28 above, wherein the respondents have stated that as against personnel (petitioner No. 13 herein) having served 119 months in EHA/HA, preference has been given to a personnel who has served 151 months in EHA/HA. Similarly, as against a personnel i.e., (petitioner No. 43, who has the highest number of experience amongst the petitioners, having served 139 months in EHA/HA), a personnel having 143 months of experience in EHA/HA, who is also the last selected Constable (GD) in the impugned list, has been given preference. Therefore, we do not see any illegality in the impugned action of issuing the corrigendum by the respondents, more so, as it has rightly been pointed out by Mr. Anshuman, that the deputation cannot be sought as a matter of right.

48. In any case, the impugned corrigendum does not completely exclude the consideration of petitioners for deputation. Moreover, when a larger public interest is involved, the same must give way to personal/individual interest. In this regard, a reference could be made to the recent judgment of the Supreme Court in the case of Yamuna Expressway Industrial Development Authority v. Shakuntla Education & Welfare Society, 2022 SCC OnLine SC 655, wherein, in paragraphs 59, 60, 61, 62, 63 and 65, it has been held as under:—

> *"59. The law with regard to interference in the policy decision of the State is by now very well crystalized. This Court in the case of Essar Steel Limited v. Union of India had an occasion to consider the scope of interference in the policy decision of the State. After referring to various decisions of this Court, the Court observed thus:*
>
> *"43. Before we can examine the validity of the impugned policy decision dated 6-3-2007, it is crucial to understand the extent of the power vested with this Court to review policy decisions.*
>
> *44. In DDA [DDA v. Allottee of SFS Flats, (2008) 2 SCC*

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672 : (2008) 1 SCC (Civ) 684] on issue of judicial review of policy decisions, the power of the Court is examined and observed as under : (SCC pp. 697-98, paras 64-65)

"64. An executive order termed as a policy decision is not beyond the pale of judicial review. Whereas the superior courts may not interfere with the nitty-gritty of the policy, or substitute one by the other but it will not be correct to contend that the court shall lay its judicial hands off, when a plea is raised that the impugned decision is a policy decision. Interference therewith on the part of the superior court would not be without jurisdiction as it is subject to judicial review.

65. Broadly, a policy decision is subject to judicial review on the following grounds : (a) if it is unconstitutional; (b) if it is dehors the provisions of the Act and the Regulations; (c) if the delegatee has acted beyond its power of delegation; (d) if the executive policy is contrary to the statutory or a larger policy."

xxx xxx xxx"

Satisfaction of the Commissioner, MCD or his Delegate while Arriving at a Decision to Declare a Building as Dangerous, not to be Subject Matter of Judicial Review as Regards its Correctness:

50. The issue of legality of the satisfaction arrived by the Commissioner, MCD, while arriving at a decision under Section 348 of the DMC Act, has been considered by Courts on numerous occasions. It has been laid down that it is the satisfaction of the Commissioner or his delegate, being based on material before it, which is relevant, and not the satisfaction of the Court. The Court cannot proceed to enquire whether the material on which the Commissioner has based his opinion was sufficient. The satisfaction of the Commissioner or his delegate, cannot be subject matter of judicial review as regards its correctness. A Court cannot sit in appeal over the correctness of the opinion of the Commissioner MCD or his delegate that the building in

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question is dangerous.

51. Thus, in the context of subjective satisfaction of the Commissioner regarding a building being dangerous, this Court in the case of ***Municipal Corporation of Delhi Versus Daulat Ram (Died) Represented by L.Rs., 1971 SCC OnLine Del 130***, has held as follows:

> *"xxx xxx xxx*
>
> *The contrast between the language of section 348(1) and the language of the issue No. 4 framed by the trial Court which shaped the approach of the Courts shows the fundamental error committed by both the learned lower Courts. The question for decision was whether the Commissioner had formed the opinion that the premises were in a ruinous condition. But the learned lower Courts thought that the question for decision was whether, in fact, the premises were in a ruinous condition and that this fact was to be decided by the Courts and not by the Commissioner. The concurrent findings of the learned lower Courts that in fact the premises were not in a ruinous condition are, therefore, completely irrelevant for the decision of the question whether, in the opinion of the Commissioner, the premises were in a ruinous condition. In view of the wrong approach of the learned lower Courts to the construction of section 348(1), it would be useful to understand the precise nature of the power of the Commissioner under section 348(1) and the nature of judicial review exercised by the civil Courts either in trying suits or writ petitions under Article 226 of the Constitution challenging the exercise of such a power by the Commissioner. Let us consider the different types of suits which may come before the Courts in such a context.*
>
> *xxx xxx xxx*
>
> ***A proper reading of section 348(1) will show that the issue arising thereunder is not between two private persons. On the other hand, it is one between a public authority acting thereunder and the individual affected by the administrative action. The law does not place the public authority and the individual on the same footing. Section 348(1) expressly confers a statutory discretion on the Commissioner by the words "if it appears to the Commissioner". The discretion is to decide whether "any building is in a ruinous condition". The reason is that the question whether a building is in a ruinous condition is of public interest and is not a matter only of the private interest of its owner or of its tenant. This is why the power is given to the Commissioner to form the opinion whether the building is in a ruinous condition or not. By***

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giving this power exclusively to the Commissioner, the Legislature has correspondingly withdrawn the question whether the building is in a ruinous condition or not from the jurisdiction of the Courts. If however, the existence of the conditions or grounds on which such opinion could be formed is proved, then the Courts cannot go further and enquire whether the grounds or the conditions were sufficient to support the opinion.

That the assessment whether the grounds were sufficient or not was essentially in the discretion of the Commissioner. It is the very reason why section 348(1) is so phrased. *Of course, the aggrieved party is entitled to show that in arriving at the opinion, the Commissioner took extraneous or irrelevant materials into consideration or ignored relevant materials which he ought to have taken into consideration. He can also show that the authority acted mala fide. ....*

xxx xxxx xxx

It is to be noted that the evidence of Shri Chakravarti was only to show that his inspection and the inspection made by the other engineers formed the material. The evidence of Shri Nayak, Municipal Commissioner, was relevant only to show that he had applied his mind to the case and formed his own opinion on the basis of the material furnished by the municipal engineers as well as by his own inspection. The evidence of these municipal officers is not like the evidence of a private party to be rebutted by other evidence. The error committed by the learned lower Courts was to regard the dispute as a private dispute in which the issue was to be decided by the Court by assessing the evidence of both the parties. ***The learned lower Courts forgot that it was not the satisfaction of the Court but only of the Commissioner which was relevant. The satisfaction of the Commissioner being based on ample material could not itself be subjected to judicial review as regards its correctness. The Courts have proceeded to enquire whether the material on which the Commissioner based his opinion was sufficient and concluded that it was not sufficient. This is precisely what is prohibited by the restriction on the scope of the judicial review imposed by section 348(1). The approach of the learned lower Courts was fundamentally wrong inasmuch as they thought that the question for decision by them was whether the building was in a dangerous condition or not. This certainly was not a question for the decision of the Courts. That was a question on which the opinion of the Commissioner was unreviewable by the Courts if the opinion was based on relevant material.*** *This wrong approach has vitiated the decisions of both the learned lower Courts. The case is, therefore, to be viewed de novo in the light of the true meaning of section 348(1). When the trial*

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Court, therefore, referred to the evidence of the Secretary of the Gujrati Samaj and to his own spot inspection note and to the fact that the ruinous condition of the premises was brought to the notice of the authorities initially not by the technical staff but by the Gujrati Samaj and when the trial Court purported to decide the question according to the opinion of the layman as well as technical experts, it went wholly wrong. It purported to assess for itself the evidence as to whether the building was in a dangerous condition or not. It was precluded from doing so by section 348(1). The approach of the lower appellate Court was also wrong in precisely the same way and for the same reasons.

xxx xxx xxx

Learned counsel then said that the ground floor which was ordered to be demolished in 1958-59 is still standing in 1971 and, therefore, it could not have been in a ruinous condition in 1957-58 as was thought by the Municipal Commissioner. The answer to this argument is that section 348(1) refers to a building in a "ruinous condition". This is to be distinguished from a building referred to in section 348(3) in which "if it appears to the Commissioner that danger from a building which is in a ruinous condition or likely to fall is imminent". While section 348(3) deals with a building in which the danger is imminent, section 348(1) apparently deals with a building in which the danger is not imminent. The action is taken not under section 348(3) but under section 348(1). ***The opinion formed by the Commissioner under section 348(1) does not mean that the danger from the ruinous condition of the building was imminent. The fact, therefore, that the building has not fallen down till now does not mean that the opinion formed by the Commissioner was not based on existence of grounds or circumstances. As already stated above, the correctness of the opinion is not to be canvassed before the civil Court. We cannot sit in appeal over the correctness of that opinion. This is the difference between the power of this Court in an appeal or even in a wide judicial review as distinguished from the restricted judicial review which alone is available against action under section 348(1) of the Act.***

xxx xxx xxx"

(Emphasis Supplied)

52. Even otherwise, considering the various documents placed before this Court, it cannot be said that there was no material before the Commissioner MCD or his delegate to arrive at the conclusion that the buildings in question were dangerous. The various reports of investigation by the

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structural consultants and findings of the testing agencies were duly placed before the MCD and considered. On the basis of the material before it, the MCD issued the order under Sections 348 and 349 of the DMC Act, thereby, declaring the towers of the Signature View Apartments as dangerous and not fit for habitation. Once material has been shown to exist, on the basis of which the order declaring the buildings in question as dangerous was issued, this Court will not go into the question of sufficiency or otherwise of the material. This exercise is within the domain of the MCD and the statute is very categorical in stipulating and envisaging the satisfaction of the Commissioner MCD, in this regard.

53. Keeping in view the aforesaid propositions of law, deciding the structural safety of the building cannot be within the domain of this Court. The said decision is best left to the experts in the field, who have given their recommendations after carrying out detailed structural investigation and analysis. Similarly, the decision of the DDA and the Lieutenant Governor to demolish and reconstruct the structures, is based upon the expert opinion, and has apparently been taken in public interest. Likewise, the MCD has declared the structures in question as dangerous and not fit for habitation in the larger public interest, after considering the detailed study conducted by the structural experts.

54. The subjective satisfaction of the Commissioner MCD or his delegate is material for arriving at a considered decision regarding declaring a building as dangerous and not fit for habitation. When such a subjective satisfaction has been arrived at, then, it becomes the bounden duty of the authorities concerned to ensure protection against the dangerous building. Thus, once on the basis of the material before the authorities concerned, a

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considered decision has been taken declaring the building as dangerous and for demolition of the same, requisite action shall follow.

55. This Court also notes that upon receipt of the report of IIT, Delhi, the RWA convened a General Body Meeting, which *inter alia* resolved unanimously that all the 336 flats be reconstructed and handed over to a construction company through DDA. The relevant extract from the Minutes of the Extraordinary General Body Meeting of the RWA held on 15th January, 2023, is reproduced as under:

> *"xxx xxx xxx*
>
> ***Resolution 2:*** *This EGBM wants DDA*
>
> *i. Reconstruction and handing over of all 336 multi-storey flats in a time bound manner - through a regulated construction company hired by DDA.*
> *ii. Rent as per actuals to each flat owner/occupier.*
> *iii. One time compensation for interior work - based upon the valuation / assessment report and actual expense.*
> *iv. Relocation expenses-as per actuals.*
> *v. Payment of compensation for mental agony and harassment.*
>
> *Resolution was passed with voice vote.* ***APPROVED***
>
> *xxx xxx xxx"*

Authority of the DDA to Carry Out Demolition and Re-Construction:

56. As regards the authority of the DDA to carry out reconstruction of the structure in question, reference may be made to Clause 4.2.2 and 4.2.2.1 of MPD 2021, wherein, provisions have been made regarding restructuring and up-gradation of existing areas. The said Clauses, read as under:

> ***"4.2.2 RESTRUCTURING AND UP-GRADATION OF THE EXISTING AREAS***
>
> *In Delhi, a large number of areas are old and are characterized by poor structural condition of buildings, sub-optimal utilisation of land, congestion, poor urban form, inadequate infrastructure services, lack of*

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community facilities, etc. The housing stock in both planned and unplanned areas can be enhanced through various approaches as given below.

4.2.2.1 Planned Areas

A. Plotted / Group Housing

The flats built by DDA, particularly those, which have become aged, may be redeveloped with permission and subject to the condition that the structural safety of other flats is not impinged. Already developed group housing inclusive of public (DDA and others), co-operative housing may be redeveloped on the basis of prescribed norms and regulations by formulating co-operative societies or self-managing communities. The funds for redevelopment should be contributed by the residents.

B. Employer Housing

In Delhi after Independence, substantial areas were developed at low density and have potential for densification. These are mainly government and cantonment areas. In order to optimally utilise these prime lands there is need of intensive development. On a conservative estimate the present housing stock can be increased to more than double. Infrastructure enhancement and provision for additional housing can be financed from the funds generated through cross-subsidisation between commercial and residential use for EWS and LIG categories.

C. Bungalow Area

Lutyens' Bungalow Zone comprises of large size plots and has a very pleasant green environment. The essential character of wide avenues, large plots, extensive landscape and low rise development, has a heritage value which has to be conserved. Mixed use, high intensity development along MRTS corridor and de-densification of trees / reduction of green cover is not permitted at all. The strategy for development in this zone will be as per the approved plans and the LBZ guidelines, as may be issued by the Government of India from time to time.

Civil Lines also has Bungalow Area of which the basic character has to be maintained.

[D. Low Density Residential Area

The majority of Farm Houses in the urban extension areas are located on lands where ground water has already been severely depleted or close to such depletion. Further, intensification of residential density and heavy additional load on civic

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infrastructure such as water supply, Drainage, Sewerage, Parking etc. is highly undesirable in such areas from environmental considerations. Therefore, villages containing existing farm houses clusters are notified as "Low Density Residential Area" (list of village at Annexure- 4.0 (I). Low Density Residential Plots are also allowed in the village falling in Green belt (list of villages in Green Belt at Annexure-4.0 (II).]

xxx xxx xxx"

57. Section 6 of the DDA Act provides the objects of the DDA, and casts an obligation on DDA to 'manage' and dispose of the land and 'other property', to carry out 'other operations' besides building, engineering, etc. and generally 'to do anything necessary or expedient for purposes of development and the purposes incidental thereto'. Section 6 of the DDA Act, reads as under:

> *"**6. Objects of the Authority.—**The objects of the Authority shall be to promote and secure the development of Delhi according to plan and for that purpose the Authority shall have the power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering, mining and other operations, to execute works in connection with supply of water and electricity, disposal of sewage and other services and amenities and generally to do anything necessary or expedient for purposes of such development and for purposes incidental thereto:*
>
> *Provided that save as provided in this Act, nothing contained in this Act shall be construed as authorising the disregard by the Authority of any law for the time being in force."*

58. Section 53 of the DDA Act, under the heading 'effect of other laws, provides that the provisions of the said Act and the Rules and Regulations made thereunder, shall have effect notwithstanding anything inconsistent therewith contained in any other law. Section 53 of the DDA Act, reads as under:

> *"**53. Effect of other laws.—**(1) Nothing in this Act shall affect the operation of the Slum Areas (Improvement and Clearance) Act, 1956 (6 of 1956).*

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(2) [Save as otherwise provided in sub-section (4) of section 30 or sub-section (8) of section 31 or sub-section (1) of this section], the provisions of this Act and the rules and regulations made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law.

(3) Notwithstanding anything contained in any such other law—

(a) when permission for development in respect of any land has been obtained under this Act such development shall not be deemed to be unlawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has not been obtained;

(b) when permission for such development has not been obtained under this Act, such development shall not be deemed to be lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has been obtained."

59. In the context of re-erection and erection of buildings, the legislature by virtue of Section 53A of the DDA Act, has provided for overriding effect of the DDA Act, in the following manner:

*"[**53A. Restriction on power of a local authority to make rules, regulations or bye-laws in respect of certain matters.—**(1) Notwithstanding anything contained in any law for the time being in force, no rule, regulation or bye-law shall be made or amended by a local authority in respect of matters specified in sub-section (2) unless the Authority, upon consideration of such rule, regulation or bye-law, certifies that it does not contravene any of the provisions of the master plan or the zonal development plan.*

(2) The matters referred to in sub-section (1) are the following, namely:—

(a) water supply, drainage and sewage disposal;
(b) erection and re-erection of buildings, including grant of building permissions, licences and imposition of restrictions on use and sub-division of buildings;
(c) sub-division of land into building sites, roads and lanes, recreational sites and sites for community facilities; and
(d) development of land, improvement schemes, and housing and rehousing schemes."

60. Section 57 of the DDA Act empowers the DDA to make Regulations

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to carry out the purposes of the said Act. In exercise of the powers conferred by Section 57, the DDA has issued the UBBL, 2016. Clause 1.7.3 of UBBL, 2016, is reproduced hereunder:

> *"xxx xxx xxx*
>
> *1.7.3* ***Reconstruction:*** *The reconstruction in whole or part of a building which has ceased to exist due to fire, natural collapse or demolition having been declared unsafe, or which is likely to be demolished by or under an order of the Authority/ concerned local body as the case may be and for which the necessary certificate has been given by the authority/ concerned local body shall be allowed subject to these Bye-Laws.*
>
> *xxx xxx xxx"*

61. Clause 1.4.118 of UBBL, 2016, defines to erect/ re-erect, in the following manner:

> *"xxx xxx xxx*
>
> *1.4.118* ***To Erect:*** *To erect a building means: To erect a new building on any site whether previously built upon or not; To re-erect any building of which portions above the plinth level have been pulled down, burnt or destroyed; and conversion from one occupancy to another.*
>
> *xxx xxx xxx"*

62. Clause 1.4.123 of UBBL, 2016, defines unsafe building as follows:

> *"xxx xxx xxx*
>
> *1.4.123 Unsafe Building: Unsafe buildings are those which are structurally unsafe, insanitary or not provided with adequate means of egress or which constitute a fire hazard or are otherwise dangerous to human life or which in relation to existing use constitute a hazard to safety or health or public welfare, by reason of inadequate maintenance, dilapidation or abandonment and are a danger to human life.*
>
> *xxx xxx xxx"*

63. Perusal of the aforesaid manifest that any construction/ re-construction can be done by the DDA, so long as it emanates from the DDA Act, the UBBL, 2016 and MPD-2021.

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64. Reports placed on record clearly show that pillars of some of the buildings have developed wide deep cracks and the steel bars are rusted. Due to corrosion and rusting of steel bars, cracks have developed in the pillars of all the buildings, which are basic to the strength of the structure. The pillars are not in a condition or have the strength to take load of and support of the multi-storey building. The persistent threat to the life and well being of the residents of the Society has been highlighted irrefutably by the reports of the structural experts. Repairs works were undertaken by the DDA on many occasions. Yet, the buildings remained structurally unsafe. Accordingly, this Court finds no error in the decision of the DDA and the MCD, to declare the structures as dangerous and not fit for habitation, and to carry out reconstruction of the same, after demolition.

65. This Court also notes the submission made by DDA and MCD, that while the area in question falls within the jurisdiction of the MCD, the Signature View Apartments have not been formally transferred by the DDA to the MCD for maintenance purposes. This is for the reason that the Housing Scheme, under which the DDA auctioned the flats, covenants the maintenance of the structures by DDA for a period of 30 years. Thus, while the MCD is within its statutory authority to declare the structures in question as dangerous, in view of the area falling within the jurisdiction of MCD, the DDA has the authority to take decision, as in the present case, to carry out the demolition and reconstruction of the flats in question. Clause 1.7.3 of UBBL clearly makes provisions for reconstruction in whole or part of a building after demolition, on account of a building having been declared unsafe by the authority/concerned local body. Therefore, the decision of the DDA for undertaking the exercise of demolition and reconstruction of the

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structures in question, is upheld.

Legality of the Proposal of DDA to Construct Additional Flats by Using the Additional FAR:

66. This brings us to the next issue regarding the proposal of the DDA to construct 168 additional flats by using the additional FAR.

67. This issue is intrinsically connected with the question whether the DDA can claim any right of any nature whatsoever, including ownership of land beneath the freehold flats, common area, pump house, generator rooms, stilt parking, parking area, community space etc., which form part and parcel of the 2.16 ha of the residential society.

68. To find answer to the aforesaid question, it would be apposite to refer to the provisions of the Delhi Apartment Act. Section 3(c) and 3(e) of the said Act defines 'apartment' and 'apartment owner', in the following manner:

> *"xxx xxx xxx*
>
> *(c) "apartment" means a part of any property, intended for any type of independent use, including one or more rooms or enclosed spaces located on one or more floors or any part or parts thereof, in a multi-storeyed building to be used for residence or office or for the practice of any profession, or for the carrying on of any occupation, trade or business or for such other type of independent use as may be prescribed, and with a direct exit to a public street, road or highway, or to a common area leading to such street, road or highway, and includes any garage or room (whether or not adjacent to the multi-storeyed building in which such apartment is located) provided by the promoter for use by the 4 owner of such apartment for parking any vehicle or, as the case may be, for the residence of any domestic aide employed in such apartment;*
>
> *xxx xxx xxx*
>
> *(e) "apartment owner" means the person or persons owning an apartment and an undivided interest in the common areas and facilities appurtenant to such apartment in the percentage specified in the Deed of Apartment;*
>
> *xxx xxx xxx"*

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69. As per the definition of apartment under Section 3(e) of the Delhi Apartment Act, the ownership of an apartment entails to and includes an undivided interest and right in the common areas and facilities appurtenant to such apartment in a proportionate manner.

70. Further, the 'common area and facilities' have been defined under Section 3(j) of the Delhi Apartments Act, as follows:

> *"xxx xxx xxx*
>
> *(j) "common areas and facilities", in relation to a multi-storeyed building, means—*
>
> *(i) the land on which such building is located and all easements, rights and appurtenances belonging to the land and the building;*
>
> *(ii) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire-escapes and entrances and exits of the building;*
>
> *(iii) the basements, cellars, yards, gardens, parking areas, shopping centers, schools and storage spaces;*
>
> *(iv) the premises for the lodging of janitors or persons employed for the management of the property;*
>
> *(v) installations of central services, such as, power, light, gas, hot and cold water, heating, refrigeration, air conditioning, incinerating and sewerage;*
>
> *(vi) the elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;*
>
> *(vii) such other community and commercial facilities as may be prescribed; and*
>
> *(viii) all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use;*
>
> *xxx xxx xxx"*

71. From the definition of common areas and facilities under Section 3(j) of the Delhi Apartments Act, it is clear that the petitioners are the owners of not only the land on which building/structure/tower/block are built up, but all such easements, rights and appurtenances belonging to the land and

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building, including, community space, park/green areas, parking space, road/path ways, generator room, electric room, pump house, commercial plots/shops, etc., that form part of the common areas and facilities. As per the said Section, the commercial shop and offices that were to be built up over the commercial plots, shall be included and counted as common area facilities.

72. Section 4 of the Delhi Apartment Act stipulates that every person to whom any apartment is allotted or sold, is entitled to the exclusive ownership and possession of the apartment so allotted or sold, along with undivided interest in the common areas and facilities. Specifically, the definition of 'ownership of apartments' under Section 4 (4) (a), and (b) of the Delhi Apartments Act, grants and confers a deemed right, which is inalienable from the rights/title of the owners of apartments, to the common areas. Section 4 of the Delhi Apartment Act, reads as under:

> *"**4. Ownership of apartments**.—(1) Every person to whom any apartment is allotted, sold or otherwise transferred by the promoter, on or after the commencement of this Act, shall, save as otherwise provided in Section 6, and subject to the other provisions of this Act, be entitled to the exclusive ownership and possession of the apartment so allotted, sold or otherwise transferred to him.*
>
> *(2) Every person to whom any apartment was allotted, sold or otherwise transferred by the promoter before the commencement of this Act, shall, save as otherwise provided under Section 6 and subject to the other provisions of this Act, be entitled, on and from such commencement, to the exclusive ownership and possession of the apartment so allotted, sold or otherwise transferred to him.*
>
> *(3) Every person who becomes entitled to the exclusive ownership and possession of an apartment under sub-section (1) or sub-section (2) shall be entitled to such percentage of undivided interest in the common areas and facilities as may be specified in the Deed of Apartment and such percentage shall be computed by taking, as a basis, the value of the apartment in relation to the value of the property.*

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(4) (a) The percentage of the undivided interest of each apartment owner in the common areas and facilities shall have a permanent character, and shall not be altered without the written consent of all the apartment owners.

(b) the percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with the apartment, even though such interest is not expressly mentioned in the conveyance or other instrument.

(5) The common areas and facilities shall remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof, and any convenant to the contrary shall be void.

(6) Each apartment owner may use the common areas and facilities in accordance with the purposes for which they are intended without hindering or encroaching upon the lawful rights of the other apartment owners.

(7) The necessary work relating to maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvements thereto, shall be carried out only in accordance with the provisions of this Act and the bye-laws.

(8) The Association of Apartment Owners shall have the irrevocable right, to be exercised by the Board of Manager, to have access to each apartment from time to time during reasonable hours for the maintenance, repairs or replacement of any of the common areas or facilities therein, or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to any other apartment or apartments."

73. Thus, it is evident that the petitioners are the joint/common owners of the common areas and facilities, as the undivided interests and rights in the common areas and facilities, cannot be separated/alienated from the apartment, and the same are deemed to be conveyed or encumbered with the apartment, even though the same is not expressly mentioned in the conveyance deed or instrument of title document.

74. The DDA is bound as per law, to transfer the entire common areas vide a separate deed, namely, Deed of Apartment, as defined under Section

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13 of the Delhi Apartment Act. Even though, the Deed of Apartment has not been executed, the petitioners have the proportionate land right in the common area by virtue of Section 3(j) read with Section 4 (4) (a) & (b) of the Delhi Apartment Act.

75. It is to be noted that the provisions of the Delhi Apartment Act, have been enforced by this Court in the case of ***Sagar Apartment Flat Owners Society (Regd.) & Ors. Versus Sequoia Construction (P) Ltd. & Ors., 1993 SCC OnLine Del 175***. In the said case, the residents of the plaintiff – society had been allotted the flats and possession of the same was taken by the allottees, after completion of all formalities. The builder therein, time and again, got fresh layout plan sanctioned from the New Delhi Municipal Council, as the FAR was enhanced with the passage of time. The builder got approval/sanction of layout plan to construct additional flats, which was opposed by the residents of the society. Thus, a suit was filed by the residents for declaration that the area and the amenities of the society are common areas and facilities appurtenant to the apartments, and the builder is not entitled to claim any right, title or interest therein. Further, declaration was sought that the builder had no right to make any construction of whatsoever nature, either by way of addition, alteration or modification, in any manner in the building complex. Recognising the rights and interests of the residents in the common areas, it was held as follows:

> *"xxx xxx xxx*
>
> ***14. The Act ensures that the promoter of the multi-storeyed buildings gets full consideration for the apartments constructed by it before the rights of the purchasers of the apartment come into play. At the same time, it safeguards the rights of the apartment owners, particularly, in common areas and amenities provided in the multi-storeyed building complex. The common areas and facilities have been defined in Section 3 of the Act. A reference to the definition shows that the definition takes***

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under its sweep a whole lot of amenities, facilities, common areas including foundations, columns, girders, beams, supports, main walls, roofs, corridors, lobbies, stairs, fire escapes, entrances and exits. This shows that the intention is that even such basic things pertaining to the building like foundation pillars, beams and girders should be treated as common facilities in order to ensure that the strength of the building in which each apartment owner has a inherent interest is protected. Section 4 puts the interest of the apartment owner in the common areas and facilities in the same proportion as the value of the apartment has to the value of the property. Sub-section 4 of Section 4 of the Act ensures that the percentage of the undivided interest of each apartment owner in the common areas and facilities has a permanent character. It is provided that it shall not be altered without the written consent of all the apartment owners. Again the intention is to firmly protect the interest of each apartment owner in the common areas and facilities.

15. *According to the learned Counsel for the plaintiffs, these provisions of the Statute confer on the apartment owners/allottees certain inalienable and indefeasible rights which ought to the protected and the builder/promoter cannot be allowed to do anything which infringes such rights of the plaintiffs who are apartment owners/allottees with respect to the building complex in the suit. Reliance is also placed on Section 24 of the Act which has an over-riding effect. Section 24 lays down that notwithstanding anything inconsistent with the provisions of the Act including any law or agreement or instrument, the provisions of the Act and the bye-laws and the rules therein will prevail. It is the case of the plaintiffs that the proposed construction of additional apartments in the building will prejudicially affect the rights of the plaintiffs in the common areas and facilities in the building which are safeguarded under the Act and, therefore the plaintiffs seek to restrain the defendant from carrying on any such activity.*

xxx xxx xxx

20. *The Delhi Apartment Ownership Act came into existence in the year 1986. However, this was enforced in the year 1988. Passing of the legislation and enforcing the same clearly shows that the Act is intended to be live wire rather than a dead letter.* ***Merely because the competent authority has not been notified so far, does not render the statute otiose. The Act defines common areas and facilities and as such spells out various things in a multi-storeyed building complex which are covered under the sweep of the definition of common areas and facilities. The effect of non-notifying the competent authority can at best be that the Deeds of Apartment cannot be executed. This does not mean that by non-execution of the deeds of apartment, rights and interests of the apartment owners/allottees are obliterated. The non-execution of the***

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deeds of apartments may mean that the exact percentage of the interest of the individual apartment owners in relation to the building complex is not specified. But it cannot surely mean that their rights and interest evaporate in thin air. The proposed construction of additional complex on the existing terrace in the front block will mean additional load on the foundation, columns, girders, beams, supports, main walls of the building. It will mean further pressure on the stairs, stairways, fire escapes, entrances and exits of the building. The number of inhabitants and users of the common facilities will increase. The pressure on existing sewerage system designed with a view to coping with the building proposed to be constructed initially, the open spaces, parking areas etc. will also increase. There will also be more sharers of these facilities which will necessarily affect the rights and interests of the existing apartment owners in the building.

21. *So far as the question of non-execution of the Deeds of Apartment is concerned, the plaintiff submit that as per Section 13 of the Act, the responsibility is cast on the promoter to do the needful. It is further submitted that the plaintiffs have done whatever they were required to do under the Act inasmuch as they have paid the entire sale consideration. Therefore, no fault can be attributed to the plaintiffs regarding non-execution of the Deeds of Apartment. On the other hand, it is submitted on behalf of defendant No. 1 that the non-execution of the Deeds of Apartment is because of the fact that the competent authority under the Act has not been notified by the Government so far. In other words, the defendant No. 1 also claims to be not at fault in the matter of non-execution of the Deeds of Apartment. It follows from this that neither party can be blamed for non-execution of the Deeds of Apartment.* ***However, non-execution of the Deeds of Apartment cannot be taken as giving licence to the promoter/builder to go on and with additional construction in the building so as to defeat the rights and interests of the apartment owners/allottees in the existing building complex. The question remains should the promoter/builder be allowed to take advantage of this situation for which in any case the plaintiffs are not responsible? A reference to the provisions of Section 13 of the Act and the rules framed under the Act called the Delhi Apartment Ownership Rules, 1987 shows that in the Deeds of Apartment, the description of the common areas and facilities and the percentage of undivided interests appertaining to the apartment in the common areas and facilities, the description of the multi-storeyed building with number of storeys and basements, number of apartments in the building etc. has to be given. The sanctioned plan of the building has to be annexed. These provisions show that the intention of the statute is that on execution of Deeds of Apartment, the state of the building is frozen, the rights and interests of the apartment owners in the building get crystallized so that in future there is no scope for***

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manoeuvre. From Section 6 of the Act when it ensures that the promoter gets full consideration for sale of the apartments, it should follow that after payment of full consideration there should be some protection or safeguards for the rights of apartment owners/allottees. The non-execution of the Deeds of Apartment should not mean that the building as well as the rights of the existing apartment owners remain in a fluid stage. The builder may keep on adding floors after floors and apartments after apartments so as to satisfy its greed for money and thereby adversely affect the rights of the existing apartment owners in the common areas and facilities and also increase the burden on the foundations of the building. As already noticed admittedly the burden obtained a completion certificate with respect to this building in the year 1979 after constructing the building as per the existing sanctioned plan. The builder also admittedly exhausted and achieved the maximum permissible FAR at the relevant time. Contemporaneously, all the apartments were also sold, sale consideration realised and possession delivered. For all practical purposes, the project was complete and over at that stage. In the year 1986, The Delhi Apartment Ownership Act was enacted and it came into force in the year 1988. After the enforcement of the Act, the provisions creating interest of the apartment owners in the common area and facilities have to be honoured. The promoter has for its own reasons not carried out the additional construction for about 10 years. Now that the statute is in force, the builder cannot be permitted to act in violation thereof.

22. *Learned Counsel for the builder submits that the builder had a pre-existing right for further construction as per the sanctioned plan which accrued to it in the year 1983. Therefore, it is submitted that the builder is entitled to complete the additional construction. The pre-existing right, if any, became subject to the Act when the same came into force. Section 24 of the Act is an over-riding provision. Therefore, this argument is not tenable. Further, it is submitted on behalf of the builder that unless and until the entire project is complete, rights, if any, of the apartment owners do not get crystallized and, therefore, the plaintiffs cannot prevent the builder from carrying out further construction. The answer to this submission is that the project admittedly was completed in the year 1979. The sanction for additional construction which came in the year 1983 was not availed of by the builder for its own reasons.* ***In the meanwhile, the statute came into force and the sanction for further construction which does not take note of the rights created by the statute cannot be permitted if it defeats the rights created by the statute in favour of the apartment owners. In other words any action in violation of the Statute cannot be permitted.***

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26. *In any case the above discussion shows that important legal issues have been raised which will require further detailed consideration at the final stage of the suit and at this stage, prima facie, I am inclined to accept the case of the plaintiffs in this regard. There is yet another reason which impels me to take this view.* ***Assuming for the sake of argument that the statute does not apply or it does not confer any rights on the plaintiffs for the present, I am of the view that the claim of the plaintiffs to a rights or interest in the common areas and facilities in the multi-storeyed building complex is reasonable and justifiable and equity demands that the interests of the plaintiffs need to be protected.***

xxx xxx xxx

28. *I am of the considered view that the plaintiffs ought not be denied the advantage of the beneficial provisions of the Act. The plaintiffs, therefore, have a strong prima facie case in their favour requiring preservation of the property in the same position as it was in existence on the day of grant of the-ex parte interim order on 16th October, 1992. A contrary view will encourage the builder to avoid execution of the Deeds of Apartments so that the provisions of the Act may not become applicable and he continues' to make money from the building by raising additional construction. The Act is a legislation meant primarily for the protection of the flat buyers from the unscrupulous practices of the builders. The Court should endeavour to uphold this legislative intent.*

2. Rights of the plaintiffs' under the license agreements:

xxx xxx xxx

47. *I have given my careful consideration on this aspect of the case. The conduct of defendant No. 1 in the present case shows that equity cannot be said to be in its favour. Defendant No. 1 admitted in its letter dated 16th December, 1990 annexure R. 1/3 that it had completed the construction in the year 1979 and obtained a completion certificate after achieving the maximum FAR permissible at that time. This fact is also admitted in the affidavit 20th January, 1993 filed on behalf of the defendant No. 1. Having completed the building and having obtained a completion certificate, for all practical purposes the building achieved a finality. Various apartments were sold by defendant No. 1 on that basis and consideration for the same was realised, possession was delivered. The purchasers of the apartments purchased the same on the basis of whatever was indicated as the common areas and facilities as per the then existing sanctioned plans. I have already expressed a view that de hors the Delhi Apartment Ownership Act, equity demands that till the rights and contentions of the parties are further examined, the apartment purchasers ought to be protected.* ***Further construction which the builder i.e. defendant No. 1 proposes to raise is an act of extracting more benefits out of the building and the***

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same are to a large extent at the expenses of the existing apartment owners. Builder's greed knows no limits.

48. *Even though, the rights in the common areas and space, terraces etc. have been preserved under the licence agreement by defendant No. 1, the question will still be open as to whether merely on the basis of such clauses in the agreement, defendant No. 1 can be allowed to defeat and damage the rights and interests of the apartment owners of the building. It may be open to plaintiffs to urge that the licence agreement is a type of agreement which the apartment purchasers were required to sign on dotted lines. They had no options in this regard. This aspect may also be germane for consideration of the rights and obligations of the parties created under the licence agreement. Today law has advanced to a great extent in this area and when the parties to an agreement have an unequal bargaining power the rights and obligations under such an agreement are liable to be interpreted and considered by the Courts.*

49. *As per the Statute which is in force the Deeds of Apartment are required to be executed. The only hurdled out in this behalf is non appointment of the Competent Authority. The Competent Authority may be appointed any time. Thereafter, apparently, there will be no excuse for non-execution of the deeds of apartment on the part of the builder/promoter. The consideration before me today is, should the building not be preserved as it is for that day when the Deeds of Apartment would come into existence? On that day question will arise as to what should be the crucial date on which the situation got frozen for the purpose of determining the rights of the purchasers of the apartments. At that stage also the plaintiffs may endeavor to establish that situation qua the complete building structure froze on the ground of completion certificate in the year 1979. If further construction is allowed at this stage, it will mean foreclosing this issue. The plaintiffs will be met with a fait accompli. The further construction in the building would retrievably change the position to the prejudice of the plaintiffs and other apartment owners.*

50. There is yet another danger in permitting the construction. The Government may again change its policy and may further increase the FAR. Defendant No. 1 will try to raise further additional construction. If construction is permitted at this stage on account of increase in FAR, further construction will have to be permitted at that stage also on account of further increase in FAR. This will mean an unending situation and apparently it will mean a seal of authority from the Court for such further construction on the part" of the greedy builders.

xxx xxx xxx"

(Emphasis Supplied)

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76. Likewise, holding that the owners of individual apartments in a multi-storeyed building have an undivided interest in the common areas and facilities appurtenant to such apartment, in the case of ***Guru Ram Das Bhawan & Ors. Versus Doon Apartments Pvt. Ltd., 2009 SCC OnLine Del 1654***, it has been held as follows:

> *"xxx xxx xxx*
>
> ***8. The Legislature promulgated Delhi Apartment Ownership Act, 1986 to provide for the ownership of an individual apartment in a Multi-Storeyed Building and of an undivided interest in the common areas and facilities appurtenant to such apartment and to make such apartment and interest heritable and transferable and for matters connected therewith or incidental thereto. Though there was some controversy as to the applicability/enforcement of the said but this Court in Sagar Apartments Flat Owners Society (Regd.) v. Sequoia Construction Pvt. Ltd., 1993 Rajadhani Law Reporter 446 has held that the said law is in force and rights of the parties created under the said law have to be taken into consideration and the Court has to ensure that the legislative intent in the said law is fulfilled rather than allow it to flouted.***
>
> ***9. Section 2 of the Apartments Act provides that the provisions thereof shall apply to every apartment in a multi-storeyed building constructed for residential or commercial purposes by any group housing society or any other person and whether before or after the commencement of said Act, and on a free hold land or a lease hold land, if the lease for such land is for a period of thirty years or more. The Act applies to all buildings which have four or more apartments.*** *As per the plaintiffs themselves Guru Ram Das Bhawan has more than four apartments and the documents show the lease of land underneath the same to be perpetual. Thus the Apartment Act applies to the said building.* ***The flats/shops/godowns in the said building in occupation of the members of the plaintiff No. 1 are covered by the definition of Apartment in Section 3(c) of the said Act. Section 3(e) defines an apartment owner as meaning a person owing an apartment and an undivided interest in the common areas and facilities appurtenant to such apartment. Section 3(f) defines an Association of apartment owners as meaning of the owners of the apartments therein. Section 3(w) defines a promoter as meaning any authority, person or cooperative society, by which or by whom any multi-storeyed building has been constructed.***
>
> ***10.*** *Section 4 of the Apartment Act provides that every person to whom any apartment is allotted, sold or otherwise transferred by the promoter shall*

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be entitled to the exclusive ownership and possession of the apartment so allotted, sold or otherwise transferred to him. In the present case, the defendant having constructed the multi-storeyed building named Guru Ram Das Bhawan is the promoter and the persons to whom the defendant had allotted, sold or transferred the flats/shops/godowns are the owners thereof. ***Section 4(3) provides that every person who becomes entitled to ownership and possession of an apartment shall also be entitled to such percentage of undivided interest in the common areas and facilities as may be specified in the Deed of Apartment and such percentage shall be computed by taking, as a basis, the value of the apartment in relation to the value of the land underneath the multi-storeyed building and the structure of the multi-storeyed building and all the fixtures, fittings, appurtenances thereto. Under Section 4(5) common areas and facilities which have been defined in Section 3(j) are to vest collectively in the apparent owners and to remain indivisible.***

11. *Section 9 of the Act provides for the provisions of the Act to become applicable inter alia to a lessee of a period of 30 years or more of any apartment. Section 13 imposes obligation on the promoter, as the defendant herein is, to execute a deed of apartment in favour of the apartment owners. Section 15 provides for an Association of apartment owners for the administration of all the affairs in relation to the apartments and the property appertaining thereto and for the management of the common areas and facilities.* ***Section 24 makes the provisions of the Act effective notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any contract, undertaking or other instrument and all the apartment owners or tenants or any person in use of the property or any part thereof to which the Act applies shall be subject to the provisions of the Act.***

12. Thus, notwithstanding anything to the contrary contained in any agreement executed by the defendant at the time of allotment/sale of any of the offices/flats/shops/godowns, the provisions of the Act are to remain prevalent.

xxx xxx xxx"

(Emphasis Supplied)

77. The case of ***Sagar Apartment (Supra)*** was transferred to District Court in the year 2016. The said suit was decreed, thereby, recognising the rights of the residents in the common areas. The judgment dated 28th August, 2019, passed by the Court of ADJ-03, Patiala House Court in *CS No. 58738/2016*, reads as under:

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"xxx xxx xxx

38. As another Association is collecting rents, the present issue anyways has become infructous.

Issue No.7-Whether defendant no. l is entitled to construct additional flats in accordance with the sanction plan, if any, of 1983? OPD-1.

39. The present issue is with respect to the rights of defendant no.1 builder, if any, with respect to the construction of additional flats in accordance of sanctioned plan, if any, of 1983. Needless to say, defendant no.1 has not placed any sanctioned plan on record. It is the case of defendant no.1 that the same is not in their possession. In the cross-examination of D1W1 Shri Shyam Sharma, the only witness on behalf of defendant no.1 he has specifically stated that he does not know in whose possession the said site plans are. Needless to say, defendant no.1 is a builder and a dispute is going on between the apartment owners and defendants since 1992. Further, after coming into the force of Delhi Apartment Act 1984 the deed of Apartment has not been executed till date. In the circumstances, it is very unlikely to believe that the said site plans are not in possession of the builder. But be that as it may, the matter of fact is that defendant has not placed any of the site plans on record and I am bound to draw adverse inference against them regarding the same.

40. NDMC has placed duly certified copies of several maps on record. The maps were read with the help of two Architects who were present from Enforcement Department of NDMC in the Court room itself. All the maps were opened and read in the Court itself in the presence of two Architects, Counsel for plaintiff Shri R Krishnamorthi as well as Counsel for defendant no.1. ***As per the various site plans on record, as far as terrace is concerned, a perusal of the said site plans would show that no construction was shown or permitted on the terrace of front block or tower block. A bare perusal of this plan Ex.PW4/1 along with one another plan would show that there was only one machine room, penthouse, lift room and certain stairs which were permitted on the terrace of tower block i.e. 4th floor terrace and on the terrace of second floor of front block. Hence, as per site plans on record, no room or flat or any other construction is permitted on the terrace of both towers / blocks except as noted above.***

41. The onus to prove this issue was on defendant. It was for the defendant to prove that he was permitted to make additional construction of additional flats in accordance with the site plan of 1983. But defendant has not led any evidence regarding the same. The drawings of 1983 site plan, the approved plan, the architectural design nothing is filed by

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defendant.

42. It is submitted by Ld. Counsel for defendant no.1 that it is mentioned by Justice Shri Arun Kumar in order dated 31.03.1993 on page 4 that sanction was accorded to defendant on 31.01.1983. However, the perusal of the entire order including the said paragraph would show that the said observation was made on the basis of information supplied by defendant no.1 vide affidavit dated 20.01.1993. Further the said was only an interim order. However, the matter is now at the stage of final arguments and no evidence is led by defendant regarding the same.

43. Coming to the question whether defendant no.1 is entitled for construction of additional flats on the terrace or not is concerned, reliance is placed upon by Ld. Counsel for defendant no.1 on the judgment titled as ***M/s. Virmani, Roy & Kutty Vs. Ansal Properties & Land Ltd. and Anr. 102 (2004) Delhi 539 dated 01.10.2002*** *thereby drawing attention of the Court towards paragraph 10 wherein it was observed-*

> ***10. After considering the submissions made by learned counsel for the parties and examining the provisions of the Delhi ownership of Apartments Act, this Court is of the considered view that the Act certainly creates valuable rights in respect of the "common areas and facilities" in multi-storeyed buildings in favor of the apartment owners so that they may enjoy their portions comfortably, but these rights are controlled by and are subject to the provisions of Section 4(3) of the Act which entitles the promoter/builder of a multi-storeyed building to specify common areas which he wishes to transfer to the flat owners. It entitles him to earmark different common areas and facilities for different occupants in the building so that different groups of the flat owners in different parts of the building may enjoy separate "common areas and facilities" without interference from other occupants of the building. This can be done by the promoter/builder of the building by incorporating appropriate Clauses regarding common areas in the Deeds of Apartments executed in favour of the purchasers of the flats in terms of Section 4(3) of the Act. Had the Legislature intended not to permit, the promoter/builder of a building to earmark or apportion such areas Section 4(3) of the Act would have simply stated that every person who becomes entitled to the exclusive ownership and possession of an apartment under Sub-section (1) or Sub-section (2) of Section 4 of the Act shall become entitled to undivided***

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interest in all the common areas and facilities in the building and there was no need to use the words "as may be specified in the Deed of Apartment". A purchaser of the Apartment may opt out of the deal in case he finds that common areas and facilities required by him are not being provided to him by the promoter. Learned counsel for the defendants rightly contends that the roof in question still remains exclusively with defendant No. 1 in as much as Clause 11(a) of the Agreement between the parties specifically provides that the promoters shall continue to have a right to make additions or put up additional structure etc. as may be permitted by the local authorities on the terrace of the complex and the terrace and parapet walls shall continue to be the property of the promoter who shall be entitled to use the same for any purpose whatsoever.

44. However, in para 11 of the said judgment, the facts of the present case have been noted and the present suit has been distinguished. Para 11 of the said judgment is as follows-

> *11. Learned counsel for the plaintiff however, relies upon a judgment of this Court in Sagar Apartment Flat owners case (supra), in which Delhi Apartment ownership Act, 1986 was considered and it was held that the intention of the Act is to protect the interests of the apartment owners in the common areas and facilities available in the building. However, a perusal of para 26 of the judgment shows that in the said case the promoter/builder had impliedly given an assurance that he shall have no right to raise any additional stories or put up any additional structures after the specific flat/space, the subject matter of the agreements, was given to the flat owners. In view of Clause 18 of the Agreement in the said case the Court had come to the conclusion that the promoter/builder had no right to raise any further constructions in the common areas available to the flat owners. However, in the present case Clause 11(a) of the agreement does not confer any right in favor of the plaintiff in respect of the terrace of the building in question and therefore in terms of Section 4(3) of the Act the plaintiff has no prima facie case in his favor to show that the defendant No. 1 is not entitled to use the said roof/terrace without its permission.*

45. I agree with the argument made by counsel for defendant no.1 that it

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is the agreement between the parties which governs their relationship and their rights with respect to common areas as well.

46. Now coming to the agreement between the various plaintiffs/apartment owners and the defendant no.1 it lays down the terms and conditions thereby governing the relationship between the parties and the rights conferred therein on the apartment owners. It is important to quote Clause 18 of the same which is as follows-

> *18. That until the specific flat/space the subject matter of this Agreement of Licence is given to the Second Party, the First Party, shall have right to raise any additional storeys or put up any additional structures as may be permitted by the Municipal Committee or any other competent authorities. Such additional structures and storeys shall be for the sole benefit of the First Party who will be entitled to dispose them off in any way it may choose and the Second Party hereby consents to the same and shall not be entitled to raise any objection thereto. The roof terrace of the entire building including the parapat walls, basement, ground floor and any other area not specifically mentioned in the agreement of the Second Party singly shall always be the property of the First Party and the Agreement with the Second Party and all other Licences of Flats/spaces in the said building shall be subject to the aforesaid right of the First Party who shall be entitled to use the said roof terrace including the parapat walls etc. for any purpose including the display to the advertisements and sign-boards or for open air restaurants/cinema or any other use and the First Party shall always have the right of easement to the roof terrace and parapat walls etc.*

47. A bare perusal of the very first line of the paragraph would show that by way of the said agreement, builder has given up all his rights to raise any additional storeys on the existing building i.e. tower block as well as front block or to put up any additional structures anywhere. ***Hence, once apartments are handed over to the apartment owner / purchaser, the builder shall have no right to make any additional storeys on the existing building or to make any additional structure anywhere.***

48. Hence any construction made by defendant no.1 beyond the approved sanctioned plans after handing over of flats along with agreement to the plaintiffs/apartment owners would be illegal and unauthorised. Hence, defendant no.1 is not entitled to construct any additional flats.

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Issue No.3-Whether the plaintiffs are no. 1 entitled to a decree of declaration declaring the areas listed in Schedule "A" to the plaint are common areas? OPD.

49. As far as issue regarding common areas is concerned, plaintiffs have listed certain areas as common areas and put them in a form of Schedule A being filed by him along with present suit.

50. For the purpose of common areas, it is argued by Ld. Counsel for the plaintiffs that common areas are laid down in Schedule 3 which is annexed with the agreement between the parties. Hence, it is submitted that roof, shutters, lifts, generators, maintenance of machinery, water pipes, gas pipes, electric wires, staircases, compounds, gardens, shrubs, trees, pathways are common areas as is laid down in 3rd Schedule.

51. On the other hand, it is submitted by Ld. Counsel for defendant no.1 that it is specifically mentioned in Clause 18 that roof, terrace of the entire building, basement, ground floor and any other area not specifically mentioned in the agreement shall be the property of builder defendant no.1. Further defendant no.1 is entitled to use said roof, terrace for display of sign boards, advertisements, open air restaurants, any other use as is mentioned in Clause 18.

52. It is relevant to quote here Clause 6, Clause 18 and 3rd Schedule to the agreement which are as follows-

Clause 6

> *6. That saving and excepting the particular Flat/space office cum shop hereby agreed to be acquired by the Second Party, the Second Party shall have no claim or right of any nature or kind over or in respect to all or any open spaces, parking places, lobbies, staircase, lifts, terraces, roofs, basement and ground floor which will a and singular remain the property of the First Party for all times, but subject to the right of the Second Party as mentioned hereafter. However, the first option to acquire the parking spaces shall be given to the Second Party.*

Clause 18

> *18. That until the specific flat/space the subject matter of this Agreement of Licence is given to the Second Party, the First Party shall have right to raise any additional storeys or put up any additional structures as may be permitted by the Municipal*

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Committee or any other competent authorities. Such additional structures and storeys shall be for the sole benefit of the First Party who will be entitled to dispose them off in any way it may choose and the Second Party hereby consents to the same and shall not be entitled to raise any objection thereto. The roof terrace of the entire building including the parapat walls, basement, ground floor and any other area not specifically mentioned in the agreement of the Second Party singly shall always be the property of the First Party and the Agreement with the Second Party and all other Licences of Flats/spaces in the said building shall be subject to the aforesaid right of the First Party who shall be entitled to use the said roof terrace including the parapat walls etc. for any purpose including the display fo the advertisements and sign-boards or for open air restaurants/cinema or any other use and the First Party shall always have the right of easement to the roof terrace and parapat walls etc.

Third Schedule to the Agreement

THIRD SCHEDULE

The Third Schedule hereinbefore referred to:
All costs, charges and outgoings for maintaining, repairing, and decorating of the main structure and in particular the roof, shutters, and rain water pipes of the building, Lifts, Generators for essential service, Tube Well, Pumps and maintenance of all machinery water pipes, gas pipes and electric wires in or under, or upon the building or enjoyed or used by the Licencee in common with the other occupiers, all landing and staircases of the building as enjoyed by the Licence or used by him/her/them in common as aforesaid and the boundary walls of the building, compounds, maintenance of gardens, shrubs, trees, pathways and any other amenities to be enjoyed in common by all or any of the said licenses and/or occupiers of the said building.

53. A bare perusal of Clause 6 would show that Apartment owners have not been given rights in open spaces, parking places, lobbies, staircases etc. but subject to their rights as mentioned hereinafter. At this stage, it becomes necessary to again refer and to go to Schedule 3 wherein charges and cost for maintenance of roof, shutters, lifts, generators, wires, pipes, garden, trees, shrubs etc. is being mentioned. It is pertinent to mention here that Schedule 3 is not mentioned anywhere in the main body of the agreement but it is annexed with every agreement which is entered into between the Apartment owner and the defendant.

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54. On the other hand, Clause 18 lays down that builder shall have right to roof, terrace, basement, ground floor and other areas not specifically mentioned therein. Further builder shall have right to the use of said roof/terrace for advertisements, sign boards, restaurants, Cinemas etc.

55. The harmonious reading of the above all the three clauses would lead to conclusion that builder has right to roof, terrace, basement, ground floor as is mentioned specifically in Clause 18 but subject to right of apartment owners is mentioned in Clause 6. Further builder shall also have right to roof, terrace for display of advertisements, sign boards etc. but subject to the condition that he shall not be permitted to make any construction / alteration on the terrace as is laid down in Clause 18 itself. Further since 3rd Schedule also mentions roof, generators, pathways, staircases, compounds, gardens, shrubs, trees and other amenities enjoyed in common, as common areas, hence, the apartment owners shall also have easementary rights on the roof, gardens, parks, pathways, staircases, gardens, shrubs, trees and other areas which are specifically mentioned in the 3rd Schedule.

56. As far as swimming pool is concerned, it is nowhere denied by defendant/builder that swimming pool along with fittings has not been provided for the common use of residents.

57. NDMC has filed all the site maps available with them. The Court has gone through the same. The plan with respect to swimming pool is not on record or if on record, it was not legible. Builder has not filed any site plan on record.

58. In the circumstances, going by the admission of defendant/builder himself swimming pool is also a common area along with changing rooms built nearby.

59. It is the case of defendant/builder that they are not aware of any authorised construction in the changing rooms near the swimming pool area nor it has been established on record by the plaintiffs by way of documents that there is any unauthorised construction.

60. However, any construction in the building has to be as per site plan. The facility of swimming pool is not denied by defendant No.1. In the circumstances, in the absence of any proof that construction of rooms / chambers in the vicinity of swimming pool in the changing rooms is permitted, which defendant/ builder has failed to prove, construction of rooms in the changing rooms are also unauthorised and against the sanction plans as there is nothing on record to show that construction of

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any such chambers in the vicinity of swimming pool was approved ever by NDMC. NDMC has stated that they have filed whatever site plans they have on record and builder has not filed any site plan. Moreover, swimming pool with fittings is also mentioned in Schedule 4 of the agreement between apartment owners and builder/defendant no.1. Schedule 4 contains specifications of the various facilities provided to apartment owners. The facility of changing rooms necessarily goes with the facility of swimming pool and is implicit in it. Hence, swimming pool alongwith changing rooms nearby is a common area. This issue is accordingly decided.

61. As far as the argument that government Grants Act is applicable to the present apartments is concerned, the Government Grants Act is applicable only on the lease. There is no issue with respect to the lease in the present case. Hence, GGA is not applicable to the issues involved in the present case.

62. ***It is further the argument of counsel for defendant no.1 that the rights of the plaintiffs as apartment owners would arise out of the deed of apartments. But no deed of apartment is executed till date. Hence, plaintiffs are not entitled to any declaration with respect to common areas. However, I do not agree with this argument. Delhi Apartment Ownership Act was enacted in 1986. Thereafter, it was duty of defendant no.1 to hand over deed of apartments to plaintiffs but the same is not done till date. Defendant no.1 cannot be permitted to take benefit of his own wrong. In the circumstances, the rights of the parties are to be determined on the basis of the existing agreement between the parties.***

xxx xxx xxx"

(Emphasis Supplied)

78. Thus, it is evident that DDA has no right over the land of the common areas and facilities, and the same belong to the petitioners, being the owners of the apartments.

79. In a similar case, the Bombay High Court held that once a building is completed in terms of the plan and the flat purchasers are put in occupation, any subsequent enhanced area of construction, which becomes available under the Development Rules, would be available to the society, to which the land had been conveyed. It was held that the developer cannot

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continuously exploit the building potential for eternity, without conveying the land in favour of the society. Thus, in the case of ***Dosti Corporation, Mumbai Versus Sea Flama Co-operative Housing Society Ltd., Mumbai and others***, ***2016 SCC OnLine Bom 1836***, it has been held as follows:

> *"xxx xxx xxx*
>
> ***80.*** *I shall now decide the issue as to whether the defendant No. 1 could have taken blanket consent of the members of the plaintiff and defendant nos. 3 to 5 society to carry out any development in future without their consent in future again and whether the defendant No. 1 had disclosed about the details of the development to be carried out in future on the suit plot to the members of the plaintiff and defendant Nos. 3 to 5 society at the time of execution of the agreements with the members. Learned senior counsel appearing for the plaintiff and defendant No. 1 relied upon various judgments of Supreme Court and this Court on this issue.*
>
> ***81.*** *This Court in case of Ravindra Mutenja (supra) has held that once the buildings shown in the approved plan submitted in terms of the regulations under an existing scheme filed before the authorities under MOFA have been completed and possession is 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 provisions of MOFA, he is entitled to take advantage of any additional F.S.I. that may become available because of subsequent events. It is held that 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.* ***Once the building is completed and the purchasers are put in occupation in terms of plan filed and the time to form the society or convey the property in terms of the agreement or the rules framed under MOFA is over, the permission of such purchasers would be required. In the said judgment this Court considered a situation where the building completion certificate for the building of the plaintiffs was issued in the year 1997. The developer had to put up the construction, based upon the permission/license granted and to construct the building and to convey the title by sale deed in terms of Rule 9. It is held that if property had been conveyed, prima facie the remaining FSI or FSI which became subsequently available on the facts of the case, would be to the society to whom the land had to be conveyed.***
>
> ***82.*** ***This Court considered the fact that the building in that matter***

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was approved in December, 2001. It is accordingly held that the builder did not have any rights under which they were entitled to put up an additional building contrary to section 7-A of the MOFA. It is not in dispute that in this case, the construction of all four wings was already completed sometime in the year 2008. The Municipal Corporation had already issued a completion certificate under the provisions of Mumbai Municipal Corporation Act in respect of the said four wings in which the defendant No. 1 developer had already utilized the entire FSI except 2.5 sq.mtrs. It is also not in dispute that the members of the plaintiff and defendant Nos. 3 to 5 society were already put in possession by the defendant No. 1 much prior to the defendant No. 1 applying for IOD in respect of the public parking lot and for other constructions proposed to be made.

83. *This Court in case of Madhuvihar Co-operative Housing Society (supra) has held that there is consistent view of this Court, 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 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. It is held that the 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 a 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.*

84. *This Court also considered the judgment of Division Bench in case of Manratna Developers v. Megh Ratan Co-operative Housing Society Ltd., 2009 (2) Bom.C.R. 836. The learned Single Judge of this Court distinguished the said judgment of the Division Bench in case of Manratna Developers (supra).* ***In this case though the case of the defendant No. 1 is that the defendant No. 1 had proposed to carry out the construction in a phased manner, the fact remains that the entire FSI except 2.5 sq.mtrs. was already utilized as then available under the provisions of Development Control Regulation in construction of four wings which have been occupied by the members of the plaintiff and defendant nos. 3 to 5 society. The construction of all the said four wings which were subject matter of various agreements of flat purchasers and the defendant No. 1 was over much prior to the date of the introduction of Regulation 33(24) in the Development Control Regulations. The defendant No. 1 admittedly did not take any consent of the members of the plaintiff and defendant Nos. 3 to 5 society in respect of any future***

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development on the suit plot based on any informed disclosure to the members of the plaintiff and defendant Nos. 3 to 5 society. None of the parties had contemplated the introduction of the provisions of Regulation 33(24) of the Development Control Regulation when the agreements were entered into between the plaintiff and defendant Nos. 3 to 5 society by the defendant No. 1. In my view there is substance in the submission of Mr. Bharucha and Mr. Reis, learned senior counsel appearing for the societies that right to get conveyance of the suit property from the defendant No. 1 in favour of the society had already accrued and thus without their consent, the defendant No. 1 could not have applied for modification of the plan and/or for carrying out any further development on the suit property as contemplated under the provisions of MOFA.

85. *This Court in case of Ratna Rupal Co-operative Housing Society Ltd. (supra) adverted to the judgment of this Court in case of White Towers Cooperative Housing Society Ltd. v. S.K. Builders, (2008) 6 Bom.C.R. 371 and several other judgments. In case of White Towers Co-operative Housing Society Ltd. (supra), this Court has held that the promoter is not only required to make disclosure concerning the inherent F.S.I., but he is also required at the stage of layout plan to declare whether the plot in question in future is capable of being loaded with additional F.S.I./floating FSI/TDR.* ***It is held that at the time of execution of the agreement with the flat takers, the promoter is obliged statutorily to place before the flat takers the entire project/scheme, be it a one building scheme or multiple number of buildings scheme. It is further held that the prior consent of the flat purchasers would only not be required, if the entire project is placed before the flat purchasers at the time of the agreement and the developer puts additional construction in accordance with the layout plan.***

86. *In the said judgment, it is held that if the developer wants to make additional construction which is not a part of the layout, consent of the flat purchasers would be required.* ***It is held that once the buildings shown in the approved plan are completed and possession is handed over, the Developer cannot contend that because he has not formed the Society and because he had not conveyed the property he can take advantage of the additional FSI which became subsequently available. Such FSI will go to the society to whom the land had to be conveyed. It is held that the advantage of the FSI would be taken only when the building is under construction and only for the buildings forming part of the development plan or layout plan already approved. It is held that subsequent amendment of layout plan without the consent of the flat purchasers was not***

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permissible. Therefore, once the building is completed in terms of the plan and the flat purchasers are to be put in occupation, permission of the flat purchasers would be required. If subsequently FSI becomes available under the Development Control Rules, it would be available to the Society to whom the land had to be conveyed.

87. *This Court also considered the judgment of this Court in case of Bajranglal Eriwal v. Sagarmal Chunilal, 2008 (5) Mh.L.J. 571 : (2008) 6 Bom. C.R. 887 in which it is held that the specific consent was relatable to the particular project or the scheme of Development which was intended to be implemented. The scheme which could be implemented could only be under the sanctioned plan or a plan under the layout shown to the flat purchasers. In the absence of that the statutory embargo to alter or add to any structures on the plot would continue and would be lifted only upon the written consent of the flat purchasers. It is held that the blanket consent taken in the agreement would defeat public policy and would dilute the purposive object and intent of the legislature and would not eliminate the abuses and malpractices which it sought to remedy.*

88. It is held that the additional FSI cannot be claimed by the Developer for putting up any additional building not under the approved plan. The failure and neglect to register the society and convey the property would certainly not give any right to the Developer to step upon the property or to claim any FSI. The FSI belongs to the plot. The plot must be taken to be conveyed after the statutory period and thus the FSI that would be available only to the true owner of the plot. Failure to convey would not constitute the Developer a true owner. That would be putting a premium upon his default and that would constitute an abuse of legal process. It is held that any FSI for putting up any additional construction not in the initial sanctioned plan can therefore never enure for the benefit of the Developer except with the express written permission of all the flat purchasers or the Society, after its formation. It is held that such FSI would belong to and can be exploited by none other than the Society of flat purchasers. *This Court in the said judgment of Ratna Rupal Co-operative Housing Society Ltd. (supra) also adverted to the judgment of Division Bench in case of Manratna Developers (supra) and distinguished the same. Admittedly in this case, the defendant No. 1 did not disclose any plan in respect of the additional construction sought to be put up by the defendant No. 1 to the plaintiff and defendant Nos. 3 to 5 society before obtaining such sanction from the Municipal Corporation nor obtained their disclosed consent.*

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89. ***<u>This Court in case of Ravindra Mutenja (supra) has held that once the buildings 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. It is 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.</u>***

90. *It is held in the said judgment that* ***<u>once the building is completed and the purchasers are put in occupation in terms of plan filed and the time to form the society or convey the property in terms of the agreement or the Rules framed under MOFA is over, the permission of such purchasers would be required. It is held that if property had been conveyed, prima-facie the remaining F.S.I. or F.S.I. which become subsequently available on the facts of the case, would be to the society to whom the land had to be convened.</u>***

91. *It is not in dispute that in this case the defendant No. 1 had to carry out construction in accordance with the plan referred to in the agreement for sale and I.O.D. issued by the Municipal Corporation based on such sanctioned plan. The construction of all four wings was fully completed.* ***<u>The Municipal Corporation had already granted completion certificate. The members of the plaintiff and defendant Nos. 3 to 5 society were already put in possession of their respective flats by the defendant No. 1. The subsequent amendment of the lay out plan in my view could not have been effected by the defendant No. 1 without the consent of the flat purchasers and such amendment without such consent was not permissible and thus not binding on the flat purchasers.</u>*** *The judgment of this Court in case of Ravindra Mutenja (supra) squarely applies to the facts of this case.*

92. *The Division Bench of this Court in case of Lakeview Developers (supra) has after adverting to the judgment of the Supreme Court in case of Jayantilal Investments v. Madhuvihar Co-operative Housing Society (supra) has held that though the object behind the amendment in section 7(1) and insertion of section 7(A) was to give maximum weightage to the exploitation of development rights which*

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existed in the land by construction of additional buildings subject to total layout allowing construction of more buildings and subject to complying with the building rules or building bye-laws or Development Control Regulations. It is however clarified that at the same time this could be done only after full and true disclosure of particulars mentioned in Section 3(2) is made incorporating the same as provided under sub-section (1-A) to Section 4 in the agreements with the flat purchasers, which has to be harmoniously read with section 10 of the MOFA which cast obligation on the promoter to form a Cooperative Housing Society of the flat takers and under section 11 to complete his title and convey the title to the Society within a prescribed time under Rule 8 of the said Rules.

93. It is held that the developer cannot claim that he can continuously exploit the building potential for eternity without conveying the land in favour of the society. *The obligation to convey the land in favour of the society within a prescribed time and the obligation to make true and full disclosure under clauses 3 and 4 of Form V remains unfettered.* ***This Court had considered a situation, where the developer had fully utilized the full F.S.I./potential of the land and was under an obligation to convey the property after the construction of 10th building and was trying to construct four other buildings by claiming additional T.D.R. and trying to load it on 4 additional buildings. This Court accordingly held that the full development potential/F.S.I. had already been utilized by the developer and his claim that additional buildings were constructed by utilizing the additional T.D.R. prima-facie did not appear to be correct if the lay out plan produced by the plaintiff society was taken into consideration. This Court held that even if there is any contractual condition mentioned in the contract permitting the construction till the entire land was developed, the statutory obligations would over ride the contractual clauses in the agreement.***

94. In my view, there was neither any disclosure made by the defendant No. 1 to the flat purchasers about any such development in future based on any further F.S.I. being made available on the basis of the construction of public parking lot nor such additional F.S.I. was contemplated at that stage nor any consent was taken from the flat purchasers after such F.S.I. was made available for construction of new buildings. *The Division Bench of this Court in case of Lakeview Developers (supra) has considered similar facts and has rejected the identical submissions made by the defendant No. 1 in this case. The judgment of the Division Bench of this Court, in my view, squarely applies to the facts of this case. I am respectfully bound*

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by the said judgment.

95. *A perusal of the said judgment of the Division Bench of this Court in case of Lakeview Developers (supra) indicates that the Division Bench has also adverted to the earlier judgment of the Division Bench of this Court in case Man Ratna Developers (supra) and has distinguished the said judgment and has held that the observations made by the Division Bench of this Court in Man Ratna Developers (supra) did not much assist the developer. In my view, reliance placed by learned senior counsel for the defendant No. 1 on the judgment of this Court in case of Man Ratna Developers (supra) would be of no assistance to the defendant No. 1 and is clearly distinguishable in the facts of this case.*

96. *This Court in case of Noopur Developers (supra) after adverting to the judgment of the Division Bench of this Court in case of Man Ratna Developers (supra) and after adverting to Rules 8 and 9 framed under the MOFA has held that the Legislature had certainly intended that the formality of conveying the title and formation of society must be completed within the time as stipulated so that an unscrupulous promoter should not take disadvantage of the same. This Court also held that the permission of the flat purchasers would be necessary if time to form the society and convey the property is over or expired. This Court after adverting to the judgment of the Supreme Court has held that the promoter is required to make disclosure concerning the inherent F.S.I. and also at the stage of lay out plan he is required to declare whether the plot in question in future is capable of being loaded with additional F.S.I./floating F.S.I./T.D.R. It is held that if the entire scheme including the information about T.D.R./F.S.I. is not disclosed, then the promoter loses his right to use the residual F.S.I. It is held that if the original layout plan would have shown the proposed construction in phased manner, then the promoter did have right to construct the additional building without permission of the flat purchasers.*

97. *In this case, the original plan shown to the flat purchasers did not show any construction on any portion of the land other than those four wings. It is not in dispute that the plan shown to the flat purchasers was in respect of the entire plot and not only in respect of those four wings. The entire F.S.I. except 2.5 sq. mtrs. was already exhausted. The defendant No. 1 had not disclosed that the plot in question was capable of being loaded with the additional F.S.L/floating F.S.I./T.D.R. The judgment of this Court in case of Noopur Developers (supra) squarely applies to the facts of this case.*

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98. *This Court in case of Malad Kokil Co-operative Housing Society Ltd. (supra) after adverting to the judgment of the Supreme Court in case of Jayantilal Investments (supra) has considered a situation where the developer had shown the layout plan and did not disclose regarding the proposed additional buildings. It is held that the reason that the entire layout should be presented to the flat purchaser and that there should be full disclosure made to him is with the purpose that he should be aware as to what the entire lay out of the scheme in which he is going to purchase the property. This Court has considered an illustration that if the original layout shows only the proposed building of ground + one, the flat taker would purchase the same with the knowledge that only few more persons are likely to join the society and there would not be much effect on the facilities, amenities etc. provided to the members of the society. However, if a structure of ground + one is converted in a towering structure of 28 storeys, the entire scenario would change. The number of additional members that would reside on the said plot would increase by substantial number, thereby putting an additional load on the infrastructure, amenities, facilities etc. available on the said plot.*

99. *It is held that if this is permitted, the very purpose of requiring a developer to make full and complete disclosure would stand frustrated. This Court rejected the contention of the developer that if any layout area is earmarked for proposed construction, it hardly matters if the layout shows a building of 1+1 floor and the construction is in fact of four storeys, 10 storeys or 28 storeys. It is held that if such an argument is accepted, it would frustrate the very purpose of beneficial legislation like MOFA.*

100. ***In my view, merely because there was a clause in the agreement for sale that the defendant No. 1 would be entitled to carry out construction on a portion outside the yellow line boundary in future and had alleged to have obtained the blanket consent of the flat purchasers, since there was no disclosure or full disclosure about the proposed construction on the portion of the land outside the yellow line boundary area and the fact whether the land in question was capable of any further construction on the date of sanction of such layout plan, the defendant No. 1 could not have applied for amendment to the sanctioned plan without obtaining prior consent of the flat purchasers in writing. Such blanket consent in the agreement for sale without full disclosure is contrary to the provisions of MOFA and cannot be enforced by the developer.*** *In my view, the judgment of this Court in case of Malad Kokil Co-operative Housing Society Ltd. (supra) squarely applies to the facts of this case. There is thus no merit in the submissions made by Mr. Chinoy,*

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learned senior counsel for the defendant No. 1 that there was informed and full disclosure made to the flat purchasers about the development on two portions of the suit plot outside the yellow boundary line. Admittedly, the defendant No. 1 had amended the plan more than once after showing such plan to the flat purchasers without obtaining any informed consent after making full disclosure of the proposed amendment by the developer on the suit plot.

101. *Insofar as the judgment delivered by the learned Single Judge of this Court in the case of Jamaluddin A. Khan (supra) relied upon by the learned senior counsel for the defendant No. 1 is concerned, a perusal of the said judgment indicates that the sanction was granted by the Municipal Corporation in favour of the developer for phase-wise development. It is not in dispute that in this case, a plan which was shown to the flat purchasers by the defendant No. 1 was admittedly sanctioned in respect of the entire plot and showed consumption of the entire FSI available to the said plot except 2.5 sq.mtrs. The said judgment of this Court thus would not assist the case of the defendant No. 1-developer and is clearly distinguishable in the facts of this case.*

102. *In my prima facie view there is no substance in the submission of the learned counsel for the defendant No. 1 that the obligation of the defendant No. 1 was to execute a Deed of Conveyance or a lease of the entire properties in favour of the apex society and not the society of the flat purchasers who had purchased various flats in those four wings. Though there was a recital in the agreement for sale that the developer would be entitled to FSI in future, there was no disclosure made by the developer that whether such suit plot was capable of being loaded with any FSI or TDR in future and if so, to what extent and what would be the nature of construction proposed to be made by the developer on the suit plot. In my prima facie view, there is no substance in the submission of the learned counsel for the defendant No. 1 that the members of the plaintiff and the defendant Nos. 3 to 5-societies were concerned only with the four wings constructed on the suit plot and the land underneath and not the entire suit property. In my view, there is no merit in the submission of the learned counsel for the defendant No. 1 that the provisions of sections 7 and 7-A of the MOFA did not apply to the agreements entered into between the parties.*

xxx xxx xxx"

(Emphasis Supplied)

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80. Further, reference may also be made to Regulation 37 of the DDA Regulations 1968, wherein, the DDA is enjoined upon to handover to the allottees, the common portion and common services. The same reads as under:

> *"xxx xxx xxx*
>
> *37.* ***Handing of Possession of Property (Sale)*** *- When the property is disposed of by way of sale, the possession of the property shall be handed over to the allottee, after such allottee has made the required payments and the possession of the common portions and common services in the Housing Estate shall be handed over to the Registered Agency of which such allottee is a member after such Agency has been duly registered and the agreement with regard to common portions and common services has been executed as prescribed in Regulation No. 55.*
>
> *xxx xxx xxx"*

81. Likewise, Regulation 55 of the DDA Regulations 1968, prescribes for transfer of common portions and common services, in the following manner:

> *"**55. Transfer to ownership to allottee.** - When the property is disposed of by way of sale, the allottee shall become the owner only after the full disposal price and all other dues have been paid by him to the Authority and the transfer of the property has been effected through a Conveyance Deed executed in such form as may be prescribed by the Authority and the common portions and common services have been transferred to the Agency through a Conveyance Deed executed in such form as may be prescribed by the Authority."*

82. The definition of 'Housing Estate' under Regulation 2(23) of the said Regulations also includes not only the dwelling unit, but also the land, roads, parks, sewers, drains, open space, community hall and other amenities/facilities meant for common area. Accordingly, once the Housing Estate has been developed and the flats have been constructed, the common areas/common portions, shall belong to the allottees/owners of the society flats. Regulation 2(23) of the DDA Regulations 1968, is extracted as below:

> *"xxx xxx xxx*

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(23) "Housing Estate" means a group of houses built by the Authority for dwelling purposes and may comprise all or any of the following; namely:

(a) a dwelling unit;

(b) land under and appurtenant to such dwelling unit:

(c) roads and paths, sewers, storm water drains, water supply and ancillary installations, street lighting and other similar amenities;

(d) open spaces intended for recreations and ventilations;

(e) convenient shopping, schools, community hall or other amenity for common use.

xxx xxx xxx"

83. Similarly, the definition of common portion under Regulation 2(9), is similar to the definition of common areas as defined under the Delhi Apartment Act. Regulation 2(9) of the DDA Regulations 1968, reads as under:

"xxx xxx xxx

(9) "Common Portions" means those portions of the plot or premises which are in common use and includes the lands, gate-way, enclosure, compound walls, parks, open ground, passages, corridors staircase, fitting, fixture, light, if any, any installation whether for water supply or drainage or lighting for any other purpose and all such facilities which are used or intended to be used in common;

xxx xxx xxx"

84. The DDA has taken the defence that by virtue of Section 53(3) of the DDA Act, the provisions of the Delhi Apartment Act, shall not be applicable to the facts and circumstances of the present case, as Section 53(3) of the DDA Act has an overriding effect over any other law in force. Section 53(3) of the DDA Act, reads as under:

"xxx xxx xxx

(3) Notwithstanding anything contained in any such other law—

(a) when permission for development in respect of any land has

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been obtained under this Act such development shall not be deemed to be unlawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has not been obtained;

(b) when permission for such development has not been obtained under this Act, such development shall not be deemed to be lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has been obtained.

xxx xxx xxx"

85. The aforesaid contention of the DDA cannot be accepted. The Delhi Apartment Act itself stipulates and envisages the application of the provisions of the Act to an individual apartment in a multi-storey building. The preamble of the Delhi Apartment Act, reads as under:

"xxx xxx xxx

An Act to provide for the ownership of an individual apartment in a multi-storeyed building and of an undivided interest in the common areas and facilities appurtenant to such apartment and to make such apartment and interest heritable and transferable and for matters connected therewith or incidental thereto.

WHEREAS with a view to securing that the ownership and control of the material resources of the community are so distributed as to sub-serve the common good, it is expedient to provide for the ownership of an individual apartment in a multi-storeyed building and of an undivided interest in the common areas and facilities appurtenant to such apartment, and to make such apartment and interest heritable and transferable and to provide for matters connected therewith or incidental thereto;

xxx xxx xxx"

86. Further, even Section 2 of the Delhi Apartment Act stipulates that the provisions of the said Act shall apply to every apartment in a multi-storey building, which was constructed mainly for residential/commercial or other purposes. The Delhi Apartment Act is a Welfare Legislation, and there is no inconsistency and contradiction between the provisions of Section 53 of the

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DDA Act and those of Delhi Apartment Act. Section 2 of the Delhi Apartment Act, is reproduced as under:

> *"xxx xxx xxx*
>
> *2. **Application**.—The provisions of this Act shall apply to every apartment in a multi-storeyed building which was constructed mainly for residential or commercial or such other purposes as may be prescribed, by—*
>
> *(a) any group housing co-operative society; or*
>
> *(b) any other person or authority, before or after the commencement of this Act and on a free hold land, or a lease hold land, if the lease for such land is for a period of thirty years or more: Provided that, where a building constructed, whether before or after the commencement of this Act, on any land contains only two or three apartments, the owner of such building may, by a declaration duly executed and registered under the provisions of the Registration Act, 1908 (16 of 1908), indicate his intention to make the provisions of this Act applicable to such building, and on such declaration being made, such owner shall execute and register a Deed of Apartment in accordance with the provisions of this Act, as if such owner were the promoter in relation to such building.*
>
> *xxx xxx xxx"*

87. Even the Delhi Apartment Act has provisions of non-obstante clause under Section 24, which is reproduced as under:

> *"xxx xxx xxx*
>
> ***24. Act to be binding on apartment owners, tenants, etc.**—(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any contract, undertaking or other instrument and all apartment owners, tenants of owners, employees of owners and tenants, or any other person who may, in any manner, use the property or any part thereof to which this Act applies, shall be subject to the provisions of this Act and the bye-laws and the rules made thereunder: Provided that nothing contained in this sub-section shall affect the right, title or interest acquired by any allottee or other person in common areas and facilities from any promoter on or before the 28th day of February, 1986.*
>
> *(2) All agreements, divisions and determinations lawfully made by the Association of Apartment Owners in accordance with the provisions of this Act and the bye-laws shall be deemed to be binding on all apartment owners.*

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xxx xxx xxx"

88. Considering that both Section 53 of the DDA Act and Section 24 of the Delhi Apartment Act, have *non-obstante* Clauses, the question arises as to which *non-obstante* Clause shall prevail. In this regard, it is settled law that in case of two Special Statues which contain *non-obstante* clauses, the provisions of the later Statue, shall prevail. Thus, in the case of ***Solidaire (India Ltd.) versus Fair Growth Financial Services Ltd. and Others, 2001 (3) SCC 71***, Supreme Court has held as follows:

> *"xxx xxx xxx*
>
> *9.* ***It is clear that both these Acts are special Acts. This Court has laid down in no uncertain terms that in such an event it is the later Act which must prevail.*** *The decisions cited in the above context are as follows: Maharashtra Tubes Ltd. v. State Industrial & Investment Corpn. of Maharashtra Ltd. [(1993) 2 SCC 144] ; Sarwan Singh v. Kasturi Lal [(1977) 1 SCC 750 : (1977) 2 SCR 421] ; Allahabad Bank v. Canara Bank [(2000) 4 SCC 406] and Ram Narain v. Simla Banking & Industrial Co. Ltd. [AIR 1956 SC 614 : 1956 SCR 603]*
>
> *10. We may notice that the Special Court had in another case dealt with a similar contention. In Bhoruka Steel Ltd. v. Fairgrowth Financial Services Ltd. [(1997) 89 Comp Cas 547 (Special Court)] it had been contended that recovery proceedings under the Special Court Act should be stayed in view of the provisions of the 1985 Act. Rejecting this contention, the Special Court had come to the conclusion that the Special Court Act being a later enactment would prevail. The headnote which brings out succinctly the ratio of the said decision is as follows:*
>
> > *"****Where there are two special statutes which contain non obstante clauses the later statute must prevail. This is because at the time of enactment of the later statute, the Legislature was aware of the earlier legislation and its non obstante clause. If the Legislature still confers the later enactment with a non obstante clause it means that the Legislature wanted that enactment to prevail. If the Legislature does not want the later enactment to prevail then it could and would provide in the later enactment that the provisions of the earlier enactment continue to apply.***
> >
> > *The Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992, provides in Section 13, that its provisions*

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are to prevail over any other Act. Being a later enactment, it would prevail over the Sick Industrial Companies (Special Provisions) Act, 1985. Had the Legislature wanted to exclude the provisions of the Sick Companies Act from the ambit of the said Act, the Legislature would have specifically so provided. The fact that the Legislature did not specifically so provide necessarily means that the Legislature intended that the provisions of the said Act were to prevail even over the provisions of the Sick Companies Act.

xxx xxx xxx"

(Emphasis Supplied)

89. Likewise, holding that if the legislature confers the later enactment with a *non obstante* clause, it means the legislature wanted the subsequent/later enactment to prevail, Supreme Court in the case of ***Kotak Mahindra Bank Limited Versus Girnal Corrugators Pvt. Ltd. and Others, (2023) 3 SCC 210***, has held as follows:

"xxx xxx xxx

30. At this stage, it is required to be noted that Section 26-E of the Sarfaesi Act which is inserted in 2016 is also having a non obstante clause. Even as per the submission on behalf of Respondent 1, two enactments have competing non obstante provision and nothing repugnant, then the non obstante clause of the subsequent statute would prevail over the earlier enactments. ***As per the settled position of law, if the legislature confers the later enactment with a non obstante clause, it means the legislature wanted the subsequent/later enactment to prevail.*** *Thus, a "priority" conferred/provided under Section 26-E of the Sarfaesi Act would prevail over the recovery mechanism of the Msmed Act. The aforesaid is to be considered along with the fact that under the provisions of the Msmed Act, more particularly Sections 15 to 23, no "priority" is provided with respect to the dues under the Msmed Act, like Section 26-E of the Sarfaesi Act.*

xxx xxx xxx"

(Emphasis Supplied)

90. Accordingly, in view of the law as discussed hereinabove, the provisions of Section 24 of the Delhi Apartment Act shall prevail upon Section 53 of the DDA Act. Thus, after coming into force of the Delhi

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Apartment Act in the year 1986, the petitioners are the absolute owners of not only the freehold flats, but also the common areas and facilities as defined under the Delhi Apartment Act.

91. In this regard, it is apposite to refer to the judgment in the case of ***O.S. Bajpai Versus Administrator (Lt. Governor of Delhi) & Ors., 2010 SCC OnLine Del 2125***, wherein, the Division Bench of this Court held that the Delhi Apartment Act extends to the whole of Delhi and applies to every apartment in a multi-storey building, which was constructed for residential or commercial or such other purposes. Referring to the Delhi Apartment Act, the Division Bench has held that every apartment owner is entitled to exclusive ownership and possession of the apartment so allotted, along with undivided interest in the common area and facilities. Thus, the Division Bench has held as follows:

> *"xxx xxx xxx*
>
> ***3. <u>The Act was passed by the Legislator for providing ownership of an individual in a multi-storeyed building and also to give him undivided interest in the common areas and facilities appurtenant to such apartment and also to make such apartment and interest heritable and transferable.</u>*** *The preamble to the Act reads as under:*
>
> > *"An Act to provide for the ownership of an individual apartment in a multi-storeyed building and of an undivided interest in the common areas and facilities appurtenant to such apartment and to make such apartment and interest heritable and transferable and for matters connected therewith or incidental thereto.*
> >
> > *Whereas with a view to securing that the ownership and control of the material resources of the community are so distributed as to subserve the common good, it is expedient to provide for the ownership of an individual apartment in multi-storeyed building and of an undivided interest in the common areas and facilities appurtenant to such apartment and interest heritable and transferable and to provide for matters connected therewith or incidental thereto."*

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4. *The purpose which was sought to be achieved by passing this enactment is elaborately stipulated "objects and reasons" to the Delhi Apartment Ownership Bill, 1986, which makes the following reading:*

"The Delhi Apartment Ownership Bill, 1986 seeks to achieve the object of enabling the conferment of heritable and transferable right in an apartment including its proportionate and undivided interest inland and other common areas. The scarcity of land in Delhi because of very rapid urbanization has led to a vertical growth of buildings. Multi-storeyed residential buildings, integrated development of commercial, institutional and industrial areas and flatted factories have resulted in a marked increase in the number of multi-storeyed buildings in Delhi containing a number of apartments, sharing land and other common facilities. In the case of flats constructed by agencies like the Delhi Development Authority, while the super structure is conveyed to the allotted, the land is conveyed to a registered agency and the allottees jointly which apart from separating the ownership of land and super structures, interposes the registered agency in future transfers of properties. In the case of cooperative societies, difficulties are experienced in obtaining loans in the absence of a mortgageable title in an apartment constructed on indivisible land, the title to which rests in the society. The existing arrangements also involve the intervention of the Government and agencies like the Delhi Development Authority in the litigation or dispute regarding management of common areas which arise between the lessees and buyers of the apartments. The legislation therefore proposes to meet the persistent demand for statutory recognition of an apartment as a unit of property, capable of transfer and for statutory recognition of an apartment as a unit of property, capable of transfer and for a statutory organization clothed with adequate powers for management of common areas in multi-storeyed buildings."

5. *The said Act extends to the whole of the Union Territory of Delhi and applies to every apartment in a multi-storeyed building, which was constructed, viz., for residential or commercial or such other purposes as may be prescribed, by—*

(a) Any group housing cooperative society, or

(b) Any other person or authority, before or after the commencement of this Act and on a free hold land, or a lease hold land, if the lease for such land is for a period of thirty years or more.

6. *According to Section 4(1) of the Act, every apartment owner is entitled to exclusive ownership and possession of the apartment so allotted, sold or otherwise transferred to him on or after commencement of the Act. Under Section 4(2) of the Act, the*

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apartment owner is entitled to exclusive ownership and possession of the apartment so allotted, sold or otherwise transferred to him before the commencement of the Act. ***Section 4(3) of the Act provides that, a flat owner who becomes entitled to the exclusive ownership and possession under Sub-section (1) or (2) of Section 4 shall be entitled to such percentage of undivided interest in the common areas and facilities as may be prescribed in the deed or the apartment and such percentage shall be computed by taking "as a basis" the value of the apartment in relation to the value of the property. As per Sub-section (4)(a) of Section 4, the percentage of the undivided interest of each apartment owner in the common areas and facilities shall have a permanent character, and shall not be altered without the written consent of all the apartment owners. Further, sub-section (4)(b) of Section 4 mandates that the percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with the apartment, even though such interest is not expressly mentioned in the conveyance or other instrument.***

7. *Section 5 makes the apartment heritable and transferable. Section 13 of the Act provides for the contents of the deed of apartment. Section 14 deals with its registration and stipulates that every deal of apartments and every endorsement relating to the transfer of apartment shall be deemed to be a document, which is compulsorily registerable under the Registration Act, 1908.*

xxx xxx xxx"

(Emphasis Supplied)

92. The contention raised by the DDA that no fixed proportionate share of land has been allotted to the petitioners and therefore, the petitioners cannot claim any right or share or proportionate share in the common area, cannot be accepted. The consequence of the conveyance deed being executed by the DDA in favour of the petitioners is that the same not only transfers the dwelling unit, but also has the effect of transferring the undivided interest in the common areas and facilities. It is undisputed that the DDA has taken money from the petitioners against both cost of land as well as cost of construction, in addition to other charges. Section 4 (4)(b) of Delhi

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Apartment Act, specifically stipulates that percentage of the undivided interest of the owner of apartment in the common area and facilities, shall not be separated from the apartment to which it appertains, and shall be deemed to be conveyed or encumbered with the apartment, even though such interest is not expressly mentioned in the conveyance or other instrument.

93. Further, the definition of apartment owner, as given in the Delhi Apartment Act, clearly stipulates that apartment owner means the person or persons owing an apartment and un-divided interest in the common areas and facilities.

94. Section 13 of the Delhi Apartment Act makes provision regarding contents of Deed of Apartment. Reading of the various definitions of apartment, apartment owner and common areas and facilities, indicates in clear terms that the conveyance deed executed by the DDA in favour of the allottees and the Deed of Apartment, as defined in Section 13 of the Delhi Apartment Act, are two entirely different nature of instruments transferring or conveying different nature of rights, titles, shares and interests in entirely different nature of land/properties. The conveyance deed executed by the DDA in favour of the allottees, transfers not only the dwelling unit but also the undivided interest and share in the common areas and facilities. The Deed of Apartment demarcates the proportionate right of the apartment owners in respect of common areas and related properties of the multi-storey apartments.

95. Merely because the Deed of Apartment has not been executed by the DDA, does not mean that the rights of the petitioners over the common areas and facilities are not protected. The provisions of the Delhi Apartment Act

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and the notifications issued by the DDA in that regard, cast a bounden duty upon the DDA to execute the Deed of Apartment, which the DDA has not done in the present case.

96. Considering the aforesaid, it is manifest that Regulations 37 and 57 of the DDA Regulations 1968 envisage the scheme of transferring the common portion and common services to the residents through a registered agency, i.e., the Association of the Residents/Apartment owners, by way of separate conveyance deed executed between DDA and the Association of Apartment Owners. Similar scheme has been provided under Section 13 of the Delhi Apartment Act, whereby it is stipulated that the common areas and facilities have to be transferred to the Association of Apartment Owners vide separate deed of apartments, earmarking the proportionate right and share of each individual apartment owner. Thus, when the DDA Regulations 1968 are read in totality, it is obvious that the DDA has to transfer the common portion and common services to the Association of Apartment Owners, i.e., the registered agency, as named in the DDA Regulations 1968. Further, when the DDA Regulations 1968 and the Delhi Apartment Act are read together, it is clear that there is no conflict between the two. Further, it is to be noted that Section 4(4)(a) and (b) of Delhi Apartment Act incorporate deeming provisions, thereby laying down that the common area is part and parcel of the apartment, and each apartment owner has proportionate rights in the common areas, even though the conveyance deed or sale deed does not talk about the same. Thus, even if the conveyance deed executed by DDA does not make any reference to either the common areas or FAR, the same cannot be construed to mean that the petitioners do not have any right or share or undivided interest in the land or common area.

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97. The DDA has tried to justify its decision to construct extra flats by relying upon Clause 23 of the DDA Housing Scheme 2010, which reads as under:

> *"**23. OTHER GENERAL CONDITIONS***
>
> *A. DDA reserves the right to alter any term and condition/ clause of the scheme at its discretion as and when considered necessary.*
>
> *B. DDA reserves the right to increase or decrease the number of flats on offer in the scheme. DDA also reserves the right to withdraw some/all flats depending on the circumstances.*
>
> *xxx xxx xxx"*

98. The said contention of the DDA cannot be accepted and has essentially to be rejected. The said liberty to increase or decrease the number of flats on offer in the Scheme can only be exercised by the DDA, at the time of construction of the flats. Once flats have been fully constructed and have been transferred by way of valid conveyance deed, valuable rights in the common areas accrue in favour of the allottees, which cannot be disturbed by allowing the DDA to construct extra flats.

99. At this stage, it would be fruitful to refer to the judgment of this Court in the case of ***M/s Nehru Place Hotels Limited Vs. M/s Bhushan Limited, 2005 SCC OnLine Del 532***. In the said case, it has been held that statutory provisions override contractual terms stipulated in an agreement. Further, as per Section 24 of the Delhi Apartments Act, the provisions of the said Act are binding on all apartment owners, tenants, etc. notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Thus, in the said judgment, it has been held as follows:

> *"xxx xxx xxx*
>
> ***26. Whatever may be the terms of agreement, the field is admittedly covered by the statutory provisions. Indisputably, the apartment in question is covered by the provisions of the Act. Therefore, statutory***

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provisions contained in that Act, wherever applicable, shall override the contractual terms stipulated in the Agreement signed between the parties. It is trite law that 'contracting out' is not permissible in a manner which would offend and breach the statutory provisions. To put it simply, there cannot be a clause in the Agreement between the parties which infringes statutory provision and such a clause would clearly be void even if the parties had agreed to the specific terms. *We are concerned herewith the maintenance charges. The Agreement between the parties contains clauses as per which maintenance charges are payable. However, it is to be borne in mind that the Act also deals with the subject of maintenance of these apartments.*

27. *'Common areas and facilities' are defined in Section 3(j) of the Act which includes land on which such building is located as well as parking areas, elevators, tanks, pumps and all other parts of property necessary or convenient to its existence, maintenance and safety, or normally in common use. Learned counsel further submitted that even the Deed of Compromise (which is given nomenclature of the Agreement in the instant case) had to contain the contents as specified in Section 13. The Act further provides for forming an association of apartment owners for the administration of the affairs in relation to the apartments and the property appertaining thereto and for the management of common areas and facilities. Section 15 of the Act, which was a mandatory provision for forming such an association, stipulates as under:*

> *"**15. Association of Apartment Owners and bye-laws relating thereto** - (1) There shall be an Association of Apartment Owners for the administration of the affairs in relation to the apartments and the property appertaining thereto and for the management of common areas and facilities:*
>
> *Provided that where any area has been demarcated for the construction of multi-storeyed buildings, whether such area is called a block or pocket or by any other name, there shall be a single Association of Apartment Owners in such demarcated areas.*
>
> *(2) The Administrator may, by notification in the Official Gazette, frame model bye-laws in accordance with which the property referred to in sub-section (1) shall be administered by the Association of Apartment Owners and every such Association shall, as its first meeting, make its bye-laws in accordance with the model bye-laws so framed, and in making its bye-laws the Association of Apartment Owners shall not make any departure from, variation of, addition to, or omission from, the model bye-laws aforesaid except with the prior approval of the Administrator and no such approval shall be given if, in the opinion of the Administrator, such*

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departure, variation, addition or omission will have the effect of altering the basic structure of the model bye-laws framed by him."

28. *In sub-section (3) of Section 15, it is provided that the model bye-laws framed under sub-Section 2 shall contain specifically the matters stipulated therein and includes:*

"(m) Maintenance, repair and replacement of the common areas and facilities and payment therefor;

(n) manner of collecting from the apartment owners or any other occupant of apartments, share of the common expenses;"

29. *The expenses which are to be borne for maintenance of these common areas and facilities are described as 'common expenses' and defined in Section 3(k) which reads as under:*

"Common expenses means—

(i) all sums lawfully assessed against the apartment owners by the Association of Apartment Owners for meeting the expenses of administration, maintenance repair of replacement of the common areas and facilities;

(ii) expenses declared as common expenses by the provisions of this Act or by the bye-laws, or agreed upon by the Association of Apartment Owners.

30. *Any surplus left from the monies collected from the apartment owners, after spending at common expenses is termed as 'common profits' which is defined in Section 3(1) in the following manner:*

"3(1) Common profits means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses."

31. *These common profits are to be distributed among apartment owners as mandated by Section 19 of the Act which makes the following reading:*

*"**19. Common profits, common expenses and other matters**. - (1) The common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest of the apartment owners in the common areas and facilities.*

(2) Where the apartment owner is not in the occupation of the apartment owned by him, the common expenses payable by such apartment owner may be recovered from the person in the occupation of the apartment."

32. ***<u>As already seen above, as per Section 24 of the Act provisions of the Act are binding on all apartment owners, tenants etc. notwithstanding anything inconsistent therewith contained in any</u>***

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other law for the time being in force or in any contract, undertaking or other instrument etc.

33. *Even if it is assumed that in the absence of any association having been formed, the petitioner has right to maintain the apartments and collect maintenance charges, what cannot be disputed is that in such circumstance the petitioner can be loosely described as the association maintaining these apartments and in any case would be bound by the aforesaid provisions including Sections 15 and 19 of the Act. Thus it would be the obligation of the petitioner to keep proper accounts of the monies so received, expenses incurred on the maintenance and render those accounts. Since there is an obligation to distribute the surplus that remains with the association/body maintaining these apartments to the apartment owners as 'common profits', necessary corollary would be to maintain the premises on 'no profit no loss' basis. As a consequence, the association, and in this case the petitioner since it is maintaining the apartments, can charge only actual maintenance charges and cannot enrich itself in the process by charging over and above the expenses actually incurred. From this it will also flow, as a matter of course, that the petitioner is bound to render accounts of the monies realized from the apartment owners towards maintenance of these apartments.*

xxx xxx xxx"

(Emphasis Supplied)

100. Thus, the position that emerges is that even if no Deed of Apartment has been executed in favour of the petitioners, and even though the conveyance deed does not refer to the common areas or the FAR, the common area and the common facilities vest with the owners and stand transferred to them. The DDA, on the basis of a stipulation in the Housing Scheme regarding reservation of right to increase or decrease the number of flats, cannot take away the material rights of the petitioners that have accrued to them in the common areas. No additional flats can be allowed to be constructed once the conveyance of constructed flats is complete in all respects in all the towers in question. DDA was left with no rights for construction of extra flats over the plot in question, after completion of the construction and conveying the same to the respective apartment owners.

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Benefit of Additional Enhanced FAR to Accrue in Favour of Owners of Apartments

101. As regards the issue as to who can avail the benefit of additional enhanced FAR, reference may be made to the MPD 2021. Relevant extract of Para 4.4.3 of MPD 2021, read as under:

> *"**4.4.3 CONTROL FOR BUILDING/ BUILDINGS WITHIN RESIDENTIAL PREMISES***
>
> *xxx xxx xxx*
>
> *xiii. Plot owners / allottees seeking extra coverage, additional floor or part thereof, over and above Gazette Notification dated 23.07.98, as per above mentioned norms shall be charged betterment levy (or additional FAR charges) at the rates notified with the approval the Government from time to time. This is in addition to the levy payable on the additional FAR allowed vide notification dated 23.07.98 and over the FAR allowed vide notification dated 15.05.95.*
> *xiv. Plot owners / allottees seeking regularization of construction in terms of the additional coverage allowed under this notification, shall have to pay a penalty and compounding charges notified with the approval of the Government, over and above the betterment levy referred to in para (xiii) above.*
> *xxx xxx xxx*
>
> ***B. Residential Plot – Group Housing***
> *xxx xxx xxx*
>
> *vii. Levy on additional FAR shall be at rates notified with the approval of Government from time to time.*
>
> *xxx xxx xxx"*

102. Reading of the aforesaid clearly shows that the MPD 2021 envisages that benefit of the additional FAR, shall inure to the benefit of the plot owners/allottees.

103. Even to the understanding of the DDA, the owner/allottee of the plot can avail the benefit of the original enhanced FAR by paying necessary betterment charges. The notification no. S.O.3172(E) dated 29th June, 2018 issued by the DDA, stipulating various rates for payment of betterment levy/additional FAR charges payable by the owners of the plots, is

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reproduced as under:

Fixation of Rates to be Applied for Enhanced FAR for Residential Properties, Coop. Group Housing, Mixed Use/Commercial Streets and Commercial Properties (Excluding Hotel and Parking Plots) Arising Out of MPD 2021

DELHI DEVELOPMENT AUTHORITY

NOTIFICATION

[1]S.O. 3172(E).—New Delhi, the 29th June, 2018

S.O. 3172(E).—In exercise of powers conferred under Section 57 of the Delhi Development Act, 1957 (61 of 1957), the Delhi Development Authority with the prior approval of the Central Government, hereby makes the following modifications to notification vide S.O. 2955(E) dated 23rd December, 2008: —

(Figure in ₹ per sq.mtr built up area)

Sl.No.	Item	Purpose/category of colony	Applicable Rates upto six months of Notification	Applicable Rates after six months of Notification
(1)	(2)	(3)	(4)	(5)
1.	(a) Residential properties. Including for basement under Mixed use rates of payment of betterment levy-/additional FAR charges for new construction and penalty/ compounding/special compounding charges for regularization of unauthorized construction.	(1) New Construction, (2) Regularization of Unauthorised construction within permissible FAR		
		A & B colonies	4200/-	9080/-
		C&D colonies	1680/-	3632/-
		E,F,G & H colonies With plot size more Than 50 Sqm.	840/-	1816/-
		E,F,G & H colonies With plot size up to 50 Sqm.	588/-	1271/-
	(b) Residential properties including for basement under Mixed use	The rates for additional coverage within permissible FAR-use of basement for professional/commercial activities leading to excess permissible area on the plot.		
		A & B colonies	4200/-	9080/-
		C & D colonies	1680/-	3632/-
		E,F,G & H colonies With plot size more Than 50 Sqm.	840/-	1816/-
		E,F,G & H colonies With plot size up to 50 Sqm.	588/-	1271/-
2.	(c) Addl. FAR charges for cooperative Group Housing Societies for which land was allotted by DDA	A & B colonies	4200/-	9080/-
		C & D colonies	1680/-	3632/-
		E,F,G & H colonies	840/-	1816/-

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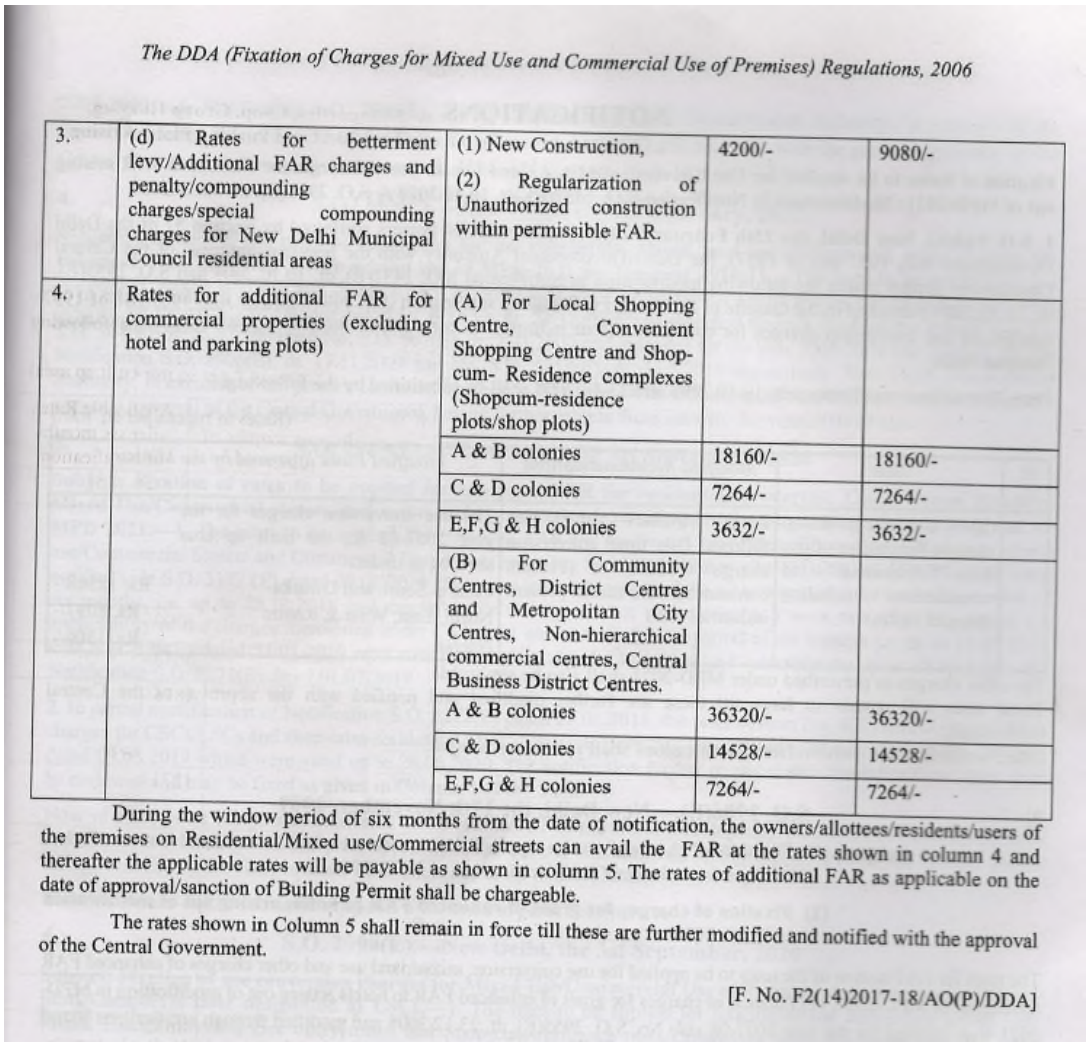

The DDA (Fixation of Charges for Mixed Use and Commercial Use of Premises) Regulations, 2006

3.	(d) Rates for betterment levy/Additional FAR charges and penalty/compounding charges/special compounding charges for New Delhi Municipal Council residential areas	(1) New Construction, (2) Regularization of Unauthorized construction within permissible FAR.	4200/-	9080/-
4.	Rates for additional FAR for commercial properties (excluding hotel and parking plots)	(A) For Local Shopping Centre, Convenient Shopping Centre and Shop-cum- Residence complexes (Shopcum-residence plots/shop plots)		
		A & B colonies	18160/-	18160/-
		C & D colonies	7264/-	7264/-
		E,F,G & H colonies	3632/-	3632/-
		(B) For Community Centres, District Centres and Metropolitan City Centres, Non-hierarchical commercial centres, Central Business District Centres.		
		A & B colonies	36320/-	36320/-
		C & D colonies	14528/-	14528/-
		E,F,G & H colonies	7264/-	7264/-

During the window period of six months from the date of notification, the owners/allottees/residents/users of the premises on Residential/Mixed use/Commercial streets can avail the FAR at the rates shown in column 4 and thereafter the applicable rates will be payable as shown in column 5. The rates of additional FAR as applicable on the date of approval/sanction of Building Permit shall be chargeable.

The rates shown in Column 5 shall remain in force till these are further modified and notified with the approval of the Central Government.

[F. No. F2(14)2017-18/AO(P)/DDA]

104. Similarly, the DDA had issued 'The Delhi Development Authority (Levy/Charges for Residential Plotted Development) Regulations, 2006', stipulating betterment charges/additional FAR charges for plot owners/allottees, seeking extra coverage. The relevant extracts from the said 2006 Regulations, are reproduced as under:

> "*xxx xxx xxx*
>
> *1 These Regulations shall be called "The Delhi Development Authority (Levy/Charges for Residential Plotted Development) Regulations, 2006".*

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xxx xxx xxx

2. Definitions

xxx xxx xxx

(b) "Betterment Levy or Additional FAR Charges" means the levy payable on the additional FAR allowed vide notification dated 23.7.98 and over the FAR allowed vide notification dated 15.5.95.

xxx xxx xxx

(ix) Plot owners/allottees seeking extra coverage, additional floor or part thereof, over and above Gazette Notification dated 23rd July 1998, as per above mentioned norms, shall be charged betterment levy (or additional FAR charges) at the rates notified with the approval of the Government, from time to time. This is in addition to the levy payable on the additional FAR allowed vide notification dated 23rd July 1998 and over the FAR allowed vide notification dated 15th May 1995.

(x) Plot owners/allottees seeking regularization of construction in terms of the additional coverage allowed under this notification, shall have to pay a penalty and compounding charges notified with the approval of the Government, over and above the betterment levy referred to in para (ix) above.

xxx xxx xxx

3. Application

These Regulations shall apply to all plotted development in the areas covered under Municipal Corporation of Delhi, New Delhi Municipal Council, and the Delhi Development Authority subject to certain terms and conditions laid down in the Master Plan of Delhi as amended vide Notification No. S.O. 1591(E), dated 22.09.2006.

4. Betterment Levy/Additional FAR Charges and Penalty/Compounding Charges Special Compounding Charges

4.1 The plot owners/allottees seeking extra coverage, additional floor or part thereof, over and above Gazette Notification dated 23.07.1998, as per the norms defined in the notification dated 22.9.2006, shall be charged betterment levy (or additional FAR Charges).

4.2 Plot owners/allottees seeking regularization of construction over the coverage, allowed as per notification dated 23.7.1998 in terms of the additional coverage allowed under the notification dated 22.9.2006, shall have to pay penalty and compounding charges over and above the betterment levy referred to in para 4.1 above.

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4.3 Plot owners/allottees "Seeking sanction/regularization of additional coverage over the development control norms as per 15.5.1995 shall also be liable to pay penalty and compounding charges over and above the betterment levy referred to in para 4.1 above, at the rates hereinafter prescribed, for availing of additional coverage permissible vide notification dated 23.07.1998.

4.4 Plot owners/allottees seeking regularization of additional height in terms of notification dated 22.9.2006 will have to pay penalty and special compounding charges, in addition to the betterment levy referred to in para 4.1 above.

5. Rates of payment of betterment levy/additional FAR charges and penalty/compounding charges/special compounding charges

5.1 As per sub-para (ix) to (xi) of Notification dated 22.9.2006, the Plot owners/allottees shall be subject to levy of:-

(i) Betterment Levy or Additional FAR Charges in respect of new construction;

(ii) Compounding Charges/Penalty/Special Compounding Charges for regularization of following unauthorized constructions:

a) Additional Coverage within sanctioned height;

(b) Additional Coverage above sanctioned height but within permissible limit as per notification dated, 23.7.98; and

(c) Additional Coverage beyond permissible height as per notification dated 23.07.1998, but within 15m.

5.2 The Charges for the financial year 2006-07 as approved by the Government of India shall be as follows:

(Rates in Rs. per sqm)

Sl. No.	Purpose	A&B Colonies	C&D Colonies	E, F & G Colonies: in plots of more than 50 sqm.	E, F & G Colonies: in plot of upto 50 sqm.
1.	New Construction	3500/-	1400/-	700/-	490/-
2.	Regularization of unauthorized construction				
	(a) Additional Coverage within sanctioned height	4020/-	1610/-	805/-	564/-
	(b) Additional Coverage above sanctioned but within permissible height (as per 23.7.98)	4375/-	1750/-	875/-	613/-
	(c) Additional Coverage beyond permissible height as per 23.07.1998 but within 15 metres	4900/-	1960/-	980/-	686/-

5.3 These rates will remain in force in respect of subsequent years unless specifically revised and notified with the approval of the Central Government.

xxx xxx xxx

7. Conditions for Regularization of Additional Construction

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7.1 Encroachment on public land shall not be regularized and shall be removed first, before the Local authority grants sanction for regularization of additional construction/height.

7.2 Every applicant seeking sanction or regularization of additional FAR and/or height shall submit a certificate of structural safety obtained from a structural engineer. Where such certificate is not submitted or the Building is otherwise found to be structurally unsafe, formal notice shall be given to the owner by the local authority concerned, to rectify the structural weakness within a reasonable stipulated period, failing which, the building shall be declared unsafe by the local authority concerned and shall be demolished by the owner or the local authority.

xxx xxx xxx"

105. Therefore, the DDA cannot be held entitled to construct 168 additional flats against the available FAR, thereby, compromising the rights of the allottees in respect of land rights pertaining to flats and common areas, as well as the FAR/enhanced FAR. The said submissions by the DDA are contrary to the provisions of the Delhi Apartment Act as well as MPD 2021. The petitioners being the allottees of the flats, are entitled to the proportionate land, as well as right/interest in the common area and facility.

106. It is to be noted that even as per the DDA, the plot of 0.67 ha is not a separate plot, but forms part of the total site area, i.e. 2.83 ha of the scheme. The additional affidavit filed by the DDA in this regard, reads as under:

"xxx xxx xxx

8. That the Signature view Group Housing scheme (existing) was designed under MPD 2001 norms. As per the existing approved LOP the total area of site is 2.83 hectares wherein the residential blocks were developed in 2.16 hectares (with 336 dwelling units) and remained 0.67 hectares planned for MLU/Commercial lying undeveloped. ***It is noteworthy that the 0.67 hectare is not a separate plot but forms a part of the total site area of the scheme. As such, the development control norms shall apply to the total site area of 2.83 hectares.*** *Considering that there is no provision of MLU/commercial as a part of the Group Housing scheme, it was decided by DDA (in view of the MPD 2021 norms and to make the scheme Optimal and*

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financially viable) to develop the reconstruction scheme on total area of 2.83 hectares, while utilising the remaining permissible FAR arising from the 0.67 hectares. This is besides the fact that the construction of new 168 flats were specifically agreed to by the RWA. A copy of letter from RWA dated 03.07.2023 in this regard is enclosed as ***ANNEXURE-R1****.*

xxx xxx xxx"

(Emphasis Supplied)

107. Considering the aforesaid, it is clear that while the DDA has the authority to carry out the demolition of the flats in question, being in dangerous condition, the DDA cannot construct extra flats. However, the DDA is within its authority to construct community facilities such as community/recreational hall, crèche, library, etc. in terms of MPD 2021. Provision with regard thereto as contained in Chapter IV of MPD 2021 in Clause 4.4.3, reads as under:

"4.4.3 CONTROL FOR BUILDING/ BUILDINGS WITHIN RESIDENTIAL PREMISES

xxx xxx xxx

B. Residential Plot – Group Housing

xxx xxx xxx

iii. [Additional floor area minimum 400 sq.m or at the rate 0.6% of permissible FAR shall be allowed free from FAR to cater to community needs such as community / recreational hall, crèche, library, reading room, senior citizen recreation room / club and society office]

xxx xxx xxx"

108. Recognising the rights of the apartment owners in the common areas, this Court in the case of ***DCM Limited Vs. R.K. Towers (India) Pvt. Ltd., 2008 SCC OnLine Del 972***, has held as follows:

"xxx xxx xxx

13. *This court in Sagar Apartments Flat Owners Society (Regd.) v. Sequoia Construction Pvt. Ltd., 1993 Raj LR 446: 1993 (26) DRJ 71 has held that the Apartment Act is in force and rights of the*

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parties created under the said Act have to be taken into consideration and the purchasers of the apartments must get protection and the court has to ensure that the legislative intent is fulfilled rather than allow it to be flouted.

14. *Thus, under the agreement of the petitioner with the respondent, the petitioner merely had a right to subscribe to a certain extent in the holding organisation which was to carry on the maintenance of common areas and amenities. The petitioner itself had no rights to manage the common areas and facilities or to interfere in any manner in the same. The petitioner does not even plead that it is so entitled. Grievance is made that the holding organisation has not been constituted and the respondent is continuing to maintain the common areas and amenities in the building and profiteering therefrom.*

15. *The question which arises is, whether the petitioner has any locus standi in the matter of maintenance, specially in the light of the petitioner having sold off the entire built-up area which under the agreement had fallen to its share and further in the face of the petitioner not being the owner of any apartment in the building and also not being in possession of any space in the said building.*

16. ***In my view, the right, if any, of the petitioner under the agreement even to subscribe to the holding organisation, which under the agreement was to carry on maintenance of common areas and amenities, stands superseded by the Apartment Act. After coming into force of the Apartment Act, this court cannot allow anything in contravention thereof. The petitioner under the Apartment Act has no right to be a member of the association of apartment owners or to interfere in any manner with the maintenance of the building. If the respondent is in the wrong in continuing to maintain the common areas and facilities in the building and in profiteering from the same, the grievance, if any, is of the apartment owners and not of the petitioner. Allowing this petition would tantamount to this court holding that the petitioner has a locus to interfere in the maintenance of common areas and amenities and which, as aforesaid, does not exist under the law of the land. This court, whenever approached, has been enforcing the rights of the apartment owners****. See Star Estate Management Pvt. Ltd. v. Neo Securities Limited, FAO (OS) No. 390/1996, decided on 31.10.1996, where Division Bench held that only an association of apartment owners has the right to maintain. The Division Bench of this court again in Ganesh Prasad Seth v. Karam Chand Thapar, 1998 (IV) AD (Delhi) 657 held that* ***apartment owners have a definite specific interest in the common areas and facilities which form part of the building and cannot be deprived of the same and these rights cannot be altered without the written consent of all the apartment***

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> ***owners***. *Also Om Prakash Charaya v. Ashok Kamal Capital Builders Pvt. Ltd., 2000 (VII) AD (Delhi) 67 where the association of owners/residents was held to have a right in lis with respect to common areas and amenities in the building. Also See Municipal Corporation of Delhi v. A.M. Khanwilkar, 2002 (65) DRJ 38, where it was held that common areas and facilities cannot be the separate property for the purposes of levy of property tax. In R.L. Bhardwaj v. Shivalik Co-operative Group Housing Society Limited, 56 (1994) DLT 600 it was held that no person has exclusive right over the roof which falls in the definition of common areas. Similarly, in Dhawan Deep Resident Welfare Association v. Star Estate Management Limited, 1A No. 8139/2006 in CS (OS) No. 1474/2006, decided on 20th September, 2007, also the owners/residents of a multi-storied building were held to have a right of maintenance of common areas and amenities.*
>
> *xxx xxx xxx*
>
> ***21.*** *The claim of the petitioner of interference in maintenance of common areas and facilities in the building is thus found contrary to law. The Apex Court in Oil and Natural Gas Corpn. Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705 : AIR 2003 SC 2629 : 2003 (2) Arb. LR 5 (SC) has held the award contrary to fundamental policy of Indian Law to be against the Public Policy of India and liable to be set aside. The claim of the petitioner for formation of holding organisation in terms of agreement with the respondent is against the Apartment Act and thus no purpose will be served in directing the parties to arbitration for the said claim.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

109. This Court cannot be oblivious to the needs of the petitioners for living with dignity and with adequate open spaces. It is to be noted that the petitioners had purchased the flats by taking into account the original sanctioned layout plan of the housing estate/society with regard to the parking area, community space, common area, green area/open space, natural airflow and sunlight and other basic amenities. Therefore, the valuable rights of the residents over the common areas cannot be impaired.

110. The judgments as relied upon by the DDA are clearly distinguishable, and the DDA cannot seek any right over the additional FAR, on the basis of

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the said judgments.

110.1 The DDA has relied upon the judgment in the case of ***Virmani, Roy and Kutty Vs. Ansal Properties and Industries Limited***, ***2002 (65) DRJ 290***, to submit that the rights in respect of common areas and facilities in terms of the Delhi Apartments Act, are subject to the provisions of Section 4(3) of the said Act, which entitles the promoter/builder of a multi-storey building to specify common areas, which it wishes to transfer to the flat owners. Thus, by relying upon the said judgment, it is the case of the DDA that in the absence of any Deed of Apartment transferring any specific areas in favour of the petitioners, the proportion of the common area to be transferred in favour of the petitioners, has not been specified. By referring to the same, DDA has claimed its right to construct additional flats. However, in a subsequent judgment in the case of ***M/s Nehru Place Hotels (supra)***, it has categorically been held that Delhi Apartment Act would have overriding effect over any agreement, the terms of which may be contradictory to the provisions of the said Act. Further, as discussed in the preceding paragraphs, reading of the Delhi Apartment Act and the DDA 1968 Regulations, make it evident that the undivided interest in the common areas and facilities, shall be deemed to be conveyed or encumbered with the apartment, even though such interest is not expressly mentioned in the conveyance or other instrument. Even otherwise, the judgment in the case of ***Virmani, Roy and Kutty (supra)*** was delivered in the context of an application for interim injunction with regard to installation of a Transmission Tower for cellular services and was rendered in the facts and circumstances of the said case. It is clearly stated in the said judgment that no opinion was expressed on the merits of the case and the judgment was

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being passed only in the context of the interim application.

110.2 DDA has also relied upon the judgment in the case of ***Vikas Singh Vs. Govt. of NCT of Delhi and Others***, ***2022 SCC OnLine SC 1207***. The said judgment has been relied by the DDA in order to contend that the provisions of the DDA Act have overriding effect over the Delhi Apartment Act, to submit that the DDA has rights over common areas and has the authority to construct additional flats in view of the enhanced FAR. The facts of the said case are totally different from the present case. In the case of ***Vikas Singh (supra)***, there was conflict between the MCD Fire Safety Regulations and UBBL-2016. In that context, the Supreme Court observed that in case of conflict between the Rules framed under the DDA Act and any other Rules, the provisions of DDA Act shall prevail. The said judgment cannot be relied by the DDA to claim any right over the common areas appurtenant to the Signature View Apartments.

110.3 Likewise, the judgment of the Supreme Court in the case of ***DLF Limited Vs. Manmohan Lowe and Others, (2014) 12 SCC 231***, as relied by the DDA, is clearly distinguishable. The said judgment dealt with huge project of DLF, spreading over an area of 1530 acres of land, demarcated as Phase 1, Phase 2 and Phase 3. In the said case, issue arose as regards a gated colony by the name of 'Silver Oaks Apartments', wherein, two nursery schools, three shops and one community centre were developed. The Supreme Court held that the said structures were part of planning for larger area, and were not meant for the exclusive use of the flat owners of Silver Oak Apartments. It was held that the nursery schools, shops and community centre were meant for the development of the entire colony and were not confined only to the said apartments. The said judgment cannot certainly be

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relied by the DDA to claim any right over the additional FAR for construction of extra flats. As already noted, the MPD 2021 makes provisions for utilization of part of the FAR in the common areas for construction of community facilities, which DDA can certainly undertake. The facilities that are obligatory under the MPD 2021, can be constructed by the DDA. However, the judgment of the Supreme Court cannot be misinterpreted by the DDA to claim any rights over the common areas for construction of additional flats on account of the enhanced additional FAR.

110.4 Likewise, the judgment in the case of ***Ramesh Chandra Agrawal Vs. Regency Hospital Limited and Others, (2009) 9 SCC 709***, relied upon by the petitioner in *W.P.(C) 3760/2024,* is not applicable to the facts and circumstances of the present case. The said case dealt with an expert opinion in the case of a medical negligence, wherein, the Supreme Court held that evidence of an expert is of an advisory character and without examining the expert as a witness in court, no reliance can be placed on an opinion alone. The facts of the said case are clearly distinguishable and do not apply to the present case, wherein, report has been given by structural experts after thorough testing, investigation and examination.

Terms of the Rehabilitation Offer by the DDA

111. This brings us to the next issue as regards the temporary rehabilitation of the petitioners during the period when the DDA undertakes the exercise of demolition of the structures in question and reconstructs the same. The DDA after detailed discussions with the residents and members of the RWA had issued terms of Final Rehabilitation Offer dated 26th June, 2023.

112. It is to be noted that after taking cognizance of the report of the IIT, Delhi and the recommendations therein, the Lieutenant Governor of Delhi

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constituted a three-member committee comprising of the Engineering Member, Chief Legal Advisor and Commissioner (Housing), DDA, to interact with the RWA and the residents of the Signature View Apartments. Thus, a meeting was conducted on 16th March, 2023 with Senior Officials of the DDA and representatives of RWA, under the chairmanship of VC, DDA.

113. Pursuant to the aforesaid meeting, the RWA, Signature View Apartments, addressed a letter dated 10th May, 2023 to the VC, DDA, wherein, they submitted that many residents had already vacated their flats and shifted, therefore, the process of vacation of the remaining premises should be facilitated at the earliest. Further, the RWA made an earnest request for fixing a timeline so as to close the entire Rehabilitation Plan. The letter dated 10th May, 2023 written by the RWA, reads as under:

> *"xxx xxx xxx*
>
> *1.* ***Buyback:***
>
> *As per Methodology I: Buyback of flats online of relevant provisions stipulated in the RERA Act 2016*
>
> *a. Refund of cost of capital with simple interest@l0.6% on Cost of Capital + Maintenance Charges plus stamp duty charges which were incurred by individual allottee for executing the CD*
>
> *b. Calculation of interest for the period - the date of payment made to DDA till the date of refund by DDA to allottee/owner of the flat*
>
> *xxx xxx xxx*
>
> *2.* ***Reconstruction****:*
>
> *a. Reconstruction of 336 DUs with complete amenities as, per MPD 2021 norms and handing over the same to allottee/owner in a time bound manner. The project should be completed within 3 years by engaging a quality contractor who has track record of meeting the project timelines.*
> *b. Allotment of these flats on AS-IS, WHERE IS BASIS by constructing 12 towers.*
> *c. Additional Flats may be constructed on these 12 towers to avoid compromising the existing location of towers and to provide larger green area and open space to Residents.*
> *d. Carpet Area & Built-up Area of the reconstructed flats should not be*

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reduced.

e. Due to change in MPD norms, if the size of Plinth area increases, DDA should not recover any additional amount from allottee/owner of the flats.

f. As per DDA minutes dated 16th Mar 23

i. As per current building by-laws, balconies up to the width of 2 mtrs. are free from FAR, hence DDA may provide the balconies as per current norms in the reconstructed flats.

ii. Unutilized permissible FAR of the consolidated plot, remains available, if any, after construction of the additional flats of DDA, may be added to the 336 flats to be reconstruct i on pro-rata basis subject to prior undertaking by the respective allottees or the owners.

3. ***Rent during rehabilitation period****:*

Residents are thankful to DDA and hon'ble LG for decision in Authority meeting to give monthly rent to allottee/ owner of the flat for rehabilitation in alternate/rented accommodation and for accepting the demand of increase of Rent from Rs. 42635/- to Rs. 50,000 for HIG and Rs. 33030/- to Rs. 38000/- per month of MIG flats.

Further Residents are requesting to consider the followings: ·

a. In case of delay in handover of reconstructed flats, monthly Rent should be increased@10% pa. from 3rd year onwards.

b. Advance monthly rent to allottee/ owner of the flats by direct fund transfer in their bank account.

For the smooth closure of rehabilitation plan, RWA is requesting a formal binding document for execution of the agreement at the earliest. A timeline to be fixed so that Residents can opt these options and sign the agreement. Further RWA is also requesting to nominate a dedicated team who will stationed in Signature View Apartment premise to undertake this responsibility for smooth execution of the process.

As every day in delay adds to agony and pain of the residents, we seek your urgent support for expedited closure and execution. We are observing multiple cracks on columns and beams following recent earthquake instances. However, in absence of any firm proposal and execution of rehabilitation from DDA, residents have no option but live in risk every day.

Would appreciate your final approval and early closure of the request.

xxx xxx xxx"

114. Subsequently, a meeting was held on 16th May, 2023 under the chairmanship of VC, DDA with the representatives of RWA, Signature

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View Apartments to finalise the various issues. Ultimately, the DDA issued Final Rehabilitation Offer dated 26th June, 2023, which is reproduced hereunder:

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विनीत जैन, भा.रे.का.से.
आयुक्त (आवास)
VINEET JAIN, IRPS
COMMISSIONER (HOUSING)

आजादी का अमृत महोत्सव

दिल्ली विकास प्राधिकरण
इ-1, विकास सदन
आई.एन.ए., नई दिल्ली-110023
DELHI DEVELOPMENT AUTHORITY
E-1, VIKAS SADAN
I.N.A., NEW DELHI-110023

No. L/PA/COMMR-(H)/DDA/2023/58

Dated: 26/06/2023

To,
The President,
Resident Welfare Association
Signature View Apartment
Mukherjee Nagar
New Delhi-110009

ANNEXURE-P/1

Subject: Approved Final Rehabilitation Offer to the 336 DDA Flat allottees/ owners of Signature View Apartment, Mukherjee Nagar,Delhi.

Reference may kindly be taken of the above-mentioned subject and your letter bearing Ref No. 074/RWA/SVA dated 16th June 2023 on the same. After detailed internal deliberations within DDA as well as a series of meetings with the representatives of RWA of Signature View Apartment, the proposed offers were placed before the Authority for discussion and appropriate decision in its meeting held on 14-6-2023. As approved by the Authority, DDA is offering the following two options to the 336 flat allottees/owners of Signature View Apartment:

1. Buyback:

I. DDA will refund the Cost of Capital to the owner of the flat, that is the sum paid initially by the allottee of the flat to DDA which will be excluding the maintenance charges paid to DDA.

II. A simple interest at the rate of 10.6% per annum shall be paid to the owner of the flat (unit holder) on Cost of Capital and the same shall be reckoned from the date of each payment made to DDA until 14.06.2023 i.e., the date of approval of the proposal by the Authority. The payment shall be made upon submission of proof of payment and No Dues Certificate from the concerned departments towards property tax, electricity bills, water bills, PNG, etc. The provision of Income Tax Act, 1961 in vogue shall apply at the time of payment to the allottees/owners.

III. DDA shall refund the amount of stamp duty for registration of conveyance deed paid by the allottee at the time of first registration of the flat as per actual.

IV. The terms of buy back will be governed by the tripartite Agreement which shall be entered into with DDA by the allottee/owners of the flat/unit and the RWA of Signature View Apartment.

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V. Payment will be made only after a deed of conveyance is registered by the flat owner with DDA permanently and irrevocably transferring his right in favour of DDA.

VI. An undertaking from each owner and also by the bank / financial institution or other person with whom the property is mortgaged, consenting for this option that *upon entering into an agreement in form of* conveyance deed, the matter will be fully and finally settled and they will be left with no claim against DDA.

2. **Reconstruction:**

I. RWA / allottees of Signature View Apartment who are preferring the option of reconstruction, have to choose either of the following two options in writing:

(i) To have a DDA block with 3 BHK units attached with CSP units located in the front along the road adjoining the larger side of the site utilizing additional FAR available and part of the additional FAR to be loaded on two blocks F and G in vertical manner for building 2 BHK/3 BHK flats. Besides the 336 DUs of SVA, it will consist of 144 DUs (3BHK+CSP units) in the separate block and 24 DUs (16 DUs – 3 BHK and 8 DUs – 2 BHK) loaded on F & G blocks as additional 4 floors.

(ii) To have DDA to load the additional dwelling units as per the available additional FAR on all 12 towers for 2 BHK/3 BHK flats along with a separate EWS/ CSP block. Besides, the 336 DUs of SVA, it will consist of 216 DUs [3 BHK / 2 BHK loaded on all blocks (A to L Blocks)] as additional 6 floors and with 118 DUs of EWS in a separate block which shall be the property of DDA to be used as per its own policies.

II. DDA will make all efforts for completion of the project within a period of 3 years by hiring a contractor through competitive and transparent bidding process with adequate financial capacity and sufficient experience being built into the RFP as eligibility conditions while meeting all norms of MPD 2021.

III. DDA shall make efforts on best endeavour basis to retain the existing layout (As is where is basis) subject to requirements of prevailing MPD 2021 norms, UBBL-2016 and existing fire safety rules.

IV. Carpet area of the reconstructed flat size will not be reduced. In case of increase in plinth area due to change in MPD norms by way of increase in built up common area, no additional charge shall be levied for the common area.

V. The width of existing balconies can be increased to 2 meters (as per MPD 2021 & UBBL norms) only on request which has to be made by all those allottees/owners who opt for reconstruction and the additional cost of construction thereof shall be borne by these flat owners/allottees and the same shall be incorporated in the

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tripartite agreement to be signed between DDA, flat owner and RWA. This additional cost towards increase in balcony area as well as stamp duty for registration of conveyance deed for additional area of balcony shall be realised from the owner / allottee before handing over the possession of the new reconstructed flat.

VI. Podium parking facilities will be made available in the reconstructed towers as per prevailing master plan norms and allottees who had been given one parking space would be entitled to purchase one additional parking space, if available, and those who had not been allotted any parking space, would be entitled to purchase two parking spaces, if available. The allotment of additional parking space will be made on e-auction basis.

VII. Furthermore, before initiating the process of reconstruction, No Objection Certificates shall be obtained by each flat allottees/owners (by all co-owners, if more than one) of the flats from the bank/financial institution or other person having charge or encumbrance of the property, if applicable, with regard to the reconstruction. An undertaking to be given by such flat owners to DDA giving their no objection to the plan of reconstruction.

VIII. The tripartite agreement between DDA, flat allottees/owners and RWA Signature View Apartment would inter alia, include clauses on either of the two layout plans, demolition, additional FAR, parking space, balcony (payment for cost of additional construction of balcony plus stamp duty charges), facilitation amount towards rent, etc.

IX. The reconstruction process will be governed by the terms of the tripartite Agreement, with detailed rights, obligations, and timeline for the reconstruction.

X. Facilitation amount towards Rent:

The Facilitation amount towards Rent shall be paid unit wise, to each allottee/unit holder irrespective of the fact that they are residing in the flat or the flat has been rented out. The facilitation amount towards Rent (i.e., Rs. 50,000/- per month and Rs. 38000/- per month for HIG and MIG owners respectively), will be paid from the day all the flat allottees/owners/occupiers' hand over the vacant possession of the flats to the designated site staff for a period of three years or till the date of offer of allotment whichever is earlier in case the flats get reconstructed prior to three years from the day all the flat allottees/owners/occupiers' hand over the vacant possession of the flats to the designated site staff.

If need be, the same shall be re-visited on expiry of three years in case the flats do not get reconstructed within three years from the day all the flat allottees/owners/occupiers' hand over the vacant possession of the flats to the designated site staff.

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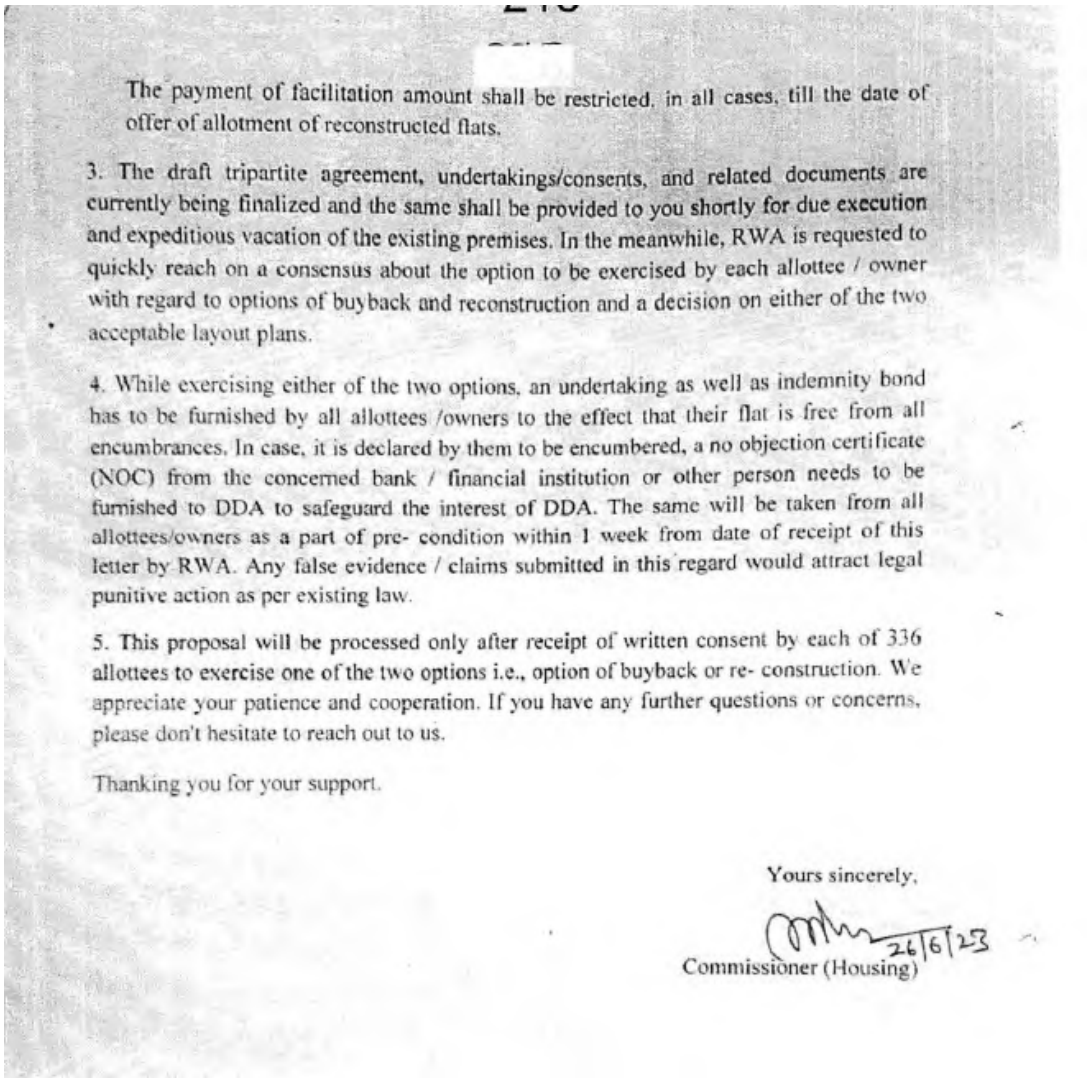

The payment of facilitation amount shall be restricted, in all cases, till the date of offer of allotment of reconstructed flats.

3. The draft tripartite agreement, undertakings/consents, and related documents are currently being finalized and the same shall be provided to you shortly for due execution and expeditious vacation of the existing premises. In the meanwhile, RWA is requested to quickly reach on a consensus about the option to be exercised by each allottee / owner with regard to options of buyback and reconstruction and a decision on either of the two acceptable layout plans.

4. While exercising either of the two options, an undertaking as well as indemnity bond has to be furnished by all allottees /owners to the effect that their flat is free from all encumbrances. In case, it is declared by them to be encumbered, a no objection certificate (NOC) from the concerned bank / financial institution or other person needs to be furnished to DDA to safeguard the interest of DDA. The same will be taken from all allottees/owners as a part of pre- condition within 1 week from date of receipt of this letter by RWA. Any false evidence / claims submitted in this regard would attract legal punitive action as per existing law.

5. This proposal will be processed only after receipt of written consent by each of 336 allottees to exercise one of the two options i.e., option of buyback or re- construction. We appreciate your patience and cooperation. If you have any further questions or concerns, please don't hesitate to reach out to us.

Thanking you for your support.

Yours sincerely,

26/6/23

Commissioner (Housing)

115. As per the aforesaid Rehabilitation Offer by the DDA, each flat owner was required to give a NOC, before the DDA shall start demolition and reconstruction of the flats of Signature View Apartments. Further, the said Rehabilitation Offer provided that the rent/facilitation amount for the alternate accommodation shall be payable to the residents of Signature View Apartments, only after handing over the possession of flats by all the flats owners. The said conditions have come to be challenged in *W.P.(C) 6850/2024*, wherein, Clauses VII and X of the said Rehabilitation Offer,

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have been challenged.

116. During the course of hearing, issue also arose as regards the condition of obtaining NOCs from the banks by the residents, wherever, loan had been taken from the banks. In the Rehabilitation Offer, the DDA had stipulated that NOCs are required from the respective banks, wherever loan has been taken, before the DDA can take any action with respect to demolition/reconstruction of the building. Thus, it was noted by this Court that in the event of refusal to give NOC by any bank, the whole process of demolition and reconstruction cannot be allowed to be stalled. Hence, by order dated 11th July, 2024, this Court directed the DDA to relook at its Rehabilitation Offer with respect to issuance of NOCs by the banks. The order dated 11th July, 2024, reads as under:

> *"xxx xxx xxx*
>
> *1. Learned counsel appearing for the petitioner has raised issue with respect to obtaining No Objection Certificates ("NOCs") from the bank by the respective residents, wherever such residents have taken loan in that regard.*
> *2. It is submitted that in many cases, the banks have refused to issue any such NOC.*
> *3. The Delhi Development Authority ("DDA") is directed to take instructions and address the court on this aspect.*
> *4. This Court notes that, in case, it is the stand of the DDA that NOCs are required from the respective banks before the DDA can take any action with respect to demolition/reconstruction of the building, then, in the event of absence of such NOC in any case by the respective banks, the whole project would be stalled, if this Court ultimately comes to a finding that reconstruction of the building needs to be done.*
> *5. Therefore, in order to overcome such impediment, it is directed that the DDA shall relook at its rehabilitation offer with respect to issuance of NOCs by the banks.*
> *6. The DDA is directed to file a short affidavit on this aspect, which may also include further terms, which the DDA may consider to incorporate for the purposes of securing its own interest.*
> *7. Let the needful be done by the DDA before the next date of*

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hearing.

8. Re-notify on 26th July, 2024.

xxx xxx xxx"

117. Pursuant thereto, the DDA revisited the terms of the Final Rehabilitation Offer dated 26th June, 2023 and filed an additional affidavit dated 03rd August, 2024, in the following terms:

"xxx xxx xxx

*3. **That the respondent DDA has re-visited the terms of the final rehabilitation offer dated 26.06.2023. It is respectfully submitted that although this offer was issued after detailed discussions and with consent /concurrence of the registered RWA (acting on behalf of all residents) yet in spirit of the observations made by the Hon'ble court the DDA has decided to relax this requirement. As such, in those cases where the allottee is unable to get NOC from the Bank/FI, the allottee itself shall furnish an undertaking and an Indemnity Bond to safeguard the interests of DDA. The remaining conditions in this regard to remain same. This is without prejudice to the stand of DDA that the allottee is obliged 'in law' to get the NOC from the Bank/Fl.***

xxx xxx xxx"

(Emphasis Supplied)

118. As regards the term of the Rehabilitation Offer, wherein, the DDA has stipulated that the facilitation amount/rent shall be payable only from the date when all the occupants have vacated the flats, the same cannot be accepted. This Court notes that more than 70% of the occupants have already vacated the flats owing to the dangerous condition of the structures. The said occupants of the flats cannot be put in a disadvantageous position of bearing the burden of rent of alternate accommodation, merely because they have complied with the directions of the DDA for vacation of flats, in a time bound manner. Considering the precarious condition of the structures, the occupants of the flats cannot be expected to wait till each occupant vacates the flats. It is far-fetched to expect that all the occupants will vacate

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the flats at one go or to expect the occupants to wait for others to vacate, when the reports have categorically stated with respect to the dangerous condition of the structures. Therefore, the DDA is bound to pay the facilitation amount/rent to the various residents of Signature View Apartments from the date when they vacate their respective flats.

119. Further, there is a term in the Rehabilitation Offer regarding setting out an outer timeline of three years during which the reconstruction takes place, as regards payment of facilitation amount/rent. This stipulation is again found to be arbitrary and unreasonable. In case, the demolition and reconstruction of the structures extends to a period beyond three years, the residents of the Signature View Apartments cannot be put at a perilous situation, for bearing cost of their stay in an alternate accommodation. The residents of Signature View Apartments are already suffering on account of the situation in which they have been put into, on account of circumstances, for which they are not responsible and which are beyond their control. Once DDA has accepted that the said structures are dangerous for habitation and has undertaken to demolish and reconstruct the said structures, it is the bounden duty of the DDA to ensure the rehabilitation of the residents in a proper manner till the possession of the reconstructed flats is handed over to the residents.

120. Therefore, it is held that the residents of Signature View Apartments are entitled to payment of facilitation amount/rent, till they are handed over possession of reconstructed flats.

121. Likewise, when the structures in question have already been found to be dangerous and have been so declared under a statutory order, there is no question of seeking any NOC from each flat owner before such action of

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demolition and reconstruction can be taken. When a structure has been declared as dangerous for habitation, no NOC is required from such occupant. In such a case, it becomes the statutory duty of the authority to take requisite action for demolition of the said structure. Such a structure, which has been declared as dangerous, can neither be allowed to remain, nor can anyone be allowed to reside in such a structure. Therefore, the condition regarding NOC from each flat owner, before taking any action for demolition of the structure, cannot be accepted.

122. As regards the amount of facilitation amount/rent, the same has been fixed by the DDA as Rupees Fifty Thousand per month for HIG Flats and Rupees Thirty-Eight Thousand per month for MIG Flats. The said amount is stated to have been fixed by the DDA as per the prevailing market conditions, on the basis of analysis undertaken by the DDA. This Court accepts the said amount, as stipulated by the DDA, as such administrative decisions have to be left to the authorities. The Court shall not interfere in such decision, the same being within the administrative realm of the DDA. However, considering the fact that demolition and reconstruction of the structures may take some time on account of logistics, it is directed that the residents of the Signature View Apartments, shall be entitled to enhancement at the rate 10% per annum, at the end of each year, till the possession of the reconstructed flat is handed over to them.

123. As regards the contempt petition, it is held that since no coercive steps have been taken by the DDA in violation of the court order, mere issuance of tender notice by the DDA, would not tantamount to contempt of the court's order. Accordingly, no merit is found in the contempt petition.

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Conclusions:

124. In view of the detailed discussion hereinabove, it is concluded as follows:

124.1 The Delhi Apartment Act provides for a proportionate and an undivided interest in the common areas and facilities appurtenant to an apartment.

124.2 The Delhi Apartment Act applies to every apartment in a multi-storey building, constructed for residential or commercial purposes.

124.3 A flat owner shall be entitled to such percentage of undivided interest in the common areas and facilities, as may be prescribed in the Deed of Apartment.

124.4 The percentage of undivided interest of each apartment owner in the common areas and facilities, have a permanent character and cannot be altered, without the written consent of the apartment owners.

124.5 The percentage of the undivided interest in the common areas and facilities is not separate from the apartment to which it appertains and shall be deemed to be conveyed or encumbered with the apartment, even though such interest is not expressly mentioned in the conveyance or other instrument.

124.6 Mere absence of execution of Deed of Apartment, will not mean that the apartment owners do not have an undivided interest in the common areas and facilities, though proportionate share may not have been fixed.

124.7 The conveyance deed transfers the title of the apartment and common areas in favour of the apartment owners, whereas, the Deed of Apartment demarcates the proportionate rights of the apartment owners in respect of common areas.

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124.8 The benefit of enhanced FAR cannot be claimed by DDA in order to construct additional flats on the basis of enhanced additional FAR.

124.9 The benefit of enhanced FAR accrues in favour of the apartment/flat owners.

124.10 The DDA has the authority to utilize part of the common areas for construction of community facilities in terms of MPD 2021.

Directions:

125. Accordingly, the following directions are issued:

I. The order dated 18th December, 2023 issued by the MCD under Sections 348 & 349 of the DMC Act, declaring the structures as dangerous, is upheld.

II. The DDA has the authority to demolish the structures and reconstruct the same.

III. The residents of Signature View Apartments have rights over the common areas and facilities.

IV. The DDA is not entitled to construct extra flats.

V. The benefit of enhanced FAR shall inure to the benefit of the owners of the flats of Signature View Apartments.

VI. All the occupants of Signature View Apartments, who have still not vacated the flats, shall vacate the flats within three months.

VII. The DDA shall pay facilitation amount/rent at the rate of Rs. 50,000/- (Rupees Fifty Thousand) per month to owners/occupants of HIG Flats and Rs. 38,000/- (Rupees Thirty Eight Thousand) per month to owner/occupant of MIG Flats from the date when the flat has been vacated.

VIII. The amount of facilitation amount/rent shall be enhanced at the rate of 10% per annum by the DDA, at the end of each year, till possession of

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reconstructed flats is handed over to the owners of the flats of Signature View Apartments.

IX. The DDA shall continue to pay the facilitation amount/rent to the owners/occupants of Signature View Apartments, till possession of reconstructed flats is handed over to the owners of the flats of Signature View Apartments.

126. In view of the observations made as above, the contempt petition, i.e., *CONT.CAS(C) 647/2024*, has become infructuous.

127. The present petitions are disposed of, with the aforesaid directions.

(MINI PUSHKARNA)
JUDGE

DECEMBER 23, 2024
kr/ak/au/c

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