

(1993) 03 DEL CK 0081

In the Delhi High Court

Case No : Interim Application No's. 12694 and 12795 of 1992 and Suit No. 3967 of 1992

Sugar Apartments Flat owners Society (Regd.) and Others

APPELLANT

Vs

SeqUnion of Indiaa Construction Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 31-03-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1
Delhi Apartment Ownership Act, 1986 — Section 4

Citation : (1993) 51 DLT 308 : (1993) 26 DRJ 71 : (1993) 2 ILR Delhi 543 : (1993) RLR 446

Hon'ble Judges : Arun Kumar, J

Bench : Single Bench

Advocate : H.L. Tikku, B.L. Wali, Swantantar Kumar, A.S. Chandhiok, Chetan Sharma, L.R. Gupta, P.N. Lekhi, D.R. Mahajan, B.J. Nayyar and V.K. Shall, for the Appellant;

Judgement

Arun Kumar, J.

(1) This order will dispose of I.A.12694/92 an application filed by the plaintiffs under Order 39 Rules 1 and 2 of the CPC and another application being I.A. No. 12795/92 filed by defendant No. 1 under Order 39 Rule 4 of the Code of Civil Procedure. The plaintiffs have prayed for grant of interim injunction against defendant No. 1 restraining it from engaging in any construction activity, either of demolition or addition or iteration in the front block of existing building called "Sagar Apartments" at 6, Tilak Marg, New Delhi. An ex parte interim order was passed on 16th October, 1992 restraining defendant No. 1 from engaging in any construction activity including demolition /addition/alteration in the front block of the existing building called "Sagar Apartments" at 6. Tilak Marg. New Delhi. Defendant No.1 moved I.A.12795/92 under Order 39 Rule4 of the CPC for vacation of the said ex parte interim order.

(2) The plaintiffs have filed the present suit for declaration, injunction and

rendition of accounts. The plaintiff No.1 is an Association of flat owners in the building known as "Sagar Apartments" while the other plaintiffs are some of the flat owners in the said multi-storeyed building. Defendant No. 1 M/s Sequoia Construction (Pvt.) Ltd. is the promoter/builder of the said multi-storeyed building complex. Defendant No.2 is New Delhi Municipal Committee while defendant No.3, is the Union of India through the Secretary, Ministry of Urban Development and the Land & Development Officer. The declaration sought in the present suit is that the areas and amenities listed in schedule "A" , to the plaint are "common areas and facilities" appurtenant to the apartments and that defendant No. 1 or anyone claiming through it is not entitled to claim any right, title or interest therein of whatsoever nature. Further the declaration is sought that defendant No.1 has no right to make any construction of whatsoever nature either by way of addition, alteration or modification or in any other manner in the building complex. The mandatory injunction is sought against the New Delhi Municipal Committee defendant No.2 to " demolish all illegal and unauthorised construction in the said building. plaintiffs have also prayed for permanent injunction to restrain defendant No.1 from engaging in any construction activity in the aforesaid building. plaintiffs have also sought rendition of accounts from defendant No. 1 regarding the amounts collected by the said defendant from the plaintiffs on account of ground rent/lease money and by way of claims of compensation from Insurance Company, non-utilisation of collection made on account of fire fighting installation etc.

(3) Defendant No. 1 is a construction Company. It acquired the lease hold rights with Vs. Sequoia Construction (P) Ltd. & Ors. respect to the plot No.6, Tilak Marg, New Delhi and got plans sanctioned for construction of a multistoried building thereon. The lease deed with respect to the plot was executed by the President of India through the Land and Development Officer, New Delhi in favor of defendant No.1 on 18th December, 1970. On 31st May, 1971 the New Delhi Municipal Committee sanctioned building plans for construction of 68 dwelling units (56 in the Tower Block and 012 in the Front Block) on the said plot. The permissible Far (Floor Area Ratio) at that time was 150.

(4) As per information supplied by defendant No.1 vide affidavit dated 20th January , a fresh plan was sanctioned by the New Delhi Municipal Committee on 11th March,1977 whereby construction of 11 dwelling units (1 in Tower Block and 10 in the Front Block) was permitted. In Pursuance of these sanctions 79 flats were constructed and a completion certificate was obtained on 26th July, 1979. Sanction for one more flat in the Front Block was obtained on 1st February, 1980 and the same was added as per the sanction. It is admitted on behalf of the construction company that with the consturction of those 80 dwelling units an Far of 150 was achieved.

(5) The matter did not rest there. The construction Company again applied for sanction to add 7 dwelling units in the Front Block. The sanction was accorded on 31st January,1983. Out of this only two units are stated to have been

constructed and for remaining 5 units extension of time to construct was sought from the New Delhi Municipal Committee. The extension was granted in the first instance up to 30th January, 1988. However, construction was not carried out during the extended period. Extension was again sought and was granted on 30th June, 1992 valid up to 31st January, 1993.

(6) The plaintiffs have filed an affidavit controverting these facts. They have emphasised that there is lot of unauthorised construction in the building i.e. construction contrary to and beyond the sanctioned plans. According to plaintiffs basements have been converted into flats and sold by defendant No.1. At this stage it is neither necessary nor it is possible to go into the question of unauthorised construction except that it appears that there is some unauthorised construction in the building as is clear from notices issued by the New Delhi Municipal Committee in this behalf copies whereof have been placed on record.

(7) There is no dispute that the dwelling units/apartments constructed in the building have been sold by the construction company to various parties after Realizing full sale consideration from them. The documents of transfer are called agreements/license deeds in view of restrictions on outright sale. Possession of the apartments has been delivered to the respective parties long ago in pursuance of the agreements.

(8) According to the plaintiffs even if the FAR was increased subsequently, defendant No.1 was not entitled to any benefit from this because it had already far exceeded even the increased FAR.

(9) The plaintiffs in the present suit and the other connected suits are purchasers of the dwelling units constructed in the building. plaintiff No.1 is the Flat Buyers' Association. Though several points have been raised on behalf of the parties, the hearing has been confined to the following points:

1. Rights of the plaintiffs under the Delhi Apartment ownership Act, 1986.
2. Rights of the plaintiffs under the license agreements executed between the apartment buyers and defendant No. 1.
3. Whether the permission of the L.& D.O. to make further construction is a sine qua non before any construction activity is undertaken ?
4. Is there any valid revalidation/extension of the plans which were sanctioned by the New Delhi Municipal Committee regarding the additional construction ?
5. Balance of convenience and irreparable loss and injury. plaintiffs' Rights Under The Delhi Apartment ownership Act,

(10) plaintiffs have heavily relied on the provisions of the Delhi Apartments ownership Act (hereinafter referred to as the Act). It has been submitted that admittedly the building in consideration is a multi-storeyed building in which the plaintiffs have acquired interests in the respective apartments allotted to them by defendant No.1. The defendant No. 1 has executed license deeds in favor of the

plaintiffs which confer certain rights on them. plaintiffs have in most of the cases, paid the entire consideration for acquiring their rights in the apartments and have obtained physical possession thereof in pursuance of payment of the entire consideration and execution of the agreement/license deeds. The agreement/license deeds are subsisting documents and are very much in force. In these circumstances, it is submitted that the Act applies and the benefits conferred under the Act on the allottees/apartment owners have to be honoured, upheld and preserved and the promoter of the multi-storeyed building complex can not infringe the rights of the plaintiffs in this behalf. At this stage, it may be worthwhile to refer to certain relevant provisions of the Act.

SECTION 3 "Allottee", in relation to an apartment, means the person to whom such document has been allotted, sold or otherwise transfer by the promoter;

SECTION 3(e) "Apartment owner" means the person or persons owning an apartment and in undivided interest in the common areas and facilities appurtenant to such apartment in the percentage specified in the deeds of apartments;

Section 3(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, main walls, roofs, Vs. Sequoia Construction (P) Ltd. & Ors. halls, corridors, lobbies, stairs, stairways, fire-escapees and entrances and exits of the building; iii) the basement, cellars, yards, gardens, parking areas, shopping centres, 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. Section 3(n) "Deed of apartment" means the deed of apartment referred to in Section 13:Section 3(w) "Promoter" means the authority, person or co-operative society, as the case may be, by which, or by whom, any multi-storeyed building has been constructed; Section 4 4.(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 u/s 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.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 covenant 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.

Section 6 is important mainly for the purpose that it ensures full payment of the consideration to the promoter before any interest in the apartment is conferred on the allottee.13.(1) Whenever any allotment, sale or other transfer of any apartment is made, the promoter shall - a) in the case of an allotment, sale or other transfer made after the commencement of this Act, within three months from the date of such allotment, sale or other transfer or Vs. Sequoia Construction (P) Ltd. & Ors.b) in the case of any allotment, sale or other transfer made before the commencement of this Act, within six months from the date of such commencement, execute a Deed of Apartment containing the following particulars namely :- i) the name of the allottee, ii) description of the land on which the building and the common areas and facilities are located; and whether the land is free-hold or lease-hold, and if lease-hold, the period of such lease. iii) a set of floor plans of the multi-storeyed building showing the layout and location, number of apartments and bearing a verified statement of an architect certifying that it is an accurate copy of the portions of the plans of the" building as filed with, and approved by, the local authority within the jurisdiction of which the building is located. iv) description of the multi-storeyed building, stating the

number of stories a statement and basements, the number of apartments in that building and the principal materials of which it is constructed, v) the apartment number, or statement of the location of the apartment, its approximate area, number and dimension of rooms, and immediate common area to which it has access, and any other data necessary for its proper identification, vi) description of the common areas and facilities and the percentage of undivided interest appertaining to the apartment in the common areas and facilities, vii) description of the limited common areas and facilities, IF any, stating to which apartments their use is reserved, viii) value of the property and of each apartment and a statement that the apartment and such percentage of undivided interest are not encumbered in any manner whatsoever on the date of execution of the Deed of Apartment, . ix) statement of the purposes for which the building and each of the apartments are intended and restricted as to use. xxx", Section 24 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 there under: 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."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 thereof. Whereas with a view to securing that the ownership and control of the material resources of the community are undistributed as to subserve 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."

(11) The Act ensures that the promoter of the multi-storeyed" building gets full consideration for the apartments constructed by it before the rights of the purchasers of the apartments 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 under its sweep a whole lot of amenities, facilities, common areas including foundations, columns, guarders, 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 guarders 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.

(12) According to the learned counsel for the plaintiffs, these provisions of the Statute Vs. Sequoia Construction (P) Ltd. & Ors. confer on the apartment owners/allotters certain inalienable and indefeasible rights which ought to be protected and the builder/promoter can not be allowed to do anything which infringes such rights of the plaintiffs who are apartment owners/allotters 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.

(13) The case of defendant No. 1 in this behalf is two fold:

1.The plaintiffs can not take advantage of the Act because the Act is a conditional legislation and till the conditions are fulfilled, the Act is not enforceable.

2.The Deeds of Apartments envisaged under the Act have not been executed and unless and until the same are executed, no rights of the apartment owners/allottees come into existence.

(14) Regarding the first point, it is submitted that the rights under the Act" have not matured as rights because of non-fulfilment of the various conditions precedent before the application of the Act. One such condition pointed out is that the competent authority which has to register the Deeds of Apartments u/s 13 of the Act has not so far been notified. Therefore, it is submitted that the Deeds of Apartment can not be executed and unless and until the same are executed, the rights created by the statute do not mature. Counsel for defendant No. 1 has relied on AIR 1945 48 (Privy Council) , State of Bombay Vs. Narothamdas Jethabai and Another, , Sardar Inder Singh Vs. The State of Rajasthan, and Hamdard Dawakhana and Another, Kalipada Deb and Another,

Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, .1 am afraid the analogy of these cases can not be applied to the situation in hand.

(15) In Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, , the difference between conditional legislation and delegated legislation was explained. It was held that when the legislation is complete in itself and the legislature has itself made the law and the only question left to the delegate is to apply the law to an area of to determine the time and manner of carrying it into effect, it is conditional legislation. In the case of the Delhi Apartment ownership Act, the legislation was complete in itself. Only the date of its being brought into effect remained to be notified. This date was also notified in 1988. Therefore, nothing remained to be done. Non-appointment of the competent authority under the Act does not make it a conditional legislation.

(16) Sardar Inder Singh Vs. The State of Rajasthan, , The State of Bombay Vs. Narottamdas Jethabhai, Air 1951 Bom 69 and AIR 1945 48 (Privy Council) enunciate the same principle. The test for a conditional legislation is whether the legislation was full and complete when it left the legislative chamber. What remains to be done is not any law making function, but only to execute the legislative will by determining the date and time of enforcement of the Statute, If: at all the Delhi Apartment ownership Act was a conditional legislation because the date of its enforcement remained to be notified, the condition stands satisfied with the enforcement of the Statute.

(17) 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 can not be executed. This does not mean that by non execution of the deeds of apartment, rights and interests of the apartment owners/allotters are obliterated. The non execution of the 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 can not surely mean that their rights and interest evaporate in thin air. The proposed construction of addition a complex on the existing terrace in the front block will mean additional load on the foundation, columns, guarders, 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 effect the rights and interests of the existing apartment owners in the building.

(18) So far as the question of non execution" of the Deeds of Apartment is concerned, the plaintiffs 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 in as much 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 can not be taken as giving license to the promoter/builder to go on .and on with additional construction in the building so as to defeat the rights and interests of the apartment owners/allotters 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 crystalised so that in future Vs. Sequoia Construction (P) Ltd. & Ors. there is no scope for 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/allotters. 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 state. 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 builder 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 possessions 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 areas and p73 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 can not be permitted to act in violation thereof.

(19) 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 crystallised and, Therefore, the plaintiffs can not 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 can not be permitted if it defeats the rights created by the statute in favor of the apartment owners. In other words any action in violation of the Statute cannot be permitted.

(20) For the proposition that the rights of the plaintiffs under the Act have not matured reliance was also placed on Babu Lal Vs. Hazari Lal Kishori Lal and Others, . This appears to be totally misplaced. It was held in this case that till Sale-Deed is executed in favor of the Decree Holder, no right or title in the property passes to him. From this, it is urged that till the competent Authority under the Delhi Apartment ownership Act is appointed, the plaintiffs cannot avail of Section 4 of the Act. The analogy of a suit for specific performance of an agreement to sell a property filed by the vendee is totally alien to the point under consideration regarding applicability of the provisions of a Statute duly enacted by the Parliament and enforced.

(21) Reliance has also been placed on Faqir Chand Vs. Shri Ram Rattan Bhanot, in support of the contention that because of non-appointment of the Competent Authority, there is no machinery to put the Act into operation. Section 14 of the Delhi Development Act deals with prevention of the use of any land or building in the zone otherwise than in conformity with zonal plan. In this context, the Supreme Court held that the Section does not contemplate complete prohibition of the use of the land or building for purposes other than that permitted in the zonal plan. Such uses can be continued subject to terms and conditions

prescribed by the regulations provided it had been there even before the zonal plan. No such regulations had been framed. The previous use could be continued till regulations are framed. I do not see how this analogy applies to facts of the case in hand.

(22) It had also been contended on behalf of defendant No. 1 that the perpetual lease in favor of the said defendant is governed by the provisions of the Government Grants Act. The said Act being a special law prevails over other laws. Section 3 of the Government Grants Act merely upholds the primacy of the terms of lease granted under the said Act over everything else. The terms of the perpetual lease deed granted by the Government in the present case are in no way in conflict with the provisions of the Delhi Apartment ownership Act. The perpetual lease deed and the Delhi Apartment ownership Act operate in different areas and for different purpose. I fail to see the relevance or purpose of this argument. The perpetual lease deed does not contain any clause excluding the applicability of other laws in areas not dealt with under it.

(23) 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 right 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.

(25) The main reason advanced on behalf of defendant No. 1 for non-application of the provisions of the Delhi Apartment ownership Act is the non-execution of the Deeds of Apartment. In view of the above discussion and particularly for the following reasons.

1. Under the Act the Deeds of Apartment are required to be executed by the promoters of the building;
2. plaintiffs are in no way responsible for their non execution;
3. plaintiffs have fully performed their obligation under the Act in as much as they have paid full consideration for their respective apartments;
4. The Act is meant to confer certain rights on the apartment owners and is a legislation for their benefits;
5. Equity demands that even if the Act does not apply, the property be preserved in the status quo condition, till the Act applies.

(25) 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- Vs. Sequoia Construction (P) Ltd. & Ors. facie case in their favor

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 endeavor to uphold this legislative intent. 2. Rights of the plaintiffs" under the license agreements :

(26) It has been contended on behalf of the plaintiffs that under the license agreements executed between the purchasers of the apartments and defendant No. 1 certain rights are conferred on the purchasers and those rights are liable to be protected. The defendant No. 1 can not be permitted to defeat such rights of the plaintiffs/ purchasers of apartments. On the basis of clause 8 of the agreement, it is submitted that the purchasers acquire the right to perpetual, heritable and transferable license in the premises sold to them forming part of the multi-storeyed building complex. Reliance has been particularly placed on clause 18 of the agreement. The same is reproduced as under: That until the specific flat/space the subject matter of this Agreement of license 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 parapet 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 licenses 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 parapet walls etc. for any purpose including the display of the advertisements and sign-boards or for open air restaurant/cinema or any other use and the first party shall always have the right of easement to the roof terrace and parapet walls etc.

(27) On the basis of the contents of the said clause, it is submitted that the builder/ promoter is entitled to raise additional storeys or put up additional structures as may be permitted by the Municipal Committee or any other competent authority only until the specific flat/space subject matter of the agreement is given to the purchaser. Thus, according to the plaintiffs after possession of an apartment is handed over to the purchaser, the builder/ promoter forfeits all his rights, if any, to raise additional storeys or additional structures. Admittedly the possession of the apartments stands delivered to the respective purchasers long time back and in view of clause 18 of the agreement the builder can not be permitted to raise any additional construction in the building complex. The aforesaid clause 18 is a part of the agreement by which

both the parties are admittedly bound. The agreement is subsisting and therefore, the rights and obligations cast on the parties under the said agreement have to be complied with and enforced. The rights flowing to the plaintiffs under clause 18 are liable to be protected and, Therefore, the defendant No. 1 is liable to be restrained from raising any additional storeys or structures in the building.

(28) In reply to ther aforesaid contention on behalf of the plaintiffs, it has been submitted on behalf of defendant No.1 that clause 18 has to be read as a whole. It is further submitted that clause 18 has to be read Along with clause 6 of the agreement and a combined reading of both these clauses shows that the contention of the plaintiffs is untenable. At this stage, clause 6 of the agreement may also be reproduced. The same is as under 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 of all or any open spaces, parking places, lobbies, staircase, lifts, terraces, roofs, basement and ground floor which will all 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.

(29) From the aforesaid clause of the agreement, it appears that the builder/promoter has reserved a right to all or any open space, parking space, lobbies, staircase, lifts, truces, roofs, basement and ground floor. The Clause further provides that all these will remain the properties of the builder/promoter for all times. Under clause 6 only a limited right regarding the particular flat/space subject matter of the agreement has been conferred on the purchaser and the right with respect to the common space has been reserved by the builder/promoter to itself.

(30) Regarding clause 18 of the agreement, it has been submitted that the meaning being assigned to the said clause on behalf of the plaintiff on the basis of the use of the word "until" is misconceived. According to the learned counsel for defendant No. 1 such an interpretation would lead to absurdities. To illustrate this, it is pointed out that the plaintiffs interpretation would mean that the moment possession of any flat is delivered by the defendant No. 1, its right to make further instruction will come to an end. In the event of the building being still under consideration and the builder choosing to handover possession of flats, which are complete to the purchasers the builder would be prevented from completing the building as per interpretation of the plaintiffs of clause 18 of the agreement.

(31) It is further submitted that in the later part of clause 18, the right to roof, terrace of the entire building including parapet walls, basement, ground floor and any other area not subsequently mentioned in the agreement has been given to the builder/promoter and he is entitled to use such areas for any purpose including display of advertisements, signboards, open air restaurants, cinema

etc. This shows that as per clause 18 itself, the right to common areas including roofs, terraces etc. has been reserved to the builder/ promoter and the argument advanced on behalf of the plaintiffs on the basis of clause 18 is not tenable.

(32) Having considered submissions on behalf of both the parties in relation to interpretation of clauses 6,8 and 18 of the agreement, prima-facie, I am of the view that the license agreement does not confer any exclusive rights on the plaintiffs regarding common areas roofs, terraces etc. except their normal use for purpose of enjoyment of their respective apartments. Reading of clause 18 as a whole Along with clause 6 of the agreement shows that rights to such areas has been reserved by the builder/promoter in Vs. Sequoia Construction (P) Ltd. & Ors. its favor. Use of word "until" in clause 18 can not be interpreted to mean that the right of the builder/promoter to raise additional construction is available only until Recession of the flat/space subject matter of the agreement is delivered to the purchaser and not thereafter.

(33) plaintiffs also relied on clause 30 of the agreement. Clause 30 reads as under :- That after the possession of the flat is handed over to the Second Party if any additions or alterations in, about or relating to the said building are thereafter required to be carried out at the behest of the Government, Municipality or any other statutory authority, than the same shall be carried out by the First Party in co-operation with the Second Party and/or licensees of the other Flats in the said building at their cost and the First Party shall not be in any manner liable or responsible for the same. A bare reading of this clause shows that it applies when any further construction is required to be carried out in the building at the behest of the Government, Municipality or any other statutory authority. The present case does not relate to any construction at the behest of such authorities. Therefore, clause 30 is not at all attracted. Whether permission of the Land & Development Officer to make further construction was required before hand ?

(34) Exhibit R.1/4 dated 24th August,1992 is the letter whereby revalidation of plans for additions/alterations in the building was granted by the New Delhi Municipal Committee. The revalidation has been granted subject to certain conditions which have been indicated in the said letter. Condition No. 12 and 14 in the said letter have been relied upon on behalf of the plaintiffs in support of the point under consideration. They are as under:

CONDITIONNo.12: The plans be got approved separately under the terms of lease from the Lesser i.e. Land & Development Office.

CONDITIONNo.14: The sanction will be void, ab initio if auxiliary conditions mentioned above are not complied.

A copy of the perpetual lease deed dated 22nd April,1963 granted by the President of India with respect to the plot No-6, Tilak Marg, New Delhi has also been placed on record. Clause 5 of the said lease deed provides :

"THE Lessee will not without the prior consent in writing of the Lesser or of such officer or body as the Lesser may authorise in this behalf make any alterations or additions to the buildings erected on the said demised premises so as to affect any of the architectural or structural features thereof or erect or suffer to be erected or any part of the said demised premises, any building other than and except the building erected thereon at the date of these persons".

(35) It is contended on behalf of the plaintiffs that clause 5 of the perpetual lease deed dated 22nd April, 1963 makes it obligatory to have a prior permission of the Lesser or any officer or body authorised by the Lesser before any additions or alterations can be made in the existing structure on the building. Further on the basis of conditions No. 12 and 14 of the letter of revalidation issued by the New Delhi Municipal Committee, it is submitted that without prior permission of the Land & development Officer, the defendant No. 1 cannot be permitted to make any additions or alterations in the existing building on plot No.6, Tilak Marg, New Delhi.

(36) Admittedly, no permission of the Land & Development Officer has been obtained for carrying out the additions/alterations in the building. Written statement has been filed on behalf of the Land & Development Officer, defendant No.3 to the effect that no such permission has been obtained by defendant No.1. However, it is submitted on behalf of defendant No. 1 that no such permission is necessary in view of the fact that the Land & Development Officer was himself present in the meeting of the New Delhi Municipal Committee in which the resolution was passed granting revalidation of the plans for additions or alterations for the building in question. His permission will be deemed to be granted. Defendant No. 1 has also relied on a judgment of this Court in Shanti Swaroop Bhatia Vs. the Land & Development Officer, C.W.No. 1343/76 decided on 18th February, 1991.

(37) Apart from this, it has been submitted on behalf of defendant No.1 that if the Lessee commits breach of any of the conditions of the perpetual lease dated 22nd April, 1963, the same is not fatal. The Lesser may take appropriate action in accordance with the provisions of the lease deed by issuing show cause notice. In such an event, the Lessee would be entitled to defend its action which may include raising the plea of estoppel on the ground that the Land & Development Officer was present in the meeting in which the plans for additional construction were sanctioned by the New Delhi Municipal Committee. Thus, according to defendant No.1, the matter would be between the Lesser and the Lessee and the plaintiffs do not come in the picture at all and, Therefore, the plaintiffs are not entitled to any relief on the basis of this ground according to the learned counsel for defendant No.1. Prima-facie. I am of the view that there is a lot in favor of what has been contended on behalf of defendant No. 1 in this behalf and, Therefore, this ground alone is not enough to grant injunction sought by the plaintiffs against defendant No.1.

(38) 4. Revalidation of plans: Exhibit R.1/4 is the letter by which the New Delhi

Municipal Committee granted revalidation of the building plans. It is submitted on behalf of the plaintiffs that in the year 1988, when the New Delhi Municipal Committee granted the revalidation of the plans, the Delhi Apartment ownership Act had come into force and the New Delhi Municipal Committee could not overlook the rights of the apartment owners created under the Act. Various points have been raised on behalf of the plaintiffs in this connection. They are :-

A) There is no power in the Punjab Municipal Act (which applies to areas under the New Delhi Municipal Committee) to grant revalidation of building plans. The only power is under the Unified Building Bye-laws, Vs. Sequoia Construction (P) Ltd. & Ors. 1983 framed by the Delhi Development Authority. The Unified Building Bye Laws have not been duly adopted by the New Delhi Municipal Committee and, Therefore, they cannot be pressed in to service for granting revalidation of plans.

B) The sanctioned plans had lapsed in the year 1988. There could be no revalidation of plans which had lapsed.

C) Under Section 194 of the Punjab Municipal Act whatever time that is allowed for construction has to be allowed at the time of sanction of plans. There is no power to extend the time.

D) Bye law 6.8 is beyond the Act and, Therefore, is invalid.

E) When there are deviations and notice regarding unauthorised construction has been issued, there can be no revalidation.

(39) In this connection, it has been submitted on behalf of defendant No. 1 that revalidation of sanctioned plans is really extension and extension can be granted any time and any number of times. Reliance has been placed on Rajeshwar Pershad Versus Municipal Corporation of Delhi, 39 1989 DLT 212. On the basis of this judgment, it is submitted that the law regarding extension is quite liberal and this Court should not interject the proposed construction on this ground. Counsel for the New Delhi Municipal Committee has placed on record a copy of the notification showing that the Unified Building Bye Laws have been duly adopted by the New Delhi Municipal Committee. The interpretation of Section 194 of the Punjab Municipal Act sought to be put on behalf of the plaintiffs that no revalidation of plans can be granted under the said provisions does not prima-facie appear to have much force. I also do not consider that bye law 6.8 is beyond the provisions of the statute. In view of the fact that this Court has taken a very liberal view regarding revalidation of the building plans in Rajeshwar Pershad's V.MCD 39 1989 Dlt 212 do not consider that this point raised on behalf of the plaintiffs has much force.

(40) 5. Balance of convenience, irreparable loss and injury : According to the learned counsel for the plaintiffs, the considerations of balance of convenience and irreparable loss and injury require that in the facts and circumstances of the case the interim order as sought by the plaintiffs be granted in their favor . The

plaintiffs submit that in view of rights conferred on the plaintiffs, by the Delhi Apartment ownership Act, 1986 regarding common space and facilities the plaintiffs are entitled to have their such rights preserved and protected. If the defendant No. 1 is permitted to carry out the proposed construction, such rights of the plaintiffs will be seriously prejudiced and irretrievably lost. It is further submitted that plaintiffs have raised serious legal issues in the suit which require further examination and in order to preserve the rights of the plaintiffs, interim injunction as prayed ought to be granted. If no interim order staying further construction is granted the suits will become infructuous. A direct result of the further construction would be that the pressure on the common areas and facilities will increase and proportionate share of the plaintiffs therein will get reduced. Section 4 of the Act protects this proportion and the further construction will be directly in contravention of section 4 of the Act. The increase in number of apartments will mean increase in requirement of water supply, electricity, parking space in the building. There will be more pressure on the existing sewer system which had been designed in view of the construction originally proposed. The number of users of the staircase, drive-way, lifts and open space will increase which will also adversely affect the interests of the plaintiffs. Further it is submitted that once the construction takes place, it will be difficult to put the clock back. The learned counsel for the plaintiffs has also submitted in this connection that admittedly the plans for additional construction were sanctioned in the year 1983 and defendant No. 1 has waited for ten years to make the additional construction. So when it suited defendant No. 1 not to construct or it was not convenient to defendant No. 1 to carry out construction, it waited. The balance of convenience, Therefore, demands that defendant No. 1 may further wait till the decision of the suit. It is also submitted on behalf of the plaintiffs that by waiting defendant No. 1 does not suffer any irreparable loss and injury. On the other hand, allowing the construction at this stage will seal the fate of the present suit and the rights of the plaintiffs will be lost for ever.

(41) On the other hand, it is submitted on behalf of defendant No. 1 that the plaintiffs have no prima-facie case and, Therefore, they are not entitled to any interim order. Without prejudice to this, it is submitted that in view of the constant rise in cost of construction, the defendant No. 1 may be permitted to carry out the construction as per the sanctioned plans and if at all the Court considers it necessary in the facts of the present case, certain conditions may be imposed on defendant No. 1 including the condition that construction will be subject to final orders of this Court which may include removal of entire such construction if the Court so directs.

(42) 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 can not be said to be in its favor. 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 same are to a large extent at the expenses of the existing apartment owners. Builder's greed knows no limits.

(43) Even though, the rights in the common areas and space, terraces etc. have been preserved under the license 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 license 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 Vs. Sequoia Construction (P) Ltd. & Ors. rights and obligations of the parties created under the license 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.

(44) As per the Statute which is in force the Deeds of Apartment are required to be executed. The only hurdle pointed 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 frozen 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.

(45) 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.

(46) The Act applies to multi-storied buildings constructed prior to its coming into force. The building in the present case admittedly came into existence prior to this Act coming into force. The intention of the Legislature is clear that the benefits of the Statute should be conferred also on the purchasers of apartments in multi-storeyed buildings constructed prior to the enforcement of the Statute. The building was originally admittedly completed in the year 1979 and completion certificate was obtained on 26th July, 1979. Had the Act been in force at that time, the Deeds of Apartment would have had to be executed and the sanctioned plan of the year 1979 would have formed part thereof. This further means that the rights of the apartment purchasers in the building, particularly, in its common areas and facilities would have got crystalised at that stage. The Act, however, came into "force in the year 1988. Therefore, any additional construction, which is raised after the enforcement of the Act has to be subject, to the Act and the rights of the parties created under the Act have to be taken into consideration and if so required preserved. Any view to the contrary would mean that the building will be constantly in a state of flux and the rights of the apartment purchasers would always remain in a state of fluidity. For the buildings which came into existence prior to enforcement of the Act, six months time is granted under the Act for the execution of the Deeds of Apartment. This is intended to ensure that the rights of the parties created under the Statute get crystalised soon after the enforcement of the Statute. When the Statute has been enforced, the purchasers of the apartments must get some protection against the builder. The Court has to ensure that the legislative intent is fulfilled rather than allow it to be flouted. Therefore, the building ought to be preserved and further construction ought to be stopped.

(47) There is possibly no answer to the point that defendant No.1 has waited for almost ten years after the sanction of the plans For additional constriction in 1983 to start the construction. The only reason advanced on behalf of defendant No.1 to justify permission to construct is constant increase in cost of construction. In view of the various important issues raised in the case, this reason is not enough to persuade me to permit further construction at this stage. Secondly, if the cost of construction increases, the value of the property increases in a higher ratio".

(48) For all these reasons, I am of the view that the ex parte ad interim injunction restraining defendant No.1 from raising any further construction including demolition/ addition/alteration in the front block of the building called "Sagar Apartments" at 6, Tilak Marg, New Delhi- 110001 ought to be confirmed. The ex parte interim order dated 16th December,1992 is, Therefore, confirmed.

(49) I.A.12694/92 and I.A.12795/92 are disposed in the above terms. In the circumstances of the case, there will be no order as to costs.

(50) It is clarified that the above view is, of course, subject to final decision of the suit.