

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF AUGUST, 2026



PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

WRIT APPEAL NO. 608 OF 2024 (BDA)

BETWEEN:

1. H.M. TAMBOURINE APARTMENT
OWNERS ASSOCIATION
A SOCIETY REGISTERED UNDER THE
PROVISIONS OF THE KARNATAKA
SOCIETIES REGISTRATION ACT, 1960
ITS REGISTERED OFFICE AT
H M TAMBOURINE, NO.28
KANAKAPURA ROAD, 6TH PHASE
J P NAGAR, BENGALURU-560078
REPRESENTED BY ITS PRESIDENT
SRI HEMENDRA MADNAWAT
2. SRI D NARASIMHA MURTHY
S/O R DASHARATHA RAM
AGED ABOUT 57 YEARS
R/AT R-404, H M TAMBOURINE
KANAKAPURA MAIN ROAD
JARAGANAHALLI
BENGALURU-560078

...APPELLANTS

(BY SRI S.S. NAGANAND, SENIOR ADVOCATE FOR
SRI R SWAROOP ANAND, ADVOCATE)

AND:

1. BANGALORE DEVELOPMENT AUTHORITY
KUMARA PARK WEST, T CHOWDAIAH ROAD
BENGALURU-560020
REPRESENTED BY ITS COMMISSIONER



2. M/S PEDIGREE CONSTRUCTIONS PVT LTD
A COMPANY REGISTERED UNDER
THE COMPANIES ACT, 1956, HAVING ITS
REGISTERED OFFICE AT NO.13/C
SHRUNGAR SHOPPING COMPLEX, 80
M G ROAD, BENGALURU-560001
3. SRI PRADEEP RAO S/ LATE SRI M V RAO
AGED ABOUT 52 YEARS
PREVIOUSLY R/AT S-404, H M TAMBOURINE
KANAKAPURA MAIN ROAD
JARAGANAHALLI, BENGALURU-560078
4. GREATER BENGALURU AUTHORITY (GBA)
REPRESENTED BY COMMISSIONER
HUDSON CIRCLE, N R SQUARE
BENGALURU, KARNATAKA-560002
(IMPLEADED V/O DT. 23.06.2026)

...RESPONDENTS

(BY SRI ASHOK HARANAHALLI, SENIOR ADVOCATE FOR
SRI M.V. CHARATI, ADVOCATE FOR R-1;
SRI V. SRINIVASA RAGHAVAN, SENIOR ADVOCATE FOR
SRI ABHINAV R, ADVOCATE FOR R-2;
MS. SUMANTHA C, ADVOCATE FOR C/R-3;
SRI KARTHIKEYAN B S, ADVOCATE FOR R-4)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA
HIGH COURT ACT, 1961, PRAYING TO SET ASIDE THE
JUDGMENT DATED 25.03.2024 PASSED BY THE LEARNED
SINGLE JUDGE IN W.P.NO.17375/2017 AND ETC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR
JUDGMENT ON 27.07.2026, COMING ON FOR
PRONOUNCEMENT THIS DAY, **HON'BLE MR. JUSTICE
D K SINGH** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE T.M.NADAF

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE D K SINGH)

I PREFACE:

1. The present intra Court appeal has been filed impugning the judgment and order dated 25.03.2024 passed by the learned Single Judge in W.P.No.17375/2017.
2. The parties are referred to as per their ranking before the writ Court, for the sake of convenience.

II FACTS:

3. Briefly stated, the relevant facts of the case for the purpose of decision in this appeal are that the petitioner No.1 is an Association of apartment owners and a society registered under the provisions of the Karnataka Societies Registration Act, 1960. The respondent No.2 (real estate developer) is a company registered under the Companies Act, 1956 and was the owner in possession of 3 acres and 20.18 guntas of land in Sy.No.28 situated at Kanakapura Road, Jaraganahalli Village, Uttarahalli Hobli, Bengaluru South Taluk.

4. The respondent No.2 had entered into a Joint Development Agreement (JDA) dated 19.08.2003 with M/s. H.M. Estates & Properties, now incorporated as M/s. H.M. Infra Tech Pvt. Ltd., for construction of a residential complex on the said plot of land. The respondent No.1- Bangalore Development Authority (BDA) had sanctioned the plan for the residential complex comprising of Basement Floor, Ground Floor plus 10 Upper Floors on the eastern portion of the property and had also issued the Commencement Certificate dated 31.01.2004. Accordingly, the respondent No.2, in collaboration with M/s. H.M. Infra Tech Pvt. Ltd., had completed construction of 241 apartments consisting of 4 Towers on the property in the name and style of "H.M. Tambourine".

5. The respondent No.2 had executed the sale deeds and sold 241 apartments to the members of the petitioner- Association with the respective undivided share in the entire extent of property.

6. The BDA had approved the Building Plan on 17.05.2006 and had issued the Occupancy Certificate dated 29.04.2006 with respect to 241 apartments constructed on the property

based on the Sanction Plan dated 21.07.2003. Accordingly, individual khata certificates were issued with respect to each apartment by the concerned authority and thus, the Sanction Plan dated 21.07.2003 got accomplished.

7. The petitioner-Association has been managing and maintaining the apartment complex viz., "H.M. Tambourine" as per the provisions of the Karnataka Apartment Ownership Act, 1972. According to the petitioner-Association, each apartment owner is entitled to undivided interest in the common areas and facilities and as per the provisions of the Karnataka Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1972 (hereinafter referred to as 'the 1972 Act' for brevity) and Section 14 of the Real Estate (Regulation and Development) Act, 2016. It is said that the developer cannot make any alteration in the structure of the building or construct any additional structure without the previous consent of the apartment owners.

8. The residential complex "H.M. Tambourine" (hereinafter referred to as 'A' Block) is covered by the boundary, with entry and exit gates and has common facilities and amenities

for its flat owners. Though, this residential complex was sanctioned on the area of 3 acres and 20.18 guntas, which also had unused vacant land on the western portion of the property after leaving the driveway of 6 metres wide and within the setback line, this was shown in the original sanction as Built Plan dated 29.04.2006 (issued on 17.05.2006).

9. It appears that the respondent No.2 had applied for a modified plan to construct an additional apartment block on the vacant land outside the boundary wall of 'A' Block. The BDA had issued the Modified Sanction Plan dated 24.06.2016 for construction of 5th apartment block on the vacant land (hereinafter referred to as 'B' Block') comprising of 120 apartments. While sanctioning the modified plan, the BDA has taken into consideration the Floor Area Ratio (FAR) of the entire land i.e., 3 acres and 20.18 guntas, which would obviously include the land used for 'A' Block as well.

10. Sensing that there would be obstruction and opposition by the flat owners of 'A' Block, Original Suit No.8454/2016 was filed by M/s. H.M. Infra Tech Pvt. Ltd., (the developer) on the file of the XL Additional City Civil Judge at Bengaluru

(CCH-41). The learned City Civil Judge had passed an order dated 22.04.2017 granting temporary injunction restraining the petitioner-Association from interfering with the construction of the residential apartment ('B' Block) by the developer. Challenging the said order of temporary injunction, an appeal was preferred by the petitioner-Association in MFA No.5580/2017. Initially, an order of *status quo* dated 08.08.2017 was passed in the said appeal and thereafter, on 06.10.2017, the interim order of *status quo* was vacated.

11. The residents of 'A' Block had filed W.P.No.20615/2017 and W.P.Nos.20867-20877/2017 challenging the Modified Sanction Plan dated 24.06.2016. An interim order was granted in the said writ petitions on 09.05.2017. However, the interim order came to be vacated on 14.06.2017 and the writ Court permitted the Respondent No.2 as well as the developer to put up the construction. The petitioners in W.P.No.20615/2017 and W.P.Nos.20867-20877/2017 did not challenge the order dated 14.06.2017 vacating the interim order and permitting the owner and the developer to put up the construction. The petitioner-Association filed

W.A.Nos.6103/2017 and W.A.Nos.375-385/2018 before a Coordinate Bench of this Court challenging the order dated 14.06.2017. The said writ appeals came to be disposed of as having become redundant in view of the fact that W.P.No.20615/2017 and W.P.Nos.20867-20877/2017 had been dismissed as withdrawn.

12. On 24.04.2017, the present writ petition i.e., W.P. No.17375/20174 came to be filed praying for quashing of the Modified Sanction Plan dated 24.06.2016 and also seeking quashing of the Reply Letter dated 08.01.2018 given to the President of the petitioner-Association in respect of the request for cancellation of approval of re-modified building plan dated 24.06.2016. In its reply, the BDA refused to cancel the modified plan, thereby allowing construction of 'B' Block.

13. The learned Single Judge, vide impugned judgment and order, has dismissed the writ petition on the basis of the affidavit filed by the BDA, wherein the BDA stated that the modified plan was sanctioned in accordance with the law and there was no violation of Regulation 3.6 of the Revised Master Plan of 2015.

III ORDER DATED 08.12.2025:

14. On 08.12.2025, while issuing emergent notice, we directed the appellant/petitioner-Association to file its affidavit on the following points:-

"(i) Whether the proposed construction of B block falls outside the boundary of the residential complex, for which occupancy certificate has already been issued and the flat buyers are in possession thereof or whether the proposed construction of B block falls inside the boundary of the residential complex of the appellants.

(ii) What is the extent of land on which the existing residential Complex has been constructed along with the common facilities and amenities provided to the flat owners, what was the status shown in respect of the land where proposed block is under construction in the sanctioned building plan of the existing residential complex."

14.1 We also directed the Respondent No.2 to file its affidavit on the following issues:-

"(i) Whether the proposed block under construction is within the boundary wall constructed for the existing residential complex or it is being carried out outside the boundary wall of the existing residential complex?

(ii) What was the area for which the plans for the existing residential complex was sanctioned?

(iii) What was the status of the land on which the proposed block is under construction in the original sanction plan for the existing residential complex?

(iv) Whether the flat buyers in the proposed under construction Block could use the common facilities and amenities already existing within the boundaries of the existing residential complex or whether the residents of the under construction Block of buildings will be provided separate facilities and amenities?"

14.2 We further directed the Respondent No.2 to file the original sanction plan and the proposed sanction plan for construction of residential 'B' Block.

IV AFFIDAVIT DATED 17.12.2025 FILED BY THE APPELLANT:

15. The appellant, in compliance of the order dated 08.12.2025, filed its affidavit and response to point No. (i). The stand of the appellant is that the respondent No.2 was constructing a new building named "Proposed B Block" within the boundary of the existing residential complex and it was putting up the construction on the driveway and the existing

exit and entry ramp of 'A' Block apartments, for which the occupancy certificate had already been issued and the flat purchasers were in possession of their respective apartments.

16. In respect of point No. (ii), the appellant-Association has stated that the total extent of development undertaken by the respondent No.2 was for the entire area of 3 acres and 20.18 guntas, equivalent to 13,962.00 Sq.Mts. The permissible FAR was 2.00. For the FAR computation, the entire land to the extent of 13,962.00 Sq.Mts. was taken into account. The actual FAR utilized was 1.827, which would be within the permissible limit. The permissible ground coverage was 60%, whereas the actual ground coverage was only 19.31%. The entire FAR plus ground coverage would amount to 2 FAR for the entire land of 3 acres and 20.18 guntas, equivalent to 13,962.00 Sq.Mts.

17. Once the Respondent No.2 had utilised 2 FAR for the entire land of 13,962.00 Sq.Mts., there was no land left for any future development by the Respondent No.2. It was further stated that 'B' Block was being constructed on the land of driveway, entry gate, exit gate and fire engine access

way, all of which were common amenities meant for the residents of the existing apartment complex consisting of 4 Towers i.e., 'A' Block. By undertaking construction of 'B' Block as permitted in the modified sanction plan, the respondent No.2 had encroached upon and obstructed the common amenities of the apartment owners. The total super built-up area of the 4 Towers in 'A' Block would be 18,33,182.05 Sq.Ft. and the total built-up area would be 17,76,706.25 Sq.Ft. The common area would be 56,680.05 Sq.Ft. and the proportionate undivided share would be 1,15,464.82 Sq.Ft. Thus, there remained no scope for any further development or construction on the existing land and the construction of 'B' block as per the modified sanction plan would be on driveway, entry and exit gates and fire engine/fire exit way.

18. It is the case of the appellant-Association that the respondent No.2 had executed agreements to sell in respect of the proposed 'B' Block in favour of third party purchasers and had illegally transferred the undivided share belonging to the existing apartment owners in violation of their statutory rights.

V AFFIDAVIT DATED 28.01.2026 FILED BY THE RESPONDENT NO.2:

19. The entire extent of land i.e., 3 acres and 20.18 guntas in Sy.No.28 situated at Kanakapura Road, Jaraganahalli Village, Uttarahalli Hobli, Bengaluru South Taluk, was the subject matter of development, for which sanction plan was obtained on 21.07.2003. It was made clear to the flat buyers of 'A' Block consisting of 4 Towers that the front portion of the residential block would be utilized by the developer to put up construction in future. This fact was mentioned in the brochure as well as the sale deeds executed and registered in respect of each apartment of 'A' Block and a Clause in the registered sale deeds would make it clear that, the purchasers were aware that the developer was entitled to put up construction on the vacant land in the front portion of 'A' Block.

20. It was submitted that the vacant space was not included either in the undivided share shown to the owners of 'A' Block consisting of 4 Towers viz., Melody, Rhythm, Harmony and Symphony. The 'B' Block is being constructed

on the land retained by the respondent No.2 for putting up further construction.

21. The BDA, after verifying all the aforesaid facts, had issued the Modified Sanction Plan dated 24.06.2016 permitting construction of 5th apartment Tower shown as 'B' Block on the land which was earlier reserved for future development when the construction of 'A' Block comprising of 4 Towers was undertaken.

22. A segregating wall was constructed clearly demarcating the 4 Towers of 'A' Block and the proposed/under construction 'B' Block was outside the boundary of the existing 'A' Block. The status of the land on which the proposed 'B' Block is being constructed was left blank in the original sanction plan and shown as "Block-B/proposed building" in the modified plan.

23. It has been further stated that, in the sale deeds executed for the existing 'A' Block residential flats, it was mentioned as follows:-

"That the Purchaser is aware that he/she/they shall not object for the construction to be put up in the front

portion of the residential Block by the Developer and the developer has right to put up construction for residential/commercial building as the developer deems fit. The Purchaser shall not interfere with such construction in any manner whatsoever even if taken up after execution of this Deed of Sale and possession of the apartment being handed over."

24. The brochure of 'A' Block project would also clearly show the Block-'B' area as future construction. It was further stated that the residents of Block-'B' would be provided facilities and amenities in the newly constructed Block-'B'. However, they would also be permitted to use the common facilities such as, swimming pool, club house, gym, but they would not be permitted to use the existing car parking facility allotted to the residents of 'A' Block.

VI ORDER DATED 08.01.2026:

25. Vide order dated 08.01.2026, the Commissioner, BDA was granted further time to file his affidavit as directed by this Court vide order dated 18.12.2025. We also restrained the respondent No.2 from making any construction to

connect the existing complex with the under construction new complex and passed the following order:-

"Mr. Murgesh V Charati, learned counsel for the respondents submits that the Commissioner - BDA needs a little more time to file an affidavit as directed by this Court vide order dated 18.12.2025.

Considering the said request, the Commissioner - BDA is directed to file affidavit by the next date of hearing.

Sri. Naganand, learned Senior Counsel for the appellants submits that the respondents are trying to connect new building with the existing complex.

Having considered the said submissions, the respondents are hereby restrained from making any construction to connect existing complex with under construction new complex.

Learned counsel for the appellants is directed to pay PF in respect of unserved respondent No.3, during the course of the day.

List on 30.01.2026."

VII AFFIDAVIT DATED 28.01.2026 FILED BY BDA:

26. The Commissioner, BDA, in compliance of the order dated 18.12.2025, filed his affidavit on 28.01.2026. The affidavit of the Commissioner is said to be based on the

report submitted by the Technical Assistant-II of the BDA. It would be apt to extract the relevant part of the affidavit filed by the BDA, which reads thus:-

"(i) Whether the proposed construction of B Block falls outside the boundary of the residential complex, for which Occupancy Certificate has already been issued and the flat buyers are in possession thereof or whether the proposed construction of B Block falls inside the boundary of the residential complex of the appellants.

*I submit that the proposed construction of 'B' Block falls after 'A' Block building in the vacant and unused area which is in front 'A' Block, within the boundary of the existing residential complex (plot area of 3 acre 20.18guntas). A copy of the approved sanctioned plan dated 21.07.2003 is herewith produced as **Annexure-R.1**. The as Built Plan was approved on 29/04/2006 (issued on 17.05.2006). A copy of the as built plan dated 29.04.2006 is herewith produced as **Annexure- R.2**. The as built plan shows the demarcation and for which the occupancy certificate is already been issued by the BDA for the existing 'A' Block.*

(ii) What is the extent of land on which the existing Residential Complex has been constructed along with the common facilities and amenities provided to the flat owners, what was the status shown in respect of the land where proposed block is under construction in the

sanctioned building plan of the existing Residential Complex.

I submit that the extent of land is 3 acre 20.18 guntas on which the existing Residential Complex has been constructed along with the common facilities and amenities provided to the flat owners.

I submit that the status shown in respect of the land where proposed block is under construction in the sanctioned building plan of the existing Residential Complex was as "vacant unused area" (which was left blank).

- (iii) Whether the proposed Block under construction is within the boundary wall constructed for the existing residential complex or it is being carried out outside the boundary wall of the existing Residential Complex.*

I submit that the proposed construction of B block falls on the vacant and unused area after the driveway and in- between the set back line in the earlier sanctioned as built plan dated 29-04-2006 (issued on 17.05.2006) of the existing residential complex.

- (iv) What was the area for which the plans for the existing residential complex was sanctioned?*

I submit that the area for which the plans for the existing residential complex was sanctioned on the area of 3 acre 20.18 guntas which also had unused vacant land on the western portion of the property after leaving the

drive way of 6.0 meters wide and within the set back line shown in the original sanctioned As Built plan dated 29-04-2006 (issued on 17.05.2006).

(v) What was the status of the land on which the proposed block is under construction in the original sanction plan for the existing residential complex?

I submit that the status shown in respect of the land where proposed block is under construction in the sanctioned building plan of the existing residential complex was as "vacant unused area" (which was left blank).

(vi) Whether the flat buyers in the proposed under construction Block could use the common facilities and amenities already existing within the boundaries of the existing residential complex or whether the residents of the under-construction Block of buildings will be provided separate facilities and amenities?

*I submit that the flat buyers in the proposed under construction Block can use the common facilities and amenities already existing within the boundaries of the existing Residential complex. The copy of the modified plan dated 24.06.2016 is herewith produced as **Annexure-R.3.**"*

VIII ORDER DATED 30.01.2026:

27. Vide order dated 30.01.2026, we directed the Commissioner, BDA to file his further personal affidavit categorically stating as to whether, while sanctioning the

building plan of 'B' Block, the entire area measuring 3 acres and 20.18 guntas was taken into account or only the vacant area measuring 36,000 Sq.Ft. was taken into consideration.

IX AFFIDAVIT DATED 13.02.2026 FILED BY THE BDA:

28. The Commissioner, BDA, in paragraphs 2 and 3 of his affidavit dated 13.02.2026, stated as under:-

"I, P. Manivannan, the Commissioner, Bangalore Development Authority, Kumara Park West, Bangalore-560 020, do hereby solemnly affirm and state on oath as follows:-

1. I submit that I am working as the Commissioner, BDA. I am conversant with the facts of the case. The contents of this affidavit are based on the information given to me and as per the records maintained in the office of the BDA.

2. I submit that this Hon'ble Court vide order dated 30.01.2026 has directed the Commissioner to file further affidavit categorically stating that whether, while sanctioning the building plans of 'B' Block, the entire area measuring 3 acres 20.18 guntas was taken into account or only the vacant area measuring 36,000 square feet was taken into consideration.

3. I submit that as per the records maintained in the office of the Bangalore Development Authority, the Bangalore Development Authority has considered the entire area measuring 3 acres 20.18 guntas while sanctioning the building plan for the 'B' Block. The area measurement is mentioned in the plans approved by the Bangalore Development

Authority. As built plan approved and the modified plan approved by the Bangalore Development Authority are already produced alongwith my previous affidavit. Hence the present affidavit.

What is stated above are true and correct to the best of my knowledge, information and belief."

29. Thus, from the affidavit of the Commissioner, BDA, it is evident that the entire area measuring 3 acres and 20.18 guntas was taken into consideration while sanctioning the building plan for 'B' Block, though the sale deeds were executed in respect of 'A' Block consisting of 4 Towers in favour of 241 apartment owners.

X ORDER DATED 23.02.2026:

30. Having considered the affidavit filed by the Commissioner, BDA, we passed the following order on 23.02.2026:-

"In pursuance to the direction issued by this Court vide order dated 30.01.2026, the Commissioner of Bengaluru Development Authority (BDA) has filed his personal affidavit categorically stating that the entire area measuring 3 acres 20.18 guntas was taken into consideration while sanctioning the building plan and FAR for 'B' Block.

If after constructing the residential housing complex for which the completion and occupancy certificates were issued by the BDA and possession was handed over to the land buyers, how the BDA could take into consideration the entire area for sanctioning FAR and the building plans on 36,000 square feet of land, which was in possession and ownership of the builder?

After the sale deeds got executed in respect of the apartments for which the completion and occupancy certificates were issued way back in 2006, prima facie, the builder would not remain the owner of any inch of the land of the residential complex. Therefore, we would like to ask the BDA to file its further affidavit as to how the BDA has taken into consideration the entire parcel of land of 3 acres 20.18 guntas for considering the FAR for the construction of the flats on 36,000 square feet of land, which is said to be in the ownership of the builder.

We, therefore, direct the Commissioner, BDA to file its further personal affidavit to state categorically on affidavit, whether sanctioning the building plan and taking into account the entire parcel of land for calculating the FAR would be in accordance with the law?

Post this appeal on 11.03.2026.

Interim order granted earlier shall remain in operation till the next date of hearing."

XI AFFIDAVIT DATED 18.03.2026 FILED BY BDA:

31. In pursuance of our direction for filing the further affidavit to explain the issue flagged by us in the order dated 23.02.2026, the Commissioner, BDA, in his affidavit dated 18.03.2026, had explained the factors while calculating the FAR in accordance with the Zoning Regulations of the Revised Comprehensive Development Plan, 1995 and the modified building plan approved as per the Revised Master Plan-2015. It is stated thus:-

- "a) The Modified Sanction Plan is issued in respect of the entire area which was considered at the time of granting the sanction to the original plan. Thus, if the original plan approval pertains to an extent of 3 acre 20.18guntas (13,962 square metres), the modified plan shall also pertain to the very same extent.*
- b) As a consequence, the entire plot area is considered for the modified plan, the entire area is also taken into account for calculation of Floor Area Ratio (FAR). Upon arriving at the total area for FAR calculation, the existing constructed area is to be deducted therefrom.*
- c) For an extent of 3 acres 20.18 guntas (13,962 square metres), the total eligible floor area as per 3FAR is 41,886 square metres. As per the modified plan, the total floor area sanctioned is 39103.86 square meters, which amounts to 2.8 FAR. The BDA*

has sanctioned 39103.86 square meters, without deducting / subtracting the extent which has been sold to several owners. i.e., Block A Area, in respect of which the Occupancy Certificate has already been issued."

32. In respect of our specific query as to whether while sanctioning the modified building plan, would it be proper to take into account the entire parcel of land for calculating the FAR and whether it would be in accordance with the law, the Commissioner, in his affidavit, had stated that the matter was subjected to detailed discussion with the entire team of Town Planning and Engineering Team on 10.03.2026. However, the Engineering Team could neither give a clear affirmative answer nor concede that the process was not as per the law. This was on account of there being no specific rule prohibiting the inclusion of already built-up area in the FAR calculation (emphasis supplied).

33. It was further stated that if such a rule were to be applied, the 8500 Sq.Mts. (out of 13,962 Sq.Mts.) land utilized for construction of the built-up area of approximately 35,363.316 Sq.Mts. would have to be excluded. Therefore, only the remaining extent of land measuring approximately

5,462 Sq.Mts. would have to be treated as a separate plot for the purpose of granting a modified plan and calculation of FAR (emphasis supplied).

34. In such a situation, the process would not be termed as a "modified building plan", but would instead amount to a "subdivision plan" involving two distinct steps viz.,

"a) Cancellation of the original plan and subdivision of the plot into parts/fragments with separate plan approvals for each portion; and

b) It would also lead to fragmentation of a layout into multiple portions which would amount to subdivision. Such subdivision is ordinarily not contemplated as a subdivision in turn entails provision for independent access roads and other applicable Rules leading to diminution of usable land."

35. It has been stated that such a practice had not been adopted at any point of time by the BDA, particularly in cases where the ownership remains with a single individual/entity. Consequently, development is processed under a single sanctioned plan with phased implementation being permitted through issuance of modified plans. It has

been further stated that a subdivision is not ordinarily envisaged, and for single- ownership plots, a single plan with provision for stage-wise development through modified plans had been the practice, which had been consistently followed by the BDA.

36. The Commissioner further stated that he had taken steps to remedy the anomaly and a clarificatory circular would be issued by the BDA with due approval of the Board which would unequivocally clarify that prospectively, in cases where modified plans are sought for properties for which an occupancy certificate had already been issued in respect of a portion of such plot/s, no further modification would be permitted in respect of that portion, and such area for which occupancy certificate had already been issued would be excluded while calculating the FAR. It has also been stated that if this Court directs modification of the Modified Sanction Plan dated 24.06.2016 in respect of 'H.M. Tambourine' Apartment by excluding the FAR calculated by including the entire extent of land of 3 acres and 20.18 guntas, the same would be fully complied with and the additional FAR so calculated would be deducted accordingly.

XII ADDITIONAL AFFIDAVIT DATED 03.07.2026 FILED BY THE APPELLANT:

37. The appellant-Association filed its additional affidavit on 03.07.2006 stating therein that the claim of the respondent No.2 that there exists a vacant land measuring 36,000 Sq.Ft. on the western side of the property is wholly false and untenable for the reason that the Respondent No.2 itself purported to relinquish an extent of 1,056.93 Sq.Mts. (11,376.7 Sq.Ft.) in favour of the BDA for the purpose of road extension by executing the relinquishment deed. It is further stated that the stand taken by the respondent No.2 before this Court is contrary to the stand taken in the civil suit bearing O.S. No.8454/2016 filed by the developer that the common amenities viz., gym and swimming pool had been constructed on the vacant land available within the developed property and that the said gym and swimming pool do not form part of the undivided share transferred by the Respondent No.2 in favour of the apartment owners and thus, the undivided share in the apartment property ('A' Block) allegedly retained by the respondent No.2 had already been utilized for common amenities such as, gym and swimming pool. No further land remained available for

computation of any additional FAR. The Respondent No.2 cannot contend that the new building viz., the proposed "Block-B" was being constructed on the land for which fresh FAR had been calculated.

XIII ORDER DATED 23.06.2026:

38. Vide order dated 23.06.2026, we directed the Greater Bengaluru Authority (GBA) to be impleaded as additional Respondent No.4. Learned counsel, Mr. Karthikeyan B.S. accepted the notice on behalf of the GBA. We directed the Commissioner, BDA to draft the clarificatory circular as mentioned in paragraph 9 of his affidavit dated 15.04.2026, which would read as under:-

"9. I respectfully submit that, in light of the observations made by the Hon'ble High Court, I have taken steps to remedy the anomaly and I undertake that a clarificatory circular shall be issued by the BDA, with due approval of the Board. Such a circular shall unequivocally clarify that, prospectively, in cases where modified plans are sought for properties for which an Occupancy Certificate has already been issued in respect of a portion of such plot/s, no further modification shall be permitted in respect of that portion, and such area for which Occupancy Certificate has already been issued shall be excluded while calculating the FAR. I further

submit that the draft of the proposed clarificatory circular, upon receipt of approval of the Board, shall also be filed before this Hon'ble Court."

38.1 We also directed the Commissioner, BDA, to get the clarificatory circular approved from the Board of the BDA. We directed the Managing Director of M/s. H.M. Infra Tech Pvt. Ltd. to file personal affidavit placing on record their stand in respect of the common facilities of the existing complex by name "H.M. Tambourine" and the facilities for new Tower in the name and style of "H.M. Crescendo" referred to as 'A' Block and 'B' Block respectively.

XIV AFFIDAVIT DATED 22.07.2026 FILED BY BDA:

39. The Commissioner, BDA, vide his affidavit dated 22.07.2026, placed on record the clarificatory circular issued by the BDA after its approval from the Board of the BDA. It has been stated that the BDA had instructed the concerned official to follow the procedure prescribed in the circular while issuing the modified sanction plan. The Clarificatory Circular dated 15.07.2026 reads as under:-

"...1) Do not sanction modified plan where permissible FAR is completely utilised and Occupancy Certificate [OC] is issued.

2) Sital area under consideration in the sanctioned Building Plan shall not be altered wherever the Modification Plan is sought by the Builder for the Cases wherever Partial Occupancy Certificate is issued & permissible FAR is under utilized.

3) Public spaces like Park and Open Spaces, Amenities also shall not be altered. These public spaces shall remain intact as indicated in the first Sanction plan

4) If the Permissible FAR is under utilised, then the Builder can go for modification subject to consent from the 2/3rd of the purchasers if third party interests are created already. If not, no such consent is required.

5) Whenever the permissible FAR is under utilised due to some constraints, a clause shall be mentioned by the developer in the agreement or sale deeds about the modification of Building Plan in future for full utilisation of permissible FAR/TDR/Premium FAR.

6) Balance FAR may be utilised on land / property only if such addition FAR utilization has been mentioned in the sale deeds and obtaining NOCs from various agencies concerned wherever applicable.

7) Necessary NOCs and requisite approvals as required from the various competent

authorities shall be obtained by the Builder for the proposed additions as applicable.

8) Builder shall ensure that by adding or loading of additional floor area in the form of utilising balance permissible FAR/TDR/ Premium FAR, the Undivided Share [UDS] shall not be altered.

9) Zonal Regulations at the time of sanctioning of building plan shall not be applicable for the Modification of Building Plan.

10) Once OC for the entire project is issued by the competent authority, then the builder will lose his rights on getting permissions for modification of Building Plans perpetually. Under such circumstances, the Competent Authorities shall not entertain any such applications for approval.

11) Any vacant area which is not earmarked for future development in the original Sanction Plan shall not be considered while approving the Modified Plan.

12) While issuing a modified sanction plan, Town Planning section/Engineering section has to verify whether any portion of the project has already received OC from the Engineering Section of BDA.

13) A software shall be made where all approvals by TPM section & EM Section shall be available to avoid communication gap.

14) A ERP solution shall be made within 6 months and implemented from 1st April 2027.

15) Applications submitted to TPM & EM section shall be completed and either approve or rejected within 90 days."

40. We direct all the authorities i.e., BDA, GBA or any other development authorities which have the power to sanction the plan, modify the plan etc., to strictly follow the Clarificatory Circular dated 15.07.2026 and any deviation from the circular would have serious consequences for the officials who would sanction any modified/new plan in violation of the Circular dated 15.07.2026.

41. The Managing Director of M/s. H.M. Infra Tech Pvt. Ltd., has undertaken to provide a separate swimming pool, a club house with a multipurpose hall and a gymnasium within the new block (Block-B) named as "H.M. Crescendo" by reducing few of the apartments in the said block, which would be used by the flat buyers of H.M. Crescendo (Block-B).

XV POINTS FOR CONSIDERATION:

42. The points for consideration in this appeal are as follows:-

(1) Whether the landowners and the developer of the land in Sy.No.28 situated at Kanakapura Road, Jaraganahalli Village, Uttarahalli Hobli, Bengaluru South Taluk, on which the housing complex consisting of 4 Towers named and styled "H.M. Tambourine" ('A' Block) has been constructed, can be said to have retained any right, title and interest after execution of the sale deeds in respect of the 241 apartments constructed on the land over which they had conveyed undivided interest in respect of the vacant land/unused portion of the land for future development?

(2) Whether the statement in the sanction plan as vacant/unused land could lead to an inference that the landowners had

retained the property to utilise the same exclusively and independent of the apartment complex already built i.e. 'A' Block?

(3) Whether the BDA, while sanctioning the modified plan, could have taken into account the proposed modified plan for construction of new residential block i.e., 'B' Block consisting of 120 flats, by taking into consideration the FAR of the entire land of 3 acres and 20.18 guntas or the BDA should have taken into consideration the FAR only in respect of the vacant/unused land for future development as shown in the original sanction plan for 'A' Block?

(4) Whether the Clause in the sale deed which reads that *"the purchasers are aware that he/she/they shall not object for the construction to be put up in the front portion of the residential block by the*

developer and the developer has a right to put up construction for residential/commercial building as the developer deems fit. The purchasers shall not interfere with such construction in any manner whatsoever even if taken up after execution of the deed of sale and possession of the apartment being handed over", would act as estoppel for the flat buyers in 'A' Block to object construction of 'B' Block on the vacant land?

XVI ANALYSIS AND FINDING:

Re. Point Nos.1 to 4

43. Before considering the aforesaid points, it would be apt to take note of the relevant provisions of the statutes governing the subject matter.

44. The 1972 Act provides to regulate the promotion of construction, sale, management and transfer of flats on ownership basis. Section 4 of the said Act mandates that before the promoter accepts an advance payment or deposit,

he is required to enter into an agreement, and the agreement of sale is required to be discharged.

45. Section 5 creates an obligation on the promoter to maintain a separate account in respect of sums taken as advance or deposit, and mandates that he would be the trustee for the said amount and for their disbursal for the purposes of constructing an apartment complex.

46. Section 6 of the Act creates the responsibility on the promoter for payment of outgoings till the apartments are transferred.

47. Section 7 of the said Act stipulates that after the plan and specifications have been disclosed to the prospective purchasers, no alterations or additions can be made without the consent of the purchasers.

48. Section 8 of the Act creates another obligation on the promoter to refund the amount paid with interest, if he fails to give possession within a specified time or further time allowed.

49. As per Section 9, the promoter cannot create mortgage etc., without the consent of the parties who have entered into an agreement of sale.

50. Section 10 of the Act casts an obligation on the promoter to take steps for the formation of a co-operative society or a company.

51. Thus, the architecture of the 1972 Act lays down the details for the manner in which an apartment complex has to be constructed, sold, managed and ultimately transferred. Section 7 of the Act is specifically important for the purposes of deciding the present controversy which bars any alterations in the structures without the consent of the persons who have agreed to purchase the apartments/flats.

52. Section 2 of the 1972 Act makes the provisions of the Act applicable to those properties in respect of which the sole owner or all the owners agreed to submit the same to the provisions of the Act by duly executing and registering a declaration as provided under the Act. Thus, essentially, the provisions of the Act are made applicable voluntarily by the

owners of the apartment complex by executing a Deed of Declaration and also registering it.

53. The term 'apartment' is defined under Section 3(a) of the 1972 Act, which states that it would be a part of the property intended for any type of independent use, containing one or more rooms or enclosed spaces located on one or more floors in a building which is intended to be used for residential purposes.

54. The term 'building' is defined under Section 3(e) of the Act as a building containing four or more apartments, or two or more buildings, each containing two or more apartments with a total of four or more apartments.

55. Section 3(f) of the Act defines 'common areas and facilities'.

56. It is evident from Section 3(f)(1) of the 1972 Act that if a Deed of Declaration has been executed by the apartment owners and the provisions of the Act are made applicable, a common area would mean the land on which the building is located. Thus, in law, the entire land on which the building is located becomes common area.

57. Section 4 of the Act declares the status of the apartments and makes it clear that each apartment complex together with its undivided interest in the common areas and facilities appurtenant to such an apartment complex shall constitute to be the heritable and transferable immovable property within the meaning of any law for the time being in force and also declares that an apartment owner can transfer his apartment and percentage of his undivided interest in the common areas and facilities.

58. Thus, in law, on the plan being approved by the BDA, the entire area of land on which the residential complex is constructed would be treated as common area, and every apartment owner would have undivided interest in the common area. Therefore, any future development that is mentioned in the plan can only be relatable to development by the owners on the vacant area, if that area was not part of the common area of the existing residential plan.

59. In the present case, the construction of 'B' Block is undertaken on the vacant land shown for future development, and the flat buyers have specifically

undertaken that they would not have any claim, right or interest in respect of such unused/vacant land.

60. It would also be relevant to take note of Section 14 of the Real Estate (Regulation and Development) Act, 2016, which provides that the developer cannot make any alteration in the structure of the building or construct any additional structure without the previous consent of the apartment owners.

61. The 'A' Block consisting of 4 Towers is separated by the boundary wall, and entry and exit gates, with common areas and facilities for the use and enjoyment of the flat buyers/apartment owners of 'A' Block. The 'B' Block is constructed outside the boundary wall of 'A' Block on the area which was shown in the original plan as unused/vacant land for future development. As stated above, the flat buyers have undertaken not to obstruct the future construction by the developer on the vacant area. Thus, the vacant area falls outside the residential complex of 'A' Block consisting of 4 Towers and the flat owners of 'A' Block have no right to object/obstruct the construction of 'B' Block on the

unused/vacant land as per the Sanction Plan dated 29.04.2006.

62. However, the question remains as to whether, while sanctioning the building plan for 'B' Block, the entire land of 3 acres and 20.18 guntas could have been taken into consideration without obtaining the consent of the apartment owners of 'A' Block.

63. We are of the considered view that such course of action may not be available to the builder in absence of express consent of the apartment owners of 'A' Block. However, the developer would be entitled to develop the unused/vacant land as per the permissible FAR for the said land and by buying additional TDR, if so required.

64. It appears that in practice, the aforesaid has not been followed, and when any future development was undertaken on the vacant/unused land after completing an apartment complex, the entire area of the land would be taken into consideration for sanctioning the modified plan as stated by the Commissioner, BDA. The Commissioner, BDA, has now brought on record the Clarificatory Circular dated

15.07.2026, issued by the BDA that in future, the entire area would not be taken into consideration while sanctioning the modified plan. We have already taken note of the circular and we direct that in future, any modified plan would be sanctioned strictly in accordance with the Circular dated 15.07.2026 mentioned hereinabove by all concerned authorities including BDA, GBA or any other development authorities.

65. We, therefore, do not find that the construction of 'B' Block is *per se* illegal. As submitted by the learned Senior Counsel Mr. Srinivasa Raghavan appearing for the respondent No.2, if the FAR used by the respondent/builder/promoter while undertaking the construction of 'B' Block has been exceeded, the respondent/builder/promoter should buy the TDR for which the GBA/BDA would communicate in writing the costs to be paid by the respondent/builder/promoter within a period of one month from the date of this order. On this communication of costs for buying the TDR for extra construction to bring the 'B' Block within the parameters of the relevant provisions of the Building Bye-laws, the

respondent/builder/promoter shall pay the amount within two months from the date of communication of the costs by the GBA/BDA.

66. It is also made clear that the common facilities existing in the 'A' Block consisting of 4 Towers shall not be used by the flat owners of 'B' Block. As undertaken by the Managing Director of M/s. H.M. Infra Tech Pvt. Ltd. vide his affidavit dated 25.07.2026, separate facilities shall be provided for the flat owners of 'B' Block.

67. This Court, in similar circumstances, vide its judgment dated 01.04.2026 passed in W.A.No.1782/2025, at paragraphs 9 and 10, has held as under:-

"9. The petitioner cannot ask for putting up the premium on the illegality committed in collaboration by some officers in granting the FAR-4, when the concession of granting FAR-4 stood withdrawn by means of Notification dated supra. The petitioner has taken the risk of putting up unauthorised construction and therefore, the petitioner has only two options: (i) to buy the Transferrable Development Rights ('TDR'

for short) at the present market rate or (ii) face the consequence of putting up unauthorised construction, that is, demolition of the excess construction, breaching permissible FAR 3.25.

10. Mr.T.P.Vivekanand, learned counsel for the respondent fairly submits that the petitioner would buy the TDR for 1,312 Sq.mtr for which the BBMP will communicate in writing the cost to be paid by the petitioner within a period of two weeks from today. On this communication of cost for buying the TDR for extra construction of 1,312 Sq.mtrs, the petitioners shall pay the amount within a period of four weeks from the date of the communication of the cost by the BBMP, now Greater Bengaluru Authority ('GBA' for short)."

68. The judgment cited by Mr. S.S.Naganand, learned Senior Counsel for the appellants in ***SUPERTECH LIMITED vs EMERALD COURT OWNER RESIDENT WELFARE ASSOCIATION AND OTHERS [(2021) 10 SCC 1]*** is not applicable in the facts and circumstances of the present case,

inasmuch as we are of the considered opinion that the construction of 'B' Block is not *per se* illegal. The respondent/builder/promoter may have exceeded the FAR available on the land which is shown as vacant/unused land for future development for which we have permitted the respondent/builder/promoter to buy the TDR to bring the apartment complex of 'B' Block within the permissible limits of FAR for the complex.

69. With the aforesaid modifications in the impugned judgment and order passed by the learned Single Judge, we dispose of this appeal.

In view of disposal of the writ appeal, pending IAs, if any, do not survive for consideration and accordingly, they stand disposed of.

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

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CT:SN