

HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA
AND
THE HON'BLE JUSTICE SANDIP KUMAR DE

FMA 763 OF 2026
WITH
CAN 1 OF 2025

Ambica Beri

VS

Forum Atmosphere Flat Owners Association and Ors.

For the appellant:

Mr. Rudraman Bhattacharya, Sr. Adv.
Mr. Shuvasish Sengupta, Adv.
Mr. Sourojit Dasgupta, Adv.,
Mr. Sushovit Dutt Majumder, Adv.,
Mr. Souvik Ganguly, Adv.,
Ms. Rajeshwari Prasad, Adv.,

For the respondent no.1:

Mr. Joydeep Kar, Snr. Adv.,
Mr. Krishna Raj Thakker, Snr. Adv.,
Mr. Aniruddha Chatterjee, Sr. Adv.,
Mr. Shoham Sanyal, Adv.

For the respondent no.2:

Mr. Debangshu Ghatak, Adv.,
Mr. Upasana Bhattasali, Adv.

Last heard on: 13.08.2026

Judgement on: 18.08.2026

SANDIP KUMAR DE, J:

1. The present appeal arises out of order no.2 dated 17th July, 2025 passed by the learned Civil Judge (Senior Division), 4th Court, Alipore, South-24-Parganas in T.S No.1060 of 2025 (***Ambica Beri Vs. Forum Atmosphere Flat Owners Association and Ors.***)
2. The facts of the case in brief are that the plaintiff/appellant is purchaser of a unit having no.E-101 ('the said unit' for short) on first and second floor in Tower East of the residential complex known as 'Forum Atmosphere'('the complex' for short). The plaintiff/appellant purchased the said unit on 9th February 2024 from Forum Projects Pvt. Ltd. ('the developer' for short). The respondent no.1 is the association of the owners known as "Forum Atmosphere Plot Owners Association" ('the association' for short).
3. The fact remains that the complaint was lodged by the association against the developer in respect of construction in the said premises at E-Deck thereof on 23rd December, 2024 and pursuant to the said complaint, the appropriate authorities of Kolkata Municipal Corporation started a proceeding under Section 400(1) and Section 415 of the Kolkata Municipal Corporation Act, 1980. By order dated 4th May, 2025, the Special Officer, Building held that there was no infringement of rule noted by the department and recorded that he did not find any reason to demolish the changes, etc which would be retained on payment of fees. Subsequently, by a letter dated 13th

June, 2025, the office of the Executive Engineer of the Kolkata Municipal Corporation (Borough VII) informed the plaintiff/appellant, amongst others, that the illegal construction at the said unit has been regularized. The allegation of the plaintiff/appellant is that the plaintiff/appellant is not being allowed to use the 'My Gate App' meant for controlling the entry and exit of the said complex. She is also not getting the gas connection at the unit from the dedicated gas bank situated inside the complex.

4. The plaintiff/appellant offered to become the member of the Association, though her membership was not accepted.
5. In this backdrop, the plaintiff/appellant filed the suit being TS no.1060 of 2025 in the Court of Learned Civil Judge (Senior Division), 4th Court, Alipore, South-24-Parganas praying for decree of declaration to the effect that the plaintiff is entitled to receive gas connection, access to 'My Gate' software and other basic essential amenities available at the said complex, further decree of declaration that the plaintiff is entitled to all right, title and interest as sub-lessee in respect of the said unit and consequential injunctions.
6. The plaintiff/appellant moved an application for ad interim injunction but the same was refused by the judgement and order impugned herein on the ground that the indenture of sub-lease dated 9th February, 2024 by which the plaintiff/appellant purchased the said unit contains arbitration clause but there is no averment to the effect in the pleading of the plaintiff that the plaintiff approached for arbitration regarding the dispute.

7. The learned senior counsel appearing for the plaintiff/appellant placed the sub-lease dated 9th February, 2024, the plaint and the application for injunction.
8. From the sub-lease, the learned senior counsel placed reliance on the definition of common areas, amenities and facilities which include common areas, facilities, amenities, erections, functions and installations comprised in the said complex and for common use and enjoyment for the purchaser/allottees of the apartments of the said complex.
9. He also placed reliance on the proceedings under Section 400(1) read with Section 415 of the Kolkata Municipal Corporation Act, 1980 and submitted that the offending constructions in the said unit has already been regularized.
10. The learned senior counsel further placed reliance on the memorandum of association of the respondent no.1/Association and clause 2 thereof which records the objects of the company being respondent no.1/Association includes the object to up-keep and maintain open and covered parking areas, the open spaces, etc and to carry out other objects set out in the common interest of the members/owners/occupants/users of the said complex.
11. The learned senior counsel placed reliance on Section 2 (n)(v) of the Real Estate (Regulation and Development) Act, 2016 which envisages common areas meaning installation of central services such as electricity, gas, water and sanitation, air condition and incinerating system for water conservation and renewable energy.

12. The learned senior counsel further submitted that pending hearing of the present appeal, the access to 'My Gate' has been allowed to the plaintiff/appellant but the plaintiff/appellant has yet to get the gas connection from the dedicated gas bank situated inside the complex.
13. The learned senior counsel for the plaintiff/ appellant has placed reliance on a judgment of the Hon'ble Supreme Court reported in **(2019) 14 SCC 1 (Hammad Ahmed Vs. Abdul Majid and Ors.)**.
14. He has drawn attention of this Court to paragraphs 57 to 59 of the said report and submitted that strict position of law regarding grant of mandatory injunctions has been diluted. He submitted that the Hon'ble Supreme Court has laid down that the proposition, that the Court has jurisdiction to maintain the status of the parties on the date of filing of the suit or on the date of passing of the order but cannot direct the parties to do something which was not in existence at the time of filing of the suit, is not a general rule of universal application. As such, even a status quo ante could be granted in the form of mandatory injunction if a strong prima facie case is made out before the court as it has been done in the present case.
15. Learned senior counsel appearing for the respondent no.1 opposed the submissions advanced on behalf of the appellant and submitted that the gas connection, if required to be installed at the said unit, requires infrastructure.
16. He further submitted that gas connection, although is an amenity, it is not an essential amenity. He further submitted that the

plaintiff/appellant purchased the said unit from the developer and the developer did not provide gas connection to the said unit.

17. Being aware of such fact, the appellant/plaintiff purchased the said unit and at present the plaintiff/appellant cannot ask for the gas connection from the association.
18. He further submitted that the plaintiff /appellant could take separate LPG cylinders for consumption at his unit.
19. The learned senior counsel further referred to the orders passed in suit being Title Suit No.1217 of 2025 wherein by order dated 1st August, 2025 the learned Civil Judge, Junior Division, 1st Court Alipore has passed an order of ad interim injunction by restraining the defendants from creating any third party interest and from carrying out or dealing with suit B scheduled mentioned property of the plaint including from changing its nature and character of the suit property till 29th August, 2025.
20. Be it mentioned that the said order was passed after the order impugned herein dated 17th July, 2025 was passed.
21. The learned senior counsel placed reliance on the order passed in an application under Section 17 of the Arbitration and Conciliation Act, passed by the learned arbitrator, which is an order of status quo dated 5th February, 2026 whereby the arbitrator has restrained the developer from changing the nature and character of the common areas as situated in the agreement dated 23rd September, 2022 till disposal of the said application, amongst other orders.

22. In reply, the learned senior counsel for the plaintiff/appellant has placed reliance on a letter dated 22nd March, 2025 wherein the developer has informed the plaintiff/appellant that the developer has already informed the Executive Committee of the Association to grant permission of gas line work while checking the convenience with the residents of the East Tower on the proposed shut down of gas line on East Tower Apartments, the moment the developer gets in-principle approval on the same.
23. The learned senior counsel for the appellant further submitted that the arbitration clause was the part and parcel of the sublease between the plaintiff/appellant and the developer which has no connection with the present dispute and the learned Trial Judge erred in refusing to grant ad interim relief to the plaintiff/appellant in respect of the essential amenities like access to 'My Gate' App and gas connection.
24. Heard learned counsel for the respective parties.
25. It appears from the record that the plaintiff/appellant is the purchaser of the unit in the said complex for valuable consideration from the developer and the offending construction inside the unit has been regularized.
26. It is pertinent to note here that the plaintiff/appellant requested for subscription of the association but the association refused to subscribe the plaintiff/appellant as a member thereof.
27. It further appears from record that there are several proceedings going on between the developer, residents and the association in different fora. It further appears that the plaintiff/appellant is being

singled out and being deprived of the basic amenities required at the said unit inside the complex. The association may have complaints or allegations against the developer but for said reason, the plaintiff/appellant cannot be made to suffer.

28. It has also been informed that at present the meter and the installation is ready for the purpose of connecting the unit with the gas supply from the dedicated gas bank of the said complex.

29. It has further been informed that the hearing of the injunction application is scheduled on 5th September, 2026 before the learned Trial Court.

30. Considering the situation, we are not inclined to pass any order in the appeal at present in respect of the gas connection, as any order passed in the appeal would render the application for injunction pending before the learned trial court infructuous and any order passed by this Court would amount to allowing the appeal of the plaintiff/appellant. However, since the appellant has made out a strong prima facie case of title and right of user to the suit flat and entry and exit to the same, the respondents are directed to allow the appellant to continue using the 'My Gate App' meant for entry and exit to the complex.

31. The impugned order dated July 17th, 2025 passed by the learned Civil Judge, (Senior Division), 4th Court at Alipore, the Title Suit no.1060 of 2025 is modified to such extent.

32. The observations made above are tentative in nature.

33. As such, we refrain from passing any order in the present appeal insofar as the gas connection is concerned and dispose of the present appeal by requesting the learned trial court to conclude the hearing and dispose of the application for injunction scheduled to be heard on 5th September, 2026 positively within a month without granting any adjournment to any of the parties. The learned trial court shall dispose of the application for injunction without being influenced by the observations made above and in an independent manner upon considering the materials on record and submissions of the parties.

34. The appeal and the connected applications are disposed of accordingly.

35. Urgent Photostat certified copy of this order/judgment if applied for, be supplied to the parties upon compliance with all requisite formalities.

(SANDIP KUMAR DE, J)

I Agree,

(SABYASACHI BHATTACHARYYA, J)