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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ FAO 514/2016, C.M.Nos. 40266/2016, 43837/2016, 42174/2017,
15312/2018

M/S NAURANG HOUSE (KGM) FLAT OWNERS ASSOCIATION

..... Appellant

Through: Mr. Vibhor Bagga, Adv.

versus

**M/S ANSAL PROPERTIES & INFRASTRUCTURE LIMITED &
ORS**

..... Respondent

Through: Mr. Rohit Gupta, Adv. for R-1
Mr. Junaid H. Nahvi, Adv. for the Provisional
Administrator.

**CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI**

**ORDER
19.04.2018**

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CM No.15312/2018

This application by the Provisional Administrator, appointed by
this Court, seeks the following reliefs:

*“a) Adjudicate upon the issue as to whether the
occupants of the basement had a right to become a
member of the association; AND*

*b) Adjudicate upon the issue as to whether the
occupants of the basement had a right to vote in the
forthcoming elections of the association; AND/OR*

*c) Pass any other or further order(s) as this
Hon'ble Court may deem fit and proper in the interest of*



justice.”

There are two residents welfare associations – the appellants’ association and the R-2 association, both claiming a right to maintain the group of apartments known as “Naurang House” at 21, K.G. Marg, New Delhi.

It is not in dispute that the said apartments are in a state of poor repair and there is cause for real danger to the life and limb of its occupants; it poses serious fire hazard and needs to be maintained properly, as quickly as possible to obviate an untoward incident.

The learned counsel for the parties submit that about 60% of the apartment owners are not making any contributions whatsoever to either of the two associations. The ostensible reason for some persons not making the contribution is, that there is an uncertainty apropos the “legitimate apartment owners association”, to whom the contributions could be made. Additionally, there is the issue of persons running commercial establishments in the basement of the said building.

In terms of this Court’s order dated 26.10.2016, funds of the appellant/association were to be supervised by a Provisional Administrator. The issue presently is whether the occupants/owners of spaces in the basement would be considered as apartment owners thereby leading to a claim for membership in the association as well as voting rights in the forthcoming elections of the association(s).

The learned Provisional Administrator has referred to the definitions of ‘apartment’ and ‘common areas and facilities’ under the Delhi Apartment Ownership Act, 1986 (the Act) under section 3 (c) and (j), respectively.



While section 3(c) defines ‘apartment’ as *a part of any property, intended for any type of independent use, including one or more rooms or enclosed spaces located on one or more floors or any part or parts thereof, in a multi-storeyed building to be used for residence or office or for the practice of any profession, or for the carrying on of any occupation, trade or business or for such other type of independent use as may be prescribed, and with a direct exit to a public street, road or highway, or to a common area leading to such street, road or highway, and includes any garage or room (whether or not adjacent to the multi-storeyed building in which such apartment is located) provided by the promote for use by the owner of such apartment for parking any vehicle or, as the case may be, for the residence of any domestic aide employed in such apartment....*

Evidently, the definition of apartment would extend to the ‘parking space for the residents’ and/or for the residence of the domestic employees as long as the apartment and such additional space as made in section 3(c) are treated as one unit. Section 3(c) specifically does not refer to the basement area. Definition of “common area and facilities” includes the basements, cellars, yards, gardens, parking areas, shopping centres, schools and storage spaces as “common areas” in relation to a multi-storeyed building. Clearly, the “storage space” would mean storage for all persons, unless it is specified as being a part of or attached to the apartment itself. However, such storage space, by definition, cannot be used for habitation and cannot be construed as an ‘apartment’, therefore, it would fall under the definition of 3(c) of the Act. Storage space is specifically defined as “common areas and facilities”, therefore, it cannot be deemed to be an apartment.



In view of the above, the Court is of the *prima facie* view that the occupants of the basement would not have a right to become members of the association. Consequently, they would not have a right to vote in the forthcoming election. The reference would be answered accordingly.

However, at this stage, the Court is informed that since the affected apartment owners are neither parties to this litigation nor has been sought to be impleaded, their rights will be affected should the aforesaid order is passed.

In view of the above, CM No. 42174/2017 is allowed and all the 217 affected flat owners are made parties to the petition as respondents. Issue notice to them through ordinary process, Speed Post, *dasti*, through the learned Provisional Administrator as well as by way of a general notice on the Notice Board. An affidavit of compliance and photographs of affixation of notice on the Notice Board shall be filed by the learned Provisional Administrator before the next date.

In the interim, the apartment owners shall continue to deposit their monthly maintenance amount including arrears with respondent no. 2. No money shall be spent by the respondent No.2 except with prior permission of the learned Provisional Administrator.

This arrangement has been made with the consent of the parties present and in the interest of all the parties concerned. There is an opposition to this arrangement by the appellant.

The Court is informed that the learned Provisional Administrator has been paid same preliminary fees in 2016; he has otherwise been discharging his duties for the last one and a half years without any further payments. In the circumstances, with the consent of all the parties, another interim amount



of Rs.1,50,000/- shall be paid to the learned Provisional Administrator from the collections in maintenance amount.

The appellants object to arrangement of monies being collected by respondent No.2. The learned counsel for the appellant states that insofar as respondent No.1 has not given any explanation about the monies collected by them towards the sinking funds and other maintenance amount, therefore, no money should be paid to respondent no.2.

It is not in dispute that there is no maintenance or collection of money since 01.01.2015. Corrective repairs of Naurang House have not taken place for years. There is an obvious urgent need to set aright the common facilities like lifts, washrooms, drinking water supply, cleaning of water, tanks, fire systems, evacuation processes, etc., in place. Therefore, in the circumstances, an account shall be opened by respondent no.2 in UCO Bank, Delhi High Court Branch, in the name of "Naurang House Maintenance Account" which shall be maintained by the learned Provisional Administrator and all such collections shall be deposited in that account. Of the amounts collected in the said account, monies shall be spent towards the maintenance, only with the consent of the learned Provisional Administrator. Arrears of maintenance shall be paid in three equal monthly instalments beginning, the 15th May, 2018. The details of account opened in UCO Bank, shall be notified by the learned Provisional Administrator to all residents/occupants.

Since this order would affect the owners/occupants of spaces in the basement, notice shall be issued to them as per the list maintained by the learned Provisional Administrator. Affidavit of service shall be filed before the next date.

Renotify on 09.05.2018.



A copy of this order be given *dasti*, to the learned counsel for the parties, under the signature of the Court Master.

APRIL 19, 2018/acm

NAJMI WAZIRI, J