

**IN THE COURT OF SH. AMIT KUMAR :**  
**ADDL. DISTRICT & SESSIONS JUDGE-CUM-PRESIDING OFFICER,**  
**APPELLATE TRIBUNAL, M.C.D., DELHI.**

**APPEAL NO. 385/ATMCD/2020**

**M/s D.S.I.D.C. Friends CGHS Ltd.  
Plot No. 23, Sector-09, Rohini  
New Delhi-110085  
Through its General Secretary**

..... Appellant

**Versus**

**Municipal Corporation of Delhi  
Through its Commissioner  
Civic Centre, Minto Road  
New Delhi**

..... Respondent

**Date of Filing of Appeal : 10.12.2020**

**Date of Judgment : 07.05.2026**

**APPEAL NO. 560/ATMCD/2024**

**M/s DSIDC Friends CGHS Ltd.  
Plot No. 23, Sector-09, Rohini  
Delhi-110085  
Through its President  
Shri Deepak Mittal S/o Shri Subhash Chand Mittal  
R/o Flat No. D-127, Sangam Apartment  
Plot No. 23, Sector-09, Rohini  
Delhi-110085**

..... Appellant

**Versus**

**Municipal Corporation of Delhi  
Through its Commissioner  
Civic Centre, Minto Road  
New Delhi**

..... Respondent

**Date of Filing of Appeal : 25.07.2024**

**Date of Judgment : 07.05.2026**

## JUDGMENT

1. These are the two appeals challenging the demolition order dated 01.12.2020 in appeal no. 385/20 passed in respect of unauthorized construction in the shape of erection of fabricated steel frame alongside with existing structure of various flats for the extension of balcony against standard plan at Sangam Apartment, Sector-09, Plot No. 23, Rohini, Delhi (here in after referred as subject property) and the rejection order dated 03.07.2024 in appeal no. 560/24 whereby the regularization application of the appellant seeking regularization of the subject property was rejected.
2. The brief facts necessary for disposal of these two appeals are that the appellant is a cooperative housing society initially constructed in 1998 and the flats were allotted to the respective members. With the passage of time, the flat owners carried out certain modifications in the existing structure more so in view of the enhanced FAR under the provision of MPD-2021 by which the FAR was enhanced from 133 to 200 and as such the flat owners extended their respective balconies to enjoy the benefit of additional FAR.
3. As per appellant, under clause 7.2.4.1 (ii) of Unified Building Bye Laws (UBBL-2016), the balcony up to 2 meter is free from FAR and therefore, the entire construction including balconies are within the compoundable limits of the enhanced FAR. The respondent on the complaint of one Sh. Prabhunath Gupta, who also filed a writ petition before Hon'ble High Court no. 8680/2020 booked several flats in the society for unauthorized construction in the shape of erection of fabricated steel frame alongside with existing structure of various flats for the extension of balcony against standard plan and passed the demolition order dated 01.12.2020. The appellants applied for regularization of the existing construction vide application dated 11.11.2020 and also preferred a writ petition before Hon'ble High Court no. 9042 of 2020. The Hon'ble High Court directed the MCD to provide personal hearing to the appellant and decide this regularization application and till then no coercive measure was to be taken against the appellant, yet the demolition order was passed on 01.12.2020. The appellant has preferred appeal no. 385/2020 against this demolition order. The respondent also rejected the regularization application on 07.12.2020 against which the appellant preferred an appeal no.

396/2020 before this tribunal. This appeal was allowed on 19.12.2023 and the matter was remanded back with directions to give hearing to the appellant and pass fresh order. The respondent there after again rejected the regularization application on 03.07.2024 which has been assailed in appeal no. 560/24.

4. It was argued by Id. counsel for the appellant that a balcony of maximum 2 meter width is permitted in group housing society free from FAR under 7.2.4.1 (ii) of UBBL-2016 and the balconies constructed by the flat owners of the appellant society is within permissible compoundable limit and yet the respondent without considering this aspect passed the demolition order. It was argued that the regularization application was also rejected on flimsy ground without considering that the set-backs in the front and rear are compoundable under annexure IV of Chapter 13 of UBBL-2016. No NOC from fire services is required. The appellant has already submitted all the drawings and the equivalent car space (here in after referred as ECS) available is more than the required ECS and yet the regularization was rejected which should have been allowed and therefore, both the appeals should be allowed.
5. Ld. counsels for the respondent on the other hand argued that the balconies constructed by the several flat owners is unauthorized till it is regularized as per law and unless and until the same are not compounded, are liable to be demolished. It was further argued that the appellant failed to comply with the invalid notice in respect of the regularization application and therefore, the regularization was refused for non-compliance of the invalid notice and therefore, both the appeals are without merits.
6. Ld. counsel for the intervener in appeal number 385/2020 argued that the similar construction in the property of the intervener and some other flats owners was demolished was the respondent and there is no reason why the unauthorized construction in other flats should be protected and therefore, the appeal should be dismissed.
7. I have perused the record. It is not disputed by the respondent that FAR has now been enhanced from 133 to 200 in respect of the group housing society flats, after coming into force of MPD-2021. Further it is also undisputed that

balconies with maximum width of 2.0 meter are free from FAR under clause 7.2.4.1 (ii) of UBBL-2016, which reads as under:

“7.2.4.1 Balcony

(i) .....

(ii) For group housing: balcony (isolated/wrap around) max width of 2.0 m will be permitted free from FAR with all the rooms including kitchen provided it does not hinder fire tender movement and within the plot line. Balcony constructed more than 2.0 m width, the extended part of the balcony shall be counted towards FAR. This provision clearly provides for balcony free from FAR which was constructed by the flat owners of the society and for which the regularization was applied for.”

8. The regularization application was rejected by the respondent on 03.07.2024 for following reasons:

“(1) Front set-back not clear  
(2) Rear set-back not maintained  
(3) Parking drawing not submitted”

9. This rejection letter did not specify as to how the front set-back is not clear and how the rear setback was not maintained. It is relevant to mention that annexure IV of Chapter 13 of UBBL-2016 talks about non-compoundable and compoundable items. Under the category of compoundable items, the setback infringement have been provided under clause 1(e)(c) and the same provides that infringement of the setback to the extent of 0.3 meter can be compounded by levying compounding fees. The respondent did not ascertain as to whether the front and rear setbacks are within the compoundable limit or not as provided in annexure IV of Chapter 13. The respondent find it convenient to reject the regularization without coming to the conclusion that the deviation, which are undefined in the rejection letter, are compoundable or not. The impugned rejection letter is liable to be set aside on this aspect alone. The respondent being a Quasi Judicial Authority is not suppose to demolish several flats in the society which have compoundable deviations without specifying whether the deviation in the front and rear setbacks of the society are compoundable or not.

10. Further, it was stated in the rejection letter that the parking drawings have not been submitted. I have perused the drawings submitted by the appellant while seeking regularization of the existing structure that the ECS required is 339.50 ECS, whereas the ECS available in the society is more than that which is 82.57 ECS in covered stilt area and 290.70 open ECS area making it total ECS area as 373.27 ECS. The same is more than the required ECS of 339.50 ECS. This clearly shows that the parking area available in the society is more than the area required to be maintained. The rejection letter therefore is liable to be set aside on this ground as well and same is so set aside.
11. Coming to the demolition appeal, the demolition order in respect of the unauthorized construction or erection of fabricated steel frame for extension of balcony has been passed without considering the fact that the same is compoundable and the appellant society has already applied for regularization of all the compoundable deviations. The rejection of regularization application order as already discussed is not sustainable. The demolition should be the last resort and if the deviations are compoundable and are not malafide, the same should be protected. It is not a case where unauthorized construction has been raised by violating the law. The construction was raised as permissible under available law after MPD-2021. The demolition action can be taken only when regularization is finally decided / rejected.
12. In these facts, the demolition order, though upheld, is kept in abeyance till the regularization application is decided afresh by the respondent after considering the compoundable deviations as per annexure IV of chapter 13 of UBBL-2016 in the front and rear set-back of the society and also after considering that the ECS available is more than the ECS required as per the drawings submitted by the appellant. Let the regularization application be reopened and decided afresh in view of this discussion with opportunity of hearing to be provided to the appellant. The regularization application be decided within eight weeks after receiving the copy of this order. Till then, no demolition action be taken in pursuance to the demolition order dated 01.12.2020 and in case the regularization is again rejected for any reason, no coercive action be taken for two weeks thereafter.
13. In view of the same, both the appeals stand disposed of.

14. Record of the respondent, if any, be returned along with copy of this order and appeal files be consigned to record room.

**Announced in the open Court  
today i.e. on 07.05.2026**

**(AMIT KUMAR)  
Addl. District & Sessions Judge-cum-P.O.  
Appellate Tribunal, MCD, Delhi**