

**IN THE HIGH Court OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO.362 OF 2024

- | | | |
|--|---|---------------|
| 1. Mr. Satish Murlidhar Inamdar |] | |
| age 66 years, Occupation:- Retired |] | |
| 2. Mrs. Swapna Satish Inamdar |] | |
| age 62 years, Occupation:-Housewife |] | |
| both residing at Room No.202, 2 nd Floor, |] | |
| S.G. Barve Marg, Nehru Nagar Building, |] | |
| No.30, Prerna Building, Kurla (East), |] | |
| Mumbai - 400 024. |] | ...Appellants |

Org. Plaintiffs

V/s.

- | | | |
|--|---|--|
| 1. Mr. Amogh Sawant, |] | |
| the Sole Proprietor of M/s. Amogh Sawant |] | |
| & M/s. Adit Enterprises, age : 55 years, |] | |
| Occupation:- Business, having office address |] | |
| at 5, Suryaji Niwas, 200, Senapati Bapat |] | |
| Marg, Dadar (West), Mumbai - 400 028. |] | |
| 2. Nehru Nagar Vidyut Vilas Co-operative |] | |
| Housing Society Ltd., |] | |
| having registered office at Building No.148, |] | |
| Nehru Nagar, Kurla-III, Kurla (East), |] | |
| Mumbai 400 024. |] | |
| 3. Mr. Ramesh E. Mehetre, |] | |
| Chairman of Nehru Nagar Vidyut Vilas |] | |
| Co-operative Housing Society Ltd., |] | |
| having address at Building No.148, |] | |
| Nehru Nagar Vidyut Vila CHSL, |] | |
| Nehru Nagar, Kurla East, Mumbai 400 024. |] | |
| 4. Mr. Santosh Shinde, |] | |
| Secretary of Nehru Nagar Vidyut Vilas |] | |
| Co-operative Housing Society Ltd., |] | |
| presently residing at 16/702, Ganesh |] | |
| Krupa CHSL, Nehru Nagar, Kurla (East), |] | |
| Mumbai 400 024. |] | |

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5. M/s. Kabra Infrastructure and Developers]
LLP, 10th Floor Kamla Hub,]
JVPD Scheme, N.S. Road, Vile Parle (West),]
Mumbai 400 049.] ... Respondent/s
Org. Defendants

WITH
INTERIM APPLICATION (ST) NO.27614 OF 2025
WITH
INTERIM APPLICATION NO.8569 OF 2024
IN
APPEAL FROM ORDER NO.362 OF 2024
WITH
APPEAL FROM ORDER NO.364 OF 2024
WITH
INTERIM APPLICATION (ST) NO.27617 OF 2025
WITH
INTERIM APPLICATION NO.8570 OF 2024
IN
APPEAL FROM ORDER NO.364 OF 2024
WITH
APPEAL FROM ORDER NO.367 OF 2024
WITH
INTERIM APPLICATION (ST) NO.27621 OF 2025
WITH
INTERIM APPLICATION NO.8574 OF 2024
IN
APPEAL FROM ORDER NO.367 OF 2024
WITH
APPEAL FROM ORDER NO.366 OF 2024
WITH
INTERIM APPLICATION (ST) NO.27620 OF 2025
WITH

INTERIM APPLICATION NO.8572 OF 2024
IN
APPEAL FROM ORDER NO.366 OF 2024
WITH
APPEAL FROM ORDER NO.363 OF 2024
WITH
INTERIM APPLICATION (ST) NO.27616 OF 2025
WITH
INTERIM APPLICATION NO.9299 OF 2024
IN
APPEAL FROM ORDER NO.363 OF 2024
WITH
APPEAL FROM ORDER NO.365 OF 2024
WITH
INTERIM APPLICATION (ST) NO.27619 OF 2025
WITH
INTERIM APPLICATION NO.8571 OF 2024
IN
APPEAL FROM ORDER NO.365 OF 2024
WITH
APPEAL FROM ORDER NO.368 OF 2024
WITH
INTERIM APPLICATION (ST) NO.27623 OF 2025
WITH
INTERIM APPLICATION NO.8575 OF 2024
IN
APPEAL FROM ORDER NO.368 OF 2024
WITH
APPEAL FROM ORDER NO.369 OF 2024
WITH
INTERIM APPLICATION (ST) NO.27624 OF 2025

WITH
INTERIM APPLICATION NO.8577 OF 2024
IN
APPEAL FROM ORDER NO.369 OF 2024

Mr. Kishor Patil, a/w Mr. Abhishek Matkar, Ms. Vaishnavi Gujarathi and Mr. Sanket Dorugade for the Appellants.

Mr. Ankit Lohia, a/w Ms. Aditi Bhatt and Ms. Mamta Harwani, i/by Mr. Dhiren Shah for Respondent No.2.

Ms. Jennifer Michael, a/w Ms. Riddhi Dhamecha, i/by Ms. Neha Shah for Respondent No.5.

CORAM : KAMAL KHATA, J.
RESERVED ON : 16th October 2025.
PRONOUNCED ON : 4th November 2025.

JUDGMENT:

1. These Appeals challenge the Order dated 4th April 2024 passed by the Trial Court in Notice of Motion No. 282 of 2024 in S.C. Suit No. 98 of 2024, Notice of Motion No.229 of 2024 in S.C. Suit No.97 of 2023, Notice of Motion No.234 of 2024 in S.C. Suit No.3145 of 2023, Notice of Motion No.228 of 2024 in S.C. Suit No.101 of 2023, Notice of Motion No.233 of 2024 in S.C. Suit No.3146 of 2023, Notice of Motion No.230 of 2024 in S.C. Suit No.100 of 2023 and Notice of Motion No.232 of 2024 in S.C. Suit No.97 of 2023 whereby the Appellants' Notice of Motions seeking interim reliefs came to be dismissed. By the said Notice of Motions, the Appellants had sought an interim injunction restraining Respondent Nos. 2 to 5, from carrying out any

demolition or construction activity on the suit property without the express consent of the Appellants. The Appellants had further sought an injunction restraining the Respondents from modifying the sanctioned building plans of the under-construction building, and from selling, transferring or otherwise encumbering any of the flats in the new building proposed to be constructed on the suit property.

2. The Appellants are third-party flat purchasers in the redevelopment project initiated by Respondent No.2 - the Society - through Respondent No. 1, the erstwhile developer. The Respondent No. 2 - Society holds leasehold rights in land bearing Survey No. 229 & 267 and CTS No. 6 (part) and Mauje Kurla 'III' at Nehru Nagar, Kurla (East), Mumbai - 400024, within the Registration Sub-District of Bandra and District of Bombay City, admeasuring 739.31 square meters as per demarcation, together with a building standing thereon admeasuring 1019.47 square meters as per the conveyance deed. The suit land is leased by MHADA to Respondent No.2 under a registered Indenture of Lease dated 24th June 1991.

3. These Appeals raise the question whether third-party flat purchasers - who derive their rights through a developer whose appointment by the Society has been eventually terminated, and whose termination is confirmed by the Arbitrator - can assert or enforce any right, title or interest in the Society's property or its redevelopment project through a new developer.

4. Learned Counsel for the Appellants and Respondents submit

that these Appeals can be disposed of by a common order. Having heard the rival submissions of both Counsel and upon perusing the record, I proceed to dispose of the Appeal finally.

Whether Society qualifies as a “Promoter”:

5. The Appellants argue that since the Society, being the owner of the plot, had executed a Development Agreement with the erstwhile developer for redevelopment of its property, it therefore qualifies as a ‘Promoter’ within the meaning of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (“MOFA”).

Distinguishing previous decisions:

6. It is argued that *Vaidehi Akash Housing Private Limited*¹ is clearly distinguishable. The learned Single Judge therein was dealing with a Notice of Motion in a pending suit and made only *prima facie* observations regarding the obligations of the Society under MOFA. The Court held merely *prima facie* that there was no basis to treat the Society as a ‘Promoter’ or to foist upon it promoter-level obligations vis-a-vis the purchasers. It was also observed that, *prima facie* the purchasers had no right to seek specific performance of their individual agreements against the Society. The order, being interim in nature, did not finally adjudicate rights of the parties and was confined to the peculiar facts of that case. Moreover, in that matter, the Plaintiff developer had sold premises in excess of his

¹ 2014 SCC OnLine Bom 5068

entitlement, and the Court's *prima facie* conclusion that the society was not to be covered by the definition of 'Promoter' was limited to those excess sales.

7. It is further argued that the earlier decision in *Farhat Co-op. Hsg. Society Ltd.*² was not considered in *Vaidehi Akash* (supra). Relying on *State of Assam Vs. Barak Upatyaka D.U. Karmachari Sanstha*³, it is argued that an interim order which does not conclusively decide an issue cannot serve as a precedent. Accordingly, since that suit remains pending before the City Civil Court, Bombay reliance on *Vaidehi Akash* is misplaced.

8. The Appellants further submit that *Goregaon Pearl CHSL Vs Dr. Sema Mahadev Paryekar and Others*⁴, is distinguishable on facts. The present Appeal arises from a Notice of Motion in a suit seeking enforcement of MOFA obligations read with their respective MOUs and allotment letters. Here, the Society terminated the development rights of Respondent No.1 on 14th September 2015 and invoked arbitration, which culminated into the Final Award dated 7th November 2022. The developer's counterclaim seeking to set aside the termination was rejected by the said Award.

9. The record further reveals that the Society failed to bring to the learned Arbitrator's attention that there existed third-party purchasers with agreements or allotment letters executed in their

² (2014) 6 Mah LJ 358

³ 2009 (5) SCC 694

⁴ 2019 SCC OnLine Bom 3274

favour by the erstwhile developer, despite execution of the 2011 Supplemental Agreement acknowledging such transactions.

10. Consequently, the learned Arbitrator had no opportunity to address the issue of third-party purchasers' rights. It is also evident that the Society was fully aware that Respondent No. 1 had created third-party rights over the free-sale components based on the authority conferred under the Development Agreement.

11. The present case, therefore, stands on a distinct footing. The Plaintiffs seek construction and/or possession of the flats agreed to be allotted to them by the Respondent No.1 under their respective sale agreements, MOUs, or allotment letters. It is argued that the Society and the new developer have declined to recognize the rights created by the erstwhile developer and are reserving flats in the proposed buildings, thereby rendering the Appellants - who have invested their hard-earned money - remediless. The factual matrix in *Goregaon Pearl* (supra) is thus materially distinguishable, particularly in view of the Arbitrator's findings therein, and hence inapplicable to the present case.

12. *Deepak Prabhakar Thakoor Vs. MHADA & Ors.*⁵ is also distinguishable. Unlike that case, the Appellants herein have not challenged the IOA issued by MHADA, nor have they sought to restrain demolition. Their claims are founded on registered sale agreements, MOUs and allotment letters executed by the erstwhile

⁵ 2023 SCC OnLine Bom 2234

developer. They do not oppose the redevelopment; rather, they seek enforcement of MOFA obligations against the Respondent Nos.1, 2 and 5. Furthermore, since the present project is unregistered under RERA, the observations made in *Goregaon Pearl* would not apply.

13. Relying on the below mentioned documents it is contended that the Society was, in fact, a 'promoter' within the meaning of MOFA and that a clear privity of contract existed between the Society and the Appellants.

Documents that establish - (I) Society is a 'Promoter' in this case, and (ii) there is privity of contract with Appellants:-

Sr. No.	Particulars	Pg. Nos.
1]	D.A. dated 28/04/2008 between Society and R.1: Clauses 11 & 12 - Developer entitled to construct additional floors 5 th floor and sell units to purchasers of his choice and execute agreements, etc. ; Developer shall collect amounts from new flat purchasers towards share/entrance fees and hand over same to Society.	14 (COD)
2]	GPA dated 26/06/2008 by Society to R.1 : * Executed through Chairman Jayant Kogekar [Reply filed in N.M. and A.O, by same person, taking stand contrary to POA] * Cl.39 - R.1 to appear before Sub-Registrar to lodge deeds, agreements, Etc. in furtherance of development. * Cl.44 - "To enter into sign, execute and deliver	71 (COD) 86 (COD) 88 (COD)

	the Model Agreement for Sale of units/premises....” and “to receive the earnest money and/or full consideration...” * Cl.45 - “...authorised and empowered to lodge for registration....all such Agreement/s for sale”, and “...and to admit execution thereof...” * Cl.49 – Society ratifies and confirms all acts of Attorney.	88 (COD) 90 (COD)
3]	Supplementary Agreement dated 17/01/2011 (Regd. On 21/04/2011) :- * Cl. 11 – Developer shall collect share/entrance fees from flat purchasers and hand over same to Society. * Cl. 13 – Developer shall collect and deposit amounts from new flat purchasers towards 6 months maintenance.	113 (COD) 114 (COD)
4]	D.A. dated 04/10/2023 between R.2 and R.5 :- Cl. 7 – Any claim or demand in respect of Property or part thereof to be settled by Society at its own cost. Note: Appellants have statutory charge created over the land and the building, as per Sec.8 of MOFA [See G. Swaminathan Versus Shivram Co-operative Housing Society & ors., Writ Petition No.1869 of 1982 decided on 24/02/1983 & 25/02/1983]	226 (COD)
5]	Registered Agreements for Sale between some of the Appellants/Plaintiffs and R.1 :- * In these Agreements, R.2 Society has signed as Confirming Party;	81 (AO)

	* In view of clauses of GPA (noted above) and statement of Society Chairman recorded before E.O.W., Society cannot claim ignorance of these Agreements.	
6]	Notarized Agreements for Sale of some other Appellants :- * Even these Agreements make reference to the decision of GBM of Society and to the D.A., GPA and Supplementary Agreement. * Title Certificate annexed to these Agreements also refers to D.A. and GPA.	
7]	MOUs / Allotment Letters of some other Appellants * It is well settled that suits for enforcement of MOFA obligations based on allotment letters / unregistered agreements are maintainable [Note: Even the decision in <i>Rakhi Kamal Thakur</i> relied upon by R.2 confirms this position].	

14. *Per Contra*, it is argued - and I find merit in the submission - that the issue is no longer *res integra* and stands concluded by several judgments of this Hon'ble Court, including: –

- (i) Vaidehi Akash Housing Pvt. Ltd. versus D. N. Nagar C.H.S. Union Ltd. & Ors reported in 2014 SCC OnLine Bom 5068; [Paras 80 to 93]
- (ii) Goregaon Pearl C.H.S. Ltd. vs. Dr. Seema Mahadev Paryekar & Ors reported in 2019 SCC OnLine Bom 3724; [Paras 6 to 8]

- (iii) Deepak Prabhakar Thakoor & Ors. vs. MHADA & Ors. reported in 2023 SCC OnLine Bom 2234; [Paras 8 to 14]
- (iv) Kapilkunj C.H.S. Ltd. vs. State of Maharashtra & Ors decided on 12/13th December 2023 in Writ Petition No. 2157 of 2021; [Paras 23, 41, 42]
- (v) Rakhi Kamal Thakur vs. Rebuilt & Ors. decided on 31st August 2023 in Appeal from Order No. 534 of 2023; [Paras 15, 20, 25 to 30]
- (vi) Tuvn Constructions LLP vs. State of Maharashtra & Ors. decided on 9th September 2025 in Writ Petition No. 1673 of 2025; [Paras 12 to 16]

15. In *Vaidehi Akash* (supra), this Court expressly rejected the very contention now urged before me - that the agreements executed by the terminated developer during the subsistence of the Development Agreement bind the Society, or that the Society itself, as landowner, assumes the status of a "promoter" under MOFA, and becomes liable to third-party purchasers.

- (i) The learned Single Judge held that purchasers under agreements with the terminated developer have no privity of contract with the Society; their rights are entirely derivative of, and contingent upon, the developer's subsisting rights under the Development Agreement. Once the Society validly terminated that agreement, the developer's rights and consequently those of the purchasers - stand extinguished.
- (ii) The Court further clarified that the Society, being the landowner, could not be saddled with the statutory obligations of a "promoter" under MOFA

vis-à-vis third-party purchasers. Their remedies, if any, lie only against the erstwhile developer in damages, not against the Society or the newly appointed developer. Importantly, the Court emphasized that redevelopment projects exist primarily to secure permanent housing for Society members; any relief to third-party purchasers jeopardising this objective would be inequitable, as it would impede or defeat the members' rights to rehabilitation. [Paras 80 to 93]

16. In *Goregaon Pearl* (supra), this principle was reaffirmed even after the advent of RERA. The Court, upon comparing the definitions of "promoter" under MOFA and RERA, held that *Vaidehi Akash* continues to govern the field. RERA, though enacted to promote consumer protection and transparency, does not enlarge the liabilities of a Society as landowner vis-a-vis purchasers claiming through a terminated developer. [Paras 6 to 8]

17. The same ratio was applied consistently in *Rakhi Kamal Thakur* (supra). [Paras 15, 20, 25 to 30]

18. In *Deepak Thakoor* (supra), a Division Bench of this Court expressly upheld and confirmed the principles laid down in *Vaidehi Akash* and *Goregaon Pearl*. [Paras 8 to 14]

19. In *Kapilkunj* (supra), the Division Bench reiterated that:

- i. third-party sale agreements entered into by the erstwhile developer cannot compromise or curtail the rights of Society members;

- ii. third-party purchasers have no right, title or interest in the Society's property;
- iii. upon termination of a development agreement, any additional FSI or buildable area accrues exclusively to the Society, to meet the redevelopment costs; and
- iv. there is no privity of contract between the Society and such third-party purchasers. [Paras 23, 41, 42]

20. More recently, in *Tuvini Constructions (supra)*, a Division Bench of this Court clarified that a new developer cannot be saddled with liabilities towards allottees of the erstwhile developer. The insistence by RERA authorities on obtaining consent of such allottees for change of developer or fresh project registration was held misconceived. The Court reiterated that neither the Society nor its new developer could be treated as co-promoters in respect of purchasers claiming through the terminated developer. [Paras 12 to 16].

21. The present case stands squarely covered by the aforesaid decisions. The consistent view of this Court is that purchasers claiming through a terminated developer cannot assert or enforce any rights against the Society or the newly appointed developer. Their remedies, if any, are confined to claims for damages against the erstwhile developer.

22. In *ASF Buildtech Pvt. Ltd. v. Shapoorji Pallonji and Co. Pvt.*

*Ltd.*⁶ the Hon'ble Supreme Court clarified that where the Chief Justice or his designate actually determines an issue under the Arbitration Act, the such determination cannot be described as merely “prima facie”. Once issues are finally decided after hearing the parties, it can no longer be prima facie, but would be a decision binding in law. The judgment underscores that the arbitral tribunal cannot reopen such issues, which may only be disturbed by a competent court. These observations make clear that the use of the expression “prima facie” in a judgment does not reduce the binding effect of the decision—once the court reaches a determination, it operates as a precedent.

23. Similarly, the Division Bench of this Court in *Deepak Prabhakar Thakoor* (supra), which also dealt with third-party purchasers in a redevelopment dispute, noted that in *Vaidehi Akash* (supra) the learned Single Judge had observed that there was “prima facie no case” to treat the Society as a promoter. Nevertheless, the Division Bench held that it was in “respectful agreement with all these findings on law” and “emphatically reaffirmed *Vaidehi Akash*”. By expressly endorsing the reasoning of the Single-Judge, the Division Bench elevated those observations as binding legal principles despite the use of “prima facie” language.

24. Thus, in my view the mere use of the words “prima facie” in a judgement does not dilute its binding effect. Once a Court,

⁶ (2025) 9 SCC 76 : 2025 SCC OnLine SC 1016 at page 151

after hearing the parties, renders a determination on an issue, that decision becomes conclusive and binding and cannot be treated as tentative. This is particularly so where a Division Bench subsequently confirms the Single Judge's reasoning – as was done in *Deepak Prabhakar Thakoor* – thereby reaffirming and crystallising the principles laid down in *Vaidehi Akash* as a binding precedent.

25. The Appellants place reliance on *Farhat Co-operative Housing Society Ltd., Mumbai Vs. Malkani Enterprises, Mumbai and Others*⁷, to contend that where a Society, acting as owner, undertakes and completes construction through a developer, such an owner would fall within the ambit of a 'Promoter' as defined in Section 2(c) of MOFA.

26. It is contended that the Respondent No.2 – the Society – executed the Development Agreement with the builder who had not only commenced but also completed considerable construction on the property thereby attracting the definition of 'Promoter'.

27. I however find merit in the Respondent's contention that, *Farhat CHS* (supra) dealt with a challenge to an order of unilateral deemed conveyance granted by the Competent Authority under MOFA in favour of a flat purchasers' society, against the landowners and the developer who had jointly developed a building and sold flats under MOFA agreements. [Para 23, 26]. It was in that specific context that the Court held both landowners and the developer to be

⁷ (2014) 6 Mah LJ 358.

"promoters" and liable to convey the building to the society. The ratio of Farhat thus turns on deemed conveyance under MOFA and does not apply to the present redevelopment context.

Authority to the Developer:

28. The Appellants then place reliance on *Ramnislal Tulsidas Kotak Vs. Varsha Builders & Ors.*⁸, particularly paragraphs 16 and 17, to contend that the irrevocable Power of Attorney executed by the Society in favour of developer (Respondent No.1) expressly authorized the latter to collect monies from the flat purchasers on behalf of the Society, evidenced by the Society's signature as a confirming party to certain sale agreements. It is further contended that the object of the MOFA is to protect flat purchasers and to curb malpractices. The decision interpreted the term 'promoter' to include the owner of the land and held that if a promoter is merely a developer under an agreement, the owner must be made a confirming party to bind him to the transactions with flat purchasers and secure the flat purchaser. Under the scheme of MOFA, where the promoter develops the land as agent of the owner, such agency must be irrevocable. On this basis, it is contended that Respondent No.2-Society is deemed to fall within the definition of 'promoter' and is bound by the obligations cast upon the erstwhile developer.

29. The argument is repelled by the Respondents and I find merit in their contention that this case dealt with four questions of law

⁸ 1993 (1) Mh.L.J 323 : AIR 1992 Bombay 62

pertaining to the issuance of title certificates by solicitors. [Paras 18, 22, 23, 27]. Any general observations made regarding MOFA are obiter dicta and do not constitute binding ratio. In fact, *Ramnislal* was specifically considered and distinguished by this Court in *Goregaon Pearl* (supra). [Para 7]. Even the observations in Para 17 relied upon by the Appellants are inapplicable because:

(a) The Society was not a party to the alleged sale agreement executed between the Appellants and Respondent No. 1. Respondent No. 1 signed the agreement as constituted attorney of Respondent No. 2 [Pg. 84 of AO] A copy of the alleged Power of Attorney is not even annexed to the agreement annexed to the Plaint.

(b) The Power of Attorney to development and did not authorise sale on behalf of the No. 1 was limited to Respondent No. 2 [clause 12 @ Pg. 14 of DA]. The sale by Respondent No. 1 was on his own account.

(c) The alleged sale agreement itself stipulates that in case of disputes, responsibility would rest solely with Respondent No. 1 [clause 24 @ Pg. 80]. This aligns with the Development Agreement (since terminated), which contained an indemnity clause requiring Respondent No. 1 to indemnify Respondent No. 2 against claims by persons claiming through Respondent No. 1 [clause 18 @ Pg. 17 of DA].

(d) The power of sale given under the Power of Attorney executed by the Respondent No. 2 in favour of Respondent No. 1 was to facilitate the redevelopment process. The Respondent No. 1 was not authorised to make sales on behalf of Respondent No. 2. Respondent No. 1 was selling free sale component flats on his own

account. This is clear from a perusal of the DA and PoA read together.

Interim Orders whether binding precedents:

30. The Appellants place reliance on *State of Assam Vs. Barak Upatyaka D.U. Karmachari Sanstha*,⁹ to contend that the Hon'ble Supreme Court held that interim orders passed in a Writ Petitions under Article 32 do not constitute final decisions or binding precedents. Paragraph 10 of that judgement clarifies that reasons assigned in non-final interim orders containing prima facie findings are only tentative and confined to peculiar facts of those cases. On this basis, it is contended that the observations in *Vaidehi Akash Housing Private Ltd. Vs. New D.N. Nagar Co-operative Housing Society Union Ltd. & Ors.*¹⁰ cannot be treated as an authoritative pronouncement laying down the law, since those observations were rendered in the peculiar factual matrix of that case.

31. I agree with the Respondents contention that *Barak Upatyaka* (supra) arose from a Writ Petition seeking release of grant-in-aid sanctioned by the State of Assam. [Para 2]. The observations in paragraphs 9 and 10, relied upon by the Appellants, were made in the context of two Article 32 matters involving interim directions of the Supreme Court, which themselves expressly clarified that they did not lay down binding law. The reliance placed on this decision is therefore misplaced. The contention that *Vaidehi Akash* (supra) is

⁹ 2009 (5) SCC 694.

¹⁰ (2015) 3 AIR Bom R 270.

not binding merely because it arose out of an interim application is misconceived. The present proceedings too arise from an order rejecting interim relief in a Notice of Motion. Accordingly, the ratio of *Vaidehi Akash* – which directly addresses the rights of purchasers claiming through a terminated developer - applies with equal force to the present case.

Agent's Interest in subject matter:

32. The Appellants next rely on *Amar Nath Vs. Gian Chand and Anr.*¹¹, wherein the Hon'ble Supreme Court examined Sections 201, 202 and 208 of the Indian Contract Act, 1872, and held that Section 202 carves out an exception to the general rule in Section 201 – namely, that where an agent has an interest in the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of that interest, and is therefore irrevocable. The Court further held that the termination of an agent's authority does not take effect vis-à-vis third parties until they have knowledge of such termination.

33. On the strength of this decision, it is contended that the agreements, MOUs, and allotment letters in favour of the Appellants were executed when the Development Agreement and POA were subsisting and binding. It is submitted that these transactions were entered into after execution of Supplemental Agreement between the Respondent Nos.1 and 2, the recitals of which clearly indicate that

¹¹ 2022 INSC 106.

Respondent No.2-Society was aware that Respondent No.1 had sold flats in the free-sale component to third-party purchasers. Accordingly, it is urged that Respondent No.2-Society must be held to have ratified the acts of the developer in entering into transactions with the Appellants, and is consequently liable as a 'Promoter' vis-à-vis the Appellants.

34. I find merit in the Respondents submission that the facts in *Amar Nath* are wholly distinct: it involved a fraudulent sale by a power of attorney holder acting after revocation of the Power of Attorney, to the knowledge of the buyer. [Para 2 @ Pg. 72] In contrast, the alleged sale transaction here between the Appellants and Respondent No. 1 was independent; Respondent No. 1 did not act as agent of Respondent No. 2 nor was the alleged sale in favour of the Appellant made on behalf of the Respondent No. 2. Hence, the ratio of *Amar Nath* is inapplicable.

35. Furthermore, any rights of the Appellants are necessarily subject to the contractual arrangement between Respondents No. 1 and 2, of which the Appellant had full knowledge, which has been validly terminated by Award dated 7th November 2022. By virtue of Section 35 of the Arbitration and Conciliation Act, 1996, the said Award is binding on the Appellants, who claim through Respondent No. 1.

Enforcement of Statutory obligations on basis of unregistered documents:

36. The Appellants further rely upon *C. Radhakrishnan Vs. Richa Construction & Associates & Anr.*¹², wherein this Court held that a Suit for enforcement of statutory obligations under Sections 4 and 4A of the MOFA is maintainable even on the basis of unregistered agreement for sale, it is submitted that the Respondent No.1 had not executed the registered agreements with certain Appellants despite having received the full or substantial part of consideration. These Appellants, therefore, were entitled to seek enforcement of their unregistered agreements, MOUs, or allotment letters.

37. I find merit with the Respondents' submissions that the facts of *C. Radhakrishnan* bear no resemblance to the present case. In that matter, there was no dispute between the developer and the society, and it does not appear that the project was one of redevelopment project. The only issue before the Court was whether a third-party purchaser had established an agreement to sell with the developer and could seek a mandatory injunction against the developer for compliance with MOFA obligations. That judgment, therefore, has no bearing on the present redevelopment dispute where the redevelopment agreement between Respondent No. 1 and 2 has been validly terminated, and such termination has been upheld by an Arbitral Award.

38. The authorities cited by the Appellants arise in entirely distinct factual and legal contexts and do not advance their case. None of

¹² Judgment dated 16th January 2020 in First Appeal No.514 of 2014.

these decisions dilute the settled position that third-party purchasers claiming through a terminated developer have no enforceable rights against the Society or its new developer.

39. In my view, the judgment in the case of *Deepak Prabhakar Thakoor (supra)* conclusively determined the issue. The Division Bench, while considering the challenges raised by third-party purchasers asserting rights created by a terminated developer, specifically referred to paragraphs 80 to 93 of *Vaidehi Akash*. The Division Bench observed that these paragraphs “speak eloquently” to the determination of the issue and held itself in complete and emphatic agreement with all findings of law recorded therein.

40. It follows that Appellants who hold allotment letters, MOUs, registered or unregistered agreements cannot assert an independent claim against the Society or anyone claiming through it once the rights of the prior developer have been lawfully terminated under the Development Agreement.

41. I find that the impugned order is well-reasoned and cogently articulated. It suffers from no perversity or legal infirmity warranting an interference at this stage.

42. For the reasons aforesaid, the Appeals from Order stand dismissed, with no order as to costs.

43. The accompanying interlocutory applications also stand dismissed.

44. The learned counsel for the Appellants requests continuation of interim protection granted vide a order dated 7th May 2024 for a period of six weeks. In view of the Respondent-Society members rights being severely affected since more than a year by the protection granted in favour of the Appellants, the request is rejected.

(KAMAL KHATA, J.)

Cases Referred:

1. Vaidehi Akash Housing Pvt. Ltd. versus D. N. Nagar C.H.S. Union Ltd. & Ors 2014 SCC OnLine Bom 5068
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6. Kapilkunj C.H.S. Ltd. vs. State of Maharashtra & Ors decided on 12/13th December 2023 in Writ Petition No. 2157 of 2021
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