

AGK

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

WRIT PETITION NO. 64 OF 2014

- 1. Ornet Park-D Wing Sahakari Gruh
Rachana Sanstha Maryadit,
Balavantpuram, Shivrith Nagar,
Poudroad, Kothrud, Pune -411 038
Through its Secretary
Shri. Shirish C. Joshi, Age adult
Occu.: Business R/o As above** ... **Petitioner**

V/s.

- 1. Balwantpuram Shefalika Heights,
Sahakari Gruha Rachana Sanstha
Maryadit, Shivrith Nagar, Kothrud,
Pune, Through its Chairman/Secretary**
- 2. District Deputy Registrar,
Having office at Pune**
- 3. M/s. Pethkar Projects,
Having its office at Shanivar Peth,
Appa Balwant Chowk,
Pune 400 030** ... **Respondents**

WITH

WRIT PETITION NO. 8953 OF 2015

- 1. Pethkar Projects
having office at S No.117+118,
Plot No. 21-B, Madhavnaug,
Paud Road, Kothrud, Pune- 411038**
- 2. Kumudini Chandrakant Pethkar
Adult, Occ: Business, Having office at
S. No.117+118, Plot No.21-B,
Madhavnaug, Paud Road,
Kothrud, Pune-411038.** ... **Petitioners**

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V/s.

1. **Balwantpuram Samrajya Sahakari
Gruha Rachana Sanstha Maryadit,**
S. No.110/1/A, Shivrith Nagar,
Kothrud, Pune - 411038

2. **District Deputy Registrar,**
Having office at Pune

... Respondents

**WITH
CIVIL APPLICATION NO. 388 OF 2019
IN
WRIT PETITION NO.8953 OF 2015**

**Balwantpuram Samrajya L6 (H, I, J, K)
Coop. Housing Society Limited,**
S. No.110/1/A, Shivrith Nagar,
Kothrud, Pune – 411038

through it's Chairman/Secretary

... Applicant

In the matter between

1. **Pethkar Projects**
having office at S No.117+118,
Plot No. 21-B, Madhavnaug,
Paud Road, Kothrud, Pune- 411038
2. **Kumudini Chandrakant Pethkar**
Adult, Occ: Business, Having office at
S No.117+118, Plot No.21-B,
Madhavnaug, Paud Road,
Kothrud, Pune-411038.

... Petitioners

V/s

1. **Balwantpuram Samrajya Sahakari
Gruha Rachana Sanstha Maryadit,**
S. No.110/1/A, Shivrith Nagar,
Kothrud, Pune – 411038

2. **District Deputy Registrar,**
Having office at Pune

... Respondents

**WITH
WRIT PETITION NO. 10210 OF 2013**

1. Pethkar Projects

having office at 538 b/3 Shanivar Peth,
Appa Balwant Chowk, Pune-400 030

2. Kumudini Chandrakant Pethkar

Adult, Occ: Business, Having office at
538 b/3, Shanivar Peth,
Appa Balwant Chowk, Pune 400 030

... **Petitioners**

V/s.

1. Balwantpuram Shefalika Heights,

Sahakari Gruha Rachana Sanstha

Maryadit, Shivrth Nagar, Kothrud,

Pune, Through its Chairman/Secretary

2. District Deputy Registrar,

Having office at Co-operative Societies

Sakhar Sakul, Shivaji Nagar,

Pune- 411005

... **Respondents**

Mr. S. S. Patwardhan with Mr. A. A. Hardas with Mr. A. S. Patwardhan, for Petitioners in WP/8953/2015 and WP/10210/2013 & for respondent No.3 in WP/64/2014.

Mr. Ajay A. Joshi for the petitioner in WP/64/2014.

Mr. Nitin P. Deshpande, for Respondent no. 1 in WP/8953/2015 and WP/10210/2013 & WP/64/2014.

Ms. Snehal Jadhav, AGP for State-Respondent no. 2 in WP/8953/2015.

Mr. Alok Nadkarni, AGP for State-Respondent no. 2 in WP/10210/2013.

Dr. Dhruvi Kapadia, AGP for State-respondent no. 2 in WP/64/2014.

CORAM : AMIT BORKAR, J.

RESERVED ON : MARCH 23, 2026

PRONOUNCED ON : APRIL 18, 2026

JUDGMENT:

1. By the present writ petitions instituted under Articles 226 and 227 of the Constitution of India, the petitioners have assailed the order dated 27 February 2015 passed by Respondent No. 2 in Writ Petition No. 8953 of 2015 and the order dated 14 October 2013 passed by Respondent No. 2 in Writ Petition No. 10210 of 2013.

2. In Writ Petition No.64 of 2014, the petitioner society , by way of the present petition filed under Articles 226 and 227 of the Constitution of India, has assailed the Judgment and Order dated 14 October 2013 passed by Respondent No. 2 under Section 11 of the Maharashtra Ownership Flats Act, 1963 in Application No. 174 of 2013.

3. The facts giving rise to the present petitions, in brief, are that Respondent No. 1 came to be registered as a Co-operative Society on 17 May 2012. It is the case that thereafter the petitioners, being the builders/promoters, failed and neglected to execute conveyance in favour of the said Society on the purported ground that they intended to complete the entire project, constitute a Federal/Apex Society of all smaller societies, and thereafter transfer the title in favour of such Apex Society. It is contended that the concept of conveying title to an Apex Society upon

completion of the entire project and all its phases is not contemplated either under the provisions of the Maharashtra Ownership of Flats Act, 1963 or under Maharashtra Act No. 4 of 2008 once the Society of flat purchasers stands duly registered. It is further contended that the period within which conveyance is required to be executed is specifically prescribed under Rule 9 of the MOFA Rules and the same cannot be extended under any circumstances, much less at the instance of the promoter. It is further the case that Respondent No. 2 Society had, on several occasions, called upon the petitioners to execute conveyance of the property in its favour. Communications in that regard were addressed to the petitioners/promoters on 16 September 2012, 4 October 2012, 14 October 2012, 14 September 2013, 12 January 2014, 23 January 2014, 12 February 2014 and 12 April 2014. In response thereto, the petitioners are stated to have repeatedly assured the Society that the Conveyance Deed would be executed, as reflected from their letters dated 22 February 2013, 12 March 2013 and 9 February 2014. It is contended that at no point of time did the petitioners assert that conveyance would not be executed unless the entire project was completed. The Society is stated to have extended full co-operation by furnishing all requisite documents demanded by the petitioners. Further, in joint meetings held between the Managing Committee of the Society and the partner of the petitioners in April 2013, on 26 October 2013 and on 14 December 2013, the petitioners allegedly reiterated their assurance to execute conveyance in favour of the Society. It is further contended that the sanctioned layout plan and brochure

clearly demonstrate that the Respondent Society constitutes an independent unit having separate amenities, independent access and distinct facilities of its own. It is on the basis of such material that the competent authority is stated to have allowed the application preferred by Respondent No. 1.

4. Elaborating further, learned counsel submitted that Clause 16 of the agreement specifically contemplates common facilities for all buildings within the project and, therefore, the same necessarily presupposes that such facilities are to be enjoyed jointly by all constituent buildings. It was contended that the authorities failed to appreciate that facilities such as gutters, sewerage lines, electrical cabling, gardens, internal roads and open parking spaces are common amenities meant not merely for Building No. L-6, but for all buildings constructed within the layout. In such circumstances, according to the petitioners, subdivision of the common amenities and open spaces is impermissible. Reliance was also placed upon Clause 17 at page 11 and Clause 32 at page 16 of the agreement between the parties to submit that Respondent No. 2 ought to have rejected the application filed by Respondent No. 1. It was argued that the recitals contained in the agreement clearly indicate that a Federal Society/Apex Body was intended to be formed for management of common facilities, though the same has not yet been constituted. Consequently, the application filed by Respondent No. 1 was premature and ought not to have been entertained. It was further submitted that Respondent No. 2 failed to appreciate that the common facilities and common open spaces pertain to the entire

sanctioned layout and are not restricted only to Building No. L-6. It was lastly contended that the certificate relied upon by Respondent No. 1 ought not to have been accepted by Respondent No. 2, as the same contains factual inaccuracies and is based on an outdated layout dated 12 July 2006, whereas the final revised layout sanctioned on 30 October 2010 ought to have been considered. On that basis also, it was contended that the application deserved rejection. Learned counsel further submitted that in view of the aforesaid contractual stipulations, the certificate issued by Unison Architects could not have been relied upon, as the same fails to take into consideration several mandatory and relevant aspects. It was contended that the sanctioned layout of the entire project is subject to revision from time to time depending upon developmental requirements, changes in applicable laws, rules, regulations, and variations in FSI/FAR/TDR available to the builder till completion of the project. According to him, the latest revised sanctioned layout for Balwantpuram is layout bearing No. CC/2549/2010 dated 30 October 2010, whereas the applicant has annexed an earlier layout bearing No. 3207/2006 dated 7 December 2006. It was submitted that the certificate issued by the said Architect does not disclose the sanctioned layout or building permissions relied upon while calculating the area mentioned therein, particularly the proportionate area proposed to be conveyed to the applicant society. It was further submitted that the certificate is unsupported by any affidavit of the Architect explaining the basis thereof, nor does it enclose copies of documents relied upon for preparation of the certificate. It was

additionally contended that the certificate does not disclose whether the Architect had verified if the entire project under the sanctioned layout had been completed, despite the Architect being fully aware that multiple societies exist on the same layout. According to the petitioners, unless the entire project is completed, proportionate plot area attributable to any one building or scheme cannot be accurately calculated, and therefore the certificate issued by Unison Architects is erroneous, illegal and incapable of being relied upon. It was thus contended that the area proposed to be conveyed, namely 14,935.49 square metres, is incorrect and incapable of ascertainment at this stage. It was further argued that no open space beyond the land beneath the applicant's building can be conveyed, since the same forms part of the entire Balwantpuram project and the applicant society and its members possess merely a right of access thereto. Learned counsel submitted that the applicant society was fully aware of all revised sanctioned plans, as copies thereof were supplied at the time of formation of the society. Despite this, the applicant failed to obtain certification from the project architect and instead procured a certificate from an outside architect with mala fide intent in support of its allegedly untenable claim. It was therefore contended that deemed conveyance could not have been granted on the basis of such certificate.

5. In Writ Petition No. 10210 of 2013 Petitioner submitted that the total plot area of the larger layout measures 1,37,510 square metres, out of which the net plot area is 97,322 square metres. It was further submitted that the total permissible FSI available is

1,19,156 square metres, the permissible Transferable Development Rights admeasure 62,707.60 square metres, and the total FSI potential of the plot aggregates to 1,81,863.60 square metres. He submitted that the built-up area of Shefalika Heights is 13,226.81 square metres, whereas the ground coverage area beneath the buildings comprising Shefalika Heights measures 3,311.22 square metres. He further submitted that various commencement certificates and occupancy/completion certificates were issued in respect of the several buildings forming part of the larger project. In that regard, it was pointed out that Building Nos. L-1 and L-2 comprising Wings C, D and E received Commencement Certificates bearing Nos. CC/6551 dated 11 August 2000 and CC/5348 dated 3 December 2002, and Completion Certificate No. BCO/231 dated 18 January 2003. Likewise, Building No. L-3 comprising Wings A and B received Commencement Certificates bearing Nos. CC/6705 dated 10 May 2000, CC/5657 dated 29 March 2001 and CC/5349 dated 4 December 2002, along with Occupancy Completion Certificate No. BCO/230 dated 18 January 2003. Similar approvals and certificates were also issued for Building No. L-4, Building A-7, Building M and Building B-1, details whereof have been set out to demonstrate that construction and occupation of various buildings within the project has taken place over a substantial period of time.

6. Mr. Joshi, learned counsel appearing for the petitioner in Writ Petition No. 64 of 2014, submits that Respondent No. 2 has committed a manifest error in failing to properly appreciate the terms and conditions of the agreement executed by Respondent

No. 3 in favour of Respondent No. 1, which, according to him, clearly records that there exists a single sanctioned layout governing the entire Balwantpuram project. He submits that the agreements executed by Respondent No. 3 both in favour of the petitioner and Respondent No. 1 specifically provide that the common areas including roads, parking spaces, open grounds, and other common amenities are to remain common and available for the benefit of all societies within the project. On the strength of the said stipulations, it is contended that Respondent No. 1 is not legally entitled to secure exclusive deemed conveyance in respect of such common areas in its individual favour. He further submits that Respondent No. 1 Society has already erected fencing surrounding its buildings and that the petitioner has been informed that Ornate Park Society is also desirous of obtaining a similar order of deemed conveyance. According to him, if such conveyances are permitted in favour of the individual societies, the petitioner-society would effectively become landlocked and would be deprived of lawful access to the property as a matter of right. It is further contended that since development of original Plot No. 101/1/A was undertaken in a phased manner, the common amenities, open spaces, and internal roads forming part of the larger layout cannot be conveyed exclusively in favour of Respondent No. 1 alone. Learned counsel further submits that Respondent No. 2 has failed to consider that the total area beneath the structures of Respondent No. 1 Society is only 3,529.61 square metres and, therefore, Respondent No. 1 is not entitled to claim any area in excess thereof as sought in its application and as

ultimately granted by Respondent No. 2.

7. Per contra, Mr. Deshpande, learned counsel appearing for Respondent No. 1, submitted that the stand of the petitioners that conveyance would be executed only in favour of an Apex Society to be formed upon completion of the entire project is contrary to Clauses (1) to (5), (8) to (13) and (22) of the prescribed Model Form Agreement, which clauses are mandatory in nature. He submitted that under the Model Agreement, conveyance is required to be executed within a period of four months, which is in consonance with Rule 9 of the MOFA Rules. It was further contended that in terms of Section 6(v) of Maharashtra Act No. IV of 2008, if any dispute exists regarding the area liable to be conveyed, the same is capable of resolution by the Sub-Registrar competent to register the conveyance. It was submitted that at the time of registration of the society, the builder/promoter is required to disclose the area to be occupied by the society and, therefore, once such disclosure is made, no dispute ought to survive regarding the area to be conveyed. Learned counsel further submitted that the Competent Authority, while exercising powers under Section 11(4) of MOFA, has issued a certificate of deemed conveyance in favour of Respondent No. 1 Society granting conveyance of a specified area of land carved out on the basis of a recognised formula, together with proportionate share in common amenities available on the layout and built-up area admeasuring 13,226.81 square metres. It was submitted that there is no dispute regarding the built-up area, as the same figure is reflected in the certificates issued by both the Architect appointed by the Society

and the Architect engaged by the builder. According to him, the Competent Authority has correctly taken into account the area of common amenities, and the marginal variation therein arises solely due to discrepancies in the certificate furnished by the builder's Architect. It was submitted that the Competent Authority has assessed the proportionate share of the Society in the total layout land on the basis of the formula, namely: $\text{Total Built-up Area} / \text{Total Sanctioned Area} \times \text{Net Plot Area} = \text{Proportionate Area of Society}$. Applying the said formula to the relevant figures, it was submitted that the proportionate area of the Society comes to 11,349.86 square metres.

8. It was submitted that the Competent Authority, in Clause 3 at page 2 of the order granting deemed conveyance, has duly considered the figures relating to amenities, open spaces and other relevant areas in a manner consistent with the aforesaid formula. Hence, according to Respondent No. 1, no error whatsoever can be attributed to the Competent Authority in assessing the area incorporated in the certificate of deemed conveyance. Learned counsel further submitted that presently six housing societies have been formed and are functioning on the said layout in phases between the years 2002 and 2012. It was pointed out that one such society, namely Ornate Park CHS Ltd., had filed Consumer Complaint No. 98 of 2004 before the District Consumer Forum, Pune and had obtained an order directing conveyance against the builder, which order has attained finality and remains unchallenged. It was further stated that execution proceedings initiated at the behest of the said society are presently pending. It

was also submitted that another society on the same layout, namely Balwantpuram Samrajya CHS Ltd. (L-6), had similarly filed proceedings under Section 11 of MOFA before the Competent Authority, which application was allowed, and pursuant thereto a conveyance deed was executed in favour of the said society on 30 June 2015.

9. Learned counsel submitted that construction on the said layout commenced in or about 1998–1999 and, since then, the builder has sold flats and caused formation of six housing societies, all of which are presently functioning. It was contended that despite lapse of more than nineteen years, the builder asserts that construction of the entire layout remains incomplete. According to Respondent No. 1, no construction activity has taken place after the year 2007 and no development is presently underway. It was submitted that if the builder's contention is accepted, the project may take several further decades to be completed, thereby frustrating the very object underlying Section 11 of MOFA. It was thus contended that the plea of postponing conveyance until completion of the entire layout and constitution of an Apex Body is merely a pretext adopted to deprive Respondent No. 1 Society of its lawful entitlement to conveyance.

10. Learned counsel further submitted that Government Resolution dated 22 June 2018 issued by the Co-operation Department, State of Maharashtra, squarely applies to the facts of the present case. It was contended that the said Government Resolution takes into consideration twelve earlier Government Resolutions on the subject of deemed conveyance and, as

explained in paragraph 2 Clause VI(1) thereof, was specifically issued to address situations where the entire project is incomplete but certain buildings therein have been completed and occupied by flat purchasers. Since the petitioners themselves have admitted in the affidavit in rejoinder that the project remains incomplete, it was submitted that the said Government Resolution is directly applicable. It was further contended that the same is in consonance with the object and purpose of MOFA.

11. In Writ Petition No.8953 of 2015 Society submitted that the layout plan sanctioned by the Pune Municipal Corporation vide Commencement Certificate No. CC/4169/10 dated 14 March 2011 formed the basis for grant of deemed conveyance in favour of the respondent society in the year 2015 under Section 11 read with Rule 9 of MOFA. It was submitted that all area calculations and entitlements were determined strictly in accordance with the sanctioned plan. He further submitted that the deemed conveyance certificate dated 27 February 2015 culminated in registration of the deemed conveyance deed on 30 June 2015. As per the sanctioned plan, the total plot area admeasures 1,37,510 square metres; the ground coverage area of the society is 1,799.51 square metres; the built-up area of Balwantpuram Samrajya L-6 (H, I, J, K) CHS is 17,363.39 square metres; the common open space area is 12,236 square metres; the common amenity area is 6,118 square metres; and construction, if any, on total open space covers 1,835.40 square metres. It was further submitted that the Competent Authority, after due verification of all relevant records and documents, was pleased to register the deemed conveyance by

determining the proportionate plot area transferred to the Society as 14,935.49 square metres, calculated on the basis of the prescribed formula. The built-up area of the Society was accordingly taken as 17,363.39 square metres.

12. Learned counsel additionally submitted that the petitioners have not undertaken any development on the said layout since the year 2011. In such circumstances, the respondent society cannot be compelled to wait indefinitely for completion of the entire project. It was urged that the statutory right of conveyance cannot be made contingent upon uncertain and delayed future development at the discretion of the builder.

13. In Writ Petition No.10210 of 2013 society submitted that the layout plan sanctioned by the Pune Municipal Corporation vide Approval No. 0862/06 dated 5 June 2006 formed the basis for grant of deemed conveyance in favour of the respondent society by order dated 14 October 2013 issued under Section 11 read with Rule 9 of MOFA. It was submitted that all area calculations and entitlements were determined strictly in accordance with the sanctioned plan.

14. He submitted that as per the sanctioned plan, the total net layout area measures 1,02,247.25 square metres, the total sanctioned area is 1,19,156 square metres, and the built-up area of Shefalika Heights is 13,226.81 square metres. It was further submitted that the Competent Authority, after due verification of all relevant documents and records, granted deemed conveyance in favour of the respondent society by determining land area of

11,349.86 square metres on proportionate basis by applying the formula $13,226.81 \times 1,02,247.25 / 1,19,156 = 11,349.86$. It was also determined that the proportionate undivided share area amounts to 20,112.75 square metres corresponding to the built-up area of the society. It was lastly submitted that the petitioners have not carried out any development on the said layout since the year 2010. Therefore, the respondent society cannot reasonably be expected to wait indefinitely for completion of the entire project. It was further submitted that the respondent society, being merely one of the several societies situated within the larger layout, does not possess access to all records pertaining to the entire development and is, therefore, not in a position to furnish the same.

REASONS AND ANALYSIS:

15. I have bestowed consideration to the rival submissions canvassed by the learned counsel appearing for the respective parties. The controversy involves adjudication in the backdrop of the statutory obligations imposed upon the promoter under the scheme of MOFA, the contractual documents executed inter se between the parties, the sanctioned layout plans governing the development, and the limitations governing the exercise of supervisory jurisdiction by this Court under Articles 226 and 227 of the Constitution of India.

16. The first submission advanced on behalf of the petitioners is until the final phase of the entire project reaches completion, no

society can demand conveyance of its proportionate land or rights therein. However, I am unable to accept the aforesaid submission urged by the petitioners. The statutory scheme under the Maharashtra Ownership Flats Act does not permit a promoter to indefinitely postpone or defer his statutory obligation of conveyance merely because certain other phases or portions of a development remain yet to be constructed. The statutory duty cast upon the promoter is mandatory and cannot be made contingent upon the developmental schedule of the promoter. The obligation to convey is not left to the discretion of the builder. Once a co-operative housing society stands duly registered and the building in question is complete and occupied by the flat purchasers, the promoter becomes duty-bound in law to execute conveyance of the land and building, along with the proportionate undivided rights and interests appurtenant thereto, within four months from the date of registration. To permit the promoter to indefinitely retain title until completion of the entire project would amount to permitting the promoter to frustrate the legislative intent underlying MOFA. The very object and purpose of the enactment is to secure and protect flat purchasers from unreasonable delay, uncertainty, and withholding of title documents by promoters after sale and possession of flats. Therefore, the proposition advanced by the petitioners, though perhaps commercially convenient from the promoter's standpoint, runs contrary to the legislative object and spirit of the enactment.

17. This court in similar facts in case of *One Astoria Cooperative Housing Society Federation Limited Versus Peninsula*

Land Limited and Others 2026 SCC OnLine Bom 2059 held as under:

“24. On completeness and prematurity. The issue raised by the promoter that the project is incomplete and therefore conveyance should wait needs careful examination. The principles laid down in the decision in *Flagship Infrastructure (P) Ltd.v.competent authority* 2025 SCC OnLine Bom 1240 provide clear guidance. That judgment dealt with a similar situation where the promoter attempted to postpone conveyance by linking it to future development. The same pattern appears in the present case. When those principles are applied to the facts on record, the legal position becomes straightforward and leaves little room for doubt.

25. The first aspect concerns the reasoning found in para 32 of the said decision. In that case, as in the present one, the promoter relied on future completion of the larger project to justify delay. Here also, the promoter says that since some part of the project or future development remains, conveyance cannot be granted at this stage. This argument does not withstand scrutiny. Rule 9 of the MOFA Rules imposes a clear obligation. Once a cooperative society is registered, the promoter must execute conveyance within four months unless a definite and specific alternative period is agreed. The law does not recognise vague or uncertain events as valid reasons for postponement. Completion of future phases, revised layouts or proposed developments are uncertain matters. They depend on approvals, finances and decisions that flat purchasers cannot control. Therefore, such events cannot become conditions for delaying conveyance. The respondents' submission, if accepted, would defeat the statutory scheme itself.

26. The second aspect flows from para 33 of the judgment, which explains the object behind Rule 9. MOFA is a welfare

legislation. Its purpose is to protect flat purchasers who invest their savings in homes and expect secure ownership. The timeline in Rule 9 is a safeguard created to prevent promoters from retaining control over land and common areas long after flats are sold. In the present case, occupation certificates have been issued. Purchasers are residing in their flats for several years. Societies have been formed. If conveyance is still postponed merely because some future development is proposed, purchasers would remain without clear title despite having fulfilled all obligations. Such a situation would bring back the very uncertainty that MOFA seeks to remove. Therefore, the Act must be interpreted in a way that ensures certainty of ownership rather than prolonging uncertainty.

27. The third aspect arises from para 34 of the judgment, which interprets the word “period” in Rule 9. The word has been understood in its ordinary meaning, that is, a fixed and definite block of time. It cannot mean an open ended event. In the present matter, the promoter's argument converts a fixed statutory timeline into condition dependent on future development. If such an interpretation is accepted, there would be no real deadline at all. The promoter could continue to hold title for years by merely showing that some portion of development remains. Courts cannot permit such a reading because it would amount to rewriting the statute and undermining legislative intent.

28. The fourth aspect is equally important. The reasoning in *Flagship Infrastructure* makes it clear that private arrangements or clauses in agreements cannot override statutory obligations under MOFA. Even if any agreement suggests that conveyance will be postponed till completion of the entire township, such a clause cannot prevail over Rule 9. Statutory duties are mandatory and cannot be diluted by contractual terms. The relationship between promoter and flat purchaser is governed by the statute, and the promoter

cannot contract out of those obligations. Therefore, reliance on future development proposals or private clauses cannot justify refusal to execute conveyance or refusal to issue a certificate under Section 11(4)

29. The fifth aspect concerns application of these principles to the present facts. The project consists of multiple completed buildings. Occupation and completion certificates exist. Cooperative societies have been formed. Purchasers are in possession. The promoter did not execute conveyance within the statutory period. In these circumstances, the petitioners were fully justified in invoking Section 11(3) and seeking issuance of certificate under Section 11(4). The objection that the project is incomplete or that future development is contemplated cannot legally defeat their entitlement. Completion of the entire township is not a precondition recognised by law.

30. The sixth aspect relates to common areas. This dispute also becomes clear once the above principles are applied. If promoters are permitted to delay conveyance on the ground of future development, they would continue to retain control over common spaces indefinitely. That would defeat the rights of flat purchasers. Common areas shown in the sanctioned plan form part of the rights sold to purchasers. These areas must pass to the societies along with conveyance. Future development cannot be used as a reason to keep those areas outside the conveyance. At the same time, the law recognises that future development may proceed on portions specifically earmarked for that purpose in the sanctioned plan. Such development, however, cannot disturb or reduce common areas already promised and shown in the approved layout.”

18. In view of the aforesaid settled legal position and the pronouncements of Coordinate Benches of this Court, the objection of the petitioners that the applications for deemed conveyance

were premature because the larger project remains incomplete deserves rejection. Once the society stands registered, the building is complete and occupied, and the promoter has failed to execute conveyance within the period contemplated under law, the society acquires statutory entitlement to seek deemed conveyance. The promoter cannot defeat such right by merely pointing to future developmental intentions, incomplete construction, or proposed formation of an apex body at some uncertain future point of time.

19. Considerable argument was advanced on behalf of the petitioners regarding the architect's certificate relied upon by the respondent societies and the alleged errors contained in the calculations therein. The petitioners contend that the said certificate is defective inasmuch as it allegedly refers to an outdated layout, fails to adequately disclose the basis of calculations adopted therein, and does not sufficiently account for revisions in the sanctioned development plan. It is further contended that the figures of the area proposed to be conveyed are inaccurate and that the Competent Authority ought not to have acted upon such certificate while granting deemed conveyance.

20. In my considered opinion, these objections partake the character of factual disputes regarding measurement, technical calculations, and quantitative assessment of area. Such objections do not furnish a valid ground for setting aside the entire proceedings in exercise of writ jurisdiction. Even assuming for the sake of argument that certain discrepancies or variations exist in the figures reflected in rival certificates, the same would not, by itself, establish manifest illegality, perversity, or jurisdictional error

in the impugned order, as petitioner has remedy of filing civil suit. The Competent Authority, while exercising jurisdiction under Section 11 of MOFA, is required to examine the material placed before it and make a prima facie assessment on the basis of sanctioned plans, architect certificates, built-up area, and proportionate entitlement.

21. Much emphasis was laid by the petitioners upon the architect's certificate relied upon by the respondent societies and the alleged inaccuracies said to be contained in the figures mentioned therein. It has been contended on behalf of the petitioners that the said certificate is fundamentally defective inasmuch as it proceeds upon an earlier layout plan, does not clearly disclose the precise methodology or basis upon which the calculations have been undertaken, and further does not adequately account for the subsequently revised sanctioned plan governing the project. It has also been urged that the area proposed to be conveyed has been incorrectly computed and that the Competent Authority committed serious error in acting upon such certificate without undertaking deeper scrutiny. However, upon careful examination of the nature of this objection, I find that the same is essentially rooted in factual and technical disputes concerning calculation, measurement, and architectural assessment. Such objections, in their true character, pertain more to quantitative variation and factual computation than to any issue touching the legality of jurisdiction exercised by the authority. Merely because rival figures are suggested or because one party disputes the basis of measurement adopted by the architect, the

same would not ipso facto vitiate the entire proceedings or render the impugned order illegal. Even assuming that some discrepancy or variation in the figures may exist, such variation by itself would not establish any manifest illegality unless the discrepancy is so fundamental as to destroy the very foundation of the determination. The Competent Authority, while exercising powers under Section 11 of the Maharashtra Ownership Flats Act, is not expected to conduct a full-fledged civil trial or mathematical audit of each technical figure. What is expected of such authority is that it should examine the material placed before it, consider the sanctioned plans, evaluate the built-up area and relevant documents, and arrive at a practical and workable determination regarding proportionate entitlement. Minor deviations in measurement, or reliance upon one version of a sanctioned plan rather than another, may at the highest invite correction or clarification, but cannot by themselves become a basis to hold the entire exercise void ab initio. To accept the petitioners' contention in such broad form would mean that every minor dispute of measurement would frustrate the entire deemed conveyance mechanism contemplated under the statute, which is neither the object nor the intention of the law.

22. The Supreme Court in *Arunkumar H. Shah v. Avon Arcade Premises Coop. Society Ltd.*, (2025) 7 SCC 249 observed as under:

“**37.** Our conclusions on the interpretation of sub-sections (4) and (5) of Section 11 of the MOFA are as under:

.....

(ii) The competent authority, while following the summary procedure, cannot conclusively and finally decide the question of title. Therefore, notwithstanding the order under sub-section (4) of Section 11, the aggrieved parties can always maintain a civil suit for establishing their rights;

(iii) The provisions of Section 11 are for the benefit of the flat purchasers. In writ jurisdiction, the Court should not interfere with the order granting deemed conveyance unless the same is manifestly illegal. The writ court should generally be show in interfering with such orders. The reason is that, notwithstanding the order under Section 11(4), the remedy of aggrieved parties to file a civil suit remains open; and

23. Coordinate Bench of this Court in *Valentine Cooperative Housing Society Ltd. Versus District Deputy Registrar, Cooperative Societies and Others*, 2026 SCC OnLine Bom 1833 assumes significance while examining the present controversy. In the said judgment, while relying upon the pronouncement of Supreme Court in *Arunkumar H. Shah* it is further laid down that the jurisdiction exercised by the Competent Authority under Section 11 of MOFA is summary in nature. It has further been clarified that the Competent Authority does not finally and conclusively adjudicate disputed questions of title and that such issues remain open to be agitated in properly constituted civil proceedings by the aggrieved party. Most importantly, the Coordinate Bench has reiterated that this Court, while exercising writ jurisdiction, ought to interfere with orders of deemed conveyance only where manifest illegality, perversity, or jurisdictional error is clearly demonstrated. In the present case, the challenge raised by the petitioners is fundamentally based upon their contention that a

larger area ought to be retained, that the project remains incomplete, or that conveyance should be postponed until constitution of an apex body. These objections, at their highest, raise disputes concerning extent of entitlement, timing of conveyance, and technical assessment of area. Such disputes do not, by themselves, establish manifest illegality or jurisdictional infirmity in the order passed by the Competent Authority. Once the authority has examined the documents, considered rival contentions, and arrived at a reasoned determination, mere disagreement with that determination cannot furnish sufficient ground for interference under Articles 226 and 227.

24. The aforesaid pronouncements makes the legal position clear that the jurisdiction exercised by the Competent Authority while considering and granting deemed conveyance is only summary in character and the same is not intended to operate as a final adjudication upon disputed questions concerning title, measurement, demarcation, or exact proprietary entitlement of the parties. The Competent Authority, while acting under Section 11 of the Maharashtra Ownership Flats Act, is not expected to undertake a detailed trial for deciding complicated questions of ownership or rival technical claims regarding exact extent of land. In the present proceedings, the principal controversy which the petitioners seek to raise is substantially regarding the precise extent of land area liable to be conveyed and the correctness of the measurement and formula adopted by the Competent Authority while arriving at the proportionate entitlement of the respondent societies. In Writ Petition No. 10210 of 2013, the petitioners contend that though

the total plot area is 1,37,510 square metres and the net plot area is 97,322 square metres, with permissible FSI of 1,19,156 square metres and overall FSI potential of 1,81,863.60 square metres, the built-up area of Shefalika Heights is only 13,226.81 square metres with ground coverage of 3,311.22 square metres and, according to them, the land area claimed by the said respondent society is excessive, inflated, and not in accordance with proper calculation. On the other hand, the respondent society asserts that by applying the sanctioned layout and the accepted architectural formula, it is lawfully entitled to proportionate land admeasuring 11,349.86 square metres together with undivided proportionate share of 20,112.75 square metres. Similarly, in Writ Petition No. 8953 of 2015, the petitioners dispute the determination by which Balwantpuram Samrajya Society has been granted proportionate plot area of 14,935.49 square metres based upon built-up area of 17,363.39 square metres, and contend that such area is excessive and beyond the actual entitlement of the said society.

25. Thus, what becomes evident from the rival pleadings and submissions is that the dispute between the parties is not one touching upon inherent lack of jurisdiction in the Competent Authority, nor is it a case where patent illegality apparent on the face of record is demonstrated. The controversy concerns rival claims regarding exact area, proportionate entitlement, technical measurements, architectural calculations, and the extent of land that should accompany the conveyance in favour of the societies. Such questions are by their very nature mixed questions of fact and technical evidence which require detailed examination of rival

documents, scrutiny of architectural certificates, survey reports, sanctioned plans, technical calculations, and oral and documentary evidence which may be adduced by the parties. Such an elaborate exercise cannot be conclusively undertaken in summary proceedings before the Competent Authority under Section 11 of MOFA, nor can the same be properly adjudicated in supervisory writ jurisdiction under Articles 226 and 227 of the Constitution where the scope of interference remains confined to jurisdictional and manifest legal errors.

26. Having regard to the law laid down by the Supreme Court in *Arunkumar H. Shah HUF* where the substantial grievance of the petitioners is directed not against the competence of the authority but against the precise quantum of area determined for conveyance, and where the contention of the petitioners essentially is that a lesser or different area ought to have been granted than what has been awarded by the Competent Authority, such dispute necessarily deserves to be relegated to a competent Civil Court for full and substantive adjudication. The petitioners, if so advised, are at liberty to institute appropriate civil proceedings for establishing their alleged rights, for challenging the measurements adopted, and for seeking adjudication regarding the correct area, title, and extent of proprietary entitlement. However, disputes of such factual, technical, and title-related character do not constitute sufficient or permissible grounds for this Court to invoke writ jurisdiction, so as to interfere with the impugned orders granting deemed conveyance.

27. However, insofar as Writ Petition No. 64 of 2014 is

concerned, a careful perusal of the impugned order dated 14 October 2013 itself makes the position sufficiently clear and leaves no ambiguity in that regard. The said order specifically records that the area comprising common amenities, internal roads, open spaces, and other common portions forming part of the sanctioned layout shall continue to remain undivided in nature and that Respondent No. 1 Society has merely been granted an undivided and proportionate right in such common areas by virtue of the order of deemed conveyance. Thus, the Competent Authority has not granted exclusive ownership or exclusive possessory rights over the common amenities in favour of Respondent No. 1 so as to deprive other societies or occupants from enjoying the same. The nature of right conferred under the impugned order is only that of proportionate and undivided interest in the common portions appurtenant to the larger layout, which is consistent with the very concept of common amenities in a multi-building housing project. Therefore, the apprehension sought to be raised by the petitioner in the said writ petition that the respondent society may claim absolute and exclusionary rights over the roads, open spaces, or common facilities does not appear to be borne out from the plain language of the impugned order itself.

28. It is required to be noted that the grant of deemed conveyance in favour of one society in respect of its proportionate undivided interest in common areas does not operate so as to extinguish or defeat similar rights of use, access, and enjoyment available to other societies or occupants having lawful entitlement in the same common areas. Merely because a society is granted

deemed conveyance including proportionate undivided rights in common portions, the same cannot be construed to mean that such society acquires authority to exclude other lawful users or to obstruct access to the common amenities. The legal consequence of conveyance of undivided common area is only recognition of proportionate proprietary interest therein, subject always to corresponding rights of other stakeholders similarly situated. Therefore, the fear expressed by the petitioner that grant of deemed conveyance in favour of Respondent No. 1 may render the petitioner landlocked or deprived of access is, at this stage, more apprehensive than real and does not arise from the contents of the impugned order itself.

29. Accordingly, for removal of any possible ambiguity and in order to safeguard the rights of all concerned parties, it is clarified that insofar as Writ Petition No.64 of 2014 is concerned, conferment of deemed conveyance in favour of Respondent No. 1 in respect of the common area and undivided amenities shall not in any manner preclude, restrict, or obstruct the petitioner in Writ Petition No. 64 of 2014 from continuing to use, enjoy, and access the said undivided common areas in accordance with law and subject to its lawful entitlement. Needless to observe, the respondent society shall not claim any exclusive possession or exclusive right over such common amenities to the exclusion of the petitioner or other similarly placed stakeholders having lawful rights therein.

30. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

- (i) Writ Petition No. 10210 of 2013, Writ Petition No. 8953 of 2015, and Writ Petition No. 64 of 2014 stand dismissed;
- (ii) Rule is discharged in all the writ petitions;
- (iii) The impugned order dated 14 October 2013 passed by Respondent No. 2 in Application No. 174 of 2013, which is subject matter of Writ Petition No. 64 of 2014, is upheld;
- (iv) The impugned order dated 14 October 2013 passed by Respondent No. 2, which is subject matter of Writ Petition No. 10210 of 2013, and the impugned order dated 27 February 2015 passed by Respondent No. 2, which is subject matter of Writ Petition No. 8953 of 2015, are also upheld;
- (v) It is clarified that insofar as Writ Petition No. 64 of 2014 is concerned, the conferment of deemed conveyance in favour of Respondent No. 1 in respect of the common amenities, road, open spaces, and undivided common areas shall not preclude, obstruct, or restrict the petitioner therein from using and enjoying the said undivided common areas in accordance with law and subject to its lawful entitlement;
- (vi) It is further clarified that grant of deemed conveyance in favour of Respondent No. 1 in Writ Petition No. 64 of 2014 shall not be construed as conferring any exclusive right, possession, or control upon Respondent No. 1 over the common amenities and undivided common areas to the exclusion of other persons or societies having lawful rights therein.

(vii) It is further clarified that dismissal of the present writ petitions shall not preclude the petitioners from instituting appropriate civil proceedings before the competent Civil Court, if so advised, for adjudication of their claims relating to title, precise area, measurement, proportionate entitlement, or any other proprietary rights in respect of the subject property;

(viii) In the event such civil proceedings are instituted, the same shall be decided on their own merits and in accordance with law without being influenced by any observations made in the present judgment, save and except the findings on the limited scope of writ jurisdiction;

(ix) There shall be no order as to costs.

(x) Pending interim applications, if any, stand disposed of accordingly.

31. Considering the reasons assigned in the judgment and the period of ad-interim order also in force for more than 12 years, the ad-interim relief in Writ Petition No.10210 of 2013 is extended for a period of four weeks from today.

32. It is made clear that extension of ad-interim relief shall not be construed as expression on merits of the case of the petitioner.

(AMIT BORKAR, J.)