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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1332 OF 2014**

Kirit Chandulal Abhani and Ors. ... Applicants

Versus

State of Maharashtra and anr. ... Respondents

Smt. Dimple Ketan Shah or the Applicants.

Mr. Yahya Gheghani i/by Vigil Juris along with Ms. Indrayani Deshmukh for respondent no. 2.

Mr. V.B. Konde-Deshmukh, A.P.P. for State.

**CORAM : M.L. TAHALIYANI, J.
DATED : MARCH 31, 2015**

P.C.

Admit. Heard finally.

2. Heard learned counsel for the applicants and learned A.P.P. for respondent no. 1.

3. The applicants are facing trial for the offence punishable under section 13 of Maharashtra Ownership of Flats Act, 1963(for short “MOFA Act”) for having violated various provisos of the MOFA Act including the provisions in respect of conveyance of the property in the name of the society.

The original complainant is secretary of respondent no.2. It is an admitted position that the property has not been conveyed in the name of respondent no.2 by the applicants. It is submitted that according to the agreement, the property was to be conveyed to the society which might be formed of all the flat purchasers of 3 wings i.e. A, B and C or there can be three independent societies of three buildings. It is brought to my notice that the option was given to the applicants to form either one society or more than one societies. The learned counsel for the applicants has also submitted that the construction of the third building i.e. C Wing was stalled by respondent no.2 for some time and therefore, the third building could not be completed.

4. It is contended that because of the non completion of the third building, the property could not be conveyed to the housing societies.

5. In the first place, the court has noted that the flat purchasers have occupied their respective flats as back as in the year 1980. As such more than 35 years had elapsed and the property is not still conveyed to them. I am informed that the wing "C" is now ready and is likely to be occupied.

6. From the discussions hereinabove, it is absolutely clear that the defence of the applicant is that they could not convey the property because of non completion of Wing C. This is disputed fact which needs to be examined

by the trial Magistrate. The allegation as to whether the construction of the building “C” was stalled by respondent no.2 will also have to be examined by the learned trial Magistrate. These issues cannot be decided by this court under section 482 of Code of Criminal Procedure.

7. In view of the above discussions, the Application is dismissed.

(JUDGE)