

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

WRIT PETITION NO. 6558 OF 2016

The Chairman/Secretary, Omega Heritage
Co-operative Housing Society Ltd., Dist.Pune ...Petitioner

vs.

The State of Maharashtra & ors. ...Respondents

Mr. Satyajeet A. Rajeshirke, Advocate for the petitioner.
Ms. M. S. Bane, Additional Government Pleader for respondent
no.1/State.
Mr. Tejesh Dande a/w Akshay Tapkir i/by Tejas Dande &
Associates, Advocate for respondent no.3.

Coram : Smt. R. P. SondurBaldota, J.
Date : 13th July, 2016

P.C. :

1. This petition challenges the order dated 29th January, 2016 by which respondent no.2, the Deputy Registrar Co-operative Society, Pune rejected the petitioner's application under Section 11 of the Maharashtra Ownership Flats Act, 1963 ('MOFA', for short) seeking unilateral deemed conveyance of the property. The rejection of the application was on the ground that the same was premature. Clause 16 of the agreement between respondent no.3 promoter and respondents no.5 to 12 as owners on the one hand and member of the petitioner on the other, provides for conveyance "within one year from and after (i) completion of construction of all buildings in the entire

scheme and utilisation of entire FSI and TDR, permissible to be utilised or the said Plot as per Development Control Rules (whether previously got sanctioned or not) (ii) booking and sale of all units in the scheme, (iii) acceptance of the draft of Deed of Declaration and Deed of Apartment by the parties concerned (i.e.) owner, promoter and flat/unit purchasers) by their mutual consent and (iv) after payment of all dues, amounts and considerations including stamp duty etc. by all unit purchasers, whichever is later.” The agreement provides for amalgamation of the lands by respondents no.3 and 5 to 12, utilization of the FSI available thereafter, utilization of FSI available over amenity space, road widening etc. before execution of conveyance.

2. Respondent no.2 has held that the application of the petitioner was premature because the work of construction is not complete in accordance with the agreement and an application for deemed conveyance can be filed only after completion of construction in accordance with the agreement.

3. Respondents no.3 and 5 to 12 do not dispute their liability to convey the property on completion of the project of construction. However, according to them the project is not complete as FSI of amenity space and that remaining balance from road-widening is yet to be utilized by revision of the construction plans. This claim on appreciation of facts having been accepted by respondent no.2, there can be no interference with the impugned order. If the petitioner desires to dispute the questions of facts, it needs to file a civil suit for the purpose. Hence, the petition is dismissed.

[Smt. R. P. SondurBaldota, J.]