

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8283 OF 2022

1. Meru Heights Co-operative Housing Society]
 Limited.]
 A Co-operative Housing Society,]
 Registered under The Maharashtra]
 Co-operative Societies Act, 1960,]
 Bearing registration no.MUM/W-FN/HSG(TC)]
 9710/2020-2021 and having its office at]
 268, Telang Road, Matunga, Mumbai.]
2. Devshi Devraj Gada,]
 Age – 52 years.]
3. Devji Devshi Gada,]
 Age – 32 years,]
4. Paresh Devshi Gada,]
 Age – 30 years,]
 All residing at Apartment Nos.601, 602 and]
 603, Meru Heights, 268, Telang Road,]
 Matunga, Mumbai – 400 019.]
5. Kewal Kiran Realtors & Infra Private Limited,]
 A Company incorporated under the provisions] of The Companies Act, having its registered
 office at B-101-107, Synthofine Estate,]
 Opp. Virwani Industrial Estate, Goregaon (E),]
 Mumbai – 400 063,]
 And its Director's residence at Apartment]
 Nos.201 and 202, Meru Heights, 268,]
 Telang Road, Matunga, Mumbai – 400 019.]
6. Valabhji Khimji Savla,]
 Age – 42 years,]
 Residing at Apartment Nos.301 & 302,]
 Meru Heights, 268, Telang Road, Matunga,]
 Mumbai – 400 019.]

7. Mita Biren Savla,]
Age – 45 years,]
Residing at Apartment No.303,]
Meru Heights, 268, Telang Road, Matunga,]
Mumbai – 400 019.]
8. Pravin I Manania alias Pravin I Soni]
Age – 39 years,]
9. Nanda P Manania alias Nanda P Soni]
Age – 46 years,]
Both Residing at Apartment Nos.301 & 302,]
Meru Heights, 268, Telang Road, Matunga,]
Mumbai – 400 019.]
10. K. G. Krishnamurthy,]
Age – 50 years,]
11. Bhavna Krishnamurthy,]
Age – 47 years,]
Both residing at Apartment Nos.403 & 404,]
Meru Heights, 268, Telang Road, Matunga,]
Mumbai – 400 019.]
12. Kantibai Nanji Karani, HUF]
Through its Karta Mr. Kanti Nanji Karani,]
Residing at Apartment No.501,]
Meru Heights, 268, Telang Road, Matunga,]
Mumbai – 400 019.]
13. Kantibai Nanji Karani,]
Age – 39 years,]
Residing at Apartment No.502,]
Meru Heights, 268, Telang Road, Matunga,]
Mumbai – 400 019.]
14. Hira Bakul Shah,]
Age – 45 years,]
Residing at Apartment Nos.701 & 702,]
Meru Heights, 268, Telang Road, Matunga,]
Mumbai – 400 019.]

15. Bakul Umarshi Shah,]
 Age – 38 years,]
 Meru Heights, 268, Telang Road, Matunga,]
 Mumbai – 400 019.] ... Petitioners

Versus

1. The State of Maharashtra]
 2. The State Minister of Co-operation,]
 Mantralaya, Mumbai.]
 3. The Divisional Joint Registrar,]
 Co-operative Societies,]
 6th Floor, Malhotra House, Fort,]
 Mumbai – 400 001.]
 4. The Assistant Registrar, F North Ward,]
 Co-operative Societies, Mumbai,]
 Malhotra House, 6th Floor,]
 Opp. GPO, Fort, Mumbai – 400 001.]
 5. Jagshi Jethabai Chheda]
 Age – 55 years,]
 Residing at Apartment No.802,]
 Meru Heights, 268, Telang Road,]
 Matunga, Mumbai – 400 019.]
 6. Vijay Jagshi Chheda]
 Age – 53 years,]
 Residing at Apartment Nos.803 & 802,]
 Meru Heights, 268, Telang Road,]
 Matunga, Mumbai – 400 019.] ... Respondents

Mr. A. V. Anturkar, Senior Advocate a/w Minal Chandnani i/b Mr. Jaiwant Chandnani Associates for Petitioners.

Mr. P. P. Pujari, AGP for Respondent Nos.1 to 4.

Mr. G. S. Godbole, Senior Advocate a/w Mr. Yuvraj Singh & Mr. V. S. Vengurlekar i/b M/s. Nair Vengurlekar & Co. for Respondent Nos.5 & 6.

CORAM :- SANDEEP V. MARNE, J.

RESERVED ON :- 29 NOVEMBER, 2023

PRONOUNCED ON :- 05 DECEMBER, 2023

JUDGMENT :

1. **Rule.** Rule is made returnable forthwith. With the consent of the learned counsel for parties, Petition is taken up for hearing.

2. By this Petition, Petitioner–Society challenges Order dated 27/12/2021 passed by the Divisional Joint Registrar, de-registering the Society under the provisions of Section 21A of The Maharashtra Co-operative Societies Act, 1960 (**‘MCS Act’**) as well as the Order dated 21/06/2022 passed by the Minister–Cooperation rejecting Petitioner’s appeal.

3. Briefly stated, facts of the case are that Respondent Nos.5 and 6 are the developers / promoters in respect of the building named Meru Heights. Completion Certificate in respect of the building was issued by the Municipal Corporation on 08/11/2011. Respondent Nos.5 and 6 instituted agreements for sale of flats in the building with Petitioners who are flat purchasers. Respondent Nos.5 and 6 executed and registered a Deed of Declaration dated 30/11/2006 under the provisions of the Maharashtra Apartment Ownership Act, 1970 (**‘Apartment Ownership Act’**). A Supplementary Deed of Declaration was executed on 14/05/2009 thereby framing bye-laws for the Condominium. Some of the flat purchasers desired to form a cooperative society and were apparently aggrieved by subjecting the building to the provisions of Apartment Ownership Act. Nine flat purchasers accordingly instituted Suit No.2617/2010 before the City Civil Court. Seven out of the 9 Plaintiffs got themselves deleted from the Suit which was pursued only by 2 members Mr. Kaushal A. Thakkar and Mr. Bakul U. Shah. The City Civil Court dismissed the Suit by Judgment and Decree dated 16/03/2016 holding that the Plaintiffs therein were not entitled to form a society and

that the Defendant's act of submitting the suit property to the provisions of the Apartment Ownership Act was valid.

4. Consequent to the amendment of the provisions of Section 14 of the Apartment Ownership Act, the Petitioners were advised that they could adopt a resolution by majority for removal of the building from the provisions of Apartment Ownership Act. Accordingly, the members convened a meeting on 25/01/2021 and adopted a resolution both for removal of the property from operation of provisions of the Apartment Ownership Act as well as for formation and registration of a cooperative housing society. Accordingly, an Instrument to Remove the Property from the Provisions of the Apartment Ownership Act was executed and registered on 25/01/2021. The members filed an application before the Deputy Registrar for registration of the society on 28/01/2021 and Petitioner-society came to be registered under the provisions of Section 9(1) of the MCS Act vide Certificate dated 28/01/2021.

5. Aggrieved by registration of Petitioner-society, Respondent Nos. 5 and 6 filed an application seeking de-registration of the society under the provisions of Section 21A of the MCS Act before the Divisional Joint Registrar, Co-operative Societies, Mumbai. By order dated 27/12/2021, the Divisional Joint Registrar allowed the application filed by Respondent Nos.5 and 6 and directed de-registration of Petitioner-society by setting aside registration certificate dated 28/01/2021. Aggrieved by the decision of the Divisional Joint Registrar, Petitioner-society filed Revision Application before the Minister-Cooperation. By order dated 21/06/2022, the Minister-cooperation, has rejected the Revision filed by the Petitioner-society. Aggrieved by the orders dated 27/12/2021 passed by the Divisional Joint Registrar and 21/06/2022 of the Minister-Cooperation, Petitioner-society has filed the present Petition.

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6. Mr. Anturkar, the learned Senior Advocate appearing for the Petitioner – society would submit that the application filed by Respondent Nos. 5 and 6 seeking de-registration did not come within the purview of Section 21A of the MCS Act. He would submit that there was no misrepresentation on the part of promoter members in seeking registration of the society and therefore in absence of any misrepresentation being proved, it was not open for the Divisional Joint Registrar to exercise jurisdiction under Section 21A directing de-registration of the Petitioner – society. Inviting my attention to various findings recorded by the Divisional Joint Registrar, Mr. Anturkar would submit that there is no finding of any misrepresentation in the order. That, despite dismissal of Suit No.2617/2010, the erstwhile condominium members had right to seek registration of society in view of amended provisions of Section 14 of the Apartment Ownership Act. That, therefore, the factum of dismissal of the Suit cannot be treated as a misrepresentation / suppression on the part of those members. He would further submit that the provisions of Section 9 of the MCS Act do not envisage issuance of any notice to the developer / promoter before registration of a cooperative society. That, therefore, failure to give notice to Respondent Nos.5 and 6 could not have been a reason for de-registration of the society. That, the developer / promoter otherwise do not have any say in the matter of registration of the society. Inviting my attention to the resolution adopted in the meeting dated 25/01/2021, Mr.Anturkar would submit that the meeting was attended by Respondent Nos.5 and 6. That, the resolution has been validly adopted which is not under challenge. That, majority of the members are entitled to take a decision for formation of society and the developer / builder cannot oppose the decision of majority.

7. Mr. Anturkar would further submit that the findings recorded by the Minister – Cooperation while rejecting the Revision Application are perverse. That, the Minister–Cooperation has unnecessarily highlighted some inconsequential mistakes in the application for registration of the society. Relying on the Judgment of this Court in **Airoli Neha Apartment Co-Op. Housing Society Ltd. Vs. State of Maharashtra and others**¹, Mr.Anturkar would contend that minor irregularities do not create any right in favour of the developer to seek de-registration of a cooperative society under the provisions of Section 21A of the MCS Act. He would further submit that the Petitioner–society does not intend to wriggled out of rights, if any, created by the Order of the City Civil Court while dismissing the Suit and if any right is created in favour of Respondent Nos.5 and 6 on account of dismissal of the Suit, the same shall be honoured even after registration of a society.

8. Mr. Godbole, the learned senior advocate would appear on behalf of Respondent Nos.5 and 6 to oppose the Petition. He would submit that registration of Petitioner – society is an outcome of deceit and fraud on the part of some of the flat purchasers. He would submit that the society was registered on the very same day of filing of application. That, the stamp-duty for execution of deed of cancellation was purchased one day before holding the meeting dated 25/01/2021. That, false submissions were made in various documents filed along with the application for registration of the society. That, Respondent Nos.5 and 6 were not issued with any notice nor were they heard before registration of the society. That Notice to the Developer is mandatory under provisions of Section 10 of The Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (**'MOFA'**). He would rely upon the Judgment of this Court in **CIPLA**

¹ [2023(3) Mh.L.J.] 529

Limited Vs. Competent Authority and The District Registrar, Co-operative Society² in support of his contention that issuance of notice to a developer is mandatory under the provisions of Section 10(2) of MOFA. That, the entire action of the flat purchasers in holding the meeting, executing the deed of cancellation, filing application for registration of society and procuring registration was outcome of gross suppression of facts, misrepresentation and fraud. The fraud played by the promoters of the society would vitiate the act of registration. That, the promoters of the society suppressed the factum of dismissal of the Suit filed and seeking registration of the society. That, the Decree dated 16/03/2016 is valid and subsisting and in view thereof, registration of society is now impermissible. That, the Divisional Joint Registrar has correctly exercised jurisdiction under Section 21A of the MCS Act and his order does not warrant any interference. That, the Minister - Cooperation has further considered the fraudulent action on the part of the promoters of the society and has rightly upheld the order passed by the Divisional Joint Registrar.

9. Mr. Godbole would submit that the cooperative housing society cannot be registered without grant of opportunity of hearing to the developer / builder. That, Respondent Nos.5 and 6, in addition to their capacity as developer / builder, also own and occupy flats in the building. That, the cooperative society is registered with ulterior objective of denying the entitlements of Respondent Nos.5 and 6 and their family members flowing out of the deed of declaration. That, the acts of holding of the meeting dated 25/01/2021 and the resolution passed therein are totally illegal and Respondent Nos.5 and 6 have challenged the resolution as well as execution of deed of cancellation by filing application under Section 16A of the Apartment Ownership Act, which is pending. In the

² 2021 DGLS(Bom.) 546

event of Respondent Nos.5 and 6 succeeding in those applications, the deed of apartment would be upheld and registration of society would automatically rendered infructuous. He would further submit that this Court need not interfere into order of de-registration of the society. Lastly, Mr. Godbole would contend that de-registration of the society has been ordered on account of fraud and suppression on the part of the promoters and that it is always open for the flat purchasers to adopt a fresh resolution for formation of the society and to make a fresh application for registration thereof. That, therefore, no prejudice is caused to the Petitioners on account of de-registration of the society. He would pray for dismissal of the Petition.

10. Rival contentions of the parties now fall for my consideration.

11. The issue that arises for consideration is whether de-registration of Petitioner-Society is warranted in the facts and circumstances of the case. Petitioner-society has been registered vide certificate dated 28/01/2021. The registration is granted under the provisions of Section 9 of the MCS Act. Respondent Nos. 5 and 6 filed an application seeking de-registration of the society under Section 21A of the MCS Act which reads thus:

21A. De-registration of societies

(1) If the Registrar is satisfied that any society is registered on misrepresentation made by applicants, or where the work of the society is completed or exhausted or the purposes for which the society has been registered are not served, or any primary agricultural co-operative credit society using the word 'Bank', 'Banking', 'Banker' or any other derivative of the word 'Bank' in its name,] he may, after giving an opportunity of being heard to the Chief Promoter, the committee and the members of the society, de-register the society :

Provided that, where the number of members of the society is so large and it is not possible to ascertain the correct addresses of all such members from the records in the office of the Registrar and, in the opinion of the Registrar it is not

practicable to serve a notice of hearing on each such individual member, a public notice of the proceedings of the de-registration shall be given in the prescribed manner and such notice shall be deemed to be notice to all the members of the society including the Chief Promoter and the members of the Committee of the Society, and no proceeding in respect of the de-registration of the society shall be called in question in any Court merely on the ground that individual notice is not served on any such member.

(2) When a society is de-registered under the provisions of sub-section (1), the Registrar may, notwithstanding anything contained in this Act or any other law for the time being in force, make such incidental and consequential orders including appointment of Official Assignee as the circumstances may require.

(3) Subject to the rules made under this Act, the Official Assignee shall realise the assets and liquidate the liabilities within a period of one year from the date he takes over the charge of property, assets, books, records, and other documents, which period may, at the discretion of the Registrar, be extended from time to time, so however, that the total period does not exceed three years in the aggregate.

(4) The Official Assignee shall be paid such remuneration and allowances as may be prescribed; and he shall not be entitled to any remuneration whatever beyond the prescribed remuneration or allowances.

(5) The powers of the Registrar under sub-sections (1) and (2) shall not be exercised by any [officer below the rank of a Joint Registrar of Co-operative Societies.]”

12. Thus, under Section 21A of the MCS Act, the Registrar is empowered to de-register a society after recording a satisfaction that the society is registered on misrepresentation made by applicants, or where the work of the society is completed or exhausted or the purposes for which the society has been registered are not served. For the present case, the eventuality made applicable for ordering de-registration is alleged misrepresentation made by the applicants. The de-registration is also ordered by recording a finding that no notices were issued to Respondent Nos. 5 and 6 who are developers before registering the society.

13. The ground of failure to issue notices to Respondent Nos. 5 and 6 while ordering de-registration is taken up first. Though the reason of failure to issue notice to developer is not recognized under Section 21A

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of MCS Act for ordering de-registration of a society, failure to issue notice is essentially argued as a facet of misrepresentation by Respondent Nos. 5 and 6. Mr. Anturkar has contended that issuance of notice to the developer is not mandated by any provisions of the MCS Act. As observed above, the society has been registered under the provisions of Section 9(1) of the MCS Act which reads thus:

9. Registration

(1) If the Registrar is satisfied that a proposed society has complied with the provisions of this Act and the rules, 3or any other law for the time being in force, or policy directives issued by the State Government under Section 4, and that its proposed bye-laws are not contrary to this Act or to the rules, he "shall within two months, from the date of receipt of the application register the society and its bye-laws.

14. Section 9 thus does not mandate issuance of any notice to the developer / builder. Faced with a situation that Section 9 does not mandate issuance of notice to the developer before registration of a Society, Mr. Godbole has relied upon provisions of second Proviso to Sub Section (1) of Section 10 of MOFA. Section 10 reads thus :

“10. Promoter to take steps for formation of co-operative society or company.

(1) As soon as a minimum number of persons required to form a co-operative society or a company have taken flats, the promoter shall within the prescribed period submit an application to the Registrar for registration of the organisation of persons who take the flats as a co-operative society or, as the case may be, as a company; and the promoter shall join, in respect of the flats which have not been taken, in such application for membership of a co-operative society or as the case may be of a company. Nothing in this section shall affect the right of the promoter to dispose of the remaining flats in accordance with the provisions of this Act:

Provided that, if the promoter fails within the prescribed period to submit an application to the Registrar for registration of society in the manner provided in the Maharashtra Co-operative Societies Act, 1960 (Mah. Act 24 of 1961), the Competent Authority may, upon receiving an application from the persons who have taken flats from the said promoter, di-

rect the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar concerned, to register the society :

Provided further that, no such direction to register any society under the preceding proviso shall be given to the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar, by the Competent Authority without first verifying authenticity of the applicants, request and giving the concerned promoter a reasonable opportunity of being heard.”

15. Section 10 casts a duty upon the Promoter (Developer) to form a society or company immediately upon purchase of requisite number of flats required for formation of society or company. Thus Section 10 essentially applies to a situation of construction of a new building where the promoter is under obligation to form a collective body of flat purchasers for governing affairs of the building. The objective behind enacting Section 10 is to ensure that the Promoter does not unduly delay formation of a collective body. Section 10 would not have any application to a situation where the collective body is already formed, and the flat purchasers decide to alter the nature of such collective body from a condominium under the Apartment Ownership Act to a cooperative housing society. This is because there is no obligation on promoter in a case where a condominium of apartments is already formed and is dissolved under Section 14 of the Apartment Ownership Act. It would be necessary to make a reference to Section 14, which reads thus:

“14. Removal from provisions of Act

(1) A property may be removed from the provisions of this Act, by majority of apartment owners by an instrument to that effect duly executed.

(2) Upon removal of the property from the provisions of this Act, the property shall be deemed to be owned in common by the apartment owner. The undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.”

16. Thus it is lawful for majority of apartment owners to remove the property from application of Apartment Ownership Act. Once the property is removed from provisions of the Apartment Ownership Act, there is no obligation on the Developer to form a society or company under Section 10 of MOFA. His obligation under Section 10 of MOFA comes to an end once condominium of apartments is formed by execution of a Deed of Declaration. The obligation under Section 10 of MOFA is thus not continuous one. Since obligation under Section 10 of MOFA is inapplicable to a Promoter in case of dissolution of condominium of apartments and registration of housing society, the obligation to grant reasonable opportunity of hearing to the promoter under second Proviso to Section 10 (2) of MOFA would equally be inapplicable to such a situation. In my view therefore, second Proviso to Section 10(2) of MOFA would not come to the aid of Respondent Nos. 5 and 6 for insisting that they ought to have been heard before registration of Petitioner society.

17. Mr. Godbole has relied upon the Judgment of Division Bench of this Court in **CIPLA Limited** (*supra*) in which this Court held in paragraphs 143 to 146 as under :

“143. Under Section 10(1) of the MOFA, the promoter is required to submit an application to the Registrar for registration of the organization of persons who take the flats as a co-operative society or, as the case may be, as a company failing which, the minimum number of persons required to form a Co-operative society or a company who have taken flats, may apply for formation of a co-operative society or as the case may be, of a company. First proviso to Section 10(2) however, makes it clear that if the promoter fails within the prescribed period to submit an application to the Registrar for registration of society in the manner provided in the Maharashtra Co-operative Societies Act, 1960, the persons who have taken flats from the promoter may apply to the Competent Authority to direct the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar concerned, to register the society.

144. Second proviso to Section 10(1) makes it clear that the Competent Authority however, shall not issue direction to register any society under the provision of Section 10(1) to the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar without first verifying authenticity of the

request of the applicants and without giving the concerned promoter a reasonable opportunity of being heard. It is thus clear that the reasonable opportunity to the developer is contemplated as mandatory under second proviso to Section 10(1) before any directions issued by the Competent Authority to register a society upon receipt of the application from the persons who have taken flats from the promoter.

145. A perusal of Section 10(2) of the MOFA clearly indicates that if the promoter has already submitted such property to the provisions of MAO Act by executing and registering a Declaration as provided by that Act, the promoter is bound to inform the Registrar as defined in the MCS Act about such execution and registration of a Declaration. In such case, it shall not be lawful to form a co-operative society or a company. The legislative intent is clear that if the promoter has submitted such property to the provisions of the MAO Act by executing and registering a declaration as provided by MAO Act and informs the Registrar as defined under the MCS Act, there is clear bar prescribed in second proviso to Section 10(1) of MOFA that no such direction to register a society can be issued by the Competent Authority to the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar.

146. The bar contemplated under second proviso to Section 10(1) would apply only if such mandatory conditions prescribed under Section 10(2) are complied with strictly by the promoter by executing and registering the declaration as provided by MAO Act and then the promoter informing the Registrar as defined in the MCS Act. The Competent Authority has to ascertain and find out whether the developer has complied with the provisions of Section 10(2) of the MOFA read with the other provisions of MAO Act requiring the promoter to execute Deed of Declaration in the mode and manner prescribed under the said provision at the time of hearing being rendered to the promoter. The said second proviso prescribing the mandatory condition of rendering an opportunity of being heard to the developer is not an empty formality.

Hearing is contemplated to ascertain whether the developer has complied with the mandatory condition under Section 10(2) of the MOFA read with the provisions of MAO Act.”

18. While relying on the judgment in **CIPLA Ltd.** Mr. Godbole has fairly stated that challenge to the judgment is pending before the Supreme Court. Even if the judgment is held to be constituting a binding precedent by ignoring the pending challenge before the Supreme Court, the judgment has no application to the present case. **CIPLA Limited** deals with a case where Petitioner therein (purchaser of commercial units) was opposed to formation of a cooperative society by other commercial unit purchasers, on the ground that the developer had already executed Deed

of Declaration under the Apartment Ownership Act. The issue before Division Bench of this Court was thus entirely different. This Court has dealt with the issue as to whether the Registrar is bound to accept the intimation given by the promoter about execution of Deed of declaration for application of bar for formation of a society or he is competent to go into the issue of validity and effect of such Deed. The above quoted observations of the Division Bench must be considered in the light of the issue decided by this Court. In the present case, the issue is altogether different. The issue here is whether notice to developer under Section 10(2) of MOFA would be necessary for registration of a society after the building is removed from provisions of the Apartment Ownership Act. Since I have already held that issuance such notice to developers is not necessary, the judgment of *CIPLA Ltd.* would be inapplicable to the facts of the present case

19. It is otherwise incomprehensible as to why a notice to Respondent Nos.5 and 6 was necessary in the present case, when majority of condominium members decided to opt for removal of the building from Apartment Ownership Act and apply for registration of a society by adopting a resolution in meeting attended by Respondent Nos. 5 and 6. In a given case, a building may be subjected to the provisions of the Apartment Ownership Act immediately after its construction by execution and registration of deed of declaration. After passage of few years, the flat purchasers may feel that registration of a society is more appropriate and hence can decide to opt for removal of the building from Apartment Ownership Act. This right is created in their favour by the amendment effected to Section 14 of the Apartment Ownership Act with effect from 07/07/2018. Before amendment to Section 14, the provision required all apartment owners to execute instrument for removal of property from

provisions of Apartment Ownership Act. Unamended Section 14(1) read thus :

“14. Removal from provisions of Act:

(1) All the apartment owners may remove a property from the provisions of this Act, by an instrument to that effect duly executed. “

After amendment on 7th July 2018, such instrument can now be executed by majority of apartment owners.

20. Thus, when majority of apartment owners decide to remove the property from the provisions of the Apartment Ownership Act and further decide to register a cooperative housing society, it is incomprehensible as to why the developer / builder, who constructed the building many years ago, needs to be heard. The developer / builder may have objection in the matter of registration of a cooperative housing society, to the extent of protection of his interests *qua* unsold flats in the building. Once all flats in the building are sold and an apartment is formed, it is not necessary to hear the developer or builder while registering the society after exercise of right by majority of apartment owners under Section 14 of the Apartment Ownership Act. I am therefore of the view that, in the facts of the present case, Respondent Nos. 5 and 6 did not have any right to seek hearing in their capacity as developer / promoter before registering the Petitioner – society.

21. Having held that notices to Respondent Nos. 5 and 6 were not required to be issued, the next issue for consideration is whether there is indeed any misrepresentation, suppression or fraud on the part of the promoters of the society in (i) passing resolution for removing the property from provisions of Apartment ownership Act or (ii) executing instrument for such removal or (iii) in applying for registration of Society.

22. The sheet anchor of Respondent Nos.5 and 6 before the Divisional Joint Registrar and Minister-Cooperation was non-disclosure of dismissal of Suit No.2617/2010 seeking formation of cooperative society. Suit No.2617/2010 has been dismissed by Judgment and Decree dated 16/03/2016 by taking into consideration provisions of Section 10(2) of MOFA. Under Section 10(2), there is an embargo on registration of a cooperative society in respect of a property in respect of which a deed of declaration is executed under the provisions of the Apartment Ownership Act. Thus, prior to the amendment of provisions of Section 14 of the Apartment Ownership Act, upon subjecting a property to the provisions of the Apartment Ownership Act, it was incumbent to execute the instrument for removal of property from provisions of Apartment Ownership Act by all apartment owners. In absence of consent of Respondent Nos.5 and 6 (who also own flats), it was impermissible for other members of the erstwhile condominium to remove the building from provisions of Apartment Ownership Act prior to 7th July 2018. However, after 7th July 2018, a right has been created in favour of majority of apartment owners to remove the property from the provisions of the Apartment Ownership Act. In the present case, the apartment owners adopted a resolution by majority on 25/01/2021 removing the property from the provisions of the Act. Thus, the embargo under Section 10(2) of the MOFA no longer remained applicable after 25/01/2021. In that view of the matter, the Judgment and Decree dated 16/03/2016 in Suit No.2617/2010 cannot come in the way of the flat purchasers in registering a cooperative housing society. The findings recorded by the Divisional Joint Registrar and the Minister – Cooperation about impermissibility to register cooperative housing society in view of the Judgment and Decree dated 16/03/2016 are thus unsustainable and are liable to be set aside.

23. The next issue highlighted by Mr. Godbole in support of his contention of fraud, suppression and misrepresentation is the manner of adoption of resolution and execution of Instrument dated 25/01/2021. So far as payment of stamp-duty on 24/01/2021 for execution of registration of Instrument dated 25/01/2021 is concerned, the same cannot amount to fraud. The members of the society may have purchased the Challan on 24/01/2021 in anticipation of majority decision for removal of the building from the provisions of the Apartment Ownership Act. Minutes of Meeting dated 25/01/2021 would clearly show that draft of the Instrument was already ready and was put up for perusal of the members. Mere payment of stamp-duty one day prior to adoption of resolution dated 25/01/2021 cannot and would not render the acts of adoption of resolution, registration of Instrument and seeking registration of Society as fraudulent acts.

24. Much has been said about the action on the part of the Assistant Registrar in registering the society on the same day of filing the application by the promoters of society. The application for registration of the society was filed on 28/01/2021 and the Assistant Registrar has issued certificate of registration on the same day. The exact illegality or irregularity in doing so is difficult to fathom. If the Assistant Registrar in acted promptly in issuing the registration certificate on the same day of receipt of application, there can be no presumption of any illegality, irregularity or fraud in doing so. In most cases, the government officials are accused of delay in taking decisions. In the present case, allegation of fraud is sought to be raised because the Assistant Registrar registered a cooperative housing society on the date of receipt of application. In fact exhibition of alacrity on the part of Assistant Registrar was warranted in the present case as any delay in registration of society would have created vacuum for collective management of the building by flat owners.

25. Perusal of the resolution adopted in the meeting held on 25/01/2021 would indicate that the same was attended by Mr. Vijay Chheda, Rupal Chheda and Jagshi Chheda. Therefore, it cannot be alleged that they were not given notice of meeting held on 25/01/2021. In fact, agenda of meeting held on 25/01/2021 was published and served on the members of condominium on 20/01/2021. After receipt of the notice, Respondent Nos.5 and 6 and Rupal Chheda apparently attended the meeting on 25/01/2021. Perusal of the minutes of the meeting would indicate that out of total 16 members of the condominium, only 10 were actually present at the time of adoption of the resolution. It is not known whether Respondent Nos.5 and 6 and Rupal Chheda continued to remain present at the time of adoption of resolution or whether they left the meeting midway. It appears that at the time of adoption of resolution, 10 voting members were present. Both the resolutions for cancellation of deed of declaration and consequent removal of the building from the provisions of the Apartment Ownership Act as well as for formation of cooperative housing society were adopted unanimously by 10 voting members. The minutes record reasons why such decision was taken. In the minutes, it is recorded the developers were continuing to act as landlords and were denying lawful rights of other flat purchasers. One of the members complained about the developer demanding huge amount for issuance of NOC for resale of the apartment. Various other reasons are discussed in the meeting. The members therefore decided to remove the building from the provisions of the Apartment Ownership Act and to register a cooperative housing society. Respondent Nos.5 and 6 have averred in para 5.12 of their Affidavit-in-reply that they have challenged the resolution dated 25/01/2021 as well as Instrument of cancellation dated 25/01/2021 before the competent authority under the provisions of Section 16A of the Apartment Ownership Act. Validity of the resolution

adopted by majority of apartment owners would be decided in those proceedings. As of now, it appears that the majority of apartment owners exercised the right conferred on them under the provisions of Section 14 of the Apartment Ownership Act.

26. Mr. Godbole has relied upon the statements made by the promoters of the society in various documents filed for registration of the society. My attention is invited to the Form of Undertaking given by the Chief Promoter dated 25/01/2021, in which a statement is made that the builder has attested the signatures of the promoters and that the Chief Promoter had received application for membership from the builder. According to Mr. Godbole, these are false statements to the knowledge of the Chief Promoter as no such signatures or forms were obtained from Respondent Nos. 5 and 6. He would brand the said action on the part of promoters of society to be a fraudulent act. Careful perusal of the document would indicate that the same is in a prescribed format in 'Form Y'. It appears that the Chief Promoter has printed the same prescribed format on a stamp-paper and has signed the same before a Notary public. Even otherwise, the statements made therein do not appear to be fallacious. Admittedly, the builder / developer did not have any unsold flats and therefore there is no question of receiving any application forms them in respect of unsold flats. Therefore, mere copying of some statement in the prescribed format, which were inapplicable to the facts of the present case, would not render the act of the Chief Promoter in executing the document as an act of fraud or misrepresentation.

27. Perusal of the order passed by the Minister – Cooperation would indicate that he has highlighted some minor discrepancies in the submission of documents by the Chief Promoter and members. In my

view, such minor discrepancies would not entitle the Divisional Joint Registrar to exercise the power of de-registration under Section 21A of the MCS Act. Such minor deficiencies would not amount to misrepresentation within the meaning of Section 21A of the MCS Act.

28. Power of de-registration of a society is drastic one and cannot be exercised in a routine manner unless a gross case of misrepresentation is made out. The Registrar must record a satisfaction that the society was otherwise non-registrable but was registered on account of a misrepresentation. In my view, after removal of the building from provisions of Apartment Ownership Act, there was no hurdle for registration of Society. The Divisional Joint Registrar in the present case ought to have appreciated that the building is removed out of provisions of Apartment Ownership Act and the order de-registering the society would result in non-existence of any collective body of flat owners to manage the building. Exercise of power under Section 21A by the Divisional Joint Registrar in the present case defeats the objective behind registration of a cooperative society by flat owners for collective management of the building.

29. In many cases, the developers subject the buildings to the provisions of the Apartment Ownership Act even before sale of the flats. Thus, formation of apartment or cooperative housing society does not remain a matter of choice for the flat purchasers, who are ultimately supposed to manage the affairs of the building. Considering this difficulty, a right seems to have been created in favour of the apartment owners to remove the building from the applicability of provisions of the Apartment Ownership Act. Such right has lawfully been exercised by the erstwhile apartment owners in the present case. No fraud or misrepresentation has

been committed either while removing the building from the provisions of the Apartment Ownership Act or while registering the cooperative housing society. The Divisional Joint Registrar has erroneously exercised power of de-registration of the society under the provisions of Section 21A of the Act in the present case. The orders passed by the Divisional Joint Registrar and the Minister – Cooperation are against the spirit of 2018 amendment of Apartment Ownership Act.

30. I therefore find the impugned orders of Divisional Joint Registrar and the Minister – Cooperation to be indefensible. The Writ Petition accordingly succeeds. The order dated 27/12/2021 passed by the Divisional Joint Registrar and 21/06/2022 passed by the Minister – Cooperation are set aside. Rule is made absolute. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)

31. After the Judgment is pronounced, the learned Counsel appearing for Respondent Nos.5 and 6 request for stay to the order for a period of eight weeks. Request is opposed by the learned Counsel appearing for the Petitioners. Considering the reasons recorded in the Judgment, the request for stay is rejected.

(SANDEEP V. MARNE, J.)