



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.16228 OF 2024

Aurigaa Realtors

... Petitioner.

Versus

Rose Icon Cooperative Housing Society Ltd.

Through its Chairman and Ors.

... Respondents.

Mr. Kishor Patil a/w. Mr.Yatin Yeole i/by Mr.Siddheshwar Biradar for the
Petitioner.

Mr. Y.D. Patil, AGP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : November 12, 2024

P. C. :

1. By this Petition, the challenge is to the order dated 13th June, 2024 passed by the Competent Authority in exercise of powers under Section 11(3) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management And Transfer) Act, 1963 (for short, "**MOFA**") on the ground that prior to the grant of deemed conveyance by the competent authority in exercise of powers under Section 11(3) of MOFA, the Petitioner who is the developer has already executed Sale deed-cum-Conveyance Deed in favour of the Rose Icon Apartments which according to the Petitioner, was registered under Maharashtra

Apartment Ownership Act, 1970.

2. From the record it appears that subsequently, the apartment owners have formed a Cooperative Housing Society Ltd. and thereafter applied for deemed conveyance under Section 11 of the MOFA, which has been allowed by the Competent Authority. As the Petitioner has already executed the sale deed-cum-Conveyance Deed in respect of an area which is much more than the area of deemed conveyance, the Petitioner has divested himself of the rights in the property subject to the terms of flat purchaser agreement. Even if any rights in the unconsumed FSI/additional FSI is claimed by the Petitioner, the remedy for the Petitioner is to file an appropriate suit seeking declaration of its entitlement to the unconsumed/additional FSI and for that purpose the order of deemed conveyance is not required to be challenged.

3. In light of the above, the Petition stands disposed of with liberty to the Petitioner to file a substantive suit, if so advised, for claiming entitlement to the additional/unconsumed FSI arising out of the said property which would be decided by the Civil Court on its merits and uninfluenced by the fact that the order of deemed conveyance has already been executed.

[Sharmila U. Deshmukh, J.]