

VRJ

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

WRIT PETITION NO.165 OF 2025

Neelkanth Heights Cooperative Housing
Societies Association Limited & Ors. ... Petitioners
V/s.
Abhinav Real Estate Pvt. Ltd. & Ors. ... Respondents

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Mr. Akshay Patil with Devika Madekar i/by Kalpesh
Patil for the petitioners.

Mr. Ashish Kamat, Senior Advocate with with Mr. Saket
Mone, Mr. Shrey Shah and Mr. Bhupen Garud i/by
Vidhii Partners for respondent No.1.

Mr. Mandar Limaye for respondent No.2.

Mr. Anil V. Anturkar, Senior Advocate with Kashish
Chelani i/by Vinayak Katti and Swatantri Waghmare
for respondent No.3.

Ms. Neha Bhide, G. P. with S. A. Prabhune, AGP for the
State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 25, 2025

P.C.:

1. The petitioner has moved oral application seeking leave to amend the petition for the limited purpose of deleting respondent No.3 from the array of parties. It is undisputed that respondent No.3 claims to be a mortgagee in respect of the subject property. It is further not in dispute that respondent No.3 has not executed any

development agreement in favour of respondent No.1, who claims rights over the property under the said agreement. In such circumstances, presence of respondent No.3 is not necessary for effective adjudication of the issues arising in the present petition.

2. It is pertinent to note that Section 2(c) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ("MOFA" for short) defines the term "promoter" to mean a person who constructs or causes to be constructed a block or building of flats or apartments for the purpose of selling them to the public. The said definition is wide enough to include not only individuals, but also a firm, company, body of persons or association which either constructs or causes the construction of flats for sale, or sells flats to others, including their assignees.

3. In the present case, since respondent No.3 has not executed the development agreement, nor is he claiming any right as a builder, developer, or seller of flats, he cannot be termed as a "promoter" within the meaning of Section 2(c) of MOFA. Therefore, no cause of action survives against respondent No.3 within the framework of the present proceedings. Accordingly, the prayer for amendment to delete respondent No.3 from the array of parties deserves to be allowed.

4. It is, however, clarified that the deletion of respondent No.3 from these proceedings shall not preclude him from asserting his rights, if any, in respect of the subject property by taking recourse to such independent legal remedies as may be available to him in

accordance with law. All rights and contentions of respondent No.3 in that regard are kept open.

5. In view of the above, leave to amend is granted. Amendment be carried out forthwith.

6. Heard arguments of both sides. Judgment reserved.

(AMIT BORKAR, J.)