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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.165 OF 2025

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1. Neelkanth Heights Cooperative Housing Societies Association Ltd., an Association of
2. Rameshwar Cooperative Housing Society Limited,
3. Mansarovar Cooperative Housing Society Limited,
4. Girija Cooperative Housing Society Ltd., through it's Treasurer/authorized representative Laxmikant Bhalchandra Makaji, Age 65 years, Occu.: Service, having office at Mini Club House, S.No.194/1B, Neelkanth Heights, Village-Maziwada, Pokharan Road No.2, Thane (West).

... Petitioners

V/s.

1. Abhinav Real Estate Private Limited, Now known as Neelkanth Realtors Private Limited, through it's Directors Mr. Tulsi C. Bhimjyani, Age __ Occupation Business, having office at 508, Dalamal House, Jamnalal Bajaj Road, Nariman Point, Mumbai 400 021.
2. Thane Municipal Corporation, Pachpakhadi, Thane (West), through it's Commissioner.
3. Sarkawasji Jahangirji Age Adult, Occupation Business

4. Madhuardas Gokuldas,
Age Adult, Occupation : Business
respondent Nos.4 and 5, having
address at S.No.194/1B, Majiwade,
Thane 610.
5. National Stone Quarry,
A partnership firm through its partners
- 5A. Keharsinh Puransingh
Age Adult, Occupation Business,
- 5B. Smt. Ashaish Begum
Age Adult, Occupation Business
Both address at S.No. 194/1B,
Village Majiwade, Thane – 610.
6. District Deputy Registrar, Cooperative
Societies, Thane alias Competent
Authority under Section 5A of the
MOFA Act, Office at Gaondevi Mandai
Building, First Floor, Near Gaondevi
Ground, Gokhale Road, Thane 400 602 ... Respondents

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

Mr. Ashish Kamat, Senior Advocate 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-TMC.

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

Ms. Neha Bhide, Government Pleader with S.A. Prabhune, AGP for respondent No.7-State.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 24, 2025

PRONOUNCED ON : MAY 9, 2025

JUDGMENT:

1. The petitioners have invoked the supervisory jurisdiction of this Court under Article 227 of the Constitution of India, challenging the legality, correctness, and propriety of the Judgment and Order dated 15th October 2024 passed by the Competent Authority, i.e., respondent No.6, in Application No.419 of 2024, filed under Section 11(3) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, commonly referred to as the MOFA Act. By the said order, the Competent Authority has rejected the application filed by the petitioners, who sought issuance of a certificate of unilateral deemed conveyance in relation to the property bearing Survey No.194/1B, situated at Village Maziwada, Pokharan Road No.3, Thane.

2. The petitioner is an Association of Cooperative Housing Societies, registered under the Maharashtra Cooperative Societies Act, 1960, on 1st April 2022, and comprises three individual housing societies whose members are purchasers of flats constructed on the said property. Respondent No.1 is the promoter as defined under Section 2(c) of the MOFA Act. Respondent Nos.3 to 5 are the recorded owners of the land bearing Survey No.194/1B, ad-measuring 53,600 square meters. One Provident Investment Company Ltd., who had become the mortgagee in possession of about 52,609.19 square meters of the land pursuant to an Indenture dated 10th June 1938, executed a 99-year lease deed in favour of M/s. National Stone Quarry (respondent No.6), commencing from June 1963, at an annual rent of Rs. 3,600/-.

3. Thereafter, on 4th May 1995, M/s. National Stone Quarry entered into a development agreement with Abhinav Real Estate Private Limited concerning the said property. The said development agreement came to be supplemented by another agreement dated 11th January 2002, whereunder the rights and obligations of the parties were further elaborated and reaffirmed.

4. Based on these development agreements, the respondent No.1-promoter, undertook development of the land and constructed multiple buildings thereon. Specifically, buildings numbered 1 to 4 came to be named as Rameshwar CHS., comprising 212 flats and 29 shops; buildings numbered 5 and 6 as Mansarovar CHS., comprising 244 flats; and buildings numbered 7 and 8 as Girija CHS., comprising 284 flats. In totality, the promoter has developed eight buildings comprising 740 flats and 29 commercial shops.

5. Respondent No.1 executed registered agreements for sale with individual flat purchasers in accordance with Section 4 of the MOFA Act. Subsequently, the three societies came to be registered in 2004, 2005, and 2011 respectively. Despite such registration and the legal obligation under Rule 9 of the MOFA Rules, which mandates that the promoter shall execute the conveyance deed or assignment of lease within four months from the date of registration of the cooperative society, respondent No.1 failed to do so. The inaction of the promoter necessitated the three societies to come together and form a common Association of Societies on 1st April 2022 to take steps for obtaining conveyance.

6. In the General Body Meeting held on 17th March 2024, a resolution was unanimously passed authorising the initiation of proceedings for obtaining deemed conveyance. In pursuance of the said resolution, the petitioner-Society, through their Advocate, issued a legal notice dated 19th March 2024 to respondent Nos.1 to 6, thereby calling upon them to execute the assignment of lease deed in favour of the petitioner-Association. Despite the service of said notice, respondent No.1 failed and neglected to comply. Consequently, the petitioner-Association was constrained to file an application under Section 11(3) of the MOFA Act seeking a unilateral deemed conveyance certificate.

7. Upon receipt of the application filed under Section 11(3) of the MOFA Act, respondent No.6, i.e., the Competent Authority, issued notices to the concerned respondents. In response, respondent No.1—the promoter—filed a reply opposing the application. The promoter contended that the petitioner-Association had been formed illegally and that proceedings had already been initiated before the competent authority for its de-registration. The promoter further submitted that the development of the remaining phases of the project on the larger layout was yet to be completed. It was argued that the conveyance in the form of assignment of lease could be executed only after the full and final completion of the entire development on the layout. In addition, respondent No.1 contended that the Apex Body referred to by the petitioner was contemplated only for a limited purpose—namely, to manage the maintenance of the clubhouse, common areas, amenities, and facilities, and to facilitate the transfer of such

common areas—not to seek conveyance of leasehold rights in the entire property.

8. After considering the submissions advanced and documents placed on record by both sides, the Competent Authority rejected the application filed by the petitioner vide its order dated 15 October 2025. Aggrieved thereby, the petitioner-Association has approached this Court by way of the present writ petition under Article 227 of the Constitution.

9. Shri Patil, learned counsel appearing on behalf of the petitioners, submitted that the impugned order suffers from legal infirmity as it proceeds on four principal grounds, which, according to him, are either factually untenable or legally unsustainable. These grounds are as follows:

- (i) That the Hon'ble High Court had granted status quo in Notice of Motion No.2905 of 2009 in Suit No.36 of 1969, which precludes the conveyance;
- (ii) That the petitioner-Association was not constituted in accordance with the stipulations under the individual agreements executed with flat purchasers;
- (iii) That the project is a larger layout, still under phased development, and hence the conveyance can only be executed upon completion of entire development; and
- (iv) That the petitioners are claiming rights in lands earmarked for public purposes such as Recreational Ground (RG), High Capacity Mass Transit Route (HCMTR), etc., which do not form part of the property agreed to be conveyed under the MOFA agreement.

10. In response to these grounds, Shri Patil contended that the status quo order dated 27 January 2010 passed in the aforementioned Notice of Motion is not binding on the parties to the present petition for the simple reason that neither the petitioner-Association nor respondent No.1-promoter is a party to the said civil suit. Moreover, it was argued that such an order cannot override or defeat the statutory mandate under Section 11 of the MOFA Act, which casts an obligation on the promoter to convey the property to the society or association of flat purchasers within the prescribed timeframe.

11. Shri Patil further submitted that the petitioner-Association is duly registered under the MCS Act, 1960, and squarely falls within the ambit of Section 154B-1(8). The three constituent societies of the petitioner-Association were formed in the years 2004, 2005, and 2011, with the express consent and participation of the promoter. None of the agreements executed under Section 4 of the MOFA Act restrict the right of the flat purchasers to form such an Apex Body under Section 154B-1. It was submitted that although Clause 11 of the agreement refers to indivisibility of the larger property and Clause 39(1)(a) provides that conveyance shall be executed only upon full development of the layout, such clauses are contrary to the spirit and mandate of the MOFA Act. In support of this proposition, reliance was placed on the recent judgment in *Flagship Infrastructure Ltd. v. The Competent Authority*, in Writ Petition No.151 of 2019, wherein a similar clause was held to be void and unenforceable for being inconsistent with the statutory obligation under MOFA.

12. With respect to the extent of area sought to be conveyed, it was pointed out that the Architect's Certificate produced by the petitioner reflects a proportionate share of 27,266.51 square meters, whereas the total built-up area as per the sanctioned plan is 42,890.404 square meters. It was submitted that the Architect has rightly calculated the area on the basis of the final sanctioned plan dated 25 April 2011. The developer has also availed of Transferable Development Rights (TDR) in lieu of surrendering land for reservations under the MRTP Act, and the construction of flats in the petitioners' societies is based on such TDR utilization. Therefore, it is just and lawful that the petitioner-Societies are entitled to a proportionate share in the RG area, road setback, HCMTR, and other reservations, as well as the benefits of TDR. It was argued that the Architect's Certificate is a legally sound and evidentiary document reflecting the area to which the societies are equitably entitled, and the respondent has not produced any material to dispute the same. Accordingly, it was prayed that the impugned order be set aside and appropriate directions be issued for execution of assignment of lease in favour of the petitioner-Association.

13. Per contra, Shri Kamat, learned Senior Advocate appearing for respondent No.1, opposed the petition and submitted that the registration of the petitioner-Association itself has been cancelled by the Divisional Joint Registrar vide order dated 28 February 2025. Though the said order is under challenge in Writ Petition No.4704 of 2025, and was heard along with the present petition, the judgment therein is reserved. Hence, it was contended that the

petitioner lacks locus standi to pursue the present writ petition.

14. He further submitted that the rights of the parties are strictly governed by the agreements executed under Section 4 of the MOFA Act, which envisage phased development and specifically reserve in favour of the developer exclusive rights concerning FSI, TDR, and overall development of the larger property. According to the agreement, an Apex Society was to be constituted only after completion of all the buildings in the layout and solely for the purpose of maintenance of common areas and amenities. Clause 39(1)(a) stipulates that the lease assignment in favour of the societies would be executed only after completion of the entire project. As per the agreement, Rameshwar CHS is entitled to 4800 sq. mtrs., Mansarovar CHS to 4350 sq. mtrs., Girija CHS to 4705 sq. mtrs., and Building No.9 to 1869 sq. mtrs.—making a total of 13,855 sq. mtrs.. However, the application for deemed conveyance seeks an area of 27,266.651 sq. mtrs., nearly double the area agreed upon, and also includes lands reserved for various public purposes. Such a claim, it was argued, goes beyond the contractual framework and violates the agreement under MOFA.

15. In support of his contentions, Shri Kamat relied upon the judgments of this Court in:

- (i) *Swastik Promoters and Developers v. The Competent Authority*, W.P. No.6869 of 2021, decided on 7 February 2025;
- (ii) *Jai Jalaram CHS Ltd. v. Nanji Khimji & Co.*, W.P. No.2082 of 2018, decided on 9 February 2024; and
- (iii) *Nahalchand Laloochand Pvt. Ltd. v. Shri Panchamrut CHS*

Ltd., W.P. No.2222 of 2025, decided on 24 February 2025—to contend that a society cannot be granted area or rights beyond what is agreed under Section 4 agreements.

16. He also placed reliance on the judgment in *New Sonal Industries Premises Ltd. v. District Deputy Registrar, W.P. No.10548 of 2024*, decided on 12 February 2025, to urge that in the event of inconsistency between the sanctioned plans and the contractual terms, it is the agreement that must prevail. Based on these submissions, he prayed that the petition be dismissed.

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

18. One of the main grounds mentioned in the impugned order for rejecting the application for deemed conveyance is that the land in question forms part of a larger layout which, as per the petitioners, is planned for future development involving additional buildings and consumption of extra Floor Space Index (FSI) including TDR-based FSI. It is contended that after completion of all phases, the entire layout would be conveyed to an apex body of purchasers. Upon close scrutiny, this justification appears to be inconsistent with the very object and intent of the MOFA. It is well-settled that MOFA does not prevent a promoter from undertaking development in phases or from constituting an apex body for all societies. However, such planning cannot be made a reason to indefinitely delay the conveyance in favour of the society representing the completed phase. Section 11 of MOFA was enacted to eliminate the mischief of promoters retaining control

over land and buildings even after project completion, often on vague promises of future development.

19. In *Flagship Infrastructure (Supra)*, this very issue came before this Court. That was a township project where the promoter had inserted clauses in the agreements stating that conveyance would be given only after ten years or on completion of the entire township—whichever was earlier. This Court categorically held that such clauses cannot override the statutory mandate of Section 11 or Rule 9 of the MOFA Rules. It was emphasized that the law provides a definite timeline—four months from registration of society—for execution of conveyance, unless otherwise mutually agreed. The word “period” used in Rule 9 refers to a fixed and definite time, not an uncertain event such as full township completion. Thus, any clause in the agreement that seeks to postpone conveyance indefinitely or tie it to future phases is inconsistent with MOFA and is, therefore, void in law.

20. This Court in the case of *Flagship Infrastructure (Supra)* has observed in paragraphs 32 to 34 as follows:

“32. The promoter tried to justify the delay in giving ownership to the society by pointing to two clauses (Clauses 6.3.1 and 6.3.2) in the sale agreements. According to the promoter, these clauses allowed them to delay conveyance for ten years after completion of Towers 1 to 8, or until the entire township project is completed, whichever happens earlier. In my opinion, this argument cannot be accepted. Because there is a clear rule under Rule 9 of the MOFA Rules, which lays down a strict time limit for the promoter to give ownership to the society. Rule 9 says that unless both sides specifically agree to a different period, the promoter must

execute the conveyance within four months from the date of registration of the society.

33. *The purpose of Rule 9 must be seen in the light of MOFA's overall goal which is to protect flat purchasers and ensure they get clear ownership without unnecessary delay. Rule 9 is not just a formality. It is a real protection created by law against endless delays by promoters. The four-month period is written into law to make sure that flat buyers are not left in uncertainty about who owns the land and the building where they live. A promoter cannot escape this responsibility by simply pointing to private agreement clauses, especially if those clauses depend on uncertain future events like full township completion, which flat buyers themselves have no control over.*

34. *The use of the word “period” in Rule 9 of MOFA Rules is very important. In common understanding, a “period” means a fixed, definite block of time, like four months, six months, etc. It does not mean some vague or uncertain future event. This meaning fits the general rule in law : unless the context requires otherwise, words in a law must be given their natural, everyday meaning. Here, the word “period” is clear and plain it points to a definite timeline. The promoter's argument that the conveyance can be delayed until ten years after completion of Towers 1 to 8, or till the entire township is done would destroy this certainty. It would replace a clear deadline with an uncertain, shifting future event. That is not allowed. Courts are not allowed to change or rewrite clear laws under the excuse of interpretation. If courts start allowing such changes, it would defeat the whole purpose for which MOFA was made to protect flat buyers. If the promoter's argument is accepted, it would allow promoters to hold on to ownership forever, just by pointing to some incomplete work in the township. This would bring back the very problems MOFA wanted to prevent. Thus, the word “period” in Rule 9 must be understood as a definite,*

fixed time and not an open-ended condition. Any clause in a sale agreement (like Clauses 6.3.1 and 6.3.2) that tries to override this rule is void (meaning invalid) because it goes against the law.”

21. Applying the above legal position to the present case, it is evident that the first building was completed about 20 years ago, and till date, no further phases have been constructed. The so-called Apex Federation cannot be made to wait endlessly for some hypothetical development.

22. In *Veer Tower CHS Ltd. (Supra)*, this Court has already held that indefinite delay or stagnation of a project, solely due to the inaction of the developer, cannot be a valid ground to postpone conveyance to an existing society. The statutory right under MOFA is not subject to the promoter’s future expectations.

23. The right of flat purchasers to receive conveyance crystallizes once the society is formed. This right does not depend on any vague promises or future intentions of the promoter to construct additional buildings or complete an entire layout. Once reasonable time has passed, the promoter is legally bound to convey the property. In the present case, the petitioners have neither completed the remaining buildings nor shown any concrete plan to do so. They cannot be permitted to use their own failure as a shield to delay the rights of the society.

24. The maxim “*commodum ex injuria sua nemo habere debet*”—no person should benefit from his own wrong—clearly applies here. Equity and fair play do not permit any person to take benefit of his own default. In this case, the petitioners have not

completed the remaining structures even after two decades. It is, therefore, unacceptable for them to argue that conveyance should be delayed only because they have not completed their promised development. The law does not allow a defaulting party to use their own failure as a reason to deny rights that have already vested in others.

25. Additional FSI is a species of development right that attaches to the land. Once a building is completed and the flat purchasers take possession, any unutilized FSI generally still “belongs” to the land and thereby to whoever owns the land. If the land has not been conveyed, technically the promoter/landowner could claim to be the owner of the land and thus owner of the remaining development potential. This underpins the Promoter’s eagerness to delay conveyance: by not transferring the land, the Promoter can attempt to utilize the left-over FSI for profit. However, court needs to be vigilant to prevent unfair exploitation of this at the expense of flat owners. In **Jayantilal Investments v. Madhuvihar Co-op. Hsg. Society** (2007) 9 SCC 220, the Hon’ble Supreme Court dealt with a scenario where the developer after conveying the building still tried to retain rights to additional FSI that became available later. The Supreme Court held that in absence of an express reservation of that right in the flat sale agreement (with informed consent of purchasers), the developer cannot unilaterally appropriate additional FSI – it would enure for the benefit of the society (since FSI is attached to the land which was to be conveyed). This principle emanates from the obligation of good faith and complete disclosure under MOFA. Section 7 of MOFA, in particular, would

require that any intention to construct additional floors or buildings by using future FSI must be disclosed and consented to by the flat takers, failing which the promoter cannot claim an entitlement to build later without their agreement.

26. Therefore, the ground taken in the impugned order to reject conveyance on the basis of possible future phases is legally unsustainable. The intention of the legislature behind Section 11 of MOFA and Rule 9 of the MOFA Rules is clear: flat purchasers must not be left in a state of uncertainty, and conveyance should be granted within a stipulated time. The reliance on future development is speculative, and such reasoning cannot defeat a matured statutory right.

27. As seen from the record, it is not in dispute that the three member societies of the petitioner-Association—namely Rameshwar, Mansarovar, and Girija—were formed between the years 2005 and 2011 with the knowledge and consent of Respondent No.1 (the original promoter). Therefore, in terms of Section 11(1) and Rule 9 of the MOFA Rules, it was the legal duty of Respondent No.1 to execute the conveyance in favour of these societies within four months from the date of their registration, unless a different ‘period’ was mutually agreed upon.

28. The promoter has relied on clause 39(1)(a) and 39(1)(b) of the agreement, which states that conveyance will take place only after the full development of the larger property to the satisfaction of the developer. However, this Court finds that such a clause runs directly contrary to the mandate of Rule 9 of the MOFA Rules. In

Flagship Infrastructure Pvt. Ltd. (supra), this Court has clearly held that any contractual term which delays the statutory obligation to execute conveyance until completion of an entire project is not legally sustainable. The obligation to convey title within four months of registration is not a matter of contract—it is a matter of law. Private agreements cannot override statutory protections created for the benefit of flat purchasers.

29. Additionally, a perusal of the layout plan annexed at page 158 of the MOFA agreement relating to Girija Society shows that it is not a sanctioned plan. In fact, even the sanctioned plan dated 24 April 2011, if taken into consideration, does not indicate any proposed construction or future development near Rameshwar Society. Therefore, the argument made by the Competent Authority—that the entire layout must be completed before conveyance—is unsupported by any sanctioned plan. This reasoning is not only legally unsustainable but also factually incorrect.

30. The reliance placed by the petitioners on the concept of an "apex body" is equally misplaced. In a situation where there are multiple societies and an apex federation is duly formed, the conveyance may, for convenience, be made in favour of that apex body. However, that is only a procedural option—not a legal precondition. If, in future, more buildings come up and other societies are formed, the respective proportionate share in land can be worked out accordingly. But that future contingency cannot be allowed to block the legal rights of an existing and functioning society.

31. The next reason assigned for refusal is that the petitioner-Association is not formed in consonance with the terms of the agreement between flat purchasers and respondent No.1. As has been explained by this Court in connected Writ Petition No.4704 of 2025, the statutory right to register such an apex or federal society flows from the decision of member societies, each consisting of lawful purchasers. Once a cooperative society is validly formed and registered by a group of flat purchasers in accordance with MOFA and the MCS Act, it becomes a juristic person with independent decision-making powers. If multiple societies, each having attained legal status, resolve collectively to form a federal or apex association for the layout or township, the law does not require a further ratification from the developer who is no longer a stakeholder in such cooperative governance. Therefore, the promoter's agreement with an individual flat purchaser under Section 4 of MOFA or his obligation under Section 10 to form an initial association of purchasers may serve as a trigger for collective action but does not regulate or restrict the formation of a cooperative housing association. The legislative scheme makes it abundantly clear that MOFA governs the obligations of the promoter and the rights of the purchasers in the pre-conveyance stage, whereas the MCS Act takes over the field once societies are formed and registered.

32. The third reason for refusal of deemed conveyance is grant of order of status quo by this Court in Notice of Motion No.2905 of 2009 in Suit No.36 of 1969. On perusal of the record, it is evident that neither the petitioner nor respondent No.1 (developer) is a

party to the said suit and, therefore, the order passed in said suit shall not bind petitioner or respondent No.1. Moreover, the suit has been filed for redemption of mortgaged property and, therefore, will have no consequence on the statutory obligation on the respondent No.1 under MOFA Act for fulfillment of obligation created under agreement under Section 4 of the MOFA Act.

33. In so far as the judgments relied upon by the learned Senior Advocate on behalf of respondent No.1 in *Swastik Promoters and Developers, Jai Jalaram Cooperative Housing Society Ltd.*, and *Nahalchand Laloochand Pvt. Ltd. & Ors. v. Shri Panchamrut CHS Ltd. & Ors.* (supra), in my opinion, there cannot be a dispute in relation to legal proposition of law that while granting relief under Section 11 of the MOFA Act, the agreement registered under Section 4 of the MOFA Act crystalizes contractual obligation of promoter to convey defined portion of land to the cooperative society formed by the purchasers and schedule in such agreement binds the promoter. The grant of a deemed conveyance does not determine ultimate title vis-à-vis third-party claims; it simply transfers whatever rights the promoter had, to the society

34. However, in the facts of the case, as rightly pointed out by the learned Advocate for the petitioner that what is claimed by the petitioner as mentioned in the Certificate of Architect is the assignment of leasehold rights in relation to proportionate area of 27,266.651 sq. mtrs., whereas the built up area as reflected in the sanctioned plan dated 25 April 2011 is to the tune of 42,890,.404 sq. mtrs. It is true that in the agreement executed with the purchasers of Rameshwar Society, the schedule mentioned net

land area of 4800, area of 4350 in respect of Mansarovar Society and 6574 sq. mtrs. in respect of purchasers of Girija Society. However, the built up area as per sanctioned plan for the said society is 12,166.128 for Rameshwar, 14,476.932 for Mansarovar and 16,247.344 for Girija. Therefore, total proportionate area comes to 42,890.404 sq. mtrs. as per sanctioned plan. The area of 4800, 4350, and 6574 sq. mtrs is in respect of net land area and, therefore, the respondents are not justified in contending that the petitioner-Association can at the most be entitled to the area of 13,855 sq. mtrs. It needs to be noted that the respondent No.1 has utilized TDR obtained from handing over various reservations in the said property for the purpose of constructing buildings of the said societies and, therefore, the petitioners are entitled to proportionate rights in RG, road setback area, HCMTR, reservation TDR, and amenity TDR.

35. The Promoter's claimed right to utilize TDR or additional FSI is not a valid justification to refuse or delay the deemed conveyance. At best, it is an ancillary issue that can be addressed through appropriate conditions in the conveyance or by reserving liberty to the promoter to pursue the claim legally. The Competent Authority should not speculate on or decide the merits of such a claim – it lies beyond the Authority's limited mandate. The bottom line is that the prospect of future FSI utilization cannot be a roadblock to the petitioners' statutory right.

36. In summary, the Competent Authority under Section 11(3) has a duty to grant a certificate of deemed conveyance once it is shown that: (a) the promoter was obliged to convey (by statute

and contract), (b) a proper organization of flat takers exists to take conveyance, (c) the promoter failed to convey within the time. These conditions were plainly fulfilled in this case: (a) MOFA imposed the obligation (4 months after forming society/association) which had long passed; (b) the Association representing all flat takers applied; (c) no conveyance had been executed for 20 and 10 years respectively. Nothing more was required for the Authority to proceed. The various objections raised by the promoter were either outside the Authority's jurisdiction or not weighty enough to deny the statutory right. As one judgment put it, "statutory rights under MOFA take precedence even in cases of... ownership challenges". The Competent Authority should have confined itself to the statutory mandate and left the challenging questions to be sorted out separately

37. In my opinion, therefore, the impugned judgment and order cannot be sustained.

38. Accordingly, rule is made absolute in terms of prayer clauses (a) and (b). No costs.

39. However, the grant of relief to the petitioner-Society by way of issuance of a certificate of deemed conveyance shall not, and ought not to be construed as, foreclosing the right of the respondents to seek adjudication of their independent civil rights, if any, before a forum of competent jurisdiction.

40. Accordingly, while the statutory direction to issue the deemed conveyance certificate in favour of the petitioner-Society

shall be implemented in accordance with law, it is clarified that it shall be open to the respondents to institute an independent civil suit for ventilation of their alleged grievances. All questions of fact and law as may be raised in such proceedings, including the claim of excess area or proprietary interest, shall be considered on their own merits, without being influenced by any observation made in the present judgment, which is confined solely to the determination of the petitioners' entitlement under Section 11(3) of the MOFA.

(AMIT BORKAR, J.)