

MPBalekar

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

WRIT PETITION NO. 17057 OF 2025

Kumar Samruddhi Co-op. Hsg. Soc. ... Petitioner

V/s.

M/s. Ved Real Estate

Developers Pvt. Ltd. and Anr. ... Respondents

Mr. Pavan S. Patil along with Mr. Tanmay A. Deshmukh,
for the petitioner.

Mr. B. B. Dahiphale, for the State – Respondent No. 2.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 15, 2025

P.C.:

1. The grievance of the petitioner raises a substantial issue touching the very scheme of membership under the Maharashtra Ownership Flats Act, 1963 and the Maharashtra Co operative Societies Act, 1960. The facts, as asserted, are not in dispute at this stage. Purchasers of flats had already applied for membership of the Society. Those applications remained pending. During the same period, the promoter stepped in and moved an application seeking membership for *same purchasers*. That application was entertained and ultimately allowed by the statutory authorities.

2. Membership of a housing society is not a matter of choice or convenience. It flows from statutory entitlement. A flat purchaser acquires a valuable right to be considered for membership the moment he fulfills the conditions prescribed by law. That right

cannot be eclipsed or bypassed by permitting a promoter to sponsor *same purchasers*, particularly when the purchasers' applications are already on record and await decision.

3. The position becomes graver when the role of the Administrator is taken into account. It is the petitioner's case that till August 2023, the Society was under the control of an Administrator. An Administrator is appointed to manage affairs. He is not elected by members. His powers are limited. Enrollment of new members is not an ordinary administrative act. It has long term consequences. If the Administrator had no authority to enroll members, then the statutory period of ninety days under Section 22(2), which admittedly expired on 6 May 2023, cannot be read in isolation. That entire period fell within the tenure of the Administrator. The law cannot compel performance of an act by a body that was not legally competent to perform it.

4. Seen in this light, the concept of deemed membership requires careful scrutiny. Deemed membership is a legal fiction. It operates only when the statutory conditions are strictly satisfied. It cannot arise by default where the Society was under an Administrator and where applications of purchasers were pending.

5. The core question is does a promoter retain the right to move an application for membership when purchasers have already applied and their applications remain undecided. Can the authorities confer deemed membership on such an application, ignoring claims and the legal disability of the Society during the Administrator's regime. These questions go to the root of the

matter. They affect not only the parties before the Court but also the integrity of the cooperative movement.

6. These issues demand adjudication. They cannot be resolved by a mechanical application of timelines. The Court must examine the statutory scheme, the role of the promoter, the rights of purchasers, and the legal effect of administration. Until these aspects are tested, the impugned action cannot be treated as settled or beyond challenge.

7. Hence, issue notice to Respondent No. 1, returnable **19 January 2026**.

8. Until further orders, there shall be ad-interim relief in terms of prayer clause (c).

(AMIT BORKAR, J.)

Note:- This order is modified as per the order dated 17 December 2025. Corrections are shown in italicize.