

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

WRIT PETITION NO. 17120 OF 2025

M/S. Akash Builders

..Petitioner

Versus

Aashiana Co-Operative Housing
Society Ltd. And Ors

...Respondents

Mr. Aniesh Jadhav i/b. Shyam Singh, for the Petitioner.
Mr. S. L. Babar, AGP for Respondent-State.

CORAM: N. J. JAMADAR, J.

DATE : 22nd DECEMBER 2025

P.C.:

1. Heard the learned Counsel for the petitioner.
2. The challenge in this petition is to an order dated 29th October, 2024 passed by the Competent Authority under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963.
3. The learned Counsel for the petitioner submitted that, the petitioner was not served with the notice of the petition.
4. In the impugned order, the Competent Authority has recorded that, notices were duly served and even published in two newspapers.

5. The Court finds that, the agreement for sale was executed by the petitioner in favour of the flat purchasers in the year, 1981. There was clear breach on the part of petitioner in discharging its obligations under Maharashtra Ownership Flats Act, 1963.

6. It further appears that, the area granted by way of certificate of deemed conveyance is less than the area agreed to be conveyed under the agreement for sale.

7. In any event, having regard to the fact that, there was default on the part of the petitioner/promoter to execute a conveyance in favour of Respondent No. 1 Society for over 45 years, the Court does not consider it expedient to exercise its writ jurisdiction as the impugned order does not suffer from any manifest illegality.

8. At any rate, the petitioner is not precluded from instituting a suit based on title, if the petitioner disputes the entitlement of the Respondent No. 1 Society for the conveyance. A useful reference, in this context, can be made to the judgment of the Supreme Court in the case of **Arunkumar H. Shah HUF Vs Avon Arcade Premises Coop Society Ltd¹**, wherein the Supreme Court

1 2025 SCC OnLine SC 828

expounded the nature and import of the proceeding before the Competent Authority, as under:

“37. Our conclusions on the interpretation of sub-sections (4) and (5) of Section 11 of the MOFA are as under:

.....

ii. The competent authority, while following the summary procedure, cannot conclusively and finally decide the question of title. Therefore, notwithstanding the order under sub-section (4) of Section 11, the aggrieved parties can always maintain a civil suit for establishing their rights;

iii. The provisions of Section 11 are for the benefit of the flat purchasers. In writ jurisdiction, the Court should not interfere with the order granting deemed conveyance unless the same is manifestly illegal. The writ court should generally be show in interfering with such orders. The reason is that, notwithstanding the order under Section 11(4), the remedy of aggrieved parties to file a civil suit remains open; and

9. Keeping open the liberty to institute a suit, the petition stands dismissed.

[N. J. JAMADAR, J.]