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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8087 of 2021

M/s. Hallmark Marvel Realtors

...Petitioner

V/s.

The State of Maharashtra and Ors.

...Respondents

WITH
INTERIM APPLICATION NO.38437 OF 2025
IN
WRIT PETITION NO.8087 OF 2021

Marvel Matrix Cooperative Housing
Society Ltd.

...Applicant

In the matter between

M/s. Hallmark Marvel Realtors

...Petitioner

V/s.

The State of Maharashtra and Ors.

...Respondents

Mr. Vineet Naik, Senior Advocate with **Mr. Sukand Kulkarni i/b. Mr. Amit Gharte** for the Petitioner.

Mr. Zerick Dastur, with **Mr. Palak Agrawal, Ms. Vasundhara Dhar i/b. M/s. Aquilaw** for the Applicant in IA/38437/2025 and for Respondent No.3 in WP/8087/2021

Mrs. Vaishali Nimbalkar, AGP for Respondent-State.

CORAM: SANDEEP V. MARNE, J.

DATED: 15 DECEMBER 2025.

P.C.:

1) Challenge in the Petition is to the order dated 14 June 2021 passed by the Competent Authority and District Deputy

Registrar, Pune, conveying land admeasuring 5114.42 sq.mtrs. and constructed area admeasuring 5123.51 sq.mtrs. in favour of third Respondent -Society.

2) I have heard Mr. Naik, the learned Senior Advocate appearing for the Petitioner, Mr. Dastur, the learned counsel appearing for third Respondent -Society and Ms. Nimbalkar, the learned AGP for Respondent -State. I have gone through the reasonings adopted by the Competent Authority in the impugned order dated 14 June 2021.

3) Perusal of the impugned order dated 14 June 2021 would indicate that the third Respondent-Society had demanded conveyance of land admeasuring 4557.42 sq.mtrs. However, the Competent Authority has directed conveyance of land admeasuring 5114.42 sq.mtrs.

4) It appears that the last Agreement executed with one of the flat purchasers of the third Respondent Society is dated 31 March 2010. The Agreement is in respect of development on the entire land admeasuring 5114.42 sq.mtrs. Under the Agreement, the Petitioner-Developer undertook to convey the entire land under clause 34 as under:-

34) Notwithstanding anything contained hereinabove, the Promoters shall cause conveyance of the said land and the Buildings standing thereon to be conveyed in favour of the Cooperative Housing Society to be formed of all the purchasers of Flats/Units in "MARVEL MATRIX" within a period of one year from the date the Promoters completes the last Building in the said Complex and after the Promoter has realized all its dues from all the purchasers of all units in the said complex.

5) Alongwith the Agreement dated 31 March 2010, copy of last revised commencement certificate /sanctioned plan dated 11 May 2009 was appended. Perusal of the said sanctioned plan of 11 May 2009 would indicate that for land admeasuring 5114.42 sq.mtrs, the total sanctioned Built Up Area (**BUA**) was 7334.43 sq.mtrs. Out of the said available sanctioned BUA, Petitioner-Developer decided to utilise only 7107.14 sq.mtrs of BUA. Mr. Naik has fairly made a statement that the Petitioner shall not claim any benefit in respect of unutilised FSI in 11 May 2009 plan ($7334.43-7107.14=227.29$ sq.mtrs.). This BUA of 7107.14 sq.mtrs was divided into Building No.1(Wings 'A' and 'B') of 5089.62 sq.mtrs. and Building No.2 of 2017.52 sq.mtrs. aggregating 7107.14 sq.mtrs. Thus, the full disclosure was made to the flat purchasers, who are members of the third Respondent-Society, that second building with sanctioned BUA of 2017.52 sq.mtrs would be constructed in the layout. Therefore the contractual obligation to convey the entire land in favour of the Society was made subject to Petitioner's right to complete construction of Building No.2.

6) It is well settled position of law that while exercising jurisdiction under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (**MOFA**) the Competent Authority steps into the shoes of Promoter and conveys land and building as per the flat purchase agreement and sanctioned plan/layout. He cannot convey something more than the one indicated in the Agreement read with sanctioned plan. Therefore the Competent Authority has to take into consideration not just the Agreement executed under Section 4 but also the sanctioned plan. The Competent Authority in the present case has

not undertaken the exercise of considering the sanctioned plan which formed part of MOFA Agreement dated 31 March 2010. As per the said sanctioned plan, Building No.2 was sanctioned in the layout with the sanctioned BUA 2017.52 sq.mtrs.

7) It appears that the Petitioner-Developer refused to convey any part of the land in the layout on the ground of incomplete development of the layout as construction of Building No.2 was still incomplete by relying upon Clause No.34 of the MOFA Agreement. This issue of permissibility to convey proportionate land in the layout during pendency of layout development is no more *res integra* and is covered by several judgments of this Court. The Government Resolution dated 22 June 2018 also mandates that a society, construction of whose building is complete, need not wait for completion of entire layout development for the purpose of availing benefit under Section 11 of the MOFA for securing conveyance of land in its favour. However, in such case, the society, construction of whose building is complete, can get only land proportionate to BUA utilised in construction of its building. Going by this settled position, third Respondent-Society would be entitled to land corresponding to the sanctioned BUA 5089.62 sq.mtrs out of the total land admeasuring 5114.42 sq.mtrs. Similarly, Petitioner-Developer will be entitled to retain portion of land corresponding to the BUA 2017.52 sq.mtrs sanctioned for Building No.2.

8) It appears that the Competent Authority has taken into consideration plan of 5 June 2009 ignoring the position that the correct division of BUA for Building Nos. 1 and 2 is reflected in the sanctioned

plan of 11 May 2009, which was appended to the MOFA Agreement executed with one of the members of the third Respondent-Society.

9) In view of the above, the Competent Authority ought to have called for a certificate of architect for dividing total land admeasuring 5114.42 sq.mtrs corresponding to BUA utilised in the building of third Respondent-Society and the BUA sanctioned in the 2009 plan for construction of Building No.2. Under the GR dated 22 June 2018 the Competent Authority is empowered to call for such Architect's Certificate. Even though construction of Building No.2 is still incomplete, disclosure of which was clearly made to members of the third Respondent-Society, the Competent Authority has erred in directing conveyance of entire land admeasuring 5114.42 sq.mtrs. in favour of the Society. In my view therefore, the order of deemed conveyance dated 14 June 2021 is in the teeth of provisions of Section 11 of the MOFA and of GR dated 22 June 2018. Order is indefensible and is liable to be set aside. Proceedings are required to be remanded to the Competent Authority for the purpose of conduct of exercise of division of land admeasuring 5114.42 sq.mtrs corresponding to the BUA of 5089.62 sq.mtrs for building of third Respondent -Society and BUA of 2017.52 sq.mtrs sanctioned for Building No.2.

10) Consequently, I proceed to pass the following order:-

- (i) Certificate of deemed conveyance dated 14 June 2021 passed by the Competent Authority is set aside.
- (ii) Proceedings of Deemed Conveyance Application No.DC1006572/2019 are restored on the file of the

Competent Authority, who shall proceed to decide the same afresh.

- (iii) In the remanded proceedings, the Competent Authority shall direct parties to furnish certificate of architect. The architect shall divide land admeasuring 5114.42 sq.mtrs in proportion to BUA of 5089.62 sq.mtrs utilised in construction of building of third Respondent-Society and BUA 2017.52 sq.mtrs sanctioned for construction of Building No.2. While doing the land area division, the Architect shall consider the balance unutilised BUA of 227.29 sq.mtrs in favour of Respondent No.3 society.
- (iv) Upon receipt of certificate of architect dividing the land in proportion to BUA sanctioned for the two buildings, the Competent Authority shall proceed to pass fresh order conveying in favour of third Respondent-Society, the proportionate land so determined in accordance with certificate of architect.
- (v) Balance land corresponding to BUA of 2017.52 sq.mtrs. shall remain in ownership of the Petitioner-Developer, who shall be entitled to develop the same in accordance with the applicable Development Control Regulations.
- (vi) After completion of construction of Building No.2 and sale of flats therein, flat purchasers therein shall be admitted as members of the third Respondent Society. Thereafter the third Respondent Society

would be at liberty to seek conveyance of entire land of 5114.42 sq.mtrs.

- (vii) Remanded proceedings shall be decided as expeditiously as possible, preferably by 31 March 2026. Parties shall appear before the Competent Authority on 6 January 2026 and obtain necessary orders for fixation of date(s) of hearing of the Application.

11) With the above directions, Petition is **partly allowed and disposed of**. There shall not no orders as to costs.

12) With disposal of the Writ Petition, Interim Application does not survive and hence stands disposed of.

[SANDEEP V. MARNE, J.]