

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2659 OF 2024

Vakil Nagar Sahakari Gruhrachana Sanstha

Maryadit, a duly registered housing coop.

Society, through its Chairman Madhukar

Pandurang Navale, Age 61, Occu.: Advocate,

R/at Building No.5, Flat No.22, Vakil Nagar

Coop. Housing Society, Erandwana,

Pune 411 004.

... Petitioners

Vs.

ATUL
GANESH
KULKARNI

Digitally signed
by ATUL GANESH
KULKARNI
Date: 2026.04.28
15:24:22 +0530

1. Gopal Krishna Dharne, died through
legal heirs

1a. Vinod Gopal Dharne,
Age 48 years, Occupation.
R/at Shirish Duplex, Lane No.11,
Prabhat Road, Pune 411 004

1b. Megha Prashant Maidgikar,
Age Adult, Occu.: Household

1c. Bilva Ranjeet Shelar,
Age Adult, Occu.: Household
Both r/at C/o. Lawyers Chambers No.1,
'B' Building, District Court,
Shivajinagar, Pune

2. Dnyaneshwar Govind Zungare,
died through legal heirs

2a. Jayshree Dnyaneshwar Zurange,
Age Adult, Occu.: Household

2b. Manoj Dnyaneshwar Zurange,
Age Adult, Occupation Nil.

Both r/at 230, Oppo. Lokmanya
Library, Navi Peth, Pune 411 030

3 Nivrutti Govind Surange,

died through legal heirs
Latika Nivrutti Zurange, died
through legal heirs

3a. Rajendra Nivrutti Zurange,

Age Adult, Occupation Business

3b. Santosh Nivrutti Zurange,

Age Adult, Occupation Business

3c. Anuradha Suresh Alhat,

Age Adult, Occupation Household.

3d. Smita Veenit Naik,

Age Adult, Occu.: Household

3e. Nirmala Narayan Aaru,

Age Adult, Occu.: Household
All R/at 230, Opposite Lokmanya
Library, Navi Peth, Pune 411 030

4. The Competent Authority & District

**Deputy Registrar, Coop. Society,
Pune City, Pune**

... Respondents

Mr. Anil Sakhare, Senior Advocate with Mr. Ajay Joshi
i/by Mr. V.B. Tapkir for the petitioner.

Mr. S.S. Redkar for respondent Nos.1a, 1b, and 1c.

Mr. S.M. Gorwadkar with Mr. Ritvik Joshi i/by Mr.
Niranjan Mogre for respondent Nos.2a and 2b.

Mr. S.S. Patwardhan i/by Mr. Bhooshan Mandlik for
respondent Nos.3a to 3d.

Mr. Y.D. Patil, AGP for respondent No.4-State.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 18, 2026.

PRONOUNCED ON : APRIL 28, 2026

JUDGMENT:

1. By way of the present writ petition instituted under Articles 226 and 227 of the Constitution of India, the petitioner seeks to challenge the legality, correctness, and propriety of the order dated 27 September 2022 passed by respondent No.4. The petitioner contends that the said order suffers from errors apparent on the face of record, proceeds on an incorrect appreciation of the statutory provisions, and has resulted in denial of relief otherwise available in law.

2. The facts giving rise to the present proceedings, in brief, are as follows. An Agreement for Sale-cum-Development Agreement came to be executed on 1 April 1974 between the original landowners, namely the Zurange family, and Kalpanamiti Co-operative Housing Society together with M/s. Auti Brothers and M/s. Amey Constructions, for the purpose of development of the property and construction of a housing scheme thereon. Thereafter, with effect from 17 February 1976, the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 became applicable to the subject land. Subsequently, by order dated 29 August 1988, the Deputy Collector and Competent Authority declared land admeasuring 3733.33 square meters as surplus land under the provisions of the said Act. It further appears that the landowners had, on 25 December 1983, preferred an application

seeking exemption under Section 20 of the ULC Act. The State Government, in principle, granted such exemption on 30 May 1985 for construction of tenements intended for the weaker sections of society. Thereafter, a further Development Agreement was executed on 28 December 1986 between Shri G.K. Dharane as Party No.1, Kalpanamiti Co-operative Housing Society as Party No.2, the landowners as Party No.3, Auti Brothers as Party No.4, and M/s. Amey Constructions as consenting Party No.5. By virtue of the said agreement, development rights in respect of the subject property were conferred upon Shri G.K. Dharane, while the remaining parties recorded their consent thereto. Reliance has been placed upon Clauses 7, 9, 9(1), 9(3), 9(7) and 9(8) of the said agreement. It is further material to note that a formal exemption order under Section 20 of the ULC Act came to be issued by the Government of Maharashtra on 30 September 1988. Reference has been made to Recitals 3 and 5, as also paragraphs 2, 5, 11, 12, 14, 16, 17 and 20 of the said exemption order. In particular, Clause 14 thereof is stated to cast a statutory obligation upon the landowners to execute conveyance in accordance with the terms of the exemption.

3. In pursuance of the exemption order dated 30 September 1988, another Development Agreement was executed on 29 March 1989. The parties thereto were Nivrutti Govind, Dnyaneshwar Govind and Smt. Sakubai, being landowners, as parties of the First Part; Shri J.K. Dharane, acting as Chairman of Pune Bar Association Housing Project, together with Shri Prakash Auti as Promoter and parties of the Second Part; Amey Construction as

party of the Third Part; M/s. Auti Brothers & Co. as party of the Fourth Part; and Kalpanamiti Co-operative Housing Society as party of the Fifth Part. Attention has been invited to Clauses 1, 2, 3, 6, 8 to 13 and 17 of the said agreement. The broad purport of the arrangement was that the parties of the Second Part were to function as promoters and developers, obtain sanction of building plans from the planning authority, undertake construction of the buildings, and thereafter convey title in favour of Kalpanamiti Co-operative Housing Society or such other co-operative society as may be formed.

4. A Power of Attorney dated 4 April 1989 was thereafter executed by the landowners in favour of Shri Dharane and Shri Hate, Consultant Engineer. Reliance is placed on Clauses 6, 8, 10, 11, 12, 13, 14 and 17 thereof. The said instrument is stated to authorise Shri G.K. Dharane, inter alia, to obtain sanction of building plans, carry out construction activities, sell the tenements, and execute conveyance of the property in favour of a co-operative society or any other lawful transferee. It is further the case of the petitioner that physical possession of the property was handed over on the same date, namely 4 April 1989, to the promoters Shri Dharane and Shri Prakash Auti. The possession letter records Shri G.K. Dharane as Chairman and Promoter of the housing scheme and recognises his entitlement to develop the property. Thereafter, on 24 April 1989, the promoters obtained commencement certificate from the competent authority.

5. It is the petitioner's case that during the period from 1987 to 1991, various flat purchasers, who later became members of the

petitioner-society, paid consideration amounts from time to time to the promoters, particularly Shri G.K. Dharane, towards construction of the housing scheme. The petitioner society came to be registered on 2 June 1990 through Shri Dharane acting in the capacity of developer and promoter. Thereafter, on 8 July 1990, Shri G.K. Dharane, as Chairman of the society, issued allotment letters to the concerned purchasers. The said allotment letters specifically refer to annexures and enclosures forming integral part thereof and required to be read conjointly. The enclosure contains terms and conditions governing the allotment. Clause 1 specifies the cost of the flat. Clause 6 records that Shri G.K. Dharane, as promoter, would complete construction of the buildings and hand over possession upon receipt of completion certificate. Clause 9 stipulates that final conveyance would be executed in favour of the society. The annexure further contains specifications relating to construction, including structural specifications, external walls, partition walls, internal and external plaster, doors, windows, flooring, sanitation, electrification, loft, kitchen platform, water supply, colouring, and other amenities. The annexures also include layout plan of the society, typical floor plan and commencement certificate.

6. It appears that on 20 February 2021, the petitioner society issued a legal notice to the owners and promoters calling upon them to execute conveyance of their right, title, and interest in favour of the society. Thereafter, an application seeking deemed conveyance came to be filed on 8 October 2022 along with supporting documents. Prior thereto, on 14 July 2022, respondent

Nos.2(a) and 2(b), being some of the landowners, opposed the said application principally on the ground that no registered agreement existed in favour of the members of the petitioner society. On 21 July 2022, respondent Nos.2(a), 2(c) and 2(d) adopted the same objections. Ultimately, by order dated 27 September 2022, the Competent Authority dismissed the application solely on the ground that there was no registered development agreement as contemplated under Section 4 of the Maharashtra Ownership Flats Act, and consequently the application under Section 11(3) thereof was held to be not maintainable.

7. Mr. Sakhare, learned Senior Advocate appearing for the petitioner, submitted that a composite reading of the entire documentary record is necessary for proper adjudication of the present dispute. According to him, the following documents are required to be read conjointly and not in isolation, namely: (i) Agreement dated 28 December 1986; (ii) Order dated 30 September 1988 issued under Section 20 of the Urban Land Ceiling Act; (iii) Agreement dated 29 March 1989 conferring development rights upon Mr. Dharane and another; (iv) Power of Attorney dated 4 April 1989 executed in favour of Mr. Dharane and another; (v) Possession Letter dated 4 April 1989; and (vi) Allotment Letter dated 8 July 1990. It was submitted that if the said documents are read as parts of one continuous transaction, they unmistakably disclose a concluded contractual arrangement between the parties, under which Mr. Dharane functioned as promoter, undertook construction of the buildings, and thereafter,

in his capacity as Chairman of the society, allotted flats to the members of the petitioner society. It was therefore contended that these documents, when read together, satisfy the substance and requirements of an agreement under the Maharashtra Ownership Flats Act, and consequently entitle the petitioner society to grant of deemed conveyance.

8. Learned Senior Advocate further submitted that the Competent Authority rejected the petitioner's application solely on the premise that no registered document existed, and such approach is ex facie contrary to law. According to him, the authority failed to consider settled legal position laid down by this Court that the remedy of deemed conveyance cannot be defeated merely on technical absence of a registered instrument, where substantive rights otherwise stand established from the material on record. It was further urged that the authority wholly overlooked Government Resolutions dated 22 July 2018 and 1 March 2019, which, according to the petitioner, provide relevant administrative guidance for adjudicating applications seeking deemed conveyance. It was submitted that these resolutions were binding considerations and ought to have been taken into account while deciding the petitioner's claim.

9. In support of the aforesaid submissions, reliance was placed upon the judgment of this Court in *Prakash Arun Apte v. Narendra CHS, reported in 2015(6) MLJ 373*. It was submitted that in the said decision, this Court held that an exemption order granted under Section 20 of the ULC Act superimposes itself upon the contractual arrangement between the parties, particularly where

the exemption is granted subject to a condition requiring execution of conveyance in favour of the society. According to learned counsel, the ratio of the said judgment squarely applies to the facts of the present case. Further reliance was placed on the decision of this Court in Writ Petition (L) No.8735 of 2024, *Ravi Agarwal v. Prince Tower CHS*, decided on 8 April 2024, wherein it was held that absence of registration of the agreement by itself would not bar grant of deemed conveyance. Reliance was also placed upon the judgment in Writ Petition No.406 of 2018, *ALJ Residency CHS v. State of Maharashtra & Anr.*, decided on 25 November 2024, wherein this Court granted deemed conveyance on the basis of an unregistered Permanent Alternate Accommodation Agreement, notwithstanding absence of a formal MOFA agreement. It was submitted that the Coordinate Bench observed that acceptance of a defence based merely on absence of a MOFA agreement would amount to placing a premium on the default of the promoter. It was further contended that under Section 2(c) of the Act, the expression “promoter” includes a person who constructs or causes construction of a structure, and therefore the landowner also falls within the statutory ambit of promoter and is bound to discharge obligations including execution of conveyance.

10. Learned Senior Advocate also relied upon the judgment of this Court in Writ Petition No.2455 of 2023, *Blue Heaven CHS v. Pune Construction*, decided on 21 November 2024. It was submitted that in the said matter, this Court rejected the defence that an unregistered or unstamped document creates no rights in favour of flat purchasers and further negated the contention that

deemed conveyance cannot be granted merely because landowners were not signatories to the flat purchase agreements. According to learned counsel, this Court recognised that execution of conveyance is a statutory obligation which binds the landowner as well. Reliance was further placed on the decision in *Harshad Developers v. Manohar*, reported in 2013(1) MLJ 855, wherein it was held that after insertion of Section 11(4A) of MOFA, annexing a registered agreement along with an application for deemed conveyance is not an inflexible requirement. He also relied upon the judgment in *Ramniklal Kotak v. Varsha Builders*, AIR 1992 Bom 62, to contend that the definition of promoter is wide enough to include the landowner. Further reliance was placed on *Hanuman Vitamin Foods Pvt. Ltd. v. State*, reported in 1989 MLJ 935, wherein it was held that a document must be construed as a whole and that the nomenclature assigned to it is not determinative of its true legal character.

11. Reliance was also placed upon the judgment of the Supreme Court in *Aloka Bose v. Parmatadevi*, (2009) 2 SCC 582, wherein it was held that the cardinal rule of construction requires an instrument to be read as a whole and the intention of parties must be gathered from its terms read in entirety. Learned counsel further submitted that in *Ms. Dilavari Exports v. Alitalia Cargo*, AIR 2010 SC 2233, the Supreme Court recognised the principle that a person may act in dual capacities where circumstances so warrant. It was contended that the same principle was reiterated in *Corned Chemicals v. C.N. Ramchand*, AIR 2009 SC 494. On the strength of these authorities, it was urged that Mr. Dharane could validly act

both as promoter and as office bearer of the society without legal inconsistency.

12. Proceeding further, learned Senior Advocate submitted that in the present case Mr. Dharane functioned as promoter, and his acts, undertaken within the framework of authority conferred upon him, are binding upon the landowners. It was urged that the inter se documents executed between the parties, when read along with the exemption order under Section 20 of the ULC Act and the allotment letters issued to members, lead to only one conclusion, namely that the petitioner society is entitled to deemed conveyance. According to him, the landowners cannot now be permitted to raise a plea that in the absence of a registered MOFA agreement no conveyance can be directed. Such defence, it was submitted, is contrary to good faith and contrary to the obligations accepted by them under the exemption order. It was argued that once the landowners obtained benefit of exemption and retained land which otherwise stood declared surplus, they cannot approbate and reprobate by denying the corresponding obligation to convey title. Learned counsel submitted that the landowners are estopped in law from resisting the present claim, having taken advantage of the exemption granted under Section 20. It was therefore prayed that the writ petition be allowed and the petitioner's application for deemed conveyance be granted.

13. Per contra, Mr. Gorwadkar learned Senior Advocate appearing for respondent Nos.1(a) and 1(b) submitted that Mr. Dharane had executed documents only in his capacity as Chairman of the society and not in the independent capacity of promoter or

developer. It was therefore contended that any act done by him as office bearer of the society cannot create enforceable rights against the respondents so as to entitle the petitioner to relief in the present proceedings.

14. Learned Senior Advocate for respondent Nos.2(a) and 2(b) submitted that internal documents such as letters of allotment do not create or confer title, and in support thereof relied upon the judgment of this Court in *Navi Mumbai Municipal Corporation v. Arjun Krishnarao Deshmukh & Others*, Writ Petition No.10677 of 2019, decided on 12 February 2025. It was submitted that the letter of allotment relied upon by the petitioner is merely an internal document of the society, stated to have been issued pursuant to a General Body Resolution dated 23 June 1990 passed by Vakilnagar CHSL and confirmed by the Managing Committee in its meeting dated 8 July 1990. According to the respondents, the allotment letters were issued on the official letterhead of Vakilnagar CHSL and signed by its Chairman and Secretary. Since Vakilnagar CHSL was not itself a promoter, it was urged that its Chairman and Secretary cannot be treated as promoters in law. It was further submitted that the terms and conditions enclosed with the allotment letters do not satisfy the statutory requirements contemplated under Section 4 of MOFA.

15. It was further submitted that the allotment letter is neither registered nor duly stamped and therefore cannot be relied upon as a statutory agreement under MOFA. According to the respondents, deemed conveyance is a creature of statute and can arise only upon fulfillment of conditions expressly prescribed

therein. If the statutory right accrues only upon execution of an agreement under Section 4 of MOFA, then in absence of such agreement, the society acquires no right to seek unilateral deemed conveyance. It was also contended that the allotment letter does not contain a valid covenant for conveyance. Therefore, in absence of the foundational jurisdictional fact, namely existence of a registered agreement under Section 4, the petitioner society was not entitled to invoke Section 11, nor could the Competent Authority assume jurisdiction to entertain such application.

16. Learned senior counsel further submitted that there is complete absence of a valid agreement conforming to Section 4 of MOFA. It was urged that the statute mandates an agreement for sale between promoter and flat purchaser in the prescribed statutory form. Such agreement is required to substantially conform to Form V under Rule 5 of the MOFA Rules and must contain essential particulars including obligation to construct, date of possession, carpet area, price, common areas, and title aspects. According to the respondents, the allotment letter relied upon by the petitioner does not satisfy these statutory requirements. It was submitted that several essential particulars are either absent or inadequately stated, including date of possession, precise carpet area, proportionate price of common areas, nature of organisation to be formed, extent of common facilities, percentage of undivided interest, intended use of the flat, and related disclosures. On this basis it was argued that the allotment letter cannot be elevated to the status of an agreement under Section 4 of MOFA.

17. It was further submitted that there is non-compliance with mandatory clauses contained in Form V. According to the respondents, the allotment letters do not incorporate several statutory terms such as the promoter's obligation to construct in accordance with sanctioned plans, a reciprocal agreement to purchase and sell, the date and mode of delivery of possession, the declared purpose of the flat, transfer of title within stipulated period, and execution of a formal conveyance deed. It was urged that these are not merely directory provisions but mandatory statutory safeguards, and their absence renders the document legally deficient for the purposes of claiming deemed conveyance.

18. Learned senior counsel submitted that Rule 5 of the Rules obliges the promoter, prior to accepting any advance or deposit, to execute an agreement in Form V containing all particulars specified in Section 4(1A)(a) and to annex supporting documents required by clause (b) thereof. It was contended that this provision was introduced by Government Notification dated 10 April 1987. According to the respondents, none of such statutory enclosures were attached to the allotment letters. Reliance was also placed upon Note 1 appended to Form V, which states that while the model form may be adapted to suit factual circumstances, certain clauses, namely, clauses 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13 and 22 are statutory and mandatory and must be retained. It was submitted that any departure from such mandatory clauses would be ultra vires the Act and unenforceable.

19. On the aforesaid basis, learned senior counsel submitted that the mandatory clauses referred to above are compulsory in

character and binding in nature. Consequently, mere letters of allotment do not operate to convey or transfer any legal interest in flats. It was contended that the documents relied upon by the petitioner lack the essential hallmarks of an agreement for sale, such as reciprocal promise to purchase and sell, date of possession, consideration structure with payment terms, and statutory approvals relating to layout and development. It was therefore submitted that no enforceable right can arise therefrom.

20. Learned senior counsel further submitted that the mandatory signature of the landowners as consenting parties is absent from the alleged operative documents. It was also specifically objected before the Competent Authority that the supporting documents produced by the petitioner were not certified copies of originals, nor were originals themselves produced for verification. In such circumstances, according to the respondents, the authority ought not to have taken cognizance of uncertified photocopies. Reliance was placed on the reported decision in (2010) 8 SCC 423. It was further submitted that Rule 13(5)(c) requires the Competent Authority to conduct such inquiry as deemed necessary and to verify authenticity of documents before passing orders. Reliance was also placed on *Arunkumar H. Shaha v. Avon Arcade*, (2025) 7 SCC 249, to contend that unauthenticated photocopies ought not to have been accepted. It was therefore argued that the petitioner's case rests on no admissible evidence.

21. It was further submitted that under the mandatory conditions of the exemption order issued under Section 20 of the ULC Act, the landowners were required to construct and hand over

forty-eight flats admeasuring 40 square meters each to the State Government. According to the respondents, neither were such flats handed over, nor were those obligations reflected in the allotment letters or annexures relied upon by the petitioner. It was contended that any allotment made in derogation of the exemption conditions is void and incapable of recognition in law. It was also urged that breach of the exemption conditions exposed the landowners to penal consequences. Learned counsel additionally submitted that no Completion Certificate or Occupation Certificate has been issued by the Municipal Corporation till date. Lastly, it was submitted that the landowners have not signed the relevant documents at all. Reliance was placed upon Note No.2 to the prescribed form, which contemplates joining the owner as confirming party. According to the respondents, the Zurange family, being the owners, were never arrayed as confirming parties to the allotment documentation, and therefore there is clear non-compliance with the statutory framework. On this ground also, it was urged that the petitioner's claim for deemed conveyance deserves rejection.

22. Mr. Patwardhan, learned Advocate appearing for the legal representatives of respondent No.3, being one of the owners, invited attention to the letter of allotment at page 140 of the record and submitted that the entire claim of the petitioner under Sections 4 and 11 of the Maharashtra Ownership Flats Act is founded upon the said allotment letter. According to him, a plain reading of the document demonstrates that the same bears the signatures of Mr. Dharne and Mr. Waikar in their capacities as

Chairman and Secretary respectively of Vakil Nagar Co-operative Housing Society Limited. Learned counsel then referred to the various documents placed on record, including the Articles of Agreement dated 29 March 1989 executed between the owners, the promoters namely Gopal Krishna Dharne and Prakash Vasudeo Auti, M/s. Amey Constructions, Auti Brothers and Company, and Kalpanamati Co-operative Housing Society. It was submitted that in the said agreement Mr. Dharne and Mr. Auti had executed the document in their individual capacities as Chief Promoter and Developer. It was further pointed out that even the General Power of Attorney dated 4 April 1989 describes Dharne and Auti in their personal capacities as promoters. Likewise, the possession receipt is stated to have been acknowledged by both of them in their individual capacities. On the basis of these documents, learned counsel contended that the allotment letter executed by Mr. Dharne and Mr. Waikar as Chairman and Secretary on behalf of Vakil Nagar CHS was not issued in exercise of any authority vested in them as promoters, and therefore cannot bind the owners.

23. Learned counsel further submitted that there exists no agreement under Section 4 of MOFA executed between the petitioner and the promoters. According to him, the petitioner seeks to rely upon an impermissible blending of capacities by asserting that Mr. Dharne acted both as promoter and as Chairman of Vakil Nagar CHS. Inviting attention to Clauses 9 and 10 of the allotment letter, he submitted that the very terms of the document negate any contention of absolute or permanent allotment. Clause 9, according to him, restrained the allottee from transferring,

alienating or otherwise dealing with the flat in favour of any third party until final conveyance of the building was executed. Clause 10 further provided that during pendency of construction, or before handing over possession, if the allottee desired to withdraw or resign from the housing scheme, the allottee was required to surrender the allotted flat to the society. It was therefore urged that these stipulations indicate a provisional and conditional arrangement rather than a concluded transfer or sale conferring enforceable proprietary rights.

24. Inviting attention to the application for deemed conveyance filed under Section 11 of MOFA, learned counsel submitted that paragraph 4 thereof contains a specific averment that the opposite parties had executed registered agreements under Section 4 in favour of the applicant. According to him, this assertion goes to the root of the matter. He then referred to the reply filed on behalf of respondent No.3, wherein a specific defence was raised that the Competent Authority had granted adjournments on several occasions, so as to enable the applicant society to produce documents in support of its claim. However, despite such opportunities, the applicants failed to produce any registered instrument or any legally admissible document substantiating the alleged agreements. Learned counsel further invited attention to the submissions advanced on behalf of opponent No.2 before the authority, wherein it was specifically contended that the applicant had failed to produce agreements to sell executed in favour of flat purchasers as well as the development agreement between owner and promoter. It was pointed out that the impugned order itself

records that the Advocate for the applicant had assured production of such documents at the time of hearing. However, during the course of hearing, only allotment letters were produced with a contention that the same should be treated as agreements under Section 4A of MOFA. Learned counsel submitted that although copies of agreements dated 28 December 1986, 29 March 1989 and other connected documents were stated to be produced within two days, no such duly proved documents were in fact tendered before the authority. According to him, the documents now relied upon by the petitioner, namely those dated 28 December 1986, 29 March 1989 and 4 April 1989, are unregistered instruments and mere photocopies, and therefore inherently unreliable.

25. Learned counsel thereafter invited attention to Sections 4 and 11 of MOFA and submitted that both the provisions contemplate existence of duly executed and registered instruments. According to him, the statutory scheme requires copies of agreements executed in favour of flat purchasers to accompany an application seeking deemed conveyance under Section 11. It was therefore contended that in absence of registered documents satisfying the mandate of law, the petitioner cannot claim any substantive relief in the present writ petition. On these grounds, learned counsel prayed for dismissal of the petition.

REASONS AND ANALYSIS:

26. Having heard the learned counsel for the parties and having gone through the entire record with the assistance of the rival submissions, this Court finds that the dispute has to be decided on

the totality of the arrangement which emerged between the landowners, the promoters and the society members over a passage of time.

27. In order to effectively adjudicate upon the issues arising in the present proceedings, and to properly appreciate the rival submissions advanced on behalf of the parties, it becomes necessary to set out the relevant provisions of the Maharashtra Ownership Flats Act. The relevant provisions of the MOFA Act, therefore, are reproduced hereinbelow.

28. Under Section 2(c) MOFA, the term “Promoter” has been defined as under:

“(c) “promoter” means a person and includes a partnership firm or a body or association of persons, whether registered or not who constructs or causes to be constructed a block or building of flats, or apartments for the purpose of selling some or all of them to other persons, or to a company, cooperative society or other association of persons and includes his assignees; and where the person who builds and the person who sells are different persons, the term includes both;”

48. Section 4 mandates entering into an agreement with flat purchaser and registration thereof by a promoter before accepting advance payment. Section 4 MOFA provides thus:

“4. Promoter before accepting advance payment or deposit to enter into agreement and agreement to be registered.—

(1) Notwithstanding anything contained in any other law, a promoter who intends to construct or constructs a block or building of flats all or some of which are to be taken or are taken on ownership basis, shall, before, he accepts any sum of money as advance payment or deposit, which shall not be more than 20 per cent, of the sale price enter into a written agreement for sale with each of such persons who are to take

or have taken such flats and the agreement shall be registered under the Registration Act 1908(hereinafter in this section referred to as “the Registration Act, 1908)” and such agreement shall be in the prescribed form.

(1-A) The agreement to be prescribed under subsection (1) shall contain inter alia the particulars as specified in clause (a); and to such agreement there shall be attached the copies of the documents specified in clause (b)—

- (a) particulars— (i) if the building is to be constructed, the liability of the promoter to construct it according to the plans and specifications approved by the local authority where such approval is required under any law for the time being in force;
- (ii) the date by which the possession of the flat is to be handed over to the purchaser;
- (iii) the extent of the carpet area of the flat including the area of the balconies which should be shown separately;
- (iv) the price of the flat including the proportionate price of the common areas and facilities which should be shown separately, to be paid by the purchaser of flat; and the intervals at which instalments thereof may be paid;
- (v) the precise nature of the organisation to be constituted of the persons who have taken or are to take the flats;
- (vi) the nature, extent and description of limited common areas and facilities;
- (vii) the nature, extent and description of limited common areas and facilities, if any; and
- (viii) percentage of undivided interest in the common areas and facilities appertaining to the flat agreed to be sold.
- (ix) statement of the use for which the flat is intended and restriction on its use, if any;

(x) percentage of undivided interests in the limited common areas and facilities, if any, appertaining to the flat agreed to be sold;

4A. Effect of non-registration of agreement required to be registered under section 4.-

Where an agreement for sale entered into under subsection (1) of section 4, whether entered into before or after the commencement of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, Management and transfer) (Amendment and Validating Provisions) Act, 1983 (Mah. V of 1984), remains unregistered for any reason, then notwithstanding anything contained in any law for the time being in force, or in any judgement, decree, or order of any Court, it may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1963 (XLVII of 1963), or as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property Act, 1882 (IV of 1882), or as evidence of any collateral transaction not required to be effected by registered instrument.

50. Section 11 MOFA, which is the crucial provision for determination of issue in the present case, imposes an obligation on the promoter to convey his title in the land and building in favour of the Cooperative Society, Company or Association of apartment owners. It reads as under:

“11. Promoter to convey title, etc. and to execute documents, according to the agreement.—(1) A promoter shall take all necessary steps to complete his title and convey to the organisation of persons, who take flats, which is registered either as a cooperative society or as a company as aforesaid or to an association of flat takers [or apartment owners], his right, title and interest in the land and building and execute all relevant documents therefor in accordance with the agreement executed under Section 4 and if no period for the execution of the conveyance is agreed upon, he shall execute the conveyance

within the prescribed period and also deliver all documents of title relating to the property which may be in his possession or power.

(2) It shall be the duty of the promoter to file with the competent authority, within the prescribed period, a copy of the conveyance executed by him under subsection (1).

(3) If the promoter fails to execute the conveyance in favour of the cooperative society formed under Section 10 or, as the case may be, the Company or the association of apartment owners, as provided by subsection (1), within the prescribed period, the members of such cooperative society or, as the case may be, the Company or the association of apartment owners may, make an application, in writing, to the concerned competent authority accompanied by the true copies of the registered agreements for sale, executed with the promoter by each individual member of the Society or the Company or the association, who have purchased the flats and all other relevant documents (including the occupation certificate, if any), for issuing a certificate that such society, or as the case may be, company or association, is entitled to have an unilateral deemed conveyance, executed in their favour and to have it registered.

(4) The competent authority, on receiving such application, within reasonable time and in any case not later than six months, after making such enquiry as deemed necessary and after verifying the authenticity of the documents submitted and after giving the promoter a reasonable opportunity of being heard, on being satisfied that it is a fit case for issuing such certificate, shall issue a certificate to the Sub-Registrar or any other appropriate Registration Officer under the Registration Act 1908, certifying that it is a fit case for enforcing unilateral execution, of conveyance deed conveying the right, title and interest of the promoter in the land and building in favour of the applicant, as deemed conveyance.

(5) On submission by such society or as the case may be, the Company or the association of apartment owners, to the Sub-Registrar or the concerned appropriate Registration Officer appointed under the Registration Act 1908, the certificate

issued by the competent authority along with the unilateral instrument of conveyance, the Sub-Registrar or the concerned appropriate registration Officer shall, notwithstanding anything contained in the Registration Act 1908, issue summons to the promoter to show cause why, such unilateral instrument should not be registered as “deemed conveyance” and after giving the promoter and the applicants a reasonable opportunity of being heard, may on being satisfied that it was fit case for unilateral conveyance, register that instrument as ‘deemed conveyance’.”

29. Section 2(c) of the Maharashtra Ownership Flats Act defines the expression “promoter”. The definition includes a person, and then clarifies that such person may be an individual, a partnership firm, a body corporate, or even an association of persons whether registered or unregistered. This shows that the Legislature was conscious that business of housing construction is carried through different arrangements and different legal persons. If the Act had restricted liability to one entity, then escape routes would have remained open. Therefore, broad words were employed so that persons operating through family entity, partnership names, nominees or unregistered bodies may come within the purview of the statute. The provision also covers any person who constructs or causes to be constructed a block or building of flats for the purpose of selling some or all of such units to others. The phrase “causes to be constructed” enlarges the scope of the Act beyond the contractor constructing building. Many times, the controlling person does not personally build. He finances, obtains permissions, appoints contractors, negotiates with purchasers and takes the benefit of the project. If only the builder was covered, then the controlling hand behind the scheme could avoid responsibility. The Legislature therefore used expression wide enough to include

those who cause construction through others. The definition includes assignees. Housing projects change hands midway. Original promoter may assign rights to another entity. New entity may collect money and continue construction. If liability ended with original promoter, flat purchasers would be left in uncertainty each time rights are transferred. By including assignees, the Act ensures continuity. Whoever steps into the shoes of promoter may also bear burdens. Most important part of the definition is where the person who builds and the person who sells are different persons, both are included. In numerous developments, landowner retains title, developer constructs, marketing agency sells, and another person receives consideration. Thereafter, when purchasers seek conveyance, each points to the other. Legislature anticipated such defence. Therefore, it declared that where builder and seller are different, both fall within the expression promoter. If several persons participate in promoting flats for sale, they cannot hide behind contracts inter se. The purchaser has no access to such arrangements. The Act treats all responsible participants as accountable.

30. In consequence, the landowner cannot exonerate by stating that construction was carried out by some developer. If the owner permits the land to be used for a housing scheme, grants development rights, signs powers of attorney, allows purchasers to be inducted, receives consideration, or benefits from the project, then the owner may well fall within the statutory definition. Where owner becomes participant in exploitation of the property, he cannot claim stranger status. Likewise, the developer cannot

escape by saying title remained with owner and therefore owner must answer claims.

31. This provision becomes relevant where respondents seek to divide capacities of persons by describing them as promoter, chairman, secretary, landowner, office bearer of society, confirming party or power of attorney holder. Such labels may explain administrative roles, but they do not determine liability under Section 2(c). The Court must enquire what function was performed. If a person caused construction, managed allotments, represented the project before purchasers, and dealt with flat takers as controlling authority, nomenclature cannot save him. A person signing as chairman may act as promoter if he controls the scheme. Therefore, while applying Section 2(c), the authority or Court should not stop at names used in documents. It must trace the factors like participation, benefit, and representation. Once it appears that a person or set of persons promoted the project and induced purchase of flats, the obligations of promoter may follow.

32. Section 4A recognises that an agreement though unregistered may still be receivable for certain purposes. The legislative policy therefore does not treat non-registration as extinguishment of transaction. It acknowledges rights. Hence, when Section 11(3) is applied the authority must read procedural requirements in the light of the object of Act. Accordingly, where documentary material shows that flats were sold, consideration was accepted, possession was handed over, society was formed, promoter represented himself as authorised person, and members entered occupation, the Competent Authority is entitled to

examine entitlement. The deemed conveyance mechanism is welfare legislation. The promoter's signature on conveyance is required because title must pass through instrument. But where such signature is withheld the statute creates a legal process. The Competent Authority certifies entitlement and unilateral deemed conveyance is executed.

33. Sub-section (3) of Section 11 provides a remedy in a situation where the promoter fails to execute conveyance in favour of the co-operative society, company, association of flat purchasers or apartment owners. This provision is of importance because the Legislature was conscious that many promoters complete construction, collect full consideration, hand over possession, and thereafter postpone transfer of title. In such cases, the society remains in possession of the building but without ownership of land and structure. Therefore, the Legislature created a remedy enabling members of the society or other recognised body to approach the Competent Authority for issuance of certificate entitling them to unilateral deemed conveyance. The scheme of sub-section (3) also shows that the Legislature did not intend purchasers to remain helpless till promoter cooperates. Therefore, once the statutory conditions are satisfied, the authority is expected to complete the transfer process.

34. The expression "other relevant documents" occurring in sub-section (3) carries significance. The Legislature intentionally did not restrict the applicant only to one type of evidence. It recognised that housing projects differ in age and nature. Therefore, the section permits production of "other relevant

documents”. These words allow the authority to consider documents such as allotment letters, possession receipts, share certificates, payment receipts, approved plans, tax records, occupation evidence and other surrounding material depending upon facts of each case. If “other relevant documents” are read in a restricted manner, the words become otiose. Courts avoid construction rendering statutory words otiose. Hence, where applicants produce documentary material connecting them to the project and showing promoter’s obligations, the authority must consider the same. The section also refers to occupation certificate, if any. These two words, namely “if any”, are of clear consequence. They indicate that the Legislature was aware that in some cases occupation certificate may not have been issued or may not be available. Therefore, where occupation certificate is unavailable, remedy under Section 11(3) does not collapse. The authority must then examine other evidence to ascertain whether building was completed, occupied, or otherwise delivered to purchasers. The Court cannot read “if any” out of the statute. Those words were inserted to avoid injustice.

35. Though sub-section (3) mentions true copies of registered agreements for sale executed with the promoter, this requirement must be read harmoniously with the object of the Act and with Section 4A. Section 4 imposes duty upon promoter to execute registered agreements. If promoter breaches that duty, it would be unjust to deny remedy to purchasers on the ground created by promoter’s own wrongdoing. Such interpretation would defeat legislative purpose. If promoter executes no agreements, destroys

records, withholds papers and later says society cannot seek conveyance because registered agreements are absent, then statutory protection becomes illusory. Therefore, while registered agreements are important, their absence due to promoter default cannot conclude the matter against purchasers.

36. Applying these principles, the Court must examine certain aspects. First, whether flats were constructed or offered for sale. Second, whether persons purchased or were allotted units for consideration. Third, whether an organisation such as co-operative society or association of purchasers came into existence. Fourth, whether promoter or persons falling within the definition under Section 2(c) failed to convey title within required time. Fifth, whether documentary material substantially proves the history of transaction. If these elements are answered in affirmative, relief should follow.

37. The objection raised by the respondents that there was no registered agreement under Section 4 of the Maharashtra Ownership Flats Act is required to be considered, because Section 4 contemplates execution of an agreement for sale in prescribed form and registration thereof. However, the Court is required to see whether statutory purpose is served by the interpretation sought to be pressed. Section 4 was enacted for protection of purchasers from shady dealings. It was not enacted to provide a defence to promoter who themselves failed to comply with statutory obligation to convey building and land to purchasers. Hence, the real question is whether from the material on record, the contractual obligations stand established. If the parties entered

into development arrangement, flats were promoted, consideration was accepted, possession followed, society was formed and conveyance was contemplated, then Court must examine the real transaction. The record in the present matter shows that the landowners themselves had entered into agreements concerning development of the land. Development rights were granted. Powers of attorney were executed. Possession was delivered for project purpose. Permissions were pursued. They show participation of the owners in the housing scheme. Once owners enabled the project, it is difficult for them to take defence of strangers. Further, the promoter Mr. Dharane executed documents placed on record. The development agreement, power of attorney, possession documents and subsequent allotment process indicate that he was acting within project. It was also urged that Mr. Dharane signed some documents in more than one capacity. By itself, such circumstance is not prohibited. Particularly in older housing schemes, one person functioned as promoter, organiser, chief promoter, office bearer of proposed society or authorised representative. The Court must see whether conflict of authority existed or whether transaction was sham. If evidence shows he acted both as promoter and as office bearer in furtherance of same project, the dual description does not invalidate the acts done. Where buildings have come up, purchasers have paid monies, society has been formed and possession has followed, the Court must approach the matter with practical approach. If every old project is tested only on perfect documents, then genuine purchasers would remain exposed to defaults of promoters.

Therefore, what must be seen is the real nature of the arrangement. The Court must therefore prefer legal reality over paper description.

38. The next contention of respondents was that the allotment letter is incapable of creating rights. It is true that in some situations a allotment letter, standing alone and unsupported by surrounding circumstances, may not amount to transfer of title or complete contract of sale. But Act does not require documents to be read in isolation where they form part of one larger transaction. Here, the allotment letters do not stand solitary. They are preceded and accompanied by development agreements, handing over of possession, commencement certificate, authority to develop and exemption order under 20 of ULC Act. Construction activity was contemplated and sanctioned. Units were being distributed to members. Consideration terms were referred. Future conveyance was also contemplated. Therefore, the allotment letters derive meaning from the surrounding circumstances. The allotment letters were issued after project had already commenced. They refer to construction obligations, price aspects, handing over possession and eventual conveyance. These are legal indicators of a housing transaction. Absence of a heading naming MOFA does not destroy their evidentiary value. What is material is that flat purchasers were inducted into a housing scheme, paid consideration, accepted allotments, and were linked to a society intended to receive final title. The promoter treated the society as beneficiary of conveyance. Such conduct has legal significance. It reflects intention that individual flat takers and their collective

body were intended ownership beneficiaries. In such circumstances, the Court cannot accept the argument that the allotment letters are mere papers devoid of legal consequence.

39. The defence that Mr. Dharane signed in dual capacity, one as Chairman of the society and another as promoter, also does not weaken the petitioner's case. The documentary material suggests that the project was handled in a composite manner by same controlling persons. In many co-operative housing projects of earlier period, promoter himself took steps to form society and then functioned through it till completion. Respondents attempted to separate roles and contend that because one signature was as Chairman, the act ceased to be promoter act. Such division is not acceptable in present the case. The surrounding documents clearly describe Mr. Dharane as promoter in development arrangement and in power of attorney. Later, the society also functioned through him. Therefore, continuity of role appears rather than contradiction of role. The Court must see whether authority existed and whether transaction was acted upon. On record, authority is evident through documents executed and project conduct. The transaction was acted upon through allotments, payments, and formation of society.

40. The petitioner has produced documents which possesses evidentiary value. Agreements, powers of attorney, possession documents, allotment records and project progression collectively indicate existence of housing transaction. The authority ought to have weighed this material instead of rejecting claim solely because registered document under Section 4 was absent in form.

The exemption order under Section 20 of the Urban Land Ceiling Act assumes special significance. It was statutory grant conferring benefit upon landowners subject to conditions. One vital condition was execution of conveyance in favour of society or beneficiaries. Therefore, rights and duties arising from that order cannot be ignored. Once landowners accepted benefit under the exemption and retained land for project purpose, it is difficult in law for them to later say that no conveyance can be compelled because MOFA agreement is absent. A party cannot accept benefit of statutory order and reject burden attached thereto. The exemption order and development documents must therefore be read together. The order enabled retention and development. The agreements implemented that permission. Purchasers entered the project on that basis. Hence, obligation to convey does not extinguish merely because later document was incomplete.

41. The Court has also considered objection that particulars prescribed under Form V were absent, such as exact possession date, carpet area details, common area particulars and some other clauses. In present case, the documents reveal intention to develop land, allot flats, induct purchasers, form society and ultimately convey title. Where such arrangement has developed long ago and members have arranged their affairs accordingly, it would be unjust to allow landowners to defeat remedy solely on hyper technical omissions. The Act against promoter is designed to prevent withholding of title. It is not designed to become shield for defaults of those persons who were obliged to comply. If mandatory forms were imperfect because promoter failed in duty,

he cannot get benefit of his own lapse.

42. The Court also notes that petitioner's claim is not founded upon some isolated resolution of society. It is founded upon the full project history. First came agreement with landowners. Then development rights were granted. Then, possession was handed over. Then, commencement certificate was obtained. Then, society was formed. Then, allotments were made. Then, members paid consideration. Thereafter, society demanded conveyance. This sequence reflects progress of a housing scheme. Such process cannot be broken into fragments only to argue that one specific form of agreement was not registered exactly as Section 4 contemplates. Court is required to look at substance of arrangement and continuous conduct rather than mere nomenclature. Therefore, this Court is not persuaded by stand of respondent Nos.1 and 2 that petitioner lacked jurisdictional basis to approach the Competent Authority. The petitioner had justiciable claim requiring adjudication on merits. The Competent Authority ought to have examined the entire chain of documents, participation of landowners, role of promoter, formation of society and effect of exemption order. Instead, it dismissed the application solely on absence of a registered development agreement. The competent authority ignored the legal force of the exemption order, the power of attorney, the possession letter, the allotment letters and the conduct of promoter acting under authority. It failed to appreciate that in housing transactions of this nature, conveyance cannot be refused merely because statutory form was not preserved by those who were themselves bound to preserve it.

For these reasons, the objection of respondents cannot be sustained as defence.

43. In view of the foregoing discussion, reasons recorded hereinabove, and upon overall consideration of the material placed on record, the writ petition succeeds.

(i) The impugned order dated 27 September 2022 passed by respondent No.4 in Deemed Conveyance Application No.1006820 of 2021 is quashed and set aside;

(ii) Deemed Conveyance Application No.1006820 of 2021 filed by the petitioner society stands allowed;

(iii) It is hereby declared that the petitioner society is entitled to unilateral deemed conveyance in respect of the land and property admeasuring 11,300 square meters, bearing Survey No.14/1 (Part) and Survey Nos.14/2+3+6+7 (Part), situated at village Erandwane, Taluka Pune, District Pune, together with the building structures standing thereon, appurtenant rights, easements, common areas, open spaces, access ways, and all rights incidental thereto;

(iv) The Competent Authority shall issue necessary certificate under Section 11(3) of the Maharashtra Ownership Flats Act in favour of the petitioner society within a period of four weeks from the date of receipt of this order;

(v) Upon issuance of such certificate, the Authorized Officer / Competent Authority shall execute and register the

unilateral deemed conveyance deed in favour of the petitioner society in accordance with law, preferably within a further period of eight weeks thereafter;

(vi) The concerned Sub-Registrar of Assurances shall register the conveyance deed presented pursuant to this order, subject to payment of requisite stamp duty, registration charges and compliance of procedural requirements as per law;

(vii) Revenue and municipal authorities shall, upon registration of the deemed conveyance deed, mutate the name of the petitioner society in the relevant property records in accordance with law, without insisting upon separate consent of the erstwhile owners or promoters;

(viii) Rule is made absolute in the aforesaid terms. No order as to costs.

44. At this stage, learned Advocates for the respondents seeks stay of the judgment. However, for the reasons assigned in the judgment, request for stay stands rejected.

(AMIT BORKAR, J.)