Sayali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8540 OF 2024

Bramha Sun City Platinum
Co-operative Housing Society Ltd.,
(Reg. No. PNA/PNA(5)/HSG(TC)/
18706/2018-19 dated 18.09.2018
having its office at:- Survey Nos. 7/1,
2, 3,4, 5, 8/1/1/2/3/2 (Part),
Wadgaonsheri, Pune - 411 014.
Through its Chairman & Secretary

1. **Deep Kumar Ramchandran,**
   Aged 64 years, Occu: Business,
2. **Datta Damodar Wagaskar,**
   Aged 69 years, Occu; Business. **... petitioner**

V/s.

1. **The State of Maharashtra,**
   Through Secretary, Ministry of
   Co-operation Department, Mantralaya,
   Mumbai. (Notice to be served on Ld.
   Government Pleader), appearing for
   the State of Maharashtra under
   Order 27 Rule 4 of Civil Procedure
   Code, 1908).

2. **The Competent Authority and District**
   Deputy Registrar, Co-op. Societies,
   Pune City, Pune, having its office at
   Sakhar Sankul, Shivaji Nagar,
   Pune - 411005)
   (Notice to be served on Ld.
   Government Pleader, appearing for the

State of Maharashtra under Order 27
Rule 4 of Civil Procedure Code, 1908).

3. **Bramha Corp Limited (Formerly Known as Bramha Corp Infrastructure Private Limited)**,
through their Authorized
Officer/ Director/ Managing Director,
having its office at 3, Queens Garden,
General Arunkumar Vaidya Marg,
Pune – 411 001.

4. **Bajaj Electricals Limited,**
Through their Power of Attorney
Shri Rajkumar Agarwal, Having their
office at Survey No. 7,
Wadgaonsheri, Nagar Road,
Pune - 411 014.

5. **Sanjay Raut**
The Competent Authority and District
Deputy Registrar, Co-operative
Societies, Pune City, Pune
having its office at Sakhar Sankul,
Shivajinagar, Pune – 411 005. **... respondents**

Mr. Girish S. Godbole, Senior Advocate with Mr. R. S. Kulkarni, for petitioner.

Mr. S. L. Babar, AGP for State-respondent Nos. 1 and 2.

Mr. Anil Y. Sakhare, Senior Advocate i/b Mr. Aadesh M. Patil, for respondent No. 3.

Mr. Sanjay Sanduji Raut, District Deputy Registrar, Pune City, present in-person.

CORAM : AMIT BORKAR, J.

RESERVED ON : FEBRUARY 23, 2026

PRONOUNCED ON : MARCH 6, 2026

JUDGMENT.:

1. By the present Writ Petition filed under Article 227 of the Constitution of India, the petitioner assails the legality, validity and propriety of the impugned order dated 06 March 2024, passed by the Competent Authority and District Deputy Registrar, Co-operative Societies, Pune City, Pune, in Deemed Conveyance Application No. 82 of 2023, whereby deemed conveyance has been granted.

2. The facts, according to petitioner, giving rise to the present writ petition are set out herein below.

3. respondent No. 3 undertook development of the land comprised in Survey Nos. 7/1, 2, 3, 4, 5 and 8/1/2/3/2 (Part), situated at Wadgaonsheri, Pune, admeasuring in aggregate 21 H. 93.4 R., owned by respondent No. 4 Company. The petitioner Society came to be registered with the Competent Authority on 18 September 2018 and consists of four buildings, namely A-4 comprising 22 flats, C-6 comprising 44 flats, CL-3 comprising 44 flats, and D-7 comprising 22 flats. respondent No. 3 executed agreements for sale, styled as Articles of Agreement, with the purchasers and members of the petitioner Society in respect of flats constructed in the layout developed by respondent No. 3, as described in the said agreements. Prior to the formation of the petitioner Society, respondent No. 3 executed a Memorandum of

Understanding seeking to convey an area admeasuring 10,763.06 sq. meters, together with total FSI/FAR potential of 18,089.77 sq. meters, out of the larger layout described in Schedule 'A' to the notarized Memorandum of Understanding dated 12 August 2018.

4. After formation of the petitioner Society on 18 September 2018, the Society received records and charge from respondent No. 3. Upon scrutiny of the records and the sanctioned development plan approved by the Competent Authority vide CC No. 3461/2014 and revised on 22 January 2015, the petitioner Society found that the area proposed to be conveyed under the Memorandum of Understanding dated 12 August 2018 was less than its entitlement. Consequently, in the Annual General Meeting, the Society unanimously rejected the said Memorandum of Understanding on the ground that it was unilateral and that the proposed area was inconsistent with the Government Resolution dated 22 June 2018 and the sanctioned development plan dated 22 January 2015. Thereafter, upon computation of the area together with appurtenant rights claimed to be conveyable, the petitioner Society obtained an architect's opinion. By certificate dated 20 November 2023, the Architect opined that the petitioner Society was entitled to conveyance of proportionate area admeasuring 15,762.39 sq. meters, along with the built-up area specified therein.

5. The petitioner Society accordingly filed Deemed Conveyance Application No. 82 of 2023 under Section 11(3) of the Maharashtra Ownership of Flats Act, 1963, in the prescribed format before respondent No. 2. By the said application, the petitioner sought conveyance of proportionate land admeasuring 15,471.74 sq. meters, based on the Architect's Certificate dated 20 November 2023, together with the built-up area mentioned therein. The said application was opposed by respondent No. 3 by filing a reply dated 08 August 2023. The principal defense raised therein relied upon the Memorandum of Understanding dated 12 August 2018 allegedly executed between the Ad-hoc Committee of the petitioner Society and respondent No. 3, providing for conveyance of area admeasuring 10,763.06 sq. meters with FSI of 18,089.77 sq. meters. The reply also records that the Society was formed on 18 September 2018, whereas the Memorandum of Understanding is dated 12 August 2018. Upon completion of pleadings, the petitioner Society filed written notes of arguments dated 14 September 2023 before respondent No. 2, which were taken on record.

6. Respondent No. 3 thereafter filed an additional reply dated 07 February 2024 contending that, in view of the revised development plan for the entire DP layout sanctioned by Pune Municipal Corporation vide CC/0237/23 dated 26 April 2023, the Architect's Certificate obtained by respondent No. 3 indicated that the petitioner Society was entitled only to conveyance of 7,577.31 sq. meters of proportionate land from the entire layout. It was further stated that though the revised development plan was sanctioned on 26 April 2023, the Deemed Conveyance Application had been filed earlier on 20 February 2023 and, therefore the revised plan was not in existence on the date of filing of the application. In response to the additional reply dated 7 February

2024, the petitioner filed additional written notes of arguments dated 1 March 2024. The petitioner specifically contended that the Deemed Conveyance Application was filed on 20 February 2023 and first heard on 23 March 2023, followed by hearings on 13 April 2023, 27 April 2023, 06 June 2023, 26 June 2023, 19 July 2023, 8 August 2023, 31 August 2023, 14 September 2023, 26 September 2023, 19 October 2023, 02 November 2023, 22 November 2023, 06 December 2023, 21 December 2023, 09 January 2024, 18 January 2024, 07 February 2024 and 12 February 2024, aggregating to nineteen hearings. It was asserted that despite these hearings, respondent No. 3 did not place on record the revised plan approved on 26 April 2023 until 7 February 2024. According to the petitioner, the initial defense of respondent No. 3 rested solely on the Memorandum of Understanding, and though respondent No. 3 had knowledge of the revised plan, the same was produced only at the final stage of hearing. It was further contended that the Competent Authority directed the petitioner to file additional written submissions and thereafter closed the matter for orders, thereby denying an effective opportunity of hearing as contemplated under Rule 13(5)(a), (b) and (c) of the MOFA Rules, 1964.

7. It is the case of the petitioner that respondent No. 2, without affording an adequate opportunity to address the additional reply dated 7 February 2024 filed by respondent No. 3, proceeded to close the matter for orders and passed the impugned order dated 6 March 2024, granting deemed conveyance in respect of proportionate land admeasuring 8,436.16 sq. meters together with built-up area admeasuring 28,506.91 sq. meters. According to the petitioner, the impugned order results in conveyance of substantially lesser area than that claimed by the petitioner Society.

8. Mr. Girish Godbole, learned Senior Advocate appearing for the petitioner, submits that the Architect's Certificate dated 20 November 2023 is founded upon the revised development plan dated 22 January 2015 applicable to the petitioner Society, and that upon complete computation undertaken therein, the proportionate area required to be conveyed works out to 15,762.39 sq. meters. According to him, this material aspect reflected in the Architect's Certificate has not been considered by respondent No. 2 while passing the impugned order. It is further submitted that the calculations reflected in the revised development plan dated 26 April 2023 are not in conformity with the revised development plan dated 22 January 2015 insofar as the petitioner Society is concerned, particularly in relation to the computation of area attributable to the buildings constituting the petitioner Society. Learned Senior Counsel submits that the petitioner Society filed the Deemed Conveyance Application on 20 February 2023 and that the first hearing commenced on 23 March 2023. Since the revised development plan dated 26 April 2023 was not in existence either at the time of filing of the application or at the commencement of hearing, the same, according to him, cannot be treated as the final sanctioned plan for adjudication of the said application.

9. He further submits that the Government Resolution dated 22 June 2018 specifically mandates that conveyance is required to be granted on the basis of the sanctioned development plan and in accordance with completion of construction of flats as per such sanctioned plan while filing and adjudicating a deemed conveyance application. It is contended that respondent No. 3 was under a statutory obligation to make full disclosure regarding the FSI available in respect of the entire land forming part of the development project at the time of execution of agreements with the purchasers, as required under Section 3 of the Maharashtra Ownership of Flats Act, 1963. Reliance is placed on the decision of the Supreme Court in *Jayantilal Investments v. Madhuvihar Co-operative Housing Society Ltd. and others,* reported in (2007) 9 SCC 220 in support of this proposition.

10. Learned Senior Counsel further submits that even if additional FSI is obtained under the new Development Control Regulations applicable in Maharashtra, including the Development Control Regulations, 2034, which provide additional FSI in specified categories, the determining factors for computation of proportionate land to be conveyed remain the plinth area and proportionate area attributable to the petitioner Society.

11. Reliance is also placed on the judgment of the Supreme Court in *Jayantilal Investments v. Madhuvihar Co-operative Housing Society Ltd. and others*, wherein it has been held that under Sections 3 and 4 of the MOFA Act, the promoter is statutorily obliged not only to disclose particulars relating to the land, amenities and facilities, but also to make full and true disclosure of the development potential of the plot forming the subject matter of the agreement. It is submitted that such obligation extends beyond disclosure of inherent FSI and includes disclosure, at the stage of layout planning, as to whether the plot is capable of being loaded with additional FSI in future. Consequently, at the time of execution of agreements with flat purchasers, the promoter is required to place before them the entire project or scheme, whether comprising a single building or multiple buildings. Learned Senior Counsel further relies upon the decision of this Court in *Malad Kokil Co-operative Housing Society Limited v. The Modern Construction Company Limited and others* in Notice of Motion No. 1359 of 2011 in Suit No. 1005 of 2011, decided on 07 September 2012, wherein it has been observed that the object behind requiring disclosure of the entire layout to flat purchasers is to ensure that purchasers are fully informed of the complete scheme in which they are acquiring their property.

12. Mr. Anil Sakhare, learned Senior Advocate appearing for respondent No.3 submits that the petitioner has instituted Regular Civil Suit No.1134 of 2024 before the learned Civil Judge, Senior Division, Pune, on 16 July 2024, challenging the sanctioned layout plans bearing Nos. CC/0934/2019 dated 26 July 2019, CC/1810/2022 dated 14 October 2022 and CC/0237/2023 dated 26 April 2023, and seeking to restrain respondent No. 3 from relying upon the said sanctioned plans. It is, therefore, contended that the petitioner ought to be relegated to the civil remedy already invoked and that the present writ petition, insofar as it seeks modification of the impugned order, is not maintainable.

13. He further submits that the original layout for the entire land was sanctioned by the Pune Municipal Corporation in the year 2010 and that a revised sanctioned development plan governing the larger land was thereafter approved on 22 January 2015. It is further submitted that additional sanctioned layout plans bearing Nos. CC/0934/2019 dated 26 July 2019, CC/1810/2022 dated 14 October 2022 and CC/0237/2023 dated 26 April 2023 were subsequently issued by the Pune Municipal Corporation. According to respondent No. 3, the balance land admeasuring 65,820.28 sq. meters under the revised sanctioned layout dated 26 April 2023 stands earmarked for existing and future developments forming part of the larger integrated layout, including other projects.

14. Learned Senior Counsel submits that Recitals 11 and 11.1 of the Agreements executed with flat purchasers expressly reserve in favour of the promoter the right to utilize the balance and residual FSI as well as TDR available on the larger land until completion of all proposed buildings forming part of the overall development. The said recitals, according to him, clarify that the remaining development potential exclusively vests with the promoter and may be utilized in the manner permissible under the sanctioned plans. He further submits that under Recital 11.2, the flat purchasers have expressly acknowledged the promoter’s exclusive right to utilize additional FSI and TDR and have agreed not to raise any claim in respect thereof. It is further submitted that Recital 12.7 records that development of residential and or commercial projects on the larger land is intended to be undertaken in a phased manner, and that the promoter is expressly authorized to execute such development jointly or separately, including amalgamation or subdivision of adjoining lands as may be necessary for implementation of the project. Learned Senior Counsel further submits that Recital 15.4 of the registered Articles of Agreement executed with the flat purchasers clearly stipulates that conveyance shall be executed either in favour of the ultimate or apex body upon completion of all proposed buildings or, alternatively, in favour of individual building-wise societies only to the extent of their respective buildings together with appurtenant land, as determined by the developer. It is submitted that Recital 58 of the Agreements records that the purchasers were fully aware that the promoter had not exhausted the entire FSI and that revised plans could be submitted as required, with liberty to the promoter to alter or modify the layout and building plans accordingly. According to him, this clause evidences prior disclosure, knowledge, and acceptance by the flat purchasers of the possibility of revision of plans, and therefore the petitioner cannot now object to such revisions which were contractually contemplated from inception.

15. He further submits that the scheme submitted at the time of registration records that the land area admeasures 10,763.06 sq. meters and the plinth area admeasures 2,920.01 sq. meters, which, according to respondent No.3, constitutes a clear admission by the Society regarding the extent of land and built-up area attributable to it.

16. Learned Senior Counsel submits that respondent No.2, by order dated 6 March 2024, allowed the Deemed Conveyance

Application. He draws attention to paragraph 4 of the impugned order, wherein it is recorded that the petitioner Society had relied upon the layout plan dated 22 January 2015 and the Architect's Certificate to claim land admeasuring 15,762.39 sq. meters. The Authority also noted that during the course of hearing, respondent No. 3 placed on record the subsequently sanctioned layout plan bearing No.CC/1810/2022 dated 14 October 2022 and the revised plan dated 26 April 2023. It was further observed therein that the said sanctioned and revised layout plans had not been challenged by the petitioner before any court at the relevant time.

17. He further submits that the impugned order records that Clause 2(iv) of the Government Resolution mandates annexing a copy of the final sanctioned layout plan and that, in the present case, the layout sanctioned in the year 2023 constituted the final sanctioned plan. Accordingly, as recorded in paragraph 6 of the impugned order, the Authority considered it appropriate to rely upon the sanctioned layout plan of 2023 and granted conveyance of land admeasuring 8,436.16 sq. meters together with built-up area admeasuring 28,506.91 sq. meters.

18. In view of the aforesaid factual and legal position, learned Senior Counsel submits that the impugned order dated 06 March 2024 passed by respondent No. 2 is legal and proper, and that the present writ petition deserves to be dismissed. He places reliance upon the following decisions: *Mazda Construction Co. & Ors. v. Sultanabad Darshan CHS Ltd. & Ors.,* 2012 SCC OnLine Bom 1266. *Sukruti Apartment CHS Ltd. v. Tirumala Developers & Ors.,* 2022 (4) Mh.L.J. 394, *Solitaire CHS Ltd. v. Vertex Newton Projects*

Pvt. Ltd. & Ors., 2024 SCC OnLine Bom 4216, *Tushar Jivram Chauhan & Anr. v. State of Maharashtra & Ors.,* 2015 (4) Mh.L.J. 867, *Ganga Bhaskar Builders & Ors. v. Competent Authority & Anr.,* 2015 (4) Mh.L.J. 721, *Marathon Nextgen Realty Ltd. v. Competent Authority,* 2015 (5) Mh.L.J. 318, *M/s. S & M Enterprises v. Palazzo Building No. 1 CHSL,* 2025 SCC OnLine Bom 2760, *Prestige Garden A-1 CHSL v. State of Maharashtra & Ors.,* 2024 SCC OnLine Bom 5625, *Rai Residency Pvt. Ltd. v. Competent Authority & DDR, Thane,* 2025 SCC OnLine Bom 3591.

REASONS AND ANALYSIS:

Statutory Framework under Sections 3 and 4 of MOFA and Duties of the Promoter:

19. For the purpose of adjudicating the issues involved in the present matter, it is necessary to reproduce Sections 3 and 4 of the Maharashtra Ownership of Flats Act, as the rights and obligations of the parties substantially arise from and are governed by these provisions. The said sections read as under.

> "**3. General liabilities of promoter**.— (1) Notwithstanding anything 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 in all transactions with persons intending to take or taking one or more of such flats, be liable to give or produce, or cause to be given or produced, the information and the documents hereinafter in this section mentioned.
>
> (2) A promoter, who constructs or intends to construct such block or building of flats, shall— (a) make full and true disclosure of the nature of his title to the land on which the

flats are constructed, or are to be constructed; such title to the land as aforesaid having been duly certified by an Attorney-at-law, or by an Advocate of not less than three years standing, and having been duly entered in the Property card or extract of Village Forms VI or VII and XII or any other relevant revenue record;

(b) make full and true disclosure of all encumbrances on such land, including any right, title, interest or claim of any party in or over such land;

(c) give inspection in seven days‟ notice or demand, of the plans and specifications of the building built or to be built on the land; such plans and specifications having been approved by the local authority which he is required so to do under any law for the time being in force;

(d) disclose the nature of fixtures, fittings and amenities (including the provision for one or more lifts) provided or to be provided;

(e) disclose on reasonable notice or demand if the promoter is himself the builder, the prescribed particulars as respects the design and the materials to be used in the construction of the buildings, and if the promoter is not himself the builder disclose, on such notice or demand, all agreements (and where there is no written agreement the details of all agreements) entered into by him with the architects and contractors regarding the design, materials and construction of the building;

(f) specify in writing the date by which possession of the flat is to be handed over (and he shall hand over such possession accordingly);

(g) prepare and maintain a list of flats with their numbers already taken or agreed to be taken, and the names and addresses of the parties, and the price charged or agreed to be charged therefor, and the terms and conditions if any on which the flats are taken or agreed to be taken;

(h) state in writing, the precise nature of the organisation of persons to be constituted and to which title is to be passed, and the terms and conditions governing such organisation of persons, who have taken or are to take the flats;

(i) not allow persons to enter into possession until a completion certificate where such certificate is required to be given under any law, is duly given by the local authority (and no person shall take possession of a flat until such completion certificate has been duly given by the local authority);

(j) make a full and true disclosure of all outgoings (including ground rent if any, municipal or other local taxes, taxes on income, water charges and electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any);

(k) make a full and true disclosure of such other information and documents in such manner as may be prescribed; and give on demand true copies of such of the documents referred to in any of the clauses of this sub-section as may be prescribed at a reasonable charge therefor;

(l) display or keep all the documents, plans or specifications (or copies thereof) referred to in clauses (a), (b) and (c), at the site and permit inspection thereof to persons intending to take or taking one or more flats;

(m) when the flats are advertised for sale, disclose inter-alia in the advertisement the following particulars, namely :— (i) the extent of the carpet area of the flat including the area of the balconies which should be shown separately; (ii) 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 the instalments thereof may be paid; (iii) the nature, extent and description of the common areas and facilities; and (iv) the nature, extent and description of limited common areas and facilities, if any;

(n) sell flats on the basis of the carpet area only: Provided that, the promoter may separately charge for the common areas and facilities in proportion to the carpet area of the flat.

Explanation.— For the purposes of this clause, the carpet area of the flat shall include the area of the balcony of such flat.

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 (XVI of 1908) (hereinafter in this section referred to as "the Registration Act")] [and such agreement shall be in the prescribed form.

(1A) The agreement to be prescribed and sub-section (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 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;

(viii) percentage of undivided interest in the common areas and facilities appertaining to the flat agreed to be sold;

(ix) statement of the use of which the flat is intended and restriction of 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;

(b) copies of documents,—

(i) the certificate by an Attorney-at-law or Advocate under clause (a) of sub-section (2) of section 3;

(ii) Property Card or extract of village Forms VI or VII and XII or any other relevant revenue record showing the nature of the title of the promoter to the land on which the flats are constructed or are to be constructed;

(iii) the plans and specifications of the flat as approved by the concerned local authority.]

(2) Any agreement for sale entered into under sub-section (1) shall be presented by the promoter or by any other person competent to do so under section 32 of the Registration Act, at the proper registration office for registration, within the time allowed under sections 23 to 26 (both inclusive) to the said Act and execution thereof shall be admitted before the registering officer by the person executing the document or his representative, assign or agent as laid down in sections 34 and 35 of the said Act also within the time aforesaid:

Provided that, where any agreement for sale is entered into, or is purported to be entered into, under sub-section (1), at any time before 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), and such agreement was not presented for registration or was presented for registration but its execution was not admitted before the registration officer by the person concerned, before the commencement of the said Act, then such document may be presented at the proper registration office for registration, and its execution may be admitted, by any of the persons concerned referred to above in this sub-section, on or before the 31st December 1984, and the registering officer shall accept such document for registration, and register it under the Registration Act, as if it were presented, and its execution was admitted, within the time laid down in the Registration Act:

Provided further that, on presenting a document for registration as aforesaid if the person executing such document or his representative, assign or agent does not appear before the registering officer and admit the execution of the document, the registering officer shall cause a

> summons to be issued under section 36 of the Registration Act requiring the executant to appear at the registration office, either in person or by duly authorised agent, at a time fixed in the summons. If the executant fails to appear in compliance with the summons, the execution on the document shall be deemed to be admitted by him and the registering officer may proceed to register the document accordingly. If the executant appears before the registering officer as required by the summons but denies execution of the document, the registering officer shall, after giving him a reasonable opportunity of being heard, if satisfied that the document has been executed by him, proceed to register the document accordingly.

Nature and Scope of Mandatory Disclosure and Rights of Flat Purchasers:

20. Sections 3 and 4 of the Maharashtra Ownership of Flats Act form the main protection given by the law to flat purchasers. In most projects, the promoter controls everything connected with development. He holds the title documents of the land, obtains permissions from authorities, prepares layout plans and deals with technical matters. The purchaser depends mainly on the information given by the promoter. He sees brochures, plans shown to him and whatever documents are disclosed at the time of sale. His decision to purchase a flat is based on that information. For this reason the law places the responsibility of honesty and complete disclosure on the promoter. The duty is a legal obligation.

21. Section 3 begins with a non obstante clause which indicates that the duties imposed on the promoter will apply even if anything contrary is found in some other law, agreement or arrangement. In other words, the promoter cannot later rely on contractual clauses or private understandings to avoid these statutory duties. Once flats are offered for sale on ownership basis, the promoter must disclose complete and truthful information to the purchasers. The wording of the section shows that the legislature intended this obligation to be mandatory.

22. Sub-section (2) of Section 3 explains what kind of disclosure is required. The first requirement is disclosure of the promoter's title to the land. A person buying a flat is not only buying the structure of the flat. He is also getting a share in the land on which the building stands. If the title of the promoter itself is doubtful or unclear, the purchaser's rights become insecure. Therefore, the Act requires the promoter to produce proof of title certified by a legal professional and supported by entries in revenue records.

23. The Act also requires disclosure of encumbrances on the land. This means mortgages, loans, charges or any claim of another person over the land. Such liabilities can seriously affect the future of the project. If these matters are hidden, the purchaser may face legal disputes or financial burdens later. The Act therefore insists that these details must be disclosed at the very beginning.

24. Another important requirement is that purchasers must be allowed to inspect the sanctioned plans of the building. The sanctioned plan shows the entire layout of the project. It indicates the number of buildings, open spaces, access roads and the manner in which development will take place. Purchasers often decide to buy flats after considering these aspects. They look at open areas, ventilation and the general environment of the project. By giving the purchaser the right to inspect sanctioned plans, the Act ensures that he understands the real nature of the project and does not rely only on advertisements or verbal assurances.

25. The Act further requires disclosure of fixtures, fittings and amenities. Purchasers must know what facilities are promised to them, such as lifts or other common amenities. These facilities later become part of the common property maintained by the society.

26. Section 3 also requires disclosure regarding the design of the building and the materials used for construction. Whether the promoter constructs the building himself or through contractors, purchasers have the right to know the basic nature and quality of construction. The principle behind this requirement is that a purchaser should not invest money in a project without knowing how the structure will be built.

27. Another important obligation is that the promoter must specify the date by which possession of the flat will be given. In many housing projects delays cause serious hardship to purchasers. By requiring the promoter to state the possession date in writing, the law converts what might otherwise be a promise into a legal obligation.

28. The law also requires the promoter to clearly disclose the nature of the organization that will be formed for the purchasers.

At the time of entering into the agreement, the promoter must state whether the property will be transferred to a co-operative society, a company or some other recognised body. The type of organisation affects how the property will be managed and how collective decisions will be taken by the purchasers. The promoter cannot keep this matter open or say that he will decide later whether to form a society or a company. Such a clause defeats the purpose of the law. Purchasers must know, from the very beginning, the exact form of organisation through which their rights will operate. MOFA therefore requires certainty at the start and does not allow the promoter to keep this decision for the future. Any clause giving such discretion to the promoter goes against the statutory duty imposed by the Act. Such clauses are therefore void and cannot be enforced against the purchasers.

29. The Act also requires disclosure of all outgoings such as taxes, charges and other liabilities connected with the property. These expenses directly affect the cost of ownership for purchasers. If they are not disclosed at the beginning, the purchaser may face unexpected financial burdens later.

30. The law also requires that documents and sanctioned plans should be displayed at the project site. Advertisements must clearly mention the carpet area and the price of the flat. Flats must be sold on the basis of carpet area. These provisions were introduced to prevent misleading claims in advertisements.

31. When Section 4 is read together with Section 3, the scheme of the Act becomes complete. Section 4 requires that before accepting substantial payment from a purchaser, the promoter must enter into a written agreement for sale and the agreement must be registered. The agreement must contain details about construction, possession date, area of the flat, price, nature of the organisation and common rights of purchasers.

32. The requirement that title documents, revenue records and sanctioned plans must be attached to the agreement is particularly important. These documents represent the project exactly as it was disclosed to the purchaser at the time of sale. Purchasers rely upon these documents while entering into agreements. Their expectations and rights are formed on that basis. Therefore, the sanctioned plan attached to the agreement becomes the representation of the development scheme at the time the transaction takes place.

33. When Sections 3 and 4 are read together, the intention of the legislature becomes clear. The promoter must act with complete openness at the beginning of the project. Purchasers must know the exact details of the land, the layout, the facilities, the nature of the organisation and the development potential including available FSI. The Act seeks to prevent situations where purchasers later realise that the project is different from what was originally shown to them. Therefore, when disputes arise about conveyance or land entitlement, the starting point must always be the disclosure made at the time of agreement. The sanctioned plan attached to the agreement forms the basis on which purchasers invested their money and acquired rights. Any later change can be considered only if it does not defeat the rights that arose from the original disclosed scheme.

Effect of Sanctioned Plan Disclosed at the Time of Agreement and Role of the Architect's Certificate:

34. The main contention of the petitioner is that the Architect's certificate dated 20 November 2023 is based on the sanctioned development plan dated 22 January 2015. According to the petitioner, this 2015 plan was the same plan that was shown and disclosed to the purchasers when the agreements for sale were executed. This aspect becomes important because the rights of the purchasers arise from what was represented to them at the time they purchased the flats. The petitioner therefore submits that the Architect's certificate does not introduce any new claim. It only calculates the proportionate entitlement based on the sanctioned plan that formed part of the original disclosure.

35. This submission has to be examined in the light of the statutory scheme under MOFA. The Act requires the promoter to make full and true disclosure of the entire project and its development potential when agreements are executed. Seen from this angle, the Architect's certificate dated 20 November 2023 becomes important. The certificate is a expert assessment based on the sanctioned plan of 2015, which was already in existence and disclosed to purchasers at the time of sale. The Architect has simply carried out technical calculations to determine the proportionate entitlement of the society according to that plan.

36. I find substance in this submission. The Act does not permit a promoter to change the basis of entitlement after purchasers have acquired rights relying on a disclosed scheme. If the promoter later relies on revised plans that were not part of the original disclosure, such plans cannot automatically take away the rights that have already arisen. Otherwise, the requirement of prior disclosure under MOFA would lose its meaning.

37. A promoter may obtain revised sanctions during the course of development. However, such revisions cannot be used to reduce or defeat the entitlement which arose from the sanctioned plan disclosed when the agreements were executed. Purchasers entered into the contract relying on that plan. The Act protects the legitimate expectation created by such disclosure. The promoter cannot first attract purchasers on one development scheme and later attempt to change the basis of their rights by relying on new plans.

38. Therefore, in the present case the Architect's certificate based on the sanctioned plan of 2015 provides the correct starting point for adjudication. It reflects the scheme that was known to the purchasers and on which they acted. The entitlement flowing from that disclosure cannot be taken away by later revisions that were not part of the original representation. If such a course were permitted, the protection provided by MOFA would become meaningless.

Contractual Clauses, Informed Consent and Applicability of Jayantilal Investments Principles:

39. The developer has relied on certain clauses in the agreements which state that the promoter may utilize the balance

FSI, carry out development in phases and postpone conveyance in favour of an apex body. Such clauses cannot be ignored completely because agreements do record the understanding between parties. However, where transactions are governed by MOFA, contractual terms must operate within the limits fixed by the statute. They cannot override the statutory duties imposed on the promoter.

40. Sections 3 and 4 of MOFA require the promoter to make full and true disclosure when agreements are executed. This requirement lies at the heart of the Act. The Supreme Court in *Jayantilal Investments* has explained that purchasers must be informed of the entire project and its development potential so that their consent is informed and meaningful. Therefore, even if an agreement contains clauses reserving certain rights to the promoter, those clauses cannot cure a failure to make proper disclosure at the beginning.

41. The real question is not what language appears in the agreement. The real question is whether purchasers were clearly informed about the development scheme when they decided to buy the flats. If purchasers were shown a particular sanctioned plan and entered into agreements relying on that plan, that plan becomes the one of the basis of their rights.

42. In the present case the record shows that purchasers were shown the sanctioned plan of 2015. They purchased flats and later formed the society on that basis. Once this position is accepted, the promoter cannot rely on general recitals in the agreement to change the basis of entitlement. Clauses reserving balance FSI or phased development cannot be interpreted as a license to alter the scheme in a manner that defeats the rights arising from the original disclosure. The requirement of disclosure under MOFA exists precisely to avoid such uncertainty. If promoters were allowed to rely on vague contractual clauses to change rights later, purchasers would never know the true nature of the project they had invested in. For this reason the Act gives importance to the sanctioned plan disclosed at the beginning rather than to later interpretations based on contractual wording.

Objection Regarding Civil Suit and Procedural Fairness in Deemed Conveyance Proceedings:

43. Learned counsel for respondent No. 3 has pointed out that the petitioner has filed a civil suit in July 2024 challenging the later sanctioned plans. On this basis it is argued that the petitioner should pursue the civil remedy and that this Court should not entertain the present petition. However, it must be noted that the civil suit was filed after the Deemed Conveyance order had already been passed. The impugned order is dated 06 March 2024 whereas the civil suit was filed in July 2024. Therefore, the existence of the civil suit cannot cure any defect that may have occurred during the proceedings before the Competent Authority. The legality of the impugned order must be examined on the basis of the material that was available when the authority passed its decision.

Architect's Certificate and Government Resolution dated 22 June 2018:

44. The Architect's certificate dated 20 November 2023 becomes even more important when seen in the background of the Government Resolution dated 22 June 2018. The Resolution states that while granting deemed conveyance the Competent Authority must rely on approved plans, proportionate construction, plinth area and the land attached to the building. Where there is dispute regarding measurement or area, the Resolution recognises the role of an architect's report based on the sanctioned plan.

45. In the present case the Architect examined the sanctioned development plan and carried out technical calculations. He concluded that the petitioner society is entitled to conveyance of 15,762.39 square metres of proportionate land together with the built up area mentioned in the certificate. Such calculation involves expert examination of layout, plinth area, ground coverage and the proportionate share in the overall project. The importance of the certificate lies in the fact that it provides a clear basis for determining entitlement. The Government Resolution itself emphasises that where several buildings exist in one layout, conveyance should be granted proportionately based on construction and sanctioned plans. The certificate also rests on the sanctioned plan which governed the project when the purchasers entered into agreements. It therefore does not create a new claim but quantifies what already flows from the approved scheme.

46. In these circumstances, the Architect's certificate dated 20 November 2023 is a material document. It provides a proper foundation for determining proportionate entitlement in accordance with the Government Resolution dated 22 June 2018.

47. The judgments cited by respondent No. 3 explain the scope of deemed conveyance proceedings and the limits of the Competent Authority's jurisdiction under MOFA. Those decisions emphasise that the authority should proceed on the basis of sanctioned plans and should not enter into complicated disputes about title. When these judgments are read together, the common principle that emerges is that the authority must act within statutory limits and must rely on material forming part of the project disclosure. None of these decisions permit a promoter to defeat the entitlement of purchasers by introducing new plans that were not part of the original disclosure at the time of agreement. Therefore, although those judgments state that deemed conveyance proceedings are summary in nature and that civil remedies remain open, they do not help the respondent on the central issue in the present case. The core question here concerns statutory disclosure, informed consent and the plan on which the purchasers relied. On this issue the governing principles remain those laid down under MOFA and explained by the Supreme Court in *Jayantilal Investments*.

48. For the reasons stated above, following order is passed:

(i) The Writ Petition is allowed.

(ii) The impugned order dated 6 March 2024 passed by the Competent Authority and District Deputy Registrar, Co-operative Societies, Pune City, Pune, in Deemed Conveyance Application No.82 of 2023 is quashed and set aside.

(iii) The Architect's Certificate dated 20 November 2023, computing the petitioner Society's proportionate entitlement at 15,762.39 sq. meters together with the built-up area specified therein, shall be treated as the basis for determination of conveyance.

(iv) The Competent Authority shall issue the Deemed Conveyance Order and Certificate under Section 11(4) of the Maharashtra Ownership of Flats Act, strictly in accordance with the sanctioned plan dated 22 January 2015, the Architect's Certificate dated 20 November 2023, and the Government Resolution dated 22 June 2018.

(v) The above exercise shall be completed as expeditiously as possible and preferably within a period of four weeks from the date of receipt of this order.

(vi) Rule is made absolute in the above terms. No order as to costs.

49. At this stage, the learned Advocate for respondent No. 3 seeks stay of the judgment. However, in view of the reasons recorded in the judgment, the request for stay is rejected.

(AMIT BORKAR, J.)