

Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9353 OF 2024

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1. **Gala Complex Premises Co-operative Society Ltd.**, A registered Co-operative Housing Society under the provisions of the Maharashtra Co-operative Societies Act, 1960, having Regd. Office address at – Dindayal Upadhyay Road, Mulund (West), Mumbai – 400 080.

... Petitioner

V/s.

1. **Gala Wood Works,**
 - (a) **Samji Jakhu Gala**
 - (b) **Morarji Jakhu Gala**
 - (c) **Shantilal Morarji Gala**
 - (d) **Girish Shamji Gala**
 - (e) **Hasmukh Morarji Gala**
 - (f) **Vijay Morarji Gala**

All 1(a) to 1(f) are the Partners of the Gala Wood Works having common address at Gala Estate, 2nd Floor, Dindayal, Upadhyay road, Mulund (W), Mumbai – 400 080.

2. (a) **Samji Jakhu Gala**
(b) **Morarji Jakhu Gala**
Being the land owners having their Common address at Gala Estate, 2nd Floor, Dindayal Upadhyay Road, Mulund (West), Mumbai – 400 080.

- 3. The Competent Authority & District Deputy Registrar, Co-operative Societies**
(2) East Suburban, Mumbai having address at Room No. 201, Konkan Bhavan, C.B.D. Belapur, Navi Mumbai, Mumbai - 400 614.
- 4. The State of Maharashtra,**
Through Secretary, Housing Department ... **Respondents**

Mr. Vishal Kanade a/w Ms. Tanaya Patankar, Mr. Kartik Tiwari and Mr. Aditya Kanchan i/by Lakshyawedhi Legal for the Petitioner.

Dr. Virendra Tuljapurkar, Sr. Advocate a/w Mayur Thorat for Respondent No.1.

Ms. V. S. Nimbalkar, AGP, for the State-Respondents.

CORAM : AMIT BORKAR, J.

RESERVED ON : FEBRUARY 17, 2026

PRONOUNCED ON : MARCH 17, 2026

JUDGMENT:

1. By the present Petition instituted under Article 227 of the Constitution of India, the Petitioner calls in question the legality and correctness of the order granting deemed conveyance and the certificate issued under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963. The said order and certificate are both dated 20 December 2023 and have been passed by Respondent No.3, who is the Competent Authority, in Application No.86 of 2023. The grievance of the Petitioner is that

the impugned order suffers from errors apparent on the face of the record and has been passed in breach of the principles of natural justice.

2. The background facts giving rise to the present Petition may be stated thus. By an Indenture of Conveyance dated 10 October 1961, registered under Serial No.BND/219D/9/9/1961, the original owners namely Shri Sowar Gopal Vaity, Shri Damodar Gopal Vaity and Shri Bhaskar Sowar Vaity conveyed and transferred land bearing CTS Nos.744, 744/1 and 744/2 forming part of Survey No.294 (Part), admeasuring about 12,290.49 square meters, situated at Village Mulund (West), Taluka Kurla, Mumbai Suburban District. The said property is presently known as Pandit Dindayal Upadhyay Marg, Mulund (West), Mumbai – 400080. The conveyance was executed in favour of Shri Morarji Jakh Gala and Shri Shamji Jakhu Gala.

3. After acquisition of the said property, the purchasers constituted a partnership firm under the name and style of M/s. Gala Wood Works. Subsequently, on 1 August 1981, additional partners namely Shantilal Morarji Gala, Girish Shamji Gala, Hasmukh Morarji Gala and Vijay Morarji Gala were inducted into the said partnership firm. It is material to note that no lease deed in respect of the subject land was executed in favour of M/s. Gala Wood Works. The firm thereafter undertook development of the said land in the capacity of a developer or promoter.

4. Respondent No.1 thereafter submitted building plans to the Municipal Corporation of Greater Mumbai for construction of a

building on a portion of the said land. The said plans were approved by the Municipal Corporation under File No. CE/2535/B.P.E.S/A/T. Pursuant to such approval, a Commencement Certificate was issued permitting construction of a building known as “Gala Complex Premises” in accordance with the sanctioned plans. The sanctioned plans reveal that the entire Floor Space Index available in respect of the larger plot bearing CTS Nos. 744, 744/1 and 744/2 was utilized for the construction. The utilization of the available FSI is also reflected in the Intimation of Disapproval, the Commencement Certificate and the Occupation Certificate issued by the Municipal Corporation of Greater Mumbai. Respondent No.1 thereafter proceeded to sell various units in the said building to several purchasers in accordance with the provisions of the Maharashtra Ownership Flats Act, 1963.

5. The purchasers of units in Building No.2 known as “Gala Complex Premises” subsequently formed a co-operative housing society under the provisions of the Maharashtra Co-operative Societies Act, 1960. The said society came to be registered in the name of Gala Complex Premises Co-operative Society Limited, which is the Petitioner before this Court. The society was registered under Registration No. BOM/WT/GNL/C/1225/1989-1990 dated 4 October 1989.

6. Under Section 11 of the Maharashtra Ownership Flats Act, the promoter is under a statutory obligation to execute a conveyance in favour of the co-operative society of the flat purchasers within the prescribed period. In the present case,

Respondent Nos.1 and 2 failed to execute such conveyance in favour of the Petitioner Society even after the lapse of more than three decades. According to the Petitioner Society, it is therefore entitled to obtain conveyance of the land proportionate to the FSI consumed by the building of the society, having regard to the Government Circular dated 22 June 2018.

7. In view of the failure of the Respondents to execute the conveyance, the Petitioner Society approached Respondent No.3, who is the Competent Authority under the Act. The Petitioner filed Application No.86 of 2023 seeking grant of deemed conveyance in respect of a proportionate area admeasuring 5364.90 square meters out of the larger layout bearing Survey No.294 (Part) and CTS Nos.744, 744/1 and 744/2. The said claim was based upon the Architect's Certificate dated 12 September 2023.

8. Upon receipt of the application, Respondent No.3 issued Notice in Form X dated 10 November 2023. Public notices were also caused to be published in the newspapers "Punyanagari" in Marathi and "Business Standard" in English, both dated 11 November 2023, thereby inviting objections from all concerned persons. Respondent No.1 thereafter filed a Written Statement dated 04 December 2023. In the said Written Statement it was stated that the original purchasers of the property, namely Shri Morarji Jakh Gala and Shri Shamji Jakhu Gala, had expired. The Advocate appearing on behalf of the Petitioner Society addressed a letter dated 07 December 2023 to Respondent No.1 requesting that copies of the death certificates of the deceased landowners as well as details of their legal heirs be furnished. The request was

made so that the Petitioner could amend the application and implead the legal heirs as parties to the proceedings. During the course of the hearing held on 11 December 2023, Respondent No.1 failed to furnish the said documents. However, the Advocate appearing for Respondent No.1 submitted that amendment of the application was not necessary on the ground that the legal heirs had already executed release deeds in favour of Respondent No.1. Without granting an opportunity to the Petitioner to amend the application and bring the legal heirs of the deceased landowners on record, Respondent No.3 proceeded to close the proceedings for orders. According to the Petitioner, this course adopted by the Competent Authority resulted in denial of adequate opportunity of hearing. The Petitioner thereafter addressed a further communication dated 18 December 2023 to Respondent No.3 requesting that the proceedings be reopened and permission be granted to amend the application so as to implead the legal heirs of the deceased landowners. On the same day, the Petitioner Society also filed a Rejoinder to the Written Statement submitted by Respondent No.1. Despite the said request and the rejoinder placed on record, the Competent Authority passed the impugned order directing unilateral deemed conveyance in respect of land admeasuring 697.27 square meters, instead of granting ownership rights in respect of the proportionate area of 5364.90 square meters as claimed by the Petitioner Society.

9. Mr. Kanade, learned Advocate appearing on behalf of the Petitioner, submitted that Respondent No.3 failed to take into consideration that the promoter was under a statutory obligation

to execute agreements in accordance with the provisions of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 and the Model Form of Agreement prescribed under Form V. According to the learned counsel, once the provisions of the said enactment become applicable, any contractual stipulation which runs contrary to the mandate of the statute cannot be sustained in law. It was therefore contended that Clause 40 of the agreement executed under MOFA, being inconsistent with the statutory scheme of the Act, is illegal, void and incapable of enforcement. Learned Advocate for the Petitioner further submitted that Respondent No.3 failed to appreciate that the building known as “Gala Complex Premises” was constructed by utilizing the available Floor Space Index of the entire plot of land. He pointed out that the sanctioned plans approved by the Municipal Corporation of Greater Mumbai clearly indicate that the FSI pertaining to CTS Nos.744, 744/1 and 744/2 of Village Mulund was utilized for the construction of the building. According to him, the said utilization is also reflected in the Intimation of Disapproval, the Commencement Certificate and the Occupation Certificate issued by the Municipal Corporation. On that basis, it was submitted that the Petitioner Society is entitled to conveyance of land admeasuring 5364.90 square meters, which represents the proportionate land corresponding to the FSI consumed by the building of the society, in terms of the Government Circular dated 22 June 2018. In support of the said contention, reliance was also placed upon the Architect’s Certificate dated 12 September 2023,

which has been prepared in accordance with the said Government Circular.

10. The learned Advocate further submitted that Respondent No.3 did not consider that the entire plot of land bearing CTS Nos.744, 744/1 and 744/2 forming part of Survey No.294 (Part), admeasuring 12,290.49 square meters, situated at Village Mulund (West), Taluka Kurla, Mumbai Suburban District, has been specifically described in Schedule I of the agreement executed under MOFA as well as in the Title Certificate annexed thereto. According to him, the area of 697.27 square meters referred to in the impugned order represents merely the ground floor plinth area of the building. He submitted that if the conveyance is restricted only to such limited area, the remaining structure consisting of three upper floors constructed by utilizing the available development potential would be rendered unauthorized. Such a consequence, according to him, would be legally unsustainable. It was further submitted that Respondent No.3 committed an error in concluding that the Petitioner Society would be entitled only to the area described in Schedule II of the agreement executed under MOFA and not to the proportionate area of the entire plot described in Schedule I. According to the learned Advocate, once it is undisputed that the building belonging to the Petitioner Society has been constructed by utilizing the development potential of the entire plot, the society cannot be confined merely to the limited portion described in Schedule II. Learned Advocate for the Petitioner also submitted that Respondent No.3 failed to consider the Architect's Certificate produced on record by the Petitioner

Society. The said certificate, according to him, clearly verifies and confirms that the land area corresponding to the sanctioned plans works out to 5191.71 square meters. It was therefore contended that the land corresponding to the sanctioned construction ought to have been conveyed in favour of the Petitioner Society.

11. Per contra, Mr. Tuljapurkar, learned Senior Advocate appearing on behalf of Respondent No.1, submitted that the provisions of the Maharashtra Ownership Flats Act are required to be interpreted in a manner that balances and protects the interests of both the promoter and the flat purchasers. According to him, the Act is in the nature of beneficial legislation and therefore its provisions must be construed in a manner which maintains equilibrium between the rights of the promoter and those of the purchasers. In support of the said contention, reliance was placed upon the judgment of the Hon'ble Supreme Court in *Arunkumar H. Shah (HUF) vs. Avon Arcade Premises Co-operative Society Ltd.*, particularly paragraphs 20, 21, 22, 24, 25, 43 and 44. He submitted that the said decision recognizes that a beneficial legislation cannot be interpreted in a manner which results in expropriation of the promoter's property. According to the learned Senior Advocate, the Petitioner, by claiming additional land beyond the area of 697.27 square meters already granted, is in substance seeking to appropriate the remaining land belonging to Respondent No.1 to the extent of 4667.63 square meters, which would amount to impermissible expropriation. He further submitted that the Petitioner cannot place reliance upon documents which were not part of the record before the

Competent Authority. According to him, the Architect's Certificate dated 12 September 2023, which is now relied upon by the Petitioner, was never produced before the Competent Authority and therefore Respondent No.1 had no opportunity to dispute or contest the same. In any event, it was contended that such a certificate is not relevant for determination of an application seeking deemed conveyance under Section 11 of the Act.

12. Learned Senior Advocate further submitted that the provisions of Section 11 of MOFA, and particularly Section 11(4), must be interpreted in the context of the entire statutory framework of the Act, including its preamble and the rules framed thereunder. According to him, the Competent Authority, while exercising powers to grant deemed conveyance, is required to grant conveyance strictly in accordance with the terms of the agreement executed between the promoter and the flat purchasers.

13. He further submitted that one of the agreements executed between Respondent No.1 and the members of the Petitioner Society clearly sets out the nature and extent of the land upon which construction was proposed. As recorded in Recital 5 of the said agreement, the construction was intended to be carried out on a triangular portion of land forming part of a larger property. The said triangular portion has been specifically described in Schedule II appended to the agreement. Learned Senior Advocate then invited attention to Clause 28 of the agreement, which stipulates that Respondent No.1 shall execute a lease in favour of the society in respect of the triangular portion of land together with the building constructed thereon, subject to the permission of the

competent authority under the Urban Land Ceiling Act.

14. It was also submitted that Clause 40 of the agreement specifically records that the transfer in favour of the society shall be effected by way of a building lease for a period of 98 years at a nominal rent of Re.1 per month. The said lease was to be in respect of the building constructed on the triangular portion of land described in Schedule II together with the land underneath the said building and not in respect of any other portion of the larger property. Learned Senior Advocate further submitted that although Schedule I of the agreement refers to the larger parcel of land, Schedule II clearly describes the triangular portion of land admeasuring approximately 697.27 square meters upon which the building in question has been constructed. According to him, the contention advanced by the Petitioner that the structure has not been conveyed is factually incorrect. A reading of the impugned order in its entirety would demonstrate that the structure along with the land underneath it has been granted to the Petitioner Society by way of lease. Such a course, according to him, is permissible under the provisions of MOFA, since the Act contemplates grant either by way of conveyance or lease.

15. It was further submitted that the claim made by the Petitioner for additional land forming part of the larger property belonging to Respondent No.1 cannot be sustained. Without prejudice to the said contention, Respondent No.1 has already placed on record an Affidavit dated 13 February 2025 before this Court stating that it is willing to execute a conveyance in respect of the structure and the land admeasuring 697.27 square meters

instead of granting a lease. In the said affidavit it has been stated that the structure standing on the land admeasuring 697.27 square meters has consumed not only the FSI attributable to that portion but also additional FSI to the extent of 4235.47 square meters from the larger property. According to Respondent No.1, the members of the Petitioner Society are presently enjoying the benefit of such consumption of FSI.

16. Respondent No.1 has further undertaken that while undertaking development of the remaining larger property, it shall be entitled to utilize the available development potential including base FSI, fungible FSI, premium FSI and transferable development rights, excluding the FSI to the extent of 4235.47 square meters which stands reserved for the benefit of the Petitioner Society. It has been specifically undertaken that Respondent No.1 shall neither claim nor utilize the said FSI of 4235.47 square meters in any future development of the remaining property and that the said FSI shall remain reserved for the benefit of the construction already existing on the land admeasuring 697.27 square meters. On the basis of the said undertaking, it was submitted that the grievance raised by the Petitioner stands substantially addressed and therefore no interference with the impugned order is warranted. Lastly, it was submitted that the reliance placed by the Petitioner upon the Government Resolution dated 22 June 2018 is misplaced. According to the learned Senior Advocate, the said Government Resolution cannot be applied to agreements which were executed prior to the issuance of the said Resolution. In support of the said submission, reliance was placed upon the

judgment of the Division Bench of this Court in *Marathon Next Gen Realty Ltd. vs. Competent Authority*, wherein it has been held that amendments or notifications issued subsequent to the execution of the agreement between the promoter and the flat purchasers cannot be applied retrospectively.

REASONS AND ANALYSIS:

17. These rival submissions bring the Court to two important questions. The first question is whether the clauses and schedules in that agreement can control or limit the operation of the Maharashtra Ownership Flats Act. The second question is how the proportionate land area should be calculated when such FSI from the larger plot has been used.

18. While considering the first issue, one basic principle must be remembered. Parties are free to enter into agreements and they can decide many terms between themselves. But when a statute governs the field, the agreement must operate within that statutory framework. In the present case the Maharashtra Ownership Flats Act is a special law enacted to regulate the construction and sale of flats. The Act was brought into force to protect flat purchasers who are otherwise in a weaker position compared to the promoter. Because of this reason the Act imposes certain duties on the promoter which are statutory in nature. These duties cannot be avoided by drafting a clause in the agreement. Section 4 of the Act requires that the promoter must enter into a written agreement with the flat purchaser before accepting substantial payment. That agreement must be in the

prescribed form, and it must be registered. This is not optional. It is mandatory. Further, Section 11 of the Act places a clear obligation on the promoter to convey his right, title and interest in the land and building to the society or association of flat purchasers. The Act expects that after the building is constructed and the society is formed, the promoter must transfer the property to the society. This obligation flows directly from the statute. Therefore, a clause in the agreement cannot be used to defeat that statutory duty. If any clause in the agreement runs contrary to the provisions of MOFA, the statute will prevail and the clause will have to give way. The promoter cannot escape statutory responsibilities by inserting restrictive conditions in the agreement.

19. With this principle in mind the relevant clauses of the agreement must now be examined. Clause 40 of the agreement says that the promoter would grant a building lease for ninety-eight years. The lease is described as relating to a triangular portion of land and the building standing on that land. Clause 28 also indicates that the transfer may be by way of lease subject to permissions under the Urban Land Ceiling law which was applicable at that time. Schedule II attached to the agreement identifies the triangular portion of land where the building stands. All these provisions are part of the agreement and, therefore, they cannot be ignored. However, it would not be correct to read them in isolation as if they alone represent the entire transaction.

20. When the agreement is read as a whole, another important fact emerges. Schedule I of the agreement describes the larger parcel of land which forms the property on which the development

has taken place. This larger parcel becomes important when the municipal record is examined. The sanctioned building plan issued by the Municipal Corporation shows the entire layout. The Commencement Certificate and the Occupation Certificate also form part of the record. These documents clearly show that the building of the petitioner society was constructed by using the development potential of the larger plot. The FSI which permitted the construction was not confined only to the triangular portion mentioned in Schedule II. The building standing today has been constructed by using the potential of the larger land parcel.

21. Because of this factual position it would not be correct to say that the purchasers have rights only over the ground plinth area mentioned in Schedule II. The municipal approvals show that the building exists because the development potential of the larger plot was utilised. Therefore, the rights of the purchasers cannot be confined only to the small triangular portion. If that interpretation is accepted it would ignore the reality shown by the municipal records. The promoter cannot therefore rely upon a narrow reading of Schedule II to say that the society has rights only over the land exactly under the building. If such an argument is accepted the whole purpose of MOFA would be defeated. The Act was enacted to protect flat purchasers and to ensure that they ultimately get proper rights in the property for which they have paid money. The building itself is the result of the development potential of the land. When that development potential from the larger plot has been used, the purchasers cannot be denied their share in that land. Otherwise, the promoter would continue to

control the land which actually made the construction possible. That result would clearly go against the object of the Act.

22. The second question relates to the calculation of proportionate land area. In this context the Government Resolution dated 22 June 2018 becomes important. The purpose of that Resolution is to provide a uniform method for determining how much land should be conveyed to a society when construction is done on a larger layout. Many disputes arise in such situations because promoters sometimes say that only the plinth area should be conveyed while societies claim a larger share. To remove confusion the Government issued the Resolution giving a method for calculating the proportionate land area.

23. It is important to understand that the Resolution clarifies how the existing entitlement should be worked out in a rational way. When the building uses the FSI of the entire plot, the land corresponding to that construction must also be determined proportionately. The Resolution cannot be treated as interfering with vested rights of parties. When the sanctioned plan and municipal documents show that the building has used the development potential of the entire plot, applying this formula becomes logical. It ensures that the society gets land corresponding to the construction which already exists.

24. Respondent No.1 has argued that the Resolution should not apply because the agreement between the parties was executed much earlier. This argument requires careful consideration. In some situations applying a later policy might disturb rights already

settled between parties. In such cases the Court must be cautious. But the present case is different. Here the Resolution is not changing the agreement. It is only helping the Court determine the correct proportionate land area when the building has clearly used FSI of the larger plot.

25. The real deciding factor in this case is the material on record. The sanctioned building plan, the Commencement Certificate and the Occupation Certificate issued by the Municipal Corporation clearly show that the building of the petitioner society was constructed by using the development potential of the entire plot. The Architect appointed by the society has examined these records. On that basis he prepared a calculation according to the method mentioned in the Government Resolution. That calculation shows that the built up area of the society building is 4,962.83 square metres. The sanctioned total plot area is 12,387.00 square metres. When the proportionate method from the Government Resolution is applied to these figures, the land entitlement comes to approximately 5,363 square metres.

26. The parties have mainly argued about legal interpretation. For this reason these figures become reliable reference points for deciding the case. Once the figures are applied to the formula mentioned in the Government Resolution, the proportionate land entitlement of the petitioner society works out to 5,363 square metres. That figure therefore represents the correct land area corresponding to the development potential used for the building.

27. Respondent No.1 has also objected that the Architect's Certificate was not placed before the Competent Authority earlier. It is important to note that calculation and figures in the certificate are not seriously disputed. Procedural fairness is always important in quasi judicial proceedings. However the Court must also see whether the petitioner was given a fair opportunity to present its case before the authority. The record shows that the Competent Authority issued notices in Form X and also published public notices inviting objections. During the hearing it was revealed that the original landowners had already passed away. Because of this the petitioner requested permission to amend the application and to add the legal heirs of the deceased landowners. This was a reasonable request. However that permission was not granted. The proceedings were then closed for orders.

28. Because of this the petitioner did not get a proper opportunity to place all relevant material on record, including the Architect's Certificate explaining the proportionate land calculation. This shows that the petitioner was denied a meaningful opportunity to present its full case. When such opportunity is denied the resulting order cannot be considered fully fair. The defect affects the very basis of the decision. Therefore the promoter cannot rely on that procedural situation to defeat the rights of the society.

29. Respondent No.1 has also argued that granting larger land to the society would amount to taking away the promoter's remaining land. At first sight this argument may appear persuasive. However on closer examination it does not hold good. The purpose of MOFA

is to protect flat purchasers who invest their life savings in purchasing homes. At the same time the law does not ignore the rights of the promoter. The balance lies in recognising that the promoter cannot retain land whose development potential has already been used for constructing the society building. Once the FSI of the larger plot has been used to construct the building occupied by society members, the purchasers obtain a corresponding interest in the land which supported that construction. The promoter is still free to develop the remaining property according to law. But that development must respect the fact that part of the development potential has already been utilised for the society building.

30. In this context the undertaking given by Respondent No.1 becomes relevant. Respondent No.1 has stated that during development of the remaining property it will keep reserved FSI of 4,235.47 square metres for the benefit of the existing building of the society. This statement itself shows that the building has used development potential beyond the plinth area. The undertaking may give some comfort to the society. But it cannot replace the legal right of the society to obtain proportionate ownership of land. The undertaking therefore only adds support. It does not substitute the statutory conveyance.

31. There is also a aspect which the Court must consider. Buildings in cities like Mumbai often undergo redevelopment after many years. Housing societies reconstruct their buildings so that members can continue to live there with better facilities. For such redevelopment the society must have clear and adequate rights in

the land. If the conveyance is restricted only to the ground plinth beneath the building, redevelopment would become extremely difficult. Members who have already purchased flats and lived there for years would then face serious legal hurdles. They may not be able to reconstruct the same built up area which presently exists. This would deprive them of the full benefit of the property which they purchased long ago. Granting conveyance of 5,363 square metres therefore serves both legal and practical purposes. It ensures that the society receives land corresponding to the development potential already used for its building. It also ensures that in future the society can redevelop the property and reconstruct the same built up area. Such a result is consistent with the purpose of MOFA and it protects the long term rights and security of the flat purchasers.

32. It is not in dispute between the parties that Respondent No.1 is the owner of the land admeasuring about 12,387.00 square metres and some additional small portion. The scheme of the Maharashtra Ownership Flats Act clearly contemplates that once flats are sold and an organisation of purchasers comes into existence, the promoter cannot indefinitely retain control over the property. The land and building must ultimately pass to the flat purchasers through their society or association.

33. The judgments in *Harish Vijaysingh Bhatia v. District Deputy Registrar*, 2025 SCC OnLine Bom 1981 and *Nusli Neville Wadia v. Ijimima – Imitation Jewellery Market Co-operative Society and Others*, 2026 SCC OnLine Bom 1520 explain the real purpose of the Maharashtra Ownership Flats Act. Both the judgments point

out that if the promoter is allowed to keep the main ownership of the land and transfer only a small or limited portion to the society, then the very purpose of the law would fail. In such a situation the society would technically have the building but the promoter would still control the land in the background. That would mean the flat purchasers are only occupying their premises without having full and secure rights over the property. For this reason the Act insists that the promoter must transfer his entire right, title and interest in the land and the building to the society of flat purchasers. Only when such complete transfer takes place can the society exercise full control over the property and manage it for the benefit of its members.

34. In view of the discussion and reasons recorded in the foregoing paragraphs, the following order is passed.

- (i) The writ petition is allowed.
- (ii) The impugned order dated 20 December 2023 passed by Respondent No.3, the Competent Authority, in Application No. 86 of 2023, to the extent it restricts the deemed conveyance of leasehold rights to land admeasuring 697.27 square metres, is quashed and set aside.
- (iii) Respondent No.3 shall issue a certificate under Section 11 of the Maharashtra Ownership Flats Act for unilateral deemed conveyance in respect of in respect of the land and building admeasuring 5,363 square metres within six weeks from today.

(v) The Sub Registrar concerned shall, upon presentation of the conveyance deed together with the certificate of the Competent Authority, register the conveyance in accordance with law.

35. Rule is made absolute in the aforesaid terms. No order as to costs.

(AMIT BORKAR, J.)