

AGK

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

WRIT PETITION NO.5520 OF 2023

Eversmile Properties Private Limited,
a company incorporated under the
provisions of the Companies Act, 1956,
and having its registered office at
Plot No.75, Old Block Factory, Sector-1,
Srishti, Penkar Pada, Mira Road (East),
Thane - 401 104

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... Petitioner

Vs.

- 1. The Competent Authority & District
Deputy Registrar of Coop. Societies,**
Thane and having office at Gaondevi
Market Building, Near Gaondevi Gr.,
Gokhale Road, Thane (West) 400 602
- 2. Shristi Sector III Coop. Housing Society
Federation Limited,** having office at
Cabin Office, Shristi Complex,
Mira Road (East), Taluka and
District Thane 401 107
- 3. Kumar Saihans Pradhan,**
At Penkar Pada, Shristi, Mira Road (East),
Taluka & District Thane 401 107.
- 4. Mandakini Prabhakar Mhatre,**
At Penkar Pada, Shristi, Mira Road (East),
Taluka & District Thane 401 107
- 5. Swati Saihans Pradhan,**
At Penkar Pada, Shristi, Mira Road (East),
Taluka & District Thane 401 107
- 6. Mira Bhayandar Municipal Corporation**

Indira Gandhi Bhavan, Chhatrapati
Shivaji Maharaj Marg, Bhayandar (West),
Thane 401 101

7. **Shristi Complex Sector III Coop. Housing
Society Association Limited**,
Shristi Complex, Mira Road (East),
Taluka & District Thane 401 107
8. **Joint Sub Registrar of Assurances Thane
No.1**, Ground Floor, MTNL Building,
Charai, Thane (West) 400 601
9. **Joint Sub Registrar of Assurances Thane
No.1**, Mahila Mandal Building, Talavpali,
Opposite Perfect Driving School,
Thane (West) 400 601
10. **The Talathi Saza Mire (Penkarpada)**,
O/l. Talathi Saza Mire (Penkarpada),
Near Kashi-Mira Police Station,
Adjacent to Western Express Highway,
Kashi-Mira, District Thane 401 107
11. **The Circle Officer, Mira-Bhayander**,
O/o The Additional Tahasildar
Mira-Bhayander, Near Maxus Mall,
Padmavati Nagar, Bhayandar (West),
Thane 401 101

... Respondents

**WITH
WRIT PETITION NO.10111 OF 2024**

**Shristi Complex Sector III Coop. Housing
Society Association Limited**, an Association
registered under the provisions of the
Maharashtra Coop. Societies Act, 1960,
having its address at Shristi Complex,
Mira Road (East),
Taluka & District Thane 401 107

... Petitioner

Vs.

1. **The Competent Authority & District Deputy Registrar of Coop. Societies,**
Thane and having office at Gaondevi Market Building, Near Gaondevi Gr., Gokhale Road, Thane (West) 400 602
2. **Eversmile Properties Private Limited,**
a company incorporated under the provisions of the Companies Act, 1956, and having its registered office at Plot No.75, Old Block Factory, Sector-1, Srishti, Penkar Pada, Mira Road (East), Thane - 401 104
3. **Azure Tree Townships Private Limited,**
A company incorporated under the provisions of the Companies Act, 2013 and having address at 101, Kalpataru Synergy, Opp. Grand Hyatt, Santacruz (East), Mumbai 400 055
4. **Mira Bhayandar Mahanagarpalika,**
Indira Gandhi Bhavan, Chhatrapati Shivaji Maharaj Marg, Bhayandar (West), Thane 401 101
5. **Shristi Sector III Coop. Housing Society Federation Limited,** having office at Cabin Office, Shristi Complex, Mira Road (East), Taluka and District Thane 401 107
6. **Swati Saiprasad Pradhan,**
At Penkar Pada, Shristi, Mira Road (East), Taluka & District Thane 401 107
7. **Chandrakant Janardhan Mhatre,**
At Penkar Pada, Shristi, Mira Road (East), Taluka & District Thane 401 107 ... Respondents

**WITH
WRIT PETITION NO.10113 OF 2024**

**Shristi Complex Sector III Coop. Housing
Society Association Limited**, an Association
registered under the provisions of the
Maharashtra Coop. Societies Act, 1960,
having its address at Shristi Complex,
Mira Road (East),
Taluka & District Thane 401 107

... **Petitioner**

Vs.

- 1. The Competent Authority & District
Deputy Registrar of Coop. Societies,**
Thane and having office at Gaondevi
Market Building, Near Gaondevi Gr.,
Gokhale Road, Thane (West) 400 602
- 2. Shristi Sector III Cooperative Housing
Society Federation Limited,**
Having office at Cabin Office,
Srishti Complex, Mira Road (East),
Thane - 401 104
- 3. Kumar Saihans Pradhan,**
At Penkar Pada, Shristi, Mira Road
(East), Taluka & District Thane 401 107.
- 4. Mandakini Prabhakar Mhatre,**
At Penkar Pada, Shristi, Mira Road
(East), Taluka & District Thane 401 107
- 5. Swati Saiprasad Pradhan,**
At Penkar Pada, Shristi, Mira Road
(East), Taluka & District Thane 401 107
- 6. Eversmile Properties Private Limited,**
a company incorporated under the
provisions of the Companies Act, 1956,
and having its registered office at

Plot No.75, Old Block Factory, Sector-1,
Srishti, Penkar Pada, Mira Road (East),
Thane - 401 104

7. Azure Tree Townships Private Limited,

A company incorporated under the
provisions of the Companies Act, 2013
and having address at 101, Kalpataru
Synergy, Opp. Grand Hyatt,
Santacruz (East), Mumbai 400 055

8. Mira Bhayandar Mahanagarpalika,

Indira Gandhi Bhavan, Chhatrapati
Shivaji Maharaj Marg, Bhayandar
(West), Thane 401 101

... Respondents

Mr. Sanjeev Gorwadkar, Senior Advocate with Mr. Vishal Kanade, Mr. Suneet Tyagi, & Mr. Swaraj M. Savant i/by Makarand B. Savant for the petitioner in WP/5520/2023, for respondent No.5 in WP/10111/2024 & for respondent No.2 in WP/10113/2024.

Mr. Atul Damle, Senior Advocate with Mr. Amogh Singh, Mr. Santosh Pathak, & Mr. Kailash Pathak i/by Law Origin for the petitioner in WP/10111/2024 & WP/10113/2024.

Mr. Chetan Kapadia, Senior Advocate with Mr. Sunny Shah, Mr. Viral Dilip Shukla, Ms. Priti Shukla and Mr. Rudra M. Dani i/by Shukla & Associates for respondent No.2 in WP/5520/2023 & WP/10113/2024, and for respondent No.5 in WP/10111/2024.

Ms. S.S. Jadhav, AGP for the State.

Mr. N.R. Bubna with Ms. Pooja Naik for respondent No.8-MBMC in WP/10113/2024 & WP/10111/2024.

Mr. Mayuresh Lagu with Mr. Sagar Patil, and Mr. Shashank Dubey for respondent No.6-MBMC in WP/5520/2023.

CORAM : AMIT BORKAR, J.

RESERVED ON : MARCH 30, 2026.

PRONOUNCED ON : APRIL 7, 2026

JUDGMENT:

1. Inasmuch as all the present writ petitions involve substantially the same questions of law and arise out of a common set of facts, they are being heard together and are disposed of by this common judgment, so as to avoid repetition of facts and conflicting findings.

2. By these writ petitions filed under Articles 226 and 227 of the Constitution of India, the petitioner in Writ Petition No. 5520 of 2023 has assailed the order dated 27 March 2023 passed by respondent No. 1 under Section 11(3) of the Maharashtra Ownership of Flats (Regulation of Promotion of Construction, Sale, Management and Transfer) Act, 1963, whereby Application No. 797 of 2022 preferred by respondent No. 2 came to be allowed and a certificate of unilateral deemed conveyance was issued in respect of the lands bearing Old Survey Nos. 218, 219, 228/1, 230/1, 231 (part), 232 (part), 233 (part) and 240 (part), corresponding to New Survey Nos. 50, 51, 60/1, 62/1, 63 (part), 65 (part), 66 (part) and 64/2 (part), situated at village Pankar Pada, Mira Road, District Thane, admeasuring about 50,000 square meters. The petitioner has further challenged the deed of deemed conveyance bearing Registration No. 2408 of 2023 dated 12 April 2023, which has been registered under Section 11(5) of the said Act.

3. The petitioner in Writ Petition No. 10113 of 2024, which is an adjoining society, has also questioned the said order; however, the challenge is founded on entirely distinct grounds, primarily relating to the alleged incorrect calculation and determination of the area, which is different from the grounds raised in Writ Petition No. 5520 of 2023.
4. The petitioner in Writ Petition No. 10111 of 2024, being the same adjoining society, has further impugned the order dated 12 January 2024 passed by respondent No. 1, whereby Application No. 439 of 2023 filed by the said petitioner seeking grant of unilateral deemed conveyance in its favour came to be rejected.
5. For the sake of convenience, the petitioner in Writ Petition No. 10113 of 2024 is hereinafter referred to as “the Association”, respondent No. 2 is referred to as “the Federation”, and the petitioner in Writ Petition No. 5520 of 2023 is referred to as “the Developer”.
6. The facts necessary for adjudication of these writ petitions, as borne out from the record, indicate that between the years 1980 and 1993, the Developer acquired development rights in respect of lands bearing Old Survey Nos. 218, 219, 228/1, 230/1, 231, 232, 233 and 240/2, corresponding to New Survey Nos. 50, 51, 60/1, 62/1, 63, 65, 66 and 64/2, admeasuring in aggregate about 2,00,230.07 square meters, situated at village Penkar, Mira Road, District Thane. Pursuant thereto, the Developer commenced development of the said larger property and constructed 34 buildings and 10 row houses on a portion admeasuring about

50,999 square meters, being the subject property, and entered into agreements for sale with various flat purchasers in respect thereof. A model agreement for sale dated 13 August 1993 executed by the Developer records that the larger property was proposed to be developed in a phased manner, namely in Sections I to VI, and that the said agreement pertained to construction in Sector III. It further stipulated that the ultimate conveyance would be executed in favour of a corporate body in respect of Sector III and that the agreement would be governed by the provisions of MOFA. However, the agreements for sale did not specify or disclose the exact area of Sector III. It is also evident that at the time of execution of the agreements, there was no disclosure or indication of any further construction being proposed in Sector III. In the period between 1995 and 2000, as many as 20 separate co-operative housing societies of flat purchasers came to be registered in respect of the subject property. Thereafter, on 12 May 2003, respondent No. 2, namely the Federation, was formed and registered as an apex body comprising the said 20 societies.

7. On 18 October 2007, the Developer entered into a Development Agreement with Azure Tree Townships Private Limited for undertaking further construction of 16 buildings on lands bearing Old Survey Nos. 231 (part), 232 (part), 233 (part), 234 (part) and 240 (part), corresponding to Survey Nos. 63 (part), 65 (part), 66 (part), 67 (part) and 64 (part), admeasuring about 30,880 square meters at village Penkarpada, District Thane, being the property of respondent No. 7, as more particularly described in the Second Schedule to the said Development Agreement.

8. On 16 June 2008, the Federation instituted Special Civil Suit No. 460 of 2008 before the Civil Judge, Senior Division, Thane, inter alia seeking conveyance of the subject property. In the period between 2010 and 2011, the Developer along with Azure Tree Townships Private Limited executed agreements for sale with various flat purchasers in relation to the development carried out in the property pertaining to the Association. The Association itself came to be registered on 2 February 2016 comprising 16 societies. The aforesaid Special Civil Suit No. 460 of 2008 came to be dismissed for default on 4 October 2017, whereafter the Federation filed an application for restoration of the said suit on 27 October 2017.

9. On 21 May 2019, the Developer forwarded a draft deed of assignment of leasehold rights to both the Federation and the Association. Thereafter, the Federation filed Application No. 797 of 2022 before respondent No. 1 on 2 December 2022 seeking unilateral deemed conveyance of the subject property. The Developer filed its affidavit in reply to the said application on 31 January 2023 opposing the grant of such conveyance.

10. By order dated 27 March 2023, respondent No. 1 allowed the said Application No. 797 of 2022 filed by the Federation and issued a certificate of unilateral deemed conveyance in respect of the subject property in favour of the Federation. Pursuant thereto, on 31 March 2023, the Federation lodged the deemed conveyance deed for registration before respondent No. 8. Thereafter, respondent No. 8 issued a show cause notice dated 3 April 2023 under Section 11(5) of MOFA, inter alia to the Developer and the

Association. The Developer addressed communications dated 10 April 2023 and 11 April 2023 to respondent No. 8 requesting that the deemed conveyance deed should not be registered. Notwithstanding the same, the deemed conveyance deed came to be registered on 11 April 2023 bearing Serial No. 2408 of 2023.

11. The Developer served Civil Writ Petition No. 5520 of 2023 upon the Federation on 11 April 2023 and 12 April 2023. The said writ petition was listed before this Court on 20 April 2023; however, it could not be taken up for hearing due to paucity of time. The Association thereafter filed Application No. 439 of 2023 before respondent No. 1 on 14 July 2023 seeking unilateral deemed conveyance in respect of an area admeasuring about 47,101.52 square meters, which included a part of the subject property. The Association also filed an affidavit in reply dated 28 August 2023 supporting the challenge raised by the Developer to the order granting conveyance in favour of the Federation. The Federation filed its limited affidavit in reply on 31 August 2023. The writ petition filed by the Developer came up for consideration on several dates in September 2023; however, no interim relief was granted, though the Developer was permitted to amend the petition so as to challenge the registered conveyance deed.

12. Ultimately, by order dated 12 January 2024, respondent No. 1 rejected Application No. 439 of 2023 filed by the Association seeking unilateral deemed conveyance.

13. Mr. Damle, learned Senior Advocate appearing on behalf of the Federation, along with Mr. Gorwadkar, learned Senior

Advocate for the Developer, invited attention to Clause Nos. 1C(vii)(a), (b) and (viii) of the agreements for sale. He submitted that Clause (a) stipulates that the promoter is undertaking development of the entire land, known as “SRISHTI”, in a phased manner comprising Sections I to VI, excluding the portion falling under the ‘G’ Zone, as delineated in the layout plan annexed as Exhibit B. Clause (b) records that the promoter intended to acquire or purchase additional lands belonging to other owners, which may be contiguous, adjoining or situated in the vicinity of the said entire land, with a view to integrate such lands into the overall scheme of development of the project known as “SRISHTI”. Clause (viii) further provides that the promoter is entitled and obligated to construct buildings in the various sectors forming part of the said entire land, in accordance with the agreement, the relevant orders, and the building plans duly sanctioned by the Mira Bhayander Municipal Council and other competent authorities. Relying upon Clause Nos. 2(e), (fg), (l)(i) to (iv) and (g), as well as Clause Nos. 13(A) and 13(B)(i), Mr. Damle contended that Sector III was clearly identified as a distinct project and that its scope and extent were made known to each individual purchaser. It was therefore urged that the Federation cannot object to the inclusion of the recreational ground area in the unilateral deemed conveyance executed in favour of the petitioner society.

14. In the alternative, Mr. Damle submitted that the purchasers forming part of the petitioner society in Writ Petition No. 10111 of 2024 have expressed willingness to become members of the Federation, thereby resolving any inter se dispute regarding

entitlement.

15. It was further contended that while passing the impugned order, respondent No. 1 has placed reliance upon documents which lack legal validity. In particular, reliance on the Architect's Certificate dated 30 November 2022 was questioned, as the said certificate, being a brief document, does not disclose the basis or methodology adopted for its issuance. It does not indicate the sanctioned plans considered nor does it explain the manner in which the area of 50,999 square meters has been determined as being attributable to respondent No. 2. It was further submitted that the said Architect's Certificate does not appear to have been issued upon consideration of the layout plans of the Srishti Project as approved by the Mira Bhayander Municipal Corporation on 31 March 2022, thereby rendering its evidentiary value doubtful.

16. Mr. Gorwadkar submitted that the Developer has at all times been ready and willing to assign and transfer the subject property in favour of respondent Nos. 2 and 7 in accordance with their respective entitlements as per the sanctioned plans pertaining to Srishti Sector III. In this regard, it was pointed out that a draft Deed of Assignment of Lease and Transfer had already been forwarded by the Developer to the Federation and the Association by letter dated 21 May 2019, much prior to the filing of the application for deemed conveyance on 2 December 2022.

17. Per contra, Mr. Kapadia, learned Senior Advocate appearing on behalf of the Federation, invited attention to the proposed deed of assignment intended to be executed in favour of the Association.

Referring to Clause 38 thereof, it was submitted that the area contemplated in Annexure A excludes the recreational ground area which has been conferred in favour of respondent No. 5 society. By referring to Clause 39, it was further submitted that even under the Development Agreement dated 18 October 2007, only an area of 30,880 square meters constituted the undeveloped portion of the larger property, as described in the Third Schedule, for the purpose of constructing 16 buildings of the Association. Learned Senior Advocate further invited attention to the agreements executed by the Developer in favour of members of the Federation, particularly Exhibit B annexed thereto, to contend that the area forming part of the entire project, including the recreational ground area, stood confined to the extent allotted to respondent No. 2 society. Placing reliance upon the judgment of this court in case of *Madhuvihar Co-Operative Housing Society v. Jayantilal Investments*, (2011) 1 Mah LJ 641, it was submitted that even if the recreational ground area was depicted as part of the overall layout, the subsequent layout pertaining to the balance land, including the societies forming part of the Association, cannot confer any right over such area. It was urged that the recreational ground forms part of the obligations undertaken under agreements executed with purchasers under Section 4 of MOFA and is thus exclusively attributable to the Federation.

18. In rejoinder, Mr. Kapadia invited attention to Clause 9 and Clause 1C(vii)(a), (b) and (viii) to submit that the layout plan annexed as Exhibit 'B' clearly includes the recreational ground area, in respect of which the unilateral deemed conveyance has

been granted. It was contended that there is no stipulation in the agreements executed with members of the Federation that such recreational ground would constitute a common area for any future development. It was therefore submitted that the competent authority has rightly included the said area in the conveyance granted in favour of the Federation, and that the Association would be entitled only to the residual areas such as the clubhouse and other remaining land after deducting the area conveyed to the Federation. The learned counsel for the respondents further submitted that the applicable legal provisions have been correctly applied to the facts of the present case. It was pointed out that the Federation was registered on 12 May 2003 and that the agreements for sale executed with the flat purchasers do not prescribe any definite timeline for execution of conveyance. In such circumstances, it was contended that the Developer was under a statutory obligation to convey the title of the subject property in favour of respondent No. 2 within a period of four months from the date of its registration, that is, on or before 12 September 2003. It is not disputed that such conveyance was not effected. Consequently, respondent No. 2 became entitled to invoke the provisions of Section 11(3) of MOFA and to seek unilateral deemed conveyance, which led to the filing of Application No. 797 of 2022 on 2 December 2022.

19. It was further submitted that respondent No. 1, upon due consideration, rightly allowed the said application by order dated 27 March 2023 and granted unilateral deemed conveyance in respect of the subject property admeasuring 50,999 square meters.

It was also contended that disputes relating to the extent of area and entitlement thereto involve questions of fact which cannot be adjudicated in writ jurisdiction and would appropriately lie within the domain of a civil court. Without prejudice, it was submitted that respondent No. 1 has rightly relied upon the Architect's Certificate dated 30 November 2022 as an expert opinion. In contrast, the agreements for sale executed by respondent No. 7 and the Development Agreement dated 18 October 2007 clearly restrict the area to 30,880 square meters, and therefore respondent No. 7 cannot claim any right over the recreational ground area or any area beyond what is expressly stipulated therein. On these grounds, it was urged that the writ petitions are devoid of merit and deserve to be dismissed with costs.

REASONS AND ANALYSIS:

20. I have given my careful consideration to the rival stands. I have also gone through the agreements for sale, the development agreement, the layout plans, the certificate of deemed conveyance, the show cause notice issued by the registering authority and the orders passed by respondent No. 1. The matter involves following questions. The first is whether the Federation was entitled to the deemed conveyance in respect of the subject property including the RG area. The second is whether the Association which came later and on a different footing can claim a joint right over that same RG area. The third is whether the Association is entitled to a separate deemed conveyance in respect of the balance area of 30,880 sq. mtrs.

21. The Supreme Court in *Jayantilal Investments v. Madhuvihar Coop. Housing Society*, (2007) 9 SCC 220 held as under:

“18. The above clauses 3 and 4 are declared to be statutory and mandatory by the legislature because the promoter is not only obliged statutorily to give the particulars of the land, amenities, facilities, etc., he is also obliged to make full and true disclosure of the development potentiality of the plot which is the subject-matter of the agreement. The promoter is not only required to make disclosure concerning the inherent FSI, he is also required at the stage of layout plan to declare whether the plot in question in future is capable of being loaded with additional FSI/floating FSI/TDR. In other words, at the time of execution of the agreement with the flat takers the promoter is obliged statutorily to place before the flat takers the entire project/scheme, be it a one-building scheme or multiple number of buildings scheme. Clause 4 shows the effect of the formation of the Society.

22. In *Madhuvihar Co-Operative Housing Society v. Jayantilal Investments*, this court held as under:

“46. Thus, there is consistent view of this Court, that the blanket consent or authority obtained by the promoter, at the time of entering into agreement of sale or at the time of handing over possession of the fiat, is not consent within the meaning of section 7(1) of the MOFA, inasmuch as, such a consent would have effect of nullifying the benevolent purpose of beneficial legislation.

47. It is, thus, clear that it is a consistent view of this Court, that the consent as contemplated under section 7(1) of the MOFA has to be an informed consent which is to be obtained upon a full disclosure by the developer of the entire project and that a blanket consent or authority obtained by the promoter at the time of entering into agreement of sale

would not be a consent contemplated under the provisions of the MOFA. I am in respectful agreement with the consistent view. The interpretation placed by the learned Single Judges of this Court is in consonance with the benevolent provisions of the MOFA which have been enacted for protecting flat takers.”

23. At the outset it is necessary to bear in mind the object of the provisions of the Maharashtra Ownership of Flats Act. Its purpose is to safeguard flat purchasers who in most cases invest their lifetime savings and act on the representations made by the promoter. The Act therefore casts a strict obligation upon the promoter to place before the purchaser the true and complete picture of the project. A flat purchaser, at the stage of entering into an agreement, does not have equal bargaining power. He relies upon what is shown to him and what is stated in the agreement. If the promoter is permitted to withhold material particulars and later alter the project, the purchaser would be left without any real protection.

24. It follows from this that the concept of consent under the Act requires that such consent must be meaningful based on knowledge. A person cannot be said to have consented to something which was never properly disclosed to him. If the agreement contains general clauses without explaining specific nature of the proposed development such clauses cannot be treated as valid consent in the eye of law.

25. The judgments referred to above emphasise this aspect making it clear that the promoter cannot rely upon a blanket consent taken at the time of agreement. Such a consent would

defeat the very object of the statute. What is required is a informed consent, which is given after the purchaser is made aware of the entire project. Only when the purchaser has been placed in a position to understand the nature of the development can his consent be treated as valid. At the same time the Act does not prevent the promoter from undertaking development in phases or from constructing additional structures provided such development forms part of the scheme that was disclosed at the outset. If the entire project including future phases has been clearly placed before the purchaser at the time of agreement, and the subsequent construction is in accordance with that disclosed plan and the applicable regulations, then no further consent is required. In such a case, the purchaser is aware of the overall scheme and has accepted it. However, where the additional construction or alteration is not part of the disclosure, the position is different. In such a situation the promoter cannot proceed on the basis of implied consent. The Act requires that the promoter must obtain prior consent after making full disclosure of the proposed changes.

26. When the present record is examined on that footing, the position of the Federation becomes clear and steady. The agreements executed with the original flat purchasers seen as a whole document show that the promoter was dealing with a large land, known as “SRISHTI” and that land was to be developed in parts. The annexed layout plan, marked as Exhibit B also becomes very important in this context. It is part of the agreement itself. When a purchaser signs such an agreement he is taken to have

seen the plan and to have understood what is being developed. The plan shows the structure of the project. It shows how the land is divided. It gives a picture of what is to come. Once such a plan is part of the agreement the promoter cannot later deny it and equally the purchaser cannot later say that he had no idea of phased development.

27. Now coming to the objection raised by the Association. The Association says that the RG area should not be treated as part of the Federation's project. This argument does not fit with the Agreements entered with purchasers. The agreement does not contain a recital that the RG area will remain common or will be shared with future development. The agreements, along with the layout plan, show a larger and connected scheme. They do not show a closed or isolated building. They show different sections. They show that the development is continuing. In such a situation, open spaces like RG area are normally part of the layout of that phase. They are part of the planning itself. If that is so it would not be correct to later separate that area and say that it was never part of the project disclosed to the first purchasers.

28. So far as the submission of the Association that the Federation has no exclusive right over the RG area and that the Association has a joint right to use the same is concerned, the said contention, when examined closely, does not appear to be supported either by the documents or by the legal position. The land is one larger piece. Different buildings have come up at different times. Therefore, according to the Association all open spaces like RG area should be treated as common for everyone.

The Court must see what was actually disclosed, what was agreed, and what rights have already been created. When one turns to the agreements executed with the original flat purchasers it becomes clear that the project known as “SRISHTI” was shown as a phased development. The layout plan Exhibit B formed part of those agreements. That plan included the RG area as part of the layout of that phase. Therefore, for the purchasers who became part of the Federation the RG area was part of the project as disclosed to them at the time of purchase.

29. Now if that is the position then the rights of those purchasers get attached to that layout. They purchased flats on the understanding of that plan. They were shown a particular scheme. That scheme included open spaces. Once such rights are created they cannot be diluted later by bringing in another group and saying that the same area must now be shared jointly unless there is clear material to support such sharing. The Association has not been able to point out any clause in the agreements which says that the RG area forming part of Exhibit B would be kept open for use by future developments or future societies. There is no such express provision. More importantly there is no material to show that the original purchasers were told that this RG area would later become a common facility for other independent developments coming up on different portions of the land. It is also necessary to keep in mind that the Association’s project arises from a later development agreement. That agreement relates to a different portion of land admeasuring 30,880 sq. mtrs. That area is clearly identified. The Association’s rights flow from that

agreement. Therefore, the Association must confine its claim to what belongs to that later project. It cannot travel backwards and claim rights over areas which were already part of an earlier disclosed phase.

30. The concept of “joint use” must have some basis. Either there must be a clear agreement, or there must be a clear indication in the layout that the area was reserved for common use across all phases. In the present case, no such material is shown. The mere fact that both projects are part of a larger land parcel is not enough to create joint rights.

31. Another aspect also needs to be noticed. If the argument of the Association is accepted it would lead to uncertainty. Any later development could then claim a right over the open spaces of earlier developments even though those spaces were part of the scheme shown to earlier purchasers. That would disturb settled rights. Once rights have crystallised in favour of one set of purchasers based on a disclosed plan those rights cannot be lightly interfered with.

32. The Association has argued that the RG area should be treated as a general amenity for all residents of the larger project. But this argument overlooks the distinction between a single integrated project and multiple phased developments with separate entitlements. In a truly integrated project where all phases are disclosed together and the amenities are shown as common such a claim may have merit. But in the present case the material shows that the Federation’s phase was disclosed earlier

with its own layout and the Association's phase came later under a separate agreement with a defined area. Therefore, the claim of the Association that it has a joint right to use the RG area cannot be accepted. The Federation's right over the RG area flows from the original disclosure and the agreements executed with its members. That right has now been recognised by the deemed conveyance. The Association cannot by a later claim reduce that right into a shared entitlement.

33. It is also important that the Federation came into existence much earlier. The original societies were formed between 1995 and 2000 and the Federation was registered on 12 May 2003. The promoter was under a duty to convey the property within four months required by MOFA rules. That was not done. Instead, the matter prolonged for years. A draft deed of assignment was forwarded only on 21 May 2019. By then the statutory obligation had long matured. The Federation therefore had every right to move under Section 11(3) of MOFA for unilateral deemed conveyance. The application filed in 2022 was a lawful response to a failure to execute conveyance.

34. The challenge raised by the Developer against the order dated 27 March 2023 does not persuade this Court for more than one reason. The record shows that the authority had before it the agreements executed with the flat purchasers, the layout plans including Exhibit B, the history of development of the project and the circumstances in which the Federation approached for deemed conveyance.

35. The case of the Association requires to be considered separately because its position is not exactly the same as that of the Federation. The Association has come into existence at a later point of time. Its claim is not arising from the original agreements with the first set of flat purchasers. Instead its claim is based on a different arrangement namely the Development Agreement dated 18 October 2007. The said Development Agreement deals with the undeveloped portion of the larger property. It identifies the area as 30,880 sq. mtrs. Even agreements under Section 4 of MOFA entered with members of Association refer to area of project as 30,880 sq. mtrs. This area is part of the contractual understanding between the parties. It fixes the extent of land on which the later development was to take place. Therefore, the Association's rights must flow from this agreement and must remain confined within this identified area. It would not be correct for the Association to go outside this boundary and attempt to claim rights over areas which were already part of an earlier disclosed phase. The RG area which has already been dealt with while considering the Federation's case forms part of that earlier phase. Therefore the Association cannot enlarge its claim by including that area. Its claim must stand or fall on the strength of the Development Agreement of 2007 and agreement under section 4 of MOFA.

36. The record clearly shows that the Development Agreement dated 18 October 2007 and agreements under Section 4 of MOFA deal with a separate portion of land admeasuring 30,880 sq. mtrs. That portion is not the same as the land covered by the

Federation's conveyance. It is described as the balance or undeveloped land. Therefore the Association's entitlement has to be seen in respect of that balance land alone. Second schedule of agreement under Section 4 indicates the area as 30,880 sq. mtrs. These clauses show that the parties themselves were conscious that the later development was to proceed on a separate portion of land. The figure of 30,880 sq. mtrs. fits into this understanding. Once the documents themselves identify the area and the development, the authority ought to have given effect to the same. If the competent authority refuses to act even in such a case then the purpose of the statute would be defeated. The provision for deemed conveyance is intended to give relief where the promoter fails to perform his duty. It is not meant to be rendered ineffective by directing parties to another forum even when the entitlement is evident from the record itself.

37. The correct approach is to read both sets of rights separately and harmoniously. The Federation's rights over its phase including the RG area remain undisturbed. At the same time, the Association's rights over the later phase, confined to 30,880 sq. mtrs. must also be recognised.

38. In the present case, however, the authority appears to have allowed the earlier conveyance in favour of the Federation to overshadow the independent claim of the Association. This has resulted in rejection of Application No. 439 of 2023 without properly appreciating the distinction between the two phases. Such an approach is not correct. Therefore, the rejection order dated 12 January 2024 cannot be sustained. The Association is entitled to

have its application considered in the light of the Development Agreement dated 18 October 2007 and agreements under Section 4 of MOFA the area of 30,880 sq. mtrs. specified therein.

39. In view of the aforesaid discussion and reasons recorded hereinabove, I proceed to pass the following order:

- (i) Writ Petition No. 5520 of 2023 is dismissed;
- (ii) Writ Petition No. 11013 of 2024 is dismissed;
- (iii) Writ Petition No. 10111 of 2024 is allowed;
- (iv) The order dated 12 January 2024 passed by respondent No. 1 rejecting Application No. 439 of 2023 is quashed and set aside;
- (v) Respondent No. 1 is directed to grant and issue a certificate of unilateral deemed conveyance in favour of the petitioner in Writ Petition No. 10111 of 2024 in respect of the land admeasuring 30,880 sq. mtrs.in accordance with law;
- (vi) It is clarified that the deemed conveyance granted in favour of respondent No. 2–Federation pursuant to order dated 27 March 2023 including the RG area forming part of Exhibit B of the agreements shall remain undisturbed;
- (vii) The claim of the petitioner–Association to any joint or shared right over the said RG area is rejected;
- (viii) Respondent No. 1 shall complete the process of issuing the certificate and all consequential steps within a period of

eight weeks from the date of this order;

(ix) There shall be no order as to costs.

40. At this stage, learned Advocate for the petitioner in Writ Petition No.10111 of 2024 prays for stay of the judgment. However, in view of the reasons recorded herein above, the said request stands rejected.

(AMIT BORKAR, J.)