

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11258 OF 2024

Saniya City Co-op. Hsg. Soc. Ltd.

Through its Chairman

A) Shankarsingh Bapusingh Parmar

Age 40 years, Occ: Business,

B) Secretary

Faiz Mohammad Bashir Khan

Age: 49 years, Occ: Business

C) Treasurer

Mehfooz Alam

Age: 60 years, Occ: Business,

All R/at Survey No. 45/7, 7A,

7B, 48/6, 10, 11, 50/3,

at Village Walvi, Tal: Vasai, Dist: Palghar.

..Petitioner

Versus

1. Sagar Developers and Ors

A partnership Firm, through its Partner

Mohammad Yusuf Abdul Latif Questhi

Age: 59 years, Occ: Business,

Add. Ramji Patel Compound,

Opp. Tabela, Near Mallika Hotel,

Pathan Wadi, Malad (E) Mumbai 97

2. Vasai Virar City Municipal Corporation

Through its Town Planning Authority

Mr. Yamiganu Shiva Reddy

Bazarward, Virar (East), Tal: Vasai,

Dist: Palghar.

3. Mona Atul Patel

Age : 48 years, Occ: Business,

Residing at: 5th Floor, Trade Avenue,

Suren Road, Western Express Highway

Andheri (E), Mumbai – 93.

...Respondents

Dr. Uday Warunjikar, a/w Ms. Sakshi Inamdar, Mr. Hrishikesh
Nabar, for the Petitioner.

Mr. Shriram S Kulkarni, a/w Mr. Ashok Dhanuka, Mr. Hitesh Gupta and Mr. Nikhil Sonar, i/b W3 Legal LLP, for Respondent No.1.
Ms. Swati Sagvekar, for Respondent No.2.

CORAM : N. J. JAMADAR, J.
RESERVED ON : 02nd DECEMBER 2025
PRONOUNCED ON : 05th MAY 2026

JUDGMENT:

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.
2. This Petition under Article 227 of the Constitution of India assails a judgment and order passed by the learned District Judge, Vasai in MCA No. 22 of 2024 whereby the Appeal, preferred by Respondent Nos. 1- original Defendant No.1, against an order passed by the learned Civil Judge dated 24th July 2024, thereby restraining Defendant No.1 from making any construction over the property bearing Survey Nos. 47/5, 7A, 7B, 48/6, 10, 11, 50/3 admeasuring 26810 sq. mtrs. at village Waliv, Taluka Vasai, District Palghar (the suit property) or from changing the nature of the suit property till the final disposal of the suit, came to be partly allowed and Defendant No.1 was allowed to carry out developments subject to undertaking to protect the interest of the Plaintiff.

3. The background facts necessary for the determination of this Petition can be stated as under:

3.1 The Petitioner-Plaintiff is a cooperative housing society of the owners of the flats in Sagar City Building Nos. 3A to E constructed over the suit property.

3.2 Defendant No.1 is the promoter-developer. Defendant No.3 is the original owner of the suit property. Defendant No.1 had constructed Building Nos. 3 and 4 on the suit property in accordance with Building Permission and Plan dated 2nd September 2008, sanctioned by Vasai Virar Municipal Corporation (D2).

3.3 Defendant No.1 had utilised the FSI of 13276 sq. mtrs. against build-able plot area of 14701 sq. mtrs. The Plaintiff claims Defendant No.1 had utilised the entire FSI of the land.

3.4 In the last week of November 2023, Defendant No.1 commenced digging work on a portion of the suit property. Upon enquiry, it transpired that Defendant No.1 has obtained revised Development Permission dated 22nd February 2023 from the Defendant No.2.

3.5 Upon perusal of the original sanctioned plan and the revised plan, it transpired that RG area was reduced to 1352.27 sq. mtrs. from 2594.38 sq. mtrs.; CFC area was reduced to

711.31 sq. mtrs. from 864.789 sq. mtrs.; DP Road was reduced from 6477.45 sq. mtrs. to 5665.65 sq. mtrs. and a rivulet (nalla) admeasuring 118.68 sq. mtrs., which was shown in the original sanctioned plan, was not at all reflected in the revised plan.

3.6 Defendant No.1 was exploiting additional FSI, generated by the aforesaid deletion and suppression, which Defendant No.1 was obligated to convey to the Plaintiff-society.

3.7 The society, thus, instituted a suit for enforcement of the statutory obligations of the promoter under Section 3, 4, 7 and 7A of the Maharashtra Ownership Flats (Regulation of The Promotion of Construction, Sale, Management And Transfer) Act, 1963 ("the MOFA 1963") and for declaration and injunction.

3.8 It was *inter alia* asserted that Defendant No.1 had made misrepresentations in obtaining sanction for the revised plan in regard to the plot area and illegal reductions in the RG, CFC and rivulet (nalla) and thereby grabbed the FSI which the Plaintiff-society was in law entitled to exploit. Defendant No.1 has attempted to usurp the land over which the pond exists. Defendant No.1 has also suppressed the claim of M/s Best Builders to an area admeasuring 4000 sq mtrs land over the suit property.

3.9 The revised plan has been obtained by Defendant No.1 without clear, specific and informed consent of the Plaintiff. The said plan is in derogation of the statutory obligations of Defendant No.1 and jeopardizes the statutory entitlements of the society. The Defendants had no right to revise the original sanctioned plan dated 2nd September 2008 without Plaintiff's clear and informed consent.

3.10 The Plaintiff thus prayed for declarations that Defendant No.1 has no right to make any changes in the representations/amenities as shown in the original sanctioned plan dated 2nd September 2008, without specific, clear and informed written consent of the Plaintiff-society, that the revised plan and permission VP 4289 dated 22nd February 2023 inclusive of VP 4289 dated 1st November 2022, being in derogation of the statutory obligations of Defendant No.1 under the MOFA 1963, are illegal, and for the consequential relief of injunction including to restrain Defendant No.1 from carrying out any construction over the suit property, or from changing the nature or character of the suit property and utilizing the FSI of the Plaintiff.

3.11 In the said suit, the Plaintiff took out an application for temporary injunction.

3.12 Defendant No.1 contested the said application. Defendant No.1 *inter alia* contended that Defendant No.1 was completing the development which was already disclosed to the members of the Plaintiff-society. The layout plan then shown to the members of the Plaintiff-society, specifically indicated all the proposed buildings and developments to be carried out in future.

3.13 The permission dated 2nd August 2008 was granted in respect of development of Building Nos. 3 and 4 only, over a portion of a larger layout. In view of the United Development Control and Promotion Regulations 2020 (“UDCPR 2020”), Defendant No.1 was required to obtain revised permission for carrying further development over larger property. Defendant No.1 was entitled to develop the larger layout.

3.14 After appraisal of the rival contentions and the submissions, the learned Civil Judge was persuaded to allow the application for temporary injunction. The learned Civil Judge was of the view that *prima facie* it appeared that Defendant No.1 had not disclosed future developments when the Agreements for Sale were executed with the members of the Plaintiff-society. There was no informed consent for the further development. In the event, injunctive reliefs were not granted,

the members of the Plaintiff-society would suffer irreparable loss.

3.15 Thus, the learned Civil Judge restrained Defendant No.1 from making any construction over the suit property and from changing the nature of the suit property till the final disposal of the suit.

3.16 Being aggrieved, Defendant No.1 preferred an Appeal, being MCA No. 22 of 2024, before the learned District Judge, Vasai.

3.17 By the impugned judgment and order, the learned District Judge interfered with the discretion exercised by the trial Court. The learned District Judge was of the view that, the sanctioned plan and the layout which were shown to the members of the Plaintiff-society clearly indicated proposed future development. Those proposed buildings were shown at a distance from the existing structures of the Plaintiff-society. Therefore, the learned Civil Judge was not justified in holding that Defendant No.1 had not disclosed proposed additional structures in the layout plan when the apartments were sold in the year 2008.

3.18 Finding that the balance of convenience tilted in favour of Defendant No.1 as he was complying with UDCPR 2020 Regulations and the continuation of prohibitory injunction till

the final disposal of the suit would cause irreparable loss to Defendant No.1, the learned District Judge allowed the Appeal subject to Defendant No.1 filing the undertakings that the RG area, CFC area, DP road and additional FSI would be provided proportionate to the share of Plaintiff-society as per the sanctioned plan dated 2nd September 2008 and making full and true disclosure in respect of the suit property to the Plaintiff-society as per the revised building permission.

4. Being aggrieved, the Plaintiff has invoked the writ jurisdiction.

5. I have heard, Dr. Uday Warunjikar, the learned Counsel for the Petitioner, Mr. Shriram S Kulkarni, the learned Counsel for Respondent No.1-developer, and Ms. Swati Sagvekar, the learned Counsel for Respondent No.2. The learned Counsel took the Court through the material on record. After conclusion of the oral submissions, the parties have also tendered the written submissions.

6. Dr. Warunjikar, the learned Counsel for the petitioner, took a slew of exceptions to the impugned judgment and order. Firstly, it was submitted that, the statutory rights of the petitioner could not have been sacrificed at the altar of an undertaking to be filed by the Defendant No. 1 – Promoter.

Once, the Defendant No. 1 carries out the construction which is in flagrant violation of the representations made by the Defendant No. 1 to the members of the plaintiff - Society, an irreversible situation would arise and the flat purchasers will be presented with a *fait accompli*. On this count alone, Dr. Warunjikar would urge, the impugned judgment and order deserves to be quashed and set aside.

7. Secondly, after taking the Court through the comparative chart of the changes brought about by the revised sanction plan of the year, 2023, Dr. Warunjikar would submit that, the revised plan not only affects the statutory rights of the flat purchasers but the very landscape of the subject property is altered. An area admeasuring 4,000 sq. mtrs., over which Wing F of Building No. 3 stands, has been excluded from the total area of subject land, despite having made a representation that the Defendant No. 1 had the right to develop the entire land admeasuring 26,810 sq. mtrs., and propounded a title certificate to that effect.

8. Thirdly, Dr. Warunjikar would submit, the exclusion of the pond area of 2917.96 sq. mtrs., in breach of the earlier representations and NA order passed by the District Collector on the specious ground of a drafting error, was clearly an

attempt at commercial exploitation of the land even at the cost of severe environmental damage.

9. Fourthly, Dr. Warunjikar laid emphasis on the fact that in the revised plan, the RG area, CFC area and Nallah area have been drastically reduced.

10. Premised on the aforesaid facts, Dr. Warunjikar would urge, the proposed development under the revised plan is in teeth of the binding judgments of the Supreme Court and this Court. Dr. Warunjikar placed reliance on the judgment of the Supreme Court in the case of *Jayantilal Investments Vs. Madhuvihar Co-operative Housing Society & ors.*¹, to buttress the submission that, despite the insertion of Section 7A of the MOFA, 1963, in view of the provisions contained in Sections 3 and 4 and Form V of the Rules under MOFA, 1964, the promoter continues to be under an obligation to place the entire project before the flat purchaser at the time of execution of the agreement.

11. Dr. Warunjikar would urge, the disclosure envisaged by the statutory provisions is a full and true disclosure and not a mere indication that some buildings would be constructed at a later point of time. Inviting the attention of the Court to the

¹ 2007 (9) SCC 220

sanctioned layout of the year 2008, Dr. Warunjikar would urge that, the Defendant No. 1 had failed to disclose the plinth area, storeys and exact location of the future buildings in the said layout plan. Therefore, the learned District Judge was in error in holding that, the Defendant No. 1 had disclosed the further development to be carried out in the layout.

12. As a second limb of the submission, Dr. Warunjikar would urge that, if the Defendant No. 1 is permitted to carry out the construction in accordance with the revised plan and erect 22 storey buildings, there would be significant reduction of amenities due to such huge development. A strong reliance was placed by Dr. Warunjikar on a judgment of this Court in the case of *Malad Kokil Co-operative Housing Society Ltd. & ors. Vs. Modern Construction Co. Ltd. & ors.*²

13. Refuting the contention of the respondents that, clauses 26 to 29 of the agreement for sale constitute the consent of the flat purchasers for the future development, Dr. Warunjikar submitted that, the said recitals in the agreement for sale do not constitute an informed consent. On the contrary, those recitals betray an intent to obtain a blanket consent of the flat purchasers which the Courts have repeatedly frowned upon.

² 2012 SCC OnLine Bom 1310

14. Reliance was placed by Dr. Warunjikar on the judgments of this Court in the cases of *Vitthal Laxman Patil Vs. Kores (India) Ltd. Real Estate Division, Mumbai & Ors*³. and *Malad Kokil CHS Ltd. (supra)*. To lend support to the submission that, the additional structures must be disclosed in the layout plan with reference to their plinth area, location and storey, Dr. Warunjikar placed reliance on a decision in the case of *K. M. Realty Vs. Diamond Hill Co-operative Housing Society Ltd*⁴.

15. In substance, Dr. Warunjikar would urge that, disguised as future development under the sanctioned layout, the Defendant No. 1 has obtained sanction for development to the tune of 24,558.18 sq. mtrs. when the balance developable area under the building plan 2008 was 1424.77 sq. mtrs. only. It was urged that, the FSI for additional development even under revised development control regulations can never enure for the benefit of the promoter, except with the express written permission of all the flat purchasers. The additional FSI can only be exploited by the flat purchasers.

16. Per contra, Mr. Kulkarni, the learned Counsel for Defendant No. 1 would submit that, in the circumstances of the case, the impugned judgment and order finely balances the

3 2019 AIR OnLine BOM 64

4 2024 SCC OnLine Bom 41

equities between the parties. Under no circumstances, a society of flat purchasers of the buildings, initially developed, can be permitted to completely restrain the promoter from carrying out further development despite the same having been specifically disclosed in the sanctioned layout. The very premise of the plaintiff that, it is entitled to rights and amenities over the entire subject property is completely flawed. Taking the Court through the sanctioned plan 2008, Mr. Kulkarni submitted that, all the buildings and the development which the Defendant No. 1 has been carrying out, were expressly disclosed at the time of execution of the agreement for sale. Thus, the very substratum of the plaintiff's claim that, there was no disclosure of additional development over the subject land, gets dismantled.

17. At best, the plaintiff Society would be entitled to proportionate rights in the land over which the buildings of the said Society stand and the proportionate right in the RG area, CFC area and other common areas and amenities. The learned District Judge has precisely protected proportionate rights of the plaintiff by ordering the Defendant No. 1 to furnish undertakings to that effect. Therefore, in exercise of supervisory jurisdiction, Mr. Kulkarni would urge, no interference is warranted with such equitable order.

18. Amplifying the submissions and meeting the case urged on behalf of the plaintiff, Mr. Kulkarni would submit that, the project in question is that of phase-wise development. Under the terms of the agreement, the Defendant No. 1 has been empowered to develop the entire layout in a phase-wise manner. The building plan for entire layout was sanctioned by CIDCO, the then Planning Authority, for then proposed four buildings. In the first phase, the development covered building No. 3 with six wings i.e. A to F and Building No. 4 with C wing only. The rest of the building Nos. 1 and 2 were specifically and prominently shown in the sanctioned plan 2008. Both development agreement and sanctioned plan 2008, were specifically annexed to and/or referred in the agreements for sale executed in favour of the respective flat purchasers. Therefore, the assertion of the plaintiff that there was no full disclosure of the additional development proposed in the next phase, cannot be countenanced.

19. Mr. Kulkarni submitted that, the contentions on behalf of plaintiff that, the Defendant No. 1 has removed the pond area of 2917.96 sq. mtrs. from the sanctioned layout and plan, is again based on incorrect and incomplete information. Pond never existed on the subject land. Nor the said pond was shown as an

amenity in the sanctioned layout. It was a case of drafting error and the National Green Tribunal, (Western Zone) Bench at Pune, by its order dated 24th January, 2025, has ruled that no pond was in existence in the entire layout. Therefore, the submission on behalf of the plaintiff that, the Defendant No. 1 has removed the pond and thereby caused environmental damage was canvassed to prejudice the Court against the Defendant No. 1.

20. In regard to the exclusion of 4000 sq. mtrs. land from the layout, Mr. Kulkarni submitted that, in view of the dispute with Best Builders, in regard to the said area, which is subjudice in Special Civil Suit No. 66/2011, the Defendant No. 1 has temporarily deducted the area of 4,000 sq. mtrs. from the layout and that has resulted in reduction in the RG area, CFC area and DP Road area in the entire layout. However, the said development does not affect the rights of the plaintiff – Society.

21. Mr. Kulkarni would urge that, there was true and full disclosure of the additional development in the sanctioned layout. Therefore, the Defendant No. 1 could not have been restrained from carrying out further development in accordance with the sanctioned layout and the error committed by the trial Court was, thus, justifiably corrected by the Appellate Court, while ensuring that a balance is struck between the rights of

the flat purchasers in the already developed buildings and the right of the promoter to carry out further development in accordance with the sanctioned layout and plan.

22. To buttress the aforesaid submissions, Mr. Kulkarni placed reliance on the decisions of this Court in the cases of *Grand Paradi Co-operative Housing Society Ltd. & ors. Vs. Mont Blanc Properties & Industries Pvt. Ltd. & anr.*⁵, *Madhuvihar Co-operative Housing Society, Mumbai & ors. Vs. Jayantilal Investments, Mumbai & ors.*⁶, *Venus Vasant Valley Co-operative Housing Society Ltd. Vs. Sheth Shelters Pvt. Ltd & ors.*⁷, and *M/s. Krishna Constructions & ors. Vs. Subhash Uttam Dalvi & ors.*⁸.

23. Dr. Warunjikar, joined the issue by canvassing a submission that, the Defendant No. 1 had made an endeavor to wriggle out of the situation by advancing arguments as if the issue of unilateral deemed conveyance has arisen for consideration in this petition. It was submitted that, the substratum of the suit is essentially the failure on the part of the promoter to discharge its obligations under MOFA, 1963.

5 2010 SCC OnLine Bom 608

6 2011 (1) Mh.L.J. 641

7 2024 SCC OnLine Bom 1054

8 Appeal from Order No. 744/2024

Therefore the question whether the plaintiff would be entitled to the proportionate share in the land over which the buildings of the plaintiff stand and the common area, is wholly irrelevant for the determination of the controversy at hand.

24. The aforesaid submissions now fall for consideration.

25. To start with, few uncontroverted facts deserve to be noted.

26. The sanction of the building plan by the CIDCO, the then Planning Authority, in the year 2008, with the Building Nos. 3 and 4, is incontrovertible. The sanctioned plan does show that, the Building Nos. 1 and 2 were then shown as the future buildings. The development was to be in a phased manner. Incontrovertibly, the Building No. 3 Wings A to E and Building No. 4 Wing C, have been completed and the occupation certificate has been granted. The fact that, the Defendant No. 2 - the succeeding Planning Authority has sanctioned the revised building plan in the year 2023, for the development in the form of additional Buildings with other structures and amenities, is also not in dispute.

27. Since the thrust of the submission on behalf of the petitioner was that, there has been significant alterations and drastic reduction in RG area, CFC area and the common areas

on account of the revised building plan, it may be apposite to reproduce the change in 2023 plan from that of 2008, as shown by the petitioner in Paragraph No. 7 of the Plaint, in a tabular form.

B. P. 3564 dated 02/09/2008	V.P. 4289 dated 22.02.2023
Gross Plot Area 26810.00 sq.m.	Gross Plot Area [as per 7/12] 26810.00 sq.m.
Less D.P. Road 6477.45 sq.m., Nalla 118.68 sq.m., Pond Area 2917.96 sq.m.	D.P. Road 5665.65 sq.m., Pond Area 2917.96 sq.m.
Balance Plot Area 17295.91 sq. m.	Balance Plot Area 14226.39 sq. m.
RG 15% 2594.38 sq.m.	RG 1352.27 sq.m.
CFC 5& 864.79 sq.m.	CFC 711.31 sq.m.
Net Plot Area 14701.52 sq. m.	Net Plot Area 13515.08 sq. m.
BUA for building nos. 3 – 10988.67 sq.m.	Base FSI 14866.58 sq.m.
BUA for building nos. 3 & 4 – 13276.75 sq.m.	Max Permissible Premium [6 x 0.50] 11405.00 sq.m.
	Proposed F.S.I. on payment of Premium 11405.00 sq.m.
	Total Entitlement Area 26271.58 sq.m. [14866.58 sq.m. + 11405.00 sq.m.]
	Earlier Approved BUA [Excluding Bldg No. 3, Wing F] 11040.87 sq.m.
	Balance Entitlement 15230.71 sq.m.
	Add. Ancillary Area F.S.I 80% of Comm. 1095.28 <u>sq.mt.</u> = 876.22 sq.m.
	Add. Ancillary Area F.S.I. 60% of Resi. 17184.70 sq. mt. = 8481.25 sq.m.
	Total Ancillary Area 9357.47 sq.m.
	Total permissible Area including Ancillary 24588.18 sq.m.

28. In the backdrop of the aforesaid facts and the controversy, the questions as to whether the Defendant No. 1 was entitled to carry out further development, as proposed above ?, Whether the Defendant No. 1 had made true and full disclosure while entering into the agreement for sale in regard to the additional development ? Whether the flat purchasers had given consent for further development ?, Whether the consent for the development given in the agreements for sale constitutes an informed consent or the consent was in the nature of a blanket consent ? crop up for consideration.

29. Before adverting to explore answers to the aforesaid questions, in the light of the facts that have *prima facie* emerged, it may be appropriate to note the legal regime which governs the rights and obligations of the flat purchasers and the promoter.

30. MOFA, 1963, *inter alia*, provides the general liabilities of the promoter, under Section 3, and casts obligations on the promoter to make disclosures. Section 4 obligates the promoter to enter into a registered agreement with the flat purchaser before accepting any advance payment or deposit. Sub-Section (1A) of Section 4 mandates the promoter to enter into an

agreement with the flat purchasers in the prescribed form. The sub clauses (i) to (x) of Clause (a) prescribe the particulars which such agreement for sale shall contain. Section 10 of MOFA, 1963 casts an obligation on the promoter to form a Co-operative Housing Society of flat purchasers as soon as the minimum number of persons required to form a Society have purchased the flats. Section 11 casts a further obligation on the promoter to take all necessary steps to complete his title and convey the same to the Society or an association of flat purchasers, within the time specified under the rules.

31. Sections 7 and 7A of the MOFA, 1963 with which we are primarily concerned, enshrine a regime of disclosures and proscribe the additions and alterations without the consent of flat purchasers. In this regard, the nature of the disclosures made by the promoter and the consent of the flat purchasers for the addition, alteration and further development, as obtained under the agreement for sale, assume critical salience.

32. Section 7 of MOFA, 1963 incorporates the rights of a purchaser and also the obligations of the promoter. Section 7 of MOFA, 1963, as it stood prior to its amendment by the Amending Act No. 36/1986, restricted the promoter's rights to make the specified alterations once the plans and specifications

of buildings as approved by the Planning Authority were disclosed or furnished to any person who agreed to take one or more flats in the building. Clause (ii) of sub Sections 1 of Section 7 was amended by substituting the words “or construct any additional structures” with “additions in the structure of the building”. By way of abundant caution, Section 7A came to be inserted in the MOFA, 1963 to provide that the deleted words, “or construct any additional structures” shall be deemed never to apply in respect of construction of any other additional building structures constructed or to be constructed under a scheme or project of development in the layout after obtaining the approval of a local authority, in accordance with the building rules or building by-laws or development control regulations, by way of a *non obstante* clause.

33. The interplay between Sections 7 and 7A of the MOFA, 1963 came up for consideration before the Supreme Court in the case of *Jayantilal Investments Vs. Madhuvihar CHS (supra)*. The observations of the Supreme Court in Paragraph Nos. 15 to 19 are instructive and hence extracted below : -

“15.....Consequently, reading Section 7 and Section 7A, it is clear that the question of taking prior consent of the flat takers does not arise after the amendment in respect of any construction of

additional structures. However, the right to make any construction of additional structures/buildings would come into existence only on the approval of the plan by the competent authority. That, unless and until, such a plan stood approved, the promoter does not get any right to make additional construction. This position is clear when one reads the amended Section 7(1)(ii) with Section 7A of the MOFA as amended. Therefore, having regard to the Statement of Objects and Reasons for substitution of Section 7(1)(ii) by the Amendment Act 36/86, it is clear that the object was to make legal position clear that even prior to the amendment of 1986, it was never intended that the original provision of Section 7(1)(ii) of MOFA would operate even in respect of construction of additional buildings. In other words, the object of enacting Act No. 36/86 was to change the basis of the judgment of the Bombay High Court in *Kalpita Enclave case (supra)*. By insertion of Section 7A vide Maharashtra Amendment Act 36/86 the legislature had made it clear that the consent of flat takers was never the criteria applicable to construction of additional buildings by the promoters. The object behind the said amendment was to give maximum weightage to the exploitation of development rights which existed in the land. Thus, the intention behind the amendment was to remove the impediment in construction of the additional buildings, if the total lay out allows construction of more buildings.

subject to compliance of the building rules or building by-laws or Development Control Regulations. At the same time, the legislature had retained Section 3 which imposes statutory obligations on the promoter to make full and true disclosure of particulars mentioned in Section 3(2) including the nature, extent and description of common areas and facilities. As stated above, sub-section (1A) to Section 4 was also introduced by the legislature by Maharashtra Act 36/86 under which the promoter is bound to enter into agreements with the flat takers in the prescribed form. Under the prescribed form, every promoter is required to declare the FSI available in respect of the said land. The promoter is also required to declare that no part of that FSI has been utilized elsewhere, and if it is utilized, the promoter has to give particulars of such utilization to the flat takers. Further, under the proforma agreement, the promoter has to further declare utilization of FSI of any other land for the purposes of developing the land in question which is covered by the agreement.

16. Therefore, the legislature has sought to regulate the activities of the promoter by retaining Sections 3 and 4 in the Act. It needs to be mentioned at this stage the question which needs to be decided is whether one building with several wings would fall under amended Section 7(1)(ii). Section 7A basically allows a builder to construct additional building provided the construction forms part of a scheme or a project. That

construction has to be in accordance with the lay out plan. That construction cannot exceed the development potentiality of the plot in question. Section 10 of MOFA casts an obligation on the promoter to form a cooperative society of the flat takers as soon as minimum number of persons required to form a society have taken flats. It further provides that the promoter shall join the society in respect of the flats which are not sold. He has to become a member of the society. He has the right to dispose of the flats in accordance with the provisions of the MOFA. Section 11 *inter alia* provides that a promoter shall take all necessary steps to complete his title and convey the title to the society. He is obliged to execute all relevant documents in accordance with the agreement executed under Section 4 and if no period for execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period. Rule 8 *inter alia* provides that where a cooperative society is to be constituted, the promoter shall submit an application to the Registrar for registration of the society within four months from the date on which the minimum number of persons required to form such society (60%) have taken flats. Rule 9 provides that if no period for execution of a conveyance is agreed upon, the promoter shall, subject to his right to dispose of the remaining flats, execute the conveyance within four months from the date on which the society is registered.

17. *Reading the above provisions of MOFA, we are required to balance the rights of the promoter to make alterations or additions in the structure of the building in accordance with the lay out plan on the one hand vis-à-vis his obligations to form the society and convey the right, title and interest in the property to that society. The obligation of the promoter under MOFA to make true and full disclosure of the flat takers remains unfettered even after the inclusion of Section 7A in MOFA. That obligation remains unfettered even after the amendment made in Section 7(1)(ii) of MOFA. That obligation is strengthened by insertion of sub-section (1A) in Section 4 of MOFA by Maharashtra Amendment Act 36/86. Therefore, every agreement between the promoter and the flat taker shall comply with the prescribed Form V. It may be noted that, in that prescribed form, there is an explanatory note which inter alia states that clauses 3 and 4 shall be statutory and shall be retained. It shows the intention of the legislature. Note 1 clarifies that a model form of agreement has been prescribed which could be modified and adapted in each case depending upon the facts and circumstances of each case but, in any event, certain clauses including clauses 3 and 4 shall be treated as statutory and mandatory and shall be retained in each and every individual agreements between the promoter and the flat taker. Clauses 3 and 4 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction etc.) Rules, 1964 are quoted hereinbelow:*

3. The Promoter hereby agrees to observe, perform and comply with all the terms, conditions, stipulations and restrictions if any, which may have been imposed by the concerned local authority at the time sanctioning the said plans or thereafter and shall, before handing over possession of the Flat to the Flat Purchaser, obtain from the concerned local authority occupation and/or completion certificates in respect of the Flat.

4. The Promoter hereby declares that the Floor Space Index available in respect of the said land is square metres only and that no part of the said floor space index has been utilized by the Promoter elsewhere for any purpose whatsoever. In case the said floor space index has been utilized by the Promoter elsewhere, then the Promoter shall furnish to the Flat Purchaser all the detailed particulars in respect of such utilization of said floor space index by him. In case while developing the said land the Promoter has utilized any floor space index of any other land or property by way of floating floor, space index, then the particulars of such floor space index shall be disclosed by the Promoter to the Flat Purchaser. The residual F.A.R. (F.S.I.) in the plot or the layout not consumed will be available to the promoter till the registration of the society. Whereas after the registration of the Society the residual F.A.R. (F.S.I.), shall be available to the Society.

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 lay out 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.

19. In our view, the above condition of true and full disclosure flows from the obligation of the promoter under MOFA vide Sections 3 and 4 and Form V which prescribes the form of agreement to the extent indicated above. This obligation remains unfettered because the concept of developability has to be harmoniously read with the concept of registration of society and conveyance of title. Once the entire project is placed before the flat takers at the time of the agreement, then the promoter is not required to obtain prior consent of the flat takers as long as the builder put up additional construction in accordance with the lay out plan, building rules and Development Control Regulations etc.

(emphasis supplied)

34. The Supreme Court has thus enunciated that, Section 7A basically allows a builder to construct additional building provided the construction forms part of a scheme or a project. That construction has to be in accordance with layout plan. That construction cannot exceed the development potentiality of the plot in question. However, Section 7A does not dilute the obligation of the promoter to make full and true disclosures. The obligation of the promoter under MOFA to make true and full disclosures to the flat purchasers remains intact and unwavering even after the insertion of Section 7A in MOFA, 1963. That obligation remains unfettered even after the amendment made in Section 7(A)(ii) of the MOFA, 1963. Instead, by insertion of sub Section (1A) of Section 4 of MOFA, 1963 by Amendment Act, 36/1986 that obligation is strengthened, held the Supreme Court.

35. The Supreme Court further emphasized that, the rights of the promoter to make alterations or additions in the structure of the building in accordance with the layout plan, on the one hand, *vis-a-vis* obligation to form the Society and convey right, title and interest in the property to that Society, are required to be balanced. The condition of true and full disclosure flows from the obligation of the promoter under MOFA vide Sections 3 and

4 and Form V which prescribes the form of agreement. The obligation remains unfettered because the concept of developability has to be harmoniously read with the concept of registration of society and conveyance of title. Once the entire project is placed before the flat purchasers at the time of the agreement, then the promoter is not required to obtain prior consent of the flat purchasers as long as the promoter puts additional construction in accordance with the layout plan, building rules and development control regulations, etc.

36. In the case of *Grand Paradi CHS Ltd. Vs. Mont Blanc Properties & Industries Pvt. Ltd. (supra)*, a Division Bench of this Court after referring to the decision in the case of *Jayantilal Investments Vs. Madhuvihar CHS (supra)* enunciated that, a builder is entitled to raise additional structures if he discloses the additional structures in the layout plan itself, when the flats are sold. The observations in Paragraph 13 and 14 read as under :-

“13. It is thus clear that the builder is always entitled to raise additional structures if he discloses the additional structures in the layout plan itself at the time when he sales the flats. No consent of the flat owners is necessary for raising additional structures. But if the additional structures are not

disclosed in the layout plan then previous consent of the flat owners is necessary.

14. This consent was given by the members of the plaintiff society in the year 1971 with full knowledge of the law then in force. Now they cannot be permitted to resile from such express consent given by them. In our opinion, once the flat purchasers give their consent at the time of entering into the agreement to purchase the flat unless they make out a case that their consent was obtained by adopting any illegal means, they will be bound by the consent given by them. In our opinion, therefore, fresh consent at the time of raising every additional construction will not be necessary. It is pertinent to be noted that the defendant No. 1 was always ready to execute the deed in favour of the society in accordance with the agreement but it could not be executed because society wanted a conveyance as per amended provisions of the act. We thus find that the plaintiffs have not made out a *prima facie* case that they are entitled to have sale-deed of entire land and the building executed in their favour and the defendant No. 2 society.”

(emphasis supplied)

37. In the case of ***Madhuvihar CHS Vs. Jayantilal Investments (supra)***, a learned Single Judge of this Court after adverting to the aforesaid observations of the Supreme Court in the case of ***Jayantilal Investments Vs. Madhuvihar CHS (supra)*** enunciated that, a prior consent of the flat owner would not be required if

the entire project is placed before the flat purchasers at the time of agreement and that the builder puts an additional construction in accordance with the layout plan, building rules and development control regulations. It is, thus, manifest that if the promoter wants to make additional construction, which is not part of the layout, which was placed before flat purchaser at the time of agreement, the consent as required under Section 7 of the MOFA, 1963, would be necessary.

38. In the said case, the learned Single Judge also referred to the nature of the disclosures, that would obviate the necessity of further consent. After referring to the previous pronouncements, the learned Single Judge observed *inter alia* 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 flat, 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.”

(emphasis supplied)

39. In the case of *Malad Kokil CHS (Supra)*, after adverting to the aforesaid decision in the case of *Jayantilal Investments Vs. Madhuvihar CHS (Supra)*, it was, *inter alia*, enunciated that the promoter ought to make complete disclosure to the flat purchaser at the time of placing the scheme before the flat purchaser. If the entire project is placed before the flat purchaser at the time of entering into an agreement for sale, then the promoter is not required to obtain prior consent of the flat purchaser. However, if the promoter desires to make additional construction not part of the plan originally placed before the flat purchasers at the time of entering into the agreement for sale then consent as envisaged under Section 7 of MOFA, 1963 would be necessary. Moreover, such consent under Section 7 of MOFA 1963 can not be “blanket consent” but must be an “informed consent” meaning thereby the flat purchasers

were made fully cognizant of the proposed future development and, yet, gave consent.

40. It thus emerges that, the position in law has crystallized to the effect that the consent as contemplated under Section 7(1) of MOFA, 1963 has to be an “informed consent”, which is obtained upon full and fair disclosure of the entire project by the promoter and that a blanket consent or authority obtained by the promoter at the time of entering into agreement for sale, would not serve the purpose.

41. In the light of the aforesaid enunciation of law, reverting to the facts of the case, as noted above, the Defendant No. 1 had professed to develop the project in phases. In the sanctioned layout and the building plan 2008, Building Nos. 1 and 2 and the other buildings were shown as the future buildings. The location of those buildings was specifically indicated in the sanctioned building plan 2008. *Prima facie*, the learned District Judge was thus justified in holding that in the sanctioned plan 2008, the additional buildings, to be constructed as a part of the said project, were shown in the layout as the future buildings.

42. This propels me to the question as to whether there was an informed or blanket consent, as alleged by the plaintiff.

Clauses 26 to 29 of the agreement for sale were pressed into service on behalf of Defendant No. 1 to demonstrate that, there was an 'informed consent' of the flat purchasers. Clauses 26 to 29 read as under : -

"26. The Builders shall be entitled to amend, modify and/or vary the building plans, layout plans and/or also the specification in respect thereof without reducing an area of the said premises.

27. The Builders shall be entitled to consume FSI as may be available in respect of the said property or any part thereof at present and for all times in future and shall always be entitled to utilize, construct and dispose of in their own right any balance FSI or any increased FSI of the said property. For the purpose of consuming such balance and/or additional FSI the developers shall be entitled to construct any vertical or horizontal extension thereto and/or put up additional floor and/or new or additional structure/building as the Builders may think fit and proper and to do all such things as may be necessary for this purpose.

28. The Purchaser/s agrees, confirm, declare or otherwise empower the Builders irrespective of the possession of the premises being given to the Purchaser/s under this agreement reserved unto or in favour of the Builders for exploiting the commercial, potential including the building thereon in the manner aforesaid or otherwise howsoever shall be subsisting and shall continue to vest in the Builders and further empower the Builders to keep

and/or store any construction materials on any portion of the said property and/or to have additional electricity supply and/or additional water supply and for the purpose of the construction to do all such further acts, deeds, matters and things as may be necessary. In such event the Purchaser/s shall not take any objection or otherwise on the ground of any nuisance, noise and/or shall not claim any easement rights and/or any other rights in the nature of easements or prospective or other rights of any nature whatsoever. The Purchaser/s directly and/or indirectly shall not to any acts, matters, deeds and things whereby the Builders may be prevented from putting any additional and/or new construction and/or shall not raise any objection/obstruction/hindrance or otherwise.

29. The Purchaser/s agree, confirm declare or otherwise empower the Builders to give development rights to develop any one or more portion of the said property to any third party and/or permit to construct additional floors on the existing building on the said property for such price and terms as Builders may think fit and proper.”

(emphasis supplied)

43. The erection of additional buildings and exploitation of the balance FSI by the promoter was *prima facie* acceded to by the flat purchasers. Undoubtedly, an expansive consent which runs counter to the statutory obligations of the promoter under the provisions of the MOFA, 1963 falls foul of the ‘informed consent’.

Such untrammelled permission even to change the layout plan and modify or alter the building plans to the prejudice of the flat purchasers at the sweet will of the promoter, constitutes a blanket consent. The consent obtained without disclosing the additional development at the time of execution of the agreement for sale, thus cannot be said to be an informed consent. Is that the case at hand?

44. The aforesaid extracted clauses in the agreement for sale in question if read in juxtaposition with the sanctioned building plan 2008, indicate, at the least, that the flat purchasers were informed that, the Defendant No. 1 would construct additional buildings as shown in the sanctioned layout and plan. If the revised sanctioned plan 2023 is compared and contrasted with the sanctioned plan 2008, it *prima facie* becomes evident that, the additional buildings, which are proposed to be erected at the designated places, were shown in the sanctioned plan 2008.

45. The principal grievance of the plaintiff appears to be that the Defendant No. 1 is exploiting the development potential of the subject land by utilizing FSI which would otherwise be available to the plaintiff, by drastically reducing the RG area, CFC area and other common areas. Non-inclusion of the pond area of 2917.96 sq. mtrs was also

vehemently urged on behalf of the plaintiff as an instance of the unlawful commercial exploitation of the subject land.

46. In regard to the pond area of 2917.96 sq. mtrs, this Court finds that in the sanctioned building plan 2008 as well as 2023, the pond area of 2917.96 sq. mtrs. was shown and it was designated as non-developable. Even while granting NA permission, the Collector has imposed a condition that the construction shall not be permitted in the pond area of 2903.30 sq. mtrs.

47. In contrast, it was the stand of Defendant No. 1 that the pond area was shown on account of a drafting error. It would be contextually relevant to note that, in the complaint being OA No. 194/2023, lodged by Charan Bhat, by an order dated 24th January, 2025, the National Green Tribunal, (Western Zone) Bench at Pune has accepted the contention of Defendant No. 1 and ruled that, there was a clerical or drafting error in recording that there was a small pond existing at the site in question, when the permission was granted by the District Collector. On account of the said error only, the entire controversy has arisen with respect to the existence of the pond at the site in question. It was concluded that, there was no pond in existence at the site in question and, hence, there was no

question of its restoration. The aforesaid order passed by the National Green Tribunal *prima facie* lends credence to the submission on behalf of the Defendant No. 1.

48. The reduction in RG area, CFC area and other common areas, according to Defendant No. 1, occurred on account of reduction in the area of the larger property as an area admeasuring 4,000 sq. mtrs. was excluded from the total area in view of the dispute with Best Builders. The RG area, CFC area and other common areas, the Defendant No. 1 claims, have been determined in accordance with UDPCR.

49. In regard to exclusion of 4000 sq mtrs area over which Building No. 3F stands and M/s Best Builders has laid a claim, in the Agreement for Sale executed by Defendant No.1 in favour of flat purchasers, the description of the larger parcel of land undoubtedly cover the total area of 26810 sq mtrs. A representation could thus be said to have been made to the flat purchasers that the Defendant No.1 was entitled to develop the entire area admeasuring 26810 sq mtr and CIDCO vide letter dated 2nd September 2008 had granted Commencement Certificate for approved layout of property admeasuring 26810 sq mtrs. The first schedule appended to the Agreement for Sale

describes larger property as NA plot of land, admeasuring 26810 sq mtr.

50. Thus the reduction of an area admeasuring 4000 sq mtrs from the total area in view of the dispute with M/s Best Builders may be a contentious issue. However, the aspect of the entitlement of the purchasers of the flats in Wing “F” of Building No.3, which stands over the said area of 4000 sq mtrs, cannot be lost sight of.

51. On first principles the flat purchasers of Building No. 3 wing “F” would have the right to claim land covered by the plinth area of Building No.3, wing “F”, the appurtenant land, and the corresponding rights in the common areas. Therefore, the fact that in the sanctioned plan 2023, a provision for the land admeasuring 4000 sq mtrs in respect of which Defendant No.1 is entangled in a dispute with M/s Best Builders is made, by itself, is not sufficient to throw the case of Defendant No.1 overboard.

52. This takes me to the thrust of the submission of Dr. Warunjikar that the unlawful reduction of the RG, CFC, other common area services/facilities and exploitation of the entire balance development rights, excluding the approved BUA of

11040.87 sq mtrs, only to account for the built up area covered by the Plaintiff's buildings, jeopardizes the rights of the Plaintiff.

53. In the face of the aforesaid challenge the learned District Judge ventured to balance the equities by directing the Defendant No.1 to file undertaking to the effect that RG area, CFC area, DP Road and additional FSI which has been generated would be provided proportionately to the share of the Plaintiff-society as per the sanctioned plan 2008. In addition, Defendant No.1 was directed to make full and true disclosure. Whether the aforesaid approach of the learned District Judge is justifiable?

54. As a matter of principle the provisions contained in Sections 7 and 7A of the MOFA, 1963, strike a balance between the rights of the promoters to make further development in accordance with the layout plan and his obligations to convey the right, title and interest in the property to the society of flat purchasers.

55. In the case of *Jayantilal Investments (Supra)* the Supreme Court expressly observed that, in the facts of the said case, the Court was required to balance the rights of the promoter to make alterations or additions in the structure of the building in accordance with the layout plan on the one hand, via-a-vis his

obligations to form the society and convey the right, title and interest in the property to that society.

56. Section 7A allows a builder to construct additional buildings provided the construction forms a part of scheme or project, it is in accordance with the layout plan and it does not exceed the development potentiality of the plot in question.

57. The Court is thus required to steer clear of two extremes. First, completely prohibiting additional development on the ground that the said development was not disclosed to the flat purchasers of the buildings/wings constructed at an earlier point in time, in minutest detail. Second, to permit the developer to put additional construction and commercially exploit the development potential to the fullest and exclusion of the society of flat purchasers on the premise that those societies form part of a sanctioned layout, irrespective of the nature of the disclosures and the quantum of exploitation by the developer to the prejudice of the society.

58. In the case of *Marathon Era Cooperative Housing Society Ltd Vs Competent Authority and District Dy Registrar, Cooperative Societies*,⁹ albeit in a different context, this Court adverted to the controversy that often arises in a layout

⁹ 2024 SCC OnLine Bom 1115.

development. This Court stated the issues that may need resolution. However, those issues were not definitively decided.

The observations in paragraphs 69 to 72 read as under:

“69. Now the complication in a layout development is that one building may be completed first, with its occupation certificate, but development may yet be going on elsewhere. Now if the developer, due to a change in the regime, is entitled to additional FSI, what is to happen to the building already completed — and already entitled to a conveyance?

70. Two principles emerge. First, while additional FSI may be used, it cannot be used in a manner that would reduce the promised or assured facilities and amenities. That is settled law. Second, the FSI already used in the completed building cannot be compromised in any way. It cannot be reduced either. Further FSI utilization cannot come at the cost of either promises amenities or already consumed FSI.

71. To illustrate: if a 10,000 sq mt plot has an FSI of 4.00, then 40,000 sq mts may be built. Building A is constructed with 15,000 sq mts — the FSI used from the layout FSI of 4 is 1.5. This cannot be reduced or taken away. The test, surely, must be at the extremity: if the completed building has to be re-built, then it must be allowed to be re-built at least to the extent already constructed.

72. There is a ticklish problem here of sharing of additional FSI. I need not decide it now, but will only state it. If the development regime changes, and there is additional FSI available for the whole layout, does the completed building have a stateable fractional share in the augmented FSI? Can it demand that share as of right, on the basis that it is already an 'owner' with title to the completed building, the land beneath it, the area mentioned in the sale agreement and the appurtenant land?

(emphasis supplied)

59. At this juncture, reference to the Government Resolution dated 22nd June 2018, which was also taken note of in the case of *Marathon Era Cooperative Housing Society Ltd (Supra)*, becomes necessary. Extracting the directives in the said GR dated 22nd June 2018, in the case of *Marathon Era Cooperative Housing Society Ltd (Supra)*, this Court observed as under:

“73. Acknowledging the difficulties in operating the deemed conveyance provisions in MOFA, the Government issued a GR on 22nd June 2018, based on recommendation of a special committee, and superseding all previous GRs. It was intended to ‘streamline’ the process.

74. There is now a four-stage process. Part A deals with the documents required. Part C details the procedure to be adopted. While issuing orders of deemed conveyances, the Competent Authority is to bear in mind and take into consideration identified issues (Clause C(vi) of the GR):

1) On a parcel of land, where there are many buildings and every building has a separate/independent co-operative society and amongst these buildings, if some of the building's construction work is incomplete, then for such Co-operative Society buildings completed buildings Deemed Conveyance should be done in relation to their constructed area of the land area (proportionate area) or ground coverage or plinth area and similarly open area, common service/ facilities, road, on all of these in relation to the constructed area undivided share usage entitlement be given.

2) While making Deemed Conveyance in respect of the buildings in the layout where T.D.R. is utilized, conveyance of such buildings should be made according to plinth and appurtenant area.

3) If only one society has made such application for Deemed Conveyance, in a

layout when there is more than one society and other societies are not cooperating in the measurement of the land area, then the District Dy. Registrar, Cooperative Societies or Competent Authority, shall suggest that a registered architect from the panel of the Competent Authority, be appointed, who shall in relation to Applicant Society's building constructed area approved plan, present his report on the Society's land area.

4) If the developer did not complete the project in expectation of getting additional F.S.I. or T.D.R. in urban area, then in such cases, deemed conveyance of the number of flats proposed as per approved construction plan and such number of flats have already been constructed, then their deemed conveyance should be effected.

5) On carrying out inspection of the application filed by the society in prescribed form and the documents submitted along with it, if application is fulfilled in all respect, then only the Competent Authority should issue Deemed Conveyance Order and Certificate to the concerned society.

6) While mentioning common easement/amenities in the Deemed

Conveyance order, certificate and documents, it should be mentioned therein that the applicant society shall have undivided rights in the common easements/amenities, in proportion to the construction of the building of the applicant society.

(emphasis added)

75. Thus, there is now legal basis and sanction for a conveyance of the kind Mr Khambata commends in a layout development. My findings are in consonance with and not in derogation of this GR.”

(emphasis supplied)

60. The GR in substance provides a mechanism for grant of deemed conveyance where there are many buildings with separate/independent cooperative housing societies on a parcel of land, and the construction of the some of the buildings is incomplete. It provides that for such completed buildings the deemed conveyance should be done in relation to their constructed area of the land area (proportionate area) or ground coverage or plinth area and similarly open area, common services/facilities road, and on all of these in relation to the constructed area undivided share and usage be determined.

61. The submission of Dr. Warunjikar that, at this stage, the issue of conveyance of title in favour of the Plaintiff-society need not be mixed with the obligations of Defendant No.1 under MOFA, 1993 cannot be acceded to unreservedly. As a matter of fact the Plaintiff-Society is formed by the flat purchasers of Building No.3 Wings "A" to "E". The construction of those buildings Building No. 4 wing C has been completed and Occupation Certificate has also been obtained.

62. The additional buildings which were shown in the sanctioned layout are yet to be constructed. The flat purchasers in the said buildings too would have their rights under MOFA, 1963. Therefore, in the considered view of this Court, the issue of eventual entitlement of the Plaintiff-society cannot be considered in a watertight compartment from the rights and obligations of the parties under MOFA, 1963.

63. If the eventual entitlement of the Plaintiff-Society can be adequately protected then the cause for objection for the additional development in accordance with the sanctioned layout may not survive. How this delicate balance is to be achieved?

64. Dr Warunjikar is justified in canvassing the submission that Defendant No.1 cannot be permitted to exploit the entire

development potential of the larger property by merely excluding the BUA of 11040.87 sq mtrs. The Plaintiff-society, as noted above, would be entitled to the conveyance of the land in relation to its constructed area of the land or proportionate area or ground area or plinth area and the proportionate share in the RC and common areas etc. The Plaintiff-society may also be entitled to admissible further FSI on the said land in view of the change in DCR (UDPCR).

65. Conversely, Defendant No.1's rights to carry out the additional development would be subject to the aforesaid rights and entitlement of the Plaintiff-society. The learned District Judge, was thus persuaded to secure the rights of the Plaintiff-society by directing the Defendant to file an undertaking that RG area, CFC area or DP Road area and additional FSI generated would be provided to the Plaintiff-society proportionate to its share as per the sanctioned plan dated 2nd September 2008.

66. The aforesaid measure cannot be said to be wholly inequitable. However, in the considered view of this Court, further crystallisation of the rights of the Plaintiff-society, to be secured during the pendency of the suit, is necessary and a mere undertaking without being alive to the import of the rights

of the Plaintiff-society, undertaken to be secured, may not be sufficient.

67. Hence, the following order:

: O R D E R :

- (i) The Petition stands partly allowed.
- (ii) The impugned order passed by the District Court stands modified as under:

(1) M/s Shetgiri and Associates, Architect is appointed to consider the entitlement of the Petitioner-Plaintiff for the land and the proportionate share of the Plaintiff in RG, CFC, DP Road, other common services/facilities in the light of the Agreements for sale, and the sanctioned plan dated 2nd September 2008, and the share in the additional FSI, admissible under the UDPCR, and Government Resolution dated 22nd June 2018 and submit a report to the Trial Court within a period of six weeks from today.

(2) Upon submission of such report under intimation to the parties, Respondent/Defendant No.1 shall file an undertaking, on an Affidavit, to provide the land and proportionate share in RG,

CFC, DP Road, other common services/facilities and the proportionate additional FSI to the Petitioner-Plaintiff, within a period of four weeks thereafter.

(3) Respondent-Defendant No.1 shall also furnish security in the sum of Rs. Two Crores to the satisfaction of the Trial Court, to duly perform such an undertaking to the Court, within the said period of four weeks.

(4) Upon furnishing of such undertaking and security the order dated 24th May 2024 passed by the Trial Court shall stand vacated and the aforesaid interim arrangement shall continue to operate till the final disposal of the suit.

(5) The Petitioner-Plaintiff shall furnish the requisite documents to M/s Shetgiri and Associates, within a period of one week from today.

(6) The Respondent-Defendant No.1 shall bear the charges/fees of the Architects.

No costs.

[N. J. JAMADAR, J.]