

MPBalekar

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

WRIT PETITION NO. 566 OF 2026

Radha Vallabh Co-operative Housing
Society Ltd. ... Petitioner

V/s.

District Deputy Registrar, Co-operative
Societies, Pune City and Ors. ... Respondents

Omkar M. Sapre for the petitioner.

A.A. Nadkarni, AGP, for the State.

Pankaj J. Das for respondent No.3.

CORAM : AMIT BORKAR, J.

DATED : MARCH 17, 2026

P.C.:

1. The challenge in the present writ petition arises from an order passed by the competent authority while exercising powers under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963. By the said order, the authority directed conferment of unilateral deemed conveyance in favour of the concerned society. However, the conferment was restricted only to a portion of the property. The authority limited the conveyance to land admeasuring 278.84 sq. meters along with constructed area of 633.37 sq. meters. This restriction has given rise to the present dispute.

2. According to the petitioner, the conveyance ought to have

covered the entire property used for the building project. The total land area measures 320.99 sq. meters and the total constructed area is 730.94 sq. meters. The grievance therefore is that a portion of the land and built up area, though forming part of the same development, was not included in the order of deemed conveyance. The petitioner contends that such exclusion defeats the purpose of Section 11 of the Act. That provision was enacted to ensure that once flats are sold and the society is formed, the promoter cannot indefinitely retain ownership of the land and building. The Act therefore permits the competent authority to step in and complete the transfer.

3. It is necessary to note at the outset that certain foundational facts are not in dispute between the parties. The agreement contemplated under Section 4 of the MOFA Act was duly executed between the promoter and the purchasers. The parties also accept that the provisions of the MOFA Act apply to the project in question. Thus, the statutory scheme governing the rights and obligations of the promoter and purchasers is clearly attracted. However, a reading of the impugned order indicates that the competent authority has substantially relied upon certain clauses of the agreement executed between the promoter and the purchasers. In particular, the authority has placed emphasis upon Clause Nos. 34 and 35 contained in the agreement for sale executed under Section 4 of the Act. The reasoning of the authority appears to be that these clauses restrict the rights of purchasers with respect to certain portions of the property. On that basis the authority concluded that the entire land could not be

conveyed to the society. Since the decision of the authority rests largely on interpretation of these contractual clauses, it becomes necessary to examine their contents and effect with some care.

4. Clause Nos. 34 and 35 of the agreement read as under:

“34) Possession will be given at the time of Sale Deed only.

35) The purchaser is made aware that the temple of Lord Ganesh, renovated or reconstructed on the Ground floor of the said property and Sabha Mandap appurtenant thereto and one flat above the office premises shown in the plan, towards East side, shall be the exclusive private property of Radhavallabha Janardhan Ganesh Mandir Private Trust. No other occupant or purchaser in the said building shall have any right or concern with regard to the said premises of the Private Trust. Similarly, the purchaser shall not have any right or concern with the entire terrace of the said building and the purchaser shall not raise any objection to the contractor allowing or permitting the exclusive user of the said terrace to any other person or purchaser.”

5. These clauses were incorporated in the agreement executed with the purchasers. The authority has interpreted them as creating a reservation in favour of the private trust in respect of the temple premises and the related structures.

6. Upon careful reading of the above clauses, it becomes clear that Clause 35 merely informs the purchasers about the existence of a temple situated on the property and about certain portions being reserved for the private trust. The clause specifically states that the temple of Lord Ganesh situated on the ground floor, along with the Sabha Mandap attached to it and a flat located above the office premises on the eastern side, shall remain the exclusive

private property of the Radhavallabha Janardhan Ganesh Mandir Private Trust. The clause further clarifies that other occupants or purchasers in the building shall not claim any right over those premises. In effect, the clause seeks to protect the ownership and use of the temple related structures in favour of the trust. The clause therefore deals with ownership of certain constructed premises. It does not, however, state that the land underneath those structures will remain excluded from the conveyance to the society. The clause also does not suggest that the promoter would continue to retain title to that land indefinitely. The intention appears limited to protecting the independent ownership of the temple premises. Therefore, the clause cannot be interpreted as restricting the statutory right of the society to obtain conveyance of the land forming part of the building project.

7. Another important aspect requires consideration. It is not disputed that while constructing the building in question, the entire permissible Floor Space Index available on the land was utilised for the project. The temple structure forms part of the same building development and the FSI corresponding to that portion of land has also been consumed in the overall construction. The project is a single building project. It is not a case where the land forms part of a larger layout development with several buildings. When a promoter develops a single building by using the FSI of the entire plot, the land beneath that construction becomes inseparable from the building itself. In such circumstances the statutory obligation under the MOFA Act requires the promoter to convey the entire land on which the

building stands to the society of flat purchasers. The promoter cannot divide the land after the development is completed and retain portions for himself or for any other entity, particularly when the building has been constructed by consuming the development potential of the whole plot. Therefore, the competent authority, while exercising powers under Section 11, was required to examine whether the entire land was used for the project. Once that position is clear, the authority ought to have directed conveyance of the full land area measuring 320.99 sq. meters together with the building admeasuring 730.94 sq. meters. Restricting the conveyance to a lesser portion of land defeats the legislative object of the Act. The purpose of the statute is to secure complete transfer of title so that the society can effectively manage and maintain the property.

8. The direction for conveyance of the entire land does not disturb the ownership rights of the private trust in respect of the temple building, the Sabha Mandap and the tenement stated to belong to the trust. Those structures shall continue to remain the property of the trust as indicated in the agreement. What is directed to be conveyed is only the land beneath the building which forms part of the overall development. Conveyance of the land to the society does not alter the independent ownership of the structures belonging to the trust.

9. In view of this position, the impugned order cannot be sustained to the extent it excludes the remaining portion of land from the conveyance. The competent authority ought to issue a fresh certificate granting unilateral deemed conveyance of the

entire land and the full constructed area forming part of the project.

10. Hence, the following order is passed.

i. The impugned judgment and order passed by the competent authority is quashed and set aside to the extent it rejects the balance portion of the land.

ii. The authority under the Act shall, within four weeks from today, issue a fresh certificate granting unilateral deemed conveyance of the entire land admeasuring 320.99 sq. meters along with built up area admeasuring 730.94 sq. meters.

11. The writ petition stands disposed of in the above terms.

(AMIT BORKAR, J.)