

AGK

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

WRIT PETITION NO.1647 OF 2025

ATUL
GANESH
KULKARNI

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1. **G.K. Developers**, PAN AAFFG5688P
through it's partner
 - a) Hari Nichaldas Jeswani
PAN AAOPJ7173R, Age 46 years,
 - b) Gurubaksh Vishandas Pehlani,
PAN AAVPP4251H
 - c) Vinod Premchand Chandwani,
PAN ADVPC0520B
having registered office at Pimpri,
Camp, Pimpri Pune 411 017
 2. **Dhondabai Shankar Bhise**, Age 80
 3. **Krishna Shankar Bhise**, Age 55 years,
 4. **Rajaram Shankar Bhise**, Age 45 years,
 5. **Ashok Shankar Bhise**, Age 50 years,
 6. **Chhabubai Baban Gade**, Age 65 years
 7. **Shila Krishna Bhise**, Age 35 years
 8. **Sagar Krishna Bhise**, Age 33 years
 9. **Sunanda Ashok Bhise**, Age 30 years,
 10. **Kalpana Rajaram Bhise**, Age 20 years
 11. **Bhimabai Jallinder Bhise**,
Age 60 years, petitioner Nos.2 to 11
R/at Pimple Saudagar, Pune 411 027
through their PoA holder
G.K. Developers, through its
Authorized partner
Hari Nichaldas Jeswani Age 46 years,
R/at Pimpri Camp, Pimpri,
Pune 411 017
- ... Petitioners**

V/s.

1. **The State of Maharashtra,**
through Minister of Cooperation,
copy to be served upon office of
Government Pleader, High Court,
Mumbai.
2. **District Deputy Registrar,** Cooperative
Societies, having its office at
Sakhar Sankul, Shivaji Nagar,
Pune 411 005.
3. **Dwarka Flora Residency Phase-2**
Cooperative Housing Society,
A housing society registered under the
provisions of the Maharashtra Coop.
Societies Act, 1960 having its office
at Survey No.161/2, CTS 1334(P),
1335 (P), Pimple Saudagar,
Pune 411 027

... respondents

Dr. Abhinav Chandrachud with Mr. Pavan Patil and Mr.
Shubham Saraf for the petitioners.

Ms. Snehal S. Jadhav, AGP for respondent Nos.1 and 2-
State.

Mr. Shreeprasad Parab for respondent No.3.

CORAM : **AMIT BORKAR, J.**

RESERVED ON : **FEBRUARY 23, 2026.**

PRONOUNCED ON : **MARCH 17, 2026**

JUDGMENT:

1. **Rule.** Rule is made returnable forthwith by consent of the parties.

2. By the present writ petition filed under Article 226 of the Constitution of India, the petitioners have challenged the impugned Judgment and Order dated 28 November 2024 passed by respondent No.2 in Revision Application No.580 of 2023, whereby the authority has affirmed the order granting unilateral deemed conveyance in favour of respondent No.3.

3. The facts giving rise to the present writ petition, in brief, are as follows. The petitioners entered into a Joint Development Agreement with the land owner in the year 2005, which was registered as Document No.7930 of 2005 (Haveli No.V). Along with the said agreement, a registered Power of Attorney bearing No.7931 of 2005 (Haveli No.V) dated 31 October 2005 was also executed in favour of the petitioners. The development pertained to land admeasuring 00 Hectares 22 R from Survey No.161/2, including an area of 240.87 square meters reserved for road, situated at Village Pimple Saudagar, Taluka Haveli, District Pune. It is the case of the petitioners that all necessary permissions for development were obtained from the Pimpri Chinchwad Municipal Corporation. The municipal authority issued Commencement Certificate No. B.P./Pimple Saudagar/41/2009 dated 25 September 2009. Prior thereto, the Collector, Pune had granted Non-Agricultural permission by order dated 2 March 2009 bearing NA Order No. PMH/NA/SR/721/2008. On the basis of these permissions, the petitioners developed the land in accordance with the sanctioned plan issued by the Pimpri Chinchwad Municipal Corporation. Upon completion of construction, the petitioners received Completion Certificate No.161 of 2010 dated 31

December 2010.

4. The petitioners constructed two wings consisting of forty two residential flats and eight shops in the said project. Thereafter, the project was submitted to the provisions of the Maharashtra Apartment Ownership Act, 1970. For this purpose, the petitioners executed and registered a Deed of Declaration bearing No.8363 of 2010 dated 18 August 2010, thereby establishing an Apartment Condominium for the said scheme under Section 2 of the Maharashtra Apartment Ownership Act in the name and style of “Dwarka Flora Residency Phase II Apartments”. The petitioners further state that after execution and registration of the Deed of Declaration, individual Apartment Deeds were executed and registered in favour of the respective apartment purchasers. It is further stated that after establishment of the Apartment Condominium, the petitioners executed a Sale Deed transferring the land on which the scheme was developed in favour of the said condominium. The Sale Deed dated 13 April 2011 was duly executed, stamped and registered at Haveli No.V at Serial No.3487 of 2011. According to the petitioners, by virtue of the said conveyance, ownership and title of the land admeasuring 00 Hectares 22 R, including the FSI relatable to the area of 240.87 square meters, forming part of Survey No.161/2 of Village Pimple Saudagar, Taluka Haveli, District Pune, stood vested in the Apartment Condominium.

5. The petitioners further state that subsequently the apartment owners resolved to withdraw the scheme from the provisions of the Maharashtra Apartment Ownership Act and to submit the same

to the provisions of the Maharashtra Co-operative Societies Act. Accordingly, the apartment owners executed and registered a Deed of Declaration dated 11 April 2022, thereby withdrawing the scheme from the operation of the Maharashtra Apartment Ownership Act. After such withdrawal, respondent No.3 came to be incorporated and registered as a co operative housing society. The society was registered under Registration No. NA/PNA(3)/HSG(TC)/24922/2022 dated 7 October 2022.

6. Thereafter, respondent No.3 society filed an application before respondent No.2 under Section 11(3) of the Maharashtra Ownership Flats Act, 1963 seeking issuance of a certificate for unilateral deemed conveyance on 20 December 2023. The petitioners thereafter submitted an application dated 19 March 2024 before the District Deputy Registrar raising an objection regarding the maintainability of the said application. The petitioners contended that in law a person can transfer only such title as he possesses. According to the petitioners, the title of the land had already been transferred in favour of the Dwarka Flora Residency Phase II Apartment Condominium by the registered Deed of Conveyance dated 13 April 2011. Hence, it was contended that no right, title or interest remained with the petitioners which could again be conveyed by way of deemed conveyance. The petitioners state that respondent No.2, by order dated 28 November 2024, issued a Unilateral Deemed Conveyance Certificate along with a Certificate of Entitlement to Register the same. Being aggrieved by the said order, the petitioners have filed the present writ petition.

7. Clause 7 and Clause 12 of the Sale Deed executed in favour of the condominium contain certain stipulations reserving future rights in favour of the developer. Under clause Clause 7 it is provided that Vendor Group No.2 shall remain entitled to utilize the balance Floor Space Index available in respect of the said land as on the date of execution of the Sale Deed. The clause further stipulates that Vendor Group No.2 shall also be entitled to claim and utilize any additional FSI that may be granted in future by the competent planning authority in respect of the said land. It is also stated that the purchaser shall not claim any right in respect of such FSI or TDR that may become available subsequently. However, the clause also clarifies that Vendor Group No.2 shall not be entitled to undertake construction on the terrace of the buildings which form the subject matter of the Sale Deed. Clause 12 provides that Vendor Group No.2 shall have a preferential right to undertake redevelopment of any structure standing on the property that has been submitted to the provisions of the Maharashtra Apartment Ownership Act by virtue of the Deed of Declaration. The clause further clarifies that if redevelopment of the property becomes necessary in future, the first opportunity to undertake such redevelopment shall be offered to Vendor Group No.2 on mutually agreed terms and conditions. Only in the event that Vendor Group No.2 declines such an offer would the purchaser be entitled to undertake redevelopment independently or through any other agency.

8. Dr. Chandrachud, learned Advocate appearing for the petitioners, submitted that it is a settled principle of property law

that the same property cannot be conveyed twice, as such duplication would undermine the certainty and clarity of title. According to him, respondent No.2 failed to properly consider the provisions of Section 14 of the Maharashtra Apartment Ownership Act. The said provision permits removal of a property from the operation of the Act by execution of an appropriate instrument by all apartment owners, subject to the consent of holders of charges or encumbrances. Upon such removal, the property is deemed to be owned in common by the apartment owners, and the undivided interest of each apartment owner continues in proportion to the percentage of interest previously held by such owner in the common areas and facilities. It was further submitted that, in view of the legal position under Section 14 of the Maharashtra Apartment Ownership Act, the title of the property had already vested in the body representing the apartment owners. In such circumstances, execution of a second conveyance in respect of the same property would not be legally permissible. He contended that a mere change in the form or constitution of the organization managing the housing scheme cannot result in extinguishment or invalidation of the title that had already vested in the earlier entity.

9. Learned counsel further submitted that the proceedings before respondent No.2 were summary in nature and therefore the authority could not have adjudicated upon the validity or effect of the terms contained in the conveyance deed. According to him, such issues fall within the exclusive jurisdiction of the competent civil court. He submitted that the conveyance deed dated 13 April 2011 was duly executed and registered and continues to remain

valid and binding in law unless set aside by a competent court. It was contended that respondent No.2 misapplied the provisions of the Maharashtra Apartment Ownership Act, 1970 and, in effect, treated the registered conveyance as having been annulled, which the authority had no power to do. It was also submitted that respondent No.2 acted contrary to the scheme of the Registration Act, 1908 by permitting a subsequent deed of declaration to undermine the legal effect of the registered conveyance deed executed in the year 2011. According to the petitioners, the question whether the conveyance deed of 2011 is invalid or ineffective can be determined only by a competent civil court. Respondent No.2, therefore, exceeded the limits of his jurisdiction in proceeding in a manner that virtually rendered the earlier conveyance ineffective.

10. Per contra, Mr. Parab, learned Advocate appearing for respondent No.3 society, submitted that an apartment condominium created under the Maharashtra Apartment Ownership Act is not a body corporate having perpetual succession and a common seal. According to him, such a condominium does not possess a separate legal personality capable of independently holding or disposing of property or entering into contracts. He submitted that the petitioners attempted to transfer a defective and incomplete title by imposing several restrictions in the Sale Deed dated 13 April 2011, including restrictions relating to utilization of balance FSI, additional FSI, and FSI or TDR that may become available in future. The deed also contained stipulations granting the petitioners a preferential right of redevelopment in

future. It was therefore submitted that the petitioners had not transferred full and complete title, which was contrary to the basic legal principle that a person can convey only such rights as he legitimately holds. In these circumstances, respondent No.3 society approached respondent No.2 seeking grant of complete conveyance, and respondent No.2 accordingly allowed the application for deemed conveyance. Learned counsel further submitted that mere removal of the property from the provisions of the Maharashtra Apartment Ownership Act under Section 14, followed by formation of a co operative housing society, does not automatically result in vesting of the property in the society. According to him, the restrictions contained in the Sale Deed dated 13 April 2011 amounted to reservation of rights by the petitioners which were inconsistent with the statutory scheme under the Maharashtra Ownership Flats Act, 1963 and the requirement that conveyance must be in accordance with the sanctioned plans. On this basis, it was submitted that the order granting deemed conveyance was justified and that the writ petition deserves to be dismissed.

REASONS AND ANALYSIS:

11. I have heard learned counsel for both sides. I have read the papers and the judgments cited. The narrow question is can the promoter keep residual development rights forever by clauses like Clause 7 and Clause 12 of the 2011 Sale Deed while the flat purchasers assume responsibilities of ownership.

12. For the purpose of deciding the issue involved in the present

matter, it becomes necessary to refer to the relevant statutory provisions which govern the rights and obligations of the promoter and the flat purchasers. Section 14 of the Maharashtra Apartment Ownership Act and Sections 10 and 11 of the Maharashtra Ownership Flats Act, 1963 read as under.

“**14** (1) All the apartment owners may remove a property from the provisions of this Act by an Instrument to that effect duly executed: Provided that, the holders of all charges and other encumbrances affecting any of the apartments consent thereto or agree, in either case by instrument duly executed, that encumbrances be their charges transferred to the percentage of the undivided interest of the apartment owner in the property as herein after provided; or

(2) Upon removal of the property from the provision of this Act, the property shall be deemed to be owned in common by the apartment owner. The undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities.”

10. Promoter to take steps for formation of co-operative society or company.

(1) As soon as a minimum number of persons required to form a Co-operative society or a company have taken flats, the promoter shall within the prescribed period submit an application to the Registrar for registration of the organisation of persons who take the flats as Co-operative society or, as the case may be, as a company; and the promoter shall join, in respect of the flats which have not been taken, in such application for membership of a Co-operative society or as the case may be, of a company. Nothing in this section shall affect the right of the promoter

to dispose of the remaining flats in accordance with the provisions of this Act:

Provided that, if the promoter fails within the prescribed period to submit an application to the Registrar for registration of society in the manner provided in the Maharashtra Co-operative Societies Act, 1960 (Mah. XXIV of 1961), the Competent Authority may, upon receiving an application from the persons who have taken flats from the said promoter, direct the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar concerned, to register the society:

Provided further that, no such direction to register any society under the preceding proviso shall be given to the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar, by the Competent Authority without first verifying authenticity of the applicants, request and giving the concerned promoter a reasonable opportunity of being heard].

(2) If any property consisting of building is constructed or to be constructed and the promoter submits such property to the provisions of the Maharashtra Apartment Ownership Act, 1970 (Mah. XV of 1971), by executing and registering a Declaration as provided by that Act] then the promoter shall inform the Registrar as defined in the Maharashtra Co-operative Societies Act, 1960 (Mah. XXIV of 1961), accordingly; and in such cases, it shall not be lawful to form any co-operative society or company.

11. Promoter to convey title, etc., and execute documents, according to agreement.

(1) A promoter shall take all necessary steps to complete his title and convey to the organisation of persons, who take flats, which is registered either as a co-operative society or as a company as aforesaid or to an association of flat takers [or

apartment owners], his right, title and interest in the land and building, and execute all relevant documents therefor in accordance with the agreement executed under section and if no period for the execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period and also deliver all documents of title relating to the property which may be in his possession or power.

(2) It shall be the duty of the promoter to file with the Competent Authority, within the prescribed period, a copy of the conveyance executed by him under sub-section (1).

(3) If the promoter fails to execute the conveyance in favour of the Co-operative society formed under section 10 or, as the case may be, the Company or the association of apartment owners, as provided by sub-section (1), within the prescribed period, the members of such Co-operative society or, as the case may be, the Company or the association of apartment owners may, make an application, in writing, to the concerned Competent Authority accompanied by the true copies of the registered agreements for sale, executed with the promoter by each individual member of the society or the Company or the association, who have purchased the flats and all other relevant documents (including the occupation certificate, if any), for issuing a certificate that such society, or as the case may be, Company or association, is entitled to have an unilateral deemed conveyance, executed in their favour and to have it registered.

(4) The Competent Authority, on receiving such application, within reasonable time and in any case not later than six months, after making such enquiry as deemed necessary and after verifying the authenticity of the documents submitted and after giving the promoter a reasonable opportunity of being heard, on being satisfied that it is a fit case for issuing such certificate, shall issue a certificate to the Sub-Registrar or any other appropriate

Registration Officer under the Registration Act, 1908 (16 of 1908), certifying that it is a fit case for enforcing unilateral execution, of conveyance deed conveying the right, title and interest of the promoter in the land and building in favour of the applicant, as deemed conveyance.

(5) On submission by such society or as the case may be, the Company or the association of apartment owners, to the Sub-Registrar or the concerned appropriate Registration Officer appointed under the Registration Act, 1908 (16 of 1908), the certificate issued by the Competent Authority along with the unilateral instrument of conveyance, the Sub-Registrar or the concerned appropriate registration Officer shall, notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), issue summons to the promoter to show cause why, such unilateral instrument should not be registered as 'deemed conveyance' and after giving the promoter and the applicants a reasonable opportunity of being heard, may on being satisfied that it was fit case for unilateral conveyance, register that instrument as, 'deemed conveyance'."

13. The present controversy mainly concerns the legal consequences flowing from two statutes, namely the Maharashtra Apartment Ownership Act and the Maharashtra Ownership Flats Act, 1963. These enactments were introduced to regulate the relationship between a promoter and the persons who purchase flats from him. They also lay down how and when the ownership of the land and building must finally pass from the promoter to the purchasers.

14. Section 14 of the Maharashtra Apartment Ownership Act deals with a situation where a property that was once governed by that Act is later removed from its operation. The section provides

that the apartment owners may remove the property from the provisions of that Act by executing a proper instrument to that effect. However, the Act provides that if any charges, loans, or other encumbrances exist on the apartments, the holders of such charges must give their consent before the property is withdrawn from the Act. The reason behind this requirement is that where a property is subject to liabilities, those liabilities must not be disturbed without the consent of the concerned parties. Sub section (2) of Section 14 explains what happens once the property is removed from the provisions of the Act. It states that after such removal the property will be treated as being owned in common by the apartment owners. Each apartment owner will then hold an undivided share in the property. The extent of this share corresponds to the percentage of undivided interest that the owner previously held in the common areas and facilities of the building. The Act recognises that although the legal arrangement governing the property may change, the real ownership remains with the apartment owners themselves. The common portions of the building and the land continue to belong jointly to them in proportion to their respective shares.

15. In the present case it is not in dispute that the property was initially submitted to the provisions of the Maharashtra Apartment Ownership Act through execution of a Deed of Declaration. Subsequently, the apartment owners decided to withdraw the property from the operation of that Act and instead form a cooperative housing society. This is the stage where Section 14 assumes significance. The section clarifies that even after such

withdrawal the ownership rights do not revert back to the promoter. the property continues to belong collectively to the apartment owners. The ownership itself remains with those who purchased the flats.

16. It is also necessary at this stage to consider Section 10 of the Maharashtra Ownership Flats Act, 1963. This provision places a statutory duty upon the promoter to take steps for formation of a co operative society or company of the flat purchasers. The Act recognises that when a number of persons purchase flats in the same building, they must have a collective body to manage the property and protect their common interests. Section 10 therefore requires the promoter, once a sufficient number of flats are sold, to submit an application to the Registrar for registration of a co operative society or company consisting of the flat purchasers. The provision also clarifies that the promoter must join the application in respect of the flats which are still unsold. This means that the promoter becomes a member of the society in relation to the flats that remain in his ownership. At the same time, the section does not take away the promoter's right to sell the remaining flats. Thus the Act ensures that the flat purchasers obtain an organised body for management of the property, while at the same time allowing the promoter to complete the sale of the remaining flats in accordance with law.

17. The proviso to Section 10 states that if the promoter fails to apply for registration of the society within the prescribed period, the purchasers themselves may approach the Competent Authority. In such a situation the authority may direct the Registrar to

register the society after verifying the authenticity of the applicants and after giving the promoter an opportunity of being heard. The Act therefore empowers the purchasers to initiate the process themselves so that their collective organization is not indefinitely postponed.

18. Sub-section (2) of Section 10 states that where the promoter has already submitted the property to the provisions of the Maharashtra Apartment Ownership Act by executing a declaration under that Act, the promoter must inform the Registrar about it. In such a case formation of a co operative society is not permissible because the property would already be governed by the condominium under the Apartment Ownership Act. This provision shows that the law recognises two possible ways of ownership. One is the condominium system under the Apartment Ownership Act. The other is the co operative society under MOFA and the Maharashtra Co operative Societies Act.

19. Section 11 of the Maharashtra Ownership Flats Act contains perhaps the most important obligation imposed upon the promoter. It requires the promoter to convey his right, title and interest in the land and building to the organization of flat purchasers. Once the society or association is formed, the promoter must execute the conveyance and transfer ownership of the property to that organization. If the agreement between the parties does not specify any time limit for executing the conveyance, the law requires that the conveyance must be executed within the prescribed period.

20. At the initial stage the promoter owns the land and develops the building. He sells individual flats to different purchasers. However, once the flats are sold and the society is formed, the property should ultimately belong to the collective body of purchasers. The promoter cannot continue to remain the owner indefinitely after selling the flats. Execution of conveyance ensures that the society becomes the lawful owner of the land and building and is able to manage the property for the benefit of all its members.

21. Sub-section (2) of Section 11 further requires the promoter to file a copy of the conveyance with the Competent Authority within the prescribed time. Sub section (3) provides a remedy for the flat purchasers where the promoter fails to execute the conveyance within the required period. In such circumstances the society or association of apartment owners may apply to the Competent Authority seeking a certificate for unilateral deemed conveyance. The application must include copies of the agreements for sale entered into with the promoter and other relevant documents such as the occupation certificate.

22. Sub-section (4) explains the procedure to be followed by the Competent Authority. After receiving the application the authority must conduct an inquiry. It must verify the authenticity of the documents submitted and must give the promoter a reasonable opportunity of being heard. If the authority finds that the case is fit for grant of deemed conveyance, it may issue a certificate to the Sub Registrar stating that the promoter's right, title and interest in the property may be transferred in favour of the society.

23. Sub-section (5) describes the final stage of the process. Once the society presents the certificate along with the unilateral conveyance deed before the Sub Registrar, the registering authority must issue notice to the promoter and allow him to show cause. If the authority is satisfied that the circumstances justify such action, it may register the instrument as a deemed conveyance even without the promoter's consent.

24. These provisions clearly show the intention of the legislature. The statutory scheme ensures that a promoter cannot indefinitely retain ownership of the property after selling flats to individual purchasers. The Act shifts the ownership of the property from the promoter to the collective body of flat purchasers. When these statutory provisions are considered in the context of the present case, it becomes evident that the rights of the promoter must be examined within this legal scheme. The promoter cannot rely solely upon contractual clauses if those clauses operate in a manner that defeats the statutory rights of the flat purchasers. The combined effect of Section 14 of the Maharashtra Apartment Ownership Act and Sections 10 and 11 of the Maharashtra Ownership Flats Act is that the ultimate ownership of the property must rest with the apartment owners or with the cooperative society formed by them.

25. Therefore, any interpretation of the contract in the present matter must be consistent with these statutory provisions. The Act does not permit a situation where the flat purchasers carry the responsibilities of ownership while the promoter continues to its development potential for an unlimited period without informed

consent.

26. While examining the present controversy, it is also necessary to consider the principles laid down by the Supreme Court in the case of *Jayantilal Investments v. Madhuvihar Co-operative Housing Society*, (2007) 9 SCC 220. The judgment explains how the provisions of the Maharashtra Ownership Flats Act must be understood in situations where a promoter undertakes construction in accordance with a sanctioned layout plan but disputes arise regarding additional construction or disclosure of the project. The promoter is required to place before the purchasers the entire project at the very beginning. If the layout plan contemplates several buildings or wings, that fact must be clearly disclosed to the flat purchasers at the time of entering into the agreement. Once such disclosure is made and the construction proceeds according to the approved layout plan, the promoter may carry out further construction without again seeking consent from the purchasers.

27. From the material placed before the Court it appears that in the present case the promoter did not disclose the entire project structure to the purchasers at the initial stage. The agreements for sale and the documents placed on record do not clearly show that the full scope of the development scheme was explained to the purchasers when they agreed to purchase their flats. The purchasers therefore entered into the transaction on the understanding that the development was limited to what was disclosed to them at that time. If additional development potential or further phases of construction existed, the purchasers were

entitled to be informed about it at the very beginning. Therefore, in the present case the failure of the promoter to place before the purchasers the entire project at the time of entering into the agreements assumes importance.

28. The legal position on this aspect has also been explained in recent decisions of this Court. In *Harish Vijaysingh Bhatia v. District Deputy Registrar*, 2025 SCC OnLine Bom 1981 and *Nusli Neville Wadia V. Ijimima - Imitation Jewellery Market Co-operative Society and Others* 2026 SCC OnLine Bom 1520, this Court observed that once flats are sold and the stage for conveyance arrives, the promoter cannot continue to hold back portions of the ownership rights of the property for himself. The statute requires the promoter to convey his entire right, title, and interest in the land and building to the organization of flat purchasers. If the promoter is the owner of the land and building at the time when conveyance is to be executed, he must transfer the entire interest in that property. He cannot selectively convey certain rights and retain the rest.

29. The Sale Deed dated 13 April 2011 is examined in the light of the statutory scheme governing transactions between promoters and flat purchasers. When the clauses of that deed are read carefully, it becomes apparent that certain restrictions were inserted which attempted to reserve important rights in favour of the petitioners even after the transfer of the property. These restrictions relate to development potential, future use of FSI and the manner in which the property could be redeveloped. In effect, while transferring the property, the petitioners sought to retain control over certain aspects of the land and its development. Such reservations cannot be viewed in isolation. The Maharashtra Ownership Flats Act, 1963 creates a structured scheme which regulates the relationship between the promoter and the flat purchasers. Under this scheme the promoter initially develops the property and sells flats to individual purchasers. However, once flats are sold and the organization of purchasers is formed, the promoter is expected to convey his entire right, title and interest in the land and building to that organization. The statutory intention is that the purchasers, acting through their society or association, should become the real owners of the property and should be able to manage it without continued control of the promoter. If the promoter while executing the conveyance keeps back certain substantial rights relating to the property, the purpose of the statute would be defeated. The flat purchasers would bear the responsibilities of ownership such as maintenance, taxes and management, yet important benefits connected with the land would remain with the promoter.

Therefore, any restriction or reservation which allows the promoter to continue exercising significant rights over the property after conveyance must be carefully scrutinized.

30. In the present case the restrictions contained in the Sale Deed appear to reserve development advantages in favour of the petitioners. Such reservations are inconsistent with the statutory scheme which requires the promoter to transfer the property in a complete and effective manner. The conveyance must also be consistent with the sanctioned development plans and the legal framework under which the project was approved. If the conveyance attempts to carve out private rights that operate contrary to the planning approvals or the statutory rights of the flat purchasers, such reservations cannot be sustained.

31. Viewed from this perspective, the Competent Authority was justified in examining the nature of these restrictions and in concluding that the petitioners had not conveyed the property in the manner contemplated by law. When the statutory obligation to transfer title remains unfulfilled, the law provides the remedy of deemed conveyance so that the society of purchasers is not deprived of ownership merely because the promoter retains certain rights.

32. Therefore, the order granting deemed conveyance cannot be said to be arbitrary or without basis. On the contrary, it appears to be consistent with the statutory objective of ensuring that the property ultimately vests in the society of flat purchasers without encumbrances created by the promoter. The restrictions inserted in

the Sale Deed dated 13 April 2011 were inconsistent with the scheme of the Maharashtra Ownership Flats Act and could not defeat the statutory rights of the purchasers.

33. For these reasons, the decision of the authority granting deemed conveyance appears justified in the circumstances of the case. The writ petition, which seeks to challenge that order, therefore does not merit interference. The writ petition is liable to be dismissed.

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

35. The writ petition stands dismissed.

36. Rule stands discharged.

37. There shall be no order as to costs.

38. At this stage, learned Advocate for the petitioners prayed for continuation of the ad-interim relief. However, for the reasons recorded in the present judgment, the prayer continuation of the ad-interim relief is rejected.

(AMIT BORKAR, J.)