

Shabnoor

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

WRIT PETITION NO.4135 OF 2025

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Prestige Residency Orchid Cooperative
Housing Society Ltd.

... Petitioner

V/s.

The State of Maharashtra & Ors.

... Respondent

Mr. Atul G. Damle, Sr. Advocate, i/b Jayesh Joshi, for
the Petitioner.

Mr. B. B. Dahiphale, for the State – Respondent Nos.1
and 2.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 10, 2026

PC.:

1. The petitioner–society has instituted the present writ petition impugning the order passed by the Competent Authority in exercise of 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 application preferred by the petitioner seeking grant of unilateral deemed conveyance came to be rejected. The legality and propriety of that determination are under challenge in these proceedings.

2. The material facts, as borne out from the record, are that Respondent No.5 was the owner of larger parcels of land bearing Survey No.147/3 admeasuring 2 Hectares 43 R 0 P, Survey No.150

admeasuring 0 Hectare 63 R 0 P, and Survey No.151 admeasuring 0 Hectare 63 R 7 P. The aggregate area of these lands admeasured approximately 3 Hectares 69 R 70 P, equivalent to about 36,970 square meters. The said property is situated at Village Kavesar, Post Kasarvadavali, Ghodbunder Road, Thane West, within the local limits of Thane.

3. From out of the aforesaid larger landholding, Respondent No.3 undertook development of a substantial portion in accordance with the sanctioned layout plan. As per the sanctioned layout, the net plot area comprising Plots 'A' and 'B' admeasures 35,532.24 square meters. Residential buildings were constructed by Respondent No.3 on the said plots and agreements for sale were executed in favour of flat purchasers in terms of Section 4 of MOFA. Upon completion of sales, the flat purchasers constituted the petitioner-society in the year 2007. In spite of the statutory mandate requiring the promoter to execute a conveyance in favour of the society within four months of its formation, Respondent No.3 failed to discharge the said obligation. In these circumstances, the petitioner-society, in the year 2023, invoked Section 11 of MOFA and applied for grant of deemed conveyance.

4. The application was resisted by Respondent No.3 on the ground that the claim was premature in the absence of execution of conveyance in favour of an apex society for the entire layout. After affording an opportunity of hearing to the parties, the Competent Authority rejected the application. The rejection was primarily founded on the discrepancy between the area recorded in the revenue entries and the area claimed by the petitioner-

society. The Authority further held that in the case of a sanctioned layout, conveyance in favour of an individual society cannot be granted unless an apex body is first constituted. Being dissatisfied with the said order, the petitioner has approached this Court.

5. By order dated 26 March 2025, this Court issued notice to Respondent Nos.3 and 4 for final disposal of the petition. The learned advocate appearing for the petitioner has produced on record an affidavit of service dated 24 January 2026. The said affidavit bears the seal of Respondent No.3 and demonstrates that Respondent No.3 was duly served and had knowledge of the pendency of the present proceedings as well as of the order dated 26 March 2025.

6. Notwithstanding service of notice on 24 January 2026, Respondent No.3 has chosen not to enter appearance. In view of the due service established on record and absence of representation on behalf of Respondent No.3, this Court proceeds to adjudicate the petition on merits.

7. A careful reading of the agreements executed between respondent No.3 and the flat purchasers leaves no room for doubt. Clause 41 places a clear duty on the developer. It states that the conveyance of the property must be executed in favour of the proposed co operative society within a reasonable time. The clause also mentions that once several societies are formed within the layout, they may together constitute an apex body. That apex body is to manage and control the common amenities. The structure of the clause shows the sequence. First, conveyance is to be made in

favour of each society in respect of its building and proportionate land. Thereafter, an apex body may be formed for administration of shared facilities. The clause does not postpone conveyance until the apex body comes into existence. It recognises the right of each society to receive title to the land relatable to its building.

8. The statutory scheme reinforces this position. Rule 9 of the Maharashtra Cooperative Societies Rules, 1961 fixes the timeline for conveyance. The obligation to convey arises on expiry of four months from the date of registration of the society. The rule uses the expression period. That word has significance. It refers to a definite span of time. It cannot mean an uncertain event such as completion of an entire layout or formation of an apex body. If the right of a housing society is made dependent on an uncertain future event, the protection granted by Rule 9 becomes illusory. A promoter cannot keep the society waiting indefinitely by pointing to events that may or may not happen. The law does not permit such open ended postponement.

9. This issue is no longer *res integra*. In *Lok Housing and Construction Limited v. State of Maharashtra and Others*, 2025 SCC OnLine Bom 711, this Court examined the scope of Rule 9 and the obligation under Section 11 of MOFA. The Court considered whether a promoter could rely on contractual terms to delay conveyance beyond the statutory period. The Court held that Rule 9 is not a mere procedural formality. It gives effect to Section 11 of MOFA, which casts a positive and mandatory duty on the promoter to convey title to the organisation of flat purchasers. The four month period is a legislative safeguard. It ensures that purchasers

are not left uncertain about ownership of the land and building. The Court further held that private agreements cannot override this statutory command. The word period in Rule 9 was interpreted to mean a fixed and determinable span of time. It cannot be equated with a vague future contingency such as completion of an entire development. Any clause that attempts to dilute or defeat this statutory obligation must be ignored to that extent. The reasoning proceeds on the footing that MOFA is a welfare legislation enacted to correct the imbalance between promoters and flat purchasers. The statute must therefore receive a purposive interpretation.

10. In light of this legal position, the objection raised by respondent No.3 that conveyance must await formation of an apex body cannot be sustained. Clause 41 itself contemplates conveyance to individual societies. The statute fixes a definite timeline. The petitioner society was registered long back. The obligation to convey had arisen years ago.

11. Once Clause 41 and Rule 9 are read together, the duty of the developer becomes clear. The developer was required to convey to the petitioner society the land proportionate to its building, together with the undivided share in common areas and amenities. As regards the alleged discrepancy in area, the record shows that no specific denial was made in the written statement. The contesting respondent did not place material to contradict the figures relied upon by the petitioner. In the absence of a clear and specific denial, the Competent Authority could not have rejected the application merely by observing that the revenue area did not

match. An adjudicatory authority must base its decision on pleadings and evidence. A vague doubt cannot displace a statutory right.

12. The architect's certificate placed on record sets out the calculations in detail. It specifies the total net plot area of Plot A and Plot B as 35,532.24 square meters. It identifies the permissible built up area of Building No.8 Type C, which belongs to the petitioner society, as 2,780.84 square meters. The undivided share of this building is stated as 12.34 percent. On that basis, the proportionate rights in the balance plot area are calculated by applying the formula $2780.84 \div 22,529.51 \times 22,139.75$. These figures are drawn from the sanctioned plan and the development permissions. There is no material on record to discredit this computation.

13. The final computation shows that the petitioner society is entitled to 2732.73 square meters out of 22,139.75 square meters towards proportionate rights in the balance plot area, and 482.25 square meters out of 3,907.02 square meters towards proportionate rights in the recreational ground area. The aggregate comes to 3,214.98 square meters out of 26,046.77 square meters of land bearing Survey Nos.147 Part and 151 Part at Village Kavesar, District Thane. In addition, the society is entitled to proportionate rights in the road setback area admeasuring 133.10 square meters out of 1,078.32 square meters. These figures flow from the architect's certificate and the sanctioned layout. They reflect the building's share in the overall development.

14. In view of the contractual terms, the statutory mandate, and the material on record, the refusal to grant deemed conveyance cannot stand. The reasons assigned by the Competent Authority do not accord with Clause 41 or Rule 9. The impugned order therefore suffers from legal infirmity and is liable to be set aside.

15. The Rule is made absolute in terms of prayer clause (a).

16. Respondent No.2, the Competent Authority, shall issue the certificate under Section 11 sub section 5 of MOFA in favour of the petitioner society within four weeks from the date on which a copy of this order is produced. The certificate shall specify the area as determined herein.

17. The writ petition stands disposed of in the above terms. No order as to costs.

(AMIT BORKAR, J.)