

MPBalekar

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

WRIT PETITION NO. 13743 OF 2025

Prashant Babaji Padave ... Petitioner
V/s.
District Deputy Registrar of
Co-operative Soc. and Ors. ... Respondents

Mr. S.S. Bedekar a/w Swapnil S. for the petitioner.

Mrs. Ashwini A. Purav, AGP, for the State – respondent
Nos. 1 & 2.

Mr. Ashok M. Saraogi a/w Abdullah Shaikh for
respondent No.3.

CORAM : AMIT BORKAR, J.

DATED : MARCH 17, 2026

P.C.:

- 1. Rule.** Rule made returnable forthwith.
- 2.** The challenge raised in the present writ petition is directed against an order passed by the District Deputy Registrar, Co-operative Societies, in exercise of powers under Section 10(1) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963. By the said order the authority refused to register a co-operative society proposed by the persons who have purchased flats in the building constructed under the provisions of the said Act.
- 3.** The grievance of the petitioners is that though they are flat purchasers and though the statutory scheme of the Act gives them

a right to form an organisation of flat holders, the authority declined to recognise that right. The order therefore has the effect of preventing the flat purchasers from creating the statutory body which is meant to manage the building and protect their collective interest.

4. The object of Section 10 of the Act is quite clear. The law expects the promoter to take steps for forming an organisation of flat purchasers once the minimum number of purchasers required under the co-operative law is available. Such an organisation enables the flat purchasers to manage common areas, maintain the building, and ultimately obtain conveyance of the property. When the promoter does not take such steps, the statute allows the flat purchasers themselves to approach the competent authority for registration. Thus, the right created under Section 10 is not merely procedural. It is a substantive protection given to flat purchasers so that they are not left dependent upon the promoter after purchasing flats and taking possession. It is in this background that the legality of the impugned order requires examination.

5. The competent authority appears to have rejected the proposal for registration mainly on the ground that the building complex constructed on the plot consists of three wings, namely A, B and C. According to the authority, the flat holders of A Wing had already submitted their building to the provisions of the Maharashtra Apartment Ownership Act, 1970 by executing a declaration and by registering a condominium under Section 2 of the said Act. On this basis the authority concluded that once a part of the project had been subjected to the provisions of the

Apartment Ownership Act, the registration of a co-operative society in respect of the same project could not be permitted. Proceeding on this understanding, the authority rejected the application filed by the flat purchasers seeking registration of a co-operative society.

6. However, such reasoning proceeds on an assumption that the entire construction over the plot forms one indivisible project governed by a single form of organisation. The order does not appear to consider whether each wing could be treated as a separate and identifiable unit for the purpose of organisation of flat purchasers. The issue therefore requires examination of the physical layout and the nature of the construction, so as to determine whether the rejection of the proposal was justified.

7. A perusal of the convenience plan placed on record shows a factual position which has considerable significance. The material indicates that A Wing and C Wing are separated from each other by an area which has been earmarked for parking and which has been handed over to the Municipal Corporation. Because of this intervening space, the two wings stand on clearly demarcated and identifiable portions of land. A Wing exists on one side while C Wing stands on another distinct portion. There is no structural connection between them. They are not connected by any common building structure, passage or constructed facility which would suggest that both wings form one inseparable unit.

8. In such circumstances, each wing assumes the character of a separate building unit capable of independent management. The

mere fact that the promoter constructed them as part of a larger layout does not by itself make them inseparable for the purpose of organisation of flat purchasers. The right of flat purchasers to form an organisation is closely connected with the building in which they reside and with the common areas attached to that building. If two wings are physically separate and functionally independent, the legal rights of flat purchasers in one wing cannot be curtailed merely because another wing has adopted a different statutory arrangement.

9. Therefore, merely because the promoter has chosen to submit A Wing to the provisions of the Maharashtra Apartment Ownership Act, 1970, that circumstance by itself cannot create a legal obstacle for the flat purchasers of C Wing to exercise their statutory right under Section 10 of the MOFA Act. The statute grants them the right to apply for registration of a co-operative society when the promoter fails to do so. That right cannot be defeated by relying upon a decision taken in respect of a different and physically distinct wing.

10. During the course of hearing before this Court, the developer attempted to place reliance on a document described as a deed of declaration by which, according to him, even C Wing had been submitted to the provisions of the Maharashtra Apartment Ownership Act. However, it is important to note that such a document was never placed before the competent authority at the time when the authority decided the application for registration. The impugned order was therefore passed without considering any such declaration in respect of C Wing.

11. Judicial review of an administrative order must proceed on the basis of the material which was available before the authority when the decision was taken. A party cannot seek to justify an order by producing fresh documents at a later stage which were never presented to the authority. If such practice were permitted, it would undermine the fairness of administrative adjudication. Therefore, the document which the developer now seeks to rely upon cannot be used to sustain the reasoning of the impugned order.

12. There is yet another circumstance which supports the case of the petitioners. On the date when the flat purchasers submitted their application for registration of a co-operative society, no declaration in respect of C Wing under the Maharashtra Apartment Ownership Act was in force. In law, the rights of the parties must ordinarily be determined on the basis of the legal position existing on the date when the proceedings were initiated. If on that date the property was not subjected to the provisions of the Apartment Ownership Act, the flat purchasers were clearly entitled to invoke Section 10 of the MOFA Act and seek formation of a co-operative society.

13. Furthermore, sub-section (2) of Section 10 contains an additional requirement which cannot be ignored. The provision makes it necessary that when a promoter submits the property to the provisions of the Maharashtra Apartment Ownership Act, the promoter must communicate that declaration to the Registrar concerned under Section 10. The purpose of this requirement is evident. The Registrar must have clear information that the

property is governed by a condominium structure so that registration of a co-operative society is not permitted thereafter. In the absence of such communication, the Registrar cannot assume that the promoter has validly invoked the provisions of the Apartment Ownership Act.

14. Consequently, when no such declaration had been communicated to the Registrar at the relevant time, the promoter cannot rely upon the existence of a condominium arrangement to oppose the formation of a co-operative society. This principle is no longer open to dispute. It has been clearly explained by this Court in the decision in *Padmavati Construction Co. v. State of Maharashtra*, 2006 SCC OnLine Bom 1154.

15. The judgment in *Padmavati Construction* explains the correct interpretation of sub-sections (1) and (2) of Section 10 of the Maharashtra Ownership Flats Act, 1963. Both provisions operate in the same field and therefore must be read together in a harmonious manner. Sub-section (1) places a clear obligation upon the promoter. Once the minimum number of persons required for forming a co-operative society or company have purchased flats, the promoter must immediately apply for registration of such an organisation. This obligation arises directly from the statute. It is not dependent upon the discretion of the promoter.

16. Sub-section (2) recognises that the promoter may instead choose to submit the property to the provisions of the Maharashtra Apartment Ownership Act, 1970 by executing and registering a declaration. Once such a declaration is made and communicated to

the Registrar, the formation of a co-operative society thereafter becomes impermissible. However, this alternative is not meant to be exercised arbitrarily or at a belated stage. The agreements entered into with flat purchasers under Section 4 of the MOFA Act must clearly disclose the nature of the organisation which will govern the building. If the promoter intends to adopt the condominium model under the Act of 1970, that intention must be clearly stated in the agreements so that every flat purchaser is aware of the legal structure which will govern his property rights.

17. The decision further clarifies that once the promoter has entered into agreements which contemplate formation of a co-operative society, the promoter cannot later avoid that statutory obligation. If the promoter fails to form the society as required by Section 10(1), it would be unlawful for the promoter to prevent the flat purchasers from doing so. The promoter also cannot attempt to defeat their application by subsequently submitting the property to the provisions of the Apartment Ownership Act. Such conduct would defeat the protection which the statute intends to provide to flat purchasers.

18. Applying the principles laid down in the said judgment to the present case, it becomes evident that the District Deputy Registrar could not have rejected the application submitted by the petitioners. The reasoning adopted by the authority overlooks both the factual separation of the wings and the statutory rights of the flat purchasers under Section 10. The impugned order therefore cannot be sustained in law. For these reasons the writ petition deserves to be allowed. Accordingly, the rule is made absolute in

terms of prayer clause (a).

19. It is however clarified that the direction for registration of the co-operative society shall operate only in respect of C Wing. The Registrar shall therefore proceed to register the society confined to the flat purchasers of C Wing alone.

20. The writ petition stands disposed of.

(AMIT BORKAR, J.)