

Shabnoor

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

WRIT PETITION NO.107 OF 2025

Akhtar Zahar Qureshi & Anr. ... Petitioners
V/s.
District Deputy Registrar,
Cooperative Societies Mumbai City 3
& the Competent Authority & Ors. ... Respondents

**WITH
INTERIM APPLICATION NO.12269 OF 2025
IN
WRIT PETITION NO.107 OF 2025**

Akhtar Zahar Qureshi & Anr. ... Applicants
In the matter between:
Akhtar Zahar Qureshi & Anr. ... Petitioners
V/s.
District Deputy Registrar,
Cooperative Societies Mumbai City 3
& the Competent Authority & Ors. ... Respondents

Mr. Sunny Shah i/b Bhandary & Bhandary, for the
Petitioners.

Mr. A. A. Alaspurkar, AGP, for the State – Respondent
No.1.

Ms. Harshita Kotian a/w Ms. Hrithika Shetty i/b MGS
Legal, for Respondent Nos. 3 to 6.

Mr. Kunal Bhanage i/b Kilpady Prakash Narayan, for
Respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 23, 2026

P.C.:

1. By the present Petition, the Petitioners challenge the order dated 30 July 2024 passed by Respondent No.1 in Application No.2 of 2024 preferred by Respondent No.2. Under the impugned order, Respondent No.1 has allowed the said application and granted a certificate of unilateral deemed conveyance in respect of the subject property together with the building standing thereon in favour of Respondent No.2 under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963. The Petitioners contend that the said order has been passed despite the redevelopment project remaining incomplete under the Development Agreements and the sanctioned plan.

2. The facts giving rise to the present Petition are that the Petitioners are the owners of land bearing C.T.S. No. F/674, situated at Bandra (West), Mumbai, measuring 618.70 square metres. Development Agreements dated 20 June 2013, 3 December 2015 and May 2019 were executed between the Petitioners and Respondent Nos.3 to 6, being the developers, along with Respondent Nos.7 to 10, for redevelopment of the said property. Under the said agreements, it was inter alia agreed that the proposed building would consist of 17 floors and that the residential flats on the 16th and 17th floors would form part of the entitlement of the Petitioners and Respondent Nos.7 to 10.

3. It appears that on 13 January 2016, the Municipal Corporation of Greater Mumbai sanctioned plans for construction

of a 17 storeyed building. Thereafter, a Part Occupancy Certificate came to be issued on 11 December 2018 up to the 15th floor. It is the case of the Petitioners that the flat purchasers were expressly informed, including under an Agreement for Sale dated 20 April 2019 executed by Respondent No.3 with one of the purchasers, that the building was sanctioned up to 17 floors and that conveyance in favour of the society would be effected only upon completion of the entire project and upon full consumption of permissible FSI by the promoters. The said agreement further recorded that only a Part Occupancy Certificate would initially be obtained and that the promoters would retain the right to undertake remaining and additional construction. According to the Petitioners, balance FSI of 323.04 square metres remains available for construction of the 16th and 17th floors, which admittedly remain incomplete.

4. The record further indicates that on 16 August 2021, the Petitioners addressed a communication to Respondent Nos.3 to 6 calling upon them to perform their obligations under the Development and Supplemental Agreements. Subsequently, Respondent No.2 society came to be formed and registered on 24 February 2022. Thereafter, Respondent No.2 issued a notice dated 21 June 2022 convening an Annual General Meeting purportedly scheduled for 8 July 2023. According to the Petitioners, the said notice did not contain any agenda concerning conveyance of the property. It is their specific case that a resolution allegedly passed on 8 July 2023 authorising an application for conveyance was fabricated and that the notice dated 21 June 2022 was

subsequently manipulated.

5. On 7 December 2023, Respondent No.2 filed Application No.2 of 2024 before Respondent No.1 seeking grant of a certificate of unilateral deemed conveyance. By the impugned order dated 30 July 2024, Respondent No.1 allowed the said application and granted the certificate in favour of Respondent No.2 notwithstanding that construction of the building had not been completed. The Petitioners contend that the Competent Authority failed to consider the subsisting Development Agreements, the sanctioned plans and the incomplete status of the project, thereby seriously prejudicing the rights and entitlements of the Petitioners. Aggrieved thereby, the Petitioners have instituted the present Petition.

6. Learned Advocate appearing for the Petitioners submitted that the names of the Petitioners, being the owners of the property, were not included in the proposal submitted by Respondent No.2 before the Competent Authority under Section 11 of MOFA. It was further submitted that on the date of filing of the proposal, the building remained incomplete, since the 16th and 17th floors, which were agreed to be allotted to the Petitioners, had not been constructed.

7. Learned Advocate for the Petitioners further submitted that the application for deemed conveyance was filed at the instance of the developer with a view to avoid completion of construction of the 16th and 17th floors. Inviting attention to the agreements executed under Section 4 of MOFA, it was contended that the

purchasers were specifically informed that the building would comprise ground plus 17 floors. However, the developer constructed only a ground plus 16 floor structure, sold flats therein and the purchasers thereafter formed Respondent No.2 society on 24 February 2022. It was submitted that under the agreements, the promoters retained the right to consume balance and future FSI and to carry out additional construction. Therefore, according to the Petitioners, deemed conveyance could not have been granted unless the construction stood completed in all respects.

8. Referring to the Government Resolution dated 22 June 2018, learned Advocate for the Petitioners submitted that Clause (8) thereof mandates that deemed conveyance ought not to be granted unless an Occupation Certificate is issued by the Planning Authority. In the absence of such certificate, a self declaration by the purchasers accepting responsibility and liabilities in respect of the building is required. It was contended that the mandatory requirements of the said Government Resolution were not complied with.

9. Per contra, learned Advocate appearing for Respondent No.2 submitted that under Rule 9 of the MOFA Rules, the period of four months for execution of conveyance commences from the date of registration of the society, which in the present case is 24 February 2022. It was contended that disputes between the developer and the owners cannot impede the exercise of powers by the Competent Authority under Section 11 of MOFA. It was further submitted that a Part Occupancy Certificate dated 11 December 2018 had already been issued in respect of ground plus 15 floors.

According to Respondent No.2, Rule 9 prescribes a definite time frame for execution of conveyance and such conveyance cannot be made contingent upon uncertain future events such as completion of construction, and any such stipulation would be void as being contrary to Rule 9. It was argued that issues relating to balance FSI and the right to undertake additional construction fall within the domain of the Civil Court. In that regard, it was pointed out that the owners have already instituted Civil Suit No.2258 of 2024 against the developers, which is presently pending. It was therefore submitted that the Competent Authority has rightly granted deemed conveyance in favour of Respondent No.2.

Reasons and analysis:

10. I have considered the record and the rival submissions. I have also considered the scheme of MOFA and the Rules made thereunder. I have borne in mind that Section 11 empowers the Competent Authority to grant a certificate of deemed conveyance on fulfilment of statutory conditions. I have also borne in mind that MOFA provides a summary remedy to flat purchasers and societies. That remedy exists alongside ordinary civil remedies. The two regimes are distinct in purpose and procedure.

11. The material facts are not in dispute. The developers executed Development Agreements with the petitioners. Plans for a 17 storey building received sanction. A Part Occupancy Certificate issued on 11 December 2018 up to the 15th floor. The society registered on 24 February 2022. The society filed Application No.2 of 2024 on 7 December 2023. The Competent

Authority decided on 30 July 2024 in favour of the society. The petitioners have also instituted Civil Suit No.2258 of 2024 against the developers.

12. The petitioners' primary legal objection is that the construction remains incomplete and that the conveyance should await completion of the 16th and 17th floors. That submission assumes that the Competent Authority must adjudicate and supervise performance under the Development Agreements before granting deemed conveyance. That is not the statutory scheme. MOFA and the Rules provide a mechanism for conveyance where the society meets prescribed requirements. The competence to decide disputes as to contractual rights and obligations under the Development Agreements rests with a civil court. The Competent Authority is not a substitute civil court for resolving complex contractual and title disputes. If the petitioners claim that the developers have not complied with the Development Agreements, their remedy lies in civil proceedings that can determine specific performance, damages and accounts. The existence of such disputes does not, by itself, nullify the statutory process for deemed conveyance where the statutory conditions are met.

13. The petitioners rely on the Government Resolution of 22 June 2018 and say clause (8) requires an occupation certificate prior to deemed conveyance. The Competent Authority had before it a Part Occupancy Certificate up to the 15th floor. The society relied upon that certificate and other documents to seek the certificate of deemed conveyance. Even if the Government Resolution prescribes stricter administrative guidance, the

Competent Authority exercises quasi-judicial power in the facts and circumstances of each case. Where the statutory requirements are satisfied and the society complies with the Rules, the Competent Authority may grant the certificate. The petitioners have not shown that the Competent Authority acted without jurisdiction or in manifest violation of the statutory scheme.

14. Respondent No.2 has relied on Rule 9 of the MOFA Rules and on the registered society's entitlement to seek conveyance within the prescribed period. The four month period for execution of conveyance runs from registration of the society. That statutory timeline exists to prevent indefinite delay and to protect flat purchasers who wish to take title through their society. The petitioners' insistence that completion of the entire sanctioned scheme must precede any action under Section 11 effectively converts the summary MOFA process into a full-scale adjudication of contractual obligations. That would frustrate the legislative intent to provide a summary and effective remedy to flat purchasers. Where questions of balance FSI, entitlement to specific floors and future additional construction arise, the civil court is the appropriate forum to adjudicate those disputes.

15. The petitioners argue that the application was filed at the instance of the developer to avoid completing the 16th and 17th floors. This allegation raises questions of motive and fact. The Competent Authority, on the record before it, found the documents sufficient to allow the application. The Competent Authority's evaluation of documents and supporting declarations is entitled to respect, absent manifest illegality or perversity. The petitioners

have not demonstrated such a defect in the impugned order. Allegations about the developer's motive require detailed factual enquiry and proof. The civil court is better equipped to examine such claims, call witnesses, scrutinise documents and decide on reliefs of specific performance or injunction.

16. The petitioners also advanced that the promoters retained the right to consume balance and future FSI and to carry out additional construction. That claim concerns contractual rights and future development. It does not ipso facto prevent the society from obtaining deemed conveyance in respect of the existing constructed portion where the statutory requirements are met. The existence of unresolved civil claims does not disable the statutory process. The petitioners have chosen to pursue civil litigation by instituting Suit No.2258 of 2024. That course is the correct one for resolving contentions about FSI, additional construction and promissory obligations.

17. In the view I take, the Competent Authority acted within its statutory jurisdiction. It considered the material placed before it. It granted the certificate in exercise of powers under Section 11. The objections raised by the petitioners are primarily factual and contractual. They require evidence, cross-examination and detailed findings which only a civil court can make after a full trial. The summary jurisdiction under MOFA cannot be stretched to decide such disputes in full. The petitioners have not shown that the Competent Authority ignored any mandatory condition of law so as to justify interference by this court.

18. Accordingly, this petition does not succeed. I dismiss the petition. The petitioners remain at liberty to pursue their civil remedies. They may press Civil Suit No.2258 of 2024 to a final conclusion. If they prefer, they may institute fresh civil proceedings to claim specific performance or to seek any other relief available under contract or law. Those remedies will enable a full inquiry into the merits, the evidence, and the conduct of the developer and the society.

19. All pending interim applications stands disposed of.

(AMIT BORKAR, J.)