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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1345 PF 2026

Mahalaxmi City (Type-D) Cooperative Housing Society Limited ... Petitioner

V/s.

The Competent Authority and District Deputy Registrar, Cooperative Societies, Raigad - Alibag & Ors. ... Respondents

Mr. Balkrishna Pathak with Mr. Priyanshu Mishra for the petitioner.

Mr. O.A. Chandurkar, Additional G.P. with Smt. M.S. Shrivastava, AGP for respondent No.1-State.

Mr. Simil Purohit with Mr. Omkar Kulkarni and Mr. Chinmay Acharya i/by Mr. Suyash Sule for respondent Nos.2 to 5.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 11, 2026

P.C.:

1. **Rule.** Rule is made returnable forthwith.

2. By the present petition filed under Article 226 of the Constitution of India, the petitioner calls in question the Judgment and Order dated 27 November 2025 passed by the Competent Authority under the provisions of the Maharashtra Ownership Flats Act, 1963. By the said order, the application preferred by the petitioner under Section 11(3) of the Act seeking deemed conveyance came to be rejected on the ground that the project was incomplete and that a balance FSI of 1226 square meters remained available with the promoter for future development.

3. The material facts giving rise to the present proceedings are as follows. The petitioner is a co operative housing society registered on 5 April 2019. According to the petitioner, the construction of the building stands completed. Reliance is placed on the commencement certificate, occupation certificate and the architect's completion certificate. It is further stated that the purchasers have been in possession of their respective flats since the year 2016. The grievance of the petitioner is that, despite the statutory obligation cast by Rule 9 of the MOFA Rules, the promoter failed to execute the conveyance deed within the prescribed period. The petitioner, therefore, on 26 June 2025 invoked Section 11(3) of the Act and applied for unilateral deemed conveyance.

4. Respondent No.2, the promoter, filed a reply opposing the grant of deemed conveyance. The principal objection raised was that the project styled as "Mahalaxmi City (Type D)" was not complete and that a balance FSI of 1226 square meters was available for future development. It was contended that, under the agreement with the purchasers, conveyance was agreed to be executed only after expiry of thirty six months from the date of occupation certificates of all buildings forming part of the larger project. It was also urged that the land falls within TPS No.3 of the Navi Mumbai Airport Influence Notified Area, which had caused delay in development. Accepting these objections, the Competent

Authority rejected the application. Aggrieved thereby, the petitioner has approached this Court.

5. The petitioner contends that the finding regarding incompletion of the project and availability of balance FSI is perverse and contrary to the record. It is submitted that the architect’s completion certificate clearly records that construction has been carried out in accordance with the sanctioned plan. The certificate specifies the total plot area of 7430 square meters, built up area of 5170.38 square meters and non built up area of 2260 square meters comprising internal roads, garden and play area. The petitioner also relies upon entries on the MahaRERA website reflecting 100 percent completion in respect of Buildings Nos.1, 2 and 3. Reference is further made to the Gazette publication of NAINA TPS 3, whereby Final Plot Nos.7 and 8 are allotted admeasuring 7430 square meters, without any reservation or indication of further development in favour of the promoter.

6. It is submitted on behalf of the petitioner that clauses 7 and 11 of the agreement between the promoter and flat purchasers cannot postpone execution of conveyance till completion of a larger project, when Rule 9 mandates execution within a fixed period. According to the petitioner, a future or proposed development cannot be treated as the “project” for the purposes of Rule 9. Reliance is placed on the decision of this Court in Neelkanth Heights CHSL vs. Abhinav Real Estate and others, Writ Petition No.165 of 2025 decided on 9 May 2025. It is urged that contractual stipulations cannot override a statutory obligation under MOFA, and that the prospect of future utilization of FSI cannot defeat the statutory right of a society to obtain conveyance.

7. The petitioner further submits that the right to seek deemed conveyance accrued upon expiry of four months from registration of the society on 5 April 2019. Attention is invited to the architect's certificate submitted by the promoter at the time of registration, which, according to the petitioner, does not disclose any balance FSI. It is argued that any subsequent development arising out of sanction of a town planning scheme after expiry of the statutory period cannot curtail the area agreed to be conveyed under an agreement executed in terms of Section 4 of MOFA. On this basis, the petitioner claims entitlement to conveyance of the entire plot admeasuring 7430 square meters together with the building known as Mahalaxmi City Type D Co operative Housing Society Limited situated at Village Vihighar, Taluka Panvel, District Raigad.

8. In opposition, learned Senior Counsel appearing for respondent No.2 submits that clauses 7 and 11 of the registered agreements expressly reserve to the promoter the right to utilize balance FSI, including additional FSI arising from changes in planning laws. Reliance is placed on the architect's certificate indicating balance FSI of 2244.6 square meters on the layout. It is further submitted that Gat Nos.94/3 and 97/0 have been reconstituted as final plots under the preliminary scheme of TPS 3 published on 3 August 2022. Under the provisions of the Maharashtra Regional and Town Planning Act, 1966, once a town planning scheme reaches the stage of preliminary scheme, the original boundaries and gat numbers lose their independent identity and the land vests in the Planning Authority for reconstitution. It is contended that the developer no longer retains title in the original gat numbers, which now stand merged in the notified scheme. Reference is also made to an internal road passing through the layout and presently used by the general public. On these grounds, dismissal of the writ petition is sought.

9. The core question is narrow. Did the society acquire a statutory right to get conveyance after the period fixed by law. If yes, could alleged future development rights of the promoter defeat that right. The facts are largely agreed. The society was registered on 5 April 2019. The purchasers have been in possession since 2016. The society relies on commencement certificate, occupation certificates, and the architect's completion certificate. MahaRERA records show 100% completion for buildings 1, 2 and 3. The promoter relies on clauses in sale agreements and on a claim of balance FSI. The Competent Authority accepted the promoter's version and rejected the application for deemed conveyance.

10. Rule 9 of the MOFA Rules leaves no room for doubt. It fixes a clear timeline within which the promoter must execute the conveyance in favour of the society. This is not a matter of choice. It is not left to convenience. It is a command of law. Once the society is registered and the statutory period expires, the obligation to convey the property matures. The promoter does not retain discretion to postpone it on grounds of business planning or future intentions.

11. The source of this duty is statutory. It flows from the Act and the Rules framed thereunder. When the Legislature creates such an obligation, it does so to protect flat purchasers who otherwise stand in a weaker bargaining position. The promoter drafts the agreement. The purchaser merely signs it. If the law were to permit the promoter to rely on contractual clauses to defer conveyance, the very object of the statute would stand defeated. A private agreement cannot override a public law mandate.

12. Any clause in an agreement which states that conveyance will be executed only after completion of a larger layout or after exploitation of full FSI runs contrary to the statutory scheme. The statute does not speak of completion of an entire township or future phases. It speaks of conveyance to the society within a defined period. The focus is on the building and the society formed by the flat purchasers. The law does not permit the promoter to hold back title merely because he proposes further development elsewhere on the layout.

13. This principle is not res integra. The Court in *Neelkanth Heights* has clearly held that contractual stipulations cannot dilute or postpone a statutory obligation under MOFA. The reasoning is simple and sound. When the statute fixes a timeline, parties cannot extend it by private understanding. To permit such an arrangement would amount to allowing the promoter to do indirectly what he cannot do directly. If clauses postponing conveyance were to be enforced, the promoter could indefinitely delay transfer by referring to some future plan, additional FSI, or a proposed phase that may or may not materialise. That would leave the society without title, without control over the land, and in a state of uncertainty. The law does not contemplate such a situation. Contractual promises cannot be treated as a licence to withhold conveyance at will. Once the statutory conditions are fulfilled, the right of the society crystallises, and the promoter must comply.

14. On the facts placed on record, the right of the society had clearly matured. The society came to be registered on 5 April 2019. The statute grants a limited period to the promoter to execute the conveyance after such registration. Once four months elapsed, the right of the society to demand conveyance was no longer inchoate. It became enforceable. The promoter's obligation correspondingly became absolute.

15. The documentary material supports this position. The architect's completion certificate specifies the total plot area as 7430 square meters. It records the built up area as well as the non built up area comprising internal roads, garden and play area. The figures are not vague. They are precise and correspond to the sanctioned plan. The occupation certificates issued by the planning authority further confirm that the buildings were fit for occupation. Purchasers have been in possession since 2016. They reside there. They use the common areas. They reflect the ground reality.

16. In addition, the entry on the MahaRERA portal showing 100 percent completion of the buildings in question lends independent support. That record is maintained under a statutory framework. It cannot be brushed aside lightly. When these documents are read together, they present a consistent picture. So far as this society and its buildings are concerned, the construction stands completed. There is no material to show that any structural or essential component of this project remains unfinished.

17. In that background, the finding of the Competent Authority that the project is incomplete cannot be sustained. The authority appears to have proceeded on a broader understanding of the layout rather than examining whether the buildings forming the society were complete and whether the statutory conditions were satisfied. The inquiry under Section 11 is confined. It does not extend to speculative future development. When the record clearly points to completion of the relevant construction, it was not open to the authority to deny conveyance on a general observation of incompletion.

18. The promoter's argument regarding balance FSI does not alter this conclusion. The promoter relies on certain clauses in the sale agreements which reserve a right to utilise additional or future FSI. These clauses are contractual in nature. They regulate inter se rights between parties, but they cannot override the statutory mandate under Rule 9. A contractual reservation of future FSI cannot be equated with a right to indefinitely withhold conveyance of the land and building already constructed and occupied.

19. The promoter has also relied upon the preliminary TPS-3 scheme and the reconstitution of plots under the town planning process. It is true that once a town planning scheme reaches a certain stage, original boundaries may stand altered and lands may vest in the planning authority for the purpose of reconstitution. However, such planning measures operate within their own statutory field. They may affect how additional development is to be undertaken in future. They do not, by themselves, extinguish or suspend the rights which had already accrued to the society under MOFA upon its registration and expiry of the statutory period.

20. If the promoter believes that, by virtue of TPS reconstitution, it retains some independent entitlement to additional FSI or to a modified configuration of land, the law provides remedies. Such a claim can be pursued before the competent forum under the planning legislation. What the promoter cannot do is use that pending or potential claim as a ground to resist conveyance altogether. The statutory right of the society cannot be kept in abeyance because of future contingencies. Therefore, neither the alleged balance FSI nor the subsequent town planning developments furnish a valid justification to deny the society the conveyance to which it became entitled in law.

21. The Competent Authority is not sitting as a civil court of plenary jurisdiction. It does not conduct a roving inquiry into every dispute between the promoter and the society. Its task is confined. It must see whether the society is duly registered, whether the statutory period has expired, whether the building is complete in the sense contemplated by law, and whether the promoter has failed to execute conveyance within time. If these conditions stand satisfied, the authority must proceed to grant deemed conveyance.

22. In the present case, the authority travelled beyond this limited field. Instead of confining itself to the statutory ingredients, it entered into questions concerning alleged future FSI, possible development on the larger layout, and the promoter’s asserted planning rights. These are not matters which Section 11 authorises the authority to finally adjudicate. They involve questions of title, planning law, and contractual interpretation that may require detailed evidence and independent proceedings.

23. A proceeding for unilateral deemed conveyance is not intended to resolve speculative claims regarding future exploitation of TDR or additional FSI. If such issues are allowed to dominate Section 11 proceedings, the very object of providing a summary and effective remedy to flat purchasers would be frustrated. The authority must resist the temptation to expand its jurisdiction under the guise of protecting potential rights of the promoter.

24. Turning to the record, the society has discharged its initial burden. At the time of registration, the architect’s certificate placed on record did not indicate that any defined portion of the plot was kept aside for a separate building to be constructed later in a manner that would dilute the society’s share. The certificate identified the total plot area and the built up structure in clear terms. It did not suggest that the society’s entitlement was provisional or conditional. The occupation certificates issued by the planning authority confirm that the buildings were ready for occupation. Purchasers have been residing in their flats for several years. They use the common areas. They maintain the premises through their society. These are not mere technical facts. They show that the project, so far as this society is concerned, has reached a stage of completion that attracts the statutory right to conveyance. The MahaRERA entry recording one hundred percent completion lends further assurance. That entry is part of a statutory disclosure mechanism designed to ensure transparency in real estate projects. It cannot be lightly ignored. When these documents are considered together, they present a consistent narrative of completion and readiness.

25. Against this body of evidence, the promoter relies on a subsequent architect's certificate claiming balance FSI of 2244.6 square meters on the layout. Even if such balance exists on paper, it does not by itself negate the completion of the constructed buildings or the society's right to conveyance. Balance FSI is a measure of potential development. It is not proof that the present construction is incomplete. The two concepts are distinct. It is possible that the promoter believes that it retains some development potential under planning laws. That belief may or may not be correct. It may require examination in separate proceedings. However, such a prospective or collateral claim cannot eclipse the statutory entitlement of the society which has already crystallised. If the promoter seeks to assert additional rights, the law provides avenues for doing so. What cannot be permitted is the use of such claims as a ground to indefinitely postpone or deny conveyance to the society.

26. Hence, for the reasons stated above following order is passed:

i) The Writ Petition is allowed.

(ii) The Judgment and Order dated 27 November 2025 passed by the Competent Authority under Section 11(3) of the Maharashtra Ownership Flats Act, 1963 is quashed and set aside.

(iii) It is declared that the petitioner, Mahalaxmi City Type D Co operative Housing Society Limited, is entitled to unilateral deemed conveyance of the entire plot admeasuring 7430 square meters together with the building standing thereon, known as Mahalaxmi City Type D Co operative Housing Society Limited, situated at Village Vihighar, Taluka Panvel, District Raigad.

(iv) The Competent Authority shall, within a period of four weeks from the date of receipt of this order, issue a certificate of deemed conveyance and execute the unilateral conveyance deed in favour of the petitioner society in respect of the aforesaid plot and building, in accordance with law.

(v) The Sub Registrar concerned shall register the unilateral conveyance deed upon presentation by the Competent Authority or the authorised officer of the petitioner society, subject to payment of requisite stamp duty and registration charges, if any, in accordance with law.

(vi) Upon registration of the conveyance deed, all concerned revenue and municipal authorities shall mutate the name of the petitioner society in respect of the said property in their records in accordance with law.

(vii) Rule is made absolute in the above terms. No order as to costs.

(AMIT BORKAR, J.)