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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.63 OF 2026
IN
WRIT PETITION NO.3151 OF 2026

Gera Development Private Limited,
through it's authorized signatory
Gulzar Malhotra, having its registered
office at 200, Gera Plaza, Boat Club Road,
Pune 411 001 … **Petitioner**

V/s.

1. **The State of Maharashtra**, through it's Secretary, Department of Cooperation, Address at Mantralaya, Mumbai
2. **The Divisional Joint Registrar**, having address at Cooperative Societies, Sakhar Sankul, Pune 411 005
3. **The District Deputy Registrar**, having address at Coop. Societies, Pune City, Pune, Sakhar Sankul, Pune
4. **The Deputy Registrar**, Coop. Societies, Pune City (1), Pune (DR), having address at 582 D, Marketyard, Gultekdi, Pune
5. **Gera's Isle Royale CHS Limited**, Sr.No. 24, Hissa Nos. 1 to 8, Geras Isle Royale, Bavdhan Khurd, Pune 411 021 … **Respondents**

Mr. Nikhil Sakhardande, Senior Advocate with Mr. Pralhad Paranjape, Mr. Manish Kelkar and Mr. Saket Tare for the petitioner.

Mr. Y.D. Patil, AGP for respondent Nos.1 to 4-State.

CORAM : AMIT BORKAR, J.

RESERVED ON APRIL 20, 2026

PRONOUNCED ON : APRIL 21, 2026

JUDGMENT:

1. The petitioner has preferred the present Review Petition contending that two specific submissions advanced during the course of final hearing were neither recorded nor considered in the judgment and order dated 1 April 2026. It is therefore submitted that the said submissions deserve to be brought on record and appropriately dealt with by review of the judgment.

2. Mr. Sakhardande, learned Senior Advocate appearing for the petitioner, submitted that the MOFA Validation Act, 2025 expressly provides that the provisions of the Maharashtra Ownership Flats Act shall not apply to real estate projects to which the Real Estate (Regulation and Development) Act, 2016 is applicable, save and except Sections 5A, 11A, 13B, 13C and 13D. On the strength of the said statutory amendment, it is contended that the composite application preferred by respondent no. 5 under Section 10 of MOFA seeking formation of a common society for both MOFA governed units and RERA governed projects, namely Towers 2 and 3, was itself not maintainable in law. It is further submitted that this contention was not effectively controverted by respondent no.

5 during the hearing and yet the said issue has neither been reflected nor adjudicated in the judgment dated 1 April 2026. It is therefore urged that the judgment warrants reconsideration.

3. Learned Senior Advocate further submitted that it was specifically argued on behalf of the petitioner that, having regard to the MOFA Validation Act, 2025 and the amended statutory framework whereby Section 10 of MOFA ceased to apply to RERA registered projects, it became incumbent upon the petitioner to constitute separate societies for separate buildings within the layout in consonance with Rule 9 of the RERA Rules, 2017. According to him, the conclusion reached by this Court in the judgment under review overlooks the effect of the amended statutory regime and consequently suffers from an apparent error requiring correction.

4. It was also submitted that the petitioner had specifically urged before this Court that failure on its part to register separate societies in accordance with the requirements of the RERA framework could expose the petitioner to penal consequences under Section 61 of the Real Estate (Regulation and Development) Act, 2016. According to the petitioner, this submission also remained unnoticed in the judgment.

5. I have carefully gone through the review petition, the submissions advanced by learned Senior Advocate Mr. Sakhardande for the petitioner, and the answer of respondent no. 5. The narrow question in review is whether there is any mistake apparent on the face of record or whether some material submission has been left totally unnoticed so as to cause manifest injustice.

6. The first submission of the petitioner is that the MOFA Validation Act, 2025 makes it clear that MOFA shall not apply to real estate projects governed by RERA, except the limited provisions saved therein, and therefore the composite application under Section 10 of MOFA for a common society covering both MOFA and RERA components was not maintainable. The submission founded upon the MOFA Validation Act, 2025 requires examination, because the petitioner has placed considerable emphasis upon the language stating that the provisions of the Maharashtra Ownership Flats Act shall not apply to real estate projects to which the Real Estate (Regulation and Development) Act, 2016 is applicable, except Sections 5A, 11A, 13B, 13C and 13D.

7. The submission founded upon the MOFA Validation Act, 2025 requires examination. It is true that the said enactment provides that the provisions of the Maharashtra Ownership Flats Act shall not apply to such real estate projects to which the Real Estate (Regulation and Development) Act, 2016 is applicable, except the limited provisions specifically preserved, namely Sections 5A, 11A, 13B, 13C and 13D. At first reading, the language may appear absolute. However, every exclusionary clause in a statute has to be read in the context of the legislative scheme. A provision cannot be lifted in isolation and applied without noticing the purpose for which it was enacted, the mischief sought to be remedied, and the machinery created under the later enactment.

8. The object of the amendment appears to be to avoid overlap between two enactments operating in the same field. When RERA has created a code regarding registration of projects, disclosure obligations, rights of allottees, promoter liabilities, timelines and conveyance related obligations, the legislature appears to have intended that duplication under MOFA should stand reduced. That does not mean that every situation arising in a composite development must be resolved by a declaration that MOFA disappears. Many projects are transitional in character. Some portions are completed under the earlier Act. Some phases come under RERA. Some rights crystallized earlier. Some proceedings commenced before amendment. Therefore, the provision has to be applied with balance.

9. The petitioner seeks to contend that because Towers 2 and 3 were RERA projects, no proposal under Section 10 of MOFA could at all survive. The controversy concerns formation of a legal entity for management of an actual occupied layout having common facilities, common users, and completed units belonging to different stages of development. The Court cannot ignore the practical and legal reality of the site merely because one part of the project falls under one enactment and another under another enactment.

10. It is also necessary to notice that under both Acts, when the legal entity sought to be registered is a co-operative housing society, the registration authority remains the Registrar under the Maharashtra Co-operative Societies Act, 1960. The forum, scrutiny, registration parameters, membership principles, and statutory incidents of registration are governed by the Maharashtra Co-operative Societies Act. Therefore though the source obligation may arise under MOFA in one period or under RERA in another period, the act of registration of a co-operative society is processed through the same statutory authority functioning under the MCS Act. Once this position is kept in view, the petitioner's contention loses force. The real question remains whether the competent Registrar, acting under the MCS Act, had jurisdiction and whether the proposal satisfied the statutory parameters regarding membership, majority, documents, and nature of the property.

11. The Registrar under the MCS Act examines whether the proposed society complies the statutory requirements. If the project contains common access, common amenities and a body of purchasers desiring collective management, the Registrar is entitled to examine whether one society is lawful. The Court cannot presume that the mere presence of RERA registered towers takes away all power to consider a composite society.

12. The petitioner's submission overlooks that Rule 9 uses expressions such as building, wing, layout and Apex Body. These words indicate flexibilityn. Had the legislature intended that every tower must have only separate society, nothing prevented it from using such language. Instead, the Rule recognizes multiple development. Therefore, any interpretation fragmentation in would travel beyond the text.

13. The further aspect is that many housing developments residents may share roads, water systems, club facilities, security arrangements, recreational areas and maintenance burdens. If the Court accepts an extreme construction, then separate societies may stand registered for technical reasons while management remains common. That may create disputes, cost escalation and confusion. Statutes regulating housing are meant to facilitate orderly management.

14. The MOFA Validation Act, 2025 reduces direct application of MOFA to RERA governed projects except saved provisions. RERA with Rule 9 supplies its mechanism for legal entity formation. Where a co-operative society is chosen as that legal entity, the Registrar under the Maharashtra Co-operative Societies Act remains the registering authority. Hence, the inquiry is whether the formation process conforms to Act. Accordingly, the submission that the moment RERA applies, every composite proposal must fail, cannot be accepte. The issue must depend on the stage of the project, prior accrued rights, common layout features, nature of occupancy, majority of concerned allottees and satisfaction of the Registrar under the Maharashtra Co-operative Societies Act.

15. The Second submission is that the petitioner had pointed out that if separate societies were not registered, it may attract action under Section 61 of the RERA Act, and that this was also not considered. I am unable to accept that this omission, even if assumed, changes the result. Section 61 is a penal provision. It deals with contravention of provisions of the Act or the rules or regulations made thereunder. A penal provision cannot be read as a answer to the dispute about society formation. Before any such consequence can follow, there must first be a legal breach shown on the facts. The petitioner's argument assumes that the formation of a common society was impermissible. That assumption itself is not established. Therefore, merely invoking Section 61 does not expose any apparent error in the earlier judgment.

16. It is also necessary to keep in mind the nature of review jurisdiction. The real issue is whether the judgment has failed to consider a matter which goes to the root and which, if considered, would have changed the result. The earlier judgment dealt with the project, the rights of purchasers, the effect of the common development, and the statutory scheme.

17. On a careful reading of the review petition, I do not find any omission which can be described as an error apparent on the face of record. The petitioner may feel that its arguments deserved a answer in separate language. The legal substance of those arguments was already within consideration. The core controversy was whether the purchasers of the completed and occupied portion of the project, having a clear majority, could form one society for the composite development. The answer given earlier remains supported by the statute, the factual record. Nothing has been shown which would justify review.

18. For these reasons, the review petition fails. It is dismissed. No order as to costs.

(AMIT BORKAR, J.)