IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.4859 OF 2025
IN
SUIT NO.151 OF 2025
(For Temporary Injunction)

ACME Enterprises & Anr. ....Applicants
IN THE MATTER BETWEEN
ACME Enterprises & Anr. ....Plaintiffs
V/S
Deputy Registrar
Co-operative Societies (2) & Ors. ....Defendants

WITH
SUIT NO.151 OF 2025

ACME Enterprises & Anr. ....Plaintiffs
V/S
Deputy Registrar
Co-operative Societies (2) & Ors. ....Defendants

WITH

INTERIM APPLICATION (L) NO.16204 OF 2024
IN
SUIT NO.143 OF 2025
(For Temporary Injunction)

Neelam Nagar Building Nos.11A to 11J
Co-operative Housing Society Association Ltd. ....Applicant
IN THE MATTER BETWEEN
Neelam Nagar Building Nos.11A to 11J
Co-operative Housing Society Association Ltd. ....Plaintiff
V/S
Acme Enterprises & Ors. ....Defendants

WITH
SUIT NO.143 OF 2025

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Neelam Nagar Building Nos.11A to 11J
Co-operative Housing Society Association Ltd. ....Plaintiff
V/S
Acme Enterprises & Ors. ....Defendants

Mr. Aspi Chinoy, Senior Advocate with Mr. Karl Tamboly, Ms. Kausar Banatwala, Ms. Riya Thakkar and Mr. Yash Sheth i/b Mr. Tushar Goradia for Plaintiff in Suit No.151 of 2025 and *for Defendant No.1 in Suit No.143 of 2025.*

Mr. Mayur Khandeparkar with Mr. Vikramjeet Garewal, Mr. Vinayak Pandit and Mr. Sufyaan Mansuri i/b Mr. Ajinkya M. Udane *for the Applicant/Plaintiff in Suit No.143 of 2025 and for Defendant No.2 in Suit No.151 of 2025.*

Mr. G.O. Giri with Mr. Rohit Gaikwad i/b Ms. Komal R. Punjabi *for Defendant Nos.3 and 4/MCGM in both Suits.*

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 14 OCTOBER 2025.
PRONOUNCED ON : 4 NOVEMBER 2025.

J U D G M E N T :

1. These are cross Suits filed by the Developer and by the Federation of housing societies involving dispute about conveyance of land in the common layout and Developer's right to carry out further construction therein. Suit No.151 of 2025 is filed by the Developer-Acme Enterprises (**Developer**) *inter alia* challenging the Competent Authority's order dated 26 November 2019 granting unilateral deemed conveyance conveying the entire land in the layout admeasuring 18,602.20 sq. mtrs. in favour of Neelam Nagar Building Nos.11A to 11J Co-operative Housing Societies' Association Limited (**Federation**).

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The registered deed of unilateral deemed conveyance dated 26 June 2023 is also under challenge. The Developer-Acme has sought a declaration that it is entitled to complete development on the suit plot at least to the extent of Plot D-1 admeasuring 3,200 sq.mtrs.

2. On the other hand, the Federation has filed Suit No.143 of 2025 seeking permanent injunction against Developer-Acme from utilizing any FSI arising out of conveyed layout land admeasuring 18,602.20 sq.mtrs. including D-1 plot admeasuring 3,200 sq.mtrs. The Federation has also prayed for removal of construction already erected by the Developer-Acme. The Suit filed by Federation is essentially to prevent the Developer-Acme from constructing any additional building contrary to the disclosure made to the plot purchasers under Sections 7 and 7A of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (**MOFA**).

3. In their respective Suits, the Developer-Acme and Federation have filed the present Interim Applications seeking temporary injunction against each other. In Interim Application No.4859 of 2025, Developer-Acme has sought stay of Stop-Work Notice dated 6 June 2023 issued by Defendant No.20- Municipal Corporation of Greater Mumbai (**MCGM**). The Developer has also sought temporary injunction to restrain the Federation from obstructing development of the suit plot, particularly construction of Building No.1 in accordance with plans sanctioned by MCGM. The Developer has also sought stay of deed of deemed conveyance dated 26 June 2023.

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4. In Interim Application (L) No.16204 of 2024, the Federation has sought temporary injunction against the Developer from carrying out any further construction on the suit plot or from utilizing any form of FSI on any portion of conveyed land admeasuring 18,602.20 sq.mtrs. or any portion of Plot 'D-1' admeasuring 3,200 sq.mtrs. The Federation has also sought a temporary injunction against the Municipal Corporation from sanctioning any plans for carrying out any construction over the suit plot.

5. Thus, in the cross Suits filed by the Developer and the Federation, issues arise relating to entitlement of the Federation for conveyance of entire portion of land admeasuring 18,602.20 sq.mtrs. in respect of Plot 'D' and right of the Developer to carry out any further construction based on unutilized FSI in respect of the said conveyed land admeasuring 18,602.20 sq.mtrs. Thus, what needs to be decided in Developer's Suit is whether any portion of land of Plot 'D' needs to be excluded from conveyance granted to the Federation. According to the Developer, it is entitled to construct the sanctioned building at least on the land admeasuring 3,200 sq.mtrs. out of total area of 18,602.20 sq.mtrs. The Developer wants to complete the construction of Building No.1, work of which is directed to be stopped by the MCGM on account of the entire land admeasuring 18,602.20 sq.mtrs. being conveyed in favour of the Federation. The Federation on the other hand believes that it has become owner of entire land admeasuring 18,602.20 sq.mtrs. and that therefore, the Developer cannot carry out any construction in any part of the said land. This is the broad controversy involved in these cross Suits.

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FACTS

6. The Developer-Acme claims development rights in respect of a larger plot of land admeasuring 77,823 sq.mtrs. in Mulund (East), Mumbai. The larger plot is divided into two parts – layout-1 admeasuring 28,502 sq.mtrs. and layout-2 admeasuring 49,321 sq.mtrs.. Layout-2 is further sub-divided into Plot Nos. A, B, C, D, E and F. Plot 'D' is at the heart of controversy between the parties which used to admeasure 21,102 sq.mtrs..

7. Though the gross plot area of Plot D was 21,102 sq. mtrs., 15 % area was deducted for Recreational Ground (RG), leaving net area of 18,311.87 sq.mtrs. The Developer got the plans approved for Plot 'D' from MCGM on 11 May 1991 for construction of two buildings. Building No.1 was to be a tower building having Wings A, B, and C of stilt plus 17 floors having total built-up area of 7,166.70 sq.mtrs. Building No.2 was to be constructed with Wings A to J of ground plus 7 floors having total built-up area of 13,830.73 sq.mtrs. According to the Developer, the total built-up area sanctioned for Building Nos.1 and 2 was 21,070 sq.mtrs. comprising of 18,311 sq.mtrs. by using FSI 1.00 from Plot 'D' and an additional 2,758 sq.mtrs. of DP Road FSI by transfer from other plots and added on to plot 'D'. The Developer had published brochures showing Building No.1 as a tower building with Wings A, B and C and a smaller Building No.2 with Wings A to J. The construction of Building No.2 was undertaken first and MOFA Agreements were executed with flat purchasers of Building No.2. According to the Developer, the sanctioned plan of 11 May 1991 was attached to the MOFA Agreements, thereby making a disclosure that Building No.1 would be

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constructed using FSI of 7,166.70 sq.mtrs.. The Developer also undertook construction of Building No.1 for which Commencement Certificate (CC) was issued on 16 July 1996 for construction upto 14 floors. In the meantime, construction of Building No.2 (Wings A to J) was complete by 16 April 2004, and Occupancy Certificate (OC) was issued by the MCGM. The final OC plan dated 16 April 2004 showed area of Plot 'D' as 18,602.2 sq.mtrs. as from the total area of Plot D, land admeasuring 1,543 sq.mtrs. was separated for construction of Welfare Center and Dispensary and the segregated land was given Plot No. 'E'. This is how the total plot area of Plot 'D' remained only 18,602.20 sq.mtrs. and land admeasuring 1,543 sq.mtrs. became part of Plot 'E'. According to the Developer, even the OC plan dated 16 April 2004 showed proposed built-up area of 6,842.82 sq.mtrs. in respect of Building No.1 and consumed built-up area of 13,842.86 sq.mtrs. for Building No.2 (Wings A to J).

8. In 2005, the Developer got the revised plans sanctioned from the Municipal Corporation in respect of Plot 'D' on 31 August 2005 and transferred permissible built-up area of 5,000 sq.mtrs. from Plot 'D' to Plot 'A' thereby reducing the admissible built-up area for Building No.1 from 6,842.82 sq.mtrs. to 1,842.82 sq.mtrs. By that time, Building No.2 was already complete with consumed built-up area of 13,842.86 sq.mtrs. However, the Developer opted for construction of Building No. 1 with built up area of only 1,628.78 sq.mtrs in the sanctioned plan of 31 August 2005.

9. In 2012, the Societies formed by flat purchasers of Building No.2 (Wings A to J) formed and registered the Federation. In 2014, the Developer further got approved revised plans for Plot 'D'

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from MCGM. This time it applied for sub-division of Plot 'D' into Plot 'D1' (for Building No.1) admeasuring 3,200 sq.mtrs. and Plot D2 (for Building No.2, Wings A to J) admeasuring 15,402 sq.mtrs. The plan also provided for addition of 868.45 sq.mtrs. of transferred DP Road FSI from Plot 'C' to Plot 'D'. The sub-division was however made conditional on certain conditions. According to the Federation, the said conditions were not fulfilled and that therefore, the sub-division has actually not taken place and that plot 'D' continues to remain as one contiguous piece of land admeasuring 18,602.2 sq.mtrs..

10. On 27 November 2018, Federation made an application before Competent Authority for unilateral deemed conveyance of entire land admeasuring 18,602.20 sq.mtrs. of Plot 'D'. The Developer opposed the application on the ground that it was yet to complete development of the Plot. It opposed conveyance of any portion of land in favour of the Federation till completion of development on the entire Plot. Alternatively, it pleaded that the Federation could only receive conveyance of land admeasuring 15,402 sq.mtrs. based on 2014 sub-division. On 26 November 2019, the Competent Authority passed order granting unilateral deemed conveyance of the entire Plot 'D' admeasuring 18,602.2 sq.mtrs. in favour of the Federation. The Developer filed Writ Petition No.5230 of 2020 challenging order of deemed conveyance dated 26 November 2019. Initially, this Court granted interim order on 15 October 2020 restraining any steps being taken on behalf of order of deemed conveyance. On the basis of stay so granted by the Court, the MCGM revalidated the CC for Building No.1 and according to Developer, it continued construction of Building No.1. The Developer claims that in 2023, it got modified plans for Building No.1 with Wing B of 9 floors and Wing C of 10

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floors having built up area of 3,128 sq.mtrs. On 5 June 2023, this Court dismissed Developer's Writ Petition granting liberty to file a Suit challenging conveyance of entire plot admeasuring 18,602.2 sq.mtrs. in favour of the Federation. On 6 June 2023, MCGM issued Stop-Work Notice in respect of construction of Building No.1.

11. In above background, the Developer has filed Suit No.151 of 2025 challenging conveyance of land admeasuring 18,602.2 sq.mtrs. in favour of the Federation and for restraining the Federation from interfering with completion of Building No.1

12. During pendency of the Suit, the deed of unilateral conveyance in respect of land admeasuring 18,602.2 sq.mtrs. was executed and registered in the name of the Federation on 26 June 2023. The Developer has amended the Plaint by incorporating a challenge to the deed of unilateral conveyance. On 7 August 2023, this Court rejected Plaintiff's prayer for *ad interim* injunction. The Developer filed Appeal (L) No.23236 of 2023 challenging order dated 7 August 2023 in which stay was granted to Stop Work Notice issued by MCGM. However, the Appeal was subsequently dismissed on 10 December 2024 directing decision of present Interim Application No.4859 of 2025 on its own merits. Developer filed Special Leave Petition (C) No.2081-2083 of 2025 before the Supreme Court which was dismissed on 17 February 2025 requesting this Court to expedite decision of the Interim Application for temporary injunction.

13. The Federation, in the meantime, has filed its own Suit No.143 of 2025 seeking injunction against the Developer from carrying out any construction on conveyed land admeasuring 18,602.2 sq.mtrs.

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including portion of land admeasuring 3,200 sq.mtrs. or from utilizing any FSI arising out of conveyed land. The Federation has filed Interim Application (L) No.16204 of 2024 for temporary injunction.

14. Both Interim Application Nos. 4859 of 2025 filed by Developer in its Suit No.151 of 2025 and Interim Application (L) No.16204 of 2024 filed in Federation's Suit No.143 of 2025 are taken up for hearing and disposal.

SUBMISSIONS

15. Mr. Chinoy would submit that conveyance of the entire land in the layout to the Federation by the Competent Authority is *ex facie* illegal. That the Competent Authority has grossly erred in ignoring the position that Developer's construction of Building No.1, disclosed in MOFA agreements to flat purchasers of built-up area of 7166.70 sq.mtrs., is still underway. That conveyance of entire land admeasuring 18,602 sq.mtrs. negates the Developer's right to complete construction of Building No.1. That such illegal conveyance has resulted in issuance of Stop Work Notice by MCGM as ownership of the whole Plot has been illegally granted to the Federation. That there is a specific disclosure in approved plans dated 11 May 1991 to the flat purchasers of Building No. 2 that Building No.1 with built up area of 7166.70 sq.mtrs. would be constructed in the layout and that therefore Developer is entitled to construct Building No. 1 and conveyance in favour of the Federation could not have been granted till construction of the said building is completed. That MOFA agreements envisage conveyance of entire land in favour of Federation after construction of the entire layout is complete. In support of his contention that

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requirement of execution of conveyance would arise only after completion of construction of Building No.1., Mr. Chinoy has relied upon judgment of the Apex Court in ***Jayantilal Investments V/s. Madhuvihar Coop. Housing Society and Ors.***[1]

16. While asserting the submission that the time for execution of conveyance does not arise till completion of disclosed buildings, Mr. Chinoy would alternatively submit that various judgments of this court have evolved a equitable mechanism of conveyance of part of the land in favour of the buildings which are already constructed. However, even this principle cannot come in the way of the Developer completing balance disclosed construction in the layout. That the correct solution in such case would be to convey adequate land in favour of Federation for sustenance of their existing building as well as for proposed development under the current DCPR by excluding from conveyance and by retaining land for completion of construction of remaining sanctioned building(s). He would submit that a subdivision has been approved by MCGM in 2014 by dividing Plot No. D into land admeasuring 3200 sq.mtrs (including RG 480 sq.mtrs) for Building No.1 and land admeasuring 15,402 sq.mtrs (including RG 2685 sq.mtrs) for Building No.2. He would therefore alternatively submit that even if this Court arrives at a conclusion that conveyance of some land can be sustained in favour of Federation, land admeasuring 15,402 sq.mtrs can be carved out for the Federation leaving balance portion of 3,200 sq.mtrs. for completion of construction of Building No.1. He would submit that such arrangement can be made on equitable basis during pendency of the Suit. He would further submit that conveyance of land admeasuring

1 (2007) 9 SCC 220

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15,402 sq.mtrs to the Federation is not only more than adequate to support its existing constructed area of 13,842.86 sq.mtrs. but it can also reconstruct its building by utilising built-up area upto 48,217.97 sq.mtrs. under the DCPR-2034 i.e. 3.5 times the existing built-up area. That therefore, no loss or prejudice would be caused to the Federation by carving out 3200 sq.mtrs. land for construction of Building No.1 by the Developer. That though the Developer would be in a position to construct Building No.1 with built-up area in excess of 11,000 sq.mtrs., in view of the disclosure made in approved plan dated 11 May 1991, the Developer would restrict construction of Building No.1 to the extent of built-up area of 7166.70 sq.mtrs. and 17 floors.

17. Mr. Chinoy would further submit that for the purpose of disclosure, what is relevant is the approved plan dated 11 May 1991, and subsequent modifications made by the Developer in the years 2005 or 2014 is of little consequence for the purpose of application of provisions of Sections 3, 4, 7(1) and 7-A of the MOFA. That therefore mere transfer of sanctioned built-up area of 5000 sq. mtrs from Plot D to Plot A in 2005 plan cannot be a reason for not permitting the developer from constructing Building No. 1 up to the disclosed built-up area of 7166.70 sq. mts.

18. Mr. Chinoy would therefore submit that if this Court is inclined to retain conveyance of some land in favour of the Federation, the Developer be permitted to construct Building No.1 comprising of three Wings of Stilt + 17 floors with built-up area of 7166.70 sq.mtrs. on Plot D1 admeasuring 3200 sq.mtrs as per the demarcation in sanctioned subdivided plan on 11 May 1991.

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19. Mr. Khandeparkar, the learned counsel appearing for the Federation would oppose the Suit filed by the Developer and pray for injunction in the Suit filed by the Federation. He would submit that there is no illegality in the order dated 26 November 2019 passed by the Competent Authority. That the order has been passed in tune with covenants of MOFA agreements executed with flat purchasers of Building No. 2, which provides for conveyance of entire land admeasuring 18,602.20 sq.mtrs. in favour of the Federation. That there is no clause in the MOFA agreement which permits the Developer to carve out any portion and/or reduce the total area of 18,602.20 sq.mtrs. from conveyance. That the 'land cutting' concept provided for in Government Resolution dated 22 June 2018 arises only in a situation where MOFA agreement is ambiguous in relation to area for which conveyance is to be granted. That in the present case, MOFA agreement clearly envisages conveyance of entire land admeasuring 18,602 sq.mtrs. That there is no rationale or reasoning for arriving at figure of 3200 sq.mtrs. of plot area to be carved out for Developer for proposed development.

20. Mr. Khandeparkar would submit that the 'land cutting' methodology provided in GR dated 22 June 2018 cannot be attracted in the present case as a Federation of 10 Societies has already been formed in the layout and clause 33 of MOFA agreement provides for flat purchasers in Building No.1 eventually becoming members of the Federation. Carving out land admeasuring 3200 sq. mtrs in the layout for Developer would render the Suit filed by Federation infructuous. That carving out such area would be contrary to the covenants of MOFA agreement and would cause violation to rights of Federation flowing out of MOFA agreement. That there is no physical

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demarcation of the land at the site for the purpose of carving out area of 3200 sq.mtrs. That such carving out would require survey and partition of the Suit, which relief cannot be granted at interim stage.

21. Mr. Khandeparkar would further submit that the Developer is not entitled to construct any building on Plot No. D as it has abandoned construction of the building. That IOD for Building No.1 was issued on 22 April 1982, and Commencement Certificate upto plinth level was approved on 22 April 1982 and that the same lapsed on 16 July 1997. That Developer constructed only plinth and thereafter abandoned the construction and allowed the permission to lapse. That Developer suppressed letter dated 1 March 2013 addressed by it to Tahsildar for recovery of NA charges in respect of the entire plot admeasuring 18,602.20 sq.mtrs from Federation, which has been maintaining the entire land.

22. Alternatively, Mr. Khandeparkar would submit that even if right of Developer to complete construction of Building No.1 is recognised, it cannot put up construction in excess of built up area admeasuring 1628 sq.mtrs. That though the original proposal of Building No.1 was for 6,842.83 sq.mtrs., Developer shifted FSI of 5000 sq.mtrs to Plot No. A due to financial constraints and reduced the proposed built-up area of Building No.1 to 1628.28 sq.mtrs. through approved plan dated 2 September 2005. That the Plaintiff has specifically averred in the Plaint that it does not intend to utilise additional inherent FSI, which has become available on account of change in law /FSI norm. That the Municipal Commissioner has apparently certified amended plan on 15 March 2023 on the basis of FSI norms in DCPR 2034. That Developer is proposing to construct

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Building No.1 contrary to the specific statement made in the Plaint. That therefore Plaintiff cannot be permitted to construct Building No. 1 exceeding built-up area of 1628.28 sq.mtrs.

23. Mr. Khandeparkar would submit that Developer has not produced on record any sanctioned plan in respect of Building No.1. That present structure already erected by the Developer exceeds 1628.28 sq.mtrs which in fact demonstrates use of additional/ outside FSI due to change in law. That therefore structure already erected by Developer is illegal and without permission and this conduct needs to be noted while considering Developer's entitlement to temporary injunction. That MCGM had filed affidavit confirming non-issuance of CC in respect of Building No.1.

24. Mr. Khandeparkar would press into service the principle of vesting of FSI by contending that any FSI becoming available due to change in law /FSI norms would vest in the Federation. In support, he would rely upon judgments of this Court in ***Ravindra Mutneja and Ors. V/s. Bhavan Corporation and Ors.***[2]***, Vidhi Builders Private Ltd. V/s. Arenbee Media Consultants Limited***[3] and ***Noopur Developers V/s. Himanshu V. Ganatra*** [4]. That in MOFA agreement, FSI space has been left blank and there is no disclosure in respect of balance FSI to be consumed which aspect is being attempted to be misused by the Developer. That since MOFA agreement is executed prior to 12 March 1997 unamended clause 5 of Form V of MOFA Rules would apply. In support, he would rely upon judgment of this Court in ***Madhuvihar Co-Operative Housing Society, Mumbai and others vs. Jayantilal Investments, Mumbai and others***[5]***.***

2 2003 (5) BomCR 695
3 2012 SCC OnLine Bom 219
4 (2010) 7 MhLJ 694
5 2011 1 MhLJ 641

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25. Lastly, Mr. Khandeparkar would submit that the Federation has already secured conveyance of 18,602.20 sq.mtrs land and grant of any interim order in favour of Developer would cause severe prejudice to the members of 10 Societies of the Federation. That there are no flat purchasers in Building No.1 and therefore no loss or prejudice would be caused to the Developer if *status-quo* is maintained. That the Developer has virtually abandoned right to construct Building No. 1 for over 30 years and no prejudice would be caused if the Developer does not construct Building No. 1 during pendency of the Suit. Mr. Khandeparkar would accordingly pray for rejecting the Application filed by Developer in the Suit and for granting injunction in favour of Federation.

REASONS AND ANALYSIS

26. The Developer has challenged order of deemed conveyance dated 26 November 2019 as well as registered deed of conveyance dated 26 June 2023 conveying entire land admeasuring 18,602.20 sq.mtrs. in Plot D in favour of the Federation. According to the Developer, the entire Plot 'D' admeasuring 18,602.20 sq.mtrs. cannot be conveyed in favour of the Federation as it is yet to complete construction of Building No.1. The contention of the Developer is therefore that till completion of construction of Building No.1, no conveyance could be granted in favour of the Federation. Alternatively, it is Developer's case that if Federation's right of conveyance is to be upheld during pendency of construction of Building No.1, the

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Federation is entitled to conveyance of only land admeasuring 15,402 sq.mtrs. leaving balance portion of land admeasuring 3,200 sq.mtrs. in their ownership for the purpose of completion of construction of Building No. 1.

STATUTORY SCHEME OF MOFA

27. The conveyance in favour of Federation has taken place on account of the order of deemed conveyance dated 26 November 2019 passed by the Competent Authority in exercise of powers under sub-sections (3) and (4) of Section 11 of MOFA. Since the order of deemed conveyance and Deed registered in pursuance thereof are subject matter of challenge in Developer's Suit and since the Federation is seeking permanent injunction against the Developer from constructing Building No.1 contrary to the disclosures made to flat purchasers of Building No.2, it would be necessary to refer to the relevant provisions of MOFA. Sections 3, 4, 7, 7A, 10 and 11 of MOFA are relevant and the same are reproduced below:

> **3. General liabilities of promoter.—**
>
> (1) Notwithstanding anything in any other law, a promoter who intends to construct or constructs a block or building of flats, all or some of which are to be taken or are taken on ownership basis, shall in all transactions with persons intending to take or taking one or more of such flats, be liable to give or produce, or cause to be given or produced, the information and the documents hereinafter in this section mentioned.
>
> (2) A promoter, who constructs or intends to construct such block or building of flats, shall—
>
> (a) make full and true disclosure of the nature of his title to the land on which the flats are constructed, or are to be constructed; such title to the land as aforesaid having been duly certified by an Attorney-at-law, or by an Advocate of not less than three years standing, and having been duly entered

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in the Property card or extract of Village Forms VI or VII and XII or any other relevant revenue record;

(b) make full and true disclosure of all encumbrances on such land, including any right, title, interest or claim of any party in or over such land;

(c) give inspection in seven days" notice or demand, of the plans and specifications of the building built or to be built on the land; such plans and specifications having been approved by the local authority which he is required so to do under any law for the time being in force;

(d) disclose the nature of fixtures, fittings and amenities (including the provision for one or more lifts) provided or to be provided;

(e) disclose on reasonable notice or demand if the promoter is himself the builder, the prescribed particulars as respects the design and the materials to be used in the construction of the buildings, and if the promoter is not himself the builder disclose, on such notice or demand, all agreements (and where there is no written agreement the details of all agreements) entered into by him with the architects and contractors regarding the design, materials and construction of the building;

(f) specify in writing the date by which possession of the flat is to be handed over (and he shall hand over such possession accordingly);

(g) prepare and maintain a list of flats with their numbers already taken or agreed to be taken, and the names and addresses of the parties, and the price charged or agreed to be charged therefor, and the terms and conditions if any on which the flats are taken or agreed to be taken;

(h) state in writing, the precise nature of the organisation of persons to be constituted and to which title is to be passed, and the terms and conditions governing such organisation of persons, who have taken or are to take the flats;

(i) not allow persons to enter into possession until a completion certificate where such certificate is required to be given under any law, is duly given by the local authority (and no person shall take possession of a flat until such completion certificate has been duly given by the local authority);

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(j) make a full and true disclosure of all outgoings (including ground rent if any, municipal or other local taxes, taxes on income, water charges and electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any);

(k) make a full and true disclosure of such other information and documents in such manner as may be prescribed; and give on demand true copies of such of the documents referred to in any of the clauses of this sub-section as may be prescribed at a reasonable charge therefor;

(l) display or keep all the documents, plans or specifications (or copies thereof) referred to in clauses (a), (b) and (c), at the site and permit inspection thereof to persons intending to take or taking one or more flats;

(m) when the flats are advertised for sale, disclose *inter-alia* in the advertisement the following particulars, namely :—

(i) the extent of the carpet area of the flat including the area of the balconies which should be shown separately;

(ii) the price of the flat including the proportionate price of the common areas and facilities which should be shown separately, to be paid by the purchaser of flat; and the intervals at which the instalments thereof may be paid;

(iii) the nature, extent and description of the common areas and facilities; and

(iv) the nature, extent and description of limited common areas and facilities, if any;

(n) sell flats on the basis of the carpet area only:

Provided that, the promoter may separately charge for the common areas and facilities in proportion to the carpet area of the flat.

Explanation.— For the purposes of this clause, the carpet area of the flat shall include the area of the balcony of such flat.

4. Promoter before accepting advance payment or deposit to enter into agreement and agreement to be registered.—

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(1) Notwithstanding anything contained in any other law, a promoter who intends to construct or constructs a block or building of flats, all or some of which are to be taken or are taken on ownership basis, shall, before, he accepts any sum of money as advance payment or deposit, which shall not be more than 20 per cent. of the sale price enter into a written agreement for sale with each of such persons who are to take or have taken such flats, and the agreement shall be registered under the Registration Act, 1908 (XVI of 1908) (hereinafter in this section referred to as "the Registration Act") and such agreement shall be in the prescribed form.

(1A) The agreement to be prescribed and sub-section (1) shall contain *inter alia* the particulars as specified in clause (a); and to such agreement there shall be attached the copies of the documents specified in clause (b),—

(a) particulars,—

(i) if the building is to be constructed, the liability of the promoter to construct it according to the plans and specifications approved by the local authority where such approval is required under any law for the time being in force;

(ii) the date by which the possession of the flat is to be handed over to the purchaser;

(iii) the extent of the carpet area of the flat including the area of the balconies which should be shown separately;

(iv) the price of the flat including the proportionate price of the common areas and facilities which should be shown separately, to be paid by the purchaser of flat; and the intervals at which instalments thereof may be paid;

(v) the precise nature of organisation to be constituted of the persons who have taken or are to take the flats;

(vi) the nature, extent and description of limited common areas and facilities;

(vii) the nature, extent and description of limited common areas and facilities, if any;

(viii) percentage of undivided interest in the common areas and facilities appertaining to the flat agreed to be sold;

(ix) statement of the use of which the flat is intended and restriction of its use, if any;

(x) percentage of undivided interests in the limited common areas and facilities, if any, appertaining to the flat agreed to be sold;

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(b) copies of documents,—

(i) the certificate by an Attorney-at-law or Advocate under clause (a) of sub-section (2) of section 3;

(ii) Property Card or extract of village Forms VI or VII and XII or any other relevant revenue record showing the nature of the title of the promoter to the land on which the flats are constructed or are to be constructed;

(iii) the plans and specifications of the flat as approved by the concerned local authority.

(2) Any agreement for sale entered into under sub-section (1) shall be presented by the promoter or by any other person competent to do so under section 32 of the Registration Act, at the proper registration office for registration, within the time allowed under sections 23 to 26 (both inclusive) to the said Act and execution thereof shall be admitted before the registering officer by the person executing the document or his representative, assign or agent as laid down in sections 34 and 35 of the said Act also within the time aforesaid:

Provided that, where any agreement for sale is entered into, or is purported to be entered into, under sub-section (1), at any time before the commencement of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) (Amendment and Validating Provisions) Act, 1983 (Mah. V of 1984), and such agreement was not presented for registration or was presented for registration but its execution was not admitted before the registration officer by the person concerned, before the commencement of the said Act, then such document may be presented at the proper registration office for registration, and its execution may be admitted, by any of the persons concerned referred to above in this sub-section, on or before the 31st December 1984, and the registering officer shall accept such document for registration, and register it under the Registration Act, as if it were presented, and its execution was admitted, within the time laid down in the Registration Act:

Provided further that, on presenting a document for registration as aforesaid if the person executing such document or his representative, assign or agent does not appear before the registering officer and admit the execution of the document, the registering officer shall cause a summons to be issued under section 36 of the Registration Act requiring the executant to appear at the registration office, either in person or by duly authorised agent, at a time fixed in the summons. If the executant fails to appear in compliance with the summons, the execution on the document shall be deemed to be admitted by him and the registering officer may proceed to register the document accordingly. If the executant appears before the

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registering officer as required by the summons but denies execution of the document, the registering officer shall, after giving him a reasonable opportunity of being heard, if satisfied that the document has been executed by him, proceed to register the document accordingly.

7. After plans and specifications are disclosed no alterations or additions without consent of persons who have agreed to take the flats; and defects noticed within three years to be rectified.—

(1) After the plans and specifications of the building as approved by the local authority as aforesaid, are disclosed or furnished to the persons who agrees to take one or more flats, the promoter shall not make—

(i) any alteration in the structures described therein in respect of the flat or flats which are agreed to be taken, without the previous consent of that persons;

(ii) any other alterations or additions in the structure of the building without the previous consent of all the persons who have agreed to take the flats in such building.

(2) Subject to sub-section (1), the building shall be constructed and completed in accordance with the plans and specifications aforesaid; and if any defect in the building or material used, or if any unauthorized change in the construction is brought to the notice of the promoter within a period of three years from the date of handing over possession, it shall wherever possible be rectified by the promoter without further charge to the persons who have agreed to take the flats, and in other cases such person shall be entitled to receive reasonable compensation for such defect or change. Where there is a dispute as regards any defect in the building or material used, or any unauthorised change in the construction, or as to whether it is reasonably possible for the promoter to rectify any such defect or change, or as regards the amount of reasonable compensation payable in respect of any such defect or change which cannot be, or is not rectified by the promoter, the matter shall, on payment of such fee as may be prescribed, and within a period of three years from the date of handing over possession, be referred for decision,—

(i) in an urban agglomeration as defined in clause (n) of section 2 of the Urban Land (Ceiling and Regulation) Act, 1976 (33 of 1976), to such competent authority authorised by the State Government under clause (d) of section 2 of that Act, and

(ii) in any other area, to such Deputy Chief Engineer, or to such other Officer of the rank equivalent to that of Superintending Engineer in the Maharashtra Service of Engineers, of a Board established under section 18 of the Maharashtra Housing and Area Development Act, 1976 (Mah. XXVIII of 1977),

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as the State Government may, by general or special order, specify in this behalf. Such competent authority, Deputy Chief Engineer or, as the case may be, the other officer of a Board shall, after inquiry, record his decision, which shall be final.

7A. Removal of doubt.—

For the removal of doubt, it is hereby declared that clause (ii) of sub-section (1) of section 7 having been retrospectively substituted by clause (a) of section 6 of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) (Amendment) Act, 1986 (Mah. XXXVI of 1986) (hereinafter in this section referred to as "the Amendment Act"), it shall be deemed to be effective as if the said clause (ii) as so substituted has been in force at all material times; and the expression "or construct any additional structures" in clause (ii) of sub-section (1) of section 7 as it existed before the commencement of the Amendment Act and the expression "constructed and completed in accordance with the plans and specifications as aforesaid" and "any unauthorised change in the construction" in sub-section (2) of section 7 shall, notwithstanding anything contained in this Act, or in any Agreement, or in any judgement, decree or order of any Court, be deemed never to apply or to have applied in respect of the construction of any other additional building or structures constructed or to be constructed under a scheme or project of development in the layout after obtaining the approval of a local authority in accordance with the building rules or building bye-laws or Development Control Rules made under any law for the time being in force.

10. Promoter to take steps for formation of co-operative society or company.—

(1) As soon as a minimum number of persons required to form a Co-operative society or a company have taken flats, the promoter shall within the prescribed period submit an application to the Registrar for registration of the organisation of persons who take the flats as Co-operative society or, as the case may be, as a company; and the promoter shall join, in respect of the flats which have not been taken, in such application for membership of a Co-operative society or as the case may be, of a company. Nothing in this section shall affect the right of the promoter to dispose of the remaining flats in accordance with the provisions of this Act:

Provided that, if the promoter fails within the prescribed period to submit an application to the Registrar for registration of society in the

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manner provided in the Maharashtra Co-operative Societies Act, 1960 (Mah. XXIV of 1961), the Competent Authority may, upon receiving an application from the persons who have taken flats from the said promoter, direct the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar concerned, to register the society:

Provided further that, no such direction to register any society under the preceding proviso shall be given to the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar, by the Competent Authority without first verifying authenticity of the applicants, request and giving the concerned promoter a reasonable opportunity of being heard.

(2) If any property consisting of building is constructed or to be constructed and the promoter submits such property to the provisions of the Maharashtra Apartment Ownership Act, 1970 (Mah. XV of 1971), by executing and registering a Declaration as provided by that Act then the promoter shall inform the Registrar as defined in the Maharashtra Co-operative Societies Act, 1960 (Mah. XXIV of 1961), accordingly; and in such cases, it shall not be lawful to form any co-operative society or company.

[***]

11. Promoter to convey title, etc., and execute documents, according to agreement.—

(1) A promoter shall take all necessary steps to complete his title and convey to the organisation of persons, who take flats, which is registered either as a co-operative society or as a company as aforesaid or to an association of flat takers [or apartment owners], his right, title and interest in the land and building, and execute all relevant documents therefor in accordance with the agreement executed under section 4 and if no period for the execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period and also deliver all documents of title relating to the property which may be in his possession or power.

(2) It shall be the duty of the promoter to file with the Competent Authority, within the prescribed period, a copy of the conveyance executed by him under sub-section (1).

(3) If the promoter fails to execute the conveyance in favour of the Co-operative society formed under section 10 or, as the case may be, the Company or the association of apartment owners, as provided by sub-section (1), within the prescribed period, the members of such Co-operative society or, as the case may be, the Company or the association of apartment owners may, make an application, in writing, to the concerned

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Competent Authority accompanied by the true copies of the registered agreements for sale, executed with the promoter by each individual member of the society or the Company or the association, who have purchased the flats and all other relevant documents (including the occupation certificate, if any), for issuing a certificate that such society, or as the case may be, Company or association, is entitled to have an unilateral deemed conveyance, executed in their favour and to have it registered.

(4) The Competent Authority, on receiving such application, within reasonable time and in any case not later than six months, after making such enquiry as deemed necessary and after verifying the authenticity of the documents submitted and after giving the promoter a reasonable opportunity of being heard, on being satisfied that it is a fit case for issuing such certificate, shall issue a certificate to the Sub-Registrar or any other appropriate Registration Officer under the Registration Act, 1908 (16 of 1908), certifying that it is a fit case for enforcing unilateral execution, of conveyance deed conveying the right, title and interest of the promoter in the land and building in favour of the applicant, as deemed conveyance.

(5) On submission by such society or as the case may be, the Company or the association of apartment owners, to the Sub-Registrar or the concerned appropriate Registration Officer appointed under the Registration Act, 1908 (16 of 1908), the certificate issued by the Competent Authority alongwith the unilateral instrument of conveyance, the Sub-Registrar or the concerned appropriate registration Officer shall, notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), issue summons to the promoter to show cause why, such unilateral instrument should not be registered as „deemed conveyance" and after giving the promoter and the applicants a reasonable opportunity of being heard, may on being satisfied that it was fit case for unilateral conveyance, register that instrument as, 'deemed conveyance'.

28. Section 3 of MOFA thus enjoins a duty on the promoter to make true and full disclosures of matters enumerated in the Section. Section 4 mandates execution and registration of agreement with flat purchasers in the format prescribed. Section 7 of MOFA prohibits making additions or alterations in the flat or building after disclosure of plans. Section 7A seeks to clarify applicability of Section 7 in respect of an additional building in the layout. Section 10 of MOFA enjoins a duty on the promoter to form a society or company or

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association of apartments. Section 11 of the Act mandates conveyance of title in the land and building by the promoter in favour of society, company or association of apartments.

ORDER OF DEEMED CONVEYANCE OR INSTRUMENT REGISTERED IN PURSUANCE THEREOF NOT CONCLUSIVE PROOF OF TITLE

29. Section 11 of MOFA imposes a statutory duty on the promoter to convey his right, title and interest in the land and the building in favour of the collective body formed by the flat purchasers either within the time period agreed in the agreement or within the time prescribed. In the event, the promoter fails to discharge his statutory duty to convey the land and building in favour of collective body of flat purchasers within the prescribed time limit, an application can be made to the Competent Authority under section 11(3) for issuance of certificate of unilateral deemed conveyance and the competent authority, after conducting a summary inquiry, can pass the order of deemed conveyance. Such certificate of unilateral deemed conveyance needs to be registered under Section 11(5) of the Act, which then has the effect of the collective body of flat purchasers acquiring title in respect of the land and the building, even though the promoter fails to cooperate in such conveyance. Thus, what the Competent Authority does under sub-sections (3) and (4) of Section 11 of MOFA is to do what a promoter is required to do under sub-sections (1) and (2). Thus, if the promoter fails in his statutory obligation to convey the land in favour of society or collective body of flat purchasers under Section 11(1) of MOFA, the Competent Authority steps into the shoes of the promoter and conveys in favour of the society, the title in the land and the building, which the promoter

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is obliged to convey as per the agreement executed with the flat purchasers under Section 4 of MOFA. This is broadly the concept of unilateral deemed conveyance aimed essentially at preventing the mischief by the promoters/developers in not conveying land and building in favour of collective body of flat purchasers for years together.

30. However, though deed of conveyance executed and registered under Section 11(5) of MOFA in pursuance of order of unilateral deemed conveyance passed by the Component Authority has the effect of vesting title in the name of the society, it is a well-settled position of law that the enquiry conducted by the Competent Authority under Section 11 of the MOFA is summary in nature. The Competent Authority is neither equipped to decide nor can decide complicated issues of title between contesting parties. It is therefore a well-recognised principle that a party aggrieved by conveyance of land by the Competent Authority can file a civil suit seeking a declaration of title in the land so conveyed and the civil court can determine the issue of title and make a declaration of title contrary to the order of the component authority. In its recent judgment in ***Arunkumar H. Shah HUF vs Avon Arcade Premises Co-operative Society Ltd & Ors.***[6] the Apex Court has concluded in paragraph 37 as under:

> "37. Our conclusions on the interpretation of subsections (4) and (5) of Section 11 of the MOFA are as under:
>
> > i. It is no doubt true that quasi-judicial powers have been conferred on the competent authority while dealing with applications under Section 11(3) of the MOFA. However, proceedings before the competent authority under Section 11(3) are of a summary nature, as can be seen from the MOFA Rules. Therefore, the competent authority, while passing the final order, must record reasons;

6 Supreme Court - Civil Appeal No. 5377 of 2025, decided on 21 April 2025.

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ii. The competent authority, while following the summary procedure, cannot conclusively and finally decide the question of title. Therefore, notwithstanding the order under sub-section (4) of Section 11, the aggrieved parties can always maintain a civil suit for establishing their rights;

iii. The provisions of Section 11 are for the benefit of the flat purchasers. In writ jurisdiction, the Court should not interfere with the order granting deemed conveyance unless the same is manifestly illegal. The writ court should generally be slow in interfering with such orders. The reason is that, notwithstanding the order under Section 11(4), the remedy of aggrieved parties to file a civil suit remains open; and

iv. The registering officer has no power to sit in appeal over the order of the competent authority while exercising the power under Section 11(5). He can refuse registration only on the grounds indicated in paragraph 23 above and not beyond. Thus, the scope of the powers conferred on the registering officer is limited."

(emphasis added)

31. Both the sides, therefore, do not dispute the position that this Court can decide in Developer's Suit No. 151 of 2025 the exact land entitlement of the Federation notwithstanding passing of order dated 26 November 2019 by the Competent Authority. This is a reason why this Court, while dismissing Writ Petition No.5230 of 2022, directed in paragraphs 30, 31, 38 and 39 as under:

"**30.** From the above statutory provisions and enunciation, the position which emerges can be summarized as under. The authority to grant deemed conveyance is conditioned and controlled by the primary obligation of the promoter to convey to the organization of flat purchasers right, title and interest in the land and buildings, in accordance with the agreement executed under Section 4. Competent authority cannot convey more than what the promoter had agreed to convey under the agreement executed under Section 4. What competent authority is thus required to consider is, the extent of the obligation incurred by the promoter, whether the obligation to execute the conveyance became enforceable and whether the promoter committed default in, or otherwise disabled himself from, executing the conveyance.

31. The enquiry is thus of limited nature. The competent authority cannot delve into the aspects of title. Nor the finding of the competent authority precludes a party from agitating the grievance as to the entitlement of the organization of purchasers to have the conveyance,

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before the Civil Court. The remit of enquiry by the competent authority is, thus, whether the conditions stipulated for enforcement of the obligation to execute the conveyance have been satisfied and, if yes, order an unilateral deemed conveyance.

38. I, therefore, find substance in the submission of Mr. Khandeparkar that the resistance sought to be put-forth on behalf of the petitioners to the execution of conveyance in favour of petitioner No.2 Society is in the realm of dispute as to title and can legitimately form a subject matter of a substantive suit. In a long line of decisions, adverted to above, right from Mazda Construction (supra) it has been reiterated that in exercise of writ jurisdiction and under the garb of examining the legality, validity and correctness of an order of deemed conveyance this Court cannot examine issues which essentially partake the character of title dispute and complicated question as to entitlement to have further development rights. The proper remedy for the aggrieved party is to institute a substantive suit before the competent Civil Court. In my view, the facts of the instant case do not warrant a different approach. The petition thus deserves to be dismissed.

39. Hence, the following order:

: O R D E R :

(i) The petition stands dismissed.
(ii) The petitioners shall, however, have the liberty to institute a substantive suit, if not already instituted, to agitate their claim of title to allegedly carved out Plot "D1" and consequently assail the entitlement of respondent No.2 to have conveyance of the entire Plot "D" admeasuring 18,602.20 sq. Mtrs.
(iii) In the event such a suit is instituted or has already been instituted, the same shall be decided on its own merits and in accordance with law without being influenced by any of the observations made hereinabove, which are confined to test the legality, propriety and correctness of the impugned order.
(iv) Subject to the aforesaid clarification, rule stands discharged.
(v) In the circumstances, there shall be no order as to costs."

32. Thus, in Developer's Suit No.151 of 2025, the main enquiry would be about exact land entitlement of the Federation. This Court would decide whether the Federation is entitled for conveyance of entire land admeasuring 18,602.2 sq. mtrs. or whether it is entitled to conveyance of only 15,402 sq. mtrs. of land leaving area of 3,200 sq. mtrs. for the Developer for carrying out construction of Building No.1.

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On the other hand, Suit No.143 of 2025 filed by the Federation is essentially premised on conveyance of land admeasuring 18,602.2 sq. mtrs. vide order of deemed conveyance and registered deed of conveyance. The Federation believes that it is the owner of entire land forming part of Plot D admeasuring 18,602.2 sq.mtrs. and that therefore the Developer cannot carry out any construction on any portion thereof. The Federation's Suit is also premised on provisions of Sections 7 and 7A of MOFA to restrain the Developer from carrying out any construction without the consent of the Society.

33. In my view, once the dispute relating to land entitlement of the Federation is decided, the same would also provide an answer to the other issue of Developer's entitlement to complete construction of Building No.1 as well as the extent to which Building No.1 can be constructed.

WHETHER CONVEYANCE CAN BE GRANTED BEFORE COMPLETION OF ENTIRE LAYOUT DEVELOPMENT?

34. It is the case of the Developer that conveyance of the land cannot be granted till entire development of the land is complete. It is contended that the clause 39 of the MOFA agreements contemplated conveyance of land only after all the buildings in the layout are constructed. On the other hand, it is the case of the Federation that the entire land admeasuring 18,602.2 sq.mtrs. has rightly been conveyed in its favour in accordance with clause 39 of the MOFA Agreements executed with flat purchasers of Building No.2, which reads thus:

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> "39. Subject to what is stated hereinbefore and hereinafter the Promoters shall after the said building is completely ready and fit for occupation and after the said society or Limited Company or Condominium of Apartments as aforesaid is registered or formed and only after all the premises in the said building have been sold and disposed off by the Promoters and the Promoters have received all the dues payable to them under the terms of their respective Agreements for Sale with various purchasers of various premises execute and/or cause the owners to execute in favour of the Co-operative Society or the Limited Company or the Condominium of Apartments or any body or organization to be formed of the purchaser/s of the various premises in the said building a Conveyance or a long lease for a period of 99 years for annual rent of Re.1/- in respect of the said property described hereinabove and the said building. If the Promoters shall have created any encumbrance on the said smaller property and/or construction work thereon for obtaining construction loan in favour of any party or financial institution then on or before the execution of the said Conveyance or a long lease as aforesaid, the Promoters shall clear such mortgage or encumbrance. It is expressly agreed that the right to transfer the said smaller property or the building or wings thereof in which the said premises are agreed to be allotted with be exclusively at the option of the Promoters and the purchaser/s shall have no right in respect thereof."

35. In support of the contention that conveyance cannot be granted till completion of all buildings in the layout, the Developer has relied on judgment of the Apex Court in ***Jayantilal Investments*** (supra) in which it is held in paragraph 20 as under:-

> 20. In the light of what is stated above, the question which needs to be examined in the present case is whether this case falls within the ambit of amended Section 7(1)(ii) or whether it falls within the ambit of Section 7A of MOFA. As stated above, under Section 7(1) after the lay out plans and specifications of the building, as approved by the competent authority, are disclosed to the flat takers, the promoter shall not make any other alterations or additions in the structure of the building without the prior consent of the flat takers. This is where the problem lies. In the impugned judgment, the High Court has failed to examine the question as to whether the project undertaken in 1985 by the appellant herein was in respect of construction of additional buildings or whether the project in the lay out plan of 1985 consisted of one building with 7 wings. The promoter has kept the requisite percentage of land open as recreation ground/ open space. Relocation of the tennis court cannot be faulted. The question which the High Court should have examined is: whether the project in question

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> consists of 7 independent buildings or whether it is one building with 7 wings? The answer to the above question will decide the applicability or non-applicability of Section 7(1)(ii) of MOFA, as amended. **The answer to the above question will decide whether the time to execute the conveyance has arrived or not.** This will also require explanation from the competent authority, namely, Executive Engineer, "R" South Ward, Kandivali, Mumbai-400067 (Respondent No. 8 herein). In the dates and events submitted by the appellant-promoter, there is a reference to the permission granted by ULC authorities dated 16.11.1984 which states that the owner/developer shall construct a building with 7 wings. One needs to examine the application made by the promoter when he submitted the lay out plan in 1985. If it is the building with 7 wings intended to be constructed in terms of the lay out plan then the High Court is also required to consider the effect of the judgment in the case of Ravindra Mutneja and Ors. v. Bhavan Corporation and Ors. 2003 (5) BomCR 695 in which the learned single Judge has held that if a building is put up as a wing of an existing building, it cannot be constructed without the prior permission of the flat takers. In that connection, the High Court shall also consider Permission dated 16.11.1984 under Section 21(1) of ULC Act, application made to the competent authority when initial lay out plan was sanctioned, applications for amendments to lay out plans made from time to time and also agreements between promoter and flat takers.
>
> *(emphasis added)*

36. In my view, the observations made by the Apex Court in ***Jayantilal Investments*** (supra) about the time to execute conveyance cannot be read to mean that conveyance cannot be executed till the entire disclosed construction is carried out in a layout. In paragraph 20 of the judgment, the Apex Court has dealt with the situation where this Court had not decided the issue as to whether the Developer had undertaken construction of additional buildings or one building with 7 wings. The Apex Court therefore remanded proceedings for decision of the issue as to whether the development comprised of construction of 7 independent buildings on one building with 7 wings. The Apex Court held that answer to the said question would decide applicability or non-applicability of Section 7(1)(ii) of the MOFA and answer to the above question would also decide whether time to execute conveyance

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has arrived or not. It is well settled principle of law that a judgment is an authority for what it decides and not what can be logically deduced therefrom. [SEE: ***Commr. of Customs (Port) v. Toyota Kirloskar Motor (P) Ltd.***[7] and ***Secunderabad Club v. CIT***[8]]. Therefore, a stray observation by the Apex Court in paragraph 20 of the judgment about time for execution of conveyance, made in the peculiar facts that case, cannot be read to mean as if the judgment in ***Jayantilal Investments*** is an authority on proposition that conveyance cannot be granted until all the disclosed construction in the layout is complete.

37. On the contrary, this Court has taken a consistent view that in cases where promoters fail to perform their statutory obligation of conveyance of land under Section 11 of the MOFA on the ground of non-completion of layout development, conveyance of proportionate land in the layout can be granted in favour of societies whose buildings are complete. With a view to prevent mischief of developers not conveying land on account of incorporation of a covenant that land would be conveyed only in favour of federation of societies upon completion of construction of all buildings in the layout, this Court has judicially recognised the principle of conveyance of part of the land in the layout in favour of a society or societies even during currency of development of layout. The principle is also incorporated in the guidelines issued to the Competent Authorities for deciding applications for deemed conveyance vide Government Resolution **(GR)** dated 22 June 2018 issued by the Cooperation Department of Government of Maharashtra. The relevant paragraph of the GR reads thus:

7 (2007) 5 SCC 371
8 2023 SCC Online SC 1004

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एका भूखंडावर अनेक इमारती असतील व प्रत्येक इमारतीची स्वतंत्र सहकारी गृहनिर्माण संस्था असेल आणि त्यापैकी काही इमारतीचे बांधकाम अपूर्ण असल्यास, पूर्ण झालेल्या इमारतीचे मानीव अभिहस्तांतरण करताना अशा संस्थेच्या इमारतीच्या बांधकामाच्या प्रमाणात जागेचे क्षेत्रफळ (Proportionate area) किंवा Ground Coverage किंवा Plinth area, तसेच मोकळी जागा, सामुदायिक सेवा सुविधा, रस्ते यांचेवर बांधकामाच्या प्रमाणात अविभक्त हिस्सा (Undivided share) वहिवाटीचा हक्क द्यावा.

If there are many buildings on one plot and have a separate co-operative society of each building and if construction of some of them is incomplete then while making Deemed Conveyance of completed building, undivided share of occupancy right in the proportion of construction on the proportionate area of the construction of the building of such society or ground coverage or plinth area, similarly open space, common services and facilities, roads should be given.

38. It is even otherwise a well-recognised principle that when one society is formed in respect of a building in a layout, conveyance of proportionate area can be granted in favour of such Society, and it is not necessary for such society to await completion of construction in the entire layout. In cities like Mumbai, Pune, etc, developers take a long time to complete construction of all the buildings in the layout. Since FSI is a dynamic concept and with the history of increase in the FSI with passage of time, delay in completion of development in the layout actually enures to the benefit of the developers. Therefore, many times, all buildings in the layout are not taken up for construction simultaneously and a layout is developed in a phased manner. It also happens that there is increase in the FSI or change in the FSI norms by the time last building in the layout is taken up for construction. The developers often encash the opportunity by revising FSI computation in respect of entire layout and use the additional FSI flowing through the entire layout land, for construction of last building in the layout. In order to facilitate milking of additional FSI flowing out of the entire layout, the developers sometimes deliberately delay conveyance of

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proportionate area of land even in respect of completed buildings. To avoid this mischief, this Court has recognized the principle of proportionate division and conveyance of land in favour of societies of constructed buildings and this principle is incorporated in the instructions issued by the State Government in the form GR dated 22 June 2018.

39. In ***Lok Housing and Construction Ltd vs. State of Maharashtra*** [9] this Court has rejected the contention that the conveyance of land and building can be delayed till all buildings in the layout are constructed and federation is formed. The Court has held in paragraphs 27 to 32 as under:

> 27. **The submission of the respondents that the petitioner-society has no locus to seek conveyance independently, and that the said right vests solely with the yet-to-be-formed federation, is legally untenable.** It is evident from the material placed on record that the delay in execution of the conveyance deed in favour of the society is squarely attributable to the inaction, negligence and default on the part of the petitioner himself. The agreements for sale in respect of the individual flats were admittedly executed as far back as in the year 1995. However, the co-operative housing society, comprising the said flat purchasers, came to be registered only in the year 2006—more than a decade after the execution of the said agreements. Despite the lapse of a substantial period of time, exceeding three decades since the execution of the original agreements for sale, the petitioner has failed to take effective steps for transferring and conveying the title in favour of the society in accordance with the mandate of law. The petitioner, being the promoter and original owner of the land, was under a legal obligation to execute the conveyance deed within a reasonable time from the registration of the society and in terms of the provisions of the MOFA. However, the petitioner has failed to discharge this statutory obligation, and it does not lie in the mouth of the petitioner now to make a grievance on that count.
>
> 28. The MOFA does not countenance such a restrictive interpretation of the rights conferred upon individual societies. Section 11 is a salutary provision enacted with the express object of vesting title in the societies formed by flat purchasers, thereby putting an end to the promoter's control over the land and building once the flats have been allotted and consideration paid. To accept the respondents' contention would be to denude Section 11 of its

9 Writ Petition No.6418 of 2017 decided on 26 March 2025

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efficacy and enable promoters to perpetuate control over immovable property under the guise of unfulfilled future conditions. The law does not permit such manipulation of statutory rights by superimposing contractual arrangements that are neither performed nor enforceable in the near future.

29. The legislative intent behind MOFA clearly leans in favour of safeguarding the interest of flat purchasers and ensuring prompt and timely conveyance of title. Any interpretation which postpones this right indefinitely would defeat the very object of the enactment and embolden unscrupulous promoters to delay conveyance on untenable grounds. Hence, the petitioner-society's right to deemed conveyance, having arisen upon execution of the agreement and payment of full consideration, cannot be subjected to speculative future events.

30. It is a trite principle of equity that no party can be permitted to take advantage of its own wrong. In the present case, the respondents, having failed to proceed with redevelopment and having indefinitely delayed the process of conveyance, cannot now be heard to say that the petitioner-society must wait further. The rights of the petitioner-society, which has discharged its contractual obligations in full, deserve protection both under statute and in equity. The continued inaction on the part of the respondents, spanning over a decade, is nothing but a calculated attempt to defeat the lawful entitlements of the petitioner-society.

31. This Court, in the case of Veer Tower Co-operative Housing Society Limited vs. District deputy registrar, co-operative societies in Writ Petition No. 211 of 2023 decided on February 18, 2025 has enunciated the legal position governing the rights of individual societies vis-à-vis the statutory obligation of the promoter to convey the title of the land and building, and the said ratio is squarely attracted to the facts of the present case. It is held as under:

> "12. The respondents, in their defense, contend that under the terms of the agreement executed under Section 4 of the Maharashtra Ownership Flats Act, 1963 (MOFA), the right to seek conveyance vests exclusively with a federation comprising all societies situated on the larger plot. They further argue that the statutory entitlement to deemed conveyance under Section 11 of MOFA would crystallize only upon the completion of the redevelopment of the two remaining buildings. However, the factual matrix reveals that the agreement with the members of the petitioner-society was concluded in 2014, and as of 2025 —a span of over a decade—the society has been deprived of its lawful conveyance. Crucially, the Municipal Corporation has not sanctioned the plans for the proposed redevelopment, rendering the commencement of construction contingent upon indeterminate procedural formalities. This indefinite

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postponement of the redevelopment process, coupled with the absence of a definitive timeline, underscores the speculative nature of the respondents' reliance on future events to deny the petitioner's statutory rights.

13. The inordinate delay of ten years in granting conveyance to the petitioner-society constitutes an unreasonable deprivation of its statutory and equitable entitlements. Section 11 of MOFA, read with the broader statutory intent, mandates that conveyance be executed within a reasonable time frame to secure the rights of flat purchasers. A decade-long hiatus, during which the developer has failed to even initiate the redevelopment process, cannot be countenanced as a "reasonable period" under the law. Developers cannot invoke contractual or procedural contingencies to indefinitely defer statutory obligations. The petitioner-society's right to seek conveyance, having been frustrated by the developer's inaction, must be enforced as a matter of statutory imperative and equitable justice.

14. The respondents' assertion that the federation's right to seek conveyance is contingent upon the completion of redevelopment is legally unsustainable. The MOFA Act does not contemplate relegating a society's statutory rights to the vagaries of an uncertain and uncommenced redevelopment process. To hold otherwise would render Section 11 otiose, permitting developers to indefinitely withhold conveyance under the guise of unfulfilled conditions. The statutory framework prioritizes the protection of purchasers' rights over speculative contractual stipulations. Indefinite delays in redevelopment cannot override the statutory mandate of Section 11. The petitioner's right to conveyance, having matured upon the execution of the agreement and payment of consideration, cannot be subordinated to the respondents' unsubstantiated assurances of future compliance.

15. In light of the foregoing, the respondents' objection that the petitioner-society must await the completion of redevelopment and the formation of a federation—is devoid of legal merit. The statutory scheme of MOFA, particularly Section 11, is designed to confer an immediate and enforceable right to conveyance upon societies, irrespective of peripheral contractual or developmental contingencies. Equitable principles further dictate that a party cannot benefit from its own delay or default to prejudice the rights of another. The petitioner-society, having fulfilled its obligations under the agreement, is entitled to deemed conveyance as a matter of statutory right. The indefinite stagnation of the redevelopment project, attributable solely to the respondents' inaction, cannot justify further deprivation."

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> 32. In view of the aforesaid analysis, this Court finds no merit in the respondents' objection that the petitioner-society must await the formation of a federation comprising all societies. The statutory scheme under MOFA, particularly the mandate under Section 11, is designed to create an immediate and enforceable right in favour of societies once the conditions stipulated therein are fulfilled. Neither the Act nor any judicial precedent supports the proposition that such rights can be made contingent upon future contractual developments or formation of third-party

40. Therefore, the contention raised on behalf of the Developer that conveyance of land cannot be granted in favour of the Federation till completion of construction of Building No.1 is stated to be rejected.

METHODOLOGY OF CONVEYING PROPORTIONATE LAND RECOGNISED BY MOFA OR MERE EQUITABLE ARRANGEMENT MADE BY COURTS?

41. Mr. Chinoy fairly accepts the proposition of proportionate conveyance of land but contends that what is being followed by this Court consistently is a mere evolvement of an equitable arrangement and that such arrangement does not flow out of statutory scheme of MOFA. I am unable to agree. Section 10 of the MOFA imposes an obligation on the promoter to form a co-operative society / company / association of apartments upon sale of flats to minimum number of persons required to form a society. Thereafter under Section 11, promoter is under statutory obligation to convey the land and building in favour of such society / company / association either within the time limit agreed in the MOFA agreement and if no time is agreed, within the time limit prescribed in Section 11(1) of MOFA. The time limit referred to in Section 11 (1) for conveyance of land is prescribed as four months in Rule 9 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction etc.) Rules, 1964 **(MOFA Rules)**. It therefore cannot be contended that obligation for promoter to convey proportionate land to a society before completion

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of development of layout does not flow out of statute or that the same is mere equitable arrangement devised by Courts. In my view, even the obligation to convey proportionate land to a society in respect of incomplete development of layout is a statutory obligation flowing out of Section 11 of MOFA and Rule 9 of the MOFA Rules.

42. Having held that conveyance of land and building need not be delayed till construction of all buildings in the layout is complete, the next issue for consideration and which is the real issue, is the exact land area which can be conveyed to the Federation. Whether the Federation is entitled to conveyance of the entire land in the layout admeasuring 18,602.2 sq. mtrs or whether it is entitled to conveyance of land proportionate to the built-up area consumed in construction of its Building No. 2 (Wings A to J) ?

FEDERATION'S CONTENTION OF ABANDONMENT OF CONSTRUCTION OF BUILDING NO. 1

43. The issue of land entitlement of the Federation is dependent on the right of the Developer to construct Building No. 1. To justify conveyance of the entire land admeasuring 18,602.2 sq. mtrs in the layout, the Federation has raised a plea that the Developer can no longer construct Building No. 1. It contends that though originally construction of Building No. 1 was envisaged in the layout, the Developer has abandoned construction thereof and therefore cannot be permitted to construct anything in the layout. It has accordingly sought a direction for removal of construction already put up by the Developer.

44. Federation has secured conveyance of the entire land in the layout admeasuring 18,602.2 sq. mtrs., which has put a fetter on, rather has negated, the right of the developer to construct Building

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No.1. The contention of the Federation is that since different societies have been formed in respect of Wings A to J of Building No. 2 and since all those ten societies have formed and registered Plaintiff-Federation on 26 November 2012, the Federation is entitled to conveyance of entire land admeasuring 18,602.2 sq.mtrs. The Federation believes that the Developer has virtually abandoned construction of Building No.1 and in any case, has not completed the same despite passage of more than two decades of issuance of occupancy certificate for Building No.2 on 16 April 2004. That therefore the alleged right of the Developer to complete construction of Building No.1 cannot be a ground for denial of conveyance of entire land in its favour.

45. The present case involves a situation where construction of Building No.2 is complete on 16 April 2004, whereas construction of Building No.1 is still incomplete. However, there is no dispute to the position that right since inception, flat purchasers of Building No.2 were always made aware of the fact that Building No.1 would also come up in the layout. In fact, Building No.1 was to be a much taller tower comprising of Stilt + 17 upper floors as compared to the 10 buildings of the Federation of Ground + 7 floors. The plan sanctioned by MCGM on 11 May 1991 was disclosed to the flat purchasers of Building No.2 and thus they were made aware of the position that Building No.1 would come up with built-up area of 7,166.70 sq. mtrs. with Ground + 17 upper floors. However, the Federation of societies formed in respect of 10 wings of Building No. 2 is now opposing construction of Building No. 1 and is in fact seeking removal of part construction of Building No. 1 already put up by the Developer.

46. The Federation's contention of the Developer abandoning construction of Building No.1 is premised on twin counts of:

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(i) lapsing of IOD dated 22 April 1982 and Commencement Certificate dated 22 April 1982 on 16 July 1997

(ii) Developer's letter to Tehsildar dated 1 March 2013 asking for recovery of charges for non-agriculture use (**NA charges**) in respect of the entire land from the Federation.

(i) So far as the first contention of lapsing of IOD and CC is concerned, the same deserves outright rejection for variety of reasons. After alleged lapsing of the IOD and CC on 16 July 1997, the Occupancy Certificate was issued in respect of Federation's Building No.2 on 16 April 2004, and the Plan appended thereto envisaged construction of Building No.1. Similarly, sanctioned sub-division plan of 25 September 2014 also envisaged construction of Building No.1 on Plot No. D-1 of 3200 sq. mtrs. The Municipal Corporation has subsequently issued fresh CC for construction of Building No.1 in the year 2023. Therefore, there is no question of lapsing of CC. Also, the Developer has apparently completed construction of substantial portion of Building No. 2 (C Wing of 9 floor and D wing of 10 floors). I am therefore unable to accept the contention of abandonment of construction of Building No.1 by the Developer.

(ii) So far as the Federation's reliance on Developer's letter dated 1 March 2013 to Tehsildar is concerned, the same again cannot be a ground for presuming abandonment of construction of Building No.1 by the Developer. It appears that Tehsildar had demanded N.A. charges from the Developer and at that time, Developer had

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requested the Tehsildar to recover the same from the Federation. An attempt made by the Developer to shift the liability to pay N.A. charges in respect of the entire land on to the Federation cannot be a ground to infer waiver of title by the Developer in respect of part of the land in the layout or admission of title of the Federation in respect of the entire land admeasuring 18602.20 sq. mtrs. Therefore, Developer's letter to Tehsildar cannot be a reason enough for inferring abandonment of construction of Building No.1 by the Developer.

Therefore, both the grounds raised by the Federation in support of its contention of abandonment of construction of Building No.1 are completely misconceived and liable to be rejected.

VESTING OF BALANCE UNUTILIZED FSI

47. There is no dispute to the position that there was balance FSI in the layout, meant for construction of Building No. 1. The parties may be at loggerheads about the exact FSI/built-up area left unutilized for construction of Building No. 1, but they do not dispute that some FSI remained unutilized for construction of Building No.1 both at the time when occupancy certificate was issued for Building No. 2 on 16 April 2004 and when the Federation was registered on 26 November 2012. In the light of opposition by the Federation to construction of Building No.1 and its insistence for conveyance of whole land in the layout in its favour, the question arises as to what would happen to the balance unutilized FSI meant for construction of Building No. 1, plans for construction of which were admittedly disclosed to the flat purchasers of Building No.2. It is Federation's stand that the balance unutilized FSI would vest in it. It is Federation's

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contention that once Building No. 2 is constructed and Federation of societies of 10 Wings in Building No.2 is registered, any FSI remaining unexploited in the layout would vest in the Federation.

48. Federation's plea of vesting of balance FSI is premised on the statutory covenants of Form V of MOFA Agreement prescribed in the MOFA Rules. Section of 4 of MOFA mandates every promoter to execute and register flat purchase agreement in the prescribed format. Rule 5 of MOFA Rules provides that the Agreement needs to be in Form V appended to the Rules. Rule 5 provides thus:

> **5. Particulars to be contained in agreement.-**The promoter shall, before accepting any advance payment or deposit, enter into an agreement with the flat purchaser in Form V containing the particulars specified in clause (a) of sub-section (1A) of section 4 and shall attach thereto the copies of the documents specified in clause (b) of the said sub-section (1A).

49. In the prescribed Form V, there used to be following covenant till 12 March 1997:

> Residual F.A.R.(FSI) in the plot or layout not consumed available to the promoter till registration of the society whereas after the registration of the society residual F.A.R (FSI) shall be available to the Society.

MOFA Rules were amended, and the above covenant has been deleted from Form V w.e.f. 12 March 1997. It is therefore contended by the Federation that since the MOFA Agreements were executed with flat purchasers of Building No. 2 prior to 12 March 1997, the balance FSI must vest in the societies upon their registration and consequently in their federation. I am unable to accept the plea of vesting of balance FSI in the facts of the present case. Firstly, the above quoted covenant has been deleted since 12 March 1997. The deletion was required as

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the covenant was resulting in an absurd situation and was straight in conflict with provisions of Section 10 of MOFA. Section 10 of MOFA provides for registration of cooperative society or a company upon sale of minimum number of flats required for formation of such society or company. If enforced, the promoters would have lost title in the FSI the moment minimum number of flats in the building are sold and a society is formed. Such covenant would thus come in the way of formation of societies as the promoters would delay registration of societies out of fear of losing title in the FSI, thereby defeating the objective behind Section 10 of MOFA. Secondly, the deleted covenant was otherwise unenforceable in respect of a layout development. In a layout development, the deleted covenant would have resulted in an absurd situation where the sanctioned FSI for construction of other buildings in the layout would vest immediately upon registration of first society in the layout. Thirdly, the Federation was not registered as on 12 March 1997 and therefore the vesting did not occur. As on 12 March 1997, the Developer in the present case continued to be the owner of the balance FSI and by the time the societies and the Federation was registered the covenant for vesting of balance FSI got deleted.

50. Even otherwise, considering the facts of the case, I am unable to accede to the contention of vesting of balance FSI sought to be canvassed on behalf of the Federation. This is not a case where the Developer has completed the entire sanctioned development by exhausting the originally sanctioned FSI potential and is seeking to take benefit of increased FSI. The concept of vesting of FSI is usually invoked while conveying the land to the society by denying the opportunity to the developer of taking advantage of additional FSI

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arising out of new norms/policy. It cannot be invoked in a layout development, where the developer is yet to complete all the sanctioned and disclosed development in the layout. In the present case, construction of Building No. 1 with sanctioned built-up area of 7166.70 sq. ft was disclosed to the flat purchasers of Building No.2. The Developer is yet to complete construction of Building No.1 and the principle of vesting of FSI cannot be invoked to deny right of the developer to construct Building No. 1.

51. Therefore, the contention raised on behalf of the Federation that the balance sanctioned and unutilized built-up area would vest in the Federation does not appeal to the Court. This is particularly so because MOFA agreements gave specific disclosure to flat purchasers of Building No.2 that FSI to the extent of 7166.70 sq. mtrs. not only belonged to the Developer but also was to be utilized in construction of Building No.1. Reliance by Federation on judgment of this Court in ***Ravindra Mutneja*** (supra) is misplaced, as the said judgment deals with the issue of delay in formation of society by the developer for utilization of additional FSI available due to change in building regulations and constructing an undisclosed additional wing to the existing building without consent. In the present case, there is disclosure of Building No. 1 to the flat purchasers and sanction of built-up area of 7166.70 sq. mtrs. in the plan of 1991. Therefore facts of the case in ***Ravindra Mutneja*** are clearly distinguishable. Similarly, the facts of the case in ***Vidhi Builders Private Ltd.*** (supra) are clearly distinguishable. In that case, agreement for sale did not mention as to how much FSI was available to the developer at the time of getting the plans sanctioned for construction of the building consisting of basement, ground and one upper level. The Agreement also did not

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disclose how much FSI was being utilized for the construction of the building and how much FSI would be residual. Considering that factual position, this Court held that if such information was disclosed in the agreement for sale, the flat purchasers could have clear idea as to the potentiality of the construction, then and in future, on that land. In the present case, there is clear disclosure to the flat purchasers of Building No. 2 that Building No. 1 with built-up area of 7166.70 sq. mtrs with 17 floors would be constructed in Plot No. D. Thus the judgment in ***Vidhi Builders Private Ltd.***, far from assisting the case of the Federation, actually militates against it. In ***Noopur Developers*** (supra) this Court has observed thus:

> Had the original lay out plan shown the proposed construction in a phased manner, then the promoter did have a right to make construction of additional building without permission of the flat purchasers. Even if we look into the judgment of Division Bench of this Court in *Manratna Developers's* case, the ratio is that if the original plan shows the construction of building in a phased manner on single plot, then the promoter is not supposed to take consent of the flat owners.

Thus, even the judgment of this Court in ***Noopur Developers*** does not assist the case of the Federation.

52. It must also be observed that repeated recognition of right of societies to have conveyance of proportionate land even before completion of development of layout, does mean negation of right of developer to complete balance development in the layout. When the Court or Competent Authority grants conveyance of proportionate land to society in respect of completed building(s) proportionate to the built-up area consumed therein, it obviously recognises the right of the developer to develop unconveyed portion of land. The only restriction on the developer to develop unconveyed land would be in resepct of

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disclosure made to the flat purchasers under Sections 3, 4, 7 and 7A of the MOFA. Subject to obligations flowing out of such disclosure, the developer is free to develop unconveyed land and there can be no concept of vesting of sanctioned unutilized built-up area/FSI in balance portion of land in favour of the society. This position would apply even when Federation of multiple societies in a layout is formed and registered, which has happened in the present case. It is immaterial as to whether there is a single society, multiple societies or a federation of societies formed in respect of constructed buildings in the layout. Therefore, it cannot be countenanced that upon mere formation of Federation of Societies in respect of Building No.2, the balance unutilised FSI in the layout would automatically vest in favour of the Federation. Mere recognition of a right in favour of Federation to have proportionate portion of land conveyed to it cannot have the effect of negation of right of Developer to complete balance development in the layout, subject of course to the disclosures made to the flat purchasers. Therefore the contention of vesting of balance unutilized FSI raised on behalf of the Federation deserves rejection.

FEDERATION'S OPPOSITION TO CONVEYANCE OF PROPORTIONATE LAND

53. The Federation is opposed to application of methodology of proportionate 'land cutting' based on utilization of built-up area for construction of its Budling No. 2 (Wings A to J). It contends that whole of the land in the layout admeasuring 18,602.2 sq. mtrs. has rightly been conveyed in its favour in accordance with clause 39 of the MOFA Agreement, which reads thus:

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> "39. Subject to what is stated hereinbefore and hereinafter the Promoters shall **after the said building is completely ready and fit for occupation** and after the said society or Limited Company or Condominium of Apartments as aforesaid is registered or formed and only after all the premises in the said building have been sold and disposed off by the Promoters and the Promoters have received all the dues payable to them under the terms of their respective Agreements for Sale with various purchasers of various premises **execute and/or cause the owners to execute in favour of the Co-operative Society** or the Limited Company or the Condominium of Apartments or anybody or organization to be formed of the purchaser/s of the various premises in the said building **a Conveyance or a long lease for a period of 99 years for annual rent of Re.1/- in respect of the said property described hereinabove and the said building**. If the Promoters shall have created any encumbrance on the said smaller property and/or construction work thereon for obtaining construction loan in favour of any party or financial institution then on or before the execution of the said Conveyance or a long lease as aforesaid, the Promoters shall clear such mortgage or encumbrance. It is expressly agreed that the right to transfer the said smaller property or the building or wings thereof in which the said premises are agreed to be allotted with be exclusively at the option of the Promoters and the purchaser/s shall have no right in respect thereof."

Reliance by the Federation on clause 39 of flat purchase agreements does not assist its case as the said clause envisages conveyance of land in the layout after completion of the building in the smaller property (Plot D). If clause 39 of the agreement is strictly enforced, the conveyance of land would be possible only after the entire development on Plot-D is complete. However, the Federation has opted to apply for deemed conveyance of the land before completion of construction of Building No.1. This is the reason why, the methodology of conveyance of land proportionate to built-up area used in construction of Building No. 2 needs to be adopted in the present case.

54. Mr. Khandeparkar however opposes this methodology of distribution of land in the layout proportionate to the built-up area consumed in the present case by contending that the same can be adopted only where conveyance is sought by a single society, construction of whose building is complete in the layout without

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waiting for entire development of the layout. He would submit that in the present case, construction of 10 buildings (Wings) in the layout is complete, and each Wing has formed and registered their own societies, who have ultimately formed Plaintiff-Federation. That MOFA Agreements with flat purchasers of Building No. 2 contemplates conveyance of whole portion of land admeasuring 18,602.2 sq. mtrs. in favour of the Federation. It is therefore contended on behalf of the Federation that dividing the land corresponding to utilized built-up area for each building cannot be followed in present case and the entire land must be conveyed in favour of the Federation.

55. I am unable to agree with the above submission. The contention is again premised on the principle of vesting, which is already rejected in the preceding paragraphs. In my view, the settled principle of dividing and conveying land proportionate to utilized built-up area for each building would not depend on formation of single or multiple societies or a Federation. Even in a case where more than one societies form a Federation and development in the entire layout is still incomplete, the principle of dividing land proportionate to built-up area consumed for each building must be made applicable so that developer's right to complete the balance construction in the layout is not affected. If the entire land is conveyed to the Federation, the Developer will not be able to complete construction of remaining disclosed building(s) in the layout by utilizing balance sanctioned FSI. It is only where all the disclosed buildings are constructed that the entire land can be conveyed to the Federation. Till the time development of the layout is incomplete, the methodology of conveyance of proportionate land needs to be adopted.

CONTENTION OF FEDERATION THAT BUILDING NO. 1 CAN BE CONSTRUCTED WITH ITS PERMISSION BY RETAINING CONVEYANCE OF ENTIRE LAYOUT LAND

56. Faced with the situation that conveyance of entire land in

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favour of Federation puts a fetter on Developer's right to complete construction of remaining building in the layout, Mr. Khandeparkar has suggested a via media that the Federation can grant consent for completion of remaining building in layout for the purpose of enabling the Developer to utilize the balance sanctioned FSI. According to Mr. Khandeparkar, since the unit purchasers of Building No. 1/the society formed by them is required to become member of the Federation, the structure of Building No. 1 and the land beneath it would remain property of the Federation. The suggestion appears to be the last and desperate attempt to somehow save conveyance of entire land in the layout. However, the suggestion is misconceived and deserves outright rejection. The suggestion envisages the Federation to remain owner of the entire land in the layout (including the land on which footprint of Building No. 1 is situated), but the Federation granting permission to the Developer to complete construction of Building No. 1 by utilizing the balance portion of sanctioned unutilized FSI. However, what is missed by Mr. Khandeparkar is the fact that with ownership of entire land in the layout, the Federation would also become owner of the balance unutilized FSI. Also, MCGM would never sanction plans submitted by the Developer if the land owner is the Federation. If Federation owns the entire land, it alone can cause the construction in the layout. If the plans are submitted and sanctioned in the name of the Federation, the Developer would remain a mere construction contractor. To enable the Developer to sell flats in Building No. 1, the Federation will have to grant development rights in its favour, resulting in an absurd situation of the Developer losing title in the land and in the bargain, gaining mere secondary development rights for construction of Building No. 1. This model would then be demanded in all layout developments, where every society, construction of whose building is complete, would demand conveyance of the entire land in the layout leaving the developer at the mercy of the new landowner (society) for completion of balance construction in the layout.

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Provisions of MOFA cannot be interpreted in a manner which results in an absurd situation. On the other hand, harmony can be achieved by carving out the proportionate land for the developer from the entire layout land to enable it to complete construction of Building No. 1. The contention raised on behalf of the Federation therefore deserves rejection. In my *prima facie* view therefore, the conveyance of entire land admeasuring 18602.20 sq. mtrs effected in favour of the Federation deserves interference.

PROPORTIONATE DIVISION OF LAYOUT LAND

57. Having held that the Federation is entitled to conveyance of only land proportionate to the built-up area consumed in construction of its Building No.2 (Wings A to J), the next issue that arises for *prima facie* determination is the exact area which needs to be conveyed in favour of the Federation. Before proceeding further, it must be clarified that computation of land entitlement is considered only for *prima facie* purpose of deciding the issue of temporary injunction. The exact land entitlement would be decided at the time of final decision of the Suit.

58. The total area of Plot No. D is 18,602.20 sq.mtrs., which has been conveyed in favour of the Federation by virtue of order of the Competent Authority dated 26 November 2019 and Deed of Unilateral Conveyance registered on 26 June 2023. From the total land area of 18,602.20 sq.mtrs. in Plot No. D, 15% RG area of 2790.33 sq.mtrs and further 15% RG area in respect of subsequent DP road of 375 sq.mtrs appears to have been deducted while sanctioning the plans, leaving behind the balance plot area of 15,436.87 sq.mtrs. These figures are borne out from the occupancy certificate plan in respect of Federation's building of the year 2004. By computing the permissible built-up area based on FSI 1.00, and after adding back built-up area of

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258.55 sq. mtrs. in respect of DP road FSI advantage, the total permissible built-up area was 15,695.42 sq. mtrs.

59. There is no dispute to the position that the total built-up area consumed for construction of Building No. 2 of Federation is 13,842.86 sq.mtrs. If Federation's built-up area is deducted from total permissible built-up area of 15,695.42 sq.mtrs, the balance built up area left is 1852.56 sq. mtrs. Thus, out of total permissible built-up area of 15,695.42 sq. mtrs. in Plot No. D, the entitlement of the Developer is in respect of balance built-up area of 1852.56 sq. mtrs. The total RG area of 2790.33+375.00 = 3165.33 sq. mrts. is also required to be subdivided in proportion to built-up area entitlement of the Federation (13,842.86 sq. mtrs) and Developer (1852.56 sq. mtrs). While sanctioning the sub-division plan of Plot D in 2014, RG area has also been divided as under:

		Sub-divided Plot area (sq. mtrs)	RG Area (sq. mtrs)
Federation	Plot D	15402.20	2685
Developer	Plot D-1	3200	480
	Total	18602.20	3165

60. Momentarily ignoring the sub-division sanctioned by MCGM and reverting to the issue of proportionate land allotment to the Federation, it appears that the sanctioned DP road FSI advantage in respect of Plot No. C for the Developer was 1424.45 sq.mtrs. While getting 2014 plans sanctioned, the Developer decided to deduct FSI advantage of 868.45 sq.mtrs. from Plot No. C and has added the same on Plot No. D. This advantage of 868.45 sq.mtrs. built-up area would obviously be to the credit of Developer, and the Federation has not disputed this position. This is how Developer's entitlement in respect of total built-up area would increase by 868.45 sq. mtrs.

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61. Therefore, the entitlement of the Federation and the Developer towards the built-up area, for the purpose of proportionate division of the layout land, would be as under:

Details	**Federation's built-up area (sq. mtrs)**	**Developer's built-up area**
Buit-up area in 2005 Sanctioned Plan	13842.86	1852.56
Built-up area arising from transfer of DP road from Plot 'C'	--	868.45
Total	13842.86	2721.01

62. Based on the above built-up area entitlement, the total layout land admeasuring 18,602.20 sq. mtrs. can be proportionately subdivided. Based on its built-up area of 13842.86 sq. mtrs, the Federation would be entitled to 83.57% layout land in Plot D i.e. approximately land admeasuring 15545 sq. mtrs. Similarly, based on the built-up area of 2721.01 sq. mtrs, the Developer would be entitled to 16.42% share in the layout land, i.e. land admeasuring approximately 3054 sq mtrs. If the above computations look complicated, there is one other simpler option for making equitable arrangement for *prima facie* determination of the land area entitlement during pendency of the Suit. The same is reflected in subdivided Plot No. D sanctioned by MCGM on 25 September 2014. Plot No. D was retained in respect of land admeasuring 15,402.2 sq.mtrs. Plot No. D1 was carved out for construction of Building No.1 for land admeasuring 3,200 sq.mtrs. The Federation has not challenged sanction of sub-division by Municipal Corporation vide letter dated 25 September 2014. This would be a vital aspect to be borne in mind while determining the issue of Federation's entitlement to claim conveyance of entire layout land of 18602. 20 sq. mtrs.

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63. The Federation opposes determination of land entitlement based on sub-division sanctioned vide letter dated 25 September 2014 on the ground that the sub-division did not come into reality as the same was conditional and that the two conditions specified therein were never fulfilled by the Developer. The letter of Executive Engineer (Building Proposal) E.S.-II of MCGM sanctioning the sub-division of Plot-D reads thus:

MUNICIPAL CORPORATION OF GREATER MUMBAI
NO.CHE/304/BPES/LOT

25 SEP 2014

To
Shri R.R. Chawla,
Hari Chambers, 3rd floor,
59-64, Shahid Bhagatsingh Roard,
Mumbai- 400 023

Sub : Proposed amended layout /sub-division of plot bearing C.T.S. No.43, 44 & 45 of village Mulund
(East), gavanpada, Mulund (East), Mumbai.

Ref : Your letter dated 27.3.2014

Sir,

I have to inform you that, the amended plans submitted by you for the above mentioned
work are hereby approved, subject to the compliance of the conditions mentioned in this office Intimation of Disapproval under even No. dated 22.4.1982 and amended plan approval letter under even No. Dated 22.3.1983, 25.3.1985, 1.7.2003, & 2.9.2005 and following additional conditions :

1) That the fresh P.R. Card sub-divided for plot 'D' shall be obtained and submitted to the office.
2) That the layout R.G. shall be conveyed in the name of society / federation of society.

One set of amended plans duly signed and stamped is hereby returned in the token of
Municipal approval.

Yours faithfully,

Acc. One set of plan.

Executive Engineer
(Building Proposal)E.S.-II

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64. Thus, while sanctioning the sub-division, the MCGM had incorporated following two conditions in the letter dated 25 September 2014:

(i) Issuance of fresh PR card of sub-division of Plot No. D.

(ii) Conveyance of layout RG in favour of Federation.

65. So far as the first condition of issuance of fresh PR card of sub-division of Plot-D is concerned, same remained a mere formality to be completed by the Revenue Authorities on account of sanction of sub-division by MCGM. The condition of procurement of fresh PR Card was incorporated only for the purpose of giving effect to the sub-division in the revenue records. This condition can be fulfilled even today and therefore non-procurement of fresh PR card of subdivision of Plot No. D cannot be reason for inferring that the permission for sub-division has lapsed. So far as the second condition of conveyance of Recreation Ground in favour of the Federation is concerned, the distribution of total RG area (3165 sq. mtrs) in Plot D is as under:

		Sub-divided Plot area (sq. mtrs)	RG Area (sq. mtrs)
Federation	Plot D	15402.20	2685
Developer	Plot D-1	3200	480
	Total	18602.20	3165

The Developer is not opposed to handing over the RG area of 2685 sq. mtrs to the Federation. The Developer cannot claim and is not

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claiming any rights in respect of Federation's RG entitlement of 2685 sq. mtrs. The sub-divided Plot D admeasuring 15402.20 sq. mtrs comprise of RG area of 2685 sq. mtrs and the Developer is willing to hand over the same to the Federation. All that the Developer is contending is that the Federation cannot come in the way of the Developer developing Plot D-1 admeasuring 3200 sq. mtrs, from which also RG area of 480 sq. mtrs, needs to be carved out. Thus, the two conditions imposed in the letter dated 25 September 2014 of issuance of separate PR Card and handing over RG area to the Federation remained mere formality. It would therefore not be prudent to ignore the sub-division sanctioned by MCGM on 25 September 2014, which was never contemporaneously challenged by the Federation. The said sub-division, on the contrary, provides a useful tool for *prima facie* determination of land entitlement of the contesting parties.

66. It is sought to be contended by the Federation that the land sub-division vide Plan of 25 September 2014 is without any basis. The contention appears to be legally and factually incorrect. *Legally* speaking, if the sub-division is without basis, the Federation ought to have contemporaneously challenged the same. It however failed to do so and acquiesced in the same. The sub-division had the effect of cutting land admeasuring 3200 sq. mtrs (Plot D-1) from the layout land, leaving only land admeasuring 15402.20 sq. mtrs for the Federation. Faced with a situation that the Federation acquiesced in the sub-division sanctioned vide letter dated 25 September 2014, it has now taken a convenient defence that the sub-division never came into reality, ignoring the position that the same can be brought into reality even today by procuring fresh PR card from revenue authorities and by handing over RG area of 2685 sq. mtrs to the Federation. Therefore Federation's failure to challenge the sub-division would prevent it from claiming that the same is without any basis. *Factually* also, the

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contention appears to be incorrect as the sub-division of land into 15,402 for Federation and 3,200 for Developer approximately match the proportionate land entitlement based on built-up areas indicated in the preceding paragraph. If the total land of 18602.20 sq mtrs is divided proportionately in accordance with built-up area sanctioned in 2005 Plan between the Federation (BUA of 13842.86) and Developer (BUA of 2721.01), their respective share in the land would be approximately 15545 sq. mtrs and 3054 sq mtrs, which approximately matches the sub-division sanctioned by the MCGM. For the purpose of deciding entitlement of parties to temporary injunction, it would therefore be safe and appropriate to consider the sub-division sanctioned by the MCGM.

67. Thus, if the land division corresponding to built-up area entitlement is computed, such land entitlement would more or less match the area of 15,402 sq.mtrs. for Federation and 3,200 sq.mtrs for the Developer. In my view therefore, instead of going into further complicated computations for determining the land entitlement of Federation and Developer, it would be safe to accept the figures indicated in the sanctioned sub-divided plan by the MCGM on 25 September 2014 by temporarily allocating land admeasuring 15,402 sq.mtrs. for Federation and 3,200 sq.mtrs. for Developer for the limited purpose of permitting the Developer to carry out construction of Building No.1.

68. Once the land entitlement of the Federation and the Developer is determined, solution to the problem of construction of Building No.1 becomes easy. The Developer would be entitled to carry out construction to the extent of admissible FSI in respect of land entitlement of 3200 sq mtrs.

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WHETHER CONSTRUCTION OF BUILDING NO. 1 IS CONTRARY TO THE DISCLOSURE

69. It is sought to be contended on behalf of the Federation that the Developer cannot be permitted to carry out any construction in excess of disclosure made to the flat purchasers of Building No.2 under provisions of Sections 7 and 7A of MOFA. This is clarified by Mr. Chinoy by contending that in the MOFA Agreements executed with flat purchasers of Building No.2, sanctioned plan of 11 May 1991 was appended, thereby making disclosure about Building No.1 of 17 floors having built-up area of 7,166.70 sq. mtrs. True it is that in the MOFA Agreement, the exact FSI to be consumed in respect of Building No.1 was not indicated and clause 8 thereof left the figure of FSI/built up area 'blank'. However, it is equally well settled position that sanctioned plan also forms part of Agreement executed under Section 4 of MOFA. Therefore, in the present case also, since sanctioned plan dated 11 May 1991 was appended to agreements executed with flat purchasers of Building No.2, they had full disclosure of the fact that Building No.1 would be constructed of 17 floors with built up area of 7,166.70 sq. mtrs. Thus, the members of the Federation were already disclosed the fact that Building No.1 can be constructed utilizing built up area of upto 7,166.70 sq. mtrs. They were also given disclosure about the exact location where Building No. 1 would come up.

70. Building No. 1 is not an additional wing to existing Building No. 2 and therefore consent of the Federation is not necessary under Section 7(1)(ii) of MOFA. It is an 'additional building in the layout' within the meaning of Section 7A of MOFA. As observed above the flat purchasers of Building No. 2 were made aware that a much taller tower of stilt+17 floors would come up in the layout with built-up area of 7166.70 sq. mtrs. A statement is made on behalf of the Developer that, irrespective of the total sanctionable built-up

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area, construction of Building No. 1 shall be restricted to only 7166.70 sq. mtrs built-up area.

71. The proposed construction of Building No. 1 is thus in accordance with the disclosure made to the flat purchasers of Building No. 2. Therefore, it cannot be said that construction of Building No. 1 is contrary to the disclosure or that the same therefore cannot be constructed or that the construction already put up needs to be pulled down.

FEDERATION'S ALTERNATE PLEA THAT BUILDING NO. 1 CANNOT EXCEED BUA DISCLOSED IN 2005 SANCTIONED PLAN.

72. The Federation has raised an alternate plea that even if the Developer's right of construction of Building No. 1 is recognised, the same cannot exceed built-up area of 1628.78 sq. mtrs. The alternate plea is premised on the built-up area indicated for Building No. 1 in plans sanctioned on 13 September 2005. The Federation has contended that though the initial disclosure was for utilizing built-up area of 7,166.70 sq. mtrs. in the plan of 11 May 1991, the same was subsequently amended in the revised sanctioned plan of 13 September 2005 indicating built-up area of Building No.1 of only 1,628.78 sq. mtrs. It is therefore contended that the Developer is bound by the disclosure made in 2005 sanctioned plan.

73. The issue for consideration is whether the 2005 plan can be considered as a disclosure made to the flat purchasers of Building No.2 within the meaning of Sections 3, 4, 7 and 7A of MOFA? The answer to the question appears to be in the negative. What was disclosed to the flat purchasers of Building No. 2 is the sanctioned plan of 11 May 1991. They purchased their respective flats with full understanding that Building No. 1 would also be constructed in the layout with built-up area of 7166.70 sq. mtrs with stilt plus 17 floors. The subsequent

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tweaking in the building plans by the developer in the year 2005 cannot be a reason to free the flat purchasers of Building No.2 from the original disclosure made to them when they purchased their respective flats.

74. The provisions of Sections 3, 4, 7 and 7A of MOFA are aimed at ensuring that the developer puts forth full particulars of the development undertaken by him and the provisions do not permit the developer to deviate from the same without seeking consent of the flat purchasers. The objective is to ensure that the developer is bound by the disclosure made to the flat purchasers, based on which they make an informed decision of purchasing the flat. In the present case, the flat purchasers of Building No. 2 were given full knowledge that another building of 17 floors with built up area of 7166.70 sq mtrs would come up in the layout. Now all that the Developer is proposing to do is to restrict construction of Building No. 1 to the extent of the disclosure made in 1991 sanctioned plan.

75. No agreement has been executed with the flat purchasers after sanction of plan of 2005. All MOFA Agreements are executed well before 16 April 2004, when occupancy certificate was issued in respect of Buildings of the Federation. Therefore, the only disclosure made to the members of the Federation is in the form of sanctioned plan dated 11 May 1991. Therefore, the contention raised on behalf of the Federation that Building No. 1 cannot exceed built-up area of 1628.78 sq. mtrs sanctioned in 2005 plan deserves rejection.

FEDERATION'S OPPOSITION TO USE OF ADDITIONAL FSI FLOWING THROUGH DCPR-2034

76. Another contentious issue between the parties is about the Developer utilizing FSI flowing through the provisions of DCPR-2034 for construction of Building No. 1. Ordinarily, a promoter cannot be

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permitted to make use of additional FSI flowing out of change in FSI norms/policy. The principle is recognised to ensure that the additional FSI flowing through new DCRs also belongs to the flat purchasers of completed building. The principle is usually invoked when the developers delay conveyance of land with a view to milk the ever-increasing FSI. Therefore, in ordinary circumstances, the Federation's objection could have been upheld. However, the issue here is slightly different as the case involves a unique fact situation, which is explained below.

77. As observed above, the Developer owned a large tract of land of 77823 sq. mtrs, which it took up for development in two phases. The second phase development was for land admeasuring 49321 sq. mtrs, which was divided in Plot Nos. A, B, C, D, E and F. Plot No. D initially admeasured 21102 sq. mtrs, which got subdivided on account of construction of public amenity of welfare center and dispensary and Plot E was carved out with area of 1543 sq. mtrs, leaving area of 18602.20 sq. mtrs. for Plot No. D. It appears that while some portion of land in Plots A to E was acquired for DP road for which about 10147.26 sq. mtrs. built-up area was sanctioned by MCGM. That sanctioned built-up area was distributed by the Developer for utilization in constrictions planned in Plot Nos. A to D. Out of such sanctioned built-up area of 10147.26 sq. mtrs, area admeasuring 5000 sq. mtrs was earmarked by the Developer for utilization in Plot No. D. This is how it was proposed to carryout development in Plot D by utilizing additional built-up area of 5000 sq. mtrs. arising out of DP Road FSI advantage. Out of total built up area of 20695.42 sq. mtrs so sanctioned for Plot-D, out of which built-up area of 13842.86 sq. mtrs was shown for Building No. 2 and area of 6842 was indicated for construction of Building No. 1. This was sanctioned by the MCGM while issuing the Occupancy Certificate Plan for Building No. 2 of the Federation in the year 2004.

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78. However, the Developer changed its mind and decided to utilize the said earmarked DP Road FSI advantage of 5000 sq. mtrs built-up area in Plot No. A by deducting the same from Plot No. D while getting the 2005 plans sanctioned. This is how the total permissible built-up area for Plot D got reduced from 20695.42 sq. mtrs to 15695.42 sq. mtrs in 2005 sanctioned plan, out of which built-up area of 13842.86 sq. mtrs was utilized in construction of Building No. 2 leaving area of 1852.86 sq. mtrs for Building No. 1. As observed above, built-up area of 868.86 has been shifted by the Developer from Plot-C, thereby increasing the balance built-up area in respect of Plot-D as 2721.01 sq, mtrs. If the Developer was to restrict construction of Plot-D by using built-up area of only 2721.01 sq. mtrs, there would have been no difficulty. However, what is sought to be done by the Developer is to utilize the additional FSI flowing out of DCPR-2034 for construction of Building No. 1 upto disclosed potential of 7166.70 sq. mtrs. This is what is objected to by the Federation, as an alternate case, if this Court permits construction of Building No. 1.

79. Thus, what is sought to be done by the Developer is to regain or replenish the built-up area lost on account of transfer of 5000 sq. mtrs of DP road FSI advantage from Plot-D to Plot-A, by getting the plans sanctioned as per DCPR 2034, which provides for higher FSI. According to the Federation, apart from use of additional FSI flowing from DCPR-2034 being impermissible in law, such action is contrary to the pleadings in the Plaint. The Federation has relied on averments made in para 79 of the Developer's Plaint in which it is pleaded thus:

> "79. The absurdity of the position taken by Defendant No. 2 is that according to Defendant No.2, once the Defendant No. 2 buildings are constructed, the Plaintiffs and Defendant Nos. 3 to 19 are bound to convey the entire undivided plot D to Defendant No. 2 and no further construction (even though disclosed) can be continued and this FSI now belongs to the

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> flat purchasers even though they are neither owners nor developers of the property **It is clarified that the development does not utilize additional inherent FSI which has become available on account of change in law / FSI norms etc.** In the circumstances, the order to convey the entire property without allowing the Plaintiffs to complete construction of duly disclosed buildings is entirely misconceived, illegal, and arbitrary."
>
> *(emphasis added)*

Relying on the above averments in the Plaint, the Federation contends that the Developer cannot seek to utilize any FSI arising out of change in law / FSI norms. In the light of this position, the issue that arises for consideration is whether the Developer can be permitted to make use of higher FSI arising out of DCPR-2034.

80. In my view, application of the methodology of 'land cutting' or 'proportionate land segregation' applied above, would provide an answer to the above conundrum. When a society, construction of whose building is complete, seeks conveyance of proportionate land in the layout and once the land entitlement of such society is determined and conveyance is executed and registered, conveying a portion of land in the layout, such society need not be concerned with what the developer does in the balance portion of the land in the layout, subject to the disclosure restrictions. When a portion of land in the layout is conveyed in favour of a society, it becomes owner of that portion of land and loses all rights in respect of balance land in the layout. Upon acquisition of ownership of portion of land in the layout, such society is entitled to develop or redevelop the conveyed portion of land. The issue is whether such society, who has secured ownership of part of land in the layout, can restrain the developer from constructing disclosed buildings in the layout, by availing the benefit of change in FSI norms/policy? The answer to the question appears to be in the negative.

81. The main reason why developers oppose conveyance of any portion of land in favour of completed buildings till completion of

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entire development in the layout is because the FSI computations in respect of the layout are always done on the whole of the land in the layout and this system benefits the developers to a large extent. Let us take the illustration of developer undertaking layout development in land admeasuring 10,000 sq. mtrs, in which the developer has planned construction of 4 buildings. First three buildings are constructed with basic FSI 1.00 and each building has utilized built-up area of 2500 sq. mtrs each, leaving only 2500 sq. mtrs of FSI balance for the fourth building. The developer does not convey land to societies of those 3 buildings by citing the pretext of incomplete development of the layout. By the time, the fourth building is taken up for construction, new DCR is introduced permitting higher FSI 2.00. The developer submits the revised plan for sanction by making FSI computation in respect of the entire layout of 10,000 sq mtrs and secures sanction for total built-up area 20,000 sq. mrts. He then deducts the utilized built-up area of 7500 sq. mtrs and constructs the fourth building with built-up area of 12500 sq. mtrs. This is how non-conveyance of any land in the layout enables the developer to milk the additional FSI generated due to change in the norms/policy. On the other hand, in the above illustration, the society of three completed buildings secure conveyance of proportionate land of 7500 sq. mtrs and the developer is left with ownership of only balance land of 2500 sq. mtrs, even if he takes benefit of the increased FSI norms and applies for revised building permission for 2500 sq. mtrs land, he would be sanctioned built-up area of only 5000 sq. mtrs for the fourth building. Thus, the difference between the two scenarios is that in the former case (non-conveyance of any land), fourth building is constructed with built up area of 12500 sq. mtrs whereas in the latter case, the fourth building has less built-up area of 5000 sq mtrs., though the developer is permitted to take benefit of increased FSI in both cases. In the former case, the developer would profiteer by utilizing the additional FSI, whereas in the latter case, both society and the developer would proportionately share the additional

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FSI. The present case is similar to the latter scenarios, where portion of land can be conveyed in favour of the Federation (15402.20 sq. mtrs) and the remaining portion (3200 sq. mtrs) would remain in the ownership of the Developer and both the Federation and Developer can proportionately share the additional FSI arising out of DCPR-2034.

82. Since this Court has arrived at a *prima facie* conclusion that conveyance of entire layout land admeasuring 18602 sq. mtrs in favour of the Federation is erroneous and that its land entitlement as of now would be to the extent of 15402.20 sq. mtrs, the balance land admeasuring 3200 sq. mtrs would be in the ownership of the Developer. However, what the Federation is seeking to do is to interfere with the Developer's right of construction in the land, in which it has no title. Can this be countenanced? In my view, yes, but to the limited extent of binding the developer with disclosures made to the flat purchasers of Building No. 2. The Federation can thus interfere with the right of the Developer to construct Building No. 1 on land admeasuring 3200 sq. mtrs to the limited extent of restricting the construction to built-up area of 7166.70 sq. mtrs and 17 floors. The Federation cannot insist that the Developer should not avail the increased FSI under DCPR-2034 in respect of land admeasuring 3200 sq. mtrs. Since the Federation has opted for conveyance of land before completion of layout development and since its title in respect of land admeasuring only 15402.20 sq. mtrs is *prima facie* upheld, it cannot have any say in respect of the balance portion of land in the layout. Therefore, the developer cannot be restrained from availing the FSI admissible under DCPR-2034 in respect of land in which the Federation does not have any title. This is not a case where the Developer is seeking to milk higher FSI flowing out of the entire layout and loading the same on Building No. 1. The additional FSI

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arising out of land admeasuring 15402.20 sq. mtrs would continue to belong to the Federation, which is a reason why Mr. Chinoy has repeatedly highlighted the position that if the Federation goes for redevelopment today, it can construct upto 48,217.97 sq. mtrs under DCPR-2034 regime i.e. upto 3.5 times its current built-up area of 13842.86 sq. mtrs. However, the expectation of the Federation that the Developer cannot utilize the full FSI potential under DCPR 2034 regime in respect of balance land of 3200 sq. mtrs is something which cannot be countenanced.

83. Therefore, the objection raised by the Federation to the Developer replenishing the lost built-up area on account of shifting of built-up area of 5000 sq. mtrs to Plot-A by utilizing FSI under DCPR-2034 in respect of land of 3200 sq. mtrs. deserves rejection. However, the entitlement of the Developer to exploit full FSI potential under DCPR-2034 in respect of land admeasuring 3200 sq. mtrs would be subject to the caveat that it cannot exceed construction of Building No. 1 beyond the disclosure made to flat purchasers of Building No. 2, i.e. built-up area of 7166.70 sq. mtrs and stilt+17 floors.

CONCLUSIONS

84. Thus, delay by the Developer in constructing Building No.1 would not result in loss of ownership in the land meant for construction of that Building. Such delay would also not result in vesting of title in respect of land admeasuring 3200 sq. mtrs. in favour of the Federation. The Federation's right to secure ownership of land cannot exceed the area utilized for construction of its building. Section 11 of the MOFA cannot be enforced to claim ownership in the land, which a society/federation is not supposed to own. It can own the land in the layout only proportionate to the built-up used for construction of its building. To illustrate, if land admeasuring 10,000 sq. mtrs is taken

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up for construction of two buildings, whose plans are sanctioned with built-up area of 5000 sq, mtrs each and the Developer constructs only one building and construction of the second building is delayed, the society formed by the flat purchasers of the first building cannot claim ownership of the entire land admeasuring 10,000 sq. mtrs. It can only secure ownership of half of the land i.e. 5000 sq. mtrs. and the balance land admeasuring 5000 sq. mtrs would remain in ownership of the developer, who can complete construction of the second building. Also, once conveyance of half of the land (5000 sq. mtrs) is granted in favour of the society of first building, the developer can utilize full admissible FSI potential under the applicable DCR, subject to disclosures made under Sections 3,4,7 and 7A of MOFA.

85. What is being done in the present case is usurping of title in the land by the Federation, which it is not supposed to own. The statutory scheme of Sections 3, 4, 7 and 7A of MOFA is such that the promoter is divested of title in the land once all flats in the building are sold. With sale of each unit in the building, title of the promoter in the land gets diluted. If a building with 10 flats is sanctioned by the planning authority on a piece of land, upon completion of construction of all 10 flats and upon sale thereof, the developer gets denuded of his title in the land on which the building is constructed. MOFA provides for contractual as well as statutory transfer of title in the land in favour of the collective body formed by the unit purchasers. Transfer of title in the land is not left at the mercy of the developer, who cannot put any contractual fetter on transfer of land. He is statutorily obliged to transfer 'his right, title and interest' in the land and the building. He cannot contract with the unit purchasers that he would grant only lease of land or building, if he is the owner of the land. With sale of each unit in the building, his title in the land and the building gets diluted and the same gets completely denuded the moment all flats in the building are sold. However, this does not mean

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that if two buildings on a plot of land are sanctioned, the first building with 15 flats is constructed and the second building with 5 flats is left incomplete, the society formed by 15 flat purchasers of first building will secure title in the whole of the land. Such society can either await construction of second building or seek conveyance of proportionate land, which would be 75% land in the layout in this illustration. In the present case, flat purchasers of Building No. 2, whose societies and Federation is entitled to own only 83.57% land in the layout, is claiming ownership of balance 16.43% land also (meant for construction of Building No.1) merely because the Developer has delayed construction of Building No. 1. This cannot be countenanced in law.

86. Thus, in my *prima facie* view, the Developer is entitled to construct Building No. 1 by using admissible built-up area to the maximum extent of 7,166.70 sq. mtrs. The Developer can be permitted to carry out construction of Building No.1 by getting approved the plans for construction thereof from MCGM by utilizing admissible FSI in respect of land admeasuring 3200 sq. mtrs. However, such construction cannot exceed built up area of 7,166.70 sq.mtrs. and stilt plus 17 floors.

87. The Developer has thus made out a *prima facie* case of an error in the conveyance of entire land admeasuring 18,602.20 sq. mtrs in favour of the Federation. Apart from non-entitlement of the Federation to own the entire land of 18,602.20 sq. mtrs, the impugned conveyance negates the right of the Developer to complete construction of Building No. 1, which was clearly disclosed to the members of the Federation. By distribution of land proportionate to the built-up area of Building Nos. 1 and 2, the Developer can be permitted to complete construction of Building No. 1 by getting the plans sanctioned in respect of land admeasuring 3200 sq. mtrs., subject

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to the condition of not exceeding the construction beyond built-up area of 7166.70 sq. mtrs. and 17 floors. The Federation has thus failed to make out *prima facie* case for restraining the Developer from constructing Building No. 1. The Developer would suffer irreparable loss if injunction is refused in its Suit and if injunction is granted in the Suit filed by the Federation. The balance of convenience also lies in favour of the Developer and against the Federation, as the Developer is being permitted to construct only to the extent of the disclosure made in the MOFA agreements executed with flat purchasers of Building No. 2. The Interim Application filed by the Developer therefore deserves to be allowed and the Interim Application filed by the Federation deserves to be rejected.

ORDER

88. I accordingly proceed to pass the following order:

i) Pending the hearing and final disposal of Suit No. 151 of 2025 filed by the Developer, the Conveyance Deed dated 26 June 2023 conveying the entire layout land admeasuring 18602.20 sq. mtrs in favour of the Federation shall remain stayed and the Federation is restrained from relying on the same before MCGM or any other authority.

ii) During pendency of both the Suits, for the purpose of construction of Building No.1, the land entitlement of the Federation in the layout shall be restricted to area of 15402.20 sq. mtrs and the land entitlement of the Developer in the layout shall be to the extent of 3200 sq. mtrs. as indicated in the Sub-Division Plan sanctioned on 25 September 2014.

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iii) Pending the hearing of final disposal of both the Suits, Developer-ACME shall be entitled to construct Building No. 1 by using admissible FSI in respect of land admeasuring 3200 sq. mtrs. subject to the condition of not exceeding built-up area of 7,166.70 sq. mtrs. and stilt plus 17 floors.

iv) Accordingly, the Stop-Work Notices issued by MCGM on dated 6 June 2023 and 30 June 2023 shall remain stayed during pendency of the Suits.

v) Construction of Building No. 1 by the Developer shall be subject to the final outcome of both Suits and while selling the units in Building No. 1, the Developer shall inform the unit purchasers about pendency of both the Suits.

vi) Interim Application for temporary injunction filed by the Federation is rejected.

89. With above directions, Interim Application No. 4859 of 2024 filed by the Developer is partly allowed and Interim Application (L) No.16204 of 2024 filed by the Federation is dismissed. Both the Interim Applications are accordingly disposed of.

(SANDEEP V. MARNE, J.)

90. After the judgment is pronounced, the learned counsel appearing for the Federation would submit that an oral assurance was given on behalf of the Developer on 19 June 2024 (*which is not recorded in any particular order passed by this Court)* that flats in

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building no.1 shall not be sold. He would pray for continuation of the said assurance and for stay of the judgment for a period of 5 weeks. The request is opposed by the learned counsel appearing for the developer.

91. I have already directed that construction of building no.1 by the developer shall be subject to the final outcome of both the suits and while selling the units in building no.1, the developer shall inform the flat purchasers about the pendency of both the suits. This adequately protects the interest of the Federation. Accordingly, the request made by the Federation for continuation of the oral assurance and for stay of the judgment is rejected.

(SANDEEP V. MARNE, J.)

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