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

## WRIT PETITION NO.6418 OF 2017

ATUL GANESH KULKARNI
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**Lok Housing & Construction Ltd.**
a company incorporated under the provisions of Companies Act, 1956, through it's Resolution Professional Mr. Hemant J. Mohite, having registered address at 4, Lok Bhavan, Ground Floor, Lok Bharti Complex, Marol Maroshi Road, Andheri (East), Mumbai 400 069. ... **Petitioner**

**V/s.**

1. **State of Maharashtra,** through the office of the learned Government Pleader, High Court, Appellate Side, Bombay.
2. **The District Deputy Registrar, Cooperative Societies (2)**, Mumbai & Competent Authority, Eastern Suburbs, Mumbai Office at Konkan Bhavan, Navi Mumbai 614.
3. **Lok Everest Cooperative Housing Society Ltd.**, a society registered under the provisions of Maharashtra Cooperative Societies Act, 1960 having its registered office at Everest Complex, J.S. Dosa Road, Mulund, Mumbai 400 080
4. **Everest Industries Ltd.,** A company incorporated under the provisions of Companies Act, 1956



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having its registered address at Gat No.152, Lakhmapur, Taluka Dindori, District Nashik 422 202

5. **Lok Everest Mansarovar Cooperative Housing Society Ltd.,** a society registered under the provisions of the Maharashtra Cooperative Societies Act, 1960 having its address at Ground Floor, B-Wing, J.S. Dosa Road, Mulund (W), Mumbai 400 080 **... Respondents**

Ms. Swati Dalmia & Ms. Rishika A. Jain, Mr. Orijit Chatterjee, i/by Fox Mandal & Associates LLP for the petitioner.

Mr. Bapusaheb Dahiphale, AGP for respondent Nos.1 & 2-State.

Mr. Bhavik Manek with Mr. Mukesh Gopta, & Ms. Ashwini Patel i/by Solicis Lex for respondent No.3.

Mr. Niket Dalal i/by Mr. Himanshu Vidhani for respondent No.4.

Mr. Sanjay T. Manek with Mr. G.S> Bhatt for respondent No.5.

**CORAM : AMIT BORKAR, J.**

**RESERVED ON : MARCH 24, 2025**

**PRONOUNCED ON : MARCH 26, 2025**

**JUDGMENT:**

**1.** By way of this writ petition filed under Article 226 of the Constitution of India, the petitioner, who is a developer, has challenged the legality, validity, and propriety of the impugned judgment and order dated 21st March 2017 passed by the District



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Deputy Registrar, Cooperative Societies, Mumbai. The said impugned order was passed in Application No. DC 1003197/2016 and is accompanied by a certificate of deemed conveyance issued on the same day in favour of respondent No.3 – the Co-operative Housing Society. The said certificate pertains to the land admeasuring 5219.90 square metres along with the undivided share and interest in the common areas and common facilities to the extent of 17288.80 square metres out of the total area admeasuring 29897.20 square metres forming part of the larger layout of land bearing CTS No.661/1/1.

**2.** The brief facts as pleaded by the petitioner are as follows:

The original owner of the property in question is M/s. Eternit Everest Limited. As per the partnership deed dated 31st July 1990, the development rights in respect of the said property were assigned to M/s. Lok Holdings. Subsequently, all rights, title, and interest, including benefits flowing from the said development agreement dated 31st July 1990, were further assigned and transferred in favour of the present petitioner-developer. Thereafter, on 22nd June 1993, a supplementary agreement was executed between the parties, thereby modifying and amending certain terms and conditions of the original agreement dated 31st July 1990. This transfer of development rights was the basis upon which the petitioner claims to have lawfully stepped into the shoes of the developer and undertaken the obligations and rights associated with the property.



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**3.** The petitioner further submits that, in pursuance of the said development rights, he applied to the competent planning authority for development permission. Upon due consideration, the planning authority granted a commencement certificate dated 4th January 1995 for development of Plot No.5, which formed a part of a larger layout scheme. The said development was in relation to buildings identified as Wings B-3, C-3, C-4 and C-5. According to the petitioner, the entire scheme was to be developed in a phased manner, and all development activities undertaken were strictly as per sanctioned plans and in accordance with the permissions granted by the municipal authority from time to time.

**4.** It is further stated by the petitioner that, on 27th April 1995, agreements for sale as contemplated under Section 4 of the MOFA Act were executed in favour of flat purchasers of buildings constructed as part of the Lok Everest Scheme on Plot No.4. According to the petitioner, he has developed and constructed a total of 15 buildings in the said layout, including one building meant for common amenities. Building No.4, which is the subject matter of the present dispute, consists of four wings, namely B-1, C-1, C-2, and B-2. In addition to these, the petitioner submits that construction of three out of four wings of Building No.5, namely B-3, C-3, and C-4, is also complete. However, construction of Wing C-5 has not yet been undertaken or completed.

**5.** In view of this factual position, the petitioner contends that the development of the project is still ongoing, and therefore, issuance of deemed conveyance for the entire land, including undivided share in common areas and facilities, in favour of one



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single Society (respondent No.3), without considering the composite nature of the development and the incomplete construction, is legally unsustainable and would result in prejudice to the developer's lawful rights.

6. It is an admitted position on record that on 25th February 2005, the Occupation Certificate in respect of Building No.4 was issued by the competent authority. Thereafter, on 4th September 2006, the flat purchasers of Building No.4 formed themselves into a Co-operative Housing Society. The said Society, namely respondent No.3 herein, came to be duly registered under the Maharashtra Co-operative Societies Act, 1960, by issuance of Registration Certificate dated 4th September 2006.

7. Thereafter, on 11th March 2014, respondent No.3-Society filed an application bearing No.508 of 2014 under Section 11(3) of the MOFA Act, seeking unilateral deemed conveyance on the ground that despite repeated demands, the developer had failed to execute the conveyance deed. However, respondent No.2–the competent authority–rejected the said application by its order dated 16th October 2014. Subsequently, on 29th December 2016, respondent No.3 filed a second application bearing No.1003197 of 2016 under the same provision, again seeking deemed conveyance in respect of the land and building in its favour.

8. In response to the said application, the petitioner filed a detailed written statement raising preliminary objections to the maintainability of the second application. It was specifically contended that the second application was not maintainable, as it



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was based on the same set of facts and cause of action as the earlier application which had been rejected. Furthermore, the petitioner pointed out that Building No.4 of respondent No.3-Society forms part of a much larger composite lay-out, and that the construction of Wing C-5 of Building No.5 is still incomplete. Therefore, according to the petitioner, it is not possible to physically bifurcate the entire lay-out into smaller plots to allow deemed conveyance to individual societies in isolation. Despite these objections, respondent No.2, by the impugned order dated 21st March 2017, allowed the application filed by respondent No.3-Society and directed issuance of a deemed conveyance certificate in its favour. It is this order which is the subject matter of challenge in the present writ petition.

**9.** Learned counsel appearing for the petitioner submitted that the competent authority has committed a serious error of law and fact in allowing the application of respondent No.3 without appreciating the incomplete nature of the project. She relied upon Government Resolution dated 25th February 2011 which provides that, in cases where construction of some of the buildings in a single lay-out remains incomplete, it would not be feasible to execute a conveyance deed for part of the property, as it could give rise to practical difficulties in the implementation of the lay-out. She further invited attention to Clause 25 of the Agreement for Sale executed under Section 4 of MOFA, to submit that there was a clear agreement between the parties that the conveyance deed would be executed only upon completion of the entire development scheme, namely, Lok Everest. It was also pointed out



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that Clause 28 of the said agreement contemplates the formation of an apex body or federation upon full completion of the scheme, which would then be the appropriate entity to receive the conveyance.

**10.** Additionally, she submitted that the residual Floor Space Index (FSI) available on the plot was contractually and statutorily reserved for the petitioner till the completion of the entire project. In this regard, she relied on the fact that the construction of Wing C-5 is not yet completed, and the same is the subject matter of a civil suit filed by the petitioner, in which an order of status quo has been granted by the Civil Court. Consequently, the petitioner argued that in view of such restraint order, the construction could not be carried forward and hence, respondent No.3 cannot insist on conveyance of the entire property. It was further submitted that the mandatory legal notice contemplated under the proviso to Section 11(3) of MOFA was not served prior to the filing of the second application and hence, the application itself was not maintainable in law. Learned counsel also contended that the respondent-Society sought to rely upon a Government Resolution issued in the year 2018, which cannot retrospectively justify the impugned order passed in the year 2017. She, therefore, submitted that the impugned order is liable to be quashed and set aside.

**11.** On the other hand, learned counsel appearing for respondent No.3-Society supported the impugned order and submitted that the sanction plan of the lay-out was shared with the flat purchasers at the time of entering into agreement for sale, and the total FSI permissible under the said plan was 67028.44 square metres. He



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pointed out that the total built-up area permissible for Wing C-5, as per sanctioned plan, was 22807.89 square metres, and the petitioner has already consumed approximately 22513.38 square metres of built-up area in respect of Building No.5 as per the revised sanctioned plan dated 1st November 2007. Thus, according to him, the entire FSI for Building No.5 (including C-5) stands consumed and no further construction can be carried out, which implies that the developer's claim of 'incomplete construction' is misleading and devoid of merit.

**12.** He further submitted that although Clause 32 of the Agreement may envisage execution of the conveyance in favour of an apex body or federation, the petitioner has failed to convey the property in favour of respondent No.3 for over a decade, which forced the society to take steps for unilateral deemed conveyance. It was submitted that under the MOFA Act, the developer is under a statutory obligation to execute the conveyance deed within the prescribed period from registration of the society. The failure to do so disentitles the petitioner from invoking equitable jurisdiction of this Court under Article 226.

**13.** He submitted that the conveyance granted by the competent authority was strictly limited to the area proportionate to the built-up area of the building of respondent No.3-Society, and not the entire lay-out. He also clarified that the earlier application filed by the society was not rejected on merits but was disposed of for want of necessary documentation and details.



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**14.** Learned counsel for respondent No.3 also contended that although the initial sanctioned plan for Building C-5 was for stilt plus 12 storeys, the petitioner later modified the same and constructed three wings of Building No.5 as stilt plus 16 storeys, thereby fully consuming the available FSI. Hence, the claim of pending construction is, in substance, no longer tenable. In light of these submissions, it was urged that the impugned order dated 21st March 2017 is legal, proper, and based on correct appreciation of facts and deserves to be upheld.

**15.** The rival submissions advanced by the learned Advocates for the petitioner and respondent No.3 give rise to the core issue for consideration, namely, whether the order passed by the Competent Authority granting deemed conveyance in favour of respondent No.3-Society is legally sustainable in the facts and circumstances of the case.

**16.** Upon perusal of the record placed before the Court and after giving anxious consideration to the submissions advanced by the learned Advocates for the parties, certain material aspects stand out. It is an admitted position that agreements for sale under Section 4 of the Maharashtra Ownership of Flats Act, 1963 ("MOFA") were executed in favour of individual flat purchasers as far back as in the year 1995. It is also not in dispute that respondent No.3-Society came to be registered on 4th September 2006 under the provisions of the Maharashtra Co-operative Societies Act, 1960.



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**17.** The submission advanced on behalf of the petitioner, seeking to justify delay in execution of conveyance by relying upon contractual clauses 25 and 28 to contend that conveyance in favour of society can be executed only after completion of the entire development scheme, cannot be accepted in the face of the clear statutory mandate contained in Rule 9 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Rules, 1964 (hereinafter referred to as "the MOFA Rules"). Rule 9 leaves no room for ambiguity and categorically prescribes the time frame within which a promoter is required to convey title to the co-operative housing society or association of flat purchasers. The Rule provides that, unless a specific period is mutually agreed upon between the parties, the promoter shall execute the conveyance deed within four months from the date of registration of the society.

**18.** The purpose of Rule 9 must be understood in light of the statutory scheme of MOFA, particularly Section 11, which casts a positive obligation upon the promoter to execute the conveyance of title in favour of the organization of flat purchasers. The Rule is not merely procedural in nature but is a substantive safeguard against indefinite and deliberate delay on the part of the promoter. The four-month period is a codified timeline intended to operationalize the legislative objective of ensuring that flat purchasers are not left in a state of uncertainty regarding title to the land and building in which their flats are situated. This obligation cannot be evaded on the basis of private contractual stipulations that seek to indefinitely defer the promoter’s duty, nor



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can it be defeated by reference to alleged defaults by individual purchasers. MOFA being a social welfare legislation intended to protect the interests of flat purchasers must be interpreted in a purposive and beneficial manner. It is settled law that in interpreting such welfare statutes, the Court must give precedence to the legislative intent over the literal terms of any private agreement which runs counter to such intent.

**19.** Of particular significance is the use of the word “period” in Rule 9 of the MOFA Rules. The legislature has deliberately chosen this word to signify a determinate, fixed and measurable segment of time. The ordinary and grammatical meaning of “period” is a definite span of time, not subject to vague or indefinite conditions. This interpretation is consistent with the well-recognized principles of statutory interpretation, whereby words used in subordinate legislation are to be given their natural and popular meaning unless the context requires otherwise.

**20.** In the present case, the statutory language is clear and unambiguous. It therefore warrants a plain and literal interpretation. The term “period” in Rule 9 cannot be interpreted to mean an indeterminate, future event-based timeline such as "completion of the entire development scheme". Such an interpretation would amount to substituting a definite and enforceable timeframe with a contingent and uncertain condition, thereby diluting the efficacy of Rule 9. Courts are not permitted to rewrite statutory provisions under the guise of interpretation, especially when doing so would defeat the purpose and object of the legislation.



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**21.** In the face of statutory obligations, courts are empowered and indeed duty-bound to disregard any such clause that seeks to dilute, defer or defeat the legislative scheme. To uphold such a clause would be to allow the promoter to continue holding title in perpetuity under the guise of incomplete obligations, which the legislature clearly intended to avoid.

**22.** Further, the Court finds that any interpretation of the word "period" that allows it to be supplanted by the occurrence of a future uncertain event would defeat the legislative intent of providing a time-bound mechanism for conveyance. MOFA was enacted precisely to remedy the imbalance in bargaining power between promoters and flat purchasers. To interpret Rule 9 in a manner that enables the promoter to defer conveyance indefinitely would amount to restoring the very imbalance which MOFA seeks to correct.

**23.** Therefore, this Court has no hesitation in holding that the expression "period" as used in Rule 9 must necessarily mean a fixed, determinable and reasonable span of time. It cannot be equated with any open-ended or contingent condition. Any clause in the agreement for sale that attempts to override or nullify this statutory obligation must be declared void to that extent, being inconsistent with the law.

**24.** In view of the aforesaid discussion, this Court is of the considered opinion that any contractual clause, including Clause 25 of the agreement in the present case, which seeks to defer the promoter's obligation to execute conveyance until completion of



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project, is in direct conflict with Rule 9 of the MOFA Rules. Such a clause cannot take precedence over a statutory duty. Where the majority of purchasers have taken possession and formed a registered society, and have complied with their obligations, the promoter cannot avoid conveyance by raising inter se disputes or conditions involving other purchasers. A condition based on a future uncertain event — neither time-bound nor within the control of the society — cannot be treated as a valid "period" under Rule 9.

**25.** Acceptance of the petitioner's contentions would amount to rendering the statutory mandate under MOFA nugatory and placing the rights of the flat purchasers at the unregulated discretion of the promoter. Such an interpretation cannot be sustained in law. It would frustrate the very purpose for which MOFA was enacted — to ensure time-bound transfer of ownership to flat purchasers and to check arbitrary and exploitative practices by promoters. In the present case, no specific and mutually agreed "period" exists which is contrary to Rule 9. Accordingly, the petitioner was under a statutory obligation to execute the conveyance deed within four months from the date of registration of respondent No.3-Society. Admittedly, the petitioner failed to do so. Therefore, the application filed by respondent No.3 under Section 11 of the MOFA Act was legally maintainable, and the order passed by the Competent Authority granting deemed conveyance cannot be faulted.

**26.** The petitioner has also relied on Clause 28 of the agreement to contend that the conveyance is required to be executed in



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favour of a federation of societies, and not in favour of individual societies. It is a settled principle of law that statutory obligations cannot be circumvented by reference to contractual stipulations which are incapable of being performed or are left unacted upon for inordinate periods. A developer who has reaped the benefits of the agreement by receiving full consideration from the flat purchasers cannot be permitted to frustrate their rights by taking recourse to vague assurances of future compliance. The doctrine of frustration of contract, if at all, would operate against the party whose acts or omissions have led to the impossibility of performance—in this case, the respondents themselves. The right of the petitioner-society to seek conveyance has matured and crystallized; the same cannot be rendered illusory by the unilateral inaction of the developer.

**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



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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 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



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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*



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*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 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*



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*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."*

**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



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bodies.

**33.** Learned Advocate appearing for the petitioner next contended that the construction of Building C-5 is incomplete, and therefore, no order granting deemed conveyance could have been passed in favour of respondent No.3-Society. However, this submission, in the opinion of this Court, is devoid of merit. As rightly pointed out by the learned Advocate appearing for respondent No.3, the sanctioned lay-out plan which was disclosed to the purchasers of respondent No.3-Society at the time of execution of agreements clearly showed three buildings under Building C-5, each consisting of 12 storeys. Subsequently, however, the petitioner unilaterally revised the sanctioned plan and introduced a fourth building under Building C-5. Furthermore, after the revised sanction, the actual construction carried out for three wings of C-5 was of stilt plus 16 floors, thereby consuming the entire permissible Floor Space Index (FSI) under the Development Control Regulations. This Court finds substance in the contention of respondent No.3 that once the petitioner has consumed the entire FSI and revised the lay-out unilaterally after execution of agreements with the flat purchasers of respondent No.3-Society, the petitioner cannot now be permitted to take advantage of its own conduct to defeat the statutory rights of the Society. The petitioner, having derived benefit of the development potential, cannot be allowed to raise the plea of incomplete construction as a ground to withhold conveyance. The right of the society to seek conveyance under Section 11 of MOFA is not conditional upon the petitioner's unilateral alterations to the



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project or incomplete status of any subsequent building.

**34.** It was next submitted on behalf of the petitioner that the application for deemed conveyance filed before the Competent Authority was not accompanied by the mandatory legal notice as contemplated under the Rules, and therefore, the impugned order is vitiated and liable to be set aside on this ground alone. This objection also does not commend acceptance. It must be noted that the right conferred upon an Association of Flat Purchasers or a Co-operative Housing Society under Section 11 of the MOFA Act is a statutory right, which cannot be defeated or extinguished merely due to technical non-compliance of procedural requirements, such as non-annexure of a legal notice. Rule 9 of the MOFA Rules imposes a positive obligation upon the promoter to execute the conveyance deed within four months from the date of registration of the society. It is the promoter who is under a continuing statutory duty to act, and failure on the part of the society to serve a notice cannot be used as a defence to justify prolonged delay. Moreover, there is nothing on record to indicate that the petitioner was unaware of the proceedings or that it was denied an opportunity of hearing. Therefore, the objection raised by the petitioner on this ground is not only hyper-technical but also without legal merit, and is liable to be rejected.

**35.** The petitioner has also relied upon Government Resolution dated 25th February 2011 to contend that no deemed conveyance can be granted in respect of buildings forming part of an incomplete lay-out. This submission also deserves to be rejected. A perusal of the said Government Resolution reveals that the State



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Government had taken note of potential practical difficulties that may arise in executing conveyance in respect of incomplete buildings forming part of a larger lay-out. However, such difficulties were merely part of the background considerations leading to the issuance of the Resolution and do not form part of the operative decision.

**36.** On the contrary, the operative portion of the said Government Resolution clarifies that in cases where buildings in a lay-out are complete and co-operative housing societies have been formed, such societies are entitled to seek conveyance of their respective building along with the proportionate share in the land beneath and appurtenant to such buildings. Thus, the Resolution in fact supports the cause of respondent No.3 rather than that of the petitioner. In the present case, it is not disputed that respondent No.3-Society was registered as early as on 4th September 2006. The registration of other societies forming part of the lay-out was completed only in 2015. The developer cannot be permitted to indefinitely postpone conveyance on the ground that other societies were not yet formed. The statutory obligation to execute conveyance within four months from the date of registration of each individual society operates independently and cannot be suspended on account of non-registration of other societies in the lay-out. Permitting the petitioner to delay conveyance for over 30 years under one or the other pretext would render the statutory mandate under MOFA wholly nugatory and undermine the rights of flat purchasers. Such conduct is clearly impermissible and contrary to both the letter and spirit of the



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MOFA legislation.

**37.** Learned Advocate appearing on behalf of the petitioner further contended that the impugned order passed by the Competent Authority has conferred rights upon respondent No.3-Society in excess of the area that was originally agreed to be delivered under the agreements executed with the flat purchasers. However, upon a careful perusal of the impugned order, this Court finds that the Competent Authority has considered the relevant material placed on record, particularly the Architect's certificate dated 17th October 2016 submitted by respondent No.3-Society. The said Architect's certificate quantifies the plot area and the undivided share of land based on the sanctioned plan dated 1st November 2007, which was duly approved by the Municipal Corporation. It further deserves to be noted that the original lay-out plan dated 26th November 1993, which was disclosed to the purchasers at the time of entering into agreements under Section 4 of the MOFA Act, showed a total permissible FSI of 74476.04 sq. mtrs., and the number of buildings disclosed therein were five.

**38.** As per settled legal position, the rights of the purchasers, and consequently the society representing them, crystallize based on the sanctioned plan and lay-out which is presented at the time of execution of the agreement for sale. The said documents form the foundation of the contractual and statutory rights of the flat purchasers. Therefore, the entitlement of respondent No.3-Society to seek conveyance of the proportionate land and undivided share in the common areas must be determined with reference to the approved lay-out disclosed to its members.



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**39.** Accordingly, this Court finds no infirmity in the determination made by the Competent Authority in directing the execution of deemed conveyance for the area ad-measuring 5219.90 sq. mtrs. along with undivided share of land ad-measuring 17288.30 sq. mtrs., as per the sanctioned plan placed before the purchasers. The said finding is based on cogent material and is not vitiated by any error apparent on the face of the record.

**40.** Furthermore, it is significant to note that a similar issue was raised by another housing society situated within the same lay-out by filing Writ Petition No. 7152 of 2017 before this Court. In the said petition, the petitioner-society had specifically challenged the grant of undivided share in the common areas and amenities in favour of respondent No.3-Society. However, the coordinate Bench of this Court, after hearing the parties, dismissed the said writ petition by relegating the petitioner-society to pursue its remedy by way of a civil suit.

**41.** At this juncture, it is imperative to refer to the Division Bench judgment in *Zainul Abedin Yusufali Massawawala & Ors. v. Competent Authority District Deputy Registrar of Coop. Housing Societies, Mumbai & Ors.*, (2016) SCC OnLine Bom 6028. In that matter, the owner of the property contended that the agreement between the owner and the developer expressly contemplated the consumption of only a specified portion of the land. It was further submitted that the development agreement did not empower the developer to claim an area of 1791.96 sq. mtrs. as described in the schedule, especially in light of the individual agreement entered into with the flat purchaser. Accordingly, it was averred that the



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rights of the developer were confined solely to the area actually consumed by the construction. In this context, the Division Bench held that if, while granting deemed conveyance, the Competent Authority exceeds the parameters set forth in the agreement—thereby allowing the society to claim a larger property in contravention of the covenants and recitals contained in the two agreements—then the appropriate remedy for the aggrieved party, as elucidated in *Tushar Jivram Chauhan & Anr. v. The State of Maharashtra & Ors.*, (2015) 4 Mh.L.J. 867 and *Mazda Construction Co. v. Sultanabad Darshan CHS Ltd.*, 2012 SCC OnLine Bom. 1266, is not to seek redress via a writ petition under Article 226 before this Court but rather to approach the competent civil court to establish his right, title, and interest in relation to the larger property. In support of this proposition, it is further submitted that while the petitioners may allege that the society's claim of a larger area is contrary to the development and MOFA agreements, such contentions are more appropriately resolved in a civil forum where evidentiary proof regarding the disputed title can be adduced and examined in detail.

**42.** In view of the said precedent, and considering the nature of the objections now raised by the present petitioner, this Court is of the opinion that the proper course of action for the petitioner is also to approach the civil court for adjudication of any substantive claim or right he may have in relation to the land or apportionment thereof. The Competent Authority, while exercising jurisdiction under Section 11 of MOFA, is concerned primarily with the prima facie entitlement of the society and does not adjudicate



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upon disputed title or complex factual questions which require detailed evidence.

**43.** Viewed in this light, it is evident that the petitioner-developer has failed to perform his statutory obligations for a prolonged period of time. The delay in execution of conveyance is clearly attributable to the inaction and default of the petitioner himself. The agreements with flat purchasers were executed in the year 1995. The society came to be registered in 2006. More than 30 years have now passed since the execution of the initial agreements, and yet no conveyance has been executed in favour of the society. Such long delay, without any justifiable cause, is not only contrary to the letter and spirit of MOFA, but also prejudicial to the rights of the flat purchasers who continue to be denied ownership and legal title to the property despite full consideration having been paid.

**44.** Accordingly, it is clarified that if the petitioner so desires, he is at liberty to institute a civil suit seeking appropriate reliefs. If such a suit is instituted, the same shall be decided by the civil court on its own merits, in accordance with law, and without being influenced by the observations made in the impugned order passed by the Competent Authority or by this Court in the present proceedings under Article 227 of the Constitution of India.

**45.** In view of the aforesaid discussion and findings, this Court is of the considered view that no case for interference in the impugned order passed by the Competent Authority is made out. The impugned order is found to be in consonance with the



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statutory scheme of MOFA, and does not suffer from any jurisdictional or procedural irregularity warranting exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

46. The writ petition is accordingly dismissed. No order as to costs.

(AMIT BORKAR, J.)



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