



AGK

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

**WRIT PETITION NO.6869 OF 2021**

Swastik Promoters and Developers,  
Swastik House, 39D, Gultekadi,  
Pune, through partners

**A. Chetan Purushottam Patel**

**B. Vipul Vallabhbhai Patel**

Both R/at. Shankarsheth Road,  
Pune 411 037

**C. Annuj Umesh Goyal,**

R/at: 5, Bund Garden Road,  
San-Mahu Complex, Opposite  
Poona Club, Pune 411 001

**... Petitioner**

**V/s.**

1. The Competent Authority,  
the District Deputy Registrar of  
Cooperative Societies, Pune City  
Pune, having its office at  
Sakhar Sankul, Shivaji Nagar,  
N.T. Wadi, Pune  
Maharashtra 411 005
2. Ganga Cypress Co-operative  
Housing Society Limited,  
S.No. 58, Hissa No.1 and 2/2,  
Mouje Tathavade, Tal.- Mulshi,  
District Pune – 411 033,  
Through Secretary Piyush Sodi,  
R/at: Flat No. 1102, C-Wing,  
Ganga Cypress Co-operative

Digitally  
signed by  
ATUL  
GANESH  
KULKARNI  
Date:  
2025.02.07  
16:15:38  
+0530

Housing Society Limited,  
S.No.58, Hissa No.1 and 2/2,  
Mouje tathavade, Tal. Mulshi,  
Pune 411 033

... Respondents

Mr. Jaydeep Deo for the petitioner.

Mr. T.S. Kapre, AGP for respondent No.1 – State.

Dr. Abhinav Chandrachud i/by Mr. Pavan S. Patil for  
respondent No.2.

**CORAM : AMIT BORKAR, J.**

**DATED : FEBRUARY 7, 2025**

**JUDGMENT:**

1. The petitioner takes exception to an order dated 26th July 2021 passed by respondent No.1 in Deemed Conveyance Application No.D.C.1006568/2019/1608 granting unilateral deemed conveyance under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (“MOFA Act”) in respect of land admeasuring 13718.26 sq. mtrs. along with construction admeasuring 12048.83 sq. mtrs. on the land at Mouje Tathavade, Taluka Mulshi, District Pune.

2. The facts and circumstances giving rise to the filing of the instant writ petition are as under:

Respondent No.2 filed Deemed Conveyance Application No.1006568 of 2019 before respondent No.1. The petitioner is promoter and developer of the scheme. The members of

respondent No.2 – Society purchased units / flats as per agreement to sale which was based on sanctioned plan dated 24th December 2010. According to the petitioner, as per sanctioned plan dated 24th December 2010, permissible FSI was 12,086.87 sq. mtrs. And sanctioned units were 219. The said sanctioned plan was revised on 4th April 2014 by the petitioner without consent of respondent No.2 – Society. However, the revision of plan does not change position of FSI.

3. The respondent No.2, therefore, filed Special Civil Suit No.1482 of 2019 before the Civil Judge Senior Division, Pune seeking relief of specific performance of the agreement to sale, and further seeking declaration that lay-outs dated 4th April 2012 and 26th May 2014 be declared as illegal and void. The respondent No.2 further prayed injunction against the petitioner and Municipal Corporation not to revise existing plan of the property without the consent of members of the respondent No.2–Society.

4. The petitioner contests the deemed conveyance application by asserting that respondent No. 2-Society has already initiated Special Civil Suit No. 1482 of 2019, seeking specific performance, damages, and impugning the sanctioned plan pertaining to the subject land. It is contended that the Competent Authority under the Act is jurisdictionally barred from adjudicating the application filed by respondent No. 2, as the civil suit involves overlapping issues of title, contractual obligations, and validity of the sanctioned plan, which fall squarely within the domain of the civil court. The petitioner further avers that all flat purchasers affiliated with respondent No. 2-Society were duly apprised of, and

expressly consented to, the phased construction of seven buildings under the development scheme. It is underscored that the execution of conveyance was contingent upon the completion of all seven buildings, as per the mutual understanding between the parties. Consequently, the petitioner asserts that the application for deemed conveyance, instituted prior to the culmination of the entire project, is premature, lacks contractual and statutory foundation, and ought to be dismissed in limine for being devoid of merit.

5. Respondent No. 1, the Competent Authority, upon a comprehensive evaluation of the documentary evidence on record and the submissions advanced by both parties, rendered the impugned order. The Authority concluded that respondent No. 2-Society is legally entitled to the conveyance of land admeasuring 13718.26 sq. mtrs. and constructed area admeasuring 12048.83 sq. mtrs, which constitutes the substratum of the present writ petition. The Competent Authority, in arriving at its determination, relied on the statutory mandate under Section 11 of the Maharashtra Ownership Flats Act, 1963 (“MOFA”), which obligates the promoter to execute conveyance in favour of the society upon fulfillment of contractual obligations, irrespective of the pendency of collateral disputes. It was held that the respondent No. 2-Society had demonstrated compliance with the prerequisites for deemed conveyance, including the submission of requisite consents and documentation, and that the application was neither premature nor barred by the pending civil suit. The Authority emphasized that the statutory right to conveyance under MOFA

operates independently of civil proceedings, as the latter pertains to distinct contractual and proprietary grievances.

6. Mr. Deo, learned Advocate for the petitioner, strenuously contended that the institution of Special Civil Suit No.1428 of 2019 by respondent No. 2-Society, seeking specific performance and damages, renders the concurrent proceedings before the Competent Authority under Section 11 of the MOFA Act is impermissible. He asserted that the petitioner had transparently disclosed the phased development plan, envisaging the construction of six buildings, and that the obligation to execute conveyance would crystallize only upon the completion of the entire project. Thus, the application for deemed conveyance, filed after the erection of merely four buildings, was characterised as premature and violative of the agreed terms. Mr. Deo further assailed the impugned order for its failure to consider the binding Memorandum of Understanding (“MoU”) dated 30th July 2015, wherein respondent No. 2-Society unequivocally acknowledged the petitioner’s entitlement to utilize residual Floor Space Index (FSI) through the procurement of Transferable Development Rights (TDR) for completing the balance construction. Additionally, he highlighted the Competent Authority’s non-application of mind to the Government Resolution dated 26th July 2018, which stipulates that in composite projects comprising multiple buildings intended to form separate societies, deemed conveyance must be restricted to the proportionate area corresponding to the completed structures. By disregarding these critical contractual and regulatory frameworks, Mr. Deo argued that the Competent

Authority's order suffers from jurisdictional errors, non-compliance with statutory guidelines, and patent perversity, warranting its annulment under Article 226 of the Constitution of India.

7. Per contra, Dr. Chandrachud, learned Counsel for respondent No. 2, ardently defended the impugned order by underscoring that the members of respondent No. 2-Society acquired their units from the petitioner in reliance on the explicit representations enshrined in the sanctioned plan dated 24th December 2010, annexed to their purchase agreements. This plan unequivocally delineated the construction of 219 residential units across Wings A to F, with a permissible Floor Space Index (FSI) of 12,086.87 sq. mtrs. Dr. Chandrachud contended that the petitioner, having exhausted the entirety of the sanctioned FSI through the construction of four buildings, is estopped from asserting any residual rights over FSI or Transferable Development Rights (TDR) under the doctrine of exhaustion of statutory entitlements. He emphasized that the pendency of a civil suit, which primarily addresses contractual disputes and damages, cannot vitiate the statutory mandate under Section 11 of the MOFA Act, which confers an independent and indefeasible right to conveyance upon fulfillment of the sanctioned plan. Further, he argued that the Memorandum of Understanding (MoU) dated 30th July 2015, relied upon by the petitioner, fails to satisfy the stringent requirements of Section 7 of the MOFA Act, as it neither constitutes "informed consent" nor aligns with the sanctity of the 2010 sanctioned plan—the foundational document governing the parties' rights.

8. Dr. Chandrachud meticulously drew the Court's attention to the agreement executed between the petitioner and one of the flat purchasers, which explicitly stipulates the conveyance of land admeasuring 1 Hectare 66 Are (16,600 sq. mtrs) in favour of the Association of Purchasers. He highlighted that Clause 25(a) and 25(b) of the agreement categorically bind the petitioner to construct the housing complex strictly in accordance with the 2010 sanctioned plan, which the purchasers had reviewed and approved. Significantly, he underscored that Clause 11(g) of the agreement, which purports to grant the petitioner unilateral rights to alter construction plans, constitutes a blanket consent that is inherently antithetical to the statutory safeguards under Section 7 of the MOFA Act. Dr. Chandrachud argued that such a clause, being devoid of specificity and transparency, cannot qualify as "informed consent," as it fails to apprise purchasers of material deviations from the sanctioned plan, thereby violating the mandatory disclosure requirements under MOFA.

9. In a compelling reliance on judicial precedent, Dr. Chandrachud cited the authoritative pronouncement in *Dosti Corporation, Mumbai v. Sea Flama Cooperative Housing Society Ltd., Mumbai & Ors.* (2016 (5) Mh.L.J. 102), wherein the Court unequivocally ruled that blanket clauses conferring development rights on promoters cannot circumvent the statutory obligation to obtain informed consent under Section 7 of the MOFA Act. He analogized the facts of the present case to *Dosti Corporation*, stressing that the petitioner's attempt to leverage Clause 11(g) for unilateral modifications to the sanctioned plan mirrors the

impermissible conduct adjudicated therein. The judgment elucidates that "informed consent" under MOFA necessitates a voluntary, specific, and knowledge-based acquiescence by purchasers to any post-agreement alterations, a threshold conspicuously unmet in the present case. Dr. Chandrachud further asserted that the Competent Authority's reliance on the 2010 sanctioned plan as the sole basis for granting deemed conveyance aligns with the statutory intent of MOFA to protect purchasers from arbitrary deviations by promoters. He concluded by urging the Court to uphold the impugned order as a faithful application of both statutory mandates and binding judicial precedents.

10. Reliance was placed by the petitioner on the Division Bench judgment of this Court in *Shimmering Heights CHSL & Ors. v. State of Maharashtra* (Writ Petition No. 3129 of 2016, decided on 6th April 2016), wherein it was authoritatively held that the statutory mechanism for deemed conveyance under Section 11 of the Maharashtra Ownership Flats Act, 1963 (MOFA) does not preclude a promoter from pursuing remedies in the civil forum to assert rights over disputed property. The petitioner contends that if the respondent No. 2-Society's claim for conveyance exceeds its contractual or statutory entitlement, the petitioner retains the inalienable right to approach the competent Civil Court under Section 9 of the Code of Civil Procedure, 1908, to adjudicate questions of title, ownership, and proprietary interests.

11. It was further underscored that this Court has consistently reaffirmed, in judgments such as *Mazda Construction Company v. Sultanabad Darshan CHS Ltd.* (2012 SCC OnLine Bom 1266) and

*Zainul Abedin Yusufali Massawala & Ors. v. Competent Authority* (2016 SCC OnLine Bom 6028), that a deemed conveyance order under Section 11 of MOFA is administrative in nature and does not operate as res judicata or conclusively determine rights in rem. The statutory process merely enforces the promoter's pre-existing obligation to execute conveyance as per the sanctioned plan and registered agreements, without adjudicating competing claims to title. Thus, an aggrieved party retains the unfettered right to institute a civil suit, to seek declaratory or injunctive reliefs, thereby ensuring that the civil court's plenary jurisdiction under Section 9 CPC remains inviolate despite the Competent Authority's administrative action.

**12.** This Court has meticulously evaluated the submissions advanced by both parties, cognizant of the quasi-judicial character of the Competent Authority's functions under Section 11 of MOFA. While the Authority's determination carries trappings of judicial process—including adherence to principles of natural justice, verification of documents, and reasoned satisfaction—it remains circumscribed by the statutory framework. The Authority's role is not to adjudicate title disputes or interpret complex contractual terms but to ensure compliance with the promoter's obligations under MOFA. A concise reference to the statutory scheme under Sections 4 and 11 of MOFA, read with Rules 8 and 9 of the Maharashtra Ownership Flats Rules, 1964, elucidates the Legislature's intent to balance the interests of flat purchasers and promoters while preserving the civil court's supremacy in title adjudication.

*“4. (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 (hereinafter in this section referred to as "the Registration Act, 1908") 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 for 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*

**(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) .....

**11. (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 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, 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, the certificate issued by the Competent Authority along with the unilateral instrument of conveyance, the Sub-Registrar or the concerned appropriate Registration Officer shall, notwithstanding anything contained in the Registration Act, 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 '.

### **Rules**

**8. Period for submission of application for registration of co-operative society or company of Flat purchasers.-** Where a co-operative society or a company of persons taking the flats is to be constituted, the promoter shall submit an application to the Registrar for registration of the co-operative society or the company, as the case may be, within four months from the date on which the minimum number of persons required to form such organisation have taken flats.

Where the apartment takers propose to submit the apartments to the provisions of the Maharashtra Apartment Ownership Act, 1970, by executing Declarations and Deeds of Apartments as required by that Act, the promoter shall inform the Registrar as defined in the Maharashtra Co-operative Societies Act, 1960, as soon as possible after the date on which all the apartment owners (being not less than five) have executed such Declarations and Deeds of Apartment.

**9. Period for conveyance of title of promoter to organisation of Flat purchasers.-** If no period for conveying

*the title of the promoter to the organisation of the flat purchasers is agreed upon, the promoter shall (subject to his right to dispose of the remaining flats, if any) execute the conveyance within four months from the date on which the co-operative society or the company is registered or, as the case may be, the association of the flat takers is duly constituted.*

*When a promoter has submitted his property to the provisions of the Maharashtra Apartment Ownership Act, 1970 by executing and registering a Declaration as required by section 2 of the Act, and no period for conveying the title of the promoter in respect of an apartment to each apartment-taker is agreed upon, the promoter shall execute the conveyance or deed of apartment in favour of each apartment-taker within four months from the date the apartment-taker has entered into possession of his apartment.*

*The promoter shall file with the Competent Authority a copy of the conveyance executed by him under sub-section (1) of section 11 within a period of two months from the date of its execution.”*

**13.** The statutory field of MOFA imposes a tripartite obligation on promoters: (i) to execute and register agreements under Section 4; (ii) to form a legal entity of flat purchasers under Section 10; and (iii) to execute conveyance within the stipulated timeline under Section 11. Rule 8(1) mandates that conveyance be executed within four months of the formation of the society, failing which the Competent Authority is empowered to issue a deemed conveyance under Section 11(4). This legislative intervention was necessitated by promoters' systemic defaults, which left flat purchasers perpetually dispossessed of their proprietary rights.

However, the Competent Authority's function is not unfettered; it must adhere to fundamental principles of procedural fairness, including:

- (i) Verification of the authenticity of agreements and consents under Section 7 of MOFA;
- (ii) Granting the promoter a reasonable opportunity to contest the application under Rule 9(3);
- (iii) Ensuring satisfaction that the society's claim aligns with the sanctioned plan and contractual stipulations.

14. The Authority's role is thus quasi judicial, confined to effectuating the promoter's pre-existing obligations, and any deviation from this mandate would render its order vulnerable to judicial review under Article 226 of the Constitution of India.

15. The decision in *Mazda Construction Company (supra)* offers a interpretation of the legislative intent behind the insertion of Sections 5A and 11 of the Maharashtra Ownership Flats Act, 1963 (MOFA). The learned Single Judge elucidated that the Competent Authority's jurisdiction under Section 11 is quasi judicial, designed to enforce the promoter's statutory duty to execute conveyance as per the sanctioned plan and registered agreements. The Court emphasized that the Authority acts as a statutory substitute for the defaulting promoter, ensuring that flat purchasers are not left remediless due to the promoter's neglect or refusal. The judgment clarifies that a deemed conveyance under Section 11(1) merely transfers the promoter's existing rights—no more, no less—as crystallized in the original agreements. The Court rejected the

argument that Section 11 lacks guidelines, highlighting the inbuilt safeguards: Mandatory verification of registered agreements under Section 11(3); Compliance with the sanctioned plan and contractual terms; Adherence to principles of natural justice, including notice and hearing for promoters;

**16.** The Authority's satisfaction under Section 11(4) is not a mere formality but a quasi-judicial obligation to ensure alignment between the conveyance and the promoter's contractual commitments. This safeguards against arbitrary exercise of power, as the Authority cannot unilaterally expand or dilute rights beyond the agreement's four corners.

**17.** The Division Bench in *Zainul Abedin Yusufali Massawala (supra)* reaffirmed the limited scope of Section 11 proceedings, stressing that the Competent Authority's role is confined to enforcing conveyance obligations, not adjudicating title disputes. Where a promoter alleges that a society's claim exceeds its contractual entitlement (e.g., over a "larger property" beyond the sanctioned plan), the remedy lies in a civil suit under Section 9 of the CPC, not a collateral challenge under Article 226. The Bench underscored that civil courts retain plenary jurisdiction to independently examine title disputes, uninfluenced by the Competent Authority's administrative findings. This preserves the hierarchy of remedies, ensuring that complex questions of ownership and proprietary rights are resolved through evidentiary scrutiny in civil forums, not summary proceedings under MOFA.

18. In *Dosti Corporation (supra)*, the Court addressed the criticality of full disclosure under Section 7 of MOFA. The learned Single Judge held that promoters cannot rely on blanket consent clauses in agreements to justify post-hoc deviations from the sanctioned plan. Citing *Noopur Developers* and *Malad Kokil CHS*, the Court ruled that residual FSI/TDR claims require prior informed consent, which presupposes explicit disclosure of phased development plans at the agreement stage. The absence of such disclosure renders unilateral amendments to the sanctioned plan void ab initio, as they violate the statutory mandate of uberrimae fidei (utmost good faith) underpinning MOFA. The judgment reinforces that transparency in layout plans is non-negotiable; promoters forfeit development rights if they conceal the project's scope or capacity for future expansion.

19. Analyzing the above precedents, the legal framework governing deemed conveyance under MOFA is crystallized as follows:

- (i) The Competent Authority's jurisdiction is strictly confined to enforcing the promoter's pre-existing obligation to convey rights as per Section 4 agreements. It cannot adjudicate title disputes or expand contractual terms.
- (ii) The Authority must (i) verify registered agreements, (ii) ensure compliance with the sanctioned plan, and (iii) afford the promoter a reasonable hearing under Section 11(4).

(iii) A deemed conveyance order does not confer title per se; it merely operationalizes the promoter's contractual duty. Title disputes remain exclusively within civil courts' domain.

(iv) Promoters must disclose all material particulars—including phased development and FSI/TDR potential—at the agreement stage. Non-disclosure vitiates consent under Section 7.

20. In light of the limited jurisdictional ambit of the Competent Authority under Section 11 of the MOFA Act, a meticulous examination of the agreement to sell executed between the petitioner and the flat purchasers assumes paramount significance. The agreement, annexed to the petitioner's reply, delineates the specific parcel of land intended for conveyance in the First Schedule, which unambiguously describes the property as follows:

*“THE FIRST SCHEDULE ABOVE REFERRED TO*

*(Description of the said land)*

*ALL THAT PIECE AND PARCEL of joint and continuous block of land comprising of (1) land admeasuring Hectares 01 – 27.5 Ares out of the larger land bearing Survey No.58 Hissa No.1 totally admeasuring Hectares 02-25 Ares and (2) land admeasuring Hectares 00-38.5 Ares out of the larger land bearing Survey No.58 Hissa No.2/2 totally admeasuring Hectares 00-93 Ares situate, lying and being at Village Tathawade, Taluka Mulshi, District Pune, situated within the Registration District of Pune, Registration Sub-District of Taluka Haveli, situated within the Registration District of Pune, Registration Sub-District of Taluka Haveli and within the limites of Municipal Corporation of Pimpri*

*Chinchwad, and which joint and contiguous block is bounded as under:-*

|                                  |                                                                |
|----------------------------------|----------------------------------------------------------------|
| <i>On or towards the East -</i>  | <i>By S.No. 57 (Part)</i>                                      |
| <i>On or towards the South -</i> | <i>Partly by S. No.56 (Part) and partly by S.No. 58 (Part)</i> |
| <i>On or wards the West -</i>    | <i>Partly by and partly by S.No.58 (Part)</i>                  |
| <i>On or towards the North -</i> | <i>Partly by road and partly by S.No. 58 (Part)."</i>          |

21. This description, registered under Section 4 of the MOFA Act, crystallizes the contractual obligation of the petitioner to convey the defined portion of the land to the cooperative housing society formed by the purchasers. The specificity of the First Schedule underscores the statutory mandate of transparency under MOFA, binding the promoter to the sanctioned plan and precluding unilateral deviations.

22. Clause 33 of the agreement unequivocally obligates the petitioner to execute conveyance in favour of the society within one year of completing the last unit in the complex, contingent upon the petitioner realizing dues from all purchasers. Crucially, the sanctioned plan dated 24th December 2010, annexed to the agreement, stipulates a permissible FSI of 12,086.87 sq. mtrs. for the construction of 219 units. The respondent No. 2-Society's assertion that the petitioner exhausted the entire FSI in constructing four buildings, leaving no residual FSI for the proposed two additional wings, is irrefutably borne out by the documentary record. This factual matrix aligns with the judicial principle in Dosti Corporation (supra), wherein this Court held that promoters forfeit rights to unutilized FSI if its potential was

not disclosed in the original sanctioned plan, as mandated under Section 7 of the MOFA Act.

23. The petitioner's contention that the Competent Authority ought to have granted conveyance proportionate to the FSI consumed in the four existing buildings transcends the statutory mandate of Section 11, venturing into the realm of disputed title. As reiterated in *Shimmering Heights* (supra), the Competent Authority's role is confined to enforcing contractual obligations under the sanctioned plan, not adjudicating title or apportioning land rights. Such disputes fall squarely within the domain of civil courts under Section 9 of the CPC, where the petitioner may seek declaratory reliefs, implead the respondent No. 2-Society, and challenge the validity of the deemed conveyance. This dichotomy between administrative enforcement (MOFA) and judicial adjudication (civil courts) preserves the rule of law and hierarchy of remedies, ensuring that complex title disputes are resolved through evidentiary rigor, not summary proceedings.

24. This judicial approach finds resonance in *M/s. P.R. Enterprises & Ors. v. Competent Authority* (WP No. 11251/2016, decided on 23rd July 2018), where a coordinate Bench dismissed a promoter's challenge to deemed conveyance, holding that disputes over phase-wise development rights and separate societies must be adjudicated in civil forums. The Court emphasized that the Competent Authority's jurisdiction is strictly circumscribed by the four corners of the sanctioned plan and registered agreements, and any grievance alleging overreach by the society necessitates a civil suit. This precedent fortifies the conclusion that the petitioner's

remedy, if aggrieved by the extent of conveyance, lies in availing civil remedies, not in collateral challenges to the Competent Authority's administrative order.

25. In *Mehboob Ali Humza & Ors. v. District Sub-Registrar (3), Mumbai/Competent Authority & Ors.* (Writ Petition No. 1170 of 2014, decided on 24th June 2016), the Division Bench of this Court confronted a challenge wherein the developer alleged that the Competent Authority, while granting deemed conveyance under MOFA, erroneously included a triangular portion of land contrary to the consent terms mutually agreed upon with the society. The Court categorically rejected this contention, holding that disputes over title, possession, or access to specific portions of land—such as the triangular parcel—fall beyond the Competent Authority's statutory mandate under Section 11 of MOFA. The Bench emphasized that if the developer asserts proprietary rights over such portions, the remedy lies in instituting a civil suit under Section 9 of the Code of Civil Procedure, 1908, to establish title through evidence, including documentary proof and expert testimony. The judgment reaffirmed the principle that administrative orders under MOFA cannot override substantive property rights, which must be adjudicated through the civil court's plenary jurisdiction. This aligns with the doctrine of election of remedies, ensuring that parties aggrieved by the scope of deemed conveyance must seek redress in forums equipped to resolve complex title disputes.

26. In light of the foregoing, this Court finds merit in Dr. Chandrachud's contention that the petitioner's resistance to

executing conveyance in favour of respondent No. 2-Society constitutes a legitimate title dispute warranting adjudication in civil suit. The consistent judicial refrain, as articulated in *Shimmering Heights CHSL, Zainul Abedin, and Mehboob Ali Humza (supra)*, is that writ proceedings under Article 226 of the Constitution of India are inherently unsuited for resolving controversies involving competing claims to title, ownership, or developmental rights. Such disputes necessitate a comprehensive examination of evidence—including registered agreements, title deeds, and municipal records—which falls squarely within the domain of civil courts. The Competent Authority's order, being confined to enforcing the promoter's statutory obligation under Section 11 of MOFA, merely operationalizes the contractual duty to execute conveyance as per the sanctioned plan. Consequently, the petitioner's grievances regarding the alleged overreach in the conveyed area (13,718.26 sq. mtrs.) and entitlement to construct additional wings must be ventilated in a civil suit, where the petitioner can adduce evidence to substantiate its claims.

- (a) The writ petition is dismissed.
- (b) Liberty is reserved to the petitioner to institute a civil suit, to agitate its claims over the balance two buildings and challenge the respondent No. 2-Society's entitlement to the conveyed plot.
- (c) In the event of such suit(s), the competent civil court shall adjudicate the matter de novo, uninfluenced by the observations herein, which are confined to the legality of the

Competent Authority's order under MOFA.

**27.** The writ petition stands disposed of in the above terms. No order as to costs.

**28.** At this stage, learned advocate for the petitioner requested for ad-interim relief. Considering the facts that the ad-interim relief was in force for last four years, the same is extended for four weeks from today.

**(AMIT BORKAR, J.)**