IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4542 OF 2024

Krishna Developers Pvt Ltd … Petitioner

V/s.

The District Deputy Registrar Co-op Soc and Others … Respondents

Mr. Deepak Chitnis with Simran Jaggi, for Petitioner.

Ms. Aloka A. Nadkarni, AGP for State.

Mr. Arun Panikar with V. Nair, for Respondent No. 2.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 11 , 2026

P.C.:

1. By the present Petition, the petitioner, who is the promoter and owner of the property in question, has assailed the order passed by the Competent Authority whereby deemed conveyance has been granted in favour of respondent no. 2 society.

2. Learned Advocate appearing for the petitioner submitted that the promoter has at all material times been ready and willing to execute the conveyance, subject to the rights expressly reserved under the agreements executed with the flat purchasers. It was contended that Clauses 23, 24 and 28 of the agreement reserve specific rights in favour of the owner, including a right of way. It was further urged that the balance FSI expressly reserved under the agreement executed pursuant to Section 4 has been directed to be conveyed in favour of the society by the impugned order. According to the petitioner, the Competent Authority has thereby travelled beyond the terms of the agreement and the order impugned warrants interference.

3. It was further submitted on behalf of the petitioner that on the date of filing of the application for deemed conveyance, the Chairman, Secretary and Treasurer of the society stood disqualified. The proceedings were initiated by a person who was not duly authorised by the society nor supported by a valid resolution. It was therefore contended that the very initiation of proceedings was without authority of law. According to the petitioner, the proposal to initiate such proceedings did not have the approval of the majority of the members of the society.

4. Per contra, learned Advocate appearing for respondent no. 2 society, by inviting attention to the averments in the reply and written statement, submitted that though the petitioner professed readiness and willingness to execute the conveyance, no steps were in fact taken to complete the conveyance within the statutory period, thereby necessitating recourse to the proceedings for deemed conveyance.

5. Learned Advocate for the respondent society further drew attention to the description of the scheduled property under

Section 4 of the MOFA Act. It was submitted that the total area agreed to be conveyed admeasured 6510.40 sq. mtrs, whereas the Competent Authority has granted conveyance to the extent of 5150.40 sq. mtrs along with the benefit of the remaining portion out of the larger plot admeasuring 6510.40 sq. mtrs. It was pointed out that the society was registered on 09 April 2007 and comprises three buildings. The occupation certificate for the first building was issued on 22 August 2004 and for the third building on 05 January 2007. Thus, according to the respondent, the construction contemplated under the agreements executed under Section 4 stood completed by the year 2007.

6. It was further submitted that the FSI available as on the date of execution of the agreements under Section 4 had already been fully utilised for construction of the three buildings. Reference was made to Clause 23 of the agreement to contend that no further development remained to be undertaken on the said plot. In so far as the alleged reservation of excess FSI under Clause 24 is concerned, it was urged that such a reservation is impermissible in law. The promoter is under a statutory obligation to convey his entire right, title and interest in the property, subject only to the rights reflected in the sanctioned plan. A clause reserving excess FSI, being inconsistent with the statutory Form V prescribed under the MOFA Rules, cannot be enforced by the promoter.

7. Attention was also invited to the certificate issued by the Architect dated 01 February 2007, which records that the available FSI stood fully consumed in the construction of the three buildings. In regard to the objection that the proposal was not supported by the majority of members, it was submitted that such matters pertain to the internal management of the society and cannot be agitated by an outsider. It was further contended that the application for deemed conveyance, being in furtherance of the statutory rights and interests of the society, cannot be defeated on the basis of alleged procedural irregularities in passing the resolution. The alleged disqualification of office bearers, it was submitted, does not invalidate actions taken in the interest of the society. On these grounds, dismissal of the Petition was sought.

8. This Court has heard the parties and reviewed the record. The petitioner is the promoter and owner of the building complex. The petitioner challenges the order passed by the Competent Authority under Section 11 of the MOFA Act which granted deemed conveyance in favour of respondent No. 2 society. The petition is now dismissed for the reasons stated below.

9. Analysis and findings

10. The promoter has placed heavy reliance on Clauses 23, 24 and 28 of the individual sale agreements. According to him, these clauses protect certain rights in his favour even after formation of the society. He argues that Clause 28 preserves a right of way for the owner. He further submits that Clause 24 reserves the balance FSI and therefore the society cannot demand conveyance of the entire property without recognising this reservation. In substance, the promoter's case is that these contractual clauses operate as a legal barrier against the grant of deemed conveyance.

11. This Court is unable to accept that submission. While examining such a contention, the agreements cannot be read in isolation. They must be read in the light of the statutory framework under the Maharashtra Ownership Flats Act. MOFA is a welfare legislation. It was enacted to protect flat purchasers who invest their life savings in residential premises. The statute casts a clear obligation on the promoter to execute a conveyance in favour of the society within the prescribed time. Section 11 does not create a new right. It enforces an existing statutory duty. Therefore, once the building is complete and the society is formed, the promoter is bound to transfer his right, title and interest in the land and building, except to the limited extent permitted by the sanctioned plan and law.

12. A private agreement cannot dilute that obligation. Contractual clauses are valid only so long as they do not defeat the statute. If a clause seeks to retain for the promoter what the statute requires him to convey, that clause cannot prevail. The Court must give primacy to the statute. The intention of the legislature was clear. After completion of construction in accordance with the sanctioned plan, the promoter must step aside and transfer the property to the collective body of flat purchasers.

13. Clause 24, which purports to reserve excess or balance FSI, directly conflicts with this statutory position. The right to additional FSI, if any, must flow from the sanctioned plan and applicable development control regulations. It cannot rest solely on a contractual declaration. Moreover, the statutory Form prescribed under the MOFA Rules does not contemplate an open ended reservation of future FSI in favour of the promoter once the project is completed as per the approved plans. A clause inconsistent with the statutory form and scheme cannot be enforced to the prejudice of the society. The promoter cannot contract out of his statutory duty.

14. As regards Clause 23, even if it records that nothing further remains to be developed, that statement does not create an independent proprietary right in favour of the promoter. It merely reflects the stage of construction. It cannot be read as a device to retain ownership of the land indefinitely. Title does not remain with the promoter merely because he inserts such a recital in the agreement.

15. Clause 28, which speaks of a right of way, must also be tested against the sanctioned plan and municipal records. If a right of way is shown in the approved plan or is otherwise legally established, it will continue as a matter of record. However, a vague reservation in a private agreement cannot override the statutory transfer of the property. Rights that are reflected in the sanctioned layout or in revenue records will naturally bind the society. Beyond that, no additional or undefined right can be carved out merely by inserting a clause in the agreement.

16. The record placed before this Court includes the sanctioned plan and the occupation certificates. These documents show the extent of construction actually carried out and approved by the planning authority. They define the project as it stands on the ground. There is nothing on record to show that any independent, surviving development right remained with the promoter after completion of the three buildings. Once the available FSI stood consumed and occupation certificates were issued, the promoter's statutory duty to convey became absolute, subject only to what is lawfully recorded in the sanctioned plan.

17. For these reasons, this Court holds that Clauses 23, 24 and 28 do not create any enforceable right which can obstruct the grant of deemed conveyance. They do not provide a legal defence against the statutory mandate under Section 11. The promoter cannot rely upon private contractual language to defeat a public law obligation imposed by MOFA. The claim of reservation, therefore, fails.

18. The promoter has also questioned the very maintainability of the application filed by the society. He submits that on the date when the application for deemed conveyance was filed, the Chairman, Secretary and Treasurer stood disqualified. According to him, the person who initiated the proceedings had no proper authority and no valid resolution of the general body supported the action. It is contended that the proposal lacked approval of the majority of members and therefore the entire proceedings before the Competent Authority were void from the beginning.

19. At first glance, the submission appears serious. However, when examined closely, it does not withstand scrutiny. Proceedings under Section 11 of MOFA are not in the nature of a private dispute between two contracting parties alone. They are statutory proceedings intended to enforce an obligation cast upon the promoter by law. The Competent Authority does not adjudicate complex title disputes. It examines whether the society of flat purchasers is entitled to conveyance under the statute and whether the promoter has failed to discharge his duty. The purpose is to prevent promoters from indefinitely withholding conveyance after completing the project and collecting consideration.

20. In that background, objections relating to internal management of the society must be viewed with caution. Societies function through elected office bearers. At times there may be disputes about eligibility, elections or resolutions. Such disputes are governed by the Co-operative Societies Act and can be resolved in appropriate forums. They do not automatically render every action taken by the society void.

21. The Competent Authority in the present case took note of the registration of the society on 09 April 2007. The society represents flat purchasers of three completed buildings. Occupation certificates were issued years earlier. The application for deemed conveyance was supported by relevant agreements, sanctioned plans and architectural certificates. The material placed before the authority showed that the society was functioning and seeking enforcement of a statutory right.

22. The promoter has not shown that the application was filed by a complete stranger or by a person having no connection with the society. The objection is confined to the alleged disqualification of certain office bearers and absence of a proper resolution. Even assuming there were defects in the internal process, such defects would not nullify a statutory claim unless it is shown that the society itself did not support the action or that the application was fraudulent or mala fide. No such case is established here.

23. It must also be borne in mind that the promoter is an outsider to the internal affairs of the society. He cannot ordinarily question the validity of the society’s internal resolutions unless he demonstrates a direct legal prejudice. The promoter benefited from the completion of construction and sale of flats. Having accepted the society as a legal entity for the purpose of agreements and dealings, he cannot selectively dispute its internal governance only to avoid conveyance.

24. The law does not permit a promoter to rely upon internal quarrels within the society as a shield against his own statutory obligation. If members of the society are aggrieved by the functioning of their office bearers, they have remedies under the co-operative law. That is a separate matter. It does not dilute the society's collective right to obtain conveyance of the property.

25. For these reasons, this Court holds that the alleged disqualification of office bearers and the procedural objections raised by the promoter do not vitiate the application for deemed conveyance. They do not strike at the root of jurisdiction of the Competent Authority. The proceedings under Section 11 were validly entertained and decided. The statutory remedy cannot be defeated on such technical and internal grounds.

26. The promoter has finally argued that the Competent Authority travelled beyond the terms of the agreements and thereby exceeded its jurisdiction. According to him, the authority was bound strictly by the contractual clauses between the parties and could not have directed conveyance in a manner inconsistent with those terms. In his submission, once the agreement records certain reservations, the authority had no power to disregard them.

27. The power exercised by the Competent Authority flows from the statute. Section 11 of MOFA confers a specific duty upon the authority to step in where the promoter has failed to execute conveyance within the prescribed period. The authority is enforcing a statutory obligation created in public interest. Therefore, one of the parameter for examining the validity of order is whether it aligns with the statute and the sanctioned development.

28. When there is a conflict between a private agreement and a statutory mandate, the statute must prevail. Parties cannot by agreement override a legislative command. If contractual terms attempt to reserve rights which are inconsistent with the sanctioned plan or with the scheme of MOFA, the authority is entitled to ignore such clauses to the extent of inconsistency. Jurisdiction is not lost merely because the authority refuses to give effect to a clause that defeats the statute.

29. In the present case, the Competent Authority examined the sanctioned plans, the occupation certificates issued by the planning authority, and the architect's certificate dated 01 February 2007. These documents are official records that reflect the actual development carried out on the land. They show that the available FSI at the relevant time had been fully consumed in construction of the three buildings. They also establish that the buildings were completed and occupation certificates were granted. Once these facts are accepted, there remains no lawful basis for the promoter to retain any portion of the land or any alleged balance development right, unless such right is independently sanctioned by the planning authority. No such material is placed on record. The authority therefore determined what right, title and interest of the promoter existed in reality and directed conveyance of that interest to the society. This exercise squarely falls within the scope of Section 11.

30. This Court, in exercise of writ jurisdiction, does not sit in appeal over every factual determination made by the Competent Authority. Interference is warranted only when there is patent lack of jurisdiction, violation of natural justice, or manifest error of law. None of these grounds are made out here. The promoter's grievance, in essence, is that the outcome is unfavourable to him. Disagreement with the result does not amount to jurisdictional error.

31. Accordingly, this Court holds that the Competent Authority acted within its statutory remit. It applied the law to the material placed before it and ensured that the statutory obligation of conveyance was enforced in accordance with the sanctioned plan and the factual position on the ground. No case is made out for interference on the ground of excess of jurisdiction.

32. For the reasons stated above, the Petition is dismissed.

33. No costs.

(AMIT BORKAR, J.)