IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1128 OF 2026

Satellite Garden I Cooperative Housing Society Ltd. **...Petitioner**

V/s.

State of Maharashtra through Ministry of Housing and Ors. **...Respondents**

WITH
WRIT PETITION (ST.) NO. 1629 OF 2026

Satellite Tower Cooperative Housing Society Ltd. **...Petitioner**

V/s.

District Deputy Registrar of Co-operative Societies, Mumbai City (4) and Ors. **...Respondents**

WITH
WRIT PETITION (ST.) NO. 1632 OF 2026

Sadguru Complex 1 (AB) Cooperative Housing Society Ltd. **...Petitioner**

V/s.

District Deputy Registrar of Co-operative Societies, Mumbai City (4) and Ors. **...Respondents**

***Dr. Milind Sathe*, Advocate General** with Mr. A.C. Bhadang, Ms. Sulbha Chipade, Mr. P.V. Nelson Rajan, Ms. Savina Crasto, AGPs for Respondent-State.
***Mr. Pravin Samdani*, Senior Advocate**, *Amicus Curiae.*
***Mr. G. S. Godbole*, Senior Advocate**, *Amicus Curiae.*
***Mr. Naushad Engineer*, Senior Advocate**, *Amicus Curiae.*
Mr. Mayur Khandeparkar, *Amicus Curiae.*
Mr. Karl Tamboly, *Amicus Curiae.*
Mr. Y.R. Mishra with Mr. Upendra Lokegaonkar and Mr. Sachidanand T. Singh for Petitioner in WP/1128/2026 and for Respondent No.22 in WPST/1629/2026 and for Respondent No.13 in WPST/1632/2026.
Mr. Rajan Kakkara for Petitioner in WPST/1629/2026 and WPST/1632/2026.
Mr. Tushad Kakalia with Mr. Sahil A. Pandire i/b Mr. Dinesh Shinde for Respondent No.16 in WP/1128/2026 and for Respondent No. 12 in WPST/1629/2026.
Mr. J.K. Shah with Ms. Namrata Thakur, Ms. Samiksha and Ms. Pooja Shah i/b RJ Law for Respondent No.3 in WP/1128/2026.

CORAM: SANDEEP V. MARNE, J.

RESERVED ON: 05 AUGUST 2026

PRONOUNCED ON: 16 SEPTEMBER 2026

Judgment:

PROLOGUE

"He is not a full man who does not own a piece of land."

1) The above ancient proverb underscores the importance of ownership of land and applies befittingly to the situation of denial of title in the land to the home buyers in multi-storey buildings. The organisations of flat purchasers struggle to secure ownership of the land on which their buildings are constructed. The developer, who constructs the building, treats the land as his own for eternity with the hope of milking the future development potential and tells the home buyers emphatically that what is sold to them is just the superstructure and not the rights in the land, which would remain the property of the developer. Noting this tendency on the part of such errant developers, the law is required to extend its long arm to reach out to them by ensuring that the ownership in the land is transferred in favour of the organisation of flat purchasers. While the issues relating to transfer of ownership in the land to the housing societies of a single building are largely sorted out, the difficulties in land division amongst the societies of multiple buildings in a layout still persist.

2) Rather than living in standalone buildings, home buyers prefer to live in gated communities providing integrated infrastructure, superior amenities, better security, etc. Home buyers prefer community living fostering an active social environment with shared common spaces and organised community events. A layout development involving construction of multiple buildings on a comparatively larger piece of land enables the developers to provide far better amenities to the residents as compared to standalone buildings. Therefore, by and large, the homes in the gated communities demand better prices and higher appreciation. However, when it comes to ensuring that the developer sticks to the disclosed plan and conveys the due land to organisations formed by each building, the layout development takes a beating as compared to standalone buildings. In standalone buildings, it is much easier to keep a tab on activities of the developer who usually quits after completion of construction and conveyance of the land also does not pose much difficulty. However, in a layout development, inability of the flat purchasers to keep vigil on the activities of the developer results in additional construction being put up than what was originally disclosed. More importantly, sharing of the layout land amongst organisations formed by various buildings in the layout gives rise to complications.

3) It is this intricate issue of land division amongst the organisations formed by multiple buildings in a layout, which this Court is tasked upon to decide in these Petitions. The issue of conveyance of proportionate land to multiple organisations of flat purchasers in a layout development is of seminal importance, giving rise to several litigations. How to share the land in a layout by housing societies many times becomes a hotbed of controversy, particularly on account of myriad ways of exploitation of development potential in the layout land as well as permissibility to import development potential of another unconnected land and load the same in the layout land. Many times, apple to apple comparison becomes impossible. The present Petitions pose a similar quandary, which I proceed to resolve.

4) Noting the mischief played by the promoters and developers in avoiding conveyance of the land to the organisation of flat purchasers, the concept of deemed conveyance has been introduced, under which the organisation of flat purchasers can secure title in respect of the land without cooperation from the land owner or the developer/promoter. As observed above, in a case involving construction of a single building on a plot of land, conveyance of land in favour of organisation of flat purchasers therein does not pose much difficulty as the entire land can easily be conveyed. The difficulty arises where multiple buildings are constructed in a layout. The promoters take unduly long time in completion of layout development. Quite often the delay is deliberate and aimed at milking the additional FSI made available with passage of time. The organisation of flat purchasers in respect of the first building constructed in the layout need not await completion of the entire layout development and the law in this regard is now well-settled. The right of such organisation of flat purchasers to seek conveyance of proportionate share in the land is also well-recognised. The difficulty however arises as to how much land can be conveyed to the organisation in respect of the completed building.

5) Even in respect of the layouts where the development is complete, disputes often arise about the manner in which the land in the layout is to be shared. Here again, when all buildings in the layout are constructed with same the FSI, no difficulty is posed as the land as well as common amenities, such are Recreational Ground (**RG**), can be divided proportionate to the built-up area **(BUA)** utilised in construction of each building. The difficulty arises where the buildings in the layout are constructed either with different FSI or where BUA arising out of Transferrable Development Rights **(TDR)** is utilised in construction of some of the buildings. There are cases involving mixed development where one building is constructed with the normal base FSI whereas another building is constructed by use of incentive FSI such as IT Park FSI, hospitality FSI etc. Difficulties also arise where the buildings get constructed in different FSI regimes where buildings constructed later, in the new FSI regime, often tend to consume more BUA than their former counterparts.

6) Thus, the difficulty in proportionate land division arises where buildings in the layout are not constructed using same parameters and there is imbalance while undertaking the exercise of proportionate land division. Through this judgment, it is proposed to resolve the difficulties in proportionate land division for grant of conveyance in a layout development. While resolving the conundrum posed in the present three Petitions, general principles governing grant of conveyance by proportionate land division are also proposed to be discussed.

7) To understand the controversy at hand, a very brief narration of factual background as a prelude to the judgment would be necessary.

FACTS

8) The land admeasuring 55,696.70 sq.m. located at A.K. Vaidya Marg, Goregaon (E), Mumbai- 400063 was owned by Kadam family. Development rights in respect of the larger land admeasuring 55,696.7 sq.m. were granted by the landowners in favour of BPM Industries, now named as Satellite Developers Ltd. **(developer)** in the year 1995-96. An exemption under the provisions of Urban Land (Ceiling and Regulation) Act, 1976 **(ULC Act)** was obtained and the land was apparently subdivided into Sub-Plot Nos. A, B, C, and D. After subdivision, Sub-Plot No. A was apparently located within CTS No.620A, 1/A4(Pt), 644 (Pt), 653

(Pt) of revenue village Malad (East), Mumbai Suburban District. The developer undertook development of Sub-Plot No. A admeasuring 16,855.47 sq.m. and Commencement Certificate for construction of Building No.1 comprising of 196 flats and 2 shops with amenities was sanctioned by the Planning Authority. The developer entered into flat purchase agreements for sale of flats in Building No.1 with the purchasers. The flat purchasers formed and registered Satellite Garden I Co-operative Housing Society Limited in respect of Building No.1 on 11 October 2002.

9) After completion of construction of Building No.1, in which Satellite Garden I CHSL was formed, the Developer applied for amalgamation of the plots in the larger property and the sub-plots were apparently realigned under which the area of Sub-Plot A got increased to 21,807.18 sq.m. The original promoter failed to convey the land in favour of Satellite Garden I CHSL and instead executed a Development Agreement dated 17 April 2003 with Shree Swastik Developers, who applied for further permissions in respect of the development to be caried out in sub-plot A. During 2003 to 2006, the new developer constructed two buildings viz. 'AB' and 'CD' on Sub-plot No. A. The flat purchasers of AB and CD buildings formed their own respective cooperative societies. In respect of 'AB' building, Sadguru Complex 1 (AB) CHSL was formed. Similarly, in respect of 'CD' building, Sadguru Complex 1 (CD) CHSL has been formed.

10) On 23 April 2010, Satellite Garden-I CHSL filed Suit No.1002 of 2010 before the City Civil Court seeking conveyance of land forming part of old Sub-plot A admeasuring 16855.47 sq.m. The suit is still pending. In the meantime, the developer has also constructed the fourth building in the layout named 'Satellite Tower' and the flat purchasers therein have formed Satellite Tower CHSL. It appears that the fifth building has also been envisaged under the sanctioned plans, construction of which is yet to be undertaken by the developers.

11) Thus, there are total 5 buildings sanctioned in realigned Sub-plot No. A, total area of which is approximately 21,807.18 sq.m. As per the last sanctioned plan (*OC Plan dated 9 July 2010*), the position of the 5 buildings sanctioned in the layout appears to be as under:

Building No.	Name of Society	BUA (sq.m.)
A-1	Satellite Garden I CHSL	11186.41
A-2	Sadguru Complex 1 (AB) CHSL	3936.31
A-3	Not constructed	328.74
A-4	Sadguru Complex 1 (CD) CHSL	3917.76
A-5	Satellite Tower CHSL	20728.06

12) As observed above, Satellite Garden I CHSL has already filed S.C. Suit no. 1002 of 2010 before the City Civil Court seeking conveyance of original Sub-plot A (*before realignment*) admeasuring 16855.47 sq.m. Thus, Satellite Garden I CHSL is aggrieved by action of Developer of amalgamating the plots and increasing area of Sub-Plot No. A from 16855.47 sq.m. to 21807.18 sq.m. It wants whole of the land admeasuring 16855.47 sq.m. conveyed to it. Satellite Garden I CHSL believes that the entire development potential of old Sub-Plot No. A was exploited in construction of its buildings and by illegal realignment of the Sub-plot, further construction is carried out by the developer.

13) While Satellite Garden I CHSL has filed suit for conveyance of land, the Satellite Tower CHSL filed Application No. 138 of 2023 under Section 11 of Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, seeking proportionate deemed conveyance of land in its name. Similarly, Sadguru Complex 1 (AB) CHSL filed Application No. 22 of 2025 seeking deemed conveyance of the proportionate land in its name. Also, Sadguru Complex 1 (CD) CHSL filed Application No.153 of 2025 seeking unilateral deemed conveyance of proportionate land and the building in its favour.

14) Application No. 138 of 2023 filed by Satellite Tower CHSL came to be decided by order dated 16 May 2024 and the Competent Authority has conveyed to it only land admeasuring 4864.21 sq.m. being the plinth area. Thus, what is conveyed in favour of Satellite Tower CHSL by the Competent Authority is only the land covering the plinth of the building admeasuring 4864.21 sq.m.

15) Application No.22 of 2025 filed by Sadguru Complex 1 (AB) CHSL is decided by the Competent Authority by order dated 6 March 2025, conveying to it only land admeasuring 643.81 sq.m. out of Sub-Plot A, which appears to be less than the plinth of the building.

16) Application No. 153 of 2025 filed by Sadguru Complex 1 (CD) CHSL came to be decided by the Competent Authority on 31 October

2025, conveying the land admeasuring 1814.03 sq.m. and proportionate share in the RG area of 320.12 sq.m. aggregating total area of 2134.15 sq.m. in addition to road setback area advantage.

17) In the above manner, the Competent Authority has adopted different parameters for granting unilateral deemed conveyance in respect of the three societies. The Competent Authority has denied share in the land proportionate to BUA utilised for 2 societies (*Sadguru Complex 1 (AB) CHSL and Satellite Tower CHSL*) and has apparently conveyed to them only the plinth area of their respective buildings or even lesser area than that in the case of Sadguru Complex 1 (AB) CHSL. On the other hand, Competent Authority has granted proportionate share in the land in favour of Sadguru Complex 1 (CD) CHSL. The fourth society (*Satellite Garden I CHSL*) has filed suit for deemed conveyance in the City Civil Court, which is pending. The fifth building in the layout is yet to be constructed.

18) In view of the above developments, the present 3 Petitions have been filed as under:

i. Writ Petition No. 1128 of 2026 is filed by Satellite Garden I CHSL for challenging order dated 31 October 2025 passed by the Competent Authority in Application No. 153 of 2025 filed by Sadguru Complex 1 (CD) CHSL. In that Petition, Satellite Garden I CHSL is aggrieved by conveyance of land proportionate to the BUA utilised in construction of Sadguru Complex 1 (CD) building.

ii. Writ Petition (Stamp) No. 1632 of 2026 is filed by Sadguru Complex 1 (AB) CHSL, challenging the order dated 6 March 2025 passed by the Competent Authority in Application No. 22 of 2025 to the extent it conveys land lesser than even the plinth area and denies conveyance of land proportionate to the BUA utilised in construction of society's building.

iii. Writ Petition (Stamp) No. 1629 of 2026 is filed by Satellite Tower CHSL, challenging order dated 16 May 2024 passed by the Competent Authority in Application No.138 of 2023 to the extent it conveys only the plinth area and denies conveyance of land proportionate to BUA utilised in construction of society's building.

THE CONUNDRUM IN THE PRESENT CASE

19) Thus, in respect of the 4 buildings already constructed and 1 building yet to be constructed in the layout development of Sub-Plot A, conveyance has been granted in respect of 3 buildings by the Competent Authority, a Suit for conveyance of one building is pending and the 5th building is yet to be constructed. Though Competent Authority has granted conveyance to the 3 buildings, it has not applied uniform yardstick for deciding entitlements of even those 3 buildings in respect of the land in the layout. As observed above, Sadguru Complex 1 (CD) CHSL has received conveyance of land proportionate to BUA utilised in its construction, whereas Satellite Tower CHSL has received conveyance of only plinth land. It appears that Sadguru Complex 1 (AB) CHSL has not even received conveyance of plinth area as what is conveyed to it is only land admeasuring 643.81 sq.m. though the building is constructed on plinth of 959.69 sq.m.

20) The following table reflects the lack of uniform approach and disparity in the matter of conveyance to the four societies:

Society Name	**BUA consumed (sq.m.)**	**Land conveyed (sq.m.)**
Satellite Garden I CHSL	11186.41	Nothing Conveyed yet. *Suit pending but society has demanded conveyance of 16855.47 sq.m., which is the area of original Sub-Plot A*
Sadguru Complex 1 (AB) CHSL	3936.31	643.81 *This land is less than plinth of the building, i.e. 959.69 sq.m. and order does not indicate basis for determining area of 643.81 sq.m.*
Sadguru Complex 1 (CD) CHSL	3917.76	2134.15 *By undertaking the exercise of determining BUA proportionate to area utilised in construction of building.*
Satellite Tower CHSL	20728.06	4864.21 *Which is the plinth area of the building*
Building 5	328.74 *(yet to be constructed)*	--

21) Ordinarily, this Court could have set aside the orders passed in the case of Sadguru Complex 1 (AB) CHSL and Satellite Tower CHSL and could have directed conveyance of land proportionate to BUA utilised in construction of their buildings so that there could have been uniformity in grant of deemed conveyance to all the three societies. Even Satellite Garden I CHSL could have opted for land division proportionate to BUA utilised in construction of its building by giving up demand for conveyance of entire original Sub-Plot No. A admeasuring 16855.47 sq.m. However, in peculiar facts of this case, this Court is unable to direct that exercise. This is on account of loading of TDR in some of the buildings. The TDR is not uniformly loaded and there is massive loading of TDR in building of Satellite Tower CHSL. The position of loading of TDR in 4 constructed buildings is as under:

Society Name	**Base BUA (sq.m.)**	**TDR (sq.m.)**	**Total BUA (sq.m.)**
Satellite Garden I CHSL	11186.41	0	11186.41
Sadguru Complex 1 (AB) CHSL	3126.32	720	3936.31
Sadguru Complex 1 (CD) CHSL	830.92	3086.08	3917.76
Satellite Tower CHSL	5778	14949.6	20728.06
Total	**20921.65**		**39768.43**

22) Considering the above position, if the principle of subdivision of land proportionate to BUA used in construction of each building is applied, Satellite Tower CHSL will receive maximum share of the land since its total BUA is 20728.06 sq.m., which is more than 50 % of total BUA used in the layout. Satellite Tower CHSL will thus own more than 50 % of layout land though the base FSI for its construction was only 5778 sq.m. (representing only 25% of base BUA). Thus, the building with only 25% base BUA will walk away with more than 50% of the land in the layout. This is how use of massive TDR of almost 3 times the base FSI would give a windfall gain to Satellite Tower CHSL, which would claim ownership of more than 50 percent of land in the layout. On the other hand, Satellite Garden I CHSL, for construction of which no TDR is utilised, would be put in a disadvantageous position.

23) On the other hand, if the principle of conveyance of only plinth area to each society is followed, the question as to who would own the balance portion in the layout would still beg an answer. This is because the plinths of the 4 buildings totally admeasure only 10797.23 sq.m., whereas total land available for subdivision is 21807.18 sq.m. Even if balance area excluding plinths is to be proportionately owned by all the buildings, again the difficulty of proportionate land division would arise.

24) During the course of hearing of the present petitions, this Court identified the above unique conundrum presented in the case and has accordingly sought assistance from various learned counsel at the bar requesting them to act as *Amicus Curiae* and present their views on resolving this intricate issue of grant of conveyance in a layout plan.

25) Accordingly, this court requested Mr. Pravin Samdani, learned Senior Advocate, Mr. Girish S. Godbole, learned Senior Advocate, Mr. Naushad Engineer, learned Senior Advocate, Mr. Mayur Khandeparkar, learned counsel, and Mr. Karl Tamboly, learned counsel to act as *Amicus Curiae* and present their views for resolution of the conundrum. Dr Milind Sathe, learned Advocate General, has also presented the views on behalf of the State Government on the issue of proportionate land division in a layout. In addition, I have also heard the learned counsel appearing for the rival parties in the present Petitions. I proceed to briefly capture the broad submissions canvassed and the suggestions made by the learned counsel.

SUBMISSIONS

Dr. Milind Sathe, The Advocate General

26) Dr. Sathe has taken me through the statutory scheme of Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 **(MOFA)** and the Maharashtra Ownership Flats (Regulation of the Promotion of Construction etc.) Rules, 1964 **(MOF Rules)**. He submits that there is a statutory duty on the promoter to form a cooperative society under Section 10 of MOFA within the time prescribed under Rule 8 of MOF Rules, which is 4 months from the date of purchase of flats required for formation of society. That once the society is formed, under Section 11, there is a statutory duty to convey promoter's right, title and interest in favour of the society within 4 months of its formation as per Rule 9 of MOF Rules. He submits that sub-sections (2) to (5) are added to Section 11 by Maharashtra Act 4 of 2008 to enforce rights of organisation of flat purchasers to obtain conveyance on failure of promoter to convey the land.

27) Dr. Sathe then takes the Court through the Development Control Regulations for Mumbai, 1991 **(DCR 1991)**. He submits that Regulation 32 provides for FSI and tenement density in residential, commercial and industrial zones. That Regulation 33 provides for additional FSI in certain categories and Regulation 35 provides for computation of FSI. Dr. Sathe submits that Regulation 34 of DCR 1991 introduced, for the first time, the concept of Transferable Development Rights (TDR) which provides that the development potential of land could be separated from the plot and the same was made available to the landowner. That generation and utilisation of TDR is regulated under Appendix VII. That clauses 1 to 9 of Appendix VII provided for 'generation' of TDR whereas clauses 10 to 19 provide for 'utilisation' of TDR. That clause 14 provides that FSI of receiving plot may be allowed to be exceeded by only 0.4 by availing TDR. That this clause was substituted in 2007 by changing 0.4 to 0.8. That thus, by utilising the TDR, the development potential of the plot was allowed to be increased by 0.4 in 1991 and 0.8 after 2007. That therefore for computing the plot potential, the FSI would be base FSI and TDR permissible under Clause 14 of Appendix VII/VIIA. He further submits that under DCR 33, additional FSI is admissible in respect of various categories such as MHADA colonies [DCR 33(5)], destroyed or burnt buildings [DCR 33(6)], cessed or municipal or police buildings [DCR 33(7)], cluster development [DCR 33(9)], slums [DCR 33(10)] etc. He submits that under DCR 33(16), there is incentive FSI granted for establishment of IT parks.

28) Dr. Sathe invites attention of this Court to Government Resolution **(GR)** dated 22 June 2018 prescribing the procedure to be followed for deciding applications for deemed conveyance. He submits that under Para 2(C)(vi)(2) of the GR, there is provision for conveyance of only plinth and appurtenant area where TDR is utilised in construction of the building. Dr. Sathe however fairly concedes to the position that the

GR does not assist in resolution of the conundrum of proportionate land division created in present case and in various other cases of revision of layout plans midway. He submits that GR is meant only for guidance of the Competent Authority.

29) Dr. Sathe submits that the concept of proportionate land division on a reasonable basis is judicially recognised and invites attention of this court to judgment of Division bench of this Court in ***Shree Siddharth Construction vs. Shree Saraswati Apartment CHS Limited***[1], in which it is held that there can be subdivision of land proportionate to FSI distribution in a reasonable manner.

30) Dr. Sathe thereafter has presented his views for resolving the disputes relating to conveyance of proportionate land in the layout in the following three scenarios/contingencies:

(a) The entire layout is developed 'simultaneously' under one regime of DCR;

(b) The layout is developed 'in phases' under one regime of DCR;

(c) The layout is developed in phases 'partly under regime of one DCR and one layout developed under regime of another DCR'.

31) He submits that the critical date for consideration of distribution of plot/land for conveyance between competing claims may be reckoned depending upon facts of each case as follows:

a. The date of first sanction of the plans of a building.

1 Writ Petition No. 1439 of 2012 decided on 17 October 2013.

b. The date on which the right of a building/society accrues in terms of Section 11 of MOFA.

c. The date of subsequent plan/s.

d. Whether permissible TDR at the relevant time was utilized in the plans would be a relevant consideration.

32) Dr. Sathe has suggested the process to be adopted for the purpose of fair and legal distribution of land in reasonable manner for conveyance to respective bodies of flat purchasers in various contingencies and considering the GR dated 22 June 2018.

Mr. Pravin Samdani, Senior Advocate, *amicus curiae*

33) Mr. Samdani fairly concedes that in a layout development where external FSI such as TDR is used or where mixed development is undertaken, problems are created for conveyance of proportionate land to the buildings constructed in such layout. He has submitted that ideally mixed use should not be permitted in a layout development after one of the buildings is already constructed. He submits that if mixed use to be allowed in such case, the planning authority must first deduct the land in respect of the building already constructed and then sanction the FSI under the incentive scheme only for balance plot area, to avoid imbalance. He has given suggestions in his Note to be followed for undertaking conveyance in (i) cases involving use of TDR and (ii) cases involving mixed development, which are discussed in the latter part of the judgment.

Mr. Girish S. Godbole, Senior Advocate, *amicus curiae*

34) Mr. Godbole has submitted that while dealing with an application under Section 11(3) of MOFA, it may not be advisable for the Competent Authority to go into the issue of informed consent or lack thereof since the jurisdiction of Competent Authority under Section 11(3) of the Act is limited to issuance of a certificate certifying that the society is entitled to have unilateral deemed conveyance in its favour. He has given his views on different scenarios in his Note, which are discussed in the latter part of the judgment.

35) Mr. Godbole has further submitted that while considering a mixed development as contemplated under Regulation 33 of Development Control and Promotion Regulations for Greater Mumbai, 2034 **(DCPR 2034)**, this Court needs to lay down certain conditions that a developer will be required to disclose in the plans submitted to the authorities at the outset whether there is any possibility of usage of extra TDR in such development. That in such cases, this Court may devise a way to potentially freeze the quantum of potential of each constructed building which needs to be conveyed to each society at the time of each conveyance.

36) Mr. Godbole further submits that for the purpose of determining what is land appurtenant, a useful reference can be made to Regulation 41 of DCPR 2034 which defines open spaces within building plot/layouts while granting conveyance of appurtenant areas.

Mr. Naushad Engineer, Senior Advocate, *amicus curiae*

37) Mr. Engineer also has taken me through the statutory scheme of MOFA and the MOF Rules. Adverting to the GR dated 22 June 2018, he has submitted that the GR was introduced to address the practical difficulties which had arisen in cases of layout development, particularly where multiple buildings are constructed on the same parcel of land and question of apportionment of land for the purpose of deemed conveyance had become contentious. That the GR seeks to provide a workable mechanism for determining the extent of land to be conveyed to each society in such layout projects.

38) Mr. Engineer further submits that since MOFA gives primacy to representations made in the Agreement for Sale under Section 4, the GR, even in the cases of layout development, where promoter is constructing multiple buildings, cannot be said to have an absolute operation. That the GR can be applied only in consonance with the Agreement for Sale and the disclosures made thereunder, and not in derogation thereof. He relies on the judgment of this Court in ***Indian Finance Construction Co. Pvt. Ltd. and Anr. vs. State of Maharashtra and Ors.***[2] He submits that in ***Rashesh CHS Ltd. v. State of Maharashtra and Ors.***[3], this Court has held that GR cannot override the statute and that it can only assist in implementation where ambiguity exists. That GR is therefore only clarificatory in nature and enabling framework, which cannot be read to displace the substantive rights flowing from

2 2024:BHC-AS:48565
3 Writ Petition No. 10961 of 2025 decided on 28 April 2026

Agreement for Sale, sanctioned plans and statutory obligations under MOFA.

39) Mr Engineer has thereafter given his suggestion for resolving the issue involved in the present 3 petitions by presenting the following table:

Sr. No.	Building	Plinth (sq.m.)	FSI BUA (sq.m.)	TDR (sq.m.)	Total BUA (sq.m.)	Plot Area (sq.m.)	Development Potential (sq.m.)
1.	Satellite Garden I CHSL	4004.56	11186.41	0	11186.41	21807.18	20921.65 (base FSI) + 18755 (TDR)
2.	Sadguru Complex 1 (AB) CHSL	959.69	3126.32	720	3936.31		
3.	Sadguru Complex 1 (CD) CHSL	968.77	830.92	3086.08	3917.76		
4.	Satellite Tower CHSL	4864.21	5778	14949.6	20728.06		
5.	**Total**	**10797.23**	**20921.65**	**18755.68**	**39768.54**	**21807.18**	**39677.33**

40) Mr Engineer submits that after applying the formula of "[**Base FSI utilised ÷ Total Base FSI on the Plot] x Plot Area**", the respective societies would be entitled to following areas:

Satellite Garden I CHSL = 11659.88 sq.m.

Sadguru Complex 1 (AB) CHSL = 3258.64 sq.m.

Sadguru Complex 1 (CD) CHSL = 866.08 sq.m.

Satellite Tower CHSL = 6022.55 sq.m.

41) Mr. Engineer has submitted that if conveyance is granted solely on the basis of base or inherent FSI, completely ignoring the TDR, then Sadguru Complex 1 (CD) CHSL would receive land lesser than its plinth area. He has further submitted that the aforesaid illustration also demonstrates the inherent inequity in adopting a “purely base FSI based formula” in a TDR-loaded layout without regard to the actual development consumed by each society, as is apparent from the example of Sadguru Complex 1 (AB) CHSL and Sadguru Complex 1 (CD) CHSL. That both these societies have been constructed at the same time between 2003-2005 on a plot of land admeasuring 7,868.17 sq.m. and that the structures of the two societies are identical, as both the societies consist of two wings of ground+8 floors comprising a total of 64 flats each, and that the total built up area of both the societies is also almost identical. That, however, Swastik Developers used TDR of only 720 sq.m. for Sadguru Complex 1 (AB) CHSL and TDR of 3086.08 sq.m. on Sadguru Complex 1 (CD) CHSL. Thus, even though the two societies are virtually identical, just because the promoter has utilized the TDR unequally, Sadguru Complex 1 (AB) CHSL would get conveyance of an area of almost 4 times more than Sadguru Complex 1 (CD) CHSL as can be seen from the following:

Sadguru Complex 1 (AB) CHSL = (3,126.32/3,957.24) × 7,868.17 = 6216.07 sq.m.
Sadguru Complex 1 (CD) CHSL = (830.92/3,957.24) × 7,868.17=1652.11 sq.m.

He submits that such a result would be arbitrary and inequitable.

42) Mr. Engineer has further submitted another illustration where there is a plot of land admeasuring 10000 sq.m. having base FSI of 10000 sq.m. and the developer has loaded TDR of 10000 sq.m. on that land. The developer then constructs two identical structures, A and B of

10000 sq.m. each, where Structure A is constructed using inherent FSI and Structure B is constructed using TDR. In that case, applying the aforesaid formula, the entire land would have to be conveyed to Structure A, and Structure B would get nothing at all, which he submits is not the statutory intention and, in any case, is not statutorily permissible.

43) Mr. Engineer has therefore suggested that clause 2 (C) (vi) (2) of the GR cannot be departed from in the manner suggested, as the same would produce anomalous results. He has therefore submitted that completely ignoring the TDR cannot be a solution while undertaking proportionate land division.

44) Mr. Engineer has further pointed out 2 scenarios in layout development as under:

a. Whether, in a case where TDR is loaded and the same is disclosed to the flat purchasers in the Agreement for Sale, the land can be conveyed proportionately on the basis of the total BUA utilized by each society; and

b. Where a promoter starts development of a subsequent building by loading TDR which is not disclosed to the flat purchasers of the first building, then can the land be conveyed proportionately based on the total BUA utilized by each society?

45) Mr. Engineer has submitted that in a case where TDR is loaded and is disclosed to flat purchasers in Agreement for Sale, a conveyance / deemed conveyance proportionate to total BUA in each building can be permitted. He refers to judgment of this Court in ***Neelkanth Mansions and Infrastructure Pvt. Ltd. vs District Deputy Registrar***[4]. However, in a scenario where promoter starts development of subsequent building by loading TDR which is not disclosed to flat purchasers of first building, conveyance based on total BUA including TDR cannot be sustained as the same would be contrary to statutory scheme of MOFA, particularly Sections 7 and 7A. He concludes by submitting that applicability of GR depends on whether TDR was disclosed in Agreement for Sale and whether the proposed apportionment is consistent with statutory scheme under MOFA. Mr. Engineer has given suggestions by considering 3 options which are discussed in the latter part of the judgment.

Mr. Mayur Khandeparkar, *amicus curiae*

46) Mr. Khandeparkar has submitted that given the volatility of the situations and circumstances that exist concerning the manner and mode of development, there cannot possibly be any straitjacket formula / illustrative guidelines for conveyance of land in the layout and that the aspect will have to be dealt with on a case-to-case basis. He has submitted that the Competent Authority must look at the last sanctioned plan for undertaking the exercise of proportionate land division. That the only exception to this principle is where a civil court has passed an order to the contrary, interdicting further development in the layout on the basis of revised plans. He submits that there can be cases where society formed first has never objected or has not taken steps against

[4] Writ Petition No.3530 of 2026 decided on 25 June 2026.

construction of the building in a society formed subsequently. Or there can be cases where society formed first has specifically consented to construction of building of subsequent society. That the result of both illustrations is that the vested rights in favour of subsequently formed society come into play and therefore, conveyance of proportionate land has to be on the basis of the last sanctioned plan.

47) Mr. Khandeparkar has submitted that Competent Authority cannot go into the issues of consent under Section 7 or 7A of MOFA and that if any society has any dispute regarding construction carried out in breach of MOFA, appropriate remedy would be to approach civil court to restrain or restrict such construction. That where such construction is not restricted, there is deemed consent and conveyance must take place by taking into consideration BUA utilised in construction of all buildings in the last sanctioned plan.

48) Mr. Khandeparkar has submitted that suggestion of freezing first sanctioned plan would result in anomalous/dangerous situation where a society whose building is constructed subsequently in the form of revised sanctioned plan will never be able to seek any conveyance and such limitations placed on rights of subsequent societies would be contrary to the statutory scheme of MOFA.

49) Mr. Khandeparkar submits that buildings constructed majorly/purely by utilising the TDR are no less than buildings constructed by utilising inherent FSI. He relies on Regulation 30 Table 12 of DCPR 2034, which states that “permissible FSI” viz. development potential includes (i) Zonal (basic) FSI, (ii) Additional FSI on payment of premium, and (iii) Admissible TDR. That therefore law does not create any distinction between buildings constructed with inherent/base FSI and TDR. That therefore such discrimination cannot be introduced while granting conveyance to various buildings in the layout. That since jurisdiction of Competent Authority is limited, it cannot go into complicated issues of consent, legality of construction of building, legality of use of additional FSI or TDR etc. That therefore the Competent Authority must accept the last sanctioned plan for the purpose of proportionate subdivision of layout land.

50) Mr. Khandeparkar further submits that there is another reason why no straitjacket formula can be applied in matters of deemed conveyance as under DCPR 2034, various types / modes of development are now permissible as under:

a. Development concerning basic FSI + TDR (Reg.30, Table 12)

b. Incentive schemes such as (i) cluster re-development under Reg. 33(9), (ii) slum rehabilitation schemes under Reg.33(9)

c. Development concerning combined schemes such as those permitted under (i) Clause 22 of Reg. 33(7), (ii) Clause 10 of Reg. 33(10), Clause 1 of Reg. 33(20)(B), etc.

d. Development concerning buildable reservations such as (i) under Reg. 33(17)(C) for BMC and MHADA and (ii) under Reg. 33(17)(D) for SRA, etc. in which cases, the FSI consumed for construction of the reservation is exempted, so long as the same is handed over to the concerned authority.

51) Mr. Khandeparkar has given two suggestions for purpose of resolving the controversy involved in the facts and circumstances in the present case, which are discussed in the latter part of the judgment.

Mr. Karl Tamboly, *amicus curiae*

52) Mr. Tamboly has assisted the Court by inviting its attention to various judgments dealing with the issue involved in the present case. By relying on judgment of Division Bench of this Court in ***Shree Siddharth Construction*** (supra), he has submitted that the principle of FSI distribution between the constructed properties existing on the land for the purpose of conveyance in a reasonable manner can be followed. That the Division Bench has held that such distinction between different claimants on the basis of FSI consumed becomes necessary where land is not allocated for each building for conveyance purposes. He submits that in ***Marathon Next Gen Realty Ltd. vs. Competent Authority***[5], a Single Judge of this Court has held that Competent Authority has no jurisdiction to adjudicate disputed facts and law, nor has power to decide disputed interpretation of clauses in the Agreement for Sale. That in ***ACME Enterprises vs. Deputy Registrar, Cooperative Societies***[6], Single Judge of this Court has held that Competent Authority cannot convey more than what the promoter had agreed to convey under Section 4 agreement. That this Court has held that grant of conveyance in respect of area proportionate to FSI consumed in construction of buildings would take the matter in the arena of disputed questions as to title and

5 2015 (5) Mah LJ 318
6 2023 SCC OnLine Bom 1102

that Competent Authority was neither competent nor equipped to adjudicate the said issue. He submits that in subsequent judgment in ***Marathon Era CHS Ltd. vs. Competent Authority & DDR***[7], Single Judge of this Court has dealt with the concept of appurtenant land and has held that the same must go with the building and with the footprint land. That it is further held that though additional FSI can be utilised, it cannot be used in a manner in which it would reduce the promised or assured facilities and amenities. That FSI already used in completed building cannot be compromised in any manner. That utilisation of further FSI cannot come at the cost of already consumed FSI. He then invites the attention of this Court to ***Runwal Paradise vs. District Deputy Registrar Cooperative Societies***[8], in which it is held that the issue of entitlement to additional/unutilised FSI is outside the purview of the Competent Authority and that purport of guidelines of GR dated 22 June 2018 is to grant conveyance of land required to sustain the constructed structure along with proportionate areas in common amenities. He also invites attention of this Court to the judgment in ***Mahanagar Realty vs. Ganga Ishaniya CHS Ltd.***[9], in which this Court has noted the scenario of share of constructed building in plot area getting reduced with every revised sanctioned plan and the need to freeze the FSI as per the sanctioned plan after some of the buildings in the layout are constructed for the purpose of deemed conveyance. He then invites attention of this Court to ***Gala Complex Premises Cooperative Society Ltd. vs Gala Wood Works***[10], in which it is held that

7 2024 SCC OnLine Bom 1115
8 2024 SCC OnLine Bom 2041
9 2026 SCC OnLine Bom 1445
10 2026 SCC OnLine Bom 2052

when the building uses FSI of the entire plot, the land corresponding to such construction must also be determined proportionately. That this Court has held that promoter cannot retain land whose development potential has already been used for constructing buildings and that society must receive land corresponding to development potential already used for its construction. He also invited attention of this court to judgment in ***Nook CHS Ltd. vs Pyramid Developers***[11], in which it is held that the latter plan cannot be permitted to cut down a right which had already arisen from the original arrangement unless the following 3 elements are clearly shown: (i) clear disclosure to purchasers, (ii) informed consent, and (iii) proper sanctioned basis. That this Court has held that latter sanctioned plan may be relevant but cannot supersede statutory obligations owed at earlier stage. He submits that in ***Rashesh CHSL*** (supra), this Court has held that while interpreting any provision under MOFA, the Court must lean in favour of protecting the legitimate rights of flat purchasers rather than permitting methods by which conveyance is delayed. That the Court has also dealt with the concept of appurtenant land in that judgment.

53) Mr. Tamboly also invites attention of this Court to the judgment in ***Upvan Woodlands Cooperative Housing Society Limited vs. M/s. Upvan Developers and Ors.***[12], in which it is held that it is not necessary to await completion of development in the layout and society in respect of completed building can seek conveyance of proportionate land. That in ***Neelkanth Mansions*** (supra), this Court has held that where

[11] 2026 SCC OnLine Bom 2774
[12] 2026 SCC OnLine Bom 4723

TDR is used for construction of all buildings in the layout, principle of proportionate land division can be followed by taking into consideration the BUA of each of the buildings.

54) Mr. Tamboly also relies on judgment of this Court in ***ACME Enterprises and Anr. vs. Deputy Registrar Cooperative Societies (2) and Ors.***[13] in support of his contention that principle of land-cutting can be followed by conveying the due land to the building whose construction is completed, so as to leave open all options to the developer to utilise the balance land by loading the full development potential thereon.

SUBMISSIONS OF LEARNED COUNSEL APPEARING FOR RIVAL PARTIES IN THREE PETITIONS

Mr. Y. R. Mishra for Satellite Garden I CHSL

55) Mr. Mishra submits that the Competent Authority could not have exercised jurisdiction under Section 11 of MOFA in the facts and circumstances of the present case where disputes are already *sub judice* and Suit No. 1002 of 2010 is pending in which his client society has sought conveyance of area of original sub-plot A admeasuring 16855.47 sq.m. That, Section 11 of MOFA confers only a limited and facilitative jurisdiction and under the guise of that jurisdiction, Competent Authority cannot go into complicated question of title. That the exercise of "proportionate allocation" is beyond the jurisdiction of Competent Authority. That Section 11(3) of MOFA permits conveyance only in accordance with Agreement for Sale, and GR dated 22 June 2018 cannot

13 IA No. 4859 of 2025 decided on 4 November 2025

be followed in derogation of covenants of Agreement for Sale and provisions of MOFA. That the impugned order of deemed conveyance granted in favour of Sadguru Complex 1 (CD) CHSL is in complete disregard of injunction dated 29 January 2013, as confirmed by this Court by judgment dated 16 April 2013 by which the developers were restrained from creating third party rights in respect of the suit land. That by executing deemed conveyance in favour of Sadguru Complex 1 (CD) CHSL, Competent Authority has breached the said injunction order.

56) Mr. Mishra further submits that the impugned order of Competent Authority ignores the fact that the entire development potential of land admeasuring 16855.47 sq.m. of original sub-plot A was already consumed and exhausted in construction of Satellite Garden I CHSL. That therefore, construction of building of Sadguru Complex 1 (CD) CHSL itself is illegal. That there is suppression of material facts and collusion with developers, and therefore, impugned order is rendered illegal. That Petitioner alone is statutorily entitled to conveyance of entire land admeasuring 16855.47 sq.m. and no right, title or interest could lawfully pass on to Sadguru Complex 1 (CD) CHSL. That the impugned order is vitiated by procedural irregularity and non-application of mind.

57) In support of his contentions, Mr. Mishra relies on judgments in ***Arunkumar H. Shah (HUF) vs. Avon Arcade Premises Co-operative Housing Society Ltd.***[14], ***Mazda Construction Co. vs***

[14] 2025 SCC OnLine SC 825

Sultanabad Darshan Co-operative Housing Society Ltd.[15] and ***Zainul Abedin Yusufali Massawala vs. Competent Authority***[16]. Mr. Mishra also opposes the petitions filed by Satellite Tower CHSL as well as Sadguru Complex 1 (AB) CHSL, contending that grant of conveyance to those societies is in the teeth of injunction order passed in the pending suit.

Mr. J.K. Shah for Sadguru Complex 1 (CD) CHSL

58) Mr. Shah submits that the Competent Authority has rightly followed the principle of subdivision of land proportionate to BUA utilised in construction of the building of his client society while passing the impugned order. That pendency of Suit of Satellite Garden I CHSL cannot come in the way of his client society securing due conveyance under Section 11 of MOFA. That Occupation Certificate **(OC)** has been granted in respect of his client society on 9 July 2010 and that the society is entitled to conveyance of proportionate portion of land. That there are 64 member flat purchasers in his client society who have purchased the flats for lawful and valuable consideration. That, the society has already expended huge sums in securing conveyance and has purchased the requisite stamp duty for conveyance of deeds. That no prejudice would be caused to other societies if the conveyance is granted in favour of Sadguru Complex 1 (CD) CHSL is allowed to sustain.

15 2012 SCC OnLine Bom 1226
16 2016 SCC OnLine Bom 6028

Mr. Rajan Kakkara for Satellite Tower CHSL and Sadguru Complex 1 (AB) CHSL

59) Mr. Kakkara has submitted that the Competent Authority has erroneously restricted conveyance to only plinth area of land in favour of his client society. That his client-societies are also entitled to conveyance of land proportionate to BUA used in construction of those buildings. That his client society has relied on certificates of architect indicating proportionate land entitlement. Mere loading of TDR in construction of a building becomes an irrelevant factor for deciding land division. That mere use of TDR cannot reduce lawful entitlement of society since building constructed with TDR ultimately amounts to lawful construction as per the sanctioned plan. That pending suit and injunction order therein do not justify denial of rights of his client society. That his clients are also entitled to proportionate land division in accordance with GR dated 22 June 2018 and conveyance cannot be restricted only to plinth area used in construction of the buildings. That, his client-societies are not parties to the suit and therefore their rights had crystallised before passing of injunction order. That Competent Authority already granted proportionate land in favor of Sadguru Complex 1 (CD) CHSL and therefore restriction of plinth area selectively imposed on his 2 client societies is clearly discriminatory. He accordingly prays for setting aside the impugned order passed in the case of Sadguru Complex 1 (AB) CHSL and Satellite Tower CHSL with direction for conveyance of land proportionate to BUA utilised for construction of the 2 buildings.

Mr. Tushad Kakalia for Developer - Satellite Developers Ltd.

60) Mr. Kakalia has submitted that the developer has never shied away from obligations to convey the land in favour of the societies. He submits that there are following seven structures on the land bearing sub-plot A of the larger layout:

(a) Building No. A-1 of Satellite Garden I CHSL;

(b) Building No. A-2 of Sadguru Complex (A&B) CHSL;

(c) Building No. A-5 of Satellite Tower CHSL;

(d) Proposed Building on Plot No. A-3;

(e) Wagheshwari Temple;

(f) Electric sub-station; and

(g) Internal roads and Open Areas.

61) Mr. Kakalia has fairly placed on record copies of various plans including last OC plans and based on the OC plans, he has indicated utilisation of total permissible BUA of 40,343.28 sq.m. in respect of each of the buildings as under:

Sub-plot A

Floor area considering base FSI: 21587 sq.m.

FSI credit available by TDR: 18755 sq.m.

Total permissible floor area: 40343.28 sq.m.

BUA with TDR

Building A-1: 11186.14 sq.m.; [Satellite Garden Phase I]

Building A-2: 3936.32 sq.m.; [Sadhguru AB]

Building A-3: 328.74 sq.m.; [Not completed]

Building A-4: 3917.76 sq.m.; [Sadhguru CD]

Building A-5: 20728.06 sq.m.; [Satellite Tower]

62) Mr. Kakalia further submits that TDR has been used in respect of 3 out of 5 sanctioned buildings as under:

TDR used in Building A-1: NIL

TDR used in Building A-2: 720 sq.m.

TDR used in Building A-3: NA

TDR used in Building A-4: 3086.08 sq.m.

TDR used in Building A-5: 14949.60 sq.m.

63) Mr. Kakalia, at the suggestion of this Court, has submitted the figures of base FSI in respect of each of the buildings (without use of TDR) as under:

<u>BUA excluding TDR</u>

Building A-1: 11186.41 sq.m. [Satellite Garden Phase I]

Building A-2: 3126.32 sq.m. [3936.32 – 720] [Sadhguru AB]

Building A-3: 328.74 sq.m. [Not completed]

Building A-4: 830.92 sq.m. [3917.76 – 3086.08] [Sadhguru CD]

Building A-5: 5778 sq.m. [20728.06-14949.6] [Satellite Tower]

Existing Temple: 244.31 sq.m.

64) Mr. Kakalia has submitted that his client has completed the development on the plot and the last building (building No. 5) is yet to be constructed by the original owners as per the contractual arrangement between the parties.

CONSIDERATION OF SUBMISSIONS, REASONS AND ANALYSIS

65) The issue that is taken up for consideration in the present Petitions is about conveyance of land to the organisations of flat purchasers, whose buildings are situated in a layout development. When more than one building is constructed in a layout land and FSI and BUA sanctioned in respect of the entire layout land is distributed for construction of various buildings in the layout, division of the layout land for conveyance purposes many times becomes a contentious issue. This is particularly when the buildings are constructed by utilisation of BUAs under different schemes/potentials, such as (i) buildings constructed with base/inherent FSI, (ii) buildings constructed with use of full/partial TDR, (iii) buildings constructed with base FSI, but flowing through different FSI regimes (iv) buildings constructed under incentive schemes such as cluster development, slum schemes, IT Parks etc. In such a situation, it becomes difficult to have an apple-to-apple comparison for the purpose of proportionate distribution of land in the layout to be conveyed to organisations of flat purchasers formed by different buildings.

66) During yesteryears, the concept of house-owning was simple. A person interested in buying and owning a house would purchase the land and construct a house thereon. Alternatively, he would purchase a constructed house like a bungalow together with the plot of land. In such a scenario, the purchaser would become owner of both land as well as the constructed structure. In such a case, ownership of land goes hand-in-hand with ownership of constructed structure. However, as the time passed and lesser and lesser land became available for housing, especially in the urban areas, multistorey buildings came to be constructed by implementing house schemes, where multiple purchasers came together and decided to share ownership in the land through ownership of their respective superstructures. To illustrate, if a plot of land was taken up for development by constructing four-storey building comprising of four flats (*one flat on each floor*) and four different purchasers purchased one flat each of equivalent size, each of the four flat purchasers became owners in respect of the land to the extent of 25% share therein. This concept is still prevalent in many parts of the country such as in New Delhi, where limited number of floors are constructed on a plot of land and each floor owner becomes proportionate owner in the land beneath the structure.

67) However, in Maharashtra and particularly in Mumbai, the concept of owning flats in multistorey buildings was adopted even prior to independence. Multistorey buildings were constructed in Mumbai even prior to independence. Post independence, the activity of constructing multistorey buildings in urban areas in the State picked up pace. A landowner started engaging a professional developer for constructing building(s) on the land owned by him/her. Since there was demand for housing in urban areas, planning authorities permitted construction of multistorey buildings by implementing the concept of floor space index (FSI), meaning thereby that it was permissible to build superstructures proportionate to the size of land. For FSI 1.00, construction equivalent to the size of the land became permissible. However, on account of requirement of leaving marginal open spaces, exclusion of areas covered by staircase, verandahs, etc., need arose for the developers to go vertically, thereby constructing multiple flats on the land taken up for development.

68) However, the entry of professional developers in house building activities gave rise to many malpractices in construction and sale of flats to the purchasers. The developers sold only superstructures (flats) while retaining ownership in the land with the aim of milking further development potential. It therefore became necessary to regulate the activities of promoters and developers, and to safeguard the interests of flat purchasers. Need was also felt for statutory governing of relation between promoter and flat purchasers, rather than leaving the matters only in the realm of private contracts. With that objective, the State of Maharashtra enacted MOFA in the year 1963.

STATUTORY SCHEME OF MOFA AND MOF RULES

69) The MOFA has been enacted taking note of acute shortage of housing in several areas of the State and to prevent sundry abuses and malpractices by the developers and for regulating construction, sale of flats and for collective management of the buildings by the flat purchasers. The Preamble of the MOFA reads thus:

> WHEREAS, it has been brought to the notice of the State Government that, consequent on the acute shortage of housing in the several areas of the State of Maharashtra, sundry abuses, malpractices and difficulties relating to the promotion of the construction of, and the sale and management and transfer of flats taken on ownership basis exist, and are increasing;
>
> AND WHEREAS, the Government in order to advise itself as respects the manner of dealing with these matters, appointed a committee by Government

> Resolution in the Urban Development and Public Health Department, No. S. 248-79599-F, dated the 20th May 1960, to inquire into and report to the State Government on the several matters referred to aforesaid with the purpose of considering measures for their amelioration;
>
> AND WHEREAS, the aforesaid Committee has submitted its report to Government in June 1961, which report has been published for general information;
>
> AND WHEREAS, it is now expedient after considering the recommendations and suggestions made therein, to make provision during the period of such shortage of housing, for the regulation of the promotion of the construction, sale and management and transfer of flats taken on ownership basis in the State of Maharashtra;

70) MOFA broadly deals with the compulsory execution of flat purchase agreements, project disclosures, timely possession, society formation and conveyance. It would be necessary to take a brief note of the important provisions of MOFA, which are relevant for deciding the issue taken up for discussion/consideration. Section 2(a-1) of MOFA defines the term 'flat' as under:

> (a-1) "Flat" means a separate and self-contained set of premises used or intended to be used for residence, or office, show-room or shop or godown or for carrying on any industry or business (and includes a garage), the premises forming part of a building and includes an apartment.

71) Section 2(c) of MOFA defines the term 'promoter' to mean every person who constructs or causes to be constructed a block or building or flats or apartments for the purpose of selling the same. The phrase has been interpreted to include the land owner also, who causes construction. Section 2(c) of the MOFA provides thus:

> (c) "promoter" means a person and includes a partnership firm or a body or association of persons whether registered or not who constructs or causes to be constructed a block or building of flats or apartments for the purpose of selling some or all of them to other persons, or to a company, co-operative

society or other association of persons, and includes his assignees; and where the person who builds and the person who sells are different persons, the term includes both;

72) Section 4 of MOFA mandates that before accepting advance payment or deposit for purchase of flat, the promoter must execute and register an agreement with the flat purchasers. For the present purpose, the most vital ingredient of section 4 of MOFA is that the agreement needs to be in the prescribed form and must contain the particulars specified in clause (a) of sub-section (1A) and must accompany the documents enumerated in clause (b) of sub-section (1B). Thus, there is a statutory duty on the developer to make the necessary disclosures and also to append plans and specifications of the flat as approved by the local authority. Section 4 of MOFA provides thus:

> **4. Promoter before accepting advance payment or deposit to enter into agreement and agreement to be registered.—**
>
> (1) Notwithstanding anything contained in any other law, a promoter who intends to construct or constructs a block or building of flats, all or some of which are to be taken or are taken on ownership basis, shall, before, he accepts any sum of money as advance payment or deposit, which shall not be more than 20 per cent. of the sale price enter into a written agreement for sale with each of such persons who are to take or have taken such flats, and the agreement shall be registered under the Registration Act, 1908 (XVI of 1908) (hereinafter in this section referred to as "the Registration Act") and such agreement shall be in the prescribed form.
>
> (1A) The agreement to be prescribed and sub-section (1) shall contain inter alia the particulars as specified in clause (a); and to such agreement there shall be attached the copies of the documents specified in clause (b),—
>
> (a) particulars,—
>
> (i) if the building is to be constructed, the liability of the promoter to construct it according to the plans and specifications approved by the local authority where such approval is required under any law for the time being in force;
>
> (ii) the date by which the possession of the flat is to be handed over to the purchaser;

(iii) the extent of the carpet area of the flat including the area of the balconies which should be shown separately;
(iv) the price of the flat including the proportionate price of the common areas and facilities which should be shown separately, to be paid by the purchaser of flat; and the intervals at which instalments thereof may be paid;
(v) the precise nature of organisation to be constituted of the persons who have taken or are to take the flats;
(vi) the nature, extent and description of limited common areas and facilities;
(vii) the nature, extent and description of limited common areas and facilities, if any;
(viii) percentage of undivided interest in the common areas and facilities appertaining to the flat agreed to be sold;
(ix) statement of the use of which the flat is intended and restriction of its use, if any;
(x) percentage of undivided interests in the limited common areas and facilities, if any, appertaining to the flat agreed to be sold;

(b) copies of documents,—
(i) the certificate by an Attorney-at-law or Advocate under clause (a) of sub-section (2) of section 3;
(ii) Property Card or extract of village Forms VI or VII and XII or any other relevant revenue record showing the nature of the title of the promoter to the land on which the flats are constructed or are to be constructed;
(iii) the plans and specifications of the flat as approved by the concerned local authority.

(2) Any agreement for sale entered into under sub-section (1) shall be presented by the promoter or by any other person competent to do so under section 32 of the Registration Act, at the proper registration office for registration, within the time allowed under sections 23 to 26 (both inclusive) to the said Act and execution thereof shall be admitted before the registering officer by the person executing the document or his representative, assign or agent as laid down in sections 34 and 35 of the said Act also within the time aforesaid:
Provided that, where any agreement for sale is entered into, or is purported to be entered into, under sub-section (1), at any time before the commencement of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) (Amendment and Validating Provisions) Act, 1983 (Mah. V of 1984), and such agreement was not presented for registration or was presented for registration but its execution was not admitted before the registration officer by the person concerned, before the commencement of the said Act, then such document may be presented at the proper registration office for registration, and its execution may be admitted,

> by any of the persons concerned referred to above in this sub-section, on or before the 31st December 1984, and the registering officer shall accept such document for registration, and register it under the Registration Act, as if it were presented, and its execution was admitted, within the time laid down in the Registration Act:
>
> Provided further that, on presenting a document for registration as aforesaid if the person executing such document or his representative, assign or agent does not appear before the registering officer and admit the execution of the document, the registering officer shall cause a summons to be issued under section 36 of the Registration Act requiring the executant to appear at the registration office, either in person or by duly authorised agent, at a time fixed in the summons. If the executant fails to appear in compliance with the summons, the execution on the document shall be deemed to be admitted by him and the registering officer may proceed to register the document accordingly. If the executant appears before the registering officer as required by the summons but denies execution of the document, the registering officer shall, after giving him a reasonable opportunity of being heard, if satisfied that the document has been executed by him, proceed to register the document accordingly.

73) Section 7 of MOFA prohibits alteration or addition without consent of flat purchasers after the plans and specifications are disclosed. Thus, once the approved plans are disclosed or furnished to flat purchasers, the promoter cannot make any alterations or additions in the structure prescribed therein in respect of any flat, nor can he make other alterations or additions in the structure of the building without the previous consent of all the flat purchasers. Section 7A has been incorporated by Amendment Act of 1986, which seeks to clarify that clause (ii) of sub-section 1 of section 7, which was incorporated by 1986 amendment shall be deemed to be effective at all material times and that the expression "*or construct any additional structures*" used therein existed before the commencement of the Amendment Act. Section 7 and 7A of MOFA provide thus:

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

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

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

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

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

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

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

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

7A. Removal of doubt.—

For the removal of doubt, it is hereby declared that clause (ii) of sub-section (1) of section 7 having been retrospectively substituted by clause (a) of section 6

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

74) Under Section 10 of MOFA, it is a statutory duty on a promoter to form a cooperative society or a company within the prescribed period. Section 10 of the Act provides thus:

> **10. Promoter to take steps for formation of co-operative society or company.—**
>
> (1) As soon as a minimum number of persons required to form a Co-operative society or a company have taken flats, the promoter shall within the prescribed period submit an application to the Registrar for registration of the organisation of persons who take the flats as Co-operative society or, as the case may be, as a company; and the promoter shall join, in respect of the flats which have not been taken, in such application for membership of a Co-operative society or as the case may be, of a company. Nothing in this section shall affect the right of the promoter to dispose of the remaining flats in accordance with the provisions of this Act:
>
> Provided that, if the promoter fails within the prescribed period to submit an application to the Registrar for registration of society in the manner provided in the Maharashtra Co-operative Societies Act, 1960 (Mah. XXIV of 1961), the Competent Authority may, upon receiving an application from the persons who have taken flats from the said promoter, direct the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar concerned, to register the society:

> Provided further that, no such direction to register any society under the preceding proviso shall be given to the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar, by the Competent Authority without first verifying authenticity of the applicants, request and giving the concerned promoter a reasonable opportunity of being heard.
>
> (2) If any property consisting of building is constructed or to be constructed and the promoter submits such property to the provisions of the Maharashtra Apartment Ownership Act, 1970 (Mah. XV of 1971), by executing and registering a Declaration as provided by that Act then the promoter shall inform the Registrar as defined in the Maharashtra Co-operative Societies Act, 1960 (Mah. XXIV of 1961), accordingly; and in such cases, it shall not be lawful to form any co-operative society or company.

75) Section 11 of MOFA imposes statutory duty on the promoter to convey in favour of organisation of flat purchasers his right, title and interest in the land and the building by executing all the relevant documents in accordance with the agreement executed under Section 4 either within the agreed period or within the prescribed period. Sub-sections (2) to (5) have been incorporated in Section 11 by 2008 amendment which confers jurisdiction on the Competent Authority to issue a certificate of unilateral deemed conveyance in the event promoter fails to execute conveyance in favour of society under sub-section (1). Section 11 of MOFA provides thus:

> **11. Promoter to convey title, etc., and execute documents, according to agreement.—**
>
> (1) A promoter shall take all necessary steps to complete his title and convey to the organisation of persons, who take flats, which is registered either as a co-operative society or as a company as aforesaid or to an association of flat takers or apartment owners, his right, title and interest in the land and building, and execute all relevant documents therefor in accordance with the agreement executed under section 4 and if no period for the execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period and also deliver all documents of title relating to the property which may be in his possession or power.

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

(3) If the promoter fails to execute the conveyance in favour of the Co-operative society formed under section 10 or, as the case may be, the Company or the association of apartment owners, as provided by sub-section (1), within the prescribed period, the members of such Co-operative society or, as the case may be, the Company or the association of apartment owners may, make an application, in writing, to the concerned Competent Authority accompanied by the true copies of the registered agreements for sale, executed with the promoter by each individual member of the society or the Company or the association, who have purchased the flats and all other relevant documents (including the occupation certificate, if any), for issuing a certificate that such society, or as the case may be, Company or association, is entitled to have an unilateral deemed conveyance, executed in their favour and to have it registered.

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

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

76) Accordingly, Competent Authorities have been constituted under Section 5A of MOFA which reads thus:

5A. Competent Authority.—

The State Government may, by notification in the Official Gazette appoint an officer, not below the rank of the District Deputy Registrar of Co-operative Societies, to be the Competent Authority, for an area or areas to be specified in such notification and different officers may be appointed as Competent Authority for different local areas, for the purposes of exercising the powers and performing the duties under sections 5, 10, 11 and 11A of this Act.

77) Section 16 of MOFA gives overriding effect to the provisions of the Act over any contract to the contrary and the same also provides that provisions of MOFA shall be in addition to the provisions of Transfer of Property Act, 1882. Section 16 of the Act provides thus:

16. Act to be in addition to Transfer of Property Act and to over-ride contract to the contrary.—

The provisions of this Act, except where otherwise provided, shall be in addition to the provisions of the Transfer of Property Act, 1882 (IV of 1882), and shall take effect notwithstanding anything to the contrary contained in any contract.

78) In exercise of powers conferred under Section 15 of MOFA, MOF Rules have been framed. Rule 3 of MOF Rules deals with the manner of making disclosure and Rule 4 enumerates copies of documents to be provided to the flat purchasers. Rule 3 and 4 of MOF Rules provide thus:

3. Manner of making disclosure.-

(1) A promoter for the purposes of making disclosure of any document referred to in section 3 or prescribed thereunder shall produce the original of such document before the person intending to take or taking one or more flats. The promoter shall display or keep all the documents, plans or specifications (or copies thereof) referred to in clauses (a), (b) and (c) of sub-section (2) of the said section 3 at the site and permit inspection thereof"; Such person may ask the promoter all relevant questions for seeking further information or

clarification in respect of any documents of matter to be disclosed, produced or furnished by or under the provisions of the Act; and the promoter shall be legally bound to answer all such questions to the best of his knowledge and belief.

(2) The promoter while making disclosure of the outgoings as required by clause (j) of sub-section (2) of section 3 shall state the basis on which any estimated figures or other information is given.

(3) The Promoter shall, when the flats are advertised for sale, disclose inter alia in the advertisement the particulars as required by sub-clauses (i) to (iv) (both inclusive) of clause (m) of sub-section (2) of section 3.

4. True copies of certain documents to be given.-
A promoter shall, on demand and payment of a reasonable charge therefor, give to any person intending to take or taking one or more flats true copies of the following documents, namely:

(a) all documents of title relating to the land on which the flats are constructed, or are to be constructed, which are in the promoter's possession or power;
(b) the certificate by an Attorney-at-Law or Advocate referred to in clause (a) of sub-section (2) of section 3;
(c) all documents relating to encumbrances (if any) on such land, including any right, title, interest or claim, of any party in or over such land;
(d) the plans and specifications of the buildings built or to be built on the land referred to in clause (e) of sub-section (2) of Section 3;
(e) a list of fixtures, fittings and amenities (including the provision for one or more lifts) provided or to be provided for the flat;
(f) a list referred to in clause (g) of sub-section (3) of section 3;
(g) a list of all outgoing referred to in clause (j) of sub-section (2) of section 3 and the basis on which any estimated figures or other information is given to the person intending to take or taking the flat.

79) Rule 5 provides for the particulars to be contained in the agreement and further provides that the agreement needs to be in Form V in MOF Rules. Rule 5 of MOF Rules provides thus:

5. Particulars to be contained in agreement.-
The promoter shall, before accepting any advance payment or deposit, enter into an agreement with the flat purchaser in Form V containing the particulars

specified in clause (a) of sub-section (1A) of section 4 and shall attach thereto the copies of the documents specified in clause (b) of the said sub-section (1A).

80) Rule 8 of MOF Rules prescribes the period during which promoter must apply for formation of society and the period prescribed thereunder is 4 months from the date on which minimum number of persons required to form the organisation of flat purchasers have taken flats. Rule 8 provides thus:

> **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 person 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.

81) Rule 9 of MOF Rules prescribes the period of 4 months from the date on which organisation of flat purchasers is formed for conveyance of land and building of the promoter in favour of such organisation. Rule 9 provides thus:

> **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.

82) It would also be necessary to make a quick reference to Form V appended to MOF Rules. Under Form V, a model form of agreement to be entered into by the promoter and flat purchaser is prescribed. There are explanatory notes to Form V and Note 1 is of vital importance. Note 1 provides thus:

> Note No 1:-This is only a model form of agreement, which will have to be modified and adapted in each case having regard to the facts and circumstances of each case but in any event such clauses 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13 and 22 which are statutory and mandatory according to the provisions of the Act and these rules shall be retained in each and every individual agreement/s executed between the Promoter and Flat Purchaser. Any departure or variation from these statutory and mandatory conditions, being violative and ultra vires of the provisions of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereinafter referred to as "the said Act") will not be binding and enforceable upon the parties, such conditions being void *ab initio*:

83) It is thus mandatory to incorporate clauses 1 to 5, 8, 9, 10,11,12,13 and 22 in the agreement which are declared as statutory and mandatory in nature. Any covenant contrary to those enumerated clauses automatically becomes *void ab initio*. Clause 13 of Form V agreement contains statutory covenant for conveyance of land and building within a period of 4 months of registration of society. Clause 13 of the Form V agreement reads thus:

> 13. Unless it is otherwise agreed to by and between the parties hereto the Promoter shall, within four months of registration of the Society or Limited Company, as aforesaid cause to be transferred to the Society or Limited Company all the right, title and the interest of the Vendor/Lessor/Original Owner/Promoter and/or the owners in the aliquot part of the said land together with the building/s by obtaining/ or executing the necessary conveyance/1 and or assignment of lease of the said land (or to the extent as may be permitted by the authorities) and the said building in favour of such Society or Limited Company, as the case may be such conveyance/assignment of lease shall be in keeping with the terms and provisions of this Agreement.

84) Thus, there is a contractual as well as statutory obligation on a promoter to convey in favour of organisation of flat purchasers his right, title and interest in land and building within 4 months of formation of society. The obligation is contractual on account of mandatory incorporation of clause 13 in flat purchase agreement. As observed above, flat cannot be sold without executing agreement under Section 4. The agreement needs to be in accordance with Rule 5 which prescribes Form V. Form V contains clause 13, which is statutory in nature and cannot be deleted or excluded or modified. Any departure from clause 13 renders the contractual arrangement void and the statutory right to the contrary prevails. Thus, scheme of MOFA mandates that the promoter must undertake the contractual obligation to convey the land and building within 4 months of formation of society.

85) Notwithstanding the contractual obligation and even if in a given case, the developer omits to incorporate clause 13 of Form V agreement or privately contracts with flat purchasers otherwise, there is still a statutory duty on the promoter to convey the land and building within 4 months of formation of society. As observed above, Section 16 of MOFA gives overriding effect to provision of MOFA over any contractual clause. Thus, even if a promoter may privately contract with a flat purchaser that the land would never be conveyed or that only leasehold rights in land would be conveyed or that conveyance would be executed after 30 years or after completion of entire layout development, such contractual clause would be rendered void and combined effects of provisions of Sections 4, 11 and 16 of MOFA and Rules 5 and 9 of MOF Rules would make a promoter statutorily liable to convey the land and building within the prescribed period i.e., period of 4 months from the date of formation of society.

INTRODUCTION OF REMEDY OF DEEMED CONVEYANCE IN MOFA

86) The amendments effected in 2008 to the MOFA mark a watershed moment in protecting the rights of flat purchasers in respect of conveyance of land and buildings. The Legislature noted the reluctance and avoidance by developers in conveying the land in favour of organisation of flat purchasers. Therefore, the concept of deemed conveyance was introduced in the form of sub-sections (3) to (5) in Section 11 of MOFA. The Statement of Reasons and Objects for Amendment Act-IV of 2008 reads thus:

Statement of Objects and Reasons

The Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 has been enacted by the Government of

Maharashtra in the year 1963 to regulate for a certain period in the State, the promotion of the construction of, the sale and management and the transfer of flats on ownership basis. The said Act has been enacted to effectively prevent the sundry abuses and malpractices which had been on increase, consequent upon the acute shortage of housing in the several areas of the State.

2. It has come to the notice of the Government that the objective behind enactment of the said law is not fully achieved and its implementation has not been effective enough to curb certain malpractices and sundry abuses by the promoters or developers of the properties. Therefore, to make provisions of the said Act more effective and to safeguard interests of the purchaser of the flats, the Government of Maharashtra considers it expedient to carry out certain amendments to the existing provisions of the said Act. The important amendments proposed to be carried out are as follows:

(a) It is proposed to provide for appointment of one or more competent authorities for different local areas who would, on failure on the part of the promoter,—

(1) to form a cooperative society of the persons who have purchased the flats from the promoter, on application received from such purchasers, direct the District Deputy Registrar, Deputy Registrar or, as the case may be, the Assistant Registrar of cooperative societies to register the cooperative society of such flat owners:

(i) to execute a conveyance within the prescribed period as provided in Section 11, on receiving an application from the flat owner members of a cooperative society, issue a certificate to such society certifying that the said society was entitled to have a conveyance registered and that it is a fit case for execution of a unilateral conveyance as a deemed conveyance in favour of the said society by the Registration Officer under the Registration Act, 1908.

(b) To serve as a deterrent, a provision is also being made for disqualifying a promoter, convicted under the said Act (except under Section 12-A), for a period of five years so as to debar him from being granted any permission by the local authorities under the relevant laws for undertaking construction of flats.

(c) The proceedings before the competent authority are given the status of judicial proceedings for the purposes of Sections 193 and 228 of the Penal Code, 1860 and every competent authority is to be deemed to be a civil court for the purpose of Sections 345 and 347 of the Criminal Procedure Code, 1973.

3. The Bill seeks to achieve the above objectives.

87) Thus, the provision for deemed conveyance under Section 11 of MOFA is made by the Legislature after noticing failure on the part of the promoters and developers in the State of Maharashtra to convey lands in favour of the societies.

88) If the promoter fails to perform the contractual obligation (*under clause 13 of the Form V Agreement*) or the statutory obligation under Section 11(1) of MOFA read with Rule 9 of MOF Rules, the organisation of flat purchasers can make an application to the Competent Authority for deemed conveyance. After conducting a summary inquiry by considering the flat purchase agreements, sanctioned plans and other relevant documents and after providing an opportunity of hearing to the promoter, the Competent Authority can 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.

89) Thus 'failure' by the promoter to perform the statutory duty confers jurisdiction on the Competent Authority to entertain and decide the application for deemed conveyance. Occurrence of 'failure' within the meaning of Section 11(3) of MOFA thus constitutes a jurisdictional fact for the Competent Authority. [SEE: ***Nahar Builders Ltd. Vs. Orchid Enclave Cooperative Housing Society Ltd.***[17]]

17 Writ Petition No. 6063 of 2026 decided on 26 July 2026

90) Once a certificate of deemed conveyance is issued under Section 11(4), the organisation of flat purchasers can present such certificate to the Registration Officer for registration under the Registration Act, 1908 and after issuing notice to the promoter, the Registrar registers the instrument as 'deemed conveyance'.

THE CONCEPT OF 'DEEMED' CONVEYANCE

91) As observed above, there is a purpose for which provisions of sub-sections (3) to (5) are inserted in Section 11 of the MOFA. The provision for deemed conveyance is consciously made by the Legislature after noticing rampant failure on the part of the promoters to convey land in favour of organisation of flat purchasers. The Legislature was alive to the situation that by the year 2008, most of the societies, associations of apartments, etc. were without conveyance of land. Many buildings in cities like Mumbai, Pune, etc. had outlived their lifespan and needed immediate redevelopment. Though Section 11(1) of the MOFA imposes statutory duty on promoters to convey land, the only remedy available to the organisation of flat purchasers was to file a suit for securing conveyance. Decision of suits was taking years. To illustrate, in the present case itself, the suit filed by Satellite Garden-I CHSL in the year 2010 for conveyance is still pending. It was therefore necessary to make available faster, cheaper and swifter remedy for investing the title in the land in favour of the flat purchasers.

92) However, rampant failure on the part of the promoters was observed when most of the societies remained without title in respect of the lands. Developers were taking disadvantage of this position by putting up additional construction on the strength of ownership of land by them despite sale of all the flats in the building. Societies were finding it difficult to undertake the work of redevelopment and flat owners were languishing in old and dilapidated buildings. Noticing this abject failure of objective under the MOFA, the Legislature had to step in and cure the mischief by inserting sub-sections (3) to (5) in Section 11 of the MOFA. What is done under sub-sections (3) to (5) of Section 11 is performance of duty of promoter by the Competent Authority. Ordinarily, under the Transfer of Property Act, 1882, title would pass only after the owner executes conveyance in respect of the land. However, Sections 11(3) to (5) of the MOFA make slight departure from provisions of the Transfer of Property Act and permit a non-owner (Competent Authority) to effect sale/conveyance of land in favour of organisation of flat purchasers. This is permissible only on account of the fact that the promoter is actually divested of title in the land by reason of sale of all flats in the building, but continues to commit the folly of not executing the document, which would have the effect of vesting of title in the housing society.

93) Sale of a flat in the building does not mean sale of only a superstructure. It is a composite sale of superstructure and some interest in the land as well. Therefore, with sale of all flats in a building, the promoter/landowner stands divested of his title in the land. There is nothing that remains to be conveyed on account of operation of concept of divestment. To illustrate, if plot of land admeasuring 1000 sq.m. is taken up for construction of building and 10 flats are constructed as sanctioned by the Municipal Corporation and the entire development potential in the land is exhausted, the moment 10^{th} flat in the building is sold, the landowner automatically gets divested in respect of his title in the land. What needs to be performed by him under Section 11(1) of the MOFA is actually a formality so that vesting of title in the organisation of flat purchasers takes place. Divesting happens automatically by sale of flats but vesting of title requires completion of formality of execution of Conveyance Deed in favour of organisation of flat purchasers. Thus, what is done by the promoter under Section 11(1) of the MOFA is only the latter act of vesting since the former act of divesting is already complete. The promoter already loses his title in the land and all that is required to be done by him under Section 11(1) of the MOFA is to complete the formality of execution of document, which would then vest the title in favour of organisation of flat purchasers.

94) The concept of divesting of title of promoter in the land and of deemed conveyance is discussed by this Court in ***Darshan Mandir CHSL Vs. District Deputy Registrar***[18] and it is held thus:

> 28. **What must also be borne in mind is the fact that in most of the cases, there is virtual loss of right of the promoter in the land and building due to combined effect of provisions of Section 4 and Section 11 of MOFA. With sale of each flat in the building, there is dilution of title of the developer in the land. The moment all the flats in the building are sold, the developer is virtually divested of title in the land.** While things may look slightly complicated in respect of multistory towers, one may take into consideration a simple illustration of a developer undertaking construction of four flats on a plot of land. When all four flats in the building are constructed and sold, the four flat purchasers acquire 25% right each in the land and the developer looses its title in the land. In a similar manner, when all flats in a multistorey tower are sold and a cooperative society/company of flat purchasers is formed, the promoter's title in the land gets divested and such society/company becomes entitled to own the land on which the building is constructed. The things may also get slightly complicated in a layout

18 2026 SCC OnLine Bom 5634

development. **However, even qua layout development, similar analogy would apply and the developer loses proportionate title in the land to the extent of completed buildings in the layout.** It cannot be that the developer exploits development potential in the land, constructs flats and sells them to the purchasers, but still retains ownership in the land. This concept is unknown to law. On the other hand, provisions of Sections 4 and 11 of MOFA ensure that the developer is divested of his right, title and interest in the land and the building which is statutorily required to be transferred/conveyed to the organisation of flat purchasers. Thus what is conveyed by the competent authority need not necessarily be the "asset" of the promoter on account of operation of concept of divesting.

29. Ordinarily only an owner of the immovable property can execute conveyance thereof. However, a unique concept of "deemed conveyance" is introduced in MOFA for reasons discussed above. The concept of deemed conveyance envisages transfer of title of land owner without his consent and in absence of his signature on the instrument of conveyance. The transaction of deemed conveyance is effected through registration of a certificate issued by the Component Authority. This concept of deemed conveyance envisaging transfer of title of a landowner against his desire is thus based on the principle of divesting of title. Once the development potential as per the sanctioned plan is exploited, buildings are constructed, flats are sold and an organization of flat purchasers is formed, the developer loses title in the land and the building. The law enjoins a duty on him to transfer the title in the land and the building in favour of the organization of flat purchasers [Section 11(1) of MOFA]. However, if the developer fails in performance of statutory duty by not transferring the title, the competent authority steps into developer's shoes and issues a certificate of unilateral deemed conveyance. The law thus presumes loss of title of the developer once failure occurs on his part to perform the duty under Section 11(1) of MOFA. This presumption is however rebuttable. Even after the certificate of unilateral deemed conveyance is issued and registered, the developer can still institute a suit and demonstrate that the title in the land or in portion thereof still vests in him. **Thus, the statutory scheme of Section 11 of MOFA is such that there is presumption of loss of title in the land and the building and it is on this presumption that a certificate of unilateral deemed conveyance is issued by the Component Authority. Till the developer secures a declaration from a Court to the contrary through a decree, the instrument of deemed conveyance based on such presumption continues to remain valid for all purposes.** ....

(emphasis added)

95) When the land is subjected to a housing scheme by the landowner, either by himself or through a promoter, the statutory obligation to convey the land automatically kicks in. Once plans are sanctioned and sale of flats commences by execution of Section 4 Agreements, the landowner continues to hold the title in the land so subjected to a housing scheme only for the purpose of completing of construction and for conveying the same to the organisation of flat purchasers. The moment the development potential as per the disclosed sanctioned plans is exploited by sale of the last flat in the building, the title in the land is lost and what remains is only an obligation to convey. Section 10 of MOFA provides for formation of a cooperative housing society even before all the flats in the building are sold. It is not compulsory for the developer to sell all the flats in the building in a particular time. If he chooses to delay sale of all flats, but a society is formed, the promoter can become member of the society *qua* unsold flats. But the obligation to convey the land and the building does not stop or get postponed even where there is delay in sale of flats.

96) The concept of dual ownership is thus ordinarily unknown to MOFA. Once the land is subjected to housing scheme by constructing a building or a block comprising 'flats' (*as defined under MOFA*) and once the flats are sold, obligation to convey the land gets attached and must be fulfilled. The landowner/promoter cannot state or even contractually provide that the flat purchasers/their organisations would own only the superstructure and that the land beneath shall always remain in the ownership of the landowner/promoter. Whatever that is owned by the promoter must be conveyed. Thus, the law does not recognize a concept where only superstructure can be sold to the flat purchasers, but the land would continue to remain in the ownership of the promoter. Except in rare cases where the land taken up for development itself is a leased land, the ownership rights in the land must statutorily be conveyed in favour of the organisation of flat purchasers. Provisions of MOFA are thus the antithesis of the concept of dual ownership.

97) As observed above, the former act of divestment of title of the promoter automatically occurs upon sale of the last flat in the building. However, the latter act of vesting of title in favour of the Society needs execution of a formal document. The Competent Authority only performs the latter act on account of the occasion of failure on the part of the promoter. The land is thus 'deemed to be conveyed' in favour of the organisation of flat purchasers even though the landowner/promoter does not desire or is unwilling to convey the same. This is the reason why Section 16 of the MOFA makes provisions of the Act in addition to the provisions of the Transfer of Property Act. Without the signature and consent of the landowner/promoter, the deeming fiction occurs and the title passes from the landowner to the organisation of flat purchasers.

98) Thus, the conveyance under Sections 11(3) to (5) of MOFA is treated as 'deemed' since the land owner or the promoter is not a party/signatory to the document/instrument of conveyance. Someone not owning the land issues a certificate that the land is conveyed and such certificate is registered as an instrument of deemed conveyance.

99) Thus, the Legislative intention behind empowering the Competent Authority to issue a certificate of unilateral deemed conveyance in favour of organisation of flat purchasers is to curb the malpractices on the part of the developers. Introduction of concept of deemed conveyance has largely been successful and has benefited several societies / associations of apartments / companies in securing title in respect of the land.

CONCEPT OF DEEMED CONVEYANCE INTRODUCED IN MOFA TO CURE THE MISCHIEFS COMMITTED BY THE DEVELOPERS

100) As observed above, no difficulty arises in case of a single building erected on a plot of land where the Competent Authority can swiftly pass an order of deemed conveyance. No difficulty arises even when multiple buildings in a layout are constructed on the basis of a single sanctioned plan. Even in such scenario, the Competent Authority can swiftly make an order of deemed conveyance of the entire land in favour of either the federation or jointly in the name of all societies. The Competent Authority can even grant partial conveyance in respect of one out of multiple societies by proportionately sub-dividing the land. The difficulty only arises where plans are revised and additional BUA is sanctioned. In this scenario, the mischief is committed again by the developer. The developer applies for revised permission and takes benefit of higher BUA due to introduction of new scheme or change in the FSI regime.

101) The issue for consideration is whether the Competent Authority can be prevented from exercising jurisdiction under Section 11 of the MOFA merely because the developer has committed the mischief of getting the plans revised during currency of the layout development? Can the argument of creation of title dispute relating to proportionate land division be permitted to be raised for the purpose of defeating the jurisdiction of the Competent Authority under Section 11 of the MOFA? The answer, to my mind, appears to be in the negative. After all, MOFA and particularly the 2008 amendment introducing the concept of deemed conveyance is aimed at preventing the mischief by the developers. The mischief prevention concept of MOFA is dealt with by this Court in ***Haresh Vijaysinh Bhatia & Ors. Vs. District Deputy Registrar & Ors.***[19]. Referring to the Apex court judgment in ***Municipal Corporation of Greater Mumbai v. Ankita Sinha***[20], this Court held as under:

> 60. The Mischief Rule also known as Heydon's Rule is often applied by courts in determining the true objective behind enacting a statute by identifying the exact "mischief" that the statue seeks to correct or prevent. The rule is applied to surpass the mischief and to advance the remedy. Referring to seven Judge Bench decision in ***Bengal Immunity Co. Ltd. v. State of Bihar***, the Supreme Court has held in ***Municipal Corpn. of Greater Mumbai v. Ankita Sinha*** as under:
>
> > 31. While adequate clarity is discernible in the phraseology that is employed under Section 14 and other provisions of the National Green Tribunal Act 2010, as shall be discussed in the latter parts of the judgment, the intention behind the statute should receive our careful attention. Tracing the legislative history for creation of NGT it is seen that NGT is intended to address wide-ranging societal concerns and these have prompted us to opt for purposive interpretation. The statute will have to be read in its entirety and each provision of the Act must be given its due meaning by comprehending the mischief it intends to remedy. The chosen interpretive exercise is best understood from the treatise Interpretation of Statutes, authored by Justice G.P. Singh who explained thus:
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> > xxxx
>
> 61. Section 11 MOFA is enacted to suppress the mischief by promoters and developers and to advance the remedy for the home buyers for securing title in respect of the land and building.

[19] 2025 SCC Online Bom 1981

[20] (2022) 12 SCC 401

102) Since the objective behind enacting the provisions of MOFA is to cure the mischief, merely because layout development is completed with multiple revisions in the plan by taking benefit of additional incentive FSI/BUA, the same cannot be a ground for denying the statutory right of conveyance through the Competent Authority to the buildings of such layout. Therefore, instead of holding that the Competent Authority should stay away from such instances by relegating the parties to the remedy of civil suit, it would be more appropriate to lay down the principles governing conveyance in respect of such layout developments with a view to achieve the legislative object under Section 11 of the MOFA.

DEEMED CONVEYANCE IS ALSO A 'CONVEYANCE' IN REAL SENSE AND FOR ALL PRACTICAL PURPOSES

103) Though deemed conveyance involves a deeming fiction and is granted through a summary inquiry, once granted, it becomes a 'conveyance' in real sense and for all practical purposes as per the Transfer of Property Act. Once the certificate of deemed conveyance is registered under Section 11(5) of the MOFA, it vests title in the land and the building in favour of the society/company/association in whose name it is issued. Revenue entries can be effected based on registered certificate of deemed conveyance. Use of the word 'deemed' in such conveyance does not make it of a lesser value than a contractual conveyance.

104) The only exception in a deemed conveyance is that it can be challenged in a civil court and a declaration to the contrary can be secured. This is because of the summary nature of inquiry envisaged under Section 11(3) and (4) of the MOFA. Since the inquiry before the Competent Authority is not a detailed evidence-based inquiry and since the Competent Authority is not supposed to decide the intricate issue of title like a court, a contrary declaration in respect of land conveyed vide certificate deemed conveyance can be sought from a Civil Court. In ***Arunkumar H. Shah (HUF)*** the Apex Court has held thus:

> 45.1. It is no doubt true that quasi-judicial powers have been conferred on the competent authority while dealing with applications under Section 11(3) of MOFA. However, proceedings before the competent authority under Section 11(3) are of a summary nature, as can be seen from the MOFA Rules. Therefore, the competent authority, while passing the final order, must record reasons;
>
> 45.2. The competent authority, while following the summary procedure, cannot conclusively and finally decide the question of title. Therefore, notwithstanding the order under sub-section (4) of Section 11, the aggrieved parties can always maintain a civil suit for establishing their rights;

105) Thus, like a contractual conveyance, even a statutory deemed conveyance can be challenged before the Civil Court. However, till the order of deemed conveyance is set aside by a decree of Civil Court, the same constitutes a document of title. In ***Dev Ashish CHSL Vs. State of Maharashtra***[21]. This Court has held thus:

> 16. .... By issuing certificate of unilateral deemed conveyance, the Competent Authority merely steps into the shoes of the promoter and conveys to the organization of flat purchasers what it believed was the right, title and interest of the promoter in the land and the building. **The certificate of conveyance so issued by the Competent**

[21] Writ Petition No. 13649 of 2025 decided on 7 July 2026

> **Authority creates presumption of title in the party in whose favour the certificate is issued. This presumption is however rebuttable and the affected party can secure a declaration from Civil Court contrary to the one made in the certificate of unilateral deemed conveyance.** This principle is recognised in the judgment of the Apex Court in *Arunkumar H. Shah HUF Vs. Avon Arcade Premises CHSL*.
>
> *(emphasis added)*

106) Thus, for housing societies, securing deemed conveyance in respect of the land and the building results in vesting of title, enabling them to manage and deal with the same and more importantly, to undertake redevelopment of their buildings.

DEVELOPMENT OF LAW ON DEEMED CONVEYANCE

107) Under Sections 11 (3) and (4) of the MOFA, the Competent Authority exercises summary jurisdiction and performs the statutory obligation of the promoter by stepping into his shoes when failure on his part to perform those obligations occurs. Over the period of time, the contours of scope of inquiry to be made by the Competent Authority are to some extent broadened through various judicial pronouncements. The role of the Competent Authority is not restricted to act only in accordance with Section 4 Agreements, but it can also examine whether the Agreement is in consonance with the scheme of MOFA and MOF Rules and ensure performance of statutory obligations when contractual arrangement is found to the contrary. The timeline for conveyance stipulated in Section 4 Agreement can be ignored by the Competent Authority and the one prescribed in Rule 9 of the MOF Rules can be adhered to. Contrary to the contractual stipulation for conveyance of land only in favour of a federation, proportionate land can be conveyed to individual societies. Similarly, *qua* the area of land to be conveyed, the Competent Authority can look into the plans and convey land in proportion to the BUA utilized for construction of building, rather than conveying the area of land stipulated in the Agreement. It would be apt to take a quick stock of judgments on these principles.

A. Conveyance of proportionate land in favour of individual societies ignoring contractual stipulation for conveyance in favour of federation alone

108) Many Agreements executed under Section 4 of MOFA provide for conveyance of land only in favour of the federation upon completion of layout development. Under the provisions of Maharashtra Co-operative Societies Act, 1960, a federal society can be registered by constituent cooperative housing societies formed in respect of the buildings in the layout. Actually, conveyance of the entire land in the layout in favour of the federation is the ultimate panacea for all the problems of layout land division for conveyance purposes. However, in several cases, federations are not formed or the layout development takes years or decades for completion. In the present case itself, the layout development commenced in 1997 and is still incomplete after passage of 29 long years. Even though the layout development may be complete, sometimes, societies prefer to have individual conveyances rather than joint conveyance in favour of the federation. This gives them the flexibility to take decisions relating to redevelopment process. Be that as it may. This Court has recognised the principle that conveyance of proportionate land can be granted to the individual societies ignoring the contractual stipulation of conveyance only in favour of the federation. This is on account of obligation of conveyance kicking in on expiry of period specified in Rule 9 of MOF Rules upon formation of society in respect of one of the buildings in the layout. Thus, the Competent Authority can convey proportionate land to the society of completed building without waiting for formation of a federation.

109) In ***Veer Tower CHSL Vs. District Deputy Registrar***[22] this Court has held thus:

> 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.

Thus the Competent Authority can ignore the contractual stipulation in the Section 4 Agreement for conveyance of land only in favour of federation and can convey proportionate land in favour of individual societies.

B. Ownership in the land can be conveyed though the Flat Purchase Agreement may provide for only the Lease

22 2025 SCC OnLine Bom 324

110) The law on the issue of obligation of the promoter to convey his right, title and interest in the land and the building (*ownership in the land*) and not merely leasehold rights is now well settled. In ***Haresh Vijaysinh Bhatia*** (supra), it was sought to be contended on behalf of the promoter that the Competent Authority is a tribunal of limited jurisdiction and cannot travel beyond the jurisdiction conferred under Section 11 of MOFA, under which it has to direct deemed conveyance of land and building '*in accordance with the agreement executed under Section 4*'. It was contended that if the agreement executed under Section 4 of MOFA contemplates grant of only a lease, the Competent Authority does not have the jurisdiction to rule that the covenant in the agreement is contrary to the provisions of Section 11 of MOFA and to grant in favour of a society something over and above the one provided for in the agreement. It was contended that the Competent Authority must confine itself within the contours of agreement executed under Section 4 MOFA and that the limited role that it plays is to substitute itself in the place of promoter while deciding the application filed under Section 11(3) and to grant unilateral deemed conveyance of land and building strictly in terms of the agreement executed under Section 4 MOFA. It was contended that if any covenant in the agreement is found to be contrary to any provisions of the MOFA or MOF Rules, the remedy for the affected party is to file a suit to have such covenant declared void and thereafter file application for unilateral deemed conveyance under Section 11 before the Competent Authority. It was thus contended that the Competent Authority does not have jurisdiction while making an enquiry under Section 11 MOFA to rule that any particular covenant in the agreement executed under Section 4 is contrary to the provisions of the MOFA or MOF Rules. Rejecting the contentions, this Court held thus:

> **56.** Thus, conjoint reading of provisions of Section 11(1) MOFA, Rule 5 and Clause 13 of Form V agreement under MOFA Rules leaves no manner of doubt that the promoter is required to transfer and convey in favour of a society, "his right, title and interest in the land and building". Thus, everything that is owned by a promoter must be transferred and conveyed in favour of a cooperative society or association formed by flat purchasers. Section 11 MOFA does not permit a promoter to hold onto himself any part of right in the land and building. Thus, MOFA contemplates automatic divesting of ownership of promoter in the land and transfer thereof in favour of society formed by home buyers. What is performed by the competent authority is to issue a certificate recognising and certifying such transfer, for the purpose of registration thereof for mutation of name of society in the revenue records.
>
> **57. Thus, if the promoter is the owner of the land, he has no option but to transfer and convey his ownership in the land and building in favour of society. Section 11 MOFA does not permit a promoter, who is owner of land, to grant only leasehold rights in the land or building in favour of the Society**. **Whatever is owned by the promoter must fall in the ownership of the Society.** This principle recognised under Section 11 MOFA is premised on the concept that with sale of each flat in the building, the title of the promoter in the land gets diluted. Section 4 MOFA seeks to strike at the root of the mischief that was being played by the promoters in retaining ownership in the land despite sale of all flats in the building. ……
>
> **62.** Thus, a statutory right is created in favour of a society or association of flat purchasers to have in its favour conveyance and transfer of every right which the promoter possessed in respect of the land on which building is constructed. If promoter is the owner of land, he must transfer and convey his ownership right in favour of the Society. If on the other hand, promoter is a mere lessee, he must transfer his leasehold rights in the building in favour of the Society. Promoter cannot provide for demise of only leasehold rights if he is the owner of the land.
>
> **65.** The expression "in accordance with the agreement executed under Section 4" cannot be read in isolation in such a manner that the other words used in the same sub-section are rendered superfluous. If agreement provides for non-conveyance of land in favour of society and application for deemed conveyance is to be decided strictly in accordance with the covenants of that agreement, the words "and convey … his right, title and interest in the land and building" used in Section 11(1) would be rendered otiose. In my view therefore, the expression "in accordance with the agreement executed under Section 4" needs

> to be harmoniously constructed with the words "and convey ... his right, title and interest in the land and building". Thus while conveyance can be granted in accordance with MOFA Agreement, regard must be had to the provision which mandates conveyance of the whole of promoter's right, title and interest in the land and building. In that sense, the expression "in accordance with the agreement executed under Section 4" is controlled and guided by the words "and convey ... his right, title and interest in the land and building" used in the same sub-section. Therefore, while granting conveyance in accordance with the MOFA Agreement, the competent authority must convey promoter's entire title in the land and building. In other words, the contractual covenant in MOFA Agreement cannot defeat the statutory right of association of flat purchasers to have promoter's title in the land and building conveyed in its name in entirety.
>
> **67.** If above interpretation is not made, the same would result in incongruity and absurdity as statutory right of association of flat purchasers to have conveyance of promoter's title in entirety would get defeated by contractual covenant in MOFA Agreement. As observed above, Section 11 creates a statutory right in favour of societies to have conveyed to themselves promoter's "right, title and interest in the land and building" which would then get defeated by a contractual covenant in the agreement providing for demise of lease or non-conveyance of any portion of land. It is well-settled principle of law that any interpretation which leads to confusion or absurdity must necessarily be avoided.
>
> **72. In my view therefore, the competent authority possesses the necessary jurisdiction to direct conveyance of land and building on ownership basis where the promoter is owner of the land by ignoring covenant in the agreement, which does not provide for conveyance of land on ownership basis or grant of mere lease thereof.**
>
> *(emphasis and underlining added)*

Thus, in ***Haresh Vijaysinh Bhatia***, this Court has held that the Competent Authority possesses the necessary jurisdiction to direct conveyance of the land and building(s) on ownership basis where the promoter is the owner of the land by ignoring covenant in the agreement, which does not provide for conveyance of land on ownership basis or grant of mere lease thereof.

C. Conveyance cannot be delayed till completion of the entire layout development

111) This Court has repeatedly held that it is impermissible for the developer to delay conveyance for eternity on the ground of incomplete development of the layout. Reference in this regard can be made to the judgments of this Court in ***Lok Housing and Construction Ltd. vs. State of Maharashtra and Ors.***[23], ***ACME Enterprises and Anr. vs. Deputy Registrar Cooperative Societies (2) and Ors.*** (supra) and ***Upvan Woodlands CHSL*** (supra).

112) In ***Lok Housing and Construction Ltd.*** (supra), this Court interpreted the term 'period' appearing in Rule 9 of MOF Rules and has held that the same connotes a fixed, determinable and reasonable span of time. This Court held that any clause in the Agreement for Sale that attempts to override or nullify the statutory obligation under Rule 9 must be declared void to that extent, being inconsistent with law. This Court held in paras-17 to 24 of the judgment as under:

> 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.

[23] 2025 SCC OnLine Bom 711

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 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.

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 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.

Thus, a building in the layout in respect of which a society is formed need not wait for conveyance of land till completion of layout development.

D. <u>Land Area either as per the Sanctioned Plan or as per Agreement, whichever is higher.</u>

113) In ***Nitin Nagarji Mehta Vs. Shree Jupiter CHSL***[24], this Court has dealt with a case where the developer had deliberately earmarked lesser land in Section 4 Agreements for conveyance while utilizing FSI/BUA by amalgamating other plots. This Court held that the

[24] Writ Petition No. 12677 of 2025 decided on 28 July 2026

conveyance could not be restricted only to the lands indicated in Section 4 Agreements, but land as per the entitlement as per the sanctioned plans must be conveyed. This Court held thus:

> **19)** As observed above, the case involves earmarking of lesser land in Section 4 Agreements whereas buildings are constructed by utilizing FSI arising out of larger land than the one indicated in the those Agreements. If Petitioner was to restrict itself as per covenants of Agreements for Sale and to construct the buildings strictly in accordance with the development permissions individually granted to the two parcels of the land, what Mr. Gorwadkar contends could have been right and, in such circumstances, conveyance ought to have been strictly in accordance with the covenants of the Agreements for Sale. However, in the present case, Petitioner got amalgamated various parcels of land and has carried out layout development thereby utilizing much larger land from which FSI required for construction of buildings of the two societies has arisen. In these circumstances, conveyance cannot be restricted only to the lands indicated in Section 4 Agreements.
>
> **20)** In a given case, where the land agreed to be conveyed under the Flat Purchase Agreement falls short of the land actually required for sustenance of the building, it is necessary to convey the land which is taken into consideration by the Planning Authority for construction of the building.

114) However in a converse situation, in ***New Sonal Industries Premises Ltd. Vs. District Deputy Registrar***[25], this Court has held that when lesser FSI than the one admissible is consciously utilized by the developer, mere availability of balance FSI potential in the land cannot be a ground for not conveying the whole plot as per the Section 4 Agreements. This Court has held thus:

> **26. When a covenant in the agreement to convey entire land is pitched against the consideration of built-up area in the approved plans, the former would prevail. This is particularly when the entire FSI potential is not used and the promoter has made a conscious call to convey more land than the utilised built-up area despite availability of FSI potential.** In such cases, the promoter will have to carve out or exclude any portion of the land corresponding to the unutilised FSI from the agreement. Whether a

[25] 2024 SCC Online Bom 391

promoter fails to carve out or exclude any portion of the land from purview of the agreement and agrees to convey the entire land, mere availability of unutilised FSI is no answer to escape the liability to convey the entire land. **However, there can be converse cases as well, where the covenant in the agreement provides for conveyance of lesser area of land than the utilised FSI for construction of building.** To illustrate, the promoter constructs building using 10,000 sq m built-up area with FSI 1.00 requiring land at least admeasuring 10,000 sq m to sustain the building, but incorporates covenant that he would convey land admeasuring only 5000 sq mt. In such a case, whether the Society would be entitled to conveyance of land which is required to sustain its building (10,000 sq mt) contrary to the covenant in the agreement? In my view, though in limited remit of inquiry under Section 11 of the MOFA, the competent authority may not be able to travel beyond the covenants of the agreement, the civil court surely can be approached in such cases to have conveyance of the due area of land required for sustenance of the building. However, since this issue does not arise in the present case, the same is left to be decided in an appropriate case.

(emphasis and underlining added)

Thus MOFA, being a beneficial piece of legislation enacted for the benefit of the flat purchasers and their organisations and to prevent the mischief by developers, the same is repeatedly interpreted in favour of the former class and against the latter.

E. Impermissibility to keep open-ended reservation of future FSI for Developer and supremacy of the statute over contractual arrangement

115) In ***Krishna Developers Pvt. Ltd. Vs. The District Deputy Registrar***[26], it was contended that the clauses in the Agreement preserved right of way and balance FSI for the developer. This Court held that the private agreement cannot dilute the statutory obligations and the contractual clauses are valid only so long as they do not defeat the statute. It is further held that the statutory Form prescribed under the MOF Rules does not contemplate an open-ended reservation of future FSI in favour of the promoter once the project is completed as per the

26 Writ Petition No. 4542 of 2024 decided on 11 February 2026

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. It is held thus:

> 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.

116) In ***Kiran Builders Pvt. Ltd. Vs. Kalpita Enclave CHSL***[27], this Court, after referring to the judgment in ***Lakeview Developers*** (supra) has held that a developer cannot put up additional constructions for eternity on the basis of FSI made available in future, and on that ground, avoid conveyance of the land in favour of the society. It is held thus:

> 31) Even otherwise, it is well settled position of law that a Developer cannot put up additional constructions for eternity on the basis of FSI made available in future. The issue is well settled by Division Bench judgment of this Court in ***Lakeview Developers*** (supra) in which it has held in paras-55 to 56 as under:
>
> > 55. In our view, therefore, from the aforesaid judgment, it is clear that the developer cannot claim that he can continuously exploit the building potential for eternity without conveying the land in favour of the Society. The obligation to convey the land in favour of the Society within a prescribed time and the obligation to make true and full disclosure under Clauses 3 and 4 of Form V remains unfettered. If the full development potential of the land is exhausted and the obligation for conveyance of land in favour of the Society has arisen as per the Act and Rules and if the developer fails to do so then any further benefit which would accrue to the developer on account of any additional TDR or FSI made available, cannot be used by him for the purpose of construction of additional buildings. ……
> >
> > xxxx
>
> 32) The principles are reiterated by this Court in its judgment in ***Rajkumar Gulati*** (supra). Therefore, mere possibility of additional FSI being made available in respect of the reserved land cannot be a ground for not conveying the land in favour of Respondent-Societies.

[27] Writ Petition No.9694 of 2017 decided on 18 June 2026.

F. Principle of divesting of promoter's title and IBC Moratorium not affecting right to secure conveyance

117) This Court has dealt with the issue as to whether the moratorium imposed under Section 14 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) can come in the way of Competent Authority exercising jurisdiction under Section 11(3) of MOFA to grant deemed conveyance. In ***Santoshkumar Motilal Bhansali Vs. District Deputy Registrar***[28] and ***Darshan Mandir CHSL*** (supra), this Court has held that provisions of Section 14 of the IBC cannot come in the way of the Competent Authority exercising statutory duty imposed on the promoter under Section 11(1) of MOFA. It is further held that an action initiated by a financial creditor against a corporate debtor under Section 7 of IBC and a moratorium imposed under Section 14 of IBC, while admitting the application of that financial creditor, cannot negate or even suspend the statutory duty of the Competent Authority under Section 11(3) and (4) of MOFA. It is further held that the statutory objective behind MOFA cannot be permitted to be defeated merely on account of provisions of Section 14 of IBC. As discussed above, in ***Darshan Mandir CHSL***, this Court has discussed the concept of divestment of title of the promoter and has accordingly held that the freeze on assets of corporate debtor created under Section 14 of IBC does not affect the right of the housing society to secure conveyance as the promoter is already divested of the title and mere formal duty of execution of conveyance remains, which is performed by the Competent Authority.

[28] 2026 SCC OnLine Bom 552

G. Deemed Conveyance in absence of Occupation Certificate

118) In ***ALJ Residency Co-operative Housing Society Ltd. Vs. State of Maharashtra and Ors.***[29], this Court had an occasion to deal with the issue as to whether the Competent Authority can exercise jurisdiction under Section 11 of MOFA to grant certificate of unilateral deemed conveyance in respect of a building, which is yet to be issued an Occupation Certificate. This Court referred to the provisions of GR dated 22 June 2018, which permits conveyance of land and building in favour of Society, whose building is yet to be issued Occupation Certificate upon submission of a self-declaration by the society accepting all responsibilities and liabilities regarding the building and to make an application to the Planning Authority for issuance of occupation certificate. The judgment in ***ALJ Residency Co-operative Housing Society*** has been followed in ***Yogesh Jayant Khadilakar Vs. State of Maharashtra***[30].

119) Having discussed the law enunciated in various judgments on permissibility to grant certificate of deemed conveyance by the Competent Authority in various situations, it is time to revert to the core issue taken up for discussion and resolution i.e. proportionate land division in the layout. Before discussing various illustrative cases in which difficulties are posed in proportionate land division in a layout, it would be necessary to

29 Writ Petition No.406 of 2018, decided on 25 November 2024
30 Writ Petition No. 13755 of 2022 decided on 11 February 2025

deal with the submission that the Competent Authority cannot deal with the complications involved in proportionate land division and that it must leave the matter for Civil Court to decide.

RESOLUTION OF DISPUTES RELATING TO PROPORTIONATE LAND DIVISION IN DEEMED CONVEYANCE APPLICATIONS RATHER THAN DRIVING SOCIETIES FOR ADOPTION OF REMEDIES BEFORE CIVIL COURTS

120) The Competent Authority constituted under Section 5A of MOFA and exercising jurisdiction under Section 11(3) and (4) is undoubtedly a tribunal of limited jurisdiction. It makes a summary inquiry under sub-sections (3) and (4) of Section 11 of MOFA while issuing a certificate of deemed conveyance. In cases relating to single building on a plot, the scope of inquiry before the Competent Authority is extremely limited. It only satisfies itself as to whether there is failure on the part of the promoter to convey his right, title and interest in the land and the building in favour of organisation of flat purchasers, looks into the Agreement for Sale and sanctioned plans, and makes an order for issuance of certificate of deemed conveyance.

121) However, things get complicated while deciding applications for deemed conveyance filed by a society whose building is constructed in a layout land. The developers or landowners raise several defences for somehow denying and delaying conveyance so that future development potential can be milked. Sometimes there are other societies in the layout who also oppose the applications for deemed conveyance.

Therefore the nature of inquiry before the Competent Authority gets intensified in relation to layout developments.

122) Since the legislative objective behind MOFA is to provide a swifter remedy to the organisation of flat purchasers to secure conveyance, mere raising of objections by developers, land owners or other societies cannot be a reason for the Competent Authorities to shun the responsibility and drive the parties to lengthy litigations before Courts. The very objective behind Section 11 (3) to (5) of MOFA is that the organisations of flat purchasers need not undertake lengthy and expensive court litigations for securing conveyance. Decision of conveyance suits can take years. In the present case itself, the suit filed by Satellite Garden-I CHSL for conveyance is pending since 2010. This also reminds me of the fact that while the principles in the Division Bench judgment of this Court in ***Grand Paradi Housing Society Ltd. Vs. Mont Blanc Properties***[31] are oft quoted, the suit filed by the plaintiff society therein in the year 2002 for conveyance still remains pending. Therefore, driving the societies to litigate before Civil Courts for securing conveyance is not the best of the options. This Court of course is mindful of the law enunciated by this Court in ***Mazda Construction Co.*** (supra) and ***Zainul Abedin Yusufali Massawala*** (supra) that the Competent Authority under the MOFA cannot adjudicate complex title disputes or civil rights when granting a unilateral deemed conveyance. At the same time, expecting the organisations of flat purchasers to file suits for conveyance the moment some dispute is raised in deemed conveyance applications by the opponents would defeat the very objective behind

31 2010 SCC OnLine Bom 608

the 2008 amendments to MOFA. Also, the law has developed post ***Mazda*** and the broad contours of jurisdiction of the Competent Authority to deal with various situations through various judicial pronouncements (*as discussed above*) are now well-settled.

123) Therefore, the approach of the Competent Authorities must be to resolve the disputes relating to proportionate land division rather than driving parties to lengthy litigations. Now that several principles relating to proportionate land division are settled through judicial precedents and additional principles are being discussed in this judgment, there would be sufficient clarity for the Competent Authorities while dealing with cases relating to proportionate land division in a layout development. The approach must be to resolve the disputes relating to land sharing in deemed conveyance applications and leaving open the remedy to the aggrieved party raising complicated issues requiring evidentiary inquiry to approach the Civil Court. By now, it is well-settled position that deemed conveyance granted by the Competent Authority under Section 11 of MOFA is not final determinative of rights and entitlements of parties *qua* the land conveyed and the aggrieved party can always approach civil court claiming rights in the land contrary to the conveyance so granted. [SEE: ***Arunkumar H. Shah (HUF)*** (supra)]. Therefore, the Competent Authorities must attempt to resolve the disputes relating to land division in the layout keeping in mind the statutory scheme of MOFA and MOF Rules and the settled principles through various judicial pronouncements.

ILLUSTRATIONS OF DIFFICULTIES IN LAND DISTRIBUTION IN THE LAYOUT

124) Having considered the statutory scheme of MOFA and MOF Rules and few precedents on supremacy of statutory framework of MOFA over private contractual arrangements, it is now time to resolve the difficulties created in conveyance of land in the layout development. It is not that in every layout development the difficulty for proportionate subdivision of land really arises. In most of the layout developments, this difficulty may not even arise where the developer submits a layout plan for approval, gets all the buildings sanctioned at one go and commences construction and completes them within a reasonable time. There can never be any difficulty in proportionate division of land in such cases. To illustrate, a developer undertakes development on 10000 sq.m. land and is required to deduct 15 % area for RG, the balance land developable is 8500 sq.m. With FSI of 1.00, he secures BUA of 8500 sq.m. which he distributes among 4 buildings as under:

Building	BUA (sq.m.)
1	1500
2	2000
3	3500
4	1500

125) If all 4 buildings are sanctioned in one plan and are simultaneously taken up for construction and completed within a reasonable time without seeking revision in the development permission, there is no difficulty in proportionate land division as each of the 4 buildings/their societies can be conveyed proportionate share in the land and in the RG area.

126) There can also be no problem in a situation where TDR is loaded by the developer in the above example. To illustrate, if plot admeasuring 10,000 sq.m. is taken up for development, out of which 15 % area is earmarked for RG and sanctioned BUA is 8,500 sq.m. based on FSI of 1.00. There is permissibility to load TDR of 3500 sq.m. and the developer purchases TDR and loads the same, thereby increasing his permissible BUA upto 12,000 sq.m. He gets approved 4 buildings as under:

Building	BUA (sq.m.)
1	1500
2	2000
3	3500
4	5000

127) Even in the above example, though TDR is loaded, there is absolutely no difficulty in proportionate land division and Competent Authority / court can apply principle of division of land proportionate to BUA utilised in construction of 4 buildings. In ***Neelkanth Mansion and Infrastructure Pvt. Ltd.*** (supra), this Court has dealt with situation as above and has held in para 16,17 and 24 of the judgment as under:

> 16) The objective behind prescribing the procedure for conveyance of only plinth and appurtenant land area in respect of the layout where TDR is utilised must be appreciated. In the layout development, all buildings may not be constructed simultaneously and by use of same FSI. Since layout development takes substantial time on account of phase-wise construction of buildings, it is possible that first building is constructed in the layout by utilising the base FSI whereas the developer may purchase TDR from the market and load the same in construction of subsequent buildings. On account of loading of TDR for construction of one of the buildings in the layout, the same results in FSI imbalance and ordinarily the principle of division of land proportionate to

built-up area utilised for each building results in a situation where the building with TDR walks away with larger share in the land. To illustrate, if the plot admeasuring 10,000 sq.mtrs is taken up for layout development and the normal FSI available is 1.00, the total available built-up area (BUA) would be 10,000 sq.mtrs. The developer constructs building no.1 by utilising BUA of 5,000 sq.mtrs. The second building can be constructed with balance available built-up area of 5,000 sq.mtrs. However, the Developer purchases TDR of 2,000 sq.mtrs and loads the same for construction of the second building and the second building is actually constructed by utilising built-up area of 7,000 sq.mtrs. In this illustration, if principle of land division proportionate to utilised builtup area for each building is followed, building no.1 would get lesser share in the land whereas building no. 2 would get larger share only on account of utilisation of TDR. To prevent this incongruous situation, para-2(C)(vi)(2) provides a transitional/temporary solution for conveyance of only plinth and appurtenant area. Para 2(C)(vi)(2) of the GR seeks to ensure that there is no imbalance in the land distribution where some of the buildings in the layout are constructed with use of TDR. This could also have been achieved by ensuring that for land division purposes, only base FSI utilised in each building is considered by ignoring the TDR, premium FSI, incentive FSI, etc. used in some of the buildings. However this is not the issue to be decided in the present case. Suffice it to observe that the objective behind prescribing procedure under para-2(C)(vi)(2) is to provide a solution, possibly a temporary one, to avoid unequal division of land while making an order of deemed conveyance.

17) If all societies in the layout jointly seek conveyance or seek conveyance in favour of the federation, entire land can be conveyed and use of TDR in construction of some of the buildings does not pose any difficulty. However, where layout development takes unduly long time and society formed in respect of the completed building opts for conveyance before completion of development in the entire layout, use of TDR for constructing other buildings pose a problem for proportionate land division. Therefore, the GR makes a sort of transitional solution where only plinth and appurtenant areas can be conveyed in favour of society of each building and the final conveyance of balance land in the layout can take place in favour of the federation or in favour of all societies jointly. Thus para 2(C)(vi)(2) of the GR merely seeks to provide a solution where proportionate land division is an impossibility on account of use of TDR in some of the buildings in the layout. The legislative intent behind incorporation of para-2(C)(vi)(2) of the GR is not to provide any benefit to the developer or to deprive the societies of their due land entitlement. Otherwise, in every layout the developer would deliberately use some TDR to prevent conveyance of proportionate land and go on milking additional FSI arising out of new Building Regulations in the unconveyed land by putting up additional construction in the layout. Para-2(C)(vi)(2) of the GR merely makes a transitional arrangement to surmount the difficulty faced in proportionate land division due to use of TDR. This is the true purport of the procedure prescribed in para-2(C)(vi)(2) of the GR dated 22 June 2018.

> 24) Conspectus of the above discussion is that ordinarily the approach of the Competent Authority must be to make an endeavour to divide and convey land proportionate to the utilised BUA in each building in the layout. The procedure prescribed in para-2(C)(vi)(2) cannot be mechanically applied to deny proportionate land conveyance merely because some TDR is used in the layout. In cases where the Competent Authority notices that use of TDR does not pose any difficulty in proportionate land conveyance, it must grant conveyance of proportionate land. It is only in rare cases where use of TDR or incentive FSI in some of the buildings results in imbalance making proportionate land division impossible that the Competent Authority can grant conveyance of plinth and appurtenant area till the entire land in the layout gets conveyed to the federation or to all Societies jointly. However, under no circumstances, non-conveyance of proportionate land should work to the advantage of the developer. Thus the first endeavour of the Competent Authority must be towards proportionate land division. Where TDR is distributed across many buildings the principle of conveyance of land proportionate to the BUA utilised in each building must necessarily be followed. In a case where TDR is used only for construction of some of the buildings in the layout, an endeavour can be made by the Competent Authority to examine whether BUA corresponding to only base FSI for all buildings can be taken into consideration for proportionate land division. For example, in illustration discussed in para 14 above, it can be examined if only base BUA of 5000 sq.mtrs. can be considered for proportionate land division by ignoring the TDR or incentive FSI. If such solution is possible, the Competent Authority must adopt it rather than mechanically conveying only the plinth and appurtenant area to each building in the layout. To sum up, the procedure of conveying land less than proportionate land should be followed only in rare cases where it becomes impossible to divide and convey land proportionate to the BUA utilised in each building or where application of such principle gives undue advantage to one of the societies in the layout at the cost of other societies.

128) The problem, however, occurs where the promoter commits the mischief of delaying the layout development and gets the plans revised after construction of the first or second building and secures benefit of higher BUA either through TDR or incentive FSI or through change in FSI regime. Here there can be multiple scenarios as under:

Scenario 1 – Revision in the plan for the purpose of loading of TDR

Plot admeasuring 10,000 sq.m. is taken up for development and after deducting 15 % RG area, normal permissible BUA on the basis of FSI 1.00 is 8,500 sq.m. The Developer gets the layout plan sanctioned for construction of 4 buildings as under:

Building No.	BUA (sq.m.)
1	1500
2	2000
3	2500
4	2500

The developer completes construction of Building Nos. 1, 2 and 3 with BUA 1500 sq.m., 2000 sq.m. and 2500 sq.m. respectively. The developer delays construction of Building No. 4, and in the meantime, the DCR permits loading of TDR on the plot. The developer accordingly purchases TDR of say, 3500 sq.m. and starts constructing Building No. 4 with BUA 6000 sq.m. The land entitlement of each building would be as under:

Bldg	Original BUA (sq.m.)	Original land entitlement (sq.m.)	Revised BUA (sq.m.)	Revised land entitlement (sq.m.)
1	1500	1765	1500	1250
2	2000	2353	2000	1667
3	2500	2941	2500	2083
4	2500	2941	6000	5000
Total	**8500**	**10000**	**12000**	**10000**

In this illustration, Building No. 4 with massive BUA of 6000 sq.m. would virtually eat up 50 percent of the land, even though in the original sanctioned layout, it was supposed to consume BUA of only 2500 sq.m. and would have received conveyance of much lesser land.

Scenario 2 – Change of FSI regime

Suppose a developer undertakes development of land admeasuring 10,000 sq.m. and he secures base FSI of 1.00 and BUA of 10,000 sq.m. He gets the layout sanctioned for construction of 4 buildings by distributing the BUA as under:

Building	BUA (sq.m.)
1	1500
2	2000
3	2500
4	4000
Total	**10000**

The developer does not construct Building 4 for a considerable period of time and new DCPR is introduced, which raises the FSI to 2.5. The developer accordingly gets the plan revised. In these circumstances, MCGM or any other planning authority unfortunately takes into consideration the entire plot of 10000 sq.m. for revision of development permission. They do not exclude the land potential, which is already consumed, nor do they restrict additional FSI only in respect of balance land potential. Therefore, in this illustration, the planning authority would sanction the increased FSI of 2.5 to entire land of 10,000 sq.m. and sanction BUA of 25,000 sq.m. The planning authority would then deduct utilised BUA of Building Nos. 1, 2 and 3 of 6000 sq.m. and sanction

Building 4 with BUA of 19000 sq.m. In this scenario, the original planned development and revised development would be as under:

Building	**Original layout (sq.m.)**	**Revised layout (sq.m.)**
1	1500	1500
2	2000	2000
3	2500	2500
4	4000	19000
Total BUA	**10,000**	**25,000**

In this case, the land entitlement of each building in the plot admeasuring 10,000 sq.m. based on the BUA utilized in construction would be as under:

Bldg	**Original BUA (sq.m.)**	**Original land entitlement (sq.m.)**	**Revised BUA (sq.m.)**	**Revised land entitlement (sq.m.)**
1	1500	1500	1500	600
2	2000	2000	2000	800
3	2500	2500	2500	1000
4	4000	4000	19000	7600
Total	**10,000**	**10,000**	**25,000**	**10,000**

The above table would indicate massive difference in relation to land entitlement of buildings on account of revision to the plan by the developer. The fourth building has eaten up the land entitlement of the first three buildings. Thus, by mere reason of mischief played by the developer in delaying the construction of the 4th building and taking advantage of change in FSI regime, the first 3 buildings suffer immensely in terms of their share in the land. The issue for consideration is whether this can be permitted? The answer is in the latter part of the judgment.

Scenario 3- Mixed Use Development

Under DCR 1991 as well as DCPR 2034, there are different schemes under which additional FSI is granted for carrying out a specific nature of development. The incentive FSI is granted with a specific objective. To illustrate, under Regulation 33(16) of DCR 1991, the Municipal Commissioner is empowered to permit additional 100% FSI over and above the one grantable in Table 14 of Regulation 32 for building of Information Technology Establishment, which provision is now in the form of Regulation 33(13) of DCPR 2034, which specifies incentive FSI for the buildings of IT Establishments/data centers. Under Regulation 33(13) of DCPR 2034, if the road width is 27 meters, FSI of 5 can be sanctioned even though the normal FSI for similar road width is only 3.0 in the island city and 2.5 in the suburbs. There are several other schemes for incentive FSI such as buildings of biotechnology establishments, buildings for the students and/or working women hostel etc. In this illustration, even during same FSI regime, the developer revises plan during pendency of layout development and gets the same sanctioned for mixed use. The same results into imbalance.

To illustrate, in a plot admeasuring 10,000 sq.m., FSI 1.00 was admissible during DCR 1991 and 2 buildings were sanctioned with BUA of 5000 sq.m. each, Building No. 1 is complete and the society is formed. The developer delays construction of Building No. 2. Looking at the market demand, the developer decides to use incentive FSI for IT park or hostel and he applies for revision in the layout plan. In this scenario also, unfortunately, the Municipal Corporation sanctions the incentive FSI in respect of the entire plot of 10,000 sq.m., ignoring the position that half potential of the plot is already consumed by Building No. 1. The developer misuses the difficulty for Planning Authority in going into title disputes wherein it needs to consider the developer as a single owner in respect of the whole plot and accordingly gets sanctioned the revised plan with incentive FSI for the whole plot. Accordingly, the Municipal Corporation sanctions 2.00 FSI for the whole plot with BUA of 20,000 sq.m. In such case, BUA used for building No.1 of 5000 sq.m. is deducted and developer is permitted to construct building No.2 (IT park /hostel) with BUA of 15,000 sq.m. In this scenario, if principle of land division proportionate to BUA used in both the buildings is followed, Building No.1 will suffer. It is clear from the following table:

Bldg.	Original BUA (sq.m.)	Original Land Entitlement (sq.m.)	Revised BUA (sq.m.)	Revised Land entitlement (sq.m.)
1	5000	5000	5000	2500
2	5000	5000	15000	7500
Total	**10000**	**10000**	**20000**	**10000**

129) In the above manner, revision in the layout plan for additional construction poses difficulties in land division amongst various buildings in the layout and the buildings constructed by revision of layout walk away with larger pie in the layout land at the cost of buildings constructed earlier as per the originally sanctioned plans.

SUGGESTIONS ON BEHALF OF STATE GOVERNMENT AND BY LEARNED *AMICI*

130) The difficulties in the land division in the above discussed scenarios were put forth before the learned counsel for suggestions and for resolution and various suggestions are made by the Learned Advocate General and by the Learned *Amici*. It would be apt to consider the same.

131) Dr. Sathe, the learned Advocate General has given following suggestions to tackle the above discussed problems:

> (a) **Where the entire layout is developed 'simultaneously' under one regime of DCR:**
>
> In this case, the entire land needs to be conveyed to the body, if there is only one body or on *pro-rata* basis if there are more bodies on the basis of BUA.
>
> (b) **That the layout is developed 'in phases' under one regime of DCR:**
>
> If only one conveyance is granted to one body, then the entire land has to be conveyed. However, if there are more bodies than one, then here also, the land component has to be on *pro-rata* basis for each society considering the entire consumed FSI including permissible TDR.
>
> Note: In cases (a) and (b), whether TDR is utilized or not is immaterial.

(c) **That the layout is developed in phases 'partly under one regime and partly developed under another regime after migration':**

i. The obligation of the promoter to convey the land and building arises and crystallises in terms of Section 11 r/w Rule 9 of MOFA and MOF Rules, respectively.

ii. For example: If one building on a plot of land is completed consuming part FSI and balance potential of FSI is not utilized, then in that event, the entitlement of the society has crystallised on Occupation Certificate being received and such society ought to get conveyance of the land component on the basis of FSI consumed. FSI being calculated as both Base FSI and TDR regardless of the fact that TDR has been used or not.

iii. If in future, the development potential increases because of the change in DCR and the developer takes benefit of such increased development potential including TDR and utilises the same on the balance portion of the land, it would result in clear imbalance of the plot of land and the FSI. In such a situation, the first society whose rights are crystallised ought not to be deprived of the entitlement of the appropriate land component based on the FSI consumed.

iv. The occupants of subsequent additional building, which is constructed by utilisation of TDR which could be either generated from the same plot or purchased from the market should be informed about their building being constructed only out of TDR and cannot claim parity with the first building.

v. The buildings which are constructed on the basis of changed DCR regime in which the TDR has been utilised will not be entitled to the same treatment in view of the fact that their construction is after some society's rights have been crystallised and such a development cannot be considered violating the already approved rights.

vi. The GR providing for grant of deemed conveyance to a building which has utilised TDR, considering the plinth area and appurtenant area, has to be construed in this background.

vii. The plinth and appurtenant area can be granted only if such land is available after considering the entitlement of the first building whose rights have already crystallised for a specific area. The developer who defaults in not conveying the land to a society whose rights have crystallised cannot be allowed to benefit from its own wrong and take advantage of the enhanced development potential because of change in DCR and deprive the first building of its entitlement.

viii. The concept of appurtenant land has been explained in a judgment of this Court in the case of ***Rashesh CHS Ltd.*** (supra). The concept of appurtenant land has also been defined in Urban Land (Ceiling and Regulation) Act, 1976 under Section 2(g).

ix. All these contingencies would not arise if the promoter has obtained consents under MOFA. In such an eventuality, the conveyance will be on the basis of the BUA (including TDR) and this case will fall in category (a) mentioned hereinabove.

132) Mr. Samdani, the learned amicus has indicated the following suggestions:

> **I.** In any layout, mixed user should not be permitted (for example - residential + IT/Hotel/Hospital/other user), the reason being that the permissible FSI for residential purposes is different from that for the other user given in the example above. This may be permitted if the layout has within itself a sub-division and the other user is on a sub-divided plot and for construction only the area of such sub-divided plot is taken into consideration. This avoids imbalancing of the FSI in the context of vesting of the title in a society/condominium. In cases where mixed user is already in existence for conveyance, the solution may be as set out in para II below.
>
> **II.** In a layout where there are a number of buildings each one forming a separate society and the layout has used full TDR either in some building out of all or maybe in the last building, the total built up area ("BUA") should be considered to be the layout potential. Conveyance in a situation like this can only be of the land underneath the building and appurtenant thereto with a covenant that the building shall be entitled to the same FSI as was consumed from and out of the layout in the event of reconstruction or redevelopment, with a further covenant for incremental FSI benefits available under the DCR at the time of redevelopment or reconstruction to be in the same percentage which the building bore when it was constructed considering all the buildings forming part of the layout. In a situation under

scenario in para I above also, the mixed user building can be granted conveyance of the land below the building and land appurtenant thereto with a covenant that at the time of redevelopment if the same user is permitted, it will have the benefit of the same FSI as was consumed and if there is any incremental benefit at the time of redevelopment it would be entitled to the same accordingly.

III. In the event of conveyances in terms of para II above, the remaining lands and common areas and facilities of the layout be conveyed either to a federation of all the societies in the layout and each society therein shall have the same percentage of interest as defined in para II above. In the event the societies do not form a federation, a separate conveyance jointly in favour of all the societies with respect to the common areas and facilities be granted. In the alternative, in the conveyance in terms of para II above itself an undivided interest in terms of percentage in the common areas and facilities can be conveyed to such society.

133) Mr. Godbole has also made suggestions in the Note submitted by him to resolve the difficulties created due to TDR loading, different FSI regimes, mixed development, etc. His suggestions are as under:

Sr	Scenario	How conveyance ought to be granted
1)	There are two buildings in a common layout which are constructed from base FSI having equal plinth and constructed area.	Both societies can be given conveyance of structure, land appurtenant (comprising of side margins) and undivided share in all remaining areas.

2)	There are two buildings in a common layout which are constructed from base FSI which have same plinth but different constructed area.	Both societies can be given conveyance of structure, land appurtenant (comprising of side margins) in the ratio of their built up areas vis-à-vis their plot area.
3)	There are two buildings in a common layout which have the same plinth and constructed area, however, second building is constructed by utilizing TDR.	If use of TDR with specific reference either to quantum or of construction of a separate building for TDR is also disclosed (instead of a general reference), then conveyance can be in the ratio of their built-up area vis-à-vis their plot area. However, if there is only a general reference to TDR then conveyance ought to be in the ratio of their built up area vis-à-vis their plot area and both societies can be given 50% undivided share in common areas irrespective of the built up area of the TDR building being more.
4)	There are two buildings in a common layout and one building is constructed from the base FSI, while the other building is constructed by utilizing FSI benefit derived from surrender of portion of land to statutory authority.	It is really not TDR which is used but it is nothing but FSI used "in-situ" though the Planning Authority may issue a Development Rights Certificate (DRC). Such a case should be governed by Sr. No.1 above, i.e., both societies can be given conveyance of structure, land appurtenant (comprising of side margins) and undivided share in all remaining areas.
5)	There is change in regulation, etc. due to which additional TDR becomes available.	If there is a very explicit, clean and unambiguous consent for change of scheme including the regulation which will be used (not merely a future possibility) including in a revised draft Development Plan pending for sanction and only if location of purported additional building is clearly shown on plan annexed to MoFA agreement and described in MoFA agreement, then alone in the ratio of their built up area vis-à-vis plot area. In all other cases, the second building should be given only the conveyance of superstructure of building and land component comprising of footprint of the building, i.e. plinth and compulsory side margins, i.e. land appurtenant and only a right to use the common amenities

		or on payment of agreed contribution / maintenance charges without any right of ownership in such land or the building structure of such amenities.

134) Mr. Engineer, in his Note, has made following suggestions in the three scenarios:

Option 1

If the layout is developed / constructed by using only the base FSI which is duly disclosed to all the flat purchasers of the entire layout, in their respective Agreements for Sale, then in such situation, each society forming part of the layout should be conveyed the proportionate area in the total layout / plot area on the basis of their respective built-up areas.

Applicable formula:

"BUA utilized by the Society ÷ Total Built Up area of the Plot x Plot Size".

Option 2

If the layout is developed by utilizing TDR, and the entire development potential, including the full TDR, is disclosed to the flat purchasers of the entire layout in their respective Agreements for Sale, then a departure from Para 2(C)(vi)(2) of the GR can be permitted. In such a situation, each society ought to be conveyed the proportionate area in the layout on the basis of its respective built-up area, as has been held by this Hon'ble Court in ***Neelkanth Mansions & Infrastructure Pvt. Ltd. vs. DDR***, Writ Petition No. 3530 of 2026, paragraph 18.

Applicable formula:

"BUA utilized by the Society ÷ Total Built Up area of the Plot x Plot Size"

Option 3

If the layout is developed and/or constructed by utilizing TDR and/or additional FSI which was not disclosed to the flat purchasers of the first and/or original society or societies, then the Competent Authority must convey the land as per the declarations/plans made and disclosed to the flat purchasers of the first/original society. The subsequently constructed society would only be entitled to claim the land under the plinth and the area appurtenant thereto which comprises of the minimum open spaces that are required to be maintained as per the planning laws. It shall be open to the subsequently constructed society to file a suit to claim any higher area if it believes it is entitled to it.

135) Mr. Khandeparkar has a different point of view, and he has suggested that there can never be a straitjacket formula to lay down uniform principles which would govern every case. Mr. Khandeparkar has given 2 suggestions for the purpose of resolving the controversy involved in the facts and circumstances in the present case. By way of first suggestion, he submits that plinth area of all the buildings can be added (10797.23 sq.m.), deduct the total plinth area from net plot area (21807.18 – 10797.23) sq.m. = 11009.95 sq.m. and grant conveyance of plinth area of the concerned building/society along with the proportionate share in the balance net plot area by taking into consideration BUA sanctioned in the last plan. Alternatively, by way of second suggestion, he submits that proportionate share of each building/society can be calculated based on BUA actually utilised in each of the buildings and same can be conveyed to each building/society.

136) Thus, on behalf of the State Government as well as the learned *amici* have made several suggestions, particularly for dealing with the cases where some of the buildings in the layout are constructed mainly by utilising TDR. Therefore, before proceeding further, it would be necessary to consider the concept of TDR as loading of TDR in subsequent buildings post revision of plans in most of the cases poses the difficulties in the land division.

TDR: MOVABLE PROPERTY, HAVING NO CONNECTION WITH THE LAND

137) The concept of TDR was introduced for the first time in DCR 1991. Regulation 34 of DCR 1991 provided that in certain circumstances, the development potential of a plot of land could be separated from that land itself and may be made available to the owner of the land in the form of Transferable Development Rights (TDR). The TDR was made available subject to the Regulations in Appendix VII. Under Appendix VII, detailed provisions were made for generation and utilization of TDR. Restrictions were imposed on utilization of TDR in certain areas, including the island city. Under clause 13 of Appendix VII, DRC could be used on plots which are already developed for erecting of additional storeys, subject to the restriction of not exceeding the FSI stipulated in clause 14. As pointed out by Dr. Sathe, the loading of TDR was restricted until 2007 to maximum permissible BUA indicated in clause 14. Clause 14 earlier provided that the FSI of receiving plot could be allowed to be exceeded only 0.4 by availing TDR. However, by notification dated 14 May 2007, clause 14 of Appendix VII was amended and the limit of receiving plot was raised from 0.4 to 0.8. Thus, notification dated 14 May

2007 created a bonanza for the developer where TDR was permitted to be loaded to the extent by increasing the total FSI of receiving plot by 0.8. To illustrate, if FSI of receiving plot was 1, the same was permitted to be increased upto 1.8 by use of TDR. The developers started submitting proposals for revision of plans of buildings which were already constructed, for the purpose of adding construction thereon. This is how increase in the cap on TDR utilization in 2007 was one of the reasons which led to revision of several layout plans and additional constructions are put up in the layout.

138) As provided in DCR 34, the TDR is nothing but development potential separated from the land. It has no connection with the land on which it is loaded. In ***Green Garden Apartments Co-operative Housing Society Limited vs. Nitin Chaudhary and others***[32], this Court has dealt with the concept of TDR by treating the same as movable property. It is held thus:

> **43.** The judgment in *Chheda Housing* rendered in the context of specific performance of contract for use of FSI cannot therefore be cited in support of an abstract proposition that the TDR must be held to be immovable property for the purpose of compulsory registration of an agreement for utilization of TDR. More importantly, **the judgment in *Chheda Housing* has been explained in subsequent Division Bench judgment in *B. Jeejeebhoy Vakharia* (supra), in which the Division Bench has held that the judgment in *Chheda Housing* does not lay down a general proposition of law that FSI is immovable property.**
>
> **44.** Thus apart from holding that the observations in *Chheda Housing* about TDR/FSI being immovable property not constituting a binding precedent, the Division Bench in *B. Jeejeebhoy Vakharia* has made an independent analysis of the concept of TDR in the context of definition of the term 'immovable property' under Section 3(26)of the General Clauses Act, 1897 and has held that to form an immovable property, the benefits arising out of the land has to be necessarily attached to the land or fastened to the land and until such

[32] 2025 SCC OnLine Bom 3623

benefit is either attached or fastened to the land, it would continue to be an immovable property. The moment it is detached from the land to which it pertains to, it will cease to be an immovable property. **Thus in *B. Jeejeebhoy Vakharia*, the Division Bench of this Court has emphatically ruled that since TDR is detachable from land, the same does not constitute immovable property.**

45. ..... Thus, the explanation by Division Bench in *B. Jeejeebhoy Vakharia* of judgment in *Chheda Housing* would bind me. **Consequently, TDR cannot be held to be immovable property atleast for the purposes of Section 17 of the Registration Act.**

63. To appreciate the requirement of registration of instrument of transfer of DRC in DCPR and UDCPR, it would be necessary to examine the very concept of TDR, how it is generated and in what manner in can be utilized and sold. When the land is reserved in a development plan or a regional plan for public purposes, it becomes mandatory for Planning Authority or the Development Authority to acquire the same. There are three modes of acquisition under Section 126 of the MRTP Act viz., (i) by agreement of paying the amount agreed to, (ii) grant of FSI or TDR against the area of land surrendered or (iii) by making the application to the State Government for acquisition of the land.

64. There are twin purposes why provision is made under Section 126 of the MRTP Act to enable the Planning Authority to offer FSI or TDR to the landowner. Firstly, it expedites the process of acquisition and secondly it relieves the Planning Authority of financial burden of paying monitory compensation to the land owner. The concept of offering TDR to the land owners in lieu of compensation was introduced by amending Section 126 of the MRTP Act w.e.f. 25 March 1991. Simultaneously, with amendment of Section 126 of the MRTP Act, Development Control Regulations 1991 for Greater Mumbai came to be notified on 20 February 1991 which came into effect from 25 March 1991. Regulations 33 and 34 and Appendix VII of DCR 1991 dealt with procedure for generation of TDR and for grant of DRC. The DCR 1991 also provided for the manner of utilisation of TDR on same or another land. After introduction of DCPR 2034, Regulation 32 therein governs 'Transfer of Development Rights'. Clause 4 of Regulation 32 deals with generation of TDR whereas clause 5 deals with utilisation of TDR. Under Clause 6.2 of DCPR 32 it is provided thus:—

> **6.2** DRC shall be issued by the Municipal Commissioner as a certificate printed on bond paper in an appropriate form prescribed by him. Such a certificate shall be a "**transferable and negotiable instrument**" after the authentication by the Municipal Commissioner. The Municipal Commissioner shall maintain a register in a form considered appropriate by him of all transactions, etc. relating to grant of, or utilisation of, DRC.

> **<u>65. Thus, under the DCPR 2034, DRC issued by the Municipal Commissioner is a transferable negotiable instrument</u>**. The Municipal Commissioner is required to maintain a register of all transactions relating to grant or utilisation of DRC. **Thus, there is a register <u>like a passbook,</u> which must contain entries of utilisation of TDR made from time to time.**
>
> *(emphasis and underlining added)*

139) In ***<u>Abdul Aziz Bharmar & Anr. Vs. Vinod Anand</u>***[33], this Court has dealt with an issue as to whether owner of land from which TDR is generated has no right to claim ownership in flats constructed on another land where the TDR is used. This Court formulated the question for consideration in Para 1 and 10 of the judgment as under:

> 1. **The Petition raises an interesting issue of Plaintiff's right to claim ownership in flats constructed on non-suit land owned by a third party by use of TDR generated from the suit land, in which Plaintiff claims ownership.** The issue arises in the light of opposition by the owner of non-suit land to his impleadment to the suit. **No doubt the TDR is generated from the suit land in which Plaintiff claims ownership, but is the TDR akin to immovable property and whether its utilization on another land would mean 'transfer of right' in suit land in favour of owner of non-suit land entitling the Plaintiff to run behind such owner and claim rights in flats constructed in that land? TDR is capable of being freely sold and monetized. Therefore, whether extraction of TDR from suit land and its utilization on another land would create in Plaintiff's favour merely a right to claim monetary value of that TDR or can he also claim ownership rights in the flats constructed by use of such TDR?** Whether owner of non-suit land would be a necessary party to the suit because TDR from suit land is utilized on his land? These are the issue that this Court is tasked upon to decide in the present Petition.
>
> 10. The issue for consideration therefore is whether loading of TDR generated out of suit land on adjoining land would entail impleadment of owner of such adjoining land to the Suit? Also involved is the issue whether mere loading of TDR arising out of suit land on adjoining land would entitle Plaintiff to claim reliefs in respect of flats constructed on adjoining land on which the TDR is loaded?
>
> *(emphasis added)*

33 Writ Petition No. 3595 of 2023 decided on 03-02-2026

140) Answering the issues, this Court held that when TDR is detached from a piece of land and utilized on another piece of land, it loses the characteristic of immovable property and also loses connection with the land in respect of which the same is generated. This Court has held in paras 16 and 17 of the judgment as under:

> 16. Thus, when TDR is detached from a piece of land and utilized on another piece of land, it loses characteristic of immovable property and also loses connection with the land in respect of which the same is generated.
>
> 17. Following the above principle, mere utilization of TDR generated out of part of suit property cannot be a reason for impleadment of owner of the land on which such TDR is loaded as party Defendant to the Suit. Defendant No.9 could have simply sold the TDR in the DRC to a third party, who could have held such TDR and then allowed it to be utilized to number of persons. Mere existence of title disputes relating to suit land cannot be a ground for presuming that Plaintiff would have a semblance of right in the land on which the TDR is utilized. If Plaintiff claims title in the suit land from which TDR is generated and is aggrieved by transfer/utilization of such TDR on another land, Plaintiff can sue Defendant for recovery of monetary value of such TDR. Mere purchase of TDR or utilization thereof on another land would not necessarily mean that the purchaser of TDR or owner of land, on which it is utilized, needs to be impleaded as party Defendant to the Suit. This is because mere loading of TDR on another land does not mean that landowner from which the TDR is generated becomes entitled to any rights in the land on which TDR is loaded.

Thus, in ***Abdul Aziz Bharmar***, this Court has held that the land owner from whose land the TDR is generated cannot claim any right in the land in which the TDR is used. The judgment is of significance for deciding the issue involved in the present case from the point of view of absence of connection of building using TDR with the land on which the same is constructed for the purpose of conveyance.

<u>MISCHIEF BY DEVELOPERS: A RESULT OF MANNER OF SANCTIONING OF PLANS BY THE PLANNING AUTHORITIES</u>

141) The genesis of the problem created in proportionate land division in a layout for conveyance purposes is the manner in which the planning authorities sanction the construction plans. Till the land or part thereof is actually conveyed, the planning authorities treat the entire plot of land as developable, ignoring the position that part of the land is already developed. As illustrated above, when it comes to revision of plan upon admissibility of additional FSI/BUA, the entire admissible FSI/development potential is calculated *qua* the entire land, ignoring the position that part of the land is already developed. This lacuna in the manner of sanctioning the plans is taken advantage of by the developers who go on adding more construction in the layout by deliberately delaying the development of the layout.

142) When conveyance to completed buildings is delayed, the whole plot continues to be reflected in the revenue records/property card as belonging to the original landowner/promoter. It is only when conveyance of part of the land is taken by the completed buildings that the phenomenon of land cutting occurs and then the further revision of plans can take place only in respect of unconveyed land.

143) The comparison of scenarios of incomplete layout development where conveyance of part of land has taken place and where no land is conveyed is indicated in the table below:

	Conveyance of land to completed building	**Non-conveyance of land to completed building**
Plot area	10,000 sq.m.	10,000 sq.m.
Original Layout sanctioned in 2000	FSI: 1.00 BUA: 10,000 sq.m.	FSI: 1.00 BUA 10,000 sq.m.
Building No. 1	Complete with utilisation of BUA of 5000 sq.m.	Complete with utilisation of BUA of 5000 sq.m.
Building No. 2	Planned with BUA of 5000 sq.m. but not constructed	Planned with BUA of 5000 sq.m. but not constructed
Conveyance	Building No. 1 gets conveyance of 5000 sq.m. land	Conveyance is delayed to Building No. 1
Land ownership status	Promoter: 5000 sq.m. Building No. 1: 5000 sq.m.	Promoter: 10,000 sq.m.
FSI increase due to permissibility to load TDR in 2010	FSI: 2.00	FSI: 2.00
Revised BUA sanctioned for Building No. 2	10,000 sq.m. *(balance land 5000 x 2.00 = 10000)*	15,000 sq.m. *(total land 10000 x 2.00= 20000 less 5000 used for Bld. No. 1)*

144) Thus, in the above illustration, non-conveyance of land in favour of Building No. 1 and the system of sanction of plans by the planning authorities results into a bonanza for the developer who gets to construct additional area of 5000 sq.m. just by delaying the conveyance to the completed building. This Court has noticed cases where the developers have either deliberately not secured OC for the last building in the layout or where a small part of land in the layout is deliberately left undeveloped to take advantage of future additional BUA. Thus, in a plot admeasuring 10,000 sq.m., all the planned buildings are constructed and land of 100 sq.m. is deliberately shown as future development and when additional BUA gets sanctioned, a skyscraper with massive BUA comes up on that 100 sq.m. land by loading all the additional FSI/incentive FSI/TDR, etc. This is the main reason why the developers are reluctant to convey even their due portion of the land to the societies of completed buildings.

145) This tendency can be curbed by societies by timely applying for conveyances or by the planning authorities by altering the method of sanctioning the development permissions. Ideally, if the portion of the land of which the potential is already exploited is excluded while sanctioning revised layout plan, the above mischief can be prevented. But that is not the ambit of inquiry in the present petitions. However, the State Government can consider modifying the development control regulations providing for exclusion of developed part of the land while sanctioning the revised plan.

UNDUE AND ENVISAGED ADVANTAGE TO LAYOUT DEVELOPERS VIS-À-VIS STANDALONE BUILDING DEVELOPERS

146) As discussed above, the developers undertaking the layout development misuse the lacuna in the sanctioning procedures of authorities and continue milking undue advantages. On the other hand, the developer undertaking the project of constructing a singular building on the plot does not get these undue advantages. Once the planned single building is constructed on the plot, usually the developer makes exit from the plot. Even if there is delay in effective conveyance, the developer does not get to stand out of the same. Barring the exceptional cases where the developers may make attempts to put in additional floors on the constructed buildings, usually the mischief played by layout developers ordinarily does not occur in a single building development. On the other hand, in the layout development, the developer stays on the plot for years if not decades. There are instances of incomplete layout developments in Mumbai for a quarter of century. The present case is also illustrative where the layout is still shown as incomplete despite passage of three decades.

147) While in a single building development, any activity to put additional construction immediately gets noticed, in the layout development, the residents of constructed building find it difficult to notice revision of plans and putting up of additional constructions. The developers add floors in under construction buildings using incentive FSI/TDR or even add a building in the layout.

148) Whether the law treats developer of a single building differently than developer of a layout? Whether there is any intention to shower additional benefits to the layout developments? Whether the law has intended that layout development would have a license to endlessly milk the future development potential in the land? Answers to all these questions are obviously in the negative. All these additional benefits in layout developments are outcome of mischief by the developers of not conveying the portions of land to the completed buildings and by taking disadvantage of lacuna in sanctioning process by the planning authorities.

GOVERNMENT RESOLUTION DATED 22 JUNE 2018

149) For simplifying the procedure for deciding the applications for deemed conveyance, the State Government has issued the GR dated 22 June 2018. It lays down detailed guidelines for processing and deciding the applications for deemed conveyance. For the purpose of deciding the issue involved in the Petitions, the relevant portion of the GR is reproduced thus:

> **(**क**)** जिल्हा उपनिबंधक**,** सहकारी संस्था / सहनिबंधक**,** सहकारी संस्था **(**सिडको**)** तथा सक्षम प्राधिकारी यांनी मानीव अभिहस्तांतरण प्रमाणपत्र देण्याबाबत करावयाची कार्यपध्दतः-
>
> XXX
>
> vi) मानीव अभिहस्तांतरणाचे आदेश व प्रमाणपत्र पारीत करताना जिल्हा उपनिबंधक, सहकारी संस्था/ सहनिबंधक, सहकारी संस्था (सिडको) तथा सक्षम प्राधिकारी यांनी खालील बाबी विचारात घेऊन आदेश पारीत करावेत:
>
> (१) एका भूखंडावर अनेक इमारती असतील व प्रत्येक इमारतीची स्वतंत्र सहकारी गृहनिर्माण संस्था असेल आणि त्यापैकी काही इमारतीचे बांधकाम अपूर्ण असल्यास, पूर्ण झालेल्या इमारतीचे मानीव अभिहस्तांतरण करताना अशा संस्थेच्या इमारतीच्या बांधकामाच्या प्रमाणात जागेचे क्षेत्रफळ (Proportionate area) किंवा Ground Coverage किवा Plinth area, तसेच मोकळी जागा, सामुदायिक सेवा सुविधा, रस्ते यांचेवर बांधकामाच्या प्रमाणात अविभक्त हिस्सा Undivided share) वहिवाटीचा हक्क द्यावा.
>
> (२) ज्या ठिकाणी टि.डी. आर. चा (TDR) वापर केला असेल अशा लेआऊट मधील इमारतींच्या बाबतीत मानीव अभिहस्तांतरण करताना Plinth व Appurtenant area प्रमाणे अभिहस्तांतरण करावे.
>
> (३) एकाच रेखांकनात (Layout) एकापेक्षा जास्त संस्था असतील व त्यापैकी फक्त एकाच संस्थेने असा अर्ज केला असेल तर, तसेच अर्जदार संस्थेच्या जमिनीची मोजणी करण्यास इतर संस्था सहकार्य करीत नसतील तर, जिल्हा उपनिबंधक, सहकारी संस्था तथा सक्षम प्राधिकारी यांनी अर्जदार संस्थेस संबंधित संस्थेच्या बांधकामाचे नकाशे मंजूर करणा-या सक्षम प्राधिकरणाकडील नामतालिकेवरील वास्तुविशारदाचे मंजूर नकाशाप्रमाणे मोजणी करुन संस्थेच्या क्षेत्राबाबत अहवाल सादर करण्यास सूचित करतील.

English translation of the above part of the GR is as under:

> **(C) A procedure to be adopted in respect of issuing Deemed Conveyance Certificate by the District Dy. Registrar, Co-opera-tive Societies/Jt. Registrar, Co-operative Societies (CIDCO) and Competent Authority:**
>
> XXX
>
> While passing Deemed Conveyance Order and Certificate, District Dy. Registrar, Co-operative Societies/Jr. Registrar, Co-operatives (CIDCO) and Competent Authority should consider following matter and then pass the order:
>
> (1) If there are many buildings on one plot and have a separate co-operative society of each building and if construction of some of them is incomplete then while making deemed conveyance of completed building, undivided share of occupancy right in the proportion of construction on the proportionate area of the construction of the building of such society or ground coverage or plinth area, similarly open space, common services and facilities, roads should be given.
>
> (2) While making deemed conveyance in respect of the build-ings in the layout where T.D.R. is utilized, their conveyance should be made according to plinth and appurtenant area.
>
> (3) If there is more than one society in one layout and out of them only one society has made such application, similarly other societies are not cooperating for conducting measurement of the land of the applicant society then the District Deputy Registrar, Co-operative Societies, and Compe-tent Authority shall suggest the applicant society to conduct the measurement according to the approved plan from the Architect on the panel of the Competent Authority who approved the constructions plans of the concerned society and submit the report regarding area of the society."

150) Thus, under the GR dated 22 June 2018, in a layout development involving multiple buildings, the land can be conveyed proportionate to the BUA utilized for construction of each building. However, the GR also provides that where TDR is used for construction of buildings, only plinth and appurtenant areas can be conveyed. This part of the GR is already interpreted by this Court in ***Neelkanth Mansion*** (supra) in which it is held that in every case where TDR is used, it is not necessary to give a go-by to the principle of proportionate land division.

151) However, in para 2(C)(vi)(1) and also in para-2(C)(vi)(2) of the GR dated 22 June 2018, the words 'plinth' and 'appurtenant areas' are used. The GR, as interpreted in ***Neelkanth Mansion*** (supra), provides that when a difficulty arises in applying the principle of proportionate land division, only plinth and appurtenant areas can be conveyed during the time the layout development is incomplete and later, the rest of the land can be conveyed to the federation or jointly to all the societies.

152) Before proceeding further, it must be borne in mind that the GR dated 22 June 2018 is issued merely for prescribing the guidelines and the GR, by itself, does not create any rights or liabilities, which flow from the statutory provisions of MOFA and MOF Rules. The guidelines in the GR dated 22 June 2018 are largely followed by the Competent Authorities and are aimed essentially to ensure that there is uniformity in the procedure to be followed by different Competent Authorities.

153) While the GR provides for conveyance of plinth land and appurtenant land in case of layout development, there are difficulties even in this arrangement, which are discussed in the paragraphs to follow.

PROBLEMS IN CONVEYING ONLY PLINTHS OF BUILDINGS

154) The GR dated 22 June 2018 contemplates conveyance of plinths of buildings and sometimes the Competent Authority finds it easier to convey only the plinths of the buildings when it notices that the proportionate land division is a difficult task. Conveyance of plinth areas of buildings ensures that atleast the land in physical occupation of the buildings is conveyed and this is how the Competent Authorities find it convenient to convey plinth areas to the buildings in the layout. However, in some cases, conveyance of land as per plinths also results in a situation where a building/society secures conveyance of larger land than its due entitlement. In a given case, Building 'A' may be slimmer than the Building 'B'. Building 'A' may be slimmer, but may occupy larger BUA. Building 'B' may occupy larger plinth, but lesser BUA. In such a case, if principle of land division based on plinth area is followed, the building with larger plinth but with lesser BUA would walk away with larger share in the land as compared to the slimmer building with higher BUA. This particularly happens in cases involving bungalows/rowhouses and multi-storey building in a layout. Since the bungalows/rowhouses occupy larger plinth area, but lesser BUA, they walk away with larger share in the land thereby reducing the share of land of the multi-storey building. Therefore, in my view, the plinth size of a building may not always be a relevant yardstick for determining conveyance of land. Also conveying only plinths leaves unconveyed land and here again the issue of sharing non-plinth land crops up. Therefore, the real solution is the land division proportionate to the BUA utilized in each building.

PROBLEMS IN CONVEYANCE OF ONLY THE PLINTHS AND APPURTENANT LANDS

155) The word 'appurtenant' has not been defined in MOFA or in MOF Rules. In fact, the MOFA does not contemplate or recognize the concept of conveyance of appurtenant land. The concept of conveyance of appurtenant land is to be found mainly in the GR dated 22 June 2018 while dealing with the issue of conveyance of land in a layout. Since use of TDR poses a problem in determining shares of land in the layout, GR dated 22 June 2028 prescribes the procedure of conveying the plinth areas and appurtenant areas to the buildings in the layout.

156) Though not in MOFA, the concept of appurtenant land can be found recognised in some other enactments. Under Section 2(g) of the Urban Land (Ceiling and Regulation) Act, 1976, the term 'land appurtenant' has been defined thus:

> (g) "**land appurtenant**", in relation to any building, means -
>
> (i) in an area where there are building regulations, the minimum extent of land required under such regulations to be kept as open space for the enjoyment of such building, which in no case shall exceed five hundred square metres; or
>
> (ii) in an area where there are no building regulations, an extent of five hundred square metres contiguous to the land occupied by such building,
>
> and includes, in the case of any building constructed before the appointed day with a dwelling unit therein, an additional extent not exceeding five hundred square metres of land, if any, contiguous to the minimum extent referred to in sub-clause (i) or the extent referred to in sub-clause (ii), as the case may be;

157) Thus, under the Urban Land Ceiling Act, the term 'land appurtenant' means the minimum extent of land required under the building regulations to be kept as open space for the enjoyment of such building.

158) The term 'land appurtenant' is also defined under Rule 2(h) of the Maharashtra Housing and Area Development (Disposal of Land) Rules, 1981 (**MHADA Rules**) as under:

> (h) "land appurtenant" means the land which is required to be kept open around a building, in accordance with the Development Control Rules of the concerned Planning Authority

159) For the city of Mumbai, the 'building regulation' contemplated under Section 2(g) of the Urban Land Ceiling Act or 'Development Control Rules of the concerned Planning Authority' under MHADA Rules is Regulation No. 41 of DCPR 2034, which provides for the open spaces within building plot/layouts while granting conveyance of appurtenant areas. Regulation 41(1) provides for the open spaces to be separate for each building or wing. Regulation 41(2) prescribes the compulsory open and marginal spaces in a Table depending on the height of the building and the plot size on two parameters of 'light and ventilation' and 'dead wall'. Regulation 41(3) provides for relaxation in open spaces if height of the building is restricted. Regulation 41(4) provides that the Front Set-backs from the Street Line/Plot Boundary and set-backs from the zonal boundary in the different zones shall be as in Table No 18. Regulation 41(5) makes special provisions in open spaces for plots in reconstruction/redevelopment schemes under the Maharashtra Housing and Area Development Authority Act, 1976, Slum Rehabilitation Authority and Redevelopment Scheme of municipal tenanted properties. Regulation 41(6) provides for open spaces for various types of buildings such as educational buildings, hospitals, cinema halls, etc. Regulation 41(7) provides for relaxation of open spaces norms for narrow plots. Regulation 41(8) provides for interior open spaces (*chowks*). Regulation 41(9) provides that the open spaces shall be kept unencumbered.

160) Thus, even if the concept of 'land appurtenant' is borrowed from the Urban Land Ceiling Act or MHADA Rules, such land only means the land required under building regulations to be kept as open space for the enjoyment of such building. Thus, only the marginal and compulsory open spaces required to be maintained is the land appurtenant to a building.

161) Therefore, mere conveyance of compulsory open spaces in addition to plinth of the building may not always resolve the problem of land sharing in the layout. To illustrate, if there are 5 buildings in the layout admeasuring 10000 sq.m. and the total plinth areas and land appurtenant of all five buildings is only 6000 sq.m., how to divide the balance land of 4000 sq.m. still poses the question. In incomplete layout developments, conveying only plinths and appurtenant lands would result in a bonanza for the developer who would milk the additional BUA on the unconveyed land by getting the plans revised multiple times and by constructing additional structure(s). This mischief is identified by this Court in ***Neelkanth Mansion*** (supra) where the developer was opposing proportionate land division and was insisting for only conveyance of plinth and land appurtenant with a view to exploit additional BUA on unconveyed land.

162) The scope of the term 'appurtenant area' in the context of provisions of MOFA and the procedure prescribed in the GR dated 22

June 2018 is examined by this Court in ***Rashesh Cooperative Housing Society Limited*** (supra) and it is held that in housing matters, appurtenant land may include compulsory marginal open spaces, access roads, passages, fire tender movement areas, common utility strips, parking areas if earmarked, gardens or amenities linked with building use, and other areas which by regulation are intended for occupants of that building or group of buildings. It is further held that a promoter cannot convey only the footprint beneath columns and staircase and retain all open areas despite those open areas being mandatory under building rules. This Court has held thus:

> **(i) Scope of 'appurtenant area'**
>
> 22. The present dispute is required to be examined in light of the provisions of the Maharashtra Ownership Flats Act, 1963, commonly known as MOFA, together with the applicable Development Control Regulations, layout approval, open spaces, setbacks, access, amenities and permissible construction. MOFA protects flat purchasers against withholding of title by promoters, whereas the Development Control Regulations determine how land is to be used, what minimum open spaces are compulsory, what recreational areas are to be maintained, and what portion of land remains attached to a building for occupation. In addition to these, reliance is also placed on the Government Resolution dated June 2018, which has been issued for guidance in matters of deemed conveyance and determination of land appurtenant to buildings in layouts. Therefore, the controversy before this Court requires a combined reading so that purchaser rights are not defeated by technical objections by the promoters.
>
> 23. It is required to be noted that MOFA is a welfare legislation enacted with object of controlling malpractices in sale of flats and to secure title for persons who invest life savings in residential premises. Before such legislation, many promoters used to construct buildings, sell flats, collect full consideration, yet continue to retain ownership of land and common areas for indefinite period. Purchasers were left in occupation without complete title. It is to remove such injustice that MOFA casts binding obligations upon the promoter. Therefore, while interpreting any provision under MOFA, the Court must lean in favour of protecting legitimate rights of flat purchasers rather than permitting methods by which conveyance is delayed.

24. Section 11(1) of MOFA requires the promoter to take all steps for conveying the right, title and interest in the land and building in favour of the co-operative society, company or association of flat purchasers, and to execute conveyance within the period prescribed by rules and in accordance with the agreement for sale. The language used by the legislature show that once the conditions contemplated by law are fulfilled, the promoter cannot postpone conveyance on ground that he may have proposed additional construction, possible redevelopment, or internal disputes regarding layout potential. The words "right, title and interest in land and building" occurring in Section 11(1) are of wide amplitude and cannot be reduced to transfer of only superstructure standing upon land. Ownership of a building in law includes beneficial rights necessary for its use, such as ingress, egress, open setbacks required by regulation, utility connections, access for repairs, safety movement, ventilation zones and such portions of land. A building stands upon land and draws its use from surrounding spaces as required by planning law. Hence, conveyance under Section 11 must include such land as is appurtenant.

25. The submission raised by promoters that conveyance remains suspended till all future development in entire layout is exhausted cannot be accepted. Section 11 does not say that statutory transfer can be postponed till promoter uses every inch of land. If rights were reserved in agreements and sanctioned by way of informed consent, that may stand on separate footing. But in absence of informed consent, the duty under Section 11 remains enforceable. Otherwise, the promoter would continue as owner while purchasers remain perpetual consumers, which is contrary to the legislative scheme.

26. Assistance may also be taken from Section 8 of the Transfer of Property Act, 1882, though the present matter arises under MOFA. Section 8 recognises that unless contrary intention appears, transfer of property passes to the transferee all legal incidents attached thereto. In relation to a dwelling house, the land appurtenant thereto also passes with the conveyance. One does not transfer a house while retaining those incidents without which the house cannot be enjoyed. The expression "appurtenant" ordinarily means attached to, belonging to, or necessary for beneficial enjoyment of the main property. It does not always mean land touching every wall. Nor does it include unlimited surrounding land. Its meaning depends on purpose, user, sanctioned layout, planning norms and factual necessity. **Therefore, in housing matters, appurtenant land may include compulsory marginal open spaces, access roads, passages, fire tender movement areas, common utility strips, parking areas if earmarked, gardens or amenities linked with building use, and other areas which by regulation are intended for occupants of that building or group of buildings.**

27. **A promoter cannot convey only the footprint beneath columns and staircase and retain all open areas despite those open areas being mandatory under building rules.** Such open lands are the reason why occupation certificate could be granted. **If setback, access width,**

recreational reservation or ventilation distance were necessary to sanction the building, then such spaces cannot later be treated as inalienable right of the promoter.

28. The Development Control Regulations become relevant for this reason. Planning regulations prescribe minimum front, side and rear margins, distance between buildings, internal roads, amenity spaces, Recreational Ground reservations, parking norms, drainage corridors and other planning controls. They define how the building can exist. **Therefore, while deciding extent of conveyance, the Court must examine sanctioned plans and applicable regulations. Land which planning law links to the use of the building may constitute part of the appurtenant entitlement, subject to layout and rights of other buildings.**

29. The June 2018 Government Resolution has also been placed before the Court to indicate guidance for determining unilateral conveyance claims in layouts comprising multiple buildings. Though such Government Resolution cannot override statute, it can assist in implementation where ambiguity exists. If the Resolution recognises proportionate land sharing, common amenities, or method for identifying appurtenant areas, such guidance may be relevant so long as it remains consistent with MOFA and rules and planning law.

30. In the present case the issue is what land component, open spaces, and common shares must accompany such conveyance. <u>A conveyance of building plinth without usable rights would defeat purpose.</u>

31. Thus, on combined reading of MOFA Section 11(1), Section 8 of the Transfer of Property Act, and the Development Control Regulations, this Court is of opinion that where a building is conveyed to a society of flat purchasers, the transfer carries with it those surrounding lands and open spaces which are appurtenant, necessary or incidental to the beneficial enjoyment of that building. Any contrary claim by promoter must be established from sanctioned reservations.

(emphasis and underlining added)

163) In ***Rashesh Cooperative Housing Society Limited*** (supra), this Court has held that transfer carries with it those surrounding lands and open spaces which are appurtenant, necessary or incidental to the beneficial enjoyment of that building and that conveyance of only plinth land without the usable rights would defeat the purpose. Before this Court, certificate of the architect of the developer was produced which stated that the appurtenant area of the building as 1050 sq.m. The area of plinth of 1151.56 sq.m. was also indicated in the certificate in addition to 19.99% share in the RG. But how this share in the RG is to be determined is the issue. As observed above, there can be land other than plinth, appurtenant land and RG. Since appurtenant land is restricted to the land surrounding the building which is compulsory marginal open space, what happens to the land beyond that limit? There can be internal roads in the layout. What happens to that land which is over and above plinth, appurtenant land and RG? Who would own that land? These questions would remain unanswered if only plinth and appurtenant land is conveyed.

164) For the above reasons, conveyance of only the plinth and appurtenant land in the layout to each building does not provide answer to the intricate issue of land sharing in the layout.

PRINCIPLE OF FREEZING OR CRYSTALLISATION OF LAND ENTITLEMENT

165) Having taken note of the complexities in proportionate land division in layout developments where plans are modified successively for the purpose of availing the benefit of higher FSI/BUA, it is now time to find a best possible answer to the conundrum. In my view, the answer to these complications created by the developers on account of revision of layout plans lies in combined reading of provisions of MOFA and MOF Rules, and a suggestion in this regard has also come from the State Government.

166) MOFA imposes twin duties on the developer once he undertakes construction of a building comprising of flats. Developer's first obligation is under Section 10 of the MOFA, under which he must form a cooperative society or a company within the prescribed period of sale of minimum number of flats required for formation of society/company. The period prescribed for formation of the society under Rule 8 of the MOF Rules is 'four months'. Once the promoter discharges this obligation, the second obligation immediately kicks in under Section 11(1) of the MOFA. Developer then needs to convey in favour of the society/company his right, title and interest in the land and building within the prescribed period. Prescribed period here is again 'four months' from the date of formation of the society/company as provided under Rule 9 of MOF Rules. The combined effect of Sections 10 and 11 of the MOFA and Rules 8 and 9 of MOF Rules is such that the promoter cannot delay conveyance and the same must be done within the period prescribed.

167) If this concept of twin obligations on a promoter/developer, discussed in the preceding paragraph, is borne in mind and followed in each case, there may not be much difficulty even in a case where developer commits the mischief of getting the plans revised midway for availing benefit of higher FSI/BUA. To illustrate, when development of a plot admeasuring 10,000 sq.m. is undertaken for construction of two buildings each of 5,000 sq.m. and construction of building No.1 is complete and if the required number of flats therein are sold, there is a statutory obligation to form a cooperative society within four months. Accordingly, the society is formed, say on 1 January 2005. Within four months thereafter, the next statutory obligation kicks in to convey the title in the land in favour of the society i.e. by 1 May 2005. Thus, the right of the first building/society to secure its proportionate share in the land crystallises on 1 May 2005. Its land entitlement gets ‘frozen’. In this illustration, since Building No. 1 has utilized half of the BUA sanctioned, it must get conveyance of 50% of the layout land. Since the first building/society is entitled to secure land admeasuring 5,000 sq.m. as on 1 May 2005, any delay on the part of developer in conveying the land would not defeat the entitlement to secure conveyance of the frozen portion of land of the first society/building.

168) As observed above, the concept of divestment of title of the promoter has already taken place *qua* land admeasuring 5,000 sq.m. for Building No.1 in the above illustration. What is postponed is the latter act of vesting of title in the society. In such a scenario, the title *qua* the land admeasuring 5000 sq.m. has gone away from the developer but is yet to fall in the pockets of the society. It is in the state of limbo temporarily. In such a case, even if developer gets the plan revised taking benefit of his mischief in not conveying the land in favour of the Society, the same would have no effect on the right of the first building/society to secure conveyance of land admeasuring 5000 sq.m. As observed above, the planning authorities unfortunately take into consideration the area of the entire plot while sanctioning the revised permission since the name of the original owner continues to figure in the record of rights. If in this scenario, the promoter was to fulfil his statutory obligation and convey land admeasuring 5000 sq.m. to the society of Building No.1, the name of that society would get mutated in the revenue records, thereby restricting the right of the promoter to construct Building No.2 only *qua* the balance land admeasuring 5000 sq.m. However, as observed above, the developer takes the benefit of his own wrong and misuses the facility available with the planning authority and gets the additional BUA sanctioned in respect of the whole plot admeasuring 10000 sq.m. either due to change in FSI regime, sanction for mixed user, permissibility to load TDR, etc. Therefore, even if the planning authority sanctions higher FSI for Building No.2 and the second building is constructed with BUA of 15000 sq.m., the proportionate land division can never be in proportion to the BUA of 5000 sq.m. of Building No.1 and 15000 sq.m. to Building No.2. If the sub-division of land in proportion to 'last or revised sanctioned plan' (*as suggested by Mr. Khandeparkar*) is accepted, the same would tantamount to reducing the land entitlement of the first building/society without any fault on its part. Thus, if the proposition canvassed by Mr. Khandeparkar is accepted, the same would mean that Building No.1 would receive conveyance only of land admeasuring 2500 sq.m. though its entitlement in respect of area of 5000 sq.m. was already crystallised/frozen in May 2005.

169) The concept of freezing/crystallisation of the land entitlement under twin effects of Sections 10 and 11 of MOFA and Rules 8 and 9 of MOF Rules is also in tune with the legislative objective of MOFA. There is a purpose behind prescribing the periods for performance of the twin acts of formation of society and conveyance of land. The legislative objective is that the organisation of flat purchasers must become owner of the land and the developers do not misuse the delay in conveyance for the purpose of putting up additional construction. As discussed above, the developer's title in the land dilutes with sale of each flat in a building. Even in a layout development, once the plans are drawn up for construction of multiple buildings, and the first building is taken up for development and all flats therein are sold, the developer gets divested of title in the proportionate land. Mere failure on his part to convey that proportionate land does not mean that the developer can subject the land in which he is divested of the title for revision of plans for securing additional built-up area in the under construction or yet to be constructed building(s) in the layout.

170) Thus, what occurs by subsequent revision of plan is actually stealing of rights of the organisation of flat purchasers by the developer and loading the same on the subsequent buildings. The act of stealing is apparent in following the illustration:

(i) In a Plot size of 10000 sq.m. with FSI 1.00, the original sanctioned BUA is 10000 sq.m., divided in two buildings of 5000 sq.m. each. In normal circumstances, both buildings would receive conveyance of 5000 sq.m. land each. The developer completes construction of Building No. 1 but denies conveyance of 5000 sq.m. land on the ground of incomplete layout development. There is a change in FSI regime or the TDR loading limit increases, which effectively permits construction of 1.5 times the land area (*total BUA of 15000 sq.m.*). Here, both buildings become entitled to increased BUA of 5000 sq.m. (*2500 sq.m. for each building*). However, by not conveying land in favour of the first building, the developer steals the increased

BUA of Building No. 1 and utilises it for putting up additional construction of Building No.2 (*comprising BUA of 10,000 sq.m*).

(ii) Thus, what legitimately belongs to Building No. 1 is misappropriated by the developer and encashed by delaying conveyance of land to Building No. 1. The organisation formed by the flat purchasers of Building No. 2 then claim land corresponding to the BUA of 10,000 sq.m. (67*% share in the land*).

(iii) If however, the legitimate entitlement of Building No. 1, as on the date when the conveyance was due, is frozen, it would own 50% land in the layout. When the buildings are redeveloped, Building No. 1 would regain the lost entitlement.

(iv) Thus, the principle of land freezing ensures that what legitimately belongs to Building No. 1 is not lost.

171) In view of the above discussion, the concept of freezing of entitlement of share in the land of each society upon completion of statutory prescribed periods under MOFA Act and MOF Rules would resolve the conundrum involved in cases where layout plans are revised by the developers with a view to milk the additional FSI/BUA.

172) The above discussed principle of freezing/crystallisation has also emerged from the suggestions given on behalf of the State Government in the Note. For the sake of convenience, it would be apt to reproduce the relevant suggestion made by the learned Advocate General:

i. The obligation of the promoter to convey the land and building arises and crystallises in terms of Section 11 r/w Rule 9 of MOFA and MOFA Rules, respectively.

ii. For example: If one building on a plot of land is completed consuming part FSI and balance potential of FSI is not utilized, then in that event, the entitlement of the society has crystallised on Occupation Certificate being received and such society ought to get conveyance of the land component on the basis of FSI consumed. FSI being calculated as both Base FSI and TDR regardless of the fact that TDR has been used or not.

iii. If in future, the development potential increases because of the change in DCR and the developer takes benefit of such increased development potential including TDR and utilises the same on the balance portion of the land, it would result in clear imbalance of the plot of land and the FSI. In such a situation, the first society whose rights are crystallised ought not to be deprived of the entitlement of the appropriate land component based on the FSI consumed.

173) Therefore, the concept of freezing of the first plan for conveyance purposes would be the solution to ensure that the successive revisions in the plans do not affect the land entitlement of existing buildings in the layout.

EFFECT OF ADDITIONAL CONSTRUCTION CONTRARY TO SECTION 7 OF MOFA

174) As observed above, the act of revision of plans for putting up additional construction in a layout is often enacted by the developers behind the scenes. There are blanket consent clauses in the Agreements for Sale of flats enabling the developers to put up additional constructions. Therefore, while one of the buildings in the layout is under construction or where its construction is yet to commence, the developer may get the plans revised for availing additional BUA and the society of existing building may not even be aware of revision of plans.

This Court has come across several instances where layout development remains active for couple of decades and the plans are revised on multiple occasions in those 10-20 years for availing additional BUA. Since conveyance is not executed, the revision of plans does not require consent of societies of existing buildings, and this is how the plans are revised behind the back of the societies of existing buildings. While there may be vigilant societies keeping a tap on developer's activities, but in majority of cases, revision in the plans goes unnoticed.

175) Also, until 2008, securing conveyance required lot of efforts, expenses and indulgence in litigation. The conveyance suits were taking years for decision. In the present case itself, the suit filed by Satellite Garden-I CHSL (Suit No.1002 of 2010) seeking conveyance is pending for the last 16 years. It is only after the provision for deemed conveyance was introduced by the 2008 amendments to MOFA that the drive for conveyance gathered momentum. Many societies notice the factum of revision of plans only at the time of applying for deemed conveyance.

176) In such circumstances, if the societies whose buildings are constructed in accordance with the original plans have not objected to additional construction due to revision of plans, whether their land entitlement as frozen/crystallised on account of effect of Sections 10 and 11 of MOFA and Rules 8 and 9 of MOF Rules would stand correspondingly reduced? Whether they must face the double whammy of tolerance of additional construction (*and increased density*) in the layout as well as loss of land entitlement?

177) Provisions of Sections 7 and 7A of MOFA are already discussed in the preceding paragraphs. Under Section 7 of MOFA every flat purchaser as well as the organisation of flat purchasers have a right to ensure that no alterations are made in the flats without the consent of flat purchaser or in the structure of the building without consent of all flat purchasers in the building. By now the law is sufficiently developed on the concept of 'consent' within the meaning of Section 7 of MOFA, obligation to make full and informed disclosure, blanket consent being inconsequential, etc. It is unnecessary to delve deeper into that area. Suffice it to observe that the flat purchasers can seek injunction against the developer if construction is being made beyond the disclosure made. But what happens if the societies of existing buildings either do not notice that the additional construction is contrary to the disclosure or do not possess the wherewithal to file suit for injunction with necessary alacrity against a mighty developer? In a given case, the court may find it iniquitous to grant ad-interim or interim injunction on account of the stage of construction when injunction is sought. In such a case, the developer may complete the construction, sell flats and society is formed in respect of the building whose construction is contrary to the disclosure already made. The flat purchasers of earlier buildings (*constructed in accordance with originally sanctioned plans*) are already required to tolerate additional construction in the layout and share common amenities with additional residents. Whether their land entitlement in the layout would get reduced on account of inability to stop the developer from putting up additional construction? The answer to the question appears, to my mind, in the negative.

178) MOFA does not distinguish between societies who are diligent in applying for conveyance and those who are not and take some time in seeking conveyance. The societies which diligently apply for conveyance immediately after expiry of the prescribed period, secure their due share in the layout land. Even a society which takes some time in seeking conveyance is also entitled to same land entitlement. This is because, MOFA does not recognise a principle that when there is some delay in applying for convenance, what legitimately belongs to a society is lost or is reduced. Mere delay on the part of a housing society in applying for conveyance does not result in loss/reduction of share in the land. This is because MOFA violations give rise to continuing cause of action. This is discussed in the paragraphs to follow.

MOFA OBLIGATIONS GIVING RISE TO CONTINUOUS CAUSE OF ACTION

179) To answer the conundrum involved in the Petitions, it needs to be examined as to whether it is necessary for a society to apply for conveyance within any fixed time? MOFA obligations give rise to continuous cause of action. The statutory right under Section 11 of MOFA to seek conveyance does not have any prescribed period of limitation for exercise of remedy. The right of organisation of flat purchasers to secure conveyance does not get extinguished on account of expiry of any particular period of limitation. In ***Samruddhi Coop. Housing Society Ltd. v. Mumbai Mahalaxmi Construction (P) Ltd.***[34], the Apex Court has held that MOFA obligations give rise to a continuous cause of action. It is held thus:

[34] (2022) 4 SCC 103

20. **Sections 3 and 6 of the MOFA indicate that the promoter has an obligation to provide the occupancy certificate to the flat owners.** Apart from this, the promoter must make payments of outgoings such as ground rent, municipal taxes, water charges and electricity charges till the time the property is transferred to the flat owners. Where the promoter fails to pay such charges, the promoter is liable even after the transfer of property.

21. Based on these provisions, it is evident that there was an obligation on the respondent to provide the occupancy certificate and pay for the relevant charges till the certificate has been provided. The respondent has time and again failed to provide the occupancy certificate to the appellant Society. For this reason, a complaint was instituted in 1998 by the appellant against the respondent. Ncdrc on 20-8-2014 directed the respondent to obtain the certificate within a period of four months. Further, Ncdrc also imposed a penalty for any delay in obtaining the occupancy certificate beyond these 4 months. Since 2014 till date, the respondent has failed to provide the occupancy certificate. Owing to the failure of the respondent to obtain the certificate, there has been a direct impact on the members of the appellant in terms of the payment of higher taxes and water charges to the municipal authority. **This continuous failure to obtain an occupancy certificate is a breach of the obligations imposed on the respondent under the MOFA and amounts to a continuing wrong.** The appellants, therefore, are entitled to damages arising out of this continuing wrong and their complaint is not barred by limitation.

22.NCDRC in its impugned order has held [Samruddhi Coop. Housing Society Ltd. v. Mumbai Mahalaxmi Construction (P) Ltd., 2018 SCC OnLine NCDRC 1711] that the cause of action arose when the municipal authorities ordered the payment of higher taxes in the first instance. Further, the impugned order [Samruddhi Coop. Housing Society Ltd. v. Mumbai Mahalaxmi Construction (P) Ltd., 2018 SCC OnLine NCDRC 1711] also states that the present complaint is barred by limitation as there is no prayer for supply of occupancy certificate. We are unable to subscribe to the view of Ncdrc on both counts. **Undoubtedly, the continuing wrong in the present case is the failure to obtain the occupancy certificate.** Against this act of the respondent, the appellant Society has taken appropriate action by filing a complaint before the consumer forum. The appellant is currently pursuing the execution of the order of Scdrc arising from that complaint. However, that itself does not preclude it from claiming compensation for the consequences which have arisen out of this continuing wrong. The failure to obtain the occupancy certificate has resulted in the levy of higher taxes on the members of the appellant Society repeatedly by the municipal authorities. Despite the order of 20-8-2014, the respondent has failed to obtain the occupancy certificate. This has resulted in a situation where the appellant, despite having followed the correct course of litigation in demanding the furnishing of an occupancy certificate, will continue to suffer the injury inflicted by the respondent merely due to the

> delay in the execution of the order against the respondent. Rejecting the complaint as being barred by limitation, when the demand for higher taxes is made repeatedly due to the lack of an occupancy certificate, is a narrow view which is not in consonance with the welfare objective of the Consumer Protection Act, 1986.
>
> *(emphasis added)*

180) This Court in ***Sushama Tulsidas Adhav vs. Pradeep D. Shah and Ors.***[35], has held that breach of statutory obligations under MOFA gives rise to a continuous cause of action. It is held in paras 36 to 38 as under:

> **36.** In the instant case the Plaintiff seeks enforcement of the statutory obligations imposed by Section 3 and 4 of MOFA. Under Section 4 of MOFA the agreement with the flat purchaser is required to be in prescribed form i.e. Form V prescribed by Rule 5 of MOFA Rules. It may be noted that, in that prescribed form, there is an explanatory note which inter alia states that certain clauses shall be statutory and shall be retained. Note 1 clarifies that a model form of agreement has been prescribed which could be modified and adapted in each case depending upon the facts and circumstances of each case but, in any event, certain clauses including clauses 9 and 22 shall be treated as statutory and mandatory and shall be retained in each and every individual agreements between the promoter and the flat taker. Clause 9 provides for the agreement to specify the date on which the possession of the flat shall be given to the flat purchaser and on demand by the flat purchasers to refund the amount already received along with interest. Clause 22 provides that the flat purchasers agreement to be presented for registration within the time limit prescribed by the Registration Act and imposes obligation on the Promoter to attend the office and admit execution thereof.
>
> **37.** The Plaintiff was thus seeking enforcement of Clause 9 and 22 of the Model Agreement which are non derogable and constitutes continuing wrong till the obligations are complied with. The reliance placed by Mr. Joshi on Clause 7 of the Model Agreement pertaining to termination is mis placed as Clause 7 does not find mention as being statutory and mandatory in the Note 1 to the Model Agreement. Coming to the agreement dated 1st February, 2001 executed between the parties in respect of Shop No. 4, there is no termination clause in the said agreement and it appears that the absence of termination clause is for the reason that the total consideration agreed was Rs. 10,03,460/- out of which

[35] 2024 SCC OnLine Bom 4325

> the plaint pleads payment of Rs. 9,10,000/- which amounts to substantial payment.
>
> **38.** The Defendant No. 1 has admittedly neither registered the agreement executed between the parties nor specified the date on which possession is to be handed over and has not handed over possession which amounts to a continuous breach of obligations imposed by MOFA and is thus a continuing wrong.

181) Since MOFA obligations give rise to a continuous cause of action, merely because a society does not apply for deemed conveyance immediately after expiry of period prescribed under Rule 9 of MOF Rules, such inaction does not mean that its right to secure conveyance of the land gets extinguished. The right to have conveyance of the proportionate land, as frozen/crystallised upon expiry of period of 4 months prescribed in Rule 9, can be exercised at any point of time. What needs to be conveyed when right to seek conveyance accrues must also be conveyed when the application/suit is filed for conveyance after expiry of few years. Therefore, mere delay in applying for deemed conveyance or in filing a suit for conveyance would not mean that the frozen/crystallised land entitlement would get reduced with passage of time. The land entitlement gets frozen/crystallised for all times to come and the remedy for its enforcement can be exercised at any time. Additional construction put up by violating the disclosures and in contravention of provisions of Section 7 of MOFA during the time the first society does not apply for conveyance does not result in automatic reduction of its land entitlement.

WHETHER TOLERANCE SHOWN BY FIRST BUILDING/SOCIETY TO ADDITIONAL CONSTRUCTION IN THE LAYOUT REDUCES ITS LAND ENTITLEMENT?

182) It is sought to be suggested that if the society is aggrieved by the action of the developer putting up additional construction in the layout, it is its duty to take steps to stall the additional construction by the developer by filing a suit under Section 7/7A of MOFA. It is contended that when subsequent buildings are permitted to be constructed without any objection, the first society must accept the necessary consequence of reduced land in the layout. It is contended that additional construction can be out of express consent and where additional construction is an outcome of acquiescence, there is implied consent. In either of the cases, it is contended that the land division must happen by taking into consideration the BUA actually utilized for all buildings in the last sanctioned plan.

183) When there is express consent for revision of the layout, there can be no difficulty and, in such cases, land division can be made based on the plan to which there is a consent by previous flat purchasers. However, can the consent be inferred by conduct? The statutory scheme of Section 7 does not contemplate implied consent by conduct. It requires express written consent for putting up additional construction. Also, the words used in Section 7(1)(ii) of MOFA are 'previous consent'. The law in this regard is well-settled by several judgments of this Court.

184) If additional construction contrary to the disclosure made in the first layout is without express written consent, whether mere inaction on the part of the flat purchasers/their societies from injuncting the developer from putting up additional construction based on revised plan would automatically entail reduction in their land entitlement? Here again, the answer, to my mind, appears to be in the negative.

185) Failure to take steps to stop the developer from constructing additional structure and thereby tolerating such additional structure is a concept different than the concept of ownership of land. As observed above, the right to own the land crystallises the moment prescribed statutory period ends. This crystallised right to own the land does not fluctuate upon subsequent revision of plans. It remains static. The right to own a particular piece of land has already inured in the first building/society and merely because it fails to take steps to stop developer from putting up additional construction, it does not mean that the crystallised right to own land is given away or is diluted in any manner. The law does not provide for dilution of such land entitlement. This is the reason why I have observed that the concept of tolerating additional structure contrary to disclosed plans is different than the concept of owning land as per the first disclosed plan. In fact, if the principle of reduction in land entitlement on account of additional construction contrary to Section 7 of MOFA is accepted, the same would cause violence to the entire scheme of the Act.

186) Therefore, mere failure to file a Suit under Section 7/7A of the MOFA to injunct the developer from putting up construction contrary to disclosure would not result in losing title in respect of frozen share in the land. Developer already commits a mischief of getting the plans revised without consent and puts up additional construction. As observed above, many a times, the scene of getting the plans revised is enacted behind the back of the society and its members. Many a times they do not even know as to whether subsequent building in the layout is being constructed as per the original disclosed plan or whether there is any modification in the plan. The Municipal Corporation does not require any NOC from the society at the time of sanction of the plan. In such circumstances, it is difficult to expect the society to keep vigil on day-to-day basis on the activities of the developer and to object to revision of plan or to putting up additional construction. In such a situation, the developer cannot be permitted to take benefit of his own wrong. He has already committed twin wrongs - *firstly*, by not conveying the land within prescribed period and *secondly,* by putting up additional construction contrary to the disclosed plan. In such circumstances, mere failure on the part of the first society to file a suit under Section 7/7A of MOFA cannot be a reason enough for holding that such society would lose its entitlement in the ownership of the land which is already crystallised / frozen upon expiry of the twin periods prescribed under Sections 10 and 11 of the MOFA.

JUDGMENTS SUPPORTING FREEZING/CRYSTALLISATION CONCEPT

187) There have been some judgments of this Court which do tend to suggest that the share of constructed building in the plot/FSI cannot get reduced with every revised sanctioned plan. It would be apt to make reference to some of those judgments.

188) In ***Malad Kokil CHSL vs. Modern Construction Co. Ltd. and Ors.***[36], a coordinate Bench of this Court took note of the folly committed by the developer by loading TDR for the purpose of additional construction without conveying the land in favour of the society. As pointed out by Dr. Sathe, the concept of TDR was introduced for the first time in DCR 1991. However, its loading was restricted until 2007 to maximum permissible BUA indicated in Table 14 under Regulation 32. Regulation 34 provided that development potential of plot of land can be separated from the land itself and can be made available to the owner in the form of TDR, which can be loaded in another plot. Appendix VII of DCR 1991 included regulations for grant of TDR. Clauses 1 to 9 of Appendix VII provided for generation of TDR and clauses 10 to 19 provided for utilisation of TDR. Clause 14 earlier provided that the FSI of receiving plot could be allowed to be exceeded only 0.4 by availing TDR. However, by notification dated 14 May 2007, clause 14 of Appendix VII was amended and the limit of receiving plot was raised from 0.4 to 0.8. Thus, notification dated 14 May 2007 created a bonanza for the developer where TDR was permitted to be loaded to the extent by increasing the total FSI of receiving plot by 0.8. To illustrate, if FSI of receiving plot was 1, the same was permitted to be increased upto 1.8 by use of TDR. The developers started submitting proposals for revision of plans of buildings which were already constructed, for the purpose of adding construction thereon. The State Government took note of this folly and issued notifications dated 7 December 2007, relevant portion of which reads thus:

36 2012 SCC OnLine Bom 1310

> 74. …
> It is brought to the notice of the Government that, while sanctioning plan in the beginning from the Planning Authority for development of any land by the Developer, at that time no inclusion of T.D.R. use therein and after completion of some construction, then the Housing Society is formed. <u>But the conveyance deed was not made in the name of society with structures thereon. Thereafter, again Developer demands permission for amalgamation of surround area with vacant plot and the construction was made on that site without taking approval of the Housing Society or Plot holder and T.D.R. of said land was utilized on vacant plot</u> and carried out construction of multi storied building. <u>Therefore, the right of plot holders are affected</u>. Now, the Government is giving direction to all Municipal Corporations and all other planning authorities having provisions of T.D.R. as per Section 154 of the Maharashtra Regional and Town Planning Act, 1966 as follows.
>
> DIRECTION
>
> 1. While granting building permission along with use of T.D.R. by all Municipal Corporations and other Planning Authorities having provision of T.D.R., T.D.R. of all land should be permitted in the ratio of balance potential area of the concerned Housing Society without permitting at same place.
>
> 2) The said order is in force immediately for the date of this Government Order.
>
> *(emphasis in original)*

189) In ***Malad Kokil CHSL*** (supra), this Court took note of this folly committed by the developers and held that the increased limit for use of TDR could only be applicable for land which is 'vacant' and which is not already constructed. This Court thus froze the land which is already constructed and prevented loading of TDR on the same.

190) In ***<u>Eternia CHSL and Ors. Vs Lakeview Developers and Ors.</u>***[37], the learned Single Judge of this Court took note of the ratio of judgment in ***Malad Kokil*** (supra) and held in paragraph 75 as under:

> 75. As Gavai J notes in paragraph 55 of *Malad Kokil*, this limits and restricts the TDR potential to such land as is vacant, not already constructed. If this be so, then there is no question of the Hiranandanis having both TDR for the

[37] 2015 SCC OnLine Bom 723

> Societies' buildings *and* inherent FSI available. It follows, therefore, that if the inherent FSI is, *prima facie*, shown to have been exhausted, there exists no 'vacant land' that is properly 'developable' : its FSI has already been consumed. Mr. Kapadia is, therefore, correct in saying that the developers must be held to the development potential shown, without the TDR; they cannot retrospectively load this TDR and change the very basis on which construction of the Societies' buildings and Galleria was completed.

191) The order in ***Eternia CHSL*** (supra) was challenged before the Division Bench of this Court in ***Lakeview Developers and Ors. vs. Eternia CHSL and Ors.***[38] While dismissing the Appeal, the Division Bench held in paragraph 65 as under:

> 65. From the layout charts which have been shown to use, it can be seen that prima facie the Plaintiffs have made out a case that the entire consumable FSI has already been consumed after 10th building was constructed. The additional FSI and TDR which was utilized for construction of last two buildings was made available to the developer from the road set back area and other amenities which were provided and out of that these 10 buildings have been constructed. Prima facie, promoter/developer has not been in a position to show that the buildings were constructed out of additional TDR such as Slum TDR or TDR which is purchased by the developer. The development potential therefore, prima facie, in our view, has been fully consumed after the 10th building was constructed and, therefore, even otherwise, promoter/developer was under an obligation to convey the land in Sector IV-A in favour of the Societies.

192) Thus, in both the judgments of the learned Single Judge as well as of the Division Bench, in ***Eternia CHSL*** and ***Lakeview Developers***, it is held that once development potential is fully consumed, there was an obligation on the developer to convey the land in favour of the Societies. This follows that mere sanction of additional FSI/TDR by the notification of 2007 did not defeat the right of the building already constructed to have conveyance of the entire land. Though judgments in

[38] 2015 SCC OnLine Bom 3824

Eternia CHSL and ***Lakeview Developers*** (supra) are rendered in the context of provisions of Sections 7 and 7A of the MOFA, the same underscore the point that mere revision of a plan for putting up additional construction does not destroy the frozen right of the society to have conveyance of its entitled share in the land.

193) The concept of freezing of the first layout plan is also recognised to some extent by the coordinate Bench of this Court in ***Mahanagar Realty*** (supra), in which it is held in paragraph 22 of the judgment as under:

> 22. The share of the constructed buildings in the plot area/FSI gets reduced with every revised sanctioned plan and if building AB goes for re-development in future, then considering the reduced plot area, the FSI may not be sufficient to sustain re-development. **It is therefore necessary to freeze the FSI as per the sanctioned plan after some of the buildings in the layout are constructed for purpose of grant of deemed conveyance, which is what is sought to be achieved by the Government Resolution of 22nd June, 2018**. The Competent Authority has rightly considered the sanctioned plan of the year 2018 which was placed before it for consideration and applied the GR of 22nd June, 2018 for calculating the proportionate share in the plot to be conveyed.
>
> *(emphasis and underlining added)*

194) Thus, in ***Mahanagar Realty***, this Court has emphasised the need to freeze the FSI as per the sanctioned plan after some of the buildings in the layout are constructed for the grant of deemed conveyance, which is the purpose which is sought to be achieved by the GR dated 22 June 2018.

195) In ***Gala Complex Premises Cooperative Society Ltd.*** (supra), this Court has held that when the building uses FSI of the entire land, the land corresponding to that construction must also be determined proportionately and that such exercise ensures that the society gets land corresponding to the construction which already exists. More importantly, this Court has held that promoter cannot retain land of which development potential has already been used for construction of the building of the Society. It is held that once the FSI of larger plot has been used to construct the building, the purchasers of the flats therein obtain a corresponding interest in the land which supports that construction. This Court held in paragraphs 23 and 29 as under:

> 23. It is important to understand that the Resolution clarifies how the existing entitlement should be worked out in a rational way. When the building uses the FSI of the entire plot, the land corresponding to that construction must also be determined proportionately. The Resolution cannot be treated as interfering with vested rights of parties. When the sanctioned plan and municipal documents show that the building has used the development potential of the entire plot, applying this formula becomes logical. It ensures that the society gets land corresponding to the construction which already exists.
>
> 29. Respondent No.1 has also argued that granting larger land to the society would amount to taking away the promoter's remaining land. At first sight this argument may appear persuasive. However on closer examination it does not hold good. The purpose of MOFA is to protect flat purchasers who invest their life savings in purchasing homes. At the same time the law does not ignore the rights of the promoter. The balance lies in recognising that the promoter cannot retain land whose development potential has already been used for constructing the society building. Once the FSI of the larger plot has been used to construct the building occupied by society members, the purchasers obtain a corresponding interest in the land which supported that construction. The promoter is still free to develop the remaining property according to law. But that development must respect the fact that part of the development potential has already been utilised for the society building.

196) Again, in ***Nook CHS Ltd.*** (supra), this Court has emphatically held that the latter plan cannot be permitted to cut down a right which has already arisen from the original arrangement unless three elements are clearly shown viz. clear disclosure, informed consent and proper sanctioned basis. This Court has held that a latter sanctioned plan may be relevant but cannot supersede statutory obligations owed at an earlier stage. This Court has held in paragraphs 25, 26, 27, 28 and 32 as under:

> 25. **This Court finds that the later plan cannot be permitted to cut down a right which had already arisen from the original arrangement unless three elements are clearly shown**. First, there must be clear disclosure to the purchasers. Second, there must be informed consent. Third, there must be proper sanctioned basis. In present matter, these elements are not established in the impugned order.
>
> 26. Turning now to the respondents' defence, it was contended that the project was disclosed in stages and that agreement dated 9-10-2018 mentioned total net area of 28,110.16 square meters and total potential area of 51,160.49 square meters. It was also urged that the agreement specified three phases, of which Phase I alone had then commenced. On this basis, respondents submit that purchasers were put to notice regarding overall development potential. A mention of potential figures in an agreement is one circumstance, but not complete answer under MOFA. Numbers alone do not disclose the real scheme. Purchasers need to know where future construction may arise, its scale, impact on amenities, open spaces, access, density, common facilities and relation with their own building rights. Mere insertion of large figures without specific project particulars may amount to formal notice, but not full and true disclosure contemplated by Act.
>
> 27. The learned counsel for Respondent 1 further submitted that because potential area was disclosed, the competent authority rightly relied on sanctioned plan of 2020 while determining proportionate area. **A later sanctioned plan may be relevant, but it cannot supersede statutory obligations owed at earlier stage.** If later plan differs from earlier disclosed scheme, the authority must first determine whether such change is permissible. **Without that enquiry, mere existence of later plan cannot justify reduction in conveyance area.** The Act requires informed consent. Purchasers cannot be assumed to have agreed to every variation because some vague development potential was mentioned. In *Malad Kokil Cooperative Housing Society* it has been stated that promoter must place the whole scheme before purchasers, and if later construction is not in accordance with the layout shown at the time of agreement, prior consent becomes necessary. That principle answers the respondents' argument. The issue is whether the development now relied upon by respondents formed part of the originally

disclosed scheme governing the purchasers and the society. On present record, that burden has not been satisfactorily discharged by Respondent 1.

28. When rights of conveyance are to be curtailed, the scrutiny must be strict. A society once formed represents collective rights of all flat takers. Such rights cannot be reduced by inference. For these reasons, the petitioners' challenge gains force.

32. Liberty to represent also cannot mean liberty to ignore binding precedents such as *Jayantilal Investments* and *Malad Kokil Co-operative Housing Society*. Those decisions continue to apply to the promoters and flat takers under MOFA. Liberty cannot override law unless stated so in the order. The promoter must make full disclosure of the entire project. Consent cannot be presumed from vague clauses. Additional development beyond disclosed scheme requires legal justification. These principles stand unaffected by the respondents' version of the Supreme Court orders. Hence, the said orders do not assist the respondents in sustaining impugned order. The judgment in *Jayantilal Investments* declares that the promoter's duty of disclosure remains unaffected. The entire project, whether one building scheme or multiple building scheme, must be placed before flat takers at the time of agreement. It further indicates that residual FSI or development potential cannot be treated lightly. The decision in *Malad Kokil Co-operative Housing Society* holds that if construction is not part of the layout disclosed to purchasers, prior consent is necessary.

(emphasis and underlining added)

197) Thus, the judgment of the coordinate bench in ***Nook CHS Ltd.*** is a direct authority on the concept of crystallisation and freezing of land entitlement based on earlier plan and ignorance of the plan for conveyance purposes which does not have consent. This Court has emphatically ruled that a later sanctioned plan may be relevant, but it cannot supersede statutory obligations owed at earlier stage. It is further held that if later plan differs from earlier disclosed scheme, the authority must first determine whether such change is permissible and that without such enquiry, mere existence of later plan cannot justify reduction in conveyance area. The judgment is also illustrative on the issue of inquiry to be conducted by the Competent Authority about existence or otherwise of a consent. Thus, the judgment of this Court in ***Nook CHS Ltd.*** is a direct precedent on the issue of later plan not resulting into reduction of land entitlement crystallised as per the earlier plan.

198) Thus, this Court has repeatedly emphasized the principle that there is crystallisation/freezing of land entitlement of the buildings constructed in accordance with the original sanctioned plan and mere revision in the layout plan does not result in automatic reduction in land share of the buildings constructed as per the earlier sanctioned plan.

LAND DIVISION AS PER BUA SANCTIONED FOR EACH BUILDING IN THE ORIGINAL SANCTIONED PLAN

199) In my view therefore, it is necessary that conveyance of the land in the layout is done on the basis of the first sanctioned plan or at least on the basis of the plan which is sanctioned at the time when freezing occurs i.e. when twin effects of Sections 10 and 11 of MOFA trigger. This means that if the plan is revised before the twin obligations occur, such revised plan can be considered for land division. Upon formation of the society and upon expiry of period of four months, freezing occurs and the sanctioned plan at that time would alone determine the proportionate share of each building in the land. This would ensure that the legislative objective of MOFA is fulfilled and the folly/mischief committed by the developers does not affect the land entitlement of buildings constructed in accordance with the originally sanctioned plans.

200) Conveyance on the basis of the plan sanctioned as on the date of triggering of obligation to convey land to the first building would ensure that rights of flat purchasers of that building are not trampled upon by the flat purchasers of the subsequent building. To illustrate, if a plot admeasuring 10,000 sq.m. is taken up for layout development and on the basis of FSI of 1.00, the BUA of 10,000 sq.m. is sanctioned, which is divided as under:

Building No. 1	:	5000 sq.m.
Building No. 2	:	5000 sq.m.

The moment period of 4 months expires after formation of cooperative society in respect of Building No. 1, its right to have land admeasuring 5000 sq.m. crystallises/stands frozen. Even if the developer delays construction of Building No. 2 and applies for revision of plans by loading TDR of 3000 sq.m. with increased BUA of 8000 sq.m. for Building No.2, the same would not affect the crystallised/frozen land entitlement of Building No. 1 of 5000 sq.m. In such a case, even if Building No. 2 is constructed with BUA of 8000 sq.m., it will have to remain satisfied with the land admeasuring only 5000 sq.m. This is dealt with in greater details and better illustration in the latter part of the judgment.

Denial of Similar Treatment to Building Loaded with Additional BUA Due to Revision in Plan

201) This Court is aware of the difficulties that may be faced by the last or subsequent buildings in the layout on account of the mischief played by the developer by revising the plans by loading TDR or by taking benefit of new scheme or of change of FSI regime. As observed above, if the developer does not commit the mischief and conveys the land within the prescribed period and conveys proportionate land to the first society, his right to avail additional FSI/incentive BUA automatically gets restricted only to the balance portion of the land. In such circumstances, land cutting (*notional*) occurs. The land cutting may be notional in most of the cases since there are common amenities in the layout such as RG, internal roads, etc, which cannot be physically subdivided. Thus, once proportionate land is conveyed to the society of the first building in the layout and if the developer desires to go for revision in the plan to avail incentive FSI/TDR, sanction of such incentive FSI/TDR would get restricted only in respect of the unconveyed portion of the land, and this process does not result in additional development rights inuring to the benefit of already constructed building being transferred to the developer for being utilized on proposed buildings. This concept is recognised by this Court in the judgment rendered in ***ACME Enterprises*** (*Suit judgment of 2025 Supra*) in which it is held as under:

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

> 81. The main reason why developers oppose conveyance of any portion of land in favour of completed buildings till completion of entire development in the layout is because the FSI computations in respect of the layout are always done on the whole of the land in the layout and this system benefits the developers to a large extent. Let us take the illustration of developer undertaking layout development in land admeasuring 10,000 sq. mtrs, in which the developer has planned construction of 4 buildings. First three buildings are constructed with basic FSI 1.00 and each building has utilized built-up area of 2500 sq. mtrs each, leaving only 2500 sq. mtrs of FSI balance for the fourth building. The developer does not convey land to societies of those 3 buildings by citing the pretext of incomplete development of the layout. By the time, the fourth building is taken up for construction, new DCR is introduced permitting higher FSI 2.00. The developer submits the revised plan for sanction by making FSI computation in respect of the entire layout of 10,000 sq mtrs and secures sanction for total built-up area 20,000 sq. mrts. He then deducts the utilized builtup area of 7500 sq. mtrs and constructs the fourth building with builtup area of 12500 sq. mtrs. This is how non-conveyance of any land in the layout enables the developer to milk the additional FSI generated due to change in the norms/policy. On the other hand, in the above illustration, the society of three completed buildings secure conveyance of proportionate land of 7500 sq. mtrs and the developer is left with ownership of only balance land of 2500 sq. mtrs, even if he takes benefit of the increased FSI norms and applies for revised building permission for 2500 sq. mtrs land, he would be sanctioned built-up area of only 5000 sq. mtrs for the fourth building. Thus, the difference between the two scenarios is that in the former case (non-conveyance of any land), fourth building is constructed with built up area of 12500 sq. mtrs whereas in the latter case, the fourth building has less built-up area of 5000 sq mtrs., though the developer is permitted to take benefit of increased FSI in both cases. In the former case, the developer would profiteer by utilizing the additional FSI, whereas in the latter case, both society and the developer would proportionately share the additional FSI. The present case is similar to the latter scenarios, where portion of land can be conveyed in favour of the Federation (15402.20 sq. mtrs) and the remaining portion (3200 sq. mtrs) would remain in the ownership of the Developer and both the Federation and Developer can proportionately share the additional FSI arising out of DCPR 2034.

202) Once the land cutting (*even on a notional basis*) occurs on account of conveyance of proportionate share in the land in favour of first society, the developer is free to utilise the additional/incentive FSI/TDR on the balance portion (*subject to disclosure under Sections 7 and 7A of MOFA*). However, when a mischief occurs and the developer does not convey the land within the prescribed period to such society and he is benefited of his own folly, and secures additional/incentive FSI /TDR on the entire plot and loads the same on the subsequent building(s), application of concept of freezing of land entitlement upon expiry of prescribed period may cause some inconvenience to the purchasers of flats in the subsequent buildings. They or their organisation may get lesser share in the land than the BUA actually utilised for construction of their building(s).

203) To illustrate, if the concept of freezing of land entitlement is applied to a case where the first building is constructed with BUA of 5,000 sq.m. and the second building is constructed with BUA of 15,000 sq.m. (*on account of additional/incentive FSI/TDR of 10,000 sq.m.*) and the plot admeasuring 10,000 sq.m. is divided by conveying area of 5,000 sq.m. to the first building, only balance area of 5,000 sq.m. would be left for the second building. The second building has used BUA of 15,000 sq.m. But it needs to be content with land admeasuring only 5000 sq.m. If the concept of freezing of land entitlement is not applied, Building No. 2 would get land of 7500 sq.m. thereby eating into the share of Building No.1. This is illustrated below:

Bldg.	**Original BUA as per the First plan (sq.m.)**	**If land was conveyed in 'prescribed period' (sq.m.)**	**BUA as per revised Plan (sq.m.)**	**Entitlement as per proportionate land division (sq.m.)**	**Land entitlement as per freezing concept (sq.m.)**
No. 1	5000 *(construction complete & society formed)*	5000	5000	2500	5000

No. 2	5000	Balance plot left of 5000 sq.m.	15000 *(incentive FSI or TDR is loaded)*	7500	5000

The above illustration would indicate that the application of concept of crystallisation/freezing of land entitlement, when Building No. 1 became entitled for conveyance, ensures that the Building No. 2 does not eat into the land entitlement of Building No. 1.

204) It is sought to be contended that construction of Building No. 2 in the above illustration would be rendered illegal because it may not have requisite land for its sustenance. Here, I would like to clarify that while dealing with the concept of conveyance/deemed conveyance, the question of validity or legality of construction does not arise. Once building plans are sanctioned, building is constructed and Occupation Certificate is received, mere non-conveyance of proportionate land does not *ipso facto* render the construction of such building illegal. It continues to be a legal and valid construction. All that may happen is the entitlements of flat purchasers of such subsequent building would get reduced when it comes to redevelopment of the building. When redevelopment of the building is undertaken, every member of the society expects a larger home/unit. This may or may not be possible in case of a subsequent building, which is constructed by use of incentive FSI/TDR. However, the expectation of flat purchasers of building constructed by revision of plans by using incentive FSI/BUA or TDR cannot trample upon the land entitlement of building whose land entitlement was crystallised/frozen.

205) However, the lawmakers have ensured that when redevelopment of such subsequent building (*which does not have ownership of proportionate land*) takes place, the new building is reconstructed with at least the BUA equivalent to the existing BUA. This is in the form of Regulation 30(C) of DCPR 2034, which provides thus:

> **(C) Protected Development**
>
> (a) The FSI permitted as per Table No. 12 will be allowed to be exceeded for redevelopment of existing authorized building to the extent of existing authorized development rights/BUA and shall be also entitled for the additional FSI as per relevant regulations.
> Provided further that in cases where benefit of additional FSI as per the then prevailing regulations was availed for the purpose of educational, medical, starred category hotels, religious development and Information Technology establishments and if redevelopment is proposed by discontinuing such users, then such additional BUA will not be protected. The development shall have to be in consonance with the provisions of these Regulations. The premium paid in past for such user will not be adjusted.
>
> (b)In cases where development is not completed, it shall be permissible to avail the balance development rights as permissible under these Regulations by utilizing the TDR or additional FSI on payment of Premium by adjusting the payments made earlier for availing FSI if any, or payments made for grants of any concessions, Provided that if the development is proposed to the extent of protected built-up area only as per a) above, 9 m road width shall be considered adequate. However, if development is proposed with more area than protected as per regulation then, the restrictions as per regulation 19(2) shall be applicable.

206) Thus, in the buildings where the maximum sanctionable FSI/BUA falls short of the existing BUA, DCPR 30(C) ensures that an additional FSI is granted to ensure that building of the same size (*equivalent BUA*) is reconstructed. In that sense, flat purchasers of subsequent building constructed with use of incentive FSI/TDR will not suffer in the matter of redevelopment of their buildings. They would get flats in size equal to what they already have. Only aspect is that they have to live with a reality that the members of society whose building was earlier constructed as per originally sanctioned plans, may receive larger sized flats in redevelopment process and they have to be content with the flats of same size as they occupy in the existing building. This is not discrimination amongst two sets of flat purchasers, but protection of rights of the buildings which are denied their due share in the land by delaying the conveyance.

207) Therefore, by reason of declaration of law in this judgment, the existing building, which does not receive conveyance of proportionate land, does not get declared illegal or unauthorised. Even when it comes to redevelopment, Regulation 30(C) ensures that requisite quantum of additional FSI, as may be necessary to put up reconstruction of at least the existing BUA, is sanctioned.

208) It must be observed that the history has indicated only northwards movement in the FSI. With acute shortage of space in the urban areas, the FSI has gone upwards with passage of time. In DCPR 2034 for Mumbai and in UDCPR for other cities, there is already a substantial increase in the FSI. In DCPR 2034, there is massive increase in the base FSI. To illustrate, in Mumbai the island city, where road width available is 27 meters and above, as against base FSI of 1.33 during 1991 DCR regime, FSI now available is 3.00. In the suburbs, FSI for plots with road-width of 27 metres has gone up from 1.00 to 2.50. With this trend, I do not find much difficulty for the flat purchasers of subsequent buildings (*whose buildings are constructed with use of incentive FSI/TDR by* *revision of plans*) in redeveloping their buildings. They may get lesser additional area than the members of the society of first building, but that is a reality with which they need to live since their building is constructed by trampling upon the rights of the first building/society. Their building is allowed to stand, which can be directed to be demolished by a civil court, if violation of provisions of Sections 7 and 7A of MOFA is demonstrated. However, merely because existence of subsequent building is tolerated by the flat purchasers of first building/society, it does not mean that the building which is constructed by eating into the rights of the first building/society would earn a premium over illegality already committed, by permitting stealing of the land meant to be conveyed to the first building/society.

209) In my view therefore, no real difficulty is posed in following the principle of crystallisation/freezing of land entitlement upon expiry of statutorily prescribed periods under Section 11 of the MOFA and under Rule 9 of the MOF Rules. Here, one must also bear in mind the fact that under Section 4 of the MOFA, the developer makes disclosure of the sanctioned plans. Thus, a flat purchaser of subsequent building becomes aware of the fact that building has come up largely through incentive FSI/TDR. This being the position, I do not find much difficulty in existence of two classes of societies/associations in the same layout viz., (i) societies whose buildings are constructed as per originally sanctioned plans and (ii) societies whose buildings are constructed by revision of plans by use of TDR/incentive FSI. The folly committed by the developer in eating away the FSI meant for first/earlier building by getting the plans revised cannot be a reason for equating both the classes of societies for determining proportionate share in the layout land. As observed above, if both the societies are placed on the same pedestal for conveyance, the subsequent societies would earn a premium over illegality already committed in their construction (*in the sense of their construction being contrary to the first disclosed plans*).

CASES INVOLVING CONSENT

210) It is not that in every case the plans are revised behind the back of already constructed buildings. There may be cases where the developer has secured written consent from the society of building already constructed as per originally sanctioned plan for effecting a revision therein for availing additional BUA. In some cases, the existing societies may have monetized their right of giving consent by securing consideration in the form of money or additional facilities and may have given consent for revision in the plan. In such cases, whether the concept of land freezing/crystallisation as on the date of formation of the first society can be applied? In my view, the answer is in the negative. Where there is express consent by the flat purchasers/societies of earlier buildings for revision of plans for construction of subsequent buildings, the freezing/crystallisation concept cannot apply. Where such express written consent is given, land division can be undertaken on the basis of subsequently revised plan, which has such consent. However, in every case where such express consent is not given, proportionate land division must necessarily be on the basis of the first sanctioned plan or at least the sanctioned plan which was in existence at the time of application of concept of freezing.

211) It is contended that Competent Authority being a tribunal of limited jurisdiction cannot go into the issue of existence of consent. There can be no dispute about this proposition and since existence or otherwise of the consent, being a matter of intrinsic evidentiary inquiry, the Competent Authority would not have jurisdiction to decide that issue. However, in its summary jurisdiction, if the developer or society of subsequent building produces a consent letter/affidavit, I do not see much difficulty in the Competent Authority in acting on the same and assuming that there exists a consent for undertaking the exercise of proportionate land division. If a competing society has any contrary claim, the same can always be taken for adjudication to the Civil Court as the order of deemed conveyance passed by the Competent Authority is not final determinative of rights and entitlement of parties *qua* the land conveyed. On the other hand, if no *prima facie* written evidence of consent is produced, the Competent Authority can proceed on the basis of absence of consent and apply the principle of freezing/crystallisation of land entitlement as per the plan in existence at the time of expiry of the prescribed period under Section 11 of MOFA and Rule 9 of MOF Rules for the first society. In such a case, the developer/society of latter building can approach the Civil Court to establish existence of consent. In my view therefore, though the Competent Authority may not be able to resolve the issue of existence or otherwise of consent but can make an adjudication on the basis of *prima facie* existence/absence of material to indicate consent. I am supported in my view by the judgment of this Court in ***Nook CHS Ltd.*** (supra).

EQUITY OR LAW?

212) It is suggested by Mr. Khandeparkar that the buildings constructed majorly/purely by utilising the TDR are no less than the buildings constructed by utilising inherent FSI. He has relied on Regulation 30 Table 12 of DCPR 2034, which states that the term 'permissible FSI' or the 'development potential' includes (i) zonal (basic) FSI, (ii) additional FSI on payment of premium, and (iii) admissible TDR. According to him, law does not create any distinction between buildings constructed with inherent/base FSI and TDR. He therefore suggests that such discrimination cannot be introduced while granting conveyance to various buildings in the layout and that therefore the Competent Authority must accept the 'last sanctioned plan' for the purpose of proportionate subdivision of the layout land. I am unable to agree. As discussed above, permissibility under the building regulations to put up additional construction is a concept different than the concept of conveyance of proportionate land. Building regulations may permit additional construction on a plot of land, but for putting such additional construction, written previous consent of flat purchasers is necessary. As held above, mere inaction on the part of the society of earlier building(s) in not objecting to additional construction does not result in dilution of their crystallised share in the layout land, which was already frozen upon expiry of the 'prescribed time'. Therefore, for conveyance purposes, the buildings constructed with incentive FSI/TDR as a result of revised plan, which does not have consent, cannot be put on the same pedestal as that of the buildings constructed as per the originally sanctioned plan.

213) This Court is also alive to the situation where some or one of the buildings (*mostly the last building in the layout*) may have been constructed mostly/purely out of TDR. Application of the principle of land freezing/crystallisation discussed above may possibly leave no land for such building for conveyance purposes. I must say that such cases are rare, and would be difficult to handle *qua* conveyance rights. No building can come up purely on TDR. For loading of TDR, some land in the layout is required. In normal cases, TDR is utilized by adding the BUA flowing through the Development Rights Certificate (**DRC**) to the base/inherent BUA. Therefore, it is ordinarily impossible to construct a building without any land. For conveyance purposes, it has to be assumed that the TDR is loaded on the inherent BUA flowing through some part of the land. Therefore, such portion of land can be identified and conveyed to the society whose building is constructed mainly by utilizing TDR.

214) As observed above, TDR is a transferable movable asset capable of being hoarded, monetized and freely transferable. It has no connection with the land in the receivable plot. If some land is required in receivable plot for loading of TDR, how a building can ever come up purely through TDR? If any building in the layout is an outcome of pure TDR, this again is an outcome of mischief of developers. The layout development is deliberately left incomplete by not securing occupancy certificates of buildings and when TDR loading limit increases, the layout is demonstrated to the Municipal Corporation as incomplete (*for indicating availability of land for loading of TDR*) and the TDR is loaded for construction of an additional building. The planning authorities act mechanically and since land is shown available in the incomplete project, they allow loading of TDR in the layout and this is how some of the buildings may have come up in the layout without much land left for being conveyed. Such cases are rare, but may exist. Majority of cases however are where lesser land becomes available for conveyance than utilised BUA on account of TDR/incentive FSI.

215) Can Court treat all the buildings in the layout on the same pedestal for conveyance purposes as sought to be suggested by Mr. Khandeparkar? Though the last building may have been constructed by violating provisions of Section 7 of MOFA, but since the innocent flat purchasers have purchased flats after verifying the construction permission, can principle of equity be followed to accommodate the building constructed mostly/purely out of TDR by conveying to it the proportionate land? Or whether the Court needs to uphold the true spirit of MOFA by ensuring that the building constructed as per originally sanctioned plan must receive conveyance of the land which was due to it as per MOFA? I would tend to lean in favour of the latter proposition. Adoption of the former proposition (*for accommodating rare cases of pure TDR buildings*) may cause violence to the legislative object of MOFA and would amount to turning the provisions of the Act on its head.

216) Equitable considerations cannot prevail over the statutory scheme of MOFA. As observed above, if Section 11 of MOFA crystallises the entitlement of the first building in respect of a particular area of land in the layout, that lawful area entitlement cannot be reduced by applying equitable consideration for accommodating rights of buildings which are constructed contrary to provisions of Section 7 of MOFA by revising the plans subsequently for loading of TDR/incentive FSI.

217) Therefore, in extremely rare cases where there is very little or no land left for being conveyed to the buildings erected out of pure TDR, the societies of such building can purchase some land from the other societies in the layout for redevelopment of its building and then take the benefit of DCPR 30(C) for securing the requisite additional FSI for reconstruction of same BUA.

218) As observed above, conveyance of land in the layout on the basis of the 'last revised plan' would cause violence to the statutory framework of MOFA and mere equitable considerations cannot be the basis for denying to the societies their lawful land entitlement merely because they could not stop the developer from revising the plans and putting up additional construction in the layout. One must bear in mind the larger impact of grant of conveyances based on the 'last revised plan'. There may be very few or minuscule number of cases where the entire building is constructed only by utilizing TDR. But majority of cases involve use of TDR/incentive FSI for putting up additional construction than originally planned. Various illustrations discussed above and the facts of the present case would depict how use of TDR in subsequent/last building results in massive increase of BUA thereof. If the principle of grant of conveyance based on 'last revised plan' is followed, there would be a windfall gain or a bonanza to the societies of those buildings, who would walk away with large pie in the land at the cost of societies whose buildings are constructed as per the originally sanctioned plans. Hence, land division on ‘last plan principle’, far from resuorganizlting in equality, would actually create discrimination by making societies whose buildings are constructed with massive TDR entitled to grab the highest share in the layout land. Thus, for protecting the interests on equitable considerations of very few buildings constructed by utilizing only TDR, the Court cannot violate the objective and scheme of MOFA by offering to them on a platter a larger share in layout land at the cost of buildings constructed as per the plans existing at the time of expiry of the prescribed period.

THE WAY FORWARD

219) The cases involving FSI/BUA imbalance occur mainly due to the manner in which the planning authorities sanction and revise the plans in the layout. Since conveyance of proportionate lands was not granted by the developers, they/original land owners continued to remain owners and for the planning authority, the layout development continued to remain incomplete. Therefore, the increased FSI/BUA got sanctioned by the planning authorities for whole of the land in the layout and by deducting the BUA already used for construction of existing buildings, the developers loaded the entire additional FSI/BUA/TDR on the subsequent buildings. The flat purchasers are unaware of the effect of this phenomenon, especially in the context of land entitlement of their society. The mischiefs played by the developers would ultimately affect the flat purchasers of the buildings constructed by use of TDR/incentive FSI due to revision of plans.

220) Some suggestions are made by the learned AG and the learned *amici* for protecting the interests of flat purchasers henceforth.

221) Dr. Sathe has suggested that if in future, the development potential increases because of the change in DCR and the developer takes the benefit of such increased development potential, including TDR and utilises the same on the balance portion of the land, in such a situation, the occupants of subsequent additional building, which is constructed by utilisation of TDR, should be informed about their building being constructed only out of TDR and cannot claim parity with the first building.

222) Mr. Samdani has suggested that in any layout, 'mixed user' should not be permitted, meaning thereby that on the same layout there should be prohibition of construction of buildings for use as residential + IT/Hotel/Hospital/other user. The reason for this suggestion is that the permissible FSI for residential purposes is different than the other users. He has suggested that the mixed user may be permitted if the layout has within itself a sub-division and the other user is on a sub-divided plot. The suggestion means that if the layout is taken up for development for construction of residential and commercial buildings with normal FSI and after construction of one or two buildings in the layout, the developer changes his mind and decides to apply for incentive FSI for IT Park, Hotel, Hostel or Hospital, such development should not be allowed. Alternatively, the planning authority should insist on sub-division of the plot by carving out the land meant for conveyance of buildings already constructed and sanction the incentive FSI only in respect of balance undeveloped land. This is an important suggestion which would ensure that the developers do not secure massive BUA for incentive use like IT Park/Hospital/Hostel/Hotel, etc. in respect of the entire layout land, but use the same only on the last building in the layout. This would be for the planning authorities to consider as this Court is not dealing with challenge to the Development Control Regulations and the issue here is restricted to only laying down principles for dividing the layout land for conveyances.

PRINCIPLES FOR CONVEYANCE OF LAND IN LAYOUT DEVELOPMENTS

223) From the above discussion, following principles emerge:

(a) The right to secure conveyance of the land and the building inures in favour of the organisation of flat purchasers upon expiry of the period prescribed in Section 11 of the MOFA read with Rule 9 of MOF Rules.

(b) Consequently, in a layout development, the proportionate land which was meant to be conveyed in favour of an organisation of flat purchasers, as on the date of expiry of period of four months from its formation, stands crystallised and frozen and shall not get reduced merely on account of subsequent revision of the plans.

(c) The conveyance or deemed conveyance of land in a layout development by undertaking the exercise of land division proportionate to BUA used in construction of each building shall be on the basis of either the first sanctioned plan or the plan sanctioned as on the date when freezing/crystallisation occurs i.e. when the period specified under Rule 9 of the MOF Rules expires.

(d) The above principle shall however be subject to an exception where the flat purchasers of earlier buildings/their societies have given a written consent for modification/revision of the plan, in which case, the exercise of proportionate land division can be undertaken by taking into consideration the plan, which has such consent.

(e) The Competent Authority accordingly needs to convey the proportionate land to the societies in a layout by taking into consideration the sanctioned plan, which existed at the time when the time prescribed under Rule 9 of the MOF Rules had expired from the date of formation of organisation of flat purchasers or the plan which has the written consent as discussed above, whichever is later.

(f) If the developer or any other organisation of flat purchasers in the layout are aggrieved by land division as discussed above and are able to demonstrate land entitlement to the contrary, they need to file a suit questioning the land conveyed by the Competent Authority. A society seeking conveyance of land by application of principle of freezing/crystallisation need not be driven to Civil Court for seeking conveyance of the proportionate land.

(g) Developers and promoters shall give adequate notice to the flat purchasers about construction of the building by use of incentive FSI / TDR having and the potential risk of securing lesser land as compared to BUA used in construction of their building(s).

CONVEYANCE OF LAYOUT LAND IN THE PRESENT PETITIONS

224) Applying the above principles to the case in hand, it is seen that the first building constructed in the layout is that of Satellite Garden I CHSL, which is formed and registered on 11 October 2002. The Occupation Certificate of the building Satellite Garden I CHSL was apparently issued on 9 August 2001. The sanctioned plan as well as the Occupation Certificate dated 9 August 2001 are the basis of area of sub-plot A of about 16855.47 sq.m. However, it appears that the layout and subdivision of the plots therein have undergone changes on several occasions as under:

Date of Layout	Sub-Plot A area (sq.m.)	Sanctioned BUA (sq.m.)
29 May 1997	16855.41	16895.63 (available) 12671.72 (used)
29 July 2003	16566.90	17081.86
8 June 2004	20948.16	20805.94
25 November 2004	21807.18	21587.60
10 March 2005	21807.18	21587.60

225) Thus, the rejigging of the Plots has changed the area of sub-plot No. A from time to time. In the rearrangement of the sub-plots, the area of sub-plot No. A finally became 21807.18 sq.m.

226) I have gone through all the rearranged layout plans. In the final layout plan dated 10 March 2005, 6 proposed buildings and a clubhouse is shown, out of which apparently Building No. 1 was shown to have received OC, plans for Building Nos. 2 to 5 were shown to have been 'sanctioned' and the plans for Building No. 6 were shown as 'not approved'.

227) Therefore, the present case involves a peculiar situation in which the plot itself has undergone change in size. The demand of Satellite Garden I CHSL is for conveyance of land on the basis of OC plan dated 9 August 2001 and it accordingly seeks conveyance of land admeasuring 16855.47 sq.m. However, even in the OC Plan dated 9 August 2001, the total BUA sanctioned for original Sub-Plot No. A was 12671.72 sq.m, which was divided between Building No. 1: 9866 sq.m., Building No. 2: 2653 sq.m., Building No. 3: 285 sq.m. and Building No. 4: 285 sq.m. Therefore, the whole land of 16855.47 sq.m. could otherwise not have been conveyed to Satellite Garden-1 CHS even if there was no rearrangement of the sub-plots. Also, what is finally used in construction of building of Satellite Garden-1 CHS is BUA of 11186.41 sq.m. This is a reason why I have observed that the case involves peculiar circumstance, where the plot size itself underwent a change making it impossible to divide the land in the originally sized sub-plot A (16855.47 sq.m). The division of land has to be in respect of the rearranged sub-plot A which is now sized 21807.18 sq.m.

228) In my view therefore and in the light of the principles discussed above, the conundrum in the present case can be resolved by directing conveyance of land based on the Layout Plan dated 10 March 2005. The Layout Plan dated 10 March 2005 does not indicate use of any incentive FSI/TDR. The BUA calculated for land area of 21807.18 in the layout plan dated 10 March 2005 is as under:

Net Plot Area	21807.18
Reduction for 15% RG area	3271.08
Balance area	18536.10
Addition for FSI: Setback Area	 3051.50
Total area	21587.60
Permissible Area for FSI 1.00	21587.60

Thus, for plot sized 21807.18 sq.m., BUA of 21587.60 sq.m. was sanctioned while approving the layout on 10 March 2005.

229) Mr. Kakalia has placed on record the OC Plan for Building A-4 dated 9 July 2010 for indicating the distribution of BUA of 21587.60 sq.m. However the OC plan dated 9 July 2010 indicates use of massive slum TDR raising the sanctioned BUA from 21587.60 to 40343.28 sq.m. Hence as per the principles discussed above, the figures of distribution of BUA of 40343.28 sq.m. cannot be taken into consideration for determining the land distribution amongst the four buildings. The OC

Plan of 9 July 2010 is therefore irrelevant for deciding the proportionate land division.

230) In my view therefore, the proportionate land division in the present case needs to be done by following the principle of freezing based on Layout Plan dated 10 March 2005 by taking into consideration the BUA excluding TDR used for construction of each of the buildings indicated in the plans reflected as sanctioned in that layout. Mr. Kakalia, has placed on record the figures of BUA distribution amongst each of the buildings as under:

Building A-1: 11186.41 sq.m. [Satellite Garden Phase I]
Building A-2: 3126.32 sq.m. [3936.32 – 720] [Sadguru AB]
Building A-3: 328.74 sq.m. [Not completed]
Building A-4: 830.92 sq.m. [3917.76 – 3086.08] [Sadguru CD]
Building A-5: 5778 sq.m. [20728.06-14949.6] [Satellite Tower]

231) However, Building No. 3 has not been constructed yet, for which an insignificant area of 328.74 sq.m. is reserved. The developer has already increased the density of flats in the layout by subsequent revision of plans by use of massive slum TDR. The layout is shown as incomplete for the last 29 long years. If the layout is still shown as incomplete and if the layout plan is permitted to be further revised as per DCPR-2034 , there might be further increase in the BUA for the entire plot which the developer may load while constructing building No. 3. Mr. Kakalia has fairly submitted that the developer is no longer interested in putting up any additional construction in the layout and that some areas in the layout are reserved for the landowners. It appears that in the OC plan of 9 July 2010, significant BUA admeasuring 244.31 sq.m. is shown for temple. But the plan dated 9 July 2010 is prepared on the basis of loading of slum TDR due to revision and is wholly irrelevant for deciding the land distribution. In my view, time has come to put a full stop on any further development in the layout and the entire land in the layout needs to be distributed only amongst the four buildings which are standing today. Both the developer as well as the original land owners (*having already milked undue development potential in the layout land*) need to be thrown out of the land. Therefore, there cannot be any land reservation either for the fifth building (Building No. 3) or for the temple. Even if the temple may physically exist in the land, the land beneath it would fall in the ownership of one of the four societies.

232) The certificate of deemed conveyance issued in favour of Sadguru Complex -1 (CD) CHS is based on architect's certificate dated 23 May 2025, who has made the calculations based on the revised sanctioned plan dated 9 July 2010, in which massive slum TDR got loaded on buildings of Sadguru Complex-1 (CD) and Satellite Tower CHSL. As discussed above, the land distribution cannot be based on the plan dated 9 July 2010. The certificate of deemed conveyance dated 31 October 2025 based on revised plan dated 9 July 2010 is thus unsustainable and deserves to be set aside. Similarly, the certificates of deemed conveyance issued conveying only plinth areas to Satellite Tower CHSL and Sadguru Complex 1 (AB) CHSL are also liable to be set aside. Instead, the working of division of land needs to be done based on the BUA sanctioned for each of the buildings in plans reflected on layout dated 10 March 2005.

233) Mr. Engineer has highlighted one concern in undertaking this exercise. He has submitted that if the principle of land division proportionate to BUA utilised on the basis of base FSI is applied in the present case, buildings of Sadguru Complex 1 (CD) CHSL would receive lesser land than its actual plinth. Mr. Engineer has accordingly highlighted that Sadguru Complex 1 (CD) CHSL would receive only land admeasuring 866.08 sq.m. when in fact its plinth is 968.77 sq.m. However, this Court is not following the principle of land division based on base FSI concept. Instead, it is being directed to take into consideration the BUA figures indicated in the plans reflected in the Layout dated 10 March 2005.

234) In any case and in my view, the difficulty of a building receiving land lesser than its plinth alone cannot be a reason for not applying the principle of freezing as this difficulty can easily be surmounted. What is done is only the notional sub-division of the land, mainly for the purpose of redevelopment of buildings in the layout. In the layout, it is not always possible to physically divide the land because of spreading of amenities, internal roads, etc. throughout the layout. Therefore, even if any building/society receives conveyance of land less than its plinth, at the time of redevelopment, the size of the plinth can be reduced and building can go vertically for the purpose of utilising entire FSI/BUA potential available at that time. This can typically happen in case of societies of row houses/bungalows. Since the row houses and bungalows occupy larger plinth but lesser BUA as compared to a tower in the same layout which occupies lesser plinth but much larger BUA, while undertaking redevelopment of such row houses/bungalows, the plinths of the redeveloped subcultures can always be readjusted as per the proportionate land entitlement in the layout.

235) In my view therefore, the unique conundrum of land distribution due to change of the area of land of Sub-Plot A can be resolved on a reasonable basis by taking into consideration the BUA figures in the sanctioned plans which existed at the time of layout plan dated 10 March 2005 and by ignoring the BUA figures of OC plan dated 9 July 2010. Instead of leaving the matter for speculation as to which plan existed as on 10 March 2005 and in the facts of this case, the figures of approximate BUA distribution of 21587.60 sq.m. indicated by Mr. Kakalia can be taken into consideration for proportionate land division amongst the four societies without reserving any land for Building A-3 or for the temple. The BUA for each society to be taken into consideration of land division is as under:

Satellite Garden Phase I: 11186.41 sq.m.
Sadguru AB: 3126.32 sq.m.
Sadguru CD: 830.92 sq.m.
Satellite Tower: 5778 sq.m.
Total BUA: 20921.65 sq.m.

This Court is conscious of the fact that the total of the above BUAs of the four buildings falls little short of the sanctioned BUA of 21587.60 sq.m. for Sub-Plot A. However, the Architect needs to apply a reasonable formula for undertaking the exercise of distribution of the land by taking into consideration the above BUA figures. This can be done by adding the BUAs indicated above and determining the percentage share of each building in such sum total and by then applying such percentage for dividing the land in the layout. The Competent Authority shall accordingly procure a fresh certificate from the architect for division of the land in Sub-Plot A by taking into consideration the above BUA for each building. Mr. Aniket Mathakar, Architect, who had issued certificate to Sadguru Complex-I (CD) CHSL on 23 May 2025 (*which is found to be erroneous*) shall accordingly prepare and submit a fresh certificate by distributing the entire area of Sub-plot No. A based on the above BUAs for each of the building.

236) Before parting, this Court places on record its deep sense of appreciation for the able assistance rendered by Mr. Samdani, Mr. Godbole, Mr. Engineer, Mr. Khandeparkar and Mr. Tamboly, the learned *amici curiae*. The Court also places on record appreciation for Dr. Sathe, the learned Advocate General for assisting the Court in determining the principles for proportionate sub-division of land in a layout. Appreciation is also deserved by Mr. Kakalia who has not only been neutral throughout the hearing despite appearing for a developer, but has also assisted the Court in placing on record the statistical data of complex BUA and FSI figures as well as several old plans requested by the Court from time to time. Without the able assistance of the learned counsel who have appeared in the Petitions, it would not have been possible for the Court to resolve the intricate issue relating to proportionate land division amongst organisations of flat purchasers in a layout land.

ORDER

237) In view of the above discussion, I proceed to pass the following order:

i. Impugned orders passed by the Competent Authorities dated 31 October 2025 in Application No.153 of 2025 filed by Sadguru Complex 1 (CD) CHSL, Order dated 16 May 2024 passed in Application No.138 of 2023 filed by Satellite Tower CHSL, and Order dated 6 March 2025 in Application No.22 of 2025 filed by Sadguru Complex 1 (AB) CHSL are set aside.

ii. Application Nos.153 of 2025, 22 of 2025 and 138 of 2023 are remanded to the Competent Authority for fresh adjudication.

iii. The Competent Authority shall procure a fresh Certificate from Mr. Aniket Mathakar, Architect who shall indicate the land distribution of the entire area of Sub-Plot No. A (21807.18 sq.m.) based on the BUAs for each of the building indicated in and as discussed in para 235 above.

iv. While re-adjudicating the applications, the Competent Authority shall bear in mind the principles laid down in the judgment and shall proceed to determine land entitlement of each of the societies by taking into consideration the certificate of the Architect as directed above.

238) With the above directions, all the three Writ Petitions are disposed of. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]