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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 151 OF 2019
WITH
INTERIM APPLICATION NO. 18160 OF 2022
WITH
INTERIM APPLICATION NO. 19665 OF 2022

1. Flagship Infrastructure Ltd.
   (Initially known as Flagship Infrastructure Pvt. Ltd.) Behind Cognizant, Rajiv Gandhi InfoTech Park Phase No.1, Hinjewadi, Tal:- Mulshi District:- Pune By and through its present director/authorized Signatory:- Ms. Meghali Katdare

2. Flagship Infrastructure Ltd.
   (Initially known as Flagship Infrastructure Pvt. Ltd.) By and through its director/authorized Singnatory:- Ms. Meghali Katdare
   Blue Ridge, Behind Cognizant, Rajiv Gandhi InfoTech Park, Phase No.1, Hinjwadi, Tal:- Mulshi District:- Pune

..Petitioner

V/s.

1. The Competent Authority
   District Deputy Registrar of the Co-operative Societies, Pune (Rural) Pune.

2. Blue Ridge Unit "A" (Tower No.1 to 8) CHS Ltd. S. No. 119/125/154 to 160/160/2 to 171/17 Plot No.1, Behind Cognizant, Rajiv Gandhi InfoTech Park Phase No.1, Hinjwadi, Tal:- Mulshi District:- Pune
   By and through Shri. Vaibhavraj Kumthekar
   Shri. Samir Gokhale

..Respondents

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Mr. Prasad Dani, Senior Advocate i/b. Mr. Sarthak S. Diwan for the Petitioners.

Ms. M. P. Thakur, AGP for Respondent No.1-State.

Mr. Anil Anturkar, Senior Advocate i/b. Sugandh Deshmukh for Respondent No.2 in Writ Petition and for the Applicants in all Interim Applications.

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CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 4, 2025

PRONOUNCED ON : APRIL 15, 2025

JUDGMENT

1. This petition raises a narrow, but important question of law: whether a notification issued under Section 20(4) of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act), granting a developer ten years' time for completing a development project, can override the statutory obligation cast upon the developer under the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (MOFA) and Rule 9 of the MOFA Rules, 1964, to execute a conveyance of title in favor of a cooperative housing society within four months of its formation. This Court is thus called upon to examine the scheme and purpose of the two statutes and decide which must prevail in the event of an apparent conflict.

2. The present petition has been instituted by the petitioners, who are developers, questioning the legality and validity of the judgment and order dated 27th November 2018 passed by the District Deputy Registrar, Co-operative Societies, Pune (Rural). By

the said order, rendered in Application No. DC 16/2018-19, a certificate of deemed conveyance has also been issued in favor of respondent No.2 – the Housing Society. The certificate pertains to *land admeasuring 44285.25 square mtrs.*, together with the constructed area of 85,926.373 square meters, and includes an undivided share and interest in the common areas and common facilities to the extent of the said area. The land in question forms part of Survey Nos. 119 (Part) to 125 + 154 (Part) to 160/2 to 171 + 173, situate behind Cognizant, Rajiv Gandhi InfoTech Park, Hinjewadi, Pune.

3. The petitioners, feeling aggrieved by the said order and certificate of deemed conveyance, have approached this Court invoking its writ jurisdiction.

4. The facts necessary for deciding the present petition, briefly stated, are as under: The petitioners are the original developers and owners of the property in question. They had undertaken the development of a township project known as Blue Ridge, after securing requisite permissions under the provisions of the Maharashtra Regional and Town Planning Act, 1966. The construction was to be carried out in a phased manner as per the sanctioned plans. The dispute giving rise to the present proceedings is confined only to Towers 1 to 8 within the said township project. Respondent No.2-Society was registered on 12th September 2011. According to respondent No.2, the Society comprises eight buildings consisting of 811 flats, 12 shops, and common amenities, spread over the land forming part of the Blue Ridge Township. It is the grievance of respondent No.2 that despite

repeated requests, the petitioners failed to convey the land and constructed premises to the Society, as required by law.

5. Faced with such inaction, respondent No.2 preferred an application for deemed conveyance before the District Deputy Registrar under the provisions of Section 11(3) of MOFA. The application was duly accompanied by necessary documents and records. On receipt of notice from the authority, the petitioners appeared and contested the application. By way of written submissions and oral arguments, the petitioners contended that the application was not maintainable in law. It was urged that no cause of action had arisen, inasmuch as the petitioners had not committed any breach of statutory duty. It was further submitted that the description of the subject matter of the application was incorrect, inasmuch as the entire master layout of the township could not be the subject matter of a deemed conveyance application restricted only to Towers 1 to 8. The petitioners also contended that the right of respondent No.2, if at all, could only extend to the land directly beneath the eight buildings in question, and not to the entire larger parcel of land forming the township.

6. Both parties submitted written arguments before the authority. After affording full opportunity of hearing to the petitioners and the society, the District Deputy Registrar, by the impugned order dated 26th November 2018, allowed the application of respondent No.2 and issued a certificate of deemed conveyance. Aggrieved thereby, the petitioners have preferred the present writ petition.

7. This Court, by an order dated 14th January 2019, issued Rule and granted interim relief in terms of prayer clause (c) of the petition, thereby staying the operation of the certificate of deemed conveyance pending the hearing and final disposal of the petition. The petition has now been placed for final hearing.

8. Mr. Dani, learned Senior Advocate appearing on behalf of the petitioners, invited the attention of this Court to various provisions of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act"), including Sections 2(13D), 2(27), 14(l), 17, 18(3), and 44(2), to contend that the State Government had sanctioned the township project by issuing a notification under Section 20(4) of the said Act. According to the learned Senior Advocate, such integrated township, being specially sanctioned, occupies a higher pedestal and would prevail over the other general provisions of the MRTP Act. In the event of a conflict between regional plans, development plans, or subordinate rules and regulations, it is the integrated township, sanctioned under the special provisions, that must prevail. He submitted that the township project in question, being a special township permitted under Section 18(3) of the MRTP Act, is entitled to benefits and concessions such as exemption from individual Non-Agricultural (NA) permissions, concession in stamp duty, and the grant of floating Floor Space Index (FSI). The floating FSI, it was pointed out, could be utilized anywhere within the township area, irrespective of the location of the particular plot. The completion certificate for individual buildings, he submitted, could be granted only after the completion of the entire township as per the conditions stipulated

in the notification issued under Section 20(4) of the MRTP Act.

9. Mr. Dani further drew the attention of the Court to the agreements executed with the flat purchasers under Section 4 of the Maharashtra Ownership Flats Act ("MOFA"). He submitted that at the time of purchase of the flats, the flat purchasers were made fully aware of the nature and character of the integrated township project. It was specifically disclosed to them that the developers retained the right to utilize the floating FSI anywhere within the township area, even after the completion of individual buildings. Thus, it was contended that the flat purchasers, having entered into agreements with full knowledge and consent regarding the development rights reserved by the petitioners, cannot now seek to defeat those rights by seeking conveyance of the larger parcel of land. Learned Senior Advocate next submitted that respondent No.2-Society had filed the application for deemed conveyance on 18th July 2018 under Section 11 of MOFA, by which time the Real Estate (Regulation and Development) Act, 2016 ("RERA") had already come into force. He pointed out that the Maharashtra Real Estate Regulatory Authority (Form of Annual Statement of Accounts and Annual Report) Rules, 2017, had also been notified on 20th April 2017.

10. According to him, under the scheme of RERA and the said Rules, in the case of a layout project, the conveyance is limited to the structure of the building and not of the entire underlying land. The conveyance of the land comprising the entire layout would be permissible only after the last building in the layout has received an occupation certificate. He contended that in case of any

inconsistency between MOFA and RERA, the provisions of RERA, being a later Central legislation, would prevail. In support of his submissions, reliance was placed on the judgment of the Hon'ble Supreme Court in Dr. Abraham Patani & Anr. v. State of Maharashtra & Ors., (2023) 11 SCC 79.

11. Mr. Dani also referred to the Maharashtra Housing (Regulation and Development) Act, 2012, which came into force on 8th July 2014. He submitted that Section 19 of the said Act, which provided for conveyance of title, recognized the right of the developer to utilize the increased FSI within a layout even after the completion of individual buildings, provided the entire development of the layout was not complete. He contended that this recognition of the right to utilize increased FSI survives, and that the competent authority ought to have borne in mind these legislative provisions while deciding the application for deemed conveyance.

12. Learned Senior Advocate then submitted that although the competent authority recorded a finding in the impugned order that it had no jurisdiction to adjudicate upon rights relating to increased FSI and related matters, in the operative portion of the order, the authority proceeded to grant benefits relating to increased FSI to respondent No.2-Society. He contended that the operative part of the order was self-contradictory and unsustainable in law.

13. Dealing with the objection raised on behalf of respondent No.2 that the applicability of RERA and the Maharashtra Housing

Act, 2012 had not been specifically pleaded in the reply before the competent authority, Mr. Dani submitted that the petition contains various grounds which substantively raise these points. He contended that it was open to the petitioners to raise legal issues during the course of hearing, and the objection to such submissions being advanced at the stage of final arguments ought not to be entertained. He thus submitted that the impugned order deserves to be quashed and set aside.

14. Per contra, Mr. Anturkar, learned Senior Advocate appearing on behalf of respondent No.2-Society, supported the impugned order. He contended that the points relating to the applicability of the Maharashtra Housing (Regulation and Development) Act, 2012 had not been raised in the reply before the competent authority, and therefore, it was not permissible for the petitioners to raise such points for the first time during oral submissions before this Court. According to him, procedural fairness demands that points not raised before the lower authority cannot be entertained at a belated stage. He further submitted that the Maharashtra Housing Act, 2012, had already been repealed by the RERA Act with effect from 1st May 2016. The agreements for sale in the present case had been executed in the year 2008, and therefore, the provisions of the 2012 Act were not applicable. Dealing with the petitioners' reliance on RERA, Mr. Anturkar submitted that the argument based on Rule 9 of the Maharashtra Rules framed under RERA was misconceived. Rule 9 applies only to agreements executed under Section 17 of RERA. In the present case, the agreements were executed prior to the coming into force of RERA and are governed

by MOFA. Thus, Rule 9 of the RERA Rules has no application. He submitted that under Section 11 of MOFA, the competent authority is empowered to grant deemed conveyance in respect of the superstructure as well as the land underneath and appurtenant thereto. According to him, a clear distinction must be drawn between the land immediately underneath the building and other lands forming part of common amenities, open spaces, or lands reserved for FSI utilization.

15. In the present case, he pointed out, the entire constructed area measures approximately 85,926.373 square meters, and the land admeasures 44,282.52 square meters. The FSI has already been fully utilized. Therefore, the competent authority was correct in granting deemed conveyance in respect of the constructed area, as no unused FSI remained available for future exploitation by the developer. Accordingly, he submitted that the impugned order is in accordance with law and does not warrant interference.

16. In light of the submissions advanced on behalf of the petitioner, it becomes necessary to examine the statutory scheme of both the MRTP Act and the MOFA. The Maharashtra Ownership Flats Act, 1963 (known as MOFA) is a law made for protecting ordinary people who buy flats. It was passed by the State Government because, at that time, many promoters were taking advantage of home buyers. People would spend their entire life's savings to buy a flat, but even after paying the full price, they would not get a clear legal title to the property. Promoters would sometimes hand over the keys and let the buyers live in the flat, but would not transfer the legal ownership. They would continue

to control the land and the building. MOFA was made to stop this kind of wrongdoing. The law puts several duties on the developer, who is called the “promoter” in the Act, to protect the interests of flat purchasers. One very important duty is given in Section 11 of MOFA. This section says that after selling the flats, the promoter must transfer the ownership rights that is, the title to the land and the building to the body formed by the flat purchasers. This body could be a cooperative housing society, a company, or any other organization made by the flat owners.

17. The law does not leave the timeline for this transfer open-ended. Rule 9 of the Maharashtra Ownership Flats Rules, 1964 clearly says that if the sale agreement does not mention the time for handing over ownership, the promoter must transfer the property within four months from the date the society or other organization of flat buyers gets registered. In plain words, once the flat owners form a cooperative society, the promoter has no choice he must transfer the property to the society within four months. This is a strict requirement. It is not just a guideline or suggestion. It is a must.

18. The reason behind this strict rule is simple, a person who has paid the full amount and completed all formalities should not be left at the mercy of the promoter. The buyers should get clear ownership rights quickly, without unnecessary delay. Otherwise, the promoter would continue to have control over the property and the buyers would remain insecure. MOFA has been recognized by the Supreme Court, as a special law made for consumer protection. Once the flats are sold, the promoter must take all

steps necessary to complete his legal title and must then transfer that title to the buyers' society. After this transfer, the promoter's rights are only limited to those flats which are still unsold. Even for those unsold flats, the promoter becomes just another member of the society, like any other flat owner.

19. The duty of the promoter to transfer ownership is not just a private promise. It is a legal obligation under the Act. The lawmakers were very clear that after selling the flats and forming a society, the promoter must lose all power and control over the property. The flat purchasers must become full and final owners. If a promoter tries to hold on to control by delaying transfer or giving excuses like pending development he is going against the very purpose for which MOFA was made.

20. To further strengthen the rights of flat owners, the Government brought an amendment in 2008. This amendment added a new idea called "deemed conveyance". Under Section 11(3) to 11(5) of MOFA, if the promoter does not transfer ownership within the prescribed time, the flat purchasers' society can apply to a competent authority, usually the District Deputy Registrar. The authority will check the documents and hear both sides. If the society's claim is correct, the authority can pass an order and directly execute the conveyance deed, giving ownership to the society, even without the promoter's cooperation. This system shows that transferring ownership is not optional. It is a must. The rights of flat buyers would mean nothing if promoters could keep delaying conveyance by taking shelter under other laws like the MRTP Act. The Legislature wanted to give flat buyers a

clear and absolute right to become legal owners of their flats and the land attached to them, free from any delay, conditions, or commercial tactics of the promoter.

21. The Maharashtra Regional and Town Planning Act, 1966 (commonly called the MRTP Act) is a law made to ensure that the growth of cities and towns happens in an organized and planned manner. Before this law came into force, cities were growing in an unplanned way, and there was a need for a proper system to manage land use and development. The main purpose of the MRTP Act is to make sure that the use of land happens in a systematic way. It does this by creating regional plans and development plans which set out how different areas can be used for homes, shops, industries, gardens, schools, and so on. The law also controls who can build what and where, so that public facilities like roads, parks, and drainage are properly planned. In plain words, this law looks at the “big picture” of how cities should grow, so that there is order and not chaos. The MRTP Act is about city planning and development control. It is not about the private dealings between a promoter and a flat buyer. One important part of the MRTP Act is Section 20(4). This section says that if the Government wants to change or modify a regional plan, it can do so by issuing a notification in the Government Gazette after following certain steps like inviting objections and suggestions. Through this notification, the Government can allow special rules for particular projects.

22. At this stage, it is very important to understand that MRTP Act and MOFA are two different laws made for two very different

purposes. MRTP Act deals with how land is used, how cities are developed, and how big projects should be planned and carried out from the State's and public's point of view. It looks at the larger interest where roads, parks, hospitals, and schools should come, and how construction should happen according to development plans. MOFA, on the other hand, is about the rights of flat purchasers. It focuses on making sure that promoters deal fairly with people who buy flats that they give all necessary information, that the building is constructed as promised, and that the ownership of the flat (and land) is properly and timely transferred to the buyers' society. Thus, while the MRTP Act speaks about planning of the city, the MOFA speaks about protecting the home buyers. This difference is very important. Even if the promoter has permission under the MRTP Act to take ten years to complete the entire township, that does not mean he can hold on to the ownership of flats or land for so many years and refuse to transfer ownership to the flat buyers who have already paid the full amount and moved into their homes.

23. It is a well-settled rule in law known as generalia specialibus non derogant. It simply means that when two laws apply, and one law is general and the other law is special, the special law will override the general law, especially when the special law is made to protect a particular class of people. Here, even though MOFA was made in 1963 and MRTP Act in 1966, the MOFA Act has been amended many times (like in 1983, 1986, 2008, and so on) to strengthen the rights of flat purchasers. It continues to be a law that deals specially with promoter-buyer relations. The MRTP Act,

though also amended, has remained focused on town planning, and it does not deal with sale of flats or the obligations of promoters towards flat buyers. Thus, there is no real conflict between MRTP and MOFA. Even if the promoter has town planning permissions and an extended timeline under MRTP Act, when it comes to giving ownership to flat buyers who have already bought and occupied their flats, MOFA must prevail. The promoter cannot delay the conveyance by citing permissions or concessions under MRTP Act. The promoter's town planning rights under MRTP Act and his legal duty under MOFA are two different things. The town planning permission does not take away the flat purchasers' right to become owners under MOFA.

24. Having considered the arguments of both sides, this Court finds as follows: The two laws, MOFA and the MRTP Act, deal with different subjects. Both can work together without clashing with each other. When we read these two laws in a way that makes them both meaningful, it becomes clear that when it comes to issues between a promoter and flat buyers, MOFA must prevail. There is nothing in the MRTP Act, or even in the Section 20(4) notification the promoter is relying on, that says MOFA will not apply. The MRTP notification only gives the promoter more time of ten years to finish the township's construction and development work. It does not say anywhere that the promoter is allowed to hold on to the ownership of flats already sold and occupied. Thus, it is very much possible for the promoter to comply with MOFA by handing over ownership of the already completed and occupied buildings to the flat owners' society, and at the same time,

continue to enjoy the other development benefits under MRTP for the unfinished parts.

25. It is well settled if a law requires to do something in a particular way, one has to do it exactly that way and not in any other manner. MOFA rules state that the conveyance must be done within four months from the date of registration of the society. That is the only method and timeline allowed. The promoter cannot use an excuse of a government notification that talks about project completion to delay handing over ownership. If the law wanted promoters to delay conveyance till township completion, it would have clearly said so. But neither MOFA nor the MRTP Act say that. Therefore, both laws must be followed in their own areas and when it comes to promoter-flat buyer relations, MOFA is supreme.

26. In the case of *Lok Housing & Construction Ltd. v. Lok Everest Co-op. Housing Society, 2025 SCC Online Bombay 711*, a promoter made a similar excuse. He contended that conveyance should happen only after the whole layout was complete, and pointed to a agreement clause deferring conveyance. This Court rejected that argument and clearly held that Rule 9 of MOFA fixes a strict four-month time limit. Any part of the contract that tries to go against this rule is void. In that case, the Court noted that even after 30 years, the promoter had not given conveyance. Such delay was called “completely against the purpose of MOFA” and very unfair to flat owners. The Court held that no clause in the agreement can defeat a promoter’s legal duty under MOFA. If an agreement between buyer and promoter cannot postpone conveyance, then

surely a general government notification under MRTP, which does not even talk about flat buyers' rights, cannot be used to avoid the conveyance obligation. The *Lok Housing* judgment also held that Section 11 of MOFA is a very important safeguard. It is meant to end the promoter's control once the flats are sold. Allowing a promoter to keep ownership for ten years or more would defeat the very purpose for which MOFA was made.

27. The Supreme Court also gave a strong message in *Nahalchand Laloochand Pvt. Ltd. v. Panchali Co-op. Housing Society (2010) 9 SCC 536*. In that case, while dealing with the issue of parking spaces, the Court explained the larger scheme of MOFA. It said the promoter has the right to sell only flats and not the common areas, land, parking spaces, or other facilities. All those must be transferred to the society. The Supreme Court said very clearly that any arrangement made by the promoter with buyers that goes against MOFA is not valid. By the same reasoning, if a promoter tries to hide behind an MRTP permission to avoid handing over title, that too is not valid. The law (MOFA) must be followed as it is.

28. It is therefore clear that MOFA's provisions for protecting flat owners, especially timely transfer of ownership, must be strictly followed. Promoters cannot escape their duties under MOFA by pointing to other permissions, administrative timelines, or private agreements. Following the MOFA timeline is very important. If conveyance is delayed for ten years (or even longer if the township gets delayed), the society formed by the flat owners faces legal problems such as society's name does not get recorded as owner in

government records like property cards and revenue entries. Without ownership, the society cannot take loans for major repairs or redevelopment. Banks and financial institutions usually refuse loans if ownership is unclear. If the promoter becomes bankrupt or gets into legal trouble, creditors can try to claim the land because it is still in the promoter's name. The promoter can misuse the delay to use extra FSI or development rights without the society's knowledge or permission, affecting the rights of existing flat owners. This is why MOFA insists that the "entire land and building" must be transferred to the society once flats are sold. The promoter should retain only the unsold flats and nothing else. Timely conveyance gives full transparency, makes flat owners true legal owners, and protects their investment. It also empowers the society to manage the property, enforce their rights, and even compel the promoter to complete pending amenities if needed. Thus, this Court cannot support any interpretation that would leave flat owners vulnerable and the promoter in control even after flats are sold and occupied.

29. For all these reasons, this Court holds that:

(i) A notification under section 20(4) of the MRTP Act, 1966, cannot override or postpone the legal duty of conveyance under MOFA.

(ii) MOFA, being a special law made to protect flat buyers, will prevail over the general provisions of the MRTP Act.

(iii) The ten-year period given to the Petitioner (promoter) under Section 20(4) of the MRTP Act is only for completing

construction. It does not affect the promoter's duty to transfer ownership to flat buyers within four months of forming the society.

(iv) By the time the flat owners' society was formed, the Petitioner had already sold flats and handed over possession. Therefore, the obligation under MOFA became applicable, and the Petitioner had to transfer the title.

30. In light of the legal discussion and the parameters laid down hereinabove, it becomes necessary to scrutinize the facts of the present case in the context of the settled legal position. After carefully perusing the documents placed on record and giving anxious consideration to the rival submissions advanced by the learned Senior Advocates appearing for the parties, certain material aspects emerge which are undisputed and stand established.

31. Firstly, it is an admitted position that the agreements for sale between the petitioners, who are the promoters, and the individual flat purchasers were executed in the year 2008, much prior to the coming into force of the Real Estate (Regulation and Development) Act, 2016. Secondly, it is not disputed that respondent No.2, the cooperative housing society comprising the flat purchasers of Towers 1 to 8, came to be registered under the provisions of the Maharashtra Cooperative Societies Act, 1960 on 12th September 2011. Thirdly, it is also admitted that the possession of the flats in Towers 1 to 8 was handed over to the flat purchasers, and that the flat purchasers have been in occupation thereof since the

completion of construction of the said towers. Fourthly, it is not in dispute that despite the registration of the society on 12th September 2011, and despite the passage of considerable time thereafter, the petitioners did not execute the conveyance of title in favour of respondent No.2-society as required under Section 11 of MOFA read with Rule 9 of the MOFA Rules. These factual aspects, emerging from the record and admitted on both sides, form the basis for determination of the controversy in the present case.

32. The promoter tried to justify the delay in giving ownership to the society by pointing to two clauses (Clauses 6.3.1 and 6.3.2) in the sale agreements. According to the promoter, these clauses allowed them to delay conveyance for ten years after completion of Towers 1 to 8, or until the entire township project is completed, whichever happens earlier. In my opinion, this argument cannot be accepted. Because there is a clear rule under Rule 9 of the MOFA Rules, which lays down a strict time limit for the promoter to give ownership to the society. Rule 9 says that unless both sides specifically agree to a different period, the promoter must execute the conveyance within four months from the date of registration of the society.

33. The purpose of Rule 9 must be seen in the light of MOFA's overall goal which is to protect flat purchasers and ensure they get clear ownership without unnecessary delay. Rule 9 is not just a formality. It is a real protection created by law against endless delays by promoters. The four-month period is written into law to make sure that flat buyers are not left in uncertainty about who owns the land and the building where they live. A promoter cannot

escape this responsibility by simply pointing to private agreement clauses, especially if those clauses depend on uncertain future events like full township completion, which flat buyers themselves have no control over.

34. The use of the word “period” in Rule 9 of MOFA Rules is very important. In common understanding, a "period" means a fixed, definite block of time, like four months, six months, etc. It does not mean some vague or uncertain future event. This meaning fits the general rule in law: unless the context requires otherwise, words in a law must be given their natural, everyday meaning. Here, the word “period” is clear and plainit points to a definite timeline. The promoter’s argument that the conveyance can be delayed until ten years after completion of Towers 1 to 8, or till the entire township is done would destroy this certainty. It would replace a clear deadline with an uncertain, shifting future event. That is not allowed. Courts are not allowed to change or rewrite clear laws under the excuse of interpretation. If courts start allowing such changes, it would defeat the whole purpose for which MOFA was made to protect flat buyers. If the promoter’s argument is accepted, it would allow promoters to hold on to ownership forever, just by pointing to some incomplete work in the township. This would bring back the very problems MOFA wanted to prevent. Thus, the word "period" in Rule 9 must be understood as a definite, fixed time and not an open-ended condition. Any clause in a sale agreement (like Clauses 6.3.1 and 6.3.2) that tries to override this rule is void (meaning invalid) because it goes against the law.

35. Based on the above discussion, I am firmly of the opinion that an agreement clause (like Clauses 6.3.1 and 6.3.2) that says the promoter can delay conveyance until the full project is complete goes against Rule 9 of MOFA. Especially when most of the flat purchasers have already taken possession, have formed a registered society, and have fulfilled their obligations, the promoter cannot hide behind private clauses to delay conveyance. If I accept the promoter's argument, it would make the protection given to flat purchasers under MOFA meaningless, and would give complete, unregulated power to the promoter. That is not what the law allows. Therefore, the promoter was under a legal duty to execute the conveyance deed within four months from the date the society was registered (i.e., within four months from 12th September 2011). The promoter failed to do so. Thus, the application filed by respondent No.2-society under Section 11 of MOFA was legally correct.

36. The next contention of petitioners is based on Rule 9 of the Maharashtra RERA Rules which talks about how and when a promoter must transfer ownership (i.e., execute a conveyance) under Section 17 of the RERA Act. In plain words, Rule 9 says that if the project is a layout (meaning a bigger project with multiple buildings or wings), the promoter must first complete the entire layout and only then execute the conveyance of the common areas, land, and building. If it is just one building, the promoter must execute conveyance after the occupancy certificate for that building is obtained.

37. The promoter (petitioner) is trying to use this Rule to argue that only the building structure has to be conveyed not the land beneath it. The promoter can wait until the occupancy certificate for the last building in the layout is obtained. In my opinion, this argument made by the promoter cannot be accepted for multiple reasons. First, if we read Section 17 and Rule 9(2) together, it becomes obvious that when the law says "in the absence of local law," it is referring to cases where no state-specific law exists. In Maharashtra, there is already a local law the Maharashtra Ownership Flats Act, 1963 (MOFA). MOFA was already in place long before RERA came into existence. It has its own complete rules about when and how the promoter has to give conveyance to flat buyers. Thus, the phrase "local law" under Section 17 should be interpreted to mean MOFA in Maharashtra. In fact, the lawmakers who made RERA were very much aware that laws like MOFA already existed in different states. That is why, in Section 17, they clearly said that RERA timelines will apply only if no local law exists. So, the complete code of MOFA particularly Sections 10 and 11, and Rule 9 of the MOFA Rules still applies fully in Maharashtra. MOFA already provides a clear timeline to promoters for transferring ownership. Therefore, the promoter cannot rely on Rule 9 of RERA to delay conveyance where MOFA already applies. In the present case the flat buyers' society was formed way back in 2011. The agreements between promoter and flat buyers were signed under MOFA, much before the RERA Act and RERA Rules even came into force. Thus, the promoter cannot now fall back on RERA or its Rules to escape the duty he had under MOFA.

38. Moreover, on a careful reading of Section 17 of the RERA Act, it becomes clear that this section puts a responsibility on the promoter (promoter) to do two main things: First, to execute a registered conveyance deed that means to officially transfer ownership of the flat and a share in the common areas to the buyers' association (society). Second, to hand over possession of the flats, buildings, or plots, along with the documents of title and common areas, to the society within a specific time. This must be done according to the sanctioned plan and the deadlines set by the local laws. Now, the important point is this the proviso (the condition) in Section 17 says that only if there is no local law available, the promoter must carry out the conveyance within three months from the date of getting the occupancy certificate.

39. Similarly, sub-section (2) of Section 17 says that the promoter must hand over necessary documents and plans, and again, this is to be done as per local laws. If there is no local law, then he must do it within 30 days after getting the completion certificate. Thus, the structure of Section 17 itself shows that local law comes first, and the timeline under RERA applies only if no local law exists. In Maharashtra, Rule 9(2) of the Maharashtra RERA Rules has been made to support Section 17 of the Act. Rule 9(2) also talks about the promoter's obligation to convey title under Section 17.

40. Second, Section 17 of RERA itself talks about handing over not just the flat or building structure, but also the undivided share in the land and common areas. It does not say anywhere that only the building structure must be conveyed. Thus, the promoter's

argument that only the building and not the land should be transferred has no basis in the law. Third, if the promoter's interpretation is accepted that he can wait until the whole township is completed then flat owners will be left without ownership rights for an indefinite number of years. This would completely defeat the very purpose of MOFA, which was made to protect flat purchasers and to stop promoters from holding onto ownership unnecessarily. The law expects that once people have paid for their flats and taken possession, they should become legal owners without having to wait endlessly.

41. Thus, in plain words the promoter cannot delay conveyance by depending on RERA Rules because MOFA already applies. The promoter cannot claim that only the building needs to be conveyed and not the land. The promoter must convey both the flat, the share in the land, and the common areas to the society. Rule 9 of RERA does not change the promoter's legal duty which had already arisen under MOFA. Hence, the petitioner's argument based on Rule 9 of RERA Rules is rejected.

42. In the present case, a few important facts cannot be disputed that the agreements for sale were signed under Section 4 of MOFA. The agreements were signed before RERA came into force. The society (respondent No.2) was registered on 12th September 2011. The four-month period under Rule 9 of MOFA Rules for handing over ownership ended in 2011 itself. By the end of four months from the date of registration, the flat buyers' society had already earned the right to demand conveyance from the promoter under MOFA. This right, once earned under MOFA, cannot be taken away

by trying to apply the timelines of another law (RERA) that came into force later. If the promoter's argument is accepted that RERA timelines should now apply it would defeat the whole purpose of MOFA, which is a consumer-friendly law specially made to protect flat buyers. It would mean giving more time to promoters to delay conveyance, which is exactly what MOFA was made to prevent.

43. Thus, when it comes to providing the timeline for executing conveyance there is no conflict between MOFA and RERA. MOFA continues to apply, especially for agreements signed before RERA came into force. The language of Section 17 of RERA supports MOFA's application where a local law like MOFA already exists. Therefore, in my opinion, the promoter's argument cannot be accepted.

44. The next submission advanced on behalf of the petitioner pertains to the findings recorded by the Competent Authority in the impugned order. It was submitted that although the Competent Authority recorded a categorical finding that it did not possess jurisdiction to adjudicate upon the rights relating to increased Floor Space Index (FSI), nonetheless, in the operative part of the order, the Competent Authority proceeded to confer benefits arising from the alleged increased FSI in favour of respondent No.2-society.

45. Having given careful consideration to the said submission, in my opinion, the grievance raised by the petitioner merits acceptance. Once the Competent Authority, upon due examination, concluded that it lacked jurisdiction to adjudicate upon disputes or

rights pertaining to the increased FSI particularly in the light of notification under section 20(4) of MRTP Act, it was not open for the Competent Authority to thereafter, in the operative portion of the order, grant any relief to respondent No.2-society in relation to such increased FSI. It is well-settled that a statutory authority must act strictly within the bounds of its jurisdiction. If the Competent Authority in the peculiar facts of this case held that it had no power to decide upon rights concerning additional FSI, any directions issued in that regard in the operative part of the order would clearly be beyond the scope of its authority and would be legally unsustainable.

46. In my considered opinion, therefore, to the extent that the impugned order purports to confer or deal with rights arising from the alleged increased FSI, the same cannot be sustained. The proper remedy available to respondent No.2-society, in such circumstances, would be to approach the competent civil court by instituting appropriate proceedings seeking adjudication of its rights, if any, in relation to increased FSI and any related entitlements. Accordingly, this Court deems it appropriate to clarify that the rights, if any, of respondent No.2-society concerning the increased FSI and other related issues are kept expressly open to be agitated and adjudicated before a competent civil court in properly instituted proceedings, in accordance with law.

47. With respect to the petitioners' contention that, in view of the promulgation of the MHRDA Act, the provisions of the MOFA Act have been rendered inoperative by implied repeal, this Court has already considered such arguments in *Dosti Corporation,*

Mumbai v. Sea Flama Cooperative Housing Society Limited & Ors. (2016 (5) Mh.L.J. 102). In that decision, this Court authoritatively held that an implied repeal of an earlier law may be inferred only where a subsequent statute is expressly empowered to override the earlier statute and is so fundamentally inconsistent with the earlier statute that both cannot coexist harmoniously. It was further held that unless there is a direct inconsistency, both statutes are to be construed as operating together in their respective spheres. Accordingly, the right to obtain a conveyance deed under the MOFA Act is not a mere procedural right or a right to sue, but a statutorily vested substantive right conferred upon societies. Moreover, no notification in respect of Section 56 of the MHRDA Act has been issued by the State Government, and therefore, the operative provisions of the MOFA Act, including Section 11, remain in force and are capable of being enforced. In view of the said judicial pronouncement, the contention raised by the respondents that the petitioner is precluded from claiming relief under the MOFA Act on account of its repeal is devoid of merit and stands rejected.

48. Furthermore, it is necessary to add that the object and purpose of the MOFA Act are distinct from those of the MHRDA Act. While the MOFA Act primarily governs the rights and obligations of promoters and flat purchasers, ensuring statutory protection to purchasers in relation to conveyance and management of properties, the MHRDA Act is regulatory in nature and establishes authorities for regulation and promotion of the real estate sector. The two enactments operate in different fields, and

unless there is an express repeal or an irreconcilable conflict, the rights under the MOFA Act cannot be abrogated by implication. Consequently, the petitioner-society's application for deemed conveyance continues to be maintainable under Section 11 of the MOFA Act.

49. The consistent judicial refrain, as articulated in *Shimmering Heights CHSL & Ors. v. State of Maharashtra* (Writ Petition No. 3129 of 2016, decided on 6th April 2016), *Zainul Abedin Yusufali Massawala & Ors. v. Competent Authority* (reported in (2016) SCC OnLine Bom. 6028), *P.R. Enterprises & Ors. v. the Competent Authority* (Writ Petition No. 11251 of 2016, decided on 27th November 2018), and *Mehboob Ali Humza & Ors. v. District Sub-Registrar (3), Mumbai & Ors.* (Writ Petition No. 3129 of 2016, decided on 24th June 2016), is that writ proceedings under Article 226 of the Constitution of India are inherently ill-suited for resolving disputes involving competing claims to title, ownership, or proprietary development rights. The jurisdiction of the Competent Authority under Section 11 of the MOFA Act is narrowly circumscribed to operationalizing and effectuating the statutory and contractual duty to execute conveyance in favor of flat purchasers or their legal entity in accordance with the sanctioned plan and the terms recorded in the registered agreements.

50. The Competent Authority is not empowered to adjudicate intricate questions of title, ownership disputes, or competing development rights that require examination of complex evidence or third-party rights. These disputes necessarily fall within the

exclusive domain of the civil courts, where full-fledged trial, examination, and cross-examination of evidence can take place. Therefore, any grievance raised by the petioners alleging that the Respondent-society's claim exceeds its lawful entitlement must be agitated by way of a substantive civil suit. The existence of such competing claims does not, by itself, oust the society's right to seek deemed conveyance under Section 11 of the MOFA Act before the Competent Authority.

51. In view of the foregoing discussion and upon a careful consideration of the factual matrix and the applicable legal principles, I pass following order:

(i) The Writ Petition is partly allowed in the aforesaid terms.

(ii) The order dated 27th November 2018 passed by the Competent Authority granting deemed conveyance in favour of respondent No.2-society is upheld, except to the limited extent that the conferment of benefits relating to increased FSI is set aside.

(iii) The rights of respondent No.2-society in relation to increased FSI and related entitlements are kept expressly open to be adjudicated by the competent civil court in properly instituted proceedings.

(iv) The petitioners retain the liberty to agitate their substantive civil rights before the civil court in a civil suit.

(v) Rule is made absolute in the aforesaid terms.

(v) There shall be no order as to costs.

(vi) All pending applications, if any, stand disposed of.

(AMIT BORKAR, J.)

Note: This judgment is modified as per order dated 2 May 2025. Corrections in paragraph 2 are shown in italicize.