Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14690 OF 2022

SHABNOOR AYUB PATHAN

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Nusli Neville Wadia,
Administrator of Estate of Late
E.F. Dinshaw, having office at
C-1, Wadia International Center,
Pandurang Budhkar Marg,
Prabhadevi, Mumbai 400 025 … **Petitioner**

V/s.

1. **Ijimima – Imitation Jewellery Market Co-operative Society**,
   Raheja Metroplex, Link Road,
   Malad (West), Mumbai 400 064
2. **Ivory Properties and Hotels Ltd.**,
   having office at Construction House
   "A", First Floor, 24th Road, Khar,
   Mumbai 400 052
3. **Radhakrishna Properties Pvt. Ltd.**,
   having office at Construction House
   "B" First Floor, 24th Road, Khar,
   Mumbai 400 052
   And also at
   Raheja Centre Point, 294, C.S.T. Road,
   Near Mumbai University,
   Off. Bandra-Kurla Complex,
   Santacruz (East), Mumbai 400 098
4. **Ijimima – Imitation Jewellery Manufacturers Association**,
   Shop No.10, Nilanjana Coop.
   Housing Society Ltd., Marve Road,
   Malad (West), Mumbai 400 064

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5. **Building No.1**
6. **Building No.2**
7. **Building No.3**
8. **Building No.5**
9. **Building No.6**
10. **Building No.7**
11. **Building No.8**
12. **Building No.9**
13. **Building No.10**,
    Raheja Metroplex, Link Road,
    Malad (West), Mumbai9 400 0645
14. **The Competent Authority & District Deputy Registrar**, Cooperative
    Mumbai City (4), Bhandari Bank
    Building, 2nd Floor, P.L. Kale Guruji
    Marg, Dadar (West),
    Mumbai 400 028

... Respondents

WITH
WRIT PETITION NO.1584 OF 2024

Radhakrishna Properties Pvt. Ltd.,
a company registered under the provisions
of Companies Act, 1956, and having
office at Raheja Centre Point, 294,
CST Road, New Mumbai University,
Off. Bandra Kurla Complex,
Santacruz (East), Mumbai 400 098

... Petitioner

V/s.

1. **District Deputy Registrar**, Cooperative
   Mumbai City (4), Competent
   Authority, having his office at

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Bhandari Bank Building, 2nd Floor,
P.L. Kale Guruji Marg, Dadar (West),
Mumbai 400 028

2. **Ijimima Imitation Jewellery Market Co-operative Society**,
a Cooperative Society, duly registered under the provisions of Maharashtra Cooperative Societies Act, 1960, and having its registered office at
Raheja Metroplex, Link Road,
Malad (West), Mumbai 400 064

3. **Imitation Jewellery Manufacturers Association**, registered under the provisions of Society Registration Act, 1860 and having its registered office at Shop No.10, Nilanjana Coop. Housing Society Ltd., Marve Road,
Malad (West), Mumbai 400 064

4. **Nusli Neville Wadia**,
Administrator of Estate of Late
E.F. Dinshaw, having office at
C-1, Wadia International Center,
Pandurang Budhkar Marg,
Prabhadevi, Mumbai 400 025

5. **Ivory Properties and Hotels Ltd.**,
also a Company registered under the provisions of Companies Act, 1956, and having its office at
Plot No.C-30, Block-G, Opp. SIDBI,
Bandra Kurla Complex,
Bandra (East), Mumbai 400 051

… Respondents

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AND
WRIT PETITION NO.112 OF 2023

Ivory Properties and Hotels Ltd.,
also a Company incorporated under
the provisions of Companies Act,
1956, and having its office at
Plot No.C-30, Block-G, Opp. SIDBI,
Bandra Kurla Complex,
Bandra (East), Mumbai 400 051 … **Petitioner**

V/s.

1. **The District Deputy Registrar**,
   Cooperative Societies, Dadar,
   Mumbai City (4),
   (Competent Authority),
   Bhandari Bank Building, 2nd Floor,
   P.L. Kale Guruji Marg, Dadar (West),
   Mumbai 400 028
2. **Ijimima Imitation Jewellery
   Market Co-operative Society**,
   Raheja Metroplex, Link Road,
   Malad (West), Mumbai 400 064
3. **Radhakrishna Properties Pvt. Ltd.**,
   having office at Construction House
   "B" First Floor, 24th Road, Khar Road,
   Khar, Mumbai 400 052
4. **Nusli Neveille Wadia**,
   Administrator of Estate of Late
   E.F. Dinshaw, having office at
   C-1, Wadia International Center,
   Pandurang Budhkar Marg,
   Prabhadevi, Mumbai 400 025,
   Maharashtra & Registered Office
   at Churchgate, New Marine Lines,

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Mumbai 400 020

5. **Imitation Jewellery Manufacturers Association**,Shop No.10,
Nilanjana Coop. Housing Society Ltd.,
Marve Road, Malad (West),
Mumbai 400 064

6. **State of Maharashtra**,
Mantralaya, Mujmbai 400 202

7. **Union of India**,
Ministry of Law and Justice,
Aaykar Bhavan, Annex Building,
2nd Floor, New Marine Lines,
Mumbai 400 020

... Respondents

Mr. Navroz Seervai, Senior Advocate with Ms. Meena Doshi, Mr. Hasan Mushabber i/by Negandhi Shah & Himayatullah for the petitioner in WP/14690/2022.

Mr. Girish Godbole, Senior Advocate with Mr. Aniruth Haryeni, Mr. Hemanta, Mr. Rahil Shah i/by Veritas Legal for the petitioner in WP/112/2023 & for respondent No.2 in WP/146790/2022.

Mr. Bharat Zaveri with Ms. Aishwaryajeeta Tawde i/by Kanga & Co., for the petitioner in WP/15842/24 & for respondent No.3 in WP/14690/2022 & WP/112/2023.

Mr. Mayur Khandeparkar with Mr. Viraj Parikh i/by Mr. Dharmesh S. Jain for respondent No.1 in WP/14690/ 2022 & for respondent No.2 in WP/1584/2024 & WP/112/2023.

Ms. A.A. Nadkarni, AGP for State in WP/14690/2022.

Ms. Mamta S. Srivastava, AGP for State in WP/1584/2024.

Mr. P.V. Nelson Rajan, AGP for State in WP/112/2023.

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CORAM : AMIT BORKAR, J.

RESERVED ON : FEBRUARY 4, 2026.

PRONOUNCED ON : FEBRUARY 24, 2026

JUDGMENT:

1. The present writ petitions have been instituted by Nusli Neville Wadia, Radhakrishna Properties Pvt. Ltd., and Ivory Properties and Hotels Pvt. Ltd., challenging the Order of Unilateral Deemed Conveyance dated 29th August 2022 passed by the District Deputy Registrar, Co-operative Societies (4), Mumbai City, acting as the Competent Authority under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963. By the said order, the Competent Authority has granted deemed conveyance in favour of IJMIMA – Imitation Jewellery Market Co-operative Society in respect of a portion of land admeasuring 16,747.19 sq. meters together with RG area admeasuring 2,955.39 sq. meters, constituting 22% of the total area admeasuring 89,056 sq. meters forming part of land bearing CTS No. 1406/A/14 situated at Village Malad, Taluka Borivali, District Mumbai Suburban, located at Link Road, Malad (West), Mumbai .

2. The material facts according to petitioners giving rise to the present proceedings are as follows. Nusli Neville Wadia, acting as Administrator of the Estate of late Neville Wadia through Eduljee Framroze Dinshaw (hereinafter referred to as “Wadia”), was the absolute owner of land bearing CTS No. 1406A/14 admeasuring 89,056 sq. metres situated at Village Malad, Taluka Borivali,

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District Mumbai Suburban, at Link Road, Malad (West), Mumbai. The said property is hereinafter referred to as the "Larger Property". Being desirous of developing the Larger Property, Wadia entered into an Agreement dated 2nd January 1995 with Ivory Properties and Hotels Private Limited ("Ivory Properties"), whereby Ivory Properties was appointed as Project Co-ordinator for development of the said land. The Agreement contemplated phased development of the Larger Property in segments and not as one composite project. It was expressly agreed that Wadia would transfer title in respect of each segment directly to the purchasers along with delivery of physical possession. It was further provided that upon completion of each segment, title would be conveyed to the co-operative housing society or association of apartment owners formed for that particular segment. The transfer of title was thus envisaged to take place segment-wise and at different stages depending upon completion of construction.

3. The Agreement further stipulated that juridical possession of the land comprised in each segment would be handed over simultaneously with delivery of the completed building. In consideration thereof, Wadia was entitled to 12% of the gross receipts towards land and building sale proceeds, whereas Ivory Properties was entitled to 88%. Subsequently, by an Agreement dated 6th April 1995, Ivory Properties appointed RK Properties in its place to undertake development of the Larger Property. The said Agreement recorded that the units were to be sold on ownership basis and that the buildings constructed would ultimately be transferred to the co-operative society of purchasers. It further

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contemplated that Wadia would transfer full ownership of the respective segments directly to such society. RK Properties undertook responsibility for construction and handing over possession, while Wadia retained an independent obligation to transfer title simultaneously. Wadia accepted the said arrangement and executed a Power of Attorney in favour of RK Properties authorising it to perform obligations on his behalf. During the period 2000–2001, RK Properties proposed construction of Building No. 4 within the sanctioned layout of the Larger Property. On 30th April 2003, the Municipal Corporation of Greater Mumbai sanctioned a layout known as "Raheja Metroplex" comprising Building Nos. 1 to 10. The last amended sanctioned plan dated 11th February 2005 depicted the entire layout and recorded the FSI proposed to be utilised for all ten buildings. It is material to note that under the MOFA, once flats are sold on the basis of a sanctioned layout, such layout cannot be altered without consent of the flat purchasers.

4. Prior thereto, on 22nd November 2002, a MOU was executed between Imitation Jewellery Manufacturers' Association ("Association") and RK Properties, whereby it was agreed that units in Building No. 4 would be sold exclusively to members of the Association. A Supplementary MOU dated 15th April 2003 was thereafter executed. In or about 2005, Wadia and RK Properties executed multiple Agreements for Sale with members of the Association in respect of units in Building No. 4. The said Agreements were duly stamped and registered and were governed by MOFA. The Agreements reiterated the obligation of Wadia to

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transfer title in the segment of the Larger Property and recorded that 12% of the total consideration was payable to Wadia towards land consideration. It was further provided that 1.5% was payable to RK Properties upon transfer of title in favour of the society to be formed. The Agreements contemplated formation of a co-operative housing society and provided that Wadia would transfer title in the demarcated land simultaneously with handing over possession. Certain clauses, including Clauses 22 and 24, contemplated leasehold rights and postponement of conveyance until completion of the entire layout. However, such stipulations were inconsistent with MOFA and contrary to the earlier contractual framework. Construction of Building No. 4 was completed in the year 2005, whereupon an Occupation Certificate was issued and possession of the units was handed over to the purchasers. Thereafter, on 27th May 2009, IJMIMA Imitation Jewellery Market Co-operative Society ("Society") came to be incorporated.

5. From the period 2008–2009 onwards, disputes arose between Wadia, Ivory Properties and RK Properties, resulting in multiple suits pending before this Court. The Society and its members are not parties to the said proceedings. It is also an admitted position that for nearly two decades after completion of Building No. 4, no further development has taken place in respect of Building Nos. 1 to 3 and 5 to 10. On 24th December 2021, the Society issued a notice calling upon Wadia, Ivory Properties and RK Properties to execute conveyance in its favour. As the said demand was not complied with, the Society filed Application No. 153 of 2022 on 13th April 2022 before the District Deputy

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Registrar (4), Mumbai City, acting as the Competent Authority under Section 11 of MOFA, seeking unilateral deemed conveyance. The Society sought conveyance of 16,747 sq. metres of land proportionate to the FSI consumed for Building No. 4 together with 2,955 sq. metres representing 22% proportionate share of the recreational ground area, on the basis of the Architect's Certificate dated 6th April 2022 prepared in accordance with the sanctioned plan and Government Resolution dated 22nd June 2018. Public notice of the Application was issued on 29th April 2022. Wadia and Ivory Properties appeared in the proceedings, whereas RK Properties remained absent. Upon hearing the parties and considering the material placed on record, the Competent Authority, by Order dated 29th August 2022, allowed the Application and granted unilateral deemed conveyance in favour of the Society. The Competent Authority held, inter alia, that the Society had complied with statutory requirements; contractual clauses inconsistent with MOFA could not defeat statutory rights; development of remaining buildings could not indefinitely postpone conveyance; Wadia, Ivory Properties and RK Properties were promoters within the meaning of MOFA; consideration had been received by them; there was no misjoinder of parties; the Government Resolution dated 22nd June 2018 was applicable; no lease having been executed, freehold conveyance was warranted; and the Real Estate (Regulation and Development) Act, 2016 had no retrospective application. Being aggrieved by the said Order dated 29th August 2022, the Petitioners have preferred the present Writ Petitions challenging the grant of unilateral deemed

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conveyance.

6. Mr. Bharat Zaveri, learned Advocate appearing for the Petitioner in Writ Petition No. 15842 of 2024, submits that a plain reading of Paragraphs 4 and 14(A) of the Impugned Order shows that the same merely records issuance of notice and does not record due service of notice upon the Petitioner. It is contended that, in law, issuance of notice and valid service thereof are distinct and independent requirements. In the absence of a specific finding regarding proper service, the proceedings stand vitiated on account of violation of principles of natural justice. Learned counsel further submits that no Affidavit in Reply has been filed on behalf of the Office of the District Deputy Registrar (Respondent No.1) to demonstrate compliance with Rule 13(2) of the applicable Rules. It is also pointed out that Respondent No. 5 has not filed any Affidavit in Reply dealing with Exhibits 'F' and 'G' annexed to the Petition. According to the Petitioner, in the absence of pleadings supported by affidavit, the record does not establish compliance with mandatory procedural requirements.

7. It is further submitted that though the Society has placed on record a compilation of documents, the Deemed Conveyance Application appearing at Serial No. 13 is incomplete. Learned counsel contends that a statutory application must be complete in all material particulars as prescribed under the Rules, and any defect or incompleteness therein renders the proceedings initiated thereunder unsustainable. Reference is made to Form 'X' annexed in Writ Petition No.14690 of 2022, and it is submitted that the said Form is not in conformity with the format prescribed under Rule

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13(2). In the absence of any amendment to the Rules or lawful justification, service purportedly effected on the basis of a defective Form 'X' is stated to be invalid in law. Without prejudice to the aforesaid submissions, it is further urged that the notice was addressed to the old registered office of the Petitioner at Construction House-B, First Floor, 24th Road, Khar, Mumbai – 400052, despite the Petitioner having changed its registered office in May 2005. Service effected at an old address, despite change in the registered office, cannot be treated as valid or proper service in law.

8. Learned counsel further submits that the Petitioner was not served at its prevailing registered office. As per Form 'X', a copy of the Deemed Conveyance Application along with all annexures was required to be served upon the Petitioner, which requirement, according to the Petitioner, has not been complied with. It is contended that publication of public notice in a newspaper constitutes substituted service and cannot be resorted to as a matter of course. The Impugned Order itself records that Form 'X' and the Public Notice bear the same date, namely 25th April 2022. It is therefore submitted that Respondent No. 1 ought to have passed a specific order recording satisfaction and permitting substituted service before resorting to newspaper publication. Mere publication, without prior satisfaction and order, cannot amount to compliance with Rule 13(2). Reliance is placed on the Judgment dated 27th February 2024 passed by this Court in *Shree Giridhar Enterprise v. Shyam Sarita Co-operative Housing Society Ltd.*, wherein it has been held that substituted service must be

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preceded by due satisfaction and an appropriate order. On this basis, it is submitted that non-compliance with the mandatory procedure vitiates the proceedings. In light of the aforesaid submissions, learned counsel for the Petitioner prays that: (a) the Impugned Order be quashed and set aside; (b) Deemed Conveyance Application No.153 of 2022 be restored to the file of Respondent No. 1; (c) the Petitioner be granted liberty to file a Reply on merits; and (d) Respondent No. 1 be directed to decide the Deemed Conveyance Application afresh after granting an opportunity of hearing to all concerned parties within such period as this Court may deem fit and proper.

9. Mr. Godbole, learned Senior Advocate appearing for the Petitioner in Writ Petition No. 112 of 2023 and for Respondent No. 2 in Writ Petition No. 14690 of 2022, submits that the District Deputy Registrar ("DDR") lacked jurisdiction to grant a conveyance of sale contrary to the Agreement executed under Section 4 of the MOFA. It is contended that the statutory authority cannot confer any right higher or different from that contemplated under the Section 4 MOFA Agreement executed between the parties.

10. Learned Senior Counsel submits that Wadia, as owner of the property, had appointed the Petitioner as Project Co-ordinator under an Agreement dated 2nd January 1995. Clause 2 of the said Agreement specifically contemplated grant of a lease in respect of the immovable property, the terms whereof were set out in the draft annexed thereto. Further, under Clause 3(a), the Owner expressly retained title to the immovable property. It is therefore submitted that the foundational contractual document

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contemplated only leasehold rights and did not envisage conveyance of absolute ownership. It is further submitted that under the Agreement for Sub-Lease dated 6th April 1995 executed by the Petitioner in favour of RK Properties, there was a clear stipulation for grant of a sub-lease. Clause 1(1) thereof expressly provided that only a sub-lease was to be granted to the developer, namely RK Properties. According to the Petitioner, the contractual arrangement consistently proceeded on the basis of leasehold rights.

11. Learned Senior Counsel further submits that the MOU dated 22nd November 2002 executed between RK Properties and IJMIMA Imitation Jewellery Market Co-operative Society Limited ("IJMA") specifically contemplated grant of a long-term lease. Clause 8(g) recorded that a long-term lease at a nominal rent of Rs. 1/- per annum would be granted. Clause 18 provided for grant of a long-term lease in respect of land admeasuring not less than 6900 sq. metres in favour of the Association of Unit Holders, and Clause 19 reiterated that grant of lease constituted a condition of the contract. The Supplementary MOU dated 15th April 2003 modified the area to not less than 7240 sq. metres but retained the stipulation regarding grant of long-term lease. It is therefore submitted that the MOU and Supplementary MOU, forming the foundation of the contractual relationship, consistently contemplated only leasehold rights.

12. It is submitted that Recital V of the Section 4 MOFA Agreement expressly refers to and incorporates the terms of the MOU and Supplementary MOU. Clauses 22 and 24 of the said

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Agreement crystallised the right of the Association of Flat Purchasers to obtain only a lease for a period of 999 years. Clause 28 is stated to restrict the rights of flat purchasers. Even Clause 41(d), relied upon by the Society, contemplates transfer of demarcated land "in the manner aforesaid", thereby incorporating the concept of lease and not an outright conveyance of sale. On this basis, it is contended that the DDR could not have granted freehold conveyance contrary to the express contractual stipulations.

13. In support of the aforesaid submissions, reliance is placed upon the judgment of this Court in *A. H. Wadia Trust v. State of Maharashtra,* (2023) 5 BCR 418, wherein it has been held that the authority cannot grant anything beyond what is contemplated under the Section 4 MOFA Agreement. Reliance is also placed on *Shanti Prakash v. District Deputy Registrar,* 2024 SCC Online Bombay 2899, wherein it has been reiterated that deemed conveyance must strictly conform to the Section 4 MOFA Agreement. Further reliance is placed on *New Sonal Industries Premises Ltd. v. District Deputy Registrar,* 2025 SCC Online Bombay 391, wherein this Court has held that where the agreement contemplates assignment of leasehold rights, the competent authority ought to grant only assignment of leasehold rights and not freehold conveyance.

14. Learned Senior Counsel further submits that there has been deliberate suppression of material documents, namely the MOU dated 22nd November 2002 and the Supplementary MOU dated 15th April 2003, which were not annexed to the Deemed

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Conveyance Application despite being integral to the Section 4 MOFA Agreement. It is submitted that under the MOU, the total consideration was fixed at Rs. 43,38,18,000/- and IJMA had paid 10% earnest money. Clauses 10, 11, 14 and 17 imposed obligations upon IJMA to nominate its members and make balance payments. The transaction, according to the Petitioner, was in the nature of a package construction contract wherein IJMA effectively stepped into the role of a developer and assumed obligations akin to a promoter under MOFA. Suppression of these documents, it is contended, prevented the DDR from appreciating the true contractual position and resulted in an erroneous order. It is further submitted that there was deliberate suppression regarding the change of registered office address of Radhakrishna. According to the Petitioner, IJMA was aware that RK Propertieshad shifted its registered office from Khar to Kalina, Santacruz, as early as May 2005. Reliance is placed on a letter dated 11th May 2005 issued by IJMA to RK Propertiesat its Kalina address. It is also pointed out that the Kalina address was reflected in the application for registration of the Society. Despite such knowledge, notice was issued to the old address, thereby depriving the Petitioner of an effective opportunity to contest the proceedings.

15. The Petitioner further submits that it was not a party to the MOU or the Supplementary MOU and is presently engaged in litigation with RK Properties before this Court. In the absence of disclosure of the said documents, the Petitioner was unable to draw attention to the clauses restricting the rights of flat purchasers to leasehold rights. It is therefore contended that the

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conduct of the Society amounts to suppression of material facts and fraud, thereby vitiating the Impugned Order.

16. Lastly, it is submitted that Respondent No. 2 Society is not entitled to seek deemed conveyance under the scheme of MOFA. According to the Petitioner, the statutory framework contemplates formation of a housing society or a premises society. Respondent No. 2 is stated to be registered as a general society under Rule 10(9)(c) of the Maharashtra Co-operative Societies Rules, 1961. It is contended that the expression "housing society" under Section 2(16) of the Maharashtra Co-operative Societies Act, 1960 refers to tenant ownership or tenant co-partnership societies as contemplated under Rule 10(5). The expression "co-operative society" used in MOFA, it is submitted, cannot be interpreted to include a general society not falling within the definition of a housing society. A conjoint reading of Sections 10 and 11 of MOFA with Section 27 and the Schedule to the Maharashtra Apartment Ownership Act, 1970, according to the Petitioner, indicates legislative intent to vest such rights only in a housing society or apartment owners' association of that nature. Hence, Respondent No. 2, being a general society, cannot claim deemed conveyance under MOFA. In view of the aforesaid submissions, it is contended that the Impugned Order granting freehold conveyance is contrary to the contractual framework, the statutory scheme and binding judicial precedents, and is therefore liable to be set aside.

17. Mr. Navroz Seervai, learned Senior Advocate appearing for the Petitioner in Writ Petition No. 14690 of 2022, submits that the principal issue arising in the present Petition concerns the

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interpretation and application of Sections 11 and 16 of the MOFA and the Government Resolution dated 22nd June 2018. It is contended that the findings recorded in the impugned order are contrary to the statutory mandate contained in Section 11(1) of MOFA, which requires the promoter to execute all relevant documents in accordance with the agreement executed under Section 4 and, where no period is specified, within the prescribed period. According to the Petitioner, the statutory language being clear and unambiguous must receive its plain and literal meaning. The contention of the Society that a purposive interpretation ought to be adopted on the ground that MOFA is a beneficial legislation is stated to be misconceived. It is submitted that where the statutory language is explicit, legislative intent must be gathered from the words employed, and the contract executed between the parties in conformity with law remains binding, particularly in view of the mandate under Section 11(1) requiring conveyance to be executed strictly in accordance with the Section 4 Agreement.

18. Learned Senior Counsel submits that the parent Agreement dated 2nd January 1995, particularly Clause 2 thereof, has been completely ignored by the Deputy District Registrar. The said clause expressly provides that an essential term of the Agreement was grant of a lease of the immovable property in favour of the Company, on terms and conditions set out in the annexed form. It is therefore submitted that the contractual arrangement from inception contemplated grant of leasehold rights and not absolute conveyance. In furtherance thereof, a Sub-Lease Agreement dated 6th April 1995 was executed. It is also submitted that the MOU

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dated 22nd November 2002 and the Supplementary MOU dated 15th April 2003 executed between Respondent No. 3 and Respondent No. 4 Association contain express stipulations regarding grant of lease in respect of the scheduled land.

19. In the aforesaid background, learned Senior Counsel submits that the contention of the Society that Clauses 3(d), 8, 9, 11 and 12 of the Agreement require conveyance of each building on demarcated land is erroneous. According to the Petitioner, the expression "respective segments" occurring in Clause 3(d) must be read conjointly with Schedules I and II of the Agreement. A combined reading of the relevant clauses, it is submitted, clearly demonstrates that the intention of the parties was that transfer of title would be effected only in favour of the Apex Body upon completion of the entire development project. It is further submitted that the Section 4 MOFA Agreement expressly refers to and incorporates the parent Agreement dated 2nd January 1995, and consequently the Respondent Society remains bound by the contractual stipulation that only a lease would be executed in favour of the Apex Body.

20. It is further submitted that Section 11(1) of MOFA prescribes the stage and time at which the Apex Society can claim conveyance. In support of this submission, reliance is placed upon the judgment of this Court in *Harish Vijaysingh Bhatia v. District Deputy Registrar,* 2025 SCC Online Bom 1981, particularly paragraph 66 thereof, which according to the Petitioner supports the contention regarding the stage at which conveyance may be sought.

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21. The Petitioner further submits that Section 16 of MOFA has been completely overlooked by the Competent Authority. It is contended that detailed submissions based on Section 16 were made in the reply as well as in written submissions, yet the impugned order does not advert to the same. Section 16, it is submitted, provides that the provisions of MOFA, except where otherwise provided, shall be in addition to the provisions of the Transfer of Property Act, 1882 and shall operate notwithstanding anything contrary contained in any contract. According to the Petitioner, the said provision does not override the Transfer of Property Act but supplements it. Consequently, the Competent Authority was required to consider Section 54 of the Transfer of Property Act while determining the nature of rights liable to be conveyed.

22. It is submitted that the Government Resolution dated 22nd June 2018 is squarely applicable to the present case. However, the finding of the Competent Authority that the Society had complied with the said Government Resolution is stated to be erroneous. It is contended that the Authority failed to consider clauses (iv)(1) and (iv)(2) thereof, which provide that where multiple buildings exist on a single plot with separate societies and construction of certain buildings remains incomplete, deemed conveyance in respect of completed buildings ought to be restricted to proportionate undivided share in occupancy rights based on plinth area, ground coverage and appurtenant land, including common services, roads and open spaces. It is further submitted that the Government Resolution provides that where TDR is utilised, conveyance must

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be granted with reference to plinth area and appurtenant land.

23. Learned Senior Counsel submits that grant of conveyance under Section 11 necessarily comprises two components, namely the land and the building constructed thereon. As regards the land component, it is contended that a harmonious reading of all relevant agreements demonstrates that, at the highest, only a deemed lease could have been granted and not a freehold conveyance. It is therefore submitted that the Competent Authority lacked jurisdiction to grant freehold conveyance in derogation of contractual stipulations.

24. The reliance placed by the Society on the judgment in *Sarayu Properties & Hotels Pvt. Ltd. v. District Deputy Registrar* and the judgment in *Harish Vijaysingh Bhatia* is stated to be misplaced, as according to the Petitioner neither decision considers the interplay between Section 16 of MOFA and Section 54 of the Transfer of Property Act, nor the Government Resolution dated 22nd June 2018. It is further submitted that reliance on the judgment of the Supreme Court in *Arun Kumar H Shah (HUF) v. Avon Arcade CHS Ltd* (2025) 7 SCC 249 is misconceived. Reference is made to paragraph 25 of the said judgment, wherein the Supreme Court has held that proceedings under Section 11 are quasi-judicial and summary in nature and do not conclusively determine title. Paragraph 24, it is submitted, emphasises that the Competent Authority must record reasons while passing an order under Section 11(3). According to the Petitioner, the impugned order lacks reasons in respect of compliance with the Government Resolution dated 22nd June 2018, consideration of the Architect's

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Certificate, and applicability of Section 16 and the contractual clauses governing the nature and timing of conveyance.

25. As regards the building component, it is submitted that the Resolution mandates that conveyance cannot exceed the plinth area and appurtenant land. According to the Petitioner, the Competent Authority has failed to apply its mind to the plinth area of Building No. 4 and the corresponding appurtenant land. The grant of 16,737.19 sq. metres as freehold land is therefore stated to be legally and factually unsustainable. It is further submitted that determination of the recreational ground area is erroneous, particularly in view of the MOU which provides for demarcated land admeasuring not less than 6900 sq. metres. The Agreement for Sale is also stated to contemplate transfer of demarcated land only on lease basis.

26. The Petitioner further submits that the Society has made misleading statements in its Application, including an incorrect assertion that Building Nos. 5 to 14 are constructed buildings. It is contended that the Society falsely claimed compliance with all statutory requirements despite deficiencies, including failure to produce registered agreements with each unit holder and suppression of the MOU and Supplementary MOU. The reliance placed on Rule 13(4), according to the Petitioner, is misconceived and constitutes an attempt to justify suppression of material documents. It is submitted that the law is well settled that suppression of material facts vitiates judicial proceedings.

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27. In support of the aforesaid contention, reliance is placed upon the judgments of the Supreme Court in *Bhaskar Laxman Jadhav v. Karamveer Kakasaheb Wagh Education Society* 2013(11) SCC 531, *Prestige Lights Ltd. v. State Bank of India* 2007(8) SCC 33*, and Ramjas Foundation v. Union of India,* 2010(4) SCC 3 which lay down that suppression of material facts and false statements on oath disentitle a party from equitable relief. On the basis of the aforesaid submissions, it is prayed that the Petition be allowed and the impugned order dated 29th August 2022, together with the certificate of even date, be quashed and set aside.

28. Mr. Mayur Khandeparkar, learned Advocate appearing for Respondent No. 1 in Writ Petition No. 14690 of 2022 and for Respondent No. 2 in Writ Petition No. 1584 of 2024 and Writ Petition No. 112 of 2023, submits that All the Petitioners have contended that Clause 22 of the MOFA Agreements for Sale contemplates grant of a perpetual lease and not execution of conveyance. He submits that such contention is contrary to the settled position of law and is liable to be rejected.

29. Referring to the Agreement dated 2nd January 1995 executed between Wadia and Ivory Properties, he submits that Clause 3(d) thereof records that Wadia agreed to transfer title in the different segments of the Larger Property directly to the respective purchasers along with physical possession. Clause 8 further provides that Wadia would transfer title in the segments of the Larger Property directly in favour of the co-operative housing society or apartment owners' association, and Ivory Properties

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would correspondingly transfer title in the buildings constructed thereon to the same entity. Clause 12 records the revenue-sharing arrangement, under which Wadia was entitled to 12% of the gross receipts towards the price of land and sale of buildings. According to him, these provisions clearly indicate an obligation to transfer title and not merely leasehold rights.

30. He further relies upon the Agreement for Sub-Lease dated 6th April 1995 executed between Ivory Properties and RK Properties. It is submitted that Clause 6 thereof records the nature of the development project and provides that units would be sold by RK Properties on ownership basis, that the buildings constructed would ultimately be transferred to the co-operative society of purchasers, and that Wadia would transfer full ownership of the respective segments of the Larger Property directly in favour of the co-operative society. Clause 11 contemplates that RK Properties would have an independent obligation to construct and hand over possession of the buildings, whereas Wadia would independently transfer title and juridical possession of the land comprised in the relevant segment simultaneously with delivery of possession. According to him, the contractual framework consistently envisages transfer of title.

31. He submits that Wadia's obligation to convey the different segments of land, as contained in the aforesaid agreements, has been reiterated and incorporated in Recital h(vi) and Recital (i) of the MOFA Agreements for Sale. It is further submitted that specific clauses in the MOFA Agreements for Sale also provide for transfer of title, including Clause 4(A)(i), which records that 12% of the

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consideration represents contribution towards transfer of interest in the land, and Clause 41(d), which expressly records that Wadia shall transfer title in the land. He further submits that Wadia is in direct privity with the MOFA Agreements for Sale, being a signatory thereto and having received 12% of the total consideration from each unit purchaser. It is therefore contended that Wadia is a promoter within the meaning of MOFA, having caused and facilitated construction of Building No. 4, and as such was obligated to convey his right, title and interest in the land. According to him, Wadia cannot be permitted to fragment such title or retain ownership while conveying limited rights. He submits that Section 11 of MOFA obligates the promoter to convey whatever right, title and interest he possesses in the property to the society, and does not contemplate fragmentation of ownership rights. Reliance is placed on Clause 13 of Form V under the MOFA Rules, which is stated to possess statutory character and mandates conveyance of the promoter's entire interest. It is contended that any contractual clause contrary to this statutory principle must be disregarded by the Competent Authority. In support, reliance is placed upon the decisions in *Sarayu Properties v. DDR and Anr.* dated 2nd July 2024 in Writ Petition No.10404 of 2024 and *Haresh Bhatia v. Vijay CHS Limited* 2025 SCC Online Bom 1981, wherein this Court has affirmed the aforesaid interpretation. On the aforesaid basis, he submits that Wadia, being a promoter under MOFA, cannot be permitted to fragment his title and convey only leasehold rights while retaining ownership of the land.

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32. He further submits that the Deemed Conveyance Application is not premature. The contention of the Petitioners that, under Clause 22 of the MOFA Agreements for Sale, conveyance could arise only after completion of the entire layout is stated to be misconceived. According to him, it is settled law that conveyance cannot be indefinitely delayed on the pretext of future construction. It is submitted that Building No. 4 was completed in the year 2005 and no further construction has taken place for nearly two decades thereafter. Disputes between Wadia, Ivory Properties and RK Properties have been pending since 2008. In these circumstances, he contends that further development of the Larger Property is not imminent within the reasonably foreseeable future. In the aforesaid factual background, he submits that promoters cannot indefinitely postpone conveyance on the ground that the larger layout remains incomplete, as such conduct would defeat the statutory scheme of MOFA.

33. He further submits that the grievance of the promoters regarding alleged prejudice to their right to carry out additional construction is misconceived. Firstly, no additional construction is reflected in the sanctioned plan pertaining to the Subject Property and Building No.4. Secondly, any such grievance, even if available, can only be agitated in appropriate civil proceedings. Reliance is placed on the judgment in PR Enterprises v. Competent Authority. He submits that even the contractual documents do not contemplate postponement of conveyance until completion of the entire layout, but rather provide for segment-wise conveyance upon completion of individual buildings. It is submitted that the

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inter se agreements between Wadia, Ivory Properties and RK Properties clearly contemplate conveyance of different segments as and when each building is completed, and not after completion of the entire development. In this regard, reliance is placed on the Agreement dated 2nd January 1995, wherein Clause 9 records that development of the Larger Property was to occur in separate segments and that transfer of title would accordingly take place at different points in time. Clause 11(c) further provides that Wadia would transfer title and juridical possession of the land comprised in the concerned segment simultaneously with handing over of the completed building.

34. Similarly, under the Agreement for Sub-Lease dated 6th April 1995, Clause 11 stipulates that Wadia would independently transfer title and juridical possession of the land comprised in the relevant segment simultaneously with delivery of possession by RK Properties. He submits that these obligations were expressly reiterated and incorporated in Recital h(vi) and Recital (i) of the MOFA Agreements for Sale, thereby confirming the segment-wise conveyance structure.

35. He further submits that the Competent Authority has granted conveyance for the correct area after applying the Government Government Resolution dated 22nd June 2018, and that the MOUs between IJMIMA Association and RK Properties do not restrict the entitlement of the Society. At the outset, it is contended that any dispute regarding excess area granted under deemed conveyance raises questions of title and entitlement which cannot be adjudicated in writ jurisdiction and must be agitated in a civil suit.

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Reliance is placed upon the decision in *Zainul Abedin v. Competent Authority*.

36. Without prejudice to the aforesaid, he submits that Clause 18 of the MOU and Clause 7 of the Supplementary MOU merely prescribe a minimum area, as evidenced by the expression "not less than", and do not impose any ceiling or restriction on entitlement to conveyance. He submits that the sanctioned plans were obtained after execution of the MOU and Supplementary MOU, and the MOFA Agreements for Sale were executed thereafter. Consequently, the MOFA Agreements, having statutory flavour and being later in point of time, govern the rights of the parties and do not restrict the area for conveyance.

37. It is further submitted that the MOUs stand superseded by the MOFA Agreements for Sale, and the rights of unit purchasers must be determined on the basis of the latter.

38. He submits that though it was argued that a specific plan defining the segment to be conveyed was annexed to the MOFA Agreements, no such plan forms part of the registered agreements.

39. In any event, and without prejudice, he submits that the Competent Authority has correctly applied the 2018 Government Resolution. The last sanctioned plan dated 11th February 2005 contemplates ten buildings and provides the breakup of proposed built-up area. He submitted an Architect's Certificate dated 6th April 2022 calculating entitlement based on the built-up area of Building No. 4 vis-à-vis the total proposed built-up area. Based on the said certificate, conveyance of 22% of the Larger Property was

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granted, which is in accordance with Clause B(iv)(1) of the 2018 Government Resolution .

40. It is submitted that none of the Petitioners disputed the validity of the last sanctioned plan, the correctness of the Architect's calculations, or the conformity of the granted area with the 2018 Government Resolution . He, therefore, contends that the area granted under deemed conveyance is correct.

41. He further submits that joining Building Nos. 1 to 3 and 5 to 10 as proforma parties does not render the Application defective. Since the Society was not aware of the exact status of third-party rights, such impleadment was made by way of abundant caution. It is submitted that the said error, if any, was rectified before the Competent Authority when it was clarified that the other buildings were not constructed. The Competent Authority has recorded this fact in paragraph 14(h) of the impugned order. Hence, no prejudice survives. He contends that misjoinder of parties is at best a procedural defect and cannot be a ground to set aside an order granting unilateral deemed conveyance, particularly when no necessary party is shown to have been omitted.

42. As regards the contention that the Society is not registered as a housing society, he submits that such distinction is irrelevant under MOFA. Section 10 of MOFA does not prescribe the nature of co-operative society to be formed and even contemplates registration of a company. Further, since the definition of "flat" under MOFA includes shops, offices and showrooms, not every society formed under MOFA can be a housing society within the

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meaning of the Maharashtra Co-operative Societies Act. Consequently, a general society cannot be excluded from seeking deemed conveyance.

43. He further submits that the allegation of violation of principles of natural justice qua RK Properties is untenable. According to him, RK Properties was duly served with notice in accordance with law. Notice was issued to RK Properties at the address recorded in the MOFA Agreements for Sale and was returned with the endorsement "Left Without Instructions". This, according to him, constitutes sufficient attempt at service. It is further submitted that under Section 27 of the General Clauses Act, service by registered post at the correct address raises a presumption of due service. In addition, public notice was published in newspapers. Hence, the contention that RK Properties was not served is without merit. He submits that reliance placed on communications showing a Kalina address is irrelevant, as no formal intimation was given that the address recorded in the MOFA Agreement had ceased to be operative. Existence of another address does not invalidate service at the contractual address. Reliance is placed on the decision in PR Enterprises v. Competent Authority, wherein this Court held that service at the address mentioned in the MOFA Agreement coupled with public notice is sufficient compliance. Without prejudice, he submits that even assuming invalid service, no case for setting aside the impugned order is made out for additional reasons. It is submitted that Ivory Properties and RK Properties belong to the same Raheja group and are controlled by the lineal descendants of Lachmandas Raheja. RK

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Properties is stated to be a special purpose vehicle created for development of the Larger Property, as reflected in the relevant contractual documents. Since Ivory Properties was served and participated in the proceedings, and both entities espouse identical interests, he contends that effective representation existed before the Competent Authority. He further submits that mere technical violation of natural justice is insufficient to invalidate an order unless substantial prejudice is demonstrated. Reliance is placed upon the judgment of the Supreme Court in *State of Uttar Pradesh v. Sudhir Kumar Singh*. It is pointed out that all grounds raised by RK Properties have also been urged by Wadia and Ivory Properties and were considered by the Competent Authority. Therefore, no prejudice has been caused. He further submits that RK Properties has already been terminated by Wadia and has only filed a suit for specific performance in 2009 without obtaining any effective interim relief. Accordingly, RK Properties cannot claim any subsisting development right warranting interference. He denies the allegation of suppression of the MOU dated 22nd November 2002 and the Supplementary MOU dated 15th April 2003 and submits that the allegation of fraud is wholly unfounded.

44. In response, he submits that the sanctioned plans and MOFA Agreements were executed subsequent to the MOUs; that rights and obligations are governed by the Section 4 MOFA Agreements for Sale, which supersede earlier arrangements; that the MOUs were executed between RK Properties and the Association and not with the Society or individual purchasers; and that proceedings under Section 11 must conform to the prescribed format under the

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Rules and do not require annexing all documents. It is further submitted that the MOUs are referred to in the recitals of the MOFA Agreements and were therefore within the knowledge of Wadia, who failed to invoke the procedure under Rule 13(4) for production of documents. Consequently, the plea of suppression is untenable. He therefore submits that the allegation of fraud and suppression is baseless and cannot be invoked in the absence of any material foundation. In view of the aforesaid submissions, he prays that the present Writ Petitions be dismissed with costs.

Legal framework of MOFA

45. In order to effectively address the objections raised by the promoters, it becomes necessary to examine the statutory scheme of the Maharashtra Ownership Flats Act, 1963, together with the Rules framed thereunder, in a comprehensive manner. The controversy cannot be resolved by placing reliance upon isolated clauses contained in private contractual arrangements. The issue must be determined in the light of the legislative intent and the manner in which the statute regulates and structures the legal relationship between the promoter and the flat purchaser.

46. The Act was enacted with the object of regulating the promotion of construction, sale, management and transfer of flats on ownership basis within the State of Maharashtra. The Statement of Objects and Reasons indicates that the legislation was introduced to curb prevailing malpractices and abuses on the part of promoters. Prior to the enactment of MOFA, flat purchasers were frequently left without clear title, without the formation of a

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cooperative society, and without execution of conveyance of the underlying land. The statute was therefore intended to remedy this imbalance and to secure protection to flat purchasers by imposing defined statutory obligations upon promoters.

47. Under Section 2(c) MOFA, the term "Promoter" has been defined as under:

> "(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, cooperative 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;"

48. Section 4 mandates entering into an agreement with flat purchaser and registration thereof by a promoter before accepting advance payment. Section 4 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

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under the Registration Act, 1908 (hereinafter in this section referred to as “the Registration Act, 1908)” and such agreement shall be in the prescribed form.

(1-A) The agreement to be prescribed under 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 the 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; and

(viii) percentage of undivided interest in the common areas and facilities appertaining to the flat agreed to be sold.

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(ix) statement of the use for which the flat is intended and restriction on 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;"

49. Section 10 MOFA imposes obligation on the promoter to take steps for formation of cooperative society or company and provides thus:

"10. Promoter to take steps for formation of cooperative society or Company.—(1) As soon as a minimum number of persons required to form a cooperative 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 a cooperative 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 cooperative 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 cooperative Societies Act, 1960 (Mah. Act 24 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:

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> 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."

50. Section 11 MOFA, which is the crucial provision for determination of issue in the present case, imposes an obligation on the promoter to convey his title in the land and building in favour of the Cooperative Society, Company or Association of apartment owners. It reads as under:

> "11. Promoter to convey title, etc. and to execute documents, according to the 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 cooperative 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).

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(3) If the promoter fails to execute the conveyance in favour of the cooperative 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 cooperative society or, as the case may be, the Company or the association of apartment owners may, make an application, in writing, to the concerned competent authority accompanied by the true copies of the registered agreements for sale, executed with the promoter by each individual member of the Society or the Company or the association, who have purchased the flats and all other relevant documents (including the occupation certificate, if any), for issuing a certificate that such society, or as the case may be, company or association, is entitled to have an unilateral deemed conveyance, executed in their favour and to have it registered.

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

(5) On submission by such society or as the case may be, the Company or the association of apartment owners, to the Sub-Registrar or the concerned

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> appropriate Registration Officer appointed under the Registration Act, 1908, the certificate issued by the competent authority along with the unilateral instrument of conveyance, the Sub-Registrar or the concerned appropriate registration Officer shall, notwithstanding anything contained in the Registration Act, 1908, issue summons to the promoter to show cause why, such unilateral instrument should not be registered as "deemed conveyance" and after giving the promoter and the applicants a reasonable opportunity of being heard, may on being satisfied that it was fit case for unilateral conveyance, register that instrument as 'deemed conveyance'."

51. Rule 5 deals with particulars to be contained in the agreement to be executed under Section 4 MOFA and reads as under:

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

52. The definition of "promoter" under Section 2(c) is deliberately broad and inclusive. The Legislature has consciously avoided limiting the expression to only the person who physically constructs the building or only the person who signs the agreement for sale. The provision brings within its fold every person who constructs or causes construction of flats for sale. It includes individuals, firms, companies, associations and even assignees. The language used is clear. If one person builds and

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another sells, both are treated as promoters. The emphasis is not on labels but on the role played in the project. This approach is significant because it reflects the legislative intent to prevent fragmentation of responsibility.

53. The Legislature was fully aware of the reality that real estate projects are rarely executed by one entity alone. Landowners, developers, coordinators and marketing entities often function together under layered contractual arrangements. If liability under MOFA were restricted only to the developer who physically constructs, the landowner could retain title and escape statutory obligations. Likewise, a developer could argue that he has no ownership and therefore no duty to convey. The law prevents such arguments by widening the definition. The statutory scheme of MOFA proceeds in a sequence. The promoter executes registered agreements, discloses material particulars, facilitates formation of a society and ultimately conveys title. These are not isolated obligations. They form a continuous chain meant to protect flat purchasers. If the term "promoter" were read narrowly, this chain would break at crucial points. A landowner could retain control over land while shifting responsibility to a developer. The result would defeat the object of the Act. Therefore, the Court is required to look at the real substance of the arrangement.

54. Section 3 of the Act lays down the general liabilities of the promoter. Section 4 introduces a strict statutory safeguard before any consideration is accepted from purchasers. It mandates that a promoter intending to construct flats on ownership basis must enter into a written and registered agreement for sale with each

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purchaser before accepting more than twenty percent of the sale price as advance or deposit. The requirement of registration and prescribed form ensures certainty and enforceability at the earliest stage of the transaction.

55. Sub-section (1A) of Section 4 further prescribes the essential contents of the agreement. The promoter must disclose the obligation to construct according to sanctioned plans, the date of possession, the carpet area, the breakup of consideration including common areas, and the nature of the organization to be formed. The agreement must also specify the extent of undivided interest in common areas. These requirements demonstrate that the law insists upon full disclosure and clarity at the time of sale so that purchasers enter the transaction with complete knowledge of their rights and obligations.

56. Section 7 prohibits unilateral alteration of sanctioned plans without consent, thereby protecting purchasers from post-sale changes that may affect their rights. Section 10 imposes a further duty upon the promoter to take steps for formation of a cooperative society or company as soon as the minimum number of purchasers is reached. If the promoter fails, the competent authority may direct registration upon application by purchasers. The formation of a society is therefore not a matter of choice but a statutory step intended to transfer collective control to purchasers.

57. The core of the statutory scheme lies in Section 11. This provision marks the transition from contractual arrangements to actual transfer of ownership. Until conveyance is executed,

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purchasers hold only contractual rights under the agreement for sale. Section 11 ensures that these contractual rights mature into real proprietary rights by compelling transfer of title in favour of the collective body of purchasers. Sub-section (1) requires the promoter to take all necessary steps to complete his title and convey his right, title and interest in the land and building to the organization of purchasers. This obligation is significant. The promoter cannot avoid conveyance by contending that his title is incomplete or imperfect. The law places the burden squarely on him to perfect his title and transfer whatever he holds. The form of organization, whether cooperative society, company or association of apartment owners, does not alter the obligation. The promoter must transfer the interest that he possesses.

58. The expression "his right, title and interest" used in Section 11 signifies the entirety of the promoter's legal and beneficial estate in the property. The phrase is not confined to the superstructure alone, nor restricted to common areas. The section expressly refers to both land and building, recognizing that ownership of flats cannot be meaningfully separated from the land upon which the building stands. The Legislature has therefore employed language that excludes any possibility of retaining a hidden or residual interest. A promoter cannot transfer less than what he holds, nor can he retain any part of his interest once the stage of conveyance arises. The extent of the society's right necessarily corresponds to the promoter's title. If the promoter holds freehold ownership, then the entire ownership, including land and building, must pass to the society. The statute does not

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permit the promoter to retain ownership while granting only a lease or limited right. Such division would defeat the very object of collective ownership envisaged under the Act. Conversely, where the promoter himself holds only leasehold rights under a superior owner, he cannot transfer ownership which he does not possess. In such cases, the statutory requirement is that he must assign the entirety of his leasehold interest to the society. Even then, he cannot retain any portion of the lease or continue as a superior lessee after flats have been sold. The rationale is that the society steps into the legal position previously occupied by the promoter. It receives exactly what the promoter held, neither more nor less. This principle prevents misuse whereby promoters attempt to retain superior rights in land after selling flats, thereby controlling redevelopment or extracting future benefits. The inquiry under Section 11 is therefore factual. The Court must determine the true nature of the promoter's title at the time conveyance becomes due. Once identified, the transfer must correspond fully to that title without reduction or reservation. Flat purchasers acquire flats together with a proportionate undivided interest in the land and common areas. Their ability to manage, maintain and redevelop the property depends upon control over the underlying land. If the promoter retains ownership, the society's autonomy becomes illusory and major decisions remain subject to the promoter's control. The expression "right, title and interest" must therefore be given full meaning. It obliges the promoter to divest himself entirely of his estate in the land and building. Any attempt to transfer only the structure while retaining land ownership is

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contrary to the statutory mandate. The legislative command is that the entire interest held by the promoter must vest in the society. Section 11 also requires execution of all relevant documents in accordance with the agreement under Section 4. This ensures continuity between the statutory agreement and the final conveyance. If a specific period for conveyance is agreed, that governs. In the absence of such stipulation, the Rules prescribe a period of four months. The promoter must also hand over title documents in his possession. Without such documents, the society cannot effectively manage or deal with the property. The Legislature clearly intended to prevent situations where promoters retain control by withholding title papers.

59. When read as a whole, the statutory sequence is clear. The promoter constructs and sells flats. Purchasers form a society. The promoter perfects title and then transfers his entire interest in land and building along with title documents. Section 11 thus represents the point at which ownership and control pass from promoter to purchasers collectively. The provision ensures that promoters do not indefinitely remain in a dominant position and that contractual rights mature into genuine ownership.

60. Form V prescribed under the Rules serves as a statutory model agreement under Section 4. Once such a form is prescribed, parties cannot dilute its essential obligations through private drafting. The purpose of a uniform model is to guarantee minimum statutory protection to purchasers across the State. Clause 13 of Form V specifically addresses conveyance and requires transfer within four months of society registration unless

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otherwise agreed. It mandates transfer of all right, title and interest of the vendor, lessor, owner or promoter in the land together with the building, through conveyance or assignment of lease, consistent with the agreement. Clause 13 carries particular significance. First, it reiterates the expression "all right, title and interest", leaving no scope for partial transfer. Second, it recognizes different kinds of title. Where the promoter is owner, conveyance of ownership must follow. Where the promoter is a lessee, assignment of the entire leasehold interest must be executed. The nature of the instrument may differ, but the extent of transfer remains complete. The clause ensures that statutory obligations become part of the contractual arrangement and prevents promoters from later contending that only limited rights were intended to be transferred.

61. A combined reading of Section 11, Rule 5 and Clause 13 of Form V reveals a single coherent statutory scheme. Section 11 imposes the obligation. Rule 5 ensures the agreement reflects that obligation. Clause 13 incorporates the duty directly into the contract. The promoter cannot split his interest, retain valuable rights and transfer only a diminished estate to the society. The Act seeks to secure collective ownership for purchasers and not a perpetual landlord-tenant relationship between promoter and society, except where the promoter himself possesses only leasehold rights. Even in such cases, the entire leasehold must pass. The legislative intent is consistent throughout. Once the society is formed, the promoter must transfer his full right, title and interest and withdraw from ownership. Any interpretation

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permitting partial retention would dilute the statutory protection granted to flat purchasers and cannot be accepted.

Promoter's title and the contractual record:

62. Both sides have placed substantial reliance on the contractual documents executed at different stages of the project, and therefore it becomes necessary to examine these agreements in their proper sequence and context. The Petitioners seek to build their case primarily on Clause 2 of the parent Agreement dated 2nd January 1995 and the subsequent Sub-Lease Agreement dated 6th April 1995. According to them, these documents show that the arrangement between the landowner and the developer contemplated only leasehold rights, and, therefore, the competent authority could not have granted a conveyance of ownership. Their submission is that the foundational structure of the transaction was lease based, and every subsequent step must be read consistently with that original intention.

63. The Society, on the other hand, draws attention to a different set of clauses and documents which, according to it, reveal the real legal position emerging from the later stage of the project. Reliance is placed on Clauses 3(d), 8 and 11 of the inter-se agreements, which speak of transfer of title in segments and handover of juridical possession. More importantly, the Society relies upon the MOFA Agreements for Sale executed with individual purchasers. These agreements are not private commercial arrangements between promoters alone; they are statutory agreements executed in the prescribed form under the

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Maharashtra Ownership Flats Act. Within these agreements, Clause 4(A)(i) records that 12% of the consideration was payable towards land, and Clause 41(d) specifically contemplates transfer of title in the land. The Society therefore submits that the intention reflected in the statutory agreements is clear and unambiguous, namely that title in the land was to be transferred to the body of purchasers.

64. A significant factual aspect emerging from the record is that Wadia himself is a signatory to the MOFA Agreements for Sale. It is not a case where the landowner stood outside the transaction or remained a distant entity. The material placed before the Court indicates that Wadia accepted 12% of the consideration directly from unit purchasers as land consideration. This circumstance assumes importance because acceptance of such consideration under registered MOFA agreements normally indicates acknowledgment of an obligation to part with corresponding rights in the land. The agreements, read as a whole, contain recitals and operative clauses which refer to transfer of title in demarcated segments, and Clause 41(d) expressly states that title in the land would be transferred.

65. Therefore, when these documents are read together, a clear conflict appears between the interpretation advanced by the Petitioners based on earlier agreements and the interpretation advanced by the Society based on later statutory agreements executed with purchasers. The Court cannot read one set of clauses in isolation while ignoring the later contractual framework that governed the relationship between promoters and flat

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purchasers. The issue, therefore, is not merely what was contemplated at the initial stage between promoter entities, but what rights were ultimately promised to and accepted by the purchasers under the statutory scheme of MOFA. This requires the Court to assess the agreements and to determine which set of obligations governs the stage of conveyance now in question.

66. The MOFA Agreements for Sale assume central importance in this exercise. These are not ordinary private contracts drafted at the convenience of parties. They are statutory-form agreements executed in the format required by law. The Legislature has attached significance to such agreements because they represent the final legal understanding placed before purchasers at the time of sale. These agreements record the consideration structure, including the payment of 12% towards land, and set out the obligations concerning transfer of title. Once such agreements are executed and registered, they carry statutory weight and cannot be lightly ignored in favour of earlier internal arrangements between promoter entities.

67. An important circumstance is that Wadia himself is a signatory to these MOFA Agreements for Sale. This is not a case where the landowner remained outside the contractual chain. The record shows that he accepted the stipulated 12% land consideration directly from unit purchasers. When a promoter signs the statutory agreement, receives land consideration, and the agreement contains express clauses speaking of transfer of title, the natural and reasonable inference is that the promoter has undertaken to transfer ownership interest in the relevant land.

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Courts cannot disregard such clear contractual indicators and proceed on speculative interpretations.

68. Viewed in this background, the material placed before the Competent Authority supports the conclusion that Wadia had direct contractual privity with the purchasers. The MOFA Agreements for Sale demonstrate that he agreed to transfer title in respect of the land corresponding to Building No. 4. Once such a conclusion emerges from the documents, the Competent Authority was justified in examining and granting conveyance on a freehold basis, unless there existed clear and convincing documentary evidence showing that the promoter's interest was limited in law. No such overriding material has been shown at this stage.

69. The Petitioners rely heavily on earlier MOUs executed between the developer and the association, which refer to leasehold arrangements at nominal rent. However, those antecedent documents cannot automatically prevail over later statutory agreements executed with individual purchasers. The Section 4 MOFA Agreements for Sale are registered, executed in prescribed form, and supported by consideration paid by purchasers. They represent the binding terms under which flats were sold. Where such agreements clearly refer to transfer of title and land consideration, earlier commercial understandings between promoter entities cannot, by themselves, displace or dilute the rights created in favour of purchasers. At best, the MOUs may have governed internal commercial arrangements between the developer and the association, including allocation of responsibilities or financial terms between them. But those

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documents do not operate as instruments controlling or reducing statutory rights granted to purchasers under MOFA agreements. The rights of flat purchasers must ultimately be determined from the statutory agreements executed with them, and not from prior inter-se arrangements to which purchasers were not parties. For these reasons, the Court is required to give primacy to the MOFA Agreements for Sale while determining the nature of conveyance contemplated under the law.

70. The principles laid down in *Haresh Bhatia*, when applied to the facts of the present case, make the legal position fairly clear. Once flats are sold and a society is formed, the law does not permit the promoter to keep back any part of the interest which he himself holds in the land and building. The society steps into the shoes of the promoter. It receives exactly what the promoter possessed. Nothing less. This is the core idea that runs through the statutory scheme and the judgments relied upon.

71. In the present matter, much argument has been advanced about who exactly should be treated as the promoter. The record shows that development of the project was carried out through multiple entities. The land belonged to Wadia. Development responsibilities were routed through Ivory Properties and thereafter RK Properties. Agreements were executed, permissions were obtained, construction was carried out, flats were sold, and consideration was received. The law does not permit these roles to be separated in a way that allows responsibility to disappear. A person who causes construction, enables development, or participates in sale of flats falls within the definition of promoter

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under MOFA. Therefore, even if the development was structured through different companies, those who effectively brought the project into existence cannot avoid statutory obligations by relying on internal arrangements.

72. The next important aspect is the nature of the interest that must be conveyed. The judgments relied upon make it clear that deemed conveyance does not create a new or enlarged title. It merely transfers what the promoter already has. That means the competent authority must look at the real entitlement of the promoter. If the promoter is owner of the land, ownership must pass to the society. If the promoter is only a lessee, then the entire leasehold interest must be assigned. The law recognises these two possibilities. What it does not permit is a halfway arrangement where the promoter keeps the superior right and transfers only a limited or subordinate interest to the society.

73. This principle assumes significance in the present case because the petitioners rely heavily on internal agreements between owner and developer to suggest that only leasehold rights were contemplated. However, the statutory agreements executed with flat purchasers, the receipt of land consideration, and the obligations recorded therein indicate that the promoter had undertaken to transfer title corresponding to the completed segment. Internal commercial arrangements may regulate business relationships between promoter entities, but they cannot override the statutory mandate contained in Section 11. The rights of flat purchasers arise from the registered MOFA agreements and the statute itself. Once those rights crystallise, the promoter cannot

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rely on private arrangements to reduce what the society is entitled to receive.

74. The reasoning in *Haresh Bhatia* reinforces this position. Both judgments emphasise that the purpose of MOFA is to ensure that flat purchasers obtain real control over the property and are not left as mere occupiers dependent on the promoter. If the promoter were allowed to retain the superior estate while conveying only a fragment, the entire object of the legislation would be defeated. The society would remain vulnerable in matters of redevelopment, management and future use of the property. The law therefore insists on complete transfer of the promoter's interest.

75. Applying this principle to the facts before the Court, the Competent Authority examined the material available, including the MOFA Agreements for Sale, the role of the promoter entities, and the consideration received. It concluded that conveyance should be granted to the extent of the promoter's entire interest in the relevant segment. That approach is consistent with the statutory framework. The authority did not create a new right in favour of the society. It merely ensured transfer of whatever right the promoter held. It is also necessary to remember the practical consequence of accepting the petitioners' argument. If promoters are permitted to retain superior title indefinitely while societies receive only limited rights, the statutory protection under MOFA would become illusory. Flat purchasers would remain dependent on promoters even decades after possession. The law was enacted precisely to prevent such imbalance. The interpretation adopted by the Competent Authority aligns with that legislative purpose.

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Therefore, when the reasoning in *Haresh Bhatia* is read in the context of the present facts, it strengthens the conclusion that the impugned order does not suffer from any legal infirmity. The order ensures that the society receives the promoter's full right, title and interest, whatever be its nature, and thereby gives effect to the statutory command under Section 11. The challenge raised by the petitioners on this ground cannot be accepted.

Whether the DDR had jurisdiction to grant freehold conveyance

76. The Petitioners have relied upon a line of judgments which lay down that where the Section 4 MOFA Agreement clearly contemplates only assignment of leasehold rights, the competent authority cannot travel beyond that arrangement and grant freehold conveyance. That proposition is correct in law and there can be no disagreement with it. The authority exercising powers under Section 11 does not create new rights. It only gives effect to the rights flowing from the statutory agreements executed between the parties. Therefore, if the agreement itself restricts the transfer to leasehold rights, the authority must remain within that boundary.

77. However, the application of this principle always depends upon the factual foundation of the case. The decisive factor is not the abstract legal rule but the nature of title and rights actually reflected in the Section 4 agreements and the accompanying project documents. The Court must therefore examine what the competent authority had before it and whether the conclusion drawn was reasonably possible on that material. Jurisdiction

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cannot be tested in isolation from the record that was available at the time of decision.

78. In the present matter, the Competent Authority examined the MOFA Agreements for Sale executed with the purchasers, the Architect's certificate, and other supporting documents placed on record. On that basis, it recorded findings that no formal lease deed had ever been executed in favour of the Society or any intermediary, and that land consideration had in fact been received from purchasers. These factual findings were not reached casually. They were part of the authority's exercise of evaluating the nature of rights that had emerged from the transaction as it actually unfolded.

79. Once the authority found that the statutory agreements contain clauses relating to transfer of title, and that consideration towards land had been accepted, it concluded that the Society had satisfied the requirements under MOFA and was entitled to conveyance of ownership rights. In this background, it cannot be said that the authority acted outside its jurisdiction merely because an alternative interpretation of earlier documents is possible. Jurisdiction is exceeded only when the authority ignores the governing documents or grants a right plainly contrary to them. That situation does not arise on the material presently available.

80. The MOFA Agreements for Sale occupy a central position because they are the statutory instruments through which purchasers entered the project. When such agreements indicate transfer of title and are supported by payment of land

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consideration, the competent authority is entitled to proceed on that basis. The decision to grant freehold conveyance, therefore, cannot be characterised as a jurisdictional error. At best, it is a conclusion drawn from appreciation of documents, which is a matter of merits rather than power.

81. It is also necessary to clarify the limits of this determination. Proceedings before the competent authority under Section 11 are summary in nature. They do not finally adjudicate complicated questions of title. If, in a properly constituted civil proceeding and on fuller evidence, a promoter is able to establish that his interest was strictly leasehold and that the MOFA Agreements did not intend to pass ownership rights, the legal consequences may be different. Such issues remain open to be examined in appropriate proceedings where evidence can be tested in detail.

82. But on the record as it stood before the District Deputy Registrar, the conclusion that freehold conveyance could be granted cannot be termed perverse or without jurisdiction. The authority considered relevant material, applied the statutory framework, and arrived at a view that was reasonably supported by the documents. For that reason, the jurisdictional challenge to the order cannot be accepted.

Execution of conveyance after completion of the entire layout and creation of an Apex Body:

83. The submission of Mr. Seervai learned Senior Counsel proceeds on the footing that the expression “respective segments” used in Clause 3(d) of the parent Agreement dated 2nd January

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1995 does not contemplate transfer of title building wise, but only postpones transfer until completion of the entire layout and creation of an Apex Body. According to the petitioners, if the clauses are read together with Schedules I and II, the intention was to grant only leasehold rights at a later stage and not to permit conveyance in favour of an individual society representing a completed building. This argument requires careful examination because it goes to the root of the challenge.

84. At the outset, the Court must keep in mind the nature of the proceedings before the Competent Authority. The authority under Section 11 of MOFA is not deciding abstract contractual disputes between commercial entities. Its task is limited. It has to examine whether flat purchasers, who have entered into registered Section 4 agreements, are entitled to receive conveyance of the promoter's right, title and interest. Therefore, while earlier inter se agreements between landowner and developer may provide background, the decisive document for the purposes of MOFA remains the registered agreement for sale executed with flat purchasers. When the clauses relied upon by the petitioners are read in context, they do not conclusively establish that transfer could occur only after completion of the entire development. The phrase "respective segments" itself indicates that the larger property was intended to be developed in parts. The language does not necessarily compel a conclusion that conveyance must wait till the entire layout is completed. On the contrary, the concept of segments suggests that different portions could be dealt with separately depending on progress of construction. This

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understanding also finds support in other clauses of the agreements which speak of transfer linked with completion of buildings in particular segments. Further, the Court cannot read one clause in isolation while ignoring the subsequent conduct of the parties and later statutory agreements. The MOFA Agreements for Sale executed with individual purchasers are registered documents in the prescribed statutory form. These agreements expressly record transfer obligations, land consideration and participation of Wadia as signatory. They also contain clauses indicating transfer of title in relation to the land connected with the building purchased. Once such statutory agreements were executed and consideration accepted, the rights of flat purchasers crystallised under MOFA. Those rights cannot be diluted merely by referring back to earlier commercial arrangements between promoter entities.

85. The submission that the Section 4 agreements incorporated the parent agreement and therefore bound purchasers to accept only a lease also cannot be accepted in absolute terms. Incorporation of earlier agreements does not mean that every internal arrangement automatically overrides the statutory obligations imposed by MOFA. The Act is a welfare legislation intended to protect flat purchasers. Section 11 requires the promoter to convey whatever right, title and interest he holds. If the promoter had intended to restrict transfer strictly to leasehold rights, such limitation ought to have been clearly reflected in the registered agreements with purchasers. The record, however, shows clauses referring to transfer of title and payment of land

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consideration. That weakens the argument that only leasehold rights were contemplated. It is also important to notice the practical aspect. Building No. 4 was completed long ago. For years thereafter, no further development took place. Litigation between promoter entities continued. If conveyance is postponed indefinitely on the ground that the entire layout is incomplete, flat purchasers would remain without title for an uncertain period. MOFA was enacted precisely to prevent such situations. The law does not permit promoters to indefinitely delay conveyance by relying on future development plans that may or may not materialise.

86. The argument that only an Apex Body could receive conveyance also does not assist the petitioners at this stage. The statute recognises conveyance to a cooperative society formed by flat purchasers of a building. Where a building is complete and a society is formed, the competent authority is empowered to grant conveyance of the promoter's interest relating to that portion. Whether a future apex arrangement may be created is a matter that can be worked out separately. It cannot defeat the statutory right of an existing society to seek conveyance of the land appurtenant to its building. Therefore, on a plain and practical reading of the documents, the Court finds that the interpretation suggested by the petitioners is not the only possible interpretation, nor is it compelling enough to displace the conclusion reached by the Competent Authority. The authority examined the MOFA Agreements for Sale, the project documents and the material on record and concluded that conveyance in favour of the respondent

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society was permissible. That conclusion cannot be said to be perverse or contrary to law merely because another interpretation of the parent agreement is possible.

87. Therefore, the reliance on Clauses 3(d), 8, 9, 11 and 12 to argue that conveyance could arise only after completion of the entire project does not withstand scrutiny when viewed in the light of the statutory scheme of MOFA, the later registered agreements executed with purchasers, and the factual position that the building in question stood completed long ago. The submission is therefore rejected.

Compliance with procedural rules and natural justice:

88. The Petitioners assail the findings of the Competent Authority on the issue of service of notice. Their principal submission is that the impugned order merely records issuance of notice and does not contain a clear finding that service was duly effected. Attention is drawn to Paragraphs 4 and 14(A) of the order. According to them, issuance and service are legally distinct. They further contend that no affidavit has been filed by the office of the District Deputy Registrar demonstrating compliance with Rule 13(2) of the applicable Rules. The Form X relied upon is said to be defective. It is also argued that notices were sent to an old registered office address despite change of address, thereby rendering the entire process invalid.

89. These objections require examination in the backdrop of settled legal principles. The requirement of notice is rooted in natural justice. A person likely to be affected must have a fair

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opportunity to participate in the proceedings. Rule 13(2) prescribes the manner of service and the form in which notice is to be issued. At the same time, the law is equally clear that every procedural lapse does not automatically nullify the proceedings. Courts have consistently held that the test is one of prejudice. Unless the breach goes to the root or unless the rule violated is mandatory in a manner that itself establishes prejudice, the Court must examine whether the party was in fact denied a meaningful opportunity to contest. The focus therefore shifts from technical deficiency to legal prejudice.

90. The Court must, therefore, examine three aspects. First, whether notice was attempted at the address available in the relevant agreements and records. Second, whether substituted service such as public notice was resorted to. Third, whether any procedural shortcoming actually deprived the Petitioners of an effective chance to place their case before the authority. The enquiry is factual and cannot be decided merely by pointing to absence of formal procedure.

91. On the present record, the Competent Authority has noted that Form X and the public notice are both dated 25th April 2022. Public notice was admittedly published. The application was accompanied by the Architect's certificate and other supporting documents. The record further shows that notices were dispatched to the address mentioned in the MOFA Agreements for Sale. Those notices were returned with the endorsement "Left Without Instructions." Thereafter, public notice was issued. The authority recorded these circumstances and proceeded with the hearing. It is

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also undisputed that Wadia and Ivory Properties appeared before the authority and contested the matter on merits, while RK Properties did not remain present.

92. It is true that there is no separate finding by the office of the District Deputy Registrar strictly proving each step of compliance under Rule 13(2). However, it remains a procedural irregularity. The legal consequence depends upon whether real prejudice has been demonstrated. On this aspect, the record assumes significance. Two of the promoters appeared and participated in the proceedings. They advanced submissions and contested the application. This indicates that the proceedings were not conducted behind the back of all concerned parties.

93. RK Properties contends that it had shifted its registered office and therefore did not receive notice. Even accepting this assertion, the material does not show that it was deprived of a genuine opportunity which, if granted, would have altered the course of the proceedings. No concrete material is shown indicating what additional evidence it would have produced or how the outcome would have been materially different. Mere assertion of non-service, without demonstrating actual prejudice, is insufficient to invalidate the proceedings, particularly when public notice was issued and related parties were already contesting the matter.

94. The Court must also bear in mind the practical context. Proceedings under MOFA are intended to provide an effective remedy to flat purchasers where conveyance is delayed. If every technical irregularity in service were treated as fatal despite

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substantial participation by affected parties, the statutory object would be frustrated. The law therefore insists on a balanced approach, ensuring fairness without allowing procedural objections to become instruments of delay.

95. In *State of U.P. v. Sudhir Kumar Singh*, the Supreme Court observed that in earlier decisions non-observance of principles of natural justice was treated as prejudice per se, dispensing with any requirement of independent proof of prejudice. An exception, however, was recognised in cases where admitted or indisputable facts admitted of only one possible conclusion and only one consequence in law, in which event courts would decline to issue futile writs. The Court further noted the subsequent evolution of law, as explained in *P.D. Agrawal v. SBI,* (2006) 8 SCC 776, wherein it was held that the doctrine of natural justice has undergone substantial development and that real prejudice must be demonstrated. A distinction was drawn between cases involving complete denial of hearing and those involving merely technical infringement, emphasising that application of natural justice depends upon the factual context of each case and cannot be applied in a rigid or mechanical manner.

96. The Supreme Court further held that prejudice cannot be presumed where facts are admitted or indisputable. Reliance was placed on *K.L. Tripathi v. SBI [K.L. Tripathi v. SBI,* (1984) 1 SCC 43, wherein it was held that principles of natural justice are rooted in fair play and must be examined in the context of the nature of charges, the enquiry conducted and the governing statutory framework. The Court clarified that where facts are not in dispute

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and no real prejudice is shown, absence of certain procedural opportunities, such as cross-examination, would not by itself vitiate the decision. It was emphasised that unless the party disputes the veracity of material or seeks to challenge credibility, procedural omissions do not automatically invalidate the outcome.

97. In *State of U.P. v. Neeraj Awasthi,* (2006) 1 SCC 667, the Supreme Court reiterated that where action is founded upon undisputed facts and is otherwise valid in law, principles of natural justice may not be attracted unless the action carries punitive consequences or stigma causing prejudice. Reliance was placed on *Viveka Nand Sethi v. J&K Bank Ltd.,* (2005) 5 SCC 337, wherein it was held that natural justice is not an inflexible doctrine and that where facts are admitted, insistence on a formal hearing may amount to an empty formality.

98. The Constitution Bench decision in *ECIL v. B. Karunakar,* (1993) 4 SCC 727 was also considered, wherein the Supreme Court held that non-furnishing of an enquiry report does not automatically invalidate the order of punishment. The Court emphasised that principles of natural justice are intended to advance justice and not to operate as empty rituals. It was held that the court or tribunal must examine whether non-supply of the report caused actual prejudice and whether furnishing the report would have led to a different result. Only upon such finding should interference be warranted.

99. The Supreme Court further observed that relief cannot be granted mechanically merely upon proof of procedural violation.

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The enquiry must extend to the question whether such violation has caused prejudice and whether interference would serve the ends of justice. It was specifically clarified that the determination of prejudice lies within the domain of the court or tribunal and cannot be undertaken unilaterally by the authority denying the hearing. In *Dharampal Satyapal Ltd. v. CCE,* (2015) 8 SCC 519, the Supreme Court explained that principles of natural justice are flexible and their application depends upon the nature of the function, the extent of impact on the affected person, and the surrounding circumstances. The Court held that while authorities cannot dispense with hearing on the assumption that no prejudice would result, courts are empowered to examine whether remand would serve any meaningful purpose and may decline interference where no prejudice is shown.

100. In *State Bank of Patiala v. S.K. Sharma,* (1996) 3 SCC 364, the Supreme Court distinguished between cases of "no opportunity at all" and cases of inadequate or technical opportunity. It was held that violation of procedural provisions does not automatically vitiate proceedings unless prejudice is established. The Court laid down that the ultimate test is whether a fair hearing was afforded, and that only where violation results in failure of justice would interference be justified. A distinction was also drawn between substantive and procedural provisions, the former ordinarily requiring strict compliance, while the latter are examined on the touchstone of prejudice.

101. In *M.C. Mehta v. Union of India,* (1999) 6 SCC 237, the Supreme Court discussed the tension between breach of natural

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justice and judicial discretion to refuse relief where no real prejudice is caused. The Court noted divergent judicial opinions on the "useless formality" theory but recognised that in cases involving admitted and indisputable facts leading to only one conclusion, courts may decline to grant relief as remand would be futile.

102. In *Aligarh Muslim University v. Mansoor Ali Khan,* (2000) 7 SCC 529, the Supreme Court reiterated that breach of natural justice by itself is insufficient and that prejudice must ordinarily be demonstrated, depending upon the facts of each case. The Court observed that there is no absolute rule and that application of the prejudice test must be context-specific.

103. In *Union of India v. Alok Kumar,* (2010) 5 SCC 349, the Supreme Court held that prejudice cannot be based on mere apprehension or suspicion. The party alleging violation must demonstrate actual or reasonably inferable prejudice arising from non-observance of natural justice. The Court clarified that procedural lapses do not ipso facto render proceedings void unless de facto prejudice is established.

104. The Supreme Court thus emphasised that principles of natural justice are intended to secure fairness and not to provide technical grounds for invalidation where no injustice has resulted. Upon analysis of the aforesaid precedents, the Supreme laid down following principle :

> "42.1. Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The

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breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

42.2. Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

42.3. No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

42.4. In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

42.5. The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice."

105. Applying this principle to the present case, the first question is whether the promoters were denied an effective opportunity of hearing. The record shows that notices were issued in the

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prescribed form, notices were sent to the address recorded in the MOFA Agreements for Sale, and when those notices returned unserved, public notice was published. The Competent Authority also recorded these steps in the proceedings. More importantly, Wadia and Ivory Properties appeared before the authority and contested the matter on merits. This shows that the proceedings were not conducted behind the back of all promoters. The opportunity to participate was in fact exercised by parties connected with the project.

106. The Petitioners emphasise that the order records only issuance and not proof of valid service, and that there is no affidavit from the office of the District Deputy Registrar strictly proving compliance with Rule 13(2). Even if this is accepted, the law as explained in *Sudhir Kumar Singh* makes it clear that breach of procedure by itself is not enough. The Court must examine whether the defect caused real prejudice. Here, no such prejudice is demonstrated. The parties who appeared placed their case on record. The issues were argued on merits. The authority considered the contractual documents and rival contentions before passing the order.

107. As regards RK Properties, the case is that it had shifted its address and therefore was not served. However, the test is not whether service was technically perfect but whether absence from proceedings resulted in real disadvantage. RK Properties has not shown what specific defence or material it was prevented from producing, or how the result would have been different had it appeared. A bare assertion that notice went to an old address

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cannot by itself establish prejudice. The Supreme Court has made it clear that prejudice must exist as a matter of fact and not as a mere apprehension or possibility.

108. The principles further state that where facts are admitted or largely undisputed, courts should not set aside orders merely to repeat the same exercise. In the present case, the material documents, including the MOFA Agreements for Sale, the Architect's certificate, and other records, were before the authority. The decision was based on these documents. Remanding the matter only on a procedural objection, without showing that any different conclusion is likely, would serve no useful purpose and would amount to a futile exercise. It is also relevant that natural justice protects fairness, not technicality. Where parties had knowledge of proceedings, where some promoters actually appeared, and where public notice was issued, it cannot be said that the process was fundamentally unfair. The absence of a formal affidavit or strict procedural perfection does not automatically establish denial of hearing.

109. Viewed in the light of the principles laid down in *Sudhir Kumar Singh,* the Court finds that the alleged defects in service, even if assumed, do not demonstrate real or substantive prejudice. The Petitioners have not shown that they were prevented from putting forward their case or that the outcome would likely have been different. The challenge based on breach of natural justice therefore fails.

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Completeness of Deemed Conveyance Application and Form X

110. The Petitioners have argued that the application filed by the Society was defective because the entry at Serial No. 13 was incomplete and Form X was not in the exact prescribed format. According to them, once the statutory form itself is defective, the entire process of service becomes invalid and the proceedings stand vitiated. Their submission proceeds on the footing that strict compliance with the form is mandatory and any deviation must automatically result in rejection of the application.

111. The legal position, however, requires a more balanced approach. It is correct that applications under Section 11(3) of MOFA must be filed in the prescribed manner and must contain the particulars required under the Rules. The format is not meaningless. It ensures that the promoter knows the case he has to meet and that the Competent Authority receives the necessary material before issuing a certificate. At the same time, the law does not treat every imperfection in a form as fatal. The purpose of the rule is to secure fairness and clarity, not to defeat substantive rights on technical grounds. Therefore, courts generally examine whether the defect is substantial, whether it misled the opposite party, and whether it caused any real prejudice. If the defect is merely technical or stands cured during the proceedings, the order is not ordinarily set aside on that ground alone.

112. Examining the present record, the application filed by the Society was accompanied by material documents, including the Architect's certificate, copies of registered MOFA Agreements for

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Sale, sanctioned plans and supporting records. The Competent Authority scrutinised these documents, accepted the application for consideration, and thereafter issued notices and called upon parties to participate. This indicates that the authority did not proceed on an empty or incomplete record. The essential facts necessary for adjudication were before it.

113. The Petitioners have not demonstrated how the alleged defect in Form X actually prejudiced them. There is no material to show that any relevant information was concealed because of the format adopted, or that the promoters were misled about the nature of the claim. The proceedings were contested on merits. Submissions were advanced regarding title, nature of conveyance, area of land and other substantive issues. This itself indicates that the promoters understood the case they had to answer.

114. In judicial review, the Court must distinguish between a defect that goes to the root of jurisdiction and a defect which is procedural in nature. A technical irregularity in the form, without proof that it affected fairness of the process, cannot by itself justify setting aside an otherwise reasoned order. The law insists on prejudice, not mere technical objection. Unless the defect prevented the promoter from presenting his defence or resulted in failure of justice, interference is not warranted.

115. In the present case, no convincing material has been placed to show that the alleged defect in Serial No. 13 or the format of Form X caused any real disadvantage or miscarriage of justice. The Competent Authority had before it the relevant documents, heard

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the parties who appeared, and decided the matter on merits. Therefore, even assuming that there was some irregularity in the form, it remains a procedural defect which does not invalidate the impugned order in the absence of demonstrated prejudice.

Allegation of suppression of MOUs and Supplementary MOU

116. Wadia and RK Properties have strongly argued that the Society suppressed the MOU dated 22nd November 2002 and the Supplementary MOU dated 15th April 2003. According to them, these documents were material because they allegedly recorded tenantship or lease arrangements and, if placed before the Competent Authority, would have changed the nature of the decision on conveyance. The submission is that non-production of these documents amounts to suppression of material facts and therefore the impugned order deserves to be set aside.

117. There can be no dispute about the legal principle. If a party deliberately withholds a material document which goes to the root of the matter and which could reasonably influence the decision-making process, such conduct is serious. Courts do not permit parties to secure orders by concealment. The fairness of quasi-judicial proceedings depends upon complete and honest disclosure of relevant material. At the same time, the allegation of suppression cannot be accepted lightly. The Court must examine the nature of the document, the context in which it exists, whether it was actually concealed, and whether its absence caused prejudice or led to a wrong decision.

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118. When the record is examined, certain facts stand out. The MOUs relied upon are inter-se arrangements between RK Properties and the Association. They are not agreements executed with individual flat purchasers under Section 4 of MOFA. Further, the MOFA Agreements for Sale, which are registered statutory-form contracts, contain recitals referring to the existence of these earlier arrangements. This circumstance is important. If the recitals themselves mention the MOUs, it becomes difficult to accept that their existence was hidden or unknown to the promoters. The documents were not secret in that sense.

119. Another aspect cannot be ignored. The MOFA Agreements for Sale were executed later in point of time and were registered documents. Wadia was a signatory to those agreements and accepted land consideration from purchasers. If Wadia's case was that the earlier MOUs restricted his title or limited the nature of conveyance, he had full opportunity to place those documents before the Competent Authority. The Rules themselves provide a mechanism. Rule 13(4) permits parties to seek production of additional documents relevant to the inquiry. The record does not show that such a step was effectively pursued. A party who is aware of a document, participates in proceedings, and yet does not invoke the available procedure cannot later allege suppression as a ground to invalidate the entire process.

120. It is also necessary to keep the hierarchy of documents in mind. The MOUs appear to regulate commercial arrangements between the developer and the association. The MOFA Agreements for Sale, on the other hand, are statutory contracts executed with

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purchasers in the prescribed form. Rights of flat purchasers arise primarily from these later agreements, which carry statutory force. Therefore, even assuming that the MOUs contained clauses regarding lease or tenancy, they cannot automatically override later registered agreements executed under the statute, especially when those agreements contain express provisions regarding transfer of title and payment of land consideration.

121. The real question is whether the Competent Authority was misled because the MOUs were not placed before it. On the present record, such a conclusion is not possible. There is no clear material to show that the authority proceeded on a false assumption created by concealment. Nor is there proof that the decision would necessarily have been different had the MOUs been formally produced. The allegation of suppression, therefore, remains more in the nature of an argument on interpretation rather than proof of fraud or deliberate concealment.

122. In these circumstances, the Court is unable to hold that suppression is established to the degree required to vitiate the order. The MOUs, being prior inter-se documents, do not by themselves displace the effect of later registered MOFA Agreements executed with purchasers. In the absence of demonstrated prejudice or clear evidence that the Competent Authority was misled, mere non-production of such documents cannot be treated as fatal to the proceedings.

Entitlement and area; 2018 Resolution and Architect's certificate

123. The Petitioners have argued that the area granted under the

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deemed conveyance exceeds the entitlement of the Society. Their case is founded mainly on Clause 18 of the MOU and Clause 7 of the Supplementary MOU, which according to them restrict the extent of land that could be conveyed. The Society, on the other hand, relies upon the last sanctioned layout plan dated 11th February 2005 and the Architect's certificate dated 6th April 2022. It is submitted that the area has been calculated strictly in accordance with the 2018 Government Resolution and that the Competent Authority has merely applied the statutory formula.

124. Before examining the rival submissions, the governing principle must be kept in view. The 2018 Government Resolution lays down a structured method for determining proportionate undivided share in cases where multiple buildings exist on a larger layout. The computation is based on objective factors such as plinth area, built-up area, and appurtenant land. The role of the Competent Authority is to verify the sanctioned plans, examine the Architect's calculations, and ensure that the proportion awarded corresponds to the completed building.

125. It is equally settled that disputes relating to exact area, title boundaries, or quantitative allocation usually involve detailed factual examination. A writ court does not normally undertake that exercise unless a clear jurisdictional error or manifest arbitrariness is demonstrated. Judicial review is concerned with legality of the decision-making process and not with reworking technical calculations as if sitting in appeal over factual findings.

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126. Applying these principles to the present case, the record shows that the Competent Authority relied on the last sanctioned plan dated 11th February 2005. Significantly, the Petitioners have not challenged the authenticity of this sanctioned plan. They have also not produced material to show that the Architect's certificate dated 6th April 2022 is fabricated or mathematically incorrect. The calculations placed before the authority were based on the built-up area of Building No. 4 as a percentage of the total proposed development. The Competent Authority applied Clause B(iv)(1) of the 2018 Government Resolution and arrived at a figure of 22 percent of the Larger Property. This approach is consistent with the method prescribed under the Resolution.

127. The Petitioners seek to rely on the MOUs to contend that the Society's entitlement should be restricted. However, those clauses use language such as "not less than," which ordinarily indicates a minimum threshold and not a fixed ceiling. More importantly, those documents are earlier inter-se arrangements and cannot automatically override the statutory Section 4 MOFA Agreements for Sale executed later in registered form with flat purchasers. Once rights of purchasers arise under statutory agreements, the determination of conveyance area must be aligned with the statutory scheme and the Government Resolution rather than private commercial arrangements alone.

128. The Court also notes that the challenge raised by the Petitioners is essentially to the quantum of area and the factual computation adopted by the authority. That exercise is more appropriately undertaken in civil proceedings where evidence can

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be led and tested. Writ jurisdiction is not designed to resolve such factual controversies unless the decision is shown to be perverse or wholly unsupported by material.

129. On the material available before the Competent Authority, there is nothing to indicate arbitrary exercise of power or misapplication of the 2018 Government Resolution. The authority adopted the prescribed method, considered the Architect's certificate, and arrived at a proportionate area corresponding to the completed building. In the absence of clear error, this Court finds no reason to interfere. The Petitioners remain free to pursue appropriate civil remedies if they seek adjudication on title or precise quantification, but such disputes cannot form the basis for setting aside the impugned order in writ jurisdiction.

130. The legal position governing this issue now stands well settled. In *Zainul Abedin Yusufali Massawawala and Others v. Competent Authority, District Deputy Registrar of Co-operative Housing Societies, Mumbai and Others*, reported in *2016 SCC OnLine Bom 6028*, the Division Bench was confronted with a grievance substantially similar to the one raised in the present proceedings. In that case also, the landowner contended that the Competent Authority, while granting deemed conveyance under Section 11 of MOFA, had included a larger area than what could lawfully be conveyed and that the promoter himself did not possess title over the entire extent. The Court carefully examined the nature and scope of proceedings under Section 11 and held that such proceedings are summary in character and are not intended to finally adjudicate complex questions of title or extent

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of proprietary rights. The Court clarified that where the challenge is essentially that the conveyance exceeds contractual or legal entitlement, the proper remedy lies in instituting a substantive civil action, where evidence can be led and disputed facts can be adjudicated in detail.

131. The rationale behind this principle is straightforward and rests on the nature of deemed conveyance itself. An order passed under Section 11 does not confer any fresh or independent title upon the society. It merely facilitates transfer of whatever right, title and interest the promoter is found to possess at that stage. Therefore, if the promoter or owner asserts that he had no title over a particular portion, or that the society has obtained conveyance beyond what was agreed between the parties, such issues necessarily involve examination of title documents, contractual interpretation, and factual evidence. These are matters requiring a full-fledged trial. A writ court exercising jurisdiction under Article 226 is not designed to undertake such an enquiry. This approach has been consistently followed in subsequent decisions of this Court, including *Shimmering Heights CHSL and Others v. State of Maharashtra* (Writ Petition No. 3129 of 2016, decided on 6 April 2016), *P.R. Enterprises and Others v. Competent Authority* (Writ Petition No. 11251 of 2016, decided on 27 November 2018), and *Mehboob Ali Humza and Others v. District Sub Registrar (3), Mumbai and Others* (Writ Petition No. 3129 of 2016, decided on 24 June 2016), wherein the same principle has been reiterated that title disputes and disputes regarding exact entitlement must be left to civil adjudication.

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132. When the above settled principles are applied to the facts of the present case, the conclusion becomes clear. The core grievance raised by the petitioners is that the Competent Authority has granted conveyance of an area larger than what, according to them, could lawfully be conveyed, and that the Authority has thereby exceeded its jurisdiction. Even assuming, for the sake of argument, that such contention raises a triable issue, the nature of the dispute remains one concerning extent of title and entitlement. These questions cannot be conclusively resolved in writ proceedings. The petitioners are not left without remedy. They remain at liberty to institute a properly constituted civil suit seeking declaration of their rights, correction of area, or any other consequential relief permissible in law. The Civil Court alone is equipped to undertake detailed examination of evidence, measurement, contractual rights and competing claims. Entertaining such disputed factual controversies in writ jurisdiction would amount to converting this Court into a trial forum, which is neither the purpose nor the scope of jurisdiction under Article 226 of the Constitution.

<u>Misjoinder and joinder of unbuilt buildings as pro-forma parties</u>

133. The Petitioners have raised an objection that the deemed conveyance application was defective because Building Nos. 1 to 3 and 5 to 10 were shown as parties even though those buildings had not been constructed. According to them, inclusion of non-existent or unconstructed buildings amounted to misjoinder and therefore the entire proceedings stood vitiated. The Society has explained that these buildings formed part of the larger layout and

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were included only by way of caution, as the exact status of third party rights in the layout was not fully clear at the time of filing.

134. The legal position on this aspect is settled. Misjoinder of parties is essentially a procedural defect. Procedure exists to advance justice and not to defeat it. Unless the inclusion of unnecessary parties results in confusion, denial of opportunity, or actual failure of justice, such defect does not render the entire proceedings invalid. Courts have consistently held that technical objections of this nature cannot override a substantive decision unless prejudice is clearly demonstrated. The focus must always remain on whether the decision-making process became unfair or whether any party was deprived of a real opportunity to contest the case.

135. The record further shows that during the course of hearing before the Competent Authority, it was clarified that the said buildings were not constructed. The authority has expressly recorded this factual position in the impugned order and proceeded accordingly. In other words, the authority did not grant any benefit or pass any direction on the assumption that those buildings existed. The factual correction was acknowledged during the hearing itself, and the proceedings moved forward on the corrected understanding. Once the authority took note of the actual status, the initial procedural mistake stood effectively cured.

136. It is also relevant that the Petitioners do not contend that any necessary party was left out. Their grievance is only that additional parties were included. The law draws a clear distinction between

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non-joinder of a necessary party and misjoinder of unnecessary parties. Non-joinder may in some cases affect the validity of proceedings because a person whose rights are directly affected is absent. Misjoinder, however, ordinarily does not cause such consequence unless it can be shown that the presence of extra parties misled the authority or caused tangible prejudice.

137. In the present case, no material has been placed to show that inclusion of unconstructed buildings altered the decision, expanded the scope of conveyance improperly, or deprived the Petitioners of any defence. The Competent Authority considered the relevant material relating only to Building No. 4 and the corresponding entitlement. The proceedings remained focused on the actual dispute. The Petitioners fully participated and addressed their submissions on merits. Therefore, the procedural objection does not translate into any real injustice.

138. Viewed in this manner, the contention of misjoinder is purely technical. The defect, even if assumed, was noticed and corrected during the hearing stage. No prejudice has been demonstrated, and no failure of justice has occurred. Accordingly, the objection based on misjoinder cannot be accepted as a ground to interfere with the substantive decision of the Competent Authority.

139. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

(i) All the Writ Petitions stand dismissed;

(ii) The impugned order dated 29th August 2022 passed by the Competent Authority under Section 11 of the

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Maharashtra Ownership Flats Act, 1963, together with the certificate of deemed conveyance issued pursuant thereto, is upheld.

(iii) It is clarified that observations made in this judgment are confined to the validity of the proceedings under Section 11 of MOFA and shall not preclude the parties from pursuing appropriate civil remedies, if otherwise available in law, in respect of title disputes or allied claims requiring detailed adjudication;

(iv) Rule stands discharged. No order as to costs.

140. Pending interlocutory application(s), if any, stand disposed of.

141. At this stage, learned Advocate for the petitioners seeks continuation of interim protection. However, for the reasons stated in this judgment, request for continuation of interim protection stands rejected.

(AMIT BORKAR, J.)

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