



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

WRIT PETITION NO. 14936 OF 2023

M/S. Mahanagar Realty]
 A Partnership Firm Registered]
 Under the Indian Partnership Act, 1932]
 Having its Office at: S. No. 19A/3A, CTS 373,]
 Pune-Satara Road, Adjoining Shankar]
 Maharaj Math,]
 Dhankawadi, Pune – 411043.]
 Through its Partner,]
 Bharat Mithalal Nagori]
 Age: 63 years, Occ: Business] **...Petitioner**

Versus

- 1) Ganga Ishanya Co-operative Housing]
 Society Ltd.]
 A Co-op. Housing Society registered]
 under the provisions of the Maharashtra]
 Cooperative Societies Act, 1960, Having]
 its registered office at: S. No. 19A, Hissa]
 No. 3A CTS No. 373, 375, 376, 377 & 378,]
 Satara Road, Dhankawadi, Pune – 411 042]
 Through its Chairman,]
 Vijay Kantilal Shah]
 Age: 67, Occu: Lawyer]
 And]
 Secretary]
 Pankaj Chandrashekhar Deshmukh]
 Age: 45 years., Occu: Business,]
- 2) Ganga Ishanya 'C' Co-operative Housing]
 Society Ltd.]
 (PNA/PNA(4)/HSG/(TC)/23719/2022-23)]
 A Co-op. Housing Society registered]
 under the provisions of the Maharashtra]
 Cooperative Societies Act, 1960, Having]
 its registered office at: S. No. 19A, Hissa]
 No. 3A CTS No. 373, 375, 376, 377 & 378,]
 Satara Road, Dhankawadi, Pune – 411 042]

Through its Chairman,]
Sudhakar Kashid]
Age: 58 years Occu.: Service]
Scretary]
Manoj Ijantkar]
Age: 52 years, Occu.: Business]

- 3) District Deputy Registrar of Co-Operative]
societies, And Competent Authority]
under the Maharashtra Ownership Flats,]
(Regulation of the promotion of]
construction, sale, management and]
transfer) Act, 1963.]
Having its Office At: Sakar Sankul, Shivaji]
Nagar, Pune- 411 005]

...Respondents

Mr. A. A. Kumbhkoni i/b Mr. Pankaj Das, for the Petitioner.

Mr. Vishwajeet Sawant i/b Mr. Ashok Gade, Ms .Riya John, Mr. Navin
Rathod, for the Respondent No. 1 & 2.

Ms. Pooja Patil, AGP for the Respondent No. 3.

CORAM : SHARMILA U. DESHMUKH
RESERVED ON : January 19th,2026
PRONOUNCED ON : February 23rd, 2026

JUDGMENT:

1. Rule. With consent Rule made returnable forthwith and taken up
for final hearing.

2. The present petition, at the instance of the landowner/developer,
impugns the order dated 17th November, 2023 passed by the

Respondent No. 3-competent authority in Application No. 167 of 2023 filed by the Respondent Nos. 1 & 2 under Section 11 of Maharashtra Ownership Flats and Apartment Act, 1963 (for short "**MOFA**") seeking certificate for execution of unilateral deemed conveyance.

FACTUAL MATRIX :

3. The Petitioner is owner of land bearing survey no. 19A, Hissa no. 3A admeasuring as per revenue record 25040 square meters but found to physically admeasure 23734 square meters situated at village Dhankawadi, District Pune. After deducting the area under road widening of 1125 square meters, the net area admeasures 22609 square meters. The Petitioner proposed development of residential/commercial complex consisting of four buildings/wings 'A', 'B', 'C' and 'D' on the said land and obtained necessary commencement certificate, sanctioned building plans from the Pune Municipal Corporation. As per the sanctioned plan, the residential building complex was to consist of four buildings forming three independent projects (a) project comprising of wings "A" and "B" named as Ganga Ishanya 'AB', (b) project comprising of wing "C" named as Ganga Ishanya 'C' and (c) project comprising wing "D" named as Ganga Nakshatra.

4. The construction of Ganga Ishanya 'AB' and Ganga Ishanya 'C' is completed and the project Ganga Nakshatra comprising of building/wing D is under construction. Respondent No. 1 and 2 i.e.

Ganga Ishanya 'AB' and Ganga Ishanya 'C' approached the competent authority under Section 11 of MOFA by Application No. 167 of 2023 contending that the total area of subject plot was 22609 square meters. Building no. A and B comprised of 81 flats and building no. C comprised of 101 flats and the entire construction is over and sought conveyance of the entire plot area of 22609 square meters along with the construction thereon.

5. The Petitioner opposed the application contending that the layout consists of four wings and have completed construction of Ganga Ishanya 'AB' and Ganga Ishanya 'C', whereas wing 'D' is an ongoing project. It was further stated that the built-up area of building 'A' and 'B' was 23469.34 square meters and building 'C' is 8239.34 square meters and as per the sale agreement, the Petitioner will execute conveyance of the entire land to an Apex Society formed of co-operative housing societies of Building "AB", "C" and "D". It was contended that the Petitioners are constructing building 'D' as part of the sanctioned layout and obstruction has been caused by Respondent No. 1 and 2.

6. By the impugned order, the competent authority has taken into consideration the statutory provisions of MOFA and Government Resolution dated 22nd June, 2018 which provided that where there are several buildings in one layout and constructed buildings have an independent co-operative housing society and in event, the

construction of other buildings in the layout is not completed, the deemed conveyance of the land is to be granted to the constructed building in proportion to their built up area or ground coverage or plinth area and undivided share in the common amenities. The competent authority further considered the sanctioned plan of Pune Municipal Corporation dated 2nd November, 2018 and by taking into consideration the built-up area as per the sanctioned plan granted deemed conveyance of land admeasuring 11890.53 square meters and 23469.34 square meters constructed area to Respondent No. 1 and land admeasuring 4174.39 square meters and 8239.34 square meters constructed area to the Respondent No 2.

SUBMISSIONS :

7. Mr. Kumbhakoni, learned senior advocate for the Petitioner would submit that MOFA came to be amended by MOFA Amendment and Validation Act, 2025 and the amendment is given retrospective effect from 1st May, 2016. He submits that by reason of the amendment in respect of projects registered under RERA, the allottees are entitled to seek deemed conveyance upon failure to execute the registered deed of conveyance by the promoter as per the statutory provisions of RERA and the obligation arises after the date of issuance of occupancy certificate to the last of the building or wing in the layout. He submits that as per Section 5 of the Amendment Act, 2025 pertaining to the

validation and savings, any action taken or any order of any authority passed before commencement of the Amendment Act, 2025 shall be deemed to have been validly executed and in the present case, as the present Petition came to be admitted on 9th October, 2024, and the order of the competent authority is under challenge, the impugned order is not saved by Section 5 of the Amendment Act, 2025.

8. He would further submit that the area available for development is only 22,609 square meters. He submits that Ganga Ishanya A and B wing and Ganga Ishanya C wing were part of larger layout which included the construction of Ganga Nakshatra D. He submits that Wings AB and C are complete and the co-operative housing societies have been registered. He submits that in the aforesaid layout, the 4th building i.e. Ganga Nakshatra D wing is proposed of 26 floors and 203 tenements and presently the Petitioner has already constructed 7 floors and is in the process of completing rest of the construction for which considerable funds have been invested by the Petitioner. He would further submit that the Petitioner is ready and willing to execute appropriate conveyance to the apex society comprising of three societies of the projects which are already completed and the final conveyance will be executed of the land with common areas and facilities in favour of the apex society and buildings with proportionate land portion in favour of the Respondent No. 1 and 2. He submits that

however the competent authority has granted deemed conveyance of larger plot of land than the one to which the Respondent Nos 1 and 2 are entitled. He would further point out that as per the architect's certificate annexed to Page 289 of the present Petition, Respondent No. 1 is entitled to 8678.19 square meters and Respondent No. 2 is entitled to 3401.19 square meters and the proposed 'D' wing is entitled to 7370.46 square meters He submits that by virtue of conveyance of 11,890.53 square meters to Respondent No. 1 and 4174.39sq.m. to Respondent No. 2. It has become impossible for the Petitioner to complete construction of 'D' wing as permitted by the building permission granted by the Corporation.

9. He would further submit that the competent authority while granting deemed conveyance to Respondent No. 1 and 2 has given no reason for conveying the said area to Respondent Nos 1 and 2. He submits that the claim made by Respondent No. 1 and 2 was for the entire plot of land, whereas the Petitioner's architect certificate speaks of a different area and the competent authority has given a completely different area. He would further submit that it was necessary for an architect's certificate to be placed on record, before the competent authority could have ascertained the entitlement of the Respondent No. 1 and 2. He submits that specific ground has been taken in the present petition that there was no architect's certificate produced on record,

and therefore, the area conveyed by the Respondent No. 3 is not supported by any material on record. He submits that as per the Government Resolution of 22nd June, 2018, it was open for the competent authority to appoint an architect from the panel of architect which has not been done in the present case. He submits that this Court can modify the area and grant proportionate area as the impugned order does not give any reasons for conveying the area as conveyed.

10. Mr. Sawant, learned senior advocate for Respondent No. 1 and 2 submits that in the year 2011, the original layout was sanctioned for wing 'A', 'B' and 'C' with wing 'D' being a small commercial building of ground + one plinth area admeasuring 528.75 square meters as per the brochure advertised by the Petitioner. He submits that based on the sanctioned layout plan of 2011, individual agreements for sale were entered into by and between the Petitioner and the Respondent-Society members under the provisions of MOFA. He submits that from time to time the Petitioner revised the sanctioned layout without consent of the flat purchasers. In the year 2017, the project came to be registered under MAHARERA and the revised sanctioned plan has been obtained by suppressing material facts. He submits that the last revised plan was sanctioned on 24th February, 2023. He submits that in 2022, the Petitioner started construction of "D" building and has converted the initial ground + one area into ground + 32 residential and commercial

area based on illegally revised sanctioned layout. He submits that as there was default in complying with the obligations under Section 11 of MOFA, an application was filed by the Respondent No. 1 and 2 before the competent authority which has rightly granted the conveyance to the Respondent No. 1 and 2. He submits that though an area of 23,0609 square meters was claimed by way of deemed conveyance, the Respondents are agreeable to the area conveyed by the impugned order.

11. He submits that it is not the case of Petitioner that conveyance ought not to be given and the dispute is as to the area to be conveyed. He submits that based on sanctioned plan placed on record before the competent authority of 2nd November, 2018, the authority has granted proportionate area in accordance with the Government Resolution dated 22nd June, 2018. He submits that there is no dispute about the constructed area of Respondent No. 1 and 2 and it is case of simple mathematical calculation of arriving at the proportionate area. He tenders the area statement as per the sanctioned plan of 2018 working out the area to be conveyed to the Respondent No. 1 and 2. He submits that there is no question of remand only for the purpose of submitting architect certificate as there is sufficient material for ascertaining the area by the competent authority in the form of the sanctioned plan of 2018.

12. In so far as the amendment of 31st December, 2025 is concerned, he would submit that as the order of the competent authority was passed prior to the Amendment Act of 31st December, 2025, Section 5 of the Amendment Act, 2025 saves the impugned order. He submits that the architect's certificate which is now placed on record before this Court was not placed before the competent authority and in any event, the calculations are based on revised plan of the year 2022 and the architect's certificate would indicate that the statement is issued subject to decision of the Municipal Commissioner in the subject matter which is pending.

13. In rejoinder, Mr. Kumbhakoni would submit that as per the list of documents, the architect's certificate was not submitted by the Respondent No. 1 and 2. He would further submit that the Petitioner has pleaded in the petition that the competent authority had granted liberty to both the parties to file their additional submissions and their documents, if any, and in view thereof, the Petitioner was in the process of filing the submissions as well as the architect certificate giving correct and exact calculation, however, the same was not placed on record as the Roznama of the competent authority did not indicate the date by which the written submissions/additional documents were required to be filed. He submits that it is not the case of simple mathematical calculation by considering the proportionate area and

what was required to be considered is the land to be conveyed to sustain the built-up area which has nexus with FSI.

REASONS AND ANALYSIS :

14. The Petitioner who is the developer had proposed development on the larger layout of three projects comprising of Wings AB as one project, Wing C as second project and Wing D as the third project. The flat purchaser's agreement dated 17th September, 2013 which is placed on record at Page 318 of the Petition, has been executed between the Petitioner and the flat purchaser of tenement in Wing A. The said agreement contains recital about sanction of building plans obtained from the Pune Municipal Corporation dated 22nd August, 2011. Similarly, there is a flat purchaser's agreement dated 15th December, 2012 executed between the Petitioner and flat purchaser of tenement in Wing B placed at Page 402. There is another flat purchaser's agreement dated 11th October, 2018 executed with flat purchaser of Wing C which speaks of the entire project comprising of four buildings/wings i.e. A, B, C and D and the revised sanctioned plan dated 20th July, 2017.

15. Perusal of the flat purchasers agreement executed in the year 2011 would indicate reference to sanctioned plans of the year 2011. The sanctioned plans of the year 2011 speaks of construction of Wings A, B,C and D. The flat purchasers were therefore alive to the proposed construction of wing D. The sanctioned plan of 22nd August, 2011 shows

the built up area calculations of all the Wings and in so far as Wing D is concerned, the plan shows construction of ground floor with BUA of 257.74 square meters apart from common amenities which BUA of D Wing was retained in the sanctioned plan of the year 2013. The BUA of D Wing was revised in the sanctioned plan of the year 2014 and the area of ground floor increased to about 500 square meters and first floor was proposed with BUA of about 182 square meters. In the sanctioned plan of the year 2017, the BUA in so far as D Wing is concerned was further revised to 622.39 square meters on ground floor and mezzanine floor of about 330.34 square meters. It is therefore evident that subsequent to the execution of the flat purchaser's agreement, the sanctioned plans have been revised from time to time. The occupation certificate of Wings AB was received on 21st September, 2018 and Wing C was received on 29th June, 2021.

16. Before the Competent Authority, the plan of 2nd November, 2018 was placed for consideration in which the constructed area of Wings A was 11692.73 square meters, Wing B was 11776.61 square meters, Wing C was 8239.34 square meters and Wing D was 7269.81 square meters. The area statement shows the net plot area at 19748.01 square meters and with addition of TDR previously approved and TDR proposed shows the permissible FSI at 39005. To simplify the procedure in respect of grant of certificate for execution of unilateral deemed conveyance, the

Government of Maharashtra has issued a Government Resolution dated 22nd June 2018. Relevant for our purpose are Sub-clauses (1) and (4) of Clause 2(B) of the said Resolution which reads thus :

"1) If there are many buildings on one plot and have a separate co-operative society of each building and if construction of some of them is incomplete then while making Deemed Conveyance of completed building, undivided share of occupancy right in the proportion of construction on the proportionate area of the construction of the building of such society or ground coverage or plinth area, similarly open space, common services and facilities, roads should be given."

"3)

4) If the developer did not complete the project in expectation of getting additional FSI or TDR in urban area, then in such cases, deemed conveyance of the number of flats proposed as per approved construction plan and that much flats are constructed then their deemed conveyance should be made."

17. The guidelines specifically deal with the situation where there are many buildings on one plot and have separate cooperative societies and when the construction of some of them is incomplete. The purport is to grant conveyance of the land required to sustain the constructed structure along with the proportionate area in common amenities which is required to be conveyed.

18. There is no dispute about the applicability of the Government Resolution of 22nd June, 2018 or about the obligation of the Petitioner to convey the land and the building to the Respondent Nos. 1 and 2 or about the constructed built up areas of Wings AB and C. The entire dispute is centered around the area which ought to have been conveyed to Wings AB and C under Section 11 of MOFA. The contention of Mr.

Kumbhakoni is that without an architect's certificate on record, there is no basis for conveying the area as conveyed by the impugned order. I am unable to subscribe to the said contention. Considering that the sanctioned plan of 2nd November, 2018 was on record and the constructed built up area of Respondent No 1 and 2, who were seeking deemed conveyance was not disputed, it was matter of simple mathematical calculation. The constructed BUA of Wings A & B is 23469.34 square meters and of Wing C is 8239.34 square meters. The total plot area is 19748.01 square meters as per sanctioned plan and the total permissible FSI was 38978.49. For purpose of sustaining the built up area of the constructed buildings, by taking into consideration the total permissible FSI, the share of Wings AB in the total plot area would be :

$$\frac{23469.34}{38978.49} \times 19748.01 = 11890.53 \text{ square meters.}$$

Share of Wing C in the total plot area would be :

$$\frac{8239.34}{38978.49} \times 19748.01 = 4174.36 \text{ square meters.}$$

19. The competent authority has rightly calculated the proportionate land area on basis of the sanctioned plan of the year 2018 and conveyed proportionate share in the plot area and the constructed built up area. I

am, therefore, unable to accept the contention that without the architect's certificate being on record, there is no basis for ascertaining the area required to be conveyed. Though, reliance has been placed by Mr. Kumbhakoni on the architect's certificate annexed at Page 290 of the Petition, firstly this certificate has been produced before this Court for the first time and secondly the certificate is based on the revised sanctioned plan of the year 2022 and the certificate comes with a disclaimer of being subject to the decision pending before Pune Municipal Corporation. The certificate cannot be relied upon to ascertain the proportionate area to be conveyed to the Respondent Nos. 1 and 2.

20. It needs to be noted that in event the proportionate area required to sustain the building as directed to be conveyed by the Government Resolution of 2018 is construed literally, then as the FSI was 1, Wing AB itself would take complete plot area of about 23000 square meters to sustain its constructed BUA was 23469.34 square meters. The impugned order does not calculate the proportionate area literally but on the basis of the area statement and considering the permissible FSI as per the sanctioned plan of 2018 has ascertained the proportionate share of plot area to be conveyed.

21. As per the sanctioned plan of 2018, the TDR utilized earlier was 10569.84, thereafter by the revised plan, the TDR proposed to be

utilized was 7462.08. By loading TDR, the Petitioner gets right to construct additional area thereby proportionately reducing the already constructed building's share in the FSI. For eg. if the Petitioner is permitted to utilize further TDR and gets FSI of 50,000 and proposes to utilize the FSI for enhanced constructed of Wing D, the share of Wings AB in the plot area will be :

$$\frac{23469.34}{50000} \times 19748.01 = 9269.45$$

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

23. By opposing the area sought to be conveyed by the impugned order, in effect, the Petitioner claims the benefit of TDR as may be sanctioned for enhanced construction of Wing D, which is clear from the

revised sanctioned plans showing increased TDR proposed to be utilized for construction of Wing D.

24. The Petitioner's case of decreased entitlement of Respondent No 1 and 2 in the plot area would entail an inquiry as to whether the construction of Wing D should be in consonance with the sanctioned plans as disclosed to the flat purchasers of Wings AB and C or the flat purchasers had consented to utilization of additional TDR for enhanced construction of wing D. Perusal of the clauses in the flat purchaser's agreements executed in the year 2011 and 2018 would disclose some degree of variance as regards the disclosure of sanctioned plans which were revised from time to time. The core of the dispute lies in the nature of enhanced construction proposed in respect of Wing D. Whether the flat purchasers of Wings AB and C had consented to the Petitioner's entitlement to the benefit of TDR for construction of Wing D is not an issue to be adjudicated in Section 11 application. Considering the restrictive nature of inquiry contemplated in adjudicating an application under Section 11 of MOFA, these issues pertaining to Section 7 and 7A of MOFA are outside the remit of inquiry by the competent authority and can be effectively adjudicated only in Civil Court.

25. The flat purchaser's agreement dated 11th October, 2018 in respect of tenement in Wing C contains Clause 35 which reads as under:

“35. Notwithstanding anything contained hereinabove, the Promoter shall cause the said Project to be conveyed in favour of the Co-operative Housing Society formed of all the Purchaser/s of Units therein within a period of One year from the date the Promoter completes the last unit in the said Project and after the Promoter has realized all its dues from all the Purchaser/s of all units in the said Project. Further the Promoter, shall, within a period of One Year form completion of the last Building forming part of the said Whole Project cause to be conveyed the said Land and all areas and facilities common to the Whole Project to the Apex Society formed with the Co-operative Societies formed of the holders of Units in individual Societies in the said Whole Project as its Members.”

26. The contractual clause is pressed in service to obstruct the right of the Respondent Nos 1 and 2 to deemed conveyance. The said clause does not find mention in flat purchaser's agreement dated 17th September, 2013 annexed at Page 318 in so much specific terms and appears to have been included in the later flat purchaser's agreements. Secondly, such a contractual term has been found to be in direct conflict with Rule 9 of MOFA Rules by Co-ordinate Bench of this Court in **Lok Housing & Construction Ltd vs State of Maharashtra And Others**¹. In that case the flat purchaser's agreement contained a clause that the conveyance deed would be executed only upon completion of the entire development scheme. The Learned Single Judge interpreted Rule 9 of MOFA Rules to hold that the term "period" in Rule 9 cannot be interpreted to mean an indeterminate, future event based timeline such as completion of the entire development scheme.

27. Dealing next with the submission as regards the Amendment Act

1 2025:BHC-AS:13887

of 31st December, 2025. By virtue of the said amendment, Section 11 A is deemed to have been inserted in MOFA with effect from 1st May, 2016 which provides for the entitlement of association of allottees to deemed conveyance as per provisions of RERA, which speaks of conveyance after the receipt of occupancy certificate of last of the building in the layout.

28. What is necessary to consider is Section 5 which is the validation and saving clause. Section 5 of the Amendment Act, 2025 provides that any proceedings instituted under the provisions of the principal act before the commencement of the MOFA Amendment Act including the decisions taken, orders passed or directions issued by competent authority shall be deemed to be duly and validly executed and no suit or legal proceedings shall lie in any Court on the ground that the provisions of the said principal act prior to such commencement did not provide for unilateral deemed conveyance in respect of real estate projects registered under RERA. The validation and saving clause, therefore, saves the orders passed by the competent authority. In the present case, the impugned order has been passed by the competent authority on 17th November, 2023 i.e prior to the Amendment Act of 31st December, 2025, and therefore, the impugned order is saved. The present Petition being a continuation of the proceedings will be governed by the statute in force at the time of passing of the impugned

order. This Court is not inclined to accept the submission that by reason of the Petition being admitted, the saving clause will not apply the impugned order.

29. Coming the decisions relied upon to assail the impugned order, in case of **Velentine Properties Private Limited vs State of Maharashtra And Others²**, the flat purchaser's agreement included a clause as regards reservation of right to develop the balance land area. Despite the said clause, the competent authority declined the entitlement of developer to the retained area of 146 square meters. The facts herein are completely distinguishable as the Petitioner claims the benefit of additional TDR for enhanced construction of Wing D.

30. The decision in **Acme Enterprises & Another vs Deputy Registrar Co-operative Societies (2) And Others³** arose of interim application filed in cross suits by the developer and the federation of housing societies involving dispute about conveyance of land in common layout and developer's right to carry out further construction. The present proceedings arise of Section 11 application and the competent authority even otherwise could not have gone into the said issues.

31. In view of the discussion above, I do not find any infirmity in the impugned order of Competent Authority passed under Section 11 of MOFA. The Petitioner is at liberty to file declaratory suit for enforcing

2 2025 SCC OnLine Bom 5424

3 2025:BHC-OS:20023

its entitlement to utilize the benefit of TDR for additional construction of Wing D.

32. Resultantly, the Petition fails and stands dismissed. Rule is discharged.

(SHARMILA U. DESHMUKH, J.)

33. At this stage, Mr. Kumbhakoni learned senior advocate for the Petitioner seeks extension of ad-interim order granted on 9th October, 2024.

34. Mr. Gade, learned counsel for the Respondent Nos. 1 and 2, opposes the request. As the interim order is operating since 9th October, 2024, the same is extended for period of 6 weeks from today.

(SHARMILA U. DESHMUKH, J.)