BEFORE THE MAHARASHTRA REAL ESTATE

APPELLATE TRIBUNAL, MUMBAI

Appeal No. AT06/00804/2025

In

Complainant No. CC006000000395936 of 2023

RA Residences Co-Op. Housing Society Ltd.
Plot No. 810, Opp. Sharda Cinema, Dr. B.A.
Road, MMGS Marg, Dadar East, ...Appellant
Mumbai- 400 014.

V/s

RA Associates
113/114, Mittal Tower, 'A' Wing, Nariman
Point, Mumbai – 400 021 ...Respondent No. 1

Sushil Kothari
113/114, Mittal Tower, 'A' Wing, Nariman
Point, Mumbai – 400 021 ...Respondent No. 2

Rajendra Kothari
113/114, Mittal Tower, 'A' Wing, Nariman
Point, Mumbai – 400 021 ...Respondent No. 3

Ashok Kothari
113/114, Mittal Tower, 'A' Wing, Nariman
Point, Mumbai – 400 021 ...Respondent No. 4

Vinay Kothari
113/114, Mittal Tower, 'A' Wing, Nariman
Point, Mumbai – 400 021 ...Respondent No. 5

Vivek Kothari
113/114, Mittal Tower, 'A' Wing, Nariman
Point, Mumbai – 400 021 ...Respondent No. 6

Varun Kothari
113/114, Mittal Tower, 'A' Wing, Nariman
Point, Mumbai – 400 021 ...Respondent No. 7

Sushil Kothari
113/114, Mittal Tower, 'A' Wing, Nariman
Point, Mumbai – 400 021 ...Respondent No. 8

Chandraprakash Siroya
113/114, Mittal Tower, 'A' Wing, Nariman
Point, Mumbai – 400 021 ...Respondent No. 9

Adv. Mr. Nilesh Gala for appellant.

Adv. Mr. Rubin Vakil for respondents.

CORAM : SHRI S. S. SHINDE J., CHAIRPERSON &
SHRI SHRIKANT M. DESHPANDE, MEMBER (A)

RESERVED ON : 18th August, 2026

PRONOUNCED ON: 16th September, 2026

[Through Video Conference and Physical (Hybrid) Mode]

JUDGMENT

[PER: SHRIKANT M. DESHPANDE, MEMBER (A)]

1. The captioned appeal arises from the order dated 07.07.2025 passed by the learned Member-I, Maharashtra Real Estate Regulation Authority (for short "the Authority") in complaint no. CC006000000395936 of 2023 filed by the appellant herein.

2. The appellant is registered co-operative housing society of allottees of the project in the name and style "RA RESIDENCES" bearing MahaRERA project registration no. P51900001634 located at CTS/Plot/Surve No.2/12, District Mumbai. The appellant will be hereinafter referred to as "society". The respondent no. 1 is the partnership firm which is developing the

said project. The respondent no. 2 is authorized signatory and partner of respondent no. 1. The respondent nos. 3 to 9 are also partners of respondent no. 1. Therefore, respondent nos. 1 to 9 collectively hereinafter will be referred to as "promoters".

3. The brief facts culled out from the pleadings, documents on record, and the impugned order are that the promoters advertised the said project on hoardings, banners, brochures and other promotional materials making several material representations that induced the members of the appellant society to book and purchase their respective flats. These representations, which formed the basis of the transactions, included assurances regarding project timelines, amenities, design features, and statutory compliances. The said project consists of 2 independent buildings i.e. 2 residential wings A and B (collectively referred to as "residential building") and 1 IT Building (collectively referred to as "commercial building"). The proposed date of completion of the project when the project was registered with the MahaRERA was 30.06.2018, which came to be extended to 30.06.2019, which was further extended till 31.03.2025. The promoter obtained occupation certificate in parts on 23.06.2020, 15.12.2020 and 09.12.2021 for the wing A and Wing B i.e. "residential building" and allottees in the said residential building are put in possession of their respective flats. The promoter has established and registered the society of the allottees in the said residential building, i.e. the appellant herein, which came to be registered on 18.10.2022.

4. According to the appellant society, promoter at the time of execution of agreements for sale with the allottees represented the following assurances:

"a) *Project completion by 30th June 2018;*

b) *Solar Power Plant*

c) *Rainwater Harvesting System*

d) *Luxury amenities;*

e) *Engagement of international vendors;*

f) *Specific design features and elevation;*

g) *Full ground floor reserved for guest parking per sanctioned BMC plan;*

h) *Advanced safety systems like gas leak detectors;*

i) *Development of 40,000 sq. ft. IT Park;*

j) *Designated RG area; gymnasium on the 41st floor of both wings;*

k) *A full glass rear façade;*

l) *Issuance of a single Occupation Certificate for the entire residential portion; and*

m) *Installation of international-standard fire safety systems.*

n) *Place in front of IT Park was designated RG Area."*

5. According to the appellant society, none of the above amenities as assured by promoters were ever completed till date in violation of Section 12 of the RERA Act, 2016. On the contrary, the plans of the said project were unilaterally changed by the promoters. According to the appellant society, the promoters in complete disregard of the statutory scheme under Section 14(1) of the RERA Act, 2016, proceeded to illegally and unauthorizedly

consume, appropriate, and utilize the Floor Space Index (for short "FSI") that is attributable to the appellant's share, for purposes extraneous to the original scope of development, and that too, without obtaining the prior written consent or informed approval of the members of the appellant society. The promoters at various stages of construction and thereafter, unilaterally modified and altered the layout plans, internal configuration, and external elevation of the building, as well as the nature and location of amenities and facilities, without any prior express consent of the allottees, thereby committing a gross breach of their obligations under the RERA Act as well as MOFA and in terms of express provisions in the agreements for sale executed with the individual flat purchasers.

6. According to appellant society, the promoters had obtained the sanction to the building plan in the year 2017 based on which they actively marketed, promoted, and sold various flats and units to the allottees, including the members of the appellant society. The said 2017 sanctioned plan formed the foundational basis and inducement for the individual agreements for sale executed by the promoters with the allottees. Subsequent to the execution of such agreements for sale and without obtaining the prior written consent of the appellant society and/or its constituent allottees, the promoters unilaterally carried out substantial modifications, alterations, and deviations to the sanctioned plan and procured a revised plan in the year 2021. Such unilateral and material modifications to the originally sanctioned building plans, undertaken by the promoters without the requisite consent of a least two-thirds of the allottees as

mandated under Section 14(2)(i) of the RERA Act constitute a gross violation of the said provision. These changes are not only voidable under law but also actionable as unfair trade practices under Section 18 read with Section 61 of the RERA Act, 2016.

7. According to the appellant society in violation of Section 14(2)(i) of RERA Act, 2016, the promoters have committed following deviations, which, *inter alia,* include as below:

   a) *Encroachment on mandatory guest parking areas to create additional parking;*
   b) *Unauthorized conversion of designated IT building into commercial use, along with unlawful expansion of FSI and RG area encroachment;*
   c) *Relocation of the open-to-ground RG space to the 5th floor podium, reducing open-to-sky areas;*
   d) *Granting of extra space in duplex flats by encroaching upon lower-floor open areas;*
   e) *Illegal construction and sale of storerooms on refuge floors, which are non-saleable under fire safety norms; and construction and unauthorized sale of office premises on the ground floor by encroaching on common areas.*

8. According to the appellant society, the promoters intentionally delayed the formation of the co-operative housing society in order to retain control over and usurp the residual and future FSI that would otherwise accrue to the society upon its registration. It was only after repeated follow-ups and sustained efforts by the allottees that the present society was eventually formed. Post-formation of society, the promoters failed to carry

out various compliances including execution of conveyance, handover of building documents, and transfer of common areas, in violation of their statutory obligations under MOFA and RERA. The appellant society vide letter dated 20.12.2022 convened the General Body Meeting of the society which was also attended by the promoters. In the said meeting, the promoters committed and assured the members that the entire project along with all common areas, amenities, and relevant records, would be formally handed over to the society on or before 31.03.2023. Despite the written request from the society, no response has been received, and the promoters have failed to comply with the said terms.

9. According to the appellant society, for the effective and smooth functioning of the society, it had addressed a detailed communication to the promoters on 06.01.2023, wherein the society specifically requested the promoters to furnish and hand over a comprehensive set of 84 documents including statutory approvals, sanctioned plans, occupation certificates, maintenance manuals, title records, and other project-related documents essential for the day-to-day administration and governance of the society. The society also noticed that there was serious fire incident occurred on 26th January 2023, on the 42nd floor of Wing 'A', which exposed grave deficiencies in the fire safety infrastructure of the project. During the incident, the fire-fighting system failed, pipes burst due to substandard materials and defective joints, flooding the pump room and disabling the sprinkler system. Fire extinguishers were non-functional, and the Mumbai Fire Brigade had to deploy excessive

water, which flooded all five lift shafts, rendering all lifts inoperative. According to the appellant society, promoters have failed to install or operationalize the fire fighting and fire-suppression systems in accordance with the National Building Code and relevant fire safety regulations, and the same has been reported by multiple inspection authorities. Similarly, the lifts installed in the building are non-operational, faulty, or dangerously ill-maintained, causing serious inconvenience to the senior citizens. Further, the electrical load at the project was inadequate to operate the firefighting water pumping system, yet no remedial steps were taken by the promoters. Further, the fire brigade's access was obstructed due to the inadequate width of entry gates, a clear violation of norms under the Maharashtra Fire Prevention and Life Safety Measures Act, 2006 and Rules made thereunder. The promoters only restored two lifts. However, 3 remaining lifts remained non-functional for nearly a month. Consequently, the appellant society issued a letter dated 14.02.2023 formally placing these failures on record followed by a reminder on 21.02.2023 requesting submissions of the pending documents essential for the effective administration of society. Despite repeated follow-ups, the promoters continued to neglect their responsibilities, forcing the appellant society to issue a further letter dated 25.02.2023 highlighting their continued non-compliance and inaction. The appellant issued a legal notice dated 29.03.2023 to the promoters, thereby formally calling upon the promoters to comply with their contractual and statutory obligations in respect of completing the balance work in the said project. Pursuant to the said legal notice, the promoters convened joint meetings with the Managing Committee members of the appellant society on 04.04.2023 and 06.04.2023 during which promoters categorically assured the appellant society that the balance work pertaining to the project, including pending civil, mechanical, electrical, fire safety, and compliance-related works, would be completed within one month from the date of said meeting. However, there was no progress.

10. Aggrieved by the above conduct of the promoters, the appellant society filed the captioned complaint before the Authority seeking following reliefs:

"a) *That the Respondents be directed to forthwith complete the balance work as required under the necessary specifications and to rectify the defects in the work and in Fire Fighting machinery or direct the Respondents to deposit Rs. 15/- crores with the complainant to carry out necessary repair/replace work.*

b) *That the Respondents be directed to hand over the entire project to the Society forthwith and be further injunction from carry out any construction work in respect of changed plans.*

c) *That this Hon'ble Court may be pleased to grant and order of injunction thereby prohibiting/restraining the Respondents from changing the sanctioned plans of buildings as shown in sanctioned layout which were shown to the respondents and annexed to their respective agreements and also disclosed on*

RERA website at the time of registration of the Project.

d) *That this Hon'ble Court may be pleased to grant and order of injunction thereby prohibiting/restraining the Respondents from Creating 3rd party rights in respect of commercial building which is being constructed by the respondent adjoining to the existing society building.*

e) *That this Hon'ble Court may be pleased to direct the Respondents*

D1) *To provide to the complainant bank lien list of all the Society members,*

D2) *provide the list of documents more particularly mentioned in their letter dated 06/01/2023 for the purpose of smooth functioning of the Society,*

D3) *to provide CFO's provisional Fire NOC, CFO's Final Fire NOC, Occupation Certificate and Form-B,*

D4) *to provide exact numbers and location of gates, parking spaces, guest parking as well as the parking spaces allotment Wing wise to the Complainant,*

D5) *to install CCTV camera*

11. After hearing the parties, the Authority passed the impugned order with following directions:

"a) *The present complaint is partly allowed.*

b) *It is held that the respondent has violated the provisions of Section 14(2) of the RERA. Accordingly, the respondent is directed to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) to the complainant towards costs, in view of the observations made in paragraph no. 18(n) mentioned above.*

c) *The respondent is further directed to comply with its obligations under Sections 4 and 11 of the RERA by uploading the relevant permissions obtained by it on the MahaRERA website forthwith.*

d) *The respondent is further directed to revive the registration validity of the said project, which has lapsed on 31-03-2025, by filing an application for extension within a period of 30 days from the date of this order, as per the prescribed norms of MahaRERA".*

12. From the impugned order, it seems that the Authority has primarily adjudicated on the substantive issues of allegation of violation of Section 14(2) of RERA Act, 2016, which also included issues pertaining to creation of third-party rights in commercial building of the project. The Authority has, however, not adjudicated on the remaining prayers in the captioned complaint.

13. Aggrieved by the impugned order the appellant society has filed the captioned appeal on the ground as set out in the appeal memo seeking following reliefs:

"a) *This Hon'ble Tribunal be pleased to quash and set aside the impugned final order dated 7th July 2025 passed by the Hon'ble Maharashtra Real Estate Regulatory Authority in Complaint No. CC006000000395936 of 2023*;

b) This Hon'ble Tribunal be pleased to order and direct the Respondent Nos. 1 to 9 to deposit Rs. 19,91,50,000/- (Rupees Nineteen Crores Ninety One Lakhs Fifty Thousand only) with the Appellant to carry out necessary repair/ replacement work/incomplete amenities to forthwith complete the balance work as required under the necessary specifications and to rectify the defects in the work and in Fire Fighting machinery, without prejudice and strictly in the alternative, direct the Respondents to forthwith complete the balance work and incomplete amenities as required under the necessary specifications and to rectify the defects in the work and in Fire Fighting machinery.

c) This Hon'ble Tribunal be pleased to order and direct the Respondent Nos. 1 to 9 to hand over the entire project to the Society forthwith and be further injuncted from carrying out any construction work beyond the sanctioned plans dated 18.7.2017.

d) This Hon'ble Tribunal be pleased to order and direct order of injunction thereby prohibiting/ restraining the Respondents from changing the sanctioned *plans of the buildings as shown in the sanctioned layout plan dated 18.7.2017.*

e) *This Hon'ble Tribunal be pleased to order and direct injunction thereby prohibiting/ restraining the Respondents from creating 3rd party rights in respect of the commercial building which is being constructed by the respondent adjoining the existing society building.*

f) *This Hon'ble Tribunal be pleased to direct the Respondents*

  1) *To provide the Appellant, bank lien list of all Society members,*
  2) *Provide the list of documents more particularly mentioned in the letter dated 06/01/2023 for the purposes of smooth functioning of the Society,*
  3) *Provide CFO's provisional Fire NOC, CFO's Final Fire NOC, Occupational Certificate and Form-B,*
  4) *Provide exact number and location of gates, parking spaces, guest parking as well as the parking spaces allotment Wing wise to the Appellant*
  5) *to Re-imburse cost of installation of CCTV camera.*

g) *That this Hon'ble Tribunal be pleased to order and direct the cancellation/revocation of the illegal extensions granted to the said project u/s 7(3) and* *stay on further extensions to the project registration.*

h) *That this Hon'ble Tribunal be pleased to order and direct a debit freeze on the RERA Escrow Bank Account of the said project.*

i) *That this Hon'ble Tribunal leased to issue a permanent injunction and status quo in respect of Wing C as in violation of Section 14 of the RERA Act, 2016.*

j) *That this Hon'ble Tribunal be pleased to grant permanent injunction from using FSI admeasuring approximately 45,000 sq. ft. Built-up Area belonging to the Appellant.*

k) *That this Hon'ble Tribunal be please to hold and declare the conversion of the Office/ IT Building i.e. Wing C to Commercial Building a violation under Section 14 of the RERA Act and further order and direct the Respondents to restore the Wing C of the said project into Office/IT Building as per sanctioned plans dated 18.7.2017*

l) *That this Hon'ble Tribunal be pleased to order and direct the Respondent to restore the construction of Wing C of the said project as per sanctioned plans prior dated 18.7.2017; and further declare all amendments to sanctioned plans on and after 18.7.2017 as illegal, bad in law and contrary to Section 14 of the RERA Act, 2016.*

m) That this Hon'ble Tribunal be pleased to hold and declare the unilateral increase of 5 Office/IT Units in Wing C to 7,457 sq. mtrs of Commercial Units a violation under Section 14 of the RERA Act and further order and direct the Respondents to restore the Wing C of the said project into 5 Office/ IT Units as per sanctioned plan dated 18.7.2017.

n) That this Hon'ble Tribunal be pleased to order and direct the Respondent to restore the construction of the said project as per sanctioned plans dated 18.7.2017 and grant conveyance of the said project along with all the common areas, open areas, terraces, parking, society offices, clubhouse, amenities and free of FSI spaces etc. as per sanctioned plans dated 18.7.2017

o) That this Hon'ble Tribunal be pleased to order and direct a permanent injunction against the Respondents from illegally converting the common areas, open areas, terraces, parking, society offices, clubhouse, amenities and free of FSI spaces of the project into FSI spaces controlled by the Respondent.

p) That this Hon'ble Tribunal be pleased to order and direct the Respondent to restore all the refuge areas on 13th, 20th, 27th and 41st Floor of the said project as per sanctioned plans dated 18.7.2017.

q) *That this Hon'ble Tribunal be pleased to order and direct Respondent to transfer the balance 64 "Guest Car Parking Spaces" to the Appellant.*

r) *That this Hon'ble Tribunal be pleased to order and direct the Respondents to not allot any parking spaces of the Wing A & Wing B to allottee of Wing C or any third party*

s) *That this Hon'ble Tribunal be pleased to order and direct the Respondent to pay to the Appellants Rs. 1,24,41,957/- incurred by the Appellants towards the incomplete works of the said project.*

t) *That this Hon'ble Tribunal be pleased to order and direct the Respondent Nos.1 to 9 to redeposit with the Appellant Rs. 17,50,00,000/- collected by the Respondent Nos. 1 to 9 towards Clubhouse Charges/Clubhouse Membership Fees/Maintenance Deposits, along with interest.*

u) *That this Hon'ble Tribunal be pleased to order and direct the Respondents to install Solar Panels and Rain Water Harvesting System as per Clause 25 and 36 of the Environment Clearance dated 2017.*

v) *That this Hon'ble Tribunal be pleased to order and direct the Respondent to handover audited accounts and direct the Respondent to refund the amounts which are not audited and accounted along with interest from dates of receipt till realisation thereof.*

w) *That this Hon'ble Tribunal be pleased to order and direct the cand cancellation of the registration of the* *project professionals associated with the said project.*

x) *That this Hon'ble Tribunal be pleased to impose maximum penalty under Section 61 of the RERA Act, for the blatant breach of the provisions of the RERA Act*

y) *Be pleased to order and direct appropriate directions/ issue report to the MahaRERA Chairperson and/or the State Government to initiate an inquiry into the adjudicatory conduct, competence, and decision-making process of the Ld. Member-1, MahaRERA;*

z) *Be pleased to order, direct and/or issue report to the State Government and/or Chairperson, MahaRERA to revoke the assignment of the Ld. Member-1, MahaRERA till investigation and/or inquiry of the judicial disobedience is completed, to prevent any further injury and harm to the allottees.*

aa) *Any other and further orders as this Hon'ble Tribunal deems fit and proper.*

bb) *Costs."*

14. We have heard the learned Advocate for the parties, their submissions entirely based on the contents of the memorandum of appeal, reply, rejoinder, and written submissions.

15. The learned advocate for the appellant society submitted that RERA Act does not contemplate extension to project registration beyond one year. In the instant case, the MahaRERA has unilaterally awarded extension of project registration to the said

project in violation of the RERA Act, rules regulations made thereunder. The project was originally registered on 29.07.2017 with completion date as 30.06.2019. The promoters sought Section 6 Extension from the MahaRERA for a period of one year, which came to be extended up to 29.06.2020. Subsequently the promotors sought extension under Section 7(3) of RERA Act, 2016 from 29.06.2020 to 31.05.2021 in violation of the RERA Act and provisions thereunder. The promoters did not seek any express written consent from the allottees for any such extension of project completion date. The promoters further sought extension of the project from 31.05.2021 to 31.03.2025, a 4-year extension in further violation of the RERA Act. As these extensions are granted unilaterally, without the consent of the allottees to illegally and unilaterally amend the sanctioned plans of the project. Any change/amendment in the said sanctioned plans of the project is violation of Section 14 of the RERA Act, 2016.

16. The learned advocate further submitted that promoters were to complete the project as per sanctioned plan dated 18.07.2017. However, the promoters amended sanctioned plan of the said project. The promoters have attempted to exploit the project by seeking additional FSI of 45,000 sq. ft. built up area. Further, the promoters have amended the sanctioned plan of open areas, refuge areas, common terraces etc. The promoters got the approved sanctioned plan of the project on 08.01.2021, without seeking consent of the allottees. The promoters at the time of sale of flats informed that the said building shall be an office/IT building, used for official purposes. Instead, the promoters have

filed an application to convert the usage of the premises to shop to commercial premises in violation of Section 14 as the conversion of IT Building to commercial building amounts to violation of change of use, adversely impacting the project and the same could not have been done without seeking express written consent of the allottees.

17. The learned advocate further submitted that the promoters illegally exploited the FSI of the said project by converting the proposal of the project, wherein the promoters' architect made a false statement before the MCGM for illegally constructing additional units in the project without seeking the consent of the appellant and complete change in the parking layout, other common areas of the project, substantially affecting the rights of the appellant and its allottees.

18. The learned Advocate submitted that promoters failed to provide the requisite open area/recreational area, which is mandatory to be provided on the ground/mother earth. Instead, the promoters provided the recreational garden on 5th floor podium, which is completely illegal and contrary to the settled position of law. Further, the promoters used the FSI for society management offices, which are provided free of FSI and excluded from FSI calculation. Illegal conversion of open areas of the appellant into private clubhouse areas after receipt of occupation certificate. This clearly shows that the promoters, in collusion with the MCGM, have unilaterally amended the sanctioned plans of the project.

19. The learned advocate submitted that it is mandatory under the RERA Act, 2016, to give true disclosures of facts in respect of

the project under Section 4 of RERA Act, 2016. None of the above amendments to the sanctioned plans have been disclosed by the promoters before the MahaRERA. On the contrary, the same are intentionally suppressed by the promoters, which is an absolute and blatant violation of the RERA Act, Rules and Regulations thereunder. Therefore, the promoters are liable for maximum penalty.

20. With regard to car parking spaces, the learned advocate submitted that promoters have failed to convey the guest parking spaces constructed in the said project to the appellant till date. As per sanctioned plan 73 guest parking spaces were sanctioned to be handed over to the appellant. It is submitted that the promoters have only 9 guest car parking spaces. Hence, the balance 64 car parking spaces are required to be handed over to the society. Further, the promoters are bound to demarcate and convey the guest parking spaces in favour of the society as the same forms part of the common amenity of the project. The society addressed a letter dated 10.05.2024 calling upon the promoters to handover the 64 number of guest parking spaces as per sanctioned plans and called upon the promoters to refrain any amendment in the sanctioned plans of the project.

21. The learned advocate submitted that the project is still incomplete and the society has incurred substantial cost towards the completion of some of the works of the said project for example, lifts, firefighting system, society office and furniture, incomplete common windows, incomplete common area lights, electrical works, common area and signage work etc. for these the society incurred total cost of Rs. 01,24,41,957/-.

22. The learned advocate submitted that as per the environment clearance report of the said project dated 2017, the promoters are bound to provide solar power plant/panels in the project along with rainwater harvesting for the said project. Apart from the aforesaid there are substantial works which are incomplete/not provided by the promoters till date such as solar power plant/panner, internal and external paint, fins, gas detector, fire chute, water, lift etc. which approximate amount to Rs. 19,91,50,000/- Hence, the promoters are liable to complete the incomplete work and/or pay the aforesaid sum to the society for completing the balance work. The learned advocate submitted that till date the incomplete works are there despite of a full occupation certificate having been obtained by the promoter. The promoter kept certain incomplete works towards amenities, finishing and certain defective work which needs to be rectified, which is covered within 5 years of defect liability period. The society has pointed out orally and while in meeting with promoters wherein promoters assured to make those changes. However, the promoters have not done the same till date. The appellant society has prepared through its architect/valuer an estimate for cost of balance incomplete work.

23. The learned advocate submitted that the promoters have failed to maintain the project despite receipt of maintenance amount from the allottees. The promoters failed to maintain the said project despite recovery large sums towards advance maintenance charges for the said project from the allottees of the project. The lifts of the said project in the 'B' wing stopped working sometime around January 2024. Further, the promoter

failed to hand over the complete and audited accounts of the maintenance amount paid by the members to the promoters. Therefore, promoters are liable to hand over complete audited accounts of all the amount received and expenditure incurred of the said amount of the project towards maintenance, clubhouse etc. The promoters have received amount of Rs. 17,50,00,000/- towards advance maintenance charges and clubhouse charges and no accounts have been provided till date in violation of Section 11 of the RERA Act. Therefore, the promoters ought to redeposit the said amount received in lieu of clubhouse membership and advance maintenance charges with appellant society.

24. With regard to conveyance, the learned advocate submitted that as per Section 11 of the RERA Act, 2016, promoters are bound to handover the conveyance of the land, common areas and amenities of the said project in favour of the society. Thus, promoters under the guise of amendment of sanctioned plan have unilaterally extended time for handover of the conveyance. Therefore, promoters are liable for transfer of the project land in favour of the society by execution of conveyance. With these submissions the learned advocate prayed to allow the appeal and grant the reliefs as sought in the said appeal.

25. The learned advocate for the appellant society has placed reliance on the following judgments, resolutions passed by Govt. of Maharashtra and RERA circular in support of the above contentions:

a) In the case of *Nahalchand Laloochand Pvt. Ltd. Vs. Panchali Co-operative Housing Ltd.,* in Civil Appeal No.

2544 of 2010 passed by the Hon'ble Supreme Court on 31.08.2010.

b) In the case of *Rajkumar Gulati & Ors. Vs. S.D. Corporation Private Ltd. & Ors.* in interim application (L) No. 25478 of 2025 in Suit (L.) No. 25468 of 2025 passed by the Hon'ble Bombay High Court on 11.11.2025.

c) In the case of *Garden Court Cooperative Housing Society Ltd., through Secretary Ramakant Singhal Vs. The Competent Authority & District Depute Registrar of Coop. Societies, Thane & Others.* In Writ Petition no. 976 of 2023 passed by the Hon'ble High Court on 09.03.2026.

d) Government Resolution dated 20.09.2019, bearing Reference No. २०१७/२४५३/प्र.क्र.४१०/म–१ (धोरण), issued by the Government of Maharashtra.

e) Government Resolution dated 13.08.2020, bearing Reference No. २०१७/२४५३/प्र.क्र.४१०/म–१ (धोरण), issued by the Government of Maharashtra.

f) In the case of *Nadakerappa, since deceased by LRs. & ors. Vs. Pillamma Since Deceased by LRs & Ors.* [2022] 14 S.C.R. 1046 in Civil Appeal Nos. 7657-7658 of 2017 passed by the Hon'ble Supreme Court on 31.03.2022.

g) In the case of *Shri. Vitthal Laxman Patil Thane Vs. Kores (India) Ltd. & Ors.* in Second Appeal No. 233 of 2019 passed by Hon'ble High Court on 31.01.2025.

26. Per contra, the learned Advocate for the promoters has submitted that the residential building is completed with occupation certificate. Work of the building has already been completed by the promoters, and the promoters have procured

completion certificate from the Architect. Additionally, the work has been completed in terms of the agreements for sale and as per approved plans and specifications. Furthermore, the aforesaid compliances have not violated any provisions of RERA Act, 2016. The promoters have obtained 3 part-occupation certificates namely dated 23.06.2020, 15.12.2020 and 09.12.2021 for residential building since year 2021. The Members of the appellant society have been occupying their respective premises and deriving benefits of the amenities and facilities provided by the promoters in the said building. The members of the appellant society had taken possession of their respective flats without any demur/protest. Moreover, in April 2023, the maintenance work of the building is also handed over to the appellant society, thus, there is no pending obligation on the part of the promoters. Further, at the time of receiving possession, the appellant society raised no grievance, whatsoever, regarding the amenities, or incomplete work or any defect in the structure of the building. Pertinently the allottees have carried out illegal construction in their respective premises without seeking any permission from the statutory authorities. Furthermore, the allottees have failed to inform the promoters of the illegal construction carried out by them including but not limited to covering the open duct of toilets, which can be perilous for the structure of the said project. Pursuant to the same, MCGM issued a notice dated 05.02.2025 to the Chairman, Secretary of the appellant society under Section 448 of the Mumbai Municipal Corporation Act, 1888.

27. As regards fire safety, the learned advocate submitted that the reliefs sought with respect to fire safety are baseless as the promoters have obtained all requisite fire department's No Objection Certificate (NOC) and is fully complying with the requirements under the provisions of the RERA Act and the MCGM Act. In fact, many residential flat owners have illegally altered and changed the internal fire sprinkler system within their individual flats. As this is a high-rise building, such unauthorized modifications are extremely hazardous and pose a direct threat to human life. A thorough inquiry is therefore required to be conducted by the competent authority to ascertain the full extent of that illegal modification. The promoters cannot be held responsible or liable for any adverse consequences or fire-related incidents arising from these illegal acts committed by the allottees.

28. With regard to monetary claims, the learned advocate submitted that the appellants society has sought a sum of Rs. 15,00,00,000/- purportedly for undertaking necessary repair work. However, in their own statement, the society explicitly stated before the Authority that they were no longer seeking payment of the aforesaid amount which has been duly recorded by the Authority in its order dated 26.04.2024. Furthermore, the society later submitted that the amendment application to the complaint before the Authority, wherein they sought a revised amount of Rs. 19,91,50,000/- for the purported incomplete work. The society evidently initially withdrew their monetary claim, only to later reintroduce the significantly inflated claim, which is violation of established legal principles. The society has

already given up its claims in respect of the completion of purported balance work and/or rectification of the purported defects and is not claiming the same again, which is impermissible.

29. With regard to extension of registration of the project by the Authority, the learned advocate submitted that promoters were entitled to an automatic extension of 1 year for the completion of the commercial building in light of the disruptions caused by COVID-19 pandemic. This extension was granted pursuant to the order of MahaRERA No. 13/2020 dated 18.05.2020, which extended the project completion timelines by 6 months due to force majeure. Further, under the advisory issued by the Ministry of Housing and Urban Affairs dated 13.05.2020, all RERA-registered projects were granted an automatic 6-month extension, with regulatory authorities empowered to extend this period further as deemed necessary. The learned advocate submitted that the extension was obtained solely for the completion of the commercial project and did not involve any modification of rights or obligations of all the allottees that would necessitate their consent. The said extension was a regulatory measure undertaken in the wake of an unforeseen force majeure event and was neither discretionary nor subject to approval of individual allottees including the appellant. The Occupation certificate for the residential building was successfully obtained in the year 2021. Further, the members of the appellant have already taken possession of their respective flats which underscores the fact that the project has been completed, and the occupants have been enjoying their properties without any

significant issues. The learned advocate submitted that the extension granted under Section 7(3) of the RERA Act, 2016, does not require the consent of allottees and is binding upon them. Accordingly, the appellant cannot dispute the validity of the extension, which has been granted in conformity with law. The Authority on three occasions i.e. 29.07.2019, 18.05.2020 and 21.04.2023 has granted extension certificates for registration of the project. The learned advocate submitted that in paragraph 18(k) of the impugned order, the Authority observed that the Authority has granted an extension in the interest of completion of the project, which ultimately serves the larger interest of the allottees, and that the appellant, being part of the completed phase for which occupation certificate has already been obtained, was not prejudiced by such extensions.

30. With regard to disclosure of amendment plans, the learned advocate submitted that in terms of the RERA Act agreements for sale and MOFA Act agreements for sale, the promoters were entitled to develop a separate residential structure and a commercial structure and was at its discretion to form and register a separate and independent co-operative societies/ condominiums/ limited companies in accordance with the MOFA in respect of residential building and commercial building. The learned advocate submitted that admittedly promoters have envisaged and disclosed to the flat purchasers, including members of the appellant society, that there shall be two independent structures constructed on the said property i.e. residential building and commercial building. This is evident from Clauses- 'U', '9' and '17' of the agreements for sale executed by

the promoters with the flat purchasers under the provisions of MOFA. Further, Section 7 read with Section 7A of MOFA, once the entire scheme of development has been disclosed by the promoter in the MOFA agreements, the promoters were entitled to amend, alter and/or modify plans in respect of a different independent structure/building without the consent of flat purchasers. Further, commercial building in the present case is an independent structure and, accordingly, the promoters were entitled to amend the sanctioned plans in relation thereto without the consent of the allottees of the residential building. The present case squarely falls within the framework of Section 7A of MOFA and does not, therefore, require the consent of the allottees. The learned advocate submitted that, in the present case, the provision of Section 14 of RERA Act, 2016, in the context of allegations of the society will have to be limited to and adjudicated in the context of amendment of plans of the residential building and not that of the commercial building. In this regard, it is pertinent to note that only amendment in relation to the residential building is the amendment of plans approved by MCGM on 19.08.2021 relating to expansion of club house. By the said amendment relating to the club house, the promoters have shifted the gym at the first level of clubhouse so that the allottees have a bigger gym and an open deck adjacent to the gym. Initially, there were two gyms and in order to have a bigger gym, the promoters have combined the same. In the view thereof, the changes to the clubhouse were with a sole intention to benefit the members of the appellant. Furthermore, as per the 2017 sanctioned plan the promoters were granted permission to either build a clubhouse on the 41^{st} floor or on the open ground. Thus, the promoters have built the clubhouse on the open ground for the benefit of the members of the appellant society. Pertinently, the clubhouse is being utilized by all the members of the appellant society thus confirming that its construction aligns with the sanctioned plan and serves the collective interest of the appellant society's members.

31. The learned advocate further submitted that as per layout plan sanctioned in the year 2017, the open area/recreational garden area was located on the 5^{th} floor podium and that the same is in compliance with Development Control and Promotional Regulation. Additionally, the Ministry of Environment, Forest and Climate Change has issued clarification permitting the placement of such open areas/recreational gardens on levels other than ground level for projects that received prior approval, thereby endorsing the promoters' compliance with the applicable regulatory framework.

32. The learned advocate submitted that the members of the appellant society at the time of taking fit-out possession of their flats, impermissibly and illegally encroached upon and enclosed the duct, thereby contravening statutory provisions and the 2017 approved plan. Subsequent to this unauthorized act, promoters were approached by these members with a request to regularize the encroachment with an undertaking to remit the requisite premium. Accordingly, promoters duly paid the premium to MCGM. However, the concerned members of the appellant society have to reimburse the said amount. In view of

the aforesaid, it is evident that promoters have not contravened Section 14 of RERA Act, in fact they have taken steps to regularize the unauthorized alterations made by certain members of the appellant society.

33. The learned advocate further submitted that the members of the appellant society had approached them with a request to relocate the office, pursuant to which the relocation was duly affected in accordance with their wishes after necessary amendments and approvals. It is noteworthy that the appellant society is presently utilizing the office at the new location, thereby underscoring that the change was made at their behest and for their benefit and with their consent. The promoters have applied for and been granted an additional FSI of 45,000 sq. ft. for which they have duly paid the requisite premium. Furthermore, the change of user from IT Building to commercial building has also been duly approved, with the promoters having paid the necessary premium for the same, thereby demonstrating compliance with regulatory requirements and negating any suggestion of non-compliance or breach on their part. Furthermore, the configuration and layout of the common areas within the residential building remain unaltered, and the approved plan pertaining to these areas has not been subject to any modification or amendments.

34. The learned advocate submitted that the amended plans were duly disclosed and made available to the allottees as they were uploaded on the MahaRERA website in accordance with the provision of RERA Act, 2016. As per Section 11(1) of the RERA Act, the promoter is required to provide complete and updated

project details on the regulatory authority's website, ensuring transparency and accessibility to all allottees. In compliance with this statutory obligation, the amended plans were uploaded and remained publicly accessible for review. Therefore, the appellants' contention regarding non-disclosure is untenable and contrary to the regulatory framework.

35. With regard to issue of car parking, the learned advocate submitted that, there is no statutory or regulatory mandate that requires the provision of guest parking spaces in the project. The parking requirements are governed by the relevant Development Control and Promotion Regulation and other applicable building regulations, which prescribe parking norms for allottees but do not impose any obligations to provide separate guest parking. In the present case contractual commitment for providing car parking is more than that is provided under DCPR 2034 i.e. 370. However, the promoters have provided a total of 411 parking spaces, exceeding the agreed requirement. Out of these, 18 car parking spaces are shown on the podium in the sanctioned plan, the members/allottees of the appellant society suggested that play area be constructed on the podium instead of the 18 car parking spaces. The MCGM has issued occupation certificate demonstrating compliance with DCPR, therefore, there is no question of going behind occupation certificate which is conclusive. Thus, the appellants' claims regarding guest parking are, therefore, without merit and contrary to the factual position.

36. With respect to incomplete work and maintenance etc., the learned advocate submitted that allegation of the appellant

society regarding incomplete work is misconceived and contrary to the actual status of the project. The promoters have diligently undertaken and completed the construction work in accordance with the sanctioned plans and regulatory requirement. Any pending minor work, if at all, does not affect the usability or habitability of the premises and is part of the routine project finalization. The claim of substantial incompletion is therefore baseless. Pertinently allottees have carried out illegal construction in their respective premises without seeking any permission from the statutory authorities. Furthermore, the allottees have failed to inform the promoters of the illegal construction carried out by them, including but not limited to covering the open ducts of toilets, which can be perilous for the structure of the said project.

37. With regard to conveyance, the learned advocate submitted that as per terms of the agreement executed with the allottees, the conveyance of the said project is to be affected only upon the completion of the entire project. The relevant clause 8.2 stipulates that:

> *"8.2 It is however agreed that the Promoters will take the steps to execute conveyance or lease in respect of the said organizations within a period of 12 months only after the Promoters have completed the construction of the said Project on the said Property and obtained the occupation certificate for the entire Project and till then, the Promoters shall not be bound, liable, required and/or called upon to cause to execute conveyance or lease or any other document in respect of the said property*

together with said Project standing thereon and the Purchaser/s agree and irrevocably consent not to have any demand or dispute or objection or claim in that behalf."

38. The learned Advocate submitted that in the present case, as the project is yet to be fully completed, the prayer for conveyance is premature and contrary to the agreed contractual terms. The promoters are committed to executing the conveyance in accordance with legal and contractual obligations upon project completion. Therefore, the society's request for conveyance at this stage is untenable and devoid of merit. With these submissions the learned advocate for the promoters prayed to dismiss the appeal.

39. The learned advocate for the promoters in support of the above contentions placed reliance on the following judgments.

a) In the case of *Bhuvaraha Maithreyan through the Power of Attorney Holder Dr. Tara Maithreyan Vs. Municipal Corporation for the City of Pune & Ors.* 2002 SCC OnLine Bom 1347: (2003) 105 (3) Bom LR 803 in Civil Revision Application No. 1152 of 2002 passed by the Hon'ble Bombay High Court on 16.08.2002.

b) In the case of *Jayantilal Investment Vs. Madhuvihar Coop. Housing Society and Others* (2007) 9 SCC 220 in Civil Appeal No. 3233 of 2006 passed by Hon'ble Supreme Court on 10.01.2007.

c) In the case of *State of Rajasthan Vs. Gopi Kishan* 1993 Supp (1) SCC 522 in Civil Appeal No. 1840 of 1992 passed by Hon'ble Supreme Court on 07.04.1992.

d) In the case of *Ravinder IREP Credit Capital Pvt. Ltd. Vs. Tapaswi Mercantile Pvt. Ltd. and another* (2019) SCC OnLine Bom 5719 in Comm Arbitration Petition (L.) No. 1501 of 2019 passed by Hon'ble Bombay High Court on 20.12.2019.

e) In the case of *Ravinder Kumar Sharma vs. State of Assam and Others* (1999) 7 SCC 435 in Civil Appeal No. 6036 of 1990 passed by Hon'ble Supreme Court on 14.09.1999.

f) In the case of *S. Nazeer Ahmed Vs. State Bank of Mysore and others* (2007) 11 SCC 75 in Civil Appeal No. 175 of 2007 passed by Hon'ble Supreme Court on 12.01.2007.

g) In the case of *Haresh Vijaysinh Bhatia and others Vs. District Deputy Registrar & Ors.* (2025) SCC OnLine Bom 1981 in W.P. No. 18739 of 2024 passed by Hon'ble Bombay High Court on 08.05.2025.

h) In the case of *Sadguru Universal CHS Ltd, through it's authorized representative Sanjay More Vs. State of Maharashtra, through Govt. Pleader* (2025) SCC OnLine Bom 4382 in Writ Petition No. 18153 of 2024 decided by Hon'ble Bombay High Court on 11.11.2025.

i) In the case of *Naredco West Foundation and another Vs. Union of India and others* (2023) SCC OnLine Bom 239 : (2023) 2 AIR Bom R 461 in writ petition (L) No. 35671 of 2022 decided by Hon'ble Bombay High Court on 27.01.2023.

j) In the case of *Sagar Devre & Anr. Vs. Naredco West Foundation & Ors.* in Special Leave Petition (Civil) Diary

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No(s). 11843/2023 passed by Hon'ble Supreme Court of India on 08.05.2023.

k) In the case of *Sagar Devre & Anr. Vs. Naredco West Foundation & Ors.* in Special Leave Petition (Civil) Diary No(s). 10095/2023 passed by Hon'ble Supreme Court of India on 07.01.2025.

l) In the case of *Mysore State Road Transport Corporation Vs. Mirja Khasim Ali Beg and another* (1977) 2 SCC 457 in Civil Appeal Nos. 1601-1609 and 2402-2408 of 1968 passed by the Hon'ble Supreme Court on 01.12.1976.

40. We have heard the learned advocates for the parties at length. On examined the pleadings of the parties, submissions advanced by the learned advocates for the parties, the impugned order and material placed on record following points arise for our consideration, and we have recorded our findings thereupon for reasons to follow as under:

Sr. Nos.	**Points**	**Findings**
1.	Is consent of 2/3rd allottees required for construction of C-Wing/commercial building as approved in the revised plan of 2021?	In the affirmative
2.	Whether the promoters committed a violation of Section 14 of the RERA Act, 2016?	In the affirmative
3.	Whether the promoters are required to be directed to execute the conveyance in favour of appellant society as per the approved plan of 2017?	In the affirmative

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4.	Does the impugned order warrant interference in this appeal?	In the affirmative
5.	What Order?	As per the final Order

REASONS

Point No. 1 and 2

41. An ensemble of the facts as submitted by the above parties and the material on record, it is not in dispute that the appellant society is the association of the allottees of the "residential building" of the subject project. The allottees purchased their respective flats in the said project from the promoters by executing agreements for sale which are both pre-RERA, i.e. MOFA regime as well as post-RERA i.e. RERA regime. The sanctioned plan dated 18.07.2017 was the one that was shown to the allottees and formed part of the respective agreements for sale, when they purchased their respective flats. The said plan was subsequently revised and got approved from the competent authority by the promoters on 08.01.2021. The said project consists of independent residential buildings of Wing 'A' and Wing 'B' collectively referred to as "residential building" in the agreements for sale and "IT building" which is referred to as "commercial building" in the said agreements for sale. The said IT Building came to be subsequently converted into commercial building in the revised plan of 2021. When the said project was registered with the MahaRERA the project completion date, which was 30.06.2018, came to be extended to 30.06.2019, which was further extended till 31.03.2025. The promoters

obtained occupation certificates for the residential buildings of the project in parts on 23.06.2020, 15.12.2020 and 09.12.2021. The "residential building" consisting of Wing A and B is completed and the allottees have taken possession of their respective flats. The commercial building is not still completed. The promoters have established and registered the appellant society for the "residential budling" of the project on 18.10.2022.

42. We now examine the disclosures made by promoters while the project was registered with the MahaRERA. The promoters registered the said project with the MahaRERA as ongoing project on 29.07.2017. The revised date of completion in the said application for registration was disclosed to be 30.06.2019. The application for project registration discloses area of the project land at 12,751.45 Sq. Mtrs. It discloses wing 'A' and Wing 'B' as "residential building" name "RA residences" and wing 'C' as "RA Business Park". It discloses total built-up area/floor space index of the entire project at 33,772.40 Sq. Mtrs. It further discloses that 492 proposed parking spaces in the said application. These were disclosures made by the promoters when the subject project was registered with the MahaRERA.

43. We now will examine the disclosures made by the promoters in 2017 sectioned plan, which was shown to the allottees, when they executed their respective agreements for sale. The said 2017 sanctioned plan was part of the agreements for sale and was disclosed to the allottees when they executed their respective agreements for sale. The said approved layout plan discloses the area of the project plot at 12,751.44 Sq. Mtrs. Further, total built-up area of 33,772.40 Sq. Mtrs. The total built-

up area of 3231.63 Sq. Mtrs. is shown for commercial (IT building) and 30,540.77 Sq. Mtrs. for residential building (wing 'A' and wing 'B'). It discloses the proposed building with description as "stilt+ 1st to 4th floor part of IT office and part parking + 5 podium RG". The said layout discloses wing 'A' and wing 'B' as "residential building" up to the 46th floor. The said layout also discloses the RG area as per details below:

On ground	651.20 Sq. Mtrs.
On podium	3139.71 Sq. Mtrs,
Total RG	3790.91 Sq. Mtrs.

Thus, the said layout discloses the required RG area of 3187.82 Sq. Mtrs. and proposed RG area of 3790.91 Sq. Mtrs. as mentioned above.

44. Regarding parking spaces, the 2017 layout discloses the following required parking spaces:

IT Office	64 Sq. Mtrs.
Wing 'A'	183 Sq. Mtrs,
Wing 'B'	183 Sq. Mtrs,
Total	430 Sq, Mtrs,

Against the said required 430 car parking spaces, the layout discloses proposed car parking spaces of 492. The said layout also discloses the clubhouse having an area of 376.86 Sq. Mtrs.

45. Thus, the 2017 plan, which was disclosed to the allottees at the time of execution of their respective agreement for sale as per disclosures mentioned above. It clearly shows the proposed structure in the name of "IT office".

46. The said 2017 plan was amended on 08.01.2021 with the approval of the competent planning authority. The said 2021 plan discloses total built-up area of 39,243.50 Sq. Mtrs. with built-up area of residential buildings at 31,769.76 Sq. Mtrs. and for the IT building at 7,457.20 Sq. Mtrs. Further, the said IT building was entirely proposed in the amended proposal of 2021 for commercial use as per DCPR 2034 and by utilizing additional premium FSI as per Regulation 30 Potentiality. The said 2021 layout plan, however, does not materially alter the approved layout plan for the "residential building" (wing 'A' and wing 'B') as in the 2017 plan. The said 2021 plan discloses RG area as per details below;

On ground	922.83 Sq. Mtrs.
On podium	3474.34 Sq. Mtrs,
Total RG	4397.17 Sq. Mtrs.

47. The said layout also discloses required RG area of 3076.51 Sq. Mtrs. Whereas the proposed total RG area is 4397.17 Sq. Mtrs. as per details above. With regard to parking, the said 2021 plan layout discloses the required number of parking spaces as per details below;

Wing 'A'	183 Sq. Mtrs,
Wing 'B'	183 Sq. Mtrs,
Commercial building	101 Sq. Mtrs.
Total	467 Sq, Mtrs,

48. As against the required car parking of 467, the said layout proposed 588 car parking spaces. With regard to the clubhouse,

the 2021 plan discloses the area of 375.16 sq. Mtrs., which is not materially different from 2017 plan. However, it discloses spaces for Gym, whereas in 2017 plan the said place is shown as a cafeteria.

49. From the comparison of the 2017 and 2021 approved plans, it reveals the following;

a) The residential building (Wing A and Wing B) built-up area/FSI has been slightly increased from 30,540.77 Sq. Mtrs. in 2017 plan to 31,769.76 Sq. Mtrs., which is within 5% of the approved built-up area as permitted by the competent authority.

b) IT building as proposed in the 2017 plan is entirely proposed for commercial use as per DCPR 2034 and, by utilizing additional premium FSI as per Regulation 30 Potentiality resulting in increased from 3231 Sq. Mtrs built-up area in the 2017 plan to 7,473.74 Sq. Mtrs. in the 2021 approved plan. Thus, it indicates that the built-up area/FSI of the residential building remains more or less unaffected, whereas the built-up area/FSI for the commercial building is significantly increased by utilizing additional premium FSI on payment of premium amounts by the promoters.

50. From the discussion above, it is clear that the structure of the IT building, which was proposed in the 2017 plan, was disclosed to the allottees as the 2017 plan and was part of the agreements for sale executed by the allottees. Further, the use of IT building was changed to commercial purpose in the 2017 plan. The said proposed building was disclosed as an "IT building" and in the 2021 plan it is shown as "commercial building".

51. It would now be apposite to examine the disclosures made by the promoters in the various recitals and clauses of the agreements for sale, apart from the layout plan of 2017, as referred to hereinabove. The following recitals and clauses contained in the proforma agreement for sale/MOFA agreement for sale are relevant and the same are reproduced below;

"***Recital H.*** *The Promoters are developing and constructing:*

(i) *A residential structure to be known as '**RA Residences'** comprising of nil basements, 3 plinths, ground + 4 podiums, 4 stilts and 49 upper floors utilizing approximately [.] sq. mtrs of FSI equivalent to [.] sq. ft. of FSI on the piece and parcel of land admeasuring [.] sq. mtrs out of the said Property as shown in red colour boundary line earmarked on the plan annexed hereto and marked as **Annexure 'A'** on the said Property (hereinafter referred to as the "**said Residential Building"**), in addition to the above the said Residential Building shall have common areas and amenities in aggregate admeasuring [.] sq. mtrs and the amenities area is more particularly marked in hatched lines on the plan annexed hereto (hereinafter referred to as "**the said Residential Building Amenities Area").***

(ii) *a commercial structure to be known as '_______' comprising of nil basement, [.] plinths, [.] podiums, [.] stilts, and [.] upper floor utilizing approximately [.] sq. mtrs. of FSI equivalent to [.] sq. f.t. of FSI on the piece and parcel of land admeasuring [.] sq.*

mtrs. out of said Property as shown in green colour boundary line earmarked on the plan annexed hereto and marked as ***Annexure 'A'*** *on the said Property (hereinafter referred to as the* ***"said Commercial Building")*** *in addition to the above the said Commercial Building shall have common areas and amenities in aggregate admeasuring [.] sq. mtrs. and the amenities area is more particularly marked in hatched lines on the plan annexed hereto (hereinafter referred to as* ***"the said Commercial Building Amenities Area"****)*

The said Residential Building, the said Residential Building Amenities Area and the said Commercial Building and the said Commercial Building Amenities Area are hereinafter collectively referred to as the ***"Project".***

(iii) In addition to the above, the Promoter states that the terrace area of the Commercial Building shall be utilized solely for and by the members and purchasers/allottees of the Residential Building ***and shall form part of the garden area*** *of the Residential Building. The purchasers/allottees in the Commercial Building shall not in the future or otherwise claim the use or the right to access the terrace area of the Commercial Building. It is further agreed that the frontage of the Commercial Building shall be utilized and maintained by the purchasers/allottees in the Commercial Building and*

the allottees/purchasers of the Residential Building shall not be entitled to utilise the same or restrict the purchaser / allottees of the Commercial building in utilising the same in any manner whatsoever including but not limited to erection of signage, display boards, etc.

Recital L. *The Promoters represent that they shall at their sole discretion* ***form and register separate and independent co-operative societies/ condominiums/ limited companies in respect of the said Residential Building and said Commercial Building.*** *By virtue of formation of two separate and independentco-operative societies/condominiums/limited companies,* ***the said Residential Building and the said Commercial Building will always remain independent of each other and shall be entitled to their respective common areas and amenities as provided herein****. The Promoters shall execute joint or separate conveyance/lease in respect of the said Property in favour of the two separate co-operative societies/condominiums/limited companies so formed in accordance* ***with their respective proportionate interest in the said Property i.e., proportionate to the FSI consumed in the said Residential Building and the said Commercial Building respectively together with other structure and common areas and amenities constructed on the said Property.***

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Recital U. *The present layout, design, elevation, plans, etc. may be required to be amended from time to time by the Promoters. Therefore, the Promoters shall be entitled to amend, from time to time, the plans, lay out, design, elevation etc. as the Promoters may consider necessary or as may be required by the Government, MCGM or any other local authority in accordance with law.*

Clause 2.1 *The Promoters shall construct the said Project i.e., Residential Building comprising of nil basements, 3 plinths, ground + 4 podiums, 4 stilts and 49 upper floors utilizing approximately [.] Sq. Mtrs. of FSI equivalent to [.] sq. ft. of FSI on the piece and parcel of land admeasuring [.] sq. mtrs out of the said Property as shown in red colour boundary line earmarked on the plan annexed hereto and marked as* ***Annexure 'A'*** *on the said Property (hereinafter referred to as the* ***"said Residential Building"****): in addition to the above the said Residential Building shall have common areas and amenities in aggregate admeasuring [.] sq. mtrs. and the amenities area is more particularly marked in hatched lines on the plan annexed hereto (hereinafter referred to as* ***"the said Residential Building Amenities Area")*** *and a commercial structure to be known as '__________' comprising of nil basement, _____ plinths, _____ podiums, _____ stilts, and _____ upper floors utilising approximately _____ sq. mtrs. of FSI equivalent to _____ sq. ft. on FSI on the piece and parcel of land admeasuring __________ sq. mtrs. out of the said*

Property as shown in green colour boundary line earmarked on the plan annexed hereto and marked as ***Annexure 'A'*** *on the said Property (hereinafter referred to as the "****said Commercial Building"****) in addition to the above the said Commercial Building shall have common areas and amenities in aggregate admeasuring _____ sq. mtrs. and the amenities area is more particularly marked in hatched lines on the plan annexed hereto (hereinafter referred to as the* ***"the said Commercial Building Amenities Area"****) in accordance with the plans, specifications, designs and elevations as approved by the concerned local authority and which have been seen by the Purchasers/with such variation and modification as the Promoters may consider necessary or as may be required by the Government, MCGM or any other local authority from time to time. The Promoters reserve the right to amend the sanctioned plans from time to time. In accordance with law. The Promoters hereby agree to observe, perform and comply with all the terms, conditions, stipulations and restrictions, if any, which may have been imposed by the concerned local authorities and/or Government bodies at the time of sanction of the plans or thereafter.*

Clause 2.2 *The Promoter declares that the Floor Space Index ("****FSI****") available in respect of the said Property is _____ sq. mtrs. only and promoter has planned to utilize the entire FSI of _____ sq. mtrs. by availing, TDR, FSI available on payment of premium, FSI available as* *incentive FSI by implementing various schemes as mentioned in the Development Control Regulations."*

52. The total floor space index available in respect of the project land has not been shown in the proforma agreement, however, it came to be shown in one of agreements placed on record, which is also reproduced below:

"Clause *2.2 The Promoter declares that the Floor Space Index ("**FSI**") available in respect of the said Property is* **33,722.40** *sq. mtrs only and Promoter has planned to utilize the entire FSI of 33,722.40 sq. mtrs by availing, TDR, FSI available on payment of premium, FSI available as incentive FSI by implementing various schemes as mentioned in the Development Control Regulations".*

53. The other relevant clauses of the agreements are also reproduced below.

Clause 7.3 *It is expressly agreed that there shall be a separate gate for the ingress and egress of the purchasers of units/premises in the said Residential Building and a separate gate for the ingress and egress for the purchasers of the units/premises in the said Commercial Building. However, it is expressly clarified that the Purchaser/s shall not be entitled to access or make use of the common area and amenities of the said Commercial and the* ***said Project shall be governed by two independent and separate organizations and as such the said Buildings shall always remain independent of each other and the two autonomous organizations so formed shall have***

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proportionate interest in the said Property i.e. proportionate to the FSI consumed in the said Residential Building and the said Commercial Building respectively.

Clause 8.2 *It is however agreed that the Promoters will take the steps to execute conveyance or lease in respect of the said Property together with the said Project standing thereon in favour of the said Organizations within a period of 12 months only after the Promoters have completed the constructions of the said Project on the said Property and obtained the occupation certificate for the entire Project and till then, the Promoters shall not be bound, liable, required and/or called upon to cause to execute conveyance or lease or any other document in respect of said Property together with said Project standing thereon and the Purchaser/s agree and irrevocably consent not to have any demand or dispute or objection or claim in that behalf.*

Clause 9. DESIGN SUBJECT TO AMENDMENTS AND CHANGES:

The Purchaser/s is/are aware that the said Project comprises of both residential flats and commercial units and hereby agree, confirm and consent that the Promoters shall be entitled to re-design the passages and such other area or areas by submitting amended plans to the statutory authority in accordance with applicable law. The Purchaser/s further agree confirm and consent that till the entire Project as per layout sanctioned by MCGM and as *amended from time to time of the said Project is completed and the FSI (by whatever name called including TDR) available on the said Property, is fully utilized by the Promoters and all the obligations required to be observed by the Purchaser/s of herein are fulfilled and/or the obligation to be required to be observed by the Purchaser/s of premises are fulfilled, the Promoters shall not be bound and shall not be called upon or required to form any Co-operative Society or Condominium or Limited Company as the case may be and the Purchaser/s agree and irrevocably consent not to raise any demand or dispute or objection or claim of whatsoever nature in that regards.*

Clause 17.1 *It is agreed that notwithstanding anything contained to the contrary herein, the Promoters shall be entitled at any time to amend the existing layout and/or to construct additional structures on the said Property and/or additional floors on said Project being constructed on the said Property, even after completion of said Project until the execution of conveyance/lease in respect of the said Project in favour of the said Organizations as per law. All such additions, alterations, additional floors and/or additional wing, building and/or structures shall be sole property of the Promoters who shall be entitled to self/allot and/or otherwise deal with the same in the manner the Promoters deems fit. Such additional constructions may either be on account of balance FSI which remains unconsumed by the Promoters or additional*

FSI that may be available from the said Property or elsewhere and/or account of TDR and/or any other rights, benefits including floating rights which may be available in respect of the said Property of other properties and/or any potential that may be available on account of the amendment in the Development Control Rules or FSI or otherwise or on account of the amendment in the Development Control Rules or FSI or otherwise or on account of floating rights and all other benefits and rights. The Promoters shall be entitled to utilize and consume such TDR, FSI or any other potential, other rights, benefits including floating rights, etc. to the extent permissible as per rules / regulation in force at such relevant time. The Purchaser/s shall not be entitled to claim any rebate in price or any other advantage from the Promoters on the ground of the Promoters making additional construction or any other ground whatsoever. The Purchaser/s hereby confirm and consent to the irrevocable and unfettered right of the Promoters to amend the existing layout and construct and sell/allot the said Project/structures on the said Property and/or additional floors on the said Project being constructed on the said Property in the manner deemed fit by the Promoters as per the provisions of law."

54. The collective reading of the above recitals and clauses in the agreements for sale reveals as under:

a) The promoters have declared the FSI available in respect of the plot of the project as **33,772.40 Sq. Mtrs.**, which is also disclosed in the application filed by the promoters

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before the MahaRERA for registration of the project as well as the 2017 sanctioned plan. It further reveals that promoters have planned to utilize the entire FSI of 33,772.40 Sq. Mtrs. by availing TDR, FSI available on payment of premium, FSI available as incentive FSI by implementing various schemes as mentioned in the Development Control Regulations.

b) Wing 'A' and wing 'B' are collectively referred to as "residential building". The said residential building is provided with independent common areas and amenities.

c) The Commercial building (IT building) has been shown as independent building referred to as "commercial building". The said commercial building shall have separate and independent common areas and amenities.

d) The "residential building" and "commercial building" together with "residential building amenities area" and "commercial building amenities area" are collectively referred to as the "said project".

e) The terrace area of the commercial building is shown as part of the garden area of the residential building, which will be solely used by allottees of the residential building.

f) The "residential building" and "commercial building" are independent of each other, having separate common areas and amenities.

g) The promoters have disclosed that they shall form and register **separate and independent co-operative societies/condominiums/limited companies for the residential building and commercial building.**

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The said residential building and commercial building will remain **independent of each other** and shall be entitled to their respective common areas and amenities as provided in the agreement for sale. Further, the promoters shall execute joint separate conveyance lease in respect of said property in favour of two separate co-operative societies/condominiums/limited companies in accordance **with their respective proportionate interest in the said property i.e proportionate to FSI consumed in the said residential building and commercial building** together with their respective common areas and amenities.

h) The promoters shall be entitled to amend the plans from time to time etc. in accordance with law.

i) The promoters have planned to utilize the entire FSI of the plot i.e. 33,772.40 sq. mtrs. by availing TDR, FSI available on payment of premium, FSI availing as incentive FSI by implementing various schemes as per Development Control Regulations.

j) The promoter will take steps to execute conveyance or lease in respect of the said project in favour of the separate societies, condominiums/limited companies within period of 12 months **only after the promoters have completed the construction of the said project** and till then the promoters shall not be bound, liable or called upon to execute conveyance in favour of the said co-operative societies, condominiums/limited companies.

k) Promoters have sought **blanket consent** of the allottees that promoters shall be entitled at any time to amend the existing layout and/or **to construct additional structures** on the said Property and/or **additional floors on said Project** being constructed on the said Property, even after completion of said Project **until the execution of conveyance/lease** in respect of the said Project in favour of the said Organizations as per law.

l) Further promoters have sought the **blanket consent** of the allottees that, all such additions, alterations, additional floors and/or additional wing, building and/or structures **shall be sole property of the Promoters** who shall be entitled to self/allot and/or otherwise dealt with the same in the manner the Promoters deems fit. **Such additional constructions may either be on account of balance FSI which remains unconsumed by the Promoters or additional FSI that may be available from the said Property or elsewhere and/or account of TDR and/or any other rights, benefits including floating rights which may be available on account of the amendment in the Development Control Rules of FIS or otherwise or on account of the amendment in the Development Control Rules or FSI or otherwise or on account of floating rights and all other benefits and rights.** The Promoters shall be entitled to utilize and consume such TDR, FSI or any other potential, other rights, benefits including floating rights, etc. to the extent permissible as per rules / regulation in force at such relevant time.

m) The promoters have also sought the blanket consent of the allottees that Purchaser/s hereby confirm and consent to the **irrevocable and unfettered right of the Promoters** to amend the existing layout and construct and sell/allot the said Project/structures on the said Property and/or additional floors on the said Project being constructed on the said Property in the manner deemed fit by the Promoters as per the provisions of law.

55. From the discussion above, it is clear that the said "commercial building" as an independent structure was disclosed in the 2017 plan, which was shown to the purchasers when the agreements for sale were executed for the respective flats as well as in the clauses in agreements for sale. The pivotal question that arises for our consideration is whether the promoters have made full and true disclosures of the entire scheme of the project to the flat purchasers when they executed the agreement for sale? Further, whether the promotes have amended the 2017 plans in accordance with the said disclosures made in the 2017 plan and various clauses of the agreements for sale, and whether the promoters are obligated to take prior consent of the allottees before amending the 2017 plan, which came to be amended in 2021?

56. It is a settled position of law that the promoters are always entitled to construct additional structure/s if they disclosed the said additional structure/s in the layout plan itself at the time of sale of flats and if full. Further, if true and full disclosures are

made in the agreements for sale or plan layout, then no prior consent of flat purchasers is necessary for constructing the said additional structure/s as per the plans disclosed to the allottees. However, if the additional structure is either not disclosed in the layout plan or no full or true disclosures are made in the agreements for sale or the amended plan deviates from the plan shown to the flat purchasers adversely affecting them, then the previous consent of the flat purchasers is mandatory both under Section 7 of MOFA and Section 14 of RERA Act, 2016.

57. The above position in law has been extensively dealt with in great details by the Hon'ble Bombay High Court in case of *Vitthal Laxman Patil* (supra) wherein the Hon'ble Bombay High Court in paras-12,13,14,17, and 18 of the said judgement held as under:

> *12. In view of the rival submissions and in the light of observations of the Supreme Court as contained in the Order dated 19th July 2022 passed in Civil Appeal No. 4801 of 2022, remanding back the matter to this Court, it is necessary to consider following substantial question of law framed by learned Single Judge in this Second Appeal.*
>
> > *"Whether, after making disclosure to flat purchasers of a sanctioned layout plan showing a certain number of buildings and open and amenity spaces including Recreation Ground ('RG') and their locations as per the requirements of Maharashtra Ownership Flats Act ("MOFA"), it is permissible to a promoter to construct an additional building on the RG area shown in the layout plan without seeking consent from the flat purchasers?"*
>
> *13. For consideration of the question of law raised in this Second Appeal, certain provisions of the MOFA and more*

particularly Sections 3, 4, 4A, 7, 7A, 10 and 11 are relevant. The relevant portion of these Sections are reproduced hereinbelow:

*"3. **General liabilities of promoter***

*(1) Notwithstanding anything in any other law, a 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 in all transactions with **persons intending to take or taking one or more of such flats, be liable to give or produce, or cause to be given or produced, the information and the documents hereinafter in this section mentioned.***

*(2) **A promoter**, who constructs or intends to construct such block or building of flats, **shall-***

*(a) **make full and true disclosure of the nature of his title to the** land on which the flats are constructed, or are to be constructed; such title to the land as aforesaid having been duly certified by an Attorney- at-law, or by an Advocate of not less than three years standing, 3[and having been duly entered in the Property card or extract of Village Forms 'TI or VII and XII or any other relevant revenue record;]*

*(b) **make full and true disclosure of all encumbrances on such land, including any right, title, interest or claim of any party in or over such land;***

(c) ***give inspection in seven days' notice or demand of the plans and specifications of the building built or to be built on the land; such plans and specifications having been approved by the local authority which he is required so to do under any law for the time being in force;***
(d) disclose the nature of fixtures, fittings and amenities (including the provision for one or more lifts) provided or to be provided;
(e) disclose on reasonable notice or demand if the promoter is himself the builder, the prescribed particulars as respects the design and the materials to be used in the construction of the buildings, and if the promoter is not himself the builder disclose, on such notice or demand, all agreements (and where there is no written agreement the details of all agreements) entered into by him with the architects and contractors regarding the design, materials and construction of the building;
(f) specify in writing the date by which possession of the flat is to be handed over (and he shall hand over such possession accordingly);
(g) ***prepare and maintain a list of flats with their numbers already taken or agreed to be taken, and the names and addresses of the parties, and the price charged or agreed to be charged therefor, and the terms and conditions***

if any on which the flats are taken or agreed to be taken;

(h) ***state in writing, the precise nature of the organisation of persons to be constituted and to which title is to be passed, and the terms and conditions governing such organisation of persons, who have taken or are to take the flats;***

(i) not allow persons to enter into possession until a completion certificate where such certificate is required to be given under any law, is duly given by the local authority (and no person shall take possession of a flat until such completion certificate has been duly given by the local authority);

(j) make a full and true disclosure of all outgoings (including ground rent if any, municipal or other local taxes, taxes on income, water charges and electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any);

(k) ***make a full and true disclosure of such other information and documents in such manner as may be prescribed; and give on demand true copies of such of the documents referred to in any of the clauses of this sub-section as may be prescribed at a reasonable charge therefor;***

(l) ***display or keep all the documents, plans or specifications (or copies thereof) referred to in clauses (a), (b) and (c), at the site and permit***

inspection thereof to persons intending to take or taking one or more flats*;*

(m) ***when the flats are advertised for sale, disclose inter-alia in the advertisement the following particulars, namely****:*

(i) the extent of the carpet area of the flat including the area of the balconies which should be shown separately;

(ii) 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 the instalments thereof may be paid;

(iii) ***the nature, extent and description of the common areas and facilities; and***

(iv) ***the nature, extent and description of limited common areas and facilities, if any****;]*

[(n) sell flats on the basis of the carpet area only:

Provided *that, the promoter may separately charge for the common areas and facilities in proportion to the carpet area of the flat.*

Explanation. - For the purposes of this clause, the carpet area of the flat shall include the area of the balcony of such flat.].

4. Promoter before accepting advance payment or deposit to enter into agreement and agreement to be registered:

*[(1)] Notwithstanding anything contained in any other law, **a promoter who** intends to construct or constructs a block or building of flats, all or some of which are to be taken or are taken on ownership basis, shall, **before, he accepts any sum of money as advance payment or deposit, which shall not be more than 20 per cent. of the sale price enter into a written agreement for sale with each of such persons who are to take or have taken such flats, and the agreement shall be registered under 4{the Registration xvi of Act, 1908 (hereinafter** in this section referred to as "the Registration Act")] 1908. 5[**and such agreement shall be in the prescribed form**.].*

*'[(IA) **The agreement to be prescribed and sub-section (1) shall contain inter alia the particulars as specified in clause (a); and to such agreement there shall be attached the copies of the documents specified in clause (b),***

(a) particulars,

*(i) **if the building is to be constructed, the liability of the promoter to construct it according to the plans and specifications approved by the local authority***

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where such approval is required under any law for the time being in force

(ii) the date by which the possession of the flat is to be handed over to the purchaser

(iii) the extent of the carpet area of the flat including the area of the balconies which should be shown separately

(iv) ***the price of the flat including the proportionate price of the common areas and facilities which should be shown separately, to be paid by the purchaser of flat; and the intervals at which instalments thereof may be paid.***

(v) the precise nature of organisation to be constituted of the persons who have taken or are to take the flats;

(vi) ***the nature, extent and description of common areas and facilities,***

(vii) ***the nature, extent and description of limited common areas and facilities, if any,***

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

(ix) statement of the use of which the flat is intended and restriction of its use, if any,

(x) ***percentage of undivided interests in the limited common areas and facilities, if***

any, appertaining to the flat agreed to be sold,

(b) ***copies of documents****,*

(i) the certificate of an Authority-at-law or Advocate under clause (a) of sub-section (2) of section 3;:

(ii) Property Card or extract of village Forms VI or VII and XII or any other relevant revenue record showing the nature of the title of the promoter to the land on which the flats are constructed or are to be constructed,

(iii) ***the plans and specifications of the flat as approved by the concerned local authority****].*

[(2) ***Any agreement for sale entered into under sub section (1) shall be presented by the promoter or by any other person competent to do so under section 32 of the Registration Act, at the proper registration office for registration****, within the time allowed under sections 23 to 26 (both inclusive) to the said Act and execution thereof shall be admitted before the registering officer by the person executing the document or his representative, assign or agent as laid down in sections 34 and 35 of the said Act also within the time aforesaid:*

Provided *that, where any agreement for sale is entered into, or is purported to be entered into, under sub section (1), at any time before the commencement of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) (Amendment and of Validating Provisions) Act, 1983, and such agreement was not presented for 1984. registration or was presented for registration but its execution was not admitted before the registration officer by the person concerned, before the commencement of the said Act, then such document may be presented at the proper registration office for registration, and its execution may be admitted, by any of the persons concerned referred to above in this sub section, on or before the 31st December 1984, and the registering officer shall accept such document for registration, and register it under the Registration Act, as if it were presented, and its execution was admitted, within the time laid down in the Registration Act:*

Provided further that, on presenting a document for registration as aforesaid if the person executing such document or his representative, assign or agent

> ***does not appear before the registering officer and admit the execution of the document, the registering officer shall cause a summons to be issued under section 36 of the Registration Act requiring the executant to appear at the registration office, either in person or by duly authorised agent, at a time fixed in the summons. If the executant fails to appear in compliance with the summons, the execution on the document shall be deemed to be admitted by him and the registering officer may proceed to register the document accordingly***. *If the executant appears before the registering officer as required by the summons but denies execution of the document, the registering officer shall, after giving him a reasonable opportunity of being heard, if satisfied that the document has been executed by him, proceed to register the document accordingly.].*

[4A. ***Effect of non-registration of agreement required to be registered under Section 4***

Where an agreement for sale entered into under sub-section (1) of section 4, *whether entered into before or after the commencement of the Maharashtra Ownership Flats (Regulation of the*

Promotion of Construction, Sale, Management and Transfer) (Amendment and Validating Provisions) Act, 1983, **remains unregistered for any reason, then notwithstanding anything contained in any law for the time being in force, or in any judgment, decree or order of any Court, it may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1963, or as evidence of part performance of a contract for the purposes of Section 53A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument**.].

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

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

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

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

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

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

(ii) In any other area, to such Deputy Chief Engineer, or to such other Officer of the rank equivalent to that of Superintending Engineer in the Maharashtra Service of Engineers, of a Board established section 18 of the Maharashtra Housing and Area Development Act, 1976, as the State Government may, by general or special order, specify in this behalf. Such competent authority, Deputy Chief Engineer or, as the case may be, the other officer of a Board shall, after inquiry, record his decision, which shall be final.].

7A. Removal of doubt

For the removal of doubt, it is hereby declared that clause (ii) of sub-section (1) of section 7 having been retrospectively substituted by clause (a) of section 6 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, sale, management and transfer) (Amendment) Act, 1986 (hereinafter in this section referred to as "the Amendment Act"), it shall be deemed to be effective as if the said clause (ii) as so substituted had been in force at all material times;

and the expression "or construct any additional structures" in clause (ii) of sub-section (1) of section 7 as it existed before the commencement of the Amendment Act and the expressions "constructed and completed in accordance with the plans and specifications aforesaid" and "any unauthorised change in the construction" in sub-section (2) of section 7 shall, notwithstanding anything contained in this Act, or in any Agreement, or in any judgment, decree or order of any Court, be deemed never to apply or to have applied in respect of the construction of any other additional buildings or structures constructed or to be constructed under a scheme or project of development in the layout after obtaining the approval of a local authority in accordance with the building rules or building bye-laws or Development Control Rules made under any law for the time being in force."

10. Promoter to take steps for formation of co-operative society or company.—[(1)] As soon as a minimum number of persons required to form a co-operative society or a company have taken flats, the promoter shall within the prescribed period submit an application to the Registrar for registration of the organisation of persons who take the flats as a co-operative

society or, as the case may be, as a company; and the promoter shall join, in respect of the flats which have not been taken, in such application for membership of a co operative society or as the case may be of a company. Nothing in this section shall affect the right of the promoter to dispose of the remaining flats in accordance with the provisions of this Act:

*[**Provided** that, if the promoter fails within the prescribed period to submit an application to the Registrar for registration of society in the manner provided in the Maharashtra Co-operative Societies Act, 1960 (Mah. 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:*

***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.]*

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[(2) If any property consisting of building or buildings is constructed or to be constructed and the promoter submits such property to the provisions of the Maharashtra Apartment Ownership Act, 1970 (Mah. Act 15 of 1971), by executing and registering a Declaration as provided by that Act] then the promoter shall inform the Registrar as defined in the Maharashtra Co-operative Societies Act, 1960 (Mah. Act 34 of 1961), accordingly; and in such cases, it shall not be lawful to form any co-operative society or company.]

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

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

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

(4) The Competent Authority, on receiving such application, within reasonable time and in any case not later than six months, after making such enquiry as

deemed necessary and after verifying the authenticity of the documents submitted and after giving the promoter a reasonable opportunity of being heard, on being satisfied that it is a fit case for issuing such certificate, shall issue a certificate to the Sub-Registrar or any other appropriate Registration Officer under the Registration Act, 1908 (Act 16 of 1908), certifying that it is a fit case for enforcing unilateral execution, of conveyance deed conveying the right, title and interest of the promoter in the land and building in favour of the applicant, as deemed conveyance.

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

for unilateral conveyance, register that instrument as, 'deemed conveyance'

(Emphasis added)

*14. It is also important to note relevant rules framed under MOFA namely Maharashtra Ownership Flats (Regulation of the Promotion of Construction Etc), Rules 1964 ("**MOFA Rules**"). The relevant rules are as follows:*

3. Manner of making disclosure

*(1) **A promoter for the purposes of making disclosure of any document referred to in section or prescribed thereunder shall produce the original of such document before the person intending to take or taking lone or more flats. The promoter shall display or keep all the documents, plans or specifications (or copies thereof) referred to in clauses (a), (b) and (c) of sub-section (2) of the said section at the site and permit inspection thereof**;. Such person may ask the promoter all relevant questions for seeking further information or clarification in respect of any document of matter required to be disclosed, produced or furnished by or under the provisions of the Act; and the promoter shall be legally bound to answer all such questions to the best of his knowledge and belief.*

(2) The promoter while making disclosure of the outgoings as required by clause (j) of sub-section (2) of

section 3 shall state the basis on which any estimated figures or other, information is given.

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

4. ***True copies of certain documents to be given,***

A promoter shall, on demand and payment of a reasonable charge therefor, give to any person intending to take or taking one or more flats 3 true copies of the following documents, namely:

(a) ***all documents of title relating to the land on which the [flats] are constructed or are to be constructed, which are in the promoter's possession or power***

b) the certificate by an Attorney-at-law or Advocate referred to in clause (a) of sub-section (2) of section 3;

(c) All documents relating to encumbrances (if any) on such land, including any right, title, interest or claim, of any party in or over such land;

(d) ***the plans and specifications of the building built or to be built on the land***

referred to in clause (c) of sub-section (2) of section 3;

(e) a list of fixtures, fittings and amenities (including the provision for one or more lifts) provided or to be provided for the flat;

(f) a list referred to in clause (g) of sub-section (2) of section 3;

(g) a list of all outgoings referred to in clause (i) of sub section (2) of section 3 and the basis on which any estimated figures or other information is given to the person intending to take or taking the flat.

5. Particulars to be contained in agreement.

The promoter shall before accepting any advance payment or deposit, enter into an agreement with the flat purchaser in Form V containing the particulars specified in clause (a) of sub-section (1A) of section 4 and shall attach thereto the copies of the documents specified in clause (b) of the said sub-section (1A).

8. Period for submission of application for registration of co operative society or company of Flat purchasers

Where a co-operative society or a company of persons taking the flats is to be

constituted, the promoter shall submit an application to the Registrar for registration of the co operative society or the company as the case may be, within four months from the date on which the minimum number of persons required to form such organisation have taken flats.
Where the apartment takers propose to submit the apartments to the provisions of the Maharashtra Apartment Ownership Act, 1970, by executing Declarations and Deeds of Apartments as required by that Act, the promoter shall inform the Registrar as defined in the Maharashtra Co operative Societies Act, 1960, as soon as possible after the date on which all the apartment owners (being not less than five) have executed such Declaration and Deeds of Apartment.)

9. Period for conveyance of title of promoter to organisation of Flat purchasers.

If no period for conveying the title of the promoter to the organisation of the flat purchasers is agreed upon, the promoter shall (subject to his right to dispose of the remaining flats, if any) execute the conveyance within four months

from the date on which co-operative society or the company is registered or, as the case may be, the association of flat takers is duly constituted.

When a promoter has submitted his property to the provisions of the Maharashtra Apartment Ownership Act, 1970 by executing and registering a Declaration as required by section 2 of that Act, and no period for conveying the title of the promoter in respect of an apartment to each apartment-taker is agreed upon, the promoter shall execute the conveyance or deed of apartment in favour of each apartment-taker within four months from the date the apartment-taker has entered into possession of his apartment.

The promoter shall file with the Competent Authority a copy of the conveyance executed by him under sub-section (1) of section 11 within a period of two months from the date of its execution.

17. Section 7 and 7A of MOFA Act as well as relevant rules and format of the agreement to be entered into between the flat purchasers and developer have been considered by the Supreme Court in the case of Jayantilal (supra). The relevant paragraphs are paragraphs 15 to 19, which read as under:

"15. The judgment of the Bombay High Court in Kalpita Enclave case was based on the interpretation of unamended Section 7 of MOFA. Consequently, it was held that a promoter was not entitled to put up additional structures not shown in the original layout plan without the consent of the flat takers. Thus, consent was attached to the concept of additional structure. Section 7 was accordingly amended. Section 7-A was accordingly inserted by Maharashtra Amending Act 36 of 1986. Section 7-A was inserted in order to make the position explicit, which according to the legislature existed prior to 1986, implicitly. Section 7 of MOFA came to be amended and for the purpose of removal of doubt, additional Section 7-A came to be added by Maharashtra Act 36 of 1986. By this amendment, the words indicated in the parenthesis in the unamended Section 7(1)(ii), namely, "or construct any additional structures" came to be deleted and consequential amendments were made in Section 7(1)(ii). Maharashtra Act 36 of 1986 operated retrospectively. Section 7-A was declared as having been retrospectively substituted and it was deemed to be effective as if the amended

clause had been in force at all material times. Further, it was declared vide Section 7-A that the abovequoted expression as it existed before commencement of the amendment Act shall be deemed never to apply in respect of the construction of any other additional buildings / structures, constructed or to be constructed, under a scheme or project of development in the layout plan, notwithstanding anything contained in the Act or in any agreement or in any judgment, decree or order of the court. Consequently, reading Section 7 and Section 7-A, it is clear that the question of taking prior consent of the flat takers does not arise after the amendment in respect of any construction of additional structures. However, the right to make any construction of additional structures/ buildings would come into existence only on the approval of the plan by the competent authority. That, unless and until, such a plan stood approved, the promoter does not get any right to make additional construction. This position is clear when one reads the amended Section 7(1)(ii) with Section 7-A of MOFA as amended. *Therefore, having regard to the Statement of* **Objects and Reasons for substitution**

of Section 7(1)(ii) by Amendment Act 36 of 1986, it is clear that the object was to make legal position clear that even prior to the amendment of 1986, it was never intended that the original provision of Section 7(1) (ii) of MOFA would operate even in respect of construction of additional buildings**. In other words, the object of enacting Act 36 of 1986 was to change the basis of the judgment of the Bombay High Court in Kalpita Enclave case [1986 Mah LJ 110 : (1987) 1 Bom CR 355]. **By insertion of Section 7-A vide Maharashtra Amendment Act 36 of 1986 the legislature had made it clear that the consent of flat takers was never the criteria applicable to construction of additional buildings by the promoters. The object behind the said amendment was to give maximum weightage to the exploitation of development rights which existed in the land. Thus, the intention behind the amendment was to remove the impediment in construction of the additional buildings, if the total layout allows construction of more buildings, subject to compliance with the building rules or building bye laws or Development Control Regulations. At the same time, the legislature

had retained Section 3 which imposes statutory obligations on the promoter to make full and true disclosure of particulars mentioned in Section 3(2) including the nature, extent and description of common areas and facilities. As stated above, sub-section (1-A) to Section 4 was also introduced by the legislature by Maharashtra Act 36 of 1986 under which the promoter is bound to enter into agreements with the flat takers in the prescribed form. Under the prescribed form, every promoter is required to declare FSI available in respect of the said land. The promoter is also required to declare that no part of that FSI has been utilised elsewhere, and if it is utilised, the promoter has to give particulars of such utilisation to the flat takers. Further, under the proforma agreement, the promoter has to further declare utilisation of FSI of any other land for the purposes of developing the land in question which is covered by the agreement.

16. ***Therefore, the legislature has sought to regulate the activities of the promoter by retaining Sections 3 and 4 in the Act****. It needs to be mentioned at this stage the question which needs to be decided is whether one building with several wings would fall under amended Section*

7(1)(ii). Section 7-A basically allows a builder to construct additional building provided the construction forms part of a scheme or a project. That construction has to be in accordance with the layout plan. That construction cannot exceed the development potentiality of the plot in question. Section 10 of MOFA casts an obligation on the promoter to form a cooperative society of the flat takers as soon as minimum number of persons required to form a society have taken flats. It further provides that the promoter shall join the society in respect of the flats which are not sold. He has to become a member of the society. He has the right to dispose of the flats in accordance with the provisions of MOFA. Section 11 inter alia provides that a promoter shall take all necessary steps to complete his title and convey the title to the society. He is obliged to execute all relevant documents in accordance with the agreement executed under Section 4 and if no period for execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period. Rule 8 inter alia provides that where a cooperative society is to be constituted, the promoter shall submit an *application to the Registrar for registration of the society within four months from the date on which the minimum number of persons required to form such society (60%) have taken flats. Rule 9 provides that if no period for execution of a conveyance is agreed upon, the promoter shall, subject to his right to dispose of the remaining flats, execute the conveyance within four months from the date on which the society is registered.*

17. Reading the above provisions of MOFA, we are required to balance the rights of the promoter to make alterations or additions in the structure of the building in accordance with the layout plan on the one hand vis-a-vis his obligations to form the society and convey the right, title and interest in the property to that society. The obligation of the promoter under MOFA to make true and full disclosure to the flat takers remains unfettered even after the inclusion of Section 7-A in MOFA. That obligation remains unfettered even after the amendment made in Section 7(1)(ii) of MOFA. That obligation is strengthened by insertion of sub-section (1-A) in Section 4 of MOFA by Maharashtra Amendment Act 36 of 1986. Therefore, *every agreement between the promoter and the flat taker shall comply with the prescribed Form V. It may be noted that, in that prescribed form, there is an explanatory note which inter alia states that clauses 3 and 4 shall be statutory and shall be retained. It shows the intention of the legislature. Note 1 clarifies that a model form of agreement has been prescribed which could be modified and adapted in each case depending upon the facts and circumstances of each case but, in any event, certain clauses including clauses 3 and 4 shall be treated as statutory and mandatory and shall be retained in each and every individual agreements between the promoter and the flat taker. Clauses 3 and 4 of the Form V of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, etc.) Rules, 1964 are quoted hereinbelow:*

> *"3. The promoter hereby agrees to observe, perform and comply with all the terms, conditions, stipulations and restrictions, if any, which may have been imposed by the local authority concerned at the time of sanctioning the said plans or thereafter and shall, before handing over possession of the flat to*

the flat purchaser, obtain from the local authority concerned occupation and/or completion certificates in respect of the flat.

4. The promoter hereby declares that the floor space index available in respect of the said land is ... square metres only and that no part of the said floor space index has been utilised by the promoter elsewhere for any purpose whatsoever. In case the said floor space index has been utilised by the promoter elsewhere, then the promoter shall furnish to the flat purchaser all the detailed particulars in respect of such utilisation of said floor space index by him. In case while developing the said land the promoter has utilised any floor space index of any other land or property by way of floating floor space index, then the particulars of such floor space index shall be disclosed by the promoter to the flat purchaser. The residual FAR (FSI) in the plot or the layout not consumed will be available to the promoter till the registration of the society. Whereas after the registration of the society the residual FAR (FSI), shall be available to the society."

(emphasis supplied)

18. The above clauses 3 and 4 are declared to be statutory and mandatory by the legislature because the promoter is not only obliged statutorily to give the particulars of the land, amenities, facilities, etc., he is also obliged to make full and true disclosure of the development potentiality of the plot which is the subject-matter of the agreement. The promoter is not only required to make disclosure concerning the inherent FSI, he is also required at the stage of layout plan to declare whether the plot in question in future is capable of being loaded with additional FSI/floating FSI/TDR. ***In other words, at the time of execution of the agreement with the flat takers the promoter is obliged statutorily to place before the flat takers the entire project/scheme, be it a one building scheme or multiple number of buildings scheme****. Clause 4 shows the effect of the formation of the Society.*

19. ***In our view, the above condition of true and full disclosure flows from the obligation of the promoter under MOFA vide Sections 3 and 4 and Form V which prescribes the form of agreement to the extent indicated above. This obligation remains unfettered because the concept of developability has to be harmoniously read with the concept of registration of society and conveyance of title. Once the entire project is placed before the flat takers at the***

time of the agreement, then the promoter is not required to obtain prior consent of the flat takers as long as the builder puts up additional construction in accordance with the layout plan, building rules and Development Control Regulations, etc."

(Emphasis added)

*Thus, the Supreme Court in **Jayantilal Investments** (supra) has held that reading of Sections 3, 4, 7, 7-A, 10 and 11 of MOFA as well as Rules 3, 4, 5, 8 and 9 of MOFA Rules and agreement as prescribed under Form V and explanation note to said Form V, it is required to balance the rights of the promoter to make alterations or additions in the structure of the building in accordance with the layout plan on the one hand vis-a-vis his obligations to form the society and convey the right, title and interest in the property to that society. The obligation of the promoter under MOFA to make true and full disclosure to the flat takers remains unfettered even after the inclusion of Section 7-A in MOFA. At the time of execution of the agreement with the flat takers, the promoter is obliged statutorily to place before the flat takers the entire project/scheme, be it a one-building scheme or multiple number of buildings scheme. The said condition of true and full disclosure flows from the obligation of the promoter under MOFA vide Sections 3 and 4 and Form V which prescribes the form of agreement to the extent indicated above. This obligation remains unfettered because the concept of developability has to be harmoniously read with the concept of* *registration of society and conveyance of title. Once the entire project is placed before the flat takers at the time of the agreement, then the promoter is not required to obtain prior consent of the flat takers as long as the builder puts up additional construction in accordance with the lay-out plan, building rules and Development Control Regulations, etc.*

18. Thus, it is mandatory that at the time of execution of the agreement with the flat purchasers the promoter is obliged statutorily to place before the flat purchasers the entire project/scheme, be it a one-building scheme or multiple number of buildings scheme. Once the entire project is placed before the flat takers at the time of the agreement, then the promoter is not required to obtain prior consent of the flat takers as long as the builder puts up additional construction in accordance with the layout plan, building rules and Development Control Regulations, etc. Thus, it is very clear that true and full disclosure is the obligation of the Promoter and binding nature of the consent, if any, given by the flat purchasers is required to be ascertained on the basis of disclosure made.

58. The proposition emerged from the ratio and dictum of law as laid down by the Hon'ble Bombay High Court as above, is that the Clause 3 and 4 and form V under MOFA required the promoters to make full disclosure of the proposed building and its amenities or the project of the buildings and their amenities and then to comply with such disclosures while constructing the building/buildings or implementing the project. Further, under

the prescribed form, every promoter is required to declare FSI available in respect of the project land. The promoter is also required to declare that no part of that FSI has been utilized elsewhere, and if it is utilized, the promoter must give particulars of such utilization to the flat takers. Further, under the proforma agreement, the promoter must further declare utilization of FSI of any other land for the purposes of developing the land in question which is covered by the agreement. The promoter must disclose the development potentiality of the project land. The cornerstone of the law as laid down in above judgment is full and true disclosure to the flat purchasers, while executing the agreements for sale. The promoters must construct strictly in conformity to such disclosures made to the allottees. Any deviation from such disclosures is impermissible in law, without prior consent of the allottees.

59. We will now examine whether the promoters have made full and true disclosures of the entire project to the flat purchasers when they executed the agreements for sale. It is matter of fact that the sanctioned plan of 2017 has disclosed proposed "IT building" in the 2017 layout plan. The promoters have also disclosed the said building as "commercial building" in the said agreements for sale. The promoters have also disclosed that the floor space index available in respective of the project property is 33,772.40 sq. mtrs. and the promoters have planned to utilize the entire FSI of 33,772.40 sq. mtrs. The promoters have also disclosed that the "residential building" (Wing 'A' and wing 'B') and "commercial building" are two buildings independent of each other. Further, "residential building" will have separate and

independent common areas and amenities, and the "commercial building" will have separate and independent common areas and amenities to be exclusively used by the respective allottees/unit purchasers of the said buildings. It also discloses that the terrace of the "commercial building" shall be part of the garden area of the residential building, which will be solely used by the allottees of the residential building. The promoters also have disclosed that "residential building" and "commercial building" being separate and independent buildings, the promoters shall form and register separate and independent co-operative societies/condominiums/limited companies for the residential buildings and commercial building. Further, the "residential building" and "commercial building" shall remain independent of each other and shall be entitled to their respective common areas and amenities as provided in the agreements for sale. The promoters shall execute joint or separate conveyance/lease in respect of said property of the two separate co-operative societies/condominiums/limited companies in accordance with respective proportionate interest in the said property i.e proportionate to FSI consumed in the said "residential building" and "commercial building" together with the respective common areas and amenities. The promoters have also disclosed that they shall be entitled to amend the layout plans from time to time in accordance with law. The promoters have also disclosed that they are entitled to avail entire FSI of the plot by availing TDR, FSI available on payment of premium, FSI available as incentive FSI, etc. The promoters also disclosed that the conveyance will be executed in favour of separate co-operative societies/condominiums/limited companies within period of 12 months only after the promoters have completed the construction of the entire said project and obtained occupation certificate for the entire project.

60. From the above, we are of the view that the promoters have disclosed the said proposed "commercial building" in 2017 plan as well as the agreements for sale and made all the disclosures to the allottees when the agreements for sale were executed. Therefore, the promoters are entitled to construct the said proposed "commercial building" as disclosed in 2017 plan and the agreements for sale. Further, they are entitled to construct the said "commercial building" strictly in accordance with 2017 plan without requiring the consent of the allottees. The settled position of law is that any deviation from the disclosed plan to the allottees at the time of executing the agreements for sale shall require prior consent of the allottees. The disclosures made to allottees at the time of executing agreements for sale entails promoters' obligations to conforming to those disclosures.

61. We have already discussed above the comparison between the 2017 and 2021 approved plans. It is evident from the said comparison that the entire available FSI with the plot is 33,772.40 sq. mtrs., which has disclosed in the 2017 plan to allottees, whereas the promoters, in the 2021 plan, have proposed 39,243.50 sq. mtrs. The residential building FSI has been slightly increased from 30,540.44 sq. mtrs. in the 2017 plan to 31,769.76 sq. mtrs., which is within 5% of the approved built-up area. We do not find any issue on this and in this regard the appellant society does not have any grievance. However, for the

said IT building/commercial building proposed in the 2017 plan, the built-up area of the said building is increased from 3231.63 sq. mtrs. in the 2017 plan to 7473.74 sq. mtrs. in the 2021 plan. Therefore, there has been a significant deviation of the built-up area of the commercial building from disclosure made in 2017 plan. Such deviation from the disclosures would mandate the promoters to seek prior consent of the allottees (of both residential and commercial buildings) before making any amendment in the layout plan, which was disclosed to the allottees at the time of executing agreements for sale.

62. The clauses of the agreements for sale also stipulate that promoters will take prior consent of the allottees, if any amendment or changes adversely impact the allottees by the said proposed amendments. It is the contention of the promoters that there are no changes in the layout plan of the residential building and amendments are entirely in relation to the commercial building. The residential building and commercial building being independent building, there would not be any grievance of the allottees or society even if the layout plan of the commercial building is amended for which the consent of the allottees of the residential building is not required.

63. We do not accept the above contention of the promoters for the reason that, as per the above-referred clauses in the agreements for sale, the promoters shall form and register separate and independent two co-operative societies/condominiums/limited companies (for short "organizations") and convey the project property in favour of these independent organizations in accordance with their respective proportionate interest in the

said property i.e. proportionate to FSI consumed in the said residential building and commercial building, together with respective common areas and amenities. Since the FSI/built-up area of the commercial building, which was originally disclosed in the 2017 plan at 3231.63 sq. mtrs. has been changed to 7473.74 sq. mtrs. in the 2021 plan, thereby decreasing the proportionate interest of the appellant society in the project property, which will be decided in proportion to FSI consumed by the residential building vis-à-vis the commercial building. We are of the view that such amendment of increasing FSI of commercial building is going to adversely affect the interest of the appellant society of residential building in the said project property and therefore, as per the Clauses in the agreements for sale the promoter is bound to take informed consent of the allottees for the proposed changes that were made in 2021 approved plan.

64. We reiterate that in the ratio and dictum laid down by the Hon'ble Bombay High Court in the judgment discussed above, it has clearly laid down position of law that if proposed structure is disclosed to the allottees in the approved layout plan shown to the allottees at the time of executing agreement for sale, the promoters are not required to take prior consent for amendment for undertaking construction of the proposed building if it confirms to the said disclosures made in the 2017 plan, which was shown to the allottees. If there is any deviation from the plan disclosed to the allottees, the promoters are obligated to take prior consent of the allottees for amending the 2017 plan. Therefore, in our view, the promoters have amended the plan

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of 2017 without prior consent of the allottees as mandated under Section 7 of MOFA and Section 14 of RERA Act, 2016. Thus, promoters have violated Section 7 of MOFA as well as Section 14 of RERA Act, 2016.

65. In view of the above discussions, we do not agree to contention of the promoters that the provision of Section 14 RERA Act, 2016 will have to be limited and adjudicated in the context of amendment of plans of the residential building and not that of the commercial building. It is pertinent that the project consists of residential and commercial building and there are no two separate projects registered for the residential building and commercial building. Further, for the reason that an increase in the FSI of commercial building has an adverse impact on the society of the residential building in terms of its proportionate interest in the project property, the residential and commercial building being part of the identical subject project.

66. It is the contention of the promoters that as per agreements for sale promoters are entitled to avail the TDR, thereby amending the plan with respect to the commercial building. The promoters have relied on the specific clauses, namely Clause 9 and Clause 17.1 of the agreement for sale, which are reproduced below.

*"9. **DESIGN SUBJECT TO AMENDMENTS AND CHANGES:***

The Purchaser/s is/are aware that the said Project comprises of both residential flats and commercial units and hereby agree, confirm and consent that the Promoters shall be entitled to re-design the passages and such other area or areas by submitting amended plans to the statutory *authority in accordance with applicable law. The Purchaser/s further agree confirm and consent that till the entire Project as per layout sanctioned by MCGM and as amended from time to time of the said Project is completed and the FSI (by whatever name called including TDR) available on the said Property, is fully utilized by the Promoters and all the obligations required to be observed by the Purchaser/s of herein are fulfilled and/or the obligation to be required to be observed by the Purchaser/s of premises are fulfilled, the Promoters shall not be bound and shall not be called upon or required to form any Co-operative Society or Condominium or Limited Company as the case may be and the Purchaser/s agree and irrevocably consent not to raise any demand or dispute or objection or claim of whatsoever nature in that regards.*

17.1 *It is agreed that notwithstanding anything contained to the contrary herein, the Promoters shall be entitled at any time to amend the existing layout and/or to construct additional structures on the said Property and/or additional floors on said Project being constructed on the said Property, even after completion of said Project until the execution of conveyance/lease in respect of the said Project in favour of the said Organizations as per law. All such additions, alterations, additional floors and/or additional wing, building and/or structures shall be sole property of the Promoters who shall be entitled to self/allot and/or otherwise deal with the same in the manner the Promoters deems fit. Such additional constructions may either be on* *account of balance FSI which remains unconsumed by the Promoters or additional FSI that may be available from the said Property or elsewhere and/or account of TDR and/or any other rights, benefits including floating rights which may be available in respect of the said Property of other properties and/or any potential that may be available on account of the amendment in the Development Control Rules or FSI or otherwise or on account of the amendment in the Development Control Rules or FSI or otherwise or on account of floating rights and all other benefits and rights. The Promoters shall be entitled to utilize and consume such TDR, FSI or any other potential, other rights, benefits including floating rights, etc. to the extent permissible as per rules / regulation in force at such relevant time. The Purchaser/s shall not be entitled to claim any rebate in price or any other advantage from the Promoters on the ground of the Promoters making additional construction or any other ground whatsoever. The Purchaser/s hereby confirm and consent to the irrevocable and unfettered right of the Promoters to amend the existing layout and construct and sell/allot the said Project/structures on the said Property and/or additional floors on the said Project being constructed on the said Property in the manner deemed fit by the Promoters as per the provisions of law."*

67. As per agreements for sale, the allottees agree and confirm and consent that the promoters shall be entitled to amend the plans in accordance with the applicable laws and the flat purchasers further agree, confirm and consent that till the entire project as

per sanctioned layout plan as amended from time to time of the said project is completed and the FSI available on said property fully utilized by the promoters in accordance with the applicable law the promoters are not bound to execute the conveyance deed. Further, the purchasers confirm and consent to the irrevocable and unfettered right of the promoters to amend the existing layout and construction and sale/allot the said project/structures on the priority and/or additional floors on the said project in the manner deemed fit by the promoters as per provisions of law. Further, promoters are entitled to avail TDR, FSI available on payment of premium. According to the promoters, the promoters have procured the FSI on payment of premium and therefore the said amendments are in conformity with the prevailing regulation, and therefore the consent of the allottees is not required for amending the 2017 plan as per the above clauses of the agreements for sale.

68. The Hon'ble Bombay High Court in the judgement in the case of *Shri Vitthal Laxman Patil* (supra) has elaborately dealt with the whether consent given in the clauses of agreement would be a valid or informed consent for the purposes of section 7 of the MOFA and in para 19, 21, and 24 has held as under.

> ***19.*** *The Supreme Court in the case of* ***Jayantilal Investments*** *(supra) after considering the question of law and answering the same in paragraphs 15 to 19 as set out hereinabove remanded back the matter to the High Court. A learned Single Judge after remand, passed the Order in the said case between* ***Madhuvihar CHS and Ors. Vs. Jayan-***

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tilal Investments and Ors.*[2010 6 Bombay Cases Reporter 517] 8. The relevant portion of the said Judgment are paragraphs 42 to 47, which read as under:*

> *"42. In the present case, the scheme was floated in the year 1985, showing 7 wings. The building was completed in the year 1989 and the purchasers who had entered into agreement with the promoter were put in possession. In this respect, it would also be relevant to refer to condition No. 4 of the occupation certificate dated 12th April, 1989 issued by the Bombay Municipal Corporation, which reads thus :*
>
> *"That, the Co-operative Society shall be formed and registered within three months from the dale of issue hereof, or before B.C.C. whichever is earlier."*
>
> *43.* ***That leaves us to the next question, as to whether the consent which is deemed to be given in the clauses of agreement would be a valid consent for the purposes of section 7 of the MOFA. The learned Counsel appearing for the promoter, relying on various clauses i.e. Clauses 1, 8, 10, 11 12, 15, 17, 18, 38 and 51 of the agreement entered between the promoter and the flat owners, strenuously contends that there is implied consent for the additional construction.***
>
> *44. Recently, after judgment of the Apex Court in the present case, considering import of the said judgment, the learned Single Judge of this Court, had an*

occasion to consider the issue, which is raised by the promoter herein, in the case of Bajranglal Eriwal & others Vs. Sagarmal Chunilal & others, 2008(6) Bom CR 887, wherein it is observed thus:

The provisions of the Act, as construed now by the judgment of the Supreme Court, would leave no manner of doubt that ***the statutory bar upon the promoter altering the structure of a flat agreed to be purchased under Clause (i) of sub-section (1) of section 7 and of making any other alterations or additions in the structure of the building under Clause (ii), can be lifted only subject to a disclosure by the developer of the entire project or scheme. The previous consent that is contemplated by sub-section (1) of section 7 must be an informed consent. An informed consent is one which is freely given, after a flat purchaser is placed on notice by a complete and full dis- closure of the project or scheme which the builder intends to implement. The consent that is contemplated by sub-section (1) of section 7 is, therefore, a specific consent which is relatable to the particular project or scheme of the developer which is intended to be implemented.*** *The observations of the Supreme Court in Jayantilal Investments, bring about a balance between the rights of the promoter on the one hand and a flat purchaser on* *the other. There is a statutory embargo upon the making of alterations either in an individual flat or in respect of the structure of the building after the disclosure of the plans and specifications of the building. This embargo was introduced by the legislature specifically to obviate the kind of malpractices that were taking place. The lifting of the embargo is conditional on the grant of previous consent. The lifting of the embargo must be confined strictly within the parameters which have been envisaged by the legislature and it is in that context the Supreme Court has held that the consent can be regarded as valid if there has been a full disclosure by the developer of the entire project which he has to implement. Thus construed, there can be no manner of doubt that it is not open to a developer/promoter to rely upon a general consent. To allow such generalized consents to operate would defeat the public policy which underlies the provisions of sub-section (1) of section 7 as interpreted by the Supreme Court. It is a well settled principle of statutory interpretation that the interpretation which the Court places on a statute must be purposive, so as to achieve the object and intent of the legislature. The Maharashtra Ownership Flats Act, 1963, is an Act to regulate the*

promotion of the construction of the sale and management, and the transfer of flats on ownership basis. The preamble specifically provides that the State Government was conscious of the fact that on account of an acute shortage of housing, there were "sundry abuses, malpractices and difficulties relating to the promotion of the construction of, and the sale and management and transfer of flats taken on owner- ship basis." The legislature has found that such malpractices not merely existed, but they were increasing. It is in this background that the Court must adopt a purposive interpretation of law and that interpretation which would defeat the object of the legislature must be eschewed."

The learned Single Judge of this Court, while taking the aforesaid view, has also relied on the judgments of other Single Judges of this Court, in the cases of Neena Sudarshan Wadia Vs. Venus Enterprises 1984(2) Bom.C.R. 505; (Tejal Residency Co- operative Housing Society Ltd. Vs. Brihan Mumbai Municipal Corporation)14, 2007(6) All.M.R. 861; (Khatri Builders Vs. Mohmed Farid Khan) 15, 1992(1) Bom.C.R. 305; and in the case of Ravindra Mutenja (cited supra).

45. The similar argument, which is advanced before this Court, fell for consideration before the learned

Single Judge of this Court, in the case of ***Neena Sudarshan Wadia Vs. Venus Enterprises, 1984(2) Bom.C.R. 505****, wherein the learned Single Judge has observed thus:*

"Now, we have to understand the meaning of the word 'consent' as used in Clause (ii) of sub-section (1) of section 7. After the plans and specifications of the building as approved by the local authority are disclosed or furnished to a person who agrees to take a flat from the promoter, a prohibition is claimed on the promoter not to make any alterations in the building or constructed additional structures. This prohibition can be lifted if before the promoter carries out the alterations in the building or before he starts the work of additional construction, the promoter obtains the consent of all the persons who have agreed to take the flats. For the purpose of obtaining consent, a promoter must ask the flat owners for their permission and reveal to them the nature of the proposed. alterations to the building or of the additional structures to be constructed as, without such disclosure, the flat owners cannot know for what work the permission is sought and for what work they are required to consent. Again in response to a request for consent, there must be an affirmative acceptance from all the persons

who have agreed to take the flats. The word "consent" in the context of the section does not mean implied consent such as by conduct or acquiescence or circumstance that might be consent. Consent in this section is to be under- stood to mean as positive consent to specific items of work or alteration to be carried out or particular additional structure to be built by a promoter. *This seems to be the object of enacting these pro- visions of obtaining previous consent of the flat owners as otherwise the malpractices and irregu- larities intended to be eradicated by this enactment would continue to flourish and the promoters would not be deterred by the penal provision of section 13.* ***A blanket consent or authority obtained by a promoter at the time of entering into an agree- ment for sale cr at the time of handing over possession is not the consent contemplated by section 7(1)(i) or (ii) for such a blanket consent or authority would sew up or nullify these pro- visions.***

46. Thus, there is consistent view of this Court, that the ***blanket consent or authority obtained by the promoter, at the time of entering into agreement of sale or at the time of handing over possession of the flat, is not consent within the meaning of section 7(1) of the MOFA, inasmuch as, such a consent would have***

effect of nullifying the benevolent purpose of beneficial legislation.

47. ***It is, thus, clear that it is a consistent view' of this Court, that the consent as contemplated under section 7(1) of the MOFA has to be an informed consent which is to be obtained upon a full disclosure by the developer of the entire project and that a blanket consent or authority obtained by the promoter at the time of entering into agreement of sale would not be a consent contemplated under the provisions of the MOFA. I am in respectful agreement with the consistent view. The interpretation placed by the learned Single Judges of this Court is in consonance with the benevolent provisions of the MOFA which have been enacted for protecting flat takers."***

(Emphasis added)

21. *Thus, it has been held by this Court* **in Madhuvihar CHS (supra), Bajranglal Eriwal & others Vs. Sagarmal Chunilal & others** *[2008 (6) Bom CR 887]* **Neena Sudarshan Wadia Vs. Venus Enterprises** *[1984(2) Bom.C.R.505],* **Ravindra Mutenja Vs. Bhavan Corporation [2003(5) Mah.L.J.]** *and* **Dosti Corporation** *(supra) as follows:*

(i) The statutory bar upon the promoter altering the structure of a flat agreed to be purchased under Clause (i) of sub-section (1) of section 7 and of making any

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other alterations or additions in the structure of the building under Clause (ii), can be lifted only subject to a disclosure by the developer of the entire project or scheme. The previous consent that is contemplated by sub-section (1) of section 7 must be an informed consent. An informed consent is one which is freely given, after a flat purchaser is placed on notice by a complete and full dis- closure of the project or scheme which the builder intends to implement. The consent that is contemplated by sub-section (1) of section 7 is, therefore, a specific consent which is relatable to the particular project or scheme of the developer which is intended to be implemented.

(ii) It is not open to a developer/promoter to rely upon a general consent. To allow such generalized consents to operate would defeat the public policy which underlies the provisions of sub section (1) of section 7 as interpreted by the Supreme Court.

(iii) The meaning of the word 'consent' as used in Clause (ii) of sub-section (1) of section 7 is explained as under:

After the plans and specifications of the building as approved by the local authority are disclosed or furnished to a person who agrees to take a flat from the promoter, a prohibition is claimed on the promoter not to make any alterations in the building or constructed additional structures. This prohibition can be lifted if before the promoter carries out the alterations in the *building or before he starts the work of additional construction, the promoter obtains the consent of all the persons who have agreed to take the flats. For the purpose of obtaining consent, a promoter must ask the flat owners for their permission and reveal to them the nature of the proposed. alterations to the building or of the additional structures to be constructed as, without such disclosure, the flat owners cannot know for what work the permission is sought and for what work they are required to consent. Again, in response to a request for consent, there must be an affirmative acceptance from all the persons who have agreed to take the flats. The word "consent" in the context of the section does not mean implied consent such as by conduct or acquiescence or circumstance that might be consent. Consent in this section is to be understood to mean as positive consent to specific items of work or alteration to be carried out or particular additional structure to be built by a promoter.*

(iv) A blanket consent or authority obtained by a promoter at the time of entering into an agreement for sale or at the time of handing over possession is not the consent contemplated by section 7(1)(i) or (ii).

(v) Blanket consent or authority obtained by the promoter, at the time of entering into agreement of sale or at the time of handing over possession of the flat, is not consent within the meaning of section 7(1) of the MOFA, inasmuch as, such a consent would have effect

of nullifying the benevolent purpose of beneficial legislation.

(vi) The consent as contemplated under section 7(1) of the MOFA has to be an informed consent which is to be obtained upon a full disclosure by the developer of the entire project and that a blanket consent or authority obtained by the promoter at the time of entering into agreement of sale would not be a consent contemplated under the provisions of the MOFA.

24*. ..... As per the settled legal position, blanket consent or authority obtained by the promoter, at the time of entering into agreement of sale or at the time of handing over possession of the flat, is not consent within the meaning of section 7(1) of the MOFA, inasmuch as, such a consent would have effect of nullifying the benevolent purpose of beneficial legislation. The consent as contemplated under section 7(1) of the MOFA has to be an informed consent which is to be obtained upon a full disclosure by the developer of the entire project and that a blanket consent or authority obtained by the promoter at the time of entering into agreement of sale would not be a consent contemplated under the provisions of the MOFA. The above quoted disclosure and consent as set out in the agreement do not give any particulars namely what is the F.S.I. available for the project, how much T.D.R. will be utilised etc. This is very relevant in view of the Form-V as contained in the Rules framed under MOFA. Note No.1 of said Form V specifically* *provides that the promoter shall disclose the floor space index available in respect of the concerned land and if floor space index of any other land or property by way of flooring space, space index etc. i.e. T.D.R. is proposed to be utilised on the said land, then the particulars of such floor space index i.e. T.D.R. shall be disclosed by the promoter to the flat purchasers. Perusal of the above disclosure do not show that the promoter has given full disclosure concerning the same. By no stretch of imagination, it can be said that the said disclosure is full disclosure and consent obtained is an informed consent. As per the settled legal position, the consent as contemplated under section 7(1) of the MOFA has to be an informed consent which is to be obtained upon a full disclosure made by the developer of the entire project and that a blanket consent or authority obtained by the promoter at the time of entering into agreement of sale will not be a consent contemplated under the provisions of the MOFA. Thus, there is no substance in the contention of the Respondent No.1 that the Respondent No.1 has made complete disclosure and the flat purchasers have given informed consent".*

69. Bare perusal of the recitals and clauses of the agreements for sale clearly reveal that the consent given by the flat purchasers is not informed consent. There is no disclosure how much TDR the promoters will be utilized, there are no particulars disclosed about in case the promoters have used/going to use any FSI of any other land or property by way of floating floor, space index etc. which are mandatorily required to be disclosed. In the 2017

plan the promoters had clearly disclosed the FSI of the commercial building at 3231.63 sq. mtrs. whereas the in the approved 2021 plan the promoters have proposed the FSI of 7473.74 sq. mtrs. By invoking deemed consent in the agreements for sale, we cannot accept and conclude that the allottees have given their informed consent to increase in the FSI to commercial building from 3231.63 sq. mtrs. to 7473.74 sq mtrs. In view of this and in light of ratio of the Hon'ble Bombay High Court in the case of *Shri Vitthal Laxman Patil* (supra), we are of the considered view that the blanket consent in the said clauses of the agreements would not be informed consent as contemplated under section 7(1) of the MOFA or under section 14 of RERA. The promoters were under obligations to take informed and express consent of the allottees for the amending 2017 plan, which was disclosed to the allottees.

70. It is the contention of the promoters that the competent authority approved revised 2017 plan which was sanctioned on 08.01.2021. Further, the said sanctioned plan was obtained lawfully in accordance with all prevailing rules, regulations and procedures. Since the revised sanctioned plan was obtained following all the statutory procedures, it is validly obtained and binding on the society and allottees. We do not find any merit in the above contention.

71. The Hon'ble Bombay High Court in case of *Rajkumar Gulati & Ors. V/s. S. D. Corporation Private Limited & Ors.* [I.A.(LODG) No.25478 of 2025 in Suit No.25468 of 2025 has distinguished the concept of "construction in accordance with sanctioned

permissions" vis-à-vis "construction in accordance with disclosure" *and* in para-217 has held as under:

> *"217. This is why 'construction in accordance with sanctioned permissions' and 'construction in accordance with disclosure' are two distinct concepts. Merely because something is constructable in accordance with the applicable DCR, it does not mean that it can be constructed contrary to the disclosures made to the flat purchasers. If disclosure of project involving lesser density is made (by specifying FSI/BUA to be utilized, with or without details as to number of buildings, number of floors, height of buildings, their plinth, etc.) and on that basis, an informed decision is made by the flat purchasers to purchase the flats, the developer cannot be permitted construct buildings in excess of the disclosed density merely because higher FSI/BUA is made available due to change of norms/policy. This is why disclosure made to flat purchaser by the developer assumes significance and MOFA seeks to bind the developer to the disclosure made to the flat purchasers".*

From the above judgment it is clear that carrying out construction according to the approved plan will not entitle the promoters to carrying the construction with deviations from the disclosures made to the allottees, when they executed the agreements for sale. The law laid down by the hon'ble Bombay High Court is clear that any deviation from the disclosed plan to the allottees, the promoters are mandatorily required to obtain prior informed consent of the

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allottees for amending the plan. The disclosures to allottees made mandates the prompters to conform to those disclosures.

72. The contention of the appellant society that the promoters have converted the use of the "IT building" to "commercial building" and therefore have violated Section 14 of RERA Act, 2016. We do not accept that contention since the agreements for sale have clearly disclosed the said building as "commercial building".

73. It is also the contention of the appellant society that the promoters have shifted the gym from 41st floor to the clubhouse. The promoters have contended that, by the said amendment relating to clubhouse, promoters have shifted the gym to the first level of the clubhouse so that allottees have a bigger gym and an open deck adjacent to the gym. There were initially 2 gyms and in order to have bigger gym, the promoters have combined the same. In view of this, the changes in the clubhouse were being sole with intention of benefiting the members of the society. Further, as per 2017 sanction plan, the promoters were granted permission to either build the clubhouse on the 41st floor or on the open ground. Thus, the promoters have built the clubhouse on the open ground for the benefit of the members of the appellant society. In the original 2017 plan, the relevant space wherein the gym has been shifted is shown as Cafeteria. Instead of Cafeteria, the promoters have accommodated a gym in that place. It is also pertinent that there is no mention of Cafeteria in the agreements for sale. In view of this, we do not find any serious breach on the part of the promoters of Section 14 of RERA Act, on this count. It has not materially changed the layout on this count.

74. It is the contention of the appellant society that RG areas are to be mandatory provided on the ground/mother earth instead of promoters have provided the recreational garden on 5th floor podium which is illegal. In this connection, the 2017 approved plan discloses the RG areas on both on the ground and on podium, with details below:

On ground	651.20 Sq. Mtrs.
On podium	3139.71 Sq. Mtrs,
Total RG	3790.91 Sq. Mtrs.

75. The 2021 layout plan also disclosed the RG areas distributed on both ground and podium with the following details:

On ground	922.83 Sq. Mtrs.
On podium	3474.34 Sq. Mtrs,
Total RG	4397.17 Sq. Mtrs.

In our view, the RG area has increased on the ground as well as the on podium. Therefore, we do not find any serious violation on the part of the promoters on this count.

76. In view of the discussion hereinabove on point no. 2, we come to the conclusion that promoters did not disclose entire project as amended in 2021 to the flat purchasers at the time of executing the agreements for sale by disclosing particulars about the availing TDR to amend the commercial building plan layout from 3231.63 sq. mtrs. to 7473.74 sq mtrs. As per settled legal position as elaborately discussed above, promoters are precluded to carry out changes in the 2017 plan layout which was shown to the allottees at the time of executing the

agreements for sale without obtaining prior informed consent of the allottees. Admittedly there is no informed consent of the allottees for amendment of the 2021-layout plan. The deemed consent in the clauses of the agreements for sale in not the consent within the meaning of consent under section 7 of MOFA or section 14 of RERA. Therefore, we are of the considered view that there is a clear violation of Section 7 of MOFA and Section 14 of RERA Act, 2016. Accordingly, we answer point no. 1 in the affirmative and also point no. 2 in the affirmative. On account of this serious violation of section 7 of MOFA and section 14 of RERA, the promoters are liable for penalty under section 61 of the RERA Act, 2016.

Point No. 3.

77. With regard to conveyance, the promoters have contended that as per clauses in the agreements for sale, promoters will take steps to execute conveyance or lease in respect of said properties in favour of the separate societies/condominiums/limited companies within the period of 12 months only after promoters have completed the construction of the said project and obtained the occupation certificate for the entire project and till then promoters shall not be bound, liable required and/or called upon to cause execution of conveyance or lease or any other documents in respect of the said property and the purchasers agree and irrevocably consent and not to have any demand or dispute or objection or claim in that behalf.

78. It is pertinent that as per the Clause 17.1 of the agreement for sale, *"It is agreed that notwithstanding anything contained to*

the contrary herein, the Promoters shall be entitled at any time to amend the existing layout and/or to ***construct additional structures*** *on the said Property and/or* ***additional floors on said Project*** *being constructed on the said Property,* ***even after completion of said Project until the execution of conveyance/lease*** *in respect of the said Project in favour of the said Organisations as per law. All such additions, alterations, additional floors and/or additional wing, building and/or structures shall* ***be sole property of the Promoters*** *who shall be entitled to self/allot and/or otherwise dealt with the same in the manner the Promoters deems fit. Such additional constructions may either be on account of balance FSI which remains uncousumed by the Promoters or additional FSI that may be available from the said Property or elsewhere and/or account of TDR and/or any other rights, benefits including floating rights witch may be available on account of the amendment in the Development Control Rules of FIS or otherwise or on account of the amendment in the Development Control Rules or FSI or otherwise or on account of floating rights and all other benefits and rights. The Promoters shall be entitled to utilise and consume such TDR. FSI or any other potential, other rights, benefits including floating rights, etc. to the extent permissible as per rules / regulation in force at such relevant time. The Purchaser/s shall not be entitled to claim any rebate in force or any other advantage from the Promoters on the ground of the Promoters making additional construction or any other ground whatsoever. The Purchaser/s hereby confirm and consent to the irrevocable and unfettered right of the Promoters* *to amend the existing layout and construct and sell/allot the said Project/structures on the said Property and/or additional floors on the said Project being constructed on the said Property in the manner deemed fit by the Promoters as per the provisions of law."*

79. In essence, the promoters have sought blanket consent of the allottees to build any additional structures, additional floors even after completion of the project till conveyance executed in favour of the society(ies) with entitlement to procure additional FSI/TDR. Further the promoters will be sole owner of such additional structures and floors. As we have already observed that such consent is not informed consent within the meaning of section 7 of MOFA and section 14 of RERA. However, such provision envisage that the promoters will perpetually postpone the execution of conveyance and keep on procuring FSI/TDR to add more structures or increase the floors in the project. In fact, once the FSI available in the project property is exhausted, the promoters are obligated to execute the conveyance and are not entitled to any further FSI, if available, due to change in policy within the property or procured from elsewhere. All these FSI would belong to the societies of the project including appellant.

80. By promoters' own contention, the residential building and commercial building are independent of each other, having separate common areas and amenities. Further, the promoters have obtained occupation certificate for the residential building and allottees have taken possession of the respective flats. Further, the appellant society for the residential building has already been registered on 18.10.2022. Therefore, we are of the

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view that as per Section 11 of the RERA Act, 2016, the promoters ought to have executed the conveyance deed in favour of the appellant society of the residential building as per its proportionate interest in the said property, in proportion to FSI consumed in the residential building as per the 2017 plan. We reiterate that for determining the proportionate interest in the said property of the residential building, the promoters shall use the 2017 plan as a basis and not the 2021 plan as a basis for the reasons we have already discussed earlier.

81. With regard to obligations of the promoter on conveyance, the Hon'ble High Court in case of *Rajkumar Gulati* (supra) in para-208 has further held as under:

> *"208. Division Bench of this Court in* ***Lakeview Developers*** *(supra) has held that if the full development potential of the land is exhausted and the obligation for conveyance of land in favour of the society has arisen as per MOFA and if the developer fails to do so, then any further benefit which would accrue to the developer on account of additional TDR/FSI made available cannot be used by him for the purpose of construction of additional buildings. The Division Bench held in paragraphs-55, 56, 57, 64 and 65 as under:*
>
> > *55. In our view, therefore, from the aforesaid judgment, it is clear that the developer cannot claim that he can continuously exploit the building potential for eternity without conveying the land in favour of the Society. The obligation to convey the land in favour of the Society within a prescribed time*

and the obligation to make true and full disclosure under Clauses 3 and 4 of Form V remains unfettered. ***If the full development potential of the land is exhausted and the obligation for conveyance of land in favour of the Society has arisen as per the Act and Rules and if the developer fails to do so then any further benefit which would accrue to the developer on account of any additional TDR or FSI made available, cannot be used by him for the purpose of construction of additional buildings****. For example, recently, the Government of Maharashtra has announced that the FSI which would be available in the City of Greater Mumbai would be increased by 0.6. The benefit of this announcement cannot be availed by a developer who has not conveyed the property in favour of the Society though he was under legal obligation to do so, having fully developed the building potential of the land under building as per true and full disclosure under Section 3 and 4 of the said Act and Clauses 3 and 4 of Form V of the said Rules. He, therefore, cannot having failed in his obligation to convey the property within the time prescribed thereafter claim that full building potential has not been utilized and claim right to construct further buildings.*

56. In our view, from the facts and circumstances of the present case, it can be seen that though the developer/promoter had fully utilized the full FSI/potential of the land and was under an obligation to convey the property after construction of the 10th building on Sector IV-A, he is now trying to construct four other buildings by claiming additional TDR and trying to load it on the four additional buildings. In our view, prima facie, it can be seen that full development potential/FSI has already been utilized by the developer and his claim that additional buildings were constructed by utilizing the additional TDR prima facie does not appear to be correct if the layout plan produced by the Plaintiffs/Societies is taken into consideration.

57. Since the judgment of the Apex Court in Jayantilal Investments (supra) is the only judgment on the point under the MOFA, ratio of the said judgment will prevail and will be binding on this Court for that purpose. In our view, it is not necessary to minutely scrutinize the ratio of the judgments which have been shown to us by Mr. Aspi Chinoy the learned Senior Counsel appearing on behalf of the developer, though we can observe that the facts in most of these cases are different and, therefore, even otherwise the ratio of these judgments will not apply to the facts of this case. The contention of the developer that he is entitled *to carry on the construction till the entire land i.e. the land not only in Sector IV-A but in all Sectors 1 to 13 is developed, is not correct.* ***Neither the tripartite agreement nor the lease agreement executed between the landowners and developer nor the individual agreement between the developer and the flat purchasers can be construed in this manner as it would render the statutory provisions of MOFA nugatory.*** *Even if such contractual conditions are mentioned in the contract, statutory obligation would override the contractual clauses in the agreement. Reliance on the note below the proforma of the lease therefore is misconceived and it cannot be used to interpret the meaning which is sought to be given by the developer that till the entire land is fully developed in all sectors, he is entitled to exploit the development potential in the land in Sector IV-A.*

64. In our view, the said submission is fallacious and without any substance. ***A clause in the agreement between the flat purchasers and the developer cannot be construed to mean that the developer can continue to develop the land for eternity*** *and on the basis of some clause in the agreement refuse to convey the property which is contrary to the provisions of Section 7 read with Section 7-A and Sections 3 and*

4 of the said Act and Rules 3 and 4 of Form V of the said Rules. As observed in Jayantilal Investments (supra), all these provisions have to be construed harmoniously. ***The clauses in the agreement cannot be construed in such a way as to make the obligations cast on the developer under Sections 3 and 4 and Rules 3 and 4 and Rule 8 and 9 of Form V redundant.*** *If these clauses are read in such a manner, the purpose of the Act would be defeated. The provisions of the Act and Rules seek to strike a balance between the right of the developer to develop the property to its full potential and, at the same time, protect the rights of the flat purchasers (i) to ensure that there is no alteration in the building and (ii) within a prescribed period title of the property is conveyed in favour of the Society. In the present case, the developer is trying to interpret clauses in the flat purchasers' agreement and the note annexed to the lease deed in such a manner as to defeat the rights of the Societies in getting the land conveyed in their favour. If the interpretation which is sought to be made by the promoter/developer is accepted then till the entire 230 acres of land is not constructed/developed, the flat purchasers would not get the land conveyed in their favour. A lease was to be executed for a period of 80 years out of which 26 years have already been over. There is a* *large part of the vacant land in all the 13 Sectors. The promoter will continue to develop the said property and refuse to convey the land in favour of the Societies.*

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

(emphasis and underlining added)

82. The Hon'ble Bombay High Court in case of *Mr. Haresh Vijaysinh Bhatia & Ors. V/s. District Deputy Registrar & Ors* [W.P.No.18739 of 2024] in para-59 has held as under:

"59. The above simple concept of proportionate ownership in the land by flat purchasers was being deliberately made complicated by the promoters by misrepresenting to the flat purchasers that what is being sold to them is mere constructed units and that they shall not acquire any rights in the land in question. Section 11 of MOFA seeks to strike at the root of this mischief and cures the same by providing that there is automatic loss of title of the promoter, the moment all flats in the building are sold. In that event, Society or association of flat purchasers becomes owners of the land on which building is constructed. If any flat remains unsold in the building, the promoter can be admitted as member of the Society and his right to sell such unsold flats remains unaffected under the provisions of Section 10. However, under no circumstance, a promoter can retain any semblance of right in the land once the building is constructed, Society is formed, and all flats are sold".

83. The Hon'ble Bombay High Court in case of *M/s. K.M. Realty V/s. Diamond Hill Co-operative Housing Society Limited* [Appeal from Order No.418 of 2023 decided on 08.01.2024] in para-28 has held as under:

*"28. In **Malad Kokil CHS** (supra), this Court also took note of Government Order dated 27 November 2007, on which reliance is placed by Mr. Shah before me and this Court held in para-76 and 77 of judgment as under:*

76. Insofar as the contention by the learned Counsel for the developer that the Government Order dated

23rd November, 2007 are not applicable to the facts of the present case is concerned, said contention is also without any substance. It is the contention of the learned Counsel that the said Government Orders, which are issued under Section 154, are only applicable in case of amalgamation of plots and not when the TDR is purchased from somewhere else and loaded on the plot of a developer. I find that the said contention is based on a total misreading of the orders dated 23rd November, 2007. The said order provides that the concept of TDR has been incorporated in Development Control Regulations of the most of the cities which states that in lieu of grant of compensation for acquisition of reserved lands, a TDR should be given. It further states that there is also a provision of granting TDR for slum rehabilitation scheme. It further states that insofar as Mumbai Municipal Corporation is concerned, the TDR is also available in respect of heritage buildings. It further states that TDR which is generated can be utilised by the land owner/developer himself or transferred to others. It states that, it has come to the notice of the Government that some developers at the time of getting plan sanctioned from the Planning Authority, do not include the TDR. It further states that after some construction is complete and Co-operative Society established, the developer do not execute *the conveyance deed in favour of the Society. Thereafter, the developers seek permission for amalgamation of open plots in the 'neighbourhood' and without obtaining the permission of the Co-operative Society or the other land owners make an attempt to utilise the TDR even in respect of the area of the land on which construction is complete and construct multi storey buildings. It further states that, therefore, the individual rights of the persons are affected. It will be relevant to refer to the operative part of the said order issued under Section 154. It clearly states that while giving permission for construction by utilizing the TDR, if the developer has not executed conveyance deed in favour of a co-operative society of the occupants residing in the building constructed on the land, the TDR potential in respect of such part of the land on which construction is made should not be permitted to be used by the developer while giving permission for development of the remaining plot or amalgamated plot. It further states that in such cases the permission to use TDR should be given only in sofar as the open land available on the plot. I find that applying the principle of contextual and textual interpretation, as argued by Shri Samdhani, the contention that said Government order is applicable only in case of amalgamation will have to be rejected.* ***Reading the order in entirety, it***

would reveal that said order has been issued with an object that a builder should not be permitted to use TDR potential of an area of a land on which the building is constructed and a Co-operative Society formed, however, the developer has not conveyed the said land along with building to the Society.

77. The another contention of learned counsel appearing for the developers that the TDR is not in respect of the suit plot and the same is purchased from some other property and, therefore, no prejudice is caused to the plaintiff/appellant is also without any substance. Though the TDR sought to be loaded is in respect of some other property, it cannot be forgotten that insofar as TDR potentiality is concerned, the suit plot is a relevant factor. It cannot be forgotten that the TDR loaded cannot be more than inherent FSI available on the suit plot. It is not in dispute that the only remaining inherent FSI available on the suit plot is 0.7% inasmuch as 0.93% has already been utilised. Had the developers executed conveyance in favour of the plaintiff and the appellant to comply with statutory obligations, the TDR potential in respect of land on which buildings of plaintiff and defendants are already constructed would have been available to the plaintiff/appellant. Under the impugned plan the developers are using TDR potential which could *have been otherwise available to the plaintiff/appellant society. In that view of the matter, the contention in that regard is rejected.*

(emphasis supplied)

84. The Hon'ble Bombay High Court in the case of *Shri Vitthal Laxman Patil* (supra) in para 20, 21 and 28 has held that:

20. There is one more judgment, which will be relevant i.e. ***Dosti Corporation, Mumbai Vs. Sea Flama CHS, Mumbai & Ors****.[(2016) 5 Mah LJ 102]. It is required to note the submission of learned Senior Counsel of the Respondent No.1 that the decision in the case of* ***Dosti Corporation*** *(supra) is arising out of the interim order and therefore same is not relevant. However, it is required to be noted that the said decision is on the basis of various provisions of MOFA and Rules framed thereunder and on the basis of earlier decisions concerning the interpretation of the various provisions of MOFA and MOFA Rules. The relevant part is paragraph Nos. 88 to 90, which read as under:*

"88. It is held that ***the additional FSI cannot be claimed by the Developer for putting up any additional building not under the approved plan. The failure and neglect to register the society and convey the property would certainly not give any right to the Developer to step upon the property or to claim any FSI. The FSI belongs to the plot. The plot must be***

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taken to be conveyed after the statutory period and thus the FSI that would be available only to the true owner of the plot. Failure to convey would not constitute the Developer a true owner. That would be putting a premium upon his default and that would constitute an abuse of legal process. It is held that any FSI for putting up any additional construction not in the initial sanctioned plan can therefore never ensure for the benefit of the Developer except with the express written permission of all the flat purchasers or the Society, after its formation. It is held that such FSI would belong to and can be exploited by none other than the Society of flat purchasers. *This Court in the said judgment of Ratna Rupal Co-operative Housing Society Ltd. (supra) also adverted to the judgment of Division Bench in case of Manratna Developers (supra) and distinguished the same.* ***Admittedly in this case, the defendant No. 1 did not disclose any plan in respect of the additional construction sought to be put up by the defendant No. 1 to the plaintiff and defendant Nos. 3 to 5 society before obtaining such sanction from the Municipal Corporation nor obtained their disclosed consent.***

89. ***This Court in case of Ravindra Mutenja (supra) has held that once the buildings shown in***

the approved plan submitted in terms of the regulations under an existing scheme filed before the authorities under MOFA Act, have been completed and possession handed over, the builder/owner cannot contend, that because he has not formed the society and/or not conveyed the property by sale deed under the Act, he is entitled to take advantage of any additional F.S.I. that may become available because of subsequent events. *It it held that it would be so at the stage the building is under construction or the building is not completed and/or purchasers are not put in occupation provided such building forms part of the development plan and/or lay out plan already approved. Subsequent amendment of the lay out plan after the building plan is registered under MOFA, without the consent, prima facie, of the flat purchasers would not be permissible.*

90. ***It is held in the said judgment that once the building is completed and the purchasers are put in occupation in terms of plan filed and the time to form the society or convey the property in terms of the agreement or the Rules framed under MOFA is over, the permission of such purchasers would be required.*** *It is held that if property had been conveyed, prima-facie the remaining F.S.I. or F.S.I. which become* *subsequently available on the facts of the case, would be to the society to whom the land had to be conveyed."*

(Emphasis added)

21. Thus, it has been held by this Court ***in Madhuvihar CHS (supra), Bajranglal Eriwal & others Vs. Sagar-mal Chunilal & others*** *[2008 (6) Bom CR 887]* ***Neena Sudarshan Wadia Vs. Venus Enterprises*** *[1984(2) Bom.C.R.505],* ***Ravindra Mutenja Vs. Bhavan Corporation [2003(5) Mah.L.J.]*** *and* ***Dosti Corporation*** *(supra) as follows:*

(vii) The additional FSI cannot be claimed by the Developer for putting up any additional building not under the approved plan. The failure and neglect to register the society and convey the property would certainly not give any right to the Developer to step upon the property or to claim any FSI. The FSI belongs to the plot. The plot must be taken to be conveyed after the statutory period and thus the FSI that would be available only to the true owner of the plot. Failure to convey would not constitute the Developer a true owner. That would be putting a premium upon his default and that would constitute an abuse of legal process. It is held that any FSI for putting up any additional construction not in the initial sanctioned plan can therefore never ensure for the benefit of the Developer except with the express written permission of all the flat purchasers or the Society, after its formation. It is held that such FSI

would belong to and can be exploited by none other than the Society of flat purchasers.

(viii) Once the buildings shown in the approved plan submitted in terms of the regulations under an existing scheme filed before the authorities under MOFA Act, have been completed and possession handed over, the builder/owner cannot contend, that because he has not formed the society and/or not conveyed the property by sale deed under the Act, he is entitled to take advantage of any additional F.S.I. that may become available because of subsequent events.

28. Section 11 provides that the promoter shall take all necessary steps to complete his title and convey to the organisation of persons, who take flats, which is registered either as a co operative society or as a company as aforesaid, or to an association of flat takers or apartment owners, his right, title and interest in the land and building, and execute all relevant documents therefor in accordance with the agreement executed under Section 4 of MOFA within a period of four months as per Rule 9 of MOFA Rules. In view of this position, what has been held by learned Single Judge in the case of Dosti Corporation (supra) in paragraph 88 to 90 is very relevant that the additional F.S.I. cannot be claimed by the Developer for putting up any additional building not under the approved plan, the failure and neglect to register the society and convey the property would certainly not give any right to the Developer to step upon the property or to claim any

FSI. The F.S.I. belongs to the plot and the plot must be taken to be conveyed after the statutory period and thus the FSI that would be available only to the true owner of the plot. Failure to convey would not prejudice a true owner and the same would be putting a premium upon his default and that would constitute an abuse of legal process. It has been held that such F.S.I. would belong to and can be exploited by none other than the Society of flat purchasers. As far as the present case is concerned, the Developer is loading T.D.R. on the said land. Thus the observations in the case of Dosti Corporation (supra) are also squarely applicable to the present case. In any case, as already held hereinabove the consent which is incorporated in the "Agreement of Sale" executed with the flat purchasers is not the informed consent and therefore not the consent contemplated under MOFA."

85. The Hon'ble Bombay High Court in above judgements has held that the promoters cannot continuously exploit the building potential of the project land for eternity without conveying the land in favour of society. Once the development potential, as disclosed to the allottees at the time of executing agreements for sale, is exhausted and obligation for conveyance of land in favour of society has arisen as per the provisions of law, any further benefit which would accrue to the promoter on account of any additional FSI/TDR cannot be used by the promoter for the purpose of the additional structure or floors. Even if the contractual conditions are mentioned in the agreements for sale, statutory obligation would override the contractual clauses in the

agreements. The promoters cannot be permitted to use TDR potential of an area of the land on which the building is constructed and society is formed. Further, additional FSI cannot be claimed by the promoter for putting up additional structure or floors not under the approved plan, disclosed to the allottees at the time of execution of agreements for sale. Failure and neglect to register society and convey the project property would certainly not give any right to the promoter to claim any FSI. FSI belongs to the plot. The plot must be conveyed after statutory period and this FSI will be available only to the true owner of the plot. Failure to convey would not constitute a promoter true owner. That would be putting additional premium upon his default and that would constitute an abuse of legal process. The FSI for putting an additional construction not in the disclosed plan can therefore never ensure for benefit of the promoter. Such FSI would belong to and can be exploited none other than the society.

86. We reiterate that residential building and commercial building are independent of each other, having separate common areas and amenities. Further, the promoters have obtained occupation certificate for the residential building and allottees have taken possession of the respective flats. Further, the appellant society for the residential building has already been registered on 18.10.2022. Therefore, we are of the view that as per Section 11 of the RERA Act, 2016, the promoters ought to have executed the conveyance deed in favour of the appellant society of the residential building as per its proportionate interest in the said property, in proportion to FSI consumed in the residential

building as per the 2017 plan. We reiterate that for determining the proportionate interest in the said property of the residential building, the promoters shall use the 2017 plan as a basis and not the 2021 plan as a basis for the reasons we have already discussed earlier.

87. The logical corollary from above settled position of law is that the additional FSI/TDR used by the promoters and not disclosed in the 2017 plan, which was shown to the allottees, in fact belong to the societies of "residential" and "commercial building" of the project and same cannot be ensured for the benefit of the promoters. We are therefore of the view that the sale proceeds of the units in commercial building using additional FSI/TDR in deviation to the disclosed 2017 plan to the allottees, after excluding the costs incurred by the promoters, would in fact belong to the society of "residential" and "commercial building" in proportionate to their interest in the project property i.e in proportion to the consumed FSI in the residential and commercial building as per the 2017 plan. This would be in fairness, justice and equity to both the parties.

88. As we have already observed that the residential and commercial buildings are independent buildings in the project. The residential building is completed, promoters obtained occupation certificates for the residential building, allottees are put in possession of their respective flats, and the society for the residential building is established and registered in the 2022. Therefore, the promoters are obligated to execute and register conveyance in favour of appellant society in respect of the residential building in proportion to the FSI consumed in

accordance with the 2017 plan and not 2021 plan. Therefore, the promoters are required to be directed to convey the project property in favour of the appellant society as mentioned above. Accordingly, we answer the point no.3 in the affirmative.

89. We have already held that the promoters have violated the section 14 of RERA Act, 2016 and they went ahead with construction of commercial building by increasing the FSI for the said building from 3231.63 sq. mtrs. in 2017 disclosed plan to 7457.20 sq. mtrs. in 2021 plan. Further, the promoters have failed to execute conveyance in favour of the appellant society since its formation and registration in the year 2022, thereby violating section 11 of the RERA Act. We are of the view that these violations warrant appropriate penalty on the promoters for violations under section 61 of RERA Act, 2016. As per section 61 of RERA Act, the penalty amount can be imposed up to 5% of the project costs. While determining the quantum of the penalty, we have also considered that residential building is completed, occupation certificate obtained by the promoters and the allottees of the appellant society are also put in possession in the year 2021. In our view, penalty of 2% of the project costs would meet the ends of justice. Since the construction of commercial building has substantially advanced, we are not inclined to grant prayers of the appellant society for directions to demolish/remove the said structure and restore the 2017 plan. In view of the discussion in para 85 onwards, we are of the view that equity and justice to both the parties are ensured by balancing of the interests of both the parties.

90. In light of the discussion above, the rights of appellant society (and its allottees) and society that may be formed for the commercial building are safeguarded in respect of conveyance of the project property in favour of appellant society with its proportionate interest in proportion to the FSI consumed in residential building as per the 2017 plan and not 2021 plan; by imposing appropriate penalty on the promoters for violations of the provisions of RERA Act, 2016; and apportionment of the sale proceeds of the units in the commercial building built by the promoters out of additional FSI/TDR in deviation to the disclosed 2017 plan to the allottees, after excluding the costs incurred by the promoters, among the society of residential and commercial building in proportionate to their interest in the property i.e in proportion to the consumed FSI in the residential and commercial building as per the 2017 plan, in our view will balance the equity for the parties. In view of this, we are not inclined to grant relief to the specific prayers in relation to the commercial building or violation of sections of RERA particularly prayers (c), (d), (e), (i), (j), (k), (l), (m), (o), and (p) in the appeal memorandum, which are produced in para 13 of this judgement. Accordingly, the same are rejected.

91. With regard to extension for the project from time to time, it is the contention of the appellant society that the RERA Act, 2016 does not contemplate for the extension of a project registration beyond a period of one year under Section 6 of the Act. In the present case, the MahaRERA has unilaterally awarded extension of project registration to the said project on multiple dates for a period of more than one year in violation of the RERA Act, 2016,

Rules and Regulations made thereunder. Thus, the appellant society has contended that MahaRERA has granted extensions not in accordance with the provisions of RERA Act, 2016 and therefore, the said extensions are invalid/illegal and therefore, they should be set aside.

92. It is the contention of the promoters that the extensions were lawfully granted by MahaRERA on 29.07.2019, 18.05.2020, 31.04.2023, and 25.09.2025 including an automatic extension under Order No. 13 of 2020 due to the Covid-19 force majeure. These extensions were regulatory in nature but did not affect/alter any rights of the allottees and were granted in the larger interest of project completion. The residential building is already completed, and the promoters have already obtained the occupation certificate in the year 2021. The members of the appellant/society have taken possession of their respective flats. Therefore, no prejudice would be caused to the appellant society due to the aforesaid extensions granted by the Authority for the project registration.

93. Section 6 provides for the extension of registration beyond the period contemplated under sub-section (3) of Section 5 of the RERA Act. In case of *force measure,* it may be extended on application by promoter in the prescribed form and on payment of fees as prescribed. In other reasonable circumstances, where the promoter is not in default and on the merits of each case, the Authority may extend the registration for such time not exceeding a period of one year in aggregate. It means registration granted under Section 5 may be extended by the

Authority on an application made by the promoter under two circumstances namely;

(i) Due to force majeure, or

(ii) In other reasonable circumstances.

94. No doubt in the instant case, the learned Authority has extended the period of registration beyond one year, therefore, we have to consider those extensions in the light of the object and scheme of the Act. A harmonious construction of the relevant provisions of the Act would advance the purpose of enactment of Act, and would protect public interest, as well as interest of the promoter and the allottees, both. Under the scheme of the Act, provisions of Sections 6, 7(3), 8 and 37 are required to be considered and understood in a way to advance the purpose for which such provisions are made by the Legislature. Considering the extent and scope of the powers conferred upon the Authority under Section 7, we need to put a harmonious interpretation/construction on the provisions of Section 6 of the Act. The Act confers power under Section 7 on the competent authority, in the larger public interest, to regulate the real estate sector. The Authority shall be entitled to take into consideration reasons and circumstances due to which project could not be completed within the extended aggregate period of one year as prescribed under Section 6.

95. A balanced approach must be adopted, keeping in view the object and intent of the enactment of the Act, and the rights and liabilities of promoters and allottees in larger public interest. The Authority would exercise its discretion while dealing with the cases under Sections, 6, 7, 8 read with Section 37 of the Act.

The Authority shall have to examine as to whether there were exceptional circumstances due to which the promoter failed to complete the project. Such an assessment to be done by the Authority on case-to-case basis and exercise its discretion to advance the purpose and object of the Act by balancing rights of both the promoter and the allottees. If the extension is not granted beyond the period of one year, the developer cannot proceed further as the remaining development work has to be carried out in accordance with Section 8 of the Act.

96. In the present case, it is not the case of the appellant society that the allottees have expressed their willingness to carry out the remaining development work. Section 7(3) of the Act also empowers the Authority to permit promoter/developer to carry out further remaining development. A proper construction of the provisions would therefore mean that even in case of lapsing of or on revocation of registration, the Authority shall not mechanically terminate the registration of the promoter or injunct him to act as a promoter, but in the facts of a case, would take necessary steps in the interest of the allottees permitting the promoter to carry out the remaining construction work.

97. In case the promoter fails to complete the project within the prescribed time declared by him or the extended time under Section 6, then it shall not mean that the only outcome would be to oust the promoter from the project. In view of Sections 7(3), 8 and 37, the Authority would take appropriate steps and issue directions in the given facts and circumstances of the case to carry out the remaining development work and to safeguard the larger public interest.

98. Section 7 of the RERA Act provides for the revocation of registration; the said Section is reproduced below:

"***<u>Section 7: Revocation of registration</u>.***

7. (1) The Authority may, on receipt of a complaint or Suo motu in this behalf or on the recommendation of the competent authority, revoke the registration granted under <u>section 5</u>, after being satisfied that—

(a) the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder;

(b) the promoter violates any of the terms or conditions of the approval given by the competent authority;

(c) the promoter is involved in any kind of unfair practice or irregularities.

<u>Explanation</u>. —For the purposes of this clause, the term "unfair practice means" a practice which, for the purpose of promoting the sale or development of any real estate project adopts any unfair method or unfair or deceptive practice including any of the following practices, namely: —

(A) the practice of making any statement, whether in writing or by visible representation which, —

(i) falsely represents that the services are of a particular standard or grade;

(ii) represents that the promoter has approval or affiliation which such promoter does not have;

(iii) makes a false or misleading representation concerning the services;

(B) the promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered;

(d) the promoter indulges in any fraudulent practices.

(2) The registration granted to the promoter under <u>section 5</u> shall not be revoked unless the Authority has given to the promoter not less than thirty days notice, in writing,

stating the grounds on which it is proposed to revoke the registration, and has considered any cause shown by the promoter within the period of that notice against the proposed revocation.

(3) The Authority may, instead of revoking the registration under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter.

(4) The Authority, upon the revocation of the registration, —

(a) shall debar the promoter from accessing its website in relation to that project and specify his name in the list of defaulters and display his photograph on its website and also inform the other Real Estate Regulatory Authority in other States and Union territories about such revocation or registration;

(b) shall facilitate the remaining development works to be carried out in accordance with the provisions of section 8;

(c) shall direct the bank holding the project bank account, specified under sub-clause (D) of clause (l) of sub-section (2) of section4, to freeze the account, and thereafter take such further necessary actions, including consequent de-freezing of the said account, towards facilitating the remaining development works in accordance with the provisions of section 8;

(d) may, to protect the interest of allottees or in the public interest, issue such directions as it may deem necessary."

99. Under Section 7 of the RERA Act, 2016, if the Authority receives any complaint on any grounds specified in the said Section, the Authority can revoke the registration granted under Section 5, if

it is fully satisfied as per the provisions of the said Section. It is, therefore, clear that if any person aggrieved by the grant of registration or extension in the registration has remedy under Section 7 of the Act. It is not the case that the Appellant society has filed an application under Section 7 of the Act and has come before this Tribunal in appeal against any order passed by the Authority under Section 7 of the Act. In view of the aforesaid, we are not inclined to grant any relief with regard to the extensions granted by the Authority to the project registration. Pertinently, the residential building is completed, promoters have obtained occupation certificate for the residential building, allottees have taken possession of their respective flats. In such situation, extension to registration to complete the commercial building will not prejudice the appellant society and its members. We do not see any malafide on the part of the Authority not to grant any relief so far as the extensions of registration is concerned. The Authority has extended registration from time to time keeping in view the interest of allottees in commercial building without causing any prejudice to the residential building, which is already completed. In view of this the specific prayers (g), (h), (y), (z), and (w) in the appeal memo which are produced in para 13 of this judgement are rejected.

100. The appellant society has sought directions from this Tribunal to the promoters to transfer the balance 64 guest car parking spaces to the appellant society by earmarking the same. Further, directions to the promoters not to allot any parking spaces of residential building to allottees of commercial building. During the course of hearing, the promoters contended that they have

already handed over 30 parking spaces, 9 parking spaces were provided on the ground floor, and 21 parking spaces were provided on the podium level 5. The balance guest parking spaces will be provided on the podium level by way of stack parking, subject to MCGM approvals. The promoters have also clarified that the said parking spaces for residential and commercial buildings are independent and separate. Therefore, we deem it appropriate to direct the promoters to take appropriate steps to earmark and transfer the balance guest car parking spaces to the appellant society after obtaining the due approvals from the competent authority.

101. The appellant society has also sought relief of direction to the promoters to handover audited accounts and refund the amounts along with interest from the date of receipt of the said amounts towards maintenance, clubhouse charges, and corpus. Since the residential building (wing 'A' and wing 'B') is completed with occupation certificate and the allottees have taken their possession of the respective flats, we deem it appropriate to direct the promoters to provide audited accounts of the amounts collected under agreements towards maintenance charges, clubhouse charges, and corpus fund and refund the amount as per the audited accounts to the appellant society with accrued interest on the said amount, if kept in a separate account.

102. The appellant society has sought several reliefs with regard to the balance work, removal of defects, repair and replacement, and deficiencies of services wherein the appellant society has claimed to have incurred some expenditure. However, the Authority has not adjudicated on the said issues. We are of the

view that if the said issues are adjudicated by this Appellate Tribunal, both the parties will lose its right to first appeal. Therefore, we are of the view that the matter is required to be remanded back to the Authority to decide on those issues, particularly prayer clauses "b", "s", and "u" in the memo of appeal, which are reproduced in para 13 of the judgment. The rights and contentions of the parties are kept open to be agitated when the matter is heard a fresh by the Authority.

103. The Hon'ble Apex Court in the case of *Institute of Chartered Accountant of India Versus L.K. Ratna and Others (Civil Appeals No.1911-12 of 1980 decided on 21.10.1986*) in Para-17 has held that:

> *"17. It is then urged by learned counsel for the appellant that the provisions of an appeal under Section 22-A of the Act is a complete safeguard against any insufficiency in the original proceeding before the Council, and it is not mandatory that the member should be heard by the Council before it proceeds to record its finding. Section 22-A of the Act entitled a member to prefer an appeal to the High Court against an order of the Council imposing a penalty under Section 21(4) of the Act. It is pointed out that no limitation has been imposed on the scope of the appeal, and that an appellant is entitled to urge before the High Court every ground which was available to him before the Council. Any insufficiency, it is said, can be cured by resort to such appeal. Learned counsel apparently has in mind the view taken in some cases that an appeal provides an adequate remedy for a defect in procedure during the original proceeding. Some of those cases as mentioned in Sir Wiliam Wade's erudite and classic work on Administrative Law 5th Edn. But as that learned author observes (at p.487), "in principle there ought to be an observance of natural justice equally at both stages", and*
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> > *"If natural justice is violated at the first stage, the right of appeal is not so much a true right of appeal*

as a corrected initial hearing: instead of fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial."

And he makes reference to the observations of Megarry J. in Leary V.National Union of Vehicle Builders. Treating with another aspect of the point, that learned Judge said:

"If one accepts the contention that a defect of natural justice in the trial body can be cured by the presence of natural judice in the appellate body, this has the result of depriving the member of his right of appeal from the expelling body. If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? Even if the appeal is treated as a hearing de novo, the member is being stripped of his right to appeal to another body from the effective decision to expel him. I cannot think that natural justice is satisfied by a process whereby an unfair trial, though not resulting in a valid expulsion, will nevertheless have the effect of depriving the member of his right of appeal when a valid decision to expel him is subsequently made. Such a deprivation would be a powerful result to be achieved by what in law is a mere nullity; and it is no mere triviality that might be justified on the ground that natural justice does not mean perfect justice. As a general rule, at all events, I hold that a failure of natural justice in the trial body cannot be cured by a sufficiency of natural justice in an appellate body."

The view taken by Megarry, J was followed by the Ontario High Court in Canada in Re Cardinal and Board of Commissioners of Police of City of Cornwall. The Supreme Court of New Zealand was similarly inclined in Wislang v. Medical Practitioners Disciplinary Committee, and so was the Court of Appeal of New Zealand in Reid v. Rowley.

18. But perhaps another way of looking at the matter lies in examining the consequences of the initial order as soon as it is passed. There are cases where an order may cause serious injury as soon as it is made, an injury not capable of being entirely erased when the error is

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corrected on subsequent appeal. For instance, as in the present case, where a member of a highly respected an publicly trusted profession is found guilty of misconduct and suffers penalty, the damage to his professional reputation can be immediate and far-reaching. "Not all the King's horses and all the King's men" can ever salvage the situation completely, notwithstanding the widest scope provided to an appeal. To many a man, his professional reputation is his most valuable possession. It affects his standing and dignity among his fellow members in the profession and guarantees the esteem of his clientele. It is often the carefully garnered fruit of a long period of scrupulous, conscientious and diligent industry. It is the portrait of his professional honour. In a world said to be notorious for its blase attitude towards the noble values of an earlier generation, a man's professional reputation is still his most sensitive pride. In such a case, after the blow suffered by the initial decision, it is difficult to contemplate complete restitution through an appellate decision. Such a case is unlike an action for money or recovery of property, where the execution of the trial decree may be stayed pending appeal, or a successful appeal may result in refund of the money or restitution of the property, with appropriate compensation by way of interest or mesne profits for the period of deprivation. And, therefore, it seems to us, there is manifest need to ensure that there is no breach of fundamental procedure in the original proceeding, and to avoid treating an appeal as an overall substitute for the original proceeding".

In the aforesaid judgement, the Hon'ble Supreme Court of India has held that, if the natural justice violated at the first stage, the right of appeal is not so much a true right of appeal as corrected an initial hearing instead of fair trial followed by appeal, the procedure is reduced to unfair trial followed by fair trial. Therefore, if the appeal is heard in this Tribunal, we are of the view the first right of appeal is denied to both the parties thereby violating the natural justice at the first stage. Therefore, it will be in the interest of justice that both the parties are allowed to argue their case before the Authority instead of hearing those prayer in this Tribunal.

104. In light of the above, we are of the view that, by deciding those issues in this appeal by this Tribunal, at this stage of the appeal, we would be denying right to first appeal to both parties. Further, the Authority has not adjudicated on the said issues on merits. Therefore, we are of the view that the matter is required to be remanded back to the Authority to adjudicate on those issues particularly prayer clauses "b", "s", and "u" in the memo of appeal, which are reproduced in para 13 of the judgment.

105. In view of the above, we proceed to pass the following order.

ORDER

1. The appeal No. AT06/00804/2025 in complaint no. CC006000000395936 of 2023 is partly allowed and the said impugned order dated 07.07.2025 is modified and substituted as under:

a. It is held that the promoters have violated Section 14 and Section 11 of the RERA Act, 2016, for which the promoters are directed to deposit the penalty amount of 2% of the project cost under section 61 of RERA Act, 2016 in the Registry of this Tribunal within 60 days of this order.

b. The promoters are directed to execute conveyance deed of the project property in favour of the appellant society in respect of "residential building" in its proportionate interest in the project property i.e. proportionate to the consumed FSI in the said residential building vis-à-vis commercial building as per the 2017 plan, along with its common areas and amenities within the period of 60 days of this order.

c. The promoters shall apportion the sale proceeds of the units in the commercial building constructed out of additional FSI/TDR in deviation to the disclosed 2017 plan to the allottees i.e. 4225.57 Sq. Mtrs. (7,457.20 Sq. Mtrs. – 3,231.63 Sq. Mtrs.) in the sanctioned plan 2021, after excluding the costs incurred by the promoters, amongst the society of "residential building" and "commercial building" in proportionate to their interest in the project property i.e proportionate to the consumed FSI in the "residential building" and "commercial building" as per the 2017 plan. The promoters shall apportion the said amounts within 60 days of obtaining the completion certificate for the project.

d. The promoters are precluded to use any additional FSI/TDR, in whatever name, for construction of any additional structure or additional floors and further amend the plans, without prior express informed consent of 2/3rd allottees of both "residential building" and "commercial building".

e. The promoters are directed to demarcate and hand over the remaining 64 guest parking spaces to the appellant society after obtaining necessary approvals from the competent authority within the period of 4 months of this order.

f. The promoters are directed to hand over audited accounts for the amounts collected for maintenance charges, clubhouse maintenance charges, clubhouse membership fees, and corpus, along with amounts, as per the audited account statement, remaining with the promoters which are collected under the agreements for sale, along with accrued interest thereon, if kept in a separate account, within the period of 60 days of this order.

2. With regard to prayers on balance work, repair and replacement, deficiencies of services, rectification of defects as well as the prayers regarding depositing amounts on account the amount spent by the society and carrying out balance incomplete work etc. the matter is remanded back to the Authority for fresh adjudication on the same, more particularly prayer Clauses "b", "s", and "u" as mentioned in para 13 of the judgement. The contentions of the parties are kept open to be agitated when the matter is heard afresh by the Authority.

3. Parties to bear their own costs.

4. Copy of this Order be communicated to the Authority and the respective parties as per Section 44(4) of the RERA Act, 2016

(SHRIKANT M. DESHPANDE) **(S.S. SHINDE, J.)**

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