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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 35377 OF 2025

Velentine Properties Private Limited

.. Petitioner

Versus

State of Maharashtra and Ors.

.. Respondents

**Adv. Vivek Kantawala a/w Adv. Ajit Makhijani and Adv. Rajat Jain i/b
M/s.M. M. Legal Associates, Advocates for the Petitioner.**

**Mr. Mohit Jadhav a/w Mr. Shamrao Gore, AGP, for Respondent Nos. 1
& 2 -State.**

**Adv. Vishal Kanade a/w Adv. Tanaya Patankar, Adv. Kartik Tiwari,
Adv. Devang Shah and Adv. Aditya Kanchan i/b Lakshyavedhi Legal,
Advocates for Respondent No.3.**

CORAM: FIRDOSH P. POONIWALLA, J.

RESERVED ON: DECEMBER 10, 2025

PRONOUNCED ON: DECEMBER 23, 2025

JUDGEMENT:-

1. Rule. Rule made returnable forthwith and heard finally by consent of parties.

2. This Writ Petition challenges an Order dated 16th October 2025 passed by Respondent No.2 i.e. the District Deputy Registrar – Co-operative Society, Mumbai City (4), Competent Authority under Section 5A of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short “MOFA”), whereby Respondent No.2 has granted a Unilateral Deemed Conveyance in favour of Respondent No.3 Society.

3. Before considering the impugned Order dated 16th October 2025, and the submissions of the parties in respect thereof, it would be appropriate to set out the facts in the matter.

4. The Petitioner is the Promoter, Owner and Developer of a property admeasuring 27,116.30 square meters which, subsequently, in view of multiple amalgamations and subdivisions, has been divided into sub-plots marked as Plot A, B, C, D, E, F and G in terms of approved layouts from time to time.

5. These plots were designated for the construction of multi-storied buildings as per the sanctioned layout plan. A portion of the said larger land, admeasuring approx.6,536.30 square meters, and bearing CTS

Nos.692/A/2/2/A/1, which forms part of a single layout, is identified as the aforementioned Sub-Plot 'A'.

6. Sub-Plot 'A' comprises of multiple buildings, out of which Respondent No.3 consists only of Wings A, B, C and F of Building A-2, constructed on the said land.

7. The Petitioner had executed Sale Agreements with the members of Respondent No.3, 4 and 5 which agreements contain clear, binding and specific clauses pertaining to the execution of the conveyance. The Petitioner had referred to one such Agreement for Sale dated 31st July 1999, executed between the Petitioner and one of the members of Respondent No.3, which was produced by Respondent No.3 before Respondent No.2. The Petitioner has referred to Clauses 26 and 27 of the said Agreement and stated that a perusal of the aforesaid clauses demonstrates that the Developer, i.e. the Petitioner, had expressly reserved its right to determine the extent, mode and timing of the conveyance or lease, including the option to execute a long-term lease in lieu of an outright conveyance. Furthermore, the Petitioner stated that it has also been recorded that the Petitioner shall be entitled at its option to form a single Organization of all the Premises to be constructed on the said land i.e. of Respondent Nos.3, 4 and 5 and to execute a conveyance / lease in respect of the said land in favour of Respondent Nos.3, 4 and 5.

8. It is the case of the Petitioner that despite the aforesaid clear and unambiguous terms and conditions, Respondent No.3 prematurely raised a demand for conveyance without waiting for the completion of the entire development of the said land. The Petitioner states that, in view of the said demand, the Petitioner, in good faith, demonstrated its willingness to convey the conveyable portion of the said land of Respondent Nos.3, 4 and 5 by preparing and sharing a joint conveyance deed. By an email dated 6th February 2025, addressed by the Petitioner to Respondent No.3, the Petitioner forwarded the said draft conveyance to Respondent No.3.

9. Thereafter, the Petitioner issued a reminder to Respondent No.3 by its email dated 6th May 2025 requesting for a response to the Draft Conveyance. However, instead of responding to the said communications of the Petitioner, Respondent No.3 directly issued a legal notice dated 19th May 2025. In response to the same, the Petitioner once again shared a Draft Conveyance by its Reply dated 23rd May 2025 and reiterated its willingness to execute the conveyance. In response to the said reply dated 23rd May 2025, Respondent No.3 issued a letter dated 30th May 2025. By the said letter dated 30th May 2025, Respondent No.3 raised objections with respect to the retention of an area admeasuring 146 sq.mtrs by the Petitioner out of the total area admeasuring 6536.30 sq.mtrs. of the said land and Respondent

No.3 further objected that only 43.21% of the said land was being conveyed to Respondent No.3.

10. The Petitioner dealt with the aforesaid objections by its letter dated 17th June 2025 addressed to Respondent No.3. By the said letter, the Petitioner stated that, as per the terms and conditions as stipulated in the agreements executed with all the members of Respondent Nos.3, 4 and 5, the Petitioner was entitled to develop the retained area, as the same forms part of the residual area to be developed in accordance with the sanctioned plan, which is subject to amendments from time to time. Further, the Petitioner stated that the said land is a part of a unified layout and, hence, the same will be divided between adjoining Societies and, accordingly, only 43.21% of the said land can be conveyed to Respondent No.3.

11. The Petitioner states that, despite having any discussions with the Petitioner, Respondent No.3 filed Application bearing No.148 of 2025, under Section 11 of MOFA, before Respondent No.2, seeking deemed conveyance in favour of Respondent No.3 for an area admeasuring 3215.19 sq.mtrs., including 5% open amenity space from the said land. The Petitioner filed a reply to the said Application on 13th August 2025 dealing with the contentions therein.

12. Subsequently, the Petitioner and Respondent No.3 addressed their oral arguments before Respondent No.2 and thereafter, liberty was given to the parties to file their respective written notes of arguments. Pursuant thereto, the Petitioner filed written notes of arguments dated 19th September 2025. The Petitioner is not aware if Respondent No.3 has filed any written arguments since the Petitioner was not served with the same.

13. Thereafter, the impugned Order dated 16th October 2025 was passed by Respondent No.3. It is the case of the Petitioner that by the impugned Order, Respondent No.2 erroneously conveyed 49.19% of the subject land in favour of Respondent No.3, without due appreciation of the factual and documentary evidence on record.

14. It is in these circumstances that the Petitioner filed the present Petition impugning the Order dated 16th October 2025 passed by Respondent No.2.

15. Mr.Vivek Kantawala, the learned counsel appearing on behalf of the Petitioner, made submissions impugning the said Order dated 16th October 2025.

16. Mr.Kantawala first submitted that the Application filed by Respondent No.3 was premature. In this context, he submitted that Rule 9 of the Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Rules, 1964 (“MOFA Rules”)] mandate execution of conveyance within a period of four months only where no period is agreed upon between the parties. He submitted that, in the present case, the parties are governed by a specific and binding contractual arrangement. Clause 26 of the Agreement for Sale provides that the Petitioner shall be entitled to form separate co-operative societies and obtain separate conveyances / leases for one or more structures, and that such conveyance(s) shall be executed only upon full completion of the entire development on the said land. The contractual stipulation thus postpones the obligation to convey title until completion of all buildings and amenities forming part of the sanctioned layout. Consequently, the Petitioner’s readiness and willingness to execute the conveyance arises only upon full development, and not prior thereto. Mr.Kantawala submitted that the present Application filed before Respondent No.2, in disregard of the express terms of the said Agreement, and contrary to the contractual time-line mutually agreed upon, is therefore, premature.

17. Mr.Kantawala submitted that Respondent No.3's claim is ex-facie contrary to the Government of Maharashtra's Resolution dated 22nd June 2018 ("said GR") which mandates that in multi-building layouts, conveyance must be restricted only to the proportionate share relatable to completed buildings and, wherein TDR is used, it should be limited further to the plinth and appurtenant area.

18. Mr.Kantawala submitted that the Petitioner had complied with this requirement and offered more than what the said G. R. prescribes. The Respondent No.3 however, sought 3215.19 sq.mtrs. based on built-up area calculations, which the said G. R. expressly prohibits.

19. Mr.Kantawala submitted that the larger layout admeasures 6390.30 sq.mtrs., on which three buildings of three different societies stand, with common areas shared across all. Further, Mr.Kantawala submitted that the discrepancies in Respondent No.3's Architect Report warrant appointment of an independent Architect, as contemplated under the said G. R. In this context, Mr.Kantawala referred to the judgement of this Court in ***Sushil Samir CHSL vs. DDR, Mumbai and Ors. 2014 (4) Mah.L.J. 888.***

20. Mr.Kantawala further submitted that the Petitioner had always disclosed phased development under Clauses 21(b), 26 and 27 of the Agreements for sale and had retained approximately 146 sq.mtrs. for future developments. He submitted that the granting of the Application of Respondent No.3 by Respondent No.2 leads to categorically conveying this retained portion, and, therefore, would lead to multiplicity of disputes and violation of the said G. R.

21. Next, Mr.Kantawala submitted that there was no failure or neglect under Section 11(3) of MOFA by the Petitioner warranting an Application for deemed conveyance by Respondent No.3. In this context, he submitted that Section 11(3) permits deemed conveyance only when the Developer has failed or neglected to execute it. He submitted that, in the present case, the Developer, i.e. the Petitioner, issued a draft conveyance on 6th February 2025, followed by a reminder on 6th May 2025, evidencing continuous readiness and willingness on the part of the Petitioner to execute the conveyance. He submitted that, in these circumstances, the statutory condition precedent is therefore, not met, thereby rendering the Application non-maintainable. Mr.Kantawala further submitted that Respondent No.3 had deliberately suppressed the draft deed of conveyance, reminders and replies, including the Petitioner's detailed response dated 23rd May 2025

enclosing the draft once again. Mr.Kantawala submitted that such concealment constitutes *mala fide* and amounts to approaching Respondent No.2 with unclean hands. Mr.Kantawala submitted that, in these circumstances, Respondent No.3 would not be entitled to any relief from Respondent No.2.

22. Further, in support of his submissions, Mr.Kantawala relied upon a judgment of this Court in *M/s. S & M Enterprises vs. The Palazzo Building No. 1 CHSL & Ors. [in Writ Petition No.12297 of 2022]*. Mr.Kantawala submitted that, in this judgement, this Court held that in phased developments, deemed conveyance is restricted to the proportionate undivided share corresponding to completed construction. Conveyance of the entire land prior to completion of the overall project is impermissible as it prejudices the developer's rights. He submitted that the ratio of this case squarely applied to the present case.

23. On the other hand, Mr.Vishal Kanade, the learned counsel appearing on behalf of Respondent No.3, opposed the granting of any relief in the Petition. Mr.Kanade submitted that the Petitioner's case, that it was entitled to retain an area of 146 sq.mtrs., ought to be rejected. In this context, Mr.Kanade submitted that there was no contractual basis for

retention of any area. Further, Mr.Kanade submitted that there was absolutely no pleading by the Petitioner as to why and how the Petitioner is entitled to an exact area of 146 sq. mtrs. nor is its claim supported by any cogent document. Without prejudice to the said argument, Mr.Kanade submitted that, if the basis or challenge to the impugned order is the alleged right of retention of 146 sq. mtrs., then it is beyond the purview of the jurisdiction of the Competent Authority. In this context, Mr.Kanade relied upon the judgement of this Court in *M/s. ACME Enterprises v/s Deputy Registrar Cooperative Societies & Ors., (2023) SCC OnLine BOM 1102*. Mr. Kanade submitted that, hence, the remedy of the Petitioner was to file a suit for declaration of rights qua the retained area. Further, Mr.Kanade submitted that the impugned Order has been passed after considering all the relevant material on record.

24. Further, Mr. Kanade submitted that none of the grounds urged by the Petitioner hold any merits. In this context, Mr. Kanade submitted that the Petitioner shared a draft of a joint-conveyance deed by withholding/retaining the said area of 146 Sq Mts. There was no explanation as to why this area was being retained. This was an explicit finding of the Competent Authority. Mr.Kanade submitted that, in these circumstances, it cannot lie in the mouth of the promoter to state that the statutory obligation

of executing conveyance ends the moment an offer is made, notwithstanding, that such an offer is inherently untenable.

25. Further, Mr.Kanade submitted that the Petitioner was under an obligation to execute the conveyance of land and building in favour of the society within four months from the date of registration of Respondent No.3, which was on 17th February 2004. The draft of the joint-conveyance, that too after retaining certain portion, only came on 6th February 2025. Mr.Kanade submitted that this aspect has also been dealt with by the Competent Authority.

26. Next, Mr.Kanade relied on the judgement of this Hon'ble Court in *Lok Housing and Construction Limited v/s. State of Maharashtra & Ors., 2025 SCC Online Bom 711* and submitted that the reliance of the Petitioner on clauses 26 and 27 of the MOFA Agreement, to contend that the Respondent No. 3's application for deemed conveyance is premature, is misplaced.

27. Next, Mr.Kanade submitted that it is not in dispute that the Architect's Certificate produced by Respondent No. 3 before the Competent authority is in consonance with the sanctioned/approved plan. Mr.Kanade

submitted that, on the contrary, the Architect's certificate produced by the Petitioner is only on basis of calculation of the Appurtenant Area and Plinth area, without any basis as to why this calculation is applicable to Respondent No. 3's case.

28. As far as the Government Resolution dated 22nd June 2018 is concerned, Mr.Kanade submitted that Clause B (1) specifically deals with a situation where there are many societies and construction of some of them is incomplete. He further submitted that Clause B (2) had to be read with Clause B (1) and thus, it deals with a situation where circumstances exist as in clause B1, however, where additional TDR is utilised.

29. Mr.Kanade submitted that a reading of Clause B (1) would show that conveyance can be made of an undivided share of occupancy right in the proportion of construction on the proportionate area of the construction of the Building of such Society or on the basis of ground coverage or or on the basis of the plinth area alongwith open space, common services and facilities, etc.

30. Mr.Kanade submitted that this Court in the case of *Akshay Girikunj-3 CHSL v/s. State of Maharashtra, in Writ Petition (L) No. 603 of*

2023 had left it to the wisdom of the Competent authority to grant either land proportionate to the FSI utilised for construction of the Society's building or to convey footprint of the building alongwith proportionate undivided share to the society in respect of common areas, depending on the circumstances of each case.

31. Further, Mr.Kanade submitted that Clause B (3) deals with a situation where there are more than one societies and other societies are not cooperating for conducting measurement of the land of the Applicant Society. Mr.Kanade submitted that, only in that case, it is contemplated that an Architect may be appointed for measurement of the land. Mr.Kanade submitted that, in the present case, although Respondent No. 3 Society has filed its Application for deemed conveyance, the other Societies, despite having an intimation of the same, have chosen to not contest the application.

32. As far as the judgment in *M/s. S & M Enterprises (Supra)* cited by Mr.Kantawala is concerned, Mr.Kanade submitted that the same is not at all applicable to the facts of the case since the facts of that case are entirely different. Mr.Kanade submitted that, in the present case, the construction of the layout has been completed and the Petitioner has been unable to

demonstrate from the sanctioned plan as to how and if any area and/or FSI at all has remained available for further construction.

33. Next, Mr.Kanade referred to the judgement of this Court in ***Sushil Samir CHSL (Supra)*** cited by Mr.Kantawala and stated that the same is much prior to the Government Resolution dated 22nd June 2018 and it does not consider the position of law that the jurisdiction of the Competent Authority is extremely limited in the enquiry that it can conduct, and that while following the summary procedure, it cannot conclusively and finally decided the question of title.

34. Mr.Kanade submitted that, for all these reasons, the Writ Petition deserves to be dismissed.

35. In Rejoinder, Mr.Kantawala referred to the judgement in ***Lok Housing and Construction Limited (Supra)*** cited by Mr.Kanade and submitted that the said decision concerns a situation where FSI has already been consumed. By contrast, in the present matter, FSI has not been consumed, and, therefore, the ratio in the said case was factually inapplicable and does not assist Respondent No.3.

36. Mr.Kantawala referred to the judgment in the case of ***Akshay Girikunj (Supra)***, cited by Mr.Kanade and submitted that the facts and regulatory context in that case differ materially from the present case. He submitted that the said case does not address the specific combination of a completed building, disclosed conveyance and retained area recorded in the Deed of Conveyance before the Authority.

37. Lastly, Mr.Kantawala refer to the judgment in ***M/s. ACME Enterprises (Supra)*** and submitted that the same relates to availability of a civil remedy versus writ jurisdiction. He submitted that Respondent No.3's reliance on ***ACME (supra)*** therefore mischaracterises the remedy question and does not detract from the Petitioner's prima facie entitlement of the retained area. He submitted that the said judgement makes it clear that the Competent Authority cannot convey more than what the promoter has agreed to convey, and must determine the scope of the promotor's obligation, whether such obligation has become enforceable and whether any default has occurred. Mr.Kantawala submitted that this principle squarely supports the case of the Petitioner. Petitioner's readiness to execute the conveyance by letter dated 6th February 2025 issued to all three Societies, including Respondent No.3, was material which the Competent Authority, i.e. Respondent No.2, failed to consider, thereby rendering its decision contrary to law and record.

38. Mr.Kantawala submitted that, in light of the submissions made by him, the present Petition deserves to be allowed.

ANALYSIS AND FINDINGS

39. I have heard the learned counsel for the parties and perused the documents on record.

40. The first challenge of the Petitioner in respect of impugned Order dated 16th October 2025 is that the Application filed by Respondent No.3 before Respondent No.2 was wholly premature and unsustainable. In this context, Mr.Kantawala submitted that Rule 9 of the MOF Rules, mandates execution of conveyance within four months only where no period is agreed upon between the parties. In the present case, the parties were governed by a specific and binding contractual arrangement. Mr.Kantawala submitted that Clause 26 of the Agreement for Sale is such an agreement. He submitted that, in light of the said Clause 26, the question, of the Petitioner executing the conveyance arises only after full development and not prior thereto. Mr.Kantawala also submitted that the present Application filed by Respondent No.3 before Respondent No.2, in disregard of the express terms

of the said Agreement, and contrary to the contractual time-line mutually agreed upon, is therefore, premature.

41. Clause 26 of the Agreement reads as under:

“26. In respect of Plot "A" more particularly described in second Schedule hereunder written, the Developers shall be entitled at their option to form the single Organisation of all the Premises to be constructed on the said Property and to execute cause and/or cause the owners to execute the Conveyance/lease in respect of the said Property and the structures thereon in favour of such Organisation/s. The Developers shall also at their option be entitled to form different co-operative societies for one or more structures to be constructed on the Property described in the Second Schedule hereunder written and to cause the Owners to execute separate Conveyance/lease in favour of such Organisation/s, as the case may be. Such conveyance / lease and / or conveyances/leases shall, however, be executed only after the entire Property described in the Second Schedule hereunder written is fully developed (i.e. all the Buildings as may be permitted by the Concerned Authorities shall have been fully constructed on the said Property)”

42. Further, Rule 9 of the MOF Rules, 1964 reads as under:

“Period for conveyance of title of promoter to organisation of flat purchasers:- If no period for conveying the title of the promoter to the organisation of the flat purchasers is agreed upon, the promoter shall (subject to his right to dispose of the remaining flats, if any) execute the conveyance within four months from the date on which the Co-operative society or the company is registered or, as the case may be, the association of the flat takers is duly constituted.

"When a promoter has submitted his property to the provisions of the Maharashtra Apartment Ownership Act,

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

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

43. Under Rule 9 of the MOF Rules, the promoter is required to execute the conveyance within four months from the date on which the Co-operative Society or the Company is registered or, as the case may be, the Association of Flat takers is duly constituted. It is now well settled law that Rule 9 of the MOF Rules overrides a clause like Clause 27 of the Agreement which postpones the executing of a conveyance. This is absolutely clear from the judgement of this Court in *Lok Housing and Construction Limited (Supra)*. Paragraphs 17 to 25 of the said Judgement illuminate this point and read as under:

“17. The submission advanced on behalf of the petitioner, seeking to justify delay in execution of conveyance by relying upon contractual Clauses 25 and 28 to contend that conveyance in favour of society can be executed only after completion of the entire development scheme, cannot be accepted in the face of the clear statutory mandate contained in Rule 9 of the Maharashtra Ownership Flats (Regulation of the Promotion of

Construction, Sale, Management and Transfer) Rules, 1964 (hereinafter referred to as "the MOFA Rules"). Rule 9 leaves no room for ambiguity and categorically prescribes the time-frame within which a promoter is required to convey title to the co-operative housing society or association of flat purchasers. The rule provides that, unless a specific period is mutually agreed upon between the parties, the promoter shall execute the conveyance deed within four months from the date of registration of the society.

18. *The purpose of Rule 9 must be understood in light of the statutory scheme of MOFA, particularly Section 11, which casts a positive obligation upon the promoter to execute the conveyance of title in favour of the organisation of flat purchasers. The rule is not merely procedural in nature but is a substantive safeguard against indefinite and deliberate delay on the part of the promoter. The four-month period is a codified timeline intended to operationalise the legislative objective of ensuring that flat purchasers are not left in a state of uncertainty regarding title to the land and building in which their flats are situated. This obligation cannot be evaded on the basis of private contractual stipulations that seek to indefinitely defer the promoter's duty, nor can it be defeated by reference to alleged defaults by individual purchasers. MOFA being a social welfare legislation intended to protect the interests of flat purchasers must be interpreted in a purposive and beneficial manner. It is settled law that in interpreting such welfare statutes, the court must give precedence to the legislative intent over the literal terms of any private agreement which runs counter to such intent.*

19. *Of particular significance is the use of the word "period" in Rule 9 of the MOFA Rules. The legislature has deliberately chosen this word to signify a determinate, fixed and measurable segment of time. The ordinary and grammatical meaning of "period" is a definite span of time, not subject to vague or indefinite conditions. This interpretation is consistent with the well-recognised principles of statutory interpretation, whereby words used in subordinate legislation are to be given their natural and popular meaning unless the context requires otherwise.*

20. *In the present case, the statutory language is clear and unambiguous. It therefore warrants a plain and literal interpretation. The term "period" in Rule 9 cannot be interpreted to mean an indeterminate, future event-based time-line such as "completion of the entire development scheme". Such an interpretation would amount to substituting a definite and enforceable time-frame with a contingent and uncertain condition, thereby diluting the efficacy of Rule 9. Courts are not permitted to rewrite statutory provisions under the guise of interpretation, especially when doing so would defeat the purpose and object of the legislation.*

21. *In the face of statutory obligations, courts are empowered and indeed duty-bound to disregard any such clause that seeks to dilute, defer or defeat the legislative scheme. To uphold such a clause would be to allow the promoter to continue holding title in perpetuity under the guise of incomplete obligations, which the legislature clearly intended to avoid.*

22. *Further, the court finds that any interpretation of the word "period" that allows it to be supplanted by the occurrence of a future uncertain event would defeat the legislative intent of providing a time-bound mechanism for conveyance. MOFA was enacted precisely to remedy the imbalance in bargaining power between promoters and flat purchasers. To interpret Rule 9 in a manner that enables the promoter to defer conveyance indefinitely would amount to restoring the very imbalance which MOFA seeks to correct.*

23. *Therefore, this Court has no hesitation in holding that the expression "period" as used in Rule 9 must necessarily mean a fixed, determinable and reasonable span of time. It cannot be equated with any open-ended or contingent condition. Any clause in the agreement for sale that attempts to override or nullify this statutory obligation must be declared void to that extent, being inconsistent with the law.*

24. *In view of the aforesaid discussion, this Court is of the considered opinion that any contractual clause, including Clause 25 of the agreement in the present case,*

which seeks to defer the promoter's obligation to execute conveyance until completion of project, is in direct conflict with Rule 9 of the MOFA Rules. Such a clause cannot take precedence over a statutory duty. Where the majority of purchasers have taken possession and formed a registered society and have complied with their obligations, the promoter cannot avoid conveyance by raising inter se disputes or conditions involving other purchasers. A condition based on a future uncertain event neither time-bound nor within the control of the society cannot be treated as a valid "period" under Rule 9.

25. Acceptance of the petitioner's contentions would amount to rendering the statutory mandate under MOFA nugatory and placing the rights of the flat purchasers at the unregulated discretion of the promoter. Such an interpretation cannot be sustained in law. It would frustrate the very purpose for which MOFA was enacted to ensure time-bound transfer of ownership to flat purchasers and to check arbitrary and exploitative practices by promoters. In the present case, no specific and mutually agreed "period" exists which is contrary to Rule 9. Accordingly, the petitioner was under a statutory obligation to execute the conveyance deed within four months from the date of registration of Respondent 3 Society. Admittedly, the petitioner failed to do so. Therefore, the application filed by Respondent 3 under Section 11 of the MOFA Act was legally maintainable and the order passed by the competent authority granting deemed conveyance cannot be faulted."

44. The next submission of Mr.Kantawala is that, under Section 11(3) of MOFA, deemed conveyance can be granted only when the Developer has failed or neglected to execute a conveyance. Mr.Kantawala submitted that, in the present case, the Developer, i.e. the Petitioner, had issued a draft conveyance on 6th February 2025 followed by a Reminder on 6th May 2025 evidencing continuous readiness and willingness on the part of the Petitioner

to execute the conveyance. Mr.Kantawala submitted that the statutory condition precedent is therefore, not met, thereby rendering the Application non-maintainable.

45. Again, I am unable to accept this submission of the Petitioner. The Petitioner forwarded to Respondent No.3, a conveyance that was not acceptable to Respondent No.3. According to Respondent No.3, the offer of conveyance of the Petitioner was untenable. In these circumstances, in my view, it cannot lie in the mouth of the promoter to submit that the statutory obligation of executing conveyance ends the moment an offer is made, notwithstanding, that such an offer is inherently untenable. For this reason, I am unable to accept the submission of Mr.Kantawala that the Petitioner had not failed to execute a conveyance in favour of the Society. In my view, if a developer, like the Petitioner, offers to the Society to execute a conveyance, which is not agreeable to the Society, then obviously the Society would have a right to file an Application under Section 11(3) of the MOFA.

46. The next submission raised by the Petitioner is that the area granted by the deemed conveyance is not the correct area and that the matter should have been referred to the Architect on the panel of the Competent Authority to decide as to what was the appropriate area.

47. The impugned Order dated 16th October 2025 has decided to grant a deemed conveyance on the basis of the area mentioned in the certificate of Respondent No.3's Architect and by coming to a finding that there was no basis for the Petitioner seeking to retain 146 sq.mtrs. of land.

48. It is the case of the Petitioner that the area should have been according to the plinth and and appurtenant area as per Clause B(2) of the said G.R. and, further, that 146 sq.mtrs. should have been excluded. The Petitioner has provided the area, which according to it, is the correct area, by furnishing its Architect's certificate. Further, it is the case of the Petitioner that, in any case, since there is a dispute about the area, an Architect from the panel of the Competent Authority should have been appointed to determine the correct area.

49. The recitals of the Agreement dated 31st July 1999 between the Petitioner and one of the flat purchasers, produced before Respondent No.2 as a sample agreement, clearly show that the Petitioner had reserved to itself the right to develop the balance 146 sq.mtrs of land. In this context, recitals 4 to 7 of the said Agreement are relevant and are set out hereunder :

“ 4. In view of the D. P. Road passing through the said larger Property, the said larger Property is divided into 2 (two) parts, i.e., Plot "A" and Plot "B".

(a) In the respect of Plot "A" and "B", the Developer had prepared the layout for putting up various building/buildings. The Plot "B" was further sub-divided into "B" and "C". The said lay-out was approved by Municipal Corporation of Greater Mumbai vide approval No. CHE/968/LOP dated 20th April, 1995.

(b) The aforesaid layout has been revised and the said larger property has been sub divided into four plots and marked plot A, B, C & D as shown in the plan annexed hereto as (Annex. "A") The plots A, B, C & D are more particularly described in the Second, Third, Fourth and Fifth Schedule hereunder written. The revised layout has been approved by the Municipal Corporation of Greater Mumbai vide approval to CHE/968/LOP dated 8th December, 1997 and hereinafter referred to as the "Said Lay-out Area".

(c) The Developers have prepared the Plan for construction of multi-storied Buildings/s on the part of the lay-out area of Plot "A" more particularly described in the Second Schedule hereunder written through Architect, Mr. Yunus Zaveri, consisting of Basement, ground & 7 (Seven) upper floors, hereinafter referred to as "the said Building" comprising of flats/shops/car parking spaces and other premises and known as "VELENTINE APARTMENT (A-2)" [Shown as Building (A-2) in the layout] and the Building Plan in respect of the said Building/s is/are approved by Municipal Corporation of Brihanmumbai under IOD NO. CHE / 7017 / BP (WS) / AP dated 19th August 1998 (Annexure - "B") and necessary Commencement Certificate in respect of the said Building is also obtained vide Commencement Certificate No. CHE/7017 / BP(WS) /AP dated 3rd February, 1999 (Annex "C"). The location of the said Building "VELENTINE APARTMENT" on the part of the lay-out area of the Plot "A" is more particularly described in the Sixth Schedule hereunder written and referred to as "the said Property" and delineated in red colour boundary lines and annexed hereto as (Annex "A"),

5. (a) *The Developers have informed the Purchaser/s that the Developers are entitled to construct additional Buildings in the layout by use of Transferable Development Right (T.D.R.) as per the prevailing law there under. The Purchaser/s hereby agree/s and give/s his/her/their irrevocable consent to the same and the Purchaser/s shall not raise any objection for carrying out such changes by the Developers in the Building Plans and/or putting up of additional building/ buildings on the said lay-out area of Plot "A" and it is expressly agreed that this is the basis of this Agreement.*

(b) *The Developers have informed the Purchaser/s that in the lay-out area of the Plot "A", the Developers are constructing 4 (four) or more Buildings by utilising the F.S.I. of the Plot and/or by use of T.D.R.*

6. *The Developers will hereafter obtain approval to the construction of other Building/Buildings in respect of the remaining portion of the Plot "A" and also Building Plans in respect of these Buildings which are proposed to be constructed on the said Plot "A" and, accordingly, on such Building Plans being approved, the Developers shall construct the additional Building/Buildings by utilising FSI of other properties to be obtained by way of T.D.R., and at present, the Developers shall in their absolute discretion determine as regards the total floors and total built-up area in these other Buildings.*

7. *It is expressly agreed and the Purchaser/s is/are aware that, as a result of changes in the layout plan and/or the Building Plans of the said Building or any one or more of the Buildings, to be hereafter constructed on the said Property, the share of the said premises in the said common areas and facilities may decrease. The Purchaser/s hereby expressly consent/s to such changes in the said share and hereby irrevocably and expressly authorise/s the Developers to so decrease the said share of the said Premises in the said common areas and facilities of the said Building and/or the said Property and the Purchaser/s hereby irrevocably agree/s to accept the said share as changed as aforesaid and shall not raise any plea in this respect."*

50. Thus, the recitals of the said Agreement support the case of the Petitioner in respect of retention of 146 sq.mtrs. of land.

51. Section 11 of the MOFA also clearly provides that the conveyance to be executed by a promoter would be in accordance with the agreement executed under Section 4. Further, this Court, in the case of *M/s. S & M Enterprises (Supra)*, has also reached a similar conclusion.

52. Further, Clause B(2) of the said G.R. reads as under:

“(2)While making Deemed Conveyance in respect of the buildings in the layout where T.D.R. is utilized, their conveyance should be made according to plinth and appurtenant area.’

53. A perusal of the said Clause B(2) makes it clear that, while making a deemed conveyance in respect of buildings in the layout where TDR is utilised, the conveyance should be according to the plinth and appurtenant area. According to the Petitioner, in the present case, since the TDR was utilised, the conveyance should have been according to the plinth and appurtenant area as shown in the certificate of the Architect of the Petitioner.

54. Further, clause B(3) of the said G.R. reads as under:

“(3) If there is more than one society in one layout and out of them only one society has made such application, similarly other societies are not co-operating for conducting measurement of the land of the applicant society then the District Dy. Registrar, Co- operative Societies, and Competent Authority shall suggest the applicant society to conduct the measurement according to the approved plan from the Architect on the panel of the Competent Authority who approved the construction plans of the concerned society and submit the report regarding area of the society.”

55. As per clause B(3) of the said G.R., if there is more than one society in one layout and out of that only one society has made an Application for granting a deemed conveyance, and the other Societies are not cooperating for conducting measurements of the land of the Applicant Society, then Respondent No.2 should suggest to the Applicant Society to conduct the measurement according to the approved plan from the Architect on the panel of the Competent Authority who would submit a report regarding the area of the Society.

56. In the present case, the question before Respondent No.2 was whether the area, for which deemed conveyance should be granted, should be as per the built up area, or as per the plinth and appurtenant area, and whether 146 sq.mtrs. could be retained by the Petitioner. Further, the present case also falls under Clause B(3) because there are three Societies in the layout and only Respondent No.3 Society had submitted its

measurements and all the three Societies have not conducted measurement of the land. In these circumstances, in my view, Respondent No.2 ought to have appointed an Architect on the panel of the Competent Authority to find out the area in respect of which Respondent No.3 would be entitled to a deemed conveyance. The whole purpose of appointing an Architect is that the area conveyed to each Society on a particular layout is crystalised and there are no disputes in the future.

57. However, instead of doing the same, by the impugned Order dated 16th October 2025, Respondent No.2 accepted the Certificate of the Architect of Respondent No.3, and wrongfully held that there was no material to support the retention of 146 sq.mtrs. of land by the Petitioner, despite the provisions of the Agreement having been pointed out to him.

58. In these circumstances, in my view, the Order dated 16th October 2025 will have to be set aside and the matter remanded back to Respondent No.2 to decide on the granting of a deemed conveyance after appointing an Architect from the panel of the Competent Authority and after considering his Report.

59. This leaves me to deal with the submissions made by Mr.Kanade on the basis of the judgements of this Court in ***Akshay Girikunj-3 CHSL (Supra)*** and in ***M/s. ACME Enterprises (Supra)***.

60. As far as the Order in ***Akshay Girikunj-3 CHSL (Supra)*** is concerned, Paragraph 3 of the said Order reads as under:

“3 After having considered the submissions canvassed by the learned Counsel appearing for the parties and after perusal of the impugned order dated 8 August 2022, it is seen that the Competent Authority has rejected the application for unilateral deemed conveyance of the Petitioner-Society only on the ground that the Developer is yet to complete construction of Building Nos.4 and 5. Even if it is assumed that the building of the Society is located on a layout, there is nothing in law that prevents the Competent Authority from granting unilateral deemed conveyance of the building of the Society in a layout. The only issue is about the exact area of land to be conveyed. The Competent Authority can either grant land proportionate to the FSI utilized for construction of Society's building or the other option available to the Competent Authority is to convey footprint of the building and grant proportionate undivided share to the Society in respect of common amenities. The exact course of action to be adopted by the Competent Authority would depend on the facts and circumstances of each case. In my view the Competent Authority has failed to apply his mind in the present case and has erroneously rejected the Society's application. Merely because the construction of Building Nos.4 and 5 is yet to be completed, the same could not have been a ground for rejecting the Society's application for deemed conveyance. In that view of the matter, the proceedings need to be remanded to the Competent Authority for being decided afresh. Accordingly, the order dated 8 August 2022 passed by the Competent Authority is

set aside. Petitioner-Society's application is restored on the file of the Competent Authority who shall decide the same on its own merits without being influenced by any of the observations made in the order dated 8 August 2022. All rights and contentions of the parties are left open.”

61. I am not holding that a deemed conveyance cannot be granted to Respondent No.3 Society. I am only holding that the exact area for such deemed conveyance to be granted must be determined by appointing an Architect from the panel of the Competent Authority as per Clause B(3) of the said G. R.

62. Therefore, the said Order, which holds that merely because two buildings have completed, the same cannot be a ground for rejecting the Society's Application for deemed conveyance, does not carry the case of Respondent No.3 any further.

63. In *M/s. ACME Enterprises (Supra)*, this Court has held that an Order of deemed conveyance would not preclude or prevent the Petitioner from filing a Suit and claiming appropriate reliefs. The same is set out in paragraph 27 of the said judgement which reads as under:

“27. It would be contextually relevant to immediately notice that the import of the aforesaid judgment was clarified by the Division Bench in the case of Shree Chintamani Builders (supra). It was observed that an order

granting deemed conveyance would not conclude issue of right, title and interest in the immovable property. It was not as if such an order was passed that the petitioners had no remedy to question the act of the Society on the strength of such deemed conveyance. The petitioners could still bring a substantiate suit on title and point out therein that as far as CTS No. 2193/2 was concerned the reservation was shifted. Referring to the aforesaid factual background, in the case of Shree Chintamani (supra) this Court observed that the Court cannot examine in writ jurisdiction and in the garb of examining the legality, correctness and validity of deemed conveyance, the issues concerning the right, title or interest in the immovable property. It was reiterated that the order of deemed conveyance would not preclude or prevent the petitioner therein from filing a suit and claiming therein appropriate reliefs.”

64. On the basis of this Judgment, Mr.Kanade has submitted that the appropriate remedy for the Petitioner, in respect of 146 sq.mtrs. of land, would be to file a Suit and not to challenge the Order of deemed conveyance.

65. I am unable to accept this argument of Mr.Kanade. It is a settled principle that the deemed conveyance should be as per the MOFA Agreement entered into with the flat purchasers. Further, the same is also laid down in paragraph 30 of the ***M/s. ACME Enterprises (Supra)*** itself which reads as under:

“30. From the above statutory provisions and enunciation, the position which emerges can be summarized as under. The authority to grant deemed conveyance is conditioned and controlled by the primary obligation of the promoter to convey to the organization of flat purchasers right, title

and interest in the land and buildings, in accordance with the agreement executed under Section 4. Competent authority cannot convey more than what the promoter had agreed to convey under the agreement executed under Section 4. What competent authority is thus required to consider is, the extent of the obligation incurred by the promoter, whether the obligation to execute the conveyance became enforceable and whether the promoter committed default in, or otherwise disabled himself from, executing the conveyance.

- 66.** For all the aforesaid reasons, I pass the following order:
- a. The Order dated 16th October 2025 passed by Respondent No.2 is set aside.
 - b. Respondent No.3's Application is restored to the file of the Competent Authority who shall decide the same after appointing an Architect from the panel of the Competent Authority and after considering his or her Report, as provided in Clause B(3) of the Government Resolution dated 22nd June 2018.
 - c. Rule is made absolute in the aforesaid terms.
 - d. Writ Petition is disposed of.
 - e. There shall be no order as to costs.

[FIRDOSH P. POONIWALLA, J.]

- 67.** At this stage, the learned Advocate appearing on behalf of Respondent No.3 seeks stay of the Order for a period of eight weeks from today. This

Application is opposed by the learned Advocate appearing on behalf of the Petitioner.

68. The operation of the Order is stayed for a period of six weeks from today. Further, in the meanwhile, Respondent No.3 shall not register the deemed conveyance.

[FIRDOSH P. POONIWALLA, J.]