



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 744 OF 2024**

1. M/s. Krishna Constructions,
A Partnership Firm Registered under
the Provisions of Partnership Act,
Having Office At : S.No. 28/1,
Old Kharadi Mundhwa Road
Next To Kran Radar Factory
Pune 411014 and also at
20, Ghodapdeo Cross Road
No. 01, Mumbai-400 010
through its Partners
2. Mrs. Shikha M. Mistry
Age : Adult, Occ : Business
3. Mr. Mittal Pranjivan Mistry
Age : 48 years, Occ : Business ... Appellants

Versus

1. Mr. Subhash Uttam Dalvi,
Age: 46 Years, Occ: Business,
R/at: First Floor, A Wing, Flat No. 103,
Spring Dale CHS LTD.,
Old Mundhwa Road, Wadgaonsheri,
Pune – 411014.
2. The Pune Municipal Corporation,
Through its Commissioner.

3. The Commissioner,
Pune Municipal Corporation, Pune.
4. City Engineer,
Building Permission and Unauthorized
Construction, Control Department,
Office of No. 2(a) to 2(b) above at:
Pune Municipal Corporation,
PMC Main Building, Shivajinagar,
Pune – 411005.
5. M/s. Sandeep Hardikar & Associates,
through its authorized signatory
Sandeep Hardikar [Licensed
Architect], Age: Adult, Occ:
Profession/Architect, R/at: Flat No.
502, Sadhana Apartment,
Shivajinagar, Pune – 411005.
6. Mr. Varun Atulkumar Shah,
Age: 38 Years, Occ: Not Known,
7. Mrs. Richa Varun Shah,
Age: 36 Years, Occ: Not Known,
Both Nos. 6 & 7 R/at : A/602, Shivyog,
Sambhajinagar, Shiv Vallabh Road,
Near Sai Baba Temple, Ashok Va
Dahisar, Mumbai – 400068.
8. Mrs. Renu Yadav,
Age: 39 Years, Occ: Not Known,

9. Mr. Anil Rajaram Yadav,
Age : 41 Years, Occ: Not Known,
Both Nos. 8 & 9 R/at: Flat No. 302,
Oxy 04 Valley, Phase II, Gade Vasti,
BJS College, Wagholi,
Pune – 412207.
10. Mrs. Laxmi Mukund Mane,
Age: 40 Years, Occ: Not Known,
11. Mr. Mukund Gundanna Mane,
Age: 49 Years, Occ: Not known,
Both Nos. 10 & 11 R/at:
Wadgaonsheri,
Pune – 411014.
12. Mr. Harshal Uday Kulkarni,
Age: 40 Years, Occ: Not Known,
13. Mrs. Amruta Harshal Kulkarni,
Age: 34 Years, Occ: Not known,
Both Nos. 12 & 13 R/at: Plot No. 18,
Gat No. 190/1, Nisarg Colony,
Pimprala, Jalgaon – 425001.
14. Mr. Vipul Naveen Thakkar,
Age: 36 Years, Occ: Not known.
15. Mrs. Shweta Vipul Thakkar,
Age: 31 Years, Occ: Not known.
16. Mrs. Lata Naveen Thakkar,
Age: 57 Years, Occ: Not known.

All No. 14, 15 & 16 R/at: Flat No. A-903, Goodwill 124, Porwal Road, Dhanori, Jakat Naka, Lohegaon, Pune – 411047.

17. R. Pankaj Prakash Patil,
Age: 38 Years, Occ: Not known.
18. Mrs. Kalyani Pankaj Patil,
Age: 35 Years, Occ: Not known,
Both Nos. 17 & 18 R/at: F-202,
Santosh Park, Bhoisar Tarapur Road,
Mark Gate, Tal. Palghar Salvad,
Tarapor Upper Thane – 401504.
19. Mrs. Khushboo Sushil Bajaj,
Age: 38 Years, Occ: Homemaker,
20. Mr. Sushil Suresh Bajaj,
Age: 38 Years, Occ: Service,
Both Nos. 19 & 20, R/at:
B5 Sai Nandanvan Housing Society,
Ganesh Nagar, Near Sundarabai
School, Wadgaonsheri,
Pune – 411014.
21. Mr. Kaushik Guha,
Age : 56 Years, Occ: Not known
22. Mrs. Priyadarshini Roy,
Age: 51 years, Occ: Not Known,
Both Nos. 21 & 22 R/at:

Flat No. 5, Building No. 08,
Konark Nagar, CHS LTD,
Viman Nagar, Dunkirline,
Pune- 411014.

23. Mr. Parmatma Prasad,
Age: Adult, Occ: Not Known.
24. Mrs. Pooja Gupta,
Age: Adult, Occ: Not Known,
Both Nos. 23 & 24 R/at:
C-1/1004, Colonade,
S. No. 25/1A,26/1,
Kharadi, Pune- 411014.
25. Mr. Rahul Kumar Singh,
Age: 35 years, Occ: Not Known.
26. Mrs. Ruchita Shaligram Bakoliya,
Age: 33 years, Occ: Not Known,
Both Nos. 25 & 26 R/at:
Flat No. 09, Building No. C-2,
Punyadham Society, Tempo Chowk,
Wadgaonsheri, Pune- 411014.
27. Mr. Narendra Bhaskar Lagad ,
Age: Adult, Occ: Not Known.
28. Mrs. Supriya Wamanrao Navale,
Age: Adult, Occ: Not Known ,
Both Nos. 27 & 28 R/at:
Hasnapur Road, Behind Pravara

Bank, At Post. Loni Budruk, Tal.
Rahata, Loni Budruk,
Ahmednagar- 413736

29. Mr. Lakshit Chabda,
Age: 35 years, Occ: Not Known.
30. Mrs. Komal Arora,
Age: 32 years, Occ: Not Known,
Both Nos. 29 & 30 R/at:
Flat No. 6, Unique Enclave,
Sadesatra Nali, Hadapsar,
Pune- 411028.
31. Mr. Sujoy Dutta,
Age: 43 years, Occ: Not known.
32. Mrs. Saheli Dutta,
Age: 38 years, Occ: Not known,
Both Nos. 31 & 32 R/at:
S. No. 42/2/2A, Plot No. 5B,
Anand Mangal Society, Ganesh Nagar,
Jain Temple, Wadgaosheri,
Pune- 411014.
33. Mrs. Pooja Agarwal,
Age: 33 years, Occ: Not known.
34. Mr. Saurabh Shrivastav,
Age: 32 years, Occ: Not known,
Both Nos. 33 & 34 R/at:
B/1-1106, Tatva Apartment,

- Old Kharadi- Mundhawa Road,
Kharadi, Pune- 411014.
35. Mr. Priya Madhab Mohapatra,
Age: 35 years, Occ: Not known.
36. Mrs. Priyanaka Lekan,
Age: 33 years, Occ: Not known,
Both Nos. 35 & 36 R/at:
Trupti Sada, Nimidhi,
Paradeep gadh, Jagatsinghpur,
Odisa- 754141.
37. Mrs. Priya Sagar Jaju,
Age: 32 years, Occ: Not known.
38. Mr. Sagar Shamsunder Jaju,
Age: 33 years, Occ: Not known,
Both Nos. 37 & 38 R/at:
A/206, Sidhivinayak Park,
Ashoka Marg, Ganesh Babanagar,
Nashik- 411011.
39. Mr. Kapil Vijay Kulkarni,
Age: 36 years, Occ Not known.
40. Mr. Ketan Vijay Kulkarni,
Age: 38 years, Occ: Not known,
Both Nos. 39 & 40 R/at:
Flat No. A3, Radhika Vihar,
Kesnand Road, Wagholi,
Pune- 412207.

41. Mrs. Maya Ashish Oza,
Age: 33 years, Occ: Not known.
42. Mr. Ashsih Rajaram Oza,
Age: 35 years, Occ: Not known,
Both Nos. 41 & 42 R/at:
A1-201, Runwal Seagal Twonship
Handewadi Road, Hadapsar,
Pune- 411028.
43. Mrs. Shradha Madhur Rathi,
Age: 36 years, Occ: Service,
44. Mr. Madhur Babulalji Rathi,
Age: 37 years, Occ: Service,
Both Nos. 43 & 44 R/at:
36, Sarthak, Indramani Housinng
Society, Near Anand Park Bus Stop,
Wadgaon Sheri, Pune- 411014
45. Mr. Amar Vishwas Mane,
Age: 33 years, Occ: Not known.
46. Mrs. Snehal Bajirao Shinde
Age: 31 years, Occ: Not known,
Both Nos. 45 & 46 R/at:
S. Nos. 191, Nagpur Chal, Airport
Road, Post Office, Yerwada, Pune-
411006
47. Mr. Amol Dattatray Todkar,
Age: 37 years, Occ: Not known.

48. Mrs. Sangita Sudam Ghavte
Age: 34 years, Occ: Not known,
Both Nos. 47 & 48 R/at:
S. No. 41/5, Jai Housing Society,
Jai Gas Agency, Wadgaonsheri,
Dunkerline, Pune- 411014.
49. Mrs. Jayesh Suhas Shimpi,
Age: 43 years, Occ: Not known.
50. Mrs. Ansha Jayesh Smimpi,
Age: 40 years, Occ: Not known,
Both Nos. 49 & 50 R/at:
Flat No. 602, A3, Prasad Nagar
Society, Sidhivinayak Temple,
Wadgaonsheri, Pune- 411014.
51. Mr. Ranjit Sambhaji Pisal,
Age: 31 Years, Occ: Not known
52. Mrs. Priyanka Shivaji Shende,
Age: 31 Years, Occ: Not known,
Both Nos. 51 & 52 R/at:
Trivenishwar Temple, Handi Nimgaon,
Bhalegaon, Ahemdnagar – 414603.
53. Mrs. Sneha Prasad Dhoot,
Age: 35 Years, Occ: Doctor,
54. Mr. Prasad Suresh Dhoot,
Age: 35 Years, Occ: Service,
Both Nos. 53 & 54 R/at: A/303, Bora

Ville Society, Kharadi, Pune – 411014.

55. Mrs. Nayana Paresh Wadodariya
Age: 56 Years, Occ: Not known,
56. Mr. Hirishraj Paresh Wadodariya,
Age: 31 Years, Occ: Not known,
Both Nos. 55 & 56 R/at: C5, Amrapali,
Society, Agakhan Palace, Nagar Road,
Yerwada, Pune – 411006.
57. Mr. Sandeep Rajendra Satpute,
Age: 38 Years, Occ: Not known,
58. Mrs. Bhagyashree Sandeep Satpute,
Age: 33 Years, Occ: Not known,
Both Nos. 57 & 58 R/at: Kalparaj,
Bungalow, Subhash Nagar, Behind
Sangli Akashwani Kendra, Kolhapur,
Sangli – 416416.
59. Mr. Anup Anil Peshwe,
Age: 41 Years, Occ: Not Known,
60. Mrs. Nidhi Anup Peshwe,
Age: 40 Years, Occ: Not Known,
Both Nos. 59 & 60 R/at: Flat No. 604,
A Wing, Vishalshrushti Residency,
Old Mundhwa Road, Wadgaonsheri,
Pune – 411014.
61. Mr. Ashok Bhagwanrao Nagargoje
Age: 55 Years, Occ: Not Known,

62. Mrs. Surekha Ashok Nagargoje,
Age: 45 Years, Occ: Not Known,
Both Nos. 61 & 62 R/at: Flat No. 3,
Vishal Corner, S. No. 34/1, Tingre
Nagar,Pune Sub Office, Indrayani
Nagar, Pune – 411032.
63. Mrs. Manisha Raghunath Dabhade
Age: 47 Years, Occ: Not Known,
64. Mr. Raghunath Sopan Dabhade,
Age: 54 Years, Occ: Not Known,
Both Nos. 63 & 64 R/at: 550,
Matoshree, Niwas, Baif Road,
Dabahde Wasti, Wagholi,
Pune – 412207.
65. Mr. Akshay Arvind Kayande,
Age: 31 years, Occ: Not known,
R/at: Plot No. 71, Yoheshwari Plaza,
Hanuman Nagar, Nagpur – 440009
66. Mrs. Smita Sitaram Somwanshi,
Age: 32 Years, Occ: Not known,
67. Mr. Ganesh Bhagwan Kakde,
Age: 34 Years, Occ: Not known,
Both Nos. 66 & 67 R/at: Building,
C-305B, Golmohar Paradise Homes,
Thite Wasti, Behind Zensar IT Park,
Kharadi, Pune – 411014.

68. Mrs. Poonam Prakash,
Age: 58 Years, Occ: Not known,
69. Mr. Mayank Prakash,
Age: 28 Years, Occ: Not known,
70. Mr. Animesh Prakash,
Age: 33 Years, Occ: Not known,
All Nos. 68 to 70 R/at: Flat No. 201 A,
Riverview Apartment, Lane No. 01,
Wadeshwar Nagar, Sainath Nagar
Road, Pune – 411014.
71. Mrs. Prachi Kumar,
Age: 35 years, Occ: Not Known,
R/at: Deepak Bungalow, Darshan Mall,
Shridhar Nagar, Chinchwad,
Pune – 411033.
72. Mrs. Ashwini Kailash Lendal,
Age: 31 Years, Occ: Not known,
73. Mr. Suhas Shreedhar Veer,
Age: 35 years, Occ: Not Known,
Both Nos. 72 & 73 R/at: Plot No. 1,
Gat No. 139/3, Chhatrapati Nagar,
Near Mahadeo Temple, Satra Parisar,
Aurangabad – 431001.
74. Mr. Manish Arvind Rashnikar,
Age: 50 years, Occ: Not Known,
75. Mrs. Meera Manish Rashnikar,

Age: 48 years, Occ: Not Known,
Both Nos. 74 & 75 R/at: S. No. 51/1,
House No. 06/847, Renuka Niwas,
Gharkool Housing Society, Plot No.
36/2 Behind Stella Marie School,
Wadgaonsheri, Pune – 411014.

76. Mrs. Kavita Vijay Shetty
Age: 43 Years, Occ: Not known
77. Mr. Vijay Muddanna Shetty
Age: 54 years, Occ: Not known
Both Nos. 76 & 77 R/at:
Flat No. 03, Navdurga Homes,
S. No. 46/7/8, Bombay Sapphires
Colony, Plot No. 6, Pune- 411014
78. Mr. Amit Anant Utekar
Age: 37 years, Occ: Not known
79. Mrs. Aparna Amit Utekar
Age: 36 years, Occ: Not known
Both Nos. 78 & 79 R/at:
Room No. 504, 2D Building,
Phase II, Mohan Tulsi Vihar Complex,
Hendrapada, Badlapur,
Thane, 421503
80. Mr. Himanshu Mishra
Age: 46 years, Occ: Not known
81. Mrs. Seema Mishra

Age: 44 years, Occ: Not known
Both Nos. 80 & 81 R/at:
Flat No. 06, Wing No. 'A',
Devkar Residency, S. No. 39/5/2/2
Near Dutta Temple, Wadgaonsheri,
Pune- 411014

82. Mr. Parag Satish Kolhe
Age: 30 years, Occ: Not known
83. Mrs. Mamta Satish Kolhe
Age: 54 years, Occ: Not known
Both Nos. 82 & 83 R/at:
Flat No. 504, Building No. C4,
Lake Town CHS LTD, S. No. 11,
Katraj, Pune- 411046
84. Mr. Kishore Shankar Pramanik
Age: 43 years, Occ: Not known
R/at: 23B, Kantilal Chal,
Shreyas Colony,
Near Arey Road, Next to
Satyam Park Hall,
Mumbai, Goregaon East- 400063
85. Mr. Avinash Ganpat Mahajan
Age: 33 years, Occ: Not known
R/at: Ram Temple Area,
Jalgaon Khurd, Jalgaon – 425002
86. Mrs. Sapna Gajendra Kedia

- Age: 31 years, Occ: Not known
87. Mr. Ankit Suresh Agarwal
Age: 32 years, Occ: Not known
Both Nos. 86 & 87 R/at:
Near Lahanuji Maharaj Temple,
Krushnarpan Colony, Sai Nagar,
Amravati- 444607
88. Mrs. Aparna Arvind Bhairat
Age: 36 years, Occ: Not known
89. Mr. Arvind Balaji Bhairat
Age: 39 years, Occ: Not known
Both Nos. 88 & 89 R/at:
301, Vedant Residency,
Raghvendra Nagar, S. No. 35, Plot
No. 45, Padmachaya Hsg Soc.,
Kharadi,Pune- 411014
90. Mr. Naveenkumar Patro
Age: 49 years, Occ: Not known
91. Mrs. Bhavani Lata V
Age:42 Years, Occ: Not Known
Both Nos. 90 & 91 R/at:
27-8-307/33, Survana Plaza,
Shreenagar Gajuwaka,
Vishakapatnam,
Andhra Pradesh- 530026.
92. Mr. Rahul Ramkumar Rathi,

- Age: 36 Years, Occ: Not Known,
93. Mr. Ramkumar Tolaram Rathi,
Age: 65 Years, Occ: Not Known,
Both Nos. 92 & 93 R/at:
S. No. 232/12, Flat No. 02,
Anand Avenue Society,
Sakore Nagar, Viman Nagar,
Airport Road,Pune- 411014.
94. Mr. Anil Kumar,
Age: 38 Years, Occ: Not Known,
95. Mrs. Nidhi Kumari,
Age: 37 Years, Occ: Not Known,
Both Nos. 94 and 95 R/at:
Flat No. 908, Selene Park, Sasane
Nagar, Kale Padal Road, Hadapsar
Pune 411028.
96. Mr. Pores Bejan Katrak,
Age: 68 Years, Occ: Not Known,
97. Mrs. Parveen Pores Katrak,
Age: 68 Years, Occ: Not Known,
Both Nos. 96 & 97 R/at:
Wing 'A', 302-303, Nirlep House,
GD Ambekar marg,
Behind Halfkin Institute, Village Parle,
Parle East, Mumbai 400012.
98. Mr. Darshan Dinesh Maru,

- Age: 37 Years, Occ: Not Known,
99. Mrs. Nilam Darshan Maru,
Age: 35 Years, Occ: Not Known,
Both 98 & 99 R/at:
B-12, Kashinath Bhavan, Old Agra
Road, Near Ratan Cinema, Narpoli,
Bhiwandi Vidyashram,
Bhiwandi Thane 421035.
100. Mrs. Anushree Das,
Age: 36 Years, Occ: Not Known,
R/at: Azad Colony, Bhatt Bazar,
Purniya, Bihar-854301.
- 101 Mrs. Madhuri Ashok Shah,
Age: 58 Years, Occ: Not Known,
102. Mr. Pratik Kumar Ashok Shah,
Age: 37 Years, Occ: Not Known,
Both 101 & 102 R/at:
B-402, Karan Athena, Sainath Nagar,
Wadgaonsheri, Near Kumar
Primavera, Pune 411014.
- 103 Kiran Kailash Shinde,
Age: 46 Years, Occ: Not Known,
R/at: S. No. 59, Rajeshree Colony,
Road No. 4A, Niramayee Hospital
Wadgaonsheri, Pune-411014.

... Respondents

Mr. Surel Shah, Senior Advocate a/w. Mr. Atharva Kamble and Mr. Ishaan Kapse i/b. Mr. Mrinal Shelar for the Appellants.

Dr. Abhinav Chandrachud (through VC a/w. Mr. Pavan Patil, Mr. Shubham Saraf, Mr. Darshan Patankar and Mr. Kartavya Ostwal for Respondent No. 1.

Ms. Manisha Jagtap for Respondent Nos. 2 and 3 – PMC.

CORAM: GAURI GODSE, J.

RESERVED ON: 2nd MAY 2025

PRONOUNCED ON: 10th JUNE 2025

JUDGMENT:

1. This appeal is preferred by defendant nos. 1 to 3 to challenge the interim order passed in a suit filed by respondent no.1. Respondent no. 1 is a purchaser of one flat in the building developed by the appellants. The agreement in favour of the plaintiff is executed under the provisions of The Maharashtra Ownerships Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (“MOFA”) by the appellants, i.e. defendant no. 1 as promoter. The partners of the promoter are joined as defendant nos. 2 and 3. Defendant no. 4 is the Pune Municipal Corporation [“corporation”], and defendant nos. 5 and 6 are officers of the corporation. Defendant no. 7 is the Architect of

the project. Defendant nos. 8 to 105 are the flat purchasers in the building in question.

2. The suit is filed to seek rectification in terms of the agreement and specific performance of the rectified agreement, and challenge the amendment to the sanctioned layout. Various other reliefs are prayed, including a declaration that the additional floors constructed as per the amended plan are illegal and thus also challenged the flat purchase agreements in favour of the flat purchasers of the additional floors. By the impugned order, the application filed by the plaintiff seeking the grant of a temporary mandatory injunction and a temporary prohibitory injunction is decided. The prayer for a temporary mandatory injunction to hand over possession of the suit flat is rejected. However, the trial court partly allowed the interim application and granted a temporary injunction restraining defendant nos. 1 to 3 (promoters) from carrying out any activity in the said project with respect to the additional construction and from dealing with or creating any further third party interest and handing over the possession to the flat purchasers of the additional floors. The defendant nos. 4 to 6 are restrained from sanctioning and revising any plan, issuing any permission, sanction with respect to additional construction not forming part of the disclosure made to the plaintiff,

and restrained defendant nos. 8 to 105 from creating any third-party interest.

3. The appeal was admitted vide order dated 21st January 2025, and by way of ad-interim relief, the order of temporary injunction was stayed. Being aggrieved by the ad-interim relief granted by this court, the plaintiff filed a Special Leave Petition in the Hon'ble Apex Court. The Special Leave Petition is allowed, the ad-interim relief granted by this court is vacated, and this court is directed to hear and finally decide the appeal. Hence, in view of the directions issued by the Hon'ble Apex Court, this appeal was heard for final disposal on 2nd May 2025.

Facts in Brief:

4. By a registered agreement dated 20th January 2017 entered into by defendant no.1 as promoter and the plaintiff as flat purchaser a residential flat No. 502, admeasuring 67.11 square meters carpet area on the 5th floor of Wing "A" of the housing complex known as Lotus Court ("the suit flat") was agreed to be sold to the plaintiff for a total consideration of Rs.43 lakhs. Out of the total consideration, an amount of Rs. 5,22,500/- was paid by the plaintiff as recorded in paragraph 8 of the agreement. The payment

schedule regarding balance consideration was agreed between the parties as per the Third Schedule attached to the agreement. Thus, the balance consideration out of the total consideration of Rs . 44,93,500/- was to be paid slab-wise as indicated in the payment schedule.

5. The plaintiff filed a suit to challenge the amendment to the sanctioned layout on the ground that it was altered without the informed consent of the plaintiff. The plaintiff also prayed for a declaration that certain clauses in the agreement were violative of the provisions of MOFA and, therefore, be declared to be duly rectified to the effect that such clauses do not exist in the agreement. The plaintiff thus prayed for specific performance of such a rectified agreement. Various other reliefs were claimed for declarations that the promoter would not be entitled to carry out construction and other activities based on the amended plan and would not be entitled to sell the flats constructed on the additional floors. The plaintiff also prayed for a decree for possession of his flat. The plaintiff further prayed for a declaration that the agreements in favour of the flat purchasers of the additional floors were illegal.

6. The plaintiff filed an application for a temporary injunction by seeking various temporary and mandatory injunctions, directing Defendant Nos. 1 to 3 to hand over the vacant and peaceful possession of the unit to the Plaintiff, and a temporary prohibitory injunction restraining Defendant Nos. 1 to 3 from carrying out any activity, including but not limited to construction/completion activity, in the said project with respect to the entire additional construction and from dealing with or creating any further third party interest and handing over possession under any head (e.g. soft, Interior, Furniture, Etc.) to the purchasers who purchased their respective units/flats in the said entire additional construction. A further injunction was prayed to restrain the Corporation and its officers from sanctioning and/or revising any plan and/or issuing any permission/s sanction/s and/or Completion Certificate in part or full in favour of the Defendant Nos. 1 to 3 with respect to the entire additional construction. The plaintiffs also prayed to restrain Defendant Nos. 8 to 105 from creating third-party interest on the basis of their respective agreements.

Submissions on behalf of the Appellants:

7. Learned senior counsel for the appellants submitted as follows:

(a) The initial commencement certificate was granted on 30th March 2007 for the construction of a total of 68 units. The commencement certificate was revalidated on 27th May 2011. Subsequently, the commencement certificate was received on 13th October 2015 for the construction of 62 units having Basement, Ground, Upper Parking, Podium, plus seven floors, with a height of 32.95 metres. By way of an agreement executed in favour of the plaintiff, he had agreed to have purchased the suit flat with an initial date for possession as 31st December 2019. On 4th May 2019, the promoter was permitted to construct 110 units having Basement Ground, Upper parking, Podium, plus 14 floors with a height of 49.95 meters. On 1st June 2022, a commencement certificate was issued for the construction of 126 units, having a Basement, upper parking, a Podium, plus 16 floors, with a height of 55.95 meters.

(b) After filing the suit, the plaintiff called upon the promoter by letter dated 25th November 2023, seeking possession of the suit flat. In view of the filing of the suit challenging the various terms and conditions of the agreement, the promoters replied to the plaintiff's notice intimating the cancellation of the

agreement with a refund. The promoter accordingly filed a Written Statement-cum-Counter Claim and prayed for a declaration that the agreement in favour of the plaintiff stands cancelled.

- (c) The trial court granted a temporary injunction by holding that the promoters violated their obligations under MOFA and the balance of convenience would lie in favour of the plaintiff. Paragraph 11 of the agreement contained various clauses of informed consent by the plaintiff. After the entire disclosure about the project, as contained in paragraphs 2 to 11, the specific and informed consents on behalf of the plaintiff with regard to the additional construction were recorded in the terms and conditions agreed between the promoters and the plaintiff. Thus, all the relevant clauses in paragraph 11 containing the informed consent of the plaintiff were sought to be challenged by the plaintiff in the suit. Clauses (c), (f), and (g) of paragraph 11 contain the informed consent of the plaintiff.
- (d) The plaintiff does not challenge the termination of the agreement by the promoter in the suit. Hence, the suit for

specific performance of a terminated agreement would not be maintainable. The notice dated 20th February 2023 issued by the plaintiff is suppressed by him at the time of filing the suit, hence, in the written statement the promoter specifically contended that the plaintiff by way of notice dated 20th February 2023 sent through Advocate Karan Parmar had called upon the plaintiff to hand over possession of the suit flat. The only grievance made by the plaintiff was regarding the extension of time for completion of the construction. The plaintiff thus never raised any grievance with regard to the informed consent for the additional construction. The notice issued by the plaintiff calling upon the promoters to hand over possession is completely silent about the challenge raised by the plaintiff in the suit. The conduct of the plaintiff indicates that the grounds raised in the suit are by way of an afterthought, when the plaintiff had already accepted the additional construction and had called upon the promoters to hand over possession of the suit flat.

(e) The cause of action pleaded by the plaintiff is of December 2022; however, the suit is filed on 14th September 2023, after the construction was completed and third-party rights were

already created in favour of the flat purchasers of the additional floors. The sanctioned plan of 27th May 2011 attached to the plaintiff's agreement shows the permissible tenements as 149 and the proposed tenements as 68. The consent of all the persons as contemplated under Section 7(1) (ii) was therefore obtained from the plaintiff as specifically recorded in paragraph 11 of the plaintiff's agreement. The clauses in the agreement showing the informed consent of the plaintiff are challenged for the first time in the suit. Thus, the prayer for a temporary injunction in the suit is based on the declaration sought by the plaintiff to challenge the clauses containing informed consent. Hence, the plaintiff seeking to challenge the clauses containing informed consent indicates that he was very well aware of the informed consent as contemplated under the provisions of MOFA. Thus, the clauses in paragraph 11 of the agreement containing the informed consent of the plaintiff are valid and subsisting unless the plaintiff succeeds in the prayers in the suit seeking to challenge the clauses. Hence, without considering the nature of the suit and the peculiar prayers seeking specific performance of the rectified agreement, which was based on

the challenge to the clauses of the informed consent, the trial court has granted a temporary injunction by also completely ignoring the rights created in favour of the flat purchasers who are also joined as party defendants.

(f) The occupation certificate upto the 14th floor has already been received, and tenements on the 15th and 16th floors have already been sold. Out of the total 120 tenements, the promoter has already sold 110 tenements. Thus, considering the nature of the dispute raised by the plaintiff, the trial court was required to consider the three golden rules for the grant of a temporary injunction, which has resulted in drastic consequences in the facts of the present case. He submits that the trial court has completely ignored the three basic principles of prima facie case, balance of convenience and irreparable loss.

(g) The sanctioned plan attached to the plaintiff's agreement and the relevant clauses in the agreement clearly indicate disclosure of the full potential of the land under development. All the necessary approvals granted by the competent authorities upheld the additional construction, hence there is

no substance in the grievance raised on behalf of the plaintiff that the additional construction would hamper the structural integrity of the building. Admittedly, no changes have been made to the common spaces and amenities as agreed in the terms and conditions of the plaintiff's agreement.

(h) To support his submissions, learned senior counsel for the appellants relied upon the legal principles regarding informed consent as settled in the following decisions:

*(a) Jayantilal Investments vs. Madhuvihar Co-op Housing Society and Others.*¹

*(b) Manratna Developers, Mumbai vs. Megh Ratan Co-operative Housing Society Ltd, Mumbai and Others.*²

*(d) Zircon Venture Co-operative Housing Society Ltd., Lohagaon, Pune vs. Zircon Ventures, Pune and Others.*³

*(e) Ambalal Sarabhai Enterprise Limited vs. KS Infraspace LLP Limited and Another.*⁴

*(f) Lakeview Developers vs. Eternia Co-operative Housing Society Ltd.*⁵

1 (2007) 9 SCC 220

2 2009 (2) Mh.L.J. 115

3 2014 (4) Mh. L. J. 481

4 (2020) 5 SCC 410

5 2015 SCC OnLine Bom 3824

*(g) Dosti Corporation, Mumbai vs. Sea Flama Co-operative Housing Society Ltd. Mumbai and Others*⁶

*(h) Madhuvihar Co-operative Housing Society, Mumbai and Others vs. Jayantilal Investments, Mumbai and Others*⁷.

(i) Learned senior counsel for the appellants thus submitted that the conduct of the plaintiff does not deserve any discretionary relief as envisaged under Order XXXIX Rule (1) and (2) of the CPC. He submits that the principle of delay defeats equity would fairly apply to the facts of the present case. He submits that in any event, suppression of issuance of notice in January 2023 calling upon the promoters to hand over possession of the suit flat, without making any grievance about the additional construction, the plaintiff is not entitled to any discretionary relief as granted by the trial court.

(j) After the amendment of MOFA by insertion of Section 7A, if the promoter gets approval from the planning authority for additional structure or building, the purchaser cannot object to the additional structure. In the case of *Jayantilal Investment*, it

⁶ 2016(5) Mh.L.J. 102

⁷ 2011(1) Mh.L.J. 641

is held that in the absence of consent of flat purchasers, the promoter cannot raise additional structure without sanction of the modified plan. In the present case, since additional structure has come up after the sanction of the local authority, no express consent was necessary from the flat purchasers.

(k) The plaintiff has miserably failed to prove any prima facie case, a balance of convenience, or irreparable loss to him. It is a well-established position of law that before granting a temporary injunction, the applicant has to satisfy the three basic principles of a prima facie case, balance of convenience and irreparable loss. In the facts of the present case and the conduct of the plaintiff, he is not entitled to the injunction granted by the trial court. The trial court has erroneously held that irreparable loss would be caused to the plaintiff. The trial court has completely ignored that the promoter has invested a large amount in developing the property to its full potential and that defendant no. 8 to 105 have invested their hard earned money for purchasing flats and thus if the defendants are restricted at this stage by way of temporary injunction granted by the impugned order, irreparable loss would be caused to the promoters as well as the flat purchasers and the loss

cannot be compensated in terms of money. Hence, the impugned order deserves interference by this court.

Submissions on behalf of the Respondent No.1 (Plaintiff):

8. The submissions made by the learned counsel for the plaintiff are as follows;

a) The entire complexion of the project has changed in view of the additional construction in terms of the amended plan. The promoter does not deny the plaintiff's factual averments in the written statement. The trial court considered the plaintiff's specific contention regarding the change in the nature of the amenities while granting the interim injunction.

b) On the aspect of legal position regarding informed consent, learned counsel for the plaintiff relied upon paragraphs 14 and 15 of the decision of *Jayantilal Investment*. Only in the event of constructing an additional building, informed consent from the flat purchasers will not be necessary. However, in view of section 7(1)(ii) of MOFA, the informed consent of flat purchasers would be necessary in the event any additional construction is proposed in the same building, which amounts to a change in the nature of the building. A separate consent

may not be necessary only when there is a specific disclosure in the agreement regarding any proposed change or addition to the building.

c) In the plaintiff's agreement, the disclosure regarding the FSI potential is 4921.53 sq. meters. However, by way of amended plans, the same is increased to 11575.14 sq.mtrs. Thus, it is incumbent upon the promoter to disclose the full development potential. To support his submissions, learned counsel for the plaintiff relied upon the legal principles in paragraph 18 of the decision of *Jayantilal Investment*.

d) The term 'prior consent' would include disclosure of everything by the promoter. On the ground of the blank consents as recorded in the suit agreement, the promoter is not entitled to carry out changes in the building by adding floors, which would amount to a change in the complete complexion of the building. The full and complete disclosure, even with regard to the phases of the project, is to be made in the agreement. The additional floors would mean that the amenities available to the flat purchasers would be required to be shared with almost double the number of occupants in the

building, which is unfair to the plaintiff, who was put on notice that the amenities would be shared by the occupants of only the ground plus six floors.

e) In the facts of the present case, the clauses in paragraph 11 of the agreement would amount to a blanket consent, which is contrary to the provisions of MOFA. Hence, the legal principles settled by this court in the case of *Madhuvihar CHS* squarely apply in favour of the plaintiff. The legal principles settled in the decision of *Manratna Developers*, relied upon by the learned senior counsel for the appellants, are distinguished in the decision of *Lakeview Developers*. Considering the legal principles in the decision of *Lake View Developers* and *Dosti Corporation*, the legal principles settled in the decision of *Manratna Developers* would not be of any assistance to the arguments raised on behalf of the promoter. In the decision of *Malad Kokil Co-operative Housing Society vs. The Modern Construction Co. Ltd.*⁸, this court held that if the floor space index is utilised by the promoter elsewhere, then the promoter is required to furnish to the flat purchasers with all the detailed particulars in respect of such utilisation of

8 (2012) 46 BOM C.R. 476

the FSI. So far as the residual FSI in the plot or layout is concerned, it is not consumed by the promoter and will be available to the promoter only till the registration of the society. The promoter is therefore not only required to make disclosure concerning the inherent FSI, but also required to declare whether the plot in question in future is capable of being loaded with additional FSI/TDR. This court held 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 project scheme for any one building or multiple buildings. Therefore, in the absence of disclosure of the project's full potential, the clauses in paragraph 11 of the plaintiff's agreement would amount to taking a blanket consent contrary to the legal principles settled by this court in the case of *Madhuvihar CHS*.

- f) Therefore, in the present case, in the absence of complete and full disclosure, the promoter would not be entitled to construct additional floors, which would adversely affect the rights created in favour of the plaintiff. The obligation as contemplated under MOFA is to be performed by the developer. Hence, the termination letter issued after the filing

of the suit would not be relevant for deciding the prayers for an interim injunction. The suit was filed on 14th September 2023, and the promoter issued the termination on 27th November 2023. Therefore, it will always be open to the plaintiff to challenge the illegal termination. Hence, on the ground of termination not being challenged at this stage, the plaintiff cannot be denied the relief of a temporary injunction.

g) Learned counsel for the plaintiff, therefore, submits that the view taken by the trial court is plausible. Hence, in view of the legal principles settled by the *Wander Ltd. vs. Antox India (P) Ltd⁹* the plausible view taken by the trial court may not be interfered with in this appeal only on the ground that a different view would be possible.

Analysis and conclusions:

9. I have considered the submissions made on behalf of both parties. I have perused the papers of the appeal. The following dates and events would be relevant for considering whether the plaintiff would be entitled to a discretionary relief of temporary injunction:

9 1990 (Supp) SCC 727

- (a) 20th January 2017: An agreement is executed under MOFA for purchasing the suit flat based on the commencement certificate dated 13th October 2015 for the construction of 62 out of the permissible units of 126.

- (b) 4th May 2019: Commencement Certificate is issued for constructing 110 units.

- (c) 1st June 2022: Commencement Certificate is issued for constructing 126 units based on the initial permissible units.

- (d) 2017-2020: The plaintiff claims to have visited the construction site periodically to see the updated construction.

- (e) December 2022: The plaintiff claims to have visited the construction site for the first time after the COVID-19 lockdown from March 2020. Plaintiff pleads he learnt about the construction of higher floors in December 2022.

- (f) January 2023: According to the promoter, the plaintiff issued notice through his Advocate calling upon

the promoter to handover possession of the suit flat. It is pertinent to note that the plaintiff made no grievance about the additional construction in his notice issued through his Advocate in January 2023. It is further pertinent to note that the plaintiff has not disclosed the issuance of such notice in the plaint.

(h) 14th September 2023: The plaintiff filed the present suit seeking to challenge the relevant clauses in paragraph 11 of the suit agreement containing informed consent.

(i) 9th November 2023: The occupation certificate up to the 14th floor is granted.

(j) 25th November 2023: The plaintiff called upon the promoter to provide information about the occupation certificate received and also sought possession of the suit flat.

(k) 27th November 2023: The promoter intimated the plaintiff about cancellation of the suit agreement with refund.

(l) Admittedly, the suit agreement in favour of the plaintiff is for a total consideration of Rs. 42 lakhs, and according to the promoter, the remaining consideration amount to be paid till date is Rs. 27 lakhs.

(m) 16th July 2024: The trial court decided the interim application for a temporary injunction and granted various injunctions restraining the promoter as well as the flat purchasers of the additional floors.

10. To decide whether the plaintiff is entitled to an interim injunction, it is necessary to understand the legal position based on which the plaintiff is seeking an interim injunction. Learned counsel for the plaintiff has mainly relied upon the decision of this court in the case of *Madhuvihar CHS*, to support his submissions that the construction carried out pursuant to the sanctioned amended plans without the informed consent of the plaintiff is in breach of the provisions of MOFA.

11. In view of the unamended Section 7 of MOFA, consent was attached to the concept of additional structure. 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 the Maharashtra Act 36

of 1986. The Hon'ble Apex Court in the decision of *Jayantilal Investments*, held that 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. The Apex Court held that 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 and that the object behind the said amendment was to give maximum weightage to the exploitation of development rights which existed in the land. It is further held that 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 and 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.

12. After discussing Sections 3, 4 and 10 of MOFA, the Hon'ble Apex Court in the case of *Jayantilal Investments* held that it was necessary 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. It was further held 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. The Hon'ble Apex Court thus, held that the 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 and 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. Thus, it was held that 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. The Hon'ble Apex Court remitted the matter to the High Court for reconsideration on merits.

13. Accordingly, this Court decided the matter in the case of *Madhuvihar CHS*. In the meantime, the Hon'ble Division Bench of this Court, by relying upon the legal principles settled by the Hon'ble Apex Court in the case of *Jayantilal Investments*, decided the case of *Manratna Developers*. The Hon'ble Division Bench held that in the facts of that case, the parties had agreed that the promoters would be developing the property in a phased manner, the entire FSI/TDR was to be used by the Promoter to the exclusion of the flat purchasers or the Society that they would form, and the disclosure in regard to TDR was not made in the agreement, as the very concept of TDR was non-existent in the year 1988. It was thus, held as under in paragraph 12;

“12. Taking over all view of the matter what surfaces is that the defendants have constructed only one wing of a building which is very small portion even according to the original sanctioned plan. Rest of the property could not be developed though was intended to be developed in phased manner, as according to the appellants, the premises were not vacated by the tenants. However, after a portion of the plot was vacated by the tenants

residing in the dilapidated structures, it became feasible for the defendants to develop the property upto its permissible full potential and thus modified plans in accordance with the building bye-laws were submitted to the Corporation. The local authority, on being satisfied that the defendants were not constructing anything in excess of what is permissible according to the potential of the property, sanctioned the modified plan and after approval of the modified plans, the appellant was proceeding to carry out the construction which was objected to by the flat purchasers of erstwhile lower arm of Building "A". *The amenities in the form of recreation ground are, in no way, reduced. The consent of the flat purchasers after amendment of section 7 and insertion of section 7A is not necessary if additional structures/buildings are to be raised after obtaining approvals or sanction from the' Municipal Corporation. The balance of convenience lies in favour of the defendants, as restraining them from carrying out the proposed construction which has been sanctioned by the Municipal Corporation, would cause undue hardships and inconvenience and lock the property for years. We are also of the view that the agreements entered into with the flat purchasers clearly postulate the development of the property in phased manner, according to the sanctioned plans or modified plans sanctioned in due course of time. Thus, prima facie, the appellants/defendants appear to have complied with the requirement of true and full disclosure as envisaged by Clauses 3 and 4.* There could not have been disclosure in regard to TDR, as the very concept of TDR was not prevailing when the agreement was entered into in the year 1988 and had been

introduced by the Development Control Rules in the year 1991. Hence, the appellants/defendants can not be blamed on that count.”

emphasis applied by me

14. This court in the decision of *Madhuvihar CHS*, referred to the findings in *Manratna Developers* and held that it would not be applicable to the facts of the case as the plaintiff, who was flat purchaser in lower arm of building “A”, was in occupation of small portion of the building and the scheme was for development of the property in a phased manner and not one building scheme; hence, the Division Bench prima facie found that the amenities in the form of recreation ground, etc. are nowhere reduced and, as such, in the facts of the case, as no prima facie case was made out, interfered with the order of injunction. In the case of *Madhuvihar CHS*, the project was never intended to be a project for phased development, hence this Court held that on the interpretation of section 7(1) of the MOFA, reference to other judgments except to the judgment of *Ravindra Mutenja vs. Bhavan Corporation*¹⁰, would not be necessary, in view of the law explicitly laid down by the Apex Court in the judgment of *Jayantilal Investments* while remanding the

¹⁰ 2003 (5) Mh. L.J. 23

matter. The applicability of the judgment in the case of *Ravindra Mutenja* was considered, as was directed by the Supreme Court in the judgment of remand.

15. This Court in the judgment of *Madhuvihar CHS*, held that the learned Single Judge in the decision in the case of *Ravindra Mutenja*, in unequivocal terms held that once the building shown in the approved plan submitted in terms of the regulations under an existing scheme, has been completed and possession handed over, the builder/owner cannot contend, that because he has not formed the society and has not conveyed the property under the MOFA, he is entitled to take advantage of any additional F.S.I. that may become available because of subsequent events and that once the building is completed and the purchasers are put in occupation in terms of plan 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. The relevant findings in paragraphs 32 and 33 in the case of *Ravindra Mutneja*, were reproduced, which read as under :

“32. The real issue as has been noted earlier is what is the stage up to which the developer/owner can put up additional construction after the building in terms of the registered plan has

been constructed and occupied. In my opinion, 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. That 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 layout plan already approved. Subsequent amendment of the layout plan after the building plan is registered under MOFA, without the consent, prima facie, of the flat purchasers would not be permissible. It may be possible to accept that the development plan could be modified as long as the right of the purchasers and the benefits which they are entitled to including recreational and open areas are not effected by the revised development plan. ***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.***

33. In the instant case, the building completion certificate for the plaintiff's building, was issued in the year 1997. The

builder/owner defendant Nos. 1, 3 and 4 had to put up the construction, based upon the permission/license granted. The defendant Nos. 1, 3 and 4 had to construct the building and to convey the title by sale deed in terms of Rule 9. If property had been conveyed, prima facie the remaining FSI or FSI which become subsequently available on the facts of the case, would be to the society to whom the land had to be conveyed. The record shows that the building was approved in December, 2001. It cannot prima facie, be said that defendants Nos. 1, 2, 4 and 5 have any rights under which they are entitled to put up an additional building contrary to section 7A of the Act.”

(emphasis applied in the judgment of Madhuvihar CHS)

16. This court, in the decision of *Madhuvihar CHS*, thus, held in paragraph 42 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 date of issue hereof, or before B.C.C. whichever is earlier.”

It is not in dispute, that in furtherance to the statutory obligation enjoined upon the promoter, in view of section 10 of the MOFA and Rule 8 of the Rules, though the promoter had initially taken steps for forming of Co-operative Society, the matter was not taken to logical end. As such, the flat takers were required to move the appropriate authority for registration of the Society. Accordingly, the competent authority granted registration to the plaintiff No. I/Society on 20th January, 1993. It is further to be noted that though the appeal was preferred by the promoter against the said order, the appeal was rejected. It could, thus, be seen that the promoter was under the statutory obligation in view of section 11 of the MOFA read with Rule 9 of the Rules, to execute conveyance in favour of the Society, within a period of four months. *In view of the judgment of the learned Single Judge of this Court, in the case of Ravindra Mutenja (cited supra), once the building shown in the approved plan was completed and possession handed over and the time frame prescribed for registration of the Society and conveying land to the Society is over, the promoter was legally precluded from putting up further construction without consent.”*

emphasis applied by me

17. This court, after referring to various other decisions of this court, decided the question as to whether the consent which is deemed to be given in the clauses of the agreement would be a valid consent for the purposes of section 7 of the MOFA. It was held 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. In the facts of the case in *Madhuvihar CHS*, it was therefore concluded that the promoter was statutorily obliged to execute conveyance in favour of the Society within a period of 4 months from 20th January, 1993 i.e. the date of registration of the Society; therefore the additional structure which was not forming part of the original layout in the year 1985, could not have been constructed without consent of the Society.

18. The decision in the case of *Lakeview Developers*, relied upon by the learned counsel for the plaintiff, would not be of any assistance to the plaintiff in view of the different facts of this case.

After discussing all the legal principles by referring to the various judgments, including the judgments discussed in the above paragraphs, this court in the decision of *Lakeview Developers*, in view of the facts of that case, 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 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. Thus, even in the decision of *Lakeview Developers*, the stage of construction for utilising the additional benefits of FSI and the obligation of the promoter to convey the land to society are considered as important factors.

19. Even the decision of this court in the case of *Dosti Corporation*, would not be of any assistance to the plaintiff. This Court, in the said decision, was dealing with a challenge to the order of a temporary injunction granted in favour of a society against the developer restraining from putting up any construction work upon or over the suit properties till disposal of the suit and further restraining from using any FSI as available in the suit properties or part thereof

till disposal of the suit. The relevant facts of the case were that the development of the suit property commenced on 27th May, 2004 and continued till 31st March, 2008. During the stage of the construction on the suit property, various parties entered into agreement for sale with the defendant No. 1 for purchase of various flats in the four wings. A complex comprising four wings was completed, and four separate co-operative housing societies connected by a common basement podium were registered. A completion certificate was also issued. Thereafter, the developer applied for modification of the plan and had applied for construction of a public parking lot without obtaining consent of the flat purchasers. In these facts, this court after discussing the well-established legal principles held that the members of the society were already put in possession of their respective flats and the subsequent amendment of the lay out plan could not have been effected without the consent of the flat purchasers and such amendment without such consent was not permissible and thus not binding on the flat purchasers.

20. This court in the decision of *Malad Kokil CHS*, held that the very purpose that the entire layout should be presented to the flat

purchasers and that there should be full disclosure made to him is with the purpose that he should be aware as to what is the entire layout of the scheme in which he is going to purchase the property. It is held that if the original layout shows only the proposed building of ground + one, the flat taker would purchase the same with the knowledge that only few more persons are likely to join the Society and there would not be much effect on the facilities, amenities etc. provided to the members of the Society; however, if a structure of ground + one is converted in a towering structure of 28 storeys, the entire scenario would change and the number of additional members that would reside on the said plot would increase by substantial number, thereby putting an additional load on the infrastructure, amenities, facilities etc. available on the said plot. This court thus held that if this is permitted, the very purpose of requiring a developer to make full and complete disclosure would stand frustrated. This court held 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. It is important to note that even in this case, the construction was complete, the society was registered and the suit was filed by the society for a decree to convey the property and for a declaration that the concessions/relaxations granted to the developer are bad in law, malicious etc. and thus prayed for a declaration that commencement certificate was null and void. In this suit, a temporary injunction was granted restraining the defendants from making any construction.

21. In all these decisions, the suit was filed after the construction was complete and the society of the flat purchasers was formed and registered. Hence, the issue of informed consent was examined in the context of full disclosure about the potentiality of the permissible construction. In the decision of *Zircon Venture CHS*, this court held that the sanction of the layouts is evidenced by the certificate issued by the Architect and therefore, the Promoter/Developer would be entitled to put up the building as per the layout sanctioned by the Local Authority. With reference to the contention in respect of the pressure on the infrastructure on account of the construction of the building this court held that the said objection cannot be

countenanced once there is a true and full disclosure of the complete scheme by the Developer and that it was only when there is no full disclosure that the said contention would be available to the flat purchasers. The facts of the scheme of development had been disclosed and the sanctions envisaged the construction of 12 buildings and therefore, it was held that it was not a case where the nature of construction has undergone a drastic change, and therefore the judgment in *Malad Kokil CHS* would have no application regarding the contention about the pressure on infrastructure. It was thus held as under:

“The prior consent of the flat owner would not be required if the entire project is placed before the flat taker at the time of agreement and that the builder puts an additional construction in accordance with the layout plan, building rules and Development Control Regulations. It is, thus, manifest that if the promoter wants to make additional construction, which is not a part of the layout which was placed before flat taker at the time of agreement, the consent as required under section 7 of the MOFA, would be necessary.”

22. Thus, considering the well-established legal principles as discussed above, it is necessary 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-à-vis his obligations to form the society and convey the right, title and interest in the property to that society. 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 and the 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 and 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. Thus, 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. Thus, the issue of disclosure of the full potential of the project and developability, and the informed consent of the flat

purchaser cannot be decided on any straightjacket formula, in as much as, these issues would depend upon the facts of each case. The concept of informed consent cannot be stretched beyond the statutory obligations of the Promoter as contemplated under Sections 3 and 4 of MOFA and form V, which prescribes the format of the agreement.

23. In the present case, the flat purchase agreement discloses the revised layout and revised commencement certificate dated 27th May 2011 and 13th October 2015 for the construction of multi-storied buildings, amenity space, open space and the area under internal roads. Paragraphs 1 to 5 of the agreement disclose the specifications of the complex. Paragraph 11 of the agreement discloses the particulars regarding the explicit consent of the plaintiff regarding the promoter's entitlement to consume FAR and Transferable Development Rights, extended construction and additional floors. The clauses in paragraph 11 also provides for the developer's right to exploit the full potentiality of development even if possession of units is handed over and the entitlement of the promoter to make changes in the elevation and specifications of the

complex, on a condition that such changes shall not materially affect the internal plan and location of the unit sold to the plaintiff.

24. It is important to note that the layout of the 2015 annexed to the plaintiff's agreement discloses the complete area statement, including permissible tenements of 123 out of which 62 tenements are shown as proposed. Thus, the clauses providing the plaintiff's consent in paragraph 11 of the agreement are to be read with reference to the area statement and the tenement statement in the approved layout annexed to the agreement. It is further pertinent to note that the relevant clauses containing the plaintiff's consent, recorded in paragraph 11 of the agreement, are challenged by the plaintiff in the suit. The challenge to the amended plans of 2019 on the ground that it is without the plaintiff's consent is based on the substantive prayer to challenge the clauses containing the plaintiff's consent to enable the developer to utilise the full potential of the land, including extension to the construction and additional floors. Thus, the plaintiff signed the agreement, with full knowledge about the scope of the project and he consenting for the promoter to utilise the full potentiality of the project. However, by filing the suit, the plaintiff for the first time raised objection to the clauses of the

agreement containing his consent and sought to withdraw his consent. Prima facie, the clauses in agreement contain the plaintiff's informed consent as contemplated under Section 7 of the MOFA, and the appellants/defendants appear to have complied with the requirement of true and full disclosure, as contemplated under Section 3 of MOFA.

25. A perusal of the reasons recorded in the impugned judgment indicates that the trial court has misinterpreted all the relevant terms and conditions of the agreement. The trial court has completely ignored that the substantive prayer in the suit is to challenge the clauses in paragraph 11 of the suit agreement, which pertain to the informed consent of the plaintiff for the proposed additional construction. A perusal of the reasons recorded by the learned trial Judge does not indicate an appreciation of the disclosure made in the plaintiff's agreement.

26. The learned trial judge has reproduced the changes made in the updated and revised plans. However, the learned Judge has ignored the contents of the agreement and the plan attached to the agreement, which indicates that the permissible units in the building in which the plaintiff has purchased the flat are 126 flats. Learned

Judge has emphasised the commencement certificate and the total flat area, including amenities, and the open space. However, the learned Judge has not considered the effect of the specific clauses in paragraph 11 of the suit agreement, which also disclose the proposed increase in the floors. Without recording any prima facie findings on the effect of the specific clauses in paragraph 11 of the plaintiff's agreement, the learned Judge has held that the consent of the plaintiff and other flat purchasers was not taken before the alteration. Learned Judge emphasized the construction of additional floors; however, completely ignored the effect of the specific clauses in paragraph 11 of the plaintiff's agreement.

27. Based on the subsequent changes and alterations in the sanctioned plan, the learned Judge has erroneously concluded that the promoters have obtained sanction illegally and colluded with the municipal corporation and its officers. There is absolutely no basis or foundation for the findings in the impugned judgment for concluding that there was collusion with the corporation and its officers. In the absence of any pleadings and prima facie indication of any collusion, the reasons recorded in the impugned judgment amount to perverse findings.

28. Without considering the effect of the clauses in paragraph 11 of the plaintiff's agreement, the learned Judge observed that the suit raises triable issues. The conclusion recorded by the trial court that there is a prima facie case made by the plaintiff and that the balance of convenience lies in his favour, is based on the reason recorded by the trial court that triable issues are raised in the suit. Only raising a triable issue would not entitle the plaintiff to any temporary injunction that has drastic consequences.

29. The learned Judge completely ignored the rights created in favour of the flat purchasers of the additional floors who were added as party defendant nos. 8 to 105. The impugned judgment is bereft of any discussion on the conduct of the plaintiff in not disclosing his Advocate's letter in January 2023 seeking possession without raising any grievance about the additional construction and seeking an injunction at a belated stage despite having knowledge about the construction of additional floors. The relevant clauses in paragraph 11 of the plaintiff's agreement disclose the future potential development of the building in which the flat is purchased by the plaintiff. The learned trial judge has completely ignored the effect

and drastic consequences of the injunction on the rights created in favour of the flat purchasers of the additional floors.

30. The learned Judge has not even referred to the total consideration of the plaintiff's flat and the balance payments yet to be made by the plaintiff towards the total consideration. Thus, the impugned order's ultimate effect is granting a drastic injunction in favour of the plaintiff who has not yet paid the entire consideration amount. The plaintiff has not pleaded his rights in respect of the additional TDR or FSI available to the developer. Admittedly, the stage of formation of a co-operative society and registration of the society has not yet arisen in the facts of the present case. Hence, the reasons recorded by the trial Judge in paragraphs 61 and 62 are irrelevant regarding the plaintiff's grievance in the suit.

31. Learned Judge in paragraph 63 of the impugned judgment further recorded findings on the duties discharged by the architect and the alleged collusion with the corporation in permitting illegal construction. Thus, the learned Judge has proceeded on the footing that the construction carried out by the promoter is an illegal construction. The reasons regarding collusion between the promoter, the municipal corporation and the architect are ill-founded

and imaginary. Thus, the reasons recorded for the grant of an injunction that has drastic consequences are without any prima facie findings on the entitlement of the plaintiff to the nature of the prayers made in the suit. The grant of injunction, even if in aid of final reliefs, cannot be granted without recording findings on any prima facie case made by the plaintiff, the balance of convenience and irreparable loss.

32. Learned Judge held that the irreparable loss and balance of convenience is in favour of the plaintiff by completely ignoring the plaintiff's conduct and the execution of the agreements in favour of the flat purchasers on the upper floors. Nothing is indicated in the impugned judgment and order about the irreparable loss that would be caused to the flat purchasers of the additional floors. Thus, the reasons recorded in the impugned judgment for granting an injunction with drastic consequences, without satisfying the basic principles of the grant of a temporary injunction, are therefore perverse and contrary to the well-settled legal principles. By the impugned order, the promoter/developer is restrained from carrying out any activity in the project with respect to the additional floors, creating any further third-party interest or handing over possession

to the purchasers of the respective flats of the upper floors. The impugned judgment and order do not deal with the aspect as to whether the rights of defendant nos. 8 to 105 need to be protected for the loss that would be suffered in the event the plaintiff fails in the suit. The drastic injunction granted by way of the impugned order without recording any findings on the balance of convenience and irreparable loss that would be suffered by defendant nos. 8 to 105 would not be sustainable.

33. Prima facie, the clauses in the agreement executed in favour of the plaintiff, particularly the clauses in paragraph 11, would not amount to any blanket consent. The challenge to the specific clauses containing informed consent itself indicates that the plaintiff was well aware of the informed consent for utilisation of the full potential of the land under development, including the proposed additional units as reflected in the sanctioned layout of 2015 attached to the plaintiff's agreement. Admittedly, there is no alteration in the flat, or there is no alteration or change in the common amenities to be provided as per the agreement and the sanctioned layout. Hence, the impugned order granting an injunction with drastic consequences would not be sustainable.

34. The plaintiff has not yet challenged the termination of his agreement. Though it may be open to the plaintiff to amend his plaint to challenge the termination, it cannot be ignored that at the stage of deciding the prayer for interim injunction, there is no challenge to the termination of the agreement. The plaintiff has prayed for rectification of the clauses in the agreement pertaining to the disclosure of the project and the plaintiff's consent, which prima facie amounts to full disclosure and informed consent. The plaintiff has made a peculiar prayer for specific performance of such rectified agreement.

35. The learned trial judge ignores the legal principles settled by the Hon'ble Apex Court in the decision of *Ambalal Sarabhai Enterprises* for the grant of the interim injunction. The Hon'ble Apex court held that the grant of relief in a suit for specific performance is itself a discretionary remedy, and a plaintiff seeking a temporary injunction will therefore have to establish a strong prima facie case on the basis of undisputed facts. It is further held that the conduct of the plaintiff will also be a very relevant consideration for the purpose of injunction, and the discretion has to be exercised judiciously and not arbitrarily. The Hon'ble Apex Court held that the principles in

Wander Ltd., prescribe a rule of prudence only, and much will depend upon the facts of each case.

36. In the present case, the learned trial judge has not only ignored the vital facts but also misappreciated the legal principles; thus, the trial court has exercised the discretion arbitrarily and the reasons to grant the injunction are perverse and based on unreasonable grounds. Therefore, the impugned judgment and order would require interference by this court. Hence, the decision in the case of *Wander Ltd.* would not be of any assistance to the plaintiff.

37. In the facts of the present case, the legal principles relied upon by the learned counsel for the plaintiff, referring to the various judgments discussed above, would not assist the plaintiff's arguments. For the reasons recorded above, I am satisfied that the impugned judgment and order granting the injunction is not sustainable. The appeal is therefore allowed by passing the following order:

- (i) The impugned judgment and order dated 16th July 2024 passed by the learned 15th Joint Civil Judge

Pune below Exhibit 5 in Special Civil Suit No. 1869 of 2023 is quashed and set aside.

(ii) The application filed below Exhibit 5 is rejected.

[GAURI GODSE, J.]

Digitally
signed by
RAJESHWARI
RAMESH
PILLAI
Date:
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