

(2025) 04 BOM CK 0236

In the Bombay High Court

Case No : Writ Petition No.4272 Of 2025

Krupa Zubin & Anr

APPELLANT

Vs

Divisional Joint Registrar, Cooperative Societies & Ors

RESPONDENT

Date of Decision : 01-04-2025

Acts Referred:

Constitution of India, 1950 — Article 227
Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 — Section 4, 4(1A)(v), 10(1), 10
Maharashtra Cooperative Societies Act, 1960 — Section 154B(2)

Citation : (2025) 04 BOM CK 0236

Hon'ble Judges : Amit Borkar, J

Bench : Single Bench

Advocate : Sean Wassoodew, Rupesh Mandhare, Ashna Shah, Sulbha Chipade, Paritosh Jaiswal, Rubil Vakil, Sahil Gandhi, Dimple Vora, Riddhi Shah, Markand Gandhi & Co.

Final Decision : Dismissed

Judgement

Amit Borkar, J.

1. By the present Writ Petition, invoked under Article 226 and Article 227 of the Constitution of India, the Petitioners, who are purchasers of premises in a building constructed and developed under the provisions of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short, "MOFA Act"), have assailed the legality and validity of the order passed by the Competent Authority under Section 10 of the said Act, whereby a co-operative housing society of flat purchasers has been registered.

2. The facts giving rise to the present writ petition, as set out by the petitioners, are briefly enumerated herein below for the sake of clarity and completeness:

3. It is the case of the petitioners that respondent No.3- Company became the owner of the immovable property bearing C.T.S. Nos. 15, 16 and 16(1),

admeasuring in aggregate 780.60 square metres, situated at Sion-Trombay Road, within the revenue limits of Village Deonar, Taluka Kurla, Mumbai, together with the building and superstructures standing thereon. It is submitted that under the Articles of Agreement dated 1st June 1982, respondent No.3–Company conferred development rights in respect of the said property upon M/s. Creative Builders, a proprietary concern engaged in the business of construction and development (hereinafter referred to as "the Developer").

4. Pursuant to the said development agreement, the Developer was authorised and entitled to construct a residential building on the said land and to enter into agreements for sale of individual flats with prospective purchasers. It is further the case of the petitioners that under the terms and conditions of such agreements executed between the Developer and the flat purchasers, a specific stipulation was incorporated requiring the purchasers to become members of respondent No.3–Company. Clause 37 of the said agreement, in particular, obligated each purchaser to execute and sign such applications, forms, declarations, papers, and documents and to do all acts, deeds, and things as may be necessary or required for the purpose of acquiring membership of respondent No.3–Company.

5. It is submitted that on the strength of the said development agreement, the Developer undertook construction of a building known as "Meghdoot" on the suit property, and upon allotment and occupation of the respective flats, the purchasers were inducted as members of respondent No.3–Company. The petitioners, in particular, purchased shares along with rights in the flat from the predecessor-in-title on 29th December 2006 and, accordingly, claim to be members of respondent No.3–Company by virtue of such purchase.

6. On or about 5th March 2024, certain flat purchasers preferred an application bearing No.6 of 2024 before the office of the District Deputy Registrar, Co-operative Societies, seeking registration of a co-operative housing society under the relevant provisions of the Maharashtra Co-operative Societies Act, 1960. By an order dated 28th March 2024, the said authority, upon consideration of the application and the documents placed on record, was pleased to allow the said application and granted registration to the newly formed society, now arrayed as respondent No.4 herein.

7. Aggrieved by the said decision of the District Deputy Registrar, the petitioners preferred a statutory appeal before respondent No.1, challenging the order of registration of respondent No.4–Society. However, vide order dated 11th March 2025, the said appeal came to be dismissed, thereby affirming the registration of the said society. Being dissatisfied with the impugned appellate order and the consequential registration of respondent No.4–Society, the petitioners have invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking appropriate reliefs.

8. The substratum of the grievance raised by the Petitioners is as follows:

(a) That the Petitioners had entered into agreements with the Developer under Section 4 of the MOFA Act, and the said agreements, in unequivocal terms, provided that the purchasers shall become members of a company already established and controlled by the Developer. It is the specific contention of the Petitioners that in view of the binding contractual stipulation, they had no discretion or liberty to choose any other mode of association, and accordingly, they became members of the said company and continued to exercise their rights as such for a substantial period spanning over four decades, namely, 43 years;

(b) That although it is a matter of record that the said company came to be dissolved and de-registered in the year 2018, the Petitioners assert that notwithstanding such de-registration, the said company continued to function in practice. It continued to discharge essential functions such as collection of maintenance charges, execution of various agreements on behalf of the purchasers, and generally acted in furtherance of its original objectives. Therefore, according to the Petitioners, for all practical and functional purposes, the said company remained in existence, and the dissolution thereof did not extinguish its operational character;

(c) That the applicants before the Competent Authority, who sought registration of the co-operative society under Section 10 of the MOFA Act, did so by suppressing material facts. In particular, it is urged that the existence and subsequent de-registration of the said company, of which the Petitioners were members, was not brought to the notice of the Authority. The Petitioners contend that this act of suppression of material particulars, which were crucial and germane to the adjudication of the application under Section 10, reflects adversely on the bona fides of the applicants. On this count, it is the submission of the Petitioners that the applicants had disentitled themselves from claiming any equitable or discretionary relief under Section 10 of the MOFA Act, and consequently, the registration of the society deserves to be quashed and set aside.

9. In order to properly appreciate the submissions urged on behalf of the Petitioners, it is necessary to consider the statutory scheme of the MOFA Act, in particular, the mandate of Section 4(1A)(v) thereof. The said provision stipulates that the agreement for sale to be entered into between the promoter and the flat purchaser shall contain specific particulars, including "the precise nature of the organisation to be constituted of persons who have taken or are to take the flats." The emphasis, therefore, is on the formation of a new and independent organisation comprising the flat purchasers themselves.

10. A purposive and harmonious construction of clause (v) of Section 4(1A) makes it abundantly clear that what the Legislature contemplates is the constitution of a new organisation by and amongst the flat purchasers who have acquired rights in the building. The language employed does not envisage, nor does it permit, the inclusion of a clause in the agreement compelling such

purchasers to join an existing organisation or company already constituted by the promoter. The object and spirit behind Section 4(1A)(v) is to ensure that flat purchasers are vested with autonomous rights in the management and administration of the building in which they reside. This legislative intent underscores the obligation of the promoter to facilitate the formation of a co-operative society or similar body by the purchasers and to convey the title and hand over management to such body. MOFA is a consumer-protection statute, and any clause that has the effect of perpetuating the promoter's control or divesting the purchasers of their statutory rights must be viewed with circumspection.

11. In the present case, the Petitioners rely on a clause in the agreement which compelled them to join a company already in existence at the behest of the developer. Such a clause, in my considered view, is repugnant to the provisions of Section 4(1A) (v), and cannot override the statutory mandate. Permitting enforcement of such a clause would render nugatory the very object of the MOFA Act, which seeks to confer upon the purchasers the right to self-governance and independent control over their premises.

12. Furthermore, from the material on record, it stands established that the company, of which the Petitioners claim to be members and which was originally established by the developer, was dissolved and stood de-registered as of the year 2018. A certificate evidencing such de-registration was produced before the Appellate Authority, and has been duly referred to and relied upon in the appellate order. The objection that the certificate was not produced before the Competent Authority does not hold merit, inasmuch as the proceedings before the Appellate Authority are in the nature of a continuation of the original proceedings.

13. It is a settled position in law that an appellate forum has the power to take into consideration additional material if the same is germane to the controversy and necessary in the interest of justice. In the present case, the certificate of de-registration was crucial to the issue of whether the company in question could be treated as the organisation contemplated under Section 4(1A)(v). In my opinion, such evidence goes to the root of the matter and was rightly considered by the Appellate Authority.

14. In view of the admitted position that on the date of filing of the application under Section 10 of the MOFA Act, and even on the date of the order passed thereon, the said company was no longer in existence, the residual statutory right of the flat purchasers to initiate the process of registration of a co-operative housing society stood revived. There is no dispute that the building comprises eight residential units, and more than five flat purchasers have joined in the application seeking registration of the society. Thus, the numerical requirement stipulated under Section 10 of the MOFA Act read with Section 154-B-2 of the Maharashtra Cooperative Societies Act, 1960, stands satisfied.

15. The next contention urged on behalf of the Petitioners is that the applicants, who sought registration of the co-operative society, were guilty of suppression of a material fact, namely, that a company had already been registered by the developer pursuant to Clause 37 of the Agreement for Sale, and that such alleged suppression had a direct bearing on the merits of the matter. It is the Petitioners' submission that the registering Authority was misled by this omission, thereby vitiating the entire process undertaken under Section 10 of MOFA Act.

16. In this context, it is necessary to reiterate that the Petitioners place reliance on Clause 37 of the Agreement which, according to them, mandated their compulsory association with an already existing company floated by the developer. As observed hereinabove, such a clause, in my considered view, is wholly repugnant to the statutory intent underlying Section 4(1A)(v) of the MOFA Act. The Legislature, while enacting the said provision, intended to empower the purchasers of flats with the right to constitute an independent and self-governed body, whether a co-operative society, company, or association, comprising the flat purchasers themselves. The use of the expression "to be constituted" in Section 4(1A)(v) clearly indicates that the organisation contemplated must be a prospective one, to be formed by the purchasers, and not an existing body unilaterally imposed upon them.

17. The historical fact of registration of a company by the developer in the facts of present case is of no legal consequence. In the present case, the admitted position is that the company referred to in Clause 37 of the agreement stood dissolved and de-registered as of the year 2017. Thus, as on the date of the application and on the date the order was passed under Section 10, such a company did not exist in the eyes of law. Once the company ceased to exist, there remained no legal impediment in the way of the flat purchasers, acting through the majority, to exercise their statutory right to seek registration of a co-operative housing society.

18. Insofar as the allegation of suppression of the fact of formation of the company is concerned, it is well-settled that for any non-disclosure or suppression to be material, it must go to the root of the matter and must have the effect of causing prejudice or misguiding the Authority. Suppression of material facts which affect the adjudication of rights of the parties can vitiate proceedings. However, in the instant case, the suppression alleged is in relation to a company that had ceased to exist at the relevant time and whose existence, even when operative, was contrary to the spirit and letter of the statute. In that view of the matter, the alleged suppression cannot be regarded as material so as to vitiate the order passed under Section 10.

19. It is pertinent to note that Section 10(1) of the MOFA Act expressly empowers the Competent Authority to direct registration of a society if the promoter has failed to take steps to do so within a reasonable time. The provision is a remedial mechanism aimed at protecting the collective rights of flat

purchasers who are otherwise at the mercy of the promoter's inaction. MOFA imposes statutory obligations upon the promoter to form a co-operative society or company and transfer management to the purchasers, and where such promoter fails to act, the flat purchasers may, by majority, move the Authority for redressal.

20. In the present case, the certificate of de-registration of the said company has been brought on record, and it is undisputed that as on the date of the application and the passing of the impugned order, the said company had ceased to exist. Hence, the grievance of the Petitioners regarding alleged suppression of the formation of the company is entirely academic and bereft of legal consequence. Once the company ceased to exist, no right could be said to have survived either in favour of the Petitioners or the developer on the basis of such entity.

21. For the foregoing reasons, I am of the view that the alleged non-disclosure of the historical fact of formation of the company is of no relevance or consequence while considering an application under Section 10 of the MOFA Act. The Competent Authority was concerned with the factual position existing on the date of the application, and once it was established that the company was not in existence and that the majority of the flat purchasers supported registration of a co-operative society, the Authority was justified in granting such registration.

22. The next submission advanced on behalf of the Petitioners is that the purchasers of flats had, at the relevant time, accepted membership of the company formed by the developer and, even subsequent to the dissolution of the said company, continued to accept services such as maintenance and entered into agreements in the name of the said company. It is thus contended that such conduct demonstrates acquiescence and constitutes a waiver of their rights to seek registration of a co-operative society under Section 10 of MOFA Act.

23. In my considered opinion, this contention does not hold merit in light of the statutory framework under the MOFA Act. As observed earlier, the scope of inquiry contemplated under Section 10 of the MOFA Act is limited to specific parameters, namely: (i) the relevant stipulation under Section 4 of the MOFA Act regarding the nature of the organisation to be formed; (ii) whether the promoter has failed to form such an organisation within a reasonable time; and (iii) whether the purchasers applying for registration of the society meet the eligibility criteria under the Maharashtra Co-operative Societies Act, 1960, the Rules framed thereunder, and the applicable bye-laws.

24. Once the Competent Authority, upon appreciation of the material on record, has returned a finding of fact that the application for registration of the society satisfies the requirements under the aforesaid provisions, the past conduct of the applicants —such as continuing to accept maintenance services or execute agreements in the name of the erstwhile company—cannot defeat their statutory rights. Such acts may at best reflect a temporary arrangement in the

interregnum but do not confer any vested or overriding right either on the company or the Petitioners to defeat the statutory scheme of the MOFA Act.

25. MOFA is a beneficial legislation enacted to protect flat purchasers, and the promoter cannot be permitted to defeat the object of the statute by creating alternate legal structures or devices contrary to the scheme envisaged under the Act. In the present case, even assuming that certain acts were carried out in the name of the company, such acts are of no legal consequence once it is established that the company is no longer in existence and that the statutory conditions under Section 10 are otherwise satisfied.

26. At this juncture, learned counsel for the Petitioners has submitted that the Petitioners have instituted independent proceedings before the National Company Law Tribunal (NCLT), challenging the order of dissolution of the said company, and that in view of the pendency of such proceedings, the Competent Authority under the MOFA Act ought to have refrained from passing any order on the application for registration of the society.

27. This submission is equally without merit. The remedies under the MOFA Act and those available under the Companies Act or before the NCLT operate in entirely distinct and independent legal spheres. The inquiry under Section 10 of the MOFA Act is concerned with the rights of flat purchasers to form a co-operative society, and such inquiry is governed by the provisions of the MOFA Act and the Maharashtra Co-operative Societies Act, 1960. On the other hand, the jurisdiction of the NCLT in proceedings concerning dissolution or restoration of a company is governed by the Companies Act, 2013.

28. It is a well-settled principle that parallel remedies under different enactments can be pursued simultaneously so long as there is no express statutory bar. The pendency of proceedings before the NCLT, which pertain to the legality of the company's dissolution, cannot be construed as a fetter on the statutory right of flat purchasers to seek registration of a society, particularly when the existence of the company, as on the date of the application, stood extinguished. Statutory authorities must act in consonance with the purpose of the statute under which they are empowered, and cannot await adjudication by an authority acting under a different statute unless expressly mandated.

29. In the absence of any statutory interdict, the Authority under the MOFA Act was well within its jurisdiction to proceed with the inquiry and decide the application under Section 10. The mere pendency of the appeal before the NCLT cannot render the order passed by the Authority invalid or premature.

30. Save and except the contractual clause (which is now held to be inconsistent with the statutory provision), and the allegation of suppression of facts (which has already been dealt with), no other tenable objection has been raised against the registration of the society. It is not the Petitioners' case that the members forming the society are ineligible under the provisions of the Maharashtra Co-operative Societies Act, 1960, or that the formation of such society violates any

rule, bye-law or statutory requirement. In this view of the matter, and having regard to the object and scheme of the MOFA Act, I am of the considered opinion that the clause in the agreement relied upon by the Petitioners is void and inoperative being contrary to the mandate of Section 4(1A)(v). The challenge to the registration of the co-operative housing society, therefore, is without merit and cannot be sustained in law.

31. The impugned order, therefore, suffers from no infirmity warranting interference under Article 226 of the Constitution of India. Hence, there is no merit in the writ petition. The writ petition, accordingly, stands dismissed. No costs.