

(2025) 07 BOM CK 0292
In the Bombay High Court
Case No : Writ Petition No.12297 Of 2022

M/s S & M Enterprises

APPELLANT

Vs

Palazzo Building No. 1 CHSL & Ors

RESPONDENT

Date of Decision : 28-07-2025

Acts Referred:

Maharashtra Ownership Flats (Regulation of the promotion of Construction, Sale, Management And Transfer) Act, 1963 — Section 3, 4, 7, 7(1)(i), 7(1)(ii), 10(1), 11(3), 11(5)

Citation : (2025) 07 BOM CK 0292

Hon'ble Judges : Milind N. Jadhav, J

Bench : Single Bench

Advocate : G.S. Godbole, Sumit Kothari, S.S. Panchpor, Aashay Rabade, Pradnya Borhade, Shyam Taori, Hamid Mulla

Final Decision : Disposed Of

Judgement

Milind N. Jadhav, J

1. Present Writ Petition takes exception to the order dated 17.06.2022 passed by the District Deputy Registrar, Pune in Application No.466 of 2021 filed by Respondent No.1 – Society under Section 11(3) of the the Maharashtra Ownership Flats (Regulation of the promotion of Construction, Sale, Management And Transfer) Act, 1963 (for short 'MOFA').

2. By order dated 17.06.2022, the District Deputy Registrar, Pune allowed the Application filed by Respondent No.1 – Society and granted deemed conveyance in respect of the subject property bearing CTS No.1707(P) of C.S. No.1, Pune and Survey No. 256/1+1+1/2+2+3+4/1+4/2+5/1+5/2+6/1+6/2+6A/1+6A/2+7A+7B/1+7B/2/1/2 for land admeasuring 3422 square meters and constructed area of 3648 square meters out of total 3880 square meters originally situated in Village Hadapsar, Taluka Haveli and District Pune (for short "Suit property") in favour of Society which is admittedly owned by the Petitioner – Promoter / Developer. Pursuant to the above order Deemed Conveyance is also registered by

Respondent No.1 - Society on 01.07.2022. Petition is filed on 12.10.2022.

3. Briefly stated facts germane for adjudication of the present Writ Petition are as follows:-

3.1. Petitioner – Promoter / Developer being owner of suit property was desirous of developing it in a phase-wise manner and in furtherance thereof applied for obtaining various approvals, sanctions, NOCs, Certificates, permissions etc. from the Pune Municipal Corporation and Statutory Authorities for carrying out the proposed development by exploiting its fullest potential. Accordingly on 23.05.2013 Petitioner – Promoter / Developer received Commencement Certificate and approval for construction of first building consisting of stilt + 9 floors on plinth area of 3170 square meters. On 19.11.2013 Petitioner – Promoter / Developer obtained non-agricultural permission in respect of the suit property. Thereafter Petitioner – Developer handed over reserved and designated H.C.M.T.R. area, Development Plan road area and water body area to the Competent Authority which were reserved in the suit property and in lieu thereof became entitled for additional FSI / benefits.

3.2. On 11.01.2016 Petitioner – Promoter / Developer revised the building plan of first building and got sanctioned a revised Commencement Certificate from Pune Municipal Corporation for building consisting of stilt + 11 floors with total 55 units, 24 two-wheeler parking spaces and 58 cycle parking spaces for 3648.23 square meters constructed area. Members of the Society did not object to this development. Promoter completed the said construction.

3.3. After completion of first building nomenclatured as Palazzo, on 25.08.2016 Petitioner – Developer executed registered Agreements under Section 4 of the MOFA with prospective flat purchasers / members of Respondent No.1 – Society. On 20.07.2017 Petitioner – Promoter / Developer received part Occupation Certificate for 55 flats in building No.1.

3.4. On 18.11.2019 Petitioner – Promoter / Developer submitted further proposal for development to the Pune Municipal Corporation for construction of additional building comprising of ground + 18 storeys on the balance suit plot by exploiting the balance potential of the entire plot as available in accordance with law. CC was sanctioned accordingly in 2021 by the Corporation.

3.5. In the interregnum, members of building No.1 filed Application under Section 10(1) of MOFA for formation of Co-operative Housing Society for 55 members of 'Palazzo' building before the Deputy Registrar and the Society was registered on 26.06.2020.

3.6. On 31.08.2021, Respondent No.1 – Society issued notice to Petitioner – Promoter / Developer calling upon it to execute Conveyance Deed to Respondent No.1 – Society in respect of land below its building alongwith the superstructure and building thereon from and out of the suit property with proportionate undivided share in the common areas, amenities, facilities and open spaces, etc.

3.7. On 12.11.2021 Pune Municipal Corporation issued revised Commencement Certificate to Petitioner – Promoter / Developer for development of the additional building as per its building proposal dated 18.11.2019 in accordance with law.

3.8. On the same date i.e. 12.11.2021, Respondent No.1 – Society filed Application No.466 of 2021 before the District Deputy Registrar, Pune seeking Deemed Conveyance for plot area of building No.1 i.e. 3422 square meters alongwith constructed area of 3648.19 square meters. On 24.12.2021, Petitioner – Promoter / Developer filed reply to the Application showing readiness to execute the conveyance in favour of the Society but only after completion of the additional building on the suit plot.

3.9. By order dated 17.06.2022, District Deputy Registrar, Pune allowed the Application for Deemed Conveyance filed by Respondent No.1 – Society for plot area of 3422 square meters alongwith constructed area of 3648.19 square meters to the detriment of Petitioner - Promoter / Developer. Pursuant to the aforesaid, Deemed Conveyance is registered in favour of Respondent No.1 – Society on 01.07.2022.

3.10. Hence, the present Petition.

4. Mr. Godbole, learned Senior Advocate for Petitioner - Promoter / Developer has drawn my attention to clause 15 of the MOFA Agreement executed between the parties (Promoter / Developer and flat purchaser / member of Respondent No.1 - Society) and would submit that the said clause clearly stipulates that Developer shall transfer all rights in favour of the Society only on completion of all buildings in the project on the suit plot.

4.1. He would submit that in any event the Competent Authority is bound by the Government Resolution dated 22.06.2018 which in clause 4 thereof states that certificate for Deemed Conveyance in such a case can only be issued for the proportionate area and not for the entire area as development is in subsistence. He would submit that as provided in the Government Resolution, Competent Authority ought to have conducted the exercise of ascertaining only the area required to sustain the constructed structure of Palazzo Building for granting conveyance and thereafter directed to convey the said area beneath the building standing thereon alongwith undivided proportionate area as available after completing construction of the 2nd building. He would submit that however in the present case Competent Authority has given a complete go-by to the above exercise prescribed in the Government Resolution and has granted Deemed Conveyance in respect of 3422 sq. mtrs. plot area out of the suit property to the detriment of the Petitioner and jeopardizing Petitioner's right to complete development on the balance suit property in accordance with law so as to permit the Developer to exploit the balance potential thereon.

4.2. He would submit that the Competent Authority failed to follow the mandatory provisions of Section 11(5) of MOFA which require the Authority to issue notice to the Promoter to show cause as to why unilateral instrument

presented by the Society for registration should not be registered as Deemed Conveyance despite the Petitioner having appeared before the Competent Authority to oppose grant of Deemed Conveyance to Society at this stage and when development of the 2nd building was underway and grant of conveyance to the Society or the Apex Society was never objected to by Petitioner.

4.3. In support of his submissions, he has referred to and relied upon the ratios of the following decisions of the Supreme Court and this Court:-

(i) Kashish Park Reality Pvt. Ltd. and Anr. Vs. State of Maharashtra and Anr. 2021(3) Mh.L.J. 778;

(ii) Prestige Garden A-1 CHSL Vs. State of Maharashtra and Ors. Writ Petition No.7668 of 2023 decided on 28.03.2024 and

(iii) Runwal Paradise Vs. District Deputy Registrar Co-op Societies and Ors. 2024 SCC OnLine Bom 2041.

4.4. In view of his above submissions, he would urge the Court to allow the Writ Petition and quash and set aside the order dated 17.06.2022 passed by the District Deputy Registrar and cancel the registered Conveyance for the entire suit plot dated 01.07.2022.

5. PER CONTRA, Mr. Panchpor, learned Advocate for Respondent No.1 – Society would at the outset submit that order granting Deemed Conveyance would not disentitle the aggrieved party to file a Regular Civil Suit before the Civil Court seeking appropriate relief pertaining to title in respect of the entire suit property and the Competent Authority under MOFA is not empowered to adjudicate upon disputed questions of facts raised by Petitioner. He has referred to and relied upon the decision of the Supreme Court in the case of Arun Kumar H. Shah Vs. Avon Arcade Premises CHS Limited 2025 SCC OnLine SC 828 to contend that proceedings under Section 11(3) of the MOFA are summary in nature and do not conclusively decide title of property and the aggrieved party can always maintain a Civil Suit for establishing its right and therefore deemed conveyance granted to the Society need not be interfered with at this stage.

5.1. He would submit that Petitioner - Promoter / Developer herein has already filed Regular Civil Suit No.1715 of 2022 before the Civil Judge Senior Division for permanent injunction on the basis of its title to the suit plot with pleadings that order granting deemed conveyance is void for the reasons stated in the said Suit and has pleaded herein in the Petition a positive assertion that Petitioner - Promoter / Developer is entitled to commence additional construction on the balance plot being owner of the suit plot. He would submit that thus Petitioner - Promoter / Developer has claimed ownership in respect of the disputed portion of the suit property and sought permanent injunction against Society. He would submit that when the Civil Court is already seized of the proceedings, this Court should refrain from interfering in the order of Deemed conveyance. He would submit that except for the averment by the Petitioner – Promoter / Developer

that they are entitled to construct on the balance portion of the suit property in a phase-wise manner, it is not contended by them that the order of Deemed Conveyance is manifestly illegal or otherwise.

5.2. He would submit that Petitioner – Promoter / Developer’s contention that as per terms of MOFA Agreement with flat purchasers / members of the Society, they have already given their consent in terms of Section 7 of MOFA and necessary disclosure in the brochure has been made by him and hence in the light of such consent contained in the Agreement and disclosure made in the brochure, Petitioner – Promoter / Developer is entitled to construct the additional building as per the sanctioned revised layout of 2021 cannot be countenanced as the alleged brochure is not forming a part of the Agreement entered between Petitioner - Promoter / Developer and flat purchasers of Palazzo building and the same was also not referred to in their respective Agreements and there is nothing on record to indicate that the said brochure was shown to the flat purchasers at the time of execution of their Agreement or their consent was ever taken based upon the said brochure.

5.3. He would submit that Government Resolution dated 22.06.2018 especially clause 2(C)(vi) therein stipulates that if there are many buildings on one plot and has separate co-operative societies of each building and if construction of some of them is incomplete then while granting Deemed Conveyance to the completed building, undivided share of the occupancy rights in the proportionate area in proportion to the construction of the building of such society or ground coverage or plinth area or open space, common services and facilities ascertained / computed should be and if there is more than 1 society in a layout and out of them only 1 society has made an Application and other societies are not cooperating for conducting the measurement, then the Competent Authority is competent to direct the Society to conduct measurement by an approved architect on the panel of the authority and call for report regarding area held by the Society.

5.4. He would submit that on a bare reading of the aforesaid directions in the Government Resolution it is seen that it is applicable only in cases where there are more than 1 buildings on the same plot and construction of the other buildings is incomplete and other members of the buildings / Society are not co-operating for measurement of land. Hence he would submit that the said Government Resolution is not applicable to the facts of the present case for the reason that in the original layout of 2013 which was revised in 2016, the second building was never shown in the layout much less to state that construction of the second building is incomplete at the time of filing of the Application for Deemed Conveyance by Respondent No.1 - Society.

5.5. He would submit that reliance placed by Petitioner - Promoter / Developer on the 3rd layout of 2021 is misconceived in law since in the original layout the 2nd building was never disclosed and open 2 and 4 wheeler parking spaces were promised to be given to the flat purchasers alongwith the first building i.e.

"Palazzo" and hence they agreed to purchase the flats. He would submit that if the entire scheme including area information about prospective TDR / FSI is not disclosed to the members of the first building when they purchased their respective flats then the promoter loses his right to use any additional FSI that he would be entitled to since in the present case the original layout plan of building No.1 did not show proposed construction of building No.2 on the balance suit plot.

5.6. He would submit that requirement of issuance of notice under Section 11(5) is for the reason that in certain cases there may be a statutory requirement of obtaining prior permission or consent of the Authority before registration of the conveyance and the registering authority cannot register an instrument and unless such permission is obtained there may be a prohibition order of the competent Court from executing the conveyance. He would submit that as such there is limited scope of adjudication by the registering officer under Sub-section 5 of Section 11 and he does not have the power to go into the correctness or otherwise of the order of Competent Authority. He would submit that registering Authority is not the Appellate Authority over the Competent Authority and therefore mere non-issuance of notice by registering Authority under Section 11(5) of the MOFA would not vitiate registration of Deemed Conveyance as illegal.

5.7. In support of his submissions, he has referred to and relied upon the ratios in the following decisions of the Supreme Court and this Court:-

- (i) Noopur Developers Vs. Himanshu V. Ganatra 2010(7) Mh.L.J. 694;
- (ii) Dharampal Satyapal Ltd. Vs. Deputy Commissioner of Central Excise, Gauhati and Ors. (2015) 8 SCC 519;
- (iii) Dosti Corporation Vs. Sea Flama CHS Ltd. 2016 (5) Mh.L.J. 102 and
- (iv) Madhuvihar Co-operative Housing Society, Mumbai and Ors. Vs. Jayantilal Investments, Mumbai and Ors. 2011 (1) Mh.L.J. 641

5.8. In view of his above submissions and the judicial precedents he would urge the Court to dismiss the Writ Petition.

6. Heard the learned Advocates for the respective parties and with their able assistance perused the record and pleadings of the case. Submissions made by the learned Advocates have received due consideration of the Court.

7. In the present case, it is prima facie seen that Petitioner - Promoter / Developer has undertaken development of the suit property in 3 phases to utilize its entire potential. It is seen that layout of the buildings as desired to be developed is sanctioned by Pune Municipal Corporation by issuance of commencement certificate dated 23.05.2013 for the first phase, commencement certificate dated 11.01.2016 for the second phase and commencement certificate dated 12.11.2021 for the third phase on applications made by Developer. Insofar as development undertaken in the first phase is concerned, it pertained to

construction of first building out of two proposed buildings. First building comprised of nine floors initially. Thereafter in the second phase, two additional floors were planned and added to the first building after 3 years and it was extended upto eleven floors having a total of 55 flats. Thereafter it is seen that Developer filed plan for construction of the second building in 2019 vide application dated 18.11.2019 to the Corporation. Commencement certificate dated 12.11.2021 for the third phase was issued which is appended at page Nos. 102-105 of the Petition.

8. From the above it is prima facie seen that Petitioner desired to exploit the complete FSI / potential as available to him as Promoter / Developer in respect of the suit plot. It is seen that in the meanwhile when Application for the third phase of development (dated 18.11.2019) for seeking commencement certificate was pending before the Corporation since 2019, flat purchasers in the first building formed a Co-operative Housing Society which was in fact aided and assisted by the Petitioner - Promoter / Developer himself in accordance with law. This fact is undisputed. In 2021, however the Society of the members in the first building filed Application before the Competent Authority seeking deemed conveyance. This Application is dated 12.10.2021 and is appended at page Nos. 107-113 of Petition. On reading of the Application it is evident that Society asked for deemed conveyance of the area of the building No. 1 and constructed area admeasuring 3648.19 square meters only. The Competent Authority granted deemed conveyance out of the suit property for area admeasuring 3422 square meters and constructed area of 3648.19 square meters to Society. This grant of deemed conveyance is to the detriment of Petitioner and it has virtually jeopardized further development undertaken on the balance plot under the third phase for which Promoter is granted commencement certificate for construction of the second building having legally admissible sanctioned area for development in accordance with law. This CC dated 12.11.2021 sanctioned takes into account the entire balance legally available potential FSI of the entire suit property available to the Owner - Promoter / Developer alongwith permissible FSI, TDR as available and entitled. Once that is the position rather the admitted position and a valid CC is sanctioned as per the Application for the third phase of development then balance development potential is duly available on the suit property and development proposed of the 2nd building to utilize the balance potential in the layout is required to be allowed and completed. Hence Deemed Conveyance granted to Society ought to have been restricted only to the constructed area of the building of the Society at this stage until the 2nd building was completed. Only after the 2nd building is completed, deemed conveyance for the undivided / proportionate land area can be granted either jointly or severally to both buildings or the Apex Society in accordance with law. That not having been done, what has happened is that conveyance of land area of 3422 sq. mtrs. out of suit property has been granted to the Society which is objected to by the Promoter / Developer vehemently due to objection raised by Society the further development of the second building cannot take place.

9. From perusal of the plans it is seen that building No.1 has plot area of 3422 square meters. It is comprising of an eleven storey building having constructed area of 3648.19 square meters on plot area of 3422 sq.mtrs. Total area of original plot is 3880 square meters. Out of the original plot area Promoter / Developer surrendered area for H.C.M.T.R., D.P Roads and Water Body to the Corporation and received additional benefits in lieu thereof for exploiting it on the balance suit property at the time of construction of 1st building. However Petitioner - Promoter / Developer is now constructing the 2nd building on the balance area of the plot by utilizing the entire balance potential out of the total suit property area for constructing the 2nd building in accordance with law which is duly sanctioned by Planning Authority (Corporation) in accordance with law which will have a total constructed area of 5438.33 square meters built-up area equivalent to 5217 P line carpet area in the second building. This 2nd building is proposed to be a 18 storey building standing next to building No.1. Deemed Conveyance is granted to the Respondent No.1 - Society for plot area admeasuring 3422 square meters and constructed area of 3648.19 square meters. Thus it is Petitioner's case that if Respondent No.1 -Society is declared to be the owner of plot - land area admeasuring 3422 square meters out of total original suit plot area admeasuring 3880 square meters at this stage by virtue of the Deemed Conveyance then Petitioner - Promoter / Developer will not be able to construct and utilize the balance potential on the land as available today for construction of its 2nd building proposed by Petitioner - Promoter / Developer. This is because the 2nd building is planned in proportion to the total suit plot area as available today by taking benefit of the TDR received pursuant to acquisition of the areas surrendered out of the total plot towards H.C.M.T.R., the 2 DP road areas and the water body area alongwith premium FSI being available to Petitioner - Promoter / Developer as per prevailing policy. To counter this, the only submission of Respondent No.1 - Society is that when Petitioner - Promoter / Developer proposed building plan during the 2nd phase it is in respect of the total area of the suit plot shown as 3648.19 square meters and it was therefore meant for the benefit of building No.1 only and therefore development of the 3rd phase i.e building No.2 is not permissible since according to Society there is no balance FSI available at all and neither consent of members of Respondent No.1 - Society has been obtained by Promoter - Developer for further development on the balance plot. This in short is the dispute between the two parties before me which is agitated vehemently by Mr. Panchpor.

10. Record presently placed before me however prima facie indicates the fact that Respondent No. 1 Society is aggrieved and dissatisfied with the Developer for various other reasons regarding construction of Building No. 1. According to the Society, Promoter / Developer has either not provided various amenities which ought to have been provided to them as promised in their respective registered agreements for sale or has provided sub-standard amenities which are not upto the mark, inter alia, pertaining to rain water harvesting system, fire fighting system, provision of sub-standard solar system, incomplete drainage

work, repeatedly changing the plan, misleading the Statutory Authorities about obtaining consent from the members of Society for further development, utilizing the entire fungible FSI of the said plot, still proceeding with unauthorized construction when FSI is not available, written consent of Society and members of the Society not having been obtained for further development undertaken on the suit land, not providing good and convenient club house, not providing landscape garden, not providing good children garden, not providing senior citizen katta, not providing piped gas, not providing effective security system, not providing decorative entrance lobby, not undertaking works pertaining to the twin roads and two gates of the Society, not repairing the compound wall of the Society wherever it is broken, not deciding the issue of site office finally, for sub-standard construction of Society building leading to leakage and seepage over the years, not providing separate gymnasium to Society, not carrying out fire audit, not resolving the issue of garbage dumped near the Society and several incomplete works having remained pending. In that regard Society has given a detailed letter highlighting a litany of complaints on aforesaid issues against the Developer on 03.02.2022 appended at page Nos. 124-135 of the Petition to the Municipal Commissioner and the Chief Engineer. This undoubtedly is a separate cause of action. It in any manner directly or indirectly cannot overlap the present issue at hand. But it clearly appears that the above issue is the precursor for the present issue.

11. Rather when the matter is argued before me by Mr. Panchpor, he has attempted to defend the order of deemed conveyance granted in favour of the Society for the area of the land therein on consideration which was in fact never argued before the Competent Authority. He would submit that the area mentioned in the agreement entered into with the members of the Society qua the suit plot is sought to be varied by the Petitioner - Promoter / Developer to his advantage for the third phase of development and he now cannot resile from the same and will have to abide by the same area which is stated in the agreement. That apart he would vehemently submit that it was duty of the Promoter / Developer to take individual consent of each of the members of the Society before proceeding with the third phase of development on the suit plot. The answer to the above submissions and arguments advanced by Mr. Panchpor clearly lie in the record of the case itself. Promoter / Developer has entered into identical individual agreements with flat purchasers respective members of the Society and some clauses of the said agreement are a direct answer to Mr. Panchpor's arguments. One such representative registered flat agreement dated 25.08.2016 between the Promoter / Developer and one member called Hanumandas Ramprasad Modani of the Society is appended at page Nos. 42-96 of the Petition. Both Advocates have informed me that identical 55 Agreements have been entered into with all the members of the Society. At page No. 49 of the Petition, recital Nos. 5, 6 and 7 of the said agreement read thus:-

"5. The Pune Municipal Corporation approved the plans, designs, specifications, elevation, sections and details of the building known as "The Palazzo" proposed

to be constructed by the Promoters on the Land consisting of stilt for parking and 9 upper floors containing residential flats and the Pune Municipal Corporation issued its Commencement Certificate No. CC/ 0565/13 dated 23rd May 2013 in respect thereof. The Pune Municipal Corporation approved the revised plans, designs, specifications, elevation, sections and details of the building proposed to be constructed by the Promoters on the Land consisting of stilt for parking and 9 upper floors containing residential flats and the Pune Municipal Corporation issued its Commencement Certificate No. CC/2820/13 dated 25th November 2013 in respect thereof. The Promoters have handed over the H.C.M.T.R Area, the Development Plan Road Area and the Water Body Area, which were located on the Land, to the Authorities, and, on the Floor Space Index of the Development Plan Road Area becoming available for utilization or consumption in the development and construction being carried out by the Promoters on the Land, the Promoters got approved the revised plans, designs, specifications, elevation, sections and details of the building proposed to be constructed by the Promoters on the said Land consisting of stilt for parking and 11 upper floors containing residential flats and the Pune Municipal Corporation issued its Commencement Certificate No. CC/3454/15 dated 11th January 2016 in respect thereof.

6. The Land together with the building known as "The Palazzo" being constructed thereon is hereinafter referred to as "the said Property and more particularly described in the First Schedule hereunder written. The building known as The Palazzo being constructed on the Land is hereinafter referred to as "the said Building".

7. The Promoters are proposing to carry out development and construction on the said Property by utilizing the Floor Space Index of the H.C.M.T.R. Area and the Water Body Area as well as Transferable Development Rights in the form of FSI purchased or acquired by the Promoters from elsewhere Including inter alla by constructing additional floors, additional wing/s/building/s and for these purposes the Promoters shall be entitled to and be at liberty to get further amended/revised plans sanctioned from the Pune Municipal Corporation and all approvals and sanctions from the Pune Municipal Corporation and other concerned authorities for carrying out such development and construction and carry out such development and construction Provided However and it is hereby expressly agreed that the area, location, dimensions and specifications of the flat agreed to be purchased by the Flat Purchaser/s are not affected or changed or modified in any manner and the Flat Purchaser/s give/s his/her/their/its consent to the aforesaid and the Flat Purchaser's/ Purchasers consent shall for all purposes be considered as the Flat Purchaser's/s' consent under the provisions of Sections 7(1)(1) and (ii) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963."

11.1. Thus, recital No. 7 is a complete answer to the defence raised by the Society which the learned Competent Authority has not considered at all despite

being specifically pointed out by the Petitioner.

12. Next clause 5 of the same agreement reads as follows:-

" 5. The Promoters hereby declare that at present the Floor Space Index available in respect of the said Property is 2817.21 square meters and the Transferable Development Rights in the form of FSI which can be utilized in the development and construction on the said Property is 1690.32 square meters and that no part of the floor space index of the said Property has been utilized by the Promoters elsewhere for any purpose whatsoever.

In case any part of the said Floor Space Index of the said Property will be utilized by the Promoters elsewhere, then the Promoters shall disclose all such particulars in respect of such utilization of such part of the said Floor Space Index by it in the Deed of Conveyance to be executed in pursuance of this Agreement. In case the Floor Space Index in the locality is increased or otherwise the Promoters acquire Floor Space Index on acquisition of Transferable Development Rights in respect of some other property (TDR) as per the provisions of the Development Control Regulations/Rules or any other statutory Regulations relating to the development of properties or acquire any additional property or properties in the locality and amalgamate the same with the said property and thereby more Floor Space Index becomes available for utilization to the Promoters on the said property then the Promoters shall be entitled to consume the same on the said Property or otherwise in such manner as may be permissible as per the Rules and Regulations of the Corporation including by constructing additional floors and by constructing additional structures in case while developing the said Property the Promoters have utilized any floor space index of any other land or property by way of flooring from space index then the particulars of such floor space index shall be disclosed by the Promoters to Flat Purchaser/s in the Deed of Conveyance to be executed in pursuance of this Agreement. The residual FAR (FSI) of the said Property not consumed as well as of any other property acquired by the Promoters by way of or under Transfer of Development Rights will be available to the Promoters till the execution of the Deed of Conveyance hereby contemplated in favour of the Co-operative Society even if the Promoters have put the Flat Purchaser/s and the purchasers of the other flats and premises in the said Building in possession of their respective flats and/or premises and also if the Flat Purchaser/s and the purchasers of other flats and premises have formed a Co-operative Society and that the Promoters shall be at liberty and be entitled to consume such unconsumed F. A. R (F. S. I) of the said property as well as of any other property that may be acquired by the Promoters by way of or under Transfer of Development Rights either by constructing additional structures on the said Property or by constructing additional floors but without in any manner affecting the said Flat or the rights of the Flat Purchaser/s in the said Flat and to sell the same and to receive and appropriate to themselves the entire sale price in respect thereof and further that if at the time of execution of Deed of Conveyance such construction is

incomplete, the Promoters shall be at liberty and be entitled to complete the same and for the purposes thereof and for all other purposes connected therewith the Promoters shall have unfettered and unrestricted right, liberty and authority to enter upon and be upon the said Property with all their workmen and material and the Flat Purchaser/s or the Co-operative Society or any one claiming under him/her/them/it as the case may be shall not have any right to and as such shall not object to the same or otherwise obstruct the same."

A conjoint reading of the above quoted recitals and clause (5) above prima facie show that all residual FSI of the suit plot of land not consumed as well as that acquired by way of TDR will be available to the Promoter (emphasis supplied) till execution of the deed of conveyance contemplated in favour of the Co-operative Housing Society. Clause 5 herein above is as widely worded as possible and it does not need any reiteration or interpretation or explanation.

13. Next it would be worthwhile to peruse further directly relevant clauses in this agreement. Clause 28 is the clause whereby expressed consent of the flat purchaser is recorded in the said agreement under MOFA for development of the balance suit plot in the vicinity and that its conveyance shall be subject to such right of the Promoter in favour of adjacent development in the vicinity. Clause 28 reads thus:-

"28. The Flat Purchaser/s hereby expressly agree/s that the Promoters shall be entitled to grant to any properties in the vicinity of the said Property right of way including the right to lay drains, water pipes, electricity, cables, telephone cables and other service facilities and either underground or overhead and so far as the right of way is concerned throughout the year without break and at any time of day and night and either on foot or in any of any and every description and both laden and unladen over the internal roads on the said property and to make the said Right of Way available to the owner/s of the properties, workmen, buyers of premises in buildings, their servants, agents, visitors etc., on such terms and conditions and for such consideration as the Promoters may in their absolute discretion decide. The consideration amount or amounts receivable for grant of such right of way shall belong to and be the property of the Promoters and the Flat Purchaser/s shall not have any right, title and interest or claim to or in the same. The Flat Purchaser/s hereby gives his/her/its/their express consent to the Promoters giving such right of way to any of the adjoining properties or properties in the vicinity and the said consent hereby given by the Flat Purchaser/s to the Promoters shall be deemed to be a consent under the provisions of MOFA. The Deed of Conveyance to be granted in pursuance of this Agreement shall be granted subject to such right/s of way/s that may be granted by the Promoters in favour of such owners of the properties in the vicinity.

13.1. Once again the above clause prima facie records the individual consent of flat purchasers i.e. members of Society expressly giving their consent to the Promoter with respect to development of adjoining properties or properties in the vicinity and any deed of conveyance granted to them will be subject to the right

that may be granted by the Promoter in favour of the owners of the properties in the vicinity. Clause 28 expressly records consent of the parties namely members of the Society which is unconditional and expressed, inter alia, relating to further development of the balance Suit plot in question.

14. In the aforesaid background it cannot be open for the Society to contend that despite such disclosure and express consent having been given by its members, the Promoter / Developer will not be in a position to undertake any development on the balance plot any further. In my opinion it is not open to the Society to take or adopt such a stand on the strength of the deemed conveyance granted. Hence in the above facts the deemed conveyance ought to have been granted only of the constructed building area of the Society Building No. 1 at the highest and nothing more at this stage until phase 3 was completed by the Developer. One of the argument of the Society before me is that the Promoter / Developer has utilized the entire FSI while constructing building No. 1 and therefore there is no FSI available and he is not entitled to undertake any further construction whatsoever on the balance plot of land insofar as building No. 2 is concerned for which commencement certificate has been issued by the Competent Authority in favour of the Developer. This is a preposterous and illegal submission made by the Society. If the contention of Respondent No. 1 Society is assumed to be correct then the Competent Authority would not have issued the commencement certificate for the third phase by following the due process of law. The commencement certificate is issued after a thorough scrutiny of the application made for sanction and approval of the 2nd building plan by the Promoter / Developer which was made as far back as on 19.11.2019 when the Respondent No. 1 Society was not even born. Record also indicates that Respondent No. 1 Society was fully aware about the further plan envisaged by the Developer. This awareness clearly stems out from the fact that when Society first addressed a notice on 31.08.2021 to the Promoter / Developer seeking execution of conveyance deed for the Society apart from its litany of complaints and demands. Insofar as the execution of the conveyance deed is concerned, the Society had in paragraph Nos. 5 and 8 of its legal notice stated as under:-

"5. That, we have called upon you time and again to execute Sale / Conveyance Deed in respect of the land below said Building along with proportionate undivided share in the common areas, amenities and facilities and open spaces. That, till day you have not taken any steps to convey the land below said Building in favour of the society nor showed any willingness to do for the reasons best known to you.

6.

7.

8. We further hereby request upon you to complete all the other pending work as asked by the Society from time to time including the letter dated 21/11/2019, email Dt. 29/03/2021 and 08/04/2021 regarding accounts and other various

correspondences and also execute Sale / Conveyance Deed in respect of the land below the said Building along with the superstructures and buildings thereon from and out of S. No. 256 (part), CTS No 1707(part) in favour of the society along with proportion undivided share in common areas, amenities and facilities and open spaces etc. within 15 days from the date of receipt of this Notice failing with we will be forced to file appropriate legal proceeding against you for the same which please note."

14.1. Thus it is seen that even according to the Society it had called upon the Developer to execute conveyance deed in respect of the land below their building along with proportionate undivided share in the common areas, amenities and facilities and open space. In paragraph No. 8 it has sought execution of conveyance but in respect of the land below its building along with superstructures and the building thereon from and out of Survey No. 256 (part), CTS No. 1707 (part) in favour of Society along with proportionate entitled share in the common areas, amenities, facilities and open space. Though this stance is adopted by Society, grant of deemed conveyance for the land beneath the building cannot be granted at this stage since the 3rd phase is incomplete. Hence it cannot be contended that deemed conveyance granted by Competent Authority is a correct order with respect to Society having been declared deemed owner of 3422 sq. mtrs. out of the suit plot since the 3rd phase of development is not yet completed. As noted earlier, one of the significant reason which is borne out from the record as to why Society is aggrieved with the Developer is because of the issue of parking. Record clearly shows that time and again Society has raised differences and complaints with the Developer with respect to parking of vehicles of members inside the Society compound in the open space. The open space adjacent to Society building No. 1 is claimed to be used by Society members for parking of their vehicles. Record shows that members of Respondent No. 1 Society are precluded from parking their vehicles in the said open space by Developer and this has led to enormous friction and animosity between parties. It is seen that parking insofar as Building No. 1 - Palazzo is concerned, has already been provided as per its sanctioned plan under stilts. Society may be justified in raising its grievances with respect to dereliction on the part of Promoter / Developer in not providing the promised amenities or having provided sub-standard amenities which is gathered from the record, but the said issues cannot be overlapped and mixed with the issue relating to grant of deemed conveyance. Deemed conveyance has to be looked at from the perspective of the existing substantive right of the Promoter - Owner Developer in the entire suit property. In this case record shows that Promoter-Developer is the owner of the entire suit plot originally admeasuring 3800 square meters situated in Pune along with other Survey numbers within the Sub-District of Haveli and District Pune. Record shows that under the sanctioned plan for Pune city, a portion of land admeasuring 165 sq. mtrs. was shown reserved for 24 meter vide H.C.M.T.R. whereas the portion admeasuring 87 sq. mtrs. was shown reserved for Water Body and land was also reserved for DP Road in teh suit plot. Record shows that

Promoter was entitled to the entire maximum extent of permissible FSI by utilizing all FSI / FAR (Floor Area Ratio) available in respect of the entire suit plot including that of the reserved portion of land, additional FSI, incentive FSI, floating FSI, fungible FSI, FSI of any reserved portion of the land, transferable development rights in respect of the suit plot qua the development and construction carried out by it thereon and sold to the prospective purchasers and allottees thereof.

15. In this background the first phase of construction / development undertaken by the Developer was with respect to development of building comprising of stilt and 9 upper floors; stilt for parking and 9 upper floors for residential flats in respect of which commencement certificate dated 23.05.2013 was granted. Insofar as reservation for H.C.M.T.R. area DP Road and Water Body area is concerned, same has been handed over by Petitioner to Corporation in lieu of which it has been sanctioned benefit of FSI available for the same for utilizing or consuming in the development and construction carried out by the Promoters on the suit plot. The Promoters therefore got approved revised plans, revised designs, specifications, elevation, sections and details of the building proposed to be constructed by them on the land consisting of stilt for parking and 11 upper floors in two phases (phase 1 (9 floors) and phase 2 (2 additional floors)) which was sanctioned by Corporation by two separate commencement certificates dated 23.05.2013 and 11.01.2016 resultantly leading to completing construction of Building No. 1 known as "The Palazzo". It is seen that in the respective agreement with members of the Society, Developer has transparently placed before the members all aforesaid information which has been accepted by the members and therefore in that view of the matter, members of the Society now cannot take a contrary stand which is not maintainable in law to oppose the case of the Petitioner. Insistence of the members that development potential of the suit plot available ought to have been stated in their Agreement to the last available FSI in figures cannot be countenanced. The Society cannot be benefited by virtue of the impugned order of deemed conveyance in respect of the area of its building on the suit plot granted to it which is clearly to the detriment of the right of the Promoter - Developer since the third phase is yet to be completed. It is shocking that when the 2nd phase of development was undertaken, the members / flat purchasers of Building No. 1 never raised this grievance about entitlement when the fact situation was absolutely identical.

16. Mr. Panchpor has vehemently argued on the issue of disclosure but in view of the specific clauses of the individual agreements entered into with each member of the Society, submissions made by Mr. Panchpor cannot be accepted. Even today when the matter is argued, Mr. Godbole at the outset has informed the Court that the Developer is not averse to give its consent for grant of conveyance to the Society in respect of Building No. 1 to the extent of the constructed area of the said building and to the extent of its undivided proportionate right in the area of the suit plot or for that matter conveyance in favour of the Federation of Societies for both buildings as agreed in the agreements entered into with each

member of the Society in accordance with law. This stand adopted by the Developer prima facie appears to be correct in law and extremely fair. The Society's case that it is entitled to the deemed conveyance for the land as granted and as a result of which the Developer cannot now construct on the balance available area since Society is declared as owner of 3422 sq. mtrs. becomes a disputed question which is not legally tenable and cannot be countenanced.

17. While the matter is argued by the Society before me, I get a distinct feeling that the Society is adopting an extortionist attitude when none of the submissions advanced by Mr. Panchpor are supported in law. Mr. Panchpor has made a futile attempt to place reliance on various decisions of the Supreme Court which have been referred to and relied upon while recording his submissions to argue that the Developer / Promoter has failed in its endeavour to complete its obligations under Sections 3 and 4 of MOFA and therefore in that view of the matter, he is not entitled to put up any construction whatsoever under the third phase on the open area next to the building of the Society without the consent of the Society and the said construction is illegal as no FSI is available and therefore the grant of deemed conveyance is correct.

18. However in view of the aforesaid observations and findings, I am not inclined to accept the submissions made by Mr. Panchpor since the right of the Promoter - Developer cannot be jeopardized in this fashion before he completes development on the entire suit plot in accordance with law. Society's complaint that no further FSI is available and the construction of the 2nd building is illegal can be dealt with by the Corporation which is the Planning Authority if it is so. Rather there is no substance in this argument of the Society since the Commencement Certificate dated 12.11.2021 issued by the Corporation is in accordance with law.

19. The impugned order granting deemed conveyance of 3422 sq. mtrs. land out of the suit plot to the Society therefore needs immediate interference of this Court especially in view of the fact that development with respect to the third phase by the Promoter - Developer which was initiated even before the birth of the Society is not yet completed.

20. In that view of the above, the order granting deemed conveyance dated 17.06.2022 is interfered with since the Society is entitled to deemed conveyance only to the extent of the constructed area of Building No. 1 admeasuring 3648.23 sq. mtrs. at this stage out of the total area of the suit plot along with all undivided proportionate rights in the common areas / amenities / common roads on the suit plot. The deemed conveyance order dated 17.06.2022 is therefore quashed and set aside and the Competent Authority is directed by Court to pass a fresh order of deemed conveyance in favour of Society to the above extent. Needless to state that as agreed by Mr. Godbole, the Promoter - Developer shall grant conveyance of the land occupied by the Society (Building No. 1) and Building No. 2 (after its development) for the land occupied by them either

jointly or severally for the entire area / individual areas as desired by them alongwith undivided areas / common areas in accordance with law within a period of one month after completing development of the 2nd building and registration of the Society of the 2nd building in accordance with law.

21. In view of this order, registered deemed conveyance dated 01.07.2022 of the Society is directed to be immediately cancelled and is quashed and set aside by this Court. Pursuant to the fresh order being passed for grant of deemed conveyance in terms of the constructed area of Building No. 1 by the Competent Authority, Society is permitted to register the same in accordance with law if so desired.

22. In view of the above observations and findings, Writ Petition stands allowed in the above terms and disposed.

23. After the present Judgment & Order is pronounced in open Court, Mr. Panchpor, learned Advocate for Respondent No. 1 - Society has requested the Court for stay to the operation of this judgment & order to enable the Respondent No. 1 Society to approach the superior Court to test the validity of this judgment. The request is granted. Present Judgment & Order is stayed for a period of six weeks from today to enable the Society to approach the superior Court.