

(2012) 02 BOM CK 0168

In the Bombay High Court

Case No : Appeal From Order No. 175 of 2012 in Notice of Motion No. 2380 of 2011 in B.C.C.C.S.C.Suit No. 2224 of 2011 With Civil Application No. 219 of 2012

Vidhi Builders Private Limited

APPELLANT

Vs

Arenbee Media Consultants Limited

RESPONDENT

Date of Decision : 14-02-2012

Acts Referred:

Maharashtra Ownership Flats (Regulation of the promotion of construction etc.) Rules, 1964 — Rule 8, 9
Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 — Section 10, 11, 13, 3, 4

Citation : (2012) 3 ALLMR 271 : (2013) 2 BomCR 232

Hon'ble Judges : J. H. Bhatia, J

Bench : Single Bench

Advocate : A.V. Anturkar assisted with Mr. Mahesh Menon, Mr. S.A. Oak and Mr. Vilas Bane, instructed by Mr. Mahesh Memon and Co, for the Appellant; Simil Purohit a/w. Mr. Manish Doshi, Gauraj Shah and Ms. Azmin Irani, Advocates instructed by . M/s. Vimadalal and Company, for the Respondent

Final Decision : Dismissed

Judgement

1. Rule. Rule made returnable forthwith. With consent, matter is taken up for Final Hearing immediately. The appeal is preferred by the original defendant against the grant of certain reliefs in the notice of motion taken out by the plaintiff. Admittedly, the property bearing plot No. 18, C.T.S. No. 619/28 admeasuring about 1422.1 sq.mtr. situated at Moti Baug, Village Borla, Taluka Kurla / Chembur, Mumbai belonged to Burjor Behramshah Mehta and others. Under an agreement for sale dated 02.07.1992, the defendant-appellant bought that land and obtained permission for redevelopment of this property on 12.04.1994 from the Additional Collector and Competent Authority, ULC, Greater Bombay. Building plans submitted by the defendant were sanctioned by the Municipal Corporation on 19.05.1995 and the Commencement Certificate was also issued to the defendant. The defendant constructed a new commercial

building known as "Mahinder Chambers". The plaintiff-respondent purchased Unit Nos.3 and 4 on the ground floor admeasuring 800 sq.ft. each under two separate agreements dated 23.03.2001. He also bought two car parking spaces at the ground level along with the said Units.

2. According to the plaintiff, at the time of agreement for sale, the defendant had declared that the construction would consist of basement, ground and one upper floor as per the building plans. The defendant had also agreed to form a co-operative society of the purchasers of the Units in the said building. There were in all 36 Galas or Units in the said building. In the year 2003, the defendant informed the plaintiff that he was going to raise one more floor. However, he raised one plus two more floors on the building, which was already completed as per the plan. The construction of additional two floors was without any consent or intimation either to the plaintiff or to the other purchasers of the Units nor this development was shown in the original sanctioned plan, which was shown by the defendant to the purchasers. In the year 2010, the defendant approached the Municipal Corporation for further addition and construction. The defendant surrendered certain garden portion to BMC and in lieu of the same, he got additional FSI. The defendant did not disclose to the plaintiff or other Unit holders about the additional FSI available, consumed and in balance. The plaintiff contended that the defendant was likely to make construction on the open space and thereby his right for two car parking spaces is likely to be violated. According to the plaintiff, the defendant had failed to form and register a co-operative society after completion of the building and after sale of the Units. He also failed to execute a conveyance deed in favour of the society as required under the provisions of Maharashtra Ownership Flats Act (MOFA). With these contentions, the plaintiff filed the suit claiming several reliefs. He took out the notice of motion for four interim reliefs, which read thus:

(a) That pending hearing and final disposal of the above suit, this Hon'ble Court be pleased to grant temporary injunction and order restraining the Defendants, their agents, servants and person or persons claiming through or under them from entering upon or obstructing using of the two car parking spaces allotted to the Plaintiffs by the Defendants as shown in the sketch plan Exhibit-"E" hereto;

(b) That pending hearing and final disposal of the above suit, this Hon'ble Court be pleased to grant temporary Order and Injunction restraining the Defendants, their agents, servants, and person or persons claiming through or under them from alienating, encumbering, dealing with, transferring, creating third party right, or allow any one to occupy and disposing off the two car parking spaces allotted to the Plaintiffs;

(c) That pending hearing and final disposal of the above suit, this Hon'ble Court be pleased to grant temporary Order and Injunction restraining the Defendants, their agents, servants and person or persons claiming through or under them from consuming balance FSI or TDR in respect of the building;

(d) That pending hearing and final disposal of the above suit, that this Hon'ble Court be pleased to grant temporary order and injunction restraining the Defendants, their agents, servants and person or persons claiming through or under them from carrying out any further construction in the parking area at the north end of the building beyond Podium area of the suit building.

3. The defendant contested the notice of motion and denied that he was making any construction illegally. According to him, the construction has been made as per the available FSI, additional FSI and Transfer of Development Rights (TDR) as per the rules. He also contended that the society of the Unit holders was to be formed and registered only after the construction was completed after utilizing the available FSI, additional FSI and TDR, which could be available to the defendant as per the rules. As the said FSI or TDR has not been fully utilized and construction has not been completed, the stage of forming the co-operative society has not reached, and therefore, the stage of executing the conveyance of the said property in favour of the society has also not reached. The defendant denied that the plaintiff had any specific area earmarked for his car parking. According to him, there was open space for car parking of all the Unit holders and the plaintiff could also park two cars in the said space and that he was not making any construction on the space shown by the plaintiff as the car parking space reserved for him, and therefore, there was no question of granting any relief to him. It was also contended that for the construction of additional building on the land, defendant did not require any permission or consent of the plaintiff or other Unit holders because the construction was made or being made within the limits of available FSI, additional FSI or TDR as per the Rules.

4. After hearing the parties, the learned trial Court found that there was nothing to show that the defendant was making any construction on the space shown by the plaintiff as the parking space reserved for him, and therefore, the trial Court came to a conclusion that the reliefs as sought under prayer clauses (a) and (b) in the notice of motion were not necessary. However, the trial Court came to a conclusion that, as per the original sanctioned plan, which was shown to the plaintiff and other purchasers, the building was completed long back and it was necessary for the defendant to form a co-operative society of the purchasers and to execute conveyance in their favour as per MOFA. The trial Court also held that the defendant had not disclosed any additional FSI or TDR available to him nor he had shown any such plan for future construction in the plan which was shown to the purchasers, and therefore, the trial Court granted interim relief in terms of prayer clauses (c) and (d) against the defendant. As a result, the learned trial Court restrained the defendant from consuming balance FSI or TDR in respect of building in question till the decision of the suit and also restrained the defendant by temporary injunction from carrying out any further construction in the parking area at the north end of the building beyond Podium area of the suit building till the decision of the suit. The defendant has preferred this appeal challenging the said order of temporary injunction.

5. Heard the learned Counsel for both the parties. Mr. Anturkar, the learned Counsel for the defendant-appellant vehemently contended that the construction was made as per the sanctioned plan and within the limits of the original FSI available for the land, additional FSI and the TDR which could be available as per the Development Rules, and as long as the construction is made within the limits of such FSI, additional FSI or TDR and also if the construction of a separate building is made on that land, no consent of the purchasers of Units is required as per the provisions of MOFA. On the other hand, the learned Counsel for the plaintiff-respondent vehemently contended that, it is the responsibility of the promoter or developer of the building to disclose the complete layout plan and the potentiality of further construction to the purchasers of the flats or Units so that they are fully aware as to what type of building is likely to come up before taking decision for purchase. He also contended that the vague or general consent obtained by the promoter on the basis of the printed form of agreement for sale is not sufficient because it does not give clear idea to the purchaser about the future development. He contended that as per the provisions of Section 7 of the MOFA, the consent of the purchasers is necessary for any addition / alteration in the building as well as for construction of any additional building, if such addition or alteration or such additional building was not shown in the original plan to the purchasers. He contends that the consent of the purchasers has to be the informed consent and not a general consent with clear knowledge of what promoter or builder is going to develop.

6. Admittedly, the plaintiff purchased two Units of 800 sq.ft. in Mahinder Chambers by two separate but identical agreements for sale dated 23.03.2001. Para 1 of the terms of the contract reveals that the builder was to construct a new building described in the Schedule consisting of basement, ground and one upper floor in accordance with the plans, designs and specifications approved by the concerned local authority and which had been seen and approved by the purchasers, with only such variations and modifications as the builder may consider necessary and proper or as may be required by the concerned local authority or the Government. The area of the plot was also shown in the agreement. Para 4 of the agreement reveals that the builder shall be entitled to avail of and utilise the entire FSI available upon or in respect of the said properties by doing construction of whatsoever nature thought proper by the builder and the purchaser shall not be entitled to raise any objection. It provides that the purchasers notwithstanding their having formed and registered a co-operative society or any such corporate body shall not be entitled to demand conveyance of the said properties or of any part thereof until the builders and / or the owners would have completed the entire development of the said properties as proposed by them. The residual FSI not consumed will be available to the builder till the time the builder obtains and gives the conveyance of the said properties to such society. Para 4-A provides that the builder shall, in addition to their right to exploit FSI available in the land, be entitled to bring in and utilise additional FSI by way of TDR and Development Rights Certificate

(DRC) into, upon or about the said property. Para 7 provides that until execution of a proper Deed of Conveyance of the said properties in favour of the society, the builder shall have an unrestricted right to make additions and alterations in the said building and / or in any other building upon the said property as may be permitted by the Municipal Corporation and other competent authorities.

7. In view of the above provisions in the agreement for sale, the learned Counsel for the defendant vehemently contended that the plaintiff, as a purchaser, could not object to utilization of the FSI or additional FSI or TDR which could be brought upon the land as per the rules as long as the conveyance was not executed. The learned Counsel for the plaintiff vehemently contended that the above-referred terms of the contract are in violation of the provisions of MOFA, and therefore, they cannot be enforced and the parties are bound by the provisions of MOFA which mandate that the builder should form a society within the specified period, and if the period is not specified, within four months from the date when sufficient number of purchasers have purchased the flats or Units and the builder is also required to execute conveyance of the said property and thereafter the builder does not have any right to utilize any FSI or additional FSI on that land, and if any such right is available, that will be available to the society and not to the builder.

8. Admittedly, the original plan which was got sanctioned by the defendant consisted of only basement, ground and one upper floor and that sanctioned plan was shown to the purchasers at the time of agreement for sale and as per that plan, the plaintiff had entered into agreement with the defendant and had purchased two Units on the ground level. To a query made by this Court as to how much FSI, additional FSI, etc. was available and how much was consumed, one Mr. Gautam Aggarwal, Director of the defendant-appellant filed an affidavit before this Court. According to him, FSI available was 1 and the builder was entitled to utilize the said FSI and also equivalent TDR by acquiring DCR in that respect as per the rules in force at that time. According to him, the defendant was entitled to utilise FSI of 29796.23 sq.ft. and TDR of 30031.56 sq.ft. as per the Development Control Regulations, 1991. He deposed in the affidavit that the appellants are not utilizing any further FSI and / or TDR in the suit property. It is material to note that in the agreement for sale, there was no mention as to how much FSI was available to the builder at the time of getting the plan sanctioned for construction of the building consisting of basement, ground and one upper level. It also did not disclose how much FSI was being utilized for the construction of the said building and how much FSI would be residual. It also did not disclose how much additional FSI in the form of TDR or on the basis of DCR could be available. If such information would have been disclosed in the agreement for sale, the purchaser could have clear idea as to the potentiality of the construction then and in future on that land. Paras 4, 4-A and 7 of the agreement had only made general declaration and it was a general consent of the purchaser that the builder would be entitled to utilize the residual FSI and additional FSI on the basis of TDR or DCR but the quantum of the same was

never disclosed nor it was known to the purchaser.

9. Admittedly, sometimes in the year 2002-2003, the defendant raised three more floors on the said building. According to the plaintiff, the defendant had informed about raising one more floor. It appears that the plaintiff did not object to the same, and therefore, that additional floor appears to have been raised with implied consent of the plaintiff. Admittedly, construction of two more floors was completed sometimes in the year 2004. According to the plaintiff, there was no consent for construction of those two floors. It may be noted that in the suit, the plaintiff has sought declaration that construction of those two floors is illegal and they are liable to be demolished. However, that is the subject matter of the suit which has to be decided at the time of final hearing and disposal of the suit. It is contended on behalf of the defendant that the suit was filed in the year 2011, and thus, for about seven years after completion of the construction of third and fourth floor, the plaintiff had kept quiet. His silence for the period of seven years shows that there was implied consent. In my opinion, this aspect need not be considered at this stage and that can be looked into at the time of the trial of the suit.

10. Section 7(1) of the MOFA provides for the consent of the purchasers of the flats in a building for any addition or alteration in the building. In *Jayantilal Investments Vs. Madhuvihar Co-operative Housing Society and Others*, , the scope of Section 7(1) read with Section 7-A as amended by Maharashtra (Amendment) Act 36 of 1986 was considered. Their Lordships observed thus:

14. Before dealing with the point in issue one needs to look at original Section 7 which was in existence in the statute prior to its amendment by Maharashtra Amending Act 36 of 1986. The unamended Section 7 reads as follows:

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

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

(ii). any other alterations in the structure of the building, or construct any additional structures, without the previous consent of all the persons who have agreed to take the flats.

(emphasis supplied)

The amended Section 7 reads as follows:

7. After plans and specifications are disclosed no alterations or additions without consent of persons who have agreed to take the flats; and defects noticed within three years to be rectified. -(1) After the plans and specifications of the building, as approved by the local authority as aforesaid, are disclosed or furnished to the

person who agrees to take one or more flats, the promoter shall not make-

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

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

(emphasis supplied)

15. The judgment of the Bombay High Court in Kalpita Enclave case was based on the interpretation of unamended Section 7 of MOFA. Consequently, it was held that a promoter was not entitled to put up additional structures not shown in the original layout plan without the consent of the flat takers. Thus, consent was attached to the concept of additional structure. Section 7 was accordingly amended. Section 7-A was accordingly inserted by Maharashtra Amending Act 36 of 1986. Section 7-A was inserted in order to make the position explicit, which according to the legislature existed prior to 1986, implicitly. Section 7 of MOFA came to be amended and for the purpose of removal of doubt, additional Section 7-A came to be added by Maharashtra Act 36 of 1986. By this amendment, the words indicated in the parenthesis in the unamended Section 7(1)(ii), namely, "or construct any additional structures" came to be deleted and consequential amendments were made in Section 7(1)(ii). Maharashtra Act 36 of 1986 operated retrospectively. Section 7-A was declared as having been retrospectively substituted and it was deemed to be effective as if the amended clause had been in force at all material times. Further, it was declared vide Section 7-A that the above quoted expression as it existed before commencement of the amendment Act shall be deemed never to apply in respect of the construction of any other additional buildings / structures, constructed or to be constructed, under a scheme or project of development in the layout plan, notwithstanding anything contained in the Act or in any agreement or in any judgment, decree or order of the court. Consequently, reading Section 7 and Section 7-A, it is clear that the question of taking prior consent of the flat takers does not arise after the amendment in respect of any construction of additional structures. However, the right to make any construction of additional structures / buildings would come into existence only on the approval of the plan by the competent authority. That, unless and until, such a plan stood approved, the promoter does not get any right to make additional construction. This position is clear when one reads the amended Section 7(1)(ii) with Section 7-A of MOFA as amended. Therefore, having regard to the Statement of Objects and Reasons for substitution of Section 7(1)(ii) by Amendment Act 36 of 1986, it is clear that the object was to make legal position clear that even prior to the amendment of 1986, it was never intended that the original provision of Section 7(1)(ii) of MOFA would operate even in respect of construction of additional buildings. In other words, the object of enacting Act 36 of 1986 was to change the basis of the judgment of the Bombay High Court in Kalpita Enclave case. By insertion of

Section 7-A vide Maharashtra Amendment Act 36 of 1986 the legislature had made it clear that the consent of flat takers was never the criteria applicable to construction of additional buildings by the promoters. The object behind the said amendment was to give maximum weightage to the exploitation of development rights which existed in the land. Thus, the intention behind the amendment was to remove the impediment in construction of the additional buildings, if the total layout allows construction of more buildings, if the total layout allows construction of more buildings, subject to compliance with the building rules or building bye-laws or Development Control Regulations. At the same time, the legislature had retained Section 3 which imposes statutory obligations on the promoter to make full and true disclosure of particulars mentioned in Section 3(2) including the nature, extent and description of common areas and facilities. As stated above, sub-section (1-A) to Section 4 was also introduced by the legislature by Maharashtra Act 36 of 1986 under which the promoter is bound to enter into agreements with the flat takers in the prescribed form. Under the prescribed form, every promoter is required to declare FSI available in respect of the said land. The promoter is also required to declare that no part of that FSI has been utilised elsewhere, and if it is utilised, the promoter has to give particulars of such utilisation to the flat takers. Further, under the pro-forma agreement, the promoter has to further declare utilisation of FSI of any other land for the purposes of developing the land in question which is covered by the agreement.

16. Therefore, the legislature has sought to regulate the activities of the promoter by retaining Sections 3 and 4 in the Act. It needs to be mentioned at this stage the question which needs to be decided is whether one building with several wings would fall under amended Section 7(1)(ii). Section 7-A basically allows a builder to construct additional building provided the construction forms part of a scheme or a project. That construction has to be in accordance with the layout plan. That construction cannot exceed the development potentiality of the plot in question. Section 10 of MOFA casts an obligation on the promoter to form a co-operative society of the flat takers as soon as minimum number of persons required to form a society have taken flats. It further provides that the promoter shall join the society in respect of the flats which are not sold. He has to become a member of the society. He has the right to dispose of the flats in accordance with the provisions of MOFA. Section 11 inter alia provides that a promoter shall take all necessary steps to complete his title and convey the title to the society. He is obliged to execute all relevant documents in accordance with the agreement executed u/s 4 and if no period for execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period. Rule 8 inter alia provides that where a co-operative society is to be constituted, the promoter shall submit an application to the Registrar for registration of the society within four months from the date on which the minimum number of persons required to form such society (60%) have taken flats. Rule 9 provides that if no period for execution of a conveyance is agreed upon, the promoter

shall, subject to his right to dispose of the remaining flats, execute the conveyance within four months from the date on which the society is registered.

11. In para 17 of the Judgment, Their Lordships considered the Clauses 3 and 4 of Form V of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, etc.) Rules, 1964. As per the said Clauses, the promoter has to declare the FSI available to him in respect of the land at the time of entering into the contract. He is bound to form and register a society of the purchasers within the specified period and also to execute conveyance. After referring to the clauses 3 and 4, Their Lordships observed thus:

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

19. In our view, the above condition of true and full disclosure flows from the obligation of the promoter under MOFA vide Sections 3 and 4 and Form V which prescribes the form of agreement to the extent indicated above. This obligation remains unfettered because the concept of developability has to be harmoniously read with the concept of registration of society and conveyance of title. Once the entire project is placed before the flat takers at the time of the agreement, then the promoter is not required to obtain prior consent of the flat takers as long as the builder puts up additional construction in accordance with the layout plan, building rules, and Development Control Regulations, etc.

From this it is clear that, the declaration as to the exact available FSI for the land, the FSI already utilized and the FSI to be utilized are to be specifically declared. The builder is obliged to make full and true disclosure of the development potentiality of the plot, which is the subject matter of the agreement. If the entire project is placed before the flat purchasers at the time of agreement then the promoter is not required to obtain prior consent of the purchasers as long as the builder puts up additional construction in accordance with the layout plan, building rules and DCR. The builder cannot claim that there was a consent for any additional construction either on the building or any construction of the additional building which was not declared in the layout plan or the sanctioned plan which was shown to the purchasers at the time of the agreement. The blanket consent of the authority obtained by the promoter at the time of the agreement is not the consent within the meaning of Section 7(1) of

the MOFA. The consent has to be express, specific and informed.

12. In *Bjranlal Eriwal and Others Vs. Sagarmal Chunilal and Others*, , the learned Single Judge of this Court observed thus:

11. The judgment of the Supreme Court (in *Jayantilal Investments Vs. Madhuvihar Co-operative Housing Society*) emphasized that the obligation of the developer is to make a full and complete disclosure of the entire project to flat purchasers. If there has been a complete disclosure of the entire project then in such a case the promoter is not required to obtain the prior consent of the flat purchasers so long as the layout plan and building bye laws are complied with. The Court observed as follows:

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

12. The observations of the Supreme Court in *Jayantilal Investments*, bring about a balance between the rights of the promoter on the one hand and a flat purchaser on the other. There is a statutory embargo upon the making of alterations either in an individual flat or in respect of the structure of the building after the disclosure of the plans and specifications of the building.

13. In *Madhuvihar Co-op. Hsg. Soc. Vs. Jayantilal Investments*, 2010 (6) ALL MR 600, the learned Single Judge of this Court took the same view and observed thus:

46. Thus, there is consistent view of this court, that the blanket consent or authority obtained by the promoter, at the time of entering into agreement of sale or at the time of handing over possession of the flat, is not consent within the meaning of Section 7(1) of the MOFA, inasmuch as, such a consent would have effect of nullifying the benevolent purpose of beneficial legislation.

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

14. In view of the legal position discussed above, it would be clear that the consent of the purchasers of the flats or Units in the existing building has to be obtained in respect of any alteration in the structure, in respect of the flat or flats which are agreed to be taken as well as for any other alteration or addition in the structure of the building. Even after the amendment of 1986, if any additional

construction is to be made, it would be necessary to obtain the consent if that additional construction was not shown in the sanctioned plan or the layout plan which was shown to the purchasers at the time of agreement. In the present case, at the time of the agreement, the proposed construction of only basement, ground and one upper floor was disclosed in the plan. Even though in the general terms, the builder reserved the right to utilize the residual FSI or additional FSI as could be available, he had not disclosed the exact FSI which was available or the exact additional FSI which could be available to him as per the rules and thus, he did not disclose the potentiality of the development on the said land in future. The defendant added three more floors after completion of the building as per the original plan. Not only that, at present, the construction of one Podium consisting of about 36 car-parkings is under construction. According to the plaintiff, it is the additional construction on the building as it is annexed and joint with old building, while according to the defendant, it is a separate construction of the building. In either case, I refrain from commenting on the legality or otherwise of this construction of Podium because the defendant is restrained by way of temporary injunction from carrying out any further construction in the parking area at the north end of building beyond Podium area of the suit building. (Emphasize supplied.) It appears that the learned trial Court enjoined the defendant from carrying out any further construction and did not restrain the construction of Podium consisting of the parkings possibly because this construction is almost completed, and at this stage, it cannot be demolished. In para 2 of the impugned order, the trial Court has restrained the defendant from consuming balance FSI or TDR in respect of the building in question till the decision of the suit and that injunction is important. The said order is consistent with the provisions of law and the facts and circumstances noted above. Taking into consideration the facts and the legal position, it is difficult to find any fault with the impugned order. As per the original plan, which was shown to the plaintiff, building was completed in the year 2001 itself, and most of the Units were purchased by the people. The defendant was bound to form a co-operative society within four months and then to execute a conveyance form within four months after formation of the society. If the defendant would have complied with his legal obligations within the time-frame, he could not have claimed the right to use any residual FSI or any additional FSI which could be brought on the land. In fact non-compliance of the legal provisions of Section 11, about the conveyance of the title within the specified period, is an offence punishable u/s 13 of the MOFA. A builder cannot be heard to say that he did not comply with the provisions of Section 11 and even though he might have committed the offence u/s 13, still, he has the right or power to use the residual FSI or additional FSI which could be brought on the land. To accept such type of argument would amount to rewarding the violation of the provisions of law. Therefore, such argument has to be rejected.

15. In view of the facts and circumstances and legal position noted above, I find no fault with the impugned order and I find no merit in the appeal.

16. In the result, the appeal stands dismissed.

17. As the appeal itself is finally disposed of, the application does not survive and stands disposed of accordingly. At this stage, the learned Counsel for the appellant seeks stay to this order for four weeks. As the order against the defendant-appellant is of temporary injunction, question of stay does not arise. Request turned down.