

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12078 OF 2025

ATUL
GANESH
KULKARNI

Digitally signed by
ATUL GANESH
KULKARNI
Date: 2026.02.06
12:20:13 +0530

Kartik Regency Coop. Housing society Ltd.,

having office at Shahabaz, (Belapur)

CTS No. 100, 101, 103-107, Behind NRI

Police Station, Kille Gaothan, Belapur,

Navi Mumbai, Thane 400 614

... petitioner

V/s.

- 1. The State of Maharashtra**, through
Cooperation Department, Mantralaya,
Mumbai 400 032
- 2. The District Deputy Registrar**,
Cooperative Societies, Thane, having
office at Gaondevi Mandai Building,
First Floor, Near Gaondevi Ground,
Gokhale Road, Thane West 400 602
- 3. Vijay Agre**,
Age __ Years, Occu.: Business.
- 4. Vidya Vijay Agre**,
Age __ Years, Occu.: Business,
both R/at at 703-704, Kartik Regency
CHS Limited, Shahabaz, (Belapur),
Behind NRI Police Station, Kille
Gaothan, Belapur, Navi Mumbai,
Thane 400 614.
- 5. Raghwendra Kumar**
- 6. Premsingh K. Kumpaval**,
both 4 and 5 having office at Shop
No.36, Ground Floor, Gawri Complex,

Sector 11, C.B.D. Belapur,
Navi Mumbai, Thane 400 614

... Respondents

Mr. Sanjiv Sawant with Mr. Rohan Mahadik, Ms. Kekhala More, & Ms. Nikita Butty i/by the Juris Partners for the petitioner.

Ms. Kavita N. Solunke, Additional G.P. for respondent Nos.1 and 2-State.

Mr. Shailendra S. Kanetkar i/by Mr. Shivraj Patne and Mr. Rohan Soman for respondent Nos.3 and 4.

Ms. Shivali S. Mhatre for respondent No.6.

CORAM : AMIT BORKAR, J.

RESERVED ON : JANUARY 20, 2026

PRONOUNCED ON : FEBRUARY 6, 2026

JUDGMENT:

1. By the present writ petition instituted under Articles 226 and 227 of the Constitution of India, the petitioner calls in question the legality and correctness of the order dated 26 August 2025 passed by Respondent No. 2 in exercise of powers under Section 11 of the Maharashtra Ownership Flats Act, 1963. By the said order, the application preferred by the petitioner Co-operative Housing Society seeking grant of Deemed Conveyance in respect of the property of the Society came to be rejected.

2. The material on record indicates that pursuant to the Commencement Certificate dated 13 September 2007 issued by the Navi Mumbai Municipal Corporation, the building of the

petitioner Society was constructed on land bearing CTS Nos. 100, 101 and 103 to 107, situated at Kille Gaothan, Belapur, Navi Mumbai.

3. Upon completion of construction, the Navi Mumbai Municipal Corporation issued an Occupation Certificate dated 21 March 2009. A plain reading of the said Occupation Certificate demonstrates that Respondent Nos. 3 and 4 had exhausted the entire permissible Floor Space Index in respect of the aforesaid land bearing CTS Nos. 100, 101 and 103 to 107. The sanctioned building plan as it stood on the date of issuance of the Occupation Certificate further substantiates that the entire FSI available on the land bearing CTS Nos. 100, 101 and 103 to 107 had been fully utilized by Respondent Nos. 3 and 4.

4. It is not in dispute that Respondent Nos. 3 and 4 had sold the majority of the flats even prior to the issuance of the Occupation Certificate. In such circumstances, it was incumbent upon them, in terms of the statutory mandate under MOFA and more particularly in view of the undertaking recorded in paragraph 27 of the Agreements executed under Section 4 of MOFA, to take necessary steps to form a Co-operative Housing Society of the flat purchasers and to execute a conveyance in favour of the petitioner Society within the prescribed period. The Agreements executed by Respondent Nos. 3 and 4 in favour of the individual purchasers, who are now members of the petitioner Society, specifically describe the property in the First Schedule as Tika No. 2, City Survey Nos. 100, 101 and 103 to 107, admeasuring in aggregate 1479.10 square metres, situated at Village Shahabaz Belapur, Kille

Gaothan, Navi Mumbai. The description of the property is thus clear and unambiguous.

5. As Respondent Nos. 3 and 4 neither formed the Society within the stipulated time nor executed the conveyance in its favour, one of the members of the petitioner Society lodged a First Information Report dated 13 March 2025 against Respondent Nos. 3 and 4 alleging commission of an offence under Section 13 of MOFA. Thereafter, Respondent Nos. 3 and 4 approached the Court of the learned Judicial Magistrate, First Class, Belapur, Navi Mumbai, and were granted conditional bail by order dated 16 April 2025, inter alia considering their age and status as senior citizens. Subsequent to their release on bail, Respondent Nos. 3 and 4 preferred an appeal before the learned Joint Registrar, Co-operative Societies, Konkan Bhavan, under Section 152 of the Maharashtra Co-operative Societies Act, assailing the registration of the petitioner Society. The sequence of events, as set out above, is relied upon by the petitioner to contend that the conduct of Respondent Nos. 3 and 4 has caused prejudice to the members of the Society and has resulted in continued uncertainty regarding their title and peaceful enjoyment of the premises.

6. In support of its application before Respondent No. 2, the petitioner Society placed reliance upon the Architect's Certificate. A comparison of the Architect's Certificate with the Agreements executed under Section 4 of MOFA indicates that the Society sought Deemed Conveyance strictly in respect of the same property and area as described in the Agreements executed in favour of the members. Respondent Nos. 3 and 4 filed an Affidavit in Reply

before Respondent No. 2 opposing the grant of Deemed Conveyance and disputing the entitlement of the petitioner Society to such relief. Upon consideration of the application submitted by the petitioner Society and the Affidavit in Reply filed by Respondent Nos. 3 and 4, Respondent No. 2, by the impugned order dated 26 August 2025, rejected the application seeking Deemed Conveyance.

7. Learned counsel for the petitioner submitted that Respondent No. 2 has exceeded the limits of jurisdiction while passing the impugned order. According to him, the Competent Authority was required to confine its scrutiny only to the Agreement executed under Section 4 of MOFA and the Architect's Certificate along with supporting documents placed on record by the petitioner Society. It is urged that any enquiry beyond these documents amounts to travelling outside the statutory scope. He further submitted that the authority to grant Deemed Conveyance flows from Section 11 of the Maharashtra Ownership Flats Act, 1963 read with the relevant Rules and Government Notifications. The jurisdiction is attracted only when the promoter fails or refuses to execute conveyance in favour of the Co-operative Housing Society or association of flat purchasers despite a statutory obligation. The proceedings under Section 11 are summary in character. The Competent Authority is required to undertake a prima facie verification of compliance, examine the basic documents, ascertain that the applicant is a duly registered society of flat purchasers, verify that the flats have been sold and the property is liable to be conveyed, and confirm that the

promoter has failed to execute conveyance within the prescribed period.

8. Learned counsel submitted that Respondent Nos. 3 and 4 have relied upon alleged minutes of meeting dated 27 March 2021 annexed to their Affidavit in Reply. The said minutes purport to record that occupants or owners have no objection to construction on adjacent open land. It is contended that the minutes contain forged signatures and that several flat purchasers are not signatories thereto. It is clarified that the application under Section 11 of MOFA is confined strictly to the property of the petitioner Society, namely land bearing CTS Nos. 100, 101 and 103 to 107, as reflected in the Commencement Certificate dated 13 September 2007 and Occupation Certificate dated 21 March 2009. The petitioner asserts that it has no concern with adjacent properties bearing CTS Nos. 102 and 1198. In support of the submission regarding the requirement of informed consent, reliance is placed on the decision of this Court in *Madhuvihar Co-operative Housing Society v. Jayantilal Investments reported in 2010 SCC OnLine Bom 1526*.

9. Per contra, learned counsel for Respondent Nos. 3 and 4 submitted that the present petition is not maintainable. It is contended that the registration of the petitioner Society under Section 9 of the Maharashtra Co-operative Societies Act, 1960 has been challenged by filing Appeal No. 08 of 2025 before the Divisional Joint Registrar. The said appeal is pending and is closed for orders. An order dated 19 May 2025 directing status quo has been passed in those proceedings. It is therefore submitted that

until the appeal is finally decided, the application for Deemed Conveyance and the present writ petition are premature and liable to be dismissed on that ground alone. It is further submitted that if the registration of the petitioner Society is ultimately cancelled, the present proceedings would become infructuous since Deemed Conveyance cannot be granted in favour of a Society that ceases to exist in the eye of law. Learned counsel contended that if Deemed Conveyance is granted and the Society is subsequently deregistered, an anomalous situation would arise where conveyance stands executed in favour of a non-existent entity. Such a situation would prejudice the landowners as well as flat purchasers and adversely affect their proprietary rights and interests in the immovable property. It is also submitted that the impugned order dated 26 August 2025 passed by the Deputy Registrar expressly grants liberty to the petitioner Society to file a fresh application after final adjudication of the appeal challenging its registration. According to the Respondents, the petitioner has an alternate remedy available at an appropriate stage.

10. Learned counsel submitted that the building known as “Kartik Regency” comprises 28 flats. Out of these, only 16 flat owners have formed the petitioner Society. The application for Deemed Conveyance has thus been made without including the remaining 12 flat owners. It is alleged that these 12 flat owners, including the present Respondents, were deliberately excluded at the time of formation and registration of the Society, and that the Society was registered without their knowledge. It is further submitted that the Respondents are owners of land bearing CTS

Nos. 100 to 107 and 1198 of Village Shahabaj, Kille Gaothan, Belapur, Navi Mumbai. The existing building of the petitioner stands constructed on parts of CTS Nos. 100, 101 and 103 to 107. The Respondents are also owners of adjoining lands bearing CTS Nos. 102 and 1198 admeasuring 57.7 square metres and 318 square metres respectively, the latter being subsequently purchased. Development rights in respect of CTS Nos. 100, 101 and 103 to 107 were granted to M/s. Kartik Builder under Development Agreement dated 25 April 2005 and Supplementary Agreement dated 12 February 2008. The developer was entrusted with formation of the Society and a Power of Attorney was executed for that purpose. After completion of the petitioner's building, a balance portion of land remained adjacent to the structure.

11. It is stated that on 27 March 2021, prior to formation of the petitioner Society, a meeting of flat purchasers and owners was convened. At the said meeting, a majority resolved that a new building would be constructed by Mr. Vijay Agre on adjacent open land forming part of the property in question, and that a common Co-operative Housing Society of the existing and new building would thereafter be formed. It was also resolved that individual No Objection Certificates would be granted for the proposed construction and that members of the existing building would pay maintenance and property tax dues to Respondent No. 3, who had till then paid such dues on their behalf. According to the Respondents, the said meeting was attended by flat owners including members of the petitioner Society. The minutes were

drawn up by the flat purchasers themselves and record that the Co-operative Society would be formed after construction of the adjoining building and that all members would become part of the proposed Society.

12. It is submitted that the plan annexed to the additional affidavit of Respondent No. 4 dated 20 January 2026 indicates that the proposed construction is partly on CTS Nos. 100 and 101, where part of the existing building stands, and partly on CTS Nos. 1198 and 102 which are adjoining lands. For this reason, express consents and No Objection Certificates of the existing flat purchasers were obtained.

13. Learned counsel submitted that the minutes dated 27 March 2021 specifically record that flat purchasers granted consent for construction on the open portion of adjacent land on which the existing building stands. It is contended that if the proposed construction were confined only to CTS Nos. 102 and 1198, which are newly acquired plots, there would have been no occasion to obtain consent from flat owners of the existing building. It is thus argued that the flat purchasers were aware of the proposed construction on the land in question. It is further submitted that irrevocable consents for construction were executed by a majority of flat owners of the existing building.

14. Learned counsel also pointed out that the petitioner has filed Writ Petition No. 5612 of 2025 challenging the Commencement Certificate and sanctioned plans for further construction. No interim or ad interim relief has been granted in that petition. The

same plan annexed to the affidavit dated 20 January 2026 has been challenged in those proceedings. It is submitted that pursuant to permissions granted by the Navi Mumbai Municipal Corporation, the Respondents have commenced construction on the balance portion of land, partly situated on CTS Nos. 100, 101 and 103 to 107 and partly on adjoining lands in which the petitioner Society has no right, title or interest. On the aforesaid grounds, learned counsel for the Respondents submitted that the writ petition lacks merit and is liable to be dismissed with costs.

Reasons and analysis:

15. Section 11 of MOFA is meant to give flat purchasers a workable remedy. Once a promoter has sold flats and the purchasers have come together to form a society, the promoter cannot indefinitely hold on to the title of the land and building. The statute therefore creates a mechanism where, if the promoter fails or refuses to execute conveyance, the society can approach the Competent Authority and seek what is called deemed conveyance.

16. At the initial stage, the Competent Authority is not expected to conduct a detailed trial as if it were deciding a civil suit for declaration of title. The enquiry is limited. The Authority must see whether the basic statutory conditions are satisfied on the face of the record. This involves checking whether valid Agreements under Section 4 of MOFA exist between the promoter and flat purchasers. It must identify the property described in those Agreements and verify that the flats have in fact been sold. The

Authority must also look at documents such as the Architect's Certificate which confirm the built area and the extent of development. Above all, it must ascertain whether the promoter has failed to execute conveyance within the time contemplated by law.

17. These are threshold requirements. If these elements are shown from the documents placed on record, the remedy under Section 11 is attracted. The process is summary in nature because the legislature did not intend flat purchasers to be driven to lengthy civil litigation merely to obtain what the promoter had already promised in writing. At the same time, the Authority cannot shut its eyes to the record. It must examine the documents carefully, but only to the extent necessary to see whether a prima facie case exists. It is not required to decide complex questions of title or to record oral evidence unless the material itself compels such an exercise.

18. For that reason, the argument that Respondent No.2 exceeded jurisdiction by looking at material beyond the Section 4 Agreements and the Architect's Certificate cannot be accepted in the absolute terms in which it is canvassed. While the Agreements and Architect's Certificate form the backbone of a Section 11 application, they are not the only documents that may be relevant. If the respondents place on record minutes of meetings, alleged consents, sanctioned plans or development proposals, and if those documents directly relate to the description of the land or to the promoter's obligations, the Competent Authority is entitled to look at them. It may examine such documents for a limited purpose. It

may assess whether they cast doubt on the identity of the property or on the applicant's entitlement.

19. What the Authority cannot do is convert a summary proceeding into a full scale trial of disputed title. It cannot embark upon detailed fact finding as if it were adjudicating a civil suit. But it can certainly take note of relevant documents placed before it and consider whether, despite those documents, the statutory conditions for deemed conveyance stand satisfied. Considering supporting material for this limited purpose does not amount to travelling beyond jurisdiction. It remains within the statutory framework so long as the Authority confines itself to deciding whether a prima facie entitlement under Section 11 is made out.

20. In that view, a balanced approach is required. The Competent Authority must neither restrict itself mechanically to two documents nor enlarge the enquiry into a roving investigation. It must examine the record as a whole, but only to the extent necessary to determine whether the promoter has failed in its statutory duty and whether the society has made out a case for deemed conveyance on the face of the documents.

21. The starting point has to be the documents which create rights between the parties. The Agreements executed under Section 4 of MOFA are not informal papers. They are statutory agreements entered into by the promoter with each flat purchaser. In every one of these Agreements, the property is clearly described. The description is consistent. It refers to Tika No. 2, City Survey Nos. 100, 101 and 103 to 107. The total area is stated as 1479.10

square metres. There is no ambiguity in this recital. The land is identified by survey numbers and by total measurement.

22. When one turns to the Commencement Certificate dated 13 September 2007, the same survey numbers are reflected. The municipal authority permitted construction on that very land. Thereafter, the Occupation Certificate dated 21 March 2009 was issued in respect of the completed building standing on those survey numbers. These are not private documents. They are statutory certificates issued by a public authority in discharge of its official functions. They carry weight. They confirm that the building was constructed and occupied on the land described therein.

23. The Architect's Certificate placed on record by the petitioner also aligns with these documents. It certifies the built area and the extent of development. More importantly, it corresponds to the area mentioned in the Agreements. There is no attempt to inflate the measurement or to add adjoining plots. The Architect's Certificate does not travel beyond what is recorded in the Agreements and municipal records.

24. When these documents are read together, a clear picture emerges. The identity of the property is certain. The area is definite. The land for which Deemed Conveyance is sought measures 1479.10 square metres and comprises CTS Nos. 100, 101 and 103 to 107. The petitioner has not claimed anything outside this description. There is no material on record to suggest that the petitioner is attempting to include CTS Nos. 102 or 1198 or any

other adjoining land within the present application.

25. In proceedings under Section 11 of MOFA, the Competent Authority is required to be satisfied about the identity of the land and the extent of area for which conveyance is sought. That requirement stands fulfilled here. The Agreements identify the land. The Commencement and Occupation Certificates corroborate that identification. The Architect's Certificate confirms the built area. The documents speak in one voice.

26. On the basis of this record, the petitioner has established, at least prima facie, that the suit property measures 1479.10 square metres and that its claim for Deemed Conveyance is confined strictly to that area. This finding answers the submission that the petitioner is seeking conveyance of an undefined or larger tract of land. The record does not support such an apprehension. The claim is precise. It is rooted in the Agreements and supported by statutory certificates. That is sufficient for the purpose of Section 11 proceedings.

27. It is undisputed that Respondent Nos.3 and 4 sold a majority of flats before issuance of the Occupation Certificate. The Agreements recorded the obligation to form the society and to execute conveyance in favour of the society once formed. The case law requires performance of these obligations by the promoter. Where the promoter fails to perform, Section 11 remedy crystallises. The record shows that despite sale of flats and the obligation recorded in the Agreements, no conveyance was executed in favour of the society within the prescribed period. The

lodging of FIR under Section 13 MOFA by a member underscores the non-performance allegation. The promoter's conditional bail or their age is irrelevant to the statutory obligation. In the face of these facts a statutory remedy under Section 11 is triggered.

28. The next limb of the defence rests upon the alleged minutes of meeting dated 27 March 2021. Respondent Nos. 3 and 4 contend that in that meeting the flat purchasers gave consent for further development and recorded that they had no objection to construction on the adjacent open land. The petitioner disputes the very foundation of this document. It is stated that several signatures appearing on the minutes are forged and that many flat purchasers never attended such meeting. It is also pointed out that some members whose names are shown as present deny participation altogether. At this stage, the Court is not conducting a trial on the authenticity of signatures.

29. Even assuming for a moment that some meeting did take place, the contents of the minutes must be read carefully. The minutes refer to proposed construction on adjoining portions and to certain arrangements for future development. They do not contain any clear and specific resolution stating that the flat purchasers waive their right to obtain conveyance of the land described in their Agreements. There is no categorical statement that the promoter is relieved of his obligation to execute conveyance in favour of the society. The Agreements under Section 4 record a clear promise. The promoter agreed to form the society and to convey the land. Such a promise cannot be lightly brushed aside on the strength of a subsequent informal meeting, especially

when the authenticity of that meeting itself is in dispute.

30. The Court must also bear in mind the nature of rights involved. The right to conveyance flows from statute. It is not a mere personal arrangement. Section 11 of MOFA creates a remedy to enforce that obligation. If promoters were permitted to rely on loosely worded minutes of meetings to defeat statutory rights, the entire scheme of the Act would be rendered uncertain. Therefore, unless the document clearly establishes a conscious and lawful surrender of rights, it cannot be treated as conclusive.

31. On the material placed before this Court, the minutes of 27 March 2021 do not displace the petitioner's prima facie entitlement. They neither override the Agreements nor nullify the statutory obligation to convey. As the record stands, the minutes do not defeat the claim for deemed conveyance.

32. The Agreements executed under Section 4 are binding contracts supported by statutory mandate. They specify the land and record the promoter's duty to convey. Such contractual and statutory obligations cannot be unilaterally altered by subsequent consents, whether informal or formal, unless there is a legally valid modification accepted by all concerned and consistent with law. A promoter cannot say that because some purchasers signed NOCs for construction, the obligation to convey the original land disappears. Development proposals and conveyance obligations operate in different spheres. The consents relied upon by the respondents appear to relate to proposed construction on adjacent or open portions. They do not expressly state that the flat

purchasers give up their right to obtain conveyance of 1479.10 square metres as described in the Agreements and confirmed by the Commencement and Occupation Certificates.

33. The statutory record continues to recognise the building as standing on CTS Nos. 100, 101 and 103 to 107. The Agreements continue to bind the promoter. No registered document has been produced which lawfully alters the extent of land to be conveyed. In these circumstances, the alleged consents and NOCs do not operate to extinguish or dilute the petitioner's statutory right to seek deemed conveyance. They may have relevance in separate proceedings concerning development, but they cannot override the clear mandate of MOFA. For these reasons, neither the minutes of meeting nor the consents relied upon by the respondents can stand in the way of granting deemed conveyance on the present record.

34. Respondents complain that only 16 of 28 flat owners formed the petitioner society and that 12 flat owners were excluded. The Co-operative Societies Act and the rules prescribe the mode of registration and the remedy against wrongful registration. The existence of an appeal under Section 152 challenging registration cannot per se render the society non-existent until the appeal is decided. Registration of a society is prima facie valid and the society may invoke its statutory rights unless and until the competent authority cancels registration. The Divisional Joint Registrar's status quo order of 19 May 2025 is not an order of cancellation. It preserves the position pending adjudication. In these circumstances the petitioner society cannot be treated as non-existent simply because an appeal is pending. To hold

otherwise would allow promoters to frustrate statutory remedies by initiating collateral proceedings. The correct approach is to treat the society's registration as valid for present purposes subject to the result of the appellate proceedings. If the registration is ultimately set aside, appropriate consequences will follow. That contingency does not justify refusal of Deemed Conveyance where the statutory prerequisites are otherwise satisfied.

35. Respondents rely on sanctioned plans and permissions granted by NMMC for further construction which they say include parts of CTS Nos.100 and 101. The petitioner has itself filed Writ Petition No.5612 of 2025 challenging the commencement certificate and sanctioned plans for such further construction. No interim relief was granted in that writ. The existence of municipal permissions does not resolve the rival claims of title and the statutory obligation to convey. Where the Agreements, the Commencement Certificate and the Occupation Certificate identify the land as belonging to the purchasers and where the promoter has failed to convey, the statutory remedy under Section 11 remains available. The sanctioned plans for new construction require separate adjudication. They cannot be allowed to frustrate a clear statutory remedy which arises out of the promoter's failure to execute conveyance.

36. On the record before this Court the petitioner has established the essential facts which invoke Section 11. The Agreements identify the property and area of 1479.10 sq m. The Architect's Certificate corroborates the built area. The Occupation Certificate and Commencement Certificate are on record. The promoter has

sold flats and has not executed conveyance in favour of the society. The Competent Authority erred in rejecting the application for Deemed Conveyance on the materials placed before it. The petitioner is therefore entitled to relief.

37. For the reasons recorded above, the writ petition is allowed.

38. The impugned order dated 26 August 2025 passed by Respondent No.2 under Section 11 of MOFA is set aside to the extent it rejects the petitioner's application for Deemed Conveyance for the area described in the Agreements and in the Commencement and Occupation Certificates, namely 1479.10 square metres comprised in Tika No.2, City Survey Nos. 100, 101 and 103 to 107, Village Shahabaz Belapur, Kille Gaothan, Navi Mumbai.

39. Respondent No.2 is directed to pass a fresh order in accordance with law under Section 11 of MOFA, to record the petitioner Society's entitlement to Deemed Conveyance for 1479.10 sq m and to issue necessary certificates and directions enabling execution and registration of conveyance in favour of the petitioner Society.

40. Respondent No.2 shall complete the said exercise and issue the consequential order and certificate within six weeks from the date of receipt of this judgment.

41. No order as to costs.

42. At this stage, Mr. Kanetkar, learned Advocate for respondent Nos.3 and 4 seeks stay of the Judgment and Order. However, for

the reasons recorded in this Judgment, the request for stay is rejected.

(AMIT BORKAR, J.)