

A CONTRACT BETWEEN FLAT PURCHASERS & PROMOTOR CANNOT OVERRIDE OR DEROGATE FROM STATUTORY MANDATES

INTRODUCTION:

The Bombay High Court in its decision in **Rameshwar Cooperative Housing Society Limited & Ors vs. Divisional Joint Registrar & Ors.**¹, held that any clause in the agreement of sale between the flat purchaser and the developer which is inconsistent with the rights and obligations flowing under the Maharashtra Cooperative Societies Act, 1960 ("MCS Act") and Maharashtra Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ("MOFA") is void to the extent of such inconsistency.

FACTS:

The Petitioners are Cooperative Housing Societies registered under the MCS Act who have challenged the legality of the order dated 28th February, 2025 ("Impugned Order") passed by Respondent No. 1 being the Divisional Joint Registrar, Cooperative Societies in Application No. 14 of 2024, deregistering the cooperative housing association formed by the Petitioners – namely, Neelkanth Heights Cooperative Housing Societies Association.

Respondent No. 3 is the developer who undertook construction of a large housing project named Neelkanth Heights. The project was developed in a phased manner and the concerned planning authority i.e., Thane Municipal Corporation had issued occupancy certificates in favour of the respective housing societies between the years 2004-2005 and 2011. The cooperative societies representing purchasers of the respective buildings were

registered in the years 2006 and 2011 under the MCS Act.

Despite completion of substantial portions of the project and occupation of flats by the purchasers, steps were not taken by Respondent No. 3 to constitute an apex body or association of societies as envisaged under Section 154B of the MCS Act. As a result, the Petitioners filed an application with Respondent No. 2 being the Deputy Registrar, Cooperative Societies, for registering Neelkanth Heights Cooperative Housing Societies Association ("said Association"). The said Association was registered with Respondent No. 2 on 1st April, 2022.

As a result of Respondent No. 3's failure to execute a conveyance deed in terms of statutory mandate under section 11 of MOFA, the Petitioners convened a special general body meeting of the apex association and a resolution was accordingly passed on 17th March, 2024 authorizing the filing of an application for deemed conveyance. Thereafter, a legal notice

¹ Writ Petition No. 4704 of 2025

was issued upon Respondent No. 3 on 19th March, 2024 calling upon it to execute the conveyance of the leasehold rights in favour of the said Association.

As a result of Respondent No. 3 failing to comply with the above request, the said Association filed Application No. 419 of 2024 on 6th June, 2024 before Respondent No. 2, seeking issuance of unilateral deemed conveyance under Section 11 (3) of MOFA.

On 29th April, 2024, the Respondent No. 3 filed Application No. 14 of 2024 before Respondent No. 1 Divisional Joint Registrar, praying for deregistration of the said Association, contending that the said Association was registered prematurely by misrepresentation, without Respondent No. 3's consent and that the layout is yet to be completed.

Thereafter, Respondent No. 2 being the competent authority under MOFA rejected the Petitioners' Application No. 419 of 2024 for deemed conveyance by order dated 15th October, 2024 on the ground that the layout of the project was still under completion which order was challenged by the Petitioners separately and was stated to be pending.

In the meantime, the Petitioners filed a reply in Application No. 14 of 2024 pointing out that neither the MCS Act nor the rules framed thereunder required consent of the promotor for formation of any apex body by registered societies. The Petitioners submitted that the registration of the said Association was legally valid and made after adherence of due process. However, Respondent No. 1 without proper consideration of the legal provisions and the binding obligations under MOFA, proceeded to pass the Impugned Order deregistering the said Association in purported exercise of powers under Section 21A of the MCS Act. Thereafter,

the Petitioners filed a Writ Petition before the Bombay High Court.

ISSUE FOR CONSIDERATION:

The issue for consideration before the Bombay High Court was whether the Impugned Order directing deregistration of the said Association was valid in the eyes of law in the facts and circumstances of the case.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

It was contended that there is no legal obligation under the MCS Act requiring that the promoter be given a hearing before registration of a cooperative housing association and that Respondent No. 3 had no locus standi to seek deregistration of a duly registered society as it is not an aggrieved party in the eye of law. It was submitted further that the formation of a cooperative society by purchasers of flats is a statutory right which flows from Section 10 of the MCS Act and Section 10 of MOFA and as such cannot be diluted or curtailed by any private agreement with the promoter.

The Petitioners pointed out that the said Association had been registered under Section 154B-8(1) of the MCS Act which permits societies within a layout to form an apex body for the purpose of managing common facilities. It was also submitted that Respondent No. 1 had failed to record any satisfaction that the registration was procured by fraud or misrepresentation adding further that the finding that the flat purchase agreements were not submitted at the time of registration is legally inconsequential as there is no such statutory requirement.

The Petitioners submitted that for more than a decade the Promoter avoided execution of conveyance under MOFA citing the pretext of

incomplete project – the societies comprising the said Association were constructed in 2004-2005 and 2011 and have been functioning independently have long since been registered. It was also submitted that filing a deregistration application in nearly two years after registration of the said Association was *malafide* and to frustrate the deemed conveyance proceedings initiated under Section 11 of MOFA.

The Petitioners relied upon the judgment of the Bombay High Court in ***Aurum Avenue Co-op Housing Society Ltd. & Anr vs. State of Maharashtra & Ors.***² wherein it has been held that power under Section 21A of MCS Act is a punitive measure and is not to be equated with appellate or revisional powers under Section 152. It was clarified that deregistration must be based on cogent and credible evidence of fraud or deception, and not merely on an erroneous administrative decision. It was further contended that even in *Waghmay Mahila Machimar Sahakari Sanstha (supra)*, the Bombay High Court had held that initial satisfaction of the Registrar must be based on tangible material before proceeding to exercise power under Section 21A and that the present case lacked such foundational satisfaction and hence the Impugned Order is legally unsustainable.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

Relying upon the judgment of the Supreme Court in ***Radha Krishnan Industries vs. State of Himachal Pradesh***³, the Respondent No. 3 submitted that the Court ought not to exercise its writ jurisdiction where an alternate statutory remedy is available, unless there is a breach of natural justice or fundamental rights or where the impugned order is patently without

jurisdiction. Reliance was placed upon the judgment in ***Waghmay Mahila Machimar Sahakari Sanstha Maryadit, Botha (SA) vs. Commissioner of Fisheries***⁴ to submit that a registration obtained by submitting incorrect or incomplete information can be cancelled by the Registrar in exercise of powers under Section 21A of the MCS Act. The Respondent No. 3 also placed reliance upon the decision in ***Lodha Belmondo Housing Federation Ltd. vs. State of Maharashtra & Ors.***⁵ where the Court held that registration of an apex body prior to completion of the full project, and contrary to the agreement with the developer was unsustainable. The Respondent No. 3 urged that the flat purchase agreements contained a clause stipulating that an umbrella society would be formed only after completion of the entire layout and that such suppression of the clause constitutes material misrepresentation. It was also submitted that the Respondent No. 3 was never heard before registration and therefore, Respondent No. 1 has rightly passed the order of deregistration after considering the materials placed before him.

JUDGMENT:

On the preliminary objection raised by Respondent No. 3 regarding entertainability of the Writ Petition on the grounds of existence of an alternative remedy being available under the MCS Act, the Court held that the writ jurisdiction of the Court under Article 226 of the Constitution is not to be readily invoked wherein an effective and efficacious alternative statutory remedy exists. However, the principle is not an inflexible rule of law. The Court relied upon the Apex Court judgment in the case of

² W.P. No. 14644 of 2023

³ (2021) 6 SCC 771

⁴ 2020 (1) Mh.L.J. 864

⁵ W.P. No. 15253 of 2023

Maharashtra Chess Association vs. Union of India⁶ which held that the power of judicial review under Article 226 is discretionary in nature. The existence of an alternative remedy is merely relevant factor, and not bar, to the exercise of writ jurisdiction. The Court held that the discretion of the High Court must be exercised keeping in view the nature of injustice, the seriousness of allegations, and the character of the right alleged to be violated, adding further that where a petition raises issues that touch upon statutory rights conferred under beneficial legislation, the writ court is not precluded from exercising jurisdiction solely on the ground of an alternate remedy.

The Court also observed that MOFA and MCS Act are laws made for the benefit of flat purchasers and the developer under MOFA has a legal duty to help the flat purchasers to form a cooperative housing society and to see that the property is transferred to such society within a time fixed by law. The Court observed that the record show that Respondent No. 3 had acted in a manner meant to defeat the legal rights of the Petitioners and that the duty to help purchasers in forming a cooperative society is not optional but compulsory as per Section 10 of MOFA and Rule 9 of the MOFA Rules and that this right does not depend on the permission or consent of the developer. The Court added that the actions of Respondent No. 3 show that the intent was not *Bonafide* but to stop purchasers from getting the legal rights which they were trying to enforce and that when such palpable injustice is brought before the Court, it cannot turn away and reject the petition merely because another legal remedy may be available. The Court added that the law is clear that having another remedy is only one faction and not a

complete bar to filing a writ petition under Article 226 of the Constitution.

The Bombay High Court held that an agreement under Section 4 of MOFA is a contract between a flat purchaser and a promoter having statutory flavour. While it binds the parties *inter se*, it cannot override or derogate from statutory mandates, especially those enacted under welfare legislation. Similarly, the MCS Act is a special State legislation that governs the formation, registration, and regulation of cooperative housing societies and their federations. Section 10 of MOFA casts an obligation on the promoter to take all necessary steps for the formation an association of persons who have taken flats within a prescribed time. The Court held further that a cooperative housing association or federation of cooperative societies is a distinct legal entity, and its formation is neither governed nor regulated by the contract between the flat purchaser and the promoter.

The Court observed further that promoter's agreement with an individual flat purchaser under Section 4 of MOFA or his obligation under Section 10 to form an initial association of purchasers may serve as a trigger for collective action but does not regulate or restrict the formation of a cooperative housing association – the Court held that MOFA governs the obligations of the promoter and the rights of the purchasers in pre-conveyance stage, whereas the MCS Act takes over the field once societies are formed and registered – they are not obligated to the promoter's consent to federate into an apex body and that there is no provision either in MOFA or the MCS Act to obtain promoter's consent for registering a cooperative housing association.

⁶ (2020) 13 SCC 285

In view of the above, the Court observed that it is legally impermissible for Respondent No. 1 to have relied on a clause in the sale agreement to invalidate the statutory act of registration and that no clause in a private agreement can nullify a statutory right under the MCS Act nor can it be the sole foundation deregistration. The Court held that the order of deregistration is vitiated by fundamental error in law.

Applying the inversion test, the Court held that the proposition sought to be relied upon from the judgment in ***Waghmay Mahila Machimar Sahakari Sanstha (supra)*** is not the ratio decidendi and the reliance placed on the said judgment is misplaced insofar as it seeks to draw authoritative support from a proposition that was not determinative of the outcome in that case. The Court also held that the material on record does not reveal any conduct by the Petitioners amounting to fraud or misrepresentation in obtaining registration. The alleged concealment of the agreement entered with purchasers is not something which is required under the MCS Act or Rules to be submitted for association of society registration and that the Registrar was aware of the prior registration of member societies therefore there was no suppression of material fact.

The Court observed further that the reliance placed upon the judgment in ***Lodha Belmondo Housing Federation Limited (supra)*** by Respondent No. 3 to urge that registration of an apex body of a cooperative housing society prior to the completion of overall project and in contravention of the agreement between Respondent No. 3 and the Petitioners is unsustainable. The Court held the said judgment was distinguishable on facts and does not advance the case of the present Respondents.

Relying upon its own judgments in ***Lok Housing and Constructions Ltd. vs. Lok Everest Cooperative Housing Society Ltd.***⁷ and ***Flagship Infrastructure Ltd. vs. The Competent Authority***⁸ the Court reiterated that any contractual clause which postpones the conveyance of title in favour of the society until completion of the entire project is violative of the MOFA Rules and that promoter's obligation to convey title within four months from the date of registration of society cannot be diluted or defeated by any agreement to the contrary.

Applying the above principles, the Court held that any clause in the agreement of a sale which is inconsistent with MCS Act and MOFA is void to the extent of such inconsistency – statutory mandates cannot be defeated by contract.

The Bombay High Court held that the use of Section 21A in the present case was not justified and based on a wrong understanding of law. The Court observed that the basic legal requirements for deregistration of a cooperative society were not fulfilled – there was no proper evidence brought on record to prove any fraud either. The action of initiating deregistration by Respondent No. 3 went beyond its lawful right and that the flat purchasers acted within their legal rights for their common good. The Court also observed that ultimately, the rule of law must ensure that legitimate collective efforts of home-buyers are not thwarted by technicalities or the stratagems of those who stand to profit from disunity. The Court observed that the Registrar seemed to have ignored this important object of the law and therefore the order deserves to be set aside on the grounds of legal perversity and absence of jurisdictional basis.

⁷ 2025 SCC Online Bombay 711

⁸ 2025 SCC Online Bombay 1240

In view of the aforesaid, the Impugned Order was quashed and set aside.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.