2026:BHC-AS:13204

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 14 OF 2024
WITH
INTERIM APPLICATION NO.241 OF 2024

Cable Corporation of India Limited]
A Company incorporated under the]
provisions of the Companies Act, 1956,]
having its registered office at 6, Vallabhdas Marg,]
Ballard Estate, Mumbai – 400 001.]... Appellant

Versus

1. The Western Edge II Premises]
Co-operative Society Limited]
having its address at Off Western Express Highway,]
Borivali (East), Mumbai – 400 066,]

2. Kanakia Spaces Realty Private Limited]
A Company incorporated under the]
Companies Act, 1956, having its registered office]
at 215, Atreum, 10th Floor, CTS No. 215,]
Andheri Kurla Road, Andheri (East),]
Mumbai – 400 093.]

3. Prithvi Consultancy Private Limited]
A Company incorporated under the]
Companies Act, 1956, having its registered office]
at 6, Nagin Mahal, 2nd Floor, 82, Veer Nariman]
Road, Fort, Mumbai – 400 023.]

4. Samarpan Exotica CHS Limited]
having its address at Kanakia Spaces,]
Off Western Express Highway, Borivali (East),]
Mumbai – 400 066.]

5. The Western Edge I Premises]
Co-operative Society Limited]
A Society registered under the Maharashtra]

Co-operative Societies Act, 1960,]
having its address at Kanakia Spaces,]
Off Western Express Highway,]
Borivali (East), Mumbai – 400 066.]...Respondents

Mr. Aspi Chinoy, Sr. Adv. a/w. Mr. Nikhil Sakhardande, Sr. Adv., Mr. Yash Momaya, Mr. Munaf Virjee, Mr. Rushabh Parekh i/b. AMR Law for Appellant;

Mr. Mehul Shah a/w Mr. Yatin Kochar, Ms. Nishita Joshi and Ms. Chaitali Jadhav for Respondent No.1;

Ms. Bhakti Mehta, Ms. Shubadha Khandekar, Ms. Letishiya Chaturvedi i/b. Wadia Ghandy & Co. for Respondent No.2.

CORAM : KAMAL KHATA, J.
RESERVED ON : 10th February 2026.
PRONOUNCED ON : 17th March, 2026.

JUDGEMENT:

1. This Appeal has been preferred by the Appellant/Original Defendant No.1 ("*the Owner*") under Order XLIII Rule 1(r) challenging the Order dated 30th October 2023 passed by the Learned Additional Principal Judge, City Civil Court at Dindoshi, in Notice of Motion No. 2989 of 2022 in S.C. Suit No. 2103 of 2022 ("*Impugned Order*").

2. By the Impugned Order, the Learned Trial Court allowed the Notice of Motion filed by Respondent No. 1 (*"the Society")* and has granted injunction restraining the Appellant-Owner from utilising any FSI/TDR, creating third-party rights, and or commencing any construction on the land bearing CTS Nos. 165 and 163A

admeasuring approximately 31,123 sq. mtrs. at Village Magathane, Borivali, Mumbai (*"Suit Land"*).

3. The Owner's grievance against the impugned Order is threefold.

i. The Trial Court has granted sweeping and drastic interim reliefs which effectively freeze the entire development potential of the Suit Land, even though the Society has failed to establish any prima facie case entitling it to the Owner's reserved and contractually demarcated FSI/TDR rights.

ii. Second, that the Trial Court has completely overlooked the express terms of the Development Agreements of 2005 and 2008, as well as the Agreements for Sale executed with the flat purchasers, which clearly record that development rights of Respondent No. 2 were restricted to 59,157 sq. mtrs. FSI/TDR, while the balance FSI/TDR was expressly reserved to the Owner.

iii. Third, that the Trial Court has failed to consider that the present suit has been instituted by the Society as a means to pressurize the Owner to part with additional FSI/TDR, allegedly required for regularisation of unauthorised additions and alterations in the Society's own building.

4. In these circumstances, the principal question that arises in this Appeal is:

Whether, pending final adjudication of the Suit, an Owner who has expressly reserved its balance FSI/TDR rights under Development Agreements - which are incorporated and acknowledged by the flat purchasers' in their own Agreements for Sale - can nevertheless be injuncted from dealing with those reserved rights solely on the basis of the Society's claim that it is entitled to such balance FSI/TDR under the provisions of the Maharashtra Ownership Flats Act, 1963 (*"MOFA"*).

FACTS OF THE CASE

5. It is an undisputed fact that the Appellant is an owner of the land parcels bearing CTS No.165 and 163A totally admeasuring 151,328 sq.mtrs. situated at Village Magathana, Borivali, Mumbai (*"Larger Property"*).

6. By a Development Agreement dated 10th February 2005 between the Owner and the Respondent No.2 (*"the Developer"*), read with Supplemental Agreement dated 8th May 2008, Deed of Rectification dated 5th June 2008, Agreement dated 19th April 2008 executed between the Owner, EIPL (now CCI Projects Pvt. Ltd.) and Respondent No. 3 (*"Prithvi")* and the Agreement dated 30th April 2008 executed between the Developer and Prithvi (the aforesaid agreements are collectively referred to as *"the*

Development Agreement/(s)"), development rights in respect of the Suit Land were granted to the Developer. Under the said Development Agreements, the aggregate and final FSI available for development was fixed and capped at 59,157 sq. mtrs.

7. Pursuant to the development rights so granted, the Developer constructed three buildings on the relevant portion of the Larger Property namely Western Edge I, Western Edge II (the building of the Plaintiff Society), and Samarpan Exotica. It is admitted by all parties that the entire permissible FSI/TDR of 59,157 sq. mtrs. was fully consumed in the construction of the said three buildings.

8. Subsequently, Occupation Certificates were issued by the Mumbai Municipal Corporation (MMC) in respect of the buildings of Respondents Nos. 4 and 5 on 22nd June 2010, and in respect of the building of Respondent No. 1 Society on 3rd July 2012. Possession was thereafter handed over to the flat purchasers, who have been in occupation and enjoyment of their respective flats since then. The Respondent No.1 Society was formed on 20th November 2014, and the flat purchasers thereafter became its members.

9. The Agreements for Sale executed by the Developer with the flat purchasers expressly recorded that the Developer's development entitlement was strictly restricted to 59,157 sq. mtrs. of FSI/TDR under the Development Agreement. They further clarified that any balance or additional FSI/TDR in respect of the

land would remain the exclusive property of the Owner, who retained the unfettered right to utilise the same for development of other parts of the Larger Property.

10. Matters remained undisputed until 2019-2020, when the MMC issued notices to the Society and the Developer alleging illegal additions and alterations in the Western Edge II building, resulting in excess FSI usage of approximately 4,226 sq. mtrs. beyond the permissible limit. This excess FSI was attributed to unauthorised additions and alterations carried out in the building.

11. Following the MMC notices, discussions took place between the Owner, the Society and the Developer regarding the purchase of additional FSI/TDR from the Owner to regularise the excess FSI usage. However, these negotiations failed as the Owner declined to provide additional FSI/TDR for such regularisation.

12. In September 2021, Society filed a Deemed Conveyance Application before the Competent Authority under the provisions of MOFA. The Society also alleged that prior to this, on 9th November 2020, the Owner had subdivided the Suit Land in breach of Section 7 of MOFA.

13. On 22nd March 2022, a Deemed Conveyance Order was passed in favour of the Society in respect of 8,953.46 sq. mtrs. However, the order did not attain finality and was subsequently challenged, resulting in the matter being remanded for

reconsideration. Thereafter, on 7th June 2022, Society's application for Deemed Conveyance was rejected by the Competent Authority.

14. Shortly thereafter, in September 2022, Society instituted S.C. Suit No. 2103 of 2022 along with Notice of Motion No. 2989 of 2022 seeking interim reliefs.

15. In the meantime, on 31st March 2023, the Owner obtained permission from the MMC to undertake construction of additional towers on the Suit Land. The learned Trial Court thereafter passed the impugned order dated 30th October 2023 allowing the Notice of Motion.

16. Subsequently, by an order dated 14th November 2025 in Writ Petition No. 6972 of 2023, this Court set aside the rejection of Society's Deemed Conveyance Application and remanded the matter to the Competent Authority for fresh consideration.

17. During the pendency of this Appeal, Society filed SLP (C) Nos. 7401-7402 of 2025 before the Hon'ble Supreme Court challenging an order of this Court dated 4th February 2025. By order dated 21st March 2025, the Supreme Court directed the parties to maintain status quo. The SLP was disposed of on 7th May 2025, with the Supreme Court declining to interfere and observing that any action taken by the parties would remain subject to further order of this Court.

RIVAL SUBMISSIONS

18. Mr. Aspi Chinoy, learned Senior Counsel, appearing for the Owner, submits that the impugned order, insofar as it restrains the Owner and its associate company, Respondent No.3, from utilising the balance FSI /TDR available on the Suit Land of 31,323 sq mtrs., is not only contrary to the Society's own pleaded case, but is also contrary to the settled legal position under MOFA

19. He submits that under the MOFA, the flat purchasers can assert rights only against the promoter, and not against the landowner, and in any event cannot claim rights greater than those held by the promoter.

20. It is further submitted that the Society itself has specific pleaded that the Developer alone acted as the Promoter, and it is an admitted position that the Developer was granted rights by the Owner to utilise only 59,157 sq. mtrs. of FSI / TDR on the Suit land. Despite this the Trial Court has proceeded on the footing that the Owner, the Developer, and Respondent No. 3 together constituted the promoter and developer, and has held that after possession of the buildings was handed over to Respondent Nos. 1, 4 and 5, the balance FSI on the Suit land belonged to the Society. According to the learned Senior Counsel, this finding is wholly contrary to both the pleadings and the contractual arrangement between the parties.

21. Learned Senior Counsel submitted that the Trial Court has granted interim relief without examining the express terms of the Development Agreements between the Owner and Developer. These agreements clearly restrict the Developer's rights to 59,157 sq. mts. of FSI/TDR on the suit land. The Agreements for sale executed with the Flat Purchasers also record this limitation.

22. Despite these clear contractual provisions, the Trial Court has granted interim relief in terms of prayers (a) to (c) of the Notice of Motion, restraining the Owner, the Developer, and Respondent No. 3 from utilising any FSI/ TDR on the suit land, creating third party rights, or commencing construction thereon.

23. Learned Senior Counsel further submits that the findings recorded in the impugned order are beyond the pleadings and the case made in the Plaint. The Society has never claimed any right over the entire larger property admeasuring 1,51,328 sq. mtrs., nor has it challenged the Development Agreements, which expressly reserve the balance FSI and development rights to the Owner.

24. Even the documents relied upon by the Society show that its rights are confined only to the specific portion of the land admeasuring 31,323 sq. mtrs., which was given to the Developer/Promoter for development. In the absence of any pleading that the reservation of balance land or FSI is illegal or contrary to MOFA, the Trial Court could not have assumed that the

Owners are prohibited from developing the remaining property. The findings are therefore not supported by the pleadings and are unrelated to the reliefs sought in the Notice of Motion.

25. Learned Senior Counsel submitted that the legal position governing the present issue is well settled by the judgments of this Court in *Vaidehi Akash Housing Pvt. Ltd. v. New D.N. Nagar Co-op. Housing Society Union Ltd.*[1] and the Division Bench judgment in *Deepak Prabhakar Thakoor v. MHADA*[2]. These judgements hold that a landowner who merely grants development rights to an independent developer does not become a "promoter" under MOFA.

26. Where the developer undertakes construction and sale of flats in its own right and on its own account, the development cannot be said to have been "caused" by the owner so as to impose upon the owner the statutory obligations of a promoter. Any contrary interpretation would blur the distinction between an owner and a promoter and would impermissibly impose upon landowners the entire statutory burden under MOFA, which was never contemplated by the Act.

27. Learned Senior Counsel submits that the Division Bench has expressly approved and reaffirmed this legal position, and the issue is no longer open to debate. The principle emerging from these authorities is that third-party purchasers cannot enlarge their

[1] 2014 SCC Online Born 5068
[2]2023 SCC Online Born 2234

rights by describing a landowner as a promoter, when the contractual arrangement clearly vests the role of promoter in another entity. The statutory obligations under MOFA attach only to the person who undertakes the development and sale in his own right, and not to a landowner who has merely granted development rights.

28. Learned Senior Counsel further submits that the Development Agreements expressly provide that the Developer would construct and market the premises in its own name and at its own responsibility, that it would sell the units on a principal-to-principal basis, and that the sale consideration would belong absolutely to the Developer. The Agreement thus clearly allocate the development activity and commercial benefit to the Developer, while the Owner retained proprietary rights to any balance FSI/TDR.

29. Learned Senior Counsel also submits that both in the present Suit and in the deemed conveyance proceedings, the Owner has specifically disputed and denied Society's claims under the MOFA Agreements. The Society's application for deemed conveyance was in fact rejected by the Competent Authority.

30. In these circumstances, there exists a serious dispute regarding the Society’s alleged rights, yet the Society has filed the present Suit seeking only injunctive relief without any declaratory

reliefs. It is submitted that, as held by the Supreme Court, in *T.V. Ramakrishna Reddy v. M. Mallappa*[3] *and K.M. Krishna Reddy v. Vinod Reddy*[4] such a Suit for bare injunction in the face of a disputed title is not maintainable.

31. It is therefore submitted that the Appeal deserves to be allowed, the Impugned Order be set aside, and the Notice of Motion be dismissed.

32. *Per Contra*, Mr. Mehul Shah, learned Advocate appearing for Society, opposed the Appeal at the outset. According to him, the core issue is whether a Landowner/Promoter, after disclosure of the plans in terms of Section 4 of MOFA at the time of sale of units, (ii) obtaining Occupation Certificate, (iii) handing over possession, and (iv) allowing statutory period for conveyance to expire, can subsequently claim rights over additional FSI arising from a change in law without the informed consent of the flat purchasers ?

33. In his view the answer is emphatically No. According to him, such a claim is contrary to Sections 4, 7, 10 and 11 of the MOFA read with rule 9 of the MOFA Rules. In support, he relied upon the judgment in the case of *Ravindra Munteja Vs Bhavan Corporation and Ors.*[5]*, Vithal Patil Vs Kores Ltd.*[6] *And Madhuvihar Co-operative Housing Society Vs M/s. Jayantilal Investments*[7]. He submitted that

[3] (2021) 13 SCC 135
[4] (2023) 10 SCC 248
[5] 2003 (5) Mh. L.J 23
[6] 2019 (3) MH. L.J. 857
[7] 2010 SCC Online Bom 1519

the promoter is under a statutory obligation to make full and true disclosure of the development potential of the plot, at the stage of layout plan, including whether the plot is capable of being loaded with additional FSI/TDR, to what extent, and in what manner it is proposed to be utilised.

34. Learned Counsel submitted that the Appeal proceeds on a fundamentally erroneous premise that the Owner is merely a 'landowner' and not a 'promoter' under the MOFA. He submitted that the statutory definition of promoter under Section 2(c) clearly includes a person who constructs or causes to be constructed a building for sale. According to him, the Owner executed the Development Agreement and comprehensive Powers of Attorney, authorised the Developer to construct and sell flats, obtained all development permissions in its own name, and received consideration for the grant of development rights. In these circumstances, the Owner cannot now disassociate itself from the project so as to evade the statutory obligations under MOFA.

35. Learned Counsel submitted that the distinction sought to be drawn between "allowing" and "causing" construction is artificial and contrary to the scheme of the Act. By granting development rights, conferring agency powers, and retaining economic interest in the FSI/TDR, the Owner actively facilitated and enabled the construction and sale of flats. Reliance was placed on the judgment

in *ALJ Residency Coop. Housing Society Ltd. Vs. State of Maharashtra*[8] and the subsequent decision *in Laxman Narayan Zagade & Ors. V. Competent Authority*[9], where it was held that an owner who causes construction and retains rights in the property falls within the definition of promoter and is bound by statutory obligations under MOFA, including the obligation to convey the land.

36. Learned Counsel further submitted that the Owner's contention that Developer alone is the promoter is contrary to the Plaint and the record. According to him, the Plaint does not state that Developer is the only promoter, and in any event the statutory definition of promoter cannot be limited by the pleadings. Once the Act includes a person who causes construction within the definition of promoter, the Owner cannot avoid liability by relying on selective pleadings.

37. It was also submitted that the judgements relied upon by the Owner in *Vaidehi Akash* (supra) and *Deepak Prabhakar Thakoor* (supra) is misplaced and distinguishable on facts. According to the learned Counsel, those cases involved situations where the landowner had only a passive role or where redevelopment arrangements were materially different. In the present case, however, the Owner actively participated in the development,

[8] 2024 SCC OnLine Bom 3638
[9] 2025 SCC OnLine Bom 768

retained commercial interest in the balance FSI, and authorised sale of flats on ownership basis. The Owner therefore falls within the statutory definition of promoter.

38. Learned Counsel further relied upon subsequent decisions including *Wadhwa Group Holding Pvt. Ltd. Vs Vijay Choksi*[10], *Sandeep Grover Vs Sai Siddhi Developers*[11] and *Goregaon Pearl CHS Ltd. Vs Sandeep Grover*[12] to submit that absence of privity of contract does not absolve a person from liability as a promoter. Where development is undertaken through a power of attorney, principles of agency apply and the owner acting through such agent cannot deny responsibility under MOFA.

39. Learned Counsel also relied upon the judgment of this Court in *Jai Jalaram Co-operative Housing Society Ltd. Vs Nanji Khimji and Co.*[13] and submitted that the Developer, under clause 6(iv), 6(v) and 11(a)(xxi) of the Development Agreement, had undertaken to convey 31,323 sq. mtrs. of land to the Society. Having made such a representation, the Developer is estopped from denying the absolute rights under MOFA.

40. It was further submitted that Section 7 of MOFA prohibits alteration or additional construction after disclosure of plans without prior consent of flat purchasers. According to the learned

[10] 2024 SCC Online BOM 660
[11] 2023 SCC Online NCDRC 197
[12] 2023 SCC Online SC 1687
[13] 2024 SCC Online BOM 491

Counsel, the layout plan annexed to the Occupation Certificate did not disclose any further towers or buildings on the open portion of the land. Any attempt by the Owner to utilise additional FSI for new construction is therefore contrary to the statutory requirement of prior informed consent of the flat purchasers.

41. In this context, reliance was placed on the judgment in *Neena Sudarshan Wadia Vs. Venus Enterprises*[14] *(1984) and Dosti Corporation Vs Sea Flama CHS Ltd.*[15] where it was held that blanket or general consent or authority obtained by the promoter is not valid consent under Section 7 of the MOFA. It was submitted that clause 7, 8, 27 and 30 for the Agreement for Sale are standard clauses which amount to blanket consent and therefore cannot be relied upon by the promoter. According to the learned Counsel, the Trial Court has aptly recorded that neither the Developer nor the Owner had shown any additional buildings or towers in the approved layout plan, and therefore further construction cannot be undertaken without the Society's consent.

42. Learned Counsel relied upon the principle laid down in *Dosti Corporation* (supra) where it was held that post-completion of construction and once conveyance becomes due, the promoter cannot appropriate further FSI. According to him, once the project is completed and possession handed over, any additional FSI arising

[14] 1983 SCC OnLine Bom 31

[15] 2016 SCC OnLine Bom 1836

from a change in law or increase in permissible FSI enures to the benefit of the Society. In the present case, since the promoter has failed to convey its right, title and interest in the land to the Society despite completion of project and handing over of possession, the Society is entitled to any additional FSI arising under DCPR 2034. It was also contended that clauses 7 to 9, 25 to 27, 30(b) and 34 of the Agreement for sale are contrary to the scheme of MOFA and therefore unenforceable.

43. Learned Counsel submitted that the present Suit is maintainable as it seeks enforcement of statutory obligations and prevention of breach. Where rights arise under statute and are supported by registered agreements and occupation certificates, a suit for simpliciter injunction is maintainable to restrain their violation. The decisions relied upon by the Owner relating to cloud over title are therefore inapplicable. It is submitted that the deemed conveyance proceedings initiated by the Society demonstrate that it has consistently asserted its statutory rights, and the rejection of the application is presently under reconsideration pursuant to orders of this Court. It is contended that pendency of such proceedings does not create any cloud over title but rather reinforces the Society's entitlement to statutory protection.

44. It was further submitted that Section 11 of MOFA casts a mandatory obligation upon the promoter to complete title and

convey right, title and interest in the land to the society of flat purchasers. The provision must be interpreted purposively and harmoniously, to ensure effective transfer of the land and appurtenant rights forming part of the project, and cannot be restricted only to such rights as the promoter chooses to acknowledge.

45. Learned Counsel submitted that Section 16 of MOFA gives the Act overriding effect over any contract to the contrary. Therefore, any clause in the Development Agreement or Agreement for Sale purporting to reserve future or additional FSI without full and informed disclosure to purchasers is unenforceable as being contrary to the statutory scheme. Mere recital reserving future FSI cannot be treated as informed consent under Section 7 of MOFA.

46. It was further submitted that the Owner failed to execute conveyance within the statutory period and instead sought to obtain fresh permissions for construction of additional towers. Such conduct, according to the learned Counsel, defeats the very object of MOFA and justifies the grant of protective relief. He submitted that the balance of convenience lies entirely in favour of the Society, since further construction would permanently affect the Society's land, open spaces, and FSI entitlement, whereas the Owner owns a much larger parcel of land and would suffer no irreparable prejudice if status quo is maintained.

47. Learned Counsel therefore submitted that the Impugned Order merely preserves the subject matter of the Suit and prevents creation of third-party rights during its pendency. According to him, the Trial Court has correctly exercised its discretion in accordance with the statutory scheme and judicial precedents and has correctly restrained the Owner from proceeding with additional construction without complying with MOFA.

48. It was accordingly submitted that the impugned order is well-reasoned and calls for no interference, and that the Appeal deserves to be dismissed with costs.

REJOINDER SUBMISSIONS BY APPELLANT - OWNER

49. Learned Senior Counsel countered that the Respondent No.1's attempt to describe the Owner as a co-promoter is contrary to the express terms of the Development Agreements and the admitted position on record. Under the Agreements, the Developer was granted a limited right to construct by consuming FSI/TDR up to 59,157 sq. mtrs. on a defined portion of 31,123 sq. mtrs. The agreements also expressly provide that the balance and any additional FSI or TDR would remain with the Owner, with a clear stipulation that such additional FSI would not be utilised on the said portion of land but could be used on other parts of the larger property .

50. It is submitted that the Development Agreement unequivocally provided that the Developer would construct and market the buildings in its own name and at its own responsibility, sell flats on a principal-to-principal basis, and retain the entire sale consideration. These provisions, according to the Senior Counsel negate any suggestion of an agency relationship and demonstrate that the Developer acted in its own right and not as an agent of the Owner.

51. Learned Senior Counsel further submitted that the Respondent's reliance on the Power of Attorney to suggest an agency relationship is misplaced. The Power of Attorney was executed only to facilitate approval of plans in the Owner's name, since the land had not been subdivided. Such procedural arrangement does not alter the substantive allocation of rights under the Development Agreements. The MOFA Agreements with flat purchasers were executed solely by the Developer as "Promoter" and they expressly record the Developer's limited entitlement to 59,157 sq. mtrs. of FSI/TDR, while reserving all additional FSI/TDR in favour of the Owner.

52. It is further submitted that under Section 11 of MOFA, the promoter is obliged to convey only his right, title and interest in the land and building. Consequently, the Society cannot claim rights greater than those held by its promoter. According to the learned

Senior Counsel, the present case is not one where the promoter seeks to retain rights contrary to statute, but one where the Society seeks to enlarge its rights beyond the entitlement of its own promoter.

53. Learned Senior Counsel also submitted that the Plaint itself contains a categorical admission that the Developer alone acted as the Developer and Promoter under MOFA. Such an admission is binding and conclusive unless withdrawn. Reliance is placed on the decision of the Supreme Court in *Nagindas Ramdas v. Dalpatram Ichharam*[16] and the judgement of this Court in *Schenker India Pvt. Ltd. v. SK APS Industries Pvt. Ltd.*[17], which hold that a party cannot be permitted to take a stand contrary to its pleadings .

54. It is further submitted that the reliance placed by the Respondent on *Wadhwa Group Holding Pvt. Ltd.* (supra) is wholly misplaced. The case concerned joint promoters who were both recognised as promoters in statutory documents and were jointly responsible for the project. In the present case, however, the contractual framework and statutory documents unequivocally identify only the Developer as promoter, while the Owner neither marketed nor sold flats nor received sale consideration.

55. Learned Senior Counsel also contended that the Society's reliance upon *Sandeep Grover* to argue that earlier judgments

[16] (1974) 1 SCC 242
[17] 2025 SCC Online Bom 2801

stand impliedly overruled is legally untenable. A decision of the NCDRC cannot override binding precedents of this Court. In any event, the factual matrix in that case concerned redevelopment and appropriation of developer's share, which is entirely distinct from the present case involving limited development rights with express reservation of balance FSI.

56. Learned Senior Counsel submitted that the Respondent's invocation of Section 7 of MOFA is without foundation. The Society never claimed any right over the entire larger property admeasuring 1,51,328 sq. mtrs., nor has it challenged the reservation of balance FSI in favour of the Owner. Section 7 applies to alterations or additional constructions in respect of the property disclosed for development, and cannot be extended to independent development on other parts of the Owner's larger holding.

57. It is further submitted that the observations in the impugned order regarding alleged non-disclosure of development on the entire plot and prohibition against additional construction are beyond the pleadings and unrelated to the reliefs claimed, since the Suit seeks only injunction and not any declaration that the reservation of FSI is illegal .

58. Learned Senior Counsel submitted that once the Society's alleged entitlement to balance or future FSI is expressly denied and disputed by the Owner, a clear cloud over such alleged right arises.

In such circumstances, a suit for bare injunction without seeking declaratory relief is not maintainable. Reliance is placed on the judgements of the Supreme Court in *T.V. Ramakrishna Reddy* (supra) and *Ananthula Sudhakar vs P Buchi Reddy*[18], which hold that where title or entitlement is disputed, a declaration must first be sought.

59. Learned Senior Counsel submitted that the Society's alleged claim to the additional FSI and TDR is inconsistent with its own pleadings and categorical admission which acknowledge that the Appellant is the owner of the larger property and that Developer alone undertook the development of the Society's building under MOFA. The claim is also contrary to the express covenants contained in the Development Agreements and MOFA Agreements, which unequivocally restrict the Developer's entitlement and reserve the balance FSI/TDR in favour of Owner. Without seeking any declaration or adjudication to set aside those binding contractual clauses, the Society has attempted to circumvent them by seeking a bare injunction. Such a claim, it is submitted, is ex facie untenable and amounts to a mala fide attempt to claim additional FSI/TDR belonging exclusively to Owner. Reliance is placed on the judgement of the Supreme Court in *Kashi Math Samsthan v. Shrimad Sudhindra Thirtha Swamy*[19], wherein it held

[18] *(2008) 4 SCC 594*
[19] (2010) 1 SCC 689

that in the absence of a *prima facie* case, the Court cannot proceed to examine the balance of convenience or irreparable injury, and grant injunction.

60. Learned Senior Counsel finally submitted that the Society has failed to establish irreparable injury or balance of convenience. Even if the Society were ultimately to succeed, appropriate relief by way of specific relief, damages or compensation could be granted. On the other hand, an injunction at this stage would seriously prejudice the Owner by stalling ongoing construction undertaken pursuant to duly sanctioned plans, which are based on the balance FSI/TDR and in respect of which third-party rights have already been created. The balance of convenience therefore lies decisively against the grant of any interim relief.

ANALYSIS AND FINDINGS

61. I have carefully considered the submissions advanced by learned Senior Counsel Mr. Aspi Chinoy appearing for the Appellant-Owner and learned Advocate Mr. Mehul Shah appearing for Respondent No.1. I have also perused the pleadings, documents on record, and the impugned order dated 30th October 2023.

62. The central issue is whether a landowner, despite having granted only limited development rights to a developer and having expressly reserved the balance FSI/TDR to itself, can be treated as a "promoter" within the meaning of Section 2(c) of the MOFA, and

thereby restrained from utilising the balance FSI/TDR expressly reserved in its favour.

63. In the present case, it is not in dispute that the Developer, was granted development rights limited to utilisation of 59,157 sq. mtrs. of FSI/TDR, which has been fully consumed in constructing the three buildings namely Western Edge I, Western Edge II and Samarpan Exotica. The Society now seeks to claim rights in additional FSI/TDR available on the suit land, particularly in view of DCPR 2034 introduced in 2018, despite the fact that such additional FSI/TDR was never part of the development rights granted to Developer and was expressly reserved to the Owner under the Development Agreement and the Agreements between the Developer and the flat purchasers.

64. The following issues therefore arise for consideration:

i. whether the Development Agreements merely granted limited development rights to Developer or created a relationship of agency or joint venture making the Owner a co-promoter;

ii. whether flat purchasers who executed Agreements for Sale acknowledging the Developer's limited entitlement can subsequently claim rights in the balance FSI/TDR reserved to the Owner;

iii. whether Section 7 of MOFA can restrain the Owner from undertaking independent development using FSI/TDR that never formed part of the Developer's entitlement;

iv. whether a suit seeking bare injunction without seeking declaratory relief regarding the alleged entitlement is maintainable; and

v. whether the Society has established the ingredients necessary for grant of interim injunction.

vi. whether the present suit is, in substance, an abuse of process and a misuse of beneficial legislation.

63. It is first necessary to examine the contractual framework governing the parties. The Development Agreements clearly allocate rights and obligations. Developer was granted development rights in respect of a specific portion of the larger property admeasuring 31,323 square metres out of the Owner's total landholding of 151,328 square metres. The FSI/TDR available to Developer for construction was expressly fixed and capped at 59,157 square metres. This is clearly recorded in Clause 3 of the Development Agreement and in the recitals of the subsequent agreements.

64. Under Clauses 11(a)(xviii), 11(a)(xx), 11(a)(xxi), and 13(e) of the Development Agreement, Developer was authorised to sell the constructed flats or units on ownership basis under MOFA and

to undertake all incidental acts necessary for that purpose. Clause 23(f) of the Development Agreement dated 10th February 2005 expressly states that Developer would develop, market, and sell the units at its own risk and responsibility, and that the agreement would not be construed as a partnership or joint venture. The sale consideration received from flat purchasers was to belong absolutely to Developer and constitute its remuneration and profit. These clauses make it clear that Developer acted in its own right and for its own account as an independent developer, and not as an agent or partner of the Owner.

65. Further, Clause 4(c) of the Development Agreement read with the supplemental agreement expressly provided that any FSI/TDR available on the suit land in excess of 59,157 square metres would remain the exclusive property of the Owner. It was also specifically provided that such balance FSI/TDR would not be consumed on the portion of the suit land on which Developer was to construct its buildings, but could be utilised elsewhere on the larger property. This reservation was neither vague nor uncertain. It was specific and quantified.

66. The Society relied heavily on the fact that Powers of Attorney were executed by the Owner in favour of Developer, contending that this established an agency relationship and thereby made the Owner a co-promoter. I am unable to accept this submission. The

Powers of Attorney were executed only as a procedural necessity to enable Developer to obtain statutory approvals in the name of the Owner, since the suit land had not been subdivided from the larger property and permissions therefore had to be obtained in the name of the owner.

67. The execution of such Powers of Attorney for a limited purpose does not, by itself, convert Developer into the Owner's agent for all purposes, nor does it alter the substantive allocation of rights, risks, costs, and profits under the Development Agreement.

68. It is well settled that the nature of the relationship between parties must be determined from the substance of the arrangement and not merely from its form. In deciding whether the relationship is one of agency or that of an independent contractor, the Court must examine who bears the risk and cost of the activity, who is entitled to the profits, who controls day-to-day operations, and who is liable to third parties. Tested on these parameters, Developer was plainly an independent developer. It bore the entire cost and risk of construction, received the entire sale consideration, controlled the construction and marketing activities, and undertook liability to flat purchasers under the Agreements for Sale. The Owner did not participate in any of these activities and exercised no control over them.

69. The Agreements for Sale executed by Developer with the flat purchasers of Respondent Nos.1, 4 and 5, copies of which are on record, expressly set out the Developer's right, title and interest in the suit land as flowing from the Development Agreement. They specifically record that Developer's development entitlement was limited to 59,157 square metres and that any balance or additional FSI/TDR on the suit land remained the exclusive property of the Owner. These are substantive terms defining the extent of what was being sold to the purchasers. Clauses 7, 8, 9, 25, 26, 27, 30(b), and 34 of the Agreements for Sale shall be referred.

70. More importantly, the Agreements for Sale record that the purchasers had inspected the layout plans, the Development Agreement, the Supplementary Development Agreement, and the other relevant documents, and had satisfied themselves regarding the Developer's entitlement and the rights reserved to the Owner. The purchasers thus accepted the arrangement with full knowledge. This is not a case where material facts were concealed or where vague standard clauses were inserted without disclosure. The purchasers were specifically informed that Developer's entitlement was limited to 59,157 square metres of FSI/TDR, that such entitlement stood exhausted in the three buildings, and that any additional FSI/TDR remained with the Owner.

71. Read as a whole, these documents establish a clear factual position: the Owner granted limited development rights to Developer; Developer was entitled to use only 59,157 square metres of FSI/TDR for constructing buildings on a part of the suit land; Developer acted in its own right and not as agent of the Owner; the balance FSI/TDR was expressly reserved to the Owner; and the flat purchasers were aware of and accepted this arrangement at the time of purchase.

72. The Society's principal contention is that the Owner falls within the definition of "promoter" under Section 2(c) of MOFA because it "caused to be constructed" the buildings by granting development rights to Developer. According to the Society, the grant of development rights, execution of Powers of Attorney, obtaining permissions in the Owner's name, and receipt of consideration together establish that the Owner "caused" the construction. It is then argued that, once so held, the Owner becomes subject to all obligations of a promoter, including the obligation to convey the land and building to the Society under Section 11, together with the balance FSI/TDR.

73. Section 2(c) of MOFA defines "promoter" as follows:

> *"a person and includes a partnership firm or a body or association of persons whether registered or not, who constructs or causes to be constructed a block or building of flats or apartments for the purpose of selling some or all of them to other persons, or to a company, co-operative*

> *society or other association of persons, and includes his assignees; and where the person who builds and the person who sells are different persons, the term includes both."*

The expression *"causes to be constructed"* cannot be read so broadly as to include every landowner who grants development rights to an independent developer. Such an interpretation would obliterate the distinction between an 'owner' and a 'promoter'. The definition indicates that the person must either undertake the construction activity or undertake the sale or transfer of flats.

74. The question, therefore, is what amounts to "causing construction" within the meaning of Section 2(c). Every act that facilitates construction cannot amount to causing construction. Otherwise, financiers, suppliers, landowners, and statutory authorities granting approvals would all become promoters. That would lead to absurd consequences. The expression must therefore mean something more, namely, active participation, control, or entrepreneurial involvement in the construction activity.

75. In the present case, the Development Agreements show that Developer alone undertook the construction and sale of flats. It obtained approvals, carried out construction at its own cost and risk, marketed the flats, executed the Agreements for Sale, and received the sale proceeds. The Owner did not undertake any of these acts since the Owner had received consideration for granting development rights to the Developer. Its role was confined to

granting limited development rights over a part of its land, subject to the condition that only a specified quantum of FSI/TDR would be consumed and that the balance would remain reserved to it. This does not amount to "causing construction" within the meaning of Section 2(c).

76. Learned Senior Counsel for the Owner relied upon the judgment of this Court in *Vaidehi Akash Housing Pvt. Ltd.* and the later decision in *Deepak Thakoor*, which followed it, in support of the submission that a landowner who grants limited development rights to an independent developer does not become a promoter under MOFA.

77. In *Vaidehi Akash Housing Pvt. Ltd.*, a co-operative housing society had entered into a redevelopment agreement with a developer. The developer was to reconstruct the society's building, rehabilitate existing members, and sell additional flats to outsiders. The free-sale purchasers sought to hold the society liable as a promoter under MOFA. The society contended that it was only the landowner and that the developer alone was the promoter. This Court accepted that contention and held that the society was not a promoter.

78. The Court held that the society had neither undertaken any construction activity nor sold any flats to purchasers. Its role was confined to granting development rights and receiving

consideration in the form of rehabilitation for its members. The Court observed:

> *"88. The Society is the owner of the property and has entered into an agreement with the developers... Such authority or entitlement is to the developers' account and in their own right and as an independent contractor. If in exercise of such authority or entitlement, a building is constructed by the developers, it cannot be said that such building is caused to be constructed by the Society within the meaning of Section 2(c) of the MOFA.*
> *89. Any other interpretation would lead to anomalous consequences... The owners of lands entering into agreements for sale or development agreements with promoters/developers would be held as being subject to all liabilities of a promoter... This would be plainly inconceivable.*
> *90. Prima facie thus, there is no case to treat the Society, who is merely in the position of an owner vis-a-vis the third party purchasers, as a 'promoter' within the meaning of MOFA..."*

79. The Society attempted to distinguish *Vaidehi Akash* on the ground that the landowner there was a housing society acting only to rehabilitate its members, whereas the Owner is a commercial entity retaining an economic interest in the balance FSI/TDR. I do not find this distinction material. Whether a person is a promoter under Section 2(c) depends on whether that person undertook or caused construction and sold flats, not on whether the person is a society or a commercial entity, nor on whether the person reserved rights for future use. In the present case, as in *Vaidehi Akash*, the Owner neither carried out construction nor sold flats. Those acts

were undertaken by Developer in its own right. The Owner's commercial character and reservation of balance FSI/TDR do not alter that position.

80. The Society also submitted that *Vaidehi Akash* and *Deepak Thakoor* were only interim observations and therefore not binding. This submission cannot be accepted. *Vaidehi Akash* contains a detailed analysis of Section 2(c) and the facts before the Court. It has been consistently followed by coordinate Benches. In the absence of any contrary judgment of a coordinate or larger Bench, it cannot be brushed aside in the manner suggested.

81. The Society placed reliance on the decision of the National Consumer Disputes Redressal Commission in *Sandeep Grover* and on the dismissal of the Special Leave Petition in *Goregaon Pearl CHS Ltd.*, contending that the Supreme Court's order affirms the NCDRC's reasoning and overrides *Vaidehi Akash* and *Deepak Thakoor*. This contention is misconceived.

82. First, *Sandeep Grover* is a decision of the NCDRC in proceedings under the Consumer Protection Act. The NCDRC is a statutory tribunal. Its decisions may have persuasive value, but they are not binding precedents for this Court under Article 141.

83. Second, the factual matrix in *Sandeep Grover* was materially different. That case arose out of a redevelopment arrangement involving a landowner society and a developer, and the

observations were made in that specific context. It does not lay down any general principle that every landowner who grants development rights becomes a promoter under MOFA.

84. Third, the NCDRC itself referred to *Vaidehi Akash* and did not hold it to be wrongly decided. At the highest, it distinguished that case on facts.

85. Fourth, the Society's reliance on the doctrine of merger based on dismissal of the Special Leave Petition is contrary to settled law. In *Kunhayammed v. State of Kerala*[20], the Supreme Court has clearly held that dismissal of a Special Leave Petition without granting leave does not attract the doctrine of merger and does not amount to affirmation of the reasoning in the impugned order. Unless leave is granted and the appeal is heard, there is no merger.

86. The Society also relied on recent decisions in *ALJ Residency Co-operative Housing Society Ltd.* and *Laxman Narayan Zagade*. Those judgments arose in specific contexts such as deemed conveyance or regularisation of unauthorised construction. Their observations must be read in that factual setting. They cannot be construed as overruling or diluting the principles laid down in *Vaidehi Akash* and *Deepak Thakoor*.

87. Reliance on *Wadhwa Group Holding Pvt. Ltd.* is equally misplaced. That case arose under RERA and involved parties admittedly registered as promoters. The issue there was whether

[20] (2000) 6 SCC 359

one such promoter could avoid liability merely for want of privity with the flat purchaser. Here, the Owner neither participated in the development or sale activity nor stood identified as a promoter in any statutory document. It merely granted limited rights while reserving the balance to itself. The ratio of *Wadhwa Group* therefore does not assist the Society.

88. Similarly, *Jai Jalaram Co-operative Housing Society Ltd.* turned on its own facts, where the developer had expressly undertaken to convey the entire land and was then estopped from resiling. In the present case, there is no such undertaking by the Owner. On the contrary, the Development Agreement and the Agreements for Sale expressly limit Developer's rights to 59,157 square metres and reserve the balance FSI/TDR to the Owner. No case of estoppel arises.

89. In view of the definition of "promoter" under Section 2(c), the contractual documents, and the authorities discussed above, the Owner cannot be characterised as a promoter under MOFA. The statutory obligations under MOFA, including the obligation to execute conveyance under Section 11, attach to Developer and not to the Owner. The Society's primary contention that the Owner is a co-promoter must therefore fail.

90. The reliance of the Society on *Ravindra Munteja* (supra), *Vithal Patil* (supra) *and Madhuvihar Co-operative Housing Society*

(supra) is also misplaced. It is not the Society's case that it is entitled to rights over the entire larger property admeasuring 151,328 square meters. In view of the Development Agreements and the Agreements for Sale, it is an admitted fact that the Developer was entitled to develop only 31,323 square meters out of the Appellant's total landholding and to consume FSI/TDR of only 59,157 square meters, with the balance FSI/TDR being expressly reserved to the Appellant. The Developer, in accordance with Section 4 of the Maharashtra Ownership Flats Act, had duly disclosed the layout plans pertaining to the land admeasuring 31,323 square meters on which the three buildings were to be constructed. The provisions of the Act do not obligate the promoter or landowner to disclose layout plans for land or FSI/TDR over which the promoter has no right, title or interest and which was expressly reserved to the landowner. The disclosure obligation extends only to the project that the promoter is undertaking and not to any future development that the landowner may undertake using reserved development rights. It is also not the Society's case that the development proposed by the Appellant using the reserved FSI/TDR in any manner encroaches upon or affects the Society's rights or entitlement to conveyance of its building and proportionate land area.

91. The Society then argued, in the alternative, that even if the Owner is not a promoter, the clauses reserving balance FSI/TDR to the Owner are invalid as they amount to "blanket consent" contrary to Section 7 of MOFA. Reliance was placed on *Neena Sudarshan Wadia* and *Dosti Corporation*.

92. Section 7 of MOFA provides:

> *"After the plans and specifications of the building as approved by the local authority... are disclosed or furnished to the persons who agree to take one or more flats, the promoter shall not make—*
> *(i) any alteration in the structures described therein in respect of the flat or flats... without the previous consent of that persons;*
> *(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 the flats in such building."*

The object of this provision is to protect flat purchasers from unilateral changes by a promoter to the disclosed plan.

93. In *Neena Sudarshan Wadia*, the Court held that a general clause in an agreement for sale could not amount to valid consent for future additional construction unless the purchasers were specifically informed of what was proposed. In *Dosti Corporation*, the Court held that after completion of the disclosed project and handing over of possession, the promoter could not rely on broad contractual clauses to exploit additional FSI that had become available later.

94. Those decisions do not assist the Society. In both those cases, the promoter sought to retain or exploit future or additional FSI without clear and specific disclosure to the purchasers. Here, the position is altogether different.

95. In the present case, the reservation of balance FSI/TDR was not by the promoter, Developer, but by the landowner, namely the Owner, who is not a promoter. More importantly, the reservation was clearly, specifically, and quantifiably disclosed to the purchasers at the time of sale. The Agreements for Sale record that Developer's entitlement was limited to 59,157 square metres, that the same stood exhausted in the three buildings, and that any balance or additional FSI/TDR remained the exclusive property of the Owner. These are specific disclosures and not vague blanket clauses. The relevant clauses from the Development Agreement and the Sale Agreements are reproduced hereunder for ready reference:

i. Clause 4(c) of the Development Agreement dated 10th February 2005, executed between the Appellant Owner and the Developer:

"(c) Subject to sub-clause (b) above, all additional Floor Space or TDR that may become available in respect of the property to be Developed shall belong to and vest with the Owner who alone shall be entitled to deal with the same, as it may so desire but, in any event, the Owner shall not be allowed to use the same on the Property to be Developed or any part thereof."

ii. Clause 30 from Agreement For Sale dated 11th May 2012, executed between the Developer and a Unit/office Purchaser:

"Kanakia has further represented to the Purchaser that in the Supplemental DA and the Prithvi Kanakia Agreement, Kanakia has covenanted with CCI/Prithvi that the following covenants ("the Fundamental Covenants") shall run with the Property to be Developed and be binding on the Kanakia, its successors and assigns and all those owning the Property to be Developed:

a) Kanakia shall not be entitled to develop and/or construct on the Property to be Developed beyond 59,157 sq. meters equivalent to 6,36,767 sq. feet (inclusive of outside TDR to be purchased by Kanakia and TDR permitted to be load under the Prithvi-Kanakia Agreement)

b) All Floor Space Index or TDR that may become available in respect of the Property to be Developed on account of change in law or regulations or otherwise shall belong to and vest with Prithvi or its successors or assigns who shall be entitled to deal with the same, as it may so desire but in any event. Prithvi shall not be allowed to use the same on the Property to be developed or any part thereof.

c) There shall be no sub division of the Property to be developed from the Larger Property.

d) .....

e) ....."

96. The Agreements for Sale also record that the purchasers inspected the relevant documents and accepted the arrangement. This is therefore not a case where the purchasers were kept in the dark.

97. The principle against blanket consent is aimed at preventing a promoter from defeating the purchasers' legitimate expectation of

receiving conveyance of the land and building forming part of the disclosed project. In the present case, the Society is not being denied what it bargained for. Developer remains obliged to convey the building and the proportionate land pertaining to it. What the Society seeks is something more, namely rights in FSI/TDR that never formed part of the Developer's entitlement and which its members knew were reserved to the Owner.

98. The Society also invoked Section 16 of MOFA, which gives overriding effect to the Act. That provision prevents promoters from contracting out of their statutory obligations. It does not prevent a landowner from limiting the rights granted to a developer or from reserving rights never granted. There is no contracting out of MOFA here. Developer remains bound by all obligations cast upon a promoter. Section 16 does not assist the Society in enlarging its rights beyond the Developer's entitlement.

99. The principle of *nemo dat quod non habet* squarely applies. No one can transfer a better title than he possesses. Developer was granted rights only to use 59,157 square metres of FSI/TDR. It never had any right in the balance FSI/TDR. It could not, therefore, pass any such right to the flat purchasers or the Society.

100. I therefore hold that the contractual provisions limiting Developer's rights to 59,157 square metres and reserving the balance FSI/TDR to the Owner are valid and enforceable and are not

contrary to MOFA. The flat purchasers entered into the Agreements for Sale with full knowledge of these terms and cannot now contend otherwise.

101. The Society next invoked Section 7 of MOFA to contend that the Owner cannot undertake additional construction on the suit land without prior consent of the flat purchasers. According to the Society, since the layout plan annexed to the Occupation Certificate dated 3rd July 2012 did not show additional buildings on the open portion of the suit land, any subsequent construction amounts to an alteration or addition to the approved plan.

102. This submission cannot be accepted. Section 7 imposes obligations upon a "promoter". Since the Owner is not a promoter, Section 7 cannot be invoked against it.

103. Even otherwise, Section 7 applies only to additions or alterations in the approved plan disclosed by the promoter to the flat purchasers under Section 4. It does not apply to every future development on the larger property or even on the suit land, if such development never formed part of the promoter's project.

104. In the present case, the approved plan disclosed by Developer related to the three buildings to be constructed using the allocated 59,157 square metres of FSI/TDR. Those buildings have been constructed accordingly. Developer has not sought to alter them or the plan relating to them.

105. What the Owner now proposes is independent development by using the balance FSI/TDR always reserved to it. This is not an addition or alteration to Developer's project. It was never part of the plan disclosed by Developer to the purchasers.

106. The Society's interpretation would lead to untenable consequences. It would mean that once a landowner permits one phase of development on a part of its land, it is forever barred from undertaking any future development on the adjoining land, even using FSI/TDR that was never granted to the developer and always remained reserved to the owner. Section 7 cannot be read so broadly.

107. MOFA is a protective statute meant to safeguard flat purchasers against promoters who suppress material facts, alter disclosed plans, or fail to convey title. It is not meant to confer upon flat purchasers rights over land and FSI/TDR that never formed part of their bargain. The Act entitles them to what they agreed to purchase, not to more.

108. Significantly, the Society has never pleaded that it is entitled to the entire larger property of 151,328 square metres, or even to the entire suit land of 31,323 square metres. Its rights, on its own case, are confined to its building and the proportionate land corresponding thereto. It cannot, by invoking Section 7, claim a

veto over development on land that never formed part of its entitlement.

109. The learned Trial Judge appears to have been influenced by the fact that the layout plan annexed to the Occupation Certificate of 3rd July 2012 did not show any future towers. That approach confuses the layout relating to Developer's completed project with future development by the Owner. Developer was under no obligation to disclose in its layout plan development that did not form part of its own project and which related to FSI/TDR reserved to the Owner.

110. I therefore hold that Section 7 of MOFA has no application to the Owner's proposed development.

111. The reliance on *Dosti Corporation* is also misplaced. That decision restrains a promoter from exploiting additional FSI accruing to the land forming part of its own project after completion. Here, the Owner is not a promoter, and the FSI/TDR sought to be utilised by it was never part of Developer's entitlement. It was always reserved to the Owner. To apply *Dosti Corporation* to these facts would be to extend its ratio far beyond its proper limits.

112. The Society further argued that failure to execute conveyance within the statutory period should disentitle the Owner from exercising its reserved development rights. This contention is wholly misconceived. The obligation under Section 11 is upon the

promoter. In the present case, that promoter is Developer. If the Society is aggrieved by failure to execute conveyance, its remedy lies against Developer, including by resort to deemed conveyance proceedings, which it has in fact invoked. The Owner cannot be deprived of its proprietary rights on account of any default by Developer.

113. Having dealt with the merits, it is now necessary to consider the Owner's objection to the maintainability of the suit itself. The Owner has contended that the Society, despite claiming rights in the balance FSI/TDR which are expressly denied by the Owner and contradicted by the contractual documents, has not sought any declaratory relief and has filed only a suit for injunction. Reliance is placed on the judgments of the Supreme Court in *T.V. Ramakrishna Reddy* and *K.M. Krishna Reddy*.

114. In *T.V. Ramakrishna Reddy*, the Supreme Court held that when there is a serious dispute as to title or right, a suit for bare injunction without seeking declaration is not maintainable. The same principle was reiterated in *K.M. Krishna Reddy*. Injunction is a remedy to protect an established right. Where the right itself is under a cloud, the plaintiff must first seek and obtain a declaration.

115. This principle applies squarely here. The Society claims entitlement to the balance FSI/TDR on the footing that the Owner is a promoter, that the contractual reservations are invalid, and that

MOFA requires such rights to be conveyed to the Society. The Owner categorically denies all of this. The dispute is fundamental and goes to the existence and extent of the Society's alleged rights.

116. Yet the Society has consciously chosen not to seek any declaration. There is no prayer that the clauses reserving balance FSI/TDR to the Owner are invalid. There is no prayer that the Society is entitled to such FSI/TDR. There is no prayer that the Owner is a promoter. There is no prayer that the Owner must convey such rights to the Society. The suit only seeks injunctions restraining the Owner from using the FSI/TDR or developing the land.

117. This omission is plainly deliberate. If declaratory relief had been sought, the Society would have had to directly confront the express contractual terms, the purchasers' acknowledgments, and the authorities binding this Court. By filing only a suit for injunction, the Society seeks to avoid adjudication of the core issue while securing interim orders to stall the Owner's development.

118. Such a course is impermissible. Where the plaintiff's right is itself disputed and clouded, a bare suit for injunction is not maintainable. The Society's alleged entitlement is expressly contradicted by the very documents placed on record. In such circumstances, the suit as framed is ex facie not maintainable.

119. Even assuming, for the sake of argument, that the suit were maintainable, the Society has still failed to make out a case for interim relief. It is settled that a plaintiff seeking interim injunction must establish a prima facie case, balance of convenience, and irreparable injury.

120. As held by the Supreme Court in *Kashi Math Samsthan v. Shrimad Sudhindra Thirtha Swamy*, unless a prima facie case is shown, the Court need not examine the other two ingredients.

121. In the present case, the Society has failed to establish even an arguable case. Its claim to the balance FSI/TDR is directly contradicted by the contractual documents, the purchasers' acknowledgments, and the legal position discussed above.

122. The balance of convenience lies entirely in favour of the Owner. The Owner owns the larger property, has reserved the relevant FSI/TDR, and has obtained the necessary approvals for development. Restraining it from proceeding would seriously prejudice its proprietary and development rights.

123. On the other hand, the Society suffers no corresponding prejudice if injunction is refused. Its rights, if any, relate only to its own building and the proportionate land appurtenant thereto. Those rights are not affected by the Owner's independent development on the basis of its reserved FSI/TDR.

124. As to irreparable injury, the greater prejudice is clearly to the Owner. If restrained for years and it ultimately succeeds, the lost opportunity to develop and exploit its property cannot be adequately compensated. By contrast, if the Society ultimately establishes any entitlement, appropriate relief, including monetary compensation or equivalent adjustment, can always be fashioned.

125. Thus, even on the hypothesis that the suit were maintainable, no ground for interim injunction was made out. The Society has failed on all three tests.

126. The Society attempted to distinguish the Supreme Court decisions by contending that it seeks enforcement of statutory rights under MOFA and that therefore no declaration is necessary. I am unable to agree. Merely labelling a claimed right as statutory does not eliminate the need for a declaration where that right is disputed. Here, the very existence, nature, and scope of the alleged statutory right are in dispute. Declaratory relief was therefore essential.

127. Nor does the pendency of deemed conveyance proceedings cure this defect. Those proceedings concern conveyance of the land and building pertaining to the Society's project from the promoter, Developer. They do not determine whether the Society is entitled to balance FSI/TDR reserved to the Owner, nor whether the Owner is a promoter.

128. I therefore hold that the suit, as framed, is not maintainable in law. Without seeking a declaration regarding the invalidity of the contractual provisions or regarding its alleged entitlement to the balance FSI/TDR, the Society cannot directly seek an injunction restraining the Owner from exercising rights expressly reserved to it.

129. Order VII Rule 11(d) CPC provides that a plaint shall be rejected where the suit appears from the statements in the plaint to be barred by law. A suit for bare injunction, where the plaintiff's title or right is under a cloud and no declaration is sought, is barred by the principles laid down in *T.V. Ramakrishna Reddy* and *K.M. Krishna Reddy*.

130. In *Patil Automation Private Limited v. Rakheja Engineers Private Limited*[21], the Supreme Court held that the Court may reject a plaint under Order VII Rule 11 even in the absence of a formal application, if on a meaningful reading of the plaint the suit is found to be barred or manifestly meritless.

131. In *Shri Mukund Bhavan Trust v. Shrimant Chhatrapati Udayanraje Pratapsinh Maharaj Bhonsle*[22], the Hon'ble Supreme Court emphasised that the purpose of Order VII Rule 11(d) of the Code of Civil Procedure is to enable the Court to nip in the bud any litigation which, on the face of it, amounts to an abuse of the process

[21] (2022) 10 SCC 1
[22] (2024) 15 SCC 675

of law. If the Court fails to exercise this power at the threshold, it would unnecessarily compel the defendants to undergo the ordeal of a full trial and lead evidence in proceedings which are ex facie not maintainable.

132. In the present case, it is apparent from the plaint itself that the Society claims rights in the balance FSI/TDR contrary to the contractual documents, yet seeks no declaration. The suit directly seeks to restrain the Owner from exercising its reserved rights. In my view, this is a fit case to exercise suo motu powers under Order VII Rule 11(d) read with Section 151 CPC.

133. It is also necessary to note the real genesis of the suit. The project was completed in 2012. Occupation Certificates were issued, possession was handed over, and the societies were formed between 2014 and 2015. For nearly seven years, no issue was raised regarding the Owner's reserved development rights.

134. It was only after notices were issued by the MCGM in 2019–2020 regarding unauthorised additions and excess consumption of approximately 4,226 square metres of FSI in the Society's building that matters changed. Thereafter, negotiations took place between the Owner, the Society, and Developer for purchase of additional FSI/TDR from the Owner so as to regularise these violations. Those negotiations failed.

135. It was only thereafter that the Society filed an application for deemed conveyance in September 2021 and then instituted the present suit in September 2022 seeking to restrain the Owner from using the balance FSI/TDR. The sequence is revealing.

136. It strongly indicates that the suit was not filed out of any genuine concern to protect statutory rights under MOFA, but as a pressure tactic to compel the Owner to part with its reserved FSI/TDR for regularisation of the Society's own unauthorised construction.

137. This is an abuse of the process of the Court and a misuse of beneficial legislation. MOFA, enacted to protect flat purchasers from unscrupulous promoters, cannot be turned into a weapon to appropriate the landowner's reserved rights.

138. In that backdrop, rejection of the plaint is not merely a technical consequence of defective framing. It is necessary to prevent the continuation of vexatious litigation designed to frustrate the legitimate exercise of the Owner's proprietary rights.

139. For all the reasons discussed above, the impugned order dated 30th October 2023 passed by the learned Additional Principal Judge, City Civil Court, Dindoshi in Notice of Motion No. 2989 of 2022 in S.C. Suit No. 2103 of 2022 cannot be sustained and deserves to be set aside.

140. In the circumstances, it is necessary to exercise suo motu powers under Order VII Rule 11(d) read with Section 151 CPC to reject the plaint.

ORDER

i. The suit, as framed, is not maintainable and is barred by law.

ii. The Appeal accordingly succeeds and is allowed.

iii. The impugned order dated 30th October 2023 passed by the learned Additional Principal Judge, City Civil Court, Dindoshi in Notice of Motion No. 2989 of 2022 in S.C. Suit No. 2103 of 2022 is quashed and set aside.

iv. In exercise of powers under Order VII Rule 11(d) read with Section 151 CPC, the plaint in S.C. Suit No. 2103 of 2022 is rejected.

v. The suit stands dismissed.

vi. The Respondent No.1 shall pay the Owner – Appellant costs of ₹ 10,00,000/- within a period of four weeks from the date of this Order.

vii. In view of the above order, the Interim Application stands disposed off.

(Kamal Khata, J)

LIST OF JUDGMENTS RELIED UPON:

(i) *Vaidehi Akash Housing Pvt. Ltd. Vs New D.N. Nagar Co-op. Housing Society Union Ltd. [2014 SCC Online Born 5068]*

(ii) *Deepak Prabhakar Thakoor Vs MHADA [2023 SCC Online Born 2234]*

(iii) *T.V. Ramakrishna Reddy Vs M. Mallappa [(2021) 13 SCC 135]*

(iv) *K.M. Krishna Reddy Vs Vinod Reddy [(2023) 10 SCC 248]*

(v) *Ravindra Munteja Vs Bhavan Corporation and Ors. [2003 (5) Mh. L.J 23]*

(vi) *Vithal Patil Vs Kores Ltd. [2019 (3) MH. L.J. 857]*

(vii) *Madhuvihar Co-operative Housing Sociey Vs M/s. Jayantilal Investments [2010 SCC Online Bom 1519]*

(viii) *ALJ Residency Co-operative Housing Society Ltd. Vs State of Maharashtra [2024 SCC OnLine Bom 3638]*

(ix) *Laxman Narayan Zagade & Ors. Vs Competent Authority [2025 SCC OnLine Bom 768]*

(x) *Wadhwa Group Holding Pvt. Ltd. Vs Vijay Choksi [2024 SCC Online BOM 660]*

(xi) *Sandeep Grover Vs Sai Siddhi Developers [2023 SCC Online NCDRC 197]*

(xii) *Goregaon Pearl CHS Ltd. Vs Sandeep Grover [2023 SCC Online SC 1687]*

(xiii) *Jai Jalaram Co-operative Housing Society Ltd. Vs Nanji Khimji and Co.*

(xiv) *Neena Sudarshan Wadia Vs Venus Enterprises [1983 SCC OnLine Bom 31]*

(xv) *Dosti Corporation Vs Sea Flama CHS Ltd. [2016 SCC OnLine Bom 1836]*

(xvi) *Nagindas Ramdas Vs Dalpatram Ichharam [(1974) 1 SCC 242]*

(xvii) *Schenker India Pvt. Ltd. Vs SK APS Industries Pvt. Ltd. [2025 SCC Online Bom 2801]*

(xviii) *Ananthula Sudhakar vs P Buchi Reddy (2008) 4 SCC 594*

(xix) *Kashi Math Samsthan Vs Shrimad Sudhindra Thirtha Swamy [(2010) 1 SCC 689]*

(xx) *Kunhayammed & Ors. Vs State of Kerala [(2000) 6 SCC 359]*

(xxi) *Patil Automation Private Limited Vs Rakheja Engineers Private Limited [(2022) 10 SCC 1]*

(xxii) *Shri Mukund Bhavan Trust v. Shrimant Chhatrapati Udayanraje Pratapsinh Maharaj Bhonsle [(2024) 15 SCC 675].*