*VRJ*

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

## WRIT PETITION NO.4704 OF 2025



1. Rameshwar Cooperative Housing Society Limited, through its Secretary, having address, Survey No.194/1B, Neelkanth Heights, Village Majiwada, Pokhran Road No.2, Thane (West)

2. Mansarovar Cooperative Housing Society Limited, through its Secretary, having address, Survey No.194/1B, Neelkanth Heights, Village Majiwada, Pokhran Road No.2, Thane (West)

3. Girija Cooperative Housing Society Limited, through its Secretary, having address, Survey No.194/1B, Neelkanth Heights, Village Majiwada, Pokhran Road No.2, Thane (West) ... **Petitioners**

**V/s.**

1. Divisional Joint Registrar, Cooperative Societies, Konkan Division, 3-8. Third Floor, Kokan Bhavan, CBD Belapur, Navi Mumbai.

2. Deputy Registrar, Cooperative Societies, Thane City, Thane, First Floor, Gaondevi Mandai Building, Near Gaondevi Ground, Thane 400 602

3. Neelkanth Realtors Pvt. Ltd.
(Earlier known as Abhinav Real
Estates Pvt. Ltd.) through its Director
Mr. Tulsi Bhimjayani, having
addressedat 508. Dalamal House,
Jamnalal Bajaj Road, Nariman Point,
Mumbai 400 021.

4. Milind Bhalerao,
Age 50 years, Occupation Service,
having office at : Office Service
Having office at Office of Divisional
Joint Registrar, Coop. Societies,
Kokan Division, Navi Mumbai. ... **Respondents**

Mr. Akshay Patil with Devika Madekar and Mr. Kalpesh U. Patil for the petitioners.

Ms. Neha Bhide, G.P. with Mr. S.D. Rayrikar, AGP for the State.

Mr. Ashish Kamat, Senior Advocate with Saket Mone with Mr. Shrey Shah and Mr. Bhupen Garud i/by Vidhii Partners for respondent No.3.

**CORAM : AMIT BORKAR, J.**

**RESERVED ON APRIL 23, 2025**

**PRONOUNCED ON : MAY 9, 2025**

**JUDGMENT:**

1. The petitioners, who are Cooperative Housing Societies duly registered under the Maharashtra Cooperative Societies Act, 1960 (for short, "the MCS Act"), have invoked the supervisory jurisdiction of this Court under Article 227 of the Constitution of

India, challenging the legality, validity and propriety of the order dated 28th February 2025 passed by the Divisional Joint Registrar, Cooperative Societies (respondent No.1), in Application No.14 of 2024. By the said order, the cooperative housing association formed by the petitioners, named as Neelkanth Heights Cooperative Housing Societies Association, has been deregistered.

**2.** The brief facts giving rise to the present writ petition, as are necessary for adjudication, are set out hereinafter.

**3.** Respondent No.3 is a developer who undertook construction of a large housing project named Neelkanth Heights on a larger land parcel. The project was developed in a phased manner: four wings comprising 212 flats and 29 shops under the name "Rameshwar," two wings comprising 244 flats named "Mansarovar," and two wings comprising 284 flats under the name "Girija." The concerned planning authority, i.e., Thane Municipal Corporation, issued occupancy certificates in favour of the respective housing societies between the years 2004-2005 and 2011. The cooperative societies representing purchasers of respective buildings were registered in the years 2006 and 2011 under the MCS Act.

**4.** It is the undisputed position on record that despite completion of substantial portions of the project and despite occupation of the flats by purchasers, respondent No.3 failed to take steps to constitute an apex body or association of societies as envisaged under Section 154B of the MCS Act. Faced with administrative inaction on part of the developer, the petitioners

took initiative and submitted requisite application to respondent No.2 for registering a cooperative housing association representing all the constituent societies of the project. After scrutiny and satisfaction with respect to compliance of conditions, respondent No.2 registered Neelkanth Heights Cooperative Housing Societies Association Limited on 1st April 2022.

**5.** Thereafter, owing to the persistent failure of respondent No.3 to execute a conveyance deed in terms of the statutory mandate under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short, "MOFA"), the petitioners convened a special general body meeting of the apex association. A resolution was passed on 17th March 2024 authorizing the filing of an application for deemed conveyance. Legal notice dated 19th March 2024 was issued to the developer calling upon him to execute the conveyance of leasehold rights in favour of the association, as per statutory obligations. As the developer failed to comply, the association filed Application No.419 of 2024 dated 6th June 2024 seeking issuance of unilateral deemed conveyance under Section 11(3) of MOFA.

**6.** The developer, in what appears to be a retaliatory measure aimed at frustrating the deemed conveyance proceedings, filed Application No.14 of 2024 dated 29th April 2024 before respondent No.1, praying for deregistration of the petitioners' apex association. It was contended that the association was prematurely registered without his consent, and that the layout is yet to be completed. It was alleged that the registration was procured by

misrepresentation.

7. Notably, respondent No.2, the competent authority under MOFA, rejected the petitioners' Application No.419 of 2024 for deemed conveyance by order dated 15th October 2024, solely on the ground that the overall layout of the project was still under completion. This order was separately challenged by the petitioners in Writ Petition No.165 of 2025, which is stated to be pending.

8. In the meantime, the petitioners appeared before respondent No.1 in response to the notice in Application No.14 of 2024. A detailed reply was filed, pointing out that neither the MCS Act nor the rules framed thereunder require consent of the promoter for formation of an apex body by registered societies. It was further submitted that the registration was legally valid and made after following due procedure. However, respondent No.1, without proper consideration of legal provisions and the binding obligations under MOFA, proceeded to pass the impugned order dated 28th February 2025 deregistering the association in purported exercise of powers under Section 21A of the MCS Act.

9. Mr. Patil, learned counsel appearing for the petitioners, advanced submissions with clarity and precision. He 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. According to him, the developer has no locus standi to seek deregistration of a duly registered society, as he is not an aggrieved party in the eye of law. Formation

of a cooperative society by purchasers of flats is a statutory right flowing from Section 10 of the MCS Act and Section 10 of the MOFA. Such a right, he urged, cannot be contractually diluted or curtailed by any private agreement with the promoter.

**10.** He further pointed out that the petitioners have rightly registered their cooperative housing association 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. Respondent No.1, while passing the impugned order of deregistration, has failed to record any satisfaction that the registration was procured by fraud or gross misrepresentation. According to learned counsel, 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 order of deregistration, being passed without foundational facts or reasoned findings, deserves to be set aside.

**11.** Learned counsel also pointed out that for more than a decade, the promoter has avoided execution of conveyance under MOFA, citing the pretext of an 'incomplete project'. The societies comprising the association, constructed in 2004–05 and 2011 respectively, have been functioning independently and have long since been registered. The deliberate delay on part of the promoter, in not forming the apex society, compelled the petitioners to take steps under the MCS Act. The present action of filing a deregistration application in 2024, nearly two years after registration of the apex society, is clearly mala fide and calculated to frustrate the deemed conveyance proceedings initiated under

Section 11 of MOFA.

**12.** It was further submitted that Application No.419 of 2024 for deemed conveyance, filed by the petitioners, was rejected by the competent authority on 15th October 2024. The petitioners thereafter filed Writ Petition No.165 of 2025 challenging the said rejection. While this petition was pending, respondent No.4 passed the impugned deregistration order dated 28th February 2025, but a copy thereof was served on the petitioners only on 20th March 2025. It is urged that the order has been antedated to give an impression of having been passed before the hearing of the writ petition in March 2025, which according to the petitioners, amounts to an abuse of official position.

**13.** Mr. Patil invited attention of the Court to the outward register entries, pointing out that overwriting is apparent and entries for 3rd March 2025 appear to have been struck off, replaced by entries dated 28th February 2025. He submitted that the postal stamp on the envelope containing the impugned order bears the date 15th March 2025, which is in conflict with the purported date of the order. On these grounds, respondent No.4 has been impleaded in his personal capacity, and it is contended that his collusion with the developer justifies this Court invoking its extraordinary writ jurisdiction to render justice and prevent miscarriage thereof.

**14.** Per contra, Mr. Kamat learned senior advocate appearing for respondent No.3, the developer, relied upon the judgment of the Hon'ble Supreme Court in *Radha Krishan Industries v. State of*

*Himachal Pradesh*, (2021) 6 SCC 771, to submit that this 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. He placed reliance on a decision of this Court in *Waghamay Mahila Machchimar Sahakari Sanstha Maryadit, Botha (SA) v. Commissioner of Fisheries*, 2020 (1) Mh.L.J. 864, to argue 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. He also relied upon the decision in *Lodha Belmondo Housing Federation Ltd. v. State of Maharashtra & Ors.*, W.P. No.15253 of 2023 decided on 22nd November 2024, where a Coordinate Bench held that registration of an apex body prior to completion of the full project, and contrary to the agreement with the developer, was unsustainable. It was urged that in the instant case, the flat purchase agreements contained a clause stipulating that an umbrella society would be formed only after completion of the entire layout. Suppression of such a clause, it is submitted, constitutes material misrepresentation. The developer was never heard before registration and therefore, respondent No.1 has rightly passed the order of deregistration after considering the materials placed before him.

**15.** By way of rejoinder, learned counsel for the petitioners relied upon the recent judgment of this Court in *Aurum Avenue Co-op Housing Society Ltd. & Anr. v. State of Maharashtra & Ors.*, W.P. No.14644 of 2023 decided on 19th March 2025, where it has been

held that power under Section 21A of the 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 *Waghamay Mahila Machchimar Sahakari Sanstha* (supra), this Court held that initial satisfaction of the Registrar must be based on tangible material before proceeding to exercise power under Section 21A. The present case, it is submitted, lacks such foundational satisfaction and hence, the order is legally unsustainable.

**16.** Learned Government Pleader appearing for respondent No.4 (who passed the impugned order) supported the order and sought to rebut the allegation of mala fides. Referring to the reply affidavit and relevant annexures, she contended that the order dated 28th February 2025 was in fact prepared and dispatched on the same date, as borne out from the official outward register. She denied the suggestion of antedating or overwriting, and submitted that the outward register clearly reflects the dispatch entry on 28th February 2025. It was her submission that no malice can be attributed to a quasi-judicial authority in the absence of substantive material and the allegations of personal collusion are wholly unwarranted.

**17.** Before adverting futher to examine merits, it is necessary to consider the preliminary objection raised by respondent No.3 regarding entertainability of the present writ petition on the ground of existence of an alternative remedy available under the

MCS Act. It has been urged that the petitioners ought to have challenged the impugned order dated 28 February 2025 by availing the statutory appeal or revision.

**18.** It is well settled in law that the writ jurisdiction of this Court under Article 226 of the Constitution is not to be readily invoked where an effective and efficacious alternative statutory remedy exists. However, this principle is not an inflexible rule of law. It is a rule of prudence, self-restraint and judicial discipline.

**19.** The Supreme Court in the case of *Maharashtra Chess Association v. Union of India*, (2020) 13 SCC 285, has authoritatively held that the power of judicial review under Article 226 is discretionary in nature. The existence of an alternative remedy is merely a *relevant factor*, and not a bar, to the exercise of writ jurisdiction. 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*. 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.

**20.** In the present case, a unique set of facts is brought on record. The petitioners had earlier filed an application seeking deemed conveyance under Section 11 of the MOFA, which came to be rejected by the competent authority vide order dated 15 October 2024. That rejection is the subject matter of challenge in Writ Petition No.165 of 2025, which was heard by this Court on

5th and 7th March 2025. It is during the pendency of the said proceedings that the impugned order dated 28 February 2025, directing deregistration of the association of housing society, was passed by respondent No.1. The copy of this order was received by the petitioners only on 20th March 2025.

**21.** Moreover, the allegations made by the petitioners regarding tampering of the official records deserve serious consideration. It is pointed out that the outward register maintained by respondent No.4 shows overwriting against the date 3rd March 2025, and the entry appears to have been altered to reflect an earlier date of dispatch i.e., 28 February 2025. The postal stamp on the envelope received by the petitioners clearly bears the date of 15 March 2025. This 15-day gap between the purported date of order and the actual date of dispatch casts a cloud over the authenticity of the official act.

**22.** When these facts are juxtaposed with the timeline of judicial proceedings in Writ Petition No.165 of 2025, which was argued before this Court on 5th and 7th March 2025, the suspicion of manipulation cannot be lightly brushed aside. The plea that the impugned order was passed and dispatched on 28 February 2025 appears to be self-serving, particularly in the absence of a cogent explanation for the overwriting in the outward register and the delayed service of order.

**23.** It is well-settled that the MOFA and the MCS Act are laws made for the benefit and welfare of flat purchasers. The main object of these laws is to protect the rights of people who buy flats

and to empower them to come together and manage their buildings and properties through registered societies. The developer, under the MOFA Act, is not just a builder. He 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 the time fixed by law.

**24.** In the present case, the record clearly shows that instead of helping the flat purchasers as per law, the developer has acted in a manner which is meant to defeat their legal rights. The duty to help the purchasers in forming a cooperative society is not optional, but compulsory, as per Section 10 of the MOFA Act and Rule 9 of the MOFA Rules. After societies are registered, they have a full and independent right under Section 154B-8 of the MCS Act to form an apex or federation society. This right does not depend on the permission or consent of the developer.

**25.** However, in this case, instead of carrying out these duties, the developer has used the law in a reverse manner. Instead of promoting formation of societies and transferring property to them, he has tried to block and destroy what the law provides. The developer filed an application to cancel the registration of the apex society under Section 21A of the MCS Act, two years after it was registered and that too immediately after he received a legal notice for deemed conveyance. This clearly shows that the intention was not bona fide, but to stop the purchasers from getting the legal rights which they were trying to enforce.

**26.** When such palpable injustice is brought before the Court, where the person who was supposed to follow a welfare law uses it against the very people it is meant to protect, the Court cannot turn away and reject the petition merely because another legal remedy may be available. The law is clear that having another remedy is only one factor, and not a complete bar to filing a writ petition under Article 226 of the Constitution, especially when the action challenged causes serious injustice, is contrary to law, or done with bad faith. The powers of the High Court under Article 226 are wide and flexible. If the palpable injustice is serious and the other remedies are either ineffective or not suitable in the situation, the High Court can exercise its powers.

**27.** Looking at the facts of this case, if the petitioners are now sent back to use the appeal or revision remedies under the MCS Act, it would only help the developer, who is himself at fault. It would force the association cooperative society to fight just to prove its existence before the same system which failed to protect it in the first place. This would delay justice and, in reality, may lead to denial of justice. Courts are not helpless when laws meant to protect citizens are misused. When a welfare law like MOFA, which was made to help flat purchasers, is turned against them by the developer himself, who was supposed to follow it, the Court has a duty to act. This is not just a case of some small error or mistake in procedure. It is a case where the purpose of the law itself is being defeated. Therefore, this Court cannot close its eyes to the injustice that is being done under the cover of legal process. The duty of the writ court is to prevent misuse of power and to

ensure that the law serves its true purpose.

**28.** The Constitution mandates that justice must not only be done, but must also appear to have been done. In the present case, relegating the petitioners to a statutory remedy would amount to sacrificing justice for the sake of formality. Given the serious nature of allegations, the statutory rights at stake, and the irreparable harm that may ensue from denial of relief, this Court finds it necessary and appropriate to entertain the present writ petition on merits, despite the existence of an alternate statutory remedy. Hence, this Court holds that the present writ petition is entertainable under Article 226 of the Constitution, even if statutory remedy is available.

**29.** The matter involves an important question of law, whether an apex cooperative housing association validly registered under Section 154B of the MCS Act, consisting of duly registered societies of flat purchasers, can be deregistered on the objection of a developer who failed to fulfill his statutory duties under MOFA. This hinges on the interpretation and application of Section 21A of the MCS Act to the facts at hand. Section 21A of the Maharashtra Cooperative Societies Act, 1960 (inserted by Maharashtra Act 20 of 1986) provides the statutory mechanism for de-registration of societies. The provision, so far as relevant, reads: *"If the Registrar is satisfied that any society is registered on misrepresentation made by applicants, or where the work of the society is completed or exhausted or the purposes for which the society has been registered are not served, ... he may, after giving an opportunity of being heard to the Chief Promoter, the committee and the*

*members of the society, de-register the society."*.

**30.** The plain text makes it clear that two broad categories of cases warrant de-registration: (i) when the society's registration was obtained by fraud or misrepresentation by the applicants; and (ii) when the society has outlived its purpose or become defunct (including cases where the society's object is accomplished or it is otherwise non-functional). The present case falls, if at all, in the first category – alleged misrepresentation. The provision also mandates that an opportunity of hearing be given to the society's stakeholders (chief promoter, managing committee, and members) before deregistering, underscoring that it is a quasi-judicial determination, not a summary administrative act.

**31.** MOFA is a social welfare legislation enacted in 1963 to regulate transactions between flat purchasers and promoters. It casts several duties on the promoter with the aim of protecting flat buyers' investments and ensuring they eventually get title and control of the property. Two provisions of MOFA are particularly significant in this context: Section 10 requires the promoter to form a legal entity (cooperative society, company or condominium) of flat purchasers by following prescribed procedure, and Section 11 obligates the promoter to convey title of the land and building to that legal entity. The statutory rules under MOFA reinforce this timeline; Rule 9(1) of the MOFA Rules, 1964 stipulates execution of the conveyance within four months from society registration(or such further period as agreed by the parties). Thus, the formation of a cooperative society of flat takers is not only permitted, it is the expected norm. The promoter is legally obliged to initiate or at

least not prevent such formation once a minimum number of persons have taken flats. It is settled law that flat purchasers have the right to form an association/society and the promoter cannot frustrate this by withholding consent unreasonably. In fact, if a promoter fails to form the society within the prescribed time or neglects to convey the property, the flat purchasers can themselves apply to the Registrar to form the society and also approach the Competent Authority for deemed conveyance of the property title. The Supreme Court in *Nahalchand Laloochand (P) Ltd. v. Panchali Coop. Housing Society Ltd.*, (2010) 9 SCC 536 underscored the protective object of MOFA. It noted that MOFA's provisions are designed to shield flat purchasers against the malpractices of promoters and to ensure fairness in transactions.

**32.** The MCS Act does not explicitly specify who may trigger the Registrar's action under Section 21A. By its terms, it empowers the Registrar upon being "satisfied" of the specified grounds. In practice, information could reach the Registrar through a complaint or application by an interested party. However, not every person can be said to have locus to seek a society's deregistration. A vital distinction is drawn in law between: (a) a challenge to registration on the ground of failure to meet statutory conditions (which is essentially an *appeal* against the Registrar's decision to register, to be made by someone with standing such as an aggrieved promoter or member, under Section 152 of the MCS Act); and (b) an allegation of fraud in obtaining registration, which can invoke Section 21A's special power. Section 21A is not an alternative means of challenging a society's registration on

technical grounds. If a promoter or any person believes the Registrar erred in registering a society (for example, not enough members, or other non-compliance), the proper remedy is a statutory appeal or revision, not a fraud cancellation. Section 21A is a measure to be invoked only when it is alleged and proven that the society was registered by collusion or deception, such as by forging signatures of putative members, misrepresenting eligibility or project status, or concealing facts so fundamental that the Registrar would have refused registration had the truth been known.

Concept of Fraud and Misrepresentation in Law

**33.** Both in general jurisprudence and under Section 21A, fraud is a serious charge requiring strong proof. The law regards fraud as an extrinsic, collateral act that vitiates even the most solemn proceedings. Fraud involves deliberate deception – a person knowingly making false representations or concealing material facts to induce another (here, the Registrar) to do something he would not have done otherwise. Our Supreme Court has observed that fraud must be pleaded and proved with particularity; it cannot be presumed from technical violations. Minor errors or omissions do not equate to fraud. In *S.P. Chengalvaraya Naidu v. Jagannath* (1994) 1 SCC 1, the Supreme Court famously stated that *"a fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another... It is cheating the court or tribunal, and every such act vitiates the entire proceeding."* But the threshold to label something as fraud is high: there must be cogent evidence of a false statement or willful

concealment of a decisive fact.

**34.** This Court, in *Aurum Avenue Co-op Housing Society Ltd. & Anr. (supra)* in the context of Section 21A, has echoed that *mere procedural lapses or technical defects cannot be elevated to fraud so as to summarily dissolve a society*. This Court clearly distinguished between procedural illegality or irregularities and fraud or misrepresentation. Section 21A can only be invoked if the registration itself was obtained by fraud, i.e., through deliberate concealment or misstatement of facts that go to the root of the registration process. Misrepresentation, as contemplated under Section 21A, is not merely providing inaccurate or incomplete information. It must involve: Deliberate deception, Suppression of material facts, or Presentation of forged or fabricated documents. Thus, any finding of misrepresentation or fraud must be substantiated by cogent evidence, not merely inferred from procedural shortcomings.

**35.** In my opinion the Registrar must identify a *"case of misrepresentation"* such that the society "was otherwise non-registrable but was registered on account of [that] misrepresentation." In other words, but for the deceit, the society would not have been registered at all. If the society would have been registered even with full disclosure of all facts, then however improper some omission might appear, it is not 'misrepresentation' in the sense of Section 21A.

**36.** A close reading of the impugned order dated 28 February 2025 reveals that the primary reason weighed with respondent

No.1, the Registrar, for passing the order of deregistration of the petitioners' apex society, is the existence of a clause in the flat purchase agreements executed under Section 4 MOFA. The said clause apparently confers upon the developer the right to form an apex society or federation only after completion of the entire project.

**37.** At this stage, it becomes necessary to draw a clear and principled distinction between two legally distinct concepts that are often conflated—namely, (i) *an association of purchasers* contemplated under Section 10 of MOFA, and (ii) *a cooperative housing association* registered under the provisions of the MCS Act.

**38.** The 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. MOFA is a statute designed to protect the interests of flat purchasers and to ensure transparency, accountability, and finality in matters of conveyance and possession. Similarly, the MCS Act is a special State legislation that governs the formation, registration, and regulation of cooperative housing societies and their federations.

**39.** Section 10 of MOFA casts an obligation on the promoter to take all necessary steps for the formation of an association of persons who have taken flats, be it in the form of a cooperative society, a company, or any other association, within a prescribed

time from the date of booking or agreement under Section 4. The said association represents the initial collective of flat purchasers, whose rights are traceable to individual agreements for purchase of flats, and the relationship interse and vis-à-vis the promoter is governed by MOFA. However, 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. Rather, it emanates exclusively from the decision taken by *registered societies*, each of which is independently constituted and governed under the MCS Act. The formation of such a cooperative housing association is facilitated by Section 154B-8 of the MCS Act and relevant rules framed thereunder.

40. The statutory right to register such an apex or federal society flows from the decision of member societies, each consisting of lawful purchasers. Once a cooperative society is validly formed and registered by a group of flat purchasers in accordance with MOFA and the MCS Act, it becomes a juristic person with independent decision-making powers. If multiple societies, each having attained legal status, resolve collectively to form a federal or apex association for the layout or township, the law does not require a further ratification from the developer who is no longer a stakeholder in such cooperative governance.

41. Therefore, the 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 legislative scheme makes it abundantly clear that MOFA governs the obligations of the promoter and the rights of the purchasers in the pre-conveyance stage, whereas the MCS Act takes over the field once societies are formed and registered.

**42.** It must also be noted that in the instant case, the societies comprising the petitioner-association have long been registered, with some dating back to 2004–05. The purchasers forming those societies are not merely persons with a contractual right, but purchasers having right to form society. Their choice to come together and form a cooperative housing association is rooted in statutory autonomy and cannot be obstructed by belated objections raised by the developer, especially when his obligations under MOFA remain unfulfilled.

**43.** In my opinion, the formation of a cooperative housing association of societies is not a mere extension of the agreement under Section 4 of MOFA or of the obligations under Section 10. It is an independent legal act undertaken by societies themselves under a separate statute, the MCS Act. While the promoter is obligated under MOFA to facilitate the formation of a body of purchasers, once societies are formed and registered, they are not obligated to the promoter's consent to federate into an apex body. To hold otherwise would be to subvert the legislative intent of the MCS Act and render flat purchasers perpetually dependent on the developer.

**44.** There is no provision either in MOFA or the MCS Act that a promoter's consent is a sine qua non for registering a cooperative housing association. On the contrary, MOFA's thrust is that flat owners can and should form an association of purchasers regardless of the promoter's wishes, especially if the promoter delays. The only role of the promoter in this regard is usually to forward the application or at least not obstruct association of purchasers. If the promoter still owns some units, he is typically included as a member (often counting as a single member for all his unsold units) to satisfy the requirement of minimum members. This inclusion actually protects the promoter's interest in unsold flats, as he becomes a member of the society to that extent. However, nothing in law gives the promoter a *veto* over society formation. Flat purchasers' right to form a society cannot be made contingent on the very party (promoter) whose delay or neglect prompted the purchasers to act. In the present case, the Petitioners formed the society only after the promoter failed to do so for several years post completion, which is in line with MOFA's intent.

**45.** Therefore, it was legally impermissible for respondent No.1 to rely on the existence of a clause in the sale agreement to invalidate the statutory act of registration of an apex cooperative housing society. The agreement under Section 4 creates obligations and rights between individual purchasers and the promoter. The decision of independent registered societies to form a common apex body is a matter of autonomous cooperative governance, falling within the domain of the MCS Act. No clause in a private agreement can nullify a statutory right under the MCS Act, nor can

it be the sole foundation for an administrative action of such severity as deregistration.

46. In a society governed by rule of law, the supremacy of statute over contract is non-negotiable. If cooperative societies, having fulfilled the statutory requirements, resolve to federate, the Registrar cannot act contrary to law merely because the promoter objects on the basis of a contract clause that itself runs counter to the statutory scheme.

47. In view of the above, this Court is constrained to hold that the order of deregistration is vitiated by a fundamental error in law. The reliance placed on the flat purchase agreement under Section 4 of MOFA, for the purpose of nullifying the registration of a cooperative federation, amounts to misapplication of jurisdiction and abdication of statutory duty. Contractual clauses cannot derogate from a statutory right.

48. The respondents have placed reliance on the judgment of this Court in the case of *Waghamay Mahila Machchimar Sahakari Sanstha (supra)* to support the contention that an order of deregistration of a society is valid and sustainable if it is demonstrated that the society obtained registration by furnishing incorrect or fraudulent information. It was urged that the principle laid down in the said decision squarely applies to the present case.

49. Before this Court proceeds to consider the precedential weight of the judgment rendered in *Waghmay Mahila Machchimar Sahakari Sanstha Maryadit (Supra)*, it is apposite to undertake an exercise in doctrinal clarity by invoking the principle of the

inversion test as expounded by the Supreme Court in *State of Gujarat vs. Utility Users Welfare Association, (2018) 6 SCC 21*.

**50.** In paragraphs 112 to 114 of the aforesaid judgment, the Supreme Court, elucidated a jurisprudential methodology to identify the ratio decidendi of a precedent. It observed that merely because a legal proposition appears in the body of a judgment does not, by itself, elevate that proposition to the status of binding law. Instead, the test of *essentiality* is determinative.

**51.** The Court therein propounded what is now known as the "inversion test", the substance of which is succinctly captured in the following words (para 112):

> "When a particular proposition of law is sought to be regarded as the ratio decidendi, one must ask—if we were to remove that proposition from the judgment, would the conclusion still remain the same? If yes, then that proposition is not the ratio decidendi. If no, then that proposition is indeed the ratio."

**52.** This analytical tool requires the Court to engage in a mental inversion, removing the proposition in question from the judgment and testing whether the final outcome still stands on the remaining foundation. If the structure of the judgment remains unshaken, the proposition in question must be regarded as ancillary or obiter. However, if the conclusion falls, the proposition acquires the status of ratio decidendi.

**53.** To ascertain whether a particular legal proposition forms part of the ratio decidendi of a judgment, it is incumbent upon the Court to adopt the principle known as the 'inversion test', as enunciated by the Supreme Court. The methodology mandates a

threefold analytical process. First, the Court must identify the legal proposition which appears to have material significance within the body of the judgment. Second, it must hypothetically invert or exclude that proposition from the chain of reasoning. Third, it must assess the impact of such exclusion on the final outcome of the case. Should the final conclusion remain unaffected by the removal of the said proposition, it necessarily follows that the proposition did not constitute the ratio decidendi, but was a mere incidental or obiter observation. Conversely, if the exclusion of the said proposition renders the final conclusion unsustainable or altered, such proposition must be held to form an integral and indispensable part of the judicial reasoning and therefore constitutes the binding ratio of the decision.

**54.** Applying the above principle to the facts of the present case, this Court is called upon to consider whether a particular observation made by the Coordinate Bench in *Waghmay Mahila Machchimar Sahakari Sanstha Maryadit* constitutes the binding ratio or a mere incidental finding.

**55.** On careful perusal of the judgment in *Waghamay Mahila Machchimar Sahakari Sanstha (supra)*, it is evident that the facts therein were materially distinct from the present case. In the said case, the Society had obtained registration by tampering with the official records with an intent to falsely show that certain villages were within its proposed area of operation. The Authority exercising powers of deregistration recorded a categorical finding that such villages did not fall within the geographical jurisdiction of the petitioner-society and were included only after deliberate

alterations were made in the requisite documents. Furthermore, it was found that the documents submitted in support of the proof of residence of members were fabricated, and that the individual shown as the chief promoter in the records was not, in fact, the person who had acted as such in reality.

**56.** The order of deregistration in that case was therefore founded upon grave acts of fraud and misrepresentation which went to the root of the matter and rendered the very registration itself void ab initio. In such circumstances, this Court declined to interfere in writ jurisdiction, having regard to the doctrine that fraud vitiates even the most solemn acts, and upheld the action of the authorities in cancelling the registration.

**57.** In *Waghmay Mahila*, the impugned decision turned upon the interpretation of policy guidelines governing allocation of fishery rights to cooperative societies. It was argued by the learned counsel for the petitioner that a certain proposition therein regarding the primacy of registration date under the Maharashtra Cooperative Societies Act, 1960 ought to be treated as binding precedent.

**58.** Upon close reading, however, it emerges that the actual operative part of the decision was rooted in the specific finding of the Competent Authority, interalia, that:

> (a) the society in question was registered by including multiple villages beyond its stated area of operation, thereby securing registration through material alterations in foundational documents;

(b) residential proof documents submitted for members were established to be fabricated and unauthentic; and

(c) the identity of the Chief Promoter was not as declared in the records submitted for registration, amounting to a fundamental misstatement.

**59.** It was in these circumstances, where elements of fraud, misrepresentation and deliberate falsification were found, that the registration was set aside under Section 21(A) of MCS Act.

**60.** However, the factual matrix of the present case does not disclose any such allegations or findings of fraud, tampering, or misrepresentation. It is not the case of the respondent-authorities that the petitioners have forged or fabricated any documents to falsely depict their area of operation or membership strength. The sole ground of deregistration as stated in the impugned order is the alleged failure to furnish agreement under Section 4 of the MOFA Act. The ratio in *Waghamay Mahila Machchimar Sahakari Sanstha (supra)* must therefore be understood in the context of the factual scenario which involved material fraud and suppression of vital facts.

**61.** The reference to "incorrect information has been furnished relying on which he had initially granted the registration, then the Registrar can always proceed to consider deregistering the Society in question" was a contextual observation, not determinative of the final outcome.

**62.** If one were to invert or remove the proposition regarding the 'incorrect information' from the judgment in *Waghmay Mahila*, the

result, disqualification of the rival society due to fabrication and material alteration of essential documents, would remain unaffected. This exercise, by the very logic of the inversion test, leads to the inescapable conclusion that such observation was not integral to the reasoning and hence does not constitute the ratio decidendi.

**63.** It must be borne in mind that the discipline of Article 141 of the Constitution demands that only those propositions of law which form the foundation of the decision are accorded the status of binding precedent. The Hon'ble Supreme Court in *Director of Settlements v. M.R. Apparao*, (2002) 4 SCC 638, reiterated this principle by holding that not every finding in a decision is binding; only the principle underlying the judgment which is necessary for the decision constitutes the law declared.

**64.** In light of the foregoing analysis, this Court is of the considered view that the proposition sought to be relied upon from *Waghmay Mahila Machchimar Sahakari Sanstha Maryadit* is not the ratio decidendi of the said decision. It is an observation rendered in passing, incapable of binding value, and must yield to the rigor of the inversion test laid down in *Utility Users Welfare Association*. The reliance placed on *Waghmay Mahila* is, therefore, misplaced insofar as it seeks to draw authoritative support from a proposition that was not determinative of the outcome in that case.

**65.** Learned counsel appearing for respondent No.3 then placed reliance upon the judgment of a Coordinate Bench of this Court in

*Lodha Belmondo Housing Federation Limited (Supra)*, to urge that registration of an apex body of cooperative housing societies prior to the completion of the overall project and in contravention of the agreement between the developer and purchasers is unsustainable. The submission advanced was that, in view of the express contractual clause between the parties, the petitioners' association could not have been registered until the completion of the entire layout by the developer.

**66.** However, this Court finds that the said judgment is distinguishable on facts and does not advance the case of the present respondents. In the case at hand, the registered societies constituting the petitioner-association are already functioning for over a decade. The formation of the apex association is not in contradiction to any statutory requirement but is instead a necessary step in furtherance of the rights conferred upon societies under the Maharashtra Cooperative Societies Act, 1960, particularly Section 154B-8. The statutory framework permits societies within a layout to federate themselves and form an apex cooperative body. Such a right is not made contingent upon the consent or convenience of the developer.

**67.** In fact, this Court in *Lok Housing and Constructions Ltd. Vs Lok Everest Cooperative Housing Society Ltd.[2025 SCC Online Bombay 711]* and *Flagship Infrastructure Ltd. Vs The Competent Authority [2025 SCC Online Bombay 1240]* has categorically held that any contractual clause which postpones the conveyance of title in favour of the society until completion of the entire project is violative of Rule 9 of the MOFA Rules. The Court observed that the

promoter's obligation to convey the title within four months from the date of registration of the society is a mandatory statutory requirement and cannot be diluted or defeated by any agreement to the contrary.

**68.** In *Flagship Infrastructure* this court observed as under :

> "**32.** The promoter tried to justify the delay in giving ownership to the society by pointing to two clauses (Clauses 6.3.1 and 6.3.2) in the sale agreements. According to the promoter, these clauses allowed them to delay conveyance for ten years after completion of Towers 1 to 8, or until the entire township project is completed, whichever happens earlier. In my opinion, this argument cannot be accepted. Because there is a clear rule under Rule 9 of the MOFA Rules, which lays down a strict time limit for the promoter to give ownership to the society. Rule 9 says that unless both sides specifically agree to a different period, the promoter must execute the conveyance within four months from the date of registration of the society.
>
> > **33.** The purpose of Rule 9 must be seen in the light of MOFA's overall goal which is to protect flat purchasers and ensure they get clear ownership without unnecessary delay. Rule 9 is not just a formality. It is a real protection created by law against endless delays by promoters. The four-month period is written into law to make sure that flat buyers are not left in uncertainty about who owns the land and the building where they live. A promoter cannot escape this responsibility by simply pointing to private agreement clauses, especially if those clauses depend on uncertain future events like full township completion, which flat buyers themselves have no control over.
> >
> > **34.** The use of the word "period" in Rule 9 of MOFA Rules is very important. In common understanding, a "period" means a fixed, definite block of time, like four months, six months, etc. It does not mean some vague or uncertain future event. This meaning fits the general

> rule in law : unless the context requires otherwise, words in a law must be given their natural, everyday meaning. Here, the word “period” is clear and plainit points to a definite timeline. The promoter's argument that the conveyance can be delayed until ten years after completion of Towers 1 to 8, or till the entire township is done would destroy this certainty. It would replace a clear deadline with an uncertain, shifting future event. That is not allowed. Courts are not allowed to change or rewrite clear laws under the excuse of interpretation. If courts start allowing such changes, it would defeat the whole purpose for which MOFA was made to protect flat buyers. If the promoter's argument is accepted, it would allow promoters to hold on to ownership forever, just by pointing to some incomplete work in the township. This would bring back the very problems MOFA wanted to prevent. Thus, the word “period” in Rule 9 must be understood as a definite, fixed time and not an open-ended condition. Any clause in a sale agreement (like Clauses 6.3.1 and 6.3.2) that tries to override this rule is void (meaning invalid) because it goes against the law.”

**69.** Applying the above principles, this Court finds 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 MCS Act and MOFA is void to the extent of such inconsistency. Statutory mandates cannot be defeated by contract. While a developer may have commercial or logistical reasons for planning completion of a larger layout in phases, such planning cannot override the statutory rights of flat purchasers and the autonomy of registered cooperative societies to federate under the MCS Act.

**70.** The present association has been formed by already-

registered cooperative housing societies, who have been in legal existence since 2004–05 and 2011. Their right to federate and register a cooperative housing association is a statutory right and not one subject to the whims of the promoter. Therefore, in my considered opinion, the judgment rendered in *Lodha Belmondo* is clearly distinguishable on facts and cannot be invoked as a precedent to defeat the legality and validity of the petitioner-association's registration.

**71.** In view of the above discussion, I find no justification for the respondents to rely on the said judgment as a ground to support the impugned order. The case at hand stands on an entirely different footing and cannot be equated with a case of fraudulent procurement of registration

**72.** Having examined the factual narrative and legal framework, this Court is of the considered view that the drastic power under Section 21A was mis-invoked in the present case. The material on record does not reveal any conduct by the petitioners amounting to fraud or misrepresentation in obtaining registration. It is important to recall what was (and was not) represented to the Registrar when the society was registered. The application for registration included the required information. The alleged concealment of the Agreement entered with purchasers is not something that the MCS Act or Rules require to be submitted for association of society registration. The Registrar obviously knew of the prior registration of member societies of association of societies. Thus, there was no suppression of a material fact.

**73.** In the opinion of this Court, the use of Section 21A in the present case was not justified and was based on a wrong understanding of the law. The basic legal requirements for deregistration of a cooperative housing society were not fulfilled. Moreover, there was no proper evidence brought on record to prove any fraud committed by the society or its members. It is also clear that the action of respondent developer in initiating or pushing for the deregistration of the society went beyond his lawful rights. Permitting such interference from a builder would create a harmful precedent, where builders and developers could try to break down societies formed by genuine flat purchasers under their rights granted by the MOFA. Such interference would shake the faith of home buyers in the protection provided by law. The purpose of cooperative housing society laws is to help flat purchasers come together for collective ownership and to protect them from exploitation. These laws were never meant to be misused by developers to keep control over housing projects forever by using legal technicalities. Here, the flat purchasers acted within their legal rights to come together for their common good. The promoter, having sold the flats, ought to have facilitated their endeavor rather than impede it. 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 cooperative spirit must prevail. In the present matter, the Registrar seems to have ignored this important object of the law. Therefore, their orders deserve to be set aside on the grounds of legal perversity and absence of jurisdictional basis.

**74.** In view of the above discussion, the order dated 28th February 2025 passed by the Divisional Joint Registrar, Cooperative Societies (respondent No.1), in Application No.14 of 2024 under Section 21A of the Maharashtra Cooperative Societies Act, 1960, directing deregistration of the petitioner society, is hereby quashed and set aside.

**75.** Rule is made absolute in the above terms. No order as to costs.

(AMIT BORKAR, J.)