

Nikita

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

WRIT PETITION NO.963 OF 2020

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KAILAS
DARADE

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Apoorvi Co-operative Housing Society
Ltd. Through Chairman Atul M.
Daundkar ... Petitioner
V/s.
Yashashri Construction Through
Director Viraj V. Lomte and Ors. ... Respondents

Mr. Rameshwar N. Gite, a/w Mr. Rohit D. Gorade for
the Petitioner.

Mr. Mahesh R. Joshi for Respondent No.1

Mr. Sanjay D. Rayrikar, AGP for the State-Respondent
Nos. 4 and 5.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 31, 2024

P.C.:

1. The petitioner is challenging order passed by the Competent Authority dated 10th October 2019, rejecting petitioner's application for registration of Society in furtherance of agreement under Section 4 executed by promoter in favour of purchasers.

2. The Competent Authority refused to pass direction for deemed conveyance on the ground that eight purchasers out of 33 have registered deed of apartment in relation to land in question and, therefore, registration of conveyance in favour of society is

barred under Section 10(2) Maharashtra Ownership of Flats Act, 1963.

3. It is not in dispute that in an agreement entered into under Section 4 of the said Act, purchasers are given option to register either the society or submit such project to the provisions of the Maharashtra Apartment Ownership Act, 1970. In such situation, the decision as regards to the submission of such Society either under the provisions of Cooperative Societies Act, 1960 or the Maharashtra Apartment Ownership Act, 1970 needs to be taken by the majority of purchasers. The material on record, indicates that only 8 persons out of 33 claimed to have supported promoter's decision to submit project under the provisions of Maharashtra Apartment Ownership Act, 1970.

4. The law in this regard is no longer res integra in view of the judgment of this Court in the case of **Rahul Enterprises Vs. Abhineha Park Sahakari Gruha Rachana Samstha Maryadit and Ors.** reported in 2013 (2) Mh. L.J. 463. This Court held that if flat purchasers have not decided to form an apartment, in absence of such decision, promoter could not have decided to submit the project under the provisions of the Maharashtra Apartment Ownership Act, 1970.

5. On perusal of the order dated 25th March 2014, it appears that the purchasers have registered cooperative society under the provisions of Maharashtra Cooperative Societies Act, 1960.

6. The scheme of the Act indicates that in furtherance of the agreement entered into between the promoter and the purchasers,

if the choice is with the purchasers, it is purchasers' right to decide either to register deed or declaration or apply for deemed conveyance under the provisions of Maharashtra Ownership of Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Act, 1963 (MOFA Act). Such right in absence of support from majority of members could not have been exercised by the promoter.

7. During the pendency of the present petition, the petitioner society has submitted affidavits of 29 members out of 33 which have stated that they are interested in registration of deemed conveyance under the provisions of MOFA Act.

8. Affidavits are taken on record and marked as "X" for identification collectively.

9. In view of the fact that the deed of declaration was submitted by the promoter unilaterally without getting majority of the purchasers include with the fact that 29 members out of 33 desired to have deemed conveyance under Section 11(3) of the MOFA Act, the submission of project unilaterally under the Maharashtra Apartment Ownership Act, 1970 deserves to be set aside. It is pertinent to note that promoter has not placed on record, an intimation as contemplated under Section 10(2) of the MOFA Act to the Registrar defined under the Maharashtra Cooperative Societies Act, 1960.

10. The Competent Authority, therefore, directed to pass a formal order of deemed conveyance in view of the petitioner society and to issue certificate as required under the provisions of

Section 11 of the MOFA Act. The Sub-registrar shall thereafter register the conveyance under Section 11(5) of the said Act.

11. The Competent Authority shall pass appropriate order within four week from today.

12. The writ petition stands disposed of in above terms.

(AMIT BORKAR, J.)