

District Deputy Registrar, Co-operative Societies, Mumbai City (4)

Competent Authority U/s 5A of the MOFA, 1963

Bhandari Bank Building, 2nd Floor, P.L.Kale Guruji Marg, Dadar (W), Mumbai 400 028

No.DDR-4/Mum./D.C./Kuber CHSL / 3081/2021

Date: - 17/12/2021

Order of Deemed Conveyance and Certificate U/s 11 of the MCFA, 1963

Application No. 182 of 2019.

Ref.:-

1. Section 3 and 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963.
2. Rule 9, 11, 12 & 13 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Rules 1964.
3. The conferment of the powers under section 5A of the Maharashtra Ownership Flats Act, 1963 issued by Housing Department on 23rd June, 2008 and the same has been further amended on 25th February, 2011 and on 9th January 2013.
4. Application of Kuber Co-operative Housing Society Ltd., submitted to this office on dt. 27.08.2019.
5. Hearings held from time to time in the said matter.

Kuber Co-operative Housing Society Ltd.

CTS No. 112/D, KVSC Lane, Off Borsapada Road,
Mahavir Nagar, Kandivali (W), Mumbai- 400067.

...Applicant

Versus

1. Joseph E. Mendes
2. Smt. Melvile Mendes
3. M/s. Classic Construction Co.
02, Charkop Jupiter CHS Ltd.,
Plot No. 137, RDP-7, Sector-6,w
Charkop, Kandivali (W), Mumbai- 400067.
4. M/s. Jayantilal Investment,
Mahendra Jayantilal Vora.
5. Hemang Mahendra Vora (POH)
6. Chirag Mahendra Vora (POH)
Opponent No. 4 to 6 having address at :-
101, Balaji Arcade, S.V. Road,
Kandivali (W), Mumbai- 400067.



7. **Municipal Corporation of Greater Mumbai**
MCGM Head Office, Opposite Azad Maidan,
CSMT Area, Next to Killa Court, Fort,
Mumbai, Maharashtra 400001.

8. **Municipal Corporation of Mumbai**
R/S ward office, M.G.Cross Road No. 2,
Near S.V.P. Swimming Pool,
Kandivali (West), Mumbai-400067.

...Opponents

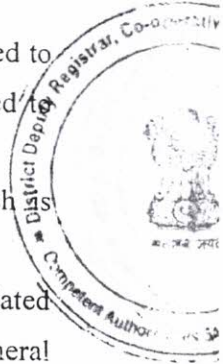
JUDGEMENT:

1. The Applicants are the Members of a Co-Operative Housing Society viz. "Kuber Co-operative Housing Society Limited" bearing Reg. No. MUM/WR/HSG/TC/14632/2010-11 Dated 26.04.2010 formed U/s.10 of the MOFA, 1963 and duly registered under the M.C.S. Act, 1960 having its address at CTS No. 112/D, KVSC lane, off Borsapada Road, Mahavir Nagar, Kandivali (W), Mumbai- 400067 have applied to this office on dt. 27.08.2019 vide its application No.182 of 2019 in form No. VII as prescribed in the MOF Act.
2. The application is filed under section 11(3) and section 11(4) of the Maharashtra Ownership Flats Act, 1963 (hereinafter referred to as the "said Act") and under Rules 11, 12 and 13 of the Maharashtra Ownership Flats Rules, 1964 (hereinafter referred to as the "said Rules")
3. The application is in prescribed form no. VII alongwith following relevant documents :-
 - a) The payment of fees of Rs. 2000/- (~~GRAS~~/Online/ Court fees Stamps/~~Treasury Challen~~)
 - b) Copy of Resolution passed at Special/ Annual General Meeting held on dt. 29.09.2018.
 - c) Copy of Society Registration Certificate dated 26.04.2010.
 - d) Copy of Agreement for Sale executed between M/s. Jayantilal Investments and one of the Flat/unit purchasers dated 26.02.2008.
 - e) Copy of Property Card dated 02.04.2019.
 - f) Copy of building plan dated 07.10.2003.
 - g) List of present members with their details in prescribed format.
 - h) Copy of the Legal Notice dated 08.02.2018 sent to the Opponents by the Applicant.



- i) Copy of the Self Declaration dated 04.06.2019 regarding O.C.
- j) Affidavit dated 30.05.2019 thereby stating that the documents submitted are true and correct and this Applicant have not approached any Court in the matter of Deemed Conveyance and if the documents are not true and correct then they will be liable for punishment under IPC.
4. On receipt of the above documents, this office issued Notice in Form No. X vide letter no. DDR-4/Mum/deemed conveyance/Notice/2183/2019 dated 29.08.2019 and public notice dated 29.08.2019 in order to give sufficient opportunities to all the parties concerned as required under the Act and the principles of natural justice.
5. The hearing was conducted on various dates and after giving proper opportunities to all the parties concerned, the matter was closed for order on 06.02.2020 with the liberty to file written statements/final arguments till 13.02.2020. After going through the application, it is observed that it is necessary to keep the matter for hearing afresh in the interest of natural justice. Therefore this office issued hearing notice vide letter no. DDR-4/Mum/deemed conveyance/Notice/1915/2020 dated 23.11.2020 and again the notice of hearing issued on 15.03.2021 and 11.08.2021. The hearing was conducted on various dates and the matter was closed for order on 09.09.2021 with the liberty to file written statements/final arguments till 23.09.2021
- a) On behalf of applicant society previously authorized representative Shri. Bhupendra Mistri & Vijayshri Naik was present and thereafter advocates from Omkar Khanolkar Law Chambers and M/s Solicis Lex appeared and file submissions.
- b) On behalf of Opponent No.01 to 06 Adv. Amol V. Kumeria, Adv. Yash Bhatiya & Adv. Jaya Shekhavat, on behalf of opp. no. 7 and 8 Adv. Sablani were present and filed written submission.
6. In the present application the applicant has prayed to get the certificate issued by this Competent Authority that the applicant is entitled to have unilateral deemed conveyance of land admeasuring 1234.18 sq. meters bearing at Survey No.141, Hissa No.3 corresponding to City Survey No. 112/D in the Revenue Village Kandivali, Tal-Borivali Mumbai Suburban District within the Registration District and Sub- District of Mumbai City and Mumbai Suburban.
7. It is observed that, the building of the applicant society is having 2 wings and as per the list submitted by the applicant, the applicant society is having 63 Flats.

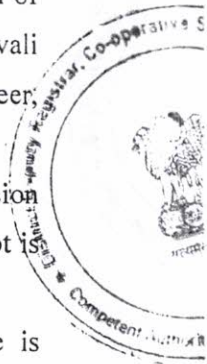
8. It is observed that, as per the latest Property card, submitted by the applicant society the land bearing CTS No. 112/D, is admeasuring 1889.1 sq. mtrs. The applicant submitted 7/12 Extract of Survey No.141, Hissa No.3 in which Opponent No.01 & 02 appears as the land owners.
9. As per the MOFA agreement submitted by applicant, the land owners as per 7/12 extract (i.e. Opp. No. 01 & 02 as per this application) have sold the rights, title and interest in the land to the builder / developer (i.e. Opp. No. 04 in this application). There is no any dispute regarding title of the land which is to be transferred in the name of society.
10. It is observed that, the Opponent No.04 as a developer constructed and completed building after having all the permissions from the concerned authorities. After completion of the building, the builder has sold the flats / units to various purchasers and entered into agreement for sale of flats with the individual purchasers of flat / shops as required by Section 4 of MOFA, 1963.
11. It is observed that after the formation of society, promoter / landowners have failed to execute the conveyance in favour of the applicant which they are legally entitled to have as provided under the said Acts & Rules made thereunder.
12. The Opp. No. 1 to 6 during the hearing of case raised the objections which are summarized as follows:
 - a. The applicant has not annexed the proper resolution. It is only a letter dated 19.04.2019 indicating that, the Applicant in their purported Annual General Meeting held on 29.09.2018 have decided to file application before this Hon'ble Authority. The letter is also in doubt as the date mentioned on the same has been cut.
 - b. There is no privity of contract between the Applicants and Opponent Nos. 1 & 2 hence Opp. No. 01 and 02 are not the promoters.
 - c. As per section 11 of MOFA the promoter shall convey title, etc., and execute documents, according to the agreement for sale and if he fails to do that, then such persons or organization can approach the competent authority and can take action against such promoter. But in this case they expresses their readiness and willingness to execute the Deed of Conveyance in conformity with the terms and conditions of the MOFA Agreement and vide letter dated 22.2.19 they have forwarded the Draft Conveyance Deed to the Applicant. Therefore the present application is suffers from preliminary issue of



maintainability.

- d. The Applicants have admitted and agreed that the said Deed of Conveyance of the aliquote part i.e. approx. 352 Sq. Mtrs. Area of the plinth upon which building of the Applicant with residential wing A & B stand and only be executed after the Building/wings are fully constructed and the Retail Market wing is handed over/conveyed with required open spaces to the Municipal Corporation after the said property is developed As per Clause No. 8 of the said agreement.
- e. Pending the execution of the Deed of Conveyance of the Retail Market wing in favour of the Municipal Corporation the order for grant of Conveyance in favour of the Applicants will severely prejudice the legitimate rights of the Opponent No. 4 and the same shall result into multiplicity of litigation.
- f. Under Clause No. 49 of the MOFA agreement it has been specifically agreed that, the Opponent Nos. 4, 5 and 6 shall have unrestricted and permanent right to grant rights of way or access or way leave permissions from the said property and the purchasers hereby agree to covenants the said right of the Opponent Nos. 4, 5 and 6.
- g. The application is suffers from mis-joinder of party as the opp. no. 03 is merely of a contractor who has provided construction services to Opponent Nos. 4, 5 and 6 pursuant to an agreement dated 25/01/2005 executed between them and Opp. No. 4 to 6.
- h. Despite of being well aware of the fact that the Occupation Certificate and the Building Completion Certificate were yet to be obtained the flat owners have admittedly occupied the respective flats on their own risk, cost and started furniture work in their respective flats. Therefore allegation with respect to the Occupation Certificate and the Building Completion Certificate should not be considered.
- i. Upon perusing of the GR dated 22.06.2018, the applicant is not having occupation certificate has failed to provide self-declaration to accept all responsibilities/ liabilities regarding the said building .
- j. The applicant has to carry out necessary amendment in the present application making BMC as party opponents.
- k. The provisions of RERA are not applicable in the present situation as no unsold flats remained in the Applicant society.

13. The Opp. No. 7 to 8 during the hearing of case raised the objections which is summarized as follows:
- a. There is no privity of contract between the applicant society and its members, with them.
 - b. They are neither promoter or the builder. They have not constructed any building of flats or does not enter into any agreement with applicant society or its members.
 - c. The applicant has filed the application for the plot bearing CTS No. 112/D. As per DP reservation 1991, the said plot was reserved for Retail Municipal Market and the built up amenity under the said reservation has been taken by the Market department of M.C.G.M. on 27.02.2006. Out of the entire area of the plot area in possession of M.C.G. M. is 654.92 sq. mtrs.
 - d. On 27.02.2006 their Asstt. Commissioner (Market) have taken over the vacant possession of the above built up amenity under accommodation reservation of Market Building on plot bearing CTS NO. 112/D of Village Kandivali admeasuring area 633.88 sq. mtrs. as approved by the Executive Engineer, Building Proposal (W.S.)
 - e. The area admeasuring 633.88 sq. mtrs. is in the vacant and peaceful possession of MCGM and Therefore the rights of the opponent MCGM in the said plot is required to be protected.
 - f. The application made by the applicant society for deemed conveyance is maintainable for the plot area 1234.18 sq. mtrs. in the name of the society and 654.92 sq. mtrs. in the name of MCGM.
14. To the objection raised by the Opponents, the applicant submitted their reply denying the contentions raised by the opponents which is summarized as follows:
- a. The certified copy of Resolution passed in the Annual General Meeting dated 29.09.2018 has been annexed.
 - b. The property card is in the name of Joseph E. Mendes and Smt. Melville Mendes and therefore as per MOFA Act, become party for Deemed conveyance case.
 - c. M/s Classic Construction i.e. Opp. No. 03, have them self agreed that they are contractor to construct building who have signed various agreement of them therefore as per MOFA Act they become party for Deemed conveyance case.
 - d. The Opponents are statutory defaulters under the civil as well as criminal laws



by not forming society, not obtaining the OC of the building for the society, not obtaining BCC from Concern authority, not executing conveyance in favour of them and also not complying clauses of the agreement no 14,15,16,18. The conveyance was required to be done in the year 2010 itself i.e. within a period of 4 months from the date of registration of the society.

- e. The Opponents are ready to execute Deed of Conveyance of the aliquot part i.e. approx 352 Sq. Mtrs. area of the plinth upon which building his constructed but the society is entitle to get Conveyance of Land 1234.18 Sq. mtrs., on which the plinth is constructed.
- f. Opponents cannot denied execution of deemed conveyance on bases of balance FSI. residual FAR (FSI) in the plot or the layout not consumed will be available to the promoter tiill the registration of the society building where after it will belong to the society.
- g. The Opponent no 4, 5 & 6 has not disclosed anything regarding balance FSI anywhere in draft conveyance. The draft conveyance deed the Opponent No. 4, 5 & 6 has already given conveyance to Retail market admeasuring of 654.9 sq.mtr in favour of MCGM.
- h. If the project is incomplete, the builder hereby requested to produce RERA registration number and if builder fails to give which liable to pay penalty and also leads to civil & criminal offence.
- i. The said plot is divided into two part, One is Municipal Retail Market consist of 654.92 Sq. Mtrs and another part is the Applicant Society consist of 1234.18 Sq. Mtr., and both the construction is divided by the wail. Further stated that both properties are having separate Legal entity and also having separate Property Tax, Water tax Bill & Entrances. Therefore they are liable for the land admeasuring 1234.18 sq. mtrs.
15. On perusal of the above submissions and documents submitted by the applicants / the concerned parties, it is observed that :
- a. The clauses of agreement enter between the parties can't override provision of MOFA Act.
- b. Applicant has furnished all the required documents to establish their claim.
- c. The Opponents are ready to execute the conveyance deed but only for the area 352 Sq. Mtrs, area of the plinth upon which building is constructed which is

much less than the society is entitled therefore they approached this authority as per MOFA, 1963.

- d. The opp. no. 7 and 8, the MCGM authority appeared for hearing and submitted that the application made by the applicant society for deemed conveyance is maintainable for the plot area 1234.18 sq. mtrs. in the name of the society and 654.92 sq. mtrs. in the name of MCGM. The applicant society also claimed for the area admeasuring 1234.18 sq. mtrs. only.
- e. Opponents have failed and neglected to carry out their obligation to convey the property as envisaged under the MOFA Act, 1963. Because of their failure, the legitible right of applicant to get conveyance cannot be denied.

Therefore the objections raised by Opponents are hereby rejected.

16. It is observed that as per approved building plan, architect certificate and the property card submitted by applicant, the applicant society is entitled to get the unilateral conveyance of the land admeasuring 1234.18 sq. meters including R.G. area bearing Survey No.141, Hissa No.3 corresponding to City Survey No. 112/D in the Revenue Village Kandivali, Tal- Borivali Mumbai Suburban District within the Registration District and Sub- District of Mumbai City and Mumbai Suburban alongwith the building situated thereon.
17. Therefore, with the above observations and after going through all the documents submitted by the concerned parties and after relying on all the documents and submissions made by them, I am of the opinion that the application filed by the "Kuber Co-operative Housing Society Ltd.," is fit to allow and grant the Unilateral Deemed Conveyance.

Hence, I pass the following order.

ORDER

In exercise of the powers conferred upon me U/s 5A of the Maharashtra Ownership Flats Act, 1963, I, **Dr. Kishor Mande**, the Competent Authority & District Deputy Registrar, Co-operative Societies, Mumbai City (4), hereby allow the application No. 182 of 2019 and grant the Unilateral Deemed Conveyance in favour of the "Kuber Co-operative Housing Society Ltd.," situated at CTS No. 112/D, KVSC lane, off Borsapada Road, Mahavir Nagar, Kandivali (W), Mumbai- 400067. Accordingly, I am issuing certificate of entitlement of Unilateral Deemed Conveyance.

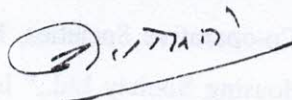
I also direct the applicant society, to register the Deemed Conveyance Deed as per Registration Act, 1908.

However, this order is issued on the basis of documents and information submitted by the Applicant and in the belief that the information/documents furnished by the Applicant are true and correct. And if the documents submitted by the applicant are not true and correct then the applicant will be responsible for the legal consequences arising out of it.

This Order is passed under my seal and signature.

Place: Mumbai

Dated: 17/12/2021



(Dr. Kishor Mande)
District Deputy Registrar,
Co-operative Societies, Mumbai City (4)
Competent Authority
SA of the MOFA, 1963



**Certificate of Deemed Conveyance under sec. 11 of the
Maharashtra Ownership Flats Act. 1963.**

Deemed Conveyance

Application No. 182 of 2019

CERTIFICATE

In exercise of the powers conferred on me U/s 5 (A) of the Maharashtra Ownership Flats Act, 1963, I, **Dr. Kishor Mande**, Competent Authority & District Deputy Registrar, Co-operative Societies, Mumbai City (4), hereby certify that "Kuber Co-operative Housing Society Ltd.," is entitled to have Unilateral Deemed Conveyance of land admeasuring 1234.18 sq. meters including R.G. area bearing at Survey No.141, Hissa No.3 corresponding to City Survey No. 112/D in the Revenue Village Kandivali, Tal- Borivali Mumbai Suburban District within the Registration District and Sub- District of Mumbai City and Mumbai Suburban alongwith the building situated thereon.

Place : Mumbai

Dated : 17/12/2022



(Signature)

(Dr. Kishor Mande)
District Deputy Registrar,
Co-operative Societies, Mumbai City (4)
Competent Authority
U/s 5A of the MOFA, 1963

To,

1. ✓ Chairman / Secretary.
Kuber Co-operative Housing Society Ltd.
CTS No. 112/D, KVSC lane, off Borsapada Road,
Mahavir Nagar, Kandivali (W), Mumbai- 400067
2. The Sub Registrar office, Borivali Taluka.
3. Opponent No. 01 to 06

(Signature)

District Deputy Registrar,
Co-operative Societies, Mumbai City (4)
Competent Authority
U/s 5A of the MOFA, 1963.