IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.751 OF 2019

1. Dr. Omprakash B. Soniminde
2. Mrs. Chandrakala Omprakash Soniminde **....Petitioners**

V/S

1. Le Chateau Co-operative Housing Society Limited through the Board of Administrators consisting of the following members:

1(a) Mr. Shivam Mahade,
Certified Auditor and Member President
Board of authorized officer,

1(b) Mr. Kumaraswami K.S. and

1(c) Smt. Sherita J. D'souza

2(a) Mr. Kanyalal Chetandas Mankani,

2(b) Mr. Ramesh Chetandas Mankani,

3. Mr. Kanyalal Chetandas Mankani,
4. Mr. Ramesh Chetandas Mankani,
5. Mrs. Renu Ramesh Mankani,
6. Jet Speed Developers Pvt. Ltd. **....Respondents**

WITH
INTERIM APPLICATION NO.15802 OF 2024
IN
WRIT PETITION NO.751 OF 2019

1. Dr. Omprakash B. Soniminde
2. Mrs. Chandrakala Omprakash Soniminde **....Applicants**

IN THE MATTER BETWEEN:

1. Dr. Omprakash B. Soniminde
2. Mrs. Chandrakala Omprakash Soniminde ....Petitioners

V/S

1. Le Chateau Co-operative Housing Society Limited
   through the Board of Administrators
   consisting of the following members:

1(a) Mr. Shivam Mahade,
Certified Auditor and Member President
Board of authorized officers,

1(b) Mr. Kumaraswami K.S. and

1(c) Smt. Sherita J. D'souza

2(a) Mr. Kanyalal Chetandas Mankani,

2(b) Mr. Ramesh Chetandas Mankani,

3. Mr. Kanyalal Chetandas Mankani,
4. Mr. Ramesh Chetandas Mankani,
5. Mrs. Renu Ramesh Mankani,
6. Jet Speed Developers Pvt. Ltd. ....Respondents

Dr. Veerendra Tulzapurkar, Senior Advocate with Mr. Mandar Soman, Ms. Aditi Bhat, Mr. Munaf Virjee and Mr. Rushabh Parekh i/b AMR Law *for the Petitioners.*

Mr. Vishal Kanade with Mr. Bharat Manghani, Ms. Drushti Gala and Ms. Durren Kaskar *for Respondent Nos.2(b) and 4 to 6.*

CORAM : SANDEEP V. MARNE, J.
RESERVED ON: 31 AUGUST 2026
PRONOUNCED ON: 24 SEPTEMBER 2026.

JUDGMENT:

1) The case involves a bizarre situation where the chairman of the housing society, which has constructed additional flats in the building for allotment to members, is left with no flat, whereas the contractor engaged to carry out the construction work has received a windfall gain in the form of allotment of four flats. Status as a close relative of a family holding 50% flats in the building has helped the contractor to receive from the society not just the cost incurred for construction and TDR, but also four large sized flats in the building. Thus, what was the legitimate right of a member is handed over to the contractor. Petitioners are those members who are deprived of their legitimate right to receive additional flats in the society's building, which are handed over free of cost by the society to directors (Respondent Nos. 4 and 5) of the contractor (Respondent No.6) under the pretext of society's inability to pay its bills.

2) Petitioners have filed the present Petition challenging the judgment and order dated 11 January 2018 passed by Cooperative Appellate Court dismissing Appeal No.18 of 2017 filed by them and confirming the judgment and award dated 30 January 2017 made by the learned Judge, Cooperative Court No.1, Mumbai in Dispute No. CC/I/179/2014 (old Dispute No.CC/II/26/1999). The Dispute was filed by the Petitioners aggrieved by cancellation of allotment of Flat Nos.701 and 702 by Respondent No.1-Society. Petitioners had also applied for review of the order of the Appellate Court, which is dismissed by the order dated 13 July 2018, which is also subject matter of challenge in the present Petition.

3) Brief facts of the case are that the property bearing Plot No. 14, TPS No. IV, Santacruz, admeasuring 1164 square meters, along with bungalow and one tenanted building known as "Shamrock", was developed by a developer by construction of Building known as "Le Chateau" comprising of stilt plus six upper floors and 12 flats. The flats in the building "Le Chateau" were sold by the developer to various flat purchasers. Petitioners are husband and wife and purchased flat Nos. 601 and 602 from the developer. The flat purchasers of the new building formed "Le Chateau Co-operative Housing Society Limited" (Respondent No.1). It appears that out of the 12 flats, about six flats were owned by Mankani family and their relatives. The entire land was conveyed by the developer in favor of Respondent No.1 - Society, which became owner of the land and the building "Le Chateau" together with tenanted structure named "Shamrock".

4) In the year 1994, the Society decided to purchase TDR/FSI and construct additional floors on the buildings Shamrock and Le Chateau and the additional flats were to be offered only to the existing members by charging them the cost of construction and cost of purchase of TDR/FSI. A decision to that effect was taken at the Extraordinary General Body Meeting **(EGM)** held on 24 April 1996. Respondent No. 6 was appointed as a contractor to carry out the work of additional construction. Petitioners were allotted flat Nos.701 and 702 in the additional construction. The other members were allotted additional flats to be constructed on Shamrock building. It is Petitioners' case that they made payment of

Rs.5,00,000/- for purchase of the said two flats. In the year 1997, new Managing Committee took over. It appears that the Society called upon Petitioners to make payments of Rs.35,00,000/- by letter dated 26 August 1997. Petitioners demanded various particulars of purchase of TDR etc. as well as demanded schedule of payment. By letter dated 21 October 1997, the Society communicated schedule of payment and demanded amount of Rs. 43,00,000/- from the Petitioners. By another letter dated 18 November 1997, amount of Rs.43,09,000/- was demanded by the Society for flat Nos.701 and 702.

5) Society convened Annual General Meeting **(AGM)** on 19 July 1998, in which the agenda was for taking decision for allotment of flat Nos.701 and 702 to the interested members. According to Petitioners, they did not receive notice dated 4 July 1998. The date of the meeting was altered to 24 July 1998, in respect of which also Petitioners apparently did not receive any notice. In the AGM held on 24 July 1998, a resolution was adopted for allotment of flat Nos.701 and 702 to Respondent Nos.4 and 5, who were directors of Respondent No.6 (Contractor). Thereafter, proceedings were initiated for expelling Petitioners from the Society, but the proposal was rejected by the Registrar by order dated 24 January 2000. The Appeal was also dismissed on 3 May 2001.

6) Petitioners filed Dispute No.CC/II/26 of 1999 before Co-operative Court, Mumbai, challenging the Resolution dated 24 July 1998 as well as seeking a declaration that the action of the Society in obstructing Petitioner No.1 from acting as Chairman was illegal and improper.

Petitioners also sought injunction against the Opponents from dealing with or disposing of flat Nos.701 and 702. Petitioners also sought possession of flat Nos.701 and 702. It is the case of the Petitioners that on 6 November 2002, Petitioners applied for deposit of amount of Rs.62,00,000/- along with interest, which application remained to be decided by the Co-operative Court. In the meantime, Petitioners filed a suit challenging 8^{th} floor construction on Shamrock building. Initially, injunction was granted in favor of the Petitioners, which was ultimately modified by permitting construction on 8^{th} floor of the building Shamrock, with restriction on its occupation. However, on 6 June 2006, the suit was disposed of, allowing the Society to continue construction. Petitioners amended the Dispute by incorporating a prayer for allotment of flats on 8^{th} floor of Shamrock's building at the costs of TDR and costs of construction.

7) By judgment and order dated 30 January 2017, the Co-operative Court proceeded to dismiss the Dispute. Petitioners preferred Appeal No.18 of 2017 before Co-operative Appellate Court challenging Trial Court's order dated 30 January 2017. However, the Co-operative Appellate Court dismissed the Appeal by judgment and order dated 11 January 2018. Petitioners applied for review before the Co-operative Appellate Court, which was also rejected by order dated 13 July 2018. Petitioners have accordingly filed the present Petition challenging the orders of the Co-operative Court and the Appellate Court.

8) Dr. Tulzapurkar, the learned Senior Advocate appearing for Petitioners submits that the Cooperative Court and the Appellate Court

have grossly erred in dismissing the Dispute and the Appeal preferred by the Petitioners. He submits that the Cooperative Court did not decide the main prayer of the Petitioners challenging Resolution dated 24 July 1998. He submits that the Resolution dated 24 July 1998 is illegal, shown to have been adopted by conducting a meeting behind the back of the Petitioners. That the agenda of the meeting did not include subject of cancellation of allotment of Flat Nos.701 and 702 to the Petitioners. That, Petitioners were not served with notice of the meeting or notice of modified date of meeting. That in absence of any agenda for cancellation of allotment of Flat Nos.701 and 702 and without taking any decision to cancel the allotment, the Society illegally allotted flat Nos.701 and 702 to the directors of the contractor who are relatives of Mankani family. That Mankani family, who holds 50% flats in the building Le Chateau, ganged up with a view to rob the Petitioners of their due entitlement in respect of flat Nos. 701 and 702. He submits that meeting dated 24 July 1998 did not have the requisite quorum. That therefore holding of the meeting as well as adoption of resolution therein for allotment of flat Nos.701 and 702 is *ex facie* illegal. That the Co-operative Court has totally ignored this aspect and has failed to adjudicate the prayer of the Petitioners for declaring Resolution dated 24 July 1998 as illegal.

9) Dr. Tulzapurkar further submits that in the EGM held on 24 April 1996, a decision was taken to allot additional flats only to the members. That Respondent Nos.4 to 5, to whom allotment was made, were admittedly not members of the Society. That the case involves taking away

allotment from members and granting it to outsiders behind the back of the Petitioners.

10) Dr. Tulzapurkar further submits that the Co-operative Court and the Appellate Court have erroneously held that Petitioners did not contribute for construction of Flat Nos.701 and 702. That Petitioners initially paid an amount of Rs.5,00,000/-. That he never expressed any reluctance for payment of contribution. That he merely inquired about the details of purchase of TDR and demanded payment schedule. He submits that Petitioners offered to deposit amount of Rs.62,00,000/- along with interest on 6 November 2002. That the construction itself started in the year 2001. That therefore alleged non-payment of monies by the Petitioners could not have been a reason for cancellation of allotment in the AGM held on 24 July 1998.

11) Dr. Tulzapurkar further submits that securing allotment of flat Nos. 701 and 702 by Respondent No. 6 is unjust. That by March 1998, Respondent No. 6 was paid Rs. 2,69,18,660/- though he had purchased TDR of only 450 sq.m. by that time. By July 1998, Society created dues of Rs. 77,40,729/- against the Petitioner *qua* flat No. 701 and 702. Respondent No. 6 was to construct only 1298 sq.ft. area for flat No.701 and 702, though he demanded amount equivalent to area of 1935 sq.ft. That therefore there was no need or occasion for cancelling Petitioners' allotment and transferring the same to Respondent No. 6. That even if maximum expenses allegedly spend by Respondent No. 6 are taken into consideration, the same would not exceed Rs. 2.47 Crores, against which he received amount of 3.29 crores by March 1999. That therefore

Respondent No. 6 was overpaid and in addition, he received allotment of flat Nos. 701 and 702.

12) Dr. Tulzapurkar further submits that even if for some reasons flat Nos. 701 and 702 could not be allotted to Petitioners, at least flat Nos. 801 and 802 ought to have been allotted to them. However, the society, controlled by Mankanis, illegally allotted even flat Nos. 801, 802 to the directors of Respondent No.6. He submits that as of today, Respondent No. 6 purchased TDR of 870 sq.m. for five floors over Shamrock, 130 sq.m. for flat Nos. 701 and 702 and 130 sq.m. for flats on 8th floor of Shamrock. That if TDR in respect of flats 701, 702, 801 and 802 is deducted, what is consumed by Respondent No. 6 for benefit of society members is TDR of only 870 sq.m., for which it already received amount of Rs. 4,61,68,500/- which comes to Rs. 4930 per sq.ft. as against original agreement of Rs. 4,000 per sq.m. Thus, Respondent No. 6 is already paid Rs. 87,09,780/- in excess and in addition, he has secured allotment of four flats in the buildings of the society. That Respondent No. 6 has clearly and unjustly enriched himself. That therefore at least flat Nos. 801 and 802, construction of which is incomplete and which are unoccupied, must be allotted to the Petitioners. He submits that Petitioners are willing to pay the amount of Rs. 62 lakhs agreed as on 6 November 2002 with a reasonable interest thereon for securing allotment of flat Nos. 801 and 802.

13) Dr. Tulzapurkar accordingly prays for setting aside the orders passed by the Co-operative Court and Co-operative Appellate Court and for making the Dispute absolute in terms of the prayers made therein.

14) Mr. Kanade, the learned Counsel appearing for Respondent Nos.2(b) and 4 to 6, opposes the Petition submitting that concurrent findings are recorded against the Petitioner in three orders passed by the Co-operative Court and the Co-operative Appellate Court. He submits that the decision to cancel the allotment of Flat Nos.701 and 702 was on account of flat refusal by the Petitioners to pay the contribution. He submits that in the EGM held on 24 April 1996, a specific decision was taken that allotment was subject to prompt payments. He submits that Society issued several demands to the Petitioners for making the payments for construction of the flats. That Petitioners failed to make any payment and therefore the other members were left with no other option but to let the directors of the Contractor accept allotment of flat Nos.701 and 702 with a view to ensure that the construction is carried out in an expeditious manner. He submits that both the Courts have conducted factual inquiry into claim raised by the Petitioners about payment of amount of Rs.5,00,000/- and that it is ultimately found that the same was not paid by the Petitioners. He submits that Petitioners were fully aware of the fact that the Society was proceeding ahead with proposal for cancellation of allotment. He submits that there was substantial correspondence between the parties before passing of Resolution dated 24 July 1998. He therefore submits that no prejudice is faced by the Petitioners on account of alleged non-service of notice or non-inclusion of agenda in the notice in respect of meeting held on 24 July 1998. That since Petitioners have decided not to pay the amount required for construction of flats, they cannot now turn around and press for allotment. That the Society was left with no

alternative but to allot the flats to a person who was ready and willing to contribute the cost of purchase of TDR and additional construction.

15) Mr. Kanade further submits that though specific issue relating to Resolution dated 24 July 1998 is not formulated, the Co-operative Court has answered the issue in the judgment by holding that challenge to the resolution is merely auxiliary to the main relief of allotment of flats.

16) Mr. Kanade further submits that since resolution dated 24 April 1996 was not challenged, the Petitioner was bound to make payments in pursuant thereof. That Petitioner No. 1 had issued letter dated 7 June 1996 to Ms. Maria Srinivas calling upon her to make payment of Rs. 35 lakh by 15 June 1996 but he himself never made payment in respect of flat Nos. 701 and 702. That therefore, the society was justified in cancelling allotment of flat Nos. 701 and 702. That the theory of cash payment of Rs. 5 lakh to the society is utterly false and has been rightly rejected concurrently by both the Courts.

17) Mr. Kanade further submits that so far as flat Nos. 801 and 802 are concerned, the Co-operative Court rightly held that the issue was subject matter of another Dispute No. CC/I/210/2014. That this finding was not impugned by the Petitioners in their appeal which focused only on flat Nos. 701 and 702. Having not challenged non-allotment of flat Nos. 801 and 802 before the Appellate Court, Petitioners are precluded from challenging the same in the present Petition. That in any case, Appellate Court rightly held that dispute relating to flat Nos. 801 and 802 would be decided in Dispute No. CC/I/210/2014.

18) Mr. Kanade further submits that flat Nos. 801 and 802 are correctly allotted to Respondent Nos. 4 and 5 by valid resolution dated 21 August 2000. The challenge to the said resolution by Petitioners has failed on account of dismissal of Dispute No. CC/I/210/2014. That there was escalation in cost from Rs. 4000 to Rs. 4800 per sq.ft. That the society members also acknowledged the position that the built-up area of each flat was 2253 per sq.ft. However, the escalation was still restricted to Rs. 4100 per sq.ft. considering the financial position of the society. That Petitioner remained present at AGM of 2001, in which minutes of meeting dated 21 August 2000 were confirmed. Therefore, Petitioner cannot question allotment of flat No. 801 and 802.

19) Mr. Kanade further submits that valuable rights have accrued in respect of Respondent Nos. 4 and 5 *qua* flat Nos. 801 and 802. That Respondent Nos. 4 to 6 are kept in process of litigation continuously for 27 years. That Respondent No. 6 has already suffered substantial loss in the transaction of construction of additional flats for the society and even after allotment of flat Nos. 701, 702, 801 and 802, there are still dues payable from the society. That since dispute questioning allotment of flat Nos. 801 and 802 is dismissed by Co-operative Court, the said issue cannot be permitted to be reagitated in the present Petition. He submits that Petitioners never deposited the alleged amount of Rs. 62 lakh in the Co-operative Court. That even if the said amount of Rs. 62 lakh with interest is paid by the Petitioners, the same would not satisfy the market value of the flat Nos. 801 and 802 comprising of area of 1400 Sq. Ft + 450 sq.ft. terrace (*totally admeasuring 1625 sq.ft. by considering 50% of terrace*). By even going

by most moderate rate of Rs. 45000 per Sq. Ft. (*considering pending work in the flats*), the same are worth 7.31 crores. Mr. Kanade accordingly prays for dismissal of the Petition.

20) Rival contentions urged on behalf of the parties now fall for my consideration.

21) Petitioners are aggrieved by the society's decision in allotting flat Nos.701 and 702 in favour of Respondent Nos.4 and 5. Admittedly, Respondent Nos.4 and 5 are not the original members of the society. They are directors of Jet Speed Developers Pvt. Ltd. (*Respondent No.6*), who was appointed by the Society for undertaking the work of construction of additional flats. The Society had resolved to construct 6 additional flats in the building Shamrock and one additional floor on the building Le Chateau in the EGM held on 24 April 1996. The Society further resolved to allot the additional flats only to the existing members (*except to Mrs. Kedia who had no interest in allotment of the additional flats*). Accordingly, it was decided that Flat Nos.701 and 702 on the 7th floor of the building Le Chateau shall be allotted to the Petitioners and the 10 flats from 3rd to 7th floors of the building Shamrock shall be allotted to the other members. Since Mrs. Kedia was not interested in the additional flats, the society decided to allot the same to another member (Maria Srinivas). The Resolution adopted in the EGM held on 24 April 1996 reads thus:

> "Resolved that the society do implement the scheme of development through the M/s. Jeet Speed Developers Private Limited, (5^{th} floor over the 'SHAMROCK' and 1 floor over Le-Chateau), construct the six additional floors over the building 'SHAMROCK' in exercise of the rights and powers reserved to the society under the Indenture of Lease dated in favour of the said lessee in

respect of the said building by acquiring and utilizing 10000 square feet T.D.R., F.S.l. through the agreed good offices of the said contractors who is being authorised to finalise the monetary terms with the sellers of T.D.R., F.S.I. and lines discussed with the contractor."

"Resolved further that the 12 flats which will be available upon construction of the additional six floors shall be and hereby allotted to the members except Mrs. Kedia subject to prompt and regular said payments to the contractor through the society towards T.D.R., F.S.I. acquisition costs payable 15^{th} July 1996 or extended period and construction / developers as per progress of construction work as follows:

	NAME OF THE MEMBER	FLAT NO.	NEW FLOOR
1)	Shri. O. B. Soniminde	701	7^{th} floor over the society.
2)	Smt. Chandrakala Soniminde	702	" "
3)	Smt. Maria Srinivas	504	5^{th} floor over Shamrock
4)	Smt. Maria Srinivas	503	" "
5)	Shri C. H. Mankani	604	5^{th} floor over Shamrock
6)	Smt. T. C. Mankani	603	" "
7)	Shri K. C. Mankani	704	5^{th} floor over Shamrock
8)	Shri M. C. Mankani	703	" "
9)	Smt. S. V. Harjani	403	5^{th} floor over Shamrock
10)	Shri. J. V. Harjani	404	" "
11)	Smt. Maria Srinivas	303	5^{th} floor over Shamrock
12)	Smt. Maria Srinivas	304	" "

22) The contract for construction of additional floors on Le Chateau and Shamrock buildings was awarded to Respondent No.6-Jet Speed Developers Pvt. Ltd.

23) It appears that majority of the flats in the building Le Chateau were owned by Mankani family and their relatives. Out of the 12 flats in the building, 4 flats were held by Mankani Family and 2 flats were held by Harjanis who were NRIs and relatives of Mankani. Thus, 6 out of the 12 flats were held by Mankanis and their relatives. Even the directors of Respondent No.6, who was engaged as the contractor to construct additional floors of the buildings-Le Chateau and Shamrock, are close

relatives of Mankanis. Thus, Respondent No.4 and 5 who are apparently husband and wife (*and who themselves are Mankanis*) were closely related with the Mankani Family. The case thus involves Mankani Family controlling the affairs of the building and who brought in their own relatives to construct additional floors on the two buildings. However, though Respondent Nos.4 and 5 were close relatives of Mankanis, their role was restricted only to construction of additional flats upon receipt of cost of construction and TDR. They were not to be allotted any flats in either of the buildings and the arrangement with them envisaged utilization of mere professional services for construction of additional flats upon payment of cost of construction and TDR.

24) Accordingly, Agreement dated 20 June 1996 was executed between the society and Respondent No.6 under which Respondent No.6 agreed to procure TDR from the market for construction of additional flats and to construct the same. The society agreed to pay Respondent No.6 Rs.4,000/- per sq.ft. in respect of the cost of construction and TDR. The relevant clause in the agreement reads thus:

> In consideration of the builder undertaking obligations under these presents including the obligation to acquire T.D.R., F.S.I. and to construct the five floors over Shamrock, and one floor over "Le Chateau" the Society shall pay the builders construction costs at the rate of Rs.4000/- (Rupees Four Thousand Only) per Square foot as per progress of construction work and/or as may be mutually agreed to between the Society and Builder keeping in mind the period within which the builder has agreed to complete the work of construction of the six floors and obtain Occupation Certificate. It is specifically agreed that the construction costs payable as aforesaid are inclusive of acquisition costs of the T.D.R., F.S.I. and also inclusive of the services to be rendered by the contractors in connection with the procurement of T.D.R., F.S.I. and the payments to be made who Architects/R.C.C. Consultants, Surveyors, Engineers and the payments and deposits to be made to the Municipal Corporation of Greater

> Bombay or other Concerned Authorities in connection with the construction of the six floors. It is however agreed and understood that the progress of the construction work by the Builders shall entirely depend on regular and timely payment of the construction costs at the aforesaid rate by the Society to the Builders. To facilitate matters and to ensure prompt payment of the construction costs, the Architects shall issue a Certificate of Construction work on or before the first of each month for the value of the construction work carried out by the elder for the preceding month. The estimated value of the construction work for each successing month has been agreed to be paid by the society to the Builders seven days prior to commencement of such month.

25) Thus, the role of Respondent No.6 (*and of Respondent Nos.4 and 5)* was restricted only as a professional contractor having no interest in the land and the building of whatsoever nature.

26) Though Petitioners were allotted flats-701 and 702, it appears that they did not pay the agreed amounts to the society or to Respondent No.6. Several correspondence took place between the parties post passing of EGM resolution dated 24 April 1996 and post execution of the agreement dated 20 June 1996. It must be noted at this juncture that Petitioner No.1 functioned as the Chairman of the society at the relevant time and was instrumental in initiating the process for construction of additional flats. It appears that position of Petitioner No.1 as Chairman of the society earned the best possible flats to the couple, who were allotted both additional flats to be constructed on the 7th floor of Le Chateau building. The other members were allotted flats in Shamrock building.

27) It appears that some difference arose between the Petitioners and Mankanis, who were apparently controlling the affairs of the building though Petitioner No. 1 was a formal chairman. The Secretary of the society issued notice to the Petitioners on 26 August 1997 informing them

that a sum of Rs.35,00,000/- was payable towards acquisition of TDR/FSI on or before 15 June 1996 and that subsequent payments were due in accordance with the progress of construction. It was intimated to the Petitioners that except them, all other members had contributed the cost in respect of the allotments made to them. The relevant part of letter dated 26 August 1997 reads thus:

> Subsequently, an Agreement with the Developers namely, JET Deed Developers Pvt. Ltd. was entered into for the development of willing and follow-up of matters connected with the development, as per the terms of allotment, each floor members were to make initial payment of sum of Rs. 35 lakhs towards TDR/FSI acquisition last on or before 15th June 1996, and subsequent payments towards Development, construction and incidental expenses in accordance with the progress of the construction.
>
> You are fully aware that the allotment of the proposed flats was subject to members observing and performing the obligations to make the payments on respective dates stipulated by society with the Developers. Except you, all allotte members of the flats in the additional floors to be constructed have made initial payment of about Rs. 35 lacs against allotment letters in accordance with.
>
> ...
>
> In view of above progress, Developers are ready with slab work and have requested for further payments. I requested allottee for further payments. They enquired as to whether all allottee members have made initial payment. On their specific quarry. I had no option but to inform them that despite my personal reminders, you have failed and neglected to make initial TDR/FSI requisition payments in accordance with the Schedule agreed between the society and allottee members and have adopted obstructive attitude. They were shocked and expressed that this was not expected Chairman of the Society who was not only instrument in negotiations and finalizing the Development Agreement with the said Developers but have executed the same pursuant to the General Body Resolutions.
>
> In order to implement scheme, you induced and impressed upon the member like Srinivasan and Kedia to make initial payments. On their knowing this fact that you as a Chairman have not made any payments, they requested for an meeting and accordingly a meeting was organized on 9th instant at Flat No. 501 at 10.30 a.m. Members like Shri Srinivasan, Shri Harjani and Kedia (Dube) specially came from Dubai, Singapore, Indore respectively to attain the meetings.

After long discussions and during course of meeting you were kind enough to agree and undertake that you shall make payment of outstanding together with further due amounts within 10-12 days time.

It is indeed a matter of regret and concern that time taken by you is ober and till date no payment has come from you. If this sort of your attitude continues, the interest of the society and its members will be prejudiced and society will become liable to the Developers for the damages and other consequences.

If the circumstances, as a Secretary of the society and in the interest of the society and also in your interest, I on behalf of the society call upon you to make payments as paid by other allottee members with 24% interest from the due date i.e. 15th June 1996 with week from receipt of this notice.

Please note that if you fail to comply with this notice, the society will be constrained to legally and validly cancel proposed reserved allotment in your favour without any further notice and society shall take appropriate action at your risk and cost for the damages.

28) Petitioner No.1 responded to society's letter on 6 September 1997 stating as under:

Further in order to reply you to your above letter, I hereby specifically ask you to produce all books of accounts, minutes of the meetings, details of payments made to the builders and copy of terms of contract with builders.

Further, you say that the allotment of proposed flat is made to me but you have not indicated as the details of Construction Cost and in what manner it is to be paid i.e. time frame or time schedule which must match with that of the society's schedule.

I agree that allotment was made but no flat number or area is mentioned to me. Further you say that allotment of the proposed flat was subject to members observing and performing the obligations to make payments on respective dates stipulated by the society but as far as my knowledge as Chairman of the Society, no such schedule was decided. If at all decided you are requested to immediate send me the copies of minutes in which the schedule of such payment is decided.

Further I reserve my right to give detailed reply to your notice after having inspection of books of accounts, minutes books and terms of contract with builders.

29) The society wrote back to Petitioner No.1 on 1 October 1997 stating as under:

> It is however obvious to me that you have written this letter in total disregard of: the discussions and decisions made at the General Body Meetings of the Society as also its Managing Committee from time to time starting from December, 1994. You not only participated in all of its discussions, meetings and decisions as a normal Co-operative Society Member but, in fact, and in law chaired each of these meetings as a Chairman. So, apart from your actually being a party to all deliberations on the Scheme of Development, and participating in the decision making process as the Chairman, you and I as is evidenced by the Resolution passed at the Extra Ordinary General Body Meeting of the Society held on the 24th April, 1996 were appointed to co-ordinate and look after the implementation of the Scheme through M/s. Jet Speed Developers Private Limited who were legally and validly appointed under an agreement drawn by our solicitors and approved by the society and signed by you and me as Chairman and Secretary of the society.
>
> …
>
> This is obviously without prejudice to the right of the Society as Developers to call upon defaulter members to make payment of the unpaid amounts forthwith. Inconclusion. I wish to warn you that the Developers will not part with possession of the flat until they receive all the unpaid instalments, and the balance of the consideration monies on a timely basis. Surely, you do not expect the Scheme to be completed with the help of payments made by other members while defaulters delay and default and raise unnecessary controversies.

30) Instead of making payments, Petitioners served advocate's notice dated 11 October 1997 to the society raising various issues about management of affairs of the society. Thereafter, several correspondence took place between the Petitioners and the society. By letter dated 18 November 1997, the society demanded amount of Rs.43,09,000/- and threatened to cancel the allotment of flat Nos.701 and 702 by stating as under:

> With reference to para 6, I hope that your client will not act prejudicial to the interest of the society and honour the commitment made by him under the agreement and the subsequence meetings held by the society. It may be recalled that in the General Body Meeting held on 19th Oct. 1997 your client had expressed his willingness to make payments towards the development account

and as such further time was given to make payment till 9th November 1997 as per the payment schedule worked out and your client was to make a sum of Rs.43,09,000/- and failing which his allotment of Flat No. 701 and 702 was liable to be terminated. I therefore state that the Managing Committee has given sufficient opportunity to your client to abide by the decision taken by the committee during his Chairmanship and if his inclined to flout his own commitment we are left with no other alternative but to call upon him to step down from the present position before causing further harm and injury to the interest of the society.

31) The Respondent No.6-developer also complained about non-payment of contribution by the Petitioners and had apparently requested Petitioner No.1 to make the payment. Finally, the developer wrote to the society complaining about non-payment of contributions by Petitioners. The society brought letter of Respondent No.6-developer to the notice of the Petitioner on 21 February 1998. However, beyond making correspondence, Petitioners failed to pay the agreed amounts either to the society or to Respondent No.6.

32) Tired of awaiting payments on the part of the Petitioners, the society published notice dated 4 July 1998 proposing to hold AGM on 19 July 1998 in which agenda item for allotment of flat Nos.701 and 702 to the interested members or to others was also included. Petitioners complain that they did not receive notice dated 4 July 1998. By further notice dated 13 July 1998, the date of the meeting was changed to 24 July 1998. It appears that the AGM was held on 24 July 1998, which was apparently not attended by the Petitioners. In the meeting, Item No.6 about allotment of flat Nos.701 and 702 to ‘other members’ or to ‘some other persons’ was taken up for discussion. It appears that no other member showed interest for allotment of flat Nos.701 and 702. It appears

that Respondent Nos.4 and 5 requested for allotment of flat Nos.701 and 702 for the purpose of recovery of costs incurred by them. The society accordingly resolved to allot flat Nos.701 and 702 to Respondent Nos.4 and 5. The relevant part of resolutions dated 24 July 1998 reads thus:

> Item No. 6 of Agenda.
>
> The Hon. Secretary briefed the members about the default committed by the past Chairman of the Society Dr. Soniminde and Smt. Chandrakala Soniminde. The Hon. Secretary informed the members that Dr. Soniminde has committed breaches of the Development Agreement the Society has executed with the Developers Ms. Jet Speed Developers Pvt. Ltd., though he was instrumental in executing the Agreement with the said Developers. After having executed the Agreement on behalf of the Society, as Chairman in pursuance of the general Body resolution Dr. Soniminde has failed to honour his commitment to pay his contribution towards the cost of acquisition of T.D.R./F.S.I. etc. for the Development of the property and one construction cost payable by him and his wife in respect of the proposed development of Flat No. 701 and 702.
>
> The Secret the members that on behalf of the willy called Dr. Soniminde and make payment of the dues payable by them in respect of the proposed allotment. However, the Chairman with ulterior motives and designs, failed and neglected to pay his and his wife contribution with a view to defeat and delay the project The Hon. Secretary placed before the Meeting the correspondence between the Managing Committee and the Chairman and his Advocate in the subject matter which would throw sufficient light on the obstruction live attitude of the past Chairman of the Society, Secretary further refreshed the memory of members about the misbehaviour and threats given by past Chairman Dr. at Special General Body Meeting held on 10.10.97, which Soniminde left unconcluded in anger and huff. It was evident from the communication received from Dr. Soiminde and his Advocate that he has been making false and frivolous allegations against the committee and office bearers of the Society with a view to sabotage whole development project with ulterior motives and designs so that he could held the Society and the Developers to reasons and rate wrongful again. Dr. Soniminde went to the extent of making said allegations against the office bearers of the Society and conducting that by holding threat of lodging compliant with offence Division of the police and thereby tarnish the indulge of the Society and its members. The Hon. Secretary of the Society the constrained to give a fitting reply to the Advocate of Dr. Soliminde by letter dated 01.03.98 for rising frivolous basement, defamatory and derogatory statements. The Hon. Secretary further informed the members that the past Chairman of the Society not only failed to make payment of any farthing towards the construction cost and other development cost but continued his defiance in a high handed and

objectionable manner causing impediment to the smooth functioning of the Society and the development activities as against decision of the General Body Meeting in which he was a party. In view of the non-co-operative obstructive attitude of Dr. Soniminde ultimately the Managing Committee was constrained to requisition a Special Meeting under Section 73(1) ID of the M.C.S.Act to consider a no-confidence motion against him. The notice of requisition alongwith annexures were submitted to the Dr. Registrar as required U/s. 73 (1) ID for appropriate action. Thereafter, on account of default and failure to gttend the Managing Committee Meeting resulted in ceasenian of the Membership of the Managing Committee. Members are also aware that at the instruct of Dr. Soniminde the Dy. Registrar has taken drastic action against the Managing Committee without reasonable ground and has appointed administrator in violation of the established accounts of law. The said decision of appointment of Administrator was subsequently stayed by the Revisional Authority.

The Hon. Secretary further informed that the Developers M/s. Jet Speed Developers Pvt. Ltd., who has been entrusted with the construction work of the additional building for the Society has intimated vide letter dated 28.02.98 that due to the default on the part of the past Chairman of the Society to pay any single farthing to the construction cost they are unable to proceed with the work. In the circumstances they shall be left with no other alternative but to dispose of the said flat and realize the proceed towards the cost of construction and to cover shortfall if any from Society.

The Hon. Secretary informed further that in view of default committed by Dr. Soniminde and Smt. Chandrakala Soniminde their right of allotment in respect of the above Flat No. 701 and 702 stands terminated as_ per Society's letter dated 21.10.97 addressed to them, to which till date there is no reply. Members discussed the matter in detail and after deliberations it was unanimously agreed that the allotment of flat under question should be given to any other interested members or outsiders as the case may be. As the members present in the meeting were not interested in lying additional allotment of flats it Was decided to offer the Said flat to M/s. Jet Speed Developers Pvt. Ltd. in reimbursement in their outstanding Payments. At this point Director of M/s. Jet Speed Developers Pvt. Ltd. who was Specially invited in the supporting to sort out their outstanding payments entered. The members present explained to the developers that in view of the fact that no Payment has came forth from the defaulter members. Society is not imposition to clear their outstandings and that clear has no means to offer the flats to outsiders. Members therefrom offered the Developers to take allotment of that NOC 701 & 702 in reimbursement of their outstanding Payments of the same Price at which other members have been given allotment. Further lengthy discussions, Director of M/s. Jeet Speed Developers Pvt. Ltd., was persuaded to accept the Society's Offer and Complete the Construction work. There being no other alterative available with the Society, Developers accepted the offer and informed the members present to issue allotment in favour of their following Directors:

1) Flat No. 701 – Shri Ramesh C. Mankani
2) Flat No. 702 – Smt. Renu R. Mankani

Members present unanimously approved allotment in favour of Shri Ramesh C. Mankani and Mrs. Renu R. Mankani and authorised the Hon. Secretary and Hon. Treasurer to issue letters of allotment to them. Accordingly the following resolution was passed.

IT IS UNANIMOUSLY RESOLVED BY THE GENERAL BODY OF THE SOCIETY that having regard to the last bill dated 15.05.1998 for sum of Rs.77,40,729/- submitted by our contractors M/s. Jet Speed Developer Pvt. Ltd. and duly certified by the Architect and with a view to protect and Safeguard the interést of the members of the Society who have already paid huge amounts for their respective flats which are being constructed by said contractors M/s. Jet Speed Developers Pvt. Ltd., and to avoid claim of damages from M/s. Jet Speed Developers Pvt. Ltd., and on account of the non-payment of the dues and to avoid the situation which has been created by non-payment by Dr. Oprakash Soniminde and his wife, Chandrakala Lokiminde in respect of their proposed allotment of Flats NO. 701, 702 in the new building which is being constructed by the said contractors, M/s. Jet Speed Developers Pvt. Ltd. who have thréatened to initiate proceedings for sale of the flats which are being constructed to realise their dues, the Society hereby allots the Said Flats No. 701 and 702 to Shri Ramesh C. Mankani and Smt. Renu R. Mankani respectively, Directors of M/s. Jet Speed Developers Pvt. Ltd., with Ownership rights and for sale of the flats for a consideration of Rs.62 lacs with amount shall be adjusted from the amount Payable by the society to the said Contractors M/s. Jet Speed Developers Pvt. Ltd.

IT IS FURTHER RESOLVED THAT the allotment the said flats to Mr. Ramesh C. Mankani and Smt. Renu R. Mankani is firm and shall not be revoked by the Society and allottee shall Code by the Bye-Laws and Regulations of the Society as may be applicable from time to time. The said allottee shall be eligible the membership of the Society in respect of the above flats on planning of the requirements under the Act. Rule and Bye-Laws of the Society.

33) Petitioners have questioned correctness of Resolution adopted in AGM held on 24 July 1998 by raising multiple objections. According to them, there was no agenda for cancellation of allotment of flat Nos.701 and 702 included in the notice for the SGM. They have also complained about non-receipt of notice of the said meeting. However,

what really is objectionable is the decision shown to have been taken in the AGM of 24 July 1998 to directly allot flat Nos.701 and 702 to the directors of the Developer, who are close relatives of Mankanis. No doubt, Petitioners are to be blamed for not making payments in respect of flat Nos.701 and 702 despite grant of repeated opportunities. However, such act on the part of the Petitioners could not have been a reason to make arbitrary allotment of flats to the relatives of Mankani Family. If Petitioners did not show interest in making payments in respect of flat Nos.701 and 702, the society ought to have auctioned those flats. On conduct of auction, both the flats could have received much higher price as compared to the alleged dues of Respondent No.6. As per the minutes of the AGM dated 24 July 1998, the dues of Respondent No.6 as per last bill dated 15 May 1998 were to the tune of Rs.77,40,729/-. However, whether the entire amount of Rs.77,40,729/- was payable only in respect of Flat Nos.701 and 702 is not discernible. What was shown as due and payable vide bill dated 15 May 1998 were the total dues in respect of all additional flats constructed by Respondent No.6. It is also sought to be suggested that there was escalation in the cost of construction. If indeed there was escalation, whether other members contributed the additional cost is unclear. It thus appears that the additional cost was also sought to be recovered through the flats allotted to Petitioners. The society ought to have auctioned flat Nos.701 and 702 and from consideration so received, the bills of Respondent No.6 could have been paid. Be that as it may. Respondent Nos.4 and 5, who are Directors of Respondent No.6 were directly allotted flat Nos.701 and 702 by the society to satisfy the outstanding bills for construction of additional flats in the buildings Le Chateau and Shamrock.

34) The matter, however, does not end here. As per the original decision adopted in the EGM held on 24 April 1996, construction only upto 7th floor on building Shamrock was to be carried out. Flat Nos.703 and 704 in Shamrock building were allotted to Mankanis. However, it appears that two more flats on 8th floor of the buildings were taken up for construction by Respondent No.6. Mr. Kanade justifies the action by submitting that the dues payable to Respondent No.6 were not satisfied only on account of allotment of Flat No.701 and 702 and that therefore it became necessary to construct and allot two additional flats bearing Nos.801 and 802 in building-Shamrock. This decision of the society was like adding premium to the illegalities already committed by it. The decision is arbitrary particularly because construction of additional flats was taken up only for allotment to Respondent Nos.4 and 5. Thus, Mankanis, who held 50% flats and membership in the society, were not satisfied by assignment of construction work to their close relatives and by allotment of Flat Nos.701 and 702 to them. The society decided to offer on a platter another set of flats to Respondent Nos. 4 and 5. Mankanis flouted the decision of the society to allot additional flats only to members and ensured that the same went to their relatives. They were not satisfied with the irregularities already committed and decided to allot two more flats to their own relatives *(Respondent Nos.4 and 5*) by constructing flat Nos. 801 and 802 in Shamrock building.

35) Petitioners amended the Dispute by inclusion of a prayer for allotment of atleast Flat Nos. 801 and 802 constructed on 8th floor of the building Shamrock at the cost of TDR and construction by adding prayer-CC (iii) in the dispute. It appears that Petitioners also independently challenged Society’s Resolution dated 21 August 2000 to construct two additional flats on 8th floor of building, Shamrock by filing independent Dispute No. CC/I/210/2014, which was apparently dismissed for non-prosecution by order dated 18 August 2018. In my view, however, dismissal of Dispute No. CC/I/210/2014 cannot come in the way of Co-operative Court granting prayer clause-CC (iii) in Dispute No.CC/I/179 of 2014 in favour of the Petitioners. This is discussed in detail in latter part of the judgment.

36) In my view, allotment of Flat Nos.701 and 702 to Respondent Nos. 4 and 5 was itself an illegal act and the same cannot be permitted to be compounded by allotment of 2 additional flats i.e. Flat Nos.801 and 802 in their favour. The entitlement of Respondent No.6 to receive monies for construction of additional flats flow out of agreement dated 20 June 1996 and if any amount remained unpaid for construction of additional flats, the remedy for Respondent No.6 was to file a suit against the society for recovery of that amount. It appears that the suit has indeed been filed by Respondent No.6 against the society though none of the parties have placed before this Court the plaint in any such suit. There was no right in favour of directors of Respondent No.6 (*who are close relatives of Mankanis*) to secure allotment of any flats in the building. In that sense, allotment of flat Nos.701 and 702 in favour of Respondent Nos.4 and 5 was itself an

illegal act on behalf of the society. The said illegality is compounded by the society by allotting flat Nos. 801 and 802 to them. In my view, this position ought to have been appreciated by the Cooperative Court and by the Cooperative Appellate Court, who have erroneously dismissed the Dispute of the Petitioners.

37) If both the Courts found that the flat Nos.701 and 702 were not possible to be allotted to the Petitioners on account of occupation thereof by Respondent Nos. 4 and 5, they ought to have considered the alternate prayer of Petitioners for allotment of atleast Flat Nos.801 and 802 to the Petitioners. Petitioners had shown willingness to pay the cost of TDR and cost of construction of 2 flats to the society and the said amount would have satisfied the alleged additional claim of Respondent No.6 towards costs incurred in purchase of TDR and construction of additional flats. As observed above, against outstanding amount of Rs.77,40,729/-, Respondent No.6 (*through its directors*) had already secured flat Nos.701 and 702 from the society. What exactly was the cost of those two flats as in the year 1998 is unknown as this juncture. But to have some idea about the cost of the flats, I proceed to rely upon the calculations presented by Mr. Kanade, according to whom, the approximate market cost of flat Nos. 801 and 802 is now 7.31 crores. This would mean that flat Nos. 701 and 702 may have satisfied almost the entire dues of Respondent No. 6 of Rs.77,40,729/- in 1997-98. In such circumstances, allotment of further two flats to the directors of Respondent No. 6 (*who are relatives of Mankanis*) was clearly an arbitrary act.

38) Thus allotment of 2 additional flats (801 and 802) free of cost to Respondent Nos.4 and 5 was clearly an arbitrary act on the part of the society. In such situation, the Cooperative Court ought to have granted prayer CC(iii) by directing allotment of Flat Nos.801 and 802 to the Petitioners upon payment of cost of TDR and cost of construction. This would have enabled the society to satisfy any balance payment to Respondent No.6, if any. Instead of doing so, the Cooperative Court erroneously proceeded to reject even prayer clause CC(iii) only because another Dispute filed by the Petitioners was pending. The Cooperative Court ought to have appreciated that the separate Dispute filed by the Petitioners was *qua* the management of affairs of the society and there was no prayer for allotment of those 2 flats to the Petitioners in that dispute. Only the resolution of the society to construct additional flats and allot the same to Respondent Nos.4 to 6 was under challenge in Dispute No. CC/I/210/2014. The entitlement of Petitioners to receive allotment of flat Nos. 801 and 802 was required to be decided in the present proceedings. Dismissal of Dispute No. CC/I/210/2014 would only mean that the decision of the society to construct flat Nos. 801 and 802 is validated. Whether Petitioners are entitled to secure allotment of those two flats was not the subject matter of controversy in Dispute No. CC/I/210/2014. Therefore, dismissal of Dispute No. CC/I/210/2014 cannot be a ground *ipso facto* for denial of relief of allotment of flat Nos. 801 and 802 to the Petitioners.

39) As observed above, Dispute No. CC/I/210/2014 did not contain a prayer for allotment of flat Nos. 801 and 802 to the Petitioners. The prayers in Dispute No. CC/I/210/2014 read thus:

a) This Hon'ble Court be pleased to declare that the resolution dated 21.8.2000 allegedly passed by the Opponent No. 1 under Item No. 5 concerning the alleged settlement with the Opponent No. 4, allowing the Opponent No. 4 to use 100 sq.mt. T.D.R. / F.S.I. to construct 8th floor flat and to retain the flat unto itself, is illegal, unauthorized and unlawful and same is liable to be quashed and set aside and accordingly this Hon'ble Court be please to quash and set aside the said Resolution No. 5 of the meeting dated 21.8.2000.

(b) This Hon'ble Court be pleased to restrain the Opponents by a permanent order and injunction from in any manner acting upon and/or giving effect and/or making representations, except proceeding with construction of 8th floor flat as per order dated 22.11.2004 passed by the Hon'ble High Court, in any manner whatsoever to any person/authority on the basis of said alleged resolution allegedly recorded under Item No. 5 in the minutes of meeting dated 21.8.2000;

(c) This Hon'ble Court be pleased to declare that the said flat on 8th floor on 'Shamrock Building' belong to the Opponent no. 1 and be pleased to further declare that the Opponent Nos. 4, 5 and 3 and/or any other person claiming through them have no right, title and interest therein.

(d) The Hon'ble Court be pleased to declare that the Opponent Nos. 3, 4and 5 are bound and liable to handover vacant and peaceful possession of said flat on 8th floor in 'Shamrock Building' to the Opponent No. 1 and accordingly the Opponent Nos. 3, 4 and 5 be ordered and directed to handover vacant and peaceful possession of said flat on 8th floor in 'Shamrock Building' to the Opponent No. 1;

(e) This Hon'ble Court be pleased to declare that towards cost of construction and other expenses for constructing 8th floor flat on Shamrock. Building the Opponent no. 4 is entitled at the rate of Rs. 500/- per sq.ft. and accordingly the Opponent No.1 be ordered to pay construction costs to the Opponent no.4.

(f) Pending the hearing and final disposal of dispute the Opponent Nos. 3, 4 and 5 be restrained from in any manner dealing with, disposing of, alienating, encumbering and/or occupying, parting with possession of said flat,

(g) Ad-interim relief interms of prayer (f) hereinabove;

(h) The cost of dispute be provided for;

(i) Such further and other reliefs be granted as this Hon’ble Court may deem fit and proper.

40) Thus, Dispute No. CC/I/210/2014 essentially challenged decision of the society in entering into settlement with Respondent No. 6 *qua* construction to be carried out on the 8th floor. Petitioners sought a declaration that flats on the 8th floor belong to the society and that Respondent Nos. 4 to 6 cannot claim any rights therein. They also sought a declaration that the cost of construction of flats on 8th floor cannot exceed Rs. 500 per sq.ft. and sought a direction to the society to pay the said cost at the rate of 500 sq.ft. instead of entering into illegal settlement with Respondent No. 6. Thus, Dispute No. CC/I/210/2014 neither challenged allotment of flat Nos. 801 and 802 in favour of Respondent Nos. 4 and 5 nor sought relief of allotment of these flats to the Petitioners. Therefore, dismissal of Dispute No. CC/I/210/2014 on account of non-prosecution cannot come in the way of Petitioners prosecuting the prayer for allotment of flat Nos. 801 and 802 in the present proceedings.

41) Respondent Nos. 4 to 6 themselves desired that the prayer for allotment of flat Nos. 801 and 802 ought to have been decided in Dispute No. CC/I/179/2014. It appears that Respondent Nos. 4 to 6, in addition to Mr. K. C. Mankani, had filed their own Appeal No. 26 of 2017 challenging the judgment and award dated 30 January 2017 passed in Dispute No. CC/I/179/2014 (old Dispute No.CC/II/26/1999). They were aggrieved by the finding recorded by the Co-operative Court about decision of prayer for allotment of flat Nos. 801 and 802 in Dispute No. CC/I/210/2014. The Co-operative Court had recorded following findings in paragraph 59:

> 59. Furthermore, the relief in respect of possession of Flat Nos. 801 and 802 is based upon Occupation Certificate obtained against the payment of costs as per the decision taken by the General Body on 21 August, 2000. That means in the

> event of obtaining Occupation Certificate the Disputants claiming the said relief. The Disputants already have filed the dispute with regard to the said Flat Nos. 801-802 before the Court which is pending. In view of the contentions of obtaining Occupation Certificate it needs the adjudication of the facts pleaded in this respect by the respect parties. Moreso there is no specific evidence in respect of the claim of 801 and 802. Therefore, unless the facts related to the said flat and the possession as claimed are determined based on the Occupation Certificate, it cannot be decided at once. In the present dispute and when already the dispute with respect to the said subject matter need not be taken into consideration in the present dispute, being the subject matter subjudice.

42) The findings in paragraph 59 were sought to be challenged before the Co-operative Appellate Court by Respondent Nos. 4 to 6 in Appeal No. 26 of 2017. Having challenged the findings in paragraph 59 of the judgment of the Co-operative Court, Respondent Nos. 4 to 6 clearly took a position that the prayer for allotment of flat Nos. 801 and 802 ought to have been decided in Dispute No. CC/I/179/2014 and the same could not be decided separately in Dispute No. CC/I/210/2014. Respondent Nos. 4 to 6 cannot now turn around and contend that dismissal of Dispute No. CC/I/210/2014 extinguishes the right of Petitioners to seek allotment of flat Nos. 801 and 802 in the present proceedings.

43) I am also not impressed by the submissions on behalf of Respondent Nos. 4 to 6 that there was no challenge by the Petitioners to rejection of their prayer for allotment of flat Nos. 801 and 802 before the Appellate Court. In paragraph 80 of its judgment, the Appellate Court has specifically dealt with non-grant of prayer clause CC(iii) and it is held as under:

> 80) The appellant is also aggrieved with the observation of the Ld Co-operative Court in Para 13 of the order that "the prayer of declaration and injunction does not survive as the possession was handed over to the opponents and the disputant has not taken any further steps for the violation of the order of the court passed below Ex.5 that the parties were directed to maintain status-quo."

> The appellant contended that the said finding is bad in law as the order of the Ld Court dated 10/1/2003 20-00hat all the opponents were directed to maintain status-quo. Despite the said order the opponents No.4 to 6 have taken possession from the 5 opponent No.1, so there is violation of court order. According to the disputants, though the possession is given, still the reliefs in terms of prayer clauses (a), c, cc(ii) still survive. In prayer clauses b, cc, cc(i) do not survive. So far as prayer clause cc(iii) is concerned, the issue of 8th floor in "Shamrock" building is subject matter of appeal filed by the opponents No.2 to 6 and therefore the main relief still survives despite the opponents violating injunction order.

44) Thus, Appellate Court was specifically concerned with the validity of findings recorded by the Co-operative Court *qua* prayer CC (iii) relating to flat Nos. 801 and 802.

45) In view of the above discussion, I am of the view that allotment of both set of flats *(Nos. 701 and 702, as well as Flat Nos.801 and 802*) made in favour of directors of Respondent No.6 is clearly arbitrary. However, it is too late in the day to take away flat Nos.701 and 702 from Respondent Nos.4 and 5. They have been occupying those flats for a considerable period of time. It is also an admitted position that Petitioners did not pay their contributions *qua* flat Nos.701 and 702. Though ordinarily flats ought to have been auctioned instead of allotting them to Respondent Nos.4 and 5, it is now too late in the day to take away those two flats from Respondent Nos.4 and 5. I am therefore not disturbing allotment of flat Nos.701 and 702 in favour of Respondent Nos.4 and 5.

46) So far as allotment of Flat Nos.801 and 802 in building Shamrock is concerned, Mr. Kanade has submitted that those two flats are partly constructed but Respondent could not complete finishing work of

the said two flats due to lack of funds. It thus appears that construction of Flat No.801 and 802 is not complete in all respects, on account of which both the flats remain unoccupied. However, Respondent Nos.4 and 5 continue to be the allottees in respect of those two flats (801 and 802) and apparently hold membership of the society in respect of those two flats. Flat Nos.801 and 802 are thus unoccupied. In these circumstances, flat Nos.801 and 802 can be allotted to the Petitioners as per prayer clause-CC (iii). In that prayer, they have shown willingness to pay cost of TDR and cost of construction in respect of flat Nos. 801 and 802.

47) Dr. Tulzapurkar submits that on 6 November 2002, Petitioners had filed an application for permitting them to deposit an amount of Rs.62,00,000/- and interest thereon in the Dispute as their contribution towards flat Nos.701 and 702. After applying simple rate of interest of 8% p.a. on the amount of Rs. 62 lakhs, the amount payable today would be approximately Rs.1.8 crores. However, Dr. Tulzapurkar has fairly submitted that, considering interest payable on offered amount of Rs. 62 lakhs since 2002, Petitioners are willing to pay an amount of Rs. 2.5 crores if flat Nos.801 and 802 are allotted to them. The offer of Rs.2.5 crores is made despite the fact that the flats are unfinished. Petitioner will have to either spend a substantial amount for completing the finishing work or will have to wait for redevelopment of the building by blocking the amount of Rs.2.5 crores for indefinite period. This indicates that the Petitioners will get penalised for this non-cooperation in making timely payments to the society for flat Nos. 701 and 702.

48) Respondent Nos.4 and 5, who are directors of Respondent No.6 are allotted flat Nos.801 and 802 for the purpose of enabling them to recoup the alleged additional cost of construction. The Society has allotted those two flats to Respondent Nos.4 and 5 in view of its inability to pay pending dues of Respondent No.6. In that sense, the amount of Rs.2.50 crores, which Petitioners are willing to pay, must go to Respondent Nos.4 and 5 and not to the society. In my view therefore, the amount of Rs.2.50 crores can be directed to be paid by Petitioners to Respondent Nos.4 and 5, against which they must surrender their allotment in respect of those two flats and Petitioners shall become allottees thereof. This is the best possible way to resolve the conundrum involved in the unique facts and circumstances of the present case. This would also be an equitable arrangement between the parties. Today, the cost of flat Nos.801 and 802 may be much higher than Rs.2.50 crores, which amount Petitioners are willing to pay. However, the case involves entitlement of members of the society to secure additional flats by paying only cost of construction and cost of TDR. The TDR became loadable on the plot owned by the society. The members of the society are the beneficiaries of permissibility to construct additional flats and decided to share the same amongst each other except Mrs. Kedia who showed no interest in allotment of additional flats. All other members of the society have benefited by receiving additional flats at nominal costs of construction and cost of TDR. Petitioners must also receive the same benefit, and in that sense, they need not pay the market rate of flat Nos.801 and 802. The case involves stealing of benefits meant for members of the society by directors of the contractor, who had no

semblance of interest in the property of the society. What should have been enjoyed only by society members is stolen by Respondent Nos. 4 and 5, possibly on account of their relations with majority shareholders in the society. As a matter of law and fact, Respondent Nos. 4 and 5 are not entitled to any flat in the building. Even today, this Court could have directed the society to auction all the four flats and to satisfy the dues of Respondent No. 6 from sale consideration. However this Court is showing indulgence in favour of Respondent Nos. 4 and 5 by not disturbing allotment made to them in respect of flat Nos 701 and 702. This does not mean that they would demand market rate of flat Nos. 801 and 802 from Petitioners.

49) Therefore Respondent Nos.4 and 5 cannot expect market price of flat Nos.801 and 802 since allotment of all the four flats to them itself is found to be arbitrary. They are not the original members of the society. They arrived at the scene in their capacity as directors of Respondent No.6, who was a mere professional contractor entitled to receive cost of TDR and cost of construction from members. Respondent No.6 or its directors did not have any right in the land or the building. Despite this position, directors of Respondent No.6, who happen to be the relatives of Mankanis, have already secured a windfall gain in terms of allotment of flat Nos.701 and 702. This Court is ensuring that they receive additional amount of Rs. 2.50 crores, which Petitioners are willing to pay for flat Nos.801 and 802. In my view therefore, the arrangement suggested by this Court balances the equities amongst the parties. Petitioners will have to spend considerable amount in completing finishing work in

respect of flat Nos.801 and 802. This would mean that the flat Nos. 801 and 802 would cost them much higher than Rs. 2.50 crores.

50) The unjust enrichment by Respondent Nos. 4 to 6 in the present case is more than apparent. There is no dispute to the position that all other members of the society had paid their agreed contribution as per the agreement executed with Respondent No. 6. The members were required to contribute Rs. 4000 per sq.ft. for construction of additional flats which included cost of construction and cost of acquisition of TDR. Apart from flat Nos. 701, 702, 801 and 802 (secured by Respondent Nos. 4 and 5), the society members apparently paid them an amount of Rs. 4,61,68,500/-. Additionally, it has secured allotment of four flats of substantially large size. The total area of flat Nos. 701 and 702 is apparently 1300 sq.ft.. According to Mr. Kanade, the total area of flat Nos. 801 and 802 together with terrace is 1400+450=1850 sq.ft. Thus, in a prominent location like Santacruz in Mumbai, Respondent Nos. 4 to 6 have received allotment of substantially large 4 flats, which themselves would be worth a couple of crores when resolution was adopted in the year 2000. According to Mr. Kanade flat Nos. 801 and 802 are today worth 7.31 crores even going by unfurnished work in the flats. Thus, the market value of all the 4 flats today may be in the range of approximately Rs. 15 Crores. Respondent Nos. 4 to 6 have thus secured a windfall gain possibly due to their family relations with Mankanis, who controlled 50% of decision making power in the society.

51) Both the sides have submitted complex computations of exact quantum of TDR purchased by Respondent No.6. The calculations submitted on behalf of the Petitioners are based on quantum of TDR of 450 sq.m. Mr. Kanade has placed on record computations on behalf of Respondent Nos. 4 to 6, in which a claim is raised that TDR of 1000 sq.m. (approximately 10000 sq.ft.) is purchased. Additionally, 3000 sq.ft. area was obtained by payment of premium to MCGM. This is how it is contended on behalf of Respondent Nos. 4 to 6 that additional area of 13000 sq.ft. is purchased, cost of which @ Rs.4000/sq.ft. payable by members was Rs.5.2 crores. Even if the computations by Mr. Kanade are taken into consideration and alleged escalated rate of Rs.4800/sq.ft. is applied, the amount payable to Respondent No.6 would be Rs.6.24 crores. It appears that the members of the society already paid about Rs.4.62 crores to Respondent No.6. This would leave deficit of only about Rs.1.62 crores. For alleged deficit of Rs.1.62 crores, Respondent Nos. 4 to 6 are already rewarded with allotment of flat Nos. 701 and 702. Therefore, further allotment of flat Nos. 801 and 802 is clearly unwarranted in the present case. This Court is ensuring that Respondent Nos.4 and 5 receive additional amount of Rs.2.5 crores from the Petitioners. Thus, for non-payment of alleged amount of Rs.1.62 crores, Respondent Nos. 4 to 6 would receive / have received Rs.4.62 crores + Rs.2.5 crores + two large sized flats (701 and 702) in the building. This should ideally quench the thirst of Respondent Nos.4 to 6. However, if Respondent No.6 believes that after adjusting price of flat Nos. 701 and 702 there was still some deficit amount payable by the society, it is free to recover the said amount from the society. Its

directors have no right to retain flat Nos. 801 and 802, which are unfinished and unoccupied and must go to the real beneficiaries i.e., Petitioners.

52) In view of the above discussion, the Petition succeeds in part and I proceed to pass the following order:

(i) Judgment and order dated 30 January 2017 passed by the Co-operative Court in Dispute No.CC/I/179/2014, as well as judgment and order dated 11 January 2018 passed by the Co-operative Appellate Court in Appeal No. 18/2017 and order dated 13 July 2018 passed by the Co-operative Appellate Court in Review Application No.3/2018 are set aside.

(ii) Dispute No.CC/I/179/2014 is partly decreed by declaring that Petitioners are entitled to allotment of Flat Nos. 801 and 802 in the building Shamrock and they have become owners and occupiers as well was members qua flat Nos. 801 and 802.

(iii) The Respondent-Society is accordingly directed to formally cancel the allotment of flat Nos.801 and 802 made in favour of Respondent Nos.4 and 5 and enter the names of Petitioners in its membership register in respect of flat Nos. 801 and 802.

(iv) Petitioners shall pay to Respondent Nos. 4 and 5 an amount of Rs. 2,50,00,000/- within 6 weeks.

(v) Respondent No. 4 and 5 shall hand over possession of flat Nos. 801 and 802 to the Petitioners upon receipt of amount of Rs.2,50,00,000/- from Petitioners.

(vi) If Respondent Nos. 4 and 5 refuse to accept the offered amount of Rs.2.5 crores from the Petitioners, the amount shall be deposited by the Petitioners with the society, which shall invest the same in interest-bearing deposits. Upon deposit of the amount with the society, Petitioner shall be entitled to take over possession of flat Nos. 801 and 802 by assistance of local police.

(vii) Petitioners shall be made liable to pay maintenance dues to the society only from the date of handing over possession of flat Nos.801 and 802 in their favour. Neither the society, nor Respondent Nos. 4 and 5 shall demand any amounts from the Petitioners towards maintenance in respect of the past period.

(viii) In the event of failure on the part of the Petitioners to pay amount of Rs.2.50 crores to Respondent Nos.4 and 5 within the stipulated time, the allotment of flat Nos.801 and 802 shall revive in the name of Respondent Nos.4 and 5.

53) With the above directions, the Writ Petition is **partly allowed**. Rule is made partly absolute. There shall be no order as to costs.

54) Pending Interim Applications if any, are also disposed of.

[SANDEEP V. MARNE, J.]