

RECENT JUDGMENTS ON BUYERS AGREEMENT PART - 1



ACELEGAL
D-201, 2ND FLOOR,
TOWER No. - 3,
INTERNATIONAL INFOTECH PARK,
VASHI STATION COMPLEX,
NAVI MUMBAI – 400703.
PH: 27812781/82/0196

NORMAL FLOW OF TRANSACTION

- Buyers are made to sign pre-drafted agreements / documents.
- All the terms/clauses of signed agreement are binding on the Parties.



BUYERS AGREEMENT CASE

NATIONAL CONSUMER DISPUTES REDRESSAL
COMMISSION, NEW DELHI

SHRI SATISH KUMAR PANDEY
AND ANOTHER
VS.
M/s. UNITECH LTD.

ACT RELIED UPON
CONSUMER PROTECTION ACT, 1986

CORE DISPUTE

- Possession was agreed in complex known as “Vistas” sector – 70 of Gurgaon within 36 months from the date of respective “buyer agreement”.
- Date stipulated in the “buyers agreement” for delivery of the possession had already expired more than 2 years ago.
- Neither possession was given to them nor construction was completed on time.



PURCHASERS EXHAUSTIVE PRAYERS

- Immediate possession of their flats sold to them.
- Compensation for rental loss for two years
- Compound interest @ 18% on funds already paid.
- Compensation on account of their mental torture and agony.

From the last stipulated date in the buyer's agreement for possession.



Till the date of possession actually being delivered to them

ARGUMENT OF BUILDER'S ADVOCATE

Clause 4 of the
buyer
agreement

“Unless the
exceptional
circumstances
occurs during said
36 months.”

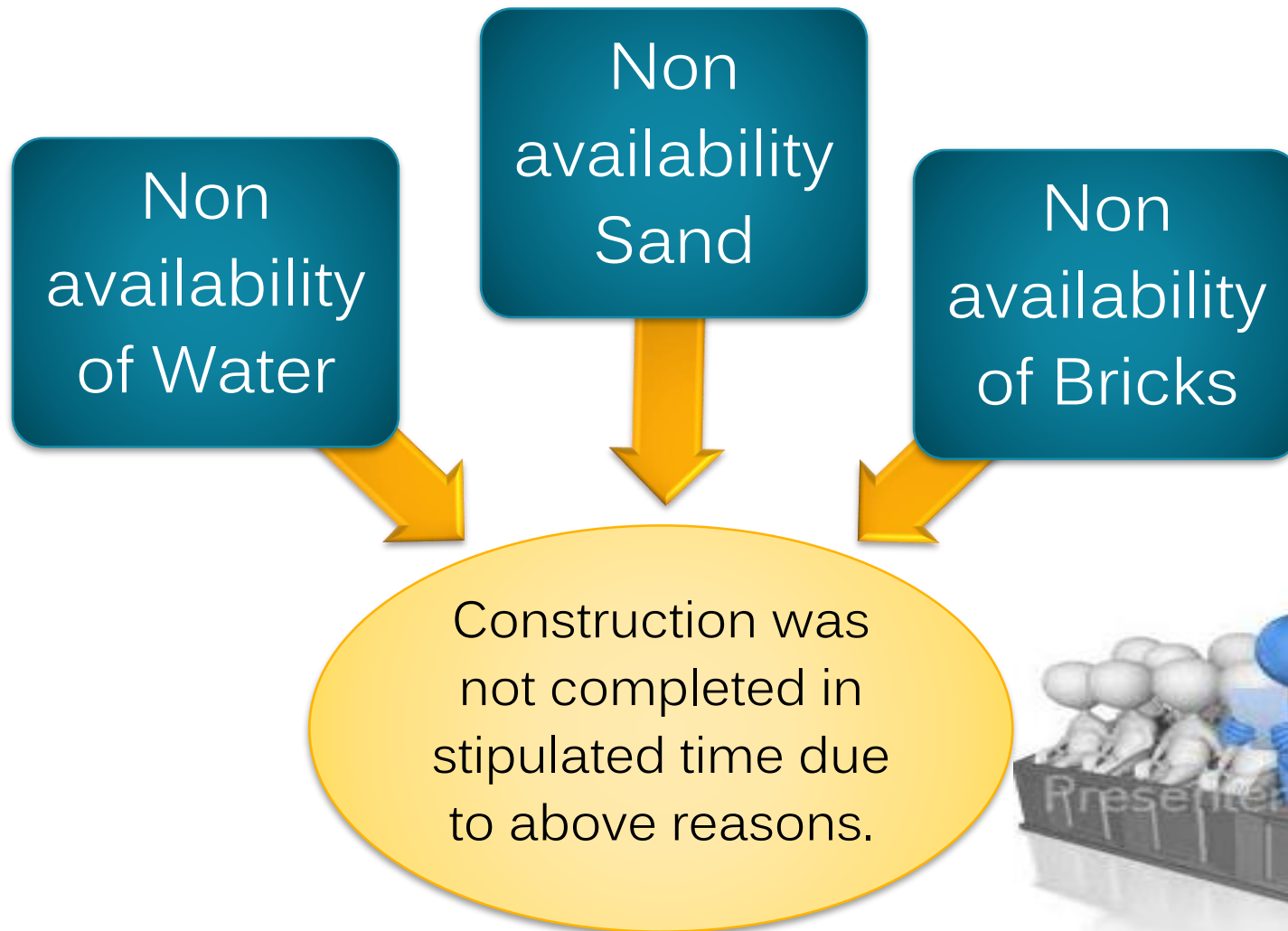
Possession has to
be transferred in 36
months from the
date of agreement

Clause 4.a of the Buyers Agreement

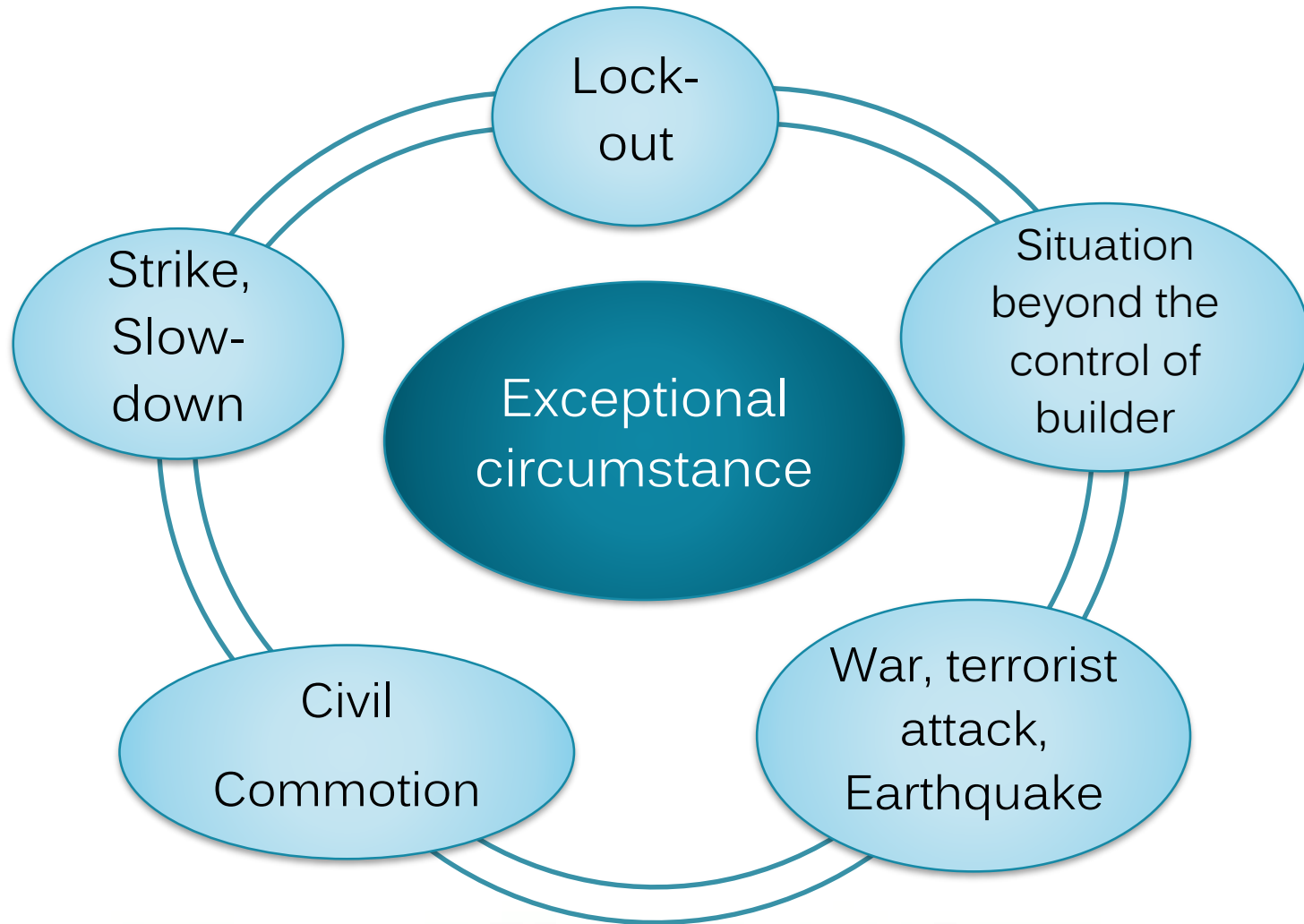
Delivery of Possession:

- It is proposed to offer possession of the Apartment within a period of 36 months from the date of signing of this agreement and upon execution and registration of Conveyance Deed in favour of the Apartment Allottee (s).
- It is agreed by the Apartment Allottee (s) that in the following circumstances the date of possession shall stand extended:
 - In the event of any default or negligence attributable to the Apartment Allottee(s) in compliance of conditions of this agreement and the letter of allotment issued by the Developer.
 - Delayed by reasons of lock-out, strike, slow down or civil commotion or by reasons of war or enemy action or terrorist action or earthquake or by any act of GOD or due to any reasons or circumstances beyond the control of the Developer.

ARGUMENT OF BUILDER'S ADVOCATE



COMMISSION'S FINDINGS



The delay was also justifiable if there was to be a new legislation, regulation or order suspending/stopping the construction of complex and other apartments.

FEW QUESTIONS TO THE BUILDER'S ADVOCATE BY COMMISSION

Is there an lock-out in your client's case?

NO

Is there any civil Commotion ?

NO

Is there were war during construction of project ?

NO

Any New legislation/Rule or order was passed stopping the Construction Activity?

NO

Was there a Slow down by any means?

YES –
Mentioned
Precisely

Was Slow down out of the control of your client?

YES

10

INTERIM VERDICT OF COMMISSION

- Word “Slow down” has to be read “ejusdem generis” with the words “lock-out” and “strike” and therefore, can mean only a slow down if resorted by the labourers engaged in construction of the project.
- That Plea of Builder that delay was due to non availability of water, sand and bricks in adequate quantity is rejected.



COUNTER OF BUILDER'S ADVOCATE ON INTERIM VERDICT

- Compensation to be calculated @ Rs. 5 per Sq. Feet of the super built area of the complex as per agreement.
- Period to be calculated as per the clause 4 (c)(ii) of Buyer's agreement.
- All the terms of Buyer's Agreement are binding and enforceable.
- Agreed terms cannot be altered even by the this commission.



REJOINDER OF THE PURCHASERS


Two Options

Buy plot and construct the Structure.

Acquire the apartment being constructed by builder

Preferable Option for Laymen

REJOINDER OF THE PURCHASERS (CONT.)



Builder made us to sign pre-drafted documents and agreement.

Buyers agreement is one-sided.

Few clause mentioned are totally unreasonable and wholly in favour of Builder.

REJOINDER OF THE PURCHASERS(CONT.)



Buyers left with no option but to sign the agreement made available to them.

Particularly clause of Rs. 5 per sq feet is unjust and exploits the Petitioners.

WHICH CLAUSES WAS WHOLLY IN FAVOUR OF BUILDER ?

Default on the part of Builder for delay in Possession

Compensation of 0.25% of estimated cost of construction per month.

Default of the Part of Buyer for non payment or delay in payment for flat

Interest of 18% compound interest per annum

No Sensible Person would volunteer to accept such compensation.

CAN COMMISSION GO BEYOND THE SCOPE OF THE TERMS AND CLAUSE OF “BUYERS AGREEMENT” FOR FINAL VERDICT?



FINAL VERDICT

- Terms of this nature is wholly one-sided.
- Such terms allowed diversion of funds from one project to another project with very nominal cost.
- Builder should pay adequate compensation to the Petitioners, must satisfy (Additional burden + Compensation).

FINAL VERDICT

- Increased cost of service tax should be borne by builder.
- 12% simple interest cost to the builder as against cost of loan to the Petitioner i.e. 11%.
- Also higher rate than 12 % per annum shall be paid by Builder if possession is not honoured on revised date.



WHETHER BINDING TERMS OF BUYERS AGREEMENT BE IGNORED BY COMMISSION?



VERDICT

ACELEGAL

ADDITIONAL FSI CASE

MUMBAI HIGH COURT

GANGA BHASKAR BUILDERS

AND ORS.

VS.

THE COMPETENT AUTHORITY

AND ORS.

ACT RELIED UPON

MAHARASHTRA OWNERSHIP FLAT ACT, 1963

DEEMED CONVEYANCE

- Where Builder does not convey the ownership of flats to the housing society.
- Society has right to get it conveyed suo moto without the need of builder to do so under section 11 of MOFA.



FACTS OF THE CASE

26 November,
2001

- Builder have agreed to sell flat.

27 November,
2006

- Letter was issued stating balance FSI in respect of the entire plot of 3370 sq. mtrs. was 161 sq. Mtrs.

29 November,
2011

- Amended plan of project was submitted before town planning authority.

20 April, 2013

- Society filed an application for Deemed Conveyance.

FACTS OF THE CASE

11 December,
2013

- Municipal corporation addressed said correspondence.

16 January,
2014

- Builder filed objection letter against deemed conveyance proceedings.

29 January,
2014

- Issue was addressed to Town planning authority.

FACTS OF THE CASE

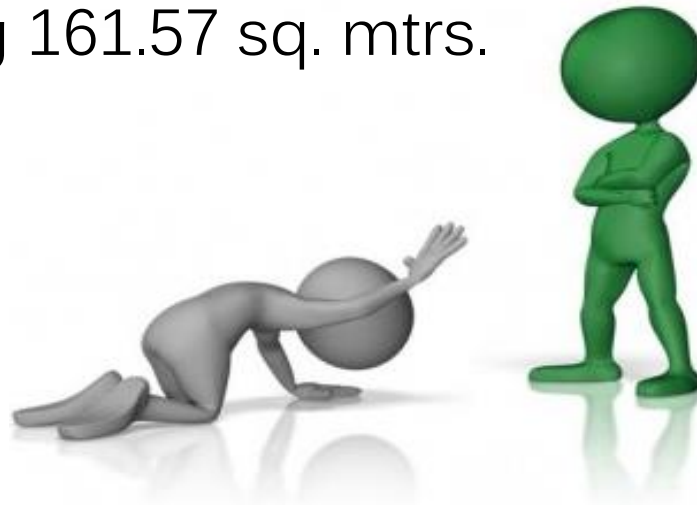
5 May,
2014

- Corporation issued order of deemed conveyance in favour of Society and consequential certificate thereof.



BUILDER APPROACHED HIGH COURT

- Writ Petition was filed challenging corporation's order and consequential deemed conveyance certificate.
- Builder also prayed for re-hearing of the proceedings before corporation for deemed conveyance due to the balance FSI admeasuring 161.57 sq. mtrs.



ARGUMENT OF BUILDER'S ADVOCATE

- My Lords, Members has entered into "Buyers Agreement" dated 26/11/2001 with my client containing specific clause 25 and 26!!!



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ARGUMENT OF BUILDER'S ADVOCATE



That Impugned order is passed without application of mind and took away all the rights and benefits of builders .

That inspite of specific submissions filed, corporation failed to take note of said submissions.

The issue of additional FSI just cannot be overlooked before passing such order of deemed conveyance.

ARGUMENT OF BUILDER'S ADVOCATE



Sec. 10 and 11 of MOFA

That agreement between
Builders and Purchasers
play very imp. role

That all parties involved
are bound by the
agreement before
applying for the deemed
conveyance.

That binding clause No.
25 and 26 not dealt with
by the corporation before
issuing impugned order.

CLAUSE NO. 25 OF BUYERS AGREEMENT

- It is agreed between the builders and Purchasers that in case any additional FSI is granted or construction of additional floor are allowed then the Builders are entitled to construct and dispose of the additional construction.
- The necessary covenant in the deed of conveyance to be executed in favour of Cooperative Housing Society shall be incorporated.

CLAUSE NO. 26 OF BUYERS AGREEMENT

- It is agreed that the Builders shall be entitled, without affecting the rights of the Purchaser/s to the said premises including the area thereof to revise the buildings plans in respect of the said buildings and to utilise the total FSI.

CLAUSE NO. 26 OF BUYERS AGREEMENT (CONT..)

- The development rights *available* in respect of the said property by suitably modifying the Buildings plans in respect of the said premises as the Builders may desire and the purchaser/s hereby *irrevocably consent* to the rights of the Builders to revise and modify the buildings plans in respect of the said premises from time to time.

- Builder never challenged the issuance of deemed conveyance certificate in favour of society.
- Builder has challenged extinguishment of the additional rights in project by corporation ignoring the binding terms of agreement.



CAN COURT GO BEYOND THE SCOPE OF THE TERMS AND CLAUSE OF “BUYERS AGREEMENT” FOR FINAL VERDICT?



FINAL VERDICT

- The delay on the members part in construction should not be reason to overlook the specific agreement between the parties.
- It is necessary to consider respective Corporation's Rules before passing of the unilateral conveyance.
- Impugned order takes away all immovable property rights of builder and creates exclusive rights of members.

FINAL VERDICT

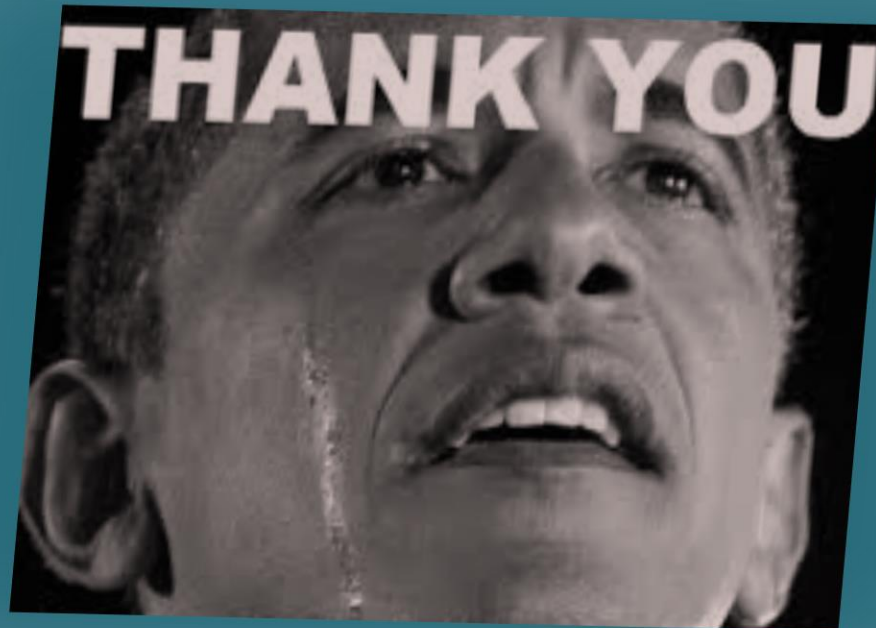
- The rights, interest and title of the property to be transferred to the transferee, based upon the agreement/contract between the parties involved. The Corporation cannot rewrite the contract.
- The future use and utilisation of layout also required to be seen before passing such orders.

FINAL VERDICT

- Due to change in the development plan, as the land falls within the ambit of residential zone, Petitioner is entitled to keep the balance FSI of 161.57 sq. mtrs. In view of the specific clauses so referred above the Petitioner/developers are entitled to get the benefits.
- Society **cannot insist** for deemed conveyance and or certificate on the entire land as done in the present case based upon the society's wrong averment that **"That there is no balance FSI available as per the prevailing D.C. Rules and the Bye-laws"** *ACELEGAL*

FINAL VERDICT

- Impugned order dated 5 May, 2014 passed by Respondent / competent authority is quashed and set aside.



BONAFIDE BUYER CASE

SUPREME COURT

HANSA V. GANDHI

Vs.

DEEP SHANKAR ROY

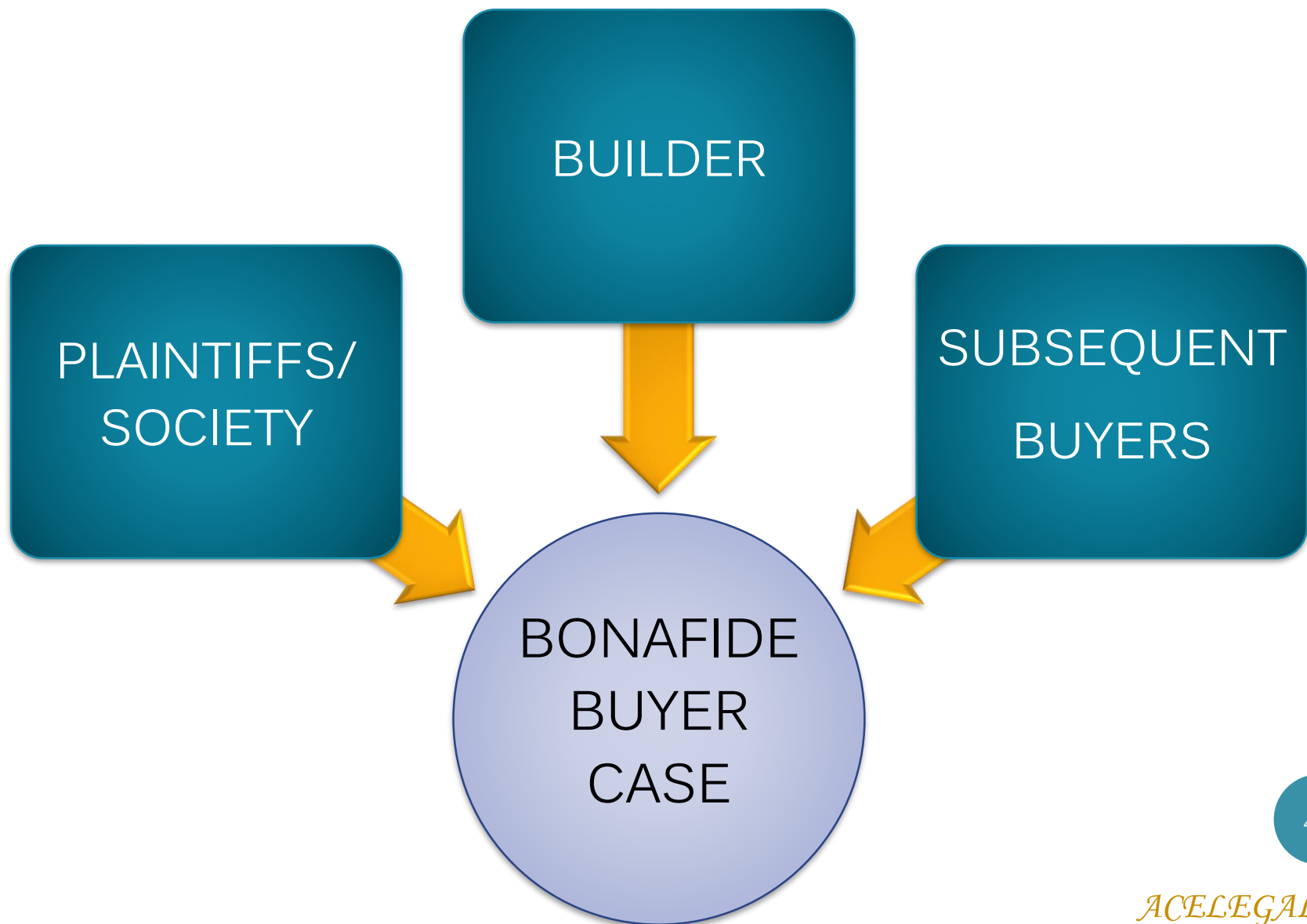
AND ORS.

ACT RELIED UPON

MAHARASHTRA OWNERSHIP FLAT ACT, 1963

ACELEGAL

PARTIES INVOLVED IN THE CASE



FACTS OF THE CASE

17th April
1992

- Builder and Society members entered into agreement to develop the land owned by society.

29th
September,
1992

- Builder had executed a “letter of intent” whereby builder had reserved a flat for each member.

FACTS OF THE CASE

Reservation of flats

Letter of Intent issued by the Builder to member

Bye-laws of society

Fulfilment of conditions mentioned in letter of intent

Agreement to sell thereafter transfer of possession.

FACTS OF THE CASE



- Litigation :- on land owned by the society between some persons and the society before the High Court.



- Due to which Builder could not continue his construction activity and that resulted into delay in construction work.

FACTS OF THE CASE

- When litigation was concluded in 1996 and in favour of society, Builder thereafter completed construction of project.
- Due to delay, cost of construction substantially increased.
- Builder asked members to pay increased cost of construction.
- Members opposed this action of Builder and stopped paying further instalments.

POINT OF DISPUTE

- Builder as per the clause 3 of the letter of intent dated 19th September, 1992 cancelled the reservation of respective flats of members.



- Clause 3: Delayed payment of the instalment would attract interest at the rate of 21% p.a. and if two or more instalments remained unpaid, the reservation made in respect of the flat would stand cancelled.

POINT OF DISPUTE



- The Builder entered into agreement with subsequent buyer with increased price of flats which were allotted to the members.



AGGRIEVED MEMBERS FILED SUIT BEFORE TRIAL COURT

SUIT FOR SPECIFIC PERFORMANCE

PROCEEDINGS BEFORE TRIAL COURT BUILDER'S CONTENTION

- Denied Liability.
- Reservation is cancelled by the virtue of clauses contained in “letter of Intent” duly issued to members.
- There was no subsisting agreement, no question of either specific performance or breach of contract.

PROCEEDINGS BEFORE TRIAL COURT

- Subsequent buyer is the bonafide buyer, Purchased flats without any knowledge of previous transaction.
- It cannot be presumed that subsequent buyers had any notice with regard to the earlier transaction in absence of agreement between builder and members.
- Subsequent buyers paid the entire amount of consideration against flat allotted.
- Possession is also transferred.

VERDICT OF TRIAL COURT

24th AUGUST, 2005

- ❑ COURT DECREED THE SUITS WHEREBY THE BUILDER IS DIRECTED TO SPECIFICALLY PERFORM THE CONTRACT WITH REGARDS TO SALE OF THE FLATS IN FAVOUR OF THE MEMBERS UPON PAYMENT OF UNPAID AMOUNT OF CONSIDERATION BY THEM.



AGGRIEVED SUBSEQUENT BUYERS
FILED FIRST APPEAL BEFORE
HIGH COURT



VERDICT OF HIGH COURT

- Set aside the decision and Decree of Trial Court.
- Directed Builder to refund the amount paid by the Plaintiff alongwith 9% interest rate.

From the date of letter of termination of agreement sent to the members.



Till the actual date of payment.

AGGRIEVED MEMBERS FILED SUIT
BEFORE
SUPREME COURT

PROCEEDINGS BEFORE SUPREME COURT

Sufficient enquiry were not made by the Subsequent Buyers

Gross Negligence on Part of Sub. Buyers

Argument
by Member

Burden of establishing the Bonafide of subsequent buyers was on them and said burden was not discharged by them.

Subsequent buyer had not adduced any evidence for payment against the flats.

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PROCEEDINGS BEFORE SUPREME COURT

In absence of the registered Agreement could not get opportunity to find out existence of “letter of Intent”

Register Agreement is notice to all persons and *in absentia*, it cannot be presumed that the Subsequent Buyers had any knowledge about earlier transactions.

Counter by
Sub. Buyers

The burden is on member to establish that the subsequent buyers had knowledge about “Letter of Intent” in question.

Non-compliance with the provision of section 4(1) of the MOFA.

WHO HAS BETTER RIGHTS IN RESPECT OF THE FLATS IN QUESTION?



UNDISPUTED FACTS

Letter of Intent was issued and certain conditions were imposed.

Member and builder had not entered into any formal agreement.

It was open to the builder to vary the price of flats in questions.

Builder had raised the price delay caused on account of litigation faced by Society.

Members had refused to pay instalments raised, even as per the letter of Intent.

FINAL VERDICT

- The letter of intent cannot be said to be an “*agreement to sell*” for the simple reason that, only upon payment of the entire purchase price, the builder and the members were to enter into an agreement.
- The High Court did not commit any error and therefore, the trial Court could not have decreed the suit for specific performance.

FINAL VERDICT

- In absence of such a registered document, the members would not get any right in respect of the flats, which they intended to purchase.
- In absence of the registration, the subsequent buyers could not have got an opportunity to inspect the agreement and there could not be any presumption that the subsequent buyers knew about the agreement.

FINAL VERDICT

- That burden of proof lie on member to prove subsequent buyer is not a bonafide buyer, which members had not been discharged, consequently it proved subsequent buyers were bonafide buyers.
- However, looking to the rising price and inflationary trend in the country, court partly modified the judgment by increasing the rate of interest from 9% p.a. to 12% p.a.

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PRESENTER
MANAGING PARTNER - ACELEGAL
BHARAT AGARWAL
ON
RECENT JUDGMENTS ON
BUYERS AGREEMENT
PART - 2

ACELEGAL

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PH: 27812781/82/0196



TUSHAR JIVRAM CHAUHAN
AND ORS.
VS.
THE STATE OF MAHARASHTRA
AND ORS.
HIGH COURT OF BOMBAY

MAHARASHTRA OWNERSHIP OF
FLATS ACT 1963

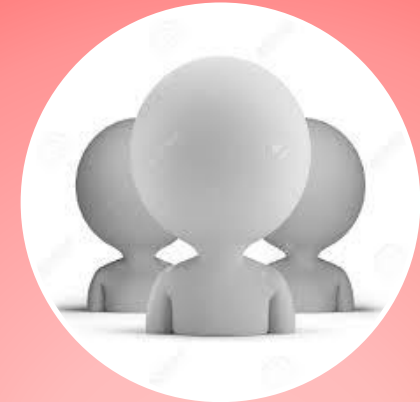
PARTIES INVOLVED



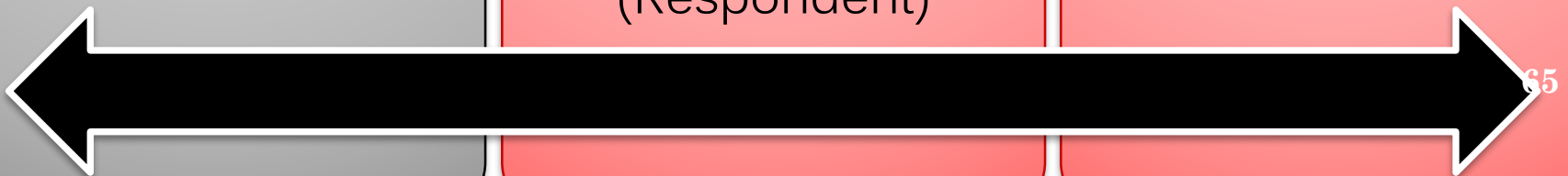
Existing
Members and
owners of Plot
since 1961.
(Petitioner)



Builder engaged by
Existing members
for further
development of
society
(Respondent)



New Members
After
development.
(Respondent)



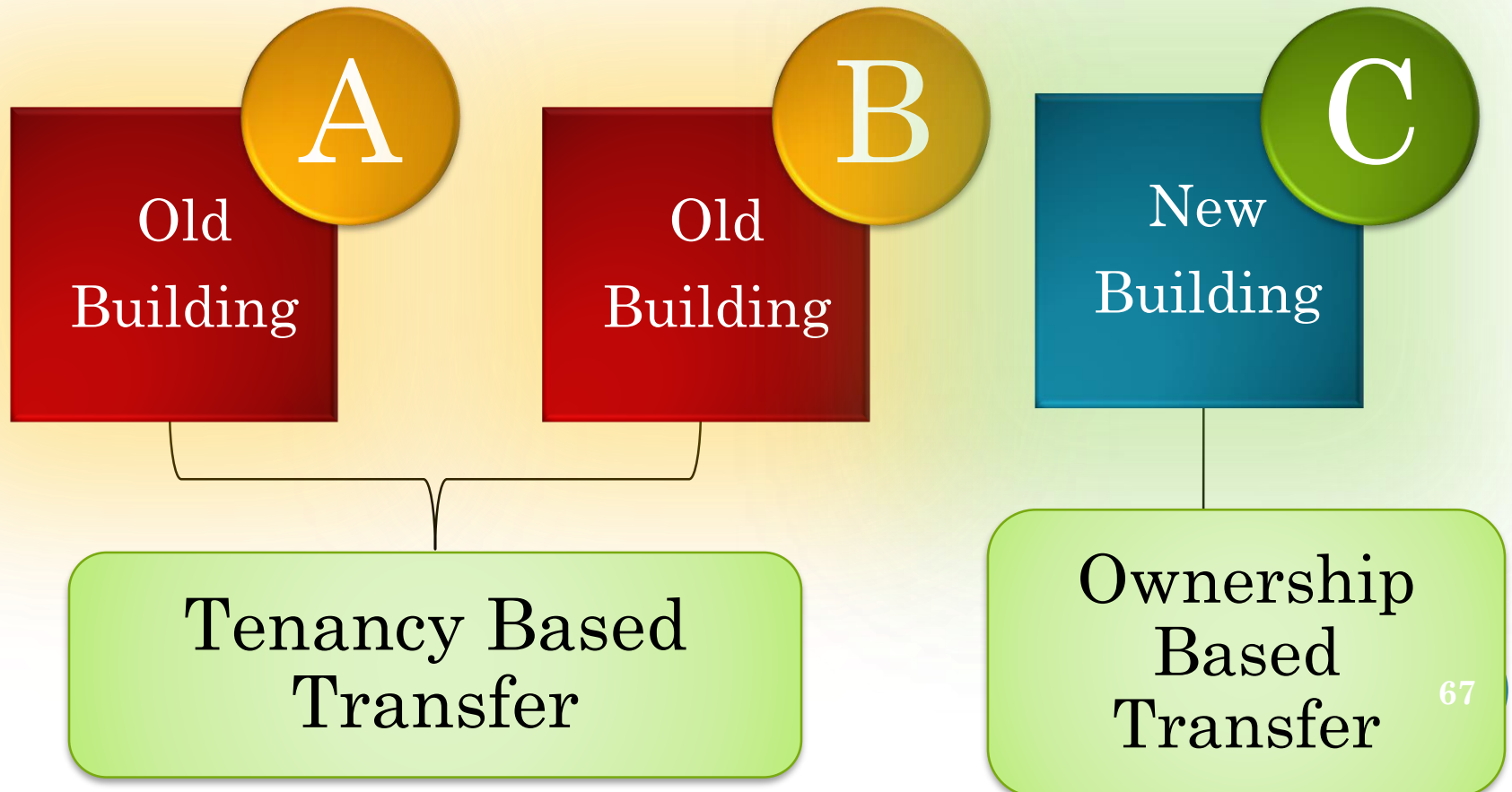
FACTS OF THE CASE

- Members are absolute owner of plot of land admeasuring about 1672.80 Sq. Mtrs.
- There were two existing buildings in on the plot since 1961 and 1966 respectively.



FACTS OF THE CASE

- 17.01.2001 Members allowed Builder to develop the balance part of the plot with the “Balance FSI” available.



FACTS OF THE CASE

June 2013

New Member applied before register for unilateral Conveyance.

Falsely stated that Members and Builder has agreed to convey that “entire plot”.

Members even hold flats in new building and this was well known fact.

No notice for unilateral conveyance was served to Members

On 18.11.2013 Registrar granted unilateral conveyance in favour of New Members for Entire Plot.

FACTS OF THE CASE

- June, 2014 members gained knowledge about this unilateral conveyance from one of the New member in casual discussion.



ARGUMENT OF PETITIONER'S COUNSEL

Mazda Construction
case

All (2) MR. 278,2013

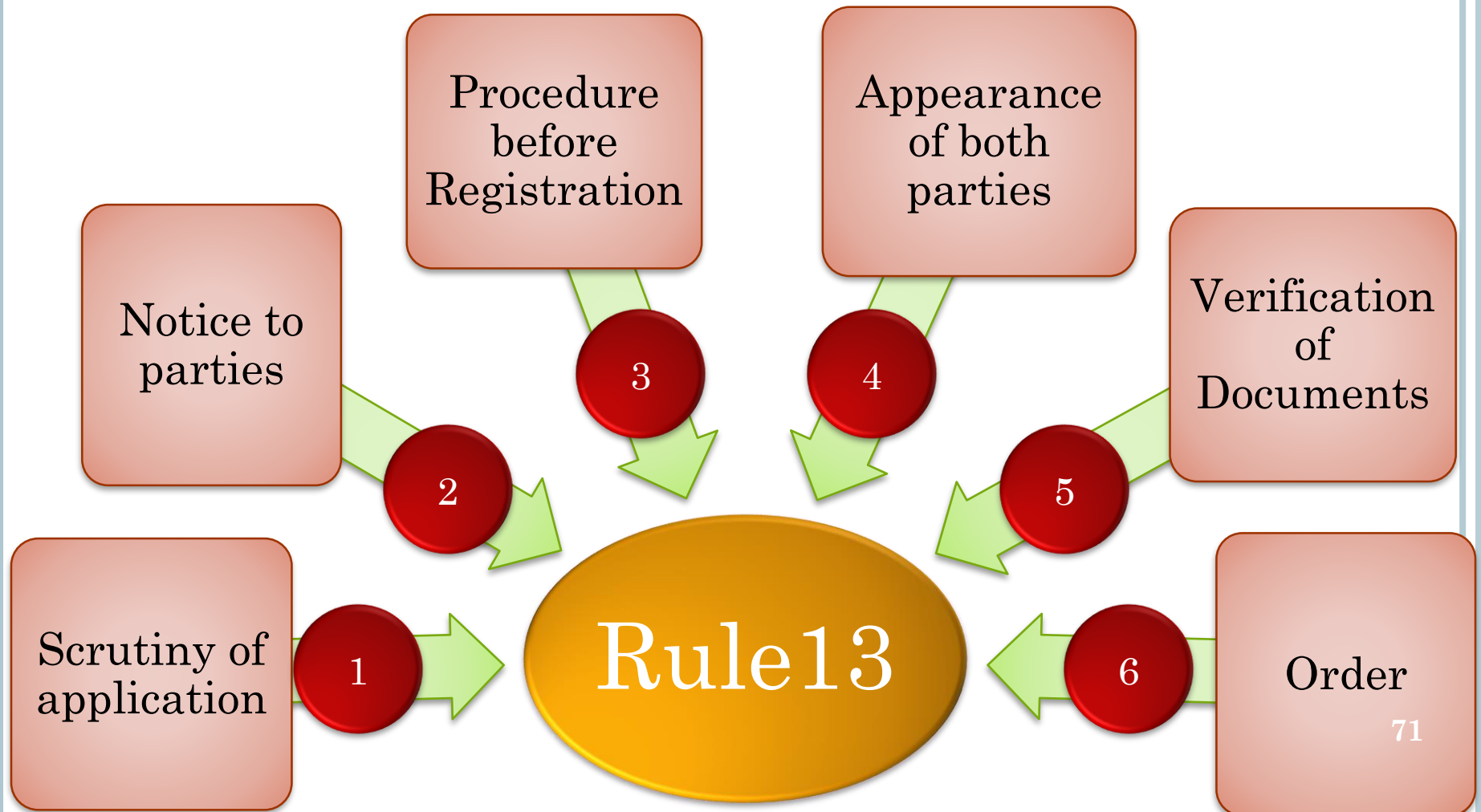
Competent
Authority
has to
perform
duty and
obligation.

Authority
cannot
travel
beyond
agreement
under
MOFA.

Convey the
title and
execute the
documents
according to
the
agreements.

Strict
Procedure
under Rule,
13 of MOFA
for
Unilateral
Conveyance

PROCEDURE UNDER RULE 13 OF MOFA FOR UNILATERAL CONVEYANCE



LAWS TO BE CONSIDERED BEFORE PASSING UNILATERAL CONVEYANCE

1

MOFA

2

TOPA

3

REG.
ACT



OBLIGATIONS AND DUTIES OF REGISTRAR

- Ratify all related document and agreement before passing impugned unilateral conveyance order.
- Needs to satisfy himself that all concerned parties have been given proper and equal opportunity of being heard.
- It is settled law that any order by any authority where the Civil rights of the parties are involved factual, actual hearing & fair and equal opportunity to all need to given and recorded accordingly.

ARGUMENTS OF PETITIONERS

- Specific Averments of Members remain uncontroverted as to why members address was wrongly mentioned in application for unilateral conveyance, and envelop sent by Registrar returned undelivered.
- Impugned order passed was never communicated, Members came to know from one of the New member of society.
- Deemed conveyance order is passed by brushing aside specific clauses of Buyers Agreement in which it is specifically stated that:-
 - New members shall be conveyed only the plinth area of 227.87 sq. mtrs. not more than that.

LEARNED COUNSEL APPEARING FOR
THE NEW MEMBERS DID NOT
COUNTER MUCH BUT SUBMITTED
COMPILATION OF
4 CASE LAWS



HIGH COURT FINDINGS

- Conveyance shall be in pursuance to written agreement between parties.
- Based on the agreement between parties New members could be conveyed only the plinth area of 227.87 sq. mtrs. out of total area of 1672.80 sq. mtrs.
- No where in the agreement is mentioned that property where Building A and Building B is located may be conveyed to newly constructed Building C.
- Building A and Building B consisting of various tenants and they will be affected by the deemed certificate.

FINAL VERDICT

Impugned order date 18.11.2013 passed by the Registrar so called Unilateral Conveyance is quashed and set aside.

Complete importance is given to the agreement entered between the party for New Building.



Deemed conveyance issued is also quashed and set aside.

Competent authority are directed to follow the procedure laid down under Rule 13 of MOFA.

THE UNREGISTERED AGREEMENT
CASE
BOMBAY HIGH COURT

HARSHAL DEVELOPERS PVT. LTD.
Vs.
MANOHAR GOPAL BAVDEKAR

ACT RELIED UPON
MAHARASHTRA OWNERSHIP OF FLATS ACT 1963
AND
THE REGISTRATION ACT, 1908.

ACELEGAL

FRAUD

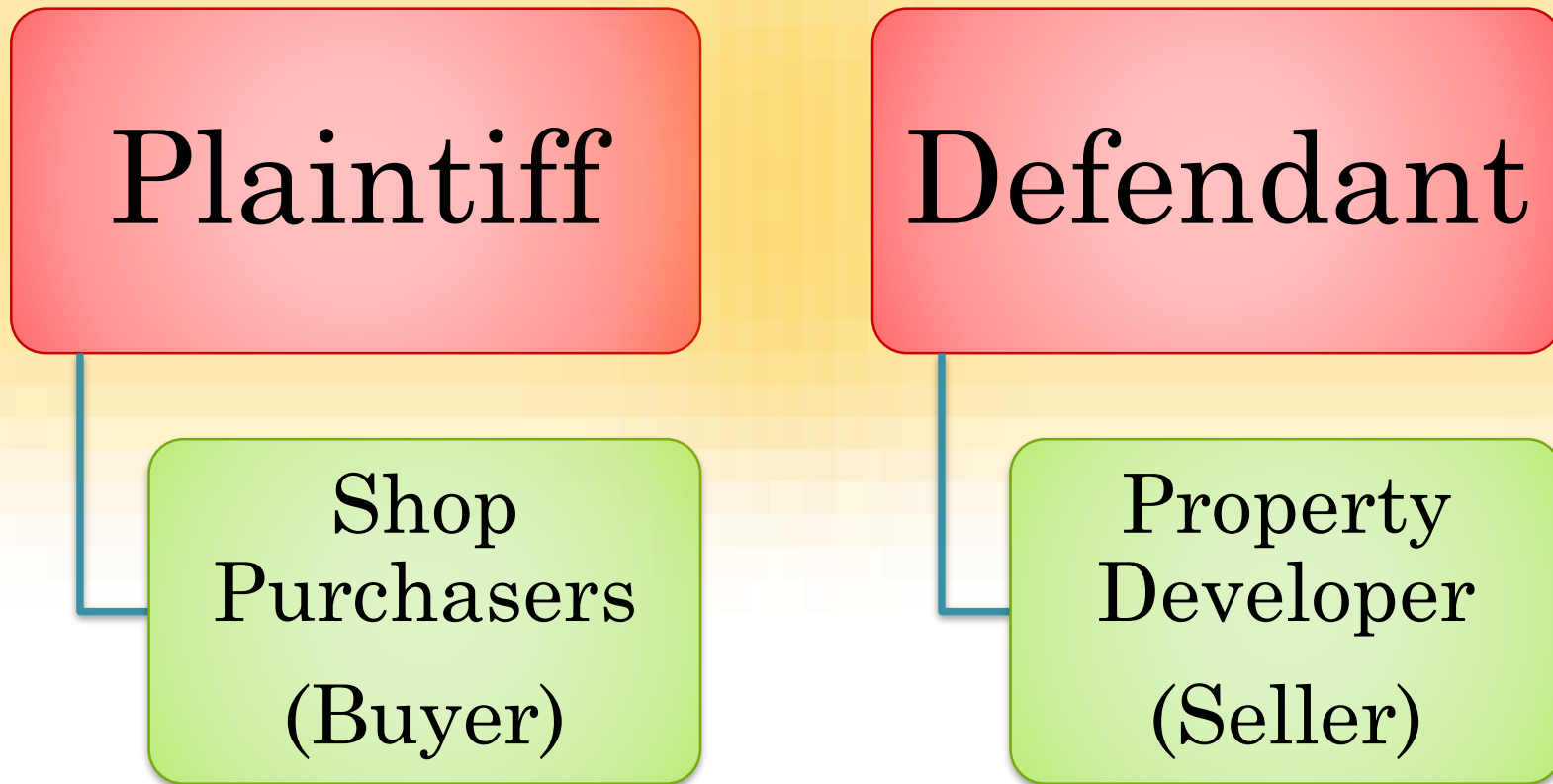
Agreed to sale the property, Money was paid.

Party did not turn up to register the agreement as agreed at the inception.

Defaulting party claims “money was received as loan and liability”.

Is there any remedy for bonafide buyer having “unregistered agreement” in hand?

PARTIES INVOLVED



FACTS OF THE CASE

31.08.1991

Buyer and seller entered into agreement for sale of shops for total consideration of ₹ 2,94000/-

₹ 2,50000/- was paid on upon execution of agreement entirely backed by provisions of MOFA Act.

Buyer duly informed Seller to come and admit the execution before Sub-Registrar.

Agreement was presented before Sub-Registrar, Pune on 23.12.1991.

Seller did not turn up to admit the agreement.

FACTS OF THE CASE

- Buyer issued legal notice against the seller to admit the execution of the agreement.
- Seller did not even bother to reply.



**AGGRIEVED BUYER OF THE
SHOP FILED
REGULAR CIVIL SUIT NO. 1279
BASED ON THE
"UNREGISTERED AGREEMENT"**

Suit For Specific Performance

PRAYERS OF BUYER

Specific direction to seller to admit execution of agreement in the office of Registrar.

Specific Performance i.e. Possession of Shop.

SELLER CONTENTION

1

- Money was accepted as loan.

2

- Agreement is security against funds accepted.

3

- Agreement has no value as per provision of MOFA Act.

AFTER 4 YEARS OF CONTINUOUS
HEARING SUIT WAS TRANSFERRED
FROM SENIOR DIVISION TO
JUNIOR DIVISION.



WHAT SHOULD BE VERDICT OF TRIAL COURT ?

SUIT WAS DECREED IN FAVOUR
OF BUYER



HOW when Agreement was not
registered??

**FIRST APPEAL WAS FILED
BY THE SELLER**

FIRST APPEAL COURT

Listed conditions for

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graph TD; A[Listed conditions for] --> B[Specific performance]; A --> C[Execution of Sale deed];
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Specific
performance

Execution of
Sale deed

FIRST APPEAL COURT VERDICT

ALL THE POINTS WERE
DETERMINED IN FAVOUR OF
SELLER.



BUYER APPROACHED BOMBAY HIGH COURT



1ST QUESTION BEFORE HIGH COURT

Whether Suit can lie under MOFA for Specific Performance on the basis of “Unregistered Agreement” ?



SELLER'S ADVOCATE

Challenged Unregistered Agreement and maintainability of Suit thereof

Obligation of section 4 not followed

Non-registration of agreement

Agreement is void

Bombay HC earlier case

Commerce House
Vs.
Vishndas Samaldas

Question of allotment of shop does not arise

BUYER'S ADVOCATE

- Suit for specific performance based on the “unregistered agreement” is tenable under MOFA Act.



BUYER'S ADVOCATE

Presented Undisputed Facts

Para 22 of agreement –
obligation for admitting
execution

Sellers admitted receipt of
Rs. 2,50,000/-

Seller contention wrong -
agreement is not for security
against money

After this
drastic
development
sellers not
even once
stepped in
witness box
nor cross
examined
the buyer.

BUYER'S ADVOCATE (CONT..)

Radical Amendment in MOFA

After the judgment on which Id. counsel relied upon, **Section 4A** was enacted and added in MOFA act.

To meet the lacuna caused to “Genuine Buyer” due to non-registration of agreement.

SECTION 4A OF MOFA ACT

Where any agreement for sale is entered into under section 4(1)

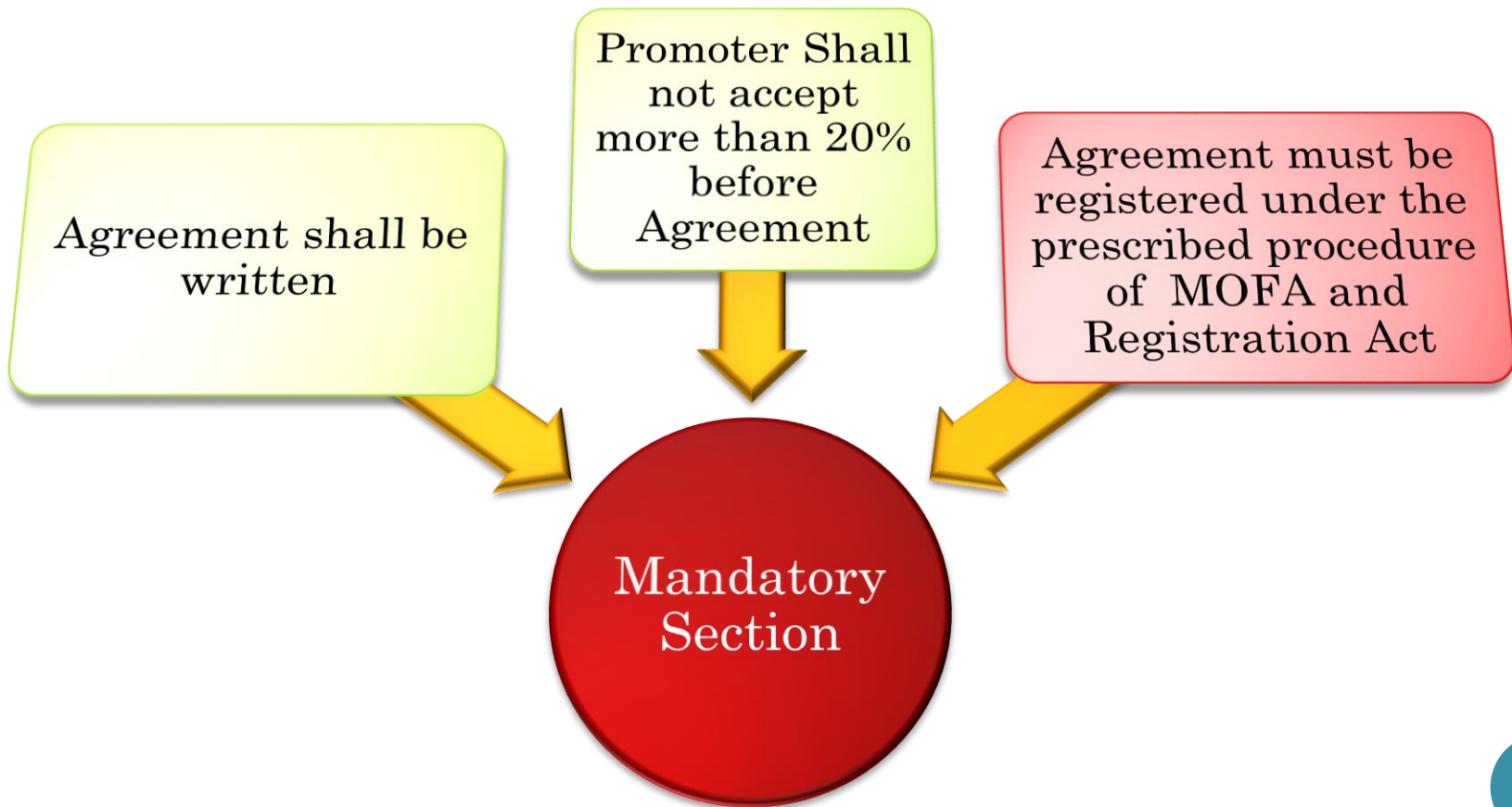
Whether Before or after the commencement of this act
(This indicates amendment is retrospective)

Effect of Non Registration of agreement required to be register under section 4

Such Agreement may be received as **Evidence** of a Suit for specific performance, under Specific Relief Act, or for Part Performance under s. 53 of TOPA Act.

Remains Unregistered for any reason, then notwithstanding anything containing **in any Law, judgment, decree or order of any court**

IMPLICATION OF SECTION 4 OF MOFA BEFORE AMENDMENT



IMPLICATION SECTION 4A OF MOFA ACT

Before Amendment

Unregistered

Agreement
has no value
in eyes of law.

After Amendment

Unregistered

Agreement
can be
enforced.

BUYER'S ADVOCATE (CONT..)

- Execution of Unregistered agreement is not in dispute.
- Buyer has duly discharged the burden to prove their case.
- Sellers has nothing in their hand to prove the genuineness of their case, written statement filed during the currency of matter.
- Intention behind enacted of MOFA Act is to curtail the mal-practice of Builders and Promoter and to Protect the interest of buyers.

HIGH COURT FINDINGS

- Section 4A has over-riding effect over the section 4 of MOFA.
- Suit based on “Unregistered Agreement” is maintainable.
- Agreement in this case is not invalid but very strong evidence.
- Specific Performance can be demanded on the basis of Unregistered Agreement.

2 ST QUESTION BEFORE HIGH COURT

Whether to invoke the powers under the proviso (2) of sub-section 2 of section 4 of the MOFA, the party demanding execution needs to give an application to the registering officer ?

ARGUMENTS OF DEFENDANT'S ADVOCATE

Section 4(2)

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graph TD; A[Section 4(2)] --> B[Person who presented the agreement for registration]; B --> C[Shall make application before the registrar]; C --> D[To issue summons to person who failed to remain present on registration day.];
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Person who presented the agreement for registration

Shall make application before the registrar

To issue summons to person who failed to remain present on registration day.

ARGUMENTS OF DEFENDANT'S ADVOCATE

- Under section 4(2) registering officer has power to issue summons to defaulter

BUT

- Those powers cannot be used unless party moves an application to the Registrar.
 - Mere Presentation of agreement to take out summons is not sufficient.
- Unless there is a prayer of conveyance, prayer of possession is not tenable

ARGUMENTS OF PLAINTIFF'S ADVOCATE

- Section 4A of the MOFA is borrowed from proviso of section 49 of the registration Act.
 - Which enables party to use an unregistered document for the purpose of suit as an evidence for specific performance.
- When any unregistered documents is presented section 36 of Registration Act needs to be follow by the Registration officer.

SECTION 36 OF REGISTRATION ACT

- If any person presenting any document for registration
- Which is capable of being so presented,
- Desires the appearance of any person whose presence or testimony is necessary for the registration of such document,

SECTION 36 OF REGISTRATION ACT

- The registering officer may, in his discretion.
- call upon such officer or Court as the directs in this behalf to issue a summons.
- call upon such officer or Court as the directs in this behalf to issue a summons requiring him to appear at the registration office.
- Either in person or by duly authorized agent, as in the summons may be mentioned, and at a time named therein.

ARGUMENTS OF PLAINTIFF'S ADVOCATE

- It is not necessary for the party to make separate application to the to the registering officer.
- Registering officer ought to issue a summons of his own.

COURT'S FINDING

- In pursuance to the statutory section of Registration Act power to issue summons vests with the registering officer.
- It is duty of the registration officer to ensure whether all the parties are present or not.
- If not then presentation of agreement for registration is sufficient enough to proceed and take further step to issue summons to defaulters.

COURT'S FINDING

- If party fails to comply with the summons then execution of agreement shall be deemed to be admitted by him.
- Registration officer may proceed to register the agreement.
- Section 4A is deeming provision but only for the purpose of admitting the execution.
- On failure of the appearance of the other party such terminology is not provided for the registration but only for execution.

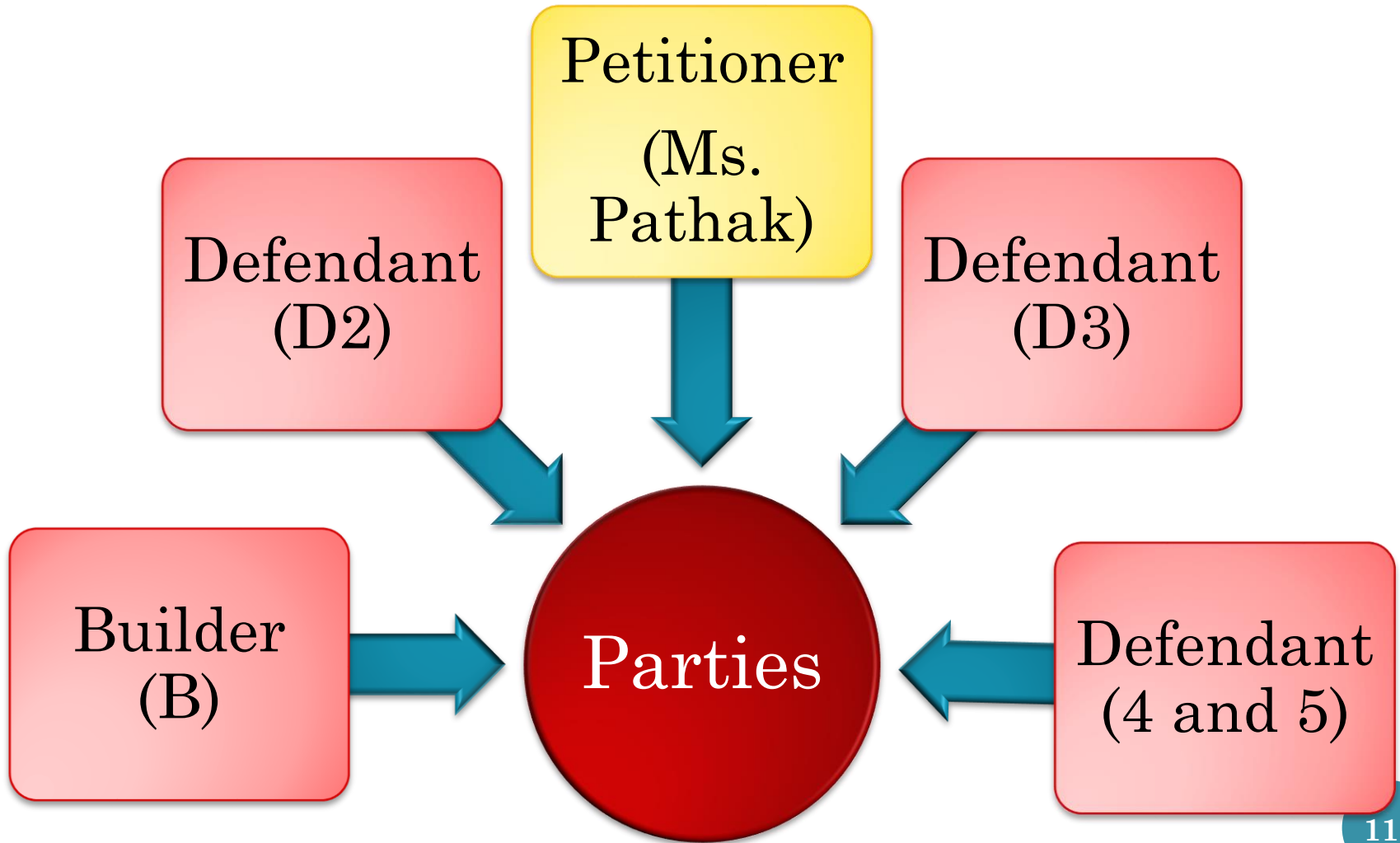
COURT'S ORDER

- Defendant's prayer that unless there is a prayer of conveyance, a prayer of possession cannot be accepted.
- In the suit for specific performance based on unregistered agreement of sale the prayers demanding registration of the document and possession are maintainable.
- All registration officers are hereby directed to maintain separate register for compliance under section 4 and 4A of MOFA.

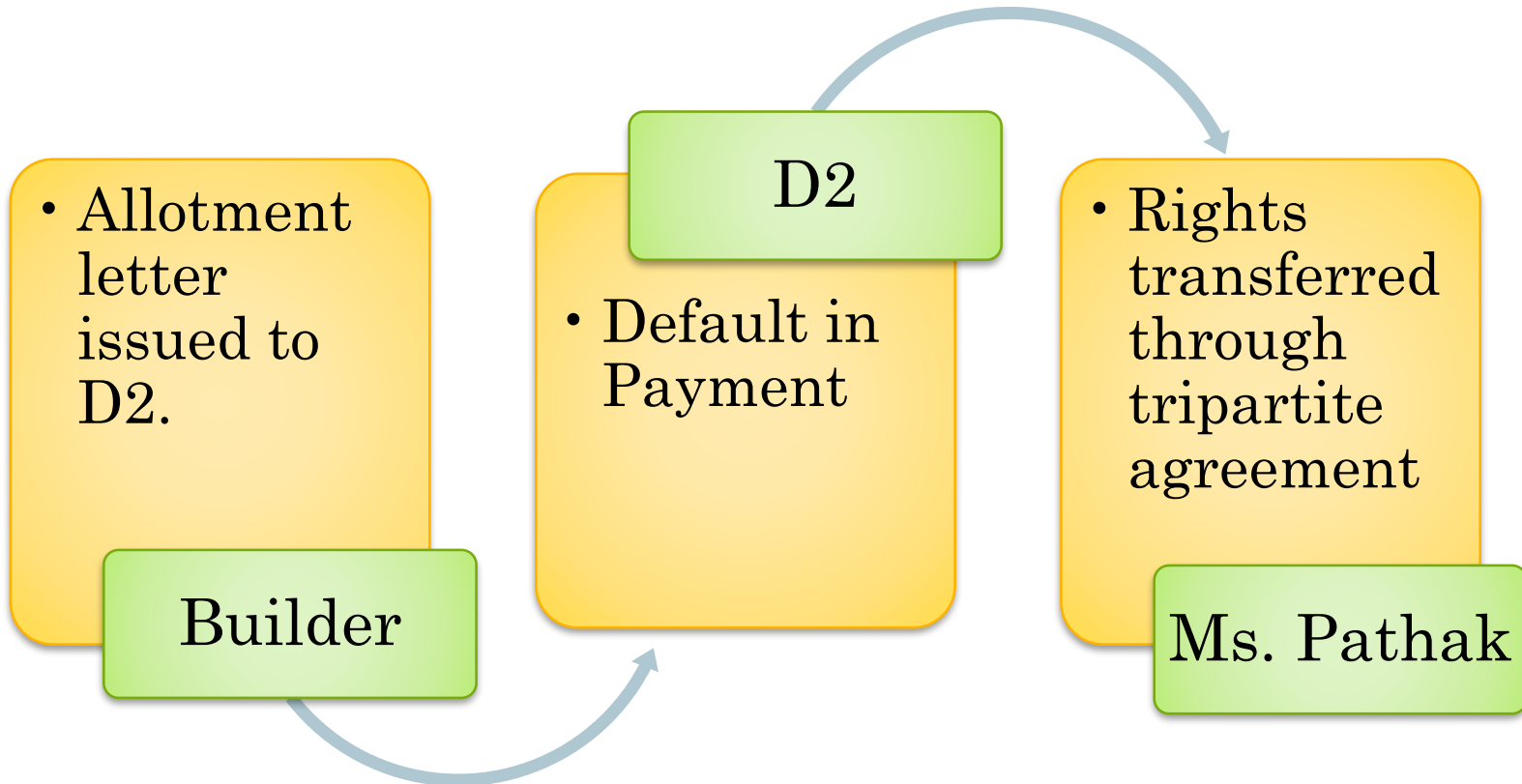
SHAILA PATHAK
Vs.
OBERAI CONSTRUCTIONS LTD.
BOMBAY HIGH COURT

ACT RELIED UPON
MAHARASHTRA OWNERSHIP OF FLATS ACT 1963

PARTIES INVOLVED



FACTS OF THE CASE



EVENT WHICH LEADS TO WHOLE CONTROVERSY

D2 claims that Ms. Pathak has forged tripartite agreement and he is willing to discharge obligation stipulated in allotment letter.



ACELEGAL

FACTS OF THE CASE

Builder calls
for payment
from Ms.
Pathak



Ms. Pathak
Refused



Till Builder
executes
registration
deed



Builder refuses
to execute
registration
deed



Due to
Dispute
with D2



FACTS OF THE CASE

Builder issued notice for termination of tripartite agreement due to failure of Ms. Pathak in discharging the full consideration of flat.



In reply to the termination letter Ms. Pathak called Builder for execution of sale deed.

MS. PATHAK MOVED IN TWO DIFFERENT COURT

Consumer court

Did not Adjudicate

Complicated question of facts and law.

City Civil Court

Rejected

No direct relationship between Ms. Pathak and Builder

Only tripartite Agreement can be made through D2

FACTS OF THE CASE

- Builder offered and expressed willingness to execute tripartite sale deed with certain clauses with pre-requisite condition.



MS. PATHAK FILED APPEAL IN HIGH COURT AGAINST CIVIL COURT ORDER



MEANWHILE BUILDER
TERMINATED ALLOTMENT OF
MS. PATHAK AND EXECUTED
SALE DEED IN FAVOUR OF D3.



D3 FURTHER SOLD THE
FLAT TO
D4 AND D5



CONTENTION OF Ms. PATHAK

- Original allotment letter to D2 is contravention to MOFA.
- Her money is ready and she is willing buyer.
- She has already made substantial payment.
- Various disputed clauses in draft of MOFA sent by the builder.

CONTENTION OF MS. PATHAK

- She has no marketable title due to disputed clauses in draft MOFA sale deed given by Builder.
- No further payment till execution of proper and valid MOFA.



CONTENTION OF BUILDER

- Breach of terms of allotment letter.
- Unwillingness to execute tripartite agreement by Ms. Pathak indicates she was not willing to acquire.
- 3rd Party rights is created (D3).
- D3 sold suit property further to D4 and D5 for valid consideration.
- D4 and D5 are bonafide buyers for value.

BOMBAY HIGH COURT'S VERDICT

When to execute
tripartite
agreement

Builder will
decide

Clause 2(c)

LOA to
Ms. Pathak

BOMBAY HIGH COURT'S VERDICT

- Builder stated if dispute between Ms. Pathak and D2 is not settled and balance payment not made, then allotment will be stand cancelled.
- Builder gave draft of the tripartite agreement to Ms. Pathak to get it stamped and asked to pay balance consideration.
- No further payment was received by Builder as per agreement.
- No relief to Ms. Pathak.



BOMBAY HIGH COURT'S VERDICT

- Clause in tripartite draft included narration of dispute between Ms. Pathak and D2.
- Indemnity from Ms. Pathak for any loss, cost or claim such clauses are NOT CONTRARY to MOFA.
- Cancellation of allotment of Ms. Pathak is valid.
- 3rd Party have good title in suit property.

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Bharat Agarwal
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