The building ‘Gaganvihar’ with 10 flats is situated in Pune on land owned by Mr Aroon Joseph (hereafter ‘Joseph’). It was constructed by Shining Star Builders (hereafter ‘Star’) in 1984.

In 1981, Joseph made a ‘development agreement’ with Star under the terms of which he allowed Star to promote a scheme of ownership flats on the land. Some terms agreed between them and relevant for the competition are as follows:

1. Star shall carry out the construction at their cost, and retain all price received from the flat-purchasers. The building so constructed shall be owned by Star.

2. Star will carry out the construction according to the provisions of the Maharashtra Ownership Flats Act (hereafter ‘Act’), and will comply with all provisions, and indemnify Joseph against all claims made by any person by Star’s failure or omission to do so. Joseph will also fulfil his obligations under the Act.

3. Star will carry out the construction entirely at its risk, and will indemnify Joseph of all claims arising out of any act or omission of Star in connection with the construction. In particular Joseph shall not be concerned nor shall he be liable, and shall be indemnified in respect of, any claims arising from faulty construction of the building.

4. Possession is handed over to Star for completing the construction.

5. Star will pay to Joseph a total amount of Rs 20 lakhs to be paid from time to time as stated in the agreement, the payment to complete by the time the building was complete and fit for occupation.

6. Star will decide price for sale of flats, and will choose purchasers, decide terms of agreements for sale of flats to such purchasers, and Joseph shall not interfere.

7. Joseph will provide all cooperation for completion of the scheme.

8. Upon completion of construction, and at request and option of Star, Joseph will convey or lease (at nominal rent of Re 1 per annum) the land to the flat-purchasers, or to any Cooperative Society or Company which may be formed.

Star made registered agreements in standard form with various flat-purchasers. Some important relevant provisions of these flat-purchase agreements are as follows:

1. Each flat purchaser shall be entitled to use, occupy and hold on ownership basis his respective flat, and car-park allotted to him, and shall use enumerated common areas required for enjoying the flat, and shall have no right, claim etc over any other area in the building or land or any other flat or terrace.

2. Star shall have the right and discretion to sell any part of the property other that the flat sold to the respective purchaser, to any other person of their choice;

3. Star shall decide whether to form Apartments Condominium, Company or Cooperative Society for management of the flats, and shall transfer the building accordingly to such body of persons.

Star gave to each flat purchaser a copy of agreement made between Joseph and Star in 1981.

The building was completed. All flats were sold. All flat-purchasers took possession of flats after paying full price. With assistance from Star, they applied for forming the Gaganvihar
Cooperative Housing Society, and their application for registration was pending. Star informed Joseph about their decision of forming the Society. Joseph replied that he was ready to sign the sale deed whenever called upon to do so, but shall not bear any expense for doing so.

On 31 December 1998, all residents in the building had gathered on the playground on the land for a new-year party, when a massive earthquake brought down the building. There were no deaths. Very few residents suffered minor injuries. Earthquake of such magnitude had occurred earlier in 1965. It is revealed that the building was not constructed to bear an earthquake of this magnitude.

All flat-purchasers removed their belongings from the debris by August 1999. Joseph removed debris from the site in December 1999.

All flat-purchasers had insured the building for an amount of Rs 80 lakhs against fire and other events, including earthquake. Cost of reconstruction would be Rs 1.5 crores. The flat-purchasers made a claim with insurance, which remained pending for a long time, and was rejected by the insurance company in 2002. Their proceeding against the insurance company is pending in the State Consumer Commission.

The State government announced a scheme under which compensation will be paid to such persons whose houses/homes/flats have been destroyed by the earthquake. The compensation package includes an amount calculated as follows:

Rs 8000 (being construction cost at the time) × area of residential premises owned in sq.m.

Eight flat-purchasers applied for this compensation. Their application is pending.

All flat-purchasers sent a notice in December 2000 to Star and Joseph that both should reconstruct the building. They did not pursue this later.

In December 2006 Joseph has put a board on the land: “This land belongs to Joseph. Trespassers will be prosecuted.” In June 2007, a public notice has appeared in the newspaper that Joseph is negotiating with an unnamed person for transferring the same land for construction of a scheme.

All ten flat-purchasers have approached the Civil Court with a suit for declaration and other appropriate reliefs against Joseph. They assert that they continue to be in possession of the land, and seek interim injunction that Joseph shall not hand over possession or alienate the land to any other person.

Application for interim injunction is to be heard. Argue for flat-purchasers and Aroon Joseph.

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This problem is formulated by Nilima Bhadbhade, ILS Law College, Pune and Mr Prasad Jagdale, Advocate. Anyone is free to use it for non-commercial educational purposes, provided the author is acknowledged. The events narrated are imaginary.

Facts are located in Pune, Maharashtra State, India. The case will involve provisions of the Transfer of Property Act 1882 and the Code of Civil Procedure 1908. The obligations of promoters and developers, and the rights of flat-purchasers in this case will be governed by the Maharashtra Ownership Flats Act 1963.