

Adv. Vinod C. Sampat B. Com. (Hons.), L. L. B.	
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BY COURIER / REGISTERED A.D. / SPEED POST / HAND DELIVERY

Dated: __ __, 2016

To,

1. ___ **Chief Secretary,**
2. ___ **Minister of State for Home,**
3. ___ **Additional Chief Secretary (Home),**
4. ___ **Additional Chief Secretary (General Administration, Services),**
5. ___ **Minister of State for Housing,**
6. ___ **Principal Secretary (Housing),**
7. ___ **Minister of State for Law and Judiciary,**
8. ___ **Principal Secretary (Law and Judiciary),**
9. ___ **Minister of State for Co-operation,**
10. ___ **Principal Secretary (Co-operation),**
11. ___ **Principal Secretary (Urban Development),**
12. ___ **Principal Secretary (Special), (Home Department),**
13. ___ **Minister of State for Urban Development**
14. ___ **Secretary (Urban Development),**
15. ___ **Secretary (Law and Judiciary),**

___ to ___ above having address at:

Mantralaya,
Mumbai.

16. ___ **Commissioner of Police,**
17. ___ **Joint Commissioner of Police (Crime),**
18. ___ **Joint Commissioner of Police (Law and Order),**
19. ___ **Additional Commissioner of Police (Crime),**

___ to ___ above having address at:

Crawford Market,
Mumbai.

20. ___ **Additional Commissioner of Police (South Region),**
 Sir J. J. Road,
 Opposite Hume High School,
 Nagpada,
 Mumbai.

21. ___ **Additional Commissioner of Police (Central Region),**
 Bawla Compound,
 Dr. Babasaheb Ambedkar Marg,
 Byculla,
 Mumbai – 400 027.

22. ___ **Additional Commissioner of Police (Eastern Region),**
 Chembur Police Station Compound,
 Opposite Basant Park,
 R. C. Marg,
 Chembur,

Mumbai.

23. Additional Commissioner of Police (Western Region),

Carter Road,
Near Ashirwad Bungalow,
Bandra (West),
Mumbai.

24. Additional Commissioner of Police (North Region),

Near Thakur College,
Samta Nagar,
Kandivali (East),
Mumbai – 400 101.

25. Deputy Commissioner of Police (Zone 1),

109, Valachand Hirachand Marg,
1st Floor,
Opposite GPO,
Fort,
Mumbai – 400 001.

26. Deputy Commissioner of Police (Zone 2),

Sir J. J. Marg,
ATS Building Compound,
Nagpada,
Mumbai.

27. Deputy Commissioner of Police (Zone 3),

Bawla Compound,
Babasaheb Ambedkar Marg,
Byculla,
Mumbai – 400 027.

28. Deputy Commissioner of Police (Zone 4),

Matunga Police Station,
1st Floor,
Dr. Babasaheb Ambedkar Marg,
Mumbai – 400 019.

29. Deputy Commissioner of Police (Zone 5),

Worli Police Station Building,
5th Floor,
Dr. Annie Beasant Road,
Worli,
Mumbai – 400 018.

30. Deputy Commissioner of Police (Zone 6),

Administrative Building,
4th Floor,
Art Gallery Complex,
R. C. Marg,
Chembur,
Mumbai – 400 071.

31. Deputy Commissioner of Police (Zone 7),

Mulund Police Station,
1st Floor,
Netaji Subhash Chandra Road,
Mulund (West),
Mumbai – 400 080.

32. Deputy Commissioner of Police (Zone 8),

Bandra Kurla Complex Building,
1st Floor,
BKC Road,
Bandra (East),
Mumbai – 400 051.

33. Deputy Commissioner of Police (Zone 9),

Hill Road,
Bandra (West),
Mumbai – 400 050.

34. Deputy Commissioner of Police (Zone 10),

MIDC Police Station,
2nd Floor,
Central Main Road,
MIDC,
Andheri (East),
Mumbai – 400 093.

35. Deputy Commissioner of Police (Zone 11),

Borivali Police Station Building,
2nd Floor,
S. V. Road,
Borivali (West),
Mumbai – 400 097.

36. Deputy Commissioner of Police (Zone 12),

Shailendra Nagar,
Dahisar Police Station,
S. V. Road,
Dahisar (East),
Mumbai – 400 068.

37. Senior Inspector of Police,

___ Police Station,
Address.

38. Municipal Commissioner,

39. Additional Municipal Commissioner (Project),

40. Additional Municipal Commissioner (City),

41. Additional Municipal Commissioner (Eastern / Western Suburbs),

42. Chief Engineer (Development Planning),

___ to ___ having address at:

Municipal Corporation of Greater Mumbai,
Chhatrapati Shivaji Terminus,
Mumbai.

43. Deputy Chief Engineer (Building Proposal) City,

‘E’ Ward Office Building,
Byculla,
Mumbai – 400 008

44. Deputy Chief Engineer (Building Proposal) Western Suburbs-I,

Municipal Building,
Near K. B. Bhabha Hospital,
R. K. Patkar Marg,
Bandra (West),
Mumbai – 400 050

45. Deputy Chief Engineer (Building Proposal) Western Suburbs-II,

Municipal Building,
Sanskriti Complex,

Kandivali (East),
Mumbai – 400 101

46. Deputy Chief Engineer (Building Proposal) Eastern Suburbs,

Paper Mill Compound,
LBS Marg,
Vikhroli (West),
Mumbai – 400 083

47. Builder's name

Address

48. All directors/partners

address

Sirs/Madams,

**Subject: LEGAL NOTICE TO INITIATE ACTION AGAINST NOS. ___ ___ FOR:
(A.) ___ The following offences of the Indian Penal Code being alleged by my
clients to have been committed against them by the abovenamed Nos. ___**

- ___:
- Acts done by several persons in furtherance of common intention : Section 34
 - When such an act is criminal by reason of its being done with a criminal knowledge of intention : Section 35
 - Effect caused partly by act and partly by omission : Section 36
 - Co-operation by doing one of several acts constituting an offence : Section 37
 - Persons concerned in criminal act may be guilty of different offences : Section 38
 - Abetment of a thing : Sections 107 and 108
 - Criminal conspiracy : Sections 120A and 120B
 - Furnishing false information : Section 177
 - Using evidence known to be false : Section 196
 - Issuing or signing false certificate : Section 197
 - False statement made in declaration which is by law receivable as evidence : Section 199
 - Intentional omission to give information of offence by person bound to inform : Section 202
 - Giving false information respecting an offence committed : Section 203
 - Destruction of document or electronic record to prevent its production as evidence : Section 204
 - Theft : Section 378
 - Extortion : Section 383
 - Putting person in fear of injury in order to commit extortion : Section 385
 - Dishonest misappropriation of property : Section 403
 - Criminal breach of trust : Section 405
 - Cheating : Section 415
 - Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect
 - Cheating and dishonestly inducing delivery of property : Section 420
 - Dishonest or fraudulent removal or concealment of property : Section 424
 - Mischief : Section 425
 - Criminal trespass : Section 441
 - Forgery : Section 463
 - Making a false document : Section 464
 - Forgery of record of Court or of public register, etc. : Section 466
 - Forgery of valuable security, will, etc. : Section 467
 - Forgery for purpose of cheating : Section 468
 - Having possession of document described in section 466 or 467 : Section 474
 - Falsification of accounts : Section 477A
 - Criminal intimidation : Sections 503 and 506
 - Intentional insult with intend to provoke breach of peace : Sections 504 and 506

(B.) _____ The following offences under the Indian Contract Act being alleged by my clients to have been committed against them by the abovenamed Nos. _____:

- Fraud : Section 17
- Misrepresentation : Section 18
- Coercion : Section 15
- Breach of contract : Chapter 6

(C.) _____ The following offences under the Maharashtra Ownership of Flats Act being alleged by my clients to have been committed against them by the abovenamed Nos. _____:

- Not disclosing nature of title and not giving true copy of title certificate and not giving true cop of all documents of title relating to the land on which the flats are constructed or are to be constructed : Sections 3, 4 and 13 and Rules 3, 4 and 5 and model agreement in Form-V
- Not disclosing encumbrances on land and not giving true copy of all documents relating to encumbrances: Sections 3, 4 and 13 and Rules 3, 4 and 5
- Not giving inspection of approved plans and specifications of building : Sections 3, 4 and 13 and Rules 3, 4 and 5 and model agreement in Form-V
- Not disclosing nature of fixtures, fittings, amenities : Sections 3 and 13 and Rule 3 and model agreement in Form-V
- Not disclosing materials to be used in construction : Sections 3 and 13 and Rule 3
- Not disclosing agreements entered by builder/promoter with architects and contractors regarding design, materials and construction of building : Sections 3 and 13 and Rules 3 and 4
- Not disclosing date by which possession of the flat is to be handed over : Sections 3, 4 and 13 and Rules 3, 4 and 5 and model agreement in Form-V
- Not disclosing list of flats with their numbers, the price charged/agreed to be charged : Sections 3, 4, 5 and 13 and Rules 3, 4, 5 and 10 and model agreement in Form-V
- Not disclosing the nature of the organization of persons to be constituted and to which title is to be passed : Sections 3, 4 and 13 and Rules 3, 4 and 5 and model agreement in Form-V
- Not disclosing all outgoings : Sections 3 and 13 and Rule 3 and 4
- Not disclosing other prescribed information : Sections 3, 4, 5 and 13 and Rules 3, 4 and 5
- Not disclosing true copies of documents as asked for : Sections 3 and 13 and Rules 3 and 4 and model agreement in Form-V
- Not disclosing all the documents, plans and/or specifications at the site and not permitting inspection thereof : Sections 3, 4 and 13 and Rules 3 and 4 and model agreement in Form-V
- Not disclosing the carpet area of the flat : Sections 3, 4 and 13 and Rules 4 and 5 and model agreement in Form-V
- Not making agreement on the basis of carpet area of the flat : Sections 3, 4 and 13 and Rules 3, 4 and 5 and model agreement in Form-V
- Not disclosing the price of the flat including the proportionate price of the common areas and facilities : Sections 3, 4 and 13 and Rules 5 and 10 and model agreement in Form-V
- Not disclosing the nature, extent and description of the common areas and facilities : Sections 3, 4 and 13 and Rule 5 and model agreement in Form-V
- Not entering into a registered written agreement for sale as per the prescribed format in spite of taking the full booking amount : Sections 4 and 13 and Rule 5 and model agreement in Form-V
- Not specifying liability of the promoter to construct the building according to the plans and specifications approved by the local authority : Sections 4 and 13 and Rules 3, 4 and 5
- Not specifying the percentage of undivided interest in the common areas and facilities appertaining to the flat agreed to be sold : Sections 4 and 13 and Rule 5 and model agreement in Form-V

- Not disclosing statement of the use of which the flat is intended and restriction of its use : Sections 4 and 13 and Rules 5 and 10 and model agreement in Form-V
- Not maintaining a separate account in any bank of sums taken as advance or deposit : Sections 5 and 13 and Rule 10 and Form-I, Form-II, Form-III and Form-IV
- Not disbursing the moneys collected for the purpose for which they were given : Sections 5 and 13 and Rule 10 and Form-I, Form-II, Form-III and Form-IV
- Not making full and true disclosure of all transactions in respect of the said account : Sections 5 and 13 and Rule 10 and Form-I, Form-II, Form-III and Form-IV
- Making alterations in the structures without consent of my clients : Sections 7 and 13
- Creating third-party rights on the flat after execution of agreement : Sections 4, 5, 9 and 13 and Rule 5 and model agreement in Form-V
- Not registering co-operative society / company : Sections 10 and 13 and Rule 8
- Not fixing his title for the land : Sections 11 and 13
- Not executing conveyance : Sections 11 and 13 and Rule 9
- Not passing on documents of title : Sections 11 and 13 and Rule 9
- All persons being in charge of the company/companies becoming liable to be proceeded against : Section 14

(D.) _____ And the following offences being alleged by my clients to have been committed against them by the abovenamed Nos. ___ __ __ __::

- Not obtaining Building Completion Certificate : Section 353A read with Schedule T of the Brihanmumbai Municipal Corporation Act
- Not obtaining Occupancy Certificate : Regulation 6(7) of the Development Control Regulations
- Our claim of Rs. ___ for the deficiencies in service and failures to comply with statutory obligations.

With reference to the above and under instructions from my clients, _____, having address at _____ (hereinafter referred to as, “the premises in dispute”), and in addition to the various correspondence done by my clients with the builders / promoters, I have to state as under:

INTRODUCTION OF THE PARTIES:

1. _____ You Nos. ___ to ___ are instruments of the State Government. You Nos. ___ to ___ are the police authorities. You Nos. ___ to ___ are the municipal authorities.

2. _____ My clients state that their grievances are with the builders / promoters, i.e., You Nos. ___ __ __. The reference to the builders / promoters hereinafter shall refer also to the teammates of the builders / promoters. My clients state that under the definition of “promoter” under Section 2(c) of the MOF Act, the builders / developers are also meant to be promoters.

3. _____ You Nos. ___ __ __ have constructed the premises in dispute, namely, ___. You Nos. ___ __ __ are the partners/directors/proprietor of No. ___. My clients state that they have acquired rights in the premises in dispute, namely, ___ building/Co-operative Housing Society Ltd. situated on all that piece and parcel of land bearing CTS No. ___ Survey No. ___ Hissa No. ___ of ___ Taluka in ___ Village admeasuring ___ square feet/metres/yards by ___. My clients

state that You Nos. ___ ___ ___ have no right, title and interest of any nature whatsoever in even 1 square foot of the land in the Schedule of the property referred hereinbelow

NUMBER OF FLATS, and APPROXIMATE MARKET VALUE OF THE FLATS:

4. ___ My clients say and submit that there are ___ flats in the building belonging to the Society. My client says and submits that you are aware that the definition of flat includes shops and garage. My client says and submits that as of date, the aggregate value of the flats in the builder ___ could easily be of more than Rs. ___ (Rupees ___ Only).

REQUEST TO POLICE AUTHORITIES:

5. ___ My clients submit that for violation of various provisions of the MOF Act, a first information report (FIR) can be lodged against the errant builders. My clients also draw your attention to the circular dated 01/07/2016 issued by the विशेष पोलीस महानिरीक्षक (का. व. सु.), पोलीस महासंचालक, महाराष्ट्र राज्य, मुंबई यांचेकरीता, which justifies FIR against the erring builders.

6. ___ My clients submit that as the stakes in the matter are above Rs. 20,00,000/-, they request you to lodge an FIR against the builders/developers. In the alternative, you are requested to refer the matter to the Crime Branch.

7. ___ My clients submit that some of the flat-purchasers are senior citizens, and as per the Bombay High Court circular dated 03/08/2009, there is a *bona fide* need for expeditious proceedings.

REQUEST TO MUNICIPAL AUTHORITIES:

8. ___ My clients request the municipal authorities to blacklist the builder/developer, namely, ___, and their architect, namely, ___ for the purported wrongful acts done by the builder and his teammates.

9. ___ My clients submit that in the Supreme Court judgment in Civil Appeal No. 12984 of 1999 decided on 01/11/2004 by Chief Justice R. C. Lahoti and Justice Ashok Bhan in the case of Friends Colony Development Committee vs. State of Orissa and Others, in the context of regularization of unauthorized/illegal construction, it has been held in para-25 that, *“Only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding ... Other than these, deliberate deviations do not deserve to be condoned and compounded ... A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future ... the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilized for compensating and rehabilitating such innocent or unwary buyers who are displaced*

on account of demotion of illegal buildings ... The application for compounding the deviations made by the builders should always be dealt with at a higher level by multi-membered High Powered Committee so that the builders cannot manipulate.”

10. A builder is supposed to understand the laws better than common-man, and deviations by such builder can safely be assumed to be intentional and deliberate, done with the *mala fide* intention of earning profits at the unfair cost of flat-purchasers, and therefore the same is deserved to be dealt with sternly so as to act as a deterrent for the future. The relevant judgment in this regard is of the Hon’ble Court of the Metropolitan Magistrate, 22nd Court, at Andheri, Mumbai on 18/02/2003 in case No. 276/S/86 where complainant was Amar Ganesh Joshi, Hon. Secretary, Torana Co-operative Society Ltd. against the accused, Shri Hiraji Dinanath Jamsandekar and Smt. Hemlata Hiraji Jamsandekar for the offences u/ss. 3, 4, 5, 10, 11 and 13 of the MOF Act and Rules thereunder, wherein it was held, “*Imposition of fine only will not be a proper sentence in this case. One of the purpose of the punishment is also to send a signal to persons who are holding intention of similar kind.*” My clients state that the builders in this case are in a similar footing as in the said case.

11. My clients request you to give them an opportunity to explain to you in person the wrongful acts done by the builder/developer.

WRONGFUL ACTS DONE BY THE BUILDER/DEVELOPER:

12. My clients state that representatives of the building have time and again briefed the builders about the problems in the building. My clients submit that the builders have time and again given only verbal promises to sort out the problems, but have never cared to ensure that the grievances of the flat-purchasers are sorted out to the satisfaction of the flat-purchasers of the building.

VIOLATION OF THE TERMS AND CONDITIONS MENTIONED IN THE BROCHURE:

13. My clients have reasons to believe that you have violated the various submissions made by you in the prospectus/brochure. My clients understand that

14. My clients say and submit that pursuant to the decision given by the Bombay High Court in its Civil Appellate Jurisdiction in First Appeal No. 786 of 2004 in the case of Madhuvihar Co-operative Housing Society Ltd. & Others versus M/s. Jayantilal Investments & Others heard with First Appeal No. 989 of 2004 in the case of M/s. Jayantilal Investments versus Madhuvihar Co-operative Housing Society Ltd. & Others, pronounced on 07/10/2010, the amenities promised in the brochure/prospectus should be provided by the builder/developer. In the said pronouncement, the builder/developer was permanently restrained from making any construction over the suit property.

VIOLATIONS OF SECTIONS 3 AND 4 OF MOF ACT READ WITH RULES 3 AND 4 OF MOF RULES:

- 15.** The builders have not, in spite of my clients' demand by letter dated __, provided my clients with:
- a.** either production or display or inspection of all documents, plans or specifications in original or Xerox at the site,
 - b.** full and true disclosure of the nature of their title to the land on which the flats are constructed, or are to be constructed, and title duly certified by an Attorney-at-law or advocate of at least 3 years' standing, and duly entered in the Property card or extract of Village Forms VI or VII and XII or any other revenue record a true copy of all documents of title relating to the land on which the flats are constructed or to be constructed,
 - c.** a true copy of certificate by an Attorney-at-law or Advocate referred to in clause (a) of sub-section (2) of Section 3,
 - d.** disclosure of all encumbrances on such land, including any right, title, interest or claim of any party in or over such land,
 - e.** a true copy of all documents relating to encumbrances on such land, including any right, title, interest or claim of any party in or over such land,
 - f.** disclosure and inspection of the approved plans and specifications of the building built or to be built on the land,
 - g.** a true copy of the plans and specifications of the building built or to be built on the land,
 - h.** disclosure of nature of fixtures, fittings and amenities,
 - i.** a true copy of a list of fixtures, fittings and amenities,
 - j.** particulars as respect the design and the materials to be used in the construction of the building,
 - k.** all agreements entered into by him with the architects and contractors regarding the design, materials and construction of the buildings,
 - l.** specific date in writing by which possession of the flat is to be handed over,
 - m.** list of flats with their numbers already taken or agreed to be taken, and the names and addresses of the parties, and the price charged or agreed to be charged therefor, and the terms and conditions if any on which the flats are taken or agreed to be taken,

- n.** _____ the precise nature of the organisation of persons to be constituted and to which title is to be passed, and terms and conditions governing such organisation of persons who have taken or are to take the flats,
- o.** _____ full and true disclosure of all outgoings (including ground rent if any, municipal or other local taxes, taxes on income, water charges and electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any,
- p.** _____ full and true disclosure of such other information and documents in such manner as may be prescribed, and true copies thereof, and a declaration / statement stating, “No other document remains or is required to be disclosed”.
- 16.** _____ My clients state that they are ready to pay reasonable and accounted charges for copies of the documents as are demanded from them, that too only if such act of charging my client is prescribed by the law, which the builder is to cite for that purpose. My clients state that if an agreement has been entered into, builders are bound to provide approved building plans, certificate by Attorney-at-law or Advocate, Property Card or extract of Village Forms VI or VII or XII, etc. or any other revenue record showing builder’s title to the land, free of cost, and in the manner prescribed.
- 17.** _____ My clients call upon the builders to make a declaration as to whether they have allowed persons to enter into possession until a completion certificate is obtained, and whether any person has been given possession of a flat until completion certificate has been duly given by the local authority.
- 18.** _____ My clients state that the builders have not, as required under Section 3(m)(i) of the MOF Act by which they were duty-bound, declared carpet area of flat, with area of balconies shown separately. My clients call upon you to give exact carpet area of each of the flats, which has to be duly certified by your architect. My clients point out Section 3(n) which states that sale of flat may be made only on the basis of carpet area.
- 19.** _____ My clients state that the builders have not, as required under Section 3(m)(ii) of the MOF Act by which they were duty-bound, declared the basis on which they have charged the proportionate price of the common areas and facilities to each of the flat-purchasers. My clients call upon you to give the list of amounts collected by you from each of the flat-purchasers towards proportionate price of the common areas and facilities. My clients also call upon you to clarify the periods on which the instalments have been demanded by you from each of the flat-purchasers.
- 20.** _____ My clients state that the builders have not, as required under Sections 3(m)(iii) and 3(m)(iv) of the MOF Act by which they were duty-bound, declared the nature, extent and description of all the common areas and facilities, and of the limited common areas and facilities. My clients call upon you to give the nature, extent and description of all the common areas and facilities, and of the limited common areas and facilities.

AGREEMENT AS EXECUTED:

- 21.** My clients state that Section 4 of MOF Act is very clear in that if more than 20% of the sale price is intended to be taken by the builder from the purchaser, he shall enter into a written agreement for the sale with each persons who are to take or have taken the flats, and the agreement shall be registered under the Registration Act, 1908.
- 22.** The said section read with Rule 5 of the MOF Rules also states that such agreement shall be in the prescribed form, i.e., in the format prescribed in Form-V.
- 23.** My clients state that the builders have committed an offence by entering into dealing of the flats without executing a written and subsequently registered agreement.
- 24.** My clients state that the builders have committed an offence by not executing agreements as per model agreement prescribed in Form-V of the MOF Rules.
- 25.** My clients state that builders have committed an offence by not including in their agreement the various compulsory statutory clauses as prescribed in Form-V.
- 26.** My clients state that the builders, not being owners of the property as is clear from the agreement / property card, have committed an offence by not making the owners a Confirming Party.
- 27.** Explanatory Note Nos. 1 and 2 are relevant, and are provided below:

Explanatory Note No. 1: *“This is only a model form of agreement, which will have to be modified and adapted in each case having regard to the facts and circumstances of each case but in any event such clauses 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13 and 22 which are statutory and mandatory according to the provisions of the Act and these rules shall be retained in each and every individual agreement/s executed between the Promoter and Flat Purchaser. Any departure or variation from these statutory and mandatory conditions, being violative and ultra vires of the provisions of the Maharashtra Ownership of Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Act, 1963 (hereinafter referred to as “the said Act”) will not be binding and enforceable upon the parties, such conditions being void ab initio:*

Explanatory Note No. 2: *“Clause (c) of Section 3 of the said Act defines a promoter to mean, inter alia, a person who “causes to be constructed a block or building of flats” i.e. an owner of the land and building who engages a developer (also a promoter) as his agent to develop the land and building and authorises him to dispose flats. In such a case the owner will have to be joined as a Confirming Party to the tripartite agreement in model form of agreement to be executed between the Promoter, Flat Purchaser and the Owner so that the Owner is bound by all the terms, conditions and covenants of the tripartite agreement.”*

- 28.** My clients state that by not declaring / clarifying in the agreement the price being the proportionate price of the common areas and facilities appurtenant to the premises, you have committed an offence, as is compulsory under clause-2 of the model agreement prescribed in Form-V. The relevant portion of the said clause-2 is, “... *including Rs. _____ being the proportionate price of the common areas and facilities appurtenant to the premises ...*”.
- 29.** My clients state that you have committed an offence by not making agreement on the basis of carpet-area. My clients state that you have committed yet another offence by making agreement on the basis of super-built up area, wherein you have charged the flat-purchasers for open/common areas.
- 30.** Further, this is the reason you have no right to sell parking, which shall be dealt with at length below.

SEPARATE ACCOUNTS:

- 31.** Section 5 of the MOF Act read with Rule 10 of the MOF Rules requires the builder to compulsorily maintain a separate bank account in respect of sums (as advance or deposit including any sums so taken towards share capital for formation of co-operative society or a company, or towards the outgoings), taken by them from persons intending to take or who have taken flats, and he shall hold the said moneys for the purposes for which they were given and shall disburse the moneys for those purposes and shall on demand in writing by a Competent Authority make full and true disclosure of all transactions in respect of that account. My clients state that they have applied to the Competent Authority in this regard.
- 32.** My clients call upon the builders to give details of the various amounts collected by you and the various amounts spent by you. You are called upon to give audited statement of accounts for the amounts collected by you from the flat-purchasers for which you are supposed to be a trustee. My clients call upon the builders to give copies of all the relevant pass-books in respect of the amounts collected and supposed to be deposited in the separate bank account of the project, and clarify how much of the funds from the said bank account have been spent for purposes other than the construction of the project. Even the annual audited accounts are not given by the builders despite the fact that substantial amount of time has passed since the date they have collected the funds. My clients call upon the builders to provide details of all expenses above Rs. 500/- incurred by you by cash or by cheque, along with bills and receipts thereof, along with details of where and how the products/services for the said bills and receipts and moneys have been used. My clients also call upon you to give details of the amounts collected from each flat-purchaser, along with date from which the amount is collected till the date (for which the amount is collected) it is disbursed. You are also called upon to give bifurcation of all the amounts which are paid by all the flat-purchasers collectively, and bifurcation of the amounts which according to you are outstanding and / or overdue to the flat-purchasers.

My clients state that there is a clear-cut understanding of the law that my clients are in no way responsible or liable to collect or to take efforts to collect even a single rupee, if outstanding by any flat-purchaser.

33. My clients have reasons to believe that you have inflated the expenses and that is the reason why you are not submitting the audited statement of accounts inspite of repeated requests, demands and requisitions. My clients state that the builders have allegedly misused *bonda fide* funds for which they are to be trustees.

34. My clients also call upon you to submit to my clients details of the outstanding payments in any regard that has not been made by you to the various authorities / entities until the date of formation of the Society, or until the obtaining of occupancy certificate, whichever is later.

35. My clients also call upon you to give the office address, residential address and mobile number of all the directors / partners of the company / firm as well as the persons handling the finances of the company.

36. Rule 10(2) of the MOF Rules read with Section 5 makes the builder liable to maintain Form-I, Form-II, Form-III and Form-IV as prescribed under the MOF Rules, which are reproduced as under:

FORM-I

[See Rule 10(2)]

Form of Register of persons purchasing ownership flats in the (name of building) and constructed by (name of builder)

Sr. No.	Date of Application	Name of the person	Address	Date of Agreement	No. of Flat	Floor	Amount Paid	Date of payment	No. of receipt	Date of receipt
1	2	3	4	5	6	7	8	9	10	11

FORM-II

[See Rule 10(2)]

Form of Register of flats sold in the (name of building) and constructed by (name of builder)

Sr. No.	No. of flats	Name of the purchaser	Address of the purchaser	Whether purchased or agreed to be purchased	Whether original purchaser or a transferee	Date of agreement	The price settled	No. of instalment and amount	Date of payment
1	2	3	4	5	6	7	8	9	10

FORM-III

[See Rule 10(2)]

Statement indicating person-wise receipts and disbursements in respect of sum accepted as advance or deposit from the flat purchasers in the (name of building) constructed by (name of builder)

Sr. No.	Date of payment	Receipt No.	Purpose	Date of deposit in bank	Date of withdrawal from bank	Purpose of withdrawal	Date of disbursement	Voucher No.	Date of payment
1	2	3	4	5	6	7	8	9	10

FORM-IV

[See Rule 10(2)]

Statement indicating purpose-wise receipts and disbursements in respect of sum accepted as advance or deposit from the flat purchasers in the (name of building) constructed by (name of builder)

Purpose of deposit of advance	From whom received	Date of receipt	Receipt No.	Date of deposit in bank	Date of withdrawal from bank	Purpose of withdrawal	Date of disbursement	Voucher No.	Date of payment
1	2	3	4	5	6	7	8	9	10

BUILDING COMPLETION, OCCUPANCY CERTIFICATES, AND MUNICIPALITY:

37. My clients state that the builders have not obtained the Building Completion Certificate as required under Section 353A read with Schedule "T" of the BMC Act. Subsequently, the builders were to, but have not, obtained the Occupancy Certificate as required under Regulation 6(7) of the Development Control Regulations.

38. My clients state that the builders have committed an offence by offering flats for sale without having building completion and occupancy certificates in respect of the building. My clients call upon you to give specific reasons clarifying why building completion certificate and occupancy certificate despite the fact that substantial amount of time has passed.

39. My clients understand that the reason for not obtaining the building completion certificate could be: (A) certain amounts of penalties have not been paid by you to BMC, (B) work has been commenced by you without commencement certificate, (C) you have not complied with the terms and conditions of the IOD, (D) infrastructure development has not been complied with by the developer, (E) recreation garden is not provided, (F) internal layout road is not provided, (G) not providing water mains and sewerage lines, (H) balcony premium not paid, (I) ULC flats are not handed to authorities, (J) your architect has not submitted the building completion report and / or has not approached the BMC for the same.

40. My clients would like to know as to when you have applied and got the building completion and occupancy certificates. My clients state that it is the policy of the BMC to

issue the building completion certificates within a period of 21 days if the architect has complied with all the statutory formalities and has submitted the completion report to the BMC.

41. My clients state that as a builder you have to obtain the intimation of disapproval (IOD) from the competent authority, which in the given case is the Municipal Corporation of Greater Mumbai. My clients herewith call upon you to clarify the dates on which you have complied with the various conditions as mentioned in the IOD issued by the BMC.

MAINTENANCE OF PROPERTY TO BE DONE BY THE BUILDERS:

42. Further, my clients state that management of the building has to be done by the builders till occupancy certificate is received, especially for those purposes to which Section 7 of the MOF Act applies.

ALTERATION IN PLANS WITHOUT CONSENT OF FLAT-PURCHASERS:

43. Section 7 of the MOF Act prohibits the builders or any other persons from making any change or alteration in the structure of the building constructed by you after the plans and specifications of the building as approved by the local authority are disclosed to the persons who agrees to take one or more flats. My clients further state that the blanket consent obtained at the time of signing the agreement with the flat-purchasers is no consent at all, in light of the judgment delivered by Justice R. L. Aggarwal of the Bombay High Court decided on 09/02/1982 in Appeal No. 575 of 1982 heard with Appeal No. 875 of 1982 in the case of Smt. Neena Sudarshan Wadia vs. M/s. Venus Enterprises & Others, where it has been held, “*A blanket consent or authority obtained by a promoter at the time of entering into an agreement for sale or at the time of handing over possession is not the consent contemplated by Section 7(1)(i) or (ii) for such a blanket consent or authority would sew up or nullify these provisions ... These defendants cannot under the cloak of the blanket consent obtained under the proforma agreement for sale carry out the work of additional structures and thus set at naught the provisions of Section 7(1)(ii).*” My clients state that you have changed the building plan without taking written consent of each and every flat-purchasers. My clients state that this act of yours is an offence, and an illegal abuse of power by you.

THIRD-PARTY RIGHTS CREATED BY YOU WITHOUT CONSENT:

44. My clients state that they have reason to believe that the builders have created mortgage and / or other third-party rights over the flat(s) of the flat-purchaser(s) after agreement in that respect was executed. My clients state that this act of the builders is forbidden by Section 9 of the MOF Act.

NOT REGISTERING CO-OPERATIVE SOCIETY:

45. By virtue of Section 10 of the MOF Act read with Rule 8 of the MOF Rules, the builders were under an obligation to take necessary steps to form a co-operative society within 4 months from the date on which the minimum number of persons required to form such organisation have taken flats. In the present scenario, considerable amount of time has passed but you have not formed the co-operative society, and the flat-purchasers were required to form the same on their own. My clients state that if any amount has to be recovered by you from individual flat-purchasers, the same has nothing to do with conveyance or formation of co-operative society.

CONVEYANCE, PASSING OF DOCUMENTS OF TITLE, AND TRANSFER IN PROPERTY-CARD:

46. My clients state that by not completing and perfecting your title, the builders have committed an offence under Section 11 of the MOF Act.

47. My clients further state that despite the fact that substantial time has passed, you have not executed the conveyance in favour of my clients, nor have you entered my clients' names on the property-card. Your attention is drawn to the provisions of Section 11 of the MOF Act read with Rule 9 of the MOF Rules, which prescribe four months as the time conveyance has to be executed. My clients state that various reasons like plot is not subdivided, owners are not co-operating, there are practical difficulties for builders, etc. have got no legal relevance, and the same have to be sorted out by you at your end in your capacity as builders. Needless to add that all costs for completing title is to be borne by the builder. Needles to add that in the event excess stamp-duty has to be paid, then the same has to be paid by you as this is a clear-cut case of negligence on your part.

48. My clients state that with regards to execution of conveyance, signature of my clients are not at all required. All the information pertaining to conveyance is with you and it is your statutory obligation to execute conveyance in favour of my clients and transfer the property-card in my clients' names. My clients further state that in the event you are not having any information, then you are requested to depute your representative who may contact my clients' representative and approach the individual flat-purchasers, and collect the information from the respective flat-purchasers. It is an admitted fact that you have signed the agreement, which is executed by you with the flat-purchasers. In view of the same, all the relevant papers, including payment of stamp-duty receipt, is already with you and in your possession. My clients will appreciate if you will send the draft of the conveyance deed. You are also informed that conveyance deed can be executed unilaterally by you. You are also aware that the same has to be obtained by you are your own cost within four months from the date of formation of the society. My client calls upon you to inform my clients as regards the daily progress done by you and your teammates handling the assignments from the date of formation of society till date, as regards conveyance of the property.

49. My clients state that it is necessary to get the property transferred in the name of the owners. My clients state that as the flat-purchasers have acquired their respective flats for a valuable consideration from you, my clients have become owners of the property, and it is your statutory obligation to ensure that the property is transferred in my clients' names.

50. My clients point out the judgment of the District Consumer Disputes Redressal Forum, Mumbai Suburban District on 01/07/2010 in Consumer Complaint No. 388 of 2008 in the case of Natalia Co-operative Housing Society Ltd. vs. M/s. Navbharat Development Corporation and Others, wherein builders have been directed to obtain, jointly and severally, full occupancy certificate and building completion certificate, to execute deed of conveyance in favour of the Society, to bear additional burden of stamp-duty while doing so, and to pay, if they fail to do so within 3 months, penalty of Rs. 500/- per day from expiry of the said 3 months. My clients state that there are a slew of similar judgments penalising builders for same and similar offences.

51. My clients would also appreciate if you will give to my clients, as is your duty, certified true copy of the below mentioned documents, namely:

- a)** Ledger Abstract of the property i.e. 7/12 Abstract.
- b)** Order issued by the competent authority as per the provisions of the Urban Land Ceiling Act.
- c)** Development Agreement executed by the developer with the land owners.
- d)** Copies of the Power of Attorney given by the owners in favour of the developers along with the copy of the registration receipt.
- e)** Intimation of disapproval from the Bombay Municipal Corporation Authorities.
- f)** Occupation Certificate.
- g)** Building Completion Certificate.
- h)** Approved plan of the building.
- i)** Chain of documents through which the vendor acquired the right, title and interest in the property.
- j)** Non-agricultural assessment order.
- k)** Non-agricultural tax paid receipts.
- l)** Title Clearance Certificate from the vendor's advocate.
- m)** Search report for the last 30 years with the search fees paid receipts.

OTHER DOCUMENTS BEING ASKED FOR BY MY CLIENTS:

52. My clients are, in their capacity as flat-purchasers, asking for the following documents from the builders:

- a.** architect's certificate for various stages of construction,
- b.** amenities as promised and/or shown in the original layout,
- c.** the nature of the title of the builders
- d.** all encumbrances on the land,
- e.** detailed information regarding nature of fixtures, fittings and amenities,
- f.** detailed information regarding materials to be used in construction,
- g.** agreement entered by builder/promoter with architects and contractors regarding design, materials and construction of building,
- h.** date by which possession of the flat is to be handed over,
- i.** list of flats with their numbers, price charged/agreed to be charged,
- j.** the nature of the organization of persons to be constituted and to which the title is to be passed,
- k.** all outgoings,
- l.** other information prescribed u/s. 3 of the MOF Act,
- m.** all the documents, plans and/or specifications at the site,
- n.** carpet area of the flat,
- o.** the price of the flats including the proportionate price of the common areas and facilities,
- p.** the nature, extent and description of the common areas and facilities,
- q.** liability of the promoter to construction the building according to the plans and specifications approved by the local authority,
- r.** undivided interest in the common areas and facilities appertaining to the flats agreed to be sold,
- s.** statement of the use of which the flats are intended and restrictions on each of their uses,
- t.** details of full and true disclosures of all transactions in respect of the said accounts,
- u.** alterations in the structures made with and/or without consent of the flat-purchasers,
- v.** names, addresses, telephone and e-mail contacts of all the relevant builder(s)/promoter(s)/vendor(s) associated with the project,
- w.** a draft of the agreement sought to be executed, which must include all the statutory clauses as provided in the Modal Agreement as per the Maharashtra Ownership of Flats Act,
- x.** copy of the bank pass book where the amounts are invested in a separate bank account,

- y.** _____ statutory registers namely Form-I, Form-II, Form-III, Form-IV as mentioned in Maharashtra Ownership Flats Rules
- z.** _____ audited statement of accounts
- aa.** _____ all documents of title relating to the land,
- bb.** _____ title certificate by advocate,
- cc.** _____ all documents relating to encumbrances over the land,
- dd.** _____ the building plans and specifications,
- ee.** _____ a list of the nature of fixtures, fittings and amenities,
- ff.** _____ property card,
- gg.** _____ 6/12 extract and 7/12 extract,
- hh.** _____ Index-II of the land,
- ii.** _____ particulars as respect the design,
- jj.** _____ materials to be used in the construction,
- kk.** _____ all agreements entered by the promoter with the architects and contractors regarding the design, materials and construction of buildings,
- ll.** _____ specific date on which possession shall be handed over,
- mm.** _____ all past and present lists of flats with their numbers, names and addresses of the parties, price charged or agreed to be charged, and terms and conditions on which the flats are taken or agreed to be taken,
- nn.** _____ the nature of the organization of persons to be constituted to which title is to be passed, and terms and conditions governing such organization of persons who have taken or are to take the flats,
- oo.** _____ date on which commencement certificate was obtained,
- pp.** _____ date on which building completion certificate is to be obtained,
- qq.** _____ copy of IOD,
- rr.** _____ full and true disclosure of all outgoings, other information and documents,
- ss.** _____ list of all amenities promised in the brochures (all, past and present), and all changes thereto,
- tt.** _____ draft of agreement in accordance with Form-V of the MOF Rules, 1964,
- uu.** _____ reasons why agreement in accordance with Form-V was not entered into to begin with,
- vv.** _____ details of separate bank account for advance/deposits taken,
- ww.** _____ details of disbursement of moneys collected in respect of the land/flats,
- xx.** _____ details of all transactions in respect of the bank account/moneys collected,
- yy.** _____ pass-book of the bank account, receipts, bills, tenders and/or quotations in respect of the land/plot/project,
- zz.** _____ putting up all documents, plans and/or specifications at the site and permitting inspection thereof,

- aaa.** ___ the carpet area of the flats,
- bbb.** ___ nature, extent and description of common areas and facilities,
- ccc.** ___ liability of the promoter to construction the building according to the plans and specifications approved by the local authority,
- ddd.** ___ specific percentage of undivided interest in the common areas and facilities appertaining to the flat agreed to be sold,
- eee.** ___ basis on which common area charges have been levied,
- fff.** ___ statement of the use of which the flat is intended and restriction of its use,
- ggg.** ___ all alterations in the structure/plan from the date of collecting first sum of money in respect of the structure/plan,
- hhh.** ___ all persons in the company being charge,
- iii.** ___ all correspondences, permissions, orders and any other documents with/from/by the ULC authorities,
- jjj.** ___ reasons why consent of my clients was not sought before altering the structure,
- kkk.** ___ complete set of structural drawings with structural calculations,
- lll.** ___ soil investigation report,
- mmm.** ___ environmental impact assessment report,
- nnn.** ___ details of car-parkings sought to be made, especially whether the car-parkings are in compliance with Table 15 of Regulation 36 of the Development Control Regulations,
- ooo.** ___ audited statement of accounts,
- ppp.** ___ statutory and non-statutory dues payable to the NMMC,
- qqq.** ___ demarcation of plot (fencing and boundary),
- rrr.** ___ check-zone from NMMC,
- sss.** ___ DP remarks,
- ttt.** ___ remarks of the Ministry of Environments and Forests as regards whether the land is a forest / private forest, etc.,
- uuu.** ___ Labour NOC,
- vvv.** ___ Coastal Regulation Zone NOC,
- www.** ___ Zone Conversion from NMMC,
- xxx.** ___ particulars regarding amalgamation of property,
- yyy.** ___ Survey of the plot to confirm existing ground level,
- zzz.** ___ Survey of the plot to confirm site elevation remarks,
- aaaa.** ___ Survey of the plot to confirm sewage line,
- bbbb.** ___ Survey of the plot to confirm over-head line,
- cccc.** ___ Survey of the plot to confirm MTNL line,
- dddd.** ___ Survey of the plot to confirm water line,

- eeee.** Survey of the plot to confirm road level,
- ffff.** evaluation of existing FSI and maximum usage / exploitation of plot,
- gggg.** type of additional FSI required / TDR arrangement, etc. and loading the same,
- hhhh.** structural consultant(s) for the project, along with particulars of their addresses, duration of involvement, fees charged from bank account / moneys of money-depositors,
- iiii.** services consultant(s) for the project, along with particulars of their addresses, duration of involvement, fees charged from bank account / moneys of money-depositors,
- jjjj.** environment consultant(s) for the project, along with particulars of their addresses, duration of involvement, fees charged from bank account / moneys of money-depositors,
- kkkk.** aviation consultant(s) for the project, along with particulars of their addresses, duration of involvement, fees charged from bank account / moneys of money-depositors,
- llll.** licensed plumber(s) for the project, along with particulars of their addresses, duration of involvement, fees charged from bank account / moneys of money-depositors,
- mmmm.** licensed site supervisor(s) for the project, along with particulars of their addresses, duration of involvement, fees charged from bank account / moneys of money-depositors,
- nnnn.** consent to establish from Maharashtra Pollution Control Board,
- oooo.** particulars of any public parking lot(s) on the land,
- pppp.** particulars of Tree NOC from Superintendent of Garden,
- qqqq.** bore-well permission,
- rrrr.** NOC for debris disposal,
- ssss.** CTS plans,
- tttt.** rain water harvesting system,
- uuuu.** non-agricultural permission,
- vvvv.** registered undertaking for agreeing to hand over set back area, if any,
- wwww.** indemnity bond for damages, risks and accidents,
- xxxx.** undertaking regarding no nuisance,
- yyyy.** NOC from Assistant Assessor and Collector of the NMMC
- zzzz.** NOC from pest control department,
- aaaaa.** insurance policy for workers,
- bbbbb.** certificate from structural engineer for complying with requirement for earthquake design,
- ccccc.** location clearance from Police,
- ddddd.** labour licenses,
- eeeee.** batching plant approval, if necessary, from SRA / NMMC, as the case may be,

ffff. ___ award of contract for construction,

ggggg. ___ water connection,

hhhhh. ___ electrical connection,

iiii. ___ drainage connection,

jjjj. ___ excavation permission,

kkkkk. ___ plinth-level inspection,

llll. ___ any and all relevant clearances / documents / NOC's / permissions / orders, etc. as the case may be from:

- i.** ___ Airport Authority of India,
- ii.** ___ Assistant Engineer Water Works,
- iii.** ___ Assessing Officer,
- iv.** ___ Bank,
- v.** ___ Fire Officer / Fire Department / Fire Brigade,
- vi.** ___ Forest Department / Ministry,
- vii.** ___ Coastal Regulation Zone Authority,
- viii.** ___ Maharashtra Coastal Regulations Management Plan Authority,
- ix.** ___ Executive Engineer,
- x.** ___ Heritage Conservation Committee,
- xi.** ___ Hydraulic Engineer,
- xii.** ___ High Rise Committee,
- xiii.** ___ Licensed Surveyor,
- xiv.** ___ Navi Mumbai Municipal Corporation / Municipal Corporation of Greater Mumbai, as the case may be
- xv.** ___ Maharashtra Housing and Area Development Authority
- xvi.** ___ Mumbai Metropolitan Region Development Authority,
- xvii.** ___ Ministry of Environment and Forests,
- xviii.** ___ Maharashtra Pollution Control Board,
- xix.** ___ Municipal Retail Market,
- xx.** ___ Maharashtra Tourism and Development Corporation,
- xxi.** ___ National Building Code of India,
- xxii.** ___ Registrar of Companies,
- xxiii.** ___ State Expert Appraisal Committee,
- xxiv.** ___ Slum Rehabilitation Authority,
- xxv.** ___ Town Planner,

- xxvi. District Collector's Office,
- xxvii. Gram Panchayat's Office,
- xxviii. Tahsildar's Office,
- xxix. Talathi's Office,
- xxx. DSLR's Office,
- xxxi. Sub-Registrar's Office,
- xxxii. Railway authority / authorities,
- xxxiii. Sewerage and Water Drainage department,
- xxxiv. Mechanical and Electrical Engineer of the NMMC,
- xxxv. all Police departments

EXEMPTIONS AS WELL AS VIOLATIONS OF THE TERMS AND CONDITIONS UNDER ULC:

53. My clients understand that when you claimed exemption from ULC, you have given an undertaking that you will be conveying the property in favour of the legal entity, i.e., the co-operative housing society. My clients also request you to give copies of all correspondence exchanged between you and the Urban Land Ceiling authorities. My clients have reasons to believe that the various acts of yours are in utter violation to the submissions as well as declarations given by you to the ULC Department.

OPEN / PARKING SPACES:

54. My clients state that you do not have any right of any nature whatsoever to collect money and allot car parking spaces, stilt parking spaces, etc. to a person of your choice. Attention of yours is drawn to the Supreme Court judgment by Justice R. M. Lodha on 31/08/2010 in Civil Appeal No. 2544 of 2010 in the case of Nahalchand Laloochand Pvt. Ltd. vs. Panchali Co-operative Housing Society Ltd. wherein the following points of the High Court were upheld:

- The carpet area of any of the 56 flats/tenements in Panchali building is not less than 35 sq. mtrs.
- The parking space either enclosed or unenclosed, covered or open cannot be a 'building'.
- It is compulsory requirement to provide for parking spaces under DCR.
- It is obligatory on the part of the promoter to follow the DCR. The agreement signed under MOFA between the developer and the flat purchaser must be in conformity with the model form of agreement (Form V) prescribed by the State Government.

- The model agreement does not contemplate the flat purchasers to separately purchase the stilt parking spaces.
- The rights arising from the agreement signed under the MOFA between the promoter and the flat purchasers cannot be diluted by any contract or an undertaking to the contrary. The undertakings contrary to DCR will not be binding either on the flat purchasers or the Society.
- The stilt parking space is a common parking area available and the developer is obliged to provide the same under the DCR when the carpet area of the flat is 350 sq. meters. It is not an additional premises/area that he is authorized to sell either to flat purchaser or any outsider. It is part and parcel of the Society building and it cannot be a separate premises available for sale. As soon as the Corporation issues the occupation certificate and the Society is registered, the building as well as the stilt parking spaces, open spaces and all common amenities become the property of the Society.
- The stilt parking spaces cannot be put on sale by the developer as he ceases to have any title on the same as soon as the occupation certificate is issued by the Corporation and it becomes the property of the society on its registration.
- The stilt parking spaces cannot be termed as 'open/covered garages' and Clause 2 of the Model Agreement—Form V provides for sale of covered/open garage in addition to the flat/shop.
- It is immaterial if the purchase agreement does not include stilt car parking spaces in the common area of amenities. The stilt car parking spaces is part of the common amenities and it cannot be treated to be a separate premises/garage which could be sold by the developer to any of the members of the society or an outsider.
- Under MOFA, the developer's right is restricted to the extent of disposal of flats, shops and/or garages, which means that any premises which is included in the Flat Space Index (FSI) can be sold by the developer/promoter. The stilt parking space is not included in the FSI nor is it assessable for the Corporation taxes.

55. My clients also point out the judgment delivered by the Maharashtra State Co-operative Appellate Court at Mumbai through Justice V. Nirgude on 04/03/2002 in A.O. No. 86 of 2001 in the case of M/s. Prakash Auto vs. Arenja Arcade Premises Co-operative Society Ltd. & Others wherein it has been held that the purchaser of open car-parking space or the purchaser of basement does not get title to the car-parking space in the open space and / or the basement.

56. Attention of yours is also drawn to Table 15 of the Development Control Regulations which prescribes parking for the various flats.

NO RIGHTS IN FSI, TDR OR FUNGIBLE FSI ONCE FLAT IS SOLD:

57. My clients state that once the property is sold, you cannot stake any claim and you do not have any right of FSI, TDR or Fungible FSI components which have accrued with the passage of time, particularly after selling the flats to the first flat-purchaser of the building. My clients have reasons to believe that you cannot exploit TDR benefits and FSI benefits for your financial gains. My clients call upon you not to utilize FSI rights and TDR rights of the property.

JUDGMENTS RELIED UPON:

58. My clients would like to rely upon the following judgments:

<p>Supreme Court : Civil Appeal No. 12984 of 1999 decided on 01/11/2004 by Chief Justice R. C. Lahoti and Justice Ashok Bhan in the case of Friends Colony Development Committee vs. State of Orissa and Others</p>	<p>Only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding ... Other than these, deliberate deviations do not deserve to be condoned and compounded ... A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future ... the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilized for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demotion of illegal buildings ... The application for compounding the deviations made by the builders should always be dealt with at a higher level by multi-membered High Powered Committee so that the builders cannot manipulate.</p>
<p>Metropolitan Magistrate, 22nd Court, at Andheri, Mumbai : On 18/02/2003 in case No. 276/S/86 where complainant was Amar Ganesh Joshi, Hon. Secretary, Torana Co-operative Society Ltd. against the accused, Shri Hiraji Dinanath Jamsandekar and Smt. Hemlata Hiraji Jamsandekar for the offences u/ss. 3, 4, 5, 10, 11 and 13 of the MOF Act and Rules thereunder</p>	<p>Imposition of fine only will not be a proper sentence in this case. One of the purpose of the punishment is also to send a signal to persons who are holding intention of similar kind.</p>
<p>Bombay High Court (Civil Appellate Jurisdiction) : by Justice R. L. Aggarwal decided on 09/02/1982 in Appeal No. 575 of 1982 heard with Appeal No. 875 of 1982 in the case of Smt. Neena Sudarshan Wadia vs. M/s. Venus Enterprises & Others</p>	<p>A blanket consent or authority obtained by a promoter at the time of entering into an agreement for sale or at the time of handing over possession is not the consent contemplated by Section 7(1)(i) or (ii) for such a blanket consent or authority would sew up or nullify these provisions ... These defendants cannot under the cloak of the blanket consent obtained under the proforma agreement for sale carry out the work of additional structures and thus set at naught the provisions of Section</p>

	7(1)(ii).
District Consumer Disputes Redressal Forum, Mumbai Suburban District : on 01/07/2010 in Consumer Complaint No. 388 of 2008 in the case of Natalia Co-operative Housing Society Ltd. vs. M/s. Navbharat Development Corporation and Others	Builders have been directed to obtain, jointly and severally, full occupancy certificate and building completion certificate, to execute deed of conveyance in favour of the Society, to bear additional burden of stamp-duty while doing so, and to pay, if they fail to do so within 3 months, penalty of Rs. 500/- per day from expiry of the said 3 months
Supreme Court : by Justice R. M. Lodha on 31/08/2010 in Civil Appeal No. 2544 of 2010 in the case of Nahalchand Laloochand Pvt. Ltd. vs. Panchali Co-operative Housing Society Ltd.	Parking cannot be sold
Maharashtra State Co-operative Appellate Court, at Mumbai : through Justice V. Nirgude on 04/03/2002 in A.O. No. 86 of 2001 in the case of M/s. Prakash Auto vs. Arenja Arcade Premises Co-operative Society Ltd. & Others	The purchaser of open car-parking space or the purchaser of basement does not get title to the car-parking space in the open space and / or the basement
Bombay High Court (Ordinary Original Civil Jurisdiction) : Justices F. I. Rebello and S. R. Sathe on 23/07/2004 in Writ Petition No. 1304 of 2004 in the case of Sky Anchorage Co-operative Housing Society Ltd. and another vs. Municipal Corporation of Greater Mumbai and another	... it is clear that open spaces are meant for the benefit of all persons who are entitled to the benefit under the development plan, and no single individual can appropriate any part of the same
Bombay High Court (Civil Appellate Jurisdiction) : Justice R. J. Kochar on 07/02/2002 in Civil Writ Petition No. 5319 of 2001 in the case of Kokila Shah vs. State of Maharashtra and Others	The requirement of a proposed Society is only a part of guidelines policy and not a statutory limit
Maharashtra State Consumer Disputes Redressal Commission : on 25/02/2005 in Complaint No. 60 of 2003 in the case of Mrs. Annapurna Digambar Dhande vs. Shri Bhanuprakash Khandelwal and another	Court commissioner is appointed to inspect structural defects
Supreme Court of India (Civil Appellate Jurisdiction) : on 12/08/1999 in Civil Appeal No. 2418 of 1969 in the case of Lata Construction and Others vs. Dr. Rameshchandra Ramniklal and another	Cause of action is continuous and nature therefore claim is not barred by limitation
National Consumer Disputes Redressal Commission : on 20/10/2003 in First Appeal No. 347 of 1999 in the case of M/s. Sharma Properties Pvt. Ltd. vs. Prerna Co-operative Housing Society Ltd.	Society was entitled to all expenses it incurred, plus costs, with interest at 18% per annum from the date of complaint till recovery ... Builder to obtain occupancy certificate within 4 months from the date of Order, failing which he shall pay a penalty of Rs. 250/- per day from expiry of the said 4 months
Bombay High Court (Civil Appellate Jurisdiction) : on 07/10/2010 in First Appeal No. 786 of 2004 with No. 989 of 2004 in Madhuvihar Co-operative Housing Society Ltd. & Others vs. M/s. Jayantilal Investments	Conveyance to take place ... Builder is restrained from erecting any additional structure over the property ... Court commissioner is appointed

& Others	
Maharashtra State Consumer Disputes Redressal Commission : on 27/12/2010 in Consumer Complaint No. 7 of 2000 in the case of Pradip Kumar Roy & another vs. M/s. Ravi Ashish Land Developers Ltd. & another	Builders are directed to pay a sum of Rs. 5 lakhs as compensation for mental harassment and various deficiencies, to pay Rs. 1,000/- per day from 01/08/1998 till actual procurement of occupancy certificate, to pay Rs. 25,000/- as costs
Bombay High Court (Civil Appellate Jurisdiction) : on 14/01/2010 by Justice C. L. Pangarkar in Appeal from Order No. 1195 of 2009 in the case of M/s. Noopur Developers vs. Himanshu Ganatra & Others	Builder cannot carry out construction without consent of flat-purchasers once co-operative society is formed
Thane Additional Consumer Grievances Redressal Forum, Konkan Bhavan, Thane : on 19/09/2008 in Environ Emanuel Co-operative Housing Society Ltd. vs. The Environ Enterprises INC	Builder must register the conveyance deed in favour of the society within 2 months from date of order ... Order within 128 days from filing
Bombay High Court (Ordinary Original Civil Jurisdiction) : on 27/06/2011 by Justice Roshan Dalvi in Notice of Motion No. 2327 of 2000 in Suit No. 3323 of 2000 in the case of Ratna Rupap Co-operative Housing Society Ltd. vs. Rupa builders & Others	No layout plan showing a scheme of development approved by the MMC is produced ... Therefore, there can be no mistaking that the entire plot of land on which the Plaintiff's building was constructed had to be conveyed by the Defendants to the Plaintiff.
South Mumbai District Consumer Disputes Redressal Forum : on 23/06/2010 in Execution Application No. 14 of 2008 in Complaint No. 243 of 2006 in the case of Malad Dipti Apartments Co-op. Housing Society Ltd. vs. M/s. Gariba Construction Co. Proprietor, Shri Bimal Gariba	Builders are directed to take immediate steps to handover conveyance of the society property in favour of the society, occupancy certificate to be obtained and costs imposed

OBLIGATIONS UNDER THE NEW REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016:

59. The following are obligations of the builder under the new Act which replaces MOF Act:

- a.** **Section 3:** To get the project registered with the regulatory authority
- b.** **Section 3:** Not to advertise or make offer for sale without registering the project
- c.** **Section 4:** To keep 70% of the amount received in separate bank account
- d.** **Section 11:** To create a webpage and display the project
- e.** **Section 11:** To make available certain documents at the time of booking and issue of allotment letter
- f.** **Section 11:** To obtain the building completion and occupancy certificates
- g.** **Section 11:** To obtain lease certificate

- h. _____ Section 11:** To enable formation of association or society of the allottees or a federation of the same
- i. _____ Section 11:** To provide essential services till handing over to the association of allottees
- j. _____ Section 11:** To execute conveyance in favour of allottees and their association
- k. _____ Section 11:** Pay all outgoings till transfer of physical possession
- l. _____ Section 11:** Not to create any charge after execution of agreement for sale
- m. _____ Section 12:** To ensure veracity of advertisement
- n. _____ Section 13:** Not to accept deposit of advance exceeding 10% of cost without executing agreement to sell
- o. _____ Section 14:** To adhere to sanctioned plans and project specifications
- p. _____ Section 15:** Not to assign his majority rights and liabilities to a third-party
- q. _____ Section 16:** To get the project insured
- r. _____ Section 18:** To refund the amount received in case of failure to give possession in time
- s. _____ Section 18:** To compensate the allottee for loss due to defective title of the land

LEGAL NOTICE:

60. By this legal notice for and on behalf of my clients, I hereby call upon you, the builders, to comply with the abovesaid submissions immediately. My clients further submit that the mental torture that has been caused, and the risk that may be caused, to them cannot be expressed in words. My clients further inform you that if within 15 days you do not comply with the abovementioned submissions, then my clients will move a claim of Rs. _____ (Rupees _____ Only) from you for the deficiency in service, unfair trade practices and negligence committed by you, as well as compensation. Please note that this is besides initiating appropriate civil and criminal action against you and all the directors/partners of the company/firm and also against all the responsible officers of the company/firm at your risk and costs which may kindly be noted. My clients state that they have been given to understand that individual flat-purchasers of the building would also be claiming compensation from you for the mental torture, etc. that is being caused to them by your acts of omission and commission.

FROM

ADV. VINOD C. SAMPAT

Draft approved and posted by clients:

For and on behalf of ___ Co-operative Housing Society Ltd.:

Name	Contact	Signature
(Secretary)		
(Chairman)		
(Treasurer)		

Enclosed:

Schedule of the property

Adv. Vinod C. Sampat B. Com. (Hons.), L. L. B.	
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NOTICE FOR CONVEYANCE: List of things required from client:
THINGS REQUIRED
<p>Address a letter to builder, asking for:</p> <ul style="list-style-type: none"> • Full and true disclosure of the nature of his title to the land on which the flats are construction, or are to be constructed, which is duly certified by an advocate of not less than 3 years standing. The title must also be duly entered in the property card or extract of Village Forms VI or VII and XII or any other relevant revenue record • True copy of a title certificate by an Attorney-at-law or Advocate of not less than 3 years standing • True copy of title relating to the land on which the flats are constructed or are to be constructed • Full and true disclosure of all encumbrances on such land, including any right, title, interest or claim of any party in or over such land • True copy of all documents relating to encumbrances on such land including any right, title, interest or claim of any party in or over such land • Inspection on seven days' notice or demand of the approved plans and specifications of the building built or to be built on the land • True copy of a list of fixtures, fittings and amenities provided or to be provided • If promoter is himself the builder, disclosure of the prescribed particulars as respect the design and materials to be used in construction of the building, and if the promoter is not himself the builder, disclosure of all agreements (and details of unwritten agreements) entered into by him with architects and contracts and others regarding the design, materials and construction of the building, • Specific date (in writing) by which possession of the flat is to be handed over, • List of flats with their numbers already taken or agreed to be taken, and the names and addresses of the parties, and the price charged or agreed to be charged therefor, and the terms and conditions if any on which the flats are taken or agreed to be taken, • The precise nature (in writing) of the organization of persons to be constituted and to which title is to be passed, and the terms and conditions governing such organization of persons who have taken or are to take the flats, • Whether builder has allowed persons to enter into possession until a completion certificate (if required by law) is duly given by the local authority, and whether any person has taken possession of a flat without obtainment by the builder from the BMC of a completion certificate, • Full and true disclosure of all outgoing (including ground rent if any, municipal or other taxes, taxes on income, water charges and electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any), • Full and true disclosure and true copies of such other information and documents in such manner as may be prescribed, • A declaration / statement stating, "No other document remains or is required to be disclosed" • Disclosure of carpet-area of the flat including area of balconies shown separately • Disclosure of the price of the flat including the proportionate price of the common areas and facilities which should be shown separately, to be paid by the purchaser of flat and the intervals at which the instalments thereof may be paid • Complete and absolute disclosure of the nature, extent and description of common areas and limited common areas • (to Competent Authority letter + RTI) disclosure of all transactions in respect of separate bank account for sums taken as advance or deposit, disbursed for the purpose for which they were taken

<ul style="list-style-type: none"> • (to builders) disclosure of all transactions in respect of separate bank account for sums taken as advance or deposit, disbursed for the purpose for which they were taken by the builder as a trustee • Building completion and occupancy certificates, or reasons why they have not been obtained • Form-I, Form-II, Form-III, Form-IV of MOF Rules • Steps taken by builder for formation of society
Details as regards recreational ground area
Regarding agreement: <ul style="list-style-type: none"> • Has more than 20% of sale price been collected without registered agreement? • Has agreement, after being executed, been registered within time prescribed by Registration Act? (4 + 4 months with penalty) • If agreement presented for registration, but party/valid representative not present, has summons been served by registering officer? What is its status? If still not appeared after summons, is it deemed to be admitted? If present, but execution is denied, what is status?
Has builder delayed possession?
Have there been defects in building within 3 years of possession?
Has builder, without consent, created mortgage on flat after execution of agreement?
Has builder sold parking?
How many buildings are there in the project?
Are there any court cases pending against the builder?
Have any lien letters been received from the builder for not transferring flats?
Is the property freehold or leasehold? If leasehold, what is the lease rate per annum and duration of the lease?
Copy of bye-laws
Society resolution
All names and addresses of partners / directors
Property card standing in whose name?
Details of how many members have not paid stamp duty, and how many have not registered their agreements
Has area above water tank been kept vacant
Name and address of builder's architect