

WESTERN INDIA REGIONAL COUNCIL
OF THE INSTITUTE OF
CHARTERED ACCOUNTANTS OF INDIA

WORKSHOP ON DRAFTING OF
AGREEMENTS, DEEDS AND DOCUMENTS

Date : 7th February, 2016 Time: 11.15 a.m. to 12.15 p.m.
Venue : J.S. Lodha Auditorium, ICAI Bhavan, Colaba,
Mumbai – 400 005.

Topic : **DRAFTING OF DOCUMENTS RELATING TO
REDEVELOPMENT OF PROPERTIES OF CO-OPERATIVE
SOCIETIES**

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Societies to be bodies corporate

According to Sec. 36 of The Maharashtra Co-operative Societies Act, 1960

“The registration of a society shall render it a body corporate by the name under which it is registered, with perpetual succession and as common seal, and with power to acquire, hold and dispose of property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all such things as are necessary for the purpose for which it is constituted.”

On registration the society acquires legal status. Thereafter the society has its own name, a seal and perpetual succession. The Society can acquire, hold and dispose of properties, enter into contracts and it can sue and it can be sued. In Maharashtra the administration of the Society is subjected to the legal control and checks provided in Maharashtra Co-operative Societies Act, 1960.

New Model Bye-Laws

Bye Law No.73. Incorporation:

“The registration of the Society shall render it a body corporate by the name under which it is registered, with perpetual succession and common seal and with power to acquire, hold and dispose of the property, to enter into contracts and other legal proceedings and to do all such things as are necessary for the purpose for which it is constituted.”

Bye Law No.74. Common Seal:

“The common seal of the Society shall be in the custody of the Secretary of the Society and shall be used under the authority by means of a resolution of the Committee and the deeds of conveyance, share certificate or any other documents, to which the seal is affixed on behalf of the Society, shall be attested by the Chairman, the Secretary and one member of the Committee

authorised by the Committee in that behalf along with their name and designation.”

HOW THE SOCIETY BECOMES OWNER OF THE LAND AND THE BUILDING ?

There are basically two ways in which the Society can become the owner of the plot of land and the building thereon. **Firstly** the society itself purchases the plot of land and constructs building thereon out of the funds contributed by its members and allots the flats and other premises in the building to its members and **Secondly** the society becomes the owner of the plot of land with the building thereon by virtue of conveyance executed in favour of the society in pursuance of various agreements for sale of flats and other premises etc. on ownership basis under the Maharashtra Ownership Flats Act, 1963 executed between the Developer/ builder and individual purchasers of flats etc. who are the members of the Society.

NEED FOR REDEVELOPMENT OF PROPERTY OF CO-OPERATIVE SOCIETIES

In the city of Mumbai and various other cities several buildings owned by the co-operative societies have become very old and are in dilapidated conditions. In spite of incurring various huge expenses for heavy repairs the life of such buildings cannot be increased much. Therefore the best option is to demolish such old buildings and construct new building in place thereof by taking advantage of Fungible F.S.I., use of T.D.R., etc. and various other benefits in accordance with Development Control Regulations and Rules, Regulations of MHADA wherever applicable (in case of land owned by MHADA).

STEPS TO BE TAKEN IN THE AGREEMENT FOR DEVELOPMENT WITH THE DEVELOPERS

To ensure proper development of the property of co-operative societies the Government of Maharashtra has issued Circular dated 3rd January, 2009 by way of Directive under Section 79 (A) of Maharashtra Co-operative Societies Act, 1960. It is necessary to comply with the procedure prescribed under this Circular for redevelopment of the property of co-operative societies.

PERMISSION OF REGISTRAR OF CO-OPERATIVE SOCIETIES BEFORE EXECUTION OF DEVELOPMENT AGREEMENT

CONSIDERATION TO BE TAKEN FROM THE DEVELOPERS

I. Monetary Consideration for utilising the balance F.S.I. of the Society and getting the permission of the Society to consume and utilise T.D.R. (to be acquired by the Developers at their own cost)

- Monetary consideration payable to society only.
- Monetary consideration payable partly to the society and partly to the members.

II. Consideration by way of Developers at their own cost carrying out necessary repairs and renovation of the existing building of the Society, providing lift, making garden, swimming pool, children play ground etc.

- Repairs and/or providing some amenities in the existing flats of the members of the Society.

III. Consideration by way of providing new flat in the new building having more area than the area of the existing flats of the members of the society or providing extra room to the existing flat.

IV. Consideration by way of payments to the all the existing members of the society by way of compensation for the personal inconvenience caused to them during the period of construction.

VARIOUS DOCUMENTS TO BE EXECUTED IN CONNECTION WITH REDEVELOPMENT OF PROPERTY OF CO-OPERATIVE SOCIETIES

- Agreement for Development between the Society and the Developers
- Power of Attorney by the Society in favour of the Developers
- Deed of Indemnity by the Developers in favour of the Society in pursuance to the Power of Attorney in favour of the Developers
- Declaration and Deed of Indemnity by the Society
- Affidavit of Consent by the members of the Society
- Tripartite Agreement for Alternate Accomodation between the Society, the Developers and the Member of the Society

AGREEMENT FOR DEVELOPMENT

Important Clauses to be included in Agreement for Development in respect of the redevelopment of the Society's Property

1. PLOT AREA AND PERMISSIBLE T.D.R.:

Get the plot area (including area of the old building) duly verified by the Developers on the basis of the documents of title, revenue records (7/12)

Extracts, P.R. Card) and physical survey. The Developers must confirm that they have verified the area of the plot and found the same to be _____ sq.mtrs. and they have also ascertained that they can consume and utilise _____ sq.mtrs. F.S.I. of the plot + 0.35 Fungible F.S.I. in respect of T.D.R. on the plot of the Society.

2. NEW BUILDING - WHETHER ONLY RESIDENTIAL OR RESIDENTIAL – CUM – COMMERCIAL:

It must be made very clear from the beginning whether the new building shall be completely only residential or partly residential and partly commercial and members specific consent about the same must be obtained in the initial Special General Body Meeting.

3. DETERMINATION OF MONETARY CONSIDERATION IN THE FORM OF CORPUS / HARDSHIP COMPENSATION AND PAYMENT SCHEDULE:

The total monetary consideration in the form of corpus to the Society and corpus / hardship compensation to the members for the hardship, inconvenience, etc during the course of construction to the members of the Society should be worked out on the basis of the area of the plot area of the flat of each of the member.

Timely payment of such corpus to the Society and corpus / hardship compensation to the members should be ensured – preferably 50 % of such amount should be payable at the time of entering into Agreement for Development and remaining 50 % at the time of members vacating their old flats and handing over possession of the old building to the Developers.

4. APPOINTMENT OF ARCHITECT, R.C.C. CONSULTANTS ETC.:

Society to appoint Architect, R.C.C. consultant etc. as suggested by the Developers – provided that the cost charges, expenses and professional fees of such Architect, R.C.C. consultant etc. shall be borne and paid by the Developers alone and Society shall not be responsible for the same

Also specify that Society if so desire shall be entitled to appoint its own Architect, Site Supervisor at its own cost to ensure the quality and timely construction of new building.

5. PURCHASE OF T.D.R.:

When the T.D.R. will be purchased ? Society should insist for purchase of T.D.R. by the Developers in the name of the Society before old building is demolished – Developers submit plans with use of T.D.R.

6. SANCTION OF BUILDING PLANS AND VARIOUS PERMISSIONS:

- Time limit for providing basic plans with two/three options to the Society for the consideration of the Society and its members – Society
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to give its suggestions for any change in such plan within _____ days
– such suggestions to be incorporated in the plans and thereafter the
plans to be submitted to MCGM and other Authorities.

- Time Limit for submission of building plans and obtaining I.O.D.
from the M.C.G.M.
- Time limit for sanction of building plans and obtaining C.C.
- Developers to obtain all the necessary permissions for redevelopment
and construction of new building within _____ days from the date of
Agreement.

7. LIST OF AMENITIES :

It is advisable for the society to get the complete list of the amenities
annexed to the Offer Letter of the Developers. In the event of any change in
the list of the amenities same should be mentioned in the society's Letter
appointing the Developers. The List of the Amenities should be annexed to
the Agreement for Development. – Height of the New Flats

8. SOCIETY'S OFFICE :

Society to ensure construction of one office for the Society by the
Developers at appropriate place and get the same approved in building plans.
Also clarify whether the Developers will provide any furniture, fixtures, etc.
in such office.

**9. NEW FLATS TO BE GIVEN TO THE EXISTING MEMBERS OF
THE SOCIETY - EXTRA AREA IF REQUIRED BY MEMBERS TO
BE PURCHASED:**

- Existing carpet area of the old flats and how much additional carpet
area to be given ? Get the areas of the old flats measured with plans
and the list of the same should be signed by the Society, Members and
the Developers.
- Clarity about nitch area, flower bed area, cupboard area etc.
- Payment of compensation for increase or decrease in the area of the
new flat due to planning constraint (standard size of the new flats).

10. PARKING:

- Clarity about allocation of parking – i.e. Open Car Parking, Stilt Car
Parking, Podium Parking between the Society (for allotment to
existing members) and the Developers (for allotment to the purchasers
of the new flats from the Developers).
 - Provision for allotment of parking coming to the share of the Society
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– If enough parkings – if less no. of parkings than the no. of members of the Society.

11. TEMPORARY ALTERNATE ACCOMMODATION

- Clarity about the temporary alternate accommodation to the members of the Society – whether Developers will provide or the members themselves to arrange.
- Period for which the temporary alternate accommodation is to be arranged – whether any extension required?
- Payment of monthly rent / compensation – whether single cheque for the first year or post dated monthly cheques? – post dated cheques for second year and third year
- Payment of deposit and brokerage for obtaining temporary alternate accommodation – brokerage for the second year and third year.
- Payment of shifting charges to move to the temporary alternate accommodation and afterwards to shift to the new flat.

12. DEMOLITION OF OLD BUILDING

- When the existing members of the Society to vacate their old premises and shift to the temporary alternate accommodation? – Developers to give to the Society and members 30 days / 60 days notice to vacate after obtaining I.O.D. from M.C.G.M.
- When the existing old building to be demolished?
- Who will be entitled to the debris of the old building?

13. CONSTRUCTION OF NEW BUILDING AND COMPLETION OF DEVELOPMENT

- Time limit for completion of construction of new building from the date of obtaining Commencement Certificate from M.C.G.M. subject to :
- Grace period of 3 to 6 months for circumstances beyond the control of Developers.
- Damages for delay – per day / per month (also provide for payment of rent / compensation of Temporary Alternate Accommodation at higher rate as per prevailing market conditions due to delay)

- Construction strictly as per sanctioned plans – in case of any amendment affecting the flats and premises to give to the members of the Society prior written consent of the Society should be obtained by the Developers.
- Time limit for obtaining Occupation Certificate.
- Time limit for obtaining Building Completion Certificate from the date of issue of Occupation Certificate.

14. SECURITY DEPOSIT / BANK GUARANTEE:

To ensure timely and quality construction of new building the Society should insist for the Security Deposit or Bank Guarantee from the Developers. The release of the Bank Guarantee should be on the pro-rata basis as per the progress of the new building. Preferably about 25 % / 30 % of the amount of Bank Guarantee should be released upon obtaining O.C. of the new building – and provision of various other services / facilities such as piped gas, etc..

15. LOAN / FINANCIAL ASSISTANCE TO BE OBTAINED BY THE DEVELOPERS:

Better to provide that the Developers shall not obtain any bank loan or financial assistance from any institution. However if Developers wants to take any loan charge should be only on the sale portion of the new building and the Developers alone shall be liable for repayment of such loan with interest thereon and the Society and its existing members not liable for the same.

16. ALLOTMENT OF NEW FLATS TO THE EXISTING MEMBERS OF THE SOCIETY :

- Clarity about allotment of new flats and other premises in the new building to the existing members of the Society. Proper method of allotment/formula should be finalised in the Society's meeting in advance. The Society and the Developers to finalise the allotment of respective flats within 15 days from the sanction of the building plans. – Thereafter in next 15 / 30 days the Society to finalise the allotment of new flats to the existing members.
- Clarify about road - facing Flats, Flat / Shops on the Ground Floor.
- It is advisable if after issue of I.O.D. allocation of flats and premises is made between the Society and the Developers – It will facilitate better drafting of Tripartite Agreement for Alternate Accomodation.

17. POSSESSION OF THE NEW FLATS / SHOPS TO THE EXISTING MEMBERS OF THE SOCIETY :

Clearly provide in the Agreement for Development that till the possession of new flats and other premises are given to members of the Society the

Developers shall not be entitled to give the possession of flats and other premises in the new building to the purchasers from the Developers.

18. DRAFTING OF AGREEMENT FOR SALE OF THE FLATS AND OTHER PREMISES IN THE NEW BUILDING :

Clearly provide in the Agreement for Development that the Agreement for sale of the premises in the new building to the purchasers from the Developers shall be prepared by the Advocates & Solicitors for Developers. However the draft of such agreement should be furnished to the Society to ensure the rights of the Society and its members and any suggestions by Advocates & Solicitors for the Society shall be incorporated in the Agreement for Sale of Premises. – provide for joint meetings to finalise the draft of Agreement for Sale of flats and other premises by the Developers.

19. DEVELOPERS ALONE RESPONSIBLE FOR TERMS AND CONDITIONS OF AGREEMENT FOR SALE OF FLATS AND OTHER PREMISES :

The Developers alone shall be liable and responsible to comply with the terms and conditions of Agreement for Sale of flats and other premises with purchasers of flats and other premises from the Developers – Society and its existing members not responsible for the same.

20. ADMISSION OF PURCHASERS OF FLATS AND OTHER PREMISES IN THE NEW BUILDING FROM THE DEVELOPERS:

Clearly provide that the purchasers of the flats and other premises from the Developers shall be admitted as the members by the Society only after the possession of the new flats and other premises are given to the members of the Society. – Also clarify the amounts to be paid by such purchasers to the Society

- (a) Rs. _____/- Entrance Fees
- (b) Rs. _____/- Share Money
- (c) Rs. _____/- towards Sinking Fund of the Society (to equalise the same)

21. DEVELOPERS TO DEVELOP THE SOCIETY'S PROPERTY AT THEIR OWN RISK, COST, CHARGES AND EXPENSES:

Clearly provide in the Agreement for Development that the entire development of the Society's property and construction of the new building shall be done by the Developers at their own risk, cost, charges and expenses and the Society and its members shall not be responsible for the same in any manner.

22. DEVELOPERS ALONE LIABLE AND RESPONSIBLE TO COMPLY WITH THE TERMS AND CONDITIONS OF VARIOUS PERMISSIONS, ORDERS, APPROVALS ETC. FOR DEVELOPMENT.

23. INCOME TAX AND OTHER TAXES LIABILITY:

Each party to bear and pay its respective Income Tax and other Taxes Liability.

24. PAYMENTS OF ALL THE TAXES AND OUTGOINGS:

The Society shall be liable and responsible for payments of all the taxes and outgoings for the period till handing of possession of old building – thereafter the Developers alone shall be liable and responsible for payment of all the taxes and outgoings.

25. INSURANCE POLICY:

The Developers at their own cost and expenses to take proper insurance policies for all risks during the course of construction / redevelopment i.e. Workmen's compensation, third party risks, etc.

26. DEVELOPMENT RIGHTS NON – TRANSFERABLE – PERFORMANCE GUARANTEE BY DIRECTORS OF DEVELOPERS:

The Developers shall not be entitled to assign the benefit of the development rights granted to them. – In case of Developers being a limited company the directors of the Developers should execute their Personal Performance Guarantee in favour of the Society.

27. PAYMENT OF PROFESSIONAL FEES, ETC. OF RESPECTIVE ADVOCATES & SOLICITORS BY THE SOCIETY AND THE DEVELOPERS:

Each of the Society and the Developers shall bear and pay the professional fees, cost, charges and expenses of their respective Advocates & Solicitors.

28. SERVICE TAX, MVAT, L.B.T., ETC. LIABILITY:

- Specifically clarify in the Agreement for Development that the entire liability of payment of any Service Tax, MVAT, LBT or other taxes in respect of the Agreement for Development and in respect of the development of the Society's property by the Developers and providing flats and other premises to the members of the Society shall be that of the Developers alone.
- If Service Tax, MVAT, LBT, etc. is to be paid by the members of the Society it must be clearly provided.

29. EXTRA / ADDITIONAL F.S.I.:

Clarity about use of any extra / additional F.S.I. by the Developers and payment for the same by the Developers.

30. **TITLE – PUBLIC NOTICE:**

31. **PENALTY:**

32. **STAMP DUTY AND REGISTRATION CHARGES:**

Clearly provide that the stamp duty and registration charges in respect of the Agreement for Development, Tri-partite Agreement with the Members in respect of the new flats and other premises, etc. to be borne and paid by the Developers alone.

33. **ARBITRATION:**

