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April 2024

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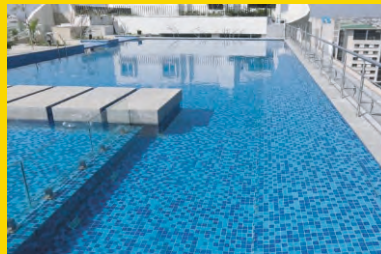


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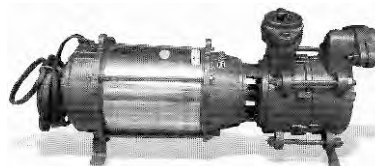


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CA. Ramesh S. Prabhu
Chairman, MahaSewa

Dear Members,

I wish one and all a Happy and successful financial and cooperative year 2024-25!!!

I am sure all of you would have accomplished your financial targets and achieved your compliances for the last year. The accounts of the housing societies would have also been closed to send it to their auditor for preparation of the balance sheet, profit and loss statement and audit report. It is apt to mention here that the auditor is required to submit the audited financials on or before the 31st of July 2024.

Further, the society is required to conduct their Annual General Meeting on or before 30th September 2024 to approve the same. Furthermore, the society shall file their audit rectification report on or before 31st October 2024, based on the audit remarks raised by the auditor in the audit report. On the MahaRERA front, while the Authority has started taking strict action against errant promoters who have failed to complete the projects and have left it in a stalled stage, the regulator has also started taking action upon the real estate agents who have not renewed their registration with the authority. These agents shall now be required to get trained and then obtain the certificate to operate as brokers again.

The Real Estate regulator has now put both the Promoter of the real estate project as well as the real estate accountable for their performance. It is a well known fact that section 9 and section 10 of RERA Act, 2016 deals specifically with the registration of the real estate agents and their functions. Agents, who fail to adhere to the provisions of the Act, shall be liable for penal action either upon a complaint from the flat buyer or the promoter or the Authority can take Suo-Moto action against them.

Continue on Page No. 10

CONTENT	Page
Shri. Bhavesh Doshi - Appointed President - NM	06,
Co-operative Updates	08,
Smaller Housing Societies....	12,
Society Seek Celerity	14,
Issue of Membership in CHSL	16,

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SHRI. BHAVESH DOSHI APPOINTED NORTH MUMBAI PRESIDENT OF MAHASEWA



Well Known Social Worker Shri Bhavesh Chandulal Doshi is Appointed as President North Mumbai of **MahaSewa - Maharashtra Society Welfare Association**.

By his appointment it is sure that Societies Problem Redressal will get due momentum. Were Present on this occasion CA Ramesh Prabhu Chairman of MahaSewa, Sunil Sharma Vice President of MahaSewa And Rupa Bhaavesh Doshi, Yasharaaj Doshi, Pranay Patava, Sameer Shah, Nehal Doshi, Rajesh Doshi, Kamalesh Parikh, Karan Bajaj, Jagdish Gangar, Maneesh Madiya, Arun Shah, Chirag Gamit, Mavji Waadher.



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COOPERATIVE UPDATE FOR APRIL, 2024



1. Extension of Stamp duty Amnesty Scheme upto 30.06.2024:

Government of Maharashtra has extended the Stamp Duty Amnesty Scheme phase 2 which would have ended on 31 st March, 2024 to 30 th June 2024 vide notification dated 15.03.2024.

2. The deemed conveyance can be granted based on Allotment letters:

IN THE HIGH COURT OF JUDICATURE AT BOMBAY in ORDINARY ORIGINAL CIVIL JURISDICTION in Writ Petition No. 405 of 2020 in the matter of Crystal Blue Premises Co-operative Society Limited vs State of Maharashtra & ors, has directed the District Deputy Registrar -III (Competent Authority) to grant the deemed conveyance to the society even if there was no agreement executed by the builder under Maharashtra Ownership Flats Act, 1963 based on allotment letters issued, approved plan and other relevant documents.

3. Stamp duty Ready Recknor Value for the year 2024-25:

Government of Maharashtra has issued notification dated 31 st March, 2024 that Stamp duty Ready Recknor value for the year 2024-25 has not been changed. It is same as the year 2023-24.

4. CONVERTING GOVERNMENT LAND OF OCCUPANCY CLASS II INTO CLASS I LAND:

CA. Ramesh Prabhu
Chairman, MahaSewa
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REVENUE AND FORESTS DEPARTMENT vide Notification No. Jamin 2023/C.R.292/J-1 dated 16th March, 2024, Government of Maharashtra has published Maharashtra Land Revenue (Conversion of Occupancy Class-II and Leasehold lands into Occupancy Class-I lands) Rules, 2019.

As per the this Rule, Conversion premium payable for conversion of Occupancy Class-II lands granted to Co-operative Housing Society as under:

(1) Societies opting for self redevelopment, premium at the rate of 5% (Five percent) of value of such land calculated as per rate of such land specified in the current Annual Statement of Rates shall be charged.

(2) Co-operative Housing Society not opting for self redevelopment, premium . premium at the rate of 10% (Ten percent) of value of such land calculated as per rate of such land specified in the current Annual Statement of Rates. Following terms and conditions are applicable for reduced premium payable by the societies

(3) Provided that above rates of premium shall be applicable for the applications received upto 30th September 2024 only. Afterwards, the premium shall be applicable as per the provisions in the notifications dated 8th March, 2019 and dated 27th March, 2023.



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(4) Provided that other terms and conditions stated in notifications dated 8th March 2019 and dated 27th March 2023 shall apply in addition to above provisions

(5) In case of redevelopment of land provided on lease / occupancy rights to Co-operative Housing Societies, if additional FSI area is available excluding the original FSI area of the building, 25% of available additional FSI area, shall be made available by the housing society for the beneficiaries under Pradhan Mantri Awas Yojana at Government rates.

(6) Provided that, if the Co-operative Housing Society fails to comply with the provision stated in 3 above, the premium amount paid by the society shall be forfeited and the land shall be restored back to class-II tenure.

(7) Provided further that, the Co-operative

Housing Society opting for Self redevelopment will have to initiate the process of Self redevelopment within a period of two years from the date of order of converting to class-I.

(8) Provided further that, in case the Co-operative Housing Society fails to initiate Self redevelopment process as defined in proviso 5 stated above the State Government shall be competent to grant a further extension of two years.

(9) Provided further that, in case Co-operative Housing Society fails to initiate redevelopment process as stated in proviso 6 above or in case there is breach of any other conditions stated herein, the premium amount paid by the society shall be forfeited and the subject land of Co-operative Housing Society shall be restored to class-II tenure.

Continued from Page No. 4

The smaller Housing societies having less than 50 members have been given a relief by the cooperative department. These societies can now fill up their open and women category seats during the election and are not required to worry about the other reserved seats (SC, ST/OBC/NT).

The government circular also says that the society can function with 5 general category seats and two women category seats, making it a total of 7 seats. In a worst scenario, even if women seats are not available, the society can function with 5 committee members representing the open/ general category seats.

In a landmark judgment by the Hon'ble Bombay High Court, Justice G.S.Patel has passed an order stating that in case a developer, who is redeveloping a society building and in the midst of the development if the promoter faces any action in the form of insolvency under the IBC, then the society members interest has to be protected and the promoter cannot be allowed to walk Scott-free stating that a moratorium period has set in.

The court has allowed the society to terminate the promoter/ developer and appoint a new promoter in his place to complete the balance construction and development of the project.

The government has put on hold the elections in the cooperative housing societies due to the ensuing general elections. All the societies where the elections are due and the stage of display of the nominations have not reached, and then the election officer is required to keep the election procedures on hold and in abeyance till 31st May 2024.

All such managing committees can continue in office as care taker committee till that period and can function the way they do normally. The societies are required to begin their election process after 31st July 2024. I congratulate all the housing societies to have successfully completed yet another year and wish them success in the years to come.

Best Regards,
CA. Ramesh S. Prabhu,
Chairman, MahahaSewa

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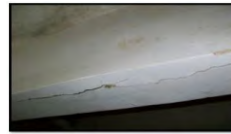


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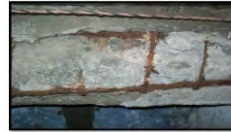
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SMALLER HOUSING SOCIETIES CAN BE RUN WITH NO CASTE OR TRIBE-BASED RESERVATION EXCEPT FOR WOMEN

MUMBAI: Around 35000 housing societies in Mumbai metropolitan region and around 15000 in the rest of which have fewer than 50 members, will now be allowed to have their managing committee elected, without needing to fill the mandated reserved category posts.

The State Housing Department has revised its earlier on January 3 circular wherein they had initially brought down the minimum number of committee members from 11 to 5, and had only kept one seat for candidates from the open category and the remaining four seats were kept for reserved (SC/ST, OBC, VJNT and woman) candidates.

"Now as per the new circular five general category members and two women members will be enough to form a committee of seven.

If not, a five-member committee can be formed with three of the members forming the quorum to pass any resolution in the managing committee,"

said cooperatives expert Ramesh Prabhu who also heads Maharashtra Societies Welfare Association (MahaSeWa), a federation of cooperative societies in the state.

The two seats have been reserved for women irrespective of caste/creed/religion and five seats for the members from the general category for all societies, across MMR and the state. "If no women contest, only 5 seats will be filled.

A minimum of 3 members is required for meetings," the circular issued on February 28 indicated. "Small societies were struggling to have their managing committee appointed due to the non-availability of reserved category members and were handled by the

Source: The Times of India- March 19, 2024



administrator, and flat owners were at their mercy.

The new circular will bring an end to such a practice," said society federation members. At present Maharashtra has 1.25 lakh registered housing societies of which Mumbai and MMR has around 65 per cent to 70 per cent of the societies registered (fewer than 250 and more than 250 members).

Older societies with less than 50 members struggled to form a full managing committee leading to appointment of an external administration who would often misuse their power making decisions without fairness, transparency and without taking members into confidence leaving no say for the residents in important matters such as repair, maintenance and redevelopment.

Prabhu said "As per the MCS Act 1960, even with five members instead of mandatory 11 members, a cooperative housing society can be registered.

In a cooperative housing society, it is difficult to get candidates under the reserved category, even if such candidates are available, they may or may not contest the election, and thereby the post would remain vacant and there was no provision under the law to fill such reserved vacancy, with other general category members.



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As per the act, minimum 2/3rd members need to be elected to constitute the committee and as these post remains vacant, in a smaller society with less than 50 members, the Cooperative Societies Registrar is compelled to appoint an Administrator, who would man the society for rest of the period, thereby derailing the very foundation of cooperative moment, as

the existing members had no say in the decisions of the administrator and most of the time such decision were arbitrary. **"Prabhu said** it should also apply to larger societies too, up to 250 members. Reserved category members could still join as additional members if they wish to contest elections, he added

SOCIETIES SEEK CLARITY ON GROUNDWATER TAX

Pune: Maharashtra State Housing Federation members have approached the state government for clarity on the notice issued by the Central Ground Water Authority (CGWA) regarding payment of registration fees and fresh permissions for withdrawal of groundwater for drinking, domestic, commercial or swimming purposes before summer. They have opposed payment of additional amount as housing societies are already paying water tax to local authorities.

Chairman of the Maharashtra State Housing Federation Suhas Patwardhan said that housing societies are paying water tax. Some of the borewells used by housing societies have also run dry, he said. "Unless there is a proper clarity and direct communication regarding payment of registration fee, we will not pay the additional amount," he told TOI.

The federation had earlier volunteered to help collate information from members on use of groundwater in each district, however, since there is no clarity regarding payment of registration fee, they have not carried out any survey, the members added. Unless the CGWA has conducted a proper survey, and there is clarity regarding payment, there is no point in issuing notice or charge any penalty, a retired groundwater officer said. He said that the CGWA should have requested the local bodies to carry out a survey on the number of borewells in housing societies.

Source: The Times of India- March 10, 2024



"There is no point in fining anyone without a proper communication," he said The CGWA in its notice issued earlier had mentioned that a survey be conducted on the number of borewells in the city. CGWA authorities refused to respond to emails and phone calls from TOI regarding notice for payment of registration fee.

The CGWA's website also does not give any clear direction on taxes to be paid, a housing federation member added. The CGWA public notice directs old and new housing societies, and residential apartments in urban areas to register for groundwater withdrawal. The notice further stated that strict action would be initiated against housing societies using groundwater but not paying a one-time registration fee of Rs 10,000. Federation members and groundwater experts dubbed the fee "too high". "No notice should be sent out randomly to housing societies as it is essential to know whether they are drawing groundwater. Many of these housing societies have borewells, which have dried up, so there is no question of any NOC or registration fee. Moreover, there is no clarity as to whether this fee will not be charged again," he said.



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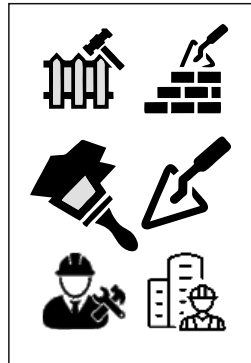
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In my last article on the issue of membership in cooperative housing society I presented to you my analysis of three important judgements on this issue. I have further presented my analysis of two more judgements in this article.

In a particular case the society was presented with duly stamped and registered document of title to the flat, however, society demanded chain of documents right from the first sale by developers.

It further demanded undertaking from the applicant that he recognize the right of all the members in the open spaces of the building of society, common terrace, compound etc.

The court decided that validity of the Gift Deed must be recognized by the society, the society must consider the application based on the Gift Deed and other transfer documents. The Society must follow due process, as outlined in the Maharashtra Cooperative Societies Act and its bylaws, in accepting or denying membership applications. While societies have a degree of autonomy in deciding membership, this cannot override legal provisions.

Societies must follow transparent and fair procedures favour of new incoming member because society is not concerned with the validity or otherwise of the transaction in favour of the new incoming member favour of new incoming member. when considering membership applications to ensure that all parties receive due process.

In another case a member of society confirmed that he has sold the flat to the applicant and all the documents for transfer were submitted.

It was held that so far as the membership is concerned, it is undoubtedly correct that person holding the interest in the property can only become a member and not any stranger.

But in case where earlier holder of the property admits that he has transferred the said premises to new person and resigned from the membership, and executes all necessary documents in favour of new incumbent to be a member of the society then in such cases it is not open for the society to challenge.

The validity or other of the sale transaction in favour of new incoming member because society is not concerned with the validity or otherwise of the transaction in favour of the new incoming member.

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CITIZEN RIGHTS OVER CORPORATE'S: HC OKS REDVPT BY NEW BUILDER

Mumbai: Bombay High Court (HC) said a corporate resuscitation will not be permitted to override the rights of city residents to have a redeveloped home and receive transit rent.

Granting interim relief to a housing society, HC last Thursday directed BMC and Mhada to permit construction work by a new builder in a project stalled since 2009 in Vikhroli.

It is not an isolated incident, said a division bench of Justices Gautam Patel and Kamal Khata on Thursday.

The bench said it sees again and again, a development real estate company under the Corporate Insolvency Resolution Process (CIRP) cites moratorium as a ground to delay further development and default in transit rent payments in Mumbai. The bench criticised as “absurd”, “monstrosity and inequitable” the submission to prioritise corporate interests over residents' rights.

“In a city like ours, there is precisely this widespread perversion of every concept of justice, equity and law,” the judges said, starkly observing how solemnly it was being argued by builder AA Estates that a statutory provision meant to protect or revive fortunes of companies can come at the cost of city residents and persons, dishoused and with no financial means to acquire temporary alternative accommodation.

Tagore Nagar Shree Ganesh Krupa Co-operative Housing Society Ltd in Vikhroli east had petitioned HC. Senior advocate Pradeep Sancheti and advocate Raj Patel for the society sought necessary permission to a new builder, Truearth Developers, who it had appointed last year, after terminating the deal with AA Estates in May 2022.

Source: The Time of India: Mar 27, 2024



Last July, the residents vacated the ground-plus-four storey building after Mhada termed it “dangerous and dilapidated”. Truearth, represented by advocates Aditi Bhat and Deeksha Jani, said it was paying the transit rent. Mhada denied permission.

The resolution profession of AA Estates, represented by advocate Sachit Bhogle, had objected saying the project was the builder's 'asset' and a moratorium under Insolvency and Bankruptcy Code (IBC) bars further redevelopment work.

The submission is incorrect as AA Estates was never the property owner, it only had conditional rights to free sale flats on completing the redevelopment, observed HC.

Delinking the obligations is an inconceivable position in law, the court added. HC noted that AA Estates had taken CIRP argument in an even more dramatic scenario, that of the 1998 collapse of an entire building called Govinda Tower.

“The IBC, we are told, and the corporate fortunes or misfortunes of AA Estates, must prevail over basic and fundamental rights of society members.

Because AA Estate is trying to revive itself, society members must be without shelter and forced either into penury,” or made to pay rent which the builder failed, said Justices Gautam Patel and Kamal Khata.



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DIRECTION FOR CO-OPERATIVE HOUSING SOCIETIES ON ERECTION OF MOBILE TOWER AND ADVERTISING BOARD/ HOARDING ON BUILDING PREMISES



**Adv. Kiran Saha,
Consultant,
MahaSeWA
Mob.: 85915 70159**

As the world becomes more urbanized, the number of places where a mobile phone tower may be built is shrinking. As a result, High-Rise building rooftops are one of the few remaining choices for Mobile Tower Placement. When we talk about “**High Rise Building**”, they are all formed and registered as a “**Co-operative Housing Societies**”.

Thus, the Co-operative Housings Societies are permitted to “**Install the Mobile Tower on the Terrace of the High Rise Building or to display the Advertising Board or hoarding on the Building Structure and Premises**” in Maharashtra through Co-operative Department. This Activity generates funds and revenue for the Co-operative Societies and it directly benefits the members by way of “**Bonus**” and also promote to expand the number of Telecom Towers Built, to improve network coverage and combat call dropouts issues.

Pre- condition for Installation of Mobile Tower or Advertising Board/ Hoarding on Building Premises:-

1. A Co-operative Housing Society should be the “**Owner**” of Land and Building; basically Co-operative Housing Society should have **Conveyance/ Title** in its name.
2. The Mobile Tower cannot be erected in A Co-operative Housing Society, which is very close to educational institutions or medical facilities.
3. Building should have an OC, or a CC, certifying that Building is a legally

approved and sanctioned Building, by a Planning Authority.

4. A structural stability certificate from a licensed structural engineer
5. A minimum of 1200 square feet of space is required for tower installation if it's on Roof. For mobile tower installation, the land area must be at least 2000 square feet.
6. No-Objection Certificate from the concerned civil aviation authority, if the property is situated near an airport/ airbase

The **Government of Maharashtra, Co-operation, Marketing and Textile Department, Mantralaya**, through its **Order cum Direction dated 04/03/2014** has permitted the Co-operative Housing Societies, to generate the Revenue for its Co-operative Housing Societies by installing Mobile Tower or Hoardings in Society Terrace and Premises, only with the terms and conditions which specifically given in **Circular dated 04/03/2014** by way of “**Procedures/ Directions**”. Thus any Co-operative Housing Society installing Mobile Tower or Advertisement Hoardings in Society Premises, in contravention to the Procedures/Directions given by Government of Maharashtra vide Circular dated 04/03/2014, shall result to get nullified and cancelled. The mandatory Procedures/Directions prescribed by Government of Maharashtra, vide its **Circular dated 04/03/2014**, to be adhered by all Co-operative Housing Societies for installing such Mobile Tower and Advertising Board/ Hoarding on Building Premises, are summarized below as under:-

1. Proposal for installation of Mobile Tower and Advertising Board/ Hoarding on Building Premises, to be firstly placed before “General Body” by calling “Special General Body Meeting”:-

In a Co-operative Housing Society, the decision of General Body prevails, as per the provision of **Section 72 of MCS Act, 1960**.



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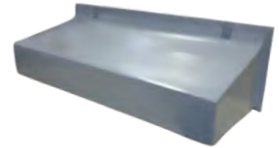
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Thus, the proposal for installing Mobile Tower and Advertising Board/ Hoarding on Building Premises of a Co-operative Housing Society shall be firstly taken by "**General Body**". The General Body decision has to be passed and resolved in a "Special General Body Meeting". Thus, Managing Committee on receiving a proposal from any Advertising Agency shall firstly convene a Special General Body Meeting to take a "**Preliminary Decision**". For conveying a Special General Body Meeting in Co-operative Housing Society, provision of Model Bye laws of Co-operative Housing Society shall be followed and adhered by Managing Committee, and required Special Agenda and Notice shall be circulated to all members, specifying the date, time, place and quorum for Special General Body Meeting.

2. Proposal for installation of Mobile Tower and Advertising Board/ Hoarding on Building Premises shall be placed before General Body, only when the Quorum for SGM is 70%, out of total number of members of Society:-

In order to resolve this "**Preliminary Decision**", firstly the Quorum for Special General Body Meeting has to be minimum 70%, out of total number of members in a co-operative Housing Society. Thus, it is essential that 70% members out of total number of members attend the Special General Body Meeting. Secondly, a **Preliminary Resolution** for installation of Mobile Tower and Advertising Board/ Hoarding on Building Premises shall be passed, resolved, approved and consented by minimum 70% of number of members, out of total members in a Co-operative Housing Society. The General Body shall be made aware about the negative effects which cause on health due to installation of Mobile Tower and subject to the Structure Stability Certificate. Only after having detailed discussion on the positive as well as negative effects, the Preliminary Decision shall be taken and basically Consent is to be obtained from 70% of members. Thirdly, this Special General Body Meeting for installation of Mobile Tower and Advertising

Board/ Hoarding on Building Premises shall be video recorded and the minutes of meeting shall be circulated to all the members of Society.

3. Structural Audit:-

After taking a Preliminary decision and obtaining Consent from 70% members of Co-operative Society, the Managing Committee shall mandatorily approach a Structural Engineer (approved panel) of Government Department / Local Authorities/MHADA/MMDRA/CIDCO and other semi government authorities, and carry out "**Structure Audit**", in order to ascertain whether the structure of Building is capable to place a Mobile Tower or Advertising Hoarding. If the Structural Certificate issued by Structural Engineer certifies that the Structure of Building is capable enough to bear the load and is capable to place Mobile Tower or Advertising Hoarding, then the Proposal resolved in Special General Body Meeting can be executed and implemented by "**Registered Agreement**" with the Mobile Tower or Advertising Agency. The registered Agreement shall cover all the important clauses, such as period for installation, number of towers, income per month for Society and per year, detail about the deposit amount, clauses for damages, notice period for cancellation of Agreement, insurance clause, compensation clause, etc based on the situation prevailing and on terms and conditions agreed between Society and Tower Agency or Advertising Agency.

4. Provision for Distribution of Income to members, as bonus:-

Firstly, the decision taken for installing Mobile Tower on terrace of Building or displaying Hoarding on Building premises is to generate funds and revenue for the Co-operative Societies, and benefit its members. Thus, total Annual Income received from Mobile Tower Agency or Advertising Agency has to be mandatorily divided into 2 parts, wherein 50% amount shall be transferred into Sinking Fund of Society and 50% amount shall be distributed among all the members of Society, by way of Bonus to members. The Society can also recover overdue amount from members.

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Que. Whether as per RERA Act can promoter allot and sell the covered podium parking space/ any parking space to the flat purchasers after handing over to the society? What are the relevant provisions?

Answer:

According to the clause (j) of sub section (1) of Rule 2 of Maharashtra Real Estate (Regulation and Development) Rules, 2017 defines covered parking which is read as under,

“Covered parking means an enclosed or covered area as approved by the competent authority as per the applicable development control regulations for parking of vehicles of the allottees which may be in the basement and/or stilt and/or podium and/or space provided by mechanised parking arrangements but shall not include a garage and/or open parking”.

Further Section 2 (n) of RERA defines common areas while 2 (n)(iii) defines open parking areas while Section 17 says the promoter is liable to transfer to the society title in the common areas and to handover the possession of common areas to the society which presupposes that it cannot be sold to an individual allottee.

From the above it is clear that the Real Estate (regulation and development), Act, 2016 provides for selling of covered parking and has clearly states that as the open parking space comes under the purview of common area which as per the provisions of Real Estate (regulation and development), Act, 2016, need to be conveyed to the Association of Allottees after receiving OC and thus the promoter is not entitled to sell the open parking space.

The above mentioned extract is self explanatory that the promoter can sell the covered parking to the flat purchaser and clause with respect to same shall be incorporated in the respective agreements.

The Authority after clarifying that the promoters are not entitled to sell/allot open parking areas for monetary consideration has further made the clarification at serial no.(iv) in the Circular which can be briefly reproduced as under, *“garage/covered parking space when sold/allotted for monetary consideration the details of the same should be mentioned in the agreement for sale”.*

So presumably RERA Authority does not object/restrict the sale of covered parking when it uses the words **“garage or covered parking space when sold or allotted for monetary consideration...”** in the Circular.

Further in the complaint bearing no. CC00600000089761 i.e. Deepesh singh vs Neelkanth constructions, the hon'ble MahaRERA Authority passed an order which is as under,

Selling of the Car Parking

stated that there is an explicit provision under RERA that promoter can sell only covered car parking by charging a certain amount. Open Parking had to be handed over to society, it could not be sold in the open market. Therefore, complainant allottees and respondent promoter were bound by the said provision.

Following Order was passed:

Respondent directed to pay interest to the complainants till the date of occupancy certificate.

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Respondent promoter was entitled to claim the benefit of "moratorium period".

Since the complainants want to continue in the project, they are entitled to seek interest for the delayed possession under section 18 of the RERA.

Respondent/Promoter directed to form a society as per the provision of Section 11(4)(e) of RERA

With regard to construction of additional floor, without the consent of the 2/3 allottees, the same could not be constructed.

It was also directed that respondent was entitled to sell only covered car parking and no cash money be demanded from the allottees.

As per the abovementioned provisions, circular and order, it is within the purview of the promoter to sell the covered parking and the same is not in contravention of any provisions

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VALIDITY AND EXECUTION OF WILLS

Adv. Darshana Manjrekar | 93218 70241

SUBMISSIONS OF THE COUNCIL:-

1. The Testamentary Department is a highly technical one and cannot defeat the Will executed by the deceased. He brought to my attention that the last Will and Testament of the deceased was executed on 11.11.2008 and on the same day it was registered with the Joint Sub-Registrar, Mumbai City Division-1.

He submitted that both the witnesses, namely, Mahendra Tulsidas Jattani and Mrs. Bhavna Mahendra Jattani have filed their affidavits dated 4th January, 2021 wherein they have clearly stated that on 11th November, 2008 they were present together with the deceased at Old Customs House Building, Shahid Bhagat Singh Road, Horniman Circle, Fort, Mumbai 400 023 when both of them did then and there see the deceased set and subscribe her name at the foot of the testamentary paper in English language and character and which is marked as Exhibit "B" to the petition.

2. It is thereafter stated in the affidavit that on the same day, i.e. 11th November, 2008, both the deponents did at the request of the said deceased and in her presence and in the presence of each other set and subscribe their respective names, signatures and thumb impression on the registration page bearing their photographs as witnesses.

However, these two attesting witnesses, namely, Mahendra Jattani and Mrs. Bhavani Jattani inadvertently did not sign as witnesses at the foot of the testamentary paper being the Last Will and Testament of the deceased though their names were printed therein.

3. Submitted that the deponents have clearly stated on oath that the names, the signatures



and the thumb impression of the deceased subscribed at the foot of the testamentary paper are of the party executing the same and is in the proper handwriting of the deceased. They have further stated on oath that they have subscribed their names, signatures and thumb impression on the registration page bearing their photographs and which is annexed to the last Will and Testament of the deceased.

It is also stated that the deceased's last Will is executed and registered on 11th November, 2008 and the deponents were present with the deceased throughout and the witnesses witnessed the registration of the last Will of the deceased.

He submitted that both these affidavits, therefore, clearly establish that Mr. Mahendra Jattani and Mrs. Bhavani Jattani were the attesting witnesses and merely because their signatures do not appear on the Will but on the registration page, would not, in any way, invalidate Will of the deceased.

ORDER

It is quite clear that when the Court is dealing with a Will, the Court must approach it as a Court of Conscience. It is for the Court to be satisfied that the document put forward is the last Will and Testament of the deceased and if the Court finds that the wishes of the deceased are likely to be defeated or thwarted merely by

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reason of some technicality, this Court, as a Court of Conscience, would not permit such things to happen.

In the facts of the present case also, I find that the objection taken is a highly technical one considering that the attesting witnesses have fled their affidavits stating that they were very much present at the time when the deceased executed the Will in the office of the Joint Sub-Registrar on 11th November, 2008 and have even signed as witnesses on the registration page.

I therefore find that the objection taken by the Testamentary Department that the signatures of the attesting witnesses do not appear on the Will and hence is invalid, is a hyper-technical one.

In these circumstances, the Testamentary Department is directed to take these affidavits into consideration for the purpose of processing the petition for the grant of probate and grant the same, if it is otherwise found in order.

MAHARASHTRA RERA CANCELS REGISTRATION OF 13,785 REAL ESTATE AGENTS

The Maharashtra Real Estate Regulatory Authority (MahaRERA) has cancelled the registration of 13,785 real estate agents who failed to renew their licenses.

These agents must complete training and obtain certification to operate as brokers again.

The highest number of delisted agents are from Mumbai, followed by Thane and Pune.

The Maharashtra Real Estate Regulatory Authority (MahaRERA) has cancelled registration of 13,785 real estate agents as they failed to renew their license received back in 2017.

These agents are required to complete the prescribed training and obtain certification if they wish to operate as property brokers again, the regulator said in a release.

The real estate regulator has made the data public by uploading the list of these close to 14,000 real estate agents on the website.

Of the 13,785 delisted brokers, the highest number of agents are from Mumbai city and Mumbai suburbs put together at 6,291,



followed by Thane at 3,075 and Pune at 2,349.

While several new agents have signed up and registered with MahaRERA, the overall numbers have dwindled owing to non-renewal.

Recently, the regulator held the fourth round of examination for real estate agents.

A total of 1,767 candidates appeared for the test and 1,527 cleared the same.

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FAQS ON STAMP DUTY APPLICABILITIES



CA. Shreyash Prabhu,
B.Com., ACA
Mobile: 9820601890

1. I had submitted my Agreement for Sale dated prior to year 1985 under the amnesty scheme of 2008, but my Agreement got returned with a letter saying I don't have to pay stamp duty. Should I submit my Agreement again in the current amnesty scheme?

Ans: Not required. The reasons being, basically there are two different types of instruments related to property transaction prior to 10.12.1985.

(a) Agreement for sale which was required to be stamped on a stamp paper of Rs.5/- and the same used to get registered prior to 10.12.1985 as the same was sufficient as per Article 5(h) of the Schedule I of the Maharashtra Stamp Act, 1958. Thus there was no provision to collect stamp duty more than Rs5/- on agreement for sale. Therefore, such agreements were returned giving a letter to the applicant. Copy of such letter and the explanation given by the department is marked as appendix in this book.

(b) Conveyance deed or sale deed or sale certificate or lease deed etc: Conveyance deed means, after the transaction was completed, the instrument used to executed and registered. These instruments are covered under Article 25 of the Schedule I of the Maharashtra Stamp Act, 1958. The stamp duty was 10% of the value upto Rs.50,000/-, 12% for the value between Rs.50,010 to Rs.1,00,000/- and 15% of the value for the amount exceeding Rs.1,00,000/-.

Thus full stamp duty was required to be paid at the time of conveyance and nominal duty at time of execution and registration of the agreement for sale.

To collect more revenue and to plug this loophole of postponing the collection of stamp duty on future date of conveyance, an explanation 1 was included in the Article 25 of the Schedule I to the Maharashtra Stamp Act, 1958 effective from 10.12.1985 declaring that the agreement for sale will be treated as part conveyance and full stamp duty will be collected at the time of execution of the agreement as applicable on the conveyance and at the time of conveyance, only nominal stamp duty of Rs.100/- will be collected as applicable on agreement for sale. Thus the position was reversed from 10.12.1985. Therefore, even, if you submit such agreements, the government will not be able to collect the stamp duty on the agreement for sale executed prior to 10.12.1985.

However, if you have any other instruments other than agreement for sale like sale deed, lease deed, sale certificate, mortgage deed, development agreement etc, those remained insufficiently stamped and executed prior to 10.12.1985 can be applied under the scheme and get the benefits but not agreement for sale.

2. I have already paid stamp duty on my agreement at the time of my society conveyance, so should I still submit my Agreement under the current amnesty scheme?

Ans: Yes. It is advisable and suggested that you should submit your agreement for sale executed after 10.12.1985 under the scheme, if that agreement was not sufficiently stamped and you were compelled to pay at the time of society conveyance.



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As the prevailing law, your agreement for sale continued to be remained insufficiently stamped. If you want to get it regularised, better you apply under the scheme and get the same certified that your agreement for sale is duly stamped. If you do not avail the benefit of the scheme, the future purchaser or the bankers may not grant the loan to you against the said flat as the agreement is not duly stamped.

3. I have paid stamp duty at the time of conveyance but my bank is insisting on paying stamp duty on all the chain agreements for approval of loan, what should I do?

Ans: The bankers are correct. Your agreement for sale or chain of agreements for sale executed after 10.12.1985 is chargeable to stamp duty under article 25 of the Maharashtra Stamp Act, 1958. As per section 34 of the Maharashtra Stamp Act, 1958, if the agreement for sale is not properly stamped, they will not be considered as evidence in the court of law. Further section 31A and section 32 of the Maharashtra Stamp Act, 1958 says, any documents which are insufficiently stamped, the government officer may impound and send it for collection of proper stamp duty with penalty. Further section 46 of the Maharashtra Stamp Act, 1958 provides that any arrears of the stamp duty and penalties on any instruments may be recovered as arrears of Land revenue.

In other words, though through the society, you have paid the applicable stamp duty on conveyance deed, but your agreement for sale or chain of agreement for sale remained

insufficiently stamped and therefore to regularise the same, please avail the benefit of this scheme. No doubt, you are made to pay twice but no penalties will be charged and no claim of whatsoever may come in future.

4. My society was formed in the year 1986 & I was the promoting member of my society & not paid stamp duty at the time and my society is not planning to go for conveyance now, how can I take benefit under the current amnesty scheme?

Ans: Your agreement for sale having executed after 10.12.1985 is considered under Maharashtra Stamp Act, 1958 as the part deemed conveyance. Whether society is going for conveyance or not, it is your statutory duty to get your agreement for sale duly regularized. You have golden scheme to get the waiver of stamp duty and the penalties, depending on the date when you will be applying during phase 1 (before 31st January, 2024) or phase 2 (between 1st February, 2024 and 31st March, 2024). So please apply online as per the flow mentioned in this book by visiting IGR website: www.igrmaharashtra.gov.in and submitting all the documents physically to the respective collector of stamps office.

5. My society has already filed for adjudication of stamp duty for conveyance, will I get the amnesty scheme benefit directly? or do I have to make a separate application?

Ans: The society deemed conveyance application is different and your agreement for sale is different instrument. Therefore, you may request the society to keep under abeyance of adjudication of the deemed conveyance deed till you regularise your agreement under the scheme. Once you regularize the same under the amnesty scheme, no further duties will be demanded from you by the department at the time of adjudication of your society conveyance deed. In case, you do not regularise now, when the society gets the adjudication demand notice,



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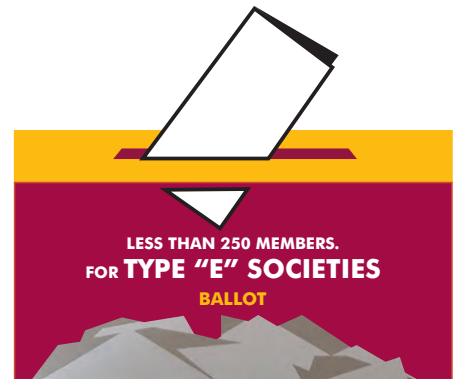
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the department will charge stamp duty and penalty upto 4 times for defaulting in payment of stamp duty on your agreement. Please note that you have to make a separate application under the scheme to get the benefits, the society will not be able to get the benefit of the scheme for your through their process of adjudication of the conveyance deed.

6. Clause (b) of the Annexure to the Government order dated 7th December, 2023 prescribes at the end that “also Conveyance of allotment of residential or non-residential units or houses in registered Co-operative Housing Societies or any apartments whose deemed conveyance is pending”. Does it mean the allotment letters issued by the builder or society is covered under the scheme where deemed conveyance is pending ? Whether society can apply directly for regularization of their members agreement for sale by submitting the application under the scheme?

Ans: There is an ambiguity in this regard. This is contrary to what has been said in the terms and conditions of the order that the documents should be on stamp paper. Further, at one place it states, that first allotment letters issued

government or competent Authorities land will be considered under the scheme. Therefore, we suggest that, the members of such societies should make an application under the scheme to avail the benefits of the scheme.

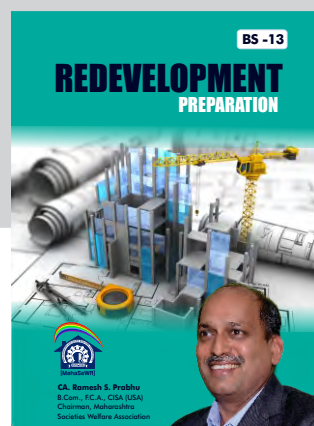
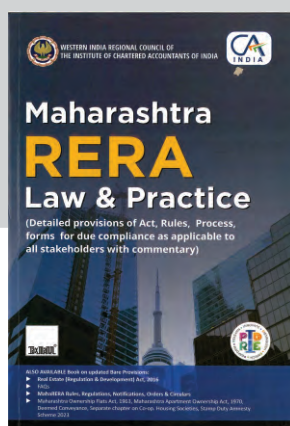
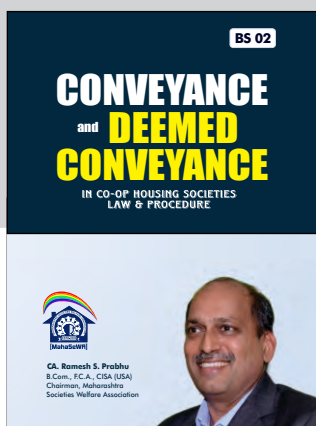
There is no clarity whether the societies who are planning for deemed conveyance or whose application for deemed conveyance is pending can apply under the scheme.

However, the intention of the above clause indicates that the government wants to extend such benefits to the Co-operative housing societies whose deemed conveyance is pending. They should make the application online by following the process and also send the hard copy physically to the department.

If they do not receive it physically, then, the same should be send by speed post acknowledgment due. Thereafter, the society may follow up to submit any additional documents required by the department to give the benefits of the scheme.

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A CO-OPERATIVE HOUSING SOCIETY SHALL NOT REFUSE THE MEMBERSHIP TO ANY PERSON DULY QUALIFIED THEREON WITHOUT SUFFICIENT CAUSE

Adv. Mehal Vora | Mobile No. 85915 70159

Maharashtra Co-operative Societies Act, 1960, Maharashtra Co-operative Societies Rules, 1961 and the Model Bye-Laws, 2014 of the co-operative society governs transfer of the membership in a Co-operative Housing Society.

The provisions of open membership is specified in section 23 of the Maharashtra Co-operative Societies Act, 1960 which is produced as under:-

"S.23 Open membership: (1) No society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of this Act and its bye-laws. (1A) Where a society refused to accept the application from an eligible person for admission as a member, or the payment made by him in respect of membership, such person, may tender an application in such form as may be prescribed together with payment in respect of membership, if any, to the Registrar, who shall forward the application and the amount, if any, so paid, to the society concerned within thirty days from the date of receipt of such application and the amount; and thereupon if the society fails to communicate any decision to the applicant within sixty days from the date of receipt of such application, and the amount by the society, the applicant shall be deemed to have become a member of such society] [If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties.]

2) Any person aggrieved by the decision of a society, refusing him admission to its (membership, may appeal to the Registrar



[within a period of sixty days from the date of the decision of the society]. [Every such appeal, as far as possible, be disposed of by the Registrar within a period of three months from the date of its receipt: Provided that, where such appeal is not so disposed of within the said period of three months, the Registrar shall record the reasons for the delay].

(3) The decision of the Registrar in appeal, shall be final and the Registrar shall communicate his decision to the parties within fifteen days from the date thereof.

(4) Without prejudice to the foregoing provisions of this section, in the case of agro-processing societies or any other society for which a definite zone or an area of operation is allotted by the State Government or the Registrar, it shall be obligatory on the part of such society to admit, on an application made to it, every eligible person from that zone or the area of operation".

From bare perusal of section 23 of the MCS Act, 1960 it appears that no society shall without sufficient cause refuse the membership to any person duly qualified thereon. It has been held by Hon'ble Bombay High Court in several judgments that the membership of a co-operative society is a open membership and if a person is in lawful possession of the premises, then, membership cannot be refused to such person.

Why a trained CHS Manager?

In today's 'fast' life, the members of societies are busy in their own business or jobs. They can only devote time to the functioning of the society on need based basis and that too at a cost of their personal work. In many small societies, the office bearers look after the day to day working of the societies. They however, at most times, are just unable to fulfill the statutory requirements as required by the bye-laws. In the larger societies, they employ a manager to look after the day-to-day affairs of the society. They try to ensure that they have a manager who is conversant with the statutory requirements of the society.

For big or small societies, it benefits them to have a person who is conversant with the bye-laws. With a view to make this task easier, the Mumbai Suburban District Housing Federation along with MahaSEWA is in the process of coming out with a list of trained Housing Society Managers. These candidates will have the back up support from the Federation. Needless to say, they will have access to periodic training as and when required.

Over a period of time, the concept of Housing Society Manager has changed drastically. In the good old days we visualized the Manager as a retired person, having a good knowledge of accounts, would be preparing the bills and attending to routine banking tasks. In today's times, this concept has changed drastically. Today, the managers are much younger with ability to handle societies of less than 50 members to more than 250 members.

Larger societies have full time managers with ability to handle day-to-day routine, academically qualified, computer literate, and in many cases technically knowledgeable. They also ensure that the statutory compliances are in place.



The smaller societies can make use of services of managers on part time basis on daily or weekly visits depending on their requirements.

To make the task of hiring a manager, the Federation along with MahaSewa intends to put up list of empaneled Managers on their website: www.mahasewa.org

A directory of such candidates will also be available in the Federation office at A-2/302, Laram Centre, Near Bus Depot, Andheri (W), Mumbai – 400 058 or Call on 9137436871

Societies desirous of Housing Society Managers can also fill up a Google Form with MahaSewa, stating their requirements. Email in your contact details mentioning WhatsApp number for the Google Form.



Please Scan to Registered

... Paresh Jobanputra,
Empanelment Committee



MahaSEWA

MAHARASHTRA SOCIETIES WELFARE ASSOCIATION

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For Housing Society Managers Why Empanelment?

The concept of Housing Society Managers has changed in today's world. The Manager is no more a retired person looking for a job. Today the choice of a manager ranges from retired person at one end of the spectrum to a young dynamic professional.

With a view to provide societies with a data base for hiring the services of a manager, the Mumbai Suburban District Housing Federation along with MahaSEWA will be putting up a list of qualified candidates on its website: www.mahasewa.org as well as a directory.

The list of Empaneled Managers will comprise of prospects who will be in a position to handle large societies as well as part timers. Those seeking employment can also be empaneled.

The current empaneled manager list already consists of male and female candidates ranging from those conversant with statutory requirements, computer literate, have knowledge of accounts, knowing Gate Management Apps, Society Management Software etc.

You can get empaneled even if you do not seek employment.



Training can be provided to those who desire. The Federation is also in the process of setting up a Help Desk facility to be made available to the empaneled managers.

What to do to get oneself Empaneled?

Fill up the Empanelment Form, available in the Federation office at Laram Centre, A-2/302, Laram Centre, Near Bus Depot, Andheri (W), Mumbai – 400 058 or Call on 9137436871 after which you will be called for an interaction session. In case you desire the form to be emailed or sent on WhatsApp, do send us request on email ID: mswa.has@gmail.com

Those who have already filled up the Empanelment Form in the various training seminars, and have not received a call for interaction are requested to call on Ph: 9137436871 (only between 7 pm and 10 pm).

.... Paresh Jobanputra,
Empanelment Committee

COMPENDIUM OF SELF Re-DEVELOPMENT FOR CO-OPERATIVE HOUSING SOCIETIES

This book will be open for sale from 7th February, 2020 and also available in MahaSeWA Office at A-2/302, Laram Centre, Opp. Railway Station, Andheri (W), Mumbai – 400 058., Tel : 022 - 4255 1414 / 25 / 32

FREE CONSULTATION

1. Conveyance | 2. Deemed Conveyance | 3. Redevelopment / Self Redevelopment
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MUMBAI SUBURBAN DISTRICT CO-OPERATIVE HOUSING FEDERATION LTD.

Registration No Bom/DDR.3/GNL/(O)/203/2000-2001, dated 14/02/2001

H. O.:- A-2/302, Laram Centre, Opp Railway Station, Andheri (W), Mumbai – 400 058.

Tel.: 022 -42551414/25 Email: ho.msdcchl@gmail.com | rsprabhu13@gmail.com

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Date: 22/07/2023

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Mob.: 97029 40073

Dear Chairman/Secretary,

AN APPEAL

We congratulate you for becoming the office bearers of the society to serve your members selflessly and making your housing society a better place to live. You will be happy to know that Federation for Mumbai Suburban District Federation has been formed to provide necessary supports and services for the smooth function of societies. The various services provided by the federation is attached herewith. Your Federation also has decided to setup Local Area Committees (LAC) to get all the federation's services at your locality. As per bye law No. 6 becoming a member of District Federation is compulsory. As your society falls in the jurisdiction of Mumbai Suburban District, you have to become a member of our Federation. We request you to become the member of our Federation.

In order to become member of the Federation, you are requested to do the following things.

1. To pass the resolution in the managing committee to become a member of Federation (Resolution format is attached)
2. Fill up the attached application form
3. Attach copy of society Registration certificate
4. Cheque of Rs. 1708/- Drawn in the Name of "MUMBAI ZILHA UPNAGAR CHS FEDERATION LTD. " towards Entrance fee Rs. 118/- Share money Rs. 1000/- & Annual subscription of Rs. 590/-

By becoming a member of the Federation you will be able to avail the services of Federation and also comply with the legal requirements of becoming the member of Mumbai Suburban District Federation and strengthen the Federation to provide the better services to you. In case you need any information you may contact our Manager Mr. Santosh Giri, Mob- 9702940073. & LAC Chief co-ordinator Mr. Vinayak Walwaikar Mob- 9821437348.

Thanking You
Yours faithfully

(CA. Ramesh Prabhu)
Secretary
9137436871

Branch Office:- Dahisar Sports Foundation. C. S. Road, Opp. Vidya mandir School, Dahisar (East), Mumbai - 400 068



MUMBAI SUBURBAN DISTRICT CO-OPERATIVE HOUSING FEDERATION LTD.

Registration No Bom/DDR.3/GNL(O)/203/2000-2001, dated 14/02/2001

H. O.:- A-2/302, Laram Centre, Opp Railway Station, Andheri (W), Mumbai – 400 058.

Tel.: 022 -42551414/25 Email: ho.msdcchl@gmail.com | rsrabhu13@gmail.com

WE ARE DOING FOR YOU

1. Guidance to the members of the public, in the matter of formation of New Co-operative Housing Societies & to guide them in submitting their Registration Proposal.
2. Supply of various forms and model Bye-laws required for formation of Co-operative Housing Societies.
3. Guidance to the Chief Promoters of Cooperative Housing Societies in the matter of holding First General Meeting and conduct of proceeding thereof.
4. Guidance to the members of the Provisional Committee in holding First Meeting of the Provisional Committee and the proceedings to be conducted thereat.
5. Supply of various Forms, Registers and Accounts Books required by Co-op. Housing Societies and guidance in maintaining the same.
6. Guidance to Co-operative Housing Societies in the matter relating to Municipal Taxes, Local Taxes, Income Tax etc.
7. To depute a representative of the Federation to attend the General Body Meeting of a society, on a written invitation of the society.
8. Guidance to Co-operative Housing Societies in the matter of formulation of proposals for a amendments to the Bye-laws.
9. Guidance to Co-operative Housing Societies relating to the Provisions in the Maharashtra Co-operative Housing Societies Act, 1960 and The Maharashtra Co-operative Housing Societies Rules 1961, the Bye-laws of Co-operative Housing Societies, the Maharashtra Ownership Flats Act, 1963 etc.
10. Guidance to Co-operative Housing Societies in their general as well as individual problems.
11. Federation will distribute a publication of a monthly magazine of **“MahaSeWA”** containing latest developments on all matters relating to the Co-operative Housing Movement, including case laws on Co-operative Housing, amendments to Acts and Rules etc.
12. Holding Conferences, Seminars, Symposiums on matter the Co-operative Housing Movement.
13. We will provide Federation services at local area by establishing local area committee to arrange seminars/ Housing Darbar to resolve local problems.
14. Dealing with common problems affecting majority of co-op Housing Societies and taking up matters with authorities of the Central Government, the State Government, The Municipal Corporation, Municipal Councils and Local Authorities with a view to securing maximum advantages for Co-operative Housing Societies.
15. To arrange **“Sahakar – Darbar”** at different locations in Mumbai Suburban District to resolve the problems of Co-operative Housing Societies, Experts Directors and Eminent Legal Advisors guide in this meeting.
16. **“Recovery of Dues/Arrears”** as per Co-operative Act, Section 154B- 29, (Previously known as Section 101) of the MCS Act 1960.

Branch Office:- Dahisar Sports Foundation. C. S. Road, Opp. Vidya mandir School, Dahisar (East), Mumbai - 400 068

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Application for Membership (Registered)

Membership No. _____

Date : _____

I/We hereby apply for Registered membership of **Maharashtra Societies Welfare Association**.

My/Our Particulars are as under

My/Society Name _____

Address _____

Telephone(R) _____ (M) _____ (O) _____

E-mail id : _____

Societies Registration No. & Date _____

Total Members of Society _____ Flat _____ Shop _____ Garage _____

**Enclosed 1 Year Subscription ₹ 2360/-, 3 Years Subscription ₹ 4720/-, 5 Years Subscription ₹ 7080/-
(Including 18% - GST = CGST - 9% | SGST - 9%)**

By Cash / Cheque No. _____ Date _____ Rs. _____

drawn on _____ bank.

Yours faithfully,

Signature: Applicant / Chairman / Hon. Secretary / Treasurer

*** Cheque be Drown in favour of "Maharashtra Societies Welfare Association"**



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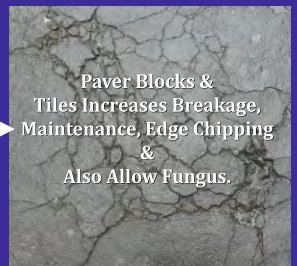
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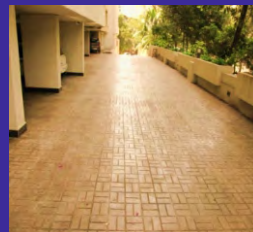
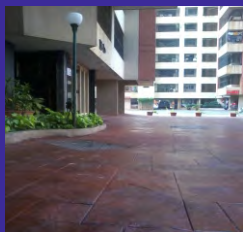
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From,
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WELFARE ASSOCIATION**

A-1/ 207, Laram Centre, Near Bus Depot,
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To,