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Vasai Taluka

Housing
Federation

June 2018

VOL.08 Issue 03

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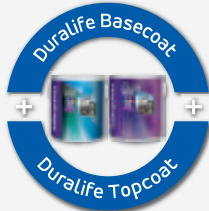


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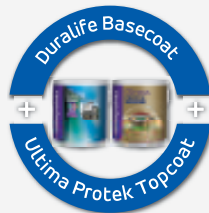
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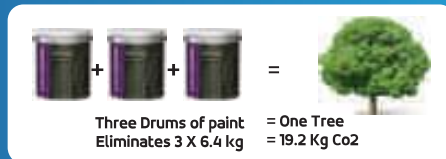
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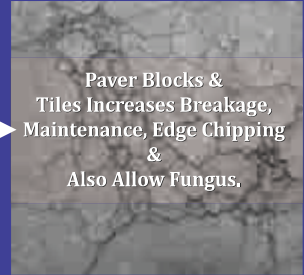
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EDITORIAL



वसिष्ठ
श्री. वि. विष्णुनाथन

Dear Readers,
Season's Greetings,

Meteorological Department has predicted good rain this year and our farmers and in all everybody will have a sigh of relief. Another good news is that the Maharashtra Government has announced that henceforth the 7/12 extract will be get with digital signature. Maharashtra become the first state in the Country which is going to issue computerized digital signature 7/12 extract online. This will definitely curb the corruption. This facility will available throughout Maharashtra from 1st August 2018. You have to go on web site www.mahabhulekh.maharashtra.gov.in there you have to fill up information like district, taluka, village, survey no./gut no. then you can see 7/12 extract with digital signature in the PDF form. You can use it anywhere by taking print of it.

In its ruling on the amendments in the Maharashtra Land Revenue Code, the High Court uphold the amendments and pave the way for the state exchequer to earn thousands of crores of rupees, given the large number of lands leased across Maharashtra. Considering the Housing Societies on government lease hold land, henceforth the state government may charge hefty amounts every time a lessee who has leasehold rights over government land signs away his or her rights over the plot fully or partially to another person. The new law said that, a lessee can transfer his leasehold rights to someone else, but with permission and at a premium.

The Central Government has made amendment in the Insolvency and Bankruptcy Code and treat home buyers as financial creditors. By this amendment, henceforth, if the developer become bankrupt, then the home buyers in that developer's project would become treated on par with the.....

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HOMEBUYERS TO BE TREATED AS FINANCIAL CREDITORS



The Central Government has made an amendment in the Insolvency and Bankruptcy Code. Now the Customer become a king in its true sense. **Hon'ble Prime Minister of India, Shri Narendra Modi** brought this bankruptcy law two years back to handover the bankrupted industry to another healthy industry. Recently Bhushan Steel which was run in losses and was on the edge of closure was handed over to TATA Steel smoothly because of this new bankruptcy law. Inspiring with this success, the Central Government made another amendment in the Insolvency and Bankruptcy Code and included the home buyers in its purview by giving them the status as a financial creditors.

Earlier when the developer became bankrupted, then the banks and financial institutions providing loan to that developer were considering first for repayment of their loan. By selling the property of the developer and raising fund out of it, repayment of the banks and other financial institutions were made on priority. The home buyers who are also taking loan from the banks to purchase the flat were left helter-skelter when the developer is declared as bankrupted.

This gives guarantee to the home buyers that though they will not get home but they will definitely get their money back. However it is not yet clear that in what proportion they will get their money back. The details yet to be declared. However this is definitely good step the government has taken in the interest of the consumers and therefore it should be welcome from all strata of the society.

Continued from page No. 06

financial institutions who have rendered finance to that project, and the home buyers are entitled for the compensation. This is a landmark decision taken by the Central Government in the interest of the common home buyers.

While going to the printing of this magazine, another news flashed that the Suburban Mumbai Collector has decided to scrap the 7/12 extract, a crucial document gives information like the name of a plot's owner, its area and its cultivator. This decision of the Suburban Collector is in the line of the State Government's planning to scrap 7/12 extracts in all urban areas of Maharashtra, where every plot now has a city survey number. Since agricultural plots in the cities are being converted for non-agricultural purposes on large scale, this decision of the government will become beneficial to the developers at large.

I am glad to inform you that the Collector and the District Election Officer, Mumbai Suburban District, Hon'ble Shri Sachin Kurve (I.A.S.) has appointed MahaSevak of the Maharashtra Societies Welfare Association as Both Level Volunteers to give home to home visit in the Housing Societies and verify the voters. I request all the readers to co-operate them and display the appeal published elsewhere in this magazine on your society's notice board.

With Best Regards,

Secretary
V Viswanathan
vasaihousingfederation@gmail.com

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IT IS NOT ADVISABLE TO OCCUPY A FLAT WITHOUT OBTAINING OC

Q. In a Pagdi system (tenanted building), if the land owner is not ready to carry out the redevelopment, can the tenants proceed to carry out redevelopment?

A. In the case of pagdi building, the redevelopment initiative can be taken only by the land owners. Of course, the land owner shall require the consent of more than 70% tenants. If the building is dilapidated, the building will be forcefully vacated by the Municipal Corporation of Greater Mumbai. As per the present law, if the land owner undertakes the redevelopment of dilapidated building, the tenants are entitled to get the same old area with 5% less or more.

However, as a good practice, and in order to make the redevelopment a success formula, the land owners offer to give ownership title to the tenants in the new building and offer to give old area plus fungible FSI of 20% to 30%. Some land owners do ask for construction cost of fungible FSI from the tenants which range from Rs. 2500/- per sq. feet to Rs. 3000/-. If the land owner does not want, he may not give fungible FSI to the tenants and such fungible FSI also cannot be used by the land owners for their project as well for sale. Therefore, to get a win and win situation, even if the developer/ land owner demands the cost of construction, the same should be paid to get the extra area.

For suburban Mumbai, the new Development control Rules 33(7A) have been introduced, which is similar to south Mumbai tenanted building regulations. It is a provision to benefit both the tenants and the land owners. Still, if the land owner does not take initiatives, you may proceed to complain to the MCGM and Mhada, who will take over the land for the purpose of redevelopment. You may also file a case, before the Hon'ble High Court / Civil Court / small causes court directing the land owner to initiate the redevelopment process.

Q. In a Mhada redeveloped building, if people occupy flat without OC, will the building face problems of water connection, electricity connection etc?



A. There are many redevelopment buildings in Mhada colony as well as private plots, the occupation certificates are not obtained for several reasons. Since the building is ready for occupation as per the Architect certificate and the builder has to pay the rent till the members occupy the flat, the developers advise the societies to occupy the flat and state that the application for OC is submitted.

CA. Ramesh S Prabhu
Mob.: 9820106766
E-mail: rsprabhu13@gmail.com

Thereafter, it is noticed that due to certain reasons OC is not issued. This is done to save the rent of the developer and also the members are keen in occupying in the new building. If the members insists for OC to occupy the building, the developer stops the payment of rent which becomes a burden on the existing flat owners and they are forced to take the possession by arm twisting, even if they are not keen to take possession without OC. As per BMC rules, on the application made by the societies, on humanitarian ground, water supply is provided even when there is no OC. There are nearly 10000 buildings in Mumbai without OC. In case of redevelopment every second building is without OC. However, after the implementation of Real Estate (Regulation and Development) Act, 2016, effective from 1st May 2017, it is not advisable to occupy the flats / building without obtaining the occupation certificate.

Q. I have a shop which is not registered and I haven't paid its stamp duty. The basic agreement with the builder is done but rest of the formalities were not done due to some

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3. As per municipality-it is mandatory for building aging 30 year +.

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reasons (builder was missing since then). Now, that the society is going under redevelopment, the committee members are not considering us for anything regarding redevelopment, though we have paid the maintenance of that shop for 20 years. Now where do I stand? Please let me know.

A. Since you are having the possession of the shop and also having an agreement with the developer, you will have to be provided new shop in the redeveloped building. The society or the new developer cannot do the redevelopment without giving your shop. Since you have agreement, you

will be able to pay the stamp duty on the said agreement along with penalty of 2% per month on the stamp duty amount due which may be maximum up to 400% penalty.

Once the stamp duty and penalty is paid, society can admit you as the members of the society. In case, the society still does not admit you as the member, you can file a case against the society before the Deputy registrar and get the order against the society to admit you as the member of the society.

TO TAKE ACTION AGAINST THE UNAUTHORIZED CONSTRUCTIONS UNDER MRTP ACT

GOVERNMENT OF MAHARASHTRA URBAN DEVELOPMENT DEPARTMENT

GOVERNMENT CIRCULAR NO. MISC. -2018/Pra.Kra.510/UD-20

Mantralaya, Mumbai-400 032.

Date :- 3rd May, 2018.

Read :- Government Resolution No. KDMP-1006/Pra.Kra.192/2006, UD-26, Date : 02 March, 2009.

GOVERNMENT CIRCULAR;-

The problem of the unauthorized constructions in the urban area of the state is become serious day by day. Constructions are being made by the developer illegally / without taking necessary permissions and thereafter such flats, properties are being sold and registration of such transactions are made with the Sub Registrar.

However, when it is noticed that the said construction is unauthorized, and then if eviction action is taken by the urban local self government/ planning authority, innocent tenant holder or flat holder have to face the eviction proceedings. In fact most of the tenement holders and flat holders did not know that the building they are staying is unauthorized. Thereby tenement holders and

flat holders get deceived. To avoid such cases, instructions have been issued by the under reference Government Resolution Dated 02 March, 2009.

2. The matter to give clear-cut instructions in view of to avoid above matters was under consideration of the Government. All Planning Authorities under the Urban Development Department in Maharashtra should follow following procedure along with the instructions given earlier regarding taking action against the unauthorized constructions under MRTP Act, 1966.

1. Regarding unauthorized constructions, action should be taken according to Section 260, 267 and 267(A) of the Maharashtra Municipal



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Corporation Act and similarly Section 52, 53 and 54 of the MRTP Act, and other incidental sections.

2. All the concerned Urban Local Self Government/Planning Authorities should prepared ward wise list of the authorized and unauthorized constructions, with survey number and name of the developers and should published it in their web site independently and also in the newspaper.
3. The Municipal Corporation while issuing the notice of the eviction of the construction, should have to give instructions to file Caveat in the concerned Civil Court, so that Ex-parte stay order of the concerned Court cannot be issued.
4. By submitting the list of the unauthorized buildings / constructions in the respective Urban Local Self Government / Planning Authorities to the concerned Sub-Registrar, the concerned Planning Authorities should give instructions to
5. The cases in which Stay Order is given, in such cases request to be made to the Court for removing the stay by bringing notice to the concerned Court the matters like building is unauthorized and thereby consumers are deceived. To take action accordingly shall be the responsibility of all concerned officer/employees.
6. Action should be taken according instructions in the Government Resolution dt. 02-03-2009 on such designated officers under whose jurisdiction such unauthorized constructions are lying.
3. The said Government Circular has been make available on the www.maharashtra.gov.in web site of Government of Maharashtra and its computer code is 201805041424129925. This Government Circular is being issued by digital signature.

In the name and order of the Governor of Maharashtra.

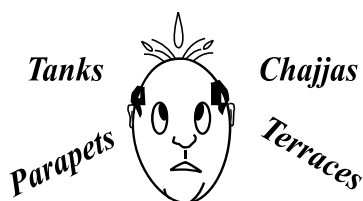
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Dy. Secretary, Government of Maharashtra.

Liberal Translation the above Govt. Circular Dated 3rd May 2018

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WHY IT IS MANDATORY TO REGISTER FLAT BEFORE RESALE



**Nresh Pai, Consultant,
MahaSeWA
Mob.: 9850822472**



Q. Technically, how do you differentiate- Investor/ Purchaser/ Allottee for the purpose of Promoter?

A. Any person who invests in the property before the same is registered with MahaRERA and causes the construction or redevelopment through the promoter, such investors are also called as promoters or investors and they do not receive the protection under RERA for any violation of RERA provisions.

Q. We have formed society in 2005. OC has not yet come. MHADA and developers have litigation about dummy tenancy created, that is why OC has not been given. Please guide.

A. Normally MCGM(Municipal Corporation of Greater Mumbai) does not give conveyance, if there is litigation on the land or if there are litigation between the MHADA or any government bodies. The MCGM is planning to bring out ascheme for regularising the structure and grant the OC by relaxing lot of conditions. You should try to get the OC whenever such schemes are announced or may apply for the OC after the litigation is resolved. You should insist the builder resolves such dispute and provides you the OC. You may simultaneously move before the consumer court against the developer to provide you the OC in time-bound manner.

Q. Can we release deed from daughter to son of mother and get it registered? Can 100% ownership be taken by son? Also, is it compulsory to issue public notice for legal heir in two newspapers?

A. As a legal process, to inherit any immovable property in Mumbai, if there is will, the executor has to obtain the probate of the will, and transfer the property to the beneficiary. When there is no will, the legal heirs have to obtain the letter of Administration. The probate or the Letter of Administration is issued by the Testamentary Department of the High Court, Mumbai. As per the bye-laws, to transfer the shares in the name of the legal heirs, where there is no nomination and when the probated will or letter of administration is not submitted, the issue of public notice in two local newspapers by the society is compulsory.

Q. The rent paid by redevelopment builder to old tenant is not used because tenant has another flat. Is it liable for Income Tax?

A. Yes, such rent which is not used for paying the rent is considered as income under other sources in the hands of the tenant and is liable for taxation as per the applicable slab of taxation of the tenant.

Q. When you buy residential land with an Intention to develop it later, at what stage do you need to register with RERA?

A. When the builder decides to sell, market, book or advertise the property for sale, he has to register the project with RERA. If he decides to sell only after completing the project and after receiving the OC, he need not register the project.

Q. Allotment letter has been allotted before RERA. Allottee wants to transfer flat after successful payment of 100 % amount to builder. But, the builder wants allottee to



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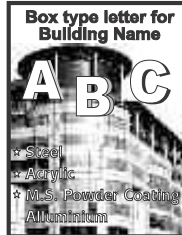
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register flat before transfer. Is the builder correct as per law?

A. Yes. Once the flat is booked by a person and he has paid the TDS and the service tax in his name, the agreement also needs to be executed in favour of him. If such agreements are not executed and new agreement is executed in the name of new person, the revenue department (Stamp Duty)

may question the developer and recover the stamp duty with penalty up to 400%. The income Tax department may also take up the matter for scrutiny when the TDS is made, and still the agreement for sale is not shown in the books of account. The builder is right in insisting for registering the agreement for sale and then execute the resale agreement.



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MAHARASHTRA REAL ESTATE AUTHORITY RESOLVED 2,100 COMPLAINTS IN ONE YEAR

Naresh Kamath Hindustan Times

The MahaRERA was established as a replacement for the Maharashtra Ownership Flat Act, 1963, which was ineffective

The Maharashtra Real Estate Housing Regulatory Authority (MahaRERA), which will complete a year on Tuesday, has so far solved 2,100 of the 2,500 complaints that it received against developers. With 16,200 realty projects covering about 18 lakh apartments registered with it, MahaRERA has become the leading real estate regulator in the country.

According to MahaRERA chairman, Gautam Chatterjee, the biggest advantage was that all the information was brought on a digital platform. "Today, buyers have all the information available online and this has ushered an era of transparency in the realty sector," he said.

Details of projects registered with MahaRERA are displayed online, and thus, builders have to deliver the flats within the stipulated amount of time or face penal action. The MahaRERA has mandated that all new and ongoing projects need to be registered with it, with details such as layouts, approvals, number of apartments, as well as date of possession. Builders who fail to hand over possession of the property within the stipulated time period have to pay an interest amount as compensation to the buyers. Builders who tend to give misleading information on the website are also penalised.

Shishir Baijal, chairman and managing director, Knight Frank India, a leading real estate consultancy firm, has said that the MahaRERA norms are "path-breaking." "Maharashtra, which implemented the regulation in letter and spirit, witnessed signs of uptick in residential sales and overall consumers' satisfaction," said Baijal.



Details of projects registered with MahaRERA are displayed online, and thus, builders have to deliver the flats within the stipulated amount of time or face penal action. (Representational photo)

The MahaRERA was established as a replacement for the Maharashtra Ownership Flat Act, 1963, which proved to be ineffective as builders ran the roost and buyers were kept in a lurch. Even builders have acknowledged the contribution of MahaRERA on the realty sector.

"It has also bridged the trust deficit between builders and developers. The past year has facilitated a level playing field for reputed players, eradicating fly-by-night operators," said Mr Shailesh Puranik, managing director, Puranik Builders. Over the past year, builders who failed to register their projects or violated rules were fined up to Rs10 lakh. MahaRERA has also been instrumental in giving a boost to projects that had been under construction but were suffering due to a realty slowdown over the last few years.

CA. Shri Ramesh S Prabhu, Chairman, Maharashtra Societies Welfare Association (MahaSeWA) said that MahaRERA has brought cheers on the face of common home buyers by its achievement in last one year.

Source : Hindustan Times



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Airoli delayed possession: RELIEF FOR HOME BUYER; RERA asks developer Shahaji Javir to pay compensation

Homebuyers are happy that they are getting fast relief from RERA

In a huge relief to a homebuyer, the Real Estate Regulatory Authority (RERA) directed a developer to pay compensation for delaying possession by nine years. The RERA bench acted on a complaint filed by Asha Devi. In her complaint, Devi said that the developer was agreed the possession would be provided in 2009 and they have not happened till date.

Devi had booked a flat in Nitin Enclave at Airoli in June 2008 for a total consideration of approximately Rs 27 lakh. "The flat was booked by my son after a registered agreement was signed by the developer Shahaji Javir on June 13, 2008, and the date of possession was given as March 2009," said Devi.

The complainant further stated that due to some dispute between the developer and the landowner, the construction of the building was stopped in 2009. Since then, the construction work never resumed and none of the allottees have received possession of their flats so far.

The complainant also sought compensation for the delay. During hearings, Asha Devi reiterated her contention and requested the authorities to direct the developer to pay interest for the delayed possession.

The developer's advocate said the delay was beyond their control as there were disputes between the developer and the landowner.

He further said that his client was allotted the plot by CIDCO (City Industrial Development Corporation) under the 12.5 per cent scheme of Project Affected Persons (PAPs). However, ownership disputes arose in respect of the said plot and litigation was filed by the concerned owners before the civil court.



"Due to this, we were in a position to complete project by June 2018, which is the revised date of possession given on the RERA website," said the advocate. He further said the developer was willing to hand over the possession of the flat to the complainant by June 2018 and was also ready to refund the interest on the entire amount paid by the home buyer.

The RERA bench found that the reasons given by the advocate for delayed possession were unsatisfactory. "The developer is liable to pay compensation to the buyers accordingly. Even if all the factors pointed out by the developer due to which the project got delayed are taken into consideration, there was enough time for the developer to complete the project," stated the order.

"The developer is thereby directed to pay interest to the complainant for the delayed possession of the prescribed rate under RERA Act, 2016, and the rules made there under the same," the order said. Interest will be paid on the amount paid by home buyer from May 2017 till the actual date of possession as the RERA Act came into force in May 1, 2017.

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-: मतदारांना जाहीर आवाहन -:

मी सचिन कूर्वे, जिल्हाधिकारी तथा जिल्हानिवडणूक अधिकारी मुंबई उपनगर जिल्हा मतदारांना जाहीर आवाहन करतो कि, मा.भारत निवडणूक आयोगाने दिनांक १ जानेवारी २०१९ या अर्हता दिनांकावर आधारित छायाचित्र मतदार यादीचा विशेष संक्षिप्त पुनरिक्षण कार्यक्रम जाहीर केला आहे. त्या अनुषंगाने दिनांक १५ मे २०१८ (मंगळवार) ते २० जून २०१८ (बुधवार) या कालावधीत, मतदार नोंदणी अधिकारी यांचे कार्यालयातील मतदान केंद्रस्तरीय अधिकारी (BLO) तसेच महाराष्ट्र सोसायटीज वेल्फेअर असोसिएशनचे महासेवक (BLV) घरोघरी भेटी देऊन मतदारांची पडताळणी करणार आहेत. या मोहिमेमध्ये १ जानेवारी २०१८ पर्यंत १८ वर्ष पूर्ण झालेल्या युवा मतदारांनाही मतदार यादीत सामावून घेतले जाणार आहे. तसेच, दुबार, मयत आणि स्थलांतरित मतदारांची नावे पडताळणी अंती वगळण्यात येणार आहेत. ज्यांचे छायाचित्र Black and White असतील त्यांनी रंगीत छायाचित्र (Colour Photo) मतदान केंद्रस्तरीय अधिकारी (BLO) तसेच महासेवक (BLV) यांचेकडे जमा करावेत.

मतदान केंद्रस्तरीय अधिकारी (BLO) व महासेवक (BLV) घरोघरी भेटी देतील त्यावेळी,

- १ जानेवारी २०१८ रोजी पात्र असलेले परंतु मतदार म्हणून अद्याप नोंदणी न झालेल्या नागरीकांची नावे गोळा करणे, व त्यांना मतदार नोंदणीयसाठी नमुना ६ चे वाटप करणे.
- दि. १ जानेवारी २०१९ रोजी मतदार म्हणून नोंदणीसाठी पात्र ठरणान्या भावी मतदारांची नावे गोळा करणे, व त्यांना मतदार नोंदणीसाठी नमुना ६ चे वाटप करणे.
- दुबार, मयत व कायमस्वरूपी स्थलांतरित मतदारांची माहिती गोळा करणे.
- मतदार यादीतील नोंदणीची दुरुस्ती करणे.

- तसेच मतदारांना तक्रारीसाठी जिल्हा कार्यालयात मो. नं. ८१०४२१२१००० हा नंबर कार्यन्वीत करण्यात आला असून मतदारांनी सदर whatsapp नंबरवर आपले नाव विधानसभा मतदार संघाचे नाव तक्रारीचे स्वरूप थोडक्यात नमूद करावे. मतदान केंद्रस्तरीय अधिकारी (BLO) व महासेवक (BLV) हे जेव्हा घरोघरी भेट देतील तेव्हा सर्व सोसायटीमधील मतदारांनी त्यांना सहकार्य करावे. असे आवाहन करण्यात येत आहे.

ठिकाण :- बांद्रे (पूर्व)

सही / -
जिल्हाधिकारी व जिल्हा निवडणूक अधिकारी
मुंबई उपनगर जिल्हा

APPEAL TO THE VOTERS

I, Sachin Kurve, Collector and District Election Officer, Mumbai Suburban District hereby appeal to the voters that, Hon'ble Election Commission of India has declared Special Brief Revision Programme. Incidental to that the Booth Level Officer from the office of the Voter Registration Officer and similarly Booth Level Volunteers amongst the **MahaSeWak** from the **MAHARASHTRA SOCIETIES WELFARE ASSOCIATION** will give home to home visit and make verification of voters. In this drive, youth voters who have completed 18 years of age till 1st January 2019 will also be included in the voters list. Similarly name of the voters having duplicate entry, deceased and migrated would be excluded after verification. Those who have black & white photograph, should hand over the same to the Booth Level Officer or Booth Level Volunteers for the color photograph.

When Booth Level Officer and Booth Level Volunteers give home to home visit, at that time they are asked, -

- To collect the name of citizens eligible on 1st January 2018 but not registered as voter so far and to distribute them form no.6 for the voter registration.
- To collect the name of future voters eligible for registration as voter on dated 1st January 2019, and to distribute them form no.6 for the registration as a voter.
- To collect information of duplicate, deceased and permanently migrated voters.
- To rectify the entries in voters' list.
- Similarly mobile number 8104212100 has been activated in the district office for the voters for their complaint if any. The voters should mentioned their Legislative Constituency name and nature of complaint in brief.

All the voters are hereby appeal that when the Booth Level Officer and Booth Level Volunteers gives home to home visit at that time all the voters from the respective society should co-operate them.

Place : Bandra (East)

Collector and District Election Officer, Mumbai Suburban District.

MAHARASHTRA GOVERNMENT HAS ISSUED DIRECTIONS TO TAKE STRICT ACTION AGAINST UNAUTHORIZED CONSTRUCTIONS

The Maharashtra Government once again came forward to take strict action against the unauthorized constructions in the State. The Urban Development Department of the Government of Maharashtra has issued Circular in this regard on dated 3rd May, 2018. Government has earlier also issued the Circular in this regard on dated 02 March, 2009 but in no effect. When much hue and cry about the unauthorized constructions and deception of the flat purchasers and after the Hon'ble High Court intervened in the matter Government came with this Circular.

According to this Circular onus to take action against the scrupulous builders/developers is assigned on the Urban Local Self Government and Planning Authorities. They are instructed to take action against unauthorized constructions under Section 260, 267 and 267(A) of the Maharashtra Municipal Corporations Act and similarly Section 52, 53 and 54 of the Maharashtra Regional And Town Planning Act, 1966.

Section 260 of the M.M.C. Act provided proceedings to be taken in respect of building or work commenced contrary to rules or by-laws. Section 267 of the M.M.C. Act provided powers of designated officer to direct removal of person directing unlawful work. Section 267(A) of the M.M.C. Act provided levy of penalty on unlawful buildings.

Section 52 of MRTP Act provided penalty for unauthorized development or for use otherwise than in conformity with Development plan. Section 53 of MRTP Act provided power to require removal of unauthorized development.

Section 54 of MRTP Act provided power to stop unauthorized development. This means there is already provision in the Act for removal of unauthorized constructions but it was not



This Circular of the Government is just reminding the authorities the provisions in the law and to take action accordingly.

The new thing in this circular is that the circular directed to all concerned urban local self governments and planning authorities to prepare ward wise list of authorized and unauthorized constructions with survey number and name of the developer and published it in their website and also in the newspapers.

The Municipal Corporation should give instructions to file Caveat in the concerned Civil Court while giving notice of the eviction of the construction, so that the concerned Court cannot pass Ex-parte stay order.

While giving list of the unauthorized buildings/constructions in the area of the respective urban local self government and planning authorities, to the concerned Sub Registrar, they should be instructed not to register the transactions in such buildings.

In the cases where stay orders are already given, in such cases Court should be requested to remove stay by bringing to the notice of court that the consumers being deceived because of unauthorized building.

It is now up to the officers of the concerned authorized how they take seriously of this circular and act accordingly or it is mere an eye wash.

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Bank connived with bldr to deny buyers rights: HC

Were Involved In Making Sham Mortgage: Court

It is not just builders who derail projects. The Bombay high court recently found that a bank played a “collusive” role to try and deprive property buyers of their rights. The HC pulled up the State Bank of India for, prima facie, colluding with a builder to create a mortgage in its favour in a case where 300 shop buyers have waited for over five years for property possession; some had made bookings about a decade ago.

Justice S J Kathawalla restrained the SBI from seeking to exercise any right in its favour over the alleged mortgage, created in 2012 by the developer, Metallica Industries Ltd.

The property, an industrial unit in Kandivli, caused gala buyers “sleepless nights” as the bank had moved the National Company Law Tribunal (NCLT) to declare the builder insolvent and get rights to the prime land to recover a Rs40crore loan, based on a mortgage. But in a relief to the buyers, Paresh Suru and others, who had moved court, Justice Kathawalla held that the NCLT lacks jurisdiction to hear the bank's plea when shop buyers have alleged fraud in mortgage creation.

“It appears, prima facie, that the SBI was also involved in the creation of a sham mortgage facility,” said the HC, based on “expired documents”. The judge agreed with Janak Dwarkadas, counsel for the buyers, that the mortgage is “invalid”.

SBI counsel Rohit Gupta had pleaded that the bank had valid mortgage and cannot be faulted for documents submitted by the developer. Many buyers had booked shops in 2009 in a building called Kamala Industrial Park. Possession was promised since 2013. The buyers had paid Rs 67 crore to the developer and only Rs 12 crore remained to be paid. The land was the Kandivli Corporate Industrial Estate, Charkop, and its erstwhile owner was the Maharashtra Industrial Development Corporation (MIDC).

THE CASE FILE

15 buyers of shops at Kamla Industrial Park, Kandivali, moved court in April against developer Metallica Industrial Ltd. SBI and others, alleging that a mortgage created in 2012 by the developer in the bank's favour was fraudulent and invalid

BUYERS' CASE

Loan was disbursed in violation of rules and because it was based on title deeds of a 30-year lease to Metallica that expired in 2006. The shops were bought in 2009



BANK'S CASE

Mortgage valid and bases on documents submitted by developer

HC'S ORDER | SBI recorded mortgage without due diligence and on strength of expired lease. Prima facie, no title as mortgagee can be said to have flowed from such a document to create a mortgage in 2012

The developer constructed seven floors based on a “forged” commencement certificate (CC), the HC observed.

An October 2009 CC was endorsed and attested by an SBI officer as being valid till the seventh floor “as verified with original”. The HC perused the original only to find no such endorsement. Only four floors were authorised. “The actions constitute not mere negligence, but a fraudulent endeavour to create charge upon a land by Metallica Industries in collusion with the SBI,” said Justice Kathawalla.

The HC was shocked at how the SBI disbursed a loan of Rs40crore in 2012 “despite the developer not fulfilling” 27 preconditions set out in its own sanction letter. The disbursal, the HC held, was “in gross violation of RBI guidelines”.



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Then, one has to find out available Floor space Index, premium FSI and TDR that can be loaded, Fungible FSI, etc, and the development control rules under which the building shall be constructed. Once it is ascertained what the total FSI and TDR than can be used a particular flat is, the permissible heights from the Air Aviation Department need to be obtained. If there is highway or creek or the railway tracks, etc., near the plot of the land, Central Ordinance Depot (COD) or defence facilities, the area that need to be left for such expansion plan or the respective department NOC need to be obtained.

If the land is affected by CRZ or NDZ etc, the necessary remarks will be available on the DP remarks. Thereafter, prepare a plan of the building to be submitted to the building proposal department and submit to the Chief Fire Officer for necessary NOC or the concession. After obtaining all the permissions, the plan is submitted through the building proposal department to Municipal commissioner for necessary approval of the concession like open spaces, parking to be provided etc., and after all the NOC, concessions are received, the entire plan with necessary statements of the use of FSI, loading of TDR etc. are submitted to the building proposal department.

The Building proposal department, issues IOD after they are satisfied with the scrutiny of the

entire proposal. The intimation of Disapproval (IOD) will have various conditions to be fulfilled before obtaining the commencement certificate. Once all the conditions are complied with, Commencement certificates are issued.



Adv. Anisha Shastri
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After the commencement certificate in stage wise is done for all the approved plan and all the requirements as per IOD is complied with, the occupation certificate is issued.

Thereafter, water connection and drainage lines are cleared by the Hydraulic engineer. Then, the architect submits the building completion certificate to the building proposal department of MCGM, who thereafter shall issue the building completion certificate.

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REMEDIES FOR OBTAINING CONVEYANCE

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As per Section 11 of Maharashtra Ownership Flats Act, 1963, a legal body is formed to obtain the conveyance of land and building in its name. Thus the MOFA has made necessary provisions that the promoter / builder is legally bound to form a Society or a company or condominium within 4 months of sale of minimum number of flats required to register such legal entity. (i.e. Society, Company or a Condominium). And within 4 months of registration of legal body of the flat purchasers to manage the complex, the builder/promoter is legally bound to convey the land and the building to such legal entity.

1. REMEDIES OR THE PROCEDURE TO OBTAIN THE CONVEYANCE OF LAND AND BUILDING

Due to many reasons and also to reap the benefits of Redevelopment, the landowner/ builder / promoter does not give the conveyance of land and building in favour of the society as provided in the MOFA. In such cases the society / Legal body like Condominium or company has the remedies to get Conveyance of land and building in favour of them:

2. APPROACH BUILDER / LANDOWNER AND COLLECT ALL THE DOCUMENTS REQUIRED TO BE ATTACHED WITH CONVEYANCE DEED

Where the builders/land owners are co-operative, collect all the Title Deeds of the plot of land and building to enable the purchaser/s [Housing Societies] to attach the same while

executing the Conveyance Deed and submitting the same to the registering authorities.

3. TO FILE CIVIL SUIT UNDER SPECIFIC RELIEF ACT -

Where the builders / land owners are not co-operative, then it is advisable to file civil suit against them at Civil Court of respective jurisdiction under Specific Relief Act. The various provisions for filing the civil suits under the Specific Relief Act, 1963 along with the model form of application is given in a separate chapter.

5. TO FILE CRIMINAL CASE AS PER SECTION 13 OF MAHARASHTRA OWNERSHIP OF FLATS ACT, 1963

Where the builders / land owners are not cooperative, then the purchaser/s [Societies] can file a criminal case under section 13 of Maharashtra Ownership Flats Act, 1963. The entire details of criminal provisions, model form of criminal complaints etc are given in separate chapter in this book.

6. TO FILE CASE FOR DEFECTIVE SERVICE UNDER CONSUMER PROTECTION ACT, 1986.

Where the builders/land owners are not cooperative, then the purchaser/s [Societies] can file a case for Defective service against the builders/owners under Consumer Protection Act, 1986. The preparation to be carried out, the provisions of Consumer Protection Act, 1986 and the various model of the complaints to be filed

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Date- / /2015

To,
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Seconded By : Shri _____

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