

## CO-OPERATIVE HOUSING SOCIETIES

CA. Ramesh Prabhu, CA. D.A. Chougule

### (1) Validity of Auditors Panel Extended upto 31st December, 2023 :

The Co-operative Auditors Panel was valid upto 31st March, 2020. Due to covid-19 and the upgradation of the software for empanelment of Cooperative Auditors, the existing panel was given extension from time to time. The cooperative Commissioner has vide his order dated 11th July, 2023 has given further extension of validity of the existing Co-operative Auditors Panel upto 31st December, 2023.

### (2) Stamp duty of Rs.100/- on Permanent Alternative Accommodation Agreements(PAAA):

The Inspector of General of Registration and Controller of Stamps (IGR), Maharashtra State has issued a notification dated 26th July, 2023 regarding the applicability stamp duty of Rs. 100/- on Permanent Alternative Accommodation Agreement( PAAA) executed between the Developer, Society as the confirming party and the Member for the free area offered to the existing members as per the Development Agreement. This is in line with the Hon'ble Bombay High Court decision in the Writ Petition NO. 4575/2022 decided on 17th February, 2023. As per this circular and the decision of the Hon'ble High Court , the PAAA is considered as a supplementary agreement to the Development Agreement and accordingly only nominal stamp duty of Rs.100/- is payable. The earlier circular date 30th March, 2017 of IGR had mentioned that, if the society member joins the Development agreement as the confirming party, PAAA executed with such members only will be considered as supplementary agreement attracting Rs.100/- and for other members who could not join the Development agreements were asked to pay the stamp duty on the construction cost of the free area allotted to such members. Now this circular based on the Hon'ble High court decision has clarified that whether the existing members are made party in the Development agreement or not, the PAAA will be stamped with nominal amount of RS.100/- only considering such agreements to be supplementary agreement under section 4(1) of the Maharashtra Stamp Act, 1958.

### (3) The Home loan Lenders to existing members are fully protected and separate NOC from lenders not required for Redevelopment- Hon'ble Bombay High Court:

The Bombay High Court Division Bench (G.S.Patel & Neela Gokhale, JJ) in a Writ petition filed by Jaylon Impex Pvt Ltd & Ors v Punjab National Bank & Ors. passed a judgement dated 11July 2023.

The Honourable High Court has given the clear guidelines that what procedure to be followed by the society or developer or lender when flat is mortgaged with lender and society is going to be redeveloped. The right of lender is always protected during the redevelopment period.

No fresh mortgage-

The Court states that the Court does not require the Bank to execute a fresh mortgage deed and therefore no Writ of Mandamus can be issued against the PNB compelling it to execute a fresh mortgage.

Mortgage of old flat to be treated as mortgage for new flat allotted and identified

Directions of the Court

The other directions passed by the Court inter alia are that:

- 1) Developer will transfer the instalments of corpus /hardship compensation periodically and when due directly into the subject account of the PNB by online remittance.
- 2) All other amounts whether as transit rent or otherwise are to be similarly deposited directly by the developer with the PNB.
- 3) A copy of the payments made periodically will be sent to the Petitioners for record purposes.
- 4) When the redevelopment is complete, the developer and the Society must ensure that unless there is a redemption of the mortgage, possession of the flat is delivered to the representatives of the PNB and an appropriate possession letter or Panchnama is drawn up in the presence of representatives of the Petitioner.
- 5) The original of the Permanent Alternative Accommodation Agreement ("PAAA"), duly signed, executed and registered will be lodged with the PNB.
- 6) If a fresh share certificate is to be issued, the same is to be deposited with the PNB.

- 7) The Society records must reflect this order and the charge of the bank
- 8) The payments made by the developer to the bank will operate as a discharge of the developer's obligations to Petitioner Nos. 2 to 4 as the original owners of flat No. 9.

**(4) The Pune Co-operative Court No. 2 stays the Resolution of the society restricting letting out the flats to the Bachelors / Students:**

In a landmark decision of the Pune Co-operative Court No. 2 decided on 6th July, 2023 in the dispute No. 08/ 2023 in the matter of Mr. Swapnil D. Arthamwar & others Vs. Vanraj CO-operative Housing society Ltd. The society had passed the resolution to restrict the members to let out the flats to the Bachelors and students. The resolution was challenged before the Cooperative Court. The court was pleased to stay the said resolution. The court has observed that from the perusal of the Bye-laws of the society, it is seen that the society has no right to decide who will or will not be the tenant. The owners of the flat who are also members of the opponent society are free to choose their tenants and they may give their flat on leave and license basis as per their wish subject to the compliance of existing bye-laws.

The court further observed that, it is prima facie seen that the MCS Act, 1960, MCS Rules, 1961 and Bye-laws of the opponent society does not give any power to the opponent society decide who will be the tenants of its building also the opponent society has no power to ban particular person or group of persons to be tenants in its building. The resolution of opponent society will affect the entire students who are willing to stay as tenants in the opponent society without being any fault on their behalf. The resolution No. 8 passed in AGM dated 17th July, 2022 is prima facie is illegal and opponent society is not permitted to pass any resolution which is not in consonance with its bye-laws and the existing laws. Opponent society is not permitted to impose unreasonable restrictions upon the minority member on the strength of the majority.

**(5) Increase in the borrowing limit by Co-operative Credit societies in Maharashtra:**

Effective from 12th May, 2023, Rule 35 of the Maharashtra Cooperative Societies Rules, 1961 has been amended to increase the limit of borrowing by the credit societies upto 25 times of the net owned funds. The amendment in Rule 35 of the MCS Rules, 1961 is as under :

*"In rule 35 of the Maharashtra Co-operative Societies Rules, 1961,—*

*in first proviso, after the words "urban banks" the words " Co-operative Credit Societies," shall be inserted ;*

*after the first proviso the following proviso shall be added, namely :— "*

*Provided further that, Primary Agricultural Co-operative Societies with limited liability shall not incur liability exceeding in total twenty-five times the total amount of its paid up share capital, accumulated reserve fund and building fund minus accumulated loss".*

*Provided further that, Primary Agricultural Co-operative Societies with limited liability shall not incur liability exceeding in total twenty-five times the total amount of its paid up share capital, accumulated reserve fund and building fund minus accumulated loss".*

Initially as per this Rule 35 only urban banks were allowed to raise liabilities upto 25 times of the net owned funds. This has been now made applicable to even Primary Agricultural Co-operative Societies under MCS Rules, 1961 effective from 12th May, 2023

**(6) The OTS Scheme for Credit society is extended:**

The extension has been granted for the One time settlement of NPA loans of Cooperative Credit societies by Cooperative Commissioner vide notification dated 19th July, 2023.