

PANEL DISCUSSION ON ISSUES UNDER REAL ESTATE

CASE STUDY NO. 2

FACTS OF THE CASE :

Ashirwad Co- Op Hsg Society (CHS) was owner of land and building in Mumbai and desirous of exploring Development on account of increased FSI potential

The facts are as under :

Existing area occupied of Member	50000 sq ft
Total current FSI entitlement	150000 sq ft

It called for quotation from Developers and finally Adventure Brothers LLP was granted Development rights with following terms and conditions in August 2018

- a. Existing member to get total area 75000 sq ft
 - b. Corpus to Society 5 crore
 - c. Hardship Allowance to all Members 2 crore
 - d. Rent and Shifting Allowance 2 crore
 - e. Additional area 500 sq ft at concessional rate by offering discount of 25 % on current fair value
 - f. Date of Possession agreed 31-12-2022
 - g. Developer entitled to sell balance area to outsiders but society is not responsible for such contract with outsiders except admitting them as Member of the Society.
- Some member even preferred to buy further additional area at current fair value apart from regular entitlement.

- Somehow the progress of the work was not satisfactory as to speed , quality and other aspects and there were breach on the part of Developer for fulfilling its financial obligations towards members and society as covered by Development Agreement.
- Finally , Society terminated the Development Agreement with Developer.
- Developer preferred Arbitration Petition before High Court, Mumbai which is yet pending for disposal.
- Developer has created third party rights by selling units to outsiders.
- New purchasers are seeking relief against Society u/s 15 of RERDA 2016 for protection of their individual rights.
- Society claims that there is no privity of contract with new purchaser.

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CASE STUDY NO.2

ISSUES UNDER RERA :-

- a. Is the Termination action by Society is valid in law in the changed scenario under RERA ?.
- b. Can Termination be termed as transfer of rights by Promoter
- c. Whether Society has any obligation towards new purchasers for various relief ?
- d. Will the position changes if
 - I. Society first terminate DA and then appoint new Developer by executing fresh DA OR
 - II. Society appoints 2nd Developer under Tripartite Agreement granting Development Rights to 2nd developer and Terminating DA of 1st Developer
 - III. 1st Developer assigns Development Rights to 2nd Developer under Tripartite Agreement

ISSUES UNDER INCOME TAX :-

- a. Whether Society being Land Owner will be liable to Capital Gain Tax u/s 45 (5 A) being area sharing arrangement ?
- b. If not , then

Taxability in the hand of Society & Members ?

CASE STUDY NO.2 - ISSUES UNDER REDEVELOPMENT

ISSUES UNDER GST :-

- Whether Supply of Development Right by the Society is in furtherance of business ?
- Valuation of Development Right in the hand of Society to include even member getting financial benefits under individual capacity ?
- GST liability on allotment to members with
 - a. Free of cost allotment
 - b. Free of cost + concessional rate allotment
 - c. Free of cost + concessional rate + FMV rate

Valuation aspect & Time of Supply ?