

Intensive Study Course on Conveyance / Deemed Conveyance



**Law and Procedure related to
Deemed conveyance.**

**BY CA. RAMESH S. PRABHU
04/08/2016 AND 6/08/2016,
WIRC OF ICAI.**

1) M O F A, 1963

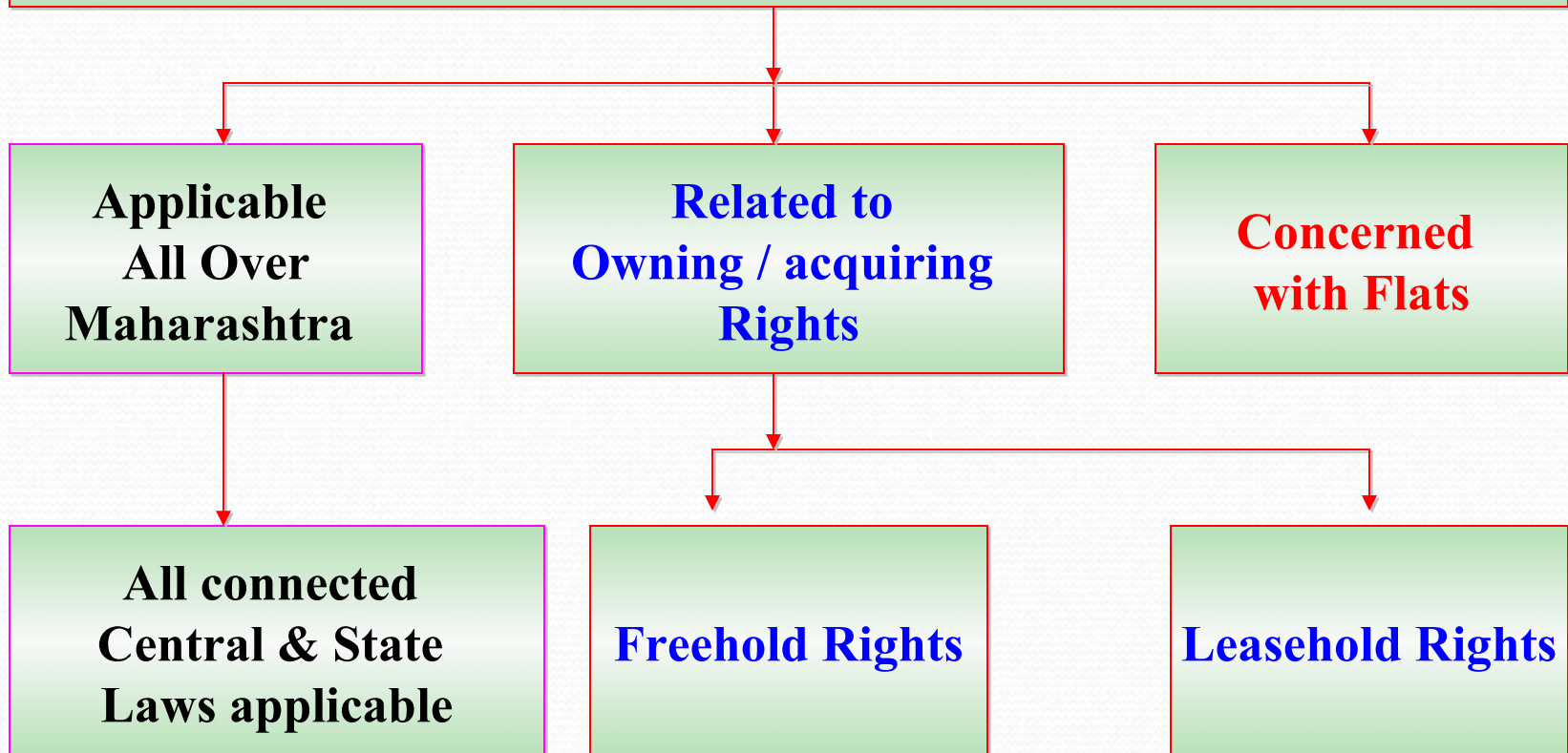
- **Construction Boom in the 60's**
- **Flat Purchasers were unprotected**
- **Builders took full advantage**
- **Many irregularities surfaced**
- **Govt. implement an Act in 1963**
- **Known as M O F A, 1963**

2) Under M O F A, 1963

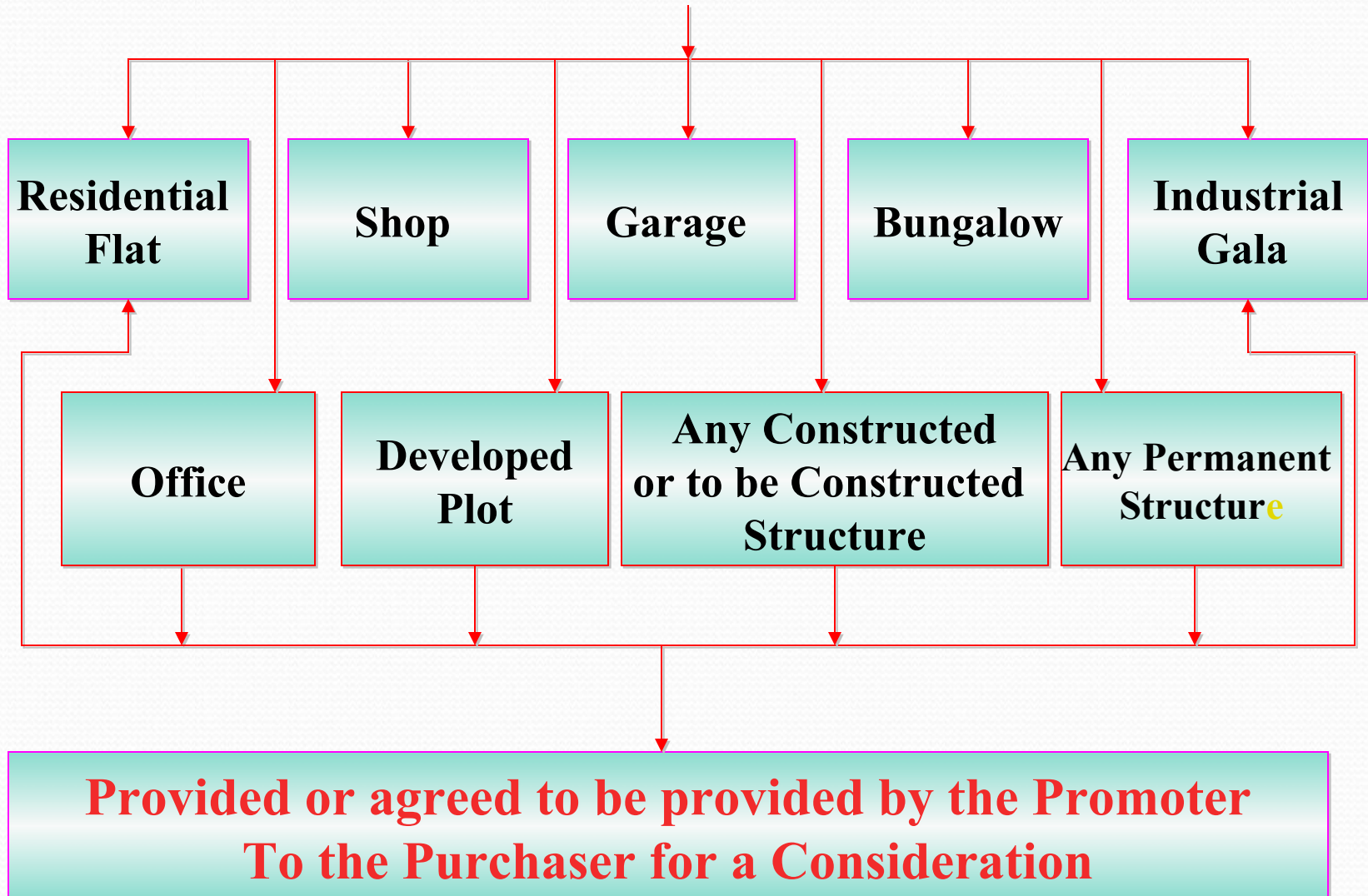
- **Flat Owners get Statutory Rights**
- **Can demand Building relevant papers**
- **Get the Agreement Registered**
- **Agreement in Specific Format**
- **Maintain property till society formed**

3) MOTHER OF FLAT ACT

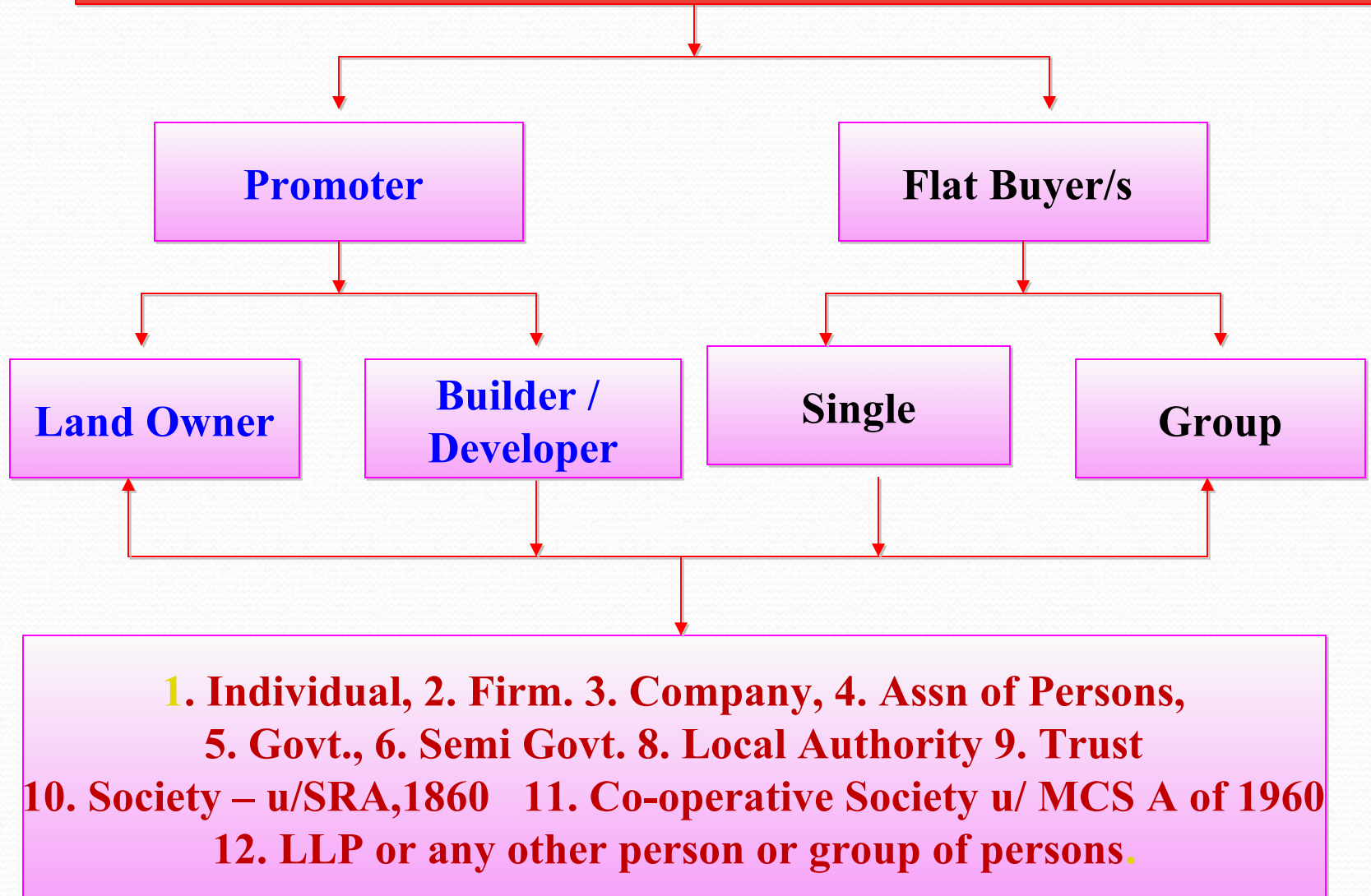
MAHARASHTRA OWNERSHIP FLAT ACT, 1963



4) MOFA : INDEPENDENT UNITS



5) PARTIES ON WHOM OBLIGATIONS ARE MADE APPLICABLE



6) OBLIGATION OF THE BUILDER

Contractual Obligations

1. Enter into Agreement
2. Registration of Agreement
3. Receive the Flat Consideration
4. Hand over the Possession of flat as agreed

Statutory Obligations

1. Register Agent on Receipt of 20%
2. Complete the Building in all respect
3. Provide O.C., B.CC.
4. Provide Common Facilities
5. Water Connection
6. Electric connection
7. Disclose the information
8. Provide all Documents
9. Registration of Society / Legal Body
10. Providing Conveyance

7) REMEDIES WITH COMPETENT AUTHORITY

FOR VIOLATION OF STATUTORY OBLIGATIONS BY THE PROMOTER FOR THE COMMON BENEFIT OF FLAT BUYERS

U/s.5.
Disclosure of
Information
of Money
Collected
for a Particular
Purpose

U/s.10.
Formation of
Legal entity to
Manage
Common
Services,
Area & Facilities
after
Disposing
60% units

U/s11.
To Convey
Land
and Building
to the Legal
Entity
within 4
months & Deliver
Documents.

U/s 13(4) & 13(5)
To Inform
Local Authority
to Debar The
Promoter from
Construction
Activity for
next 5 years
on conviction
by court on
MOFA violation.

8) U/S. 5 DISCLOSURE OF INFORMATION BY THE PROMOTER

COLLECTED MONEY FROM THE FLAT BUYERS FOR FOLLOWING PURPOSE OTHER THAN SALE CONSIDERATION/ COST OF FLAT TO BE DISCLOSED AND ACCOUNT STATEMENT TO BE PROVIDED..

Payable to Authorities for service

For Tax Payments

For Maintenance

For Common Legal Entity

1. Development Charges
2. Water Meter Deposit
3. Electric Deposit
4. Premium to Authorities etc

1. BMC-Prop. Tax
2. N.A Tax
3. Stamp Duty
4. Regn Fees
5. MVAT Deposit
6. Serv. Tax Deposit

1. Water Chgs
2. Elect. Chgs
3. Comm. Repairs
4. Service chgs
5. Insurance
6. Common Services

1. Share Money
2. Convy Chgs
3. Corpus Fund
4. Adv. Maint.
5. Legal Fees
6. Others

9) U/S.10. FORMATION OF LEGAL ENTITY . (MOFA-MOTHER OF FLATS ACT)

TO MANAGE COMMON SERVICES,
AREA & FACILITIES AFTER DISPOSING 60% UNITS BY PROMOTERS

Society or
Federation

Company

Condominium

Other
Legal Entity

Mah.Co-op.
Soc.Act, 1960
At Dy. Repr.

Companies Act,
1956 at ROC

Mah. Aprt.
Own. Act, 1970
At Sub-Regr.

Association
u/SRA, 1860

Trust
u/BPT,1950

Firms
u/IPA, 1932

PSU & GU
u/Act of Pimt

Others
LLP etc.

CONVEYANCE

- **Meaning of Conveyance :**
Transfer the title of
LAND & BUILDING
in the SOCIETY NAME.
- **Objects :**
 - To become the legal owner
 - To make entries in Govt. Records
 - To have free and marketable title



ADVANTAGES OF CONVEYANCE

- **Transfer of Ownership Rights over the land**
- **All Commercial benefits come to Society**
- **Appreciation of Propertyas also**
- **Loan can be raised by mortgage**
- **Balance F S I can be retained**
- **Permission for redevelopment possible**

CONVEYANCE

LAND

BUILDING



METHODS /WAYS TO GET CONVEYANCE

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graph TD; A[METHODS /WAYS TO GET CONVEYANCE] --> B[BY BUILDER]; A --> C[THROUGH COURT CASES]; A --> D[DEEMED CONVEYANCE];
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**BY
BUILDER**

**THROUGH
COURT
CASES**

**DEEMED
CONVEYANCE**

CONVEYANCE BY BUILDER

1. Approach the Builder

**2. Collect all Document
of Land & Building &
Member.**

3. Prepare & Approach Conveyance Deed

4. Adjudication & Pay Stamp Duty



CONVEYANCE BY BUILDER

- 5. Register Conveyance Deed by Authoring Registrar office by all parties sub**
- 6. Obtain Index - II & Original Conveyance Deed**
- 7. Apply City Survey Office & gate the Property Card changed in the Name of Society.**

**U/S11. OF MOFA, 1963
TO CONVEY LAND AND
BUILDING WITHIN 4 MONTHS**

**Court cases- Legal Remedies
Existing till 2005**

**Through
Competent Authority as per
MOFA-Amendment-2008**

**Civil Court
U/Specific
Relief
Act, 1963**

**Consumer Court
U/ Consumer
Protection
Act, 1986**

**Criminal
Court
U/S-13 of
MOFA 1963**

**Dy.Dist.Regr,
C.A notified
as Competent
Authority**

**Amendment to Rules were made to implement
the functioning of Competent Authority and MOF
(Amendment) Rules, 2010 notified**

DEEMED CONVEYANCE


- 1. AS GOOD AS CONVEYED**
- 2. TREATED AS CONVEYED**
- 3. LEGAL FICTION**
- 4. BUT NOW ACTUALLY TO BE CONVEYED THROUGH COMPETENT AUTHORITY**

AMENDMENT IN MOFA IN 2008- PURPOSE



- 1.To provide a Competent (Quasi Judicial) Authority in addition to existing Legal Remedies.**
- 2. To order & Implement the remedial steps by Competent Authority in the common interest of flat buyers.**

U/s 5A of MOFA not below the rank of (D D R) Dist. Dy.Registrar of Co-op.Soc. as per Notification Dated. 25-06-08, have been notified to be Competent Authority for their respective Jurisdiction



DOCUMENTS REQUIRED FOR CONVEYANCE

- 1. Application & COURT FEES**
- 2. Certified documents of land**
- 3. Certified copies of Bldg documents**
- 4. Flats Agreements duly stamped/Regd**
- 5. Applicant Identity-Regn Certificate**

DOCUMENTS REQUIRED FOR CONVEYANCE

- 6. Others relied upon by applicant**
- 7. The Area entitlement by Architect Report**
- 8. Survey no & CTS No. Matching to be done**
- 9. Search Report of the Advocate to be given.**

16) U/S11. TO CONVEY LAND AND BUILDING TO THE LEGAL ENTITY WITHIN 4 MONTHS & DELIVER RELEVANT DOCUMENTS.

Conveyance can be done

On Single Plot or Sub-divided Plot

On layout Plot with Common Areas, Roads, Gym, Garden etc. where Sub-division not Possible or Township or cluster /Complex .

On Single Plot & Single Entity Convey Land & Bldg all Comm Facilities on the plot to Sole Entity

To All Entities with 100% rights of Resp Bldg & with proportionate % of Plot & Com. Facilities Apex Body to be formed to Mng Services as per Plan Passed at the time of sanction of Layout

On appl to each Entity with 100% rights of the resp Bldg & proportionate % of Plot & Com. Facilities

To Fedn or Apex Body, if desired by all entities on the Layout Plot

17) 11(9) SCRUTINY OF APPLICATION & NOTICES TO PARTIES

- a) Give the Acknowledgement to Applications and register in register**
- b) Application to be incomplete, send the notice for compliance as per the prescribed form**
- c) If compliance is not done as per sub-rule (b), the application to be dismissed.**
- d) CA to issue notice for hearing within 15 days of registering the application . Notice to be served registered post, Acknowledgement due.**
- e) CA to issue public notice inviting claims, objections in 2 local news papers having wide circulation of which one should be at least in Marathi Language.**

18) 11(10) APPEARANCE & NON APPEARANCE

On Apt. Date –Opp. To appear In person or Auth.Rep. File Reply. Adjournment not to exceed 15 days in the first instance.

Only Appl Appears, CA to satisfy that notice is served on Opponents and Appl to justify prayers on next Date and Decide the case ex-parte.

If Opponent shows sufficient cause for non-appearance, hear his say in the matter.

On hearing date, if applicant is absent, the CA may hear the opponent and decide the matter as per merit.

On hearing date, the Opponent is absent, the CA may decide the matter after hearing the applicant.

19) 11(11) PRODUCTION & INSP. OF DOCUMENTS

Parties to file relevant documents in support of their say. If CA is satisfied, that reqd. documents is with other party, CA may direct the concerned party to produce the same. The Appl. to file written say before demanding such documents.

The party ordered, fails to produce, CA may draw adverse inference against such party and original Appl hearing will continue.

CA is satisfied documents cannot be brought, CA may order to take inspection of such documents at site within 7 days.

If CA is satisfied, on the basis of new documents, the opponent has to give a written statement, the same may be allowed.

20) 11(12) PROCEDURE FOR HEARING

- (a) On receipt of reply from Opponent/s, the Applicant to prove his contents and deal with opponents reply.
Opponent may file written say on next date.
No cross examination allowed.**
- (b) On receipt of replies, CA may hear oral Arguments of the parties and close the proceedings.**
- (c) Within 6 months after making such enquiries , verifying the authenticity of documents and giving sufficient hearing as per law of natural justice to the parties, pass such order as he deems fit.**

21) 11(13) JUDGEMENT, ORDER & CERTIFICATE

- (a) For Appl.u/s. 5- Speaking order IV directing the **OPPONENT TO DISCLOSE INFORMATION IN 15 DAYS ELSE DIRECTING THE APPLICANT TO MOVE IN THE COURT.**
- (b) Appl U/s 10 – Speaking Order in directing the Dy/Asst. **REGISTRAR TO REGISTER THE SOCIETY** as per MCS Act, 1960
- (c) Appl u/s 13(4)/ (5) Speaking Order in directing the Local authority **NOT TO GRANT PERMISSION TO THE PROMOTER TO CONSTRUCT FOR NEXT 5 YEARS**

22) 11(13) JUDGEMENT, ORDER & CERTIFICATE

(d) Appl U/s 11 – **SPEAKING ORDER** either fit case **FOR UNILATERAL CONVEYANCE** or otherwise and

-

(e) Speaking order u/s 11 to include each entities **PERCENTAGE OF UNDIVIDED INTEREST** in the layout plot and how the conveyance deed to be executed, whether individually or jointly or as an apex Body / Federation etc

(f) On receipt of the above order, the **APPLICANT TO PREPARE CONVEYANCE DEED / DECLARATION** obtain the append **SIGNATURE ON BEHALF OF OPPONENTS** and pay the appropriate duty and register the same under Indian Registration Act, 1908.

(ii) Order to be in writing and every party to receive the same.

What in case if this happens?

Building collapse kills 14

30-YEAR-OLD STRUCTURE IN BORIVLI TOPPLES, 60 FEARED TRAPPED IN THE DEBRIS

Megha Sood & Prociy Thomas
Mumbai, July 18

AT LEAST 14 people were killed and 18 injured when two wings of a 30-year-old seven-storey residential building in Borivli crumpled on Thursday.

More than 60 people are feared trapped in the debris, though Deputy Chief Minister H.R. Patil said NIT that figure is closer to 100. Maharashtra Collector Vishwas Patil added that some of the people trapped had been contacted on their cellphones and efforts were on to rescue them.

Home to 24 families, the A and B wings of Laxmi Chhaya Building at Ishba Naka collapsed like a pack of cards at 4.15 pm.

The 24 families living in the third wing have been evacuated.

"The residents had recently installed an additional tank on the terrace of the building and made structural changes for the same,"



DUST TO DUST

Earth movers try to clear the debris of seven-storey Laxmi Chhaya Building in Borivli.

BUILDING TANKS

Civic officials said an extra water tank set up on top of the building could have caused it to topple.

IN NICK OF TIME

About 18 people have been rescued and sent to nearby Bhagwati Hospital.

said Municipal Commissioner Jitendra Phatak. "The building may have crumbled due to the pressure of this tank."

Mayor Shubha Basu, however, said that jewellers who owned shops on the ground floor had il-

legally built a room underground, despite residents' protests, which may have led to the collapse.

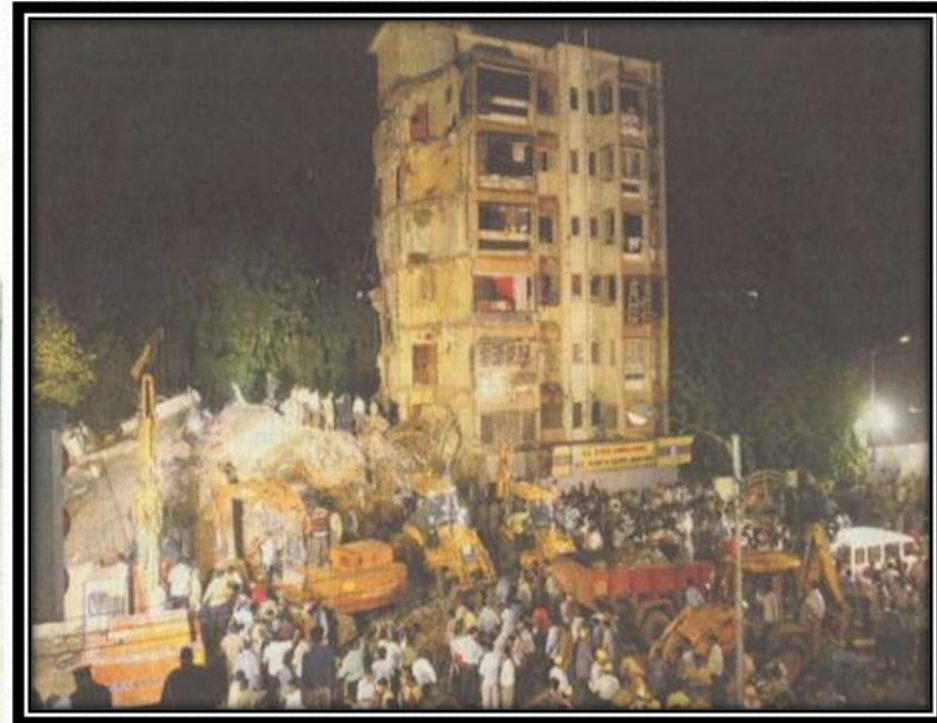
Chief Minister Vilasrao Deshmukh has announced compensation of Rs 1 lakh for the kin of

those who have died, and Rs 50,000 for those injured.

He has also ordered an inquiry by a magistrate into the collapse.

megha.sood@hindustantimes.com

FULL REPORT, PAGE 3



Don't wait for a Situation Like this to Happen



DEEMED CONVEYANCE AT 100
New DDR Office in North Mumbai
Grand Felicitation of Hon. Chief Minister

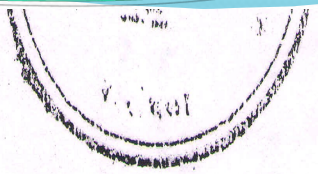
Special Guests
SHRI MANIKRAO THAKRE PRESIDENT, MPCC
SHRI HARSHVARDHAN PATIL MINISTER OF CO-OPERATION, GOVT OF MAHARASHTRA
SHRI KRIPASHANKAR PRESIDENT, MRCC

On Thursday 26th May, 2011





CONVEYANCE DEED



DEED OF CONVEYANCE made at Mumbai this 30th day of May in the 2011 Christian year Two Thousand Eleven Between M/S SUNSHINE ENTERPRISES, a partnership firm carrying of business as Builders and Developers and having their office at Room 0.5, Gupta House, 2nd Marine Street, Mumbai 2 (which is the last known address) (which expression shall unless it be repugnant to the context or meaning thereof mean and include its partners or partner for the time being of the said firm the survivor of them and their respective heirs, executors and administrators) hereinafter called "THE OWNERS" of the ONE PART

Handwritten signature
U. K. Doshi
Conveyance on account

SIGNED SEALED AND DELIVERED BY THE
 M/s S. P. Ghospade Competent Authority having powers
 of MOFA 1963, to grant deemed conveyance on
 account of
 Within named Owners M/s Sunshine Enterprise
 in the presence of

District Deputy Registrar,

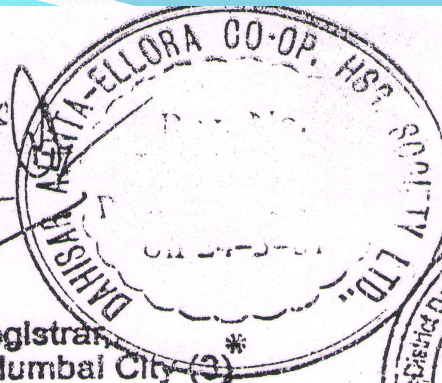
THE COMMON SEAL of the ~~Co-operative Societies, Mumbai City (3)~~
 Ellora Co-operative Society Ltd. Hereby
 Competent Authority
 u/s 5A of the MOFA, 1963

Affixed pursuant to the Resolution)
 passed by the Managing Committee on 13th)
 day of March 2011 authorising the following)
 office bearers to sign & execute the presence)
 conveyance deed of the society)

- (1) Shri Mukesh Maisuria - Chairman)
- (2) Shri Arvind Modi - Secretary)
- (3) Shri Bharat Gosalia - Managing)
 Committee Member)
- (4) Shri Kanaiyalal Bhatia - Managing)
 Committee Member)
- (5) Mrs. Urmila Kanubhai Joshi - Managing)
 Committee Member)

Who have signed for and behalf of the society)
 in the presence of)

[Handwritten signature]



For DAHISAR AJANTA ELLORA
 CO-OP. HOUSING SOCIETY LTD.

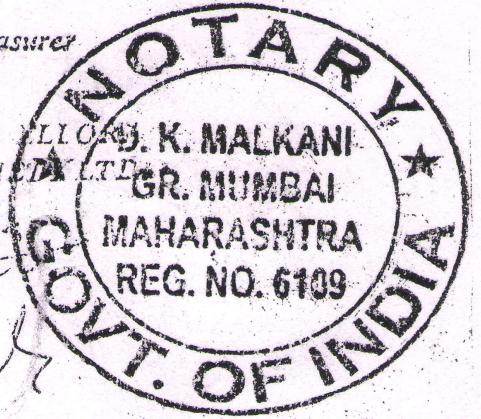
[Handwritten signature]
 Chairman / Secretary / Treasurer

For DAHISAR AJANTA ELLORA
 CO-OP. HOUSING SOCIETY LTD.

[Handwritten signature]
 Chairman / Secretary / Treasurer

For DAHISAR AJANTA ELLORA
 CO-OP. HOUSING SOCIETY LTD.

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ACTS & RULES APPLICABLE

- **REGISTRATION ACT, 1908 – For registration of Conveyance deed**
- **BOMBAY STAMP ACT, 1958 – For Stamp Duty Verification and calculation**
- **M.C.S. ACT, 1960- under which society is registered**
- **INCOME TAX ACT, 1961 – To Verify Tax Liabilities of the Vendor**
- **MAH. OWNERSHIP FLATS ACT, 1963- Under which Flats are purchased**

ACTS & RULES APPLICABLE

- **ULC-** For verifying any violations under the Act
- **Criminal Procedure Code / Civil Procedure Code and Consumer Protection Act**– For proceeding against the builder
- **BMC – Development Control Rules, 1991-** For Legality of the Building construction.
- **LAND REVENUE CODE –** Where Land Records Order kept
- **BYE-LAWS:** Applicable to all the societies

DEPARTMENT TO BE VISITED

- **City Survey Office – for Property Card**
- **Collector of Stamps – For Stamp Duty**
- **Sub Registrar – For Registration of Copy**
- **Assessment Dept– For Change in the Prop. Tax Bill**
- **Collector office : For N.A. Order**
- **Revenue Dept : ULC order**
- **Many more dept on case to case basis**







**COMPLETION CERTIFICATE/ OC NOT REQD FOR
DEEMED CONVEYANCE :**

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4943 OF 2013**

**M/s. S.D.Darekar Developers
and Builders, through Partner,
Satish Dagdu Darekar & Ors.Petitioners.**

Versus

**The Competent Authority and
the District Deputy Registrar and Anr. ...Respondents.
Mr. Siddhartha R. Ronghe, advocate for the Petitioner.**

CORAM : RANJIT MORE, J.

DATED : August 29, 2013.

It is the specific contention of the petitioner before this Court and the Competent Authority that, they are ready and willing to convey property in favour of respondent no.2/society but this **was not done for want of completion certificate.**

Petitioner in all constructed 46 flats and 18 shops along with four parking spaces, which were sold to various persons. Respondent no.2/Society along with proposal annexed Index-2 extracts of the purchasers of 36 flats situated in the said building.

In these circumstances, it is the petitioner's obligation to execute conveyance in favour of respondent no.2/Society, which is formed by the purchasers of said flats.

In the above facts and circumstances, I am not inclined to interfere with the impugned order in writ jurisdiction of this Court under Article 227 of the Constitution of India.

The Petition is, therefore, dismissed.

(RANJIT MORE, J.)

**CASE IN CONSUMER COURT PENDING- STILL
YOU CAN APPLY FOR DEEMED CONVEYANCE.**

**IN THE HIGH COURT OF JUDICATURE AT
BOMBAY**

**CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5107 OF 2013**

**The Deonar Avanti Coop
Hsg Scty Ltd. ...Petitioners**

Vs.

The State of Maharashtra & Ors ...Respondents

1. The Petitioner is a Cooperative Housing Society which has applied for deemed conveyance under Section 11(1) of the Maharashtra Ownership of Flats Act, 1963.

2. The District Deputy Registrar vide letter dated: 19.1.2013 has informed the Petitioner Society that though the matter regarding deemed conveyance is closed for orders ,he cannot presently pass orders in view of the fact that case No.352 of 2011 filed by the Respondent No.3 herein is pending before the Consumer Court

3. Since the proceedings before the District Deputy Registrar are one under Section 11(1) of the MOFA, 1961, the District Deputy Registrar to pass an order on the application in accordance with law dealing with the contentions raised by the parties.

4. Needless to state that the letter dated 19.1.2013 would not come either in the way of the Petitioner Society or the other parties at the hearing of the said application.

5. The District Deputy Registrar to pass appropriate orders in accordance with law by 30.4.2014. With the aforesaid directions, the Writ Petition is disposed of.

**DEEMED CONVEYANCE IS POSSIBLE, EVEN IF
THERE IS BALANCE FSI.**

**IN THE HIGH COURT OF JUDICATURE AT
BOMBAY**

**CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7114 OF 2013**

**M/s. Bipin Construction Company
and Ors. :Petitioners**

versus

State of Maharashtra and Ors. :Respondents

The two fold contentions raised on behalf of the Petitioner have been dealt with by the Competent Authority, namely,

(A)that a joint application for conveyance in respect of two owners could not be filed and

(B)that there is balance FSI. For the reasons mentioned in the impugned order, the said contentions have been rejected.

In my view, considering the said reasons as also considering the fact that the Society has been registered in the year 1979 and has been awaiting for conveyance ever since then, the order passed by the Competent Authority having regard to the provisions of Section 10 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 cannot be taken exception to.

No case for interference in the writ jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

(R. M. SAVANT, J.)

Disputes raised of open space between the two buildings
and FSI thereupon- Still Deemed Conveyance upheld:

*IN THE HIGH COURT OF JUDICATURE AT
BOMBAY*

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2429 OF 2013

Suleman Abdul Razzak Nishandar .. Petitioner

Vs.

The State of Maharashtra & Ors. .. Respondents

The learned Counsel for the Petitioner submitted that there is a dispute between the developer and the society as regards the area to be conveyed to the Society and more particularly as regards the open space between the two buildings and FSI thereupon.

4. The Competent authority has considered the said submission. The Competent authority came to the conclusion that the Petitioner did not complete his obligations under Section 3(2)m & Section 4(1A)(6) Section 4(2) of the Act. The Competent authority held that the Petitioner-developer was under obligation to finalize the building plans as well as specify the open area before selling the flats..

The Competent authority held that since in the plan the open area has been designated as the common area, the Petitioner at this stage cannot raise a dispute and stall the conveyance in favor of Respondent No.3.

There is no perversity in this finding. The Petitioner was under the mandate to perform his obligations under the Act and having failed to do so, he cannot oppose the registration of the Society and oppose the conveyance in favor of the society. The Competent authority has kept the issue as regards the right to the open area to be agitated before the appropriate forum. In view thereof, no interference is warranted in the impugned order.

5. Writ Petition is accordingly rejected.



Co-op Enterprises & Co-op Stakeholders



Let us be Partner in Nation Building

CA.Ramesh S. Prabhu, FCA, CISA(USA)

09820106766/ rsprabhu13@gmail.com

What is all this empowering us to do? Innovate, Get involved & Solve social problems for financial inclusion and better India through Co-ops!

Thank you for Getting involved in the discussion!

CA RAMESH PRABHU ,