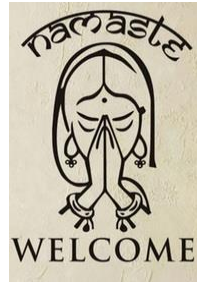




SHREE HARI



WELCOME TO THE SEMINAR ON
DEEMED CONVEYANCE IN CO-OPERATIVE
SOCIETIES AND RECENT AMENDMENTS IN
CO-OPERATIVE SOCIETIES ACT





SEMINAR ORGANISED BY
WESTERN INDIA REGIONAL COUNCIL OF THE
INSTITUTE OF CHARTERED ACCOUNTANTS OF
INDIA AND CONDUCTED BY
CA MR. MUKUL A. VARMA



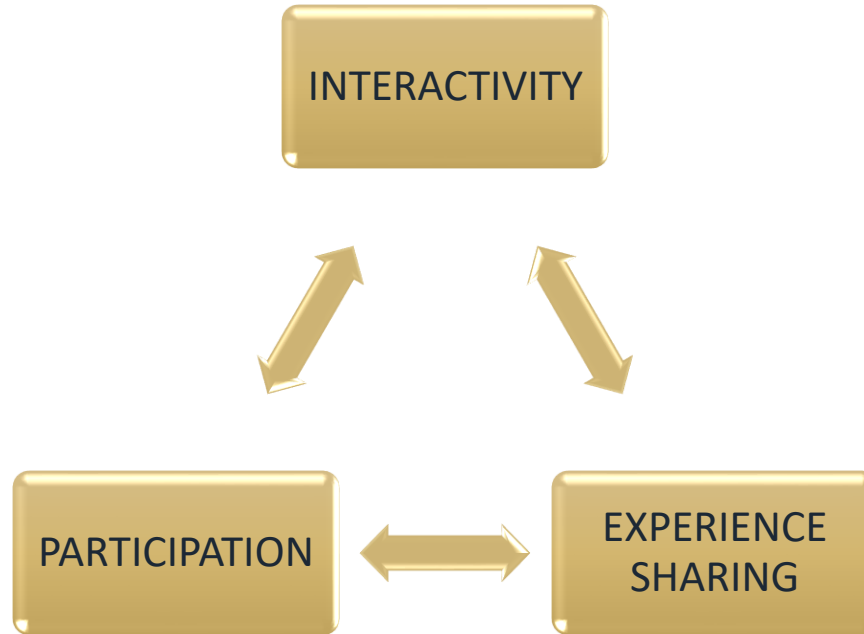


**“One who wins without
Problem is just ‘Victory’.
But one who wins with a
lot of troubles makes
‘History’.”**





EXPECTATION AND VALUABLE INPUTS FROM RESPECTED AUDIENCE





PART-1 CONVEYANCE AND RELATED ACTS

- 🌀 Brief Introduction of Conveyance.
- 🌀 Advantages of Conveyance
- 🌀 Life before and After Conveyance
- 🌀 Acts covered
- 🌀 Some light on MOFA'1963
- 🌀 Important Sections of MOFA

AGENDA FOR THE DAY



PART-2 PATH LEADING TO DEEMED CONVEYANCE

- 🌀 Prerequisites.
- 🌀 Formation of Co-Op. Society.
- 🌀 Imp. Provision related to Formation.
- 🌀 Documents required for Formation.
- 🌀 Reasons for Non-Conveyance.
- 🌀 Notable Amendments
- 🌀 Provisions of Bye-laws.





AGENDA FOR THE DAY



PART-3 ENTRY INTO CONVEYANCE

- 🌀 Documents Required.
- 🌀 Parties to Conveyance Deed.
- 🌀 Stages of Deemed Conveyance.
- 🌀 Online Process Review.
- 🌀 Stage 1: Submission of Application.

PART-3 ENTRY INTO CONVEYANCE

- 🌀 Stage 2: Adjudication and Registration.
- 🌀 Contents in Conveyance Deed.
- 🌀 Stamp Duty Provisions.
- 🌀 Amnesty Scheme-2019.
- 🌀 Stage 3: Transfer of Property Card.

PART-4 CASE STUDIES





PART-I





CONVEYANCE DEFINITION



TRANSFER



PROPERTY



SOCIETY





CONVEYANCE



PROPERTY

SOCIETY

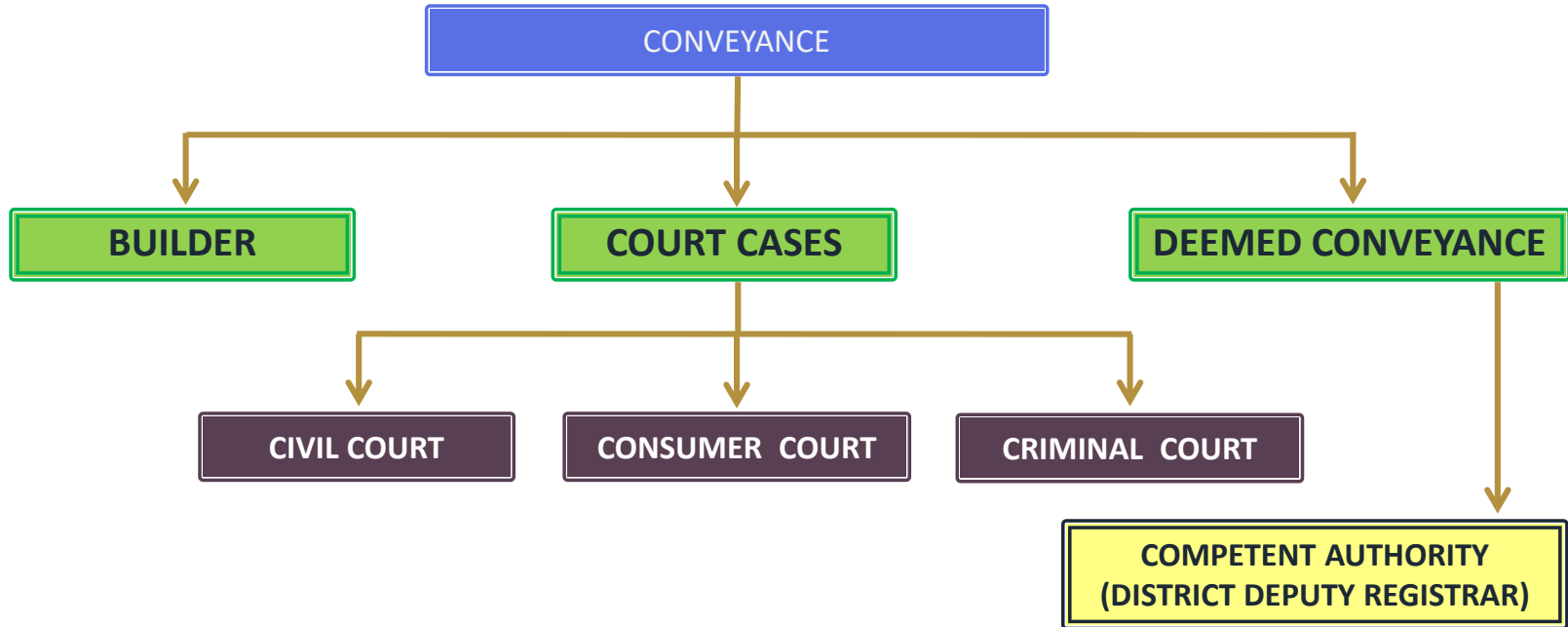
- ✓ Land
- ✓ Building

- ✓ Registered Society
- ✓ The Company
- ✓ Federation
- ✓ Individual Flat Owner





WAYS OF OBTAINING CONVEYANCE





ADVANTAGES OF CONVEYANCE AND DISADVANTAGES OF NOT OBTAINING CONVEYANCE

ADVANTAGES

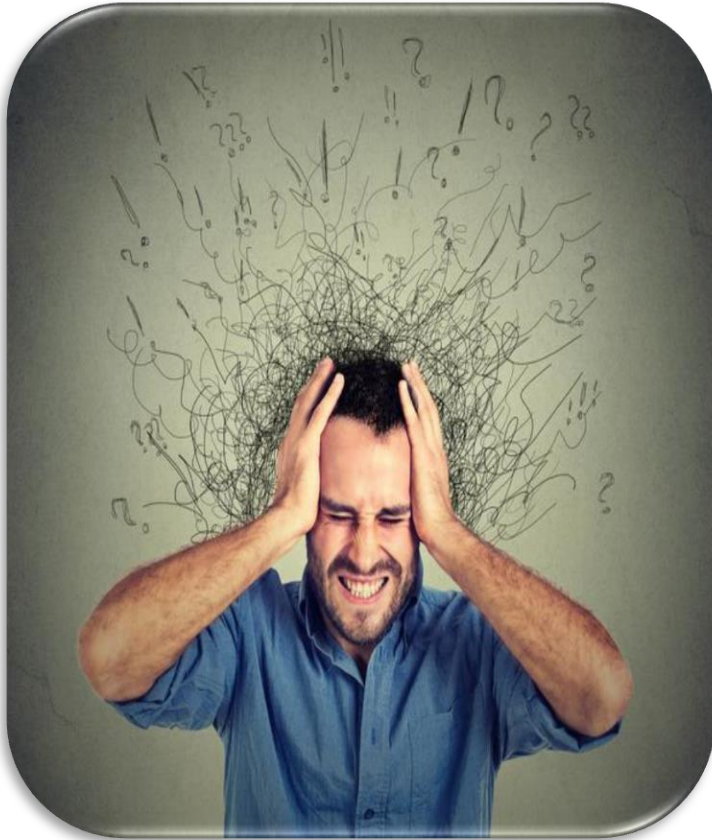


- 👍 Right/Title/Interest to Property.
- 👍 Property-Free and Marketable.
- 👍 FSI/TDR Benefits
- 👍 Property Appreciation
- 👍 Redevelopment/Repairs
- 👍 Property Rent
- 👍 Reconstruction Permission



Disadvantage: If due to any Calamity, building is destroyed, you may lose right to land if you don't have conveyance.





Life Before Deemed Conveyance



- ☹ Many Years in Courts
- ☹ Lots of Legal Complications.
- ☹ Change in M.C. Members



DEEMED CONVEYANCE – “A BLESSING”

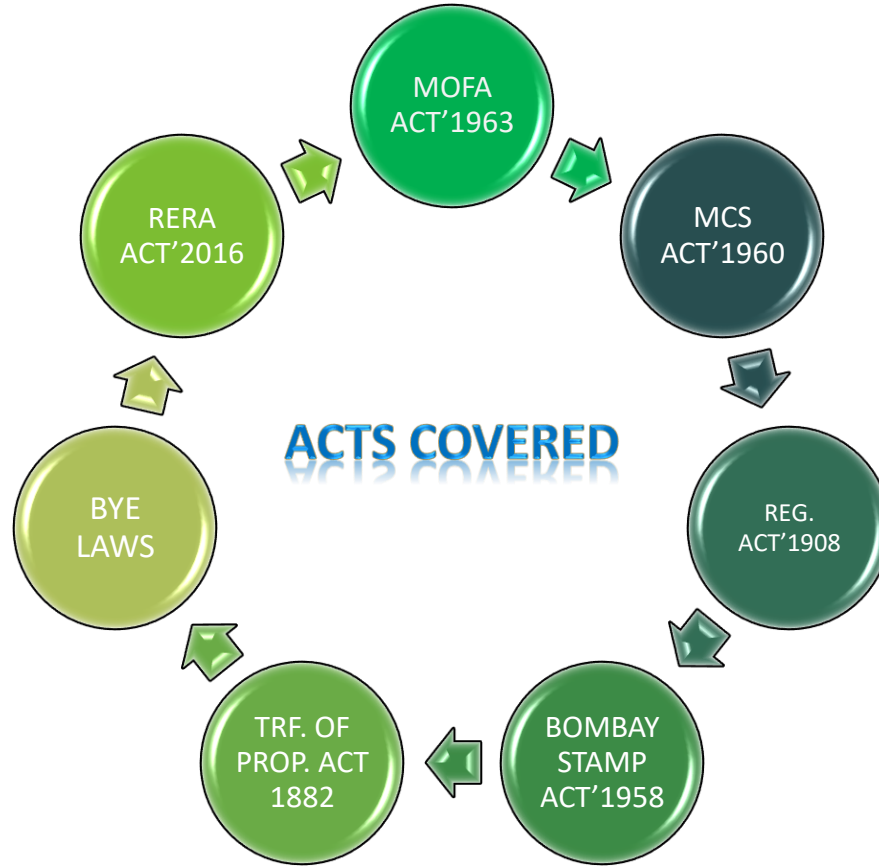


Life After Deemed
Conveyance

6 Months
to 1 Year

Peace of
Mind







MOFA 1963 AND WHY WAS IT ENACTED?

MOFA-MAHARASHTRA OWNERSHIP FLATS ACT-1963



Protect/Regulate Interest of Flat Buyers



Malpractices of Builder

- 👉 Construction Delays
- 👉 No Timely Approvals
- 👉 Defective Title
- 👉 Delay in Possession
- 👉 Delay in Conveyance





DEFINITION OF PROMOTER

MOFA

**Builder or Developer
who Constructs and
Sells Flats**

RERA

**Land Owner, Builder ,
Developer , Contractor
etc.**

MCS Act

Same as in RERA





IMPORTANT SECTIONS-MOFA/RERA

Section 4

Written Agreement and its Registration.

Section 10

Formation of Society.

Section 11 & Rule 9

Conveyance.

Section 13

Punishment - 3 Years Imprisonment or Fine or both.

Section 13a

Trial of offence under the Act-Metropolitan Magistrate or Judicial Magistrate of the first class.

RERA 2016

Section 11 (4)

Formation of Society/Company/
Association/Federation

Section 17 & Rule 9

Conveyance





PART-2





PREREQUISITES FOR DEEMED CONVEYANCE



Registered Society

**4 Months
Completion from
Registration**

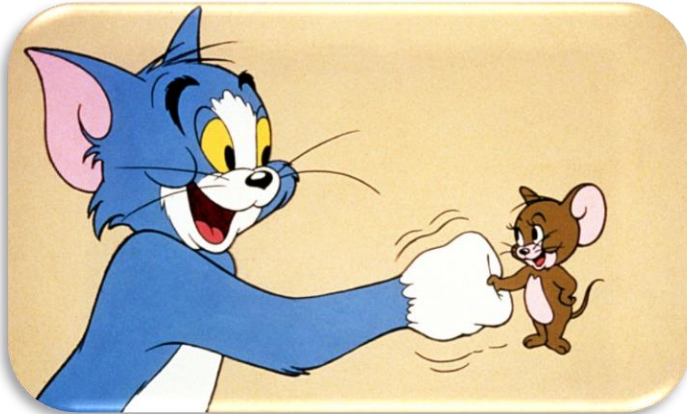




FORMATION OF SOCIETY

Builder Co-operation

Builder Non-Co-operation





IMPORTANT PROVISIONS RELATED TO FORMATION OF SOCIETY

MOFA 1960	RERA 2016	MCS ACT 1960
Within 4 months from registration of at least 60% of the Flat Purchasers Agreements.	Within 3 months from the date of the issue of OC or payment of full consideration by 51% of the total no. of allottees.	No Formation, unless it consists of at least Five Persons or 51% of total Flat Purchases as per Proposed or Sanctioned Lay-out.






DOCUMENTS REQUIRED FOR FORMATION OF SOCIETY WITH AND WITHOUT CO-OPERATION FROM BUILDER

From Society

Complete Agreement Containing:

-  I.O.D.
-  C.C.
-  P.R. Card
-  Title Clearance Certificate
-  Index II

From Builder

-  O.C.
-  Development Agreement
-  Approved Building Plan
-  Architect Certificate
-  Electric/Water/P. Tax Bill
-  List of Unsold Flats





RIGHT OF BUILDER AFTER SOCIETY HAS BEEN FORMED



When a Purchaser is buying a flat; he is not only purchasing the flat but also acquiring an undivided right title and interest in the Property



After the Registration of a Housing Society any balance unutilised residual Floor Space Index (FSI) shall be available to the society and not to the Builder- Judgement by MSCDRC



As per MOFA Provisions, after Registration of the Society, the Builder cannot claim residual FSI or further FSI in the plot or layout

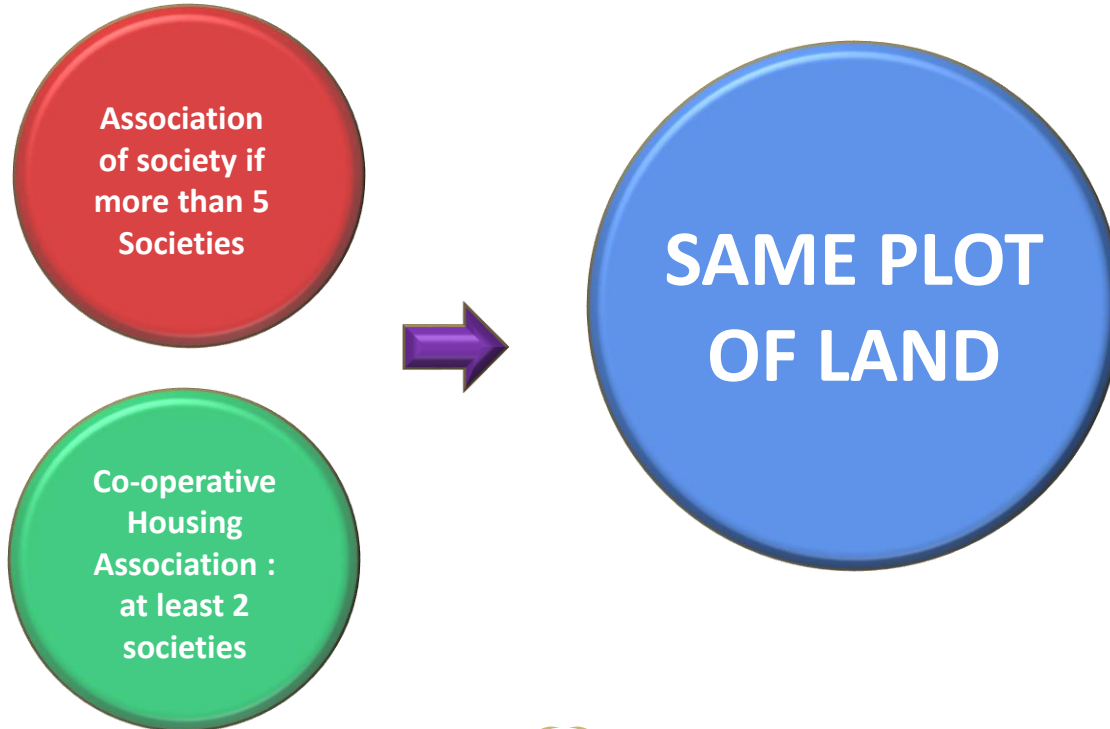


Any provision in the Builders Agreement for sale contrary to the statutory provision will not be binding on any Flat Purchaser or the Society.





FORMATION OF ASSOCIATION





WHY CONVEYANCE NOT DONE FOR MANY SOCIETIES



Non-Cooperation From Builder

- ❖ Retention of Control
- ❖ FSI Benefit
- ❖ Advertisement/Hoarding Rental Income

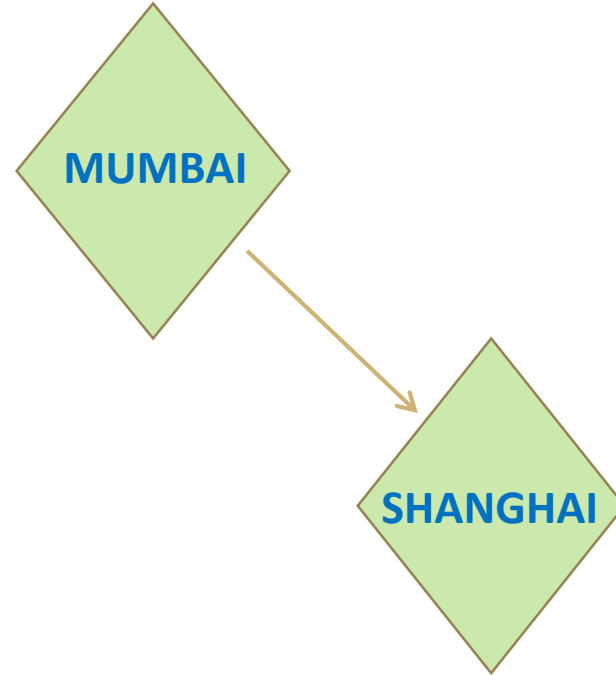
Difficult & Complicated Procedure

- ❖ Approach Court of Law
- ❖ Internal Disputes-Members & Society





GOVERNMENT VISION





IMPORTANT EVENT WITH RESPECT TO MOFA



District Deputy
Registrar notified as
Competent Authority

MOFA Amendment-
25th February'2008



MOFA
(Amendment)
Rules, 2010 notified





IMPORTANT PROVISIONS OF BYE-LAWS

Bye-Law No. 5: Object Clause

To obtain Conveyance from Owner/Promoter of the Right/Title/Interest in Land and Building

Bye-Law No. 88: Agenda of First AGM- Agenda No. 6

Authorising the Committee to secure Conveyance of the right, title and interest in the Property, in the name of the Society from the Promoter/Builder.

Bye-Law No. 154

- ☑ Committee in consultation with General Body, to take necessary steps for Conveyance of Land and Building.
- ☑ Committee to Examine in consultation with the advocate of the Society, the deed of Conveyance/deemed Conveyance and Place the Same before the General Body.
- ☑ On Approval, Committee to execute it as per Law.





PART-3





DOCUMENTS REQUIRED FOR DEEMED CONVEYANCE

Available with the society

- 📄 Registration Certificate.
- 📄 List of members
- 📄 One sample sale agreement.

Available with the members





- 📄 Registered Stamp duty Agreement.
- 📄 Index ii





DOCUMENTS REQUIRED FOR DEEMED CONVEYANCE

From Land Owner

-  Partnership Deed.
-  Certificate from ROF.
-  Death Certificate of the owners of Land.
-  Land Agreement with the earlier owner of the land, in case the Property Card is in a different name.

From Local Authority

(i.e. B.M.C.)



-  BMC Approved Plan.
-  I.O.D.
-  Commencement Certificate.
-  Occupation Certificate.
-  Building Completion Certificate.
-  Property Tax paid receipt.







DOCUMENTS REQUIRED FOR DEEMED CONVEYANCE




From Developer

-  Development Agreement.
-  Death Certificate of the Developer of Land.



From City Survey Office

-  Property Card.
-  City Survey Map.

Talati/Tahsildar Office

-  7/12 extract.
-  Village Form No 6.
-  K.J.P.

Advocate

-  Title Clearance Certificate about the Property.
-  Search Report.





DOCUMENTS REQUIRED FOR DEEMED CONVEYANCE

From Architect

 Survey Report.

From Collector Office

 N.A. Order.

 U.L.C. Order.





O.C. NOT REQUIRED FOR DEEMED CONVEYANCE-GR DATED 17.09.2018

1 As per GR Dated 14.06.2016, Applicant Society has to submit 8 Documents along with Deemed Conveyance Application.

2 In Point No. 7, Society has to submit Completion Certificate issued by the Town Planning Authority.

3 But now as per GR, Building Completion Certificate is to be excluded. Government Resolution is Reproduced below.

Out of the following documents listed in GR dated 14.06.2016 the document listed in point No. 7 to submit Building Completion Certificate issued by the Town Planning Authority is to be excluded and to incorporate the below content.

4 In order to get the Deemed Conveyance procedure in easy manner instead of taking Occupancy Certificate from the cooperative society the society should give a self declaration in writing that they the society has taken the possession of their building/s and will take all the responsibility related to their building. After Deemed Conveyance work is been completed society should apply for Occupancy Certificate at Mumbai Municipal Corporation or related City Local Bodies.





O.C. NOT REQUIRED FOR DEEMED CONVEYANCE-GR DATED 17.09.2018

DOCUMENTS TO BE SUBMITTED WITH ONLINE/OFFLINE APPLICATION

ONLINE

- i. Form No. VII**
- ii. A Copy of Registration Certificate**
- iii. Details of Society and Resolution for Deemed Conveyance passed in AGM/SGM**
- iv. Extracts of the Property Card.**
- v. List of all lawful Flat Holders.**
- vi. Legal Notice of Conveyance Served on Promoter.**
- vii. Building Commencement Certificate as well as Occupation Certificate.**
- viii. Self Certificate, if Occupation Certificate not available.**
- ix. Self Affidavit of the Applicant.**

OFFLINE

- i. Form No. VII**
- ii. A Copy of Form No. VII Showing Receipt of Deemed Conveyance Number.**
- iii. A copy of Sale Agreement and Index-II proof of any one Member as to Ownership of Flat.**
- iv. A copy of Final Sanction Plan.**





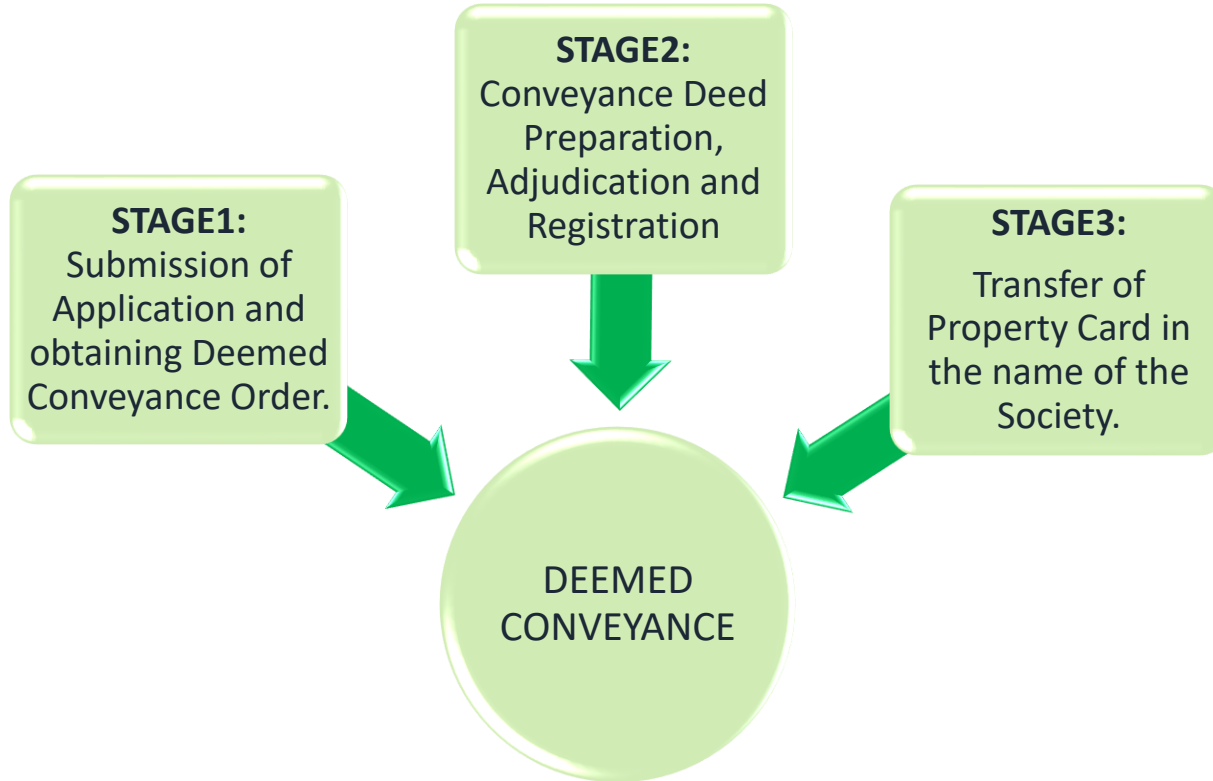
SOCIETY

**PARTIES TO
CONVEYANCE
DEED**

**BUILDER/
DEVELOPER**

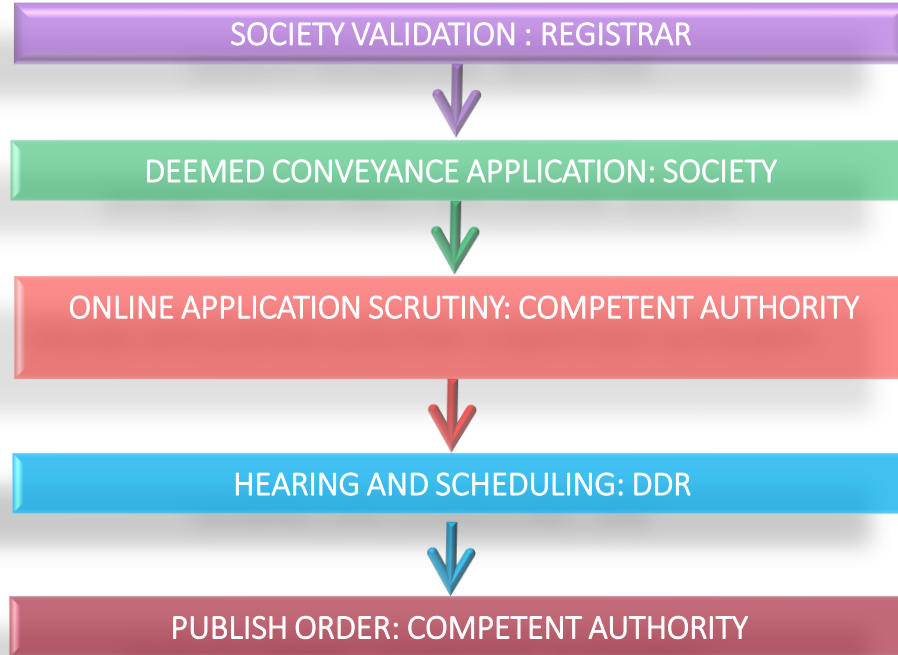
**LAND
OWNER**







STAGE: 1-ONLINE PROCESS OVERVIEW





PHASE 1: APPLICATION

- Validated Society can apply for Deemed Conveyance.
- All Case Documents and details should be uploaded online.

PHASE 2: SCRUTINY

- Competent Authority/ DDR review the application.
- Request information by generating form 8 online.
- Society modifies or provides the requested information.
- Application is accepted after scrutiny.

PHASE 3: HEARING AND SCHEDULING

- Case number is generated online.
- DDR schedules the hearing and generate form 10 automatically.
- Hearing Notes (Roznama) is uploaded online by DDR.
- Stakeholder can track Application online.

PHASE 4: PUBLISH ORDER

- DDR publish the Final Order on closer of the case





STAGE 1: SUBMISSION OF APPLICATION AND OBTAINING DEEMED CONVEYANCE ORDER

STEP 1: DOCUMENTS TO BE PREPARED AND SUBMITTED TO DDR

Authority Letter In Favour of Consultant and Resolution of AGM

Affidavit on Rs.100/- Stamp Paper duly Notarised.



Schedule of Property

Application in Form No. VII



List of Members





STAGE 1: SUBMISSION OF APPLICATION AND OBTAINING DEEMED CONVEYANCE ORDER



**All Parties
Covered**



**CTS No. &
Village/Division**



**Land Area In
Sq. Mtr.**



FORM NO. 7





STAGE 1: SUBMISSION OF APPLICATION AND OBTAINING DEEMED CONVEYANCE ORDER

***STEP 2: Make Written
Submission***

***STEP 3: Attend
the Hearings***

***STEP 4: Argue
the Case***

***STEP 5: Obtain the
Deemed
Conveyance Order***





STAGE 2: CONVEYANCE DEED ADJUDICATION AND REGISTRATION

- ✍ Drafting
- ✍ Approval from CA.
- ✍ Submission for adjudication.
- ✍ Obtain demand notice.
- ✍ Payment of Stamp Duty.
- ✍ Obtain the Conveyance deed duly stamped.
- ✍ Signing the Conveyance deed.
- ✍ Exemption letter from DDR.
- ✍ Issue of notice by Sub Registrar.
- ✍ Registration of Conveyance Deed.





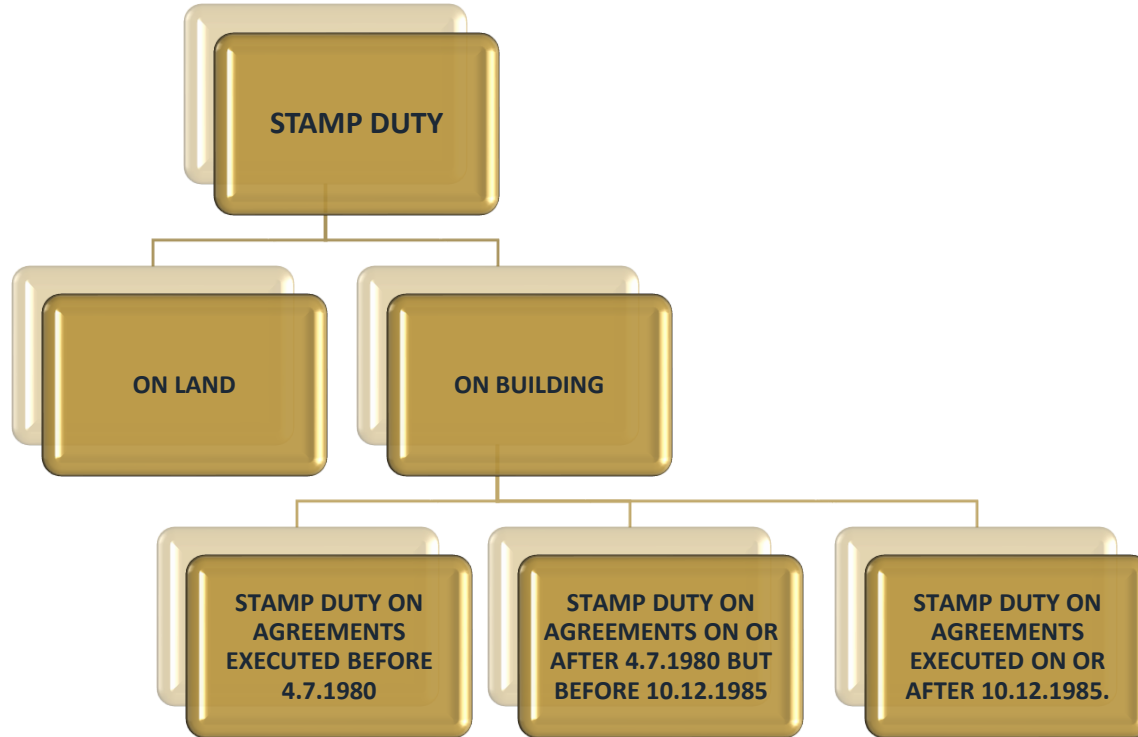
CONTENTS IN CONVEYANCE DEED

- ▮ Description of vendor/land owner/purchaser.
- ▮ Description of property.
- ▮ Description of original owners and chain of transactions.
- ▮ Consideration amount.
- ▮ Name of the Confirming Party..
- ▮ Other usual terms and conditions.
- ▮ Adjudication of Conveyance Deed.
- ▮ Adjudication fees of Rs. 100/-.





STAMP DUTY PROVISIONS





STAMP DUTY PROVISIONS



STAMP DUTY ON LAND

- ❑ Shall be Rs. 100/- only unless increase in FSI has been consumed by the Society after its formation.

STAMP DUTY ON BUILDING

Stamp Duty on agreements executed before 04.07.1980

- ❑ Stamp Duty to be paid at present rate and on the agreement value.





STAMP DUTY PROVISIONS

STAMP DUTY ON BUILDING

Stamp Duty on Agreements on or after 4.7.1980 but before 10.12.1985 flat owners who lodged their agreements in the Amnesty Scheme of 2005-2006 got a reply from the Stamp Office as under :

“Your Sale Agreement is executed before 10.12.1985. At the time of execution of your Sale Deed, the Agreement for **Sale was not treated as part Conveyance** and provision for **collection of Stamp Duty was not applicable** at that time. As such the **agreement is considered properly stamped** under article 5(h). However it must be noted that whenever you proceed to procure the **conveyance** you would be **liable to pay full stamp duty** on the current market value of your property as applicable under the rules”





STAMP DUTY PROVISIONS

STAMP DUTY ON BUILDING

Stamp Duty on Agreements executed on or after 10.12.1985.

Stamp Duty to be paid at rate prevailing in the year of purchase and on the market value of the year of purchase of flat with penalty of 2% per month subject to maximum of 400%.





STAMP DUTY PROVISIONS

AMNESTY SCHEME-2019



GENERAL PROVISIONS

- ✍ Lease/Sale/Mortgage appropriate Stamp Duty Payable.
- ✍ Inadequately Stamped Document, pay differential amount of duty and penalty @2%.
- ✍ Maximum Penalty 400%.



AMNESTY SCHEME

- ✍ Penalty-10% of the actual Penalty.
- ✍ MHADA: can avail Amnesty Scheme, even if no Stamp Duty has been paid on such documents.





STAMP DUTY PROVISIONS



AMNESTY SCHEME-2019

APPLICABILITY



- ☞ Sale or Transfer of Tenancy Rights.
- ☞ Any instrument to allot/transfer/sale units-eligible/pending for deemed Conveyance.
- ☞ Transactions of CIDCO, MHADA OR SRA.
- ☞ Action for recovery of deficient duty has been initiated.
- ☞ Cases being Subject matter of the Appeal-decision on the same is pending.
- ☞ In case of pending appeal, should withdraw appeal unconditionally.
- ☞ Penalty and Stamp Duty not paid in Application of Previous Amnesty Scheme-Filing Fresh Application.
- ☞ Cannot avail to claim refund of Penalty already paid.
- ☞ Agreement executed on or before 31st December'2018.





STAMP DUTY PROVISIONS

AMNESTY SCHEME-2019

The Scheme is For

- Property Owners in Housing Societies.
- Constructed by MHADA-CIDCO-SRA



- Made on Stamp Paper of Nominal Amount or on plain paper.
- Registering Authority not under obligation to ensure payment of Adequate Stamp Duty.

- Housing/Premises Societies



- Conveyance not done for the land.

- Residents of old Housing Societies



- Wish to opt for Redevelopment.





STAMP DUTY PROVISIONS

AMNESTY SCHEME-2019

RECEIVE DOCUMENTS



SUBMIT DOCUMENTS



RECEIVE DEMAND NOTICE



PAY APPROPRIATE STAMP DUTY



DOCUMENT CERTIFICATION



RECEIPT OF CERTIFIED DOCUMENT





STAGE 3: TRANSFER OF PROPERTY CARD IN THE NAME OF THE SOCIETY

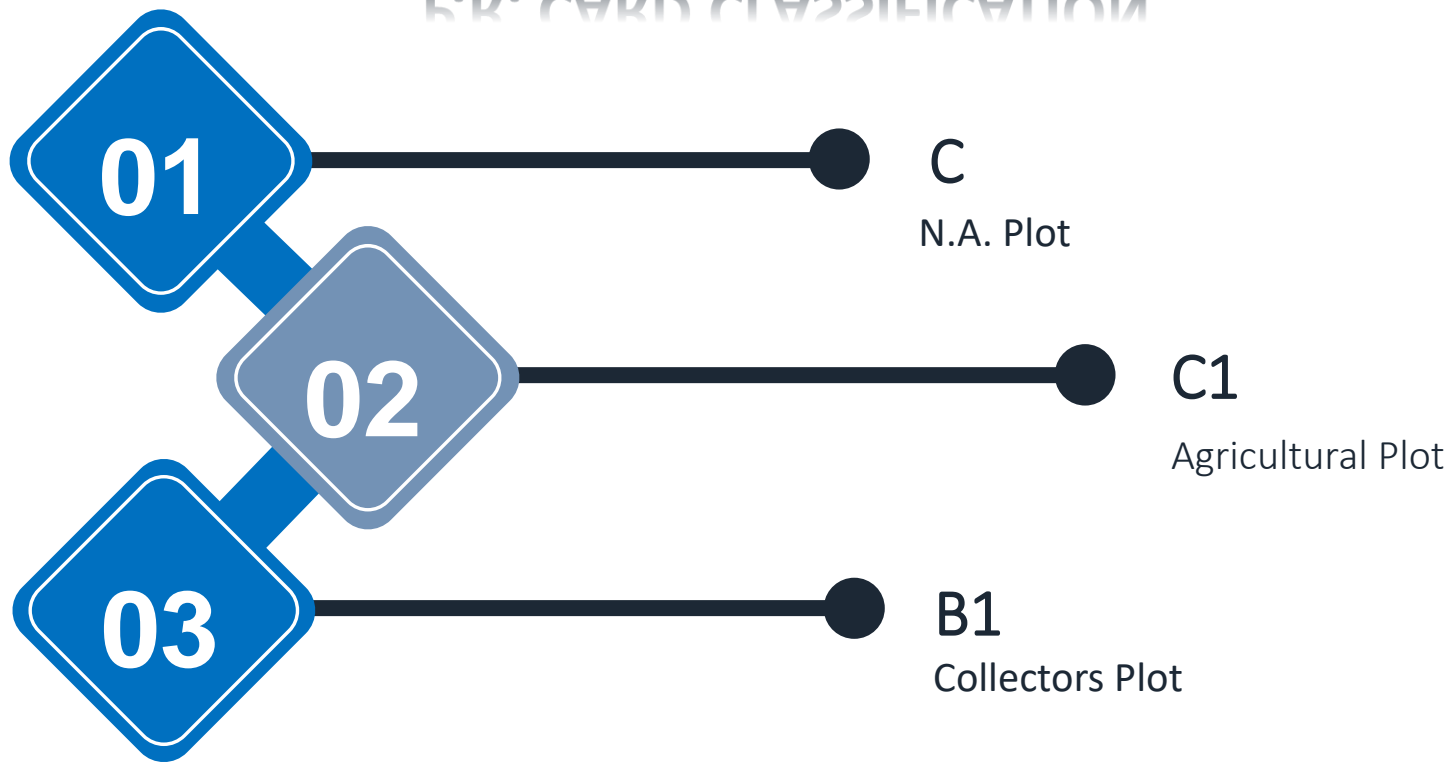


- Application to the city survey office.
- Enquiry/survey.
- Endorsement.





P.R. CARD CLASSIFICATION





PART-4





CASE STUDIES





RULE IN AMENDED MOFA: CONVEYANCE BY BUILDER/PROMOTER/ LAND OWNER (WHAT AREA TO BE CONVEYED)

LAYOUT PLOT

- ✍ Exclusive Right/Title and Interest;
- ✍ Proportionate undivided share, title and interest in common areas and the facilities provide or to be provided;
- ✍ Calculated based on the total FSI Permissible;
- ✍ If balance FSI or any benefits of TDR available, same shall be available to Promoter without any hindrance;
- ✍ The Apex Body or Federation can also be formed to Manage Common Areas/Facilities;
- ✍ If the Apex Body or the Federation is formed, if desired by legal entities Conveyance can be executed in favour of Apex Body or Federation;



The Promoter Cannot withheld Conveying Land and Building for want of further Development.





CALCULATION OF PROPORTIONATE LAND AREA TO BE CONVEYED



Total Plot Area : 1903.90 Sq. Mt.

Total Built-up Area of all the buildings on the Plot : 3284.43 Sq. Mt.

Built-up Area of Applicant Society : 497.01 Sq. Mt.

Area to be Conveyed: $\frac{\text{Total Plot Area}}{\text{Total Built-up Area}} \times \text{Built-up Area of Society}$

$\frac{1903.90 \text{ Sq. Mt.}}{3284.43 \text{ Sq. Mt.}} \times 497.01 \text{ Sq. Mt.}$

Area to be Conveyed: 288.10 Sq. Mt.





**BUILDER NOT ENTITLED TO EXPLICIT ANY ADDITIONAL FSI ONCE
OCCUPATION CERTIFICATE & B.C.C. HAS BEEN OBTAINED.**

01

WRIT PETITION NO.2834 OF 2018

MAYFAIR HOUSING PRIVATE LIMITED.....PETITIONERS

V/S

MAYFAIR KUMKUM CHS LTD. AND OTHERS.....RESPONDENTS





2.

Case in Consumer Court Pending. Can Society get Conveyance?

3.

Whether Conveyance Possible if there is balance FSI?

4.

Whether Conveyance possible in case of dispute raised for open space between the 2 buildings and FSI thereon ?





5.

If Conveyance has been given by the Developer and Property Card not transferred? Later found that area and CTS No. in Conveyance is wrong and builder has refused to rectify.

6.

Conveyance given by builder 40 years back. Later found that area in possession is more than area given in Conveyance.

7.

Land Owner gave lease to Developer. Developers name on PR Card as lessee. Society obtained Conveyance from Land Owner. How do you remove name of lessee from PR Card?





8.

Land Owner has died? Legal heirs ready to give Conveyance, but their names not incorporated on property card? What is the Remedy?

9.

Conveyance granted by the Court 30 years back? But name of the land owner not entered in the order? How do you execute Conveyance Deed?

10.

Partly Developed Lay-out plot, after Society Formation, Land Owner sold full plot to the Third Party. Can Society claim Conveyance for its Proportionate Share?





11.

Dispute between Land Owner and the Builder for money not paid to the land owner by the Builder. Whether conveyance is possible ?

12.

One plot – 2 societies – can they have separate Conveyance?

13.

Land owner granted lease to the Developer? Can the Society get Conveyance?

14.

Whether chain of Agreements of a particular flat are required in the case of Conveyance?

15.

If the Agreement of one flat owner is not available , what is the option as regards Stamp Duty payment?





MISCONCEPTION AND REALTY OF NOMINEE AND ITS RIGHTS

TRUE
OR
FALSE

- 💡 Automatic Membership of Society on the death of a Member on filing Application for Membership by Nominee.
- 💡 As Supreme Court Ruling in 1984, Nominee is a mere trustee.

As per New Section 154B-13:

- ✍ Transfer only on the basis of Testamentary Documents/Succession Certificate/legal heirship/family arrangement document etc.
- ✍ Can admit Nominee as a Provisional Member.





“WHEN IT RAINS MOST BIRDS SEEK SHELTER. THE EAGLE IS THE ONLY BIRD THAT WILL FLY ABOVE THE CLOUDS TO AVOID THE RAIN.”

“PROBLEM IS COMMON TO ALL BUT THE ATTITUDE TO SOLVE THE PROBLEM MAKES ALL THE DIFFERENCE...”



**THANK
YOU**

CA MUKUL A. VARMA

