

WELCOME

PRESENTATION ON RERA IMPACT ON REDEVELOPMENT PROJECTS

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GENERAL ASPECTS TO CONSIDER ABOUT REDEVELOPMENT

Under RERA there is no specific provision for redevelopment project. In case of redevelopment including self-redevelopment, provisions of MahaRERA and Rules Regulations are applicable as in normal course to any other Real Estate Projects.

Some important points have to be considered for redevelopment by the developer or for self-redevelopment by the society:-

For redevelopment of society building, one has to follow **Revised Redevelopment Direction by the Maharashtra Government dated 4th July 2019** issued under section 79A of The Maharashtra Cooperative Society Act 1960.

Wherein certain directions are given to be followed to bring transparency in the process of appointment of developer etc. Whereas in case of self-redevelopment except directions for appointment of developer, all other directions are applicable. There can be no compromise in transparency of the project as regards appointment of contractors and other professionals.

Proper procedure has been specified to be followed regarding tendering systems for appointment of contractor and other professionals by passing appropriate resolution at appropriate meeting of the Redevelopment Committee or the General Body of the society with specific percentage of members for specific resolution as the case may be.

COST-BENEFIT AND RISK-REWARD ANALYSIS

❖ **This Analysis be done before deciding Redevelopment by the Developer or by the Society:**

- Cost-benefit and risk-reward analysis should to be done professionally before making the choice between both of them.
- The process of redevelopment by the developer is very familiar, rested and proven.

Wherein after due process of appointing PMC by the society and the following the Revised Redevelopment Direction, developer is appointed by the society.

- Developers are well equipped with knowledge and techniques of real estate construction industry to complete the project and handover the flats to society members in a professional manner.

- At the same time, in case of redevelopment by the developer, there are additional cost which is required to incur and ultimately those costs are resulting increase in overall cost of the project and reduced area sharing with the society members.

For example:-

- To pay the corpus fund

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- Developer has to pay huge amount of stamp duty for registering the Development Agreement and its registration charges added with professional charges to consultants for doing that.
- To bear cost of professional charges for preparing, drafting Development Agreement and various other documents which may not be required in case of Self-redevelopment.

- Increased cost due to GST impact on sale of additional area or flat to society members.
- Finance cost on fund requirement to cater the resulted increased cost of the project and this cost burden starts recurring since inception of redevelopment process.
- Developer has to give 20% bank guarantee of the project cost to the society which increases bank charges and other cost and ultimately added to the cost of the project.

SELF-REDEVELOPMENT GUIDELINES

Big Opportunity for Self-redevelopment announced by Maharashtra Government by issuing Guidelines for Self-Redevelopment dated 13th Sept, 2019 to give impetus to the Self-redevelopment of the registered co-operative housing societies in the State but implementation procedure is yet to be declared by the government.

WHETHER SERVICE PROVIDERS ARE AVAILABLE TO SUPPORT THE SOCIETY FOR SELF-REDEVELOPMENT

- If we really look into the various technicalities and other aspects under self-redevelopment and want to resolve them, there are many service providers who are providing all the service under one roof and taking the responsibility to coordinate with all the professionals and the redevelopment committee of the society so that redevelopment work get complete smoothly in time bound manner.

- In recent few years, major shift in thinking and planning of the members of the housing societies has happened and they have started considering both types of proposals with pros & cons. This seems to be major shift from the traditional pattern of redevelopment only through developers to self-redevelopment.

- After declaration of self-redevelopment guidelines by the State Government, lots of hopes arose in housing sector for redevelopment but that hope is put on the back burner in absence of guidelines for implementation procedure for self-redevelopment as well as clarification by RBI or Government initiative to provide project financial for self-redevelopment.

- Once such genuine hurdles will be removed then there may be sea change in this direction to reconstruct old and dilapidated buildings. Even currently unviable projects will become viable & profitable.

MAJOR ADVANTAGES OR BENEFITS TO MEMBERS OF THE SOCIETY UNDER SELF-REDEVELOPMENT

In case of self-redevelopment major benefits to members of the society may be visualized by way of following:-

- Members may get more constructed area in comparison to redevelopment by the developer.

- Profit possible from the project at the end which may be deposited in bank to earn interest to reduce monthly maintenance cost.
- Quality construction and quality materials of choice of members of the society is possible.
- Member's choice of design, plans, specifications, amenities etc possible.

- Faster completion of the project,
- Chances of less litigation,
- Lesser formalities to begin the project
- Lesser cost due to GST impact.

➤ Reduction in overall project cost.

For example-

No need for Development Agreement and
Related cost of drafting SD & registration etc.

➤ All contracts, approvals, licenses etc will be in the name of the society. Therefore no one can dare to play with the society.

EXEMPTION FROM REGISTRATION REQUIREMENT UNDER RERA

No registration under RERA required for the following Real Estate projects in general including redevelopment projects: -

- Where the area of land proposed to be developed does not exceed 500 square meters or
the number of apartments proposed to be developed does not exceed eight inclusive of all phases,

- Where the promoter has received completion certificate for a real estate project.
- For the purpose of renovation or repair or redevelopment which does not involve marketing, advertising selling or new allotment of flat under the real estate project.

❖ Important Common Provisions under RERA for Redevelopment projects:-

- RESTRICTION ON PROMOTER TO ADVERTISE, MARKET, BOOK, SELL OR OFFER FOR SALE, OR INVITE PERSONS TO PURCHASE.
- **REGISTRATION OF REAL ESTATE PROJECT**

- EXTENSION OF REGISTRATION
- REVOCAION OF REGISTRATION – ON DEFAULT
- OBLIGATION CONSEQUENT TO LAPSE OF OR ON REVOCATION OF REGISTRATION.
- All obligations as promoter including Penalty & offences provisions.

CHALLENGES IN SELF-REDEVELOPMENT BY THE SOCIETY

- ❖ From the perspective of self-redevelopment there are few crucial challenges:-
 - Concern of members for devotion of so much of time,
 - Real estate industry is highly technical and specialized,

- To gather consensus of all members of the society,
- Various income group members trying to fight for their interest,
- Initial funding is big hurdle,
- Subsequent fund arrangement for completing the redevelopment,

- Administrative capabilities in members,
- To handle various professionals such as PMC, Architect, Advocate, Chartered Accountant, Contractor, Finance consultant, society consultant, etc.
- To co-ordinate amongst all professionals and Redevelopment Committee members and Society members from time to time.

STATUS OF DEVELOPER AND THE SOCIETY IN MAHARERA REGISTERED PROJECT

- In case redevelopment project carried by developer, then the developer is the Promoter-developer under MahaRERA and the society becomes Promoter-Land owner.

- Similarly, in case of self-redevelopment of project by the society, the society becomes the promoter of the project under MahaRERA. Accordingly, the society has to comply with all the requirements for registration of the real estate project with MahaRERA.
- In both the situation if the promoter whether developer or society want to advertise, market, book, sell or offer for sale, or invite for flat in the real estate project, they have to first register the project with MahaRERA.

CONSIDERATION CLAUSE IN DEVELOPMENT AGREEMENT WITH THE DEVELOPER VIS A VIS MAHARERA COMPLIANCES

❖ The society enters into Development Agreement with the developer wherein regarding consideration mostly the following understanding may happen:-

- Area sharing,
- Revenue sharing,
- Combination of both

- In the above two situations under clause (A) and (C), the Developer as well as the Society have to upload Affidavit-Declaration in Form-B as being Promoter-Developer and Promoter-Landowner respectively.
- In the given case, developer became the main promoter under MahaRERA and is responsible for the functions and duties under the Act/Rules/Regulations therein.

- The society being promoter-Land owner also has to comply with requirements related to opening Designated Bank Account, CA Certification related to the land cost, quarterly updation of sale or booking of flats etc from time to time, RERA Audit etc.
- But in case of revenue sharing under option-B above, the society does not require to do so because in this case, only developer is promoter under MahaRERA and he has to comply all duties and functions as a promoter as aforesaid.

ADVANTAGES OF REDEVELOPMENT BY DEVELOPER

- Hands-off approach for the Society
- Construction expertise,
- process know-how,
- liaison work done by the developer.
- Fund management is the responsibility of the developer.

ADVANTAGES OF REDEVELOPMENT BY DEVELOPER

- Least intervention from the society members.
- Handling disgruntled members of the society.
- Having professional team ready to work in better way.

DISADVANTAGES OF REDEVELOPMENT BY DEVELOPER

- Lower extra space by developer.
- Challenge of timely payment of Corpus Fund, rent payment, extra space or corpus.
- Failure to maintain completion deadlines,

- Challenge of timely completion of redevelopment project.
- High chances or probability of the project to get stalled.
- Mis-use of Authority given to the developer and chances are that he may change the plans, designs, specifications and also standards or qualities.

- Lack of transparency in the process leading to higher risk for the society.
- False promises or inappropriate commitments by the developer leading to stressful relations with Developer as well as amongst members of the society.
- Timely Handing over after completion/OC of the redevelopment of the project.

QUESTIONS & ANSWERS RELATED TO RERA ON REDEVELOPMENT

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Question-1: Whether Redevelopment of society building needs to be RERA registered?

Ans: – If the promoter wants to book/sell/market etc flat, then he has to first register the project with MahaRERA.

Question 2: Whether society members can claim relief under MahaRERA for non-payment of rent or corpus fund etc as committed by the promoter in DA?

Ans: – No, society members are not eligible to get relief for non-payment of rent or corpus fund etc at MahaRERA because society is also treated as promoter (Land Owner)

Question 3: Whether society members can claim relief under MahaRERA for Interest and compensation for the delay in completion of the project from the developer?

Ans: - No, society members are not eligible to interest and compensation in completion of the project at MahaRERA because society is also treated as promoter (Land Owner).

Question 4: Existing members of the society, in a redevelopment project through the developer, have bought additional area(s) or additional flat(s) in that project alongwith outsider allottees:-

1. Whether society members are entitled to take relief under RERA ?
2. Whether there will be any difference if the developer does not sell additional area or flat to the non-member or outsider ?

Ans: –

1. Yes, Society members will be treated as allottee for the additional area or flat they purchase from the developer in the redevelopment project registered in MahaRERA.
2. Yes, for additional area or flat, right of buyers be protected in RERA even if they are members of the society.

Question 5: Whether there will be any difference if the developer sells additional area or flat to the existing society members only at terms agreed prior to CC of the project?

Ans: – In the circumstance, in my opinion, the member buying additional area or flat be treated as Promoter (Investor) and will not get relief under RERA.

Question 6: In case of self-redevelopment project whether society is to register with MahaRERA?

Ans: – Simply because society is promoter under self-redevelopment of project does not require MahaRERA registration. If the society wants to book/sell/market/offer etc apartment to non-members, registration of project with MahaRERA will be compulsory.

Question 7: Whether there will be any difference if the society member wants to purchase any flat in the name of his brother / relative in the self-redeveloped project by the society

Ans: – In my opinion there can be two situations:-

First, if the member's relatives or friends purchase prior to CC for the project, they will be treated as Promoter (Investor) and registration of the project will not be necessary until society wants to market/sell further.

Secondly, if the society has got CC for the project and member's relatives or friends want to book or purchase flat in the project, the society can not do that without first registering the project in MahaRERA.

Question 8: In case of self-redevelopment by the society additional area or flat is purchased by the existing society members as well as few flats are sold to non-members in the MahaRERA registered project whether existing members will be eligible for relief for the additional area or flat they purchased?

Ans: - Existing members will not get the relief under MahaRERA. Only non-members will be entitled to get the relief under MahaRERA. Here in this case society is consisting of members and the society as a promoter carries on the redevelopment activities through its own members. Therefore members cannot claim relief from the society. Although there can be other view also and based on general body decision of the society to provide such previlage.

CASE LAWS STUDY

8th July, 2021

BOMBAY HC ORDER DATED 25TH FEBRUARY, 2021

In the matter of

SBI Staff Dream Co-operative Housing Society Ltd.... Petitioner

Vs

Surya – Landmark Developers Private Limited ... Respondent

/Developer

Bhavna Rajesh Doshi & Ors.

... Applicants /Interveners

- **The Applicants had purchased, for valuable consideration, certain flats in the free-sale component of a building belonging “SBI Staff Dream Cooperative Housing Society Ltd.” and which was to be developed by the developer, Surya – Landmark Developers Private Limited.**
- **By court order the Development Agreement entered with the developer was terminated.**

- The Applicants had submitted that the aforesaid order ought to be set aside as their rights are vitally affected and no notice was given to the Applicants before passing the order on **6th March 2020**.
- This order was passed in a Contempt Petition which was filed by the Society against the developer. **In this order, the Court had held that it saw no reason why the Development Agreement should not be terminated as a necessary consequence and as an alternative to a jail sentence and fine being imposed.**

- In such a situation, the grievance, if any, of the Applicants cannot be against the Society.
- **The Applicants have no right vis-a-vis the Society and they certainly have no privity with the Society.**
- **This being the case, they certainly have no locus to contend that the Society is not entitled to terminate the Development Agreement entered into with the developer.**
- **Their grievance, if at all, would be against the developer from whom they have purchased their flats in the free-sale component.**

- Applicants herein, purchasing flats in the building to be redeveloped by the developer, do not get any rights against the Society, as there is no privity between the Applicants and the Society.
- Applicants are at liberty to raise all their contentions against the developer but no injunction on any part of the property that belongs to the Society or is to be developed for the Society's benefit can be granted in a Suit for specific performance of the agreement between the Applicants and the developer.
- **Accordingly, the Interim Application of the Applicants was dismissed.**

BOMBAY HC ORDER DATED 12TH MARCH 2021

In the matter of:-

•Chirag Infra Projects Pvt LtdPetitioner

Versus

•Vijay Jwala Coop. Hsg Soc Ltd & Anr ... 1st Respondent

•Kondvilkar 2nd Respondent

- **Key points & facts in the judgement:-**
- In this landmark Judgement, Hon'ble Bom HC had taken very strongly against the solitary member of the society obstructing the redevelopment of the society building.
- The building was in dilapidated condition and unfit for human habitation. MHADA had declared and categorized as a 'C1' building.
- HC commented on the occupant that It does not matter to that dissenting member that the building now poses a risk to all occupants including the dissenting himself and ,in addition , others in the vicinity .

- Persistent obstruction for the last 6 years are beyond shocking. Obstructing member is only tell what is right or wrong and what's good for all.
- The society had obtained written consent of not less than 70% members.
- Any person who refuses to vacate such premises or obstructs such eviction shall, on conviction , be punishable with imprisonment for a term which may extend to one year or with fine which may extend to Rs5000/- or with both.

- The Society's general body resolution is a foundational document and the occupant had never assailed the Society's resolution regarding re-development or the redevelopment agreement.
- **Member loses his individual identity upon becoming a member, and his identity is subsumed with in the society of which he is a member.**
- **A person can not both claim the benefits of membership and yet deny the authority of the general body of the society.**

- Once the person becomes a member of the Co-operative Society, he loses his individuality with the Society and has no independent rights except which is given to him by the statute and bye-laws as a member.
- The occupant was given time until 30th April 2021 to vacate his flat.
- The occupant will be afforded all the benefits and incidents available to all other members of the society including transit rent/ the transit accommodation, shifting and corpus charges.

- **If the Occupant fails to vacate by 30th April 2021, the Court Receiver, High Court ,Bombay will proceed to forcibly take possession from the occupant with the assistance of the police authorities from Goregaon Police Station. The Court Receiver is at liberty to break open the locks of the said premises.**
- **The police authorities at the Goregaon Police Station will not take cognizance of any complaint or allegation that the Occupant makes against any officer of this Court.**

BOMBAY HC ORDER DATED 14TH OCTOBER 2019

In the case of....

Goregaon Pearl CHSLAppellant

VS

Dr Seema Mahadev Paryekar & Ors.Respondents

Key facts & findings:-

- This judgement is landmark because in this case developer & flat purchasers had gone right upto the Supreme Court.
- The matter pertains to redevelopment of building owned by **Goregaon Pearl CHSL with developer, SSD Escatics Pvt Ltd and CC** was taken in June , 2008.
- Possession was supposed to give in 25 months by the developer with two wings A and B.
- Both wings were partly accommodate the members of the society and partly third party purchasers of the free sale component of the project.

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- Both wings were partly accommodate the members of the society and partly third party purchasers of the free sale component of the project.
- Even after 8 years in 2016, construction was nowhere near completion and the society revoked the rights given to the developer.
- The society invoked bank guarantee of Rs.5 crores and encashed.

- By interim order of the High court, the parties entered into consent terms in July 2017 and the developer was to complete the project by June 2018.
- The developer breached the terms and the society terminated their D/A.
- The developer was directed by the court to handover possession of the suit property to these private receivers.
- Decision taken by the General Body of the Appellant society, which required all its members to be accommodated in Wing B, which was at a much more advanced stage of completion.
- The society allowed by the court to appoint a new developer or contractor for completion of the project.

- Some Flat purchasers approached SC but their plea was dismissed.
- SC said the third party purchasers were given liberty to approach the arbitral tribunal and seek appropriate remedies.
- The court said that the project has been judicially formulated after judicial scrutiny and it cannot be allowed to be jeopardized. All the members of the society were allowed to be accommodated in Wing B.
- Those flat buyers, who purchased out of free sale component in Wing B, were said to approach MahaRERA to address their grievances against the developer.

- This court held that there was no privity of contract in such a case as between the society and third party purchasers claiming through the developer.
- The court held that the interest of buyer has been adequately protected and no further protection which has the effect of disturbing the scheme formulated by the judiciary.
- **The application for stay by the flat buyers was rejected.**

THANK YOU

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8th July, 2021

Disclaimer

All the efforts are made to cover the important provisions of the law. The material contained herein is not exhaustive, and contains certain generalizations. The latest Provisions and Notifications must be viewed. The presenter is not responsible for any loss incurred on the actions taken based on the material presented.