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JANUARY 2012

Vol. 05 Issue 10

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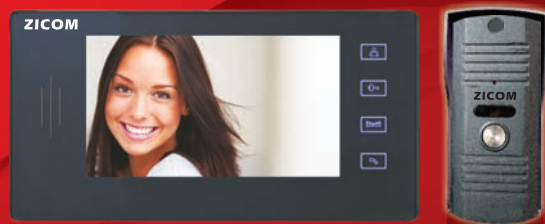
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**Mr. Ramesh Tank**, Sr. Manager, BDD, **Mobile: +91 98202 10019, Landline: +91 22 6723 2362, Email: ramesh@mayfairhousing.com**  
**Mr. Chhotulal Jain**, Manager Business Development, **Mobile: +91 9619889967, Landline: +91 22 6723 2363, Email: chhotulal.jain@mayfairhousing.com**

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## EDITORIAL & PUBLICATION OFFICE

A-2/302, Laram Center,  
Above Golden Gate Hotel,  
Opp. Andheri Railway Station,  
Andheri (W), Mumbai - 400 058.

## EDITOR & PUBLISHER

Ramesh S. Prabhu  
Off : 022 - 42551414 / 26248589 / 65  
Mob.: 09820106766

## MANAGING EDITOR

Mr. V. Viswanathan 9890187344

## DESIGNED BY

Mr. Vishal Bamane 9823911027

## EDITORIAL BOARD

Mr. G. G. Shanbaug 9870205677  
Adv. Pramod Kumar 9224768008  
Mr. Naresh Pai 9850822472  
CA. Vijay Rao 9819432765  
Adv. Vijay Thilakan 9869051947

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office at Tel.: 022-42551414  
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## EDITORIAL

Dear Members,

Wish you all a happy and a prosperous new Year 2012. There were many changes that have happened in the real estate in the year 2011. Deemed Conveyance, redevelopment of the old buildings were the highlights of the year. In the new year we are expecting to have increase in FSI, appointment of regulatory authority for real estate development etc.



CA RAMESH PRABHU  
Chairman, MSWA

We had arranged 3 mega redevelopment exhibition with the help of DNA in the year 2011. This year again on 4<sup>th</sup> and 5<sup>th</sup> Feb, 2012 4<sup>th</sup> Mega Redevelopment exhibition is being held at Goregoan. The details are given elsewhere in this magazine. You are requested to take the full benefit of the same.

The proposed Maharashtra Housing Act, 2011 has been recently approved by the Cabinet and is expected to see the light of the day in the new year. There are many controversial provisions like the developer will be allowed to sell the car parking, recover the cost of amenities in addition to the cost of flat. The Registration department has issued a circular stating the old agreement on which stamp duty has been paid will not be registered by taking the declaration. At the time of registration, both the parties have to be present after the expiry of 8 months from the registration.

The layout conveyance in the name of the Federation has been proposed in the new Bill. In case the individual societies want to have conveyance, they will get only conveyance of building with the FSI consumed and any increase in FSI/ TDR will go to the promoter till the complete conveyance of land takes place in the name of the Federation.

Once again, wish you all a happy new year

With warm Regards  
CA RAMESH PRABHU

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# ASHVI ENTERPRISES

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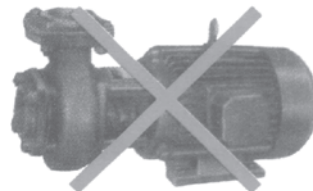
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## **FOURTH INNINGS OF DNA'S UNIQUE INITIATIVE WILL PROVIDE CLARITY ON THE REDEVELOPMENT PROCESS WITH EXPERTS EXPLAINING IMPORTANT KEY NORMS AND ANALYSING THEIR IMPLICATIONS**

**AFTER A SUCCESSFUL HAT-TRICK ACROSS MUMBAI IN 2011, THE FOCUSED REDEVELOPMENT CONFERENCE-EXHIBITION SERIES PROCEEDS TO THE WESTERN SUBURBS OF MUMBAI, AT AN EASILY ACCESSIBLE VENUE - BOMBAY EXHIBITION CENTER, GOREGAON (E) - IN FEBRUARY 2012**

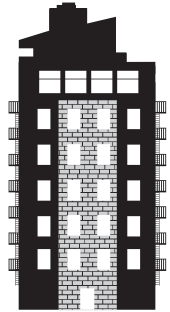
Redevelopment is the magic mantra that can give Mumbai's old and dilapidated buildings a complete makeover. From old chawls to tenanted buildings and old housing societies, every type of structure can benefit from it. Redevelopment of old buildings has become a common cause for concern where existing housing societies across Mumbai are concerned. Making the transition from an old dilapidated building to a new, stable redeveloped structure is not an easy task due to various factors.

To facilitate this process DNA has launched a dedicated interactive platform, which will help and ensure that the residents in these old structures take an informed decision and give them a new lease of life. As part of DNA's sustained endeavour in this direction, the fourth DNA Property Redevelopment Conference-cum-Exhibition will be held at Bombay Exhibition Center, NSC Grounds, Goregaon (E) on February 4-5, 2012 from 10.00 a.m. onwards. One can register online in advance for a dedicated one-on-one interaction with renowned experts during this event on

[www.dnaindia.com/propertyredevelopment](http://www.dnaindia.com/propertyredevelopment)

DNA launched its Redevelopment Conference-cum-Exhibition series on January 8-9, 2011 and following the immensely successful debut of the concept,

**DNA**Property  
DAILY NEWS & ANALYSIS  
**REDEVELOPMENT**  
CONFERENCE-CUM-EXHIBITION



took the series forward with the second edition held on May 14-15, 2011 at Chembur Gymkhana. This was followed by the hat-trick event, when the third DNA Property Redevelopment Conference-cum-Exhibition was held on August 27-28, 2011.

February 2012 will mark the fourth time that DNA has arranged a Redevelopment and Conveyance Exhibition in which all the four stakeholders related to redevelopment are brought under one platform: Policy makers like the Housing minister, Co-operative department and BMC; Stake holders like project management consultants, professionals like architects, structural engineers and chartered accountants, advocates etc.;

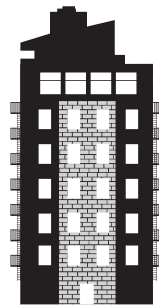
Builders who redevelop the properties will exhibit their profile and projects along with housing society members/ office bearers who want to carry out the redevelopment. Eminent experts will discuss solutions and the implications of policies, analysing the concept of redevelopment and highlight its advantages.

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# Decide Decode Debate

**DNA**Property  
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## All your doubts at Mumbai's only Property Redevelopment Conference

**Date : Feb 4<sup>th</sup> & 5<sup>th</sup>, 2012**

**Time : 10.00 am to 6.00 pm**

**Exhibition Venue : Bombay Exhibition Center, NSE GROUND, Goregaon (East).**

**To pre book your slot for one to one interaction with MSWA experts**

**SMS DNA RED <Name> <Address> to 575758 or**

**visit [www.dnaindia.com/propertyredevelopment](http://www.dnaindia.com/propertyredevelopment)**

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# SEEK RELIEF

There are some ways to obtain the desired information from the managing committee.

## FILE RTI APPLICATION TO DEPUTY REGISTRAR:

Co-operative housing societies are not directly under the Right to Information Act 2005 (RTI Act).

But they are indirectly covered, through the office of the Deputy Registrar, as per Section 2(f), which entitles you to "information relating to any private body which can be accessed by a public authority under any other law for the time being in force". This is an indirect way of obtaining information from a society. Make an RTI application to the Dy. Registrar of the ward in the format prescribed under Maharashtra RTI Rules "An-nexure A" with Rs 10/- court fee stamp or Indian Postal Order. You can also download readymade RTI Application Format from the official website.

The Deputy Registrar has to provide the information after getting it from your society, using his powers U/S 77 and 78 of the MCS Act (to which RTI Sec 2(f) refers as "any other law for the time being in force."). Quite often, in response to the RTI application, the Registrar or Deputy Registrar will issue notices to the managing committee, threatening stern action if they do not provide information. A copy of this notice will be endorsed to you. Sometimes, this notice will have the desired effect, and you will get the information. If the information is not provided within 30 days, invoke two legal mechanisms by filing a complaint with the Dy Registrar, say on the 35th day after the order.

✍ Invoke the mechanism of first appellate authority under RTI Act Sec 19(1).

✍ Invoke Section 148A - i.e. contempt of cooperative courts, which says, "(1) If any person - (a) when ordered by a Co-operative Court or the Co-operative Appellate Court to produce or deliver up any document or to furnish information, being legally bound so to do, intentionally, omits

You can use the RTI Act to seek information from the society, says **J B Patel**

to do so, he shall, on conviction, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."



**J B PATEL**

**IF THE ABOVE REMEDIES FAIL, FILE A CONSUMER COMPLAINT** M - 9820538570

As a consumer of services provided by a cooperative housing society, you are covered by the Consumer Protection Act in matters concerning the "business" of the society. Failure to give you necessary documents is a "deficiency in service", and so you may approach the consumer court and pray for reliefs i.e. copies of documents, and compensation for difficulties suffered by you.

The first step is to serve a notice under section 164 of MCS Act 1960. Sec 164 says, "No suit shall be instituted against a society, or any of its officers, in respect of any act touching the business of the society, until the expiration of two months next after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left." With luck, this notice may itself subdue the managing committee, causing them to give you the necessary documents. In case this does not happen, proceed with litigation in the consumer court. Don't engage an expensive lawyer. If you have time and knowledge, appear as party-in-person and argue your own case. This will be an economical and effective solution, and also a learning experience. Download a ready-made format of complaint before the consumer court from the internet.



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## KEY POINTS:

✍ The consumer court is not a forum for resolving disputes. Therefore, don't mention personal disputes. Your complaint must highlight various deficiencies of service, and negligence in rendering service, with documentary proof for each allegation. Build up such documentation beforehand. Your case will be strong only if you establish that you wrote various letters, applications etc. requesting the managing committee by all lawful means to render you the legitimate services.

✍ Your case must be about the "business" of cooperative housing societies. The scope of a housing society's business is determined by the MCS Act, Rules and the registered bye-laws. It broadly covers membership and share transfer, maintenance and service charges, issues relating to proper conduct of general body and managing committee meeting, accounts and audit parameters, proper maintenance of building, providing a good living environment for all members, proper management and caution towards society funds such as repair funds and sinking funds, due diligence in case of engaging various contractors e.g. lift maintenance, civil works, repairs, and also building redevelopers, project management consultants, etc. As you are paying money towards monthly maintenance dues, sinking fund, repair fund, etc, you are a consumer who is aggrieved by the managing committee's negligence in rendering services or deficiency in services rendered. Serve notice and allow sufficient time (15 days) to correct the deficiency. As per the provisions of the Consumer Act, we need to serve notice for the "deficiency of service" on the housing society and give them adequate time to correct the deficiency.

✍ Consumer Protection Act is not concerned with other laws. It is applicable "notwithstanding anything in any other laws", which includes the MCS Act (section 164 or whatever). It is "over and above" all laws of the country as long as the law is appropriately invoked by a consumer within the

limitation of time i.e. within 24 months from the date of grievance arising.

✍ This is an "additional remedy" and not "alternative remedy". You may file for your grievances in the co-operative court as well as consumer court, and the orders of both will have to be honoured independently. Other court decisions / rulings are not binding on the consumer court. The proceedings under a case in the consumer court cannot be stopped, even if a similar or same matter is pending before another court.

✍ Only an aggrieved party has the right to file a consumer complaint. As against this, subject to certain parameters, a third party may petition to the Deputy Registrar / cooperative court, to initiate suo moto proceedings for violations of MCS Act. The case is against the housing society, and not against individuals. In both consumer court and cooperative court, complaints and cases may be filed against the CHS.

You cannot target individual managing committee members, as you would do in criminal proceedings. Also as a last resort, you may file FIR or private complaint with magistrate against individual member of the managing committee. Even if you have initiated proceedings in cooperative court and consumer court, you may also initiate proceedings in criminal courts, if you have documentary evidence of nefarious activities such as misappropriation of funds, forgery of society records, duplicate share certificates, letting out the society property for mobile towers, advertisement hoardings etc. without the written consent of 75% members, rigged and manipulated elections, forged and backdated M 20 indemnity bonds, refusal to transfer membership based on caste, creed, religion, assaulting members.

This can be done without any permission / sanction from the registrar of cooperative housing societies, because it is against individuals, and not against the society.

MILIND PARVATE : 9320024648  
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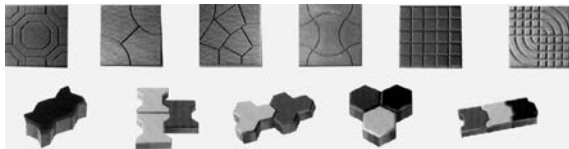
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# HOUSING SOCIETY NOD MUST FOR NEW CONSTRUCTION: HC

14 – YEAR HITCH Bhandup Society wins reprieve to halt work on new wing started over a decade after builder handed over flats

The Bombay High Court last week ruled that a housing society, and not the builder or landowner, is entitled to any additional floor space index (FSI) that may become available due to changes in the Development Control Rules. The ruling stands even if a society has not been registered or the builder has not conveyed the land to the society, as long as the time stipulated for these formalities in the Maharashtra Ownership of Flats Act (MOFA) — three months after the society is formed — is over.

Justice RM Borde also held that any amendment to layout plan is not permissible without the consent of the flat purchasers and directed Konark Builders to maintain status quo with respect to construction of an additional wing in Rachana-1 co-operative housing society in Bhandup (West).

The developer has constructed the building in 1993 and the Brihanmumbai Municipal Corporation (BMC) has accorded Occupancy Certificates (OCs) for the two wings in 1993 and 1996. The property is yet to be conveyed to the housing society, which was formed and registered by the flat owners without cooperation from the developer.

The dispute began after the developer got plans for a third wing sanctioned from the BMC in 2009 and began construction without consulting members of the society. The society approached the Bombay city civil court after Konark paid no heed to their requests to stop the construction work, but the court refused to provide interim relief.

## FILLIP FOR FLAT OWNERS

**KONARK BUILDER** had constructed a building comprising two wings in 1993.

**THE CIVIC BODY** gave Occupation Certificate to them in 1993 and 1996.

**THE FLAT OWNERS** formed a society without cooperation from the builder, who hasn't yet conveyed the land to the society

**IN 2009**, the builder began construction of a new wing without consent from society members

**THEY MOVED** the city civil court, which refused to give them interim relief

**THE MEMBERS** then moved the High Court, which ruled that the builder cannot affect changes 14 years later without the consent of society matters

**IT NOTED** that the new construction had resulted in reduction of open space available to the current society members

## QUOTE UNQUOTE

**The builder / landowner cannot contend that because he has not formed the society and/or not conveyed the property, he is entitled to take advantage of any extra FSI that may become available subsequently**

**- JUSTICE RM BORDE**



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The members then approached the High Court, where their counsel Ashutosh Kumbhakoni argued that the construction will affect amenities available to the existing members, and that the developer is not entitled to start additional construction on the land after 14 years of receipt of OCs. The developer opposed the plea contending the flat owners had given consent for construction of the C-wing at the time of executing sale deeds, and a balance was required to be struck between the rights of the flat purchasers and the builder.

Justice Borde, however, found that the original plan had seen several changes, and the final one did not have provision for a third wing.

He also noted that the 2009 amendment had resulted in reduction of open space available to the current society members. The judge held that changes effected by the developer were disadvantageous to the occupants and therefore the developer is required to obtain their consent before starting construction.

Apart from ordering status quo with respect to construction of the C-wing, the High Court has also directed the trial court to hear afresh the housing society's plea for interim relief, after allowing the developer to tender some relevant documents.

**Source: Hindustan Times, Mumbai**

**Dated : December 24, 2011**

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## IMPORTANCE OF HOUSING SOCIETY INSURANCE

### In Who's Interest?

Individuals who have purchased flats / shops from builder or in a society by paying hard earned money or borrowing loans do have insurable interest in the insurance of Housing Society. However, it is the Co-operative Housing Society under the law of land which owns the total premises and therefore, is the actual insured to take the insurance of the complex / premises. The premium contribution is done through the collection from members. The Co-operative Housing Society Act also provides under by law 161 that the society is bound to get the premises necessarily insured against losses due to fire and allied perils including earthquake.

### What is Fire Policy?

Fire policy is not only losses due to fire but includes other losses and risk arising due to Lightning, Explosion/Implosion, Aircraft Damage, Riot, Strike, Malicious Damage, Storm, Cyclone, Typhoon, Tempest, Hurricane, Tornado, Flood and Inundation, Impact Damage, Subsidence

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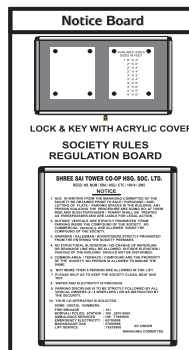
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assuming the proportions of or amounting to the popular rising, military rising, rebellion, revolution, insurrection or military or usurped power. In case of shops, loss destruction or damage to the stocks in Cold Storage premises caused by change of temperature, Loss, destruction or damage to any electrical machine, apparatus, fixture, or fitting arising from or occasioned by over-running, excessive pressure, short circuiting, arcing, self heating or leakage of electricity from whatever caused. Loss by theft during or after the occurrence of any insured peril except as provided under Riot, Strike, Malicious and Terrorism Damage cover.

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The whole civil work of the building premises as per approved plan which includes basement, ground floor, all the floors including areas of stair case, lift, ducting, etc...It also includes servant quarters, sports and gymnasium rooms, society office room, meter room, underground / overhead tanks, compound wall, society furniture and fixtures, centralised a.c. system (if provided), electrical installations and lift per se against the losses due to fire perils. Some societies do have offices, shops and other commercial establishment including hotels etc... These areas have to be separately listed in the proposal form as they attract separate premium rates.

The above needs to be separately valued and calculated on reinstatement value basis as any loss to a particular civil work or other facilities will be quantified at the time of claim separately, for e.g., due to heavy flooding, the compound wall gets damaged and if it not valued separately in the policy, settlement of claims becomes a problem for deciding the loss. For Lifts there is also a separate comprehensive policy which includes Electrical and Mechanical losses.

### **What is reinstatement value?**

Property or a complex cannot be insured on present market value basis and therefore the sum

insured is arrived at by calculating the F.S.I. with today's reinstatement value, which means if the same premises has to be reconstructed today what will be the construction cost for redeveloping the premises at the same level of construction in size and quality. Land cost is not included in the sum insured.

Normally where the sum insured is on high side, the society has many wings / buildings, in case of high rise building or the complex is old one, the premises is insured after valuation / inspection and the same also depends on Insurance Company's discretion.

### **Today's Insurance Market**

In addition to 4 public sector Insurance Company, there are 15 private owned Companies doing non life general insurance business. The fire market is de-tariffed, and therefore, each company has its own fire product with rate structure and discounts. While finalizing insurance company, in addition to the discount in premium one must also take it in consideration the short listed company's policy clauses, condition and exclusion, the turn around time of policy issuance, endorsements and claim settlement. It is therefore important for the office bearers of the society to have an insurance expert to advice on all the above issues so that the society gets the best of quotation, policy coverages and technical support at the time of claims. It is more in view of insurance business highly technical subject with exhaustive clauses/conditions involved in the policy documents.

The above information is illustrative and gives only general information on the importance of fire policy and how it works in the market. The next article on fire policy will be related to claims and the procedures thereunder to be followed by the societies in case of losses due to perils covered.

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# CHEERS FOR FLAT OWNERS ON THE EVE OF NEW YEAR – 2012

Here is a good news for flat buyers who often find themselves short changed by builders have a reason to cheer on the eve of New year. Maharashtra Government has approved a proposal to enact a new Act containing provisions to set up a Housing Regulatory Authority. The new Act will contain provisions to enable deemed conveyance in layouts involving multiple buildings or phase-wise development.

Meant to provide relief to flat purchasers against malpractices by developers, the new Act will replace the Maharashtra Ownership Flats Act, 1963. All provisions of the 1963 Act have been included in the new Act.

Prima facie it seems that this new Act become flat owners oriented but time will only tell of its effectiveness but till then we have to welcome this new Act.

On this background the Bombay High Court has also recently given a ruling on the side of the Flat owners that a Housing society and not the builder or landowner is entitled to any additional Floor Space Index (FSI) that may become available due to changes in the Development Control Rules.

The ruling stands even if a society has not been registered or the builder has not conveyed the land to the society as long as the time stipulated for these formalities in the Maharashtra Ownership of Flats Act (MOFA) – three months after the society is formed – is over. The Court further held that changes effected by the developer were disadvantageous to the occupants and therefore the developer is required to obtain their consent before starting construction.

Justice RM Borde also held that any amendment to layout plan is not permissible without the consent of the flat purchasers and directed Konark Builders to maintain status quo with respect to construction of an additional wing in Rachana-1 co-operative housing society in Bhandup (West).

The developer has constructed the building in 1993 and the Brihanmumbai Municipal Corporation (BMC) has accorded Occupancy Certificates (OCs) for the two wings in 1993 and 1996. The property is yet to be conveyed to the housing society, which was formed and registered by the flat owners without cooperation from the developer.

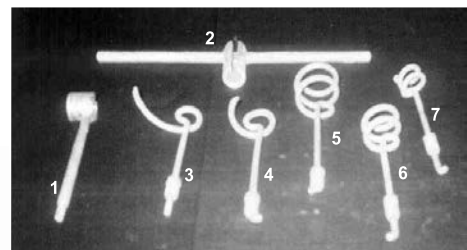
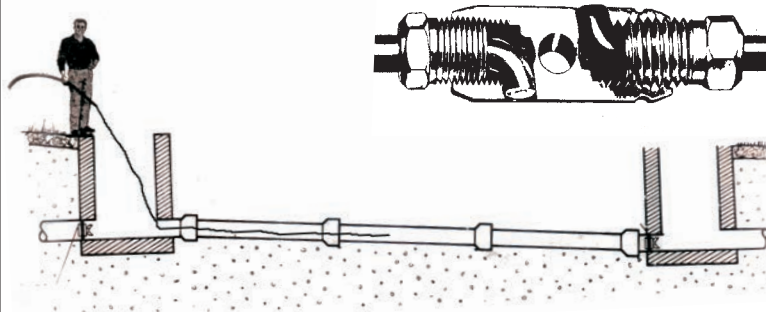
The dispute began after the developer got plans



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for a third wing sanctioned from the BMC in 2009 and began construction without consulting members of the society. The society approached the Bombay City Civil Court after Konark paid no heed to their requests to stop the construction work, but the court refused to provide interim relief.

The members then approached the High Court, where their counsel argued that the construction will affect amenities available to the existing members, and that the developer is not entitled to start additional construction on the land after 14 years of receipt of OCs. The developer opposed the plea contending the flat owners had given consent for construction of the C-wing at the time of executing sale deeds, and a balance was required to be struck between the rights of the flat purchasers and the builder.

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plan had seen several changes, and the final one did not have provision for a third wing. He also noted that the 2009 amendment had resulted in reduction of open space available to the current society members. The judge held that changes effected by the developer were disadvantageous to the occupants and therefore the developer is required to obtain their consent before starting construction. Apart from ordering status quo with respect to construction of the C-wing, the High Court has also directed the Trial Court to hear afresh the housing society's plea for interim relief, after allowing the developer to tender some relevant documents.

**(The said Ruling is also available in our Office.)**

We hope that the year 2012 will become the Consumer Friendly year with more and more reliefs and facilities for flat owners.

To  
Dear Our Readers,

It gives me immense pleasure to announce that upon the circular from the Commissioner of Co-operation, Pune to form **ward wise federation, Vasai Taluka Co-operative Housing Federation Ltd.**, is registered on 25<sup>th</sup> of August 2011. You must be aware that as per bye-law no. 5 of the housing societies, every housing society has to become the member of the local area federation or the district federation. The job of the federation is to guide, educate and propagate the co-operation movement in Maharashtra. The year of 2012 is commensurate as co-operative movement year in Maharashtra.

Under the able, valuable and priceless leadership of CA. Ramesh Prabhu, who is also the founder Chairman of the federation. We intend to take the co-operative movement further in Vasai Taluka. There are about 5000 co-operative housing societies in Vasai Taluka i.e. between Naigaon and Virar and the disputes are many.

All the housing societies in Vasai Taluka are requested to

enroll themselves as the member of the Vasai taluka Federation having its registered address at Swagat Bhawan, Near Indian Oil, Opp : MSEB colony, Station Road, Vasai Road (E) Dist. Thane 401 202 having Tel no. 0250 – 2390170/71/239 377 3/74/645 75 85/95 by filling up a application form, passing a resolution in the managing committee meeting and paying a sum of Rs. 1600/- (rupees One Thousand Six Hundred Only) being Rs. 1000/- towards share money, Rs. 100/- Towards entrance fees, Rs. 500/- Towards Annual subscription.

The federation also intends to start a branch office in Royal Shopping Centre, Ambadi Road, Vasai Road (W). For more details and to avail the benefit, please contact the Vasai Taluka federation office at the registered address or send email

Thanking you.

**V.Viswanathan**  
**Secretary – MSWA**  
**Secretary –**  
**Vasai Taluka Co-operative Housing Federation Ltd.,**



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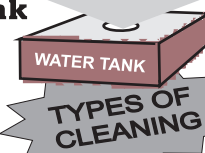
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A Project Management Consultancy is a professional consulting firm with knowledge and experience in the specialized area of assisting organizations to improve their practice of project, program and/or portfolio management. The areas these firms focus on also include the supporting environment and necessary leadership that enables projects and programs to accelerate the implementation of an organizations' strategy and the achievement of business results.

As more and more Co-operative Housing Societies are going for Re-development of their Societies to avail benefits of additional area along with other benefits like Corpus, better amenities etc., there are chances that many of the Societies may be cheated by the Builders. Hence, the Government of Maharashtra under Section 79A of the MCS Act, 1960 has introduced Special Guidelines regarding Redevelopment of Co-operative Societies by passing an Order dated 03/01/2009 under Reference No. S.G.Y. 2007/ L. No. 554/14-C of Co-operative Marketing and Textile Department to safeguard the interest of Flat owners. The draft Redevelopment rules are now on anvil following consultations with various Experts, Housing Associations and Residents.

The Government has also been planning to draft a separate Chapter in the new Model Bye-Laws for Co-operative Housing Societies who wish to go for Re-development, with step by step pre-redevelopment procedures to serve as guidelines before Society members shift to alternate accommodation; however, no consensus has been reached on the same. This has become necessary since, though the General Body of a Co-operative Housing Society is the supreme authority to decide on re-development, there is no transparency involved. This creates conflict among some members.



Shri. S. R. Desai  
M - 9820687418

It is observed that many disputes come up due to the absence of rules. By introducing step-by-step procedures in the Re-development Rules in the Model Bye-Laws, all Co-operative Societies who follow the Rules will stand to benefit. These Rules are mandatory as per Section 79A of the Maharashtra Co-operative Societies Act, 1960. However, many Societies do not follow the same and by the time the members realize that the due process of law is not followed by the Managing Committee, it becomes too late and the courts have given different judgments based on the facts of the case and most of the judgments are in favour of majority who have agreed for redevelopment with a particular builder, even if the Society has not followed the mandatory guidelines made under Section 79A of the MCS Act, 1960. Therefore, the aggrieved members should approach the appropriate authorities well in time before it is too late to initiate any actions.

Appointing Project Management Consultants (PMC) could be a viable option before a Society goes in for Redevelopment. This is one of the

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**To register your problems / suggestion about redevelopment email to [gruhusankalp@ymail.com](mailto:gruhusankalp@ymail.com).**



before going for Re-development. In the past, there were one sided agreements and decisions taken without getting into proper negotiations.

The proposed Bye-laws can put to rest many redevelopment issues once it becomes effective. The Re-development Rules to appoint a PMC as a facilitator would cast a duty on every Co-operative Housing Society to comply with the pre-redevelopment procedures irrespective of a General Body Resolution.

mandatory Redevelopment provision incorporated in these Rules. The Consultants will consist of a technical group, viz., an Architect, Structural Engineer, Advocate and other Experts who will guide the Housing Society towards successful Redevelopment. The involvement of such persons in the redevelopment process can minimize disputes at a later stage.

Housing Societies in Mumbai are increasingly being tempted by attractive offers for redevelopment, and often run into trouble because they are unaware of the pitfalls. A little care and attention to detail would make all the difference. The proposed guidelines will go a long way towards helping them achieve their goal with minimum stress.

The role of Project Management Consultants is crucial for the proper implementation of redevelopment of the Buildings. Housing Societies should appoint the PMC to analyze the project feasibility for use of additional FSI and potential TDR of the Society, appointment of the Developer through Tenders, technical verification of the best Tender to the Society. PMC will highlight each and every technical procedure in the redevelopment before the Managing Committee.

The PMC will ensure that the shifting process of members to alternate accommodation begins after entering into proper negotiations and individual agreements with the Developer. Often, Housing Societies take hasty decisions to demolish the building in a hurry to please the Builder. The PMC will initiate Structural Audit of the Building before deciding on Re-development. This Structural Audit Report will be the basis

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# “Nominee is only the trustee of property”

**CA. RAMESH PRABHU** answers specific queries on redevelopment and society matters

**I and my wife are currently staying with my mother in a flat owned by my mother. The said property is under redevelopment at Goregaon. Hence we, along with my mother are staying in a rented flat since April 2008. We have bought a flat at New Panvel in September 2011 for which we are joint owners. Can we keep our names as nominees in my mother's flat which is under redevelopment? We are in dire need of able guidance on the issue of joint ownership i.e. what are the legal implications?**

**—N N Desai**

Regarding the flat owned by your mother gone for redevelopment, she can nominate you and your wife or any other person. Nominee is only trustee of the property on the death of the member/owner. In order to grant to ownership of property in the name of the nominee, mother should make a will.

The will may be registered or unregistered. In order to be more authentic and sure, it is advisable to get the will registered. In case, you inherit the property in the form of nomination or will, there are no tax liabilities. In case, your mother receives corpus, as per the Mumbai Income Tax Tribunal, such corpus is also not taxable. Only if the rent is received for temporary accommodation and to the extent of the rent that you are saving will be treated as income from other sources and the same will be liable for tax. In case you spend all the rent received to rent a

premises for rented premises then such rent received from the developer is not taxable. There is no income tax payable on new premises acquired on redevelopment.

Regarding the property purchased in joint name of you and your wife, in the absence of any detailed mention in the agreement, as per MOFA or Transfer of Property Act, 1882, it is treated that both of you are joint owners enjoying 50% rights in the property. Since you have taken the loan, the interest paid on housing loan can be claimed by both of you up to Rs.1,50,000 per annum, if the loan is repaid by both of you jointly.

In case, any one is paying the loan, the interest can be claimed as deduction only by the person paying the loan up to Rs.1,50,000 per annum. In case, the property is sold in due course, the capital gain can be divided between both of you. Both of you can make nomination or WILL in respective of their share in the property. Husband can nominate or make will in favour of his wife and she can also nominate or make will for her rights, title and interest in the flat in favour of husband or in any other names as they personally think fit. In case of death of any one of the persons, the property will be transferred to the person whom they nominate or make will in respect of their share in the property.

Since you have two daughters, each one of you can nominate or make a will in favour of one daughter. In case, you want daughters to inherit the property only after the death of both of you,

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- b) Cash Book,
- c) General Ledger and Personal ledger
- d) Stock Register
- e) Property register
- f) Form "I & J" Prepared in soft copy
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you can accordingly make a will or nomination. This is your personal decision. You are advised to meet your legal counsel and take the appropriate decision in the matter.

Naturally, if you know the new flat number and area as per the plan approved, it is advisable that before vacating the old flat, you execute the agreement for permanent alternative accommodation agreement.

This gives you a right also to fight individually against the developer, if he defaults in any of the terms and conditions, otherwise, you may have to wait for the society managing committee to take the appropriate decision and action.

Ramesh Prabhu,  
Chairman, MSWA.

E-mail : [rsprabhu13@gmail.com](mailto:rsprabhu13@gmail.com)

Tel.: 022 - 42551414 / 26248589 / 65

**We are in the process of redevelopment of our society containing 12 members. Please advise why it is required to execute a permanent alternative accommodation agreement pay the stamp duty and register the same before handover the vacant flat for redevelopment. Is there any connection with redevelopment procedure or to avoid any litigation in future with developers?**

**—Mayur Motta**

When you hand over the old flat, you are promised with a new flat. Under Transfer of property Act, 1882, any transaction of immovable property exceeding Rs.100 should be duly stamped and registered as required under Registration Act, 1908. Before you vacate old flat, the developer is required to get the plan sanction of the new building to be constructed on the land.

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# CONDOMINIUM

Condominium is a building or complex of building containing a number of individually owned apartments, or houses. Unlike co-operative housing societies, where in land or property belongs to the society, when you are a part of condominium or apartment owners association, every apartment owner has a legal title of his or her house along with a percentage of common amenities.

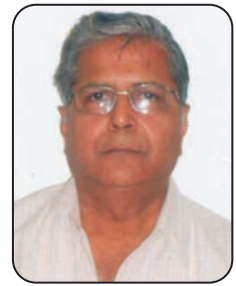
The initial owner of the land the builder makes a declaration that states the division of the property and the number of flats on it. He then sells the apartments to home buyers through a deed of apartment to each of them individually. Any decision regarding the development of the entire property will need the individual consent of each and every apartment owners. So if the complex needs to go for redevelopment all the owners have to give permission. In a co. operative housing society only 70% of the flat owner's permission is needed.

Condominiums are popular in cities such as Bangalore and Pune. In these cities majority of residents have formed apartment association and there are better regulation than Mumbai. The bye-laws of an association of apartments are under Maharashtra Apartment Owners Act 1970. But the regulation and implementation of the bye-laws are not very clear.

An apartment association may or may not have rules for leasing, parking, transfer flat etc. This flexibility in the bye-laws can help the association make decision faster, but can lead to more disputes also. While a condo can run smoothly so long as there are no disputes, it gets messier if you are part of an apartment association than housing society if there are disputes that need to be resolved. An apartment owner can file a complaint at co. operative departments, but it is better the matter be taken at civil court as there are no decided legislation for condominium.

## From society to condo:

Unless a society has its conveyance deed document showing transfer of ownership of land from land owner to society-it will not be switched to the condo style functioning. The owner of apartment has



**G. G. Shanbaugh**

to make declaration in a prescribed form the contents whereof should be stated as under section 11 of Maharashtra Apartment ownership Act. 1970. The declaration should contain in brief a description of land, description of the building proposed to be constructed, description of each apartment, description of common area and facilities, description of limited common areas and facilities on respect of each apartment, and value of property and each apartment and percentage of undivided interest in common area and facilities of each apartment.

The declaration should have the name and address of all flat owners, percentage of votes of each apartment owner, manner of amendment of declaration if required and other details desired by the declarants. The declaration with annexure is required to be registered with the state Govt's sub registrar of assurances from your civil ward.

As per the declaration registered with sub-registrar of assurances, the apartment owners form an apartment owners association and run the society using the bye-laws under Maharashtra Apartment ownership Act 1970, An association will have board of management similar to managing committee of co. op. Housing society. Their chief duty would be to look after the administration and maintenance of the condos common areas.

**Land Title** - The legal title of the Flat along with a proportionate share in the common areas of the building and Proportionate share in the land on

which the building stand, is with the apartment owner. This means the building belongs to everyone jointly but each apartment owner has independent right to his apartment to the extension of others. In case of co-operative housing society the title to the building and the land is with the society or a limited company and flat owner has only a right to occupy the flat.

#### Pros and Cons-

- 1) Every resident owns his or her share of property, so you do not need permission to repair or renovate your flat. Your opinion will always count when it comes to common amenities as you are a part-owner. No decisions concerning the entire property can be taken without the consent of each and every apartment owner.

- 2) The bye-laws are not clear and are flexible. It helps association to make decision faster but there can be case for more disputes in matter relating to leasing, parking, transfer for among other things. If there is a dispute that needs outside intervention, an apartment owner can file a complaint at co-operative department sub-registrar office but matter ultimately have to be taken up by a civil court as there is no dedicated state department for condominiums nor a dedicated court.

**Courtesy: D.N.A. - 14<sup>th</sup> Nov- 2011**

**(Where the Condominium is not formed by the landlord, now the same is being formed by the District Deputy Registrar by making an application before the Competent Authority. Such orders are being passed by the DDR, The copy of which is available in our office.)**

## रियल इस्टेट विधेयक ग्राहक हित विरोधी

हे सर्वज्ञात आहे आहे की, बहुतेक बिल्डर्स बांधकामास सुरुवात करण्यास उशीर करणे, हलक्या दर्जाचे सामान वापरणे, मंजूर नकाशापासून विचलित होणे, भोगवटा प्रमाणपत्र न मिळविणे, सहकारी संस्था घटित करण्यास टाळाटाळ करणे, वाहन तळ आणि इतर मोकळ्या जागांची बेकायदेशीर विक्री करणे, देखभाल इत्यादीसाठी घेतलेल्या आगाऊ रकमांचा गैरव्यवहार करणे अशा विविध गैरमार्गांचा अवलंब करण्यात गुंतलेले असतात. बिल्डर हे महाराष्ट्र मालकी हक्क सदनिका तरतुदींचे उल्लंघन करीत असल्यामुळे सदनिका खरेदीदार हे नेहमीच दुःखात असतात. अशा वेळी बिल्डरच्या विरुद्ध लढण्यासाठी सदनिका खरेदीदारांना ग्राहक संरक्षण अधिनियम हे एकच परिणामकारक अस्त्र आहे. गृहनिर्माण आणि नागरी दारिद्र्या निर्मूलन मंत्रालयाने सादर केलेले रियल इस्टेट (नियमन आणि विकास) अधिनियम ग्राहकाना संरक्षण देऊ शकेल की नाही हा प्रश्नच आहे. कारण जरी या अधिनियमाने ग्राहकांच्या हक्कांबाबत गुलाबी चित्र रंगविले असले तरी यातील तरतुदींचा विचार करता प्रत्यक्षात ते बिल्डर धाजिणे आहे.



या विधेयकातील नकारात्मक बाबी:-

नवीन कायद्यातील कलम २(क) अन्वये अपार्टमेंटच्या (वेश्म) व्याख्येत मोकळ्या जागांचा अंतर्भाव करण्यात आला आहे. एकदा का विधेयक मंजूर झाले की बिल्डर कायद्याने मोकळ्या जागा जसे वाहन तळ जागा, टेरेस आणि खाजगी बगिचा स्वतंत्र आणि खाजगी वापरासाठी विकू शकेल. सर्वोच्च न्यायालयाने कायद्याची जी अर्थउकल केली आहे त्यानुसार बिल्डरने मोकळ्या जागा विकणे बेकायदेशीर आहे कारण जमीन आणि इतर मोकळ्या जागा या संस्थेच्या मालकीच्या आहेत. या सर्वोच्च

न्यायालयाने अतिशय तर्कसंगत दिलेल्या निर्णयावर मात करण्यासाठी बिल्डरांना हा नवीन कायदा मदत करील आणि मोकळ्या जागा विकून बिल्डर मालामाल होईल.

सदर विधेयकाच्या कलम ३ मध्ये बिल्डरने ४००० चौ. मीटर किंवा जास्त भूखंड असलेल्या जागेची नोंदणी रियल इस्टेट विनियमन प्राधिकरणाकरणे बंधनकारक असल्याची तरतूद आहे. बहुतेक इमारती लहान भूखंडावर बांधल्या जातात त्यामुळे बहुतेक बिल्डर्सना ही तरतूद लागू होणार नाही. सदर विधेयकाच्या कलम १८ मध्ये एक अध्यक्ष आणि दोन सदस्य यांचा समावेश असलेल्या इस्टेट विनियमन प्राधिकरणाची स्थापना करण्याची तरतूद आहे. या प्राधिकरणावर कोणत्याही न्यायिक अधिकाऱ्याची नेमणूक करण्याचे आदेश नाहीत. त्यामुळे आपल्याकडील प्रचलित पद्धती पाहता हितसंबंधित व्यक्तींचीच नेमणूक होण्याची जास्त शक्ती आहे.

संपूर्ण देशात बांधकाम आणि विकासविषयक चालू असलेले प्रकल्प पाहत हे तीन सदस्यांचे प्राधिकरण पुरेसे नाही. तसेच सर्वसामान्य माणसाला फार दूरवर असलेल्या या केंद्रीय प्राधिकरणाशी संपर्क साधायला फार त्रासदायक होणार आहे. त्याचप्रमाणे सदर विधेयकाच्या कलम ३५ अन्वये तंटे सोडविण्यासाठी स्थापन करण्यात यावयाचे नऊ सदस्यीय रियल इस्टेट अपील न्यायाधिकरण देशभरात खांडपीठे उभारण्यासाठी सक्षम नाही. तक्रार निवारण यंत्रणेकडे संपर्क अतिशय कठीण आणि खर्चिक होणार आहे. या विधेयकाच्या कलम ४६ मध्ये तरतूद आहे की, न्यायाधिकरणाच्या आदेशांची अंमलबजावणी दिवाणी न्यायालयाच्या हुकूमनाम्यासारखी होईल ही कार्यपद्धती लाबिलचक, अडचणीची आणि खर्चिक आहे. ग्राहक मंच सारखे आदेशाचे पालन केले नाही म्हणून प्राधिकरण किंवा न्यायाधिकरणाला नवीन विधेकान्वये दंडनीय कार्यवाही करण्याचा किंवा फौजदारी अभियोग चालविण्याचा अधिकार नाही. अशी कार्यवाही प्राधिकरण किंवा न्यायाधिकरण फौजदारी न्यायालयात खटला दाखल करून करू शकेल आणि अशा कार्यवाहीत काय घडत आहे याची कल्पना सदनिका खरेदीदाराला असणार नाही.

या विधेयकाच्या कलम ४७ मध्ये तरतूद आहे की, अपील प्राधिकरणाच्या निर्णयाला सर्वोच्च न्यायालयात आव्हान देता येईल. प्राधिकरणाकडून दिलेल्या अभिनिर्णयाच्या दर्जावर प्राधिकरणावर कोणीही न्यायिक सदस्य नसल्यामुळे प्रश्न निर्माण करता येणार नाही. तसेच अपीलाचे दर सुद्धा जास्त असतील. यासाठी येणारा खर्चही जास्त असेल. सर्वसामान्य माणसाला न्यायाधिकरणाशी संपर्क साधणे सहज शक्य होणार नाही. ग्राहक संरक्षण अधिनियमाखालील तीन स्तरीय निवारण पद्धती अधिक परिणामकारक व किफायतशीर आहे.

या विधेयकातील कलम ६० मधील तरतूद ही सगळ्यात ग्राहक विरोधी आहे. यात म्हटले आहे की, या अधिनियमाअन्वये प्रदान करण्यात आलेल्या शक्तीनुसार केलेल्या कोणत्याही कारवाईवर किंवा करण्यात यावयाच्या कारवाईवर कोणत्याही न्यायालयाकडून किंवा इतर प्राधिकरणाकडून कोणताही आदेश मंजूर करून घेता येणार नाही. अशाप्रकारे नवीन कायद्याने पर्यायी, गुणकारी उपाययोजना जी सदनिका खरेदीदाराला ग्राहक संरक्षण अधिनियमान्वये उपलब्ध होती ती काढून घेण्यात आली आहे.

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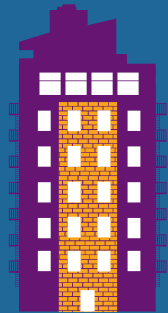
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