

# THE HOUSING TIMES

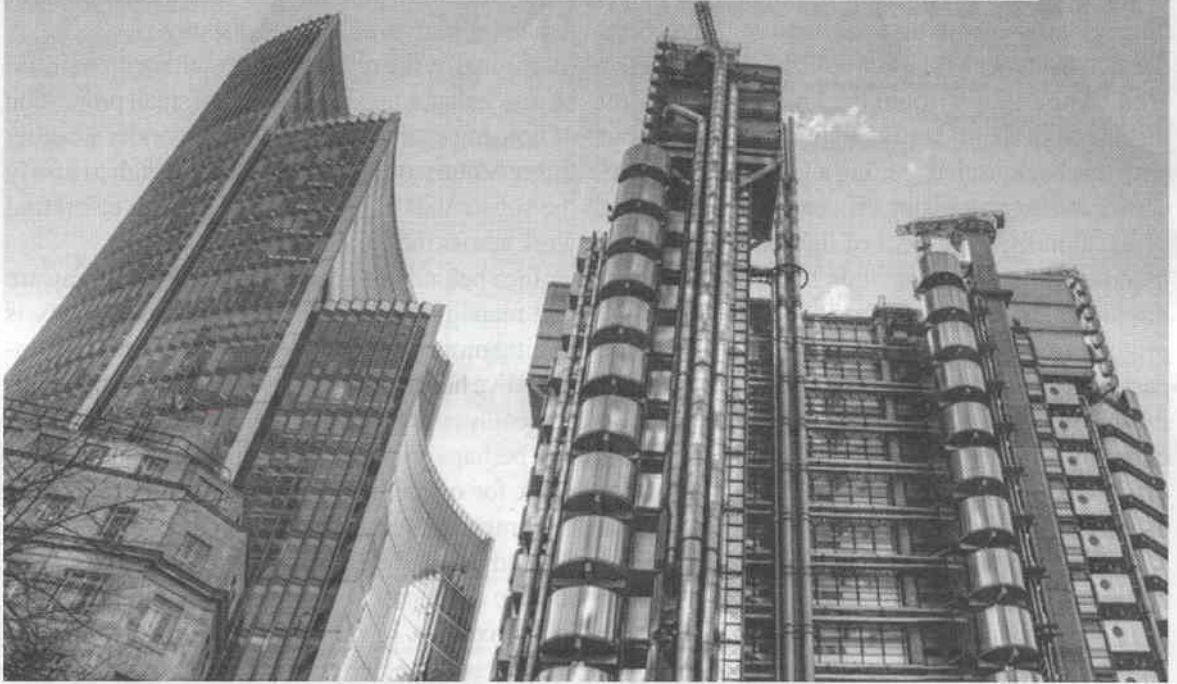
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## Income Tax Provisions for Co-op Housing Societies



पीएमसी बँकेत ठेवी अडकलेल्या  
सहकारी गृहसंस्थांना आवाहन!

# REMOVE DISCREPANCIES IN FIXING LAND AREA WHILE ISSUING DEEMED CONVEYANCE CERTIFICATE



Food, cloth & Shelter are the three basic needs of human being for achieving the third basic need which is too costly in Mumbai. Mumbaikar puts his entire earnings of life for buying just a modest, 400-500 sq. feet flat. This story is going on since last 8-10 decades. To own a home in Mumbai is a dream of every countryman, but what if the land on which it is built is not owned by him? What if it is in name of someone else even after years & years of occupancy. To safeguard the flat owners from being evicted from his own home on the basis that land underneath is not owned by him, government of Maharashtra enacted the Maharashtra Ownership Flats Act (MOFA), 1963 and Rules, 1964. As per these rules there is mandatory provision for making conveyance of land and building in the name of co-operative housing societies or apartments in the developer /promoter within a prescribed period. But the said provision is never implemented and almost all lands are never transferred in name of societies.

Looking at the grave need of the time, state

*By Er. Harshad Maanohaar More*

housing department made amendment in section 10 & 11 of MOFA and made provision for ex-parte deemed conveyance and appointed district deputy registrar (DDR), co-operative societies in the state to act as competent authority for this purpose. To bring down the complexity of submissions & ease in execution of deemed conveyance in favour of societies, housing dept issued various guidelines vide its government resolutions, circulars & orders dated 25-02-2011, 14-06-2016, 12-07-2016 and 18-09-2017.

The execution of conveyance of land is itself a complicated process. It requires not only legal inputs of land like ownership documents, legal title including its search report etc, but also a technical inputs like area of property on basis of property card, approved plans and physical area in possession. The title and legal ownership is assigned or transferred to societies by district deputy registrar (DDR), co-operative



societies after conduction hearing & giving opportunities to land holders, developers & promoters to submit their say. But if the eligible area of land not transferred to precision may lead to more complications, legal disputes and can reduce the future development potential of societies. This lacunae can have a huge financial implication not only to societies but also to individual occupant member or flat owner.

Government of Maharashtra vide its resolution dt. 22-06-2017 superseding its earlier GR dt. 29-04-2014 & 07-06-2014 giving revised orders regarding procedure to be followed in respect of giving deemed conveyance order and certificate. The clause (A) of the said GR gives the list of documents to be submitted with online and also with offline application. The clause (B) of the said GR lays down the procedure to the adopted in respect of issuing deemed conveyance certificate by the district deputy registrar (DDR), co-operative societies and competent authority. The clause (D) describes procedure to be followed for adjudication of conveyance deed, clause (E) for registration of document and clause (F) for making entry of conveyance in revenue record whereas clause (C) seems to be missing.

In the clause (A) which prescribes the list of documents, only technical documents such as commencement certificate, occupancy certificate or declaration if no occupation received is mentioned at serial no. (1)(vi), (1)(vii) and *“a copy of final approved plans from competent approval authority of the layout get sanctioned by the developer”* is mentioned at serial no. 2(iv). However in the said list, there is no mention of any area certificate for defining area of plot to be conveyed in name of society to be issued by any technical person either architect or licensed engineer, registered with competent planning authority, authorised to understand and issue such certificate. Any approval authority either MCGM, MHADA, SRA or MMRDA has made it mandatory to submit the proposal for approval of plans through licensed technical persons like architect, licensed surveyor, licensed engineer, licensed supervisors. These technical professional understand the complexity of land, their actual possession, builtup potential and then submit the proposal to authority for approval

as per the prescribed development regulations. Similarly these professionals are competent to understand and derive the extent of land that is eligible for a particular society which should be demanded in their application for deemed conveyance.

For deriving eligible area for conveyance of society the professional has to verify the approvals/sanctions issued by authority i.e. IOD/IOA, commencement certificate, occupancy certificate, sanctioned building plans, sanctioned layout plans etc. In many cases there are plans which are revised and amended many times. Also there are areas which are under reservations like road, setback, garden amenity etc. which either were handed over or pending to be handed over whose effect have not been reflected in land revenue records. Further, in most of the cases the areas under reservation differs in land records than what is seen in approved plan, after its sub-division by city survey office or collector. Also, in many cases, the actual area of land does not match with the area of the property register card. It gets further complicated when the building, whose application for conveyance is received by competent authority, is part of undivided layout having more than one building with a common layout road, common recreation open space (garden) and its FSI builtup area calculation is approved in totality without sub-dividing land. The issue of deemed conveyance of land in favour of SRA society is a matter of technical complication. The competent authority who is authorised to give order for deemed conveyance, the district deputy registrar (DDR), co-operative societies, is not a technically qualified person to understand the FSI builtup area distribution in layout and derive the extent of land which should be conveyed to the applicant society.

In the said GR dt. 22-06-2018, the clause (B) sub-clause (iv)(1), (iv)(2) and (iv)(3) describes the procedure to the followed while issuing deemed conveyance certificate which states as under: (B) (iv)(1): *If there are many buildings on one plot and have separate co-operative society of each building and if construction of some of them is incomplete then while making deemed conveyance of completed building, undivided share of occupancy right in proportion of construction on the proportionate area of the*

construction of the building of such society or ground coverage or plinth area, similarly open space, common services and facilities, roads should be given.

(B)(iv)(2): While making deemed conveyance in respect of the buildings in the layout where T.D.R. is utilised, their conveyance should be made according to the plinth and appurtenant area.

(B)(iv)(3): If there is more than one society in one layout and out of them only one society has made such application, similarly other societies are not co-operating for conducting

from other societies of layout then the district deputy registrar, co-operative societies and competent authority shall suggest the applicant society to conduct measurement according to the approved plan from architect on panel of competent authority who approved construction plans of the concerned society and submit report regarding area of society”.

The construction area is not defined in development control promotion regulations 2034 (DCPR2034) of Mumbai not in any other development regulations and the ground coverage is thing of the past which also is not even defined in

development regulations. Further the plinth area is not the base area of grant of approval by any authority, whereas the base is the builtup area permissible and builtup area sanctioned. The builtup area is clearly defined in development control regulations which is as under: “Builtup area means the area covered by a building line on all floors including cantilever portion, if any, but excluding cladding and area specifically exempted under these regulations for the purpose of computation of FSI.”

Now here it is specifically mentioned the excluding areas

exempted under these regulations, like area required for staircase, lift, lobby, stilt floor, podium floor, society office, fitness centre, electric meter room, sub-station, servant toilet, pump room etc. Further the plinth area and plinth are defined in development regulations as under: “Plinth area means the built-up covered area measured at plinth level.”

“Plinth means the portion of structure between the surface of the surrounding ground and surface of the floor immediately above ground or basement or any storey level.”

On basis of the above mentioned clause of the GR, the certificate of area for deemed conveyance for societies in layout are being given by the district deputy registrar, co-operative societies and the competent authority. The areas of plinth at ground level of each building is skilfully derived from approved plan as it is not mentioned anywhere in



measurement of the land of the applicant society then the district dy. registrar, co-operative societies, and competent authority shall suggest the applicant society to conduct the measurement according to the approved plan from the architect on the panel of the competent authority who approved the construction plans of the concerned society and submit the report regarding area of the society.

In the sub-clause (1), it is rightly and correctly specified that the distribution of undivided land has to be done in proportionate area. But instead of mentioning the sanctioned builtup area it is mentioning “the construction area or ground coverage area or plinth area”. Similarly in the sub-clause (2), again it says “conveyance should be made according to the plinth and appurtenant area”. Further the sub-clause (3) specifies “in case of non-cooperation



sanctioned plan. Thereafter from entire land area all the plinth areas at ground level of all buildings is deducted to derive appurtenant land, which is also not mentioned anywhere in sanctioned plans and this appurtenant land is distributed on the proportionate area of construction or ground coverage or plinth. This method of distribution is creating huge room for errors and future disputes when the societies in layout go for redevelopment. This can be explained with following two illustrations as under:

**In illustration 1**, the plot area is 1000 sq.m. and two identical buildings of ground floor only are built with area of 200 sq.m. each. Then the appurtenant area will be 600 sq.m. i.e. 1000-200-200 and the share of 600 sq.m. of appurtenant area will be as per the plinth area as builtup area and plinth area are same.

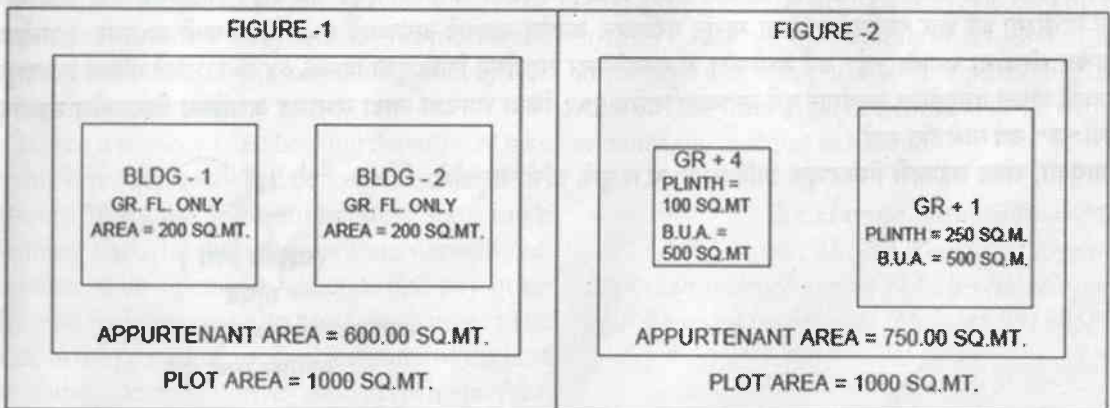
**Now consider illustration 2**, the plot area is same 1000 sq.m. and there are again two buildings, one ground + 1 floor having plinth area of 250 sq.m. and builtup area of 500 sq.m. Whereas the other building is ground + 4 floors having plinth area of 100 sq.m. and builtup area of 500 sq.m. Here in this case the plinth area of both building differs but builtup areas are same and the appurtenant land is 650 sq.m. i.e. 1000-250-100, which is to be distributed on the proportionate area of construction or ground coverage or plinth and not builtup area though it is same in both buildings.

As per MOFA, wherever any flat or unit is purchased in that cost of flat or unit the cost of land is also paid by purchaser and hence his rights get induced on basis of the builtup area purchased and not on plinth area or ground coverage area. Hence distribution of undivided share of land in layout based

on this above circular is creating injustice on the building with more multiple floors and favouring building with lesser floors as their plinth or ground coverage area is not as per their builtup areas approved by planning authority for which they made payment.

Based on the GR dt. 22-06-2018, certificate of areas are being demanded by district deputy registrar, co-operative housing societies and competent authority, which architects or licensed engineers who have not approved the plans of the said building / layout submit their self-derived areas those are not seen anywhere in approved / sanctioned plans issued by approval authority, which are accepted by district deputy registrar, co-operative housing societies and the competent authority to issue deemed conveyance certificate.

When the society after obtaining deemed conveyance registered document, submit application to land revenue department i.e. city survey office for entering their area and name in property register card, at that moment, only the area mentioned in the deemed conveyance is entered in front of the respective society's name. Thereafter when the proposal is submitted to approval authority (MCGM) then while calculating the permissible FSI of builtup area for the respective society only the area mentioned in the property card will be considered for approval which will lead to huge loss of development potential to buildings who are having more number of floors and profitable for building with less number of floors in layout. This itself will lead to violation of provisions of MOFA under which the rights should have been distributed in proper proportion. Many such orders have already been given and many are being processed to give deemed



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conveyance certificate by the competent authority after the enforcement of this GR dt. 22-06-2018 which will definitely create disputes and matter will have to be filed in High Court as there is no provision for rectification or filing appeal against the wrong deemed conveyance certificate & order issued by the district deputy registrar, co-operative societies and the competent authority which will lead to increase in number of cases in High Court and basic purpose of deemed conveyance to give immediate relief for societies of layout in obtaining conveyance is long from achieving.

Hence it is needed that housing department take up this issue seriously and depute a committee of officers from approval authorities, state town planning department, land revenue department, registrar of co-operative societies and any other offices it feels necessary to propose changes to be made in the procedure for finalising area of the land for issuing deemed conveyance certificate. Also

government of Maharashtra should appoint an architect/engineer either from town planning department or approval authority like MCGM which has experience in building approval process on deputation in the office of district deputy registrar, co-operative housing societies and the competent authority to assist in finalising the area of the land to be conveyed in favour of applicant society before issuing certificate for deemed conveyance. This will not only resolve all Technical issues but also implement the basic purpose of implementation of Acts & Law in interest of people at large without creating any disputes in future.

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