

Conveyance of Flat to Flat Purchaser under RERA

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You purchase Flat from Developer by paying few lakhs or crore by entering into Agreement for Sale, which was required to be entered under Sec 4 of Maharashtra Ownership Flat (Regulation of the Promotion of Construction of Sale, Management and Transfer) Act 1963 (**MOFA**). Flat which is purchased by you is one of the few Flats in the building. You would occupy your flat and maintain your flat but issue arise who will maintain all common area viz lobby, garden, parking space, swimming pool etc and also common amenities viz lift, common electricity, sewerage treatment plant(STP) etc. To resolve the issue of maintenance of all common areas and common amenities under section 10 of MOFA it is mandatory for Developer to form an Association of Flat purchaser, the Developer normally forms a Co-operative Housing Society under Maharashtra Co-operative Society Act, 1960(**Society Act**). Under Sec 11 of the MOFA it is mandatory for the Developer to cause the conveyance of land alongwith building to the Society. Under Section 12 of MOFA it is mandatory for a Flat Purchaser to become member of the Society.

AS PER MOFA CONVEYANCE TO SOCIETY

The effect of conveyance of land and building to the Society is that, Flat purchaser who has paid few lakhs does not become owner of the Flat but Society become the Owner of whole property including the Flat and Flat Purchaser as a member of the Society has right to use and occupy the Flat. Thus despite paying few lakhs to acquire the Flat, Flat Purchaser is not owner, he merely get right to occupy the Flat. However now this has changed, under The Real Estate (Regulation and Development) Act, 2016(**RERA**), under RERA it is mandatory that Flat has to be conveyed to the Flat Purchaser alongwith undivided right in common area.

Under RERA, Flat has to be conveyed to Flat Purchaser

The relevant section of the RERA, which corresponds to conveyance of Flat are Sec 4, 11,17 and 19. The relevant extract of those sections are reproduced here under:-

Section 4:- Application for registration of Real Estate Project

4. (1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be specified by the regulations made by the Authority.

(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely

(a)

(b)

(g) proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees;

Thus under section4(2)(g), alongwith application for registration, proforma of (i) Allotment Letter (ii) Agreement for Sale and (iii) Conveyance Deed is required to be submitted. The Section 4(2)(g) very specifically states that conveyance deed proposed to be signed with the allottee, therefore unlike MOFA, RERA is clearly stating about the conveyance deed with the Flat Purchaser. But at present during registration of Project MahaRERA is not insisting on Deed of Conveyance of Flat.

Section 11:- Functions And Duties Of Promoter

*(1) ******

*(2) ******

*(3) ******

(4) The promoter shall—

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(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

*(b) ******

(c)

(f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;

Under section 11 (4) (a) “**till conveyance of all apartments**” clearly implies that there has to be conveyance of all apartments in favour of Allottees. Again section 11 (4) (f) states of conveyance in favour of Allottees alongwith undivided proportionate title in the common area to the association of the Allottees has to be executed as required under section 17 of RERA.

Section 17:- Transfer of Title

17. (1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining

thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

Under Section 17 (1) the Promoter has to execute registered Conveyance Deed in favour of the Allottees **alongwith undivided proportionate title in the common area to the association** of the allottees and **Promoter has to handover physical possession of the apartment to Allottee** and **common area to the association of the Allottees**. In absence of any local act the conveyance has to be executed within 3 months from the date of Occupation Certificate. In Maharashtra the local act which will be applicable is MOFA.

Section 19:- RIGHT AND DUTIES OF ALLOTTEES

*Sec 19(11) Every allottee shall participate towards **registration of the conveyance deed of the apartment**, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.*

Thus it can be seen under Sec 19(11) it is duty of the Allottee to register the Conveyance Deed of the Apartment.

Therefore from reading of relevant Sec 4, 11, 17 and 19 it is abundantly clear that unlike in MOFA under RERA, Apartment has to be conveyed to the Flat Purchaser.

CONTRARY PROVISION IN MahaRERA Rule

Despite very clear provision under RERA, under Rule 9 of The Maharashtra Real Estate(Regulation and Development)(Registration of Real Estate projects, Registration of Real Estate Agents, Rates of Interest and disclosure on Website) Rule 2016(**MahaRERA Rule**) contemplate

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conveyance of the land and building to Society, which is contrary to RERA. The rule under any acts are made for implementation of the act, the rule has to be in conformity with the act, rule cannot be contrary to the act or rule cannot have something different than that is not contemplated by the act, **therefore the author is of the view that, those rules are wrong and cannot be implemented.**

PROPERTY CARD OF FLAT

The proposed amendment to Maharashtra Land Revenue Code 1966, also contemplate separate property card to Flat Owner, wherein it is referred as Starta title, the relevant provision is reproduced hereunder

"Strata title" means a form of ownership of immovable property devised for multi-level apartment blocks and horizontal sub-divisions with shared areas. The 'strata' part of the term refers to apartments being on different levels, or 'Strata'.

CONCLUSION

From Sec 4, 11, 17 and 19 of the RERA it is abundantly clear that unlike in MOFA under RERA, Apartment has to be conveyed to the Flat Purchaser. The provision contained in the MahaRERA is contrary to the provision of RERA and if challenged in any court it will not sustain. This author is therefore of opinion that under RERA, Flat has to be conveyed to the Flat purchaser alongwith undivided interest in the property on which flat is constructed.