

Deemed Conveyance for Societies

OBJECTS OF CONVEYANCE

To Become Legal Owners:

Any movable/immovable property ownership is identified on the basis of title documents for example; immovable properties are recorded and identified on the basis of Survey No., Hissa No. and such other identity marks in Government Records like 7/12 extract property card etc in favour of purchasers, then only, the purchaser become the legal owner.

To make entries in Government Records:

When the property transactions are recorded in Government records, it becomes conclusive evidence of ownership of property. To make entries in Government records, a Conveyance Deed has to be executed as explained above.

To have free and marketable title:

When a particular person/Society has paid full consideration and is in possession of the property but the title documents are continued in the original owners' name, the purchaser will not have a free and marketable title on the said property. It is only after proper conveyance - the purchaser will derive free and marketable title over the property.

ADVANTAGES OF CONVEYANCE:

Following are the advantages of getting the conveyance of land and building in the name of the legal bodies.

- Getting the proper title
- Retaining Additional F.S.I which has been granted by change of regulations.
- Property will be free and marketable from any encumbrances/ charges
- Loan can be raised by Mortgage for repairing of the buildings.
- Permission for reconstruction will be given by the planning authorities.
- Construct new building by using TDR or give the redevelopment rights to the builder and get the additional area and the corpus with new amenities.
- Receive Compensation on Development like Hoarding rents, tele communication tower rent etc.

TYPES OF DOCUMENTS

There are basically two types of rights attached to the land on which building is constructed and then the society is formed of the flat/shop takers. First is the Freehold property and the other is leasehold property. The documents to be prepared to get the title in favour of the society depends upon the type of property on which the building is constructed. Normally the type of document whether lease rights or freehold of the land will be conveyed to the legal body will be mentioned in the agreement for sale executed by the builder with the individual flat purchasers.

STAGES INVOLVED

1. Preparation of conveyance deed and execution thereof:

On behalf of the Society, the Managing Committee has to enter into the conveyance deed of the society. The Committee shall examine, in consultation with the Solicitor or the Advocate of the Society, the deed of the conveyance of the land and the building/buildings thereon

prepared by the builder and place the same before the Meeting of the General Body of the Society for its approval. On approval of the draft deed by the General Body Meeting of the Society, the committee shall execute it.

2. Pay the Appropriate Stamp Duty on conveyance deed:

Once the conveyance deed is prepared and executed, the same should be send to the collector of stamps for payment of stamp duty and the stamp duty on conveyance is calculated as under:

- In case of the agreement for sale registered with the sub-registrar by the flat owners, the market value as on the date of registration of the document will be worked out and the stamp duty rate will be applied as on the date of execution of the conveyance deed.
- In case the agreement is not registered, the stamp duty on the present market value will be calculated for such flats/shops.
- In case of co-operative housing societies, as per the explanation given in Article 25 of the Schedule I of the Bombay Stamp Act, 1958, if the flat purchasers have paid the stamp duty at the time of their individual agreement, the same would be adjusted at the time of final conveyance. Therefore, the society need not pay separate stamp duty at the time of conveyance. However, if some flat/shop owners have not paid or have paid less than the required stamp duty, the difference will have to be paid at the time of executing the conveyance.

3. Registration of conveyance deed

Once the conveyance deed is executed and proper stamp duty is paid, the same should be lodged for registration with subregistrar of assurance within four months from the date of execution by the parties who have executed the document. They are also required to appear before the Sub-Registrar for admitting execution of the document.

4. Changes in the government records

After the conveyance deed is executed in favour of the society, the office bearers will have to apply to the Talathi/ Revenue Officer or to the city survey office for making necessary changes in the revenue record. There are prescribed forms to be filled for making necessary changes. Even the land owner will have to give consent for making changes in the revenue record. Accordingly, after making such changes, the property card or 7/12 extract, form 6 extracts of revenue record will be given in the name of the society.

DEEMED CONVEYANCE

After the expiry of 4 months of formation of the legal body, the land and building is deemed to have been conveyed to the legal body. In order to bring the name of the society/ legal body in the revenue record, a Competent Authority has been designated i.e District Deputy Registrar, who will hear the parties on the basis of applications received from the aggrieved party and decide the matter. In case the Competent Authority is satisfied that the society/legal body is entitled to get the conveyance of land and building, an appropriate order in favour of the society/legal body will be passed. After getting the favourable order from the Competent Authority, the society/legal body should prepare an unilateral conveyance deed along with deemed conveyance order and get the same registered with the sub-registrar of assurance after paying appropriate stamp duty. Getting the title of land and building by adopting the above procedure is known as deemed conveyance.

THE PROCEDURE

Deemed Conveyance is a one of the legal process to get the conveyance of land and building in favour of the legal bodies. Once the Deemed conveyance is passed by the Competent Authority, unilateral conveyance deed as provided in MOFA will be executed by the

society/legal body as per the order received from the competent Authority. Further, the same will be registered by paying appropriate stamp duty and registration charges. There is no appeal against the deemed conveyance order passed by the competent Authority. However, the aggrieved parties can file a writ petition in the High court or in the Supreme Court under Article 226 of the constitution. Once the deemed conveyance order with Unilateral conveyance deed is executed, the index II has to be obtained and submitted to the Talati office or City Survey office to incorporate the name of the legal body in the 7/12 extracts or in the property card.

PAYMENT OF STAMP DUTY

The stamp duty will be only Rs.100, if all the flat owners have paid the stamp duty and have done the registration of their respective flats including on all the transactions (Chain of Agreements) done in those flats. In case there are some flat owners who have not paid the stamp duty or has escaped the duty, the same will have to be paid at the time of registration of the deemed conveyance deed by the legal bodies and the same can be recovered from such flat owners.

CONSTRUCTION IN PHASES

In case of layout plot, the provision for part conveyance is already in existence on proportionate basis. There are many complexes where the conveyance has been done for one of the societies in a layout plot. There are many judgments to provide part conveyance to one of the societies in layout plot. It has been clearly pointed out that in case of layout plot, the legal body will be entitled to get the proportionate undivided rights, title and interest in the layout plot based on the FSI/TDR used for the respective building out of the total development potential of the entire layout plot as on the date of conveyance of the land and the building and as per the disclosure made by the builder. In case the builder has not disclosed the same, the entire balance FSI/TDR will be transferred to the legal bodies proportionately otherwise it will be available to the builder.

DEEMED CONVEYANCE ORDER

Normally, the aggrieved party has to make the application to the competent Authority in the prescribed form with documents available against the builder, if he fails to convey the land and building to the legal body within 4 months of its formation. The Competent Authority shall scrutinize the application, collect the documents from the promoter/ builder or from the authorised officer appointed by him and get the application admitted. After the admission of the application, the competent Authority shall conduct the hearing and then take the appropriate decision, whether the applicant or the legal body is a fit case for granting the deemed conveyance. If he passes a favourable order, then he appoints an authorised officer, who shall execute the conveyance deed.