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I.A.S. (Retd.)

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Rasesh Kanakia
Parag Munot

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Sandeep Runwal
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Sunil Mantri
Pravin Doshi
Mohan Deshmukh
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Ref. No. MCHI/PRES/15-16/020

August 5, 2015

To,
Hon'ble Shri Prakash Mehta
Minister for Housing Department
Government of Maharashtra
Mantralaya,
Mumbai - 400 032.

Sub: Provisions of MOFA - Section 7 and 7A.

Respected Sir,

This is to bring to your notice certain recent Judgments interpreting the provisions of Section 7 and 7A of Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ("MOFA").

1. The Bombay High Court in the matter of Kalpita Enclave Co-operative Housing Society Ltd. v/s. M/s. Kiran Builders Pvt. Ltd., (1985) 88 BLR 100, interpreted Section 7(1) (ii), observing that contraventions contemplated in the said Section are not confined to the construction of buildings only; this contravention may extend to the construction of any additional structure not in the original plans and specifications as approved by the local authority. Thus, if the original plans and specifications on the basis of which the persons were persuaded to purchase the flats disclosed that certain areas will be kept open, it would be a clear contravention of the agreements as well as of law if the promoter proceeds to construct additional structures on those open spaces, even with the sanction of the Municipal Corporation.
2. The Bombay High Court further held that a Promoter was not entitled to put up additional structures not shown in the original layout plan without the consent of the flat takers. Thus, consent was attached to the concept of additional structures.

(Signature)
लिपिक ए.क.जि.
मंत्री, गृहनिर्माण, कामगार व खनिकर्म
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3. Section 7 was therefore amended and Section 7A was inserted in order to make the position explicit, which according to the Legislature existed prior to 1986, implicitly. Further, it was declared vide Section 7A that the expression contained in Section 7(1)(ii) as it existed before commencement of the Amendment Act, viz. "(ii) any other alterations or additions in the structure of the building without the previous consent of all the persons who have agreed to take the flats in such building", shall be deemed never to apply in respect of any other additional building constructed or to be constructed under a scheme or project of development in the layout, notwithstanding anything contained in the MOFA or in any agreement or in any judgment, decree or order of the court. Consequently, reading Section 7 and 7A, it is clear that the question of taking prior consent of the flat takers does not arise after amendment in respect of any construction of additional structures.
4. This intention of the Legislature is evident from the Statement of Objects and Reasons for introducing Section 7A. The relevant portion thereof is reproduced hereunder -

"The prohibition of making additions and alterations under this provision is in relation to a building wherein the purchasers of the flats have taken or to take flats. It was never intended that this provision should operate even in respect of construction of additional buildings according to a scheme or project of development of total layout. In Kalpita Enclave Co-operative Housing Society Ltd. v/s. Kiran Builders Private Ltd. (1986 Mh. L.J. 110) the High Court of Bombay has held that the contravention contemplated in section 7(1) or in section 7(2) which includes alterations in the structures or construction of additional structures, is not confined to the construction of the buildings only; and this contravention may extend to the construction of any additional structure not in the original plans and specifications as approved by the local authority. Such an interpretation of these provisions would result into the flat purchasers in one building objecting to the additions and alterations being made in any other buildings although such alterations and additions are consented to by the persons who have taken or who are to take flats in such other buildings or even if they are permissible under the building rules or building bye-laws or development control rules and are approved by the local authority. This would further result into retarding the growth of construction of buildings and increasing the housing stock. If the total layout permits construction of more buildings in accordance with the building rules or building bye-laws or the development control rules made under any law for the time being in force, there should be no impediment in construction of the additional buildings."

5. However inspite of the above, the provisions of Section 7A and the clear mandate and intent of the Legislature, the Courts have, in certain Judgments, held that in view of non disclosures as per Section 3 and 4 of the MOFA and Clauses 3 and 4 of the Format of Agreement given under the MOFA, the Developer cannot construct additional buildings, if such building/s is/are not shown in the layout plan disclosed to the flat purchasers at the time of entering into agreement for sale. The provisions contained in these Sections and Clauses relate only to additions and alterations in the flat and/or in the building itself and not to additional structures being constructed as per the plans duly sanctioned by the local authority. The same has rendered the provisions of Section 7A infructuous and consequently the further development cannot take place in the large layout which are being developed in a phased manner. Much of the potential of the land will remain unexploited.
6. Such interpretation by the court, is not only contrary to the provisions of Section 7A, the same is also not consistent with Housing Policy of the State Government. The State Government in view of shortage of housing in the State of Maharashtra, has always encouraged optimal exploitation of the land and construction of more and more housing so that the housing is provided to the maximum people. In view of such interpretation, the maximum exploitation of land for providing more and more housing cannot take place.
7. Some of the Judgments where such retrospective interpretation of Section 7 and Section 7A have been given are as under -
 - (i) Madhuvihar Co-op. Hsg. Society v/s. Jayantilal Investments
2010(6) Bom.C.R. 517
 - (ii) Asian Development Corporation & Ors. v/s. Kavita Co-op. Housing Society Ltd. & Ors.
2012(1) Bom.C.R. 666
 - (iii) White Towers Co-op. Hsg. Society Ltd. v/s. S.K. Builders & Ors.
2008(6) Bom.C.R.371
 - (iv) Malad Kokil Co-op. Hsg. Society Ltd. & Anr. v/s. Modern Construction Co. Ltd. & Ors.
2013(2) Bom.C.R. 414
 - (v) Zircon Venture Co-op. Hsg. Society Ltd. v/s. Zircon Ventures & Ors.
2014(5) Bom.C.R. 158

- (vi) Eternia Co-op. Hsg. Society Ltd. & Ors. v/s. Lake View Developers & Ors.
Notice of Motion No. 62 of 2014 in Suit No. 54 of 2014
- (vii) Lake View Developers & Ors. v/s. Eternia Co-op. Hsg. Society Ltd. & Ors.
Appeal (L) No. 189 of 2015 in Notice of Motion No. 62 of 2014 in Suit No. 54 of 2014
8. In view of the policy initiative of the Central Government as well as State Government to provide "Housing for All", it is positive to bring in optimal use of the land available for higher number of houses to be constructed over that. You will also agree, Sir, as also pointed out in the recently issued Draft Housing Policy, the applicability/interpretation of the various provisions of the MOFA, particularly the interpretation of Sec. 7A of MOFA has been subject of various judicial pronouncements. We in MCHI plead, Sir, that in order to fulfil the aspirations of the people to own the dwelling and government's positive stand to create larger stock of housing for the people who need them, the policy and the provisions have to be very clear and without confusions. Such larger stock of houses can be created in a phased manner. Hence, we request that the Government may consider amending the Sec. 7A of the MOFA, so that it will not affect large housing projects, where the development has been undertaken by the Developer, in case of layout development, he will always be entitled to construct additional building/structures where, the development has been undertaken by the Developer in sector wise/phase wise manner, the developer should entitled to use the benefit of layout within layout.

Thanking you,

Yours faithfully,
For MCHI-CREDAI



Dharmesh Jain
President