

LIBERAL TRANSLATION OF MARATHI

For the stamp duty payable on the built up area given to the Owner by the Developer as per the Development Agreement executed between the owner of immovable property and the Developer.

GOVERNMENT OF MAHARASHTRA
REVENUE AND FOREST DEPARTMENT
Government Circular No. Petition-2013/1425/Case. No.260/M-1
Mantralaya, Mumbai 400032
9th May, 2014

Introduction :

While executing Development agreements between the owner of the immovable property and the Developer, sometimes the owner of immovable property retains some tenements / flats for himself, as a consideration. A Public Interest Litigation (Petition) bearing No.14/2011 (Chandrakant Nanekar Vs State of Maharashtra and others) was filed before the Hon'ble Bombay High Court regarding the payment of stamp duty on the built up area retained by the land owner as per documents executed between the Developer and the land owner.

The Hon'ble Bombay High Court vide order dated 19th March, 2014 in Public Interest Litigation No.54/2001, has directed the Government to issue Circular clarifying the payment of stamp duty on the tenements / flats retained by the land owner with reference to the judgment delivered on 29/01/2004 in Writ Petition No. 146/1997 – Prabha Laxman Ghate Vs State of Maharashtra, as the principle laid therein still stands.

In writ petition No. 146/1997 (Prabha Ghate Vs State of Maharashtra and), the petitioner (original land owner) executed Agreement for development of her property on 10/04/1989 with the developer. As per the said Agreement, the said property was to be developed by the Developer and out of the total six flats, two flats were to be retained by the petitioner (original land owner).

The said document was presented to the Collector of Stamps, Pune for adjudication of stamp duty. The Collector of Stamps concluded that the flats retained by the petitioner (land owner) are conveyed in her favour and accordingly, demanded the stamp duty thereon. Smt. Prabha Ghate, the petitioner challenged the said order before the Hon'ble High Court. The Hon'ble High Court vide order dated 29/01/2004 set aside the order passed by the Collector of Stamps and clarified the following two issues :

- A. The Bombay Stamp Act, 1958 has been amended on 16.01.1997 and new Article 5(g)(a) was inserted for Development Agreement, which was effective in retrospect from 07.02.1990. In the matter of Mrs. Prabha Ghate, the Development Agreement was executed on 10th April, 1989 and the amendment by inserting Article 5(g)(a) in the Bombay Stamp Act 1958 (presently Maharashtra Stamp Act) was effective from

7.2.1990 i.e. much after the date of execution of the agreement in question and therefore, it is not applicable on the documents in question.

- M. As per the agreement in the matter of Smt. Prabha Ghate, the original land owner retained two flats in lieu of the development rights and, therefore, there is no transfer in any manner. Therefore, the stamp duty on the retained flats cannot be charged as per the Conveyance.

In the aforesaid background, the following clarification is issued :

1. As per the judgment passed by the Hon'ble Bombay High Court in writ petition No.146/1997 – Prabha Laxman Ghate Vs Sub-Registrar and Collector of Stamps, Pune, the stamp duty on the Development Agreement executed on or prior to 7.2.1990 is not applicable as per the newly added Article 5(g-a) of the Maharashtra Stamp Act, 1958. But the stamp duty on the Development Agreements executed after 7.2.1990 shall be payable according to the Article 5(g-a) of the Maharashtra Stamp Act, 1958.
2. The stamp duty is not payable in the matters where, the owners of property have retained for themselves, the built up area as per the agreement executed between the developer and the original owner of property, which are similar to that of Prabha Laxman Ghate. As per the said agreements, the transfer of built up area in favour of the original owner does not amount to conveyance of the property and therefore, the stamp duty on said agreements should be charged as per the Article 4 of the Maharashtra Stamp Act.

As per of the order and in the name of the Hon'ble Governor of Maharashtra

Sd/-
Rajesh Narvekar
Deputy Secretary

Copy to :

1. Inspector General of Registration and Controller of Stamps, Maharashtra State Pune
2. Additional Controller of Stamps, Mumbai, Chief Stamp Office, Fort, Mumbai
3. All Deputy Inspector General of Registration and Controller of Stamps.
4. Assistant Government Pleader, Hon'ble High Court, Appellate Jurisdiction (Writ Cell), Mumbai 40003
5. Revenue and Forest Department, Mantralaya, Mumbai 400032