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Date: 20th February, 2015

To
Hon'ble Chief Minister of Maharashtra
Government of Maharashtra
Mantralaya, Mumbai 400 032

Sub: Stamp duty on Deemed Conveyance Deeds.

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Respected Sir,

1. Presently, some Collectors of Stamps in Mumbai demanding Building Completion Certificate for adjudicating the stamp duty on the Deemed Conveyance on the basis of Circular dated 26th November, 2012 issued by the Department Revenue and Forest. In my opinion this demand is absolutely unjustified being contrary to the provisions of law for the reasons mentioned hereinafter:
 - i) Rule 8 of the Maharashtra Ownership Flats Rules, 1964 talks about the period of submission of application for registration of the cooperative society and Rule 9 thereof talks about period for conveyance of title of Promoter to the Cooperative Society in the matter of regular conveyance deed. These time limits are based not on state of construction but sale of flats and, therefore, importing the requirement of completion of construction as a pre-condition to conveyance renders these provisions redundant and unworkable. This can be illustrated by means of following example :

Supposing a builder plans to construct 30 Flats in a building. As soon as he gets Commencement Certificate, he sells 10 flats. As per Rule 8 of MOFA, the Builder is supposed to submit an application for registration of cooperative society within 4 months from the date when 10 flats are sold by him. Let us presume that the registration of the Society takes 6 months and the building still remains under construction. As per Rule 9 of MOF Rules, 1964 within 4 months from the date

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on which the cooperative society is registered, the builder has to give conveyance to the Society irrespective of the fact whether building is completed or not.

As per Maharashtra Ownership Flats Act, 1963 read with MOF Rules, 1964 (specially Rule 8 and 9) a builder is duty bound to give the conveyance within 4 months from the date on which the society is registered. He cannot wait for building completion certificate. Registration of Society is to be applied for when only 10 flats are sold. The obligation is based on sale of the prescribed number of flats and not construction thereof when, as a general practice, sale takes place before completion of construction and even before the construction commences. If, therefore, he does not give conveyance on account of non-procurement of completion certificate, he will be acting against the MOF Rules.

- ii) If building completion certificate cannot be a condition precedent for grant of regular conveyance to the Society, it certainly cannot be made compulsory for the deemed conveyance. This fact has been appreciated by the department of revenue while issuing circular dated 26th November, 2012 (copy enclosed). The circular expresses urgency of action and details the procedure to be followed as well as the actions to be taken by the concerned officers. The circular lists out in Schedule A, the minimum required documents for valuation of the conveyance. Particular attention is drawn to item 4 of the Schedule which along with its translated version is as under:

“the approved plan for construction issued by Municipal Corporation and Building completion certificate/ In case the approved plan is not available, a certificate of the Architect”.

The above Circular is proper being consistent with provisions of MOFA and in accordance with the requirement of the purpose for which the documents are demanded. In order to ascertain the stamp duty on the conveyance deed the Collector of Stamps has to verify the balance FSI and charge stamp duty thereon at current market value. The approved plan with the occupation certificate shows unutilised FSI which can be valued by the authority at current market value. The above referred circular makes it abundantly clear that if the Occupation

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Certificate/Building Completion Certificate is not available, the society can tender Architect certificate specifying the balance FSI. It means even in the absence of Occupation Certificate/Building Completion Certificate, the adjudication can be completed by verifying the Architect's Certificate regarding balance FSI.

- iii) A similar circular has been issued by the Housing Department Govt. of Maharashtra on 25th February, 2011 (copy enclosed) which also does not provide for mandatory furnishing of building completion certificate. Some of the Collectors of Stamp are misinterpreting the aforesaid circulars. In fact, the interpretation placed by those Collectors of Stamp to the aforesaid circulars is wrong and presuming for the sake of argument that their interpretation is correct, it is also settled law that a circular cannot go beyond the statutory Act and the Rules made thereunder. It will be relevant in this connection to refer to the provisions of section 11(3) of MOFA which read as under:

*Section 11(3) If the promoter fails to execute the conveyance in favour of the co-operative society formed under Section 10 or, as the case may be, the company or the association of apartment owners, as provided by sub-section (1), within the prescribed period, the members of such co-operative society or, as the case may be, the company or the association of apartment owners may, make an application, in writing, to the concerned Competent Authority accompanied by the true copies of the registered agreements for sale, executed with the promoter by each individual member of the society or the company or the association, who have purchased the flats and all other relevant documents **(including the occupation certificate, if any)**, for issuing a certificate that such society, or as the case may be, company or association, is entitled to have an unilateral deemed conveyance, executed in their favour and to have it registered.*

The portion highlighted, for emphasis, makes it clear that furnishing of occupation certificate is subject to its availability. The issue of building completion certificate, being a step subsequent to issue of occupation certificate, is also, therefore, subject to availability. While prescribing it to be so, the legislature gave due recognition to the fact that a large number of societies in Mumbai are such where the promoters have not even discharged their obligation of obtaining occupation certificate / building completion certificate and if production of such certificate is made mandatory, it will render the whole scheme unworkable.

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2. Introduction of Sub-section (3) in Section 11 of Maharashtra Ownership of Flats (Regulation of Promotion of Construction, Sale, Management and Transfer) Act, 1963 is aimed to enable conveyance in favour of co-operative societies where the promoter has failed and is reluctant to comply with his obligation under this Section to convey the title over the land and building to the society after it is formed in accordance with the provisions of Section 10 of the Act. The legislative measure is hailed as a highly needed one in view of the prevalent and growing instances of default in the matter, causing grave unintended handicap to the societies and their members. It is heartening that the government's endeavour is to ensure that maximum number of societies benefit under the scheme and steps have been taken from time to time to remove bottlenecks in procedures and make it workable. To name one, is the circular by Inspector General of Registration and Controller of Stamps dated 12th April, 2012 directing matters of adjudication of Deemed Conveyance to be decided on priority basis and formation of a committee of officers of concerned departments for removal of obstructions in the matter of stamp duty and registrations. The laudable object of such legislative and follow-up exercise is being frustrated by the practice being adopted in the matter of adjudication of stamp duty in respect of the Deemed Conveyance Deed under which certain Collectors of Stamp are demanding Occupation Certificate and Building Completion Certificate for this purpose.
3. The requirement as laid down in law as well as the above mentioned circulars is not being followed in letter and spirit by some collectors of stamps when they insist on compulsory furnishing of Building Completion Certificate and Occupation Certificate. As a sample, copy of notice received by one housing society is enclosed. Such insistence, instead of facilitating the conveyance, has become a stumbling block in deemed conveyance. The same is not only contrary to the provisions of section 11(3) of MOFA, but also unworkable in most of the cases.
4. Further, the demand for Occupation Certificate / Building Completion Certificate has no relevance to the scope of consideration by the collector of stamps. Under

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the scheme, it is the Competent Authority under the Act which has to consider the genuineness of the society's request and all other matters relating to grant of deemed conveyance. When, even for consideration by the Competent Authority furnishing of occupation certificate / building construction certificate is not mandatory, making it compulsory for adjudication of stamp duty is without any purpose.

Once a certificate certifying that applicant society is entitled to have deemed conveyance is issued, all subsequent stages in the process are only to give effect to this order and stamp duty adjudication is one such step. The law does not permit any authority in subsequent proceedings to sit in judgment over the decision of the authority in previous proceedings. The limited jurisdiction of Collector of Stamps is only to decide the stamp duty payable and for this purpose to determine whether any balance FSI is available on the plot of land on the basis of approved plans or the Architect Certificate. For the Collector of Stamps, only those documents have relevance which enable him to take the decision within his purview and when so viewed, insistence on occupation certificate / completion certificate has no relevance.

5. In the interest of effective implementation of the scheme of deemed conveyance which is the crying need of the day, your kind intervention is sought in removing the handicap by issue of suitable clarifications and instructions to avoid the practice of demanding the Occupation Certificate / Building Completion Certificate. This will go a long way in ensuring the intended benefits of deemed conveyance to the large number of deserving societies which is presently being denied to them because of such unwarranted insistence.

Hope you will be kind enough to issue clarification.

Yours Truly,

Sd/-
K.K. Ramani
Advocate