

J.B. NAGAR C.A. STUDY CIRCLE

Lecture at Kohinoor Hotel, Andheri (E)

On Drafting of Redevelopment Agreement and related documents

A] Laws to be considered

1. Maharashtra Co-Operative Society Act, Rules, byelaws, S.79A and notification dated 03.01.2009.
2. Maharashtra Regulation Development Act.
3. Maharashtra Ownership Flats Act,
4. Maharashtra Apartment Ownership Act.
5. Indian Contract Act.
6. Transfer of Property Act
7. Easement Act.
8. Maharashtra Rent Control Act,
9. Mhada,
10. Public Premises Act,
11. MRTP Act,
12. Development Control Regulations DCR 33(7)
13. Civil Procedure Code.
14. Mah Stamp Act.

B] Process Upto Drafting Stage

1. Society must have Conveyance (Deemed Conveyance).
2. Structural Audit, dilapidated, not repairable
3. Report must detail about FSI used balance, TDR, fungible FSI, Development Potential of Society land, financial benefit projections.

C] Drafting Assignment.

1. Resolutions

2. Tender
3. Memorandum of Understanding
4. Consent Letter,
5. Development Agreement
6. Title document for flat.
7. Power of Attorney only for work
8. Indemnity

D] Society to Follows Process SGBM for considering

1. PMC Report
2. Bids Short listing
3. Selection of Builders
4. Development Agreement draft approval
5. Development Agreement Execution

E] **Gist of Proposal**

Keep in mind developer is not bearing any land cost, but only construction cost and he wants to share profit.

F] Points to be considered while drafting Development Agreement (Chapter wise)

I] **Recitals**

1. Conveyance held by society.
2. Existing Construction in Carpet and Built-up sq. ft. area as per sanction plan.
3. FSI Consumed, balance and total Development Potential
4. Balance FSI, Setback,
5. TDR in Sq. ft. can be loaded.
6. Fungible FSI, available

II. **Definitions-**

Definitions of terms and reference of Applicable Law

III. **Describe process**

Process followed for PMC SGBM, Tender, bid Short listing, SGBM, Reg, Video recording, LIO/MOU, Terms finalization, DA, SGBM, Power of Attorney, as per S.79A and notification dated 03.01.2009.

IV. **Negotiation - Negotiation On**

1. Letter of Intent or Memorandum of Understanding
2. Letter of developer recording acceptance of Letter of Intent.
3. Terms of Development Agreement.

V. **Negotiation for and reference off following points**

1. Letter of Intent/acceptance of Letter of Intent is superior to bid document. Acceptance of Letter of Intent forms a contract
2. Area addition in carpet to each Member
3. Rent by Advance Cheque
Corpus by Advance Cheque to be kept with society
Brokerage by Advance Cheque
Deposit by Advance Cheque
Transportation by Advance Cheque
4. Bank guarantee equal to Construction Cost of society component Performance linked reducing guarantee
5. Lien or No sale- offers are to be avoided
6. Different models of Amenities in Annexures such as Flooring, windows, A/c Opening, gas geysers, dish antenna, Security Camera Copper Wire, Colour Plaster of Paris on walls, society office, security cabin, Electricity Points, Kitchen furniture water outlets, Plumbing accessories.
7. Liberty to Members to select amenity model
8. Quality of construction to be specified in Annexure

9. Supervision, Certificate of society Architect is binding
10. Plan to be sanctioned in name of society and copies of Plans and correspondence with BMC and authorities to be furnished.
11. Time Schedule (18 months to 24 months)
12. Deposit against execution of Development Agreement to be adjusted against corpus.
13. No Cost to be borne by society.
14. Advocate and PMC Fees by developer.
15. Title documents tripartite agree for new flats Registration, Stamp duty by developer
16. Mode of Payment or rent, corpus
17. Corpus to be deposited with Society before vacating flats.
18. Design of flats Direction of flats Location of flats of member will not be changed without written consent.
19. Garden, Jogging Track, Gym, Hall Skylange, Lifts, Servants Lift, Spare Lift, stretcher lift.
20. Vacating after IOD and Registration of new flat title document
21. Possession after O/c.
22. Parking
23. Plan to be put up to BMC approval by society.

VI. **Essential Points**

1. Time is essence of contract
2. Stages of construction with time schedule specified.
3. Default mechanism resulting into termination
4. Penalty, for delay daily/lump sum.
5. Consequences of defaults or delay 6 months of any state Taking construction over to other developer or contractor

6. Possession be given to Members with o/e. and amenities first
7. No possession be given to purchasers of new flats till members are given possession with occupation certificate and amenities.
8. Security of payments/defaults or dishonor of cheques by linking to bank guarantee.
9. NOC of architect is not required or deemed permission for switching to new developer

VII. Termination/Frustration

1. Defaults in completing stage of construction in time.
2. No Claims or damages from society.
3. Indemnity by developer to society.
4. Arbitration Clause, define points of reference
5. Certain dispute to Co-operative Court
6. Certain disputes to mediation.
7. Technical Mediation
8. Supremacy of supervision certificate of architect.
9. Remove Goods, articles on termination or else it will be property of the society.

VIII. General Terms

1. Share benefits accrued by change in law
2. Force majeure to be specifically defined
3. Share benefit accrued, by change in circumstances.
4. Plinth if laid then benefits of change cannot be shared.
5. Share further benefit formula by payment of money.
6. Forthwith payment to society before using benefit.
7. 5 years guarantee of constructed building for rectification
8. Tax Payment, dues by developer and certificate of no dues by authorities or C.A.

9. Insurance, Labour Laws, Taxation, Property Tax to be cleared.
10. Construction cost total or incidental cost payment by developer
11. New Building is not property of developer and hence cannot be mortgaged.
12. No finance on Building/land mortgage to developer
13. NOC for free sale component flats, for bank loan
14. Developers Entry as licensee of society
15. Indemnity to society against any actions or suit from purchasers or suppliers.

Adv. Bharat Joshi

bjoshilawyer@yahoo.in

9820055955