

J.B. NAGAR CPE STUDY CIRCLE OF WIRC

CPE
4 HRS

OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

PHYSICAL STUDY CIRCLE MEETING



Speaker
CA. Chintan Shah

Session 1

Standards on Auditing: NFRA Perspective



Chief Guest
CA. Ketan Saiya
Chairman - WIRC of ICAI



Speaker
CA. Ramesh Prabhu

Session 2

**Issues & Challenges in Redevelopment
& Self-Redevelopment with Reference
to RERA, MCS Act, Income Tax & GST**



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VENUE

Hotel Kohinoor Continental, J B Nagar , Andheri (E), Mumbai 400059

DAY
Sunday

DATE
10th August, 2025

TIME
08.45 AM - 01.15 PM

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SHARP : Strategy, Honesty, Accuracy, Responsibility, Proficiency



J B NAGAR CPE STUDY CIRCLE OF WIRC OF ICAI

PRESENTS

ON 10th August 2025.



- Redevelopment impact on :
- MCS Act, 1960 Rules, GR
- RERA, Income Tax & GST

RAMESH S. PRABHU

VICE CHAIRMAN, GRIHAROMY REDEVELOPMENT STAKEHOLDERS FEDERATION

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REDEVELOPMENT & Self Redevelopment IN CHS & Impact on GST, Income Tax, RERA and MCS Act

AGENDA

- Concept of Re-Development , Advantages, Challenges & Types
- Feasibility Report & Role of PMC & professionals
- Direction u/s 79A of the MCS Act, 1960
- Prerequisites for Self Redevelopment
- Self Redevelopment & its systems.
- Fund raising options
- Government Initiatives & Incentives
- Impact of RERA, GST & INCOME TAX
- Stakeholders Opportunities & Challenges
- Way forward



MEANING OF REDEVELOPMENT

“REDEVELOPMENT” means
demolition of the Old
Structure.



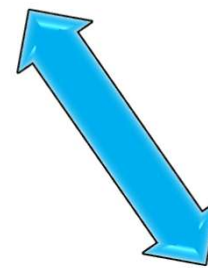
Replacing it with a
NEW STRUCTURE with new
dimensions and space.



Concept of Redevelopment

- Redevelopment is **the process of:**
- **demolishing existing old** society building and
- **reconstructing** it by appointing a developer
- developer constructs **new building with additional FSI/ TDR/ fungible FSI** etc as per DCPR , 2034 for Mumbai or Unified DCPR for rest of Maharashtra and
- **handover new flats to** the Society members free of cost with some additional area/ cash benefits and
- make profit by utilizing balance plot potential by constructing additional flats and shops as per approval from the respective municipal corporation
- **Sells the additional units in the open market** to fund the project cost and generate his profit.

REDEVELOPMENT

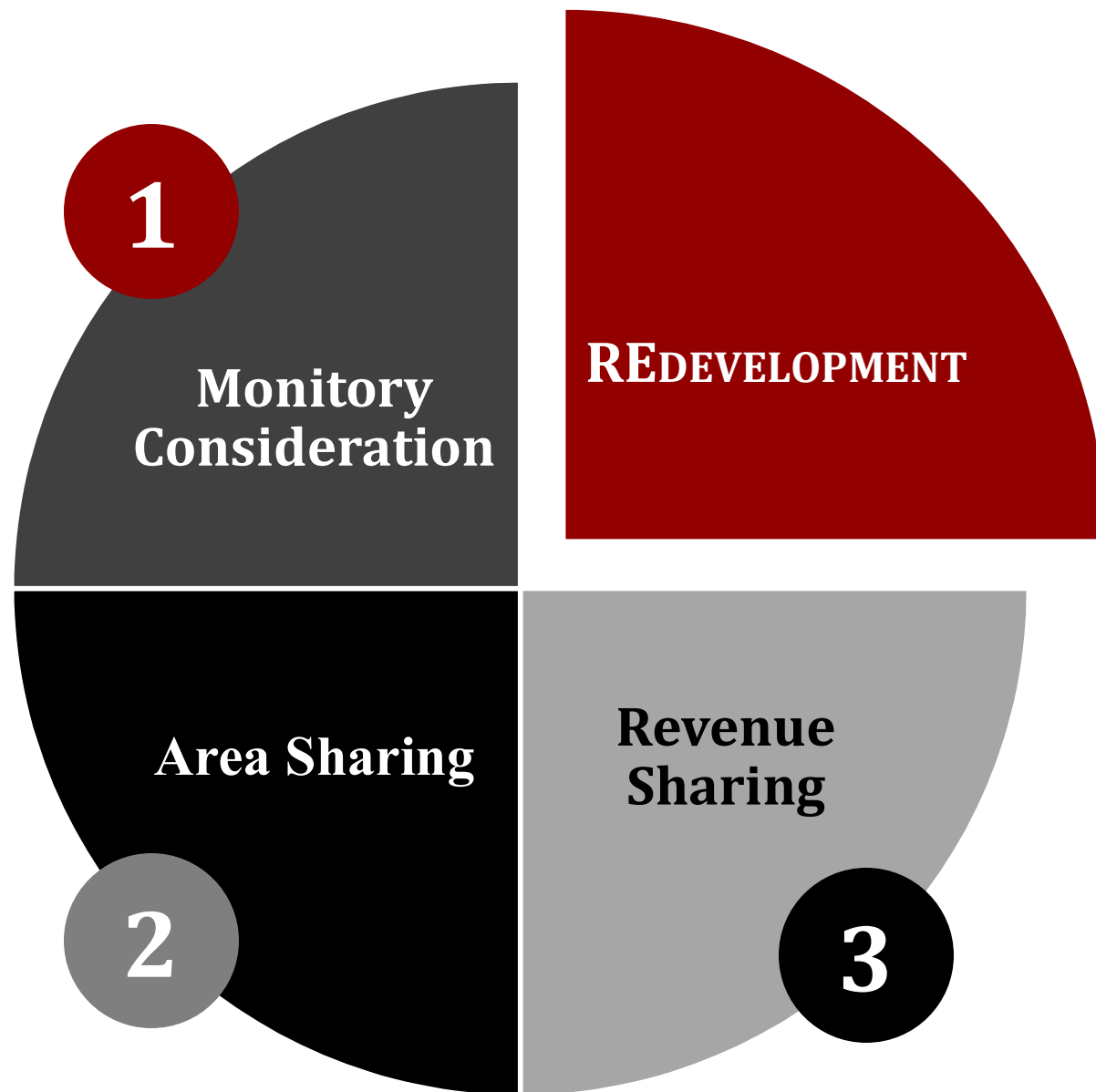


**JOINT VENTURE
DEVELOPMENT**



**SELF
REDEVELOPMENT**

REDEVELOPMENT OF CHS



COMBINATION OF ALL THREE OR ANY TWO

**REDEVELOPMENT
POTENTIAL**

**IS IN DCPR BASED
ON LAND-
OWNERSHIP &
LOCATION**



REDEVELOPMENT - BASED ON LAND

Owned/ Tenanted
Building

In Mumbai or other
than Mumbai in
Maharashtra

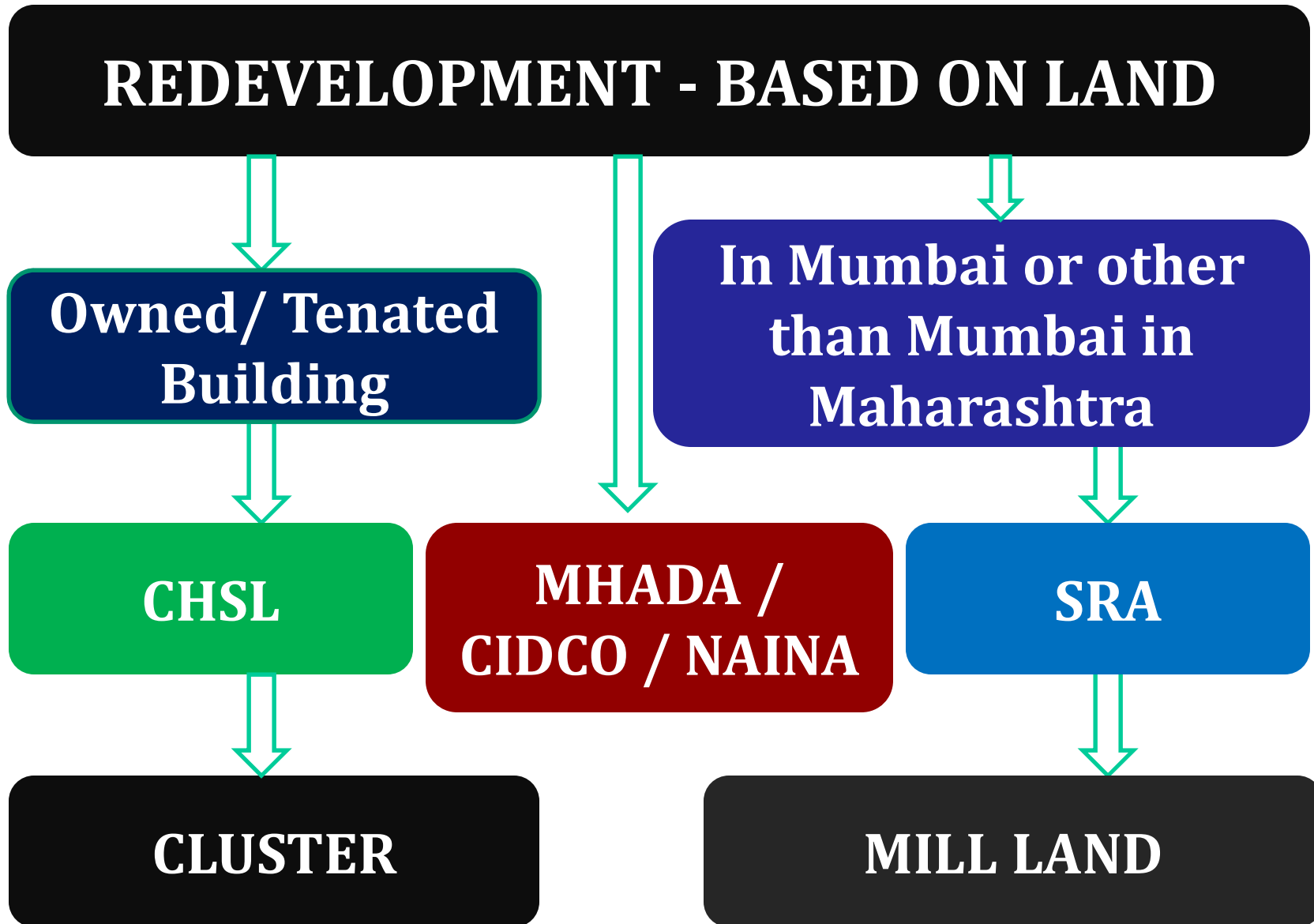
CHSL

MHADA /
CIDCO / NAINA

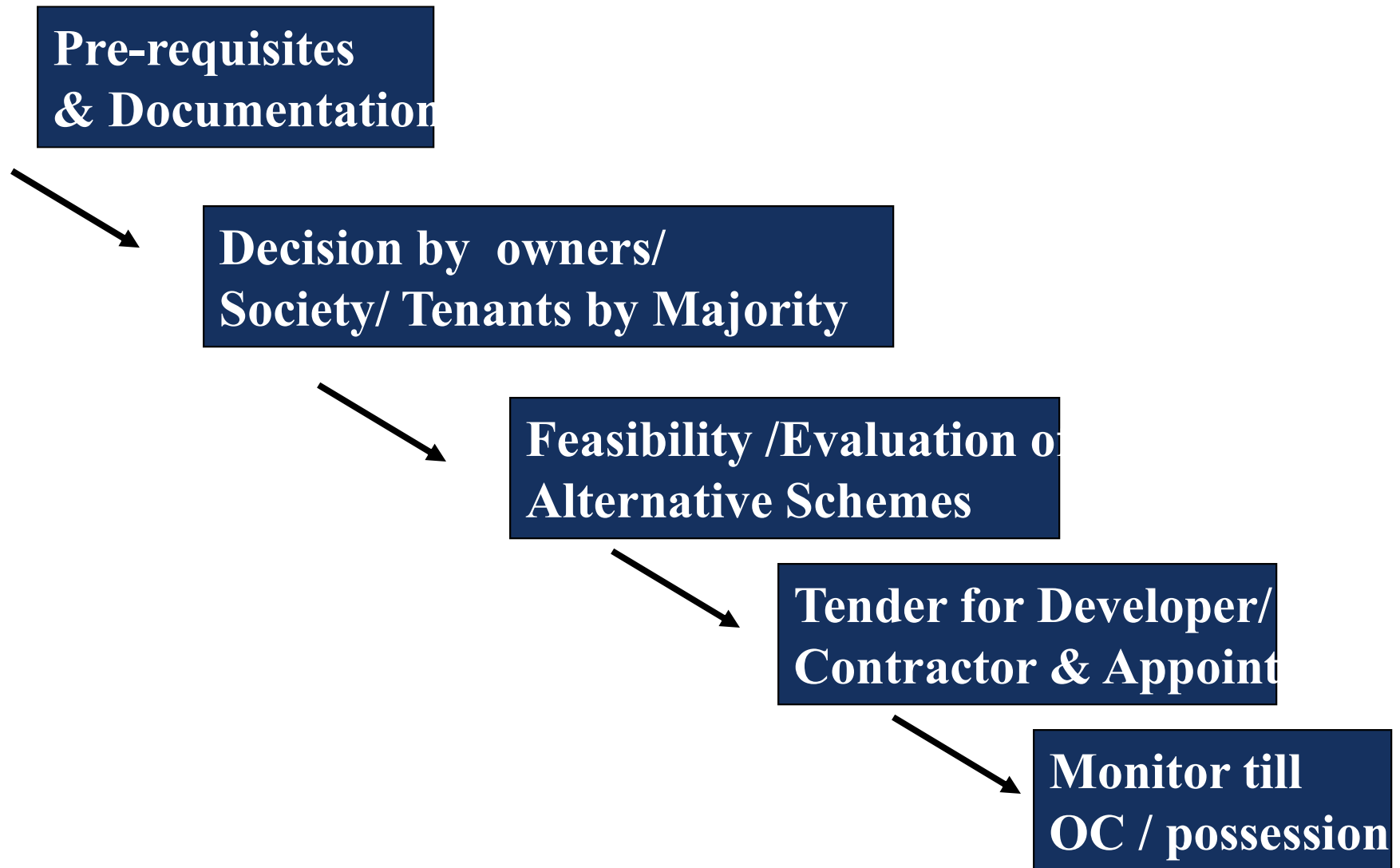
SRA

CLUSTER

MILL LAND



STEPS of Redevelopment and the PROFESSIONAL Opportunities



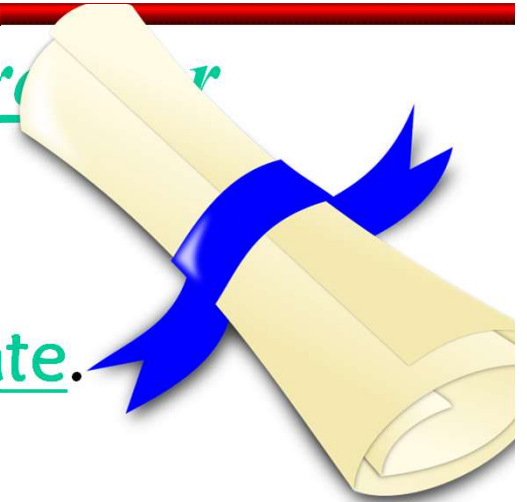
Professional Opportunities

- Confirm the Authority of the society to redevelop – Ensure Duly Elected Committee
 - Legal Title of land –Conveyance /Title Search
 - Comply with Legal Process till end.
 - Appointment: PMC/Developer / Contractor etc.
 - Comply with DCPR Provisions.
 - Documentations –DA, PAAA, POA etc
 - Communication during the Process
 - Address legal Issues / Litigation.
 - Compliance Post OC / possession.
 - Taxation, Finance, Accounts, audit & Administration
-

A) Pre-requisites for Redevelopment Process:-

- ☐ Registration under Maharashtra Co-operative Societies' Act, 1960.
- ☐ Duly Elected Managing Committee
- ☐ Conveyance or Deemed Conveyance in the name of the Society.
- ☐ Membership of District Central Co-op. Bank / Mah. State Coop bank.
- ☐ Membership of District Housing Fedn.
- ☐ No outstanding Government levies/dues.

B) Executing documents require
Redevelopment:-



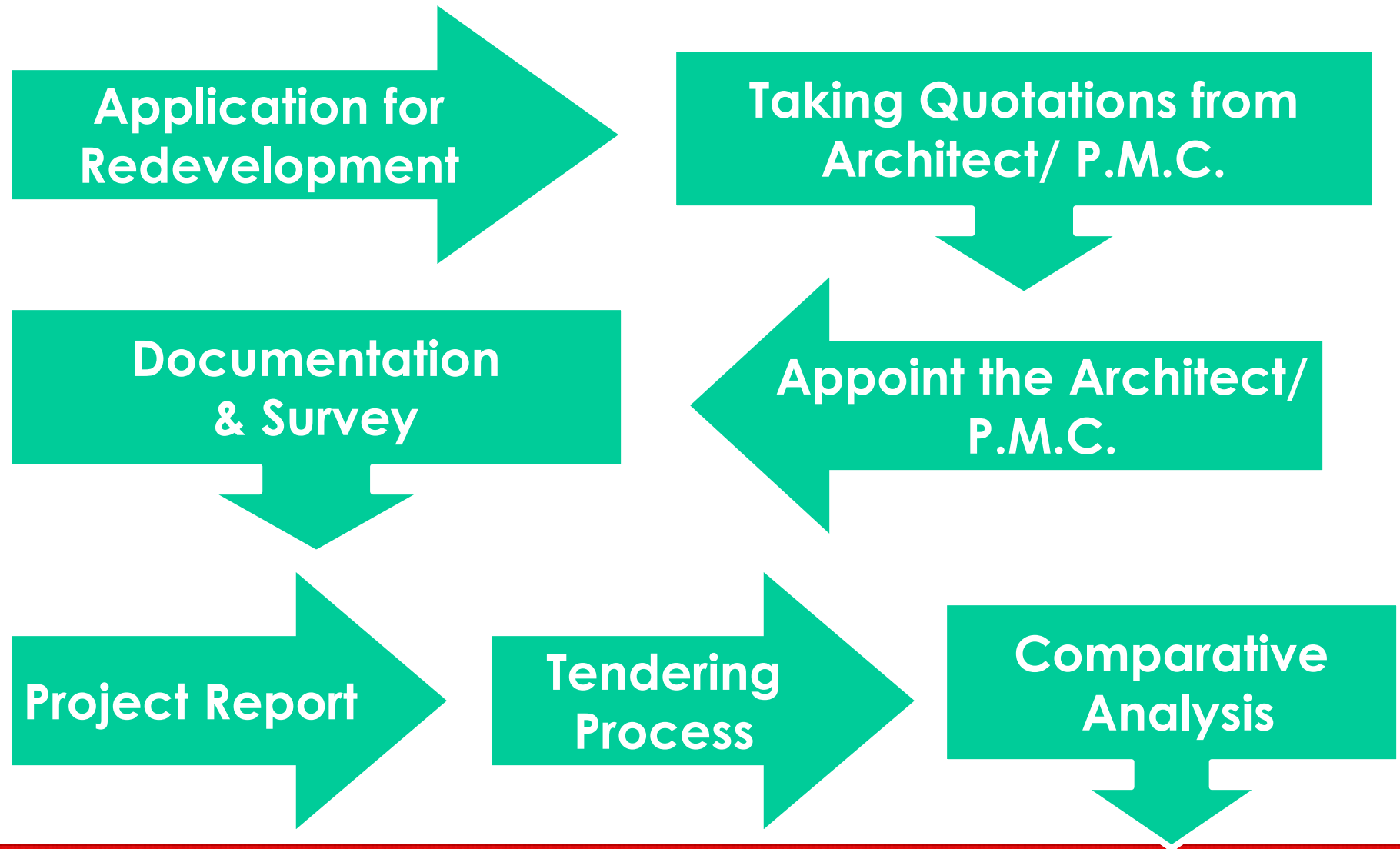
- ❑ Search & Title Certificate from Advocate.
 - a) Search is to be taken from the Sub-registrar office, in respect of the property.
 - b) For issuance of Title, Advocate needs to check either 7/12 extract or Property card, Conveyance Deed and other related documents.



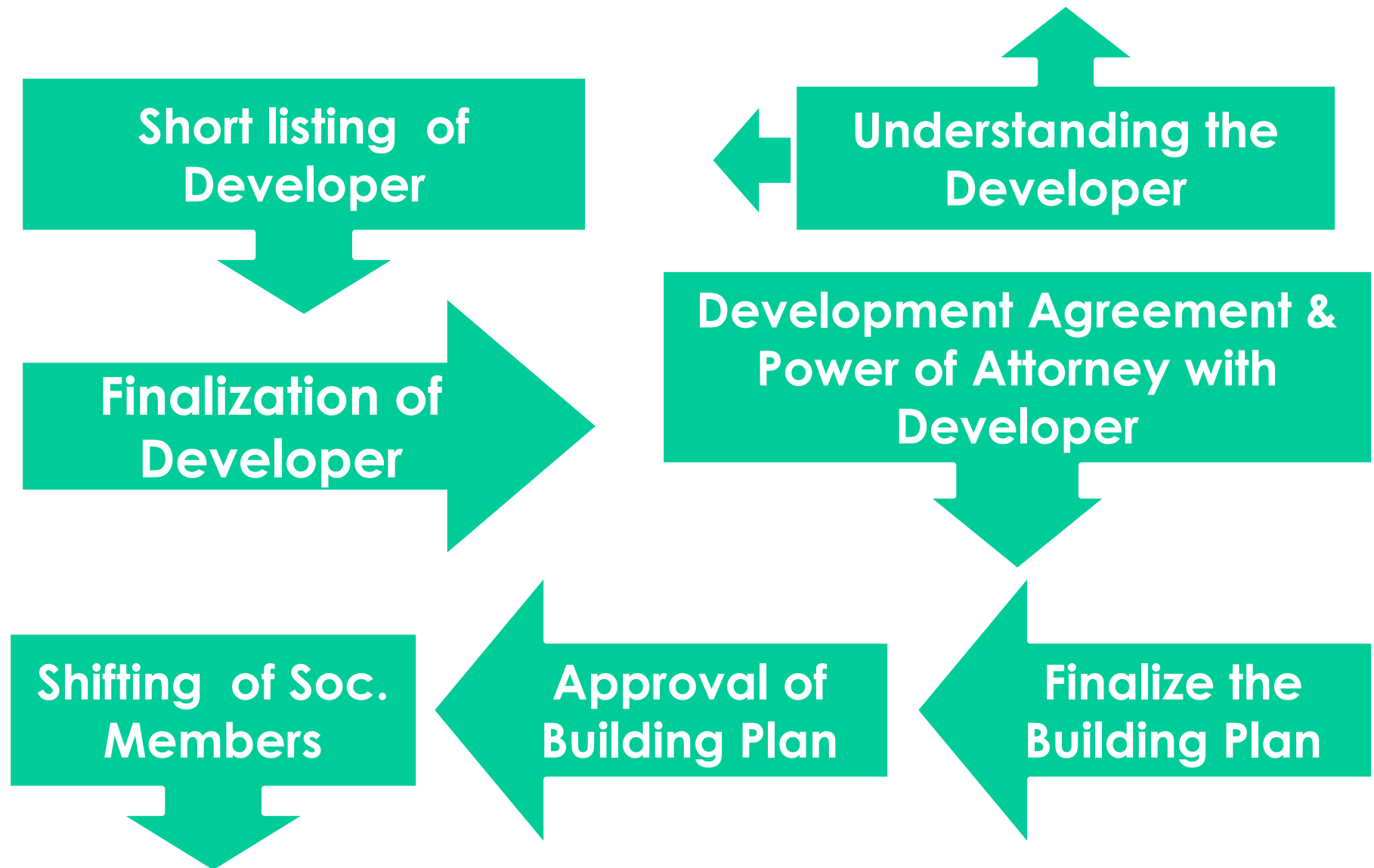
LINE OF ACTION OF

(As per the Directions u/s 79A of the MCS Act
1960 by the State Govt. of
Maharashtra dtd. 4th July. 2019)

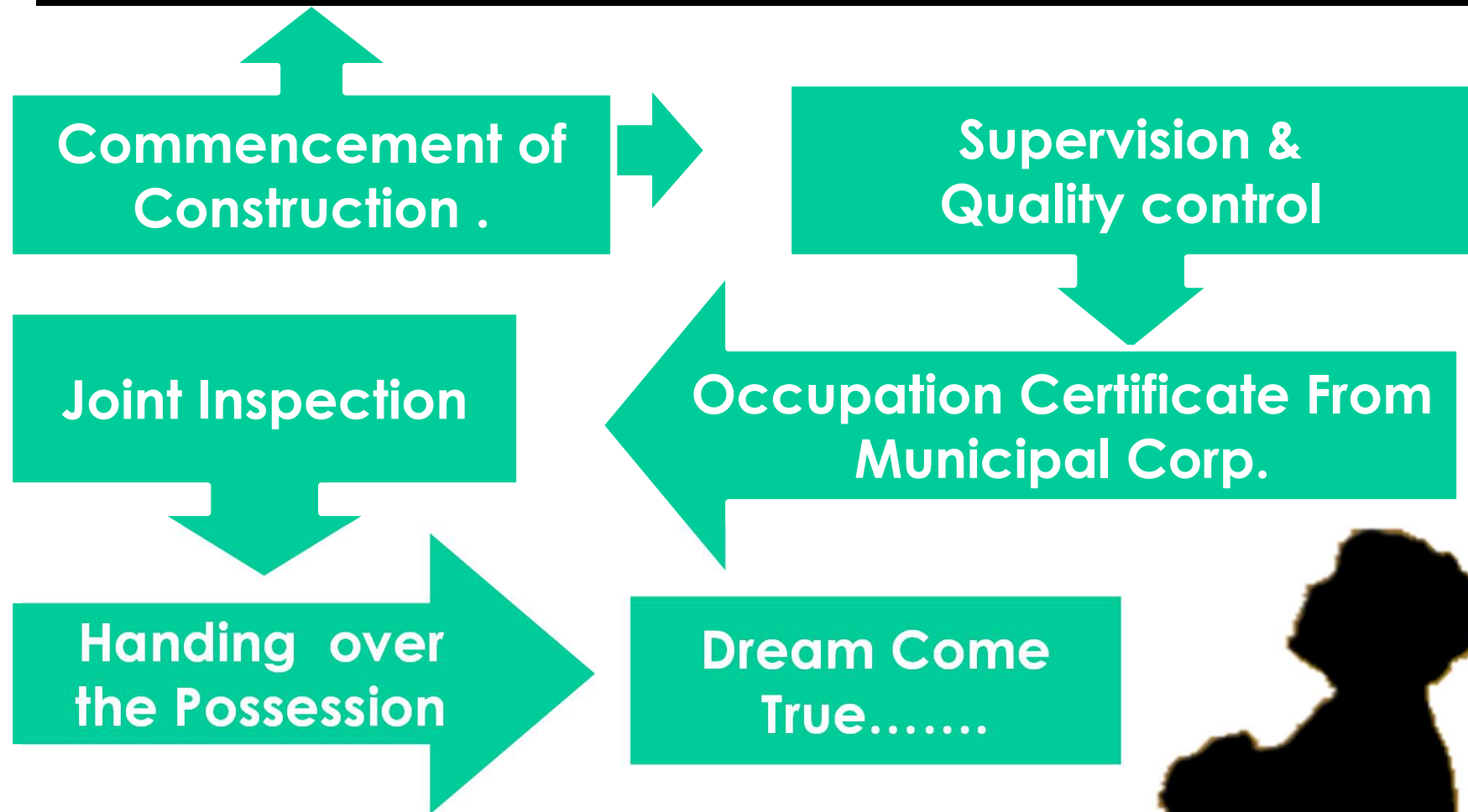
STEPS FOR REDEVELOPMENT OF CO. OP. HSG. SOCIETY.



STEPS FOR REDEVELOPMENT OF CO. OP. HSG. SOCIETY.



STEPS FOR REDEVELOPMENT OF CO. OP. HSG. SOCIETY.



dream[★]come true



Directions Dt 4.7.2019 u/s 79A of the MCS Act on ReDEDVELOPMENT

1. Society to decide in SGM as per DCPR.
 2. Applicable to all types of re-development.
 3. Decisions as per Bye-laws, Act, Rules & notifications.
 4. Society need to have a Redevelopment web portal.
 5. Authorized Officer/Administrator not eligible.
 6. SGM to be called by minimum 20% members
 7. SGM with 14 days notice to have at least 2/3rd quorum
 8. Agenda: Redevelopment, Appt of PMC & Time frame.
 9. Decision to be taken by 51% of members in writing.
 10. Feasibility report, Plans, tenders etc by MC & PMC
 11. Select the Developer/ Contractor in SGM in the presence of Registrar's representative.
-

FEASIBILITY REPORT AND ROLE OF PMC

- A PMC group of professionals to guide the society
 - Architect, Structural Engineer, Civil Engineer, Chartered Accountant, Advocates etc
 - Prepare Feasibility Report & get the plans approved
 - Guide for appointment of agencies like contractors
-

Feasibility Report consist of:-

PART-1

To determine what is maximum carpet area available in the project.

PART-2

To determine the Total Project Cost

PART-3

To determine how much carpet area required to sale in the open market to recover the project cost..

PART-4

Balance Carpet Area for existing members.

PART-5

Evaluation in terms of percentage of Balance Carpet area with respect to existing Carpet Area

**How to determine the
maximum permissible
Carpet Area in the Project?**

**IT IS VERY ESSENTIAL
TO KNOW
D.C.Regulations**

Development Plan of any Region in Maharashtra is governed by M.R.T.P. ACT

Hence, Development Plan for the jurisdiction of Greater Mumbai is governed by MRTP ACT,1966.



Floor Space Index (FSI) Provisions

- **Net Plot Area and Computation of FSI:** Guidelines on how FSI is calculated based on net plot area.
- **Permissible FSI:** Defines the base FSI allowed for different types of developments.
- **Incentive/Additional FSI:** Available upon payment of premiums, subject to conditions.
- **Protection of FSI in Redevelopment:** Ensures protection of sanctioned FSI during redevelopment of existing buildings.
- **Premium FSI Charges:** Provisions for availing additional FSI beyond base limits through premium payments.

Transfer of Development Rights (TDR)

- **TDR Utilization:** Defines how TDR can be consumed in various types of projects.
- **TDR in Lieu of Development Plan Sites:** Mechanisms to transfer development rights instead of physically allocating DP sites.
- **Ancillary FSI/ Fungible FSI :** Utilization of TDR to achieve additional buildable area.
- **TDR Receiving Potential:** Conditions on the maximum permissible TDR absorption per plot.

Redevelopment Potential

- **Redevelopment FSI Benefits:** Additional incentives and FSI allocations for slum redevelopment, cluster redevelopment, and redevelopment of old societies.
- **Special Provisions for Cooperative Housing Societies:** Rules on how societies can maximize FSI during self-redevelopment.
- **Parking and Road Boundary Adjustments:** Conditions to ensure redevelopment projects meet infrastructure requirements.
- **FSI Adjustments for Premium Payments:** Possibilities to avail extra FSI by paying prescribed premiums.

D.C. Reg. 30 of D.C.P.R. 2034: Deals with FSI

TDR Allowed in City Area: As Per Width Of The Road

TABLE 12 of DCPR 30 (A)

SR.NO	Area	Zone	Road Width	Zonal (Basic)	Additional FSI on Payment of premium	Admissible TDR	Permissible FSI (4+5+6)
	1	2	3	4	5	6	7
2	The remaining area in Suburbs and Extended Suburbs	Residential/ Commerical	Up to 9m	1.0	-	-	1.0
			9.00m and less than 12.20m	1.0	0.5	0.5	2.00
			12.20m and less than 18.30m	1.0	0.5	0.7	2.2
			18.30m and less than 27.00m	1.0	0.5	0.9	2.4
			More than 27.00m	1.0	0.5	1.0	2.5

D.C.Reg.31 of D.C.P.R.2034

- 31(1) Deals with area to be counted in FSI.
 - 31(2) Deals with area to be exempted from FSI
 - 31(3) Fungible compensatory FSI at par with D.C.Reg.No.35(4) of DCR 1991.
-

D.C.Reg.32 of D.C.P.R.2034 deals with
Transferable Development Rights (T.D.R.)

D.C.Reg.No.33

Deals with additional FSI in certain
categories at par with D.C.Reg.No.33 of
DCR 1991

D.C.Reg.33

Additional F.S.I. allowed in certain categories.

e.g.

33(5):- For MHADA Buildings

33(7):- For Cess Category Buildings

33(7)(A):- Non Cess tenanted buildings
in city and suburbs

33(7)(B) :- Additional Incentive FSI for
redevelopment of existing housing
society excluding cessed building

33(9):- For Cluster Development

33(10):- For Slum Re-development

PREREQUISITES FOR SELF REDEVELOPMENT

- a) SOCIETY NEED TO HAVE CONVEYANCE**
 - b) SOCIETY NEED TO HAVE APPROVED PLAN**
 - c) MANAGING COMMITTEE TO TAKE THE FULL RESPONSIBILITY**
 - d) MEMBERS CONSENT**
 - e) BANKERS NEED ALL MEMBERS CONSENT**
 - f) COMMITTEE MEMBERS TO EXECUTE THE INDEMNITY BONDS**
 - g) MEMBERS CONTRIBUTION FOR MARGIN MONEY**
 - h) RAISE THE BANK LOAN**
-

WHY GO FOR SELF REDEVELOPMENT

- Society will have full control on execution & Land
 - Loss of Trust and faith with the profit motto-Developers
 - 60% to 70% of the cost is land -owned by Society
 - Professionals & PMC are Available for nominal Fees
 - The approval cost may be part of Cost of Construction
 - Own choice of plans and the area for the members
 - Profit in the form of extra area/ corpus to members
 - 5,800 Re-Development projects are stalled.
 - Members are not getting regular rent and possession
 - Societies need to go to court to remove Developer
-

WHY GO FOR SELF REDEVELOPMENT

- **Market Conditions do not encourage the developer**
 - **Accountability and Responsibilities post RERA & GST**
 - **Lack of sales , Investors and Finance to developers**
 - **Incentive FSI, TDR etc Rules and regulations are settled.**
 - **Motto is to have better quality house than profit**
 - **Less of legal issues and disputes with outsiders**
 - **Limited quality houses increase the demand**
 - **Better control & timely completion possible**
-

SYSTEMS OF SELF Re-DEVELOPMENT

1. DEPARTMENTAL SYSTEM:

All the Departments of Re-Development like Approval, Construction, Finance, Management, Sales and Marketing is done by Society.

2. BARTER SYSTEM :

Society appoints a contractor to complete the construction against the part of saleable area.

3. PACKAGE DEAL SYSTEM :

Society gets plan passed, appoints a contractor for construction and to purchase entire saleable area, both at pre-decided price.

4. DEVELOPMENT MANAGEMENT (DM)SYSTEM :

Society appoints a reputed Developer / PMC to manage all the departments on behalf of society for certain percentage(say 15% to 20%) of revenue/ saleable area.

FUND RAISING OPTIONS

- **Members to book area at discounted price.**
 - **Invite the Investors**
 - **Through Existing Members requesting the friends and relatives**
 - **Brokers and News paper Advertisement**
 - **Display of Hoarding/ Banner**
 - **Handbill Distribution**
 - **Payment to be made 50% on application and balance in stages**
-

FUND RAISING OPTIONS

- **Bank Loan**
 - District Central Banks give the Loans against the mortgage of the land including the rent payable to the members upto 95% of the project cost.
 - **Contractor agreement**
 - Contractor to get the approval and Construct and agree to take flats at the agreed rated and he is released the flat in stages as per the progress of the work.
-

Govt Incentives GR 13.09.2019

- Society with 30 years old or dilapidated is considered.
 - **ONE WINDOW SCHEME**
 - **SANCTIONS TO THE SCHEME IN 6 MONTHS**
 - 10% more FSI/incentive than the prevailing DCPR
 - **Road width less than 9 meters –0.4 FSI without Premium**
 - **TDR at 50% of Ready Reckor rate.**
 - **CONCESSION IN THE PREMIUM RATE**
 - **STAGES FOR MAKING PAYMENT OF THE PREMIUM**
 - **Concession in LUC & GST Stamp duty Rs.1000/-,**
 - **Maharashtra State Coop Bank- A nodal Agency**
-

Govt Incentives GR 13.09.2019

- Society to complete redevelopment in 3 years.
 - Interest subsidy of 4% on the loans availed
 - Planning authority to be regulatory authority for SRD.
 - Tripartite agreement - society, bank & contractor
 - SRD -UNDER PMAY – 35% for EWS and get 2.5 fsi
 - VIGILANCE COMMITTEE - 2 society members & 1 bank
 - GRIEVANCE REDRESSAL COMMITTEE –in every district of DDR, planning authority .
 - Appoint empanelled contractor at planning authority
 - CONTRACTOR NEED to be financially good.
 - Action against the contractor by planning authority
-

Advantages of self redevelopment

Society members
have control over
the project

All the plans and
documentations are
in Society's name

Society members also
get extra space at no
additional cost

No sharing of
additional F.S.I.

Advantages of Self Redevelopment

No dependence on
outside developer

Society members
can decide plans,
amenities

Brings transparency in
the procedure

Project can be
completed within
stipulated time
without delay

Challenges in Self Redevelopment

1. Time, competence and inclination within the society members

2. Getting consensus amongst members

3. Managing documentation through government authorities

4. Ability to sell the saleable flats for recovering the project cost

□ Agreement between the Society and the Contractor.

- a) Contents of Agreement will be general conditions and special conditions to be complied by the Contractor.
- b) Commercial clauses which will include Contract Sum and payment schedule etc.
- c) Completion period.
- d) Specifications and amenities to be provided to each Flat owner and entire building.
- e) Penalty clause, if the construction is delayed.
- f) Termination clause.

❑ Agreement between the Society and Existing Member.

a) This Agreement will be drafted as per format provided under Real Estate (Regulation & Development) Act, 2016

❑ Agreement between the Society and New Purchaser.

a) This Agreement will also be as per RERA format.



❑ Loan Agreement between Society, lender bank and Contractor, if loan is availed.

a) Under this Agreement, the Society's assets i.e. land and sale component will be mortgaged with the bank.

❑ To assist in registration of Agreements.

❑ To comply with overall legal formalities.

a) Guidance in respect of Court litigation if any, discrepancies in Title etc.

C) Stamp Duty & Registration Fee :-

- ❑ To execute Allotment Agreement of existing member by paying Stamp Duty of Rs. 1000.00 as per Pradhan Mantri Awas Yojana and Registration Fee.
- ❑ For Contract Agreement, stamp duty is Rs.500/- up to sum of Rs.10 lakhs and over and above Rs.10 lakhs, stamp duty is 0.1% of the Contract Sum.



IMPACT OF RERA, ON SELF REDEVELOPMENT

- 1. CHS is a promoter**
 - 2. APPLICABILITY OF THE ACT (SEC 1 TO 3)**
 - 3. REGISTRATION OF REAL ESTATE PROJECTS SEC 3 TO 8) :**
 - 7. MANDATORY PUBLIC DISCLOSURE (SEC 4 AND 11)**
 - 8. DUTIES OF PROMOTER (SEC 3 TO 8 AND 11 TO 18)**
 - 9. RIGHTS AND DUTIES OF ALLOTTEES (SEC 19)**
 - 10.FAST TRACK DISPUTE SETTLEMENT MECHANISM**
 - 15.PUNITIVE PROVISIONS (SEC 59 TO 69)**
 - 16.OBLIGATIONS OF THE CHS AS PROMOTER**
 - 17.RISK THAT THE SOCIETY WILL HAVE TO PROVIDE THE APARTMENTS TO THE ALLOTTEES BOOKED BY THE DEVELOPER POST RERA**
 - 18.NO APPOINTMENT OF NEW BUILDER WITHOUT RERA APPROVAL AND 2/3RD ALLOTTEE CONSENTS**
-

IMPACT OF GST, ON SELF REDEVELOPMENT

- AGGREGATE TURNOVER OF HOUSING SOCIETY
 - REGISTRATION DURING SELF Re-DEVELOPMENT
 - RECEIPTS FROM MEMBERS FOR COMMON FACILITIES
 - PROPERTY TAX & PREMIUM PAID TO LOCAL AUTHORITIES
 - GST APPLICABLE ON REAL ESTATE TRANSACTION
 - Reduced liability under self redevelopment.
 - No transfer of development rights, so No GST.
 - GST on the contribution from members at 18%
 - GST on new sales, if affordable at 1% otherwise 5%
 - No GST on the flats retained or allotted to the members.
-

IMPACT OF INCOME TAX, ON SELF REDEVELOPMENT

- **NO INCOME TAX ON ADDITIONAL FREE AREA**
- **CORPUS OR SURPLUS NO TAX**
- **NO TAX for RENT FOR TEMPORARY ACCOMMODATION**

Redevelopment & Income Tax: Stakeholder Impact

A.Context: Redevelopment models :

- Society–Developer,
- SRA/MHADA,
- Self-redevelopment.

B.Stakeholders:

- Society/AOP, Members,
- Occupiers/Tenants,
- Developer, Buyers

C.Key receipts:

- Free area, corpus/hardship,
 - rent reimbursement, shifting,
 - development rights
-

Stakeholder Tax Impact

- Society: Capital gains on development rights/land-building;
 - 50C for land/building transfers
 - Members: Capital gains on exchange;
 - 54 exemption planning; corpus = capital receipt
 - Occupiers: Tenancy surrender;
 - Cost often NIL under 55(2)(a)- Effective from 01.4.2024
 - Developer: Business income; 43CA;
 - TDS obligations : 194-IC 10%
 - Buyer: 56(2)(x) if purchase < SDV;
 - 194-IA TDS : 1% over Rs. 50,00,000/-
-

Tax implications on Redevelopment of CHS

- CHS redevelopment involves various assets & complex legalities.
 - Crucial to understand what constitutes transfer,
 - The tax implications for members and societies, and
 - The nuances of agreements are crucial for all parties involved.
 - **Assets involved in Development Agreement:**
 - 1. For Members
 - a. Shares of Society
 - 2. For Society
 - a. Land
 - b. Building (Splitting between Land and Building is important for determining Period of Holding for Long Term / Short Term)
 - c. Rights in Land incl. TDR, Tenancy, etc.
-

What is transferred?

- 1. For Members

- a. Shares of Society: Share remains with Members – **NOT TRANSFERRED**

- 2. For Society

- a. Land: Land remains with Society –

NOT TRANSFERRED

- b. Building: Bldg. remains with Society –

NOT TRANSFERRED

- c. Rights in Land incl. TDR, Tenancy, etc. – Rights utilized by Developer – Society parts with the same – **TRANSFER INVOLVED**
-

What is “Transfer”? – Sec. 2(47)? “Transfer”, in relation to a capital asset, includes,—

- (i) the sale, exchange or relinquishment of the asset ; or
 - (ii) the extinguishment of any rights therein ; or
 - (iii) the compulsory acquisition thereof under any law ; or
 - (iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment ; or
 - (iva) the maturity or redemption of a zero coupon bond; or
 - (v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882) ; or
 - (vi) any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, company or other association of persons or by way of any agreement or any arrangement or in any other manner whatsoever) which has the effect of transferring, or enabling the enjoyment of, any immovable property.
- Explanation 1.—For the purposes of sub-clauses (v) and (vi), “immovable property” shall have the same meaning as in clause (d) of section 269UA. Explanation 2.—For the removal of doubts, it is hereby clarified that “transfer” includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein, or creating any interest in any asset in any manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into in India or outside India) or otherwise, notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India;
-

Land / Development Rights – Transfer for Society?

- > **Owner:**
 - √ **Society does not transfer any undivided interest in Land to the Developer.** Title continues with the Society and Member's Right remain intact.
 - √ Builder gets right to construct and sell the additional area by utilizing the TDR / FSI of the Society. His buyers get membership in the Society. Nobody becomes co-owner of the land.
 - Society continues to be the Sole Owner of the Land.
 - > **Capital Rights:**
 - √ Development Rights in the form of FSI, TDR is a right to construct the Additional Storeys by virtue of DCR Regulations.
 - **It is a Capital Asset and its Assignment in favour of Builder amounts to "Transfer".**
 - > **Case Laws:**
 - √ Land Breez Co.-Operative Housing Society Ltd. v. ITO ([2013] 55 SOT 103 (Mum. Trib.))
 - √ Maheshwar Prakash-2 Co-op. Hsg. Society Ltd. v. ITO ([2009] 121 TTJ 641 (Mum. Trib.))
[Confirmed by Bombay HC in ITA No. 2346 of 2009 dated 24/4/2015]
-

Transfer	Licence
<ul style="list-style-type: none"> √ Agreement to sell land on 15.5.1998. Consideration was fixed. √ Both parties are entitled to specific performance. √ Seller gives permission to the Buyer to start advertising, selling, construction on the land. √ PoA executed on 27.11.1998. √ Compromise Agreement on 19.7.2003 (AY 2004-05) under which various amounts had to be paid by the Builder to the owner so that a complete extinguishment of owner's rights would take place. √ Transfer has happened not in 1998 but in AY 2004-05. 	<ul style="list-style-type: none"> √ Mere 'permission' to start construction is a licence to enter upon the land for the purpose of development and such licence "cannot be said to be 'possession'" √ "Possession" denotes control over the land and not just actual physical occupation. √ The phrase "enabling the enjoyment" in section 2(47) must mean enjoyment as a purported owner. √ The idea is to tax the transaction where, though title may not be transferred in law, there is, in substance, a transfer of title in fact.
<p>Seshasayee Steels P. Ltd. v. ACIT (2020) 115 taxman.com 5 (SC)</p>	<p>CIT v. Balbir Singh Maini (2017) 86 taxmann.com 94 (SC) CIT v. Sadiya Shaikh (2013 87 CCH 59 (Bom. HC))</p>

Transfer under Various Acts – Tax Impact for Society & Members:

- > Transfer of Property Act, 1882 and Registration Act, 1908:
 - √ Section 53A of TOPA and Section 17 of Registration Act.
 - > Section 2(47)(i) and (ii) of the Income Tax Act, 1961 – Sale, Exchange or Relinquishment of the Asset or the Extinguishment of any rights therein:
 - √ Only by way of registered conveyance – (1965) 57 ITR 185 (SC) Alapatti Venkataramiah vs. CIT
 - √ Even rights in immovable properties require registered conveyance – 133 ITR 525 (Del) Addl. CIT vs. Mercury General Corporation P. Ltd.
 - √ What if the sale deed is registered but the possession is not handed over? √ (2018) 409 ITR 0037 (Bom) PCIT vs. Talwalkars Fitness Club
 - √ (2017) 190 TTJ 371 (Mum) Ashok M Seth & Anr. vs. DCIT
 - √ **Thus, there are two prerequisites viz. possession and registration.**
-

Section 2(47)(v) vis-à-vis Section 53A of TOPA:

- v (2017) 398 ITR 531 (SC) CIT vs. Balbir Singh Maini –
Registration is must for Section 2(47)(v)
 - > No Stamp Duty because to Rebuilt or Reconstruct Premises in lieu of the Old Premises used / occupied by the Member, and even if the PAAA includes additional area available free to the Member because it is not a Purchase or a Transfer but is in lieu of the Member's Old Premises.
 - v WP No. 4575 of 2022 (Bom) Adityaraj Builders vs. SOM and Othrs
-

Amendment to Section 55(2) may change the Taxability:

- “For the purposes of sections 48 and 49, “Cost of Acquisition”,— (a) in relation to a capital asset, being goodwill of a business or profession, or a trade mark or brand name associated with a business or profession, or any other intangible asset or a right to manufacture, produce or process any article or thing, or right to carry on any business or profession, or tenancy rights, or stage carriage permits, or loom hours, or **ANY OTHER RIGHT**—
 - i. in the case of acquisition of such asset by the assessee by purchase from a previous owner, means the amount of the purchase price; and
 - i. in the case falling under sub-clauses (i) to (iv) of sub-section (1) of section 49 and where such asset was acquired by the previous owner (as defined in that section) by purchase, means the amount of the purchase price for such previous owner; and
 - ii. in any other case, shall be taken to be nil:



Point of Transfer – “When”?:

> Year of Taxation is the year in which Development Agreement was Executed and not the year in which Possession was handed over to the Developer.

- In this case, Consideration for transfer of Development Rights was entirely in Cash.
 - √ Chaturbhuj Dwarkadas Kapadia v. CIT ([2003] 260 ITR 491 (Bom.))
 - > Year of Transfer was the year in which Possession was handed over to the Developer after receiving Entire Consideration.
 - In this case, Consideration for transfer of Development Rights was entirely in Cash.
 - √ CIT v. Geetadevi Pasari ([2009] 17 DTR 280 (Bom.))
 - > Year of Transfer was the year in which Possession was handed over to the Developer.
 - In this case, Consideration for transfer of Development Rights was both in Cash and Share in Constructed Area.
 - √ CIT v. Dr. T. K. Dayalu ([2011] 14 taxmann.com 120 (Karn.))
-

Point of Transfer – “When”?:

- > There was no Transfer as No Possession was given as per Section 53A of the Transfer of Property Act i.e. entire Control over Property was with Owner and Occupation Certificate and Licence was in the name of Owner.
 - √ CIT v. Sadia Shaikh (Tax Appeal No. 11 of 2013 dt. 30/1/2014 (Bom. HC))
 - > There was no Transfer u/s 2(47) as No Permissions were obtained and Old Building was not demolished.
 - √ Bhatia Nagar Premises Co-operative Society Ltd. v. ITO ([2013] 37 taxmann.com 9 (Mum. Trib.) / [2013] 59 SOT 134 (Mum. Trib. URO) confirmed Bombay HC in [2017] 246 Taxman 387 (Bom. HC))
-

Grant of Development Rights by Society – Tax Impact for Society:

	Old Provisions	New Provisions
	<p>√ If at the time of Redevelopment, the Society was not in possession of unutilized FSI/Devlp. Rights, No Capital Gains on the receipt of the Corpus Money on surrender of a part of FSI/Devlp. Rights.</p> <p>√ Case Laws: Land Breez CHSL [2012] 28 taxmann.com 196 (Mum) New Shailaja CHSL [2010] 36 SOT 19 (Mum.)(URO) CIT vs. Sambhaji Nagar CHSL [2015] 370 ITR 325 (Bom) √ Right created through DCR 1991 attached to land √ Tribunal held that since assessee has not incurred any COA hence not chargeable to tax. It referred section 55(2) – Bombay High Court dismissed the appeal of department.</p>	<p>√ Section 55(2)(a) is amended by Finance Act, 2023 to include “any other intangible asset” or “any other right” w.e.f. A.Y. 2024-25.</p> <p>√ Considering the said amendment, new era of litigation may arise in case of society redevelopment.</p>

Receipt of Money by Member on Grant of Development Rights by Society – Tax Impact for Society / Members:

- Deepak S. Shah vs. ITO (2009) 29 SOT 26 (Mum):
 - > A Housing Society owned Property. Developer was in possession of TDR. Developers entered into Agreement with Society, whereby Developers could construct Additional Floors in Existing Building.
 - > Members of the Society agreed to receive certain sum on grant of Development Rights to Developer.
 - > It was held that the Assessee Member was neither holding any Capital Asset nor the same had been Sold, Exchanged or Relinquished. Therefore, Section 45 was not attracted.
-

What shall be situation w.r.t. Amendment to Section 55(2) (a) by Finance Act, 2023 to include “any other intangible asset” or “any other right” w.e.f. A.Y. 2024-25?

	Old Provisions	New Provisions
	<p>√ If there is no cost, no Capital Gain can be worked out</p> <p>√ Hence, the same is Exempt in the hands of the Society.</p> <p>√ Case Laws: CIT v. B.C. Srinvasa Shetty 128 ITR 294 Jethalal D. Mehta v. Dy. CIT [(2005) 2 SOT 422 (Mum)]</p>	<p>√ Section 55(2) is amended by Finance Act, 2023 to include “any other intangible asset” or “any other right” w.e.f. A.Y. 2024-25. √ In view of the said amendment, can Cost be considered as NIL for taxing the above transactions?</p>

Different Approach by Different Courts – For Society and Members:

Approach 1	Approach 2	Approach 3
<p>The Society is the owner of the land and building. Members only hold shares in such society. (Tenant Co-partnership- Multistorey Buildings)</p>	<p>The Society is the owner of the land but Members are the owner of their respective flats in the building.</p> <p>(Tenant Co-Ownership – Plots leased to members and bungalow is owned by members)</p>	<p>The Society is the legal owner of the land and building whereas the members are economic owner.</p>
<p>√ (2003) 262 ITR 0657 (Guj) CIT vs. Anilaben Upendra Shah: √ (2006) 102 ITD 101 (Mum) (SB) Pallonji Shapoorji & Co. (P) Ltd. vs DCIT</p> <p>√ WP No. 4575 of 2022 (Bom) Adityaraj Builders vs. SOM and Others.</p>	<p>√ (2019) 264 Taxman 36 (Bombay) PCIT vs. Rahul Uday Tuljapurkar</p>	<p>√ (2020) 426 ITR 0460 (Bom) J.S. & M.F. Builders vs. A.K. Chauhan √ (1997) 233 ITR 699(Bom) CIT vs. Vijaymal Sand √ (1997) 140 CTR 0379 (Bom) CIT vs. Mrs. Roshan K.A. Wadia √ (2014) 146 ITD 605 (Mum.-Trib.) Hathway Investments (P.) Ltd. v. Addl. CIT</p>

Absence of Consideration w.r.t. TDR / FSI:

> Section 50D:

- √ Presupposes an existence of consideration received or accruing as a result of transfer & it applies only where such consideration is not ascertainable / cannot be determined.
- It does not apply where consideration is not existing at all.

> Giving of Possession:

√ Giving possession of the old flat is a condition precedent for enabling the use of the development potential that is transferred. That does not mean that consideration is received or accruing as a result of such giving possession.

> Case of Taxspin 263 ITR 345 (Bom.):

√ It is a settled law that in absence of any consideration, question of taxability of capital gains does not arise.

• > Amendment to Section 55(2):

- √ Section 55(2) is amended by Finance Act, 2023 to include “any other intangible asset” or “any other right” w.e.f. A.Y. 2024-25.
-

Distribution of Corpus received by Society to Members – Tax Impact for Society:

- > MCS Act, 1960 does not allow to distribute Funds. Further, declaration of Dividends has lots of restrictions and formalities.
 - > Where assessee received certain sum from developer as corpus fund towards hardship caused to flat owners on redevelopment, impugned amount would be in nature of **capital receipt simplicitor not includible in income as per Section 2(24)(vi)**.
 - > **Case Laws:**
 - √ Jitendra Kumar Soneja v. Income-tax Officer, Ward 6(3)(3), Mumbai ([2016] 72 taxmann.com 318 (Mumbai – Trib.)
 - √ Kishore D. Patel v. ITO (ITA No. 3796/M/2014 dt. 17/2/2017 (Mum. Trib.)
 - √ Kushal K. Bangia v. ITO (ITA No. 2349/M/2011 dt. 31/1/2012 (Mum. Trib.))
 - √ Delilah Raj Mansukhani v. ITO (ITA No. 3526/M/2017 dt. 29/1/2021 (Mum. Trib.))
 - > **Amendment to Section 55(2) may change the Taxability.**
-

Compensation for Delay received by Society – Tax

Continuation of Redevelopment on Receipt of Compensation	Cancellation of Redvlp. Agreement and Appointment of New Developer	Cancellation of Redvlp. Agreement and Assignment of Redvlp. Rights in favour of New Developer by Existing Developer
√ Not Taxable √ CIT vs Ram Nath Exports Ltd. [2010] 1 taxmann.com 151 (Delhi)	<p>√ There was no benefit obtained by way of transfer of additional FSI as Agreement was cancelled. Thus, amount received from developer was not taxable.</p> <p>√ Commissioner of Income Tax-25 v. Bhatia Nagar Premises CHSL (ITA No. 2482 of 2013) (Bom. HC)</p>	<p>√ When an Assessee is unable to perform an obligation undertaken by him, it cannot be said that a partial payment for fulfilling said obligation can be treated as Income in hands of Assessee.</p> <p>√ Income Tax Officer, Ward 22(2)(4), Mumbai v. Newtech (India) Developers ([2020] 116 taxmann.com 898 (Mumbai – Trib.))</p>

Applicability of Section 50C to Society on TDR / FSI:

- > In the case of Redevelopment of Society, there is no ultimate conveyance of land or building at all. Hence, Section 50C is not applicable.
 - > A mere development potential, not followed by transfer of undivided interest in land, should not come within the net of S. 50C.
 - > Additionally, the Stamp Duty Authorities consider FSI cost of Land Value as SDV for computing Stamp Duty on Development Agreement.
-

Case laws on section 50C

- > **Cases where Section 50C is not applicable to Development Agreement:**
 - ✓ Shakti Insulated Wires P. Ltd. v. ITO (Mum) [ITA No. 3710/Mum/07. Order dt 27.04.2009]
 - ✓ Voltas Ltd. v. ITO (2016) 74 Taxmann.com 99 (Mum)
 - ✓ ITO v. Ronak Marble Industries [ITA No. 3318/Mum/2015 dt. 14.03.2017]
 - > **Cases where Section 50C is applicable to Development Agreement:**
 - ✓ Chiranjeev Lal Khanna (2012) 66 DTR 260 (Mum)
 - ✓ Arlette Rodrigues v. ITO [ITA no. 343/Mum/2010]
 - ✓ Myrtle D'Souza v. ITO [ITA no. 3168/Mum/ 2011]
 - ✓ Arif Akhtar Hussain v. ITO (2011) 59 DTR 307 (Mum)
-

Will handing over of Flat amount to Transfer ??? – Tax Impact for Members:

- > The Transfer of Property Act, 1882 defines “transfer of property” as an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons.
 - > Section 53A of the TOPA would not be attracted in a case where a license was given to another for purposes of development of the flats and selling the same and that granting such a license could not be said to be granting possession within the meaning of Section 53A.
 - > The agreement between the owners and developers is a development agreement – according to which the developer was given rights only as a licensee. That such a licensee could not be said to be in ‘possession’ within the meaning of Section 53A of the TOPA and that ‘possession’ was otherwise necessary and an integral ingredient for purposes of bringing a transaction within the purview of Section 2(47)(v) of the Income Tax Act.
-

Case Laws:

- ✓ Apex Court in Seshasayee Steels (P.) Ltd.
 - ✓ Late Bharat Jayantilal Patel vs Deputy Commissioner of Income Tax (2023 Taxscan (HC) 335
 - > In our view, Supreme Court Judgement still applies as it settles that the redevelopment of society does not amount to transfer at all. However, transfer of TDR / FSI may be taxable for Society (as explained earlier).
 - > **Amendment to Section 55(2) may change the Taxability.**
-

Transfer vis-à-vis Exchange u/s 2(47):

- > “Exchange” requires existence of different properties owned by different persons. As a result of Exchange, both the Properties continue to exist simultaneously.
 - > Section 118 of the Transfer of Property Act defines Exchange as “when two or more persons mutually transfer the ownership of one thing for the ownership of another, neither thing nor both the things being money only.”
 - > In CIT v. Rasiklal Maneklal HUF 177 ITR 198 (SC), in “Exchange”, the ownership of one property is transferred to the owner of the other property and vice versa.
 - > An Exchange involves the transfer of Property by one Person to another and reciprocally the transfer of Property by the other person to the first person. There must be a mutual transfer of ownership of one thing for the ownership of another. (CIT v. G. Narsimhan (1979) 118 ITR 60 (Mad. HC) / Addn. CIT v. Trustees of Heh the nizam’s Second Supplementary Family Trust [1976] 102 TTR 248 (AP)).
 - > **In Redevelopment, the new flat and the old flat do not exist simultaneously. This is not a case of an “exchange”.**
-

Transfer vis-à-vis Relinquishment u/s 2(47):

- > “Relinquishment” means Withdrawn from, Abandoning or Giving up anything. By Relinquishment, a Person ceases to own the Asset concerned through some act on his part.
 - > In other words, the Owner withdraws himself from the Property and abandons his rights hereto. The Property, however, continues to exist and will become the Property of someone else.
 - > The Combined reading of Sections 45(1), 2(14) and 2(47) makes it clear that Transfer of Capital Asset is not confined to the Transfer of Immovable Property only, but it's scope is much wider Section 45(1) would apply even if the Consideration is received from a Party other than the one in whose favour the Transfer is effected.
 - Therefore, where the Assessee had acquired right in the Property and that right he had relinquished in favour of the New Vendee, the Assessee was liable to LTCG. (J. K. Kashyap v. ACIT (2008) 171 Taxman 390 (Del.)).
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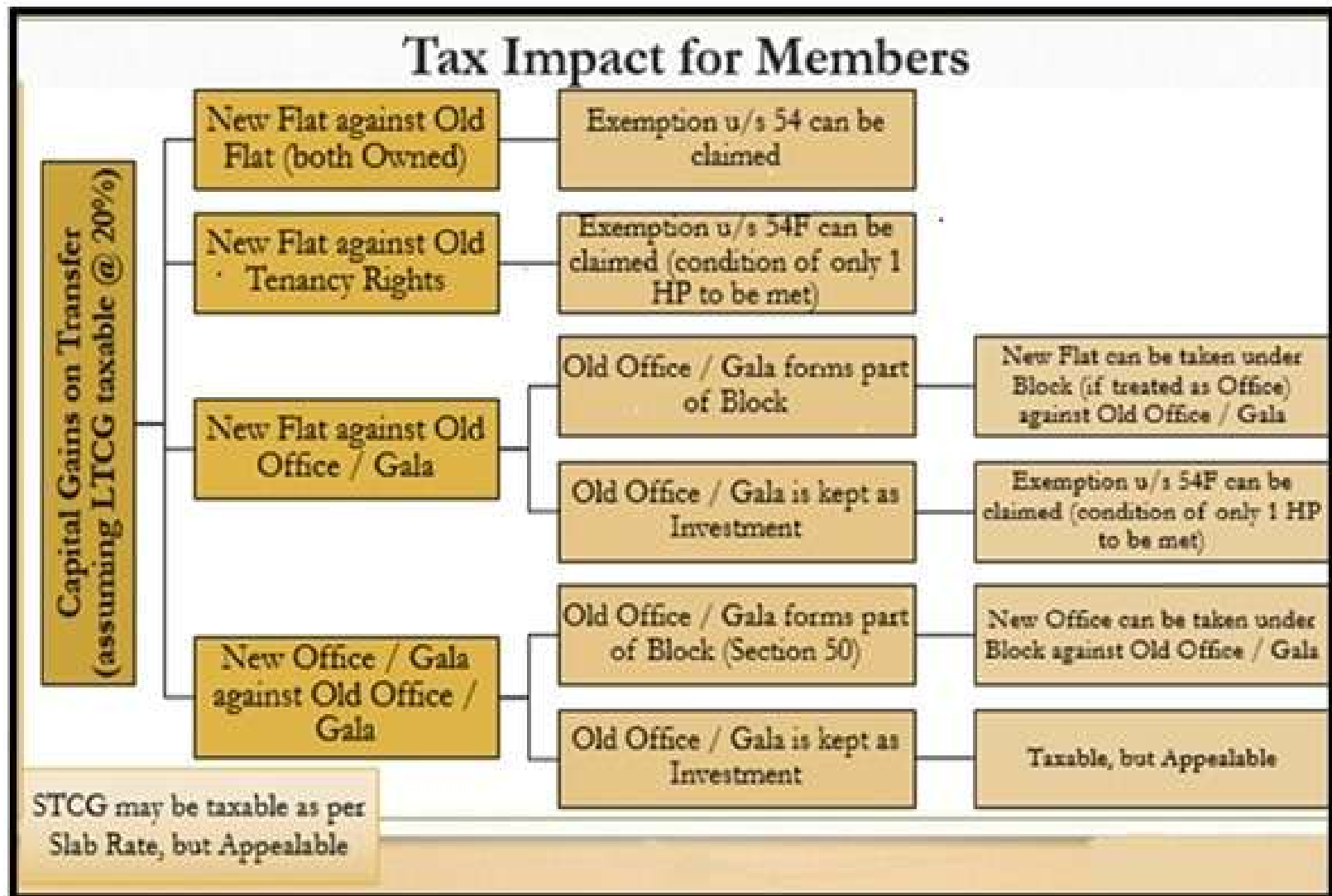
Transfer vis-à-vis Extinguishment u/s 2(47):

- > “Extinguishment” connotes Total Destruction, Annihilation, Termination or Extinction of a Capital Asset. However, Destruction or Extinction of a Capital Asset is not regarded as Transfer.
 - ✓ In the expression “Relinquishment or Exchange”, the subject matter of transfer is “Assets”, whereas for “Extinguishment”, it is “Rights”.
 - ✓ As regards “Damage or Destruction” of a Capital Asset which was insured and for which Insurance Claim was received, the same is Taxable under Section 45(1A).
 - > The Expression includes the Extinguishment of Rights in a Capital Asset independent of and otherwise than on account of Transfer.
 - When an Amalgamation takes place, the right of the Assessee in the Shares held in the amalgamating company stood extinguished and therefore there is a Transfer within the meaning of Section 2(47).
 - ✓ CIT v. Grace Collis (2001) 248 ITR 323 (SC)
-

Transfer vis-à-vis Demolition u/s 2(47):

- > Transfer presumes both the existence of the asset and of the transferee to whom it is transferred. In the case of the damage, partial or complete, or destruction or loss of the property, there is no transfer of it in favour of a third party.
 - > Section 45(1A) has certain significant implications. In the first place, the destruction, etc., of an asset resulting in receipt of insurance claim is deemed as “transfer” of that asset.
 - > An owner should not demolish the structure and rather let the builder demolish the same, if he wants the benefit of cost of the structure.
 - > Case Laws:
 - √ (1991) 191 ITR 647(SC) Vania Silk Mills (P.) Ltd. v. CIT
 - √ (2001) 248 ITR 323 (SC) CIT vs. Grace Collis
 - √ (2002) 259 ITR 651 (Madras) Neelamalai Agro Industries Ltd. vs. CIT
-

Tax Impact for Members – What if the Department



Deduction u/s 54:

- ✓ Acquisition of a new flat under a development agreement in exchange of an old flat, amounts to construction of new flat for the purpose of claiming deduction under Section 54
 - ✓ Jatinder Kumar Madan v. ITO [2012] 51 SOT 583 (Mum.)
 - **> Tenancy Right:**
 - ✓ Purchase of tenancy right in a building, does not amount to purchase of a house property and exemption under section 54 is not available.
 - ✓ Yogesh Sunderlal Shah v. CIT[2012]139 D 194 (Mum.)
 - ✓ Meher R. Surti v. ITO (2014)61 SOT 5 (Mum.)
-

House without different amenities:

- √ Where on a plot of land only one room is constructed with bricks and mud and there is no amenity like boundary wall, kitchen, toilet, etc. house cannot be considered as residential house.
 - √ Ashok Sayal v. CIT [2012] 24 taxmann.com 274 (Punj. & Har.)
 - **> If the Construction of New Flat is not complete within 3 years as required under Section 54/54F:**
 - √ Recourse can be taken to “Circular No. 672, dated 16-12-1993” and “Circular No. 471”:
 - Allotment of a flat or a house by a cooperative society, of which the assessee is the member, is also treated as construction of the house.
-

Case Laws : If the Construction of New Flat is not complete within 3 years as required under Section 54/54F

- CIT vs. Mrs. Hilla J. B. Wadia (1995 216 ITR 376 (Bom. HC))
 - Balraj v. CIT [2002] 123 Taxman 290 (Delhi)
 - Seetha Subramanian v. ACIT [1996] 59 ITD 94 (Mad. –Trib.)
Rajkumar, Jagaron v. Assessee ITA No. 473/Chd/2012 (ITAT Chandigarh)
 - Shashi Varma v. CIT [1997] 224 ITR 106 (MP)
 - CIT v. R.L. Sood [2000] 245 ITR 727/108 Taxman 227 (Delhi)
 - CIT v. T.N. Aravinda Reddy [1979] 120 ITR 461 (SC)
 - Mysore Minerals Ltd. v. CIT [1999] 239 ITR 775 (SC)
 - CIT v. Dilip Ranjrekar ([2019] 260 Taxman 317 (Kar.))
-

Additional Area purchased either by way of PAAA or Separate Agreement for Sale – Tax Impact for Members:

- > Can 54 / 54F be claimed?:
 - ✓ Can we claim Deduction u/s 54 / 54F w.r.t. Capital Gains on Corpus / Hardship Compensation received by Member?
 - > Difference between Agreement Value and Stamp Duty Value:
 - ✓ Additional Area may be purchased
 - ✓ Agreement will be registered for Full Area, leading to difference in AV and SDV
 - ✓ Chances of Scrutiny Selection w.r.t Section 56
 - > TDS issue u/s 194-IA:
 - ✓ Section 194-IA requires to deduct TDS @ 1% of Consideration or the Stamp Duty Value of such Property, whichever is higher.
 - ✓ What shall be the situation in a case where Consideration for Additional Area is Rs.14,00,000/- only, while Stamp Duty Value of Full Property is Rs.75,00,000/-?
-

Tax Impact for Members – An Overview:

Tax Impact for Members

Corpus / Hardship Compensation

Corpus received by Member and not Society is a Capital Receipt, not chargeable to Tax.

Jehalal D Mehta v. Dy CIT
[2005 2 SOT 422 (MUM)]

CIT v. B.C. Srinivas Shetty 128 ITR 294

Position post Amendment in Finance Act, 2023 w.e.f. A.Y. 2024-25?

Alternate Accommodation Charges / Rent

General Rationale is to offer it as Income u/s 56 and claim the Rent paid as Expense u/s 57.

However, there are several case laws which support that the same is not Taxable.

Recent Case of 2024:
Ajay Parasram Kothari v. ITO
(Mum. Trib.)

Narayan Devraj Inekar v. ITO (Mum. Trib.)

Re-imbursement of Commission Expense, Shifting Charges, etc.

It is advisable to offer the same as Income u/s 56 and claim the Expense u/s 57.

Delayed Charges

Delayed charges are not taxable, as it is received due to violation of the terms of the agreement.

However, Interest paid on delayed charges will be taxable.

Delhi Development Authority v. ITO [1995] 53 ITD 19 (Delhi-Trib.)

Sainath Rajkumar Sarode v. State of Maharashtra ([2021] 131 taxmann.com 332 (Bombay))

Conclusion:

- Navigating co-operative society redevelopment requires:
 - a clear understanding of assets involved,
 - transfer definitions, and
 - tax implications.
 - Members and societies must comprehend their rights and obligations under development agreements to ensure:
 - a smooth process and mitigate any potential legal or financial risks.
-

STAKEHOLDERS CHALLENGES

1. **Generating the funds to meet the project costs**
 2. **Lack of expertise & skills amongst the MC.**
 3. **Difficult to Sell the saleable area**
 4. **Challenges to the professionals with MC**
 5. **The society may not be able to handle the sales**
 6. **Disputes between the members and the society**
 7. **The committee ignorant of the latest changes**
 8. **Appointing the good and competent Contractor**
-

WAY FORWARD

- The government should start implementing the incentives announced.
 - Create Awareness of amongst the stakeholders
 - Society office bearers should get oriented in the process
 - Accept the responsibility and accountability by members
 - More and more funding agencies should be encouraged to fund self redevelopment.
 - Successful models and systems need to be spread
 - Transparency and accountability in the approval department should be increased.
-

WAY FORWARD

- Proper dispute redressal system should be implemented.
 - Self redevelopment issues to be addressed at MahaRERA.
 - Self-Redevelopment project has its own advantages / challenges.
 - The general perception among people is that any kind of construction activity is not possible to be undertaken by the society members /common public.
 - Yet if experts are appointed along with skilled professionals, who work with a clear understanding about the project, the Society can itself undertake the self-redevelopment project.
-

WAY FORWARD

- In such a situation the Society needs to take certain measures to derive the desired result.
 - The Society can arrange a minimum cost for the project, say between 5% to 15% of the project cost through members' contribution and also go in for a bank loan between 95% to 85% of the cost of the project.
 - A decision can be taken to request members to contribute 50% of advance from existing members who are interested in purchasing the additional area.
-

Disclaimer

All the efforts are made to cover the important provisions of the law. The material contained herein is not exhaustive, and contains certain generalizations. The latest Provisions and Notifications must be viewed. The presenter is not responsible for any loss incurred on the actions taken based on the material presented.

--CA. Ramesh S. Prabhu



Let us be Partner in Nation Building

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Let us empower each one of us by sharing knowledge. Let us Innovate, Get involved & Solve issues collectively within four corners of Law.

Thank you for Getting involved in the discussion!

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MAHARASHTRA SOCIETIES WELFARE ASSOCIATION, CO-OPTED MEMBER OF TASK FORCE FOR NPOS & CO-OPS OF MAHARASHTRA, CONVENER TO PREPARE GUIDANCE NOTE ON AUDIT OF DISTRICT AND STATE CO-OP BANKS –PUBLISHED BY PDC OF ICAI, CO-OPTED MEMBER OF CO-OP COMMITTEE (MAHARASHTRA) OF WIRC OF ICAI.
