



CIVIL

# Common Areas division under Conveyance and Deemed Conveyance of Societies

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**PUBLISHED** 13 July 2023

Conveyance is the transfer of the title of land and buildings by a promoter or landowner in favour of a housing society by execution of the conveyance deed. If the promoter or landowner refuses to cooperate in transferring the title, societies have the option to pursue “deemed conveyance” to obtain the land title.

The primary objective of conveyance/ deemed conveyance, or unilateral conveyance is to secure additional Floor Space Index (FSI) and Transfer of Development Rights (TDR), thereby preserving the option for future redevelopment. It is crucial for societies to have free and marketable title. The following chart compares various provisions of different acts for conveyance and deemed conveyance of societies with specific observation on sharing the title of common area by societies.

| Act                                                                     | Conveyance                                                                                                                                                                                            | Deemed Conveyance                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Common Area allocation                                                                                                   |
|-------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| <a href="#">Maharashtra Ownership of Flats Act</a> ,<br>MOFA Rules 1964 | Sec 11 (1): Conveyance should be done by Promoter within prescribed time period Rule 9: Conveyance should be completed by Promoter within 4 months from the date of formation of co-operative society | Sec 11(4)(f): Promoter <b>to execute a registered conveyance deed for undivided proportionate title in the common areas</b> in favour of association of allottees or competent authority. Sec 17 (1): The promoter shall execute a registered conveyance deed in favour of the allottee <b>along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority</b> , as the case may be and handover the common areas to the association of the allottees or the competent authority, within specified period as per sanctioned plans. In the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter <b>within three months from date of issue of occupancy certificate</b> . | It is as per The Maharashtra Apartment Ownership Act, 1970, Section 6 deals with Common Areas undivided rights of owners |

Sec 11(4) (f): Promoter **to execute a registered conveyance deed** of the apartment, plot or building, as the case may be, in favour of the allottee along with undivided proportionate title in the **common areas to the association of allottee** of competent authority, as the case may be under sec 17 Rule 9(2) (ii): For a single building project, if Promoter and allottee have not agreed upon any period for conveying the title, Promoter shall execute conveyance within 3 months from the date of issue of Occupancy Certificate OR 51% of allottees have paid full consideration, whichever is earlier Rule 9(2) (iii)(a): For a building/ wing in a Layout, if Promoter and allottee have not agreed upon any period for conveying the title, Promoter shall execute conveyance of structure of the building within 1 month from date of registration of Co-operative society OR within 3 months from Occupancy Certificate, whichever is earlier Rule 9(2) (iii)(b): For a Layout, if Promoter and allottee have not agreed upon any period for conveying the title, Promoter shall execute conveyance of entire undivided or inseparable land underneath all buildings jointly or otherwise, within 3 month from date of registration of Apex Body/Federation/Association OR within 3 months from Occupancy Certificate of last building, whichever is earlier.

Rule 9 (3): if Promoter fails to do conveyance, then RERA Authority can order him to do so. Rule 9 (4): Legal entity/Society shall be entitled to have a unilateral deemed conveyance and register it under MOFA

Sec 11(4)(f): Promoter **to execute a registered conveyance deed for the undivided proportionate title in the common areas in favour of association of allottees or competent authority.** Sec 17 (1): The promoter shall execute a registered conveyance deed in favour of the allottee **along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority,** as the case may be and handover the common areas to the association of the allottees or the competent authority, within specified period as per sanctioned plans. In the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter **within three months from date of issue of occupancy certificate.**

Sec 154 B (1) (8): "Co-operative Housing Association" means association of housing societies or other legal bodies for the purpose of maintenance of common amenities or conveyance of land and common amenities in respect of plot or layout; (at least 2 housing societies)

In view of the above clarifying chart, it is clear that under MCS Act, more than 2 societies are required to form Co-operative Housing Association with an object of taking conveyance of land and common amenities of societies. For a Cooperative society before enactment of RERA, the conveyance shall be completed as per MOFA. The MOFA actively has dealt with all wings/buildings as a single society registered under MCS.

The Common area under MOFA is to be dealt with as if the same is given MAO Act. Government Resolution dated 22<sup>nd</sup> June, 2018 stated that while passing Deemed Conveyance Order and Certificate, District Dy. Registrar, Co-operative Societies/Jt. Registrar, Co-operative Societies (CIDCO) and Competent Authority should consider following matter and then pass the order :-

1) If there are many buildings on one plot and have a separate co-operative society of each building and if construction of some of them is incomplete then while making Deemed Conveyance of completed building, undivided share of occupancy right in the proportion of construction on the proportionate area of the construction of the building of such society or ground coverage or

plinth area, similarly open space, common services and facilities, roads should be given.

2) While making Deemed Conveyance in respect of the buildings in the layout where T.D.R. is used, their conveyance should be made according to plinth and appurtenant area.

3) If there is more than one society in one layout and out of them only one society has made such application, similarly other societies are not cooperating for conducting measurement of the land of the applicant society then the District Dy. Registrar, Co-operative Societies, and Competent Authority Shall suggest the applicant society to conduct the measurement according to the approved plan from the Architect on the panel of the Competent Authority who approved the construction plans of the concerned society and submit the report regarding area of the society.

4) If the developer did not complete the project in expectation of getting additional F.S.I. OR T.D.R. in urban area, then in such cases, deemed conveyance of the number of flats proposed as per approved construction plan and that much flats are constructed then their deemed conveyance should be made.

6) While mentioning common easement in the Deemed Conveyance order, certificate and documents, it should be mentioned in it that the applicant society have the right with undivided rights of common easements in the proportion of the construction of the building of society.

For constructions to which RERA are applicable now, RERA has in depth dealt with conveyance of separate wings/buildings in same Society. RERA prima facie provides for two types of conveyance. A plot of Society is to be conveyed to allottees and the undivided proportionate title in the common areas is to be conveyed to the association of the allottees or the competent authority. Therefore, it becomes important to form Apex Body/Federation/ Association of Allottees wherein multiple wings can have a simultaneous charge of undivided title of common area.

In case there is single wing on a larger layout seeking for a conveyance/ deemed conveyance, RERA rules provide for conveyance of specific structure of that building to that single wing. RERA Rules further provide that Promoters to convey the common areas to individual building/ wing in a layout OR to execute conveyance of entire undivided or inseparable land underneath all buildings including common areas and amenities jointly or otherwise.

It seems to be growing trend among developers to not to execute or delay the conveyance and title change of land and societies thereupon in anticipation of additional FSI and TDR to be gained by them. This additional FSI is used by them to construct or add more floors to existing structures for more profit to be gained. However, in multiple cases. Courts have clarified that separate conveyance are required to be done by developers for each buildings and the same can not be delayed under the guise of completion of entire projects.