



REAL ESTATE

From Builder Control to Resident Empowerment: The New Occupancy Certificate Framework

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Why Occupancy Certificates Matter and What Has Changed

Under the Real Estate (Regulation and Development) Act, 2016, an “Occupancy Certificate” means a certificate issued by the local authorities permitting a building to be legally occupied. It confirms that the building meets local requirements for essential services such as water, electricity, and sanitation. If there is no OC, no building is considered fit legally for occupation, even if it is completed, and occupying it can amount to an offence under local laws, inviting legal action, fines, and penalties on occupants.

In reality, many residential buildings in Mumbai and the MMR have been occupied for years without an OC, mainly due to developers failing or refusing to apply for it even after handing over possession and forming housing societies. This has left residents exposed to legal, financial, resale, loan, insurance, and redevelopment risks.

Earlier, only the developer or owner could apply for an OC. Housing societies had no such right, and authorities rejected their applications. This gave developers complete control, which was often misused to demand extra payments. If a developer became insolvent, disappeared, or simply refused to act, residents were left with no remedy.

To fix this long-standing issue, the Maharashtra Government introduced a key reform allowing housing societies to apply for an OC themselves if the developer fails to do so. This change aims to protect residents and resolve years of regulatory uncertainty in a practical way.

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Clearing the OC Logjam: Maharashtra Government's New Initiative

The Maharashtra Government recently declared a policy of issuance of OCs for more than 25,000 buildings in Mumbai, constructed under BMC, MHADA, SRA and similar regulatory laws. Initiated by Mumbai Suburban, this scheme would smoothen the path for the buildings whose OCs got stuck owing to technical or administrative hurdles such as minor area differences and setback problems among others.

Housing societies, according to the new system, will be permitted to apply for full or partial OCs, jointly or on their own. Applications submitted within six months will not invite any penalty, though payment of necessary premium will apply where additional FSI has been used. The policy revises and simplifies the OC process, offering relief to over 10 lakh residents through easier compliance, discounts on premiums, and waiver of penalties for early applicants.

Significance of the Reform

The reform ends the developer's exclusive control over Occupancy Certificate (OC) compliance by allowing housing societies to apply directly, replacing discretionary officer decisions with a clear, policy-driven process, thereby reducing arbitrariness. It acknowledges ground realities, as many buildings without OCs are fully built, occupied, and paying taxes, while still ensuring safety checks for structural stability, fire safety, and essential services.

In *Sudhakar Ganpat Keer vs. The State of Maharashtra and ALJ Residency Co-operative Housing Society Ltd. vs. State of Maharashtra*, the courts held that occupation without an OC is illegal, criticized the municipal corporation for permitting it, and directed strict action including eviction, sealing, demolition of unauthorized structures, and proceedings against officials.

In **Samruddhi Co-operative Housing Society Ltd. v. Mumbai Mahalaxmi Construction Pvt. Ltd.**¹, the builder handed over flats without obtaining an OC, forcing residents to pay higher taxes and charges. This demonstrates how builder defaults harm residents and highlights the need for the reform to protect housing societies.

Current Relevance

Mumbai has a large number of old buildings, including pre-1991, MHADA, and cessed properties, where redevelopment is frequently hampered by the absence of an OC. This reform enables easier redevelopment and aids in the regularization of compliance for such buildings.

Allowing societies to apply for an OC provides a workable alternative compliance route because many older projects are outside the effective scope of RERA. This modification increases marketability, title certainty, and lowers transaction barriers because an OC is essential for lenders, purchasers, and insurers.

Advantage for Housing Communities

Instead of relying on developers who might be unavailable or unresponsive, this reform gives housing societies the power to apply for an OC on their own. Since an OC is frequently a crucial requirement, it enables redevelopment and assists societies in resolving long-standing compliance issues through collective decisions.

Limitation of the Reform

Legal amnesty or automatic approval is not implied by the reform. If there are significant unauthorized constructions, safety issues, or major non-compliances, authorities may still reject applications. Particularly in cases where only a partial or conditional OC is granted, societies may also have to pay for expenses like fines and professional fees, which could limit some of the anticipated benefits.

Impact on the Mumbai Real Estate Market

The Maharashtra government's action could significantly boost Mumbai's real estate market. Since many buyers steer clear of properties without the necessary approvals, buyer confidence is likely to rise as more housing societies acquire OCs. Additionally, more investors and end users will be drawn in by a clearer legal status.

Long-standing conflicts between locals, developers, and civic authorities should drastically decrease with the implementation of OCs. Over time, this reform might also encourage developers to adhere to building and safety regulations more closely, raising the standard of housing in the city as a whole.

Key Emerging Highlights So Far

Some points are evident even though the comprehensive Government Resolution is still pending. Housing societies without commencement certificates or conveyance deeds may still apply for an OC. Societies may also apply if they have made structural changes or used additional FSI, as long as they pay a premium at discounted rates. The program will only be accessible for a brief time. The objective is to guarantee that all housing societies in Mumbai receive an OC by regularizing excess FSI or changes at discounted rates.

Conclusion

The real estate system in Maharashtra has undergone a significant change as a result of this reform. Allowing housing societies to apply for an OC helps address long-standing compliance issues, lessens total reliance on developers, and, when applied properly, promotes lawful regularization, improved safety, and more seamless urban redevelopment without undermining planning regulations.

For further details write to contact@indialaw.in

1. [MANU/SC/0026/2022 ??](#)

Frequently Asked Questions

What is an Occupancy Certificate (OC)?

Under the Real Estate (Regulation and Development) Act, 2016, an Occupancy Certificate is a certificate issued by the local authority permitting a building to be legally occupied, confirming that it meets local requirements for essential services such as water, electricity and sanitation.

Can a housing society apply for an Occupancy Certificate if the developer does not?

Yes. Under the Maharashtra Government's reform, housing societies can now apply for an OC themselves — fully or partially, jointly or on their own — where the developer fails to do so, whereas earlier only the developer or owner could apply.

What are the risks of occupying a building without an Occupancy Certificate?

A building without an OC is not legally fit for occupation; occupying it can amount to an offence under local laws and expose occupants to fines and penalties, as well as legal, financial, resale, loan, insurance and redevelopment risks.

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