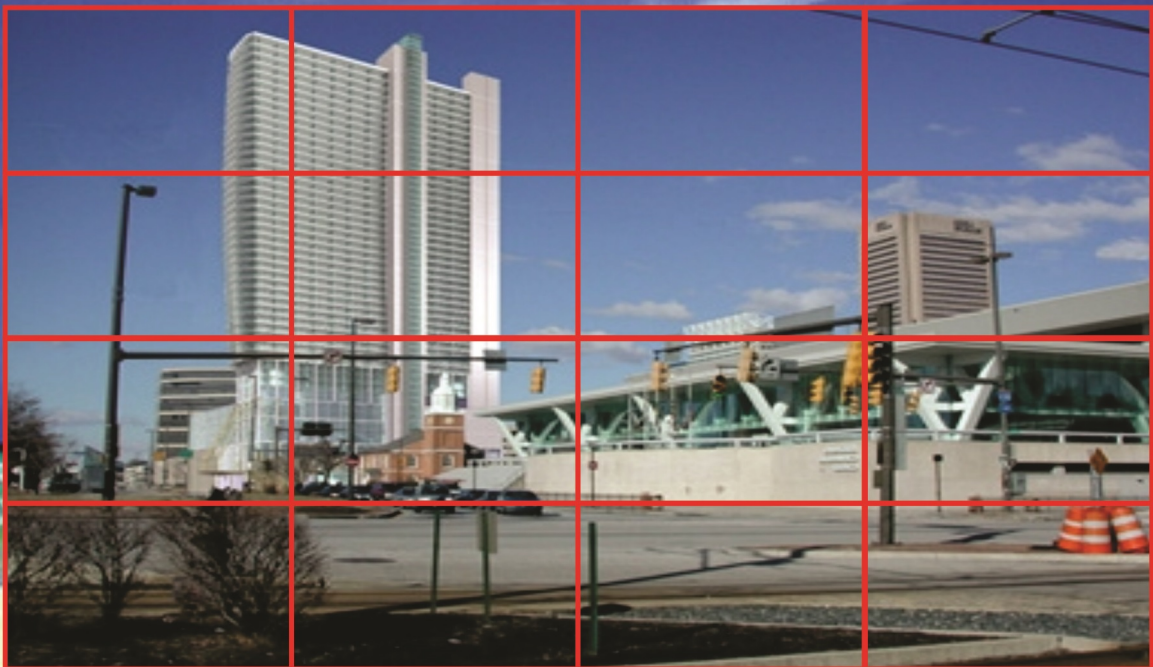


2016 EDITION

# CO-OPERATIVE SOCIETIES & CRIMINAL LAW



By

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**AUTHORS**

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for their valuable  
support and guidance.*

***ADVOCATE VINOD C. SAMPAT ,  
ADVOCATE RAMESH D. CHHEDA  
&  
ADVOCATE DHARMIN V. SAMPAT***

*While dealing with Co-operative Societies, we have observed that many members have to become office-bearers of a Co-operative Society at one point of time or another. In such circumstances, they face problems with regards to handling of nuisance created members. Keeping this point in mind, we decided to come out with this publication. We feel that this publication will be useful to the office-bearers as well as the members of the Co-operative Societies. It would also be useful to the flat purchasers, legal heirs of the members. Even the managers of Co-operative Societies will find this book as a handy guide. You are invited to send your written suggestions as to how we could make the subsequent editions of this book more and more useful and in this connection your written suggestions will be highly appreciated.*

*At this juncture, we are extremely delighted in bringing out this book for easy understanding of Criminal Laws in the administration of Co-operative Societies. In order to break the barriers of language and to remove the fears in the minds of the assesseees, this book provides clarifications for many of the possible doubts in a simple manner. We are confident that this material would be useful as a ready reference for the day to day use of the service providers, especially Co-operative Societies. The Jokes written in boxes are not to be taken seriously.*

*We acknowledge the sincere contribution of Senior Police Officers, Retired Magistrates and Senior Officers of Co-operative Departments, in bringing out this book.*

*The suggestions received are valuable and some have been incorporated from our readers.*

*Any suggestions for further improvement of this publication will be of immense help to us as authors to disseminate the information regarding Co-operative Societies for the benefit of the public in general and the Co-operative Societies in particular.*

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**&**  
**ADVOCATE DHARMIN V. SAMPAT**

# Chapter -1

## INTRODUCTION

During the course of practice, many times, we have come across instances when the members of the Housing Societies, are ignorant and scared about criminal laws and they are exploited, subjected to undue advantage by persons having vested interest. To help ignorant members of the housing societies and to educate them regarding basic concepts about the procedure related to criminal courts, this Book is written.

Many persons have raised a question as how a subject criminal law can be of any use to the members of the housing society where there are hardly any occasions of commission of criminal offence in administration of society? Again this question could be raised only with misconception prevailing that criminal laws are only to prevent crimes and to deal with the criminals.

However, in reality this is not the situation. If we refer to criminal laws, we will realise that many of the offences listed in Indian Penal Code are occurring in regular course of business of the Housing Societies. Eg. Many members commit trespass in the parking space allotted to other members, Similarly, in many general meetings situation goes to the stage of assaulting some members. Besides this, now a days because of special acts, whereby many defaults are considered as criminal offences and defaulters are subjected to criminal punishment. In such cases having knowledge of the criminal laws becomes essential. **Eg. In respect of flat purchased on ownership basis, if any builder is not executing conveyance or is not forming society, in such case they can be liable for imprisonment.** Again, by gaining knowledge of various acts, offence as defined in Indian Penal Code, can be understood in by Managing Committee members who can control those nuisance creating members in a better manner by initiating criminal actions against them. Similarly, if any members initiates, any criminal action against other member, in such case with basic knowledge of criminal laws a person can defend such proceedings in a better manner.

With this background in mind, and with an intention to help create awareness about the proceedings of criminal courts and how criminal machinery can be used for the effective administration of housing society, this book is written in a very simple language, covering basic aspects of the proceedings of criminal courts. It is our experience that people are scared to go to criminal courts. In case of dispute, criminal complaint can be lodged against other person. In that case, chances of settlement of dispute are more positive as compared to actions initiated through civil courts.

In this Book, attempt is made in such away so as to explain, offences, related with housing societies for which criminal complaint can be lodged.



## Chapter -2

### IMPORTANT DEFINITIONS.

#### (A) Under Criminal Procedure Code.

- (A.1) “ **Moveable Property**” – The words “ Movable Property ” are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth
- (A.2) “**Wrongful gain**” - “ Wrongful gain” is gain by unlawful means of property to which the person gaining is not legally entitled.
- (A.3) “**Wrongful Loss**” - “ Wrongful Loss ” is the loss by unlawful means of property to which the person losing it is legally entitled.  
Gaining Wrongfully. Losing Wrongfully – A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.
- (A.4) “**Dishonestly**” – Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “ dishonestly”.
- (A.5) “**Fraudulently**” – A person is said to do a thing fraudulently if he does that thing with intent defraud but not otherwise.
- (A.6) “**Reason to believe**” – A person is said to have “ reason to believe ” a thing , if he has sufficient cause to believe that thing but not otherwise.
- (A.7) “**Counterfeit**” - A person is said to “counterfeit” who causes one thing to resemble another thing , intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.  
**Explanation 1.** – It is not essential to counterfeiting that the limitation should be exact.  
**Explanation 2.** – When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised.
- (A.8) “**Document**” – The word “ Document” denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.  
**Explanation 1.** – It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, Court Of Justice, or not.  
**Explanation 2.** – Whatever is expressed by means of letters , figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.

- (A.9) **“Act”. “ Omission”** – The word “ act” denotes as well a series of acts as a single act; the word “ Omission” denotes as well a series of omissions as a single omission.  
Acts done by several persons in furtherance of common intention - When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.
- (A.10) **When such an act is criminal by reason of its being done with a criminal knowledge or intention** – Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.
- (A.11) **Effect caused partly by act and partly by omission.**- Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.
- (A.12) **Persons concerned in criminal act may be guilty of different offences.**- Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.
- (A.13) **Voluntarily”.** – A person is said to cause an effect “ Voluntarily” when he causes it by means whereby he intended to cause it, or by means which , at the time of employing those means, he knew or had reason to believe to be likely to cause it.
- (A.14) **Injury”.**- The Word “ injury” denotes any harm whatever illegally caused to any person , in body , mind , reputation or property.
- (A.15) **Act done by a person justified , or by mistake of fact believing himself justified by law .**- Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of a fact and not by reason of a mistake of law in good faith, believes himself to be justified by law in doing it.
- (A.16) **Accident in doing a lawful act.**- Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.
- (A.17) **Acts likely to cause harm, but done without criminal intent , and to prevent other harm.**- Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.  
**Explanation .**- It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.
- (A.18) **Act, not intended and not known to be likely to cause death or grievous hurt, done by consent.**- Nothing which is not intended to cause death, or grievous hurt , and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person , above eighteen years of age, who has given consent , whether express or implied, to

suffer that harm ; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

**(A.19) Act, not intended to cause death, done by consent in good faith for person's benefit.-** Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause , or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied , to suffer that harm, or to take the risk of that harm.

**(A.20) Right of private defence of the body and property.—** Every person has a right , subject to the restrictions contained in section 99, to defend —

First.— His own body, and the body of any other person, against any offence affecting the human body:

Secondly.- The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery , mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

**(A.21) Acts against which there is no right of private defence.—** There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt , if done , or attempted to be done , by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, , if done , or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

**(A.22) When the right of private defence of the body extends to causing death.—** The right of private defence of the body extends, under the restrictions mentioned in the last preceding section , to the voluntarily causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:-

First – Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly.—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly – An assault with the intention of committing rape;

Fourthly – An assault with the intention of gratifying unnatural lust ;

Fifthly – An assault with the intention of kidnapping or abducting ;

Sixthly – An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

**(B) Under Indian Penal Code.**

- (B.1) **“Bailable offence”** – means an offence which is shown as bailable in the First Schedule , or which is made bailable by any other law for the time being in force; and “ non- bailable offence ” means any other offence;
- (B.2) **“Charge”** – includes any head of charge when the charge contains more than heads than one;
- (B.3) **“Cognizable offence”** means an offence for which, and “ Cognizable case” means a case in which, a police officer may, in accordance with the first schedule or under any other law for the time being in force , arrest without warrant;
- (B.4) **“Complaint”** means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.  
**Explanation — A** report made by a police officer in a case which discloses, after investigation , the commission of a non-cognizable offence shall be deemed to be a complaint ; and the police officer by whom such report is made shall be deemed to be the complainant;
- (B.5) **“Inquiry”** means every inquiry, other than a trial, conducted under this code by a Magistrate or Court;
- (B.6) **“Investigation”** includes all the proceedings under this code for the collection of evidence conducted by a police officer or by any person ( other than a Magistrate) who is authorised by a Magistrate in this behalf;
- (B.7) **“Judicial” Proceeding”** includes any proceeding in the course of which evidence is or may be legally taken on oath;
- (B.8) **“Offence”** means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under section 20 of the Cattle –trespass Act, 1871 (1 of 1871);
- (B.9) **“Office in charge of a police station”** includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the Station- house who is next in rank to such officer and is above the rank of constable or , when the State Government so directs ,any other police officer so present;
- (B.10) **“Police report”** means a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173;
- (B.11) **“Summons –case”** means a case relating to an offence, and not being a warrant –case;
- (B.12) **“Warrant –case”** means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years;

## Chapter -3

### OFFENCES RELATED TO HOUSING SOCIETIES

There are many number of various offences defined under penal code for which different criminal actions and punishments are prescribed. However, in this chapter, we are discussing mainly those offences, which generally are related with housing societies. These offences are committed either by members towards other members and society or by the society through its committee members towards the members of the society. **These offences are classified mainly in following four categories in Indian Penal Code.**

#### OFFENCES UNDER INDIAN PENAL CODE

- 1 Related Public Justice
- 2 Related to Human Body
- 3 Related to Property
- 4 Related to Document

With the following table, we have discussed various offences and its type and thereafter, we have, in detail, described features of those offences and punishment that can be given to the offender for committing of offence.

#### 1) Related to Public Justice

Section	Offence	Kinds Of Offence	
194	Giving or fabricating false evidence with intent to procure conviction of capital offence	Non-Cognizable Non-Bailable	
195	Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment	Non-Cognizable Non-Bailable	
197	Issuing or signing false certificate	Non-Cognizable	Bailable
199	False statement made in declaration which is by law receivable as evidence	Non-Cognizable	Bailable
203	Giving false information respecting an offence committed.	Non-Cognizable	Bailable
204	Destruction of [ document or electronic record] to prevent it production as evidence.	Non-Cognizable	Bailable

209	Dishonestly making false claim in court	Non-Cognizable	Bailable
211	False charge or offence made with intent to injure	Non-Cognizable	Bailable

## 2) Related to Body.

Section	Offence	Kinds Of Offence	
323	Voluntarily causing hurt.	Non Cognizable Bailable	
324	Voluntarily Causing hurt by dangerous weapons or means	Cognizable	Non Bailable
325	Voluntarily Causing Grievous hurt	Cognizable	Bailable
339	Wrongful Restraint	Cognizable	Bailable
340	Wrongful Confinement	Cognizable	Bailable
350	Criminal Force	Non-Cognizable	Bailable
351	Assault	Non-Cognizable	Bailable
354	Assault or criminal force to women with intent to outrage her modesty	Cognizable	Bailable
357	Assault or criminal force in attempt wrongfully to confine a person	Cognizable	Bailable

## 3) Related to Property

Section	Offence	Kinds Of Offence	
379	Theft	Cognizable	Non-Bailable
380	Theft in dwelling house, etc	Cognizable	Non-Bailable
383	Extortion	Cognizable	Non-Bailable
384	Extortion	Cognizable	Non-Bailable
385	Putting a person in fear of injury in order to commit extortion	Cognizable	Bailable
386	Extortion by putting a person in fear of death or grievous hurt.	Cognizable	Non-Bailable

403	Dishonest misappropriation of movable property	Non-cognizable	Bailable
406	Criminal breach of trust.	Cognizable	Non-Bailable
408	Criminal breach of trust by clerk or servant	Cognizable	Non-Bailable
417	Cheating	Non-Cognizable	Bailable
420	Cheating and dishonestly inducing delivery of property	Cognizable	Non-Bailable
426	Mischief	Non-Cognizable	Bailable
427	Mischief causing damage to the amount of fifty rupees	Non- Cognizable	Bailable
429	Mischief by killing or maiming cattle, etc.,of any value or any animal of the value of fifty rupees.	Cognizable	Bailable
447	Criminal Trespass	Cognizable	Bailable
448	House trespass	Cognizable	Bailable
452	House-trespass after preparation for hurt, assault or wrongful restraint	Cognizable	Non-Bailable
460	All persons jointly concerned in lurking house-trespass or house breaking by night punishable where death or grievous hurt caused by one of them	Cognizable	Non-Bailable

#### 4) Offences Related to Document

Section	Offence	Kinds Of Offence	
463	Forgery	Non-Cognizable	Bailable
477	Fraudulent cancellation, destruction, etc., of will, authority to adopt, or valuable security.	Non-Cognizable	Non-Bailable
477- A	Falsification of accounts	Non-Cognizable	Bailable

Let us now examine in detail about abovementioned offences. While discussing , we have discussed, the definition of each of offence, type of offence, and punishment prescribed under Indian Penal Code, 1860.

### **Related to Public justice:**

#### **Section 194: Giving or fabricating false evidence with intent to procure conviction of capital offence:-**

Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital [ by the law for the time being in force in [India] shall be punished with [imprisonment for life] , or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

If innocent person be thereby convicted and executed – and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

#### **Section 195: Giving or Fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment:-**

Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which [ by the law for the time being in force in [India] is not capital, but punishable with [ imprisonment for life], or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

#### **Section 197: Issuing or Signing false certificate.**

Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

#### **Section 199: False statement made in declaration which is by law receivable as evidence.**

Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

#### **Section 203: Giving false information respecting an offence committed.**

Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Explanation** – In Sections 201 & 202 and in this section the word “offence “ includes any act committed at any place out of [India], which, if committed in [India], would be punishable under any of the following sections, namely, 302, 304, 382 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459, and 460.]

**Section 204: Destruction of [document or electronic record] to prevent its production as evidence**

Whoever secretes or destroys any[document or electronic record] which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such [document or electronic record] with the intention of preventing the same from being produced or used as evidence before such court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produced the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Section 209: Dishonestly making false claim in Court.**

Whoever, fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

**Section 211: False charge of offence made with intent to injure.**

Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

And if such criminal proceeding be instituted on a false charge of an offence punishable with death, [ imprisonment for life], or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**3 Related To Human Body**

**Section 319: Hurt.**

Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

**Section 320: Grievous Hurt.**

The following kinds of hurt only are designated as “**grievous hurt**”.

- a) Emasculation.
- b) Permanent privation of the sight of either eye.
- c) Permanent privation of the hearing of either ear.
- d) Privation of any member or joint.
- e) Destruction or permanent impairing of the powers of any member or joint.

- f) Permanent disfiguration of the head or face.
- g) Fracture or dislocation of a bone or tooth.
- h) Any Hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

**Section 321: Voluntarily Causing Hurt.**

Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause to hurt any person, and does thereby cause hurt to any person, is said "Voluntarily to cause Hurt" .

**Section 322: Voluntarily Causing Grievous Hurt.**

Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt and if the hurt which he causes is grievous hurt , is said "Voluntarily to cause grievous hurt".

**Explanation:-** A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends and or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing, himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

**Section 323: Punishment for voluntarily causing hurt.**

Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

**Classification Of Offence :-** The offence under this section is non-cognizable, bailable, compoundable and triable by any Magistrate.

**Section 324: Voluntarily causing hurt by dangerous weapons or means.**

Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance which it is deleterious to the human body to inhale, to swallow,

or to receive into the blood , or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years , or with fine , or with both.

### **Section 325: Punishment for voluntarily causing grievous hurt.**

Whoever, except in the case provided for by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Classification of offence:-** The Offence under this section is cognizable, bailable , compoundable with permission of the court before which any prosecution of such offence is pending and triable by any Magistrate.

### **Section 339: Wrongful Restraint.**

Whoever Voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restraint that person.

**Exception :-** The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

### **Section 340: Wrongful Confinement.**

Whoever wrongfully restrains any person in such a manner so as to prevent that person from proceedings beyond certain circumscribing limits, is said “ Wrongfully to Confine” that person.

### **Section 341: Punishment for wrongful Restrain.**

Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

**Classification of offence :-** The offence under this section is cognizable, bailable, compoundable and triable by any Magistrate.

### **Section 342: Punishment for Wrongful Confinement.**

Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

**Classification of Offence :-** The Offence under this section is Cognizable, bailable, compoundable and triable by any Magistrate.

### **Section 349: Force.**

A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of

motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling

Provided that the person causing the motion, or change of motion, or cessation of motion causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.

- 1) By his own bodily power.
- 2) By Disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.
- 3) By inducing any animal to move, to change its motion, or to cease to move.

### **Section 350: Criminal Force.**

Whoever intentionally uses force to any person, without that person's consent, in order to committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury , fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.

### **Section 351: Assault.**

Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person ,is said to commit an assault.

**Explanation:-** Mere words do not amount to an Assault. But the words which the person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an Assault.

### **Section 352: Punishment for assault Or criminal force otherwise than on grave provocation.**

Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

**Explanation:-** Grave and sudden provocation will not mitigate the punishment for an offence under this section. If the provocation is sought or voluntarily provoked by the offender as an excuse for the offence, or If the provocation is given by anything done in obedience to the law, or by a public servant, in the lawful exercise of the powers of such public servant, or If the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

**Classification of offence :-** The offence under this section is non-cognizable, bailable, compoundable and triable by any Magistrate.

**Section 354: Assault or criminal force to woman with intent to outrage her modesty :-**

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Classification Of Offence :-** The offence under this section is cognizable, bailable, compoundable with permission of the court before which any prosecution of such offence is pending and triable by any Magistrate.

**357. Assault or Criminal Force in attempt wrongfully to confine a person :-**

Whoever assaults or uses criminal force to any person, in attempting wrongfully to Confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

## **4. Offences related to Property.**

Under Indian Penal Code section 379 to 462, covered by chapter XVII of Indian Penal Code, deals with the offences related to property. Hereunder, in brief we have discussed important such offences.

**Section 378: Theft.**

Whoever intending to take dishonestly, any movable property out of the possession of any person without that person's consent moves that property in order to such taking, is said to commit theft.

**Explanation 1-A** thing so long it is attached to the earth, not being movable property, is not the subject of the theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

**Explanation 2- A** moving effected by the same act which effect the severance may be a theft.

**Explanation 3- A** person is said to cause a thing to move or removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

**Explanation 4 –** A person who by any means causes an animal to move, is said to move that animal, and to move everything which in consequence of the motion so caused, is moved by that animal.

**Explanation 5 –** The consent mentioned in the definition may be express or implied, and may be given either by person in possession, or by any person having for that purpose authority either express or implied.

**Section 379: Punishment For Theft .**

Whoever Commits theft shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both.

**Section 383. Extortion.**

Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security , or anything signed or sealed which may be converted into a valuable security, commits “ extortion”

**Section 385: Putting person in fear of injury in order to commit extortion.**

Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine ,or with both.

**Section 387: Putting a Person in fear of death or of grievous hurt, in order to commit extortion.**

Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years ,and shall also be liable to fine.

**Section 403: Dishonest misappropriation of property.**

Whoever dishonestly misappropriates or converts to his own use any property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Section 405: Criminal Breach Of Trust.**

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharge, or of any legal contract, express or Implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits “criminal breach of trust”.

**Section 408: Criminal Breach Of Trust by clerk or servant.**

Whoever, being a Clerk or servant or employed as a clerk or servant and being in any manner entrusted in such capacity with property, or with any dominion over property , commits criminal breach of trust in respect of that property , shall be punished with imprisonment of either description for a term which may extend to seven years , and shall also be liable to fine.

**Section 415: Cheating.**

Whoever, by deceiving any person, fraudulently or dishonestly induces a person so deceived to deliver any property to any person , or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he

would not do or omit if he were not so deceived , and which act or omission causes or is likely to cause damage or harm to that person in body, mind reputation or property, is said to “cheat”.

**Explanation – A** dishonest concealment of facts is a deception within the meaning of this section.

**Section 420: Cheating and dishonestly inducing delivery of property.**

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Section 424: Dishonest or fraudulent removal or concealment of property.**

Whoever, dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Section 425: Mischief.**

Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits “Mischief”.

**Section 427: Mischief causing damage to the amount of fifty rupees.**

Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Section 429: Mischief by killing or maiming cattle, etc, of any value or any animal of the value of fifty rupees.**

Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

**Section 441: Criminal trespass.**

Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, Or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”

**Section 442: House- trespass.**

Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit “ house- trespass”.

#### **Section 445: House-breaking.**

A person is said to commit “ house-breaking” who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described, or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say—

- a) If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.
- b) If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.
- c) If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass by any means by which that passage was not intended by the occupier of the house to be opened.
- d) If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house- trespass.
- e) If he effects his entrance or departure by using criminal force or committing an assault or by threatening any person with assault.
- f) If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house –trespass.

**Explanation :** Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

#### **Section 446: House-breaking by night.**

Whoever commits housebreaking after sunset and before sunrise, is said to commit “ house breaking by night”.

#### **Section 447: Punishment for criminal trespass.**

Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months , with fine or which may extend to 500 Rupees, or with both.

#### **Section 448: Punishment for house- trespass.**

Whoever commits house- trespass shall be punished with imprisonment of either description for a term which may extend to one thousand rupees ,or with both.

#### **Section 452: House-trespass after preparation for hurt, assault or wrongful restraint.**

Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or for assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Section 460: All persons jointly concerned in lurking house.**

Trespass or house-breaking at night is punishable where death or grievous hurt caused by one of them – If, at the time of committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily caused or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**4. Offences Related To Documents.**

**Section 463: Forgery.**

Whoever makes any false documents or false electronic record or a part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

**Section 464: Making a false document.**

A person is said to make a false document or false electronic record –  
First – Who dishonestly or Fraudulently –

- (a) makes, signs, seals or executes a document or a part of a document;
- (b) makes or transmits any electronic record or part of any electronic record ;
- (c) affixes any digital signature on any electronic record
- (d) makes any mark denoting the execution of a document or the authenticity of the digital signature.

With the intention of causing it to be believed that such document or part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly- Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly- Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of

deception practiced upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

**Explanation 1.** A man's signature of his own name may amount to forgery.

**Explanation 2.** The making of false document in the name of a fictitious person, intending it to be believed

That the document was made by the person in his lifetime, may amount to forgery.

**Section 465: Punishment for Forgery.**

Whoever, commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with fine, or with both.

**Section 477: Fraudulent cancellation, destruction, etc, of will, authority to adopt, or valuable security.**

Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels or destroys or defaces, or attempts to cancel, destroy or deface, or secretes or attempts to secrete any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect of such document, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Classification of offence :-** The offence under this section is non-cognizable, non-bailable, non-compoundable and triable by Magistrate of the first class.

**Section 477- A . Falsification of accounts.**

Whoever, being clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, willfully, and with intent to defraud, destroys, alters, mutilates or falsifies any [book, electronic record, paper writing], valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or willfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such [book, electronic record, paper, writing], valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

**Explanation –** It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed.]

**Classification of offence :-** The offence under this section is non-cognizable, bailable, non-compoundable and triable by Magistrate of the first class.

# Chapter -1

## INTRODUCTION

During the course of practice, many times, we have come across instances when the members of the Housing Societies, are ignorant and scared about criminal laws and they are exploited, subjected to undue advantage by persons having vested interest. To help ignorant members of the housing societies and to educate them regarding basic concepts about the procedure related to criminal courts, this Book is written.

Many persons have raised a question as how a subject criminal law can be of any use to the members of the housing society where there are hardly any occasions of commission of criminal offence in administration of society? Again this question could be raised only with misconception prevailing that criminal laws are only to prevent crimes and to deal with the criminals.

However, in reality this is not the situation. If we refer to criminal laws, we will realise that many of the offences listed in Indian Penal Code are occurring in regular course of business of the Housing Societies. Eg. Many members commit trespass in the parking space allotted to other members, Similarly, in many general meetings situation goes to the stage of assaulting some members. Besides this, now a days because of special acts, whereby many defaults are considered as criminal offences and defaulters are subjected to criminal punishment. In such cases having knowledge of the criminal laws becomes essential. **Eg. In respect of flat purchased on ownership basis, if any builder is not executing conveyance or is not forming society, in such case they can be liable for imprisonment.** Again, by gaining knowledge of various acts, offence as defined in Indian Penal Code, can be understood in by Managing Committee members who can control those nuisance creating members in a better manner by initiating criminal actions against them. Similarly, if any members initiates, any criminal action against other member, in such case with basic knowledge of criminal laws a person can defend such proceedings in a better manner.

With this background in mind, and with an intention to help create awareness about the proceedings of criminal courts and how criminal machinery can be used for the effective administration of housing society, this book is written in a very simple language, covering basic aspects of the proceedings of criminal courts. It is our experience that people are scared to go to criminal courts. In case of dispute, criminal complaint can be lodged against other person. In that case, chances of settlement of dispute are more positive as compared to actions initiated through civil courts.

In this Book, attempt is made in such away so as to explain, offences, related with housing societies for which criminal complaint can be lodged.



## Chapter -5

### COMPLAINT

#### A) What is a Criminal Complaint

In respect of grievances, if any person who wishes to put criminal judiciary system into motion, he has to lodge a complaint, with the appropriate authorities. It should be noted that, a person cannot lodge criminal complaint in respect of all types of grievances. For the purpose of putting criminal machinery into action, a complaining person need to establish a fact, that guilty mind or malafide intention was in existence at the time, when cause of action has arisen.

Complaint is defined u/s.4 of Indian Penal Code,1860.

Eg. – ‘A’ has induced ‘B’ to give him loan and ‘B’ lends money to ‘A’. Thereafter, if A fails to repay loan, in that case, B needs to prove that at the time of accepting money, ‘A’ had wrong intention and had no intention to repay back money, in that case only, criminal complaint can be lodged against ‘A’. Otherwise, for the purpose of recovery of loan money, only civil suit can be filed against ‘A’.

However, in some special acts, legislators have considered few acts as criminal offences, though there was no intention to put other person in loss, when that act was performed. eg – in case when cheque is dishonored for the reason of insufficiency of funds, in that case under Negotiable Instrument Act, 1881 by inserting section, 138 legislators defined that act was criminal offence and affected person for that reason can file criminal complaint. Similarly if Builder fails to fulfill certain obligations, in that case also criminal actions can be initiated against the Builder under the Maharashtra Ownership Flat Act, 1963.

#### B) Who can lodge criminal complaint

To put Civil laws in motion there need to be a dispute between two persons. Similarly, to put criminal laws in motion, there needs to be a complaint. Unlike in civil laws, any person can set criminal laws in motion. The Code of Criminal Procedure says that except as provided in sec. 195 to 199, ordinarily, it is open to anyone, to put criminal laws in motion. In respect of the offences covered under sec. 195 to 199, only aggrieved person can file complaint. eg . In case of cruelty against married women by her laws or in case of complaint in relation to defamation, only aggrieved person can file a complaint in relation to that offence.

#### C) Where to lodge criminal complaint.

Complaint is defined u/s.2 ( ) of Criminal Procedure Code, 1973. It can be made orally or in writing. Criminal complaints can be made either to police officer or to magistrate’s Court. However, if complaints are laid as per special acts in that case, it is to be lodged before prescribed authorities as mentioned in respective special act. In some cases, complaints can be lodge only before Magistrate’s Court, e.g. – In cheque bouncing cases, complaints are directly made to Magistrate’s Court.

#### D) How to lodge criminal complaint.

After gaining basic knowledge about complaints, let us now study how complaints are lodged before various authorities.

Complaints can be orally or in writing. However, it is advisable that the complaints are made in writing. There is no fixed format in which complaints need to be lodged. But whenever, any complaints are lodged, it should give details of

- a. Name and address of the complainants
- b. Name and address of the persons against whom complaint is lodged (Accused).
- c. Details and clear averments about the manner in which offences are committed, by persons, against, whom complaint is lodged (Accused).

It should also be noted that it is not necessary, that if the complaint is lodge in the Magistrate courts, in that case, complainant should mention what punishment, court should give, if accused person are found guilty.

### **E) When to lodge criminal complaint.**

According to Criminal Procedure Code, 1973, generally complaint can be lodged at any point of time. However, in case of cognizable offences like murder, rape etc. It is necessary that the complaint need to be filed as early as possible so that there is no doubt about the fabrication of any evidences against the complainant. Also in the interest of the justice, it is necessary that complaints are filed as early as possible so that no doubts are created in respect of evidences on which the complainant relies upon and also due to passage of time, evidences may not be available. However, under the amended provisions of Code of Criminal Procedure, time limit is framed for taking cognizance of certain offences. Sec. 468 prescribes time limitations for taking cognizance of offences. Accordingly,

- i) In case, if any offences are punishable only with fine, in that case, limitation is of six months.
- ii) In case, if any offences are punishable with an imprisonment of a period not exceeding one year, in that case one year
- iii) In case, if any offences are punishable with an imprisonment of a period exceeding one year but not exceeding three year, in that case three years.

### **F) Condonation of delay in filing complaint.**

In case, if there is delay in filing complaint as per time limit provided, Section 473 of Criminal Procedure Code,1973, provides for the condoning of delay, if the delay is properly explained in the application and is in the interest of the justice. This section also provides that the accused must be heard before deciding in respect of condonation of delay application.

## Chapter -6

# COMPLAINTS TO POLICE AND PROCEDURE TO FOLLOW

### 6.1) Complaints to Police.

Section 154 to 176, deals with the complaints with the police officers, and their power to investigation:

In respect of any cognizable or non- cognizable offences, if any person approaches, Police officers to register complaint, it is obligatory responsibility of the Police officers to accept complaint and register it in appropriate registers. However, as discussed earlier, in case of some special cases, complaints are required to be lodged before appropriate authorities as provided in respective acts.

### 6.2) F.I.R. (First Information Report)

Many a times we come across with this word and we say that Police has refused to accept FIR on being approached or when any article is lost and when we approach to insurance company to file a claim for loss, in that case, Insurance companies asks for copy of F.I.R.. So it becomes important for us to know what is this F.I.R. and how it is to be lodged.

**Section 154** of the Criminal Procedure Code governs acts of Lodging F.I.R. It is filed in respect of cognizable offences. In chapter, we have learnt about cognizable and non cognizable offences. In case, when any complaint is made to the Police officer, in relation to the cognizable offences, he will immediately reproduce it in writing, read over the same to the informant and get it signed by the informant. This is known as F.I.R.(First Information Register). After recording of F.I.R., he will issue a copy of it to the complainant free of cost. (section 154 of Cr.P.C.). The Police officer also will write the substance of the complaint in the separate register to be maintained in the prescribed form as the state government has prescribed.

In case, any person aggrieved by refusal on the part of an officer in charge of a police station to record the information, he may send the substance of such information in writing and by post to the superintendent of police concerned, who, if satisfied, that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.(Section 154(3)).

It should be noted that the F.I.R. can be lodged by any person having information as about the commission of a cognizable offence. eg. In case of a murder, complaint can be lodge by an eye witness and he will be named as complainant in the F.I.R. Again in case, if the police officer receives complaint on phone, in that case, he can be named as complainant in F.I.R.

### 6.3) Important case Laws in relation to F.I.R.:

i) F.I.R. is not a substantive piece of evidence. It can be used for either to the corroborate or contradict to the maker of the F.I.R. ( Madhusudansingh V/s. State of Bihar AIR 1995 SC 1437)

ii) F.I.R. need not contain details of occurrence.

(Baldev singh V/s. State of Punjab AIR 1996 SC 272)

- iii) A Complaint cannot be refused to be recorded on the ground of territorial jurisdiction. : Refusal by the Police officer to record a complaint about cognizable offence on the ground that the said police station had no territorial over the place of crime would amount to dereliction of duty on the part of the police.

(state of Andhra v/s. Punati Ramulu AIR 1993 SC 2644

- iv) Delay in filing FIR cannot be ground to reject prosecution case, if delay is properly explained. (State of Haryana V/s. Manoj Kumar AIR 1994 SC 147)

After registering complaint, investigation will start in relation to the said complaint.

**II) N.C. :** N.C.. is a complaint in respect of Non-cognizable offence. Section 155 of Criminal Procedure Code, governs with registering of N.C.

The complaint is in relation to non-cognizable offence, in that case, police officer will enter complaint in a separate register maintained to register complaint in relation to non-cognizable offence.(Section 155) : In this case, officer however, will not give copy of the complaint to the complainant. He however, will issue a slip on which details of complaint no. and the date will be mentioned . Also on the back side of the said slip, instructions are given to aggrieved person to file a separate complaint with the Magistrate court within a period of six months from the date of lodging of the complaint with the Police officer. However, nowadays, with changed format of copy of N.C.'s, many police stations give the detailed copy of N.C., wherein all the information is available. It should be noted that in respect of complaint for non cognizable offence, the Police officer has no right to carry any investigation in this kind of complaints except with the order of the Magistrate. However, in case, case relates to two or more offences and in case one of them is cognizable, in that case, case is related to cognizable offence. (Section 155(4)). It should be noted that in case of non- cognizable offence, Police officer can register complaint only in relation to the offence which takes place in its jurisdiction. (Section 155(1)). Even though Police officer has no right to conduct any investigation in respect of non- cognizable offences, many a time, as a preventive measures, police officer will call the named accused in the presence of the complainant in the police station and the accused will be warned.

#### **6.4) Powers and rights for Investigation.**

In respect of cognizable offences, police officer( Investigating Officers) is given wide Powers. Section 156 to 176 of the Criminal Procedure Code, 1973 provides for manner in which police officers should conduct investigation, his powers to call for the witness, to collect necessary evidences, to conduct inquiries, to get expert's opinions, to send report to the magistrate during the course of the investigation and on concluding of the Investigation. To prevent any interference in conducting investigation, even courts are having no powers to give any directions as about the manner in which police officer need to conduct investigation. In the course of Investigation, Police officer conducts panchnamas, records statement of witness, takes the charge of objects, sent objects for the opinion of the forensic science laboratory, obtains opinions of experts in respect of finger print and hand writing and also try to establish a motive behind commission of offence. During the course of investigation, police officer generally will try to establish Motive, Weapons used, kind of Injuries caused and accused persons behind commission of offence, admissions of accused and confessions, if any.

#### **6.5) Arrest of the Accused during the course of Investigation.**

In the course of Investigation of cognizable and Non- Bailable offence, if police officer, comes across with any accused, then he needs to arrest the accused and produce within 24 hours before the magistrate for taking his custody for the purpose of further investigation. The accused requires

to be taken before the magistrate as in respect of non Bailable offences, only magistrate is having powers to grant bail to the accused. Even session court and High court are having no powers to grant bail to the accused. They have only powers to consider the order of Magistrate, if any appeal is filed against the order of the Magistrate before them. On production of the accused before magistrate, if he finds it necessary, then he may grant custody of the accused to the Police officers. When on arrest, any accused is present before magistrate to decide about his further custody, at that time, he can apply to the magistrate to grant him bail. Provisions of Bail are discussed in a separate chapter

### **6.6 ) Responsibility of Police Personnel towards Citizen:**

Realizing, harsh treatment given to a civilized citizen, and to check conduct of the Police Officers, certain norms are laid down by various authorities including Supreme Courts. These authorities have laid down certain norms which a Police officer needs to follow while dealing with Citizens of India. These mandatory norms includes information to be put on every police station on its notice boards, procedure to be followed while registering complaints, procedure to be followed while arresting any person, maintenance of important records in relation to the custody, transparency in the conduct of Policemen with the detainees in custody etc. National Police Commission has laid down following norms for effective enforcement of fundamental rights:

- 1) An arrested person being held in custody is entitled, if he requests to have one friend, relative or other person who is known to him or likely to take an interest in his welfare told as far as practicable that he has been arrested and where he is being detained.
- 2) The Police officer shall inform the arrested person when he is brought to the police station of this right.
- 3) An entry shall be required to be made in the diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22(1) and enforced strictly.

It shall be duty of the magistrate, before whom the arrested person is produced to satisfy himself that these requirements have been complied with.

Supreme Court has also laid down certain guidelines in its verdict given in case of D.K.Basu, V/s. State of West Bengal (AIR 1977 Sc 610) to comply with following requirements:

1. The Police personnel carrying out the arrest and handling interrogations of the arrested should bear accurate, visible and clear identification and name tag with their designations. The particulars of all such police personnel who handle interrogations for the arrestees must be recorded in a register.
2. The Police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respected person of the locality from where the arrest is made. It shall be countersigned by the arrestee and shall contain the time and date of arrest.
3. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside of the district or town through the legal aid organization in the district and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
5. The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put unless arrest or is detained.
6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrest is made.
7. The arrestee should where he so requests, be also examined at the time of his arrest of major and minor injuries, if any, present on his / her body, must be recorded at that time.
8. The 'Inspection Memo' must be signed both by the arrestee and the Police Officer affecting the arrest and its copy provided to the arrestee.
9. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the Panel of approved doctors appointed by Director Health Services the concerned state or Union territory, Director Health Services should prepare such a panel for all Tehsils and District as well.
10. Copies of all the documents including the memo of arrest, referred above, should be sent to the concerned Magistrate for his record.
11. The arrestee must be permitted to his lawyer during interrogation, though not throughout the interrogations.
12. A Police control room should be provided at all district and state headquarters, where information regarding the arrest and place of custody of the arrestee shall be communicate by the officer causing the arrest, within 12 hours of effecting the arrest and at the Police control room it should be displayed on a conspicuous police board.

The Supreme Court has further stated in its order that failure to comply with above requirements, will render concerned police officer for the actions in relation to contempt of Court.

The Home Department of Maharashtra State has also Published The Citizen's Charter wherein in respect of different Acts of the Police Department , some guidelines are issued. Important amongst them are:

**i). Registration of Complaint by the Police Officers (Page 11 of charter)**

1. Where should a citizen register his complaint
  - a) Even if the crime is committed in an area beyond the limits of any police station, a complainant cannot be forced to go the concerned Police station. A citizen can register his complaint at any Police station.
  - b) After registering a complaint of a cognizable offence, a copy thereof must be given to the complainant free of cost.
  - c) In case of non cognizable offence, the Police do not have a right to investigate the complaint without the orders of the court.

## **ii. Work entrusted to Police stations (Page 13, Charter)**

At the Police station, immediate cognizance is taken of the complaint received there and action is initiated on it. Some Special noteworthy features in this respect are as under:

- a) Every citizen has a legal right to lodge an oral or a written complaint of an offence to the station House Officer or his superior at any Police chowky or a Police station.
- b) It is duty of all the Police officers and the Police personnel to give a patient hearing to all citizens who visit or come to complaint at the Police stations, to take immediate legal action thereon and to clearly inform them about the action taken on the complaint.
- c) After the complaint of a cognizable offence is given, it should be immediately registered and it is the right of a complainant to receive a copy of the First Information Report(FIR). Similarly, in the case of non cognizable offence registered is given to the complainant and he is advised to approach the court.
- d) Police cannot evade registering an offence on the plea of want of jurisdiction. It is necessary that the offence is registered and the same is sent to the Police Station concerned.
- e) To understand the mode of working of the different sections of the police station, boards displaying general information in this regard are displayed in the Police station as well in the Office of the Deputy Commissioner of Police. In addition to it, notice boards displaying information in regard to the Protection of Human Rights have also been displayed for the benefits of the citizens.

The station House Officer also acts as Public Relation Officer with a view to assist the common man in getting information about the general working of the police station and also for the immediate redressal of their complaints or grievances whenever they come to the police station.

If the complainant is not satisfied about the action taken on his complaint by the station House Officer, he should approach the Senior Police Inspector. Despite this, if he is not satisfied, he can approach the Assistant Commissioner of Police/ Deputy Superintendent of Police or the Deputy Commissioner of Police or the Superintendent of Police.

## **6.7) List of Registers to be maintained by Police Station :**

- |                              |                                |
|------------------------------|--------------------------------|
| 1) Station Diary             | 16) Dispatch Book              |
| 2) N.C. Register             | 17) Officers Transist Register |
| 3) Crime Register            | 18) Externment Register        |
| 4) Local Acts Register       | 19) Suspect Register           |
| 5) Lock up Register          | 20) Finger Prints Register     |
| 6) Mudemmal Register         | 21) Police Notice Files        |
| 7) Traffic Accident Register | 22) Pay Sheet                  |
| 8) Officers Order Book       | 23) Surety Register            |
| 9) Court Book                | 24) Traffic Offence Register   |
| 10) S.O. (6) Register        | 25) In Charge Duty Book        |

- 11) Adult Missing Register
- 12) Wireless Message Book
- 13) Telephone Message Book
- 14) Inward Register
- 15) Outward Register

- 26) Officers Movement Diary
- 27) Officers Short Leave Book
- 28) Standing Orders
- 29) Bit Diary

## Chapter -7

### COMPLAINT BEFORE CRIMINAL COURTS

#### 7.1) Complaint Before Magistrate.

In respect of any offence, complaint can be made before the Magistrate Court. It should be noted that first complaint cannot be lodged before Session Court or High Court. They generally are Appellate Courts or Trial Courts to conduct trial in respect of certain offences.

Section 200 to Section 204 of Criminal Procedure Code deals with the Complaint before the Magistrate. The complaint filed before the Magistrate is generally known as Private Complaint.

According to section 200, a person can file complaint directly to the magistrate also. If magistrate receives any complaint, in that case he has to proceed with the said complaint. Magistrate cannot refuse to accept complaint and on receiving complaint, to deal with the complaint. According to section 200, complainant needs to sign complaint.

#### 7.2) Procedure to be followed on receipt of Complaint.

On receiving complaint, the Magistrate has to take the cognizance of the Offences made out in the complaint. The Provisions of Section 200 of the Criminal Procedure Code are as follows:

**Section 200:** A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate.

Provided that, when the complaint is made in writing, the magistrate need to examine the complainant and the witnesses-

- (a) if a public servant acting or purporting to act in the discharge of his official duties or a court has made the complaint or
- (b) if the magistrate makes over the case for inquiry of trial to another magistrate under Section 192;

Provided further that if the Magistrate makes over the case to another Magistrate under Section 192 after examining the complainant and the witnesses, the later Magistrate need not reexamine them.

**Section 200** is to be read along with section 190 of the Criminal Procedure Code.

Accordingly, the Magistrate before proceeding further in respect of the complaint filed, he need to judicially apply his mind in respect of the contents of the complaint filed and has to see that the complaint constitutes an offence. Once the Magistrate satisfies that the complaint prima facie speaks about the commission of the offence, thereafter he will proceed to comply with the further proceedings to deal with the complaint.

#### 7.3) Order to conduct Investigation u/s. 156(3):

However, in respect of the cognizable offences, if the Magistrate is of the opinion that further investigation is required to be conducted by the Police Officer, in that case, he will forward complaint to the concerned Police Officer to carry out further investigation as provided u/s. 156(3) of the Criminal Procedure Code.

When directions are given to the Police Officer to conduct the Investigation under section 156(3) of the Criminal Procedure Code, in that case, the Police officer after conducting his investigation,

he will give his report u/s. 170 of the Criminal Procedure Code to the Magistrate. If after investigation, Police officer is of the Opinion that the cognizable offence as mentioned in the complaint is committed by the offenders, in that case, the Police officer will arrest the offenders and produce them before the Magistrate for the purpose of further actions. the offence committed is bailable offence, in that case, the Magistrate will release the Accuse on bail after taking proper security as he deems fit and proper.

However, if the alleged offence is non-bailable, in that case, considering facts and circumstances, the Magistrate may not release the accuse on bail and instead, send them either for Police Custody or Jail custody for further investigation and interrogation.

It should be noted that the Magistrate could send the complaint for further investigation by the Police officers u/s. 156(3) of the Criminal Procedure Code only when he has not taken the cognizance of the Complaint. If he sends, after taking the cognizance, in that case the decision of the Magistrate is illegal and it can be set aside by the High Court, in case application is filed u/s. 482 of the Criminal Procedure Code.

#### **7.4) Case Laws:** Gautam V/s. State Of Karnataka 1992 Cr. L. J. 2897(Karn)

Let us now see what happens when the Magistrate takes the cognizance of the Complaint.

In that case, he needs to examine the complainant and witnesses on oath. The purpose behind examining the complainant on oath is to check his veracity in respect of the complaint. It is presumption that a person will not say a lie on Oath.

**7.4A) Case Law:** The Magistrate is bound to examine a complainant and then can either issue summons to the accused, or order inquiry u/s. 202 or dismiss the complaint under section 203. (Umer Ali V. Safer Alli (1986) 13 cal 334.)

#### **7.5) Order for Inquiry u/s. 202 :**

After the examination of the complaint, if the magistrate is of the opinion that further inquiry may be conducted in respect of the complaint, in that case, he may pass an order for conducting of the inquiry by any person as provided u/s. 202 of the Criminal Procedure Code. It should be noted that under section 202, the word used is any person and as such it is not necessary that the Magistrate should direct only to the Police Officer to conduct the inquiry. Even the Judicial Clerk of the court can also be appointed to conduct an inquiry.

Another important point which needs to be kept in mind is that till the time the Magistrate has not decided as about whether the Complaint is to be proceeded for trial, till then the accused mentioned in the complaint cannot have any right of hearing. The accused may be allowed to remain present at that time but they are not having right of hearing.

#### **7.6) Dismissal of Complaint :**

Section 203 of the Criminal Procedure Code, deals with the dismissal of the complaint. If after examining the complaint and witness on oath and after referring the inquiry report, in case, any inquiry was ordered to be conducted and after referring to the complaint, if magistrate is of the opinion, that no offence as alleged for is made out by the complainant in that case he will dismiss the complaint.

However, Magistrate cannot dismiss complaint suo- motto. The complainant has a right to be heard before Magistrate dismisses complaint filed by the complainant.

It should be noted that even though, if the complaint is rejected, in that case, in every special circumstances, fresh complaint could be made before the same Magistrate or the Chief Magistrate.

### **7.7) Issue of process :**

Section 204 of the criminal Procedure Code, 1974 deals with the procedure for the issue of the Process.

Last stage in the case of complaint filed before the Magistrate is of issue of the Process against the Offenders. If after taking cognizance and if in case investigation / inquiry is ordered and in that case, on the basis of the report submitted by the person conducting investigation / inquiry or in other cases, on the basis of averments made in the complaint and documents produced before him, if the Magistrate is prima facie satisfied as about the commission of the offence by the person named as the offenders, in that case, the Magistrate shall issue process against the accused person in following manner:

- (a) if the case appears to be a summons case, he shall issue summons for the attendance of the accused; or
- (b) If the case appears to be a warrant case, he may issue a warrant or if he thinks fit, a summons for causing the accused to be brought or to appear at a certain time before such magistrate or (if he has no jurisdiction himself) some other magistrate having jurisdiction.

In relation to the issue of the process following further provisions should also be kept in mind:

- (a) Process cannot be issued unless proper prescribed process fee is paid
- (b) If in the complaint, list of all the witnesses on which prosecution is relying upon is not given, in that case, the summons / warrant cannot be issued. (section 204(2)). The reason behind this is that fair opportunity need to be given to the accused to prepare himself to defend his case.
- (c) Lastly, when the complaint is made in writing, in that case, every summons / warrant should go along with the copy of the complaint (section 204(3)).

In the copy of the summons / warrants issued, the following details generally are available.

- (a) The name and address of the court issuing the summons / warrant.
- (b) The date on which the accused need to remain present before the court;
- (c) The offence in respect of which the accused shall be tried and
- (d) Seal of issuing court and signature of the judicial clerk of the issuing court.

### **7.8) Service of Warrant / Summons:**

Generally warrant / summons, as provided under chapter VI of the Criminal Procedure Code, are served by the Police personnel. However, in case of summons, if specific act prescribes for alternate mode of service of summons, in that case, summons can be serviced in that manner. eg. in case of offence related to cheque Bouncing, in Negotiable Instrument Act, 1881, it is provided that summons can be served through Registered A.D., or by way of Speed Post, in that case, summons can be served by these mode also.

### **7.9) Service Report of the Summons:**

However, it should be noted that before proceeding with the trial, report of the serving of the Summons / Warrant should be on the record of the issuing court. If, in absence of the accused, court proceeds without receiving report of the service of the summon / Warrant, in that case, proceeding of the court is said to be illegal.

### **7.10) What happens on due serving of Summons / Warrant:**

On due serving of the summons, if the accused and his pleader / advocate remains absent on the date fixed by the court, in that case, the complainant can file an application for the issue of warrant against the accused. On receiving application, the court may pass an order for the issue of either Bailable warrant or Non- Bailable warrant.

## Chapter - 8

### TRIAL IN CRIMINAL COURTS

#### 8.1) Trial in Criminal Courts :

On the basis of the complaint, to decide whether accused named therein has committed offence or not, it needs to be proved by leading various evidences and examining witnessess. This is known as trial by which court tries to decide whether accused has committed any crime or not. It is very important part of the Judiciary system. If on conclusion of trial, after considering various evidences which are brought before the court and after considering various statement of the witness made, if court decides that the accused has committed crime, in that case the court thereafter will decide about the quantum of punishment to be given to the accused. Trial is classified in two heads as

- a) Trial of Warrant Cases.
- b) Trial of Summons Cases.

Magistrate Courts conduct trial of Summons Cases, including summary trial. However, Session Court or Magistrate Court can either conduct trial, in respect of Warrant Cases. The Jurisdiction of the Court who can conduct the trial is given in first Schedule of Indian Penal Code.

In Case of warrant cases on police report, trial in sessions Court is conducted by the State through public Prosecutor and in Magistrate Court through, Prosecutor. In Sessions Court, the Complainant cannot engage his own advocate as the trial can only be conducted through Public Prosecutor (sec .225). However, in case of Magistrate Court, even in case filed through police report, Complainant has a right to engage his own advocate in place of prosecutor to conduct a trial.

**In any trial, Generally following steps are involved:**

#### 8.2) Recording of plea of the accused:

On accused coming to court in response to summons / warrant or produced by police, court has to ensure that accused has received all the documents like police report, F.I.R, Statement of Witness. In case of private complainant, the accused is entitled to receive copy of complaint filed against him. After ensuring that the accused is given all the necessary documents, the court will fix up charges against the accused. The procedure is that the judge / Magistrate will read out charges and explains to the accused various charges charged against them. The Judge / Magistrate, thereafter records plea of the accused by finding out whether accused is pleading guilty or not. In other words, the accused is asked whether he is accepting the offences charged against him or not. In case, accuse mentions that he is pleading guilty, in that case, the judge/ Magistrate will pronounce punishment immediately. But in case, the accused is not pleading guilty, in that case, judge will fix up a new date from when trail will commence and the prosecution will start examining their witness and lead their evidences before court.

#### 8.3) Chief Examination of the Prosecution (complainant's) witness:

Next step is of the examination of the prosecution / Complainant's witness. The Prosecution has right to examine sufficient number of witness. In case of Police case, Prosecution can examine only those witness in respect of which police have recorded statement u/s. 162 of Criminal Procedure Code, 1973. The Prosecution or Complainant will conduct Chief Examination of their witness. These witness are person having knowledge of facts or persons having conducted any

Investigation or Experts of any field or Medical Personnel etc. Various provisions in relation to the method in which chief examination is to be conducted is discussed in section 138 of The Evidence Act. With the help of the Chief Examination, The Prosecution / Complainant tries to prove its case and lead its evidence.

### **Cross Examination:-**

After the Prosecution / Complainant has brought their facts / objects on record, sec. 138 of the Evidence Act provides for the Cross Examination of these witnesses. The Cross Examination of the prosecution witness shall be conducted by the Defence (Advocate of the Accused). The purpose behind the conducting of Cross Examination is.

- (a) To impeach the creditworthiness of the witness.
- (b) To test the veracity of the witness.
- (c) To discover who the witness is and what is his position in his life.

It should be noted that the testimony of any witness is not legal evidence unless it is subject matter of

### **Cross- Examination**

( Ram Kumar V/s King Emperor (1936) 12 luck .553.

Conducting of cross- examination is an Art. It has two side Effects. It either can help to reverse the case of the prosecution or to establish the case of Prosecution.

It is seen that many a times, Advocate of the prosecution witness does not remain present while defence conducts cross- examination of prosecution / complainant's witness. This really can prove fatal to prosecution case, as the defence advocate by exceeding his limits, will bring irrelevant facts on records and thereby weakening the prosecution case. Also the defence Advocate by putting misleading questions to the prosecution witness can confuse the Prosecution Witness.

### **8.4) Re – Examination of the Prosecution Witness:**

If during course of cross- examination, any ambiguity is resulted, in that case by conducting Re- Examination, amguity can be cleared. However, The Evidence Act, does not permit to conduct re-Examination to fill up lacuna, which are resulted by not bringing certain facts during chief Examination. It should also be noted that after Re- Examination, Defence do not get a chance to cross Examine unless a new fact has come on record.

### **8.5) Closing of evidence of Prosecution Witness :**

After Examining all its witness, the Prosecution / Complainant has to declare that they are closing their Evidence by filing pursis in the court. It should be noted that in normal course, if the prosecution / Complainant has missed his bus by not examining any witness when they were entitled, they cannot later bring any witness for Examination. However, there is an Exception to this rule, which is provided by sec. 311 Of Criminal Procedure Code. This section allows recalling of witness by either party at any stage of trial, in case it is required for the just decision of the case. The party who wish to recall the witness, need to make an application u/s 311 of the Cr.P.C.1913, praying to allow witness to be recalled for the Examination. If the Court is Satisfiesd that recalling is essential for just decision of the case and is not to fill up any lacuna in that case. It can allow application of either of the party.

## **8.6) Recording of the statement of Accused by the Judge/ Magistrate. (sec 313):**

After the prosecution has closed its Evidence, the Judge/Magistrate shall examine the Accused in respect of the Evidence which has come against the accused. This is mandatory provision. During the Trial, Judge / Magistrate can examine the Accused at any stage. The Accused is not examined on oath .The Purpose behind Examining the Accused u/s .313 is to understand the truth of the adverse Evidence Against the Accused that has come on record. In the case of Chandu lal V Puran mal, 1989 Cr CJ 296 AIR 1988 SC 2163, it is held that the purpose behind the Examination of the Accused is for the purpose of enabling him to explain any circumstances appearing in evidence against him. In another case, State Of Kerala V/s R.Nair 1987 Cr CJ 1257 (Ker), it was held that when the accused was questioned u/s.313, and some questions were not put to him, in that adverse Evidence in relation to those question, cannot be held against the Accused . It should also be noted that, the questions put u/s.313 should be clear and properly explained to the Accused. It should also be noted that one lengthy question cannot be put to the accused to cover many facts in one question. During the course of recording of statement, the Judge / Magistrate also finds out from the Accused as about the witness which accused is planning to examine for his defence.

## **8.7) Examination of the Accused Witness:**

The Next step is for the Examination of the Witness of the Accused on whom he relies upon for his defence.

It should also be noted that accused can examine himself on oath for his own defence. Section 315 of Cr. P. C 1913 says that accused person is a competent witness. However it should also be noted that Examination of accused himself for his defence is not mandatory. This fact is clear from sec 315 (1) (b) which read as follows,

**“ His failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same time”.**

The Examination of the defence witness may also be carried out in similar manner, in which prosecution / Complainant's witness are Examined. In other words, Procedure of Chief Examination, Cross- Examination and Re-Examination of the witness is to be carried out.

## **8.8) Closing Of Accused Witness:**

When the accused completes Examination of his witnesses, he needs to file a pursoris with the court with a request to allow him to close his Evidence.

## **8.9) Re-Calling of Witness :- (sec.311)**

In case, Either of the party, after Examination of their witness realises that some facts are left out while Examining, the Witness or after closing Evidence, it realises that additional witness is required to be Examined to bring material facts before the court , in this that party can file an application u/s.311of Cr.P.C,1913 for recalling of the witness . The Court may allow said application, if in its opinion, recalling is essential for just decision of the case.

## **8.10) Arguments:**

After both the parties, have completed leading their evidences, case will be kept for hearing arguments from Advocates of both the parties. During the course of the arguments, both the parties will by leading their arguments in respect of materials, which has come on record through Evidences, will try to prove their case. Arguments can be oral as well in writing.

### **8.11) Judgement:**

After completing with the evidences and hearing both the parties, court delivers judgement. Section 353 to 365 of Cr.P.C. 1973 deals with the various provisions related to delivering of the Judgement by the court.

This section provides that it is obligatory to deliver Judgement in open court immediately after termination of the trial. It describes the language in which Judgement shall be pronounced the contents of the judgement and reasoning of the arriving to a conclusion.

It also says that in case, if the judgement by which the court convicts the accused then the court in its Judgement shall include punishment to be given to the accused. The important part of the Judgement is the mandatory provision to record say of the accused before pronouncing punishment and after court declares that it has finds accused as guilty. Section 358 of the Cr.P.C.,1973 empowers, magistrate to compensate the accused, if it founds that arrest of the accused by the police officer was caused without having sufficient reason against him. Whereas Section 359 empowers, Magistrate to declare compensation for the complainant, in case of Non-Bailable offences.

### **8.12) Order to suspend the execution of the sentence :**

Section 389 Of Cr.P.C ,1973 provides for powers of the court to suspend the Execution of the order of Imprisonment passed in its Judgement. Accordingly, when any accused, who is convicted by sentence of Imprisonment by the court then, in such cases, in certain circumstances as provided in this section, he can apply to the same court for releasing him on bail after the sentence is passed. In these Circumstances, the Court will release the accused on Bail on certain terms and conditions, which it deems fit and proper.



## Chapter -9

### APPEAL, REVISION AND REFERENCE

#### **Appeal, Revision and Reference :**

Any order of the subordinate court is subject to review or appeal before the Higher Courts. Section 372 to 405 of the Criminal Procedure Code deals with the Appeals, Revision and Reference.

Section 375 provides that no appeal can be made in respect of order which is passed when accused pleads guilty.

Section 376 provides that no appeal can be filed in respect of Petty cases. Appeal lies against the judgement or order of a criminal court as provided by Criminal Procedure Code.

Revision lies against the order of subordinate court except interlocutory order. Eg. in case, if the accused is not satisfied in respect of the order for the issue of process against him, in that case he can file revision application against the said order.

Appeals / Revision can be filed either in High Court or in session court depending upon the court has passed order, which is under challenged.

Generally time limit for filing of Appeal and Revision is of 30 days. However, if there is delay in filing, in that case by making separate application for condonation of delay, delay caused can be condoned.

## Chapter - 10

### PROVISIONS RELATED TO BAIL

As per Criminal Laws, accused needs to be arrested in respect of Non- Bailable Offences. If person is arrested by Police Officer, in that case, arrested person is required to be produce before the Magistrate within 24 hours of his arrest to decide about his custody. At the time when the accused is produced before the magistrate , he can apply to the court to grant him bail. It should be noted that in respect of Non- Bailable offences , when any person is arrested , in that case only Magistrate has initially powers to grant him bail. The Provisions related to bail are discussed herein under. Section 437 of Criminal Procedure Code, 1973 deals with the provisions of granting of Bail.

#### **Section 437 : When bail may be given in non- Bailable Offences:**

- (1) When any person accused of, or suspected of, the commission of any non- Bailable Offence is arrested or detained without warrant by an officer incharge of Police station or appears or is brought before a court other than the High Court or Court of Session, he may be released on Bail, but:-
  - (i) Such person shall not be released if there appears reasonable grounds for believing that he has been guilty of an offence Punishable with death or imprisonment for life.
  - (ii) Such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non bailable and cognizable offence:

Provided that the court may direct that a person referred to in clause (I) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the court.
- (2) If it appears to such officer or court at any stage of the investigation, inquiry or trial, as the case may be, that there are no reasonable grounds for believing that the accused has committed a non Bailable Offence, but there are sufficient ground for further inquiry into his guilt, the accused shall, subject to the provisions of section 446 A and pending such inquiry, be released on bail, or, at discretion of such officer or court, on the execution by him of a bond without sureties for the appearance as hereinafter provided.
- (3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to 7 years or more or of an offence under chapter VI , chapter XVI or chapter XVII of the Indian Penal Code ( 45 of 1860 ) or abetment of, or

conspiracy or attempt to commit ,any such offence, is released on bail under sub-section (1), the court may impose any condition which it considers necessary —

- (a) In order to insure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or
  - (b) in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or
  - (c) Otherwise in the interests of justice.
- (4) An officer or a court releasing any person on bail under sub-section (1) or sub-section (2) , shall record in writing his or its reasons or special reasons for so doing.
- (5) Any court, which has released a person on bail under sub-section (1) or sub-section (2), may, if it considers it necessary so to do , direct that such person be arrested and commit him to custody.
- (6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case , such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.
- (7) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgement is delivered, the court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

### **439. Special powers of High Court or Court of Session regarding bail.**

- (1) A High Court or Court of Session may direct –
- (a) That any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;
  - (b) That any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:
- Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the court of Session or which though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the public prosecutor unless, it is for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.
- (2) A High Court or Court of Session, may direct that any person who has been released on bail under this chapter be arrested and commit him to custody.

These two sections are distinguished from each other. Sections 437 of the Code of Criminal Procedure , 1973 limits the jurisdiction of the Magistrate in the case of offences punishable with death or imprisonment for life except in the case of children, women ,sick and infirm persons. On the other hand it will be observed that Section 439 of the Code does not prescribe any such limitation on powers of the court of Session or High Court. As we have already discussed above, the bails have to be granted by using the discretion judiciously and not indiscriminately or arbitrarily.

It may be made very clear to the learned readers that principles governing the grant of bail under sub-section (1) of sections 437 & 439 are different from the principles governing the cancellation of bail under sub-section (5) of section 437 and sub-section (2) of section 439 of the code. The court has the discretion to grant bail subject to certain conditions imposed on the accused. In granting bail to former chief minister, in Jagannath Mishra V/s. State of Bihar ,1999 Cr.L.J.3527, the Supreme Court released him on bail subject to the conditions that:

- (a) He shall not directly or indirectly make any inducement , threat or promise to any person acquainted with the facts of the case.
- (b) He shall remain present before the court on the dates fixed for hearing of the case. If he wants to remain absent, he shall take prior permission of the court. He shall not insist upon the proceedings being held up in view of his absence.

In this case the Supreme Court was satisfied that the accused had made out a case for releasing him on bail. And thus by setting aside the impugned order passed by the High Court , the Supreme Court granted him bail with certain conditions as mentioned above.

## Chapter - 12

### SOME IMPORTANT JUDGEMENTS

#### 12.1) F.I.R.

##### **A.I.R 1997 SUPREME COURT 496**

(From: Andhra Pradesh)

A.S. ANAND AND K.T. THOMAS, JJ.

Criminal Appeals Nos. 701 and 701-A of 1992, D/-26-9-1996.

Bandlamuddi Atchuta Ramaiah and others, Appellants v. State of A.P., Respondent.

(A) Evidence Act (1 of 1872), S.21, S.24 - Statement in F.I.R. furnished by an accused cannot be used against another accused- Statement inculpatory - Cannot be used against even maker unless its maker offers himself as a witness in trial - Its limited use is as an admission against its maker alone unless same does not amount to confession.

(Para 16)

#### 12.2) Hurt / Grievous hurt.

##### **LAKRISHNA ERADI, JJ.**

##### **Criminal Appeal No. 83 of 1984, D/- 1-4-1987.**

State of Karnataka, Appellant v. Shivlingaiah, Respondent.

Penal Code (45 of 1860), S.300 Cl.Thirdly, S.304 Part II, S.320, S.325, S.323 - Squeezing testicles of victim resulting in his death — Incident taking place suddenly and on spur of moment - Intention to cause death could not be attributed - S.300 Cl. Thirdly and 304 Part II not attracted - Accused convicted for causing grievous hurt and not simple hurt

##### **(From : Karnataka)**

A.P. SEN AND V. BALAKRISHNA ERADI, JJ.

Criminal Appeal No. 83 of 1984, D/- 1-4-1987.

State of Karnataka, Appellant v. Shivlingaiah, Respondent.

Penal Code (45 of 1860), S.300 Cl.Thirdly, S.304 Part II, S.320, S.325, S.323 - Squeezing testicles of victim resulting in his death — Incident taking place suddenly and on spur of moment - Intention to cause death could not be attributed - Ss.300 Cl. Thirdly and 304 Part II not attracted - Accused convicted for causing grievous hurt and not simple hurt

##### **AIR 1991 SUPREME COURT 517**

(From : Madhya Pradesh)

RANGANATH MISRA, M.M. PUNCHHI AND K. RAMASWAMY, JJ.

Criminal Appeals Nos.308 and 526 of 1979, D/-13-9-1990.

Jharu and others etc., Appellants v. State of M.P., Respondent.

(A) Penal Code (45 of 1860), S.300 - Murder - Evidence of eye-witness that accused was armed with spear - Medical evidence also supporting that one of the injuries found on deceased was

caused by spear - Accused convicted for offence of murder.  
(Para 2)

(B) Penal Code (45 of 1860), S.300, S.149, S.325 - Rioting - Grievous hurt - Death of person - Accused persons participating in rioting - However there was no evidence to point out person who had caused hurt - Accused persons convicted under S.325/149 and not under S.302/149.

### **AIR 1998 SUPREME COURT 466**

(From : Patna)\*

G.T. NANAVATI AND V.N. KHARE, JJ.

Criminal Appeals Nos. 357-58 of 1987, D/- 9-12-1997.

State of Bihar, Appellant v. Ramnath Prasad and others, Respondents.

Penal Code (45 of 1860), S.300, S.304, Part II, S.326 - Murder or culpable homicide - Proof - Accused alleged to have administered poisonous substance by way of 'prasad' to deceased and others who were on relay fast - Evidence of witnesses cannot be discarded on ground that their version was improbable - Finding of High Court that prosecution had not established guilt of accused based upon misreading of evidence - Motive to kill deceased not established by prosecution - Prasad given to deceased and others openly - No inference can therefore be drawn that accused had given 'prasad' with any intention to cause his death - However, accused have knowledge that he administered poisonous substance which was likely to cause grievous hurt and even death - Accused liable to be convicted under S. 304, Part II and under S. 326 for causing grievous hurt to other affected persons.

(Paras 11, 12, 13, 14)

### **12.3) Wrongful Restrain**

Criminal Appeal No. 34 of 1996 (arising out of S.L.P. (Cri) No. 1870 of 1994), D/- 11-1-1996.

Ms. Vijay Kumari Magee, Appellant v. Smt. S.M. Rao and others, Respondents.

Penal Code (45 of 1860), S.341 - Wrongful restraint - Necessary pre-condition is person concerned must have right to proceed - Complainant teacher a licensee of room in hostel - Cannot have right to live after termination of licence - Hence, school authorities cannot be charged for wrongfully restraining her from entering to the said room.

### **12.4) Criminal Trespass**

- 1) When right of entry exists, entry without complainants permission or consent is no offence. AIR 1923 Rangoon 157 24 CrLJ 929.
- 2) Owner is not entitled to re-enter on the land without the tenancy being determined - Re entry amounts to trespass AIR 1928 Rangoon 245.
- 3) Where a person enters upon the land of another under bonafide claim of right, without intending to intimidate, insult or annoy, he is not guilty, though he has no right to land. 65 IC 432, 43 Cal 1143.
- 4) Entry upon land of another under a bonafide claim of right does not constitute trespass - as specific intent is absent. AIR 1936 Bom 15- AIR 1938 Laho 848

- 5) When a person claiming title to a property whether his title is good or bad, enters without legal justification he is guilty. 11 Lah. 238 AIR 1930 Lah 660
- 6) A person who forcibly ejects a tenant holding over is guilty although lease permits shall re-entry after termination 36IC 962, 18 Cr LJ 402.
- 7) A complainant in possession of land claimed occupancy rights Landlords entered upon land to compel him to give up possession held guilty.  
(AIR 1930 Lah 666 – 7 CrLJ 919 81 IC 535.)
- 8) If the property was in possession of mortgagee, entry by mortgager without a suit for avoidance of mortgagee is criminal trespass.  
(AIR 1934 All 1025(1027))
- 9) Where the decree for ejectment of tenant was executed before the time fixed under section 94 of the Agra tenancy Act, but the tenant subsequently reentered upon land – held not guilty – as he was illegally ejected –  
(29 Cr. L. J. 1096)
- 10) If there is not the intent specified in the section, it is not criminal trespass but a civil trespass.  
(75 IC 292, AIR 1924 Oudh 297, AIR 1937 Rangoon 117.)
- 11) Civil trespass is mere encroachment without criminal intent specified in section.  
(441 18 All. 395, AIR 1924 Rangoon 106)

## 12.5) Cheating.

- 1) Dishonest intention is necessary for attempt to cheat.  
14 Cr. L. J. 120.
- 2) Setting fire to car and submitting false information to insurance company to obtain money falls under section 420/511.  
AIR 1934 Pesh 6735 Cr. L. J. 1345.
- 3) Fraudulent entering in a book of account is attempt to cheating . 42 mad 114, Air 1923, Port 307, 23 Cr. L. J. 108.
- 4) Accused make a claim against insurance company for much more than his loss is guilty u/s. 420 – 25 Cr. L. J. 1175.
- 5) Subsequent non fulfillment of premises is no cheating unless dishonest intention exists from before. Ramesh Kumar Jain V/s Raghubans Mani Prasad .  
1977 Cr. L. J. 463.
- 6) Difference between 417 & 420  
52 CrLJ 1222 – AIR 1951 ASS 122  
under 417 – on deception no property is transferred.  
420 – property is transferred.
- 7) Obtaining money by cheating is offence u/s. 420 and not u/s 417.  
AIR 1933 Lah 1009 – 147 IC 737.

## 12.6) Forgery.

AIR 1997 SUPREME COURT 3424

(From : Bombay)\*

M.M. PUNCHHI AND K. VENKATASWAMI, JJ.

Criminal Appeal No. 545 of 1993, D/- 24-7-1997.

Jibrial Diwan, Appellant v. State of Maharashtra, Respondent.

- (A) Penal Code (45 of 1860), S.471, S.465 — Forgery — Proof — Letters prepared on Letter Head of Minister by accused whereupon invitations were written to invite actors for cultural show — Letters did not bear signature of Minister — Neither any wrongful gain to anyone nor any wrongful loss to another is caused by delivery of forged letters — Act of accused could not be termed to have been done dishonestly — His conviction under Ss. 471 and 465 — Not proper. (Para 3)
- (B) Penal Code (45 of 1860), S.417 — Cheating — Letters prepared on Letter Head of Minister by accused whereupon invitations were written to invite actors for cultural show — Letters did not bear signature of Minister — Act of accused did not cause or was likely to cause harm to any person in body, mind — His conviction under S. 417 — Not proper. (Para 4)

AIR 1996 SUPREME COURT 2326

K. RAMASWAMY AND G.B. PATTANAIK, JJ.

Writ Petn. (Cri.) Nos. 356-57 of 1993, D/- 17-1-1996.

Afzal and another, Petitioners v/s. State of Haryana and others, Respondents.

- (A) Penal Code (45 of 1860), S.192 - Fabrication of false evidence - Police officer, accused taking delivery of draft of counter-affidavit from standing counsel for being signed by his superior for filing in Supreme Court - Asking a police official to forge signature of his superior on carbon copy of counter - affidavit - On refusal, he contacting his superior and latter directing official asked to forge his signature - Official acting accordingly - Accused sending carbon copy with others for filing it in Supreme Court - Said affidavit containing false averments - Accused officer present in Supreme Court premises along with officer whose signature was forged on date of filing affidavit - Accused is guilty of offence under S. 193 - He abetted officer to forge signature of his superior. (Paras 22, 32)
- (B) Contempt of Courts Act (70 of 1971), S.2(b) - Criminal contempt - Superintendent of Police in charge of criminal administration, first, filed fabricated counter-affidavit to obtain favourable order - Later, perceiving adverse atmosphere to him, fabricating further false evidence to show that his subordinate had forged his signature without his knowledge and filed fabricated document - He is guilty of committing contempt of judicial process. (Para 31)
- (C) Constitution of India, Art.129 - Contempt of Courts Act (70 of 1971), S.12 - High ranking police officer guilty of committing contempt of proceedings of Supreme Court - Not making candid admission nor tendering unqualified apology - Sentenced to rigorous imprisonment for six months.

## Chapter -13

### QUESTIONS AND ANSWERS

**Q.1. Can the office bearers of a Co-operative Society disconnect essential services, if a member of society does not pay the society dues?**

**Ans :** In normal course, they cannot do so. However, if there is wrongful use of the said facility or in the larger and bonafide interest of the society, in our opinion they can do so. The said fact is also provided in section 12 A (1) of MOFA. However it is in the interest of the office bearers not to disconnect essential services. The abovesaid act can amount to taking the law in ones own hand.

**Q.2. The society is collecting exorbitant amount from members under the head non occupancy charges. The office of the Commissioner for Co-operation has issued a circular dated first day of August 2001 with states that non- occupancy charges should not be in excess of 10 per cent of service charges. If the society is collecting non- occupancy charges in excess of 10 per cent of service charges, would the same amount to extortion?**

**Ans :** Yes, if after giving due notice, society still continues to charge in that case, if said charge is coupled with any kind of threat by the Committee Members, in that case they will fall within the net of extortion (section 389 of I.P.C). and can be held liable for the same.

**Q.3. What should a member of a Co-operative society do if the office bearers of the society are restraining the member from parking his car inside the society premises? Would parking of vehicles inside the society premises amount to an essential service?**

**Ans :** As per provisions of D.C. Rules, the Builder needs to make provision for car parking space in respect of dwelling units of the Building and as such, if the car parking space is open space, the society is liable to demarcate parking place and allot it to the members on pro-rata basis. Parking of vehicles inside the society premises does not amount to essential service.

**Q.4. What should an individual do if the police authorities are not taking action against the complaint lodged by an individual?**

**Ans :** The Aggrieved person can file application before the Superintendent of Police and if he also refuses to accept , in that case , aggrieved person can file private complaint u/s. 200 of criminal procedure Code, 1973 before the Magistrate.

**Q.5. Who can lodge a private complaint?**

**Ans :** Any aggrieved person can file a private complaint.

**Q.6. Can the office bearers of a co-operative society disconnect cable TV. Is cable TV, an essential service?**

**Ans :** Since charges in respect of Cable TV is directly borne by the Member , Society has no right to disconnect the supply once permission is given for the installation of the cable. Also, if cable is shared by many other members of the society, in that case, it will be an offence of singling out a particular member can also be considered as an offence of committing a Mischief. Aggrieved member can file a criminal complaint for the offence committed u/s. 426 read with section 427 of the Indian Penal Code.

**Q.7. In what circumstances can an individual approach a night magistrate?**

**Ans :** One can approach night magistrates to obtain urgent orders. Normally urgent orders are obtained from night matters in connection with bail matters.

**Q.8. What will constitute an offence of cheating?**

**Ans :** Section 415 of Indian Penal Code defines an offence of Cheating . Accordingly, offence of cheating is committed when **“whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause or harm to that person in body, mind, reputation or property is said to cheat.”**. To establish an offence of cheating, existence of guilty mind at the time when inducements were made is required to be established by the complainant.

**Q.9. The society has wrongfully collected exorbitant amount from a member. What should a member do in such circumstances. Can he initiate action against the society under the criminal law? What should the member do to get back the above amount?**

**Ans :** The same would amount to an act of extortion, criminal breach of trust and mischief for which action can be initiated jointly and severally against the members of the managing committee.

**Q.10. What is the procedure of getting the case transferred from one magistrate’s court to another magistrate’s Court?**

**Ans:** Application has to be made to Chief Metropolitan Magistrate u/s. 410, in that case if he is satisfied with the bonafide reason of the Application, the C.M.M. will pass an order for the withdrawal of case from the said Magistrate and thereafter either may keep with him or assigned to other Magistrate having the jurisdiction to try the said offence.

**Q.11. Please explain in detail as to how a suit proceeds in a criminal court?**

**Ans :** In criminal courts suits are not filed but complaints are filed. The procedure involved is.

- 1) Filing of private complaint in Magistrate court.
- 2) Taking the Cognizance of the complaint by the Magistrate.
- 3) If it relates to the Cognizable and Non- Bailable offences, in that case the Magistrate can make an order for Inquiry to be conducted by the Police Officers U/s. 156(3) of Cr.P.c. Act,1073.
- 4) After taking the cognizance of the offence, Magistrate can pass an order for the Inquiry u/s. 202 of Cr.P.C.1973. This inquiry can be conducted by any person not necessarily only by a Police officer.
- 5) If no order for the inquiry is passed u/s. 202 of Cr.P.C. in that case, Magistrate even can pass directly for the issue of Process.
- 6) If after receiving report in respect of inquiry conducted u/s. 202 of Cr.P. C. Act, in that case Magistrate, on the basis of the report can take a decision in respect of issue of Process.

- 7) If the Magistrate decides not to issue a process, in that case, he will pass an order for the dismissal of the complaint after hearing the complainant
- 8) In respect of inquiry conducted u/s. 156(3) by the Police officer, the police officer will submit his report u/s. 172(3) of Cr.P.C.1973 to the Magistrate. If according to him, the accused has committed an offence in that case, he will arrest the accused and produce him before the magistrate. In case if he feels that there is no offence committed by the accused named therein, in that case, he will report accordingly to the Magistrate. On the basis of said report, the magistrate may pass an order for the dismissal of the complaint. The Magistrate can however, take the cognizance and issue the process, even though the police officer is of the other opinion.
- 9) After issue of Process , on the prescribed date, accused is directed to remain present in court.
- 10) On the prescribed date accused has to remain present and charges are framed against him in respect of alleged offence as mentioned in the complaint.
- 11) After charges are framed, prosecutor will examine his witness which will be cross examined by the Defence Advocate.
- 12) After prosecution closes his evidence, statement of the accused will be recorded by the judge / Magistrate as provided u/s. 313 of the Criminal Procedure code, 1973.
- 13) Thereafter, the accused will lead his evidence and witness
- 14) After the accused has examined his witness, they again will be cross examined by the Prosecution/ complainant's advocate. Each witness will be cross examined immediately after their chief examination.
- 15) When the Defence has completed with examining with his witness , he will close his evidence by making application in the court.
- 16) After both the parties complete examining of their witness and leading their evidences, arguments will be made by them in respect of their case .
- 17) After hearing arguments, judge/ Magistrate will give his judgement.

**Q.12 What should be done by the defaulting member, if the office bearers of a Co-operative Society have stopped the water line of a defaulting member?**

**Ans:** Can file a complaint for disturbing from the enjoyment of essential services.

**Q.13. Who can take the bail? In what circumstances does a police officer take a bail? What is the procedure with regards to taking a bail?**

- Ans:**
- a) In case of Bailable offences, if accused person is prepared to give bail, in that case, releasing him on bail is mandatory. This bail can be given either by the Police officer or by the Magistrate before whom the accused is presented. A Person can be released by Bail by executing personal Bail Bond or by depositing cash amount or offering sureties.
  - b) However in case of Non Bailable offences, the Magistrate has only right to release on bail on certain terms and conditions which he deems fit and proper. Police officer has no right to release accused on bail in case of Non – Bailable offences.

**Q.14. When is an arrest warrant issued by a criminal court? What is the procedure of cancelling an arrest warrant?**

**Ans :** When any person is directed to remain present in any Magistrate court on any particular date and if that person fails to remain present in that case magistrate can issue arrest warrant. When arrest warrant is issued against any person, in that case, by remaining present on any other day and making application for the cancellation of warrant, person can get his warrant cancelled.

**Q.15. What should be done if the accused is not available at his residential address?**

**Ans:** Summons will be pasted at the residence of the accused. And thereafter, accused can be declared as absconding, order for the proclamation may be obtained from the Magistrate court.

**Q.16. What is the procedure of issuing public advertisement as a mode of summons by substituted service?**

**Ans:** In Cr.P.C., there is no provision for the issuing of Public advertisement as a mode of summons. The Order declaring the accused as an absconding can be published in news paper.

**Q.17. What is the hierarchy of criminal courts in India?**

**Ans :** Besides High Court , in every state, there shall be following classes of criminal courts namely

- a) Court of Sessions
- b) Judicial Magistrate of first class and in any metropolitan area, Metropolitan Magistrate.
- c) Judicial Magistrate of second class
- d) Executive Magistrate.

**Q.18. When should one go for anticipatory bail?**

**Ans:** Section 438 of Criminal Procedure Code deals with the Anticipatory Bail. Accordingly, When any person apprehending his arrest in respect of Non- Bailable Offence, in that case, he can apply for anticipatory bail either to Session Court or to High Court.

**Q.19. What types of questions can be asked by the police authorities to an accused?**

**Ans:** Any kind of questions that can help the police officer to get the information in connection with the alleged offence.

**Q.20. Do the police officers have power to arrest ladies after sunset? Are there any restrictions as regards arresting ladies against whom some charges have been framed by the police authorities? What are the restrictions placed on police officers, if the alleged offence is committed by minors?**

**Ans :** The Police officers generally do not have power to arrest women after sunset.

**Q.21 How does a suit proceed in criminal court?**

**Ans :** In criminal Courts, it is not a suit but it is complaint which is dealt in by the criminal courts. The procedure is discussed in answer no.(11 ) given as above.

**Q.22 If one is not satisfied with the station duty officer, what steps should the accused person take?**

**Ans :** Accused person can make an application before the Magistrate showing his grievances.

**Q.23. If an individual is going to lodge a complaint at the police station and the police officer is not co-operating. What steps should be taken by the individual to ensure that the complaint is taken by the police authorities?**

**Ans:** In police officer refuses or not co-operating in accepting the complaint for cognizable offences, in that case, complaint can be filed with the superintendent of Police. And if he also refuses to accept, in that case, complaint can be filed with the Magistrate. Otherwise aggrieved person can directly file a complaint before a magistrate.

**Q.24. How does one get the certified true copy of the normal complaint lodged by the individual with the police authorities?**

**Ans :** By making an application to the concerned Police station, a person can obtain copy of the complaint filed. However, if Police officer is refusing to give a copy of the complaint , in that case , application can be made to higher officer and in turn to the Magistrate. A person can also make an application under Right to Information, Act in prescribed form.

**Q.25. How can one take advantage of the Right of information act with regards to criminal law matters?**

**Ans :** One should make an Application with the Police station as provided under the said act to get desired information. The Police Officer , may refuse to give on the preventing of safety grounds.

**Q.26. What are the precautions that should be taken by an individual, if he's apprehending trouble from his neighbor with whom he is not on good terms?**

**Ans :** Actually there is no relief available in respect of apprehension. However, a person can file a complaint with the Police officer and keep the information on the records of the Police station. If the apprehension is in respect of very serious offences, in that case, police officer may call other person at the police station and warn him.

**Q.27. What are the points that should be taken into consideration by an individual, while drafting a complaint? What facts should be emphasized? Should legal points be emphasized in the complaint?**

**Ans :** In the complaint, one should put all the facts by which alleged offence can be established. There is no need to put any legal points while drafting a complaint.

**Q.28. Please highlight some of the landmark court judgements with regards to the below mentioned topics?**

(a) cheating, (b) wrongful restraint, (c) hurt, (d) criminal breach of trust, (e) cheque bouncing cases.

**Ans:** Given separately in chapter No. 12 of this Book.

**Q.29. What are the common tactics employed to delay a court case by the accused?**

**Ans:** The common tactics employed by accused to delay a court case are

- 1) To avoid receiving of summons.
- 2) To avoid execution of warrants.
- 3) To delay in getting witness.
- 4) To make an application for the adjournment of case on various grounds.

**Q.30. What are the points that have to be taken into consideration by the advocate of the accused during cross-examination?**

- a) He succeeds in bringing correct facts on records.
- b) He succeeds In impeaching his credit by injuring his character and testing his veracity.

**Q.31. If one does not wish to delay court cases what steps should be taken by the accused?**

**Ans :** If court cases are unreasonably delayed in that case an application can be made with the High court or Chief Metropolitan Magistrate.

**Q.32. Which are the normal types of applications that have to be presented in a criminal court?**

**Ans:** Normally following applications are presented in criminal courts.

- a) Application to issue summons to examine witness.
- b) Application for the adjournment of cases.
- c) Application for the issue of warrant.
- d) Application for the cancellation of warrant.
- e) Application to declare accused as absconding and issue order for the proclamation.
- f) Application to grant Bail.

**Q.33. When should one file a private complaint?**

**Ans :** When any offence is committed by any person in that case one can file a complaint.

**Q.34. What should an individual do if the police officer is acting in a partial manner?**

**Ans:** Lodge complaint with the senior Police officer or Assistant Police Commissioner or Deputy Police Commissioner if the police officer is acting in a partial manner.

**Q.35. The right of information act stipulates that the public servant has to take the necessary decision within seven days. If the police officer is sitting over the complaint for a long time, what an individual can do?**

**Ans:** The Right to Information Act cannot be made applicable in respect of Complaint. As discussed earlier, if Police officer refuses to take the complaint or sitting over the complaint, then complaint can be made with the higher officer or with the Magistrate. It is the mandatory duty of the Police officer to take immediate action in relation to the complaint filed.

**Q.36 If a person is aggrieved by the decision given by the magistrate's court. To whom should he file the appeal? What is the period within which an appeal is to be filed?**

**Ans:** Appeal will lie with the Sessions court and it need to be made within 30 days.

**Q.37 What are the grounds of condonation of delay in criminal courts?**

**Ans:** Provision for the condonation of delay in criminal courts are discussed in section 473 of criminal Procedure Code, 1973. According to this section, Magistrate can take cognizance of any offence beyond the limitation period if it is necessary in the interest of justice.

**Q.38** In what circumstances can the opposite party cross-examine the witness and/or the person who has given document like to say for example Doctor's certificate?

**Ans:** No cross- Examination can be made of the person who is appearing only to produce documents.

**Q.39.** What types of offences are considered as cognizable offences? What types of offences are considered as non-cognizable offence? Do the police authorities have an option to grant bail if the alleged offense committed is of a noncomparable type? Please give examples of cognizable offences as well as non cognizable offences?

**Ans:** Under Indian Penal Code, in first schedule of the act, classification is made of Cognizable , Non- Cognizable , Bailable and Non- Bailable Offences. Generally the offences which are of more serious nature are considered as cognizable offences and others are considered as Non-cognizable offences. Few Examples of Cognizable/ non cognizable offences are as follows:

Offences	Types
Rape	Cognizable
Murder	Cognizable
Causing grievous hurt	Cognizable
Theft	Cognizable
Criminal Trespass	Cognizable
Cheating/criminal breach of trust	Cognizable
Misappropriation of funds	Non-Cognizable
Bribery	Non-cognizable
Giving false evidence	Non-cognizable
Assault or use of criminal use.	Non- cognizable

**Q.40.** How many metropolitan magistrates' courts are there in Mumbai? Please give that jurisdiction of each of the courts?

**Ans:** There are 46 Metropolitan courts in Mumbai.

**Q.41.** What points should be highlighted for getting a bail?

**Ans:** If custody of any person is not necessary for investigation and person agrees to make himself available to the Investigating officer as and when required and also there is no apprehension against him that he will influence the witness in that case he is entitle for the bail and these are points which require to be highlighted in bail application.

**Q.42.** How will family members of the accused know if the police authorities have arrested the accused?

**Ans :** According to the Supreme court guidelines, it is a mandatory requirement of the concerned police station to inform the nearest relative of the accused when he is arrested and allow him to make a call to engage an advocate and inform his relative.

**Q.43** What is the approximate time that is taken at each of the stages? Please clarify the approximate time limit that is taken by the magistrates Court to give its verdict with regards to the below mentioned offences?

(a) cheating, (b) wrongful restraint, (c) hurt, (d) criminal breach of trust, (e) cheque bouncing cases.

**Ans:** No time limit is fixed up for the deciding of the complaint. But generally it can take about 2 to 3 years in deciding of the complaints related to the above offences. However, there are chances that during the course of trial, the matter can be settled with mutual consent.

**Q.44.** Can Criminal action be initiated against the Administrator of a Co-operative Society if he has misused the funds?

**Ans:** Yes, if any public servant is appointed as an administrator, in that case, he can be prosecuted for the offence as defined u/s. 166 of the Indian Penal Code.

**Q.45** Is permission of the Registrar necessary for the same or can an individual file a private complaint for the same and make the Administrator a party for misuse of funds?

**Ans:** To prosecute any Public Servant employed by the state government, prior permission of the state Government is necessary.

## Chapter - 14

### SPECIMEN OF IMPORTANT FORMS / COMPLAINTS / ETC.

#### FORM NO.1:- PRIVATE COMPLAINT BEFORE MAGISTRATES COURT

IN THE COURT OF METROPOLITAN MAGISTRATE'S \_ COURT AT  
MUMBAI,  
CRIMINAL COMPLAINANT NO...../ 20\_\_

SHRI H..... A....S )  
AGE \_\_ YEARS, occupation – Business )  
Address : )  
 ) ..... Complainant

Versus

1. Shri S..... S.....V )  
age \_\_ years, occupation – business, )  
address : )  
2. Shri K....S.....V )  
age \_\_ years, occupation – business )  
address : )  
3. Shri A .... S.....V )  
age \_\_ years, occupation – business )  
address : )  
4. Smt ..S ..... S.....V..... )  
 ) ..... Accused

#### A COMPLAINT U/S 323,500,504 & 506 R/W SEC .34 OF THE INDIAN PENAL CODE.

The complainant abovenamed on solemn affirmation submits as follows :

1. That the complainant is a resident of the within mentioned address and the said house property is owned and possessed by him.
2. That the property bearing house no. flat No. situated at is owned and possessed by the accused .

3. That the complainant is staying in the said residence along with his wife, a son and two young daughters.
4. That the complainant submits that both the daughters of the complainant are young and nubile, and when it has been experienced by the complainant that his daughters were being teased by the accused no.2 & 3, the complainant made complaints against them to the accused no.1 & 4 . i.e the parents of the accused no.2 & 3 to which the accused No.1 & 4 paid no heed as a result the relationship between the complainant and accused had gone from bad to worse.
5. That the complainant submits that during the recent past, the complainant, his wife and son in general and his daughters in particular used to receive blank telephone calls uttering dirty, obscene and threatening language and a great many abuses, and when the complainant approached the telephone exchange authorities to trace the whereabouts of such blank calls, it was revealed that such blank calls were made by the accused no.2 & 3, and it is respectfully submitted for the kind and sympathetic consideration of this hon'ble court that when, in the recent past, such a matter was referred to in the presence of the policemen. the accused no.3 being offended confessed to the effect that such blank calls were made by him only, and it is furthermore added that since the complainant and the accused have been residing as neighbors for years, the voice of the accused No.3 is well conversant with and known to the complainant and all the other members of his family, and therefore they have already confirmed that these calls were made by not by anybody else but the accused no.3
6. That as per the knowledge and information of the complainant the details of such blank telephone calls are furnished below:

Sr. NO	Telephone number on which the call was made	Date	Time
1	_____	22.08.2006	6.41 p.m
2	_____	22.08.2006	6.46 p.m
3	_____	22.09.2006	6.59
4	_____	22.09.2006	8.30
5	_____	27.09.2006	9.19 a.m
6	_____	27.10.2006	11.00 a.m
7	_____	27.10.2006	11.30 a.m
8	_____	22.10.2006	1.05 p.m
9	_____	22.10.2006	8.32p.m
10	_____	23.11.2006	8.40 p.m

11	_____	23.11.2006	10.15 a.m
12	_____	23.11.2006	5.12 p.m
13	_____	23.11.2006	1.30 p.m

- 7 That being the neighbours, the complainant and the accused have been with the cross terms and the members in the family of the accused being more, the accused have always been dominant not only in respect of the complainant alone but also in general and the locality as a whole .
8. That The complainant submits that he is doing the business as a fruit vendor in the city of Mumbai.
9. That The complainant submits that on Monday, 19<sup>th</sup> August, 2006 at 4.00 p.m . when the complainant started to take out his vehicle from the parking point at the doorstep of his house, the accused no.1 & 2 were sitting on other's vehicle just on the way before their house.
10. That since the complainant was not in a position to take his vehicle out on the public road unless and until the accused remove vehicle from the parking point, he asked the accused to give a way for the complainant to do so.
11. That The complainant submits that the accused, instead of removing their vehicle and themselves from the said parking point and allowing the complainant to go out, they started to shout at the complainant and subsequently abused him in a very filthy language, and then and there, the accused No.3 & 4 also joined the accused Nos . 1 and 2 and participated in abusing and threatening the complainant.
12. That The complainant also furthermore submits that the accused did not only stop just uttering the dirty abuses and obscene language, but the accused No.1 & 2 and 3 also attacked the complainant, and after falling him down on the ground, they started to beat him up with fists and kicks, and the complainant sustained multiple injuries on his face, head, right ankle, right eye and right ear as well as back, when the accused No.4 was also very active in abusing and beating the complainant.
13. That The complainant also submits that when the neighboring occupiers gathered on the scene of offence, all the accused went away from there, pronouncing a threat that if the complainant were to approach the police, he would be beaten up severally and killed.
14. That thereafter the complainant immediately approached the sitladevi police chowky, the complainant was surprised to see that the accused were already present there for lodging a false complaint against the complainant, and the complainant particularly submits that the accused No.4 played a perfect villainous role by acting in tactful manner and crying with crocodile tears and thereby she managed to seek all the sympathy of the male policemen.
15. That The complainant also submits that the sitladevi police chowky refused to register any offence against the accused, but on the contrary, a notice was served on the complainant u/s 323 and 504. And the complainant also feels that a similar action as taken by the police against the accused.

16. That thereafter the misbehavior on the part of the all the accused has been enhanced day by day, and the present climate is rather tense insofar the complainant and his family are concerned.
17. That The complainant submits that since then the complainant apprehends that the accused may cause danger or commit such offences in the near future also.
18. That The complainant also made a complaint - application to the dhanakwadi police chowky, with a request to give him necessary help and protection, which the police did not take any cognizance thereof.
19. That the accused have, thus committed an offence u/ss 323, 500, 504 and 506 R/w sec.34 of the Indian penal code within the local limits of the jurisdiction of this court, and hence, this Hon'ble court has right and jurisdiction to try this complaint and punish the accused.
20. That the cause of action for this complaint first arose on 19.8.2006 and the same has since then been everyday thereafter, and hence this complaint filed today is well within limitation.
21. That the offence has been committed within the local limits of the jurisdiction of this court and hence this Hon'ble court has jurisdiction to try and decide this complaint
22. That the complainant proposes to examine the following and other witnesses.
  - (i) Mr.. K..... N..... K.....  
  
Mumbai
  - (ii) Shri R .... G..... B  
Mumbai
- 23) That the necessary court- fee is paid herewith.
- 24) That the complainant therefore, prays that the accused be charged with and tried for the offence punishable u/ss 323,500,504 and 506 R/W Sec. 34 of the Indian Penal Code and punished accordingly to law.

**Mumbai,**

**Dated**

Complainant.

Advocate for the complainant.

**FORM NO. 2:- FORMAT OF PRIVATE COMPLAINT BEFORE  
MAGISTRATE'S COURT.**

**IN THE COURT OF METROPOLITAN MAGISTRATE'S COURT AT MUMBAI  
C.C.NO .....**

**BETWEEN :-**

..... Complainant  
V/s. ....  
..... Accused

Complaint filed on behalf of the complainant u/s . 500 IPC, u/s .200 Cr.P.C.

The Complainant herein submits that he is a respectable citizen and he is also the President of \_\_\_\_\_ club.

The complainant further submits that on ..... the accused came before the house of the complainant raised his voice and scolded the complainant in the presence of several villagers who had gathered there to the affect that the complainant had totally swallowed . The public funds and had managed with authorities by giving them illegal gratification. The said allegations are totally false and when the complainant and also other important persons of the village ..... had taken objections the accused scolded them in filthy language in the following words.....(Narrate the Particulars).

Thus the accused had committed an offence u/s . 500 IPC.

It is therefore prayed that this Hon'ble Court may be pleased to take the case on file, enquire into the matter and to punished the accused in accordance with law.

Complainant

**Verification**

Complainant

List of witnesses

- 1.
- 2.

List of documents

1.

2.

Advocate for complainant.

**FROM :**

**Form No. 2A:- FORMAT OF PRIVATE COMPLAINT BEFORE  
MAGISTRATE'S COURT FOR DEMANDING OF  
EXCESS DONATION AND TRANSFER CHARGES.**

IN THE COURT OF METROPOLITAN MAGISTRATE'S COURT AT, MUMBAI

C.C. No. :

1. Mr.  
(Name and address of the complainant) .... Complainant

V/s.

1. XYZ Co-Operative societies Ltd.  
2. Mr.  
3. Mr.  
(Name Of Office Bearers)  
Address of the society .... Accused

**Complaint u/s. 339,383 & 506 of Indian Penal Code**

I, Mr. Aged about years and having address at \_\_\_\_\_  
\_\_\_\_\_ on solemnly affirmation state as under :

- 1) That I have purchased a flat no. in the building \_\_\_\_\_ which is managed and administered by \_\_\_(name Of Hsg. Society)\_\_\_\_\_ and having address at \_\_\_\_\_ from Mr. \_\_\_\_\_ by executing an agreement for sale on or about \_\_\_\_\_. Annexed hereto and marked as Exhibit – A is the copy of the said Agreement.
- 2) That I know all the accused. That the complainant further state that the accused no. 1 is Co-operative Housing Society, registered under Maharashtra Co-Operative Soceties Act,

1960, having registration no. \_\_\_\_\_ and address as mentioned in cause title. The complainant further states that the accused nos. 2 to 4 are the office bearers of the said housing society and having address as mentioned in above cause title.

- 3) That after purchasing a flat, the complainant has forwarded an application for the transfer of membership to become a member of the said society, in respect of the said flat, along with cheque of Rs. \_\_\_\_/- being payment towards membership fees and a cheque of Rs. \_\_\_\_/- being a \_\_\_\_\_ payment of towards transfer fees as per clause no. of Bye-Laws of the said society. Annexed hereto and marked as "Exhibit - " is copy of said Application .
- 4) That as per the provisions of the Bye-Laws of said Housing Society, Committee members need to transfer membership within a period of \_\_ months from the date of the receipt of said \_\_\_\_\_ application.
- 5) That however, the committee have failed and neglected to send any reply till the period of about \_\_ months, in respect of the said application to the complainant. The complainant further states that he has therefore personally met to accused no. \_\_ on \_\_\_\_\_ at the office address of the society and requested him to inform for not transferring membership in his name.
- 6) That the accused no. has at that time demanded an amount of Rs. \_\_\_\_/- to be payable in addition to an amount of Rs. \_\_\_\_/- mentioned as transfer fees to be payable as per clause no. \_\_\_\_\_ of the Bye- Laws of the said society. The complainant further states that the accused no. \_\_ has also informed him that this decision to demand of additional amount of transfer fees was taken jointly and severally by accused nos. 2 to 4 in the meeting of the committee of the said housing society held on \_\_\_\_\_. The complainant further states that on learning about this, he requested accused no. to give him a copy of the resolution passed by the members of the committee in the said meeting . The complainant further states that the accused no. has however failed and neglected to give copy of the said resolution. Annexed hereto and marked as "Exhibit-" is copy of said application.
- 7) That on refusal of the accused no. to give copy of the resolution, complainant therefore approached to accused nos. 3 and 4 requesting them to give reason for not transferring membership in his name. The complainant further states that accused nos. 3 and 4 have induced him mentioning that since he is earning good income and there fore, unless he makes payment of additional transfer fees of Rs. \_\_\_\_/- in cash, his transfer application shall not be considered by the \_\_\_\_\_ committee of the said society.
- 8) That on \_\_\_\_\_, complainant has made an attempt to transfer his belongings, household goods to his flat. The complainant further states that however, accused nos. 2 to 4 have refused to enter tempo, in which the complainant has brought his articles in the compound of the said society. The complainant further states that accused nos. 2 to 4 have along with the watchmen of the society have forcefully stopped tempo from entering inside of the compound of the society. The \_\_\_\_\_ complainant further states that on making inquiry with the accused at that time, the accused \_\_\_\_\_ no. 3 have threatened him that unless he makes payment of demanded transfer fees, the \_\_\_\_\_ complainant shall not be allowed to enter in the compound of the society.
- 9) That the complainant has therefore approached to lodge complaint with \_\_\_\_\_ police station in whose jurisdiction, area of society falls. The complainant further states that Police officer on duty has registered however refused to register any complaint against the office bearers and instructed him that since complaint is of civil nature, the complainant should approached registrar or the Co-operative Court for appropriate reliefs.

- 10) That the complainant has therefore sent a legal notice to accused nos. 1 to 4, through his advocate \_\_\_\_\_ on \_\_\_\_\_ by registered Post. The complainant further states that accused have received said complaint on \_\_\_\_\_. The complainant further states that accused however have failed and neglected to give reply to the said notice till the date of filing of this \_\_\_\_\_ complaint. Annexed hereto and marked as "Exhibit -" is the copy of the said legal notice and receipt for payment of sending of Postal Charges and copy of the acknowledgement of the notices by the accused nos. 1 to 4.
- 11) That with these acts, the accused have jointly and severally and with a malafide intention committed following offences as defined under Indian Penal Code .
- 12) Section 383 : Extortion
- 13) Section 339 : wrongful restrain
- 14) Section 506 : criminal intimidation
- 15) That the offences are committed in the areas of \_\_\_\_\_ Police station and this Hon'ble court is having jurisdiction to try this complaint.
- 16) That necessary court fees as required to be payable is paid by the complainant.
- 17) The complainant therefore prays that this Hon'ble court may take cognizance of this complaint and proceed with as per the Provisions of Criminal Procedure Code to try and Punish the accused accordingly.

**Place : Mumbai**

**Date :** \_\_\_\_\_ Complainant

**FORM NO. 3:- SUMMONS TO ACCUSED PERSON**

TO (Name of the Accused) OF (Address)

Whereas your attendance is necessary to answer to a charge of (state shortly the offence charged), you are hereby required to appear in person (or by pleader, as the case may be) before the (Magistrate) of ....., on the ..... day

Dated, this..... Day of ....., 20.....

(Seal of the Court)

( Signature)

Magistrate may dispense with personal attendance of accused.

Application under sec. 205, Cr.P.C., 1973.

**FORM NO. 4:- APPLICATION FOR EXEMPTION FROM APPEARANCE**

**IN THE COURT OF THE METROPOLITAN MAGISTRATE'S \_ COURT AT MUMBAI  
C.C.No . .....**

**BETWEEN :-**

Name and particulars to be furnished

..... Complainant  
V/s.

Name and particulars to be furnished

..... Accused

Application filed under section 205,Cr.P.C., 1973

- 1) the accused applicant herein submits that a complaint is filed under sections ..... I.P.C. or accused is charge –sheeted under sections ..... I.P.C . the accused entered appearance also through his counsel on the first date of hearing itself.
- 2) The accused is a very old man of about 70 years age and he is unable to attend this Hon’ble court for every date of hearing. The accused is the neighbor of the complainant and all the witnesses also know him well and there is no problem relating to identification at trial.
- 3) It is therefore prayed that this Hon’ble court may be pleased to grant exemption from personal appearance permitting to be represented by advocate ..... And also pass such other suitable orders.

**Place :**

**Date :**

Advocate for accused

**Form No. 5:- SUMMONS TO AN ACCUSED PERSON**

TO (Name of the Accused) OF (Address)

Whereas your attendance is necessary to answer to a charge of (state shortly the offence charged), you are hereby required to appear in person (or by pleader, as the case may be) before the (Magistrate) of ....., on the ..... day

Dated, this..... Day of ....., 20.....

(Seal of the Court)

( Signature)

**Form No. 6:- SUMMONS TO WITNESS**

To....., of ..... whereas complaint has been made before me that ( name of the accused ) of ( address) has ( or is suspected to have ) committed the offence of ( State the offence concisely with time and place), and it appears to me that you are likely to give material evidence or to produce any document or other thing for the prosecution;

You are hereby summoned to appear before this court on the ..... day of ..... next at ten o'clock in the forenoon, to produce such document or thing or to testify what you know concerning the matter of the said complaint, and not to part thence without leave of the court; and you are hereby warned that,if you shall without just excuse neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Dated this .....day of.....,20.....

( Seal of the Court)

( Signature)

**FORM NO. 7:- WARRANT OF ARREST**

To (Name and Designation of the person or persons who is or are to execute the warrant).

Whereas( Name of Accused) of (address) stands charged with the offence of (state the offence), you are hereby directed to arrest the said ..... and to produce him before me . Herein fail not.

Dated, this ..... Day of .....,20.....

( Seal of the Court)

(Signature)

This warrant may be endorsed as follows:-

If the said .....shall give bail himself in the sum of rupees .....with one surety in the sum of rupees .....(or two sureties each in the sum of rupees .....) to attend before me on the .....day of .....and to continue so to attend until otherwise directed by me, he may be released.

Dated, this .....day of .....,20.....

(Seal of the Court)

(Signature)

**FORM NO. 8:- APPLICATION FOR THE CANCELLATION OF  
WARRANT**

**In the THE METROPOLITAN**  
**MAGISTRATE'S \_\_ COURT AT MUMBAI**  
**C.C.NO .....**

NAME ..... Complainant

v/s.

NAME .... Accused

APPLICATION FILED BY THE PETITIONER UNDER SECION 70(2), Cr.P.c.,1973.

- 1) the petitioner herein submits that he is charged with offences ..... I.P.C.
- 2) the petitioner also submits that he was to appear before this hon,ble court on ..... however the petitioner failed to appear on that day for reasons beyond his control (state the reasons .....)
- 3) The Petitioner is voluntarily appearing before this Hon'ble court and he is also undertaking to attend this Hon'ble court for every date of hearing without fail.
- 4) It is therefore prayed that this HON"BLE COURT may be pleased to recall the warrant issued against the petitioner and also pass such other suitable orders.

**PLACE :-**

**Date :-**

**ADVOCATE FOR ACCUSED**

**FORM NO. 9:- APPLICATION FOR ANTICIPATORY BAIL**

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL PETITION

**BETWEEN :-**

..... Applicant  
VS  
..... Respondents

**ANTICIPATORY BAIL APPLICATION UNDER SECTION 438 Cr.P.C.**

Petitioner herein submits that a first information report was lodged against ..... for offence under section 147,148,307 read with I.P.C. The petitioner also submits that an allegation is made for the accused named in the F.I.R and several others have involved in the aforesaid offences . Though the name of the petitioner is not mentioned in the FIR, the police are threatening and apprehending the petitioner and the petitioner is not guilty of any of the offences charged with. The petitioner is ready and willing to furnish sureties as may be directed by this Hon'ble court.

It is therefore prayed that this Hon'ble court may be pleased to direct the respondent to release the petitioner an anticipatory bail in the event of his arrest and pass such other suitable orders . Advocate for the petitioner.

**FORM NO. 10 :- APPLICATION FOR ANTICIPATORY BAIL**

Before the court of session at bombay  
criminal petition .....

v/s Applicant  
Respondents

**Bail application under section 438 of Cr.P.C.**

The petitioners are the father and mother of the accused no .1 and defacto complainant is the wife of accused no.1. the petitioner also submits that they are prayed as A2 and A3 in C.C.No ..... filed under section 498A I.P.C.read with Section 4 of the Dowry Prohibition Act. The petitioner submits that they are innocent and they are not guilty of any of the offences charged with. The first petitioner is aged about 75 years,suffering with paralytic strokes and the second petitioner is an old lady who is also a B.P.patient . Apart from it they are residing separately and they have nothing to do with A1 and the defacto complainant falsely implicated them in the present case. Hence the petitioners are entitled for anticipatory bail even of their arrest.

It is therefore prayed that this Hon'ble court may be pleased to enlarge the petitioners or anticipatory bail in event of their arrest and pass suitable orders.

Advocate for the Petitioner

### **Form No. 11 :- BOND AND BAIL-BOND AFTER ARREST UNDER A WARRANT**

I,(name), of ..... being brought before the District Magistrate of .....(or as the case may be) under a warrant issued to compel my appearance to answer to the charge of .....,do hereby bind myself to attend in the court of .....on the..... Day of .....next,to answer to the said charge, and to continue so to attend until otherwise directed by the court ; and, in case of my making default herein, I bind myself to forfeit, to Government, the sum of rupees.....

Dated, this ..... Day of .....,20.....

I do hereby declare myself surety for the above named .....of .....,that he shall attend before .....in the court of ..... on the.... Day of ....next, to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the court ; and in case of his making default therein, I bind myself to forfeit,to Government, the sum of rupees.....

Dated this ..... day of .....,20.....

(Signature)

### **Form No. 12 :- PROCLAMATION REQUIRING THE APPEARANCE OF A PERSON ACCUSED.**

Whereas complaint has been made before me that (name, description and address) has committed (or is suspected to have committed ) the offence of ....., punishable under section .....of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (name) cannot be found, and whereas it has been shown to my satisfaction that the said (name) has absconded (or is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said .....of ..... is required to appear at (place) before this court (or before me) to answer the said complaint on the .....day of .....20.....

Dated, this ..... Day of .....,20.....

(Seal of the Court)

(Signature)

### **Form No. 13 :- PROCLAMATION REQUIRING THE ATTENDANCE OF A WITNESS.**

Whereas complaint has been made before me that (name, description and address) has committed (or is suspected to have committed ) the offence of (mention the offence concisely) and a warrant has been issued to compel the attendance of (name, description and address of the witness) before this court to be examined touching the matter of the said complaint ; and whereas it has served,and it has been shown to my satisfaction that he has absconded (or is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said(name) is required to appear at (place ) o'clock, to be examined touching ..... the offence complained of.

Dated, this ..... day of ....., 20.....

(Seal of the Court)

( Signature)

**Form No. 14 :- WARRANT TO SEARCH AFTER INFORMATION OF A PARTICULAR OFFENCE**

To (name and designation of the police officer or other person or persons who is or are to execute the warrant).

Whereas information has been laid (or complaint has been made ) before me of the commission ( or suspected commission) of the offence of ( mention the offence concisely), and it has been made to appear to me that the production of ( specify the thing clearly) is essential to the inquiry now being made (or about to be made) into the said offence (or suspected offence); This is to authorise and require you to search for the said ( the thing specified ) in the (describe the house or place or part thereof to which the search is to be confined), and, if found, to produce the same forthwith before this Court, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Dated, this..... day of .....20.....

( Seal of the Court)

( Signature)

**FORM NO. 15 :- EXECUTION OF BOND TO MAINTAINS PEACE.**

**BOND TO KEEP THE PEACE**

Whereas I, (name ) inhabitant of (place), have been called upon to enter into a bond to keep the peace for the term of ..... Or until the completion of the inquiry in the matter of ..... now pending in the court of ....., I hereby bind myself not to commit a breach of the peace, or do any act that may probably occasion a breach of the peace, during the said term or until the completion of the said inquiry and, in case of my making default therein, I hereby bind myself to forfeit to Government the sum of rupees.....

Dated, this..... day of .....20.....

**FORM NO. 16 :- EXECUTION OF BOND FOR GOOD BEHAVIOUR.**

**BOND FOR GOOD BEHAVIOUR**

Whereas I, (name), inhabitant of (place), have been called upon to enter into a bond to be of good behaviors to Government and all the citizens of India for the term of (state the period ) or until the completion of the inquiry in the matter of..... Now pending in the court of....., I hereby bind myself to be of good behavior to Government and all the citizens of India during the said term or until the completion of the said inquiry; and in case of my making default therein, I hereby bind myself to forfeit to Government the sum of rupees.....

Dated, this ..... day of.....20.....

( Signature)

## **FORM NO. 17 :- APPLICATION FOR INJUNCTION U/S. 142.**

### **INJUNCTION TO PROVIDE AGAINST IMMINENT DANGER PENDING INQUIRY**

To (name, description and address).

Whereas the inquiry into the conditional order issued by me on the ..... day of .....,20.....,is pending, and it has been made to appear to me that the nuisance mentioned in the said order is attended with such imminent danger or injury of a serious kind to the public as to render necessary immediate measures to prevent such danger or injury, I do hereby, under the provisions of section 142 of the Code of Criminal Procedure,1973, direct and enjoin you forthwith to (state plainly what is required to be done as a temporary safeguard), pending the result of the inquiry.

Dated, this .....day of ....., 20.....

( Seal of the Court)

( Signature)

### **Form No. 18 :- MAGISTRATE'S ORDER PROHIBITING THE REPETITION ETC., OF A NUISANCE**

To (name, description and address).

Whereas it has been made to appear to me that, etc. ( state the proper recital guided by Form No.20 or Form No.24,as the case may be);

I do hereby strictly order and enjoin you not to repeat or continue, the said nuisance.

Dated, this ..... Day of ....., 20.....

( Seal Of the Court)

( Signature)

### **Form No. 19 :- MAGISTRATE'S ORDER TO PREVENT OBSTRUCTION, RIOT,ETC**

To ( name, description and address).

Whereas it has been made to appear to me that you are in possession ( or have the management) of ( describe clearly the property) and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug-up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road;

Or

Whereas it has been made to appear to me that you and a number of other persons ( mention the class of persons) are about to meet and proceed in a procession along the public street, etc., ( as the case may be) and that such procession is likely to lead to a riot or an affray;

Or

Whereas, etc., etc ( as the case may be);

I do hereby order you are not to place or permit to be placed any of the earth or stones dug from land on any part of the said road;

Or

I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession( or as the case recited may require).

Dated, this..... day of .....20..

( Seal of the Court)

( Signature)

**FORM NO. 20 :- APPLICATION FOR ANTICIPATORY BAIL U/S 438 OF THE PROCEDURE CODE 1973**

**IN THE COURT OF THE SESSIONS JUDGE, AT MUMBAI  
CRIMINAL APPLICATION NO. \_\_\_\_ /20\_\_**

Shri .... A....B.....C.... )  
Age 30 years, occupation – Businessman )  
Resident of 175, )  
Mumbai ) .....  
Applicant

V/s

The State Of Maharashtra  
)..... Opponent

An Application for the grant of the Bail u/s 438 of the criminal procedure Code 1973

The Applicant abovenamed submits this application, praying to state as follows :

1. That the applicant is a social worker and active member of the Party.
2. That the applicant has been serving the cause of society for the last more than five years.
3. That during the recent by-election to the Mumbai Municipal Corporation in Ward No.28, the applicant got elected with a large number of votes against his rival candidate, Shri XYZ, who belongs to the Dongree-I Party.
4. That during the election campaign, there were a great many allegations made by the members of both the parties, and the said Dongree-I candidate tried his best to make all the malicious attempts with a sole intention to defeat the candidature of this applicant .
5. That the said Dongree-I candidate could not withstand his defeat in the election and since that date of the declaration of the election result on ....., the situation as a whole has gone bad to worse.
6. That on or about ..... a person alleged to have been an active member of the Dongree-I party was stabbed, and he died the following day.
7. That the applicant believes that on account of such unhealthy political activities indulged into by the said defeated candidate, some malicious plans and designs have been worked out with an intention so as to implicate this applicant for having committed or concerned with such a non-bailable offence.
8. That the applicant submits that since the date of the declaration of the election result on ....., this applicant had gone to Pandharpur on a pilgrimage tour, and when he returned back to the head quarters only yesterday night, he came to know about such an accusation against him, and hence, this application.

9. That the applicant states and submits that he had no concern with any such offence, if committed by some miscreants, and the contention of this applicant will be explicit from the very fact that this applicant was out of headquarters throughout, and thus, he is innocent, too.
10. That the applicant apprehends that he may be arrested on such an accusation, and hence, this application .
11. That this applicant furthermore submits that if this application is not granted by the Hon'ble court, flagrant injustice will be done to him for no fault on his part.
12. That the applicant also believes that he will not be deprived of his legitimate and fundamental right.
13. That the proper court-fee is paid herewith.
14. That the applicant, therefore, prays that this application be kindly allowed and orders granting an anticipatory bail be issued in favour of this applicant.

MUMBAI

( ...ABC... )

Applicant

Dated : .....

Advocate For Applicant

### **Verification**

I, Shri ABC, the present applicant, do hereby state on solemn affirmation that contents of this application in paras 1 to 11 are true and correct to the best of my knowledge and belief, so I have signed hereunder.

(.... ABC.....)

Applicant

## **Form No. 21 :- APPLICATION FOR TRANSFER OF CASES**

IN THE HIGH COURT OF JUDICATURE  
 Cr.M.P.No ..... in .....  
 IN THE COURT OF SESSIONS JUDGE MAGISTRATE  
 S.C.....  
 C.C .....

### **BETWEEN :-**

..... and ..... Petitioner

..... Respondent

Memorandum of criminal Miscellaneous petition under section 407, Cr.P.C.

That for the reasons stated in the affidavit herewith filed it is prayed that this Hon'ble court may be pleased to transfer C.C.NO..... or S.C.NO ..... from .....to the file of ..... and pass such other suitable orders.

**Place :**

**Date :**

Counsel for petitioner

## **FORM NO. 22 :- FRAMING OF CHARGES**

I. Charges with one head

(1)(a) I, (Name and office of the Magistrate, etc.), hereby charge you ( name of accused person) as follows:-

**On Section 121.**

(b) that, you on or about the ..... day of ....., at ..... Waged war against the Government of India and thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of this court .

( c ) And I hereby direct that you be tried by this court on the said charge.

[ To be substituted for (b)]

(Signature and Seal of the Magistrate)

**On Section 124.**

(1) That you, on or about the ..... day of .....,at ....., with the intention of inducing the President Of India [ or, as the case may be, the Governor of ( name of State) to refrain from exercising a lawful power as such President ( or as the case may be, the Governor ) , assaulted President ( or, as the case may be, the Governor) and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognizance of this court.

**On Section 161.**

(2) That you, being a public servant in the ..... Department, directly accepted from ( state the name) for another party ( state the name) gratification other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of this court.

**On section 166.**

(3) That You, on or about the ..... Day of ..... at ..... did ( or omitted to do, as the case may be) ....., Such conduct being contrary to the provisions of ..... Act ....., section ..... And known by you to be prejudicial to ....., and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of this Court.

**On Section 193.**

(4) That you, on or about the ..... Day of .....,at .....,in the course of trial of ..... before ..... stated in evidence that “..... ” which statement you either knew or believed to be false, or did not believed to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of this court.

**On section 304.**

(5) That you, on or about the ..... day of ....., at committed culpable homicide not amounting to murder, causing the death of ..... and thereby committed an offence punishable under section 304 of the Indian Penal Code,and within the cognizance of this court.

**On section 306.**

(6) That you, on or about the ..... day of ....., at....., abetted the commission of Suicide by A.B., a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of this Court.

**On Section 325.**

(7) That, you on or about the ..... day of ..... At ..... Voluntarily caused grievous hurt to ..... and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of this Court.

**On Section 392.**

(8) That you, on or about the ..... day of .....,at ....., robbed ( state the name), and thereby committed an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of this Court.

**On Section 395.**

(9) That You, on or about ..... Day of ....., at ....., committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the Cognizance of this Court.

**FORM NO. 23 :- FRAMING OF CHARGES WITH TWO OR MORE HEADS**

(1) (a) I, ( name and office of Magistrate, etc) hereby charge you( name of accused person) as follows:-

**On section 241.**

(b) First – That you, on or about the ..... day of ....., at ....., knowing a coin to be counterfeit, delivered the same to another person, by name, A.B, as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the court of session.

(c) And I hereby direct that you be tried by the said court on the said charge.

Signature and Seal of the Magistrate)

substituted for (b):-

(

[ To be

**On section 302 and 304.**

- (2) First – That you, on or about the..... day of ....., at .....committed murder by causing the death of ....., and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the Cognizance of the court of Session.  
Secondly – That you, on or about the .....day of .....,at .....,by causing the death of ....., committed culpable homicide not amounting to murder, and thereby committed an offence punishable under section 304 of the Indian Penal Code and within the cognizance of the court of Session.

**On section 379 and 382.**

- (3) First – That you, on or about the ..... day of ....., at ....., committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the Cognizance of the Court of Session.  
Secondly – That you, on or about the..... Day of ....., at.....committed theft, having made preparation causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of this court.  
Thirdly- That You, on or about the..... day of ....., at.....committed theft,having made preparation for causing restrain to person in order to the effecting of your escape after committing of such theft,and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the Cognizance of the Court of Session.  
Fourthly \_ That you, on or about the..... day of ....., at .....committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the Cognizance of the Court of Session.

**I. Alternative charge on section 193.**

- (4) That you, on or about the .....day of .....,at .....,in the course of the inquiry into ....., before ....., stated in evidence that “..... ”, one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the court of Session.  
( In cases tried by Magistrate substitute “ within my Cognizance ” for “ Within the cognizance of the Court of Session”)

**II. Charges for theft after previous conviction**

- I, ( name and office of the Magistrate, etc), hereby charge you (name of accused person) as follows:-  
That you, on or about the..... day of ....., at .....,committed theft,and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session (or Magistrate as the case may be).  
And you, the said (name of accused ), stand further charged that you, before the committing of the said offence, that is to say, on the ..... day of ....., had been convicted by the ( state court by which conviction was had ) at ..... Of an offence punishable under Chapter XVII of the Indian Penal Code with imprisonment for a term of three years, that is to say, the offence of house breaking by night ( describe the offence in the words used in the section under which the accused was convicted ), which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under section 75 of the Indian Penal Code.  
And I hereby direct that you be tried, etc.

**FORM NO. 24 :- APPLICATION FOR RECALLING OF WITNESS**

IN THE COURT OF THE METROPOLITAN MAGISTRATE'S \_\_ COURT AT MUMBAI  
C.C.NO. ....

Name ..... Complainant

V/s.

Name ..... Accused

**Application filed under section 217, Cr.P.C., 1973.**

- 1) The petitioner herein submits that the following charges under sections ..... I.P.C. were framed and they were read over and explained to the petitioner / accused and the petitioner had pleaded not guilty of any of such charges.
- 2) The petitioner further submits that on the material available this hon'ble court felt that charges are to be amended and altered and accordingly they were altered on .....
- 3) It is submitted that in the height of the said circumstances the PWs are to be recalled for cross examination.
- 4) It is therefore prayed that this hon'ble court may be pleased to recall PWs for the purpose of further cross examination in view of the altered charges and pass such other suitable orders.

**Place :-**

**Date :-**

Accused

**FORM NO. 25 :- APPLICATION FOR COMPOUNDING OF OFFENCE  
U/S 320**

IN THE COURT OF THE METROPOLITAN MAGISTRATE'S \_\_ COURT AT MUMBAI  
Cr.Misc.Appl No. ....IN  
Criminal .Appeal No ..... of .....

..... Petitioner (Appellant)

And

..... Respondent

PETITION FILEDON BEHALF OF THE PETITIONER UNDER SECTION 320, Cr.P.C., 1973.

It is humbly submitted that the petitioner was convicted by the lower court on his plea of guilty and sentenced him to suffer three months imprisonment for the offence under Section 500 of

I.P.C.and also to pay a fine of Rs. 500/- .The fine amount has already paid . The alleged offence against the petitioner is compoundable one.

The petitioner is no other than the husband of the defacto – complainant and at the intervention of elders they have agreed for a compromise. Hence this petition is filed for the permission of the Honourable Court to compound the offence.

Hence both the parties pray that the Honourable court may be pleased to accord permission to compound the offence and record the same and acquit the Accused in the interests of justice . The fine amount paid by Appellant – petitioner may be ordered to be returned to the appellant – petitioner in the interests of justice.

Be pleased to consider,

Petitioner

(Appellant)

Filed :

Advocate for Petitioner / Appellant.

**Place :**

**Date :**

Respondent (Defacto – complainant).

## **FORM NO. 26 :- APPLICATION FOR WITHDRAWAL OF COMPLAINT**

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE

AT .....

C.C.No. ....

Between :-

..... Complainant

And

..... Accused

Petition filed on behalf of the Complainant under section 257, Cr.P.C., 1973. ( withdrawal of case)

- 1) The complainant filed a complaint against respondent under sections ..... I.P.C and the same was taken on file by this Hon'ble court . The accused has been appearing before this Hon'ble court in obedience of summons issued to him.

- 2) It is submitted that at the instance of the well wishers the matter was settled and there are no witness to be examined on petitioners side too.
- 3) It is therefore prayed that this Hon'ble court may be pleased to permit the complainant to withdraw his complaint and also pass such other suitable orders.

Place :

Date : Complainant

**FORM NO. 27:- APPLICATION FOR COMPLAINT U/S. \_\_\_\_ OF INDIAN PENAL CODE**

IN THE COURT OF METROPOLITAN MAGISTRATE'S COURT AT, MUMBAI

C.C. No. :

1. Mr.  
(Name and address of the complainant) .... Complainant

V/s.

Mr.  
Mr.  
Mr.

(Name Of Office Bearers)

Address of the society

4. Mr.(Name of Auditor)

Address of ..... Accused

**Complaint u/s. \_\_\_\_ of Indian Penal Code**

I, Mr. \_\_\_\_\_ Aged about years and having address at \_\_\_\_\_  
\_\_\_\_\_ on solemnly affirmation state as under:

- 1 That complainant is a member of (Name Of Society), having its address at \_\_\_\_\_, in respect of flat no. \_\_\_\_ and holding share certificate no. \_\_\_\_\_, towards membership of accused no.1 society. Annexed hereto and marked as "**Exhibit – A**" is the copy of the said share Certificate.
- 2 That I know all the accused. The complainant further states that the accused nos. 1 to 3 are office bearers of the said housing society and having address as mentioned in above cause title. The complainant further states that accused no. 4 is chartered accountant and is statutory Auditor of XYZ Housing Society Ltd. and having his address as mentioned in cause title.

- 3 That the accused nos. 1 to 3 are appointed as members of Managing committee of XYZ Co-operative Housing Society Ltd. in its general body meeting held on \_\_\_\_\_. Annexed hereto and Marked as "Exhibit - "is the copy of the Resolution by which accused were appointed as the Members of Managing Committee.
- 4 That the accused nos. 1 to 3 were entrusted with the funds and properties of the society as per the provisions of the Co-operative Societies Act and Bye-Laws of XYZ Co-operative Housing Society Ltd. The complainant further states that members of managing committee are liable to work in good faith and for common welfare of the said Housing Society while discharging their duties as member of Managing Committee of said Housing Society.
- 5 That accused no. 4 is appointed as statutory audit of XYZ Co-operative Housing Society Ltd. in a general Body Meeting held on \_\_\_\_\_ for the purpose of conducting statutory audit of the said \_\_\_\_\_ Housing Society and to give his report as about the correctness of the accounts of the said housing society as per provisions of Co-operative Society Act and to report in a format prescribed in the said Act. Annexed hereto and Marked as "Exhibit-" is the copy of Resolution passed at General Body Meeting appointing accused no. 4 as the audit of the said society.
- 6 That during the year \_\_\_\_\_, management of the funds of the XYZ Co-operative Housing Society was in the charge of accused nos. 1 to 3. The Complainant further states that during this year, fund was of the said housing society was entrusted upon to accused nos. 1 to 3. The complainant further states that the bank account of the said housing society was operated through PQR Co-operative Bank Ltd. and bank account of the society was \_\_\_\_\_. The complainant further states that said account of the society was operated jointly and severally by accused nos. 2 and 3. The complainant further states that funds of the said account was disbursed through cheque which needs to be signed by the accused nos. 2 and 3. The complainant further states that each transaction, for which payment was to be made by cheque, was decided by accused nos. 1 to 3 in its managing committee meeting held from time to time and thus accused nos. 1 to 3 are jointly and severally liable for the mismanagement of the funds of the said society.

That during the year \_\_\_\_\_, the accused nos have following payments details of which is as under.

Vno.	Date	Amount	Cheque No.	to whom payment made
20	12/05/2001	12,900	345678	
38	24/07/2001	9,500	387670	
90	30/09/2001	6,900	560890	

- 7 That above payments are made for the purpose of carrying out of Repairs of the building during the year 2001-02. The complainant further states that above payments are made to the relatives, firm and company in which the managing committee members are interested as proprietor, and / or Director. The complainant further states that as per clause no. of Bye Laws of the Society, in case when total amount to be spent is more than Rs, in that case approval of the General Body of the society is essential. The complainant further states that when total amount to be spent for repairs is more than Rs.in that case inviting of tender from various party is mandatory.
- 7 That however, while carrying out of repair work of the building of XYZ Co-operative Housing Society Ltd., accused nos. 1to 3 have failed and neglected to invite for any tenders for the

work carried out by them . The complainant further states that accused have failed and neglected to call for meeting of General Body of Meeting and to get work sanction through it.

- 8 That instead of calling for general body meeting and to get the approval for the appointment of the contractor to be appointed for the repair work and to get contract value to be approved by general body meeting, the accused nos. 1 to 3 have entrusted work to their relatives and firms in which they are interested. The complainant further states that they have also given work at much higher rates than the prevailing market rate as on that date. The complaint further states that by this acts the accused nos. 1 to 3 have enjoyed wrongful gain of about Rs.\_\_\_\_/- and in turn have caused wrongful loss of about Rs.\_\_\_\_/- to the society.
- 9 That in respect of this acts, the complainant has written a letter to the accused nos. 1 to 3 requesting them to explain to commit this default and also requested to reimburse an amount of Rs.\_\_\_\_/-for causing wrong full loss to the society. The complainant further states that he has delivered this letter personally to accused nos. 1 to 3 on or about . The complainant further states that accused nos. 1 to 3 have received this letter and have signed on copy of the said letter. The complainant further states that however accused nos. 1 to 3 have failed and neglected to give any reply thereto. Annexed hereto and Marked as “Exhibit – “ is the copy of the said letter.
- 10 That annual accounts of the said were sent for audit to accused nos. 4 and to give his report in respect of said accounts as about correctness of the transactions shown in the Annual Accounts. The complainant further states that on learning about a fact that the accounts of XYZ Co-operative Housing Ltd. are sent for audit to accused no. 4, he has sent him a letter mentioning all facts as about the irregularity and misappropriation carried out by accused nos. 1 to 3 in managing funds of the year. The complainant further states that however accused no. 4 have failed and neglected to carry out any inquiry in relation to the query mentioned in said letter. The complainant further states that accused no.4 have also failed and neglected to report these irregularities and misappropriation. Annexed hereto and marked as “Exhibit - Colley is the copy of the said letter and annual accounts of the society signed by accused nos. 1 to 4.
- 11 That the complainant has therefore sent legal notice to accused nos. 1 to 4 through his advocate\_\_\_\_ & Co. on 25-12-2001 by Registered A.D. The Complainant further states that accused nos. 1 to 4 have received said notice on 28-12-2001. The complainant further states that by this notice, he has called upon accused to make good loss of Rs. caused to XYZ Co-operative Housing Society Ltd. The complainant further states that however accused nos. 1 to 4 have neither have reimbursed any loss to the said Society nor have send any reply to the complainant.

That with these acts, the accused nos. 1 to 4 has committed an offence of criminal breach of Trust, misappropriation of funds, falsification of accounts and also mischief as provided under Indian Penal Code.

That accused nos. 1 to 4 are residing within the limits of \_\_\_\_\_ Police station and also they committed offence within the limits of \_\_\_\_\_ police station, which are within jurisdiction of this Hon'ble court.

That necessary court fee stamp as payable, is paid by complainant.

**The complainant therefore prays that:**

- 12 That Hon'ble court may please dealt with this complaint in the manner as provided under provisions of Criminal Procedure Code, 1973 and try the accused as per the provisions of Provisions of Criminal Procedure Code, 1973 and on finding them guilty punish them as per provisions of Indian Penal Code.

To pass any appropriate order as this Hon'ble Court may deems fit and proper in above facts and circumstances.

Advocate for complainant

Complainant

Place :

Date :

**FORM NO. 28 LEGAL NOTICE TO BUILDER**

**ON ADVOCATES LETTERHEAD**

**BY REGISTERED A/D**

Date : \_\_\_/\_\_\_/20\_\_\_

To:

**Sirs,**

**Sub:** Legal Notice for violation of various laws of the land including –

- a) Not executing the Agreement with the Flat purchasers in the Format as prescribed in MOFA Act.
- b) Not handing over copies of various Municipal plans as well as complete set of architectural and structural drawings.
- c) Not giving copy of the statement of accounts particularly of various amounts collected from investors at the time of resale of flats.
- d) Not sorting out the grievances of flat purchasers.
- e) Failure to comply with the statutory obligations as mentioned in the MOFA Act.
- f) Not depositing the various amounts collected from the Flat purchasers in a separate bank account.
- g) Negligence in managing the funds of the flat purchasers which are in your custody as a Trustee of the funds.
- h) Not taking steps to correct the defects in the construction in the Flats acquired by the flat purchasers.
- i) Failure to comply with the provisions of section 10(1) of MOFA Act.
- j) Making changes in the building plan without the consent of Flat purchasers.
- k) Deficiency of services and/or civil action proposed to be taken against you.
- l) Criminal action proposed to be taken against you.
- m) Damages of Rs. \_\_\_\_\_ for the deficiency of service and failure to comply with the statutory obligations.

**A) To initiate action against builder for**

- **Cheating ( Sec. 415)**
- **Abetment of a thing (Sec. 107)**
- **Public Nuisance (Sec. 268)**
- **Volunteers causing hurt to extort property or to constraint to an illegal act (Sec. 327)**
- **Wrongful Restraint (Sec. 339)**
- **Wrongful Confinement (Sec. 340)**
- **Extortion (Sec. 383)**
- **Putting person in fear of injury in order to commit extortion (Sec. 385)**
- **Dishonest misappropriations of property. (Sec. 403)**
- **Cheating and dishonesty including delivery of property ( Sec. 420)**
- **Mischief( Sec. 425)**
- **Making a False document (Sec. 464)**
- **Criminal intimidation (Sec. 503) of Indian Penal Code 1860.**

**(B)**

- **Violations of the provisions of the Maharashtra Ownership of Flat Regulation of the Promotion of Construction, Sale, Management & Transfer Act, 1963, particularly general liability of promoter of sec. 3,**
- **Promoter before accepting advance payment or deposit to enter into Agreement and Agreement to be registered sec. 4.**
- **Promoter to maintain separate account of sums taken as advance and deposit and to be trustee there for and disburse them for purposes for which it is given sec. 5.**
- **Responsibility for payment of outgoings till property is transferred sec. 6.**
- **After plans & specifications are disclosed no alterations or additions without consent of persons who have agreed to take the flat and defects notice within three years to be rectified sec. 7**
- **Promoter to take steps for formation of Co-operative Society or company sec. 10.**

With reference to the above and under instructions from my clients, Shri \_\_\_\_\_, having address at \_\_\_\_\_, I have to state as under:-

- 1) My clients say and submit that there have been instances where the Builder has cheated Flat Purchasers. My clients say and submit that the Government Authorities also felt a need to ensure that interests of flat purchasers are protected. As a result of which Maharashtra Government has prescribed a Model Agreement in Form-V that is to be executed by the Promoters with the Flat Purchasers. My clients further submit that Explanatory Note to the Form-V Agreement, which is a part and parcel of the MOFA (The Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale,

Management and Transfer) Act, 1963, which clearly stipulates that certain clauses of the Model Agreement are statutory and mandatory according to the provisions of the Act and these Rules shall be retained in each and every individual Agreement/s executed between the Promoter and Flat Purchaser. My clients say and submit that Explanatory Note No. 1 of Model Form of Agreement in Form-V is reproduced hereunder :

**Note No. 1** - This is only a model form of agreement, which will have to be modified and adopted in each case having regard to the facts and circumstances of each case but in any event such clauses 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13 and 22 which are statutory and mandatory according to the provisions of the Act and these rules shall be retained, in each and every individual agreement/s executed between the Promoter and Flat Purchaser. Any departure or variation from these statutory and mandatory conditions, being violative and ultra vires of the provisions of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereinafter referred to as "the said Act") will not be binding and enforceable upon the parties, such conditions being void ab initio.

- 2) My clients say and submit that the definition of the Promoter includes the Developer. My clients say and submit that it is the statutory duty of the Developer to join as a Confirming Party to the Tripartite Agreement to be executed between the Promoter, Flat Purchaser and the Owner so that the Owner is bound by all the terms and conditions and covenants of the Tripartite Agreement. The above said Model Agreement has come into force with effect from 10-04-1987. My clients further submit that it is your statutory obligation not to charge a Single Rupee to the Flat Purchasers till the date of receipt of Occupation Certificate. My clients submit that Management of the building has to be done by you till the Occupation Certificate is received.
- 3) My client says and submits that before the Conveyance Deed can be formally drafted by you, they would appreciate if you could make available to my clients certified true copy of the below mentioned documents namely:
  - a) Ledger Abstract of the property i.e. 7/12 Abstract.
  - b) Order issued by the competent authority as per the provisions of the Urban Land Ceiling Act.
  - c) Development Agreement executed by the developer with the land owners.
  - d) Copies of the Power of Attorney given by the owners in favour of the developers along with the copy of the registration receipt.
  - e) Intimation of disapproval from the Bombay Municipal Corporation Authorities.
  - f) Occupation Certificate.
  - g) Building Completion Certificate.
  - h) Approved plan of the building.
  - i) Chain of documents through which the vendor acquired the right, title and interest in the property.
  - j) Non-agricultural assessment order.
  - k) Non-agricultural tax paid receipts.
  - l) Title Clearance Certificate from the vendor's advocate.
  - m) Search report for the last 30 years with the search fees paid receipts.

- 4) My clients say and submit that as per section 153 (1) (2) (3) of BMC, it is necessary to get the property transferred in the name of the owners. My clients say and submit that as the flat purchasers have acquired the flat for a valuable consideration from you, my clients have become the owners of the property and it is your statutory obligation to ensure that the property is transferred in my client's name. You are aware that Conveyance has to be executed by the Vendors and for the same even signature of my clients is not required. It is your statutory obligation to ensure that the property card is transferred in my clients name. You have entered into an Agreement with the flat purchasers and a copy of the Stamp Duty receipt is also with you. In the event you do not have the said Stamp Duty receipts then it is respectfully submitted that you should obtain the same directly from the flat purchasers from whom you have collected substantial amounts without complying with your statutory obligations.
- 5) My clients submit flat purchasers have for a valuable consideration acquired the right, title and interest in the Flats/Shops in building \_\_\_\_\_. My clients submit that the Agreement executed by you with Flat purchasers is not in the format of model agreement as stipulated under The Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 Act, commonly known as MOFA. My clients say and submit that Clause-2 of the Model Agreement clearly stipulates that the price for the Flat includes certain amount "**being the proportionate price of the common areas and facilities appurtenant to the premises, the nature, extent and description of the common/limited common areas and facilities/limited common areas and facilities**". This is the precise reason why you in the opinion of my clients have no right to sell the car parking space. My client says and submits that you do not have any right of any nature whatsoever to collect money and allot open car parking space, stilt car parking space to a person of your choice. It will not be out of place to mention that when the flat purchasers were showing interest in your project the rate that was quoted by you was for super built up area. The implications of the same is that every flat purchaser has paid for the open spaces. You are also aware that open car parking space, stilt parking space is not included in FSI calculation. Enclosed **Annexure- A** is a copy of the Judgment delivered by the Maharashtra State Co-operative Appellate Court in **A. O. No. 86 of 2001 in M/s. Prakash Auto V/s. Arenja Arcade Premises Co-op. Society Limited & Another** wherein it has been held that the purchaser of open car parking space or the purchaser of basement does not get title to the car parking space in the open space and/or the basement. The nature of the grounds for which my clients propose to initiate action against you on the grounds of deficiency of service besides initiating criminal action, include:-
- a) Not obtaining Building Completion Certificate.
  - b) Not giving the Statement of Accounts.
  - c) Not giving copies of building plan.
  - d) Not paying the statutory dues payable to Municipal Corporation of Mumbai.
  - e) Not providing swimming pool and health club as promised by you.
  - f) Not providing Fire Fighting Equipments.
  - g) Not providing dish antenna.
  - h) Not providing Amenities as has been mentioned in the Agreement.

- i) Not doing the management of the building, \_\_\_\_\_ in a proper manner till the formation of the Society.
  - j) Not repairing the building \_\_\_\_\_, which requires extensive repairs in spite of the fact that the building has been recently constructed till the formation of the Society.
  - k) My clients have been given to understand the Lift that has been fixed is not of good quality. The Lift does not have security measures like sensors, alarms, etc.
  - l) Selling the open space in the building \_\_\_\_\_ for car parking purposes.
  - m) Not handing the vacant and peaceful possession of office.
- 6) Pursuant to Rule 4 of the Maharashtra Ownership Flats Rules, 1964, my clients say and submit that it is the statutory obligation to give certified true copies of the below mentioned documents. By this legal notice my clients hereby call upon you to give certified true copies of the documents as mentioned therein. The contents of Rule 4 are reproduced hereunder for your ready reference :

**Rule 4 : True copies of certain documents to be given**

A promoter shall, on demand and payment of a reasonable charge, therefore, give to any person intending to take or taking (one or more flats) true copies of the following documents, namely : -

- (a) all documents of title relating to the land on which the flats are constructed or are to be constructed, which are in the promoter's possession or power;
  - (b) The certificate by an Attorney-at-law or Advocate referred to in clause (a) of sub-section (2) of section 3;
  - (c) All documents relating to encumbrances (if any) on such land, including any right, title, interest or claim, of any party in or over such land;
  - (d) The plans and specifications of the building built or to be built on the land referred to in clause (e) of sub section (2) of section 3;
  - (e) A list of fixtures, fittings and amenities (including the provision for one or more lifts) provided or to be provided for the flat;
  - (f) A list referred to in clause (g) of sub-section (2) of section 3;
  - (g) A list of all outgoing referred to in clause (i) of sub-section (2) of section 3 and the basis on which any estimated figures or other information is given to the person intending to take or taking the flat.
- 7) My clients hereby call upon you to give to my clients a complete set of Architectural Drawings. My clients also call upon you to give complete set of Structural Drawings with structural calculations. My clients also call upon you to give a copy of the Soil Investigation Report. My clients also call upon you to give a copy of the Report of Environmental Impact Analysis.
- 8) My clients submit that the representatives of the building \_\_\_\_\_ have time and again briefed you about the problems in the building \_\_\_\_\_. My clients submit that you have time and again given verbal promises to sort out the problems but you have never cared to ensure that the grievances of the premises purchasers are sorted out to the satisfaction of the premises purchasers of building \_\_\_\_\_.

- 9) My clients have informed me that inspite of my client having paid to you the consideration for acquiring the right, title and interest in the premises mentioned against the name of my clients in the building \_\_\_\_\_, you have failed and neglected to comply with your statutory obligations.
- 10) My clients also call upon you to give the residential address of all the directors / partners of the company/firm.
- 11) My clients say and submit that they have not received original documents of the title to the property as well as copy of the Building Completion Certificate inspite of the fact that substantial time has passed since the date of purchase of flat by the flat purchasers.
- 12) My clients have been given to understand that you accepted more than 20% of the Sale Price before executing written Agreement. My clients say and submit that the above said act of yours by accepting more than 20% of the Sale Price before entering into valid written Agreement is in utter violation to the provisions of sec. 4 of the MOFA 1963. My clients further submit that the Agreement executed by you with the Flat Purchasers is in utter violation to the Model Agreement prescribed in Form-V of the MOFA 1963. The provisions of Rule 10 Sub Rule 2 format of the same is reproduced herewith for your ready reference. My clients say and submit that as a Promoter you are hereby called upon to give Certified True Copies as prescribed in the form as per your Register, List of ownership flat purchasers in building \_\_\_\_\_ constructed by you as mentioned in Form-I of the MOFA 1963.
- 12A) My clients hereby call upon you to give a copy of Form of Register of persons who are purchasing the flats in building \_\_\_\_\_ along with details of various amounts paid by them.

**FORM - I**  
**(See Rule 10 (2))**

Form of Register of persons purchasing ownership flat in \_\_\_\_\_ (name of Bldg.) and constructed by \_\_\_\_\_ (Name of Builder)

<b>Sr No. Floor</b>	<b>Date of Application</b>	<b>Name of the person</b>	<b>Date of Address</b>	<b>No. of Agreement</b>	<b>flat</b>	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
_____						
_____						

<b>Amount Paid</b>	<b>Date of Payment</b>	<b>No. of Receipt</b>	<b>Date of Receipt</b>
(8)	(9)	(10)	(11)
_____			
_____			

- 12B) My clients also call upon you to give a copy of Form of Register of Flats in building \_\_\_\_\_ constructed by you as per Form-II which is reproduced hereunder for your ready reference.

**FORM – II**  
(See rule 10 (2))

Form of Register of Flats sold in the \_\_\_\_\_ (Name of Building)  
Constructed by \_\_\_\_\_ (Name of Builder)

<b>Sr No.</b>	<b>No. of Flat</b>	<b>Name of the Purchaser</b>	<b>Address of the Purchaser</b>	<b>Whether Purchased or agreed to be Purchased</b>
(1)	(2)	(3)	(4)	(5)

<b>Whether Original Purchaser or a Transferee</b>	<b>Date of Agreement</b>	<b>The Price Settled</b>	<b>No. of Installment &amp; Amount</b>	<b>Date of payment</b>
(6)	(7)	(8)	(9)	(10)

12C) My clients also call upon you to give a Statement indicating personwise receipts and disbursements in respect of sum accepted as advance or deposit from the flat purchasers in building \_\_\_\_\_ constructed by you as per Form-III which is reproduced hereunder for your ready reference.

**FORM – III**  
(See rule 10 (2))

Statement indicating personwise receipts and disbursements in respect of sum accepted as advance or deposit from the Flat Purchasers in \_\_\_\_\_ (Name of the building) constructed by \_\_\_\_\_ (Name of Builder).

Name of the Flat Purchaser : \_\_\_\_\_

Date of Agreement \_\_\_\_\_ Flat No. \_\_\_\_ Floor No. \_\_\_\_\_

<b>Sr No.</b>	<b>Date of Payment</b>	<b>Receipt No.</b>	<b>Date of Purpose</b>	<b>Date of Deposit in Bank</b>	<b>Withdrawal from Bank</b>
(1)	(2)	(3)	(4)	(5)	(6)

<b>Purpose of Withdrawal</b>	<b>Date of Disbursement</b>	<b>Voucher No.</b>	<b>Balance</b>
(7)	(8)	(9)	(10)

12D) My clients also call upon you to give a statement indicating purposewise receipts and disbursements in respect of the sums accepted by you as advance or deposit from the Flat Purchaser in building \_\_\_\_\_ as per Form-IV reproduced hereunder for your ready reference.

**FORM – IV**  
**(See rule 10 (2))**

Statement indicating purposewise receipts and disbursements in respect of sums accepted as advance or deposit from the Flat Purchaser in \_\_\_\_\_ (Name of building) constructed by \_\_\_\_\_ (Name of Builder).

<b>Purpose of Deposit of Advance</b>	<b>From whom received</b>	<b>Date of receipt</b>	<b>Receipt No.</b>	<b>Date of Deposit in the Bank</b>
(1)	(2)	(3)	(4)	(5)

<b>Date of Withdrawal from Bank</b>	<b>Purpose of Withdrawal</b>	<b>Date of disbursement</b>	<b>Voucher No.</b>	<b>Balance in Account</b>
(6)	(7)	(8)	(9)	(10)

13) My clients hereby call upon you to hand over the certified true copies of the documents i.e.

- a. Document through which you acquired right, title and interest in the above said property.
- b. Copies of permission received by you from the BMC towards occupation certificate as well as various plans of the property as approved by the BMC authorities.
- c. Copy of permission received from Urban Land Ceiling Department, if any.
- d. Copy of the various concessions applied for by you to the Bombay Municipal Corporation Authorities with regards to the plans submitted to the BMC authorities.
- e. Copy of the IOD issued by BMC authorities.

My clients are willing to pay the necessary charges for obtaining the above said certified true copies.

- 14) Pursuant to section-5 of the MOFA Act, my clients respectfully submit that the promoter is duty bound to maintain a separate account for the advance or deposits taken by the promoter from the flat purchasers. My clients further submit that as per Section-5, you are a trustee for the above said amount taken by you. My clients further draw your attention that as per the provision of Rule 10 (2) of MOF Rules 1964, you are duty bound to maintain a register of persons purchasing ownership flats in Building \_\_\_\_\_.
- 15) My clients further submit that when a Developer constructs a building, he has to ensure that all the infrastructure facilities are provided. My clients further submit that the role of the Developer does not come to an end just by handing over possession of the Flat/Shop. There are various other statutory obligations that are cast upon the Developer which the Developer has to fulfill. My clients further submit that the representatives of the occupants of the building \_\_\_\_\_ have been in touch with you and many times you have given false promises to them verbally but you have not taken any steps to solve the legitimate grievances of the Flat/Shop Purchasers. My clients further submit that vague replies like all the maintenance dues have not been paid by Promoters, plot requires sub-division, statutory authorities are not co-operating, has got nothing to do with my clients.
- 16) My clients further submit that as a Developer it is your duty to form a Co-operative Society and take steps to see that the difficulties of the Flat/Shop Purchasers are minimized/eliminated.
- 17) By this legal notice for and on behalf of my clients, I hereby call upon you to comply with above said submissions immediately. My clients further submit that the mental torture that has been caused to them every day cannot be expressed in words. My clients further inform you that if within 15 days you do not comply with the above mentioned submissions, then my clients will have a claim of Rs. \_\_\_\_\_ **(Rupees \_\_\_\_\_ Only) from you for the deficiency of service as well as mental torture that has been caused to my clients.** Please note that this is besides initiating appropriate civil and criminal actions against you and all the directors/partners of the company/firm and also against all the responsible officers of the company/firm at your risk and cost which may kindly be noted.
- 18) My clients say and submits that they have been given to understand that individual flat purchasers of building \_\_\_\_\_ would also be claiming compensation from you for the mental torture and deficiency in service that is being caused to them on account of your various acts of omission and commission.
- 19) That you constructed the building \_\_\_\_\_ and sold flats and some shops to my client's members u/s. 4 of the Maharashtra Ownership Flat Act, 1963 and as such you are "Promoters" within the meaning of Sec. 2 (c) of the M.O.F. Act, 1963.
- 20) Sec. 7 of the M.O.F. Act, 1963 prohibits you from making any change or alteration in the structure of building constructed by you after the plans and specifications of the building

as approved by the local authority are disclosed to the persons who agrees to take one or more flats. Violation of the provision is an offence punishable under Sec. 13(3) of the M.O.F. Act, 1963 by punishment of imprisonment upto one year or fine or both. My clients say and submit that as per the provisions of Section 11 of the MOFA Act, it is the statutory obligation of the Promoter to convey the title and execute the documents in favour of the Society. The provisions of Section-11 of the MOFA Act are reproduced herewith for your ready reference:-

**Section-11**

***Promoter to Convey title, etc., and execute documents according to Agreement-***

***A promoter shall take all necessary steps to complete his title and convey, to the organization of persons who take flats, which is registered either as a co-operative Society or as a company as aforesaid, or to an association of flat-takers (or apartment owners) his right, title and interest in the land and building, and execute all relevant documents therefore in accordance with the Agreement executed under section-4 and if no period for the execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period and also deliver all documents of title relating to the property which may be in his possession or power.***

- 21) My clients have reasons to believe that you have changed the building plan without taking written consent of each and every flat purchasers. My clients say and submit that the above said act of yours is illegal, abuse of power and in utter violation to the provisions of Law. This besides civil liabilities for which my clients would be filing a suit against you before the Consumer Court on the grounds of deficiency of service.
- 22) My clients say and submit that inspite of the fact that substantial time has passed, but you have not executed the conveyance in favour of my clients.

Your attention is also drawn to the provisions of Rule 9 of the Maharashtra Ownership Flats Rules, 1964. The same is reproduced hereunder for your ready reference :

**9. Period for conveyance of title of promoter to organization of Flat Purchasers:**

If no period for conveying the title of the promoter to the organization of the flat purchasers is agreed upon, the promoter shall (subject to his right to dispose of the remaining flats, if any) execute the conveyance within four months from the date on which co-operative society or the company is registered or, as the case may be, the association of flat takers is duly constituted.

When a promoter has submitted his property to the provisions of the Maharashtra Apartment Ownership Act, 1970, by executing and registering a Declaration as required by section 2 of that Act, and no period for conveying the title of the promoter in respect of an apartment to each apartment-taker is agreed upon, the promoter shall execute the conveyance or deed of apartment in favour of each apartment-taker within four months from the date the apartment-taker has entered into possession of his apartment.

- 23) My clients further submit that vague reply such as plot is not subdivided owners are not Co-operating, there are practical difficulties of the Builders etc. have got no relevance. My

- clients say and submit that difficulties of the types as mentioned hereinabove have to be sorted out at your end which has got nothing to do with my clients. My clients hereby call upon you to ensure that the property is transferred in the name of my clients in Cadestral Survey record. Needless to add necessary cost for doing so will have to be borne and paid by you. My clients say and submit that in the event excess Stamp Duty has to be paid then the same will have to be paid by you as this is a clear cut case of negligence on your part.
- 24) My clients say and submit that the role of the Builder/Developer does not come to an end after collecting money from the flat purchasers. My clients say and submit that the Builder/Developer is the Trustee of the various amounts collected by them. My clients say and submit that it is the statutory duty of the Builder/Developer to give the original documents of title of the property to the Co-operative Housing Society and execute the conveyance in favour of the Co-operative Housing Society. My clients herewith submit copy of the Judgment delivered by the Court of Metropolitan Magistrate in 22<sup>nd</sup> Court, Andheri, in the case of **Torana Co-operative Housing Society Limited V/s. Shri Hiraji Dinanath Jamsandekar & Another**, wherein the Metropolitan Magistrate has specifically mentioned that one of the purposes of the punishment is also to send signal to the persons, who are holding intention of similar kind. Enclosed **Annexure-B** is a copy of the Judgment delivered by the Metropolitan Magistrate of 22<sup>nd</sup> Court, Andheri, in the above said case holding the Accused liable for offences Under Section 3, 4, 5, 10 & 11 of the MOFA Act read with Section 13 of the MOFA Act. My clients say and submit that you have committed offences Under Section 3, 4, 5, 10 & 11 of the MOFA Act read with Under Section 13 of the MOFA Act. The provisions of Section 13 of MOFA Act are reproduced herewith for your ready reference:

**Section-13**

**Offences by Promoters –**

- (1) Any promoter who, without reasonable excuse, fails to comply with or contravenes, the provisions of sections 3, 4, 5 (save as provided in Sub-Section (2) of this section), 10 or 11 shall, on conviction, be punished with imprisonment for a term which may extend to three years or with fine, or with both.**
  - (2) Any promoter who commits criminal breach of trust of any amount advanced or deposited with him for the purposes mentioned in section-5 shall, on conviction, be punished with imprisonment for a term which may extend to five years, or with fine, or with both.**
  - (3) Any promoter who, without reasonable excuse, fails to comply with, or contravenes, any other provision of this Act or of any rule made thereunder, shall, if no other penalty is expressly provided for the offence, be punished, on conviction with imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both.**
- 25) My clients further submit that the blanket consent obtained at the time of signing of the Agreement with the flat purchasers is no consent at all. Enclosed **Annexure-C** is a copy of the Judgment delivered by the Mumbai High Court in the case of **Smt. Neena Sudarshan Wadia V/s. M/s. Venus Enterprises & Others**, which stipulates that the blanket consent obtained at the time of signing or Agreement or at the time of handing over possession is no consent at all.
- 26) You are aware that recently the Supreme Court has in the case of Friends Colony Development Committee – Appellants v/s The State of Orissa & Ors. – Respondents (AIR SC 2005), has held that with regards to illegal construction, regularization of deviations is

permissible only in case of bonafide deviations. My clients say and submit that the application to regularize has to be dealt with by a multimember high-powered committee. My clients say and submit that while delivering the abovesaid judgement the Supreme Court has held that heavy penalty is to be imposed on erring professional builders. My clients say and submit that while delivering the abovesaid judgement the Supreme Court has held that a fund to compensate the purchasers may be created. My clients say and submit that the Supreme Court has in the above said case has held that the cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builder can safely be assumed to be deliberate and done with the intention of earning profits and hence the same is deserved to be dealt with sternly so as to act as a deterrent for future.

- 27) My clients says and submits that the Supreme Court has observed in the abovesaid judgement that it is common knowledge that the builders enter into underhand dealing. The State Government should think of levying heavy penalties on such builders and therefore Developer Welfare Fund, which can be utilised to compensate rehabilitating such innocent and unwary buyers, who are displaced on account of demolition of illegal construction. The application for compounding the deviations made by the builder should always be dealt with at a higher-level by multimember high-power committee so that the builders cannot manipulate. **The officials who have connived as unauthorised or illegal construction should not be spared.** In developing cities the strength of staff is supposed to keep a watch of building activities should be suitably increased in the interests of constant and vigil watch on the illegal and all unauthorised constructions.
- 28) The Supreme Court has further observed in the above said case that unwary purchaser, who shall be the sufferer must be adequately compensated by the builder. The arms of law must rise to catch hold of such unscrupulous builders and at the same time in order to secure vigilant performance of duty the responsibility should be fixed on officials whose duty was to prevent unauthorised construction, but who played in doing so either by negligence or by connivance. The Supreme Court in the above said Judgment has also observed that during the course of hearing the Respondent No. 3, must personally remain present in the High Court, unless exempted from personal appearance and any non-compliance of the order of the Courts cause the Respondent Nos. 2 & 3, shall be construed as contempt of the orders of the Court and they shall be liable for the legal consequences. The builders must deposit the compound fees of Rs. 2,09,160/- within such time as the High Court may allow in this behalf. The deposit should be treated as a provisional payment of compounding fees, subject to adjustment against such amount as the High Court may ultimately arrive at. Enclosed **Annexure-D** is a copy of the judgement delivered by the Supreme Court in the case of Friends Colony Development Committee v/s. State of Orissa & Others (Citation AIR 2005 Supreme Court 1).
- 29) My clients say and submit that the act of a professional builder of taking advantages of concessions, deviations from the sanctioned plan is nothing but an attempt by the professional builder to enrich himself at the cost of the innocent flat purchasers. My clients say and submit that open space is meant for the benefit of the sections of the public at large, including that of flat purchasers. My clients strongly object to the deviations (if any) from the sanctioned plan. My clients also call upon you to give to my clients details of all the applications made by you for constructions, as well as the reasons for concessions (if any) made to the competent authority.
- 30) My clients would also appreciate if you clarify the reasons why the building completion certificate has not been obtained by you, in spite of the fact that substantial amount of time

has passed. My clients further submit that in spite of repeated requests, demands and requisitions you are not giving copies of the building plans.

- 31) My client says and submits that pursuant to the decision given by the Bombay High Court in the case of Madhu Vihar Co-operative Housing Society Limited and Others V/s. Jayantilal Investments, it has been upheld that the amenities promised in the Brochures should be provided by the Developer. The Bombay High Court in the above said judgment had permanently restrained the Developer from making any construction over the suit land bearing CTS No. 1068/1 admeasuring about 6071 Sq. Mtrs. situated at Kandivli (W), Mumbai, as has been mentioned in para (d) of the order. My client understands that you have tampered with the building plan and have not given the amenities as had been promised by you to the flat purchasers. Enclosed **Annexure-E** is a copy of the judgment delivered by the Bombay High Court in the case of Madhu Vihar Co-operative Housing Society Limited and Others V/s. Jayantilal Investments.
- 32) To give you last opportunity to atone for your wrong my clients hereby call upon you to comply with the abovesaid submissions immediately failing which my client shall prosecute you under Sec. 13(1) of the M.O.F. Act, 1963. My clients hope that wiser counsel will prevail upon you and you will comply with the various submissions made in this notice failing which you will be responsible for the cost and consequences arising thereof.

**FROM**

**ADVOCATE HIGH COURT**

**Draft approved by clients**

<b>Sr. No.</b>	<b>Notice issued for and on behalf of Residents of Building _____</b>	<b>Flat No.</b>	<b>Signature</b>
1			
2			
	3		

**Encl:**

- 1) **Annexure-A** : Copy of Judgment delivered by the Maharashtra State Co-operative Appellate Court in A. O. No. 86 of 2001 in M/s. Prakash Auto V/s. Arenja Arcade Premises Co-op. Society Ltd & Another.
- 2) **Annexure-B** : Copy of the Judgment delivered by the Metropolitan Magistrate of 22<sup>nd</sup> Court, Andheri, in the case of Torana Co-op. Housing Society Limited V/s. Shri Hiraji Dinanath Jamsandekar & Another.

- 3) **Annexure-C** : A copy of Judgment delivered by the Mumbai High Court in the case of Smt. Neena Sundarshan Wadia V/s. M/s. Venus Enterprises & Others.
- 4) **Annexure-D** : Copy of the judgement delivered by the Supreme Court in the case of Friends Colony Development Committee v/s. State of Orissa & Others. (Citation AIR 2005 Supreme Court 1.
- 5) **Annexure-E** : Copy of judgment delivered by the Bombay High Court in the case of Madhu Vihar Co-operative Housing Society Limited and Others V/s. Jayantilal Investements.

## **ANNEXURE "A"**

### **The Maharashtra State Co-operative Appellate Court Mumbai (Before Shri V. Nirgude President)**

A.O. No. 86 of 2001

M/s. Prakash Auto ...Appellant  
V/s.  
1. Arenja Arcade Premises Co-op. Soc. Ltd.  
2. M/s. Shabi Construction Co. ...Respondents

Mr. Wagh for the Appellant,  
Mr. R. B. Chaudhari for the Respondent No. 1,  
Mr. Vilas Naik for the Respondent No. 2.  
Mumbai,

March

4, 2002

### **Oral Judgment**

The appeal is filed against the order dated 9<sup>th</sup> April 2001 passed by the Id Judge, Co-operative Court No. V Mumbai, in dispute No. 543 of 2000 whereby the application for temporary injunction came to be rejected.

The Appellant was the disputant and the respondents were the opponents in the lower court. The cause of action for the dispute was as under: -

The Appellant is a member of the Respondent No. 1 Co-operative Society. The Respondent No. 2 is a promoter of the building in which various persons purchased the units. (This is an office/shop premises society at Vashi, New Mumbai).

It is a common ground that the Respondent No. 2 after acquisition of the plot started development of the same as per the building plan which was sanctioned by the New Town Development Authority (for short the Authority) The sanctioned plan provided that there would be basement for the building where there would be 16 car parking spaces. It is the case of the appellant that after acquiring the shop they approached the promoter, the Respondent No. 2, for 'allotment' of car parking spaces in the basement. They Respondent No. 2 then 'allotted' 14 car

parking spaces to the Appellants in 1995 charging them Rs. 7.50 lac. The amount was paid and then the transaction was recorded in a letter of the Respondent No. 2 dated 30<sup>th</sup> September 1995. The Appellants stated they are in occupation of these car parking spaces since then. The Respondent No. 1 society was formed, in the year 1999. For the first time in October 2000, the society took objection in the Appellants occupying these car park spaces. The society wrote a letter to the appellants that they would allot these spaces to the members. They refused to recognize the transaction between the Appellants and the Respondent No. 2 about 'allotment' of the spaces in 1995. This stand of the society gave rise to the dispute. The Appellants filed the dispute for permanent injunction to prevent the society from dealing with these disputed car park spaces and from disturbing their occupation/user of the same. The Appellants also moved an application for temporary injunction for similar relief.

The society opposed the application – whereas the Respondent No. 2 supported the Appellants by filing an affidavit. The society's contention was that the respondent No. 2 was not entitled to allot/sell/dispose of the disputed car park spaces to the Appellants and so the Appellants would not get any title to them.

The Id. Judge of the lower court after hearing all the parties came to a conclusion that the Respondent No. 2 could not have lawfully allotted the disputed car park spaces to the Appellants and so rejected the application for temporary injunction.

As said above the appeal is filed against that order.

The point for consideration before this court is.

Whether the provisions of Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 [for short MOFA] as well as General Development Control Regulations applicable to Navi Mumbai prevented the Respondent No. 2 from allotting/selling or otherwise disposing of the disputed car park spaces?

The answer is in affirmative.

### **Reasons**

Mr. Wagh the Id. Counsel appearing on behalf of the Appellants submitted that there is no express provision in the MOFA as well the D.C.Rules to prevent the Respondent No. 2 from dealing with the disputed car park spaces. He also placed reliance on the principle that the Respondent No. 2 who was owner of the property could sell the same in whatever manner he wanted subject to restrictions under the law. He then quoted Salmond on Jurisprudence utilizing TWELFTH EDITION by P. J. Fitzgerald. I quote the paragraph which the Id. Counsel placed reliance.

“The rights of the owner, then, can be contrasted with the lesser rights of the possessor and of the encumbrancer. The owner's rights are indeterminate and residuary in a way in which these other rights are not. As we have seen, the possessor's right to not extend in time to infinity as do the owner's; and on the extinction of the possessor's right those of the owner revive. As compared with the rights of an encumbrancer those of the owner are again indeterminate and residuary, but on a different plane. An encumbrancer is one who has a right over the property of another. A may be the owner of Blackacre and B may have an easement of way over it. Here we can see that the interest of B, the encumbrancer, is adverse to the owner's rights and limits them. But while this adverse limiting right is of a specific nature, the rights of the owner comprise all

those indefinite rights, liberties and powers generally inherent in ownership, except for this one right of the encumbrancer; and should the encumbrancer's right be extinguished, the rights of the owner will stretch once more to their previous unlimited extent.

This does not mean, however, that an owner whose property is unencumbered has completely unlimited rights. To describe someone as an absolute owner of property is to say two things: it is to assert that his title to the property is indisputable, and that he has all the rights of ownership allowed by the legal system in question. We have seen that the rights of ownership may be limited by the adverse dominant rights of an encumbrancer or by the rights of the possessor (Who is in fact one very special type of encumbrancer). They may also be limited by special provisions of law such as town and country planning law, which regulates for special purposes the use, which an owner may make of his land. But in addition to being restricted by such specific provisions of public law, an owner's rights are restricted by a whole variety of provisions of the ordinary law, according to which various harmful and dangerous types of conduct qualify as criminal or tortious: the fact that I am the owner of the knife will not entitle me to use it to kill Smith. We may say that an owner is free to use and dispose of his property as he pleases, except in so far as he does not infringe his duties to specific encumbrancers, his duties under special regulations concerning the use of property and his general duties under the general laws of the land."

There is no and there cannot be dispute about what is stated in the above quoted paragraphs. They are the words of the eminent jurist. I would rather lay emphasis the second paragraph. It says that an owner whose property is otherwise unencumbered would still not have completely unlimited rights to it. The Id. Author said that such right would mean two things: to assert that his title to the property is indisputable, and that he has all the rights of ownership allowed by the legal system in question. The Id. Author opined that such right would be limited by special provisions of law such as town and country planning law, which regulates the use of such land.

Let us now take clue from this line of thinking. We have a party, the respondent no. 2 who was absolute owner of the plot in question. He was in possession to use this land in whatever way he wanted. Such use would be again be subject to provisions of Town Planning.

It is common ground that this area was declared as site for new township and SIDCO was declared New Town Development Authority.

Let us now consider the provision of Town Planning is applicable to this area. The Maharashtra Regional and Town Planning Act, 1966 is the relevant statute which governed development and use of the land. Under the provisions of this Act various terms such as 'owner', 'planning authority', 'plot', 'development' are defined.

Chapter II of the Act deals with the provisions relating to regional plans. Chapter III deals with the provisions for development plan. Section 22 in Chapter III deals with the contents of the development plan. It says that development plan should generally indicate the manner in which the use of land in the area should be regulated. It should also indicate the manner in which the land would be developed. It further provides that the development plan should provide number of matters such as proposals for allocating the use of land for purposes, such as residential, industrial, commercial, agricultural, recreational etc. Amongst many other matters the development plan should also make provision including impositions of conditions and restrictions in regard to the open space to be maintained about buildings, parking space and loading and unloading space for any building, etc. Section 22 thus makes it very clear that the development

plan of every area should state very clearly among other things as to how much open space should be maintained around the building, how much percentage of the plot should be utilized for building. It should also make strict provisions in respect of parking spaces for a building. Chapter IV deals with the control of development and use of land included in Development plans. Section 43 of Chapter IV says that without permission in writing of the planning authority of area no person should be allowed to change user of any land or should be allowed to carry out any development of land. This provision is further fortified by provision in section 44 & 45. They say how an application should be made for permission for development and how such application should be dealt. Section 159 of the MRTP Act enabled any Regional Board, Planning Authority or Development Authority with the previous approval of the State Government to make regulations to carrying the purposes of Act. In exercise of this power under section 159 the Development Authority here, the CIDCO made certain regulations, which are called as General Development Control Regulations for Navi Mumbai-1975. It is a common ground that these Development Control Regulations are applicable for the building in question.

Now let us understand the scheme of these regulations. The first important regulation is the definition of the "Floor Space Index".

3.11 "FLOOR SPACE INDEX" of a plot is the ratio of the gross floor area of all the storeys including the area of walls, mezzanine floors, staircase and lift, of a building on a plot to the total area of the plot. The gross floor space area of a building shall be calculated, as above, excepting that the following shall not be counted towards computation of floor space index.

- a. A basement or cellar and area under a building constructed on stilts used as a parking space or recreation space provided where there are no sidewalls on three or more sides of such a space.
- b. Electric cabin or sub-stations, Watchmen's Booth, Pump House.
- c. Staircase room and/or lift rooms above the top most storey architectural features, chimneys and elevated tanks of dimensions as permissible under these regulations.
- d. Staircase excepting those in an industrial and Service industrial building.
- e. Balconies proposed in accordance with Regulation No. 16.3.5.
- f. Lifts.
- g. Association/society office cum letterbox room in Residential and Shopping cum Residential as per following norms.

Size of Society/Association Office:

No. of Tenements	Permissible built up area for office
i) Tenements upto 16	20 sq. m.
ii) Tenements more than 16 & upto 15	25 sq. m.
iii) Tenements beyond 150	30 sq. m.

**Note :** The built-up areas mentioned above are inclusive of Toilet facility.

The Regulation No. 16 provided that development of buildings for various lands uses should be governed by the certain regulations.

The Regulation No. 17 independently deals with open spaces around buildings. This regulation provides minimum compulsory open space that is required to be left around a building.

The Regulation No. 18 deals with car parking, loading and unloading. This regulation provides certain area that is 2.50 M x 4.7 M. to be the standard car parking space. This regulation further provides that car park space should be shown clearly on the site plan along with the manoeuvring space. This regulation then gives particulars of minimum number of car parking spaces per square meter to be provided for various land uses. [Various land uses are Hotels and Lodging Houses, Educational Institution, Institutional, Assembly, Business, Mercantile and Storage.]

In present case the building is constructed on the land which is utilized for business. For such land use the regulation provides one car park space for 100 S.M. Indeed the respondent No. 2 who developed the building provided atleast 16 car parking spaces in the basement. The Development Control regulations have defined basement of a building as lower storeys of a building below or partly below ground level. A mention of basement is also made in the definition of the term floor space index. I have quoted the entire definition above. The underlined clause lay a rule that if the basement of a building is utilized in a particular fashion as car-park then the such basement of construction will not be considered as construction for the purpose of F.S.I. calculation. This provision makes it clear that legislature has made specific concession for promoter/developer of a building if he provided car park spaces in basement or cellar area. In my view the legislature has encouraged user of such area for such purpose.

In any case in this case the car park spaces are provided in the basement of this building. The Respondent No. 2, made the provision because he is bound to make such arrangement on the plot while developing and constructing the building.

Let us now consider the provisions of Maharashtra Ownership Flats (regulation of Promotion of Construction, sale Management and Transfer) Act, 1963. [for short MOFA.] This Act was passed by the legislature partly because it was brought to the notice of the State Government that, consequent on the acute shortage of housing in the several areas of the State of Maharashtra, sundry abuses, malpractices and difficulties relating to the promotion of the construction of, and the sale and management and transfer of flats taken on ownership basis existed and were increasing. (I am giving this reason from the preamble of Act.) in this Act the term flat is defined as under:

1. Definitions. In this Act, unless the context otherwise requires. – (a) “Flat” means a separate and self-contained set of premises used or intended to be used for residence, or office, show-room or shop or godown or for carrying on any industry or business and includes a garage, the premises forming part of a building and includes an apartment.

The term promoter is also defined in this Act as follows.

2.[c] “Promoter” means a person who constructs or causes to be constructed a block or building of flats; or apartments for the purpose of selling some or all of them to other persons, or to a company, co-operative society or other association of persons, and includes his assignees; and

where the person who builds and the person who sells are different persons, the term includes both;

There is no dispute about the fact that the Respondent No. 2 answers the description of term promoter used in this Act. It must therefore follow that the Respondent no. 2 has to contract this building of flats/shops/industrial units/offices and has to sell them to other persons. This would mean that though the Respondent No. 2 would be able to construct in the building staircase, stilts, Passages, Staircase landings, lobbies and terraces he is not permitted to sell them to others.

As said above the provisions of this act are made with a view to stop malpractices, abuses of the promoters of building that were noticed hitherto by the legislation. So. S.3 gives the list of the liabilities of a promoter. S. 4 makes it compulsory for a promoter to enter into a registered agreement for sale of flats before he could accept any payment. Section 5 requires a promoter to maintain a separate account of sums taken as advance and is considered to be trustee of the sum. Section 6 compels a promoter to pay out goings of the property till property is conveyed to the flat purchasers organization. Section 7,8 and 9 make other provisions to bind the promoter to his duty further. Section 10 compels the promoter to takes steps for formation of Co-operative Society or Company of the flat purchasers immediately after minimum number of persons required to form society or company have taken flats Section 11 then compels the promoter to convey his title to the property to the organization of persons. Section 12 gives the list of general liability of a flat taker. These are not many all he has to do is to pay the price at proper time and pay proportionate shares of Municipal taxes etc. section 13 defined offices by promoter. Certain rules under this Act were made and were made applicable to State in 1964. Rule 5 provided that "The promoter shall before accepting any advanced payment or deposit, enter into an agreement with the flat purchaser in Form V.

In our case such agreement was entered into between the appellant on one side and the respondent no. 2 on the other in respect of unit No. 1 on 13<sup>th</sup> August 1994. The agreement is on record.

Let us now understand as to which provision of the above mentioned town planning laws and to what extent prevents the Respondent No. 2 from selling allotting or other dealing with car park spaces independent of the flats/in this case the unit. As said above the definition of the term promoter takes away such liberty. It restricts sale of any thing other flat.

Mr. Wagh argued that being the owner of the property the Respondent No. 2 could not sell flats in this building but could sell and deal with whatever that can be sold and otherwise dealt with. It his opinion a car space is independently a saleable item.

The basis for this argument is (1) that there is no restriction in the provisions of MOFA or for that matter the provision of other laws discussed above to prevent the promoter/developer from selling/transferring car park spaces. That these laws mainly dealt with manner in which the land can be used and can be developed. They do not take away or extinguish the rights of an owner. (2) Having regards to the drafting of the form V one can specifically conclude that beside flats/units in a building developed under the MOFA the promoter can even sell or covered garage/car-parking space.

Let us now consider both these arguments separately.

Indeed the laws discussed certainly would not take away the owner's right to the property. They do not extinguish such right. But at the same time they would restrict such rights to certain extent. An owner would not enjoy what is prohibited because of the operation of these laws though

he is absolute owner. A promoter can sell a only a flat and whatever is defined as flat. I have already quote the definition of the term flat. As per the definition a promoter can also sell a garage.

The term garage is not defined in MOFA. It is neither defined in the MRTP Act. The question is what does legislature meant by the term “garage” when they drafted the clause. The dictionary meaning of the term garage is as follows: building for keeping vehicle. [I am utilizing little Oxford Dictionary for this purpose] General meaning of term garage specifically indicates that there would be a building for keeping vehicles in it. The term building is generally a structure having four walls, a door and a roof. So the garage is such building which has provision four walls and roof and a door which can be locked. The meaning of term is probably understood while legislature drafted the definition.

Let us now consider the provision of G.D.C.R. It does not define the word “garage”. But by defining term floor space index, which is quoted above. They made it clear that if car park space is provided in basement the area would not be considered to calculate FSI of the building. This provision also makes it clear that such car park arrangement should be provided walls to separate one car park space from other. There is no looking up of door permissible for such car park space. This kind of arrangement cannot be equated with the term garage, as we understood above. In that sense in this building there is no garage constructed at all. What is provided here is covered car park space. As against this had the promoter constructed proper lock-up garage in this building, such construction would have consumed FSI and then such garage would have answered the term garage used in the definition of the term. Mr. Wagh also argued that car park spaces are numbered spaces are independent units unlike a staircase or passages. He said such numbered spaces are independent salable units. This argument cannot be accepted because the reason mentioned above. Though a space is numbered it still cannot be sold because it is not proper garage as understood by the definition. So a car parking space in the basement cannot be sold in the light of the section 2 of MOFA.

Mr. wagh argued that the car park space can not be equated with common access. Staircase etc. according to him these are common amenities. According to him car park spaces are not common amenities. But considering the scheme of MOFA it is clear that this argument is incorrect.

Let us consider the second leg of argument of mr. wagh. He pointed out the following clauses of the standard agreement mentioned in form V under the rules of MOFA.

The flat purchaser hereby agrees to purchase from the promoter and the Promoter hereby agrees to sell to the Flat Purchaser one flat No. .... of the Type ..... of carpet area admeasuring ..... Sq. meters) which is inclusive of the area of balconies) on ..... Floor as shown in the floor plan thereof hereto annexed and marked Annexures D/Shop No..... /covered open Garage No..... in the ..... Building (hereinafter referred to as “the Flat”) for the price of Rs..... including Rs..... Being the proportionate price of the common areas and facilities appurtenant to the premises, the nature, extent and description of the common/limited common areas and facilities/limited common area and facilities, which are more particularly described in the Second schedule hereunder written. The Flat Purchaser hereby agrees to pay to that promoter balance amount of purchase price of Rs..... (Rupees.....) having been paid to the promoter on or before the execution of his agreement in the following manner .....

On plain reading of this clause one get an impression that promoter can either sell a flat, or shop or “Open Garage” in a building to a purchaser for a price. This clause creates impression

that such covered or open garage could have a number. Mr. wagh in view of this clause argued that the legislature did not intended to prevent the promoter from selling a covered or open garage. In my view, this argument is very myopic interpretation of this clause. This clause will not take away what is drafted in the Act. I have already mentioned above that the term "flat" includes various things. The term garage cannot certainly mean "open garage". Can there be an open garage? The word open suggests a place with no roof a place open to sky. A space marked for parking in open can not be regarded as garage as is understood by the definition of term flat. So open space reserved for parking car can not be sold at all and so can not find place in the standard agreement. The words "covered garage" suggest a space for parking car with a roof open sky. A space marked for parking in open can not be regarded as garage as is understood by the definition of term flat. So open space reserved for parking car can not be sold at all and so can not find place in the standard agreement. The words 'covered garage' suggest a space for parking car with a roof above such as under stilt. The term is not utilized here to mean a "look-up garage", which consumes FSI. In this clause the words covered/open are inserted to deviate the meaning of the word garage used in the definition clause. In the definition clause the word is used without any additive and adjective such as open or covered. There was no need to use such adjectives to the word garage because the word has a definite meaning. As said above it means an enclosure having walls, roof and door with lock-up arrangement and which would consume FSI. If we do not read the words "covered" "open" in this clause [and we are not permitted to read them here]; then what we get is in consonance with the definition of term flat section 2 of MOFA. In my view these two words distort the meaning and interpretation of the definition clause. I am not inclined to go into question whether the insertion is innocent etc. but it is clear that these two words can be used in many other cases and are being used in this case to enable the promoter to sell what he could not have sold. It seems that the legislature has not noticed these two words and understood their effect. I am inclined to bring to their notice the mischief of these two words so that they would take steps to correct the form V agreement. Needless to say, if these words are removed the promoters would stop the mischief of selling something which they are not entitled to sell and the purchasers of flat would save lacs of rupees.

The question is whether the car park spaces provided in the basement is common amenity. The answer is in affirmative because they are not independent lock-up garages.

In view of the above discussion, through the respondent No. 2 was the owner of the building he was unable to deal with the covered car parking spaces provided in the basement. Such restriction on his ownership right are put by the provisions of the above mentioned laws. One particularly the definitions of the terms promoter and flat. Subject to these restriction would certainly not cause loss to him. He would take into account this restriction while calculating price of the flats or units.

Mr. wagh then pointed out clauses 22 & 23 of the agreement dated 13<sup>th</sup> August 1994. These clauses provided that flat purchasers should not have any claim in respect of open car park spaces lobbies, staircase etc. and such area would remain property of the promoter until the building was transferred to a co-op. society or limited company as the case may be. They further provided that the promoter should be as liberty to sell, assign or otherwise deal their interests in the said plot and building subject to his rights of the purchasers under this agreement. These two clauses do give an indication that promoter would control the sell open space, car park space, lobbies, staircase etc. until the property is conveyed to the society or a company. As said above, the open space, parking spaces lobbies, staircase are common amenities married to a building. No doubt the purchasers flat cannot be hampered by putting any of the purchasers [individually] in possession of any of the open spaces, staircase etc. it is also pertinent to note that parking spaces are mentioned in the clause 22 along with words open amenities. This also indicates that

car park spaces do not have independent status. Clause 22 & 23 could not have been given the respondent no. 2 right to deal with the open space, car park spaces lobbies, and staircase. Such space would remain the property of the promoter/developer. But he would keep the property as trustee and convey the same at the earliest to an association formed by the purchaser of the flats. That is his legal obligation under S. 11 of MOFA.

### **Order**

The appeal is dismissed. A copy of this judgement be sent to the principal secretary law and judiciary to place the Government.

President

At the request of Mr. Wagh, the effect of this order is kept in abeyance for a period of four weeks from the date of signing of this judgement.

President **ANNEXURE "B"**

**In the Court of the metropolitan magistrate**  
**22nd court Andheri, Mumbai.**

**Judgement**  
**( u/sec. 355 of cr.p.C. )**

- |    |   |   |  |
|----|---|---|--|
| 1) | The serial number of the case   | : | 276/s/86   |
| 2) | The date of commission of the Offence   |   |  |
| 3) | The name of the complainant   | : | Amar Ganesh Joshi, Hon. Secretary,<br>Torana Co-op. Hsg. Soc, Sahar road.                    |
| 4) | The name of the accused<br>Jamsandekar.                                       | : | 1) Shri Hiraji Dinanath<br><br>2) Smt. Hemlata Hiraji Jamsandekar.                           |
| 5) | The offence complained of<br><br>1963 r w rule<br>thereunder.                 | : | u/sec, 3,4,5,10 & 11 and 13 of the<br>Maharashtra Ownership flats Act<br>9 of the rules made |
| 6) | The plea of the accused   | : | Both accused pleaded not guilty  |
| 7) | The final order<br>state<br>arguments heard,<br>of arguments filed on record. | : | Both accused are convicted. Their<br>ments are recorded<br>written notes                     |
| 8) | The date of such an order   | : | 18/2/2003  |

**REASONS**

- 1) Direct evidence, oral and documentary, has been \_\_\_\_\_. The oral evidence consists of testimony of complainant and documentary evidence consists of 11 exhibits. Ex P-1 is the agreement, Ex P-2 is the list of members who have paid Rs. 800/- each towards the formation of the society, Ex P-3 is the order passed by the Hon'ble City Civil Court in suit No. 3241 of 1984, Ex P-4 to P-11 are the letters.
- 2) The material on record proves that the accused being the builders, doing business under the name and style as Jamsandekar Enterprises entered into an agreement of sale cum purchase of the flats as per Ex P-1 under section 4 of the Maharashtra Ownership flats Act, There are 42 Purchasers and there are 50 flats in the building. The construction of the building was commence in the year 1975 and it was completed in the year 1980. As per the agreement at Ex P-1, all the flat Purchasers who had paid all the dues under the agreement were put in possession of the respective flats on completion of the building in or about year 1980 There is no dispute about these material facts.
- 3) However, after the building was completed and the flats owners were put in possession in the year 1980, the accused failed to get the society of the flat owners registered as well as the accused failed to pass the title to the society by executing a conveyance . The material on record shows that accused did not take any steps toward formation of the society and for conveyance of the title though amounts for formation of the society were already taken by them. In the meantime accused attempted to make certain additions and alterations in the building without sanction from the authority and without having approval of the plan and said resulted into a civil suit being filed by the members of the society in the City Civil Court. The City Civil Court has admittedly restrained the accused from making any construction, additions or alterations to the building constructed by them. The decision of the City Civil Court is at Ex P-3. These facts are also not in dispute.
- 4) The Flats owners thereafter, formed a Co-operative Society on their own and took necessary steps to get it registered under the Act, at their own expenses. The accused are occupying two flats in the building but they have not become members of the society. They are not paying any maintenance charges or common utility charges to the society. Thus the accused except handing over possession of the flats to the purchasers have done nothing to discharge their liability under the provisions of Maharashtra Ownership Flats Act. The material on record sufficiently establishes these facts and there is no real challenge to these facts either in defence or in the cross examination.
- 5) The defence put up by the accused is of general denial in respect of charge under Section 3,4, and 5 of the MOF Act. So far as charge under Section 7 is concerned, there is an order of the City Civil Court and that issue is no more for consideration and not pressed seriously. So far as the charge under Section 10 of the Maharashtra Ownership Flats Act is concerned, It is conceded ny the accused that the society has been formed by the flat owners on their own at their own expenses. There is no denial of the charge under Section 10 of the MOF Act. So far as the charge under Section 11 of the Act is concerned regarding not passing the title to the society. The story put up by the accused is that the plot of land below the structure stands on the joint minor name of accused no.2 Hemalata and Sons Mr. Tejas who has been examined as defence witness. Tejas was minor at the time of the agreement. Mr. Tejas has deposed that he has to receive certain dues from his father and mother and therefore he is withholding his consent for conveyance and this is the reason why the

accused are not in a position to execute a conveyance deed in favour of the society consisting of entire land and the building.

- 6) All these defences taken up by the accused are lame. The Accused No.2 Hemalata is one of the partners of the Jamsandekar Enterprises and she is also one of the Joint owners of the plot. The other Joint owner is obviously Mr. Tejas D. No.1. He was minor at the time of executing the agreement Ex P-1. The agreement Ex P-1 is between the flat owners and the accused No. 1. He is a partner of Jamsandekar Enterprises alongwith accused No.2 Hemalata Jamsandekar. Thus accused No.1 and 2 were the principal and agent at the same time . Hence when accused No.1 signed the agreement, the agreement is binding on accused no. 2 also. The accused No. 1 and 2 are also the natural parents and guardians of the Mr. Tejas. It is an admitted position. There is nothing on record to show that interest of accused were adverse to the interest of Mr. Tejas at the time of executing the agreement or at any subsequent point of time. Therefore the sale was for the benefit of the minor also, otherwise the accused would have obtained permission of the competent Court to alinate the property belonging to the minor, The title certificate issued in schedule to the agreement shows a clear title for the intending Purchasers. There is no mention in the certificate that one of the Joint owners was a minor and his consent will be required to give the conveyance which can be done only on his attaining majority. It is not mentioned in the title certificate that the consent of the minor will be obtained as per the terms and conditions. The agreement at Ex P-1 is a direct agreement. It is an agreement between Jamsandekar Enterprises and the flats owners. Non-disclosure of status of Mr. Tejas as minor is a clear violation of the provisions of sections3 (a)(b) and (h). The plea of dispute between the father and the son is merely an eye wash. When a builder interest into an agreement with the proposed flat owner he has to show that his agreement with the land owner is legal and binding contract. If it is to be taken that consent of Mr. Tejas was not obtained because he was unable to give consent due to minority then it was a fraud played upon the Purchasers in showing them a marketable title certificate obtained from a solicitor The title certificate is defective and it is an an offence under the Act. If the consent of Tejas was not obtained as he was minor then there was no valid power to make an agreement and the breach of the sec 3 (a)(b)&(h) of Hsg. Soc. Act is committed. If it is to be taken that there was no a legal impediment for accused No.1 in entering into a legal, valid and binding agreement with flat owners then the defence taken up is untenable, unacceptable and liable to be rejected as an after thought.
- 7) There is a ruling of the Honourable Bombay High Court regarding the scope and object of section 3 of the Maharashtra Ownership Flats Act 1963 :- "General Liabilities of the promoter : Section 3 of the Owersnhip Flats Act prescribes general liabilities of the promoter and those provision will show that they are intended to safeguard the interest of the potential flat owners in the all its aspect such as the title of the land, any encumbrance on the land on which the building is to be constructed, the exact nature of the accommodation which the potential buyer is to buy and the quality of the construction such as fixtures, fittings and emenities which are intended to be provided . The promoter has to specify the date by which the possession of the flat is to be handed over. As a matter of fact all the necessary details, Disputes with respect to which normally arise in respect of property have to be disclosed by the promoter –Association of commerce House Block Owners Ltd. Vs Vishanda Bamalda (1981) 63 BOM L.R.345)

- 8) Thus after considering the material on record I am of a clear view that the accused have committed an offence U/Sec 3 (a)(b) of the Act which is made out from their defence itself.
- 9) It is an admitted fact that flat Purchasers have formed the society on their own. It is also admitted position that all of them have paid Rs. 800/- towards formation of the society at the time of executing the documents. Their amounts have not been returned The accused have no right to use the said amount to any other purpose, as it could amount to criminal breach of trust. Thus the accused have committed offence U/sec 5 of the Act. In the case as soon as the accused not knowledge that the members have formed a society on their own they should have taken steps to return their amounts. There is absolutely on justification on the part of the accused to retain their money. The contention of the Ld. Advocate for the accused is that only authorised officer can ask for the account under the provisions of section 5 of the Act is not at all accepted as the now the question is not of account of the money but the question is of returning the amounts to the members.
- 10) The Ld. Advocate for the parties have filed their written notes of the arguments at the conclusion of the oral submissions. Those notes are on record after considering the entire material on record and going through the respective oral and written submissions, I am inclined to agree with the submissions made by the Ld. Advocate for the complainant, that violations of provisions of section 3,4,5,10 & 11 of the MOF Act have been clearly and beyond doubt made out. The complainant has proved its case satisfactorily with cogent and consistent oral and documentary evidence and the guilt has been brought home. In the circumstances accused are liable to be for conviction under section 13 of the Act which provides punishment of imprisonment for a term which may extend upto section 3 yrs. Or with fine or with both in respect of sections 3,4,10 & 11 of the Act. In respect of section 5 it provides punishment upto 5 yrs or with fine or with both. The section also provides for punishment with imprisonment upto 1 year or fine or both in respect of any breach of the rules formed under the Act. Considering the nature of punishment it is necessary to hear the accused on the point of sentence.
- 11) Both of you have been held guilty for offence under section 3,4,5,10 & 11 of the Maharashtra Ownership of Flats Act, what do you say on the point of sentence ?  
We have put the flat owner in possession of the premises long back. We are old weak/feable persons. We suffered from blood pressure. Hence option of fine may be given.
- 12) The question of sentence is a matter of judicial discretion. However sentence must be in consonance with the offences proved. It is a fact that the accused have committed the violation of section 3,4,5,10 & 11 of the Act. **Imposition of fine only will not be a proper sentence in this case. One of the purpose of the punishment is also to send a signal to the persons who are holding intention of similar kind.** The sentences of short durations are suitable in such cases. In the result the following final order :-

## O R D E R

Both accused are convicted for offence under section 3,4,5,10 & 11 of the MOF Act r/w 13 of the MOF Act.

For Offence under section 3 of the Act, both accused are sentenced to suffer SI for 6 months and to pay a fine of Rs. 2000/- (Rupees Two Thousand Only) each I.D. to suffer SI for 3 Months.

For offence u/sec. 4 of the Act both accused are sentenced to suffer SI for 6 months and to pay a fine of Rs,2000/- (Rupees Two Thousand Only) each I.D. to suffer SI for 3 Months.

For offence under section 5 of the Act both accused are sentenced to suffer SI for 6 months and to pay a fine of Rs,5000/- (Rupees Five Thousand Only) each I.D. to suffer SI for 3 Months.

For offence under section 10 of the Act both accused are sentenced to suffer SI for 6 months and to pay a fine of Rs,2000/- (Rupees Two Thousand Only) each I.D. to suffer SI for 3 Months.

For offence under section 11 of the Act both accused are sentenced to suffer SI for 6 months and to pay a fine of Rs,2000/- (Rupees Two Thousand Only) each I.D. to suffer SI for 3 Months.

Substantive sentence to run concurrently.

Out of fine amount of Rs. 26,000/- an amount of Rs. 10,000/- be paid to the complainant on behalf of the society as a compensation u/sec. 357 of cr.P.C. after appeal period is over.

The case is accordingly disposed of

(D.A.JOSHI)  
Metropolitant Magistrate  
22nd Court, Andheri,Mumbai  
18/2/2003

**1984 (2) Bom. C. R. 505**

Before

R. L. Aggarwal, J.

SMT. NEENA SUDARSHAN WADIA	....	....	APPELLANT.
<b>VERSUS</b>			
M/S. VENUS ENTERPRISES	....	....	RESPONDENT.
<b>AND</b>			
KUNJAN CONSTRUCTION CO.	....	....	APPELLANTS.
<b>VERSUS</b>			
DEEPAKBHAI R. SHAH AND OTHERS	....	....	RESPONDENTS.

Appeal No.575 of 1982 from Order, with Appeal No.875 of 1982 from Order decided on 9.2.1983.

- (A) **The Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer), Act, 1963, Sec. 7(1) (ii)** — Scope of the word consent” —  
— It means affirmative acceptance of the work of construction.

Consent in this section is to be understood to mean as positive consent to specific items of work or alteration to be carried out or particular additional structure to be built by a promoter.  
(Para 21)

- (B) **The Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer), Act, 1963, Sec. 7(1) (i) & (ii)** — “Consent” ——— Cannot

mean blanket authority obtained at the time of agreement for sale or handing over possession of flat

A blanket consent or authority obtained by a promoter at the time of entering into an agreement for sale or at the time of handing over possession is not the consent contemplated by section 7(1) (i) or (ii) for such a blanket consent or authority would sew up or nullify these provisions.

The promoters cannot, under the cloak of the blanket consent obtained under the proforma agreement for sale, carry out the work of additional structures and thus set at naught the provisions of section 7 (1)(ii).

The additional structures constructed or intended to be constructed are in breach of the provisions of section 7(1) (ii).

(Para 21 and 27)

**(C) The Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer), Act, 1963, Sec. 4 – The Indian Registration Act, 1908, Sec. 17 - Section 4 and Section 7 of the Maharashtra Flats Act, 1963 are independent – Non-registration of agreement for sale does not take away the right of the purchaser under section 7(1)(ii) of the Flats Act, 1963.**

Section 4 and Section 7 (of the Maharashtra Flats Act, 1963) are independent. These provisions are intended to safeguard the interest of the flat owners in different ways.

The absence of a registered agreement under section 4 of the Maharashtra Flats Act, 1963 cannot deprive a flat owner of his right, title and interest in the flat or the land or prevent him from enforcing the provision of the Act. (Para 24)

The Court held that the absence of the registered agreement for sale cannot come in the way of the flat-owners in invoking the provisions of section 7(1)(ii) of the Maharashtra Flats Act, 1963, and the promoter cannot carry out any additional construction or make any alteration in the building without the consent of all the flat owners under section 7(i) (ii).

(Paras 24 &

32)

**D) The Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, Sections 4 and 7 (1) (ii) – Non execution of the agreement for sale or non-registration thereof under section 17 of the Indian Registration Act, 1908 or blanket consent of the flat owners is not fatal for the purpose of section 7 (1) (ii) of the Maharashtra Flats Act, 1963.**

Notwithstanding the non-execution of the agreement for sale or non registration thereof, nor can he by obtaining blanket consent of the purchasers of the flats at the time of entering into the agreement for sale or at the time of delivering possession of the flat set at naught the provisions of section 7 (1)(ii)

(Para 32).

- E) Words and Phrases – “Additional” means “more, added, extra”. It is difficult to accept that the word “additional” means only extension either vertically or horizontally is an existing structure.

(Para 22)

### CASES REFERRED:

1. The Association of Commerce House Block Owners Limited Vs. Vishandas Samaldas, 83 Bom, LR. 339: 1981 Bom. C.R. 716

Advocates appeared:

In A.O. No. 575 of 1982

Sudarshan Wadia, Power of Attorney Holder and the Appellant in person

M.G. Kikla, for the respondents.

In A.O.No.875 of 1982

C. J. Sawant with J.B. Chinoy for M/s. Shah & Sanghavi, for the appellants, M. U. Pandey, for the respondents.

**AGGARWAL, J:-** Both these appeals involve chiefly the interpretation of the provisions of section 7(1) (i) and (ii) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer), Act, 1963 (hereinafter referred to as “the said Act”) and the relevant rules made thereunder in 1964, and therefore, they have been heard together and can be disposed of by a common judgment along with the subsidiary points.

2. In Appeal No. 575 of 1982 from Order a learned Judge of the Bombay City Civil Court has construed the provisions of section 7 (i) and (ii) of the said Act against the flat owner i.e. the plaintiff and in favour of the promoter i.e. the defendants, while in Appeal No.875 of 1982 from Order another Judge of the Bombay City Civil Court has held in favour of the flat owner and against the promoter.

3. Facts in Appeal No.575 of 1982 from Order :

Briefly stated, the plaintiff purchased from the defendants Flat No.503 in ‘Jaldarshan’ situated at Chimbai, Bandra. Bombay for a consideration of Rs.1,23,200/-. The defendants showed a sanctioned plan dated 17<sup>th</sup> April 1978 to the plaintiff, on the basis of which the defendants were to construct a seven storeyed building with shops on the ground floor. Thereafter, the plaintiff booked flat No. 503 on the fifth floor of the proposed building and made various payments. The defendants by their letter dated 25<sup>th</sup> June 1979 addressed to the plaintiff confirmed having sold flat No.503 in ‘Jaldarshan’ at a price of Rs.1,23,200/- and recorded the receipt of the three payments aggregating to Rs. 31,000/-. As the construction work proceeded, the defendants called upon the plaintiff to make further payments and she accordingly paid in all a sum of Rs.1,26,000/- inclusive of security deposit etc. The occupation certificate was issued by the Bombay Municipal Corporation on or about 20<sup>th</sup> December, 1980. Thereafter, the defendants had put the plaintiff in possession of the said flat. The plaintiff contended that once a sanctioned plan for seven storeyed building and 14

shops on the ground floor was shown at the time of the purchase and various flat-owners have purchased the respective flats on the basis of that sanctioned plan dated 17<sup>th</sup> April 1978, it was not open to the defendants to construct additional structures without the previous consent of all the persons who had agreed to take the flats. Her case is that at no time her consent was obtained by the defendants and hence the action of the defendants in putting up additional construction or structure is in contravention of the provisions of the said Act. The plaintiff further stated that 16 flat owners had filed a suit against the defendants for the same relief and, therefore, she awaited for the decision in that suit. It is in these circumstances that the plaintiff approached the Court for a permanent injunction to restrain the defendants from constructing additional structures and for mandatory injunction directing the defendants to demolish the additional structures constructed by the defendants without the consent of the plaintiff, and for other interim reliefs. The plaintiff also took out a Notice of Motion for interim relief and in the affidavit in support made by her husband Sudershan Wadia as her constituted attorney, she reaffirmed the statements made in the plaint.

3. On behalf of the defendants, their partners filed an affidavit in reply taking up various legal contentions to which reference will be made hereafter. But on merits, it was contended that the plaintiff does not have the agreement for sale of the flat as required by the mandatory provisions of section 4 of the said Act. Therefore, in the absence of any written agreement duly registered as required by section 4, the agreement between plaintiff and the defendants is wholly invalid and altogether void creating no rights in favour of the plaintiff. This submission was based on a decision of the Division Bench of this Court in the case of the (Association of Commerce House Block Owners' Ltd v. Vishndas Samaldas), 83 Bom. L.R. 339 (herein after referred to as "Commerce House Owners, case"). It was pointed out that following the said decision the Bombay City Civil Court had dismissed all the Notices of Motion for interim reliefs taken out in various suits filed by those who had agreed to purchase the flats from the defendants. Reference was made to Notice of Motion No.5629 of 1981 in Bombay City Civil Court Suit No.6788 of 1981 and the judgment dated 18<sup>th</sup> December 1981 dismissing the said Notice of Motion. The defendants, therefore, submitted that the present Notice of Motion was also liable to be dismissed. With regard to the allegations in the plaint and the affidavit in support for the limited purpose of the present Notice of Motion, the defendants contended that the plaintiff's husband Sudardhan Wadia came to the defendant's office and was introduced as an investor by a common friend one O. P. Kapila. The plaintiff's husband wanted to keep two flats, flat No.502 in the name of his father and flat No.503 in the name of his wife. The defendants further contended that in December 1978 the said Sudershan Wadi again came and he was shown proforma of the agreement which the defendants had got prepared for entering into with various persons to whom the defendants might agree to sell flats in the said building. The said Sudarshan approved the said agreement and agreed to all the terms and conditions thereof supplied. The plaintiff's husband was told that two separate agreements would have to be signed for the two flats. The plaintiff's husband however, told him that he was an officer of the Government of India working in the Customs Department and since he would not be in a position to account for the investments being made by him in the name of his father and wife, the defendants should not insist on signing the agreements. He further stated that he would be re-selling the flats and making profit and nothing would therefore come on record. Therefore, on the request of the plaintiff's husband, no agreement were signed but two typed letters were issued to him for the flats booked by him. Later on, he informed the defendants that he had decided to come and stay in flat No.502 himself and hence the agreement for the said flat be made in the name of his father. Accordingly the agreement in respect of flat No. 502 was duly prepared, averred the defendants in paragraph 14 of the affidavit, and signed on 21<sup>st</sup> April, 1979. The defendants relied upon the said agreement which was duly executed after it was

approved by the plaintiff's husband. Thereafter, the plaintiff's husband took possession of flat No.502 some time in May 1981 and he along with the plaintiff has been staying in flat No.502. The defendants denied that they had put the plaintiff in possession of flat No.503. In this connection, the defendants case, as set out in paragraph 18 is that the plaintiff's husband had taken the suit flat No. 503 for the purpose of reselling the same and hence at his request all the formalities of executing the agreement, giving possession and signing papers therefore were kept pending. The plaintiff's husband had approached the deponent of the affidavit in reply on several occasions for giving him one of the keys of flat No.503 as and when he wanted to show the same to a prospective purchaser or a broker and at his request instructions were given to the site supervisor. R. Shukla who used to give him one of the keys of the latch of outer door of flat No.503, which the plaintiff's husband used to return after showing the flat to the prospective purchasers. In or about the last week of May 1982 the plaintiff's husband requested the said R. Shukla to give him the key of the said flat for showing it to a prospective buyer and accordingly the said Shukla gave him one of the keys. The plaintiff's husband however did not return the key and after the notice of the filing of the present suit was given to the defendants by the plaintiff's advocate, it was found that the plaintiff's husband had put up a lock on the Aldrop of the main door of flat No. 503. Thus, according to the defendants, Flat No.503 is vacant and unoccupied and that the possession thereof has not been given to the plaintiff and the same is still in the possession of the defendants. The defendants denied that the plans of the building were at any time seen by the plaintiff. According to the defendants, a sum of Rs.1,24,700/- was paid towards flat No.503 and further amounts remain payable on possession. With regard to the proforma agreement approved by the plaintiff's husband, as averred in paragraph 20 of the affidavit, the defendants' case that they have a right to make any additions or alterations in the structures as mentioned in the said agreement and the said terms are binding on the plaintiff. The work of putting up the additional structures was commenced in July 1981 and in law the defendants are entitled to put up the same. The structures are put up above the shop in a wing and that wing is different from the one in which flat No.503 is situate. According to the defendants, they have got every right to put up the said structures as per the plans duly approved by the Municipal Corporation of Greater Bombay. The structures are on the other columns and as such there is no change whatsoever in the existing structures.

4. It may be mentioned that the affidavit in support of the Notice of Motion was made by the plaintiff's husband Sudarshan Wadia as her constituted attorney. He made an affidavit in rejoinder. He referred to some new facts, namely about the statement it made on behalf of the defendants in the Bombay City Civil Court Suit No.6788 of 1981 at the time of hearing of the Notice of Motion therein, that the additional construction on shops Nos. 8 to 14 was restricted only to two the additional floors, for which alone the Municipal sanction had been obtained. Contrary to the statement, the defendants started putting up additional structure on the third floor in the second week of June 1982. With regard to the allegations about the booking of the two flats the plaintiff's husband stated that both his wife and his father have independent source of income and payment in respect of their respective flats had been made by them by cheques and that the defendants have indulged in these allegations to create prejudice. He denied the allegations about the circumstances in which according to the defendants, he had taken possession of flat No.503, and submitted that towards the end of November 1981 the plaintiff was put in possession of the said flat by the defendants. The defendants thereafter forwarded to the plaintiff bills claiming maintenance and other charges.
5. The defendants have made an affidavit in surrejoinder in which reliance is placed on the two permissions given by the Municipal Corporation, one under I.O.D. dated 6<sup>th</sup>

July 1981 for construction of two additional floors and the other under I.O.D dated 6<sup>th</sup> May, 1982 for construction of another two additional floors.

6. Facts in Appeal No.875 of 1982 from Order :

In this matter, the plaintiffs are the flat-owners. The building constructed by the defendants is known as "Kunjan Apartments". This Kunjan Apartment consists of ground and four upper floors and there are in all 21 flats including of those persons who get the flats as alternative accommodation to their existing tenements. Six of the flat owners have filed the present suit. Their case is that the defendants have completed the construction of the building on the said land bearing C.T.S. No.644 and put the acquirers of the various flats in possession. According to the plaintiffs, the defendants handed over the management of the said building and the land to the various acquirers of the flats and/or the tenements in the said building and confirmed the same by their letter dated 23<sup>rd</sup> December, 1980. Ex. A to the plaint. According to the plaintiffs since then they and other acquirers of the flats in the said building are managing the affairs of the said building. The plaintiffs also referred to the agreement of sale of the said land executed by the defendants with the various acquirers of the flats and/or tenements in the said building. It is the plaintiff's case that the acquirers of the flats and/or tenements in the said building have formed a committee consisting of the plaintiff's and authorized them to manage the affairs of the said building in the land. According to the plaintiffs, since 23<sup>rd</sup> December 1980, the defendants were left with no right title and interest in the said land save and except the obligations to form a co-operative society of the acquirers of various flats and/or tenements in the said building and/or to convey the said land with the said building. The plaintiffs alleged that the defendants in collusion and/or connivance with the Municipal Corporation Officers had succeeded in getting some plans for construction of two garages sanctioned on the said land bearing C.T.S. No. 644. On or about 9<sup>th</sup> July 1982, the defendants slumped some building materials on a portion of the said land. On 10<sup>th</sup> July 1982, some workers were sent by the defendants and they have stated digging operation on the said flat and on enquiries from the said laborers the plaintiffs learnt that the defendant had got sanction for construction of two garages in the said land. The plaintiffs were shocked and surprised to get the said information and they immediately attempted to contract the defendant but failed in their attempts. The plaintiffs, therefore, by their Advocate's letter dated 11<sup>th</sup> July, 1982 addressed to the defendants complained against the said high handed action on the part of the defendants. The plaintiffs further pointed out that the possession of the said building having been given to the occupants of the said flats and the building having been constructed and completed according to the sanctioned plans, the defendants were not entitled to construct any structure on the said land including the said garages without the consent of the plaintiffs and that none of the occupants of the flats were interested in acquiring the garages. It was learnt that the defendants were contemplating to dispose of the said garages to some outsider who would be utilizing the same for commercial purposes. It was further stated that even according to the agreement entered into between the defendants and the acquirers of the flats, there was no covenant with regard to the defendants being entitled to construct any garages on the said land. The plaintiffs further stated that the defendants were not entitled to construct and/or let the said garages for being utilized for any purpose other than parking a motor vehicle. The plaintiffs also contended that the defendants have handed over the possession of the said land and the building and the management thereof to the plaintiffs and, therefore, they are not entitled to construct any structure without the previous consent of the plaintiffs. It was also contended that no plans can be amended and/or no additional construction can be availed by the defendants without the prior consent or permission of the plaintiffs and other acquirers of the flats and/or tenements in the said building as per the provisions of the Maharashtra

Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereinafter to as "the said Act") and the Rules made hereunder.

8. The defendant's case is set out in their affidavit in reply to the Notice of Motion. According to them they are constructing two garages on the said land after obtaining sanction from the Municipal Corporation of Bombay on 7<sup>th</sup> March 1981. The defendants rely upon clause 34 of the agreement for sale and according to them under that clause they have a right to make additions and alteration as may be permitted by the Bombay municipal corporation and other competent authorities. The defendants have constructed one building i.e. the suit building and with regard to the remaining building the defendants are negotiating with the tenants to vacate the occupied land to enable the defendants to consume full available balance F.S.I. by constructing the second building on the said land. As soon as the construction of the second building on the said land is over the defendants will execute conveyance in favour of the proposed society. Till then the defendants were and are the absolute owners of the entire property. According to the defendants, merely the management of the 21 flats is given to the committee as per the letter dated 23<sup>rd</sup> December 1980. The defendants have denied that they have handed over the possession of the said land and the building and the management thereof to the plaintiffs. The defendants Inter alia deny that the garages cannot be constructed around a building and let out and/or sold to any strangers or outsiders not occupying any portion of the said building and/or the land as alleged. The defendants also deny that they are not entitled to construct any structure on the said land without the previous consent of the plaintiff.
9. The plaintiffs made an affidavit in rejoinder. According to them, the agreements have been entered into by the defendants with the occupiers only after handing over possession of the respective flats and it was represented to the plaintiffs that the said agreements were on usual terms. The plaintiffs have thus signed and executed the said agreements on the said assurance and without reading the contents of the same.
10. Decision of the lower Court appealed against in A.O. NO. 575 of 1982. In view of the fact that the plaintiff did not have an agreement in writing for sale of the suit flat, the learned judge Shri Cazi did not accept her case that she had become owner of flat No .503. According to the learned judge the plaintiff could not have become the owner of immoveable property of the value of more than rupees one hundred without any conveyance in her favour by the defendants, and as there is no conveyance of the property by the defendants, the title of the defendants has not passed either to the society or to the plaintiff. With regard to the provisions of section 7 of the said Act, the learned judge took the view that the agreement that is referred to in section 7 is the one which under section 4 of the said Act has to be a written agreement and that written agreement has to be registered under the Indian Registration Act, 1908. But in the present case, the plaintiff does not have any written agreement for sale of the flat and if the plaintiff is relying upon any oral agreement or any unregistered written agreement for sale of the flat to her, such agreement would be totally void as held in Commerce House Owners case. Further, section 7 contemplates previous consent of these parties who have properly registered agreements in their favour, the question of the defendants action being contrary to the provisions of section 7 of the said Act did not arise. On the question of delay in taking out the present proceedings, the learned Judge held in favour of the defendants. For these reasons the Notice of Motion was dismissed.

## **11. Decision of the lower Court appealed against in A.O. NO.872 of 1982.**

The learned Judge Shri Ratnaparkhi accepted the contention of the plaintiff that the defendants could not raise additional structure without the previous consent of all the purchasers under section 7(1) of the said Act. The learned Judge rejected the contention of the defendants based on the provisions of clause 34 of the agreement which did not speak about the express consent to a particular act, but contemplated a blanket consent without knowing what the fact is. The agreement in question was executed on 5<sup>th</sup> December 1979. At that time, the plans sanctioned by the Municipal Corporation showed that there were no garages and only some open space was kept for parking the cars and it was not clear from the record as to when this idea of constructing garages struck the mind of the defendants, because it was not a subject-matter of the original plan and it must have struck the mind of the defendants some time thereafter. However, in December 1979, a blanket consent was obtained from all the intended purchasers that they would grant their consents to all the actions of the builders, whatever the nature thereof would be. Thus, according to the learned judge this was a consent without knowing the nature of the act. What section 7 contemplates is a free consent by the purchasers to a particular act of which they are conscious, and therefore, the consent referred to in clause 34 of the agreement is a blanket authority given to the Builder and is not a consent contemplated under section 7 of the said Act. The defendants submitted the plans on 7<sup>th</sup> March 1981, and the same were sanctioned on 26<sup>th</sup> November 1981 and, therefore, such a consent could not be fastened on the plaintiffs without the knowledge of such a plan. Since the construction of the garages was not shown in the plans which were got approved by the defendants and never contemplated of asked for at the beginning, the consent embodied in clause 34 of the agreement could not be a substitute for the consent contemplated under section 7(1) of the said Act.

### **Submission in both matters:**

12. The first matter, A.O. No. 575 of 1982 was argued in person by Shri. Sudharshan Wadia, the husband of the plaintiff. He contended for sale envisaged under section 4 in respect of the flat purchased by the plaintiff and its registration under the Indian Registration Act, 1908, as mentioned in section 4 does not debar the plaintiff from preventing the defendant promoters from contravening the provisions of section 7, by constructing additional structures without the previous consent of the plaintiff. The submission was that after a promoter has disclosed or furnished to a purchasers of the flat the plans and specifications of the flat and the building, the promoter has no right either to make alterations in the flat without the previous consent of the purchaser concerned or to make any alterations in the structures of the building or construct additional structures without the previous consent of all the persons who have purchased the flats. It was also submitted that in the present case, the building has been constructed as per the sanctioned plans and, therefore, the promoters could not start with the work of construction of additional structures without first obtaining consent of all flat owners. It was also contended that the provisions of section 7 are independent of section 4 and the Court can give affect to the same even if the required agreement for sale has not been executed and duly registered; as otherwise the protection granted to the flat owners and the malpractice sought to be eradicated by section 7 would be rendered meaningless. As against this, Shri. Kikkla, learned Counsel appearing for the defendant- promoters, submitted that having regard to the ratio of the decision in Commerce Housing Owners case, unless there is a written agreement duly registered under the Indian Registration Act, no right can accrue in favour of the plaintiff has no written agreement, the

defendant are not required to obtain previous consent under section 7 of those persons only who have valid and enforceable agreements under section 4.

In the second matter, Shri. Sawant, learned Counsel appearing for the promoters appellants, submitted that the right contemplated under section 7 would be available only when the agreements are registered under section 4 even though the flat owners and the promoter might have entered into the required agreements for sale. In respect of their respective flats. Unless such agreements are duly registered the flat owners cannot avail of section 7. According to Shri.Sawant, the Act presents a composite scheme and section 7 is not an independent right. Shri. Pandey, learned Counsel appearing for the respondents plaintiff in the second matter, referred to the various provisions of the said Act to show the various stages of the application of the Act to building and that for the purpose of section 7 non-registration of an agreement for sale cannot come in the way of the flat owners from claiming the relief.

13. Now, in order to appreciate those rival contentions in both the matters, which principally involve the interpretation of the provisions of section 7(1)(II) of the said Act, one has to bear in mind the relevant provisions. It is a short, Act consisting of 18 sections. The title and preamble of the Act are sufficiently clear. The title and preamble refers to the reasons which led the State Government to enact this law. This Act regulates, in the State of Maharashtra, the promotion of the construction of the sale and management, and the transfer of flats on ownership basis. It says that —

WHEREAS It has been brought to the notice of the State Government that consequent on the acute shortage of housing in the several areas of the State of Maharashtra, sundry, abuses, malpractices and difficulties relating to the promotion of the construction of sale and management and transfer of flats taken on ownership basis exist and are increasing;

“ AND WHEREAS, the Government in order to advise itself as respects the manner of dealing with these matters, appointed a committees by Government Resolution in the Urban Development and Public Health Department No. 6248/79599-F, dated the 20th May 1960, to inquire into and report to the State Government on the several matters referred to aforesaid with the purpose of considering measures for their amelioration;

AND WHEREAS, the aforesaid committee has submitted its report to Government in June 1961, which report has been published for general information;

AND WHEREAS, it is now expedient after considering the recommendations and suggestions made therein to make provisions during the period of the such shortage of housing for the regulation of the promotion of the construction, sale and management and transfer, of flats taken on ownership basis in the State of Maharashtra”.

In Commerce House Owner’s case, it is observed that the Act was intended to regulate the activities of a promoter. At page 359 of 83 Bom.L.R.339, it is observed that the very purpose of the Act is to prevent malpractices rampant in the business of construction of flats which were sold to intending purchasers on ownership basis. In order to prevent such malpractices, which were increasingly being practiced, according to the Legislature, the Ownership Flats Act was made to regulate the activities of promotion of the construction of, the sale and management and transfer of flats taken on ownership basis. While considering the policy of the said Act and the intention of the Legislature in enacting section 4, the view

expressed is that section 4 is intended to prevent any bogus sales and it is also intended to safeguard the interests of the purchasers. It is also opined that it was a part of public policy to see that people are not cheated out in the bargain for flats on ownership basis and that is why the agreement has been specifically required to be made in writing under section 4 and also required to be registered. To my mind, as discussed hereafter, the same policy and intention of the Legislature runs in enacting the provisions of section 7 and it is a part of the same public policy to see that flat owners are not cheated by the promoters by making changes in the flats and the structures of the building without the previous consent of the persons who made the bargain with the promoters.

14. Section 2 (a) defines "flat".

"Promoter" is defined under section 2(c).

Section 3 speaks of general liabilities of promoter. Sub-section (1) of section 3 says that notwithstanding anything in any other law, a promoter who intends to construct or constructs a block or building of flats, all or some of which are to be taken or are taken on ownership basis, shall, In all transactions with persons intending to take or taking one more of such flats, be liable to give or produce, or cause to be given or produced, the information and the documents mentioned in sub-section (2). Sub-section (2) lays down the following eleven liabilities of a promoter :-

(2) A promoter, who constructs or intends to construct such block or building of flats, shall

(a) make full and true disclosure of the nature of his title to the land on which the flats are constructed, or are to be constructed, such title to the land as aforesaid having been duly certified by an Attorney at-law, or by an Advocate of not less than three years standing:

(b) make full and true disclosure of all encumbrances on such land including any right, title, interest or claim of any party in or over such land :

(c) given inspection in seven days notice or demand, of the plans and specifications "of the building built or to be build on the land", such plans and specifications having been approved by the local authority which he is required so to do under any law for the time being in force;

(d) disclose the nature of fixtures, fittings and amenities (including the provision for one or more lifts) provided or to be provided :

(e) disclose on reasonable notice or demand if the promoter is himself the builder, the prescribed particulars as respects the design and the materials to be used in the construction of the building, and if the promoter is not himself the builder disclose on such notice or demand, all agreements (and where there is no written agreement, the details of all agreements) entered into by him with the architects and contractors regarding the design, materials and construction of the buildings :

(f) specify in writing the date by which possession of the flat is to be handed over (and the shall hand over such possession accordingly) :

(g) prepare and maintain a list of flats with their numbers already taken or agreed to be taken, and the names and address of the parties, and the price charged or agreed:

to be charged therefore, and the terms and conditions if any on which the flats are taken or agreed to be taken' ;

(h) state in writing, the precise nature of the organization of persons to be constituted and to which title is to be passed and the terms and conditions governing such organization of persons who have taken or to take the flats.

(i) not allow reasons to enter into possession until a completion certificate, where such certificate is required to be given under any law, is duly given by the local authority (and no person shall take possession of a flat until such completion certificate has been duly given by the local authority) :

(j) make a full and true disclosure of all outgoings (including ground rent, if any, municipal or other local taxes, taxes on income, water charges and electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any) :

(k) make a full and true disclosure of such other information and document in such manner as may be prescribed ; and given on demand true copies of such of the documents referred to in any of the clauses of this sub-section as may be prescribed at a reasonable charge therefore”.

Reading of section 3 shows that the obligations are cast on a promoter who may intend to construct a building on ownership basis. These obligations are of a far reaching nature. It is made obligatory on the part of a promoter to place all the cards mentioned under section 3(2) (a) to (k) before the intending purchasers even though he may not have started the construction of a building of flats or blocks. These provisions intend to safeguard the interest of intending purchasers as well as actual buyers of flats.

So far as section 4 is concerned, it has been interpreted in Commerce House Owners case to which reference will be made hereafter.

Under section 5, a promoter is made a trustee, inter alia, of the amounts received as advance or deposit from persons intending to purchase or who have purchased flats. The promoter is enjoined upon to hold such moneys for the purpose for which they were taken. These provisions make it imperative on the part of the promoter to apply and use the moneys for the purpose for which he obtained the same from the purchasers of the flats. Under section 13, punishment up to four years has been fixed for committing original breach of trust of the money received under the section. For unspecified classes of criminal breach of trust, Indian Penal Code provides for imprisonment up to three years under section 406. I. P.C. But under this Act, a new category of criminal breach of trust by a promoter is enacted. Even the State Government has acquired power under section 5 to appoint an officer by general or special order, who can demand from the promoter information about the application of the money under section 5 and promoter is required to make full and true disclosure of all transactions in respect of the account maintained by him. Section 5 also required a promoter not to keep moneys in his private coffers but put them in a Bank. Such an account has to be a separate account and cannot be mixed with the other bank account of the promoter.

By section 6, a promoter is made responsible for payment of outgoings till the property is transferred.

Section 7, with we are mainly concerned, will be considered separately.

Section 8, makes provision for refund of amount with interest in case the promoter fails to give possession in accordance with the terms of the agreement.

Section 9, debars a promoter from mortgaging or creating charge on a flat or land without the previous consent of the persons who take or agree to take the flats, and if a promoter creates any mortgage or charge without such previous consent after the agreement referred to in section 4 is registered the right and interest of such persons are protected.

Section 10 and 11 relate to steps to be taken for formation of a co-operative society or a company and to convey title etc.

Section 12 casts liabilities on a flat-taker. Sub-section(1) thereof says, every person who has executed an agreement to take a flat shall pay at the proper time and place the price, his proportionate share of the Municipal taxes, water charges and electricity charges, ground rent (if any ) and other public charges, in accordance with his agreement with the promoter. By sub-section (2) of section 12, any person who has executed an agreement to take a flat and who, without reasonable excuse, fails to comply with or contravenes sub-section (1) on conviction, is to pay fine which may extend to two thousand rupees.

Section 13 speaks of offences by a promoter. Any promoter who, without reasonable excuse, fails to comply with or contravenes any provision of this Act or of any rule-made there under, shall, where no other penalty is expressly provided for, on conviction, be punished with fine which may extend to two thousand rupees or with both, and a promoter who commits criminal breach of trust of any amount advanced or deposited with him for the purpose mentioned in section 5, on conviction, is liable to jail sentence upto four years or with fine or with both.

By section 17, various provisions of the Act are made applicable to flats which had already been constructed before the coming into force of the said Act, i.e. 10-2-1964.

15. Going back to the left out section 4, as stated earlier, the same has been interpreted in Commerce House Owners case and, therefore, I am bound by that interpretation. Section 4 runs in the following terms :-

“4 Notwithstanding anything contained in any other law, a promoter who intends to construct or constructs a block or building of flats, all or some of which are to be taken or are taken on an ownership basis, shall, before he accepts any sum of money as advance payment or deposit. which shall not be more than 20 per cent of the sale price enter into a written agreement for sale with each of such persons who are to take or have taken such flats, and the agreement shall be registered under the Indian Registration Act, 1908 and such agreement shall contain the prescribed particulars, and to such agreement there shall be attached, such documents or copies thereof, in respect of such matters as may be prescribed.”

The Division Bench in Commerce House Owners case has held that these provisions are mandatory and the learned Judges have observed at page 357, 83 Bombay L.R. as following :-

“An agreement for sale of immovable property need not necessarily be in writing nor is it one of the documents which under section 17, of the Registration Act is required to be registered. Notwithstanding the law that an agreement in respect of immovable property need not be registered, section

4 provides that the agreement shall be a written agreement and the agreement shall be registered. Section 4 appears to us to be really in four parts and the non-obstante clause will govern the first three parts of the section. The first part of the section omitting the positive prohibition of not accepting more than 20% of the sale price requires that notwithstanding anything contained in any other law, a promoter shall ‘enter into a written agreement of sale. The second part with regards to the registration will show that ‘Notwithstanding anything contained in any other law.....the agreement shall be registered under the Indian Registration Act, 1908’. These are the two principal parts of the section which will be governed by the non-obstanto clause. Thus in spite of the fact that under the general law an agreement of sale of immovable property is required to be registered, under the Ownership Flats Act it is specifically required to be registered.”

While speaking of the consequence of non-compliance with provisions of section 4, it is observed at page 359 :-

“The very purpose of the Act is, as already pointed out, to prevent malpractices rampant in the business of construction of flats which were sold to intending purchasers on ownership basis. In order to prevent such malpractices which were increasingly being practised, according to the Legislature, the Ownership Flats Act was made to regulate the activities of promotion of the construction of the sale and management and transfer of flats taken on ownership basis. If this be the object of the Legislature in enacting the provisions of the Ownership Flat Act, then it is obvious that section 4 is a statutory provision intended to prevent any bogus sales and it was also intended to safeguard the interests of the purchasers. As a matter of fact, it was a part of public policy to see that people are not cheated out in the bargain for the flats on ownership basis. That is why the agreement has been specifically required to be made in writing, the amount of the advance deposit has been restricted, the agreement is required to be registered and the agreement has to contain such details as are necessary to ensure that the purchaser gets a flat in accordance with what he bargained for with a clear title in respect of the property.

“If section 4 is not held to mandatory, one of the important purposes of the Act will be defeated inasmuch as the purchasers will be at the mercy of the promoter, if he cannot insist upon all the necessary details with regard to the intended purchase of flat and if he wants to avoid any further disputes, he cannot insist upon a written agreement of sale which has to be registered. On a careful scrutiny of the provisions of sections of section 4 of the Ownership Flat Act, therefore, we are inclined to take the view that section 4 contains an absolute enactment which must be obeyed absolutely if such absolute enactment is not obeyed, the consequence will be that the agreement between the promoter and the purchaser will be wholly invalid and altogether void creating no rights between the parties. It is no doubt true that in a given case, it will be the intending purchaser who might suffer if he connives at the failure of the promoter not to have the agreement registered but for that, the intending purchaser will himself have to be blamed because there is enough provision in the Registration Act which will enable the intending purchaser to have the document registered. Once section 4 is held to be mandatory and the consequence of non-

compliance with the provisions of section 4 will be to invalidate the transaction, there is no question of such a transaction being binding between the parties ..... “

At page 360, the learned Judges, before proceeding to the next contention conclude with the following remarks:-

“Having taken the view that the provisions of section 4 are mandatory and the agreement was, therefore, statutorily required to be registered the plaintiff cannot found any rights on such an agreement and the agreement must be treated as invalid and ineffective”.

Thus result in that case was that the plaintiff's suit for specific performance of an agreement dated 31<sup>st</sup> October 1964 in respect of certain property, which was decreed by the trial Court and confirmed by the learned Single Judge of this Court was dismissed.

16. We now go to section 7, Shri. Sawant, learned Counsel appearing in the second matter submitted that though in Commerce House Owners case, provisions of section 7 have been considered, but the full implications of section 7(1)(ii) of the Act have not been considered, especially the effect of section 4 on section 7, in a case where a purchaser of a flat has entered into an agreement for sale but that agreement is not registered. In the appeal in which Shri. Kikla appears, in that case there terms :-

“7(l) After the plans and specifications of the building, as approved by the local authority as aforesaid, are disclosed or furnished to the person who agrees to take one or more flats, the promoter shall not make.

- (i) any alterations in the structures described therein in respect of the flat or flats which are agreed to be taken, without the previous consent of that person ; or
- (ii) make any other alterations in the structure of the building, or construct any additional structures, without the previous consent of all the persons who have agreed to take the flats.” (underlined words are emphasized)

17. These provisions are couched in simple and plain language and present no difficulty in understanding their meaning and import. A mere reading of these provisions bring home the central theme thereof. After the plans and specifications of the building are approved by the local authority, and after such plans and specifications have been disclosed or furnished to the person who has agreed to take one or more flats, the promoter is enjoined by law not to make alteration in the structure of the flats without the previous consent of the person in respect of whose flat the alteration is to be made by the promoter. Likewise, the promoter is prohibited from making any alterations to the structure of the building, or construct any additional structures, without the previous consent of all the persons who have agreed to take a flats. It is obvious that the purchaser of a flat gets a picture of the building built or to be built on the land, from the plans approved by the local authority. It is on the basis and faith of that plan that he contracts to buy the flat from the promoter. It seems to me that in order that the promoter should adhere to the approved plans that these provisions are enacted. Before the enactment of these provisions, one of the malpractices and irregularities that was found out in the building industry in this metropolis was that the promoter or builder without the consent of the flat owners, could put up additional storey of structures on the building itself for erect additional building or shops or garages on the land. This left the flat-owners high and dry. The flat owners were thus never sure of what the ultimate structures of the building and the land adjoining thereto would be. It appears that

those provisions are intended to eradicate such malpractices and irregularities. In the Commerce House Owners case the scope of the provisions of section 7 fall for consideration. At page 346 of (1980) 83 Bom. L. R. the following observations are to be found :-

“Under section 7 there is prohibition against the promoter from making any alterations in the structures described in the plans and specifications of the building sanctioned by the local authority. This cannot be done without the previous consent of the person who takes one or more flats. Sub-clause (i) thus prohibits the promoter from making any alteration in the flat once the flat-owner has agreed to purchase that flat. Sub-clause (ii) deals with the alteration in the structure of the building or construction of any additional structures and section 7 has the effect of prohibiting the promoter from constructing any additional structures or altering the structure of the building unless previous consent of all the persons who have agreed to take the flats is taken

Again at page 347, It is stated this :

“If the amended definition of promoter is read into the provisions of section 7 then it is obvious that even in respect of a building which is completed, if a person has agreed to take one or more flats after the coming into force of the Act, the promoter, that is the person who has constructed the building will have the liabilities or the obligations specified in sub-clause (i) or (ii) of section 7 (1) fastened on him. In other words, if there is a building which is fully constructed on the date on which this Act has come into force, the promoter is disabled from making any alterations in the structures in respect of flat or flats which are agreed to be taken by a person or persons without the consent of that person or persons. Similarly the promoter that is, the person who has constructed the building is disabled from making any other alterations in the structure of the building or from constructing any additional structure without the provisions consent of all the persons who have agreed to take the flats”

Thus view taken by the Division Bench in the above case is that a promoter is not entitled to make any other alteration or construct any additional structure without the previous consent of all the persons who have agreed to take the flats.

18. Before dealing with the question of the effect of section 4 on section 7 in cases where there is no agreement for sale of the flat at all or the agreement for sale is not registered under the Indian Registration Act, it is convention to consider the aspect of the flat-owners for the purpose of alteration in the structure of the building or constructing any additional structures as laid down under clause (ii) of sub-section (1) of section 7. In this connection in the first matter, in which Shri Kikla appears for the promoters, there is a dispute about the proforma agreement for sale having been approved by Shri. Sudharshan Wadia, the husband of the plaintiff but it seems to me prima facie that the promoters word in this behalf is more reliable at this stage because it is unlikely that Shri.Sudharshan was not shown the proforma agreement for sale got prepared by the promoters for execution with persons who may agree to purchase flats. Moreover, at about the same time, Shri. Sudharshan had dealt on behalf of his father for the purchase of another flat in the same building. Among the clauses referred, reliance was placed on clauses 3 and 15 which are in these terms :-

“3 The Builders have informed the purchaser/s that the said building plans and specifications in respect of the said multi-storeyed building have been duly sanctioned by the Municipal Corporation of Greater Bombay subject to the terms and conditions imposed by the

Municipal Corporation of Greater Bombay. It is agreed by and between the parties hereto that the Builders shall be entitled to make such changes and/or alterations and additions in the said building plans as required by the Municipal Corporation of Greater Bombay which the Builders may deem fit and proper and the Purchasers hereby irrevocable consents to the Builders for carrying out such changes and/or alterations and additions.”

“15 The Builders shall have a right until the execution of the said conveyance in favour of the proposed Society or Limited Company or otherwise as aforesaid to make additions or put up additional structures, floors and storeys on the said building which shall be the property of the Builders and the Builders will be entitled to dispose of the same in such manner as they deem fit as aforesaid.”

The promoters were also obtaining a letter from the purchasers of the flat at the time of handing over possession and concluding paragraph of the proforma letter is as follows :

“ I declare that I will not raise any objection on your starting any additional construction by building additional floors on the building or by constructing any extension as per B.M.C. Rules & Regulations. I further agree to your forming the co-operative society after the completion of your additional floors and extension.”

19. In the second matter, Shri. Sawant referred to clause 34 of the agreement for sale, the material portion whereof runs as follows :-

“The Builders shall have a right until the execution of the conveyance in favour of the proposed Society or Limited Company to make additions, alterations, raise storeys or put up additional structures as may be permitted by Municipality and other competent authorities. Such additions, alterations, structures and storeys will be the sole property of the Builders who will be entitled to disclosed it off in any way they choose and the flat-holder hereby consents to the same.....”

20. It may be mentioned in fairness to Shri. Kikla that this aspect of the matter had been argued in the beginning, but when the matter was to argued after the second matter was also taken up for first one, Sri. Kikla did not refer to the same.

21. Now, we have to understand the meaning of the word ‘consent’ as used in clause (ii) of sub-section (1) of section 7. After the plans and specifications of the building as approved by the local authority are disclosed or furnished to the person who agrees to take a flat from the promoter, a prohibition is claimed on the promoter not to make any alterations in the building or construct additional structures. This prohibition can be lifted if before the promoter carries out the alterations in the building or before he starts the work of additional construction, the promoter obtains the consent of all the persons who have agreed to take the flats. For the purpose of obtaining consent a promoter must ask the flat-owners for their permission and reveal to them the nature of the proposed alterations to the building or of the additional structures to be constructed as, without such disclosure, the flat –owners cannot know for what work the permission is sought and for what work they are required to consent. Again in response to a request for consent, there must be an affirmative acceptance from all the persons who have agreed to take the flats. The word “consent” in the context of the section does not mean implied consent such as by conduct or acquiescence or circumstances that might be consent. Consent in this section is to be understand to mean as positive consent to specific items of work or alteration to be carried

out or particular additional structure to be built by a promoter. This seems to be the object of enacting these provisions of obtaining previous consent of the flat-owners as otherwise the malpractices and irregularities intended to be eradicating by this enactment would continue to flourish and the promoters would not be deterred by the penal provision of section 13. A blanket consent or authority obtained by a promoter at the time of entering into an agreement for sale or at the time of handing over possession is not the consent contemplated by section 7(1)(i) or (ii) for such a blanket consent or authority would sew up or nullify these provisions. Now in the first matter the original sanction on the basis of which the flats were sold by the defendants-promoters, was obtained from the local authority on 17<sup>th</sup> April 1978. Thereafter these defendants started putting up additional structures on the basis of plan sanctioned by the local authority on 6<sup>th</sup> July, 1981. This work was carried on by these defendants without the previous consent of the plaintiff as well as sixteen other persons who had purchased the flats. These sixteen persons had filed a suit being Bombay City Civil Court Suit No.6788 of 1981, against these defendants, in that suit, these defendants had stated that the additional structures on shops Nos. 8 to 14 were restricted to two additional floors as per plans dated 6<sup>th</sup> July, 1981. Contrary to this, these defendants obtained further sanction from the local authority for constructing additional structures on shop Nos.8 to14 under plans approved on 6<sup>th</sup> May 1982. It is patent that the additional work carried out on shops No.8 to 14 under the plans dated 6<sup>th</sup> July 1981 and 6<sup>th</sup> May 1982 is without the consent of the plaintiff and other persons who have purchased the flats. These defendants cannot under the cloak of the blanket consent obtained under the proforma agreement for sale carry out the work of additional structures and thus set at naught the provisions of section 7(1)(ii). Likewise, in the second matter also, the original sanctioned plan dated 5<sup>th</sup> December, 1979 was the sanctioned plan on the basis of which the flats were sold. The defendants in the second matter had also sought to build garages on the strength of clause 34 of the agreement for sale without previously obtaining the consent of all the persons for constructing garages in the open space of the building.

Therefore, there is no manner of doubt that the additional structures constructed or intended to be constructed are in breach of the provisions of section 7(1)(ii).

22. This takes me to another submission of Shri. Sawant According to Shri. Sawant, the word "additional" means extension either vertical or horizontal to the structure of the building. In this connection, Shri. Sawant made reference to the meaning of the word "additional" as contained in New Webster Dictionary of the English language.1981 edition, page 13 where the meaning of the word "additional" is given as "supplementary, more, added, extra". Shri. Sawant also referred to the meaning of the word "additional" as contained in Random House Dictionary of the English language, unabridged edition, page 17, where the meaning mentioned is "added, supplementary". To my mind the meaning "more, added, extra" of the word "additional" appears to be more appropriate. It is difficult to accept the meaning suggested by Shri. Sawant, that the word "additional" means only extension either vertically or horizontally to an existing structure.
23. Shri. Sawant next submitted that if any unauthorized work of putting up additional structure is carried out, then a promoter is liable to compensate the flat-owners and for that purpose a machinery is provided under sub-section (2) of section 7. Now, the provisions of section 7(2) make reference to the defects in a building of material used or any unauthorized change in the construction. The unauthorized change mentioned here

does not cover case of making alterations in the building of constructing additional structure, the construction whereof is barred under sub-section (1) of section 7. Therefore, I do not find any merit in this submission.

24. The last contention of Shri. Kikla and Shri. Sawant was that unless there is a written agreement for sale duly registered under the Indian Registration Act, the flat-owner cannot avail of the provisions of section 7. Shri. Kikla also emphasized that in such case, a promoter is not required to obtain previous consent under section 7, as there is no valid and enforceable agreement between the flat-owners and the promoters. In other words, the promoters can carry out the work of additional construction at their sweet Will so long as they succeed in obtaining sanction of the local authority. Now, I have quoted above the observations in the Commerce House Owners case on which reliance was placed by learned Counsel and Shri Sudharshan Wadia. In my view, section 4 and section 7 are independent. These provisions are intended to safeguard the interest of the flat-owners in, different ways. The effect of want of a registered agreement for sale, as I understand by the decision in the Commerce House Owners case, is that a flat-owner may not be able to enforce a contractual obligation or succeed in a suit for specific performance or claim protection from encumbering his rights and interest in the flat or the land under section 9, but the absence of a registered agreement under section 4 cannot deprive a flat-owner of his right title and interest in the flat or the land or prevent him from enforcing the provisions of the Act. In the first matter, though the plaintiff does not have an agreement for sale, but she has paid the price of the flat, she has obtained a letter recording the sale of the flat to her and she is also in possession of the flat. In the second matter, there are agreements for sale and the flat-owners are in possession of their respective flats and are managing the affairs of their flats. Shri. Sudharshan Wadia also referred to the provisions of section 17 of the Act, which make applicable certain provisions of the Act to flats which are already in existence and relied upon the observations in Commerce House Owners Case at page 347 quoted earlier. In the case, it has been observed that a promoter in respect of a building standing on the date of the coming into force of the Act is also disabled from making any alteration in the structure of the building or from constructing any additional structure without the previous consent of all persons who have agreed to take the flats. In case of such flat-owners to whom the provisions of section 17 are applicable, the existence of a registered agreement for sale under section 4 is not a condition precedent to the enforcement of the obligations under section 7, The liabilities or obligations, as fastened on a promoter as observed in the Commerce House Owners Case, squarely apply to the present case. Therefore, to my mind, the absence of the registered agreement for sale cannot come in the way of the plaintiffs in both the matters in invoking the provisions of section 7(1)(ii) nor are the promoters in the first matter absolved from obtaining the consent of the plaintiff in the case because of her not possessing a registered agreement for sale.

Remaining discussion in A.O. No. of 1982 :

25. In the matter, by a letter dated 5<sup>th</sup> June 1979, the defendants promoters have sold flat No.503 to the plaintiff for Rs.1,23,200/- out of which a sum of Rs.31,000/- was received on the date of the passing of the said letter Prima facie, the receipt of Rs. 31,000/- was in excess of 20 per cent of the sale, price, which was the maximum advance money which the defendants could receive from the plaintiff. It is not in dispute that the plaintiff appellant has made further payments by cheques, though according to her, she has paid in all Rs. 1,26,000/- where according to the defendants they have received Rs. 1,24,700/-. There is, however, a dispute between the plaintiff and the defendants about handing over possession of flat No. 503 to the plaintiff. Prima facie it appears that there is a great deal of doubt in the

explanation of the defendants on the circumstances in which the plaintiff took possession. It does not appear that the plaintiff has purchased the flat for the purpose of investment through her husband, as made out by the defendants. The plaintiff has made all the payment by cheques. As soon as the defendants agreed to sell the flat to the plaintiff on 25<sup>th</sup> June 1979, the defendants must have, in the registers to be maintained under the Act and Rules made there under i.e. Rules 18(2), made entries about the name of the purchaser, address of the purchaser, whether purchased or agreed to be purchased, date of agreement, the price settled, etc, as required by form II prescribed by Rule 18(2). Again, under Form III prescribed by or the same Rule, the defendants must have recorded in the register the amounts received and the disbursements made. Having regards to these provisions, it is difficult, prima facie, to take the view that the plaintiff's husband was intending to screen the transaction as a Government servant, as contended.

26. About the circumstances leading to the taking of possession, I am only dealing with one or two circumstances for taking a prima facie view. One circumstance is that if the plaintiff or her husband had taken possession of the flat in illegal manner as contended by the defendants; the defendants, as promoters would not have steps over this illegal act. Shri. Kikla submitted that the defendants came to know of the plaintiff's husband taking possession in an illegal manner only when the suit was filed. This also, prima facie, does not appeal to me because, according to the defendants, their supervisor Shukla was on the scene throughout and if Shukla had given the key to the plaintiff's husband and the plaintiff's husband had failed to return it, he could not have ignored the matter for months together. The other circumstance is that the defendants have preferred bills upon the plaintiff and claimed maintenance charged for the period from May 1981 to October 1981. One bill is dated 10.12.1981 claiming payment of Municipal taxes, water tax and maintenance charges for two months of November and December 1981. The other bill is dated 10.1.1982 claiming the same kind of charges for the months of January and February 1982 and also for the months of May 1981 to October 1981. The present suit was filed in the middle of June 1982. Having regard to these circumstances, prima facie, it is not possible to disentitle the plaintiff from seeking the interlocutory relief if she is otherwise entitled to it in law.
27. Shri. Kikla contended that the plaintiff is not entitled to an interlocutory relief on account of the latches on her part. In this connection, what is material to bear in mind is that after the original plans were approved by the Municipal Corporation on 7.4.1978, which was the basis on which the defendants had agreed to construct the flats and the building and the shops the defendants had twice obtained further Municipal permission for construction. The first sanction dated 6.7.1981 related to construction of two floors and shops Nos.8 to 14. In this connection, the defendants had made a statement to the Court, to which reference has been made above, whereby the defendants even made the Court believe that the sanction obtained by the defendants was only upto two additional floors. On behalf of the defendants it could not be shown, prima facie, that the defendants had obtained the consent of the plaintiff or the other purchasers of the flats in respect of the second sanction dated 6.5.1982 for further two additional floors. The defendants have, prima facie, contravened the provisions of section 7. The latches pointed out by Shri. Kikla were that the plaintiff was aware of the developments in the earlier suit and was watching and waiting for the result of that in the suit and it is only after the disposal of the Notice of Motion in that suit that the plaintiff has filed the present suit. I do not think that in the circumstances of this case the plaintiff's conduct in awaiting the outcome of the suit involving the same points could be a ground for refusing the relief. The defendants are guilty of misleading the Court in the previous suit. After the passing of the order dated 18.12.1981 in the previous suit the

defendants again sought to obtain sanction from the local authority on 6.5.1982 for raising two additional storeys.

**Order in A.O.No.875 of 1982:**

- 28 For these reasons, the appeal is allowed. The order of the trial Court dismissing the plaintiff's Notice of Motion is made absolute in terms of prayers (a) and (b) with costs throughout.

**Order in A.O.No.875 of 1982:**

29. In view of the above discussion; this appeal must fail. However in the view that I have taken, the defendants are not entitled to construct additional structure, i.e. the two garages or any other structure on the open land around 'Kunjan Apartments'. Accordingly the injunction granted by the trial Court is modified and pending the hearing and final disposal of the suit, the defendants, their servants and agents and any person or persons claiming through or under them are restrained from constructing any garages and or any structure on the land around the building known as 'Kunjan Apartments' on C.T.S.No.644, Kasturba Cross Road, Malad (Weat), Bombay 400 064. The defendants will, however, be at liberty to construct the second building on the said plot of land without affecting the rights of the flat – owners of Kunjan Apartments in any manner in order to utilize F.S.I., if any. Subject to this modification, the appeal is dismissed with costs.
30. At this stage of the passing of the final order, Shri Kikla makes an oral application on behalf of the respondents for leave to appeal to the Supreme Court. In the absence of Shri Sawant, it was indicated that the appellants in the other matter were also seeking leave to appeal to the Supreme Court. Later, Shri Sawant indicated that he was not making such an application.
31. Shri Kikla submitted that this case involves a substantial question of law of general importance and that many builders in the city would be affected by this judgment. Shri Kikla further indicated that some matters are pending in this Court, but he was very sure. In view of this, final order on the oral application is reserved. Shri Sudarshan Wadia submits to the order of the Court.
32. Shri Kikla states that there are about 20 appeals pending, in which the decision appealed against is either in favour of the purchasers of flats, flat-owners or in favour of the promoters-builders. Now it, therefore, seems that two views are possible and some learned Judges have taken one view and others a different view. The question becomes more important and significant by virtue of the decision of the Division Bench in Commerce House Owner's case, 83 Bom. L.R. 339, holding that the consequence of non-compliance with the provisions of section 4 is that it invalidates the transaction and there is no question of the transaction between the purchaser of the flat and the promoter being binding between them. It is further held that the provisions of section 4 being mandatory, the agreement of sale is, therefore, statutorily required to be registered and if the same is not registered, a plaintiff cannot found any rights on such an agreement and the agreement must be treated as invalid and ineffective. That being the position of the law as laid down by the Division Bench of this Court, the question posed on behalf of the respondents seeking leave was that since there is no registered agreement for sale of the suit flat, the plaintiff can not avail of the provisions

of section 7 and in such a case the defendants were not required to obtain the previous consent of the plaintiff under section 7 as there is no valid and enforceable agreement between the parties. As discussed above, the absence of the agreement for sale and its non-registration does not take away the right of the purchaser of a flat to avail of the statutory prohibition contained in section 7 (1) (ii). A promoter cannot carry out any additional construction or make any alteration in the building without the consent of all the flat-owners under section 7(1)(ii), notwithstanding the non-execution of the agreement for sale or non-registration thereof, nor can he by obtaining blanket consent of the purchasers of the flats at the time of entering into the agreement for sale or at the time of delivering possession of the flat set at nought the provisions of section 7(1) (ii).

33. Therefore, the case involves a substantial question of law of general importance and, in my opinion, the same needs to be decided by Their Lordships of the Supreme Court. The required certificate be issued accordingly.

**Annexure "D"**

ALL INDIA REPORTER 2005  
SUPREME COURT  
AIR 2005 SUPREME COURT 1  
**(From : 1996 AIHC 5515 (Orissa))**  
**R. C. LAHOTI, C. J. AND ASHOK BHAN, J.**  
**Civil Appeal No. 12984 of 1999, D/- 1-11-2004.**

**Friends Colony Development Committee. Appellant v. State of Orissa and others,  
Respondents.**

- (A) Orissa Development Authorities Act (14 of 1982), Ss. 91, 92 – Cuttack Development Authority (Planning and Building Standard) Regulations (2001), Regn. 1 — Illegal and unauthorized construction — Demolition — Construction activity in city of Cuttack presenting a sordid state of affairs — Stringent actions by ruthlessly demolishing illegal constructions and non-compoundable deviations therefore necessary — Unwary purchasers of such buildings to be compensated — Responsibility to be fixed on officials whose duty it was to prevent unauthorized constructions.  
(Para 20)
- (B) Orissa Development Authorities Act (14 of 1982), Ss. 91, 92 — Construction activities — Regulation and control — Power flows from police power of State — Such regulations may meddle with private ownership rights — But exercise of such governmental power is justified on account of its being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations — Zoning, building and structural and lot area regulations — Importance explained.  
(Para 22)
- (C) Orissa Development Authorities Act (14 of 1982), Ss. 91, 92 — Illegal construction — Regularisation of deviations — Permissible only in case of bonafide deviations — Application to regularise — To be dealt with by multi-membered High Power Committee —

Heavy penalty to be imposed on erring professional builders — Fund to compensate unwary purchasers to be built up therefrom.

Thought the Municipal laws permit deviations from sanctioned constructions being regularised by compounding but that is by way of exception. Unfortunately, the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has become the rule. Only such deviations deserve to be condoned as are bona fide or are attributable to some misunderstanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum. The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into underhand dealings. The State Government should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilised for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions. The application for compounding the deviations made by the builders should always be dealt with at a higher level by multi-membered High Powered Committee so that the builders cannot manipulate. The officials who have connived at unauthorized or illegal constructions should not be spared. In developing cities the strength of staff which is supposed to keep a watch on building activities should be suitably increased in the interest of constant and vigilant watch on illegal or unauthorized constructions.

(Para 25, 26)

- (D) Orissa Development Authorities Act (14 of 1982), Ss. 91, 92 — Illegal construction — Excess construction made on all floors — Even an additional floor was also built — Order of authorities to demolish — Writ petition against by builder — Disposed of by High court by directing that if builder makes fresh application the authority should deal with it — Held, was improper — Controversy should not have been brought to an end by High Court merely by directing reconsideration of fresh application of builder — High Court directed to determine how much deviation can be regularized and subject to what terms, if any part of the construction found to be illegal has to be Demolished and/or any of the occupants are liable to be displaced.

O.J.C. No. 4995 of 1995, D/- 16-4-1996 (Orissa), Reversed.

(Para 27, 28)

Vinod Bhagat, Advocate, for Appellant; Shiv Sagar Tiwari, Advocate (NP), for Intervenor; Raj Kumar Mehta and Bikash Mohanty, Advocates, for Respondents 2-3, Jana Kalyan Das, Advocate, for Respondents 5-6.

R.C. LAHOTI, C.J.I. :- The Friends Colony Development Committee, the appellant before us, is a society registered in the year 1982 under the Societies Registration Act, 1860. One of its objects is to over-see development of the residential area known as 'Friends Colony' in Cuttack city. M/s Modern Mechatech Housing Ltd., the respondent No. 2, is a company incorporated under the Companies Act, and engaged in building activity. Pratap Kumar Biswal, respondent No. 3, is its Managing Director. The other parties impleaded in this appeal are — the State of Orissa through the Commissioner-cum-Secretary, Housing and Urban Development Department and Cuttack Development Authority (hereinafter the 'Authority' for short). The property involved in this litigation is a six storeyed apartment situated in Friends Colony and known as 'Kalyani Apartment'.

2. The background facts leading to the present appeal are briefly stated hereinafter. The property belonged to one Abhiram Panda. He gave a power of attorney to the builder (respondent Nos. 2 and 3) for construction of a multi-storeyed apartment on the said land. On an application made by the builder, the Authority accorded sanction on 3.3.1993 for construction of a four storeyed building in accordance with the building plans sanctioned by the Authority. The construction commenced and when the building came up it was found to have been built up grossly in excess of the sanctioned plan on all the floors. Though the sanction accorded by the Authority permitted only four stories but even a fifth floor had also come up. On 7.2.1994, the Authority initiated proceedings under Section 92 of the Orissa Development Authorities Act (hereinafter referred to as 'the Act', for short) against the builder calling upon it to Show Cause why the offending portions be not demolished. The stand taken by the builder its response was that the deviations were very minor ones calling for a sympathetic view and compounding of the deviations instead of being demolished. On 25.9.1994 the appellant made a representation to the Authority complaining of the offending construction and submitting that the deviations from the sanctioned plan damaged the environment and endangered life and safety of not only the occupants of the building, but also of other inhabitants of the locality. The representations by the appellant were made not only to the Authority, but also to the Cuttack Municipality, the Pollution Control Board and the State Government.
3. By order dated 8.11.1994, the Authority directed 5<sup>th</sup> floor of the building to be demolished as also the unauthorized projections of 605 sq. ft. on each floor to be demolished. In respect of certain deviation which were compoundable, the Authority permitted compounding on payment of Rs. 2.09 lakhs by the builder. A notice-cum-order for securing compliance of the order dated 8.11.1994 of the Authority was issued on 30.11.1994 to the builder.
4. On 2.12.1994 the builder filed an appeal before the appellate authority which granted interim stay of demolition as directed by the Authority, but subject to the condition that the builder shall stop all further constructions. However, the builder proceeded with the building activity by defying the conditions incorporated in the order of the stay granted by the appellate authority. The appellant's representations inviting attention of the Authority did not serve any purpose.
5. On 5.12.1994 the appellant filed a writ petition in public interest in the High Court of Orissa which was registered as OJC No. 8128/94 laying challenge to the illegal, unauthorized and dangerous construction in the building and seeking demolition to the extent necessary. The appellant also sought for its impleadment in the appeal filed by the builder which was pending before the appellate authority. The impleadment was allowed, though opposed by the builder.
6. By order dated 28.6.1995 the appellate authority directed the builder's appellate authority directed the builder's appeal to be dismissed. The appellate authority found inter alia that the offending construction was a threat to the environment and, if not demolished, it would encourage other builder to make similar violations much to the detriment of the planned development of the city. Laying challenge to the order of the appellate authority, the builder fields a writ petition in the High Court which was registered as OJC no. 4995/95. Though the appellant was a party before the appellate authority, it was not joined by the builder as a party in the writ petition filed by him. However, the appellant moved for its impleadment,

in the writ petition and filed a counter affidavit controverting several averments made and pleas raised by the writ petition filed by it in public interest being taken up for hearing along with the writ petition filed by the builder so that all the issues relating to the said building could be heard and decided together. However, the writ petition filed by the builder was taken up for hearing, while the writ petition filed in public interest by the appellant remained pending.

7. By its judgment dated 16.4.1996 the Division Bench held that the appellant had no right to participate in the hearing; it was neither a necessary nor a proper party; it was not entitled to be heard in the writ petition filed by the builder, and the remedy, if any, of the appellant was to file a civil suit for protection and enforcement of its rights, if any. Having said so, the High Court proceeded to examine, on merits, the pleas urged by the builder in his writ petition.
8. The plea of the builder was that in spite of the construction having come up, it could yet move a fresh application and submit revised plan for approval in respect of construction already undertaken and then it will be for the Authority to consider and approve or not to approve the same. It seems to have been urged before the High Court by the learned counsel for the builder, as noted in the judgment of the High Court, that at different points of time the Planning Member and Vice-Chairman of the Authority had suggested certain courses of action which would obviate difficulties of the builder while not making any departure from the requirements of law and such suggestions were by and large, accepted by the builder. However, from the records we find that this was only an oral submission made, not supported by any documents and the judgment of the High Court also does not make reference to any document or affidavit filed by or on behalf of the Authority or any of its officials in support of the plea urged by the builder. The High Court disposed of the writ petition by directing that if the builder made a fresh application and/or submitted a revised plan for approval in respect of construction already undertaken by it, the Authority should deal with the same in accordance with law. The learned counsel for the builder undertook before the High Court to maintain status quo and not to make any further construction till a decision was taken by the Authority on re-submission of the application accompanied by plans for sanction as permitted by the High Court. The High Court allowed one months time from the date of its judgment for filing a written undertaking by the builder incorporating the oral undertaking given before the High Court and also for filing the application and plan for Sanction before the Authority. The High Court left the question of deviations already made open for consideration and to be dealt with in accordance with law after the Authority had taken decisions on such application.
9. Feeling aggrieved by the judgment of the High Court this appeal has been filed by special leave.
10. By order dated 7.10.1996 leave was granted and, at the same time, this Court directed the operation of the impugned judgment of the High Court to remain stayed. 30 occupants of the apartment have sought for Intervention at the hearing in this Court. On 5.5.1997, in the presence of the parties, this Court directed the order of stay made on 7.10.1997 to be confirmed and clarified that no demolition of the construction already made would be done during the pendency of this appeal, but the unauthorized portion would not be permitted to be occupied and no third party interest would be created therein in the meantime. After 5.5.1997 the appeal came up for hearing before this Court on 6.11.2003. Having noticed that it was a case of unauthorized constructions made by a builder in a multi-storeyed

building and the High Court had permitted the possibility of regularization of unauthorized constructions to be explored afresh as per law, this Court made the following directions :—

- (i) The respondents Nos. 5 and 6 shall have a plan of the existing structure prepared through their architects / engineers. The authority shall consider in accordance with the existing building bye-laws / regulations as to how much of the unauthorized construction can be regularized and if so then subject to what terms and conditions. The Plan showing in different colours, the sanctioned construction and the unauthorized and the construction to the extent to which it can be regularized shall be filed.
- (ii) The terms and conditions on which the regularization can take place shall also be filed.
- (iii) The status of the are which cannot be regularized shall be stated, i.e. whether it is occupied or unoccupied.”

11. The compliance by the Authority was directed to be reported within eight weeks along with plans and statement as above being filed duly supported by affidavit.
12. On 14.1.2004 another two week’s time was sought for by the Authority for reporting compliance with the order dated 6.11.2003. However, the learned counsel, who is appearing in this Court for the builder, pointed out that his client, that is the builder, was not responding to his communications. The notices of hearing issued by the Registry of this Court to the builder company and its Managing Director were returned with postal remarks ‘refused’.
13. Later, on 10.2.2004 the Managing Director of the builder company was present in the Court on having been served and pointed out that during the pendency of these proceedings he has shifted his residence to Bangalore. The Court directed him to remain present in person on all the dates of hearing unless otherwise permitted by this Court and also to keep his counsel and this Court informed of his address and his availability thereat.
14. On behalf of the Authority affidavit in compliance with the order dated 6.11.2003 was filed. Shri S.M. Patnaik, the Planning Member in the Authority was also present in person. The plan filed by the Authority showed the authorized and unauthorized constructions and also the extent of unauthorized constructions which could be regularized subject to terms. This Court directed as under:—

“Cuttack Development Authority shall file an additional affidavit pointing out how much of the unauthorized construction though not available for legalization as per the existing law can still be tolerated without any loss of public interest and how much unauthorized construction must necessarily go in public interest. The Authority shall also state and suggest the terms on which the builder should be placed for the purpose of regularization of the permissible unauthorized construction and the terms on which the builder should be placed tolerating the extent of unauthorized construction through not available for regularization.

Compliance in six weeks.”

15. The builder was also allowed the liberty of filing a statement or affidavit incorporating such relevant facts and information as would enable the Court to arrive at a just and equitable decision. Thus further affidavit has been filed.
16. According to the Stability Report submitted by the Structural Analysis & Design Cell to the Planning Member of the Authority the following facts have been reported about the Kalyani Apartment:-
  - (1) It is a framed structure building having partial parking area in the ground floor and five floors above it along with the access to the terrace with the load of overhead water tanks and headrooms.
  - (2) There is a 5 feet width Cantilever used as living areas such as toilet, kitchens & bedrooms projected to all sides in each floors.
  - (3) The peripheral walls are of 10" width K.B. brick masonry wall and all internal walls are 5" width.
  - (4) 1" thick mosaic tiles are laid in all floors as flooring materials.
  - (5) Average width of building is 41'-8" feet and average height of building is 58 feet.
  - (6) Soil condition is sandy loamy type.
  - (7) There was no sign of any sinking of foundation in the static load at present.
  - (8) There was no scope to check the actual foundation provided in the building.
  - (9) Size of all existing column are 10" x 15" whereas the size is 12" x 24" in the drawing approved in CDA.
  - (10) I have considered the column 'C 5' (Column Lay-out drawing is attached) for example, to calculate all the loads in it to check the stability of the said column. The detail calculation of the column 'C-5' is as follows."
17. Calculations and analysis data in documents have been made available. In Calculations it is stated as under :—

"As per the above Calculations and observations it is observed that this building is unsafe for the ground plus five floors along with cantilever in all sides because the section of column is not adequate. It is also noticed that during the structural design of this building the wind load calculation has not taken into consideration. Also the seismic load consideration has not been included in it though this are comes under scismic zone – III.

To make the building structurally stable the load in the building should be reduced. The load can be reduced by removing the fifth floor in total. The load can also be reduced by removing the cantilever portion all sides of each floor. A strong impact load may affect the main building during the breaking of cantilevers but if we break the top floor no such impact load may not affect the structure in the lower floors."
18. In the subsequent affidavits filed the builder has pointed out and relied on certain changes in the regulations framed by the Authority in support of his Plea that all deviations in the building are compoundable. The builder has also sought to contend that there are several other buildings with more or less similar deviations which have either been compounded or not proceeded against. On such averments the builder has sought for the deviations being condoned and regularized.

19. On the other hand, the affidavit sworn in by Shri Gupteshwar Acharya, Law Officer of the Authority, filed on 2-2-2004 with the plan of the building specifically and separately setting out the deviations – compoundable and non-compoundable, as also the calculation sheets have been filed. It is stated inter alia:-

- (1) that the floorwise coverage and deviation are set out in detail in the chart annexed to the present affidavit. From a perusal of the said chart it is submitted that as per draft CDA regulations dated 29-12-1994 the case was considered for regularization etc. After detailed examination it was found that the entire 5<sup>th</sup> floor which was constructed without prior permission covering the area 4009.5 sq. ft. was beyond the permissible norms for regularization / compounding and hence the same has to be demolished. On account of operation of stay order from this Hon'ble Court the demolition work could not be carried out.
- (2) that from the remaining unauthorized construction area a total area of 5735.5 sq. ft. could be compounded upon payment of Rs. 2,09,160/- as per the then prevailing fee. It is relevant to mention that the said amount till the date has not been deposited and therefore in the absence of the said amount being deposited the said compounding also has not been carried out and the area is liable for demolition.
- (3) that with effect from 13-12-2001 the Cuttack Development Authority (Planning & Building Standard) Regulations, 2001 has come into force. Under the said 2001 Regulation more stringent condition in respect of high-rise building pertaining to setbacks etc. have been laid down. Applying the standards laid down in the Regulation, 2001 the permissible compounding area of unauthorized construction would be far less than what was offered under the earlier draft regulation.
- (4) that since the offer for regularization / compounding had already been made under the regulation then applicable the Authority can consider compounding/regularization of an area of 5735.5 sq.ft. subject to payment of Rs. 2,09,160/- with interest as deemed fit and proper by this Hon'ble Court.

\_\_\_\_\_ upon site inspection and personal \_\_\_\_\_ out by the Planning Member and the technical staff it is noticed that all the floors are in occupation.”

20. The pleadings, documents and other material brought on record disclose a very sorry and sordid state of affairs prevailing in the matter of illegal and unauthorized constructions in the city of Cuttack. Builders violate with impunity the sanctioned building plans and indulge in deviations much to the prejudice of the planned development of the city and at the peril of the occupants of the premises constructed or of the inhabitants of the city at large. Serious threat is posed to ecology and environment and at the same time, the infrastructure consisting of water supply, sewerage and traffic movement facilities suffer unlimited burden and are often thrown out of \_\_\_\_\_. Unwary purchasers in search of roof over their heads and purchasing flats apartments from builders, find themselves having fallen prey and become victims to the design of unscrupulous builders. The builder conveniently walks away having pocketed the money leaving behind the unfortunate occupants to face the music in the event of unauthorized constructions being detected or exposed and threatened with demolition. Though the local authorities have the staff consisting of engineers and inspectors whose duty is to keep a watch on building activities and to promptly stop the illegal constructions or deviations coming up, they often fail in discharging their duty. Either they don't act or do not act promptly or do connive at such activities apparently for illegitimate considerations. If such activities are to stop, some stringent actions are required

to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. The unwary purchasers who shall be the sufferers must be adequately compensated by the builder. The arms of the law must stretch to catch hold of such unscrupulous builders. At the same time, in order to secure vigilant performance of duties, responsibility should be fixed on the officials whose duty it was to prevent unauthorized constructions, but who failed in doing so either by negligence or by connivance.

21. The conduct of the builder in the present case deserves to be noticed. He knew it fully well what the permissible construction was as \_\_\_\_\_ sanctioned building plans and yet \_\_\_\_ constructed additional built up area on each floor but also added an additional fifth floor on the building, and such a floor was totally unauthorized. In spite of the disputes and litigation pending he parted with his interest in the property and inducted occupants on all the floors, including the additional one. Probably he was under the impression that he would be able to either escape the clutches of the law or twist the arm of the law by some manipulation. This impression must prove to be wrong.
22. In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning though highly controlled is a matter based on scientific research, study and experience leading to rationalization of laws by way of legislative enactments and rules and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reasons alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in away that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of its being reasonably necessary for the public health, safety, \_\_\_\_\_ or general welfare and ecological considerations; though an unnecessary or unreasonable inter-meddling with the private ownership of the property may not be justified.
23. The municipal laws regulating the building construction activity may provide for regulations as to floor area, the number of floors, the extent of height rise and the nature of use to which a built-up property may be subjected in any particular area. The individuals as property owners have to pay some price for securing peace, good order, dignity, protection and comfort and safety of the community. Not only filth, stench and unhealthy places have to be eliminated, but the layout helps in achieving family values, youth values, seclusion and clean air to make the locality a better place to live. Building regulations also help in reduction or elimination of fire hazards, the avoidance of traffic dangers and the lessening of prevention of traffic congestion in the streets and roads. Zoning and building regulations are also legitimized from the point of view of the control of community development, the prevention of over-crowding of land, the furnishing of recreational facilities like parks and playgrounds and the availability of adequate water, sewerage and other governmental or utility services.
24. Structural and lot-area regulations authorize the municipal authorities to regulate and restrict the height, number of stories and other structures; the percentage of a plot that may be occupied; the size of yards, courts and open spaces; the density of population; and the

location and use of buildings and structures. All \_\_\_\_\_ in view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building. (For a detailed discussion reference may be had to the chapter on Zoning and Planning in American Jurisprudence. 2d, Vol. 82).

25. Though the municipal laws permit deviations from sanctioned constructions being regularized by compounding act that is by way of exception. Unfortunately, the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has been little the rule. Only such deviations deserve to be condoned as are bona fide or are attributable to some mis-understanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum. The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and one with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into under hand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and therefore develop a welfare fund which can be utilized for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions.
26. The application for compounding the deviations made by the builders should always be dealt with at a higher level by multimembered High Powered Committee so that the builders cannot manipulate. The officials who have connived at unauthorized or illegal constructions should not be spared. In developing cities the strength of staff which is supposed to keep a watch on building activities should be suitably increased in the interest of constant and vigilant watch on illegal or unauthorized constructions,
27. In the facts and circumstances of the present case we are of the opinion that the controversy should not have been brought to an end by the high court merely by directing reconsideration of the application of revised building plans submitted by the respondent builder. The matter needs a further probe hearing in public interest.
28. The appeal is allowed. The impugned judgment of the High court is set aside. The writ petition filed by respondents Nos.2 and 3 herein shall stand restored on the file of the High court to be taken up for hearing along with the writ petition filed by the appellant. The present Status of the writ petition filed by the Friends Colony Development Committee-the appellant before us is not known as to whether it is pending or has been disposed of and if so with what result. Be that as it may if the writ petition filed by the appellant has been disposed of the hearing therein shall be reopened and the hearing in the two petitions shall proceed in the High court in such manner as the High court may deem fit but keeping in view the following direction .

- (1) Both the petitions that is the writ petition filed by respondents Nos.2 and 3 herein registered as OJC No. 4995 of 1995 and the writ petition filed by the appellant herein registered as OJC No. 8128 of 1994 shall be hearing together.
- (2) The following documents which have come up on the record of this court during the course of hearing and pursuant to directions issued from to time to time by this court shall be sent to the High Court to be taken up in consideration at the hearing of the writ petitions :-
  - (i) Affidavit of compliance on behalf of Cuttack Development Authority and Planning Member dated 2-2-2004 along with enclosures.
  - (ii) Additional affidavit of compliance on behalf of the planning Member Cuttack Development Authority. respondent No.6 herein filed on 5-4-2004 .
  - (iii) Further affidavit on behalf of respondent Nos.2 and 3 dated 25-3-2004 along with
  - (iv) Copy of the report submitted by the Planning Member, Cuttack Development Authority.
  - (v) Reply to the further/additional affidavit dated 6-4-2003 filed on behalf of respondent Nos. 2 and 3.
  - (vi) Reply on behalf of respondent Nos.2 and 3 to the additional affidavit dated 5-4-2004 filed on behalf of the Cuttack Development Authority, respondent No.6 herein with copy of the structural stability certificate copies of photographs of the site copy of sketch map showing the main storm water channel copy of letter issued by the Project Engineer Orissa Water Supply and Sewerage Board and copy of the order dated 17-4-2003 passed by the high court. Orissa in writ petition (C) No.3310 of 2003.
  - (vii) The Stability Report submitted by the Structural Analysis & Design call to the Planning Member Cuttack Development Authority on 18-3-2003.
20. Photocopies of the documents transmitted to the High Court shall be retained on the record of this Court.
- (3) The High court shall find out and determine how much deviation can be regularized and subject to what terms. If any part of the construction found to be illegal has to be demolished and/or any of the occupants are liable to be displaced. The high court shall take appropriate steps for their rehabilitation at the cost of builder.
- (4) Present address respondent No.3 is available as furnished by him to this court shall also be sent to the High Court. During the course of hearing respondent no.3 shall remain personally present in the High Court unless exempted from personal appearances.
- (5) Any non-compliance of the order of the court by respondent No. 2and 3 shall be construed as contempt of the order of the court and they shall be liable for the legal consequences.

- (6) The builder must deposit the compounding fee of Rs. 2,09,160/- within such time as the High Court may allow in this behalf. This deposit shall be treated as a provisional payment of \_\_\_\_\_ compounding fee subject to adjustment against such amount as the High court may During the pendency of these proceedings have come into force replacing the preceeding \_\_\_\_\_ Regulation. We do not propose to decided the general question — whether in the matter of determining of and compounding deviations it is the law as no the date of such decision which would apply the one as was prevailing on the date of commission of the illegal act would apply, leaving that question open in the facts and circumstances of the present we direct that the present case shall be determined by reference to the regulations as were prevailing prior to the coming of the Cuttack Development Authority planning and Building Standard Regulation 2001.
- (7) The High court if it feels that illegal/ unauthorized building activities in Cuttack as to be noticed judicially, may register a public interest litigation and commence monitoring the same by issuing directions so as curb such tendency and fixing liability and accountability

Order accordingly

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
APPELLATE SIDE**

**First Appeal No. 786 of 2004**

**And**

**First Appeal No. 989 of 2004**

**First Appeal No. 786 of 2004**

1. **Madhuvihar Co-op. Hsg. Society,** )  
having its registered office at )  
Madhuvihar, MGX Road 4, )  
Kandivali (W), Mumbai - 400 067. )
2. **Parmanand Natwarlal Parekh,** )  
Residing at No. 602-A, )  
Madhuvihar, MGX Road 4, )  
Kandivali (W), Mumbai - 400 067. )
3. **Himatlal Vichand Sheth,** )  
Residing at No. 40C-C, )  
Madhuvihar, MGX Road 4, )  
Kandivali (W), Mumbai - 400 067. )
4. **Mr. Ketan Surayakant Trivedi,** )  
Residing at Flat No. 602-A, )  
Madhuvihar, MGX Road 4, )  
Kandivali (W), Mumbai - 400 067. )

5. **Kirit Ramanlal Dalal,** )  
Residing at Flat No. 303, )  
Madhuvihar, MGX Road 4, )  
Kandivali (W), Mumbai - 400 067. )

6. **Harshad Kantilal Shah,** )  
Residing at Madhuvihar, )  
MGX Road 4, Kandivali (W), )  
Mumbai - 400 067. )  
**(Orig. Plaintiffs)**

) ... **Appellants**

**V/s.**

1. **M/s. Jayantilal Investments,** )  
a Registered partnership )  
firm, carrying on business at )  
73, Abdul Reman Street, )  
Mumbai – 400 003 )  
and having branch )  
office at 101, Balaji Arcade, )  
S.V. Road, Kandivali (W), )  
Mumbai - 400 067. )

2. **The Municipal Corporation of** )  
**Greater Bombay,** )  
having its office at )  
Mahapalika Bhavan, )  
Mahapalika Marg, )  
Mumbai – 400 001. )

3. **The Executive Engineer,** )  
Building Proposal (WS), )  
“R” – South Ward, )  
having its office at )  
Municipal Market, )  
Near Station, Kandivali, )  
Mumbai - 400 067. )

) ...

**Respondents**

**(Original Defendants)**

**First Appeal No. 989 of 2004**

**M/s. Jayantilal Investments,** )  
a Registered partnership )  
firm, carrying on business at )  
75, Abdul Reman Street, )  
Mumbai – 400 003, )  
and having branch office at )  
101, Balaji Arcade, )  
S.V. Road, Kandivali (W), )

Mumbai - 400 067.

) ... Appellant /  
(Original Defendant No.1)

V/s.

1. **Madhuvihar Co-op. Hsg. Soc.,** )  
having its registered office at )  
Madhuvihar, MGX Road 4, )  
Kandivali (W), Mumbai - 400 067. )
2. **Parmanand Natwarlal Parekh,** )  
Residing at No. 602-A, )  
Madhuvihar, MGX Road 4, )  
Kandivali (W), Mumbai - 400 067. )
3. **Himatlal Vichand Sheth,** )  
Residing at No. 40C-C, )  
Madhuvihar, MGX Road 4, )  
Kandivali (W), Mumbai - 400 067. )
4. **Mr. Ketan Surayakant Trivedi,** )  
residing at Flat No. 602-A, )  
Kandivali (W), Mumbai - 400 067. )
5. **Kirit Ramanlal Dalal,** )  
residing at Flat No. 303, )  
Madhuvihar, MGX Road 4, )  
Kandivali (W), Mumbai - 400 067. )
6. **Harshad Kantilal Shah,** )  
residing at Madhuvihar, )  
MGX Road 4, Kandivali (W), )  
Mumbai - 400 067. )
7. **The Municipal Corporation of** )  
**Greater Bombay,** )  
having its Office at )  
Mahapalika Bhavan, )  
Mahapalika Marg, )  
Mumbai – 400 001. )
8. **The Executive Engineer,** )  
Building Proposal (WS), )  
“R” South Ward, )  
having its office at Municipal )  
Market, Near Station, Kandivali, )  
Mumbai - 400 067. )

) ... Respondents  
(Original Plaintiffs)

**Shri Mahendra Ghelani with Mr. Ali Murtuza, for M/s. Law Charter, for Appellants in F.A. No. 786 / 2004 and for Respondents 1 to 6 in F.A. No. 989 of 2004.**

**Shri Vijay Singh A. Thorat**, Sr. counsel with **Shri Vaibhav A. Sugdare** i/b **Miss Kumud Bhatia**, for Appellant in F.A. No. **989** of **2004** and for Respondent No. **1** in F.A. No. **786 / 2004**.

**Mr. J.J. Xavier** with **Ms. Nisha Dhabade** for B.M.C.

**CORAM : K.J. ROHEE, J.**  
**DATE : 16<sup>th</sup> MARCH, 2006.**

### **ORAL JUDGEMENT**

1. The judgment and decree dated *31<sup>st</sup> March, 2004*, in L.C. Suit No. **4385 / 1997**, passed by the Judge, City Civil Court, Greater Bombay gave rise to these two appeals. First Appeal No. **786 / 2004** has been preferred by the Original Plaintiffs, whereas First Appeal No. **989** of **2004** has been preferred by Original Defendant No. 1.
2. The facts which are not in dispute for the purposes of the appeals can be stated thus: Plaintiff No. 1, **Madhu Vihar Co-operative Housing Society Ltd.**, (hereinafter referred to as the "**Society**") is registered on *20<sup>th</sup> January, 1993* under Maharashtra Co-operative Societies Act, 1960. Plaintiff Nos. 2 to 6 (hereinafter referred to as the "**Flat Purchasers**") are some of the members of the said Society. Defendant No. 1, **M/s. Jayantilal Investment**, (hereinafter referred to as the "**Promoter**") is a partnership firm carrying on the business as builder / developer. Defendant No. 2 is the Municipal Corporation of Greater Bombay and is in authority under the Maharashtra Regional & Town Planning Act, 1966. The Urban Land (Ceiling and Regulations Act), 1976 and The Development Control Regulations for Greater Mumbai, 1991 Defendant No. 3 is serving as Executive Engineer with Defendant No. 2.
3. The land bearing CTS No. **1068 / 1** admeasuring **6,071 Sq. Mts.**, situated at Kandivali (W), Mumbai – 400 067, is owned by **Joseph Francis Mendes**, and **Mrs. Juliet**, w/o **Paul Cyprian Mendes**. The Promoter obtained the said land for construction and development. The said land was permitted to be developed u / s. **21** of the Urban Land (Ceiling & Regulations) Act, 1976. On *21<sup>st</sup> October, 1985* a plan for development of the said land was approved by the authority to commence the construction of the scheme known as "**Madhu Vihar**". Some persons including Plaintiff Nos. **2** to **6** entered into agreements with the Promoter to purchase flats from the scheme. During construction revised plans were submitted by the Promoter and were approved by the concerned authority. Accordingly 126 flats and 12 shops were constructed. On *12<sup>th</sup> April, 1989*, Defendant No. 3 issued Occupation Certificate. The Promoter delivered possession of the flats / shops to the Purchasers.
4. In 1992 the Promoter submitted another plan to the competent authority and the same was approved. The Promoter started construction but subsequently abandoned it.
5. According to the Society, even after completion of the construction of the flats, the Promoter did not take steps for forming Co-operative Society of the Flat Purchasers and in fact opposed the move of the Flat Purchasers for formation and registration of Co-operative Society. Ultimately, the Society succeeded in registering itself on *20<sup>th</sup> January, 1993*. An appeal proferred by the Promoter against registration was dismissed by an order dated *23<sup>rd</sup> December, 1995*. Despite completion of the scheme and registration of the Society, the Promoter did not convey the title of the land and flats and shops thereon by executing sale deed in favour of the Society. According to the Society its members had purchased the flats

relying on the assurance given by the Promoter in the brochure published by him assuring containing common amenities such as recreation ground, garden and open space. The Promoter was bound to convey the suit property to the Society. However, the Promoter neglected to do so. The Promoter is a mere trustee of the members of the Society and has no right, title or interest in the suit property. As such he is not entitled to carry out further construction on the suit property by taking advantage of additional FSI / TDR. The Promoter holds the suit property for and on behalf of the Society and its members who are the beneficiaries. The Promoter is trying to undertake further construction on the suit property and for that purpose he submitted latest plan to the competent authority, which was approved on *29<sup>th</sup> March, 2001*. The Promoter is trying to take advantage of his own wrong by making additional construction on the suit property and with a view to get illegal monetary gain. The Society, therefore, instituted the suit claiming following reliefs:

- (a) Declaration that the Promoter is holding the suit property for and on behalf of and for the benefit of the Society and its members and is bound to convey or cause to convey title to them in accordance with Maharashtra Ownership of Flats Act, 1963 (hereinafter referred to as "**MOFA**" for brevity);
  - (b) Mandatory injunction directing the Promoter to convey or cause to convey title of the suit property to the Society under MOFA;
  - (b1) Declaration that the Promoter is not entitled to carry on further construction on the suit property as per plan sanctioned on *29<sup>th</sup> March, 2001* or otherwise;
  - (c) Permanent injunction restraining the Promoter from making any construction on the suit property and interfering in any manner with enjoyment and possession thereon by the Society and its members.
  - (d) Direction to the Promoter to render accounts of the money received from the Purchasers of the flats / shops held in trust by him;
  - (e) Permanent injunction restraining the Promoter from alienating / encumbering / creating third party rights into the suit property;
  - (f) Direction to the Promoter to remove all the building materials / articles from the suit property;
  - (f1) Declaration that the sanction dated *29<sup>th</sup> March, 2001* by the Corporation for further construction on the suit property is bad in law and null and void;
  - (g) Direction to the competent authority to revoke the sanction dated *29<sup>th</sup> March, 2001*;
  - (h) Permanent injunction restraining the Promoter to carry out any work of development on the suit property.
6. The Promoter resisted the suit by filing written statement as well as additional written statements. The Promoter submitted that some Flat Purchasers have not paid full consideration of the flats purchased by them. They have also not paid other dues for registration of the Society and for maintenance. Hence, it is not possible for the Promoter to finalize the accounts. The Promoter repeatedly informed the members of the proposed society for outstanding amount due to them, but they did not pay the same. The members of the Society without fulfilling their obligations under the agreement for sale and without

consent of the Promoter got Society registered behind his back. There were disputes amongst the members of the Society about formation of Society.

7. The Promoter further submitted that the development of the entire property is not complete and in the absence of completion of the development of the entire property the Promoter is not in a position to execute the conveyance at this stage. The Promoter submitted that he is aware of his obligations under MOFA and he would do the needful on completion of the development of the entire property.
8. The Promoter further submitted that the area of recreation ground and open space in the amended plan is in conformity with the rules and regulations. There has been no reduction in the recreation ground and in fact the amenities by way of garden and open spaces for recreation have increased rather than reduction therein. The Promoter submitted that the construction of the new building is a part of the development of the original layout and the Promoter is entitled to undertake additional construction u / s. **7A** of MOFA. The plan sanctioned by the Corporation is strictly as per the acts and rules applicable. The Promoter has provided 20% garden and recreation spaces, as required under the rules. The approval of the plan is perfectly legal. The Promoter submitted that he has every right to develop the suit property by utilizing balance / further FSI / TDR.
9. The Promoter further submitted that he is liable to convey the suit property to the Society after completion of entire development of the property and receipt of full consideration and other amounts receivable under the agreements from the flat / shop purchasers. The Flat Purchasers have defaulted the payment of the outgoings. The Promoter denied that he is merely a trustee of the members of the Society and that he has no right, title or interest in or upon the suit property. The Promoter denied that he is not entitled to carry out further construction on the suit property by utilizing FSI / TDR. The Promoter submitted that the Society is not entitled for any relief.
10. The Promoter further submitted that the suit is barred by limitation and is liable to be dismissed on that ground alone.
11. The Promoter lastly submitted that the suit is liable to be dismissed for want of statutory notice u / s. **527** of the Bombay Municipal Corporation Act, 1888.
12. The defendant Nos. **2** and **3** have not filed written statements.
13. On the above pleadings of the parties the Ld. trial judge framed the necessary issues. The parties led oral as well as documentary evidence in support of their respective contentions. Upon considering the evidence led by the parties, the Ld. trial judge held that the Promoter is bound to convey and transfer the suit property under MOFA but granted 3 years time for the said purpose from the date of judgment. The Ld. trial judge found that the Promoter is entitled to recover amount from the Society and its members and directed that the Commissioner be appointed for taking accounts under order 20 Rule 16 of Civil Procedure Code. The Ld. Judge held that the Society failed to prove that the Promoter is not entitled to proceed with further construction on the suit property, as per the plan approved on *29<sup>th</sup> March, 2001*. The Ld. trial judge held that the suit is not barred by limitation. The Ld. trial judge held that the suit is tenable though no notice u / s. **427** of the B.M.C. Act was served on the Corporation. Thus the Ld. trial judge partly decreed the suit in favour of the Society. As stated earlier both the Society as well as the Promoter have challenged the said judgment and decree.

14. I have heard **Shri Mahendra Ghelani**, Advocate for the Society, **Shri V.A. Thorat**, Senior Counsel for the Promoter and **Shri J.J. Xavier**, Advocate for the Corporation at considerable length.
15. **Shri Mahendra Ghelani**, the Ld. Counsel for the Society, submitted that before purchase of flats, the prospective buyers including Plaintiff Nos. **2** and **6** contacted the Promoter. The documents, brochure and layout plan were shown to them relating to "Madhu Vihar" scheme. Special features like well developed garden with water fountain and lawns, Badminton Court, separate amusement facility for children and equipments were shown in the brochure. The prospective buyers were made to believe that besides 137 tenements, no other tenements would be constructed. They were also made to believe that enough space for garden with water fountain, lawns and Badminton Court would be left. Relying on these assurances, the prospective buyers were tempted to purchase flats in the said scheme and accordingly they entered into agreements with the Promoter to purchase various flats.
16. The tenements were constructed, garden was raised and after obtaining Occupation Certificate the Flat Purchasers were placed in possession of the respective flats. In this connection, **Shri Ghelani**, pointed out that admittedly 0.98% FSI has been consumed. **Shri Ghelani**, submitted that after adequate number of persons required to form the Co-operative Housing Society had entered into agreement with the Promoter, it was the statutory obligation of the Promoter u / s. **10** of MOFA to take steps for formation of Co-operative Society within a period of 4 months under Rule 8 of MOFA. However, the Promoter neglected to do so. Ultimately, the Flat Purchasers formed Co-operative Society at their own and made an application to the concerned authority for registration of the Society. Surprisingly, this move on the part of the Flat Purchasers was opposed by the Promoter. Ultimately, the Flat Purchasers succeeded in getting Society registered on *20<sup>th</sup> January, 1993*. **Shri Ghelani**, pointed out that the appeal preferred by the Promoter against the order was also rejected. **Shri Ghelani**, further submitted that after Co-operative Society of the Flat Purchasers was registered, it was the statutory obligation of the Promoter u / s. **11** of MOFA to convey title to the Society and to execute all relevant documents in accordance with the agreement within 4 months from *21<sup>st</sup> January, 1993* under Rule 9 of MOFA. However, the Promoter failed to discharge his statutory obligation.
17. **Shri Ghelani**, further submitted that instead of discharging his statutory obligations, the Promoter floated new scheme and started construction on the land reserved for garden and lawn. The Society protested this move and the Promoter abandoned the construction. Thereafter, the Society instituted the present suit against the Promoter. However, during the pendency of the suit the Promoter again submitted a plan for construction of a new scheme and the component authority approved the same on *29<sup>th</sup> March, 2001*. **Shri Ghelani**. submitted that the said approval is illegal and on the basis of it the Promoter cannot be permitted to construct on the land bearing CTS No. **1068 / 1** admeasuring **6,071 Sq. Mts.**
18. **Shri Ghelani**, submitted that there has to be a scheme or project of development in the layout in order to attract the provisions of **section 7A** of MOFA. The Promoter never suggested that there would be phase-wise development of the land. In such circumstances, the provisions of **section 7A** or MOFA would not apply.

19. **Shri Ghelani**, submitted that the Promoter is bound by the contents of brochure and he cannot say that it is not the part of the agreement.
20. The Ld. Senior Counsel, **Shri V.A. Thorat**, for the Promoter, on the other hand submitted that upto *12<sup>th</sup> April, 1989* changes were made in the plan as many as 4 times and they were approved by the competent authority. The Flat Purchasers never objected to the said changes in the plan. Thereafter, 3 plans were approved between *20<sup>th</sup> May, 1992* and *26<sup>th</sup> November, 1994*. However, the construction had to be abandoned because of some internal difficulties of the Promoter. Thereafter last plan was approved by the competent authority on *29<sup>th</sup> March, 2001* and the Promoter intends to undertake construction as per the said approved plan.
21. **Shri Thorat**, fairly conceded that it is the statutory obligation of the Promoter to take steps for formation of the Co-operative Society of the Flat Purchasers, as well as to convey title in favour of the Society by executing relevant documents in accordance with the agreements. However, it can be done only after completion of the scheme, since the scheme has not been completed as yet, no liability can be fastened on the Promoter to convey title and execute documents in favour of the Society. **Shri Thorat**, submitted that the Promoter is ready and willing to convey title and to execute documents in favour of the Society after completion of the scheme.
22. **Shri Thorat**, submitted that neither the brochure is part of the agreement nor the contents of the brochure are reflected in the agreement. **Shri Thorat**, submitted that the promises alleged to have been given by the Promoter are frozen in the agreement and now the Society cannot travel beyond the terms of the agreement. **Shri Thorat**, pointed out that even no schedule is attached to the agreement in respect of the common facilities alleged to have been promised by the Promoter to the Flat Purchasers.
23. **Shri Thorat**, submitted that the Society cannot divest the Promoter of his title to the land till the Promoter conveys the title thereof to the Society. **Shri Thorat**, submitted that there is no automatic divesting of the title of the Promoter.
24. **Shri Thorat**, strongly refuted the allegations that the Promoter wanted to encroach upon the garden land by making construction as per the plan approved on *29<sup>th</sup> March, 2001*. **Shri Thorat**, submitted that there is no reduction in the land meant for garden. **Shri Thorat**, pointed out that in fact in fresh plan sanctioned by the Corporation on *29<sup>th</sup> March, 2001* there is no reduction in the space kept to be open. On the other hand there has been increase in the space to be left open.
25. **Shri Thorat**, further submitted that the Promoter has every right to utilize the unconsumed FSI and TDR u / s. **7A** of MOFA.
26. **Shri Thorat**, lastly submitted that the flat owners occupied the respective flats in the year 1989 and the Society was registered in the year 1993. The suit however has been instituted in the year 1997. Thus, the same is barred by limitation and is liable to be dismissed.
27. **Shri Xavier**, the Ld. Counsel for the Corporation adopted the arguments made on behalf of the Promoter.
28. I have carefully considered the above submissions. I have also gone through the record and proceedings of the lower Court in L.C. Suit No. **4385 / 1997** with the able assistance of the Ld. Counsel for the parties.

29. The following points arise for my determination and I record my findings thereon as under:
- (1) Whether '**Madhu Vihar**' was the only scheme or project of development in layout on the piece of land bearing CTS No. **1068 / 1** and admeasuring **6,071 Sq. Mts.**, situated at Kandivali (W), Mumbai? . . . . . Yes.
  - (2) Whether on completion of "**Madhu Vihar**" on *12<sup>th</sup> April, 1989* and registration of the Society on *20<sup>th</sup> January, 1993*, an implied / quasi trust is created in favour of the Society the beneficiary of which are the Flat Purchasers? . . . . . Yes.
  - (3) Whether the Promoter is liable to convey title and execute all relevant documents therefor, in accordance with the agreements in favour of the Society? . . . . . Yes.
  - (4) Whether the Promoter is entitled to make additional construction on the piece of land bearing CTS No. **1068 / 1** and admeasuring **6,071 Sq. Mts.**, under the provisions of **Section 7A** of MOFA? . . . . . No.
  - (5) Whether the suit is barred by limitation? . . . . . No.
  - (6) What order? . . . . . As per order below.
30. According to **Shri Thorat**, the Ld. Sr. Counsel for the Promoter, the Promoter had purchased certain land for development. "**Madhu Vihar**" Scheme was floated on certain part of the said land and the rent of the part of the said land is yet to be developed. As such the Promoter is entitled to use unconsumed FSI as well as TDR and till completion of the entire scheme the Promoter is not obliged to convey title and execute relevant documents in favour of the Society.
31. **Shri Ghelani**, on the other hand urged that the Promoter floated **Madhu Vihar scheme** on specific portion of land; the Promoter published a brochure in which amenities to be provided in **Madhu Vihar** were specified; the special features thereof included well developed garden with water fountain, lawns and badminton Court. Even **Annexure - "C"** to the agreement for sale specifically mentions the amenities of garden and recreation space. The construction started some time in the year 1980 and it was completed in 1989. The possession of the flats was also handed over to the Flat Purchasers; even the Society started maintaining the garden. It was the statutory obligation of the Promoter to formulate Society of the Flat Purchasers and to convey title to the Society. However, the Promoter avoided to do so and now wants to take advantage of his own wrong by utilizing the garden and for construction of new building.
32. In this respect **Shri Thorat**, pointed out that the brochure was not the part of the agreement and hence it cannot be said the Flat Purchasers were misled by the Promoter. I am unable to appreciate this submission because though the brochure is not part of the agreement, there is specific mention for maintenance of garden and recreation spaces. This clearly shows that the Promoter as well as the Flat Purchasers fully knew that there would be a garden and recreation spaces meant for the use of the Flat Purchasers. Hence, though specifically the brochure was not part of the agreement it can be so treated.
33. It is important to note that the Promoter purchased the land by sale deed dated *28<sup>th</sup> August, 1980* that piece / parcel of vacant agricultural land bearing Survey No. **1 / A** Hissa Nos. **1,2, 4** CTS **1068** area **2 acres 9 gunthas = 9,003.95 Sq. Mts.**, of village Kandivali. The Promoter floated **Madhu Vihar Scheme** on the plot marked as CTS No. **1068 / 1**

admeasuring **6,071 Sq. Mts.** This clearly shows that CTS No. **1068 / 1** admeasuring **6,071 Sq. Mts.**, is a separate piece of land out of survey No. **1-A** and "**Madhu Vihar**" is the scheme / project for development in the said layout. The scheme in the said layout was completed with the construction of the flats, the shops and the garden.

34. From the facts of this case, it is apparent that the Promoter neglected to take steps for formation of Co-operative Society within the period of 4 months as prescribed under Rule 8 of MOFA. The Flat Purchasers had to move concerned authority for registration of the Society which was opposed to by the Promoter. Ultimately, the Society was registered on *20<sup>th</sup> January, 1993*. It was obligatory on the part of the Promoter to convey the title to the Society and execute the conveyance within 4 months from the date of registration under Rule 9 of MOFA. However, the Promoter neglected to do on the ground that the scheme was incomplete.
35. As pointed out above, "**Madhu Vihar**" scheme was in fact completed, the possession of the flats was handed over to the Flat Purchasers and they started maintaining the garden. During all this period implied / quasi trust has been created the beneficiary of which are the Flat Purchasers and the Society and the Promoter is the trustee. It may be noted that an express trust is created under the Indian Trust Act, 1882. The provisions of express trust can also be usefully applied in case of implied / quasi trust. A trustee under implied trust cannot for himself or for another set up any title to the trust property adverse to the interest of the beneficiary. Such trustee also cannot use or deal with the property for his own profit. The Ld. trial judge lost sight of this vital aspect of the case and arrived at a wrong conclusion.
36. **Section 7** of MOFA imposes a prohibition on the Promoter to the effect that after plans and specification of the building are disclosed or furnished the Flat Purchasers, the Promoter shall not make any alternations in the structure described therein, in respect of the flats or any other alterations or additions in the structure of the building without previous consent of that person. **Section 7A** however, clarifies that this prohibition will not apply in respect of the construction of any other additional building or structure constructed or to be constructed under a scheme or the project of development in the layout. **Section 7A** was inserted in MOFA Act by amendment in the year 1986. Construction of "**Madhu Vihar**" scheme in the present case started in the year 1980 and was completed in the year 1989. In the meanwhile, there were changes in the plans as many as 4 times. However, no additional building like the one proposed in the plan approved on *29<sup>th</sup> March, 2001* was included in the plans between 1985 and 1989. In the absence thereof the Promoter is not entitled to derive any advantage from **section 7A** of MOFA. Consequently, he is not entitled to construct additional building in the land bearing CTS No. **1068 / 1** admeasuring **6,071 Sq. Mts.** Needless to explain that the Promoter is not restrained from proposing construction on another land besides the land bearing survey No. **1068 / 1** admeasuring **6,071 Sq. Mts.** **Section 7A** of MOFA would not apply in the facts and circumstances of the present case and the Promoter will not be able to take advantage of the said provision. Consequently, he is not entitled to make further / additional construction as stated earlier.
37. **Shri Ghelani**, submitted that the Trial Court has not considered the following judgments which are in favour of the Society and against the Promoter.
1. **Runwal Investments Pvt. Ltd. V/s. Runwal Plaza Co-operative Housing Society Ltd. CA 4874 / 1994** with A.O. 1116 / 1994.
  2. **Sai Prasad Commercial Premises Co-operative Society Ltd. V/s. Lal K. Bijalani & Ors 1997 \_\_\_\_\_ 159.**

3. **Ravindra Mutenja & Ors. V/s. M/s. Bhavan Corporation & Ors.** 2003 (3) All M.R. 521.
38. A careful perusal of the above decisions would show that they are decisions on interim order in which existence of prime-facie case or balance of convenience etc., are considered and as such they are not helpful to the case of Promoter.
39. **Shri Thorat**, submitted that the provisions of **Section 7A** of MOFA override the terms of the agreement and it cannot be said that the Promoter is trying to take advantage of his own wrong.
40. **Shri Thorat**, put heavy reliance on the following cases in support of his submissions that **Section 7A** of MOFA entitles the Promoter to construct additional building on the suit land.
41. In **Mohatta Nagar Co-operative Housing Society Ltd. V/s. M/s. Vishram Khimji & Sons, 1994 (1) BCR 444**, the builder had already submitted the plans for construction of two buildings and the plot was subsequently sub-divided. Thus on facts **Mohatta Nagar** case would not apply to the present case.
42. The decision **Harshadsingh Pratapsingh Gujral & Ors. V/s. Lokhandwala Builders**, is the decision on Notice of Motion in a suit before the High Court. Secondly, agreement therein showed that the Flat Purchasers were aware that the plot had to be developed in the phased manner and thirdly, all the agreements were not registered and the flat owners were not able to register themselves as a Co-operative Society. Thus, on facts **Harsharansingh's** case would not apply to the present case.
43. **Bhavaraha Maithreyan V/s. Municipal Corporation, Pune, 2003 (105-3) Bom. L.R. 803**, is revisional order in respect of the common order of interim injunction. It was held by the Ld. single judge of this Court that the Flat Purchasers had no right to obstruct the construction being carried out by the builder / developer, because prima-facie case for grant of interim relief was not made out by the Flat Purchasers. The Ld. Single Judge directed the matter to proceed on merit. This there was no decision on merit.
44. **Mr. Sudhir Shetty & Another V/s. Mr. Dharma V. Degle, Appeal No. 844 of 2003**, Arbitration Petition No. 171 of 2003 arose out petition by Flat Purchasers. The lower Court restrained the developer from doing any construction on the plot reserved for recreational ground. The Division Bench of this court held that the said order cannot be sustained. It was observed by the Divisional Bench that in view of **section 7A** of MOFA no permission from the Flat Purchasers for shifting erstwhile area reserved for recreation ground was necessary. The Division Bench did not find any merit in the case of Flat Purchasers. Again it is an interim order and what weighed with the Division Bench is that no irreparable loss would be caused to one Flat Purchaser. It may be noted that the said order was subject to the award and with no equity in favour of the developer. Hence, it would not be helpful to the Promoter in the present case.
45. **Shri Thorat**, was fair enough not to dispute the jurisdiction of the Civil Court to deal with the present matter. In **Kalpita Enclave Co-operative Housing Society Ltd. V/s. Kiran Builders, 1987 (1) Bom. C.R. 355**, the Ld. single judge of this court dealt with the jurisdiction of civil court under MOFA in details. The said ruling was followed by another Ld. judge of this court in **M/s. Khatri Builders V/s. Mohammed Farid Khan, 1992 (1) Bom.**

**Cr. 305.** In the latter case it was held that the provisions of **Section 7A** of MOFA are not attracted to the facts of the said case.

- 46. Shri Thorat**, submitted that the trial court has wrongly decided the issue of limitation. According to **Shri Thorat**, the possession of the flats was delivered to the Flat Purchasers in 1989, the Society was registered in the year 1993, whereas, the suit has been instituted in the year 1997, as such even under the residual article 113 of the Limitation Act the suit is barred by limitation.
- 47.** On the other hand according to **Shri Ghelani**, by way of this suit the Society wants to seek mandatory injunction against the Promoter to abide by the statutory obligations cast on him by MOFA. Since the Promoter has avoided to convey title and to execute necessary documents in favour of the Society, there is a breach of statutory obligation which gives continuing cause of action to the Society against the Promoter and as such there is no question of the suit having been barred by limitation. I fully endorse the contentions made by **Shri Ghelani**, and hold that the suit is not barred by limitation.
- 48.** In this respect it was also pointed out by **Shri Ghelani**, that in fact the Promoter pleaded that cause of action for conveying title and executing necessary documents in favour of the Society does not arise. What the Promoter pleaded was that the suit is a premature suit. This is contrary to the submissions made on behalf of the Promoter that the suit is barred by limitation.
- 49.** It was urged by **Shri Ghelani**, that the trial judge should not have granted three years time to the Promoter for conveying title and for executing necessary documents in favour of the Society, because as per the statute conveyance of title and execution of the documents is to be effected within 4 months from the date of registration of the Society. The period of 4 months has elapsed long back and there was no justification on the part of the Ld. trial judge to grant 3 years for that purpose. I find considerable force in the submission. It may be noted that the Ld. trial judge has not assigned any reason as to why three years time was needed for conveying title and executing necessary documents by the Promoter in favour of the Society. The Ld. trial judge could have directed the Promoter to convey title and to execute necessary documents in favour of the Society forthwith.
- 50.** In view of the above discussion, I pass the following order:
- (A) First Appeal No. **786** of 2004 is allowed.
  - (B) First No. **989** of 2004 is dismissed.
  - (C) The Promoter is directed to convey title and execute all the relevant documents in respect of "Madhu Vihar" scheme in CTS No. **1068 / 1** admeasuring **6,071 Sq. Mts.**, situated at Kandivali (W), Mumbai in favour of Society (i.e. Respondent No. 1) forthwith.
  - (D) The Promoter is hereby permanently restrained from making any construction over the suit land bearing CTS No. **1068 / 1** admeasuring **6,071 Sq. Mts.**, situated at Kandivali (W), Mumbai.
  - (E) The direction by the trial court about rendering of accounts by the Promoter and about appointment of Commissioner for that purpose is confirmed.
  - (F) Parties are directed to bear their own costs.

On the request of **Shri Vaibhav A. Sugdare**, the Ld. Counsel for the Promoter,

the operation of the order is stayed for six weeks.  
C.C. Expedited.

[K. J. ROHEE, J.]  
ON ADVOCATES LETTERHEAD

BY REGISTERED A/D

Date : \_\_\_/\_\_\_/20\_\_\_

To,

1. **The Municipal Commissioner of Mumbai,**  
**Mr. Johny Joseph**  
BMC Bldg., Mahapalika Marg,  
Mumbai 400 001.  
Tel : 22 62 05 25
  
2. **The Additional Municipal Commissioner ( \_\_\_\_\_ Suburbs)**  
**Shri \_\_\_\_\_**  
Municipal Corporation of Greater Mumbai  
BMC Bldg., Mahapalika Marg  
Mumbai – 400 001.  
Tel : 22 62 08 09
  
3. **The Dy. Municipal Commissioner (Zone-\_\_)**  
**Shri \_\_\_\_\_**  
Municipal Corporation of Greater Mumbai  
\_\_\_\_\_  
\_\_\_\_\_
  
4. **The Vigilance Officer,**  
Vigilence Dept., Mumbai Municipal Corporation,  
C/O Municipal Commissioner's Office  
BMC Bldg., Mahapalika Marg  
Mumbai – 400 001.  
Tel : 22 62 02 51
  
5. **The Assistance Municipal Commissioner,**  
**\_\_\_\_\_ Ward,**  
Municipal Office Bldg.,  
\_\_\_\_\_  
\_\_\_\_\_
  
6. **The Building Proposal Department**  
Municipal Corporation of Greater Mumbai  
Municipal Office Bldg.,  
\_\_\_\_\_  
\_\_\_\_\_

Sirs,  
**Sub:**

- **Legal Notice Under Section 527 of the Bombay Municipal Corporation Act, 1888-**
- **Changes in Building Plan without permission for carrying out additions.**
- **Request to blacklist the Builder for failure to carry out his statutory obligations.**
- **Request for giving necessary information under the Right of Information Act.**
- **Request to give certified true copy of the building plan, IOD conditions as well as all correspondence done by the Developers for the property situated on CTS No. in Village \_\_\_\_\_.**

With reference to the above and under instructions from my clients, \_\_\_\_\_  
**Co-operative Housing Society Limited,** having address at \_\_\_\_\_  
I have to state as under:-

1. My clients say and submit that the Builder, **M/s.** \_\_\_\_\_, is constructing Building in the open space adjacent to Building “\_\_\_\_\_”. It is the submission of my clients that the open space where substitute water tank is situated belongs to my clients. My clients further submit that there have been many changes in the Building plans. My clients says and submit that the members of the Society have to be taken into confidence before making any changes in the Building Plans. My clients submit that the flat purchasers have for a valuable consideration acquired the right, title and interest in the Flats/Shops in building \_\_\_\_\_. My clients submit that the Agreement executed by you with Flat purchasers is not in the format of model agreement as stipulated under The Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 Act, more commonly known as MOFA. My clients say and submit that Clause-2 of the Model Agreement clearly stipulates that the price for the Flat includes certain amount “**being the proportionate price of the common areas and facilities appurtenant to the premises, the nature, extent and description of the common/limited common areas and facilities/limited common areas and facilities**”. This is the precise reason why the Builder has no right to sell the open space.
2. My clients say and submit that the Occupation Certificate of the Building has been received / Not received on or about \_\_\_\_\_. My clients say and submit that there are several defects with regards to construction as a result of which there is leakage in the Building “\_\_\_\_\_”. My clients say and submit that it is the statutory responsibility of the Developer to rectify the defects.
3. My clients request your goodselves to direct the Builder to sub-divide the plot and provide open space requirement separately for Building “\_\_\_\_\_” & Building “\_\_\_\_\_”. My clients further submit that a number of irregularities have been committed by the Builder with regards to ongoing construction. It needs to be emphasized that the construction work is going on till late night and there is severe shortage of water in Building “\_\_\_\_\_”.
4. My clients further submit that the blanket consent obtained at the time of signing of the Agreement with the flat purchasers is no consent at all. Enclosed **Annexure – “A”** is the copy of the Judgment delivered by the Bombay High Court in the case of Smt. Neena Sudarshan Wadia V/s M/s. Venus Enterprises & Others, which stipulates that the blanket

consent obtained at the time of signing of Agreement or at the time of handing over possession is no consent at all.

5. My clients also request you No. 6 to give certified true copies of the Building Plan as well as all correspondence done by the Builder with you for the property situated on City Survey No. \_\_\_\_\_ in Village \_\_\_\_\_. My clients say and submit that as a Member of the Society they have every right to insist for a copy of the same. My clients also would like to have copies of the correspondence executed by the Builder with your goodselves as well as various letters written by you to the Builder. My clients further would like to have copies of plan submitted by the Builder and sanctioned by your goodselves together with amendments carried out thereon. Needless to add necessary expenses for the same will be paid by my clients.
5. Please treat this notice as a legal Notice Under Section 527 of the Bombay Municipal Corporation Act 1888 before filing suit against the Bombay Municipal Corporation.

**FROM**

**ADVOCATE HIGH COURT**

**Draft approved by clients**

<b>Sr. No.</b>	<b>Designation of Society's Representatives</b>	<b>Flat No.</b>	<b>Signature</b>
1	<b>SHRI _____ HON. SECRETARY</b>		
2	<b>SHRI _____ CHAIRMAN</b>		
3	<b>SHRI _____ TREASURER</b>		

**Encl: Annexure – "A" :** Copy of Judgment delivered by the Bombay High Court in the case of Smt. Neena Sudarshan Wadia V/s Venus Enterprises & Ors.

**ON ADVOCATES**

**LETTERHEAD**

**BY REGISTERED AD / COURIER**

Date : \_\_\_/\_\_\_/20\_\_\_

**To,**

1. **The Commissioner of Police**  
Police Head Quarters,  
Opp. Crawford Market,  
Mumbai – 400 001.
2. **The Additional Commissioner of Police**  
**Shri \_\_\_\_\_**

\_\_\_\_\_  
\_\_\_\_\_  
3. **The Dy. Commissioner of Police (Zone-\_\_)**  
Shri \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
4. **The Sr. Inspector of Police**  
\_\_\_\_\_ Police Station,

\_\_\_\_\_  
Sirs,

**Sub: Criminal action to be initiated against the Builder M/s. \_\_\_\_\_,**  
**situated at, \_\_\_\_\_ Mumbai - 400 0\_\_, for –**

- 1) **Not handing over original documents of title to the property.**
- 2) **Not obtaining Building Completion Certificate.**
- 3) **Not obtaining Occupation Certificate from BMC Authorities**
- 4) **Not giving statements of account.**
- 5) **Avoiding statutory responsibilities which acts amounts to cheating, criminal breach of trust**

**(A) To initiates action against builder for**

1. **Cheating ( Sec. 415)**
2. **Abetment of a thing (Sec. 107)**
3. **Public Nuisance (Sec. 268)**
4. **Volunteers causing hurt to extort property or to constraint to an illegal act (Sec. 327)**
5. **Wrongful Restraint (Sec. 339)**
6. **Wrongful Confinement (Sec. 340)**
7. **Extortion (Sec. 383)**
8. **Putting person in fear of injury in order to commit extortion (Sec. 385)**
9. **Dishonest misappropriations of property. (Sec. 403)**
10. **Cheating and dishonesty including delivery of property ( Sec. 420)**
11. **Mischief( Sec. 425)**
12. **Making a False document (Sec. 464)**
13. **Criminal intimidation (Sec. 503) of Indian Penal Code 1860.**

(B)

1. Violations of the provisions of the Maharashtra Ownership of Flat Regulation of the Promotion of Construction, Sale, Management & Transfer Act, 1963, particularly general liability of promoter of sec. 3.
2. Promoter before accepting advance payment or deposit to enter into Agreement and Agreement to be registered sec. 4.
3. Promoter to maintain separate account of sums taken as advance and deposit and to be trustee there for and disburse them for purposes for which it is given sec. 5.
4. Responsibility for payment of outgoings till property is transferred sec. 6.
5. After plans & specifications are disclosed no alterations or additions without consent of persons who have agreed to take the flat and defects notice within three years to be rectified sec. 7
6. Promoter to take steps for formation of Co-operative Society or company sec. 10.
7. Offences by promoter's sec. 13.

With reference to the above and under instructions from my clients, Flat Purchasers in building \_\_\_\_\_, who have signed at the end of this letter, situated at Plot No. \_\_\_\_, CTS No. \_\_\_\_\_, \_\_\_\_\_ Mumbai – 400 093, I have to state as under :

- 1) My clients say and submit that they have acquired right, title and interest in their respective flats in building \_\_\_\_\_ and started residing in the said building since a long time but the Builder is not co-operating to form a Co-operative Society and also not taking any steps to sort out the grievances faced by the residents.
- 2) My clients say and submit that the Builder, M/s. \_\_\_\_\_ having its office address at \_\_\_\_\_ and site office at \_\_\_\_\_ have committed several irregularities and lapses. **My clients say and submit that there are about \_\_\_\_ flats in the co-operative society and the builder has collected more than Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_ Crores) from the innocent flat purchasers without complying with his statutory obligations.** My clients say and submit that in their opinion the Builder has committed criminal offence of cheating and criminal breach of trust. My clients say and submit that the Builder is the Trustee for the various amounts collected by him from the flat purchasers. Enclosed **Annexure-A** is a copy of the Notice dated \_\_\_\_\_ that has been sent by my clients to the Builder.
- 3) My clients would be obliged if you will investigate the various submissions made hereinabove and also in the enclosed Notice dated \_\_\_\_\_ addressed to the Builders. My clients have reasons to believe that the Builder has committed various offences under the MOFA Act.

- 4) My clients say and submit that they are willing to come down personally and meet you in person, so that they can explain you in detail the various irregularities that have been committed by the Builder. My clients will appreciate if you will give them an appointment.

Thanking you,

**FROM**

**ADVOCATE HIGH COURT**

**Draft Approved by clients**

<b>Sr. No.</b>	<b>Flat Purchasers Names</b>	<b>Flat No.</b>	<b>Signature</b>
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**Encl : Annexure – A** : Copy of the Notice dated \_\_\_\_\_ sent to the Builder.

**ON ADVOCATES**

**LETTERHEAD**

**BY REGISTERED AD / COURIER**

Date : \_\_\_/\_\_\_/ 20\_\_\_

**To,**

- 1. The Housing Minister  
Govt. of Maharashtra  
Mantralaya,  
Mumbai – 400 032**
- 2. The Principal Secretary  
Housing Dept.,  
Govt. of Maharashtra  
Mantralaya,  
Mumbai – 400 032**

Sirs,

**Sub: Complaint against M/s. for violation of provisions of MOFA Act**

**(A) To initiates action against builder for**

- 8. Violations of the provisions of the Maharashtra Ownership of Flat Regulation of the Promotion of Construction, Sale, Management & Transfer Act, 1963, particularly general liability of promoter of sec. 3,**
- 9. Promoter before accepting advance payment or deposit to enter into Agreement and Agreement to be registered sec. 4.**
- 10. Promoter to maintain separate account of sums taken as advance and deposit and to be trustee there for and disburse them for purposes for which it is given sec. 5.**
- 11. Responsibility for payment of outgoings till property is transferred sec. 6.**
- 12. After plans & specifications are disclosed no alterations or additions without consent of persons who have agreed to take the flat and defects notice within three years to be rectified sec. 7**
- 13. Promoter to take steps for formation of Co-operative Society or company sec. 10.**
- 14. Offences by promoter's sec. 13.**

**Ref: Our Complaint dated**

With reference to the above and under instructions from my clients, who have signed this legal notice served on the builder all having address at ' building situated at Plot No. C.T.S. No. I have to state as under:-

- 1) It is the submission of my clients that the Builders i.e. M/s. \_\_\_\_\_ have violated the provisions of MOFA Act. My clients say and submit that they have purchased the flats in building " \_\_\_\_\_ " for a valuable consideration more than 4 years ago, yet the builder have not formed a Co-operative Society. \_\_\_\_\_ building stilt + Ground + \_\_\_ floors has \_\_\_\_\_ flats which is fully occupied.
- 2) My clients further submit that the builder has made wrongful gains by selling / leasing / transferring the open space of the Society i.e. Terrace to M/s. Reliance Infocom and has proposed a plan for further addition of floors at the cost of health and safety of innocent occupants of the fully developed building.
- 3) My clients say and submit that in utter violation to the laws of the land particularly to provision of Section 7-A of the MOFA Act the builder is proposing to put up additional construction on the \_\_\_\_\_ adjoining old building. My clients have every reason to believe that mandatory requirement of open space have not been complied with by the builder.
- 4) My clients say and submit that the Builder is misusing his power and trying to blackmail the flat purchasers under one pretext or the other. My clients say and submit that the Builder is going out of the way and demand papers which are not specified under the MOFA (The Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963. My clients say and submit that inspite of the fact that flat purchases have taken place as far back \_\_\_\_\_ as \_\_\_\_\_ the Builder / Developer has not taken steps to form a Co-operative Society.

- 5) My clients say and submit that the Builder has installed a Communication Tower on the terrace of the Society's building for M/s. Reliance which is fetching Lakhs of Rupees. My clients say and submit that this money belongs to the Members of the Society. As per Form – V Clause 2, property purchased by the flat purchasers is not just a flat but have paid money for the open terrace and open space of the Society. You are aware that the open space including open space in society compound, space on terrace and other areas in the building including lift, stair case etc. My clients say and submit that the act of installing a Reliance Mobile Tower on the terrace of the Society Building without obtaining permission of the Society is an act of cheating the flat purchasers.
- 6) My clients further submit that with a view to harass the flat purchasers the Builder is trying to extort money from the flat purchasers. My clients say and submit that the builder is misusing his power and is trying to harass flat purchasers on one pretext or the other.
- 7) My clients say and submit that the Builder has collected the sum of Rs. \_\_\_\_\_ /- from each flat purchasers and have not given Statement of Accounts.
- 8) My clients will appreciate if you will be kind enough to initiate action against the Builder M/s. \_\_\_\_\_ for violation of the provisions of MOFA Act.  
With kind regards,

**FROM**

**ADVOCATE HIGH COURT**

**Draft approved by clients.**

Sr. No.	For _____ CHS LTD	Flat No.	Signature

**FORM NO.29 CRIMINAL CASE AGAINST BUILDER BY CO-OPERATIVE SOCIETY ALONG WITH SPECIMEN OF COMPLAINT TO BE FILED AGAINST BUILDER FOR NOT GIVING STATEMENT OF ACCOUNTS, COPY OF BUILDING PLAN, ORIGINAL DOCUMENTS OF TITLE TO THE PROPERTY AS WELL AS FOR NOT EXECUTING THE CONVEYANCE OF THE PROPERTY IN FAVOUR OF THE SOCIETY.**

**SPECIMEN OF COMPLAINT FOR VIOLATION OF MOF ACT BY BUILDER**

IN THE COURT OF THE ADDITIONAL CHIEF METROPOLITAN MAGISTRATES COURT AT \_\_\_\_\_, MUMBAI.

CC. NO. /S/20\_\_.

[NAME] COOP. HSG. SOC. LTD. )  
 ADDRESS )  
 THROUGH ITS SEC./CHAIRMAN )  
 AGED ABOUT \_\_ YEARS. )  
 INDIAN INHABITANT OF MUMBAI )  
 R/A \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ (\_\_\_\_) )  
 MUMBAI 400 \_\_\_\_.

COMPLAINANT.

VERSUS

1. M/S. \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 2. MR. \_\_\_\_\_ )  
 3. MR. \_\_\_\_\_ )  
 4. MR. \_\_\_\_\_ )  
 5. MRS. \_\_\_\_\_ )  
 ALL ARE THE PARTNERS OF THE )  
 ACCUSED NO. \_\_ ALL ARE HAVING )  
 THEIR ADDRESS AT )  
 \_\_\_\_\_ )  
 \_\_\_\_\_, MUMBAI 400 \_\_\_\_ )

ACCUSED.

**CHARGE: U/S 3, 4, 5, 10 AND 11 OF THE MAHARSHTRA OWNERSHIP FLATS [REGULATION OF THE PROMOTION OF CONSTRUCTION SALE**

**MANAGEMENT AND TRANSFER] ACT 1963 AS  
AMENDED UPTO [DATE]**

MAY IT PLEASE YOUR WORSHIP

The complainant above named states as under.

I \_\_\_\_\_ the \_\_\_\_\_ of the complainant society abovenamed do hereby state on solemn affirmation as under:

1. I say that I vide resolution dt. \_\_\_\_\_ passed by the General Body and/or Managing Committee of the complainant society I am authorized to file the above complaint in this Hon'ble Court. I am conversant with the facts of the case and competent to file and depose in the above case. The premises of the complainant society is situated at \_\_\_\_\_.
2. I say that the accused No.1 is a partnership firm of which the other accused are working partners and in charge of and was responsible for the conduct of the business of the accused No. \_ company.
3. I say that the accused are builder promoter of the complainant society and the complainant society is registered through the Dy. Registrar of Co-operatives vide Reg. No. \_\_\_\_\_.
4. I say that the accused above named were legally bound after formation of and Registration of the complainant society to give the true and correct account of the money taken by the Accused from the each of the respective members of the Society and also to convey a clear and marketable title of the land along with the building standing thereon to the Society within four months of the date of registration of the Society. The complainant society came to be registered on \_\_\_\_\_. Hereto annexed is a copy of the Certificate of Registration of the Society.
5. I say that after formation and Registration of the Society, the accused started harassing the office bearers of the society and never called first General body meeting. Hence, after our complaints, the Dy. Registrar of the co-operatives had called the first General Body Meeting by and through his representative Mr. \_\_\_\_\_ as per his notice dated \_\_\_\_\_. Hereto annexed is a copy of the said letter.

6. I say that the accused had attended the said meeting and also gave an undertaking that the accused shall give the upto date account and give the complete statement of account upto the period 14 days prior to the date of meeting. The accused were also legally bound to convey the title by executing a deed of Conveyance by lawful transfer of right, title and interest of the premises in favour of the Complainant society.
7. I say that prior to formation of the society, the accused had collected huge amount of Rs. \_\_\_\_/- per member from each of the members of the society for formation of society. Meeting expenses, payment of various taxes, to prepare the conveyance deed etc. and the said fact was narrated in para 12 of the agreement for sale executed by the accused with the members of the complainant and under all circumstances, in the First General Body Meeting the chief promoters / accused above named were legally bound to give the true and correct statement of account to the complainant society, which the accused had failed and neglected to do so. I say that inspite of several demands the accused had deaf eared the same nor have they performed their legally bound duty execution of conveyance deed and as such committed an offence u/s. 11 of MOFA. The accused are deliberately and with dishonest and malafide intention, avoiding to execute the conveyance, which they are in law bound to.
8. I say that till date the society had made all attempts to persuade the accused who happened to be Chief Promoter of the complainant society but they are adamant and on the contrary are giving threat of dire consequences to the office bearers of the society as the accused are having good relationship with the few officers of the \_\_\_\_\_ Police Station and hence the accused had taken law in their hands and are required to be dealt in accordance the law.
9. I say that the complainant society shall refer to and rely upon the records and correspondences of the society when produced which shall speak for itself that the accused are willfully avoiding to execute the conveyance in favour of the complainant society without any just cause and have till date not furnished the statement of account and misappropriated the amounts of each of the members for their personal gain. The accused have committed Criminal Breach of Trust by diverting the funds of the complainant society members for their personal gain and use rather than for the purpose for which the same was entrusted to them and hence, put the complainant members to wrongful loss and have made wrongful gain to themselves.
10. I say that the accused had not constructed the society building strictly in accordance with the plans approved by the Bombay Municipal Corporation and several defects in the constructions and building structure were pointed out to the accused and the accused were called upon to rectify the said defects forthwith but the accused have till date not taken steps to remove such defects and on the contrary given threats to the committee members/ members of dire consequences. The complainant craves leave to refer to and rely upon the correspondences and records when produced.
11. I say that the accused had illegally constructed a steel Gate in the society wall and put a lock to it and also attempting to prevent the society members to use it. I say that the complainant society learnt that the separate steel gate was never shown in the plan approved by the B.M.C. and hence,

constructed the same illegally and hence made unauthorized constructions. Hence, the accused had violated section 7 of the act.

12. I say that the accused have after formation of the society had not taken steps to complete the title and to convey the same in favour of the society within four months of the period within which the accused were required to do so and instead of conveying the title, the accused had come out false and bogus claims and are willfully avoiding to execute the conveyance in favour of the complainant society. Hence, committed an offence under section 11 of the Maharashtra Flat Ownership Act as amended upto date.
13. I say that the accused have committed the above mentioned offences within the jurisdiction of this Hon'ble Court. Hence this Hon'ble Court has jurisdiction to entertain this complaint and take cognizance of the same.
14. The offences committed by the accused are continuing offences and the complaint is filed within time and no part of the complaint is barred by law of limitation.  
The complainant therefore prays:

That this Hon'ble Court be please to take cognizance of the above offences and necessary process be issued against the accused, the accused be dealt in accordance with law.

**For this act of kindness the complainant shall remain grateful.**

Solemnly affirmed at Mumbai )  
dated this \_\_ day of \_\_\_\_ 20 \_\_.)  
Identified by me.

me  
Advocate for Complainant

Before

## **LIST OF WITNESSES :**

1. The complainant
2. The office bearers and members of the society.
3. The officers of the Municipal Corporation of Greater Mumbai.
4. The Dy. Registrar of Co-op. Societies and/or his officers and staff.
5. Such other and further witnesses with the permission of this Hon'ble Court.

## **CRIMINAL CASE AGAINST BUILDER BY CO-OPERATIVE SOCIETY**

- Step-1** :: Issue legal notice to Builder calling upon him to comply with all the statutory obligations as are stipulated in MOFA Act and complaint to Police station.
- Step-2** :: File Complaint with the Metropolitan Magistrate Court.
- Step-3** :: Process is issued.
- Step-4** :: After process, plea is recorded.
- Step-5** :: Evidence.
- Step-6** :: Arguments
- Step-7** :: Order.

Alternative available to the aggrieved party against the order of the Metropolitan Magistrate Court.  
Approach the Sessions Court challenging the order of the Metropolitan Magistrate.  
Alternative available to the aggrieved party against the order of the Sessions Court.  
Approach the High Court challenging the order of the Sessions Court.  
Alternative available to the aggrieved party against the order of the High Court.  
Approach the Supreme Court challenging the order of the High Court.  
Approximate time frame after filing of complaint:

Process stage (Complaint)	::	3 months
Plea recording (Accused)	::	6 months
Evidence (Both parties)	::	3 to 4 months
Arguments	::	2 months
Order	::	1 month
Normal Time Limit	::	2 to 3 years.

## **CRIMINAL CASE AGAINST THE BUILDER :**

\_\_\_\_\_ Many times Builders give false promises to the flat purchasers. It is observed that normally the Builders do not give copies of Building Plan, Statement of Account, Copies of Original Documents of Title to the property. The Builders do not comply with their statutory obligations as are stipulated in the MOFA (The Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer), Act 1963. In such circumstances the options available to the flat purchasers / society include filing a complaint in the Consumer Court as well as initiating criminal action before the Criminal Court against the Builder.

The first question that comes to the mind of the individual is what is the period of limitation as regards the filing of criminal complaint against the builder. If the offences that are stipulated in the IPC are continuing offences, there is no period of limitation as regards filing of the complaint

against the builder. In any other event the limitation would be of 3 years from the date of cause of action.

While drafting the criminal complaint, the Society should high-light specifically the violation of the various provisions of MOFA Act. The Society should also emphasize that violation of the provisions of MOFA Act is criminal in nature. Attention of the criminal court should be drawn to offences of various sections of Indian Penal Code – Sections 406, 407 read with sections 415 and 420. The complainant should also bring out irregularities committed by the builders while executing the constructions of the building:

- 1) Selling away the car parking
- 2) Not giving copies of the building plan
- 3) Not giving the original documents like title deeds
- 4) Not giving building plans
- 5) Not giving replies to the various submissions made by the Society by way of legal notices of advocates.

The complainant may substantiate their allegations with the documentary evidence and correspondence done with the builder.

As regards filing a complaint against the Builder in Criminal Court, normally action has to be initiated against the erring Builders under the provisions of **Sections 3, 3-J, 4, 5, 10, 11, 13** of the **MOFA Act r/w Rule 9 of the MOFA Rules**. The Society should also initiate action **u/s 406 & 407 of IPC** read with **Sections 415 and 420 of the Indian Penal Code, 1860**.

The above-said sections are reproduced herewith for ready reference. **Section 406 of the Indian Penal Code, 1860**

**“406 Punishment for criminal breach of trust –** Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

**Section 407 of the Indian Penal Code, 1860**

**“407. Criminal breach of trust by carrier, etc. –** Whoever, being entrusted with property as a carrier, wharfinger or warehouse keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

**Section 415 of the Indian Penal Code, 1860**

**“415. Cheating –** Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation – A dishonest concealment of facts is a deception within the meaning of this section.”

**Section 420 of the Indian Penal Code, 1860**

**“420. Cheating and dishonestly inducing delivery of property –** Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or

sealed, and which is capable of being converted into a value security, shall be punished with imprisonment of either description or a term which may extend to seven years, and shall also be liable to fine.”

Many a times there are disputes among individuals who make allegations against each other. In such circumstances it is a fashion to approach the police authorities making allegations against the persons with whom the party has a dispute. The police authorities in such circumstances initiate chapter proceedings against the party who is in their opinion, a source of nuisance in the area. The police authorities to begin with call upon the parties to remain physically present at the Police Station. This procedure leads to frustration as the parties are made to wait at the police station. In chapter proceedings, reasonable restrictions are made on the individuals. The Police authorities invoke **Section 107** of the **Code of Criminal Procedure, 1973**. The said section is reproduced below:

**“107. Security for keeping the peace in other cases – (1)** When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show-cause why he should not be ordered to execute a bond with or without sureties, for keeping the peace for such period, not exceeding one year, as the magistrate thinks fit.

(2) Proceedings under this section may be taken before any executive magistrate when either the place here the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act as aforesaid beyond such jurisdiction.”

Now let us analyse how the formalities have to be undertaken by the Co-operative Society if it wants to file a suit before the Criminal Court. First and foremost a Notice has to be issued to the builder calling upon him to comply with the statutory formalities as are stipulated in the MOFA Act. It needs to be emphasized that the blanket consent obtained by the Builder at the time of signing the Agreement is not a consent at all.

It is further submitted that normally the Agreement executed by the Builder is a one sided Agreement. Having regard to the misuse of power by the Builder, the Government Authorities have been compelled to incorporate Model Agreement in Form-V in the MOFA Act. It is observed that very rarely the Builders will comply with the terms and conditions as are stipulated in the Model Agreement in Form-V.

If there is no proper response from the Builder after issuance of the Notice, then the parties have a right to approach the Criminal Court. It is advisable to lodge a Police Complaint after issue of notice and then to file a Criminal Complaint in the Magistrate’s Court upon failure of the Police Authorities to take cognizance of the Complaint. This can also be a ground for approaching the Magistrate’s Court. A Criminal Complaint has to be filed against the Builder in the Metropolitan Magistrate’s Court, who has the jurisdiction to try such cases, for the offences committed by him. The offences that are normally committed by the Builder are already mentioned hereinabove.

Once a complaint is lodged, the matter is kept for verification wherein the statement of the Complainant is taken. If the Metropolitan Magistrate is of the opinion that process should be issued under the provisions of MOF Act, after verification he accordingly issues the process

(Summons) to the accused Builder calling upon him to answer the charges. The time taken for the process period is approximately one month.

On the first day of the accused Builder remaining present in the Criminal Court he has to submit a Personal Bond (PR) of such amount as directed by the Hon'ble Metropolitan Magistrate. In criminal complaint, a complainant has to personally remain present in the court. The Co-operative Societies are advised to file the complaint through the Manager. This may save time. The implication would be that the society may pay reasonable remuneration to the Manager who would attend the court. Necessary resolution of the society has to be annexed along with the complaint. It needs to be emphasized that if the services of the employee are terminated, even then the ex-employee is duty bound to attend the court and give evidence. Normally an accused has to remain present personally before the Hon'ble Judge of Metropolitan Magistrate's Court. Many times the accused, because of his other business commitment as well as with a view to avoid mental torture, may apply to the Metropolitan Magistrate's Court for permanent exemption, which is rarely granted by the Hon'ble Metropolitan Magistrate. In the event this request of the accused is not granted then the accused is supposed to remain present on each and every date of hearing.

In the event the accused does not remain present at the Metropolitan Magistrate's Court then in such circumstances first and foremost the Court may issue Bailable Warrant **u/s. 87 of Cr. P.C.** If in spite of the same accused does not remain present then Non Bailable arrest warrant is issued. Implementation of the same can be explained with an example, say the accused is traveling from Mumbai to Goa then the Police Officer can, as per direction of the Metropolitan Magistrate Court, straightway arrest the accused and produce him before the Metropolitan Magistrate's Court. This is the reason why many people settle the matter out of Court when criminal cases are filed. Normally criminal cases can result in mental torture and inconvenience to the accused including imprisonment for not complying with the statutory obligations.

Of course if there are genuine reasons like health ground then the accused may be exempted from appearing personally in the Court for a particular date.

Once the Hon'ble Metropolitan Magistrate Court issues Summons the same has to be served upon the accused Builder. Thereafter the accused has to attend the Court and answer various charges that are mentioned in the complaint. The option available to the accused includes accepting the charges or contesting the charges. Normally the accused contests the charges. Normally time taken between the different dates is about one month.

If the accused Builder does not plead guilty then the matter is kept for evidence and the evidences are recorded firstly of the Complainant and his witnesses, if any, and thereafter that of the Accused Builder and his witnesses, if any. Their evidence so recorded will be followed by cross-examination for all witnesses. The Complainant may call the Estate Agent, his bankers, Police Authorities, Govt. and Semi-Government Authorities, etc. as his witnesses. On the basis of the evidences either of the both the parties Hon'ble Metropolitan Magistrate's Court office passes proper order. If the accused Builder has erred in not complying with the various statutory obligations as contemplated under the MOFA Act, then the Metropolitan Magistrate has the powers to take action against the erring Builder.

It will not be out of place to mention here that recently one of the Metropolitan Magistrate Court while passing the Order in the case of Torna Co-operative Housing Society Ltd. has mentioned that one of the purposes of delivering the Judgment of awarding the punishment to the

Builder is also to send a signal to other likewise Builders. The Hon'ble Metropolitan Magistrate has powers to compound charges and levy penalty on the accused when a Complaint has been filed by the Society against the builder for cheating (Sec. 420 of I.P.C.)

Now let us examine alternative options that are available to the accused. Once the matter is disposed of by judgment and order passed by the Metropolitan Magistrate Court convicting the Accused Builder then he has to prefer an appeal in the Sessions Court and that has to be done within a period of 30 days from the date of the order. The Sessions Court may review the order of the Lower Court. In the event the accused is aggrieved by the order as passed by Sessions Court then in that circumstances either of the parties can approach High Court.

Normally time frame that is taken in a criminal case for matters related to conveyance is 2 to 3 years.

## Chapter - 15

### ADDRESSES OF POLICE STATIONS.

<p><b>Azad Maiden Police Station</b> Mahapalika Marg, Near CST Mumbai -400 001. <b>Tel.</b> 2262 06 79 / 2262 02 95 <b>Exchange.</b> No. 2262 01 11.</p>	<p><b>Agripada Police Station</b> Dr. A. Nair Road, Mumbai -400 011. <b>Tel.</b> 2307 82 13 / 23070535 / 23070532 <b>Exchange No.</b> 23070505</p>
<p><b>Antop Hill Police Station</b> Sector No.6 Building No. 229 Antop Hill, Mumbai 400037, <b>Tel.:</b> 2407 44 47 / 2401 37 67 <b>Exchange No.</b> 2414 09 09</p>	<p><b>Andheri Police Station</b> Sahar Road, Opp. Andheri Railway Station, Andheri (E), Mumbai 400069. <b>Tel.:</b> 2683 15 62 / 2683 14 47 / 2684 26 77 <b>Exchange No.</b> 2821 14 14</p>
<p><b>Aarey Sub Police Station</b> Dinkar Rao Desai Marg R. A. Near Gopi Garden, Goregaon (E), Mumbai 400062. <b>Tel.:</b> 2685 84 84 / 2685 84 85</p>	<p><b>Byculla Police Station</b> Near Byculla Railway Station, Mumbai 400 027. <b>Tel.:</b> 2375 52 64 / 2371 98 08 / 2374 82 92 <b>Exchange No.</b> 2307 05 05</p>
<p><b>Bhoiwada Police Station</b> St. Xavier Street, Bhoiwada, Mumbai 400012. <b>Tel.:</b> 2418 56 37 / 2418 17 59 / 2415 42 20 <b>Exchange No.</b> 2414 0909</p>	<p><b>Bandra Police Station.</b> Hill Road, Bandra (W), Mumbai 400050 <b>Tel.:</b> 2642 30 21 / 2642 31 22 / 2651 37 16 <b>Exchange No.</b> 2657 22 99</p>
<p><b>Bandra Kurla Complex Police Station</b> Bandra (E), ICICI Bank Near Petrol Pump <b>Tel.:</b> 2650 44 83 / 2650 44 82 / 2650 44 81 <b>Exchange No.</b> 2657 22 99</p>	<p><b>Bhandup Police Station</b> L. B. S. Marg, Bhandup (W), Mumbai 400078. <b>Tel.:</b> 2595 21 71 / 2595 44 67 <b>Exchange No.</b> 2568 05 05</p>
<p><b>Borivli Police Station</b> S. V. Road, Opp. Borivli Railway Station, Borivli (W), Mumbai 400092. <b>Tel.:</b> 2801 01 45 / 2801 66 06 / 2801 23 31 <b>Exchange No.</b> 2802 07 11.</p>	<p><b>Colaba Police Station</b> Shahid Bhagat Singh Road, Mumbai 400005. <b>Tel.:</b> 2285 28 85 / 2285 68 17 / 2204 37 04 <b>Exchange No.</b> 2265 07 07</p>
<p><b>Cuffee Parade Police Station</b> Plot 1 / 640, Colaba World Trade Centre, Tata Compound, Sadhu Vasvani Road Mumbai 400005 <b>Tel.:</b> 2218 80 09 / 2218 32 25 / 2218 05 88 <b>Exchange No.</b> 2265 07 07</p>	<p><b>Chembur Police Station</b> Vasant Park, Chembur, Mumbai 400071. <b>Tel.:</b> 2522 16 13 / 2522 75 63 / 2523 20 44 <b>Exchange No.</b> 2522 21 21</p>

**Charkop Police Station**

Sahyadri Nagar Kandivali (W),  
Mumbai 400067

Tel.: 2867 6581 / 2867 65 83 / 2868 22 11

Exchange No. 2802 07 11

**D. B. Marg Police Station**

Dr. D. B. Marg, Lamington Road Grant Road  
(E),

Mumbai 400007,

Tel.: 2387 28 93 / 2386 78 73 / 2387 01 81

Exchange No. 2380 05 05

**Dharavi Road**

90 Feet Road Dharavi,

Mumbai 400017

Tel.: 2407 26 46 / 2407 39 88 / 2407 43 68

Exchange No. 2414 09 09

**D. N. Nagar Police Station**

Isac Nagar Andheri (W),

Mumbai 400058

Tel. : 2630 38 93 / 2630 40 02

Exchange No. 2646 04 04

**Dahisar Police Station**

Shailendar Nagar, Dahisar (E),

Mumbai 400068

Tel.: 2895 50 24 / 2893 20 40

Exchange No. 2802 07 11

**Ghatkopar Police Station**

S. V. Road Near Samrat Theatre,

Goregaon (W),

Mumbai 400062.

Tel.: 2872 19 00 / 2872 35 54 / 2872 24 95

**Juhu Police Station**

Mithibhai College,

V.M. Road,

Parle (W),

Mumbai – 400 056.

Tel.: 2618 38 56 / 2618 43 08 / 2918 44 32

Exchange No. 2646 04 04

**Kalachowki Police Station****Dongri Police Station**

Dr. Maheshwari Road

Mumbai 400009.

Tel.: 2371 91 36 / 2375 36 76 / 23 71 62 78

Exchange No. 2307 05 05

**Dadar Police Station**

Gokhale Road, Dadar (W),

Mumbai 400028.

Tel.: 2430 36 54 / 2422 72 29 / 2430 14 03

Exchange No. 2494 03 03

**Deonar Police Station**

Near Deonar Katakhalana, A. Building

P. L. Lokhande Marg,

Mumbai 400043

Tel.: 2556 86 82 / 2556 33 81 / 2556 74 06

Exchange No. 2522 21 21

**Dindosi Police Station**

Western Highway,

Behind Sai Baba Temple

Raheja Road, Raheja Town Ship,

Vrindavan, A. Building, Malad (E),

Mumbai 400097

Tel.: 2877 07 81 / 2877 70 16

**Gamdevi Police Station**

Pandita Ramabai Road,

Grant Road (W),

Mumbai 40007

Tel.: 2380 35 05 / 2380 29 12 / 2380 45 05

Exchange No. 2380 05 05

**J. J. Marg Police Station**

J. J. Hospital Compound, J. J. Road,

Mumbai 400008.

Tel.: 2375 37 62 / 2374 82 00 / 2377 01 18

Exchange No. 2307 05 05

**Jogeshwari Police Station**

Swami Compound,

Gufa Road,

Jogeshwari (E),

Mumbai – 400 060.

Tel.: 2822 16 72 / 2821 07 63

Exchange No. 2821 14 14

**Kurla Police Station**

Sarweshwar Mandir Marg,

Srikanth Hudkar Marg,  
Shrawan Yeshwant Chowk,  
Kala Chowki,  
Mumbai – 400 033.  
Tel.: 2375 73 57 / 2375 41 28 / 2371 58 63  
Exchange No. 2414 09 09

**Kherwadi Police Station**

Bldg. No. 5,  
Government Colony,  
Bandra (E),  
Mumbai – 400 051.  
Tel.: 2657 08 77 / 2657 12 16  
Exchange No. 2657 22 99

**Kasturba Marg Police Station**

Kasturba Main Road,  
Borivali (E),  
Mumbai – 400 066.  
Tel.: 2806 61 58 / 2805 90 07  
Exchange No. 2802 07 11

**Kandivali (W) Police Station,**

S.V. Road,  
Parekh Nagar,  
Mumbai – 400 067.  
Tel.: 2805 66 03 / 2805 09 04  
Exchange No. 2802 07 11

**Kurar – Malad (E) Police Station**

Near Western Highway,  
Kurar Village,  
Mumbai – 400 097.  
Tel.: 2840 14 44 / 2840 29 11

**Marine Drive Police Station**

Netaji Subhash Road,  
Mumbai – 400 032.  
Tel.: 2288 02 65 / 2288 02 66 / 2288 02 67

**Malabar Hill Police Station**

39, Ridge Road,  
Abhay,  
Mumbai – 400 007.  
Tel.: 2363 55 17 / 2363 55 13 / 2363 75 71  
Exchange No. 2380 05 05

**Mahim Police Station**

Near Bhabha Hospital,  
Kurla (W),  
Mumbai – 400 070.  
Tel.: 2650 28 68 / 2650 04 78 / 26 50 31 82

**Khar Police Station**

S.V. Road,  
Khar (W),  
Mumbai – 400 052.  
Tel.: 2604 42 29 / 2649 60 30 / 2600 04 50  
Exchange No. 2649 49 77

**Kanjurmarg Police Station**

Behind Ankur Hospital,  
Village Road,  
Kanjurmarg (E),  
Mumbai.  
Tel.: 2578 26 37 / 2578 07 53 / 2578 93 65

**Samtanagar Police Station**

Near Western Highway,  
Kandivali (E),  
Mumbai – 400 101.  
Tel.: 2887 61 19 / 2885 07 90 / 2887 07 90

**L.T. Marg Police Station,**

Picket Road,  
Near Hanuman Temple,  
Princess Street,  
Mumbai – 400 002.  
Tel.: 2208 03 03 / 2208 43 02 / 2206 92 30  
Exchange No. 2265 07 07

**Matunga Police Station**

Opp. Gandhi Market,  
Sion Road,  
Mumbai – 400 019.  
Tel.: 2401 17 83 / 2401 01 03 / 2402 15 12  
Exchange No. 2414 09 09

**M.R.A. Marg Police Station**

Crawford Market,  
Near C.S.T.,  
Mumbai – 400 001.  
Tel.: 2262 13 13 / 2262 07 59 / 2261 19 39  
Exchange No. 2262 01 11

**M.H.B. Colony Police Station**

Gorai Road,

<p>Old Mahim Killa, Mahim, Near 4th Road Signal,</p> <p>Mumbai – 400 016. <b>Tel.:</b> 2445 38 33 / 2445 62 37 / 2444 9821</p> <p><b>M.I.D.C. Police Station</b> Central Main Road, Marol, Andheri (E), Mumbai – 400 093. <b>Tel.:</b> 2836 83 52 / 2839 42 05 <b>Exchange No.</b> 2821 14 14</p> <p><b>Navghar – Mulund Police Station</b> Purushottam Kheraj Bhavan, Netaji Subhash Road, Mulund (W), Mumbai – 400 080. <b>Tel.:</b> 2568 45 35 / 2568 98 44 <b>Exchange No.</b> 2568 05 05</p> <p><b>Meghwadi Police Station</b> Income Tax Colony, Opp. Mahatma Phule Hostel, Jogeshwari (E), Mumbai. <b>Tel.:</b> 2821 08 60 / 2821 08 37 <b>Exchange No.</b> 2821 14 14</p> <p><b>Nagpada Police Station,</b> Sophia Zuber Road, Mumbai Central (E), Mumbai – 400 008. <b>Tel.:</b> 2307 81 09 / 2300 46 05 <b>Exchange No.</b> 2307 05 05</p> <p><b>Nirmal Nagar Police Station</b> Bldg. – 11, Jaiprakash Road, Khar (E), Mumbai – 400 051. <b>Tel.:</b> 2647 09 31 / 2647 13 06 <b>Exchange No.</b> 2657 22 99</p> <p><b>Sion Police Station</b> Eastern Highway, Mhada Colony, Tol Naka Junction, Mumbai.</p>	<p>Borivali (W), Mumbai.</p> <p><b>Tel.:</b> 2867 52 57 <b>Exchange No.</b> 2802 07 11</p> <p><b>M.H.B. Colony Police Station</b> Gorai Road, Borivali (W), Mumbai. <b>Tel.:</b> 2867 52 57 <b>Exchange No.</b> 2802 07 11</p> <p><b>Malad Police Station,</b> Underai Road, Somwar Bazaar, Malad (W), Mumbai – 400 062 <b>Tel.:</b> 2882 11 47 / 2882 14 82 <b>Exchange No.</b> 2802 07 11</p> <p><b>Malwani Police Station</b> Malwani Gate No. 5, Malad (W), Mumbai – 400 095. <b>Tel.:</b> 2882 25 57 / 2882 13 19 <b>Exchange No.</b> 2802 07 11</p> <p><b>N.M. Joshi Marg Police Station</b> N.M. Joshi Marg, Mumbai – 400 013. <b>Tel.:</b> 2308 47 58 / 2309 56 67 / 2308 57 32 <b>Exchange No.</b> 2307 05 05</p> <p><b>Nehru Nagar Police Station</b> Nehru Nagar, Kurla (E), Mumbai – 400 024. <b>Tel.:</b> 2522 46 47 / 2522 42 91 / 2529 09 46 <b>Exchange No.</b> 2522 21 21</p> <p><b>Oshiwara Police Station</b> Oshiwara Tarapur Garden, Link Road, Adarsh Nagar Extn., Jogeshwari (W),</p>
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**Tel.:** 2563 73 12  
**Exchange No.** 2568 05 05

**Pydhoni Police Station**

Pydhoni,  
Mumbai – 400 003.  
**Tel.:** 2346 33 33 / 2347 33 33 / 2343 61 14  
**Exchange No.** 2265 07 07

**Parksite Police Station**

Surya Nagar,  
Vikhroli (W),  
Mumbai – 400 079.  
**Tel.:** 2578 48 40 / 2578 65 18 / 2578 93 68  
**Exchange No.** 2509 02 02

**R.A.K. Marg Police Station**

Jerbai Wadia Road,  
R.A. Kidwai Marg,  
Near T.B. Hospital,  
Mumbai – 400 012.  
**Tel.:** 2418 43 75 / 2418 68 36 / 2418 56 18  
**Exchange No.** 2414 09 09

**Tardeo Police Station**

Near Sion Railway Station,  
Mumbai.  
**Tel.:** 2403 13 76 / 2402 63 07  
**Exchange No.** 2414 09 09

**Shivaji Nagar Police Station**

Baingan Wadi,  
Mumbai – 400 043.  
**Tel.:** 2558 05 06 / 2556 04 02 / 2551 89 61  
**Exchange No.** 2522 21 21

**Sahar Airport Police Station**

Sahar International Airport,  
Sahar,  
Mumbai – 400 095.  
**Tel.:** 2682 89 16 / 2682 89 26 / 2682 87 75  
**Exchange No.** 2821 14 14

Mumbai – 400 102.  
**Tel.:** 2632 38 62 / 2632 3861 / 2632 2753  
**Exchange No.** 2646 04 04

**Pantnagar Police Station**

Bldg. No. 72,  
Ground Floor,  
Ghatkopar (E),  
Mumbai – 400 075.  
**Tel.:** 2515 36 24 / 2511 66 87 / 2515 89 14  
**Exchange No.** 2509 02 02

**Powai Police Station**

Saki Vihar Road,  
Powai Garden,  
Mumbai – 400 072.  
**Tel.:** 2570 26 90 / 2570 28 63 / 2570 24 92  
**Exchange No.** 2821 14 14

**R.C.F. Police Station**

Chembur,  
Mumbai – 400 072.  
**Tel.:** 2554 16 90 / 2554 63 88 / 2554 19 91  
**Exchange No.** 2522 21 21

**Sewri Police Station**

Rehman Bldg.,  
Sewri,  
Mumbai – 400 011.  
**Tel.:** 2375 81 63 / 2371 61 39 / 5656 72 61  
**Exchange No.** 2414 09 09

**Shivaji Park Police Station**

Ram Maruti Road,  
Near C.K.P. Hall,  
Dadar (W),  
Mumbai – 400 028.  
**Tel.:** 2422 90 59 / 2437 06 41 / 2436 25 15  
**Exchange No.** 2494 03 03

**Santacruz Airport Police Station**

Vile Parle (E),  
Mumbai – 400 099.  
**Tel.:** 2615 63 09 / 2615 63 15 / 2615 69 21  
**Exchange No.** 2646 04 04

**Saki Naka Police Station**

**Sahu Nagar Police Station**

Mahim (E),  
B.M.C. Colony,  
Mumbai – 400 017.

**Tel.:** 2404 36 24

**Exchange No.** 2414 09 09

**Wadala Police Station**

Globe Mills Compound,  
Tardeo,

Mumbai – 400 007.

**Tel.:** 2497 24 92 / 2497 41 12

**Exchange No.** 2494 03 03

**Trombay Police Station**

Chita Camp,  
Trombay,

Mumbai – 400 088.

**Tel.:** 2556 43 71 / 2556 33 82 / 2556 71 90

**Exchange No.** 2522 21 21

**V.P. Road Police Station**

Girgaon,  
Near C.P. Tank,  
Mumbai – 400 004.

**Tel.:** 2387 25 25 / 2386 97 19 / 2382 13 12

**Exchange No.** 2380 05 05

**Vile Parle Police Station**

Nehru Road,  
Vile Parle (E),  
Mumbai – 400 057.

**Tel.:** 2611 73 01 / 2611 73 17 / 2611 28 13

**Exchange No.** 2646 04 04

**Wadala Police Station**

'M' Block,  
Antop Hill Village,  
Nadkarni Park,  
Wadala (W),

Mumbai – 400 037.

**Tel.:** 2418 52 50 / 2412 74 72 / 5656 75 51

**Exchange No.** 2414 09 09

**Worli Police Station**

B.D.D. Chawl No. 66,  
Worli,

Mumbai – 400 018.

**Tel.:** 2493 03 88 / 2494 82 84 / 2493 93 52

**Exchange No.** 2494 03 03

Mhada Colony,

Bldg. 28,  
Chandivali Village,  
Mumbai – 400 072.

**Tel.:** 2847 61 60 / 2847 39 36 / 2847 23 34

**Exchange No.** 2821 14 14

**Tilak Nagar Police Station**

Chembur,  
Mumbai – 400 027.

**Tel.:** 2522 72 92 / 2522 93 45

**Exchange No.** 2522 21 2

**Versova Police Station**

Link Road,  
Andheri (W),  
Mumbai.

**Tel.:** 2630 48 12

**Exchange No.** 2646 04 04

**Vakola Police Station**

Anand Nagar,  
Santacruz (E),  
Mumbai – 400 055.

**Tel.:** 2668 32 57 / 2668 27 56 / 2668 52 36

**Exchange No.** 2646 04 04

**Vikhroli Police Station**

Kanamvar Nagar No. 2,  
Bldg. 77,  
Vikhroli (E),  
Mumbai – 400 083.

**Tel.:** 2578 22 40 / 2578 24 92 / 2578 21 89

**Exchange No.** 2509 02 02

**Wadala Truck Terminal Police Station**

Wadala T.T. Compound,  
Near R.T.O.,  
Mumbai – 400 037.

**Tel.:** 2403 66 43 / 2403 66 45 / 2403 66 46

**Exchange No.** 2414 09 09

**Yellow Gate Police Station**

Indira Dock,  
Mumbai - 400 001.

**Tel.:** 5656 50 12 / 2251 65 78 / 2261 58 30

**Exchange No.** 2262 01 11

## Details of Compliant lodged with Police authorities.

### 15.A Details of Compliant lodged with BKC Police Station.

बी.के.सी.पोलीस ठाणे,मुंबई.  
दिनांक - १९/१०/२००६

अ.क.	मुद्दा	तपशील																																							
०१	Details of the pending files / document files in the last two years and steps taken to reduce the list of files / document files.	<p>उत्तर - बी.के.सी.पोलीस ठाणे अभिलेखावर सन २००४ व सन २००५ मध्ये प्रलंबित असलेले भादवि गुन्हे खालीलप्रमाणे</p> <table border="1"> <thead> <tr> <th>२००४</th> <th>२००५</th> </tr> </thead> <tbody> <tr> <td>Nil</td> <td>१९८/०५ कलम १४३,१४४,१४६,१४९,४४७, ३२३ भादवि तपासी अधिकारी पो.नि. कोरे</td> </tr> </tbody> </table> <p>बी.के.सी पोलीस ठाणे अभिलेखावर सन २००४ व सन २००५ मध्ये प्रलंबित असलेले स्थानिक गुन्हे व तक्रार अर्ज</p> <table border="1"> <thead> <tr> <th>२००४</th> <th>२००५</th> </tr> </thead> <tbody> <tr> <td>Nil</td> <td>Nil</td> </tr> </tbody> </table> <p>भादवि गुन्हे व स्थानिक गुन्हे चा तपास कसोटीने केला जात असून सदर गुन्हेयांचा निपटारा लवकरत लवकर (९० दिवसाचे आत ) करून विल्हेवाट लावण्याची तजविज ठेवली जाते. तक्रार अर्जासंबंधी अर्जदारास २४ तासाचे आत पोलीस ठाणेस बोलावून त्यांचे तक्रार अर्जाची दखल घेतली जाते.</p>	२००४	२००५	Nil	१९८/०५ कलम १४३,१४४,१४६,१४९,४४७, ३२३ भादवि तपासी अधिकारी पो.नि. कोरे	२००४	२००५	Nil	Nil																															
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२००४	२००५																																								
Nil	Nil																																								
०२	Number of normal complaints register monthwise in the last two years.	<p>सन २००४ व सन २००५ मधिल अदखलपात्र गुन्हे</p> <table border="1"> <thead> <tr> <th>महिना</th> <th>२००४</th> <th>२००५</th> </tr> </thead> <tbody> <tr> <td>जानेवारी</td> <td>७३</td> <td>७९</td> </tr> <tr> <td>फेब्रुवारी</td> <td>८४</td> <td>९२</td> </tr> <tr> <td>मार्च</td> <td>९२</td> <td>९८</td> </tr> <tr> <td>एप्रिल</td> <td>१०५</td> <td>११०</td> </tr> <tr> <td>मे</td> <td>९८</td> <td>१०६</td> </tr> <tr> <td>जून</td> <td>१००</td> <td>९९</td> </tr> <tr> <td>जुलै</td> <td>७२</td> <td>९४</td> </tr> <tr> <td>ऑगस्ट</td> <td>८५</td> <td>६८</td> </tr> <tr> <td>सप्टेंबर</td> <td>७६</td> <td>९९</td> </tr> <tr> <td>ऑक्टोबर</td> <td>८६</td> <td>११६</td> </tr> <tr> <td>नोव्हेंबर</td> <td>१११</td> <td>१०४</td> </tr> <tr> <td>डिसेंबर</td> <td>९४</td> <td>८९</td> </tr> </tbody> </table>	महिना	२००४	२००५	जानेवारी	७३	७९	फेब्रुवारी	८४	९२	मार्च	९२	९८	एप्रिल	१०५	११०	मे	९८	१०६	जून	१००	९९	जुलै	७२	९४	ऑगस्ट	८५	६८	सप्टेंबर	७६	९९	ऑक्टोबर	८६	११६	नोव्हेंबर	१११	१०४	डिसेंबर	९४	८९
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डिसेंबर	९४	८९																																							
०३	Name and Designation of Sr. officer connected with the abovesaid Police Station	<p>श्री.शशिकांत शिंदे पोलीस उप-आयुक्त, परिमंडळ-८, मुंबई. श्री.एस एम सोनार सहाय्यक पोलीस आयुक्त,खेरवाडी विभाग, मुंबई श्री रॉल्फी परेरा वरिष्ठ पोलीस निरीक्षक बी.के.सी.पोलीस ठाणे पो.नि. पटेल, पो.नि. कोरे, पो.नि.काळे बी.के.सी.पोलीस ठाणे मुंबई.</p>																																							

आपला विश्वासू,

*300 11/10/06*  
वरिष्ठ पोलीस निरीक्षक,  
बी.के.सी.पोलीस ठाणे,मुंबई

15.B Dongri Police Station.

जायक क्र. ८३५४/०६,  
डोंगरी पोलीस ठाणे, मुंबई,  
दिनांक १३/१०/२००६.

प्रति,

श्री. विनायक सी. सपत (अॅडव्होकेट)  
रा.ठी. २०१, श्रीगणेश दर्शन, प्लॉट नं.१२,  
श्रीमद राजचंद्र लेन, समोरा, टिळक रोड लायन गार्डन,  
घाटकोपर, (पूर्व), मुंबई ४०० ०१७.  
फोन नं. २५१३ ८०९५, ९३२४ ०३ ८० ९५.

विषय.— केंद्रीय माहिती अधिकारी अध्यादेश-०५ अन्वये केलेला अर्ज.

महोदय,

वरील विषयास अनुसरून अर्जदार यांनी डोंगरी पोलीस ठाणेकडून मागितलेली माहिती खालील प्रमाणे सादर करण्यात येत आहे

१) सन २००४ साली दाखल गुन्हे — २०४  
उघडकिस आलेले गुन्हे — १०४

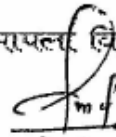
सन २००५ साली दाखल गुन्हे — २४१  
उघडकिस आलेले गुन्हे — ११३

२) सन २००४ साली दाखल असलेले अदखलपात्र गुन्हे.  
जानेवारी — १२३, फेब्रुवारी — १०६, मार्च — १३२, एप्रिल — १४६, मे — १२३,  
जून — १२२, जुलै — ११०, ऑगस्ट — १०७, सप्टेंबर — ४६, ऑक्टोबर — २२४,  
नोव्हेंबर — ९६, डिसेंबर — ११६.

सन २००५ साली दाखल असलेले अदखलपात्र गुन्हे.  
जानेवारी — ११८, फेब्रुवारी — १५०, मार्च — १४३, एप्रिल — १३१, मे — १६५,  
जून — १४५, जुलै — १४५, ऑगस्ट — १२५, सप्टेंबर — ११७, ऑक्टोबर — १५७,  
नोव्हेंबर — १३८, डिसेंबर — १२३

३) डोंगरी पोलीस ठाणेस सहा कार्गित असलेल्या अधिकारी यांची नावे व हद्द्या याबाबतची माहिती सोबत जोडून देण्यात येत आहे.

आपला विश्वासू,

  
वरिष्ठ पोलीस निरीक्षक,  
डोंगरी पोलीस ठाणे, मुंबई.

खालील नमुद अधिकारी हे डोंगरी पोलीस ठाणेस त्यांच्या नावासमोर दर्शाविलेल्या पदावर कार्यरत आहेत.

०१	वरिष्ठ पोलीस निरीक्षक एस.एस.आंबरे
०२	पोलीस निरीक्षक गाडेकर
०३	पोलीस निरीक्षक नाईक
०४	पोलीस निरीक्षक देसाई
०५	सहा.पोलीस निरीक्षक बागवे
०६	सहा.पोलीस निरीक्षक कदम
०७	सहा.पोलीस निरीक्षक टपले
०८	सहा.पोलीस निरीक्षक कळंबे
०९	सहा.पोलीस निरीक्षक ठाकुर
१०	पो. उप.नि. जमादार
११	पो. उप.नि.आवळकर
१२	पो. उप.नि. सावंत
१३	पो. उप.नि.साठे
१४	पो. उप.नि. ठोंबरे
१५	पो. उप.नि. सुतार
१६	पो. उप.नि. भोसले
१७	पो. उप.नि.पासलकर
१८	पो. उप.नि.रोकडे
१९	पो. उप.नि.डांगे
२०	पो. उप.नि.राणे
२१	पो. उप.नि.साठे
२२	पो. उप.नि. शेख
२३	पो. उप.नि.वसेकर
२४	पो. उप.नि.घाडगे
२५	पो. उप.नि.लोमटे



## Chapter - 16

# IMPORTANT MESSAGES FROM MUMBAI POLICE FOR THE SAFETY OF CITIZEN OF MUMBAI

WE all know that Mumbai Police is very much concerned with the safety of citizen of Mumbai and in order to achieve its objective, from time to time takes great pain in educating citizen of Mumbai as about how to take precaution to avoid any wrong to strike upon them. For the benefits of readers, we have reprinted some of important messages of Mumbai Police appearing in their Web site. We expect readers to take maximum benefits of the pain Mumbai Police has taken in guiding and educating Citizen of Mumbai.

1. Hire qualified / experienced chowkidars only
2. Check the antecedents / credentials of chowkidars and domestic servants before hiring them. Insist on references from their previous employers. Furnish their full particulars to your police station in the format suggested by them
3. Always employ different chowkidars for day and night duties
4. Secretaries of Societies are advised to brief all the security men / chowkidars / lift men about various aspects of security. Some of these are:

To make an enquiry if a taxi or auto-rickshaw is seen parked inside the compound or outside the building for a long time.

To inform the police in case they find any vehicle parked inside the building (if ownership is not known) for a long time.

5. Secretaries of societies are advised to brief all residents on the following:

Whenever they employ a new servant, the local police station should be informed. His or her photographs, fingerprints and other details should be obtained and submitted to local police station.

They should be advised to install a door with iron bars inside the flat, superior quality night latches and special eye lens on the main door. Ideally, interaction with strangers and vendors should be through the grilled door. High wattage light source with pilfer proof cover outside the main door should be installed.

They should not keep huge amounts of cash, valuable ornaments etc., in the house.

They should avoid discussing money transactions and other important family matters in the presence of servants/ outsiders.

They should not humiliate servants on petty matters. Nor should they penalize them for small damages.

6. It is important to inform the police about any suspicious happening or unclaimed object found in suspicious circumstances. Extend full cooperation to the police.
7. A special register should be maintained in every society and kept in the custody of the chowkidar or in the society's office. Whenever Police officers visit the area, they should get an entry in such registers.

Hire security personnel from reputed agencies only.

Use transport for carrying all valuables. If you regularly carry money, or any other precious commodity, change the route and time randomly.

Avoid cash payments as far as possible, especially in the presence of servants / outsiders

Do not talk loudly on the telephone (especially cellular phones) about money matters.

All security personnel, including lift men should be thoroughly briefed on various aspects of security.

Wherever possible use CCTV and other electronic alarm systems.

Inform the Police about any suspicious happening or unclaimed object lying for a long time. Extend full co-operation to the police.

Every year, nearly 36,000 vehicles, which amount to Rs.115/- crore, are stolen in India out of these, only about 14,500 are traced, often in un-roadworthy conditions, with many components missing. These vehicles are stolen only because thieves are provided with the opportunity to steal them. Very often, cars are left improperly secured and unattended. It is only with the installation of anti - theft devices that a thief's attempts can be frustrated.

Parking in a secure parking facility (garage, petrol pump, etc.) at night also safe-guards against theft. If such parking facilities are not available, parking in a well-lit area is the next best alternative.

It is advisable to get the number of your car etched on your windscreens and window glasses. It helps the authorities to trace your car if stolen.

#### **A) SIMPLE DO'S AND DON'TS / WHAT YOU SHOULD DO.**

Use securing devices like steering lock, clutch lock, brake lock, etc.

Double-check all doors, including the boot.

If possible, install loud alarm systems in your car, so that thieves can be discouraged even if they manage to break into your car.

Try and use detachable music systems and take them with you whenever you park the car for a long time, so that there is no temptation for thieves to make a quick steal when they see expensive items in parked cars.

Paint your car number on the front and rear end of the body, apart from the number plates. Ideally, have it etched on the windscreens and window glasses too. This prevents them from being misused by criminals using fake number plates

**B) WHAT YOU SHOULD NOT DO.**

Never leave the vehicle door unlocked, nor the windows partially open. Make sure that the quarter glasses are properly secured.

Do not leave valuables inside the car, even if it is locked, as this will attract thieves.

Do not overdo extra fittings, as these tempt prospective thieves.

Never leave the key dangling in the ignition.

**C) IN CASE YOUR CAR IS STOLEN.**

Report the theft to the nearest police station.

Inform your insurance company.

Instructions to members of public about Co-operative Housing Societies and how to prevent cheating at the time of purchasing flats.

**1. VERIFICATION OF OWNERSHIP OF LAND.**

Ensure from the City Survey office that the developer has been granted the N.O.C and the land is Non-Agricultural (N.A.)

Types of land  
Where to verify from

BMC Land  
The concerned Ward office

Govt. land  
Verification from the Collector's office

MHADA land  
Verification from MHADA, Bandra (E)

B.P.T. land  
Estate Manager, Mumbai Port Trust, Ballard Pier

Salt land  
Commissioner of Salt, Ballard Pier

Trust land  
President of the concerned Trust, and charity Commissioner, Worli

For clear title, 7/12 (Sat Bara) Extract to be verified from the "Talathi" OR "Tahasildar" office.

For Land in Dispute or in legal litigation - approach "Bailiff" or "Arbitrator" from High Court.

## **2. N.O.C.'s OF VARIOUS AUTHORITIES.**

Fire Brigade.

Especially for high rise buildings.

Traffic Dept.

Mumbai Police.

BEST/BSES.

For electricity supply.

IAAI.

Building in airport vicinity.

Railway.

Near the railway track.

BMC.

For drainage, water supply, commencement certificate.

## **3. TO CHECK THE LEGALITY OF THE CONSTRUCTION.**

- A) Checking of Commencement Certificate or Intimation of Disapproval by the Municipal authorities.
- B) Contact the Builder / Developer for
  1. Plans submitted by the architect
  2. Notice in Newspaper for clearance of title of the land
  3. Certificate from solicitor
  4. Confirm whether Residential or Commercial
  5. F.S.I. permitted, and utilized by the builder
  6. Percentage of reservation made for Government flats or any special category
  7. Whether covered under Urban Land Ceiling Reservation

## **4. ENTERING INTO AGREEMENT.**

1. The agreement for sale should be properly signed by the concerned parties
2. The agreement must be attested by two witnesses
3. Only the agreement registered with the Collector will be treated as the "legal document"
4. Stamp Duty should be paid only at the Collector's Office at the time of registration of the agreement

## **5. MODE OF PAYMENT.**

1. Cheque is the safest way of payment.
2. If paid by cash, insist on receipt.
3. Repayment of loans obtained from the Financial Institutions should be made only to the concerned Institution and not to the builder or developer.

So Here's wishing you a very happy year ahead, And all the bad luck to the cheats.

Majority of the offences committed by the persons are known to the victims - servant, watchman, craftsman etc.

Criminals are generally not on police record.

Database of elderly people staying alone in the jurisdictions of various Police Stations are compiled with poor response.

Servants information not provided to Police - fear of losing servants.

Mumbai Police with the help of Dignity Foundation, AGNI (Action for Good Governance and Networking in India) and Federation of Senior Citizens Organisation of Maharashtra is making efforts in motivating Sr. Citizens in this regard.

## **6. DO'S AND DON'TS FOR YOU.**

Employ a servant after verifying his real name, native address with the help of the nearest Police Station or through the security wardens of Dignity Foundation and AGNI

Never discuss financial matters in front of your servant

It is always safe to deposit your valuables in safe deposit vault of any Bank

Treat your servant in a humane way

Do not allow any of the relatives or friends of your servant to visit your house. If at all he has any frequent visitor, get his antecedents checked from police and try to keep the number of such persons.

Make your neighbour know of you being staying alone. The Housing Society also needs to know this.

Use of modern security gadgets is always advantageous. Door alarm, electronic eye bell etc. is available in market. Consult the professionals in this regard

Install a peephole in your front door and always check the identification of strangers before you let them inside your home.

Never leave spare keys in open or in the conventional hiding places.

Verify the identity of any repairmen. Use the telephone number listed in the phone book, not the one suggested by them.

Inform your society about the unacquainted visitors, so that their identity could be checked at the very gate of the society.

A well-designed electronic alarm system attached to the office of your Housing. Society or to the watchman's cabin would be advisable so as to send alarm signals to all simultaneously.

When you admit a workman or a salesman, do not leave him alone at any time.

## **7. CITIZENS' FACILITATION CENTER.**

Located at The Commissioner Of Police Compound, Opp. Crawford Market, L.T.Marg, Mumbai 400 001.

Remains open from 9.30 a.m. to 5.30 p.m , on all working days.

Members of Public can submit their applications relating to various licenses and other matters.

After accepting their applications, they are issued a computer generated token with ID number for future correspondence.

Arms Licenses can be renewed immediately. The armourer examines the weapon and if there is nothing adverse, the license holders can pay the fees and his license is renewed. A cashier is available for accepting the fees.

There is specific time allotted for processing the application forms. The monitoring is done by the Senior Officers.

The letters from the Govt., other departments and the members of public, addressed to the Commissioner of Police and other offices situated in the compound, are also accepted at CFC.

## **8. MUMBAI POLICE INFO-LINE 1090:**

Started off with an objective of making information available to citizens at the push of a button. This is to put an end to serpentine queues outside various government offices, where citizens have to wait for hours, simply to access a tiny bit of information.

Now, a year-and-a-half since its inception, the Mumbai police info-line has fielded more than 2.10 lakh calls, even turning out to be the essential link between hundreds of stranded families when the city was submerged under floodwaters.

A simple toll-free number 1090 is all that citizens need to dial to be able to access basic, non-emergency information.

The info-line handles queries on theatre licenses, arms and ammunition licenses, hotel licenses, passport enquiries, information on stolen/unclaimed motor vehicles, information on missing persons and information on traffic situation in the city. The queries are routed to a call center, handled by qualified by multi-lingual policemen.

They handle over 800 calls on a daily basis.

Only police call center in the world to have been awarded the BS 7799 certification on information security management.

This means that for any caller who calls up 1090, confidentiality, integrity and availability of all information assets are ensured.

Global E-secure limited, a Mumbai-based information security focused company, assisted the police in achieving this distinction.

More than 30 phone lines have been provided so that calls need not remain on-hold.

## **9. WORK DURING RECENT FLASH FLOODS.**

In recent times, citizens appreciated it the most when it served as an essential link-up between hundreds of stranded families.

In a span of five days from July 26-August 1, the info-line fielded a record 10,946 calls.

Citizens from different corners of the city called up enquiring about the traffic position in a particular area or requesting help to be rushed to stranded schoolchildren or to missing siblings/spouses, as most phone lines were dead.

The info-line doubled up its efforts in relaying messages to various police control rooms and Governmental Agencies.

It may be remembered that every citizen is a policeman without uniform and every policeman is a citizen in uniform. Participation from the members of public in the functioning of police is very important as it not only helps the police but also the public.

In several cases, witnesses are unwilling to disclose information of local crime incidents as they fear reprisals at the hands of criminal elements. Sometimes citizens want to give information about serious crimes such as unauthorized weapons, narcotic drugs,

explosives, contrabands etc, while not disclosing their identities. To help such citizens, this service has been started.

## **10. HOW CAN PEOPLE HELP POLICE.**

### **(A) Citizens can help the police in two ways:**

- (i) In Investigation of crime.
- (ii) In prevention of crime.
- (iii) In investigation, people can pass on valuable information to police regarding:

Description of the accused / suspects.

Registration number and description of the vehicle involved in the commission of crime and the direction.

in which it departed after the commission of crime.

Reporting that a vehicle has been abandoned in a public place for a long time

Reporting information about weapons

Reporting information about explosives

Reporting information about contrabands

Reporting information about narcotic drugs, etc.

The members of the public are also advised not to handle anything which would help in collecting valuable piece of evidence against the offender; nor should they disturb the scene of offence till the arrival of police.

In several countries abroad, there are crime-fighting programmes known as CRIME STOPPERS to deal with crime while keeping the citizenry perfectly insulated. Along similar lines, Mumbai Police has started a crime resistance programme known as ALERT CITIZEN since May 8, 1998.

Now, citizens can call a hotline number 26333333, and report information with complete anonymity. The caller provides a fictitious birth date, which is used as a code for identification for follow-ups on the crime and for rewards that the caller might be eligible for.

All calls will be analyzed by a Special Cell working under the DCP (Operations) and will be passed on to the concerned police stations for further action.

Depending on the kind of response that this programme attracts, the operations may be turned over to citizen volunteers.

### **(B) In the prevention of crime:**

Here also, members of the public can play a major role. Merely taking safety precautions in one's own interest is also a major contribution. Important tips for the members of the public are provided in the earlier paragraphs.

For more details about Mumbai Police and their services, Readers may refer to the web site \_\_\_\_\_, developed and maintained by Mumbai Police.

## Chapter - 17

### JURISDICTION OF MAGISTRATE COURTS IN MUMBAI

Exch No.	Police Station	Telephone Numbers			Court
2262 01 11	Azad Maidan	2262 06 97	2262 02 95	2267 81 15	23 Espalanade
2307 05 05	Agripada	2307 82 13	2307 05 35	2307 05 32	15 Mazgaon
2646 04 04	Air Santa Cruz	2615 63 15	2615 63 09	-----	22 Andheri
2414 09 09	Antop Hill	2407 44 47	2401 37 67	-----	30 Kurla
2821 14 14	Andheri	2683 15 62	2683 14 47	2684 26 77	10 Andheri
-----	Aarey Sub.	2685 84 84	2685 84 85	-----	43 Borivali
2307 05 05	Byculla	2375 52 64	2371 98 08	2374 82 92	17 Mazgaon
2414 09 09	Bhoiwada	2418 56 37	2418 17 59	2414 42 20	29 Dadar-Bhoi
2657 22 99	Bandra	2642 30 21	2651 37 16	2642 31 22	9 Bandra
2657 22 99	Bandra-kurla Comp.	2650 44 83	2650 44 82	2650 44 81	9 Bandra
2568 05 05	Bhandup	2564 13 01	2568 14 42	2567 86 11	27 Mulund
2802 07 11	Borivli	2801 01 45	2801 66 06	2801 23 31	26 Borivali
2265 07 07	Colaba	2285 28 85	2285 68 17	2204 37 02	37 Espalande
2265 07 07	Cuffe Parade	2218 80 09	2218 32 25	2218 05 88	37 Espalande
2522 21 21	Chembur	2522 16 13	2522 75 63	2523 20 44	11 Kurla
2802 07 11	Charkop	2867 65 81	2867 77 66	-----	24 Borivali
2307 05 05	Dongri	2371 91 36	2375 36 76	2371 62 78	2 Mazgaon
2380 05 05	D.B. Marg	2387 28 93	2386 78 73	2387 01 81	18 Girgaum
2494 03 03	Dadar	2430 36 54	2422 72 29	2430 14 03	5 Dadar-Bhoi
2414 09 09	Dharavi	2407 39 88	2407 26 46	2407 43 68	12 Bandra
2522 21 21	Deonar	2556 86 82	2556 33 81	2556 74 06	45 Kurla
2646 04 04	D. N. Nagar	2630 38 93	2630 40 02	-----	44 Andheri
-----	Dindoshi	2877 07 81	2877 70 16	-----	24 Borivali
2802 07 11	Dahisar	2893 20 40	2895 50 24	-----	26 Borivali
2380 05 05	Gamdevi	2380 75 05	2380 29 12	2380 45 05	14 Girgaum
2514 07 07	Ghatkopar	2515 35 43	2515 39 68	2511 32 56	31 Vikhroli
-----	Goregaon	2872 19 00	2872 34 09	2872 24 95	43 Borivali
2307 05 05	Sir J. J. Marg	2375 37 62	2374 82 00	2377 01 18	20 Mazgaon
2646 04 04	Juhu	2618 38 56	2618 43 08	2618 44 32	44 Andheri
2821 14 14	Jogeshwari	2822 16 72	2821 07 63	-----	10 Andheri
2414 09 09	Kalachowki	2375 73 57	2375 41 28	2371 58 63	6 Mazgaon
-----	Kurla	2650 28 68	2650 04 78	2650 31 82	11 Kurla

Exch No.	Police Station	Telephone Numbers			Court
2657 22 99	Kherwadi	ext 544	ext 545	2657 08 77	32 Bandra
2649 49 77	Khar	2604 42 29	2649 60 30	2600 04 50	9 Bandra
2802 07 11	Kasturba Marg	2806 61 58	2805 90 07	-----	26 Borivali

2514 07 07	Kanjur Marg	2578 26 37	2578 07 53	2578 93 65	27 Mulund
2802 07 11	Kandivali (West)	2805 66 03	2805 09 04	-----	43 Borivali
-----	Samata Nagar	2887 61 19	2885 07 90	2887 76 18	43 Borivali
-----	Kurar-Malad (East)	2849 04 44	2840 29 11	-----	24 Borivali
2265 07 07	L. T. Marg	2208 03 03	2208 43 02	2206 92 30	28 Espalanade
-----	Marine Drive	2288 02 65	2288 02 66	2288 02 67	8 Espalanade
2414 09 09	Matunga	2401 17 83	2401 01 03	2402 15 12	30 Kurla
2380 05 05	Malabar Hill	2363 55 17	2363 55 13	2363 75 71	40 Girgaum
2262 01 11	M.R.A. Marg	2262 13 13	2262 07 59	2261 19 39	33 B. Estate
-----	Mahim	2445 38 33	2445 62 37	2444 98 21	9 Bandra
2802 07 11	M.H.B. Colony	ext.327	2867 52 57	-----	26 Borivali
2821 14 14	M.I.D.C.	2836 83 52	2839 42 05	-----	10 Andheri
2568 05 05	Mulund	2568 45 35	2568 05 05	2568 98 44	27 Mulund
2802 07 11	Malad	2882 11 47	2882 14 82	-----	24 Borivali
2821 14 14	Meghwadi	2822 16 51	2821 08 60	2821 08 37	44 Andheri
2802 07 11	Malvani	2882 25 57	2882 13 19	-----	24 Borivali
2307 05 05	Nagpada	2309 22 73	2307 81 09	2300 46 05	15 Mazgaon
2307 05 05	N.M. Joshi Marg	2308 47 58	2309 56 67	2308 57 32	7 Dadar Bh.
2657 22 99	Nirmal Nagar	ext. 549	2647 09 31	2647 13 06	32 Bandra
2522 21 21	Nehru Nagar	2522 46 47	2522 42 91	2529 09 46	34 Vikhroli
2568 05 05	Navghar Mulund	2568 73 14	2590 31 42	-----	27 Mulund
2646 04 04	Oshivara	2632 38 62	2632 38 61	2632 27 53	10 Andheri
2265 07 07	Pydhonie	2346 33 33	2347 33 33	2343 61 14	2 Mazgaon
2514 07 07	Pant Nagar	2515 36 24	2511 66 87	2515 89 14	31 Vikhroli
2514 07 07	Parksite	2578 48 40	2578 65 18	2578 93 68	31 Vikhroli
2821 14 14	Powai	2857 42 14	2857 36 82	-----	22 Andheri
2414 09 09	R.A.K.Marg	2418 43 75	2418 68 36	2418 56 18	13 Dadar Bh.
2522 21 21	RCF	2554 16 90	2554 2127	2554 19 91	11 Kurla
2414 09 09	Sion	2403 13 76	2402 63 07	-----	30 Kurla
2414 09 09	Sewree	2375 81 63	2371 61 39	2371 98 07	13 Dadar Bh.
2494 03 03	Shivaji Park	2422 90 59	2437 06 41	2436 25 15	5 Dadar Bh
2522 21 21	Shivaji Nagar	2551 89 61	2556 04 02	2556 00 98	45 Kurla
2821 14 14	Sahar	2682 89 16	2682 89 26	2682 87 75	22 Andheri
2646 04 04	Santa Cruz	2649 29 72	2649 3139	2648 78 56	21 Bandra
<b>Exch No.</b>	<b>Police Station</b>	<b>Telephone Numbers</b>			<b>Court</b>
2821 14 14	Sakinaka	2852 61 60	2852 39 36	2852 23 34	22 Andheri
2414 09 09	Shahu Nagar	ext.369	2404 36 24	-----	12 Bandra
2494 03 03	Tardeo	2497 85 27	2494 11 09	2497 41 14	4 Girgaum
2522 21 21	Tilak Nagar	2522 72 93	2522 93 45	-----	34 Vikhroli
2522 21 21	Trombay	2556 43 71	2556 33 82	2556 71 90	45 Kurla
2646 04 04	Varsova	ext.158	2630 48 12	-----	44 Andheri
2380 05 05	V.P. Road	2387 25 25	2386 97 19	2382 13 12	4 Girgaum
2646 04 04	Vakola	2611 32 57	2618 29 36	2618 27 56	21 Bandra
2646 04 04	Vile Parle	2611 73 01	2611 73 17	2611 28 13	22 Andheri

2509 02 02	Vikhroli	2578 22 40	2578 24 92	2578 21 89	34 Vikhroli
2414 09 09	Wadala	2418 52 50	2412 74 72	2412 17 54	5 Dadar Bh.
2414 09 09	Wadala Truck Terminal	2403 64 95	2403 66 45	2403 66 46	5 Dadar
2494 03 03	Worli	2493 03 88	2494 82 84	2493 93 52	7 Dadar Bh.
2262 01 11	Yellow Gate	2265 50 12	2261 65 78	2261 58 30	16 B. Estate

## List and Jurisdiction of Metropolitan Magistrate's Court

	<b>Place</b>	<b>Court</b>	<b>Police Stations</b>
<b>1</b>	<b>Esplanade Court :</b> Court (Killa Court) Nr. B.M.C. H.O. Mumbai V.T. Mumabi	1	Chief MetropolitanMagistrate's
		37	Colaba, Cuffe Parade.
		28	L . T. Marg.
		8	Marine Drive.
		23	Azad Maidan
<b>2</b>	<b>Bellard Estate Court :</b> Opp. Co-Op. Court Building, Ballard Pier Mumbai	33	M.R.A Mg.
		16	yellow gate.
<b>3</b>	<b>Mazgaon Court :</b> Nyay Mandir Opp. Sales Tax Office, Nesbit Rd. Mazgaon Mumbai	15	Agripada, Nagpada
		17	Byculla
		2	Dongri , Pydhonie
		20	J.J.Marg.
		6	Kalachowki.
<b>4</b>	<b>Girgaon Court :</b> Opp. Harkishandas Hospital, Prathna Samaj Girgaon, Mumbai	18	D.B.Marg
		14	Gamdevi.
		40	Malabar Hill
		4	Tardeo , U.P.Road.
<b>5</b>	<b>Dadar – Bhoiwada Court :</b> (Old. Buidling) Opp. Bhoiwada Police station, Dadar(E) Mumabi	29	Bhoiwada
		7	N.M.Joshi Mg, Worli
<b>6</b>	<b>Dadar- Bhoiwada Court :</b> (New Buidling) Behind Bhoiwada Police station, Dadar(E) Mumabi	13	R.A. Kidwai Marg, Sewre
		5	Dadar, Shivaji Park, wadala, Wadala T. Terminus.
<b>7</b>	<b>Vikroli Court :</b> Kanmawar Nagar, Vikroli(E) Mumabi	49	Ghatkopar, Pant Nagar, Parksite.
		34	NehruNager, Tilak Nagar, Vikroli
		31	Cheque Bouncing cases.
<b>8</b>	<b>Mulund Court :</b> Near Mulund College of	27	Bhandup , Kanjur Marg, Mulund, Navghar, Mulund.

	commerce, Mulund (W) Mumabi 400 080		
<b>9</b>	<b>Andheri Court :</b> Nr. Andheri Station, Andheri (E), Mumabi	22 10 44	Santacruz Air Port, Pawai , Sahar, Sakinaka, Vileparle. Andheri, Jogeshwari, M.I.D.C, Oshiwara. D.N.Nager, Juhu, Meghwadi, Versova.
<b>10</b>	<b>Borivali Court :</b> Opp. Borivali (W) Railway Station, Behind Borivali Police Station, Off. S.V. Rd., Borivali (W), Mumabi	43 24 26	Aarey Colony, Goregaon, Goregaon (w), kandivali (w), Samata Nagar. Charkop, Dindoshi, kurar, Malad(E), Malad , Malvani. Borivali, Dahisar, Kasturba Marg, M.H.B. Colony.
<b>11</b>	<b>Bandra Court :</b> Kalanagar, Station Road, Bandra (E), Mumbai	21 9 12 32	Santracruz, Vakola. Bandra – Kurla complex, Khar, Mahim. Dharavi , ShahuNager, Kherwadi , Nirmal Nager.
<b>12</b>	<b>Kurla Court :</b> L.B.S. Mg, Nr. Lions Garden, Kurla (W), Mumbai 400 070	45 11 30	Deonar, Shivaji Nagar, Trombay Chembur, Kurla , R.C.F., Antop Hill, Matunga, Sion

### List of Sessions Courts in Mumbai :

- 1) City Civil & Sessions Court,  
Opp. Jahangir Art Gallery,  
Fort,  
Mumbai
  
- 2) Fast Track Sessions Court at Sewree  
Sewree Highway Road,  
Nr. Sewree Station,  
Sewree(W),  
Mumbai



### **ADV. VINOD C. SAMPAT**

Advocate Shri Vinod C. Sampat had been on the panel of Administrators and Inquiry Officers maintained by Co-operative Department, Shri Vinod C. Sampat had also been on the Committee of Non-Occupancy Charges of Co-operative Department. He has been the Secretary of his community i.e., Navgam Bhatia Mitra Mandal. Shri Vinod C. Sampat is the President of the Registration Fees & Stamp Duty Payers Association. Shri Vinod C. Sampat is the President of Co-operative Societies Residents & Users Association. He is the Patron member of the Estate

Agents Association of India. He has written more than 800 articles in Various newspapers on topics related to Stamp Duty, Registration, Co-operative Societies and Real Estate. He has written more than 32 books on topics related to Stamp Duty, Registration, Co-operative Societies. List of books written by him is separately annexed. He has addressed a number of seminars and has presented papers at the various seminars organized by (i) the Institute of Chartered Accountants of India at (a) Mumbai (b) Pune © Aurangabad (d) Mahabaleshwar (e) Nashik, (ii) Maharashtra Chamber of Housing Industry, (iii) Federation of Accommodation Industry of India, (iv) Estate Agents Association of India, (v) Accommodation times as well as a number of other organisations. He is the recipient of the Accommodation Times Trophies for (a) Co-operative Society Matters and (b) Stamp Duty Matters. He has been a speaker at the various seminars organized by the Co-operative Department connected with Housing Societies. He has also been a speaker at the meetings organized by the Stamp Duty Department with regards to fixation of the market value of properties.



### **ADV. RAMESH D. CHHEDA**

Mr. Ramesh Chheda is Law Graduate and also a Chartered Accountant. He is Practicing on Criminal Side and has specialized in white collar related crime. He was associated in Historical retrial of Best Bakery case with Special Public Prosecutor Mrs. Manjula Rao. He is also having sound knowledge in relation to Housing Society Laws. He was also chairman of Legal Aids committee of Lions Clubs International and under his chairmanship, many legal awareness projects and seminars were conducted. As part of his project related to legal awareness, he has

taken efforts in writing this Book with an intention to share his knowledge and experience for the Benefits of Experience for the Benefit of the Members of Housing Society who generally do not have knowledge of criminal Laws. To achieve this objective, this book is written in simple language, covering important basic aspects which an ordinary person comes across in his day to day life.



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Questions on CHS in Gujarati. (g) Answers to your Questions on CHS in Marathi & (h) Slum Rehabilitation Scheme in Marathi, (i) Amendment of Bye-laws & (j) Co-operative Societies Ready Reckoner.



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Questions on CHS in Gujarati. (g) Answers to your Questions on CHS in Marathi & (h) Slum Rehabilitation Scheme in Marathi, (i) Amendment of Bye-laws & (j) Co-operative Societies Ready Reckoner.

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