



Gujarat Real Estate Regulatory Authority

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No. GujRERA Order – 13

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Conveyance of the undivided proportionate title in the common area and facilities in favour of an allottee by conveyance deed and formation of association of allottees.

There has been some confusion since quite some time back that the stake holders and various forums have sought a clarification in respect of the execution of the registration of conveyance deed of the undivided proportionate title in the common areas in favour of the allottee. Gujarat RERA has carefully examined this issue and discussed it with the Co-operation Department. While seeking a solution, it has been kept in mind that the Gujarat Ownership Flats Act, 1973 is still in force in the State and is not repealed. Representations received from GIHED and CREDAI have also been considered.

Rule No. 9 of the Gujarat Real Estate (Regulation and Development) (General) Rules, 2017 gives the draft Agreement for Sale which provides that the promoter is required to transfer the undivided proportionate share in the common areas in favour of the allottee. There could be convergence of the requirement of section 17 of the RERA Act, the draft Agreement for Sale and the provisions of the GOFA Act. This would also be in conformity with the practice of conveyance of the proportionate undivided portion in the common area and other facilities to the allottee as is prevailing in Gujarat during the time of the GOFA Act. GIHED and CREDAI have also represented to this effect citing Rajasthan, Haryana and Uttar Pradesh rules and practice.

Vide circular dated 30th June 2017, the Registrar of Co-operative Societies in Gujarat State has provided some guidelines for the registration of Co-operative Housing Service Societies. In its second para it has provided that the objects of such

societies may be for maintenance, repair and provide services in respect of the water, gutter, cleanliness, security, lift etc. The circular provides the manner and details for the registration of such type of society. There are detailed guidelines for forming the service society for the premises including flat, tenement, bungalow, row houses, shops, show-rooms and industrial plots for sale and offices.

At the same time a question has been raised by a section of people that whether the Company under the Companies Act 2013, LLP under the Limited Liability Partnership Act, 2008 or the Society under the Societies Registration Act, 1860 can be formed in place of Association of Allottees under the Gujarat Co-operative Societies Act, 1961.

Looking to the provisions contained in the Companies Act, 2013, section 8 provides for formation of **Companies with charitable objects. To form a Company under this Act it has to be with objects for the promotion of commerce, art, science, sports, education, research, social welfare, charity, protection of environment etc.** Here, the object to form the Association of Allottees under RERA Act, is for maintenance and provides services to the members of the particular flat owners only. It has no charitable objects in its formation. Similarly, the preamble of section 20 of the Societies Registration Act, 1860, specifically provides that **Society under this Act can only be formed for the promotion of literature, science, the fine arts or for diffusion of useful knowledge, the diffusion of political education or for charitable purpose.** Here, again as per the RERA Act provisions such type of society is not envisaged to be formed. Whereas as per section 11(1)(a) of the Limited Liability Partnership Act, 2008, the Limited Liability Partnership Company can be formed by two or more persons for **carrying on a lawful business with a view of earning profit.** So it is also not in tune with the object for RERA for forming of Association of Allottees.

Whereas section 4 read with section 7 of the Gujarat Co-operative Societies Act, 1961, clearly lay down that the societies with similar object as are in RERA Act requires to be compulsorily formed and registered under the said Act unless it is exempted under section 7 thereof.

Section 17 of the RERA Act does not mention and provide for formation of the Company or LLP or Society. It says only of Association of Allottees.

In view of above it is amply clear that for the purpose of RERA objects and as per section 17 of RERA Act, Association of Allotees could not be formed by way of Company, LLP or Society but has to be under the Gujarat Co-operative Societies Act, 1961. Furthermore, Gujarat RERA is unable for the above mentioned reasons to agree to the suggestions regarding Company, LLP or Society being equally acceptable as a Co-operative Service Society.

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Gujarat RERA therefore in views of the existing practice under the GOFA Act, direct that the promoter should logically be permitted to convey proportionate undivided share in common area and facilities to the allottee who is paying consideration for the same and at the same time hand over lawful vacant, peaceful, physical possession of the proportionate undivided portion in common area and other facilities to the association of the allottees.

It is also directed that as per the requirement of section 17 of the Real Estate (Regulation and Development) Act, 2016, the Association of Allottees could not be formed by way of Company, LLP or Society but has to be under the Gujarat Co-operative Societies Act, 1961.



**Dr. Manjula Subramaniam
CHAIRPERSON**

Gujarat Real Estate Regulatory Authority