

### Chapter III

## Terms and Expressions

**3.0.0** Section 2 of the Act defines and gives meaning to the terms and expression used in the Act. Certain terms and expressions which are significant in understanding of the import of the provisions are explained hereunder.

#### **Advertisements**

**3.1.0** The term is used, *inter alia*, in Section 3 in relation to the prohibition on the promoter to make an offer or invitation to the public for purchasing building, apartment or plot without getting the project registered and in Section 12 relating to promoters obligation regarding the veracity of the advertisement or the prospects.

**3.1.1** '**Advertisement**' has been defined as -

*“advertisement” means any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing persons about a real estate project, or offering for sale of a plot, building or apartment or inviting persons to purchase in any manner such plot, building or apartment or to make advances or deposits for such purposes.*

**3.1.2** The term is not confined to advertisement in print or visual media but extends to any document issued for the purpose of publicity to make the public buy the building, apartment or plot or to make advances or deposits for the purpose.

### **Allottee**

**3.2.0** The term has significance as the Act revolves round the obligations of the promoters towards the allottee and *vice-versa*. The term occurs at several places; almost in every provision dealing with such obligations. The term has been defined as -

*“allottee” in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent”*

**3.2.1** In other words the term is used for the transferee of the building, apartment or plot from the promoter who gets the property by whatever mode including by allotment, by sale, as consideration for services, by exchange for development rights or by any other means. The building, apartment or plot transferred need not be a freehold property only. An allottee of a building apartment or plot on leasehold land is also an allottee.

**3.2.2** The term, however, does not include a person to whom the building or apartment or plot has been leased out. An issue in this connection may arise as to whether a long term lease,

say of 99 years or 999 years can be taken as sale. Although a long term lease is technically a lease and a lessee is not an allottee within the meaning of the Act, the long term lease with provision for extension gives right to occupy in perpetuity and is a viable and proven form of ownership. The possibility of such lease being taken as sale cannot be ruled out.

### **Apartment**

**3.3.0** The Act takes within its regulatory functions, the construction, sale, management and transfer of a building, an apartment or a plot. The real estate project which is the focus point of the Act means development of land for construction of a building or, a building consisting of apartments or, development of land into plots. The term 'apartment' is defined as -

*"apartment" whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified."*

**3.3.1** The term 'Flat' under the MOFA 1963 has been defined as under :

*"Flat" means a separate and self-contained set of premises used or intended to be used for residence, or office, or show-room or shop or godown or for*

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*carrying on any industry or business (and includes a garage), the premises forming part of a building and includes an apartment."*

**3.3.2** As the term 'Flat' under MOFA, includes the 'apartment'. It follows that apartment under MOFA has the same characteristics as of 'Flat' under that Act. The terms being synonymous what applied to Flat applies to apartment, which is not separately defined under MOFA. Maharashtra Apartment Ownership Act, 1970 defined 'Apartment' as -

*"apartment" means a part of the property intended for any type of independent use, including one or more rooms or enclosed spaces located on one or more floors (or part or parts thereof) in a building, intended to be used for residence, office, practice of any profession, or for carrying on any occupation, trade or business or for any other type of independent use and with a direct exit to public street, road or highway or to a common area leading to such street, road or highway."*

**3.3.3** From all these definitions it emerges that apartment is a unit in the building known by different names, depending upon the use to which it can be put to. The basic characteristics is that it is a self-contained unit, separate and unconnected with other units and meant for residential or commercial use which include office shop, showroom, godown or any other business place.

**3.3.4** As explained by the Supreme Court in *Nahalchand Laloochand Pvt. Ltd. vs. Panchali CHS Ltd.* in Civil Appeal No. 2544 of 2010 in the context of 'Flat' under MOFA, a set of premises is called self-contained " if it has the following basic amenities available: (a) sanitary; (b) washing, bathing and

(c) other conveniences (cooking etc.) for the use of its occupant/s although as provided in the explanation appended to Section 2(a-1) such provision may be common to two or more sets of premises. The nature of construction and user are important features of this definition clause. A unit or accommodation to fit in the definition of 'flat' must meet twin-test namely: (i) self-contained test and (ii) user test. The other predominant characteristic is that it must form part of a building. Crucially, for the relevant premises to be 'flat': It must be a separate and self-contained premises; It must form part of building."

**3.3.5** The definition does not specifically mention units in an industrial complex such as factory or galas in Industrial Estates. It appears non-mention of industrial use is conscious omission suggestive of such units being outside the term 'apartment' and accordingly, outside the regulatory framework, under the Act.

### **Appropriate Government**

**3.4.0** The responsibility of implementation of the Act is on the Appropriate Governments which are to set up the Regulatory Authority appoint Adjudicating officers and constitute the Appellate Tribunal. The Appropriate Government has also to frame rules for the implementation of the Act within six months of the commencement of the Act. The term Appropriate Government has been defined as under:

*"appropriate Government" means in respect of matters relating to – (i) the Union Territory without Legislature, the Central Government; (ii) the Union Territory of Puducherry, the Union territory Government; (iii) the Union Territory of Delhi, the Central Ministry of Urban Development; (iv) the State, the State Government.*

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**Building**

**3.5.0** The Act regulates transaction in buildings, apartments or plots. 'Building' is defined as

*"building" includes any structure or erection or part of a structure or erection which is intended to be used for residential, commercial or for the purpose of any business, occupation, profession or trade, or for any other related purposes."*

**3.5.1** The use for industrial purposes is conspicuous by its absence in the definition of building also which lends support to the view that premises used for industrial purposes are outside the preview of the Act.

**Carpet Area**

**3.6.0** The term is defined as

*"carpet area" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment".*

**3.6.1** The term is significant because under clause (h) to Section 4 (2) the promoter has to provide information about the number, type and carpet area of apartments for sale in the project along with area of exclusive balcony or verandah and the exclusive open terrace areas. Since balcony, verandah and open terrace areas are excluded from the computation of 'carpet area' separate information in regard thereto is required to be furnished.

**Common Areas**

**3.7.0** The term is used in various context. An important provision contained in Section 17 is relating to conveyance deed in respect of the building, apartment or plot to be executed by the promoter in favour of the allottee and that of undivided proportionate title in common area to the association of allottees. The term common area is defined as

*“common areas” mean –*

- (i) *the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;*
- (ii) *the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;*
- (iii) *the common basements, terraces, parks, play areas, open parking areas and common storage spaces;*
- (iv) *the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;*
- (v) *installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;*
- (vi) *the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;*

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- (vii) *all community and commercial facilities as provided in the real estate project;*
- (viii) *all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use.*

**3.7.2** A noticeable feature of the definition is that ‘Common Area’ includes the entire land for the real estate project. The entire land on which the project is developed being part of the ‘common area’ will mean conveyance of undivided proportionate title in land to the association of allottees when the building is conveyed to the allottees. A peculiar situation may arise in case of an apartment on ground floor with part of land attached to it as garden. Not only the land, the common area will involve separation of staircases and lift, lobbies, fire escapes, common entrance etc. from the building, undivided proportionate title in which is to be conveyed to the association of buyers.

**3.7.3** Provision under MOFA does not make a difference between the building and the land underneath. Section 11 thereof provides for conveyance of right, title and interest in the land as well as building by the promoter to the organisation of buyers. The Act, by providing for conveyance of building to the allottee and of common area to association of buyers makes a significant departure from the legislation of the State of Maharashtra and other States where the respective Acts make similar provisions.

#### **Competent Authority**

**3.8.0** “competent authority” has been defined to mean

*“the local authority or any authority created or established under any law for the time being in force*

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*by the appropriate Government which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property."*

**3.8.1** The term has relevance in the context of statutory sanctions required in respect of plan, layout plan, specification, issue of commencement certificate, completion certificate, occupation certificate, and other permissions and certificates to be issued by such authority.

**3.8.2** In case of lapse of registration or on revocation of the registration, the Regulatory Authority is empowered in consultation with Appropriate Government to entrust the completion of remaining development work by the Competent Authority or by association of allottees.

**3.8.3** Comparing the definition with the meaning given to it under MOFA, it can be seen that Competent Authority under this Act is different Authority than under MOFA. Section 5A of MOFA defines Competent Authority as under -

*"5A. Competent Authority - The State Government may, by notification in the Official Gazette, appoint an officer, not below the rank of the Deputy Registrar of Co-operative Societies, to be the Competent Authority, for an area or areas to be specified in such notification and different officers may be appointed as Competent Authority for different local areas, for the purposes of exercising the powers and performing the duties under section 5, 10 and 11 of this Act."*

Competent Authority under MOFA is an Authority to perform certain actions under that Act viz., the function of unilateral registration of the Society and deemed conveyance whereas

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under this Act a Competent Authority exercises powers to give permissions for development of immovable property.

### **Garage**

**3.9.0** Garage is defined as

*“garage” means a place within a project having a roof and walls on three sides for parking any vehicle, but does not include an unenclosed or uncovered parking space such as open parking areas.”*

**3.9.1** The term is used in item (i) of section 4(2) regarding the information to be furnished along with the application for registration about the number of garages for sale in the project. The provision indicates the saleability of the place falling within the definition of ‘garage’. The question arises as to which of the parking places are saleable being ‘garage’ under the Act and are to be informed u/s. 4(2)(i).

**3.9.2** Analysing the definition, garage should have following characteristics.

- (i) The place should have a roof and walls on three sides. This characteristic would mean that stilt parking and the open parking areas are excluded.
- (ii) The place should be meant for parking any vehicle.
- (iii) An unenclosed or uncovered parking space such as open parking space is not garage. This reiterates and clarifies the first requirement of a garage having a roof and walls on three sides.

**3.9.3** It is also relevant to refer to the definition of common area as per clause (n) of section 2, item (iii) of which is-

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*“the common basement, terrace, parks, play areas, open parking areas and common storage spaces.”*

“Open parking spaces”, being part of common areas, are not subject of sale and the builder will be prohibited from charging a price for such area. The same is also not to be part of the information to be furnished with the application for registration.

**3.9.4** Coming to stilt parking, although in the context of MOFA, the issue as to whether stilt parking is garage and can be sold as a separate space came for consideration before the Supreme Court in *Nahalchand Laloochand Pvt. Ltd. vs. Panchali Co-op Housing Society Ltd. Civil Appeal No. 2544 of 2010*. The court observed that stilt area is a space above the ground and below the first floor having columns that support the first floor and the building. The court held that

*“It may be usable as a parking place but we do not think that for purposes of MOFA such portion could be treated as garage..... the term ‘garage’ must be considered as would be understood by a flat purchaser and such person would contemplate garage which has a roof and wall on three sides.”*

**3.9.5** Thus, both as per the definition of garage under the Act and also going by the decision of the Apex Court, stilt parking is not a garage. The Apex Court also held stilt parking as ‘common area’ and, therefore also, not subject to sale.

**3.9.6** That leaves premises called garage with roof and three walls. Here again the question arises whether the standalone garage (or a garage by itself) and the garage which is appurtenant to or attached to a flat/ rowhouse/ bungalow stand on the same legal footing. While considering the question of stilt parking and open spaces to decide whether they are flat

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by themselves or places 'appurtenant or attached to flats', the Apex Court after detailed discussion, held that the promoter has no right to sell 'stilt parking spaces' as they are neither 'flat' nor appurtenant or attachment to flat. The decision of the Supreme Court (Supra) in that case did not decide the issue of saleability in cases of parking places which are garages having roof and three walls. It will be a question depending on the type of construction of the apartment and the place of parking space in it. In case the garage is inseparable from and an adjunct of the apartment, it will not be saleable. However, a standalone garage or garages constructed separately may be saleable and, it appears, that the information about such garages only is to be furnished under Section 4(2)(i).

### **Promoter**

**3.10.0** The term Promoter has been defined as

*“(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or*

*(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or*

*(iii) any development authority or any other public body in respect of allottees of—*

*(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or*

*(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or*

*(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or*

*(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or*

*(vi) such other person who constructs any building or apartment for sale to the general public.*

*Explanation. – For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells apartments or plots are different persons, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder.*

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**3.10.1** The promoter is one who develops or causes to develop a real estate project i.e., a project which involves development of land for construction of individual buildings, buildings consisting of apartments, or division of land into plots. Conversion of an existing building into apartments is also a real estate project. The essential condition is that these buildings, apartments or plots are for sale to the general public.

**3.10.2** The term also includes the Apex State Level, co-operative housing, Finance Society and a primary co-operative housing society, which construct apartments or buildings for allotment to their members. The allotment, though not sale in technical sense, is taken to be so for the purpose of this Act. The term also includes the development Authority or public Authority selling buildings, apartments or plots.

**3.10.3** In case of redevelopment arrangements where the person constructing the apartments etc. and the person selling them are different, the Act considers both of them as promoters who are jointly responsible for the functions of the promoters under the Act.

### **Real Estate Project**

**3.11.0** The term is used for the project involving construction of independent building or buildings consisting of apartments or, development and division of land into plots for the purpose of selling them to the general public. The term is defined as

*“real estate project” means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartment, as the case may be, for the purpose of selling all or some of the said apartments or plots or*

*building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto."*

**3.11.1** It will be noticed that if an already existing building or part thereof is converted into building consisting of apartments for selling them, such project shall be considered also a real estate project for the purposes of this Act.

**3.11.2** Buildings, apartments or plots have area for common use by way of staircase, lifts, open parking space, garden, terrace, swimming pool and other facilities and amenities. Such area is referred to as "common area" which is also a part of the project.

**3.11.3** The development works – external and internal – to be carried out are also integral part of the project. External development work includes roads, landscaping, water supply, sewage and drainage system, electric substation and other works to be executed in periphery of the project. Internal development work consists of internal roads, footpaths, sewage, gardens, community buildings and management of waste, water conservation, energy management, fire protection and other social infrastructure such as education, health and other public amenities.

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