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## Stamp Duty on Permanent Alternate Accommodation Agreements (“PAAA”)

A society opting for redevelopment can enter into a Development Agreement or a Redevelopment Agreement (“DA”) either with the developer alone, or with both the developer and individual society members in certain cases. There are many instances in which the society executes the DA with the developer without individual society members. The society therefore acts on behalf of individual members.

Under the DA, new homes/units are provided to the existing society members in lieu of their earlier accommodation and the additional area constructed by the developer, known as free-sale units, can be sold by the him in the open market. The DA is required to be stamped under the Maharashtra Stamp Act (“Act”) and includes units to be constructed for the society members.

The issue is that stamp authority has issued demands that individual Permanent Alternate Accommodation Agreements (“PAAA”) for society members require to be stamped on a value estimated at the cost of construction. The State Government and the Chief Controlling Revenue Authority, Maharashtra State (“CCRA”) issued circulars (“circulars”) which contemplated that PAAAs between the society members and developer are distinct from the DA between the society and developer and provided guidelines for levying stamp duty on the PAAAs. Subsequently, a clarificatory circular was issued requiring individual society members to compulsorily be a party to the DA so that the PAAAs are treated as incidental to the DA (which would be the principal agreement) and would be chargeable with a duty of one hundred rupees instead of duty (if any) prescribed for it in the Act.

Once a person becomes a member of a society, he loses his individuality and is subsumed within the identity of the society. In executing a DA, the society acts for all its members (including those

who disagree, as the society is run by majority). The PAAA is detailing of the amount of transit rent, flat number, flat size etc for each member of the redevelopment contemplated by the DA and is for ensuring clearer understanding and ease of reference. A society can never be redeveloped solely on the basis of the PAAAs between the developer and the individual owners. A DA with the society must exist for the transaction to be valid. It is therefore a distinction without a difference.

A PAAA between a developer and a society member is to be additionally stamped only to the extent that it provides for purchase by the member of additional area over and above the area that is made available to the member in lieu of the earlier premises at the market value or the consideration actually paid for purchase of the additional area, whichever is higher.

Accordingly, the Court passed the following order :

- Cancellation, withdrawal or revocation of the circular and clarificatory circular;
- levy stamp duty of an amount not more than Rs. 100/- on the PAAAs;
- re-development of homes to include garages, galas, commercial and industrial use and every form of society re-development;
- in case any amounts towards stamp duty on PAAAs is deposited with the Court or stamp office, all refunds are required to be processed upon production of an authenticated copy of the order within 4 weeks.

The Court order is a welcome step in making redevelopments in Maharashtra less costly by removing the stamp duty that was being levied twice for the same transaction. With a large number of buildings requiring redevelopment the Court order paves the way to make the redevelopment process less cumbersome.

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