

Steps in Sec 79A for Redevelopment Process of Housing Societies in Maharashtra

Mar 25, 2020 [##Maharashtra Societies](#), [#79A](#), [#society redevelopment](#)



Section 79-A of Maharashtra Co-operative Housing Societies Act, 1960 is regarding power of State Government to give directions in the public interest. If the state government receives a report from the Registrar or otherwise, it is satisfied that in the public interest or for the purpose of securing proper implementation of Co-operative production or other development program approved or undertaken by government, or to secure the proper management of the business of the society generally or for preventing the affairs of the society being conducted in a manner detrimental to the interest of the members, or of the depositors or the creditors thereof, it is necessary to issue directions to any class of societies generally or to any society or societies in particular, then the state government may issue directions to them from time to time and all the societies or the societies concerned shall be bound to comply with such direction.

The state government may modify or cancel directions issued or may also impose conditions as it may deem fit.

Registrar is authorized to pass necessary orders as stated therein and after hearing the parties concerned for the compliance of the directions issued by the state government under the above section. Registrar has the powers to disqualify the member who has without any goof reason or justification failed to comply with the direction or orders for a period of six years from committee if he is committee member and in case if he is employee of the society then he can direct the society to remove such person from employment of society and

if the committee member fails to do so then the he may also remove such member and appoint other member in his place. Orders passed by the registrar under above section shall be final.

Thus there are vast powers both with the State Government to issue direction and with Registrar to take action for non-compliance of the directions issued by State Government under section 79 – A of the Maharashtra Co-operative Societies Act, 1960.

Directive of State Government for Redevelopment of Building of Co-operative Housing Society

The Government of Maharashtra has issued circular dated 3rd January 2009 under section 79A of the Maharashtra Co-operative Societies Act, 1960 with object to bring clarity and transparency in the redevelopment process of society building and for the smooth functioning of the society. As there were no prescribed guidelines, not standard practice was adopted; transparency was lacking, confusion and litigation in the redevelopment of society building. The directives there under are mandatory and building upon the Co-Operative societies. The Government has also directed BMC to verify as to whether the society has appointed the developer as per the above directions and whether necessary approval has been given by the Deputy Registrar for appointment of the Builder before issuing the IOD.

In and around Mumbai there are large numbers of projects under process for Re-development of the Buildings owned and or occupied by the Co-op. Hsg. Societies. Both Courts of law and Registrar are receiving numerous complaints from members against society where redevelopment is happening and or is about to start. Some of the major complaints relating to redevelopment are as under:

1. The members are not taken in confidence in the process of redevelopment.
2. Lack of transparency in redevelopment process.
3. Appointment of Contractors in a haphazard manner.
4. Gross violations of provisions of Co-operative Act, Rules and Bye-Laws.
5. Lack of co-ordination between Architect and Project Consultant.
6. Project Report is not prepared.

7. Proper Procedure for finalizing tenders is not followed.
8. There is no uniformity in agreements with Developers.
9. Nexus between the managing committee members and Developer.

Since there was no concrete policy in respect of procedure to be followed by the society opting to go for redevelopment, the government of Maharashtra based on recommendation of a Study Group appointed a under the Chairmanship of Joint Registrar, Cooperative Societies (CIDCO) issued circular dated 3-1-2009 whereby procedure to be followed by the co-operative society who desire to go for redevelopment of their society building was prescribed.

1) TO CALL A SPECIAL GENERAL BODY MEETING OF THE SOCIETY TO DISCUSS THE REDEVELOPMENT OF THE SOCIETY'S BUILDING/S.

Not less than $\frac{1}{4}$ members of the Society, the building of which is to be redeveloped should submit a requisition to Secretary or the Managing Committee elected as per provisions of Bye-Laws and lawfully formed along with their suggestions for redevelopment of the Society's building for convening Special General Body Meeting to finalize the policy on redevelopment of the building.

2) TO CALL THE SPECIAL GENERAL MEETING

On receipt of application as stated in clause 1 above, Managing Committee should take a note thereof within 8 days and Secretary of the society should convene Special General Body Meeting of all the members of the society, Agenda of the proposed Meeting should be furnished to each member 14 days prior to the day of meeting and acknowledgement thereof should be kept on record of the society.

3) TO RECEIVE WRITTEN SUGGESTIONS FOR THE MEMBERS ON THE REDEVELOPMENT OF BUILDING

Before convening the said meeting, Society should obtain list of Architects / Project Management Consultants on the panel of Government / Local Authority and obtain quotations from minimum 5 experienced and expert persons for preparing project report for redevelopment work of the building and one expert person from among them will be selected in the Special General Body Meeting. Following business will be transacted in the said Special General Body Meeting:

- a) To take preliminary decision by taking into consideration demand of the members for redevelopment of society's building and suggestions received in respect of the same.
- b) To select expert and experienced Architect / Project Management Consultant on the panel of the Government / Local Authority for work of redevelopment of the building and to finalize items of work to be done by them and terms and conditions of work.
- c) To submit outline of the programme for redevelopment of the building.
- d) To accept written suggestions from members relating to redevelopment of the building. Members of the Society will be entitled to submit in writing to the committee eight days prior to the meeting their realistic scheme, Suggestions and recommendations for redevelopment of the building in the name of experienced and expert Architect / Project Management Consultant known to them. However, that Architect / Project Management Consultant should submit a letter that he is desirous of doing work of redevelopment.

4) DECISIONS TO BE TAKEN IN THE SPECIAL GENERAL MEETING

Quorum for the Special General Body Meeting convened for redevelopment of building of the Co-operative Housing Society will be $\frac{3}{4}$ of the total members of the society. If quorum is not formed, meeting will be adjourned for eight days and if there is no quorum for the adjourned meeting, it will be deemed that members are not interested in redevelopment of the building and meeting will be cancelled. On formation of quorum for the meeting, Suggestions, recommendations and objections from all the members with regard to redevelopment of the society's building will be taken into consideration and opinions expressed by all the members will be recorded in the minute's book with names of concerned members. Therefore a preliminary decision will be taken whether to redevelop society's building or not. Such decision must be taken with majority vote of more than $\frac{3}{4}$ of the members. On preliminary resolution about doing the work of redevelopment getting passed, following business will be transacted in the meeting.

- a) To selected expert and experienced Architect / Project Management Consultant from the panel of the Government / Local Authority for work of redevelopment of the building and to finalize items of work to be done by him and terms and conditions for the same.

- b) To submit an outline of the programme for redevelopment of building.

5) TO CIRCULATE MINUTE OF THE MEETING TO ALL THE MEMBERS.

Secretary of the Society should prepare minutes of Special General Body Meeting as above within ten days and a copy thereof should be furnished to all members and acknowledgement therefore be kept on record of the society. Also one copy should be forwarded to the office of the Registrar.

6) TO ISSUE LETTER OF APPOINTMENT TO THE ARCHITECT / PMC

Secretary of the society will within 15 days of the meeting issue Appointment Letter to the Architect / Project Management Consultant selected in Special General Body Meeting and Society will enter into an agreement with Architect / Project Management Consultant incorporating therein terms and conditions approved in Special General Body Meeting.

7) THE INITIAL WORK TO BE CARRIED OUT BY THE ARCHITECT / PMC.

Work to be done in the initial stage by Architect / Project management consultant:

- a) To survey Society's building and land.
- b) To obtain information about conveyance of land to the society.
- c) To take into consideration prevailing policy of the Government and the regulations applicable from time to time depending on ownership of the land (MHADA/SRA/Municipal Corporation) and to obtain information about FSI and TDR, which would be available in relation to building and land of the society.
- d) To take into consideration suggestions and recommendations from the members for redevelopment of the building as also the residential area to be made available to the members, commercial area, vacant area, garden, parking, building specifications etc. and to prepare a realistic project report.
- e) Architect / Project Management Consultant should prepare the project report within two months of date of his appointment and to submit the same to committee of the society.

8) BUSINESS AFTER RECEIPT OF THE REDEVELOPMENT PROJECT REPORT

Action to be taken on receipt of redevelopment Project Report:

a) On receipt of Redevelopment Project Report as above, Secretary of the society will convene a joint meeting to approve the Project Report with majority vote by taking into consideration suggestions received from Committee Members and Architect / Project Management Consultant. Notice in that behalf will be published on the Notice Board of the Society mentioning time venue etc. of the meeting. It should be mentioned in the notice that a copy of the Project Report is available in the society's office for members to see and the notice should be served on all the members that they should submit their suggestions eight days prior to the next Committee Meeting and acknowledgement of such notice should be kept on record of the Society. Even days prior to joint meeting, suggestions received from the members will be forwarded by Society's Secretary to the Architect / Project Management Consultant for his Information.

b) There will be a detailed discussion in the Joint meeting on the suggestions / recommendations from members and opinion thereon of the Architect / Project Management Consultant and project report will be approved with necessary changes. Thereafter draft of tender form will be prepared and date of next joint meeting will be fixed for discussion on draft tender form and finalizing the same. While preparing draft tender form, in order to get competitive quotations from renowned experts and experienced developers, either carpet area or corpus fund fixed (not to be changed) and by finalizing other technical matters, the Architect / Project Management Consultant will invite tenders. Society's members will be entitled to furnish information about it to the reputed and experienced developers known to them.

9) TO PUBLISH LIST OF TENDERS RECEIVED

a) On the Last day for receiving quotations, Secretary of the Society will prepare a list of offers received and display the same on the notice board of the society.

b) After 15 days of the last day for receiving quotations, Secretary of the society will convene special meeting of Managing Committee of the society. Authorized representatives of bidders and members of the society desirous of remaining present can remain present for the meeting as observers. Tenders so received will be opened in the presence of all and the Architect / Project management consultant will scrutinize all tenders and prepare a comparative chart and after checking merit, reputation, experience and comparative rate etc. and select minimum 5 bids and if the bids received are less than 5, all the

bids for putting up before Special General Meeting and concerned bidders will be informed about it immediately.

10) SELECTION OF A DEVELOPER

a) The office of Registrar to appoint an Authorized Officer for the SGM.

An application with list of the members should be sent within eight days to the registrar for appointment of authorized officer to attend the Special General Meeting of the Society for selecting a Developer out of those selected by committee of the Society with the help of the consultant, by taking into consideration his experience, merit, financial capacity, technical capacity and competitive rate etc.

b) To call SGM to finalize the Tender.

After appointment of authorized officer, with his prior permission Secretary of the Society will fix the time and venue convene Special General Body Meeting for appointment of Developer and Agenda of this meeting will be sent to all the members 14 days prior to the meeting by hand delivery and by registered post and keep acknowledgement thereof on record of the Society. Also, office of the Registrar will make arrangement to keep his authorized representative present for the meeting. Also arrangement will be made for video shooting of the meeting at the cost of the Society. Any person other than formal members will not be entitled to attend this meeting. Therefore members will be required to present at the venue of the meeting with their Identity Cards. At the time of submitting redevelopment proposal to the concerned authority for sanctioning, selection of Developer and other work should have been done in the presence of authorized officer from Registrar's office.

c) If there is no quorum for SGM.

If the quorum of $\frac{3}{4}$ members out of total members is not formed for Special General Body Meeting, the meeting will be adjourned for eight days. If quorum does not get formed for adjourned meeting, it will be deemed that the members have no interest in redevelopment of the building and the meeting will be cancelled and thereafter the said subject will not be taken up before the Special General Body Meeting for approval.

d) The business in the SGM for selection of the Developer.

In the Special General Body Meeting to be convened for selection of Developer, authorized representative from the office of the Registrar will be present and observe proceedings of the meeting. Also, on concerned representatives and authorized officer remaining present at the venue and at the time of meeting and on quorum of $\frac{3}{4}$ members getting formed, following business will be transacted in the meeting.

- Providing comparative information in respect of tenders selected for presentation (for redevelopment work).
- Presentation by bidders one by one.
- To select Developer for redevelopment of the building, to finalize terms and conditions and finalize the tender.
- To obtain consent from the selected Developer.
- Give information about further work. It will be essential to take written approval by $\frac{3}{4}$ majority vote of the members present for the meeting for selection of Developer. If the selected Developer or his representative does not remain present for the meeting, further action will be taken by presuming that they have given their consent for the project.

11) DEVELOPMENT AGREEMENT TO BE EXECUTED

Subject to the terms and conditions approved by General Body Meeting of the Society, an agreement should be entered into with the Developer within one month under guidance from the Architect / Project Management Consultant. Along with the points suggested by the Architect / Project Management Consultant appointed by the Society, following points will also be included in the agreement.

1. The period for completing redevelopment project of the Society will not exceed more than two years and in exceptional cases, it will not exceed three years.
2. Developer will give a Bank Guarantee for amount equal to 20% of the project cost.

3. During the period of redevelopment, the Developer will make available to the members alternative accommodation in the same area as far as possible or arrange to pay monthly rent and deposit as acceptable to members or make available transit camp accommodation.
4. The said agreement will be registered under Registration Act, 1908.
5. On completion of redevelopment project, new members will be admitted in the Society only with approval of General Body Meeting of the Society.
6. Carpet area to be allotted should be clearly mentioned in the agreement.
7. Development right vested in the Developer will be non-transferable.
8. Members will vacate their respective premises only after all legal approvals are received for redevelopment of the building.
9. Rights of those who are in possession of the flats will remain unaffected.
10. If any dispute arises in the work of redevelopment, provision should be made in the agreement to resolve the same as per provisions of Section 91 of the Act.
11. After receipt of Occupation Certificate, flats in the redeveloped building should as far as possible be allotted as per present conditions floor-wise and if it becomes necessary to allot flats by drawing lots, on completion of construction, Developer should make arrangement drawing lots, and at that time flats should be allotted in the presence of Registrar's representative and this process be recorded by video shooting.

12) Any Committee member or Office Bearer of the Society should not be the Developer or relative of the Developer.

13) Building plans sanctioned by the Municipal Corporation / Competent Authority should be put up before the General Body Meeting for information and if any member wants copies of approved documents, he should submit application for the same to the Society and it will be binding on the Committee to furnish the information by charging necessary fee. By order and in the name of the Governor of Maharashtra

The above directives were issued in the public interest and more particularly in the interest of both members and committee members of Co-operative Housing societies for better implementation of redevelopment proposal.