

BAF RESPONSE TO ARTICLE PUBLISHED IN MONEY CONTROL

Money control published an article titled [“MC Explains: Do Karnataka homebuyers actually own the land their apartment is built on?”](#) yesterday. While we agree some points in article such as KAOA has to be implemented properly and effectively, we also disagree with some. Please find claims in the article and our response as stated below. A detailed note on apartment associations will be published in a week. For any clarifications, please reach out to Legal and Statutory Track.

From Article: “However, today in Karnataka after the registration of the DoD, the builder exits the project without executing the registered conveyance deed”

BAF Response: General practice today in Karnataka is, developers execute conveyance in the form of sale deed and most of the cases do not execute DoD. As per law, the developer has to execute DoD first and then execute conveyance in the form of apartment deed. Since conveyance through apartment deed requires the developer to make a floor plan relevant to the apartment unit with a certificate from an architect stating the building is built as per the plan with respect to dimension, common area facilities etc. Hence developers bypass this by executing sale deeds under transfer of property act along with registration act. If the law is implemented in its entirety, it can be the answer to irregular or unauthorised constructions mushrooming in Karnataka.

In the case of apartments constructed before RERA, a super built up area is conveyed along with undivided interest in land. Undivided interest in the land associated with the apartment unit is the necessity under the Transfer of property act 1882 to make the apartment unit an immovable property. When the conveyance deed in the form of sale deed (or apartment deed) executed in sub registrar office under section 17 of the Registration Act 1908, it (has to) create encumbrance on the land. Execution of mortgage, interest, right or declaration affect encumbrance. Encumbrance is the actual ownership record. In the case of apartments constructed after notification of RERA, only carpet area is conveyed but whole interest in the land gets conveyed proportionately. This results in the common built up area without land left unconveyed. Since a built up area without land associated with it cannot be considered as immovable property and hence cannot be conveyed and hence cannot be registered under section 17 of registration act. In such cases, executing a declaration is the only option through which the developer can declare the common built up area as the one belonging to the association of flat purchasers.

Once 100% of interest in the land is conveyed and declared through DoD, there is no way to execute any other conveyance deed to convey already conveyed property. Each execution of sale deed (or apartment deed) and DoD create encumbrances. At Least for upcoming apartments, we expect RERA to ensure proper creation of encumbrances for each execution of conveyance deed as well as declaration and declaration consisting of the entire project in terms of both land and building while developers apply for closure.

From the Article: "the land records at the land revenue department continue to reflect the names of the previous landowner"

BAF Response: The article is confused between conveyance and mutation. These are two different records of ownership and two different processes. While a conveyance that creates encumbrance is mandatory for transfer of immovable property, mutation of urban properties are not mandatory. Various courts in India including the Supreme Court have held time again that encumbrance records are proof of ownership, not entry in mutation registers. Land records in the Department of Survey, Settlements and Land Records reflect mutation history of property. Encumbrance records along with conveyance deeds are maintained by the Department of Stamps and Registration. Since mutation of urban properties are not mandatory, the onus of updating revenue records through mutation is with apartment purchasers.

From the Article: "the purpose of the DoD is simply to register the apartment and it does not transfer the land title to the homebuyers"

BAF Response: Purpose of DoD is to define the entire property and declare ownership, not to register apartments. It does not convey anything though it creates encumbrance on the land. Declaration is a mandatory registrable document under section 17 of the registration act. Generally, a declaration is necessary when clarity in ownership of immovable property is necessary. In the case of apartments, when parts of building and land get conveyed to many apartment owners, a declaration is mandatory that puts together ownership rights of all units and defines the whole property.

From the Article: “KAOA has no words like “builder”, “developer” or “promoter”. Therefore, a builder/promoter cannot claim the submission of property under KAOA. Additionally, KAOA does not mention the type of association or the manner of its registration. Therefore, no association can be registered under KAOA.”

BAF Response: The article is ignorant of many facts. When a developer offers an apartment complex with condominium ownership model through section 3(2)(h) of KOFA, KAOA automatically comes in as the law governing the model in the state. KAOA explains in detail about conveyance of apartments, parties to the deeds etc. In the condominium model of ownership, all apartment owners are co-owners of the whole property. Generally, an association is a group of people organised for a common purpose, having a formal structure and rules of engagement. KAOA defines association as a group of owners acting together as per bylaws and declaration.

From the Article: “Section 11 of KOFA and Section 17 of RERA, the complete project land is to be conveyed to the association of owners under the Transfer of Property Act. However, this has been avoided for the last four decades and the state government has failed to monitor the process”

BAF Response: If 100% interest in the property is conveyed through sale deed (or apartment deed), the whole property stands conveyed. A list of apartment units along with UDS in tabular form in the DoD is necessary to establish this. It is equally important to ensure that each conveyance creates encumbrance in the land.

From the Article: “Though the sale deeds mention the names of the homebuyers, the land records mention the previous landowners. This becomes a major hurdle when the apartment complex needs to go for redevelopment or reconstruction. Who will be responsible for the land then, the homebuyers or the landowners? So a conflicting claim arises and will definitely open up further legal battles”

BAF Response: A bench of Justices M R Shah and Aniruddha Bose said while deciding the case Jitendra Singh v. State of M.P., 2021 that Mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose. Supreme Court in the case of Balwant Singh v. Daulat Singh, (1997) had considered the effect of mutation and observed that mutation of property in revenue record

neither creates nor extinguishes title to the property nor has any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue.

Karnataka High Court in the case of M. Ramakrishna Reddy vs Sub-Registrar, Rajajinagar 1999 stated about encumbrance “The object and intent of providing for registration of instruments under the Act is to create and maintain a public record of transactions relating to immovable properties, on which every person dealing with an immovable property can rely with confidence, for a full and complete account of the transactions by which his title to the immovable property, may be affected”.