

Safeguarding Your Homes

Implications of Falling Prey to the Unscrupulous and Ignorant



Caveat Emptor
Let the Buyer Beware

Familiarity with Subject

1. How many of you have studied the Acts - RERA, KAOA, KOF, Co-op Soc. Act?
2. How many have consulted advocates or friends or discussed with others here?
3. Think of what conclusions you arrived at and why?

Would You like to Live in ----

- ▶ Syria?
- ▶ Afghanistan?
- ▶ North Korea?
- ▶ India?
- ▶ USA?
- ▶ U.K.?

- ▶ What is your order of preference and why?

What are our Prime and Common Objectives?

1. Prime Objective: Harmonious living with all families in the community in Sobha City - A great quality of life.
2. How do we achieve this?
3. Do we need to spell out common objectives?
4. What are these objectives?
 - a. Ensure that all essential facilities, like water, power etc are available as per agreements with builder
 - b. Ensure that all recreational facilities as agreed with builder are also provided
 - c. Financial independence for each block to manage its affairs
 - d. An Apex body to coordinate activities and needs common to all blocks
 - e. We would like to have friendly neighbours and get along well with them and others here

How does KAOA, KOF and RERA affect Achievement of Our Objectives?

For this, we need to understand each of these Acts and Rule.

We will look at some key sections of each of these Acts and Rules.

In addition, we should also examine The Co-operative societies Act and The Companies Act.

We may not have time to study The Companies Act

KAOA - Key Sections

1. Preamble and Objectives
2. Section 2 - Application
3. Section 3 (j) Definition of “Declaration”
4. Section 5 (1) and (2) - Ownership of Apartments
5. Sections 11 and 12 - Contents of Declaration and Deeds of Apartments

Preamble and Objectives

- ▶ **Preamble:**

- ▶ “--- intending **persons cannot purchase flats** --- in multi-storeyed buildings **as they will not have a marketable title** - and **cannot obtain loan** by mortgaging such flats ---.”

- ▶ **Objective:**

- ▶ “- to provide for the ownership of an individual apartment in a building and make it heritable and transferable property---.”

Section 2 KAOA

- ▶ **Application of the Act -**
 - ▶ This Act applies only to property the sole owner or all of the owners of which *submit* the same to the provisions of this Act by duly executing and registering a Declaration as hereinafter provided.
 - ▶ Proviso - property mainly *used for residential purposes*
- ▶ *Q: Why are commercial buildings left out?*
- ▶ *Don't commercial buildings need marketable title?*

Section 3 (d) KAOA

- ▶ Definitions -
 - ▶ 3 (d) - “**Association of Apartment owners**” means all of the apartment owners acting as a group in accordance with the bye-laws and Declaration
- ▶ **Note:** There is no reference to co-operative society or company
- ▶ This mischief you will see again in Form ‘A’, Exhibit ‘B’, Paragraph 5 of the bye-laws

Section 3 (i) KAOA

- ▶ **Competent Authority means** ---- secretary of Housing Board ---- Registrar of co-operative societies
- ▶ **Question: Why is Registrar of Companies left out of the definition?**

Section 3 (j) KAOA

- ▶ “**Declaration**” means the instrument by which the property is **submitted** to the provisions of this Act
- ▶ This is our famous or infamous, but favourite - DoD

Section 5 (1) & (2) KAOA

- ▶ **Section 5 (1)** KAOA - Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment
- ▶ **Question:** When does owner receive her / his entitlement of exclusive ownership?
- ▶ Section 5 (2) KAOA - “**Each apartment owner shall execute Declaration** that he submits his apartment to the provisions of this Act **and the Deed of Apartment in relation to his apartment** ----.”
- ▶ *You have ownership only when both Declaration and DoA are executed.*
- ▶ **Note:** **Deed of Apartment** is so far **NOT defined** in the Act! Its **contents is given Section 12.**

- ▶ **Question:** How many of you have executed both the Declaration and the Deed of Apartment?
- ▶ If you have not, would you have ownership of your apartment as per this Act?

Sections 11 and 12 KAOA, 1972

- ▶ **Section 11** gives the contents of Declaration
- ▶ **Section 12** gives the contents of Deed of Apartment
- ▶ Deed of Apartment is NOT defined, but only its content is in the Act.
- ▶ **Significant Omissions:**
 - ▶ Name of seller is not part of the contents of Deed of Apartment, but in Rule 6
 - ▶ Consideration for sale is not mentioned.
 - ▶ There is no clause of indemnification of buyer by seller for any defect in title
 - ▶ The Seller includes all those who purchased the flats and registered the co-operative society before the next buyer bought her / his flat!

Section 10 KOF

Section 10 (1) KOF: **Promoter to take steps for formation of co-operative society or company**

“As soon as **minimum number of persons required** to form a **co-operative society or company** **have taken flats, the promoter shall** --- submit an application to the **Registrar** for regulation of the organisation of persons who take flats as a co-operative society or --- company, and the promoter shall join, in respect of flats which have not been taken ----.”

Questions:

1. **What is minimum number of persons?**
 - a. **Co-operative society - 10**
 - b. **Company - 1**
2. **Do Apartment owners have right to decide between co-operative society and company?**

Section 10 KOF - Implications

1. Promoter has sole discretion whether to form a co-operative society or company
2. He controls both
3. He then dictates how the common facilities should be managed
4. And who all may join the co-operative society

Section 11 KOF

Section 11 KOF - Promoter to convey title, etc and execute documents, according to agreement -

“A promoter shall take all necessary steps to complete *his* title and convey to the organisation of persons, who take flats, which is registered as a co-operative society or company --- or to an association of flat-takers his right, title and interest in the land and building and execute all relevant documents in accordance with the agreement under Section 4 ---- and deliver all documents of title relating to the property which may be in his possession or power.”

Implications:

To whom is the title conveyed?

Is this what we want, as buyers?

Implications of KAOA and KOF

1. Conveyance of title is to an organisation - co-operative society or company - NOT to the individual buyer
2. Significant Omissions:
 - a. No mention of Completion Certificate or Occupancy Certificate
 - b. Name of seller is not part of the contents of either Declaration or Deed of Apartment. Parties to DoA is mentioned only in Rule 6
 - c. Consideration for sale is not mentioned. It might not be a contract under the Indian Contracts Act
 - d. There is no clause of indemnification by seller for any defect in title

KAO Rules, 1974

1. **Rule 4 - Declaration** under Section 5 (2)
2. **Rule 5 - Conveyance** of Apartments
3. Exhibit 'B' - CHAPTER I - Paragraph 5 - Members of Association - Issue of shares
4. Exhibit 'B' gives the Bye-laws.
5. Rule 9 gives the Form of Memorandum under Section 13 (4). Manager (or board) has to file this with the sub-registrar. No reason given.
6. After this, in the Rules Form A - DoD is given.
7. Next is Exhibit 'A' which is the register of DoD and DoA in Form 'C' under Rule 8 (1) and Section 13 (3)

Paragraph 5, Bye-laws - Form 'A' Under Rule 3, KAO Rules, 1974

Paragraph 5 of Form 'A' in Bye-laws (Exhibit 'B'). Members of Association - (1)

“All persons who have purchased apartment in the ----- Condominium and executed respective Declarations under Section 5 submitting their apartments to provisions of the Act shall automatically be members of the Association, and shall pay a sum of one rupee as entrance fee and may purchase at least one share of face value ₹ 100 each. ---.”

Have you done so? Do you want to do so?

The mischief is in using the word, “Association” while actually meaning co-operative society and then insert in the bye-laws the purchase of share in the cooperative.

Rule 5 KAO Rules, 1974

- ▶ Rule 5. **Conveyance of Apartments** -
 - ▶ **All transfers** of apartment by sole owner **or all owners** of the property being an owner or owners who have executed and registered the Declaration under Section 2 to an apartment owner --- **shall be by a Deed of Apartment**
- ▶ **Implications:**
 - ▶ **None of you may have executed Deed of Apartment or signed a Declaration. You have got a title deed registered with (NOT the Registrar of Co-operative Societies) but with the (Revenue) sub-registrar of the district.**
 - ▶ **So, if you now submit to KAOA under Section 2 your title under KAOA is defective!**
 - ▶ **After the promoter and 9 flat-owners have formed the co-operative society, should all of them sign Deed of Apartment for the 10th buyer and all subsequent buyers?**

Exhibit 'B' - CHAPTER I - Paragraph 5 - Members of Association - Issue of shares

- ▶ **This is in the KAOR, 1974.**
- ▶ Paragraph 5 of the bye-laws in Form 'A', under Rule 3, for registering Declaration (DoD) under Section 2.
 - ▶ Members of Association - (1) "All persons who have purchased apartments under Section 5 **submitting** their apartments to provisions of the Act shall automatically be members of the Association (actually a co-operative society or company) and shall pay the sum of one rupee as entrance fee and may purchase at least one share of the face value of ₹ 100 each."
- ▶ **Questions:**
- ▶ **If any apartment purchaser buys more shares, will he / she have more voting rights in the co-operative society or company?**
- ▶ **How many shares can a person buy?**

Karnataka Ownership Flats (Regulation of Construction, Sale, Management and Transfer) Act 1972

KOF, 1972

Section 10. Promoter to take steps for formation of co-operative society or company -

- (1) As soon as a minimum number of persons required to form a co-operative society or company have taken flats, the promoter shall --- -- submit an application to the Registrar for registering of the organisation of persons who take flats as a co-operative society or company --- and the promoter shall join in respect of flats which have not been taken -."

Question: So, who controls the co-operative society or company?

The Karnataka Co-operative societies Act, 1959

Important Sections Relevant to us:

1. **Section 6:** Application for Registration of co-operative society -

a. Sub-section (b) - “----- the **number of applicants** shall **not** be **less than ten.**”

2. **Section 16:** Persons who may become members -

- i. (a) an individual who needs the services of such a cooperative and is residing in the area of operation of the society
- ii. (a-1) a depositor
- iii. (b) any other co-operative society
- iv. (c) the State or Central government
- v. (d) Life Insurance Corporation, State Warehousing Corporation
- vi. (e) a firm, a company or any other corporate body constituted under any law in force **including a society under KSRA, 1960**
- vii. (f) a Market Board
- viii. (g) a local authority

The Karnataka Co-operative societies Act, 1959

Important Sections (continued)

3. Section 28-A. **Management** of co-operative societies **vest in the board**

3. **Section 28-A (3)** - in the board of every co-operative society there shall be reserved -

- i. **One seat** to be filled by election of person belonging to **Scheduled Castes** and **one seat** to be filled by person belonging to **Scheduled Tribes**
- ii. **Two seats** to be filled by election in favour of **women**
- iii. **Two seats** to be filled by election in favour of persons belonging to **backward classes**

Summary

1. KAOA purports to provide marketable title to apartment buyers. It does not. Under Section 11 of KOF Act, 1972, title is conveyed to the organisation of persons who take flats, which is registered as a co-operative society or as a company or to an association of flat-takers.
2. Under Rule 5 of KAOA Rules, 1974, conveyance of apartments shall be done by a Deed of Apartment. This is NOT a sale deed as per the Transfer of Property Act, 1882.
3. Section 10 of KOF Act, 1972 authorises the promoter to form a co-operative society or company. Apartment buyers have no role in its formation except to join it.
4. There is no mention of 'Completion Certificate' and / or 'Occupancy Certificate' anywhere in either Acts or Rules.



Thank You

Any Questions

Any Suggestions

You are Welcome