

# The Talmakiwadi Co-operative Housing Society Ltd.

(Regd. No. B 227 dt.5-4-41)

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Ref:

Date: 14 October 2023

## NOTICE

Notice is hereby given that a Special General Body Meeting (SGM) will be held on Sunday, 29 October 2023 in Shrimat Anandashram Hall, KSA Building, Talmakiwadi, Mumbai – 400007 at 10.30 am to transact the following business:

1. Update on various meetings held between the MC members and few professionals to present the views on redevelopment given by these experts.
2. We have received representation from members to consider Redevelopment through a Developer. The signatories to the letter will present their views and make GB aware of the PROS and CONS of Self Redevelopment v/s Builder led redevelopment that will help them to take a conscious and informed decision.
3. To discuss the feasibility report submitted by M/s. MPNV Architects, PMC appointed by the General Body in the SGM held on 22 January 2023.

The feasibility report of MPNV Architects was circulated to the members on 28 August 2023 for queries, opinions & suggestions from the members.

MPNV Architects will make a presentation and address all the queries.

4. To decide on the future course of action with regards to the Redevelopment.
5. To pass necessary resolutions with regards to the future course of action.

By order of the Managing Committee

Place: Mumbai  
Date : 14/10/2023



*P. K. Nagarkatti*

Parag Nagarkatti  
(Hon. Jt. Secretary)

## Note

We will be requesting for permission from Deputy Registrar to conduct a Hybrid meeting for the benefit of all members who will not be in a position to attend the meeting. Once we receive their permission the link for Zoom meeting will be sent to the members.

**Note:**

1. If there is no quorum at the meeting, the meeting shall be adjourned for half an hour and those present for the meeting shall form the quorum. The business of the adjourned meeting shall remain the same.
2. **The meeting can be attended by EITHER the bonafide members or associate member.**
3. The Issue of Redevelopment is an important matter for the members and their family members, members are requested to go through the Project feasibility report submitted and raise queries in order to get all their doubts clarified. All the queries will be addressed by the PMC appointed in the SGM held on 22 January 2023 to conduct a detailed feasibility report.
4. **Request members to read the attached document "Developments with regards to Redevelopment post SGM"**



### Developments with regards to Redevelopment post SGM

Dear members,

22 January 2023 was an important day in the history of Talmakiwadi, when the members of the society unanimously decided to pass the proposal for undertaking Redevelopment and subsequently appointed M/s. MPNV Architects as PMC to undertake detailed feasibility study and submit their report.

The PMC appointed by the General Body have submitted their report and the managing committee held a series of meetings with the Architects to discuss the various options. We used to meet once a week to discuss the different aspects.

This was a learning experience for the managing committee as well as the PMC since this is the first project that would be undertaken by M/s. MPNV Architects.

#### **FUND RAISING**

1. The proposal submitted by MPNV Architects at the SGM had envisaged offering 150 sq.ft. carpet area room for Rs.20 lakh. While studying this aspect we realized that the rate per sq ft for this offer comes to Rs.13,334/- which is much below the ready reckoner value for the area. By entering into an agreement for sale of area below the market rate there would be an Income tax liability on both the buyer as well as seller. The amount from sale of this area was planned by the PMC as initial Seed capital for the project which will be used to take care of the expenses pertaining to the approvals from Statutory authorities.
2. Under Self Redevelopment the society becomes the Developer and has to raise funds for the project. For raising funds the society will have to mortgage the land and repay the loan from the Sale proceeds.
3. If Society assumes the role of Developer the society will have to register under RERA and will have to comply with the RERA guidelines. The liability for non adherence to any conditions / commitments will be detrimental to the society.
4. Sale of additional area or booking of new flats by members will not come under the purview of RERA. We had also discussed the idea of floating Deep discount bonds which can be subscribed by members. At the time of redemption of the bonds the members can opt for conversion to equivalent area at a predecided rate which would be below the market rate.
5. Alternatively the society will need to engage a Financer who will fund the project and expect a sizeable return from the sale proceeds.

We have checked with Legal firm on the last option who have told us that this is possible and the agreement entered between TCHS and the financer would mention that the financer would be a contractor for the Rehab tower of the society and would be Developer for the Sale Tower thereby society will not come under the purview of RERA.



## **RELOCATION**

MPNV Architects during their presentation at the SGM had suggested partial relocation by demolition of limited structures and construction of Rehab tower before demolition of the other buildings.

Subsequently when the adjacent structure in Manaji Blocks were demolished the residents of the society realized that the noise and dust pollution was very high. Due to soil erosion the buildings next to the Manaji blocks property developed cracks and the Contractor who was constructing the structure had to do remedial measures.

MC members hence felt that it would be advisable that all the buildings are demolished and the construction work is carried out immediately. This will increase the project cost due to additional rentals to be paid to the members for the duration of Relocation.

## **CAPABILITY OF PMC TO UNDERTAKE EXECUTION THE PROJECT**

This would be the first project to be undertaken by M/s. MPNV Architects who were appointed by the General Body. The promoters of the firm are professionals who are accomplished Architects having designed good structures. However to assess their capability to undertake such a huge project few committee members visited their office and noticed that apart from the 2 promoters and another professional helping them in the finance they do not have a team to undertake and execute such a project. They have indicated that they will rope in Development Managers, Structural experts and companies who will execute the project and ensure timely completion. It is important that we do due diligence on these outsourced agencies to understand their past experience of delivering projects within timelines. This in the opinion of the MC is a big risk. If the GB opts to continue with MPNV Architects for the execution of the project we will need to have strong checks and balances to ensure success of the project.

The MC members also visited the office of M/s. Verite, the second option selected by the General Body. They have a huge office in Saki Naka with a full fledged team to manage all aspects of Redevelopment.

## **LEGAL ASPECT**

The managing committee members also met established Law firms to seek their views and commercials for their appointment as Legal advisors on behalf of the society. During the course of discussions we realized that since Self Redevelopment is a new concept introduced in 2019 most of the Law firms did not have experience in Self Redevelopment project. However they had experience in undertaking Redevelopment through Builders/Developers.

During meeting with the Law firms we were informed that each member is entitled to Fungible area of 35% over and above the eligible area and fungible area of a member cannot be sold or added to the fungible area of another member. Since our



Redevelopment is undertaken as Cluster Redevelopment each member will be entitled to a minimum area of 585 sq.ft. We have asked the PMC to revise their area calculations in the presentation considering this statutory requirement.

Since the Redevelopment will also involve KSA a separate MOU will have to be signed between TCHS and KSA for proposing the Redevelopment. The benefits from the Redevelopment will be shared between the 2 institutions in proportion of the land area of both the institutions.

The General Body of KSA has accorded approval for joining TCHS in the Redevelopment. Since KSA comes under the purview of Charity commissioner KSA will need permission of Charity commissioner to undertake Redevelopment. The Advocate handling Charity commissioner matters of KSA has advised KSA to apply once the contractor is appointed by TCHS.

All the Legal firms we had approached have informed us that pending disputes between family members pertaining to tenements in the society will have to be resolved by the concerned family members and the Redevelopment cannot be stalled due to such disputes.

The PMC has suggested that the project be undertaken by a LLP where TCHS, KSA and the PMC will form the LLP. However Legal firm has advised us against formation of LLP.

#### **TAX ASPECT**

There were tax aspects which also needed to be studied. Finance Bill 2023 had introduced an important aspect in respect of Joint Development agreements. In the case of Redevelopment through Developers, a Joint Development Agreement is executed and registered. If the possession of the new premises is not provided by the builder within a period of 3 years, as per Finance Bill 2023 with effect from 01 April 2024, the difference in value of the old premises and the new premises with increased area will be considered under Capital Gains and will be added to the Income of the member who will have to pay tax on this amount. When we spoke to tax expert we were informed that under Self Redevelopment model there is no Joint Development agreement which is executed hence this tax angle will not be applicable.

The tax on Corpus received by the society and the members also need to be studied.

Apart from Income tax the Indirect tax implications due to GST will also be applicable.

#### **INVOLVEMENT OF MEMBERS IN REDEVELOPMENT**

The most important aspect in the process of Redevelopment is the involvement of the members in the Redevelopment. Members on the managing committee are mostly employed and have to attend to their office work and have limited time at their disposal for society related work. Hence the number of active managing committee members are limited.



Moreover the MC members are professionals in their own field and have very limited knowledge in the subject of Redevelopment. Also for the PMC appointed by the General Body, this is their first project hence they do not have any experience in undertaking any Redevelopment project. They will have to outsource and engage services of established companies who have adequate experience of undertaking construction projects and delivering the projects within the timelines.

To undertake the Redevelopment project involvement of dedicated team of members is very important. These members need to monitor the progress of the project and take immediate remedial steps based on the guidance from experts in the field. Without a team in place undertaking Self Redevelopment project would be a difficult proposition.



The Managing Committee met few professionals after the SGM held on January 22, 2023 to understand redevelopment and resolve a few queries/doubts. Please find below, the opinions given by these experts.

### Opinions by Professionals/Experts

#### ➤ Vimal Jain (PMC and Consultant for Redevelopment)

- Model bye-laws should be adopted. Cannot continue with restricted membership
- Independent Law firm, Structural Consultant & Tax Consultant to be appointed.
- Phased manner development should be avoided.
- Risk for the MC or the members of the Society is almost the same in case of all options. (Self /DM or Builder). Even if builder/ developer is appointed the society/ managing committee will be considered as co-promoter and would be accountable.
- Looking at the benefits of Self-redevelopment, society should consider this option only if 100% members are in favour of Self-redevelopment and all the members have total trust in the Managing committee. Suggest that you go with a builder if this is not true. Most important point, please hire the best of the lawyers to safeguard the interest of the Society and Members.

#### ➤ Mulla & Mulla And Craigie Blunt & Caroe (Law Firm)

- Model bye-laws need not be adopted in full. We can continue with restricted membership based on Supreme Court judgement.
- Society would be fully responsible in case of self-redevelopment as they are the promoters. The risk of the Society is exponentially high as a promoter. Even in DM model, though you may have back to back agreement with the DM, the primary responsibility lies with the Society as they are still the promoters. RERA will hold the Society responsible and the members may have to make good for losses, if any.
- In case of builder led development, RERA would be after the builder as the builder is the promoter.

#### ➤ Harsh Parikh, Sr. Partner Khaitan & Co (Law Firm)

- Under the new Finance act there will be tax implications for the members. The additional area that the members would get in the new complex will be considered under Capital Gains and members will have to pay tax. This comes into effect for possession obtained after 01.04.2024.
- There is no way the MC members can pass on the responsibility to any DM or contractor under any option of Redevelopment. In other words the MC and Society cannot part with their responsibility.
- His advice is considering the size of project we should go for a listed company as Developer who are into different fields and not dependent entirely on Real estate business. He has suggested Mahindra, Godrej, JSW, Tata.



➤ **Jaykar & Associates (Law Firm)**

- They have undertaken Redevelopment of projects involving Developers.
- Society would be fully responsible in case of self-redevelopment as they are the promoters. RERA will hold the Society responsible and the members may have to make good for losses.

➤ **Law Point (Law Firm)**

Three models were discussed.

- Pure Self redevelopment where the Society is the developer and RERA will become applicable on the saleable component of the project. Society will have to raise funds as well to get the construction underway through mortgage of land or member's contribution.
- Self development through PMC and DM where the DM will arrange finance and manage the sale/marketing as well as construction. PMC shall play a supervisory role.
- Model proposed by MPNV which is a barter where we will lease a part of the land to financier/ developer for him to construct a sale tower and invest for construction of our building. We will stipulate that construction of sale tower will only commence once our building is ready with OC. As per Law Point this is possible to do and liability of the Society shall not extend to the sale structure so we will be ringfenced. Also a proper agreement can be entered into with a construction firm to ensure that Managing Committee's liability is ringfenced.

They also mentioned in case Developer model is opted the additional area and Corpus would be substantially reduced as compared to the other models.

As per the DCPR 2034 guidelines, there is no mandatory requirement on providing fixed amount of corpus to the tenants. As per the Government guidelines the Corpus to be provided to the tenants should be sufficient to take care of the Property tax that would be needed to be paid for 10 years.





The Sub committee for Redevelopment had submitted a detailed report which was circulated to the members before the SGM held on 22 January 2023. The pros and cons of different models of Redevelopment prepared by the Sub committee was circulated alongwith the report.

Though the members have selected Self Redevelopment model, there is a request from members of the society to again circulate the Pros and Cons of different models.

Hence we produce the salient points for the information of members.

### **IMPORTANT POINTS**

#### **BENEFITS- FOR SELF OR DM MODEL**

1. Extra Areas.
2. Better Corpus.
3. Areas at discounted price (Tax angle to be addressed).
4. Land still in our possession.
5. Planning can be done as per our needs and expectations.
6. Lesser stamp duty.

#### **RISKS/CHALLENGES - FOR SELF OR DM MODEL**

1. Too risky as this would be the first project with such a huge land parcel. First huge Self-redevelopment project for any PMC or DM to manage as no one has the experience of going through these challenges. The Managing Committee as well as members of the Society also don't have the expertise of experience of handling such projects.
2. Trusting two or more entities without we having experience in the field of construction (PMC / Vendors or builders appointed by them).
3. Commitment from MC for 4-7 years is the key for successfully managing the Self-redevelopment project. It is unfair to expect MC or any other member of the society to devote time for this project as they may have to give priority to their personal and professional commitments. Also, their role may not end even after completion of the project. They may still have to manage Tax authorities through professionals and incur additional costs in paying professional fees.
4. General body needs to believe and have 100% trust in the Managing Committee that would be managing the Self-redevelopment process.
5. Finance to be arranged through external sources which may lead to increase in cost.
6. Tax implications in case we sell extra area over and above the eligibility at discounted price.
7. Lack of decision making among members may lead to delay.
8. Internal squabbles amongst members may delay the project.
9. Selection of professionals is very tricky. The project may suffer if incompetent, inexperienced or unqualified professionals are selected.
10. Managing KSA & the Charitable trust.
11. Managing and convincing building no. 16 for extra area/corpus.
12. Profits or Corpus will be seen only at the end of the project which is unpredictable as the profits may reduce or turn into losses in case of (Refer points 5,6,7,8 and 9).
13. Professional Fee charged by the PMC /DM may eat up into our profits
14. Responsibility lies totally with the Society or Members of the Society as we are the developers.



**MITIGANTS**

1. Involvement of members in the project is a key element for the success. Each member will assume the role of the Developer. Hence more frequent General Body meetings to take decisions will be needed.
2. Instead of MC members or few members taking the decision we may opt to have monthly General Body meetings to review the status of the project and performance based on timelines set for the previous month and approve decisions for the subsequent month.
3. The financing model where the financier assumes the role of Contractor for Rehab project and Developer for the Sale component will provide alternative model of financing instead of the society taking a loan from financiers.
4. Self Redevelopment projects are provided with 10% additional FSI to incentivize Societies to opt for Self Redevelopment model. This will result in higher Corpus for the member and increased area.
5. Higher corpus amount if invested wisely can take care of the maintenance charges for the members for future years.
6. Members can buy additional flat or additional area at lesser rate than the market rate. Even considering tax component on account of buying the area at rate lesser than the market rate this would work out to be economical.
7. Quality of material used in the construction and ensuring quality of construction can be ascertained and within our control.
8. Since Development agreement is not executed in the case of Self Redevelopment the tax liability due to Capital gains in case possession is delayed beyond 3 years will not arise. This is important for all members since in case of delay beyond 3 years the difference in value of flat prior to Redevelopment (smaller flat) with indexation and after Redevelopment (larger flat) will be considered as a Capital Gain and added to the Income in the case of Developer model.



**BENEFITS- IF WE PLAN FOR BUIDER MODEL**

1. Selection of the "A" Grade builder with good Brand and Financials is extremely important for success of builder led development.
2. Tried and Tested Model so no experiments.
3. Rents/brokerage/extra areas/ Corpus would be decided and documented in the Development agreement as well as Individual agreements with the members, which will be registered and the builder will have very little chance of backing out on his proposal. The Corpus will be given in a phased manner and not at the end of the project.
4. Intention of good brands like Godrej, L&T, Mahindra, Rustomji, Runwal, Oberoi, Shapoorji is maintaining their brand and also providing good quality so the fear and chances of builder leaving the project is minimal.
5. Lesser tensions for the MC as well as the Members of the society once an "A" Grade builder is selected by the General body through the process of tendering as per the guidelines mentioned in 79A.
6. Selecting an "A" grade builder through a proper tendering process means following a completely transparent process that helps members to select the best builder based on the facts mentioned in the offer provided by the builder.
7. Builder with the help of his legal team would be in a better position to manage tenants of KSA / Building no 16.
8. Responsibility and liability of the MC and GB is comparatively lesser in case of builder led development.
9. If we select a builder and think of a worst-case scenario, where the builder decides to quit or leave the project, we can still go for self-redevelopment but once we decide to go for self-redevelopment and for some reason it doesn't work out as per our expectation then none of the builders would show interest in our project. Even if they show interest, they may give us a raw deal.

**RISKS/CHALLENGES - IF WE PLAN TO GO FOR BUIDER MODEL**

1. Builder may delay the project or leave the project half way leading to litigations where society may face problems.
2. It is expected that the Builder may not be in a position to give all the benefits that are available in Self/DM model.
3. Tax /GST is something which the members will have to bear. If we ask the builder to pay the Tax /GST on behalf of the members the benefits offered to members would reduce further.
4. Delay in giving possession beyond 3 years from the date of Development Agreement will result in Income tax liability for the members as the difference between value of old flat and new flat will be considered as Capital Gain and added to the individual income.
5. The builders will have a strong legal team and will engage the top law firms and will not shy away from fighting their cases right upto Supreme Court. Any litigations against the builders for failing in their terms of agreement will have to be fought by the society by using their own funds and may take several years.
6. Lack of control on the quality of material used since most of the top builders outsource the construction work to smaller companies.
7. Once the members vacate and the Developer is given control of the society, the society will loose control and will be at the mercy of the builder.



**MITIGANTS**

1. Initiate the tendering process which will help us in making a comparative analysis of both models (Self-redevelopment / Builder)
2. Important to draft water tight Tender document which includes reasonable wish list provided with the help of PMC and our Legal firm.
3. Development agreement (DA) to be drafted by the appointed legal firm safeguarding the interests of the Society. The DA should include the Tender document drafted by us with the help of PMC and the legal firm appointed by us.
4. Individual Agreements should be drafted by the Legal firm appointed by us.
5. Ensure that Rent cheques (PDC's) are provided in advance.
6. Ensure Developer is providing Bank Guarantee.



Date: June 14, 2023



To

Talmakiwadi

cooperative

housing

society

Subject- request for builder re development and having a complete redevelopment without phased redevelopment

1. In light of the recent damage sustained by buildings 8 and 4/6 and the unbearable noise pollution and air pollution due to the chikhalwadi manaji blocks redevelopment project, it has become clear that it's not possible to have phased redevelopment.
2. In addition, given that it's only wise to redevelop the whole of wadi together, we do not think it is prudent to undertake self development of a property of this magnitude as it requires huge pockets of funding which is impossible with self development. We believe cluster developments of the nature of Talmakiwadi can be successfully completed only by reputed third party builders having the experience of dealing with large properties.
3. In light of recent experience from the Chikhalwadi manaji blocks most residents would revisit the redevelopment issue by self development and like to recall the decision in favour of self development and phased construction.
4. We will require a trusted builder with a strong track record to take the project of Talmakiwadi on.
5. Further, once dattatray chaal work starts the same issue will be faced by zun chaal and other adjoining structures.
6. The information of the damage sustained by buildings 4/6 and 8 needs to be shared and informed to all residents as this will allow them to make an informed decision about the self development steps given that the risks involved in phased construction are now being faced by residents of 4/6 and 8 as they have first hand experience.
7. Any damage to lives or buildings from self development and phased development will bring fiduciary responsibility to the society and hence we request the same is reconsidered.

8. The residents whose signatures are affixed in the annexure would like to urgently request for (a) a meeting to discuss the issue, (b) to discuss a builder redevelopment in a non phased manner fronted by a reputed third party builder to be adopted.

Please treat the above as urgent.

Qudiyana (8/3 - Gaurita Udiyana)

Ansh (15/2 Sneha Shah)

Kaldipur (17/19, 20, 21 Kanchan Haldipur)

M.A. Baindas (8/2 Mamata Baindas)

Smriti° Khanapurkar (consented by email)  
8/1

Santosh Birur (consented by email)  
8/15

Hemant Marinkurre (consented by email)  
8/19

(see next page  
for more  
signatures)

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Please treat the above as urgent.

Subhash Yederi

Syeder

14th June 2023

Dr. GAYATRI SZROA

G.S. 4/6-18  
14/06/23

ASNagermath

4-6/10 14.06.2023

Kripa-Nagarkar

K.Nagarkar

4-6/16, 14-06-2023.

Meenakshi Kumble

M.Kumble

1A-11 14-06-2023

4/6/11

K.mayeshwar