

## **Marketable title to the flat and Membership of a Co-operative Housing Society.**

Under the general law the property is transferred as per the Transfer of Property Act, 1882 and in case of death of owner the property goes to legal heirs of the deceased owner. When an owner of the property dies intestate i.e. without making WILL the property goes to the legal heirs of such deceased owner. In case where the owner dies leaving behind a WILL his property goes as per the WILL.

### **1. Title under Transfer of Property Act:**

As per the general law of Transfer of Property Act, 1882 a person may acquire immovable property by sale, gift, mortgage, lease or exchange. Such documents of acquisition must be registered under the Registration Act, 1908. There has to be conveyance of the property after fulfillment of terms and conditions of the agreements for Sale.

However, in case of agreement for sale the purchaser is entitled to the specific performance of the contract when he is ready to comply with his obligation under the contract. The Agreement for sale in itself does not give any right over the property and therefore to be entitled to become member of a Co-operative Housing Society it is necessary that the transaction is completed as per the agreement. Necessary proof of completion of transaction need to be given to the society at the time of applying for membership and transfer of Shares.

It is observed that in many cases, the application for membership of society is made even before the transaction is completed in terms of the agreement for sale. A person is not entitled to be member and transfer of share on the basis of agreement when the ultimate sale is not complete.

### **2. Ownership of property in case of death of an owner.**

There are two ways for ownership of property on demise of an owner. Those are namely;

- a. When the owner dies intestate and
- b. When the owner dies leaving behind a WILL.

In case of intestate death of an owner of property, the legal heirs of the deceased owners get vested in them the right over the property as per their personal laws.

In case of death of an owner, leaving behind a WILL the property will devolve on the legatees as per the WILL.

However, the membership of a Co-operative Housing Society is concerned; it is governed by the provisions of Maharashtra Co-operative Societies Act, 1960 (Act) and Maharashtra Co-operative Societies Rules, 1961 (Rules). Byelaws of a Co-operative Housing Society provide the procedure. However, such procedure must be in keeping with the provisions of Act and the Rules. It may be possible that a Co-operative Housing Society may admit a nominee or the legal heir/s as member/s and may transfer the share of the deceased member. However; in case of WILL the society may not take cognizance and will rely on the procedure as per no. 35.