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Strata Transaction Guidelines 2018

National Land Commission Secretariat

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1. Introduction

Bhutan is experiencing an unprecedented socio-economic development over the recent decades and it will continue to progress further for all times to come. The rapid pace of socio-economic growth along with the demographic dynamics exert immense pressure on the housing sector. This is also due to an escalation of land price corresponding to ever increasing demand and aspiration to own houses.

Given this context, it has now become necessary for people to build houses for their livelihood and welfare. While some build houses for their own purpose and many build for business purposes including real estate based on the market scenario. Consequently, selling and buying of houses and flats both in urban and rural areas are on the rise ever since with the onset of an online transaction system. For instance, there was 77 strata transactions undertaken in 2017 and the number has increased to 114 in 2018. This increasing trend of flat transactions being undertaken in absence of the required legal frameworks and scientific guidelines, entailing both foreseen and unforeseen legal complications and consequences. With series of consultation amongst the relevant stakeholders, it was critically felt necessary to streamline all kind of strata transactions which are currently practiced in dubious and haphazard ways.

Moreover, the e-Citizen portal for urban land transaction has been developed and made functional throughout the country, enabling online land, flat and building transactions. However, it has not devised and determined any arithmetic and guiding framework to determine the Proportionate Land Right (PLR) for the flat sellers, buyers and owners.

Therefore, considering the current scenario and in view of the limited or absence of provisions pertaining to strata ownership, administration, management and conveyances in the Land Act 2007, Land Rules and Regulations 2009, Bhutan Building Rules 2002 and other related legal frameworks and policies, the Strata Transaction Guidelines (STG) has been formulated. The formulation is in pursuant to Section 10 (h) of the Land Act 2007.

The STG was initiated by a Technical Working Group (TWG) at National Land Commission Secretariat and representatives from four Class A Thromdes and other key stakeholders. The exercises was carried out and finalized under close guidance and direction of the Secretariat's Policy, Planning and Performance Committee (PPPC). The STG broadly consists of critical components such as strata ownership and rights with empirically derived PLR formula, land right determination, procedures for flat transaction, processing and securing Lag Thram for flat ownership, prohibition on strata transaction, property tax, fees and dispute resolution.

2. Rationale

2.1. Non-existence of legal and scientific guidelines for strata transactions;

2.2. Lack of clarity on rights, responsibilities and restrictions of flat sellers, buyers, owners and the regulating authorities; and

2.3. Absence or limited legal and scientific formulae to determine PLR for flat sellers, buyers, owners and accompanying parties results in many legal predicaments, property taxations and other related complications.

3. Objective

The Guideline is formulated with the following objectives:

3.1. To better facilitate, administer and manage selling, buying and ownership transfer of flat and building with legal and scientific guideline;

3.2. To determine PLR by devising arithmetic formulae for flat and building sellers, buyers owners;

3.3. To define and ensure common property right within and outside a building; and

3.4. To determine land tax payment proportionate to land right.

4. Guiding Principles

4.1. Right to own property as per the Article 7 (Section 9) of the Constitution of the Kingdom of Bhutan;

4.2. Equal access and right to own common property;

4.3. Responsible for national property taxation; and

4.4. Just, harmonious and vibrant society.

5. Strata Ownership and Rights

5.1. A registered owner shall have absolute ownership of a flat and shall jointly own land with PLR in accordance with Section 6.1 of this guideline.

5.2. An absolute ownership of flat shall be bounded by ceiling, floor and exterior wall of flat including balcony, if any.

5.3. A flat ownership may be registered in the name of a juristic person as defined under section 58 and 59 of the Land Act 2007.

5.4. If an owner so desires, a flat within a building may be owned under joint ownership by two or more individuals.

5.5. In accordance with Section 64 and 66 of the Land Act 2007, a person may own more than one flat so long as the total land holding within a unique household does not exceed land ceiling.

5.6. A person may opt to have separate Lag Thrams for different flats in a building;

5.7. In accordance with Section 6.1 of this guideline, a flat owner shall have PLR over a plot on which the flat is constructed.

5.8. An original owner shall relinquish ownership of land, if all flats within the approved limit of a building, constructed on the minimum plot size or less than two minimum plots size are transacted and no other permanent structures are available for ownership right. However, this section shall not be applicable to an incomplete structure as per the approval of a building, and to the Real Estates having other common property structure.

5.9. Thromdes and Dzongkhags shall develop and maintain a database on building and flat information conforming to a standard format as adopted by the Ministry of Works and Human Settlement in order to facilitate strata ownership, management and transaction. Every transacted flat shall be assigned with a specific number as per the numbering system adopted by a Local Authority.

5.10. The minimum flat size permissible for transaction shall be based on building classification adopted by a concerned authority.

5.11. Strata transactions for a traditional Bhutanese house with defined flats shall be allowed. However, structures where it is technically unfeasible to define independent flats, they shall be either transacted as a floor or maintained under joint ownership.

5.12. A flat owner shall have the right to transact, mortgage, lease or authorize other people to use flat as collateral for a mortgage without the consent of other co-owners.

5.13. The right of ownership and enjoyment over common property shall be as decided by the Strata Management Committee if it exists. Otherwise, it may be regulated based on written consensus among the flat owners.

5.14. Upon demise of a flat owner, the flat shall be transacted in favour of a legal heir as per Section 44 of the Land Act of Bhutan 2007.

5.15. Attics regularized as an independent flat shall enjoy all rights and responsibilities as any other flats.

5.16. Jamthos shall not be considered as an independent flat but may be considered as part of a flat and transacted along.

5.17. Basement used as Car Parking space shall be considered as a common property and no land rights shall be assigned to any individual flat owner. However, parking space allotted to individual flats may be considered as part of a flat and the use right of the parking space may be transacted along.

5.18. Basement regularized by Thromde as store, residential etc. is considered as a legal entity and shall be considered as a flat for transfer in accordance with Section 5.7 and 5.12 of this guideline.

6. Land Right Determination

6.1. If a building is occupying the minimum plot size without scope for subdivision or additional structure as per the Development Control Regulations, land right for individual flats shall be calculated based on the plot area.

For a building having identical and non-identical flats, in terms of building classification, Proportional Land Rights (PLR) shall be calculated as follows:

PLR calculation formula for a building having identical flats

$$PLR_x = \left(\frac{1}{n_f}\right) \times A_p$$

Where,

PLR_x = Proportional land right of flat no. x

n_f = Total number of flats in the building

A_p = Area of the plot (Net area in case of land pooled plot)

PLR calculation formula for a building having non-identical flats

$$PLR_{of\ any\ one\ flat} = \frac{A_{cpo} + A_{cpi}}{n_f} + \frac{A_f}{n_{vf}}$$

Where,

A_{cpo} = Area of Common Property area outside the building

= Plot size – Plinth area

A_{cpi} = Area of Common Property area inside the building.

n_f = Total no. of flats in the building

A_f = Area of the flat or area occupied by a flat

n_{vf} = No. of flat vertically above or below of that flat, including itself

***Refer annexure V for example

6.2. If the net area can be fragmented, first the plot shall be sub-divided to create a separate plot for the portion containing the structure and land right shall be calculated as in Section 6.1 of this guideline.

6.3. If the net area can be fragmented into two standard plots but cannot be sub-divided due to the location of the structure, the whole area should be considered as a single plot and land right shall be calculated as in Section 6.1 of this guideline.

6.4. If the structures like bungalow or duplex exist, regularised by Local authority, in a plot then the land right shall be calculated considering it as building or flat depending on the storey of the building and size of the flat.

6.5. The minimum plot size shall depend upon Planning and Development Regulation of concerned Local Authority.

6.6. In terms of Real Estate, the plots may be sub-divided wherever possible before calculation of land rights. The PLR shall be calculated in accordance with Sections 6.1 to 6.4 of this guideline.

6.7. If the formulae from Sections 6.1 to 6.6 do not fit certain situations due to the design of a building, the Local Authority shall compute the PLR as per the design.

6.8. The property mentioned in the internal agreement and declared as common property in the Strata transaction form shall be registered under joint ownership amongst all the flat owners.

6.9. The real estate company may retain the common property such as convenience and recreational structures in the name of the company. However, the real estate shall not develop and disrupt the use of common property without the consensus of all the flat owners.

6.10. Land rights for all flats transacted before 2018 shall be redefined as per this guideline wherever possible otherwise status quo shall be maintained.

6.11. Horizontal and vertical extensions agreed upon by all the flat owners and approved by Local Authority that qualify as independent flats shall be assigned PLR. The land right of other flats existing on the same plot may be re-determined and the agreements executed amongst the flat owners may be revised accordingly.

7. Procedures for Flat Transaction

7.1. The parties entering into flat transaction shall follow the prevailing transaction procedures.

7.2. The agreement shall contain details as specified in Annexure I.

7.3. If the flat is owned under family or joint ownership, the No Objection Certificate shall be obtained to transact the flat from family members and co-owners respectively.

7.4. The parties shall execute agreement that shall bear legal notability and de jure on both the parties.

7.5. The Local Authority shall verify the land and flat records involved in transaction and authenticate the internal agreement and other relevant documents.

7.6. If the internal agreement drawn between the parties does not contain the requirements specified in Annexure I, it shall be deemed to be incomplete and the parties shall be informed accordingly.

7.7. If the proposed transaction fulfils the requirements as specified in Annexure I, the dealing official shall accept and register the transaction.

7.8. In accordance with Section 161 of the Land Act of Bhutan 2007, the Local Authority shall post a notice of the transaction for public viewing for a period of 30 days. However, the cooling period is not applicable for building/flat transactions directed through court verdict or enforcement order.

7.9. In the event of any objection to the transaction within 30 days of public notice, the Local Authority shall evaluate the nature of objection. In accordance with Section 162 of the Land Act of Bhutan 2007, if the objection is deemed legitimate, the Local Authority shall return the transaction documents to the parties within 15 working days.

7.10. If there is no objection, the Local Authority shall verify and validate the transaction and submit to the Secretariat for further processing.

7.11. Upon receipt of the transaction documents, the Secretariat shall complete the registration of the flat within 30 working days and send the updated Lag Thram and Chhazhag Sathram to the Local Authority for updating record and issuance of Lag Thram.

7.12. The Local Authority shall notify the landowners on completion of the transaction.

8. Lag Thram and Chhazhag Sathram for Flat Ownership

8.1. A Lag Thram shall be issued to the flat owners in the format as prescribed under Annexure IV & VI, which may be revised by the NLCS from time to time.

8.2. The co-owner's name shall not be reflected in the Lag Thram. However, any individual flat owner shall have the right to information on the names of co-owners from the Secretariat or concerned Local Authority.

8.3. The Chhazhag Sathram shall contain:

 I. Name of the co-owners

 II. Citizenship Identity Card number of the co-owners and

 III. Flat details along with their land rights as indicated in Annexure III & V.

9. Prohibition on Strata Transaction

9.1. In accordance to Section 83 of the Land Act of Bhutan 2007, a flat transaction in the name of minor shall be prohibited. However, subject to Section 84 of the Land Act, a flat may be registered in the name of the minor.

9.2. In accordance with Section 85 of the Land Act of Bhutan 2007, no transaction and mortgaging of flat registered in the name of minor shall be allowed.

9.3. The flats of a building constructed on Kasho land shall not be permissible for sale within 10 years from the date of Kasho.

9.4. If a flat is mortgaged, it shall not be transacted in the absence of clearance from concerned financial institutes.

9.5. If a flat or the plot on which a flat rests is restricted by competent authority, it shall not be transacted until the restriction is lifted.

10. Property Tax and Fees

10.1. Flats are liable for land tax based on their PLR. Land and sales tax for flats shall be based on prevailing taxation policy.

10.2. The valuation of a flat for the purpose of transfer tax shall include the value of a flat and proportionate land value.

10.3. Taxes for the common property shall be borne by all the flat owners proportionate to their PLR while taxes for the proportionate land owned by flat owners shall be levied on the concerned individual.

10.4. The 5% property transfer tax shall be in accordance with the Taxation Policy 1992 or any amendments thereof from the competent authority. Any appeal should be made to the concerned Local Authority or Ministry of Finance.

10.5. The transaction fees shall be levied as follows and subject to revision:

 10.5.1. Dzongkhag Thromdes of Thimphu, Chukha, Sarpang and Samdrupjongkhar: Nu. 1000

 10.5.2. Other Dzongkhag &Yenlag Thromdes: Nu. 700

 10.5.3. Rural: Nu. 400

10.6. Lag Thram fees shall be paid at the rate approved by the Commission. The fees shall be paid to the Local Authority upon receipt of the Lag Thram.

10.7. Property transfer tax shall be levied on the declared value or PAVA value, whichever is higher.

10.8. Valuation of building and flat for the purpose of taxation shall be as per the

standard valuation method prescribed by the competent authority.

11. Disputes Resolution

11.1. Any dispute arising between the flat owners or any other entity shall be referred to Strata Management Committee, if exists, for amicable settlement. If the dispute cannot be resolved through amicable settlement, it shall be referred to the Dispute Settlement Committee instituted in Local Authority. Any party that is not satisfied with the decision of the Dispute Settlement Committee at the Local Authority may appeal to the National Land Commission Secretariat. The decision of the Dispute Settlement Committee at the National Land Commission Secretariat may be appealed to the court of competent jurisdiction within 30 days from the date of delivery of the decision.

11.2. NLCS or Local Authority shall only entertain disputes other than inheritance and sale-purchase which may be appealed to the court.

12. Definition

12.1. In this guideline, unless the context requires otherwise, the term:

a) **Attic:** shall mean the space within the confines of the roof structure, above the ceiling of the top floor.

b) **Basement:** shall mean the floor below the ground level.

c) **Building:** Composition of flats including common property within a structure.

d) **Common Property:** The space and infrastructures both inside and outside the building used by all flat owners, which do not have the exclusive right of individual flat owners.

I. **Common property inside:** Stairs, corridors etc

II. **Common property outside:** Setback, parking etc

e) **Co-owner:** The other flat owners within the same building.

f) **Family flat ownership:** Flat belonging to family members registered in the name of any family member registered under same unique household number.

g) **Flat:** An independent self-contained housing unit that occupies a space within a building generally measured from exterior wall.

h) **Floor/ storey:** all the rooms set in the horizontal level of the building. The term floor/ storey is used to define the level of the flat.

i) **He/His:** In this guideline shall refer to both the gender.

j) **Individual flat ownership**: Flat registered in the name of an individual person.

k) **Jamtho:** Shall mean the part of the building which extends above the ridge of the main building roof.

l) **Joint flat ownership:** Collective ownership over the flat by more than one person and does not include family flat.

m) **Land:** means the soil including building or other structure erected on the land, and all vegetation, but does not include any minerals underneath.

n) **Net Area:** The area after land pooling.

o) **Plinth Area:** The area of the building or structure, measured from the façade at ground level.

p) **Set back:** Shall mean the distance measured between the outermost wall of the building and the parcel boundary.

q) **Strata:** Refers to the landed property being on different floors of the building/structure.

r) **Strata Management Committee:** The committee comprising of all

flat owners or committee elected through by laws by the flat owners for administration and management of the building.

s) **Temporary structure:** Any structure that is not attached to a permanent foundation and can be easily dismantled.

t) **Traditional Bhutanese House:** A structure generally constructed using indigenous materials and incorporating Traditional Bhutanese architectural designs.

u) **Transaction:** The term transaction here is generally used for transacting flats. It indicates the change of title of ownership through sale or purchase, inheritance, change of ownership type, exchange, gift/donation and court verdicts, etc.

ANNEXURE I

CHECKLIST FOR FLAT TRANSACTION

Sl.	Documents required	Details / Remarks
1	Sale deed	Transferor and Transferee's name and CID no.
		Transferor and Transferee's witness name and CID no.
		Thram number and plot no.
		Building number and flat no.
		Total number of flats in the building
		Nature of Transaction
		Sale value of the transacting flat(s)
		Specific common property allocated to transferee
		Common Property Declaration Form (Other available common properties in the plot)
2	Family Tree of transferor	Only for family ownership type
3	No Objection Certificate from family members of transferor	Only for family ownership type
4	No Objection Certificate from co-owners	Only for joint ownership of flat
5	Death Certificate	In case of deceased Thram holder
6	Recommendation of a guardian for minor	Recommendation from Local Authority
7	Mortgage Declaration Form	
8	Clearance from financial institutions (If the property is mortgaged)	
9	List of Strata management committee members (if any)	As on date of agreement
10	Valid Occupancy Certificate	
11	Original Lag Thram	
12	Architectural Drawing of the structure or Photograph or the Sketch of the flat	
13	Other relevant documents if any	To be validated by Thromde

ANNEXURE II

Date:................

COMMON PROPERTY DECLARATION FORM

The common property comprises of but not limited to:

Property	Yes	No
Roof		
Staircase		
Corridor		
Boundary wall		
Security gate		
Parking		
Terrace		
Columns, Beams and Supports		
Easement in general		
Pipe line		
Cable wire		
Duct or drain		
Fire hazard preventive system		
Air ventilation		
Air-conditioning		
Waste water treatment or refuse and waste disposal		
Office of the condominium juristic person		
Others (specify below in note)		

Note:………………………………………………………………………
………………..………..…………….....………….....………...............................

Signature of the transferor　　**Signature of the transferee**
Name:　　　　　　　　　　　　　Name:
CID No.:　　　　　　　　　　　　CID No.:

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ANNEXURE III

Sample for Chhazhag Sathram

Chhazhag Sathram

Plot Details

Thromde	Location/ Urban Village	Precinct/ Land use	Tram no	Plot No.	Gross area (sq.ft)	Land pooling (%)	Net area(sq.ft)	Kasho area and date

Flat Ownership Details

Name of the owner	CID No.	Building No.	Flat No.	Flat ownership type	Class of unit	Land Right (Sq.ft)	Permanent address (Dzongkhag, Gewog, Thram no, House no and Unique household no)	Remarks

Secretary:

Date:

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ANNEXURE IV

Sample for Lag Thram

Lag Thram

Land owner Detail	Permanent address	Image
Name: CID no: Thram no: Flat Ownership Type :	Dzongkhag: Gewog/Thromde: Thram no: House no: Unique Household no:	

Flat Ownership Details

Urban Village/ Location	Precinct/ Land use	Plot details		Structure details			Kasho Area and Date	Remarks
		Plot No.	Plot area(Sq.ft)	Land Right (Sq.ft.)	Building No.	Flat No.	Class of unit	

Dealing Official:

Date:

Issuing Authority:

Date:

ANNEXURE V

Example 1: Consider a building with 2 floor and 4 flats.

$$PLR = \frac{A_{cpo}+A_{cpi}}{n_f} + \frac{A_f}{n_{vf}}$$

Consider Area of the plot $=15000$ Sqft

$A_{cpo} = 15000 - 6000 = 9000\ Sqft$

$A_{cpo} = 9000\ Sqft$

$A_{cpi} = 300\ Sqft$

$Therefore\ \frac{A_{cpo}+A_{cpi}}{n_f} = \frac{9000+300}{4} = 2325\ Sqft$

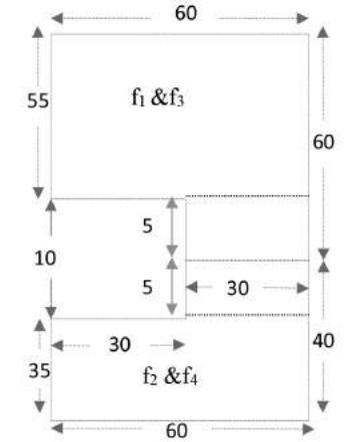$PLR_{f1} = 2325 + \frac{3450}{2} = 4050\ Sqft$

Similarly,

$PLR_{f3} = 4050\ Sqft$

$PLR_{f2} = 2325 + \frac{2250}{2} = 3450\ Sqft$

Similarly,

$PLR_{f4} = 3450\ Sqft$

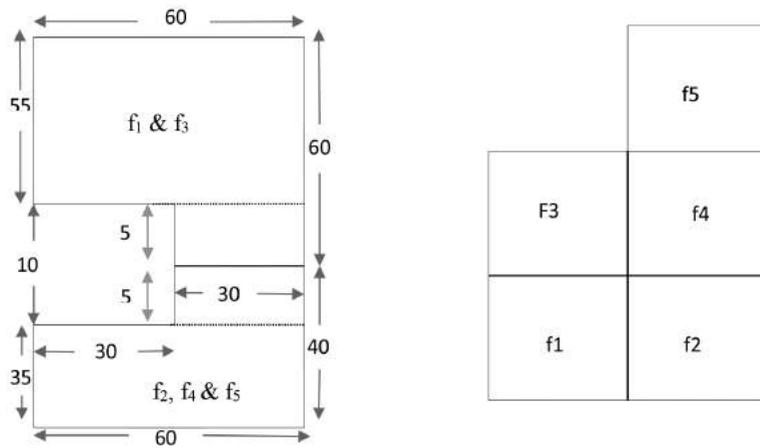$PLR_{f1+f2+f3+f4} = 4050 + 4050 + 3450 + 3450 = 15000\ Sqft$

Area of

$f_1 = (55 * 60) + 5 * 30 = 3450 sqft$

Similarly, f_3=3450sqft

$f_2 = (35 * 60) + 5 * 30 = 2250 sqft$

Similarly, f_4=2250sqft

Example 2: Consider a building with 2 floor and 5 flats.
(Two unit one side and 3 unit other side)

Formula: $\boxed{PLR = \frac{A_{cpo}+A_{cpi}}{n_f} + \frac{A_f}{n_{vf}}}$

<u>For flat 1</u>

$$PLR_{f_1} = \frac{(15000-6000)+300}{5} + \frac{3450}{2} = 3585 \; Sqft$$

Similarly,

$$PLR_{f_3} = 3585 \; Sqft$$

<u>For flat 2</u>

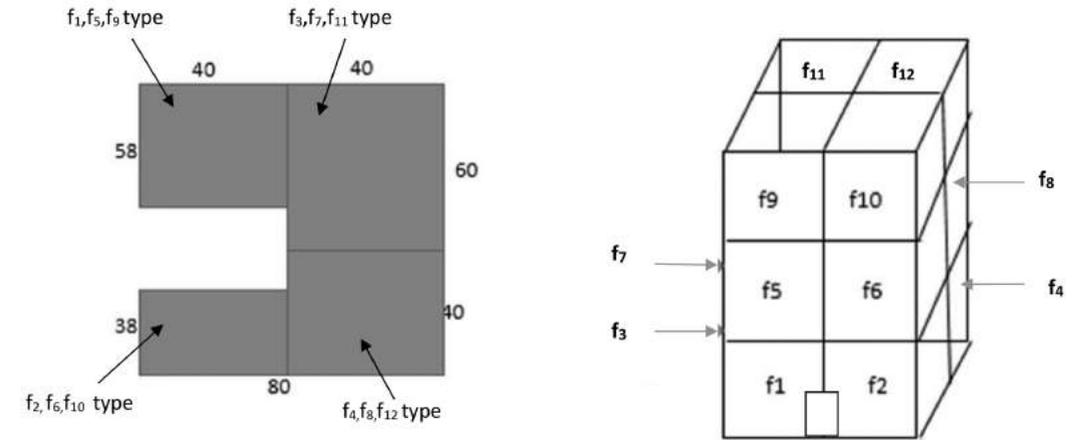$$PLR_{f_2} = \frac{(15000-6000)+300}{5} + \frac{2250}{3} = 2610 \; Sqft$$

Similarly,

$$PLR_{f_4} = 2610 \; Sqft$$

$$PLR_{f_5} = 2610 \; Sqft$$

Therefore,

$$PLR_{f_1+f_2+f_3+f_4+f_5} = 3585 + 3585 + 2610 + 2610 + 2610 = 15000 \; Sqft$$

Example 3: Consider 3 storied building of 4 flats in each floor

Formula, $PLR = \frac{A_{cpo}+A_{cpi}}{n_f} + \frac{A_f}{n_{vf}}$

Lets consider,

Plot size=15000 Sqft

A_{cpo}=15000-8000 =7000 Sqft

A_{cpi}=4*40=160 Sqft

n_f (no. of flats)=12

n_{vf} (no. of flats in same verticle line) = 3

$$PLR_{f1} = \frac{7000+160}{12} + \frac{2320}{3} = 1369.999 \; Sqft$$

Similarly, $PLR_{f5} = 1369.999$ Sqft

$PLR_{f9} = 1369.999$ Sqft

$$PLR_{f2} = \frac{7000+160}{12} + \frac{1520}{3} = 1103.333 \; Sqft$$

Similarly, $PLR_{f6} = PLR_{f10} = 1103.333$ Sqft

Area of flat for f_1=58*40=2320 Sqft

Similarly,f_5= 2320 Sqft & f_9=2320 Sqft

Area of flat f_2=38*40=1520 Sqft

Similarly,f_6=1520 Sqft & f_{10}=1520 Sqft

Area of flat f_3=60*40=2400 Sqft

Similarly, f_7=2400 Sqft & f_{11}=2400 Sqft

Area of flat f_4=40*40=1600 Sqft

Similarly,f_8=1600 Sqft & f_{12}=1600 Sqft

$$PLR_{f3} = \frac{7000 + 160}{12} + \frac{2400}{3} = 1396.666 \ Sqft$$

$Similarly, PLR_{f7} = PLR_{f11} = 1396.666 \ Sqft$

$$PLR_{f4} = \frac{7000 + 160}{12} + \frac{1600}{3} = 1129.999 \ Sqft$$

$Similarly, PLR_{f8} = PLR_{12} = 1129.999 \ Sqft$

Total PLR of $(f_1+f_2+...+f_{12})$ =3(1369.999) + 3(1103.333) + 3(1396.666) + 3(1129.999)

=14999.999sqft ≈15000 Sqft