

Easement: A legal right to enjoy property

This right which is recognised by law and is defined under the Indian Easement Act, 1882, confers limited restrictive rights to property owners

Sunil Tyagi
htestates@hindustantimes.com

htestates LEGAL REMEDIES

An owner of immovable property is entitled to enjoy the benefits and rights arising out of his property. Moreover, he/she can enjoy a few privileges from adjoining land and property if his/her own property is lacking in some fundamental ways. This right is known as right of easement. For example, A owns a certain house which is surrounded by B's land who is incidentally A's neighbour. A being the owner of the house adjacent to B's land has right of way over B's land to and from his house for the beneficial enjoyment of his house.

Such right is also recognised by law and is defined under the Indian Easement Act, 1882 ("Act"). The right of easement does not entitle the owner/user with the possession and title over the other's property but only confers limited/restrictive right such as right of way/passage, access, light, air, support etc.

The easement arising out of want of basic amenities or fundamentally required for

enjoyment of a property such as need for passage, electricity, air, water is essentially recognised as easement arising out of necessity. While easementary rights recognised may vary from jurisdiction to jurisdiction, the fundamental form of easementary rights recognised across the world and which are enforceable are mostly easements of necessity. Indian courts have also routinely upheld the property owners right to easement out of necessity.

Recently in Sri Sailendra Nath Pal & Another vs Neelachal Housing Co-Operative & Ors., the Honourable High Court of Calcutta upheld the right of easement of necessity. In the said case, the house of the appellants was surrounded by the land owned by Neelachal Housing Cooperative Society (Society). The appellants had filed an application before the competent authority for get-

ting an electric connection to their premises. The society however raised objections for laying down cables underneath its land for supply of electricity to the house of the appellants. The society further contended that the land surrounding the land of the appellants belongs to the society and the appellants have no right to use any portion of the aforementioned land without the society's consent. This reservation is applicable even for the purpose of getting an electric connection.

The High Court considered the fact that the premises of the appellants is surrounded by the land of the society from all sides and the appellants have the right to enjoy the electricity in their premises for effective use and enjoyment of the said premises. The Court observed that in order to get electricity to the premises, the appellants were in dire need of taking cables underneath or over surrounding land of the society. Therefore, such a right of taking cables underneath or over surrounding land is a right of easement of necessity. The premises of the appellants can-

not be effectively/beneficially used without such right of easement. The right of easement being a legal right, the society cannot interfere with it and raise any objections regarding the same. The High Court therefore allowed the laying of the electric cables underneath the land owned by the society for supply of electricity to the appellants considering it a right of easement of necessity.



Home owners often need 'limited' rights over other properties to fully enjoy their own properties

Every owner is entitled to enjoy his right to easement without any disturbance from any person. The Act provides that the court of law may also grant injunction restraining the

disturbance of the easement. In case the hindrance or disturbance has caused substantial damage to the owner/plaintiff, the owner having easementary right can also sue such a person for compensation. For example A, as the owner of a house has a right of way over B's land. C unlawfully enters on B's land and obstructs A in his right of way. A may sue C for compensation for the obstruction. In another case, if B obstructs A in his way, A can enforce its easementary right against B as well.

In modern and developed cities having well conceptualised master plans and colonies and requiring prior approved building plans the relevance of easementary rights by customs, prescription/usage are diminishing. However, easementary rights still continue to be recognised and property owners should be aware of these entitlements as they are fundamental to enjoying their properties.

The author is a senior partner at Zeus Law, a corporate commercial law firm. One of its areas of specialisations is real estate transactional and litigation work. If you have any queries, email us at ht@zeus.firm.in and htestates@hindustantimes.com



LAW BOOK
Sunil Tyagi

I am renting out my apartment located in Delhi. The proposed lease period is 11 months. What is the stamp duty that I have to pay on lease deed and when do I have to make the payment?

—Simanta Kakati
As per the Schedule of Indian Stamp Act as applicable in Delhi, the amount of stamp duty required to be paid is to be calculated at 2% of the lease amount payable for the lease period. As per the provisions of Indian Stamp Act, stamp duty should be paid either prior to or at the time of execution of the lease deed.

I own an apartment in a residential project of Gurgaon. I recently came to know that the builder is planning to build additional floors/towers in the same project. Can he do so?

—Nishant Chopra
As per the Haryana Apartment Ownership Act, 1983 and rules framed thereunder, the percentage of the undivided interest of each apartment owner in the common areas and facilities in a project as expressed in the declaration has a permanent character and cannot be altered without the consent of all existing apartment owners then the consent is required and declaration

has to be amended and expressed in the amended declaration which is to be duly executed and registered as per the Act. So, if the additional development/construction affects/changes the percentage of undivided interest as mentioned in the declaration.

I am the secretary of an apartment owners association in Faridabad. The elevators installed in apartment buildings are very old. Are there any compliances required to be made?

—Rajat Gupta
According to the Haryana Lifts and Escalators Act, 2008 and rules framed thereunder, a life span of a lift/elevator is 20 years. The elevator/lift has to be replaced after a period of 20 years of its installation. Such replacement should be completed within the 21st-year and you must apply for fresh registration as per the Act and rules.

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htestates CHEQUE BOOK Harsh Roongta

I understand that under the SBI Yuva Home Loan Scheme, only the interest applicable on home loan is payable during the first 36 months. The regular EMIs start after completion of 36 months. My flat is getting registered next month and I do not want to pay only interest for three years. Is there any clause in this scheme that if a flat is getting registered immediately then one can pay regular EMI from the very first month the loan is released?

—Subhash Mandal
The SBI Yuva Home Loan scheme is a step up loan provided by SBI to a loan

consumer, based on the assumption that his salary will increase by a certain percentage annually. Under a step-up loan, the loan amount eligibility may be higher than a normal home loan owing to the potential of salary increase. The loan eligibility for this loan is calculated basis the projected/expected increase in income in subsequent years, rather than on the existing salary. This scheme has been designed to give you a higher loan eligibility. The

initial outgo is lower (for three years) as this does not include any principal repayment. You can also prepay for which there will be no charges. If the loan amount eligibility is not a constraint you can always go for a regular home loan and start paying EMIs. The interest rate is the same for regular SBI home loan and this scheme.

I am working in an MNC. As part of my CTC the company provides a facility of interest payment (partial) on bank loans. I have a few queries:
■ Do banks provide loans for plot purchase also?
■ If yes, will this be also covered under home loan?
■ Will this loan have the same rebate as applicable in income tax under the home loan category?

—Shagun Gupta
Lenders are more selective while providing plot loans than home loans. These loans are available for a lower tenure as compared to a home loan and are sometimes more expensive (up to 2% higher) than normal home loans. The plot loans are generally available only when the plot is purchased from statutory authorities or from developers who are pre-approved by the lender. Even the down payment requirement is normally higher at around 30-40% for such loans.

If you are planning to construct a house on that plot of land, you should take a composite loan from any bank to cover the cost of the plot as well as the construction, but

you will have to commence the construction within a reasonable period between one to two years from the date of purchase of the plot.

Taking a composite loan brings more benefits in terms of financing and tax benefits. The loan financing in case of a composite loan goes up to 80-90% of the property value as compared to the plot loan's 60-65%. Moreover, you can avail of tax benefits under Section 80C for the principle repayment and Section 24 for the interest paid on the composite housing loan including the cost of the plot from the year in which the construction is completed. Pure plot loans do not qualify for tax benefits.

I am a retired person and own a property worth ₹2 crore. I now want to avail a loan against this property. My pension is ₹20,000 and monthly incentives via a contractual job is ₹60,000. What is the maximum amount I can get as a loan?

—Badshah Mamgain
The maximum age for any loan is restricted to 60 years for a salaried person and 65 years for a self-employed professional. As a retired person, you can get a home loan only if you can establish consistency of your contractual income as the amount needs to be paid of while you are in active service.

Harsh Roongta is director, Apna Paisa. He can be reached at ceo@apnapaisa.com



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Deconstructing the regulatory bill

changes easily," says Devender Kumar of NEFOMA (Noida Extension Flat Owners and Members Association).

3 States have to set up regulatory bodies within one year of the bill's enactment and, after another year, set up a web-based online registration facility.

4 The penalty: Failure to register a project will cause the developer to attract a penalty of 10% of the overall project cost, and an additional penalty of 10% and/or a three-year prison term in case of continued non-compliance. Incorrect or incomplete disclosures will attract a penalty of 5% of the project cost. Project cancellation has been stated as possibility in case of continued non-compliance.

5 The earlier bill had mandated that a developer put 70% of the buyer's investment into an escrow account that would be used only for the construction of that project, which has been brought down to 50%. According to Anuj Puri, chairman & country head, JLL India, this amount from the money collected from the buyers must be placed in an escrow account within 15 days. This provision will effectively allow developers to continue their practice of diverting funds collected for a project towards land acquisition or other projects, and will work in their favour by also allowing them to grow their land and/or project portfolio. However, the 50% mandate will still place enough restrictions on developers to divert funds elsewhere and ensure better completion records. For the buyers, the concerns regarding funds diversion will be higher now.

Supreme Court advocate SK Pal says the escrow percentage can be further reduced or

increased, depending on cost of land, by the state governments as real estate is a state subject. For example, if a builder pays an amount upfront to acquire land, this percentage is fine but if has to pay, say ₹25 crore, spread across five years (which is ₹5 crore a year), this percentage will only leave room for diversion of funds. Therefore, this percentage should be dependent on how the land is procured for a project. The bill should also define clearly what constitutes "wilful default" by builder, otherwise it will lead to litigations. Pal says the bill should have clearly called for enforcement of a model builder-buyer agreement. Instead, it only mentions that the document should be close to the model agreement, leaving room for misuse.

6 Under this bill, buyers can knock the doors of any other consumer forums. In case the buyer is not satisfied with RERA's decision they can approach the appellate tribunal. One issue pointed out in the bill by stakeholders was that it aimed to place itself as the sole course of action for redressal of grievances or customers, who will have no recourse to other consumer forums. It was correctly pointed out that such a stance could lead to pressure on this regulatory body in terms of an increased log of cases. As per the bill, customers can now seek help from other consumer courts and forums as well.

7 All projects which have not received completion certificates will be now covered under the bill. What this means is that if a builder's project has not been completed or has not received a completion certificate in five to six years, it will still be considered incomplete and fall under the ambit of this bill.

Cities have to get ready for changes

A smart city, by efficient utilisation of resources, will enable tangible solutions for creating quality housing for all

Rohan Sharma
htestates@hindustantimes.com

The smart cities concept may not be a novel one, but in the Indian context it is definitely an idea whose relevance couldn't have been better timed. The government has provided the thrust to develop such cities, which needs to be now backed by a holistic concept. It aims to take into account not only the infrastructure development and associated real estate growth but the assimilation of technology to increase the efficiency of the public service systems as well. Three critical elements are essential to act as enablers for creation of smart cities. These are smart technology, smart users and smart governance.

Necessity for improved local governance

Creation and management of a smart city perhaps lies in local (city) agency domain since local governance is their mandate and it is in their hands to demonstrate smart governance. This means that development and long-term vision regarding technology-driven public utilities and their acceptance by the public becomes the responsibility of the local government agencies. The current municipal operations need to undergo a systemic overhaul to get around creating a 'sustained smart' city architecture. This requires not only acceptance of technology as a means to regulate public services and city infrastructure but also requires a sustained investment environment into such technological platforms.

Capacity building in municipal governance and local self-government departments is needed across all levels. Local bodies can invest in such technology is through encouraging private enterprises which have such platforms ready

WHAT WILL AID CREATION OF SMART CITIES?

- The current municipal operations need to undergo a systemic overhaul to get around creating a 'sustained smart' city architecture
- Capacity building in municipal governance and local self-government departments is needed across all levels
- Creating smarter city level infrastructure across roads, sewage, water, transport, traffic, waste management, power, energy savings, air quality monitoring and information availability are all

- domains which require an increased level of participation
- Creating interactive and online platforms to encourage innovation and participation of all stakeholders and engaging with private enterprises
- Utilising social media as a change driver, being self-aware and participating through interactive solutions and assimilating technology into the way one lives becomes crucial in defining one's living environment

for integration at a city level. Implementation and running costs need to be covered through an efficient tax collection system and innovative fundraising to ensure long-term investments and relevant upgrades.

The role of the local agencies hence becomes paramount in this regard. Swifter decision-making, cutting across time delays and defining roles and responsibilities of involved stakeholders becomes an evident need. Similarly, training of personnel and maintaining the technology platforms through continuous engagement also rests on the shoulders of the municipal agency. Creating long-term technology infrastructure to enable real-time data availability and analysis and enabling redundancies to create multiple neural networks which devolve in to the master network also becomes paramount.

The fund allocation and systematic deployment of resources also falls in the purview of these agencies. Creating smarter city level infrastructure across roads, sewage, water, transport, traffic, waste management, power, energy savings, air quality monitoring and information availability are all domains which require an increased level

of participation, understanding and expertise in our local government framework.

Technology as an enabler

Technology forms the backbone which provides the structure and form to a smart city. Creating interactive and online platforms to encourage innovation and participation of all stakeholders and engaging with private enterprises who are leaders in technology-driven solutions is essential to bring about a sustained change in the livability of a city. Transformative possibilities abound with utilisation of big data and analytics instead of using the same looking glass of treating information in compartments.

The need is to create a system of systems, into which is funnelled the data that is collaborated from the different agencies. Innovations such as cloud-based solutions and predictive analytics are great value enhancers which today allow a city to devise forward-looking solutions and enable creation of a sustainable city environment and its resources.

Investing in such technologies along with the current increase in mobile data analytics and social media participation to



Local governments have to develop a long-term vision for management of smart cities

involve the citizens will allow a synergy of efforts which the main system will be able to utilise effectively to bring about definitive changes in how we live in our cities.

While technology has pervaded all aspects of our lives, the next inevitable step is to increase its penetration across all sections of the demography. User sensitisation towards use of technology stems from making users conversant and comfortable with the technology platforms. Technology has the ability to enable convergence between the various stakeholders to create a modern, dynamic and throbbing living ecosystem in our cities.

Better people interface

The critical component is the users. The contribution of education, training and a yearning to learn and contribute actively towards their living conditions, is what allows a smart city to live and sustain through its citizens. As citizens, we need to be more accepting of diversity and new technology to make a big contribution towards making our cities smarter.

As technology changes the way we live, utilising social media as a change driver, being

self-aware and participating through interactive solutions and assimilating technology into the way one lives becomes crucial in defining one's living environment. Embracing new changes and innovations, which contributing towards fostering open-mindedness through evolving thought is the duty of citizens and without this change in psyche, implementation of smart cities will not be complete.

A smart city by inference will thus allow for efficient use of infrastructure and the city's resources. An increase in transparency levels across decision-making, polity, resource allocation and citizen rights and responsibilities will inevitably result and enable weeding out of red tape and corruption which act as impediments to maintaining the balance between sustainability and development.

An Indian experiment

In the Indian context, the current government has announced its intention of setting up 100 smart cities. This importantly seeks to create a smarter city on the existing cities' framework. Improving the existing cities is definitely a step in the right direction. Intensive capital budgeting is required

for implementation of such smart cities in the country. As the engine of economic development chugs along, cities are the real growth enablers acting as magnets for employment and investments. Creating a sustainable living environment, which will make cities grow in a better and planned manner while bearing the strain of urbanisation, thus becomes imperative. It is essential that a clear implementation roadmap which outlines the objectives, the various stakeholders and identifies the funding mechanisms is put in place.

It also becomes crucial that this opportunity is not interpreted as only real estate led development of commercial offices and housing projects; in fact real estate is both the cause and result of smart cities in a way. While economic drivers are paramount for the city's sustainable growth, the focus should be on creating the required physical infrastructure and implementing technology driven platforms which will allow a seamless interchange of information and management of the city's resources.

The author is associate director - Research & Real Estate Intelligence Service, JLL India