

'Common areas rest with flat owners'

According to a recent order by the Allahabad High Court on the UP Rent Act, common areas and facilities must be enjoyed by apartment owners without encroaching upon the rights of the others

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Various states have enacted laws that provide for the ownership of an apartment in a building where there is an undivided interest in the common areas. These laws are also meant to make such apartments transferable.

Recently the Allahabad High Court, while hearing various writ petitions filed by apartment owners and buyers' associations, issued a clarification regarding the interpretation of various provisions of the UP Apartment (Promotion of Construction, Ownership & Maintenance) Act, 2010, and UP Apartment (Promotion of Construction, Ownership and Maintenance) Rules, 2011. The highlights of the judgment delivered by the high court are:

- The Act is applicable to all buildings, having three or more apartments for residential or commercial purposes.
- The word 'apartment' includes any garage or room, if it has

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independent access to a street, road or to a common area. The garage or rooms for a domestic help, however, do not carry any rights of common areas and facilities.

- The term apartment owner will also include lessee, where lease is for a period of 30 years or more. The lessee will include spouse and children of the apartment owner; lawful tenant; officer or employee of the company/firm or association which owns an apartment and its tenant; and a person holding a valid power of attorney of the allottee/owner of the apartment.
- No builder or promoter can resist/or delay the formation of an association of apartment owners (RWA). If the promoter does not get the RWA registered, the apartment owners can get the

RWA registered after giving due notice to the promoter.

- An apartment owner is entitled to undivided interest in the common areas and facilities as specified in the deed of apartment. This will not be altered without the written consent of all the apartment owners and approval of the competent authority. These facilities will be enjoyed by the apartment owner without encroaching upon the rights of other apartment owners.
- The 'limited common areas and facilities,' which are specified in writing by the promoter as 'independent areas,' must be clearly defined in the declaration under Section 12, failing which the promoter will not be entitled to claim these common areas as independent areas. These independent areas are the ones that have been declared as common areas but not included for joint use of apartments. These can also be sold by other apartment owners.
- Failure to submit the declara-



A flat owner is entitled to undivided interest in the common areas such as garden, elevator and parking

- tion with the deed of transfer and its non-registration will disentitle the promoter from claiming common areas as independent areas.
- The development authority may demand a no-objection certificate from the apartment owners as a condition for granting approval to the promoter or developer for carrying out any change in the building plans.
- Apartment owners' consent will be necessary for purchasing additional FAR by the promoter. Its use will also be subject to their consent.

- The RWA is to be registered by the registrar, deputy registrar or sub-registrar under the Societies Registration Act as amended in Uttar Pradesh.
- The registrar/deputy registrar/sub-registrar cannot refuse to register the RWA, if the promoter does not join even after one month's notice given by the apartment owners. Completion of all infrastructure services and completion certificate from the local authority will not be a ground to deny the registration.
- Any dispute raised in an RWA meeting must be

resolved amicably between the promoter and the RWA members. Failing this, they may approach the competent authority and the court.

- If the apartment owners have not formed the association so far, the promoters must form an association and get it registered after adopting the model bylaws within 90 days.

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