Will a homebuyer's agony come to an end?

Laws in most states do not properly define carpet and common areas of residential properties. A regulator will, hopefully, sort out the problem

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htestates LEGAL REMEDIES

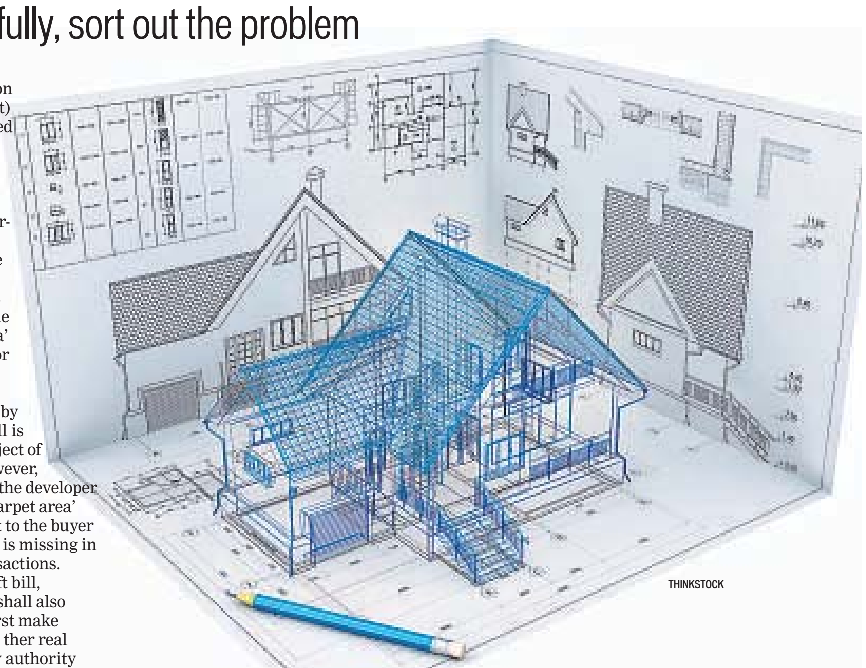
Apartment ownership legislations are state-specific and govern the construction, ownership and sale of apartments. At present, the apartment ownerships acts of Delhi, Haryana and Uttar Pradesh and some other states do not clearly define the meaning of the terms 'super area', 'built-up area' and 'carpet area' despite the fact that these terms are used commonly to indicate apartment size in allotment and sale documents.

In industry parlance, 'carpet area' essentially refers to wall-to-wall measurements of a dwelling unit. The term 'super area' refers to entire area of a dwelling unit plus proportionate undivided interest in the common areas and facilities of the housing complex. These terms become especially relevant when calculating total cost of an apartment. Besides basic sale price, other charges such as preferential location charges, external development charges, infrastructure development charges, etc, if any, may also be payable on a per square ft/ per square metre basis.

Flat buyer's agreements often have a clause that the developer would be entitled to change the 'carpet area' or 'super area' of the apartment booked at any stage of construction, and that in case of an increase in area, the buyer would be required to pay the differential sum. In these agreements, the consequence of non-payment of the differential sum is usually unilateral cancellation of the booking by the developer. In such a case, the earnest money may be forfeited by the developer and the remaining sale consideration paid by the buyer till that date would be refunded without interest.

In the absence of a legislative provision on carpet area and super area, there have been many cases of aggrieved buyers who approached courts to challenge misrepresentations in measurement of carpet area/ super area by developers. The court, after taking into account unique facts and circumstances of each case, have ordered the developer to pay compensation to the aggrieved buyer. Some buyers also opt for an amicable settlement by accepting a refund of the monetary difference (between apartment area purchased and apartment area delivered).

The much-awaited Real Estate (Regulation and Development) Bill, 2013 proposed by the central government is a welcome step in this direction to promote transparency in the real estate sector. The current draft of this bill provides a definition of the term 'carpet area' as net usable floor area of an apartment, excluding the area covered by the walls. The bill is silent on the subject of 'super area'. However, the bill requires the developer to disclose the 'carpet area' of the apartment to the buyer which at present is missing in most of the transactions.



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Under the draft bill, every developer shall also be required to first make an application to ther real estate regulatory authority for seeking registration of thereal estate project in the prescribed manner, before commencement of construction and development activity. Under this application, the developer would be required to specify the carpet area of apartments for sale in the project in addition to making mandatory disclosure of clear title of land, status of the statutory approvals, proforma of builder-buyer agreement, real estate agents, etc. On the redressal front, the buyer would be entitled to seek compensation if he/ she sustains losses due to false information of dwelling units in advertisements/prospectus. Alternatively, the buyer may opt for refund of advance/ deposit along with interest at prescribed rate. Moreover, interest or penalty or compensation not paid by the developer, shall be recoverable from the developer. The quantum of compensation/interest would be assessed on clear parameters on factors like repetitive nature of default, amount of loss suffered and disproportionate gains made by the developer. The enactment of this bill would undoubtedly curb litigation significantly and greatly mitigate the grievances of buyers.

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htestates LAW BOOK
Sunil Tyagi

I am planning to buy a flat in Mumbai. However, the owner of this flat has currently leased out the flat to another family. The owner has informed me that the lease deed of this flat will expire next year. I would prefer it if the tenant continued to stay, as I want rental income. How can I ensure that the tenant pays the rent to me and not to the previous owner, after I purchase the flat?

–Purab Gupta

Upon completion of the sale in your favour, you shall automatically step into the shoes of the previous owner. Nevertheless, prior to execution of the sale deed, ensure that the seller hands over the originals/attested copies of all documents that he/she has entered into, regarding lease of the said flat with the current tenant. Simultaneous to execution of the sale deed, also obtain an attornment of this existing lease deed in your favour to ensure all benefits/entitlements under the lease accrue to you upon execution of the sale deed. After having done so, it is important that you notify the tenant in writing about the change in ownership of the property. Once the tenant's current lease expires, you can of course execute a new lease in favour of any individual.

My siblings and I have inherited a house from my mother who died intestate recently. Are there any stamp duty implications on our inheritance?

–Anand Sharma

Since your mother died intestate, you and your siblings have each inherited equal and undivided share in this house. Till such time you and your siblings continue having ownership of this jointly-owned property, no stamp duty implications would arise from merely having inherited this house. However, if you and your siblings decide to demarcate each one's ownership by allocating specific portions of the house to each sibling by executing a partition deed of the inherited property, appropriate stamp duty shall be payable on such partition deed.

The tenant of my property is overstaying, despite the fact that the lease term had expired some weeks ago. I have given him numerous notices, asking him to vacate but to no avail. How should I proceed now?

–Vaibhav Trivedi

Despite the fact that your tenant has not vacated the property even after expiration of the lease term and the notice period, you cannot forcibly evict the tenant. Nevertheless, you are entitled to seek eviction of the tenant by filing an eviction suit in the competent civil court having jurisdiction over the place of this property.

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htestates CHEQUE BOOK
Harsh Roongta

If the government registered price of a property is ₹750 per sq ft and the current market price is ₹3,000 per sq ft, can we still get a loan based on the market rate of ₹3,000 per sq ft.?

–Raman Saksena

The registration value of the property is the value as per the stamp duty ready reckoner, which is published by the stamp duty department every year for the purpose of determining the minimum amount for payment of stamp duty. The stamp duty is payable on the stamp duty valuation or the value of the transaction as mentioned in the agreement, whichever is higher. Normally lenders finance up to 80% to 90% of the agreement value of the property. Lenders also carry out an independent valuation through their empanelled valuers and if the "market value" is found by such a valuation to be less than the value of consideration mentioned in the agreement, the loan amount will be based on the value calculated by the bank's valuer. For the purpose of loans, banks are concerned only with the market value of the property or agreement value, whichever is lower.

I am a single woman and I have bought a house for ₹28 lakh in my name. The flat is in a 32-year-old building; the building is in good condition. I need a loan of ₹11 lakh. Will banks give me a loan, since I am a single borrower?

–Maheshwari Jindal

If your income is sufficient to justify the loan, you should not have any problem in getting a loan. The tenure of the loan and the availability of the loan itself are dependent on the physical condition of the property. However, if as per the opinion of the engineers of the banks, if the residue life of the property is more than or at least equal to the loan tenure, in my opinion, you should not have any problem in getting the home loan. However, a conservative lender may not grant a loan on the old property. There are no hard and fast rules about the age of the property for it to be eligible for a home loan as long as the residue life of the property as appraised by bank is at least equal to the loan tenure requested. Banks normally are wary of lending to a single borrower (whether male or female). So it may be ideal if you could get either of your parents to be co-borrowers (their incomes are not relevant nor their age). The lender is more comfortable knowing that somebody else will take on the responsibility for loan repayment if anything happens to the main borrower. Also, if you take an insurance policy to cover the home loan and assign the policy to the lender, it might be possible to get the loan even without a co-borrower.

Can my mother, who is a housewife, take a home loan if I take the responsibility to pay the loan?

–Shiv Shankar

If your mother is a housewife and has no income, she will not be able to get a loan independently. However since you are going to take responsibility for paying the loan, it would be advisable to apply for the home loan in your name itself and make your mother a co-borrower of the loan. You can get a home loan based on your income and repayment track records in the past, if any. The house can be bought in the name of your mother, and EMIs paid by you on such loan can be shown as a gift from you to your mother. If you do not own the house, you will not be eligible for any tax benefits on the loan under Section 80 C for principle repayment of or under Section 24(b).

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1.32 lakh units launched across top eight cities

As many as 9,600 units were launched in the NCR in the third quarter of 2013. The region contributed 22% launches across cities

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Top eight Indian cities witnessed a total estimated residential unit launches of 1.32 lakh units between January to September 2013, which represented an increase of 5% as compared the to the same period for 2012, says a report by global real estate consultants Cushman & Wakefield (C&W).

High-end property launches in the first three quarters of 2013, which was recorded at 23,500 units, saw the highest growth of 142% over the same time last year, while launches in the luxury housing category recorded a decline of 10.5% between January to September 2013 over the same period last year. The residential market has been witnessing stagnant trends in the capital values as well as in most micro markets through major cities on account of restrained activities.

Shveta Jain, executive director, residential services, Cushman & Wakefield said, "Contrary to tradition, there has been a decline in new launch activities in Q3 2013 as economic conditions have not been encouraging for developers. A slowdown in demand with consumer confidence at lower ebb on account of increased and consistently high pricing in key cities. Having said that, the demand from first-time buyers and end-users has been consistent as genuine buyers with adequate capital look at this phase as ideal to enter the property market on account of stable capital values."

"Most developers are focused on keeping the levels of unsold inventories low, thus to promote sales, developers are resorting to innovating marketing to ensure buyers can get more value from their product. Their problems are compounded on account of higher input cost, thereby keeping capital values consistent. Developers are looking at alternate strategies from promotional offers to resizing of units in order to meet the end-consumer demand of economically viable housing. Developers have reduced their concentration on low demand category of luxury and on affordable housing which has high input costs," she says.

Ahmedabad, Bangalore and Chennai witnessed a quarter on quarter increase of 41%, 25% and 28%, respectively in the third quarter this year. Though Hyderabad witnessed the maximum decline of 56% in launches compared to the second quarter this year, it however witnessed one of the highest rises in year-on-year appreciation. Number of launches in 2013 more than tripled in Bangalore to nearly 35,000 units till September, 2013. Bangalore, NCR and Mumbai, respectively contributed to 27%, 23% and 19% of the launches across top eight cities in 2013.

Rentals remained stable across most of the cities, except Ahmedabad which registered a 4 to10% decline in rentals across segments. Gurgaon in NCR also registered a 4 to 12% dip in rental values for high-end spaces. Bangalore witnessed maximum appreciation of 4-12% q-o-q across a few submarkets in mid-end segment capital values due to persistent demand from working population. Kolkata witnessed a 5 to 7% appreciation in capital values of prime areas, due to growing demand for high-end projects in these locations. Capital values across segments in Chennai, Hyderabad and Pune remained stable during the quarter due to sluggish sales, subdued demand and rising construction costs. High-end segment capital values in locations like Lower Parel, Worli in South Central Mumbai declined by 2%, while in Gurgaon, NCR fell by 3 to 5% to boost demand and push transaction activity in an oversupply scenario. Ahmedabad witnessed maximum price correction of 4 to 8% across majority of the markets for both mid-end and high-end segments in the third quarter this year.

The NCR report card

NCR residential market witnessed launch of nearly 9,600 units in the third quarter at par with the number of units launched in the second quarter and contributed to 22% of the total launches across top eight cities.

Affordable, mid-end and high-end segment contributed almost equally to the total launch activity during the quarter. NCR recorded the highest contribution of 33% to the high-end launch activity among eight major cities of India during the third quarter. Majority of the high-end launches were in Gurgaon while the affordable units were concentrated in Noida. Noida and Greater Noida together contributed nearly 55% of the total number of units launched whilst Gurgaon accounted for 44% during the quarter.

The capital and rental values for mid-end segment remained stable quarter-on-quarter. Due to pile of inventory and cautious buyer sentiments prevailing in the market amidst sluggish sales, the rental and capital values for high-end properties in Gurgaon declined by 3 to 12% over the last quarter. The city has seen reduction in investor activity with most enquiries generated by end-users due to high gestation period of return and price points.

In the coming quarters, the rental and capital values are expected to remain stagnant in Delhi and Gurgaon submarkets due to cautiousness among buyers, most of whom are anticipating notable price correction.

However, areas in Noida, Greater Noida and those located along the Yamuna Expressway might witness an upward revision in capital values due to recent hike of 10 to 25% in the circle rates.

How Mumbai scored

Mumbai witnessed approximately 7,200 unit launches in the third quarter this year. Though this was a decline of nearly 34% quarter-on-quarter it was an increase of 19% for the first three quarters of the year, and was at par with the average number of quarterly launches in the city over the past two years.

The decline in launches over the second quarter could mainly be attributed to slow sales in the market and the delay in regulatory approvals, as a result of which fourth quarter might witness a slight increase in launch activity.

Panvel in Navi Mumbai contributed to 64% of these unit launches in the third quarter with major contribution from a single large project. Central Suburban areas like Mulund, Powai and Wadala contributed to 13% of the launches followed by Thane at 10% contribution.

Mid-end segment contributed to nearly 64% of the launches during the quarter followed by high-end segment at 36%. High-end segment launches were mostly concentrated in areas like Wadala, Powai and Thane. Rental and capital values remained mostly stable quarter-on-quarter except for high-end segment in South Central areas like Lower Parel and Worli, which witnessed a decline of 2% over the second quarter.

Rental yields have witnessed a decline over the last year due to an increase in capital values by 20 to 25% against stable rentals over the year. To cater to the demand-generating segment, many developers downsized their projects to two BHK configurations of average 1,150 sq ft contributing to reduction in overall ticket size in South and South Central Mumbai.

The low transaction activity with the spurt in demand is expected to exert a downward pressure on capital values next quarter. Rental values are likely to remain stable due to stable demand and limited availability.