

Can diagnostic centres open up in residential areas?

According to MPD 2021, such units can operate from residential areas if their activities do not involve use of hazardous substances or processes

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htestates LEGAL REMEDIES

It is a common sight to see medical diagnostic centres/pathological laboratories in residential buildings in Delhi, often creating a problem in the neighbourhood by way of pollution, crowded lanes and congested parking. As per the Master Plan of Delhi (MPD) certain conditions for mixed use in residential areas are provided.

According to MPD 2021, residential areas are divided into various categories with separate provisions made for each category. The Supreme Court of India, in its judgment in the case of Anirudh Kumar versus Municipal Corporation of Delhi delivered on March 20, 2015, clarified the legal position with regard to the use and misuse of the provisions of MPD.

In this case, a diagnostics centre and pathological lab was operating from the basement, ground, first and mezzanine floors of a residential building located in a category-B residential area of Delhi. The owner of the second floor ('appellant') of the same

building complained to the concerned authorities about the MPD violation, but no action was taken. Subsequently, in the writ petition filed by the complainant/appellant before the Delhi High Court, MCD averred that action had been initiated against the owners. During the pendency of the writ petition, a regularisation certificate was issued as per the Delhi Development Act, 1957, on July 11, 2006, to the owners of the diagnostics centre by the MCD under mixed land use for running the pathological lab on the ground and first floors of the building.

Aggrieved by the grant of certificate, the appellant, ie owner of the second floor withdrew the petition and filed another petition praying that it (certificate) be quashed. Following the rejection of his plea by the high court, the appellant filed a latent patent appeal for issuance of a writ prohibiting the owners from



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running the diagnostic centre in the building, which was also dismissed by the high court of Delhi.

Undaunted, the appellant then approached the Supreme Court, which then examined the provisions for mixed use in various categories of residential areas/colonies.

According to MPD 2021, in categories A and B residential colonies, activities other than residential are restricted to guest houses, pre-primary schools, nursing homes, clinics, dispensaries, pathology labs and diagnostic centres, in plots abutting roads, measuring a minimum of

18 metres. The court concluded that the said building comes within the permitted mixed use as per MPD 2021.

Thereafter, as per the report of the Delhi Pollution Control Committee (DPCC), a regularisation certificate for running a nursing home was granted, even though it was actually a pathological lab that was up and running.

The Supreme Court examined the legality and validity of the issuance of the regularisation certificate on July 11, 2006, allegedly under MPD 2021, which was still at a proposal stage at that time. It came into effect only on February 7, 2007, enabling the

owners to use the premises for activity which was prohibited in the said building as per MPD 2001 which was in force at the time of grant of regularisation certificate.

MPD 2001 stated that the area/street for mixed use activity should be identified after studying the impact on the traffic, evaluating the environmental needs and impact on municipal services of the area. In the present case, no document proving such a study conducted by the MCD was presented. It stated that if after evaluation and study the mixed use activity in the street/area is found feasible, then it shall

be allowed basis the following conditions: (i) on the ground floor of the premises, (ii) to the extent of 25% of the area or 50 square metre, whichever is less, and (iii) such establishment can be run only by the resident of the dwelling unit.

In this case, the basement, ground, first and mezzanine floors were being used and the owners were not residents of the said building. Thus, it was a violation of the provisions under MPD 2001. MPD 2001 prohibited the running of a nursing home, whereas the regularisation certificate clearly gave it the green signal.

The Supreme Court held that use of diesel generator sets, heavy medical equipment, etc led to air and noise pollution. In MPD 2021, diagnostics centres and pathological labs are permitted, provided their activities do not involve use of any kind of obnoxious, hazardous, inflammable, non-compatible and polluting substance or process. Thus, due to violation of both MPD 2001 and MPD 2021, the court ordered that the diagnostics centre should be shut down.

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LAW BOOK Sunil Tyagi

I stay in a rented house in Delhi for which a registered lease agreement has been executed with the owner. Last week, when my guests had come over to my house, my landlord entered the premises without giving me a notice to inspect the premises. Is he allowed to enter the house in such a way?

— Anchal Suri

As per law, during the term of the lease your landlord may enter the premises/house at a reasonable time for inspection of the premises without giving you a notice unless agreed to the contrary. Usually, lease agreements contain a clause providing for an advance notice to be given by the landlord to the tenant before entering the leased premises. Therefore, if your agreement contains a term providing for such a notice you may refuse to allow him to enter the house.

erally change the consideration?

— Shegali Bisht

Unless specifically agreed otherwise in the agreement, the developer cannot enhance the consideration. Even if the right to increase is reserved by the developer in the agreement, it is for specific reasons only. Kindly refer to your agreement and check the reasons for increase in consideration.

I have a house in Delhi which I wish to give on rent. Since I stay in Chennai, can I authorise my brother who stays in Delhi to execute and register a lease deed in respect of the house on my behalf?

— Ashutosh Sinha

Yes, you can authorise your brother by executing an appropriate power of attorney as per applicable law to execute and register the lease deed on your behalf.

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In June 2010, I entered into an agreement with a builder for buying an under constructed apartment for a certain consideration. Now at the time of execution of the sale deed the builder/seller is demanding a much higher consideration than what was agreed. Can he unilat-



htestates CHEQUE BOOK Harsh Roongta

My husband's salary is ₹6 lakh per year. We want to buy a house for around ₹60 lakh. Which bank will give us a loan?

— Sangit Srivastava

The quantum of loan which your husband can get is dependent on his annual income and banks will not lend him anything above this amount. Also, the value of the property is significantly higher. If he is less than 40 years of age, he should be eligible for around 4 to 4.5 times of his gross annual income as loan, provided he has no

other loan to service.

I want to buy a house with my cousin. Will banks give us a joint loan and is it possible for us to get the property registered separately?

— Narayan Swami

There is no restriction as to who can jointly own a property. As far as joining as a co-borrower in a home loan is concerned, only a spouse or a close relative such as siblings, parents or children can be permitted by banks to get joint loans. It is, therefore, unlikely that cousins want-

ing to jointly own a flat can get a home loan. Secondly, no single property can have two separate registrations under different names.

My wife is currently a housewife but may take up a job in the future. Can I include my wife's name in the loan application later and can we both pay together to the bank in order to avail tax benefits?

— Srishti Shah

In case your wife is not a co-owner of the said property, she cannot claim tax benefits. If you decide to include her name as a co-owner of the property later, that will have stamp duty implications. To add her name as a loan co-borrower will also entail closing the current loan where you may be the

sole owner and borrower and file for a fresh loan application. However, if you have not yet purchased the property and availed the loan, you can still make your wife a co-owner and a co-borrower.

I had taken a home loan of ₹22 lakh in 2005 at an interest rate of 8% for 20 years. I am currently paying an equated monthly installment of ₹19,000 per month. I have been claiming tax benefit on my home loan till date. Now I have an outstanding of ₹10 lakh which I can pay right away and close the loan. Is it advisable to close the loan or should I continue the loan and avail tax benefits?

— Daksh Ahuja

The decision to prepay the existing home loan depends on several factors. First and

foremost are the income-tax benefits available on the existing loan. You should take into account the post tax returns available on alternate investment options and compare it against the post tax interest cost.

Secondly, if you are on fixed rate of interest and taken from a bank, you may have to pay a penalty of around 2% (excluding service tax) on foreclosure of loan.

Please note that before you opt to prepay your home loan, it is always advisable to pay off all other debts on which you are paying higher interest because the rate of interest on such borrowings is normally higher than home loans.

Also keep some funds available to meet any financial contingencies.

I am planning to take home loan on my wife's name because my Cibil record is bad. My wife is working and getting a salary of ₹28,000 per month for the last three years. Can she get a home loan alone and if yes, how much loan will she get? And how can I improve my Cibil score?

— Radha Sawhney

With an income of around ₹28,000 per month, your wife is eligible for a loan amount of ₹12 lakh at the rate of 9.90% to 10.25% per annum for of 20 years.

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