



For one and all

Residents of housing complexes are also part-owners of common areas with lifts etc

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LEGAL REMEDIES

Vivek Kohli

Reducing the widening gap between the rising urban population and urban housing stock is a pressing need of the hour. However, given the acute shortage of land in urban

areas, providing adequate housing is easier said than done. Given this scenario, the government has been promoting affordable multi-storied buildings where more people are provided a roof over their heads. With the growth of apart-

ments and cooperative group housing societies, comes the need for regulating such growth so as to safeguard the interests of both buyers (consumers) and sellers (developers). Accordingly, many state govern-

ments have a state-specific Apartment Act and corresponding rules in place. In Delhi, the Delhi Apartment Ownership Act (1986) is applicable for every apartment in a multi-storied building (constructed for residential or commercial purposes). Apartments in

Noida, Greater Noida and other parts of Uttar Pradesh are governed by the Uttar Pradesh Apartment (Promotion of Construction, Ownership, and Maintenance) Act, 2010. Apartments in Gurgaon and Haryana are governed by the Haryana Apartment Ownership Act, 1983.

The Act lays down rights, duties, obligations, responsibilities and liabilities that apartment owners and developers have towards each other. Amongst various other provisions, the Act also stipulates rules governing common areas and facilities. In a multi-storied building, common areas and facilities refer to areas earmarked for basements, gardens, parking area, roofs, stairways, elevators, water tanks, etc. Under the Act, an apartment owner has ownership not only of his/her apartment but also holds a particular percentage of undivided interest in common areas and facilities of the building/apartment complex, as the case may be. This 'percentage' of undivided interest is computed by taking the value of the apartment in relation to value of the building/apartment complex. Such undivided interest in common areas and facilities is conveyed to the apartment owner along with conveyance of the apartment. Since such interest is undivided, an apartment owner cannot seek partition of the

land underneath common areas by claiming it as his own. Developers also cannot sell the space marked for common areas and facilities.

For effective administration and management of affairs concerning the apartments and common areas and facilities, the Act mandates the creation of an 'association of apartment owners' governed by a set of bye-laws framed by itself. To ensure the up-keep of common areas and facilities, the Act mandates all apartment owners to share expenses incurred lawfully for administration, maintenance and repair works in common areas and facilities. Such maintenance and repair is carried out in accordance with the Act and bye-laws. Apartment owners are required to use common areas and facilities without hindering or encroaching upon the rights of other apartment owners. The provision of common areas and facilities make an apartment complex habitable. Given that these are integral to the enjoyment of an individual apartment owner as well as residents of the entire complex, it is important that the residents comply with the Act and corresponding rules.

The author is senior partner, ZEUS Law Associates, a corporate commercial law firm. One of its areas of specialisation is real estate transaction and litigation work



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LAW BOOK

Sunil Tyagi

I will be taking up an apartment in Delhi on lease for two years soon. Since this is the first time I'm entering into a lease, what stamp duty and registration requirements do I need to fulfil, if any?

-Ritesh Mehra

A lease of one year or more is required to be compulsorily registered. Therefore, if your lease is for a duration of two straight years, you must get the lease deed registered. In Delhi, stamp duty on a lease of less than five years shall be computed @2% of the average annual rent payable for the property. Registration fee payable on registering the lease deed of a property situated in Delhi shall be ₹1,000.

My son, an NRI, is exploring options for buying property in India. Is he required to take the RBI's permission before buying the same?

-M J Shukla

If your son is buying a property other than agricultural land/plantation property/ farmhouse - a residential or a commercial property in India, he can do so without seeking the Reserve Bank of India (RBI)'s prior permission. However, if he is buying agricultural land/planta-

tion property/ farmhouse, he cannot do so unless he has obtained prior permission from the competent authority.

The seller of a house I'm currently negotiating with claims that the property is free from any mortgage charge. Please guide me on how this claim can be verified?

-Sushil Nath

In order to rule out any previously existing mortgage on a property, you may verify the original title documents of that property. If the original title documents are in custody and possession of the seller, this will rule out any existing equitable mortgage on such property. For checking other kinds of mortgage, you can verify the same through your lawyer from the office of the concerned sub-registrar in whose jurisdiction the property is situated. Also, issuing a public notice before purchasing a property is always helpful.

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For any queries on real estate litigation, write to htestates@hindustantimes.com



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CHEQUE BOOK

Harsh Roongta

I have taken a home loan @10% interest pa for an amount of ₹7.3 lakh for 10 years. Now I want to switch to another bank. In the meantime, I have switched jobs and am now earning ₹23,500. Am I eligible for a transfer? Can I get a loan at about 8%-8.25% interest. Which bank will give it?

-JS Natraj

Of course you are eligible to shift the loan to another bank provided you have paid all your installments in time and have no other loan liability. You can get teaser rate loans, which offer low fixed rates in the first 2-3 years and then floating thereafter. Check the link below to see

the rates of different banks at www.apnapaisa.com

I had bought a house and the loan liability and dues on it got over in March 2010. Now, I have bought a new house with a loan from HDFC. This is self-occupied. Am I eligible for tax benefit on the new loan? The first house is on rent.

-KL Kamat

Under the provision of the Income Tax Act, there is no restriction on how many properties you can take housing loans for or the number of properties you

can own. However, there are some restrictions on tax deduction.

The annual value of the self-occupied property is taken as nil and a person is entitled to claim interest payment for loan taken to acquire that property up to a limit of ₹1.5 lakh. He can also claim income tax benefit towards repayment of the principal of one or more housing loans within overall limit of ₹1 lakh under Section 80C.

The taxable income of the rented-out property is

arrived at by deducting actual interest payable in respect of such property without any limit from the rent received by you, in addition to 30% standard deduction.

What are the pros and cons of down payment versus construction-linked payment option for under-construction properties?

-Minakshi Gupta

It is advisable to go for construction-linked plan for property to ensure that your exposure is in proportion to

the stage of completion of the property. Whether you take a one-time disbursed loan or a construction-linked plan, you will not be able to claim tax deduction benefits either on the pre-EMI or the EMI till the financial year in which the construction is completed. Very rarely will the discount available in a full down payment plan justify the additional risk you take.

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

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