

# What's a maintenance agreement?

This document for the upkeep of your building and apartment is very important. Go through it carefully and ensure you make all payments on time

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## htestates LEGAL REMEDIES

Given the space scarcity in urban areas, more people are investing in apartments in housing complexes and group housing societies. Though allottees scrutinise the terms and conditions in the allotment letter and buyer's agreement carefully, many fail to scrutinise terms and conditions in the accompanying maintenance agreement. A buyer's agreement generally stipulates that the buyer will also be required to execute a maintenance agreement at the time of execution of the conveyance deed in his/her favour.

Broadly speaking, the maintenance agreement governs the provision of maintenance services in common areas, services and facilities and sets out rights and obligations of both allottees/buyers and the maintenance agency. In multistorey buildings and housing complexes,



FILE PHOTO

common areas and facilities refer to areas reserved for basements, parking, roofs, stairways, elevators, water tanks, terrace, open spaces, etc. For the effective administration, maintenance and upkeep of the housing complex including its common areas and facilities, a maintenance agency undertakes the responsibility of providing essential services like lighting, lifts/elevators, power back-up, sanitation, repair works, security, etc.

Under relevant state-specific apartment ownership legislations, an apartment owner not only owns the apartment but also has a certain percentage of undivided interest in common areas and facilities of the building/apartment complex. Hence, all apartment owners are required to bear maintenance-related expenses

proportionate to their ownership and interest in the complex. Allottees may carefully note the timelines of payment of maintenance charges, penalty and interest payable on delayed payment, grounds of breach as well as consequences of breach by allottee. For instance, some maintenance agreements stipulate that in case of continued non-payment of maintenance charges, supply of water/electricity services may be disconnected to the defaulting allottee's flat and would only be restored on payment of maintenance charges along with interest and penalty, if any. Owners may also note the timelines and amounts to be paid towards contribution to the sinking fund and maintenance security deposit (which may be interest bearing or non-interest bearing).

Moreover, maintenance charges are payable irrespective of whether an apartment is vacant/unoccupied or occupied. If the owner has

leased the flat to a tenant, he/she may protect its interests by clearly stating in the lease deed that it will be the lessee's responsibility to comply with the terms of the maintenance agreement and payment of maintenance charges for the duration of the lease term.

Maintenance agreements for properties situated in commercial complexes and office buildings are usually more complex given the nature of activities carried

out there. Maintenance agreements for these properties may prescribe differential rates of maintenance charges for operations during usual business hours and beyond usual business hours in addition to parking charges, power backup charges, insurance etc. In some cases, the agreement may also be accompanied with housekeeping rules, rules for carrying out fit-out/interior works, rules for putting up any signage/promotional displays, etc. Enjoyment of maintenance service and facilities makes a property habitable for oneself and other occupants. Hence, it is important that occupants (be it owners or tenants) comply with the terms of the maintenance agreement.

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

I entered into an agreement to sell in January 2012 to purchase a plot. As per the agreement, the sale deed was supposed to be executed in my favour in July 2012. However, the owner has been delaying the execution of the sale deed in my favour on flimsy grounds. Is it too late for me to file a suit for specific performance?

-XYZ

Under the Limitation Act, 1963, the period of limitation in a suit for specific performance is three years. This three-year period will be calculable depending on whether the parties have specified a date for performance of the contract in their agreements. As the agreement to sell in this case had fixed a date in July 2012 for execution of the sale deed in your favour, the period of limitation of three years will also commence from July 2012.

Alternatively, you may also take no objection or consent letters from all legal heirs of the owner's mother before purchasing the property.

My neighbour has blocked a significant portion of our common corridor in the building, claiming it is for security reasons. Is he allowed to do so?

-EFG

It is not permissible for any occupant to unlawfully reserve for his/her personal use any portion of an area demarcated as common area and facilities. Generally, corridors are part of common areas and hence meant for common use and enjoyment by all occupants.

The author is senior partner, ZEUS Law Associates. If you have any query, email us at [htestates@hindustantimes.com](mailto:htestates@hindustantimes.com)

-AB

The owner of a property I am planning to buy had inherited this property under his mother's will. He has also shown me the unregistered will dated August 19, 2005, which he insists is the last will of his mother. However, after verifying the property documents, I discovered the mother had also made a will dated October 10, 2002. This earlier will is a registered document under which the mother bequeathed this property to the owner's brother instead. Which will should I rely on?

-BS

It is always better to buy a ready-to-move flat even though it is more expensive because that avoids all construction delay risk.

Harsh Roongta is CEO, Apna Paisa. He can be reached at [ceo@apnapaisa.com](mailto:ceo@apnapaisa.com)

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Clearly there is an issue with the project and the

developer if no large bank is willing to fund the project. These kinds of issues arise when you do not do necessary due diligence before finalising the purchase. You should never buy in an under-construction project unless it has been pre-approved by at least a couple of large lenders. Even then, please remember that pre-approval does not mean that there is no risk of delay.

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