

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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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,

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



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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

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LAW BOOK
Sunil Tyagi

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. Thus, you may file a suit for specific performance against the seller as currently you are well within the limitation period.

As registration of a will is not mandatory under the Registration Act, 1908, the mere fact of registration or non-registration does not render a will valid or invalid by itself. Hence, a previously executed registered will may be validly revoked by an unregistered will at a later date, provided that the will was executed in accordance with provisions of the Indian Succession Act. In case the last will dated August 19, 2005, is not acceptable to all legal heirs or if it is contested by some legal heirs, then obtaining probate of the will will be safer. 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

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?

-AB



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CHEQUE BOOK
Harsh Roongta

I have been working in a private company for the past 11 years. I wish to construct a house on a plot. I plan to withdraw money from my Employees' Provident Fund (EPF) to fund the construction of the house. What are the rules regarding withdrawal from EPF or is there any other option?

-AB

withdrawals are available only after five years and for specified purposes like acquiring a dwelling site or a house or construction of a house.

Specific forms are required for making this withdrawal and the terms and conditions for the same are available at http://www.epfindia.com/forms/FORMS_Latest/Form31.PDF

Along with the application form for withdrawal from

your EPF, you will need to submit the original title deed for verification, non-encumbrance certificate, estimated cost of construction and approved plan.

It is a better idea to take out a construction loan for constructing a dwelling unit on a piece of land already owned by you. You will have to submit an estimate of the total cost of construction, duly certified by an architect/civil engineer.

The construction loan will be released in parts, based on the progress of the construction. However, you will have to bring in your contribution in full before the lender disburses the loan. The lender may also insist

on sending its own technical personnel to assess the progress of construction or may decide to rely on certificates/photographs submitted by you.

Some lenders are not comfortable funding self-constructed properties and hence, your choices will be limited. You can approach the State Bank of India, Axis Bank, HDFC Ltd, ICICI Bank, etc, to apply for a construction loan.

As a thumb rule, if you are below 40 years, you should be eligible for around four times your net annual income as a loan of 20 years' tenure. If the loan amount is below ₹30 lakh, the rate of interest will be in the range

of 10% to 10.25% per annum.

I opted for a construction-linked plan (CLP) and received a demand from builder in June 2012. The project was not approved by any bank till November 2012. Adding to this, the builder-buyer agreement was signed among us in March 2013. Now the builder is charging interest on late payment since June 2012. I tried to settle with the builder but they are not agreeing to the same. Should I go ahead and send a legal notice to the builder? I also know some more residents who are going through the same problem. Will it help if together we all go to the builder or we file a case together?

-BS

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.

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

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Union minister for urban development Kamal Nath, third from left, during the launch of the RICS School of Built Environment, Amity University

India's first School of Built Environment opens

Responding to calls from the industry, The Royal Institution of Chartered Surveyors (RICS) – a leading professional qualification and standard setting body in land, property and construction sector – and Amity University have established the RICS School of Built Environment at Amity University's Noida campus. The school has been set up to address the shortage of skilled professionals in the sector. This industry-led academic initiative is supported by the ministry of urban development, where the school aims to bridge the professional skills gap in real estate, construction, infrastructure and associated services – collectively termed as built environment – by delivering 'industry-ready' professionals. Inaugurating the RICS School of Built Environment, Amity University, Kamal Nath, Union minister for urban development, said, "The school will enable quality and relevant education for young professionals entering this sector."

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HT ESTATES QUIZ OF THE WEEK

Answer the following questions and win a prize. The answers can be found in this edition

- Q1** Who is Sanjeev Gupta?
- Q2** What is the current rate for conversion of LIG flats in the east zone?
- Q3** What is CLP?

Win a prize for your home by posting your answers on www.facebook.com/HTEstates

To enter the contest, readers are required to like the HTEstates Facebook page and send their email ID, contact details including mobile and landline numbers and complete postal address



Last week's winner is:
Sukit Yadav

FREEHOLD AT LAST, BUT...

of properties through GPA but the Delhi revenue department issued an administrative order for the implementation of the judgment on April 26, 2012, almost seven months after the order.

In the interim period, hundreds of homebuyers bought DDA flats through GPA, ATS and will and got these documents registered with the sub-registrars by paying stamp duty. Many of them also applied for leasehold-to-freehold conversions by paying the requisite charges, totalling more than ₹1 lakh per application. However, their applications were stuck.

Unable to find a way out, many such residents who have to sell their flats are doing so on the basis of notarised GPA (which is unauthorised in Delhi) knowing that such transactions are risky, making them vulnerable to fraud. "The flat owners are in a fix. They can't sell their property through registered GPA because it has been banned

by the Supreme Court. They also can't get their property converted in their own name because DDA refuses to allow them to get conversion done from leasehold to freehold. So, they are resorting to these illegal means of transactions which can land gullible home buyers in trouble," says Sanjeev Gupta, a lawyer specialising in property registration.

Legal experts say that the only way to resolve the issue is to approach the Supreme Court and ask for relief.

"If DDA allows leasehold-to-freehold conversion for GPA transactions post-October 11, 2011, it amounts to contempt of court and if it doesn't do that, it leaves hundreds of flat owners in the lurch. So the only way out is to approach the Supreme Court and ask for relief for those flat owners who bought the flats through GPA sale between October 11, 2011, to April 26, 2012," says Jasbir Singh Malik, a Supreme Court lawyer.

CONVERSION CHARGES AND SURCHARGE

Below are the details of the conversion charges and surcharge on conversion charges by way of extra 66-2/3% on conversion calculated by DDA

Zone	Category	Current rate for conversion of flats	Amount of penalty
EAST	LIG	15750	10,500
	MIG/SFS I	22,275	14,850
	HIG/SFS II	32,625	21,750
	SFS III	39,150	26,100
NORTH	LIG	46,800	31,200
	MIG/SFS I	66,375	44,250
	HIG/SFS II	97,650	65,100
	SFS III	1,17,000	78,000
SOUTH	LIG	62,550	41,700
	MIG/SFS I	88,425	58,950
	HIG/SFS II	1,30,050	86,700
	SFS III	1,55,925	1,03,950
CENTRAL	LIG	78,075	52,050
	MIG/SFS I	1,10,475	73,650
	HIG/SFS II	1,62,450	1,08,300
	SFS III	1,95,075	1,30,050

FLATS IN ASIAN GAMES VILLAGE COMPLEX

Plinth Area	Rates of calculation of conversion charges
Plinth area up to 140 sq mt	1,55,925
Plinth area above 140 and upto 175 sq mt	2,07,900
Plinth area above 175 sq mt	2,59,875

All figures are in rupees

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