

Noida Authority order: Will registration of flats by carpet area benefit homebuyers?

The Noida Authority recently mandated that registration of flats should be on the basis of their carpet area. The move may bring much-needed relief to homebuyers who had demanded that registration of apartments should not be determined by their super area, which allowed some developers to escalate the cost of a flat. However, to get the benefit of stamp duty calculation on the basis of carpet area, the state government must issue a notification, legal experts told Moneycontrol.

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What is the new rule?

The new rule mandates the registration of flats on the basis of their carpet area instead of super area.

While developers and some buyers have welcomed the order, others said further clarification is required. Also, it remains to be seen whether the decision will help lower costs for homebuyers.

"This order by the Noida Authority will bring much relief to homebuyers as it will reduce their registration fee cost for the flats and thereby lower their overall property acquisition cost," said Santhosh Kumar, vice chairman of Anarock Group.

This will save Rs 1 lakh to Rs 2.5 lakh per buyer, depending on the size of the flat. Some buyers said the fight to pay the correct stamp duty on the exact area of the flat, as per the area certified by authorities, has borne fruit and now the sub-registrar of Noida Authority cannot force buyers to pay excess stamp duty.

The Supreme Court had issued a notice to Noida Authority in this regard in the Amrapali matter on October 25.

The Real Estate Regulatory Authority (Rera) had already mandated earlier that developers must sell flats based on their carpet area instead of the super built-up area, Kumar said. However, while developers did mention the carpet area of flats, there was ambiguity when it came to registering them, which was mostly charged based on the super area.

"With this order now, absolute clarity has been provided and homebuyers are set to benefit from this," Kumar said.

"After the introduction of Rera guidelines, most developers have already switched to these norms and have updated their prices," said Amit Modi, director of ABA Corp. and president (elect) of CREDAI Western UP. "If we look at the ground reality, this won't be bringing any difference at all to the overall apartment price or the revenue earned by government registration department and the government exchequer."

"We are ready to implement this order if the Noida Authority has mandated that the registration of a flat be done basis the carpet area," said SS Pal, assistant inspector general of the Uttar Pradesh Stamp and Registration Department in Noida. "However, currently both documents (on super area and carpet area) are being registered. Having said that, if somebody wants to sell an apartment registered (super area basis) before Rera in 2016, wherein the deed only mentions super area, that has to be done. Currently, there is provision for both. We execute registries on the basis of documents provided by the Noida Authority, buyers and the developers."

In April, the [Haryana Rera](#) had said that the sale of property on the basis of super area would be treated as a fraudulent/unfair trade practice by the promoter. The conveyance deed – a contract in which the seller transfers all rights to the legal owner – too must be executed on carpet area basis only.

As per the Haryana Rera Act, which came into force in 2017, developers are allowed to sell property on the basis of actual carpet area but because of vague definitions, they often evaded this requirement. Before the Real Estate (Regulation and Development) Act, 2016, came into existence, there was no legal description for the term carpet area. The act provides specific/concrete definition of carpet area, which has addressed the vagueness and uncertainty in this regard.

What is the difference between carpet area and super built-up area?

The Real Estate (Regulation and Development) Act, which came into force in 2016, clearly spells out that the cost of an apartment is to be determined by carpet area and not super area.

The act defines carpet area as "the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or veranda area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment."

Simply put, carpet area is that portion of a flat that can be used to lay a carpet. It excludes the lobby, elevator, stairs and play areas.

Section 4 of the act says that every promoter should apply to the Rera for registration of a real estate project and provide, among other things, the carpet area for sale in the project, along with the area of the verandas or exclusive balconies and exclusive open terrace areas with the apartment.

A housing society consists of various common areas. While buyers have to pay a monthly maintenance charge for the upkeep of these areas, they also have to shell out money for a proportionate part of these spaces at the time of purchase.

Builders typically add the loading factor, or constructed spaces not exclusively allocated to the buyer, to the carpet area to arrive at the super built-up area. This often includes the corridor, lift lobby, elevator and in some cases, even amenities such as pools, gardens, clubhouses and tank spaces. This gives customers the impression that they are buying a large apartment.

What is the potential benefit for homebuyers?

The new rule should result in homebuyers paying less for apartments and lower stamp duty.

An apartment with a super area of 1,200 to 1,300 square feet priced at Rs 2,000 per sq. ft. would cost Rs 24 lakh to Rs 26 lakh. However, by taking only its carpet area of 1,000 sq. ft. into consideration, the cost would drop to Rs 20 lakh.

There will be reduction in the stamp duty payable if the calculation is based on carpet area and not super area and the circle rate remains unchanged.

If the [circle rate](#) for an apartment is Rs 4,000 per sq. ft. of super area and this rate applies to the carpet area, then there will be a reduction in the total stamp duty payable. The difference could be as much as 20 percent.

For an apartment with a super area of 1,000 sq. ft. and a carpet area of 800 sq. ft., the value for stamp duty (Rs 4,000 per sq. ft.) would reduce by Rs 8 lakh. Resultantly, the stamp duty payable will be lowered proportionately.

"What is important here is that if the circle rate is changed from super area to circle rate without any change in the rate prescribed earlier, then there will be benefit of stamp duty. However, if the circle rates are increased for carpet area, then there may not be any benefit," Sunil Tyagi of Zeus Law explained.

Also, there is no question of a refund where buyers have paid stamp duty on super area and have yet to complete the registration.

"In any case, the circle rate has yet not been notified on the basis of carpet area," Tyagi added.

So, what's the catch?

Some legal experts say the Noida Authority's decision is good because it is mandated by the Rera act, too.

"This will help buyers in knowing the exact area they are getting from the developer, which they were not when only the super area used to be disclosed," said Tyagi.

Tyagi was quick to add that "we may have to wait for notification by the Revenue Department of the state government of Uttar Pradesh wherein the circle rate calculation should be specified on the basis of carpet area and not super area to avail of the benefit of stamp duty calculation on the basis of carpet area."

The Noida Federation of Apartment Owners, a body comprising apartment owner associations in Gautam Buddha Nagar, welcomed the move but said several issues remain to be addressed.

"Builders in future may decide to include the common area factor while deciding on the overall price of the unit," said Rajiva Singh, president of the federation.

"In case of a re-sale of a flat in a society, would the unit be sold for less carpet area? The new buyer may also want to pay society maintenance basis the new carpet area. This may lead to disparity among old registry holders and new registries because of the area documented. Also, most apartment owners have share certificates which include common areas. The circle rate issue also needs to be addressed."