

Not happy with the management of your housing society?

A special general body meeting can be convened for removal of the management committee or its officials if they fail to look after a society's facilities

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htestates LEGAL REMEDIES

The previous column discussed the important points in respect of transfer of membership in a Cooperative Housing Society (housing society) as governed by the Delhi Co-operative Society Act, 2003 (Act) and Delhi Cooperative Societies Rule, 2007 (Rules) framed thereunder. This column will discuss the duties of the management committee vis-a-vis maintenance of the housing society complex.

A housing society is created to promote the interests of its members and to fulfill the objects for which it is created. The society will be duty-bound to look after the interests of members occupying/residing in the apartment/dwelling unit, even after apartments have been allocated to them.

The common areas, services and facilities in the housing society complex are for common enjoyment and use of members. The Act and Rules make the

management committee of the housing society complex to manage the affairs of the complex, to maintain and regulate common areas, services and facilities in the housing society complex. Such services/facilities are needed by the members to enjoy their property in the complex/building to the fullest.

In terms of rule, the management committee is under obligation to do the following:

- To maintain essential services in a housing society complex on a regular basis, such as electricity supply, water supply, sewage, garbage disposal, running of lifts, borewells, gensets, water harvesting systems and maintenance of green areas, security services, availability of plumber, fire safety equipment and other services specified by the



general body of the housing society.

- To carry out repair work and maintenance of the property of the housing society.
- To carry out regular inspection of items and taking immediate action for repair and maintenance out of housing society fund for internal roads; compound wall; external water pipelines; water pumps; water storage tanks; drainage lines; septic tanks; staircases; structural repairs of roofs of all flats; outside wall/ exterior of the building(s); maintenance of

parques; common parking and garages; power back-up; lifts; damaged ceilings and plaster on the top floors on account of leakage of the rainwater through the terrace; any other common property/space/facility/services as prescribed by the general body.

- To insure housing society building(s)/complex equipment, fixtures and fittings etc against the risk of earthquakes and other allied perils.
- To prepare a disaster management plan for the building and complex and implement

and update it regularly.

- To prepare a fire prevention plan and create awareness, conduct drill about its prevention and evacuation etc in consultation with the local fire department.

In case of complaint by any member/occupant in respect of any of the items mentioned above, the management committee is required to take suitable action regarding the same within a period of 15 days from the date of complaint.

Every housing society after obtaining approval at the general body meeting is required

to frame regulations of essential services from time to time, which shall contain details of services to be provided and charges to be recovered for such services from the members and residents of the housing society.

The costs of maintenance of common areas and facilities, repairs and replacement are met from charges paid by member/owners/occupants of the flat/units in the housing society complex. The management committee has the power to initiate proceedings for recovery against defaulting members who fail to pay the charges within 30 days of demand by the management committee.

It may be noted that in the event of the management committee or any of its officers failing to fulfill any of the above responsibilities towards the housing society, a special general body meeting may be convened for removal of the committee and/or any of its officers. Further, the registrar may also, pass an order for removal of the committee or its officers if in his opinion the management committee is negligent in performing the duties/responsibilities imposed on it under the Act.

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htestates LAW BOOK Sunil Tyagi

I own an apartment in Ghaziabad. I was unable to pay the common expenses for my apartment to the Association of Apartments for about two months and they have now (after giving me a notice) passed a resolution in the general body meeting threatening to cut water supply to my apartment. What remedy do I have?

—Shagun Makhija

Under the Uttar Pradesh Apartment Ownership Act, 2010, the General Body of the Association of Apartments can pass a resolution to curtail or reduce any essential supply to an apartment only if the common expenses remain unpaid for a period of six months or more. To ensure your water supply is not curtailed you need to make sure that the payment of common expenses does not remain pending for more than six months.

rights of the seller get transferred to the buyer. Assuming the sale deed between the seller and you does not stipulate to the contrary, you should have all the rights towards the house, including the right to collect the rents from the period since you became the owner of the house. In case the tenant and the previous owner create some hindrance, you can approach the appropriate court to enforce your rights.

I am a non-resident Indian and want to purchase a flat in Noida with my friend who is an Australian citizen as a second holder, can I do so?

—Smita Byas

A non-resident Indian/person of Indian origin (NRI/PIO) cannot purchase property in India wherein the second holder is a foreign national not being a PIO. In case your friend is a PIO then he/she can be the second holder in the property.

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I purchased a house in which already some tenants reside. I want the tenancy to continue and to collect rent from the tenant as the new landlord. However, the seller ie the previous landlord refuses to let me collect the rent and has asked the tenants to make the rent to him directly. What right do I have?

—Shobhit Phukan

Under the Transfer of Property Act, 1882, upon execution of a sale, the

htestates CHEQUE BOOK Harsh Roongta

As of now, I have a (floating rate) home loan outstanding worth ₹5.85 lakh (₹01 10.5%). The outstanding tenure is 145 months. Does it make sense to pay off the loan by taking a personal loan for five years?

—Shagun Bedi

Please note that an unsecured personal loan is very expensive in comparison to a home loan. If you wish to pay off your home loan in the next five years, you can request your lender to reduce the tenure of your loan by increasing

the EMI. Alternatively, you can part prepay your loan (assuming it is floating rate) whenever you have extra funds. Prepayment penalty is waived off by banks and housing finance companies on all home loans given under floating rate.

Which is a better option for housing loan repayment? Reduced EMI or a reduced tenure?

—Samant Gokhale

If loan eligibility is a constraint, go for the longest possible tenure. You should

ideally opt for a longer tenure (floating rate) loan. This way you manage the flexibility of low EMIs and at the same time you can prepay the loan without any penalty whenever you have surplus funds. There is no additional cost involved if you opt for a longer tenure. The interest which you will pay is dependent on the time for which you use the money.

If you are getting the loan amount you require at the lower tenure and are also confident about paying off the higher EMI then you should opt for a shorter tenure.

Are there any prepayment charges applicable in case a loan is repaid by another bank?

—Harish Goel

As far as the loan taken from housing finance companies is concerned, NHB has issued instructions not to levy any prepayment penalty if the loan is under floating rate, whatever be the source of repayment.

For HDFC if the loan is taken under fixed rate, prepayment penalty cannot be levied if the loan is repaid from the borrower's own sources (which means any source other than takeover by another housing finance company/bank).

As far as banks are concerned RBI has instructed them not to levy any prepayment penalty on loans under floating rate. There are no such similar instructions as housing finance companies

in respect of repayment of home loans under fixed rates.

Could you please comment on tax implication on 100% loan disbursement for an under construction property which would take 2-3 years for completion.

—Akash Desai

What this means is that for interest paid on a loan taken for an under construction property, you cannot get income tax benefits in respect of interest paid during the year in which the property is under construction. However, you can claim all the interest payable for the construction period excluding the year in which it is completed, in five equal installments beginning from the year in

which you take possession of the property. This way the overall claim of interest will be within the limit of ₹1,50,000 in case the property is self-occupied. However, the benefits under section 80C for principal repayment is lost for the construction period and cannot be claimed later.

If a minor and an adult are mentioned in a will, can they get a loan?

—Ranjit Kapoor

No loan is given on a property in which a minor has ownership intent as such a property cannot be mortgaged.

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