

Relinquishment versus a gift deed

Checking the nature of transaction of a property is important when you are assessing the legal validity of the owner's title

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htestates LEGAL REMEDIES

There are many legal modes of divesting one's ownership and rights in an immovable property in favour of another - release/relinquishment and gift are two such modes that are common. The direct consequence of relinquishment of one's share in a jointly owned property is that shares of other co-owners of the same property would automatically stand enlarged. For example, if a house is inherited by four siblings in equal and undivided shares (ie one-fourth share each) and one sibling wishes to relinquish his share and exit the property, the share of other three siblings would automatically stand enlarged to one-third each in this property.

There is a common element between the nature of release/

relinquishment on one hand and gifting on the other in that both are gratuitous modes. One can relinquish his undivided share in a property either in lieu of consideration as well as gratuitously (ie without receiving any consideration). Whether or not any consideration was received by the releasor (ie individual relinquishing the share) from the releasee (ie individual receiving the share) would not affect the validity of such relinquishment. A gift of an immovable property is made in favour of another without receiving any consideration or money. It is the very essence of a gift to be made voluntarily and out of love and affection for the donee (ie individual receive-

ing the gift). One must also be aware of some fundamental differences between relinquishment and gift in order to be able to choose which mode is appropriate and legally valid in light of the unique circumstances. Firstly, relinquishment is a unilateral act. In order to release/relinquish one's share in a property, the releasor does not require acceptance of the party which stands to receive the benefit of ownership and neither does he require prior consent of other co-owners of that property. However, as a gift is a bilateral act, it would be legally valid only if the gift has been voluntarily given and wholeheartedly accepted by the donee or on behalf of the donee.

Secondly, relinquishment of one's ownership in a property would arise in situations where there is joint ownership in one/more assets. Release/relinquishment of one's joint and undivided share cannot be validly made in favour of a stranger/person who does not presently have a continuing interest or share in the same property. If a relinquishment is attempted to be made in favour of a person who does not have an existing interest or share in the property, the transaction shall nevertheless be treated

as a sale/conveyance/gift in the eyes of law. On the other hand, a gift may be made in favour of a person who may or may not have any interest or share in the same asset. In case one wishes to make a gift of a share in a coparcenary property (ie property that has been acquired or inherited by the donor from his ancestors as per the rules of Hindu Mitakshara law) in favour of a stranger, he/she may do so after obtaining prior consent from all other coparceners (ie other family members having undivided share in the same immovable property which was acquired or inherited from a common ancestor). Thirdly, one cannot choose to release his/her undivided share in favour of a specific co-owner, to the exclusion of other co-owners of the same property. If one attempts to relinquish his share in favour of one co-owner to the exclusion of all other co-owners (if any), the transaction

is likely to be treated as a sale/gift in the eyes of law. However, a gift of one's share in a property may be validly made in favour of only one/few co-owners, to the exclusion of other co-owners of that property. Attempts at gifting property as a release/relinquishment deed in order to minimise stamp duty burden have arisen in numerous property disputes. In such cases, the courts ascertain the essence of a disputed transaction rather than simply rely on nomenclature used by the parties. When carrying out due diligence for a property, one must be careful to assess the legal validity of the owner's title by understanding the nature of the transaction rather than its mere nomenclature.

The author is senior partner at Zeus Law, a corporate commercial law firm. One of its areas of specialisations is real estate transactional and litigation work. If you have any queries, email us at htestates@hindustantimes.com or ht@zeus.firm.in



htestates LAW BOOK Sunil Tyagi

I had written a will last year, but now want to make some changes to the scheme of inheritance. Should I proceed to write a codicil or a new will?

-Suresh Zutshi

If you wish to make major changes to your earlier will, you may write an entirely new will to avoid the possibility of any contradictory clauses. The new will should clearly specify that it is intended to supersede the earlier will in its entirety. In case the changes desired are minor, you may write a codicil to amend the earlier will, clearly referencing the date of execution of the earlier will as well as the clauses being amended and to what extent. Further, you must execute and sign the new will and/or codicil (as the case may be) in the presence of at least two witnesses, who in turn must attest the document in your presence.

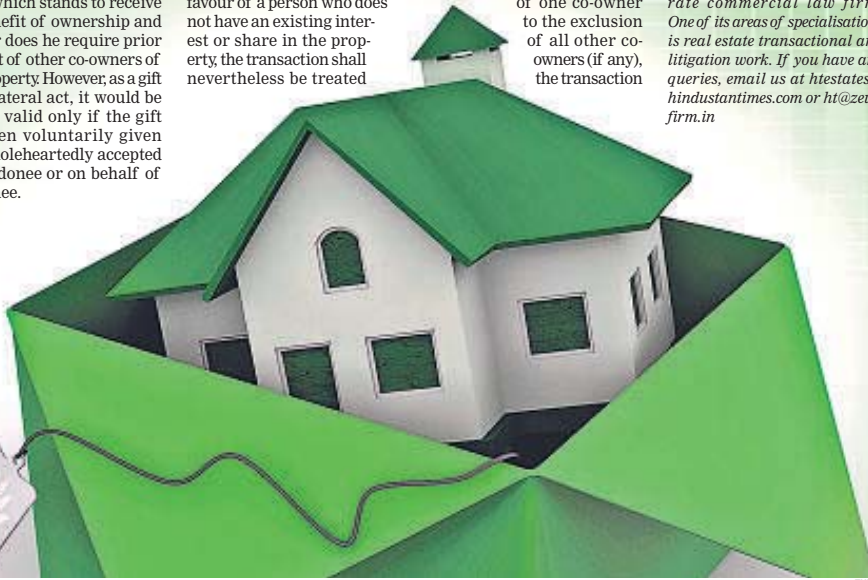
contribute towards society and maintenance expenses, even if the apartment is lying vacant. A similar provision exists under the Uttar Pradesh model byelaws for housing societies in Uttar Pradesh which additionally stipulates that all the owners are obliged to pay monthly assessments imposed by the society/residents' association to meet expenses related to the complex.

I had purchased a newly constructed flat as an original allottee. Although it has only been less than a year since I received possession, cracks have begun to form in the walls of my flat. Is the builder entitled to charge me for carrying out repair works?

-Siddharth Shah

As standard industry practice, most flat/space buyer's agreements provide for a defect liability clause wherein the developer undertakes to rectify and repair, at its own costs, any construction and other material defects that may appear within a defined period after handover of possession of the property (this period usually varies between one to two years), provided such damage is not a result of the owner's acts/omissions.

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THINKSTOCK

TO-LET

NORTH DELHI

MODEL Town Gujrawala Ashok Vhr.Civil Line Hundson Lane Kalyan vhr. & Adj. areas 1.2,3,4 BR,Setl. comm. space Hardial Propri 9811189909, 27210000

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ON Rent 2 BHK set at G.F. Rajouri Garden, 2 Side Entry, Parking not a problem, Rent Rs. 25000 P.M., Contact-9910126745.

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NEWLY Constructed Two Side open 3rd Floor 3BHK Attached bath, Lobby with Lift & Stilt parking at Rajouri Garden. Owner- 9811222202.

TO LET, 3 BR, Drawing/ Dining, Kitchen, Marble flooring, Facing Park, A-1/216, Janspuri, Near West Metro Station. Cont: 986802221, 011-25550750

DWARKA

DWARKA sec -9 F/F 4 Beds 3 Baths D/D Kitchen IGL 3 big balconies 24 Hour sweet water/ power backup/Security 1 Reserve car parking. 9810293276

FOR Rent Or Sale 4 Bedroom, Full Work done, Modular Kitchen, Society Flat, 3 toilets, Sec-19, Arvind Society Dwarka. Contact - 931229855.

SOUTH DELHI

F 3/11 Vasant Vihar, First Floor comprising 4 Bed D/D equipped with AC's & power back up. Suits Expat/ Diplomat. Saliwan: 9810062871, 9810063891

SARVODAYA Encl. 2nd Flr, 3BR w/ b'tul Terrace, Servant Room, 3 side open, park facing. Also Vijay Mandai 2BR + Study, GF, Park facing # 9310904440

LAJPAT Nagar 2nd, 3 BR, Bath, D.D., Servant Room, 1st Floor, Facing Park with Ample Parking on Rent. Contact: 9810256443

CR Park Lower GF P/64 2Bed room D/D, 2baths, Lobby 1 Car park for working Bachelors Engineers MNC's. Couple. Lal 9810293968, 26271125

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GK-II Masjid Moth 320 Sq Ft, Retail Space available on Lease at Commercial Complex, Prime Location, reasonable Terms, call 9810507454, 9811771100

G.K.-II, LGF 750 sq.ft, corner furnished with Cabins, Pantry, Toilet suits professionals. 9811089838, 011-41407172

GK - I, S-Bhk SF with lift, SO, S Parking @75K, GK - II E-69 FF @70K, E-330 SF @70K, E-89 FF @55k all 3BHK # 955599666, 9910939898

SADFARJUNG Encl., B-4/31, top flr, with terr, 4BHK, D/D, 5 toilet, Mod. Kitchen, P / Back up, c/nr AC, indp. D-way 3-car park, S. qtr, # 9810619397, 9562229322

GK4, Pamposh Encl. 450 sq ft corner S.F., 3 Large BR, 3baths child BR, D/D, fully AC 24 hrs power-back-up & water, SQ. Lift, Foreigner/ MNC. 9811086561

D-306, Def. Col. 2nd Flr with Lift fully furnished 3BR, D/D, Mod. Kitchen, Italian Flooring, Ample Parking, 100% Power Back Up # 9871234154, 9310028788

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G-41, G.K.-II Masjid Moth, F.Flr 3 Beds attach Baths, D/D, S.Qtr, 3 Balconies, Ample Parking, Wide Road, Prime Location, Owner Anand # 9818229092.

GK-1, 4BR, GF, new, GK-3, FF, 3BR, SJE 500, 400BR, Def. Col. 217/325yds 3-4 BR, Stilt for Co. Guest house, MNC, foreigner. # 7838871113

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G.K Encl.-1, Newly Const. 350 Sq yds, 4 Beds, D/D, lobby, lift, still prkg, SQ, G floor with/without attach bsmt/FF/3rd flr. owner Mehra # 9953060362 (6-8pm)

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D-77, Vasant Vihar SF modern Newly Renovated 2 BR, L/D with huge balcony, can also furnished open all time Contact-9910024666

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