

# SC to the rescue of group housing society members

Societies cannot overlook responsibilities as their members are covered by Consumer Protection Act, rules SC



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rendering of service and will be covered in the expression 'service made available to potential users'. A person who applies for allotment of a building site or for a flat constructed by the development authority or enters into an agreement with a builder or a contractor is a potential user and nature of transaction is covered in the expression 'service of any description'. It further indicates that the definition is not exhaustive. The inclusive clause succeeded in widening its scope but not exhausting the services which could be covered in the earlier part. So any service - except when it is free of charge or under a constraint of personal service - is included in it."

On the basis of the judgments in the above mentioned cases, the apex court held that the complainants who had deposited instalments for the flats being constructed by the housing society were covered by the definition of 'consumer' as per the Consumer Protection Act and it set aside the orders passed by the National Commission and the State Commission and remanded the complaints to the State Commission for adjudication.

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**LAW BOOK**  
Sunil Tyagi

My grandfather gifted an immoveable property to my sister. I attested the gift deed as a witness along with a family friend. Now our uncle is trying to challenge the deed. Can he do so on the ground that I being a family member attested the gift deed as a witness?

—Saurav Sharma  
You being an attesting witness to a gift deed executed by your grandfather in favour of your sister cannot be a ground for challenging the gift deed. There is no bar on family members from being attesting witnesses to a gift deed.

My husband passed away some time back. He had bequeathed our house in Delhi to me through a will which is duly registered. I wish to get the house mutated in my name with the municipal corporation. How do I do so?

—Sakshi Bajaj  
You may send a notice to the relevant Delhi Municipal Corporation in Form B within six months along with the appropriate mutation fee and the following documents, (i) Certified copy of registered will of your husband (ii) Original copy of death certificate (iii) Your affidavit as per form prescribed (iv) Indemnity bond by you as per form prescribed (v) Up-to-date property tax

receipts (vi) Rough site plan of the property (in case the site plan is not there in the file with the corporation, it may be required) and (vii) any additional documents the corporation may ask for.

I live in the US and want to sell my property in India. I want to appoint my brother as an authority and have drafted and signed a power of attorney for this purpose in his favour. Can my brother now execute the sale on my behalf or are there any legal formalities to validate the power of attorney?

—Mohit Singh  
For such a power of attorney to be binding and recognised by law, it should be duly executed before and attested by the Indian consulate or notary public located in the US as per the prescribed procedure. Once the power of attorney is received in India, it is required to be stamped with the proper stamp duty payable thereon, within three months after it has first been received in India.

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**htestates**  
**LEGAL REMEDIES**

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It is a settled law that consumer courts can decide on grievances against builders or developers in whose projects the allottees have booked apartments. The Supreme Court, in the case of Virender Jain vs Alaknanda Cooperative Group Housing Society Limited and others, set at rest the issue of consumer courts having jurisdiction in cases where a member has a grievance against the cooperative group housing society he or she belongs to despite the Cooperative Societies Act having a specific remedy.

In the case, the complainants were enrolled as members of the Alaknanda Cooperative Group Housing Society Limited Gurgaon. They had applied for type 'A' flats which were being constructed by the society on land allotted to it by the author-

ity. The complainants had deposited payment for the property in instalments over a period of around eight years. Thereafter, the housing society returned the amount and indirectly terminated their membership on the grounds of their failing to deposit the instalments of the first and second stage of construction and the instalment of the cost of land allotted by the authority to the society.

The complainants filed a plea with the District Consumer Disputes Redressal Forum, Gurgaon, under Section 12 of the Consumer Protection Act, 1986. The housing society claimed that the complainants did not fall within the definition of 'consumer' as per the Consumer Protection Act, 1986, and that the only remedy they had was to file a petition as per the Haryana Cooperative Societies Act, 1984, which was a special statute.

The District Forum overruled the society's objection and held that the remedy provided under the Haryana Cooperative Societies Act, 1984, was an additional remedy and it was not in derogation to remedy provided under other acts. It is the choice

of the complainants to either avail of the remedy under the Consumer Protection Act or any other applicable law. However, District Forum dismissed the complaint on the ground that there was no deficiency in the service provided by the housing society. The complainants appealed

to the State Commission and thereafter to the National Commission, but in both forums their appeals were not entertained on the ground that the complainants did not come within the purview of the term 'consumer' as per the Consumer Protection Act, 1986. Thereafter, the complainants approached

the Supreme Court.

The apex court discussed its decision in the Lucknow Development Authority vs MK Gupta (1994) case wherein it was observed that if "... authority undertakes to construct building or allot houses or building sites to citizens either as amenity or as benefit then it amounts to

u/s 54 of Income Tax Act.

What happens to processing fees if I don't avail the disbursement?

—Rohit Meena  
Most lenders do not refund the processing fees if you do not avail the disbursement after taking the sanction from them. However, some banks may refund part of the processing fee. In case the loan is not sanctioned, some lenders will refund the entire processing fee but others will either not refund anything at all or only refund a portion.

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gains. You will be required to pay tax at the rate of 20.60% on capital gains of ₹83.70 lakh which comes to ₹17.25 lakh. You can pay your tax in Challan 280 in physical form or online. You can file your online return of income in Form No ITR-2.

However, if you re-invest the entire amount of long term capital gains of ₹83.70 lakh to purchase another residential house in India within two years of transfer of your original flat or for construction of residential house in India within three years of transfer of your original flat the entire amount of long term capital gains tax for ₹83.70 lakh will be exempt

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**CHEQUE BOOK**  
Harsh Roongta

I bought a flat in 1991 for ₹3 lakh and converted it into freehold. I have been offered ₹1 crore for it. If I sell it this year, what will my capital gains liability be like? How do I pay capital gains?

—Sameer Sethi  
Firstly, flats can never be converted into freehold as these are constructed on the land owned by builder/developer in which the holder only becomes a shareholder. Assuming that you got ₹1 crore by selling the flat

bought in June 1991, you need to increase the historical cost by the inflation factor for the period of your holding. These indexed cost of acquisition in your case works out to ₹16.30 lakh. The capital gains accruing to you on sale of the flat will be ₹83.70 lakh (₹1 crore minus ₹16.30 lakh). Since the property has been in hold for more than three years, the capital gains will be in the nature of long term capital

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# More power to landowners

investments. Under the scheme, it will get about 22% (12% land for affordable housing and 10% land for community services) of land free of cost both for affordable housing, infrastructure and community services. It is a commercial method of solving the challenges associated with the stringent land acquisition Act," says Navin Raheja, chairman, FICCI real estate and chairman, advisory council of Naredco.

Some changes have been made to density norms too. Earlier the requirement was 850 to 900 persons per acre, consider-

ing the fact that each family on an average had about five family members. Assuming then that the density was 850, the minimum number of flats that could come up in a project was 190, mostly 1BHK unit types. Now with the minimum density being reduced to 750, at least 150 units can be constructed in a project, allowing a developer to build a mix of both 1BHK and 2BHK units depending on the demand pattern in that area, say experts. Also, under the new policy, if a developer owns 40 acres, the share he would have to surren-

der to the government would work out to about 8.8 acres.

This is a practical policy that is aimed at incentivising landowners, to make them participants in the development process. TDR is also linked to the market performance of real estate. It may command a favourable value in urban areas, but not in rural or semi urban areas, say experts.

A TDR is akin to virtual real estate being offered to farmers. The landowner in possession of a TDR certificate can sell the development rights to a

builder. It can be traded in the open market pretty much like any other transferable negotiable instrument.

By reducing the size of the land parcel to 25 acres under this policy, the government is hoping that even unproductive land can be utilised in the best possible manner. Also, by ensuring that developers surrender 12% of the land to the government for affordable housing, the government probably wants to control the affordable housing stock in the state and oversee its development, add experts.

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