

# Buying a resale flat? Don't let the society rip you off on transfer charges

The amount they can charge is capped in many cities; you can go legal to avoid payment or even recover your money paid under pressure

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*Most states bar housing societies from charging transfer fees the resale of apartments. (Shutterstock file photo)*

Sushil Bahal, a Mumbai-based media professional, bought a house for about Rs 30 lakh some years ago in a suburban society in which the members were mostly journalists. It was a good deal as the society was well maintained and the resale flat was cheaper than something similar in a new project nearby.

Bahal was aghast when he was asked to pay Rs 1 lakh as society transfer charges in order to acquire membership. Bahal knew he was being overcharged, but did not go legal as he did not want any friction with his neighbours. Bahal is not alone. Many buyers are either unaware of the maximum amount a society can charge, or simply don't protest.

How much can a society really charge for property transfer? "The law in Maharashtra does not permit a society to charge more than Rs 25,000 for transfer of property in the new buyer's name in its records. Another Rs 500-650 at the most can be charged for change of name in the share certificate," says Dinesh Kadam, partner, MZM Legal LLP, a law firm in Mumbai.

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He says that society bye-laws have to be in sync with a state's terms, and that the management committee cannot fix the transfer amount.

Ashoo Gupta, a partner at law firm Shardul Amarchand Mangaldas, says there are similar caps in other cities. Under the Delhi Cooperative Societies Act, 2003, society membership carries a transfer fee of Rs 500, plus some amount as share money and admission fees. She adds the courts in the National Capital have deemed a payment of Rs 10,000, charged by some societies, as reasonable.

Anshul Gupta (no relation of Ashoo Gupta), managing partner, ANG Partners, Advocates & Solicitors, draws attention to a January 2019 notification issued by the Registrar of Cooperative societies, Delhi, under Rule 77 of the Delhi Cooperative Societies Rules, 1973. The notification directs cooperative group housing/house building societies not to charge any "entry fee" from persons eligible to take possession of flats/plots in the respective cooperative society. It says: "Violations of this Directive will be viewed seriously and the President/Secretary of the concerned society would be held responsible jointly and individually."

Says Kolkata-based Soumya Banerjee, a partner at law firm AQUILAW: "There appears to be no provision under the laws in West Bengal, to collect transfer fee upon the sale of a flat or premises in a registered society. Neither the model bye-laws under Section 20 of the 2006 West Bengal Co-operative Societies Act, 2006, nor the West Bengal Co-operative Society Rules, 2011 has any sort of provision for such collection."

He says according to the FAQ issued by the Bengal's Department of Co-operation, a housing society cannot charge transfer fee from its transferor-members.

There was a provision earlier to collect 0.5 per cent of the sale value, but the payment was voluntary. That provision too was done away with.

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Both Banerjee of AQUILAW and Gupta of Shardul Amarchand Mangaldas concur that nothing in the laws in Karnataka and Tamil Nadu permits a society to collect any transfer charges.

Banerjee says any such collections made in Kolkata, Bengaluru or Chennai may constitute a breach.

Gupta believes there is no bar on collection in Bengaluru and Chennai as such. "It is just that no specific clause prescribes any mechanism for calculation of the transfer charges. A society may collect transfer charges if they are reasonable and if it has an explicit clause in its bye-laws," she says.

### **How societies squeeze out more**

The weapon societies have is withholding the no-objection certificate to the deal on some pretext. "Sometimes societies try to collect higher amounts under the garb of repair and maintenance charges. However, such charges have first to be ratified by the society members. In any case, repairs and maintenance, sinking fund and other contributions remain outside the ambit of transfer charges and attempts by the society to include them is a clear violation of the law," says Kadam.

Kadam adds that while an NOC is not required under the model bye-laws in Maharashtra, nothing in the statutes prevents a society from raising conditions to issue one. However, the non-existence of an NOC can hardly be a reason for denying membership. However, the seller/transferor should pay all maintenance arrears before transferring his interest in the premises.

He says some societies try to coerce the buyer into making a 'voluntary donation', but this too is illegal.

### **What buyers can do**

"The bye-law in Maharashtra is very clear on how much cooperative societies can charge as transfer fees. But if you really like the premises, one way of settling the transfer charge issue is for the seller and buyer to

agree to share the burden of the costs if the amount the society wants is quite high," says Jesal Sanghvi, Co-founder & CEO, Homexchange, an instant home sale and upgrade platform. "This is what typically happens in many resale deals. Of course, if the buyer has other choices, he will opt out."

If the society is asking for a donation, try and get them to put their demand in writing, as that will bolster your case in court, says Kadam.

Kadam cites instances in which the administrative authority, such as the registrar or sub-registrar of societies has dissolved the management committee and even barred its members from contesting elections for a few years. In some cases, the authority has even appointed its own administrator to run the society's affairs.

Gupta of ANG Partners, Advocates & Solicitors, cites the case of a 'council of board of directors' of a society in Katraj (Pune) that was dissolved in 2020 by the deputy district registrar for passing a general body resolution to levy a society transfer charge of Rs 1.25 lakh. The directors were also barred from contesting elections for six years.

In a case in Delhi, the judge frowned upon a charge of 'Rs one lakh and above' levied by the society from new members and fixed the maximum amount payable by them at Rs 10,000 each. Anything above that would be appropriated towards present and future dues payable to the society.

Drawing upon this order and the provisions contained in the Bye-laws, Rules and Haryana Cooperative Societies Act, 1984, the Office of the Registrar, Cooperative Societies, Haryana, Panchkula, came down on colonies for charging anything beyond Rs 10,000 towards transfer. In its circular, the authority clearly stated that such a practice was "sheer exploitation of Act and needs corrective steps".

As a buyer, you need to file a case with the competent authority in your city/state in order to prevent the society from overcharging you or to recover any money you may have paid under pressure to acquire membership. Do remember however, to keep a record of any demand for donation, voluntary contribution or any other amount by whatever name called, that falls outside the purview of legally permissible transfer charges. Try and get the society to give in writing its requirement of such donations/contributions, or get access to a resolution that it may have passed, calling for such payments. If they refuse to comply with your request, at least take a receipt for the amount so paid. The law is on your side.

### **Noida's laws differ**

The law in Noida differs from that in Delhi or Ghaziabad.

"Under Uttar Pradesh laws, there appears to be no provision for collection of transfer charges upon resale of a house/flat by a registered society. But in Noida, the New Okhla Industrial Development Authority (NOIDA) collects a 'Transfer of Memorandum' charge on resale/transfer of houses built on land leased for 90 years, at 2.5 per cent of the circle rate applicable to the relevant sector," says Banerjee of AQUILAW:

A 100 sq metre (1,076 sq ft) flat in, say, Noida Sector 14, where the circle rate is Rs 1,26,750 per sq m, would attract a transfer of memorandum charge of about Rs 316,800.