

LAW & POLICY UPDATE

REAL ESTATE



Sale of apartments only on the basis of Carpet Area – HARERA

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Earlier, developers/builders quantified area on the basis of Super Area and charged thereon, thereby attaining huge profit margins. Super Area as defined in various agreements between builder and buyer is usually vague and ambiguous. This is a misleading practice that can cause confusion and lead to avoidable litigation. Whilst the customer is contractually forced to pay for the apartment on the basis of Super Area, the loading on the actual area that the customer actually gets is usually not known. The shock dawns when the customer later discovers that the loading is exorbitantly high. In fact, the Supreme Court in the recent case of *Jaypee Kensington Boulevard Apartments Welfare Association & Ors v. NBCC (India) Ltd*¹ remarked that the homebuyers could not be charged with an extra amount towards an arbitrary increase in the name of 'super built-up area'. Such situations are avoided when the sale happens on a Carpet Area basis where the customer pays only for the Carpet Area.

In a recent move that comes as a much-needed respite to the homebuyers in Haryana, the Haryana Real Estate Regulatory Authority (**H-RERA**), Gurugram deriving genesis from the Act and the State Rules has directed the developers to sell apartments only on the basis of the Carpet Area. In a press conference held on April 27, 2021, H-RERA unequivocally stated that the sale of property on the basis of Super Area or any other basis is illegal and conveyance deeds in the district can be executed only on Carpet Area basis. The Authority further remarked that the practice of the sale of property on a Super Area basis is misleading, ambiguous, opaque, and gives rise to confusion and complexities, and sometimes results in avoidable litigation. The recent complaints from a large number of homebuyers that the property developers charge them for the Super Area and not the Carpet Area forced this move.

Dr. K. K. Khandelwal, Chairman, H-RERA, Gurgaon, asserted that these regulations were issued to ensure that the sale of property or real estate projects were done in an efficient and transparent manner and to protect the interest of consumers. H-RERA, Gurugram, warned that the sale agreement of any real estate, if not registered only on the basis of carpet area, will constitute an unfair trade practice and attract appropriate action as per the relevant provisions of the Act. Such a sale would also be declared null and void by H-RERA.

As per the HARERA Act, which came into force in 2017, developers are allowed to sell property only on actual Carpet Area and not the Super Area, but they have often gotten away with it due to vague definitions. He noted that there was a lack of legal certainty surrounding the term Carpet Area before the RERA Act, 2016 came into existence. The definition of Carpet Area as provided under Section 2(k) of the RERA Act means the net usable floor area. All walls which are constructed or provided on the external face of an apartment shall be regarded as external walls, and all walls or independent columns constructed or provided within an apartment shall be regarded as internal partition walls. While external walls, service shafts, balcony, veranda, and open terrace have to be excluded from the definition, the internal partition walls of the apartment are not excluded as they form a part of the integral structure, that is, Carpet Area.

¹ 2021 SCC OnLine SC 253.

The registration of the conveyance deeds is to be done only on the basis of the Carpet Area. While in a case where the conveyance deed of the units has not been executed, the promoter shall also indicate the Carpet Area in addition to the Super Area and its details/constituents.

As per the norms, the total price/cost will remain unaltered even if the unit is to be registered on a Carpet Area basis and will not alter the sale consideration. It is only for the purpose of disclosure and the exact description of the apartment.

Succinctly put, the legislative mandate emanating from the Act was clearly manifest that now the property can be sold only on the basis of Carpet Area. The mandatory draft Agreement to sell provided by the Rules also reinforced the determinant of Carpet Area. Therefore, it is really surprising that such mandatory provisions are not being complied with. Will such acts and omissions pass the judicial muster, only time would tell but we have serious doubts.

