

# HOW MUCH CAN HOUSING SOCIETIES CHARGE AS TRANSFER CHARGES, AS PER THE LAW

*What is the maximum amount that housing societies can levy, as transfer charges on the sale/purchase of a property? We look at a few verdicts of the Bombay HC, to answer this question*

The government of Maharashtra recently increased the stamp duty inter alia for sale, gift and transfer, by 1% and there are possibilities of further hikes in stamp duty and registration charges looming. However, an uncertainty that plagues flat owners and purchasers, lies a little closer to home – the levy of transfer charges by a cooperative housing society (society), on the sale and transfer of shares and rights to the flats in a building. Societies insist on payment of a transfer premium, at the time of sale of the shares and rights in a flat by a member, which ranges anywhere from Rs 25,000 to even a percentage of the purchase consideration for sale of the flat.

## **Transfer charges: Maximum permissible amount, by law**

The flat owner and purchaser, who require the cooperation of the society, for mutating the name of the purchaser on the share certificate, are generally left with no option but to heed to the demands of the society. The question is, whether the law permits an exorbitant levy of transfer charges by a society. The answer lies in Bylaw No 38 of the 2013 model society bylaws framed under the Maharashtra Cooperative Societies Act, 1960, read with circular dated August 9, 2001, issued by the government of Maharashtra. The aforesaid Bylaw No 38 and circular dated August 9, 2001, unequivocally state that the premium fixed by the society for the transfer of flats, cannot exceed a sum of Rs 25,000.

In order to not fall foul of the aforesaid ceiling on transfer charges, many societies often require the flat owner / purchaser to pay the demanded amount, by way of a 'voluntary donation'. However, Bylaw No 38 covers this eventuality as well and goes a step further, to qualify that 'No additional amount towards donation or contribution to any other funds or under any other pretext, shall be recovered from the transferor or the transferee'.

## **Legal judgements pertaining to transfer charges**

The legality of payment of transfer charges demanded by a society, has been tested by the courts on numerous occasions, over the past few years. The Bombay High Court, in the case of Bharatiya Bhavan Cooperative Housing Society Limited and others vs Krishna H Bajaj and others (Writ Petition No 1094 of 2004, decided on February 17, 2010) allowed the appeal filed by the society, thereby, disentitling the flat purchaser from receiving a refund of an amount of Rs 9,63,000 paid to the society at the time of sale of the flat, by way of a voluntary contribution. During the hearing of the appeal before the Bombay High Court, the flat purchaser contested that the voluntary contribution was nothing but transfer charges, which was demanded by the society, which the flat owner had no option but to pay. The Bombay High Court observed that the flat purchaser, in that case, knowing the precise

legal position, contracted with the society for payment of the transfer charges of Rs 9,63,000 in the name of a voluntary contribution.

Aggrieved by the aforesaid order, the flat purchaser filed a special leave petition before the Supreme Court of India (SLP No 11266 of 2010, order decided on November 9, 2011). The SC stated that it did not fully agree with the reasons given in the aforesaid judgment passed by the Bombay High Court. However, the SC could not overturn the decision of the Bombay High Court, on the ground that the flat purchaser had not challenged the resolution that was passed by the society in fixing the amount of the transfer charges and that the challenge by the flat purchaser, was made after over two years after the payment of the voluntary donation.

**This issue of transfer charges has now been put to rest, by the order passed by the Bombay High Court in the case of Alankar Sahkari Griha Rachana Sanstha Maryadit vs Atul Mahadev and another (Writ Petition No 4457 of 2014, decided on August 6, 2018), where the Bombay High Court categorically expressed its disagreement with the judgment passed by the Bombay High Court in the Krishna H Bajaj case and held that in view of the flat purchaser taking immediate steps to challenge the transaction of payment of the transfer charges, it cannot be concluded that it was a voluntary donation but was a transfer fee paid by compulsion. In the Alankar Sahkari case, relying on the provisions of the bylaws adopted by the society and the circular dated August 9, 2001, the Bombay High Court observed that there was a ceiling of Rs 25,000 for transfer fees and that different ways were being invented by societies, to earn more money through legally impermissible means.**

Further, the Bombay High Court, in the Alankar Sahkari case, recognised that in a situation where a flat purchaser wants a smooth transaction and transfer of the share certificate in his name, the society enjoys a dominant position. Under such circumstances, the society demands payment of exorbitant amounts from the flat purchaser, under the garb of ‘voluntary donations’.

**The Bombay High Court held that a society can collect funds, only by legally permissible charges or fees and is not expected to indulge in profiteering from the members. While there is no bar on paying donations to a society, it should be done without any compulsion or coercion and in no way, can the society charge transfer fees under the pretext of donation.**

## **Impact of the Bombay HC judgement on transfer charges, on property purchasers and sellers**

The decision of the Bombay High Court in the Alankar Sahkari case, has laid the foundation for any flat owner or purchaser to challenge the exorbitant demands of transfer charges raised by a society, whether termed as a voluntary donation or otherwise. While the legal recourse and law has been fairly settled, the question that remains, is whether a flat purchaser is willing to initiate acrimonious litigation with a society where he or she hopes to stay for the foreseeable future. However, in societies where presently there is no resolution with respect to charging of transfer premium as voluntary donations or otherwise, members should oppose the passing of any such resolution, as it is against the spirit of the law. Such acts can only be stopped, if members raise their objections at the right time.

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