

Concept of Carpet area and Common area

Definitions

- Section 2(k) of the Real Estate (Regulation and Development) Act, 2016 (for short “Act”) defines carpet area as:

“carpet area” means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.

Explanation — For the purpose of this clause, the expression “exclusive balcony or verandah area” means the area of the balcony or verandah, as the case may be, which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee; and “exclusive open terrace area” means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee”

- Section 2(n) of the Act defines common area as:

“common areas” mean—

- i. the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;*
- ii. the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;*
- iii. the common basements, terraces, parks, play areas, open parking areas and common storage spaces;*
- iv. the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;*
- v. installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;*
- vi. the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;*
- vii. all community and commercial facilities as provided in the real estate project;*
- viii. all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use”*

History

- **Carpet Area** means the following:

- The net usable area measured wall to wall, from the inner faces of walls.
- The area in a flat which can be covered by carpeting.
- The actual area which available for personal space of the buyer.
- Does not include the space covered by common areas such as lobby, lift, stairs, play area, etc.

- **Built-up Area**

This term has not been defined in the Act but is used in common parlance in the real estate business. It means:

- The area that comes after adding carpet area and wall area which means the thickness of the inner walls of a unit.
- Also consists of other areas mandated by the authorities, such as a dry balcony, flower beds, etc.

- **Common Area** means the following:

- Common spaces on the floor (lifts, staircases etc) and those in the building (entrance lobby, electrical room, pump room, flower beds etc).
- Includes all the common amenities that are built, but not directly charged to the customer.

➤ **Super-Built up Area**

It is the area calculated by adding:

- The built-up area and
- Proportionate area of common area divided amongst all unit owners that includes the corridor, lift lobby, lift, etc.
- In some cases, builders even include amenities such as a pool, garden and clubhouse

After the Act

After the introduction of the Act, the terms carpet area and common area have been clearly defined. No terms like built up area or super built up area exist.

Therefore, it is clear that:

✓ **Carpet Area=**

Area covered by inner walls (+)
Area covered by inner walls (thickness) (-)
Area covered by external walls + under shaft + exclusive balcony or verandah + exclusive open terrace area

✓ **Common Area =**

Entire land for the project/phase (+)
Common entrances and exits of buildings (+)
Terraces, parks, play areas, open parking areas and common storage spaces (+)
The premises for the lodging of persons employed for the management of the property (+)
Installations of central services (+)
All apparatus connected with installations for common use (+)
All community and commercial facilities (+)
All other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use

Obligations under the Act

➤ With respect to Carpet Area

- A promoter while making an application to the Real Estate Regulation Authority under the Act for registration of the real estate project is required to provide along with the said application all documents relating to the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas apartment with the apartment, if any. **(Section 4(2)(h))**

- Promoter is required to enter all details pertaining to the proposed project on the webpage created by him which shall be available for public viewing. Therefore, the buyer will have the knowledge as to how much carpet area is available. **(Section 11)**

➤ With respect to Common Area

Promoters

- Promoter shall be responsible for all obligations under the Act till conveyance of the flats etc. to allottees and common area to the association of allottees. **(Section 11(4))**
- Once the common area of the project is disclosed to the buyer, the promoter shall not make any additions or alterations to the common areas within the project without the consent of two-third of allottees. **(Section 14(2)(ii))**
- The promoter shall execute a registered conveyance deed in favour of the allottee and undivided proportionate title in the common areas to the association of allottees and hand over the physical possession and other title documents respectively within time specified in the sanctioned plan. **(Section 17(1))**
- After handing over the possession, the promoter shall also hand over the necessary documents and plans including the common areas to the association of allottees as per the local laws. In absence of any local law, the same shall be done within thirty days of obtaining the occupancy certificate. **(Section 17(2))**

Allottees

- The association of Allottees shall be entitled to claim possession of the common area after the expiry of the period of completion of the project declared by the promoter. **(Section 19(3))**
- After obtaining the physical possession from the promoter, the allottee shall be entitled to have necessary documents and plans including the common areas. **(Section 19(5))**

➤ Penalty

- If any promoter provides false information as to the carpet area, he shall be liable to a penalty which may extend up to five per cent of the estimated cost of the real estate project, as determined by the Authority.
- If any promoter contravenes any other provisions of the Act that imposes any obligation upon him, other than disclosing of the carpet area, he shall be liable to a penalty which may extend up to five per cent of the estimated cost of the real estate project as determined by the Authority.

Conclusion

From the above it can be drawn that:

- Area covered by internal walls themselves, i.e. the thickness of the wall is covered under the expression 'carpet area'.
- Promoter is specifically liable to disclose the 'carpet area' of the project at the time of registration to the Authority which shall be available for public viewing later. No such liability exists for projects that do not require registration.
- Though there is a provision for disclosure, but no provision is contained in the Act, inter alia, imposing obligation upon the Promoter to either sell unit to buyer based on 'carpet area' or 'common area' or both. This remains uncertain and we have to wait till the Rules are framed under the Act. If the Promoter has to sell by 'carpet area' no doubt the rate per square feet will increase.

- Apart from the common facilities and areas of common use made available to the allottees residing in a society, the entire land used for the real estate project or for a phase is covered under the expression 'common area'. This will no doubt lead to complication in practical purpose when a project is being developed in phase manner.
- Such inclusion in the definition of the term common area would imply that when the conveyance in the common area gets executed the ownership with respect to the land and not the individual structures thereon is vested with the society as a whole and doesn't continue to be with the Promoter/Builder. This ensures that the Promoter does not make use of the land that lies in open in exclusion of the structures constructed thereupon but within the external boundaries of the plot.
- The Promoter has to execute a conveyance as to undivided proportionate title in the common area in favour of the Association of allottees/Society. Therefore, the common area does not go each buyer individually and all the allottees are the joint owners.
- The Act does provide for obligation upon the Promoter to transfer the Common Area to the Association of Allottees/Society but it does not provide as to who shall bear the Stamp Duty and the Registration Fee in regards to such transfer. Further, it is not known what method of valuation of the Common Area will be followed for the purpose of assessing the Stamp Duty.
- Since the Act explicitly speaks of executing a conveyance with respect to flats/buildings etc. to the allottees and to transfer the common area to the Society, it implies that the Promoter is left with only Carpet Area or Built-up Area (though not defined) to be transferred to the allottee/flat owner but basis of charge for such transfer is not provided within the scope of the Act.