



Home Improvement, renovation or remodeling

The concept of **home improvement, home renovation, or remodelling** is the process of renovating or making additions to one's home. Home improvement can consist of projects that upgrade an existing home interior (such as electrical and plumbing), exterior (masonry, concrete, siding, roofing) or other improvements to the property (i.e., garden work or garage maintenance/additions). Home improvement projects can be carried out for a number of different reasons; personal preference and comfort, maintenance or repair work, making a home bigger by adding rooms/spaces, as a means of saving energy, or to improve safety.

Types of home improvement

While "home improvement" often refers to building projects that alter the structure of an existing home, it can also include improvements to lawns, gardens, and outdoor structures, such as gazebos and garages. It also encompasses maintenance, repair, and general servicing tasks. Home improvement projects generally have one or more of the following goals:

Comfort :

Upgrading **heating, ventilation and air conditioning** systems (HVAC). Upgrading rooms with luxuries, such as adding gourmet

features to a kitchen or a **hot tub spa** to a bathroom. Increasing the capacity of **plumbing** and **electrical** systems. **Waterproofing** basements. **Soundproofing** rooms, especially bedrooms and baths.

Maintenance and repair:

Maintenance projects can include:

Roof tear-off and replacement, Replacement or new construction windows, **Concrete** and **masonry** repairs to the **foundation** and **chimney**, Repainting rooms, walls or **fences** Repairing **plumbing** and **electrical** systems, **Wall papers**, **Furniture** **polish**, Shower maintenance

Additional space

Additional living space may be added by: Turning marginal areas into liveable spaces such as turning basements into **regrooms**, **home theatres**, or **home offices** – or **attics** into spare **bedrooms**., Extending one's house with rooms added to the side of one's home or, sometimes, extra levels to the original **roof**. Such a new unit of construction is called an "add-on".

Saving energy

Homeowners may reduce **utility** costs with **Energy-efficient thermal insulation**, **replacement windows**, and **lighting**, **Renewable energy**



Editorial...

Dear Readers,

Welcome to this eighth issue of our Newsletter.

In this issue, we are giving information on important topics viz. Difference between Society and Apartment, Home Improvement, Renovation and Remodelling and Transfer of Property Act [1882]. We hope you will certainly find it informative and useful for your business. We thank Adv. Arvind Chaphekar for authorizing these Articles.

Please give your feedback to us on the Newsletter and the topics you would like to get information through this Newsletter. You may also contribute with an article on the subject useful to readers.

with **biomass pellet stoves**, wood-burning stoves, **solar panels**, **wind turbines**, **programmable thermostats**, and **geothermal exchange heat pumps**

Safety and preparedness

Emergency preparedness safety measures such as: **Home fire and burglar alarm** systems, **Fire sprinkler systems** to protect homes from fires, Security doors, windows, and **shutters**, **Storm cellars** as protection from tornadoes and hurricanes, **Bomb shelters** especially during the 1950s as protection from nuclear war, **Backup generators** for providing power during **power outages**.

Difference Between Society and Apartment

Society	Apartment
Using increased FSI in future – The builder is interested in using the increased FSI which will be awarded by the govt. for that area in the future. If the ‘Society’ is formed, then the increased FSI will be owned by the Society and the builder does not have any right on it.	But if it is an Apartment, then the builder owns that increased FSI and can use it anywhere. Thus, the builder will keep taking advantage of the FSI increase throughout in the future.
In case of Society, the builder cannot retain any right on any of these areas and has to hand over everything to the society.	In an apartment, the builder retains the ownership of the open spaces which are not included in the saleable area. Eg. Terrace, or any open parking/stairs space which is not included in the saleable area.
Rules of ‘Society’ are binding on all the residents and nobody can follow his/her whims. So, if the society decides to ban any objectionable commercial activities in the flats (such as noise-making music classes or using the flat for catering activities etc.) or not to rent out to bachelors etc., then all the residents have to abide by it. The society disputes are resolved in a separate court (dedicated to cooperative society matters) and hence they are fast resolved.	But if it is an Apartment, then owners can violate the apartment rules and the apartment body can just file a case in the civil court. The Apartment matters have to be taken to the normal Civil Court and hence they typically take years and decades to resolve.
When the buildings go for redevelopment after 25-30 years, the ‘Society’ decision will be final and hence the society members will have negotiation power with the builder at that time. The decisions are taken on a ‘majority’ basis in society.	But if it is an apartment, the consent of every resident is required and hence it goes into an endless delay due to lack of a common decision acceptable to everybody. There are many instances wherein finally the buildings had to be forcefully vacated by court order due to this delay since they became unliveable. The apartment goes with an ‘acceptable by everybody’ rule. So, if the builder has retained even one flat in an apartment, he will play a veto card in his favour at the time of redevelopment.
In society, Society is the owner of the property and all the flat holders are its members. All the flat holders have equal share in the property of the society. Nothing common is supposed to be reserved for anybody.	In Apartment, the share of the flat holder is different (proportionate) as per his/her area of Flat occupation. There can be reservations by the members such as parking, common terrace and easement rights. Also, if there is any excess FSI available, or would be available, builder can reserve it for himself and utilise it at any other place.
In a cooperative housing society, the land is owned by the society and the flat owners are shareholders of the society.	The apartment owners collectively own the land on which the apartment building stands.
In a society, minimum 11 members are required and registration is compulsory under The Co-op. society Act along with conveyance deed for the whole building and ownership including ground space etc. passes on to society.	In an apartment, minimum 6 members are required and it is Governed under apartment Act and the conveyance deed for all flats is not necessary. In an apartment deed, ownership of space of ground does not pass on to flat owner.
Society Bye-laws are rules formed by housing societies to self-regulate their activities and to control the actions of its members. Housing society bye laws are provided and approved by higher authorities (government bodies, legislative authorities).	By-laws are the guidelines, which have provisions relating to the affairs of the apartment association. It refers to a local/private law made by an organisation for its own government.
In a Society, every member has one Vote, irrespective of the area of his premises.	Every apartment owner has a Voting Right in proportion to the value of his premises which is generally as per the area of the Apartment owned by him and which is defined while forming the Condominium.
Annual account audit of every co-operative housing society is mandated by the Constitution of India.	As per Income tax, the apartment association may not be required to get its accounts audited, but it may be required to get its audited under other law, then they have to get the accounts audited .
An Apartment can be converted in a Society, provided more than 50% of the members are ready for such a conversion.	An Apartment can be converted in a Society, provided more than 50% of the members are ready for such a conversion.

TRANSFER OF PROPERTY ACT [1882]

— Adv. Avinash Chaphekar

Transfer of property, according to this Act, an act by which a living person conveys property in present or in future, to one or more other living persons or to himself and one or more other living persons; and to transfer property is to perform such act.

The Act clarifies that "living person" includes a company or association or body of individuals, whether incorporated or not. This provision was included by an amendment in 1929.

The term transfer means a process or an act by which something is made over to another. The essence of the term "transfer" is to convey and therefore it includes not only sale, mortgage, lease, gift, and exchange but any transaction which has the effect of conveying any property or interest in the property.

It should be noted that an abandonment and a relinquishment of a claim to property is not transfer. Because in these cases, including surrender, there is only the withdrawal of the claim, and by way of withdrawal the claim is extinguished, and not conveyed. Family settlement is not a transfer of property as it does not convey any property or a right to any property. A partition is also not a transfer, it only makes a change in the mode of enjoyment.

What can be transferred? — Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force.

Essentials of a valid transfer — 1) the property must be transferable, 2) the transferor must be competent to transfer, 3) transferee must be competent to take the transfer, 4) consideration or object of the transfer must be lawful, 5) It must be made in the manner and in the form required by the Act, if any.

Who is competent to transfer? — The person who is competent to contract is competent to transfer. Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject. As far as transferee is concerned a minor can be a transferee, that is, it can take the transferred property in its name. Persons of unsound mind are not competent to transfer. A person is said to be of sound mind if he is capable of understanding what he is doing (that is, while making a contract or transferring a property). He should be capable of forming a rational judgment as to its effects upon his interests.

Operation of transfer — A transfer of property passes forthwith to the transferee all the interests the transferor is capable of transferring at that time.

Oral transfer — A transfer of property may be made without writing in every case in which a writing is not expressly required by law.

Transfer of property must be in writing in the following cases —

- 1) a sale of a tangible immovable property of the value of Rs. 100 and upwards.



- 2) a simple mortgage irrespective of the amount and all other mortgages (except a mortgage by deposit of title-deeds when the principal sum secured is Rs. 100 or more.
- 3) a lease from year to year or for any term exceeding one year or reserving a yearly rent.
- 4) a gift of an immovable property.
- 5) an exchange, subject to the same rule as a sale.
- 6) all transfers of actionable claims.

Condition restraining alienation — Where property is transferred subject to condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void except in the case of a lease.

The principle underlying this rule is that the owner has full liberty to transfer a property but has no right to make it non-transferable for ever.

Transfer for the benefit of unborn person — A transfer cannot be made directly to an unborn person. It is because transfer, according to its definition, is meant for a living person. Such a transfer can only be made by the machinery of trusts.

Rule against perpetuity — No transfer of property can operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of such transfer.

Sale of immovable property — What is sale? — sale is transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Such transfer in the case of tangible immovable property of the value of one hundred Rs. And upwards can be made only by registered instrument.

Contract for sale — A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

Subject-matter of sale — The subject-matter is transferable immovable property. The concerned section 54 is not applicable to sale of movable property which is governed by the Indian sale of goods Act, 1929. Immovable property includes land, the benefits arising out of land, and the things attached to the earth, except standing timber, growing crops and grass.

In all sales price is an essential ingredient. If it is neither ascertained nor rendered ascertainable, the contract is void for incompleteness. There are only two modes of transfer by sale: registered instrument and delivery of possession. A sale cannot be effected in any other way

except these two modes.

Deference between sale and agreement to sale —

- 1) sale is a contract plus something more. It is a transfer of property also. Whereas agreement to sell is contract similiter. Sale is an executed contract whereas agreement to sell is an executory contract.
- 2) Sale effects transfer of ownership, whereas agreement to sale does not create any interest in the subject-matter of contract.
- 3) Breach of sale is unthinkable but the covenants in sale may be broken. In case of agreement to sale, its breach is quite possible.

Leases of immovable property — A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised or of money, a share of crops, service or any other thing of value, to be rendered periodically on specified occasions to the transferor by the transferee, who accepts the transfer on

such terms.

Transferor is called the lessor, transferee is called the lessee, the price is called the premium and the money, share, service or other thing to be so rendered is called the rent.

The essential of lease is that the right to enjoy the property must be transferred for a certain time, express or implied or in perpetuity. Uncertainty as to time will be fatal to the validity of a lease.

Lease and Licence — A lease is a transfer of an interest in land. The lessor parts with his right to enjoy the property during the term of the lease. If a document gives only a right to use the property in a particular way or under certain terms while it remains to possession and control of the owner thereof, it will be a licence. The cardinal distinction between a lease and a licence is that in lease there is a transfer of interest in land, whereas in case of a licence there is not transfer of interest, although the licence acquires a right to occupy the land.

Tenancy rights whether heritable — It is well settled that tenancy rights are heritable, and devolve upon all the heirs of the deceased irrespective of the question as to whether some of them are in occupation of the demised premises or not.

Exchanges — When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an exchange. The definition is not limited to immovable property but extends to barter of goods also. A partition of family arrangement is not an exchange. Again, there cannot be an exchange of a house for money.

Gifts — Gift is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, the donor, and accepted by or on behalf of donee. Such acceptance must be made during the life time of the donor. If the donee dies before acceptance, the gift is void.

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