

Supreme Court Judgement on Society Maintenance Charges

1. What maintenance charges typically cover

- Security staff salaries and surveillance systems
- Cleaning and upkeep of common areas
- Electricity for lifts, lighting, shared equipment
- Water supply (borewell upkeep, tankers)
- Repairs/servicing of lifts, plumbing, shared equipment
- Waste collection and disposal
- Shared amenities: pools, gyms, clubhouses, play areas
- Contributions to a reserve/corpus fund

2. Key cases

Rasila S. Mehta v. Custodian, Nariman Bhavan, Mumbai (2011)

Flats attached in the Harshad Mehta case under the Special Court Act, 1992. The Court held that under Mumbai cooperative housing society bye-laws, every flat owner is a member and liable to pay whatever the society fixes for upkeep and repair of flats and common areas. The Custodian was made responsible for these dues, though interest/penalty on arrears was stayed pending litigation.

ITO, Mumbai v. Venkatesh Premises Co-op. Society Ltd. (2018)

A tax case. Maintenance charges, non-occupancy charges, transfer fees, and amenity fund contributions collected by a cooperative society from its own members are not taxable, under the doctrine of mutuality.

Padmini Infrastructure Developers v. Royal Garden RWA (2021)

Dispute over a developer's maintenance charges on unsold flats. The developer's claim was rejected for lacking a proper calculation basis, with liability attributed to the developer.

Utpal Trehan v. DLF Home Developers Ltd. (2022)

A developer sought maintenance charges from an allottee before possession was actually handed over. Direction was that a developer can't pass on maintenance liability before proper handover.

Lucknow Development Authority v. M.K. Gupta (1993)

Foundational case. Housing construction and maintenance fall within "service" under the Consumer Protection Act. Residents can pursue deficient maintenance (broken lifts, poor upkeep) as a service-deficiency complaint in consumer forums; the resident-society relationship is a legally enforceable service arrangement.

CCE v. Calcutta Club Ltd. (2019)

Transactions between a members' club/association and its own members aren't a taxable "service"/"supply" under pre-GST law, due to mutuality: there's no separate buyer and seller when a member deals with their own association. Frequently cited in ongoing arguments about GST on RWA-member maintenance collections.

3. General principles across this case law

- All owners/residents, whether occupying or renting out, generally must contribute; vacancy isn't an exemption.
- Charges tied to a flat's footprint (property tax share, structural repairs) are often split proportionally by area; equally-used amenities (security, lifts) are more often split equally per unit, but the exact method depends on each society's bye-laws.
- Societies can fix/revise charges via bye-laws and general body, but arbitrary or unilateral hikes by a managing committee are open to challenge.
- The owner remains primarily responsible even if the flat is rented; societies can't levy a special punitive tenant charge, though a capped Non-Occupancy Charge on the owner exists in some states (for example, historically around 10% of service charges in Maharashtra).
- Under RERA (Sections 4(d), 11(4)(e)), a builder must maintain essential services at reasonable rates and bear maintenance costs on unsold units until RWA handover, then transfer surplus funds and records.
- Financial transparency, meaning audited accounts, itemised billing, and residents' right to inspect records, is treated as a legal expectation.

4. GST: statutory, not a Supreme Court ruling

The ₹7,500/month threshold (below which maintenance is GST-exempt; above which 18% GST applies to the full amount) comes from CBIC/GST Council notifications under the CGST Act, 2017, not a court ruling. A 2025 Kerala High Court decision reportedly struck down taxing the full amount (rather than just the excess) as unconstitutional; a High Court, not Supreme Court, development.

5. Where to raise a dispute

- RERA complaint forum: builder/developer obligations
- Consumer forums: deficiency in maintenance service
- Registrar of Cooperative Societies: fund mismanagement, billing
- Civil courts: broader disputes over transparency/agreement breach
- Mediation/arbitration: where bye-laws or an agreement provides for it