

clearance. In case, the use of basement for professional activity leads to exceeding the permissible FAR on the plot, such FAR in excess shall be used subject to payment of appropriate charges prescribed with the approval of Government.]

1[* Management professional shall be one holding MBA degree/diploma from AICTE/UGC/Centrally recognized institutions or institutes of national importance and having membership of Delhi Management Association.]

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RELEVANT CASE LAW

Meaning of the Term 'Property Consultant' - Whether a Professional

In Association of Property Consultants vs. Delhi Development Authority, 113 (2004) DLT 161, Delhi High Court has held that the property consultant is a person who by virtue of a specialised knowledge acquired by experience in the field aids and advises his clients in acquiring or disposing of properties. The property consultant by himself does not buy and sell properties. He does not stock any goods for sale. He merely offers his services to his clients in the sale, purchase, and management of properties. There is no investment of the property consultant in the properties which are sold or purchased or leased by his clients. He merely renders his professional services for which he is remunerated by way of commission. If the property, after the purchase by his client, appreciates in value, no benefit is derived by the property consultant. Similarly, if the property depreciates in value, no loss is incurred by him either. Thus, unlike a businessman he does not share in the loss or profits of the property transaction.

The Court further held property consultants would also be entitled to the benefit of using 25% of the covered area or 50 sq. metres, whichever is less, of their residential flats for their professional activity as property consultants provided such flats are in the occupation of such property consultants/ It goes without showing that the property consultant to whom the residential flat has been allotted must not only be in occupation of the same but must also only use the flat to the extent permissible for purely professional activity i.e., providing consultancy to their clients in property matters. They cannot carry on any commercial activity. It is clear that activity of a "property consultant", ipso facto, is not a commercial activity.

OFFICE OF THE DIR
M.P.R./C, D.D.A. N.I
Dy.No. 258
Dated 2/5/18

15.9 REGISTRATION OF MIXED USE PREMISES AND PAYMENT OF CHARGES

- (i) In respect of a residential premises already under mixed use or intended to be put to mixed use, the owner/ allottee/ resident of the plot/ dwelling unit, in case of plotted development and dwelling unit in the case of group housing, shall be required to declare such mixed-use by filling up a form³ in this respect and depositing it with the local body concerned and pay one-time registration charges at rates to be notified⁴ with the approval of the Central Government.
- (ii) The premises under mixed use shall also be liable for payment of mixed-use charges every year to the local body concerned at the rates notified with the approval of

Inserted vide M.U.D. (Delhi Div.) Notification No. 1135(E), dt. 14.5.2008.

For relevant extract of the judgment, refer Appendix IX of the book.

3. For form of Registration and Affidavit, see Appendix VIII.

4. DDA (Fixation of Charges for Mixed Use and Commercial Use of Premises) Regulations, 2006 have been issued in this regard. Refer Appendix VII.

Director (Pg.) MPR/TC,
D.D.A. Vihar Minar N. DELHI-2
Dy.No. 257
Dated 3-8-18

A-7 (P) III

Pl enclose with the original copy of form 3/8

claim no 811
class discussion of Cant case "Professional Activity"

challenged opening of a branch of the ING Vysya Bank in the said property. In the order, reference was made to order dated 10th March, 2006 passed in W.P.(C) No. 27 wherein the petitioners/residents of the area, were given liberty to challenge the per granted by MCD to run a bank branch from the said property but the said petition was withdrawn. ***

(Fig.)
DELHI-2
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28. It may be noted here that the Court had observed that there was no objection to the opening of a bank branch. The Court was never informed that there was no bank branch in operation on 7th September, 2006. I may also mention here that the situation has undergone a change with the MCD itself realising its folly and on coming to know that there was no bank branch in existence or in operation from the said property as on 7th September, 2006.

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29. In view of the above, it is held as under:

- A. The amendment applications are allowed, but subject to payment of costs of Rs. 2 by each petitioner to the respondent-MCD. Observations made on merits of grounds raised in the amendment applications are tentative and will not be binding.
- B. The interim applications for stay are dismissed on merits as well as on the ground that the petitioners have stated wrong and false facts in the Writ Petitions and they have not come to the Court with clean hands. However, as the bank branch is in operation and to avoid inconvenience to customers, it is directed that the bank branch from the said property will be closed within a period of two months from today. There will be no extension of time.

C. ***

30. ***

XIV. MEANING OF TERM PROPERTY CONSULTANT - WHETHER A PROFESSIONAL

*Association of Property Consultants vs. Delhi Development Authority 113 (2004)
DLT 161 (Delhi)*

JUDGMENT (Relevant Extract)

Can a property dealer, property broker or real estate agent be construed a "consultant"? This is the seminal question in this petition. It arises in the context of the alleged misuser of residential flats allotted to members of the petitioner association by the respondent (Delhi Development Authority — "DDA" for short.)

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residential flats allotted to the members of the petitioner association (which is registered under the Societies Registration Act, 1860) are admittedly governed by the policy of the Government incorporated in the document entitled "Guidebook on Housing Department" published by DDA. The said Guidebook stipulates as under:

Prohibited action for misuse of flats—

A flat is to be used for residential purpose only. In case the flat is used for purposes other than residential, apart from action under the terms of allotment, prosecutions under the Development Act, 1957 shall be lodged.

Professional activity by the professionals such as Doctors, Architects, Engineers, Law-Chartered Accountants, Advocates, Consultants, Journalists, Artists, Designers /Contractors is permissible to the extent of 25% of the covered area or 50 sq. mtrs. whichever is provided the flat is in occupation of the professional."

It is also an admitted position that some of the members of the petitioner association are using part of their said residential flats for their offices. Because they have done so they have been issued show-cause notices from the DDA proposing to cancel their allotment.

One such notice, which is annexed as Annexure - C to the petition, has been issued on the basis that the allottee has put the residential flat to "non-residential use for commercial activities".

The learned Counsel for petitioner contended that its members are "consultants" and therefore it is permissible for them to use 25% of the covered area or 50 sq. mtrs, whichever is less, of their residential flats for office purposes. Accordingly, he prayed that the show-cause notices be quashed. The learned Counsel for the DDA, on the other hand, argued that the members of the petitioner association were property dealers, property brokers or real estate agents. They cannot be construed to fall within the ambit of the expression "professionals" or "consultants".

Both the parties referred to dictionaries in support of their contentions. As per the said dictionary, what is permissible is "professional activity by the professionals" including "consultants" to the extent of 25% of the covered area or 50 sq. metres, whichever is less, provided the flat is in the occupation of the professional. It is, therefore, to be seen as to what is the meaning of the expressions "professional activity", "professional" and "consultant". ***

The word "profession" is no longer limited to the traditional learned professions of law, medicine and the 'church'. It now has a much wider connotation as "a paid occupation". In this vein, a "consultant" is one giving expert or professional advice. However, the "professional" or "consultant" must have some specialised intellectual skill which may or may not be accompanied with manual skill or dexterity. And, as indicated by the Supreme Court in the case of

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Dr. Devendra M. Surti v. State of Gujarat, 1969 (1) SCR 235, "a professional activity must be an activity carried on by an individual by his personal skill and intelligence." In fact, it is this individual nature of activity that is, in most cases, vital in determining whether it is a "professional" activity or a "commercial" activity.

7. to 9 ***

10. *** Now, what exactly does a property agent, dealer, broker or consultant actually do? There is no doubt that his is a paid occupation. Therefore, he is clearly within the wider concept of "profession". But, there is something more. While it is true that he does not have to pass professional examinations like the M.B.B.S. or the LL.B. as is required by doctors and lawyers, it is also true that he has, may be through sheer dint of experience, acquired a specialised knowledge with regard to real estate and property. Then, his activity is quite individualistic inasmuch it is based on his personal skill or expertise. The job of a property consultant whether he be called a broker or a dealer or an agent is essentially to give expert advice with regard to the sale and purchase of property. The nature of his activities may involve the verification of title documents of the property in question, advice in preparing the proper documentation, ensuring that the purchaser gets the property with full title thereto and that the seller the consideration thereof. He also provides assistance and advice with regard to mutation, conversion from freehold to leasehold; to give expert opinion and advice with regard to market prices of properties and trends. The property consultant is a person who by virtue of a specialised knowledge acquired by experience in the field aids and advises his clients in acquiring or disposing of properties. The property consultant by himself does not buy and sell properties. He does not stock any goods for sale. He merely offers his services to his clients in the sale, purchase, and management of properties. There is no investment of the property consultant in the properties which are sold or purchased or leased by his clients. He merely renders his professional services for which he is remunerated by way of commission. If the property, after the purchase by his client, appreciates in value, no benefit is derived by the property consultant. Similarly, if the property depreciates in value, no loss is incurred by him either. Thus, unlike a businessman he does not share in the loss or profits of the property transaction.

11. ***

12. Thus property consultants would also be entitled to the benefit of using 25% of the covered area or 50 sq. metres, whichever is less, of their residential flats for their professional activity as property consultants provided such flats are in the occupation of such property consultants. It goes without showing¹ that the property consultant to whom the residential flat has been allotted must not only be in occupation of the same but must also only use the flat to the extent permissible for purely professional activity i.e., the providing

1. Read saying.

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consultancy to their clients in property matters. They cannot carry on any commercial activity. It is clear that activity of a "property consultant", *ipso facto*, is not a commercial activity. Perhaps, the show cause notices were issued under this mistaken belief. However, if property consultant uses his residential flat for a commercial activity such as running a shop, he would not have the protection of the said provisions. In this view of the matter the DA is directed to dispose of the show cause notices issued to the property consultants (members of the petitioner association) of Sarita Vihar in terms of the observations hereinabove within a period of two months.

3. ***

(B) INDUSTRY

I. INDUSTRY - MEANING UNDER MPD 2001 AND MPD 2021

Panacea Biotec Ltd. Vs. D.D.A. & Anr. 149 (2008) DLT 486 (Delhi)

JUDGMENT (Relevant Extracts)

to 14. ***

5. 'Manufacturing process' or 'industry' are plain words which are not ambiguous or obscure and have to be interpreted in a manner they are normally and reasonably understood by a common man.*** The word 'approved' therefore requires industry to comply with the Zonal Development Plan and the Development Code. Industry must be one which is permitted and allowed in the said area as per the Zonal Development Plan and Development Code.***

6. ***

17. I may mention here that as per the Master Plan of Delhi, 2021 computer hardware and software industry and industries doing system integration with computer hardware and software have been regarded as an industrial activity.***

18. A reading of the said clause indicates that under the new Master Plan of Delhi, 2021, a limited type of new industries has been permitted and these include computer hardware and software industries which are regarded as hi-tech areas. Contention of DDA in their affidavit dated 26th September, 2007 that under the Master Plan of Delhi, 2001 computer software was not considered as an industry and was not permissible in industrial premises and under the Master Plan of Delhi, 2021, computer software is permissible only in new industrial areas and is to be restricted to hi-tech areas, is to be rejected. It cannot be said that Master Plan of Delhi, 2001 did not consider development of computer software to be an industry or involving manufacturing process. Further interpretation given to Clause 7.7 of Master Plan of Delhi,