

Purchase of Property - Due Diligence Checks

Purchase of the immovable property like ownership flats, apartments and row houses entail pecuniary involvement which generally run into lakhs of rupees and therefore requires any person who ventures into such an acquisition to take utmost caution in such a purchase whereby his/her hard earned monies are suitably protected and the roof over his/her head involves no legal complications. Nowadays people are becoming more aware of the legalities involved while purchasing a property

General rules to be followed while purchasing property:

When buying commercial or residential property you would need to check for the following documents:

- Market Trends about prevalent rates of property in the vicinity and last known transactions.
- Identify the property one wish to buy and formulate commercial terms.
- Distinguish between terms and conditions of the contract which are negotiable and those which are fixed e.g. price, payment schedule, time of completion etc.
- Ask for photocopies of the all deeds of title related to the property to be purchased. Examine the deeds to establish the ownership of the property by seller, preferably through an advocate. Ascertain the survey number, village and registration district of the property as these details are required for registration of the sale. Previous encumbrances and loans, if any, on the property must be cleared before completion of purchase of the property. The title of the Vendor to the property must be clear and marketable.
- Finalize commercial terms of purchase of the property. Ascertain transfer fees, stamp duty and registration charges to be paid on purchase of the property.
- Ascertain outgoings to be paid for the property i.e. property tax, water and electricity charges, society charges, maintenance charges.
- Request Vendor to obtain, if applicable, consent, permission, sanction, no objection certificate of various authorities such as the (a) society (b) the income tax authority (c) Municipal Corporation (d) the competent authority under the Urban Land Ceiling and Regulation Act (e) any other authority.
- Permanent Account Number of Vendor and Purchaser under Income Tax laws, Payment of stamp duty on the formal agreement or document for transfer of the property, signing by both the Vendor and Purchaser and registration.

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- After payment of the entire sale price, take over legal possession of the property along with documents of title in original from the Vendor of the property.
- Change name of the holder of the property to the purchaser in the records of the society, Electricity, Company, municipal corporation, Index II etc.

Legislation to safeguard interest of purchasers:

The Government has enacted various legislations to safeguard the interest of the flat/shop/office purchasers chief amongst them being the Maharashtra Ownership of Flats Act, 1963 and which Acts and Rules have been suitably amended from time to time. The construction activities of the Builders and Developers in Maharashtra are regulated by the Maharashtra Ownership Flats Act, 1963.

The Act has very wide amplitude and imposes various responsibilities on the builders/Developers which they may ignore to discharge only under the threat of penal proceedings including imprisonment.

The MOFA Act 1963 has also prescribed and mandatorily stipulated a standard format for the agreement required to be entered into by the promoter with the flat/unit purchaser of built-up premises which contains safe-guards for the flat purchasers.

It is provided under the Act that in case for any reason the Promotor failed to deliver possession of the flat to the Purchaser within the agreed period or such extended period as may be mutually agreed upon the Promotor has to refund to the Purchaser all the monies paid by the Purchaser under the Agreement with interest at the rate of 9% per annum from the date of such payments and the amount so becoming payable is declared as a charge on the property.

In purchase of flats/apartments/row houses there can be two possibilities which may arise in a given situation;

- First possibility is purchase from the promoter/builder/developer in a new building and
- Second possibility can be apartments/flats purchased in resale.

Flat / Unit purchase in new building:

In case of the flats/apartments/row houses directly from the promoter / developer the following documents/papers should be scrutinized:

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- The revenue records of the plots on which the building is constructed or is under construction i.e. 7/12 and/or property card. Such revenue records should bear the name of the promoter/developer and/or the land owner with whom the developer has entered into contract for development.
- Title deeds of the property (i.e. the documents by which the property has been acquired or right, title and interest has been acquired or right & interest has been created) where the promoter holds the development rights of a property on which the building is constructed or is under construction the title deeds of the owner of the property together with the Agreement for development between the owner of the plot and the promoter/developer.
- These documents should be available with the promoter/developer and it should be ascertained that the promoter has sufficient rights and power to develop the property and the documents assigning the development rights is stamped and registered with the office of sub-registrar of assurances.
- Permission for non-agricultural use from the collector is a statutory pre-requisite prior to commencement of any development activity on any land.
- Building plans duly sanctioned by the municipal / local authority and a commencement certificate from such authority and in cases where the building is completed the completion certificate are also mandatory.
- It is pertinent to record that stamp duty is required to be paid on any instrument as per the market value as prescribed in the registration authority or the document value, whichever is higher, agreement of sale itself.
- All agreement/s in respect of flats/units purchased from the builder /promoter or in case of resale of the flat are to be registered mandatory. This provision is stipulated in the MOFA Act 1963 and overrides any act or law to the contrary. A registration fee of 1% or 30,000/-(check ready recokner) whichever is lower payable.

Flat / Unit purchased in resale:

In event of flats or other constructed premises / units purchased in resale and not from its promoter/developer the following precautions in addition to the aforesaid safeguards need to be observed and verified:

- Whether the seller has stamped and duly registered his/her agreement of purchase?

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- Whether the seller has made full payment to the developer including all due outgoings?
- Whether the seller's name is/are duly recorded in the concerned Municipal cantonment /Cantonment board or other relevant authority records as the owners?
- If society has been formed whether seller's name is recorded as member/owner?
- Whether all taxes, maintenance charges and electricity bills are duly paid up-to-date?
- That the flat/apartment or premises being purchased are not mortgaged to any financial institutions or bank.

The afore said are only preliminary precautions enumerated and are not exhaustive but only guidelines for examination of the prima facie title to the property however every case differs since the various other complicated legal aspects such as in case of the property inherited by virtue of will, the personal laws of the deceased are to be taken into account, the Last Will & Testament to be examined, the implication of the intestate succession all need to be closely examined and verified.

Similarly in case of the Non resident Indian selling his property the onus of deduction of Capital gain tax at source lies upon the purchasers unless an exemption certificate is obtained from the Income tax authority and failure to abide by the same puts liability of the tax payable on the purchaser.

Guidelines for co-operative societies:

Co-operative societies should ensure that they get the following documents from the builder soon after the society is formed. These documents should be handed over to the managing committee members by the builder.

- Ledger abstract of the property card i.e. 7/12 abstract.
- Registered development agreement executed by the developer with the land owners
- Copies of the power of attorney given by the owner in favor of the developer along with the copy of the registration receipt.
- Intimation of disapproval from the BMC authorities.
- Occupation certificate.
- Building completion certificate.
- Approval plan of the building.
- Chain of documents through which the vendor acquired the right, title and interest in the property.
- Non-agricultural assessment order.

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- Non-agricultural tax paid receipts.
- Title clearance certificate from the vendors advocate.
- Search report for the last 30 years with the search fees paid receipts.
- Original documents of the title to the property.
- Architectural and structural drawing of the property (this file should include electricity power supply, cable layout, water supply, connection, underground tank to overload pump drawings, sewerage and drainage drawings.).
- File of deposit receipts like electricity water and deposits to municipal authorities.
- Name and address of all the contractors with the unpaid bills, advance paid to the contractor appointed by the builder whose contracts have yet not expired with regard to the building being managed by the developer till handing over the charge of the affairs of the building. File of various contractors as well as for warranty of various goods like water pump lift contract.
- Separate files for water bills, property tax bills, electricity bills telephone bills.
- Co-operative society's registration files which shall contain various applications forms, undertakings, bye-laws, details of the bank a/c opened in the name of the bank.
- Audited statements of a/c's for the amount collected by the builder.
- List of the incomplete works.
- List of the stilt as well as open parking allotted by the builder.

Finally all the formalities are to be completed and forms are to be filled on execution of Sale Deed or document of transfer and it vary from state to state where the property is situated. Every State has its set forms under the Registration Rules that are required to be filled and filed along with and at the time of Registration of Sale Deed/Transfer Deed.

Under the provisions of the Income Tax Act and Rules for a transaction of sale, it is now compulsory for the Purchaser and Seller to give their Permanent Account Number and in the event of either the Seller and/ or the Purchaser would be required to fill Form 60 of the Income-Tax Rules.

In case of either the Purchaser or the Seller being a Non-Resident Indian, not assessed to tax in India, such a Party would be required to file Form 60 of the Income-Tax Rules.