CHECKMATE

On the paper trail

Property agents and legal experts strongly advocate that a buyer should get all property papers checked and transfer papers prepared by a lawyer

Arati Bhargava

The most important factor in the sale and purchase of property is to prepare and execute correct legal documents for the transfer of ownership of the premises. This is done mainly either through a sale deed or by a General Power of Attorney (GPA) given by the seller to the buyer giving him full authority to do anything relating to the property including selling it.

Interestingly, nearly 60 to 70 per cent of the properties in Delhi are leasehold. Although leasehold property holders can convert their property to freehold by paying specified charges to the land owning agency like the Delhi Development Authority (DDA), not many people have opted to do so. There are various reasons for this. A major one being the cumbersome and time consuming procedures which may well involve harrowing visits to the concerned department. Other reasons can be disputed ownership or simply the 'why-bother' or what 'difference does it make when one has to sell' attitude of the property owner. Leasehold properties are sold through a GPA and in this column I shall focus on such property sales.

Noted Supreme Court advocate, Virendra Goswami points out that transfer of property by a GPA generally involves executing three documents. These are:

- An Agreement to Sell
- The GPA and
- A will made by the seller bequeathing the property to the buyer.

He emphasises however that before the buyer enters into a sale agreement it is vital that he checks out the ownership documents as also the chain of ownership of the property. He can ask a competent lawyer or a person who has a sound knowledge of property documents to check out the papers. Not only should the paperwork be checked but also be tallied with the records of the land owning agency. This may cost both money and time, but is well worth it for only then can the buyer be sure that the property papers are in the clear.

Once this is done the buyer and seller sign the Agreement to Sell. This is done on a Rs50 stamp paper. The document should be registered before the concerned sub registrar of the area, as unless it is registered a court would not admit it should there be a dispute later. It is important to state clearly state the amount to be paid and also the time frame within which the payment has to be done. In the interest of the buyer it should state the damages the seller would need to pay if the property is not handed to him within the stipulated time. Also in the interest of the seller there should be a clause stating that if the buyer does not pay the money within time specified the buyer would forfeit the advance money given to the seller.

It must be noted that any receipt of advance payment is only valid if there is a revenue stamp affixed and the signature is on it.

The next important document is the GPA. This document too should be registered before the area sub registrar. Here too the buyer ought to know that if the GPA is not registered it would not be looked into by a court should there be a dispute later. A GPA would be valid if it is on a Rs50 stamp paper. Virendra Goswami cautions that the GPA should include an indemnity bond clause that states that if there is a defect in the title and the buyer suffers, the executor would be liable to pay the damages. Since an indemnity bond is made on a Rs 100 stamp paper a GPA which carries an indemnity clause should be made on a Rs 100 stamp paper, he advises.

A GPA can in law be revoked. Therefore, a buyer in order to safe guard his interest, should take from the seller a will which leaves the property in question to him in the event of the death of the seller. In the will it should be clearly stated that the will is irrevocable.

Property agents and legal experts strongly advocate that a property buyer have the property papers checked and transfer papers prepared by a lawyer. At times people save on cost and time and later deeply regret this when or if problems arise. It is definitely better to spend a little extra at the start than possibly face seemingly endless litigation involving huge expenses later. ■

The writer is a senior columnist

REAL ISSUE

Assured returns?

The slight slowdown in the real estate sector has forced developers to increase assured returns on commercial property. Investors should be careful before accepting high assured returns, warns SYED AMIR ALI HASHMI

It is a well-known fact that the real estate sector in the country is undergoing a slowdown and both the residential and the commercial sector are witnessing a change. The slowdown, however has forced real estate developers to increase assured returns on commercial property from 8.5 per cent to 15 per cent.

For the uninitiated, assured returns are the amount the builder gives to the buyer even if the property in question does not get leased. The builder of the property gives a fixed percentage to the buyer till such time as the property is rented out. The builder receives rent from the buyer once the property is rented out and this amount is always more than the assured returns. The builder, therefore gets to gain in the long run from the deal. Investors, who give a one-time payment, benefit the most as they start getting returns from day one itself.

"Currently, term loans from financial institutions/banks are not available easily. Sometimes the completion of formalities for such term loans takes a long time and builders need funds to start construction," says Gaurav Bhalla, MD, Vatika Group.

Builders, however, give sops to buyers because they get money for constructing commercial property and investors get an assured return. "An investor wants security, especially when the property he has booked is still under construction. What if the mall he has leased space in does not take off?" asks M.S. Aggarwal, MD, MSX Developers.

Another reason behind the assured returns concept is that the builder not only gets the investors' confidence but also the control over leasing. "By controlling whom the investor leases space to once a mall is fully operational helps the developer in maintaining the zoning of the said mall. If we have a plan for a particular tenant mix for the mall, we can ensure that our plans do not go awry," says Aggarwal.

Large developers, however point out that this sop is doled out only among small time developers. No well-known developer indulges in this practice. "As the cash flow in the market is limited, small time developers find it difficult to arrange money to start construction. And assured returns is the device used to gain the confidence of the investor and get the work done," says Bhalla.

He is skeptical about developers who give high-assured returns. "Investors should be cautious when someone offers them assured returns to the tune of 12-15 per cent. I think the maximum that a good developer can offer is up to 9 per cent. But above 12 per cent is risky, as no one is sure about the market movement and the rentals a particular property will enjoy. If the property fails to command expected rental values, the investor will not gain much. There will however, be no loss as the developer will ensure that the investor gets at least 15 per cent."

"Due to liquidity concerns, real estate players have started looking at private equity placements in their projects. The Private Equity Fund can have equity in real estate companies or can be invested in specific projects. Sometimes a developer needs some liquidity during the construction phase of a commercial project and this is done by offering investors a fixed return on their investments," adds Sanjeev Srivastav of Assotech.

How can a developer be assured of the rental of a particular property? "The demand in the market is good and the slowdown is mostly because the projects are in the development phase. Once supply hits the market, the slowdown will go. Developers are obviously aware of this trend. That is why they can afford to offer assured returns to investors," says Kushagr Ansal, Whole Time Director, Ansal Housing and Construction Limitied.

Will this trend impact the real estate market or bring about stability? "An active commercial real estate market requires a stable economy and a low interest rate environment. The cost of borrowing should also be stable (which is there in this case). For stability in the market, a fine balance between demand for commercial space and supply should be maintained. Compared to the other asset class, assured returns provide stability to the medium, a sustainable and predictable income stream through the rent paid by occupiers," says Srivastava. ■