

# Be legally sound

## Buying under-construction property in resale

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In the resale market of under-construction properties a no-objection certificate (NOC) from the Developer is necessary before formally acquiring ownership. Also, the second buyer must check the loan documents and NOC from the bank, in case any home loans have been availed by the first party for the under-construction unit.

It is also important to investigate if the property has any encumbrance charges on it, before ownership is handed over.

The critical question for the second home buyers is whether the developer is liable to all the builder-buyer clauses in totality if the original buyer has already sold his apartment. Analysts maintain the developer is liable to all the builder-buyer clauses even for the second buyer but only when the transfer charges are duly paid by the new buyer.

However, it is better to check with the developer before making any purchase decision. The Builder-Buyer

Agreement must be endorsed as-it-is by the developer in the name of new buyer(s) at the time of transfer of property. The new buyer(s), therefore, receive(s) all rights endorsed in his/her/their name from the first buyer, getting all the benefits as promised by the developer. For a registered property, however, the developer is not liable for all the clauses.

Citing the developers' perspective on such transactions, Abhay Kumar, CMD of Grih Pravesh Buildteck agrees that resale of under-construction property is a tricky matter where buyers need to look into some crucial points. When such a property is sold firstly one should look into the hidden charges of transfer and also the charges when it is again resold to a new buyer at another stage of construction.

"In case the construction has already started then the buyer must demand papers like digging certificate, commencement certificate, pollution control board NOC, environmental clear-

ance, layout drawings approval, fire fighting drawings approval, airport authority NOC, labour cess registration, payment and dues of land, whether the land is mortgaged, vetting agency of structural drawings, developers track record and financial health, clauses of the agreement etc.", says Abhay.

The builder is liable to the clauses of the agreement only when the property is transferred in resale in a completed project and is done after three years of completion of the project construction.

In terms of legal safeguards, the builder is responsible to amend any construction defect in the property, visible at the time of possession. Any construction defect that is visible at the time of the delivery of properties should be corrected and amended by the developer.

It is the responsibility of the second buyer to check on each and every document before the property gets transferred against his/her name. After the transfer, the second buyer



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becomes completely responsible for everything related to the property in question.

Theoretically, there are safeguards available for the second buyer. As a safeguard, however, the second buyer may get an indemnity bond signed by the first buyer stating that in case of any default in the property title and/or misrepresentation of facts/default in commitment on the part of the first buyer (now the seller), the first buyer will be held responsible.

The second buyer can

enter into a separate registered agreement to sale with the first buyer stating all the clauses of transparency and in case of any hidden part which is discovered later can be fought in consumer courts and other courts of law.

But practically the transparency needs to be checked by the buyer before getting the property transferred. There have been cases of fraud when a seller over commits on behalf of the developer which is denied by the

developer later.

Sometimes the seller makes false promises which the developer is unaware of and the second buyer gets disappointed later. The best way to deal in such case is to hire a good advocate who can whet the papers well and also take a small loan even if the buyer can pay through his own funds as banks do lots of verification and the margin of error is drastically reduced if there is a bank involved in the transaction.

— The writer is Analyst, Track2Realty