

Questions and Answers Regarding Non – Resident Indians

Buying and Selling of Flat & Real Estate:

Q: What precautions should be taken before purchasing a flat in India?

Ans: It was found that on the basis of advertisements issued in the newspapers or on the basis of brochures issued by the Builders and Developers copies of which are sent abroad, non – resident Indians used to purchase immovable property or flats. Subsequently, it was found that the Builders did not have a marketable title to the property and / or it was found that the plans were not approved by the Municipal authorities and / or the Builders do not have the necessary funds for making the construction, etc.

Some of the precautions that the purchaser has to take before buying the flat are:

- (i) He should see that the promoter has made full and true disclosure of the nature of the title of the land on which the flats are to be constructed. He should see that a proper certificate is issued by an Attorney of Law or Advocate with a standing of not less than 3 years.
- (ii) He should see that promoter has made full and true disclosure of all encumbrances on such land including the right title or interest, claim of any party on such land.
- (iii) He should see that promoter has given plan and specification of the building built or to be built on the land. It should be ascertained that such a plan or specification has been approved by the local authority as per the provisions of the law for the time being in force.
- (iv) He should see that the promoter has made disclosure as to the nature of fittings, amenities (including the provision for one or more lifts) that are to be provided.

- (v) He should call upon the promoter on reasonable notice if the promoter himself is the builder to disclose the description of the materials to be used in the construction of the building and, if the promoter is not himself the builder call upon him to disclose on such a notice the terms of agreement entered into by him with architect and contractor regarding the description or the material used in the construction of the building.
- (vi) He should call upon the promoter to specify the date on which the possession of the flat is to be handed over.
- (vii) He should call upon him to disclose the list of the members of the purchasers of the flat and the price charged for every flat and / or agreed to be charged.
- (viii) He should call upon the promoter to state in writing the addresses, nature of the organisation of the persons to be constituted to which title is to be passed on. Such organisation may be a Co-operative Society or private limited company etc.
- (ix) He should see that before taking possession the completion / occupation certificate has been granted by the local authority as required under the law.
- (x) He can call upon the promoter to make full and true disclosure of all out goings such as municipal and other local taxes, taxes on income, water charges, electrical charges etc.
- (xi) The purchaser of the flat should call upon the promoter to make full and true disclosure of other information and documents in such a manner as may be prescribed under the law.

Q: What way the Non – resident Indian can finance the flat ?

Ans: The purchase of the flats can be financed from the fresh remittance through the normal banking channels or out of funds in ordinary non – resident account or Non-resident (External) Account. When the flat is under construction, it may be possible to get instalment facilities from the builder. Loan facility may also be availed for

purchase of flats, from authorised dealers or housing finance institutions approved by National Housing Bank.

Q: Since the Non – resident Indians are staying abroad, can the property be purchased through the agent or through the Power of Attorney?

Ans: The non – resident Indians who are staying abroad may enter into agreement through their relatives and / or by executing the Power of Attorney in their favour as it is not possible for them to be present for completing the formalities of purchase (negotiating with the builder or developer, drafting and signing of agreements, taking possession, etc.) These formalities can be completed through some known person who can be given the Power of Attorney for this purpose. Power of Attorney should be executed on the stamp paper before the proper authorities in foreign countries. Power of Attorney cannot be drafted on the stamp paper bought in India.

Q: What is the significance of possession?

Ans: Possession: Vacant possession is a very important aspect of the flat transaction. In order to avoid complexities, the vacant possession of the flat should be checked in advance, and it is advisable to ensure that the acts of payment / signing of agreement / possession are done at same time. The condition of the flat should be checked at the time of taking possession.

Transfer of Shares: Where the flat is in a co – operative housing society, the shares should be transferred by the Society from the name of the seller to the name of the buyer. Certain societies have restrictions regarding the persons that can be admitted as members. These should be checked in advance, to avoid disqualification and related problems.

Registration : Registration is an important aspect in immovable property transactions. In the case of a co-operative housing society, it should be checked that the society is either already registered with the Registrar or is in the process of being registered

soon without any impediments. Disputes and delays regarding registration can lead to many problems later.

Rental : Non – resident Indians having immovable property (e.g. flats) in India can make arrangements with persons in India for realising rentals. The rental income from such properties shall be transferred to the Ordinary Non – resident account of the owner with a bank in India.

Repairs / Upkeep etc. : Non –resident Indian having immovable property in India (e.g. flats) can open an ordinary Non – resident account jointly with a resident who is looking after the property for making payments for repairs, upkeep and maintenance of the property and also for depositing rentals.