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CHECKLIST FOR BUYING APARTMENT OR INDEPENDENT HOUSE AS GOVT WASHES HANDS OF DUAL REGISTRATIONS OF PROPERTY



By : M.S.Yatnatti Editor and Video Journalist Bengaluru : Planning to buy a piece of property? Do it at your own peril. For, the stamps and registration department has said it is not responsible for fraudulent dual registrations. It means the onus is on the buyer and the seller to ascertain whether the sale in question is legitimate or not. Quoting an 1882 law, the then inspector general of registration (IGR) NV Prasad has said they have no power to stop any fraudulent registration of properties in the state. "The registering officer is not empowered to stop or refuse such multiple registrations and as per existing and applicable provisions of the Transfer of Property Act, 1882 only the parties concerned are liable responsible to stop such multiple registrations transactions," he said in his March 31 reply to a notice issued by the Committee on Judicial Accountability under section 80 of Civil Procedure Code (CPC). Take precautions as buying property is not easy. Many check lists have been reportedly published by many on the internet and websites and blogs. Please consider each one of them and do not over look any good point. Reportedly buying a resale property has always proven to be advantageous from choosing a strategic location to acquiring finer properties at better prices and ready to move properties. Although a resale apartment may be old, it is a good investment option owing to the low availability or supply of new properties in the area. Therefore, if the owner chooses to redevelop the property, it is likely to fetch him greater appreciation and better return on investment. Another advantage of buying a resale apartment will be if the buyer makes a one shot payment from his disposable income rather getting into the intricacies of seeking a home loan. However, one should be aware that seeking a home loan for a resale property would mean meeting additional legal and procedural requirements. It is mandatory that one should be aware of the legalities and paperwork before investing in a resale apartment. One can even consider hiring a good realtor and good advocate to get information on the apt resale property, the details of the seller, and running around for paperwork etc. Reportedly following are the important documents required to buy a resale apartment or independent house.

- 1. Sale Deed:** One of the core legal documents that evidence the proof of property sale and transfer of ownership between the seller and the buyer is the Sale Deed. It is important that a Sale Deed should be registered and before it is executed, one should execute a 'sale agreement' and should ensure that all the conditions between the seller and the buyer are complied with. Also, before the sale agreement is executed, the buyer should check for a clear title and whether the property has any encumbrance charges on it. However, it is critical that a seller makes all the statutory payments such as water bill, electricity bill, property tax, cess, maintenance charges etc., before executing the Sale Deed.
- 2. Mother Deed:** Also known as the parent document, Mother Deed is the second most important document that traces and evidences the origin/antecedent ownership of the property from the beginning, in case the property has changed various hands. Mother Deed also helps in smooth selling of the property by establishing the current ownership. The document consists of the change of ownership of the property via sale, gift, partition or inheritance. All such changes will be traced from a transfer document through a uniform sequence in a chronological order without breaking the sequence flow. If there is a broken sequence, one should refer to the records from the registering offices, revenue records or the recitals (preamble) in other documents and should update the sequence until the present owner. However, if the original Mother Deed is missing, one should obtain the certified copies from the registering authorities.
- 3. Encumbrance Certificate (EC):** An Encumbrance Certificate denotes the charges in the ownership or liabilities created on a property that is held against a home loan as security. The document consists of all the registered transactions pertaining to the property for a particular period/sought period. This certificate that is sought for a particular period evidences the property purchase/sale, the presence of any transaction or mortgage for that particular period. To obtain an EC, one should submit a copy of the Sale Deed, fill in the Form 22, affix a non-judicial stamp and submit it to the jurisdictional sub-registrar's office. Crucial details such as complete residential address, property location, property survey number, the sought period, property description, its measurements and boundaries should be mentioned in the Form. Therefore by paying a nominal fee amount on a yearly basis one can obtain an EC between 3-7 working days or more depending on the period sought.
- 4. Latest tax paid receipt:** All the properties that fall under the BBMP attract property tax that has to be mandatorily paid to obtain a Khata in the owner's name. The latest tax paid receipts are a proof that the property tax is paid up-to-date to the municipality. However, a buyer should ensure to make enquiries with the government/municipal authorities to see whether all the dues are cleared by the seller on the property. Also the buyer should demand for the latest original tax paid receipts and bills and check for the owner's details, the tax payer's details and the date of property tax payment on the receipt. In case the seller does not possess the tax receipt, the buyer can obtain one from the municipal body by providing the property survey number. Apart from this, the buyer should also check if other bills such as the electricity bill, water bill and other utility bills are paid up-to-date by the seller.
- 5. Khata Certificate and Khata Extract:** Khata is nothing but a property account of a person. Khata consists of Khata Certificate and Khata Extract. The Khata Certificate is a crucial document needed at the time of registering a new property/transfer of a property. Furthermore the Khata is widely referred to as 'A' Khata and 'B' Khata (Revenue records extract). An 'A' Khata has properties listed under BBMP jurisdiction with legal property construction, whereas a 'B' Khata has properties under local jurisdiction with violated property constructions. It is always wise to buy properties with an A Khata as it denotes a legal construction, besides a B Khata can always be converted to an A Khata through various schemes and the payment of a penalty to the municipality. However, a Khata Extract is nothing but obtaining the property details from the assessment registrar and is important at the time of property buying and acquiring trade license.
- 6. Occupancy Certificate (for a constructed property):** An Occupancy Certificate is obtained after the completion of a project construction by a builder. It is given only after the authorities carry out an inspection on the property. The certificate evidences that the project constructed by the builder has met all the given norms. An Occupancy Certificate will be needed at the time of property buying, seeking a home loan, before taking the property possession and for Khata transfer. It basically confirms that the project is ready to be occupied.
- 7. Building approval plan:** Without a building approval plan, a building will be deemed as an illegal construction as per the Karnataka Municipal Corporations (KMC) Act. This plan is sanctioned by the BDA (Bangalore Development Authority) or the BBMP (Bruhat Bengaluru Mahanagara Palike) or the BMRDA (Bangalore Metropolitan Region Development Authority) or the BIAPPA (Bangalore International Airport Area Planning Authority). It is important that the building owner gets the approved plan from the jurisdictional Commissioner/ an officer authorized by such Commissioner. The authorities sanction a building approval plan taking into consideration the zonal classification, road width, floor area ratio (FAR) and plot depth. One can obtain a building approval plan by submitting a set of documents such as the Title Deed, property assessment extract, property PID number, city survey sketch (from the Department of Survey and Settlement and Land Records), up-to-date tax paid receipt, earlier sanctioned plans (if any), property drawings, 2 copies of demand drafts, foundation certificate (if any) and a land use certificate issued by the competent authority (viz., Dy. Commissioner). Furthermore the requisites of acquiring a building plan include hiring a registered architect to draw a plan that meets the applicable bye laws. Making it easier to obtain a building approval plan, the newly invented BBMP software- Automated Building Approval Plan will issue the plan within a period of just 4-5 working days, provided it meets all the requirements.
- 8. Possession Certificate (PC):** A Possession Certificate has to be mandatorily issued by the Builder / Developer to the first owner. A PC confirms proper construction and allows people to take possession of the property. This document is not reissued at the time of resale; however, it is passed on to the successive owner. One would need two additional documents in case he's buying a resale independent house.
- 9. RTC (Record of Tenancy Rights/Certificate) Document:** An RTC or a Pahani is a crucial revenue record that consists of the land owner's details, the soil type, the water rate, assessment, area, liabilities, tenancy details, crops grown on the land, nature of possession of the land and other details. The RTC/ Pahani document is required for an array of purposes such as : to know the authenticity of the property seller, during the completion of the sale transaction at the sub-registrar's office, to seek a home loan and at the time of civil litigation (if any). A person can acquire a RTC document from the Pahani centre/online from the Tehsildar's office for a sum of Rs. 15/- to the revenue inspector.
- 10. Conversion Order/ DC Conversion (agricultural to residential):** A Conversion Certificate or a DC (District Commissioner) certificate is acquired to change the property status from an agricultural land use to a non-agricultural land use viz., residential use or industrial use. The Conversion Certificate plays an important role especially in cities with vast areas of agricultural land. It is issued by a competent authority by requesting the department of Town and Country Planning to issue a NOC for the conversion of such a land. In order to get a DC Conversion Certificate, the land owner should submit various documents such as ownership documents, a photo copy of the land survey number, a photo copy of the revenue survey map of the village denoting the location of the land proposed for conversion and any other information required by the authority.

Reportedly following are the important steps a buyer should take before buying a resale apartment or independent house? The buyer should ensure that the property has a marketable title: One of the most important aspects of buying a resale property is to ask the seller for a clear marketable property title. Once you have zeroed down on a resale property, ensure that there are no other claimants for the property. Check whether the property has joint ownership and if yes, ensure that all co-owners have authorized the sale. Seeking the property titles along with the original documents will help in knowing if the existing owner has bought the property on resale. In case any of the documents from the chain of titles are not stamped as regulated, the banks might refuse to offer a loan for the purchase of a resale property. One might also have difficulty in seeking a loan if the resale property is older than 10 years. **The buyer should check for the existing loan on the property:** The buyer should check if the original property documents have been mortgaged with the bank/financial institutions ("Banks"). A bank considers a loan only once the existing owner completely repays the loan and has the original documents formally released. Unless the buyer obtains the original documents he/she will not be able to obtain a new loan. On the other hand, the existing owner will not be able to repay the existing mortgage until the buyer seeking the property raises a new loan. The buyer should also be aware of the amount that is to be paid to the society at the time of transfer of ownership, as some societies charge higher rates. **Loan eligibility of the buyer:** If you have decided to buy the resale property via loan, you should keep in mind that not all banks approve loans for properties that are older than 10 years. This is because the banks do not want to take risks considering the depreciating property value. Also most banks lend only if the value of the outstanding loan is beneath the value of the property. The buyer should be aware that the cost of the to-be-bought property has a major impact on the loan eligibility, which would mean that the buyer should make a down payment from his/her end as a stake for the continued maintenance of the resale property. For example, if a property is worth 10 lakhs, the buyer will have to pay 5 lakhs as down payment. The down payment will likely be more if the property is older than 20 years. **Property valuation:** It is advisable that the buyer seeks technical expertise to evaluate the property before approaching the bank, as the bank would safeguard its interests by evaluating the property at a lower rate considering the depreciating property value in future. This makes the buyer eligible for a lower loan amount irrespective of a higher income, since the bank caps the loan amount around 80 percent of the concluded valuation. **Ready-to-move apartment:** In case of a resale apartment, it is always



wiser to buy a ready-to-move in property with all the amenities. Doing this will not just save time that is required for the completion of a new home, but will also save you rental payment on your current property. While buying a resale flat, a buyer can check before hand for all amenities and other requisites. Remember to check whether there are any outstanding dues on the utility bills or maintenance and on the allotment of parking space. **Points to remember:** Buying a resale property is quite advantageous- no project delays, ready-to-move-in property and no service tax/VAT burden. Before buying a resale property that is quite old and attracts additional maintenance charges by the society, one should meet the society's office bearer to know more about it. Resale properties are likely to be discounted. They have more flexible payment options. For properties aged over 18-20 years, there are possibilities of them being unregistered and registering in the current period will add to the buyer's burden in terms of stamp duty and arrears. A buyer of a resale property should consider the parking space, plumbing, electricals etc. A resale property will ostensibly attract expenses for repairs- renovation, labour charges, electrical refurbishment, plumbing, fittings etc. Also acquiring a home loan for a property that is older than 50 years can be quite strenuous. A resale property might miss out on the contemporary features, specifications and amenities. **As per news paper reports Bengaluru real estate is booming . There are nearly 500 residential projects underway in and around Bengaluru adding around 60,000 new units and this indicates huge construction activity happening in and around Bengaluru..** Once the buyer has decided on the location and his or her budget either through own funds or housing loan -care and caution have to be exercised. For, buying apartments and flats and homes and villas involves many intricate and complex issues. The Bengaluru real estate market is vibrant, with builders catering to all sections of the society with apartments and villas of varying categories -built up area ranging from 650 sqft to 10,000 sqft and price Rs 30 lakh to Rs 10 crore plus. Look before you leap. Cons are everywhere . Beware of con artists: Con artists make money through deception. They lie, cheat and fool people into thinking they've happened onto a great deal or some easy money, when they're the ones who'll be making money. If that doesn't work, they'll take advantage of our weaknesses -- loneliness, insecurity, poor health or simple ignorance. The only thing more important to a con artist than perfecting a con is perfecting a total lack of conscience. What does the average con artist look like? Despite what you may think, he isn't always a shady-looking character. A con artist is an expert at looking however he needs to look. If the con involves banking or investments in properties, the con artist will wear a snappy suit. If it involves home improvement scams, he'll show up wearing well-worn work clothes. Even the basic assumption that the con is a "he" is incorrect: there are plenty of con women too. "Ensure papers are in order verify the builder's credentials". In case of many buyers All their hopes of having a dream home has been dashed to ground when they came face to face with un-ethical , un professional and murkier side of the few unscrupulous builders . There are some of the instances of their cheating with unsuspecting customers. Buyers should do their home work before buying anything from builders. Buyers should do complete research of the market and Google every builder and its website and do market research and compare price side by side with the quality parameters and take into account every conceivable item and prepare a project report. Confidence tricks and scams are difficult to classify, because they change often and often contain elements of more than one type. My suggestion is, If you plan to buy a flat or plot always go for Bank loans (even if you have lots of money), when you take the loan route, the papers are legally checked by the bank and secondly, ensure there are minimum 4 - 5 banks offering loan for the apartment/residential colony. Buyers need to verify the credentials and credibility of the builder, the quality of construction, facilities and amenities offered and Once the builder and the project are identified, ensure title clearance of the land -most litigations are on account of title issues resulting in incomplete projects . Pay a token advance to the builder and get the master file consisting of copies of the entire land documents and then independently get the 'Title Search Report' (TSR) done. You can also get a detailed encumbrance certificate (EC) from the sub registrar office (SRO). prices of similar apartments in the area. Keep in mind the zoning clearances, water supply, parking space and litigations display boards, if any and do not jump into conclusion very fast . **BUILDING PLAN APPROVAL:** The layout plan in general and the building plan of all apartment projects has to be approved and sanctioned by the BDA and not by any panchayat or CMC even though the project may be coming up on the outskirts of Bengaluru. The approvals will have A khata only (entire land and individual flats). Check if the construction is as per the approved plan as builders tend to violate Floor Area Ratio (FAR) and build extra flats without approvals. It's prudent to check the copy of the approved plan, A khata at the BDA office, as many fabricated and forged plans are in the market. **LICENCE TO CONSTRUCT:** Check whether the builder has obtained proper license from the BBMP/ BDA to construct the property . **FLOOR PLAN :** Check the original plan approval with the floor plan approval of the apartment to ensure there are no deviations violations . There have been instances where the approved plan shows the apartment on the first floor, whereas it is actually constructed on the second floor as an extra floor -named "mezzanine" -which is unauthorized. **COMMENCEMENT CERTIFICATE (CC):** Verify if the builder has obtained proper CC from the BBMP. **GOVT CLEARANCES:** Obtain copies of clearances from Bescom, BWSSB, the pollution board, and fire service besides approvals for digging bore wells from competent authorities. **LOANS TAKEN BY BUILDER :** Find out whether the builder has got any loan. The original documents of the land would be mortgaged to the banks who will have to issue a "letter NOC" for release of the undivided share of interest (UDS) of the land constructed area . Also ensure that such mortgage transactions are registered and reflected in the encumbrance certificate (Form 15). Otherwise, there is a possibility of the builder getting multiple funding from banks which can take possession of the flats. **DON'T MISS! :** Periodic visits: Purchaser should visit the project site periodically to ensure that the construction is as per plan ,as per time schedule based on the agreement, and quality fittings & fixtures are used. **Completion Certificate:** The purchaser should insist and ensure that the builder provides a copy of the CC issued by the BBMP. **Occupancy Certificate (OC):** The builder has to obtain OC from the BBMP within three months of completion of the project obtainment of completion certificate. Buildings without OC are not entitled to power and water connections. **INDEMNITY OF THE BUILDER :** Since the project takes 24 months to 48 months for completion, an "indemnity bond" and "letter of undertaking and affidavit" should be taken from the builder confirming that construction will be as per the approved plan and the completion certificate will be obtained within 3 months of the completion of the project.

LAND OWNER TO EXECUTE MOE: If the project is under joint development and the builder has taken a loan, it is desirable that the landlords are made part of the Memorandum of entry , so that they cannot say later that they were not aware of the loan. **LEGAL DOCUMENTATION:** Be cautious while executing the agreement with the builder. Read and understand the implications of conditions in the agreements since they are normally in favour of the builder with very little scope for legal recourse. It is prudent to have a legal consultant to vet the documents. The buyer cannot go wrong if he she follows the above safeguards, and thus prove the proverb "fools build houses and wise men live in them", wrong.

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