All you need to know about family-owned property


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If an outsider purchases a share in the property owned by several family members, the law provides the latter an opportunity to buy back the share of the stranger

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Although the concept of nuclear families is gaining momentum in India, many joint families continue to own a common dwelling house and live together in it. In such joint families, members own an undivided and unspecified share in the property and enjoy common possession.

However, numerous disputes have arisen when a particular family member has attempted to transfer his undivided share in the family's joint property to a stranger/non-family member. Family members usually protest worrying that the stranger may interfere with their customs and traditions or disturb their peaceful common possession.

Such disputes put at stake

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the rights and interests of all persons involved – the family member who sells his undivided share, the stranger who purchases such undivided share in good faith, as well as other family members who continue to jointly own and inhabit the property. Hence, it is important to know the legal provisions governing sale of undivided share in a dwelling house.

Rights of the buyer

Section 44 of Transfer of Property Act, 1882, deals with the case of a stranger/non-family member who purchases a share in an undivided dwelling house which is otherwise owned by a joint family.

The section specifies that such a stranger does not automatically get the right to joint possession or common enjoyment of the property. The legislature enacted this provision to protect family members of an undivided family property against intrusion by an outsider. However, this restriction is not absolute and is eased by Section 4 of Partition Act, 1893. Under this section, a co-owner is entitled to sue for partition and claim separation and possession of his share in the dwelling house.

Rights of other co-owners

In the event the buyer files a suit for partition of the dwelling house, any family member who owns an undivided share in the property is entitled to put forward his claim of pre-emption. In other words, law provides such family member the opportunity to buy back the share of the stranger co-owner. In such cases, the court makes a valuation of the share belonging to the stranger co-owner. Upon payment of this value by the claimant family member to the stranger co-owner, the stranger co-owner is not left with any right in the property and can effectively be denied entry in the dwelling house.

However, family members do not have a right to purchase the stranger's share anytime they want or desire. Where there has been a sale of an undivided share in a dwelling house to an outsider, a co-sharer cannot simply file a suit for partition for claiming a right to buy back the stranger's share. The valuable right to buy back the share of the stranger only arises when the stranger himself has filed a suit for partition and possession. This way, the legislature in its wisdom has struck a balance between the rights of family members on one hand and rights of buyers who are not family members on the other.

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I am keen to construct a house on a 1 acre plot in Delhi under the recently notified policy of low density residential plots. Are there any specific locations in Delhi where such plots are permissible?
–Shraddha Malik

The ministry of urban development had issued a notification dated May 10, 2013, effecting amendments of provisions relating to low density residential plots in the Master Plan for Delhi 2021. As per this notification, low density residential plots are permissible only in villages/areas that have been notified as low density residential area in the urban extension of Delhi; and notified villages/areas situated in the green belt in Delhi.

I am the karta of a hindu undivided family which owns a property. I have to travel overseas on numerous occasions and hence, I am unable to find a suitable tenant or execute a lease deed for the property. As my major son is also a member of the hindu undivided family, can he sign the lease deed in my absence?
–Anil Gupta

In the capacity of karta of the hindu undivided family, you may validly execute a power of attorney in favour of your major son, authorising him to execute a lease deed of the property owned by the hindu undivided family. To take effect in law, applicable stamp duty and registration fee should be duly paid on such a power of attorney before the lease deed is executed for the said property.

I had booked a flat last year in an under-construction project. As I wish to exit this project, can I transfer the booking and allotment in favour of a third party?
–Vineeta Kaul

You may validly transfer your rights in the allotted space by taking prior permission from the builder for endorsement of all allotment documents in favour of the buyer, subject to terms and conditions contained in the allotment documents (eg payment of transfer charges if any).

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Harsh Roongta

We are in the process of buying an apartment in Noida being constructed by a builder on village land. He has told us that it is a freehold property. I understand that no map or sanction plan is required from any authority for village land. Is there any harm in buying such a property? Is the builder bound to get a completion certificate and occupancy certificate in this case? Can the builder also make some commercial use of part of the land though it is bought for residential purpose? What documents should we check before finalising the deal?
–Reshmi Singh

All property issues tend to be local in nature and hence it would be very difficult to get a specific answer without looking into details of the specific property purchase. It is always advisable to seek professional help from a local legal firm specialising in property matters.

Notwithstanding the above, here are a few general pointers that apply across India. Check if the property is pre-approved by any bank at all? Has any buyer in that property managed to get a loan from any lender?

If the answer to both questions is no then you would be well advised to stay away from the property. Whilst getting a loan from a lender is not a guarantee that the property is legal, the absence of approval from any bank is a sure shot red flag which you should heed. If you buy unauthorised property, you may meet the same fate as that of the Campa Cola society residents in Mumbai. Don't buy illegal property even if it is available cheap. It could prove very expensive in the long term.

It's best to go in for a ready-to-move-in property after taking a loan from a leading lender. Take a small value loan even if you have the full money so that you get a reasonable due diligence done on the property (though this is not in substitution for your own due diligence). You can always prepay the home loan after it is disbursed without any cost.

I am a central government employee earning ₹86,000 per month (₹70,000 in hand). I have taken a home loan of ₹18,50,000 from a bank and my EMI is ₹20,000 per month since 2010. Can I get a home loan for another property? If yes, how much will I get and which bank should I approach.
–Mansukh Gupta

Different banks presume different portions of your income as available for payment of EMI's of loans. It varies from bank to bank and there is no standard norm/formula. But normally the bank will assume that around 40%-45% of your net salary or even 50% in some cases is available for payment of EMI.

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Price down, affordability up

End-users are waking up to the possibility of owning homes in Panchkula, as housing prices continue to decline, says **Munieshwer A Sagar**

Panchkula, which is known for demand-driven growth has traditionally attracted investors from across the region. Now the value of realty assets is fast declining in this satellite town owing to a recent spate of drastic price corrections. This is encouraging the return of the end-user. From an investor perspective, if last year was a bad year, this year has turned out to be worse. Housing prices have declined by almost 20% to 40% depending on location and the overall condition of the property.

"Investors were coming to Panchkula from different areas of Haryana. It is a well-planned city on the borders of Chandigarh. Investors from Karnal, Panipat, Hisar, Jind, and even Himachal Pradesh have invested heavily in the local property market of Panchkula. But, in the last two-and-a-half-years, investors have been facing declining returns on their investments. To make matters worse, exit has been challenging. So, naturally, the investor demand is no longer driving the market growth," says Vikas Gupta, a realty expert based in Karnal, who commands a long-standing experience of the city's investment sector.

End-user on the realty margins

In the period from 2007 to 2011, it was tough to be an end-user in Panchkula's realty market. This was particularly the case for end-users looking at budget-accommodation. The realty investor, particularly from outside the city, had made the end-user irrelevant in terms of the realty trading activity.

"The investment-led price appreciations in the city between 2007 and 2008 have also reduced the end-user participation in the city's realty market. Prices almost doubled in the period between 2009 and 2011. Short-term trading was the norm, and sellers did not give any importance to end-users who were keen on price negotiations," says Prakash Singh, a Zirakpur-based real estate consultant.

In older sectors, namely, 6, 7, 8, etc, the price of a square metre increased from R44,000-R55,000 to R90,000-R1.25 lakh between 2009 and 2011. In sectors 12, 12A, 14 and 21, prices increased from R35,000-R45,000 to R80,000- R1 lakh per sq metre. For the new sectors - 23, 25, 26, 27, and 28 coming up beyond the Ghaggar river, prices increased from R28,000 - R30,000 to R60,000 - R70,000 per sq metre during 2009-2011.

"Consequently, not many end-users could think of buying a house in the city. Sellers were quoting a 10 marla house at around R3 crore in some areas of the city. End-users were not buying. However, investors were keen to buy and then sell quickly - a strategy which they knew would help them make the most of the ongoing price appreciations. On the other hand, most end-users opted for rented accommodations in the city," says Ankur Garg, a resident and a prospective buyer.

The investor's loss is the end-user's gain

This year, like the previous year, price growth has remained negative. But, the bigger shock to the investor has been the total absence of demand in the city followed by a sharp dip in trading volumes. Exit options for the investor are almost negligible. Since prices are expected to remain low for sometime, there is a general insecurity among investors. Nearly all of them are anticipating huge losses.

"Investors at this point are not just refraining from purchases. They are also unable to sell and have almost disappeared from the market. Their absence coupled with steep price corrections, have opened up opportunities for the end-user. The end-user is once again in a position to plan a house in the city," says Varun Yadav, a local property consultant.

The rate of price corrections is not uniform across the city, but price growth is negative in all the city areas. In the older sectors, price of a square metre decreased from ₹90,000-₹1.25 lakh to ₹70,000 - 1 lakh between 2011 and 2013. In sectors 12, 12A, 14 and 21, prices decreased from ₹80,000-₹1 lakh to ₹70,000 - 80,000 per sq metre. For sectors 23, 25, 26, 27, and 28, prices decreased from ₹60,000 - ₹70,000 per sq metre to ₹40,000 - ₹55,000 per sq metre during 2011-2013.

"Most investment gains made during 2009-2011 have become redundant during the last two years. The current price level is still higher than the price level in 2009. However, if the trend of price corrections continues, price levels are expected to go below what they were in 2009," says Yadav.

Queries from end-users have increased in the past few months as home prices continue to decline. But, so far, the potential demand hasn't translated into actual demand for the seller. "The end-user knows the price corrections are not going to stop in the short term. They are expecting further price cuts before they enter the market. Also, sellers are still somewhat reluctant to slash prices. As the market continues to stagnate and pressures mount on sellers, we are hoping for more drastic price cuts," says Bharat Verma, a city-based IT professional and potential buyer.

The fact that demand is not turning into actual demand is also because end-users have far too many options to explore before making a purchase decision. For people living in rented accommodations, this is an ideal time to buy.

The only concern is the somewhat steep interest rates on home loans. If home loan interest rates come down, the conditions for real estate purchase (by end-users) will be ideal.

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Investing in a luxury apartment?

'Luxury' is the most abused word in the Indian real estate market. Developers have no qualms in selling a 1BHK unit as premium property, little realising that generous living means ample space

Om Ahuja

A 1BHK cannot qualify as luxury by any stretch of imagination. The interpretation of luxury in the Indian context also includes an element of exclusiveness

In Indian real estate, 'luxury' is by far the most-abused word by residential project developers. Any project offering basic amenities is classified as 'luxury' in marketing materials, advertisements and pitches. We have actually seen projects wherein 1 BHKs are being offered along with 2 and 3 BHK units under the luxury tag. What is wrong with this picture?

In the first place, luxury living in any context must necessarily involve generous living spaces. Going by that alone, a 1 BHK cannot qualify as 'luxury' by any stretch of the imagination. Secondly, the interpretation of luxury in the Indian context also includes an element of exclusiveness. In other words, the buyer of a luxury apartment - apart from superior amenities and facilities - also expects to live in a project which offers a certain socio-economic standard as a neighbourhood. Therefore, when a project offers one-bedroom apartments, it automatically disqualifies itself from the 'luxury' classification.

Given that developers will continue to call every project luxurious, it is important for buyers to understand the definition, context and meaning of luxury in Indian residential real estate. But before this, let us first examine the investment dynamics of genuine luxury homes.

Buying a luxury apartment for self-use already involves the need for multiple checks and validations in any case. However, when it comes to buying such an apartment for investment, the need for 360-degree due diligence is even higher. After all, the final objective is returns on investment. If one is considering investing in a luxury apartment, one must understand what the hallmarks of genuine luxury in residential real estate are:

Location

This is one of the most crucial parameters. Though central location is certainly an important qualifier for the luxury tag in India, a project that stands at a central city junction beset with traffic congestion does not provide a luxurious experience. No matter if a project is 'normal' or 'luxurious', it is not home if one cannot reach it or get out of it. Investors need to look at many location parameters, such whether the project benefits from approach roads that allow for convenient vehicular egress and ingress.

Also, very few people buy luxury homes and then hide them from the rest of the world. Most owners of such a home want others to see and admire their properties, and to entertain people there. Noise and air pollution apart, this purpose is not achieved if the project lies in a chronic traffic gridlock zone. Finally, the owners themselves must have ready access to markets, schools, colleges, hospitals and their offices. And before we forget - the most spectacular edifice of luxurious living falls flat on its face as an investment bet if it is located in a crime-ridden area.

The view available to the project's occupants is also very pertinent. A project may be genuinely luxurious in its internal specifications and amenities. However, if it overlooks a slum or congestion-prone highway, a graveyard or a hospital, both rental and resale potential take a beating. The availability of a rooftop swimming pool and a Jacuzzi in every bathroom will not make a difference - a very basic ingredient of the luxury experience is unavailable.

Floor-to-ceiling height

This is one of the most important parameter to evaluate a project's true 'luxury' value. If the floor-to-ceiling height is less than 12 feet, the luxury feel is severely compromised. Moreover, apartments with low ceilings do not lend themselves optimally for tasteful interior decoration.

Project density

This means the number of people living in the project. There is no ideal thumb-rule for this parameter - however, it is generally understood that a one-acre project should not house more than 60 families. Anything more means that the project does not qualify as 'luxury'. This is because the available amenities are shared by too many people, destroying the project's ambience, exclusiveness, convenience and charm.

Parking

Again, there is no specific yardstick by which to measure parking sufficiency. The commonly followed norm is that the number of bedrooms in a project should equal the number of available car parks. A 3 bedroom apartment should therefore have three parking spaces within the project.

Though many luxury projects in the larger cities now offer puzzle-type mechanised parking, the fact is that HNI buyers and tenants actually prefer normal or stack parking.

Elevators

The mere provision of branded elevators does not suffice in a luxury project. The project must also have service elevators with separate entries, to ensure that domestic help and external suppliers do not populate the elevators and lobby being used by residents. Investors must also ensure that the elevators are spacious enough to accommodate a stretcher.

Security

Inhabitants of a luxury project do not expect to have to install ugly security grilles over their front doors and windows. They expect to have the assurance that their families and property are safe in all respects. A genuine luxury project has uncompromising human security as well as electronic surveillance and safety measures firmly in place.

As is evident, it takes more than a mere word like 'luxury' to place a project head and shoulders above the rest - and thereby make it a worthwhile investment option. While one cannot stop developers from misusing the luxury tag, it is certainly possible to understand what true luxury - even in the Indian context - really is.

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