

Are you in deemed possession of your housing unit? Here's what you need to watch out for

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To own a house is like a dream come true for most people and due to this there is a constant demand for housing. To cash in on this demand, real estate developers offer special schemes to attract prospective buyers in the projects being developed by them.

Usually, various payment plans are offered, such as construction-linked payment plans, timebound payment plans etc. However, in almost all such payment plans, a specific percentage of the total price of the booked unit is payable by the prospective buyer on receipt of a letter from the developer offering possession of the booked unit.

Here's a look at Deemed Possession of a housing unit due to which maintenance charges, holding charges etc. are payable by the prospective buyer to a builder.

A letter regarding Offer of Possession is issued by the builder to the prospective buyer/allottee when the unit is ready, after the handover conditions as set out under the builder buyer agreement have been met, and the booked unit has been declared fit for occupation by the competent authorities by grant of an occupation certificate for the project/phase in which the booked unit is situated.

One of the important terms of such a letter offering handover of possession of the booked unit is regarding the amounts payable by the prospective buyer/allottee to the builder/developer within the timelines mentioned in the said letter. The prospective buyer/allottee is required to pay such amounts/charges to the builder/developer and take possession of the unit within the timeline.

However, in certain cases, the prospective buyer/ allottee fails to take or delays possession of the booked unit within the timelines mentioned in the letter regarding Offer of Possession issued by the builder. In such a situation, upon expiration of the prescribed timeline, the prospective buyer/ allottee is considered to be in Deemed Possession of the booked unit.

In such an event, when the prospective buyer/ allottee is considered to be in Deemed Possession of the booked unit, then such prospective buyer/allottee is contractually liable to pay charges vis. maintenance charges, holding charges etc. along with applicable interest, if any, as agreed between the prospective buyer/allottee and the builder/developer in terms of the builder-buyer agreement executed between the parties.

It is important to mention here that upon receipt of the letter from the builder regarding Offer of Possession, a prospective buyer/allottee should check if the occupation certificate/completion certificate for the project/phase in which his unit is situated has been issued by the competent authorities.

If the occupation certificate for the project/ phase in which the booked unit is situated has been issued by the competent authorities then the prospective buyer/ allottee would be required to take possession of the booked unit and shall be liable to pay charges in terms of the builder-buyer agreement executed between the parties.

It is important to mention here that as per section 17 of The Real Estate (Regulation and Development) Act, 2016, possession of a unit is to be handed over to a prospective buyer/allottee after issuance of the occupation certificate. Therefore, in case the occupation certificate for the project/phase in which the booked unit is situated has not been issued by the competent authorities, then it is not lawful for the builder to offer possession of the unit to the prospective buyer/allottee. Sometimes in such cases, the builder/developer issues a letter offering access to the unit for fitouts and demands payment of maintenance charges from the prospective buyer/allottee within the prescribed timelines or else the prospective buyer/allottee is considered to be in Deemed Possession of the booked unit.

In such a case, where the occupation certificate for the project/ phase in which the booked unit is situated has not been issued by the competent authorities and the builder/developer raises a demand regarding the payment of maintenance charges from the prospective buyer/allottee then the prospective buyer/allottee is entitled to object to the same and refuse to pay such charges to the builder/ developer as the liability to pay such charges usually commences after the grant of the occupation certificate for the project/phase.

In such a situation, even if charges are imposed by the builder/developer on a prospective buyer/allottee by considering the prospective buyer/allottee to be in Deemed Possession, the prospective buyer/allottee may refuse to pay such charges and seek the appropriate legal remedy against such a builder/developer.

The prospective buyer/allottee may initiate a complaint against such a builder/developer with the RERA Authorities for redressal of his/her grievance against the builder/developer.

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