

# End of the road for benami transactions?

The benami bill should be effective in curbing the black money menace in the real estate sector

Vivek Kohli

The Benami Transactions (Prohibition) Bill, 2011 was introduced on August 18, 2011, in this year's Monsoon session of Parliament. However, the Bill is still pending and is likely to be tabled in the upcoming winter session.

Aimed at curbing the menace of benami transactions, the bill will replace the existing Benami Transactions (Prohibition) Act, 1988, which has been rendered largely ineffective for a number of reasons. It does not contain any specific provision for the vesting of confiscated benami property with the Central Government. It also does not have any provision for an appellate mechanism against action taken by authorities under the Act, while barring the jurisdiction of a Civil Court.

The 2011 Bill is a far more comprehensive legislation. Its primary aim is reflected in the preamble, which states that it seeks to consolidate and amend the law relating to benami transactions, seeking to prohibit persons from entering into benami property transactions and to provide a mechanism for confiscation of property held benami.

Some of the key important features of this Bill are:

- The Bill defines 'benami transaction' as an arrangement where (a) a property is held by a person (other than in fiduciary capacity) on behalf of another person who has paid for it; or (b) the transaction is made for a property in a fictitious name; or (c) the owner of the property is not aware of or denies having knowl-



## htestates LEGAL REMEDIES

edge of such ownership

- Property purchased by an individual in the name of his spouse, sibling, or any lineal ascendant or descendant shall not be considered benami property or transaction.
- Property held benami shall be liable to be confiscated by the Central government. All rights and title then of such a property shall vest completely in the central government. No compensation will be paid to the affected party
- A person will not be able to re-transfer benami property to the beneficial owner. The term 'beneficial owner' refers to the person for whose benefit the benami property is held by a benamidar. The term 'benamidar' refers to a person (or even a fictitious person, if such is the case) in whose name the benami property is transferred or held.
- Designated income tax officers shall have the same powers as a civil court while trying a suit in matters related to inspection, production of documents, making orders for confiscation of benami property, issuing notice

for surrender or forcible takeover of possession of benami property, etc.

- The Appellate Tribunal which has been established under the Prevention of Money Laundering Act, 2002, shall also serve as the Appellate Tribunal for purposes of this Act. Persons aggrieved by the decision of the Appellate Tribunal may further appeal to the High Court.
- Any person who enters into a benami transaction, or induces another person to enter into a benami transaction, shall be punished with imprisonment for six months to two years. In addition to imprisonment, he shall also be liable to pay a fine of up to 25% of the fair market value of the property held benami.

Recently, the Government has been undertaking numerous measures aimed at curbing the circulation of black money in the economy, especially in real estate transactions, such as increasing circle rates of property. Once enacted, the Benami Transactions Bill will pave the way for more transparency in real estate transactions.

The author is senior partner, ZEUS Law Associates, a corporate commercial law firm. One of its areas of specialisation is real estate transaction and litigation work



## htestates LAW BOOK Sunil Tyagi

In September 2010, my wife and I applied for two serviced apartments in a project in Greater Noida, offering 11% assured returns during the construction period plus three years. We made full payment of ₹30 lakh and received assured return cheques up to March 2011. Then, the developer wanted us to sign an agreement where the original provisions of the buyer's agreement were totally changed. We decided to quit the project and were assured a full refund within 30 days. We also submitted cancellation papers, duly acknowledged by the developer. However, the money has not been refunded. What can we do?

— Ajit Kumar Singh

You may approach the relevant civil court in the Uttar Pradesh or the State Consumer Forum for refund of your money along with interest.

We are a family of two brothers and four sisters. We jointly inherited a property from my father who died intestate in 1995. If I file a suit for partition for my share in this property, will the suit be barred by limitation?

— Jeet Ram

You may file a partition suit in the civil court, irrespective of the year in which you had inherited a share in this property, because rights in a jointly-owned property is a continuing right.

I inherited a flat in Delhi from my late mother. How do I transfer it to my wife?

— Dinesh Gupta

If you want your wife to become the owner of this flat during your lifetime, you may execute a gift deed in her favour. Stamp duty on a gift deed will be the same as that of a conveyance, for a consideration equal to the value of the property mentioned in the gift deed. Also, a gift deed has to be registered with the relevant sub-registrar's office under whose jurisdiction the property is situated.

In Delhi, the registration fee on a gift deed will be 1% of the consideration amount set forth (in the deed) or the value as per the circle rate, whichever is higher and subject to a minimum of ₹1,000. Alternatively, you can also execute a will, naming your wife as the beneficiary of this flat. Though no stamp duty or registration fee is payable on a will, the transfer will only come into effect upon your demise.

The author is senior partner, ZEUS Law Associates. If you have any queries, email us at htestates@hindustantimes.com

## inshort

Credai Conclave on Nov 24 and 25

Credai will be hosting the Credai Conclave 2011 on November 24 and 25 in Delhi. Over 1200 delegates including developers, decision-makers, financing institutions, professionals, representatives of



Minister of housing Kumari Shailja with Credai members, professionals, representatives of

stakeholder groups and distinguished individuals from across the real estate spectrum are expected to attend. The agenda of the conclave is Mission Transparency - Reassess, Realign, Reform. At a function held in the capital recently, minister of housing and urban poverty alleviation Kumari Shailja unveiled the new Credai logo.

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## htestates CHEQUE BOOK Harsh Roongta

Can a lender exercise discretion on whether it will transfer the home loan to another bank or not? I took loan of ₹17 lakh, offered at an interest rate of 10.25% per annum but later the lender hiked it to 11.75% without informing me. Now, it is not heeding any request to lower the rate and won't send the property documents. What is the solution?

— Naman

Since you have taken a loan on floating interest rate, it is bound to change whenever there are changes in the base rate of the lenders — be it due to change in repo rates announced by the Reserve Bank of India (RBI) or for any other reason. Please refer to your agreement carefully; there must be some provision for revision of the rates by the banker from time to time. As far as your option to

transfer your loan is concerned, yes, you can transfer your home loan from one lender to another. You should explore the option of changing your home loan lender if you have maintained a good track record of repayment on the existing loan. Please bear in mind that the new bank may charge you processing fee (many banks waive this for good customers) though you may not have to pay any prepayment penalty since the RBI has already indicated that banks will stop levying prepayment penalty on floating rate loans by the end of November 2011. So, if the current lender is charging you an interest rate in excess of 10.75%, you should shift to another lender who is likely to give you that rate and the shift may not cost you anything at all.

The existing lender typically provides a letter addressed to the new lender providing a list of original documents available with him as a security and also agreeing to release the documents within a certain number of days after full payment is received. The letter will also contain an amount on payment of which the loan will be treated as fully paid off. You will need a good track record of timely payment of EMIs to be able to get a good offer from another bank to take over your loan.

If you have cash in hand, is it still beneficial to take a home loan and to what extent?

— Aman

Normally speaking, if you have surplus cash, you should not borrow money. The interest payable on a home loan is tax-deductible. So, there is an argument to say that the effective post-tax cost is low. For example, at current interest rates of around 10.50% for customers paying tax at the highest

rate of 30.90%, assuming the entire interest amount is tax-deductible the effective post-tax cost works out to 7.25%. However, there aren't too many low risk instrument options that will provide a post-tax return of 7.25% (for which gross returns again need to be 10.50%). Remember, PPF, which offers 8% post-tax, has an investment limit of ₹70,000 a year.

Hence, in most cases, it would make sense to borrow less and use up as much cash as possible. A much better option is to use the facility of offset accounts (such as "Smart Home" of HSBC, "Maxgain" of State Bank of India, and "Home Saver" of Standard Chartered) wherever you can keep the surplus cash deposited in the linked current account and save full interest and yet have the flexibility to withdraw the cash should the need arise.

Harsh Roongta is CEO, Apna Paisa. He can be reached at ceo@apnapaisa.com

# METAL MANIA

The latest tiles to hit the market are metallic and all shimmery

HT Estates Correspondent

Shopping for tiles? The latest idea to hit the floors is tiling that is metallic and all shimmery. It can be used for any space — living rooms, walls, floors, bars, lounge, jacuzzis, spas, kitchens and of course bathrooms. These tiles are easy to fix, require little maintenance and can last a lifetime. They are bacteria resistant and corrosion free. The product comes with a nano coating that is resistant to corrosion and

Sizes

**300x450 mm**

Price range

**₹56-65 per sq mt**

bacteria, fire and severe weather conditions. Tiles from Somy's signature series (metallic) come in sizes of 300x450 mm, the price range being ₹56-65 per sq mt.

These anti-bacterial tiles are manufactured by using the anti-bacterial technology that kills germs. NITCO's Metal series is a swanky range of glitzy metal finish tiles. The colour range varies from antique gold, autumn bronze to brushed nickel. Copper metal tiles are used for floors, backsplashes, walls, and in some cases, roofing too. Copper tiles are also used as decorative tiles. These tiles come under the company's Naturoc category and are available in sizes of 600x600 mm and the price is ₹135 per sqft.

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