



what's inside

price update	05
news briefs	05
office market	05



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Waiting for prices to correct?

Are you hoping that residential property prices will fall and you'll be able to take advantage of it? Vandana Ramnani finds out



Salahkar Shah, a 35-year-old banker has been wanting to buy a house since last year. A property worth ₹36 lakh that he had zeroed in on in Ghaziabad last year is now going for ₹43 lakh, making him wonder whether he took the right decision to wait. He's also sure that if he buys a property now, his last year's budget of ₹40 lakh will need to be stretched a bit.

Dipankar Rao, a senior executive working with an IT company, recently received a bonus of ₹10 lakh. Last year, he would have invested the money in gold or stocks but this year the money will be invested in real estate.

These two examples clearly indicate that going forward property prices will only move northwards. Of late, many professionals have been offered bonuses and the biggest beneficiaries of this windfall have been Delhi's peripheral cities because these areas offer lucrative buying options for those with a budget of ₹30 to ₹50 lakh.

Real estate experts point out that any correction this year will be restricted to premium housing and prices will not go down in the affordable and mid-segment housing category. They will only improve. Cities in the periphery, such as Manesar, Ghaziabad, Faridabad, Noida

Extension and Greater Noida, will see increased interest as the consumer's purchasing power rises. If the rise in property prices is around 7% to 8% in core Noida and Gurgaon, the rise in the periphery, where the base price is relatively lower, will be anything between 13% to 18%. Also, the key driver of absorption will be the end-user.

A recent report points out that 70% of homebuyers are convinced that they will have more money to buy a house in 2011. About 72% believe that if they miss the bus now, they might not be able to buy a house ever. For them, the developers' credibility counts for more than anything else. Nearly 7 out of ten (68%) of prospective buyers said they would prefer to buy the house from a realty company with a proven track record rather than from unknown developers who may be selling at prices 10%-15% lower than the market price.

With many companies doing well and disbursing bonuses, the homebuyer has enough cash to make a down payment of 10% to 20% for a house purchase.

"Money will double faster in the periphery than in prime areas. If Lower Parel today commands a price of ₹20,000,

Continued on page 5

take five

right time to buy?

- 1 Premium at risk:** Experts say correction will be restricted to premium housing
- 2 Peripheral gains:** Manesar, Ghaziabad, Faridabad and Noida Extension will see increased interest
- 3 Year of the buyer:** Seventy per cent homebuyers are convinced that they will have more money to buy a house
- 4 Supply gap:** The affordable segment will always see an appreciation because of the demand-supply gap
- 5 Core vs periphery:** The rise in the periphery will be anything between 13% to 18%



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RENT AND CAPITAL RATES

Location	SOUTH DELHI (RESIDENTIAL)	
	Avg rental (per sq ft*)	Avg capital (per sq ft*)
Alaknanda	14-19	8,500-12,000
CR Park	17-23	15,000-18,000
Defence Colony	48-69	32,000-37,000
East of Kailash	20-26	20,000-24,000
Greater Kailash	29-35	25,000-30,000
Kalkaji	22-30	10,000-13,000
Lajpat Nagar	21-35	10,000-14,000

*THE RATES, IN RUPEES, ARE INDICATIVE ONLY SOURCE: Makaan.com

Those thinking of exchanging properties should conduct proper due diligence on the property to ascertain the authenticity of its title and rights

Sunil Tyagi



htestates LEGAL REMEDIES

The term 'exchange' dates back to the age when the barter system was the main mode of trade. Barter means exchange of goods or services for other goods and services. With the invention of money, goods and services were not exchanged but purchased by means of a medium i.e. money. The Transfer of Property Act, 1882 has taken further this old concept of exchange of one property for another and covers the exchange of both movable and immovable property within India.

As per Indian law, the term exchange is defined as: "When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an 'exchange'". A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale."

To constitute a transaction of exchange it is necessary that the ownership of property is transferred in exchange for another property and not in lieu of money, unlike sale of a property between parties. However, exchange is a transaction similar to sale thus, exchange of property can be done only in the prescribed

manner provided for the transfer of such property through sale. To exchange properties, an exchange deed has to be executed between the parties. An exchange deed should make it clear that there is an exchange of properties without the use of money as a medium. However, in case, the worth of the properties exchanged is not equivalent, then the difference in value is rewarded to the apt party to equalise the values of the properties. The rights and liabilities of the parties involved in an exchange are the same as those of sellers and buyers of immovable properties.

Since, exchange of properties through an exchange deed results in the transfer of rights, title and interest in property, an exchange deed should be duly stamped and registered as per the Indian Stamp Act, 1899 and Indian Registration Act, 1908. The stamp duty payable on the

exchange deed under the Indian Stamp Act, 1899 (Entry 31 of Schedule D) is the same as the conveyance on value of the property of the greatest value as set forth in the exchange deed. As per the Indian Stamp Act, 1899, the parties, unless otherwise agreed between them, will be liable to share applicable stamp duty equally. It is important to note that failure to get the exchange deed registered will not create or transfer any rights, title and interests in favour of the parties. Also, it can lead to disputes in the future as an unregistered exchange deed is inadmissible as evidence in a court of law.

While contemplating exchange of properties, the parties should conduct proper due diligence of the property to be received to ascertain that the title and rights are not defective. However, where one of the properties in an exchange transaction suffers from a defective title, the person affected has two remedies available to him, i.e. either seek damages for the loss caused, or claim the return of the property transferred, if possible.

Exchange of property is different from sale or partition of a property. An essential element in a sale is the presence of a monetary consideration. If the consideration is not money but some other valuable consideration, it can be termed as an exchange and not a sale. Further, where all parties who have shares in the properties affected by an arrangement by which some of the owners possessing undivided shares in several properties take a specific property in lieu of their shares in the properties, then such arrangement or transaction is called partition and not exchange.

Thus, due care should be taken while drafting an exchange deed to ensure that it retains the characteristics of an exchange and does not become a sale or partition of the property.

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

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