

Govt getting tough on Benami deals; here's what you should know

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Vandana Ramnani

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The government has begun cracking the whip on Benami property deals.

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So what is Benami property and what are the consequences of indulging in this practice that has been a common occurrence in real estate deals in the past?

As per the The Benami Transactions (Prohibition) Amendment Act, 2016, a Benami transaction involves a deal or an arrangement where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person and the property is held for the immediate or future benefit, direct or indirect, of the person who has paid for it.

In effect, a property bought by an individual in the name of his child, wife, mother, father, brother or sister will be considered Benami if it is not paid for from known sources of income. Under the amended Act, it is now mandatory to buy property with parents or siblings in joint names.

Earlier, to evade taxation, people would invest their black money, in buying Benami property. The real owner of these properties was hard to trace due to fake names and identities. These were generally bought in cash in the name of servants, drivers or friends and relatives.

Under the amended Act, Benami transactions include buying assets of any kind —whether movable like stocks or immovable (land home), tangible or intangible, or any interest or any right, any document or any instrument.

However, a property in the sole name of your spouse or child for which the amount is paid out of known sources of income is not Benami.

“If you are purchasing property, shares or investing money in fixed deposits in the sole name of your wife or child, you can go ahead and do so as long as it is bought from your known sources of income but it is advisable to buy them in joint name in case of parents or siblings but from explained source of funding as per the amended Act,” says Sunil Tyagi of Zeus Law, a law firm.

“A person purchasing a joint asset with his brother or sister will have to prove his source of income and the remaining 50 percent contributed by the sibling will also have to be demonstrated under the law,” says SK Pal, a Supreme Court lawyer.

Even a transaction or an arrangement in respect of a property where the owner is not aware of (has no idea), or, denies knowledge of such ownership or a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious is considered Benami.

The realty market was earlier dominated by land transactions at its peak in 2006-2007 and 2011-2012. Almost 30 percent of transactions were in Benami properties but that number has come down considerably since then, especially since the market has been stagnant for some years and investor interest has gone down.

Currently, exposure of benami properties is not more than 5-10 percent, says Pankaj Kapoor of Liases Foras.

What are the consequences for involving in Benami transactions? People caught with Benami properties could end up with up to 7 years of rigorous imprisonment and pay a significant fine. Additionally, the properties will be confiscated. A person could also face rigorous imprisonment for up to 5 years for knowingly giving false information and will have to pay a fine of up to 10 percent of the market value of the property.

Those who have invested in Benami properties will have to additionally pay a penalty of 25 percent of the fair market value of the Benami property and those who give wrong information are liable to pay 10 percent of the fair value of the property, says Tyagi.

Under the amended Act, property cannot be transferred back to the original owner. “It is a one-way traffic now. Once an asset has been marked benami it cannot be sold further or resold to the actual owner,” says Pal.