

Subvention schemes: Here's what you need to know if you are still waiting for your flat

In a recent case, the Delhi High Court halted recovery proceedings against a homebuyer for non-payment of EMIs, in a case involving a subvention agreement. Read on to find out why

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The High Court of Delhi recently passed an interim order in favour of a homebuyer by staying the proceedings before the Debt Recovery Tribunal for non-payment of the loan amount to the Union Bank of India. The buyer, who had booked an apartment in Greater Noida nearly five years ago, had stopped paying monthly instalments after the developer failed to deliver the project on time.

The court, on September 24, directed the bank that had given the home loan to stop recovery proceedings against the buyer till further orders. The bank had moved the Debt Recovery Tribunal (DRT) after serving notice on the buyer under the SARFAESI (Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest) Act. The DRT, too, had initiated proceedings against the buyer.

The homebuyer, along with his wife, had booked a 3 BHK Flat worth Rs 44 lakh with PSA Impex Pvt. Ltd. To finance the flat, the petitioner paid an amount of Rs 11 lakh from his personal savings and took a loan of Rs 33 lakh from Corporation Bank (now, Union Bank of India) by entering into a Tripartite Agreement (a subvention agreement, signed by the buyer, bank and builder).

What is a subvention scheme?

Under a subvention scheme, a Tripartite Agreement is executed between the builder/developer, bank and the buyer. It mainly targets buyers who wish to avail home loans for the purchase of property from builders. On opting for a subvention scheme, the buyer will be required to make a payment of 5-15 percent of the total price of the property to the developer/builder at the time of booking the property.

A loan will be granted for the remaining amount, in the buyer's name. However, the money is dispersed to the developer/builder and the developer/builder has to pay Equated Monthly Installments (EMI) to the bank till the date the buyer is handed over possession of the said property. EMI payments by the buyer shall only commence from the date on which the buyer gets possession of the property. The developer/builder usually ties up with various banks so that the home buyer can avail a loan under the said scheme.

In this particular case before the court, as per the agreement inked by the buyer, bank and builder, it was agreed that the bank would directly transfer the loan amount to the builder and no part of the said amount was received by the buyer.

The buyer's counsel submitted before the Court that the loan amount was disbursed recklessly by the bank to the builder, without adhering to the terms and conditions of the subvention agreement. Moreover, as per the agreement, it is the liability of the builder to pay the loan amount in case the project has not been completed and possession is not handed over to the Petitioner.

What should buyers do?

The court has held that no recovery proceedings shall be allowed against the homebuyer by the bank until further orders.

In case a buyer has entered into a similar agreement as in the case before the Delhi High Court, on similar terms with the bank and a builder, then s/he can approach a court for similar relief. The order passed by the High Court of Delhi is only applicable in the case of a buyer who approaches the court seeking relief.

However, in the event the buyer stops paying EMIs without getting an order from the Court, some penalties may be charged by the bank for delays in payment of EMIs. Also, the default in paying the loan amount may create a negative CIBIL score for the buyer, which will ultimately affect his/her prospects of availing loans in future.

It is always advisable for buyers to opt for a construction-linked payment plan arrangement. In this, the buyer is required to pay the amount to the developer based on the actual progress of construction. Any scheme offering a discount for upfront and early payment exposes the buyer to a greater risk and should be avoided.