



WHAT TO DO WHEN THE BUILDER WHO PROMISED TO PAY YOUR PRE-EMI UNDER THE SUBVENTION SCHEME HAS COMMITTED A DEFAULT?

Today in the Indian real estate sector the builders in order to engage more buyers towards their projects, offer various lucrative financial funding schemes to the homebuyers and induce them to invest their hard-earned money into these projects. One such financial funding scheme is “the Interest Subvention Scheme”. In this scheme, the innocent homebuyers are induced into taking home loans, wherein, 80% and in some cases, the entire loan amount is disbursed by the bank to the builder at the very first instance and in return, the builder will pay the Pre-EMIs on behalf of the homebuyer to the bank till the offer of the possession of the property.

But this scheme is too good to be true as when the builder defaults in paying the Pre-EMIs as promised by them, the liability to pay these Pre-EMIs falls on the head of the homebuyer and in case the home buyer or the builder defaults in paying these Pre-EMIs the banks can take adverse legal action against the homebuyers

What is a Subvention Scheme?

A subvention scheme is a financial funding scheme in which the bank or any housing finance company grants a loan to the homebuyer whose EMI loan repayment only starts after the possession of the property has been delivered by the builder. In this scheme, the bank, the builder, and the buyer enter into a tripartite agreement, in which the buyer pays 5-20% of the total amount, while the rest is disbursed by the bank to the builder. Wherein, the interest amount of the loan or Pre-EMIs is paid by the builder to the bank till the time buyer takes possession of the property. This scheme is nothing but a Ponzi scheme that the builders use to induce genuine homebuyers. The major risk involved in this scheme is that the homebuyer is liable to pay the Pre-EMIs in the case the builder defaults in paying the Pre-EMIs regardless that he/she has not received the possession of the property and the banks can take adverse legal action against the homebuyers in case of such default.



Why is this subvention scheme so popular among the homebuyers?

- ◆ The popularity of Subvention Schemes is because of the fact that the homebuyers are made to believe that they will not be burdened by EMIs from the initial stage as these schemes. Therefore, giving them a breathing period till possession.
- ◆ Going with these schemes, homebuyers do not need to fret about cash flows as the interesting part will be taken care of by the builder.
- ◆ Another advantage that a homebuyer, who is living on rent, sees is that they would not be bogged down by paying both the rent as well as the EMI.

Liabilities of the Banks/Financial Institutes while disbursing any home loans

Before disbursing any amount to the builder the banks/financial institutes have to abide by the following obligations:-

- ◆ That as per the circular of the RBI bearing no. DBR.No.DIR.BC. 13/08.12.001/2015-

16 dated July 2015, DBOD. Dir.BC.No.43/08.12.01/2006-07, and DBR.No.DIR.BC.10/13.03.00/2015-16 wherein it has been categorically stated that the banks are required to appoint an architect who must certify that the build-up property is strictly made as per sanctioned plan and/or building bye-laws. Further, the RBI forbids upfront disbursement of sanctioned loan to the builder in 80:20 or 75:25 ratio as this exposes the Banks and homebuyers/borrower to additional risks such as a dispute between a homebuyer and the builder, delayed payment of Pre-EMI's by the builder or non-completion of project etc. Therefore, the banks are advised that the disbursement of housing loans sanctioned to individuals should be closely linked to the stages of construction of the housing project/houses.

- ◆ That as per circular bearing no. NHB(ND)/DRS/Policy Circular No. 75/2016-17 on 01.07.2016 and NHB(ND)DRS/Misc Circular No. 5/2011 dated July 28th 2011 Titled "Need For Ensuring Due Diligence in Matter of deployment of funds by HFC's" issued by the National Housing Board, the Housing Finance Companies are advised that



disbursal of housing loans sanctioned to the homebuyers should be strictly linked to the stages of construction and no upfront disbursal should be made in case of incomplete/un-constructed/ green field housing projects/houses projects. Further, the HFC's are required to conduct due diligence in the matter of deployment of funds.

The Banks/Financial Institutions completely disregarded the above guidelines of the National Housing Board and RBI while disbursing the loan amounts. They ought to have conducted the due diligence and monitored the progress of the project in light of the strict guidelines that have been issued by the Reserve Bank of India time and again. The banks who now seems to have taken advantage of their dominant position over the innocent homebuyers by making them sign a standard form of agreements comprising of complete one-sided terms and conditions ought not to turn the whole liability on the innocent homebuyers to pay all the Pre-EMIs which the builder has defaulted in paying the same.

What are the actions taken by the homebuyers till now?

- ◆ Recently in some of the cases such as *“Supertech Urban5 Homebuyers Association (SUHA) Foundation v Union of India & Ors”*, *“Gautam Sethi & Ors. V Union of India & Ors”*, *“Pashmina Brookwoods Apartment Allottees/Owner Welfare Association v Union of India & Ors”* and *“Mohinder Pal Singh & Ors v Union of India & Ors”* writ petitions were filed by the homebuyers before the Hon'ble High Court of Delhi claiming that they are completely helpless and aggrieved by the acts of the builder and the banks and have been deprived of their basic fundamental rights guaranteed under Article 19 and 21 of the Indian Constitution. They have also claimed that the builder has defaulted on the payment of the Pre-EMIs under the subvention scheme and that the banks have now approached the homebuyers for the payment of the Pre-EMIs. The Hon'ble High Court of Delhi after hearing the arguments of the homebuyers in the above-mentioned



cases issued notices to the Reserve Bank of India, Builder, and the Banks in a case where the builder failed to pay equated monthly instalments under a subvention payment plan.

- ◆ In the matter of “*Pankaj Kaushik v Reserve Bank of India & Ors*”, since the Bank continues to send notices under section 138 of the Negotiable Instruments Act, 1881 to the homebuyer despite the issuance of Notice in the present writ petition, the Hon’ble High Court of Delhi directed the Bank not to take any coercive action against the homebuyer until the next date of hearing.
- ◆ In cases where the CIRP is initiated in the real estate company, should banks file a claim before the Resolution Professional (RP) and not come after the homebuyer for the payment of the EMIs and or the homebuyers will have to repay these EMIs even though there has been a default on the part of the builder. The same issue is recently raised before the Hon’ble High Court of Delhi in the matter of “*Narayan Chidambaram v Reserve Bank of India & Ors*”.

The homebuyers in the above-stated matters approached the Hon’ble High Court

to bring some perspicuity on the burden of the payment of these Pre-EMI under the subvention scheme till the builder handover the possession of the property. The Homebuyers also requested the Hon’ble High Court to propose some guidelines with respect to these subvention schemes.

Conclusion

All these years various recovery notices were issued by the banks to the homebuyers despite buying the house under the subvention schemes wherein the banks themselves were in consent with the builders as the loan amount that was disbursed by the banks was disbursed directly to the builder and not to the homebuyers, therefore it was incumbent upon the Banks that they disbursed the amount, not in a mechanical manner but ought to have analyzed the viability of the project and also that the project would be delivered in time. The banks have been abandoning their duties time and again and without any proper and due procedure disbursed the loan amount directly to the builder whereby the builder as per the mutual understanding was to pay the Pre-EMIs or full EMIs under the subvention



scheme. It is apparent that the homebuyers are the victims of the atrocious acts of the builder and the banks who have acted in collusion with each other. Now all the hopes of the homebuyers are with the Hon'ble High Court of Delhi to safeguard and protect the fundamental rights of the homebuyers.

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