

# PRE-EMI ISSUES OF HOMEBUYERS

A NEWSLETTER ON PRE-EMI ISSUES OF HOMEBUYERS



In this Newsletter, PSP Legal, Advocates & Solicitors, has elaborated on the issues faced by the Homebuyers on being allured to take up loans under various innovative schemes offered by the Developer. The Developers in such schemes receive a substantial amount of loan amount at a very initial stage and in lieu of which the Developer promises to pay the Pre-EMIs of the home loans taken by the Homebuyers towards the said Property.

However, later when they default on the payment of these Pre-EMIs, the liability of the same falls on the Homebuyers. The Homebuyers in such cases have often faced various issues from the Developers such as deficiency of services by the Developers, abandonment of the Project, inordinate delay in handing over the possession of the Property, the Developer going into insolvency, and consequently, the Homebuyers end up paying the loan amount and its installments endlessly.

The PSP Legal Team brought it to the notice of the Hon'ble High Court of Delhi that in such schemes the loan amount is usually disbursed by the Banks directly to the Developer and not to the Homebuyers, therefore it is incumbent upon the Banks that they disburse the amount after analyzing the viability of the Project and the Developer.

## Issues faced by the Homebuyers in the Real Estate Projects

- Non Payment of Pre- EMIs by the Developer
- Exemplary delay in handing over the possession
- Initiation of Insolvency proceedings against Developer's company
- Abandonment of the Project by the Developer

The Banks have been abandoning their duties time and again and disbursed a hefty amount of money from the total loan amount directly to the Developer without doing any due diligence over the Project or the Developer, whereby the Developer as per the mutual understanding was to pay the Pre- EMIs or full EMIs under the innovative scheme.

## *What is a Subvention Scheme?*

### *What to do when the Builder who Promised to Pay your Pre-EMI under Any Innovative Scheme has Committed a Default?*

Today in the Indian real estate sector the Developers 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. Such financial funding schemes include "the Interest Subvention Scheme", "Down Payment Scheme", "Profile Funding", etc. In these schemes, 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 Developer at the very first instance and in return, the Developer will pay the Pre-EMIs on behalf of the Homebuyer to the bank till the offer of the possession of the property.

But these schemes are too good to be true as when the Developer 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 Homebuyer or the Developer defaults in paying these Pre-EMIs the Banks can take adverse legal action against the Homebuyers.

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 Developer. In this scheme, the Bank, the Developer, 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 Developer. Wherein, the interest amount of the loan or Pre-EMIs is paid by the Developer to the Bank till the time the Buyer takes possession of the property. This scheme is nothing but a Ponzi scheme that the Developers use to induce genuine Homebuyers. The major risk involved in this scheme is that the Homebuyer is liable to pay the Pre-EMIs in case the Developer defaults in paying the Pre-EMIs regardless that he/she has not received possession of the property and the Banks can take adverse legal action against the Homebuyers in case of such default.



## *Why is the 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 Developer.
- 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 Developer 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 to additional risks such as a dispute between a Homebuyer and the Developer, delayed payment of Pre-EMI's by the Developer 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 disbursement of housing loans sanctioned to the Homebuyers should be strictly linked to the stages of construction and no upfront disbursement 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 seem 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, several petitions were filed before the Hon’ble Delhi High Court, by the aggrieved Homebuyers, who had booked their unit by availing Home Loans as suggested by the Developer under various innovative payment schemes. Wherein, the Banks and Builders were in the constant practice of entering into a Tripartite Agreement (TPA)/ Memorandum of Understanding (MOUs) with the Homebuyers while sanctioning the Home Loans and a hefty amount out of the total loan amount which was sanctioned by the Banks/ NBFCs was disbursed to the Developer at the very beginning without doing any due diligence over the Project.

The Buyers, through the team of lawyers at PSP Legal, had informed the High Court that Banks and Financial Institutions had disbursed loans to the Developers even before construction had started. Wherein, in one of such innovative payment plans i.e, in the case of the Subvention Payment Plan, the Developer promised to pay the PRE-EMIs of these Home Loans on behalf of the Homebuyers till the offer of possession of the said unit and the Banks were also in agreement to the same. However, when the Developer started defaulting in the payment of these Pre- EMIs, to the utter shock of the Homebuyers the Banks/ NBFCs started taking coercive actions against the Homebuyers instead of asking the Developer to pay the same.

In light of the same, the PSP Legal team for the very first time approached the Hon'ble Delhi High Court by invoking its extraordinary writ jurisdiction on behalf of several Homebuyers of different Projects mentioned below, wherein, the PSP Legal Team expostulated the entire issue before the Hon'ble Court and also apprised them with respect to the grievances faced by the Homebuyers in order to seek Hon'ble Court's indulgence for the redressal of these grievances. Further, PSP Legal Team also requested the Hon'ble Court to grant interim relief to the Homebuyers against the adverse actions being taken by the Banks against the Homebuyers for the non-payment of these Pre-EMIs and also sought directions in order to restore the CIBIL score of the Homebuyers affected due to this very cause.

- Supertech Urban5 Home Buyers Association (Suha) v. Union Of India & Ors. (W.P.(C) 9491/2020) - **Project: Hues, Azalia and Scarlet by Supertech Limited (Company under CIRP)**
- Gautam Sethi & Ors. v. UOI & Ors. W.P.(C) 9493/2020 - **Project: Hill Town by Supertech Limited**
- Pashmina Brookwoods Apartment Allotees/Owners Welfare Association v. UOI & Ors. W.P.(C) 1149/2021 - **Project: Pashmina Brookwoods by Shashwati Realty Private Limited**
- Mohinder Pal Singh & Ors. v. UOI & Ors. W.P. (C) 1225/2021 - **Project: Amadeus by Saha Infratech Private Limited and Logix City Developers Private Limited**
- Vinod Agarwal & Ors. v. UOI & Ors. W.P.(C) 1604/2022 - **Project: Vatika Turning Point by Vatika Limited**
- Pranay Prakash & Ors. v. UOI & Ors. W.P.(C) 1717/2022 - **Project: Mahagun Meadows by Logix Heights Private Limited (a Mahagun Enterprise)**
- Baljit Singh Bhatia & Ors. v. UOI & Ors. W.P.(C) 6466/2021 - **Project: Michael Schumacher World Tower by Golden Peacock Residence Private Limited**
- Shirish Chandra & Ors v. Union of India & Ors. (W.P.(C) 7582/2022 ) - **Project: Aarcity by Aarcity Infrastructure Pvt. Ltd (Company under CIRP)**
- Damnish Kumar & Ors v. Union of India & Ors. (W.P.(C) 7812/2022)- **Project: Rise SkyBunglows by Rise Projects Private Limited**
- Himadri Nayak & Ors v. Union of India & Ors (W.P.(C) 5192/2022) - **Project: Supertech Romano by Supertech Limited (Company under CIRP)**

- Suhail Jahangir v. UOI & Ors. W.P.(C) 4739/2022 - **Project: Eco Village 4 by Supertech Limited (Company under CIRP)**
- Anubhav Taneja & Ors. v. UOI & Ors. (W.P.(C) 8526/2022) - **Projects: Hill Town; Azalia; Supertech Hues; Eco Village by Supertech Limited (Company under CIRP)**
- Zulfiqar Ali Bhat & Anr. v. UOI & Ors. (W.P. (C) 10211/2022) - **Project: The Romano by Supertech Limited (Company under CIRP)**
- Shauket Hussain Parray v. UOI (W.P. (C) 10214/2022) - **Project: Cape Town by Supertech Limited (Company under CIRP)**
- Bhuvan Sharma & Ors. v. UOI & Ors. (W.P. (C.) 10401/2022) - **Project: Eco Village IV by Supertech Limited (Company under CIRP)**
- Mohd Aftab Alam and Ors v. Union of India and Ors. (W.P. (C) 10405/2022) - **Project: Eco-Village III by Supertech Limited (Company under CIRP)**
- Ankesh Saksena & Ors. v. Union of India & Ors. (W.P.(C) 6142/2022) - **Project: Ajnara Belvedere by Sequel Buildcon Private Limited (Ajnara Group)**
- Mukesh Sharma & ors v. Union of India & ors (W.P.(C) 5199/2022) - **Project: Casa Royale by Earthcon Universal Infratech Private Limited (Company under CIRP)**
- Sandeep Chadha & Ors. v. UOI & Ors. (W.P. (C) 10224/2022) - **Project: Hues by Supertech Limited**
- Gaurav Sapra & Ors. v. UOI & Ors. (W.P. (C) 10225/2022) - **Project: Up Country by Supertech Limited**
- Puneet Anand & Ors. v. UOI & Ors. (W.P. (C) 10210/2022) - **Project: Hill Town by Supertech Limited**
- Rajneesh Agarwal & Ors. v. UOI & Ors. W.P.(C) 12368/2021 - **Project: Red Apple by Idea Builders Private Limited**
- Kuldeep Singh v. UOI & Ors. (W.P. (C) 10411/2022) - **Project: Supertech Sports Village by Supertech Limited**
- Puneet Nawal Singh & Anr v. UOI & Ors. W.P. (C) 13232/2021 - **Project: Ruparel Ariana by Shree Sukhakarta Developers Private Limited**

### *What if the Developer goes into Insolvency?*

It is often seen that in cases where the insolvency proceedings are initiated against the Developer's company, the Homebuyer is left with no option but to either close the loan as soon as possible or to endlessly pay the Pre-EMI without any hope of either getting the money back from the Developer or to get possession of the Property.

The same issue was presented by PSP Legal before the Hon'ble Delhi High Court in various writ petitions and sought the Hon'ble Court's indulgence so that the Banks/NBFCs ought to be restrained from raising any demands till the completion of the CIRP process as the Homebuyers are unaware of the final fate of their claims over the booked property.



- Nalin Kumar Singh and Ors. v. Union of India and Ors. (W.P.(C) 10419/2022) - **by Revital Reality Private Limited**
- Bhupinder Kaur and Anr v. Union of India and Ors. (W.P. (C) 10351/2022) - **Project: Grace-Shopping Cum Office Complex by Grace Infraventures Private Limited**
- Abhijeet Banerjee & Ors. v. UOI & Ors. (W.P. (C.) 4116/2022 - **Project: Hill Town by Supertech Limited**
- Shreesh Shukla & Ors. v. UOI & Ors. W.P.(C) 5870/2021 - **Project: The Romano by Supertech Limited**
- Kaushik Bose & Ors. v. UOI & Ors. W.P.(C) 5879/2021 - **Project: Supertech Up Country by Supertech Limited**
- Mohd. Fazal Hamdani v. UOI & Ors. W.P.(C) 6165/2021 - **Project: Eco Village-4 by Supertech Limited**
- Anirban Dutta & Ors. v. UOI & Ors. W.P.(C) 7749/2021 - **Project: Shri Radha Aqua Gardens by Decent Buildwell Pvt. Ltd**
- Pradeep Bhartia & Anr. v. UOI & Ors. W.P.(C) 7766/2021 - **Project: Mahagun Mezzaria by Nexgen Infracon Private Limited**
- Himanshu Barola & Ors. v. UOI & Ors. W.P.(C) 7956/2021 - **Project: Pashmina Brookwoods by Shashwati Realty Private Limited**
- Sunil Kumar Gupta & Ors. v. Union of India & Ors. W.P. (C) 9143/2022 - **Project: Golf Village by Supertech Township Project Limited**



**HELD:** The Hon'ble Court came to the rescue of these Homebuyers and passed an interim stay order in their favor by restraining the Banks, Non-Banking Financial Companies, and Housing Finance Companies from taking any coercive action against Petitioners/Homebuyers till the next date of hearing.

The PSP Legal Team also prayed before the Hon'ble Court that the CIBIL score of the Homebuyers be restored and the Pre-EMIs paid by the Homebuyers be refunded by the Developer.

Accordingly, the court has directed the Banks to convey to CIBIL authorities to restore the creditworthiness of Homebuyers who stopped paying EMIs for incomplete projects.

The Court noted that merely because Homebuyers entered into a tripartite agreement with Banks/ HFCs and the Developer, they cannot be held liable to repay the loan amount on account of a default of the Developer who has not only stopped paying Pre-EMIs but has also not, till date, handed over the flats to the Homebuyers.

The Court had also noted that grave and irreparable loss will be caused to the Petitioners/Homebuyers if they are not granted any interim protection.

Besides, it has also directed the lending Banks and HFCs to provide appropriate information regarding the Petitioners/Homebuyers to the CIBIL authorities so that their ratings are suitably amended. With this, such Home-buyers can take a sigh of relief.