

Property Purchase - Precautions

Purchasing a property/land requires utmost care. One has to examine and find out the title of the seller or nature of his right. A seller can sell only what he possesses. Therefore if a seller has proper and valid title, on purchase you will get valid title. If the seller's title is defective, you will get only defective title. The simple reasoning is that he can sell what he has, and nothing more. When buying a property, legal due diligence is essential to avoid getting entangled in legal issues later. Here are some of the precautions you can take before finalizing a property deal.

Check the antecedents of the vendor(s) - We all verify title deeds and all connected documents before buying the property. But we fail to verify the antecedents of the vendor(s). It is better to verify the character and antecedents of the vendor(s) beforehand. If the vendor(s) are habitual offenders and involved in the real-estate offences or other crimes, then it is better to drop the idea of buying the property from them notwithstanding whether the title is perfect or not. If the vendor has good background; and his character and reputation are unquestionable, then the transaction will be very smooth. Even, in future, if there is any dispute regarding title or any other issue pertaining to the property, then you are dealing with a respectable person in the society; and you need not to spend your valuable money and time on unnecessary litigation. You are not facing any embarrassment in the shape of physical or verbal abuse. The issues can be resolved through gentlemen agreement without involving external forces.

Check the title of the property- The title of the property forms the foundation of any contract. According to the Indian Contract Act, no seller can pass on to the purchaser a better title than what he already possesses. Therefore, the title of the seller must be clear and free from any encumbrance. Before you buy a property, verify the title of the seller. A search of the records at the sub-registrar's office may be carried out for documents that may affect the property and may have been registered. The report will show the recorded owner of title of the property and changes in the title of the property. If the land is an agriculture land than check revenue record as khata, khatoni / khasra of that land and Title Deed can be requested from the seller. Assessment Register Ledger entry (called Khata in some parts of the country) is basically a supporting document of title. It is the entry of the present owner in the municipal/panchayat records relating to house properties. The absence of Assessment Register entry in the name of a current owner can be rectified at any time by applying for mutation. This has become important because it is required for loans, title opinions, electricity meter name change, etc. Assessment Register Ledger entry is changed after a sale deed is executed or after a property is inherited through a will, gift, partition, etc., if applied and requested for a mutation.

Verify the title of the seller- The vendor may have acquired his title either by purchase, by inheritance, by partition, by gift, by settlement or by grant. To find out the source of title there must be some document like.

Right of Purchase	Sale Deed
Inheritance	Entries in revenue records, and predecessor's title
Partition	Deed of partition
Gift	Gift deed
Settlement	Settlement deed
Grant	Grant order
Release	Release deed
Lease Deed	Deed of Lease or permanent lease

Personal inspection of property under sale (site/building/flat/agricultural land) - Buyer beware is the golden mantra in the immovable property transactions. Therefore, the entire onus lies on the purchaser in verifying the title, ownership and possession of the property. He must take all reasonable steps to ensure that he is purchasing the property from a right person and also a right property. The most important precaution is undertaking a personal inspection of the property under the sale. During the personal inspection, the buyer shall inquire with the neighbours regarding the ownership and possession of the property, disputes if any, character of the vendor(s), charges/mortgages on the property, joint owners of the property or part of the property etc. This is the most important aspect of the title verification, therefore, it is better at least three persons from buyer side shall take up this task. And they shall make discrete enquiries with various persons in and around the property like elders of the locality, longstanding property owners/tenants, workmen, etc. It is easy to undertake the inspection of site and building in the densely populated areas. It is also easy to enquire in villages where the people could identify persons by name. But it is difficult to enquire in the suburban, newly developing and agricultural lands converted as plots – where no habitation exists. In these cases a lot of effort is required to get the right answers to the questions and at times we may not get answers at all since there would be no person to contact except the vendor or his men.

Sale by holder of power of attorney- If the sale documents are being executed by a person holding power of attorney on behalf of the owner, the said power of attorney should be scrutinised thoroughly. The person must not only possess the power to sell property, the power of attorney should also be validly executed. An agreement holder (as explained above) who also has a power of attorney to sell the land and/or building is normally a developer. Alternatively, a person may have paid the entire consideration to the owner and holds on to the property for some time to sell it at a later date for a profit. The sale will be effected by the power of attorney holder on behalf of the owner. Such power of attorney must be properly stamped and registered (if it is coupled with sale agreement/development agreement/given for consideration). It should also not be revoked.

Check the original documents- Always inspect the original documents of the seller and read all the documents carefully before signing them. If the vendor states that the original documents were missing/stolen/lost, then it is better to know the full facts relating to missing documents. Know whether the vendor has filed a complaint in the concerned police station and got the copy of FIR with regard to missing of documents; and/or what are the other steps he had taken to trace them as a prudent person. There is a possibility of keeping the original documents in banks/financial institutions/private lenders to create mortgage/charge over the property by way of deposit of title deeds. So it is better to get full information regarding original documents that are missing. And it is always better to give a public notice with regard to purchase of the property on the basis of certified copies of the title deeds instead of original documents which were lost.

Colour Photostat copies – frauds- Today, the technology used in Colour Photostat machines is very advanced one; and copies generated using these machines are of high quality. Innocent purchasers can be duped by clever vendors by delivering colour Photostat copies instead of original. Therefore, a proper check shall be done in verifying whether the documents are original or Colour Photostat copies.

Verify photographs and thumb impressions of the vendor-Section 32A of Registration Act, 1908 prescribes that in case of sale deeds both the vendors and buyers should affix their photographs and thumb impressions along with the document. This provision has come into force from the year 2001. Therefore, if your vendor has acquired the property after 2001 through a registered document, then you have one more evidence to check regarding the identity of your vendor. Verify carefully the photographs and thumb impression of the vendor in the registered document where he appears as purchaser.

Tax receipt and bills-Property taxes which are paid to government or municipality are a first charge on the property. Hence, enquiries must be made in government and municipal offices to ascertain whether all taxes have been paid up to date. The owner should also possess the latest tax receipts, which you may inspect. While investigating in different departments of the municipality, you need to ascertain whether any notices or requisitions relating to the property

have been issued and are outstanding and not yet complied. While inspecting the property tax receipt, it can be noted that there are two columns in the tax receipt. Make sure that the name entered in the owner's column is correct. The second column will be for the name of the one who paid the tax. Sometimes the owner may not have the tax receipt with him, in such cases, contact the village office with the survey number of land and confirm the original owner of the land. If you are buying a house along with the property, then the house tax receipt should also be checked. Also make sure water bills and electricity bills have been paid up to date and if there is any balance payment to be made, ensure that it is made by the seller.

Encumbrance Certificate -Before purchasing the land or house, it is important to confirm that the land does not have any legal dues. Check the Encumbrance Certificate (EC) (EC) issued by the sub register office where the deed has been registered (in Uttarakhand), stating that the said land does not have any legal dues and complaints.

Pledged land-Some people may have taken loan from the bank by pledging their land. Ensure that the seller has paid back the entire amount due. Don't be satisfied with the receipt of the payment made. Release certificate issued by the bank is necessary for all the debts over the land. You could buy a land without the release certificate. But if you want to take a loan in future, the release certificate is a must.

Place a public notice-A public notice may be placed in newspapers calling for claims in respect of the property being purchased. Claims can come even afterwards, public notice helps in proving that you purchased the property bona fide and in good faith. This will prove that you have taken all measures that can be expected from bona fide and prudent purchaser thereby you will get favourable order/view from the Courts, in case of any litigation that may arise in future with regard to patent or latent defects in the title of the property.

Inspect the plans-If the building is under construction then inspect the plans to check whether they have been sanctioned by the concerned authority. Also check whether the construction was done according to the plan approved by Municipal authority. If there is any deviation from the approved plan, then it is to be verified whether it can be regularized or not. In respect of deviation that can be regularized by paying penalty to the municipal authority, it is better to record, in the agreement, that who should pay that penalty to the municipal authority. If the deviation is not allowed to be regularized then the purchaser is taking the risk of demolition of the building partly/fully by the municipal authorities.

Payments of stamp duty-Always verify documents of title to check payment of stamp duty. If the ownership of property has changed hands more than once, examine all the documents for payment of stamp duty by the predecessors. Today, many States (including Uttarakhand) have amended the Stamp law providing for creation of charge over the property in case there is any deficit stamp duty in any document relating to property. Therefore, the present owner of the

property obliged to pay the deficit stamp duty and penalties, if any on the documents registered earlier notwithstanding whether he is a party in it or not.

If the property belongs to a minor-In case where the property is owned by a minor, prior approval of the court is required to enable the minor's other/natural guardian to sell the property. In the absence of such permission, the sale could be voidable at the option of the minor on attaining majority. Or otherwise, soon after attainment of majority, the sale has to be perfected by obtaining a registered ratification deed by the person who was a minor at the time of sale.

Check the minimum tenure of land if taken on lease-If the flat that is being purchased is in a building built on a land which is given on lease, lease rent would have to be paid for the land by the flat owners. If the lease is to expire shortly, it is possible that the lease rent may increase substantially. Hence, the terms of the lease must be verified before buying the flat.

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Engage a competent lawyer-There are several laws involved in immovable property transactions. Therefore, it is better to engage a competent lawyer to investigate the title, possession, ownership and other aspects. The lawyer shall associate and his scope of work shall include in investigating the title, negotiations, drafting of agreements/sale deeds, payment of consideration, registration of documents, mutation, etc

Reputed attesting witnesses-The attesting witnesses are the persons who actually witness the signing of the sale or any document by the parties and sign as witnesses on the document. It is always important to have reputed and respectable people as attesting witnesses. Attesting witness is an important and key witness in the civil litigation in case any court case arises in future. Their statement will be having a lot of weight in deciding the case. Therefore, it is advisable to request good and reputed young and middle aged people as attesting witness.

Check the occupation certificate-Occupation certificate should be verified to ensure that the building has been built legally, especially in case of new buildings as per proper sanction of Development Authority.

Check whether the flat/portion is mortgaged to Municipal authority-As per the municipal regulations, the builder/owner shall create charge over 10% of the area under construction to ensure compliance with building regulations. So it is necessary to verify whether the flat/portion of the building under sale is mortgaged to the municipality. If it is mortgaged, then it is not possible to get a registered sale deed from the builder/owner. Purchaser has to wait till it is cleared by municipality.

Check the carpet area-You can verify the carpet area by taking actual measurement of the property if the same is ready. Plinth area includes carpet area (area between the external walls of the flat/portion) and common areas (like passages, staircase, verandah, park etc).

Search for records-A search of the records at the sub-registrar's office may be carried out for documents that may affect the property and may have been registered. Section 57 of Registration Act, 1908 allows citizens to get certified copies and encumbrance certificates from the Registrar/Sub Registrar Offices. Any person can verify personally the registered document entries in the books of the Registrar/Sub Registrar Offices by paying prescribed fee.

Certified copies-When copies of the documents are given for perusal, the buyer need rely only on them, but instead can apply for certified copies too. The certified copies of the back (link) documents should also be obtained. The copies of the sale deeds are preserved in the Sub-Registrar's office in Book 1 and are given to anyone on application after paying a prescribed fee. Power of attorney is a document in which the principal grants authority to an agent to act on his behalf. Through executive instructions, today, in Uttarakhand, the power of attorney if given in respect of immovable property is registered in Book 1 so as to enable the interested parties to get certified copy of it. This step is a progressive one since it will check frauds being played, to some extent, under the guise of power of attorney as it is no more a confidential document.