

Due Diligence Before Facilitating Sale of Property – Agent's Role & Responsibilities

Introduction

- One of the key objectives of the Real Estate Regulatory Authority (RERA) is to empower real estate agents and homebuyers with information about real estate projects to ensure informed decision making. Before facilitating the sale of any property, it is essential that agents perform proper due diligence to verify the project details and protect the interests of the buyers.

What is due diligence in real estate?

Due diligence in real estate is a comprehensive investigation of a property before facilitating the sale of Property i.e. to ensure all legal, financial, and physical aspects are in order. This process helps buyers take informed decisions and avoid potential risks.

Purpose of Due Diligence

The primary purpose of due diligence is to provide clarity and security to the buyer, minimizing the chance of future disputes or financial loss. This process is vital to ensure that all potential risks are identified, legalities are met, and the property's value is accurately assessed.

Verifying Promoter Identity and Project Details on RERA Website:

The real estate agent must verify the identity of promoter and project details from the UP RERA Website.

According to Section 10 of the RERA, 2016 a real estate agent registered under section 9 shall not facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being sold by the promoter in any planning area, which is not registered with the Authority.

Therefore, it is primary duty of the Real Estate Agents to verify the details of the promoter and projects. The following details to needs to be verified by the Real Estate Agents-

- Name of the Promoter and Projects
- Registered Office Address of the Projects and Promoters
- Promoter and Project Registration Number
- Details of Separate RERA Account etc.

Verification of Background and Track Record of Promoter:

The real estate agent should check the work experience and background and track record of the Promoters such as number of years of experience of the promoter or parent entity in real estate construction; number of completed projects and area constructed till date; number of ongoing projects and proposed area to be constructed; details and profile of ongoing and completed projects for the last 5 years.

Verification of Title of Project land:

The real estate agent should verify that the Promoter has a legal title to the land on which the development is proposed. In case if the project land is owned by another person whether the Promoter was authorized by such person to develop the project on the said land through any joint development agreement.

Further the Real Estate Agent should also check and confirm whether the land and/or unit is free from all encumbrances or there is the encumbrances on such land.

- Key Points to Review:

- Verify if the promoter holds a clear and marketable title to the property.

- Review the Legal Title Report on the RERA website. It should describe the property, any encumbrances, and the promoter's ability to convey the title.

- Ensure the property is free from any legal disputes or claims.

Building Approvals and Commencement Certificate

A real estate project requires multiple approvals from various authorities before construction can begin. It is the responsibility of the real estate agent to verify that all necessary approvals have been obtained by the promoter.

- Land Use and Conversion Permission: Verify if the land has been approved for non-agricultural use.
- NOC: Ensure that all necessary NOCs have been obtained before/at the time of construction- fire (provisional), environmental, structural, electrical, lift.

Review of Contracts and Agreements:

A meticulous review of all existing contracts and agreements related to the property is necessary. This includes checking for any encumbrance certificates, necessary approvals, and permits to confirm the legal standing of the property.

Litigations and Complaints before RERA/DCDRC/NCLT:

The Real Estate Agents should diligently check the details of past or ongoing litigations in relation to the real estate project. Ensure that litigation does not affect the sale or ownership of the property.

Status of Project and RERA Compliance:

- The Real Estate Agent should consistently check the QPRs to know the Status of Projects and targets achieved by the promoter such as- the extent of development carried out and the extent of development pending etc.

Occupancy Certificate/Completion Certificate

The Occupancy Certificate (OC)/Completion Certificate (CC) is issued once the construction is complete and certifies that the building is fit for occupation. Verify that the OC/CC has been issued and confirm that the construction complies with the approved plans.

Status of Tax Payments

- It is important to check that the promoter has cleared all property taxes and utility bills, as unpaid taxes can affect the property's marketability.
- Key Areas to Verify:
- Verify that the promoter has cleared all property taxes.
- Request tax payment receipts as proof that no outstanding liabilities exist.

Allotment Letter and Agreement of Sale

- Ensure that the Allotment Letter and Agreement of Sale conform to the proforma documents available on the RERA website. The terms and conditions should align with the information provided by the promoter.

Carpet Area and Proportionate Common Area:

- The carpet area shall be calculated, ensuring that buyers pay only for the net usable floor area and proportionate common area shall be given to the allottee.

Conclusion

- Due diligence is essential for real estate agents to ensure that a property sale is transparent and compliant with all legal requirements. By following the steps outlined in this handout, agents can protect the interests of homebuyers and ensure that the project is legally sound.