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CHARTERED ACCOUNTANTS



Is Your Property a Benami Asset?

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In India, property is often regarded as one of the most secure and valuable assets. Owning a property is not just an investment. It is the realization of a long-cherished dream for many. Whether it is a vibrant city apartment or a serene plot in a village, a property represents security, pride, and a legacy. However, have you considered the implications if your hard earned investment were to be classified as a Benami property under the law?

In India, property ownership and transactions are closely monitored under the Benami Transactions (Prohibition) Act, 1988, as amended in 2016. The act is designed to prevent individuals from hiding their assets under another person's name to avoid taxation or legal scrutiny. Being aware of the red flags that could make a property a benami asset is crucial for property buyers, sellers, and investors to ensure compliance and avoid legal complications.

What is Benami Property?

A Benami property is one that is held or registered in the name of a person, while the actual consideration for the property is provided by someone else, the real beneficiary. In simple terms, it is a property recorded in one person's name but paid for by another. The individual in whose name the property is held may have no knowledge of or legal claim over it, yet, under the law, it appears as though they are the rightful owner.

The law treats such transactions seriously, with penalties including confiscation of property and prosecution of the parties involved.

The Red Flags That Indicate a Property May Be Benami

Here are the warning signs that could signal a property is benami. Spotting these early can save you from a world of trouble:

1. Property Purchased in Cash - A Classic Red Flag

While cash transactions are often convenient and easy, it is equally the revenue's favorite clue. One of the most common grounds used by authorities to attach property as benami is when the acquisition is funded predominantly through cash. Properties purchased in cash, without proper banking channels or documentation, invite scrutiny. Red flags include:

- ☐ Large cash payments without supporting bank records.
- ☐ Cash payments made out of unaccounted income, which is not disclosed in the Income Tax Returns.
- ☐ Absence of receipts, agreements, or financial records linking the owner to the legitimate source of cash
- ☐ Cash transactions with no verifiable cash trail or supporting documents.
- ☐ Frequent small cash deposits structured to avoid detection.



2. No Income or Lower Income and High Property Value

When the person in whose name the property is registered has little or no income to justify the investment, it becomes a serious ground for suspicion. Ownership of expensive assets must normally align with the financial capacity and declared sources of income of the owner. If this nexus is missing, the Revenue Department often infers that the registered owner is only a facade, while the actual consideration is provided by another person. Red flags include:

- ☐ An individual earning only a modest salary in thousands suddenly acquiring a property worth several crores.
- ☐ A person with no declared income or a non-filer of income tax returns holding multiple high-value properties.
- ☐ Lack of any credible explanation or documentary evidence of loans, inheritances, or legitimate sources of funds

3. Payment Made by a Third Party

A major red flag in identifying benami transactions is when the funds used to acquire a property do not originate from the registered owner but from another person altogether. In such situations, the property is held in the name of one individual (the ostensible owner), while the real financial contributor and beneficiary is someone else. This disconnect between ownership and funding raises strong suspicion of a benami arrangement. Red flags include:

- ☐ Bank statements showing that the purchase consideration has been directly paid by another individual or entity.
- ☐ Payments for the property linked to immediate receipts or inflows in someone else's bank account, suggesting a diversion of funds.
- ☐ Cash payments or transfers from family/friends for property acquisition.
- ☐ Disproportionately large “gifts” or transfers claimed from third parties to justify funding, without adequate evidence of the donor's capacity.
- ☐ Absence of any legal or contractual obligation requiring the third party to bear the cost of the property.

4. The Registered Owner Seems Clueless:

Genuine ownership normally carries with it an awareness of the property's financial and legal responsibilities. If the registered owner has little or no clue about the property or isn't involved in managing it, that's a red flag. When the owner is detached or uninformed, it suggests that the ownership may be merely nominal. Red flags include:

- ☐ Key documents such as sale deed, loan papers, or tax receipts are not in the registered owner's possession.
- ☐ The registered owner cannot explain the source of funds used for purchase or the terms of acquisition.
- ☐ The owner's statements are inconsistent with the actual possession and enjoyment of the property.
- ☐ The owner does not pay property taxes, maintenance, or EMIs.
- ☐ The owner is unaware of rental income or sale of the property.
- ☐ The property is being managed, controlled, or enjoyed entirely by someone else without the owner's involvement.

5. Gifting to Relatives Without Clear Reason

While gifting property to relatives is legally permissible and culturally common, unexplained or disproportionate transfers of high-value assets to family members can raise serious suspicion. The Revenue often treats such arrangements as a potential cover for benami holdings, particularly when the donor continues to retain control, possession, or beneficial enjoyment of the asset despite the transfer. Red flags include:

- ☐ Lack of a clear occasion or justification for the gift (e.g., not linked to inheritance planning, marriage, or documented family settlement).
- ☐ Disproportionate gifting inconsistent with the donor's declared income, financial status, or tax profile.
- ☐ Absence of gift deeds, proper documentation, or compliance with stamp duty and registration requirements.
- ☐ Donor failing to show the property transfer in income tax filings or balance sheets, suggesting concealment

6. Ownership Patterns That Don't Make Sense

Certain patterns of property ownership, particularly those designed to avoid transparency or standard procedures, often indicate the presence of a benami arrangement. When the ownership structure appears deliberately complex, inconsistent, or disconnected from the financial capacity of the registered owner, it raises serious suspicion about the true beneficiary of the property. Red flags include:

- ☐ Multiple properties registered in the names of employees, friends, associates, or unrelated individuals, despite their limited financial means to acquire such assets.
- ☐ Layering of ownership across multiple entities, family members, or shell companies to obscure the identity of the real owner.
- ☐ Frequent transfers between nominal owners without any genuine change in possession, control, or beneficial enjoyment.

7. Discrepancy in Documentation

Incomplete, inconsistent, or irregular property documentation is often a strong indicator of potential benami ownership.

When official records fail to accurately reflect the transaction, it raises suspicion that the property may not be genuinely owned by the registered individual, and the real beneficiary may be concealed. Red flags include:

- ☐ Sale deeds, agreements, or registration documents that do not reflect the actual consideration paid.
- ☐ Missing or incorrect PAN details in property registration.
- ☐ Non-disclosure or misrepresentation of the actual seller, buyer, or intermediaries involved in the transaction

Legal Consequences

Being caught with benami property leads to severe penalties under the Benami Transactions Act.

Confiscation of the property by the government. The government can seize and take possession of the property

Fines or Penalties up to 25% of the property's market value.

Prosecution and imprisonment under the Benami Transactions (Prohibition) Act.

Tax headaches complications, including scrutiny by the Income Tax Department.



Protect Your Investment

Buying a property is a significant commitment, both financially and emotionally, so it's essential to take steps to protect yourself and your investment. Before making any decisions, make sure you check all the following boxes:

Ensure all payments are traceable and documented.

Ensure the property is registered correctly and deeds are accurate.

Maintain Transparency in Ownership and Control

Seek Professional Advice.

Conclusion

Buying property is a milestone for most of us, but it also comes with the responsibility of making sure every step is legally sound. A little extra care at the beginning checking the title papers, ensuring the seller's ownership is clear, and confirming that all approvals are in place can prevent big troubles later. The Benami law makes it especially important to avoid shortcuts like using someone else's name or relying on large cash deals, which may seem convenient at the time but carry heavy risks.

Getting advice from professionals may feel like an added cost, but it is far less than what one might lose if a deal goes wrong. At the end of the day, a property is more than just an asset it is a secure space for you and your family. Taking a careful, transparent approach ensures that your investment truly remains yours for years to come.

Knowledge is the first defense against Benami risks. To explore this subject in detail, contact us.



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