

Sale Of An Immovable Property

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Abstract: Sale of an immovable property is the transfer of ownership rights of the property from the seller to the buyer. For an effective and valid sale, the teamwork of real estate/property lawyers, Government authorities, and the parties to the sale, i.e., the Buyer and the Seller is essential. This article discusses the procedures involved in conducting a valid sale.

- Definition of Sale:

- Procedures involved in conducting a Valid Sale:

- 1. Conducting Due diligence of the property:
- 2. Drafting a Sale deed:
- 3. Execution and Registration of Sale deed:
- 4. Mutation of Revenue Records:

Definition of Sale:

Sale is defined under section 54 of the Transfer of Property Act, 1882.

“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Sale however made-, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer or such person as he directs, in possession of the property.

Contract for sale. –A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property. *

Procedures involved in conducting a Valid Sale:

In order to get a Valid Sale done, the following procedures need to be carried out:

1. Conducting Due diligence of the property
2. Drafting a Sale deed
3. Execution and Registration of Sale deed
4. Mutation of Revenue records

1. Conducting Due diligence of the property:

Once a person decides to buy a property, he/she should consult a Real Estate/Property lawyer to conduct a Title search of the property. A Title search report gives an idea to the buyer on the existence of legal hurdles over the property if any. A well-drafted title search report will disclose the following:

- a) Current Owner

- b) Nature of Property –Agricultural/Residential/Industrial/Commercial

- c) List of documents furnished for perusal

- d) Flow of the title – At least for 13 years, for properties owned by Government authorities like KIADB, SIPCOT, etc. & 30 years for rest of the properties, in general. This should disclose the mode of conveyance (inheritance/sale/patta/government order/gift/any other mode of transfer) by which the property is transferred from the previous owners to the present owner.

**Indian Kanoon, Transfer of Property Act, 1882*

- e) Encumbrances – existing and cleared after verifying the Encumbrance certificate for a period of 30 years in case the property is owned by a Private authority/individual and for at least 13 years in case the property is owned by a government authority.
- f) *Lis pendens* – the presence of any suit over the property in any Court of Law
- g) Details of search conducted at the Sub Registrar Office (SRO)
- h) Due registration of documents in the SRO along with details of entry in the book maintained in the SRO
- i) Mutation of revenue records like Khata/Patta, tax receipts, electricity bills, etc. in the name of the present owner
- j) Availability of building permit, approved building plan, Occupancy/Possession certificates in case the property is a building and availability of layout plans in case of vacant plots.
- k) Applicability of any land acquisition proceedings by the government over the property, if any
- l) List of original documents required for getting a complete and absolute title over the property
- m) Genuineness of the title documents
- n) Precautions recommended prior to buying the property if any
- o) Availability of marketable title over the property
- p) Schedule/description of the property along with the extent and four boundaries

2. Drafting a Sale deed:

A Sale deed is an instrument through which a Sale takes place. This is a legally enforceable document that records the instances of a Sale. An Agreement of Sale shall be followed by a Sale deed, but this is not mandatory. A valid Sale deed should contain the following clauses:

- a) Name of the Instrument – Sale deed
- b) Date of execution
- c) Description of parties – Name, age, KYC, residential address of Vendor/Seller, and Vendee/Buyer. In general, this clause should be inclusive of the parties' heirs, representatives, administrators, and successors.
- d) Description of the property with Survey number, Ward number, Village, Taluk, Registration District, Sub Registration District, the extent of land (including UDS in case of flats) and the built-up area in case of buildings, dimensions of the property and four boundaries of the property.
- e) Exclusive ownership and possession of the Vendor that entitles the Vendor to sell the property.
- f) Indemnity and Encumbrance – This clause includes a declaration from the Vendor to the Vendee stating the property is free from any kind of encumbrances and no suit is pending in any court against the property. If any loss or damage is caused due to the above-mentioned circumstances, the Vendor will indemnify the Vendee.
- g) Sale consideration – Details of the price amount of the property, the amount paid in advance, mode of payment, payment receipt etc. to be mentioned in this clause. The entire sale consideration must be paid on/before the execution of the Sale deed.
- h) Delivery of title and possession – This clause should state that the Vendor has conveyed his absolute right, ownership, title, and interest over the property to the Vendee along with vacant possession of the property, in

addition to the original title document of the property.

i) Mutation of Revenue records – This clause should state that the Vendor has paid up-to-date insurance, tax, and electricity charges, and hereafter the Vendee should get the revenue records mutated in his/her name and shall be paying all the necessary tax and charges with respect to the property.

j) Registration and Stamp duty – In general, all expenses related to execution, registration, and paying stamp duty for Sale should be borne by the Vendee. This clause should express the same.

3. Execution and Registration of Sale deed:

Once the draft Sale deed is finalized by the parties to the Sale and the consideration amount is paid in full; execution of the Sale deed takes place.

In simple terms, execution is the act wherein the parties to the Sale sign the Sale deed. Stamp duty should be paid for a Sale transaction. The Sale deed should be typed in non-judicial stamp papers of appropriate value.

Once the Sale deed is executed with sufficient Stamp duty, the registration of the Sale deed in the Sub Registrar Office is to be done mandatorily for all the properties whose value is Rs. 100 or above, as per section 17 of the Indian Registration Act, 1908, by paying an appropriate fee. All title documents and revenue records corroborating the Sale must be submitted to the SRO during the process of registration. In addition, the Sale should be witnessed by two persons for completion of the registration in the SRO.

4. Mutation of Revenue Records:

After the registration of a Sale deed, the property is legally transferred to the Vendee and the Vendee has absolute rights and ownership over the property. However, it is also important for the Vendee to get the Revenue records of the property mutated in his/her name, in order to avoid any future penalty for default in property tax. Revenue records include property tax receipts, Khata/Patta, electricity bills, water tax bills, etc.