

A legal safety net

Buyers should sign sale agreement only after proper due diligence of a property and its titles

htestates LEGAL REMEDIES

Sunil Tyagi

htestates@hindustantimes.com

When it comes to sale and purchase of immovable property, parties often execute an agreement to sell or ATS prior to signing the sale deed, which sets out the principal terms of the transaction. These terms and conditions include the advance sale consideration, total sale consideration, time period within which the sale deed is to be executed and registered, obligations to be performed by the parties before the transfer takes place, etc.

It is an important document in the sale transaction as it enables the process of sale to go through without hurdles. Therefore, all terms and conditions included in the ATS must be understood thoroughly by both parties and obeyed throughout the sale process till the time the sale deed is made.

As per the Transfer of Property Act, 1882, an ATS for sale of immovable property does not by itself transfer the title or create ownership in the

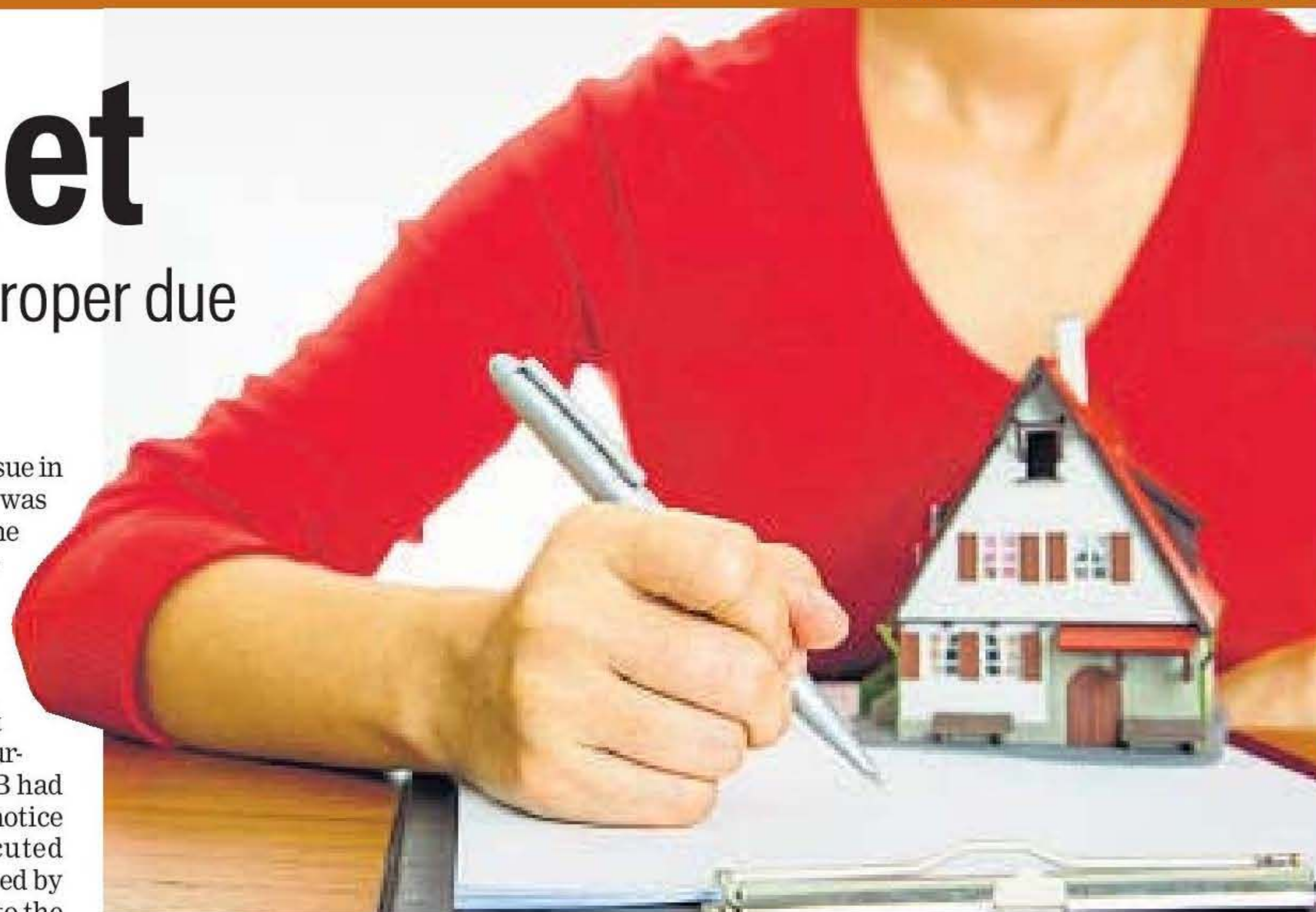
property unless sale deed is executed conveying the property. An ATS gives the parties a right to compel the other party to execute a sale deed in respect of the property or to recover damages for breach of contract if the sale deed is not executed. Sometimes a situation arises where the seller has executed an ATS but does not fulfil his obligations and sells the property to another purchaser. In such a case, the purchasers' claim over the property may become disputable and neither the previous purchaser, nor the subsequent purchaser would be able to enjoy the property.

The law in this regard has been clarified by various judgments. In one such case decided by the Supreme Court in 2004, the seller A, executed an ATS with the complainant B, for sale of certain immovable property. On the execution of the ATS, A received certain money as part of consideration, but failed to carry out the obligations on his part under the ATS. He failed to deliver the title deeds and to clear the property from encumbrances. Consequently, B issued legal notices to A but in vain. Soon after, B came to know that A had entered into sale transaction for the property with another purchaser, C.

Therefore, B filed a suit before

the trial court. The main issue in the matter was whether C was a bona fide purchaser of the property in question, without notice. The trial court ruled in favour of the sale executed by A in favour of C because B had failed to pay the balance amount as per the ATS on time to purchase the property. Also, B had failed to prove that C had notice of the earlier ATS executed between A and B. Aggrieved by this decision, B appealed to the high court which then reversed the findings of the trial court. It concluded that C had notice of the said ATS at the time of the sale and that a fresh ATS had been executed between A and C only to defeat the claim of B.

Aggrieved by the decision of the high court, C and A approached the Supreme Court. The apex court upheld the decision of the high court and ruled in favour of B and concluded that C was not a bona fide purchaser since he had knowledge of the previous ATS executed between A and B. The courts' decisions made it clear that the first purchaser would not be entitled to relief in a case of this kind if the second purchaser was a bona fide buyer and did not have information of or any earlier agreement with the first purchaser.



GET THE TERMS AND CONDITIONS RIGHT

- ATS gives the parties a right to compel the other party to execute a sale deed in respect of the property or to recover damages for breach of contract if the sale deed is not executed
- All the terms and conditions included in the ATS must be understood thoroughly by both the parties and obeyed throughout the sale process
- Purchaser must do due diligence regarding any prior third party rights over a property.

Any person not making the necessary inquiries with regards to prior agreement of sale by inspecting record or by getting it inspected will be considered as having actual knowledge or deemed knowledge of such prior agreement. This type of situation arises often in sale or purchase transactions of immovable property when the seller in order to get a high price for his property sells it to another purchaser even though he had already entered into an

agreement to sell with the original purchaser. Due to a general notion that purchaser's rights can only be exercised on execution of sale deed, the rights of a purchaser are often ignored despite his money being blocked to purchase the said property.

The apex court has clarified the position and recognised the rights of purchaser who has performed his part of the contract as per the agreement to sell. The purchasers should, therefore, be aware while making purchase of

any immovable property and undertake due diligence regarding any prior third party rights created by the seller which may hamper the purchaser's rights in the property.

The author is a senior partner at Zeus Law, a corporate commercial law firm. One of its areas of specialisations is real estate transactional and litigation work. If you have any queries, email us at ht@zeus.firm.in and htestates@hindustantimes.com