

Capture all terms in detail while drafting an Agreement to Sell

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An agreement to sell is entered into by the seller and the proposed/ intended buyer of a property to record the terms and conditions regarding the sale of a property. A clear recording of all the terms and conditions is necessary to avoid any ambiguity/ confusion regarding the contract.

After the execution of agreement to sell, the last step towards the completion of such agreement to sell is the execution of a sale deed by the seller to the proposed/ intended buyer. It is only on the execution of the sale deed that the actual transfer of ownership of property takes place i.e. transfer of ownership from seller to buyer. However, there have been several instances wherein after the execution of agreement to sell, the seller backed out of the proposed sale purchase transaction and therefore, the sale deed was not executed in favour of the proposed/ intended buyer. This draws our attention to the rights of such proposed/ intended buyer under the agreement to sell and the remedy available to him regarding the same.

The courts of law have on numerous occasions held that an agreement to sell does not create any rights or title over the property in favour of the proposed/ intended buyer. An agreement to sell is merely a document creating a right to obtain another document of sale on fulfillment of terms and conditions as specified in the agreement to sell. It does not, of itself, create any interest in or charge on such property. On strength of such agreement the proposed/ intended buyer does not become the owner of the property. The ownership remains with the seller. It will get transferred to the proposed/ intended buyer only on the execution of the sale deed by the seller. However, from an agreement to sell, the proposed/ intended buyer gets the right to obtain a sale deed in his favour. If the seller refuses to comply, the proposed/ intended

buyer is entitled to enforce that obligation by filing a suit of specific performance as per the provisions of the Specific Relief Act, 1877.

It is pertinent to mention here that to enforce the specific performance of a contract to sell/ agreement to sell against a seller, it is essential that the proposed/ intended buyer must be willing to perform his part of the contract. In simple words, a proposed/ intended buyer may seek specific performance of an agreement to sell by the seller only if such proposed/ intended buyer is ready and willing to fulfill all the obligations undertaken by him in such an agreement to sell.

It is important to understand that the specific performance of a contract is the actual execution of a contract according to its stipulations and terms. In such cases, the court may direct the party in default to do the very thing which he contracted to do. The stipulations and terms of the contract have, therefore, to be certain and parties must have consensus in the understanding of the stipulated terms and conditions. However, if the stipulation and the terms and conditions of an agreement are uncertain and the parties have a different understanding of the terms and conditions of the agreement, then there can be no specific performance of an agreement.

Thus, it is very important that while drafting an agreement to sell for the sale purchase of a property all the terms and conditions are captured in detail and with clarity so that one may be specifically enforced by the courts of law, in case any differences/ disputes arise between the parties. Further, it must also be kept in mind that under certain state laws an agreement to sell is required to be necessarily registered. Thus, in such states the buyer needs to register the agreement to sell, so that, if required, he may get it specifically enforced by the court of law.

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