

Gifting immovable property

inshort

Seasons in Noida



Paras Buildtech India Pvt Ltd recently announced the launch of 'Paras Seasons' in sector 168, Noida. Based on the seasons, the project will have four key towers named Autumn Court (G-14), Winter Court (G-16), Summer Court (G-14) and Spring Court (G-16). The USP of these courts is that the surrounding landscaping around each tower will be done according to the season it's named after. The product offerings include fully furnished 1-BHK (650 sq. ft) loft duplex units. There will be 900 residential units including 1 (duplex) 2-, 3- and 4-BHK option variants in sizes from 650 sq. ft. to 2100 sq. ft. The price range starts

Two realtors join hands

from ₹16 lakh onwards. Saviour Builders Pvt. Ltd. have tied up with Gaursons to come up with a township - Gaur City. Spread over 130 acres, it is situated on the Noida-Greater Noida link Road, next to Sector 121, Noida, at plot no. GH-01, Sector 4, Greater Noida. Gaur City has included a multi-featured stadium in an expanse of 17.5 acres.

Clarks Inn in Amritsar

The Clarks Inn Group of hotels recently announced Clarks Inn Amritsar. It will have 40 guest rooms and suites with one privilege floor among other facilities.

Where an immovable gift consists of the donor's entire property, the donee will become personally liable for all of the donor's debts and liabilities, which exist when the gift (the donor's property) is given to the donee

Sunil Tyagi

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LEGAL REMEDIES

There are numerous modes through which an individual can transfer his immovable property to another, such as by sale, gift or a will. All these modes of transfer of property entail different procedures and are governed by laws applicable to each of them. This article specifically highlights transfer of immovable property by way of gift. As per Section 122 of Transfer of Property Act (TPA), 1882, a 'gift' is defined as "the transfer of certain existing moveable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee."

Following are a few legalities that prospective donors and donees should take into account when gifting and/or receiving a gift of immovable property.

Donor's perspective

Under Section 123 of TPA, gifting of an immovable property shall be considered as a valid gift only if the transfer of such property is effected by way of an instrument (gift deed) in writing that has been signed by or on behalf of the donor, and attested by at least two wit-

nesses. By corollary, an oral gift of immovable property or mere delivery of possession of such immovable property without executing a valid written instrument will not confer any title of ownership in favour of the donee.

The property forming the subject matter of the gift must be clearly specified in the gift deed for such gift to be considered as valid.

Importantly, under Section 17 of the Registration Act, 1908, an instrument of gift of immovable property must be compulsorily registered with the competent authorities. A gift deed that has not been registered does not pass any title of ownership of the property in favour of the donee.

A donor can only gift his existing property. This means a gift made of future property which is not owned by the donor at the time of execution of the gift deed shall be considered as void. Once a gift is made by a donor to a donee, he cannot revoke such a gift, either wholly or in part, at his mere will. Even if both parties agree in writing that the gift can be revoked in the future, either wholly or in part, at the mere will of the donor,



such gift cannot be revoked and will continue to vest with the donee. However, a donor is legally permitted to revoke his gift if the parties agree to the suspension/revocation of such gift upon the happening of an event (that has been specified in writing in the instrument), the occurrence of which does not depend on

the will of the donor.

Donee's perspective

It is the essence of a gift that it should be made as an act of generosity and without consideration. Thus, donees should not pay any consideration in lieu of a gift made in their favour. Execution of the gift deed; Donee's acceptance of the gift; A gift of a property is not

considered complete unless it has been accepted by the donee or on behalf of the donee. Such acceptance can be express or implied.

Following are the steps that generally make the process of gifting complete:

- Execution of the gift deed;
- Donee's acceptance of the gift;
- Payment of adequate stamp duty and registration of the property;
- Delivery/handling over of possession of the property;
- Applying for mutation of the property in the municipal records by donee in his name, if required.

It is imperative that the above-mentioned procedure

is completed during the lifetime of both the donee as well as the donor. Where a gift consists of the donor's entire property, the donee becomes personally liable for all the debts taken on by, and liabilities of the donor existing when the gift (the property in question) was given.

Donee's liability under Income Tax Act (ITA), 1961

A gift of an immovable property received by a donee (an individual or Hindu Undivided Family (HUF)) from a relative (as defined under ITA) or on the occasion of his/her marriage is not chargeable to tax under ITA. However, if gifts are received by a donee from any person other than his relatives or from other sources except those that are exempted under ITA, such gifts are chargeable to tax under Section 56 of ITA under the head "Income from other sources".

It is to be noted that even if a gift is received by a donee from any person other than those who are exempted under ITA, if the amount of stamp duty value of such immovable property does not exceed ₹50,000, then such immovable property will be not be chargeable to tax. However, if such stamp duty value exceeds ₹50,000, then it is the stamp duty value of such immovable property that will be chargeable to tax under ITA.

Keeping these pointers and income tax implications in mind when effectuating transfer of property by way of gift can help ensure that such gift is not rendered invalid, thereby protecting the interests of the donor and donee.

The author is senior partner, ZEUS Law Associates, a corporate commercial law firm. One of its areas of specialisation is real estate transactional and litigation work

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