

Defence against eviction

A buyer can protect ownership of his property only through a registered agreement to sell with possession

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htestates LEGAL REMEDIES

What does one do if an agreement to sell with possession does not culminate in the signing of a sale deed? This may be due to many reasons, including breach of contract on the seller's part. To cite an example, seller X executed an ATS in favour of buyer Y, received substantial payment from the buyer and simultaneously handed over possession of the property to him. This specific ATS contained a clause stating that seller X will execute the sale deed within a period of six months. However, seller X refused to execute the sale deed in favour of the buyer within this timeline. Such a situation leaves many bona-fide buyers in the lurch. But the law has armed prospective buyers with valuable legal rights.

One such relief available to buyers is under section 53A of the transfer of property act, 1882 (section 53A) where a buyer has the right to protect his possession of the property. Here it is important to note that an ATS with possession requires compulsory registration under the Registration Act, 1908. Hence, if a buyer wants to protect the possession of the property, he can only do so if the ATS with possession has been duly registered. In the absence of a registered document, the buyer may face threat of eviction.

Although the buyer cannot protect his possession under section 53A on the basis of an unregistered ATS with possession, such a document is not completely null and void. Even

in the case of an unregistered ATS with possession, buyers are not without a remedy. Here the statutory relief of specific performance comes into the picture. When a court orders 'specific performance' of any ATS, it essentially mandates the seller to execute the sale deed of the property in favour of the aggrieved buyer.

In the recent case of Mohinder Singh V Jasvir Singh, the Hon'ble Punjab and Haryana High Court held that while a suit for specific performance on the basis of an unregistered ATS with possession is certainly maintainable, such an agreement cannot be used by the buyer to defend his possession under section 53-A. Hence, aggrieved buyers can sue for specific performance on the basis of an unregistered ATS with possession, which otherwise requires compulsory registration.

However, buyers must

bear in mind that specific performance is by no means an absolute right – rather, it rests on the court's discretion based on unique facts of each particular case. To seek relief of specific performance, the buyer should not have committed any default or breach of the ATS himself. For example, where the buyer himself has breached the condition of making timely payment of sale price, the court may not grant the relief of specific performance in the buyer's favour. Further, the buyer should be able to demonstrate his readiness and willingness to perform his obligations contained in the ATS with possession.

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From left: Sanjiv Rai, MD & CEO - IL&FS Rail Ltd; Surpreet Suri, Vidur Bharadwaj and Nirmal Singh, directors of The 3C Company, after signing the agreement

The 3C Company and Rapid Metro Gurgaon Ltd join hands to raise awareness about green living

The 3C Company has tied-up with Rapid Metro Gurgaon Ltd (RMGL). Through this deal, the company aims to spread awareness about sustainable development and green living. Under the agreement, RMGL will run a rapid metro train tagged 'green', thereby enabling 3C to reach out to a larger audience within Delhi NCR. Showcasing the 3C train last week, directors of The 3C Company, Nirmal Singh, Surpreet Suri and Vidur Bharadwaj, said that it is imperative for people to help create an environment which is effective in achieving an ecological balance for a better tomorrow. "We are happy to find like-minded partners in RMGL who have agreed to help us spread the green movement to a larger set of people," said Singh. They elaborated that the train would be utilised to spread tips on maintaining a greener environment that are easily applicable

HT ESTATES QUIZ OF THE WEEK

Answer the following questions and win a prize. The answers can be found in this edition

- Q1 Who is Arjun Yadav?
- Q2 How many blocks are there in Yamuna Vihar?
- Q3 Who is Naresh Kumar?

Win a prize for your home by posting your answers on www.facebook.com/HTEstates

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Last week's winner is: **Neelam Israni**

CLARIFICATION

This refers to the project rates table published in HT Estates on August 24, 2013. The table shows a 17% depreciation in TDI's Lake Grove project, whereas according to TDI, "Lake Grove when launched was priced at ₹3,750 per sq ft and we have successfully sold the first phase at the rate of ₹3,950 per sq ft." The figures for the table were provided by PropEquity

htestates CHEQUE BOOK Harsh Roongta

If the property (for which I have taken a home loan) is under a legal dispute or the builder stops construction, what will happen to the loan? Will I need to keep paying EMI? How will the property insurance help in such cases?

– Paresh Shah
Your liability to service your home loan is independent of your inability to get possession of the property either due to legal dispute or fault on the part of the builder. In case there is a delay in getting possession for any reason, you will have to keep paying the EMI or the pre-EMI interest. Property insurance does not cover risks on matters pertaining to delay due to a builder's fault or legal dispute. Basically it is the buyer (ie you), who is responsible for checking on the property title or the possibilities of a delay

in construction and the risks to be borne.

It is in your own interest to continue paying the EMI so that your credit history is intact. In case you stop paying your EMI, you may not be able to avail of any credit facility from the banking system in the future.

I had booked a flat with a builder in March 2010 which was confirmed by the builder through an allotment letter dated March 2010. The flat is under construction till date and I have not taken possession of the same. As much as 80% payment has been made at various stages of construction to the builder. I now intend selling the flat to a third party and I want to invest in a new residential flat. Will the gains I make through selling the flat be considered as capital gain (long/short) and will that be taxable if I

invest in a new residential flat?

– Shubha Singh
What you are selling is not a flat but a right to acquire the flat. The right to acquire a flat is also a capital asset and any profit made on sale of such an asset (the right to acquire the flat) shall be treated as capital gains.

Whether this will be a long-term capital gain or a short-term capital gain shall depend on the facts of the case. Since you had acquired the right on March 2010 and since it has already been 36 months, in my opinion, this right should be treated as long-term and should be taxed as such. However, the assessing officer can take a different stand depending on the different dates on which the payments were made.

In case you invest the money for purchase or construction of another residential property, the long-term capital gains shall be exempt under Section 54F proportionately to the extent of investment of sale consideration. Note that for

claiming exemption, you are required to invest the whole sale consideration and not just the amount of capital gain.

Is there a difference in income tax procedure while calculating rebate, especially when deducting EMI interest from the total income if one owns several commercial properties under Hindu undivided family category as against the individual category?

– Harsha Singh
The deduction in respect of interest paid for loan taken to acquire property is deductible under Section 24(b), whether residential or commercial. This deduction is available not only to individuals or HUF, but to all assesses who own any property and are paying interest on loan taken to acquire it.

I am in the process of availing a home loan of ₹20 lakh from a bank wherein my father is a co-applicant. However, I am unable to decide on the tenure because the EMIs vary according to the tenure. The banker has informed me that

for a tenure of seven years, my monthly EMI will be around ₹33,000, and if I go for a tenure of 12 years, the EMI will be roughly between ₹20,000 and ₹25,000. He has said that higher the tenure, lower will be the EMI.

Now, the reason for my confusion is that I wish to make part-prepayments regularly and pre-close the home loan as early as possible. In view of the same, I am wondering whether going for a longer tenure (lets say 15 or 20 years) is advantageous when compared to a shorter term such as seven or 10 years (which will result in higher EMIs), provided that in any case I will pre-pay the loan. I am completely confused with regard to deciding the loan tenure as I am not too good with loan basics. Please advise.

– Pinaki Mishra

Interest rate charged remains the same irrespective of the tenure of the home loan. Hence, you can opt for a longer tenure floating rate loan. This way you retain the flexibility of low EMIs, and at the same time, you can pre-pay the loan without any penalty whenever you have

surplus funds, as prepayment payment penalty is waived off on all home loans given under floating rate whether by a bank or a housing finance company.

I have a sanctioned loan of ₹15 lakh for 15 years from a bank. Due to some reasons I have only availed ₹6 lakh and don't want to increase the amount. Will this create any issues or problems in the future?

– Sumati Biswas

You can approach the housing finance company to make arrangements to get the sanctioned loan amount reduced. In case you decide not to avail the balance of the sanctioned amount, please note that the bank may not refund you any portion of the processing fees paid by you earlier. But no other amount will be charged, nor will there be any impact of such reduction on the sanctioned loan amount for the residential unit.

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