

How to legally exit a property sale transaction

After cancellation of allotment at the stage of booking, the prospective buyer would be left with no right, title or interest in the property

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There are many cases where before a transaction of sale-purchase of immovable property culminates in an ultimate sale, either the buyer or the seller wishes to terminate the arrangement and exit the transaction for some reason or the other. There are various legalities to be kept in mind, depending on the stage at which the parties are decide to exit the sale-purchase transaction.

At the stage of booking/flat buyer's agreement

Prospective buyer smay desire to cancel their allotment of an under-construction property for various reasons - for instance, if they find themselves unable to pay further installments towards purchase of the property, they may opt for cancellation of their allotment. Cancellation of allotment may be done at any time prior to the execution of the conveyance deed/sale deed. Most standard buyer's agreements contain a clause stating that in the event of cancellation, the earnest

money (which is paid by the buyer at the time of booking the property) would stand forfeited and the amounts paid over and above the earnest money by the buyer, if any, would be refunded without interest thereon. After cancellation of allotment, the prospective buyer would be left with no right, title or interest whatsoever in the property.

If a buyer has a nominee in whose favour he/she wants to transfer his allotment, he should inform the developer by a written application, prior to proceeding with the transfer of allotment. Most developers impose a transfer charge (calculated on per square foot/per square metre basis) or processing fee for transfer of the booking/allotment by the buyer in favour of a third party. In some projects, the first instance of transfer is permitted without levy of any transfer charges. The buyer would be required to sign an endorsement form. For the purpose of verification of signatures of the

buyer and the nominee, both may be required to be present in person at the developer's office on a specified date. Once the developer approves transfer of allotment, the amount (that had been already paid by the original buyer) would stand transferred to the account of the nominee, and the nominee steps into the shoes of the original buyer. The responsibility of paying the remaining installments, deposits and charges towards purchase of the property would be that of the nominee.

At the stage of agreement to sell

An agreement to sell (ATS) is a precursor to the sale deed which sets out terms such as 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 transfer can take place, etc. In order to validly exit an ATS (with mutual consent of the parties) that has been duly executed and registered, a cancellation deed may be executed with all parties involved in the transaction. Such cancellation



is required to be registered as per the provisions of the Registration Act, 1908.

At the stage of sale deed

Where sale of immovable property has been made absolute, parties may annul and exit the sale deed, provided proper document is executed by the parties. A buyer who, after execution of the sale deed, subsequently discovers that the seller has misrepresented material facts relating to

the property, can approach competent courts and seek relief of annulment/cancellation of sale deed. However, where both the buyer and seller want to cancel/annul the sale transaction, they may do so only by executing a conveyance deed for re-conveyance. This is because once title to immovable property has been absolutely vested in the transferee (buyer), title and ownership cannot be divested unto the transferor (seller) by mere deed

of cancellation. Here, the parties would be liable to pay stamp duty and registration fee which is leviable on a sale/conveyance deed of immovable property.

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