

Protecting the rights of homebuyers

Transfer of Property Act 1882 has provisions that help property owners who do not have registered title deeds in their favour

htestates LEGAL REMEDIES

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Generally, for property transactions, an agreement to sell (ATS) is executed between the buyer and seller before the sale deed is finalised. There may be instances where the seller hands over the physical possession of the property to the buyer after the execution of the ATS. However, there are times when the sale deed is not executed by the seller, leaving the buyer facing the prospect of eviction from the property.

The Transfer of Property Act 1882 has certain provisions that can work in favour of a person who has property in his or her possession but does not have a registered title deed/sale deed in his or her favour. Such protection is available to buyers who

can prove that a registered ATS exists and that he is willing to perform his part of the contract ie making payment of the balance consideration etc for the property.

It is important to mention here that this rule/provision does not confer any title to the buyer or creates any title, but only gives a right of estoppels (a legal defence tool used when someone reneges on or contradicts a previous agreement or claim) between parties.

Another important aspect of this provision is that the right of part performance (part performance means that the buyer has performed part of his contract and is ready to perform the remaining part but the seller is not performing his part of the contract) can be raised only in defence and cannot be applied for the purpose of declaration of title to the property or to seek recovery of possession of the property. It is a well-settled law that the doctrine of part performance is available to retain the possession and not to get the

possession.

In order to acquire a perfect title to the immovable property, execution and registration of the sale deed would still be necessary. A buyer may approach the court for the specific performance of the contract. The above rule has been incorporated into the Act to ease difficulties of buyers who have been treated unjustly by the seller. It is based on the principle of equity. For instance, A is a tenant in B's property and subsequently A agrees to purchase B's property and an ATS is executed between A and B. A pays 90% of the consideration and as he is already living in the property, B lets him retain the possession after execution of ATS. A is ready to pay 10% balance of the consideration but B after some time enters into a contract with C to sell the same property which is in possession of A. B cannot claim the property just because the sale deed has not been registered. Such a claim by B to sell the property to C would be unjust for A and



CONDITIONS THAT APPLY

- There must be a contract for sale of property
- The sale should have been made on payment of a certain sum
- The contract must be written, signed, duly registered, clearly spelling out all the

essential terms of sale and purchase of the property with sufficient clarity

- The possession of the property must have been delivered to the buyer in part performance of the sale/purchase agreement

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A has the right to remain in possession of the property. To sum up, this principle is not applicable when the transferee/buyer fails to prove that he has performed any act in continuance of the contract and applies when certain specific conditions have been fulfilled.

Unless the buyer pleads that he has performed or was willing to perform his part of contract, this principle would not be applicable. If the buyer is in possession of a property in part performance of a contract

of sale and the requisite conditions for the application of the doctrine of part performance are satisfied then the buyer can defend his possession even against the true owner.

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₹30,000 crore

According to Section 507 (DMCA), "The Corporation with the previous approval of the Government, may, by notification in the Official Gazette, declare that any portion of the rural areas shall cease to be included therein and upon the issue of such notification that portion shall be included in and form part of the urban areas."

Once the rural villages will become urban areas, Section 12 of DDA Act directs that these villages should be converted into development areas.

"Once these two steps are completed by the Delhi government, DDA can invite land owning agencies to surrender land to the Authority," says a senior officer from the DDA.

When HT Estates wrote to Manish Sisodia, Delhi deputy chief minister, with a copy to the Arvind Kejriwal, chief minister, asking for reasons for the delay in notification for the conversion of 95 rural villages to urban areas, the mail was forwarded to special secretary urban development by GK Madhav, OSD to deputy chief minister, keeping this correspondent in the loop with a comment, "Please find the mail here to look into the matter. ATR/Status may please be sent to applicant." Repeated attempts by this correspondent to get in touch with SS Gill, special secretary, urban development, who is associated with the LPP, proved futile as Gill disconnected his mobile phone the moment he was asked to clarify the status of the policy.