

Why are housing or commercial property lease agreements for 99 years? EXPLAINED

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New Delhi: Housing or commercial properties are distributed into two types --one is a freehold property and the other is a leasehold property. While freehold property is self-explanatory -- "free from hold" of any authority except the owner for an indefinite period -- leasehold property is usually leased for 99 years from the time the property goes into construction.

In some cases leasehold property is also given on perpetual lease, which is a separate subject.

The lease of the property is time bound and fixed for a 99-year timeline. For example, let's say you have bought an apartment in 2015 and you get the possession in 2022. The builder would have taken the lease from the state development or housing authority in 2015 only, so this means that your lease had begun from 2015 itself when the construction of the property started. This also means that when you get possession of the property in 2022, you will have to subtract 7 years and the effective period of your lease would be 92 years.

When a particular development authority of a state offers area or land development or construction rights to developers, it sells the said properties for a lease of 99 years. And when the builder or developer sells it to prospective buyers (whether a residential or commercial property), the latter will own it only for a period of 99 years. After the expiry of 99 years, the ownership will be given back to the original landowner.

But, why are housing or commercial property lease agreements for 99 years?

Housing Authorities like DDA and NOIDA allot residential Flats or Land on 99 years or Perpetual Lease. The objective is to ensure controlled development. By keeping property as leasehold property, authorities are able to ensure usage and development control over such assets. In case of violation of such conditions, they retain the right to cancel allotment/lease. This also helps authorities to maintain density norms, usage norms etc. For example in NOIDA, floor-wise sale is not allowed in residential plots and NOIDA Authority is able to control it because properties are leasehold and not freehold.

What happens after a leasehold property tenure expires after 99 years?

Once the objective of controlled development is achieved, the authorities come out with freehold conversions schemes and release land and properties from such controls. DDA from time to time also comes out with freehold conversion schemes to convert such properties. NOIDA Authority has hitherto not started freehold conversion but may come out with such a scheme in future.

In case the tenure of leasehold properties is extended beyond 99 years, the buyers are required to pay a ground rent to the original landowner. These leasehold properties are allowed to be renewed after the completion of the term by paying certain fees. Technically speaking, it is possible to extend the lease period to 999 years by paying a price to the authority.

However, there is another provision wherein if the occupancy of a said property has completed 100 years, then it automatically converts to a freehold property or asset.

Talking to Zee Media, Sunil Tyagi, real estate expert and Managing Partner at ZEUS Law said, "By keeping property leasehold, Development Authorities are able to control the development more effectively. Once properties becomes freehold, Authorities cannot control any sale or transfer of the same. "

"In initial years of establishing a city or colony, this mechanism is helpful but in the long term, the properties should not be kept on leasehold as it reduces their value in comparison to freehold property," opines Tyagi.

Why are housing rental agreement made for 11 months?

Usually, housing rental agreements are made for 11 months. It is not made beyond that period because if for example an agreement is made for 1 year, both the lessor and the lessee would have to agree to register the lease at the state authority office.

Additionally, in case of registration of a house rental agreement, the lessor or the lessee would have to pay a stamp duty of 2% on annual average rent. The stamp duty is 2% of annual average rent in Delhi on leases of a term up to 5 years, and would be different in other states. Hence, to save the hassle of going to the registrar office and also to save on the stamp duty, usually owners prefer to go for an 11-month rental agreement that is done through a simple notary process.