

# Yes, you can cancel a sale deed

Both the buyer and the seller have to mutually agree to it and execute a cancellation deed

Sunil Tyagi

htestates@hindustantimes.com

In many transactions of sale of immovable property, parties execute an agreement to sell (ATS) as a precursor to the sale deed, which sets out terms of sale/purchase 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. Unlike a sale deed, an ATS by itself does not pass the title of ownership in favour of the buyer.

At times, an ATS may not materialise into completion of sale of the property and execution of the sale deed for various reasons, including non-performance/non-fulfilment of conditions by either party non-payment of consideration and so on in which case the affected party may terminate the ATS as per and under the terms of the ATS. Another important question that arises is whether a registered ATS can be cancelled if

## htestates LEGAL REMEDIES

both the seller and buyer decide on such a cancellation.

Cancellation of a previously executed and duly registered ATS of an immovable property may be effected by executing a cancellation deed executed by the parties. It is settled by law that a bilateral contract relating to sale/purchase of immovable property such as ATS may be cancelled only if both the buyer and the seller mutually consent to such cancellation and execute a separate deed of cancellation.

In the case of *M/S Latif Estate Line India Ltd vs Hadeeja Ammal* (2011), the Madras High Court held that a cancellation deed, which is unilaterally executed by the seller, does not create or extinguish any right, claim, title or interest in the immovable property in question and is of no effect. A cancellation deed that is made without obtaining mutual consent of

## THE PROCESS

**Section 32A of Registration Act, 1908:** Compulsory affixation of photographs and fingerprints by persons presenting the document for registration

**Proviso to Section 32A:** In case of any document relating to transfer of ownership of immovable property, photographs and fingerprints of each buyer and seller should be affixed to such a document

all parties involved would be illegal, void and against public policy in that it encourages fraudulent transactions. A unilateral cancellation can be done by approaching the civil court for obtaining a decree of cancellation on grounds of fraud or other valid reasons.

A cancellation deed of a document relating to transfer of interest/ownership of immovable property is required to be compulsorily registered under the Registration Act, 1908 (Act). In the case of *GD Subramanian*

*v Sub Registrar, P Shanmugam, B Dilibabu and B Vasu* (2009), the Madras High Court dealt with the issue of whether registration of a cancellation deed which is unilaterally executed by the seller is sustainable under law. The high court held that when a cancellation deed is executed by mutual consent by all parties to the sale, the registering officer is bound to register the cancellation deed provided requirements like Section 32-A of the Act have been complied with.

However, the registering officer is legally obliged to reject and refuse registration of a cancellation deed which was executed unilaterally or without the knowledge and consent of all other parties or without having fulfilled the requirements under Section 32-A of the Act.

Cases in which sale of immovable property has been made absolute by transfer

of ownership of the property from the seller to the buyer, the sale deed may be subsequently annulled or cancelled by the parties only by executing a conveyance deed for re-conveyance.

In the case of *M/S Latif Estate Line India Ltd vs Hadeeja Ammal* (2011), the Madras High Court held that once the title to the property has been absolutely vested in the transferee (buyer), title and ownership cannot be divested unto the transferor (seller) by execution and registration of a deed of cancellation.

cellation even with the consent of the parties. The proper course would be to re-convey the property by a sale deed/conveyance deed by the transferee in favour of the transferor, which is duly stamped and registered.

*The author is senior partner at Zeus Law, a corporate commercial law firm. One of its areas of specialisations is real estate transactional and litigation work. If you have any queries, email us at htestates@hindustantimes.com or ht@zeus.firm.in*

