



Buyer's Guide

1. Documents Pertaining to Premises:

Under the Maharashtra Ownership Flats Act, 1963 a promoter who intends to construct a building of flats has to enter into a written Agreement for Sale with each of the persons who are to take or have taken such flats. It is also provided that the agreement should contain the particulars and also annex to such agreement the prescribed documents or the copies thereof.

In case of a building, which is yet to be constructed, the agreement has to contain the particulars regarding the liability of the promoter to construct it according to the plans and specifications approved by the local authority.

The other particulars which the agreement should contain are possession date, price to be paid by the purchaser and the intervals at which the installments for the full payment are to be made specifying stage of construction, the precise nature of the body to be constituted of the persons who would take the flats, details regarding the common areas and facilities specifying the percentage of undivided interest in the common areas and facilities appertaining to the apartment agreed to be sold, a statement of the use for which the apartment is intended.

The Act also specifies that copies of the title certificate issued (as specified earlier in this manual) and a copy of the approved plans and specification a list of fixtures and amenities including provisions for lifts to be provided/provided for the flat to be sold should be attached to the agreement.

A promoter, while he is in possession, and where he collects from persons who have taken over flats or are to take over flats, sums for payment of out goings even thereafter, has to pay all out goings until he transfers the property. The out goings would include ground rent, municipal and other local taxes, taxes on income, water charges, electricity charges, revenue assessment and interest on any mortgage or other encumbrances, if any. One should also ensure that the area of the apartment has been mentioned in the agreement. It is also mandatory for the developer/promoter to convey the land in favour of the society/ association of flat owners/ condominium/ Company within a period of 4 months of completion of the project.

In the sale agreement there should be a declaration/ representation by the promoter/ seller that he has not encumbered the property in any manner whatsoever and entered into any other agreement to sell/ lease/ license with



any other party. It needs to be specified whether the property is vacant or in possession of any other party other than the seller.

Stamp Duty and Registration:

Payments of Stamp duty followed by the registration of the agreement are two important acts when one enters into an agreement with a developer/ seller. Both, the developer/ seller and the purchaser need to be present at the sub-registrars office for registering the Agreement.

Stamp Duty:

Stamp duty is a State subject and hence would vary from state to state. The stamp duty in many states is paid as per the True market value as assessed by the Stamp Office. When an agreement is to be stamped, it needs to be unsigned and undated and after the Stamp Office affixes stamps on the agreement, one may execute the agreement. The Stamp Duty payable in various states could be ascertained from the Stamp Duty Calculator provided.

Registration of an agreement:

The agreement should be registered with the Sub-registrar of assurances under the provisions of the Indian Registration Act. Stamp duty should be paid prior to the Registration.

2. CHECK ON LEGAL DOCUMENTS:

Prior to a property purchase, it is advisable to satisfy oneself by having your solicitor inspect the original title documents to that property. Given below a broad idea of the legal documents that would require perusal: -

Land Documents:

Following are some of the essential documents that one would have to look at pertaining to the land:

- a). Chain of conveyance/ sale/ partition/ gift deed or will, by which land was acquired Urban Land Ceiling & Regulation Act (ULC),
- b). Clearance Certificate,
- c). If applicable 7/12 extract (Property card extract),
- d). Index II issued by sub-registrar,
- e). Title Certificate/ search report by an advocate for the last 30 years,
- f). Non- agricultural (N.A) permission,



- g). 37 I clearance under section 269 UL (3) of the Income Tax Act, 1961,
- f). Income Tax clearance of the seller under section 230 A of the Income Tax Act, 1961.

3. Documents of the Project/ Building:

Apart from the land documents mentioned above it is necessary to check the following documents pertaining to the project where one intends purchasing the flat:

- a) Development agreement with the landowner if the developer is not the owner of the property.
- b) Power of Attorney executed by the landowner in favour of their developer.
- c) Approved building plans.
- d) Commencement certificate.
- e) Completion /Occupation certificate.

4. PROCEDURE OF PURCHASE:

Once the project is identified and the necessary due diligence is observed, one would need to identify a particular flat as per one's need and preference. Normally, in a project, which is under construction, the developer may expect 15% on booking. An allotment letter is then issued to the purchaser. The developer would then get the agreement stamped by paying the relevant stamp duty, which is normally borne by the purchaser. Subsequent to this the agreement would be signed. The developer would then organize for the registration of this agreement immediately or in a month's time from signing the agreement. An agreement is registered to give it legal sanctity. The seller and the purchaser would have to go to the sub-registrar's office to sign the register and lodge the agreement for registration.

If the building is in an advanced stage of construction the developer may ask for a proportionate amount to be paid upon signing the agreement. Subsequent to this, the developer would inform you in writing regarding the stage of construction and would raise a demand for further amounts as the construction progresses. It would be advisable for the purchaser to countercheck the stage of construction prior to making these payments.



5. **POSSESSION:**

Taking possession of the flat would involve ensuring the following:

- Developer should have obtained Occupation Certificate from the Municipal Corporation,
- Inspect the flat thoroughly before taking possession,
- Take a letter from the seller confirming that the seller is handing over vacant and peaceful possession of the flat (Important)
- Ensure that there is municipal water connection and electric supply.

Note:

- Generally the last 10% of the consideration is payable on possession.
- Ascertain that all the original documents are handed over to you
- Ensure that you put your own lock to the flat.

6. **CLAUSES IN AGREEMENT:**

The buyer/ purchaser must take note of the following clauses in an agreement:

- a. The Premises with all rights attached thereto are free from all encumbrances' charges of any kind whatsoever and the Seller/ Transferor has observed the bye-laws of the said society and cleared all dues in respect of the said Premises till the date of execution of this transfer deed. The Seller/ Transferor further declares that the said shares and the said Premises are neither the subject matter of any litigation, nor the same are attached in the execution of any decree whether of Government or otherwise.
- b. The Seller/ Transferor has not created or purported to create any tenancy rights, license or other rights of use and occupation in respect of the said Premises.
- c. The Seller/ Transferor has not contracted to sell / transfer the said Premises / shares to any other person and the said Premises / shares are free from all encumbrances, liens, charges of any nature whatsoever.



- d. The Seller/ Transferor covenants with the Buyer/ Transferee that the Seller/ Transferor shall indemnify and keep indemnified the Buyer/ Transferee from and against all actions, claims, demands, charges etc. falling due prior to execution of these presents in respect of the said shares/ Premises.
- e. The Seller/ Transferor agree to accompany the Buyer/ Transferee and/or her legal advisor or her representative to the office of the Sub-Registrar of Assurance and lodge this transfer deed for registration and admit the execution thereof.
- f. The Seller/ Transferor agree to produce his Income-tax Clearance Certificate u/s. 230A of Income-tax Act, 1961 to enable the Buyer/ Transferee to register this Transfer Deed.