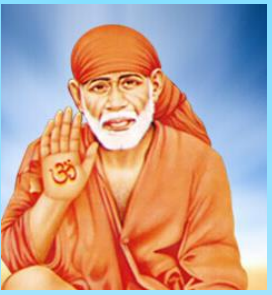


**SPEAKER: MS. TANVI GANDHI,  
ADVOCATE & SOLICITOR**



**M/S. MARKAND GANDHI & CO.  
ADVOCATES & SOLICITORS**

# DRAFTING OF DIFFERENT AGREEMENTS FOR SALE AND INVESTIGATION OF TITLE



# What is Conveyancing?

The practice of conveyancing mainly comprises of :

- documentation work of transactions relating to immovable properties
- ascertaining marketable title of the vendor by investigating his/her/its title to the property.



SELLER

BUYER

# WHAT IS IMMOVABLE PROPERTY ?

## General Clauses Act, 1897

Section 3(26) states that the term shall include land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth.

## Registration Act, 1908

Section 2(6) states that “Immovable Property” includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass.

## Transfer of Property Act, 1882

Section 3 states that immovable Property does not include standing timber, growing crops or grass.

# WHAT IS IMPLIED BY THE WORD TRANSFER IS ACTUALLY THE TRANSFER OF THE BUNDLE OF RIGHTS IN AND ATTACHED TO THE IMMOVABLE PROPERTY OF ONE PERSON TO THE OTHER PERSON

## The instances of Rights (Bundle of Rights) attached to the immovable property *inter alia* are:-

- to enter, use, enjoy, possess and control;
- to dispossession of an unlawful Occupant;
- to transfer, sell, lease, assign, release, mortgage, charge, exchange, gift and/or to give away;
- Right and power of transmissibility i.e. power to devise/bequeath or to give it to somebody after death;
- to develop by the Owner himself or through a third party;
- to earn income from the property;
- to change the user of the property;
- to sub-divide, amalgamate and/or merge the property with another;
- to convert the property into Transferable Development Rights (TDR);
- to use Transfer of Development Rights outside and within the property;
- Right of exclusion;
- to create a covenant running with the land;
- All the rights, advantages, benefits and privileges directly/indirectly attached to the property;
- to break up the aforesaid rights or any of them and to grant them to different parties; and
- to refuse to exercise any of the rights in the immovable property.

# RELEVANT ACTS FOR PRACTICE

- The Transfer of Property Act, 1882
- The Indian Stamp Act, 1899
- The Maharashtra Stamp Act, 1958
- Indian Contract Act, 1872
- Income Tax Act, 1961
- Registration Act, 1908
- Maharashtra Ownership of Flats (Regulation of Promotion of Construction Sale Management and Transfer), Act 1963
- Maharashtra Apartment Ownership Act, 1970
- Maharashtra Co-operative Societies Act, 1960
- Maharashtra Rent Control Act, 1999
- Maharashtra Public Trust Act, 1950
- Maharashtra Land Revenue Code, 1966
- Personal Laws
- Goods and Service Tax Act, 2017
- Specific Relief Act, 1963
- Real Estate (Regulation and Development) Act, 2016

# SALE & CONTRACT OF SALE

## “Sale” as defined under Transfer of Property Act, 1882-

- “Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.
- Sale how made - Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.
- In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.
- Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.
- Contract for sale - A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.
- It does not, of itself, create any interest in or charge on such property.

# **ESSENTIALS OF A VALID SALE**

➤ **Parties to Sale**

➤ **Price or Consideration**

➤ **Competency**

➤ **Delivery of possession**

➤ **Subject Matter of Sale**

➤ **Registration of sale deed**



## What is Agreement for sale of immovable property?

An Agreement for Sale is a formal, legally binding contract between a Vendor (seller) and a Purchaser (buyer) that outlines the terms and conditions under which the Vendor agrees to sell and the Purchaser agrees to buy immovable property. The agreement specifies key details such as the sale price, the earnest or deposit amount and the timeframe for the completion of the sale.

## Why?

An Agreement for Sale is generally entered into by the parties to legally bind the parties to the agreement and crystallise the terms of the transaction to avoid any disputes in future, where certain obligations / investigation of title are yet to be complied with.

- Also sometimes, permissions, consents, compliances are required prior to completion of sale.
- Permission from society, authorities (charity commissioner), etc.
- Loan required to be repaid

# STRUCTURE OF THE AGREEMENT FOR SALE

## ➤ Nomenclature, Place and Date of Execution

i.e., - Agreement for Sale, city/state,

**THIS AGREEMENT FOR SALE** is made and entered into at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_,  
2025

## ➤ Parties to the Agreement

- **Seller (Vendor):** The individual or entity selling the property.
- **Buyer (Vendee):** The individual or entity purchasing the property.

(expression clause shall vary based on the party i.e. individual, partnership firm, Joint Family, LLP, company, AOP, etc.)

## ➤ **Recitals**

This part contains the history of the immovable property and the transaction. It may include:

- Narration including history of title/ title flow.
- The parties' intent to enter into an agreement.
- Any preliminary negotiations or discussions between the parties.
- The reasons for entering into the agreement.

## ➤ **Testatum**

This section is a formal statement that the parties have come together and executed the agreement.

It may include phrases like "Now, therefore, in consideration of the premises and the mutual terms hereinafter contained, the parties hereto agree as follows:"

## ➤ **Operative Clause**

This is the heart of the agreement. It outlines the main terms and conditions of the sale. It includes clauses related to:

- **Agreement to Sell and Purchase**
- **Property Description:** Detailed description of the property being sold.
- **Consideration:** Sale price, payment schedule, and payment terms.

## ➤ **Consideration and Payment Schedule**

This section details the financial aspects of the transaction:

- **Consideration/Sale Price:** The total agreed-upon consideration/sale price.
- **Payment Schedule:** Down payment amount, instalment amounts, due dates, interest rates (if applicable), and acceptable payment methods.
- **Late Payment Penalties:** Consequences for late payments to avoid disputes.

## ➤ **Conditions for Completion of Sale and Rights and Obligations of Parties**

This section outlines the conditions that must be met before the sale can be completed. These may include:

- Obtaining necessary approvals (e.g., from Charity Commissioner, banks, authorities, etc.).
- Purchaser's right to raise requisitions and Vendor's obligations to answer such requisitions.
- Vendor's obligations making out marketable Title including clearing any existing encumbrances on the property.
- Satisfying any other agreed-upon conditions.

## ➤ **Declarations, Representations, and Warranties**

This section includes statements made by the parties regarding the property and the transaction.

- **Declarations & Representations:** Statements of fact made by one party to induce the other party to enter into the Agreement.
- **Warranties:** Assurances made by one party to the other regarding the truth and accuracy of certain statements.
- **Title & Encumbrances:** Seller's warranties and representations regarding title, disclosure of existing encumbrances, and buyer's due diligence rights.

➤ **Payment of Taxes and Outgoings**

- This section specifies which party is responsible for paying various taxes and outgoings related to the property (e.g., property tax, maintenance charges).

➤ **Indemnity**

- Indemnity from Seller to Purchaser for defect in Title.

➤ **Completion of the Transaction**

This section outlines the steps involved in completing the sale, such as:

- Payment of the balance of the consideration.
- Transfer of possession of the property.
- Execution of necessary documents of Transfer (e.g., sale deed/conveyance).

## ➤ Termination

This section outlines the circumstances under which the agreement may be terminated, such as:

- Breach of contract by either party.
- Failure to fulfil conditions precedent.
- Force majeure events (e.g., natural disasters).
- Consequences of Termination- forfeiture, refund, etc.

## ➤ Dispute Resolution

This section outlines the mechanism for resolving any disputes that may arise between the parties regarding the agreement.

- **Negotiation:** Parties may attempt to resolve disputes through amicable negotiations.
- **Mediation:** A neutral third party may be involved to facilitate communication and help the parties reach a mutually agreeable solution.
- **Arbitration:** A formal process where a neutral arbitrator hears both sides and makes a binding decision.
- **Litigation:** As a last resort, the parties may resort to legal proceedings in a court of law.

This section may specify the preferred method of dispute resolution and the applicable jurisdiction.



## ➤ **Stamping & Registration**

This section addresses the legal formalities associated with the agreement.

**Stamping:** Refers to the process of paying stamp duty on the agreement as per the applicable stamp duty laws. This is typically required to make the agreement legally valid and admissible in court.

### **Registration:**

While not mandatory for all agreements for sale, registration is highly recommended.

- It provides evidence of the contract and strengthens its legal enforceability.
- It facilitates future transactions, such as obtaining a home loan.
- It can help resolve disputes in case of discrepancies or disagreements.

This section may specify which party is responsible for the costs associated with stamping and registration.

## ➤ General Provisions

This section includes various other important clauses, such as:

- **Severability:** If any provision of the agreement is found to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.
- **Entire Agreement:** This clause states that the agreement constitutes the entire understanding between the parties with respect to the subject matter and supersedes any prior or contemporaneous communications or representations.
- **Notices:** Specifies how notices and other communications between the parties should be served (e.g., in writing, by email).
- **Governing Law:** The law that will govern the interpretation and enforcement of the agreement (typically the Indian Contract Act, 1872).
- **Assignment:** Whether or not the agreement can be assigned to a third party.
- **Waiver:** Provisions related to waiver of rights or remedies by either party.
- **Schedule:** Proper detailed Description of the Property.
- **Annexure:** Plan of the Property

# **AGREEMENT FOR SALE OF FLAT**

- **Under Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management, and Transfer) Act, 1963.**

Section 4 - Promoter before accepting advance payment or deposit to enter into agreement and agreement to be registered.

- **Under Real Estate (Regulation and Development) Act, 2016**

Section 13 - No deposit or advance to be taken by promoter without first entering into agreement for sale and registering the same.

# RESALE



SR. NO.	PARTICULARS	SOCIETY/COMPANY	CONDOMINIUM	NO ULTIMATE BODY
1.	Ownership Structure	Individuals do not directly own the individual units. Instead, they own shares in the co-operative society/ company, which entitles them to the exclusive right to occupy and enjoy a specific apartment or unit.	Individuals directly own their units (the interior space of their apartments or units) and share ownership of the common areas (such as the land, the building exterior, hallways, etc.) with other unit owners	Ownership is impartible and owner has right to become member of the ultimate body
2.	Transfer of Ownership	Transfer of shares and the right to occupy a unit to the purchaser.	The transfer involves selling, transferring and conveying the individual unit and proportionate rights in the property including land and common areas to the purchaser.	The Transfer involves transfer of all rights in the units including rights and benefits of the RERA/ MOFA agreement to the purchaser.

## ➤ **Transfer of Ownership:**

- **No Ultimate Body:**

Developer/ Promoter permission may be required.

- **Cooperative Housing Society (CHS):**

The transfer of shares (and the right to occupy a unit) usually requires approval from the society.

There might be restrictions based on the existing members' consent or the society's rules.

- **Company (CO):**

The transfer of shares (and the right to occupy a unit) may require approval from the company.

There might be restrictions in the Company's Memorandum of Association and Articles of Association including right of first refusal to other shareholders.

- **Condominium (Apartment):**

Ownership of an apartment is easier to transfer and involves selling the individual unit and property alongwith proportionate rights in the land and common areas to another party.

# DOCUMENTS TO BE EXECUTED IN CASE OF SOCIETY/COMPANY AND CONDOMINIUM

<b>Society/ Company</b>	<b>Condominium</b>	<b>No Ultimate Body</b>
Share transfer agreement of shares and consequential benefits including right to use, enjoy and possess the unit	Deed of Apartment / Deed of Transfer of Apartment transferring the unit and proportionate undivided share in the property.	Agreement for sale transferring all rights in the unit and benefits under the previous agreement/s for sale.
Society Transfer Forms		
Mutation of name on Share Certificate and records of the society	Mutation of name in the Property Card and records of the condominium	Change in name in Developer's/ Promoter's record
Change of name in utility and tax bills	Change of name in utility and tax bills	Change of name in utility and tax bills

# INVESTIGATION OF TITLE





What is

**TITLE?**

ANSWER:

**“IT IS THE OWNERSHIP OF PROPERTY”**

It is the Purchaser's responsibility to verify and investigate the title of the Vendor and Vendor's responsibility to make out a clear and marketable title

# **ACCOUNTABLE RECEIPT:**

- After execution of the Agreement for Sale the Vendor himself or his Advocate is required to send the Purchaser's Advocate, the original title deeds of the property to enable the Purchaser's Advocates/Solicitors to verify the title of the Vendor and the documents are given against the Purchaser's Advocates/Solicitors executing and handing over to the Vendor a receipt known as "**Accountable Receipt**".
- The accountable receipt records that the title deeds are received which the Purchaser's Advocate undertakes to return to the Vendor or his Advocate on demand without claiming any lien for the costs or otherwise.
- Once the Purchaser's Advocate executes the accountable receipt, it becomes his responsibility to preserve the title deeds.

## Accountable Receipt

Re: Sale of property situated at (description of the property)

\_\_\_\_\_ Vendor To

\_\_\_\_\_ Purchaser

Received from \_\_\_\_\_, (the name of the Vendor or his Advocate as the case may be), the undermentioned title deeds relating to the above property which we undertake to return to him on demand without claiming any lien for our costs or otherwise howsoever:

### **(List of title deed received)**

Dated this \_\_\_\_ day of \_\_\_\_ 20\_\_.

Advocates for the Purchaser (Full address)

However now a lot of the Advocates and Solicitors do not follow this and only take inspection of all the original documents of which photocopies have been received from the Vendor in respect of his title to the said Property.

# INVESTIGATION OF TITLE

- Review the Chain of Documents of Title, Revenue Records & prepare Abstract of Title;
- Check whether prior transfers are compliant with law;
- Issue of Public Notices;
- Have various Searches carried out;
- Administer Requisitions on Title.

Justice Dhanuka's Judgment: *Ramniklal Tulsidas Kotak vs Varsha Builders* (AIR 1992 Bom 62)

**REVIEW THE CHAIN OF DOCUMENTS OF  
TITLE, REVENUE RECORDS & PREPARE  
ABSTRACT OF TITLE**

**REVIEW THE CHAIN OF TITLE DOCUMENTS** provided by the Vendor/Seller or his Advocate chronologically to verify and investigate the root of the title of the Vendor/Seller.

**Root of the Title** is the starting point of investigating the ownership history of the property. It is usually 30-40 years old i.e. one should ideally trace back the chain of the documents upto 30-40 years old – because under the Limitation Act Section 61 (a) the period for limitation for redemption as also for foreclosure of a mortgage is 30 years. Further, the limitation for any suit by or on behalf of Centre or State Government is 30 years.

These documents include:

- a) in respect of Flat – Agreement for Sale/Deed of Transfer/Index – II/Share Certificate/details regarding car parking/NOC from society for transfer of the shares and no dues and no lien certificate /Maintenance Bill/Electricity Bill/Property Tax/Occupation Certificate
- b) in respect of plot of land – Agreement for Sale/Conveyance/Lease/Index – II/Property Register Card/7/12 Extract/D.P. or T.P. Remarks/Kami-Jasta Patrak/ Form – 1/M.C.G.M. Assessment Bill /Plans)

In these above-mentioned documents, check for the correct flow of title and every material part and prepare an abstract of title:

- grants, conveyances, litigation, easements, mortgages, Wills, births, deaths, marriages, divorces, gifts, releases, exchanges etc.
- (1) names of parties and the capacity in which they have executed the documents
- (2) relevant recitals
- (3) operative part
- (4) description of property
- (5) restrictive covenants
- (6) covenants of production of title deeds
- (7) particulars of stamp duty and registration
- (8) adequacy of execution and attestation etc.



# **CHECK WHETHER PRIOR TRANSFERS ARE COMPLIANT WITH LAW**

This will include to check whether the document is

- duly stamped under The Maharashtra Stamp Act, 1958
- duly registered under The Registration Act, 1908
- In case a Power of Attorney is used for signing and registering of the document – check whether the requisite powers are given under the said Power of Attorney and if the same is duly stamped and registered
- Whether all requisite permissions and NoC's have been obtained.

## **ISSUE OF PUBLIC NOTICES**

Inviting claims in two newspapers (one English and one vernacular) commonly circulated in the locality of the property in question. Here's a sample Public Notice:

### **PUBLIC NOTICE**

Notice is hereby given that under instructions from our clients, we are investigating title of \_\_\_\_\_, residing at \_\_\_\_\_ as the owner of the undermentioned property.

Any person or persons having any claim, demand, share, right, title and/or interest of any nature whatsoever in the undermentioned Property or any part thereof by way of any Agreement, sale, transfer, mortgage, charge, lien, encumbrance, gift, bequest, release, exchange, easement, right, covenant and condition, tenancy, right of occupancy, assignment, lease, sub lease, leave and license, partnership deed, loans, use, possession, partition, trust, inheritance, outstanding taxes and/or levies, outgoings & maintenance, attachment, injunction, decree, order, award, *lis-pendens* and/or by virtue of the original documents of title being in their possession/custody or otherwise in any manner howsoever and whatsoever are required to make the same known in writing, alongwith certified true copies of documentary proof, to the undersigned, having their office \_\_\_\_\_, within fourteen (14) days from the date hereof, otherwise the same shall be considered as waived.

### **THE SCHEDULE ABOVE REFERRED TO:**

Dated this \_\_\_\_ day of \_\_\_\_\_, 2025.

Advocates & Solicitors

# SEARCH – TO PROVE BONAFIDE PURCHASER FOR CONSIDERATION WITHOUT NOTICE

- have a Search Clerk take search for a minimum of 30 years in respect of the property in question in the Office of the Sub-Registrar of Assurances–physical and online search
- have CERSAI Search - to check for mortgages
- have Negative Index Searches (Litigation Search – generally in the Bombay High Court, Bombay City Civil Court, NCLT/NCLAT, etc.
- In case if the Vendor/Seller/Transferor is a Company/Partnership/LLP/Association/Trust – have Company (MCA) Search/Registrar of Firms Search/ Search in the office of Charity Commissioner

**ADMINISTER REQUISITIONS ON TITLE ON REVIEWING** all of the above - ask for any documents/details that are not provided by the Vendor/Seller and which have created a lacuna in the title of the Vendor/Seller

The Purchaser's Solicitor prepares requisitions on title and sends them to the Vendor's Solicitor, to be answered by the Vendor's Solicitor.

Requisitions on title are generally of 2 broad categories:

- special requisitions arising on vendor's title to the property which are specific to the Vendor's title to the property and
- general requisitions which are normally asked to the vendor on behalf of the Purchaser for being answered.

- **Special requisitions arising on vendor's title to the property** - For example, if the vendor's predecessor-in-title died leaving a Will, the question to be asked is whether probate was obtained of such Will and ask for production of the probate. If probate was not obtained, then it is averred that there is a defect in title and state how the vendor proposes to cure the defect.
- **General Requisitions** - General requisitions are general in nature like whether there is any charge on the property, whether there is any repair notice, whether there are any notice of the proceedings in the nature of acquisitions or requisitions etc. A set of general requisitions are those which one may adopt to suit a particular transaction. One will have to adopt or modify in some respect having regard to the facts of the particular transaction on hand.

- Administering requisitions is a matter of right that the purchaser has but he is not obliged to do so.
- Responding to the requisitions is an obligation that the vendor has (section 55 (1)(c) of the Transfer of Property Act) (*The seller is bound to answer to the best of his information all relevant questions put to him by the buyer in respect of the property or the title thereto*).
- If the vendor refuses or neglects to answer the requisitions, the purchaser can terminate the agreement. However, the vendor is not bound answer general requisitions.
- If the vendor is unable or unwilling to answer any requisition and if there is a clause in the agreement permitting him to do so then he can decline to answer the requisition and can terminate the agreement unless the purchaser withdraws the question.

**ONCE THE TITLE IS ACCEPTABLE, TO PROCEED WITH DOCUMENT FOR TRANSFER I.E.,**

**CONVEYANCE/DEED OF TRANSFER.**

## POINTS TO BE CONSIDERED IN SPECIFIC CASES :

If the Owner/Vendor is

Partnership Firm -

- Verify names of all Partners and ensure they are executing the document.
- If some Partners who were Partners at time of purchase have retired then check proper retirement deeds of such partners is executed. The above is since a Partnership is not an entity in law and holds property in the names of the Partners.

Public Trust -

- Verify Trust Deed
- Check Resolution
- All Trustees should sign, and execute (since trust is not a legal or juristic person)
- Verify permission from Charity Commissioner

Private Trust -

- Verify Trust Deed including to check if Trustees have Power to Sell
- All Trustees should sign (since trust is not a legal or juristic person).
- If possible, all Beneficiaries should execute to avoid challenge by any Beneficiary.

Check Resolution.

## Company -

- Check Resolution and Company's Memorandum of Association and Articles of Association
- Check for Winding up Petitions/ Insolvency proceedings
- Necessary declaration/ representation for receipt of Winding up Notice, etc.

## HUF-

- Karta and all co-parcenors/members should execute
- Ensure there are no minors else necessary permission of court is required
- Verify legal necessity.

## Nominee -

- Is not the Owner
- Holds the Property for benefit of Legal Heirs. Therefore, all Heirs should execute unless there is a Will.
- If there is a Will : Whether Probate is obtained, Executors and Beneficiaries should Execute.

## Beneficiary under Will -

- Check if Will Is Probated
- Executors and Beneficiary should execute.
- If Deed of Transfer is executed and registered then only the Beneficiary may execute



# CLEAR AND MARKETABLE TITLE

- A “marketable title” is a “*title which may at all times and under all circumstances be forced upon an unwilling purchaser*”.
- A doubtful title cannot be forced upon a purchaser.
- Title may be considered doubtful in the following cases:
  - Where there is litigation challenging the ownership.
  - Existence of an unpaid mortgage
  - When any preceding transfer of the property is in contravention of any law which makes the contract void or voidable.

# THANKING YOU



**M/s. Markand Gandhi & Co.  
Advocates and Solicitors**

## **Our Team consisted of:**

Ms. Tanvi Gandhi, Advocate and Solicitor

Mr. Jigar Shah, Advocate and Solicitor

Ms. Bhavini Chheda, Advocate and Solicitor

Ms. Dimple Vora, Advocate

Mr. Sahil Mahagaokar, Articled Clerk

Mr. Tanay Bhansali, Intern

Mr. Atharva Shukla, Intern