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House Property Matters

An Overview

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Insight

- Purchase Process of Flats
- Resale of Flats
- Legal Provisions
- Implications involved
- Transfer Agreement
- Paper Work involved
- Cost implications
- Tax Perspective
- Permissible Transactions
- Current Scenario

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Process for Purchase of Flats

Preliminary discussions and Finalisation → Pay Booking / Token sum to the Builder → Drafting Agreement to sell

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Part or total sum paid to the builder

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Finalization of Agreement (Sale Deed)

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Payment of Stampduty & Registration Chgs.

← Completion of Paper work & formalities ←

Total Consideration Paid to the builder

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Transfer of ownership & possession

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Sale / Conveyance Deed in favour of Society

Process for Resale of Flat-I (i.e. flat purchased in a registered co-op. soc.)

Share Certificate issued by society to the owner

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Original Conveyance / Sale Deed with original receipts, issued by area's Sub-Registrar

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Original Stamped receipts Issued by previous seller Against payment made to him

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NOC for transfer of flat issued by society. Purchaser becomes member of society

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Confirm dues of society/ Electricity bill etc. / any dues from Seller's side

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Confirm Mortgage (if any), Purchaser must ensure Mortgage account is cleared

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Drafting and finalizing the Agreement to Sell

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Sale Deed is duly filed & signed by parties & submitted to the society

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Legal Provisions

Chief Provisions governing the Transactions:

- Indian Contract Act, 1872
- The Maharashtra Land Revenue Code, 1966 (Sections 44 & 45)
- Transfer of Property Act, 1882 (Section 54)
- Urban Land (Ceiling & Holding) Act, 1976
- The Bombay Provincial Municipal Corporations Act, 1949 (Sections 253 & 254)
- The Maharashtra Town Planning Act, 1966 (Sections 44,45,58 & 69)
- Bombay Tenancy and Agricultural Lands Act, 1948
- Registration Act,1908
- Bombay Stamp Act, 1958

* ***The above provisions forms a basis for the legal compliances in the matters of purchase and Sale***

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Transfer Agreement

- Only an agreement to sell and not a ***conveyance. By conveyance deed (kharidikhat) title of property is transferred to the buyer.***
- Must mention the name & address of the Promoters / Developers and the Purchaser
- Permission of *Urban Land Ceiling and Non Agricultural Order*
- Disclosure of *documents of Title (Title Certificate) – i.e. 7/12, Property Card (it is given by City Survey Office), Search Report, any agreement relating to property etc.*
- Description of the Final Proposed Scheme of construction & Layout plan.
- Commencement certificate No. & date sanctioned by Municipal Corp.
- Right reserved of promoter/developer to carry out the said scheme and to sell Tenaments
- The construction of whole scheme shall be completed as per last sanctioned plans & record plan.
- Area & restricted facilities to the said tenament would not be changed inspite of changes in the plans and layout from time to time.
- Contents of the common areas, facilities & access
- Description of the tenament/flat that is Tenament No., Floor, Area with terrace area, agreed Price of the said tenament etc.

Transfer Agreement Cont...

- If purchaser obtain loan against said tenament. Promoter will give N.O.C. for mortgage of the said tenament.
- Any other terms, conditions, stipulations & restrictions
- Use of Floor Space Index (FSI) & TDR (Transferable Development Rights)
- Specifications of fixtures, fittings & amenities provided by the promoter to the said Tenament.
- Time limit for the completion of said construction scheme & reasonable extention.
- If any defects occurred after obtaining completion certificate from Municipality/Corp. the same should be rectified by the Promoter or give reasonable compensation.
- Whether to form co-operative society or to submit the entire land and building to the Jurisdiction of Maharashtra Apartment Ownership Act, 1970 - *Different rights are available under the Co-operative society & Act, 1970.*
- Clarification about who should born Stamp duty, Registration & other legal charges.
- Specification of Market Value & Actual consideration, Stamp duty is calculated on the amount which is higher of the above two.

**** There can be a separate agreement for the purchase of parking space in the society. Generally purchaser pays a separate consideration towards such arrangement.***

Vital Implications

Buyer of the Property to pay due consideration to the following:

- Documents of Title;

  - Ensure from solicitor that the original title documents to that property is clear

- Draft of agreement;

  - Must be drafted in a legally apt manner

  - Must be read carefully or make it understandable from the Advocate

- Stamp duty;

  - Ensure about the accuracy of its calculation

- Possession of Property;

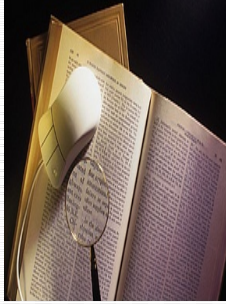
  - Generally the last installment is paid at the time of taking the possession

  - Inspect the flat thoroughly before taking the possession

  - Take letter from seller/Developer confirming that the seller is handing over vacant & peaceful possession of the flat

- Other Paper Work;

  - Examine Developer’s completion certificate obtained from Municipal Corporation



Documentation

- Documents obtained by the Promoter/Builder during the Transactions
- Verify the validity & legality of the documents

Document	Sanctioning Authority	Nature
ULC Order	Town Planning	Order to have complied with Land Ceiling Act.
7/12 Extract & Mutation Entry	Talati (Revenue Officer)	Recognition to ownership right of property
Index II	Area Registration Office	Description of the entire Property
Title & Search Report of last 30 years	Advocate	Bonafide Certificate Prior records of earlier dealings on the land
N.A. Order / Permission	Collector Office	Non-agricultural permission
Development Agreement	Builder / Owner of Land	Transfer of Development Rights
Power of Attorney	Builder	Right of representation
Sanction Plan	Collector Office	Design of the Building
Commencement Certificate	Municipal Corporation	Document permitting to start the construction
Completion Certificate	Municipal Corporation	Document certifying the completion of construction work

Cost & Regulatory

- Properties rates at different locations – Estimations *via* real estate journals
- Examine the prevailing market rate in the locality for similar properties
  - References can be made to Government registered valuers & Real estate agencies
- Stamp Duty – Based on Prescribed Slabs
- Registration Fees
- Other legal charges
- Transfer Fees, if any

Irregularity	**Way Forward**
After drafting the purchase agreement, but before the completion of transaction, if buyer wants to cancel the deal	Make deed of Cancellation
If the due installment is not paid within the prescribed time limit	Developer will be entitled to charge interest as given in the agreement or there may be Arbitration / Settlement. In worst case either flat is cancelled or filing of Suit in the appropriate court.
If the Developers fail to deliver flats to customers within the agreed time frame.	Refund the entire advance amount with interest - a minimum 20% of the advance within seven days of the expiry and pay the remaining within an agreed time frame. ***As per the Union urban development ministry's note to state governments.***

Tax Perspective

- Resultant profits arising from the sale of residential property is taxable as Capital Gains under Chapter IV - E of the Income Tax Act, 1961
- Expenses on transfer of the property are deductible from the sale consideration
- Cost indexation benefits available on the cost of acquisition and improvement of the property
- Interest on Housing Loan up to Rs. 1.5 Lakhs and Stamp Duty up to Rs. 1 Lakh allowed
- Depreciation can be claimed from such property if treated as business assets in accounts
- Separate provisions for the set off and carry forward of the losses from such sale of property
- Tax Exemption Avenues:

Section	Eligible Assessee	Assets Sold	Asset Purchased	Eligible Exemption
54	Individuals & HUFs	House Property	House Property within prescribed time limit of sale	Lower of capital gains or purchase cost of house
54 EC	All	House Property	Prescribed Securities within 6 months of sale	Total / Proportionate sum so invested in securities
54F	Individuals & HUFs	Other than House Property	House Property within prescribed time limit of sale	Proportionate to the cost of new house

Foreigners Allowed

Particulars	Non-Resident Indian (NRI)	Person of Indian Origin (PIO)	Resident
NRI may in case of Residential / Commercial Property:			
■ Purchase from	Allowed	Allowed	Allowed
■ Sell to	Allowed	Allowed	Allowed
■ Receive Gifts from	Allowed	Allowed	Allowed
■ Give gifts to	Allowed	Allowed	Allowed
PIO may in case of Residential / Commercial Property:			
■ Purchase from	Allowed	Allowed	Allowed
■ Sell to	Not Allowed	Not Allowed	Allowed
■ Receive Gifts from	Allowed	Allowed	Allowed
■ Give gifts to	Allowed	Allowed	Allowed

* Dealings in Agricultural Property/Plantation/ Farm House generally not allowed

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Current Scenario

- Average age of the Indian homeowner today 32, compared with 45 a decade ago
- Cheap and readily available home finance for middle-class ensures steady growth in the Residential housing
- India has around 70-million-square feet of A-grade office space
- Mumbai – amongst the world's 10 most expensive office markets
- Tier II and Tier III cities in India are equally hot destinations – increasing pace of construction in the so-called “interiors”
- Shopping malls are estimated to become a Rs 38,447-crore ($8.3 billion) sector by 2010
- Large Companies chief on agenda – Self consumption, SEZs, Tech Parks, Industrial Campuses etc.
- Growth in organized retail will drive commercial real estate.
- Residential housing expected to grow at a steady pace
- Entry of Foreign Players *via* FDI Route

Thank You