

Key Points for Drafting a Sale Deed

The key points given below, from Seller and a Buyer's perspective should be included in a Sale Deed, and should be kept in mind while drafting a Sale Deed for selling/ buying residential premises. These guidelines are merely indicative and vary from case to case depending on the commercial arrangement and agreement between the parties and the local laws that may apply.

A. Key Points for the Buyer.

- **Property Description** – The exact description with the areas and location of the premises should be mentioned, including description of any parking space(s), fixtures and fittings, etc., or any other benefits being provided.
- **Title Verification** - The Buyer should ensure that the Seller has complete control and valid title over the premises and has the rights to sell the property. The Seller should furnish adequate proof to establish beyond doubt, his title over the premises.
- **Encumbrances/ Third Party claims** - The premises should be free from all kinds of third party claims/ encumbrances, such as prior sale, gift, mortgage, disputes, attachment in the decree of any Court notices, lien, injunction, lease, etc.
- **Title Flow** – The complete title flow in relation to premises along with references to the relevant documents should be stated in the Sale Deed.
- **Relevant Documents** – All relevant documents including the original title deeds, should be handed over to the Buyer by the Seller, simultaneously with the execution of the Sale Deed.
- **Ownership & Rights** – The Sale Deed should clearly specify that from the date of execution of the Sale Deed, the Seller shall have no rights/ claims pertaining to the premises and the Buyer will be the sole and absolute owner of the premises and further shall be inter alia, entitled to,; (i) all ownership rights; (ii) rights over all attachments in the premises; (iii) rights pertaining to the land beneath the premises; and (iv) right(s) of way, if required.
- **Power of Attorney** – In case the Seller originally purchased the premises through a power of attorney granted to another person or has given any power of attorney to any person, the Buyer should ensure that the Sale Deed clearly mentions that upon execution of the Sale Deed, the power of attorney holder shall not have any rights in relation to the premises.
- **Consideration** – The Sale Deed should specify, (i) the total consideration payable, (ii) the amount of sale consideration already paid (whether under an Agreement to Sell or otherwise), if any, and (iii) the manner of balance payment, whether upfront or in instalments. Copies of the cheque, demand draft, etc., should be attached, depending on the manner of payment.
- **Representations & Warranties** – The Buyer should take appropriate representations and warranties with respect to the title to the property, the Seller's rights to sell and that the property is free from all encumbrances.
- **Utility Services** – The Sale Deed should mention that the Seller has no-objection to transfer of electricity, water and other such utility connections required on the premises (including the security deposits made with the concerned authorities in this regard) in his name.
- **Claims/ Charges** – The Seller should be responsible for all and any claims, charges, taxes, duties, etc., that may arise in connection with the premises till the date of execution of the Sale Deed, unless otherwise agreed.
- **Indemnities** – The Buyer should typically obtain indemnities from the Seller, *inter alia* from and against, (i) any defect in the title of the premises or due to any legal proceedings pending

or threatened against the premises; (ii) breach of the Sale Deed, or, (iii) all suits/ proceedings or any other claims/ penalties which the Buyer may suffer in relation to the period until the execution of the Sale Deed, (iv) misrepresentation/ fraud by the Seller, etc.

- **Stamp Duty & Registration** – The Sale Deed should be appropriately stamped and registered in accordance with the applicable stamp duty as per the applicable laws. The Sale Deed should specify whose obligation it is to pay the stamp duty and the registration charges.
- **Other Costs** – The Sale Deed should specify all other costs and expenses that may be involved such as transfer charges payable to the builder, society transfer charges payable to the society, as may be applicable, and also whose responsibility it will be to make these payments.
- **Revenue Records/ Mutation** – The Sale Deed should be entered into the mutation/ revenue records of the concerned authorities, depending on where the property is located and the Buyer should be reflected as the owner of the property. The records of the society/ apartment/ builder, (if property is located in a society/ apartment or if is still under the authority/ control of the builder), as the case may be, should also be updated and the Buyer should obtain an endorsement in its name with respect to the property.
- **Handover of Possession** – The Buyer should ensure that the Sale Deed clearly mentions that the handover of peaceful and vacant possession of the premises shall take place simultaneously with the execution of the Sale Deed.
- **Jurisdiction** – The court which will have jurisdiction in case of any dispute arising between the Buyer and the Seller should be mentioned.

B. Key Points for the Seller.

- **Property Description** – The exact description with the areas and location of the premises should be mentioned, including description of any parking space(s), fixtures and fittings, etc., or any other benefits being provided. The Seller should ensure that all rights of the Buyer are restricted to the said area.
- **Claims/ Charges** – The Seller should ensure that the Sale Deed specifically provides that from the date of execution of the Sale Deed, the Seller shall not be responsible for any charges/ claims which may arise in respect of the premises whatsoever and that the Buyer will be the solely responsible for any claims/ charges arising therewith.
- **Consideration** – The sale consideration outstanding to be paid by the Buyer should be mentioned. If the consideration is to be paid in instalments, then definitive timelines pertaining to such instalments must be clearly mentioned.
- **Utility Services** – The Seller should ensure that the Sale Deed clearly provides that the Buyer shall only be entitled to transfer the electricity, water, telephone or such other connections as may be agreed between the parties, in relation to the premises (including the security deposits made with the concerned authorities in this regard) in his name, only after the actual conveyance of the premises.
- **Stamp Duty & Registration** – The Sale Deed should be appropriately stamped and registered in accordance with the applicable stamp duty as per applicable laws. The Sale Deed should specify whose obligation it is to pay the stamp duty and the registration charges.
- **Revenue Records/ Mutation** – The Sale Deed should be entered into the mutation/ revenue records of the concerned authorities, depending on where the property is located and the Buyer should be reflected as the owner of the property. The records of the society/ apartment/ builder, (if property is located in a society/ apartment or if is still under the authority/ control of the builder), as the case may be, should also be updated.

- ***Jurisdiction*** – The court which will have jurisdiction in case of any dispute arising between the Buyer and the Seller should be mentioned.
- ***Indemnities*** – The Seller may obtain indemnities from the Buyer against any breach of the provisions of the Sale Deed or, misrepresentation/ fraud by the Buyer.
- ***Testatum:*** Once all the terms and conditions have been settled between both the parties, a sale deed is prepared. The executed sale deed should be witnessed by at least two witnesses one from seller side and one from buyer side, giving their full names, addresses and signatures.

DISCLAIMER:

These legal guidelines/documents are for reference only. Any agreement that you enter into, should be in consultation with a Solicitor or an Advocate. Proptiger.com will not be responsible for any claim arising out of the use of any of the formats.