

### **Key Points for Drafting an Agreement to Sell.**

Following are the major key points from a Seller and a Buyer's perspective that should be included while drafting the '**Agreement to Sell**' (ATS) for selling/ buying residential premises. The general guidelines mentioned below are merely indicative and vary from case to case depending on the commercial arrangement, agreement between the parties and the local laws that may apply.

#### **A. Key Points for the Seller.**

- **Property Description** – The exact description with the areas and location of the premises being sold should be mentioned in the ATS.
- **Consideration** – The entire consideration/ amount payable by the Buyer should be mentioned. Further, the amount paid by the Buyer at the time of the ATS as advance, should be mentioned and also the manner in which the payment was made (including the details of the cheque, if payment made by cheque). The time period and the manner for payment of the balance consideration should be mentioned too.
- **Forfeiture** – The Seller should ensure that the ATS provides for forfeiture of the consideration paid as advance by the Buyer, in case of default/ breach by the Buyer of the ATS including for failure to pay the balance consideration within the stipulated timelines.
- **Rights** – The Seller should ensure that the ATS clearly specifies that the Seller shall be entitled to all rents/ monies/ profits, if any, arising out of the premises until the same is actually conveyed to the Buyer.
- **Termination** – The Seller should ensure that the ATS clearly specifies that time is of the essence, and in the event the Buyer does not perform any of its obligations, including payment of the balance consideration, the Seller shall be entitled to terminate the ATS and forfeit the amounts paid under the ATS. Further, the notice period for termination should also be specified.
- **Indemnities** – The Seller should typically obtain indemnity in relation to any damage/ loss suffered by the Seller due to any act, error or omission on account of the Buyer or any breach of any of the terms of the ATS by the Buyer.
- **Stamp Duty & Registration** – ATS should be appropriately stamped and registered in accordance with the applicable stamp duty in the state in which the property is located. The ATS should also specify whose obligation it is to bear the stamp duty and the registration charges.
- **Jurisdiction** – The court which will have jurisdiction in case of any dispute arising between the Buyer and the Seller, should be mentioned.
- **Dispute Resolution** – The ATS should clearly specify the mechanism for resolution of disputes, including whether such dispute shall be resolved through court process or arbitration.

#### **B. Key Points for the Buyer.**

- **Property Description** – The exact description with the areas and location of the premises being sold, should be mentioned in the ATS.
- **Title Verification** – The Buyer should ensure that the Seller has complete control and valid title over the premises being purchased by the Buyer and that the Seller furnishes adequate proof so as to establish beyond doubt, his title over the premises being purchased by the Buyer. Buyer should ensure that the property is free from all kinds of encumbrances, such as prior sale, gift, mortgage, disputes, attachment in the decree of any Court notices, lien,

injunction, lease etc.

- **Consideration** – The entire consideration/ amount payable by the Buyer should be mentioned. Further, the amount paid by the Buyer at the time of the ATS as advance, should be mentioned and also the manner in which the payment was made (including the details of the cheque, if payment made by cheque). The time period and the manner for payment of the balance consideration should be mentioned. If the consideration is to be paid in instalments, then the timelines pertaining to such instalments must be clearly spelled out.
- **Refund** – The ATS should specify that the amount of the consideration paid as advance shall be refundable in the event of any breach of ATS by the Seller including for any breach of any representations and warranties, defect in title of the property and such other reasons commercially agreed.
- **Conditions Precedent** – The ATS should clearly specify the pre-conditions that need to be fulfilled by the Seller, for receiving the balance consideration, such as release of any encumbrances over the property (for e.g. release of charge on the property by a bank from whom a loan was obtained by the Seller, etc.), all representations and warranties with respect to title to the property being true and such other conditions commercially agreed.
- **Representations & Warranties** – The Buyer should take appropriate representations and warranties with respect to the title of the property and that the property should be free from all encumbrances.
- **Due Care** – The Seller should be expected to exercise due care and diligence in relation to the premises, between the period of execution of the ATS and the actual conveyance of the premises. \_
- **Indemnities** – The Buyer should typically obtain the following indemnities, among other things, from the Seller:
  - Damage/ loss suffered by the Buyer due to a defect in title of the Seller;
  - Damage/ loss in relation to the property because of the Seller's fault; and
  - Any breach of the terms of the ATS by the Seller.
- **Execution of Sale Deed** – There should be an obligation in the ATS on the Seller to execute a Sale Deed in favour of the Buyer simultaneously upon payment by the Buyer of the entire consideration.
- **Handover of Possession** – There should be an obligation in the ATS on the Seller to hand over of possession of the property to the Buyer simultaneously with the execution of the Sale Deed.
- **Stamp Duty & Registration**– ATS should be appropriately stamped and registered in accordance with the applicable stamp duty in the state in which the property is located. The ATS should also specify whose obligation it is to bear the stamp duty and the registration charges.
- **Taxes** – The Seller should be expected to pay the property tax and all other outgoing charges, taxes, levies etc. in respect of the property under sale up to the date of registration of sale deed and transfer of possession of land.
- **Jurisdiction** – The court which will have jurisdiction in case of any dispute arising between the Buyer and the Seller, should be mentioned.
- **Dispute Resolution** – The ATS should clearly specify the mechanism for resolution of disputes, including whether such dispute shall be resolved through court process or arbitration.

**DISCLAIMER:**

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