



# Concept of Sale under Transfer of Property Act 1882

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# Introduction

A sale under the Transfer of Property Act is defined in Section 54 of the Act. It states that "sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Here, "ownership" refers to the bundle of rights that the owner of the property holds, including the right to possess, use, and transfer the property. The transferor is called the seller, and the transferee is called the buyer.

# Essentials of Sale under Section 54 of TPA

- **Transfer of ownership:** The essence of a sale is the transfer of ownership from the seller to the buyer.
- **Consideration:** The transfer must be for a price paid, promised, or partly paid and partly promised.
- **Immovable property:** The subject matter of the sale must be immovable property, which includes land, buildings, and any rights attached to the land.

## Process of a sale in transfer of property act

1. Agreement to sell: The first step is the execution of an agreement to sell, which outlines the terms and conditions of the sale. This agreement is crucial as it ensures that both parties are aware of their obligations and rights.

2. Due diligence: Before the final sale, due diligence is conducted to ensure that the property is free from any legal encumbrances. This includes verifying the title, checking for any unpaid dues, and ensuring that the property complies with local laws and regulations.

3. Payment of consideration: The buyer pays the agreed-upon price to the seller. This payment can be made in full or in parts, as agreed in the contract.

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4.Execution of sale deed: The sale deed is the document that legally transfers ownership of the property from the seller to the buyer. It must be executed on non-judicial stamp paper of appropriate value and signed by both parties.

5.Registration: According to Section 17 of the Registration Act, 1908, the sale deed must be registered with the Sub-Registrar's office. Registration is essential to give legal validity to the sale and to provide public notice of the transaction.

6.Possession: Once the sale deed is registered, the possession of the property is handed over to the buyer.

# Right and Liabilities of Buyer and Seller (Section 55)

- Section 55 of the Transfer of Property Act 1882 confers certain rights and liabilities on the Seller and the Buyer.
- The rights and liabilities of seller and buyer, are divided into two categories
  - The rights and liabilities before the Sale.
  - The rights and liabilities after the Sale.

# Seller's Liabilities Before Completion of Sale

- Before the Sale is completed, the seller's liabilities are as under: -
  - **To disclose material defects in the property or title, if any, [Section 55(1) (a)]**
    - Before completion of sale, the seller is bound to disclose to the buyer and **latent material defect** in the property or any defect in his own title (ownership rights).
  - **To produce the title-deeds for inspection [Section 55(1)(b)]**
    - If the buyer requests the seller for the title-deeds for the inspection, the seller has a duty to produce not only those documents which are in his possession but also to **make arrangements for the inspection** of those documents which are within his power.
  - **To answer relevant questions as to title [Section 55(1) (c)]**
    - The Seller's duty is to **answer all questions** put by the buyer which are relevant for passing of the title.

## Cont.

- **Duty to execute Conveyance [Section 55(1) (d)]**
  - The seller's duty is to **execute the conveyance**. That is to say, he must effect the transfer of ownership. This is done by signing or affixing thumb –impression on the sale-deed by the seller.
- **Care of title deed and Property [Section 55(1) (e)]**
  - After execution of the conveyance, the next duty of the seller is to **take care of the property and the documents of title**. They are to be handed over to the buyer after the sale.
- **Payment of the out goings [Section 55(1) (g)]**
  - Before completion of the sale, the seller continues to be the owner of the property. Therefore, the **government dues etc. are to be paid by him**. The seller's last duty before completion of the sale is to pay all the outgoing



## **Seller's Right Before Completion of Sale [Section 55(4) (a)]**

- Before completion of Sale, the seller is entitled to all the rents, profits, or other beneficial interests of the property.
- Until ownership is transferred, the seller continues to be owner and as such he has every right to enjoy the profits of the property.
- The contract of sale does not create any proprietary interest in favor of the buyer.

## **Seller's Right After Completion of Sale [Section 55(4)(b)]**

- After the completion of sale, if the price or any part of it remains unpaid, the seller acquires a lien or charges on the property. The completion of sale of an immovable property does not depend on the payment of price, the price or part of it may also be paid after the sale. Therefore, under Section 55(4) (b) the seller is given a right to recover the unpaid purchase-money from out of the property. This is called as a statutory charge of the seller for unpaid price

# Buyer's Liabilities Before Completion of Sale

Before completion of sale, the duties (liabilities) of the buyer are as under:

- **To disclose facts which materially increases the value of property [Section 55(5) (a)]**
  - The buyer is liable to disclose to the seller the facts (Kind of Property, its location etc.) which materially increases the value of property. This liability is limited to disclosure of only those facts which relate to title or interest of the buyer.
- **Payment of price [Section 55(5) (b)]**
  - The completion of sale in favor of buyer, the seller has the duty of execution of deed and buyer has corresponding duty of payment of price. But, the buyer is not bound to pay the full amount before transfer of ownership.

# Buyer's Liabilities After Completion of Sale

- After completion of sale, the buyer has following two liabilities:
  - **To bear the loss to property, if any, [Section 55(5) (c)]**
    - If there is any loss to property subsequent to sale, it is the buyer who shall suffer that loss as owner of property. He cannot hold the seller to bear the loss unless it is proved that loss was caused by seller himself.
  - **To pay the out goings [Section 55(5) (d)]**
    - After completion of Sale, since the buyer becomes owner of the property, he is liable to pay the outgoings e.g., Government dues, rents, revenue or taxes.

# Buyer's Rights

## **Buyer's Right Before Completion of Sale [Sec. 55(6)]**

- This right occurs when the **seller refuses to sell**, and the buyer already paid some amount in advance. This situation creates buyers' charges, and the buyer is entitled to get his money back with interest on it, and interest will be paid from the date of transfer of money from the date of delivery of possession.
  - But if due to the fault of the buyer, the sale doesn't execute, then the buyer doesn't have a charge on it and can't claim his money back.

## **•Buyer's Right After Completion of Sale [Section 55 (6) (a)]**

- According to Section 55 (6) (a) of the Act, the buyer is entitled to get all the rights over the property inclusive of all rents, profits, and also any other benefits over the property.
- The buyer becomes the property owner after completion of the sale or, in other words, after the transfer of ownership, and he/she is entitled to all the benefits from the date of transfer of ownership.



Thank you