



## Within the law

Author: Navin Kumar, Advocate | Published in: Today Real-Estate Guide

LEGAL ANGLE

# Within the law



**Before investing huge sums in a property, you must get the credentials of the seller/developer verified. Navin Kumar explains what sale deeds and POAs are all about**

**B**efore buying or investing in real estate, it is always advisable to understand the nature of the property concerned. It will also be prudent to understand that establishing the credentials of the property is as important as establishing the credentials of the seller.

### The legal formalities required

The properties in each part of Delhi have their own intrinsic character, depending on the area of location. The nature of its character may be understood by the mode of origin of the particular property. The word 'mode' has a wide meaning and wider implication here. That's because the mode gives a definition, character to the property and defines

a definite way of further transfer of the property. For example, the status of a property – whether freehold or leasehold – can only be determined by the initial origin/instrument of the allotment by the appropriate authority. This origin only determines the mode and formalities of subsequent transfers.

The properties in Delhi were initially allotted by the Delhi

**Always verify that the construction complies with the statutory requirements such as sanctioning of site plans, complying with bye-laws**

Illustration: Jyoti Devi Mishra



Development Authority, which was previously known as Delhi Improvement Trust, a body corporate constituted under United Provinces Town Improvement Act, 1919. (For example, WEA Area, Karol Bagh, Ajmeri Gate Scheme, (Presently known as Asaf Ali Road)), L & DO, Ministry of Urban Development (For example properties in the New Delhi area) and by State Government Agencies. (I am not talking about the village land and the Old Delhi area in and around Chandni Chowk). Most of the allotment done by the above said authorities were on leasehold basis between the periods 1940 to 1970. Earlier, the erstwhile Ministry of Rehabilitation was looking after the needs of persons displaced after the partition of India and Pakistan and persons of Indian origin who migrated from Pakistan to India.

A good part of Delhi comprises of basically refugee settlement colonies such as Rajendra Nagar, Patel Nagar, Mukherjee Nagar, Indra Vihar, Model Town, Vijay Nagar, Hudson Line, Antrum's Line etc, and most of the other parts of North Delhi, Central Delhi (leaving New Delhi areas), and some South Delhi settlements. Initially, all the allotments were done by the above said agencies and the Lease Deeds were executed by the President of India in favour of the allottees.

These perpetual (for 90 years) lease deeds contained several restrictions on further transfer of the allotted properties (plots or semi-built houses). To avoid these curbs, properties were sold on unregistered General Power of



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Attorneys, wills or agreement to sale and regular sale deeds were not executed. DDA has been coming out with schemes to convert leasehold ownership to freehold on payment of a stipulated amount of money to the government. The conversion from leasehold to freehold has given absolute ownership rights to the allottees.

The legal formalities, which are required to be looked into, while buying a property, are:

- You should verify the genuineness of the property.
- You should check the chain of the owners. There should not be a break in the chain.
- You should verify the original documents and see that they are in the possession of the seller. The originals confirm that the property is not mortgaged to banks/ financial institutions or is not being resold.
- It is always advisable to get a due-diligence done by a qualified attorney/advocate.
- Take a receipt of the amount paid as advance. Get an agreement to sale executed and registered.
- The last stage is getting the sale deed executed; proper stamp duty/ municipal duty paid. A registration of the sale deed is a must. The property should also be mutated.

#### Buying a flat or building

As far as buying flats and buildings are concerned, one should always verify that. The construction complies with the statutory requirements, such as sanctioning of the site plans, complying with bye-laws, not deviating from the sanctioned plans and obtaining of a completions certificate. Remember, there shouldn't be more than the sanctioned number of flats.

When you are buying a flat out of a multi-storied building, please ensure that the flat is not being resold to you. I have come across many incidents in which people bought properties that had already been sold to somebody else. Let me



**Verify the original documents and see that they are in the possession of the seller. These certify that the property is not mortgaged**

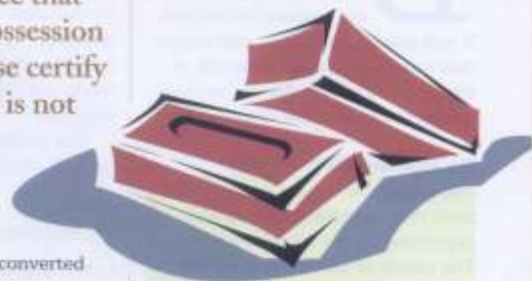
explain: Originally, the plots allotted by the statutory agencies were converted to freehold by executing a conveyance deed. When a person buys a flat out of the building, the seller retains the original conveyance deed (which pertains to the plot upon which the building is erected) and executes a sale deed in favour of the buyer.

Possession of the original conveyance deed shows the ownership of the entire property. The owner can very well mortgage the same to a bank/can resell to another person. To avoid this, it is also advisable to enter the details of the transaction on the back of the original sale deed.

#### Beware of pre-launches

The upward swing in the real-estate market has developed a concept of pre-launch invitation of public investment. Buying a flat in a pre-launch offer is a risky investment. Let me explain the meaning of a pre-launch sale. Sometimes, developers

are granted in-principal approval only and are required to get the layout plan of these projects approved from competent authorities and other statutory approval as per the procedures laid down, before making any advertisement for sale of the plots/flats/apartments. When a flat or land is sold before its proper launch, it is illegal. In most of the cases, the builder does not have the proper land use or other statutory clearances to start the project, leave alone selling the flats. I have seen many projects for which public investment is invited by way of sale at the pre-launch stage, but for which builders have been unable to secure clearances even years after selling the properties.



There have been similar instances reported in Gurgaon in recent times. I would like to comment that pre-launch of properties is an illegal business transaction, which can put at risk the investment made by innocent buyers/investors. Please do not go by catchy advertisements. Also, remember, buying older properties require more serious scrutiny.

#### How can a property buyer be duped?

In one case, a person bought property - some vacant land in Punjabi Bagh - for Rs 1.5 Crore. The seller had a POA in his name. The buyer went to a bank for a loan/credit limit against that property. While carrying out the due-diligence we discovered that the general POA, on the basis of which the property was purchased, was forged.





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In a recent case, a person was trying to mortgage a property for availing cash/credit limit, which stood already sold to someone else. It is, therefore, always advisable to consult people in the neighborhood when you buy/plan to buy property anywhere. In case you are cheated, the most efficacious remedy available is to file a case of cheating, forgery with the concerned police station. The victim can also approach the Economic Offences Wing or file a suit for damages. Remedies depend on the facts of each case.

### Verifying the credentials of a builder

There is no hard and fast rule. You can always check the documents while buying property. It is advisable to study the title papers, statutory compliances, necessary approvals and the reputation of the said builder.

### Laws involved in property transactions

- 1) Transfer of Property Act, 1882,
- 2) Indian Registration Act, 1908,
- 3) Indian Stamp Act
- 4) Indian Contract Act

Sometimes, there are some Local/Municipal laws of the states involved but the basic premise of the law remains the same. The involvement of specific and other laws depend on a given set of facts.

### Property as investment

Because of the rising prices of property, investing in the same has become a very lucrative option. At least for the time being, investment in property offers much better returns than any other kind of investment and, to some extent/ with some riders, safe too. Yes, investment in property can also help in converting black money to white. For example, if a property is priced at Rs 1 crore (market value), the seller will always ask you to pay 50 per cent or more in cash and the rest by way of cheque or draft. The cash paid is never receipted on papers and recorded. The amount paid by



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cheque is accounted for and recorded on paper. This is the (cheque) amount on which you pay the stamp duty as well as municipal taxes. That means you are paying taxes only on the amount paid by cheque. The buyer converts his black money into white without losing the value, evades duty and taxes. It is same for the seller also. He gets black unaccounted money and saves taxes.

### Rent Act

The Rent Control Act safeguards the interest of the tenants in Delhi. This Act is applicable to property fetching rent below Rs 3500 or up to Rs.3500. This Act is not applicable where the rent is above Rs.3500. In that case, you will have to file a suit under Transfer of Property for

eviction of tenant. The Act provides for eviction of tenants only on the basis of grounds given therein. Some of the grounds are non-payment of rent, sub-letting, damaging, bona fide requirement of the landlord, non-residence etc.

### Commercial

The basic premises for buying or selling commercial space in a mall or in a marketplace remain the same as residential property. The source of property is important.

Sometimes, the builder/developers of malls try to sell spaces in contravention of site plans or without the statutory approvals.

I recently came across a matter in which a builder sold open space in the mall to somebody even though as per approval and fire safety norms he was prohibited against selling the space. This depends on the set of approvals and permissions granted by statutory authorities.

### If an MNC wants to rent office space

There are no special enactments but it is advisable to also go for a written contact or agreement. Owners should also insist on payments in white. Normally the companies insist on payment of rent in white but owners differ.

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