“RIGHTS AND LIABILITIES AT THE TIME OF SALE OF IMMOVABLE PROPERTY”

By- Saksham Sankhla

# Abstract

When we talk about the mode of transfer of property, sale being the highlight in the first instance, both seller and buyer of immoveable property get some rights and both are subject to some liabilities, through this mode of transfer. Hence, rights and liabilities emerge in absence of contrary contract.

A contract between two parties, called, respectively, the seller and the buyer, by which the former in consideration of the payment or guarantee of instalment of a specific cost in cash exchanges to the last the title and ownership of property.

# Introduction

Sale is a move of possession in return at a cost paid or guaranteed or part-paid and part-guaranteed.

Sale how made. — Such exchange, on account of substantial immoveable property of the estimation of one hundred rupees and upwards, or on account of an inversion or other immaterial thing, can be made just by an enlisted instrument.

On account of substantial immoveable property of esteem short of what one hundred rupees, such exchange might be made either by an enlisted instrument or by conveyance of the property.

Conveyance of substantial immoveable property happens when the merchant puts the purchaser, or such individual as he coordinates, possessing the property.

Contract available to be purchased. — An agreement for the closeout of immoveable property is an agreement that a clearance of such property will occur on terms settled between the gatherings.

It doesn't, of itself, make any enthusiasm for or charge on such property.

## Concluded Contract

Section 54 incorporates the settlement of the terms between the gatherings as one of the conditions basic for the consummation of an agreement. There was no finished up contract between the gatherings, as the appealing party was a contracting party, he was just following up for the benefit of third individual and henceforth except if the third individual for example the gathering consented to the terms and conditions there could be no closed contract; *Satya Prakash Goel v. Smash Krishna Mission, AIR 1991 All 343.*

## Contract for sale

An agreement available to be purchased of immoveable property is an agreement that a closeout of such property will happen on terms settled between the gatherings. It doesn't, of itself make any enthusiasm for or charge on such property. An assention available to be purchased is only an archive making a privilege to acquire another record of offer on satisfaction of terms and conditions determined in that. On the quality of such an assention a purchaser does not turn into the proprietor of the property. The proprietorship stays with the vender. It will be exchanged to the purchaser just on the execution of offer deed by the vender. The purchaser acquires just a privilege to get the deal deed executed to support him. It has been held that the undoing of the assention occurred before ownership could be given to the buyers; hence there was no sale of the flats.[[1]](#footnote-2)

## Section 54 of the Transfer of Property Act, 1882

Section 54 of the price Transfer of Property Act defines “Sale” as “sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made – Such transfer, in case of tangible immovable property of the value of one hundred rupees and upwards or in the case of revision or other intangible things, can be made only by registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument of by delivery of the property.

Delivery of tangible immovable property takes place when the seller place the buyer or such person as he directs, in possession of the property.”

## Essentials of a Valid Sale

According to Section 54, following are the essentials of a valid sale—

1. Both the parties either a seller or the purchaser must be competent. They can also be called as a vendor and vendee. By the term competent we mean the one must be of sound mind and being major in terms of age that is 18 years. Both the parties have the basic right that is the seller must have the right to sell the property and purchaser should be eligible to purchased the property means not be disqualified by any law enforced in India.
2. The second validity is there must be a substance matter for sale. As we know transfer of property act deals with the sale of the immovable property and the transfer of the ownership of the immovable property is dealed in the same but sale of movable are dealed under the Sale of Goods Act, 1930.

Immovable property may be either tangible, such as land, house, and things attaches to earth, etc., or it may be intangible immovable property, such as right of ferry or fisheries, or right to a mortgage debt etc. But the immovable property must be in existence on the date of execution of sale.[[2]](#footnote-3)

1. Price or Money consideration – one of the essential ingredients is price in the matter of sale. Sale is basically the transfer of ownership in exchange of money , Payment of price is not necessary for completion of the transfer but its reference is necessary you may pay the money at the time of execution or in future.
2. Conveyance—In sale, property must be transferred from seller to purchaser. According to According to Section 54 there must be a registered conveyance in the case of—

(a) Tangible immovable property of the value of Rs. 100 and upwards; or

(b) A reversion of an intangible thing of any value.

In case of tangible immovable property of a value less than Rs. 100, there must either be,

(a) A registered conveyance, or

(b) Delivery of property.

## Sale and Contract for Sale

Section 54 of the Act defines ‘sale’ as a transfer of ownership in exchange for a price Paid or promised or part paid and part promised.

Section 54 also defines ‘contract for sale’ as, “a contract for the sale of immovable property B a contract that a sale of such property shall take place on terms settled between the parties,”

As the sale can be governed by a contact for sale, but a contract for sale is basically a document which creates a right to obtain a document like, a duly executed sale deed. While the sale of an immovable property is basically the transfer of ownership rights.

A sale passes an absolute interest in the property to the purchaser, but a contract for sale does not of itself create any interest in, or charge upon the property in favour of the buyer. It does not convey any little to the purchaser.

A contract for sale need not be registered at all.[[3]](#footnote-4)

## Sale and Exchange

According to Section 54 of the Act, a sale is a move of proprietorship in a property in return at a cost. Then again trade is a move of possession in property in return of responsibility for property. Section 118 of the Act characterizes trade as, "when two people commonly exchange the responsibility for thing for the responsibility for, neither thing or both thing being cash just, the exchange is called trade.

Subsequently in both, there is exchange of outright enthusiasm for the property, yet genuine contrast is that in deal, the thought is cash; while in return, it is another property or anything of significant worth.

## Sale and Gift

There is transfer of ownership of an immovable property in both sale and gift concept. But the difference between the two is that where in sale, the ownership is transferred in exchange for a price, in gift, the immovable property is transferred with any consideration.

In sale, in the event that the valuation of steadfast property is Rs. at least 100, than it is to be affected just by enrolled instrument. Be that as it may, if there should arise an occurrence of an endowment of an enduring property, it must be made just by enlisted instrument regardless of the valuation of the property.

## Rights and Liabilities of Buyers and Sellers

Section 55 of the Act defines the Rights and Duties of the Buyers and Sellers.

Section 55: Rights and liabilities of buyer and seller

In the absence of a contract to the contrary, the buyer and the seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following or such of them as are applicable to the property sold:

(1) The seller is bound-

(a) To unveil to the purchaser any material imperfection in the property or in the merchant's title thereto of which the dealer is, and the purchaser isn't, mindful, and which the purchaser couldn't with customary consideration find;

(b) To deliver to the purchaser on his demand for examination all reports of title identifying with the property which are in the merchant's ownership or power;

(c) To reply to the best of his data every single important inquiry put to him by the purchaser in regard to the property or the title thereto;

(d) On instalment or delicate of the sum due in regard of the cost, to execute an appropriate movement of the property when the purchaser tenders it to him for execution at a legitimate time and place;

(e) Between the date of the agreement of offer and the conveyance of the property, to take as much consideration of the property and all records of title relating thereto which are in his ownership as a proprietor of customary judiciousness would take of such property and archives;

(f) To give, on being so required, the purchaser, or such individual as he coordinates, such ownership of the property as its temperament concedes;

(g) To pay every open charge and lease collected due in regard of the property up to the date of the deal, the enthusiasm on all encumbrances on such property due on such date, and, aside from where the property is sold subject to encumbrances, to release all encumbrances on the property at that point existing.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

Given that, where the deal is made by an individual in a trustee character, he will be considered to contract with the purchaser that the dealer has done no demonstration whereby the property is burdened or whereby he is thwarted from exchanging it.

The advantage of the agreement referenced in this standard will be added to, and will run with, the enthusiasm of the transferee accordingly, and might be implemented by each individual in whom that intrigue is for the entire or any part thereof every once in a while vested.

(3) When the full amount has been paid to the buyer it is being considered as a duty of the seller to transfer all the documents related to the property.

Given that,

(a) Where the merchant holds any piece of the property contained in such reports, he is qualified for hold them all, and,

(b) Where the entire of such property is sold to various purchasers, the purchasers of the part of most prominent esteem is qualified for such records.

In any case, in the event that

(a) The vender, and in the event that

(b) the purchaser, of the part of most prominent esteem, is bound, upon each sensible demand by the purchaser, or by any of alternate purchasers, by and large, and at the expense of the individual making the demand, to create the said archives and outfit such evident duplicates thereof or removes there from as he may require; and meanwhile, the dealer, or the purchaser of the parcel of most prominent esteem, all things considered, will protect the said records, unconcealed and undefined, except if kept from so doing by flame or other inescapable mishap.

(4) The seller is entitled-

(a) To the rents and benefits of the property till the proprietorship thereof goes to the purchaser;

(b) Where the responsibility for property has gone to the purchaser before instalment of the entire of the buy cash, to a charge upon the property in the hands of the purchaser, any transferee without thought or any transferee with notice of the non-instalment, for the measure of the buy cash, or any part thereof staying unpaid, and for enthusiasm on such sum or part from the date on which ownership has been conveyed.

(5) The buyer is bound-

(a) To uncover to the vender any reality with regards to the nature or degree of the dealer's enthusiasm for the property of which the purchaser knows, yet of which he has motivation to trust that the merchant doesn't know, and which physically builds the estimation of such intrigue;

(b) To pay or delicate, at the time and place of finishing the deal, the buy cash to the dealer or such individual as he coordinates:

Given that, where the property is sold free from encumbrances, the purchaser may hold out of the buy cash the measure of any encumbrances on the property existing at the date of the deal, and will pay the sum so held to the people entitled thereto;

(c) Where the responsibility for property has gone to the purchaser, to hold up under any misfortune emerging from the decimation, damage or decline in estimation of the property not caused by the dealer;

(d) Where the responsibility for property has gone to the purchaser, as among himself and the vender, to pay every open charge and lease which may end up payable in regard of the property, the central funds due on any encumbrances subject to which the property is sold, and the intrigue consequently a short time later collecting due.

(6) The buyer is entitled-

(a) Where the responsibility for property has gone to him, to the advantage of any enhancement in, or increment in estimation of, the property, and to the rents and benefits thereof;

(b) Except if he has inappropriately declined to acknowledge conveyance of the property, to a charge on the property, as against the merchant and all people asserting under him, to the degree of the vender's enthusiasm for the property, for the measure of any buy cash appropriately paid by the purchaser fully expecting the conveyance and for enthusiasm on such sum; and, when he legitimately decays to acknowledge the conveyance, additionally for the sincere (assuming any) and for the expenses (assuming any) granted to him of a suit to constrain explicit execution of the agreement or to get an announcement for its rescission.

As of now we discussed about the rights and liabilities of buyer and seller which are been discussed and can easily be interpreted under the section, but as we carry forward the interpretation of the provision from the point of layman knowledge and understanding we have an outcome of sets of both rights and liabilities of both the parties i.e., Seller And Buyer.

## Rights and Liabilities of Seller

### (i) Production Of Documents

On the request of buyer, the request for examination, the seller is liable to produce or bound to show the entire necessary document in relation to the subject matter.

### (ii) Disclose To The Buyer Material Defect

The will undoubtedly uncover to the purchaser any material deformity in the property or in the vender's title thereto of which the dealer is and the purchaser isn't, mindful and which the purchaser couldn't with normal consideration find.

### (iii) Answer to Questions

Dealer will undoubtedly reply to best of his data every pertinent inquiry, which purchaser puts to him in regard to immoveable property or title to immoveable property.

### (iv) Rent and Profits

The vender is qualified for the rents and benefits of the property till the proprietorship thereof goes to the purchaser.

### (v) Care of Immoveable Property and Documents

Between date of agreement of offer and conveyance of immoveable property, merchant will undoubtedly take as much consideration of the property and all reports of title as a proprietor of conventional reasonability would deal with such property and records.

### (vi) Delivery of Possession of Immoveable Property

Vender will undoubtedly give ownership of immoveable property to purchaser or some other individual as indicated by bearings of purchaser.

### (vii) To give Possession

The seller will undoubtedly give on being so required the purchaser or such individual as he coordinates, such ownership of the property as its inclination concedes.

### (viii) To Pay All Public Charges

The seller will undoubtedly pay every single open charge and lease accumulated due in regard of the property upto date of the deal, the interests on all encumbrances on such property due on such date, and with the exception of where the property is sold subject to encumbrances, to release all encumbrances on the property at that point existing.

### (ix) To Deliver Documents

The seller is bound, where the entire of the buy cash has been paid to the vender to convey to the purchaser all reports of title identifying with the property which are in merchant's ownership or power.

### (x) Subsistence of Interest

Seller is considered to contract with purchaser that intrigue, which merchant claims to exchange to purchaser, subsists and that he has capacity to exchange such intrigue. Also, when deal is made by an individual in a guardian character, he is regarded to contract with purchaser that merchant has done no demonstration whereby immoveable property is hampered or whereby he is upset from exchanging it.

### (ix) Payment of Purchase Money

When ownership of immoveable property has been passed to buyer before payment of whole of purchase-money, seller is entitled to a charge upon that property, which is in hands of buyer.[[4]](#footnote-5)

## Rights and Liabilities of Buyer

### (i) Right To Get Benefit Of Improvement

The purchaser is entitled where the responsibility for property has gone to him, to the advantage of any enhancement in or increment in estimation of the property and to the rents and benefits thereof.

### (ii) To Disclose Any Fact About Property

The purchaser will undoubtedly unveil to the vender any reality with regards to the nature or degree of the merchant's enthusiasm for the property of which the purchaser knows however of which he has motivation to trust that the dealer doesn't know and which physically increment the estimation of such intrigue.

### (iii) Payment Or Tendering Of Purchase-Money

Purchaser will undoubtedly pay or delicate buy cash to merchant or some other individual as indicated by bearings of dealer at time and place of finishing deal.

### (iv) Bearing of Loss

At the point when responsibility for property has been passed to purchaser, he will undoubtedly bear any misfortune, which emerges from pulverization, damage or decline in estimation of the property when such decimation, damage or decline isn't caused by vender.

### (v) Entitled To Improvement And Increase the Value Of Immoveable Property

At the point when responsibility for property has been passed to purchaser, he is qualified for advantage of any enhancement in the property or increment in estimation of the property.

### (vi) Entitlement Of Rents And Profits

At the point when responsibility for property has been passed to purchaser, he is qualified for rents and benefits of the property.

### (vii) Entitlement To Charge On Immoveable Property

Buyer is entitled to charge on immoveable property to extent of seller’s interest in the property, to charge for amount of any purchase-money, which is properly paid by buyer in anticipation of delivery, and to charge for interest on such amount. Such charge is against seller and all persons, who claim under seller. Here condition is that buyer should not have improperly declined to accept delivery of the property.[[5]](#footnote-6)

# Conclusion

The rights and liabilities have been discussed under the given provision of the transfer of property act, 1882. As the researcher witnessed different books and articles for the measurement of the scope of the interpretation, it has been clearly identified that the layman has interpreted in the same manner what is being expected by the law making authority.

And we can say this as in the second phase while discussing about the concepts used by the layman we have witnessed the same rights and liabilities what has been interpreted above in the initial.

1. Makdisi, John (2005). Islamic Property Law: Cases and Materials for Comparative Analysis with the Common Law. Carolina Academic Press. ISBN 1-59460-110-0 [↑](#footnote-ref-2)
2. Badenhorst, PJ, Juanita M. Pienaar, and Hindi Mostert. Silberberg and Schoeman's The Law of Property. 5th Edition. Durban: LexisNexis/Butterworths, 2006, p. 9. [↑](#footnote-ref-3)
3. Felix Cohen, "Dialogue on Private Property" (1954) Rutgers LR 357. [↑](#footnote-ref-4)
4. AA Berle, 'Property, Production and Revolution' (1965) 65 Columbia Law Review 1 [↑](#footnote-ref-5)
5. Edwin Fruehwald, "A Biological Basis of Rights," 19 Southern California Interdisciplinary Law Journal 195 (2010) [↑](#footnote-ref-6)