

# Can an ‘agreement to sell’ create substantial rights in favour of an intending purchaser?

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A transaction for sale or lease in India is governed under the provisions of the Transfer of Property Act, 1882 (TOPA). In terms thereof, a sale or lease is valid and binding only if a duly executed document of sale or lease is stamped and registered with the office of the sub-registrar of assurances. However there is an exception to this rule contained in Section 53A of TOPA, which enables a potential purchaser to make a claim for title to property on the basis of an agreement to sell or lease such property, which agreement to sell itself can confer a heritable right upon a potential purchaser. Below, we briefly discuss the provisions of Section 53A.

Section 53A of TOPA provides that if the following conditions are fulfilled, the intending vendor cannot enforce any right against an intending purchaser being a party to the agreement to sell:

- The existence of a contract to transfer for consideration any immovable property;
- The contract must be in writing, signed by the transferor or by someone claiming on his behalf, and the terms should be ascertainable with reasonable certainty;
- The transferee must in part performance of the contract take possession of the property or of any part thereof;
- The transferee must have done some act in furtherance of the contract, and must have performed, or be willing to perform his part of the contract.

The section provides protection to the proposed transferee who is put into possession pursuant to an agreement, to remain in possession, provided that such proposed transferee satisfies the conditions laid down in the Section. Having said the aforesaid, the ownership of the proposed transferor is unhindered and he remains full owner of the land but it confers upon the transferee

the right to claim a specific performance of the contract and remain in possession of the property. This right, though a lesser right, is itself transferable.

Furthermore, by its recent order in *Suraj Lamp and Industries Pvt. Ltd. vs. State of Haryana and Anr.* cited at (2012) 1 SCC 656, the Supreme Court has observed that the courts will not treat agreements to sell as conveyances as they neither convey title nor create any interest in an immoveable property, and that such documents cannot be recognised as deeds of title, except to the extent of Section 53A of TOPA.

The provisions of Section 53A of TOPA and Section 17 of the Registration Act, 1908 (the Registration Act) were amended in the year 2001 to provide that protection under this section could be claimed by a potential purchaser only if the agreement to sell or lease is registered under the provisions of the Registration Act.

In light of the aforesaid, we conclude that under Section 53A of TOPA, protection can be sought by a purchaser against the original owner only to remain in possession and for specific performance of the Agreement to Sell or Agreement to Lease if the said Agreement is registered under the provisions of the Registration Act. Having said the aforesaid, pending execution of the Sale or Lease Deed, the purchaser may execute an onward conveyance of his limited rights under the principal Agreement to Sell with the original owner. While the same does not confer absolute ownership rights in favour of the proposed purchaser, he can continue to remain in possession and the original purchaser can sue the original seller for a specific performance of the Agreement to sell or lease.

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