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TRUST Redefined

Assignment Process: KEY



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One Stop, All Solutions - Real Estate Services

Founded by NRI/Techie (Ex-Cisco/TCS/HP/Dell/Atos Origin)

A Venture to Redefine TRUST with a unique concept of

All we need is Your Autograph![®]



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KEY: (Knowledge Empowers You!) Assignment Process

We strive to provide our clients with the knowledge of the Assignment sale so that they can make a more informed decision when it comes to investing in their future. **We have experienced it many a times that a buyer has to let go of their dream home because of lack of knowledge and a little complexity that comes along with the Assignment sale. They are not confident about how to deal with it. But we recommend Assignment transactions over registered property on resale because it is a WIN-WIN situation for both the buyer and seller. We have the required expertise and knowledge about Assignment transactions, and we have a well laid out procedure to execute it.**

An Assignment process primarily includes a sale transaction wherein the property is not yet registered in the name of the seller. Typically, the property in question is either under construction or the builder has not started the registration process or the seller wants to sell the property in the near future and does not want to go ahead and register the property. In a rare scenario, property may be unregistered even after possession for years to come. For top notch builders, it is very safe for the assignor e.g. Puravankara, Prestige etc. For B grade Builders or less known unethical developers, assignor may run into problem and holds a high risk.

An assignment agreement is a sale transaction where the original buyer of the property (the 'assignor') allows a new buyer (the 'assignee') to take over the buyer's rights and obligations and could 'assign' the property to the 'assignee' for a sale price. Once the 'assignor' decides to 'assign' the property to the 'assignee' an 'endorsement of assignment' is usually signed between the 'assignor' and the 'assignee' where the assignment rights are transferred from the seller/assignor to the new buyer/assignee.

In few cases, the property is ready to move-in and registrations start too but the seller chooses to sell it off before he has to get it registered. The reason behind not getting the property registered is to avoid and circumvent the high-cost involved in the stamp duty and registration. This practice is usually followed by investors. Investor will avoid paying stamp duty fee and new buyer will get the benefit of getting the property registered in his name directly as the **FIRST owner** of the property and consequently has to pay lower stamp duty. So, the buyer of an assignment is essentially stepping into the shoes of the original purchaser. These kinds of transactions are common and fully legal. These can be a little complex than the conventional resale since it involves three parties (the developer, the assignor and the assignee) rather than just two parties (buyer and the seller).

The developer/builder do charge a sum for executing assignment agreements which vary from 2% - 4% of deal value or lump sum amount per square feet (typically Rs. 50 to Rs. 200) along with a GST of 18%. The 'Assignee' is the one who ultimately completes the deal with the seller. The Assignor, Assignee and Builder/Developer need to work together very closely to close the deal.

While submitting the Assignment Agreement, the Assignor needs to pay TRANSFER Fee (Varies significantly from Builder to Builder). Paying transfer fee is the responsibility of the Seller. However, we recommend that it should be paid by the buyer to avoid risk for the seller of losing his money in case the buyer cancels the deal. Over and above, it is good for buyer as well as he holds the proof of paying to the builder directly. If the deal is cancelled post submission of the assignment agreement, Builder will not return the Transfer fee.

Assignment agreement process gets complicated if the Assignor has the loan from bank and /or Assignee needs bank loan. Few MNC banks avoid loans in case of Assignment Agreement because of lack of understanding of process.

At the completion of the deal, The Builder will issue Assignment letter and Endorsement certificate to both Assignor and Assignee and all the three parties need to sign it. **Assignee gets the title of the NEW OWNER of the property once he receives “Endorsement Certificate”**. It may take a month by the builder to complete the process as they too have to work with their legal team.

At the time of registration of the property, as a best practice, the Assignor should sign as a consenting witness/confirming party in the sub-registrar office. However, it typically depends on the builder whether or not the Assignor should be present as a consenting witness/confirming party. The Assignor can execute a POA as well if required. Assignee will require “No dues certificate” from the Assignor. The registration will be executed by Builder in favour of the Assignee/buyer.

Whereas, in a ready to move in property, the buyer(Assignee) can even hold approximately 10% of the payment if the Assignor/seller had a Bank loan and the original documents of the property are still with the Assignor’s bank. In such cases, the Assignee/buyer can clear the payment at the time of handover of the original documents from the bank. Typically, Assignor’s bank may take couple of weeks post closure of home loan to return the original property documents. Assignor’s Bank is well aware of this process and they will provide you with the exact date while you deal with them.

Penalty

In case there is any cancellation for whatsoever reason, the termination upon breach will result in:

- The party involved in the breach of contract has to pay a penalty to the other party which is typically 2% of the deal value.
- Additionally, the party involved in breach has to bear the loss of transfer fee which is typically 2-4% of deal value.

Receiving consent from the builder

Under the terms of the initial sale agreement executed between the original buyer and the builder, the original buyer should have the right to assignment and the amount of transfer fee is clearly mentioned in the sale agreement. There could be a lock-in period (might vary from 6 months to 2 years) as well from the builder. During the lock-in period the buyer cannot sell the property and exiting at this time may attract high penalty. The lock-in period is generally pre-defined in the agreement. The builder puts this clause so that they are in a position to sell their inventories first. In the absence of the lock in period, the buyer may decide to sell his unit at an attractive price compared to the builder which may prove to be a loss to the builder. At Agarwal Estates, we empower you with the right information and highlight things which are necessary for you to understand.

Specific requirements

There are often specific requirements, fees, forms which must be completed if the builder is giving a consent to assignment. There may be two possibilities to this case. Firstly, it is still possible to obtain consent to an assignment even though the contract does not include a clause entitling the original buyer to make an assignment. It is always up to the builder to

waive the prohibition to waive the assignment and allow the original buyer to initiate the assignment process.

Some builders will not allow an assignment and put restriction over the original buyer to engage in assignment rights. With such builders, it is only possible to sell the property when the property is ready for possession or when the entire amount to the builder is paid irrespective of the stage of construction. For instance, this practice prevails in one of the projects of Bangalore i.e. Mantri Web city.

If the sale agreement prohibits an assignment and the builder does not allow them, there is little the original buyer can do and he will have to wait until he gets the possession to sell the property. At Agarwal Estates, we look and study these aspects thoroughly before our customer plans to go ahead with any project. We never recommended or worked on the Mantri Web city project and this was one of the prime reasons.

We are certainly not qualified to advise on such aspects. Moreover, we are not discussing any such legal right of the buyer. We have just shared our wisdom.

Transfer Fee:

In the sale agreement executed between the original buyer and the builder, the amount of transfer fee is usually mentioned. In most instances, the original buyer pays the fee to the builder or it can be paid as per the mutual consent between the assignor and assignee.

Execution of MOU and Assignment Agreement:

Upon obtaining the token advance, the seller must provide the required documents for legal verification. Subsequent to the legal verification, a MoU [Memorandum of Understanding] will be drafted which will entail the terms and conditions of the sale. MoU must be signed in minimum Rs. 200/- eStamp form. Following the MoU, the home loan process can be initiated. You can get your loan pre-approved or start the home loan process after finalizing a property. Subsequent to the signing of the MoU, the assignment process will be initiated among all the three parties (Assignor, Assignee and the builder) will start the Assignment process.

Builder may provide the Assignment Agreement template and both buyer and seller need to work on the same. The assignment agreement has to be signed by both the parties on an eStamp fee of 0.1% or 5% of the sale agreement value. (eStamp fee varies from state to state and as per Govt rules & regulations).

Both the parties majorly depend on the legal team of the builder for smooth execution of the Assignment agreement and registering the property. Important information like Assignor/seller's information, latest statement of accounts, dues/balance payments, any sort of agreements executed separately should be meticulously verified by the legal team of the builder and the Assignee/buyer's legal advisor as well. A Tri-partite agreement may be present in case the Assignor/seller has an existing loan. It is executed between the Assignor/seller's loaner bank, builder and the assignor/seller.

Risk to the buyer in case of Under Construction property: In future, if the builder charges additional fee or the construction delays, it straightaway becomes the responsibility of the buyer to complete those payments. The Seller is no longer responsible for the delay in construction or any new fee charged. So, the buyer would be entirely responsible for any future payment since the seller has transferred the assignment rights in his favour.

Complexity of Home Loan process:

In case the owner/seller has an outstanding loan or even if the loan has been foreclosed, NOC from owner's loaner bank is also required. The buyer's loaner bank will not make any payment until they receive the 'No Dues Certificate' or 'No Objection Certificate' from the owner's bank. The buyer's bank has to coordinate with the Builder as well in this case. Owner's bank will not give 'No Dues Certificate' until they receive the payment. This is what makes the transaction little complicated. Hence, we also term it as a Catch-22 situation because the desired outcome is little tough to attain as a lot of effort is required to properly manage, follow the rules and coordinate with all the stakeholders. And we do possess the expertise to execute it smoothly.

Additional documents required are: MOU on a eStamp paper of Rs. 200/- , Assignment Agreement (eStamp paper) equivalent to 0.1% of agreement value, Endorsement Certificate and NOC from Builder

Endorsement Certificate: When Assignee's bank is ready for disbursement and Builder is Ready with the Endorsement Certificate. Builder, Assignor and Assignee has to sign it. **At this stage, the Assignee becomes the owner of the property.** Assignee's bank will release the payment to Assignor directly after 2-3 days of receiving the copy of Endorsement Certificate.

Registration of Sale Deed: In the Sale Deed, it will be mentioned that Assignor has assigned his rights to the Assignee and Assignee is the new owner as per the Endorsement Certificate. Also, Since the property will be registered for the first time by the Builder, the Stamp duty will be paid as per the Government/Guidance value of the property. However, Assignment Agreement will have "Sale Consideration value" of the property only. So lower stamp duty benefits the assignee.

Timeline for various activities (Rough Estimate):

Activities	Time taken (Working days)	Remarks
Legal Verification	5	Expert Legal opinion
Memorandum of Understanding [MoU]	5	Terms and Conditions
Home Loan	30	Lengthy and Cumbersome Process, especially in case of assignment agreement
Assignment agreement drafting and execution	30	Co-Ordination with Lender Bank, Lawyer, Builder, buyer and seller is required.
Buffer	10	
Total No. of days	50	Total time (Typical case)

Home Loan and Assignment agreement process can run parallel.

KEY Points:

- Seller needs to clear all his dues/payments with builder till date.
- NO Sale Agreement will be signed between the Assignor and Assignee.
- NO Sale Deed will be signed between the Assignor and Assignee.
- Only Sale deed will be signed between builder and Assignee. In the sale deed, it will be written that current seller assigned his rights to current buyer.
- Low Risk for buyer as Builder is also involved along with seller. Builder will have to do due diligence of Seller.
- Buyer will get the benefit of lower stamp duty & registration charges.
- While the seller does not have to pay the stamp duty and registration amount, he still has to pay the transfer fee amount to the builder.
- Seller will receive the entire sale consideration value of the property as mutually agreed between Assignor and Assignee. The Assignee must ensure that he has the latest statement of accounts from the Builder so that he does not have to suffer later with any surprise payments coming over. Therefore, having the statement of accounts is of UTMOST importance for the Assignee.
- Once the apartment complex gets the Occupancy certificate (OC), the Assignor should start paying the property tax. Sub-Registrar may not allow registration of property if property tax is NOT paid and OC was obtained in previous financial year or any time in the past. Although it is a time-consuming process (1-2 months) from the BBMP to pay the property tax for the first time but it is mandatory for the registration purpose. Property tax can be paid for unregistered property.

Pros and Cons of Assignment Agreement:

#	Pros	Cons
1	The seller by not getting the property registered avoids high costs involved in stamp duty and registration charges (6.6 % of the Govt value)	The seller has to pay the transfer fee to the builder (which is 2%-4% typically + 18% GST) However, it is much less in comparison to the stamp duty charges
2	Since the property is not registered, assignee gets the benefit of getting the property registered in his name directly as the first owner of the property.	
3	The assignee has to pay lower stamp duty as he is now registering at guidance value thereby lower stamp and registration charges.	
4	Lesser risk involved as compared to resale since the builder is actively involved in the entire process	
5	It saves the new buyer from maintaining records as in sale deed copies for subsequent buyers and it saves him from future hassles.	
6		Complex home loan process: Since the bank representatives have to deal with the buyer, Seller and the builder for necessary paperwork and other formalities, the process becomes a little complex. It may get little more complicated if the Assignor has an existing loan.

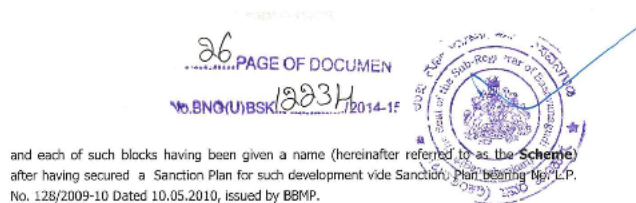
As summarized in the above chart, it happens to be a **WIN-WIN** situation as the buyer holds the title of first owner of the property. Property Assignment saves money for buyer, as compared to buying from the builder directly. Buyer is now registering at guidance value thereby lower stamp and registration charges. On the other hand, the seller saves charges of stamp & registrations duty at the cost of transfer fee.

We hope this document clarifies how “Assignment Sale” can be executed.

Sample Sale Deed of Assignment Agreement

Page#26 and 35 of a registered Sale Deed from Purva Skywood project where registered buyer purchased the property via Assignment Agreement.

First highlighted text talks about Assignor and Assignee, Deed of Assignment and Assignor has given Power of Attorney (POA) for confirming witness. In the second page, space for signature is provided for Assignor.



and each of such blocks having been given a name (hereinafter referred to as the **Scheme**) after having secured a Sanction Plan for such development vide Sanction Plan bearing No. L.P. No. 128/2009-10 Dated 10.05.2010, issued by BBMP.

WHEREAS under the said Scheme, persons interested in owning Apartments are required to purchase undivided shares in the Schedule 'A' Property from the Vendor and get the apartment constructed through the Vendor as a Developer in the manner agreed.

WHEREAS Mr. Vivek Venkatesan, son of Mr. J. Venkatesan and Mrs. Priyadarshini .G, wife of Mr. Vivek Venkatesan joined the Scheme by agreeing to purchase from the Vendor an undivided share in the Schedule 'A' Property, more fully set out in Schedule B herein, under an Agreement for Sale and entered into a separate Construction Agreement for the construction of the apartment described in Schedule "C" herein, both dated 26.08.2010 and subsequently by a Deed of Assignment dated 28.08.2013 assigned their rights under both the Agreements in favor of the Purchasers and requested the Vendor to execute the Deed of Sale in favor of the Purchasers herein, pursuant to which this Deed of Sale is executed in favor of the Purchasers and the said Mr. Vivek Venkatesan and Mrs. Priyadarshini .G (duly represented by their POA holder Mrs. Prema Agarwal) have executed this deed as **Confirming Parties, confirming the said assignment;**

WHEREAS the Vendor has subjected the Schedule 'A' Property and the common amenities and facilities attached thereto to the provisions of the Karnataka Apartment Ownership Act 1972 (hereinafter referred to as the **Said Act**), by a Deed of Declaration dated 15.12.2014 (registered as Document No.BSK-1-11341-2014-15 in Book - I, stored in CD No. BSKD 294 in the office of the Sub-registrar, Banashankari, Bengaluru, hereinafter referred to as the "**Said Deed of Declaration**") in terms of which, all the apartment owners shall become members and they shall be governed by the rules and regulations attached to the said Deed of Declaration and the Said Deed so as to ensure proper maintenance and management of the building blocks constructed in the Schedule 'A' Property and all the common areas of the Schedule 'A' Property which are to be owned and enjoyed in common by all the residential apartments constructed on the Schedule 'A' Property on the terms and conditions set out therein; and whereas the Purchasers declare that the Purchasers have gone through the Said Deed of Declaration and Bye-laws annexed thereto of **PURVA SKYWOOD APARTMENT OWNERS ASSOCIATION** which has been constituted by virtue of the said Deed of Declaration and the Purchasers herein have accepted the same as it is and the Purchasers have further agreed to abide by the same and become the members of the said Association;

WHEREAS the Vendor has also secured Partial Occupancy Certificate from Bruhat Bangalore Mahanagara Palike in respect of Blocks 5 and 6 of the Apartment Building vide JDTP(S)/ADTP/OC/21/2014-2015 dated 28.11.2014 and the Purchaser now having come forward to complete the conveyance of the Schedule B Property, the Vendor is executing this Deed of Sale;

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Assignment process for reputed builder Prestige Constructions:

Assignment Process: -

1. A/c. to be closed as on date with builder by the seller.
2. Letter from the Assignor
3. New booking form duly filled by the buyer & Seller as per builder format.
4. Transfer Template duly signed from the Assignor and Assignee
5. DD Transfer Fee as applicable (Rate per square ft area + 18% GST) payable favouring the company's name as per the agreement or in favour of Prestige Constructions.
6. In case Seller has gone for loan – we need loan closure letter or Provisional NOC from the bank to transfer their rights to the new buyer from their bank. Builder demands for Provisional NOC before initiating the assignment agreement process.
7. No dues statement/letter from Property Manager with regard to Maintenance Charges/Electricity bills/property tax for completed projects (NOC from the society).
8. PDCs (Post-dated cheque) from the new buyer for the balance instalments for ongoing projects
9. Buyer's Pan Card Xerox and ID/Address proof
10. DDs favouring 'Sub Registrar, **Shivajinagar**'
 - Rs.500/- (Buyer) in case no loan, In case of loan 0.1% of Sale Value for stamping.
 - Rs.500/-(seller)

The Required documents are:

Pan card, Address proof, One pass-port size photo, DD of Transfer amount, DD for stamping 0.1% of Sale Value, and post-dated cheques. Assignment Agreement amount may be revised soon from 0.1% to 5 %. Additional amount paid will be adjusted at the time of registration.

11. The buyer has to give Cheques for 'Registration amount' at the time of submitting Assignment Request forms.

Sample request letter from reputed builder to start the process:

Date:

From,

To,

Prestige Estates Projects Ltd.
Bangalore- 01

Dear Sir/Madam,

Sub: Apartment No. _____ in Prestige

Ref: Agreement to Sell and Construction Agreement dated _____

With regard to the above, I/we would like to inform you that I/we have agreed to assign my/our rights under the above Agreements in favour of Mr./Mrs. _____, son/daughter/wife of _____ residing at _____

_____, who is/are willing to comply with the terms of the Agreements with you and deliver the cheques for further instalments.

I/we request you to give your written consent for such assignment of my rights. The prescribed transfer fee will be paid to you for securing such written consent. I/we am/are enclosing herewith the photocopies of the Agreements for your records.

I/We request you to kindly give us the consent for Assignment and oblige.

Thanking you.

Agarwal Estates Unique Differentiator

Agarwal Estates, One Stop, All Solutions - Real Estate services venture, utilizes the promoter's extensive experience in process implementation, service delivery and standard methodologies to suit the requirements of the real estate market in India. This has helped us in delivering high quality services - on time - and also enabled us to successfully launch the concept of: **All we need is Your Autograph! ®**



TRANSPARENCY is the CORE VALUE of Agarwal Estates

Being a **transparent** organization, we empower our customers through our revolutionary concept and key initiative called as KEY (**Knowledge Empowers You**). We share all the information with customers to enable them to make informed decisions. We have been constantly getting acknowledged by our existing customers about the **Knowledge** we share with them.

Agarwal Estates provides end-to-end solutions:

- **Real estate advisory:** Overseas investments, buy-back options, Flexible investment amount, etc.
- **Buy/sell/rent property:** Understanding your needs and providing the right solutions
- **Property and tenant management:** Peace of mind, guaranteed rent
- **Home loans:** Free consultancy, awareness about hidden charges, maximum savings
- **Home décor & interiors:** Six weeks completion for a standard 3 BHK starting at Rs 3+ lakhs
- **Allied services:** Property tax, Electric meter transfer, Vastu etc.

ONE STOP, ALL SOLUTIONS - REAL ESTATE SERVICES



Agarwal Estates aspires to empower customers with the **right knowledge** to enable them to make the **right decisions** at the **right time**.



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