



INDIAN CONTRACT ACT 1872

Adv. Avinash Chaphekar

In day-to-day parleys we might be using the words 'agreement' and 'contract' rather lightly or loosely. But in law they are legal terms having legal significance.

What is a contract?

An agreement enforceable by law is a Contract. It is further explained by legal experts in this way - A contract consists in an actionable promise or promises. Every such promise involves two parties, a promisor and promisee, and an expression of a common intention and of expectation as to the act promised.

What is an agreement?

Every promise and every set of promises forming the consideration for each other, is an agreement. All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not, in the Act, expressly declared to be void.

According to section 10 of the

Act, an agreement to be enforceable must fulfil the following conditions —

- 1) The parties must be competent to contract.
- 2) The agreement must be made by the free consent of the parties.
- 3) The agreement must be made for some consideration.
- 4) The object of the consideration must be lawful.
- 5) The agreement must not have been expressly declared to be void under the Contract Act or any other Act.
- 6) In some special cases, as provided by the law, the agreement should be in writing or in the presence of witness or should be registered.

No form has been prescribed in the Act for a valid contract. A contract need not be always be in writing. It may be oral. It may even be inferred from the facts or circumstances of a case. While the contract act merely provides certain elementary conditions under which the contract becomes binding on the



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parties, it does not provide any particular form or condition of a contract. The law of contract sees to it that the promises made by men shall be performed by them. In a way this is the objective of this law. There must be at least two persons to make a contract — one person to make a proposal and the other to accept it.

What is proposal?

The Act provides that when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of the other to such act or abstinence, he is said to make a proposal.

A proposal to be valid must contain the following elements---

- 1) Every proposal must be communicated to the person to whom it is made.

- 2) It must be made with a view to obtaining the assent of the person to whom it is made.
- 3) It must be certain and definite.

A proposal can be revoked at any time before the communication of its acceptance is complete as against the proposal but not afterwards.

A proposal is revoked —

- 1) by the communication of notice by the proposal to the other party.
- 2) by lapse of the time prescribed in such proposal for its acceptance or if no such time is prescribed, by the lapse of a reasonable time, without communication of the acceptance,
- 3) the failure of the acceptor to fulfil condition precedent to acceptance.

According to section 2(b), a proposal when accepted becomes a promise. Acceptance must be communicated. Communication makes the acceptance binding.

Agent and Principal

Section 182 of the Contract Act explains these terms, Agent and Principal. An Agent is a person employed to do any act for another or represent another in dealing with third person: the person for whom such act is done, or who is so represented, is called the Principal.

An agent is a connecting link between the principal and third person — a sort of an intermediary. The relationship of principal and agent arises where one party, the principal, consents that the other party, the agent, shall act on his behalf, and the agent consents so as to act.

Any person who is of the age of majority and who is of sound mind may employ an agent. Any person, even an infant, may become an agent. But since infant is incompetent to contract, he will not be responsible to his principal.

No consideration is necessary for the creation of an agency. These are only the essential features of the law of contract. The explanation of all these features may run into many pages. ■

BENEFITS OF READYMADE HOUSES...

Consumers who want to buy a home right now are showing more interest in readymade homes. The main reason for this is that they want to avoid delays in completion of construction. So, they can save a lot in rent and pre-EMI payments and at the same time they can see the house in which they are going to live.

It is doubtful whether the construction project will be completed on time. Customers want to save interest on EMI. Also, if the house is ready, it can be rented out immediately. Due to these factors, more and more consumers are now insisting on buying ready-to-move-in homes.

Those consumers who want instant possession of the house, do opt for the ready-to-move-in houses. So, they move in from the rented house to their own home and save on the exorbitant amount of rent. But such houses are approximately 20% costlier than the normal houses. Time is the main aspect while shifting to a new house. Consumers are ready to shell out some more money, if the house is located at a prime location with the basic amenities such as Offices, Schools, Colleges, Markets, Hospitals etc.

The most important benefit of ready-to-move-in house is that the consumer is able to see the house before investing in it. So, it is easy to take a decision. In this case the possibility of being cheated by the developer or the builder, is almost zero, as the property is thoroughly checked. The aspects of maintenance, connectivity, interior designing, neighbourhood and their future valuation is already considered. Earlier, the consumers were inclined to buy a house which was under construction. Readymade houses



were considered to be costly. But now, due to the changing trends in the market, these houses are now becoming popular, which were earlier considered to be costly.

In the long run, staying in a rented house for a long time, is not advisable. Therefore, many consumers are now opting for the readymade houses. The greatest benefit of such ready-to-move-in houses, is that, as these houses are ready to use, consumers need not wait for the completion of the construction and they can shift to a new house immediately. But while shifting to such houses, it is also important to get the utmost benefits of the money that has been invested. Therefore, it is essential to check the creditability of the developer or the builder, location, connectivity and the basic infrastructural facilities and amenities.

Usually, salaried persons and first-time buyers are the main customers of readymade houses. Generally, the timetable gets haywire if there is a shortage of labour and building material during the construction of building. The construction costs also increase. The customers cannot afford such a delay. So, they prefer readymade houses.

The customers who are going for the ready-to-move-in houses, should keep in mind certain following points:

1. The current/prevaling rate of readymade houses in that particular area.
2. Location of the house.
3. All the Legal papers related to the house that they are buying.
4. The structural Plan of the building, in which they are buying the house.

The customers should first of all thoroughly check the creditability of the developer or the builder. They should also consider the quality of the construction and the exact

built-up area. They should also check whether the developer or the builder has obtained proper permissions and sanctions required for the Project. The most important thing is that the customer has to seriously think over the market value of that particular area and the probable value he would be getting in the future, for his house or property, in case he needs to rent it out or sell it out.

There is a good demand for ready-to-move-in houses in the major cities like Mumbai, Pune, Chennai, Delhi, Bengaluru etc.

Difference between an Owned House and a Rented House

OWNED HOUSE	RENTED HOUSE
You are the owner of the house which you have purchased, and you feel proud about it. Such a house gives you stability and safety in life.	A rented house may not be always secured and safe. The Owner may ask you to vacate the house any time. One has to use the rented house very carefully and with due responsibility.
You can get monetary returns from such a house. It can be by way of increase in the value, rent, if you rent it to somebody or in both ways.	You have to spend on a rented house. The rent has to be paid every month. You cannot get any sort of monetary returns or income from such a rented house.
You can get Tax benefits in the EMIs which you are paying.	You do not get any Tax benefits from a rented house.
You have to spend on the interest payable on the Loan taken, Maintenance charges, Registration Fees, Property Tax etc.	A rented house is much cheaper than a bought-out house. The monthly rent amount is much less than the EMIs. You may not have to bear the Maintenance charges, Registration Fees, Property Tax expenses etc.
EMI amount is fixed for the Loan period. This helps you to do financial planning.	The house rent amount may be variable as per the Agreement done with the Owner. It may increase with every renewal of the Agreement. So, it is difficult to do the financial planning.
There is no flexibility in the Fixed Assest. So, it is difficult to own it. You may have to wait for a long time to earn the expected value while selling it.	There is a flexibility in a rented house. If you do not find it appropriate or does not suit as per your expectations, you may move to a different house. Rented house is a good alternative for the people who have transferable jobs.

POWER OF ATTORNEY WHAT IS IT?

Adv. Avinash Chaphekar

The provisions regarding power of attorney are nothing but extension of the principle of agency. The delegation of powers has become the need of the hour because life has become complex and fast, requiring a person to do many things in a short time as well as simultaneously. This often results in practical difficulties. Hence, delegation of powers comes into picture. This situation gives rise to the concept of agency.

The section 182 of the Contract Act defines the words 'Agent' and 'Principal' as follows:

An 'Agent' is a person employed to do any act for another or to represent another in dealings with the third person: the person for whom such act is done, or who is so



represented, is called the 'Principal'.

Thus, an agent is the connecting link between the principal and third person. This intermediary has the power to create legal relationship between the principal and third parties. The relationship of the principal and agent arises where the principal gives consent that the agent shall act on his behalf, and the agent consents so as to act.

Essential Features of Principal and Agent [Attorney]

The relationship between principal (donee of powers) and agent (attorney) is a sort of contractual relationship.

There are some essential features of this contractual relationship.

Principal must be competent to contract. Section 183 of the Contract Act clearly provides that any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent. This does mean that a minor cannot employ an agent. Any

such appointment of an agent by a minor is void.

Any person may become an agent. Full contractual capacity is not necessary to enable a person to represent another as agent. An infant can be an agent. But since he is incompetent to contract, he will not be responsible to his principal.

Though, for a contract to be effectual there must be an element of consideration, no consideration is necessary to create an agency.

Representative character and derivative authority is the distinguishing feature of an agency.

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