BANAKHAT / AGREEMENT TO SELL — CHECKLIST

This is a checklist, not a draft agreement.

FIRST QUESTION — IS POSSESSION PASSING?

1. Section 17(1A) does not use the word possession. What it says is that an agreement to transfer immovable property for consideration, made for the purposes of section 53A of the Transfer of Property Act and executed on or after 24 September 2001, must be registered — and if it is not, it has NO EFFECT for section 53A purposes. Section 53A is the shield that lets a buyer already in possession resist being put out.

2. So the working rule: if possession is passing now, REGISTER IT. The unregistered agreement leaves you holding the property with no statutory protection.

3. And do not read the converse as safety. A buyer who takes possession LATER under an unregistered agreement is equally without section 53A protection. If possession is coming to you at any stage before the sale deed, registration is the prudent course whatever the timing.

VERIFY BEFORE PAYING THE ADVANCE

1. The seller's title — Index-2 of their own purchase, and the chain behind it.

2. 7/12 and 8-A from AnyROR for agricultural land, or the City Survey record for urban property.

3. That the seller's name appears in the CURRENT mutation record.

4. Any mortgage, charge, loan or attachment on the property.

5. That every recorded co-owner is a party. A co-owner who does not sign has not agreed to sell.

6. Where the seller acts through a power of attorney: that it is registered, in force, and expressly authorises sale of this property.

THE AGREEMENT MUST CONTAIN

1. Full particulars of every seller and every buyer.

2. A precise description of the property, with area and the four boundaries.

3. The total consideration, the advance paid, and the mode and date of each further payment.

4. The date by which the sale deed will be executed, and who applies for what in the meantime.

5. Whether possession passes now or on completion — state it expressly, do not leave it to inference.

6. What happens if the BUYER defaults — forfeiture of advance, or refund, and on what terms.

7. What happens if the SELLER defaults — refund with or without compensation, and the buyer's right to seek specific performance.

8. Time for the seller to clear any defect in title the buyer discovers.

9. Who bears stamp duty, registration fee and incidental costs on the eventual sale deed.

10. Which documents the seller hands over at completion.

11. Jurisdiction, and how a dispute is to be resolved.

REMEMBER

A banakhat does not transfer ownership. Only a registered sale deed does. If a property is offered to you on a general power of attorney rather than a sale deed, you are not buying the property.