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Problems sellers of incomplete houses face

The problem for sellers is how to compute the period of holding, and what is the date of acquisition

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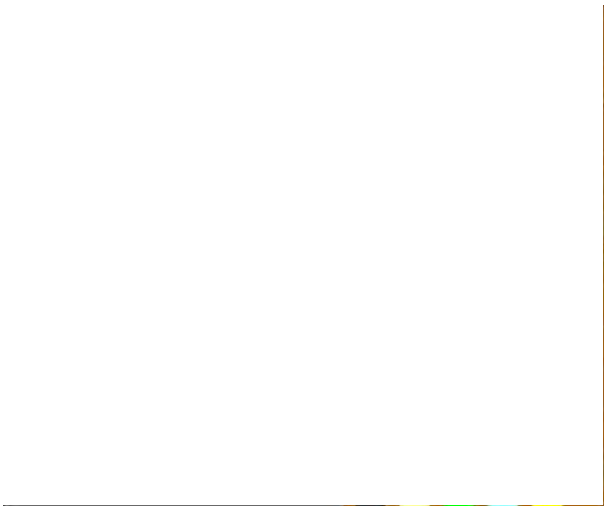
There is also significant uncertainty regarding the income tax treatment of the capital gains arising on resale of the property. Photo: Ramesh Pathania/Mint

Looking of an under-construction property comes with its own set of problems. Besides the commercial risk of the property construction not being completed in time, there is the

additional tax cost in terms of goods and service tax or **GST**, and the non-allowability of **housing loan interest** in computing taxable income during the construction period. There is also significant uncertainty regarding the income tax treatment of the capital gains arising on resale of the property, either while still under construction or after. So how is the **capital gains** taxed?

The holding period determines whether the gain is long-term or short-term, and the period for which cost indexation is available. The problem is how to compute the period of holding, and what is the date of acquisition. The law refers to the date from which the asset was first held, and not the date from which the asset was first owned. Further, the nature of the asset that is being sold is also relevant—the right to acquire the property (resale of under-construction property), or the property itself (resale after completion of construction).

In cases of resale of an **under-construction property**, what is the date from which the right comes into existence—on booking the property, on issue of the allotment letter, or on signing of the registered purchase agreement?

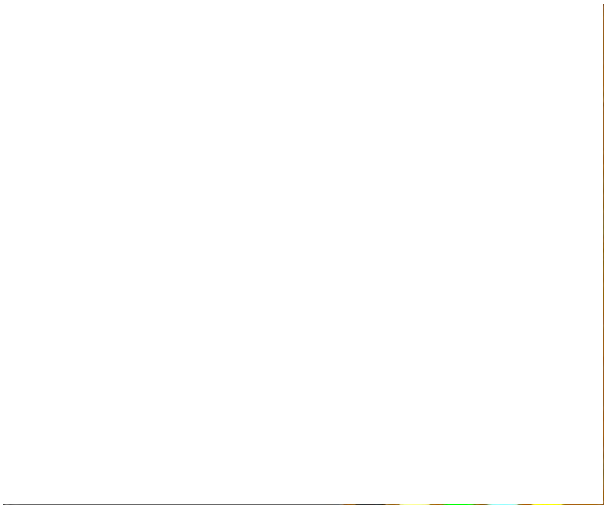


The Delhi high court has taken the view that it would be the date of signing of the registered purchase agreement, as only such agreement creates an enforceable right. As per this view, the date of acquisition would be the date of the purchase agreement, and the holding period as well as cost indexation (if long-term) would apply from this date. This view implies that the asset undergoes three forms from the date of initial booking. First, as an unenforceable right to receive a property arising on booking the property; second, getting converted into an enforceable right when the registered agreement is signed; and finally, getting converted into the property itself when possession is taken of the completed property.

A couple of tribunal decisions have taken the view that the right comes into existence from the date of allotment; this would be the date of acquisition of the right to acquire the

property. The period of holding and indexation have to be reckoned from the date of letter of allotment. As per this view, there are only two stages from the date of initial booking—the right to acquire the property (coming into existence on the date of allotment letter), and the property itself (coming into existence on taking possession after construction completion).

A complication arises in a situation in which a particular flat is initially allotted, but due to a change in the construction plans, another flat is allotted instead. Is the date of the original letter of allotment the date of acquisition, or is it the date of the revised letter of allotment? A couple of tribunal decisions indicate that the date of original allotment would be the relevant date.



Adding to the confusion, when such a property is sold in a completed state, a few high court decisions have taken the view that though the asset that is being sold is the property itself, and not the right to acquire the property, the date of acquisition of the property would be the date of the allotment letter. These decisions were in cases where possession was given by the seller on allotment, though the actual purchase deed was entered into much later. The taxpayer was the owner in substance, though not registered as the legal owner.

Therefore, one cannot generalise on the basis of these decisions that the date of allotment is the date of acquisition of the completed property.

Since the asset being resold is the property itself, which came into existence only on completion of construction, the better view is that the date of taking possession of the completed property would be the date of acquisition. This implies that in most cases, it is better to resell the right before taking possession, rather than resell the property soon after taking possession.

All in all, this issue is highly confusing even for tax professionals, let alone taxpayers. A large number of taxpayers are affected by this, as booking of an under-construction property is a fairly common phenomenon. To be fair to a taxpayer, the acquisition should be regarded as when the initial right was also acquired; that is how a buyer of property views it. Why should a change in the nature of the asset result in changes in the date of acquisition, particularly when such change in the nature of the asset is not regarded as a transfer giving rise to capital gains?

The Central Board of Direct Taxes or **CBDT** should issue a clarification that the date of acquisition of property in all such cases would be the date of letter of allotment, provided the plans have been sanctioned and an advance amount paid by the purchaser on or before the issue of letter of allotment. This would be a fair approach, ensuring that taxpayers are not saddled with unnecessarily high taxes.

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