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An Overview on Indian Real Estate

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INDEX

Sl. No.	Particulars	Page No.
1.	<u>An Introduction to Investment in Indian Real Estate</u>	1- 4
2.	<u>Indian Residential Real Estate</u>	5-6
3.	<u>Indian Commercial Real Estate</u>	6-7
4.	<u>Challenges Faced By Real Estate Sector & Sectors Facilitating Growth</u>	7-8
4.1	Retail Sector	
4.2	Special Economic Zone	
5.	<u>FDI</u>	9-12
5.1	FDI Projects	
5.2	Current Scenario	
5.3	FDI Guidelines For Application In Sector	
5.4	Sector Where FDI is not allowed	
5.5	FDI V/s FII	
6.	<u>NRI Investment In Indian Real Estate</u>	12-15
6.1	Acquisition /Transfer of Immovable Property by POI	
6.2	Repatriation of Sale Proceed by NRI/POI	
6.3	Investment by Foreign Companies	
7.	<u>Real Estate Investment Trust (REIT) & Major Foreign Investors In Real Estate Sector</u>	15-17
8.	<u>Model Real Estate Law</u>	18-19
8.1	Establishment of Real Estate Regulatory Authority	
8.2	Registration of Property	
8.3	Promoters	
8.4	Powers of Regulatory Authority ¹²	
8.5	Establishment of Appellant Tribunal	
8.6	Offences And Penalties	
8.7	Analysis of the Act	
9.	<u>Legislative Issues</u>	20-23
9.1	Various Laws In Real Estate Transaction	
9.2	Five Group of Laws in real Estate Business	
9.2.a	Land Related Laws Applicable To Delhi	
9.2.b	Environment Laws	
9.2.c	Construction Laws	

9.2.d	Registration Laws	
9.2.e	Labour Laws	
10.	<u>Comprehensive View of Major Indian Laws</u>	23-31
10.1	Transfer of Property Act (TPA), 1952 Five Modes of Property Transfer	
10.1.a	Sale	
10.1.b	Mortgage	
10.1.c	Lease	
10.1.d	Sub Lease	
10.1.e	Exchange	
10.1.f	Gift	
10.2	Indian Contract Act	
10.3	Indian Registration Act, 1908	
10.4	Specific Relief Act, 1963	
10.5	Land Acquisition Act, 1984	
10.6	Procedure for Land Acquisition	
10.7	Indian Evidence Act, 1872	
11.	<u>State Laws</u>	32-34
11.1	Rent Control Act	
11.2	Stamp Duty Act	
11.3	Property Tax	
12.	<u>Registration Process in India</u>	34-36
13.	<u>Documents and Clearance Requirements</u>	37-44
13.1	Legal Documents	
13.2	Revenue Documents	
13.3	Technical Documents	
14.	<u>Wills And Family Settlements</u>	44-49
14.1	Nomination	
14.2	Attestation	
14.3	Registration	
14.4	Forms	
14.5	Family Settlements	



REAL ESTATE

An Introduction

The term 'real estate' is defined as land, including the air above it and the ground below it, and any buildings or structures on it. It is also referred to as realty. It covers residential housing, commercial offices, trading spaces such as theatres, hotels and restaurants, retail outlets, industrial buildings such as factories and government buildings. Real estate involves the purchase, sale, and development of land, residential and non-residential buildings. The main players in the real estate market are the landlords, developers, builders, real estate agents, tenants, buyers etc. The activities of the real estate sector encompass the housing and construction sectors also.

The real estate sector in India has assumed growing importance with the liberalization of the economy. The consequent increase in business opportunities and migration of the labour force has, in turn, increased the demand for commercial and housing space, especially rental housing. Developments in the real estate sector are being influenced by the developments in the retail, hospitality and entertainment (e.g., hotels, resorts, cinema theatres) industries, economic services (e.g., hospitals, schools) and information technology (IT)-enabled services (like call centres) etc. and vice versa.

The real estate sector is a major employment driver, being the second largest employer next only to agriculture. This is because of the chain of backward and forward linkages that the sector has with the other sectors of the economy, especially with the housing and construction sector. About 250 ancillary industries such as cement, steel, brick, timber, building materials etc. are dependent on the real estate industry.

Indian Real estate sector is one of the most thriving industries of the present times. And if industry experts are to be believed, the prospects of Indian property market is going to attract all major investors to this vast land of opportunities in coming years thereby giving a boost to already raising foreign direct investment.

The Government of India has taken positive initiatives by offering the best in terms of real estate investment, by altering its FDI policies from time to time. With better infrastructure and availability of world class facilities, property in Indian prominent

cities are the most sought after proposition. No wonder, this part of the globe i.e. India will emerge as the ultimate place for investment in contemporary retail, residential or commercial space in coming years.

The boom in the sector has been so appealing that real estate has turned out to be a convincing investment as compared to other investment vehicles such as capital and debt markets and bullion market. It is attracting investors by offering a possibility of stable income yields, moderate capital appreciations, tax structuring benefits and higher security in comparison to other investment options.

With property boom spreading in all directions, real estate in India is touching new heights. However, the growth also depends on the policies adopted by the government to facilitate investments mainly in the economic and industrial sector. The new stand adopted by Indian government regarding foreign direct investment (FDI) policies has encouraged an increasing number of countries to invest in Indian Properties.

India has displaced US as the second-most favored destination for FDI in the world. The positive outlook of Indian government is the key factor behind the sudden rise of the Indian Real Estate sector - the second largest employer after agriculture in India. The growth curve of Indian economy is at an all time high and contributing to the upswing is the real estate sector in particular. Investments in Indian real estate have been strongly taking up over other options for domestic as well as foreign investors.

Why Invest In Indian Real Estate?

Flying high on the wings of booming real estate, property in India has become a dream for every potential investor looking forward to dig profits. All are eyeing Indian property market for a wide variety of reasons:

- It's ever growing economy which is on a continuous rise with 8.1 percent increase witnessed in the last financial year. The boom in economy increases purchasing power of its people and creates demand for real estate sector.
- India is going to produce an estimated 2 million new graduates from various Indian universities during this year, creating demand for 100 million square feet of office and industrial space.
- Presence of a large number of Fortune 500 and other reputed companies will attract more companies to initiate their operational bases in India thus creating more demand for corporate space.
- Real estate investments in India yield huge dividends. 70 percent of foreign investors in India are making profits and another 12 percent are breaking even.
- Apart from IT, ITES and Business Process Outsourcing (BPO) India has shown its expertise in sectors like auto-components, chemicals, apparels, pharmaceuticals and jewellery where it can match the best in the world. These positive attributes of India is definitely going to attract more foreign investors in the near future.

The relaxed FDI rules implemented by India have invited more foreign investors and real estate in India is seemingly the most lucrative ground at present. The revised investor friendly policies allowed foreigners to own property, and dropped the minimum size for housing estates built with foreign capital to 25 acres (10

hectares) from 100 acres (40 hectares). With this sudden change in investment policies, the overseas firms can now put up commercial buildings as long as the projects surpass 50,000 square meters (538,200 square feet) of floor space.

Total construction investments	(Rs.billion)		(%)
	Fiscal years 2002-2006	Fiscal years 2007-2011	CAGR*
Real estate	10,218	18,517	12.63
• Housing	9,810	17,338	12.06
• Commercial real estate	408	1,179	23.64

*CAGR: Compound Annual Growth Rate

Source: CRISIL Research Construction Annual Review (May 2007)

RESIDENTIAL REAL ESTATE

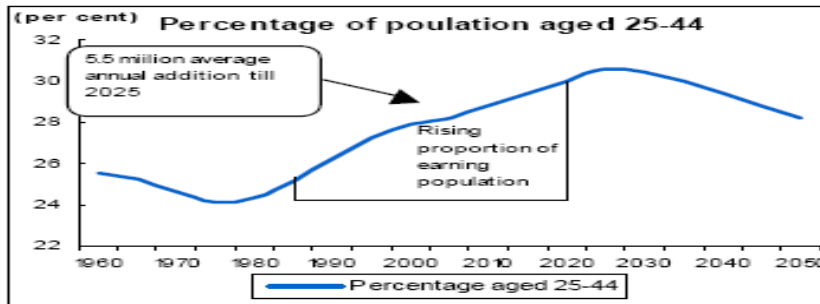
The main factors that are driving demand in the residential segment are described in more detail below:

- **Changing demographics and increasing affluence:** India's demographics have been impacted by large increases in employment opportunities, people in the earning age bracket (25 to 44 year olds) and higher salaries. Such factors are increasing disposable incomes and driving demand for new residential and retail properties.

The table below shows historic and projected annual growth rates for different segments of India's population, classified by levels of annual income. The figures highlight that strong growth is expected especially in the higher income segments. For example, the number of households with annual incomes of between Rs. 2 million and Rs. 5 million per year, Rs. 5 million and Rs. 10 million per year and in excess of Rs. 10 million per year is expected to increase in size by 23%, 26% and 28%, respectively, between financial year 2002 and 2010, as illustrated by the table. These higher income segments of India's growing middle class are expected to provide a strong impetus for the continued development and growth of the Indian real estate sector.

Household Income (Rs. mn p.a.)	Households in FY96 ('000)	Households in FY02 ('000)	Expected households in FY06 ('000)	Expected households in FY10 ('000)	CAGR (FY96-02) (%)	CAGR (FY02-06) (%)	CAGR (FY06-10) (%)
>10	5	20	52	141	26.0	27.0	28.3
10 to 5	11	40	103	255	24.0	26.7	25.4
5 to 2	63	201	454	1,037	21.3	22.6	22.9
2 to 1	189	546	1,122	2,373	19.3	19.7	20.6
1 to 0.5	651	1,712	3,212	6,173	17.5	17.0	17.7
0.5 to 0.2	3,881	9,034	13,188	22,268	15.1	9.9	14.0
0.2 to 0.009	28,901	41,262	53,276	75,304	6.1	6.6	9.0
<0.009	131,176	135,378	132,249	114,394	0.5	(0.6)	(3.6)
Total	164,877	188,193	203,656	221,945			

- **Large segment of the population economically active:** India's growing population in the earning age bracket is recognized as a key driver of growth in housing demand. The size of India's main working age group, 25 to 44 year olds, has increased over the last two decades. According to CRIS INFAC estimates, as of 2005, approximately 28.2% of India's population was in this age bracket. This figure is expected to rise to approximately 30.6% by 2025, an increase of approximately 5.5 million people each year, which could translate into a further 2.75 million new households per year. Also, the average age of a home purchaser has fallen from 42 to 31 years old (Source: CRISINFAC Retail Finance).



Source: UN Population Division 2002 Revision and CRIS INFAC

- Shift in consumer preferences from renting to owning houses:** Due to the changing demographic profile in India, there has been a steady decline in the portion of households living in rented premises. To a certain extent, this may be attributed to rising income levels. However, with fewer properties available to rent today and an increase in the rents being charged to tenants, consumers have increasingly been investing in property. Factors such as the increase in the standard of living of consumers and the greater availability of financing for consumer expected to fuel a further decline in the number of households renting premises (CRIS INFAC Annual Review on Housing Industry,)

Year	Urban areas (per cent)			Total
	Owned	Hired	Others	
1981	44.6	50.8	4.6	100.0
1991	63.0	34.0	3.0	100.0
2001	60.7	33.8	5.5	100.0
2002	60.0	33.9	6.1	100.0
Rural areas				
1981	91.2	3.4	5.4	100.0
1991	95.0	3.0	2.0	100.0
2001	92.9	4.3	2.8	100.0
2002	93.1	4.1	2.8	100.0

Source: MUDPA, MOSPI, NSSO and CRIS INFAC

- Increasing Urbanization:** India has witnessed a trend of increased urbanization as people migrate from rural to urban areas seeking employment opportunities. According to CRIS INFAC estimates, India's urban population is expected to grow at a CAGR of 2.6% over the five year period from financial year 2005 through 2010, as illustrated in the table below. Urban areas must accommodate this increase in population which, in turn, is expected to increase in demand for new urban areas and townships (CRIS INFAC Annual Review on Housing Industry, January 2006).

COMMERCIAL REAL ESTATE

- Commercial locations in India:** Over the past five years, locations such as Bangalore, Gurgaon, Hyderabad, Chennai, Kolkata and Pune have established themselves as emerging business destinations that are competing with traditional business destinations such as Mumbai and Delhi, especially with respect to their commercial real estate sector. These emerging destinations have succeeded in matching their human resources base with necessary skill sets, competitive business environments, operating cost advantages and improved urban infrastructure. The current relative position of the urban growth centers in India can be summarized

either as (i) mature, (ii) in transition, (iii) emerging, or (iv) tier III destinations. These classifications are described below:

- **Mature Destinations:** Locations such as Mumbai and Delhi have a metropolitan character and have consistently been traditional business destinations with a favorable record in attracting investment opportunities. However, factors such as increasing operating costs and constraints on the availability of land may impede such areas from sustaining a high rate of growth in their respective business districts. Therefore, commercial real estate growth is expected to be focused in the suburbs and other peripheral locations of these cities. For example, with respect to Mumbai, commercial real estate growth is expected to be focused in areas north of central Mumbai and Navi Mumbai and to the east of the city center.
- **Destinations in Transition:** Locations such as Bangalore and Gurgaon have human resource potential, quality real estate and operating cost advantages. As such, these locations are best positioned to attract investment in the near future. Lack of infrastructure is currently the main inhibiting factor precluding robust growth in these areas.
- **Emerging Destinations:** Locations such as Pune, Chennai, Hyderabad and Kolkata offer cost advantages, well developed infrastructure, supportive city governments and minimal restraints on the supply of real estate. While the number of large occupiers in these locations has yet to reach optimum levels, these locations attract a large amount of real estate investment. Growth in these emerging destinations is predominantly led by the expansion and consolidation plans of corporations in the IT and ITES sectors.
- **Tier III Cities:** Locations such as Jaipur, Coimbatore, Ahmedabad, and Lucknow have a large talent pool combined with low cost real estate. As such, businesses in the technology sector have demonstrated a growing interest in these locations as they seek to expand their operations.

High demand for commercial real estate

The commercial property market has been growing at an annual rate of approximately 30% over the past eight years across major locations in India. Moreover, there is an up shooting demand for 200 million sq. ft over the next five years.

Real estate industry research has also thrown light on investment opportunities in the commercial office segment in India. The demand for office space is expected to increase significantly in the next few years, primarily driven by the IT and ITES industry that requires an projected office space of more than 367 million sq ft till 2012-13. Real estate investments are expected to grow from Rs.10,218 billion invested between 2002-2006 to Rs.18,517 billion over 2007-2011.

Growth in Population	2001	2005	2010	CAGR (fiscal 2005 TO fiscal 2010)
Urban	285,355	316,921	360,590	2.60%
Rural	741,660	775,575	818,488	1.10%
Total	1,027,015	1,092,496	1,179,078	1.50%

CHALLENGES FACING THE INDIAN REAL ESTATE SECTOR

- **Highly regional reach of existing players:** Considering the peculiar features of the real estate sector such as the differing tastes of population across various geographies, difficulties in mass land acquisition on unfamiliar terrain, absence of business infrastructure to market projects at new locations, wide number of approvals to be obtained from different authorities at various stages of construction under the local laws, and the long gestation period of projects, most real estate developers in India tend to hover in tried and tested areas where the conditions are most familiar to them. As a result, currently there are very few players in the country, who can claim to have pan-national area of operations.
- **Majority of market belonging to unorganized segment:** The Indian Real Estate Sector is highly fragmented with the disorganized segment comprising of the small builders and contractors accounting for a majority of the housing units constructed. As a result, there is a lesser degree of transparency in dealings or sharing of data across players.
- **Demand dependent on many factors:** A challenge that the real estate developers face is generating the requisite demand for the properties constructed. The factors that influence a customer's choice in property is not restricted to quality alone, but is dependent on a number of other external factors including proximity to urban areas, amenities such as schools, roads, water supply which are often beyond the developer's sphere of reach. Also, demand for housing units is also influenced by policy decisions relating to housing incentives.
- **Increasing Raw Material Prices:** Construction activities are often funded by the client who makes cash advances at different stages of construction. In other words, the final amount of revenue from a project is pre-determined and the realization of this revenue is scattered across the period of construction. A big challenge that real estate developers face is dealing with adverse movements in costs. The real estate sector is dependent on a number of components such as cement, steel, bricks, wood, sand, gravel and paints. As the revenues from sale of units are pre-decided, adverse price changes in any of the raw materials directly affect the bottom lines of the developers.
- **Interest Rates:** One of the main drivers of the growth in demand for housing units is the availability of finance at cheap rates. Rising interest rates may dampen the growth rate of demand for housing units.
- **Tax incentives:** Interest payment on housing loans are tax deductible and it is one of the major factors influencing demand. The phasing out available tax incentives could affect the existent demand for housing units.

Retail sector facilitating real estate growth

Apart from the IT and ITES industry influencing the Indian real estate sector, India is also getting into the knowledge based manufacturing industry on a large scale. Retail, one of India's largest industries, has presently emerged as one of the most dynamic and fast paced industries of our times with several players entering the market. The contemporary retail sector in India which is reflected in sprawling shopping centers and multiplex- malls is also contributing to large scale investments in the real estate sector with major national and global players investing in developing the infrastructure and construction of the retailing business.

Accounting for over 10 per cent of the country's GDP and around eight per cent of the employment retailing in India is gradually inching its way toward becoming the next boom industry. And if industry experts are to be believed, the prospects of both the sectors are mutually dependent on each other. Another emerging trend in real estate sector in India is investment in the hospitality or hotel industry. The exceptional boom in inbound tourism and the IT sector has also led to an unprecedented shortage of rooms, with hotels all over the country witnessing their highest-ever occupancy rates.

SEZ's-The emerging investment option : Moreover, as real estate sector expands beyond the city limits with government promoting industrial belts, real estate developers are eyeing **special economic zones** (SEZ's) as an extension of their business. Several upcoming special economic zones are also expected to provide the momentum to the commercial office space development in related area where the land comes cheaper; and a SEZ developer is entitled for tax exemptions like a 10-year corporate tax holiday. On the whole, Indian real estate sector is slated to mark the growth to \$40-50 billion in the next five years. Also, India is witnessing developments of hi tech cities, a trend that has been embraced by most Indian cities. Further, India's improving image, as a corporate base for Asian markets and strong growth opportunities in emerging sectors such as financial services, pharmaceuticals, telecommunications, and biotechnology will also boost demand and broaden the occupier base.

FDI-Inviting Real Estate Investments: FDI, popularly known as Foreign Direct Investment is encouraged in the country. Prior to 2005, only NRI's and PIO's were allowed to invest in the housing and the real estate sectors. Foreign investors other than NRIs were allowed to invest only in **development of integrated townships and settlements** either through a wholly-owned subsidiary or through a joint venture (JV) company along with a local partner. India fully opened doors for FDI in real estate in 2005. It helps to boost the national economy. FDI is encouraged in the following sectors in India: -

- Development of Hotels
- Travel and Tourism Industry
- Hospitality
- Development of Township
- Development of Commercial Real Estate
- Infrastructure development
- Construction of Resorts
- Constructing Educational institutions and recreational sites
- SEZ (or Special Economic Zones)

Not surprisingly, most foreign investors have aimed India in a big way, largely through joint ventures. Along with curtailing the risk factor, it provides the participating companies an exit route. The Government of India's liberalization and economic reforms programme encourages industrial policy reforms that have reduced the industrial licensing requirements, removed restrictions on investment and expansion, and facilitated easy access to foreign technology and FDI. Increased inflow of investments arising out of flexible FDI policies is sure to have a direct and positive impact on the real estate scenario of India. More investments mean more job opportunities and more jobs means more workforces. This has created a huge demand and supply gap in housing in India. The booming IT industry has also resulted in a large section of young investors who with high-

income jobs chose real estate as an investment option. The potential of India's property market has a revolutionizing effect on the overall economy of India as it transforms the skyline of the Indian cities mobilizing investments segments ranging from commercial, residential, retail, industrial, hospitality, healthcare etc. But maximum growth is attributed to its growth from the booming IT sector, since an estimated 70 per cent of the new construction is for the IT sector. Not surprisingly, most foreign investors have aimed India in a big way, largely through joint ventures. Along with curtailing the risk factor, it provides the participating companies an exit route.

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FDI permitted 100% under Automatic Route. FDI Projects Allowed

- Townships
- Housing
- Built-up Infrastructure
- Construction Development

which would include but not limited to housing, Commercial Premises, Hotels, resorts, Hospitals etc

FDI Current Scenario

- Foreign direct investment (FDI) in India's real estate and housing market jumped 80 times between 2005 and 2010 from Rs Rs 171 crore to Rs 13,586 crore of the total 1,614 projects in which foreign investors have put in money since 2005, 422 were cleared by the Reserve Bank of India's Mumbai office, followed closely by 316 in Delhi

Guidelines for FDI Application in Indian Real Estate

Minimum Area

- In case of development of serviced housing plots, 10 hectares (25 acres)
- In case of construction-development projects, built-up area of 50,000 sq m.
- In case of a combination project, any of the above two conditions

Investment

- Minimum capitalization for wholly owned subsidiaries - US\$ 10 million for JV with Indian partners - US\$ 5 million (to be brought in within 6 months of commencement of business)
- Original Investment cannot be repatriated before a period of three years from completion of capitalization.
- The investor may exit earlier with prior approval from Foreign Investment Promotion Board (FIPB).

Time frame & rules

- At least 50 per cent of the project to be developed within five years from the date of obtaining all statutory clearances.
- Investor cannot sell undeveloped plots - where roads, water supply, street lighting, drainage, sewerage and other conveniences are not available.
- Project to conform to the norms and standards of Local Body concerned
- All necessary approvals including layout plans, infrastructure facilities as per the prevailing laws needs to be procured
- The Local Body concerned which approves the layouts etc. would monitor compliance by the Developer

Hotels & Tourism, Hospitals & SEZ Projects

- The Hotels & Tourism, Hospitals and SEZ Projects have benefits not attracting conditions as to Minimum Area of Development, Capitalisation and Time frame
- However, FDI in SEZ will be subject to SEZ Act and Policy of the Department of the Commerce in this regard.

FDI not allowed

As per paragraph 5.1. (h) and 5.23.10 of Chapter V of DIPP which expressly prohibits in Real Estate business or Construction of Farm Houses. It should be noted that FDI in any form is prohibited in Real estate business. FDI is not allowed in a partnership or proprietary concern if it is engaged in real estate business. Even investment by a Non Resident India or a Person of Indian Origin in such partnership or concern is not allowed. Real estate business means buying and selling of real estate or trading in Transferable Development Rights (TDR's).

FII Vs FDI

- Real Estate projects can attract FDI up to 100 percent, subject to certain conditions. Previously company not willing to meet the stringent project conditions, the FII route was used to overcome the rules and bring in foreign investment. All the company needs to do was get FIIs that are registered with SEBI to invest in the IPO
- Though RBI has objected towards the IPO investment through FII where the conditions are not fulfilled however still FII are been done through the secondary market

NRI Investment in Real estate

The real estate sector in India is becoming an increasingly attractive option for investments promising good returns, for both Indians and NRIs. Given the

money/risks involved, the importance of making an informed decision and investment that is in compliance with rules governing the purchase / sale / other modes of transfer of immovable property cannot be stressed enough. An NRI is a citizen of India resident outside India. PIO refers to an individual (not being a citizen of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Nepal or Bhutan), who (a) at any time held an Indian passport; or (b) who or either of whose parents/grandparents were citizens of India by virtue of the Constitution of India or the Citizenship Act, 1955. Acquiring immovable property in India by person resident outside India is regulated in terms of **Section 6(3) (i) of the Foreign Exchange Management Act (FEMA), 1999** as well as by the regulations contained in Notification issued by RBI viz. **Notification No FEMA. 21/2000-RB** as amended from time to time. The person resident outside India is categorized as Non- Resident Indians (NRIs).

Acquiring property NRIs and PIOs are permitted to purchase residential and commercial property in India without seeking any prior permission and without any limitations on the number or size of such properties. When purchasing a residential/

commercial property, an NRI/PIO can make requisite payments only from funds that have been remitted to India through normal banking channels or from funds held in an NRE/NRO/FCNR(B) * account maintained in India. They are not permitted to make payments against such purchase in foreign currency or by traveller's cheques or any other mode except those specified by RBI. However, NRIs/ PIOs wishing to purchase agricultural land/plantation property/farmhouse in India have to seek the specific permission of Reserve Bank of India (RBI) which considers such proposals in consultation with the Government of India. The regulations under the **Notification No FEMA 21 dated May 3, 2000** permit a NRI or a PIO to acquire immovable property in India other than agricultural land or, plantation property or farm house. Further, foreign companies who have been permitted to open an office in India are also allowed to acquire any immovable property in India, which is necessary for or incidental to carrying on such activity. This stipulation is not available to entities which are permitted to open liaison offices in India.

Transferring residential/ commercial property	NRI	PIO
By sale	Can sell to person resident in India; NRI or PIO	Can sell only to a person resident in India
By gift	Can gift to person resident in India; NRI; or PIO. If property is being gifted to a foreign national of non-Indian origin, prior permission of RBI is required	Can gift to person resident in India; NRI; or PIO. If property is being gifted to a foreign national of non-Indian origin, prior permission of RBI is required

Transferring agricultural/plantation / farm house property	NRI	PIO
By sale	Can sell only to person resident in India	Can sell only to a person resident in India who is a citizen of India
By gift	Can gift only to person	Can gift only to a person

	resident in India	resident in India who is a citizen of India
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Further, NRIs and PIOs may acquire residential and commercial property (not being agricultural land/ plantation property/farmhouse) by **way of gift** from a person resident in India or another NRI/PIO. NRIs and PIOs can acquire by **way of inheritance** any immovable property in India, including agricultural land/plantation property/farmhouse. Holding immovable property NRIs and PIOs do not require any prior approval for leasing / renting out residential/commercial properties owned by them (irrespective of whether such property is purchased from rupee/foreign exchange funds. The rental money received can either be credited to an NRO/NRE account or remitted abroad. If current income such as rental income, pension, interest, etc. is being remitted abroad, NRIs and PIOs need appropriate certification by a qualified Chartered Accountant, certifying that the amount proposed to be remitted is eligible for being remitted and applicable taxes on it have been paid for Transfer The restrictions and prescriptions on transfer of immovable property by a PIO/NRI differ with respect to the nature of immovable property being transferred and mode of transfer viz. sale and gift.

Acquisition and Transfer of Immovable Property in India by a person resident outside India.

Investment by NRI - The Investments made by NRI in any of the Township, Housing, Built Up, infrastructure and Construction Development Projects also does not attract conditions as to Minimum Area of Development, Capitalisation and Time frame

Foreign national of non-Indian origin - Such person resident outside India cannot purchase any immovable property in India. But, he/she may take residential accommodation on lease provided the period of lease does not exceed five years. In such cases, there is no requirement of taking any permission of or reporting to Reserve Bank

Acquisition by NRI & PIO in India

- Permitted to purchase Residential and Commercial Property without RBI'S Permission
- No Limitation on the Number / size of the Property
- Purchase of Agricultural Land/ Plantation Property/ Farm Houses requires RBI Permission
- PIO should not be a citizen of Pakistan , Bangladesh , Sri Lanka , Afghanistan , China , Iran , Nepal , Bhutan
- Citizen of above Countries not permitted to acquire Immovable Property except by way of Lease for less than five years without permission of RBI
- Payment can be made by NRI / PIO out of
 - i. Funds remitted to India through normal banking channel or
 - ii. Funds held in NRE / FCNR / NRO account maintained in India.
- No payment can be made either by traveler's cheque or by foreign currency notes and also no payment can be made outside India.

Repatriation of Sale Proceeds by NRI/PIO

- Property acquired as per rules prevalent
- In case the payment is made for acquisition out of foreign exchange sources through normal Banking Channels/NRE/FCNR the amount repatriated should not exceed the foreign currency equivalent paid
- Capital Gains may be credited to NRO Account from which NRI/PIO may repatriate the sale proceeds abroad up to US\$ 1 million per financial year subject to tax compliance
- In case the payment is made for acquisition out of balances held in NRO Account out of rupee sources NRI/PIO may repatriate the sale proceeds abroad up to US\$ 1 million per financial year subject to tax compliance
- Remittance will be permitted on submission of certificate of CA in form prescribed by CBDT
- Repatriation in the above cases are also restricted to not more than two such residential properties.

Immovable Property purchase by Foreign Company in India

- A foreign company establishing Branch Office or other place of business in India, can acquire any immovable property in India, which is necessary for or incidental to carrying on such activity.
- The payment for acquiring such property to be made by way of foreign inward remittance through proper banking channel. A declaration in *form IPI* should be filed with Reserve Bank within ninety days from the date of acquiring the property.
- On winding up of the business, the sale proceeds of such property can be repatriated *only with the prior approval of Reserve Bank.*
- Acquisition of immovable property by entities who had set up Branch Offices in India and incorporated in Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal and Bhutan would require prior approval of RBI
- Foreign Company has establishing Liaison Office can not acquire immovable property . In such cases, Liaison Offices, can take property by way of lease not exceeding 5 years.
- Foreign company which has established a Branch Office or other place of business in accordance with FERA/FEMA regulations has general permission to mortgage the property with an authorized dealer in India

Real Estate investment trust

As of January 2010, India was formulating legislation for REITs in the Indian real estate market. Once introduced these Indian REITs (country specific/generic version I-REITs) will help individual investors enjoy the benefits of owning an interest in the securitized real estate market. The best benefit being that of fast and easy liquidation of investments in the real estate market unlike the traditional way of disposing real estate. The government and Securities and Exchange Board of India SEBI through various notifications is in the process of easing the norms of investing in real estate in India directly and indirectly through foreign direct investment, through listed real estate companies, mutual funds etc. With the current real estate boom and the market being flooded with Initial Public Offer of various listed real estate companies in India it will be the best time for investors to own a share of the profiting market economy. Legislative framework, revised investment norms, a favourable investment opportunity, and a clear taxation policy will provide the right kind of investing opportunity in India in the time to come.

India in the recent times has been the potential goldmine for investors all over the world. With a booming economy and liberalized government policies, investors from all over the globe are choosing India as their business destination. As Indian real estate rules the economic vibes of the country, the most important beneficiary of the recent boom in this sector is the investors. Driven by positive growth in the real estate scenario and the Government of India's decision to allow 100% foreign direct investment (FDI) under the 'automatic route' in the construction and development there has been a significant rise in the number of Indian as well as foreign investors in the realty sector.

While top developers in India like the DLF, Ansal, Omaxe, Sobha Developers, Bengal Ambuja, Unitech, Vatika and Sahara Infrastructure among a few have initiated large scale real estate developments in the residential sector catering to all segments of the society. With more corporate houses entering real estate, a corporatisation of real estate can be witnessed. Real estate is much more professionally managed with a number of big players (developers as well as Corporates) entering the business. There are no monopolistic positions in real estate, as there are more players today in the development game. The greater the number of players, the healthier the competition and the beneficiary of all this would at last be the end-user.

In the residential segment, with the increase of disposable incomes and easy availability of home loans, most builders are trying to woo investors with lucrative features and the latest inclusions are premium luxury apartments and condominiums fitted with the most modern accessories in home luxury.

The commercial ventures include state-of-the-art office spaces, sprawling malls, multiplexes and retail outlets. Reports indicate that around 200 new malls with a combined retail space of Rs.2.5 crore/sq.ft and investment of Rs.12.500 crore are expected to come up in this year. The boom and the relaxation in FDI are also attracting interest from foreign investors to invest in India and many are seen tying up with the local developers in expanding their business. As the competition in the market is intense, builders are going out of their way to be different and provide quality services

Major Foreign Investors in Real Estate Sector in India

- Emmar Properties, of Dubai
- UK-based construction major, Laing O'Rourke (LOR)
- Morgan-Stanley Real Estate
- Vancouver-based Royal Indian Raj International Corporation (RIRIC)

As the real estate investments open up opportunities for the associated fields like **Home Loans** and **Home Insurance**, a number of global insurance companies have shown interest in the sector. This include companies like Cesma International from Singapore, American International Group Inc (AIG), High Point Rendel of the UK, Colony Capital and Brack Capital of the US, and Lee Kim Tah Holdings to name a few. As the Indian real-estate companies are in the expansion process to meet the demand for homes, offices and retail space as overseas companies are allowed in more industries and faster economic growth boosts middle-class incomes in the country. This has also generated the need for funds for investment into the realty sector creating the need for organized finance.

As India opens up its market to foreign players there is bound to be a competitive edge to give quality-based performance for customer satisfaction which will

consequently bring in quality technology and transparency in the construction and realty sector. And the ultimate winner irrespective of all is surely to be the buyers.

Model Real Estate Law

The ministry of housing and urban poverty alleviation has recently unveiled the model real estate (Regulation of development) Act on **September 23, 2009**. In order to promote planned and healthy real estate development of colonies and apartments with a view to protecting consumer interest on the one hand and to facilitate smooth and speedy urban construction on the other; Ministry of Housing & Urban Poverty Alleviation has drafted a draft Model Real Estate (Regulation of Development) Act.

The draft bill seeks to establish a Regulatory Authority and an Appellate Tribunal to regulate, control and promote planned and healthy development and construction, sale, transfer and management of colonies, residential buildings, apartments and other similar properties, and to host and maintain a website containing all project details, with a view to protecting, on the one hand the public interest in relation to the conduct and integrity of promoters and other persons engaged in the development of such colonies and to facilitating on the other the smooth and speedy construction and maintenance of such colonies, residential buildings, apartments and properties and for matters connected therewith or incidental thereto.

Key provision of the model act

1. Establishment of a Real Estate Regulatory Authority

The Model Act provides for establishment of a Real Estate Regulatory Authority ("Regulatory Authority"), to comprise of a Chairperson and two members to be appointed from amongst persons having special knowledge and professional experience in the field of public administration.

2. Registration with Regulatory Authority

The Model Act provides for compulsory registration of all real estate projects where:

- (i) the area of land proposed to be developed exceeds one thousand square meters; or
- (ii) the number of apartments proposed to be constructed exceeds four.

For obtaining registration, besides furnishing other details and information, the Promoter would have to furnish a bank guarantee equal to 5% of the estimated costs of development works to the local authority or other authority having power to give permission for construction or development of land. The registration is valid for three years. Where delay in completion of the project is for reasons beyond the control of the Promoter, he can seek 2 renewals of 1 year each.

3. Obligations of Promoter

The Model Act defines rather exhaustively who can be termed a “Promoter” and goes on to detail the obligations and responsibilities of the Promoter. The key obligations include: -

(i) To make available to all persons intending to buy a plot or apartment, all information and documents relating to the property. This would include a full and true disclosure of the nature of the title which has to be duly certified by a revenue authority not below the rank of Sub-divisional Magistrate.

(ii) File with the Regulatory Authority, copy of every advertisement or prospectus he intends to publish or issue for inviting person to purchase plots or apartments and make advances or deposits for the same.

(iii) Upload on the website of the Regulatory Authority, all details of the project and the names of property dealers or brokers dealing in the project.

(iv) Enter into a registered Agreement for Sale in a specified format, with the allottee intending to purchase the plot or apartment before accepting any deposit or advance.

(v) Not mortgage the plot or apartment without the consent of the person intending to purchase it after execution of the Agreement for Sale.

4. Transparency and Powers of the Regulatory authority

The Regulatory Authority shall host the website of records of all real estate projects in its jurisdiction and shall ensure compliance of the obligations cast upon the Promoters and allottees. The Regulatory Authority has the power to decide any dispute between a Promoter and an allottee regarding failure on either part to meet its obligations

5. Establishment of Appellate Tribunal

The Model Act provides for establishment of a Real Estate Appellate Tribunal (“Appellate Tribunal”) to adjudicate any dispute and hear and dispose of appeal against any direction, decision or order of the Regulatory Authority. The Model Act also ousts the jurisdiction of civil courts to entertain any suit or proceeding in respect of any matter which the Regulatory Authority or Appellate Tribunal is empowered to determine.

6. Offences & Penalties

In order to give teeth to the provisions of the Act, penalties have been prescribed for violations of the provisions of the Act. The penalties range from up to three years imprisonment for not registering a project or for not complying with the orders of the Appellate Tribunal to monetary penalties which may be ascertained on a daily basis for non compliance or as a percentage of the development costs or sale price.

Analysis

This Model Act is welcome step as it seeks to bring in much – needed transparency by seeking to regulate the so far unregulated real estate sector in India. When enacted, it will provide considerable relief to the ordinary investor who has to go through many obstacles in purchasing property and at times is even duped by small developers, builders or brokers. By imposing strict obligations on the Promoters, the Model Act seeks to ensure that construction is completed in a timely manner and on completion the buyer gets the property as

per the specifications that he had been promised. Further, by seeking to establish the Regulatory Authority and Appellate Tribunal, the Model Act provides for a forum where disputes could be heard by a specialized expert body, which would result in expeditious dispensation of justice. Litigation in India is known to be prolonged process and only remedies available to a consumer in a dispute with a developer are to file a suit in a court of law or approach the consumer courts. With the enactment of the Model Act, the consumers will now be able to have their grievances redressed through a specialized body.

The Model Act also ensures that allottees do not default in making payments and the Promoters receive periodical payments. By providing for penalties for both the Promoters and allottees, The Model Act seeks to ensure than non compliances would be minimal. Thus once enacted, the Model Act will ensure that all real estate transactions are carried out in a just, fair and lawful manner.

Furthermore, the Model Act makes an Agreement for Sale compulsorily registrable. The Indian Registration Act, 1908 does not provide for compulsory registration of an Agreement for Sale since such an agreement by itself does not create any interest in immoveable property but merely gives the right to obtain another document, which when executed would create right, title and interest in immoveable property. Through various amendments in local state laws a few states in India have provided for compulsory registration of the Agreement for Sale. However, with the enactment of the Model Act by the States all Agreements for Sale would require mandatory registration, so far as purchase of properties under the new law are concerned. This would further protect the interests of property purchasers.

Conclusion

-Though the Model Act is a boon for property purchasers, it has however received much criticism from developers for not providing relief for them in getting permissions and approvals expeditiously. The developers in India have long complained about the delay and difficulty in obtaining approvals for construction from various government agencies and the need for single window approvals. This issue has not addressed in the Model Act.

-The Model Act also does not make it clear whether it will be applicable only to projects where development has already been initiated.

-This bill does not look into responsibilities and duties of other stakeholders. Developers feel that It will only work as a consumer protectionist act. All stakeholders like brokers, contractors, architects should be made accountable and not just the developer.

Some key highlights of the model act are as follows:

- Builders are required to seek registration for their projects with the prescribed real estate regulatory authority before marketing of the same. The registration shall be valid for three years with a provision of two years renewals.
- Builders will be required to furnish bank guarantee amounting to 5 percent of the total project cost which could be encashed by the regulator in the event of default in completion of project.
- The proposed advertisement and names of brokers will also be required to be provided to the regulator.
- Builders shall be required to enter into the agreements of sale with the perspective buyers before accepting advances.

- All allottees shall be entitled to claim refund in the event of default.

LEGISLATIVE ISSUES

Various Laws Involved in Real Estate Transactions

The various laws governing the real estate transactions have been abridged as follows:

- **The Indian Contract Act, 1872.**
- **The Transfer of Property Act, 1882.**
- **The Indian Registration Act, 1908.**
- **The Specific Relief Act, 1963.**
- **The Urban Land (Ceiling & regularization) Act, 1976.**
- **The Land Acquisition Act, 1894.**
- **The Indian Evidence Act, 1872.**
- **The Indian Stamps Act, 1899.**
- **The Rent Control Act.**
- **The State Laws governing the real estate.**
- **The Consumer Protection Act, 1986**
- **The Arbitration & Conciliation Act, 1996**
- **Income Tax Act, 1961.**
- **The Wealth Tax Act, 1957**
- **The Co-operative Societies Act, 1912**
- **The Multi-state Co-operative Societies Act, 2002**

The Laws applicable to Real Estate Business can be divided in five groups:

- 1. Land Related Laws**
- 2. Environment Laws**
- 3. Construction Laws**
- 4. Registration Laws**
- 5. Labour Laws**

LAND RELATED LAWS APPLICABLE TO DELHI

-THE TRANSFER OF PROPERTY ACT 1882 (Transfer of right & interest in immovable property)

-THE LAND ACQUISITION, ACT, 1894 (Acquisition of land for public purpose by Govt.)

-THE DELHI LAND HOLDINGS (CEILING) ACT, 1960 (land means: land held for agriculture, horticulture or animal husbandry including pisciculture and poultry farming)

-THE DELHI LAND REFORMS ACT, 1954 (Tenancy of land)

-THE DELHI LAND REVENUE ACT, 1954 (Mutation)

- INDIAN CONTRACT ACT 1872 (Various agreements, leases etc)

ENVIRONMENT LAWS ARE TO:-

-protect the environment from pollution due to development & construction activities & to restrict construction in prohibited areas

Environment laws applicable:-

-ENVIRONMENT PROTECTION ACT 1986 (Environment Clearance)

-WATER (PREVENTION AND CONTROL OF POLLUTION) Act, 1974 (Consent to establish & consent to operate)

-THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981 (Standard of Air)

CONSTRUCTION LAWS ENSURE PLANNED DEVELOPMENT AND SAFE BUILDINGS FIT FOR HUMAN HABITATIONS BY PROVIDING:-

- MASTER PLAN
- ZONAL PLAN
- BUILDING PLAN
- FIRE SAFETY
- ELECTRICITY
- WATER SUPPLY
- SEAWAGE/ DRAINAGE

Construction laws applicable

- THE DELHI DEVELOPMENT ACT, 1957 (Master plan, zonal plan & Conversion)
- DELHI MUNICIPAL CORPORATION ACT, 1957 (Building Plan approval)
- THE NEW DELHI MUNICIPAL CORPORATION ACT, 1994 (Building Plan approval)
- THE DELHI JAL BOARD ACT, 1998 (water supply)
- DELHI FIRE PREVENTION AND FIRE SAFETY ACT, 1986 (Fire Safety in building)
- THE ANCIENT MONUMENTS AND ARCHAEOLOGICAL SITES AND REMAINS ACT 1958 (permission to construct near ancient monument)
- THE AIRCRAFT ACT, 1934 (Height Clearance)
- THE ELECTRICITY ACT, 2003 (Electricity Connection)

REGISTRATION LAWS PROVIDE:-

-Registration laws are to protect the interest of the parties to an instrument by providing evidential value to the instrument of any nature.

-Registered document can be produced the court of law as an evidence of the transaction entered between the parties to the transaction.

Registration laws applicable

- REGISTRATION ACT, 1908 (For registration of compulsorily registrable document)
- INDIAN STAMP ACT, 1899 (stamp duty to be paid on registration)

LABOUR LAWS

-Labour laws are for the welfare of the workers / labours and hence ensures:-

-Safety equipments

- Proper amenities such as (toilets, canteen, lunchroom etc)
- Proper working condition
- Proper working hours
- Proper & timely wage payment
- Proper statutory deductions / contribution and payment

Labour laws applicable to real estate

- Building and other construction workers' (regulation of employment and conditions of service) act, 1996 & Rules OF 1998 (workers safety, health & Welfare measures including necessary amenities)
- Building and other construction workers' welfare cess act,1996 (Cess Payment on cost of construction for workers welfare)

OTHER IMPORTANT LABOUR LAWS APPLICABLE TO REAL ESTATE

- THE CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970 (regulate employments of contract labours & provide necessary amenities)
- THE PAYMENT OF WAGES ACT, 1936 (payment of wage in time)
- THE MINIMUM WAGES ACT, 1948 (minimum wage rate fixed by govt. to be paid)
- EMPLOYEES' STATE INSURANCE ACT 1948 (scheme of health insurance for workers in case of sickness & injury)

Comprehensive View of Major Indian Laws Related to Real Estate Sector

Transfer of Property Act:

The Transfer of Property Act governs the transfer of property by various means. Sales, mortgages (other than by way of deposit of title deeds) and exchanges of immovable property are required to be registered by virtue of the Transfer of Property Act. Therefore, all the above documents must be in writing and registered.

Five different ways by which property can be transferred in India:

1. Sale
2. Mortgage
3. Lease
4. Exchange
5. Gift

- **SALE OF IMMOVABLE PROPERTY:** Under **Chapter III of the Act, Section 54** treats transfer of ownership in exchange for a price paid or promised or part-paid and part-promised between owner and seller as sale of immovable property. A contract for the sale of immovable property, also known as a Sale Agreement, is a contract that a sale of such property shall take place on terms settled between the parties. Delivery of tangible immovable property takes place when the seller places the buyer or such person as he directs, in possession of the property.

ESSENTIAL ELEMENTS OF SALE

PARTIES - A minor or lunatic cannot be a transferor / vendor as he is not competent to contract under Section II of the Indian Contract Act, 1872. However it has been held that a minor or a lunatic can be a transferee or purchaser in the case of transfer by way of sale or mortgage, represented by his Guardian.

SUBJECT MATTER - Subject matter is the transferable immovable property.

PRICE - Price is an essential ingredient for all transactions of sale and in the absence of the price or the consideration, the transfer is not regarded as a sale. The transfer by way of sale must be in exchange for a price. It has been held that price normally means money. The price can be paid fully in cash or it can be partly paid and partly promised to be paid in future. The price can be fixed by the agreement between the parties before the conveyance of the property. The price is to be fixed reasonably.

DELIVERY OF PROPERTY - Transfer by way of sale in the case of tangible property worth less than rupees One Hundred can be made either by a registered instrument or by delivery of property by putting the purchaser or the person directed by the purchaser, in possession of property. If the consideration for the sale is more than Rs.100/- then the instrument must be registered under the Registration Act, 1908.

- **MORTGAGE OF IMMOVABLE PROPERTY** - defined by Section 58 in Chapter IV, is an instrument to secure a loan. The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

MORTGAGE BY DEPOSIT OF TITLE DEEDS/EQUITABLE MORTGAGE - Where a person in any of the following towns, namely, the towns of Calcutta, Madras and Bombay and in any other town which the State Government concerned may by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immovable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title deeds. To create a valid mortgage by deposit of title deeds, there must be a delivery of the title deeds relating to an immovable property by the debtor to a creditor or his agent in a notified town with the intention to create a security thereon.

The rights and liabilities of a mortgagor under a mortgage are as under:

1. Right of mortgagor to redeem: Section 60, Transfer of Property Act provides that at any time after the principal money has become due, the mortgagor has right on payment or tender, at a proper time and place, of the mortgage money, to require the mortgagee

- i. to deliver to the mortgagor the mortgage deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee;
- ii. where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor; and
- iii. at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and where the mortgage has been effected by a registered instrument to have registered an acknowledgement in writing that any right in derogation of his interest transferred to the mortgage has been extinguished

2. Obligation to transfer to third party instead of re-transference to mortgagor: Section 60 A, Transfer of Property Act provides that where a mortgagor is entitled to redemption, then on the fulfillment of any conditions on the fulfillment of which he would be entitled to require a retransfer, he may require the mortgagee, instead of retransferring the property, to assign the mortgage debt and transfer the mortgaged property to such third person as the mortgagor may direct the mortgagee and the mortgagee shall be bound to assign and transfer accordingly. The provisions of this section do not apply in the case of mortgagee, who is or has been in possession.

3. Rights to inspection and production of documents: A mortgagor as long as his right of redemption subsists, shall be entitled at all reasonable times at his request and at his own cost, and on payment of the mortgagee's cost and expenses in this behalf, to inspect and make copies or abstracts of or extracts from documents of title relating to the mortgaged property which are in the custody or power of the mortgagee.

4. Rights to redeem separately or simultaneously: A mortgagor who has executed two or more mortgages in favour of the same mortgagee shall, in the absence of a contract to the contrary, when the principal money of any two or more of the mortgages has become due, be entitled to redeem any one such mortgage separately or any two or more of such mortgages together.

5. Right of usufructuary mortgagor to recover possession: In the case of usufructuary mortgage, the mortgagor has a right to recover possession of the property together with the mortgage deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee.

6. Accession to mortgaged property: Where mortgage property in possession of the mortgagee has during the continuance of the mortgage received any accession, the mortgagor upon redemption, shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession.

7. Improvements to mortgaged property: Section 63A (1), Transfer of Property Act provides that where mortgagee possession of the mortgagee has during the continuance of the mortgage, been improved, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled to the improvement and the mortgagor shall save only in cases provided for in sub-section (2) be liable to pay the cost thereof.

8. Renewal of mortgaged lease: Where the mortgaged property is a lease, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall in absence of a contract by him have the benefit of the new lease.

9. Mortgagor's power to lease: Section 65A(1), Transfer of Property Act provides that a mortgagor, while lawfully in possession of the mortgaged property, shall have power to make leases thereof which shall be binding on the mortgagee.

10. Waste by mortgagor in possession: A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate; but he must not commit any act, which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act. A security is insufficient, unless the value of the mortgaged property exceeds by one-third or, if consisting of buildings, exceeds by one-half the amount for the time being due on the mortgage.

• **LEASE OF IMMOVABLE PROPERTY :**

Chapter V Section 105 states that a lease of immovable property is a transfer of a right to enjoy such property for a certain time, in consideration of a price paid or promised, or of money or service or share or any other thing of value, that is rendered periodically or as specified by the agreement between the transferor and the transferee. **Section 107** states that a lease for a term exceeding one year can be made only by a registered document. All other lease agreements may be made either orally or through a registered document accompanied by possession of property. Section 106 specifically provides that In the absence of a contract or local law or usage to the contrary, a lease of immovable property other than for agricultural or manufacturing purposes shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

1. A lease of immovable property from year to year, or for any term exceeding one-year or reserving a yearly rent, can be made only by a registered instrument.
2. All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.
3. Where a lease of immovable property is made by a registered instrument, such instrument binds both lessor and the lessee.

ESSENTIAL ELEMENTS

The essential elements of a lease are as follows:

- **Parties** - The parties to a lease are the lessor and the lessee. The lessor is also called the landlord and the lessee the tenant.
- **Subject matter of lease** - The subject matter of lease must be immovable property. The word "immovable property" may not be only house, land but also benefits to arise out of land, right to collect fruit of a garden, right to extract coal or minerals, rights of ferries, fisheries or market dues. The contract for right for grazing is not lease. A mining lease is lease and not a sale of minerals.
- **Duration of lease** - The right to enjoy the property must be transferred for a certain time, express or implied or in perpetuity. The lease should commence either in the present or on some date in future or on the happening of some contingency, which is bound to happen. Though the lease can commence from a past day, but that is for the purpose of computation of lease period, as the interest of the lessee begins from the date of execution. No interest passes to the lessee before execution. In India, the lease may be in perpetuity.
- **Consideration** - The consideration for lease is either premium or rent, which is the price paid or promised in consideration of the demise. The premium is the consideration paid of being let in possession, such as Salami, even if it is to be paid in installments.

SUB-LEASE - A lessee can transfer the whole or any part of his interest in the property by sub-lease. However, this right is subject to the contract to the contrary and he can be restrained by the contract from transferring his lease by sub-letting. The lessee can create sub-leases for different parts of the demised premises. The sub-lessee gets the rights, subject to the covenants, terms and conditions in the lease deed. In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities

mentioned in the rules next following, or such of them as are applicable to the property leased:

Section 111 - states that a lease of immovable property is determined:

- (a) By expiration of the time limited thereby,
- (b) Where such time is limited conditionally on the happening of some event- by the happening of such event,
- (c) Where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event- by the happening of such event,
- (d) In case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right,
- (e) By express surrender, that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them,
- (f) By implied surrender, for example if a lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease.
- (g) By forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease,
- (h) On the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

- **Exchange of property:**

As per **Section 118, Chapter VI**, when two persons mutually transfer the ownership of one thing for the ownership of another, neither things being money only, the transaction is called an "exchange". A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale. An exchange is a completed transfer and does not imply the contract to make a transfer. The mutual transfer of two things is an essential element in exchange. An exchange of immovable property above the rupees 100 or upwards can only be effected by means of a registered instrument.

- **Gift of Immovable Property:**

Chapter VII of the Act covers the transfer of property by gift. Accordingly, under Section 122, a gift is the transfer of existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by, or on behalf of the donee. For the purpose of making a **gift of immoveable property, Section 123 states that the transfer must be effected** by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. Sec 48 specifically deals with priority of rights created by transfers. It lays down that where a person purports to create by transfer at different times rights in or over the same immovable property, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created. Section 52: When the property is in dispute and in which any right to immovable property is in question, the property cannot be transferred.

This legislation specifies when a party can be said to have the capacity to contract. A contract pertaining to realty can be entered into, among others, by an individual (who is not a minor or of unsound mind), partners of a firm, a corporate body, a trust, a sole corporation, the manager of an undivided family, and a foreigner. All the requirements of a valid contract, i.e. consideration, intention to contract and validity under the law of the land must be satisfied.

Indian Registration Act, 1908 :

The purpose of this Act is the conservation of evidence, assurances, title, and publication of documents and prevention of fraud. It details the formalities for registering an instrument. Instruments which require mandatory registration include:

- Instruments of gift of immovable property.
- (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, to or in immovable property;
- (c) Non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of instruments in (2) above.
- (d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent

Sales, mortgages (other than by way of deposit of title deeds) and exchanges of immovable property are required to be registered by virtue of the Transfer of Property Act. Section 17 of the Act provides for optional registration. An unregistered document will not affect the property comprised in it, nor be received as evidence of any transaction affecting such property (except as evidence of a contract in a suit for specific performance or as evidence of part-performance under the Transfer of Property Act or as collateral), unless it has been registered. Thus the doctrine of part performance dealt with under Section 53 A of the Transfer of Property Act and the provision of Section 49 of the Registration Act (which provide that an unregistered document cannot be admissible as evidence in a court of law except as secondary evidence under the Indian Evidence Act) together protect the buyer in possession of an unregistered sale deed and cannot be dispossessed. The net effect has been that a large number of property transactions have been accomplished without proper registration. Instruments such as Agreement to Sell, General Power of Attorney and Will have been indiscriminately used to effect change of ownership. Therefore, investors in real estate have to be careful in their due diligence.

Special Relief Act, 1963 :

This Act is only to enforce individual civil rights. A person dispossessed of immovable property without his consent (other than in due course of law) can recover possession by a suit filed within six months from the date of dispossession. Unless the contrary is proved, in a suit for specific performance of a contract, the Court shall presume that a contract to transfer immovable property is one in which monetary compensation for its non-performance would not afford adequate relief. The Court could also grant a permanent/ mandatory injunction preventing the breach of such contract and award damages.

Land Acquisition Act, 1984:

Land Acquisition" literally means acquiring of land for some public purpose by government/government agency, as authorised by the law, from the individual landowner(s) after paying a government fixed compensation in lieu of losses incurred by land owner(s) due to surrendering of his/their land to the concerned government agency.

The land acquisition act of 1894 was created with the expressed purpose of facilitating the government's acquisition of privately held land for public purposes. The word "public purpose", as defined in the act, refers to the acquisition of land for putting up educational institutions or schemes such as housing, health or slum clearance, apart from the projects for rural planning or formation of sites. The word "government" refers to the central government if the purpose for acquisition is for the union and for all other purposes it refers to the state government. It is not necessary that all the acquisition has to be initiated by the government alone. Local authorities, societies registered under the societies registration act, 1860 and co-operative societies established under the co-operative societies act can also acquire the land for developmental activities through the government.

- **Notification**-The process of acquisition begins with the issuance of preliminary notification, as envisaged under **section 4(1) of Land Acquisition Act, 1894**. The notification has to be essentially published in the official gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language. Further, it is also necessary that the notification has to be affixed in conspicuous places of that locality.
- **Filing of objections**-The main objective of issuing preliminary notification is to call for objections, if any, against such acquisitions from the owners or others who are having certain interest over the property; giving them an opportunity to raise their claims against the move of the government for acquiring their lands. The persons aggrieved by such notification shall file their objections within thirty days from the date of preliminary notification (date of the publication of notification).
- **Final declaration**-After receipt of objections, the concerned authority shall consider those objections, and if found unsatisfactory, then a final declaration rejecting the claims will be issued. Section 6 of the amended Act provides that the final declaration shall be issued by the authority within a period of one year from the date of issuance of preliminary notification under section 4(1) of the Act. However, prior to the amendment, the time stipulated under the Act for final declaration was three years from the date of publication of the preliminary notification. The final declaration has to be published as required under section 6(2) of the Act.
- **Award**-Section 11 of the Act provides that after receiving the objections, the authority will have to hold an enquiry. However, it is necessary that actual extent of land proposed to be acquired and the value of the land has to be assessed before starting the enquiry, as required under sections 8 and 9 of the statute. On completion of the enquiry, award will be passed to that effect and published by the competent authority. After passing the award, the Collector or the Deputy Commissioner shall send notice to the owners or their representatives who were not present personally at the time of passing of the award.
- **Time limit**-Once the enquiry is concluded, it is the duty of the competent authority to pass the award within two years from the date of publication of the declaration under section 6, as envisaged under section 11 A of the Act. If the authority fails to adhere to the time schedule prescribed under the Act, the entire proceedings initiated for land acquisition will lapse. After passing of the award, the Deputy Commissioner or any other

competent authority may take possession of the land immediately, which shall thereupon vest absolutely with the government, free from all claims, whatsoever.

- **Special powers-** Section 17 of the Act confers special powers with the concerned authority wherein passing of award may be dispensed with and yet permits to take possession of the land notified for acquisition. Further holding of enquiry can also be waived, as envisaged under section 5 A of the Act. However, such powers can be exercised only in case of urgency. After passing of the award, the person whose land has been proposed to be acquired can give his consent for such acquisition and agree to receive the compensation.

Objections can also be raised against the measurement of the land, enhancement of compensation or apportionment of the compensation by filing a written application before the Deputy Commissioner, as provided under section 18 of the Act, requesting the authority to refer the matter to the court for determination of the grounds raised in the application. An application to that effect has to be filed by the person who was personally present when the award was passed, within six weeks from the date of the award passed by the Collector. In other cases, the application will have to be made within six weeks from the date of receipt of the notice issued under section 12(2) or within six months from the date of the award passed by Deputy Commissioner, whichever is earlier.

Compensation- Provision for settlement of dispute pertaining to apportionment of the compensation amount is available under section 30 of the Act. In such a situation, the Deputy Commissioner should refer the matter to the court. The claimant will be entitled to the compensation which is determined on the basis of the market value of the land determined as on the date of preliminary notification. According to section 34, if there is delay in payment of compensation beyond one year from the date on which possession is taken, interest at the rate of 15 per cent per annum shall be payable from the date of expiry of the said period of one year on the outstanding amount of compensation till the date of payment. The government, under section 16 of the Act is at liberty to withdraw from acquisition of land except in cases provided under section 36. However, if the possession of land has been taken, then the government will have no authority to withdraw from such acquisition.

Procedure for the Land Acquisition

1. Investigation

- When a local authority or a company requires a land, an application is required to be made by it to the revenue authority.
- The application should be accompanied with a copy of the plan showing survey nos., purpose of acquisition and the reason for the particular site to be chosen and the provision made for the cost of the acquisition.
- After the government has been fully satisfied about the purpose, the least area needed, and other relevant facts as provided under land acquisition rules, it will issue a notification under Section 4 of the act that the particular land is required for public purpose.
- One of the revenue officers is appointed as the collector to hold an inquiry under Section 5-A of the Act.
- After notification the owner is prohibited from selling his property or disposing of it and prevented from carrying out any works of improvements for which no compensation will be paid if executed without prior permission from the collector.

2. Objection and Confirmation

- Objections are invited from all persons interested in land within thirty days from the date of notification.
- The objections will be valid on one or more of the following grounds:
 - i. That the purpose for which the land is proposed for acquisition is not a public purpose.
 - ii. That the land is not or less suitable than another piece of land for the said purpose.
 - iii. That the area under acquisition is excessive.
 - iv. That the acquisition will destroy or impair historical or artistic monuments or will desecrate religious buildings, graveyards and the like.
- The collector after hearing the objections will submit his report to the government who will finally declare the land for acquisition under the Section 6 of the Act.
- After notification the collector proceeds with the claim. He has the site marked out, measured and a plan of the same is made.

3. Claim and Award

- The collector will issue notices under Section 9 to all persons interested in the acquisition to file their claim reports.
- The collector is not to be a party to the proceedings, is to possess an expert knowledge on valuation, and offers a fair price to an owner and checks that the public funds are not wasted.
- The claim filed should contain the names of the claimants and co-shares if any rents or profits for last three years and a valuation report of the land from an architect or an engineer.
- The government can abandon the acquisition proceedings by simply canceling the notification. However, in that case compensation has to be paid under Section 48(2).
- In determining the compensation the market value of the land is determined at the date of notification. The rise and fall in the value during the period of transaction and notification is taken into consideration.
- Compensation is also payable when:
 - i. Part of the property is proposed for acquisition in such a manner that the remainder depreciates in value.
 - ii. When the land notified for acquisition has standing crops or trees.
 - iii. If the person interested has to change his place of residence or business then the excess rent payable for the new premises is also considered for compensation.
- Matters which are not taken into consideration for the purpose of land acquisition are:
 - i. The degree of urgency which has led to the acquisition.
 - ii. Any disinclination of the person interested to part with the land.
 - iii. Any increase in the land value likely to accrue from the use to which it will be put when acquired.
- After necessary inquiries the collector declares his award showing true area of the land, total amount of compensation payable and apportionment of compensation if there are more than one owners or claimants.
- The collector has to make the award under section 11 within a period of two years from the date of notification.

4. Reference to Court

- Any person interested to whom the award is not satisfactory can submit a written application to the court.
- This application should be made within six weeks from the date of declaration of the award.

5. Apportionment

- In apparent of the compensation each of the claimants are entitled to the value of his interest, which he has lost, by compulsory acquisition.
- Thus it is required to value a variety of interest, rights and claims in the land in terms of money.

The Indian Evidence Act, 1872:

Under the Act, whenever the status of any person as the owner of a piece of immovable property of which he is shown to be in possession is questioned, the burden of proving that he is not the owner lies on the person who asserts that he is not the owner.

STATE LAWS

Rent Control Act:

Rent legislation in India has been in existence for a very long time. Rent control by the government initially came as a temporary measure to protect the exploitation of tenants by landlords after the Second World War. However these rent control acts became almost a permanent feature. Rent legislation provides payment of fair rent to landlords and protection of tenants against eviction. Besides, it effectively allows the tenant to alienate rented property. All transactions in Indian real estate sector are governed by various laws enacted by the Central Government of India and respective State governments. One such law is the **RENTAL LAWS**. These laws govern the rental of commercial and residential property and are necessary to enforce individual civil rights of both landlord and tenant and prevention of any kind of deceit. Rent Control Act was an attempt by the Government of India to eliminate the exploitation of tenants by landlords. Rent legislation tends to providing payment of fair rent to landlords and protection of tenants against eviction. But the allowances have been very generous and hence tenants residing in rental properties in India since 1947 continue to pay rents fixed then, irrespective of inflation and the realty boom.

The Rent Control Act has led to several adverse situations like languishing investment in rental housing, withdrawing of existing housing stock from the rental market, stagnating municipal property tax revenue. The rent control along with security of tenure has not given any encouragement to house owners to renovation their houses and most houses as a result have a worn out look. Repeal of the Rent Control Act would lead to construction boom and meet the growing need for housing and aid employment generation. There will be more rational use of prime locations and will set off a continuous process of urban renewal.

In 1992, the Central Government proposed a **model rent control legislation**, which was meant for and circulated to all states. The model Act proposed modification of some of the existing provisions on inheritance of tenancy and also prescribed a rent level beyond which rent control could not apply. The New Delhi Rent Control Act that was passed in 1997 was based on this but failed to be notified due to resistance from traders who are sitting tenants. Very few states have introduced the model Act. The new **Maharashtra Rent Control Act, Delhi Rent Control Act, Tamil Nadu Rent Control Act, Karnataka Rent Control Act** all has provisions for the dispute among the landlords and tenants. Each of

the State Rent Act provides for fixation of Standard Rent as well decree for possession and provisions that lay down the satisfaction of the Court.

➤ **Rental Agreement is an integral part of rental law :**

Rent or lease of a residential or commercial property in India is subject to strict Indian laws. A mutual agreement on the terms and conditions of the rented property by the landlord and the tenant is required. In the present times, leasing a commercial space in India as opposed to owning commercial real estate is turning out to be a brilliant move.

Professional legal advice becomes a necessity as there are fewer tenant-friendly laws in the area of commercial leases, and no standard lease agreements. A lawyer's help will be useful for making an informed decision in negotiating the best deal on a commercial lease as he/she can research zoning laws and local ordinances and inform you about local real estate market conditions and customs. Under the Leave and License Agreement transfer of interest takes place on permission and the same can be terminated as per the terms of the agreement. The possession can be demanded back from the licensee. The label to the agreement could be Leave & License or Tenancy Agreement, but it is the intention of the party that counts. Documentation of the commercial lease is also an important rental law procedure.

- **In Conclusion:** The rental laws in India need to be revised to protect the owner and his/her property from the tenant.
- Special areas of focus should be on terminating old tenancies, removing constraints on increase of rentals and empowering owners in the sense of being able to reclaim their properties without any court proceedings.
- The market forces should be allowed to determine the rental amounts and the owner must have full protection for his/her property. This will go a long way in providing security to the landlord and also reduce the deposit amount required with the lease agreements.

If these laws are enacted and strictly enforced, there is every chance that more investors will want to enter the real estate market to utilize the rental fees as income. This is especially true for the commercial sector. The tax laws also need to be revised so that renting of properties becomes a financially viable option. Amendments in the Rent Acts of several states are a progressive move.

- **Rent Agreement:** The rent agreement is a legal agreement completed, signed, and dated by the landlord and tenant. It includes the terms and conditions subject to which the property has been leased by the lessor to the lessee. The rent agreement plays a crucial role in deciding the rights of the lessee and the lessor. Prior to a rent agreement with the landlord, the tenant should ensure that the lessor has the proper title of property. He should either be the owner of the property or an authorized power of attorney holder.

Common terms included in a rent agreement:

- Detail information of the lessor (landlord) and the lessee (renter) and their addresses.
- The location and the identification details of the property to be leased.
- Term of the lease
- Security deposit amount

- Monthly rentals
- Effective date of beginning of the rent agreement
- Duration of rent
- Rent increment clause and the rates
- Facilities to be included in the rent
- Details of access to terrace rights
- Routine repair and maintenance expenses of the house
- Duration of the notice period required for termination of the lease
- Maintenance charges to be paid to the society.

Stamp Duty Act

There is a direct link between Registration Act and Stamp Act. Stamp duty needs to be paid on all documents which are registered and the rate varies from state to state. India has perhaps one of the highest levels of stamp duty. Some states even have double stamp incidence, first on land and then on its development.

Property Tax

Property tax is a levy charged by the municipal authorities for the upkeep of basic civic services in the city. In India it is the owners of property who are liable for the payment of municipal taxes whereas in countries like the United Kingdom, the occupier is liable. Generally, the property tax is levied on the basis of reasonable rent at which the property might be let from year to year. The reasonable rent can be actual rent if it is found to be fair and reasonable. In the case of un-let proper-ties, the rental value is to be estimated on the basis of letting rates in the locality.

Registration Process In India.

Registration is the process of recording a copy of a document, transferring the title in immovable property to the office of the Registrar Registration acts as proof that a transaction has taken place. The registration of a document serves as a notice of the transaction, to the persons affected by the transaction. Registration also serves as an implied notice to any person subsequently acquiring interest in the property, covered by the registered document. When a document, which is compulsorily to be registered, is not registered, it fails to confer any title given by the document.

The real purpose of registration is to ensure that every person dealing with property for which compulsory registration is required, can confidently rely on the statement contained in the register, as being a full and complete account of all transactions by which the title may be affected. A certificate of Registration is mere evidence that a document has been registered. It is not proof that it has been executed. When the execution of a document is directly in dispute between two parties, the fact that the document is registered is not sufficient to prove its genuineness. Registration does not automatically dispense with the necessity of independent proof that the document was executed.

Registration is done after the parties execute the document. The agreement should be registered with the Sub-Registrar of Assurance under the provisions of the Indian Registration Act, 1908 within four months from the date of execution of the document. However, if due to any unavoidable circumstances, the

document is not registered within the time limit, then the document can be registered only on making an application to the Sub-Registrar of Assurance within a further period not exceeding four months and on payment of appropriate fine.

Documents need to be registered - Certain documents are required to be registered compulsorily for example Sale/Title Deed, Conveyance Deed, Lease Deed, Gift Deed, Agreement to Sale etc. There are certain other documents which could also be registered optionally. These are Will Adoption deed, General Power of Attorney, Special Power of Attorney, Trust Deed, Partnership deed, Cancellation of SPA,GPA or will etc .

Authority Where Documents are to be Registered - To the office of Sub-Registration Magistrate in whose jurisdiction the property is located, during 9.30 a.m. to 6.00 p.m. on any working day.

Papers/documents/fees required for the Registration - Document required to be registered (in duplicate)

- Two Passport size photographs of both parties.
- Two witnesses.
- Proof of identification of each party and witnesses i.e. election Identity Card, Passport, identity Card issued by Govt. of India, Semi govt. and Autonomous bodies or identification by a Gazetted officer.
- In case the property is/was under a lease from D.D.A., L&DO, M.C.D., Industries Department, Labour Department of Delhi Govt. etc., permission of lessor for registration of the document.
- No objection Certificate under section 8 of Delhi Land (Restriction and Transfer) Act, 1972 from Tehsildar of the Sub Division of the District to the effect that the property is not under acquisition.
- Income Tax clearance Certificate in prescribed proforma 34A, under section 230 of Income Tax Act, from concerned Income Tax Officer where the transaction exceeds Rs.5,00,000/-
- Permission from the Appropriate Authority in the prescribed proforma 37 I, where the transaction exceeds Rs.50,00,000/- under the provisions contained in section 269 of Income Tax Act, 1961.

Criteria for deciding the Case

1. The document is submitted to the Reader for scrutiny. After scrutiny, the Reader indicates the Registration fee required, on the document itself.
2. The due registration fee is to be deposited with the Cashier against a receipt.
3. After depositing the fees, the documents are required to be presented before the Sub-Registrar by the parties in accordance with Section 32 of the Registration Act, 1908.

Presentation As per Section 32 of the Registration Act, 1908 every document to be registered under the Act shall be presented at the registration-office: -

- by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order, or
- by the representative or assign or such a person, or
- by the agent of such a person, representative or assign, duly authorized by power-of-attorney and authenticated in manner hereinafter mentioned.

As per Section 33 of the Act, for the purpose of section 32, the following powers-of-attorney shall alone be recognized: -

- if the principal at the time of executing the power-of-attorney resides in any part of India in which the Act is in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides;
- if the principal at the time aforesaid (resides in any part of India in which this Act is not in force), a power –of-attorney executed before and authenticated by any magistrate;
- if the principal at the time aforesaid does not reside in India, a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, (Indian) consul or Vice-Consul, or representative of the Central government.

Provided that the following persons shall not be required to attend at any registration-office or Court for the purpose of executing any such power-of-attorney as is mentioned in clauses (a) and (b) of this section, namely: -

- persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend;
 - persons who are in jail under civil or criminal process;
 - persons exempt by law from personal appearance in court.
4. Endorsements are made under Section 52, 58 and 60 of the Registration Act on the document after completion of formalities before Sub-Registrar.
 5. The delivery of document is made on the production of the receipt issued by the cashier in respect of the document at the time of presentation.

If any person who has executed the document is unable to come to sub-registrar's office on medical grounds - In case a person is unable to attend the office of the sub-registrar on medical grounds, then he should apply to the sub-registrar through a duly authorized representative stating the fact. The sub-registrar is bound to visit such person after office hours i.e. morning 9.00 a.m. to 10.00 a.m. and in the evening 5.00pm to 6.00 pm. That person shall admit in execution in presence of that sub- registrar, affix his photograph and sign and put his thumb impression on the document. The sub-registrar will take the document with him and complete all the formalities and process of registration.

Stamp Duty and Registration- Stamp Duty: Stamp duty must be paid as per the true market value as assessed by the registration office. This amount varies from state to state. Before the execution of an agreement, it needs to be unsigned and undated and stamps have to be affixed on the agreement by the stamp office. A stamp duty paid document is admitted as evidence in courts. All registration offices make available a Stamp Duty Ready Reckoner, which is a public document. All documents should be fully stamped as per the Stamp Duty Ready Reckoner and made sure that proper stamp duty has been paid.

For a hassle-free registration of the documents at the sub-registrar's office:

1. Bring the complete list of documents along with other documents above.
2. Submit the documents along with the input form at the token window and get the token number.
3. Wait till the token number is announced.
4. On token number being announced, all parties to the document must present themselves before the sub-registrar to admit the execution of the document, to be photographed, thumb impression and signature taken on an additional sheet of paper in the presence of the sub-registrar.

5. Pay the required registration fees and computer service charges in cash as per the receipt (Computer service charges are @ Rs.20 per page).
6. The document will be returned within 30 minutes of getting the receipt.

Legal documents:

1. **Sale Agreement.**
2. **Gift Deed.**
3. **Surrender Deed**
4. **Release Deed**
5. **Transfer Deed**
6. **Power of Attorney**
7. **Sale Deed**
8. **Mortgage Deed**
9. **Indemnity Deed**
10. **Certificate of Title**
11. **Stamp Duty**
12. **Lease Deed**

The documents and clearances are classified in 3 categories:

-

- i) LEGAL: Part – I
- ii) REVENUE: Part – II
- iii) TECHNICAL: Part – III

LEGAL DOCUMENTS:

1. PUBLIC NOTICE: It is advisable that prospective purchaser should consult legal advisor for any real estate transaction and get the documents verified & prepared by him to avoid unnecessary complications later on. Before purchase of any property i.e. house, flat, plot of land etc. either out right or on lease (beyond 9 years), one should give Public Notice in two daily news papers preferably in English & other in local language i.e. Marathi, Hindi, Gujrathi etc. through the Advocate/Solicitor, asking for objections from any third party/ies having interest in the proposed transaction between seller & purchaser; with a time limit of 15 days from the date of its publications. The public notice consists of name & address of seller, description of property, time limit of notice, name & address of the advocate/solicitor etc. It is precisely mentioned in the notice that if no objections with necessary proofs are received within prescribed time limit the transaction will be completed. This notice will act as legal proof and serve as safety measure to any litigation at later stage.

2. AGREEMENT-TO-SALE (SATHE-KHAT): This is a contract duly executed between the "Vendor" (Seller) and the "Purchaser", and legally binding on both the parties. Generally this agreement-to-sale consists following details: -

Names, address, age and nationality of the vendor & purchaser. History of ownership of seller with sequence of documents, and development rights acquired by the developer from the original owner/s; in case developer is seller. Description of property i.e. Survey No., Plot No., C.T.S. No. etc. and Area of property. The terms, conditions and covenants agreed by and between the vendor & purchaser according to which the property is agreed to be sold or purchased. Specifications of constructions and list of amenities and facilities proposed to be provided by the developer/owner, for purchase of built-up

properties. Total purchase value/ consideration & schedule of payment according to which the purchase price and other charges are to be paid. Annexure documents of ownership by way of 7/12 extract / property register card, copy of approved plan / floor plan etc. Title-Search-Report & Clearance certificate from the advocate / solicitor who has investigated the title of the property, for minimum period of 60 years. Schedule of property giving description, location & area of the property agreed to be purchased/sold. **Note:** – It is mandatory to register the agreement to sale with respective Registrar of assurances within 4 months by paying adequate stamp duty & registration charges. Please note that unregistered agreements/deeds are not considered by the financing institutions and the Court of Law in case of litigations. More information on payment of Stamp duty & registration is given separately in other chapter.

3. DEED OF CONVEYANCE / TRANSFER (KHAREDI-KHAT): This is an instrument of absolute transfer of all rights, title and interest of “vendor” (seller) and all his heirs, nominees etc. in perpetuity in favour of “purchaser/s”. The contents of this document are more or less same as described in item No.2 (i.e. agreement to Sale) above. In case of conveyance of multi ownership apartment schemes, all the flat purchasers have to form, a body, either by way of a registered co-op. hsg. society/Apartment condominium to enable vendor to give/execute the conveyance of the building along with the land thereon in favour of such body/ies; as the case may be; at the end of completion of scheme.**Note:** - i) This document is also required to be registered by paying stamp duty & registration charges; as stated in item No.2 above. However the credit is given for the stamp duty paid initially by the flat purchaser/s while registering their agreement-to-sale, at the time of registration of the conveyance.

5. LEASE DEED : It is also a contract by which one conveys real estate equipment or facilities for a specified term and for specified rent; duly executed between the “Lessor” & “Lessee” and legally binding on both the parties for the lease period. The contents of the lease deed are more or less same as described in item No. 2 (Agreement to Sale) above with following different clauses: -

The vendor & purchaser so described in case of agreement to sale / conveyance are termed as lessor & lessee in this deed. Lease period varies generally from 30 years to 999 years, or any period beyond 9 years, so agreed. At the end of expiry of lease period, the lease is required to be renewed for further period on the terms & conditions, if renewal provisions are recorded in original lease deed. Description of monthly/yearly lease/ground rent and premium payable by the lessee to the lessor. Specific rights of development / constructions granted to the lessee, by the lessor. In this transaction the ownership of land always remains & vests with lessor alone. By and large the lands belonging to the State/Central Govt. and public bodies such as Municipal Corporations, Port Trust, CIDCO, MHADA, MIDC etc.; (who provides necessary infrastructure for the development) offer their lands on lease basis, to public, with minimum lease period of 60 to 99 years, where the lessee is permitted to construct premises on the said land for specific users permitted, on the terms & conditions recorded in the lease deed.**Note:** - The lease deed also attracts stamp duty & registration charges.

5. AGREEMENT OF LEASE AND LICENCE: This is a short-term contract (not more than 9 years) executed between “Licensor” & “Licensee” and is legally binding on both the parties. Under this contract the licensee is permitted to use the premises, fittings & fixtures provided therein against monthly compensation payable by the licensee to licensor. Some of the important clauses of this agreement are as under: -
The term of licence shall always be less than 9 years. The Licence can be renewed for further period if so provided in the agreement. During the subsistence of agreement the licensor always remains the owner of premises; and the licensee

has no rights other than granted in the contract. The licensee can be evicted after licence period is expired. The contract agreement can be executed on Rs.20/- court fee stamp paper. It is essential to register the contract to avoid litigations in later stage.

6. DEED OF ASSIGNMENT: This is an Indenture by which the property can be transferred to be held in trust, for the benefit of assignee/s and or creditors. The contents of this document are more or less same as described in item no.3 deed of transfer / conveyance above. This document is executed between "Assignor" & "Assignee" by which the assignor assigns all his right, title, interest in the property to the assignee on the same terms and conditions according to which such rights are hold by the assignor, in perpetuity or the specific time limit as recorded in the document; and same is legally binding on both the parties. Generally the deed of assignment is made in favour of assignee by assignment of rights of tenanted or leased assets, only when the assignor is empowered specifically for the assignment rights if so granted by the land lord, lessor etc. and not other wise. The registration of this document is also compulsory for giving necessary effect of transfer in Govt. record. Un-registered document is not entertained by the court of law.

7. GIFT DEED: This is a document executed by a "Donor", voluntarily transferring his rights & interests in the asset in favour of "Donee". In such case donee becomes a recipient of gift. This document also consists of name, address, age, nationality of the donor & donee, the description and value of asset being gifted, place & date of execution as required for transfer of documents. By this document transfer of rights in favour of donee are in perpetuity which in other words can be termed as absolute transfer. The assets so transferred under Gift Deed by donor to donee can be out of love affection; or special goodwill gesture; either in favour of any relation or otherwise. This documents attracts the stamp duty and should be registered with registrar for giving proper effect of such transfer in Govt. records.

8. AGREEMENT OF TENANCY: This is a contract executed between "Land Lord" & "Tenant" for use and occupation of the premises by the tenant against payment of monthly rent, which will remain valid and subsisting till the monthly rent is paid regularly to the land lord by the tenant. Due to the provisions of Bombay Rent control Act and its amendments the land lords are reluctant to give their specifically residential premises on monthly tenancy basis since it is almost impossible to evict the tenant and acquire the possession of the tenanted premises. On an average at present the tenancy agreements generally are executed for commercial premises. With new Maharashtra Rent Control Act 1999, now the landlord is entitled and can charge: - 4% increase in monthly rent per year. Official premium (Pagree) for transfer of tenancy. Under this contract the landlord & tenant has to observe & discharge following obligations: -

9. WILL/TESTAMENT & PROBATE: This is a written declaration made & executed by a person by which one determines the disposition of his estate to take effect in favour of beneficiary / ies only after his death and not otherwise. This document generally consists of following: -

Name, address, age, nationality of the person making a will. The names, addresses, age, relationship of persons who are named as the beneficiary/ies in the will.

Details of moveable & immovable assets and its value. Details of the distribution of such assets, its nature, share and value granted to the beneficiary/ies in the will.

The place and date of execution of the will. Minimum two witnesses, with their names, addresses in whose presence a person has signed & executed the

will.**Note:** - A person can make as many wills during his / her lifetime, canceling his/her earlier will/s. In a testament a person can record the wording in the document as a Final or Last Will. The will can be executed on plain paper. The will can become operative only after the death of such person and not other wise. A person making a will should be in sound mind and health at the time of execution of will & he should record such confirmation in the will. In case of will made by very aged person with poor health, it is advisable to take appropriate statement / certificate from the medical practitioner where he confirms that the person making such will is of sound mind. To avoid unnecessary litigations, it is required to obtain PROBATE from the court of law to establish the will as genuine and valid. The probate court has jurisdiction chiefly over the probate of wills and also administration of the estate of deceased person.

10. POWER OF ATTORNEY : This is a legal instrument executed by the "Grantor" & "Grantee", by which he/she appoints and authorise a person/s to act as his/her true and lawful agent/attorney to transact any or all business on his/her behalf; and legally binding on both the parties to the extent of powers so granted. The power of attorney is granted by the owner to the representative of the developer, in case the development rights are granted to the developer. It is essential that such power of attorney should be registered by paying adequate stamp duty and registration charges.

Following are some of the salient features: -

1. The grantee is commonly known as "Constituted Attorney (C.A.)" of the owner/s.
2. The grantee can not act beyond the scope of powers granted to him/her, by the grantor.
3. The power of attorney can be granted for limited purpose and acts; as well as for all the acts and deeds for unlimited time, so provided.
4. The power of attorney, unless irrevocable, can be revoked by the grantor for any contempt or breach of powers by the grantee.
5. The grantee can substitute the powers to any third party if so agreed by the grantor and specific clause of substitution is recorded in the power of attorney.
6. The power of attorney becomes automatically invalid, null and void upon the death of the grantor; and can not be used or exercised by the grantee there after. Un-registered power of attorney is not entertained by the Court of law in case of litigations.

11. DUE DILIGENCE FOR ACQUISITION OF PROPERTY : For sale or purchase of any property it is essential, that the property must hold clear & marketable title i.e. the property is saleable and is free from any defective rights. Before purchase of any property, it is required to examine the documents of ownership in Govt. revenue records; to ascertain as to whether the property has clear and marketable title and to confirm as to whether it is affected by any encumbrances, rights or interests of any third party, The purchaser through his advocate/solicitor should investigate in this matter before entering in to an agreement. For investigation of title, the advocate/solicitor or his authorised search clerk make the inquiries with the office of Talathi, Tahasildar, City Survey Officer, Collector etc. and collects the information of mutation entries related to the ownership of the property from Govt. revenue records; for the last minimum 60 years; and prepares the report on the sequence of change of ownership from one hand to other up to date; along with all the information of third party rights if any. This exercise is called "Title Search Report".Based on the Title Search Report, response to public notice, and examination of title deeds (i.e. original conveyance / sale deeds declarations and other revenue & public documents more particularly described in the chapter of "Documents of Ownership") the advocate/solicitor concern after getting satisfied that there is no risk to purchase the property,

issues "Title Clearance Certificate" to the effect that the property holds clear and marketable title together with search report.

Purchase of the immovable property like ownership flats, apartments and row houses entail pecuniary involvement which generally run into lakhs of rupees and therefore requires any person who ventures into such an acquisition to take utmost caution in such a purchase whereby his/her hard earned monies are suitably protected and the roof over his/her head involves no legal complications. Nowadays people are becoming more aware of the legalities involved while purchasing a property

General rules to be followed while purchasing property

- Identify the property one wish to buy and formulate commercial terms.
- Market Trends about prevalent rates of property in the vicinity and last known transactions.
- The location of the property in view of future development & connectivity by transport
- Distinguish between terms and conditions of the contract with are negotiable and those which are fixed e.g. price, payment schedule, time of completion of the transaction etc.

-Ask for photocopies of the all deeds of title related to the property to be purchased. Examine the deeds to establish the ownership of the property by seller, preferably through an advocate. Ascertain the survey number, village and registration district of the property as these details are required for registration of the sale. Previous encumbrances and loans, if any, on the property must be cleared before completion of purchase of the property. The title of the Vendor to the property must be clear and marketable.

-Finalize commercial terms of purchase of the property. Ascertain transfer fees, stamp duty and registration charges to be paid on purchase of the property.

-Ascertain outgoings to be paid for the property i.e. property tax, Request Vendor to obtain. If applicable, consent, permission, sanction, no objection of any authority required.

-Permanent Account Number of Vendor and Purchaser under Income Tax laws, Payment of stamp duty on the formal agreement or documents for transfer of the property, signing by both the Vendor and Purchaser and registration

-After payment of the entire sale price, take over legal possession of the property along with documents of title in original from the Vendor of the property

-Mutation of the land in favour of the purchaser.

The title clearance certificate consists of following information: -

Name of present owner/seller and sequence of change of ownership, & third party rights if any. Description of property i.e. Plot No., Scheme No., Survey & Hissa No., City Survey No., Name, Village, Taluka and District and Zone in which the property falls. Area of property. Short notes and findings from search report. Certification of clearance and marketability of title of the property. **Note:** - Such title certificate is not required for the lands owned by State or Central Govt.

12. DECLARATION: It is a document of written affirmation made by a party ("Declarant") for the use of legal transaction (Not under oath) declaring certain facts related to the title, ownership or interests in the property. These declarations are made by the owner and or his/her heirs or co-owners of the property or any other person having rights & interests in the property thereof. The Declaration so made is legally binding on the Declarant to the extent of the statement made. The Declaration can be made on Rs.20/- court fee Stamp paper. The Declaration contents: full name, address, age, nationality of the declarant, and the items of declarations followed by the place & date of the declaration

executed. It is advisable to get the said declaration notarized by the Notary Public appointed by the State Govt.

13. AFFIDAVIT: This is a document of written declaration on oath; by the owner, co-owners or any party having rights & interests in the property; and is legally binding on the person/s concerned. The affidavit in property transactions are executed by the owner on behalf of his/her minor children regarding their interest in the property. The affidavit consists of following: -

Full name, address, age, nationality of the person making affidavit. Items of affidavit followed by place where affidavit is executed and date of execution.

Note:- i) The affidavit can be executed on Rs.20/- Court fee stamp paper. ii) It is advisable to get the affidavit notarized by the notary public.

14. UNDERTAKING: This is a written statement made by the person legally binding on him/her. In this document the person concerned has to undertake and agrees to comply with the obligations as stated therein. The contents of undertaking are identical as mentioned in the item 13 (Affidavit) above. Such undertakings are given by vendor/seller for discharging specific performance during time limits prescribed therein. **Note:** i) The undertaking can be executed on Rs.20/- Court Fee Stamp paper. ii) It is advisable to register the undertaking with Sub-registrar as unregistered undertakings are not considered in Court of Law in case of litigation.

15. INDEMNITY BOND: This document is a writing of obligations agreeing to perform the contract executed by one party (Indemnifier) to other. For the other party, it is a document of security against damage, loss or punishment, guaranteed by the Indemnifier, where the Indemnifier is liable to bear and pay the compensation against any loss or injury caused to the other party so indemnified. **Note:-** i) The Indemnity Bond is required to be executed on Rs.100/- Court fee stamp paper. ii) It should be notarized by notary public appointed by the Govt.

16. (EXTRACT OF) INDEX NO.: II : This is an extract issued by the Registrar/Sub-registrar in a format for the documents registered with their department; as an official confirmation of recording the transaction / document in their records. It is essential to obtain this confirmation (Index – II) as the same is required for all revenue authorities for giving effect to the transfer of ownership in their records such as 7/12 extracts & property register cards etc. (Index – II) extract consists of following information: -

Nature of deed and amount of consideration: Description of property such as Plot No, Survey and Hissa No., City Survey No. etc. Area of property. Assessment details of property. Name/s of executing party (Transferor). Name/s of claiming party (Transferee). Date and place of execution of document. Date of Registration. Serial No., volume & page of register in which the document is recorded.

DEED OF CONFIRMATION: This is a legal document to be executed by and between the parties confirming any prior execution of agreement / document which could not be registered within specific time limit. This deed consists the reconfirmation of all the terms and conditions according to which previous agreement is signed and executed by both the parties.

Notes: i) This can be executed on Rs.20/- Court Fee Stamp paper. ii) Any executed documents must be registered within 4 months from the date of its execution. iii) The registrar can grant additional time of 4 months on the

application if satisfied with the reasons of delay. If the executed document could not be registered for any reasons beyond 8 months from the date of execution then the parties has to prepare a separate "Deed of Confirmation" as stated above and it has to be attached with original documents for the purpose of registration.

PART – II REVENUE DOCUMENTS & CLEARANCES

1) 7/12 UTARA: It is a revenue document of ownership mainly for agricultural and rural lands issued by the Talathi of the respective village in which property falls. It contains name of owner, description of property i.e. Survey No. & Hissa No.; Area of plot and Mutation entry Nos., of any encumbrances by way of loan, charge, protected tenant etc. and tenure of land. This document is always available in local language of the State. Validity of this document is 6 months from its date of issue.

2) 6/12 UTARA (PHERFAR PATRAK): It is also a revenue document showing the details of mutation entries showing charges or encumbrances of any nature i.e. transfer, assignment, partition, mortgage etc. popularly known as "Pherfar Patrak".

3) PROPERTY REGISTER CARD: It is also a document of ownership similar to 7/12 UTARA described above, with all its contents mainly applicable for urban areas. This is issued by the concern City Survey Officer of respective Zone. It is essential to have endorsement of area of plot in figures as well as in words on this document as per present policy of the Govt.

4) CITY SURVEY PLAN: This is a plan prepared and issued by the concerned City Survey office showing the boundaries of the plot and existing structures if any thereon. Format document is attached as "Annex. E". The city survey officer on request can carry out survey and demarcate the boundaries of the plot and issue plan of demarcation to the applicant.

5) NON-AGRICULTURAL PERMISSION (N.A. PERMISSION): This permission is essential from the Collector, when the tenure of land is changed from agriculture to nonagricultural purpose for residence, commercial & industrial use / development.

PART – III TECHNICAL DOCUMENTS & CLEARANCES

1) APPROVED PLANS: The Local planning authority i.e. Municipal Corporation/Council, approves the plans of proposed development as per rules & regulations prescribed. The plans of proposed development submitted by the architect along with necessary documents are scrutinized, and after getting satisfied, the local planning authority through its authorised officer grants its approval to the proposal subject to compliance of certain terms & conditions. The approved plans are issued in duplicate, i.e. copies to the owner & architect.

2) LETTER OF APPROVAL/I.O.D. (INTIMATION OF DISAPPROVAL): Along with approval of plans, Municipal Corporation / Council, issues letter of approval in their format. For example in Mumbai, it is popularly known as I.O.D. (Intimation of Disapproval). People get confused for the long form of I.O.D. and are reluctant to accept it as letter of approval. In fact even though it is termed as intimation of disapproval, it should be read in its positive form; which means the I.O.D. is a letter of approval subject to compliance of terms & conditions

mentioned therein. Validity of Letter of approval (I.O.D.) is ONE year unless revalidated yearly.

3) COMMENCEMENT CERTIFICATE: It is development permission under M.R.T.P. Act 1966, issued by the Local Planning authority. It is generally issued together with approved plans & letter of approval in other cities except in Gr. Mumbai. The Municipal Corporation of Greater Mumbai, issues commencement certificate only after compliance of terms & conditions of the letter of approval (I.O.D.) by the applicant. This permission is popularly known as "C.C." (Commencement Certificate). Validity of Commencement Certificate is ONE year from its date of issue. This can be revalidated yearly for further 3 times (Total 4 years) within which period the applicant has to start the work. If for any reasons work is not started within the above period; the applicant has to seek fresh development permission. In case the property is subjudice revalidation period can be extended.

Notes:- a) Only after obtaining commencement certificate the applicant is entitled to start the work and not otherwise. The work carried out without C.C. is treated as unauthorized and is offence under MRTP Act, which attracts penal action and proceedings against the applicant.

4) ESSENTIAL TECHNICAL INFORMATION ONE MUST KNOW: The consumer should have adequate knowledge and information about certain technical terms commonly used in property transaction. To ensure clarity and confidence while executing any real estate document, some of the important information's are detailed below: -

Carpet Area: It is an internal area of each of the room (including toilets, passages/lobbies, balconies etc.) calculated by the internal dimensions of respective rooms measured inside from wall to wall. Note: For the purpose of stamp duty & assessment taxes, areas of open balconies are considered 50% and 100% area for enclosed balconies whether merged or not.

WILLS AND FAMILY SETTLEMENTS

The Indian Succession Act, 1925 defines a WILL as follows:

"A Will is the legal declaration of the intention of the testator, with respect to his property which he desires to be carried into effect after his death."

Important postulates of a WILL are as follows:

1. Legal declaration: A Will is a legal declaration. The documents purporting to be a Will or a testament must be legal, i.e. in conformity with the law and must be executed by a person legally competent to make it. It must be signed and attested, as required by law.
2. Disposition of Property: The declaration should relate to disposition of the property of the person making the Will.
3. Death of the Testator: A will become enforceable only after the death of the testator. It gives absolutely no right to the legatee (the person who inherits) until the death of the testator. It has no effect during the lifetime of the testator. The testator can change his will, at any time prior to his death, in any, manner he deems fit.
4. Revocability: The essence of every Will is that it is revocable during the lifetime of the testator.

PERSONS COMPETENT TO MAKE A WILL

1. According to Section 59 of the Indian Succession Act,
 - a. Any person of sound mind
 - b. Who has reached the age of majority
2. The following persons cannot make a will:
 - a. Lunatics, insane persons.
 - b. Minors i.e. below 18 years of age. In case a guardian is appointed to a minor, such minor reaches age of maturity only at the age of 21 years.

EXECUTOR OF A WILL

An executor is the person appointed ordinarily by the testator's by his will or codicil

1. To administer testator's property and
2. To carry into effect the provision of the will

A PROBATE

1. Probate means:
 - i. the copy of the will is given to the executor
 - ii. together with a certificate granted under the seal of the court and signed, by one of the registrars, certifying that the will has been proved.
2. The application for probate shall be made by petition to the court of competent jurisdiction.
3. A copy of the last will and testament of the deceased should be annexed to the petition.
4. The copy of the will and the copy of the grant of administration of the testator's estate together, form the probate.
5. It is conclusive evidence of the validity and due execution of the will and of the testamentary capacity of the testator.
6. A probate is obtained to authenticate the validity of the will.
7. The probate is still the only proper evidence of the executor's appointment.
8. The grant of probate to the executor does not confer upon him any title to the property which the testator himself had no right to dispose off which did belong to the testator and over which he had a disposing power with a grant of administration to the estate of the testator.
9. Probate proceedings cannot be referred to Arbitration. The probate court (whether it is the district court or High Court) has been granted and conferred with exclusive jurisdiction to grant probate of a Will of the deceased.

A SUCCESSION CERTIFICATE

1. Succession Certificate can be granted by the court to realize the debts and securities of the deceased and to give valid discharge.
2. A succession certificate is a certificate when granted to the person empowers the person,
 - a. to receive interest or dividends
 - b. negotiate the transfer or any of them

- c. with respect to the securities of a deceased person P.S. Securities means any bond, stock, debenture or security.
3. He is required to dispose of the amount so realized in accordance with the rights of the person entitled thereto.
4. The person requiring the Succession Certificate may
 - a. File an application in the court, where the properties of your deceased relative are situated or where he /she normally resided.
 - b. Depending on the value of the estate of the deceased, the matter shall go to the type of court, which can conduct cases for that value (This is known as "pecuniary jurisdiction" of the court).
 - c. With the names of all other heirs of your late relative as the respondents in the matter.
 - d. Who may after notice to all concerned and a newspaper notice is also issued apart from mandatory notice to the respondents.
 - e. Upon the expiry of the time period (normally 1 and a half months) from the date of publication of the notice after the respondents have given their no objection.
 - f. The court passes the orders for issuance of the Succession Certificate to the persons making such an application.
5. Judicial Stamp papers of sufficient amount (as per the prescribed court fees structure) to be submitted in the court, where after the Certificate is typed by the court staff, duly signed and sealed and delivered.
6. The certificate takes about 3-4 month from date of filing to receive your certificate.

WILL & NOMINATION

1. A nomination is not a will.
2. The nominee merely acts as the trustee. In some instances, the nominee and the beneficiary of the will is the same person.
3. At all times, the provisions of the will prevail over the nomination.
4. It is advisable to have the same person as the nominee and the beneficiary of the will, so as to prevent future disputes.
5. A nomination , in order to the effective, need not be executed as a will but must be in accordance with the formalities required by the particular provision applicable.

ATTESTATION OF A WILL

1. The testator shall sign or shall affix his mark to the will, or some other person shall sign it in his presence and by his direction.
2. The signature or mark of the testator, or the signature of the person signing shall appear clearly and should be legible. It should appear in the manner that is appropriate and makes the will legal.
3. The will shall be attested by two or more witnesses, each of whom has seen the testator sign r affix his mark to the will or has seen other person sign the will, in the presence and by the direction of the testator, or has received from the testator.
4. personal acknowledgement of his signature or mark, or of the signature of such other person. Each of the witnesses shall sign the will in the presence of the testator.
5. Each of the witnesses shall sign the will in the presence of the testator, but it should not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

EXECUTION OF A WILL

1. On the death of the testator, an executor of the will or an heir of the deceased testator can apply for probate.
2. The court will ask the other heirs of the deceased if they have any objections to the will.
3. If there are no objections, the court will grant probate.
4. A probate is a copy of a will, certified by the court. A probate is to be treated as conclusive evidence of the genuineness of a will.
5. In case any objections are raised by any of the heirs, a citation has to be served, calling upon them to consent.
6. This has to be displayed prominently in the court.
7. Thereafter, if no objection is received, the probate will be granted.
8. It is only after this that the will comes into effect.

PROCEDURE FOR REGISTRATION

1. A Will is to be registered with the registrar/sub-registrar with a nominal registration fee.
2. The testator must be personally present at the registrar's office along with witnesses.
3. Signature of registrar: The endorsement of the register is sufficient to prove the execution of the will, if at all the testators of the will are dead and if the testator affirms the contents of the will and put his thumb impression on the endorsement in the presence of the sub-registrar, the sub-registrar could also be considered to be an attesting witness.
4. Stamping of will: A will or codicil is not require to be stamped at all.

FORMS & FORMALITIES TO MAKE A WILL

1. Form of a Will
 - a. There is no prescribed form of a will.
 - b. In order for it to be effective,
 - . It needs to be properly signed and attested.
 - . The Will must be initialed by the testator at the end of every page and next to any correction and alteration.
2. Language of a Will
 - a. A Will can be written in any language.
 - b. No technical words need to be used in a will.
 - c. The words used should be clear and unambiguous so that the intention of the testator is reflected in his Will.
3. Stamp Duty
 - a. No stamp duty is required to be paid for executing a Will or a codicil.
 - b. A Will need not be made on stamp paper.
4. Attestation
 - a. A Will must be attested by two witnesses who must witness the testator executing the Will.

- b. The witnesses should sign in the presence of each other and in the presence of the testator.
 - c. However, according to Hindu Law, a witness can be a legatee. Under Parsi and Christian law, a witness cannot be an executor or legatee.
 - d. A Muslim is not required to have his Will attested if it is in writing.
5. Registration
- a. Under section 18 of the Registration Act the registration of a will is not compulsory.
 - b. It is a strong legal evidence that the proper parties had appeared before the registering officers and the latter had attested the same after ascertaining their identity.
 - c. A Will must be proved as duly and validly executed, as required by the **Indian Succession Act**.
 - d. Once a Will is registered, it is placed in the safe custody of the Registrar and therefore cannot be tampered with, destroyed, mutilated or stolen.
 - e. It shall be released only to the testator himself or, after his death, to an authorized person who produces the Death Certificate.
 - f. The cover should be super scribed with the name of the testator or his agent with a statement of the nature of the document.

FAMILY SETTLEMENT

As per Halsbury's Laws of England, "A Family Arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family, either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour. The agreement may be implied from a long course of dealing. But it is more useful to embody or to effectuate the agreement in a deed to which the term family agreement is applied." A family settlement is entered into for achieving a superior purpose, viz., accomplishing tranquility and accord in the family.

It is an agreement for the division of the family property by way of compromise to avoid family quarrel or litigation. The arrangement results in dividing family property. It becomes an agreement among the members of a family to share equitably whatever they obtained. It is an agreement between co-heirs dividing the property between them to conduce to the family peace.

ESSENTIAL CONDITIONS OF A FAMILY SETTLEMENT

1. An imperative prerequisite in a family arrangement is that there should be a family dispute or rival claims which required to be settled by an equitable division or allotment o property between the claimants who are necessarily family members belonging to the same family. The dispute could relate to any aspect, but is usually relates to the rights or claims in respect of property, assets, enjoyment o rights in respect of properties, claims, shares, possible claims, family feuds, refusal to recognize rights of family members, etc. It could relate to any aspect which may threaten the rights of any member or the family as a whole, if the disputes are prolonged or escalated or in the nature of creating situations or

circumstances that the members are not able to meet eye to eye. It could be a genuine dispute or a controversy, rival claims, assertions and denials. It is unfortunate that many disputes revolve around the sheer ego of the persons involved. The law says that these disputes are not in the best interest of the members of the family.

2. The family arrangement should be for the benefit of the family in general.
3. The family arrangement must be bonafide, honest, voluntary and it should not be induced by fraud, coercion or undue influence.
4. The parties to the family arrangement must have antecedent title, claim or interest. Even if a possible claim in the property which is acknowledged by the parties to the settlement will be sufficient for the same.
5. The consideration for entering into family arrangement should be preservation of family property, preservation of peace and honour of the family and avoidance of litigation.

ADVANTAGES OF FAMILY ARRANGEMENT

1. The transaction is not treated as a transfer and hence capital gains tax will not arise.
2. It is not treated as a gift.
3. The clubbing provision will not be applicable.
4. Equitable distribution of the wealth instead of concentrating the same in the hands of a few.
5. Establishing or ensuring a calmness and goodwill amongst the members of the family.