



cyril amarchand mangaldas  
ahead of the curve

# GENERAL ASPECTS OF REAL ESTATE IN INDIA

A Cyril Amarchand Mangaldas Thought Leadership Publication





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## General Aspects of Real Estate in India

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# FOREWORD



Conveyancing, i.e., the sphere of law which is concerned with conveyance/transfer of property, dates back in its formal sense in India to the enactment of Transfer of Property Act, 1882. The volume of jurisprudence available in this sphere, expounded over nearly a century and-a-half, is simply unfathomable. An added complexity emerges as a result of property being listed as a state subject under the Constitution of India. As the states are empowered to separately legislate on property matters, a multitude of laws on the subject, differing from one jurisdiction to the other, have evolved over time. Thus, it becomes impossible to encapsulate the entire gamut of this domain into a handbook of this size. At the same time, one is faced with the daunting task of having to decide which facet of property law to exclude from its scope.

Then there is the theoretical versus the practical aspect. Property Law possibly entails the greatest degree of harmonisation between the teachings of theory and the learnings from practices and experiences. For example, while the law recognises oral partition, it does not tell us about the difficulties one encounters in the absence of a written record of such partition. Similarly, while mutation does not vest title, a property owner may still experience issues and hurdles if the revenue records are not mutated to reflect the owner.

What purpose then does this handbook serve? Why should one read it?

At the outset, it must be noted that the handbook is not intended to be a reference guide to specific laws pertaining to different aspects of property or to real estate transactions. Instead, it highlights certain concepts of property law that may be more relevant than others to clients who are engaged in real estate transactions, or where real estate is an important component of such transactions.

The handbook has also been written to provide a holistic understanding of the property law, where theory converges with practice and experience.

Law as a subject is associated with complex language. I am happy to say that the team of lawyers, overcoming their inherent affinity towards wordy narration, have tried to remove the linguistic complexities while working on the handbook with the aim of making it reader friendly, irrespective of his/her business or professional background.

To conclude, one hopes that the handbook will be useful in acquiring a basic understanding of property law and practice, and will also enable the reader to ask the right questions while contemplating or engaging in a real estate transaction.

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01

# CONCEPT OF IMMOVABLE PROPERTY



Property may broadly be classified into two categories, viz. movable property and immovable property. The Transfer of Property Act, 1882 (TPA), defines ‘immovable property’ as not including standing timber, growing crops or grass. The General Clauses Act, 1897 also provides a definition of ‘immovable property’, which “shall include land, benefits arising out of land and things attached to the earth, or permanently fastened to the earth.” The said Act goes on to define ‘movable property’ as being “a property of every description except immovable property.”

It is noteworthy that law does not define ‘immovable property’ merely in the context of land. The scope of this expression certainly goes much beyond, as is clear from the non-exhaustive definitions provided under the aforesaid legislations. Given the above, classification of a particular property/ asset into movable or immovable has been a matter of debate for long. Illustratively, how would one classify plant and machinery in a factory building?

The question that would logically emerge – what is the need for this classification in the first place?

At the outset, it is important to appreciate this distinction for the following reasons:

## Mode of transfer

Ownership of movable property may be transferred by way of delivery. On the contrary, title to immovable property exceeding the value of INR 100 may be transferred only by way of a registered instrument. Therefore, in the event an immovable property is wrongly classified as a movable property, and is transferred by way of delivery, the transfer of title would end up being defective.

## Determination of stamp duty

As mentioned above, movable property may be transferred simply by delivery. It does not require to be affected in writing. Having said that, the law does not preclude transfer of movable property under a written instrument. Where the transfer is so affected, it attracts stamp duty as prescribed for such an instrument under the Indian Stamp Act, 1899 (ISA), or the applicable state stamp law. However, stamp duty payable on an instrument affecting transfer of immovable property is in most cases considerably higher than the duty payable on an instrument

affecting transfer of movable property. Therefore, proper classification of property into movable and immovable becomes imperative to assess the stamp duty that would be payable on an instrument for transfer of a particular property.

## Ability to create mortgage

In terms of Section 58 of the TPA, a person may mortgage an interest in an immovable property for the purpose of securing a loan/ money. Therefore, if the property proposed to be offered as security does not fall within the meaning of immovable property, it would be considered unmortgageable under the TPA. This would also have a direct bearing on the manner and method in which security created over such property may be enforced by the creditor.

Having noted its importance, we may now touch upon the essential principles that have been adopted by courts in India as the basis of classification between movable and immovable property.

In the case of *Duncan Industries Limited v. State of U.P.* [1999] IN SC 414, the Supreme Court had to examine whether plant and machinery in a fertiliser factory should be treated as movable or immovable property. The Supreme Court held:

*“The question whether a machinery which is embedded in the earth is movable property or an immovable property, depends upon the facts and circumstances of each case. Primarily, the court will have to take into consideration the intention of the parties when it decided to embed the machinery whether such embedment was intended to be temporary or permanent. A careful perusal of the agreement of sale and the conveyance deed along with the attendant circumstances and taking into consideration the nature of machineries involved clearly shows that the machineries which have been embedded in the earth to constitute a fertiliser plant in the instant case, are definitely embedded permanently with a view to utilise the same as a fertiliser plant. The description of the machines as seen in the Schedule attached to the deed of conveyance also shows without any doubt that they were set up permanently in the land in question with a view to operate a fertiliser plant and the same was not embedded to dismantle and remove the same for the purpose of sale as machinery at any point of time. The facts as could be found also show that the purpose for which these machines were embedded was to use the plant as a factory for the manufacture of fertiliser at various stages of its production. Hence,*



*the contention that these machines should be treated as movables cannot be accepted.”*

On the other hand, in Commissioner of Central Excise v. Solid and Correct Engineering Works Limited (2010) 5 SCC 122, the Supreme Court held as follows:

*“Attachment of the plant in question with the help of nuts and bolts to a foundation not more than 1.5 feet deep intended to provide stability to the working of the plant and prevent vibration/wobble free operation does not qualify for being described as attached to the earth... That is because attachment of the plant to the foundation is not comparable or synonymous to trees and shrubs rooted in earth. It is also not synonymous to imbedding in earth of the plant as in the case of walls and buildings, for the obvious reason that a building imbedded in the earth is permanent and cannot be detached without demolition. Imbedding of a wall in the earth is also in no way comparable to attachment of a plant to a foundation meant only to provide stability to the plant especially because the attachment is not permanent and what is attached can be easily detached from the foundation.”*

The task of determining whether the property in question is movable or immovable is, therefore, to be undertaken purely on the basis of the surrounding facts and circumstances.



02

# TITLE INVESTIGATION IN REAL ESTATE TRANSACTIONS



No one can pass a better title than what he himself possesses. This principle, enshrined in the Latin maxim '*nemo dat quod non habet*', lays down the fundamental basis of investigating immovable property title.

In India, title investigation becomes important, and at the same time complex, given a multitude of factors. Illustratively:

- i) Title to land is not certified by the government. An intending purchaser, therefore, must do everything possible to satisfy himself on the title of the seller;
- ii) Very often, title devolves by succession. Additionally, several properties continue to be held by Hindu Undivided Families/ Joint Hindu Families. The possibility of other relatives having a share in the property can, therefore, not be ruled out;
- iii) Aspects such as whether the land is government or privately owned, agricultural or non-agricultural, among others, may involve nuances relating to title and transferability of the land in question.

Law does not prescribe a standard period for which title to a property is to be investigated. It is, therefore, not surprising to see title reports pertaining to different properties covering varying time periods, the most common being the ones issued for 12 years and 30 years preceding the date of the proposed transaction. The question that would logically emerge from this is, what should be the period one should cover in a title investigation, and why?

The basis for determining coverage period has its roots in limitation period that is statutorily prescribed in India for various claims pertaining to immovable property. For example, the limitation period for instituting a suit for possession of property is 12 years. This would explain why title investigation is often undertaken for a period of 12 years.

However, there are a variety of other claims for which suits may be instituted beyond the aforesaid period. Illustratively, a minor may institute a suit within 3 years from the date of attainment of the age of majority (i.e., 18 years). Therefore, if a minor who had a share in the immovable property being transacted upon was one day old on the date of the transaction, the possibility of a suit being instituted in connection with such minor's right cannot be ruled for the next 21 years. The period of 30 years is, therefore, generally accepted as the preferred and advisable

time period for undertaking title investigation, as this covers the limitation period prescribed under law for all potential claims in relation to immovable property.

Title investigation is a comprehensive and complex exercise that relies on multiple sources to assess the following:

- i) **Nature of present holder's right:** It is important to ascertain the nature of the right that the current owner holds over a property and the transferability of such a right. The nature could be absolute/ freehold ownership, perpetual or periodic lease, or land allotted by the government under various legislations.
- ii) **Mode of origin of title:** A person can derive title of a property by purchase, inheritance, partition, or gift. It is important to examine the relevant documents involved in each type of transfer to ensure that there are no restrictive covenants that affect the enjoyment or transferability of the property.
- iii) **Chain of title and authority to transfer:** It is imperative to examine the historical title documents and the corresponding land revenue records to determine whether the current owner validly acquired the title and thereby has the authority to transfer the property in question.
- iv) **Encumbrances/ charges over the property:** Where an immovable property is subject to an encumbrance, any transfer thereof would invariably be subject to such encumbrance. It is therefore necessary to ensure that the property is free from all encumbrances and charges before it is transacted upon. For this, one would need to examine the records maintained by the sub-registrar of assurances. It is also prudent to obtain an encumbrance certificate, enlisting details of all charges over the property from the sub-registrar/ local land revenue office.

Further, if the vendor is a company, it may be advisable to verify the online records maintained by the Ministry of Corporate Affairs, to identify charges that may be registered in relation to the property in the name of the company. Additionally, a mortgage could be created by the deposit of original title documents with the lender. Inspection and verification of the original title documents, therefore, helps to rule out the possibility of such third-party rights existing in relation to the property.



**v) Transfer within reserved classes:** In certain states, there is a restriction on transfer of property owned by reserved classes (such as people belonging to scheduled castes and scheduled tribes). Such properties may not always be transferable in the normal course. While undertaking title investigation, prior title documents must be checked in this regard.

**vi) Pending disputes:** Property disputes make up the single largest percentage of ongoing litigation in India. It would, therefore, be advisable to undertake appropriate searches in court records (to the extent practicable – most records are maintained manually and are not easily available) to verify that the property is not under litigation.

Just as the time period for undertaking title investigation is not prescribed under law, similarly, the law is silent on any specific steps that must be undertaken as part of the process. However, the Bombay High Court, in its decision in *Ramniklal Tulidas Kotak and Ors. v. Varsha Builders and Ors.*<sup>1</sup>,

- ii) Undertaking search in the offices of sub-registrar (and Registrar of Companies in case of a company);
- iii) Publication in at least two newspapers, inviting claims of any member of the public against the property in question;
- iv) Administer requisitions on title and obtain satisfactory answers; and
- v) Obtain declarations on oath from relevant persons, regarding the factual position before issuing the certificate of title.

As mentioned above, title investigation is not restricted to review of a single document or verification of records at a single repository. At the same time, given the potential issues surrounding title, steps taken for title investigation are not fool proof. Acknowledging this fact, the law recognises and affords certain protections to a *bona fide* purchaser/ transferee, i.e., a transferee who has acted in good faith, and taken reasonable care to ascertain



examined the essentials of a valid title certificate. The Court also enumerated the steps which were essential for issuance of a certificate, inter alia:

- i) Perusal of title deeds;

title of the transferor. It is, therefore, imperative that an intending transferee take all steps that may be possible to investigate title (as listed above), to qualify for protection offered under law to a *bona fide* purchaser.

<sup>1</sup> *Ramniklal Tulidas Kotak and Ors. v. Varsha Builders and Ors.* AIR 1992 Bom 62.



03

# TRANSFER OF PROPERTY



constructed by the lessee on the leasehold land, to name a few.

**iv) Exchange<sup>7</sup>** : As the name suggests, where two persons mutually agree to transfer ownership of property in exchange of another property between themselves.

**v) Gift<sup>8</sup>**: Where the transferor, voluntarily and without consideration, transfers property to the transferee. It may be noted that a transfer through gift does not contain any element of consideration in any shape or form<sup>9</sup> and a deed cannot be construed as gift in the absence of proof of delivery and acceptance of possession of the gifted property.<sup>10</sup>



<sup>7</sup> Section 118 of the TPA.

<sup>8</sup> Section 122 of the TPA.

<sup>9</sup> Sonia Bhatia v. State of Uttar Pradesh 1981 (2) SCC 585.

<sup>10</sup> Baby Ammal v. Rajan Asori 1997 (2) SCC 636.

The TPA, defines ‘transfer of property’ as an act by which a living person conveys property, in present or future, to one or more living persons.<sup>1</sup>

Before proceeding, it is important to note that ‘transfer of ownership’ is distinct from ‘transfer of interest’ in a property<sup>2</sup>. ‘Ownership’ is a bundle of all rights and interests in a property such as rights of exclusive possession and enjoyment, destruction, alteration, alienation, and of maintaining and recovering possession of the property from all other persons. Therefore, for a person to be considered as ‘owner’, he must have absolute dominion over the property in all respects and should be capable of transferring such ownership. On the other hand, ‘transfer of interest’ would entail transfer of one or more of such subordinate rights and interest.

Transfer of a property may be made by (i) acts of the parties (i.e., by way of a contract), and/or (ii) operation of law. Transfer by operation of law are governed by the applicable personal laws, for instance, Hindu or Muslim laws in respect of will, succession, and inheritance; or by order of the court under the Civil Procedure Code, 1908.

The TPA provides for the following modes of transfer:

**i) Sale<sup>3</sup>:** This involves executing and registering (with the Sub-Registrar of Assurances) a sale/conveyance deed for transfer of ownership in lieu of price paid or promised, or part paid and part promised.

It may be noted that it is a settled position in law that a contract for sale (*also known as agreement for sale or agreement to sell*), wherein the parties agree to transfer the property in future on terms settled between the parties, does not transfer ownership, and only creates an enforceable right for specific performance.<sup>4</sup>

**ii) Mortgage<sup>5</sup>:** Mortgage is defined as a transfer of an interest in an immovable property for the purpose of securing the payment of money (*loan*) advanced, or to be advanced, an existing or future debt, or the performance of an engagement

involving pecuniary liability. Here, the transferor and the transferee are called a ‘mortgagor’ and a ‘mortgagee’, respectively. While TPA recognises six types of mortgages, there are two which are commonly used, viz:

- (a) **Mortgage by deposit of title deeds** – where a person delivers title documents of his immovable property to the creditor with an intention to create security thereon. This is the only type of mortgage which may be created orally.
- (b) **English mortgage** – where, the mortgagor binds himself to repay the loan amount on a certain date and transfers the mortgaged property absolutely to the mortgagee subject to the condition that the mortgagee will re-transfer the mortgaged property to the mortgagor upon payment of the loan amount. Unlike other kinds of mortgage, a mortgagee has a right to enforce mortgage by way of private sale, as against seeking a decree for enforcement from a court of law.

**iii) Lease<sup>6</sup>:** A lease involves executing a lease deed/agreement to transfer the right to enjoy an immovable property for a certain time or perpetuity in consideration of a price paid or promised (*premium and/or rent*) to be rendered periodically or on specified occasions to the transferor by the transferee.

‘Lease’ is considered to be one of the most complex modes of transfer under the TPA, as it involves the rights of a person who is in legal and valid possession and enjoyment (*the lessee*), against rights of one who is the owner (*the lessor*). This assumes significance given the very large number of properties which are held on lease, either from government agencies or from private parties. Some of the aspects that warrant analysis, stemming from the interplay of a contract of lease with law, are ability of the lessee to transfer his leasehold interest in favour of a third party, ability to mortgage the leasehold interest, rights over structures that may be

<sup>1</sup> Section 5 of the TPA clarifies that ‘living person’ includes a company or association or a body of individuals, whether incorporated or not.

<sup>2</sup> Mohd. Noor v. Mohd. Ibrahim, 1994 (5) SCC 562.

<sup>3</sup> Section 54 of the TPA.

<sup>4</sup> Namdev v. Collector, 1995 (5) SCC 598.

<sup>5</sup> Section 58 of the TPA.

<sup>6</sup> Section 105 of the TPA.

04

# CONCEPT OF DUAL OWNERSHIP





The concept of dual ownership is a special feature of the Indian laws of property and is well recognised in India. In dual ownership, the land may belong to one person and the super structure (building) standing thereon may belong to another.

It may be noted that the English law maxim “*quid inaedificatur solo solo cedit*” which means that whatever is affixed to the soil becomes part of the soil was often used by opposing parties as a counter argument against the concept of dual ownership. In simple terms, the maxim suggests that if any building is erected over a land, then in the eyes of the law, the owner of such land becomes the owner of such building.

However, the courts in India, while recognising the separation of ownership of buildings from the ownership of the land, have time and again held that the said English maxim has only a limited application in India at the most and that there is no rule of law that whatever is affixed or built on the soil becomes a part of it, and is subjected to the same rights of property as the soil itself.<sup>1</sup>

Further, the courts in India have affirmed that a person who in a *bona fide* manner erects any structure/building on a land belonging to someone else (may be an individual or state) with their permission would not be deemed as a trespasser, nor would the said structure/building vest in the owner of the land by the application of the above English maxim.<sup>2</sup> The only important consideration here is that the parties (the owner of the land and the person causing the construction of the superstructure) must have an existing legal relationship and no more<sup>3</sup>.

By virtue of the concept of dual ownership, transfer of building may be independent from transfer of land, and *vice versa*. For instance, courts in India have periodically held that if the tenant has constructed a building on a leased-out land, then by virtue of the doctrine of dual ownership the tenant would have the ownership of the building, unless there is a contract to the contrary; and if such tenant let out the said building, it would not amount to sub-letting the leasehold property, for the leasehold property was only the land on which the building has been built<sup>4</sup>.

The TPA also contemplates the concept of dual ownership in the sense that it gives a lessee the right to remove all the things which he has attached to the demised land including structures, fixtures, buildings, etc. even after the determination of the lease in the absence of a contract to the contrary<sup>5</sup>. This provision essentially confirms that unless there is a contract to the contrary, the lessor is the owner of the land leased to the lessee and the lessee who builds/affixes a structure on such leased land will be the owner of such structure.

<sup>1</sup> Narayna Das Khettry v. Jatindra Nath Roy Chowdhury and Ors., AIR 1927 PC 135.

<sup>2</sup> Bishan Das and Ors. v. State of Punjab and Ors. AIR 1961 SC 1570

<sup>3</sup> Park View Enterprises v. State Government of Tamil Nadu [1991] 189 ITR 192 (Mad)

<sup>4</sup> Sitaram Narayan Shinde and Ors. v. Ibrahim Ismail Rase and Ors. 2005 (1) MhLj35; Laxmi Enterprises v. The Commissioner and Ors. 2013 (2) KCCR 1189; West's Patent Press Co. Ltd. and Anr. v. Govindnaik Gurnathnaik Kalghatgi and Ors., AIR 1984 Noc 274 (Kar)

<sup>5</sup> Section 108(h) of the TPA, 1882.

05

# DOCTRINE OF PART PERFORMANCE



It is a settled position in law (*through the provisions of the TPA and judicial precedents*) that a contract for sale (*also known as agreement to sell or agreement for sale*), wherein the parties agree to transfer the property on the terms settled between them, does not convey any right, title or interest in such property and it only creates an enforceable right for specific performance. Sale can be affected only by way of a sale deed, duly stamped and registered in accordance with law.

Notwithstanding the above, it is possible under such an agreement to sell, a part of the contract was fulfilled by an intending transferee, whose interest may be prejudicially affected if the sale deed remained non-registered. This was the premise that necessitated amendment to the TPA to insert Section 53A, which enshrines in it the doctrine of part performance in Indian law.

Section 53A of the TPA contemplates that where the transferee (*under a written contract viz. generally an agreement to sell or agreement for sale*) has, in part performance of the contract, taken possession of the property or part thereof, or the transferee being already in possession or continues in possession in part performance and (a) has done acts in furtherance of the contract, (b) is willing to perform its own part of the contract, and (c) the transfer has not been completed under law, then the transferor is debarred from enforcing against the transferee any right in respect of such property other than the right expressly mentioned in the contract.

Some key elements of the abovesaid provision of the TPA are as follows:

- ▮ Such contract for sale must be duly stamped and registered in terms of the Registration Act, 1908 (**Registration Act**), failing which they shall have no effect for the purposes of Section 53A of the TPA<sup>1</sup>.
- ▮ The transferee, in part performance of the contract, had taken and continues to be in

possession of the property;

- ▮ In order to claim the benefit of this provision, such transferee must have performed or be ready and willing to perform its own part of the agreement.;
- ▮ The rights under Section 53A act as a 'shield' and not a 'sword'. In other words, it can be used only to defend one's possession (*transferee in possession*). and not to claim against the transferor<sup>2</sup>;
- ▮ Where the requirements of Section 53A are complied with, the said provision will protect possession of the 'transferee in possession' even in the event the suit for specific performance of contract is barred by limitation<sup>3;4</sup> and
- ▮ The scope of Section 53A is not limited to sale transactions but also includes lease, exchange, and mortgage transactions which are not completed under law.

The first condition set forth above (i.e., regarding registration of the agreement to sell) is particularly noteworthy. An agreement to sale, being merely a contract for sale under which title to property does not pass, is not required to be registered under law. However, for invoking the defence of part possession, the agreement to sell must be registered. The intending transferee must, therefore, be mindful of seeking registration of the agreement (against payment of applicable stamp duty), to secure the benefit of the protection that is offered by Section 53A.

<sup>1</sup> Section 17 and 49 of the Registration Act.

<sup>2</sup> Bishwabani Private Limited v. Santosh Kumar Datta, 1980 (1) SCC 185.

<sup>3</sup> Article 54 of the Limitation Act 1963, provides the prescribed period of limitation for a suit of specific performance i.e. three years from the date fixed for performance or if no such date is fixed, when the plaintiff has notice that performance is refused.

<sup>4</sup> Shrimant Shamrao Suryawanshi and Anr. V. Pralhad Bhairoba Suryawanshi and Anr., 2002 (2) MHLJ 1 (SC).



06

# VALIDITY OF TRANSFER OF PROPERTY THROUGH GENERAL POWER OF ATTORNEY, SALE AGREEMENTS AND WILL



The Supreme Court, in the landmark judgment of *Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana and Ors.*, (2012) 1 SCC 656, exhaustively dealt with the issue and ill effects of what is known as ‘General Power of Attorney Sales’ or ‘Sale Agreement/Will/Power of Attorney Sale’ (**GPA/SA/Will Sales**).

It was observed that the *modus operandi* to deal with such GPA/SA/Will Sales involves the owner or a person (*claiming to be the owner*) to receive a consideration, deliver possession of the property (*which is subject matter of such transaction*) to the purchaser and execute the following documents or variations thereof:

- i) Agreement of sale in favour of the purchaser confirming the terms thereof (*including consideration, delivery of possession and undertaking to execute any other documents as and when required in future*), or an agreement of sale to sell the property with a separate affidavit confirming receipt of full consideration and delivery of possession; or
- ii) Irrevocable general power of attorney in favour of the purchaser or its nominee authorising him to manage, deal with and/or dispose of the property without reference to the owner, or a general power in favour of the purchaser authorising him to sell or transfer the property and a special power of attorney to manage the property; or
- iii) A will bequeathing the property to the purchaser (*as a safeguard against the consequences of death of the vendor/owner before transfer is effected*).

It was observed by the Court that such GPA/SA/Will Sales were evolved, more specifically in the northern parts of the country, to:

- i) avoid prohibitions/conditions regarding certain transfers;
- ii) avoid payment of stamp duty and registration charges on deeds of conveyance;
- iii) avoid payment of capital gains on transfers and thereby evading taxes;

- iv) avoid payment of unearned increases due to authorities on transfer; and
- v) invest unaccounted money (*termed as ‘black money’ by the Court*).

It may be noted that such GPA/SA/Will Sales must not be confused or equated with genuine transactions, where the owner of the property grants a power of attorney in favour of a family member or friend to manage and sell his/her property (*as he/she is not able to manage the property personally*) or where the owner has entered into a development agreement with a developer or builder and in that regard executed a power of attorney empowering the developer to execute agreements of sale or conveyance deeds in relation to the developed property (*built up units or undivided share in land*) in favour of the prospective purchasers.

In GPA/SA/Will Sales, the purchaser pays the full consideration, but instead of getting a conveyance deed executed and registered, a general power of attorney/sale agreement/will as a mode of transfer is executed, as the case may be, either at the instance of the owner/vendor or at his/her own instance.

The Court also opined that earlier observations of the Delhi High Court in *Asha M. Jain v. Canara Bank*, 94 (2001) DLT 841, observing that “concept of power of attorney sales have been recognised as a mode of transaction” are unwarranted and not justified and that such decisions to the extent they recognise GPA/SA/Will Sales as concluded transfers are not good law.

The key features of the judgment passed by the Supreme Court (*after considering the above observations and the provision of applicable laws*) in *Suraj Lamp Case* (*supra*) are as follows:

- 1 contract of sale (*sale agreement, agreement to sell*) does not, in itself, create any interest in or charge on such property (*the same is expressly is declared in the TPA*<sup>1</sup>) and will not confer any title nor transfer any interest in an immovable property except for the limited right granted under the TPA<sup>2</sup>;

<sup>1</sup> Section 54 of the TPA.

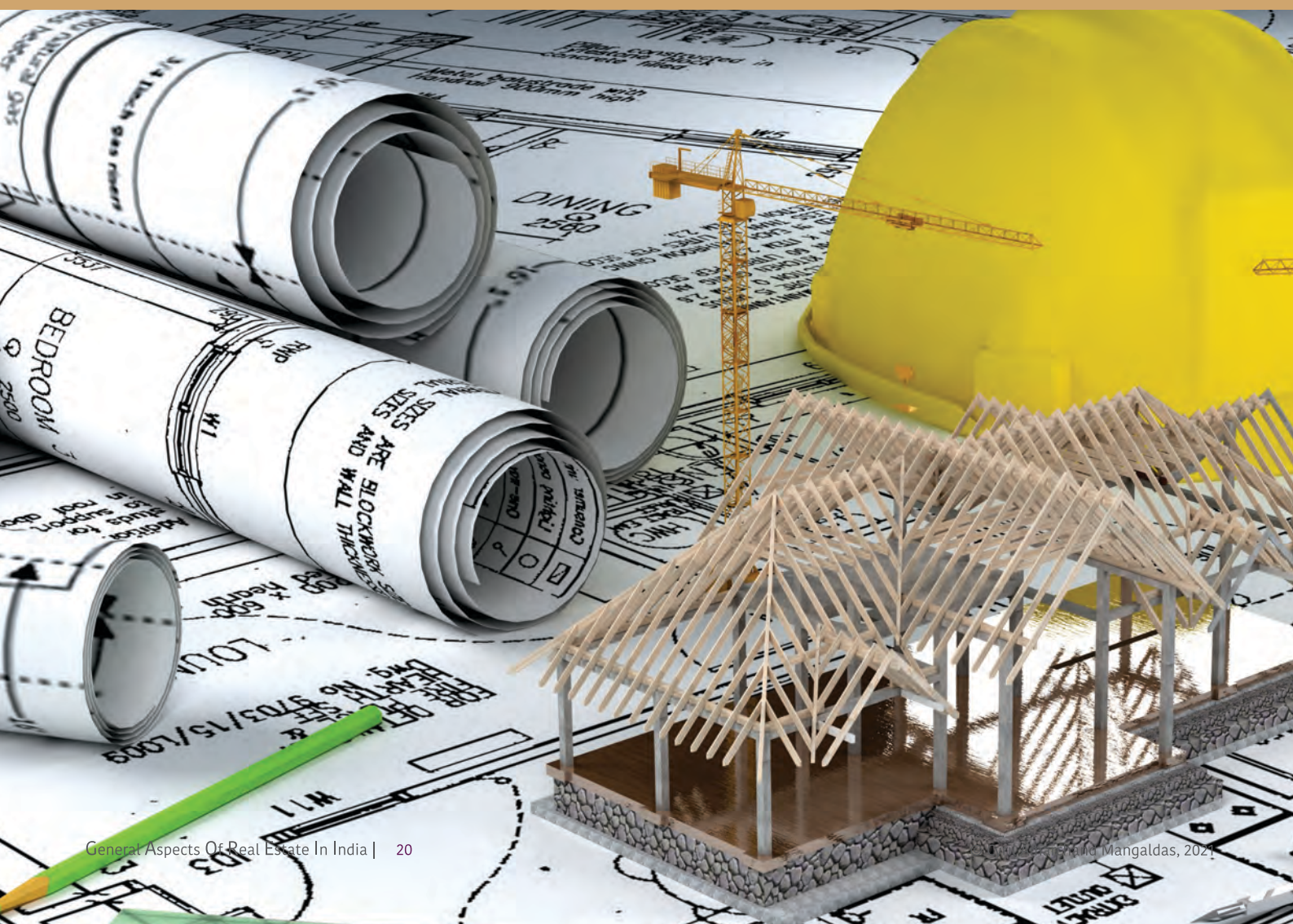
<sup>2</sup> Section 53A of the TPA, where the transferee (under a writing contract) has, in part performance of the contract, taken possession of the property or part thereof or the transferee being already in possession or continues in possession in part performance and has done acts in furtherance of the contract and is willing to perform his part of the contract, and the transfer has not been completed under law, then the transferor is debarred from enforcing against the transferee any right in respect of such property other than the right mentioned in the contract.



- ⌞ transfer of immoveable property by way of sale (or lease) can only be carried out by a registered deed of conveyance (sale deed). In the absence of a deed of conveyance (*duly stamped and registered as required under law*), no right, title or interest in an immoveable property can be transferred;
- ⌞ power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property and is merely a creation of an agency, whereby the grantor authorises the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him. Further, power of attorney is a document of convenience and even an irrevocable power of attorney does not have the effect of transferring title to the grantee;
- ⌞ will is a testament of the testator, a posthumous disposition of the estate of the testator directing distribution of his estate upon his death and is not a transfer *inter vivos*;
- ⌞ GPA/SA/Will Sales neither convey any title nor create any interest in an immovable property. Further, they cannot be recognised as a valid mode of transfer of immovable property and thus, cannot be relied upon or made the basis for mutation in municipal or revenue records;
- ⌞ The above also applies to leasehold property and a lease can be validly transferred only under a registered assignment of lease (*subject to the provisions of the Registration Act.*); and
- ⌞ A GPA/SA/Will Sales cannot be treated as a completed transfer. It will continue to be treated as agreement for sale, and may be used to obtain specific performance or to defend possession under Section 53A of the TPA.



# DEVELOPMENT ARRANGEMENTS IN INDIA




**The most commonly used development arrangements in India are as follows:**

<b>Joint Development Agreement</b>	<b>Development Management Agreement</b>
A developer is appointed by the landowner to develop the property. The developer is responsible for the physical development of the project. By virtue of the Development Agreement, the Developer acquires a right in the property itself.	A manager is appointed by the landowner for project management. While the project development may take place under the control and supervision of the development manager, the actual development is undertaken by the land owner. The rights of a development manager are purely contractual in nature.
Consideration is paid by the developer for acquisition of development rights in the property. Payment of consideration is typically structured as a revenue share or an area share arrangement. In the former, the revenue is split between the landowner and the developer basis a pre-agreed sharing arrangement. In case of the latter, each party is entitled to identified built-up areas in the development, with such party having the right to appropriate the entire sale proceeds from these spaces.	Consideration is paid by the landowner to the development manager as a fee. This may be structured as a lumpsum amount, payable on achieving specified milestones. However, it is not uncommon to structure the consideration payable to the manager on a revenue/ area sharing model as well. However, the fact that the consideration is being paid in this manner does not change the nature of the agreement.
Right to sell the built-up spaces is retained by the developer.	The development manager is granted rights relating to marketing, finalising customer documents, and overall control over project sales. However, the legal right of sale continues to vest with the landowner.
Most state stamp legislations provide for a separate entry on stamp duty payable on joint development agreements. They typically provide for stamp duty to be paid on ad valorem basis, linked to the market value of the property. In some jurisdictions, the duty payable is equivalent to what is payable on conveyance.	Attracts nominal stamp duty, as stamp duty legislations do not typically provide for a specific duty payable on development management agreements.
Development Agreements arguably create an interest in the immovable property in favour of the developer, given that the developer has effectively acquired an interest in the built-up area or the revenue in the project, which are both benefits arising from the land. Therefore, ideally, a development agreement should be registered. However, please note that it is a reasonably common practice in several jurisdictions to not register the development agreement.	A development management agreement, being purely a contractual right, does not create any right or interest in the property, and would, therefore, typically not require to be registered.
A developer develops a real estate project for the purpose of sale. This entails registration of the developer as a 'promoter' for the purpose of the Real Estate Regulation Act, 2016.	A development manager is appointed as a contractor by the landowner, who is developing the real estate project for sale. Therefore, depending on the specific provisions of the development management agreement, it may not trigger the requirement of registering the development manager as a 'promoter'.



08

# LEASE OF IMMOVABLE PROPERTY

A photograph of a garden with a brick wall and a light blue sign that reads "for lease". The sign is positioned in the foreground, and the background shows a brick wall, a white lattice fence, and various green plants and trees.

for  
lease

The term 'Lease' as defined under Section 105 of the TPA, envisages transfer of a right to exclusively enjoy an immovable property for a certain time or in perpetuity, in consideration of a price paid or promised to be paid periodically or on specific occasions by the transferee to the transferor.



## Essential Ingredients of Lease

- i) Interest and possession:** A lease creates an enjoyment rights or an interest in a property and entitles the lessee to remain in possession until the expiry or termination of the lease. A lease is not a mere contract, but a transfer of an interest in land and creates a right in rem.
- ii) Duration of lease:** The commencement date of a lease must be certain or ascertainable. Section 110 of the TPA states that in the event the date of commencement is not stated, then the lease will begin from the day of execution of the lease. In India, a lease may be in perpetuity, but if silent on the duration of the term the lease would be considered void<sup>1</sup>.
- iii) Consideration:** The consideration under lease has two components – Premium and Rent. Premium is the sum of money paid or promised as consideration for grant of lease of a property and is quantified in lumpsum, whether paid outrightly or under instalments. The expression 'price paid or promised' is similar to the one used in the definition of 'sale' under Section 54 of the TPA, which provides for sale of property in consideration of 'price paid or promised to be paid'. The import of both expressions is that that conveyance of immovable property, either by way of sale or lease, may only be done against a monetary consideration.

Rent, while also being in consideration of lease, is paid in lieu of the possession of the property by the lessee. Rent may be payable as per such periodicity as may be agreed between the lessor and the lessee. In terms of Section 105, rent may be payable as 'money, a share of crops, service or any other thing of value.' Rent may, therefore, not necessarily be in monetary terms, unlike in the case of premium.

### iv) Registration of a Lease and the Concept of Month-to-Month Tenancy:

Section 107 of the TPA prescribes the mode for creation of a valid lease and stipulates that a lease for a period of more than a year requires registration. Further, Section 17(1)(d) of the Registration Act, states that leases of immovable property for a term exceeding one year, or rents reserved for a year have to be compulsorily registered. However, the Supreme Court has time and again held that non-registration of a lease deed does not make such transfer void or ineffective. In various judgments<sup>2</sup>, the Supreme Court has held that in the absence of a registered instrument, a lease granted for more than 1 (one) year will be treated as a month-to-month lease. In such cases, while an unregistered lease for a term exceeding 1 (one) year cannot create a contractual lease, the existence of lease is nevertheless presumed from the conduct of the parties.

In terms of Section 106 of the TPA, in the absence of a written contract or local usage, a lease of immovable property for agriculture and manufacturing purpose is deemed to be year-to-year tenancy. However, the parties are free to decide any other term (other than year-to-year) for such lease, as this Section 106 is subject to a contract to the contrary. All other leases, except as aforesaid, are deemed to be month-to-month tenancies.

### v) Rights and obligations of lessor and lessee:

Section 108 of the TPA lists out various rights and obligations of both the lessor and the lessee. Illustratively, (i) a lessee may assign or sub-lease its leasehold interest in favour of another person, (ii) a lessee does not have the right to erect a structure of a permanent nature on the leased property without consent of the lessor.

It is noteworthy that the rights and obligations as set out under Section 108 are subject to local law or a contract to the contrary. Section 108, therefore, gives due regard to the various rent control Acts enacted by different states, which set out the *inter-se* rights and obligations of the lessor and the lessee. These rent control Acts would prevail over Section 108 in the event of any contradictions between the two legislations. Parties are also free to contractually vary their respective rights and obligations under the lease deed.

<sup>1</sup> Sewakram v. Meerut Municipal Board AIR 1937 All 328.

<sup>2</sup> *Burmah Shell v. Khaja Midhat Noor* (AIR 1988 SC 1470) and *Park Street Properties Private Limited v. Dipak Kumar Singh* (AIR 2016 SC 4038).

<sup>3</sup> *Anthony v. KC Itoop and Sons* (AIR 2000 SC 3523).



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# LEASE VERSUS LICENSE



### Lease versus License: Key differences

Basis	Lease	Leave and License
<b>Transfer of interest</b>	A lease entails transfer of an interest in a specific immovable property.	A license is a mere permission, without any transfer of an interest.
<b>Transferable and Heritable</b>	The lessee may assign its leasehold interest in the property, or create a sub-lease in respect thereof, in favour of a third party. The tenancy will also devolve in favour of the legal heir upon the death of the lessee.	No, it is neither transferable nor heritable.
<b>Death of the Grantor or Grantee</b>	A lease does not come to an end on either upon the death of the grantor or grantee.	Since it is a personal contract, a license comes to an end with the death of either the grantor or the grantee.
<b>Cessation</b>	A lease is not revocable and can come to an end only in accordance with the terms and conditions stipulated in the lease.	A license can be withdrawn at any time at the pleasure of the grantor, except if provided for to the contrary under the contract.
<b>Possession</b>	The lessee has an exclusive possession to the property.	Legal possession continues to remain with owner/ licensor.
<b>Transfer of Property</b>	A lease is unaffected by the transfer of the property by sale in favour of a third party. Unless there is a contract to the contrary, the sale by the lessor to a third party is subject to the lease granted in favour of the lessee.	The license terminates immediately if the property is sold to a third party, unless the transferee elects to continue with the license.
<b>Litigation</b>	A lessee can sue a third party in its own name, in respect of the property.	A licensee cannot sue strangers in respect of the property in its own name.
<b>Stamp Duty and Registration</b>	A lease agreement is required to be stamped in accordance with the local stamp laws where the concerned property is located. A lease is also required to be registered under the Registration Act, unless it is for a term not exceeding twelve (12) months.	Except for a few states, there is no specific entry in the state stamp legislation which mandates payment of stamp duty on a license agreement. Accordingly, such an agreement would be stamped for a nominal amount. License agreements do not require to be registered (being only in the nature of a personal contract) unless there is a state-specific requirement to do so (such as in Maharashtra).

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# LEASING TRANSACTIONS IN INDIA



While lease as a concept has been discussed earlier, the nuances of leasing transactions may vary, depending on the nature of immovable property and the intended purpose of the property. Some of these nuances are discussed below.

## Security Deposit

This is a common feature of both residential and commercial leases. Tenants are typically expected to deposit a fixed amount with their landlords by way of a security against a potential non-compliance of the terms of the lease. While there is no prescribed rate at which the security deposit should be maintained, an amount equivalent to three to six months' rent is fairly common in the Indian realty market. In some instances, leases also provide for escalation of security deposit in line with escalation of the rent.

Security deposit has to be maintained for the duration of the lease period and is refundable upon expiry/ termination of the lease without interest. Further, lease agreements may specifically provide for conditions under which the landlord may make deductions from the security deposit.

In this regard, the Delhi High Court, in the cases of *Narain Dass P. Godhwani v. Nenu Mal and Uberoisons (Machines) Ltd.*<sup>1</sup> vs. *Samtel Color Ltd.*<sup>2</sup> held that security deposit is not only towards adjustment of rent but also for any claim towards any damage to the tenanted premises or for any unpaid maintenance amount in relation to the premises. Therefore, every landlord is entitled to use the security deposit for repairing the damage done by the tenant, if any. Additionally, these amounts (such as repair or maintenance) are only known when the tenant vacates the suit premises and therefore, the security amount cannot be taken only towards discharge for payment of rent.

## Rent free period/fit-out period

Commercial and retail spaces are usually handed over in a bare-shell condition, to which the tenant carries out improvements in keeping with the requirement, budget and brand. These improvement/interior works may take a few months before they are completed. Tenants, therefore, often

negotiate a rent-free period with their landlords during which they endeavour to complete their interior fit-out works. Where the lease provides for a rent-free period, fixing responsibility for delay in completion of the fit-out works and consequences for such delay need to be clearly spelt out in the lease deed.

## Lock-in period

Lock-in period refers to the period during which the landlord and/ or the tenant cannot terminate the lease. The period of lock-in may be same or different for both the parties. A landlord desires the tenant to remain locked-in so as to be assured of a minimum rental income. A tenant, who chooses to terminate the lease during the lock-in period, is expected to pay rent for the unexpired portion of the lock-in period. A tenant, on the other hand, who may have spent considerable sum of money in fit-outs, may wish to impose a lock-in period for the landlord for security of tenure and the investments made in the premises. A landlord's breach of this condition may result in a claim of damages by the tenant.

## Renewal & extension of lease

Renewal and extension are often used interchangeably in the context of lease. However, implications of both expressions are markedly different. Where a lease has a clause for extension, it refers to the term of the lease being extended on the same terms and conditions as the earlier lease. However, a renewal would tantamount to a new lease on such terms and conditions as may be agreed between the parties. It is, therefore, imperative that the commercial understanding with regard to renewal/ extension is accurately captured, lest it may give rise to avoidable disputes.

## Force majeure

The law around *force majeure* came into focus with the coronavirus pandemic in 2020. Establishments were forced to shut as a result of the imposition of nationwide lockdown. Additionally, both before the

<sup>1</sup> 2015 (2) RCR (Rent) 19.  
<sup>2</sup> 2003 (2) RCR (Rent) 375.



lockdown was imposed and after it was lifted, many establishments continued to keep their premises locked, and resorted to work from home due to health risks. It is anybody's guess that virtually all tenants, eager to escape from the liability to pay rent during this period, would have sought advice on the law related to *force majeure*.

Section 108 of the TPA (which is subject to a contract to the contrary) provides that, "*if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void.*"

Interestingly, the above provision limits its application to a scenario where the property is impacted physically, which was not the case with the government mandated lockdowns/ voluntary closures during the pandemic. Relief could, therefore, be sought only on the basis of the contract entered into between the landlord and the tenant in this regard.

With the pandemic as an example before us, the importance of the *force majeure* clause in a lease agreement cannot be overstated.

## Third-party rights

In terms of Section 108, a tenant may assign, sub-lease or mortgage the leased property, unless there is a contract to the contrary. It is common practice to restrict the tenant from creating such third-party rights in residential or commercial leases. At the same time, illustratively, a company which is a tenant in the property may want to share it with an affiliate/ group company, in which scenario it must ensure to provide for the same in the lease deed.

On the other hand, where land has been taken on long lease, the tenant may be well advised to expressly provide for its ability to create such third-party rights, such as the right to create mortgage on the property for the purpose of raising finances for undertaking developments thereon.





Black's Law Dictionary defines '*partition*' as 'dividing of lands held by joint tenants, coparceners, or tenants in common, into distinct portions, so that they may hold them in severalty'. In other words, partition refers to any division of real or personal property between co-owners or co-proprietors.

Conceptually, 'partition' is distinct from 'transfer', in the sense that partition is merely a division of property between co-owners (all of whom have existing undivided interest in the property) resulting in individual ownership, while transfer is an act by which the title of the property is conveyed from one person (transferor) to another (transferee).

Joint/ co-ownership of property may result from varying factors, viz. the property belongs to a Hindu Undivided Family, self-acquired property devolving jointly upon more than one heir due to operation of applicable succession laws, two or more relatives or friends coming together to jointly acquire property, to name a few.

The following are the ways in which partition of a property may be effectuated:

- i) **Partition Deed**, which involves dividing the property and allocating individual exclusive share of each of the co-owners/ co-parceners in the property, in accordance with the applicable laws and recording the same in writing. It may be noted that a partition deed must be duly stamped and registered in accordance with the ISA (or the relevant state legislation governing stamp duty), and **Registration Act**, to give the partition a legal and binding effect.
- ii) Partition of a property may also be affected by way of **Oral Partition**. As the name suggests, an oral partition does not require to be reduced in writing, and, therefore, does not require effectuation by way of a registered instrument. The Supreme Court has held that there is no

provision of law requiring partition to be reduced to writing and registration; and binding family arrangements/ partitions dealing with immovable property can be made orally and without registration. However, like many aspects of property law, oral partition is a concept where legal position cannot be divorced from practical considerations. Please see the FAQs on Oral Partition to understand the nuances, both in law and practice.

- iii) If the parties (co-owners/ co-parceners) are not able to amicably settle and partition property, they can approach the courts for a decree to that effect, by way of filing a **partition suit**. It may be noted that prior to filing a partition suit, a legal notice must be sent to the co-owners of the property by the individual seeking the partition of the property. The said legal notice must ideally contain all important information viz. the shares of each co-owner, specificities regarding the property to be partitioned and action(s) needed to be taken. If the co-owners of the property do not respond to the legal notice or send an insufficient or ambiguous reply, a suit for the partition of the property can be filed with the court having proper jurisdiction. The court, upon assessing the submissions of the parties, may direct partition of the property by passing a decree to that effect as it deems fit, in accordance with the relevant laws.

The Partition Act, 1893, also provides that the courts, depending on the facts and circumstances of the partition sought, may, on the request of the shareholders, direct sale of the property instead of a partition of the same, if it is of the opinion that a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the shareholders.



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# SOME FREQUENTLY ASKED QUESTIONS ON **PARTITION**



**Q. Is oral partition valid under Indian law?**

- A. Yes. A property may be partitioned by oral means, as there is no prohibition to such effect under law.

**Q. Will I face evidentiary challenges in proving an oral partition?**

- A. While oral partition is valid and binding on parties, evidentiary challenges on the fact of partition or the terms and conditions thereof cannot be ruled out. Additionally, proof of partition may need to be submitted periodically. Illustratively, in the case of mutation of land revenue records, relevant governmental agency may require proof of such partition before it agrees to undertake the mutation.

Ironically, the Supreme Court in its recent judgment has observed that for the purposes of the Hindu Succession Act, 1956, a plea of oral partition may be accepted only in exceptional cases where it is supported by public documents (which may include mutation records). The Court stated that a plea of oral partition cannot be accepted based on merely oral evidence.

It is, therefore, highly advisable to record the fact of partition under a memorandum. Such memorandum is typically styled as a Memorandum of Recordal of Oral Partition, or a Memorandum of Family Arrangement, though any other name and style that is indicative of the contents would also suffice.

**Q. Since I have taken recourse to a memorandum to reduce the oral partition in writing, does it have to be registered to make the partition legally valid and binding?**

- A. Law mandates compulsory registration of a deed of partition. However, a deed of partition needs to be distinguished from a memorandum which records oral partition. Whilst in the former instance, the fact of partition, and the terms and conditions thereof take place under the instrument, the latter is merely a memorandum which records an event (of partition) that has already occurred in the past. Such a memorandum does not by itself create or extinguish an interest

in property and, therefore, does not require registration.

However, from a practical perspective, it is highly recommended that such memorandum is registered. Government agencies have often been seen to insist on a registered instrument if they are required to take cognisance of it. Here again, it is very likely that the relevant government agency will refuse to undertake mutation of a property in the revenue records if a registered memorandum is not presented before it. Prospective individual buyers also find it difficult to draw comfort on title of the owner in the absence of a registered document.

**Q. It seems there are various nuances of an oral partition which give rise to complexities. Can you please explain why I should then not simply execute and register a deed of partition? What are the advantages for me to partition a property by oral means?**

- A. A deed of partition generally attracts high stamp duty. Illustratively, a partition deed in Delhi would attract stamp duty at the rate of 2% of the value of the separated share. On the other hand, a memorandum of oral partition/ oral family arrangement does not attract similar stamp duty. The costs associated with the two arrangements, therefore, are the prime deciding factor in opting for an oral partition, notwithstanding the nuances involved.

**Q. Taking a cue from the above, if I am interested in buying a property, and am faced with a document relating to partition, how do I detect if the document is a deed of partition or a memorandum?**

- A. As mentioned above, the test to determine the exact nature of the document is to assess whether the partition has in fact taken place under the document or the act of partition has already taken place in the past and the document has merely recorded it subsequently. Once the assessment is done and the nature of the document is ascertained, the next step would involve checking if the document was correctly stamped and if the registration requirement was duly fulfilled.

# TAX IMPLICATIONS IN REAL ESTATE TRANSACTIONS



Real estate transactions attract procedural and substantive tax implications, given their complex and multifarious nature. At the outset, real estate transactions may simply be understood partaking from one's own asset, mostly in the form of immoveable property. However, several complexities arise when one delves into the nuances of tax implications of real estate transactions.

To identify these tax implications, it is imperative to look at certain important aspects of a real estate transaction:

#### **i) Existence of the element of 'transfer' of asset;**

Under the Indian Income Tax Act, 1961 (**IT Act**), the term 'transfer' is not a mere conveyance of asset. It takes a much more complex form under the IT Act, with an inclusive definition that *inter alia* include the following:<sup>1</sup>

- a. the sale, exchange, or relinquishment of the asset; or
- b. the extinguishment of any rights in an asset; or
- c. the compulsory acquisition under any law; or
- d. conversion of an asset or treatment of an asset as stock in trade by the owner; or
- e. any transaction involving the allowing of possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to under Section 53A of the TPA.

Thus, the scope of transfer of asset has been expanded to encompass not only the actual transfer of the asset, but also deemed transfer, such as conversion of an asset to a stock in trade. Further, as stated in para (e) above, part performance of contracts to transfer property, where the legal right is transferred but the possession remains in the hands of transferor, could also be treated as 'transfer' under the IT Act. Indian courts have overtime clarified that the actual delivery of the asset or the registration of instrument is not a pre-requisite for the event of transfer. Given the expansive nature accorded to the term, it is imperative to evaluate, as a first step, whether the transaction resulted in a 'transfer' of asset as defined under the IT Act.

#### **ii) Nature of asset;**

Tax implications of real estate transactions would also depend on whether the asset in question is shown as a fixed asset (i.e. capital asset) or is shown as a part of inventory (i.e. stock in trade). Capital asset *inter alia* includes property of any kind held by the taxpayer, whether or not connected with his business or profession, but excludes property held as stock in trade. Profits or gains arising from the transfer of capital assets are treated as capital gains and accordingly, capital gains tax is levied on the consideration received on transfer of the asset.

Assets held as stock-in-trade shall be excluded from capital assets and income earned from the transfer therefrom would not be subject to capital gains tax. The gains arising from transfer of such property shall be treated as business income and accordingly, be taxed in the hands of the transferor.

#### **iii) Period of holding of the asset**

For real estate assets held as stock in trade, the period of holding is not relevant to calculate the taxable income and the same is taxed as business income at normal rates.

However, capital gains tax, payable on transfer of a capital asset, could be different, depending on the period of holding. The said asset is regarded as long term if it is held for more than 24 months, while if held for a shorter period, it is construed as short term. Long term capital gains are taxed at 20% (plus applicable surcharge and cess), while short term capital gains are taxed at the tax rate applicable to the transferor.<sup>2</sup>

Purchasers are also required to withhold tax at 1% in case any immovable property is acquired from a resident seller for consideration exceeding INR 50 lakh (and at the applicable rate if it is bought from a non-resident seller).

#### **iv) Consideration received on transfer**

In case the consideration received or receivable by the transferor is less than the stamp duty value of the property, for the purposes of ascertaining

<sup>1</sup> Section 2(47) of Indian Income Tax Act, 1961

<sup>2</sup> For resident entities the applicable rate is 30%/ 25%/ 22% (plus applicable surcharge and cess) as applicable. For non-resident entities the applicable rate is 40%.



capital gains, the cost of acquisition would be deemed to be the stamp duty value of the property. Similarly, for assets held as stock in trade, if the consideration for transfer is less than the stamp duty value of the property, for the purposes of calculating the business income, consideration shall be deemed to be the stamp duty value.

In case the purchaser receives the immoveable property at a value less than its stamp duty value, the difference could be regarded as income for him on which he needs to pay tax at the slab rates applicable to him.

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## Indirect taxes

Goods and Services Tax (**GST**) is not applicable on sale of land and sale of building (where the entire consideration has been received after issuance of completion certificate or after its first occupation, whichever is earlier). However, other transactions such as construction of building, sale of building during the course of construction, transfer of TDRs/ FSIs shall be subject to GST at the applicable rates,

depending upon the nature of service, recipient and purpose. For example, 1% GST is applicable on affordable housing, while it is 5% on any other house, without availing input tax credit, while it is 18% on construction services. Thus, any person undertaking a real estate transaction must be aware of the applicable GST or availability of exemption, if any, before undertaking such transaction.

## Other procedural mechanisms

Certain other procedural compliances should be undertaken while doing a real estate transaction. If the buyer acquires a real estate during the pendency of any proceedings under the IT Act or after completion thereof, but prior to the service of tax recovery notice against the seller, the said transaction could be regarded as a void transaction by the tax authorities to the extent of outstanding taxes. However, the voidability of the transfer can be avoided if it can be established by the buyer that either the transfer was made for an adequate consideration and the buyer had no information about the pendency of the proceedings or if a no-objection certificate from the Assessing Officer is obtained.

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# ASSESSING TRANSACTION COSTS IN REAL ESTATE



## ii) Registration Fee

Under the Indian Registration Act, certain instruments mandatorily need to be registered whereas certain other instruments may be registered at will. Registration fees is the charge that must be deposited with the government to put a certain instrument/ document in government's records.

The Registration Act mandates the state governments to prepare a fee schedule for registration of various instruments. Resultantly, registration fees differ considerably from state to state, much like in the case of stamp duty. While in Maharashtra, the registration fee payable on a transaction involving sale of immovable property is subject to a maximum of INR 30,000, it goes up to 1% of the property value in Delhi. Tamil Nadu currently prescribes a fee of 4% of the property value.

## iii) Land Use Conversion Fee

In India, most of the land parcels continue to be agricultural in nature. It is, therefore, common for agricultural lands to be purchased with the intention of undertaking large real estate developments thereon, such as residential colonies, office complexes, warehousing facilities. However, with the permitted land use clearly specified by law, it becomes imperative that the intending purchaser/ developer procure the necessary approvals for change of the permissible land use. These charges vary considerably from one state to another, but it can be substantial. It is, therefore, essential to assess the fee that may be incurred for change of the permitted land use, as this may have a significant bearing on the overall costs of a real estate transaction.

## iv) Transfer Charges/ Premium

Not surprisingly, the government (Union and states) continues to be the largest land-owner in India. Resultantly, several parcels of land continue to be held on long term lease from various government land owning agencies. These leases have historically been, and continue to be, awarded on very strict terms and conditions, which include restrictions on transfer/ assignment

of the property in favour of a third person. Typically, such leases also provide for the land-owning agency to permit such transfer/ assignment at their own discretion, against payment of transfer charges. These transfer charges may be fixed or calculated on the basis of the difference between the original acquisition price and the current transfer price. As a result, this category of charges can also be very substantial.

## v) Miscellaneous

The categories of costs stated above are only illustrative in nature, and cover those which are potentially the most significant. Some of the other expenses that may be kept in mind while entering into a real estate transaction are described below:

- (a) *Brokerage*: Intermediaries who facilitate a transaction charge a success fee, referred to as a brokerage. Typically, the brokerage in a sale transaction is paid at 1% of the transaction value. However, this is subject to the commercial understanding with the broker, and the parties may negotiate a lower brokerage where the transaction value is high.
- (b) *Professional fee*: More often than not, a real estate transaction involves a host of professionals, providing legal, technical and financial advisory services to the parties. Factors such as the value of the transaction, complexity of the transaction, nature of the proposed development, among others, could determine the fee that is payable to various professional advisors engaged in the transaction.
- (c) *Fees towards plans and approvals*: As on date, undertaking a real estate development requires a host of approvals from various government agencies. They may relate to approvals of building plans, approval for commencement of construction, lift license, fire approval, height clearance, environmental consents, to name a few. Many of these approvals are also contingent on payment of the prescribed fee. Given the multitude of approvals, such costs may be significant.



In India, the cost of a real estate transaction is not assessed merely with reference to consideration/ price that a buyer pays to the seller. An understanding of the economics of a real estate transaction is, therefore, never complete unless the varied nature of costs under different heads are taken into account. The salient heads are discussed below.

## i) Stamp Duty

Stamp duty is a statutory fee imposed by the government on various types of commercial, non-commercial instruments/ documents to secure revenue. The Indian constitution allows both the Union (ISA) and the states (Maharashtra Stamp Act, 1958, Karnataka Stamp Act, 1957, to name a

value). However, most states have prescribed an official value ('circle rate/ ready reckoner value') to properties falling within their jurisdiction, which may be based on, *inter alia*, location, permitted use of the property, whether the property is vacant or built-up, to name a few. Subject to state specific exceptions, the value (referred to as 'market value' or 'true market value' in stamp duty parlance) will be the higher of the agreement value, or the government prescribed value.

Some states (for example, Delhi) provide differential stamp duty/ relaxations on real estate transactions where the transferee is a female. It is, therefore, advisable to verify if the state in which the transaction is proposed to be



few) to legislate over stamp duty, though it is the prerogative of the states to collect and retain the amounts so collected. For any transfer of assets, building or land, stamp duty is to be paid as per the rate prescribed under the applicable stamp duty legislation in the state where the assets are situated.

Stamp duty on sale of immovable property is payable on an *ad valorem* basis, i.e., as a percentage of the value of the property. Therefore, determination of the value of the property becomes crucial to assess the proper stamp duty that would be payable on such a transaction. The immediate reference point is the value that is stated in the transaction document as the consideration for transfer (i.e., the agreement

undertaken provides for such differentiation.

Being an important source of government revenue, stamp duty on real estate transactions, though differing from state to state, can contribute quite significantly to the overall transaction cost, going up to as much as 8% of the market value of the property.

The procedure for depositing stamp duty and the documentation formalities differ across states, but generally stamp duty is paid through non-judicial stamp paper or through e-stamping or franking. It should be noted that non-payment of the correct stamp duty can lead to heavy penalty and further penal actions, including imprisonment in certain cases.



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# ADJUDICATION AS TO STAMPS



The ISA, prescribes stringent consequences for insufficiently stamping instruments, including (a) impounding of such instruments, (b) imposition of hefty fine up to ten times the amount of proper stamp duty by the concerned authority, and (c) bar on admission as evidence in the court of law. Thus, determination and payment of proper stamp duty payable on the instrument is imperative.

There are several pockets of ambiguity/incertitude due to which parties are unsure of the proper stamp duty that would be payable on the transaction documents. There may also be occasions where parties wish to be cautious, and seek validation of the duty that, in their estimate, is proper.

Illustratively:

- i) Joint development agreements, in which consideration may not necessarily be in the form of upfront cash, but in the form of revenue/ area share in the project;
- ii) Commercial leases which are based on a revenue-share model, where the rent is a variable amount subject to the sales or volume generated from the demised premise in a given period; and
- iii) Sale of land and building, where factors such as number of open/covered parking spaces, area of terrace, green zone in the building complex, applicable depreciation due to age of the building, to name a few, may be relevant for determining the government prescribed market value of the property.

Having envisaged such a scenario, the ISA, prescribes provisions for '*Adjudication as to proper stamp*', that empowers the Collector, upon the parties making an application and paying the prescribed fee, to adjudicate and determine the stamp duty (if any) which is payable on the presented instrument in his opinion.

The Collector may call upon the parties presenting the instrument, to furnish documents including abstracts on the instrument, affidavits, and other evidences as may be necessary for the determination of the proper stamp duty payable on such instrument. The Collector is empowered to refuse to proceed with the application until such documents have been furnished in conformity.

Pursuant to conducting his investigation, the Collector will determine the stamp duty payable on the instrument presented and intimate the parties of his opinion in this regard.

If satisfied with the executed and stamped instruments presented for adjudication, the Collector will either certify, through his endorsement to the instrument, that proper stamp duty has been fully paid (including such additional sum as may be determined by the Collector), or assess that no stamp duty was payable on such instrument, as may be the case.

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## Key Elements

- ▮ Any instrument, whether executed and stamped or otherwise, can be presented to the Collector for adjudication.
- ▮ Executed instruments must be presented to the Collector for adjudication within (a) one month from the execution date, when executed or first executed in India, or (b) three months after it has been first received in India, when executed or first executed outside India.
- ▮ This provision applies to only those instruments which are voluntarily presented to the Collector for adjudication and cannot be considered as a remedy in cases where an insufficiently stamped instrument is brought before the Registrar of Assurances for registration.
- ▮ Once the Collector has determined the stamp duty payable on an unexecuted and unstamped instrument, it is left entirely to the parties (who had sought adjudication) to pay the determined stamp duty and execute the said instrument or otherwise and the Collector cannot compel its realisation.
- ▮ The Collector's determination of stamp duty payable on executed and stamped instrument presented to him would be final and conclusive only when the Collector has followed up his adjudication by a relative endorsement on the said instrument to the effect that proper stamp duty has been fully paid, or in cases where the Collector has expressed that no stamp duty is payable on such instrument.

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# SOME FREQUENTLY ASKED QUESTIONS ON **STAMP DUTY**





The parties are free to determine, which instrument will be deemed as the principal instrument, on which the stamp duty is to be paid (*the agreement to sell/ agreement for sale in the instant case*). However, the stamp duty chargeable on such principal instrument must be the highest duty, which would be chargeable in respect of any of the instruments employed for a single transaction.

Notably, such stamp duty exemption will not be available when a fresh instrument is executed to vary or alter the contract contained in an earlier one, which had been already completed.

In this regard, the three necessary conditions for availing this exemption are:

- i) More than one instrument is employed for completing the transaction;
- ii) These instruments are employed to complete the same transaction; and
- iii) The transaction must be of sale, mortgage or settlement.

**Q. I intend to buy a property from a person (who owes me some amount that I had loaned to him) in consideration of an amount along with the release of the loan amount. In such a scenario, please clarify whether the released loan amount will form part of the consideration amount on which stamp duty will be payable?**

A. Yes, the released loan amount will form part of the consideration on which stamp duty will be payable.

The ISA, provides that where any property is transferred to any person in consideration (*whether wholly or in part*) of any debt due to him, then such debt is will be adjusted against the consideration in respect whereof the transfer is chargeable with stamp duty.

Illustratively, 'A' owes you Rs. 100. 'A' then sells a property to you, the consideration being Rs. 50 and the release of the previous debt of Rs. 100. In such a scenario, the stamp duty will be payable on Rs. 150.



### Q. What is stamp duty payable on?

- A. Instruments that are mentioned in Schedule 1 or 1A (as the case may be) of the ISA, or Schedule 1 of the dedicated state stamp legislations are chargeable with stamp duty of the amount indicated in the above mentioned Schedules, subject to exemptions and exceptions or notifications issued. An 'Instrument' is in turn defined as including any document by which any right or liability is, or purported to be, created, transferred, limited, extended, extinguished or recorded.

### Q. Who is liable to pay the stamp duty?

- A. The ISA, duly provides as to who is liable to pay stamp duty on a particular instrument (*described in the Schedule to the ISA*), in the absence of a contract to the contrary.

Illustratively, in case of conveyance and leases, the liability to pay stamp duty falls onto the grantee/ purchaser and the lessee, respectively. Further, in case of a partition, the said liability is shared among the parties in proportion to their respective shares in the partitioned property.

Having said that, the liability to pay stamp duty can be contractually decided and agreed upon by the parties in a contract.

### Q. When does stamp duty become payable? Is it before or at the time of the execution of the instrument chargeable with duty, or can I pay stamp duty post execution of the instrument?

- A. The ISA, requires all instruments chargeable with stamp duty and executed by any person in India to be stamped before or at the time of execution of such instrument. Therefore, the proper time to pay stamp duty is either before or at the time of execution.

In other words, if the signature is put first and then stamps are affixed, the execution is not proper.

However, the ISA, provides for certain relaxations in this regard, vis-à-vis instruments executed outside India (*or State, as the case may be*). The ISA, allows that every instrument chargeable with duty, executed out of India (*or State, as the case may be*) and not being a bill of exchange or a promissory note, may be stamped within three

months after it has been first received in India (*or State, as the case may be*).

### Q What are the consequences of non-payment of proper stamp duty on an instrument chargeable with stamp duty?

- A. The consequences of non-payment/ deficient payment of proper stamp duty on an instrument chargeable with stamp duty as per the ISA, are as follows:
- Impounding of the unstamped/ insufficiently stamped instrument by any person having by law or consent of the parties, authority to receive evidence or every person in charge of a public office, before whom the said instrument is produced;
  - Such unstamped/ insufficiently stamped instrument cannot be received as evidence in the court of law; and
  - Penalty up to ten times the amount of the proper stamp duty or deficient portion thereof may be imposed by the concerned authorities.

In addition to the above, an unstamped/ insufficiently stamped instrument will (in all likelihood) not be entertained/ accepted for registration by the sub-registrar, which has further implications vis-à-vis sale of immovable property transaction.

Illustratively, an unregistered instrument will not affect any immovable property comprised therein. Therefore, the sale transaction will remain incomplete and ineffective till the time the instrument of sale is properly stamped and registered.

### Q. I have paid the applicable stamp duty for a sale transaction on an agreement to sell/ agreement for sale for the purchase of Property 'A'. Will I have to pay the stamp duty again at the time of executing and registering the conveyance/ sale deed for the said Property 'A'?

- A. No. Where completion of a single transaction is carried out by several instruments in the case of sale, mortgage or settlement, only the principal instrument will be chargeable with the prescribed stamp duty and each of the other instruments will be chargeable with a nominal stamp duty (*This varies from state to state and ranges between Re. 1 to Rs. 10*).

# REGISTRATION OF INSTRUMENTS OF TRANSFER





The Registration Act, under Section 17, mandates compulsory registration of the following instruments:

- i) Instruments of gift of immovable properties<sup>1</sup>;
- ii) Other non-testamentary instruments that purport or operate to create, declare, assign, limit or extinguish (*in present or future*), any right title or interest (*vested or contingent*) of the value of INR 100 (Indian Rupees Hundred only) or above, to or in immovable property and non-testamentary instruments, which acknowledge the receipt or payment of any consideration for the creation, declaration, assignment, limitation or extinction of any such right, title or interest;
- iii) Leases of immovable property from year to year, or for any term exceeding 1 (one) year or reserving a yearly rent;
- iv) Non-testamentary instruments transferring or assigning any decree or order of a court or any award when such decree or order or award relates to (b) above; and
- v) Documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53A of the TPA.<sup>2</sup>

Section 49 of the Registration Act sets forth the consequences of non-registration of documents, which are required to be registered under Section 17, and states that such unregistered documents shall not:

- i) affect any immovable property comprised therein; or
- ii) confer any power to adopt; or
- iii) be received as evidence for any transaction affecting such property or conferring such power, unless it has been registered. It is clarified that unregistered documents affecting immovable property may be received as evidence of a contract in a suit for specific performance under

the Specific Relief Act, 1963, or as evidence of any collateral transaction (*contemplated therein*), not required to be effected by registered instrument.

Simplistically put, it is important to remember that most transactions involving immovable property do not conclude merely with the execution of transaction documents. Notwithstanding the buyer having paid stamp duty, executed the sale deed, paid the consideration and taken possession of the property, the sale transaction will remain incomplete and ineffective if the sale deed has not been properly registered, in accordance with the provisions of the Registration Act.

Not all documents are required to be compulsorily registered, though parties may, in terms of Section 18 of the Registration Act, opt to do so. Illustratively,

- i) leases of immovable property for any term not exceeding 1 (one) year;
- ii) instruments (other than will) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in movable property;
- iii) Wills; and
- iv) all other documents not required to be registered under Section 17, may be registered at the option of parties to a transaction. Non-registration of such documents does not impact the validity of the transactions that are the subject matter of these documents.

An intending transferee will, therefore, be well advised to refer back to the provisions of the Registration Act to confirm the requirement of registration, given the nature of the proposed transaction.

<sup>1</sup> For the purposes of the Registration Act, 'Immovable Property' includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries, or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass.

<sup>2</sup> If such instruments/documents are not registered, they shall have no effect for the purposes of Section 53A of the TPA.

# SOME FREQUENTLY ASKED QUESTIONS ON **REGISTRATION**



**Q. Do I need to register every document?**

- A. No. The nature of documents which require registration are listed in Section 17 of the **Registration Act**, and essentially pertain to transactions relating to transfer of immovable properties (please note that not all documents involving immovable properties are required to be registered, though they may be optionally registered under Section 18 of the **Registration Act**).

**Q. Where do I register these documents?**

- A. Documents are required to be registered with the office of the Sub-Registrar of Assurances, who is an officer appointed by the state government, having jurisdiction over a specific sub-district in the concerned state. Where the document pertains to immovable property, it will be registered with the Sub-Registrar in whose jurisdiction the whole or some portion of the immovable property is situated. In any other case, the document is to be registered with the Sub-Registrar in whose jurisdiction the document was executed.

**Q. What are the timelines for registration?**

- A. Documents (*other than a will*) must be presented for registration within 4 (four) months from the date of execution. However:
- i) Where the document is executed by several persons at different times, such document may be presented for registration within 4 (four) months from the date of each execution;
  - ii) If owing to urgent necessity or unavoidable accident, resulting in registration delay, the registering officer may provide up to additional 4 (four) months for presentation of the document for registration on payment of fine not exceeding 10 (ten) times the amount of proper registration fee;
  - iii) Where the document is executed outside India (*or the relevant State*), the registering officer, if satisfied, may accept the registration document within 4 (four) months after its arrival in India (*or the relevant State*); and
  - iv) Wills may be presented for registration at any time.

**Q. I have executed the sale deed as a buyer on January 1, 2021. However, I have registered the sale deed only on March 1, 2021. I understand that the sale is not complete without registration. What will be the date of my purchase in the instant case?**

- A. Section 47 embodies the Doctrine of Relation-back – though the agreement required to be compulsorily registered under Section 17 will not be effective in the absence of registration, such document, once registered, will operate and be effective from the date of its execution, and not from the date of registration. Therefore, in the instant case, the sale will be effective from January 1, 2021.

**Q. Do I have to be present for the registration? What if I am unable to do so?**

- A. As a party to the document, you will be required to be present for registration. However, if you are unable to do so, you may execute a power of attorney in favour of an authorised representative for the said purpose. Please note that a power of attorney that is being used for registration of a document will have to be authenticated. If you are residing in India, the power of attorney may be authenticated by way of registration with a Sub-Registrar. However, if you are not residing in India, you may execute the power of attorney and have it authenticated by a notary public, any court, judge, magistrate, Indian consul or vice-consul, or a representative of the Government of India.

If the power of attorney has been executed and authenticated outside India, do not forget to pay the applicable stamp duty thereon, once the document is brought into India.

Alternatively, the **Registration Act** provides that on special cause being shown, the registering officer may accept presentation of a document for registration at the residence of any person desiring to register such document, subject to payment of applicable fees in this regard (which varies from state to state).

**Q. The document that I propose to execute relates to immovable properties situated across several sub-districts/ districts in the state. Do I need to register the same document with each sub-registrar in whose jurisdiction the properties are situated?**

A. No, you do not need to register the document with every Sub-Registrar. Registration of the document with a single Sub-Registrar will suffice. However, the Registrar/ Sub-registrar are required to adhere to procedure, as prescribed under Section 64 and 65 of the **Registration Act**, to intimate other concerned Registrars/ Sub-registrars.

**Q. I have prepared a Will which also deals with bequest of immovable property. Do I need to register the Will?**

A. No. A Will is not required to be compulsorily registered. It is specifically listed as one of the documents that the testator may optionally register in terms of Section 18 of the **Registration Act**. The fact that the Will deals with bequest of immovable property is not material in this regard.

However, registration of a Will, especially one that deals with bequest of immovable property, has its own practical advantages. For example, in some jurisdictions, mutation of immovable property in favour of the heir may be an easier process if the Will is found to be registered.







**‘Mutation’**, also known as **‘Dakhil Kharij’** in Hindi<sup>1</sup>, essentially means change in the revenue or municipal records in favour of the individual or entity to whom the title of the land/property has devolved a, and recording his/her/its name as the owner(s) thereof. The requirement of mutation is applicable irrespective of the property being agricultural or non-agricultural, rural or urban.

Alleviating all doubts as to the transfer of title to a land/property, the Supreme Court has from time-to-time clarified that mutation of a land/property in the revenue or municipal records does not create or extinguish the title over such land/property, nor it has any presumptive value on the title, and that it only enables the person in whose favour mutation is ordered to pay the land revenue in question.

Why then, should a property owner go through the hassle of getting the revenue/ municipal records mutated? Listed below are some reasons worth considering:

- i) Often, title to property devolves by succession. Registered sale or transfer deeds are, naturally, absent in such instances. Succession may itself be either by way of a Will (whether registered or not) or, in the absence thereof, intestate. Title investigation of such a property, therefore, relies heavily on mutation records. The relevant governmental agencies undertake a verification exercise to determine the heirs of the deceased (in accordance with the process prescribed by law) and accordingly mutate the revenue records. Absence of a mutated record may adversely impact the ability of the owner to transact in respect of the property, as the counter party may not be able to draw sufficient comfort on title.

While this issue would be universally applicable, its relevance is observed more in the context of agricultural/rural lands, where frequency of property transactions is lower. In such locations, properties mostly remain within the family, and more often than not, are seen to devolve by succession as compared to registered transfer deeds in favour of an unrelated transferee.

- ii) As is evident from the preceding paragraph, mutation also minimises the risks of property fraud, due to its relevance in title investigation.
- iii) In case of land acquisition by the appropriate government, compensation is payable on the basis

of ownership reflected in the revenue records.

- iv) Typically, a property owner is required to furnish the mutation as a proof of title ownership to obtain the approval for building plans and to get utility connections such as water and electricity.
- v) Mutation also enables the authorities to correctly fixate the tax liability in respect of the property.

## Process of Mutation

- ▮ **Intimation of Transfer and Application for Mutation:** Any person acquiring land/property (by sale, gift, inheritance or otherwise) must notify the concerned local authority<sup>2</sup> within the stipulated timelines and submit an application for mutation along with the relevant title documents and a one-time mutation fee (a nominal fee which varies from state to state) in the prescribed manner. Failing to notify within the stipulated timeline may attract fine up to five times the mutation fee.
- ▮ **Proclamation for Objections (in case of agricultural land):** Once the application has been submitted and the entries made by the local authorities in their records, a proclamation asking for objections to the proposed mutation is issued, stipulating the last date for such objections (usually 30 days from the date of such proclamation). If no objections are received, the mutation is sanctioned. Thereafter, appropriate entries are made in the mutation register, and a mutation certificate is issued.

If objections are received, the concerned officer will record the particulars of the objections in a register of disputed cases and the matter will be referred to the Revenue Assistant/Officer, who shall pass an order and dispose the objection within the period prescribed in this regard.

If the concerned parties are not satisfied with the order, an appeal can be filed before the Additional Collector (the concerned Deputy Commissioner) against the order.

- ▮ **Inspection/Verification of Documents (in case of non-agricultural land):** The concerned officer will inspect and verify the title documents submitted with the application and may also

<sup>1</sup> In different states, the mutation process may have varying nomenclatures.

<sup>2</sup> Tehsildar/Talathi/Collector/Patwari in case of Agricultural Land or concerned Municipal Corporation in case of Non-Agricultural Land.

inspect the property in question. Thereafter, if satisfied, the mutation of the property in favour of the applicant is processed, recorded in the records of the local authority and a mutation certificate to that effect is issued.

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## Indicative list of documents required at the time of mutation

- ▮ Title documents including sale deed, gift deed, etc.;
- ▮ Utility bills, if any;
- ▮ Identification documents of the applicant;
- ▮ Property tax receipts, if applicable;
- ▮ In case of inheritance, (a) Will, (b) Death Certificate, and (c) Succession Certificate/ Legal Heir Certificate; and
- ▮ Affidavits and Indemnity Bonds by the Applicant and Owner, as may be prescribed.

Please note that the above is a generic procedure, intricacy of which may vary, as would be the documentation requirement, from one state to the other. Further, many municipal corporations across India are now moving towards digitising the process of mutation, whereby the whole process may be conducted online on specified web portals.





# LAWS RELATING TO AGRICULTURAL LAND





India has historically been an agrarian economy. Policy focus shifted to industrialisation for the first time in the Second Five Year Plan, which was launched in 1956, when foundations for the ‘temples of modern India’ were laid. Nevertheless, the progress was slow. It gained traction when India stood at the threshold of the 21st century, reinvigorated by the 1991 economic liberalisation. Several large corporations, both Indian and multinational, set up large manufacturing facilities across the country. The liberalisation in FDI norms, beginning 2005, brought in a flurry of foreign investment, resulting in a spurt in development of group housing projects, integrated townships, malls, commercial complexes, to name just a few. Today, we see great investment opportunities in logistics parks and data centres.

This economic expansion has naturally led to, and will continue to foster, an increase in demand for land. Given that most land holdings across India are classified as agricultural, it is obvious that India’s growth engine will necessarily entail acquisition and use of agricultural land for, what we may call, ‘non-agricultural’ activities.

Going back to the annals of history, the first decade or two, post-independence saw a flurry of legislations concerning agricultural land. The objectives behind these legislations were primarily to:

- i) Protect the rights and interests of the tiller over the land that he toiled on;
- ii) Prevent concentration of agricultural land holdings in the hands of few, and promote more equitable distribution of land; and
- iii) Regulate diversion of agricultural land for non-agricultural purposes.

Agriculture and property, both fall within the ambit of states’ powers to legislate. Given state peculiarities, each state has enacted legislations that govern ownership, use and conversion of agricultural laws.

Against this backdrop, an understanding of agricultural land laws in India assumes significance. While these laws are extremely wide in their scope, in this section, we propose to discuss the salient aspects that one would typically be faced with, in transactions involving agricultural lands.

## Holding Agricultural Land

Most states do not impose any restrictions on the ability of a person to hold agricultural land. Any

person, whether an individual, company partnership or otherwise, may own and possess agricultural land.

However, some states like Maharashtra and Gujarat do not permit non-agriculturists to hold agricultural land, except in accordance with provisions of applicable law. Illustratively, Section 63 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 (**MTAL Act**), *inter alia* provides that no sale, lease, exchange or gift of agricultural land or any interest therein shall be valid in favour of a non-agriculturist without permission of the Collector. If one was to fall back on the definition of an ‘agriculturist’ under the said Act (‘agriculturist’ means a person who cultivates land personally), one may easily conclude that only an individual may qualify as an agriculturist and may, therefore, hold agricultural land. Companies and partnerships would, by virtue of the foregoing, not be entitled to hold agricultural land, unless permission is obtained from the Collector in this regard. However, here too, exceptions have been provided for. Recognising that land will be required for industrial and business activities, the Maharashtra state legislature introduced Section 63-IA to the MTAL Act, by virtue of which, a non-agriculturist may purchase agricultural land for bona fide industrial purposes, or to set up integrated townships, subject to specified conditions such as requirement to put the land to the intended non-agricultural use within the stipulated time.

Till recently, Karnataka prohibited non agriculturists from owning agricultural land. However, pursuant to an amendment to the Karnataka (Land Reforms) Act, 1961, in 2020, the restrictive provisions have been removed.

## Ceiling on Holdings

Each state has enacted its own laws, which govern the maximum extent of agricultural land that a person may hold in a state. While each state legislation provides for its own limits, the ceiling is generally observed to be in the range of 15-60 acres, dependent on factors such as location, whether it is a single-crop or multi-crop land, whether it is rain-fed or permanently irrigated, to name a few.

In this context, it is important to remember that determination of whether a person is in breach of the prescribed ceiling limits is not based merely on the land that is ‘owned’ by such a person; what is relevant for this determination is the ‘holdings’ that such person may have in the given state. Expressions such as ‘holdings’ and ‘to hold land’ have generally

been defined to mean as being in lawful possession of the land, either as the owner or the tenant thereof. Therefore, if a person is in possession of an agricultural land as a tenant, it will be included while determining his or her total land holding.

It is worth mentioning here that land held in excess of the ceiling limit is liable to be taken over by the appropriate state government.

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## Mortgage

While mortgage of interest in agricultural land is generally permitted, there may be state specific conditionalities that would have to be observed. For example, Maharashtra prohibits mortgage with possession unless it is so done with the Collector's approval. That is, while mortgage may be created without offering possession to the creditor, approval would be required if such mortgage were also to be accompanied with grant of possession to the creditor.

At the same time, it is also important to remember that while mortgage may be permitted, enforcement of such mortgage may be fraught with challenges. This is explained with the help of the following illustrations:

- i) As discussed above, in Maharashtra, sale of agricultural land in favour of a non-agriculturist is prohibited, unless so done under the provisions of Section 63-IA of the MTAL Act. This restriction would be equally applicable in the case of sale, pursuant to enforcement of mortgage, i.e., the ability of a creditor to sell the agricultural land to a non-agriculturist for recovery of his dues. This is due to the restrictions on account of the provisions of Section 63 of the MTAL Act;
- ii) Several states restrict transfer of lands owned by persons belonging to Scheduled Castes/ Scheduled Tribes in favour a person who is not one. A creditor seeking to sell the mortgaged land, which belongs to a person from any of the above categories would accordingly face challenges in doing so in favour of any other person from any other caste.

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## SARFAESI

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**SARFAESI Act**), defines 'security interest' as a right, title or interest of any kind upon property created in favour of a secured creditor, and includes a mortgage,

charge, hypothecation, and assignment, among others. Crucially, the interests listed under Section 31 of SARFAESI Act are excluded from the meaning of 'security interest'. Section 31(i) provides for 'any security interest created in agricultural land'. By virtue of the above provision, creditors do not have recourse to the SARFAESI Act for enforcement of any security interest that may have been created by a debtor over agricultural land.

The categorisation of the mortgaged land as agricultural or otherwise has, resultantly, been a cause of considerable debate whenever the question of invocation of the SARFAESI Act in the context of a security interest in land has arisen.

In its judgment delivered in the matter of *ITC Limited v. Blue Coast Hotels Limited*, 2018 (4) SCALE 628, the Supreme Court held that the mere reflection of the land as agricultural in the revenue records is not sufficient to classify a land as such for the purpose of the SARFAESI Act. It is necessary to have regard to the character of the land and the purpose for which it is set apart. Therefore, notwithstanding the land being treated as agricultural in the land revenue records, the application of the SARFAESI Act will have to be based on a case-to-case basis, given the facts surrounding the character and intended use of the land.

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## Use and Conversion

It is important to note the difference in treatment between ownership of agricultural land and the use thereof. While ownership of agricultural land by non-agriculturists is mostly permitted, the use thereof is strictly regulated. Where a land has been earmarked for agricultural purposes, it cannot be used for any other purpose unless the due process of law prescribed for conversion of such land is followed.

Conversion of land use from agricultural to non-agricultural purposes primarily involves and entails the following:

- i) Obtaining permission from the appropriate governmental authority (Collector, Industries Commissioner, Director of Town and Country Planning, to name a few) for such conversion;
- ii) Compliance with terms and conditions that may be stipulated under law and the conversion order, such as requirement to complete the project and put the land to the intended use within the prescribed time period;



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# URBAN LAND LAWS





- iii) Payment of conversion premium/ fee;
- iv) Going forward, payment of land revenue at rates applicable to non-agricultural lands in the area;

It may be noted that permission to convert agricultural land does not give a blanket right to put the land to any non-agricultural use. Typically, the conversion order would provide the purpose for which conversion has been approved, viz. group housing, industry, warehouse, hospital, school, commercial or retail, to name a few.

Especially with regard to renewable energy projects, most states have come out with policies for promoting such projects within their jurisdictions. Given that such projects require large tracts of land that are generally agricultural in nature, many of these policies provide for relaxations on land use, or a comparatively liberal regime for land use/ conversion.

## Foreign investment in agricultural land

In terms of the Foreign Exchange Management Act, 1999, and the regulations framed thereunder, sale and purchase of agricultural land by a non-resident person is not permitted. However, a distinction may be drawn between a person who is not a resident, and a foreign owned and controlled company incorporated in India. In case of the latter, agricultural land may be purchased for putting the land to the intended use, in accordance with the permitted activities under the FDI policy. Illustratively, a company may utilise funds infused through foreign direct investment to purchase agricultural land for the purpose of converting the same and developing a group housing project, in which FDI up to 100% is permitted under the automatic route.



Areas that fall within municipal limits are broadly referred to as urban land. With high concentration of population in relatively smaller land pockets, development, management and maintenance of urban areas becomes challenging, resulting in separate legislative frameworks governing such areas. These frameworks broadly encompass the state/ city municipal corporation Acts, statutes relating to jurisdictional development authority, and local development regulations. Some of the features of this legislative framework are set out below:

- i) **Zoning** – Under the development regulations/ master plans framed for different cities, plots have been demarcated and identified for particular uses, such as housing, commercial, hotels, industries, schools, hospitals, nursing homes, multiplexes, malls, multi-level car parking facilities, gardens, and play grounds. Any and all development must be undertaken in consonance with the use sanctioned for the plot in question.
- ii) **FAR/ FSI** – The Floor Area Ratio or the Floor Space Index refers to the extent to which construction is permitted in proportion to the size of the plot. Higher the FAR/ FSI, the greater is the extent of permissible construction. The maximum permissible FSI may be dependent on a variety of factors, such as the permitted use of the plot and its location. In Delhi, additional FAR/ FSI cannot be consumed in plots situated in the famed Lutyens' Bungalow Zone, beyond the existing built-up area. In Mumbai, the concept of transferable development rights (TDR) enables unutilised FAR/ FSI of one plot to be used on another, subject to conditions as may be prescribed in this regard under law.
- iii) **Construction** – Construction in urban areas is highly regulated, and can be undertaken only after

building plans are sanctioned by the local municipal authority, and permission is granted for commencing construction. Approvals, licences and no-objections are required at various stages, concerning, *inter alia*, felling trees, fire safety, height clearance, sewerage, traffic, installation of lifts, among others. A building may be occupied only after a completion/ occupation certificate is issued, certifying that the building has been constructed and completed in accordance with sanctioned plans, and it is now fit for occupation.

- iv) **Redevelopment** – Over time, large cities have been plagued with aging buildings, unplanned development and mushrooming of slums, much of it stemming from large scale migrations from rural areas to such cities. Some jurisdictions have come out with regulations that provide for redevelopment of such areas and settlement of slum dwellers. Regulations providing for financial incentives to encourage private parties to get involved in such projects is also gaining traction.
- v) **Land revenue** – Owners/ occupiers of properties in urban areas are required to pay property taxes to the local municipal authority. Tax may be levied based on factors such as location, market value, whether the property is let out or self-occupied, whether the property is vacant or built upon, among others. Arrears of land revenue are treated as paramount charge on the property, and the municipal authority may seek attachment and sale of the property for recovery of its dues. Mutation of land revenue records may also be held up in the event property taxes have not been cleared.

# REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016





The Real Estate (Regulation and Development) Act, 2016 (**RERA**), is a first of its kind central legislation, enacted with the intent of protecting the interests of home buyers and end use customers of real estate projects. As RERA impacts all stakeholders of a real estate project (buyer, project promoter/ developer and project lender), it would be useful to have a sense of its key provisions.

## Duties of a ‘Promoter’

RERA prescribes various responsibilities, duties, and obligations that a promoter must adhere to, to ensure fair, rational and transparent dealings in the sector and to protect the interests of the allottees. Salient responsibilities and obligations cast upon the promoter are as follows:

- i) Restrictions on advertisement, sale, marketing, booking or inviting persons to purchase any plot, apartment or building in any real estate project without first registering the project with the RERA Authority;
- ii) Full disclosure (with periodic updates) of all aspects relating to the project, such as title, details of encumbrances, status of plans and approvals, and construction schedule;
- iii) Restriction on accepting a sum in excess of 10% of the cost of the apartment/ unit, plot or building as advance payment (or booking amount), from any buyer before executing and registering an agreement for sale (in compliance with the prescribed form) in favour of such buyer;
- iv) Compliance with all obligations under RERA and the rules made thereunder, till the conveyance of all apartments/ units in the project to the allottees and the common areas to the association of allottees, including responsibility to (a) obtain the completion certificate and/ or occupancy certificate from the relevant authorities and make the same available to the allottees, (b) providing essential services and maintaining the same till maintenance is taken over by the association of allottees, (c) enable formation of association of allottees, (d) execute conveyance deed in favour of the allottees, (d) obtain lease certificate (for leasehold land), and (e) pay all outgoings collected till the transfer of physical possession of the project;
- v) Rectification of structural defects, and defects in (a) workmanship or quality, (b) provision of services;

- vi) Liability to compensate the allottee should the allottee suffer any loss or damage due to defective title of the project, or on account of the promoter’s failure to meet the construction schedule, or due to misrepresentations. It may also be noted that RERA prescribes heavy penalties (up to 10% of the project cost) on the promoter for violations under RERA.

## Who is a ‘Promoter’?

To fully appreciate the import of the above provisions, it is important to understand the ambit of the expression ‘promoter’, as all persons who fall within the meaning of this expression would be responsible for the obligations set forth under RERA. Two aspects of the definition merit reproduction:

- i) A person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees;
- ii) Any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of the power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale.

Therefore, merely not carrying a developer’s tag itself may not be adequate to exclude a stakeholder from the ambit of a ‘promoter’ under RERA. Persons involved in their capacity as project managers, development managers, project contractors may also fall within the meaning of ‘promoter’ depending on the nature of their rights and interests in the real estate project. A detailed analysis of these rights and interests under the transaction documents would, therefore, be imperative for appropriate classification.

## The 70% Account

RERA mandates that 70% of the amount realised for the project from customers must be deposited by the promoter in a separate bank account maintained in a scheduled bank. Such amounts can only be used towards cost of construction and the cost borne toward land. RERA also mandates that promoters can withdraw amounts from this separate bank account

to cover such costs, in proportion to the completion of the project and after obtaining certification in this regard by an engineer, architect and a chartered accountant.

Over time, RERA authorities in states like Haryana and Uttar Pradesh have clamped down heavily on real estate developers who have created a charge on this designated account. Some other state authorities have also set out guidelines with varying details on setting up of the accounts structure in a real estate project, withdrawals from this account and utilisation of such funds while the amount lies in the account (illustratively, the ability to invest in fixed deposits), to name a few. A new real estate project should, therefore, take into account the specific rules and regulations, if any, that may be in place in the relevant jurisdiction with regard to the above.



## Transfer of majority rights and obligations of a promoter in a real estate project

In terms of Section 15 of RERA, a promoter may transfer a majority of its rights and obligations in a real estate project, only with prior consent of the

RERA Authority, and with prior consent of 2/3rd of the allottees of the project. Some of the aspects that would warrant analysis, given the legal framework prevailing in each state from time to time and the transaction proposed to be undertaken by a promoter, would be as follows:

- i) An existing developer intending to bring in another party as a joint developer;
- ii) Change in shareholding of the developer entity;
- iii) Creation of pledge of the shares in the developer entity, and subsequent invocation thereof;
- iv) Mortgage of the project by the developer, and the subsequent enforcement thereof.

Any potential investment (equity or debt) in the promoter entity must, therefore, necessarily consider the legal framework in the concerned state regarding Section 15 of RERA.

# FOREIGN INVESTMENT IN REAL ESTATE





In India, foreign direct investment (**FDI**) is regulated by Foreign Exchange Management Act, 1999 and the regulations framed thereunder (**FEMA**), and foreign direct investment policy promulgated by the Government of India from time to time (**FDI Policy**). The FDI Policy is reviewed on a continuous basis and the changes in the sectoral policy are notified through Press Notes issued by the Department for Promotion of Industry and Internal Trade, Government of India. The Reserve Bank of India has been empowered to act and formulate regulations and issue instructions under FEMA.

Initially, as per Press Note No. 4 (2001 Series)<sup>1</sup>, FDI up to 100% was permitted under the government approval route for development of integrated townships, including housing, commercial premises, hotels, resorts, city and regional level urban infrastructure facilities such as roads and bridges, mass rapid transit systems and manufacture of building. Thereafter, the FDI Policy in construction activities was reviewed and relaxed *vide* issuance of Press Note No.2 of (2005)<sup>2</sup>, whereunder FDI up to 100% was permitted under the automatic route in townships, housing, built-up infrastructure and construction-development projects (which includes, but not restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure) and subject to the other conditions prescribed in the Press Note<sup>3</sup>. Subsequently, the FDI Policy was further liberalised *vide* issuance of Press Note No.10 of (2014 Series)<sup>4</sup>, Press Note No.12 of (2015 Series)<sup>5</sup> and Press Note No.1 of (2018 Series)<sup>6</sup>.

## Current framework: Consolidated FDI Policy Circular 2020<sup>7</sup>

Under the present framework, FDI is prohibited in entities that are engaged or propose to engage in

real estate business and construction of farmhouses as well as trading in transferable development rights. As per the FDI Policy, 'real estate business' means dealing in land and immovable property with a view to earning profit therefrom. It does not include development of townships, construction of residential/ commercial premises, roads or bridges, educational institutions, recreational facilities, city and regional level infrastructure, townships. Further, real estate business does not include Real Estate Investment Trusts (**REITs**) registered and regulated under the SEBI (**REITs**) Regulations 2014.

**FDI in Construction-Development Projects<sup>8</sup>:** FDI of up to 100% is permitted in construction-development projects under the automatic route. Under the FDI Policy, each phase of the construction development project is considered as a separate project subject to the following conditions:

### Lock-in requirements:

- i) An investor is permitted to exit on completion of the project or after development of trunk infrastructure i.e. roads, water supply, street lighting, drainage and sewerage;
- ii) A foreign investor shall be permitted to exit and repatriate foreign investment before completion of the project, if a lock-in period of three years (calculated with reference to each tranche of foreign investment) has been completed.
- iii) Transfer of stake from one non-resident to another non-resident, without repatriation of investment will not be subject to any lock-in period and will not require any government approval.
- iv) The above stated lock-in requirement is not applicable to hotels and tourist resorts, hospitals, special economic zones, educational institutions, old age homes and investments by non-resident Indians.

<sup>1</sup> Press Note No. 4 (2001 Series) by Department of Industrial Policy & Promotion dated May 21, 2001.

<sup>2</sup> Press Note No. 2 (2005) by Department of Industrial Policy & Promotion dated March 3, 2005.

<sup>3</sup> Ibid.

<sup>4</sup> Press Note No. 10 (2014 Series) by Department of Industrial Policy & Promotion dated December 3, 2014.

<sup>5</sup> Press Note No. 12 (2015 series) by Department of Industrial Policy & Promotion dated November 24, 2015.

<sup>6</sup> Press Note No. 1 (2018 series) by Department of Industrial Policy & Promotion dated January 23, 2018.

<sup>7</sup> Consolidated FDI Policy Circular of 2020 by Department of Industrial Policy & Promotion dated October 15, 2020.

<sup>8</sup> Construction-development projects include development of townships, construction of residential/ commercial premises, roads or bridges, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure and townships.



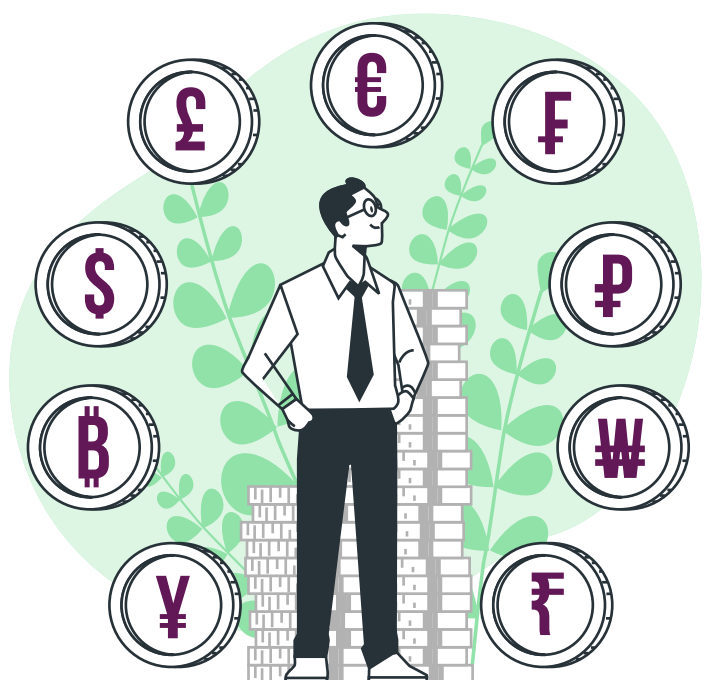
## Some of the other salient requirements are as follows:

- i) The Indian investee company is permitted to sell only developed plots, i.e., plots where trunk infrastructure has been made available.
- ii) The Indian investee company would be responsible for obtaining all necessary approvals for the project and complying with all the other requirements prescribed under the applicable byelaws, rules and regulations of the state government/ municipal/ local body concerned.
- iii) Completion of the project will be determined as per the local byelaws/ rules and other regulations of the state government.

**FDI in completed projects:** The FDI Policy permits 100% FDI under automatic route in completed projects for the operation and management of townships, malls/shopping complexes and business centres.

**FDI in leasing activities:** As per Press Note No. 12 of (2015 Series)<sup>9</sup>, 'transfer' includes the sale, exchange or relinquishment of an asset or extinguishment of any rights over it. As earning of rent/income on lease of property does not amount to 'transfer', it does not fall within the ambit of 'real estate business' and hence is not prohibited.

**FDI in real estate broking services:** The Press Note No. 1 of (2018 Series)<sup>10</sup> clarified that real estate broking service does not amount to 'real estate business' and 100% foreign investment is allowed in this service under the automatic route.



<sup>9</sup> Supra note 5.  
<sup>10</sup> Supra note 6.

# ENCUMBRANCES AFFECTING IMMOVABLE PROPERTY



Encumbrance is generally understood to refer to a claim that a person has against the title holder of property. The purpose of title investigation, after all, is to confirm if the title holder has a clear and marketable title to the property, '*free from encumbrances*'. These encumbrances may be of varying nature, some of which are briefly discussed below:

**Mortgage:** A mortgage is defined as a transfer of interest in immovable property for the purpose of securing repayment of a loan. Once a mortgage is created, title to the property will always remain subject to the mortgage, till such time as the loan is repaid and the mortgage discharged. If the loan is not repaid, the mortgagee may cause the property to be sold to recover the loan, thereby resulting in the title holder losing its title to the property. Mortgage may be created with or without possession of the mortgaged property.

A mortgage is a right in *rem*, i.e., the mortgagee's claim on the property continues even if the original title holder has transferred the property. Such transfer shall remain subject to the prior mortgage created over the property.

Law recognises several types of mortgages. Except for one, all others may be created only by way of a registered instrument. A mortgage by deposit of title deeds may be created orally.

**Charge:** All mortgages are charges, but all charges may not necessarily be mortgages. A 'charge' has a broader connotation. First, unlike a mortgage, a charge may be created not only to secure repayment of a loan but also to secure payment of a contractual liability. Second, a charge does not necessarily involve transfer of interest in immovable property. Third, a charge is a right '*in personam*', and not '*in rem*' – once the charged property is sold, the charge holder will not be able to go after the subsequent title holder to enforce the charge.

A charge is created by a way of a registered instrument. A charge holder may obtain a decree from court for sale of the charged property for recovery of its dues.

**Unpaid seller's charge:** In terms of Section 55(4)(b), where the seller has sold a property without receiving all or part of the sale price, the seller is entitled to a charge on the property to the extent of the outstanding consideration.

As mentioned earlier, a charge is not a right '*in rem*'. The original wordings of Section 55(4)(b) also provided for a charge against the property in the hands of the buyer, i.e., the charge subsisted while the buyer remained the owner of the property, and not after he had sold it further. However, pursuant to an amendment in 1929, the applicability of the charge

was also extended to subsequent purchasers/ transferees, who may have either acquired the property without consideration, or a transferee with notice of non-payment of the consideration to the seller.

**Lease:** A lease is a transfer of right to enjoy a property for a specified period or in perpetuity. Where the property is leased, the owner no longer enjoys its possession for the duration of the lease. Lease is a separate estate in property and does not terminate upon transfer of ownership. Any person looking to purchase a leased property does so subject to the lease.

A lease may be granted only by way of registered instrument, except where it is for a term not exceeding twelve months.

**Easement:** An easement is a right that a land owner enjoys over another person's property for proper enjoyment of his own land. Illustratively, A has an easement over B's land because of which A can access its land belongings, but in the absence of such easement, A may not have the ability to access its own land. The land for which the easement is acquired is called the '*dominant heritage*', while the land over which the easement is granted for beneficial enjoyment of the dominant heritage is referred to as the '*servient heritage*'. The benefit of the easement passes with transfer of the dominant heritage.

Easement, being a right created in respect of immovable property, requires to be registered. However, it is not uncommon to come across unregistered easement agreements in India.

**Arrears of land revenue:** Unpaid taxes are treated as arrears of land revenue. This results in vesting of a paramount charge over the defaulter's property in favour of the government, i.e., a charge which takes precedence of all charges and mortgages over the property, even if created prior in point of time. The relevant tax authority may seek attachment and subsequent sale of the defaulter's property for recovery of tax dues.

**Restrictive covenants:** Title to property may be subject to various restrictive/ negative covenants which restrict the full enjoyment of the property by the title holder, or which restrict the ability of the title holder to deal with the property. Illustratively, the title holder may be restricted under contract or law from mortgaging or transferring the property without prior consent.

**Encroachment:** The property, or a part thereof, may be under unauthorised or unlawful possession of another party, which impacts the ability of the title holder to put the property to proper use.



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# DISPUTE RESOLUTION IN REAL ESTATE





# Introduction to Real Estate Disputes

Real estate disputes are those legal disputes which concern immovable property along with its allied aspects and functions. Such disputes encompass various facets and are not merely related only to laws concerning immovable properties. Moreover, such disputes are predominant in all sectors of real estate - residential, industrial, retail and commercial.

Real Estate Disputes may lie before various fora, including civil courts, tribunals, specialised fora such as the Consumer Redressal Forum, Real Estate Regulatory Authority, quasi-judicial authorities, government authorities as well as private persons/bodies, such as arbitrators or arbitral institutions, chosen by parties under contracts.

It may be worthwhile noting that as of 2021, Real Estate Disputes comprise the largest percentage of all ongoing litigation in India.



## Different Types of Real Estate Disputes

- i) **Contractual Disputes:** Such disputes concern those arising under specific contracts, such as sale deeds, lease deeds, memorandums of understanding and joint development agreements.
- ii) **Personal disputes:** These disputes concern partition suits for division of land or built-up property between joint owners. Further, suits can also be filed for obtaining interim or permanent injunctions in relation to protecting rights of parties over immovable property. Inheritance and succession related disputes would also fall under this category.
- iii) **Tenancy related disputes:** Such disputes concern the TPA, as well as the various state tenancy laws, and are in respect of the rights and obligations of the landlord and the tenant.
- iv) **Disputes against authorities:** Such disputes may concern compliance with local municipal laws as well as disputes arising out of approvals provided by such executive authorities. Disputes concerning conversion and allotment of land as well as acquisition of land by government authorities under laws such as the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, National Highways Act, 1956, etc., also fall within this ambit.
- v) **Matters before the National Green Tribunal:** Such disputes concern violations of environmental laws in the context of different residential or commercial projects.
- vi) **Disputes under the Insolvency and Bankruptcy Code (IBC):** Such disputes concern the recent amendments to the IBC, which now provide that a minimum threshold limit of 100 or 10% of homebuyers (whichever is lower) is required to initiate corporate insolvency proceedings against a defaulting developer.
- vii) **Disputes before the Real Estate Regulatory Authority:** Such disputes deal with various rights and obligations of homebuyers under the RERA, such as right to obtain information, right to obtain a construction schedule, right to claim possession, rights to obtain a refund, etc.
- viii) **Consumer Disputes:** As per recent judicial pronouncements, homebuyers can also approach the Consumer fora, despite having the option of approaching the RERA. The National Consumer Disputes Redressal Commission is the apex body that deals with consumer complaints of a certain monetary value, along with its district and state counterparts, i.e., the District Consumer Disputes Redressal Commission and the State Consumer Disputes Redressal Commission.
- ix) **Disputes under special state laws:** Such disputes concern special state land legislations, such as Maharashtra Tenancy and Agricultural Lands Act, 1948, the Karnataka Land Revenue Act, 1964, Punjab Scheduled Roads and Controlled Areas Act, 1963, to name a few. They may also concern specific state policies (illustratively, the state specific solar policies and IT policies) and the rules framed thereunder.
- x) **Disputes pertaining to stamp duty valuation:** Such disputes arise in the payment of stamp duty, which is the tax placed on property documents during the sale or transfer of the property, such as sale deeds, release deeds, gift deeds, lease deeds and joint development agreements.
- xi) **Disputes pertaining to Revenue:** Such disputes concern discrepancies or issues with mutation

entries, property registration certificates and other land records present with the Revenue Authorities, such as the office of the Sub-Registrar, which are required for placing reliance in order to provide ownership or title.

**xii) Disputes arising under financing**

**arrangements:** Such disputes arise under financing agreements where immovable properties have been provided as primary or collateral security. During such disputes, a party may claim a charge over such immovable property and may seek the enforcement of such an asset.

**xiii) Arbitrations:** Such disputes concern *ad-hoc* or institutional arbitrations involving commercial land disputes or involving landlord-tenant disputes governed by the TPA.

**xiv) Benami transactions:** The Benami Transactions (Prohibition) Act, 1988 prohibits certain types of financial transactions. It defines a 'benami' transaction as any transaction in which property is transferred to one person for a consideration paid by another person.



# CHALLENGES IN A REAL ESTATE TRANSACTION





A typical real estate transaction is often faced with various challenges, starting from the stage of title investigation itself. Some of the common challenges are highlighted below.

**i) Land is a state subject:** Under the Constitution of India, states have the power to legislate on matters related to land. Given local considerations and the historical context of land holdings, the framework of these legislations differs from one region to another. Illustratively, each state has enacted its own statutes governing ownership, use and conversion of agricultural lands. States like Maharashtra and Gujarat have separate statutes for different regions in the respective states. Title investigation of a property, and any transaction contemplated thereupon must, therefore, have due regard to the local land laws applicable to the relevant jurisdiction.

**ii) Documents are mostly in vernacular:** Most transactions in urban centres are carried out in English. However, in rural areas, the preferred language for transaction continues to be the vernacular. Revenue records too are generally maintained in the local language. This poses a challenge particularly at the stage of title investigation. Further, if the comfort of the counter party so warrants, it may also necessitate negotiations and drafting of the transaction documents in vernacular.

**iii) Digitisation of land records is sometime away:** While many states have started the process of digitising land revenue records, most of them continue to be maintained manually. Resultantly, physical searches in the land revenue offices as part of title investigation become a necessity. However, with the increasing pace of digitisation, one hopes that this aspect will eventually cease to be a material challenge.

**iv) Records are lost or mutilated:** Old property records maintained manually are often misplaced or mutilated. This adversely impacts the ability to undertake title investigation and prevent assessment of the root of title to the property. However, here again, as documents get digitised, one expects this challenge to fade away with the passage of time.

**v) Searches in court records are tedious and not exhaustive:** As has been discussed separately, there are a multitude of fora in which real estate disputes may be adjudicated. These could range from the Supreme Court of India, to the High Courts, to various authorities and tribunals, down to the disputes at the sub-district and sub-divisional level. Very few court records have been digitised and made available online. Litigation records are almost entirely maintained manually and suffer the same risk of being misplaced and mutilated as in the case of old property records. Even where the litigation records are available online, searches can be carried out only on the basis of names of parties, and not on the basis of the property details. While this may not be a problem where the title holder is a company, it poses a challenge where the title holder is an individual. The possibility of other people having the same name, or the name being spelt differently in court records, cannot be ruled out. Both these factors would naturally have an adverse impact on a proper search of court records. Given the multiplicity of approvals, it is often not feasible to rule out the possibility of a property being the subject matter of an ongoing litigation.

**vi) Dispute resolution is time consuming:** Litigation related to real estate comprises the single largest percentage of all disputes in India. It is not uncommon for property disputes, especially those pertaining to title, to go on for several years or even decades. Given this background, a property embroiled in a dispute runs the risk of its marketability being prejudicially impacted, which in turn results in loss of value.

# KEY PLAYERS IN A REAL ESTATE TRANSACTION



**Lawyer** undertakes title investigation of the property, advises on transaction structure, and prepares, negotiates and finalises all transaction documents that are necessary to give effect to the transaction intended between the parties. A lawyer serves as the trusted advisor to his client, safeguarding him or her from all possible risks associated with the transaction, ensuring compliance with the law, and working towards achieving the client's objectives within the boundaries of law and ethics.

**Broker** serves as an intermediary between two transacting parties. The broker plays a key role in ironing out commercial differences between the parties, helping to facilitate successful closure of the transaction. The broker's fee is, therefore, success based. Brokers have to register themselves under the RERA, if they are involved in transactions pertaining to real estate projects as defined under the said Act.

**Technical consultant** assesses the feasibility of using a property for a purpose. This is usually the reason why it is being transacted upon. The technical/ feasibility study, inter alia, may relate to permitted FAR/ FSI, construction related aspects, permitted use, access, physical surveys, soil testing, etc.

**Valuer** ascertains the indicative valuation of a property. Valuation exercise plays a key role in determining commercials of the proposed transaction. It is also useful for assessing tax implications on the transaction.

**Tax consultant** advises on taxation implications of a proposed transaction structure. As achieving tax efficiency is a major consideration in determining the transaction structure, it is reasonably common for the client to first request a tax consultant to prepare the same, which may then be validated by a lawyer.

**Local lawyer/ Search clerk** plays a crucial supporting role in a real estate transaction. As has been mentioned separately, title investigation often requires physical searches of the local land revenue offices. Further, many of these records are maintained in vernacular. The local lawyer/ search clerk serves as the Lawyer's intermediary with the local land revenue office, assisting in procuring the necessary documents and information from public records. His help may also be taken for translating or understanding documents written in vernacular languages.

**Stamp duty** consultant can advise on specific stamp duty related matters. Some of the reasons behind engaging a stamp duty consultant, on a case-to-case basis, are:

- i) unavailability of all relevant stamp duty notifications in the public domain,
- ii) assistance in matters for adjudication on proper stamp duty payable on transaction documents before the jurisdictional collector.

**Registration consultant** assists in processing the necessary formalities for registration of the relevant transaction documents before the jurisdictional sub-registrar.

**Consultant for licenses and approvals**, to advise on and assist in processing the necessary formalities for obtaining licenses and approvals for, inter alia, change of land use and project development. The role of such a consultant assumes significance given the multitude of legislations that govern a potential real estate project, the understanding whereof becomes imperative.



# TITLE INVESTIGATION OF PROPERTY

## Due Diligence Questionnaire (Legal – Real Estate)

**Readers' Note:** This checklist has been prepared for title due diligence proposed to be conducted with respect to the parcels of land situated at [•] (hereinafter referred to as the “Property”).

SL. NO.	DESCRIPTION OF THE DOCUMENTS	COMMENTS
<b>TITLE TO THE PROPERTY</b>		
<b>DOCUMENTS REQUIRED</b>		
1.	Land schedule of the Property on which the due diligence process is required to be undertaken.  The list should set out the name of the Village, Khasra numbers/ Killa numbers, extent of land in Kanal and Marla/ Bigha and Biswa/ Hectare/ Square Meters.	
2.	Certified copies of all the title documents (conveyance deed, lease deed, letter of intent, side letters, memorandum of understanding, etc.) for a period preceding 30 years, leading to the title of each parcel of the Property with the Property owner for review.	
3.	Copy of Shijra (site map) of the Property as certified and issued by the Patwari/ relevant authority indicating the zoning and use of land.	
4.	Land records i.e., Jamabhandi/ Girdwari/ Khata-Khatoni/ 7/12/ Pahanies (Record of Rights) pertaining to the Property for a period preceding 30 years.	
5.	Mutation orders pertaining to the Property for a period preceding 30 years.	
6.	List of all exemptions (including but not limited to stamp duty, property tax, etc.) applicable in respect of the Property.	
7.	Copies of any other agreement(s)/MoU(s) executed between the Property owner and a third party with respect to transfer/ assignment of rights, interest and title over the Property (if any).	
<b>DISCLOSURES REQUIRED</b>		
8.	Does any person beside the owner have any right title interest in the Property or any part thereof?	
9.	Whether Property owner has custody of the original documents of title.	
10.	Nature of rights (ownership/ leasehold/ development agreement) vested with the company. Documents evidencing vesting of such rights in the Property.	
11.	Whether the Property owner has a peaceful vacant physical possession of the Property.	
12.	Whether the Property has been part of any acquisition proceedings under the Land Acquisition Act, 1894/ the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.	

SL. NO.	DESCRIPTION OF THE DOCUMENTS	COMMENTS
<b>CONSTRUCTION RELATED APPROVALS/ INFORMATION AND OTHER MISCELLANEOUS APPROVALS/ INFORMATION</b>		
<b>DOCUMENTS REQUIRED</b>		
13.	Clearance Certificate for the Property from the Department of Fire Services and Certificate/Report concerning seismic risk assessment (probable maximum loss due to earthquake) and any Structural Stability Certificate.	
14.	The Floor Space Index ( <b>FSI</b> ) available in respect of all the Property. Also, papers and proceedings pertaining to actions pending, if any, for unauthorised construction or use of FSI.	
15.	Copy of the conversion of land use approval issued by the relevant authority.	
16.	Floor Plan of the building(s) constructed over the Property.	
17.	Sanctioned Regional Development Plan which shows that the Property is in which zone/ zone certificate with respect to Property.	
18.	Documents evidencing any construction related restrictions relevant to the project constructed on the Property, if any.	
19.	Any consent or permission/ NOC required to be taken for leasing the property. Any other restriction(s) on and any other important issues relating to the contemplated transferability or lease of the Property.	
20.	Proof of payment of property taxes, non-agricultural tax, water and electricity tax for the preceding three years.	
21.	Proof of payment made in respect to the lease amounts (if any) or other payables, premium amount (if any), including the payment receipts issued by the Government authorities, evidencing the payment of the dues for the last three years.	
22.	Whether there are any pending/ threatened litigations pending against the Property. If yes, please provide the relevant court orders, pleadings, settlement agreements and relevant correspondences.	
23.	If any local municipal/ corporation/ revenue authorities/ police or any other authority has issued any notice, demand, demand note, show cause notice in relation to the Property.	
24.	Whether there are any encumbrances created over the Property. If yes, please provide details and relevant documents of the same. Also, provide the form filed with the Registrar of Companies for creation of the same.	
25.	Confirmation, if prior approval of the mortgagee banks, is required for the proposed transaction.	

SL. NO.	DESCRIPTION OF THE DOCUMENTS	COMMENTS
26.	Copy of the Environmental clearance issued by the State Environment Impact Assessment Authority/ Ministry of Environment and Forests with respect to the Property..	
27.	Copy of the Consent to Establish obtained from the State Pollution Control Board with respect to the Property.	
28.	Copy of the Consent to Operate obtained from the State Pollution Control Board with respect to the Property.	
29.	<p>Please provide us with copies of the following:</p> <ul style="list-style-type: none"> <li>(i) Approval for building plan;</li> <li>(ii) Approval of service plan;</li> <li>(iii) NOC for height clearance from the Airport Authority of India;</li> <li>(iv) Development Licence;</li> <li>(v) Fire NOC;</li> <li>(vi) Occupation Certificate;</li> <li>(vii) Certificate of registration of lifts;</li> <li>(viii) CEIG licences applicable for the units in the Mall;</li> <li>(ix) Approval for connection of water supply;</li> <li>(x) Approval for connection of electricity supply;</li> <li>(xi) Approval for installation of DG sets;</li> <li>(xii) Approval under Hazardous Waste Management laws;</li> <li>(xiii) Approval for storage of petroleum;</li> <li>(xiv) Approval from Central Ground Water Authority; and</li> <li>(xv) Approval for Solid waste management.</li> </ul>	
30.	Copy of the No-encumbrance certificate issued by the concerned Sub-Registrar of Assurances for a period preceding the last 30 years.	
31.	The permitted use of the Property at present as also all details and particulars of any earlier changes in permitted use, with certified copies confirming such use.	



## STAMP DUTY READY RECKONER FOR THE MAJOR PROPERTY INSTRUMENTS

STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
<b>Andhra Pradesh</b>	4% of the amount or value of the consideration set forth in the agreement or the market value of the property, whichever is higher. Registration fee- 0.5%	<p>A. When the rent is fixed and no premium is paid or delivered</p> <ul style="list-style-type: none"> <li>(i) less than a year - 0.4% on whole amount payable under lease</li> <li>(ii) for 1-5 years – 0.5% (residential properties) and 1% (any other case), on the average annual rent</li> <li>(iii) 5-10 years – 1% (residential properties) and 2% (any other case), on the average annual rent</li> <li>(iv) 10-20 years – 6% on the average annual rent</li> <li>(v) 20-30 years – 15% on the average annual rent</li> <li>(vi) 30 years or in perpetuity – 3% of the market value of the property</li> </ul> <p>B. When the rent is granted for fine, premium or money advanced without rent – 2% of the fine, premium or money advanced</p> <p>C. When the rent is granted for fine, premium or money advanced, along with rent - 2% of the fine, premium or money advanced, along with the duty payable on such lease if no fine or premium or advance has been paid.</p> <p>Leave and License Agreement:</p> <p>A. When the rent is fixed for rent or fee or by whatever name it is called:</p> <ul style="list-style-type: none"> <li>(i) less than a year - 2% of the amount payable under the license</li> <li>(ii) 1-5 years – 2% of the amount payable under license</li> <li>(iii) 5-10 years – 5% on the amount of one and half times of the amount payable under license.</li> </ul> <p>B. When the license is granted for a lump sum amount advanced and where no rent or fee is payable - 2% of the fine, premium or money advanced</p> <p>C. When the rent is granted for lumpsum amount in addition to rent or fee that is payable- 2% of the fine, premium or money advanced, along with the duty payable if no lumpsum amount has been paid</p> <p>registration fee for both- 0.1% on the value taken for charging stamp duty</p>	<p>Non- Family members: 4% for a consideration or market value, of the property which is the subject matter of the gift.</p> <p>Family members: 1% for a consideration or market value, of the property which is the subject matter of the gift</p>	<p>Development/Cons truction Agreement- 0.5%; Development/Cons truction Agreement cum GPA- 1%</p>	<p>(A) Equitable mortgage- 0.5% of the amount secured by such deed (maximum INR 50,000)</p> <p>(B) Registered Mortgage-</p> <ul style="list-style-type: none"> <li>(a) if possession of property is given- 2%;</li> <li>(b) if possession of property is not given- <ul style="list-style-type: none"> <li>(i) when in favour of government bodies/ local authorities/ UDAs to ensure compliance to building/ layout rules- INR 5000;</li> <li>(ii) Other than the above- 0.5% Registration fee- 0.1% of the value taken for charging stamp duty.</li> </ul> </li> </ul>

STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
<b>Assam</b>	(i) for women - 5% of the market value of the property; (ii) for others - 6% of the market value of the property. registration fee- 8.5%	(i) where rent is fixed and no premium is paid or delivered- (a) < 1 year - 2% for the whole amount payable/deliverable under such lease; Registration fee- total sum payable under lease. (b) 1-5 years - 2% of the average annual rent reserved; (c) 5-10 years - 6% of the average annual rent reserved; (d) 10 - 20 years - 6% of twice the average annual rent reserved; (e) 20 - 30 years - 6% of thrice the average annual rent reserved; (f) 30- 100 years 6% of four times the average annual rent reserved; Registration fee for (b) to (f) the average annual rent. (g) 100 years - perpetuity - 1/6th of the whole amount of rents which would have been paid or delivered in respect of the first 50 years of lease; Registration fee- 1/5th of the whole amount of rent which would be payable in respect of first 50 years/ (h) no definite term - 6% of three times of average annual rent which would be paid or delivered for the first 10 years if the lease continued for so long; Registration fee- average annual rent for 10 years. (ii) where lease is granted for fine or premium or money and no rent is reserved - 6% of the market value equal to the amount as set forth in lease; Registration fee- amount of fine/permium/ money advanced. (iii) where lease is granted for fine or premium or money in addition to rent reserved - 6% of the market value equal to the amount as set forth in lease, in addition to duty which would have been payable on such lease if no such fine or premium had been paid; Registration fee- aggregate amount of such fine, premium or advance in addition to the fee which would have been payable in a lease if no fine/premium/advance had been paid or delivered.	(i) for women - 5% of the market value of the property of greatest value set forth in the instrument; (ii) for others - 6% of the market value of the property of greatest value set forth in the instrument.	6%	if possession of the property is given- 6% of the amount secured by the deed; if possession of the property is not given- 2% of the amount secured by the deed. registration fee- 8.5%

STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
<b>Bihar</b>	(i) transfer from male to female - 5.7%; (ii) transfer from female to male - 6.3%; (iii) any other case - 6% registration fee: (i) transfer from male to female - 1.9%; (ii) transfer from female to male - 2.1%; (iii) any other case - 2%	(a) whereby rent is fixed and no premium is paid or delivered: (i) <1 year - 6% on 2% of the market value of property based on MVR; (ii) 1 - 10 years - 6% on 5% of the market value of property based on MVR; (iii) 10 - 30 years - 6% on 15% of the market value of property based on MVR (iv) 30 years - perprtuity, but not of definite term - 6% on 50% of the market value of property based on MVR; registration fee- 2% on consideration amount based on MVR or chargeable amount which may include consideration as per MVR and other sums. (b) where lease is granted for fine or premium and no rent is reserved - 6% of amount of value of such fine or premium set forth; registration fee- 2% of the amount on which stamp duty is paid. (c) lease is granted for a fine or premium or for money advanced in addition to rent reserved - 6% of the market value equal to the amount as set forth in lease, in addition to duty which would have been payable on such lease if no such fine or premium had been paid; Registration charge- 2% of the amount on which stamp duty is charged.	(i) transfer from male to female - 5.7%; (ii) transfer from female to male - 6.3%; (iii) any other case - 6%	6%	A. Equitable mortgage- (a) on or below INR 30,000- INR 85; (b) above INR 30,000- 0.29%; registration fee- INR 1000 B. Registered Mortgage- (a) if possession of property is given- 2%; Reg fee- 2% (b) if possession of property not given- 1%; Reg fee- 2% Exemptions:- a) in favour of public financial institutions/banks for industrial, Retail Housing or Commercial Loans: Stamp duty (max.) is INR 20000; Registration Fee(max.) is INR 5000. b) for development of agricultural purpose/KCC Loan up to INR 5 Lakhs: Stamp Duty-100%; Registration Fee-(max.) INR 50. c) Mortgage for education loan and health treatment loan- 0.5 % of the loan amount; Reg fee- 0.5%



STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
<b>Chandigarh</b>	<p>5% on value or amount of the consideration amount set forth in the instrument, whichever is higher.</p> <p>Agreement to sell: 5% on token/ earnest money</p> <p>Registration fee- 1% on value of consideration subject to maximum of INR 10,000</p> <p>Agreement to sell- 1% on token/earnest money subject to maximum of INR 10,000</p>	<p>(i) 1-5 years -</p> <p>(a) 2% on the average annual rent reserved;</p> <p>(b) 3% addition stamp duty on security/ advance rent.</p> <p>(ii) 5-10 years -</p> <p>(a) 3% on the average annual rent reserved;</p> <p>(b) 3% addition stamp duty on security/ advance rent;</p> <p>(iii) 10-20 years -</p> <p>(a) 3% on twice the average annual rent reserved;</p> <p>(b) 3% addition stamp duty on security/ advance rent;</p> <p>(iv) 20-30 years -</p> <p>(a) 3% on thrice the average annual rent reserved;</p> <p>(b) 3% addition stamp duty on security/ advance rent;</p> <p>(v) More than 30 years -</p> <p>(a) 3% on four times the average annual rent reserved;</p> <p>(b) 3% addition stamp duty on security/ advance rent;</p> <p>Registration fee- 1% on value of consideration subject to maximum of INR 10,000</p>	5% of the consideration amount set forth in the instrument	There is no specific entry for joint development agreement.	<p>A. Mortgage Deed with possession- 3%;</p> <p>B. Mortgage Deed without possession- 1.5%;</p> <p>Registration fee- 1% (maximum INR 10,000)</p>

STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
<b>Chhattisgarh</b>	5% of the market value of the property; Registration fee- 1%	(i) where rent is fixed and no premium is paid or delivered- (a) <1 year - 2% for the whole amount payable/deliverable under such lease; (b) 1-5 years - 2% of the average annual rent reserved; (c) 5-10 years - 5% of 1.5 times the average annual rent reserved; (d) 10 - 20 years - 5% of thrice the average annual rent reserved; (e) 20 - 30 years - 5% of five the average annual rent reserved; (f) 30- 100 years- 5% of eight times the average annual rent reserved; (g) 100 years - perpetuity - 5% of the market value equal to one fourth of the whole amount of rent payable in first twelve and half years of lease; (h) no definite term - 5% of three times of average annual rent which would be paid or delivered for the first 10 years if the lease continued for so long; (ii) where lease is granted for fine or premium or money and no rent is reserved - 5% of the market value equal to the amount as set forth in lease; Provide where the lease is for >30 years, then stamp duty payable - 5% of market value of the property; (iii) where lease is granted for fine or premium or money in addition to rent reserved - 5% of the market value equal to the amount as set forth in lease, in addition to duty which would have been payable on such lease if no such fine or premium had been paid. Registration fee- 3/4th of the stamp duty payable on lease	(i) when donee is not a family member of donor - 5% of the market value of the property; (ii) when donee is a family member of the donor - 0.5% of the market value of the property	2% of the market value of the land	A. Equitable Mortgage- (a) if such loan or debt is repayable on demand or more than three months from the date of instrument evidencing the agreement- 2%; (b) if such loan or debt is repayable not more than three months from the date of such instrument- Half the duty payable under clause (a). B. Registered Mortgage- (a) if possession of the property is given- 5% of the market value equal to amount secured by such deed; (b) if possession of the property is not given- 2% of the amount secured by such deed; Registration fees- 1%

STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
<b>National Capital Territory of Delhi</b>	<p>3% of the consideration amount set forth in the instrument, 2% in respect of individually/jointly held immovable property by women. + 3% Transfer Levy (paid in the form of stamp duty) Registration fee- 1% of the consideration amount set forth or the value as per the circle rate, whichever is higher</p>	<p>(i) &lt;1 year - 2% and 0.5% for the whole amount payable or deliverable under such lease; (ii) 1-5 years - 2% and 0.5% for value of the average rent received; (iii) 5-10 years - 3% of the average annual rent received; (iv) 10-20 years - 3% of the consideration equal to 2 times of the average annual rent received; (v) 20-30 years - 3% of the consideration equal to 3 times of the average annual rent received; (vi) 30-100 years - 3% of the consideration equal to 4 times of the average annual rent received; (vii) &gt;100 years or for perpetuity - 3% of the consideration amount; (viii) No definite term - 3% of the consideration equal to 3 times of the average annual rent received which would be paid or delivered for the first ten years if the lease continued so long; (ix) granted for fine/premium/money advanced and where no rent is reserved - 3% of the consideration equal to the amount or value of such fine or premium or advance set forth in the lease; (x) granted for fine/premium/money advanced, in addition to rent reserved - 3% of the consideration equal to amount or value or such fine or premium or advance set forth in the lease, in addition to the duty payable on lease, if no fine or premium or advance had been paid or delivered. Registration fee- INR 1000</p>	Same as Conveyance.	Same as conveyance	<p>A. Equitable Mortgage (a) if such loan or debt is repayable on demand or more than three months - 0.5% (maximum INR 50,000); (b) if such loan or debt is repayable in less than three months- half the duty payable under clause (a); B. Registered Mortgage (a) if possession of property is given- same as conveyance; (b) if possession is not given- 2% with a monetary ceiling of INR 2,00,000. Registration fee- 1%</p>



STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
<b>Gujarat</b>	<p>4.9 % (includes a surcharge of 1.4%) of the market value of the property or the consideration for conveyance whichever is higher.</p> <p>Registration fee- 1% of the market value or consideration, whichever is higher.</p>	<p>(i) &lt;1 year- 1% of the whole amount payable;</p> <p>(ii) 1-3 years- 2% of the value of average annual rent reserved;</p> <p>(iii) 3-10 years- 4.9% of the value of average annual rent reserved;</p> <p>(iv) 10-30 years- 4.9% of twice the value of average annual rent reserved;</p> <p>(v) 30-98 years- 4.9% of thrice the value of average annual rent reserved;</p> <p>(vi) &gt;98 years- 4.9% of five times the value of average annual rent reserved;</p> <p>(vii) For perpetuity- 4.9% of one-fifth of the whole rent payable in first fifty years of lease;</p> <p>(viii) For indefinite term- 4.9% of the average annual rent which would be paid for first 10 years if lease is continued for so long.</p> <p>(ix) Where the lease is granted for a fine or premium or for money advanced or to be advanced and where no rent is reserved - 4.9% of the amount or value of such fine or premium or advances as set forth in the lease.</p> <p>(x) Where the lease is granted for a fine or premium or for money advanced in addition to rent reserved - 4.9% of the amount or value of such fine or premium or advances as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium or advance had been paid or delivered.</p> <p>Registration Fee- For (i) to (viii)- 1% of Average lease amount; For (ix) and (x) 1% of advance premium, finer or money.</p> <p>Leave and License Agreement- 0.5% of the on the whole amount payable or deliverable plus the total amount of fine or premium or money advanced or to be advanced irrespective of the period for which such leave and licence is executed.</p> <p>Registration Fee- There is no requirement for registration of a Leave and Licence Agreement for residential property in Gujarat. For commercial property- 1%.</p>	Same as conveyance	3.5% of the market value of the property which is subject matter of such agreement.	<p>A. Equitable Mortgage</p> <p>(i) if repayable on demand or more than 3 months- (a) 0.25% where the amount of loan/debt is less than INR 10,00,00,000; 0.50% (maximum INR 8,00,000) where the amount of loan/debt exceeds INR 10,00,00,000.</p> <p>(ii) if loan is repayable in less than three months- half the duty under sub-clause (i).</p> <p>B. Registered Mortgage</p> <p>(i) if possession of property is given- 4.9% for the amount secured by such deed;</p> <p>(ii) if possession of property is not given-</p> <p>(a) if such loan or debt is repayable on demand or more than three months from the date of the instrument evidencing the agreement - 0.25% when amount of loan does not exceed INR 10,00,00,000; 0.50% where the amount of loan exceeds INR 10,00,00,000.</p> <p>(b) if such loan or debt is repayable not more than three months form the date of such instrument- half the duty payable under sub-clause (a).</p> <p>Registration fee- 1%</p>

STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
Goa	<p>(a) where the amount or value of the consideration for such conveyance as set forth therein exceeds Rs. 600/- but does not exceed Rs. fifty lakhs, the stamp duty shall be 3%; Reg fee- 2%</p> <p>(b) where the amount or value of the consideration for such conveyance as set forth therein exceeds rupees fifty lakhs but does not exceed rupees seventy-five lakhs, the stamp duty shall be 3.5%; Reg fee- 2.5%</p> <p>(c) where the amount or value of the consideration for such conveyance as set forth therein exceeds rupees seventy-five lakhs but does not exceed rupees one crore, the stamp duty shall be 4%; Reg fee- 3%</p> <p>(d) where the amount or value of the consideration for such conveyance as set forth therein exceeds rupees one crore, the stamp duty shall be 4.5%; Reg Fee- 3.5%</p>	<p>(i) where rent is fixed and no premium is paid or delivered-</p> <p>(a) &lt; 1 year - 0.3 % for the whole amount payable/deliverable under such lease;</p> <p>(b) 1-5 years - 0.3% of the average annual rent reserved;</p> <p>(c) 5-10 years - 1/3rd of the duty on conveyance for consideration equal to amount or value of average annual rent reserved;</p> <p>(d) 10 - 20 years - 1/3rd of the duty on conveyance for consideration equal to twice the amount or value of average annual rent reserved;</p> <p>(e) 20 - 30 years - 1/3rd of the duty on conveyance for consideration equal to three times the amount or value of average annual rent reserved;</p> <p>(f) 30- 100 years - 1/3rd of the duty on conveyance for consideration equal to four times the amount or value of average annual rent reserved;</p> <p>(g) 100 years to perpetuity- 1/3rd of the duty on conveyance for consideration equal to in the case of a lease granted solely for agricultural purposes to 1/10th and in any other case to 1/6th of the whole amount of rent which would be paid or delivered in respect of the first fifty years of lease.</p> <p>(ii) where lease is granted for fine or permium or money and no rent is reserved - 1/3rd of the duty on conveyance for consideration equal to amount or value of such fine/premium/advance;</p> <p>(iii) where lease in granted for fine or permium or money in addition to rent reserved - 1/3rd of the duty on conveyance for consideration equal to amount or value of such fine/premium/advance, in addition to duty which would have been payable on such lease if no such fine or premium had been paid.</p> <p>Leave and License Agreement- For residential premises- INR 500; For non-residential premises- INR 1000.</p>	<p>(a) where the amount or value of the consideration for such conveyance as set forth therein exceeds Rs. 600/- but does not exceed Rs. fifty lakhs, the stamp duty shall be 3%;</p> <p>(b) where the amount or value of the consideration for such conveyance as set forth therein exceeds rupees fifty lakhs but does not exceed rupees seventy-five lakhs, the stamp duty shall be 3.5%;</p> <p>(c) where the amount or value of the consideration for such conveyance as set forth therein exceeds rupees seventy-five lakhs but does not exceed rupees one crore, the stamp duty shall be 4%;</p> <p>(d) where the amount or value of the consideration for such conveyance as set forth therein exceeds rupees one crore, the stamp duty shall be 4.5%;</p>	<p>(a) where the amount or value of the consideration for such conveyance as set forth therein exceeds Rs. 600/- but does not exceed Rs. fifty lakhs, the stamp duty shall be 3%;</p> <p>(b) where the amount or value of the consideration for such conveyance as set forth therein exceeds rupees fifty lakhs but does not exceed rupees seventy-five lakhs, the stamp duty shall be 3.5%;</p> <p>(c) where the amount or value of the consideration for such conveyance as set forth therein exceeds rupees seventy-five lakhs but does not exceed rupees one crore, the stamp duty shall be 4%;</p> <p>(d) where the amount or value of the consideration for such conveyance as set forth therein exceeds rupees one crore, the stamp duty shall be 4.5%;</p>	<p>(a) if possession of property is given- the same duty an on conveyance for the consideration equal to the amount secured by the deed; Reg Fee- same as conveyance</p> <p>(b) if possession is not given- 4% of the amount secured by the deed; Reg Fee- INR 500.</p>

STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
<b>Haryana</b>	<p>5% (in rural areas); 7% (including 2% Municipality duty) in Urban areas</p> <p>2% exemption of stamp duty on instruments of sale executed in favour of women in rural/urban areas</p> <p>Registration fee- For all compulsory registrable documents (other than leases of immovable property):</p> <p>(a) if the value of consideration in money does not exceed INR 50,000- INR 100;</p> <p>(b) if it exceeds INR 50,000 but does not exceeds INR 1,00,000- INR 500;</p> <p>(c) if it exceeds INR 1,00,000 but does not exceeds INR 5,00,000- INR 1000;</p> <p>(d) if it exceeds INR 5,00,000 but does not exceeds INR 10,00,000- INR 5000;</p> <p>(e) if it exceeds INR 10,00,000 but does not exceeds INR 20,00,000- INR 10000;</p> <p>(f) if it exceeds INR 20,00,000 but does not exceeds INR 25,00,000- INR 12500;</p> <p>(g) if it exceeds INR 25,00,000 but does not exceed INR 30,00,000- INR 15000;</p> <p>(h) if it exceeds INR 30,00,000 but does not exceed INR 40,00,000- INR 20000;</p> <p>(i) if it exceeds INR 40,00,000 but does not exceed INR 50,00,000- INR 25000;</p> <p>(j) if it exceeds INR 50,00,000 but does not exceed INR 60,00,000- INR 30000;</p> <p>(k) if it exceeds INR 60,00,000 but does not exceed INR 70,00,000- INR 35000;</p> <p>(l) if it exceeds INR 70,00,000 but does not exceed INR 80,00,000- INR 40000;</p> <p>(m) if it exceeds INR 80,00,000 but does not exceed INR 90,00,000- INR 45000;</p> <p>(n) if it exceeds INR 90,00,000- INR 50,000</p>	<p>A. When the rent is fixed and no premium is paid or delivered</p> <p>(i) less than a year - 1.5% on whole amount payable under lease;</p> <p>(ii) for 1-5 years -1.5% of AAR;</p> <p>(iii) 5-10 years - 5% of AAR;</p> <p>(iv) 10-20 years - 5% of 2 times AAR;</p> <p>(v) 20-30 years - 5% of 3 times AAR;</p> <p>(vi) 30-100 years - 5% of 4 times AAR;</p> <p>(vii) 100 years or perpetuity- 5% for a consideration equal in case of lease granted solely for agricultural purpose to 1/10 and in any other case to 1/6 the and of the whole amount of rents which would be paid or delivered in respect of the first fifty years of lease;</p> <p>(viii) no defined term- 5% of 3 times AAR for the first ten years if the lease.</p> <p>B. When the rent is granted for fine, premium or money advanced without rent - 5% of the fine, premium or money advanced</p> <p>C. When the rent is granted for fine, premium or money advanced, along with rent - 5% of the fine, premium or money advanced, along with the duty payable on such lease if no fine or premium or advance has been paid.</p> <p>Registration Fee- Same as conveyance on the amount of rent on which stamp duty has been assessed (Maximum INR 20,000)</p>	Same duty as conveyance	2% of the market value of the property or the amount of such consideration as set forth in the collaboration agreement, whichever is higher	<p>(i) if possession of property given- 3% (in rural areas) &amp; 5% (in urban areas);</p> <p>(ii) if possession of property not given- 1.5%</p> <p>Registration Fee- same as conveyance.</p> <p>(iii) Equitable Mortgage- 0.2445% if such loan is repayable on demand or in more than three months. 0.12225% if such loan is repayable in not more than three month.</p>

STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
<b>Himachal Pradesh</b>	<p>Others - 6%, Women - 4% of the market value of the property or amount of consideration, whichever is higher.</p> <p>Registration fee- 2% of the market value of the property or consideration amount, as the case may be, whichever is higher, subject to the minimum of INR 100.</p>	<p>(a) where lease purports upto one hundred years or exceeding one hundred years- 5% X Market Value X (Period of Lease)/100;</p> <p>(b) Where lease purports to be in perpetuity and does not purport to be for any defined term-5% of the market value of the leased property or the whole lease amount which would be paid or delivered under such lease, if any, whichever is higher, subject to minimum of INR 100.</p> <p>Registration Fee- 2% of the market value of the leased property, on which stamp duty has been assessed.</p>	<p>Others - 6%</p> <p>Women - 4%</p>	<p>There is no specific entry for joint development agreement in Himachal Pradesh. Therefore, such an agreement would be stamped basis Article 5(d) of Schedule 1A applicable to the state of Himachal Pradesh which is, stamp duty payable on agreement not provided for will be INR 2.25</p>	<p>A. Equitable Mortgage- 0.05% of the amount secured (minimum- INR 100; maximum- INR 1000)</p> <p>Registration Fee- 0.05%</p> <p>B. Registered Mortgage</p> <p>(i) if possession of property is given- 4% for women, 6% for others of the market value of the property or the consideration amount, whichever is higher;</p> <p>(ii) if possession of property is not given- 0.05% for amount secured by the deed, subject to maximum of INR 1000.</p> <p>Registration fee- 2% of the amount secured by such deed (minimum INR 100).</p>



STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
<b>Jharkhand</b>	4% of the value of the document Registration Fee- 3% of the value of the document	The stamp duty payable on lease in Jharkhand is not provided.	(i) Less than INR 1000- INR 31.50; (ii) Between INR 1000 to INR 10000- INR 31.50 for first thousand and INR 21.50 for every INR 500 or part thereof; (iii) More than INR 10000- INR 31.50 for first thousand and INR 31.50 for every INR 500 or part thereof;	There is no specific entry for joint development agreement.	4.2% of the value of the deed Registration Fee- 2%

STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
<b>Jammu and Kashmir</b>	<p>(a) Where the land or estate is within any urban area - 7% of the market value of such land or estate</p> <p>(b) Where the land or estate is within rural area - 5% of the market value of such land or estate</p> <p>Registration Fee- 1.2% of the value of the immovable property.</p>	<p>(i) where rent is fixed and no premium is paid or delivered-</p> <p>(a) &lt; 1 year - 1 % for the whole amount payable/deliverable under such lease;</p> <p>(b) 1-5 years - 2% of the average annual rent reserved;</p> <p>(c) 5-10 years - 7% of one and a half times the average annual rent reserved;</p> <p>(d) 10 - 20 years - 7% of thrice the average annual rent reserved;</p> <p>(e) 20 - 30 years - 7% of five the average annual rent reserved;</p> <p>(f) 30- perpetuity - 7% of ten times the average annual rent reserved;</p> <p>(ii) where lease is granted for fine or permium or money and no rent is reserved - 7 % of the market value equal to the amount as set forth in lease;</p> <p>(iii) where lease in granted for fine or permium or money in addition to rent reserved - 7% of the market value equal to the amount as set forth in lease, in addition to duty which would have been payable on such lease if no such fine or premium had been paid.</p> <p>Registration Fee- 0.1%</p>	7% on the market value of the Property	There is no specific entry for joint development agreement in Jammu & Kashmir. Therefore, such an agreement would be stamped basis Article 5(c) of Schedule 1A applicable to the state of Jammu & Kashmir which is, stamp duty payable on agreement not provided for will be INR 100	<p>Equitable Mortgage- 0.25% of the amount secured by such deed;</p> <p>Registration Fee- 0.1% (maximum INR 10,000).</p> <p>Registered Mortgage-</p> <p>(i) if possession of property is given- 7% for market value equal to amount secured by such deed;</p> <p>(ii) if possession of property is not given- 0.5% for amount secured by the deed, subject to maximum of INR 10,00,000.</p>

STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
Karnataka	5% of the market value of the property which is subject matter of conveyance. Registration Fee- 1%	(i) <1 year for residential property- 0.5% on the sum of average annual rent, premium, fine and money advanced or INR 500; Registration Fee- INR 100. (ii) <1 year for commercial/industrial property- 0.5% on the sum of average annual rent, premium, fine and money advanced; Registration Fee- 0.5%. (iii) 1-10 years- 1% on the sum of average annual rent, premium, fine and money advanced; Registration Fee- 0.5%. (iv) 10-20 years- 2% on the sum of average annual rent, premium, fine and money advanced; Registration Fee- 0.5%. (v) 20-30 years- 3% on the sum of average annual rent, premium, fine and money advanced; Registration Fee- 0.5%. (vi) >30 years or for perpetuity/indefinite term- 5% on the sum of average annual rent, premium, fine and money advanced or on the market value of property whichever is higher; Registration Fee- 1%. (Provided where agreement to lease is stamped with ad valorem stamp required for lease and lease in pursuance of such agreement is subsequently executed, duty on such lease shall not exceed INR 50) (vii) Lease deed executed in favour of the wife, husband, father, mother, son, daughter, brother or sister- if the property is situated within the limits of Bangalore Metropolitan Regional Development Corporation Authority or Bruhat Bangalore Mahanagar Palika or City Corporation then INR 5000; if the property is situated within the limits of City or town Municipal Corporation or Town Panchayat Area then INR 3000; if the property is situated in other than specified limits then INR 1000; ; Registration Fee- INR 500. Leave and License Agreement- (i) <1 year for residential property- 0.5% on the sum of average annual rent, premium, fine and money advanced or maximum INR 500. (ii) <1 year for commercial/industrial property- 0.5% on the sum of average annual rent, premium, fine and money advanced subject to minimum INR 50. (iii) 1-10 years- 1% on the sum of average annual rent, premium, fine and money advanced subject to minimum INR 100. (iv) 10-20 years- 2% on the sum of average annual rent, premium, fine and money advanced subject to minimum INR 200. (v) 20-30 years- 3% on the sum of average annual rent, premium, fine and money advanced subject to minimum INR 300. Registration fee- Same as lease.	(i) Where donee isn't the family member of donor- 5% of the market value of the property which is the subject matter of gift. (ii) When made to a family member- (a) INR 5000 (If property situated within Bangalore Metropolitan Regional Development Corporation/Burhat Bangalore Mahanagara Palike/City Corporation) (b) INR 3000 (If property situated within limits of City/Town Municipal/Town Panchayat) (c) INR 1000 (If property is situated in any other area)	Higher of 2% of the market value of undivided share or portion of land or immovable property, consideration and money advanced if any or; 2% of the market value of such share or portion of constructed or developed building or immovable property, consideration and money advanced, if any;	A. Equitable mortgage- 0.1% (if the loan amount does not exceed INR 10,00,00); 0.2% (if the loan amount exceeds INR 10,00,000); Registration fee- 0.1% (Minimum-INR 100; Maximum INR 10,000) B. Registered Mortgage- (i) if possession of property is given- 5% for market value equal to amount secured by such deed; Registration fee- 1% (ii) if possession of property is not given- 0.5% for amount secured by the deed; Registration fee- 0.5% (Maximum INR 10,000)

STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
<b>Madhya Pradesh</b>	<p>5% of the market value of the property or on the amount of consideration set forth, whichever is higher.</p> <p>Registration Fees: 0.8% of the amount on which stamp duty is chargeable.</p> <p>Registration Fees: 2% of the fair value or consideration, whichever is higher.</p>	<p>(a) &lt;1 year - 0.01% of the average annual rent reserved, or the market value of the property, whichever is higher;</p> <p>(b) 1 - 5 years - 0.1% of the average annual rent reserved, or the market value of the property, whichever is higher;</p> <p>(c) 5-10 years - 0.5% of the average annual rent reserved, or the market value of the property, whichever is higher;</p> <p>(d) 10 - 20 years - 1% of the average annual rent reserved, or the market value of the property, whichever is higher;</p> <p>(e) 20-30 years - 2% of the average annual rent reserved, or the market value of the property, whichever is higher;</p> <p>(f) 30 - perpetuity - 5% of the average annual rent reserved, or the market value of the property, whichever is higher.</p> <p>Registration Fees: 3/4th of the value of the stamp duty payable on the lease subject to a minimum of INR 1000.</p>	<p>(a) When made to a family member - 2.5% of the market value of the immovable property, which is subject matter of the gift;</p> <p>(b) In all other cases - 5% of the market value of the property, which is subject matter of the gift.</p>	<p>2% of the market value of the property or on the amount of consideration set forth, whichever is higher. (when the developer intends to hold/ sell a portion of the developed built-up area)</p> <p>In all other cases, 0.25% of the market value of the entire land proposed to be developed, subject to a minimum of INR 1000</p>	<p>(a) Equitable Mortgage i.e. Mortgage by way of deposit of title deeds: 0.25 per cent of the amount secured by such deed, subject to a maximum of INR 5,00,000.</p> <p>Registration Fees: INR 1,000.</p> <p>(b) Registered Mortgage/ Mortgage Deed:</p> <ul style="list-style-type: none"> <li>- when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given: 5% of the amount secured by such deed.</li> <li>- when possession of the property is neither given nor agreed to be given: 0.5% of the amount secured by such deed subject to a minimum stamp duty of INR 500.</li> </ul> <p>Registration Fees: 0.8% of the amount secured by the Mortgage, subject to a minimum of INR 1,000.</p>



STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
<b>Kerala</b>	<p>When the property is situated within Panchayath/Municipalities/Townships/Cantonment/Corporation areas: INR 8 for every INR 100 or part thereof of the fair value or value of consideration whichever is higher.</p> <p>Registration Fees: 2% of the fair value or consideration, whichever is higher.</p>	<p>(a) When rent of Lease is fixed and no premium or advance is paid and delivered, and the lease is for a period:</p> <ul style="list-style-type: none"> <li>&lt;1 year: INR 5 for every INR 100 or part thereof of the whole amount payable. Registration Fees: 2% of total sum payable under the lease.</li> <li>1-5 years: INR 5 for every INR 100 or part thereof for the average annual rent reserved. Registration Fees: 2% of Average Annual Rent.</li> <li>5-10 years: INR 8 for every INR 100 or part thereof for the average annual rent reserved. Registration Fees: 2% of Average Annual Rent.</li> <li>10-20 years: INR 8 for every INR 100 or part thereof for twice the annual average rent reserved. Registration Fees: 2% of twice the amount of Annual Average Rent.</li> <li>20-30 years: INR 8 for every INR 100 or part thereof for thrice the annual average rent reserved. Registration Fees: 2% of thrice the amount of Annual Average Rent.</li> <li>30-100 years: INR 8 for every INR 100 or part thereof for four times the annual average rent reserved. Registration Fees: 2% of four times the amount of Annual Average Rent.</li> <li>&gt;100 years or in perpetuity: INR 8 for every INR 100 or part thereof for consideration equal to one-sixth of the whole amount of rents which would be paid for the first fifty years of the lease. Registration Fees: 2% of one-sixth of the whole amount of the rent which would be paid for the first fifty years of the lease.</li> <li>not definite: INR 8 for every INR 100 of part thereof for consideration equal to three times the amount or value of the annual average rent which would be paid for the first ten years if the lease continued so long. Registration Fees: 2% of Annual Average Rent which would be paid for the first ten years.</li> </ul> <p>(b) Where the lease is granted for a fine or premium or for money advanced and where no rent is reserved: INR 8 for every INR 100 or part thereof for consideration equal to the amount of such fine or premium or advance set forth in lease. Registration Fees: 2% of the amount of premium or advance or the fine.</p> <p>(c) Where the lease is granted for a fine or premium or for money advanced in addition to the rent reserved: INR 8 for every INR 100 or part thereof for consideration equal to the amount of such fine or premium or advance in addition to the duty payable under (a). Registration Fees: 2% of the amount of such fine or premium or advance in addition to the duty payable under (a).</p>	<p>(a) Where the gift is in favour of any of the members of the family and/or legal heirs of the deceased family member: INR 2 for every INR 1,000 or part thereof of the fair value of the land and the value of the other properties set forth in the instrument or the value of all properties set forth in the instrument whichever is higher, subject to a minimum of INR 1,000.</p> <p>(b) In any case other than (a), INR 8 for every INR 100 or part thereof of the fair value of the land or value of consideration whichever is higher.</p>	<p>INR 8 for every INR 100 or part thereof.</p>	<p>(a) Equitable Mortgage i.e. Mortgage by way of deposit of title deeds: 0.1 per cent of the amount secured by such deed, subject to a minimum of INR 200 and a maximum of INR 10,000. Registration Fees: INR 0.1 for every INR 100 or part thereof.</p> <p>(b) Registered Mortgage/ Mortgage Deed:</p> <ul style="list-style-type: none"> <li>when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given: INR 8 for every INR 100 or part thereof for the amount secured by such deed.</li> <li>when possession of the property is neither given nor agreed to be given: INR 5 for every INR 100 or part thereof for the amount secured by such deed.</li> </ul> <p>Registration Fees: 2% of the amount secured by the Mortgage.</p>

STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
<b>Maharashtra</b>	<p>If the Property is situated:</p> <p>(i) within limits of municipal corporation or cantonment area annexed to it or any urban area not covered under (ii) - 5% of the market value of the property;</p> <p>(ii) within limits of any municipal council or nagar panchayat or cantonment area annexed to it, or any rural area within Mumbai Metropolitan Region Development Authority or any influential area - 5% of the market value of the property;</p> <p>(iii) Any other area within limits of any grampanchayat or not mentioned in (ii) - 4% of the market value of the property.</p> <p>For Mumbai: Stamp Duty: 5% of the market value of the property. Metro Cess: 1% of the market value of the property. For Pune, Thane and Pimpri Chinchwad: Stamp Duty: 5% of the market value of the property. Local Body Tax: 1% of the market value of the property. Metro Cess: 1% of the market value of the property. For Nagpur: Stamp Duty: 5% of the market value of the property. Local Body Tax: 1.5% of the market value of the property. For Navi Mumbai: Stamp Duty: 5% of the market value of the property. Local Body Tax: 1% of the market value of the property.</p> <p>Further, vide notification dated March 31, 2020, a 1% concession is being given in stamp duty and related charges applicable during document registration within Mumbai Metropolitan Region, Pune, Pimpri Chinchwad and Nagpur Municipal Corporations for next 2 years from 01 April 2020.</p> <p>Further, by another order dated March 31, 2020, a 1% concession is given in stamp duty to women purchasers/sellers in Maharashtra.</p> <p>Registration Fee- 1% of the market value of the property, currently capped at INR 30,000.</p>	<p>(i) &lt;5 years - Same duty as leviable on conveyance, on 10% of the market value of the property;</p> <p>(ii) 5 -10 years, with a renewal clause contingent or otherwise - Same duty as leviable on conveyance, on 25% of the market value of the property;</p> <p>(iii) 10 - 29 years, with a renewal clause contingent or otherwise - Same duty as leviable on conveyance, on 50% of the market value of the property;</p> <p>(iv) 29 years - perpetuity or not having a definite period, with a renewal clause contingent or otherwise - Same duty as leviable on conveyance, on 90% of the market value of the property;</p> <p>Registration Fees is 1% of the market value of the property, currently capped at Rs.30,000/-.</p> <p>Leave and License Agreement-</p> <p>For a term not exceeding 60 months, with or without renewal clause - 0.25 % of (license fees + earnest money + 10 % interest/annum on refundable security deposit )</p> <p>For a period exceeding 60 months, with or without a renewal clause - Same as B, C and D under the Lease Deed mentioned above.</p> <p>Registration FEE- INR 1000</p>	<p>(i) within limits of municipal corporation or cantonment area annexed to it or any urban area not covered under (ii) - 5% of the market value of the property;</p> <p>(ii) within limits of any municipal council or nagar panchayat or cantonment area annexed to it, or any rural area within Mumbai Metropolitan Region Development Authority or any influential area - 5% of the market value of the property;</p> <p>(iii) Any other area within limits of any grampanchayat or not mentioned in (ii) - 4% of the market value of the property</p> <p>(iv) if gifted to a family member - 3% on the market value of the property.</p>	Same duty as conveyance	<p>A. Equitable Mortgage-</p> <p>(a) when amount does not exceed INR 5,00,000- 0.1%;</p> <p>(b) in any other case- 0.3%;</p> <p>B. Registered Mortgage-</p> <p>(a) if possession of the property is given- same duty as conveyance on the amount secured by the deed;</p> <p>(b) if possession of the property is not given-</p> <p>(i) when the amount of the loan is less than INR 5,00,000- 0.1% of the amount secured by the deed (minimum INR 100);</p> <p>(ii) in any other case- 0.3% of the amount secured by such deed (maximum INR 10,00,000)</p> <p>Registration Fee- Same as conveyance</p>

STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
<b>Manipur</b>	3% on the consideration or the market value of the property, whichever is higher	<p>(A) Where by such lease the rent is fixed and no premium is paid or delivered-</p> <p>(a) less than 1 year- 1.8% on the whole amount payable;</p> <p>(b) 1-5 years- 4.5% of AAR reserved;</p> <p>(c) 5-10 years- 3% of consideration or AAR reserved;</p> <p>(d) 10-20 years- 3% of consideration or twice the value of AAR reserved;</p> <p>(e) 20-30 years- 3% of consideration or three times the value of AAR reserved;</p> <p>(f) 30-100 years- 3% of the consideration or four times the value of AAR reserved;</p> <p>(g) more than 100 years or in perpetuity- 3% of consideration equal in the case of lease granted solely for agricultural purpose to 1/10th and in any other case to 1/6th of the whole amount of rents which would be paid or delivered in respect of the first 50 years of the lease;</p> <p>(B) Where the lease is granted for a fine or premium, or for money advanced in addition to rent reserved- 3% of consideration equal to the amount or value of such fine or premium, or advance;</p> <p>(C) Where the lease is granted for a fine or premium, or for money advanced in addition to rent reserved- 3% of consideration equal to the amount or value of such fine or premium, or advance as set forth in the lease, in addition to the duty which would have been payable on such lease, if no fine or premium or advance had been paid or delivered.</p>	3% on the value of the property	There is no separate entry for Joint Development Agreement. Hence, such agreements are stamped nominally. We recommend that the said agreement be stamped at INR 100.	<p>(a) Equitable Mortgage i.e. Mortgage by way of deposit of title deeds and if such loan or debt is repayable on demand or more than three months from the date of instrument evidencing the agreement:</p> <p>(i) if the amount of loan &lt;INR 500: INR 3</p> <p>(ii) if the amount of loan is 500-1000: INR 6</p> <p>(iii) for every 1000 or part thereof after 1000: INR 6</p> <p>Note: If such loans or debt is repayable not more than three months from the date of such instrument, then the stamp duty payable shall be half of what is provided above.</p> <p>(b) Registered Mortgage/ Mortgage Deed:</p> <p>(i) If possession of property is given- 3% of the amount secured by the deed;</p> <p>(ii) If possession is not given- 1.8% of the amount secured by the deed.</p>

STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
<b>Meghalaya</b>	<p>When the value of consideration for such conveyance as set forth in INR is:</p> <p>(i) &lt;50: INR 3 (ii) 50-100: INR 5 (iii) 100-200: INR 9 (iv) 200-300: INR 13 (v) 300-400: INR 17 (vi) 400-500: INR 23 (vii) 500-600: INR 27 (viii) 600-700: INR 32 (ix) 700-800: INR 37 (x) 800-900: INR 40 (xi) 900-1000: INR 45 (xii) for every INR 500 or part thereof in excess of 1000: INR 23 (xiii) 50,000- 90,000: INR 6 for every INR 1000 (xiv) 90,000-1,50,000: INR 8 for every 1000 (xv) &gt;1,50,000: INR 99 for every 1000</p>	<p>(a) where rent is fixed and no premium is paid or delivered-</p> <p>(i) &lt;1 year and the whole amount payable or deliverable under such lease is: - &lt;50: INR 2 - 50-100: INR 3 - 100-200: INR 5 - 200-300: INR 8 - 300-400: INR 10 - 400-500: INR 14 - 500-600: INR 18 - 600-700: INR 22 - 700-800: INR 24 - 800-900: INR 27 - 900-1000: INR 30 - for every 500 in excess of 1000: INR 17</p> <p>(ii) 1-5 years - same duty as payable in (a) for the amount or value of the average annual rent reserved.</p> <p>(iii) 5-10 years - [conveyance] equal to the average annual rent reserved;</p> <p>(iv) 10 - 20 years - [conveyance] equal to twice the average annual rent reserved;</p> <p>(v) 20 - 30 years - [conveyance] equal to thrice the average annual rent reserved;</p> <p>(vi) 30- 100 years [conveyance] equal to four times the average annual rent reserved;</p> <p>(vii) 100 years - perpetuity - 1/6th of the whole amount of rents which would have been paid or delivered in respect of the first 50 years of lease;</p> <p>(viii) no definite term - [conveyance] equal to of three times of average annual rent which would be paid or delivered for the first 10 years if the lease continued for so long;</p> <p>(b) where lease is granted for fine or premium or money and no rent is reserved - [conveyance] equal to the amount or value of such line premium or advance as set forth in lease;</p> <p>(c) where lease is granted for fine or premium or money in addition to rent reserved - [conveyance] equal to the amount or value of such line premium or advance as set forth in lease, in addition to duty which would have been payable on such lease, if no such fine or premium had been paid or delivered.</p>	Same as Conveyance for the value of the property.	INR 4	<p>(a) Equitable Mortgage i.e. Mortgage by way of deposit of title deeds and if such loan or debt is repayable on demand or more than three months from the date of instrument evidencing the agreement: (i) if the amount of loan &lt;INR 500: INR 5 (ii) if the amount of loan is 500-1000: INR 10 (iii) for every 1000 or part thereof after 1000: INR 10</p> <p>Note: If such loans or debt is repayable not more than three months from the date of such instrument, then the stamp duty payable shall be half of what is provided above.</p> <p>(b) Registered Mortgage/ Mortgage Deed:</p> <ul style="list-style-type: none"> <li>- when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given: Same duty as conveyance for a consideration equal to the amount secured by such deed.</li> <li>- when possession of the property is neither given nor agreed to be given and the amount of value secured (in INR) is: <ul style="list-style-type: none"> <li>(i) &lt;10: INR 2</li> <li>(ii) 10-50: INR 2</li> <li>(iii) 50-100: INR 3</li> <li>(iv) 100-200: INR 5</li> <li>(v) 200-300: INR 8</li> <li>(vi) 300-400: INR 10</li> <li>(vii) 400-500: INR 14</li> <li>(viii) 500-600: INR 18</li> <li>(ix) 600-700: INR 22</li> <li>(x) 700-800: INR 24</li> <li>(xi) 800-900: INR 27</li> <li>(xii) 900-1000: INR 30</li> <li>(xiii) For every 500 or part thereof in excess of 1000: INR 17</li> </ul> </li> </ul>



STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
<b>Mizoram</b>	<p>2% of the market value. registration fee:</p> <p>(a) when the market value does not exceed INR 20,000: INR 100</p> <p>(b) when the market value exceeds INR 20,000: 0.5% of the market value subject to a maximum of INR 30,000.</p>	<p>(a) where by such lease the rent is fixed and no premium is paid or delivered:</p> <p>(i) where the lease purports to be for a term not exceeding one year - 1% (subject to a maximum of INR 50,000) of the whole amount paid, payable or deliverable under such lease; Registration Fees: Same as conveyance for the whole amount of rent or the amount of average annual rent, whichever is lower.</p> <p>(ii) 1-3 years - 1 % of the average annual rent reserved; Registration Fees: Same as conveyance for the whole amount of rent or the amount of average annual rent, whichever is lower.</p> <p>(iii) 3-10 years - 2% equal to the average annual rent reserved; Registration Fees: Same as conveyance on thrice the amount of average annual rent.</p> <p>(iv) 10 - 29 years - 2% equal amount or value of the five year average annual market rent reserve plus amount of premium; Registration Fees: Same as conveyance on five times of the amount average annual rent.</p> <p>(v) 29 - perpetuity - 2% equal to market value of the property; Registration Fees: Same as conveyance on ten times of the amount average annual rent.</p> <p>(b) where lease is granted for fine or premium or money and no rent is reserved - 2% on the the amount or value of such line premium or advance as set forth in lease. Registration Fees: Same as conveyance on the amount of such a fine or premium or money advanced or to be advanced.</p> <p>(c) where lease in granted for fine or premium or money in addition to rent reserved - 2% on the the amount or value of such line premium or advance as set forth in lease, in addition to duty which would have been payable on such lease, if no such fine or premium had been paid. Registration Fees: Same as conveyance on The amount of fine or premium or money advanced or to be advanced, in addition to the fee which would have been payable on such lease, if no fine or premium or advance had been paid.</p>	<p>When the donee is not a member of the family of the donor: 2% of market value of the property which is subject matter of the gift.</p> <p>When the donee is a member of the family of the donor: 1% of market value of the property which is subject matter of the gift, subject to a maximum of INR 500.</p>	<p>2% of the market value of the property or on the amount of consideration set forth, whichever is higher.</p>	<p>(a) Equitable Mortgage i.e. Mortgage by way of deposit of title deeds and if such loan or debt is repayable on demand or more than three months from the date of instrument evidencing the agreement:</p> <p>(i) if the amount of loan &lt;INR 500: INR 5</p> <p>(ii) if the amount of loan is 500-1000: INR 10</p> <p>(iii) for every 1000 or part thereof after 1000: INR 10</p> <p>Note: If such loans or debt is repayable not more than three months from the date of such instrument, then the stamp duty payable shall be half of what is provided above.</p> <p>(b) Registered Mortgage/ Mortgage Deed:</p> <ul style="list-style-type: none"> <li>- when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given: Same duty as conveyance for a consideration equal to the amount secured by such deed.</li> <li>- when possession of the property is neither given nor agreed to be given: 1% of the amount secured by such deed, subject to a maximum of INR 50,000.</li> </ul> <p>Registration Fees:</p> <p>(a) When the amount of value secured by the deed is &lt; INR 20,000, then INR 100.</p> <p>(b) When the amount of value secured by the deed is &gt;INR 20,000, then 0.5% of such amount, subject to a maximum of INR 30,000.</p>

STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
<b>Punjab</b>	<p>5% of the consideration amount + 1% of SIC (social infrastructure cess).</p> <p>Registration Fees: 1 % of the Consideration amount (capped at a maximum of INR 2,00,000); Facilitation charges: Rs.1000/- (for consideration amount upto to 10 lac), Rs.3000/- (for Consideration amount between 10 lac to 30 lac), Rs.5000/- (for Consideration amount above 30 lac); Punjab Infrastructure Development board charges: 1% of the consideration amount.</p>	<p>(a) Where the rent is fixed and no premium is paid or delivered and where the term of lease is :</p> <p>(i) &lt;1 year and the value secured is &lt; INR 500: INR 40 - &lt;1 year and the value secures is 500-1,000: INR 80 &lt; 1 year and the amount is &gt;1,000: INR 40 for every 1,000 or part thereof. Here, the value will be calculated for the whole amount payable or deliverable under such lease. Registration Fees: 1% of the Annual Rent Amount.</p> <p>(ii) When the term of lease is between 1-5 year: same rates as mentioned above. Here, the value will be calculated for the amount or value of the average annual rent reserved. Registration Fees: 1% of the Annual Rent Amount.</p> <p>(iii) When the term of lease is between 5-10 years: 5% of the amount or value of the average annual rent reserved. Registration Fees: 1% of the Annual Rent Amount.</p> <p>(iv) When the term of lease is between 10-20 years: 5% of twice the amount or value of the average annual rent reserved. Registration Fees: 1% of twice the Annual Rent Amount.</p> <p>(v) When the term of lease is between 20-30 years: 5% of thrice the amount or value of the average annual rent reserved. Registration Fees: 1% of thrice the Annual Rent Amount.</p> <p>(vi) When the term of lease is between 30-100 years: 5% of four times the amount or value of the average annual rent reserved. Registration Fees: 1% of four times the Annual Rent Amount.</p> <p>(vii) When term is more than 100 years/perpetuity: 5% of consideration equal in the case of a lease granted solely for agricultural purposes to 1/10th and in any other case to 1/6th of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease.</p> <p>(b) where the lease is granted for a fine or premium or for money advanced and where no rent is reserved: 5% of the consideration equal to the amount or value of such fine or premium or advance as set forth in the lease.</p> <p>(c) where the lease is granted for a fine or premium or for money advanced in addition to rent reserved: 5% of the consideration equal to the amount or value of such fine or premium or advance as set forth in the lease, in addition to the duty which would have been payable on such lease, if no fine or premium or advance as set forth in the lease, in addition to the duty which would have been payable on such lease, if no fine or premium or advance had been paid or delivered.</p>	<p>5% of the consideration equal to the value of the property of greatest value set forth in such instrument</p>	<p>INR 100</p>	<p>(a) Equitable Mortgage i.e. Mortgage by way of deposit of title deeds and if such loan or debt is repayable on demand or more than three months from the date of instrument evidencing the agreement:</p> <p>(i) if the amount of loan &lt;INR 200: INR 1 (ii) if the amount of loan is 200-800: INR 2 (iii) if the amount of loan is 800-1000: INR 3. (iv) if the amount of loan is 1000-1200: INR 4 (v) if the amount of loan is 1200-1600: INR 5 (vi) if the amount of loan is 1600-2500: INR 7 if the amount of loan is 2500-5000: INR 13 (viii) if the amount of loan is 5000-7500: INR 19 (ix) if the amount of loan is 7500-10000: INR 25 (x) if the amount of loan is 10000-15000: INR 38 (xi) if the amount of loan is 15000-20000: INR 50 (xii) if the amount of loans is 20000-25000: INR 62 (xiii) if the amount of loan is: 25000-30000: INR 71 (xiv) for every additional 10000 or part thereof in excess of 30000: INR 25.</p> <p>Note: If such loans or debt is repayable not more than three months from the date of such instrument, then the stamp duty payable shall be half of what is provided above.</p> <p>(b) Registered Mortgage/ Mortgage Deed:</p> <ul style="list-style-type: none"> <li>- when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given and the amount is: <ul style="list-style-type: none"> <li>(i) &lt;50: INR 2</li> <li>(ii) 50-100: INR 4</li> <li>(iii) 100-200: INR 8</li> <li>(iv) 200-300: INR 12</li> <li>(v) 300-400: INR 16</li> <li>(vi) 400-500: INR 20</li> <li>(vii) 500-600: INR 24</li> <li>(viii) 600-700: INR 28</li> <li>(ix) 700-800: INR 32</li> <li>(x) 800-900: INR 36</li> <li>(xi) 900-1000: INR 40</li> <li>(xii) for every 500 or part thereof in excess of 1000: INR 15</li> </ul> </li> <li>- when possession of the property is neither given nor agreed to be given and where the amount is: <ul style="list-style-type: none"> <li>(i) &lt;500: INR 40</li> <li>(ii) 500-1000: INR 80</li> <li>(iii) for every 500 or part thereof in excess of 1000: INR 40</li> </ul> </li> </ul> <p>Registration Fees:</p> <p>(a) for mortgage with possession: 1% of the loan amount (subject to a maximum of INR 2 lakh) plus INR 1000 as facilitation charges.</p> <p>(b) for mortgage without possession: 1% of the loan amount (subject to a maximum of INR 2 lakh) plus INR 500 as facilitation charges.</p>

STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
<b>Odisha</b>	5% of the consideration or the market value of the property, whichever is higher. registration fee: 2%.	<p>(A) Where by such lease the rent is fixed and no premium is paid or delivered-</p> <p>(a) less than 1 year- INR 150;</p> <p>(b) 1-5 years- INR 150;</p> <p>(c) 5-10 years- 5% of consideration or AAR reserved;</p> <p>(d) 10-20 years- 5% of consideration or twice the value of AAR reserved;</p> <p>(e) 20-30 years- 5% of consideration or three times the value of AAR reserved;</p> <p>(f) 30-100 years- 5% of the consideration or four times the value of AAR reserved;</p> <p>(g) more than 100 years or in perpetuity- 5% of consideration equal to three times the value of AAR reserved which would be payable in first 10 years;</p> <p>(B) Where the lease is granted for a fine or premium, or for money advanced in addition to rent reserved- 5% of consideration equal to the amount or value of such fine or premium, or advance;</p> <p>(C) Where the lease is granted for a fine or premium, or for money advanced in addition to rent reserved- 5% of consideration equal to the amount or value of such fine or premium, or advance as set forth in the lease, in addition to the duty which would have been payable on such lease, if no fine or premium or advance had been paid or delivered.</p> <p>registration fee: 2%</p>	5% of the consideration or the market value of the property, whichever is higher.	There is no specific entry for joint development agreement in Odisha. Therefore, such an agreement would be stamped basis Article 5(c) of Schedule 1A applicable to the state of Odisha which is, stamp duty payable on agreement not provided for will be INR 10	<p>(a) Equitable Mortgage i.e. Mortgage by way of deposit of title deeds and if such loan or debt is repayable on demand or more than three months from the date of instrument evidencing the agreement, 0.5% of debt/loan. If such loans or debt is repayable not more than three months from the date of such instrument, then the stamp duty payable shall be half of what is provided above.</p> <p>(b) Registered Mortgage/ Mortgage Deed: If possession of the property is given- 5% of the amount secured by the deed; If possession of the property is not given- INR 150. registration fee: 2%.</p>

STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
<b>Tripura</b>	<p>5% of the amount of consideration or the market value of the property, whichever is higher.</p> <p>registration fee: 1.5% of the amount of consideration or market value of the property, which ever is higher.</p>	<p>Where lease is fixed and no premium is paid or delivered-</p> <p>(a) less than 1 year- 5% of the whole amount payable;</p> <p>(b) 1-5 years- 5% of the AAR reserved;</p> <p>(c) 5-10 years- 5% of the market value equal to the amount or value of AAR reserved;</p> <p>(d) 10-20 years- 5% of the market value equal to twice the amount or value of AAR reserved;</p> <p>(e) 20-30 years- 5% of the market value equal to thrice the amount or value of AAR reserved;</p> <p>(f) 30-100 years- 5% of the market value equal to four times the amount or value of AAR reserved;</p> <p>(g) exceeding 100 years or in perpetuity- 5% of market value equal in the case of a lease granted solely for agricultural purpose to 1/10th and in any other case to 1/6th of the whole amount of rents which would be paid or delivered in respect of the first 50 years of the lease.</p> <p>(h) not for a defined term - 5% of the market value equal to three times the amount or value of the average annual rent which would be paid or delivered for the first ten years.</p>	<p>5% on the market value of the property</p>	<p>5% on the market value of the property</p>	<p>5% of the amount secured by the deed.</p> <p>registration fee: 1.5% of the amount secured by the deed.</p>



STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
<b>Nagaland</b>	<p>When the value of consideration for such conveyance as set forth in INR is:</p> <p>(i) &lt;50: INR 3</p> <p>(ii) 50-100: INR 5</p> <p>(iii) 100-200: INR 10</p> <p>(iv) 200-300: INR 15</p> <p>(v) 300-400: INR 20</p> <p>(vi) 400-500: INR 25</p> <p>(vii) 500-600: INR 30</p> <p>(viii) 600-700: INR 35</p> <p>(ix) 700-800: INR 40</p> <p>(x) 800-900: INR 45</p> <p>(xi) 900-1000: INR 50</p> <p>(xii) and for every 500 or part thereof in excess of 1000: INR 15.</p> <p>(xiii) 50,000-90,000: INR 30 for every 1000 in excess of 50,000.</p> <p>(xiv) 90,000-1,50,000: INR 40 for every 1000 in excess of 90,000.</p> <p>(xv) &gt;1,50,000: INR 50 for every 1000 in excess of 1,50,000.</p>	<p>(a) where by such lease the rent is fixed and no premium is paid or delivered -</p> <p>(i) where the lease purports to be for a term not exceeding one year - 2.46% of the whole amount paid, payable or deliverable under such lease;</p> <p>(ii) 1-5 years - 2.46 % of the average annual rent reserved;</p> <p>(iii) 5-10 years - [conveyance] equal to the average annual rent reserved;</p> <p>(iv) 10 - 20 years - [conveyance] equal to twice the average annual rent reserved;</p> <p>(v) 20 - 30 years - [conveyance] equal to thrice the average annual rent reserved;</p> <p>(vi) 30- 100 years - [conveyance] equal to four times the average annual rent reserved;</p> <p>(vii) 100 years - perpetuity - 1/6th of the whole amount of rents which would have been paid or delivered in respect of the first 50 years of lease;</p> <p>(viii) no definite term - [conveyance] equal to of three times of average annual rent which would be paid or delivered for the first 10 years if the lease continued for so long;</p> <p>(b) where lease is granted for fine or premium or money and no rent is reserved - [conveyance] equal to the amount or value of such fine premium or advance as set forth in lease;</p> <p>(c) where lease is granted for fine or premium or money in addition to rent reserved - [conveyance] equal to the amount or value of such fine premium or advance as set forth in lease, in addition to duty which would have been payable on such lease, if no such fine or premium had been paid.</p>	<p>The same duty as a Conveyance for a consideration equal to the amount of the consideration for the transfer.</p>	<p>There is no separate entry for Joint Development Agreement. Hence, such agreements are stamped nominally. We recommend that the said agreement be stamped at INR 100.</p>	<p>(a) Equitable Mortgage i.e. Mortgage by way of deposit of title deeds and if such loan or debt is repayable on demand or more than three months from the date of instrument evidencing the agreement:</p> <p>(i) if the amount of loan &lt;INR 500: INR 5</p> <p>(ii) if the amount of loan is 500-1000: INR 10</p> <p>(iii) for every 1000 or part thereof after 1000: INR 10</p> <p>Note: If such loans or debt is repayable not more than three months from the date of such instrument, then the stamp duty payable shall be half of what is provided above.</p> <p>(b) Registered Mortgage/ Mortgage Deed:</p> <ul style="list-style-type: none"> <li>- when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given: Same duty as conveyance for a consideration equal to the amount secured by such deed.</li> <li>- when possession of the property is neither given nor agreed to be given and when the amount is: <ul style="list-style-type: none"> <li>(i) &lt;10: INR 0.45</li> <li>(ii) 10-50: INR 0.82</li> <li>(iii) 50-100: INR 1.65</li> <li>(iv) 100-200: INR 4.10</li> <li>(v) 200-300: INR 6.20</li> <li>(vi) 300-400: INR 8.25</li> <li>(vii) 400-500: INR 11.20</li> <li>(viii) 500-600: INR 14.90</li> <li>(ix) 600-700: INR 17.35</li> <li>(x) 700-800: INR 19.80</li> <li>(xi) 800-900: INR 22.30</li> <li>(xii) 900-1000: INR 24.75</li> <li>(xiii) and for every 500 or part thereof in excess of 1000: INR 12.30.</li> </ul> </li> </ul>

STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
<b>Rajasthan</b>	6% of the market value of the property. Registration Fees: 1%	(a) <1 year- 0.02% of the market value of the property; (b) 1-5 years- 0.1% of the market value of the property; (c) 5-10 years- 0.5% of the market value of the property; (d) 10-15 years- 1% of the market value of the property; (e) 15-20 years- 2% of the market value of the property; (f) 20-30 years- 4% of the market value of the property; (g) >30 years - 6% of the market value of the property; (h) >30 years (Female other than SC/ST/BPL) -5% of the market value of the property; (i) >30 years (Female SC/ST/BPL) - 3% of the market value of the property; (j) >30 years (Disable 40% & above) - 5% of the market value of the property. Registration Fees: 1%	6% of the market value of the property. Registration Fees: 1%.	Developer Agreement (Sale power not given) - 6% of market value Developer Agreement (Sale power) - 6% of market value Transferable development rights (TDR) - 6% of market value of TDR equal to the market value of property whichever is higher Registration Fees: 1%.	(i) Equitable Mortgage Deed when Loan repayable in more than 3 months: 0.25% of the loan amount. (ii) Equitable Mortgage Deed when Loan is not repayable in more than 3 months: 0.075% of the loan amount. (iii) Registered Mortgage (when possession is given or agreed to be given): 6% of the loan amount. (iv) Registered Mortgage (when possession is neither given nor agreed to be given): 5% of the loan amount. Registration Fees: 1%.

STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
Uttarakhand	Immovable property- In General 5%, but if Female Buyer 3.75% (upto 25 lakh there after 5 %); Movable property- 2% on the amount which is subject of such deed. registration fee: 2% of the value of consideration.	<ul style="list-style-type: none"> <li>(i) Where the lease purports to be for a term not exceeding 1 year- 2% on the whole amount. Registration Fees: 2% on total rental value, but maximum of INR 25,000.</li> <li>(ii) Where the lease purports to be for a term of 1-5 years- 2% on a consideration equal to 3 times the amount or value of the average annual rent reserved .</li> <li>(iii) Where the lease purports to be for a term of 5-10 years- 2% on a consideration equal to 4 times the amount or value of the average annual rent reserved</li> <li>(iv) Where the lease purports to be for a term of 10-20 years- 2% on a consideration equal to 5 times the amount or value of the average annual rent reserved</li> <li>(v) Where the lease purports to be for a term of 20-30 years- 2% on a consideration equal to 6 times the amount or value of the average annual rent reserved</li> <li>(vi) Where the lease purports to be for a term exceeding 30 years or in perpetuity or does not purports to be for any definite term- 5% on a consideration equal to market value of the property which is the subject of lease .</li> <li>(vii) Where the lease is granted for a fine or premium, or for money advanced and where no rent is reserved <ul style="list-style-type: none"> <li>a. Where the lease purports to be for a term not exceeding 30 years- 2% on a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease</li> <li>b. Where the lease purports to be for a term exceeding 30 years- 5% on a consideration equal to market value of the property which is the subject of lease.</li> </ul> </li> </ul> <p>Registration Fees:</p> <ul style="list-style-type: none"> <li>(i) When the lease is for 1 year or less- 2% on total rental value, but maximum of INR 25,000;</li> <li>(ii) When the lease is for a definite period of 1-20 years- 2% on whole amount of annual average rent, but maximum of INR 25,000;</li> <li>(iii) Three years rental, when the lease is not for any definite term or is for a term 20-90 years- 2% on 3 times of annual average rent, but maximum of INR 25,000;</li> <li>(iv) When the lease is perpetual or proposed to confer hereditary rights on a tenant or is for a term exceeding 90 years- 2% on 1/5 of the average rent for first 50 years, but maximum of INR 25,000.</li> </ul> <p>Provided that where the lease is granted for a fine or premium or money advanced in addition to the rent reserved that amount shall also be included in the value.</p>	Non- Family members: 5% for a consideration equal to the value of the property which is the subject matter of the gift; Family members: 1% for a consideration equal to the value of the property.	5% on a consideration equal to the amount or value of the land	<ul style="list-style-type: none"> <li>(a) If possession of the property is given- 5% on a consideration equal to the amount secured by such deed;</li> <li>(b) If possession of the property is not given- 7% on the amount secured by such deed.</li> </ul> <p>registration fee: 2% of the amount secured by such deed (maximum INR 25,000)</p>

STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
<b>West Bengal</b>	<p>(i) when the property is situated in the areas to which the Kolkata Improvement Act, 1911 or Howrah Improvement Act, 1956 extends - (a) Value of property is &lt; 1 Crore - 6% of the market value; (b) Value of property is &gt; 1 Crore - 7% of the market value;</p> <p>(ii) when property is situated in areas of any Municipal Corporation or Municipality or a notified area other than those included in clause (i) - (a) Value of property is &lt; 1 Crore - 6% of the market value; (b) Value of property is &gt; 1 Crore - 7% of the market value;</p> <p>(iii) when property is situated in area other than covered in (i) and (ii) - (a) Value of property is &lt; 1 Crore - 5% of the market value; (b) Value of property is &gt; 1 Crore - 6% of the market value;</p> <p>Further, stamp duty is reduced temporarily (9th July, 2021 to 30th October, 2021) by 2% for all documents on which stamp-duties are charged as per Art. 23 (Conveyance) of Schedule IA of the Indian Stamp Act, 1899, except the documents of amalgamation of contiguous land.</p> <p>registration fee: 1% of the market value of the property subject to minimum of INR 50.</p>	<p>(i) where by such lease the rent is fixed and no premium is paid or delivered -</p> <p>(a) where the lease purports to be for a term not exceeding one year - 4% of the whole amount paid, payable or deliverable under such lease;</p> <p>registration fee: Total sum payable under the lease</p> <p>(b) 1-10 years - [Conveyance]% of twice the average annual rent reserved;</p> <p>registration fee: Amount equal to average annual rent</p> <p>(c) 10-30 years - [Conveyance]% of thrice the average annual rent reserved;</p> <p>registration fee: An amount equal to two years rent</p> <p>(d) 30 years - any term - [Conveyance]% of the market value of the property;</p> <p>registration fee: An amount equal to two years rent.</p> <p>(ii) where lease is granted for fine/premium/money advanced/security and no rent is reserved -</p> <p>(a) &lt;30 years - [Conveyance]% of the amount or value of fine/premium set forth;</p> <p>(b) 30 years - perpetuity - [Conveyance]% of the market value of the property;</p> <p>registration fee: The amount of fine, premium or money advanced.</p> <p>(iii) where lease is granted for fine/premium/money advanced/security, in addition to rent reserved</p> <p>(a) &lt;30 years - [Conveyance]% of the amount or value of fine/premium set, in addition to duty payable, if no fine or duty had been paid;</p> <p>(b) 30 years - perpetuity - [Conveyance]% of the market value of the property, or an aggregate of stamp duties as on three times the average annual rent and premium or money advanced or security charges advanced, whichever is higher.</p> <p>registration fee: The total of the following:</p> <p>(a) amount of the fine, premium or advance; and</p> <p>(b) Amount which would be calculated in the case of a lease where by such lease the rent is fixed and no premium is paid</p>	<p>Non- Family members: 5% for a consideration equal to the value of the property which is the subject matter of the gift;</p> <p>Family members: 1% for a consideration equal to the value of the property.</p>	<p>(i) MV &lt; INR 30,00,000 - INR 5000</p> <p>(ii) MV INR 30,00,000 &lt; INR 60,00,000 - INR 7000</p> <p>(iii) MV INR 60,00,000 &gt; INR 1 cr - INR 10,000</p> <p>(iv) MV INR 1cr &lt; INR 1.5 Cr - INR 20,000</p> <p>(v) MV INR 1.5 Cr &lt; INR 3 Cr - INR 40,000</p> <p>(vi) MV &gt; INR 3 Cr - INR 75,000</p>	<p>(a) If possession of the property is given- same duty as conveyance on the amount secured by the deed;</p> <p>(b) If possession of the property is not given- 2% for the amount secured by such deed, subject to the maximum of INR 1,00,000</p> <p>registration fee: Same as conveyance.</p>



STATES/ Union Territories	CONVEYANCE	LEASE	GIFT	JOINT DEVELOPMENT / COLLABORATION	MORTGAGE
<b>Uttar Pradesh</b>	<p>For NOIDA – 5% of the amount or value of the consideration set forth in the agreement or the market value of the property, whichever is higher.</p> <p>For rest of Uttar Pradesh: 7% of the amount or value of the consideration set forth in the agreement or the market value of the property, whichever is higher.</p> <p>registration fee: 1% of such consideration or value, calculated for the purpose of stamp duty chargeable on the document, whichever is higher, subject to a minimum of INR 100.</p>	<p>For Noida:</p> <p>(i) &lt;1 year -2% of the total amount paid under the lease;</p> <p>(ii) 1 - 5 years - 2% of the consideration equal to 3 times of the average annual rent reserved;</p> <p>(iii) 5-10 years - 2% of the consideration equal to 4 times of the average annual rent reserved;</p> <p>(iv) 10 - 20 years - 2% of the consideration equal to 5 times of the average annual rent reserved;</p> <p>(v) 20-30 years - 2% of the consideration equal to 6 times of the average annual rent reserved;</p> <p>Where the lease is granted for a period of 30 years or perpetuity or no definite term: 5% on the market value of the property.</p> <p>Granted for fine/ premium/ money advanced and where no rent is reserved (for more than 30 years): 5% of the consideration equal to the market value of the property.</p> <p>Granted for fine/ premium/ money advanced, in addition to rent reserved (for more than 30 years): 5% of the consideration equal to market value of property.</p> <p>For rest of Uttar Pradesh:</p> <p>(i) &lt;1 year -4% of the total amount paid under the lease;</p> <p>(ii) 1 - 5 years - 4% of the consideration equal to 3 times of the average annual rent reserved;</p> <p>(iii) 5-10 years - 4% of the consideration equal to 4 times of the average annual rent reserved;</p> <p>(iv) 10 - 20 years - 4% of the consideration equal to 5 times of the average annual rent reserved;</p> <p>(v) 20-30 years - 4% of the consideration equal to 6 times of the average annual rent reserved;</p> <p>Where the lease is granted for a period of 30 years or perpetuity or no definite term: 5% on the market value of the property.</p> <p>Granted for fine/ premium/ money advanced and where no rent is reserved (for more than 30 years): 5% of the consideration equal to the market value of the property.</p> <p>Granted for fine/ premium/ money advanced, in addition to rent reserved (for more than 30 years): 5% of the consideration equal to market value of property.</p> <p>registration fee: 1% of such consideration or value, calculated for the purpose of stamp duty chargeable on the document, whichever is higher, subject to a minimum of INR 100.</p>	<p>For males: 5% on the market value.</p> <p>For females: 4% upto INR 10 lakhs, thereafter 5% on the market value.</p>	<p>Same duty as conveyance for a consideration equal to the amount of land.</p>	<p>(a) Equitable Mortgage: 5% of the amount secured by such mortgage, subject to a maximum of INR 10,000.</p> <p>(b) Registered Mortgage:</p> <p>(i) With Possession: 20% of the amount secured by such mortgage.</p> <p>(ii) Without Possession: 5% of the amount secured by such mortgage.</p>

## GLOSSARY OF TERMS

TERM	MEANING / DEFINITION
<b>Adangal</b>	In the State of Tamil Nadu, Adangal is a land revenue record maintained at the Village Administrative Office / Taluk office. It is an extract from the A-Register, which clearly states the type of land, number of crops being cultivated on such land, type of crops, boundaries of the land and access to the land.
<b>Ad valorem</b>	Designates an assessment of taxes against property. Literally, according to value.
<b>Adverse possession</b>	The right of an occupant of land to acquire title against the real owner, where possession has been actual, continuous, hostile, visible, and distinct for the statutory period. Generally, the statutory period is 12 years, barring the property / land owned by the Government.
<b>Akarband</b>	A Register showing the area and rate of assessment of holdings in Karnataka.
<b>A-Register</b>	In the State of Tamil Nadu, an A-Register is a land revenue record maintained at the Village Administrative Office / Taluk office, which contains details of the land such as its classification, tax assessment details and the names of the landowners, etc.
<b>Attachment</b>	Method by which a debtor's property is placed in the custody of the law and held as security pending outcome of a creditor's suit before the court of law.
<b>Atlas</b>	A survey document which shows a sketch of the land with hissas / survey sub-numbers assigned after the phoddi / sub-division of the survey number, in Karnataka.
<b>Bainama</b>	A term used for sale deed in the Northern India.
<b>Benami Ownership</b>	An ownership, where the title of the property is in one party's name and the real ownership is in another party's name.
<b>BHK</b>	Bedroom, Hall, Kitchen
<b>Built-up Area</b>	The Built-up area or the plinth area is the gross area of a property. It is the total size of the house, including the carpet area, the thickness of the walls, balcony, terrace, ducts and utility area (if any).
<b>Carpet Area</b>	The area in any flat/ apartment, excluding the area covered by the external walls but including the area covered by internal partition walls of the flat/ apartment (Also known as the net usable area).
<b>Chavadi</b>	The place ordinarily used by a village officer for the transaction of village business, commonly used in Maharashtra.
<b>Chitta / Chitta extract</b>	In the State of Tamil Nadu, Chitta is a land revenue record which contains the details of the land, including the village name, taluk name, district name, landowner's name, patta number and survey number.
<b>Completion Certificate/CC</b>	A document issued by a local/ municipal authority certifying that a new building has been constructed and completed according to all the sanctioned building plans and all safety norms and regulations of the applicable building laws in a particular jurisdiction.

TERM	MEANING / DEFINITION
<b>Common Areas</b>	The areas of a building/ land owned or managed by the respective management association incorporated for the benefit of the building/ land that are used by all of the unit owners, who share in the common expenses of their operation and maintenance.
<b>Condominium</b>	A dwelling with individual ownership of separate portions of the building along with shared ownership of the common areas.
<b>Co-Ownership</b>	Where there is more than one owner for an immovable property.
<b>Deed / Indenture</b>	A written instrument purporting to effect some legal disposition including conveying title to a property, among others.
<b>Dotted Lands</b>	Lands against which dots were marked in the Pattadar column in the Re-Settlement Register, during the Resurvey and Settlement operations.
<b>Easement</b>	Where the title to a specific area of land remains with the landowner, but another person or organisation is given the right to use that land for a distinct purpose, under a written/ oral arrangement.
<b>Encumbrance Certificate / Non- Encumbrance Certificate</b>	A report issued by the jurisdictional Sub-registrar of Assurances after due verification of the relevant documents certifying that the property is free from all / subject to encumbrances such as mortgages, leases, easements or restrictions etc.
<b>Eminent Domain</b>	The supreme power of the government under which property of any person can be taken over in public interest.
<b>Encroachment</b>	The unauthorised physical intrusion of a structure or involvement on the land of another.
<b>Eviction</b>	Removal of a tenant/ lessee from property leased out to them, by a law enforcement officer.
<b>Floor Space Index (FSI)</b>	The maximum extent of construction permitted on a given plot of land. FAR / FSI is based on multiple factors such as the locality, road width, permitted use, among others
<b>Fasli Year</b>	A chronological system introduced by the Mughals for maintenance of land revenue and records purposes in northern India.
<b>Field Map Book / Field Measurement Book / FMB Sketch</b>	The Field Map Book is a compilation of map data maintained at the Taluk office. The FMB Sketch is used to verify the land measurements and boundaries of a property.
<b>Freehold Property</b>	Any property/ estate which is 'free from hold' of any entity besides the owner. A freehold property is inheritable and there are no restrictions on the right of the property owner to further transfer the property.
<b>Gair Marusi</b>	A person holding cultivation rights over a property. This term is commonly used in the State of Haryana.
<b>Gair Mumkin</b>	An uncultivable land. This term is commonly used in the states of Northern India.

TERM	MEANING / DEFINITION
<b>Guideline Value</b>	Guideline value (circle rate, ready reckoner value) is the estimated market value of a property as per records maintained by the Government. The market value of a property indicated for the purpose of calculation of stamp duty and registration fees, is required to be higher than the guideline value.
<b>Hadbast Number</b>	A serial number assigned to a village for identification purposes. This term is commonly used in the State of Haryana.
<b>Hibba</b>	A term used in the mutation records to indicate transfer of land through a gift deed. This term is commonly used in the State of Haryana.
<b>IB ROR Extract</b>	Extracts issued pursuant to mutation of names of pattadars in the revenue records.
<b>Inam lands</b>	Lands held under a gift or a grant made by the Nizam of Hyderabad or by any jagirdar or other competent grantor.
<b>Hisse / Hissa</b>	Portions formed in survey numbers after phoddi / sub-division by the Survey Department. This term is commonly used in the State of Karnataka.
<b>Hissedar</b>	Co-owner / co-sharer of the sub-divided portion of a survey number i.e., the sub-survey number. This term is commonly used in the State of Karnataka.
<b>Hobli</b>	The sub-division of a taluk. This term is commonly used in the State of Karnataka.
<b>Intestate</b>	Legal designation of a person who has died without leaving a valid will.
<b>Index II</b>	A document issued by the relevant sub-registrar of assurances providing for a summary of a document registered with such sub-registrar of assurances including details of the property, registration and parties involved in the said transaction. This document is commonly used in the States of Maharashtra, Madhya Pradesh and Gujrat.
<b>Jamabandi / Fard / Khatian / Khatauni / 7/12 extract (Saat Baara Utara)</b>	A document prepared as part of record-of-rights in every revenue estate. It contains entries regarding ownership, cultivation and up-to-date of various rights in land. However, it does not confer ownership. A Jamabandi is revised every five years and is prepared by Patwari and attested by Revenue Officer.
<b>Joint Tenancy</b>	Where there is unity of possession as well as unity of title and interest i.e. the interests of the joint tenants are undivided, equal and derived from the same instrument.
<b>Kashtkar</b>	Cultivator of agricultural land. This term is commonly used in the state of Haryana.
<b>Kami Jasti Patrak</b>	A record that shows co-relation between the old survey numbers and the new survey numbers, along with change in area, if any and also records the name of the holder of the respective lands. This term is commonly used in the state of Maharashtra.
<b>Khata</b>	A document describing all landholding of a family or individuals in particular village. In the State of Karnataka, this is a ledger of receipts and disbursements. It consists of the Government account in which the amount for recovery under the heads of land revenue, local funds, pasture, etc., are credited and remittances from the village to the Taluk Treasury of costs recovered are debited.



TERM	MEANING / DEFINITION
<b>Khate Pustika</b>	Booklet prepared in Maharashtra containing the record of rights pertaining to a village land.
<b>Khasra No. / Killa No. / Gat / Survey No. / Patta No. / Dag No.</b>	A plot or survey identification number given to agricultural lands in rural areas.
<b>Khasra Girdawari</b>	A document maintained in the revenue authorities containing details pertaining to the nature of crops/ agricultural produce on a particular parcel of land.
<b>Khatedari</b>	A system of land tenure based on tenancy, mostly prevalent in Rajasthan.
<b>Khewat</b>	A list of a landowner's entire landholding.
<b>Khudkasht</b>	Where the land is being cultivated by its owners and not by cultivators having merely the possession of land.
<b>Kuthakapattam</b>	Lease of poramboke land on fixed ground rent for various temporary purposes. This is a term used commonly in the State of Kerala.
<b>Kist / Kist receipt</b>	An amount paid / collected, on a yearly basis, as a tax on agricultural land. Such tax is known as a kist and receipt issued towards the same is known as kist receipt.
<b>Leasehold Property</b>	A property leased from the owner for a specific period of time on certain terms and conditions.
<b>Legal Heirship Certificate</b>	A certificate issued by the Tahsildar after due enquiry with the Village Administrative Officer / Taluk officer, in relation to the legal heirs survived by a deceased in relation to his / her property.
<b>Mazrua (Krisht)/ Gair Mazrua (Akrisht)</b>	In case the land is such that it is possible to cultivate it either through man-made irrigation sources or through rainwater then land type is known as 'Mazrua' otherwise it is known as 'Gair-Mazrua'. This term is commonly used in the states of Haryana and Rajasthan.
<b>Min</b>	This term literally means partially. If min is mentioned against a land revenue number then one can assume that the said revenue number under consideration is carved / formed out of the old revenue number partially or transaction is taking place only for a portion of the land. This term is commonly used in the State of Haryana.
<b>Mouza</b>	A term used for villages in several parts of India.
<b>Mutation / Inteqal / Nondh / Dakhil Kharij / Fer Far</b>	A change in ownership of land due to its transfer in the records of rights register. This change in title could be because of transfer by a registered deed, inheritance, survivorship, bequest or lease, in the records of rights.
<b>Mutation Register</b>	A revenue document which records the transfer of ownership of lands along with details of such transfer.
<b>Najul or Nazul</b>	Term used for land belonging to the government. It also refers to any property, including land or building structures in towns and villages, which has been escheated to the government.
<b>Nakal</b>	A copy of land records, a nakal contains every information about, land, ownership pattern, revenue, etc.,

TERM	MEANING / DEFINITION
<b>Nanjai lands</b>	Wetlands meant to be specifically conserved for agriculture. This term is commonly used in the State of Tamil Nadu.
<b>Nishan Dehi</b>	Demarcation of land.
<b>Occupancy / Occupation Certificate or OC</b>	A certificate issued by a local government agency or planning authority / municipal body, upon the completion of construction of a new project / building, certifying that the project / building is fit for occupation and has been constructed as per the approved plan and in compliance with local laws.
<b>Ostensible Owner</b>	A person who appears to be the owner of immovable property even though he is not the real owner of the property.
<b>Pahani</b>	Revenue records, maintained by revenue authorities, containing entries regarding ownership, cultivation and updated rights on land.
<b>Paimaish</b>	Land measurement.
<b>Pakka Book/ RR Pakka Book</b>	A Field Book which discloses the hissas and the hissedars of a survey number after phoddi along with the extent of the land. This is a term commonly used in the State of Karnataka.
<b>Pargana</b>	A group of estates forming a sub-division of a district or Tehsil.
<b>Partition / Tatima / Takseem</b>	Any division of real or personal property between co-owners or co-proprietors.
<b>Partition Deed</b>	A document recording the partition of a property and allocating individual exclusive share of each of the co-owners / co-parceners in the property.
<b>Patta and Pattanama</b>	When a land parcel is given on lease, it is known as patta. Its mutation is known as pattanama. In the State of Kerala and Tamil Nadu, Patta is a land revenue record maintained by the Taluk office, which contains ownership details of the land holdings. A Patta establishes the land holder's title / ownership of land.
<b>Pattadar Passbook and Title Deed</b>	Documents issued to owners, pattadars and tenants issued by Mandal Revenue Officer
<b>Pattedar</b>	Leaseholder or lessee/ landowner.
<b>Patwari / Talathi / Village Accountant</b>	Revenue administrative officer in a village who is responsible for maintaining land records and collecting land revenue / taxes from a particular village / jurisdiction.
<b>Person</b>	Includes an individual, hindu undivided family, company, partnership / limited liability partnership, competent authority, association of persons or body of individuals (whether incorporated or not), and co-operative societies.
<b>Pot Kharaba</b>	A term used in the state of Maharashtra to identify non-cultivable portion in a land parcel.
<b>Phoddi</b>	Sub-division / partition of a survey number into hissas with survey sub-numbers or sub-dividing of fields. This is a term commonly used in the State of Karnataka.
<b>Poramboke lands</b>	Dry lands owned by the Government, not falling under the list of revenue records. This term is commonly used in the State of Kerala and Tamil Nadu.

TERM	MEANING / DEFINITION
<b>Stamp Duty</b>	Government tax payable under Section 3 of the Indian Stamp Act, 1899 inter alia on instruments of transfer.
<b>Super Built-up Area or Super Area</b>	The plinth area along with a share of all common areas proportionately divided amongst all unit owners makes up the Super Built-up area. The common areas include corridors, balconies, swimming pool, garden, clubhouse, the lift wells, etc. This is also known as the usable area.
<b>Tatima Shajra</b>	Village map prepared after the division of a plot comprised therein.
<b>Tabdeel Malkiat</b>	Mutation, after the settlement of dispute by a court order.
<b>Tandapper Register</b>	Basic tax register containing details of payment of taxes by the owner of the land. This is a term commonly used in the State of Kerala.
<b>Tehsil / Taluka / Mandal</b>	Sub-divided regions of a district for the purposes of revenue administration of the villages, towns, municipalities falling under in its jurisdiction.
<b>Tehsildar / Tahsildar / Mamlatdar</b>	Revenue administrative officer in a village who is responsible for maintaining land records and collecting land revenue / taxes from a particular village / jurisdiction.
<b>Tenancy in common</b>	Where there is unity of possession but no unity of title i.e. the interests are differently held, which means that none of the tenants-in-common has title over the entire estate.
<b>Tenant by sufferance</b>	Where a lease is terminated, and the tenant continues to be in possession of the demised property without the consent or acquiescence of the lessor / owner.
<b>Tipni</b>	A revenue document which discloses the sketch of the survey number, not drawn to scale, but showing the measurements. This term is commonly used in the State of Karnataka.
<b>Tukda/ Fragment</b>	A plot of agriculture land of extent lesser than the appropriate standard area determined under the Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947.
<b>Town Survey Land Register</b>	Register prepared pursuant to the town survey undertaken under the Andhra Pradesh Survey and Boundaries Act, 1923 / Telangana Survey and Boundaries Act, 1923
<b>Village Map</b>	A map of village identifying the boundaries of each survey number in the village.
<b>Wasool Baqui</b>	A correlation register which records the names of pattadars of village, showing old survey numbers, extents and assessment of pattadar and the details of the new survey numbers, extents and assessment.

TERM	MEANING / DEFINITION
<b>Power of Attorney</b>	A document by which one person (called the 'principal') authorises another person (called the 'attorney') to act on behalf of him/her in a designated transaction.
<b>Probate</b>	The copy of the will certified under the seal of the court of competent jurisdiction with a grant of administration of the estate of the testator.
<b>Property Card / Mal Matta Patrak</b>	A revenue document which provides detailed information about the ownership of a property / land and history of holders of such property / land in jurisdiction of an urban area in the state of Maharashtra.
<b>Punjai lands</b>	Dry lands meant to be specifically conserved for agriculture. This term is commonly used in the State of Tamil Nadu.
<b>Rafai-aam / Revenue Raasta</b>	Access roads identified in the land revenue records of Northern States.
<b>Registration Fee</b>	A processing fee collected by the State government to register a document with the registrar of assurances.
<b>Rehan</b>	Mortgage with possession.
<b>Release</b>	Where, a person holding an interest / claim in a property releases his / her interest / claim over such property.
<b>Relinquishment</b>	Where, one or more co-owners give up their rights and interest in a property in favour of another co-owner, thereby transferring all their rights and interest in a property in favour of such co-owner.
<b>Resettlement Register</b>	The survey and settlement register prepared after completion of resurvey and settlement operations.
<b>Salam</b>	This term literally means completely. Salam refers to the fact that the new revenue number is formed out of the old revenue number when the same was transacted completely. This term is commonly used in the state of Haryana.
<b>Sanad</b>	A deed of grant, a patent, a charter or written authority for holding either land or office.
<b>Sethwar</b>	The survey and settlement register maintained in the state of Telangana which contains details of survey number, whether the land is patta/grant or inam, the name of the pattadar, total area, rate of assessment and sources of irrigation.
<b>Shajra / Aks Shijra</b>	Detailed map of a village that shows all fields with their khasra numbers and boundaries.
<b>Shajra Nasab</b>	A table showing succession to ownership rights occurring from time to time. It is revised and brought up to date every five years and in the interval, changes occurring from time to time are reflected in patwari's copy through suitable references.
<b>Shajra Kishtwar</b>	An updated version of an original map of a village.
<b>Shajra Parcha</b>	A piece of cloth/paper used by patwaris, to draw maps incorporating all changes in land ownership.



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