

# **REAL ESTATE SECTOR**



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## **REAL ESTATE SCHOOL OF MERIDIEN BUSINESS CONSULTANTS PVT. LTD**

Meridien Business Consultants Pvt Ltd, a company managed by expert professionals is a leader in real estate offering comprehensive services to investors, property owners, tenants and developers around the world. In India, we provide occupiers and investors around the world with industry leading, end to end property solutions. We serve our clients across the breadth of their real estate needs. We are always frank in our advice, taking a stand in our clients' interests, and we are relentless in delivering value for our clients as we move from advice to action. Our team is consisting expert people like Chartered Accountants, Company Secretaries and Advocates.

### **I. Our Services with respect to real estate laws include:**

1. Legal documentation and advice on Sale/Purchase/Lease of Property
2. Verification of Title Deed of the Property
3. Land Use Regulations
4. Finance Agreements
5. Building, Development and Construction Contracts
6. Projects and retail property transactions
7. Real estate investment and development projects
8. Property joint ventures
9. Property related acquisitions and dispositions
10. Property related project finance
11. Formation of Trusts and estate management
12. Taxation and Accounting
13. Registration and Stamp Duty
14. Developing Special Economic Zones
15. Foreign Direct Investment in Real Estate
16. Valuation of Real Estate Valuation & Advisory Services
17. Arbitration and Consulting
18. Litigation Support
19. Tax Appeals
20. Compliance with Development Control Regulations

21. Malls, Multiplexes and commercial premises
22. Real Estate marketing and Brand Management
23. Conveyancing
24. Mortgages property
25. Property on lease
26. Gift
27. Exchange
28. Inheritance
29. Advisory on Wills
30. Acquisition, sale and transfer of Immovable property in India by Non Resident Indians and Persons resident outside India
31. Portfolio Strategy
32. Assessment of Financial Viability
33. Real Estate Venture Capital Investment Negotiations
34. Property Specific Joint Venture agreements
35. Regulation Compliance
36. Arrangement of fund with Real Estate Fund
37. Green Building consultancy

**II. We also assist in Drafting, Vetting and Registration of various Documents related to real estate namely:**

1. Purchase of a Flat
2. Purchase of an Apartment in a Building (Commercial / Residential)
3. Purchase of a Plot of Land
4. Purchase License of Land /Apartment (Lease / Freehold)
5. Development Agreement
6. Lease Agreement
7. Construction Agreement
8. Rent Agreement
9. Sale/ Purchase Agreement
10. Agreement to Sell
11. Deed of Mortgage of Property

12. Relinquishment Deed
13. Transfer Deed
14. Surrender Deed in Cooperative Housing Society
15. Gift Deed of Property
16. Will
17. Power of Attorney
18. Bank Guarantee and Bank Loan agreements
19. Overdraft agreements

## **PREFACE**

The real estate sector in India is being recognised as an infrastructure service that is driving the economic growth engine of the country. In fact, foreign direct investment (FDI) in the sector is expected to increase to US\$ 25 billion in the next 10 years, from present US\$ 4 billion, according to a latest industry body report.

There are various developments and elevations which are taking place in the real estate sector.

Non-resident Indians and Persons of Indian Origin (PIO) are allowed to purchase immovable property in India. Residential property prices have stabilized now and are deemed attractive for the NRI home buyer. Industry experts feel that with attractive pricing and innovation in construction technology and variety of designs, NRIs are taking a fresh look at India as a unique market in which they can invest.

The real estate in India is the second most favoured destination for FDI and the country has attracted three times the foreign investment in the past years.

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## **1. INTRODUCTION**

“Real estate is an imperishable asset, ever increasing in value. It is the most solid security that human ingenuity has devised. It is the basis of all security and about the only indestructible security.” - *Russell Sage*

Real Estate sector is a large, huge diversified sector, with many verticals such as land, design/construction, development, investment, lending etc. India, emerging as one of the most important business locations in the world with its favourable demographics and strong economic growth, makes it an attractive place for property investors as the demand for property is determined mainly by business development and demographic trends. Of late, the nature of demand is also changing, with heightened consumer expectations that are influenced by higher disposable incomes, increased globalisation and the introduction of innovative real estate products and services.

### **1.1. Key drivers of real estate growth**

The key demand drivers of the real estate industry are the residential properties, office spaces, retail space, hotels etc.

#### 1) Residential real estate development -

Residential property in India is an emerging market. The growth in the residential real estate market in India has been largely driven by rising disposable incomes, rapidly growing middle class, low interest rates, fiscal incentives on both interest and principal payments for housing loans, heightened customer expectations as well as increased urbanisation and growing number of nuclear families.

Residential real estate market in India has seen mounting prices. India has been through developments in residential plots, housing complexes and luxury housing units. The residential real estate developers in India have started construction and development of residential property, township and housing projects in order to cater to the demand of residential property for sale. The residential property developments in India are not restricted to just the metro cities now but also to suburban areas, and villages. Indian residential property is a big attraction for not just the local real estate developers but also the foreign investors especially for the NRIs.

#### 2) Commercial Real Estate Development –

The growth of commercial real estate development in India has been fuelled by increased revenue growth of companies in the services businesses especially in the IT and ITES sectors. As these sectors continue to grow and generate additional employment, it will result in increased demand for commercial space.

Commercial real estate development is rapidly taking place at all up growing cities in India and in the developing tier- 2 cities. Most of the corporate houses involved in IT

services prefer to establish their offices in such cities due to cheaper land rate. One reason why commercial real estate market in India is gaining pace is the international marketing equation. According to international marketing equation, India is the primary market in world. This is because of the huge population and wide consumption of this population. Hence the companies interested in property investment in India are plunging into Indian market to set their foot mark which has given a primary boost to commercial real estate market.

Close to 37 million sq.ft office space was absorbed in 2011 surpassing the previous peak of 33 million sq.ft in 2008. Major Indian cities underwent strong pre-leasing activity in buildings under construction. Occupiers chose to consolidate their offices by vacating multiple small offices in central business districts and taking up larger areas in secondary and suburban districts instead.

Overall, on pan-India basis, the demand for office space is expected to total 180 million sq.ft by 2013, with seven major cities (Bangalore, Chennai, Hyderabad, Kolkata, Mumbai, the NCR and Pune) catering to 75% of the total demand.

### 3) Retail Real Estate Development –

Although the retail real estate segment has the smallest pie in the real estate industry, it is growing rapidly and the demand for good quality mall space is fuelled by the growth in organised retail and the entry of international retailers into India. Over the past few years, retail has become one of the fastest growing industries in the country. Increasing disposable incomes, rising consumption and shopping convenience have been driving the growth of organised retail.

The US-based global management consulting firm, A T Kearney, in its Global Retail Development Index 2011, has ranked India as the fourth most attractive nation for retail investment, among 30 emerging markets. The rapid expansion of India's retail industry also means there is great demand for real estate. Analysts say international hypermarket chains like Walmart, Tesco and Carrefour — apart from national chains such as Big Bazaar and More — will absorb a large chunk of retail real estate in tier II and tier III cities.

The retail real estate industry is a market which focuses on the development of the retail assets ranging from the land assets to the ends of managing the property for commercial purpose. There is an increase in the emergence of a number of malls in India due to which the shopping lifestyle of people has changed. The growth of organised retail is expected to be driven by demographic factors, increasing disposable incomes, changes in shopping habits, the entry of international retailers into the market and the growing number of retail malls.

Organised retail in India is expected to grow to \$84 billion by 2016 at a CAGR of 26 per cent. As the sector grows, India will see more organised retail real estate supply as more international retail stores open up and expand.



#### 4) Hospitality industry –

Of late, the growth prospect in Indian hotel industry is transcending the boom to the Indian real estate market. The land prices have been touching new heights as hospitality giants, hunt for land to establish their new hotels. Given the rapid economic development going on in the country, India is likely to become one of the top five destinations for business travellers in the years ahead, says London based World Travel and Tourism Council. The general increase in room rates and occupancy rates is expected to contribute significantly to the demand for new hotel developments.

The hospitality segment has also been witnessing a robust demand, primarily due to a strong growth in tourism, including business and leisure travel. According to research conducted by the World Travel & Tourism Council, travel and tourism in India is expected to grow at 12.7% till 2019. India is emerging as a major tourist destination for international tourists.

## **2. THE TERM “REAL ESTATE”**

The term 'real estate' refers to land as well as building. The word 'land' includes-- the air above and the ground below and any buildings or structures on it. It covers residential houses, commercial offices, trading spaces such as theatres, hotels and restaurants, retail outlets, industrial buildings, factories and also government buildings. Thus the term real estate connotes immovable property which can be either land or building or both. Real estate differs from personal properties such as furniture, money, clothing etc. with regards to the basic assumption that any type of personal property is movable with the owner of it.

The real estate transaction includes:-

- a. Purchase,
- b. Sale and
- c. Development of land (both residential and non-residential buildings).

Real estate is a term that encompasses land along with those improvements to it such as commercial and residential structures, roadways and ports that are all fixed in location. Construction is the process of building new infrastructure on real estate. Given their close inter-linkages, these sectors are often treated as one. Far from being a single activity, large scale real estate development is a feat of multitasking by a wide host of professionals, including financial analysts, legal experts, project managers, construction managers, design engineers and project architects, amongst others.

According to Section 2(6) of the Registration Act, 1908, "Immovable Property includes land, building, 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".

Types of ownership interests in real estate (immovable property) include –

- Freehold: Provides the owner the right to use the real estate for any lawful purpose and sell when and to whom the owner wishes.
- Life estate: An interest in real estate which is granted to a life tenant until that person dies. The interest terminates upon the death of the life tenant.
- Estate for years: Similar to life estate but the term is a specified number of years.
- Leasehold: The right to possess and use real estate pursuant to the terms of a use.
- Reversion: The right to possess the free interest in real estate after the expiration of a life estate, estate for years or leasehold.

- Concurrent or co-tenancy: The ownership of an interest in real property by more than one party. Rights of any single party may be limited in various ways depending on the jurisdiction and type of concurrency.

The main players in the real estate market include the following:

1. The landlords / owners
2. The builders / developers / contractors
3. Real estate agents
4. Tenants and
5. Investors

### **Real Estate Business**

With the development of private property ownership, real estate has become a major area of business. In fact it has evolved into several distinct fields like – valuation services, brokerage, development of property, property management, real estate marketing, etc.

The following factors influence the price and cost of the real estate:

- ✓ The physical characteristics of the property
- ✓ The property rights
- ✓ The time horizon of holding the property
- ✓ Geographical area
- ✓ The development rate

The unique characteristics of real estate market are enumerated hereunder –

- i) Durability – Real estate is durable. A building can last for decades or even centuries, and the land underneath it is practically indestructible. Because of this, real estate markets are modelled as a stock/flow market. About 98% of supply consists of the stock of existing houses, while about 2% consists of the flow of new development.
- ii) Heterogeneous – Every piece of real estate is unique, in terms of its location, in terms of the building, and in terms of its financing. This makes pricing difficult, increases search costs, creates information asymmetry and greatly restricts substitutability. Further, the real estate market is typically divided into residential, commercial, and industrial segments. It can also be further divided into subcategories like recreational, income generating area, historical/protected, etc.
- iii) High transaction costs - Buying and/or moving into a home costs much more than most types of transactions. These costs include search costs, real estate fees, moving costs, legal fees; stamp duty, registration fees etc.

- iv) Long time delays - The market adjustment process is subject to time delays due to the length of time it takes to finance, design, and construct new supply, and also due to the relatively slow rate of change of demand.
- v) Both an investment good and consumption good - Real estate can be purchased with the expectation of attaining a return (an investment good), or with the intention of using it (a consumption good), or both. This dual nature of the good means that it is not uncommon for people to over-invest in real estate, that is, to invest more money in an asset than it is worth on the open market.
- vi) Immobility - Real estate is locationally immobile. Consumers come to the good rather than the good going to the consumer. Because of this, there can be no physical market-place. For example, if tastes change and more people demand suburban houses, people must find housing in the suburbs, because it is impossible to bring their existing house and lot to the suburb (even a mobile home owner, who could move the house, must still find a new lot).

### **2.1. Other Important terms**

**Acre** – Often used in Indian real estate unit of measurement of a big chunk of land area. 1 Acres is equals to 43560 sqft.

**Allotee** – The person who is allotted a property, either by government body/authority or by a developer.

**Agent** – Agent in real estate is usually referred to the Realtor or Broker. An agent plays the role of a facilitator for property transactions for a consideration.

**Appraisal** – A written report of the estimated value of a property prepared by a certified Real Estate appraiser or a valuer.

**Appreciation** – An increase in the value of a property due to changes in market conditions or other causes over a period of time.

**Assessed Valuation** – The value that a taxing authority places on real property for the purpose of determining the amount of taxation for that property.

**Benami Ownership** – In Benami Ownership, the title of the property is in one party's name and the real ownership is in another party's name.

**Beneficiary** – The person/persons/institution designated to receive the income from a trust, estate or a deed of trust. A contingent beneficiary has conditions attached to his/her/their/its rights.

**BHK** - Bedroom, Hall, Kitchen

**BR** – Bedroom

**BSP** – Basic sale price

**Bhumidar** – A Bhumidar is of the class of a tenure-holder under the Delhi Land Reforms Act, 1954. He has the right to use land for any purpose connected with agriculture, farming, pisciculture or poultry. He has no right to use the land for industrial purposes other than those connected directly with the aforesaid activities, unless the land lies within the declared industrial belt.

**Built-up Area** – Includes the carpet area, the wall thickness

**Capital Transaction** – Sale/Purchase of a property.

**Carpet Area** – The actual usable area of an apartment/office unit/showroom etc. minus Wall thickness. Simply put, it is that area within the walls where you can actually lay a carpet.

**CBD (Central Business District)** – The main Commercial area of a town and its immediate radius of 2 – 3 kms, typically located towards the city centre, which forms the hub of all major commercial activity in a city. Most of the larger corporate entities, large retail outlets and financial institutions would be located in this area.

**Circle rate:** This is the minimum rate decided by the government authorities for valuation of land in a particular area.

**Clear Title** – A title that is free from claims or legal questions and all other encumbrances about the ownership of the property.

**Collateral** - Any asset that guarantees the repayment of a loan. The borrower risks losing the asset if the loan is not repaid according to the terms of the loan contract. In a housing loan scenario, collateral would mean additional security over and above the security of the property being financed.

**Commencement Certificate** -A certificate issued by the appropriate local authority certifying the construction may commence. Typically, this is done after the concerned party has obtained sanction of plans for the construction of a multi-storied building and has put the columns in place indicating the building boundaries.

**Commercial Property** – A building / property which is used for the purposes of carrying out commercial activity or trading.

**Common Areas** – Those portions of a building, land and amenities owned (or managed) by a planned unit development (PUD) or condominium project's homeowners' association (or a cooperative project's cooperative corporation) that are used by all of the unit owners, who share in the common expenses of their operation and maintenance. Common areas include swimming pools, tennis courts, and other recreational facilities, as well as common corridors of buildings and parking areas.

**Comprehensive Development Plan (CDP)** – The Master Plan approved by an authority.

**Co-ownership** – When there is more than one owner for an immovable property, the status of the property is known to be of the Co-ownership type. A Co-owner can do whatever he wishes with his part of the property as long as he does not affect the share of the other Co-owners.

**Deed** – The legal document conveying title to a property.

**De-facto Possession** – Also called Constructive Possession; the actual physical possession is called De-facto Possession. The actual possession should be held without force or fraud.

**De-jure Possession** – Also called Juridical Possession, it means possession in the eyes of the law. This may not be accompanied by De-facto Possession. Even when the property is lying locked, the De-jure possessor is the De-facto possessor of the property.

**Deposit** – A sum of money given to bind the sale of Real Estate or a sum of money given to ensure payment or an advance of funds in the processing of a loan. Deposit could also be the deposit paid to a landlord as part of a rental transaction.

**Depreciation** – A decline in the value of property brought about by age, physical deterioration, functional or economic obsolescence, etc.

**Due diligence** – Verification of the authenticity of the title of the property

**EDC** – External Development Charges

**EMI** – Equated monthly instalments

**Earnest Money Deposit or EMD** – A nominal sum of money given as a token to the vendor, signifying the assent to a contract of sale or the like, that the parties are in the earnest or have made up their minds.

**Encroachment** – The physical intrusion of a structure or improvement on the land of another. For example, a neighbour's fence or construction that crosses over your property line.

**Encumbrance Certificate** - A report issued by Registrar of Assurances or Sub-Registrar's office after due verification of the relevant documents certifying that the property in question is free from all encumbrances such as mortgages, leases, easements or restrictions.

**Fair Market Value** – The highest price that a buyer, willing but not compelled to buy, would pay, and the lowest a seller, willing but not compelled to sell, would accept. In other words a value decided by the market forces.

**Farmhouse** – The concept of a farmhouse is nothing but the building appurtenant to the agricultural land. A farmhouse may be used for dwelling purposes, or as a storehouse or an outhouse.

**Freehold Property** – A property where title paramount has conveyed the property in favour of the purchaser by conveyance/ sale deed with no restriction on the right of the holder of the property to further transfer the property. Record of ownership of the freehold property can be ascertained from the office of the sub-registrar. It can be transferred by registration of sale deed.

It's a property where the owner has complete control of the land and all the buildings on it. When you buy a freehold property, you get absolute right to it, subject to the law and applicable regulations. This means you can transfer or sell the property, mortgage it for a loan or give it on lease. For obvious reasons, a freehold property is considered more valuable than a leasehold one.

**FSI or Floor Space Index / FAR or Floor Area Ratio** – The maximum amount of construction allowed on a given plot of land. This is purely dependent on the plot area and would vary from one locality to another based on factors such as the road width. It's the ratio of the total area of all the floors in a building to the total plot area. So if the FSI is 2, the total floor area of a multi storied building cannot exceed twice the size of the plot.

**IDC** – Infrastructural development charges.

**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 not grass.

**Industrial Property** – Any property used for a manufacturing purpose. Areas where industrial activity may be carried out are specified by the respective local authorities.

**Joint Ownership Agreement** – An agreement between owners defining their rights, ownership, monetary obligations and responsibilities.

**LOI** – The Letter Of Intent is a non-binding offer letter to buy a commercial place.

**Lease** – Lease is where there are no two kinds of payments made to the landlord by the tenant unlike a rental transaction. A sum of money is paid to the landlord at the beginning of the lease tenure, which is repaid without interest when the tenure ends. No monthly payments are made.

**Lease Hold** – Such a property is leased from the freeholder for a specific period of time on certain terms and conditions. The lease can be transferred to another person after taking permission from the lessor. Most lease agreements are for 99 years. At the end of this tenure, the property reverts to the freehold owner. The lease also specifies the person or party responsible for maintaining the property.

**Maintenance Charges** – Charges payable by the owners / occupants of a development (apartment complex / commercial complex / plotted development etc) towards upkeep & maintenance of all common areas and facilities. It is normally a monthly charge and the amount payable is dependent on the kind of amenities that are part of the project.

**Mixed land use** – The term could be used for residential properties that have the provision commercial use on the ground floor and apartments on upper floors. Mixed use is the use of commercial and residential simultaneously.

**Mutation** – Mutation means transfer/change of name in the records of the Corporation for the concerned property. Mutation of a property is the entry of the transfer of title in the revenue records of the local municipal body. Since it is only for the purpose of paying property taxes, it

doesn't provide a legal title to the person mentioned in the mutation records. As the state collects property tax, the procedure and fees differ among states.

**Net Operating Income (NOI)** - Net Operating Income is the annual income after deduction of expenses like property tax, insurance, and maintenance but mortgage payments are exceptional.

**No Objection Certificate or NOC** – A certificate issued by the concerned local authority that the plans are in order and conform to the guidelines and rules in force. In other words, the authority concerned has NO OBJECTION to the commencement of construction.

**Occupancy Certificate or OC** – A certificate issued by the local development authority certifying that all necessary works have been completed as per the sanctioned plans and that the property is fit for occupation. The OC is issued after clearance from the water, electricity, sewerage, fire fighting authorities etc.

**PLC** - Preferential Location Charges

**Power of Attorney** – This is a legal contract, which gives a person the right to manage, rent, lease, mortgage or sell property, and take binding decisions on behalf of the owner. Normally seen in a case where a property cannot be sold or purchased due to certain restrictions, power of attorney is executed to transfer the rights to the buyer. However, the ownership of the property remains with the seller.

**Registration** – A legal documenting and subsequent recognition of a transaction under the State. This can either be a rental or capital transaction and there is a fee attached to registering a transaction, which varies from state to state.

**Security** – In lending, security refers to the collateral given, deposited or pledged to secure the payment of the loan.

**Super Built-up Area or Super area** – 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.

**Tahsildar** – Revenue authority or officer empowered to impose and collect revenue from a particular jurisdiction.

**Tenant** – One who is not an owner but enjoys possession of a property from the owner on certain specified terms and conditions for a temporary period.

**Title** – The document that provides legal evidence that the person has the right to the possession of the land.

**Title Search** – An investigation of public records into the history of ownership of a property to check for liens, unpaid claims, restrictions or problems, to prove that the seller can transfer free and clear ownership.



**Under-valuation** – A value of the property that is lesser than the fair market value. Registration fee for a property is based on the value of the property in case of capital transaction or rent in case of rental transaction.

**Urban Land Ceiling and Regulation Act (ULCRA)** – Popularly referred to as ULC Act. This is basically a legislation that was enforced to prevent profiteering and hoarding in the urban land market as well as prevent urban congestion.

**Zone** – Parts of a city or town are allocated and categorized into zones, which in turn will have a bearing on factors like type of property that can be constructed, number of floors allowed for construction. For e.g. SEZ, ITZ, etc.

### **3. REAL ESTATE SECTOR IN INDIA**

The real estate sector in India is being recognised as an infrastructure service that is driving the economic growth engine of the country, according to industry experts. In fact, foreign direct investment (FDI) in the sector is expected to increase to US\$ 25 billion in the next 10 years, from present US\$ 4 billion, according to a latest report.

As per a report released by the McKinsey Global Institute (MGI)—India's urban awakening: Building inclusive cities, sustaining economic growth—on April 2010, the country's urban population will soar to 590 million by 2030, from 340 million in 2008. India's cities could generate 70 percent of the net new jobs created by 2030, produce more than 70 percent of the country's gross domestic product (GDP), and stimulate a near four-fold increase in per capita income. It also says that India needs to invest US\$ 1.2 trillion over next 20 years to modernize urban infrastructure and keep pace with the growing urbanization.

Further, growth prospects and price stability of smaller cities are attracting large real-estate developers in such cities in the recent past, according to a report titled 'Real(i)ty Next: Beyond the Top 10 Cities of India', released by Crisil Research in June 2011. The report estimates that the sale of new residential apartments in 10 such smaller cities at around US\$ 4 billion in 2012.

Industry experts feel that with attractive pricing and innovation in construction technology and variety of designs, NRIs are taking a fresh look at India as a unique market in which they can invest.

FDI flows into housing and real estate in April-March 2011-12 stood at US\$ 731 million, according to the Department of Industrial Policy and Promotion (DIPP). Housing and real estate sector including Cineplex, multiplex, integrated townships and commercial complexes etc, attracted a cumulative foreign direct investment (FDI) worth US\$ 11,168 million from April 2000 to April 2012.

Real estate also emerged as the popular sector for private equity (PE) funds, which witnessed investments worth US\$ 1,700 million in the sector during 2011.

According to the ULI-PricewaterhouseCoopers (PwC) report titled 'Emerging trends in Real Estate © Asia Pacific 2011', which surveys comments from 150 industry leaders across the Asia Pacific region, India will continue to maintain a GDP growth momentum of 9-10 percent by 2015 as the country will witness new private equity in capital markets which will inject capital in infrastructure projects. Some of the avenues for investment in the sector include: Commercial complexes, Multiplexes, Restaurants and Hotels, Malls and shopping complexes.

Some of the key trends in the Indian real estate sector include geographic de-concentration of real estate activity from large metros (such as Bangalore, Mumbai and Delhi-NCR ) to medium and small cities (such as Chandigarh, Pune, Jaipur, Kochi, Visakhapatnam etc.) and development of mixed-use projects encompassing residential, commercial and retail complexes, increase in demand for affordable housing, etc.

### **Housing shortage in India**

According to estimates of the Technical Group constituted by the Ministry of Housing and Urban Poverty Alleviation (MHUPA), the urban housing shortage in the country at the end of the 10<sup>th</sup> Five year plan was estimated to be 24.71 million for 66.30 million households. The group further estimated that 88% of this shortage pertains to houses for Economically Weaker sections and another 11% for Lower-Income groups. For middle and High Income Groups, the estimated shortage is only 0.04 million. During the 11<sup>th</sup> Five year plan, the group estimated that the total housing requirement in Indian cities (including backlog) by end of 2012 will be to the tune of 26.53 million dwelling units for 75.01 million households. If the current increase in backlog of housing is maintained, a minimum of 30 million additional houses will be required by 2020.

The main reasons for rise in shortage in affordable housing on the supply side is lack of availability of urban land, rising construction costs and regulatory issues while lack of access to home finance for low income groups are constraints on the demand side. Construction costs form nearly 50% to 60% of the total selling price in affordable housing projects while for luxury projects this figure is 18% to 20%. Moreover, majority of the loans disbursed by banks and housing finance companies are above Rs 10 lakh.

In fact the inadequacy of housing stock and lack of spaces for house these units in Indian cities manifest in the form of growth in slum and squatter settlements. It is the 6% growth of slums that is fast outstripping the growth in urbanization in India and its cities at 3% and 4% respectively. According to UN Habitat India is adding 4.4 million people to slums every year and 202 million Indians will be residing in slums by 2020.

#### **4. REAL ESTATE SECTOR IN OTHER COUNTRIES**

Many residential property markets around the world remain under considerable stress. Home prices, adjusted for inflation, declined on a year-over-year (y/y) basis in the first quarter of 2012 in the majority of international markets. The ongoing strains are most pronounced in Europe, particularly in the recession-plagued peripheral economies.

Fiscal austerity measures, rising joblessness and tight credit conditions have sidelined potential buyers even as central banks maintain highly accommodative monetary policy settings. Housing conditions have also cooled in Australia and, to a lesser extent, Canada. The U.S. housing market has shown signs of stabilization in early 2012, though it will take more time to build renewed momentum.

The next five-year period will see demand for commercial real estate rebound, following a dip caused by the credit crisis. During the crisis, demand in developing markets, such as India and China, helped to make up for lower demand in developed countries. Improving economic conditions in emerging markets due to increased construction activity and lower unemployment will continue to contribute to the global commercial real estate market. The industry buys, rents, sells and manages both leased and privately owned real estate, including non-residential building and apartment buildings. Other related services include property appraisal, brokerage and property development.

Worldwide demand for new housing is expected to expand by 3% yearly through 2014, with almost 55 million new housing units to be constructed, according to Freedonia. The 2009 recession caused housing construction to fall off in Western Europe, Japan and North America. As the construction industry rebounds, these regions will lead market growth through 2014. Africa-Mideast will show the fastest rate of emerging nation growth at close to 4%, with the construction of 11 million units. Asia-Pacific will lead in terms of volume, with almost 32 million new units representing 2% yearly growth through 2014.

Global housing stock will increase at a yearly rate of almost 2%, from a base of almost 2 billion units in 2009. Asia-Pacific held the largest share of housing stock at almost 1 billion units, or over half of the global total, with China accounting for almost a quarter of the overall total. China was followed by Africa-Mideast, which held over 290 million units of the world's housing stock in 2009, 15% of the overall total, and Western Europe and North America representing under 20% of the world's housing stock. The global growth rate is expected to settle at just under 2% yearly through 2014 to over 2 billion units.

The global real estate management and development industry is predicted to grow at a yearly rate of 0.3% between 2010 and 2015, according to MarketLine. The industry is expected to reach in excess of \$465 billion by 2015.

The Chinese residential property market is expected to grow 13% yearly between 2012 and 2015, according to RNCOS. The market will be driven by a high degree of urbanization, following continued recovery after the economic crisis, aided by government spending in the sector and rising demand. The market will equally benefit from state measures to limit climbing domestic real estate prices as the government seeks to expand affordable housing.

## **5. HISTORY OF REAL ESTATE**

The oldest use of the term "Real Estate" that has been preserved in historical records was in 1666. This use of "real" also reflects the ancient and feudal preference for land, and the ownership (and owners) thereof. Some people have claimed that the word *real* in this sense is descended (like French *royal* and Spanish *real*) from the Latin word for 'king'. In the feudal system the king was the owner of all land, and everyone who occupied land paid him rent directly or indirectly (through lords who in turn paid the king), in cash, goods or services (including military service).

For almost half of human history, our ancestors moved with the four-legged food supplies of their respective areas, leaving only trace signs of their lives - a cave painting here, some stone axes there and the odd carved trinket in the belly of a saber-toothed tiger.

Our ancestors abandoned the hunter-gatherer lifestyle gradually over the period from 30,000 B.C. to 15,000 B.C. This change was far from global, and hunter-gatherer societies still survive in some areas of the world today, but it did mark a transition toward an agrarian society - a transition that also heralded the advent of home ownership.

Many agrarian systems progressed like this: fertile plains were staked out and settled in a might-makes-right manner in which those who could defend the land were those who kept it. Eventually, a system of tribal leaders developed, and those who had the approval of the tribe would disperse lands, settle disputes and require a payment from all his subjects. The shift towards more and more powerful tribal leaders culminated in a pooling of labour along with a CEO of sorts to direct efforts. Irrigation channels were dug, strongholds were built, farming methods improved and temples were erected. With the land improvement, populations exploded. Now, where a family of hunter-gatherers might be able to support one or two children at best, farmers could produce several children. The increased fertility also meant increased available labourers.

Hunter-gatherers also followed a tribal system, but scarcity and the uncertainty of the life meant that a tribe could only support two or three extended families. The amorous farmers, however, soon found that they could not name everyone in their tribe anymore. In return for the sacrifice of familiarity, people living in these small societies gained the safety of numbers. A well-fed army easily repelled any desperate raiders. In return for this security, the people all paid homage to the lord or king who claimed ownership of the land - which, in essence was the first system of rent. As these farming villages grew into cities, the leading families maintained ownership by

right of lineage - their ancestors had clubbed all other challengers senseless - thus becoming the kings, pharaohs, daimyos and the heads of other feudal dynasties.

This system of labour-for-protection developed into two separate systems in most countries: taxes and tenancy. Royal families spread their wealth to friends, signing away titles and deeds to lands that allowed the holders to collect the revenues (rent) produced by the peasants living there. On top of this rent, all the people within a ruler's realm were generally required to pay a tax. Many other demands were made by ruling leader, such as military service, and they were grudgingly met because these rulers owned the land not only by birthright, but by military might as well. Rulers could be overthrown by other rulers, and sometimes by peasants, but a new ruler would sit on the throne and the average peasant would rarely notice a difference.

It wasn't all bad news for the peasants, however. They were able to trade with other kingdoms and the general level of wealth increased, giving rise to a merchant class as well as specialized labourers - the tradesmen - who were able to earn a living with their skills and not by their crops. This, in turn, resulted in non-agrarian shops and houses that still paid rent and taxes to the various lords and kings, but were bought, sold and rented among the common folk rather than by the royal class. Richer merchants became the first common-born landlords and gained wealth and status. These merchants didn't own the land, but they owned the houses on it.

Many aristocracies were eventually displaced - usually by displacing an aristocrat's head from the body - with supposed meritocracies - a system where the best and brightest lead a nation for the good of all. What happened instead was the creation of politics. Title lands were broken into smaller parcels and sold on a free market of sorts, but the people with the money to buy the deeds were either merchants or former aristocrats who managed to escape being shortened by revolutionary fervour. Peasants had yet to make much progress from the original farming-tribesmen 30,000 years before them.

The industrial revolution was one of the great equalizers in human history, perhaps only matched by the invention of firearms. The effects of industry, much like a gun, were neither positive nor negative, but depended on application. The use of machines for manual labour freed many peasants for different tasks, and allowed a privileged few time for education and specialization into new fields of labour opened up by the mechanization of industry. Cobblers, seamstresses and cabinetmakers found that their once invaluable skills were now obsolete, leaving them to return to the land and the coal mines beneath it to try to eke out a living.

People with ambition were able to jump classes and bring some of their low class sensibilities with them, leading to track housing for labourers and a range of products aimed at the lower classes. The people who made up the classification of peasants now became middle class, blue collar, white collar, and a handful of other things. They owned houses, cars, and eventually, radios and televisions, which suggested what other things they might want to own.

The invention of mortgages belongs to no particular country. Mortgages existed for a long time as an exclusive loan given only to nobility. After the industrial revolution, however, the wealth of the world increased to the point where banks opened themselves to "higher-risk" mortgage loans to common people. This allowed individuals to own their own homes and, if they so

desired, to become landlords themselves. It took 30,000 years, but home ownership is now open to many people.

Ownership, specifically ownership of land, was the basis of all the investment opportunities that is seen today.

## **6. OVERVIEW OF REAL ESTATE LAWS OF INDIA**

Real estate laws are the rules and regulations that regulate every aspect of a real estate property transaction. Intricate requirements are involved in every real estate transaction be it acquisition, selling, transfer, or foreclosure of a property. Real estate laws are in place to safeguard the rights in the property owned or purchased or sold.

Issues covered under Real Estate Laws –

- Legal contracts and agreements;
- Dispute resolutions related to real estate property distribution or possession;
- Buying, selling, acquisition, leasing, and disposition of different types of real estate properties.
- Taxation issues concerning real estate;
- Preparing a plan and monitoring the construction of a real estate;
- Drafting deeds and contracts for real estate transactions;
- Overseeing legal issues involved in real estate foreclosures.

The list of central laws governing real estate transactions are:

1. The Indian Contract Act, 1872
2. The Transfer of Property Act, 1882
3. The Indian Easements Act, 1882
4. The Indian Stamp Act, 1899
5. The Registration Act, 1908
6. The Specific Relief Act, 1963
7. Power of Attorney Act, 1882
8. The Urban Land (Ceiling & regularization) Act, 1976 (repealed in most states including Maharashtra)
9. The Land Acquisition Act, 1894
10. The Land Acquisition, Rehabilitation and Resettlement, Bill, 2011
11. The Indian Evidence Act, 1872
12. The Consumer Protection Act, 1986
13. The Arbitration & Conciliation Act, 1996
14. Income Tax Act, 1961

15. The Wealth Tax Act, 1957
16. The Co-operative Societies Act, 1912
17. The Multi-State Co-operative Societies Act, 2002
18. Service Tax provisions
19. Foreign Exchange Management Act, 1999 / Foreign Direct Investment Policy
20. SEBI norms for Real Estate Mutual Funds
21. Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
22. Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Central Registry) Rules, 2011
23. The State Laws governing real estate transactions
24. State Laws governing Rent Control
25. Local body laws relating to property tax

Apart from the above mentioned laws, each state has its own set of laws, which govern planned development, rules for construction and floor-area-ratio (FAR) or floor space-index (FSI) and formation of societies but there are three laws that exist in every state namely, the stamp duty, property tax and rent laws.

### **6.1. The Indian Contract Act, 1872**

The Indian Contract Act codifies the way we enter into a contract, execute a contract, and implement the provisions of the contract and the effects of breach of a contract.

Section 1 of Contract Act provides that any usage or custom or trade or any incident of contract is not affected as long as it is not inconsistent with provisions of the Act. In other words, provision of Contract Act will prevail over any usage or custom or trade. However, any usage, custom or trade will be valid as long as it is not inconsistent with provisions of Contract Act.

#### **Definition of contract**

According to Section 2 (h), the term contract means an agreement enforceable by law.

According to Section 2(e), every promise and every set of promises, forming the consideration for each other is an agreement.

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

#### **Definition of ‘consideration’**



When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise [Section 2(d)].

### **Steps involved in contract**

The steps involved in a contract are –

1. Proposal and its communication
2. Acceptance of proposal and its communication
3. Agreement by mutual promises
4. Contract
5. Performance of Contract

All agreements are not contract. Only those agreements which are enforceable by law are 'contracts'. Following are essential requirements of a valid contract.

- (i) Offer and its acceptance
- (ii) Free consent of both parties
- (iii) Mutual and lawful consideration for agreement
- (iv) It should be enforceable by law. Hence, intention should be to create legal relationship. Agreements of social or domestic nature are not contracts
- (v) Parties should be competent to contract
- (vi) Object should be lawful
- (vii) Certainty and possibility of performance
- (viii) Contract should not have been declared as void under Contract Act or any other law
- (ix) Communication, acceptance and revocation of proposals - Communication of proposal/ revocation/acceptance are vital to decide validity of a contract. A 'communication' is complete only when other party receives it.
- (x) Acceptance must be absolute - In order to convert a proposal into a promise, the acceptance must - (1) be absolute and unqualified; (2) be expressed in some usual and reasonable manner, unless the proposal prescribed the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such a manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance. [Section 7].
- (xi) Acceptance of offer is complete only when it is absolute and unconditional. Conditional acceptance or qualified acceptance is no acceptance.
- (xii) Promises express or implied - Insofar as the proposal or acceptance of any promise is made in words, the promise is said to be express. Insofar as such proposal or acceptance is made otherwise than in words, the promise is said to be implied. [Section 9]. For example, if a person enters a bus, there is implied promise that he will pay the bus fair.

## **Types of contract**

### (i) Void Contracts

Section 2 (j) of the Indian Contract Act, 1872 defines a void contract as under:

“A contract which ceases to be enforceable by law becomes void, when it ceases to be enforceable”. It is clear from this definition that a void contract is a contract which was valid originally i.e. at the time of its formation, but becomes void subsequently on account of the happening of some subsequent event. In other words, it is a contract which was valid originally, but becomes void (ceases to be enforceable by law) subsequently.

Thus a void contract is not void ab initio. It becomes void subsequently, when it ceases to be enforceable by law. A void contract is perfectly valid and binding on the contracting parties until it becomes void i.e., ceases to be enforceable by law. It is for this reason that void contracts are known as ex post facto void contracts.

### (ii) Voidable Contracts

Section 2 (i) of the Indian Contract Act, 1872 defines voidable contract as under:

“An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract”. From this definition, it is clear that a contract is voidable if it is enforceable by law at the option of only one of the contracting parties, and not at the option of both the contracting parties. In short, it is a contract which can be enforced or which can be avoided at the option of one of the contracting parties i.e., the aggrieved party.

A voidable contract becomes void when the party entitled to repudiate such a contract exercises his option to repudiate the contract. Suppose A forces B to sell his house to him for Rs. 10,000 at knife point, in this case, the contract is voidable and it can be repudiated or avoided by B. If B decides to rescind or avoid the voidable contract, the contract becomes void.

### (iii) Valid Contracts

A valid contract is an agreement enforceable by law. An agreement becomes enforceable by law only when it satisfies all the essential elements of a contract as contained in Section 10 of the Indian Contract Act. So, a valid contract is an agreement which satisfies all the essentials of a contract, as contained in Section 10 of the Indian Contract Act. For example, if A offers to sell his house to B for Rs. 10 lakhs and B accepts the same, there is a valid contract. The legal rights conferred and

the legal obligations imposed by a valid contract are enforceable by law against each other.

(iv) Unenforceable Contracts

An unenforceable contract is a contract which is valid in itself, but cannot be enforced in a court of law because of some technical defect; say absence of writing, absence of registration, want of requisite stamp, expiry of time, etc.

For example - An oral arbitration agreement is unenforceable because, as per the arbitration law, an arbitration agreement is required to be in writing. Similarly, an insufficiently stamped bill of exchange or promissory note cannot be enforced in a court of law.

(v) Illegal/Unlawful Contracts

According to Section 23 - an illegal or unlawful contract is one whose object or consideration

1. is forbidden by law or
2. is of such a nature that, if permitted, it would defeat the provisions of any law or
3. is fraudulent or
4. involves or implies injury to the person or property of another or
5. is immoral or
6. is opposed to public policy.

### **Contract of Agency**

Agency is a special type of contract. The concept of agency was developed as one man cannot possibly do every transaction himself. Hence, he should have opportunity or facility to transact business through others like an agent. The principles of contract of agency are – (a) Excepting matters of a personal nature, what a person can do himself, he can also do it through agent (e.g. a person cannot marry through an agent, as it is a matter of personal nature) (b) A person acting through an agent is acting himself, i.e. act of agent is act of Principal. Since agency is a contract, all usual requirements of a valid contract are applicable to agency contract also, except to the extent excluded in the Act. One important distinction is that as per Section 185, no consideration is necessary to create an agency.

An “agent” is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the “principal” [Section 182].

Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent. [Section 183]. Thus, any person competent to contract can appoint an agent.

As between the principal and third persons any person may become an agent, but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained. [Section 184]. The significance is that a Principal can appoint a minor or person of unsound mind as agent. In such case, the Principal will be responsible to third parties. However, the agent, who is a minor or of unsound mind, cannot be responsible to Principal. Thus, Principal will be liable to third parties for acts done by Agent, but agent will not be responsible to Principal for his (i.e. Agent’s) acts.

An agent has following duties towards principal.

- (i) Conducting principal’s business as per his directions
- (ii) Carry out work with normal skill and diligence
- (iii) Render proper accounts [Section 213].
- (iv) Agent’s duty to communicate with principal [Section 214]
- (v) Not to deal on his own account, in business of agency [Section 215]
- (vi) Agent’s duty to pay sums received for principal [Section 218]
- (vii) Agent’s duty on termination of agency by principal’s death or insanity [Section 209]

Rights of Principal are –

- (i) Recover damages from agent if he disregards directions of Principal
- (ii) Obtain accounts from Agent
- (iii) Recover moneys collected by Agent on behalf of Principal
- (iv) Obtain details of secret profit made by agent and recover it from him
- (v) Forfeit remuneration of Agent if he misconducts the business.

Duties of Principal are –

- (i) Pay remuneration to agent as agreed
- (ii) Indemnify agent for lawful acts done by him as agent
- (iii) Indemnify Agent for all acts done by him in good faith
- (iv) Indemnify agent if he suffers loss due to neglect or lack of skill of Principal.

An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an

insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors. [Section 201] In following cases, an agency cannot be revoked –

- (i) Agency coupled with interest
- (ii) Agent has already exercised his authority
- (iii) Agent has incurred personal liability.

### **Remedies for breach of contract**

When a contract is broken, the injured party has one or more of the following remedies:

1. Rescission of Contract: - When a contract is broken by one party, the other party may sue to treat the contract as rescinded and refuse further performance.
2. Suit for compensation
3. Suit for specific performance
4. Suit for injunction

### **6.2. Transfer of Property Act, 1882**

The Transfer of Property Act, 1882 mainly deals with transfer of immovable property. It does not apply to transfers by the operation of law such as transfer of immovable property necessitated by Order of Court for insolvency or forfeiture among others.

‘Transfer of Property’ means an act by which a living person conveys property, in present or future, to one or more living persons, or to himself, or to himself and one or more other living persons; and “to transfer property” is to perform such act. Living person includes a company or association or body of individuals, whether incorporated or not.

The property may be movable or immovable, present or future and the transfer can be made orally, unless transfer in writing is specifically required under any law. Any person competent to contract and entitled to transferable property, or authorized to dispose of transferable property on his own, can transfer such property whether in part or whole, absolutely or conditionally.

The Act deals with transfers of property by act of parties like sales of immovable property, mortgages and charges, leases of immovable property, exchanges, gifts and actionable claims.

According to Section 6 of the Transfer of Property Act, property of any kind may be transferred. The person insisting non-transferability must prove the existence of some law or custom which restricts the right of transfer. Unless there is some legal restriction preventing the transfer, the owner of the property may transfer it. However, in some cases there may be transfer of property by unauthorized person who subsequently acquires interest in such property.

According to Section 43 of the Transfer of Property Act 1882, in case a person either fraudulently or erroneously represents that he is authorised to transfer certain immovable property and does some acts to transfer such property for consideration, then such a transfer will continue to operate in future. It will operate on any interest which the transferor may acquire in such property. This will be at the option of the transferee and can be done during the time during

which the contract of transfer exists. As per this rule, the rights of bona fide transferee, who has no notice of the earlier transfer or of the option, are protected. This rule embodies a rule of estoppel i.e. a person who makes a representation cannot later on go against it.

## **Sale**

According to Section 54, sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. Rights and liabilities of buyer and seller of immovable property is enumerated under Section 55.

(1) In the absence of the contract to the contrary, the seller is bound-

- (a) to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;
- (b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;
- (c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;
- (d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;
- (e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;
- (f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;
- (g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all encumbrances on such property due on such date, and, except where the property is sold subject to encumbrances, to discharge all encumbrances on the property then existing.

(2) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power.

The seller is entitled-

- (a) to the rents and profits of the property till the ownership thereof passes to the buyer;
- (b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, any transferee without consideration or any transferee with notice of the non-payment, for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered.

The buyer is bound-

- (a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;
- (b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs but where the property is sold free from

encumbrances, the buyer may retain out of the purchase-money the amount of any encumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;

(c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;

(d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any encumbrances subject to which the property is sold, and the interest thereon afterwards accruing.

The buyer is entitled-

(a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

## **Mortgage**

According to Section 58, mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement that may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

After the principal money has become due, the mortgagor has a right, on payment of the mortgage-money, to require the mortgagee

- (a) to deliver to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee,
- (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and
- (c) either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and to have registered an acknowledgement in writing that any right transferred to the mortgagee has been extinguished.

The Mortgagee has, at any time after the mortgage- money has become due to him, and before a redemption decree or the mortgage-money has been paid or deposited, a right to obtain from the

court a decree that the mortgagor shall be absolutely debarred of his right to redeem the property, or a decree that the property be sold.

The mortgagee has a right to sue for the mortgage-money -

- (a) where the mortgagor binds himself to repay the same;
- (b) where, the mortgaged property is wholly or partially destroyed;
- (c) where the mortgagee is deprived of the whole or part of his security in consequence of the wrongful act or default of the mortgagor.

### **Lease**

According to Sec.105 of the Transfer of Property act, 1882, a lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium and the money, share, service or other thing to be so rendered is called the rent.

A lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice. A lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument.

The rights and liabilities of the lessor are –

- (a) The lessor is bound to disclose to the lessee any material defect in the property;
- (b) The lessor is bound on the lessee's request to put him in possession of the property;
- (c) If the lessee pays the rent and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

The rights and liabilities of the lessee are –

- (a) Any material part of the property destroyed and permanently unfit for the purposes for which it was let by fire, tempest or flood, or violence of an army or of a mob, the lease shall, at the option of the lessee, be void:



(b) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor;

(c) bound to pay, the premium or rent to the lessor or his agent in this behalf;

(d) may remove, at any time whilst he is in possession of the property leased all things which he has attached to the earth provided he leaves the property in the state in which he received it;

(e) must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes;

(f) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

## **Gifts**

According to Sec.122 of The Transfer of Property Act, 1882, "Gift is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee."

A gift is a common mode of transfer of property. It is the transfer of certain existing moveable or immoveable property by one person to another. The transfer should be made voluntarily and without consideration. The person transferring the property is called the donor. The person to whom the property is transferred is referred to as the donee. The donee must accept the property during the lifetime of the donor and while he is still capable of giving. In case the donee dies before acceptance, the gift is void.

### **6.3. The Indian Easements Act, 1882**

The Indian Easements Act, 1882 was brought into force from 17th February 1882. This Act deals with easements and licence.

An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own. (Sec.4)

Dominant and servient heritages and owners - The land for the beneficial enjoyment of which the rights exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

**Explanation.--**In the first and second clauses of this section, the expression "land" includes also things permanently attached to the earth; the expression "beneficial enjoyment" includes also possible convenience, remote advantage, and even a mere amenity: and the expression "to do

something" includes removal and appropriation by the dominant owner, for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage or anything growing or subsisting thereon.

Section 52 of the Indian Easements Act, 1882 defines the expression "licence" as a grant by one person to another a right to do or continue to do in or upon the immovable property of the grantor something which would in the absence of such right be unlawful and such right does not amount to an easement or an interest in the property. Section 52 does not require any consideration, material or non-material, to be an element of the definition of licence, nor does it require that the right under the licence must arise by way of contract or as a result of mutual promises. Thus, "licence" as defined in Section 52 of the Indian Easements Act, 1882 can be a unilateral grant and unsupported by any consideration.

The concept of licence is distinguishable from the concepts of easement and interest in property. Licence is purely a personal right created and terminable at will, which may or may not be supported by material consideration. That is the reason why Section 56 of the Indian Easements Act, 1882 provides that a licence is not transferable and Section 56 provides that where the grantor of the licence transfers the property affected thereby, the transferee is not bound by the licence already granted. Section 60 provides that a licence may be revoked by the grantor at will. There are, however, two known exceptions to this. First, where the licence is coupled with transfer of property and such transfer is in force. Second, where the licensee acting upon the licence has executed a work of permanent character and incurred expenses in the execution thereof. Section 61 of the Indian Easements Act, 1882 provides that revocation of a licence may be express or implied. Section 62 indicates specific cases where, upon occurring of certain facts, a licence already granted is deemed to be revoked. Section 63 provides for the only right of the licensee where a licence is revoked for a reasonable time to leave the property affected therein and to remove any goods which he has been allowed to place on such property. Section 64 provides that where a licence has been granted for a consideration and the licensee without any fault of his own is evicted by the grantor before he has fully enjoyed the licence right, the licensee is entitled to recover compensation from the grantor.

#### **6.4. The Indian Stamp Act, 1899**

The basic purpose of Indian Stamp Act, 1899 is to raise revenue to Government. The Stamp Act is a fiscal enactment on the basis of which stamp duties are levied on transactions in the shape of stamp on instruments, leviable with stamp duties on them. The Schedule to the Act is deemed to be exhaustive and to be strictly construed. Instruments not mentioned in the Schedule are deemed to be excluded from the operation of the Act. The duty payable is to be determined with reference to the Act in force at the time of execution of the document.

Any instrument mentioned in Schedule I to Indian Stamp Act is chargeable to duty as prescribed in the schedule. The list includes all usual instruments like affidavit, lease, memorandum and articles of company, bill of exchange, bond, mortgage, conveyance, receipt, debenture, share, insurance policy, partnership deed, proxy, shares etc. Thus, if an instrument is not listed in the schedule, no stamp duty is payable. 'Instrument' does not include ordinary letters. Similarly, an unsigned draft of an agreement is not an 'instrument'. The stamp duty is on the instrument as it stands and not on the transaction.

Instruments where stamp duty is not payable are –

- Documents, executed on behalf of the Government;
- Testamentary documents;
- Documents, required to be made for judicial or non-judicial proceedings;
- Any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act, 1894, or under Act 19 of 1838, or the Indian Registration of Ships Act, 1841, as amended by subsequent Acts;
- Any instrument executed, by, or, on behalf of, or, in favour of, the Developer, or Unit or in connection with the carrying out of purposes of the Special Economic Zone.
- Securities dealt in depository and corporatization and demutualization schemes and related instruments.

If one instrument relates to several distinct matters, stamp duty payable is aggregate amount of stamp duties payable on separate instruments. The main criterion under this section is not whether the instrument embodies distinct contracts but whether it contains distinct matters. If it does, then it must be charged with the aggregate of the duties payable in respect of all such matters even though they are written on the same paper and are signed by all parties concerned.

Every instrument written upon paper stamped with an impressed stamp should be written in such a way that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument. The object of this section is to prevent the stamp paper being used for a second time for another instrument. No second instrument chargeable with duty should be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written.

Instruments executed in India must be stamped before or at the time of execution. Execution means signature and an instrument liable to stamp duty becomes chargeable as soon as it is signed by the executant. Instrument executed out of India can be stamped within three months after it is first received in India. However, in case of bill of exchange or promissory note made out of India, it should be stamped by first holder in India before he presents for payment or endorses or negotiates in India.

Valuation for stamp duty is covered under Sections 20 to 28 of the Indian Stamp Act, 1899. If an instrument is chargeable with ad valorem duty in respect of any money expressed in any foreign currency, then the duty should be calculated on the value of such money in rupees according to the current rate of exchange on the day of the date of the instrument. In cases where property is transferred in consideration of any debt or future payment, then the consideration of such debt, money or stock will be treated as if the transfer is chargeable with ad valorem duty. Where the value of the subject matter cannot or could not be determined, then nothing more than the highest amount of value for which if stated in an instrument of the same description, the stamp actually used would, at the date of such execution will be claimable. The consideration, if any and all the facts and circumstances affecting the chargeability of the instrument with duty should be clearly and fully mentioned in the instrument.

In the absence of any agreement between the parties as to the payment of duty, the expense of providing the proper stamp should be borne by the executant of the document. Normally, the person paying the duty himself may decide the stamp duty payable and pay accordingly. However, in cases of complex documents, the person paying the duty may not be sure of the stamp duty payable. In such case, he can apply for opinion of the Collector. He has to apply with the draft document and prescribed fees. Collector will determine the stamp duty payable as per his judgment.

An instrument not 'duly stamped' cannot be accepted as evidence by civil court, an arbitrator or any other authority authorized to receive evidence. However, the document can be accepted as evidence in criminal court.

### **6.5. The Registration Act, 1908**

The Act was designed to ensure information about all deals concerning land so that correct land records could be maintained. The Act is also used for proper recording of transactions relating to other immovable property. The Act provides for registration of other documents also, which can give these documents more authenticity. Registering authorities have been provided in all the districts for this purpose.

The object and purpose of the Registration Act, 1908, amongst other things, is to provide a method of public registration of documents so as to give information to people regarding legal rights and obligations arising or affecting a particular property. The registered documents may afterwards be of legal importance, and also aid in preventing fraud. Registration lends inviolability and importance to certain classes of documents.

Stamp Act and Registration Act though not strictly in *pari materia*, may be read together. In case of disputes definition in Stamp Act may apply to Registration Act if they are not present in the Registration Act, 1908.

Section 2(6) of the Act, gives an inclusive definition of the term immovable properties. The definition includes the following:

- land,
- buildings,
- hereditary allowances,
- rights to ways,
- lights,
- ferries,
- fisheries,
- other benefit to arise out of land, and
- things attached to the earth or permanently fastened to anything which is attached to the earth

However, the immovable properties definition specifically excludes the following:

- standing timber,

- growing crops, and
- grass

Therefore, an instrument which creates a right or interest in the rents, profits, benefits and income from an immovable property, is a document which should be compulsorily registered.

All documents relating to sale, conveyance, exchange, gift, settlement partition, mortgage, lease, decrees and release of immovable property of the value of one hundred rupees or more are compulsorily registerable documents under Section 17 of the Registration Act, 1908. The remaining categories of documents mentioned in Section 18 of the Act are optionally registerable documents.

Every document other than a Will should be presented for registration within 4 months from the date of execution. In case a document requiring registration has been accepted for registration by a Registrar or sub Registrar from a person not duly empowered to present the same, and has been registered, any person claiming under such document may, within four months from his first becoming aware that the registration of such document is invalid, present such document again for registration. Where there are several persons executing a document at different times, such document may be presented for registration and re registration within four months from the date of each execution. Wills can be presented or deposited at any time.

A document relating to an immovable property can be executed out of India and later it can be presented for registration in India. According to Section 26 of The Registration Act, 1908 if a document purporting to have been executed by all or any of the parties out of India is presented for registration within the prescribed time, the Registering Officer may, on payment of proper registration fee, accept such document for registration if he is satisfied that (a) the instrument was executed out of India; and (b) the instrument has been presented for registration within four months after its arrival in India.

Every document relating to immovable property should be presented for registration in the office of a Sub-Registrar within whose sub-district, the whole or some portion of the property is situated. Other documents can be registered in the office of Sub-Registrar where all persons executing the document desire it to be registered. All documents for registration should be presented at the appropriate registration office by the person executing the document or by the representative or assign of such person or by the agent of the person, representative or assign who is duly authorised by a Power of Attorney.

According to Section 49(c) of the Act, if a document, of which registration is compulsory under Section 17 of Registration Act, has not been registered, it cannot be produced as evidence in a court of law. However, an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1963 or as evidence of any collateral transaction not required to be effected by registered instrument.

#### **6.6. The Land Acquisition Act, 1894**

Land Acquisition may be defined as the action of the government whereby it acquires land from its owners in order to pursue certain public purpose or for any company. This acquisition is subject to payment of compensation to the owners or to persons interested in the land. Land acquisitions by the government generally are compulsory in nature, not paying heed to the owner's unwillingness to part with the land.

The Act authorizes governments to acquire land for public purposes such as planned development, provisions for town or rural planning, provision for residential purpose to the poor or landless and for carrying out any education, housing or health scheme of the Government.

It was enacted for building an adequate stock of urban land for public interest purposes such as low-income housing, road widening, development of parks and other amenities. Such land is typically acquired by the government through payment of compensation to landowners as per market value.

The Act also specifies the public officers who are authorized for such acquiring of land on behalf of the State. They include the Collector, Deputy Commissioner and also any officer who is specially appointed by the appropriate government under the authority of law.

The steps involved in land acquisition are –

- A notification is published in official gazette and in two daily newspapers whenever it appears to the appropriate Government the land in any locality is needed for any public purpose. Thereupon it shall be lawful for any officer authorized by such Government to enter upon and survey and take levels of any land in such locality, to dig or bore into the sub-soil, to do all other acts necessary to ascertain whether the land is adapted for such purpose, to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon, to mark such levels, boundaries and line by placing marks and cutting trenches.
- Declaration should be made that the land is required for public purpose under the signature of a Secretary to such Government. Every declaration should be published in the Official Gazette and in two daily newspapers circulating in the locality in which the land is situated. After declaration, Collector will take order for acquisition. The Collector will thereupon cause the land to be marked out.
- The Collector should then give public notice at convenient places on or near the land to be taken; stating that the Government intends to take possession of the land and that claims to compensations for all interests in such land may be made to him.
- The collector will then make inquiry into measurements, value, claims and awards.
- The Collector should make an award within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceeding for the acquisition of the land will lapse.
- After making an award for possession of the land, land will vest absolutely in the Government, free from all encumbrances.

## **6.7. The Land Acquisition, Rehabilitation and Resettlement, Bill, 2011**

The Land Acquisition Act, 1894 is the general law relating to acquisition of land for public purposes and also for companies and for determining the amount of compensation to be made on account of such acquisition. The provisions of the said Act have been found to be inadequate in addressing certain issues related to the exercise of the statutory powers of the State for involuntary acquisition of private land and property. The Act does not address the issues of rehabilitation and resettlement to the affected persons and their families.

The Land Acquisition, Rehabilitation and Resettlement Bill, 2011 seeks to balance the need for facilitating land acquisition for various public purposes including infrastructure development, industrialisation and urbanisation, while at the same time meaningfully addressing the concerns of farmers and those whose livelihoods are dependent on the land being acquired. The issue of who acquires land is less important than the process of land acquisition, compensation for land acquired and the Rehabilitation and Resettlement process, package and conditions. The Bill specifies these irrespective of the ratios of private and government acquisition. The objective is to make the process of land acquisition easy, transparent and fair for both sides in each instance.

The Land Acquisition, Rehabilitation and Resettlement Bill, 2011 was introduced in Lok Sabha on 7<sup>th</sup> September 2011 and was referred to the Parliamentary Standing Committee on 13<sup>th</sup> September 2011. The Standing Committee on Rural Development submitted its report on 17<sup>th</sup> May 2012.

The provisions of the Bill relating to land acquisition, rehabilitation and resettlement, shall apply, when the appropriate Government acquires land,—

- (a) for its own use, hold and control; or
- (b) with the purpose to transfer it for the use of private companies for public purpose (including Public Private Partnership projects but not including national or state highway projects); or
- (c) on the request of private companies for immediate and declared use by such companies of land for public purposes:

Provided that no land shall be transferred by way of acquisition, in the Scheduled Areas in contravention of the law relating to land transfer, prevailing in such Scheduled Areas.

The provisions relating to rehabilitation and resettlement under this Act shall apply in the cases where,—

- (a) a private company purchases or acquires land, equal to or more than one hundred acres in rural areas or equal to or more than fifty acres in urban areas, through private negotiations with the owner of the land as per the provisions of section 42;
- (b) a private company requests the appropriate Government for acquisition of a part of an area so identified for a public purpose:

Provided that where a private company requests the appropriate Government for partial acquisition of land for public purpose then the rehabilitation and resettlement entitlements shall

be applicable for the entire area identified for acquisition by the private company and not limited to the area for which the request is made.

#### **6.8. Draft Real Estate (Regulation & Development) Bill, 2011**

The ministry of Housing and Urban Poverty Alleviation has prepared a draft model Real Estate (regulation of development) Act and released it on its official website.

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

The draft has seven different chapters which deal with regulation of development of colonies and promotion of construction, sale and transfer of residential buildings, apartments and other similar properties, role of promoter, Real Estate Regulatory Authority, Appellate Tribunal, Offences and Penalties and Miscellaneous items such as court jurisdiction etc.

#### **6.9. Rent Control Act**

Rent legislation in India has been in existence for a very long time. Rent control by the government initially came as a temporary measure to protect the exploitation of tenants by landlords after the World War. The first rent control legislation in India was introduced immediately after the First World War in Bombay in 1918. It was followed by similar legislations for Calcutta and Rangoon in 1920. By the end of the Second World War almost all the major cities and towns in the countries were covered by rent control measures. All these acts, born out of the inflationary aftermath of the First World War, were conceived as purely temporary measures to provide relief to the tenants against the demand of exorbitant rent and indiscriminate eviction by the landlords due to scarcity of houses in the urban areas.

However these rent control acts became almost a permanent feature. Rent legislation provides payment of fair rent to landlords and protection of tenants against eviction. Besides, it effectively allows the tenant to alienate rented property.

Under the Indian Constitution, housing (provision of) is a state subject. Thus, the enactment and enforcement of rent control laws is the responsibility of the individual states and the State Government has the exclusive jurisdiction to legislate on the subject.

The main purpose of the Rent Control Act is –

- To protect the tenant from eviction from the house where he is living except for defined reasons and on defined conditions; and
- To protect him from having to pay more than a fair/standard rent.



The main idea of a rent control act is to control and regulate eviction of tenants and not to stop it altogether.

There are various grounds under which a can evict a tenant. The most common of these are –

- Breach of condition of tenancy
- Sub-letting
- Default in payment of rent for specified period
- Requirement of building for own occupation
- Material deterioration in the condition of the building

A list of rent control acts in various states:

- i. The Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960
- ii. The Assam Urban Areas Rent Control Act, 1972
- iii. The Bihar Building (Lease, Rent and Eviction) Control Act, 1982
- iv. The Delhi Rent Control Act, 1958
- v. The Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968
- vi. The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (applicable to Gujarat)
- vii. The Haryana Urban (Control of Rent and Eviction) Act, 1973Uttar Pradesh rent control and eviction Act, 1947
- viii. The Himachal Pradesh Urban Rent Control Act, 1971
- ix. The Jammu and Kashmir Houses and Shops Rent Control, 1966
- x. Karnataka Rent Control Act, 1999
- xi. The Kerala Buildings (Lease and Rent Control) Act, 1965
- xii. The Madhya Pradesh Accommodation Control Act, 1961
- xiii. The Maharashtra Rent Control Act, 1999
- xiv. The Meghalaya Urban Areas Rent Control Act, 1972
- xv. The Mizoram Urban Areas Rent Control Act, 1974
- xvi. The Orissa House-Rent Control Act, 1967
- xvii. The Pondicherry Buildings (Lease and Rent Control) Act No. 5 of 1969
- xviii. The East Punjab Rent Restriction Act, 1949 and The East Punjab Rent Restriction (Extension To Chandigarh) Act, 1974
- xix. The Rajasthan Rent Control Act, 2001
- xx. Gangtok Rent Control And Eviction (Act 1 of 1956)
- xxi. The Tamil Nadu Buildings (Lease and Rent Control) Act, 1960
- xxii. The Tripura Buildings (Lease and Rent Control) Act, 1975
- xxiii. The Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972
- xxiv. The West Bengal Premises Tenancy Act, 1997

#### **6.10. Property tax**

Property tax is a levy charged by the municipal authorities for the upkeep of basic civic services in the city. In India it is the owners of the property who are liable for the payment of municipal

taxes whereas in countries like the United Kingdom, the occupier is liable. Generally, the property tax is levied on the basis of reasonable rent at which the property might be let from year to year. The reasonable rent can be actual rent if it is found to be fair and reasonable. In the case of un-let properties, the rental value is to be estimated on the basis of letting rates in the locality. In the case of special class of properties like cinema theatres, it is estimated by adopting the accountancy method under which the rent is a certain percentage of the total average turnover during the year, i.e. actual receipts of the sale of tickets (excluding entertainment duty).

The following types of properties are liable to be taxed under property tax –

- Residential house (self-occupied or let out)
- Office Building
- Factory Building
- Godowns
- Flats
- Shops

#### **6.11. FDI guidelines for real estate**

Foreign direct investment (FDI) is that investment, which is made to serve the business interests of the investor in a company, which is in a different nation distinct from the investor's country of origin. In fact, FDI constitutes capital provided by foreign investors, directly or indirectly to enterprises in another economy with an expectation of obtaining profits derived from the capital participation in the management of the enterprise in which they invest.

FDI policy is reviewed on continued basis and changes in sectoral policy/sectoral equity cap are notified through Press Notes by the Secretariat for Industrial Assistance (SIA), Department of Industrial Policy and Promotion (DIPP). FDI Policy is also notified by Reserve Bank of India (RBI) under Foreign Exchange Management Act, 1999 (FEMA). The procedural instructions are issued by the Reserve Bank of India vide A.P. Dir. (series) Circulars. The regulatory framework, over a period of time, thus, consists of Acts, Regulations, Press Notes, Press Releases, Clarifications, etc.

Circular 1 of 2012 consists of the Consolidated FDI policy issued by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India. This has come into effect from April 10, 2012.

The FDI provisions related to real estate sector are –

- An NRI or PIO is not allowed to invest in a firm or proprietorship concern engaged in real estate business. (Clause 3.2.2 (iv) of Circular 1 of 2012)
- LLPs with FDI will not be allowed to operate in real estate business. (Clause 3.2.5(b) of Circular 1 of 2012)

- Indian companies can raise foreign currency resources abroad through the issue of FCCB/DR (ADRs/GDRs), in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India there under from time to time. But there is a ban on deployment / investment of such funds in real estate. (Clause 3.2.4(iv) of Circular 1 of 2012)
- FDI is not allowed in Real Estate Business. (Clause 6.1(g) of Circular 1 of 2012)

### **FDI in development of Townships including Housing and Built-up Infrastructure**

FDI upto 100% is allowed under the automatic route in townships, housing, built-up infrastructure and construction-development projects (which would include, but not be restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure). The investment is subject to the following conditions –

- (i) Minimum area to be developed under each project should be as under:
  - a. In case of development of serviced housing plots, a minimum land area of 10 hectares;
  - b. In case of construction-development projects, a minimum built-up area of 50,000 sq.mts;
  - c. In case of a combination project, any one of the above two conditions would suffice.
- (ii) Minimum capitalization of US\$10 million for wholly owned subsidiaries and US\$ 5 million for joint ventures with Indian partners. The funds should have to be brought in within six months of commencement of business of the Company.
- (iii) Original investment cannot be repatriated before a period of three years from completion of minimum capitalization. (Original investment means the entire amount brought in as FDI.) The lock-in period of three years will be applied from the date of receipt of each instalment/tranche of FDI or from the date of completion of minimum capitalization, whichever is later. However, the investor may be permitted to exit earlier with prior approval of the Government through the FIPB.
- (iv) At least 50% of each such project should be developed within a period of five years from the date of obtaining all statutory clearances. The investor/investee company would not be permitted to sell undeveloped plots. (Undeveloped plots will mean where roads, water supply, street lighting, drainage, sewerage, and other conveniences, as applicable under prescribed regulations, have not been made available.) It will be necessary that the investor provides this infrastructure and obtain the completion certificate from the concerned local body/service agency before he be allowed to dispose of serviced housing plots.

- (v) The project should conform to the norms and standards, including land use requirements and provision of community amenities and common facilities, as laid down in the applicable building control regulations, bye-laws, rules, and other regulations of the State Government/Municipal/Local Body concerned.
- (vi) The investor/investee company will be responsible for obtaining all necessary approvals, including those of the building/layout plans, developing internal and peripheral areas and other infrastructure facilities, payment of development, external development and other charges and complying with all other requirements as prescribed under applicable rules/bye-laws/regulations of the State Government/ Municipal/Local Body concerned.
- (vii) Compliance of the above mentioned conditions by the developer, will be monitored by the State Government/ Municipal/ Local Body concerned, which approves the building / development plans.

The conditions with regard to minimum area to be developed; minimum capitalisation; repatriation of original investment and development of 50% of project within 5 years, will not be applicable to Hotels & Tourism, Hospitals, Special Economic Zones (SEZs), Education Sector, Old age Homes and investment by NRIs.

#### **6.12. Income Tax**

Income tax is a tax payable, at the rate enacted by the Union Budget (Finance Act) for every Assessment Year, on the Total Income earned in the Previous Year by every Person.

In case of immovable property being sold within a period of 36 months from the acquisition, the gain arising there from would be short-term capital gain and liability for taxation at 15% if it is covered under Sec.111A.

In case the immovable property has been held for more than 36 months, the gain would be long-term capital gain and the tax thereon would be at the rate of 20%.

The assessee would be entitled to index the cost as per the cost inflation index. If the asset has been purchased prior to April 1, 1981, then the assessee would be entitled to substantiate the cost by the market value as on April 1, 1981 and index the cost thereafter. Long-term capital gain is taxable at a flat rate of 20 percent (plus surcharge plus education cess) for the assessment year 2012-13.

#### **Budget provisions for the Real Estate Sector**

- During Twelfth Plan period, investment in infrastructure to go up to INR 50,000 billion with half of this, expected from private sector which will increase opportunities for the construction companies.
- Budget 2012 has provided the much needed “fiscal” impetus to affordable housing by allowing ECBs and reducing tax withholding from interest on such ECBs from existing

20 percent to 5 percent for 3 years. The Rural Housing Fund has been enhanced to Rs 40 billion from 30 billion. All these measures will support affordable housing projects.

- Enhancement of investment linked incentive for affordable housing to 150 percent of capex from current 100 percent and extension of 1 percent interest subvention scheme for housing loans upto Rs15 lakh where cost of house does not exceed Rs 25 lakh by another year.
- Tax Deduction at Source (TDS) at 1 percent of consideration for transfer of immovable property is being proposed. This is aimed at curbing circulation of unaccountable money in the sector.
- Tax-free bonds limit doubled which is a boost to construction sector.
- The limit for tax-free bonds in the infrastructure sector has been doubled to Rs 600 billion for 2012-13 vis-à-vis 2011-12. These measures will ease financing constraints faced by certain infrastructure segments and improve the investment scenario for construction sector.
- The restriction on Venture Capital Funds (VCC) to invest only in nine specified sectors is removed and consequently, investment in real estate sector is eligible for pass through tax treatment for VCFs/VCCs.
- Service tax exemption for construction service related to specified infrastructure, canals, irrigation works, post-harvest infrastructure, residential dwelling and low cost mass housing up to an area of 60 sq mtr. under the scheme of affordable housing will provide relief to the sector.
- Full exemption from basic customs duty, CVD and SAD is being extended to equipment imported for road construction projects awarded by Metropolitan Development Authorities.
- Full exemption from basic customs duty and CVD at present available to tunnel boring machines for hydel and road projects is being extended to all infrastructure projects. The exemption shall also be available for parts required for assembly of such machines.

Overall, the Budget provides the much needed impetus to the Affordable Housing segment to achieve the Government's vision of "Housing for All" and this will have a positive impact on the sector. Further, the enhancement of the spending on the infrastructure sector will generate opportunities for the construction sector. However, the enhanced levy of services tax and levy of multiple taxes on the same transaction will hamper the desired growth.

### **6.13. Service Tax**

Service tax is levied on specified taxable services and the responsibility of payment of the tax is cast on the service provider. The provisions relating to Service Tax were brought into force with effect from 1<sup>st</sup> July 1994. It extends to whole of India except the state of Jammu & Kashmir.

Budget 2012 has ushered a new system of taxation of services; popularly known as Negative List. The new changes are a paradigm shift from the existing system where only services of specified descriptions are subjected to tax. In the new system all services, except those specified in the negative list, will be subject to taxation.

The 'Negative List' approach for taxation of services will come into effect from 1<sup>st</sup> July, 2012.

'Service' has been defined in clause (44) of the new section 65B and means –

- any activity
- for consideration
- carried out by a person for another
- and includes a declared service.

The said definition further provides that 'Service' does not include –

- any activity that constitutes only a transfer in title of (i) goods or (ii) immovable property by way of sale, gift or in any other manner
- a transfer, delivery or supply of goods which is deemed to be a sale of goods within the meaning of clause (29A) of article 366 of the Constitution
- a transaction only in money or actionable claim
- a service provided by an employee to an employer in the course of the employment
- fees payable to a court or a tribunal set up under a law for the time being in force

**Mere transfer of title in goods or immovable property by way of sale, gift or in any other manner for a consideration does not constitute service.** Goods has been defined in section 65B of the Act as 'every kind of moveable property other than actionable claims and money; and includes securities, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under contract of sale'. Immovable property has not been defined in the Act. Therefore the definition of immovable property in the General Clauses Act, 1897 will be applicable which defines immovable property to include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.

'Transfer of title' means change in ownership. Mere transfer of custody or possession over goods or immovable property where ownership is not transferred does not amount to transfer of title. For example giving the property on rent or goods for use on hire would not involve a transfer of title.

A transaction which in addition to a transfer of title in goods or immovable property involves an element of another activity carried out or to be carried out by the person transferring the title would not be out rightly excluded from the definition of service. Such transactions are liable to be treated as follows-

If two transactions, although associated, are two discernibly separate transactions then each of the separate transactions would be assessed independently. In other words the discernible portion of the transaction which constitutes, let's say, a transfer of title in goods, would be excluded from the definition of service by operation of the said exclusion clause while the service portion would be included in the definition of service. For example a builder carrying out an activity for a client wherein a flat is constructed by the builder for the client for which payments are received in instalments and on completion of the construction the title in the flat is transferred to the client involves two elements namely provision of construction service and transfer of title in immovable property. The two activities are discernibly separate. The activity of construction

carried out by the builder would, therefore, be a service and the activity of transfer of title in the flat would be outside the ambit of service.

### **Taxability of service**

The taxability of services or the charge of service tax has been specified in section 66B of the Act. To be a taxable a service should be –

- provided or agreed to be provided by a person to another
- in the taxable territory
- and should not be specified in the negative list.

The services specified in the negative list therefore go out of the ambit of chargeability of service tax.

The services that have been specified in the negative list are –

- i. Services provided by Government or local authority
- ii. Services provided by Reserve Bank of India
- iii. Services by a foreign diplomatic mission located in India
- iv. Services relating to agriculture or agricultural produce
- v. Trading of goods
- vi. Processes amounting to manufacture or production of goods
- vii. Selling of space or time slots for advertisements other than advertisements broadcast by radio or television
- viii. Access to a road or a bridge on payment of toll charges
- ix. Betting, gambling or lottery
- x. Entry to Entertainment Events and Access to Amusement Facilities
- xi. Transmission or distribution of electricity
- xii. Specified services relating to education
- xiii. Services by way of renting of residential dwelling for use as residence**
- xiv. Financial sector
- xv. Services relating to transportation of passengers
- xvi. Service relating to transportation of goods
- xvii. Funeral, burial, crematorium or mortuary services including transportation of the deceased

### **Renting of Immovable Property**

Renting has been defined in section 65B as “allowing, permitting or granting access, entry, occupation, usage or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property”.

The phrase ‘residential dwelling’ has not been defined in the Act. It has therefore to be interpreted in terms of the normal trade parlance as per which it is any residential accommodation, but does not include hotel, motel, inn, guest house, camp–site, lodge, house boat, or like places meant for temporary stay.

Renting of certain kinds of immovable properties is specified in the negative list. These are –

- renting of vacant land, with or without a structure incidental to its use, relating to agriculture;

- renting of residential dwelling for use as residence;
- renting out of any property by the Reserve Bank of India;
- renting out of any property by a Government or a local authority to a non-business entity.

Renting of all other immovable properties would be taxable unless covered by an exemption.

The exemptions are –

- Threshold level exemption up to Rs. 10 lakh.
- Renting of precincts of a religious place meant for general public.
- Renting of a hotel, inn, guest house, club, campsite or other commercial places meant for residential or lodging purposes, having declared tariff of a room below rupees one thousand per day or equivalent.
- Renting to an exempt educational institution.

Some activities that is chargeable/not chargeable to service tax -

- If a residential house taken on rent is used only or predominantly for commercial or non-residential use – then the renting transaction is not covered in the negative list entry.
- If a house is given on rent and the same is used as a hotel or a lodge - the renting transaction is not covered in the negative list entry because the person taking it on rent is using it for a commercial purpose.
- Rooms in a hotel or a lodge are let out whether or not for temporary stay - the renting transaction is not covered in the negative list entry because a hotel or a lodge is not a residential dwelling.
- Government department allots houses to its employees and charges a license fee - such service would be covered in the negative list entry relating to services provided by government and hence non- taxable.
- Furnished flats given on rent for temporary stay (a few days) - such renting as residential dwelling for the bonafide use of a person or his family for a reasonable period shall be residential use; but if the same is given for a short stay for different persons over a period of time the same would be liable to tax.
- Renting of property to an educational body - Exempted if provided to an educational institution for the purpose of education which is exempt from the levy of service tax; to others will be taxable.
- Renting of vacant land for animal husbandry or floriculture - Not chargeable to service tax as it is covered in the negative list entry relating to agriculture.
- Renting of land or building for entertainment or sports - Chargeable to service tax as there is no specific exemption.
- Renting of theatres by owners to film distributors (including under a profit- sharing arrangement) - Chargeable to service tax as the arrangement amounts to renting of immovable property.

### **Declared Services**

In the definition of ‘service’ contained in clause (44) of section 65B of the Act it has also been stated that service includes a declared service. The phrase ‘declared service’ is also defined in the said section as an activity carried out by a person for another for consideration and specified in section 66E of the Act. The following nine activities have been specified in section 66E:



- i. **renting of immovable property;**
- ii. **construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of certificate of completion by a competent authority;**
- iii. temporary transfer or permitting the use or enjoyment of any intellectual property right;
- iv. development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software;
- v. agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
- vi. transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods;
- vii. activities in relation to delivery of goods on hire purchase or any system of payment by installments;
- viii. **service portion in execution of a works contract;**
- ix. service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as part of the activity.

#### **Construction service**

This service is already taxable as part of construction of residential complex service under clause (zzzh) of sub-section 105 of section 65 of the Act and as part of service in relation to commercial or industrial construction under clause (zzq) of sub-section 105 of section 65 of the Finance Act. This entry covers the services provided by builders or developers or any other person, where building complexes, civil structure or part thereof are offered for sale but the payment for such building or complex or part thereof is received before the issuance of completion certificate by a competent authority.

Construction service provided by the builder/developer is taxable in case any part of the payment/development rights of the land was received by the builder/ developer before the issuance of completion certificate and the service tax would be required to be paid by builder/developers even for the flats given to the land owner.

#### **Construction services exempted when provided to the Government, a local authority or a governmental authority**

Exemption is available to the services by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of:

- A. a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
- B. a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under Ancient Monuments and Archaeological Sites and Remains Act, 1958;
- C. a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment;
- D. canal, dam or other irrigation works;

E. pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal;

F. a residential complex predominantly meant for self-use or the use of their employees or other persons specified in the use of a religious building.

In a recent judgement passed by the Mumbai High Court in the case of Maharashtra Chamber of Housing Industry and Others vs. Union of India [012-TIOL-78-HC-Mum-ST] has upheld the Constitutional validity of levy of service tax, under clauses (zzzh) and (zzzzu) of section 65, on similar construction services provided by a builder. A relevant portion of the judgement is reproduced below-

“29. The charge of tax under Section 66 of the Finance Act is on the taxable services defined in clause (105) of Section 65. The charge of tax is on the rendering of a taxable service. The taxable event is the rendering of a service which falls within the description set out in sub-clauses (zzq), (zzzh) and (zzzzu). The object of the tax is a levy on services which are made taxable. The fact that a taxable service is rendered in relation to an activity which occurs on land does not render the charging provision as imposing a tax on land and buildings. The charge continues to be a charge on taxable services. The charge is not a charge on land or buildings as a unit. The tax is not on the general ownership of land. The tax is not a tax which is directly imposed on land and buildings. The fact that land is subject to an activity involving construction of a building or a complex does not determine the legislative competence of Parliament. The fact that the activity in question is an activity which is rendered on land does not make the tax a tax on land. The charge is on rendering a taxable service and the fact that the service is rendered in relation to land does not alter the nature or character of the levy. The legislature has expanded the notion of taxable service by incorporating within the ambit of clause (zzq) and clause (zzzh) services rendered by a builder to the buyer in the course of an intended sale whether before, during or after construction. There is a legislative assessment underlying the imposition of the tax which is that during the course of a construction related activity, a service is rendered by the builder to the buyer. Whether that assessment can be challenged in assailing constitutional validity is a separate issue which would be considered a little later. At this stage, what merits emphasis is that the charge which has been imposed by the legislature is on the activity involving the provision of a service by a builder to the buyer in the course of the execution of a contract involving the intended sale of immovable property.

30. Parliament, in bringing about the amendment in question has made a legislative assessment to the effect that a service is rendered by builders to buyers during the course of construction activities. In our view, that legislative assessment does not impinge upon the constitutional validity of the tax once, the true nature and character of the tax is held not to fall within the scope of Entry 49 of List II. So long as the tax does not fall within any head of legislative power reserved to the States, the tax must of necessity fall within the legislative competence of Parliament. This is a settled principle of law, since the residuary power to legislate on a field of legislation which does not fall within the exclusive domain of the States is vested in Parliament under Article 248 read with Entry 97 of List I.”

**The service tax liability in the following model - land is owned by a society, comprising members of the society with each member entitled to his share by way of an apartment. Society /individual flat owners give ‘No Objection Certificate’ (NOC) or permission to the builder/developer, for re-construction. The builder/developer makes new flats with same or**

**different carpet area for original owners of flats and additionally may also be involved in one or more of the following: (i) construct some additional flats for sale to others; (ii) arrange for rental accommodation or rent payments for society members/original owners for stay during the period of reconstruction; (iii) pay an additional amount to the original owners of flats in the society**

Under this model, the builder/developer receives consideration for the construction service provided by him, from two categories of service receivers. First category is the society/members of the society, who transfer development rights over the land (including the permission for additional number of flats), to the builder/developer. The second category of service receivers consist of buyers of flats other than the society/members. Generally, they pay by cash. Re-construction undertaken by a building society by directly engaging a builder/developer will be chargeable to service tax as works contract service for all the flats built now.

**When a certain number of flats are given by the builder/developer to a land owner in a collaborative agreement to construct, in lieu of the land or development rights transferred, will such transferee be required to pay service tax on further sale of flats to customers?**

The service tax will be required to be paid by such transferee if any consideration is received by him from any person before the receipt of completion certificate.

Construction of roads for use by general public is exempt from service tax. Construction of roads which are not for general public use e.g. construction of roads in a factory, residential complex would be taxable.

### **Works Contract**

Works contract has been defined in section 65B of the Finance Act as a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any moveable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property.

Typically every works contract involves an element of sale of goods and provision of service. In terms of Article 366 (29A) of the Constitution of India transfer of property in goods involved in execution of works contract is deemed to be a sale of such goods. It is a well settled position of law, declared by the Supreme Court in BSNL's case [2006(2) STR 161 (SC)], that a works contract can be segregated into a contract of sale of goods and contract of provision of service.

Contracts for construction of a pipe line or conduit would be covered under works contract as pipeline or conduits are structures on land.

Contracts for erection commissioning or installation of plant, machinery, equipment or structures, whether prefabricated or otherwise, would be treated as a works contract if transfer of property in goods is involved in such a contract.

Contracts for painting of a building, repair of a building, renovation of a building, wall tiling and flooring will be covered under works contract if such contracts involve provision of materials as well.

### **6.14. FEMA**

The Foreign Exchange Management Act, 1999 was enacted to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for

promoting the orderly development and maintenance of foreign exchange market in India. In fact it is the central legislation that deals with inbound investments into India and outbound investments from India and trade and business between India and the other countries.

Acquisition and transfer of immovable property in India is governed by the Acquisition and Transfer of Immovable Property in India, Regulations, 2000 (Notification No.21/2000-RB).

#### **Acquisition and Transfer of Immovable Property in India by a Non-Resident Indian (NRI)**

- A NRI can purchase any immovable property (other than agricultural land/ plantation property / farm house) in India.
- He can transfer any immovable property in India to a person resident in India. He can also transfer any immovable property (other than agricultural land or plantation property or farm house) to an Indian Citizen resident outside India or a PIO resident outside India.
- A Non Resident Indian can make payment for acquisition of immovable property (other than agricultural land/ plantation property / farm house) out of:
  - a. Funds received in India through normal banking channels by way of inward remittance from any place outside India or by debit to his NRE (Non-resident External Account) / FCNR(B) (Foreign Currency Non-resident Bank account) / NRO (Non-resident Ordinary) account.
  - b. Such payments should not be made either by traveller's cheque or by foreign currency notes or by other mode except those specifically mentioned above.
- A NRI who has purchased residential / commercial property under general permission is not required to file any documents with the Reserve Bank.

#### **Acquisition and Transfer of Immovable Property in India by a Person of Indian Origin (PIO)**

- A PIO can purchase any immovable property (other than agricultural land/ plantation property / farm house) in India.
- A PIO can acquire any immovable property (other than agricultural land/ plantation property / farm house) in India by way of gift from a person resident in India or a NRI or a PIO.
- A PIO can acquire any immovable property in India by way of inheritance from a person resident in India or a person resident outside India who had acquired such property in accordance with the provisions of the foreign exchange law in force or FEMA regulations, at the time of acquisition of the property.
- A PIO can transfer any immovable property in India (other than agricultural land / farm house / plantation property) by sale to a person resident in India. He can transfer agricultural land / farm house / plantation property in India, by way of gift or sale to a person resident in India, who is a citizen of India. He

may also transfer residential or commercial property in India by way of gift to a person resident in India or to a person resident outside India, who is a citizen of India or to a Person of Indian Origin resident outside India.

- A PIO can make payment for acquisition of immovable property in India (other than agricultural land / farm house / plantation property):
  - a. By funds received by inward remittance through normal banking channels or by debit to his NRE / FCNR(B) / NRO account.
  - b. Such payments should not be made either by traveller's cheque or by foreign currency notes or by other mode other than those specifically mentioned above.
- A PIO who has purchased residential / commercial property under the general permission, is not required to file any documents with the Reserve Bank.

### **Purchase of Immovable Property in India by a Foreign National of Non- Indian Origin resident outside India**

Foreign nationals of non-Indian origin resident outside India are not allowed to acquire any immovable property in India unless such property is acquired by inheritance from a person who was resident in India. However, they can acquire or transfer immovable property in India, on lease, not exceeding five years without the prior permission of the Reserve Bank. Foreign Nationals of non-Indian origin, other than a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan, can acquire immovable property in India on becoming a resident in India. For this he has to satisfy the condition of stay. The type of visa granted should clearly indicate the intention to stay in India for an uncertain period to determine his residential status. Foreign nationals of non-Indian origin who have acquired immovable property in India by way of inheritance with the specific approval of the Reserve Bank or have purchased the immovable property with the specific approval of the Reserve Bank cannot transfer such property without the prior permission of the Reserve Bank.

### **Repatriation of sale proceeds of immovable property acquired by way of purchase**

A person resident outside India or his successor should not, except with the prior permission of the Reserve Bank, repatriate outside India the sale proceeds of any immovable property.

In case of sale of immovable property other than agricultural land / farm house / plantation property in India by a person resident outside India who is a citizen of India or a person of Indian origin, the Authorised Dealer can allow repatriation of the sale proceeds outside India, provided the following conditions are satisfied, namely:

- the immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these Regulations;
- the amount to be repatriated does not exceed :
  - the amount paid for acquisition of the immovable property in foreign exchange received through normal banking channels, or
  - the amount paid out of funds held in Foreign Currency Non-Resident Account, or
  - the foreign currency equivalent (as on the date of payment) of the amount paid where such payment was made from the funds

held in Non-Resident External account for acquisition of the property; and

- in the case of residential property, the repatriation of sale proceeds is restricted to two properties.

**Repatriation of sale proceeds of immovable property acquired by inheritance/ legacy/ out of Rupee funds**

A Non-Resident Indian (NRI) / Person of Indian Origin (PIO) can remit an amount, not exceeding US \$ 1,000,000 (US Dollar One million only) per financial year out of the balances held in NRO accounts / sale proceeds of assets by way of purchase / the assets in India acquired by him by way of inheritance / legacy/ out of Rupee funds. This is subject to production of documentary evidence in support of acquisition, inheritance or legacy of assets by the remitter, and a tax clearance / no objection certificate from the Income Tax Authority for the remittance. Remittances exceeding US \$ 1,000,000 (US Dollar One million only) in any financial year requires prior permission of the Reserve Bank.

In cases of settlement made by either of his parents or a close relative and the settlement takes effect on the death of the settler, the original deed of settlement and a tax clearance / No objection certificate from the Income-Tax Authority should be produced for the remittance.

Where the remittance is made in more than one instalment, the remittance of all such instalments should be made through the same Authorised Dealer.

**Refund of purchase consideration**

Refund of application / earnest money / purchase consideration made by the house building agencies / seller on account of non-allotment of flat / plot / cancellation of bookings / deals for purchase of residential / commercial property, together with interest, if any (net of income tax payable thereon) can be allowed by the Authorised Dealers by way of credit to NRE/FCNR (B) account, provided the original payment was made out of NRE / FCNR (B) account of the account holder or remittance from outside India through normal banking channels and the Authorised Dealer is satisfied about the bonafides of the transaction.

## **7. REAL ESTATE - DEEDS / AGREEMENTS**

Several transactions affect immovable property in the form of lease, sale, mortgage, partition, construction etc. The various types of agreements/deeds related to immovable property are given hereunder.

- i. Purchase of Flat/house/apartment (commercial/residential)
- ii. Purchase of Land
- iii. Leave and Licence Agreement
- iv. Licence authorizing the licensee to use the part of land of the licensor as way to the house of the licensee
- v. Development Agreement
- vi. Transfer Deed
- vii. Power of Attorney
- viii. Lease of building or office
- ix. Lease of agricultural land
- x. Lease of a furnished house for residential purposes
- xi. Deed of surrender of lease
- xii. Deed of renewal of lease
- xiii. Tripartite lease agreement between lessor, lessee and the guarantor
- xiv. Deed Of Sub-Lease

- xv. Deed For Modification Of The Terms Of The Lease
- xvi. Gift Deed of Property
- xvii. Partition Deed
- xviii. Settlement Deed
- xix. Construction Agreement
- xx. Rent Agreement
- xxi. Sale/ Purchase Agreement
- xxii. Agreement to Sell
- xxiii. Deed of Mortgage of Property
- xxiv. Relinquishment Deed
- xxv. Surrender Deed in Cooperative Housing Society
- xxvi. Simple Mortgage Deed
- xxvii. Reconveyance Deed
- xxviii. Deed Of Mortgage By Conditional Sale
- xxix. Mortgage by deposit of Title deeds
- xxx. Deed Creating Charge On The Property

### **Drafting a document**

The following ten easy and important steps can be followed for drafting a document:

- i. Ascertain a proper title of the document, which aptly describes the nature of transaction in brief.
- ii. Ascertain the parties to the transaction/agreement or the persons executing the document representing the parties. The particulars of identity like father's/husband's name, residential/official address, age, date of incorporation in case of company etc. should also be mentioned.
- iii. Note down the transaction/agreement and the consideration involved.
- iv. State the mode and manner of payment of consideration.
- v. Note down the various terms and conditions of the agreement. These terms actually state the rights and liabilities of each party under the agreement. These terms should be drafted in very clear and precise language. The words used should be unambiguous so that only one meaning/interpretation is possible. It should be ensured that no condition is left out.



- vi. At the end, the document should bear signatures and stamp/seal where necessary of the executing parties. The date and place of execution should also be mentioned.
- vii. Some documents also require to be witnessed by some independent person who is not party to the document.
- viii. Where a document is required to be executed on stamp paper, then the stamp paper should be of prescribed value as applicable in the concerned state.
- ix. If a document is required to be registered, it should be presented for registration before the appropriate authority, within a reasonable time after execution.
- x. Necessary number of copies of the document should also be prepared on stamp paper of appropriate value, if so required.

Some of the principles of good drafting are given hereunder –

- ✓ Prepare an outline.
- ✓ Establish a single principle of division and use that principle to divide the subject matter into major topics.
- ✓ Arrange the items in a logic sequence.
- ✓ Give appropriate headings.
- ✓ Remember the audience in mind when drafting a document.
- ✓ The text should be in clear writing.
- ✓ Use concrete words and be concise.
- ✓ Avoid gender-specific words as far as possible.
- ✓ Write in short sentences.
- ✓ Use proper punctuations.
- ✓ Avoid drafting in the passive voice and use active voice as it is more direct and vigorous than the passive voice.
- ✓ As far as possible put statements in a positive form and make definite assertions.
- ✓ Avoid unnecessary, hesitating and non-committal language.
- ✓ Express co-ordinate ideas in similar form.
- ✓ Keep related words together as the position of words in a sentence is the principal means of showing their relationship.
- ✓ In summaries, keep to one tense, especially the present tense.
- ✓ The emphatic words of a sentence should be placed at the end.

## **8. AUTHORITIES AND ORGANISATIONS RELATED TO THE REAL ESTATE SECTOR**

### **CREDAI ([www.credai.com](http://www.credai.com))**

The Confederation of Real Estate Developers' Associations of India (CREDAI) is the apex body for private real estate developers in India. CREDAI represents over 5,000 developers through 20 member associations across the country. It's numerous initiatives and activities help developers come together and work towards better practices, improved customer service and a stronger realty industry.

### **Indian Institute of Real Estate ([www.iire.co.in](http://www.iire.co.in))**

IIRE is a registered non-profit organisation, championing the cause of the Indian real estate industry. IIRE has evolved into a nationally renowned certifying and accreditation institute, dedicated to enhance the standard of real estate practice in India. IIRE is designed to be an umbrella organisation offering real estate education and related skills, with updates and courses leading to a deeper knowledge on real estate affairs. IIRE offers an online/correspondence certification in Real Estate. It has tied-up with National Association of Realtors, the leading real estate association in USA, to offer real estate certification programs in India.

### **International Consortium of Real Estate Associations ([www.worldproperties.com](http://www.worldproperties.com))**

**The International Consortium of Real Estate Associations (ICREA)**, a Consortium of the world's leading real estate associations, is committed to the right to own and transfer real property. ICREA sets standards for international real estate practice and facilitates worldwide real estate transactions through its website, WorldProperties.com. It is comprised of 30+ leading national real estate organizations representing 2 million brokers/agents worldwide, each of whom adhere to a code of conduct. WorldProperties.com provides benefits to broker/agent members by assisting them in marketing and facilitating business in the global marketplace. WorldProperties.com assists consumers in locating properties outside their country and in finding a qualified real estate professional.

## **9. PROFESSIONAL OPPORTUNITIES IN REAL ESTATE**

Several opportunities are available in the Real Estate Sector.

1. Advising the client in the Purchase or Sale of Land
2. Verification of Title Deed of the Property
3. Choice of Location for Business
4. Drafting of Documents
5. ADR in real estate transactions - Arbitration, Conciliation etc.
6. Taxation and Accounting aspects of real estate transactions
7. Advice on Registration and Stamp Duty on various documents
8. Advisory on developing Special Economic Zones
9. Investment in Real Estate by NRI
10. Investments in Real Estate in India
11. Investing in Real Estate Outside India
12. Internal Audit of Real Estate Company
13. Statutory Audit of Real Estate Company
14. Valuation of Real Estate
15. Brand Value of Real Estate Companies, Agents and Foreign Companies
16. Advise in Mall management
17. Deeds and Documents pertaining to Purchase and Sale of property
18. Mortgages
19. Advising Real Estate Brokers
20. Obtaining Finance for Real Estate
21. Portfolio Strategy
22. Merger and Acquisition Strategy
23. Allocation and Investment Strategies
24. Real Estate/Asset-Type Allocation
25. Assessment of Financial Viability of Real Estate Projects
26. Legal Documentation - Review and Comment

27. Backing clients in sourcing/selling Transfer of Development Rights and preparing an agreement for TDR
28. Service in relation to Direct Taxes and Indirect Taxes
29. Real Estate Venture Capital Investment Negotiations
30. Property Specific Joint Venture agreements
31. FDI Investment Funding
32. Regulation Compliance
33. Real Estate Partnership
34. Real Estate Fund
35. Issues on Green Building concept

#### **10. IMPORTANT WEBSITES AND ADDRESSES**

<http://mhupa.gov.in/index.htm> - Ministry of Housing and Urban Poverty Alleviation, India

<http://www.urbanindia.nic.in> – Ministry of Urban Development, India

[www.credai.com](http://www.credai.com) – The Confederation of Real Estate Developers' Associations of India

<http://www.naredco.in> – National Real Estate Development Council, India

[www.baionline.in](http://www.baionline.in) – Builders' Association of India (BAI)

<http://www.iire.co.in/default.aspx> - India Institute of Real Estate

<http://www.realtor.org/> - National Association of Realtors

[www.apraindia.com](http://www.apraindia.com) – Andhra Pradesh Realtors Association

[www.boma.org](http://www.boma.org) - Building Owners and Managers Association International

[www.naiop.org](http://www.naiop.org) - National Association of Industrial and Office Properties

[www.igbc.in/](http://www.igbc.in/) - Indian Green Building Council

[www.icsc.org](http://www.icsc.org) - International Council of Shopping Centres

[www.naea.co.uk](http://www.naea.co.uk) - National Association of Estate Agents

[www.europe-re.com](http://www.europe-re.com) – Europe Real Estate

<http://www.irem.org> – Institute of Real Estate Management

[www.realtor.org](http://www.realtor.org) - National Association of Realtors (America)

