

AN OVERVIEW: REAL ESTATE AND APPLICABLE LAWS

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Abstract:

Everybody needs Shelter and/or House. Bread (Roti), Clothing (Kapda) and Shelter/House (Makaan) are the natural and very basic needs of every human being. Real Estate sector and/or Construction Industry represent this third basic need. Indian Real estate sector is one of the most thriving industries of the present times. And if industry experts are to be believed, the prospects of Indian property market is going to attract all major investors to this vast land of opportunities in coming years thereby giving a boost to already raising foreign direct investment. Sector - the second largest employer after agriculture in India. Various laws are involved in the real estate transaction. Various laws are applicable to the real estate sector but Author has considered Central Laws and State laws which play key role in the real estate sector.

KEYWORDS: Real Estate and Applicable Laws , Economic Capital.

I. INTRODUCTION:

The term 'real estate' is defined as land, including the air above it and the ground below it, and any buildings or structures on it¹. *Real estate* is "property consisting of land and the buildings on it, along with its natural resources such as crops, minerals, or water; immovable property of this nature; an interest vested in this (also) an item of *real* property; (more generally) buildings or housing in general.² It is also referred to as realty. It covers residential housing, commercial offices, trading spaces such as theatres, hotels and restaurants, retail outlets, industrial buildings such as factories and government buildings. The Real estate involves the purchase, sale, and development of land, residential and non-residential buildings. Laws applicable to Real Estate Business can be divided in five groups: Land Related Laws, Environment Laws, Construction Laws, Registration Laws, and Labor Laws. People invest their life-time savings in buying a house for them so Real Estate laws demands strict compliance to save the interest, money and life of the people. Construction Industry has to follow the related laws sincerely Central or State, as the case may be. Herewith Author will deal this important subject, concept and applicable laws.

¹ Business Dictionary.com

² Wikipedia.org

II. REAL ESTATE AND THE CONSTRUCTION INDUSTRY:

The real estate sector in India especially in Mumbai has assumed growing importance with the liberalization of the economy. Mumbai is the capital city of Maharashtra and also an economic capital of India. The *construction industry* is the second largest *industry in India* after agriculture. It accounts for about 11% of *India* as GDP³. The construction industry is set to create more and more housing stock to provide the same to the ultimate users in Mumbai on ownership basis. Residential real estate India's demographics have been impacted by large increases in employment opportunities, people in the earning age bracket (25 to 44 year olds) and higher salaries. Such factors are increasing disposable incomes and driving demand for new residential and retail properties. Over the past five years, locations such as Bangalore, Gurgaon, Hyderabad, Chennai, Kolkata and Pune have established themselves as emerging business destinations that are competing with traditional business destinations such as Mumbai and Delhi, especially with respect to their commercial real estate sector. These emerging destinations have succeeded in matching their human resources base with necessary skill sets, competitive business environments, operating cost advantages and improved urban infrastructure. India has displaced US as the second-most favored destination for FDI in the world. The positive outlook of Indian government is the key factor behind the sudden rise of the Indian Real Estate.

The main players in the real estate market are the landlords, developers, builders, real estate agents, tenants, buyers etc. The activities of the real estate sector encompass the housing and construction sectors also. Considerable construction activity is carried on in India by individuals and corporate. Public Financial Institutions have come forward to provide very substantial financial assistance in shape of bridge loans and construction loans to Builders and Developers and Home loans to flat Purchasers. This financial output has given entirely a new dimension to the construction industry in Mumbai. Construction Law ensure planned development and safe building fit for human habitations by providing Master Plan, Zonal Plan, Building Plan, fire safety, electricity, water supply, sewage/drainage Author shall attempt to give only a bird's eye view of the above topics and in the process deal with some important issues of topical interest. The growth curve of Indian economy is at an all time high and contributing to the upswing is the real estate sector in particular. Investments in Indian real estate have been strongly taking up over other options for domestic as well as foreign investors. As mentioned supra, various laws are involved in the real estate transaction and the Government of India has taken positive initiatives by offering the best in terms of real estate investment, by altering its policies from time to time. With better infrastructure and availability of world class facilities, property in Indian prominent.

III. CENTRAL LAWS

3.1 TRANSFER OF PROPERTY ACT, 1972:

This is a property law. The Transfer of Property Act governs the transfer of property by various means. Sales, mortgages (other than by way of deposit of title deeds) and exchanges of immovable property are required to be registered by virtue of the Transfer of Property Act. Therefore, all the above documents must be in writing and registered. **Five** different ways by which property can be transferred in India: Sale, Mortgage, Lease, Exchange, Gift⁴. The transaction can be affect by written document that may either be transferring an interest or

³ www.indianconstructionindustry.com/overview

⁴ Indian Transfer of Property Act, 1872

transfer the whole interest that is property in whole to the transferee. Transferee is the person in who's favor the interest is created and transferor is the person who is transferring the interest. These documents are required to a valid contract in the eyes of law and thus satisfy the provision of contract Act. By virtue of the Contract Act⁵ and Section 10 in this regard, the agreement to enforce as a contract is required to be between the parties who are competent to contract as mentioned above.

3.2 INDIAN CONTRACT ACT, 1872:

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

3.3 INDIAN REGISTRATION ACT, 1908:

The purpose of this Act is the conservation of evidence, assurances, title, and publication of documents and prevention of fraud. It details the formalities for registering an instrument. Sales, mortgages (other than by way of deposit of title deeds) and exchanges of immovable property are required to be registered by virtue of the Transfer of Property Act. Section 17 of the Act provides for optional registration. An unregistered document will not affect the property comprised in it, nor be received as evidence of any transaction affecting such property (except as evidence of a contract in a suit for specific performance or as evidence of part performance under the Transfer of Property Act or as collateral), unless it has been registered.

3.4 SPECIFIC RELIEF ACT, 1963:

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

3.5 LAND ACQUISITION ACT, 1984:

This is land law. Land Acquisition" literally means acquiring of land for some public purpose by government/government agency, as authorized by the law, from the individual landowner(s) after paying a government fixed compensation in lieu of losses incurred by land owner(s) due to surrendering of his/their land to the concerned government agency. The land acquisition act of 1894 was created with the expressed purpose of facilitating the government's acquisition of privately held land for public purposes. The word "public purpose", as defined in the act, refers to the acquisition of land for putting up educational institutions or schemes such as housing, health or slum clearance, apart from the projects for rural planning or formation of sites.

⁵ Indian Contract Act,1872

The word "government" refers to the central government if the purpose for acquisition is for the union and for all other purposes it refers to the state government. It is not necessary that all the acquisition has to be initiated by the government alone. Local authorities, societies registered under the societies registration act, 1860 and co-operative societies established under the co-operative societies act can also acquire the land for developmental activities through the government.

3.6 URBAN LAND (CEILING AND REGULATIONS) ACT, 1976:

This is also land law, dealing with the Urban Land Ceiling & Regulation Act (ULC & R Act)⁶ it must be noted that this retrograde piece of legislation was rushed through the parliament at the height of emergency to sub serve the political objectives of the then Central Government. It took in its sweep all the urban areas in the country impeding development of lands in excess of Ceiling. It was clearly a piece of legislation which had no rationale. It must be admitted that the Act has created more problems than solving any and pushed up enormously the real estate prices; the entire development work in any urban area in the Country was subject to the rigours of the ULC & R Act and no property in excess of ceiling area could be developed. These schemes encouraged corruption on scale which was unknown prior to 1976. It was realized by the Central Government that the Act had completely failed to fulfill any of its objective and had rather encouraged corruption and hiked the real estate prices. . The Act has since been abolished in almost the entire Country except in Maharashtra and West Bengal. In Maharashtra the Act is very much there in Mumbai / Pune / Thane / Nasik and continues to impede the development of these cities. The Central Government has impressed upon the State Government the desirability of abrogating the Act even from these cities and the Central Government is bringing various pressures on the State Government including by denying certain development funds to induce State Government to remove the Act. Mumbai City is the financial capital of the Country and if its growth is stunted by such unimaginable and unimplementable Act then there is no future whatsoever for the City to come to the level of international standards required of a financial hub. If the ULC & R Act is removed it will not only smoothen the growth of the City but will remove one very great cess pool of corruption.

IV. STATE LAWS

4.1 MAHARASHTRA OWNERSHIP FLATS ACT⁷:

Every State has its own law on Stamp Duty, Municipal Tax, and Rental laws but herewith Author has thrown light on the Laws applicable to State of Maharashtra. The construction activities of the Builders and Developers in Maharashtra are regulated by the Maharashtra Ownership Flats Act, 1963. The full title of the Act is "The Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963". The Act has very wide amplitude and imposes various responsibilities on the Builders/Developers which they may ignore to discharge only under the threat of penal proceedings including imprisonment. The Builders / Developers were found to indulge in unbusiness like and unethical activities which compelled the Legislature to step in and enact the Maharashtra Ownership Act.

⁶ Urban Land Ceiling & Regulation Act, 1976

⁷ The Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963.

The Act has been amended on quite a few occasions to plug some loopholes which came to light in course of its administration. However, in the interest of consumers and for controlling the activities of the Developers (which may be harmful to the consumer interest) there is considerable need for widening the scope of the Act and making more stringent provisions therein. This aspect will have to be considered by the Government on the consumer becoming more and more aware of his rights. In spite of such mandatory provisions there have been many instances where Promoters have for decades avoided executing Conveyances and therefore the legislature is now stepping in. A Bill No. 73 of 2005 on the subject is already passed by the Maharashtra Legislative Assembly and is pending before the Maharashtra Legislative Council. Under the Bill it is provided that if the Promoter fails to make application within the prescribed period to the Registrar for registration of the Society as per provisions made in the Maharashtra Co-operative Societies Act then on receipt of the application from the persons who have purchased tenements from the Promoter in question the Officer appointed for the purpose viz. the Competent Authority shall direct the concerned Registrar to register the Society and it shall be the duty of the Promoter to produce before such competent authority in the prescribed time limit copy of the conveyance deed and if the Promoter fails to execute the Conveyance Deed in the prescribed time limit in favour of such Co-operative Society or as the case may be the Company, such Society / Company shall be provided by the Competent Authority with certificate that they have right of one party Conveyance Deed executed in their name and have right of registration and accordingly on receipt of an application so made by the certificate holder society the Registrar shall execute a deemed conveyance.

4.2 MAHARASHTRA APARTMENT OWNERSHIP ACT:

As a supplemental to the **Maharashtra Ownership Flats Act** there is another enactment called **Maharashtra Apartment Ownership Act**⁸ under which a Promoter may instead of conveying the Property to a Co-operative Society or a Limited Company of the flat Purchasers he may submit the Property i.e. land and building to the provisions of the Maharashtra Apartment Ownership Act and thereafter convey each unit separately to its Purchaser by executing a Deed of Apartment. Under the Apartments Ownership Act the term 'Apartment' has the similar definition as given to the term 'flat' in the Maharashtra Ownership Flats Act. The Apartment Act deals with the post construction period in respect of the building especially for conveying of title while the Ownership Flats Act deals with the obligations of the Promoter and rights of the flat Purchasers while the building is under construction.

4.3 DEVELOPMENT CONTROL REGULATION⁹ AND TDR

I shall now deal with the concept of TDR, TDR means Transfer of Development Rights [i.e. Floor Space Index (FSI)] and such rights are available only in respect of Properties which are under public / specific reservations. The development activities in all Cities. Towns and specified areas in the State are governed by the provisions of the Development Control Regulations separately made for each district / town/ specified area by the local authority and approved by the Government. For each district / town/specified area development plans are prepared as per the requirements of the Regional and Town Planning Act¹⁰. In such

⁸ Maharashtra Apartment Ownership Act, 1970

⁹ Mumbai Development Control Regulation, 1991

¹⁰ Maharashtra Regional and Town Planning Act, 1966

development plans several lands/properties are earmarked for reservation for public purposes such as schools, hospitals, gardens, recreation grounds, roads etc. These lands / properties cannot be taken over by the Municipal Corporation or the local authority free of charge. Payment of compensation for such reserved areas in City like Mumbai will run into hundreds of cores of rupees and it would not be possible for the government or the local authority to pay such large amounts to the land owners whose hands are under reservation. The Development Control Regulations have therefore evolved a new concept whereby the development potential (i.e. FSI) of land under reservation is separated from such land and is allowed to be utilized on other properties. This separation of the development potential for use on other properties is called Transfer of Development Rights (TDR). The Owner of the land under reservations is thus compensated by grant of Transfer of Development Rights. In respect of such TDR, Certificates called Development Rights Certificates (DRCs) are issued. Such Certificates are transferable like negotiable instruments and for consideration. The holder of such Development Rights Certificate would be entitled to utilize on other properties the development potential of such land under reservation i.e. FSI (which is expressed on the certificate in terms of sq.mtrs/ sq.ft area). The person holding the DRC would thus get monetary consideration for transferring and/or allowing the potential (Floor Space Index) of such DRC to be utilized on other properties.

4.4 SLUM REDEVELOPMENT SCHEME¹¹:

Author shall now briefly deal with the Slum Redevelopment Scheme. There has been proliferation of slums in almost all open spaces in the City which have become not only eye sores but have become breeding ground for anti social elements and anti social activities. The Slums have come up under the benevolent umbrella of the State Government and the Politicians. Slums provide large vote banks to the Politicians. Slums impede the planned growth of the City. The Government has no resources to remove the slums and rehabilitate the slum dwellers in new buildings. The Government has therefore taken assistance and help from the private Developers and Builders. Specific provisions are made in the Development Control Regulations whereby private Developers are given permission to carry out redevelopment work in respect of the slum areas.

4.5 MUNICIPAL PROPERTY TAXES:

The next question is regarding property taxation. The Municipal Corporation or other local bodies are entitled to recover property taxes which are otherwise called municipal rates and taxes from the buildings constructed in the City / Towns¹². The property taxes are levied on the basis of ratable values fixed on the basis of the market value of the Property and also on the basis of the rental returns which the property owners get from the Property. Municipal taxes in respect of the new buildings are very heavy compared to the municipal taxes in respect of old buildings. In this respect there is an argument which states that the municipal services are available to all the buildings in an area on the same basis whether the building is new or old then why should the Owner of a new building pay higher taxes than the taxes paid by the Owners of old building. The State Government is also not able to take a final decision on this issue for variety of reasons including political. As regards levy of municipal rates and taxes on Property the present basis is

¹¹ The Maharashtra Slum Area (Improvement, Clearance & Redevelopment) Act, 1971

¹² Mumbai Municipal corporation Act, 1949

the ratable value basis. The Assessor and Collector propose ratable value of Properties every year for levy of taxes.

4.6 STAMP ACT:

A receipt from the levy of stamp duty is a very major source of revenue to the State Government and Central Govt, as the case may be. In Mumbai Levy of stamp duty is governed by the provisions of the Bombay Stamp Act,¹³. Stamp duty is payable on instruments i.e. documents. In respect of immovable property deals (except mortgages and to an extent the Leave and License Agreements) the stamp duty is payable on the basis of the Market value of the Property at different rates depending upon the nature of the deal i.e. sale, lease, release etc. The State Government at the beginning of each calendar year fixes market value of all properties in an area and the market value so fixed is to be accepted as the basis for calculating stamp duty in respect of an Instrument i.e. document by virtue of which the property is dealt with. The mechanism of fixation market value of the property every year is such that the increase in market value exceeds not only the rate of yearly inflation but the market value so fixed has no relation to the real value of the Property. The method of determining market value has turned the stamp office as a veritable cess pool of corruption and encouraged ‘agent’ system in the stamp office.

4.7 RENT CONTROL ACT:

Rent legislation in India has been in existence for a very long time. Rent control by the government initially came as a temporary measure to protect the exploitation of tenants by landlords after the Second World War. However these rent control acts became almost a permanent feature. Rent legislation provides payment of fair rent to landlords and protection of tenants against eviction. Besides, it effectively allows the tenant to alienate rented property. All transactions in Indian real estate sector are governed by various laws enacted by the Central Government of India and respective State governments. One such law is the Rental Laws. These laws govern the rental of commercial and residential property and are necessary to enforce individual civil rights of both landlord and tenant and prevention of any kind of deceit.

V. OTHER CENTRAL AND STATE LAWS:

5.1 LABOUR LAWS

Both Central and State has a laws on this point. Labour laws applicable to real estate, Building and other construction workers’ (regulation of employment and conditions of service) act, 1996 & Rules OF 1998 (workers safety, health & Welfare measures including necessary amenities), Building and other construction workers’ welfare cess act,1996 (Cess Payment on cost of construction for workers welfare), The Contract Labour (Regulation and Abolition) Act, 1970 regulate employments of contract labours & provide necessary amenities), The Payment of Wages Act, 1936 (payment of wage in time), The Minimum Wages Act, 1948 (minimum wage rate fixed by govt. to be paid), Employees State Insurance Act 1948 (scheme of health insurance for workers in case of sickness & injury)

¹³ Bombay Stamp Act, 1958

5.2 ENVIRONMENT LAWS:

Environment Laws are to protect the environment from pollution due to development & construction activities & to restrict construction in prohibited area Environment laws applicable are Environment Protection Act, (Environment Clearance) 1986, Water (Prevention and Control of Pollution) Act, 1947, The air (prevention and Control of Pollution) Act, 1981.

VI. THE REAL ESTATE BILL:

The ministry of housing and urban poverty alleviation has unveiled the model real estate (Regulation of development) Act on September 23, 2009. In order to promote planned and healthy real estate development of colonies and apartments with a view to protecting consumer interest on the one hand and to facilitate smooth and speedy urban construction on the other; Ministry of Housing & Urban Poverty Alleviation has drafted a draft Model Real Estate (Regulation of Development) Act. The draft bill seeks to establish a Regulatory Authority and an Appellate Tribunal to regulate, control and promote planned and healthy development and construction, sale, transfer and management of colonies, residential buildings, apartments and other similar properties, and to host and maintain a website containing all project details, with a view to protecting, on the one hand the public interest in relation to the conduct and integrity of promoters and other persons engaged in the development of such colonies and to facilitating on the other the smooth and speedy construction and maintenance of such colonies, residential buildings, apartments and properties and for matters connected therewith or incidental thereto. The Real Estate (Regulation and Development) Bill has been proposed in the Parliament which is aimed to address some of the issue faced by the urban real estate development and consolidated law on real estate and aims to establish a Real Estate Regulatory and establish appellate tribunal to hear disputes and appeals from order passed by the Real Estate Regulatory Authority. This Bill is aimed to promote a well planned urban real estate development with a view to protect the consumer interest who invests in real estate and helped in planned development.

VII. CONCLUSION:

As mentioned supra, Indian Real estate sector is one of the most thriving industries of the present times. And if industry experts are to be believed, the prospects of Indian property market is going to attract all major investors to this vast land of opportunities in coming years thereby giving a boost to already raising foreign direct investment. The Indian real estate sector promises to be a lucrative destination for foreign investors into the country especially in Mumbai. The Indian and Mumbai realty sector, if channelized properly, could catapult the growth of several other sectors in India through its backward and forward linkages. Various laws are involved in the real estate transaction. In end it can be said that the real estate in India governed by largely elaborate structure of laws and policies and the above mentioned are some of laws that are operating in the real estate field. Everybody needs Shelter and/or Home. People invest their life-time savings in buying a house for them so Real Estate laws demands strict compliance to save the interest, money and life of the people. Construction Industry has to follow the related laws sincerely Central or State, as the case may be. Herewith Author will deal this important subject, concept and applicable laws.



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Author has experience in appearing, arguing, representing State and working in various civil and criminal courts since 1991 as an Advocate, Public Prosecutor, Civil Judge and Judicial Magistrate, also deeply studied all organs of the Criminal Justice System (CJS) i.e. Police, Prosecution, Judiciary and Prison system. Also, the Author has been working as a Corporate (Legal) Consultant in real estate sector in Mumbai. Since 2009 the Author also has been working in corporate sector in Real Estate division Mumbai (Maharashtra). The Author is also pursuing RESEARCH work on the subject “**Criminal Justice System and the Prosecution**” in the North Maharashtra University of Maharashtra, India.