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"A GROUND DIVIDED: NAVIGATING LAND DISPUTES AND PATHWAYS TO RESOLUTION"

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ABSTRACT

LAND DISPUTES HAVE BECOME A MAJOR PROBLEM IN OUR SOCIETY. An estimated 7.7 million people in **India** are affected by conflict over 2.5 million hectares of land, threatening investments worth \$ 200 billion.¹ **Land disputes** clog all levels of courts in **India**, and account for the largest set of cases in terms of both absolute numbers and judicial pendency.¹ India's ambitious development agenda involves facilitating investment for economic growth, infrastructure development, and social progress. Yet, thousands of investment projects have been stalled to date, raising red flags for the health of the country's financial Findings November 2016 •² Analysts have seriously underestimated the role that land-related conflicts play in stalling investment projects, and the magnitude of the cost imposed by these conflicts on the Indian economy and society. regulatory systems, public sector banks, and investment community. While official reasons given for stalled projects remain opaque, deep contestation leading to conflict on public (and private) lands must be better understood as a substantive risk to investments. An improved understanding of the actual causes of stalled projects will not only help investors, financial institutions and regulators make better decisions, but also inform public policies regarding communities' property rights and provide a path to more inclusive development. • Out of 80 high-value stalled projects, more than a quarter (21 projects) are stalled due to land disputes. • The total investment at risk in these 21 projects is Rs.1,92,620 crores (Rs.1,926.2 billion). This is 300 percent more than estimates provided in the Capex database.³ Because of all these reasons the burden on judiciary regarding the property dispute has been increased during the past few decades. In this article we will be dealing with the major and most common forms of land disputes and frauds and the basic and legal solutions to deal with it precisely these things are important for all of the common men as well as legal practitioners to know to basically reduce the burden on the judiciary regarding the land disputes

¹ cprindia.org/understanding-land-conflict-in-india-and-suggestions/

² <https://www.casemine.com/>

³ [Land-Disputes-and-Stalled-Investments-in-India_November-2016.pdf](#)

and Not wasting The precious time that could be used in all of the other major important things in the life in short term it is known as opportunity cost.⁴time wasted in litigation can be utilized in somewhere productive ⁵.By keeping all these things in mind, some common cure can be taken that could save person from unnecessary headache and understand the nuances of property matters very easily.

Keywords-Registration, Registry, Power of attorney, Mutation, fraud, sub registrar office, stamp paper, stamp duty

INTRODUCTION

In India purchasing a property is quite a tiresome task. But in majority of India the process of buying a property remains same. First of all if a buyer wants to purchase a property then both the parties will check the id proofs of each other. Second step is to give token money to the seller.⁶This token money can be signed on a stamp paper or on any paper on which a stamp ticket is pasted. A majority of India took on money is given without taking this stamp paper legality in mind and that is why minor dispute can arise for example seller can refuse that he has received any money from the buyer. Then agreement is made between both the parties and this agreement is a legal binding agreement depending upon the registration that is done by the both the parties. After this agreement usually both the parties fix a time for the registration of the property that means the transfer of the title deed. Title over a property can be achieved by various sources. For example by buying the property over by getting a will and from other sources all of this we will be dealing in this article in upcoming pages.

Buying of property

ID proof-For any property transaction in India, the buyer and the seller must provide valid identity and address proof. This can include government-issued documents such as Aadhar cards, voter ID cards, passports, or driving licenses.⁸Documents to be checked by the buyer beforehand are

⁴ Rakesh Agarwal(legal heirs of late shri rs Agarwal)vsassistant commissioner of income tax.

⁵ Haryana power purchase center review vs Sasan power limited and others.

⁶ Token money is a small amount of money paid by a buyer to a seller as a sign of good faith and intent to purchase a property. It is also known as earnest money or booking amount. Token money is usually paid at the beginning of the property transaction process, even before a formal sale agreement is signed.

⁷ [Token Money and Property Agreements Explained! - Real Estate Sector Latest News, Updates & Insights - PropertyPistol Blog](#)

⁸ [housing.com/news/documents-required-to-buy-a-property-in-india/](#)

1. All original registry copies
2. Id proof, for example Aadhar card, pan card.
3. NOC certificate
4. Fresh fard, jamabandi
5. ID proof of witness.

AGREEMENT-In some parts of India, the buyer pays a sum of money to the seller for entering into a sale agreement. This token or earnest amount is known as Bayana. It is an understanding between the two parties, also known as the Bayana Agreement.⁹As we know A Sale Agreement constitutes all the terms and conditions of the sale of a property (movable or immovable) to the buyer. Under the Indian Registration Act, 1908, an agreement for the transfer of rights of immovable property of value more than Rs. 100/-, is **required to be registered**.¹⁰

TITLE DOCUMENT- It is a general rule in property law that a person can transfer only that title which he is already having. Mostly title can be transferred by 3 ways. sale deed¹¹, gift deed¹², and conveyance deed.¹³ Conveyance deed is basically made In cases where you buy property from Municipal Corporation.

GENERAL POWER OF ATTORNEY- The biggest mistake that people make in India during buying any property is buying property by power of attorney. In local language it is also known as Aam Muktiya Namah. This is the biggest mistake that could be made by the buyer because in the eyes of law any transfer of title by the use of power of attorney is not at all maintainable. It is very temporary kind of transfer and cannot be regarded as a proper registered transfer.

Supreme Court in its Landmark judgment has cleared that transfer of property by any power of attorney is not maintainable in the eyes of law. If sale deed is not registered or gift deed is not

⁹ [What is Bayana agreement: Bayana token money explained](#)

¹⁰ Registration act 1908 section 17.

¹¹ [A sale deed is a legal document that facilitates the transfer of ownership rights in a property from the seller \(vendor\) to the buyer \(vendee\). It serves as conclusive evidence of the sale and outlines essential details such as the property description, sale consideration, and the rights and obligations of both parties involved in the transaction. The sale deed is typically executed on non-judicial stamp paper and must be registered to be legally valid.](#)

¹² A gift deed is a legal document that describes voluntary transfer of gift from the donor (owner of property) to donee (receiver of gift) without any monetary favor in return.

¹³ Conveyance refers to the act of transferring the title, ownership, rights and interests in a property from one person to another.

registered then in the eyes of law it is null and void. It is also an offense and illegal.¹⁴ People do these type of mistake To save money that is to be imposed when the time of registration. Generally stamp duty charges are imposed and registration fees is imposed. In Punjab Stamp duty charges for male Is 7% and for female it is 5%.¹⁵ Stamp duty is a mandatory fee imposed by the state government when transferring ownership of a property to another individual. It is charged on the registration documents required for property registration.¹⁶

LAND REGISTRY EXPENSES CALCULATION

If you buy property in India which costs more than ₹100, Property registration is mandatory. Property registration is required wherever the sale and purchase of immovable property is involved. If a property is not registered in the buyer's name in the government records, They will not be the official owner of the property and they cannot challenge it in court in any dispute.¹⁷ It is also mandatory to pay stamp duty on property documents which are to be registered.¹⁸

CALCULATION OF STAMP DUTY

Stamp duty is calculated based on property's market rate or circle rate as the case may be and it varies from one state to another. In simple language circle rate is the rate of property that is decided by the state government per square foot. It may vary based on locality, Property type and other factors.¹⁹ Market rate of a property is the normal rate that is prevalent in that locality on the basis of the demand of the property by general population it can be less than circle rate or also can be more than circle rate.²⁰ in majority of the cases circle rate is less than the market rate But it is not always necessary. That's why people usually make agreement and mention the circle rate of the property because in usual cases circle rate is less. For example suppose the circle rate of a property is ₹10,00,000 and the market rate is ₹20,00,000. So in usual cases people mention circle rate that is ₹10,00,000 in the agreement and then the required percent of stamp duty is to be given on the value that is written in the agreement. But remember if the

¹⁴ In Suraj Lamp & Industries (P) Ltd. v. State of Haryana (Suraj Lamp I), a two-Judge Bench of the Supreme Court declared "power of attorney" sales to be an invalid mode of property transfer. <https://www.scconline.com/blog/post/2023/07/29/suraj-lamp-industries-p-ltd-ii-v-state-of-haryana-lacking-in-law-a-case-comment/>

¹⁵ [Stamp Duty Calculator | Estimate Rates and Registration Charges Online](#)

¹⁶ The payment of stamp duty is a legal requirement under section 3 of the Indian Stamp Act 1899.

¹⁷ SECTION 17 OF REGISTRATION ACT 1908

¹⁸ Indian stamp act, 1889.

¹⁹ <https://property.todaypricerates.com/circle-rate-market-value-for-registration#>:

²⁰ [A Complete Guide on How to Calculate Valuation of Property](#)

market rate is less than the circle rate then although you are mentioning market rate in the agreement still the stamp duty will be imposed on the circle rate only. For instance suppose circle rate is ₹10,00,000 but market rate is ₹8,00,000, Then in this situation you cannot plea To give required percentage of stamp duty on ₹8,00,000. ₹8,00,000 are less than ₹10,00,000 that's why required percentage of stamp duty is to be given on 10,00,000 rupees.²¹²² Stamp duty charges are generally five to 7 percent of the property's value And registration charges are usually one percent of the property's value.

ENCUMBRANCE CERTIFICATE

Encumbrance certificate is used as a proof of free title/ ownership of a property. It is required when buying or selling a property or when applying for a home loan or loan against property to verify that the concerned property is free of any monetary or legal liabilities. You can avail Encumbrance certificate by visiting the respective sub registrar's office. This certificate could be very useful to check whether the property is on any type of mortgage or not and whether any third party right Has been created over the property or not.²³ To obtain EC, you need to submit **Form No. 22 (application for EC)**. You have to affix Rs 2 non-judicial stamp on the **application**. You need to provide complete residential address and the purpose for which the certificate is required.²⁴ But there is slight limitation of encumbrance certificate and that is if for example loan is taken by any person over a immovable property worth more than ₹100 and registration of that mortgage is not done then This will not be seen in encumbrance certificate. But as we know the law states that Registration of immovable property worth more than ₹100 is mandatory.²⁵²⁶

OCCUPANCY CERTIFICATE

Occupancy certificate generally certifies that a building is ready to be used For the purpose it is made for.²⁷ Suppose you have purchased a flat from a very renowned builder. For a builder

²¹ if a property's sale value is less than the circle rate, the stamp duty applies to the circle rate to prevent undervaluation. If the property's sale value is above the circle rate, the stamp duty applies to the transaction value to combat tax evasion and foster transparency in the sale.

²² www.herofincorp.com/blog/circle-rate-and-market-rate

²³ [Encumbrance Certificate 2025 - EC Search in Home Loan](#)

²⁴ www.relakhs.com/encumbrance-certificate-property-ec/

²⁵ Section 49 of the registration act 1908 states that no document required to be registered under section 17 of this act shall be valid for creation operation declaration limitation and assignment of any right title or interest in any immovable property unless it is registered within the specified time..

²⁶ Mannulal vs Ramdayal & Anr. on 5 October, 2017

²⁷ [Certificate Of Occupancy: What Is It? Do I Need One? | Bankrate](#)

to construct a building first of all he has to search the land then purchase it then he will be applying to the respective municipal corporation or Nagar Nigam for approval of the map then pay the necessary taxes and then at last the government will issue occupancy certificate for that building. In some cases builders don't comply with the necessary rules and regulations made by the government regarding the formation of buildings that is why government does not issue the occupancy certificate.²⁸ It could create problems for flat owner in future.²⁹ In the absence of the **occupancy certificate**, individual flat owners were not eligible for electricity and water³⁰.

MUTATION LETTER

Mutation letter is also known as JamaBandi, Dakhil E kharij, fard etc It is a document prepared as part of record-of-right in every revenue estate. It contains entries regarding Ownership, cultivation and up-to-date of various rights in land. It is revised every five years when a Jamabandi is prepared by Patwari and attested by Revenue Officer. Two copies of revised Jamabandi are prepared. One copy is consigned to the District Record Room and other copy remains with Patwari for the currency of the Settlement, presumption of truth is attached to the entries in the Jamabandi³¹. All changes of rights in land coming to the notice of the Revenue Agency are reflected in the Jamabandi according to a set procedure after these have been verified by Revenue Officer.³² The Mutation entry in revenue record means a significant,, Substitution of the name of a person by name of another person in relation to property in regard showing right or title to that property.³³

CONCLUSION

From fake listings to the title Of property Till Mutation and after that also There are so many steps on which property fraud can happen. By having slight awareness regarding all these matters will be very helpful for the reader to tackle the property matters carefully. It is a well known principle that mistake as to law is no mistake, This principle is also followed in property laws.³⁴ Property fraud in India is widespread but avoidable with careful research, legal help, and technology tools. Key preventive measures include checking land records, engaging legal

²⁸ Pioneer urban land and infrastructure limited vs Govindan Raghavan.

²⁹ [occupancy certificate | Indian Case Law | Law | Case Mine](#)

³⁰ Samruddhi co-operative housing society limited vs Mumbai Mahalaxmi construction pvt.ltd.

³¹ section 44 of Punjab Land Revenue Act, 1887.

³² <https://jamabandi.nic.in/punjab>

³³ Narayan Atmaram Bhoir And Ors vs The Tahsildar, Thane Division, Thane ... on 17 July, 2018

³⁴ Muthammal vs Thangam on 5 October, 2018

experts, verifying ownership, and avoiding cash deals. If fraud happens, act fast, file a police complaint³⁵, preserve all documents. Starting from ordering the lodging of FIRs in cases pertaining to fraud in real estate to awarding compensation^{36 37} on time for land acquired and delays in projects, these verdicts gave buyers reason to believe that there is a playing field for all concerned. As with increased regulation³⁸, this industry is getting to be very consumer-oriented.³⁹



³⁵ Lalita Kumari v. Government of Uttar Pradesh (2013) The Lalita Kumari judgment gave strong legal support to consumers in case of fraud in the real estate sector, wherein the police had to act immediately without leaving any discretion. This has brought positive impact due to the consumer confidence while investing in the real estate, especially the projects which are under construction or pre-launch.

³⁶ K.K. Verma v. Union of India (2007) The compensation payable for land acquisition should be just and fair.

³⁷ M/s. Satyam Shivam Sundaram v. State of U.P. (2013) Buyers are entitled to get compensation in case of delayed possession.

³⁸ RERA 2016 remains a milestone for Indian real estate. Not precisely a judgment, in fact, the constitutional framework of RERA was alright from the Supreme Court itself and was cast into real estate law. Forcing real estate developers to register themselves under the authority for the particular projects they would develop, so as to make it a point that there is much more accountability and transparency. It essentially kept the consumers fully informed about project timelines, delays, and regulatory approvals, besides providing a platform for grievance redressal to the homebuyer

³⁹ Bangalore Development Authority v. R. Vasudeva (2006)

Principle laid down: "It should be fair play and transparent as far as the allotment of property is concerned by those at the helm of affairs".