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With this thought, we hereby present to you

W H I T E B L A C K
L E G A L

LEGAL REFORMATION OF REAL ESTATE SECTOR IN INDIA

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DECLARATION

I, Nikhil Bachani pursuing BBA L.L.B.(H) from Amity Law School, Amity University Uttar Pradesh, do hereby declare that the Dissertation Report submitted by me of my NTCC is an original work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise, to the best of my knowledge.

I have quoted all case analysis that have been witnessed by me during my internship. I have not submitted anything that comes under the confidentiality clause of my Industry Guide. I have not infringed any copyrights.

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Introduction

The real estate market across the world is based upon market sentiments which act as an indicator to recognise the expectation of investor from the real estate market. The growth of realty sector stimulates a positive energy in the market which triggers the growth of the economy of the nation. The increasing focus on the infrastructure requirement reflects through the serious concerns of Indian government towards ensuring protective environment for the investor in real estate business.

Variety of laws governs real estate sector in India to assure effective protection of the rights of the buyers without affecting the interests of the developers and balancing the level playing in the real estate market. Therefore, the Indian realty has experienced various legal reforms and has undergone a regime of variety of laws but there was always a concern over the professionalism in the real estate business along with a continuous ¹desire for standardisation of real estate transaction.

The dilemma for the Government of India has always been for deciding on the preference between maintaining the integrity of the secret business strategies and establishing a transparent market. Finally, with the introduction of dedicated law in the form of Real Estate (Regulatory and Development) Act 2016 (hereinafter referred as RERA), the Government of India preferred transparent business environment over private information. It becomes equally vital to analyse the effect of developing legal framework especially after the declaration of noteworthy scheme of 'Pradhan Mandri Awas Yojna' (hereinafter referred as PMAY) towards the aspiration of Housing for ALL.

Therefore, the researcher in this chapter attempts to analyse various laws governing Indian realty sector along with decoding the recent legal reform which transformed the realty sector in India. The researcher tries to explore the role of legislative development in enhancing the real estate market in India through examining the essential factors involve in real estate transaction and significant provisions of RERA. The chapter also highlights various judicial pronouncements that shaped the growth of Indian real estate market.

¹ Rajkumar Adukia, REAL ESTATE-LAW, PRACTICE AND PROCEDURE, 3rd ed. 2013, pp. 2-15.

3.2. Essential Elements of Real Estate Transactions

The real estate transaction involves various procedures related to activities such as purchase, sale, mortgage, or lease of the real estate property. The procedure includes execution of an agreement between two parties for trading in such property based on its nature of utility and transfer of ownership. It also involves analysis of the aspect of risk involved in such transactions. The real estate transactions are by and large draggy and complex. Therefore, the requirement for comprehensive legal analysis is crucial in perceiving the role of various associated components.

The analysis requires due consideration of the significant ²elements of real estate transactions for effective assessment of affairs related to real estate property such as examining the title documents and its utility, ensuring legitimacy of construction and development, easement, and responsibilities, etc. Therefore, the assessment involves detail evaluation of the factors having potential to persuade the alteration of the characteristics of the property. The process for the assessment adopts a mechanism of comprehensive and in-depth investigation of the components of transactions wherein, it evaluates the sequential change in ownership of the property, easement rights, encumbrances and charges attached to the property, status of legal compliance and the required authorisations, unsettled legal proceedings, etc.

The evaluation of the components of real estate property determines the nature of the real estate transaction wherein, the assessment of such transaction plays a significant role in decision making of the parties for investment in the real estate property. Therefore, the fundamental element of real estate transaction needs to be examined before analysing the legal complexities involved in such transactions. The noteworthy components of real estate transactions are as follows:

3.2.1. Title of Ownership

The title of ownership of the property is the fundamental component of real estate transaction. The State governing the property does not provide any certification of ownership similarly, land revenue documents does not distribute the ownership document. The ownership of the property is determined by the sequential transfer of properties from one party to another. Therefore, the title of the property played a considerable role in the development of real estate sector of India. Although, the inefficiency

² George Lefcoe, REAL ESTATE TRANSACTIONS, FINANCE AND DEVELOPMENT, 6th ed. 2009, pp. 12-19.

in handling title documents due to limitation of resources in the past resulted in increasing number of litigations related to property title disputes. But the increasing volume of real estate transaction and ever-growing number of real estate investor necessitates the efficient maintenance of property title documents. In response to such experience and anticipating future requirement, most of the States have adopted the computerisation of property related documents which are accessible anywhere and anytime by the public through an online platform. Although, the property documents are made available but, the execution of these documents still requires an alert monitoring by the authorities to guarantee the effective protection of rights and obligations of the parties involved in real estate transactions.

3.2.2. Development Agencies

The real estate properties in most of the cities of India are controlled³ by the development agencies. It covers the urban real estate properties within the jurisdiction of the municipal area. These agencies are established to ensure the safety of the interests of public at large after recognising the huge capabilities of exploring opportunities for employing the under-utilised and unutilised real estate assets of the region. Therefore, it is a conscious effort towards ensuring the optimum utilisation of real estate resource of the region thereby increasing the generation of revenue and utilising it for infrastructural development of the region. Similarly, the emerging model of Public-Private Partnership (hereinafter referred as PPP) especially in relation to housing real estate segment widen the scope of real estate with an advancement of modern dimensions of the real estate sector. Although, the development agencies are operating in accordance with its objectives of maintaining the distribution of benefit of development among the various sections of the society, simultaneously, there is a possibility of misuse of the monopolistic powers with the developing agencies for maximising its own interest. Therefore, an effective monitoring mechanism and dispute redressal mechanism are necessary for fulfilling the objectives of establishing development bodies along with ensuring a competitive and efficient real estate market in the interest of public at large.

3.2.3. Nature of Property

The nature of land and real estate property determines the value of the property in real estate market. The nature of the property can be verified through its utilisation and geographical location. The

³ Gabriel Brennan, THE IMPACT OF E-CONVEYANCING ON TITLE REGISTRATION, 1st ed. 2015, pp. 62-79.

property belonging to urban region is valued differently from the property of the rural region, property utilised for residential purpose is valued differently to the commercial property and similarly, the land having a nature of agricultural land has a different value than the non-agricultural land. These categorisations are the basic factors for ascertaining the requirements of the real estate transaction according to respective underlying property. For example, requirements such as Floor Space Index (hereinafter referred as FSI) in rural and urban areas, tax liabilities for commercial and residential properties, development formalities for non-agricultural and agricultural land, etc.

The conversion of the nature of real properties from one to another form, results in the changing rights and responsibilities of the aggrieved parties of the real estate transaction. The State government facilitates such conversation mechanism that triggered the expansion of urban area in the recent past for satisfying the need of massive residential demands due to increasing urbanisation.

3.2.4. Credit Facilities

The credit facilities introduced by the financial ⁴institutions have proved to be important components of real estate transactions for the growth and development of real estate sector in India. It has ensured increasing real estate investment by enlarging the investor base all over the globe. It provided an opportunity to the middle-income section of the society of the country to execute real estate transactions by assisting them with the financial requirements in the form of personal loan facilities. Further, it also ensured development of large-scaled real estate projects by the developers by introducing developer financing services. Though, it provides the developer financing services, most of the financial assistance has been towards the individual financing as it satisfies comparatively more credit worthiness which is reflected from the fact that merely ten percent financial assistance⁵ has been towards builders and developers out of the total amount of loan disbursed.

The Indian government is striving towards harmonising the credit situation in the country by enhancing recovery mechanism towards satisfying the apprehension among the financial institutions through various legal reforms. Similarly, the credit score mechanism also ensured increasing credit

⁴ Narayan Laxmanrao, REAL ESTATE DEALS, 2nd ed. 2020, pp. 21-46.

⁵ Arindam Bandyopadhyay and Asish Saha, “*Distinctive Demand and Risk Characteristics of Residential Housing Loan Market in India*”, JOURNAL OF ECONOMIC STUDIES, Vol. 38 No. 6, 2011, pp. 703-724.

worthiness and declining ⁶number of defaulters in the country. These, efforts towards stabilising the credit facilities in the country enhanced the credit availability which prompts increasing investment in real estate sector.

3.2.5. Securitisation

The securitisation of the assets is another mode of financial assistance that is available for the investors in the real estate business. It involves mortgage of the properties against facilitating financial services to invest in such properties. It was a popular concept from the western countries which contributed in the development of real estate sector of those respective countries. It involves financing facilities to both investors and developers. In terms of investor the facility is in the form of housing loan wherein the property is mortgaged with the financial institution for a specific period within which the repayment of the financial assistance needs to be fulfilled by the investor availing such financial assistance. Similarly, the developers avail such financial assistance in the form of housing finance services wherein the entire project is mortgaged with the financial institution which are free to convert the value of the property into tradable financial and debt instruments. This mode of financing the real estate projects are having comparatively less risk for the financial institution hence, it has the lower rate of returns compared to personal loan facilities. Also, it provides an opportunity to attract potential investor without sufficient funds or assets for security to invest in the real estate market with maximum assistance from the financial institutions. Therefore, it contributed towards the development of real estate sector in India by ensuring availability of funds for the investors in the real estate market.

3.2.6. Foreign Investment

The real estate sector has constantly been an attractive sector⁷ for investors from all over the world. This foreign investment always supports the development of real estate sector in India. It provides an opportunity for the developers to enlarge their presence in the large region by expanding its business in varied geographical locations in the country. This extensive spread of real estate development activities ensured nationwide presence of the developers along with introduction of the concepts of large-scale development projects in the form of integrated townships. Although, foreign investment

⁶ Prashant Das and Divyanshu Sharma, REAL ESTATE FINANCE IN INDIA, 1st ed. 2014, p. 121.

⁷Pravakar Sahoo and Ranjan Kumar Das, "Infrastructure Development and Economic Growth in India", JOURNAL OF ASIA PACIFIC ECONOMY, Vol. 14 No. 4, 2009, pp. 351-365.

has been noteworthy element in developing the real estate sector in India but it also raise concerns over the repatriation of profits by the foreign investors. Similarly, the short term foreign investment affects the stability of the economy of the country. Therefore, the foreign investment requires proper monitoring backed by effective policy to ensure increasing investment with and effort towards minimising the risk factor for the development of the sector or economy at large.

3.2.7. Municipal Laws

The real estate transactions are facilitated at the regional⁸ level with the established rules and regulation as per the municipal laws of the States in the country even though being age old as most of these laws date back to century. The regional law needs a facelift to match the changing trends in the real estate investments. The modern regional laws require to address various factor affecting the real estate sector such as transport facilities, road facilities, pollution control, infrastructure availability, etc. The role of government in the modern India is transformed from service provider to service facilitator. There is an increasing focus towards the investment by the private investors in public infrastructure specifically in public services and utilities.⁹ Similarly, a zoning regulation immensely affects the nature of the property; therefore, a systematic and universal approach is accommodated in zoning regulations to ensure better addressing of demographic pattern in the region.

3.2.8. Approval Procedures

The factor that is considered as the most important elements of real estate transaction is the procedures and formalities for obtaining approvals as per the legal requirements. The investment in housing development is affected by the delayed approval procedures due to dependency of the approval on various governmental bodies ranging from rural establishments to urban development agencies. This factor has always been the most litigating area; hence, it needs a proper monitoring to ensure effective and efficient functioning of these bodies. Also, most of the developers⁹ suffer from the tardy approval mechanism due to which the problems like overdue in completion of projects has been experienced by the sector. Therefore, such extended project completion period has various effects on the real estate transactions in the array of value of the property to compensation, etc.

⁸ Ramesh Singh, INDIAN ECONOMY, 10th ed. 2018, p. 66.

⁹ David J. Lynn and Tim Wang, EMERGING MARKET REAL ESTATE INVESTMENT, 1st ed. 2020, pp. 101-152.

3.2.9. Investor Protection

The interest of the investor is the vital aspect influencing the real estate transaction. The investor in India majorly covers the middle-class population who invest their hard-earned savings into the real estate sector. Although, the choice of investing into the realty market vests with the investors, there are various instances wherein the investors were influenced by the developers to invest in the real estate property by using miscellaneous influential practices with malice intent. Similarly, the middle-income population¹⁰ is the backbone of the economy which invests after analysing the risk factor in the possible investment opportunity; therefore, to create a secure and investor friendly environment for real estate investor the boost of legal framework protecting their interest provides an effective monitoring mechanism ensuring increased investment in real estate market.

The protection of the rights of the investors is the catalysing element of the real estate transaction. It creates a sense of security among the investors and provides a platform for the investor to raise concerns regarding matters of disputes in their respective real estate transaction. Therefore, the investor protection is the significant component of real estate transaction wherein its effectiveness and systemization ensure the increasing and risk-free real estate transactions in the country.

3.3. Legal Framework for Real Estate Sector in India

The real estate sector of India has gone through various transformative schemes within last two decades and maintained its considerable contribution in the economy of the country. In the early days of independence, the development observed for real estate in India was fragmented due to its unruly and unorganised nature. Although, the legal structure controlling the real estate transaction dates back to 1882, the real estate sector has experienced various legal reforms and to maintain its significance in India especially while effectively managing and satisfying the dynamic factors such as demography, availability of credit facilities, investor expectations, increasing purchasing capacity, etc. The vital role of legal reforms in the improvement of real estate market demands detailed analysis of the legal mechanism governing Indian realty.

¹⁰ Elli Pagourtzi et al., “*Real Estate Appraisal: A Review of Valuation Methods*”, JOURNAL OF PROPERTY INVESTMENT AND FINANCE, Vol. 21 No. 4, 2003, pp. 383-401.

3.4. Modern Legal Reform in Indian Real Estate Law

The increasing population and diverse but limited landscape¹¹ of the country like India generate an immediate need for equitable distribution of land resources which is one of the prime challenges in the recent years. As a result, the demand towards requirement of transparent government schemes and policies is observed as a prime need for the development of Indian realty sector. The recent experience exhibits various difficulties especially in the residential real estate business due to increasing instances of cheating, fraud, and harassment of the buyers in the real estate market. Similarly, the real estate sector is facing the challenges for protection of the right of buyer as the occurrences of depriving rights of the consumers of the residential property in India is rising due to increasing instances of delayed possession of property to the buyer, changes in the development plan of the projects, etc. Although the middle-class investors are the most affected by the challenges of the real estate operation, the position for the right of builders is not defined in India.

The real estate sector is one of the principal contributors of the economy, but it is surprising that the sector was mostly unregulated due to absence of dedicated regulator until recent times. The absence of such regulatory or monitoring mechanism resulted in increasing number of victims of the real estate scams and dubious schemes. Although the sector was mostly unregulated, the consumers in the real estate sector were covered under the shield of Consumer Protection Act 1986 (now Consumer Protection Act 2019) along with an option to approach civil courts for the remedy. The inclusion of prospective buyer in the meaning of real estate buyer created an ambiguity in resolving the dispute in most possible and effective manner. Similarly, the housing requirements have always been principal objectives of an individual in India but, it involves various legal complexities that make the real estate transaction a very tedious activity.

The relation of the aggrieved parties involved in the real estate transaction is governed¹² by the agreement executed by them defining the rights and liabilities of builder as well as home buyer of the property. Therefore, it creates an opportunity for the builders to exploit the consumers in the real estate market wherein the buyers lack the required expertise and experience related to real estate transactions or evaluating the capacity of the developer in delivering the possession of the project within the specified period or the period mentioned in the agreement with the buyer. Similarly, the

¹¹ Section 4 of the Maharashtra Regional and Town Planning Act 1966.

¹² Sachin Mittal, THE ABC OF REAL ESTATE IN INDIA, 1st ed. 2018, pp. 17-53.

portion of amount to be paid by the buyer for booking the property was also not specified, therefore the advance payment requirement was mostly controlled and determined by the builders and development. In short, the entire agreement executed by the builder and the buyer was lopsided favouring the interests of the real estate developer and with the lacunae in the monitoring mechanism or effective guidelines; it was an opportunity for the developer to exploit the buyers and the prospective buyers of the real estate sector. Although, the Consumer Protection Act 1986 provides an option to apply for remedy with comparatively lower financial burden but, it provides the curatives major rather than the preventive major for the safeguarding the rights of the consumers. The deficiency results in lack of standardisation and professionalism in the real estate market which was affecting the prospects of real estate sector in India. Therefore, the requirement of dedicated regulatory framework was recognised, and the Real Estate (Regulation and Development) Act 2016 was introduced to ensure effective and consumer friendly real estate market in the nation.

CONCLUSION

The residential real estate segment has experienced different changes due to changing dynamics of the society based on the changing dimensions of family structure¹³ and different other related components influencing the development of residential¹⁴ real estate sector in India. There are different variables that influenced the evolution of real estate sector in its different stages of advancement such as demographic ratio of India, ever increasing number of middle-class populations, inclination towards nuclear family structure, high saving rates, rising employment opportunities and many more. However, India experienced the considerable advancement of real estate sector in its true sense after the evolution of Indian economy since 1990's. The real estate¹⁵ sector has been the major contributor towards the national Gross Domestic Production (hereinafter referred as GDP) since at that point. It was the foremost alluring segment which was the key component of the Indian economy. India observed marvelous positive reaction on opening of economy for foreign investors particularly in the real estate sector, due to the dynamic characteristics of real estate market in terms of its size, variety, and complexity. The adoption of Liberalisation, Privatisation and Globalisation (hereinafter referred as LPG) policy resulted in the growth of real estate sector even without considerable change in real

¹³ Sridhar Kala Seetharam, "Impact of Land Use Regulations: Evidence from India's Cities", URBAN STUDIES, Vol. 47 2010, pp. 1541-1569

¹⁴ Priyanath Sen, GENERAL PRINCIPLES OF HINDU JURISPRUDENCE, 1st ed. 1984, p. 39.

¹⁵ K. Gowri Shankar and B.V.S. Prasad, INDIAN REAL ESTATE: TRENDS, CHALLENGES AND PROSPECTS, 1st ed. 2008, p. 8.

estate sector. The increase in demand after LPG was certainly motivated due to the persistent development and growth of businesses, supply of real estate, increasing incomes, growing population, and a steady growth of economy. This reflects the interrelation of real estate sector and economy wherein their development was dependent on each other's execution.

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