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LAWS GOVERNING PROPERTY PURCHASE IN INDIA: A COMPREHENSIVE GUIDE

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Purchasing property in India involves navigating through various legal frameworks, regulations, and procedures that govern different properties, including residential, commercial, and agricultural. Given the complexities of Indian land laws, understanding the legal nuances and historical developments that have shaped property rights is crucial for anyone looking to buy property in India. This article provides a detailed guide to the laws governing property purchases in India, the types of properties, and the legal and regulatory framework that prospective buyers must know.

HISTORICAL CONTEXT: THE RIGHT TO PROPERTY IN INDIA

Before delving into the current laws and regulations, it is essential to understand the historical evolution of property rights in India. The property right has undergone significant changes since independence, particularly regarding its status as a fundamental right.

PROPERTY AS A FUNDAMENTAL RIGHT

At the time of independence, the “Constitution of India” guaranteed the right to property as a fundamental right under “Article 31”. This provision protected individuals from the state's arbitrary acquisition of their property. However, land reforms in the 1950s and 1960s, aimed at redistributing land to promote equity, created tension between the state and landowners, particularly large zamindars (landowners).

Several legal challenges followed as landowners contested the government's efforts to redistribute their land without adequate compensation. The landmark case of “Keshavananda Bharati v. State of Kerala (1973)” became a turning point, where the Supreme Court introduced the "basic structure doctrine," emphasizing that certain features of the Constitution, including property rights, could not be amended to the detriment of individuals.

PROPERTY AS A LEGAL RIGHT

In 1978, the “44th Amendment to the Constitution” was introduced, removing the right to property from the list of fundamental rights. Instead, the property right was reclassified as a legal right under “Article 300A”, which states that "no person shall be deprived of his property save by authority of law." While this still protects against arbitrary confiscation by the state, property rights are no longer as sacrosanct as fundamental rights, and the government retains the power to acquire property for public purposes under the “Land Acquisition Act.”

TYPES OF PROPERTIES IN INDIA

In India, different types of properties are subject to different legal and regulatory frameworks. The laws governing agricultural, residential, and commercial properties are distinct, and buyers must understand these distinctions to make informed decisions.

AGRICULTURAL PROPERTY

Agricultural property is subject to special laws and regulations to preserve agricultural land for farming purposes. Many states in India restrict the purchase of agricultural land by non-farmers, and the process of acquiring such property is more complex than that of other types of land.

Key Considerations for Buying Agricultural Property

State Laws: Land laws governing agricultural land vary from state to state. In states like Maharashtra, Karnataka, and Gujarat, non-farmers are prohibited from purchasing agrarian land unless they can prove they have farming ancestry or obtain special permission from the government.

Land Ceiling Laws: Several states have enacted land ceiling laws to prevent the concentration of agricultural land in the hands of a few individuals. These laws restrict the maximum amount of land an individual or family can own. Buyers must ensure that the property they purchase is within the prescribed ceiling limits.

Land Use Conversion: In many cases, agricultural land may be converted for non-agricultural purposes, such as residential or commercial use. This process requires permission from the local land authorities and involves complying with various land conversion laws.

RESIDENTIAL PROPERTY

Residential property is typically easier to purchase than agricultural land, with fewer legal restrictions. The purchase process involves standard due diligence and compliance with title, registration, and stamp duty laws.

Key Considerations for Buying Residential Property:

Clear Title: Ensuring that the seller has a clear title to the property is one of the most important steps in purchasing residential property. Buyers should conduct a thorough title search to confirm that the property is free from encumbrances, such as mortgages or legal disputes.

Registration and Stamp Duty: Under the Indian Registration Act of 1908, the sale deed of the property must be registered to transfer ownership legally. Buyers are also required to pay stamp duty, which varies by state, at the time of registration.

RERA Compliance: The Real Estate (Regulation and Development) Act, 2016 (RERA) was introduced to protect the interests of homebuyers and ensure transparency in real estate transactions. Under RERA, developers must register their projects with the state's Real Estate Regulatory Authority and provide regular updates on construction progress. Buyers should check that the property they are purchasing is RERA-compliant.

COMMERCIAL PROPERTY

Commercial property, which is intended for business activities, offices, retail outlets, or industrial purposes, is governed by a different set of rules. The regulatory framework is more complex, as commercial properties are often located in specific zones and may require various approvals depending on the nature of the business.

Key Considerations for Buying Commercial Property:

Zoning Laws: Commercial properties are subject to zoning laws that regulate land use in different areas. Buyers must ensure the property is in a zone designated for commercial activities. Violating zoning laws can lead to penalties or legal action.

Floor Space Index (FSI): FSI, also known as Floor Area Ratio (FAR), refers to the ratio of a building's total floor area to the plot's size. The local municipal authority determines the FSI, and

buyers must ensure that the property complies with the FSI limits prescribed for commercial buildings in the area.

Occupancy Certificate: After construction is complete, the local authority issues an occupancy certificate certifying that the building is ready for occupation. Buyers should verify that the property has a valid occupancy certificate to avoid legal issues later.

ACTS AND LAWS GOVERNING PROPERTY TRANSACTIONS IN INDIA

Several laws govern property transactions in India, and understanding these laws is critical for ensuring a smooth property purchase process. Buyers must be aware of central and state-specific laws affecting property ownership, registration, and taxation.

THE TRANSFER OF PROPERTY ACT, 1882

The Transfer of Property Act of 1882 is one of India's most important laws governing property transfer. It provides the framework for transferring property between individuals, covering movable and immovable property.

Key Provisions of the Act:

Section 54: Defines a sale as a transfer of ownership in exchange for a price. A sale of immovable property worth Rs. 100 or more must be made through a registered instrument.

Section 58: Deals with mortgages and property transfer as security for a loan.

Section 105: Governs leases of immovable property, specifying the rights and obligations of the lessor and lessee.

THE REGISTRATION ACT, 1908

Under the Registration Act of 1908, certain property documents must be registered. This includes sale deeds, gift deeds, and lease agreements for a period exceeding one year. Registration is critical for establishing legal property ownership and protecting the buyer from future disputes.

Key Provisions:

Section 17: Mandates the compulsory registration of certain documents, including sale deeds for immovable property.

Section 49 States that any document required to be registered, if not registered, cannot be admitted as evidence in a court of law.

THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 (RERA)

RERA was introduced to address the real estate sector's lack of transparency and accountability. It regulates the real estate market and ensures developers meet buyer obligations.

Key Provisions of RERA:

Section 3: Developers must register their projects with the Real Estate Regulatory Authority before advertising or selling units.

Section 4: Developers must maintain 70% of the money received from buyers in a separate escrow account, which can only be used for construction and land-related costs.

Section 18: Buyers have the right to compensation if the developer fails to meet the agreed deadlines or specifications.

THE INDIAN CONTRACT ACT, 1872

The Indian Contract Act of 1872 governs contracts between individuals, including those for the sale and purchase of property. The act outlines the elements of a valid contract, including offer, acceptance, consideration, and legal capacity.

Key Provisions of the Indian Contract Act:

Section 10: Defines a valid contract, including free consent and lawful consideration.

Section 25: Specifies conditions under which contracts without consideration are void.

Section 56: Deals with the doctrine of frustration, which applies when a contract becomes impossible to perform.

THE STAMP ACT, 1899

The Indian Stamp Act of 1899 governs the payment of stamp duty on property transactions. Stamp duty is a tax levied on certain documents, varying from state to state.

Key Provisions of the Stamp Act:

Section 3: Imposes stamp duty on instruments specified in the Schedule to the Act.

Section 35: Documents not duly stamped cannot be admitted as evidence in court.

THE BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988

The Benami Transactions (Prohibition) Act of 1988 and its subsequent amendment in 2016 aim to curb holding property in a fictitious name (benami) to avoid taxes or conceal illegal assets.

Key Provisions of the Benami Act:

Section 2: Defines a benami transaction as one where property is transferred to or held by a person, but the consideration is paid by someone else.

Section 3: Prohibits benami transactions and provides for confiscation of benami properties.

REGULATORY FRAMEWORK FOR PROPERTY PURCHASE IN INDIA

The regulatory framework for property transactions in India includes various central and state authorities overseeing property purchase, sale, and registration. Buyers must navigate these regulations to ensure their property transaction is legal and valid.

LAND REVENUE AUTHORITIES

Land revenue authorities in each state maintain records of land ownership and handle the transfer of ownership through the mutation process. Mutation is the process by which the new owner's name is recorded in the revenue records after a property sale.

Key Considerations:

Buyers must apply for mutation after purchasing property to ensure that the property is legally recognized in their name. Land records maintained by the revenue authorities are essential for verifying the property's title and preventing disputes.

LOCAL MUNICIPAL AUTHORITIES

Local municipal authorities approve building plans, issue occupancy certificates, and collect property taxes. Buyers must ensure that the property complies with local building codes and has the necessary approvals.

Key Considerations:

Buyers should check that the property has a valid building plan approval and an occupancy certificate before completing the purchase.

Property taxes must be paid regularly to avoid penalties and legal issues.

RESERVE BANK OF INDIA (RBI) GUIDELINES FOR NRIS AND FOREIGNERS

The Foreign Exchange Management Act (FEMA), 1999, governs property purchases by non-resident Indians (NRIs) and foreigners in India. NRIs can buy residential and commercial properties without restrictions, but they are limited to purchasing agricultural land and farmhouses.

Key Considerations for NRIs and Foreigners:

NRIs do not need prior approval from the RBI to buy residential or commercial property in India.

On the other hand, foreigners are generally not permitted to buy property in India except under certain conditions, such as inheriting or acquiring property for business purposes with prior approval.

COMMON LEGAL CHALLENGES IN PROPERTY TRANSACTIONS

Buying property in India can sometimes be fraught with legal challenges, mainly due to the complex nature of land laws and the potential for disputes. Some common issues that buyers should be aware of include:

DISPUTED TITLE

One of the most common legal challenges is disputed title, where multiple parties claim ownership of the same property. This often arises due to incomplete or incorrect land records, fraudulent sales, or family disputes.

ENCUMBRANCES

An encumbrance is a claim or liability attached to the property, such as a mortgage, lease, or lien. Buyers should always obtain an encumbrance certificate to ensure the property is free from such claims.

LAND ACQUISITION

Under the Land Acquisition Act of 2013, the government can acquire private property for public purposes. Buyers should verify that the property they purchase is not subject to government acquisition.

CONCLUSION

Buying property in India is a significant investment that requires careful consideration of various legal and regulatory frameworks. The complexity of property laws, especially those related to agricultural land, commercial properties, and land use, makes it essential for buyers to conduct thorough due diligence and seek legal assistance when necessary.

Understanding the historical evolution of property rights, the legal provisions governing different types of properties, and the regulatory authorities involved in property transactions can help buyers navigate the process smoothly. With the right approach, purchasing property in India can be a rewarding experience, whether for personal use, investment, or business purposes.