

CHAPTER 1

Immovable Property—An Introduction to a New Perspective

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INTRODUCTION

The expression 'Real estate' has generated immense interest in recent times. It has attracted investments not just from within India but also from overseas. Unfortunately, the transactions in real estate industry are not very organised; the intending transferor and the

transferee do not have much information about the legality of transaction and rely mostly on half-baked information and practices employed in the trade.

Real estate broadly means lands and buildings. Lands may be earmarked for agricultural, industrial, residential or other purposes. Buildings may mean the structure erected on lands. Since it is not possible for everyone to own a piece of land and build thereupon, a culture of apartment/flat has come to be accepted in India in the residential sector. It is not permissible to use a piece of land for the purpose other than for which it has been earmarked.

This book is an attempt to answer all possible questions which a person must know before he enters into any transaction of real estate. This book covers all legal requirements needed to transact in real estate and their effects. The book is divided into chapters based on transactions by which these are known, namely sale, lease, etc. It does not go deep into the understanding of law but provides the basic information required.

The fundamental information needed for anyone interested in transactions in real estate/immovable property in India is to know the law governing transfer/transaction of real estate in the country. The Transfer of immovable property in India is governed by the Transfer of Property Act, 1882, (hereinafter referred to as the Act). The Act has not seen any major amendment in the last 125 years despite the fact that the economic vision of India has changed drastically, particularly during the last sixteen years. Transactions in real estate are still governed by the old and outdated Act.

The liberalization of Indian economy has permitted foreign investments in real estate and has allowed a new class of people, who are keen to and are looking forward to such investment, to invest money in real estate in India. Foreign exchange transactions in India are governed by the Foreign Exchange Management Act, 1999, (FEMA). The law relating to transfer of or transaction in immovable property in India involving foreign exchange is the Foreign Exchange Management (Acquisition and Transfer of Immovable Property) Regulations, 2000, [hereinafter referred to as FEM (A&TI) Regulations].

SCOPE

The Act prescribes the following modes of transaction/transfer of immovable property:

- Sale,
- Agreement to sell,
- Gift,
- Lease,