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REAL ESTATE NEWSLETTER
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DELHI NCR | MUMBAI | BENGALURU

REAL ESTATE NEWSLETTER

1) Delhi's Property Registration Process soon to go digital

Delhi's revenue department is set to simplify property registration and alleviate citizen's burden with the upcoming implementation of the National Generic Document Registration System (NGDRS). This digital platform aims to facilitate obtaining land deeds, rent agreements, etc. and streamlining the uploading of essential property registration documents such as sale deeds, power of attorney, and wills. With NGDRS, individuals can conveniently complete these tasks from home, including making online payments and scheduling appointments at sub-registrar offices. This move is expected to bring a significant transformation to registration of property documents in Delhi.

The system's faceless service will eliminate the need for physical visits, reduces overcrowding, and promote a more efficient and cost-effective process.

The Delhi government plans to launch a pilot project in the coming weeks to test the functionality and effectiveness of NGDRS. Following a successful pilot, the system is anticipated to be fully operational by August 2023.

By digitizing operations, Delhi aims to streamline the property registration landscape, making it more efficient and accessible for diligence, transparency, and result in minimizing frauds.

https://www.business-standard.com/india-news/delhi-to-get-system-to-upload-documents-for-property-registration-by-aug-123041901235_1.html

2) Noida Authority Considers Co-Developer Policy for Pending Projects

The NOIDA and Greater NOIDA authorities are contemplating a co-developer policy to address two key issues: completing housing projects stalled due to insufficient funds and recovering outstanding dues. Under the proposed policy, the existing developers who were struggling to complete the project can bring in new developers in the same project. It will also help the lenders to sell part of the project and recover outstanding dues.

In addition to benefiting the existing developer and lender it will also help the homebuyers waiting for their homes or flat registrations for years. There are huge outstanding land dues payable by the developers to NOIDA and Greater NOIDA, upon introduction of the new developers, NOIDA and Greater NOIDA may be able to recover most of its land dues taking over these projects would be responsible for clearing approximately Rs 40,000 crore land dues. Timely clearance of dues is crucial, with potential incentives for developers complying.

It is to be noted that in 2018 Supreme Court in *Bikram Chatterji and others v. Union of India and others* had proposed to the counsels of all stakeholders to come up with a joint proposal under which all Amrapali projects can be simultaneously undertaken in association with co-developers to complete a project.

The co-developer policy was proposed by CREDAI to resolve the impasse over land premium dues. Ritu Maheshwari, CEO of the NOIDA, confirmed their active work on policies, including the co-developer policy, enabling new developers to take over viable incomplete projects.



<https://timesofindia.indiatimes.com/city/noida/noida-may-allow-co-developers-to-complete-pending-projects/articleshow/100145159.cms?from=mdr>

3) Supreme Court's decision on Liability for payment of Stamp Duty in Immovable Property Sale Deeds

The Supreme Court in *Sub Registrar, Amudalavalasa & Anr. v. Dakuni Steels Limited & Ors.*, CIVIL APPEAL NO(S). 3134-3135 OF 2023 issued a ruling regarding the liability for payment of stamp duty in immovable property sale deeds. The case involved an auction of Midwest Iron and Steel Company Ltd., where SMC Marketing Private Ltd. (Second Respondent in the case) emerged as the successful bidder for acquiring land, buildings, civil works, plant and machinery, and other assets. The dispute arose when the parties sought registration of the sale deed, with the respondents arguing that only the land and buildings should be considered for stamp duty, while the authorities contended that the value of the plant and machinery should also be included.

The Supreme Court carefully examined the definition of "immovable property" in relevant acts and highlighted that when property includes machinery attached to the land, the movable parts of the machinery are also considered a part of the transfer. In this case, the respondents' intent to repair and maintain the plant and machinery indicated their usage for business purposes. Taking into account the parties' intentions and the nature of the transaction, the court concluded that the value of the plant and machinery should indeed be taken into account for stamp duty payment.

The Supreme Court stressed that the value of the plant and machinery must be determined in accordance with their status

as immovable property. The second appellant (District Registrar) was directed to assess the value and examine the eligibility for the stamp duty exemption. In summary, the Supreme Court ruled that in immovable property sale deeds involving plant and machinery, the value of the machinery should be considered for the calculation of stamp duty. The court emphasized the parties' intentions and the definition of immovable property in reaching this conclusion.

https://main.sci.gov.in/supremecourt/2019/7356/7356_2019_3_1501_44020_Judgment_26-Apr-2023.pdf

4) Haryana ULB Launches Online Property Tax Portal

Haryana Urban Local Bodies (ULB) department has launched an online property tax portal, aiming to address property owners' grievances and to rectify property identification issues. This dedicated portal, unveiled by Haryana ULB minister Kamal Gupta, provides convenient access to property details and enables to apply for necessary corrections, ensuring accuracy and rectifying discrepancies.

The portal covers residential, commercial, institutional, and industrial properties within 88 civic bodies across Haryana.

<https://ulbharyana.gov.in/10955>

5) Maharashtra RERA Mulls Introduction of Grading System for Real Estate Projects

The Maharashtra Real Estate Regulatory Authority (MahaRERA) intends to implement a grading system for real estate projects in the state, aiming to facilitate informed decisions for homebuyers. This pioneering initiative by MahaRERA will involve the evaluation and classification of projects as well as their promoters based on specific criteria. Factors to be



considered in the grading process include financial viability, technical approvals, compliance reports, and pending legal matters.

MahaRERA recognized the challenges faced by homebuyers in obtaining comprehensive information about permissions, developer reliability, and contractual intricacies within the housing sector. Therefore, this grading system seeks to enhance transparency, instill confidence, and protect the rights of homebuyers and in addition the homebuyers will have access to this public information, with project rankings becoming available from April 20, 2024.

To establish the criteria and procedures for project ratings, MahaRERA has formulated a detailed proposal, inviting suggestions and objections from stakeholders until July 15, 2023. The grading mechanism will be applicable to projects registered after January 2023. Project ratings will be published twice a year, with the first rating list scheduled to be available from April 2024, based on information collected between October 2023 and March 2024.

In our opinion this rating system should be implemented after due deliberation and pre-set guidelines. There can be potential challenges to the policy and regulatory authorities should not be involved in any capacity whatsoever in the committee grading the projects. Therefore, we suggest that any such rating should be done by independent agencies. In the event such grading system becomes successful, the same model can be adopted in different states.

https://maharera.mahaonline.gov.in/Site/Upload/PDF/grading%20of%20Real%20estate%20projects_001.pdf

6) SEBI Consultation paper on Fractional Ownership Platforms (FOP) to be regulated as MSM REIT

SEBI in its new consultation paper on 'Regulatory Framework for Micro, Small and Medium REITs (MSM REITs)' published on 12th May 2023 has proposed that Fractional Ownership Platforms be regulated in the same manner as MSM REITs under the SEBI (REIT) Regulations. FOPs are online platforms that offer fractional ownership to investors in real estate assets, with Strata and Property Share among the top players currently.

This model allows investors to own a fraction or share in buildings/office spaces, including warehouses, shopping centers, etc., typically through a share in company or limited liability partnership. The minimum investment range is Rs 10-25 lakh, with the cost of acquiring the property split among multiple investors.

A consultation paper is usually a step prior to introducing amendments in SEBI rules and regulations.

The proposed regulatory framework would help develop the real estate market, provide investor protection measures and lead to an orderly development of this sector and the market. This would also provide a window for retail investors to make smaller investments and still be the co-owner of the property.

<https://www.sebi.gov.in/reports-and-statistics/reports/may-2023/regulatory-framework-for-micro-small-and-medium-reits-msm-reits-71149.html>

7) SEBI Consultation Paper on Special rights to unitholders of InvIT and REIT

SEBI, vide its consultation paper on 'Special Rights and Role of Sponsor in REITs and InvITs' published on 16th May 2023, has



proposed special rights to unitholders of REITs and infrastructure investment trusts (InvITs), providing the right to nominate representative to the board of directors of investment manager of REITs and InvITs. The regulator has also proposed a concept of self-sponsored REITs and InvITs.

In addition, SEBI has proposed that principles of stewardship code should be applicable to members nominated by the unitholders on the board of directors of investment manager of REIT and InvIT.

The proposed move would empower unitholders of REITs and InvITs to monitor their investment in REITs/InvITs and assist in decision making.

Further, to encourage ease of doing business and to improve transparency, SEBI, vide circulars dated 22nd May 2023, has mandated REITs and InvITs to hold the securities of holding companies and SPVs in dematerialized form only.

For existing securities holdings by REITs and InvITs in Holding Companies and SPVs in physical form, the investment managers have been directed to dematerialize such securities by 30th June 2023.

https://www.sebi.gov.in/reports-and-statistics/reports/may-2023/consultation-paper-on-special-rights-and-role-of-sponsor-in-reits-and-invits_71231.html

8) Customized Insolvency Resolution for residential real estate projects

The Insolvency Bankruptcy Code, 2016 is likely to undergo amendments which will provide for project-wise customized insolvency resolution process in a company undergoing CIRP having multiple projects. Currently in several cases NCLT/NCLAT/Supreme Court has by orders permitted project wise insolvency, however there are no provisions in IBC

which enable such schemes of project wise insolvency. Therefore, there is an urgent need to bring in amendment to IBC for the same considering the poor record of resolution in real estate companies. Due to the complex and sensitive issues in real estate, one standard method for resolution of stress may not be beneficial to the sectors and affected parties. This is aimed at resolving issues pertaining to homebuyers and allotment of flats in their favour within timelines.

However, the said customized resolution may have to conform to the basic structure and framework of IBC.

- <https://www.mca.gov.in/content/dam/mca/pdf/IBC-2016-20230118.pdf>
- <https://realty.economictimes.indiatimes.com/news/industry/customised-insolvency-bankruptcy-code-resolutions-for-real-estate-on-the-cards/100864145>

9) Maharashtra Government Reduces the Timeline on decisions of deemed conveyance in self-redevelopment projects

Under a comprehensive government decision dated 22nd June 2018, issued in consultation with the Revenue Department, Urban Development Department, Housing Department and Rural Development Department, applications for deemed conveyance made by a housing society are required to be disposed of by the competent authority within 6 months from the date of giving notice.

By a Government Resolution dated 31st May 2023, in cases where the societies decide to undergo self-redevelopment and submit a proposal in the prescribed format for deemed conveyance, the competent authority will be bound to decide on the same within 1 month from the date of giving the notice.



[202305311210436702.pdf](https://maharashtra.gov.in/202305311210436702.pdf)
(maharashtra.gov.in)

10) DTCP, DDJAY clarification on four-floor buildings

The Department of Town and Country Planning, Haryana (DTCP) vide order dated 11th May 2023 has clarified that buildings with only three floors will be permitted on affordable housing plots under the Deen Dayal Jan Awas Yojna (DDJAY), as the expert committee constituted to examine the policy allowing construction of stilt plus four floors is yet to submit its report. On February 23, 2023, the state government put approval of fourth floors on hold after wide-scale protests by residents' groups who claimed that floors have been constructed across residential colonies in the city, but not much work has been done to augment infrastructure such as roads, power supply, sewerage and drainage. While approval was revoked for all four-floor buildings, no mention was made of affordable housing plots. This had led to confusion among developers, for which DTCP has now issued a clarification.

<https://tcpharyana.gov.in/Orders/Order%20%20Zoning%20Plans.pdf>

11) Stamp duty on registration of Power of Attorney in Uttar Pradesh

The UP Cabinet has approved a new rule by virtue of which the stamp duty payable on power of attorney authorizing any person other than a family member to sell a property, will be as per the circle rate.

The rule has been approved by UP Cabinet in light of several stamp duty evasion cases that came to light recently, wherein builders were taking advantage of the loophole available in Uttar Pradesh and getting farmers to sell their lands to them under the guise of a power of attorney which authorized them to sell the land.

Builders from even Delhi and Haryana were registering their power of attorney in Noida due to this loophole.

By virtue of the said new rule, even if a power of attorney has been issued to a person, and it involves permission to sell a property on behalf of the applicant, then stamp duty as per the circle rate of the land will be levied. This does not apply to relatives, but even in such a case, a base charge of Rs 5,000 will be levied for registering the power of attorney.

<https://realty.economictimes.indiatimes.com/news/industry/now-stamp-duty-as-per-circle-rate-for-power-of-attorney-in-uttar-pradesh/100844519>

12) ITAT Mumbai Bench Allows Tax Exemption on Long-Term Capital Gains for Taxpayers with Co-Ownership of Multiple Residential Houses

The Income-tax Appellate Tribunal (ITAT) in Mumbai has made a significant ruling in *Zainul Abedin Ghaswala v. CIT*, ITA No. 545/MUM/2023 stating that taxpayers who co-own more than one residential house are eligible to claim tax exemption on long-term capital gains under Section 54F of the Income Tax Act.

Under the current tax regulations, individuals can claim tax exemption on the 'long-term' capital gains resulting from the sale of capital assets (other than a house property) such as shares or jewelry. However, the question arose whether co-ownership of multiple residential houses would disqualify taxpayers from availing this exemption.

The ITAT Mumbai Bench referred to a precedent set by the Madras High Court in the case of *Dr P K Vasanthi Rangarajan v. CIT, 2012*. The Madras High Court had already determined that joint ownership should not prevent taxpayers from claiming



exemption under Section 54F. As there was no contrary decision by the jurisdictional Bombay High Court, the ITAT bench relied on the Madras High Court's order and delivered a favorable verdict in favor of the taxpayer.

<https://itat.gov.in/files/uploads/category/mage/1684900320-ITA%20No.%20545%20Zainul%20Abedin%20Gharwal%20Final.pdf>

13) Buying property in wife's name cannot be deemed benami: Calcutta High Court

The Calcutta High Court in *Sekhar Kr Roy v. Lila Roy & Anr*, (FA 109 of 2018) held that just because the husband on behalf of his wife is paying the sale consideration for purchase of property – the said transaction does not automatically qualify as *benami* transaction.

The court observed that *“In Indian society, if a husband supplies the money for acquiring property in the name of his wife, such a fact does not necessarily imply benami transaction. Source of money is, no doubt, an important factor but not a decisive one.”*

Further, it observed that two kinds of benami transactions are generally recognized: (i) a person buys a property with his own money but in the name of another person without any intention to benefit the other person and (ii) the owner of the property executes a deed of conveyance in favour of another without the intention of transferring the title to the property.

In the present case, the husband had purchased a property in his wife's name who is a homemaker without any source of income.

<https://www.livelaw.in/high-court/calcutta-high-court/calcutta-high-court-divorce-property-benami-transaction-dismissed-appeal-230316?infinitemscroll=1>

14) Can registration of Deed of Confirmation cures defect of an earlier unregistered document

A two-judge bench of the Hon'ble Bombay High Court, in Writ Petition No. 512 of 2023 filed by *Ashapura Ramdev Buildcon LLP and Ors. v. State of Maharashtra and Ors.*, struck down an order passed by the High Power Committee (HPC) in a suo motu proceeding initiated by the HPC against the Petitioner. In the order, HPC rejected the Petitioner's title to a property on the ground no registered conveyance was produced before the HPC. The Bombay High Court held that the question of title is the exclusive preserve of a Court of competent civil jurisdiction and that the HPC does not have the powers of a civil Court to make such declarations of title to property.

As the Petitioner claimed title to the property under a registered Deed of Confirmation, the Bombay High Court placed reliance on various judgments of the Supreme Court, Privy Council and the Bombay High Court, and decided that the registered Deed of Confirmation is a sufficient proof of title to the property.

https://judgments.ecourts.gov.in/pdfsearch/?p=pdf_search/home&text=Ashapura%200&captcha=705292&search_opt=PHRASE&fcourt_type=2&escr_flag=&proximity=&app_token=3cf8f2108e7554e0299c85fe2f2e62c5e9edb3daca85cba84c6c28f5a6f74ec7



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