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REAL ESTATE FRAUDS AND LAND GRABBING

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ABSTRACT

This paper is entirely based on the real estate frauds and land grabbing issues specially held in India. The paper also looks after the government perspective towards such frauds, and will also help in understanding these types of frauds beforehand; as such criteria have also been discussed and elaborated in order to create extra consciousness in the minds of people. Real estate scam is such which is not been addressed by many persons. The criteria if studied and analysed properly can be of greater help and a person can be saved from getting cheated by the fraudsters. In a country like India, we can see that there are countless cases going on in the courts regarding the real estate scams, so this paper may also serve the purpose of getting an intel of the real-life cases as well.

The need for the study is to highlight and explain the exact meaning of Real Estate / Property Frauds and what exactly is the government perspective behind it and how does the government handle such frauds. Further it is also very necessary to analyse and evaluate the meaning of Land Grabbing and related issues and how can these problems be treated as a category of White Collar Crimes.

Keywords: Real Estate, Property Fraud, Land Grabbing

INTRODUCTION

This paper is entirely based on the real estate frauds and land grabbing issues specially held in India. The paper also looks after the government perspective towards such frauds, and will also help in understanding these types of frauds beforehand, as such criteria have also been discussed and elaborated in order to create extra consciousness in the minds of people.

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MOST COMMON PROPERTY FRAUDS

- **Title fraud.**

In most cases of this form of fraud, the ownership of the item is not clearly tied to it. It is not uncommon for a property dealer who is involved in the sale of a property to not own the property himself. He is selling a property that does not actually belong to him. This is essentially the same as title fraud. This is most common on ready-to-move properties, when scammers falsify property title paperwork and pretend to be the owner or Power of Attorney holder.

The targeted properties here are those properties which are vacant for a longer period of time or whose owners are staying outside the state or country or the properties whose titles are not clear and have pending disputes, loans, leases, taxes, dues pending over them.

While in the case of under construction properties it is seen that the property units are sold on land which is not owned by the builder. This is done by creating a fake layout of the same unit present on the property. The basic intention here is accumulating money firstly by defrauding the customers and then purchasing the land, so one major aspect which must be checked carefully in this case is about the actual ownership of the unit. In this case of under construction property there are also the chances of land title not being clear of a mortgage of huge amount may be involved or pending dispute may be there.

- **Rushed sales fraud.**

In this type of situation, it is mainly observed that there may be a scarcity of units, i.e., the dealer here says that there is a very less amount of units left in the market and this may be purchased quickly and also puts a condition saying that the cost of the unit, due to the scarcity of the same will also be increasing at a very high rate and thus he somehow convinces the party to purchase the property with gross misrepresentation. He therefore, creates a false scenario and persuades the party to purchase the property. These types of frauds mainly happen in seller's market. While the prices are approaching the peak and therefore maximum people think that better the price

goes too high, it would be better to purchase the property or the unit. This technique is usually used to hide the facts and to push the sales to the increasing end.

- **The scam of Assured returns.**

Looking at the aspect of Assured Returns, it is usually seen that the builder of a certain property promises a specific assured return on a certain investment. For instance, the builder may say that on the investment, he promises to give you 12-20% of assured returns till the possession of the property. In such cases the builder also gives you the postdated cheques, but the problem then arises when the given cheques start bouncing. So, the fraudulent builders who intend to cheat may collect the money all over and then as an excuse declare sudden bankruptcy and fade away along with the money. Every builder may not be of a fraudulent kind of person, but still as a precaution we should always run a quick background check on the builder in order to have a glimpse of the track record of the builder and be aware in advance.

- **Delays in possession.**

This is the most popular fraud seen in our country. Several builders have been put behind the bars for the same. There are almost 70-80% of such delays found in our country which directly led to a major fraud.

In this case the builder collects all the required money from the investors in order to sell them property once is ready, but at the end the story is a bit different. As soon as the builder gets hold of the money, instead of investing it in the promised property, the builder uses the money to buy some another piece of extra land and due to this a delay in the whole cycle is caused. The actual strategy here of the builder is after collecting the money from the investors he purchases some another land and also finds some other buyers and sells the property to them for a higher price. This keeps on going on for years causing delays after delays as he keeps on raising loads of money

- **False promises by the builders**

At times these scenarios are very common. The builders assure and promise lot of things but at the end isn't able to fulfill them. He may assure 15% of discount. He may also promise 13% of assured delivery in 3 years. In case the delivery is not given in 3 years he may also promise as assured buy back of the same property from you. In case the party is not interested in selling

back the property, he may also promise to pay you late delivery penalty over the property. All these things may appear very peaceful on paper, but remember are not fulfilled by majority builders.

- **Forced cancellation**

In a rising market, the builder looks for excuses to cancel your booking so that he can sell it to someone else at a much higher price. They keep on searching for excuses which can cause an easy cancellation.

If in case where sometimes the buyer is a bit late is paying the installment, the builder immediately treats this thing as an excuse and forces the investor to cancel on the property and along with this also asks for the cancellation cost.

In some cases, the builder may cause a deliberate delay in the construction of the property which certainly may induce a panic element in the mind of the buyer and due to the unexpected delay, the buyer may cancel the purchase. The whole idea behind this whole thing is to sell the property to some another person at a substantially high purchase cost.

- **Selling without approvals**

Here, the builder sells units without taking CLU (Change of Land Use) approvals, building approvals, etc. the builder here sells the property without the approval or recognition which may further be termed as illegal. In cases the builders also arrange a pre-launch Program in which they ask all the investors/ buyers to invest immediately at a discount and assure that this will surely help them in future by providing them various benefits. So, to conclude from the above scam 2 things must be taken care of. 1. CLU Approval (Without the availability of this document purchase should not be made) 2. No instant investment should be encouraged.

- **Deviation from plans.**

This is also very commonly seen in a country like India where cost-cutting is practiced on a wider scale. Sometimes it is seen that a builder has promised something, but at the actual visibility something else has been done, For example: is a builder promises branded plumbing instruments but while actually using, he uses low-cost instruments in order to carry out the cost-

cutting. Builder also shows super Built-up area on paper, but in actual scenario the area is not according to what was decided. This is perfect example of "Deviation from Plans".

- **Selling same unit to multiple buyers.**

Here, the builder seller sells the same property to two or more buyers and this constitutes fraud. Further the seller runs away and the two buyers are left with no other option then going to court and fighting a case.

- **Encroachments**

In some cases, it is seen that the land gets encroached. It is also seen that the local land mafias take illegal possession of a particular plot which was unoccupied for a long time. In some cases, it is also seen that the adjacent plot holders build boundaries in your plot without any kind of approval or negotiation.

Some of the scammers also take a property on lease for a long time, then refuse to vacate it. Even if the lease is over and then above all, they also try to sell the same property by the way of forged documents even if the property is not owned by them. These are the typical examples of encroachments Above discussed scams were the top 10 frauds which are commonly found in India. Further this paper also discusses the ways to avoid such types of property frauds in detail.

HOW CAN PROPERTY FRAUDS AVOIDED

Check the builders track record while running a background check of the builder some of the things which must be critically examined and analyzed are whether there was any kind of unnecessary delay previously while the delivery of the property was taking place. If there is something which feels a bit uncommon then the buyer/ investor must be aware.

Another thing which needs to be taken into considerations is about the opinions placed by the various other investors has a key role as it brings the actual situation to the light. Due to this consideration of their past experiences with the builders the kind of attitude which the builder keeps is noticed and if there is a tinge of fraud element present, then the buyer can easily handle it, but for all this to be anticipated the backgrounds check are must.

Below mentioned are few more steps to avoid such type of frauds:

- **Understanding details.**

Understanding each and every minute detail while purchasing a certain property is of utmost importance and without doing this any decision taken may be of greater risk.

While understanding the details of a certain property, there are 2 major factors to be considered.

1. Checking title ownership of seller/ buyer. 2. Checking the approvals of a builder.

Checking whether the title is clear or not is the first important step to be taken care of confirming before the purchase of the property that whether the selling the unit has complete ownership over that unit or not and in case of land checking whether the builder has the complete ownership over that piece of land. One another factor which has to be taken in consideration is that whether the builder has received the approval from the appropriate authority before developing the land.

- **Invest in only RERA approved projects.**

In today's date the RERA (Real Estate Regulation Act) Approval is mandatory in the Real estate or property matters. So, while investing in any property the buyer should always check whether the estate is RERA approved or not. If the property is not registered, it is suggested that it shouldn't be purchased. Another thing to be taken care of it while undergoing any agreement should be read carefully, may it be an Allotment letter, may it be a Builder-Buyer Agreement or may it be an Agreement to sell or sale deed, any of the above documents should be read properly before signing of.

- **Do not rush into a deal.**

There should not be any type of rush while investing in any property and complete due diligence should be maintained at all times and the investment should only be done when sure of.

- **Take professional help.**

While purchasing or investing in any Real Estate, professional help from the Real Estate Agents as well as the financial advisors must be taken as they are well known with the market conditions and they are well acquainted with every necessary factor while buying a property. Sometimes, it is observed that in order to save some amount of money, the fresher investors in the market commit certain obvious mistakes. So, to avoid such circumstances professional help is necessary.

- **Get assurances in writing.**

Blank promises should be done away as they may also be faculty in nature. Whatever promised assured by the seller shall be clearly mentioned in the agreement. So that the further inconvenience is avoided beforehand.

The real estate scams are such types of scams where people usually tend to be quiet as there may be a greater involvement of renowned politicians, ministers and several other bureaucrats. Rather people keep on investing in such projects with mere assumption that on one fine day they will be given what they paid for or invested for. For example: People who invest in huge real estate schemes which usually don't give the delivery on the expected time. People here keep on investing enormous amounts of money with a mere assumption that on a one fine day they will be delivered with their flat, etc.

THE JAYPEE INFRATECH SCAM

The JaypeeInfratech had promised to build a whole township of around 30,000 flats. This scheme was supposed to be built on the Noida-Greater Noida Expressway. The name of the following scheme was supposed to be Jaypee Greens Wish Town Noida Integrated city. This scheme was initially proposed in the year 2007.

Today it has been more than 10 years of the proposal and to the astonishment it is observed that only few flats have been delivered on a ready possession basis. Rest of the whole scheme is still not ready to be delivered to the investors/owner. At such times the only thing people can do is wait and assume that one day they'll be delivered with the property and nothing else.

Besides of repeated negotiations, court notices, calls from investor politicians even after the insolvency proceedings⁵ and several trips to the court, on today's date JaypeeWish Town is again standing on the verge of being auctioned.

The owners of Jaypee, and the banks are playing their own games while the home buyers are left on the streets.

As a result, the Jaypee problem evolved into one of the most significant challenges in Indian real estate history. Every other builder would have done precisely what Jaypee did. They took all of the money from the investors and invested it into other investments. They went out and acquired land, made investments in other enterprises, and deposited the money in their own banks.

⁵In Accordance with the Insolvency and Bankruptcy Code, 2016

Clearly, all of the money that was diverted from the construction of the residences that were intended to be handed to the investors, when the whole scheme fell apart, the homebuyers wanted an audit to find out where each and every rupee they had ever invested had gone.

But it has been more than 5 years that even the banks have out rightly rejected to carry out such financial audits. This proves that the banks were also equally liable and had equal participation in one of the biggest scams in India.

- **Was the Justice served in this case?**

After a huge delay of several years, when the buyers approached the Supreme Court, then Jaypee was pulled over by the court and was charged an amount of 2000 Cr. as penalty and was asked to deposit it immediately Jaypee somehow managed to deposit Rs. 750 Cr and said that this was all we had. Despite all this no action was taken against them and Jaypee continued in the same way of doing the business.

After this the next step was that the matter went to NCLAT (National Company Law Appellate Tribunal⁶). After several negotiations with Jaypee the NCLAT started to look for another company who would take over the job of constructing Wish Town from Jaypee and in case there is no builder who can complete the pending work then better wishtown would be auctioned. In case the auction took place the home buyers would be at a greater loss and thinking of this the middle class awoke and despaired and questioned the state of affairs. They appealed to the government and then the government amended the law and gave the status of creditors to the buyers, so that they can have a voting right in such matters of auction and profit. After this at one point of time the name called NBCC (National Buildings Construction Corporation Limited)⁷.

The voters went directly in the favor of NBCC and the buyers assumed that all was well and now they would be delivered their own now that NBCC has taken over.

Now, the NBCC certainly needs funds to begin with the completion of the pending work. Then the amount of Rs. 750 Cr which was deposited by Jaypee in the court as a penalty comes into picture.

The Supreme Court has the whole amount along with the interest. So, it becomes a huge sum of money that could certainly be used to complete the project. To the astonishment Jaypee suddenly

⁶ Hereinafter also referred to as ‘the Tribunal’ or ‘NCLT’ or ‘the Adjudicating Authority

⁷ This was a PSU who had an excellent track record when it came to the completion and delivery.

claims that the money taken as a penalty should be given back as now the Project was also out of its domain. So, Jaypee wanted its money back. Furthermore, the banks like ICICI maintained that the lands that were being given to them in compensation and in exchange for the money that was not returned to them, was not acceptable to them anymore. They wanted actual money now.

On the other hand, the NCLAT told the NBCC that the onus of the pending farmer compensation that had to be given by Jaypee now is their responsibility. After all these series of events NBCC got a bit flustered and asked for Rs. 750 Cr. to restart the project or else they were ready to quit. Again, the whole conflict went to the Supreme Court. The court subsumed all the cases, it had heard all the arguments of all sides and has even arrived at a decision. But the decision has been reserved for some days.

- **The current situation**

The company is been sent to insolvency procedure, but the same is been under the question. The entire home project related to home buyer's, the money has been given by the buyers and the funding is not been done by the bankers for the home projects. IDBI have never given loan to Jaypee Home project, however the Bank sent the Jaypee under the insolvency procedure. The home buyers even though holding the highest interest, are unsecured as due to the insolvency procedure.

The buyer is obviously hoping that the company like NBCC should get all the financial aid and funding it needs so that the houses they dreamt of become a reality as soon as possible, while on the other hand Jaypee even after cheating thousands of buyers in still demanding its Rs. 750 Cr. along with the interest. Amidst this all chaos the one who is constantly suffering in the middle-class man who is busy paying the EMI.

They have no house to live and yet are paying the EMI's out of their pockets and also paying the rent on the other hand.

Amongst all this, the most critical thing is if by chance the NBCC doesn't get the funding and if the wishtown gets auctioned then the hat will be disappeared but the EMI will still keep on going.

Suraksha Group has finally emerged as the victorious bidder in the debt-ridden JaypeeInfratech, defeating the NBCC in the CoC⁸ voting after a four-year insolvency resolution process. After Jaypee declared bankruptcy in 2017, the Supreme Court gave a glimpse of hope when it directed the CoC to ask Suraksha and NBCC for their final bids, which were accepted to Suraksha Group. Sureksha Group has committed to completing and delivering the homes to the customers in 40 months. Now as SurakshaGroup is the owner of the project it now is their responsibility.

- **Analysis**

After all, this narrative isn't just about Jaypee; it's about every second builder in the country that uses power, connections, and money to defend itself and continues to plunder the middle class relentlessly. They go about in expensive automobiles, while the middle-class man who invests in such deception schemes suffers till the end.

We chose Jaypee as an example because it has become a well-known and largest scam in the country, as well as a litmus test for whether the government can act in the interests of the middle class, and if the Supreme Court can reach a favourable decision.

WHAT IS LAND GRABBING?

To be more precise and accurate land grabbing is the most-easy way/method of land acquisition. Land grabbing is the unlawful possession of land. Land grabbing is the term used to refer to the illegal/unlawful possession of lands by private companies' individuals, or even by the government. It is a larger blanket term used to speak of many kinds of possession of the land. For example, acquisition of private lands by the government for companies to do infrastructure building activities, taking possession of government lands by other powerful individuals by means of forged documents and collusion. Based on our understanding, even lands acquired through legal means can also be classified as grabbing as often the consent of the land owners are not taken.

Land grabbing has been an issue in India for decades, but it has become much more prevalent in the last two decades. It also accounts for a significant portion of all land-related difficulties in India. Land purchase by the government is perhaps the most important among them in the current context. To meet numerous developmental objectives in the country, the government has often resorted to acquiring private property to make up for the shortage of available land, the

⁸Committee of Creditors; herein referred as CoC

largest being purchase for the purpose of coal mining and irrigation. The state's power empowers it to compel the acquisition of private property for a public purpose in exchange for a monetary payment. This is done by following provisions laid out under the respective legislation. Even though land is state subject the acquisition and requisition of property falls under the concurrent list. This makes the scenario very complex as amendments to these laws have been done many times by the state as well as the center and often the acquisition is conducted under different laws giving them the liberty to pick and choose provisions that seem best to them. This leads to many discrepancies in the process and compensation for the acquisition.

This gave rise to many problems such as lack of resettlement opportunities, inadequate compensation, lack of people's participation in the government's decision and procedural delays and inequalities. There was also a lack of very clear definitions regarding what constitutes public purpose which has been misused by the states. The special economic zones are one such example where the land acquired by the government from unwilling farmers were handed over to private companies for development purposes. This raised many questions about how democratic the entire process was. The primary act that governed such acquisition used to be the Land Acquisition Act, 1894 until recently in 2013, the central government brought in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act to alleviate some of these issues. However, several states have already amended their state legislation to dilute some of the protections offered to the victims under the 2013 Act. Conducting a compulsory social impact assessment, stricter and higher compensation provisions among many others would lead to a lot of hindrances and slowing down of the ambitious infrastructure Projects which led to the dilution of these laws at the cost of the victims right to property.

The murky land scenario in India is not just limited to this. There have been many cases of land grabbing done by wealthy and powerful private individuals where they illegally possess private properties belonging to other people by forging documents.

For instance, one such case is of the Pachaiaammal family in Tamil Nadu who had been fighting a legal battle over land that has belonged to the family for over 2 generations. Some years ago, their land was forcibly taken over by a rich landlord who claimed that their dead parents owed him money. Such forceful possession is done by many construction companies as well on lands

that are left vacant for a longer period of time. Often by the time its original owners of the land find out about the illegal transfer of land. There is already a new building standing on it.

Such issues are becoming increasingly common. For instance, Andhra Pradesh has seen a long standing battle between the common people and the land mafia. Land mafias are a nexus between wealthy individuals and the private companies and revenue officials' tehsildars or other government officials. By forging title deeds through collusion, thousands of acres of private lands, government lands, and forest lands have been grabbed from their rightful owners. Many party leaders have been accused of grabbing lands as well.

A special investigation team was then set up to look into the land grabbing and other land issues in Visakhapatnam, and they said out of the Petitions received, many were cases on land grabbing. All of these land grabbing cases often stay under litigation for many years. The right to property is a constitutional right, but it is evident that the right is being violated very often. In a developing country such as India, better and more infrastructure to accommodate our growing population is necessary.

GOVERNMENT PERSPECTIVE AND STEPS TO BE TAKEN TO CURB THIS UPRISING

The following steps should be taken by the government to curb the rising issue of Land Grabbing:-

1. Fully implement the Tenure Guidelines on land, fisheries and forests.

For land rights campaigners, the passage of the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries, and Forests in the Context of National Food Security was a watershed moment. The multi-stakeholder Committee on World Food Security drafted the Tenure Guidelines⁹ (TGs) during a three-year period (CFS¹⁰). The Guidelines' overall purpose is to assist nations in improving their land tenure governance in order to promote food security for their populations. As a first step in preventing land grabs, governments should completely implement the TGs.

⁹FAO (2012) Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security,FAO: Rome

¹⁰ Committee on World Food Security

The TGs bring together existing global human rights standards and principles related to land tenure and provide detailed guidance on how to apply a human rights-based approach to:

- legal recognition and allocation of tenure rights and duties, including customary, collective, and informal land rights
- land tenure rights and responsibilities transfers and other modifications; and
- land tenure administration

In general, the TGs recommend that states:

- Recognize and respect all current customary and informal tenure right holders, even those whose rights are currently unprotected by law.
 - Defend all legitimate tenure rights from infringements and threats.
 - Promote and facilitate the exercise of lawful tenure rights.
 - Ensure that individuals who violate lawful tenure rights are held accountable.
 - Avoid violent fights and corruption as a result of tenancy disputes. All valid tenure rights must be protected from threats and infringements.
- 2. Examine and replace public policies that promote land grabs with policies that prioritise sustainable land use and the needs of women and other small-scale food producers.**

Increased demand for land is aided by a complex web of governmental incentives that put more pressure on land and make large-scale land purchases easier across the world. Governments that provide significant financial incentives for biofuel production raise demand for and strain on land. They create conducive settings for large-scale land purchases and resettlements that do not respect communities' free, prior, and informed consent when they declare entire areas available for business without respecting the rights of the people who live there. Governments and donors should immediately halt and review policies and projects that encourage and facilitate land grabs by facilitating unfair and potentially illegal large-scale land transfers, or that indirectly incentivize and increase pressures on land and natural resources, which can lead to serious human rights violations and land, forest, and water grabs from local communities.

2.1 Suspend and review large-scale land concessions, special economic zones and growth corridors.

2.2 Examine foreign aid programmes, initiatives, projects, and policy recommendations that encourage large-scale land acquisitions.

2.3 Examine trade and investment policies for compliance with human rights, environmental, social, and labour norms.

3. Make firms accountable for human rights, environmental, social, and labour norms through enacting regulations.

In countries with weak land tenure management and under-resourced or corrupt law enforcement institutions, there are still substantial gaps in corporate accountability and transparency. These responsibilities are outlined in the UN Guiding Principles on Business and Human Rights¹¹, which are built on three pillars: protect, respect, and rectify. Businesses must avoid generating or contributing to negative human rights consequences through their own operations, and they must redress these impacts when they arise.

CONCLUSION

At the end if we analyze considerably the story of Jaypee is not only about Jaypee, but is the story of every second builder of the nation who uses power, contacts, and money to save itself and keeps on looting the middle class mercilessly. They roam around in luxurious cars whereas the middle-class man who invests in such fraud schemes keeps on suffering till the end.

We have taken the example of Jaypee because it has become a very well-known and the country's biggest fraud and also has become the litmus test to show whether the government can do something in the favor of middle-class people or not, whether the Supreme Court can arrive at a positive opinion or not?

While on the other hand if we consider the issue of land grabbing the murky land scenario in India is not just limited to this There have been many cases of land grabbing done by wealthy and powerful private individuals where they illegally possess private properties belonging to other people by forging documents.

Such issues are becoming increasingly common For instance, the Andhra Pradesh has seen a long-standing battle between the common people and the land mafia. Land mafias are a nexus between wealthy individual and the private companies and revenue officials Tehsildars or other government officials By forging title deeds through collusion, thousands of acres of private

¹¹UN (2011) Guiding Principles on Business and Human Rights, Implementing the United Nations 'Protect, Respect and Remedy' Framework, Human Rights Council (A/HRC/17/31), UN/UNHROHC: New York/Geneva

lands, government lands, and forest lands have been grabbed from their rightful owners. Many party leaders have been accused of grabbing lands as well.

A special investigation team was then set up to look into the land grabbing and other land issues in Visakhapatnam, and they said out of the Petitions received, many were cases on land grabbing. All of these Land grabbing cases often stay under litigation for many years. The right to property is a constitutional right, but it is evident that the right is being violated very often. In a developing country such as India, better and more infrastructure to accommodate our growing population is necessary.

Moreover, if the steps mentioned above are followed by the government with due care, the issue of land grabbing will be completely and permanently resolved.