



Indian Contract Act And Transfer of Property Act

Relevant Provisions For Real Estate Agents

Indian Contract Act, 1872

What is Contract?

Section 2(h) An agreement enforceable by law is a contract.

What is an Agreement?

Section 2 (e) Every promise and every set of promises, forming the consideration for each other, is an agreement.

What is Promise?

Section 2(b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise

Indian Contract Act, 1872

What is Proposal?

Section 2(a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

What is Acceptance?

When a person to whom a proposal has been made, signifies his assent to that proposal then, it is said that proposal has been accepted.

What agreements are contracts?

Section 10- All agreements are contracts if they are made by the-

- parties competent to contract,
- free consent
- lawful consideration
- lawful object, and
- not expressly declared to be void.

Indian Contract Act, 1872

What is Consent?

Section 13- Two or more persons are said to consent when they-

- agree upon the same thing
- in the same sense.

What is Free Consent?

As per Section 14- Consent is free when it is not caused by –

- I. Coercion, as defined in section 15, or
- II. Undue influence, as defined in section 16, or
- III. Fraud, as defined in section 17, or
- IV. Misrepresentation, as defined in section 18, or
- V. Mistake, subject to the provisions of sections 20, 21 and 22.

Indian Contract Act, 1872

Coercion is defined under **section 15 of Indian Contract Act, 1872** as “Coercion” is the committing, or threatening to commit-

- any act forbidden by the Indian Penal Code under (45 of 1860), or
- the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Illustration: X threatens Y that he will kill him if he does not sell his flat to X. Y sells his flat to X. Consent obtained by Coercion.

Undue Influence: According to **section 16 of the Indian Contract Act, 1872**, “A contract is said to be induced by ‘undue influence’ where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. ex.- Master and Servant, Doctor and Patient, Guru and Chela, Principle and Agent, Teacher and Students etc.

Illustration: A is employer and B is employee. A exercising his influence purchases B’s very high value plot for a very low price. Consent obtained by Undue Influence.

Indian Contract Act, 1872

Fraud: Section 17 of Indian Contract Act states that, "**Fraud**" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract-

- False suggestion of fact not true.
- Active concealment of facts.
- Promise without any intention of performing it.
- Any other act fitted to deceive
- Act or omission specially declared fraudulent.

Illustration-

- I. The seller knows that he is not owner of the property but persuade purchaser to purchase.
- II. A is not owner of the plot. A sells the plot to B, B inquires A about the title of plot but A says nothing to B.
- III. B says to A—"If you do not deny it, I shall assume that the title of the plot is clear." A says nothing. Here, A's silence is equivalent to speech. It is Fraud.

Indian Contract Act, 1872

Misrepresentation: According to **section 18 of Indian Contract Act, 1872** misrepresentation means and includes:

- I. the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
- II. any breach of duty which, without an intent to deceive, gains an advantage of the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him;
- III. causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

Illustration- A does not know that title of his plot is defective, but he sells his plot to B and does not disclose that the title of his plot is defective. Consent obtained by Misrepresentation.

Indian Contract Act, 1872

Section 19- Consent to an agreement caused by coercion, fraud and misrepresentation- contract voidable.

Section 19A- Consent to an agreement caused by undue influence- contract voidable.

Mistake:

- **Bilateral Mistake**
- **Unilateral Mistake**
- **Mistake as to law**

Section 20- Both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement. Agreement Void, (Bilateral Mistake)

Section 22- Contract caused by mistake of one of the parties as the matter of fact- contract not voidable i.e., valid contract (Unilateral Mistake).

Section 21- Mistake as to law-

- Mistake as to any law enforce in India- contract not voidable i.e., valid contract
- Mistake as to any foreign law- contract void.

Illustration: X enters into an agreement with Y to sell his plot. At the time of agreement, the plot was already acquired by the government. Both X and Y were not aware of it. This contract is void due to mistake of fact.

Indian Contract Act, 1872

Who are competent to contract?

As per Section 11- Every person is competent to contract who is-

- of age of majority according to the law to which he is subject,
- of sound mind,
- is not disqualified by any law to which he is subject.

What is age of majority?

- Under Section-3 of Indian Majority Act, 1875 the age of majority is 18 years.
- The Guardian and Wards Act, 1890- If guardian of any minor has been appointed by court under Guardians and Wards Act, then in that case the age of majority is 21 years.

Indian Contract Act, 1872

Who is of sound mind for the purposes of contracting.

As per Section 12-

A person is said to be of sound mind for the purpose of making a contract, if-

- At the time when he makes it, he is capable of understanding it.
- And capable of forming a rational judgment as to its effect upon his interests.
- Idiot vs Lunatic

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Indian Contract Act, 1872

Who is disqualified by law to enter into a contract?

As per law minor, insolvents, person of unsound mind etc. are disqualified by law to enter into a contract.

Section 23-What is lawful object and lawful consideration?

Object and consideration of an agreement is lawful, unless-

- forbidden by any law
- Of such nature, if permitted, would defeat provisions of law.
- Involves or implies injury to person or property of another.
- Court regards it- immoral or oppose to public policy.

Indian Contract Act, 1872

Intention to Create Legal Relationship: The parties to the agreement must make it clear while entering into a contract that they want to create a legal relationship. If any party to the contract fails to comply with the terms of the agreement, then it will amount to breach of contract and will give rise to legal consequences.

Illustration – A Father promises his son to buy him a mountain bicycle if he scores 90% in his exam. Later on, father refuses to buy his son a mountain bicycle even after scoring 90%. This will not amount to any breach of contract as there was no intention to create a legal relationship between a father and his son.

Consideration should not be forbidden by law: Consideration should not be of such nature, if permitted, it would defeat the provisions of any law or, is fraudulent. If consideration involves or implies injury to the person or property of another. The Court regards it as immoral or opposed to public policy.

Illustration A promises to sell his car to B at Rs.100000, B promises to pay Rs. 100000 to A. This is an example of valid consideration.

Illustration: A enters into agreement with B who is a minor to sell a bike. This is not a valid contract.

Indian Contract Act, 1872

What agreements are declared to be void?

Section 24– Agreement void, if object or considerations is unlawful in part.

Section 25- Agreement without consideration is void

Exceptions-

- *Agreement on account of natural love and affection between parties in near relations*
- *Promised to pay time-barred debt*

Section 26- Every agreement in restraint of the marriage is void.

Exception- Minor.

Section 27- Agreement in restraint of trade is void.

Exception- Sale of goodwill.

Section 28- Agreements in restraint of legal proceedings, void.

Exception- Agreements to refer dispute to arbitration.

Section 29- Agreements void for uncertainty.

For Example- A makes an agreement with B to transfer his Gomti Nagar Flat. A has two flats in Gomti Nagar, not certain which one to transfer.

Section 30- Agreements by way of wager void

Exception- Horse-Racing etc.

Agency Contracts (RERA Act, 2016)

- **Role of the Agent:** You are legally bound to act in the best interest of your client (the principal). This means following their instructions carefully and protecting their rights.
- **Scope of Authority:** Ensure clarity about the extent of your authority (e.g., whether you can negotiate prices or sign documents on behalf of your client).
- Section 9 of the RERA ACT, 2016 and Rule 9 to 13 of the Uttar Pradesh Real Estate(Regulations and Development) Rules, 2016 provides for registration of Agent.
- **Section 10 Functions of real estate agents.**

Agency Contracts (RERA Act, 2016)

- Every real estate agent registered under section 9 shall—
 - Not facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being sold by the promoter in any planning area, which is not registered with the Authority;
 - Maintain and preserve such books of account, records and documents as may prescribed;
 - Not involve himself in any unfair trade practices, namely:—
 - The practice of making any statement, whether orally or in writing or by visible representation which—
 - Falsely represents that the services are of a particular standard or grade;
 - Represents that the promoter or himself has approval or affiliation which such promoter or himself does not have;
 - Makes a false or misleading representation concerning the services;

Agency Contracts (RERA Act, 2016)

- Permitting the publication of any advertisement whether in any newspaper or otherwise of services that are not intended to be offered.
- ❑ **facilitate** the possession of **all the information and documents**, as the allottee, is entitled to, at the time of booking of any plot, apartment or building, as the case may be;
- ❑ Discharge such other functions as may be prescribed.

Agency Contracts (RERA Act, 2016)

Section 65- Penalty for failure to comply with orders of Authority by real estate agent.

If any real estate agent, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent., of the estimated cost of plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated and as determined by the Authority.

Breach of Contract

Definition:

- Breach of contract, under the Indian Contract Act, 1872, refers to a situation where one or more parties to a legally binding agreement fail to fulfil their contractual obligations.
- This failure can take various forms, such as non-performance, partial performance, or defective performance of the terms agreed upon. A breach of contract may lead to legal consequences, including penalties and remedies, which can involve the payment of damages, specific performance, or injunctions.

Breach of contract : penalty

- A breach of contract penalty refers to the consequences imposed on the breaching party for failing to fulfill their contractual obligations. Penalties can take various forms and are typically aimed at compensating the non-breaching party for their losses or preventing further breaches.

Breach of Contract In India

Purpose of Penalties in Contract Law

- In contract law, penalties are typically designed to protect the interests of non-breaching party & deter future breaches.
- They are often stipulated in the contract itself in the form of liquidated damages clauses or other provisions outlining the consequences of a breach.
- Courts may also impose penalties based on the principles of equity and justice, considering factors such as the extent of the breach, the impact on the parties involved, and the nature of the contract.

Compensatory Damages

- Compensatory damages are monetary awards intended to compensate the non-breaching party for the loss suffered directly due to the breach.
- Here, direct losses means the losses actually caused due to breach of contract and not the other damages related to the non-breaching party.
- In the case of Hadley vs. Baxendale (1854), which is a landmark English case that has been adopted in Indian law, the court established the principle that damages should be limited to losses that were foreseeable at the time the contract was formed.

Transfer of Property Act, 1882

What is the Transfer of Property?

Section 5 means- An Act by which living a person conveys property to one or more **living persons** or himself.

Living includes both- natural persons as well as artificial/legal persons, i.e., company, partnership firm, association etc.

Transfer of Property Act, does not applu-

- To transfer by way of will
- Transfer by operation law-Succession.
- Transfer by order of Court.

(a) What is Doctrine of Part Performance?

Doctrine of Part Performance: When Part Performance Applies (Section 53A)

As per the Transfer of Property Act in India, the Doctrine of Part Performance applies when a person takes possession in part performance of contract of immovable property, that cannot be fully enforced due to insufficient legal documentation. If the transferee has acted on the contract, such as taking possession or making improvements to the property, they can claim protection under this doctrine. This aims to prevent injustice by allowing partial enforcement of the contract, provided the transferee has fulfilled their part of the agreement.

Transfer of Property Act, 1882

(b) Property: Property' refers to any tangible or intangible asset that can be legally transferred, owned, or possessed. This encompasses immovable property like land and buildings, which are the primary focus of the Transfer of Property Act in India. The act distinguishes between transferable property (which can be legally conveyed) and non-transferable property (which cannot be transferred under law).

(c) Immovable Property: Immovable property' refers to assets that cannot be moved, such as land, buildings, and permanent structures attached to the earth. The act primarily regulates transactions involving immovable property – setting clear guidelines for legal documentation, property registration, and compliance with laws like title deed and ownership rights.

(d) Attestation: Attestation' involves the act of witnessing a document, such as a sale deed or a loan agreement, by at least two individuals. It ensures the authenticity of the document and is mandatory for certain transfers, such as gifts, mortgage or loan transactions, under the Transfer of Property Act in India.

Transfer of Property Act, 1882

(e) Notice: Notice' refers to the legal communication of an event or transaction, making it known to concerned parties. The act emphasises the importance of proper notice in cases like loan agreements, property inheritance, and dispute resolution – ensuring transparency and compliance in property transfers.

(f) Types of Property Transfers Under Transfer of Property Act in India: The act encompasses many types of property transfers, each with specific requirements and legal implications. The main types include:

- **Sale:** A sale is transfer of all the ownership rights from the seller to the buyer in exchange for a price paid or promised; this transaction requires sale deed and property registration.

Transfer of Property Act, 1882

- **Lease-** A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.
- **Mortgage** A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced by way of loan. “Mortgage”, “mortgagor”, “mortgagee”, “mortgage-money” and “mortgage-deed” .
- **Gift:** A voluntary transfer of immovable property without consideration, that must be executed through a registered gift deed duly attested by witnesses as mandated by the Transfer of Property Act in India.
- **Exchange:** A mutual transfer where two parties swap ownership of immovable property; the exchange deed must be registered to ensure legal validity.

Transfer of Property Act, 1882

Section 54-

Sale- Transfer of **ownership-** in exchange for a price paid or promised

Ownership (title) - Bundle of rights - means-

- Right to possess.
- Right to use and enjoy
- Right to transfer
- Right to destroy

- **Sale how made-** Tangible immovable property- value Rs.100 or upwards – Only by registered instrument.
Tangible immovable property- value less than Rs.100 – By registered instrument or
— delivery of possession.

Transfer of Property Act, 1882

- **Tangible immovable property-** That can be touched.
- **Intangible property-** That cannot be touched- Right to catch fish, Intellectual property- copyright, trademark, patent etc.

Section 55- Rights and liabilities of buyer and seller

Duties of seller-

1. Disclose material defect in property or title.
2. Produce title documents for examination of buyer.
3. Answer all relevant questions in respect of the property or title.
4. To give possession.

Transfer of Property Act, 1882

(g) Sale of Immovable Property

- **Sale Deeds:** A sale is only complete once the sale deed is executed and registered. Help your clients through the entire process, from drafting to registration.
- **Seller and Buyer Responsibilities:** The seller must disclose all material defects, and the buyer must pay the purchase price and take possession. You should ensure that both parties fulfill these obligations.

(h) Leases of Immovable Property

- **Lease Agreements:** Leases transfer the right to use property for a period in exchange for rent. Make sure lease agreements cover all important aspects, such as rent, duration, and responsibilities of both landlord and tenant.
- **Rights and Liabilities:** Help both lessors (owners) and lessees (tenants) understand their rights, like the lessee's right to peaceful possession and the lessor's right to receive rent.

Transfer of Property Act, 1882

(i) Leases of Immovable Property

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(j) Mortgages of Immovable Property

- **Mortgage Agreements:** A mortgage transfers interest in property to secure a loan. If your client is obtaining a mortgage or involved in a mortgage-related transaction, ensure that the mortgage terms are clear and legally compliant.
- **Buyer Protection:** If a buyer takes possession of a property and has paid.

Practical Tips for Real Estate Agents

- **Due Diligence:** Always verify property ownership, check for encumbrances, and ensure all necessary legal documents are in place.
- **Disclosure:** It is your duty to inform your clients of any material defects, disputes, or legal encumbrances related to the property.
- **Legal Documentation:** Ensure that every transaction is backed by clear, legally valid documentation such as sale deeds, lease agreements, or mortgage deeds.
- **Fair Dealings:** Act in good faith, follow your client's instructions, and maintain transparency in all transactions.



Thank You

