



# REALTY BYTES

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# Requirement of registration and stamping of a Family Settlement Deed

The requirement of registration for Family Settlement Deeds and payment of Stamp Duty has been a perennial topic of discussion. Broadly speaking, document registration in India and the rate of applicable duty on such registration are governed by the Registration Act, 1908 (**Registration Act**) and the Stamp Act, 1899 (**Stamp Act**), respectively. This note analyses the requirement for registration and payment of Stamp Duty on Family Settlement Deeds, which are used to resolve disputes and divide family property among members and typically involve immovable property.

## Do Family Settlement Deeds need to be registered?

- The Registration Act classifies documents as either compulsory or optional for registration, with Sections 17 and 18 detailing the relevant requirements.
- Section 17 of the Registration Act specifies a list of documents that must be compulsorily registered. Section 17(1)(b) of the Registration Act mandates compulsory registration of 'other non-testamentary instruments (documents other than Wills, etc.) that create, declare, assign, limit, or extinguish any right, title, or interest in immovable property, provided the value of the property is INR 100 or more, including documents that impact the ownership or control of immovable property either currently or in the future'.
- However, Section 17(2)(v) provides an important exception to the aforesaid and states that Section 17(1)(b) does not apply to those documents that only create a right to obtain another document, which, when executed, will create, declare, assign, limit, or extinguish any such right.
- Therefore, if the Family Settlement Deed creates, declares, assigns, limits, or extinguishes any rights in immovable property, it falls under the ambit of Section 17(1)(b); however, if the Family Settlement Deed does not create, declare, assign, limit, or extinguish any rights in immovable property, it would fall within the scope of the exception contained in Section 17(2)(v) of the Registration Act.
- In light of the above, determining whether a Family Settlement Deed needs to be registered requires careful consideration and analysis of the nature of the document, as established by the Supreme Court of India in **Kale v. Dy Director of Consolidation**<sup>1</sup>. In this matter, the Court stated that registration would only be necessary if the terms of the family arrangement are documented in writing and the document itself creates, declares, assigns, limits, or extinguishes any rights in immovable property. This view was also reaffirmed by the Supreme Court in **Korukonda Chalapathi Rao & Anr v. Korukonda Annapurna Sampath Kumar**<sup>2</sup> wherein the Court distinguished between a mere Memorandum from a Family Settlement Deed, stating that Memorandum in itself does not create or extinguish any rights in immovable properties and, therefore, does not fall within the scope of Section 17(2) of the Registration Act, making it not compulsorily registrable.

## Applicability of Stamp Duty on Family Settlement Deeds

- Under Article 45 of the Stamp Act, Stamp Duty for any instrument executed between co-owners of an immovable property is charged at half a percent of the market value of the separated share or shares of the property. The largest share remaining after the property is partitioned (or, if there are two or more shares of equal value and not smaller than any of the other shares, then one of such equal shares) shall be deemed to be that from which the other shares are separated. Given that a Family Settlement Deed typically involves a partition between co-owners, the incidence of Stamp Duty will also be applicable to such a deed.
- On the other hand, a document that merely records the past transactions of any family arrangement may not require to be stamped or registered. This view was upheld by the Supreme Court in the matter of **Korukonda Chalapathi Rao & Anr v. Korukonda Annapurna Sampath Kumar** (*supra*), wherein the Court addressed the nature of *Khararunama* (which is a family settlement document that records the past transactions and arrangements) and determined that such a document, being a mere record of previous transactions, may not require to be stamped.
- The Supreme Court also referenced the judgment of the Division Bench of the Madras High Court in **AC Lakshmiopathy & Ors v. AM Chakrapani Reddiar & Ors**, wherein the Court noted that a document in the nature of a Memorandum, which evidences a family arrangement already made and serves as a record of what had been agreed upon, does not need to be stamped or registered.

The nature of the Family Settlement Deed is pivotal in ascertaining the requirement of registration and payment of Stamp Duty. If any document, Memorandum or Family Settlement Deed creates, assigns, limits, or extinguishes any rights in immovable property, then the said document is compulsorily registrable and will be required to be stamped properly as per the Stamp Act, as amended from time to time.

<sup>1</sup> (AIR 1976 SC 807)

<sup>2</sup> (2022 SCC 15 475)



## 2023 land regulations in West Bengal: Conversion of leasehold interest to freehold title

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A consolidated and standardised land allotment policy was issued by the Land and Land Reforms Department (**L&LR Department**) of the Government of West Bengal (**State Government**) vide order No. 6686-LP/1-A-18/2012 dated 26/12/2012 (**Existing Policy**). Under Clause 3(i) of the Existing Policy, land allotted to any individual/company/institution etc. under the Policy could only be transferred to them by the Government and its parastatals (entities and corporations that primarily act as functionaries of the State Government) by way of long-term lease for a period not exceeding 99 years, with the option for renewal for the same period under same or additional conditions that may be imposed and included in the Renewal Lease Deed. However, since January 2023, the State Government has begun to change this position and has allowed transfer and conversion of government-owned land on a freehold basis by existing lessees and prospective allottees. This was effectuated via a series of notifications and amendments throughout 2023, which are discussed in subsequent sections.

- **January 17, 2023**

- Notification by the Urban Development and Municipal Affairs Department**

By an order dated January 17, 2023, the Urban Development and Municipal Affairs Department (**UDMA Department**) of the State Government introduced the West Bengal Land Conversion (Leasehold Land to Freehold) Scheme, 2022 (**2022 Scheme**) whereby lessees of residential and commercial plots leased out by parastatals under lease tenures amounting to or exceeding 99 years, are permitted to apply for the conversion of their leasehold rights to the land to freehold rights, subject to certain restrictions and eligibility requirements. If found eligible for conversion, the lessee would thereafter be required to pay the requisite conversion fee as described in the 2022 Scheme, which is chargeable on the basis of the plot area and valuation of land as determined by the Inspector General of Registration and Commissioner of Stamp Revenue, West Bengal, and formulated according to the land usage, plot size and whether the plots are built-up or vacant. Subject to approval of the application of conversion, the lessee would be granted a Certificate of Modification along with a model Deed of Conveyance, to be executed within the period stipulated in the Certificate of Modification.

The material impact of the Policy remains to be seen and will become clearer as future land transfers are effectuated. While high conversion rates may disincentivize conversion, particularly in respect of recent long-term lease, the Policy alleviates many of the issues with prior land transfers under the erstwhile leasehold scheme which necessitated strict adherence to restrictive lease covenants, often leading to inflexibility in usage and sub-letting. Further, the restriction on conversion of land use post conversion from leasehold to freehold may have an adverse financial implication on the participant opting for such conversion based on the 2022 Scheme and the other follow-on notifications issued by the instrumentalities of the State Government.

A significant restriction was imposed by the 2022 Scheme whereby change in land use is not permissible post conversion from leasehold to freehold, except in cases of exceptional necessity after taking prior permission from the concerned authorities following extant rules, orders, and statutory provisions. Prior approval of the UDMA Department is also required to be taken by a parastatal on a case-to-case basis for the conversion of leasehold land parcels to freehold.

**Key aspects:**

- Lessees/mutated lessees/assignees may apply for such conversion. ‘Mutated lessee’ and ‘assignee’ have been defined to mean present lessee to whom the leasehold right has been devolved by inheritance or Will or valid transfer.
- All dues to parastatals/State Government on account of lease rent and other charges shall be cleared in order to become eligible to submit an application for conversion.
- If the concerned plot includes constructed buildings, there is a requirement to have a valid Completion Certificate (CC) or an Occupancy Certificate (OC), both of which are deemed to include partial CC and partial OC.
- As on the date of application for conversion, there should be no deviation in the context of building rules/laws and lease conditions. If there is any deviation, the conversion proposal may be considered only after regularization, if such regularization is permissible under applicable laws.
- If the leasehold right is mortgaged, a No-Objection Certificate (**NOC**) from the mortgagee shall be submitted along with the application for conversion.
- If any advance lease rent is paid, the same may be adjusted against the conversion fee.
- A formula has been provided for calculating the conversion fee.
- Post conversion, a Certificate of Modification as generated by the UDMA Department would be made available to the lessee/mutated lessee/assignee online along with a Deed of Conveyance.
- The applicant is required to deposit the previous Lease Deed in original at the time of execution of the Deed of Conveyance post conversion. Certified copy of the Lease Deed may be deposited in case of loss or damage of the original Lease Deed.
- The lessee/mutated lessee/assignee is required to pay the applicable Stamp Duty and registration fee at the time of registration of the Deed of Conveyance.

■ April 10, 2023

**Land Reforms (Amendment) Act, 2023**

On April 10, 2023, the West Bengal Legislature passed the West Bengal Land Reforms (Amendment) Act, 2023 (**Amendment Act**).

**Key aspects:**

- The second proviso to Section 14YA of the West Bengal Land Reforms Act, 1956 (**Principal Act**) – which provided that ‘any person acquiring land in excess of the ceiling limit prescribed under the Principal Act, if permitted by the State Government to establish an industrial park, industrial hub, industrial estate, financial hub, logistic hub, bio-tech park, food park or township, shall lease out such excess land subject to permissions and fee as outlined in the aforesaid provision’ – was amended to permit transfer of such excess land on a freehold basis.
- Section 52(2) of the Principal Act, which provides for management of land vested in the State Government under the Act, was amended to permit existing and prospective lessees of vested non-agricultural lands to apply for holding such land on a freehold basis as *raiyyat* even in excess of the ceiling limit for the purpose for which it is intended to be settled, subject to payment of prescribed fee and such other terms and conditions as may be imposed by the State Government.
- Section 52(3) was amended to permit the State Government to formulate separate sets of rules in respect of the purposes mentioned in the above-mentioned proviso to Section 14YA of the Principal Act.

■ June 8, 2023

**Amendment to the West Bengal Land Reforms Rules, 1965**

The State Government, acting through its L&LR Department vide an Order dated June 8, 2023, amended the West Bengal Land Reforms Rules, 1965 by insertion of Rule 28B, which provided that all lands belonging to the State Government, excluding land comprised in tea gardens, shall be managed for transfer on a freehold basis on such terms and notifications as the State Government may provide.

■ July 7, 2023

**Land Reforms Manual, 1991 Amendment**

By an Order dated July 7, 2023, the State Government amended the West Bengal Land & Land Reforms Manual, 1991 so as to authorise the Collector of a District to settle any non-agricultural land vested in the State Government or any specified classes of such land on a leasehold or a freehold basis, with prior

permission of the State Government. Rule 216, which previously permitted settlement of non-agricultural land solely on a leasehold basis, was suitably amended to permit settlement on such lands on a freehold basis. Additionally, Rule 218 (iii) was inserted to provide that the freehold settlement of non-agricultural land is to be made under the registered Deeds of Conveyance, the formats of which were inserted as Form Nos. 10 and 11 of Appendix IV of the West Bengal Land & Land Reforms Manual, 1991.

■ July 10, 2023

**Notification by the Land & Land Reforms and Refugee Rehabilitation Department dated 10th July 2023**

Vide an Order dated July 10, 2023, the State Government, by a Notification of the L&LR Department, specified the manner of transfer of various classes of land on a freehold basis.

**Key aspects:**

- In case of land retained by an intermediary under Section 6(1)(g) of the West Bengal Estate Acquisitions Act, 1953 and deemed to be leased out to such intermediary by the State Government under Section 4B(2) of the West Bengal Land Reforms Act, 1955, the conversion fee for existing lessees, whether the intermediary or a subsequent transferee, shall be 15% of the current market price as determined by the Inspector General of Registration.
- In case of fresh applicants for freehold settlement, conversion rate shall amount to the *salami* payable in terms of Rule 6A and Rule 6B of the West Bengal Land Reforms Rules 1965 (varying in accordance with utilisation of the land) in addition to 15% of the current market price.
- In case of land settled under the Tea Tourism and Allied Business Policy, 2019, the conversion rate for existing lessees/joint venture companies is 110% of the current market price (95% of *salami* for 99-year lease in addition to 15% of the current market price) in case of new projects and 15% of the current market price in case of lessees of existing projects who have already paid the requisite *salami*.
- In case of land leased out by the State Government for 2% of the current market price for industrial purposes, after vesting of ceiling surplus land purchased for that purpose, the conversion fee payable by the lessee shall be 7% of the current market price minus the amount of *salami* already paid.
- In case of leasehold land settled for 30 years or 99 years under WBIDC, WBHDC and WBSIDC, the conversion fee shall be as follows:
  - For 99-year leases, 15% of the current market price
  - For 30-year leases, 70% of the current market price (55% of the current market price for conversion of lease period from 30 to 99 years, in addition to 15% of the market price for conversion to freehold)
  - In case of land held by transferees/assignees other than lessees, 25% of the current market price
  - In the case of Kolkata *khasmahal* land, 15% of the current market price
- In all such cases specified till this point, any diversion from the activity for which the land is permitted to be used shall lead to cancellation of the Deed. All such transfers are permitted even if in excess of the ceiling limit prescribed under the West Bengal Land Reforms Act, 1955.
- In case of vested land settled with multi-storied residential buildings, individual flat assignees shall pay conversion fee of 15% of the current market value of the flat, while lessees of unsold units shall pay conversion fee as outlined hereinabove in case of leasehold land settled for 30 years or 99 years.
- In case of vacant unencumbered vested land, the land is to be auctioned in terms of the Land Allotment Policy 2012.
- For pocket vested lands where allotment is made on realization of *salami* of 95% of the current market price, the applicant shall have to pay an additional 15% of the current market price as a conversion fee.
- For land comprising industrial parks allotted to applicants, the conversion fee shall be 15% of the current market price in addition to the 'declared price.'
- For already leased out land, Stamp Duty for registration of the deed shall be based upon the additional amount to be charged for freehold conversion.

■ November 17, 2023

**Amendment to the 2022 Scheme by the UDMA Department**

The UDMA Department passed a Notification dated November 17, 2023, whereby several modifications were introduced pursuant to the 2022 Scheme.

**Key aspects:**

- Industrial plots, institutional plots and plots of mixed-use shall come under the purview of the Scheme.
- All industrial plots falling within Sector-V of Salt Lake shall be outside the purview of the Scheme.
- Industrial plots under other sectors of Salt Lake shall also be outside the purview of the Scheme and shall not be considered for conversion into freehold from leasehold.
- There shall not be any violation of the terms and conditions of the original Lease Deed.
- For industrial plots of land, the conversion fee as proposed by the July Notification were adopted, i.e. industrial plots on 99-year lease shall be subjected to conversion fee determined at 15% of the current market price of the land as determined by the IGR.
- Once transferred to freehold, the entire land schedule shall be flagged in the UDMA land record system to restrict any future conversion related to the use of the land.
- No further conversion shall be allowed after transferring the land on a freehold basis for a specific purpose. This condition of the restriction of change of land use shall be included in the Deed of Conveyance.
- Stamp Duty chargeable on already leased out land shall be based on the additional amount to be charged for freehold transformation/conversion under the Scheme.

■ **June 11, 2024**

**Notification by the UDMA Department**

The Government of West Bengal, acting through the UDMA Department, issued a Notification dated June 11, 2024, to aid the conversion of leasehold interest to freehold title.

**Key aspects:**

- Three categories of tenure were specified for the purpose of computation of conversion fee: 30 years, between 30 years and 99 years and between 99 years to 999 years.
- Conversion of proportionate undivided share of land appertaining to a flat/shop was permitted, subject to the same charges as the freehold conversion of leasehold land.
- License agreements where similar rights were conferred as are conferred through leasehold agreements, of tenures of 99 years and above, and which were granted prior to the 2012 Land Allotment Policy shall also be considered for conversion so long as the State Government/parastatal incurs no revenue loss and provided that all the interest and penalties as per the provisions of the license agreement are realised.
- Stamp Duty for registration of Deed of Conveyance shall vary between conversion of lease deeds and license agreements. It shall be payable on the consideration amount paid for conversion in respect of lease deeds and shall be charged on 110% of the current valuation of the land minus the consideration amount paid for execution of the license agreement, in respect of license agreements.
- The Scheme shall not be applicable to land leased out at concessional rates and other plots which have been allotted at token price.

## Liability of a co-promoter for allocation of other co-promoter(s)

Joint Development Agreements (**JDA**s) allow landowners to monetise their land asset by partnering with developers, and typically apportion the constructed spaces between the two parties (**Area Sharing JDA**) and/or the proceeds from the sale of the constructed spaces (**Revenue Sharing JDA**) as per the relevant terms. Given the prevalence of JDAs, the Real Estate (Regulation and Development) Act, 2016 (**RERA Act**) provided for a holistic definition of the term ‘promoter’ under Section 2(zk) of the RERA Act and included both ‘landowners’ and ‘developers’ within the purview of the definition. However, landowners and developers have been contending that they should be exclusively liable in respect of their own allocations and shall not have any liability in respect of the allocation of the other party.

This issue came up for consideration before the High Court of Bombay in the matter of **Wadhwa Group Housing Pvt Ltd v. Vijay Choksi & Ors** wherein Wadhwa Group Housing Pvt Ltd (**co-developer**) had executed an Area Sharing JDA with SSS Escatics Pvt Ltd (**developer**) to construct a project named ‘The Nest’ (**project**). Vijay Choksi (**allottee**) had booked a unit which was part of the allocation of developer and had cumulatively paid INR 1.2 crore to the developer. However, due to delay in the completion of the project and certain other disputes, the Allottee was compelled to approach the Maharashtra Real Estate Regulatory Authority (**Authority/MahaRERA**) seeking a refund of the principal amount, along with interest, costs and other compensation. The MahaRERA, in its Order dated September 24, 2021, disposed of the complaint and rejected the claims of interests, costs and compensation. The Allottee subsequently approached the Real Estate Appellate Tribunal (**Tribunal**) which set aside the Order by the MahaRERA vide its Order dated **October 18, 2022** and directed the developer and the co-developer to refund the entire amount paid of the allottee, along with interest and costs.

Aggrieved by the Tribunal’s Order, the co-developer filed an appeal in the Bombay High Court, which found no merit in the appeal and dismissed the same with costs, observing that the definition of the term ‘promoter’ under Section 2(zk) of RERA Act is wide enough to include every person associated with the construction of building, including builder, coloniser, contractor, developer(s), estate developer(s) and even persons acting as the constituted attorney of the landowners. Furthermore, the judgment elaborated that merely because the flat booked by the Allottee was situated in the construction space of the developer, would not absolve the co-developer from its responsibilities and liabilities since the RERA Act does not demarcate or restrict liabilities of different promoters. The liability is joint for all purposes under the RERA Act, its ancillary Rules and Regulations.



The Bombay High Court Order also took note of the MahaRERA **Circular Nos. 12 of 2017** and **13 of 2017**, both dated **December 4, 2017**, whereby the Authority provided for a wider connotation of the term ‘promoter’ and clarified that landowners, developers and investors in a real estate project fall within the ambit of the term. Considering the aforesaid observations, the Bombay High Court held that *‘even a promoter who has not received any consideration from an allottee is also liable to give refund with interest under Section 18 of the RERA.’* The Court interpreted that the liability to return the amount received from the allottee would be on the promoter in terms of Section 18(1)(b) of RERA Act and since the co-developer was covered by the definition of the term ‘promoter’, the co-developer would be jointly liable to refund the amount, along with the other promoters.

In a recent judgment, the Kerala High Court, in the matter of **Pooja Constructions v. Secretary, Kerala Uranma Devaswom Board & Anr**<sup>3</sup>, also dealt with the liability of a landowner under RERA. The Court drew distinction between a promoter and a landowner by referring to Section 4(2)(l)(A) of RERA Act read in conjunction with Clause 1 of Form B, referred in Rule 3(6) of the Kerala Real Estate (Regulation and Development) Rules, 2018 (**Rules**) which mandates a promoter to specify whether it has legal title to the land proposed to be developed or to mention the name of the entity having legal title in respect of such land. The Court also referred to the explanation to Section 2(zk)(vi) of the RERA Act to limit the liability of a landowner under RERA, to the extent of Section 17 of the RERA Act, stating that a landowner shall be deemed to be a co-promoter only for the purpose of executing sale deeds in favour of allottees in a project and that the responsibility to fulfill other obligations of a promoter shall not be the responsibility of a landowner.

In the instant matter, since the Kerala Uranma Devaswom Board & Anr were the landowners and had parted with their land for a fixed consideration, partly in kind (by way of completed apartments) and partly in cash, their consideration was fixed with respect to the project, irrespective of any profit or loss. The Court decided that their role was limited, and they could not be considered promoters of the project. Accepting payment in kind did not imply they were involved in the project's construction and development. The Kerala High Court judgment took note of the decision of the Bombay High Court in the matter of *Wadhwa Group Housing Pvt Ltd* (supra) and distinguished it from the instant matter, citing that the Wadhwa Group matter was of a developer contracting with an investor and did not involve a landowner.

The judgments, read in conjunction, indicate that a landowner's responsibility for fulfilling the obligations and liabilities of a ‘promoter’, as expounded under the RERA Act, is limited to Section 17 of the RERA Act. However, in the event of an investor joining in the development of a project, such investor and every person associated with the construction, including but not limited to builders and contractors, shall be jointly liable in the event of breach of the obligations and liabilities of a promoter in terms of the RERA Act.

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<sup>3</sup> MSA No. 16 of 2024

## Understanding the distinction between lease, tenancy and license

Given the increasing cost of property ownership, lease, leave and licence and/or tenancy arrangements have witnessed an upsurge over the past few years. While the terms are often used interchangeably in common parlance (and typically specify the rent, fee, or premium as well as the terms and conditions according to the convenience and requirements of the landlord and the tenant), they are governed and defined under different provisions of law. This note analyses the nuances associated with each of these and clarifies certain parameters as applicable to the State of West Bengal.

| Parameter                                    | Lease                                                                                                                                                                                                                                                                                                                                                                                              | Tenancy                                                                                                                                                                                                                                                                                                                                                    | License                                                                                                                                                                                                                                                                                                                                         |
|----------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Definition</b>                            | A lease of immovable 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. | Tenant means any person by whom or on whose account or behalf, the rent of any premises is, or but for a special contract would be, payable and includes any person continuing in possession after the termination of his tenancy or in the event of such person's death, such of his heirs as were ordinarily residing with him at the time of his death. | When one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license. |
| <b>Governing law</b>                         | Defined under Section 105 of the Transfer of Property Act, 1882 ( <b>TP Act</b> ).                                                                                                                                                                                                                                                                                                                 | Tenancy has not been defined in the West Bengal Premises Tenancy Act, 1997 ( <b>WBPT Act</b> ); however, tenant is defined under the WBPT Act.                                                                                                                                                                                                             | Defined under Section 52 of the Indian Easements Act, 1882 ( <b>IE Act</b> ).                                                                                                                                                                                                                                                                   |
| <b>Applicability in State of West Bengal</b> | TP Act extends to the whole of India and, therefore, it is applicable in West Bengal.                                                                                                                                                                                                                                                                                                              | WBPT Act extends to the municipal areas of West Bengal. However, there are certain exemptions <sup>4</sup> contained in Section 3 of the WBPT Act.                                                                                                                                                                                                         | Not applicable in the State of West Bengal, though the principles of the IE Act (justice, equity and good conscience) are applicable.                                                                                                                                                                                                           |
| <b>Instrumentality</b>                       | Lease is granted by executing a Deed of Lease or Lease Agreement by the lessor and the lessee.                                                                                                                                                                                                                                                                                                     | Tenancy is granted by executing a Tenancy Agreement between the landlord and the tenant or the landlord issuing a rent receipt to the tenant.                                                                                                                                                                                                              | License is granted by executing a Leave and License Agreement which, by their very nature, favour the licensor as they do not confer any interest on the licensee with respect to the property.                                                                                                                                                 |
| <b>Rights transferred</b>                    | Lessor transfers leasehold right and interest in favour of the lessee.                                                                                                                                                                                                                                                                                                                             | Landlord transfers a tenancy right and interest in favour of the tenant.                                                                                                                                                                                                                                                                                   | Licensor only gives specific right to the licensee and no interest is transferred.                                                                                                                                                                                                                                                              |

<sup>4</sup> Section 3 (e) and (f) of the WBPT Act provide that any premises let out for residential purpose, which carries more than INR 6,000 as monthly rent or any premises let out for non-residential purpose which carries more than INR 10,000 as monthly rent, will not fall under the WBPT Act.

|                                           |                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                             |
|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Possession of property</b>             | Possession of the leased property is given to the lessee.                                                                                                                                                                                                   | Possession of the tenanted property is given to the tenant.                                                                                                                                                                                                          | Possession of the of the licensed property remains with the licensor.                                                                                                                                                       |
| <b>Consequence of death</b>               | In case of death of the lessee, the leasehold right and interest in the property can be inherited by the lessee's heirs.                                                                                                                                    | In case of death of the tenant, the tenancy right and interest in the property cannot be inherited by the tenant's heirs, subject to the footnote <sup>5</sup> .                                                                                                     | In case of death of the licensee, the license in respect of the property expires.                                                                                                                                           |
| <b>Transfer of rights</b>                 | In case the lessor transfers the leased property to a third party, the lease of the lessee stands attorned in favour of the third party. The lessee may sub-let, assign or transfer the leasehold rights and interest with the consent of the lessor.       | In case the landlord transfers the tenanted property to a third party, the tenancy of the tenant stands attorned in favour of the third party. The tenant may sub-let, assign or transfer the leasehold rights and interest with the consent of the landlord.        | In case the licensor transfers the licensed property to a third party, the license ends. Licensee cannot transfer its rights.                                                                                               |
| <b>Limits on premium/ advance or rent</b> | There is no limit to the premium/advance or monthly rent.                                                                                                                                                                                                   | There is no limit to the premium/advance; however, there are certain limitations to the monthly rent.                                                                                                                                                                | There is no limit to the premium or monthly fee.                                                                                                                                                                            |
| <b>Registration requirement</b>           | Deed of Lease for more than 1 year is compulsorily registrable.                                                                                                                                                                                             | Tenancy Agreement may not be registered.                                                                                                                                                                                                                             | License Agreements are generally for a tenure of 11 months and hence not required to be registered.                                                                                                                         |
| <b>Termination</b>                        | Lease cannot be terminated without any default of the lessee or reasonable requirement of the lessor. For eviction of the lessee, the lessor must follow the due process of law and serve a notice under Section 106 of the Transfer of Property Act, 1882. | Tenancy cannot be terminated without any default of the tenant or reasonable requirement of the lessee. For eviction of the tenant, the landlord must follow due process of law and serve a notice under Section 6(4) of the West Bengal Premises Tenancy Act, 1997. | License cannot be revoked without any default of the licensee. In case of default of the licensee, the license can be revoked at any time by the licensor by giving a notice. There is no specified provision for the same. |

The suite of rights conferred upon the tenant will be a function of the type of specific arrangement entered into with the landlord. As such, it is vital to be aware of the differences between a lease, tenancy and licensee arrangement. While a landlord has the right to repossess their property, they must adhere to the due process of law and institute a suit for eviction before the Jurisdictional Court. Upon receiving a judgment in an eviction suit, an officer (such as a Court Receiver or Sheriff) will formally notify the tenant of the lawful eviction and specify the time frame within which the tenant must vacate the premises. If the tenant does not comply, law enforcement may proceed with physical removal. Landlords must refrain from taking matters into their own hands and ensure they follow the legal procedures to avoid any potential legal complications.

Given the high incidence of disputes between landlords and tenants/lessees/licensors, it is equally important to consider the consequence of unlawful eviction by the landlord without following the due process of law. In such instances, the tenant lessee/licensee can explore a suit under the Specific Relief Act, 1963; a suit for damages; and/or a police complaint.

<sup>5</sup> However, the spouse, son, daughter, parent and the widow of his predeceased son of the tenant who were ordinarily living with the tenant up to his death as a member of his family and were dependent on him and who did not own or occupy any residential premises shall have the tenancy right for a period not exceeding five years from the death of the tenant.



## Recent notifications by West Bengal Real Estate Regulatory Authority

| Date         | Title                                                                                                                                      | Remarks                                                                                                                                                                                                                                                                                                                                                                                                             | Link                                                                                                                                                       |
|--------------|--------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| May 13, 2024 | Notification for Online Registration of Projects which have obtained Occupancy Certificate but not Completion Certificate as on 31.01.2023 | The Notification clarifies that only projects without a Completion Certificate as of January 31, 2023 need to be registered with WBRERA within three months of this Notification's date. The previous notification mistakenly included 'occupancy certificate' in its requirements, which has now been corrected. Promoters who fail to register within this period may face penalties under Section 59 of the Act. | <a href="#">Notification for Online Registration of Projects which have obtained Occupancy Certificate but not Completion Certificate as on 31.01.2023</a> |
| May 24, 2024 | NIT invited by WBRERA from reliable agencies for carrying out publicity about WBRERA activities on various social media platform           | WBRERA made an invitation for sealed tenders from reputable agencies to handle the publicity of its activities across various social media platforms. The tender seeks a creative agency to plan, conceptualise, and execute innovative communication strategies, as well as to promote and update WBRERA's activities on its official digital channels.                                                            | <a href="#">NIT invited by WBRERA from reliable agencies for carrying out publicity about WBRERA activities on various social media platform</a>           |
| June 6, 2024 | Applications are invited from the eligible and willing persons for appointment to the post of the Chairperson of WBRERA                    | The Notification invites eligible and interested candidates to apply for the position of Chairperson of WBRERA. Open for 15 days from the date of the Notice's publication, this presents a significant opportunity for individuals with the requisite expertise and commitment to play a pivotal role in shaping the real estate regulatory landscape in West Bengal.                                              | <a href="#">Applications are invited from the eligible and willing persons for appointment to the post of the Chairperson of the WBRERA</a>                |

## **About CREDAI Bengal**



**CREDAI Bengal** is the apex body for real estate developers in Kolkata, affiliated to the Confederation of Real Estate Developers' Associations of India (**CREDAI**) which is the nationwide body of pan-India real estate developers, comprising 13000+ real estate developers as members, with a presence in 21 states and 230 cities. CREDAI Bengal has 200+ members, symbolizing the organised representation of real estate's major stakeholders based in Kolkata and its peripheries, advocating strict adherence to WBRERA Rules, commitment to consumer satisfaction with regard to handover of projects etc., promoting transparency in business and inculcating professionalism in the sector.

Our members are engaged in the development of residential housing projects, commercial buildings, malls, IT/ITeS complexes, warehouses, hotels, hospitals, logistics hubs and urban social infrastructure projects.

We collaborate with Government Departments and agencies to pursue issues related to the state's real estate development and also promote West Bengal as a significant investment destination. We work together with other CREDAI chapters to exchange best practices and help grow the real estate sector in Eastern India.

Our collaboration with the State Government on several civic projects in Kolkata – like planting lakhs of saplings on city medians and pavements, adoption of city parks, Nimtolla crematorium renovation etc. – aim at relationship building between the State Government and the industry to create a positive and harmonious atmosphere for sectoral growth and city welfare aligning with the government's vision for economic excellence of West Bengal and making Kolkata a world-class city.

We have two active committees, the CREDAI Bengal Youth Wing for the under-40 members who bring in fresh ideas in the implementation of various CSR and learning programmes and the CREDAI Bengal Women's Wing who work on making women more active in real estate and increasing their representation in the business.

CREDAI Bengal regularly organises events and exhibitions to promote greater connection between industry and consumer as well as to exhibit real estate projects of members before the public. Knowledge-sharing events for the benefit of developers are regularly hosted along with awards programmes to fete members for the projects they are building and real estate summits to bring more cohesion within the industry.

Currently, CREDAI Bengal is led by Mr Sidharth Pansari, President, and Mr Apurva Salarpuria and Mr Ashok Saraf, both Vice Presidents, for the term 2022-2024.

## About Fox & Mandal



Founded in 1896, Fox & Mandal (**F&M**) is one of India's oldest full-service law firms. Against the backdrop of our 120+ years of heritage, an unyielding and constant focus on evolution, adaptability and change has been the hallmark of our client engagement and service ethos.

As India Inc. continues to grow, driven by a desire to expand, diversify and optimize operations, India's evolving policy and regulatory ecosystem necessitates careful navigation by businesses as well as their promoters and KMPs. With a proven track record of effectively leveraging our full-service capabilities to address attendant legal challenges, our specialist teams combine relevant subject matter, sectoral and jurisdictional knowledge to craft pragmatic, commercially viable and legally enforceable solutions for addressing critical issues along the entire business life cycle. Our practice areas include Corporate & Commercial, Private Equity, Banking & Finance, Capital Markets, Dispute Resolution, Arbitration, Employment & Labour, Family Estate & Trusts, Projects & Infrastructure, and Government Advisory.

Real Estate is a core practice area at F&M and encompasses the entire gamut of contentious and non-contentious support required by our clients across commercial, industrial, hospitality, leisure, educational and other sectors. We provide a comprehensive array of legal and advisory services addressing the entire spectrum of requirements from verifying ownership rights to safeguarding operations against future legal risks. Our expertise ensures regulatory compliance for both asset acquisitions and sales and facilitates the swift monetization of real estate investments. Our services include establishing and confirming land titles, rectifying title defects, ensuring compliance with government and administrative regulations, and preparing essential transactional documents. Additionally, we draft and review agreements with architects, consultants, contractors, suppliers, and service providers, as well as sale deeds for transactions with individual buyers.

Our focus on responsive and collaborative engagement with our clients is motivated by a desire to seek alignment of values, purpose and ambition. Our extensive clientele extends across varied industry sectors, Fortune 500 companies, domestic conglomerates, startups, PSUs, MNCs, and non-profits.

We have grown and expanded to keep pace with our clients and have a team over 120 professionals across our offices in Kolkata, Mumbai and New Delhi. Even as our footprint continues to grow in India, F&M's team supports our client's global operations and cross-jurisdictional requirements through a network of international law firms and advisors.



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