

PROPERTY FRAUD

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WHAT IS FRAUD?

- Fraud is a broad term that refers to a variety of offenses involving dishonesty or "fraudulent acts". In essence, fraud is the intentional deception of a person or entity by another made for monetary or personal gain. It can be a civil wrong and criminal wrong.
- Fraud is constituted by false representation as to past or present facts for the purpose of illegal and wrongful gain to cause wrongful loss to the owner of the property in such a way that the title of the property is passed from the owner illegally.

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“IT COULD NEVER HAPPEN TO ME”

- Perhaps the biggest mistake people make when it comes to scams is to think “it could never happen to me”. It’s a common perception that investment scams are fly-by-night operations that prey on the gullible and operate in dark, unmonitored corners of the economy. That may be often true, but some of the most outrageous scams have operated openly, under regulatory supervision and have swindled the best and brightest.
- The golden rule in preventing potential fraud offenses is to be vigilant in handling your property transactions diligently.

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- This presentation is limited to the frauds which are committed against property.

TYPES OF FRAUD AGAINST PROPERTY

- Fraud is most common in the buying or selling of property. Some of the frauds are as under:

A. IDENTITY THEFT AND TITLE FRAUD-

One of the most devastating frauds for property owners is title fraud. This type of fraud starts with identity theft. Person other than the owner representing to be owner on base of false identity and executing any of the documents to create right in the property.

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- The fraudster will use false documents to pose as the property owner, will register forged documents transferring a property to his or her name, and then might get a new mortgage against the property. After securing a mortgage, the criminal takes the cash and leaves the owner on the hook for future payments.
- Identity theft can take place whether the fraud victim is alive or deceased.

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B. DEFECTIVE TITLE-

A person having defective title for any reason represents his title to be clear and marketable. The buyer will also get defective title.

C. SELLING OF PROPERTY WITHOUT DISCLOSING OTHER RIGHTS

- In case of HUF, the property is sold without disclosing rights of other members. The buyer will stand defrauded when other members claim their rights.
- The same situation can operate in case of joint property.
- Property sold without disclosing execution of other documents creating rights in the property such as Agreement to Sell, Mortgage, Gift Deed, Lease Deed, etc.

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D. NON DISCLOSURE ABOUT NATURE AND STATUS OF LAND

- Non-disclosure of subsisting mortgage on the land/property
- Land/property belonging to any third party including government
- Land/property being restricted for certain use such as housing for low income group but used for putting up commercial complex etc.
- Land/property meant for acquisition but not disclosed
- That there is charge, lien or mortgage on the property
- That there is notice of requisition or acquisition on the said property

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- That there is loan by any bank, financial institutions or any third party
- That the property is subject to any notice under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
- That there is pending litigations with respect to the property in any court
- That they are government dues outstanding against the property

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E. NON-DISCLOSURE OF BREACH OF GOVERNMENT RULES AND REGULATIONS

- Construction without sanctioned plan
- Construction in deviation of sanctioned plan
- Construction by change of use
- Construction in breach of rules and regulations

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F. FRAUDULENT REPRESENTATIONS:

The fraudster makes false representations through social media, online advertisements, advertisements in local newspapers etc. offering very cheap deals. Generally, the fraudster play on the concept of greed of the buyer to get the property at the lowest price. Once, the prospective buyer pays up money for prospective purchase of the property, such fraudster will disappear from the scene. All documents which are provided to the buyer will be forged and of no value.

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G. OTHER FRAUDS WITH REGARD TO CONSTRUCTED PROPERTY.

a. Sub standard work.

- In one of its judgment the Supreme Court of India has held that if false and misleading representations about the condition of the house is made, it tantamount to fraud.

b. Construction without approvals.

- Construction without approvals may constitute fraud, if false representation is made that all necessary approvals are take for construction and in fact, construction is carried out without such approvals.

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c. Construction on illegally acquired land.

- In cases where the construction has been made on illegally acquired land, it will constitute fraud.

d. Change of land use, layout plan and structures without the approval of the allottee shall constitute fraud.

e. Creation of third party interests.

- Creation of third party interest shall constitute fraud.

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PRECAUTIONS TO BE TAKEN BY A PROSPECTIVE BUYER.

- Before buying a house, a buyer must do a thorough due diligence of the property. A prospective buyer must thoroughly go through the original copy of the agreement with the owner. One must verify the original documents of the property. The title of the Vendor to the property must be clear and marketable.
- The Buyer must also verify the development agreement between the owner of land and the builder in case the Buyer is taking the property from a Builder.

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- Buyer must also ask for the building completion certificate (if available).
- Buyer must also check the building bye-laws in the area to verify any issue with setback, side setback, height, etc. Buyer must confirm with the seller the transfer fees, stamp duty and registration charges to be paid on purchase of the property as well as outgoings to be paid for the property.
- The sale agreement must be scrutinized in detail. It should have the municipal-approved plan of the flat, carpet area with the area of the balconies shown separately, price of the property including the proportionate price of common areas and facilities shown separately and intervals at which installments may be paid.
- It should be verified that the proper stamp duty has been paid.

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REMEDIES

Any person who is a victim of property fraud can:

- a. File a civil suit in a Civil Court
- b. File a complaint before the Consumer Forum
- c. File a Criminal Case

Penalties for fraud offenses may include criminal penalties, civil penalties, or both. Most criminal fraud offenses are punishable by jail, fines, probation, or all of the above. Civil penalties may include restitution or payment of substantial fines. The penalties for your offense will depend on the nature, type, scope, and severity of the action and whether it was committed by an individual or an entity, such as a business, corporation or group.

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SOME REAL LIFE ILLUSTRATIONS OF PROPERTY FRAUD.

- **BUILDER FRAUD**

A Kochi-based company 'Apple-A-Day Properties' reportedly collected over Rs. 100 crore from buyers which included 125 Indian expatriates in the Middle East. The company offered villas and apartments in the heart of the city at attractive rates. It used the goodwill of a couple of its completed projects to rope in buyers, but after it missed many deadlines for its 11 new projects, customers cried foul. The firm's Director and Managing Director went underground after the company allegedly went bust a few weeks ago. Soon, complaints started pouring in and over 160 FIRs have now been registered against the company. Police say the duo, who led a lavish lifestyle, have withdrawn money from all their accounts. A look out notice has also been issued against them.

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- **DOUBLE MORTGAGE**

A person proposed to purchase a plot in the City. He approached a real estate agent and finalized a plot in a prime place and after paying the money he got the plot registered in his name. After a few days officials of a corporate bank approached him with attachment orders of a civil court claiming that the said plot was mortgaged with their bank. He denied to have mortgaged the plot to anyone and approached a lawyer to fight the case. After one week, another nationalized bank approached him with a different attachment order claiming that the plot was mortgaged with their bank. The seller of the plot was absconding and the real owner is fighting the cases in the court.

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The fraudster before selling the property mortgaged the property with two banks and availed loans and absconded. He lost his hard earned money and also fighting legal battle in the court. Had he verified the ownership particulars from Sub Registrar office he would have avoided this trouble.

- **MULTIPLE GENERAL POWER OF ATTORNEY**

A person purchased a plot from somebody who was given GPA by the real owner. After registration of the plot when he went to plot to get it cleaned, in the mean time, another person claiming to be the owner of the plot objected to this. When both the parties approached the police, they found that both of them purchased the same plot from different persons who are GPA holders. It is also revealed that the real owner has given multiple GPA's in the name of several persons.

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He also sold the plot to third parties prior to registration of GPA's and left the country. All the other persons who purchased the property lost their hard earned money due to their laxity in enquiring in concerned Sub Registrar office about the ownership.

- **UNAUTHORIZED LAYOUTS**

A person who intended to purchase a plot in a good area, approached a real estate agent. After payment of considerable amount he got the plot registered in his name. Later when he went to plot showed by the seller he was objected by other persons claiming to be the owner. On further enquiry the survey No. mentioned in the lay out belongs to Forest Department. Entire lay out showed by the seller is fake. He has created unauthorized lay out in Government land and took the customers to others lay out and sold the plot and ran away with the money. He lost his hard earned money due to non verification layout with concerned departments and for not making necessary local enquiries.

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- **MULTIPLE REGISTRATION**

An NRI intended to invest in city by purchasing a plot in a good area, approached a real estate developer on seeing the paper advertisements. After payment of considerable amount she got the plot registered in her name. Later, after lapse of 6 years she intends to sell the plot due to financial problems. When she went to plot along with prospective buyer, she came to know that three other persons are claiming the ownership and one among them even constructed a compound wall. On further enquiry she learnt that she is the 1st buyer and after selling the plot to her. The owner has sold the plot to three other persons with out the knowledge of each other. The owner died and the buyer NRI is fighting a legal battle with others claiming to be owners to claim to prove her ownership.

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- **ENCROACHMENTS**

A lady planned to purchase a plot, approached a real estate developer on seeing the paper advertisements. After payment of considerable amount she got the plot registered in her name. Later when she went to site to get it cleaned she noticed that some one has dug up foundations for construction of house. When she enquired about it, she came to know that owner has encroached into neighbor's plot by creating lay out and sold it to her. She also came to know that she did not have any right over the property as plot is located in others plot. She lost her hard earned money due to non verification lay out with concerned departments and for not making necessary local enquiries.

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- **DUBIOUS AGREEMENTS**

A person wanted to purchase a flat admeasuring 1230 Sq.ft in the city approached a prospective builder on seeing the paper advertisements. After payment of considerable amount he got the flat registered in his name. Later when he got the flat measured it came to 950 Sq.ft including common area and he was left with living carpet area of 790 Sq.ft. The builder prepared sale agreement concealing the truth and he failed to read the agreement properly. Later he came to know that the builder has mortgaged the entire flats to a nationalized bank. Now the bankers are after the flat owners claiming the refund of loan amount. The builder is absconding. He is fighting legal battle with the bankers and he lost his hard earned money due to non verification agreement before purchasing the flat and getting verified with the concerned Sub Registrars regarding the mortgage and for not making necessary local enquiries.

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