REGISTERED VALUER EXAMINATION

LAND & BUILDING

COURSE MATERIALS (30 MARKS)

LAWS REAL ESTATE
VALUATION OF REAL ESTATE
INCOME APPROACH
MARKET APPROACH

COMPILED BY

R JAYARAMAN

TIRUCHIRAPALLI

jaya_r54@yahoo.com

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IMPORTANT

The study materials and illustrations given in the book are mainly for the purpose of guidance who are willing to appear for IBBI registered valuer Examination.

Depending upon the actual situation, one must be able to take suitable judicious approach. This book is intended for preparation for the examination, depending upon the situation and the probable option given, by which, the participants must be able to take a suitable solution judiciously.

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Feedback may be given if there are any mistakes.

R JAYARAMAN
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TOPICS

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LAWS REAL ESTATE

TRANSFER OF PROPERTY ACT 1882

PROPERTY ACQUISITION

GRANT - Assigning of government owned lands as per government grants act 1895. Government barren (poramboke) lands assigned to a person through issue of patta making him as owner or granting him permission to develop the properties.

eg: mining lands, quarries, housing for poor, settlement for backward, most backward and scheduled tribes, forest rights lands

SUCCESSION - Acquisition of ownership under law of succession - When a person become a legal heir by the virtue of his relationship with the property owner as per Indian Succession Act, personal laws like Hindu Succession Act & Mohammedan law of succession.

The properties transferred through will.

ACQUISITION OF OWNERSHIP - By Laws Of Prescription As Per Indian Limitation Act 1963, If a tenant or a trespasser of the property having an adverse possession or holding or enjoyment of the property for more years – minimum 12 years and above will be called as acquisition of ownership by prescription

CONVEYANCE - Transferring to other person by way of execution of title deed and conveying his rights in the property to other person - called as Acquisition of ownership by Conveyance also called as Inter-vivo by Transfer of Property Act, 1882

TRANSFER OF PROPERTY ACT, 1882

SECTIONS 1-4:	DEFINATIONS
SECTIONS 5 -37 & 118-137:	TRANSFER OF MOVABLE & IMMOVABLE PROPERTIES
SECTIONS 38-53A & 54 -137:	TRANSFER OF IMMOVABLE PROPERTIES
SECTIONS 54 -57:	SALE
SECTIONS 58 -104:	MORTGAGE
SECTIONS 105 -117:	LEASE
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SECTIONS 130 -137:	ACTIONABLE CLAIMS

SECTION 3 - Interpretation clause.—in this Act, “immoveable property” does not include standing timber, growing crops or grass;

‘‘Instrument” means a non-testamentary instrument; “Attested”, in relation to an instrument, shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant;

“Registered” means registered in any part of territories to which this Act extends for the time being in force regulating registration of documents;

“Attached to the earth” means—

(a) Rooted in the earth, as in the case of trees and shrubs;

(b) Imbedded in the earth, as in the case of walls or buildings; or

(c) <u>Attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached;</u>

"Actionable claim" means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to beneficial interest in moveable property not in possession, which Civil Courts recognize for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;

Where any transaction relating to immoveable property is required by law to be and has been effected by a registered instrument,

Provided that—

(1) Instrument has been registered and its registration completed in manner prescribed by Indian Registration Act, 1908 (16 of 1908), and rules made thereunder,

(2) Instrument or memorandum has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and

(3) Particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

<u>SECTION 4</u> - Enactments relating to contracts to be taken as part of Contract Act and supplemental to the Registration Act.—The Chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872 (9 of 1872). And section 54, paragraphs 2 and 3, and sections 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, 2[1908 (16 of 1908)].]

<u>SECTION 5</u> - An act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, and one or more other living persons; and “to transfer property” is to perform such act. In this section “living person” includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for time being in force relating to transfer of property to or by companies, associations or bodies of individuals.

SECTION 6 - What may be transferred.—Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force—

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred;

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to anyone except the owner of the property affected thereby;

(c) An easement cannot be transferred apart from the dominant heritage;

(d) All interest in property restricted in its enjoyment to the owner personally cannot be transferred by him; A right to future maintenance, cannot be transferred;

(e) A mere right to sue cannot be transferred;

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable;

(g) Stipends allowed to military naval, air-force and civil pensioners of the Government and political pensions cannot be transferred;

(h) No transfer can be made in so far as it is opposed to the nature of the interest

Affected thereby, or for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872 (9 of 1872)], or to a person legally disqualified to be transferee; Nothing in this section shall be deemed to authorize a tenant having an un-transferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate, under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee. The Sections 5 & 6 of transfer of property act describe the ownership description.

SECTION 7 - Persons competent to transfer— Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the time being in force.

SECTION 25 - **Conditional transfer**.—An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy.

Illustration -**The lease is void-examples**

1. A lets the farm to B on condition that he shall walk hundred miles in an hour.

2. A gives Rs. 500 to B on condition that he shall marry A's daughter C. At the date of the transfer C was dead.

3. A transfers Rs. 500 to B on condition that she shall murder C.

4. A transfers Rs. 500 to his niece C, if she will desert her husband.

SECTION 53 - **Fraudulent transfer -** Every transfer of immoveable property made with intend to defeat or delay creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed. Every transfer of immoveable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee. For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.

SECTION 53 A **- Part performance.—** Where any person contracts to transfer for consideration any immoveable property by writing signed by him from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has taken possession of the property, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, against the transferee claiming any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

Section 53 prohibits with Transfers intended for cheating creditors and deals with fraudulent transfers made with an intention to delay or defect the creditors. Also fraudulent transfers made with an intention to defraud the transferees. This section stipulates that - There must be a contract to transfer and a consideration must be for the contract. Contract must be written and signed by the transferor and the transferee must be in possession and continue to possess.

The **section 53 A**, is to prevent fraud by the parties. The section 53 A does not confer any title to the transferee but impose a statutory impost or bar on the transferor for seeking possession of the property and protects the transferee's rights

Transfer of Property Act, 1882 do not apply to

Transfer by Government, Non Living Person, By Will, Operation of Law by Court, Release, Relinquishment, Life Estate Surrender, Family Arrangement, Partitions

Properties which cannot be transferred

Succession by legal heir-ship, Tenancy rights of occupancy, Right of entry or breach of conditions, Easement rights, Enjoyment rights, Rights to sue in a court, Public building, Salaries or Stipends, To a person legally disqualified.

SALE - SECTIONS 54 -57

SECTION 54 - Sale defined.—''Sale" is a transfer of ownership in exchange for a price paid or promised.

Sale how made— such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. 1In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property**.** In the case of tangible immoveable property, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immoveable property takes place when the seller places the buyer, in possession of the property.

Contract for sale—a contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

Difference between

Sale & mortgage: sale is absolute interest transfer. Mortgage gets property interest as security for the debt. Interest is redeemed after the debt is cleared.

Sale & exchange: sale is for a price consideration of amount. But exchange can be for anything.

Sale & lease: sale is absolute interest transfer. But in lease the possession is for a fixed term conveyance. The lessor retains the reversion of property after the expiry of lease.

Sale & gift: sale is for a price consideration of amount. But in gift the price consideration is not there.

Rights & liabilities - The seller is bound - To disclose to the buyer any material defect in the property.

To produce to the buyer for examination all documents of title relating to the property.

To answer to the best of his information put to him by the buyer.

On payment of the amount to execute a proper conveyance of the property at a proper time and place; between the sale date and the delivery, to take care of the property and title documents. To give possession of the property.

To pay all charges and rent accrued up to the sale date. Where the purchase-money has been paid, the seller is also bound to deliver to the buyer all documents of title.

Provided that, where the seller retains any part of the property comprised in documents, he is entitled to retain them all, or, where the whole of property is sold to different buyers, the buyer of greatest value is entitled to such documents.

The buyer is bound - To disclose to the seller the fact which materially increases the value of such interest;

To pay, at the time and place of completing the sale, the purchase-money to the seller provided that, the buyer may retain out of the purchase-money the amount of any encumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;

Where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;

Where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any encumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

The seller is entitled - To the rents and profits of the property till the ownership is transferred to the buyer;

Where the ownership of the property has passed to the buyer before payment, to a charge upon the property in the hands of the buyer, for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered.

The buyer is entitled - When the ownership of the property has been transferred, the benefit of any improvement in, or increase in value of, the property, and to the rents and profits.

Unless he has improperly declined to accept delivery of the property, to a charge on the property, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, When he properly declines to accept the delivery, also for the earnest and for the costs awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a), and paragraph (5), clause (a), is fraudulent.

MORTGAGES - SECTION 58 TO 104

SECTION 58 - Mortgage, Mortgagor, Mortgagee, Mortgage-money and Mortgage-deed defined.—

Section 58 A - A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor. The transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and The instrument (if any) by which the transfer is effected is called a mortgage-deed.

<u>Section 58 B</u> - Simple mortgage - Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

<u>Section 58 C</u> - Mortgage by conditional sale - Where, the mortgagor ostensibly sells the mortgaged property— on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or on condition that on such payment being made the sale shall become void, or on condition that on such payment being made the buyer shall transfer the property to the seller, the transaction is called mortgage by conditional sale and the mortgagee a mortgagee by conditional sale.

<u>Section 58 D</u> - Usufructuary mortgage - Where the mortgagor delivers possession or binds himself to deliver possession of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage money, and to receive the rents and profits accruing from the property in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest or partly in payment of the mortgage money, the transaction is called an Usufructuary mortgage and the mortgagee an Usufructuary mortgagee.

<u>Section 58 E</u> - English mortgage - Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

Section 58 G - Anomalous mortgage - A mortgage which is not a simple mortgage, a mortgage by conditional sale, a Usufructuary mortgage, an English mortgage or a mortgage by deposit of title-deeds within the meaning of this section is called an anomalous mortgage.

Section 96 - Mortgage by deposit of title-deeds – Where a person in any of the following towns, namely, Calcutta, Madras, and Bombay, and in any other town which the State Government concerned may, by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immoveable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title deeds.

RIGHTS OF MORTGAGEE (SECTION 67 & 69)

- Right to foreclosure
- Right to sue for mortgage money
- Right to exercise power of sale
- Right to have receiver appointed
- Right to accession (agreement)
- Right to the benefit of renewed lease
- Right to spend money in certain case
- Right to proceeds of revenue sale

RIGHTS OF MORTGAGOR

- Right to redeem (Sec 60) - Right to partial redemption is available if mortgagee himself acquired property.
- Obligation to transfer to third party instead of retransfer to mortgagor. (60A)
- Right to inspection (Sec 60-B)
- Right to redeem separately and simultaneously (Sec 61)
- Right to recover possession (Sec 62)
- Right to accession, right to improvements (Sec 63)
- Right to renewal of mortgaged lease(Sec 64)

Redemption -The right to take back the property – once the loan has been paid. It is an important statutory right of mortgagor.

At any time after the principal money has become due the mortgagor has right of redemption.

In mortgage contract any condition that prevents the mortgagor from getting back his property after the mortgage debt has been paid will be invalid.

Partial redemption - General rule partial redemption is not permitted. Example: if A, B, C, are joint owners of land and mortgaged by them jointly to X for Rupees 40,000/. Latter A by making payment of Rupees 10,000/- cannot redeem separately.

Right of redemption - No time specified: Right of Redemption is available from the date of execution.

Debt payable on demand: There must be demand and from the date mortgagor can redeem at any time.

Term is fixed: The money only due after specified date then from the date redemption starts.

Extinguishment of right of redemption - It is a statutory right. It can be extinguished only as per sec 60 of the act - by act of parties. If there is a separate agreement between parties sale by mortgagee under statutory right mortgagor authorizing sale - by decree of court. Suit for foreclosure-final decree passed –limitation 12 years

Clog on redemption - Clog means any clause which restricts the mortgagor from receiving the property back from the mortgagee. Any condition which prevents the mortgagee from receiving the property is void. Any restriction on the right of redemption is void.

Liabilities of the mortgagee - Duty to manage property, Duty to collect rents and profits, Duty to pay the government taxes, Duty to carry on necessary repair works, Duty to safeguard the property, Duty to maintain accounts

REMEDIES

Simple Mortgage	– Suit for Sale
Usufructuary Mortgage	– No Right of Foreclosure
Conditional Mortgage	- Foreclosure
English Mortgage	- Sale
Equitable Mortgage	- Suit for Sale

Foreclosure can be effected by the order of the court. The decree of foreclosure extinguishes the mortgagor's right to redeem.

<u>CHARGE - SECTION 100</u>

Where immovable property of one person is by act of parties made security for the payment of money to another and when it does not amount to a mortgage, the latter person is said to have a charge on the property. The provisions of Simple Mortgage apply. (Third party liability)

Essentials of charge - There must be immovable property, it may be made security Such security must be to secure the payment.

Charge by act of parties – it can be created by an instrument inter-vivos or by will.

Charge by operation of law - charges by operation of law are based upon consideration of duty. Charge for unpaid purchase money. A charge can be enforced by filing a suit in civil court.

This section does not apply to the charge of a trustee on trust-property for reimbursing expenses properly incurred in execution of his trust.

No charge shall be enforced against any property once it is transferred for consideration without prior notice of the existence of charge.

<u>LEASE - SECTIONS 105 -117</u>

<u>SECTION 105</u> - Lease defined -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.

Lessor, lessee, premium and rent defined— The transferor is called the lessor, The transferee is called the lessee, The price is called the premium, and The money, share, service or other thing to be so rendered is called the rent.

<u>SECTION 106</u> - Duration of certain leases in absence of written contract or local usage— a lease of immovable property for agricultural or manufacturing purposes shall be a lease from year to year, terminable, by either lessor/ lessee, by six months' notice;

And a lease of immovable property for any other purpose shall be a lease from month to month, terminable, on either lessor or lessee, by fifteen days' notice.

<u>SECTION 108</u> - Rights and liabilities of lessor and lessee.—the lessor and the lessee of immoveable property, possess the rights and are subject to the liabilities, or as are applicable to the property leased:—

(A) Rights and Liabilities of the Lessor -The lessor is bound to disclose to the lessee any material defect in the property and to put him in possession of the property; if the lessee pays the rent reserved by the lease and performs the contracts binding, he may hold the property during the time limited by the lease

(**B) Rights and Liabilities of the Lessee -** If during the continuance of the lease any agreement is made to the property, such accession is deemed to be comprised in the lease;

If by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void:

If the lessor neglects to make any repairs or make any payment, the lessee may make the same himself, deduct the expense of such with interest from the rent, or otherwise recover it from the lessor;

The lessee may remove, till he is in possession of the property leased but not afterwards all things which he has attached to the earth;

Provided he leaves the property in the state in which he received it;

Lessee may transfer absolutely or by way of mortgage or sub-lease of his interest in the property, and any transferee of such interest may again transfer it.

Lessee shall not, cease to be subject to liabilities attaching to the lease;

Lessee is bound to pay or tender, at proper time and place, premium or rent to the lessor in this behalf;

Lessee is bound to keep, property in as good condition, when he was put in possession, subject only to changes by reasonable wear and tear or irresistible force, and he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes;

On the determination of the lease, the lessee is bound to put the lessor into possession of the property.

SECTION 109 **- Rights of lessor's transferee—**if lessor transfers the property leased, the transferee, shall possess all rights; but the lessor shall not, by reason only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

SECTION 110 - Exclusion of day on which term commences—where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Duration of lease for a year — where the time so limited is a year or a number of years, the lease shall last till the expiry period.

Option to determine lease — where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

SECTION 111 - Determination of lease — A lease of immoveable property determines — by expiry of the lease time and it is limited; where such time is limited conditionally or where the interest of the lessor in the property terminates on,

Or his power to dispose of the same extends only to, the happening of any event or by the happening of such event;

The interests of the lessee and the lessor of the property become vested at the same time in one person in the same right; By express surrender; in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them; Or by implied surrender; or by forfeiture or on breach, or the lessee is adjudicated an insolvent or lessor gives notice in writing to the lessee to determine the lease on the expiration, or to quit, or of intention to quit.

<u>SECTION 112</u> - Waiver of forfeiture — a forfeiture is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, the lessor showing an intention to treat the lease as subsisting:

<u>SECTION 113</u> - Waiver of notice to quit — A notice given is waived, with the implied consent of the person to whom it is given, by any act of the person giving it showing an intention to treat the lease as subsisting.

<u>SECTION 114</u> - Relief against forfeiture for non-payment of rent — Where a lease has determined by <u>forfeiture for non-payment of rent, and the lessor sues to eject the lessee</u>, if, at the hearing of the suit, the lessee pays to the lessor the rent in arrear along with interest and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the <u>Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture</u>; And thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

<u>SECTION 114 A</u> - Relief against forfeiture in certain other cases — where a lease of immoveable property has determined by forfeiture for a breach of an express condition which provides that on breach, the lessor may re-enter. no suit for ejectment until the lessor has served on lessee a notice in writing - specifying breach complained of; and if the breach can be remedied, requiring lessee to remedy the breach,

<u>SECTION 115</u> - Effect of surrender and forfeiture on under-leases — the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to and enforceable by the lessor.

SECTION 116 - Effect of holding over — If a lessee of property remains in possession thereof, and the lessor accepts rent from the lessee, or otherwise assents to his continuing in possession, the lease is, renewed from year to year, or from month to month, according to the purpose for which the property is leased.

SECTION 117 - Exemption of leases for agricultural purposes — None of the provisions apply to leases for agricultural purposes, except as the State Government may by notification in the Official Gazette declare all or any of provisions to be so applicable in the case of such leases, together with, or subject to the local law, for the time being in force. Such notification shall not take effect until the expiry of six months from the date of its publication.

EXCHANGE - SECTIONS 118 TO 121

SECTION 118 - "Exchange" defined— When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange". A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

SECTION 120 - Rights and liabilities of parties—Save as otherwise provided in this Chapter, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes.

<u>SECTION 121</u> - Exchange of money—on an exchange of money, each party thereby warrants the genuineness of the money given by him. Sec 118 refers to a specific type of mutual two way transfers. In exchange two persons are involved where each transfers their ownership of one thing for the ownership of another's non-money item. In sale, a thing is exchange for money or a promise of money. But in exchange it's more a barter of kind. Even if the exchange deed mentions the value of the items being exchanged from either side, that will not change the character of exchange. A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

ASSIGNMENT - An assignment is term used in the Contract Law & the Real Estate law. Transfer of rights held by one party - <u>the assignor</u>. To another party - the <u>assignee</u>. Or a <u>transfer of a benefit</u>, including an equitable interest.

The rights may be conferred or liable. The assignment determines additional rights and liabilities.

<u>Mortgages and lending contracts</u> are relatively amenable to assignment since the lender's duties are relatively limited; other contracts which involve personal duties such as legal counsel may not be assignable.

<u>Example:</u> A borrower borrows money from a local bank. The local bank executes a mortgage deed and can transfer that mortgage note to another bank in exchange for a lump-sum, thereby assigning the right to receive payment from the borrower to another entity.

NOVATION - Novation involves the replacement of the original party with a new party or the replacement of the original contract with a new contract. It requires the consent of all parties, but in the case of assignment, the consent of the non-assigning party may be required by a contractual provision. Assignment of rights under a contract is the complete transfer of the rights to receive the benefits accruing to one of the parties to that contract.

LIEN - A lien is a form of security interest granted over an item of property to secure the payment of a debt or performance of some other obligation.

The owner of the property, who grants the lien, is referred to as the lienee, and the person who has the benefit of the lien is referred to as the lienor or lien holder.

Example: Bank Deposits, Shares certificates, Insurance certificates, as security as Lien. A special lien, requires a close connection between the property and the service rendered. (OD & CC accounts, term loans)

GIFT - (SECTIONS 122 TO 129)

SECTION 122 - "Gift" defined —"Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. That means, there must be a transfer of ownership.

The property must exist. For all immovable properties, transfer must be made voluntarily without consideration and effected by a registered instrument, witnessed by 2 or more persons. For movable it may be by registered instrument or by delivery.

Acceptance when to be made.—such acceptance must be made during the lifetime of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void.

SECTION 124 - Gift of existing and future property—a gift comprising both existing and future property is void as to the latter.

SECTION 125 - Gift to several of whom one does not accept—A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

That means the gift is a combination of obligation of the donee and donor. The donee is at liberty to accept it or not.

LAW RELATING TO INHERITANCE / SUCCESSION

THE INDIAN SUCCESSION ACT, 1925

A legal declaration of the intention and desire of a testator to the property after his death - **Applicable for Indian Christian.**

Indian Christian means a native of India who is, or in good faith claims to be, of unmixed Asiatic descent and who professes any form of the Christian religion;

Will means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death. A will can be evoked at any time during the life time of the person creating the will. Registration of will is optional (can be registered, oral).

Will to be executed with a stable and sound mind - relating to property - taking effect only after his death - during his life the will is revocable or - can be supplemented by a codicil

Persons not capable of executing a will - Minor - physically retarded – Blind - Lunatics, Insane – mentally retarded - Intoxication due to medicines - Intoxication due to liquor

Codicil means an instrument made in relation to a will, and explaining, altering or adding to its dispositions, and shall be deemed to form part of the will;

Revocation of codicil (cancellation) - As per section 70, the codicil, or any part thereof, may be revoked other than marriage, by another will or codicil or by writing a new intention declaration to revoke the same**.** It refers to the cancellation of will can be made in the case of subsequent marriage of the testator or subsequent will or codicil or instrument of revocation or destruction of will.

Will is void - will that does not express any definite intention. It is void for uncertainty. A will, when it is properly revoked is void. A will for want of confirmation or testamentary (evidence) capacity is void

Probate means the copy of a will certified under the seal of a Court of competent jurisdiction with a grant of administration to the estate of the testator; As per **Section 222**, probate can be granted to executor of the will, or appointed. An application for probate is made by a petitioner in the court of law within the jurisdiction, either in the place of death of the testator or the location of the property mentioned in the will.

Section 218 deals with the grant administration and the probate to the petitioner, or executor of the will, or several persons applying for probate or to a creditor. **Administrator** means a person appointed by competent authority to administer the estate of a deceased person when there is no executor; **Executor** means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided;

Section 223 deals with persons to whom probate cannot be granted – lunatic, minor or to any association of individuals

Minor means any person subject to the Indian Majority Act, 1875 (9 of 1875), who has not attained his majority, and any other person who has not completed the age of eighteen years; and "minority" means the status of any such person;

Unprivileged will Section 65 - Un-Privileged will the testator may be any one. Execution of un-Privileged will is defined in Section 63. The testator shall sign or affix his mark to the will and shall be signed by another person in his presence and directions. Example Husband is an illiterate affixing his mark and wife signs on his behalf. Both mark and signature shall appear that is intended to give effect to the will. It must be attested in the presence of at least by 2 or more persons witnessing the will.

Privileged will as per Section 66 -Privileged will can be made by word of mouth if person attained majority of age. eg: an army or naval or air force person, when engaged in a warfare, he can create a will by word of mouth.

1. Will may be in his writing, need not be signed or attested.
2. It may be a part by him and part by another person, in such case it must be signed but need not be attested
3. Unsigned will written under his directions is treated as deemed will 4. Instruction in writing by him for preparing the will, before preparation if he dies, will is treated as his will

Succession Certificate (Sections 370 to 390) - Certificate granted by the court of law to a person as a result of succession and entitling other persons' debts or securities (Example any promissory note, stocks, shares, bonds etc.).

Succession certificate prove the person as representative of the title holder. Granting of the certificate is issued on when the deceased person is an Indian Christian, or Mohammedan or a Hindu (left a will and probate) or Hindu joint family property passes by survivorship.

THE HINDU SUCCESSION ACT, 1956, AS AMENDED IN 2015

Act enacted to amend and codify to intestate or unwilled succession, among Hindus, Buddhists, Jains, and Sikhs. The Act lays down a uniform and comprehensive system of inheritance and succession into one Act.

This act is to provide a uniform system of law of succession, which may be acceptable to all sections of Hindus and be equally enforceable upon them. It removes inequalities between men and women with respects to rights in the property and it lays down a common list of heirs entitled to succeed on inheritance. This act has abolished impartible estate and the special mode of its succession.

Hindu woman's limited estate is abolished by the Act. Any property possessed by a Hindu female is to be held by her absolute property and she is given full power to deal with it and dispose it of by will as she likes. This Act was amended in 2005 and by Hindu Succession (Amendment) Act, 2015.

Explanation as to who shall be considered as Hindus, Buddhists, Jains or Sikhs by religion: Any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jains or Sikhs by religion; any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jain or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged;

Any person who is convert or re-convert to the Hindu, Buddhist, Jain or Sikh religion.

A person shall be treated as a Hindu under the Act though he may not be a Hindu by religion but is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

Order of succession - The order of succession provided by the act is broadly based on the Doctrine of Propinquity or nearness of blood and accordingly the heirs are divided into four categories.

1. Heirs in class I of the Schedule
2. Heirs in class II of the Schedule
3. Agnates (male blood relations or adoptions through male)
4. Cognates (male blood relations or adoptions not through male)

The property of a Hindu male dying intestate, or without a will, would be given first to heirs within Class I. If there are no heirs categorized as Class I, the property will be given to heirs within Class II. If there are no heirs in Class II, the property will be given to the deceased's agnates or relatives through male lineage.

If there are no agnates (male blood relations or adoptions through male) or relatives through the male's lineage, then the property is given to the cognates (male blood relations or adoptions not through male), or any relative through the lineage of males or females.

Class I heirs - sons, daughters, widows, mothers, sons of a pre-deceased son, widows of a pre-deceased son, son of a, pre-deceased sons of a predeceased son, and widows of a pre-deceased son of a predeceased son.

Amended in 2015 (i) under the sub-heading "Class I", for the words "mother; son of a pre-deceased son; daughter of a pre-deceased son;", the words "mother; father; son of a pre-deceased son; daughter of a pre-deceased son; son of a pre-deceased son of a pre-deceased daughter; son of a pre-deceased daughter of a pre-deceased son;" shall be substituted.

Class II heirs are categorized in the following order: Father, Son's / daughter's son, Son's / daughter's daughter, Brother, Sister, Daughter's / son's son, Daughter's / son's daughter, Daughter's / daughter's son, Daughter's /daughter's daughter, Brother's son, Sister’s son, Brother's daughter.

Amended in 2015 for the sub-heading "Class II and entries I to IX thereunder", the sub-heading and entries thereunder shall be substituted, namely: I.(1) Brother, (2) sister. II. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter. III. Father's father; father's mother. IV. Father's widow; brother's widow. V. Father's brother; father’s sister. VI. Mother's father; mother's mother. VII. Mother’s brother; mother’s sister.”

<u>**SECTION 14**</u> **-** This Act has abolished Hindu woman’s’ limited estate and made her absolute owner of the property irrespective of her source of acquisition. Any property acquired by a Hindu female in any lawful manner whatsoever and possessed by her becomes her absolute property. She enjoys the absolute power to dispose of it as she desires. This Act provides uniform order of succession with respect to property of female Hindu. <u>On her dying intestate her property shall devolve on her children and husband and thereafter upon her parents and the heirs of parents. In the absence of any issue to her, the property inherited from her parents, would be reverted back to her parents or heirs of her parents, instead of devolving upon the husband or heirs of husband.</u>

<u>**SECTION 18**</u> **-** This Act lays down some general rules of succession among others to the effect that heirs related to male or female intestate by full blood are to be preferred

to those related by half blood, if the nature of relationship is the same in every other respect.

<u>SECTION 19</u> – Two or more heirs succeed to the property of an intestate, they shall take their per capita and per stripes. Such heirs take the property as tenants in common and not joint tenants.

<u>SECTION 20</u> - The right of the child in womb at the intestate's death and subsequently born alive shall relate back to the date of intestate's death.

<u>SECTION 28</u> – The Act has thoroughly revised the law relating to exclusion from inheritance. It discards all ground of exclusions based on physical defects, deformity or disease. The disqualifications are confined to the case of remarriage of a widow of a predeceased son, widow of a predeceased son of predeceased son and widow of the brother.

The right of the illegitimate children to inherit the property of their mother has been preserved, but such children are disqualified to succeed to their father's property.

Any person who commits murder is disqualified from receiving any form of inheritance. If a relative converts from Hinduism, he or she is still eligible for inheritance. <u>Descendants of that converted relative, however, are disqualified from receiving inheritance</u> from their Hindu relatives, unless they have converted back to Hinduism before death of relative. It <u>revised rules on coparcenary property, giving daughters of the deceased equal rights with sons, and subjecting them to the same liabilities and disabilities.</u> The amendment essentially furthers equal rights between males and females in the legal system.

MUSLIM PERSONAL LAW (SHARIAT) APPLICATION ACT, 1937

The Indian Government has adopted this Muslim Personal Law (Shariat) Application Act within this country. This law deals with marriage, succession, inheritance and charities among Muslims. The Dissolution of Muslim Marriages Act, 1939 deals with the circumstances in which Muslim women can obtain divorce. The Muslim Women (Protection of Rights on Divorce) Act, 1986 deals with the rights of Muslim women who have been divorced by their husbands and to provide for matters connected therewith.

Marriage under the Special Marriage Act, 1954 - where a Muslim contracts his marriage under Special Marriage Act, 1954, he ceases to be a Muslim for purposes of inheritance. Accordingly, after the death of such a Muslim, (his or her) properties do not devolve under Muslim Law of Inheritance. This Muslim Law of Inheritance do not apply and the inheritance is governed by the provisions of Indian Succession Act.

Rules of inheritance – After the death of a Muslim, his properties are utilized for the funeral expenses, debts and the legacies (i.e.) will if any. After these expenses, the remaining properties, are called heritable property and that property is available to the legal heirs for inheritance. Muslim Law does not make any distinction between movable and immovable or any corporeal and incorporeal properties.

Unlike Hindu Law, the Muslim Law of inheritance does not recognize the concept of right of birth. An heir does not possess any right before the death of an ancestor. It is only the death of a Muslim which gives the right of inheritance to his legal heirs. As a matter of fact, unless a person dies, his relatives are not his legal heirs. They are called as his heir apparent and they have a chance of succession.

Succession among heirs of the same class but belonging to different branches may either by per capita or per strips. In per capita distribution, the succession is according to number of heirs. Among them the estate is equally divided. Therefore, each heir gets equal quantity of property from the heritable assets of the deceased.

Males and females have equal rights of inheritance. If his heirs include females also, both male and female inherit the properties and males have no preferential right over females' inheritance. But normally the share of male is double the share of female. (**Reason:** As the female (expected at future) to get an additional money or property through her marriage (Mehr and maintenance from her husband), she will be getting two benefits. Moreover the male heir is liable for additional burden of his children's' maintenance)

A child in the womb of its mother is regarded as a living person and competent to inherit provided, if it is born alive.

The step children are not entitled to inherit the properties of their step parents. Where a Muslim H marries a widow W having a son from previous husband, the son is a step son of H and H becomes the step father of that son. Similarly, step parents do not inherit properties of step children. That means neither the step parents nor step children do not inherit each other properties. The step child is competent to inherit properties either from natural father or natural mother or vice versa.

A missing heir for 7 years, slavery, homicide, difference of religion and difference of allegiance, exclude from inheritance.

Where a deceased Muslim has no legal heir under Muslim Law, his properties are inherited by the Government, through the process of Escheat. State is regarded as the ultimate heir of every deceased.

Example: A son gets double the share of the daughter wherever they inherit together. The wife gets one-eighth of the share if there are children and one-fourth of the share if there are no children. In case the husband has more than one wife, the one-eighth share will be divided equally among all wives. The husband gets one fourth of the share of his dead wife's property. If the parent has more than one girl children, only two-third of the property shall be divided equally among girl children. If the parent has only one daughter, half of the parent's property is inherited by her. The mother gets one-sixth of her dead child's property if there are grandchildren, and one-third of the property if there are no grandchildren. Parents, children, husband and wife must, in all cases, get shares, whatever may be the number or degree of the other heirs.

Mahr: total money or property that the husband is required to give the wife at the time of marriage (Nikah). Two types of mahr - the prompt mahr which is given to wife soon after the marriage, and the deferred mahr which is given to the wife when the marriage has ended, either due to the death of the husband or by divorce.

Will: A Muslim can only give one third of his/her total property through a will (Wasiyat).

Gift: Any type of property can be given as gift by a Muslim.

THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013 - (LAND ACQUISITION ACT, 2013) - in force from 01.01.2014

Government acquires land for its own use, hold and control, incl. land for PSUs. Government acquires land with the ultimate purpose to transfer it for the use of private companies for stated public purpose. Land acquisition for strategic and development activities for national security - for defense and defense production; Rural infrastructure including electrification; Affordable housing and housing for poor; industrial corridors, railway lines, roads and Infrastructure projects

Act Application - As per Sec 2 this Act will apply when - Government acquires land for its own use, or to hold and control OR Where Government acquires land private companies or for specified public purpose - require prior consent of 80 % of the affected families.

Government acquires land for Public Private Partnership Projects - consent of 70% of the affected families is obtained MORD Notification dated 9th February, 2016. IT states "the limit of extent of land referred to in sub-section (1) of section 46 of the said Act shall be 20 hectares in urban areas and 40 hectares in rural areas.

The rules state that rehabilitation and resettlement under the Act would apply where a private company purchases land equal to or more than 50 acres in urban areas and 100 acres in rural areas.

As per the 2013 Act, in the Scheduled Areas (tribal areas to which the fifth schedule of the constitution applies, no land acquisition can happen in contravention of any law relating to land transfer, prevailing in such Scheduled Areas.

In fact any order or judgment of a High Court which has become final would also need to be adhered to.

Definitions -"Family" includes a person, his or her spouse, minor children, minor brothers and minor sisters dependent on him.

An adult of either gender with or without spouse or children or dependents shall be considered as a separate family.

Widows, divorcees and women deserted by families shall be considered separate families;

<u>"Market value" means the value of land determined in accordance with section 26;</u>

"Agricultural land" means land used for raising nursery, cultivation of crops, trees, horticulture, grass, garden produce, dairying, poultry farming, sericulture, seed farming, breeding of livestock, medicinal herbs and also open land used for the grazing of cattle.

<u>"Cost of acquisition" includes - solatium (payment to compensate injured feelings or emotional pain), any enhanced compensation ordered by the Land Acquisition Authority or the Court and interest, demurrage payable for damages caused in the process of acquisition to the land and standing crops.</u>

It also includes the cost of acquisition of such land and building for the settlement' of displaced or adversely affected families and the cost of development of infrastructure and amenities at such resettlement areas;

There are 13 other Acts which deal with acquisition and are listed in the fourth schedule and vide a departmental notification the provision the RFCTLARR Act, 2013 will become applicable to acquisition

Limits on acquisition - The Act ban on land acquisition of multi-crop irrigated area. Acquisition permitted, which will be subjected to an aggregated upper limit for all the projects as notified by the State Government. In addition to the above condition, wherever multi-crop irrigated land is acquired an equivalent area of cultivable wasteland shall be developed by the state for agricultural purposes. In other type of agricultural land, the total acquisition shall not exceed the limit for all the projects in a District or State as notified by the Appropriate Authority. These limits shall not apply to - railways, highways, major district roads, power lines, irrigation canals.

Notification and Acquisition including computation of Compensation Award - Chapter IV (sections 11 to 31) of the Act deals with notification for acquisition, declaration and also computation of Compensation Award. A preliminary notification of the proposed acquisition under section 11(1) of the 2013 Act must be published in the following manner, namely -

a. in the Official Gazette;

b. in two daily newspapers circulating in the locality of such area of which one shall be in the regional language;

c. in the local language in the Panchayat, Municipality or Municipal Corporation, as the case may be and in the offices of the District Collector, the Sub-divisional Magistrate and the *Tehsil*

d. uploaded on the website of the appropriate Government;

e. in the affected areas, in such manner as may be prescribed (rules provide for announcement by beating of drums). **The date of this publication of notification shall be the date for determination of market value**

<u>SECTION 26</u> - Compensation - Land Market Value -As per Schedule I outlines the minimum compensation based on a multiple of market value. The market value of land to be acquired, shall be set as the higher of:

1. <u>Minimum land value, as specified in the Indian Stamp Act, 1899</u>, where the land is situated;

2. Average of the sale price for similar land being acquired, ascertained from the <u>highest 50% of sale deeds registered during preceding three years</u> in the nearest village

3. Land in nearest vicinity acquired or the consented amount in case the land is acquired for private companies or public-private partnership projects.

As per the First Schedule on Minimum Compensation for Land Owners and tenants - determination of value

Compensation Package Component	**Manner Of Determination Of Value**
Multiplier Factor of the Market Value	In the case of urban areas - One in the case of rural areas - one to two based on the distance of project from urban area, as may be notified by the appropriate Government [Vide MORD Notification dated 9TH February, 2016 S.O. 425(E) - . [F NO.13011/04/2015-LRD]
Solatium	Equivalent to one hundred percent of the market value of land multiplied by the appropriate factor mentioned above plus value of assets attached to land or building
Final Award In Rural/ Urban Areas	Market Value of land multiplied by the appropriate factor for rural/ urban areas plus value of assets attached to land or building mentioned plus Solatium as above

Award for Land Acquisition - AWARD Under this Act is computed on the elements:

1) Market value as computed above for land, building and things attached to land and building. This is the compensation amount - Solatium which is an amount equivalent to one hundred per cent of the market value

2) And given in addition 12% per annum on such market value computed for the period commencing on the date of publication of the notification of the Social Impact Assessment study and till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier

3) 25% of the total compensation can be through shares in the Requiring Body if the projected affected family consent

A) If land is acquired for urbanization, then 20 percent of the acquired land must be reserved for landowning project affected people and offered to them at a price equal to cost of acquisition

B) If a person previously displaced is being displaced again in another project from the rehabilitation site - they will be entitled to 75% additional compensation

THE LAND ACQUISITION ACT, 1894 - ACT NO.1 OF 1894 - [AS ON 1955]

Section 23. Matters to be considered in determining compensation - in determining the amount of compensation to be awarded for land acquired under this Act, the court shall take into consideration-

1. The market-value of the land at the date of the publication of the notification under section 4, sub-section (1);

2. The damage by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

3. The damage sustained by the person interested, at the time of the Collector's taking possession of the land, by the reason of severing such land from his other land;

4. The damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, or his earnings;

5. If in the consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses incidental to such change; and

6. The damage bonafide resulting from diminution (decrease) of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(B) In addition to the market-value of the land as above provided the Court shall in every case award a sum of 15% on such market-value, in consideration of the compulsory nature of the acquisition.

<u>SECTION 24</u> - Matters to be neglected in determining compensation: But the Court shall not take into consideration---

1. The degree of urgency which has led to the acquisition;

2. Any disinclination of person interested to part with land acquired;

3. Any damage sustained by him, if caused by a private person, would not render such persons liable to a suit;

4. Any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put;

5. Any increase to value of the land acquired likely to accrue from use to which it will be put when acquired;

6. Any increase to value of the other land of the person interested likely to accrue from the use to which the land acquires will be put;

SECTION 25 - Rules as to amount of compensation –

(1) When the applicant has made a claim to compensation, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under sec.11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not less than, and may exceed, the amount awarded by the Collector.

SECTION 26 - Form of awards - Every award shall be in writing signed by the Judge, and shall specify the amount awarded together with the grounds of awarding each of the said amounts

SECTION 49 - Acquisition of part of house of building - The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desire that the whole of such house, manufactory or building shall be so acquired: In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

SECTION 51 - Exemption from stamp-duty and fees - No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

BUILDING RULES & REGULATIONS OF LOCAL BODIES

In 2004 a Model Building Bye-Laws was issued by GOI for the guidance of guidance of the State Governments, Urban Local Bodies, Development Authorities to carry out the mandate under the 74th Amendment of the Constitution which empowered local bodies to prepare and enforce the Master Plan for orderly development of urban areas. scope of master plan as defined by Town Country Planning Organization under MOUD, is confined to proposals & allocation of land for various purposes - residential, industrial, commercial, recreational, public & semipublic for guiding and regulating development in urbanisable area over a period of time.

Zoning and Sub division regulations are a part of Development Control Regulations (DCR) under Master Plan. They stipulate the densities of the development in various pockets of urbanisable land through Floor Area Ratio (FAR) or Floor Space Index (FSI), maximum ground coverage, maximum height permissible etc.

Building Byelaws is a separate document governed by the regulations given in Master Plan that guides and controls the setting, design and construction of the buildings with due recognition for ventilation, light and built envelope requirements from health and sanitation perspectives.

The use, coverage, FAR setbacks, open space, height, number of dwelling units, parking standards for residential premises on plotted development, group housing, resettlement and up gradation and non-residential premises shall be as per the provisions contained in Master Plan / Zonal Plan / Development Code or as per simplified Development Promotion Regulations of the Urban Development Plan Formulation and Implementation Guidelines and where these are silent on such issues or which require interpretation the norms as decided by the Authority, shall apply

Master Plan and Zoning: Where the Town and Country planning Acts are operational usually the Directorate of Town and Country Planning oversees planning and development in urban and rural areas by way of issuance of Master Plans prepared for the urban centres and notified rural areas by indicative Land Use Plans.
Such Directorates exist in almost all states and has a Town and Country Planning Organisation (TCPO) under the Urban Development Department. The Town and Country Planning Organisation (TCPO), technical arm of the Ministry of Urban Development, Government of India, is an apex technical advisory and consultant organisation on urban and regional planning strategies and monitoring of central government schemes and development policies.
But master plans may not integrate well with plans of other authorities like the Regional Development Authority, any Mineral Area Development Authority (MADA) or the Mines Board.

Master Plan and Zoning Rules: The Directorate of Town and Country Planning oversees planning and development in urban and rural areas by way of Master Plans prepared for the urban centres and notified rural areas by indicative Land Use Plans. Such Directorates exist in almost all states. The Town and Country Planning Organization (TCPO), is an apex body on urban and regional planning strategies and monitoring of central government schemes and development policies.
The Zoning and Development Promotion Regulations Development Authority has following zones

1. Residential Use Zone

2. Commercial Use Zone, including commercial along notified commercial roads; strip commercial along roads as earmarked in the master plan and areas earmarked as Commercial use in the Master Plan

3. Multiple Use Zone, including areas covered in Transit-Oriented Development (TOD) zone

4. Public and Semi - Public Use Zone

5. Work Centre Use Zone

6. Open Space Use Zone - Parks, Playgrounds, Exhibition grounds, Green buffer zone

7. Water bodies Use Zone - River, stream, Nallah, Storm Water Drains, and Lakes

8. Transportation Use zone (Road, rail, Airport, Bus depots, Terminals, Workshops, Truck terminals, Warehouses, Parking areas/Parking lots/Parking complex

9. Special Reservation Use zone

10. Sites specifically earmarked as heritage conservation - buildings and precincts/areas rocks & hillocks/Natural heritage

11. Defense / Military lands

12. Burial grounds, Cremation grounds etc

13. Special Area Development Plan (SADP)

Residential Use Zone

The residential areas are developed either as

(a) Plotted development or (b) Group housing/flatted development. Density pattern i.e. (high, high medium, low medium or low) are followed for working out development with respect to size of the plot, no. of dwelling units on each plot, setbacks, FAR and no. of storeys / height of building. Municipal and social infrastructure as per the norms and standards specified in the master plan are provided. Various sites/plots required for social and municipal infrastructure are indicated in the layout plans.

Plotted Development - Layout plans for residential scheme are formulated

(1) Sufficient light & air in buildings when constructed

(2) Protection against noise, dust and local hazards

(3) Sufficient open space for various family needs

(4) Circulation & access is easy & safe from accident point

(5) as far as possible, plots are of regular shape and size

(6) Logically arranged in a systematic manner so as to give a regular pattern of development in the form of row houses, detached & semi-detached houses and regular bungalow type plots.

'Group housing means more than two buildings on a plot with one or more floors and with one or more dwelling units in each floor.

i) Boundary roads must BE minimum width of 12 metre.

ii) FAR should be considered with reference to the width of public road abutting the property and the FAR should be calculated after deducting the area reserved for parks, open spaces and civic amenities.

iii) The set-backs should be provided with reference to depth and width of total plot area.

iv) Coverage shall be with reference to total area of the layout.

v) Distance between the buildings should be a minimum of half of the height of the tallest building.

vi) 25% of total area is reserved for OSR spaces

vii) Access to the building blocks in the area of group housing shall be as follows:

Access Less than 100 meters Road width 6 meters

Access 100 to 200 meters Road width 9 meters

Access more than 200 meters Road width 12 meters

Other Specifications Included For: Hostel, Guest House, Boarding House And Lodging House, Motels Community Centre, Industrial Plot, Flatted Group Industry & Service Centre, Light And Service Industry, Extensive Industry, Hospital, Health Centre/Nursing Home, Nursery & Primary Schools, Higher Secondary School, College, Education And Research Centre (Large Campus-Above 8Ha.), Auditorium / Community Hall, Religious Premises, Security Services, Police Post, Police Station/Fire Post/Fire Station, Post And Telegraph Office, Head Post Office, Public And Semi-Public Premises, Farm Houses, Professional Activity.

GUIDELINES FOR TRANSFER OF DEVELOPMENT RIGHTS

In case of lands where it is partly affected by the Master Plan / Detailed Development Plan proposals or by any other development listed in the Regulation, Planning Permission for development / construction in the remaining part of the site shall be considered by the competent authority to whom powers have been delegated for issue of planning permission only after the part of the land required for the project / scheme has been surrendered through a registered gift deed satisfying the regulations for the grant of TDR stated in the DR.

In other cases where a planning permission applications has not been received for any proposed development in a site as stated above, the local body concerned to whom power in this regard has been delegated may publish a programme for road widening or a new road formation or implementation of any traffic and transportation infrastructure development or any urban infrastructure development granting TDR.

After the above said publication, the owner can make and request to the executive authority of local body concerned for grant of Development Rights Certificate.

In cases where the site is already a developed one, irrespective of whether it is an authorized or unauthorised development, the part of the land required for the public purpose is eligible for the award of DRC.

In cases where there are existing buildings / structures in a site, and because of the surrender of the land for obtaining DRC there may be violations of planning parameters for the existing buildings retained in the remaining plot, they shall be construed as in conformity with these regulations as long as no addition or alteration or change of use is made, provided these existing buildings / structures should have been approved or in existence as such prior to 5.8.75. (Note: Public purpose over weighs any individual interest / requirement and hence violations if any in the remaining plot require such consideration of deemed provisions)

Existence of any unauthorized building in a plot does not prohibit a land owner from getting the DRC for the land required for the public purpose. But the existing building in the remaining part of the plot shall continue to be unauthorized until it gets regularized following due process of laws/rules, or demolished.

For arriving at the FSI credit the Guide Line Value [GLV] of the land surrendered and the GLV of the DRC utilized shall be with reference to the GLVs at the export and import sites in the year of DRC utilization applied for.

When utilized in the remaining part of the export site itself: If the applicant of a planning permission application proposes to utilize the Development Rights of the part of the land he is surrendering / has surrendered, in the remaining part of the site retained by him, then also, the applicant is eligible for the FSI as prescribed in these regulations (i.e.) after allowing the guideline value incentives, the eligible FSI would be as given below: DRC shall be valid initially for a period of 5 years, and may be renewed for a further period of 5 years subject to payment of revalidation fee fixed by the Authority, from time to time.

Application for DRC shall be with necessary documents and particulars as prescribed. Format of the Development Rights Certificate to be issued by the executive authority of local body concerned to whom power has been delegated. Register on the award of DRC, the transfer of DRC if any, and the utilization of DRC shall be maintained. DRC holders shall submit utilization form as prescribed.

DRC issued can be cancelled by the executive authority of the local body to whom power has been delegated, in the following circumstances:

a. where DRC has been obtained by fraudulent means.

b. where the property is encumbered in any way restricting the ownership or development rights or where there is a dispute on the title of the land.

Where a land for any development listed in the Regulation, could not be taken possession under these TDR regulations, Land Acquisition Laws can be invoked and the land required can be taken possession for the development by the public authorities so that the project or scheme can be implemented without any hindrance/delay.

The planning authority may consider relaxing set back requirements along the dividing line between the land surrendered and the land retained, for a proposed construction in the remaining plot, on individual merits of the case, except in the cases of multi storeyed buildings.

RENT CONTROL ACTS

Act relating to the landlord's / tenant's rights to fix the fair rent or evict the tenant on expiry of the notice of eviction. IN INDIA, Every state has its own rent control act. Rent Control Act is common to the Landlord and Tenant, and any one of them can approach the Rent Controller for Fixation of fair rent.

With regards to the rent payable by the tenant or for eviction, judiciary will find an amicable solution to fair rent or for eviction of tenants. These legislation are enacted to regulate rent payable be tenant. Many acts seek to prevent it from exceeding standard rent, regulate repair and maintenance of the property and also regulate eviction of tenants. Rent Control Acts of different states favour the tenants. The Rent Control Act applies on lease agreements of at least 12 months, and hence an eleven month agreement helps landlords to take a pre-emptive measure of avoiding filing eviction suit against tenant to claim back possession of premise. Sec 106 of Transfer of Property Act has limited application where ever a State level legislation regulating rent and lease prevails.

Premises exempted from provision of Tenancy Act -Some premises are exempted from the provisions of rent control/ tenancy regulation as per Tenancy Act. Act does not apply to any premises owned by Central or State Government, or Government undertaking or a local authority or other statutory body. Any tenancy created by the Central Government, or any State Government in respect of the premises taken on lease or requisitioned by that Government. Any tenancy where the lease with due consent of the tenant has been registered under the Registration Act, 1908 (16 of 1908), after the commencement of this Act, and the fact of such consent has been recorded in the instrument so registered If premise is rented to a foreign mission or international agency; or a tenancy created by a foreign mission or an international agency, either by way of lease or otherwise.

Building means as per Section-2 of The Tamil Nadu Buildings Lease And Rent Control Act 1960, any building or hut or part of the building or part of the hut are to be considered for residential or nonresidential purposes which includes Garden, ground or out house, if any appurtenant to such building, the hut or part of such building or hut let or to be let out along with such building. Any furniture supplied by the Landlord for such use of such building or hut but does not include a room in hotel or boarding house.

Salient features of the Tamil Nadu Buildings Lease and Rent Control Act 1960 - Section 4 to 6 deals with the fixation of fair rent. Section 10, 14 and 15 arrangements with eviction of tenants and afford considerable security to tenants, Section 11A contracts about rent payment through court in case of dispute and Section 23 & 25 deals about Appeal and Revision. Section 29 covenants about exemptions

Section-4 of The Tamil Nadu Buildings Lease and Rent Control Act 1960, enables the fixation of Fair rent and Principles laid down in the Act has to be followed.

<u>Fair rent for any Residential Building shall be 9% gross return per annum on the total cost of such building.</u>

<u>Fair rent for any Non Residential Building shall be 12% gross return per annum on total cost of such building</u>

Total cost referred to in Sub – Sections (2) & (3), shall consist of the Market Value of site in which the building is constructed, cost of construction of building and cost of provision of anyone or more of the amenities as per Schedule-I as on the date of application for Fixation of fair rent.

Market value of land in which the building is constructed and a portion up to 50%, thereof of the vacant land to be taken into account. If any vacant land is available as appurtenant to such building excess portion of the vacant land, is treated as Amenity provided in the property. The cost of provision of Amenities stipulated in the Schedule –I shall not exceed:

In case of Residential building – 15%

In case of Non Residential building – 25% of the cost of the land in which the building is constructed and the cost of construction of the building as determined in this section. The cost of the construction of the building including the cost of internal water supply, sanitary and electrical installations shall be determined according to the Rates adopted for the different types of buildings by the PWD of Tamil Nadu Government for the area concerned.

The depreciation are calculated for the age of the building at the rates specified in the Schedule II of the Act. (LINEAR METHOD). In case of building having more than one floor the market value of the land has to be proportioned to the number of floors in that building.

Fixation of fair rent: In this act, land market rate is the deciding factor in determining the value of the property for rental purpose. In most of the cases, the market rate is substantiated by the guideline rate and guideline rate will be the authenticated rate in a court. Though there are many court judgments, stating that the guide line value / Circle Rate is not the market value, in lower courts the judgment is made as per GLV only. Rent will be on the petitioned date and not on valuation date. Inspection and valuation of property may happen 1 or 2 years after filing of petition. Even though the property value increases during this period, the fair rent adoption by the courts may not be equal to market rent, since the time taken by the court for fixing the rent may occur after years. Hence, for rent controlled properties the rate of return on rents is low as per the Court decisions.

Eviction of tenant - the process is cumbersome and will get delayed. Eviction of tenant may take a longer time, even the landlord citing reason like building deterioration, Non-payment of rent, Sub-letting building without due authority and permission. The tenant using for purpose other than for which it was leased, committing acts of property value reduction & utility, Tenant using for immoral or illegal purpose, nuisance to others also attracts eviction. Also for, Even the tenant after given notice to quit, but he may not deliver vacant possession of premises to the landlord in accordance to such notice. Hence, the market value of the rent controlled properties will have lesser value when compared to freehold properties and are frozen for a longer period.

Ownership rights for rent - Ownership rights are not transferred in rental agreements. He has to pay rent periodically and cannot pledge the property. He has no power to make improvements in the property. He has only the right to live during the tenancy period. The Rent Control Act will not be applicable to licensed business premises.

THE INDIAN EASEMENTS ACT, 1882

SECTION 4 - "Easement" defined. – An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own.

Dominant and servient heritages and owners. – The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; The expression "land" includes also things permanently attached to the earth; the expression "beneficial enjoyment" includes also possible convenience, remote advantage, and even a mere amenity;

And the expression "to do something" includes removal and appropriation by the dominant owner, for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage, or anything growing or subsisting thereon.

Illustrations

(a) A, as the owner of a certain house, has a right of way over his neighbour B's land for purposes connected with the beneficial enjoyment of the house. This is an easement.

(b) A, as the owner of a certain house, has the right to go on his neighbour B's land, and to take water for the purposes of his household, out of a spring therein. This is an easement.

(c) A, as owner of a certain house, has the right to conduct water from B's stream to supply the fountains in the garden attached to the house. This is an easement.

(d) A, as owner of a certain house and farm, has the right to graze his own cattle on B's field, or to take, for the purpose of being used in the house, by himself, his family, guests, lodgers and servants, water or fish out of c's tank, or timber out of d's wood, or to use, for the purpose of manuring his land, the leaves which have fallen from the trees in e's land. **These are easements**.

(e) A dedicates to the public the right to occupy the surface of certain land for the purpose of passing and re-passing. **This right is not an easement**.

(f) A is bound to cleanse a water course running through his land and keep it free from obstruction for the benefit of B, a lower riparian owner. **This is not an easement.**

SECTION 5 - A continuous easement is one whose enjoyment is, or may be, continual without act of man. **A discontinuous easement** is one that needs the act of man for its enjoyment. **An apparent easement** is one the existence of which is shown by some permanent sign which, upon careful inspection by a competent person, would be visible to him. **A non-apparent easement** is one that has no such sign.

Illustrations

(a) A right annexed to B's house to receive light by the windows without obstruction by his neighbour A. This is a continuous easement.

(b) A right of way annexed to a's house over B's land. This is a discontinuous easement.

(c) Rights annexed to A's land to lead water thither across B's land by an aqueduct and to draw off water thence by a drain. The drain would be discovered upon careful inspection by a person conversant with such matters. These are apparent easements.

(d) A right annexed to a's house to prevent B from building on his own land. This is a non-apparent easement.

SECTION 6. - Easements for limited time or on condition- An easement may be permanent, or for a term of years or other limited period, or subject to periodical interruption, or exercisable only at a certain place, or at certain times, or between certain hours, or for a particular purpose, or on condition that it shall commence or become void or voidable on the happening of a specified event or the performance or non-performance of a specified Act. (Lease, license)

SECTION 7 - Easements restrictive of certain rights. - Easements are restrictions of one or other of the following rights (namely):

(a) Right to enjoy. -The exclusive right of every owner of immovable property (subject to any law for the time being in force) to enjoy and dispose of the same and all products thereof and accessions thereto.

(b) Rights to advantages arising from situation. -The right of every owner of immovable property (subject to law for time being in force) to enjoy without disturbance by another the natural advantages arising from its situation. -

Illustrations

(a) The exclusive right of every owner of land in a town to build on such land, subject to any municipal law for the time being in force.

(b) The right of every owner of land that the air passing thereto shall not be unreasonably polluted by other persons.

(c) The right of every owner of a house that his physical comfort shall not be interfered with materially and unreasonable by noise or vibration caused by any other person.

(d) The right of every owner of land to so much light and air as pass vertically thereto.

(e) The right of every owner of land that such land, in its natural condition, shall have the support naturally rendered by the subjacent and adjacent soil of another person.

(f) The right of every owner of land that, within his own limits, the water which naturally passes or percolates by, over or through his land shall not, before so passing or percolating, be unreasonably polluted by other persons.

(g) The right of every owner of land to collect and dispose within his own limits of all water under the land which does not pass in a defined channel and all water on its surface which does not pass in a defined channel.

(h) The right of every owner of land that the water of every natural stream which passes by, through or over his land in a defined natural channel shall be allowed by other persons to flow within such owner's limits without interruption and without material alteration in quantity, direction, force or temperature; the right of every owner of land abutting on a natural lake or pond into or out of which a natural stream flows, that the water of such lake or pond shall be allowed by other persons to remain within such owner's limits without material alteration in quantity or temperature.

(i) Right of every owner of upper land that water naturally rising in, or falling on such land, and not passing in defined channels, shall be allowed by owner of adjacent lower land to run naturally thereto.

(j) right of every owner of land abutting on a natural stream, lake or pond to use and consume its water for drinking, household purposes and watering his cattle and sheep; and the right of every such owner to use and consume the water for irrigating such land, and for the purposes of any manufactory situate thereon, provided that he does not thereby cause material injury to other like owners:

SECTION 8 - Who may impose easements -An easement may be imposed by anyone in the circumstances, and to the extent, in and to which he may transfer his interest in the heritage on which the liability is to be imposed.

Illustrations - (a) 'A' is a tenant of B's land under lease for an unexpired term of twenty years, and has power to transfer his interest under the lease. 'A' may impose an easement on the land to continue during the time that the lease exists or for any shorter period.

SECTION 9 - Servient owners -Subject to the provisions of section 8, a servient owner may impose on the servient heritage any easement that does not lessen the utility of the existing easement. But he cannot, without the consent of the dominant owner, impose an easement on the servient heritage which would lessen such utility.

Illustrations - (a) A has in respect of his mill, a right to the uninterrupted flow thereto, from sunrise to noon, of the water of B's stream. B may grant to C the right to divert the water of the stream from noon to sunset: provided that a's supply is not thereby diminished.

SECTION 10 - Lessor and mortgagor.-Subject to the provisions of section 8, a lessor may impose, on the property leased, any easement that does not derogate from the rights of the lessee as such, and a mortgagor may impose, on the property mortgaged, any easement that does not render the security insufficient. But a lessor or mortgagor cannot, without the consent of the lessee or mortgagee, impose any other easement on such property, unless it be to take effect on the termination of the lease of the redemption of the mortgage.

Explanation - a security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of building, exceeds by one-half, the amount for the time being due on the mortgage.

SECTION 52 - "License" defined.-Where 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.

CHARACTERISTICS OF LICENCE

1) No transfer of interest- A license is a permission to do some act which, without such permission, would be unlawful.

2) No interest in accretions- A licensee has no interest in the property and therefore, he acquires no right by accretion

3) Neither transferable nor heritable- A license is neither transferable; nor heritable.

4) A license is a matter purely personal between grantor and grantee.

5) Section 52 of Easement Act does not require any consideration, material or non-material, to be an element of the definition of license, nor does it require that the right under the license must arise by way of contract or as a result of mutual promises.

6) The person who grants the license must be the owner of the property. The other person who gets the permission must be a stranger or have no right in the property.

7) License creates no duties and obligations upon the person making the grant and is therefore revocable except in certain circumstances expressly provided in the Act itself.

8) A license is usually revocable by grantor, except in the two cases mentioned in the section 60 of Easement Act.

9) A subsequent transfer of the property terminates a license.

10) A licensee cannot sue trespassers and strangers in his own name.

11) A license is terminated by death of either party.

DIFFERENCE BETWEEN LEASE AND LICENCE	
Lease is a transfer of enjoyment by the lessor to lessee for a certain period subject to certain conditions	Licence is the grant of permission to use for a certain period subject to certain conditions
Lease grants exclusive possession for a fixed term	Licence does not grants exclusive possession for a fixed term
Lease creates an interest in the land which can be transferred during lease period	Licence does not create an interest and cannot be transferred
Lease can be assigned to another person and if the title is registered it will be binding on the owner	Licence cannot be assigned and it is not transferable
Lease is not revocable other than subject to conditions set out in the deed terms (redevelopment clause)	Licence is revocable

<u>REAL ESTATE REGULATION & DEVELOPMENT ACT, 2016</u>

RERA (REAL ESTATE REGULATORY AUTHORITY)

The Real Estate (Regulation and Development) Act, 2016 aims to regulate and promote the real estate sector by regulating the transactions between buyers and promoters of residential as well as commercial projects. It also has provisions for establishing a regulatory authority at state level called "Real Estate Regulatory Authority" (RERA) for monitoring the real estate sector and adjudicating disputes relating to Real Estate Projects. The main aim of the Act is to protect buyers and help investment in Real Estate Sector.

Its Main Objectives are -· Enhance transparency and accountability in real estate and housing transactions; Providing uniform regulatory environment to ensure speedy adjudication of disputes and orderly growth of the real estate sector; Boosting domestic and foreign investment in the Real Estate sector; Promote orderly growth through efficient project execution and standardization; Offer single window system of clearance for real estate projects.

REGULATORY FRAMEWORK

Establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector. Ensure sale of plot, apartment of building, as the case may be, or sale of real estate project, in an efficient and transparent manner.

Ensure protect the interest of consumers in the real estate sector. Establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of Real Estate Regulatory Authority (RERA).

Regulates transactions between buyers and promoters of residential real estate projects. Establishes state level regulatory authorities called Real Estate Regulatory Authorities (RERAs). Residential real estate projects, with some exceptions, need to be registered with RERAs. Promoters cannot book or offer these projects for sale without registering them. Real estate agents dealing in these projects also need to register with RERAs. Registration, the promoter must upload details of the project on the website of the RERA. These include the site and layout plan, and schedule for completion of the real estate project. <u>Amount collected from buyers for a project must be maintained in a separate bank account and must only be used for construction of that project. The state government can alter this amount</u>. Right to Legal Representation on behalf of Client by Company Secretaries or chartered accountants or cost accountants or legal practitioners. Imposes stringent penalty on promoter, real estate agent and also prescribes imprisonment.

<u>ACT -SALIENT FEATURES</u> ·

<u>SECTION 20</u> - Establishment and incorporation of Real Estate Regulatory Authority (RERA) at every State in India for monitoring and adjudicating disputes relating to real estate projects**.**

<u>SECTION 43 & 44</u> - Establishment of fast track dispute resolution mechanism for settlement of real estate disputes through dedicated adjudicating officers and Appellate Tribunal**.** ·

<u>SECTION 3</u> - Registration of all real estate projects is made mandatory with RERA having territorial jurisdiction over such projects. No sale in a real estate project can be made without registration of the project with RERA.

As per Section 3(2) the details of requirement for a project to be registered under this act.

a) The land area proposed to be developed does not exceed 500 square meters or number of apartments proposed shall not exceed 8 units inclusive of all phases.

b) The promoter has received completion certificate for a project before commencement of this act

c) For renovation or repair or redevelopment, which does not involve marketing, advertising or new allotment of any apartment, plot or building, as the case may be.

According to RERA, carpet area is defined as the net usable floor of an apartment, excluding the area covered by the external walls, areas under service shafts, exclusive balcony or verandah area and exclusive open terrace area, but inclusive of area covered by internal partition walls of the apartment.

SECTION 11 - RERA can also refuse to register a project, if the same is not compliant with provisions of the Act. Registration of a project can even be cancelled, in case, RERA receives any complaint and the same is found to be correct after inquiry.

It is mandatory for a promoter to upload details of proposed project on the website of RERA, including details of registration, types of apartments or plots booked, list of approvals taken and the approvals which are pending subsequent to commencement certificate, status of the project, sanction plan, layout plan etc.

SECTION 5 - RERA shall approve or reject the application for registration within 30 days, failing which it shall be deemed to have accepted the application for registration.

<u>SECTION 13</u> - <u>Any promoter shall not accept a sum more than 10% of the cost of the apartment, plot, or building, as an advance payment</u>, from a buyer without first entering into a written agreement for sale with such person and register the same.

<u>SECTION 4(2)(L)(D)</u> -· <u>It has been made obligatory for promoters to deposit 70% of the money collected from buyers for a particular project in a separate account</u> that will cover the cost of land and construction and the same can be withdrawn only after certification from an engineer, an architect and a chartered accountant. **.**

<u>SECTION 16</u> - It is now obligatory for all the promoters to obtain insurance in respect of title of the land and buildings and construction of every project**.**

<u>SECTION 15(1)</u> - The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from at least 2/3rd number of Allottees, except the promoter, and without the prior written approval of RERA

<u>SECTION 2 (ZA) (I)</u> - Both promoter and buyer are liable to pay equal rate of interest in case of any default from either side

<u>SECTION 18</u> -The promoter shall compensate the buyer in case any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

<u>SECTION 31</u> - An aggrieved person may file a complaint with RERA, as the case may be, for any violation or contravention of provisions of this Act or rules and regulations made thereunder against any promoter, buyer or real estate agent**.**

<u>SECTION 36</u> - During the pendency of enquiry, RERA can restrain any promoter, buyer or agent from continuing with the act complained of.

<u>SECTION 43</u> - A person aggrieved by any direction or decision or order made by RERA or by an adjudicating officer may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter**.**

<u>SECTION 59(2</u>) - If a promoter continues to violate the provisions of Section 3, he shall be punished with imprisonment for a term which may extend to three years or fine which may extend to 10% of the estimated cost of the project or both

<u>SECTION 63</u> - If a promoter fails to comply with orders or directions of RERA, he shall be liable to a penalty, which may extend up to 5%, of the estimated cost of the project as determined by the Authority.

<u>SECTION 64</u> - If a promoter fails to comply with orders of the Appellate Tribunal, he shall be punished with imprisonment for a term which may extend to three years or fine, which may extend up to 10% of the estimated cost of the project, or with both.

<u>SECTION 69</u> - Where an Offence under this Act has been committed by a company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished.

<u>SECTION 79</u> - · <u>No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which RERA</u> or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

VALUATION OF REAL ESTATE

Cost: Cost is the amount required to create or produce the good or service. When that good or service has been completed, its cost is a fact. Price is related to cost because the price paid becomes its cost to the buyer. The amount of money necessary to produce an asset is its cost. Cost becomes a historical fact as soon as its production is complete. The price paid for an asset is its cost to the buyer.

Price: Price is a term used for the amount offered, or paid for a good or service. Financial capabilities, motivations or special interests of a given buyer or seller decides the price. The price paid may be different than the value. Price is factual and an indication of a relative value placed by the particular buyer or seller under specific circumstances. Price is formed by the interaction of demand and supply in an economic market. When a transaction takes place, sale price becomes a historical fact.

Value: Value is not a fact but an estimate of the likely price to be paid for goods and services in an exchange or a measure of the economic benefits of owning those goods or services. The word valuation is used to refer to the estimated value or to refer to the preparation of the estimated value. Value is therefore a hypothetical price. It is a proxy for price. As per the Valuation Standards, it should generally be clear from the context which meaning is intended. Where there is potential for confusion or a need to make a clear distinction between the alternative meanings, additional words are used Value in exchange is a hypothetical price and the hypothesis on which the value is estimated is determined by the valuation objective. The value to the owner is an estimate of the benefits that would accrue to a particular owner or beneficiary of the goods or services. So, cost is fact, price is policy, value is opinion

<u>Basis of Value</u>: A basis of value is a statement of the fundamental measurement assumptions of a valuation. It deals with the fundamental assumptions of the reported value, e.g. the nature of the hypothetical transaction, the relationship and motivation of the parties and the extent to which the asset is exposed to the market. The appropriate basis will vary depending on the purpose of the valuation. A basis of value should be clearly distinguished from:

a) The approach or method used to estimate value

b) The type of asset being valued

c) The actual or assumed state of an asset at the point of valuation

d) Any additional assumptions or special assumptions that modify the fundamental assumptions to specific circumstances.

<u>Valuation Standards</u>: It recognizes and defines bases of value in each of three principal categories

1. The first is to estimate the price in a hypothetical exchange in a free and open market. Market value as defined in this standard falls into this category.

2. The second is to estimate the benefits that an entity enjoys from ownership of an asset. Investment value and special value as defined in this standard fall into this category.

3. The third is to estimate the price that would be reasonably agreed between two specific parties for the exchange of an asset. Fair value as defined in this standard falls into this category.

4. Many valuations may require the use of different bases of value that are defined by statute, regulation, private contract or other document.

Such bases have to be interpreted and applied in accordance with the provisions of the source document. Examples of bases of value that are defined in other regulations are the various valuation measurement bases found in International Financial Reporting Standards.

TYPES OF VALUE

Market Value: Market Value is the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion and with proper marketing.

Accommodation value: The value of land lacking in shape, size, or a recessed land, lacking direct access from the road, or not independent will be having a lesser market value.

Book value: Written down value (WDV) of an asset as shown in the Book of Accounts and Balance sheet as per statutory requirements

Breakup value: The estimated amount, when a Concern is closed, individual assets are valued and sold separately

Distress Value: Urgent disposal or liquidation of assets due to personal commitments, communal riots, obsolescence, labour unrest. Other social, political uncertainties will drastically reduce the market value.

Fair market value: The term used in normal conditions when the asset is sold or valued as if it can fetch. It signifies the Market value. It is not a speculative or distress or forced sale value.

Forced Sale value: It is the estimated amount of an asset, when sold in the open market when the asset is under liquidation. The term “forced sale” is used in circumstances where a seller is under compulsion to sell and that, as a consequence, a proper marketing period is not possible and buyers may not be able to undertake adequate due diligence.

Liquidation Value: Liquidation Value should take into account the costs of getting the assets into saleable condition as well as those of the disposal activity. Liquidation Value can be determined under two different premises of value:

An orderly liquidation is the value of a group of assets that could be realized in a liquidation sale, given a reasonable period of time to find a purchaser, with the seller being compelled to sell on an as it is. This is also called Realizable value: The reasonable period of time to find a purchaser (or purchasers) may vary by asset type and market conditions.

Going Concern value: It is an estimate of the profit making running business price, in the open market with all tangible and intangible assets with all liabilities.

Equitable Value: It is the estimated price for the transfer of an asset or liability between identified knowledgeable and willing parties that reflects the respective interests of those parties.

<u>Investment Value</u>: It is the value of an asset to a particular owner or prospective owner for individual investment or operational objectives.

<u>Intrinsic value</u>: The actual or true value of the asset, incurred by the owner of the assets

<u>Monopoly value</u>: It is the premium value or a fancy price of the assets due to demand, non-availability of similar assets and these types of assets demand a special value due to this peculiar advantages

<u>Mortgage value</u>: The term used in financial institutions while the asset is surrendered as security for the loans taken by the owner of the assets from financial institutions

<u>Salvage value</u>: It is the estimated amount when an asset is sold in open market, after the expiry of its life span, but still continued to be used due to its present conditions.

<u>Scrap value</u>: The scrap value is defined when the asset has served its life and no more it can be utilized for operation and it is completed in knock down status, the residual parts are valued as a scrap pretending the scrap materials of the asset is sold in open market.

<u>Replacement value</u>: This is the estimated cost of the asset to be incurred today, by replacing a similar asset at current pricing.

<u>Reproduction value</u>: This is the estimated cost of the asset to be incurred today, by replacing a similar identical asset with the same technical specifications at current pricing.

Net present value: It is the present day value of the asset derived by deducting the depreciation amount from the replacement value of the asset

Notional value: This is an imaginary value of asset or hypothetical value as required for certain valuation process for statutory purpose

Potential / special value: An asset will enjoy additional value due to demand by its physical, geographic, economic or legal aspects. Due this factor the market value will be increased.

Synergistic value: The attributes of an asset that could be of value to a special purchaser include any element of synergistic value that would be generated by its acquisition. Synergistic value is an additional element of value created by the combination of two or more interests where the value of the combined interest is worth more than the sum of the original interests.

Sentimental value: Value determined by the buyer or seller due to various sentimental reasons. It is a personal value added to the market value of both buyer and seller. It may not affect the fair market value.

Speculative value: When a speculator invest in buying the asset with sole motive of earning profit while selling of the asset after specific time. The speculator may foresee likelihood of increase in asset value and makes investment and sells the asset on profit mode.

Stigma value: Estimate of price of an unwilling purchaser based on assumptions for suspicion or negative aspects of disliking the property for certain reasons, though the physical conditions are good. Example: haunted house, suicide, near a burial / cremation ground.

Statutory value: Property value estimated in accordance to the provisions of local acts. Example: wealth tax act, registration act

MARKETABILITY, UTILITY, SCARCITY / DEMAND, TRANSFERABILITY

Marketability of an asset is based on the willing buyer to acquire for reasons like desire, utility, or income generation or an investment or for a specific purpose.

Utility of asset involving existing and future benefits due to possession and use of the property is one of the factor. There must be a demand for the property. If there is a scarcity, then the demand will increase or if it is abundance or supply is more demand will be less. The legal factor of the property is that it must be transferable with a clear perfect title.

HIGHEST AND BEST USE (HABU)

The Market Value of an asset will reflect its highest and best use. The highest and best use may be for continuation of an asset's existing use or for some alternative use. This is determined by the use that a market value for the asset, that it would be willing to bid. The nature and source of the valuation inputs must be consistent with the basis of value. Various approaches may be used to arrive at an opinion of value with market-derived data. The market approach will, by definition, use market-derived inputs. To indicate Market Value, the income approach should be applied, using inputs and assumptions adopted by participants. To indicate Market Value using the cost approach, the cost of an asset of equal utility and the appropriate depreciation should be determined by analysis of market-based costs and depreciation.

Determination of the highest and best use

(a) To establish the use is physically possible, to be considered reasonable by participants.

(b) To be legally permissible, any legal restrictions on the use of the asset, ex: town planning/zoning designations, or the likelihood that these restrictions will change.

(c) To be financially feasible taking into account whether an alternative use is physically and legally permissible will generate sufficient return, after taking into account the costs of conversion to that use, over and above the return on the existing use.

The current use may be, but is not necessarily, the highest and best use. Situations in which the value to an owner may be required includes:

(a) Supporting investment decisions, and

(b) Reviewing the performance of an asset

Special Assumptions - In addition to the basis of value, it is necessary to make multiple assumptions to clarify either the state of the asset in the hypothetical exchange or the circumstances under which the asset is assumed to be exchanged. Such assumptions can have a significant impact on value. No one method is suitable in every possible situation. The selection process must consider:

(a) The appropriate basis of value, determined by the terms and purpose of the valuation assignment

(b) The respective strengths and weaknesses of the possible valuation approaches and methods

(c) The appropriateness of each method in view of the nature of the asset, and the methods used by participants in the relevant market

(d) The availability of reliable information needed to apply the method.

Example: 20000 square feet of residential land in a commercial area in a city to be developed. Find whether the property is physically (land characteristics), legally (encumbrances if any, town planning / zoning regulations) and financially (investment & income generation) possible.

1. Whether the property can be developed? Then how?

2. Whether legally can be developed? By what means?

3. What is the investment & income generation? How much?

4. Whether residential apartments or hotel or shopping complex, cinema theatre or hospital can be made.

Examples: A vacant land near a sea port can be rented out without investment or with minimum investment and can be converted for storage of containers, and A vacant land near a bus stand or railway station can be converted for a car / scooter parking area with or without investment.

REAL ESTATE AND REAL PROPERTY

Property concepts based on exclusive right of acquiring, possessing, enjoying and disposing of anything. It may be an unlimited right in point of duration and unrestricted in point of disposition in which case it is viewed as ownership.

Ownership is very often subject to control of reduction whether by contractual obligation or by operation of laws of land.

Property includes movables, immovable and intangible which are held under such a right of ownership as well as rights falling short of ownership.

The land ownership is affected by government in three categories.

1) Government imposes taxation and the right to impose compulsory acquisition on any property.

2) Right to take or revert back any property in the absence of any legitimate inheritance.

3) Government also imposes restrictions on land use and rights of interest by development through zoning regulations, Environmental requirements

REAL ESTATE AND REAL PROPERTY

Property is anything that is capable of being owned. Anything specifically recoverable and may pass on to the heirs are real estate. The real property consist of all forms of rights & interests arising out of things.

The highest form of estate or title to land with possession free from restrictions and encumbrances is called freehold. A property owned with absolute ownership is called a real estate. This further classified as movable (land and building) and immovable (plants & machineries).

OWNERSHIP

Ownership is incorporeal – vest in a person in the eye of law. Relation between the person and the thing. Ownership is a bundle of rights, with all special and limited rights, liberties and power.

Corporeal rights is on tangible assets - material objects – movable & immovable properties (Example Car, building, machines)

Incorporeal rights is on intangible assets – Example - Copyrights, patents, trademarks or leasehold rights or goodwill.

Sole ownership – one person owns a thing- exclusive ownership

Co-ownership or concurrent ownership – two or more persons own a thing at the same time

Trust and beneficial ownership – a bare legal ownership where the trustee has no right to beneficial enjoyment of trust property. The property is held solely for the benefit of the trust, though he may be the legal owner of the property

Legal ownership is recognized by the common law.

Equitable ownership is recognized by the equity

Absolute ownership - the owner holds absolute clear, perfect title it is vested ownership

Contingent ownership- when the right is conditional ownership with limitations in his rights.

Possession by fact - actual and physical control over a thing is called as defacto possession

Possession by law - recognized and protected by law is called as de jure possession.

Direct & primary Possession – Example - Car Owner or building

Possession legality - Prima-facie evidence, confirmation of title of ownership by longevity, transfer of ownership.

Corporeal Possession - building owner, car, and factory.

Incorporeal Possession - audio / film copy right

Representative Possession - Example - Servant holding owner's money

Concurrent Possession - Example - Two persons jointly possessing a thing at the same time (Common areas in apartments)

Adverse possession - undue claim of rights of the owner by other person who do not have the right or hold in the thing

The owner is entitle to (BUNDLE OF RIGHTS)

a) Use of property in any manner (1) or abuse the property till it result in nuisance (2)

b) Enjoy it by exclusive possession (3)

c) Derive benefits (4), income or profits from it (5)

d) Disposing it during his lifetime by sale (6), gift (7) or will (8) e) can grant lease (9), create mortgage (10), induct license (11)

LIFE ESTATE

In life estate ownership, the duration of interest is limited to the life of the owner. A grantor who has given the estate for life of one person, after the death of the person who is using the estate, the termination of life estate will be effected. The ownership will go back to the grantor and this is called reversion. However, the grantor has given the estate after termination to be passed on to another person, the interest of the latter is called reminder.

LEASEHOLD INTEREST

A leasehold interest in the property is the right to occupy and use the property for a fixed term or perpetuity as per the terms and conditions in the lease deed. Person who grants the lease is called lessor. Person who takes it is called lessee. Contracts is called lease terms. A long lease with renewable clause is called perpetual lease. Lessee as per terms and conditions can develop, sub lease it, and enjoy benefits arising out. The lessee has a right in the property and the rights can be mortgaged restricted to his leasehold interests.

INTERESTS IN PROPERTY

An absolute ownership consists of an aggregate of rights, a wide variety of rights can be carved out of ownership.

Interests arising out of mortgagor and mortgagee in a mortgage. In a Trust property, the owner gets an allowance charged or right to collect dues on land given to the Trust is also an interest.

A right to enter in to the land and remove trees or to graze cattle belonging to another person. Carrying away fish from ponds. The pathway rights enjoyed in another land by way of **easement rights**

Ownership rights in an immovable property i.e. land or land with building as per Transfer of Property Act comprises of following major rights. These rights adequately describe the essential characteristics of the concept of 'Ownership'

Right of possession in exclusion of whole world. Owner has right to possess the property which he owns. Law protects his right of ownership and possession.

Right to use and enjoy the property permanently. Owner has right to use his property in any manner he likes, of course subject to restrictions of the state and municipal laws respectively.

Right to consume, alienate or destroy the property. Land can be alienated and the building could be destroyed.

Right to lease, rent, sale, transfer or assign, gift or give away under will. Owner enjoys all these rights till perpetuity as ownership right is perpetual. Owner can transfer part or whole of this right to others for a determined period as is the case in

lease and license. Ownership continues to remain with the owner even after enjoyment right is transferred to lessee or licensee.

Right to develop: Owner has right to develop the property himself or he can give development right to anyone else under a contract.

Heritable right: Owner can give away his ownership right to his successor or beneficiary under will.

Residuary right: The owner of property holds residuary powers in case of lease, license or mortgage. Residuary rights are permanently held by the owner unless the same are sold or gifted.

All these rights are popularly known as bundle or rights. **Absolute ownership of Real Estate means that the owner holds each and every right described**. He can part with some of these rights for consideration or otherwise and still continue to own the property. He can rent, lease or create life interest. He can also permit development on the plot by third party as per some norms and conditions by giving power of attorney.

Timeshare: A Time Share is a form of ownership or right for using the property, on the terms and conditions stipulated. These are designated as resort units, in which multiple owners hold the rights to use the property. Each sharer is allotted a period of time (one week, always at the same time in each year for a determined number of years). Units may be on a part ownership on lease or right to use basis, in which the sharer holds no claim on the ownership of the property. These resorts will have group chain of resorts located in various places or the group will be affiliated with other resort groups, where the time share bought for this place can be utilized elsewhere subject to terms and conditions. Time share value for the owner depends upon the season prevailing at that particular time during the year. The season is defined in many ways like - Off season, monsoons, peak seasons etc. The Time share value will vary depending upon the seasonal activity in that place. Leasehold deeds are common and offer ownership for fixed period of time after which the ownership reverts back to the freeholder or the resort management. These deeds are offered in perpetuity also. However in most of the cases, ownership of land is not conveyed but merely accommodation unit is conveyed for a specific period. With right to use, shareholder has the right to use the property and after the contract ends all rights revert back to the property owner.

VALUE IN USE (IVSC)

This term refers to the value of an individual asset which is a component of the going concern. It is the estimated amount that reflects specific contribution of the particular asset to the going concern entirely. Value in use can include elements of personality (personal property, plant, machinery, equipment, etc) and also encompasses concepts of deprival of use. Value in use is responsive to market prices through comparative or investment/ capitalization approaches based on market and/ or business, industry/ trade, etc.

VALUE IN EXCHANGE (IVSC)

It is the amount of goods and services which we may obtain in the market in exchange of a particular thing. In other words, it is the price of a particular good which can be sold and bought in the market. For instance, if one kg of rice can be obtained in exchange of one dozen of banana, then we may say that value of one kg of rice is equal to one dozen of banana. Thus, value-in-exchange depends on: **TIME & PLACE**

(i) **Time: Value-in-exchange** depends on time element. That is, with the change in time value- in exchange for a commodity in respect to other commodity will vary.

(ii) **Place:** Value-in-exchange also depends from place to place. Value-in-exchange for a commodity varies from one market to other markets. Hence, it varies according to time and place. Again, one commodity may have immense use value but no exchange value or vice versa. For example, water has immense use value but not exchange value. On the contrary, diamond has huge exchange value but no use value.

ANNUITY, CAPITALIZATION, YEAR'S PURCHASE, SINKING FUND, REDEMPTION OF CAPITAL, REVERSIONARY VALUE

Annuity: Net annual income (Return on Investment) derived from the investment made. A series of payments made at equal intervals. Annuity Valuation is calculation of the present value of the future annuity payments.

Annuity valuation involve concepts such as time value of money, interest rate and future value. Rent from land or house, interest on bank fixed deposit or yield on government security are the examples of Annuity.

Capitalization: The amount to be invested at present to have a return in future is called the capital investment. The interest or profit received on investment is the return from the investment. The percentage on interest vs. capital invested is the capitalized rate. Total amount received at the future date is called capitalized value.

Example: if a person deposits Rs.1.00 lakh in Bank fixed deposit & Bank offers interest of 8% on FD. Rate of 8% is called rate of capitalization. If an investor gets net rental income of 8 % return on his investment in a house property, 8 % is called rate of capitalization

Yield Rate: The rate at which the income derived from the assets when compared to the capital value of the asset is called the yield rate.

Yield rate (YP) = capital value (CV) / income derived

The income periodically has to increase and must match with the increased capital asset value due to inflation, demand and other factors attributing to the prevailing market value of the assets on periodic intervals.

Remunerative Rate of Interest: Rate of capitalization after due consideration to yield rates comparing other type of investments at the relevant TIME period is called Remunerative rate of interest. When the income from long term investments and perpetual in nature, yield rate on such investment is also called Remunerative rate of interest.

Accumulative Rate of Interest: Total interest portion received on accumulation is called the accumulative rate of interest.

Year's Purchase: Years purchase is defined as capitalized value required to be invested once, in order to receive annual income of Re1- for specified period of time at specified rate of return. Value of future income = present capital sum **x** average expected annual cash-flow by a multiple, known as "years' purchase".

Capital value (CV) = Year's purchase x Net Income

Year's purchase (YP) = 100 / rate of return

Redemption of Capital: The capital amount invested at present will be accumulated at the end of certain life span period or lease period. When the recovery of capital investment made, at end of life span period or lease period, it will have an interest accumulation on capital with a given interest percentage along with capital. Redemption = capital recoupment + accumulative interest

Rate of Redemption of Capital: Rate of return expected for capital investment for recoupment of capital invested in the property having a terminable income. Recoupment interest rate will be lower than remunerative rate and accumulated rate of return.

Rate of return: It is the percentage of net income from capital value investment. This includes the interest rate on capital value invested and capital appreciation or capital erosion. So, the interest rate will be less than the rate of return.

Sinking Fund: A fund for setting aside revenue over a period of time to fund a future capital expense, or repayment of a long-term loan or debt, replacing capital equipment as it becomes obsolete, or major maintenance or renewal of fixed asset, or building. Such a fund is also commonly called a reserve fund

Reversion – Deferment: It is the amount invested today, which will be deferred for a given period of time and reverted back at a future date. Deferment, is any account, the asset or liability value is not realized until a future date, e.g. annuities, charges, taxes, income etc. Deferred charge (or deferral) is cost that is accounted-for in latter accounting period for its anticipated future benefit, or to comply with the requirement of matching costs with revenues. The matching principle allows for a more objective analysis of profitability.

Rate of Reversion or Rate of Deferment: Deferment, is any account, asset or liability value is not realized until a future date. Yield at which the deferred investment will be deferred for a given period of time and reverted back at a future date is known as the rate of deferment.

Ex: if an investor invests a capital sum worth of Rs 7500 and receives a deferred sum of Rs 10036 after 5 years, the rate of return will works out to a compound interest of 6.00%. Or otherwise, to get a deferred sum of Rs 10036 after 5 years at a compound interest of 6.00%, the investor has to invest Rs 7500 today. This yield rate of 6.00% is called the rate of reversion or rate of deferment.

Reversionary Value: Property values based on capitalization rates on given rental income generated from current tenancy agreements.

Estimated Rental Value (ERV) – The estimated rental value is the open market rent. The difference between the rent and the estimated rental value is the reversionary value of the property. Initial yield is the annualized rents of a property expressed as a percentage of the property value. Reversionary yield - anticipated yield to which initial yield will rise (or fall) once the rent reaches Estimated Rental Value

CONSTRUCTION AND USE OF VALUATION TABLES

Types of Yield Rate

Simple interest - additive interest that does not increase

Compound interest - interest that increases exponentially over subsequent periods

Effective interest rate - the effective equivalent compared to multiple compound interest periods

Nominal annual interest - the simple annual interest rate of multiple interest periods

Discount rate - an inverse interest rate when performing calculations in reverse

Continuous compounded interest - the limit of an interest rate with a period of zero time.

Simple Interest Calculation: The gross amount accrued at the end of given period of term, at the given rate of simple interest. The total interest amount accrued in the given period total interest amount = I = P x N x R

Gross Amount = P + I = Principle Amount + Interest

P = Principal Amount N = number of years R = simple interest Rate

Compound interest amount Calculation: Single lump sum payments which are compounded at a given constant interest rate at the end of each definite time period at equal intervals of time. The gross amount accrued at the end of given period of term, at the given rate of compound interest.

Total interest = I = $(1+R)^{n}$

Gross Amount = P + I = P x $(1+R)^{n}$

= Principal Amount + compound Interest accrued

P = Principal Amount N = number of years R = Rate of compound interest

Present value of rupee Calculation: By this formula we can calculate the Present value of Re for a given period at a given rate of compound interest. This method is known as discounting or deferring of receivable at a future given period and at a given rate of compound interest.

Present value of a Rupee = PV = $\frac{1}{(1+R)^n}$

Present worth of amount receivable = PVA = C X $\frac{1}{(1+R)^n}$

C = Capital amount receivable at a future date R = Compound interest rate

N = Number of years

<u>Amount of Re. 1 / year (annum) Calculation</u>: Amount to calculate the annual regular investment of Re for a given period at a given rate of compound interest

Accumulated sum of Re 1 / year = (APA) = $\frac{((1+R)^n - 1)}{R}$

Gross Accumulated sum = C x $\frac{((1+R)^n - 1)}{R}$

C = Capital amount received / year R = Compound interest rate N = Number of years

<u>Annual sinking fund Calculation</u>: This calculation formula is used to find out the depreciated worth of the building. For this we have to consider a sinking fund amount to set aside annually at a given interest rate for the period equal to the building age or unexpired period of lease.

Annual sinking fund = ASF = $\frac{R}{(1+R)^n - 1}$

Gross sinking fund = GSF = C x $\frac{R}{(1+R)^n - 1}$

C = Capital recoupment amount expected

R = Compound interest rate N = Number of years

<u>Present value of future income of Re. 1 / year (Single rate basis)</u>: Present worth of future annual income for a given time period and at a given rate of compound interest. <u>This method is adopted for a perpetual income or by a long term lease with</u>

unexpired period is more where no annual sink fund is considered for calculation. Only remunerative rate of interest for the income is considered and hence it is called single rate method

Present value of Re.1 / year = YP = $\frac{1-\frac{1}{(1+R)^n}}{R}$

Asset value = C x $\frac{1-\frac{1}{(1+R)^n}}{R}$

C = Capital income (annuity) received each year R = Compound interest rate

N = Number of years YP = Year's Purchase

Present value of future income of Re.1/year (Dual rate): To calculate present worth of the future annual income flow for a given period of time and at a given rate of compound interest with taking in to account the sinking fund. It is calculated on the terminable income.

This method is usually adopted for an income with the remunerative rate of interest for the income and also a provisional annual sinking fund is considered.

Present value of Re.1 / year = YP = $\frac{1}{R+S}$

R = Remunerative rate of interest S = Sinking fund = $\frac{R}{(1+R)^n -1}$

Asset Value = C x YP

C =Capital income (annuity) received each year R = Compound interest rate

N = Number of years YP = Year's Purchase

URBAN INFRASTRUCTURE & ITS INFLUENCE ON REAL ESTATE VALUE

Property value is dependent upon characteristics such as physical characteristics, Site location in and other recreational facilities (accessibility). In addition the social and economic characteristics of neighborhood, including amenities as view, parks, schools and community services affect value. Those attributes are usually provided by the State and Local governments through their various policies and services. Thus property price will be suburb (or locational) dependent due to the attributes with respect to specific desirable services.

Vital social characteristics are: social, educational, recreational, cultural commercial services Quality, Community, neighbourhood, Occupant age levels.

As per National Urban Housing and Habitat Policy, 2007 the term "Urban" in India is defined as a human settlement with a minimum population of 5000 persons, with 75% of the male working population in non-agricultural activities and population density of at least 400 persons per sq. km". Further, all statutory towns having a Municipal Corporation, Municipal Councilor Nagar Panchayat, Cantonment Board is classified as "urban".

<u>The 74th Amendment of the Indian Constitution in 1992 introduced Part IXA (The Municipalities) on the decentralization of local governance in urban areas. It provided for the constitution of District Planning Committee (DPe} created as per article 243ZD of Constitution.</u> For consolidating the plans prepared by the Panchayat and the Municipalities and prepare a draft development plan for the district. District Plans are to be prepared by the District Planning Committees (DPCs) and Metropolitan Plans by Metropolitan Planning Committees (MPCs) for systematic urban planning. Slum was defined in the 2001 census as "compact area of at least 300 populations or about 60-70 households of poorly built congested tenements, in an unhygienic environment usually with inadequate infrastructure and lacking in proper sanitation and drinking

water facilities". It also includes any area identified as slum by the local authority or the local or State government. In 1956, a Slum Development Act was passed by parliament and it was applicable to the Union Territories.

Central Government will encourage and support the States to prepare a State Urban Housing and Habitat Policy and also a State Urban Housing & Habitat Action Plan. For achieving the housing policy objectives for housing and related infrastructure development at the State/UT level.

In order to augment sustainable and affordable housing stock along with related infrastructure like water, drainage, sanitation, sewerage, solid waste management, electricity and transportation, Action Plans should focus on accelerated flow of funds for housing and infrastructure.

Plan should provide a road map pertaining to institutional, legal, regulatory and financial initiatives in relation to: Land supply, Acts/Bye-laws modification, cost effective building materials & technologies, infrastructure development, in situ slum development. Make specific provision for use of information technology for planning, online e- connectivity. Should indicate concrete steps for motivating, guiding and encouraging an approach involving all stakeholders like ULBs, Cooperative Sector and Private Sector in order to synergize community, cooperative and private resources along with Government resources. A Monitoring framework at the State/UT level should be set up to periodically review the implementation of the Policy and concomitant Action Plan.

Rajiv Aawas Yojna (RAY) launched in 2009 was the urban equivalent to Indira Awas Yojana and was for providing housing to slum dwellers and urban poor with Centre share ranging from 50 percent to 75 percent.

It provided financial support to States/Union Territories/Urban Local Bodies Central Government Agencies, for providing housing and improves basic civic infrastructure & social amenities in selected slums. Rapid urbanization has increased the demand for urban services. Targeting and The implementation of urban services - water supply, sewage, sanitation, drainage and solid waste management.

Urban services are the responsibilities of the urban local bodies. Their finance is depend upon the budgetary allocations.

The ulbs not having sufficient source of revenue and they depend on the Central Government. They try manage through internal sources to implement the urban infrastructure.

They get finance through other sources (Example) Housing and Urban Development Corporation. They get finance through other sources (Example) Housing and Urban Development Corporation. If the urban infrastructure is not provided the real estate value comes down. The influence on the real estate value picks up on the availability of urban infrastructure.

FINANCE FOR URBAN INFRASTRUCTURE DEVELOPMENT

1. Market Based Finances
2. Pooled Financing
3. Public – Private Finances
4. Implementation & Project Finance

5. Management Contract Operation & Maintenance (O & M)

6. Built Operate & Transfer Contract (BOT)

7. Joint Sector Company

8. Linking with Jawaharlal Nehru National Urban Renewal Mission (JNNURM)

MARKET BASED FINANCES

ULBs float Municipal bonds market to mobilize for developing the infrastructure. They collect the fund & utilized them. While floating bonds, they provide information OF economic base of development area, their internal finance position, existing operation, management capacity, project viability, legal aid, administrative / financial structuring framework for repayment of the bonds. The bonds are floated as a tax free or taxable or pooled finance. They by this augment their source and improve by introducing reforms, improved cost recovery, financial management and good service delivery system.

RATING OF BONDS

Independent rating agencies provide evaluation of the credit strength or weakness of the bond issue. The rating agencies evaluate the credit worthiness of the debt offer, repayment ability for current and future performance of local finance and debt management. Ministry of Urban Development (MOUD) launched the Institutional credit rating of urban local bodies by The Security and Exchange Board of India (SEBI) Certified Agencies namely The Credit Rating Information Services of India Limited (CRISIL). The Indian Income Tax Act provides tax preference for investment in infrastructure projects.

POOLED FINANCES OPERATION

The financially strong ULBs have a direct access to bond market. The small and medium ULBs are not able to get a direct access to the bond market. Instead they join together, pool their resources and jointly access the bond market. The combined urban local bodies float the bonds and for repaying they set apart annual payments received in an Escrow Account. Though they are unsecured bonds, the bonds are provided with a backup guarantee by Development Credit Authority. Ministry of Urban Development (MOUD) launched Pooled Finance Development Fund (PFDF) and the guidelines for creating their own pooled financing entities.

PUBLIC –PRIVATE FINANCE OPTIONS

Implementation and Project Finance by Management Contract Operation and Maintenance (O & M), Joint Sector Company, Built Operate and Transfer Contract (BOT)

IMPLEMENTATION AND PROJECT FINANCE

The Central Government has designed the Private – public finance options, and it has provided the policy and procedural issues to reform the urban local bodies' infrastructure. This approach decentralizes for an improved environment of urban local bodies' infrastructure. By providing technical knowhow consultancy like implementing service improvements, performance based services contracts like operation and maintenance, management contract like providing and improving services to the urban local bodies, joint sector company adopting the urban local bodies services on Built Operate and Transfer Contract.

JAWAHARLAL NEHRU NATIONAL URBAN RENEWAL MISSION (JNNURM)

Central Government has launched Jawaharlal Nehru National Urban Renewal

Mission (JNNURM), to undertake institutional, structural and fiscal program at all urban local bodies' level, to implement & improve the urban service infrastructure. By this program, the service delivery systems, local economic level and enhanced quality of life have been improved. By this reform the <u>Central Government has decentralize of urban governance and empowering urban local bodies, improved accounting systems, improved revenue base, better quality enhancement to services</u>

Jawaharlal Nehru National Urban Renewal Mission (JNNURM) launched on 3 December 2005. Its tenure was extended till March 2014. Implementation of the 74th Amendment of the Constitution was a mandatory reform at the State level under JNNURM. Article 243ZE of the Constitution required all state governments to review the existing municipal laws and either repeal or modify those which are inconsistent with the provisions of the 74th Constitution Amendment. The main problem is that functional devolution to Urban Local Bodies (ULB) has not been supported by adequate transfer of revenue sources. It supported through perspective building City Development Plans (CDPs) for specifying infrastructure gaps relating to water, sanitation, sewerage, drainage and roads and deficiencies in housing and basic services. In January 2015, the draft Urban and Regional Development Plans Formulation & Implementation Guidelines (URDPFI), 2014) of MOUD, GOI was notified. And revised with the Urban and Regional Development Plans Formulation & Implementation Guidelines, 1996. It focused on Regional Planning, Planning Regions and Metropolitan Planning process and reviews traffic, pedestrian facility, accident rates, congestion at junctions and arteries. It overview various waste Water Recycling Techniques like Waste Stabilization Pond Systems (WSPS), Duckweed Pond System

(DPS), Facultative Aerate Lagoon (Fall, Trickling Filter (TF), Activated Sludge Process and others. Atal Mission for Rejuvenation and Urban Transformation (AM RUT) was launched on June, 2015. It developed Infrastructure creation FOR a direct impact on the real needs of people, such as providing taps and toilet connections to all household.

REAL ESTATE MARKET AND ITS CHARACTERISTICS

Real estate economics is the application of economic techniques to real estate markets. It tries to describe, and predict patterns of prices, supply, and demand. Concentrating on residential real estate markets. The main participants in real estate markets are:

Owner/user: These people are both owners and tenants. They purchase houses or commercial property as an investment and also to live in or utilize as a business.

Owner: These people are pure investors. Typically they rent out or lease the property to someone else.

Renter: These people are pure consumers.

Developers: These people prepare raw land for building, which results in new products for the market.

Renovators: These people supply renovated buildings to the market.

Facilitators: This group includes banks, real estate brokers, lawyers, and others that facilitate the purchase and sale of real estate.

The owner/user, owner, renter – market demand side. The developers and renovators -supply side. In order to apply simple supply and demand analysis to real estate markets, number of modifications need to be made to standard microeconomic assumptions and procedures. The unique characteristics of the real estate market must be accommodated. These characteristics include:

1) **Durability:** A building can last for decades or even centuries, and the land underneath it is practically indestructible. Because of this, real estate markets are modeled as a stock/flow market.

2) **Heterogeneity:** Every unit of real estate is unique in terms of its location, the building, and it's financing. This makes pricing difficult, increases search costs, creates information asymmetry, and greatly restricts substitutability. The real estate market is typically divided into residential, commercial, and industrial segments.

3) **High transaction costs:** costs include search costs, real estate fees, moving costs, legal fees, and deed registration fees. Transaction costs for the seller typically range between 1.5% and 6% of the purchase price.

4) **Long time delays:** market adjustment process is subject to time delays due to the length of time it takes to finance, design, and construct new supply and also due to the relatively slow rate of change of demand.

Adjustment mechanisms tend to be slow relative to more fluid markets. Real estate can be purchased with the expectation of attaining a return (an investment good), with the intention of using it (a consumption good), or both. This dual nature of the good means that it is not uncommon for people to over-invest in real estate—that is, to invest more money in an asset than it is worth on the open market.

FACTORS AFFECTING DEMAND AND SUPPLY SCHEDULE IN REAL ESTATE

Demand: The core variables are population size and population growth: more people in the economy, the greater the demand for housing. The price of housing is also an important factor. Family size, age composition, individual and Income, Accumulated wealth, lifetime income, permanent income are an important determinant. Many economists use permanent income rather than annual income because of the high cost of purchasing real estate. For many people, real estate will be costliest item ever bought. Market demand is calculated by summing all individual household demands.

Supply: Housing supply is produced using land, labor, and various inputs, like electricity and building materials. However, supply restrictions can significantly affect substitutability. The lack of supply of skilled labour can constrain the substitution from capital to labour. Land availability can also constrain substitutability if the area of interest is delineated (i.e., the larger the area, the more suppliers of land, and the more substitution is possible). Land-use controls such as zoning bylaws can also reduce land substitutability.

Adjustment mechanism: The basic adjustment mechanism is a stock/flow model to imitate the fact that about 98% the market is existing stock and about 2% is the flow of new buildings.

Adjustment with depreciation: If supply of existing housing deteriorates due to wear, then supply depreciates. Because of this, supply will shift resulting in a new demand (since the number of homes decreased, but demand still exists). Increase of demand will shift the value up. As a result, more houses can be produced profitably and housing starts will increase. Then the supply of housing will shift back to its initial position. **Increase in demand:** If there is an increase in the demand, there will be either a price or quantity adjustment, or both. For the price to stay the same, supply of housing must increase. **Increase in costs**: If construction costs increase, developers will find their business less profitable and will be more selective in their ventures. In addition some developers may leave the industry. The quantity of housing starts will decrease. This will eventually reduce the level of supply as the existing stock of housing depreciates. Prices will tend to rise.

Real estate financing: A homebuyer or builder can obtain financial aid from organizations like: 1. **Commercial banks** - Due to changes in banking laws and policies, commercial banks are increasingly active in home financing. These depository financial institutions are federally chartered, primarily accept consumer deposits, and make home mortgage loans. 2. **Mortgage bankers and brokers -** Mortgage bankers are companies or individuals that originate mortgage loans, sell them to other investors, service the monthly payments, and may act as agents to dispense funds for taxes and insurance. Real estate investment trusts (REITs), which began when the real estate investment trust act became effective, are available. REITs are committed to real estate lending and can and do serve the national real estate market, although some specialization has occurred in their activities. 3. **Other sources -** Individual investors with shorter-term obligations and building contractors sometimes accept in partial payment of the construction price of a home if the purchaser is unable to pay down payment amount.

INCOME APPROACH

Three main approaches used in valuation. Based on the economic principles of price equilibrium, anticipation of benefits or substitution. The principal valuation approaches are: (a) Market approach (b) Income approach (c) Cost approach

Each of these valuation approaches includes different, detailed methods of application. Selection of valuation approaches is to find the most appropriate method under the given circumstances. No one method is suitable in every possible situation. The selection process should be:

(a) Appropriate value, determined by terms and purpose of valuation assignment

(b) Strengths and weaknesses of approaches

(c) Suitability of each method in terms of nature of *asset*, and approaches used in the relevant market

(d) Reliable information needed to apply the method.

<u>Value</u>: Justice Hadley – ‘’value is an estimate of the price as it is ought to be’’. Value is highly subjective. When selling or buying an asset, value will come in to existence depending upon the requirement of the specific owner or purchaser. Asset value is assessed on nature of the physical, geographic, economic or legal characteristics and the benefits it enjoy with a demand and supply.

The income of an asset is determined by

A) Reference to the value of income

B) Cash flow or cost savings generated by the asset - For example the commercial properties or business controlled areas will fetch more income with more rate of return. Residential properties will fetch lesser income when compared to property value.

<u>FACTORS AFFECTING VALUATION BY INCOME APPROACH METHOD</u>

<u>1. Rent Control Act</u>

The law relating to the landlord's / tenant's rights to fix the fair rent or evict the tenant on expiry of the notice of eviction. Rent control act is common to the landlord and tenant. Any one of them can approach the rent controller for fixation of fair rent and for tenant eviction. (Note: each state has different type and nature of rent control act)

Eviction rights: 1) rent non-payment 2) sub-letting without due authority and permission 3) usage for purpose other than leased 4) committing acts of property value reduction & utility 5) usage for immoral or illegal purposes 6) nuisance to neighbours 7) ceased to occupy for a continuous period without reasonable cause. 8) Landlord requires building for his own occupation. 9) Occupying even after his ceased employment contract 10) given notice to tenant to quit, but failed to deliver vacant possession to the landlord in accordance to such notice.

Property valuation affected by Rent fixation: Only land market rate which is substantiated (ie) guideline rate will be the authenticated rate in a court of law. Fair rent will be awarded on the petitioned date and not on valuation date. Even though the property value increases during this period, the fair rent adoption by the courts may not be equal to market rent. For rent controlled properties the rate of return on rents is frozen as per the court decisions.

Property valuation affected by eviction of tenant: The process is cumbersome and will get delayed. Eviction of tenant may take a longer time, even the landlord citing various reasons. Even the tenant after given notice to quit, but he may not deliver vacant possession of premises to the landlord in accordance to such notice. Hence, the market value of the rent controlled properties will have lesser value when compared to freehold properties.

Ownership rights in rental agreements - Ownership rights are not transferred. Tenants are to pay rent, cannot pledge the property, no power to make improvements and only right to live in tenancy period.

2. Government Acts on Leave or license: Indian Easement Act, 1882

In **Section 52**. "License" is defined as -Where one person grants to another, a right 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. (Example: Medical shop on rental, book shop in railway platform)

The Rent Control Act will not be applicable to licensed business premises. To avoid the Rent Control Act, the properties are given under the type of leave and license. The property right of enjoyment is not transferred to the Licensee. The value of licensed premises will depend upon net profit of the business

3. Government Acts on Lease: Transfer of property act, 1882 (Act 3 / 2003)

Section 105 - **Definition of lease, lessor, lessee, premium and rent** - 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 Lessor - The transferor is called the lessor. Lessee - the transferee is called the lessee. Premium – the price is called the premium. Rent - the money, share, service or other thing to be so rendered is called the rent.

Valuation affected by the Easement Act and Transfer of Property Act

Both acts have similar implications in most of sections. –

1) Lease is defined by the lease terms and conditions.

2) Lease Terms and conditions may affect the rate of return on lease rent unless future projection of market value is properly judged. Even a Fixed lease rent in short term lease may not match with market rent.

3) Lessee cannot be evicted unless the lease period is expired or surrendered.

4) Leasehold properties have to undergo in court of law for any dispute arising between the lessor and lessee.

5) An agreement whereby a lessor grants the right to use an asset for an agreed period of time to a lessee in return for a payment or series of payments.

6) Right of enjoyment of the lessor is transferred

7) Lessee has the enjoyment right of the property

8) Lessor and lessee, possess the rights and liabilities as per lease terms and conditions.

9) Both can pledge their rights and can mortgage. Till the expiry period of lease both the lessor and lessee enjoy the rights and can mortgage their rights.

10) Lessee cannot, without the lessor's consent, construct any permanent structure, except for agricultural purposes

11) Lessee cannot use, or permit another to use the property for a purpose other than that for which it was leased.

12) Unless it is stated in terms and conditions, lessee cannot sub lease the leased property without consent of the lessor.

13) Unless it is stated, lessee has to surrender leased property as per terms and conditions (as and where it is or remove the improvements done in the permanent structure)

14) Lease agreement has to be registered - any dispute arising out between lessor and lessee, that being a statutory requirement or otherwise the lease agreement will be null and void. - Rental agreement - The rental agreement need not be registered.

DIFFERNCE BETWEEN LEASE AND RENTAL AGREEMENT	
LEASE AGREEMENT	**RENTAL AGREEMENT**
Transfer of Property Act	Tenancy Act
Enjoyment right transferred	Ownership not transferred
Right to enjoy the property	Right to live In the property
Lease deed to be registered	Rental agreement may be registered
Can pledge during lease period	Cannot pledge during rental period
No fixed lease period – extension possible	Fixed period – extension not possible
Right to develop the property	Cannot develop the property
Subletting possible	Cannot sublet

RENTS

Standard Rent (Fair Rent): Rent collected in accordance to the Rent Control Act - Fair Rents determined in a court of law

Rack Rent: Full rent (Market Rent) of property including both land and improvements. (i.e.) rent for land + interest on capital improvements + depreciation and maintenance

Virtual Rent: Rent received under lease agreement which includes the premium amount & any amount incurred for improvements by the lessor or the lessee

Ground Rent: Lease amount receivable from vacant ground given under lease is the ground rent. (Types - Secured ground rent and unsecured ground rent)

Secured Ground Rent: A vacant ground given under lease and the lessee develop the land and make improvements and lease out the building he has constructed. He maintains the building and pay statutory taxes.

Unsecured Ground Rent: A vacant ground given under lease & the lessee leases the vacant land for vehicle parking, materials storing without any construction or making any improvements.

Profit Rent: Example: Head Lessee sub leases the property. Rent received by him will be more than the rent paid by him to lessor. The increased rental is called **improvement rent**. The difference between the rent received and rent paid by the head lessee is the Profit rent.

Head Rent: Rent paid by the main lessee to the lessor or otherwise Head Rent received by the Head Lessee from sub lessee.

Contractual Rent: Rent mutually agreed upon between the landowner (Lessor) and the Tenant (Lessee). It may be equal to the economic rent (Market Rent).

<u>Premium</u>: Premium is the amount paid by the lessee to a lessor at the time of commencement of lease agreement or while renewing the lease agreement. It is the price, a non-refundable amount paid under Section 105 of the Transfer of Property Act, in return to the transfer of Rights in the Assets, in addition to the Refundable deposit and annual lease rent agreed under the lease agreement. The actual annual rent is added with, by dividing the premium or other amount by the number of years of the period of the lease.

<u>Gross Maintainable Rent</u>: Gross Maintainable rent = Lease Rent + premium amount / No of years + interest on Deposit amount.

<u>As per income tax act</u>, Interest on refundable deposits not being advance payment towards rent for a period of 3 months or less @ 15% P.A. on the deposit amounts outstanding from month to month basis for the period during which, deposit was held by owner in previous year. Value of benefits as consideration for leasing of property or any modification of lease terms.

<u>Outgoes</u> : Municipal Taxes, Repairs and maintenance Charges, Ground Rent, Insurance Cover, Management & Collection charges: This depends upon the number of tenants, types, legal disputes in collecting the rent, Service Charges: Expenditure -sweeper, liftman, common light point electrical energy, Sinking Fund: Deductions for sinking fund for machinery equipment and for building. (For it purposes building sinking fund is not considered), Additions In case of outgoings for common securities

Net Maintainable rent (N M R) = G M R - Outgoes

Profit rent of the lessee = Rack rent – ground rent - premium share – outgoes

Covenants of lease deed: Parties Name, starting date, Lease Period & Property Identification being leased, Lease renewal conditions, Additional Conditions & specific Remedies, premium for use of this asset & Provisions for security deposit & terms for its return, Permission for subletting/sub leasing, Other conditions - insurance, restrictive use, lessee's or lessor's maintenance responsibility

TYPES OF LEASE

Building lease: A vacant ground given by lessor under lease with ground rent and lessee develop the land and make improvements and lease out the building he has constructed. He maintains the building and pay statutory taxes.

The lease amount collected by the lessor is ground rent, which is here termed as Head Rent. If the building is rented out (sub lease) by the head lessee, the amount collected by him is called Rack rent.

Occupational lease: A building property given on lease to the lessee, which means, both land and building in part and parcel has been leased out. The rent collected is termed as Rack Rent. The lessor has the right of evicting the lessee. Example: Residential house, Apartments, shops.

Full repair lease: If the lease agreement stipulates the lessee to undertake all outgoings apart from his head rent, the lease is called full repairing lease

Life lease: The lease period is fixed till the death of lessee. The lease period expires on the death of the lessee.

Sub lease: In the lease agreement if the lessee is permitted to give the lease hold property to other occupants for a shorter time less than his lease period, with an enhanced lease amount, then the lease agreement entered by the lessee with the incumbents is called a sub-lease. The main lessee is called the Head Lessee. Other sub lease holders are called sub lessee. The main lessee retains his reversion of lease under his control.

KINDS OF LEASE

Perpetual / long term / short term lease: Where the lease purports to be 100 years or exceeding 100 years, with renewable clause the lease is called perpetual lease. A long term lease is for over 50 years and above up to 100 years. But nowadays, lease period for even 30 years and above is considered as a long term lease.

Any lease period entered upon below the long term lease period are deliberated as short term lease period

Fixed-term tenancy or tenancy for years: A fixed-term tenancy or tenancy for years lasts for some fixed period of time. It has a definite commencement date and a definite termination date. Despite the name "tenancy for years", such a tenancy can last for any period of time even a tenancy for one week may be called a tenancy for years. A fixed term tenancy comes to an end automatically when the fixed term runs out. Or, in the case of a tenancy that ends on the happening of an event, when the event occurs.

Periodic tenancy: A periodic tenancy also known as a tenancy from year to year, is an estate that exists for some period of time determined by the term of the payment of rent. An oral lease for a tenancy of years that violates may actually create a periodic tenancy, depending on the laws of the jurisdiction where the leased premises are located. Either the landlord or the tenant may terminate a periodic tenancy when the period or term is nearing completion, by giving notice to the other party as required by statute or case law in the jurisdiction.

Tenancy at will: A tenancy at will is a tenancy which either the landlord or the tenant may terminate at any time by giving reasonable notice. Unlike a periodic tenancy, it isn't associated with a time period.

It may last for many years, but it could be ended at any time by either the lessor or the lessee for any reason, or for no reason at all.

If a lease exists at the sole discretion of the landlord, the law of the jurisdiction may imply that the tenant is granted and a reciprocal right to terminate the lease at will.

Tenancy at sufferance: A tenancy at sufferance exists when a tenant remains in possession of a property after the expiration of a lease, and until the landlord acts to eject the tenant from the property. Although the tenant is technically a trespasser at this point, and possession of this type is not a true estate in land, authorities recognize the condition in order to hold the tenant liable for rent. The landlord may evict such a tenant at any time, and without notice.

Tenancy by holding over: The landlord may also impose a new lease on the holdover tenant. For a residential tenancy, this new tenancy is month to month. For a commercial tenancy of more than a year, the new tenancy is year to year; otherwise it is the same period as the period before the original lease expired.

In either case, the landlord can raise the rent, so long as the landlord has told the tenant of the higher rent before the expiration of the original lease.

Assignment: If the lease agreement stipulates that, the lessee is permitted to sell his leasehold rights to another person, then the term is called assignment. Example: Mining Lands, Quarries, Forest Rights Lands given on assignments.

Share in unearned increase: When the Government barren, mines and quarries lands given on assignments, it is permitted to the transfer of the assignment and will be charged while selling the leasehold rights.

The amount thus received as a premium for transfer of leasehold rights and it is known as share in unearned increase. The main lessee cannot retain his reversion of lease under his control.

When will be Lessor's rights will be more?

1) If the lease period is less and No renewal clause

2) Surrender of development by the lessee at free of cost on expiry of lease period

3) Periodical rent revision in correlations to market rent

When will be Lessee's rights will be more?

1) Lease period is a long lease (i.e.) land can be treated a freehold

2) No restrictive conditions

3) Profit rent and balance lease period is more

Lessor's interest: Lessor's interest will be Capitalized value of lease rent for the unexpired period of lease & Present value of the reversion in the property at the expiry of lease period. Lessor's interest, i.e., value of the property when it reverts back to the lessor is known as Reversionary Value of the property.

1) Right to receive lease rent fixed under the lease deed for the unexpired period of lease

2) Right to Reversionary Value - right to receive net income from the property after expiry of lease period when the property reverts back to the lessor. It is the value of the net income of market rent capitalized in perpetuity at the appropriate remunerative rate deferred for the unexpired lease period.

In case of a long lease the Reversionary Value may be negligible but it is never zero.

Lessee's interest: Difference in Capitalized value between economical (market) rent and lease rent for the unexpired lease period, revised value in the property due to improvements & Potential balance value available to the lessee. It Means, Lessee has a right to enjoy profit rent for the lease unexpired period. Market Value of lessee's interest is estimated by capitalizing profit rent at dual rate of interest for unexpired period of lease.

Securities - Secured securities & unsecured securities

Secured securities: Long term government bonds, gilt securities, bank fixed deposits and immovable properties.

Unsecured securities: Shares & stocks

Long term government bonds, gilt securities, bank fixed deposits: Capital is Secured - fine asset quality. Have yield rate as constant and guaranteed. Fixed rate of return & regularity of income with minimum risk management. It is treated as systematic risk. Capital safety is assured in all cases. Inflation rate is not covered under these types of investment. Liquidation process is easy on above securities and instant. Cost of transfer will be nil or minimum. No scope for capital appreciation.

<u>Immovable properties</u>: Capital is secured - asset quality is good. Have yield rate may be fluctuating and not constant. Irregular income with low risk management. Inflation rate is covered under this type of investment. Scope for capital appreciation. Liquidation process is not easy on this security. Further to this, for liquidation of immovable property, there will be some expenditure anticipated, deduction due to money market fluctuation and time duration for disposal may be extended. Any government act (rent control / transfer of property act, capital gain tax, etc.) may have a negative factor on property disposal.

<u>Derivation of yield rate from market derived data</u>: The net income from the asset is treated as interest yielded at a certain interest rate on the amount or capital invested in buying the asset. The rental income or the yield rate of the immovable assets in perpetuity, is compared with very similar Government bonds yields. If the upward revision of income yield rate when compared the prevailing yield from Government bonds, <u>it is treated as systematic risk and return on investment is a fair return</u>. But if the downward revision of income yield rate when compared the prevailing yield from Government bonds, <u>it is treated as for high risk with lower yield rate.</u>

<u>Rent Capitalization Method</u>: This method fall under the income approach method - income capitalization, where a fixed yield rate is applied to a <u>fixed income stream</u>. It is also, assumed that <u>annual income of the property will remain same during the entire economic life of the property</u>. <u>Hence 1st year's annual income is taken as annual income for entire economic life of the property</u>.

Net Maintainable Rent (NMR) = Gross Maintainable Rent (GMR) – Outgoes (OG)

Capitalized Value = NMR/ Rate of Return

INCOME APPROACH TO VALUE

An approach that provides an indication of value by converting future cash flows to a single current capital value. This method is used when the income-producing ability of the asset is the actual element - Income generation, Reasonable rents, income forecasts and timing of future income.

This process applies an appropriate yield, or discount rate, to projected income stream to arrive at a capital value. Income stream may be derived under a contract/ contracts/non- contractual, eg, profit generated from either use of or holding of the asset. To adopt this method:

1) The Income generation of the asset is the main factor and only one of several factors affecting value?

2) Reasonable rent / income projections or significant uncertainty regarding the amount

3) Timing of future income or significant uncertainty timing of future income

Lack of access to information on the asset like a minor owned or encumbered property or asset has not yet begun generating income, but is projected to do so. A fundamental basis for the income approach is that investors expect to receive a return on their investments and that such a return should reflect the perceived level of risk in the investment. Generally, investors can only expect to be compensated for systematic risk (also known as “market risk” or “diversifiable risk”).

INCOME APPROACH METHODS

The method under the income approach are effectively based on discounting future amounts of cash flow to present value.

A. Direct Rent Capitalization Method

B. Discounted Cash Flow (DCF) Method

(i) Net Present Value (NPV) Method

(ii) Internal Rate of Interest (IRR)

DIRECT RENT CAPITALIZATION METHOD

1. Collection of Sale & Rental instances – Similarity in character, proximity to the subject property, amenities, advantages, and sale date of transaction or rental details.

2. Analysis of sale instances - process of estimating the rate of interest yielded by a property from its sale transaction.

3. Inspection of property, sale & rental instances - To collect data and information on aspects: Physical & Technical, Legal, Social and Economic aspects

4. Estimation of Fair Rent of the Subject Property – Comparing with the rental instances to estimate its Fair Market Rent, Gross Annual Rent and Net Annual Income.

5. Selection of Interest rate for capitalization – Comparison of Subject Property with Sale Instances to select suitable Interest Rate for capitalization. Compare the Interest Rate selected for capitalization with Economic Indices to estimate final Interest Rate for capitalization.

A graph is plotted by taking time and interest rate yielded by the properties(X axis) and economic indices (Y axis) comparison will be easier.

6. Comparison of subject Property with Sale Instances for selection of suitable interest rate & Compare Interest Rate selected for capitalization with Economic Indices to estimate final Rate of Interest for capitalization - The remunerative rate of interest is inversely proportional to the security of investment. Lessee's interest in property is considered less secured than interest of the lessor's interest. Hence capitalization rate for lessor's interest is taken 1 % less than the rate of capitalization for lessee's interest.

7. Estimation of Capitalized Market Value of property

Gross Annual Rent = rent per Sq. M. x Built up area

Net annual income = Gross Annual Income – Outgoings

Y. P. = 100 / Estimated Rate of Interest

Capitalized Market Value = Net Annual Income x Y. P.

8. Estimation of Market Value - Market Value = Capitalized Market Value less (immediate repairs cost+ taxes unpaid + pending liabilities)

<u>DISCOUNTED CASH FLOW (DCF) METHOD</u>

Under the DCF method <u>the forecasted cash flow is discounted back to the valuation date, resulting in a present value of the asset</u>.

For long-lived or indefinite-lived assets, DCF may include a terminal value which represents the value of the asset at the end of the explicit projection period. In other circumstances, the value of an asset may be calculated solely using a terminal value with no explicit projection period. This is sometimes referred to as an **income capitalization method**.

The key steps in DCF method are:

(a) Select appropriate type of cash flow for nature of subject asset and the assignment (ie, pre-tax or post-tax, total cash flows or cash flows to equity, real or nominal, etc)

(b) Determine the most appropriate explicit period, over which the cash flow will be forecast

(c) Prepare cash flow forecasts for that period

(d) Determine whether a terminal value is appropriate for the subject *asset* at the end of the explicit forecast period (if any) and then determine the appropriate terminal value for the nature of the *asset*,

(e) Determine the appropriate discount rate, and

(f) Apply the discount rate to the forecasted future cash flow, including the terminal value, if any.

Forecast Period:

(a) The life of the asset

(b) A reasonable period to base the projections

(c) Minimum explicit forecast period sufficient to achieve growth and profits, after which a terminal value can be used

(d) For shorter life asset, to project cash flow over its entire life.

(e) For finite-lived assets, the cash flows will typically be forecast over the full life of the asset.

Terminal Value: Where the asset is expected to continue beyond the explicit forecast period, valuers must estimate the value of the asset at the end of that period. The terminal value is then discounted back to the valuation date, normally using the same discount rate as applied to the forecast cash flow.

Salvage Value / Disposal Cost: The terminal value of some assets may have little or no relationship to the preceding cash flow.

Examples of such assets include wasting assets such as a mine or an oil well. In such cases, the terminal value is typically calculated as the salvage value of the asset, less costs to dispose of the asset.

In circumstances where the costs exceed the salvage value, the terminal value is negative and referred to as a disposal cost or an asset retirement obligation.

Discount Rate: A rate of return used to convert a future monetary sum or cash flow into present value. The rate at which the forecast cash flow is discounted.

It should reflect not only the time value of money, but also the risks associated with the type of cash flow and the future operations of the asset.

DISCOUNT RATE METHOD

Valuers may use any reasonable method for developing a discount rate. There are many methods for determining the reasonableness of a discount rate, list of common methods includes:

1) The capital asset pricing model (CAPM): A model in which the cost of capital for any stock or portfolio of stocks equals a risk-free rate plus a risk premium that is proportionate to the systematic risk of the stock or portfolio.

2) The weighted average cost of capital (WACC): A discount rate estimated by the weighted average, at market values, of the cost of all financing sources in a business enterprise's capital structure.

3) The observed or inferred rates/yields: The annual rate of return anticipated on an asset if it is held until the maturity date taking into account the current market price, the par value, coupon interest rate and the time to maturity.

4) The internal rate of return (IRR): The discount rate at which the present value of the future cash flows of the investment equals the acquisition cost of the investment.

5) The weighted average return on assets (WARA): A discount rate estimated by the weighted average, at market values, of the cost of all financing sources in a business enterprise's capital structure.

<u>NET PRESENT VALUE METHOD</u>

In Net present value approach, all cash flows are discounted using the required rate of return which is minimum an investor requires on the investment.

The discounted rate will be generally be the minimum rate of return required over a period of cash flow. <u>If the total of the discounted cash flow over a period is zero, then it is a good investment.</u>

Multiplication of anticipated future cash flow by discounted rate of return gives the net present value. For this, estimate the <u>net cash flow</u> during the period.

Net Present Value Method has two characteristics. For the assumed net cash flow same discounted rate of return is adopted. <u>NPV will always decreases as the discount rates of return increases.</u> It takes into consideration of the time value of money. The cash flow stream is taken into account in its totality. <u>NPV represents the wealth of the investor in present day money terms after adjusting for return on the investment</u>.

Example - 'A' agrees to sell his property to 'B' for Rs 5.00 lakhs. 'B' agrees to pay in 5 instalments & pay the first payment on date of agreement. The balance In 4 equal Instalments on every 2 Months. The prevailing Rate of Return Is 13.50% Per Annum. What is NPV for 'A'?

Discount factor $= \frac{1}{(1+R)^n}$ R =rate of return & n = number of periods

INTERNAL RATE OF RETURN (IRR)

INSTAL-MENT No	AMOUNT PAID	R / MONTH	NO OF PERIOD	DISCOUNT RATE $\frac{1}{(1+R)^n}$	NPV
1	Rs 1,00,000	0.01125	0	1.00	Rs 1,00,000
2	Rs 1,00,000	0.01125	2	0.977874	Rs 97,787
3	Rs 1,00,000	0.01125	4	0.9562377	Rs 95,624
4	Rs 1,00,000	0.01125	6	0.93508	Rs 93,508
5	Rs 1,00,000	0.01125	8	0.9143905	Rs 91,439
6					Rs 4,78,358

It is defined as the rate at which discounted flow will match with the initial investment or net present value will be zero. It is the actual rate of return from investment.

It takes into account considering all future discounted receipts and discounted payments are equal making NPV zero.

IRR can be calculated by trial and error method or by linear interpolation.

Internal Rate of Return (IRR) example

A flat purchased in 31.12.1987 for Rs 1.50 lakhs. Owner received rental advance for 2 years of Rs 18000 as the same date. He spent for repairing the flat for Rs 10000 on 31.12.1989. On the same date he received rental advance of Rs 5000 for 1 year for year 1990. Again he spent Rs 9000 on renovation of the flat on 31.12.1990. On the same day, he received rental advance of Rs 10000 for 2 years for 1991 & 1992.

He received rental advance of Rs 6000 for 1 year for 1993. Finally he sold the flat on 31.12.1993 for Rs 1,90,000. What is the IRR?

Assumption: 1. Rate of return of 7% per annum

Date (p)	Time /years (n)	Cash flow (C) = - Outgoes = + income	R% per annum assumed	Discount Rate $\frac{1}{(1+R)^n}$	Present value = C x D
31.12.1987	0	- Rs 1,32,000	0.07	1	- Rs 1,32,000
31.12.1989	2	- Rs 5,000	0.07	0.8734	- Rs 4367
31.12.1990	3	+ Rs 1,000	0.07	0.8163	+ Rs 816
31.12.1992	5	+ Rs 6,000	0.07	0.7130	+ Rs 4278
31.12.1993	6	+ Rs 1,90,000	0.07	0.6663	+Rs 1,26,597
Net Present Value					- Rs 4676

Assumption: 2. Rate of return of 6% per annum

Date (p)	Time /years (n)	Cash flow (C) = - Outgoes = + income	R% per annum assumed	Discount Rate $\frac{1}{(1+R)^n}$	Present value = C x D
31.12.1987	0	- Rs 1,32,000	0.06	1	- Rs 1,32,000

31.12.1989	2	- Rs 5,000	0.06	0.8900	- Rs 4450
31.12.1990	3	+ Rs 1,000	0.06	0.8396	+ Rs 840
31.12.1992	5	+ Rs 6,000	0.06	0.7473	+ Rs 4484
31.12.1993	6	+ Rs 1,90,000	0.06	0.7050	+Rs 1,33,950
Net Present Value					+ Rs 2824

By linear interpolation method we can find actual IRR by making NPV zero. From this Example NPV arrived is + Rs 2824 @ 6% & - Rs 4676 @ 7%. But this must be zero. So, IRR must be between 6% & & 7%. To find the actual IRR, the linear interpolation method is used.

Formula: IRR = $R_1 + (R2\text{-}R_1) \text{ x } \frac{N1}{(N1+N2)}$

IRR = actual rate of return R_1 = Lower rate of return, R_2 = higher rate of return

N_1 = Lower net present value, N_2= Higher net present value

IRR = $6 + (7\text{-}6)\, x\, \frac{2824}{(2824+4676)}$ = 6.3765%

PROFIT METHOD

In the case of Hotels, Motels, Cinemas, Public houses which falls under the category of the licensed premises, the market value depends primarily on the earning capacity of the property. The market value of such properties is determined by applying profit method provided, if (i) the owner runs Hotel, Cinema himself. (ii) The owner gives Hotel or Cinema on lease agreement to a lessee.

The market value of the property is determined by capitalizing the net profits (70% tangible + 30% intangible) at certain rate of expenses, owners risk and other outgoings from the gross income.

Gross Income: The gross income is estimated on the full house capacity less normal vacancies in a year. As the gross income may not be consistent, so the gross income & expenses should be based on the average of last 3 preceding years.

Operating expenses - gross income, Hire charges, taxes pertaining to business, Freight charges, Publicity, Traveling expenses, Printing & stationary, Salaries & Bonus, gratuity, provident fund, Welfare fund of staff, Telephone bills, Electricity bills, Postage & Telegrams, Insurance for building as well as plant & machinery, Repair & maintenance not exceeding 3% of building value, Ground rent, if any, Property tax, Sinking fund for furniture, equipment and plant & machinery.

Owners risk & entrepreneurship - 15% of gross income in the case of owner runs the cinema himself or 15% of conducting charges received by the owner form the conductor less the owner's liabilities such as repairs & maintenance, ground rent, municipal taxes, collection charges etc., if any borne by the lessee.

Net Profit - The net income is worked out by deducting the expenses from the gross income.

Rate of capitalization - The net profit is required to be divided into two parts.

(a) One due to land, building, furniture, equipment etc. called as tangible profit and generally taken as 25% to 30% and is capitalized at interest rate 2% higher than the rate of interest for tangible profits.

(b) Other due to good will management, license called intangible profit and generally taken as 25% to 30% and is capitalized at an interest rate 2% higher than the rate of interest for tangible profits.

BASIC FINANCE WEIGHTED CAPITALIZATION

A purchaser is offered a property with a net income of Rs. 52,000 per annum. The purchaser assumes that a first mortgage can be raised at 60% of the purchase price. The mortgage will be at an interest rate of 15% per annum. The purchaser will fund the balance of the purchase price and requires a 10% return on equity. What is the value of the property?

R = Mf (borrowed) + Ey (own) = = (0.60 x 0.15) + (0.40 x 0.10) = 0.13

$$V = \frac{52{,}000}{0.13} = \text{Rs. } 4{,}00{,}000$$

INCOME TAX PROVISION

Sometimes interest earned is considered to be a part of the earned income. It is, therefore, taxable. The formula for present value, therefore, adjusted for tax **’t’** is

$$PV = \frac{1}{(1+R\left(100-\frac{t}{100}\right)}$$

EMI CALCULATION: Monthly instalment to be paid for redemption of Rs100,000 on Mortgage at 9% - loan to be repaid in 15 years’ time?

Formula: (R + S) x Rs 1,00,000

R = remunerative rate of interest S = sinking fund instalment at accumulative rate of interest ‘r’ for a period of n years (please note that both the remunerative rate of interest and the accumulative rate of interest is the same in this case).

Where R = 0.09, S = $\frac{R}{(1+R)^{n}-1}$ = $\frac{0.09}{(1+0.09)^{15}-1}$ =0.034059

(The annual sinking fund to accumulate to Re 1 at 9% interest in 15 years).

For Rs 1,00,000 borrowed amount = (R + S) x 1,00,000= (0.9 + 0.034059) x 1,00,000 = Rs 12,406 annually which is Rs 1,034 the monthly instalment for redemption of Rs 100,000 in 15 years.

DEPRECIATION: The word 'depreciation' generally denotes physical deterioration, i.e., perishing due to age, or simply wearing away. However, in valuation practice this word would embrace not only physical deterioration but also functional or economic obsolescence. Broadly speaking, depreciation is the loss, not restored by current maintenance, which is due to all the factors causing the ultimate retirement of the property. These factors embrace wear and tear, decay, inadequacy and obsolescence. A reliable estimate for the allocation for depreciation or present value of property should be based upon age, inadequacy, obsolescence, usefulness and other factors as well as the physical state. Physical condition alone is neither depreciation nor the sole measure of depreciation, in the sense of either cost or value.

Causes of Depreciation: There are in general four causes of accrued depreciation viz. physical deterioration, functional obsolescence, economic obsolescence and technical obsolescence.

<u>Physical Deterioration</u>: Physical deterioration- A loss in value due to wear and tear, natural forces, due to tension, compression, friction, and construction materials used, normal use, and breakage, insect's infestation, moisture. Maintenance can slow physical deterioration but not completely arrest it. Physical deterioration may be classified as curable or incurable. Curable physical deterioration occurs when the value added by a repair equals or exceeds the cost of repair. Incurable physical deterioration is that which, as of the date of valuation is not economical to repair or replace; that is, the cost of repair exceeds the gain in value.

<u>Functional Obsolescence</u>: Functional obsolescence is loss in value due to inability of the structure to perform adequately for the function for which it is used. Functional obsolescence can result from changes in demand, design and technology. It can take the form of deficiency. Potential buyers perceive a loss in utility. Therefore, the price offered may be lower due to reduced demand. Functional obsolescence - curable or incurable

<u>Curable functional obsolescence</u>: Example - old-fashioned bathroom, kitchen fixtures, electrical outlets/ room depending on whether the cost to cure is economically justifiable or not. Incurable functional obsolescence occurs when the cost of correcting the condition exceeds the increase in value. Examples - outdated design, poor room arrangement, no garage, inadequate column spacing in a warehouse and inadequate frontage in a commercial structure. Sometimes an entire structure can be functional obsolete because of its location; for example, a large, custom-built house in a remotely located neighbourhood or a small, poor quality house in a high-priced neighbourhood.

Economic Obsolescence: Economic obsolescence is loss in value resulting from impairment in utility and desirability caused by external factors i.e. outside the property's boundaries. Economic obsolescence arises from changes in the highest and best use of the property due to market shifts or rezoning government policies.

It may be due to inadequate public services or lack of facilities, narrow streets and heavy traffic in a residential neighbourhood, or proximity to inharmonious industrial or commercial land use. Economic obsolescence is seldom, if ever, curable. An undesirable location can affect land as well as improvement values. The effects should therefore be separated.

Methods of Calculating Depreciation: There are several methods of a calculating depreciation. Some of these are arbitrary whereas others are based on theory. The methods have been divided into two broad heads: · Non interest methods and Methods based on interest theories

1. Good-as-new assumption method: the assumption that the assets never depreciates since the assets are well maintained, its service efficiency and output capacity are practically undiminished are assumed as good as new. Obviously, this assumption is entirely erroneous and has no basis.

2. Direct appraisal method: It is assumed that a valuer's intuition can decide arbitrarily, after inspection and without reasoning, giving an ad-hoc depreciation without applying any method. This method is arbitrary having no basis and will not stand in a court of law.

3. Arbitrary lump sum method: this method now practically abandoned, many enterprises make arbitrary lump sum allocations as expense for depreciation. This method also has no basis.

4. Depreciation as a percentage of revenue: Estimating cost depreciation as a percentage of revenue involves the same motive as found in the arbitrary lump sum method. The percentage of gross revenue method seems not to have been used much.

5. Sum of digits method: This method is also known as the sum of the years' digits method. The sum of the years' digits method is an arbitrary method of allocation in which the depreciation base is held constant and the yearly rate decreased. As with the declining balance method, the result is to allocate the larger amount of depreciation to the first year and to decrease the amount each succeeding year.

The method is difficult to apply to groups of units, and because the declining balance method achieves similar results with greater ease and flexibility.

$$\text{Depreciation expense} = \frac{\text{remaining asset useful life}}{\text{Sum of the year digits}} \times \text{depreciable cost}$$

6. Declining balance method: This method is also known as constant or equal percentage method of depreciation. The **constant percentage method** is referred to as the linear method. Total Depreciation = $(1-(1-rd)^m)$

rd = Rate of Depreciation = 1/N, M = Building Age, N= Total Life. In this case, no scrap value is assumed.

In accounting terms, depreciation is used, for writing off the value of the asset over its useful life. It is the decrease in the value of the fixed asset due to use, time period and technological obsolescence. Reducing Balance Method charges depreciation at a higher rate in the earlier years of an asset. The amount of depreciation reduces as the life of the asset progresses.

Depreciation per annum = (Net Book Value - Residual Value) x Rate%

Where: Net Book Value is the asset's net value at the start of an accounting period. It is calculated by deducting the accumulated (total) depreciation from the cost of the fixed asset. Residual Value is the estimated scrap value at the end of the useful life of the asset. Rate of depreciation is defined according to the estimated pattern of an asset's use over its life term.

7. Straight line depreciation method: this method allocates the depreciable base of a property unit uniformly throughout its service life except when the estimate of service life is changed. Depreciation per cent ‘D’ is calculated as:

$$D = \frac{\text{Total life} - \text{Future life}}{\text{Total life}} \times (100\% \text{ less salvage value})$$

This is a simple equation which is used for estimating depreciation of existing buildings. For estimating depreciation by this method the total life, future life and percentage salvage value are necessary. This method Estimation of the Total Life of the Structure. There are no fixed rules for estimating the lives of various types of structures which depend upon many factors such as quality of construction, maintenance, etc. This fixed percentage depreciation method is more widely used in depreciation calculations than any other. It is the one method most generally used for determining depreciation for tax purposes and for profit and loss financial statements. It is the method prescribed by most agencies.

Accounting principles require companies to depreciate its fixed assets using this method. Cost of fixed asset is reduced uniformly over useful life of asset. Since depreciation expense charged to income statement in each period is same, the carrying amount of the asset on balance sheet declines in a straight line.

Limitation of Income Approach Method

Reliability depends on the reliability of Capitalisation rate.

Even 1% variation in Capitalisation rate will lead to an 8 to 10% variation in value. There are two rates of return for rented properties. For rent controlled properties the rate of return may vary.

Normal short term leased properties will have a rate of return of 8% to 10%.

For rent controlled properties, will have a rate of return of 3% to 5% depending upon the appeal and revision of rent. In rental properties,

Reversionary value is considered nil and hence value computed is far less. Moreover, future rent is assumed in perpetuity irrespective of the building condition. This can create lot of confusion while arriving at the correct Capitalisation Rate.

Even for long or perpetual lease if the periodical increase in lease rent will also an adverse reflection on the capitalisation rate.

Income capitalisation methods not suitable for Non-investment properties like schools, temples & Public buildings.

Normally this method gives too low a value ignoring the intrinsic value of land and buildings.

If the property is self-occupied, the notional rents may not reflect true value and also Underutilised FSI properties.

If actual rent is more than standard rent, there will be anomaly in fixing the gross income and net income and the rent becomes not maintainable.

The presence of Pagri, Salami, Good will etc makes the adoption of income approach method impractical in significant cases

MARKET APPROACH TO VALUE

Demand and supply factor and quality of product are equally important in determining exchange value in real markets, commodity market and stock markets. The concept 'market is supreme and highest and best use' is applicable as all the appurtenant factors are considered by buyers as well as sellers while finalizing the price factor of the asset. They are all based on the economic principles of Principle of Price equilibrium, Principle of Anticipation of benefits or Principle of substitution. Market Approach is basically operating on the Principle of Substitution.

Principles affecting Valuation

1. Principle of anticipation: According to this principle the value of the property depends on the anticipated utility or income that will accrue to the property owner in the future.

2. Principle of Balance: Value is created and maintained when there is equilibrium in the amount and location of essential types of real estate. The factors of production - labour, coordination, capital, and land - must be in proper balance in order to maintain maximum value.

3. Principle of Change: This principle realizes the economic and social forces that affect value. In other words, the area the property is in will affect the value more than the property itself. A value today is valid only for today.

4. Principle of Competition: Competition is generally considered as a benefit to the real estate trade. It produces increased efficiency in developing and operating properties, economic rents, and realistic prices.

5. Principle of Conformity: It states that conformity to land use objectives contributes to economic stability in a residential community. This is why houses are built in the same style as the other properties in that same area, because the values will go up.

6. **Principle of Progression:** The principle of progression states that the value of less expensive properties will increase when more expensive properties come into the area.

7. **Principle of regression** is a term used by real estate appraisers stating that the value of high-end real estate may be diminished by having lower-end properties in the

same vicinity. This principle is used frequently in writing zoning laws, which strive to keep business and residential areas separate.

8. Principle of consistent use: which holds that land cannot be valued based on one use while improvements are valued based on another, must be considered when properties are devoted to temporary, interim uses. The value of the land is based entirely on its potential highest and best use.

9. Principle of contribution: states that the value of a particular component is measured in terms of its contribution to the value of the whole property or the amount will have a negative factor to the value. The cost of an item does not necessarily equal its value.

10. Principle of External Factors: A variety of external factors are beyond the control of the property owner. External factors, such as government regulations, economic conditions within the area, can dramatically affect value.

11. Principle of Increasing and Decreasing Returns: This principle recognizes that increments of the agents of production produce greater net income (increasing returns) up to a point (surplus productivity).

12. Principle of Substitution: The basis for the market data approach to appraisal. This principle says that the maximum value of a property usually is established by the cost of acquiring an equivalent substitute property that has the same use, design, and income.

<u>13. Principle of Supply and demand</u>: The closely related field of housing economics is narrower in scope, concentrating on residential real estate markets, while the research of real estate trends focuses on the business and structural changes affecting the industry. Economists typically believe that a perfectly competitive market is likely to reach equilibrium.

<u>14. Principle of Surplus productivity</u>: This principle states that if the expenses of ownership (capital, labor and management) are deducted from net income, the remaining amount is termed surplus productivity and is considered the investor's return on the use of the land, or land rent.

<u>Characteristics of Real Estate</u>

1. **<u>Immobility</u>** - a physical characteristic referring to the fact that it can't be moved from one place to another. This is an equal benefit or detriment to all parcels of real estate in the same general area.

2. <u>Durability</u> - A building can last for decades or even centuries, and the land underneath it is practically indestructible. Because of this, real estate markets are modeled as a stock/flow market.

3. <u>Heterogeneity</u> - Every unit of real estate is unique in terms of its location, the building, and cost. The real estate market is typically divided into residential, commercial, and industrial segments.

4. **<u>Indivisibility</u> -** characteristics that make real estate unique as compared to other investment alternatives are - No fixed maturity – Tangible -Requires Management -

Inefficient Markets - High Transaction Costs - Lower Liquidity - Underlying Tenant Quality - Variability among Regions.

TYPES OF PROPERTIES BASED ON MARKETABILITY - Marketable Properties and Non-Marketable Properties.

Income fetching Marketable Properties: Hotels, Cinemas, malls, petrol pumps, industrial properties, leased properties

Non-income fetching but marketable Properties: Self occupied house, flats, shops, factories, freehold land

Non–income fetching and non-marketable Properties: Educational Institutions Temples, Public and Govt buildings, Fire station, museum etc

Methods of valuation varies depending upon the types of properties.

For Income fetching Marketable Properties, both market approach and income approach methods can be adopted. For Non-income fetching but marketable Properties the method to be adopted is the market approach method. For non-marketable properties either by cost approach or income approach method (if it is an income generation property) has to be followed.

Types of Markets: Technically a market is any medium through which two or more parties can engage in an economic transaction. Ex: Veg Market, Share Market, Consumer Durables Market, Turmeric, Jaggery, Real Estate Market etc.

Markets vary widely and the classification base depend on the kinds of products sold, location, duration, size and constituency of the customer base and legality and many other factors. Ex: Black Market/Grey Market refers to an illegal market.

Organised markets are market for consumer goods, Vegetable market, Gold market and Share market. Real estate market (though not existing in an organised manner) – we have a fairly good idea of the Real estate market.

Types of Real estate Markets based on occupancy – Residential, Commercial, Industrial, Agricultural and Special purpose. Types of Sub markets are Residential etc can be subdivided into house sites, individual houses, apartments etc, Urban, Sub urban & Rural, High, medium & low priced. Economic characteristics of Real Estate are

a) Transactions – less frequent

b) Unlike other markets is heterogeneous – not organised

c) Not possess the same economic characteristics like those of goods & services,

d) Lesser marketability, illiquid

e) Market not perfect

f) Market Not efficient

g) Market Not self-regulating

h) Lack of transparency – Buyers & sellers not fully informed

<u>Open Market</u>: In open market, all buyers and sellers are welcome and price competition will be there depending upon the buyer as well as seller. There will be ample substitute properties available and the Monopoly aspect absent. As in the case of real estate market, there is no Common Market for real estate. In open real estate Market, there will be a notional forum for both Buyer and Seller groups and both will be present and both compete to buy or sell on desired price level. Substitution process will be there in real estate markets.

Closed Market: All buyers are not permitted, Special buyers are permitted. Examples like Sale and Purchase in Parsi or caste based colonies or preference is only Vegetarians or in Mumbai, Diamond Bazaar permits only diamond merchants to buy and sell. .Other examples are Court decrees in partition in Joint ownership – private auction – public auction.

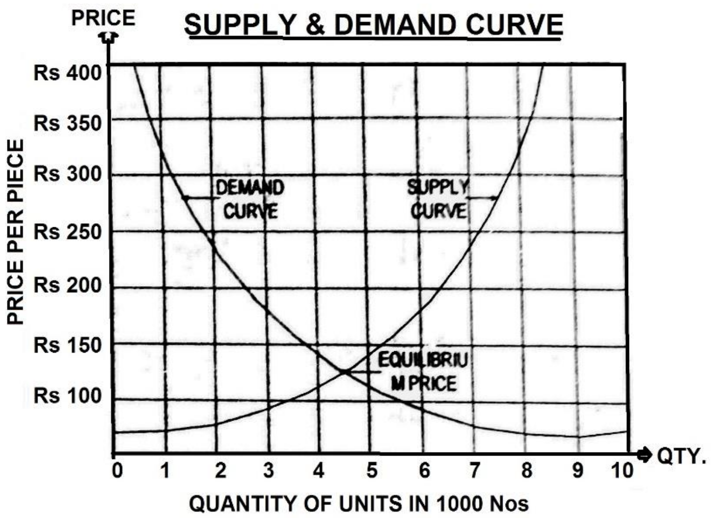
Buyer's Market – the availability of more number of units for sale and the market is flooded, then it means supply is more when compared to demand. Price will tend to decrease of bargaining power of the buyer will be more because of availability plenty of alternative or substitute properties. The sellers have to compete with other to sell their products. So, the sellers are tend to reduce their price and sells at lesser price. Hence, this market is called buyer's market and buyer is the king.

Seller's Market - non-availability of numbers of units for sale and supply is less than the demand, price tend to rise. Bargaining power of the buyer will be less because of non-availability plenty of alternative or substitute properties. Sellers will tend to quote more price than the actual selling price. Hence, this market is called seller's market and seller is the king.

Stable Market - when an artificial stoppage of demand prevails in the market, purchasers will stop purchasing or defer the purchases, even when there is a both market demand and supply exists. Due to various reasons like the present demonetization of currency, GST and other government recent reforms in real estate sector, or due to lack of paying capacity of people, the real estate is experiencing the simulated slowdown. They expect the price to go down in the near future. This results in market stable conditions.

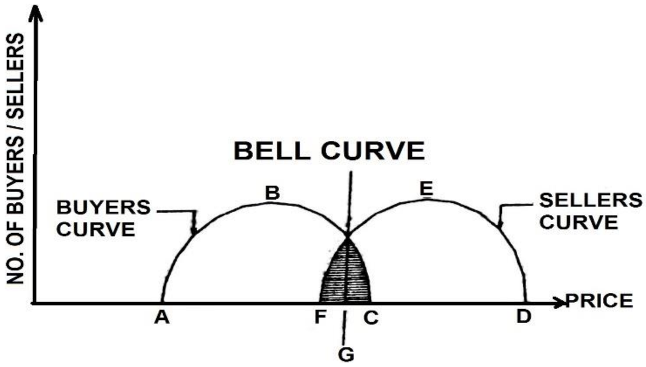
SUPPLY AND DEMAND

When there is a demand, and supply is less the price goes up. When the supply is more and demand will be less, the price comes down. Principle of supply and demand states that, the commodity price or service varies inversely with the supply of the item. Where, as price varies directly with the increase of the demand of the item. Demand curve indicates that, @ Rs 400/- the demand for number of pieces is less than 1000 unit say 500 units and when the prices falls below to Rs 50/- demand in the market rises for 10000 pieces. As in the case of supply curve, when the price is about say Rs 50/- product supply is nil or negligible. When the prices increases to Rs 400 product



supply increases to 8500 units. Intersection of curves gives the equilibrium price of Rs 125 per piece and it is called the fair price. Hence price of Rs 125 per piece will be ideal price for the product.

In the bell curve, buyers curve is ABC showing no. Of buyers at different price levels. ‘A” is the price offered by minimum number of buyers. That price is not viable or negligible for the seller, sale transaction does not take place. At “B” price maximum



number of buyers are willing to buy. At ‘C” price being considered very high, minimum numbers of buyers will be there. DEF is the seller’s curve at different price level. At “D” price sellers may not be able to sell because buyers will consider price is higher. At “E” price sellers will be more. Again “F” price there will be minimum sellers as price is low. Therefore, we can expect a maximum sale taking place in the price range of “F” to “C”. Price “G” is the ideal price or the average of highest price for a buyer and the average of the lowest price for the seller.

FACTORS AFFECTING PROPERTY VALUE

In order to adopt different market conditions, the buyers and sellers consider various characteristics of the properties like - Its usage, physical benefit, service life, resale value, infrastructure facilities, civic amenities, etc. Various market forces and characteristics influence the price factor of the properties.

Economic factor, Physical factor, Social factor & Legal factor are the main factors

Economic factor can be of micro level (local aspects) or macro level (national aspects).

Microeconomic factor includes local population, employment opportunities, changes in services, trade and commerce, per capita income at city / district / state level, trend in city growth or expansions etc.

Macroeconomic factor includes domestic savings, fixed capital formation in real estate sector, capital investment flow in bank deposits, shares, debentures, government securities.

ECONOMIC FACTOR:

1. Demand and supply of properties
2. Government polices (Central / State) for land development
3. Government economic and taxation policies
4. Resident's income, wage level, saving trend and paying capacity
5. Money market situation (Inflation Factors)
6. Cyclical boom & recession period in real estate market
7. Expected rental yields and return from investments
8. Availability of money on credit from financial institutions
9. Interest rate offered for credit from financial institutions
10. Property tax burden and maintenance outgoes
11. Better alternative use against current inferior use
12. Employment potential and development potential
13. Availability of alternate asset in the market
14. Local population and per capita income

PHYSICAL FACTOR (TECHNICAL FACTOR)

1. Land character – size, shape, area, outlook, frontage, orientation, soil type, topography
2. Infrastructure – roads, good roads networks, water supply, sanitary, drainage system, electrical power supply, telecommunication networks
3. Prominence and placement – main road, bye lane, remote area location
4. Building character - RCC Framed / load bearing structure, specification (civil, electrical, water supply, sanitary), building age and expected future life, deterioration, building cracks and present conditions, aesthetics and workman quality, obsolescence due to change in life style or technology concept, maintenance and repair liability
5. Functional aspect – optimum space use, good planning and design, high utility value, modern habitual style
6. Amenities – swimming pool, garden, lift, security system, car parking, health club, play area and compound wall
7. Environmental aspect – Noise, air, water pollution level, sea or water body frontage, vibration and noise due to nearby railway track, airport or industries and climatic conditions
8. Natural calamity – Earthquake prone, flooding due to low lying, cyclones, Tsunami prone

SOCIAL FACTOR

1. Locality – life style and living standards in the locality (Poor class, middle class, posh areas)

2. Neighbourhood – well developed, less developed, under developed, slums, cremation ground, cemetery, garbage dumping yard, nuisance due to nearby community hall, cinema theatres, schools and colleges

3. Civic amenities – proximity to shops, malls, market, schools and colleges, community hall, hospital, railway station, bus stand, garden

4. Population – density in area, population growth, congestion

5. Means of communication – railways, roads, airports and seaport

6. Prestige aspect – prestigious building, prominent location, renowned personality as neighbor

7. Political factor – Linguistics, religious communal unrest

8. Racial habitation – Hindu colony, minority colony, Christian colony, backward community colony

9. Religious factor – nearby temples, church, mosque, place of worship

10. Personal factors – sentimental value, vasthu belief, speculative interest, specific liking for that area

11. Stigma factor – haunted house, three road junction plots, fear over the past cyclone / tsunami effect, murder or suicide in the property, land used previously as cemetery.

LEGAL FACTOR

1. Social legislation – Rent control act
2. Land reforms legislation – urban land ceiling act
3. Ecological legislation – coastal regulation act
4. Transfer of property act with lease provisions

5. Land acquisition act

6. Laws governing land – Town Planning Act, Municipal Corporation Act, Urban Land Ceiling Act, Rent Control Act

7. Laws governing building construction – DCTP, LPA, development control rules, building byelaws, town planning and zoning regulations

8. Law on earthquake resistant buildings

9. Wealth tax, Income tax, capital gains tax, etc. and reservations under different acts

Other factor affecting land value - Building Byelaws

Every local authority and municipal corporation prescribe rules, byelaws and regulations for development and constructions within its jurisdiction. Important provisions in the building byelaws are floor space index, open space rules and height restrictions. Market of the land will be less for those using as residential purpose and higher for commercial purpose. Because of the income generation nature in commercial properties, their market value is more. While comparing two similar plots in a neighborhood within a radius of 200 metres, the higher the market value if the FSI is more and lower if the FSI is less. In some cases, the permissible FSI cannot be achieved. For example, a narrow plot cannot be developed for an apartment. As per the provisions of development rules, only ground and first floor can be constructed. With the minimum open space requirement and set back rules, prevent from consumption of using FSI fully. This provision reduces the market value.

For larger plots open space reservation is a must. The usable area for development is restricted towards open space reservation, roads and other services. The current use of the land at future date may be changed due to town planning rules.

Contemplation of conversion of land use at a future date will have a say on the market value. The expenditure to be incurred for conversion will affect the market value.

IVSC - Market value determination

Market value is defined as "the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently, and without compulsion".

Market value is a concept distinct from market price, market price is "the price at which one can transact", while market value is "the true underlying value" according to theoretical standards. The ideal conditions to obtain a fair and reasonable price in real estate properties, there must a willing buyer and willing seller.

If the buyer is an unwilling buyer (compelled for urgent need, immediate or forced or buying undivided share of co-owner), the market value may be at a given premium.

If there is an unwilling seller (encumbered property, by loan default, NPA, auction sales, distress sale, land acquisition, government regulations or due to political factor), the market value is discounted.

MARKET APPROACH METHODS

This approach provides a value indication by comparing assets with equal or comparable (similar) assets for which price information is available. Market approach should be applied in conditions where:

(A) Asset has recently been sold for consideration

(b) Asset or similar assets are publicly traded,

(c) Frequent/recent sale transactions in similar assets.

Sales comparison method and development method or residual method are the principle methods of market approach valuation. In the sales comparison method consists of two methods namely, the **comparison method and investment or income capitalization method**.

Comparison method is the simplest and most direct case of using comparable evidence. If data of similar property transactions are available in the market then such data can be directly used as comparable evidence. Thus by direct comparison a subject property's value can be estimated.

However, direct availability of comparable and use of this method are restricted in the case of industrial and trade related properties and specialized properties. The method is however applied extensively in the residential and commercial sectors.

Investment or income capitalization method is used where rental data of properties are available in the market. Since capital value of a property is derived from the net rent and yield for capitalization, these two data are investigated in the market for applying in the valuation method.

Obviously, comparable evidence of rental values and yields are required to be made available for the purpose of valuation. So, this method is designated as the investment method, the basic ingredients and steps are dependent on comparison or comparable evidence.

SALES COMPARISON (DIRECT MARKET COMPARISON METHOD)

Sales Comparison Method is based on Principle of Comparison and Value Substitution. Difference of value attributes with respect to price and quality of similar properties has to be investigated. Suitable discounting factor must be applied for specific property. The four methods of sales comparison methods are:

- ❑ Ad-hoc Comparison Technique (Hedonic Pricing Model)
- ❑ Adjustment Grid Model
- ❑ Price Quality Regression Technique
- ❑ Weightage Store System Of Valuation

AD-HOC COMPARISON TECHNIQUE (HEDONIC PRICING MODEL)

This is common and popular method in sales comparison method. Under this model, price of the property is expressed by the formula:

P = f (STLA)

P = Market price of the property

f = stands for the function of

S = Size or covered area of the premises

T = Time factor at which the asset is traded in the market

L = Location of the property (demand & supply, civic amenities)

A = Age or physical conditions of the property

Sales data collection sources

- ✓ Sales recorded in Registration Departments
- ✓ Local broker / real estate agents
- ✓ Newspaper advertisement
- ✓ Land acquisition cases
- ✓ Auction sales information
- ✓ Data bank by valuers' fraternity

Details that has to be collected

- ✓ Area of plot as conveyed, and as per revenue records
- ✓ Approved / unapproved area
- ✓ Area of plot as shown in approved plan
- ✓ Area of plot as per actual survey by the valuer
- ✓ four boundaries Correlation with respect to all above
- ✓ Buildings technical details: Layout, design, internal planning, construction type & method, specifications, floor area, age and obsolescence etc.

Analysis of data of collected

- ✓ Marketability of property
- ✓ Location of the subject property
- ✓ Size of the property: frontage, depth, shape, facing direction, local body regulations on land use, FSI, other contrary attributes
- ✓ Property may be a tenanted or leased out
- ✓ Mortgaged property
- ✓ Property's rental income might have been frozen under rent control act

External characteristics

- ✓ Location of the property- This gives accessibility to roads, services, public open spaces, proximity to amenities or undesirable features etc.
- ✓ Neighbourhood characteristics - Use zoning or other restrictions by planning authorities, presence of slums, social aspects, historic aspects 'amenities etc.
- ✓ Transactional characteristics - One-time payment, stage payment, time aspects etc

Analysis of data of collected from Comparable sale

- ✓ Excess Amount paid on parallel economy aspect
- ✓ Sale - a distress sale as per comparable sale instance
- ✓ Sale - premium or speculative value paid as per comparable sale instance
- ✓ Comparable sale property - for a larger plot, too far away from this subject property
- ✓ Comparable sale not done at arm's length (by gift, to relatives)
- ✓ Comparable sale taken place much earlier– time factor

Data Collection (Hedonic Pricing Model)

(a) Identify comparison units used in relevant market

(b) Identify comparable transactions and calculate the key valuation metrics for the transactions

(c) Comparative analysis of qualitative and quantitative similarities and differences between comparable assets and subject asset

(d) Make adjustments, in valuation for differences between subject asset and comparable assets

(e) Apply the adjusted valuation metrics to the subject asset, and

(f) If multiple valuation metrics were used, reconcile the indications of value.

Comparison Example: A residential flat of 150 sq.m of size is situated on a 12m wide road with superior interior planning. Flat was sold a year back at Rs 40,000 per sq.m.

Advice for fair purchase of flat of 90sq.m. In same locality but on 20m wide road with poor interior planning though both are of same specifications. This flat enjoys amenities of swimming pool & large garden.

Solution: Consider location, size, interior planning, amenities &time factor. Adjustments can be made for:

1. Size (150 & 90 sqm)	- 05%	4. a. Interior planning	- 10%
2. Time factor (1 year)	+10%	4. b. Amenities	+15%
3. Location (Road)	+ 15%		

Overall decrease / increase + 25%

Purchase price - 90 sq.m flat = 90 sqm x Rs 40,000 x 125% = Rs 45,00,000

ADOPTION OF WEIGHTAGES

Land has innumerable characteristics of attributes. These attributes can be the deciding factor to have precise market on the property value. When comparing the sales instances these attributes decides the market value of a specific property.

These attributes will be adhoc and would change from locality to locality depending upon the local market. Therefore, a detailed market study and surveys and appropriate local enquiry on these attributes before deciding on the market value has to be done.

Again, these attributes are based on the economic, physical, social and legal factors or location, size, time aspect &age and physical state of the property. The total number of factors affecting different aspects of real estate and causing dissimilarities between them may be much more than this.

In most cases however, valuers generally consider four principal aspects of real estate and make an adhoc comparison between them to arrive at a valuation conclusion.

First step is to collect suitable comparable as far as possible within the same locality and as similar to the subject property and recent sale transactions as possible.

The attributes of the comparable are then compared with those of the subject property. Find out all relevant factors and give positive or negative weightages over the rate of the comparable.

Finally, the comparison is carried out by weighing positive weightages and negative weightages. Derive the market value of the subject property with positive and negative factor over the rate of the comparable unit.

<u>Weightage for land comparison – example with minimum attributes</u>

Attribute of subject land	**Corresponding attribute of sale comparable instance land**	**+ve or -ve weightage to be applied to sale instance rate**
Return Frontage(Corner Plot)		
Large size plot		
Time Factor current year		
Main Road		
Land locked land (No road)		
Joint ownership		
Low lying land		
Sea front plot		
Title Defect/ pending litigation/ court stay		
Classification		
Irregular land shape		

Flood prone area		
E B line above		
Graveyard, burial ground, cemetery nearby		
Hospital, factories, Airport		
Temple, Marriage hall		
Noise or Air pollution		
Railway lines		
Poor SBC of soil		
Unapproved plots		
Tandem / Recessed Plots		
Non availability of infrastructure		
Less water potential		
Near to Government banned land		
Political / religious factors		
Height restriction		
Mines & quarries		
Freehold land		
Good water potential		
Good SBC of soil		
Approved layout		

Supply & Demand		
Rectangular plot		
Surrounding area development		
Agreements / Easement rights		
Topography –terrain / slope		
Acquisition notifications		
Heritage restrictions		
Approved sanitations		
Storm water drains		
Specific purpose usage		
Development rules & regulations		
Future expectations		
Other Social Factors		
Other Economic factors		
Other Physical Factors		
Other Legal Factors		
Other Factor due to Building Byelaws		
Other Factors relating Town Planning Act		
Any other factor affecting the value		

ADJUSTMENT GRID MODEL & EVALUATION GRID

As a matter of fact however, ad hoc practice may be somewhat arbitrary. The proper weightages of each attribute should be ascertained from an analysis of sale transactions in the real estate market. <u>There is no hard and fast rule in applying percentage as adhoc</u>.

But with an experienced valuer these percentage may bring good result. Unfortunately, such research is entirely lacking in this country and ad hoc practice cannot be dispensed with altogether and the valuer has to depend more on his experience. E.g., valuation of a flat under this approach.

Age aspect:

Rank (5) for buildings less than 5 years of age

Rank (4) for buildings 5 -10 years of age

Rank (3) for buildings 10-15 years of age

Rank (2) for buildings 15-20 years of age

Rank (1) for buildings of age more than 20 years

Location aspect: - civic amenities and services

Rank (5) if within a short distance

Rank (3) if at a moderate distance

Rank (1) if are available at a remote place

EVALUATION GRID

The introduction of this model has been made to make the approaches of sale comparison less ad hoc. A number of sale instances as similar as possible to the subject property is chosen as comparable. About four or five major attributes of the subject property are then selected for comparison with those of the comparable. Each attribute is classified under a suitable rank.

Sample ranking:

Quality Aspect: examples like

Rank (5) for attribute of highest quality.

Rank (3) for attribute of medium quality.

Rank (1) for attribute of poor quality.

Specification aspect: examples like

Rank (5) for best specification

Rank (3) for general standard specification

Rank (1) for poor specification

Size aspect: examples like

Rank (5) for flat area 60sq.m. or less

Rank (3) for flat area between 60sq.m. and 120sq.m.

Rank (1) for flat area beyond 120sq.m.

In practice, the number of attributes may be more although only three have been chosen here. Choose the maximum attributes according to their importance.

Now, all the comparable, their attributes with ranks and the subject property are placed in the evaluation grid. Here also, there is no regulation in ranking as indicated in the table. Next, rank of each attribute of the comparable is compared with the rank of the said attribute of the subject property and positive or negative weightages are given. Rank of the attribute of a comparable negative weightage is given whereas for inferior rank of attribute of the comparable positive weightage is given. Then all weightages of all the attributes of each comparable are summed up to find the resultant effect on the sale figure of each comparable. The finally adjusted sale figure of the comparable are then considered for arriving at the value of the subject property.

Example: 75 sq.m of A residential flat of 5 years old situated on a main road and closed to civic amenities and services. The building is of marble flooring, good specification and good internal planning. What is the value of the flat today based on sales of three comparable given below?

Sale X: flat of 130sq.m, sold @ Rs 40,000 per sq.m, 6 months back. The building is 18 years old and situated on a narrow lane away from civic amenities. The building is of standard specification within mosaic floor tiles.

Sale Y: flat of 100sq.m sold @ Rs 35,000 per sq.m, one year back. The building is 20 years old and situated in a middle-class locality on a narrow lane but close to civic amenities and services. The building is of poor specification.

Sale Z: A flat measuring 80sq.m sold @Rs 45,000 per sq.m about 9 months back. The building is 12 years old and situated on the main road in a locality dwelt in by a wealthy community but away from civic amenities and services. The building is of good specification with marble flooring. The evaluation grid is given below showing the adjustments.

Flat details	area	Price sold	Time factor to sale date	age	specification	location	Civic amenities

Salable Flat	75 sqm	To calculate	Now	5 years	Marble good spcn. good internal planning	Main road	nearby
Flat x	130 sq.m	Rs 40OOO per sq.m	6 months	18 years	Mosaic standard spcn.	narrow lane	away
Flat y	100 sq.m	Rs 35000 per sq.m	12 months	20 years	Poor specn.	narrow lane	nearby
Flat z	80 sq.m	Rs 45000 Sqm	9 months	12 years	Marble good spcn. good internal planning	Main road	good

Property characteristics	Sale flat 75 sq.m.	Sale X 130 sq.m. flat	Sale Y 100 sq.m. flat	Sale Z 80 sq.m. flat
Sale data	To find	Rs 40000 sqm	Rs 35000 sqm	RS 45000 sqm
Time aspect	today	+6 months	+ 12 months	+9 months
Adjustment time		+ 6% + Rs 2400 / sqm (Allowance +1 % per month)	+ 12% + Rs 4200 / sqm (Allowance +1 % per month)	+ 9% + Rs 4050 / sqm (Allowance +1 % per month)
Adjusted rate for time		Rs 42400 / sqm	Rs 39200 / sqm	Rs 49050 / sqm
Location aspect Rank 5 Weightage		1 +20%	3 +10%	3 +10%
Size aspects Rank 3 Weightage		1 +5%	3 nil	3 nil

Age aspect Rank 5 weightage		3 -6.50% (18-5 =13 yrs)	3 -7.50% 20-5 = 15 yrs	3 -3.50% 12-5 =7 yrs
Specification aspect Rank 5 weightage		3 +10%	3 +20%	5 nil
Overall weightage Over adjustment for time (4)		+28.50% Rs 12084	+22.50% +Rs 8820	+6.50% Rs 3188
Final rate in Rs / sqm	Rs 51600	Rs 54484	Rs 48020	Rs 52238

DEVELOPMENT METHOD (RESIDUAL TECHNIQUES)

a) Actual Sales Basis (Owner Occupied)

b) Actual Sales Basis (Tenant Occupied)

c) Hypothetical Building Method (Ownership concept)

d) Hypothetical Building Concept (Income Concept)

In sale comparison method a direct comparison of market value is determined. This method is an indirect manner of deriving land rate from sale transactions or the land value is derived in an indirect manner.

If a property is fully developed or under-utilized or of inferior use, to get best and high use, and where there is no prior sale instances available (Example: commercial / industrial / non-availability of plots sales - there may not be many sale instances available) for a direct comparison, to find out the land rate, these types of residual techniques are used. In cases, where sales of developed properties available, this indirect method provides the probable land value in the locality. In cases, where residential apartment's composite rates are available, this residual techniques can be adopted to find out the rate for land component.

For apartments, the outgoings towards promoter's profit, architect fees, interest components, plan approval charges, FSI stipulations, development charges, etc. have to be ascertained. If it is a tenanted or leasehold property, then the land is arrived with the help of rental income method and by cost approach method.

Example: sale consideration -Rs 20 lakhs(land 1000 sqft & building -1000 sqft), age -10 years, replacement cost - Rs 1200/ sqft, salvage value @10%, physical life - 60 years,.

Building value=(DRC)=1000xRs 1200 x 0.90 x 50/60 =Rs 9,00,000.

1000 sqft of Land value = Rs 20,00,000 –Rs 9,00,000= Rs 11,00,000.

Land rate per sqft = Rs 11,00,000 / 1000 sqft = Rs 1,100 per sqft.

HYPOTHETICAL BUILDING SCHEME

By adopting a hypothetical building scheme to be proposed in the property, the sale value of the proposed flats / shops can be derived. The sale value will be inclusive of profits, interest components, construction cost, outgoings, and management expenses for implementation of the project, etc. After adjustments the net proceeds will be taken as hypothetical building cost. The land component can be determined from the sale proceeds after deducting the hypothetical building cost.

In case of properties are considered for redevelopment as shopping/ office/ malls and others subject to assumption of rental income or profit, this method can be adopted both by income and cost approach method.

Profitability of development project is based on the Probable rental income receivable from redeveloping the property. Same can be reviewed, if it is a tenanted or leasehold property, then the land is arrived with the help of rental income method.

BELTING METHOD

Belting is resorted to value a large sized plot but comparable available in market are only small plots. In such cases a direct comparison of value with small sized plot may not be effective in estimation of large sized plot value.

Difference in size, location and fluctuation of land value of plots comes into picture in valuing. There may be a fall in value of the rear plot away from the road compared with the value of the front plot just on the roadside.

Usage of land: The rear land may not be suitable for a valuable land use when the front land is appropriate for such use.

Example: Front land on a road may be suitable for a commercial use while rear land can only be suitable for residential use. The front land may have the advantage of having direct connection with services such as water supply, electricity or sewerage connection from the main road.

But for the rear land, more cost is involved for having these connections over or under a passage land from the main road. In most of the cases, the front land is considered more valuable than the rear land.

The land use character of the neighbourhood dictates the rate of fall in value of the rear land as compared with the front land.

The rate of fall in the value of land away from the main road may be less drastic in case of residential neighbourhoods.

<u>Some basic norms for applicability of belting method</u>:

- ✓ Plot area must be sufficiently large and can be divided in smaller plots and different belts
- ✓ No comparable sale in locality for similar large size land
- ✓ comparable sale instances available for smaller plots
- ✓ land should be in an underdeveloped area
- ✓ Depth of the plot must more than the frontage or width
- ✓ Access to large size land is only by road on one side only
- ✓ The subject large size land must be in single ownership title.
- ✓ Clubbing different ownership title lands at different distance from road cannot be valued by belting method
- ✓ The front area of the land connecting the road is more valuable than the rear portion.
- ✓ Sufficient depth is assumed with reference to the frontage and number of belts are derived
- ✓ The first belt is assumed as a notional division based on the comparable sale instance smaller plot. The middle or second belt can be 1.50 times the first belt and third belt 2.25 times.
- ✓ <u>No rigid rule can be set for the plot depth and rate of fall in value</u>.

It will be appreciated that belting is not a method of valuation. It is a method of comparison to indicate the extent of land at different belts of a large sized plot. The entire land area of the land can be converted into number of smaller plots. Depending upon the location, size and usage of the each smaller plot is valued. Or an average rate considering the rear and front or average rate for number of belts assumed and the subject large land can then be valued.

JOINT VENTURE DEVELOPMENT

It is defined for the development of a property where the land and building components are from two different persons and they join together for execution of property development. The existing property may be can be converted in to a new one for various purpose. The existing property may be a vacant land, or an old building is existing in the property or current usage of the property is not in tune with the latest regulations or the property owner wants to get the highest and best use of the property for getting a higher income from the property. This method is applicable in case of residential apartments and commercial complex and malls.

The land owner for want of investment to be made in the property for conversion, he may get the assistance of a person whom can invest the money and develop the property. The person who is investing the money is called the developer of property or otherwise called a promoter. The promoter joins with the property owner (land owner) and they jointly promotes the project. Both the land owner and promoter gets the share of money proportionately for investment made by them. This is called a joint venture ratio. This ratio normally represented in terms of Promoter's share: land lord's share.

In The joint venture agreement, the factors deciding on the aspects are: Demand, prevailing market of land, location, FSI, usage (commercial, residential), building specifications. The joint venture ratio depends on aspects: Land lord gets his share for the investment made based on the prevailing land cost component. The promoter gets his share on the building components. The land rate is determined based on the local market rate and construction rate is defined by the specification of the proposed building. In these type of joint venture projects, the share of the landlord will be more, if the prevailing market rate of land is more.

But, every local authority and municipal corporation prescribe rules, area classification, byelaws & regulations for development and constructions within its jurisdiction. If the plot is on the main road, it is sensible for the landlord and developer to go for commercial and residential complex in order to get higher profit. If the locality is classified as commercial cum residential by the local corporation, the marketability will be better and getting construction plan sanction is not difficult at all. If the property is located in lesser width of the road, the permissible FSI may be less or it may not be achieved. So, the building byelaws or development control rules affect the market value of land. Important provisions are FSI / FAR, open space rules and height restrictions. With the open space requirement and set back rules, prevent from consumption of using FSI fully. This provision reduces the market value. Market of the land will be less for those using as residential purpose and higher for commercial purpose.

For the promoter, his share is based on the area of construction, nature of permitted usage of the building, period of construction, and technical specifications of the construction. The share of the promoter will be less than the land component, if the land component value is more. The sale value will be inclusive of profits, interest components, construction cost, outgoings, and management expenses for implementation of the project, etc. After adjustments the net proceeds will be taken as hypothetical building cost. The outgoings towards promoter's profit, architect fees, interest components, plan approval charges, FSI stipulations, development charges, etc. have to be ascertained.

Limitation of market approach

There may not be no identical properties that can be taken for comparison. Undue adjustments to the attributes may lead to inapt market value.

Lack of scientific and correct market data availability leads to inappropriate market value. Improper statistics and market study may lead to inaccurate results

For non-marketable properties, this method is not suitable. Wide range of market rate fluctuation and disparity on rates offers great difficulty in derivation.

Finding the nature of comparison sale is difficult whether compared property's value is a special / distress value.

Comparable sale may differ from land characteristics, time angle, and situation angle. Due to non-availability of comparable sale from a locality, adoption taken from the neighbourhood sale instances, may fetch a lesser or higher value for the subject property.

The parallel economy amount paid in sale consideration never reflects in the sale value and will give an untrue picture of actual market.

Change in Government regulations and Acts always react with the market value. Under hypothetical building scheme, market rate determined by this method will be subject to building regulations, recession, political and other assumptions made by the valuer and may go wrong. Comparison with rent controlled properties, may lead to detection of incorrect market value.