

FREQUENTLY ASKED QUESTIONS (FAQs) **(on the Supreme Court Judgement of 11.10.2011)**

1. What is a general power of attorney?

Ans. A general power of attorney is an instrument that is used by a person (granter) to confer authority on other person (grantee) to act on his behalf. The action done by GPA holder is deemed as if performed by the granter.

2. Whether there is any provision in the Stamp Act or in the Registration Act which brings GPA equivalent to Sale deed?

Ans. No. GPA is a device where by power can be enjoyed by the grantee till the pleasure of the granter.

3. What are risks of transactions based on GPA/SA/WILLs?

Ans. Following are certain risks:-

- I) This is not a legal form of transfer of title or ownership in immovable property.
- II) The owner of property can any time transfer the immovable property to person other than the GPA holder and he can do so either by way of a sale deed or in form of a fresh GPA in other's name. This has increased risk of forgery and cheating to many folds.
- III) You may be charged for transactions in black money as there is surely exchange of unaccounted money.
- IV) You may get entangled in property disputes and criminal assaults on you due to lack of title and in that case your

legal position in court will also remain disadvantageous to you.

4. What is the effect of Order of Hon'ble Supreme Court of India in its recently delivered judgment titled "**Suraj Lamps & Industries Pvt Ltd. v. State of Haryana and another (Special Leave Petition (C) No.13917 of 2009-Decided on 11-10-2011)**"?

Ans. Hon'ble Supreme Court of India has declared that there cannot be transfer of title by GPA/SA/WILLS transactions. Only registered sale deed /conveyance is a valid mode of transfer of title in immovable property. Based on this only, a circular has been issued by the Inspector General of Registration, Delhi.

5. After the issuing of the circular whether GPA, Will, Agreement to sell, or SPA can be registered by people in SR Office?

Ans. Yes, there is no ban on registration of these instruments in bonafide transactions. However, the GPA, Agreement to sell, Will or SPA collectively or separately shall not be recognized as a valid mode of transfer of title. These documents do not give ownership rights in an immovable property. Genuine cases of registration of such documents are not stopped. For Example:-

- i)** A person may give power of attorney to his spouse, son, daughter, brother, sister or a relative to manage his affairs or to execute a deed of conveyance on his behalf.
- ii)** A person may enter into a development agreement with a land developer or builder for developing the land either by

forming plots or by constructing apartment buildings and in that behalf execute an agreement to sell and grant a power of attorney empowering the developer to execute agreements for sale or conveyance in regard to individual plots of lands or undivided shares in the land relating to apartments in favor of perspective purchasers.

6. Status of GPA, Agreement to sell, Will or SPA registered before 11.10.2011:-

i) What will be fate of GPA, Agreement to sell, Will or SPA registered before the date of Supreme Court order i.e. 11.10.2011?

Ans. The GPA, Agreement to sell, Will or SPA registered before the order of the Hon'ble Supreme Court of India i.e. 11.10.2011 are not affected. The person who have entered into such transactions may regularize the transaction by obtaining deeds of conveyance.

ii) How can a person having GPA registered before the date of the SC order, further sell/transfer the property?

Ans. Further transfer of immovable property shall be permissible only through a registered sale deed.

7. Status of GPAs registered after 11.10.2011?

Ans. GPAs are not meant for transfer of property.

8. What is the prevalence of registration of GPA, Agreement to sell, Will or SPA as against sale deeds?

Ans. Contrary to the misconceptions, a larger number of sale deeds are registered as compared to the GPAs. For Example, out of the total 21017 documents registered in April 2012, 6378(30.35%) were sale deeds and only 1264 (6.01%) GPAs

with considerations and 1101(5.24%) agreement to sell were registered in Delhi.

9. What is the relative revenue generation through GPA, Agreement to sell, Will or SPA as against that of sale deeds?

Ans. The revenue generated through GPAs/SPAs/Sale agreement/Will is roughly only about 15% of the total Revenue generated through the Registration of all instruments. For example, in the four months from Jan 2012 to April 2012, out of total revenue of Rs 687 crores, Sale deeds generated Rs 560 Crores (81.5%) whereas GPAs/SPAs/Sale agreement/Will generated Rs 127 Crores(18.5%).

10. What is the impact of the Order of the Hon'ble Supreme Court?

Ans:-

i) Peace of mind to the citizens:-

By executing proper deed of Conveyance/Sale deed, the purchaser shall obtain the actual title of the property purchased. There shall be reduced risk of forgery and fraud by the land mafias in form of multiple transfers of the same property to many at the same time through invalid instruments like GPA/Sale Agreement and Will etc.

ii) Decriminalization of the real estate transactions:-

The end of the SA/GPA/Wills transactions shall ensure that the real title of the property is actually transferred at the time of registration and that it cannot be altered or influenced thereafter by the use of muscle power/ Arm twisting/extortion/gangster activity/ life threats / use of arms and ammunitions etc.

- iii) **Curbing of Black Money and check on artificial inflation in real estate** through speculative commodity trading resulting in lack of affordable housing for the common man.

This is because unscrupulous Builders/Real Estate Dealers/ Unscrupulous Elements indulge in speculative trading of properties through multiple GPA/Sale Agreement and Will etc creating Benami transactions leading to artificial shortage of housing stock, ballooning of property prices and evasion of Capital Gains tax, Wealth tax, Income tax and Stamp Duty.

- iv) **Drastic Reduction in property litigation:-**

GPA/Sale Agreement and Will etc. transactions have resulted in lack of correct property title trail thereby leading to excessive property litigation in various courts which take sometimes even more than a generation to get disposed of. The resultant agony of the citizens will get avoided through this order of the Hon'ble Supreme Court.

- v) **Enhanced Revenue Generation:-**

Contrary to misconceptions, the implementation of the orders of the Hon'ble Supreme Court will result in greater revenues as the requisite duty on sale deeds is two times higher than the duty on GPA/Sale Agreement and Will etc. Besides, the revenues accruing to the central government/ local bodies in the form of capital gains tax, Wealth tax, Income tax and transfer duty/conversion charges shall increase substantially.

