

Restriction of Sale of Property on Power of Attorney

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The Supreme Court of India (“SC”) in a landmark judgment delivered on Wednesday, October 12, 2011, held that the General Power of Attorney (“GPA”) method for sale of immovable property is not a valid form of transfer of property. SC opined that (i) a Power of Attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property; and (ii) property can be lawfully transferred only by way of registered sale deeds.

Reportedly, SC has held that there shall be no mutation of property in revenue and civil records on the basis of Power of Attorney. It is believed that sale of property through GPA result in investment of unaccounted money in real estate business. Property transactions through GPA were evolved, inter alia, to avoid (i) payments of stamp duty and registration charges on sale/conveyance deeds; and (ii) payment of capital gain tax on transfer of capital asset.

It has categorically been clarified that this judgment will not affect the validity of sale deeds and Power of Attorney executed in genuine transactions. For instance, a person may give a Power of Attorney to any of his family members or relatives to manage the affairs of the property or to execute the sale/conveyance deed.

SC had sought views of the Central Government as well as the State Governments of Delhi, Haryana, Punjab and Uttar Pradesh and there was unanimity that such transactions of sale of property should be discouraged as such transactions result in loss of revenue and increased disputes/litigations due to defective titles.

This judgment is likely to impact sale/purchase transactions in localities across India in regard whereof sale deed cannot be registered, such as many unauthorized colonies or areas where the State Government suspects registrations for mass level violation of land use and other restrictions.