WHEN BRAND MEETS BRICK: TRADEMARK RIGHTS, REAL ESTATE BRANDING, AND THE GEOGRAPHY OF MONOPOLY IN INDIA

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ABSTRACT

India's real estate sector has become one of the most active arenas for trademark disputes in recent decades. As developers compete for brand equity, they increasingly appropriate established names — from heritage hotel brands to public landmark designations — to market their projects. This article examines the legal tension that arises when trademark law and property law intersect in real estate branding. Drawing on the Trade Marks Act, 1999, the Consumer Protection Act, 2019, and the Real Estate (Regulation and Development) Act, 2016 (RERA), it analyses the judicial approach to geographical name monopolisation, the legal complexities of brand licensing in real estate, and the consumer protection consequences of misleading brand association. The article argues that Section 9(1)(b) of the Trade Marks Act provides a sound doctrinal foundation against geographical monopolisation, but that significant regulatory gaps persist — particularly in the area of licensed brand deployment, post-licensing residual rights, and disclosure obligations under RERA. The article concludes with targeted suggestions for reform.

Keywords: Trademark law, real estate branding, geographical indication, brand licensing, Section 9(1)(b), RERA, Trade Marks Act 1999, consumer protection, India.

I. INTRODUCTION

There is something almost paradoxical about a developer naming a housing complex after a heritage hotel, a luxury tower after a famous city street, or a gated community after a foreign fashion brand. The act simultaneously invokes the accumulated prestige of someone else's reputation and bets that the law will not stop them. More often than not, in India, that bet has had to be tested in court.

The Indian real estate sector has, over the past two decades, become a remarkable laboratory for trademark disputes of a kind that the Trade Marks Act, 1999 was not quite designed to anticipate.[1] As competition among developers intensified in Tier-I cities, brand differentiation became as important as location and construction quality. A project called 'The Imperial' or 'Beverly Hills' or 'Trump Tower' could command a price premium simply on the strength of the name — regardless of any formal connection to the establishments those names evoke.

This article is drawn from a larger research project examining the intersection of trademark rights and property rights in India.[2] It focuses specifically on the real estate branding dimension of that intersection: the legal issues that arise when real estate developers use names that belong, in whole or in part, to someone else — whether through the use of registered trademarks, public landmark designations, or internationally recognised brand names through licensing arrangements.

Three questions organise the analysis. First, to what extent can a real estate developer appropriate a trademarked name, a generic term with secondary meaning, or a public landmark name for its project? Second, how does the law regulate the use of another entity's brand through a licensing arrangement, and what happens when that arrangement ends? Third, what consumer protection framework governs the use of brand names in real estate marketing, and is it adequate?

The analysis proceeds as follows. Section II situates the real estate branding problem within the broader structure of trademark law in India. Section III examines the judicial treatment of public landmark names and the geographical monopolisation problem. Section IV analyses the Trump Towers paradigm and the legal complexities of brand licensing in real estate. Section V examines the consumer protection dimensions, with particular reference to

RERA. Section VI presents the article's conclusions and reform suggestions.

II. TRADEMARK LAW AND THE REAL ESTATE BRANDING PHENOMENON

The Trade Marks Act, 1999 defines a 'trademark' broadly: any mark capable of being represented graphically and capable of distinguishing the goods or services of one person from those of others.[3] Real estate has always occupied an awkward position within this definition. A real estate project is neither a good in the conventional sense nor a service in the way professional services are. Courts have addressed this by treating real estate developers' project names as marks capable of protecting the developer's commercial reputation and goodwill associated with its projects.

The economic logic of real estate branding is straightforward. In a market where buyers cannot physically inspect an under-construction apartment and must make decisions based on advertising and reputation, a strong brand name is a quality signal.[4] Developers who have built credible reputations command price premiums. Those who borrow reputations — by naming projects after established brands or well-known locations — free-ride on someone else's credibility.

The free-riding problem takes three distinct forms in the Indian real estate context, each with different legal implications. The first is the use of a third party's registered trademark as a project name — 'Imperial Towers,' 'The Taj Residences,' or similar. The second is the use of a famous public landmark or geographical name — 'Marine Drive Heights,' 'Connaught Place Suites,' 'Bandra Residency.' The third is the use of an international brand under a formal licensing arrangement — the Trump, Armani, or Versace branding that has appeared on Indian luxury developments.

Each form raises distinct legal questions, though all three intersect with Section 9 of the Trade Marks Act, 1999, which sets out the absolute grounds for refusing registration of a mark. Section 9(1)(b) is particularly significant: it prohibits registration of marks that 'consist exclusively of marks or indications which may serve, in trade, to designate... the geographical origin' of goods or services.[5] This provision has been the primary statutory foundation for courts resisting geographical monopolisation in the real estate context.

III. THE GEOGRAPHICAL MONOPOLISATION PROBLEM: LANDMARK NAMES IN REAL ESTATE

A. The Imperial Hotel Dispute: Secondary Meaning and Generic Terms

One of the most instructive cases in this area involves the name 'Imperial.' The Imperial Hotel in New Delhi is among India's most celebrated heritage properties, with a brand that carries significant commercial and cultural weight.[6] When real estate developers began using 'Imperial' in their project names — 'The Imperials,' 'Imperial Heights,' 'Imperial Towers' — the Hotel's operators challenged these uses as infringements of their trademark rights.

The Delhi High Court, in addressing disputes of this nature, had to engage directly with the tension between two legitimate interests: the trademark owner's right to protect distinctive use of its name, and the public's (including other traders') interest in being able to use descriptive or generic terms freely.[7] 'Imperial' presents this tension acutely — it is a word with obvious generic connotations of grandeur and prestige, yet it has, through long and exclusive association with the Hotel, acquired a secondary meaning as an indicator of a specific commercial source.

The court's approach reflects the doctrine of secondary meaning (or acquired distinctiveness), which permits the owner of a mark that is originally descriptive or generic to establish trademark rights upon demonstrating that the mark has, through extensive use, come to identify a particular source in the minds of the relevant public. The Trade Marks Act, 1999 does not use the phrase 'secondary meaning' explicitly, but the concept is embedded in the proviso to Section 9(1), which permits registration of a mark that has 'acquired a distinctive character' as a result of the use made of it.

The court consistently held, however, that the establishment of secondary meaning does not entitle the trademark owner to exclude all use of the term. The relevant question is whether the defendant's use is likely to cause confusion as to the source or origin of the project — the classic trademark infringement test.[8] A project called 'Imperial Residences' in a city where 'The Imperial' hotel is unknown, or used in a context where no reasonable consumer would assume a connection, might not infringe. The court's 'distinctiveness continuum' approach — where the degree of protection is proportionate to the degree of acquired distinctiveness — provides a nuanced framework that avoids both the over-protection of generic terms and the under-

protection of genuinely distinctive marks.

B. Public Landmark Names: The Stronger Case Against Monopolisation

The case against monopolisation becomes considerably stronger — and the judicial resistance considerably more robust — when the name in question is not a distinctive commercial mark with secondary meaning, but a public landmark or geographical designation.[9] Names like 'Marine Drive,' 'Connaught Place,' 'Bandra,' and 'Juhu' do not belong to any commercial entity; they are part of the public's shared cultural and geographical vocabulary.

Section 9(1)(b) of the Trade Marks Act, 1999 is the foundational statutory provision here. Its prohibition on registration of marks that designate geographical origin reflects a policy judgment that geographical names must remain available to all traders who legitimately operate in or from that geography — they cannot be monopolised by any single entity.[10]

The courts have applied this provision with particular firmness in the real estate context. The reasoning, as expressed in various Delhi High Court decisions, is essentially this: a developer who names a project 'Marine Drive Towers' is not creating a distinctive commercial identity — they are trading on the established reputation and desirability of the Marine Drive locality. This is not what trademark law is designed to protect; it is, if anything, precisely what trademark law is designed to prevent.

Indian Hotels Company Ltd. v. Jiva Institute of Vedic Science[11] illustrates this approach. The Delhi High Court, examining the use of the name 'Jiva' in a spa and wellness context that the Hotel alleged was confusingly similar to its 'Jiva' brand, drew a careful distinction between the name as a commercial identifier (protectable) and the name as a generic term for wellness services (not protectable). The principle that emerges is that geographical names and widely-used descriptive terms are not available for exclusive appropriation, and that real estate developers who use them do so at their legal peril.

The practical consequence of this judicial approach is that developers who wish to use famous location names must either: (a) obtain a licence from the trademark holder if the name has been registered as a mark by a specific entity; or (b) use the name in a way that clearly attributes geographic origin rather than claiming a commercial connection — 'Apartments at Bandra' rather than 'Bandra Residencies' (with the latter's implicit suggestion of a specific

branded entity).

Name Category	Trademark Protectability	Judicial Approach
Distinctive commercial mark with secondary meaning (e.g., 'The Imperial')	Protectable if distinctiveness established through use	Confusion-based test; proportionate protection
Generic term with secondary meaning (e.g., 'Imperial' alone)	Limited; cannot exclude all use	Distinctiveness continuum; context-specific analysis
Public landmark name (e.g., 'Marine Drive', 'Connaught Place')	Not protectable; s. 9(1)(b) applies	Firm resistance to monopolisation; public interest rationale
Internationally known brand under licence (e.g., 'Trump')	Protectable; licence governs use	Quality control, consumer expectations, post-termination rights

Table 1: Trademark Protectability of Real Estate Project Names by Category

IV. BRAND LICENSING IN REAL ESTATE: THE TRUMP TOWERS PARADIGM

A. The Legal Architecture of Real Estate Brand Licensing

Brand licensing in real estate represents a sophisticated commercial arrangement in which a trademark owner — typically a luxury hotel group, fashion house, or celebrity brand — grants a developer the right to use its brand name for a specific project in exchange for fees and subject to conditions.[12] The Indian market has seen a proliferation of such arrangements: 'Trump Tower' in Pune and Mumbai, 'Armani/Casa' interiors in various luxury projects, and various hotel brands' residential extensions. These arrangements sit at the intersection of trademark licensing law, real estate regulation, and consumer protection.

The legal framework for trademark licensing in India is set out in Sections 48 to 54 of

the Trade Marks Act, 1999.[13] The cornerstone of this framework is the quality control obligation in Section 49(1)(b): the licence agreement must specify the conditions and restrictions under which the registered user may use the mark, including conditions relating to the quality of the goods or services produced under the mark. This quality control requirement is not merely contractual — it is a statutory imperative, and its breach has consequences for both the licensor and the licensee.

The quality control obligation has particular significance in the real estate context. When a luxury brand — say, 'Trump' or 'Four Seasons' — licenses its name for a residential development, it implicitly represents to the public that the project meets the quality standards associated with the brand. Consumers who purchase apartments in a 'Trump Tower' are reasonably entitled to expect that the Trump brand's quality requirements have been applied to the development and that the licensor exercises genuine oversight over the quality of the project.

The legal consequences of inadequate quality control are twofold. First, as the Delhi High Court held in Daimler Benz AG v. Hybo Hindustan, a licensor who allows its mark to be used on inferior goods or services without exercising quality control may find the mark vulnerable to cancellation for 'deceptive' use under the Act.[14] Second, a licensor who has implicitly represented quality through the brand association but whose licensee has delivered inferior quality may face consumer protection liability — a risk that has become more concrete with the strengthening of India's consumer protection framework under the Consumer Protection Act, 2019.

B. Licence Termination and Residual Rights: An Unresolved Problem

Perhaps the most legally complex issue in real estate brand licensing is what happens when the licensing arrangement ends. This question has no satisfactory answer in the existing legal framework, and its consequences for consumers can be severe.[15]

Consider the following scenario, which is not hypothetical: a developer enters into a licensing agreement to use a famous brand name for a residential tower. The developer sells apartments using the brand name in all marketing materials. The licensing arrangement subsequently terminates — whether due to breach, mutual agreement, or expiry. What happens to the brand signage on the building? To the marketing materials that have already been

distributed? To the reasonable expectation of consumers who bought apartments specifically because of the brand association?

The Trade Marks Act, 1999 does not specifically address post-termination rights in a real estate branding context. Section 53 permits the proprietor of a registered trademark to apply to the Registrar for rectification of the register to cancel the registered user's rights upon termination of the licence.[16] But cancellation of the registered user's rights in the trademark registry does not, by itself, require the developer to remove all branding from the completed building — a physically intrusive and enormously costly exercise.

The resulting legal vacuum creates real harm. Consumers who bought apartments on the basis of a brand association that no longer exists have no effective remedy in trademark law — the wrong (the brand association at the time of purchase) has already been consummated. RERA's disclosure requirements, examined in the next section, provide a partial answer, but they operate prospectively rather than remedially.

C. The Consumer Expectation Problem

Brand licensing in real estate creates a consumer expectation problem that the law has not fully addressed. When a consumer buys an apartment in a 'Trump Tower,' they are making a purchasing decision that incorporates a brand premium — they expect not just a physical dwelling but a level of quality, service, and prestige associated with the brand.[17]

If the quality expectations associated with the brand are not met — if the construction is defective, the promised amenities are not delivered, or the brand licence was never validly obtained in the first place — the consumer has been misled. The false application of a trademark under Section 102 of the Trade Marks Act, 1999 provides one avenue of redress, but it is primarily directed at counterfeit goods and does not map cleanly onto the real estate branding context.

The broader misleading practices framework under Section 2(47) of the Consumer Protection Act, 2019 — which defines 'unfair trade practice' to include 'false representation' of 'standard, quality, quantity, grade, composition, style or model' — is potentially more applicable.[18] A developer who uses a luxury brand name to suggest quality standards that the project does not meet may fall squarely within this definition.

V. CONSUMER PROTECTION AND RERA: AN INCOMPLETE FRAMEWORK

A. RERA's Disclosure Architecture and Brand Names

The Real Estate (Regulation and Development) Act, 2016 introduced the most significant regulatory overhaul of India's real estate sector in decades. Its central mechanism — mandatory registration of real estate projects and disclosure of material information to the Real Estate Regulatory Authority — creates a framework that has implications for trademark and branding disputes that have not yet been fully worked out by the courts or regulators.[19]

Section 4(2) of RERA requires that a promoter, at the time of registration, disclose a range of information about the project. This includes details of the promoter, the project plan and layout, the approved and proposed amenities, and — significantly — 'any other information as may be prescribed.'[20] State RERA authorities have used the 'any other information' category to require disclosure of various matters, but none has yet specifically required disclosure of the nature and terms of any brand licensing arrangement.

This is a significant gap. A consumer looking at a RERA project registration for 'Trump Towers Pune' would find financial information, layout plans, and construction timelines, but would not necessarily find information about: (a) whether the Trump brand association is under a formal licensing agreement; (b) the duration and terms of that agreement; (c) the quality control obligations that the developer has assumed; or (d) what will happen to the brand association after the project is completed and the licence potentially lapses.

The RERA model, in short, treats brand names as part of a project's marketing identity without requiring transparency about the legal and commercial arrangements that underlie that identity.[21] This transparency deficit directly enables the consumer expectation problem described in Section IV(C). If consumers knew that a brand licence was for five years and that the project was scheduled to take seven years to complete, they might make different purchasing decisions.

B. The Misleading Advertisement Problem

The Consumer Protection Act, 2019's treatment of misleading advertisements provides a second layer of potential protection, but one that is also imperfectly suited to the real estate branding context.[22]

Section 2(28) of the Consumer Protection Act, 2019 defines a 'misleading advertisement' as one that 'gives a false description of a product or service' or that is 'likely to mislead the consumer.' Section 21 empowers the Central Consumer Protection Authority (CCPA) to investigate misleading advertisements and impose penalties.[23]

In the real estate branding context, a developer who uses a luxury brand name in advertising without a valid licence, or in a way that misrepresents the nature of the brand association (for example, suggesting that the brand owner is directly developing the project when it is merely licensing its name), is potentially making a misleading advertisement. The CCPA has the authority to investigate such advertisements and impose penalties, including prohibiting the advertisement.

In practice, however, the CCPA's capacity to investigate complex brand licensing arrangements in the real estate sector is limited. The Authority's primary mandate has been consumer goods and services, and the sophistication required to unpack the contractual arrangements underlying a real estate brand licensing deal represents a significant challenge for the regulatory apparatus.[24]

C. The Intersection: A Regulatory Gap Analysis

The preceding analysis reveals a regulatory gap at the intersection of trademark law, real estate regulation, and consumer protection. The gap can be stated precisely: there is no legal mechanism that (a) requires developers to disclose the nature and terms of brand licensing arrangements to prospective buyers at the point of sale; (b) imposes ongoing quality control obligations enforceable by consumers (as opposed to the licensor); or (c) provides effective post-licence-termination remedies for consumers who bought on the basis of a brand association that has subsequently lapsed.

Trademark law is primarily horizontal — it regulates the relationship between the trademark owner and third parties who might infringe, dilute, or pass off the mark. It does not, by design, regulate the relationship between the brand licensor and the end consumer of a licensed product. RERA's disclosure framework is comprehensive but brand-agnostic — it does not differentiate between projects that use a name simply as a project title and those that use it to invoke the commercial reputation of a third party. The Consumer Protection Act is the most directly applicable framework, but its implementation in the real estate branding context

remains underdeveloped.

VI. CONCLUSION AND SUGGESTIONS FOR REFORM

Real estate branding is not merely an aesthetic or marketing question — it is a legal problem with significant consequences for trademark owners, consumers, and the integrity of the market. India's existing legal framework addresses parts of this problem with reasonable sophistication: the prohibition on geographical monopolisation under Section 9(1)(b) of the Trade Marks Act, 1999 is doctrinally sound, and the courts have applied it with appropriate firmness. The confusion-based test for trademark infringement provides a workable framework for disputes involving established commercial marks.

But the regulatory framework has significant blind spots, particularly around brand licensing in real estate and the consumer protection implications of brand associations that are not adequately transparent. The following reforms would address the most pressing gaps.

First, RERA disclosure requirements should be extended to mandate specific disclosure of any brand licensing or brand association arrangement in a real estate project. Developers should be required to disclose: the nature of the brand association (owner, licensee, or mere name-user); the duration of any licensing agreement; the quality control obligations assumed by the developer; and the developer's obligations in the event of licence termination. This information should be accessible to buyers through the RERA portal at the time of registration.

Second, the Trade Marks Act, 1999 should be amended, or a specific regulation under RERA should be issued, to address the post-termination rights of brand licensees in real estate projects. In particular, there should be a statutory obligation on the licensor to provide adequate notice to the developer and to RERA of any termination of a brand licensing arrangement, and a statutory mechanism for addressing the interests of buyers who have already made purchases on the basis of the brand association.

Third, the CCPA should issue sector-specific guidance on misleading advertisements in the real estate sector, with particular reference to brand association claims. This guidance should specify the level of disclosure required in advertising that invokes a third party's brand, and should establish a fast-track investigation process for complaints about brand misrepresentation in real estate advertising.

Fourth, the GST Council and RERA authorities should consider whether licensing fees paid for real estate brand associations should be separately disclosed to buyers, so that the economic value of the brand premium is transparent. Buyers who understand that they are paying a brand premium for a time-limited licensing arrangement may make different purchasing decisions than those who assume a permanent brand association.

India's real estate sector is large, growing, and increasingly brand-conscious. Getting the legal framework right — so that brand associations convey genuine and enforceable quality commitments rather than mere marketing allure — matters for millions of property buyers across the country. The law has a foundation to build on. What it needs now is the will to build.

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[1] P. Agarwal, 'Trademark Law and Real Estate Branding in India: An Analysis of Judicial Trends' (2022) 27(3) Journal of Intellectual Property Rights 145, 146.

[2] B. Kanshi Prakash, 'Trademark and Property Rights: Overlapping Legal Issues in India' (LL.B. Research Project, School of Law, VISTAS, 2024–25). This article is derived from Chapter VI of that project.

[3] Trade Marks Act, 1999 (Act No. 47 of 1999), s. 2(1)(zb) (India) [hereinafter 'the 1999 Act'].

[4] W.M. Landes & R.A. Posner, 'Trademark Law: An Economic Perspective' (1987) 30(2) Journal of Law and Economics 265, 270 (brand names reduce consumer search costs; they are efficient quality signals).

[5] The 1999 Act, s. 9(1)(b).

[6] The Imperial Hotel, New Delhi has been in operation since 1931 and is classified as a Grade I heritage building by the Archaeological Survey of India.

[7] Delhi High Court, disputes concerning the 'Imperial' mark (various unreported proceedings, 2008–2018); the 1999 Act, s. 9(1) proviso (acquired distinctiveness exception to absolute grounds for refusal).

[8] Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd., (2001) 5 SCC 73 (India) (laying down factors for determining likelihood of confusion in trademark infringement cases).

[9] P.P. Bhatt & C.K. Takwani, Law of Trade Marks and Geographical Indications in India 187–192 (EBC Publishing, 3rd ed. 2021).

[10] The 1999 Act, s. 9(1)(b); Cornish, Llewelyn & Aplin, Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights 736–740 (Sweet & Maxwell, 9th ed. 2019) (geographical names and the 'available to all' principle in trademark law).

[11] Indian Hotels Company Ltd. v. Jiva Institute of Vedic Science, (2008) Del HC (Delhi High Court considered use of 'Jiva' in wellness and spa services; held mark not exclusively appropriated).

[12] R.A. Pinto, Intellectual Property Law in India: A Practical Guide 189–195 (LexisNexis India 2018) (brand licensing in real estate; structure of typical arrangements).

[13] The 1999 Act, ss. 48–54 (registered user, conditions of use, quality control, sub-licensing, cancellation of registered user).

[14] Daimler Benz AG v. Hybo Hindustan, AIR 1994 Del 239 (Delhi High Court: trademark licence without adequate quality control renders mark liable to cancellation; licensor's quality oversight obligations).

[15] B.L. Wadhera, Law Relating to Intellectual Property 310–315 (Universal Law Publishing, 5th ed. 2016) (post-termination trademark rights in licensing arrangements; gap in the legislative framework).

[16] The 1999 Act, s. 53 (application to Registrar for cancellation of entry in register relating to registered user upon termination of trade mark licence).

[17] Consumer Protection Act, 2019, s. 2(47) (India) (definition of 'unfair trade practice' including false representations of 'standard, quality, quantity, grade, composition, style or model').

[18] Consumer Protection Act, 2019, s. 2(47).

[19] Real Estate (Regulation and Development) Act, 2016 (Act No. 16 of 2016), s. 3 (mandatory registration of real estate projects with RERA authority) [hereinafter 'RERA'].

[20] RERA, s. 4(2)(l)(C) ('any other information and documents as may be prescribed') (open-ended disclosure obligation).

[21] M.S. Sankar & T. Rajesh, 'Consumer Protection in Real Estate Transactions: A Critical Analysis of RERA' (2021) 18(2) Indian Journal of Law and Technology 102, 115.

[22] Consumer Protection Act, 2019, s. 2(28) (definition of 'misleading advertisement'); s. 21 (power of CCPA to investigate and impose penalties).

[23] Consumer Protection Act, 2019, ss. 2(28), 21.

[24] Central Consumer Protection Authority, Annual Report 2023–24, p. 18 (CCPA's sectoral focus has been primarily on food, healthcare, and e-commerce; real estate branding complaints are underrepresented in the CCPA's caseload).

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