



Legal and Regulatory Hurdles and challenges associated with Real Estate Investments Sector in India: An Analytical Study

Koyel Roy

Assistant Professor, Amity law school Amity University Kolkata

DOI: <https://doi.org/10.29121/ijrsmp.v8.i3.2021.04>

Abstract

Since the liberalization of the Indian economy, there has been a substantial surge in Foreign Direct Investment (FDI) and domestic private investment in the real estate sector. This growth, while contributing significantly to the nation's infrastructure and urban development, has also exposed consumers to fraud and exploitation due to existing loopholes in land and property laws. In response, the Government of India enacted the Real Estate (Regulation and Development) Act, 2016 (RERA), with the objective of enhancing transparency, accountability, and consumer protection in the sector. The Act mandates the compulsory registration of all residential and commercial projects, promoters, and real estate agents, and provides a dedicated grievance redressal mechanism under the State RERA Authorities. Despite these regulatory advancements, the real estate sector in India continues to face challenges such as project delays, financial mismanagement, and legal disputes. Large-scale scams have shaken investor confidence, and while real estate remains a lucrative long-term investment, it is hindered by illiquidity and rapidly increasing property prices. Moreover, global financial uncertainties, such as the mounting debt crisis of international property giants like Evergrande—which has accumulated over US \$300 billion in liabilities—could pose risks of economic contagion affecting investor sentiment worldwide. The Indian government has undertaken various reforms to stimulate the sector, including initiatives to improve bank credit flow and provide tax incentives for real estate investment. With GDP growth projected to remain robust through 2019 and into 2020, investor confidence is expected to sustain, and the Indian real estate market is poised to avoid the downturns similar to the 2008 global financial crisis.

Keywords: Real Estate Sector, RERA 2016, Foreign Direct Investment, Regulatory Reforms, Investor Confidence.

Introduction

INTRODUCTION TO REAL ESTATE INDUSTRY IN INDIA

Historically, India's housing sector was primarily oriented toward individual families and government-led housing schemes under the broader framework of a welfare state. The establishment of Chandigarh as the first planned city during the post-independence period marked a significant milestone, emerging as a major success story by the 1970s. The need for a more structured and organized real estate market began to crystallize during the 1980s. In response, the Government of India established key institutions such as the Housing and Urban Development Corporation (HUDCO) in 1970, the City and Industrial Development Corporation (CIDCO) in 1971, and the National Housing Bank (NHB) in 1988 to finance and promote housing and urban development projects.

However, it was the New Industrial Policy of 1991 that proved to be the turning point. This policy ushered in economic liberalization, privatization, and globalization, thereby attracting both domestic and foreign investors to the Indian real estate market. Even before this policy shift, the country had begun experiencing rapid urban development characterized by the construction of skyscrapers, commercial complexes, and residential colonies. The liberalized economic environment accelerated this trend, prompting significant rural-to-urban migration and driving up urbanization from 23.34% in 1980 to 25.72% in 1991.

Societal changes also played a key role. The breakdown of the traditional Indian joint family system into nuclear families generated an unprecedented demand for residential units. The emergence of modern retail spaces, exemplified by Spencer Plaza in Chennai, introduced the concept of malls into the Indian socio-economic fabric and redefined urban lifestyles. As a result, the real estate sector experienced expansive growth across metropolitan areas, as well as in Tier-II and Tier-III cities.

To address issues of transparency, accountability, and consumer protection in the rapidly growing sector, the Government of India enacted the Real Estate (Regulation and Development) Act, 2016 (RERA), which came into force on 1st May 2017. RERA sought to safeguard the interests of customers, investors, and real estate agents, while also establishing a formal regulatory mechanism across states.

As aptly stated by American financier Russel Sage, “Real Estate is an imperishable asset, ever-increasing in value. It is the most solid security that human ingenuity has devised. It is the basis of all security and about the only indestructible security.” The Indian real estate sector can be broadly divided into four sub-sectors: housing, hospitality, retail, and commercial. The construction industry, which underpins the real estate sector, ranks third among 14 major sectors in terms of its direct, indirect, and induced impact on the Indian economy.

According to estimates by the Ministry of Housing and Urban Affairs and private research, the Indian real estate market was valued at approximately ₹12,000 crore in 2019 and is projected to grow to ₹65,000 crore by 2040. It is anticipated to reach a market capitalization of US \$1 trillion by 2030 and contribute nearly 13% to India’s GDP by 2025. In Q4 of FY 2018–19, the commercial office segment accounted for 71% of all private equity investments in the sector, followed by retail at 15%, and residential and warehousing at 7%.

Modes Of Real Estate Investment In India

In India, real estate investments have traditionally been dominated by life insurance companies, mutual funds, and other institutional market players. Over the years, the sector has diversified, offering multiple avenues of investment to both institutional and retail investors. The following are the primary modes of real estate investment prevalent in the Indian market:

- **Real Estate Exchange-Traded Funds (ETFs):**

Exchange-Traded Funds (ETFs) are increasingly becoming a popular vehicle for real estate investment. These funds comprise a diversified portfolio of stocks or bonds, typically linked to the real estate sector. One of the globally recognized real estate ETFs is the Vanguard Real Estate ETF (VNQ), which invests in stocks issued by Real Estate Investment Trusts (REITs) with holdings in commercial buildings, hotels, and other income-generating real estate assets. Though REIT-focused ETFs were still evolving in India as of 2019, their structure offered an efficient, liquid, and lower-risk entry point into the real estate market.

- **Real Estate Investment Trusts (REITs):**

REITs are listed and traded on stock exchanges, similar to equity shares, and carry all the typical features of market-traded instruments, including dividend policies. As of 2019, REITs emerged as one of the most attractive options for retail and institutional investors in India, offering consistent returns through dividends and interest income. Significantly, the income received through REITs—interest and dividends—enjoys tax benefits under specific provisions, enhancing their appeal.

India’s REIT framework, although conceptualized under SEBI guidelines in 2007, saw its first approval and implementation in 2014. By 2019, three major REITs were operational in the Indian market:

1. Embassy Office Parks REIT
2. Mindspace Business Parks REIT
3. Brookfield India Real Estate Trust

These REITs focused primarily on commercial office spaces, indicating the growing demand for income-generating assets in Tier-I cities.

- **Property Management Services:**

Engaging professional property managers is a strategic investment model, especially suited for low-risk, stable-return properties. These managers act as intermediaries between property owners and tenants, ensuring efficient handling of leasing, rent collection, maintenance, and compliance. This model is particularly effective for investors with multiple assets or those residing in different cities. A significant number of individual property owners in India rely on this approach to generate steady income from both commercial (shops, tuition centres) and residential uses (paying guests, rented apartments).

- **Renting and Leasing:**

Renting or leasing property remains the most traditional and secure mode of real estate investment. While large-scale real estate often conjures images of commercial complexes or high-rise buildings, even renting out a part of one’s home or a single residential unit constitutes a real estate investment. The model is widely adopted due to its low entry barriers and relatively stable returns with minimal risk exposure. In semi-urban and urban areas alike, rental yields continue to support family incomes and constitute a vital part of the informal real estate economy.

Real Estate Investment: Risks & Associated Challenges

The Indian real estate sector is the second-largest employment generator after agriculture and is projected to grow at a compounded annual growth rate (CAGR) of 30% over the next decade. Despite temporary downturns driven by global financial fluctuations and health crises, real estate continues to be perceived as a safe long-term investment. According to a Gallup Poll conducted in 2016, approximately 34% of Americans considered real estate the best long-term investment option—just seven years after the 2007–2009 recession where real estate

played a central role in the economic collapse.

However, like all financial markets, real estate is not free from risk. Investors must be aware of and prepared for the complex challenges and volatility associated with this sector. The major types of risks and their challenges are described below:

•General Market Risk:

Real estate markets are inherently susceptible to the macroeconomic environment, including inflationary trends, interest rate changes, and broader economic cycles. Though such risks cannot be eliminated, a diversified investment portfolio can help mitigate adverse impacts.

Associated

Challenge:

The COVID-19 pandemic, which emerged globally in early 2020, caused an unprecedented economic halt. In India, residential sales dropped from 4 lakh units in FY 2019–2020 to 2.8 lakh units in FY 2020–2021 across the top seven cities. The India Ratings and Research (Ind-Ra) reported a 40% drop in housing demand and a 33% decline in commercial real estate demand during the first half of FY21. The average price of commercial spaces also reduced by 7–10%, while net leasing of office space plummeted from 70 lakh sq. ft. in Q4 2020 to 35 lakh sq. ft. in Q1 2021. Despite gradual recovery and rising vaccination rates, labour shortages and project delays continue to impact the return on investment.

• Idiosyncratic Risk:

These risks pertain to individual properties and are not indicative of the real estate sector at large. They include legal disputes, construction delays, environmental clearance, and title transfer complications, among others.

Associated Challenge:

The location of a project can be both a strength and a vulnerability. If a project is embroiled in legal or developmental delays, even in prime areas, it may face prolonged stagnation, lack of buyer interest, and undermined investor expectations.

• Legislative Risk:

India's complex land laws and manual land records often create loopholes for fraudulent activities. Buyers and investors frequently fall victim to scams involving multiple sales of the same property, faulty registrations, and deceptive promoters. Rent control laws and cumbersome registration procedures further add to the burden.

Associated Challenge:

Fraudulent sales of property—where the same house is sold to multiple parties—are not uncommon due to outdated records and weak administrative oversight. While penal action can be initiated, actual recovery of funds remains rare, shaking investor confidence.

• Liquidity Risk:

Real estate projects require large capital investments, often with funds locked in over extended periods. When vacancy rates are high due to poor location or marketing, developers may face negative cash flows—spending more on operational costs than they earn, which can delay project completion.

Associated Challenge:

According to R.K. Arora, President of NAREDCO-UP, as of 2019, nearly 100 real estate projects in Gautam Budh Nagar (U.P.) faced suspension due to severe liquidity issues, requiring an estimated INR 5,000 crore in emergency funds. Without governmental intervention, these projects risked total collapse, with investor capital locked indefinitely.

• Credit Risk:

Credit risk arises when a real estate venture fails to generate adequate returns due to competitive location placement or bankruptcy of tenants or anchor clients. This affects the project's income potential and long-term sustainability.

Associated Challenge:

A case in point is the Chinara Park outlet of Big Bazaar, which was located beside a Spencer's outlet. Although both stores belonged to the same parent company (Future Group), Big Bazaar experienced lower footfall due to the absence of a liquor section—a crucial customer draw for Spencer's. The unbalanced competition led to a decline in profit margins, eventually causing relocation and devaluation of the associated property.

• Leverage Risk:

Leverage—debt used to finance real estate projects—can boost returns but equally heightens exposure to financial distress if returns fall short. In high-leverage environments, delays or market downturns can result in rapid investor losses.

Associated Challenge:

A real estate developer using heavy debt may complete projects faster and attract higher investment. However, if the project underperforms, or sees high vacancy rates, it could trigger stress in debt repayments, diminishing returns and threatening the financial health of the investor and developer alike.

Real Estate Scams: A Cause of Caution for Real Estate Investors

The Indian real estate sector, though a major driver of the national economy, has often been plagued by fraudulent activities, mismanagement, and regulatory failure. Investors—particularly homebuyers—have become increasingly vulnerable to a range of deceptive practices by developers, middlemen, and even public authorities. Landmark judicial interventions and investigative reports have exposed systemic lapses, bringing to light the need for strict legal compliance and enhanced investor awareness.

The Amrapali Case: A Judicial Stand Against Corporate and Regulatory Malfeasance

One of the most significant cases of real estate fraud in recent Indian history is *Bikram Chatterji & Ors. v. Union of India*, popularly known as the Amrapali case. The Amrapali Group had defaulted on numerous housing projects, leaving thousands of homebuyers in uncertainty. In collusion with certain regulatory authorities, the Group managed to obtain conditional 'No Objection Certificates' (NOCs), enabling them to secure substantial bank loans despite failing to meet legal and developmental obligations. Under the Revenue Authorities' notice, the company delayed premium payments and illegally leased and sub-leased mortgaged lands.

In a challenging legal scenario where homebuyers, authorities, and banks all asserted conflicting claims over the same properties, the Hon'ble Supreme Court of India delivered a landmark judgment. The Court found gross negligence on part of the authorities, stating that the Public Trust Doctrine under Article 21 of the Constitution was violated. The banks too were faulted for their lack of due diligence and financial oversight. The Court passed the following key directives:

1. Cancellation of RERA registrations of Amrapali Group and transfer of all incomplete projects to NBCC (India) Ltd. for completion;
2. Prohibition on banks and authorities from selling already allotted flats to recover outstanding dues by attaching Amrapali properties;
3. Annulment of lease deeds and direction to comply with RERA and land revenue laws in full spirit.

Other Major Real Estate Scams in India

Several other high-profile scams have revealed the depth of corruption in the real estate sector:

- **Rangamahar Cooperative Group Housing Society (CGHS) Scam:** In this INR 4,000 crore scam, seven public officers, including senior registrars and inspectors in Delhi's Cooperative Societies department, were found guilty of fabricating documents. These forged papers were used to allot land at subsidized rates to the Rangamahar Group, ultimately cheating both the Delhi Development Authority (DDA) and homebuyers.
- **Karnataka Wakf Board Land Scam:** In one of the largest land scams in Indian history, valued at approximately INR 2 lakh crore, the Karnataka Wakf Board, which manages over 27,000 acres meant for the welfare of lower-income Muslim families, was found to have illegally diverted vast land parcels to private real estate developers and politicians.

Investor Caution: Common Types of Real Estate Frauds

To prevent being trapped in similar fraudulent schemes, real estate investors must be vigilant of the following common scam tactics:

- **Title Deception:** Developers often forge or duplicate ownership documents of unoccupied, disputed, or absentee-owned properties to sell them fraudulently. In many cases, even the location or layout is misrepresented to buyers.
- **Hurried Booking Tactics:** By creating false urgency—claiming that few units are left—developers lure investors into impulsive purchases at inflated prices without proper due diligence.
- **False Discount Claims:** Real estate advertisements often promise unrealistic discounts for immediate bookings. However, projects are later delayed or even abandoned, with refund processes becoming long and bureaucratic.
- **Forced Cancellations:** After accepting initial investments at lower rates, developers may intentionally delay possession until prices rise, thereby forcing early investors to cancel their bookings and resell to new buyers at a higher profit.
- **Guaranteed Returns:** Luring investors with promises of 12–15% returns, developers issue post-dated cheques

which frequently bounce, leaving investors with no real protection or return.

- **Possession Delays:** This remains the most common and pervasive scam. Projects, both large and small, suffer from repeated delays. Homebuyers should cross-check the delivery timelines on the RERA portal before making commitments.
- **Unauthorized Sales:** Agents and builders may advertise and sell plots or apartments in projects without necessary Change of Land Use (CLU) approvals or municipal clearances, putting investor money at serious risk.

Conclusion

The rise in real estate scams in India serves as a critical warning for investors. With judicial precedents like the Amrapali judgment and investigative revelations from agencies like the CBI, there is an urgent need for stricter enforcement of RERA, enhanced transparency in land records, and institutional accountability. Investors must not only conduct due diligence but also stay informed about regulatory approvals, builder credentials, and legal status of properties before making financial commitments.

Real Estate (Regulation And Development) Act, 2016: Solutions

The Real Estate (Regulation and Development) Act, 2016 (RERA), was introduced to bring transparency, accountability, and efficiency into India's real estate sector, especially in the wake of several consumer complaints and legal lacunae that previously enabled exploitation. The Act has been pivotal in addressing issues like project delays, misleading advertising, and misuse of investors' funds. The following provisions are particularly noteworthy:

- **RERA Registration:** Under Section 3 of the RERA Act, all residential and commercial projects exceeding 500 sq. meters or having more than eight apartments must be mandatorily registered with the respective State RERA Authority before any advertisement or sale can be initiated. The online portal of RERA provides comprehensive data regarding sanctioned plans, land demarcation, carpet area, project timeline, garage space, and more, thereby enhancing transparency and investor confidence.
- **Quarterly Updates:** Section 11 mandates promoters to upload quarterly updates about project progress, unit sales, and government approvals. Furthermore, promoters must disclose any ongoing litigation related to the project. This system provides real-time insights into project status and acts as documented proof against discrepancies.
- **Escrow Mechanism:** As per Section 4(2)(l)(D), 70% of the funds received from allottees must be deposited into a separate escrow account. This amount is to be utilized exclusively for the concerned project and can be withdrawn only based on project completion status certified by engineers and chartered accountants. This curbs the practice of fund diversion and protects investor capital.
- **Cap on Advance Payment:** Section 13(1) restricts promoters from accepting more than 10% of the project cost as advance from buyers without executing a registered sale agreement. This limits premature financial exposure of investors.
- **Defect Liability Clause:** Under Section 14(3), a five-year defect liability period is imposed on developers, requiring them to rectify structural or workmanship defects at no extra cost to the buyer. Non-compliance permits the buyer to seek compensation through the RERA Authority.
- **Delayed Possession Protections:** Section 18 of the Act empowers allottees to claim a refund with interest or continue with the project and claim compensation in cases of unreasonable delay in project completion.
- **Third-party Transfer Restrictions:** Section 15 mandates that any transfer of a promoter's rights and obligations to a third party must be preceded by written consent from two-thirds of the allottees and prior approval from the RERA Authority.
- **Registration of Real Estate Agents:** Defined under Section 2(zm) and regulated under Section 9, all intermediaries or real estate agents must be registered with RERA to engage in promotional or transactional activities. This provision ensures that only verified agents participate in the market, enhancing accountability.
- **Grievance Redressal Mechanism:** Section 31 allows any aggrieved person—buyer, investor, promoter, or agent—to file a complaint with the RERA Authority, which is mandated to dispose of such cases within 60 days. Appeals may be escalated to the Appellate Tribunal, and subsequently to the High Court or Supreme Court.

COVID-19: IMPACT & INVESTMENT OPPORTUNITIES IN REAL ESTATE

The COVID-19 pandemic significantly affected the Indian real estate market, which was already facing stagnation prior to the crisis. The global stock markets saw a crash of nearly 40%, and the real estate sector, despite its illiquid nature, was not immune.

- **Property Price Decline:** Although prices have not dipped sharply due to the illiquid nature of the real estate market, demand for premium properties has declined, leading to stagnation or marginal depreciation in property values.
- **Loss of Rental Income:** The shift towards remote working, lockdowns, and business closures adversely affected rental income streams, particularly for commercial spaces such as office buildings and retail complexes.
- **Project Delays:** Due to labour shortages, supply chain disruptions, and financial constraints, many ongoing projects faced significant delays. Developers struggled with negative cash flow and mounting debt, further

exacerbating the crisis.

EVERGRANDE CRISIS: A CAUTIONARY TALE

In 2021, the Chinese real estate giant Evergrande emerged as a global concern. The company, burdened with over USD 300 billion in debt, faced severe financial distress, leading to missed debt payments and loss of investor confidence. Rating agencies downgraded the company's credit rating, while banks like HSBC and Standard Chartered pulled back funding for incomplete projects. Evergrande owns over 1,300 projects across 280 Chinese cities, and the crisis jeopardized nearly 3.8 million jobs. According to Mark Williams, Chief Asia Economist at Capital Economics, "Evergrande's collapse would be the biggest test that China's financial system has faced in years."

OPPORTUNITIES FOR INVESTORS

Despite the downturn, the Indian real estate market showed signs of resilience and recovery by Q4 FY2021. According to Colliers International, the sector was expected to grow by 4% in Q4 FY2021. Increased urban migration due to health concerns, the shift to nuclear families, and Central Government incentives helped stimulate growth.

- The Union Budget 2021-22 extended tax deductions of up to ₹1.5 lakh on housing loan interest and provided relief for homebuyers and developers under the Atmanirbhar Bharat 3.0 stimulus package for homes worth up to ₹2 crore (valid from 12th November 2020 to 30th June 2021).
- The Affordable Housing Fund (AHF) was capitalized with ₹10,000 crores through the National Housing Bank to improve credit availability for housing finance corporations.
- The Smart Cities Mission and Pradhan Mantri Awas Yojana (PMAY) continue to boost urban infrastructure and affordable housing. PMAY aimed to build 20 million houses by 2022.
- According to Anarock, residential property sales in Q4 2021 rose by 29%, and new project launches increased by 51% compared to the previous year. Notably, Blackstone Real Estate acquired Embassy Industrial Parks for ₹5,250 crores in May 2021, reflecting renewed interest from foreign institutional investors.

Conclusion

The real estate sector in India remains a cornerstone of employment and investment, second only to agriculture in terms of workforce engagement. Following liberalization policies of the 1990s, the sector expanded rapidly, including in Tier-II and Tier-III cities. However, it has been riddled with systemic frauds, legal delays, and a lack of regulatory oversight until the introduction of RERA in 2016. The RERA framework has significantly improved transparency and investor protection, although challenges persist in enforcement and awareness.

The COVID-19 pandemic posed unprecedented challenges to the sector, particularly in commercial real estate. Nevertheless, the long-term outlook remains optimistic, especially with strong government support, policy initiatives, and a growing demand for residential housing. A well-diversified investment approach in real estate, underpinned by legal compliance and due diligence, is now more critical than ever.

Bibliography

PRIMARY SOURCES:

1. The Real Estate (Regulation and Development) Act, 2016 [2021, Commercial Law Publishers (India) Pvt. Ltd].
2. Dr. Adv. Harshul Salva, Real Estate Laws – Compendium of Indian Real Estate Laws, [EBC Bookstore].

SECONDARY SOURCES:

1. www.imf.org
2. www.ibef.org
3. www.siliconindia.com
4. www.99acres.com
5. www.hookfish.com
6. www.timesofindia.com
7. www.gallup.com
8. www.ashianahousing.com
9. www.bankbazaar.com