

# REAL ESTATE INDUSTRY IN INDIA

A comprehensive guide on Real Estate Industry in India.

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# Introduction



India is among the fastest-growing major economies in the world, and the real estate sector is the second largest employment generator. It is also the third largest sector in terms of Foreign Direct Investment ("FDI") flow. With its favourable demographics and strong economic growth, India is emerging as one of the most important business locations in the world.

This makes India an attractive place for property investors as the demand for property is determined mainly by business development and demographic trends. Of late, the nature of demand is also changing with heightened consumer expectations that are influenced by higher disposable incomes, increased globalization, and the introduction of innovative real estate products and services.

The real estate industry was historically an unorganized sector with absence of a centralized title registry, a lack of transparency in transactions, the unavailability of financing, etc. In recent times, the real estate sector has evolved towards a well-regulated and transparent business environment that helps the long-term growth of the industry. Real estate sector in India is now regulated by the Real Estate (Regulation and Development) Act, 2016 ("RERA").

The country's economic transformation over the past decades has made it a potential business environment, particularly in the service sector. From commercial spaces to the residential market, the overall market is bright for the real estate industry.





# 2022: A significant year for real estate

India's real estate sector is witnessing a healthy increase in demand in 2022. The real estate sector in India is set to experience around 5% capital value growth in 2022 in the residential segment.

Certain projections state that the sales momentum is expected to increase in 2022 as prospective homebuyers will continue to prefer bigger homes and better amenities, and attractive pricing will keep them interested in sealing the deals.

Meanwhile, as work resumes in offices, the recovery in the commercial sector and the flight-to-quality trend are expected to keep rents stable and increase in 2022. Additionally, the luxury housing market is poised to reach new heights in the coming year.



## Market size

The Indian real estate sector is expected to be worth \$1 trillion by 2030, up from \$200 billion in 2021, and to contribute 13% of the country's GDP by 2025. Retail, hospitality, and commercial real estate are also growing significantly, providing the much-needed infrastructure for India's growing needs.

During the last one year, India's real estate sector saw over 1,700 acres of land deals in the major cities. From 2017 to 21, foreign investments in the commercial real estate sector totalled US\$ 10.3 billion. As of February 2022, developers expect demand for office spaces in Special Economic Zones ("SEZs") to shoot up after the replacement of the existing SEZ Act.

According to an investment information and credit rating agency, Indian firms will raise more than Rs. 3.5 trillion (US\$ 48 billion) through infrastructure and real estate investment trusts in 2022, up from the US\$ 29 billion raised to date.

# Investments and developments in the real estate sector

The Indian real estate market has rapidly expanded in recent years with the increased demand for commercial and residential spaces. According to a recent study, Indian real estate sales in the first half of 2021 totalled US\$ 2.9 billion, more than doubling from the same period the previous year.

The following are some notable investments and developments in the sector:

- Private equity investment in India's real estate industry totalled US\$ 3.3 billion between January and September 2021.
- According to a Coldwell Banker Richard Ellis (CBRE) firm analysis, India's flexible space stock is expected to grow by 10-15% year-on-year in the next three years from its current 36 million sq. ft.
- In the third quarter of 2021, home sales volume in India's seven biggest cities expanded by 113 percent year-on-year to 62,800 units, up from 29,520 units the previous year, indicating a healthy recovery after the stringent lockdown and curfew imposed in the second quarter because of the spread of COVID-19 across the country.
- In the third quarter of 2021, institutional real estate investment in India increased by 7% year-on-year. Investment totalled US\$ 2,977 million in the first nine months of 2021, up from US\$ 1,534 million in the same period the previous year.



# The Real Estate (Regulation & Development) Act, 2016 – An overview

The need for a legislation to regulate Real Estate Sector was felt badly for establishing an effective mechanism to enforce accountability against the Real Estate Sector and providing expeditious adjudication machinery, which ultimately led to passing of “Real Estate (Regulation and Development) Act, 2016”.

Section 3 also states that registration of all real estate projects is made mandatory with RERA having territorial jurisdiction over such projects. Section 43 & 44 of the RERA deals with establishment of fast-track dispute resolution mechanism for settlement of real estate disputes through dedicated adjudicating officers and Appellate Tribunal. No sale in a real estate project can be made without registration of the project with RERA.





# Mandatory registration

The Real Estate (Regulation and Development) Act, 2016, mandates all real estate projects related to commercial and residential property to be registered under Act. All transactions that involve the sale of an immovable property for a value exceeding a hundred rupees should be registered under Section 17 of the Registration Act, 1908.

It is mandatory to obtain RERA registration before advertising, marketing, selling, offering for sale, or inviting people to invest in any plot, apartment, or building. Non-registration will result in penalties under the Real Estate (Regulation and Development) Act.



# Exemption from registration

The specified persons are exempted from the registration of the real estate project as follows:

- Where the area of land proposed to be developed does not exceed 500 sq. metres or the number of apartments proposed to be developed does not exceed 8, inclusive of all phases.

If the state or union territory government considers it necessary, it may reduce the threshold limit of 500 metres or 8 apartments for exemption from registration under this Act.

- Where the promoter has received a completion certificate for a real estate project prior to the commencement of this Act.
- Where the real estate project is for the purpose of renovation, repair, or redevelopment, which does not involve marketing, advertising, selling, or new allotment of any apartment, plot, or building.

# Procedure for registration of property

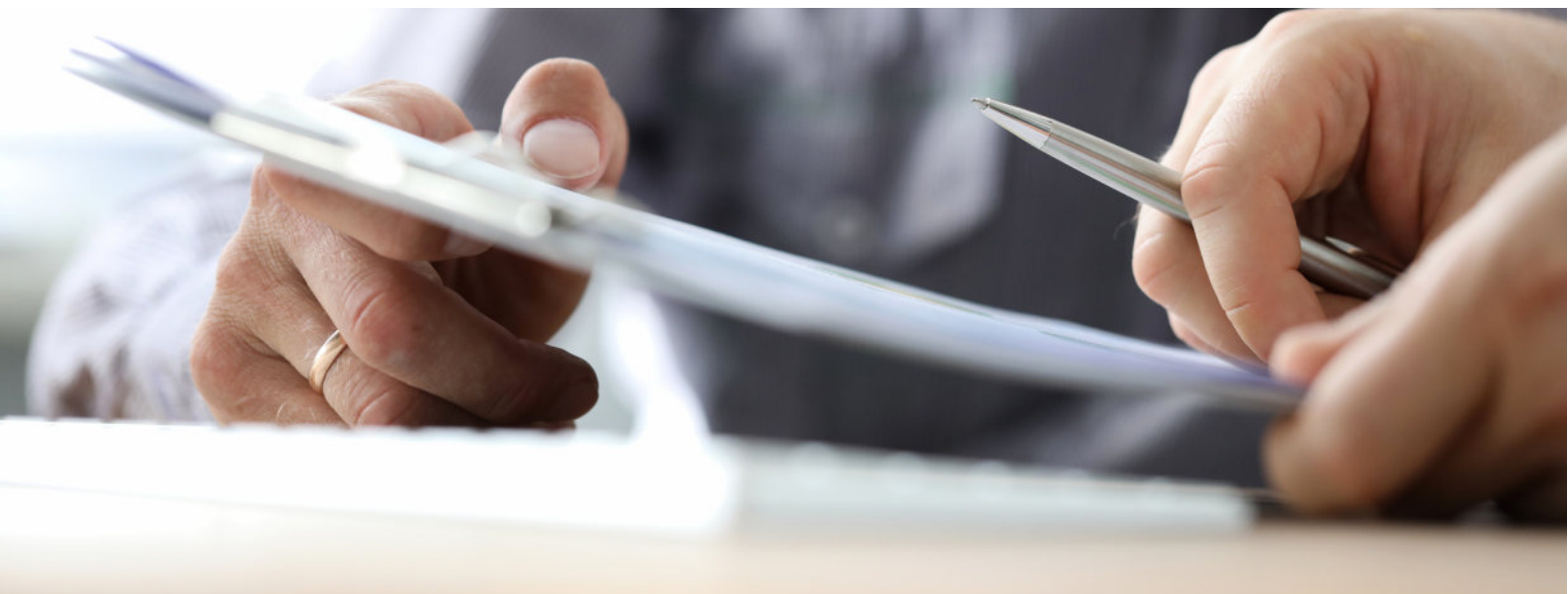
For the purpose of record, registration of documents related to the sale, transfer, or lease of a property is compulsory under the Indian Registration Act, 1908. The name of the person on the registration document identifies the rightful owner of a property. If the documents are not registered by law, then the law will not provide any rights over the property. The procedure for registration of property is as follows:

- **Verification of the title of the property:** The title of the property is put under scrutiny to figure out whether the property was bought fresh from a developer or if it was a secondary sale. The verification process becomes easier in the latter case, as the first owner has already registered the property.
- **Estimation of property value:** The value of the property must be estimated for accurate payment of stamp duty. The stamp duty value will be calculated on the agreement value of the property or the property circle rate of the area, whichever is higher.
- **Stamp duty papers:** For payment of stamp duty, non-judicial stamp papers must be purchased from a licenced vendor or by buying e-stamp papers online.
- **Readying the sale deed:** All the property details are printed on the stamp papers by the authorised attorney on behalf of the buyer.
- **Payment of stamp duty and registration fees:** The stamp duty must be paid immediately after the stamp papers are ready.

- **Visit to sub-registrar for registration:** For the registration of the documents, a prior appointment at the office of the sub-registrar is necessary under whose local jurisdiction the property is situated. On the day of registration, there is a requirement for two witnesses, as well as photos and all necessary documents.
- **Completion of registration:** Once all the documents are verified, the registration process is over. The sub-registrar will present the original documents as well as the registered documents to you. The sub-registrar will preserve copies of the records for future reference.

There are several consequences of non-registration of property as well. These include:

- The ownership of the property will not be legal in the eyes of the law.
- The ownership could be revoked at anytime on the failure of registration by the seller.
- No violation of any right by an unregistered property will be entertained by the court.
- The initiation of home loans or insurance on property will not be initiation by any bank or an insurance company.





# Documents required for registration of property

- Proof of identity, such as a passport, Aadhar card, voter ID card, PAN card, or driving licence, must be produced by both the buyer and the seller.
- The original property sale document and two photocopies of the original document.
- Power of attorney in case the party is representing someone else.
- If the party is a company, then a power of attorney or letter of authority, along with a copy of the resolution of the company's board, authorizing him to carry out the registration, certificate of incorporation
- Proof of payment of stamp duty.
- Proof of payment of the registration fee.
- Proof of payment made to the seller.

Documents that have to be mandatorily registered should be presented within four months from the date of their execution, along with the requisite fee. In case the time limit has expired, an application to the sub-registrar for condonation of the delay should be made within the next four months. In most cities and towns, the registration fee for property documents is 1% of the property valuation.

# Registration of real estate projects

## For Promoters

Promoters are the manufacturers or the developers who fabricate high rise buildings and sell them to home searchers. A promoter is defined in a very complex way. A promoter covers almost all the aspects of construction, i.e., the responsibility of a promoter includes new construction, conversion of existing buildings, commercial construction, plotting of land, contractor and estate development by any person working as the holder of the attorney from the owner of the land.

- The promoters would need to make an application to get enlisted with RERA. This application ought to be submitted to its particular RERA body within three months of RERA being implemented in that state.
- Alongside the application, a promoter needs to present his own data and his project data. He will also need to submit reports related to projects propelled by him in the last five years.
- Once registered, the promoter's data will be uploaded on the RERA website. The advertiser would likewise be given a login ID so he could refresh his ventures' subtleties for the overall population.



## For real estate agents

A "real estate agent" is an individual who performs on behalf of another person in a real estate transaction and is rewarded with fees for the service provided. The agent helps his clients by buying, selling, or renting properties. The real estate agent advises clients about:

- i) market scenario, and
- ii) providing aid through the process of buying, selling, or leasing properties.

### Procedure to obtain RERA registration for real estate agents:

- **Compulsory registration:** Before facilitating the sale or purchase of any unit that is part of a real estate project registered under the Act, an agent shall obtain registration under Section 9 of the RERA Act.
- **Application for registration:** The applicant shall make an application to the authorities along with the requisite details and documents.
- **Separate engagement records:** The agent shall keep and preserve separate books of accounts, records, and documents for each such real estate project upon being engaged by the promoter on whose behalf he has acted as a real estate agent in the previous five years for a real estate project.
- **Registration and renewal certificate:** The agent shall receive a registration certificate (in Form H) within 30 days of receipt of the application, subject to the fulfilment of conditions. In the event the application is not rejected within 30 days of being made, it shall be deemed to have been registered, and the authorities shall provide a registration number to the agent accordingly.

The said registration shall be valid for a period of 5 years, on expiry of which the same may be renewed. Renewal of Registration (Form J) must be done within 60 days prior to the expiry of the registration.

- **Rejection of application:** The authorities may reject the application and record the reasons for the same on Form I. However, the applicant should be given the opportunity to be heard before such an application is rejected.
- **Suspension of certificate:** Registration granted to an agent may be revoked or suspended if the authority is satisfied that the agent has committed any breach of the terms and conditions under the Real Estate (Regulation and Development) Act (RERA) or RERA Rules, or if the authority is satisfied that such registration has been secured by the agent through misrepresentation or fraud.

The said suspension can be made suo moto by the authorities or on an application or complaint from the promoter or allottee.





# Legislations governing real estate

Indian real estate is affected and governed by a combination of state-specific and central laws. The reason behind the same is that, as per Article 246 of the Indian Constitution, "land" is the subject matter of List 2, or State List, of the Seventh Schedule to the Indian Constitution, which covers subjects on which only States can legislate. Laws relating to real estate in India can be categorized as follows:

## Central laws governing real estate in India

### **Real Estate (Regulation and Development) Act, 2016 (RERA):**

Real Estate (Regulation and Development) Act, 2016 (RERA): This governs the development, marketing, and sale of real estate projects to safeguard consumers' interests in the real estate sector. The act established an adjudicating method for the speedy redressal of disputes via the Real Estate Regulatory Authority and the Appellate Tribunal. It makes it compulsory for specific real estate projects to be registered under its ambit. Accordingly, states have adopted corresponding RERA regulations to make sure that the Central Act is implemented at a local level.



## **Transfer of Property Act, 1882**

The Act lays down the general principles of real estate, like part-performance, and has provisions for dealing with property through sale, exchange, mortgage, lease, lien, and gift. A person acquiring immovable property or any share or interest in it is presumed to have notice of the title of any other person who was in actual possession of such property.

## **Registration Act, 1908**

The purpose of this Act is the conservation of evidence, assurances, title, publication of documents, and prevention of fraud. It details the formalities for registering an instrument. Instruments that are mandatory to register include:

- (a) Instruments of gift of real estate.
- (b) Other non-testamentary instruments that purport or operate to create, declare, assign, limit, or extinguish any right, title, or interest, whether vested or contingent, to or in immovable property, whether now or in the future.
- (c) Non-testamentary instruments that acknowledge receipt or payment of any consideration on account of the instruments listed in (b).
- (d) Leases of immovable property from year to year, for any term longer than one year, or with a yearly rent reserved.

## **Special Relief Act, 1963**

This Act is only to enforce individual civil rights. A person dispossessed of immovable property without his consent (other than in due course of law) can recover possession by filing a suit within six months from the date of dispossession. Unless the contrary is proven, the Court shall presume in a suit for specific performance of a contract that a contract to transfer immovable property is one in which monetary compensation for non-performance would not provide adequate relief.

## **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013**

This Act governs the acquisition of private land parcels by the government for a company or specific public purposes. It lays out the remuneration and rehabilitative measures to be taken by the government in acquisition cases.

## **The Indian Contract Act, 1872**

This Act regulates contract laws, which cover a person's legal capacity to enter into a contract, as well as a contract's execution, implementation, breach, and applicable remedies.

## **Land Acquisition Act, 1894**

This Act authorises governments to acquire land for public purposes such as planned development, provisions for town or rural planning, residential purposes for the poor or landless, and for conducting any education, housing, or health scheme of the government. In its present form, the Act hinders the speedy acquisition of land at reasonable prices, resulting in cost overruns.

## **The Indian Evidence Act, 1872**

Under the Act, whenever the status of any person as the owner of a piece of immovable property of which he is shown to be in possession is questioned, the burden of proving that he is not the owner lies with the person who asserts that he is not the owner.

## **Indian Easement Act, 1882**

This Act governs the regulations regarding easement rights to immovable property.



## State laws governing Real Estate

### Rent control Act

In India, the laws of rent have been in existence for a long time. Initially, after the Second World War, the rent laws in India were provisionally created to protect the tenants from exploitation. Later, these rent control laws became a permanent set of laws. Rent legislation protects tenants from unjustified evictions and requires landlords to pay fair rent. Besides this, it eventually allows the tenant to disaffect the property.

### Stamp Duty

Stamp duty is a tax levied by respective state governments on all property transactions within India under Section 3 of the Indian Stamp Act, 1899. Just having physical possession of a property does not constitute legal ownership. The property must be registered in your name to be considered legally yours.

It is the amount you pay while registering the property in your name. In India, it varies between 2% - 7% of the property agreement depending on the type of property and the state or union territory in which it is located.

# Dispute resolution system

RERA has established a Real Estate Regulatory Authority ("hereinafter referred to as authority") in each state for regulation of the real estate sector, which also acts as an adjudicating body for dispute redressal. Section 32(g) of the RERA requires the Authority to take steps to facilitate amicable resolution of disputes between promoters and allottees through dispute resolution forums comprised of representatives from consumer and promoter associations.

## Non-adjudicatory third-party intervention

It is a form of dispute resolution where an impartial third party assists the parties in resolving their disputes. Non-adjudicatory methods of conflict resolution include negotiation, conciliation, and mediation.

The techniques of non-adjudicatory dispute resolution are generally less formal, and they encourage parties involved in a dispute to communicate with each other to search for solutions that satisfy both parties.

In this way, their relationships don't tamper and both time and money are saved. In contrast to the judicial or arbitration process, the techniques or methods of non-adjudicatory dispute resolution like negotiation, mediation, and conciliation are exclusive, casual, mutual, easy and smoother, far-seeing, and interest-based and result in a modified and multidimensional agreement between both parties.

## Adjudicatory dispute resolution

Adjudication is the process in which an impartial third party holds the authority to decide a matter that is disputed by giving a judgement that is binding on both parties. The most popular form of adjudicatory dispute resolution is the court system, but it is carried out in various other forms too.

Other forms involve methods like arbitration, mini-trials, and private judging that are processes of alternative dispute resolution. Litigation is no longer an unattractive option of dispute resolution, as enacted by the Commercial Courts, Commercial Division, and Commercial Appellate Division of the High Courts Act, 2015.

## Expert determination

This is a mode of dispute resolution that can be used in combination with either litigation or arbitration. This mode is ideally suited to variation claims or claims for extra work. It allows experts to decide disputes that arise during the execution of the contract and give a quick and binding decision. The parties can decide by agreement whether the decision of the expert can be challenged in a final dispute resolution process that can be either arbitration or litigation.





## Key government initiatives

The government's focus is more towards making housing affordable and available for everyone. Changes in Floor Space Index (FSI) rules made land hoarding unsustainable and almost finished land trading practices. Similarly, the government's push for "Housing for All" fuelled the demand for affordable housing and in turn generated much-needed liquidity in the sector.

Since the introduction of the Real Estate (Regulation and Development) Act in 2016, the real estate sector has become more transparent and has boosted investors' confidence. RERA was a game-changer for real estate, as it brought much-needed transparency to the sector. The easy availability of information on project approvals and customer-centric court rulings has further given confidence to the market and buyers.

The Indian government, in partnership with the governments of several states, has made several efforts to foster the industry's growth. The Smart City Project, which aspires to construct 100 smart cities, should be used by real estate companies. The following are some additional essential government initiatives:

- The Reserve Bank of India stated in October 2021 that the benchmark interest rate would remain at 4%, providing a significant boost to the country's real estate sector. Low house loan interest rates are predicted to fuel housing demand and boost sales by 35–40% during the holiday season of 2021.
- The Union Cabinet has approved the setting up of a Rs. 25,000 crore (US\$ 3.58 billion) alternative investment fund (AIF) in order to revive around 1,600 stalled housing projects across top cities in the country.
- The government has created an Affordable Housing Fund (AHF) at the National Housing Bank (NHB) to leverage the priority sector lending deficits of banks and financial institutions for HFC microfinance.
- Tax deductions for interest on housing loans of up to Rs. 1.5 lakh (US \$2069.89) and tax holidays for affordable housing projects have been extended until the end of fiscal 2021-22 under the Union Budget 2021-22.





## How we can help?

Our team is well-versed in the laws and regulations governing the real estate sector, including FDI in real estate. The firm has advised and rendered comprehensive assistance in the documentation of investments and collaboration in real estate development projects.

We advise on purchase agreements for our clients, arrange for title insurance, ensure authenticity of the legal documents, and have experience in dealing with the implementation of the real estate deal.

The firm has an outstanding network, so we can be a knowledgeable guide for your legal transactions, documents, and insurance.

Whenever there are real estate disputes, the professionals are in a position to assist and advise promoters, real estate agents, and buyers with any real estate disputes as and when they arise.

Our team is knowledgeable and skilled when it comes to the rules and regulations of any real estate transaction.

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