

CHAPTER 7.6

REAL ESTATE

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7.6.1 The term 'real estate' is defined as land, including the air above it and the ground below it, and any buildings or structures on it. It is also referred to as realty. It covers residential housing, commercial offices, trading spaces such as theatres, hotels and restaurants, retail outlets, industrial buildings such as factories and government buildings. Real estate involves the purchase, sale, and development of land, residential and non-residential buildings. The main players in the real estate market are the landlords, developers, builders, real estate agents, tenants, buyers etc. The activities of the real estate sector encompass the housing and construction sectors also.

7.6.2 The real estate sector in India has assumed growing importance with the liberalisation of the economy. The consequent increase in business opportunities and migration of the labour force has, in turn, increased the demand for commercial and housing space, especially rental housing. Developments in the real estate sector are being influenced by the developments in the retail, hospitality and entertainment (e.g., hotels, resorts, cinema theatres) industries, economic services (e.g., hospitals, schools) and information technology (IT)-enabled services (like call centres) etc. and vice versa.

7.6.3 The real estate sector is a major employment driver, being the second largest employer next only to agriculture. This is because of the chain of backward and forward linkages that the sector has with the other sectors of the economy, especially with the housing and construction sector. About 250 ancillary industries such as cement, steel, brick, timber, building materials etc. are dependent on the real estate industry.

CURRENT SCENARIO

7.6.4 It is difficult to estimate the exact contribution of the real estate sector to gross domestic product (GDP) as it appears in a disaggregated and dispersed form in the National Accounts Statistics. Residential housing and real estate services (activities of all types of dealers such as operators, developers and agents connected with real estate) is covered under the category 'real estate, ownership of dwellings, business and legal services'. The gross value added in the ownership of dwellings is equivalent to gross rental of the residential dwellings less cost of repairs and maintenance. Gross rental is estimated as a product of average gross rental per dwelling and the number of census dwellings and includes imputed rent of owner-occupied houses.

7.6.5 The rentals of the industrial/trading establishments are deductible expenses from the profits of these establishments but appear as profits of the business or company renting out the premises. Similarly, implicit rents on self-owned real estate is accrued as profits from business and is difficult to separate from non-real estate profits. The addition to the stock of real assets with these businesses appears in the business accounts as capital addition. In the national accounts it would appear under the head 'gross fixed capital formation – construction'. Value of construction output is the additions made to the stock of real estate assets in the public, private and household sectors. The contribution of 'construction' to GDP is the estimate of value added derived from the corresponding estimates of this value of construction output.

7.6.6 Further, current data on the sectors such as ownership of dwellings, real estate services,

Table 7.6.1
Gross Domestic Product: Housing, Real Estate Services and Construction
 (at 1993-94 prices)

Figures In Rs Crore

Year	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-2000
Housing	43,507	44,706	45,958	47,252	48,585	49,968	51,391
Real Estate Services	317	333	351	370	390	413	437
Construction	40,593	42,830	45,496	46,452	51,195	54,342	58,728
Total	84,417	87,869	91,805	94,074	1,00,170	1,04,723	1,10,556

Table 7.6.2
Gross Domestic Product : Housing, Real Estate Services and Construction
 (at 1993-94 prices)

(Share in Per Cent)

Year	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-2000
Housing	5.6	5.3	5.1	4.9	4.8	4.6	4.5
Real Estate Services	0.04	0.04	0.04	0.04	0.04	0.04	0.04
Construction	5.2	5.1	5.1	4.8	5.0	5.0	5.1
Total	10.8	10.5	10.2	9.7	9.9	9.7	9.6

Source : National Accounts Statistics 2001

construction are mostly not available and estimates for the benchmark year is prepared on the basis of base year data and projected for other years with the help of relevant indicators.¹

7.6.7 To get an idea of the contribution of the real estate sector to GDP, an attempt is made to factor in the value added to ownership of dwellings, which constitute housing, real estate services and construction.

7.6.8 During the period 1994-95 to 1999-2000 the real estate services, housing and construction sector grew by 4.6 per cent. The housing sector grew by 2.8 per cent only while the construction sector grew by 6.4 per cent. Table 7.6.2 indicates that the share of real estate services, housing and construction in GDP declined steadily from 1993-94 to 1999-2000.

REFORM ISSUES

7.6.9 The Indian real estate market is still in its infancy, largely unorganised and dominated by a large number of small players, with very few corporates or large players having national presence. The Indian real estate market, as compared to the other more developed Asian and Western markets is characterised by smaller size, lower availability of good quality space and higher prices. Supply of urban land is largely controlled by state-owned development bodies like the Delhi Development Authority (DDA) and Housing Boards leaving very limited developed space free, which is controlled by a few major players in each city.

7.6.10 Restrictive legislations and lack of transparency in transactions are other main impediments to the growth of this sector. Limited investment from

organised sector has also hindered the growth of this sector. There is a thriving parallel economy in real estate, involving large amounts of undeclared transactions, mainly due to high stamp duty rates. The current legislative framework also leads to substantial losses to the Government. Some of these issues are:

LEGISLATIVE ISSUES

7.6.11 Much of the over 100 laws governing various aspects of real estate dates back to the 19th century. Despite the plethora of laws, the situation appears to be far from satisfactory and major amendments to existing laws are required to make them relevant to modern day requirements. The Central laws governing real estate include:

Indian Contract Act, 1872

7.6.12 This legislation specifies when a party can be said to have the capacity to contract. A contract pertaining to realty can be entered into, among others, by an individual (who is not a minor or of unsound mind), partners of a firm, a corporate body, a trust, a sole corporation, the manager of an undivided family, and a foreigner. All the requirements of a valid contract, i.e. consideration, intention to contract and validity under the law of the land must be satisfied.

Transfer of Property Act, 1882

7.6.13 This lays down the general principles of realty, 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/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

7.6.14 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 which it is mandatory to register include:

- (a) Instruments of gift of immovable property;
- (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, to or in immovable property;
- (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of instruments in (2) above.
- (d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent

7.6.15 Sales, mortgages (other than by way of deposit of title deeds) and exchanges of immovable property are required to be registered by virtue of the Transfer of Property Act. Evidently, therefore, all the above documents have to be in writing. Section 17 of the Act provides for optional registration. An unregistered document will not affect the property comprised in it, nor be received as evidence of any transaction affecting such property (except as evidence of a contract in a suit for specific performance or as evidence of part-performance under the Transfer of Property Act or as collateral), unless it has been registered. Thus the doctrine of part performance dealt with under Section 53 A of the Transfer of Property Act and the provision of Section 49 of the Registration Act (which provide that an unregistered document cannot be admissible as evidence in a court of law except as secondary evidence under the Indian Evidence Act) together protect the buyer in possession of an unregistered sale deed and cannot be dispossessed. The net effect has been that a large number of property transactions have been accomplished without proper registration. Further other instruments such as Agreement to Sell, General Power of Attorney and Will have been indiscriminately used to effect change of ownership.

Special Relief Act, 1963

7.6.16 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 a suit filed within six months from the date of dispossession. Unless the contrary is proved, in a suit for specific performance of a contract, the Court shall presume that a contract to transfer immovable property is one in which monetary compensation for its non-performance would not afford adequate relief. The Court could also grant a permanent/mandatory injunction preventing the breach of such contract and award damages.

Urban Land (Ceiling And Regulation) Act (ULCRA), 1976

7.6.17 This legislation fixed a ceiling on the vacant urban land that a 'person' in urban agglomerations can acquire and hold. A person is defined to include an individual, a family, a firm, a company, or an association or body of individuals, whether incorporated or not. This ceiling limit ranges from 500-2,000 square metres (sq. m). Excess vacant land is either to be surrendered to the Competent Authority appointed under the Act for a small compensation, or to be developed by its holder only for specified purposes. The Act provides for appropriate documents to show that the provisions of this Act are not attracted or should be produced to the Registering officer before registering instruments compulsorily registrable under the Registration Act.

7.6.18 The objective of acquiring the excess vacant land could not be achieved because of intrinsic deficiencies in the legislation itself. The provisions under Sections 19, 20 and 21 of the Act have together proved counter-productive to the objectives of the legislation. So far, only 19,020 hectares could be taken possession of by State Governments and Union Territories and the remaining land was locked up in various litigations². This has only helped push up land prices to unconscionable levels and practically brought the housing industry to a stop.

7.6.19 This legislation was repealed by the Centre in 1999. The Repeal Act, however, shall not affect the vesting of the vacant land, which has already been taken possession by the State

Government or any person duly authorised by the State Government in this regard under the provisions of ULCRA. The repeal of the Act, it is believed, has eliminated the large amount of litigation and released huge chunks of land into the market. However the repeal of the Act has not been carried out in all states. Initially the repeal Act was applicable in Haryana, Punjab and all the Union Territories. Subsequently, it has been adopted by the State Governments of Uttar Pradesh, Gujarat, Karnataka, Madhya Pradesh and Rajasthan. Andhra Pradesh, Assam, Bihar, Maharashtra, Orissa and West Bengal have not adopted the Repeal Act so far.

Land Acquisition Act, 1894

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

The Indian Evidence Act, 1872

7.6.21 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 on the person who asserts that he is not the owner.

State laws governing real estate

7.6.22 While each state has its own set of laws, which govern planned development, rules for construction and floor-area-ratio (FAR) or floor-space-index (FSI) and formation of societies and condominiums, two laws that exist in every state, are the stamp duty and rent laws. Stamp Duty is being covered in a later section.

Rent Control Act

7.6.23 Rent legislation in India has been in existence for a very long time. Rent control by the

government initially came as a temporary measure to protect the exploitation of tenants by landlords after the Second World War. However these rent control acts became almost a permanent feature. Rent legislation provides payment of fair rent to landlords and protection of tenants against eviction. Besides, it effectively allows the tenant to alienate rented property. Tenants occupying properties since 1947 continue to pay rents fixed then, regardless of inflation and the realty boom. Some of the adverse impacts of the Rent Control Act are:

- Negative effect on investment in housing for rental purposes.
- Withdrawal of existing housing stock from the rental market.
- Accelerated deterioration of the physical condition of the housing stock.
- Stagnation of municipal property tax revenue, as it is based on the rent.
- Resultant deterioration in the provision of civic services.
- Increase in litigation between landlords and tenants.

7.6.24 The Rent Control Act, in fact, is the single most important reason for the proliferation of slums in India by creating a serious shortage of affordable housing for the low income families. Low and middle-income families typically live in rented accommodation all over the world and the need for such accommodation in our cities will only increase as the economy modernises, labour mobility increases and urbanisation takes place. It is, therefore, necessary to increase the stock of rental housing. Promotion of rental housing can have a significant impact on the economy in many ways:

- It reduces shortage of housing for a large section of the population who cannot afford ownership.
- Housing construction being a labour-intensive activity, investment in housing generates employment for both skilled and unskilled labour.

- Housing has backward and forward linkages with many other industries.
- Rental housing helps in stabilising real estate prices and checking speculation and, thus, makes housing affordable for the weaker sections.
- It helps check proliferation of slums.

7.6.25 In the absence of rent control, dilapidated urban housing would be periodically pulled down and replaced by modern apartment buildings and other complexes leading to more rational use of prime locations and also creating a continuous process of urban renewal. This has not happened in India because rent control combined with security of tenure provides no incentive for house owners to undertake renovation work. This explains the run down appearance of many of our buildings in prime locations, which gives Indian cities a much more shabby appearance than their counterparts in other developing countries. Repeal of the Rent Control Act could unleash a construction boom as has happened in many major cities all over the world. This is not only necessary to meet the growing unmet demand for housing but it would also have a highly favourable effect on employment generation.

7.6.26 In 1992, the Central Government proposed a model rent control legislation, which was circulated to all states. The model Act proposed modification of some of the existing provisions regarding inheritance of tenancy and also defined a rent level beyond which rent control could not apply. A new Delhi Rent Control Act based on this model law was passed in 1997 but it has not been notified to date because of resistance from traders who are sitting tenants. Only a few states have introduced the model Act.

TAXES AND STAMP DUTY RATES

Stamp Duty

7.6.27 There is a direct link between Registration Act and Stamp Act. Stamp duty needs to be paid on all documents which are registered and the rate varies from state to state. With stamp duty rates of

13 per cent in Delhi, 14.5 per cent in Uttar Pradesh and 12.5 per cent in Haryana, India has perhaps one of the highest levels of stamp duty. Some states even have double stamp incidence, first on land and then on its development. In contrast the maximum rate levied in most developed markets whether in Singapore or Europe is in the range of 1-2 per cent. Even the National Housing and Habitat Policy, 1998, recommended a stamp duty rate of 2-3 per cent. Most of the methods to avoid registration are basically to avoid payment of high stamp duty.

7.6.28 Another fallout of high stamp duty rates is the understatement of the proceeds of a sale. This is also linked to payment of income tax and capital gains tax. When registration has not been effected, a transfer is not deemed to have taken place and hence capital gains tax can be totally avoided. Thus, the present provisions in various laws and their poor implementation have led to a situation where there is considerable financial loss to the exchequer on account of understatement of sale proceeds, non-registration and consequent non-payment of stamp duty and avoidance of capital gains tax.

Property Tax

7.6.29 Property tax is a levy charged by the municipal authorities for the upkeep of basic civic services in the city. In India it is the owners of property who are liable for the payment of municipal taxes whereas in countries like the United Kingdom, the occupier is liable. Generally, the property tax is levied on the basis of reasonable rent at which the property might be let from year to year. The reasonable rent can be actual rent if it is found to be fair and reasonable. In the case of un-let properties, the rental value is to be estimated on the basis of letting rates in the locality. In the case of special class of properties like cinema theatres, it is estimated by adopting the accountancy method under which the rent is a certain percentage of the total average turnover during the year, i.e. actual receipts of the sale of tickets (excluding entertainment duty).

7.6.30 However, some cities follow a different system for the levy of property tax. In Patna, local properties have been categorised into three groups,

(i) reinforced cement concrete (RCC) buildings; (ii) pucca building; and (iii) pucca buildings with A.C or C.I. sheet roof. The rental value per sq.m. for every building has been fixed according to their status, location, type of construction and user etc. This system has been upheld by the Supreme Court and has been appreciated by international bodies. In Delhi, property tax of un-let properties is based on rental value, which is arrived at on the basis of capital investment in land and buildings. In the case of rented properties, the rent recovered is taken as the base.

7.6.31 The rental value system has its own disadvantages. There is lot of discretion with the assessing officer. There is no buoyancy of revenues because of the restrictions imposed by the Rent Control Act. As a result, the rateable value of the properties increases only on account of alterations to or extension of the existing properties or on account of construction of new properties. As a result of the Rent Control Act, the income of the municipal corporations has become static. The municipal corporations are, therefore, in favour of an alternative method of levying of property tax which will de-link it from rent.

7.6.32 The Municipal Corporation of Greater Mumbai commissioned the Tata Institute of Social Sciences to undertake a study to recommend an alternate system for levy of property tax. The study has recommended a capital value based system of taxation. The advantages of this system are:

- (i) It results in revenue buoyancy, i.e. tax revenue can keep pace with inflation and cost of living since capital value can be revised after five years based on the market value of the residential properties given in the Government ready reckoner for stamp duty.
- (ii) The system is transparent and simple.
- (iii) It is objective and eliminates/reduces the element of discretion.
- (iv) It provides equitable assessment among different property owners.

7.6.33 The study has also developed a formula to work out the capital value and amount of tax:

Capital Value= Market value (MV) * Carpet area of the property * Weight for type of construction * Weight for age.

Tax= Capital Value * tax rate * weight for user category.

7.6.34 While assigning weights, concessions have been given to buildings like chawls, semi-permanent structures, those constructed prior to 1985 and those falling in the category of tenements having less than 225 square feet carpet area and belonging to the economically weaker sections. Similarly, weights have also been assigned to the user category in a progressive manner. The details of the weights assigned to each category may be seen at Annexure-7.6.1.

Entertainment Tax

7.6.35 The tax rates in the entertainment industry are among the highest in the world. Though some State Governments are waiving entertainment tax on multiplex theatres for periods ranging from three to ten years, on the whole tax on film theatres continues to be high. Lowering of these rates will not only benefit the entertainment industry, which has an annual turnover of Rs. 400 crore, but will also promote real estate development in the form of theatres in cities, towns and even villages.

LAND MARKET ISSUES

7.6.36 It is estimated that removing land market barriers can contribute an additional 1 per cent to India's GDP growth rate.³

Titles and Records

7.6.37 Another important issue in real estate development is that of title to property. In India, the State does not certify a title to housing or land property. The revenue records are not documents of title, and ownership is established only by the sequence of earlier transfers. Thus, the fundamental question of title has often led to enormous litigation. At present there are three legislations

which have a bearing on property transactions involving transfer of ownership of proprietary interest. These are the Transfer of Property Act, the Indian Registration Act and the Indian Evidence Act.

7.6.38 An examination of the provisions of these Acts reveals a number of inadequacies. Most of the sale transactions are done through the power of attorney route to evade transaction costs like registration, stamp duties, property tax etc. The system, as it exists, imposes a responsibility on the part of the purchaser with regard to the inspection of the title. The result is tenuous titles to land and non-transparency in property transactions, thereby hampering large-scale real estate development.

7.6.39 Titles to land have become necessary for more efficient handling of land title documents, to provide greater security of tenure for those in occupation of land, to keep pace with the greater demand for re-conveyancing, for better support for mortgaging and investment, to face the steady increase in the number of private and public users who make routine enquiries about land ownership.

7.6.40 There is an urgent need to ensure compulsory registration of land deeds and also to computerise such records so as to create a database. The Andhra Pradesh experience is a good example to begin with where registration of sale of land/property is achieved within a month. The Tenth Plan Working Group on Information Technology for Masses has recommended computerisation of land records all over the country with computerised land/property documents being available to the public at all levels, including in villages, by 2005. Through online documentation of land records, hyper links with court registries of the district or the State can be developed, so that the unwary buyer can get immediate information of any pending litigations.

7.6.41 In this context, the Registration and Other Related Laws (Amendment) Act, 2001 has proposed the compulsory registration of documents relating to part performance of contracts concerning immovable property (covered by Section 53A of the Transfer of Property Act), in order to prevent loss of revenue to the states. The Act also seeks to curb

the practice of avoiding registration of deeds by transferring property through power of attorney and agreements of sale. Though this Act has received the assent of the President and has been notified in the official gazette, it will come into force only from a date to be notified by the Government.

Urban Land Monopoly

7.6.42 Many cities have created development agencies (like the DDA in Delhi) and handed over control of all urban land within the municipal jurisdiction to them in the belief that they would act in the interests of the public. However, such agencies tend to behave like the monopolies that they are. It is in the interests of the monopolist to restrict the development and sale of new land and keep prices high, so as to maximise its own returns. Introduction of a competitive construction boom requires abolishing the monopoly of such agencies over urban land by completely separating control of land from its development.

7.6.43 There is a huge opportunity for leveraging the large portfolios of unutilised and underutilised real estate assets of various government agencies. A conscious effort on the part of these agencies, coupled with policy initiatives, can unlock the value of these non-performing assets. Revenues generated from such initiatives can be utilised for the development of infrastructure.

7.6.44 Government staff housing : During British rule, official bungalows were built in exclusive civil lines for government officials. This practice was perpetuated after Independence and a large volume of government housing for functionaries ranging from ministers and legislators to Class III and Class IV employees, involving huge public expenditure was developed during the past 50 years. In other democracies such as the United States and United Kingdom, there is usually an official residence for the elected chief executive and all other officials live in owned or rented houses. Many economists have proposed that all government housing including those in the Lutyens bungalows zone in Delhi should be handed over to the private sector and the resources generated be invested for productive purposes.

7.6.45 Public-Private Partnerships : Private participation in housing is giving way to the new mantra of public-private partnerships. Under this, the government acquires the land which is then developed for residential/commercial use by the private developer. One example is the 'Bengal Ambuja project' in Kolkata, which is a joint venture between the West Bengal Housing Board and the Gujarat Ambuja Cement Group. The housing project caters to the housing needs of various income groups by building 'low density high rise' buildings.

7.6.46 Another example worth emulating is the HUDA model of the Haryana Urban Development Authority (HUDA) under which a number of integrated cities have been developed through public-private partnership (Annexure-7.6.2). Gurgaon has emerged as the most successful of these, with the country's largest private sector integrated township DLF City being established there. Development of integrated townships would mean development of residential, commercial, corporate and institutional complexes, besides provision of roads, power, water supply, waste management, storm water drainage as also social infrastructure – medical, community and education facilities. A certain percentage of houses – around 10 per cent — in these townships can be reserved for the economically weaker sections (EWS) and low-income groups (LIG) at affordable rates.

Land Reforms

7.6.47 The present ceiling of 15 - 25 acres per person on agricultural holdings comes in the way of large-scale real estate development, especially with the recent foreign direct investment (FDI) norms making it mandatory for having at least 100 acres of land for investment in integrated townships. Therefore one has to under the existing law find methods of circumventing this by first converting agricultural land within the limit into urban land and then again purchasing more land in order to meet the 100-acre limit for FDI. This would only lead to delays in projects. With the urban land ceiling removed in most parts of the country, the agricultural land holding ceiling with respect to land in the periphery of towns needs to be looked into.

Conversion of Rural Land to Urban Use

7.6.48 Conversion of rural land at market prices should be completely de-controlled and left to the market. At present, in Delhi, historical village land situated within the city limits cannot be converted to develop urban colonies. The presence of 'urbanised villages' in the middle of the capital city is an anachronism and a testament to bad policy. The curbs on the expansion of urban limits into surrounding village areas should be removed.

FINANCIAL SECTOR

Credit Restrictions

7.6.49 Financing options are presently skewed in favour of personal loans vis-à-vis developer financing. Most housing finance companies cater mainly to individuals in the higher income group, who have a reasonably assured credit worthiness. Only 5-7 per cent of the loans disbursed by these housing finance companies go to builders and institutional developers.

7.6.50 The high default rates among the developers is one of the factors dissuading housing finance companies from investing in this sector. The legal recovery mechanism is time consuming. Lack of a code of conduct for the industry is the other factor that keeps investors away. Even now, developers need to become corporatised to avail funding from financial institutions. All this leads to builders and developers approaching private sources of finance at high interest rates, which ultimately leads to higher real estate prices.

7.6.51 To attract investment into this sector, it is imperative that the government increases the comfort level of the existing fund providers through appropriate legal measures and corporatisation of real estate, besides maintaining industry discipline. Developing a grading system among the developers will make investors aware of the risks associated with the projects of each developer. Grading would facilitate the overall growth of the real estate sector by providing the developers with incentives to

conform to fair trade practices and legal requirements. A scientifically graded project would lend itself to a more accurate and reliable estimation of the risks associated with the real estate project/project promoter. This is expected to enhance the confidence of the end users and augment the interest of the lenders in these projects, thereby facilitating the flow of institutional funds to the project/project owner. With the construction sector receiving industry status, it is expected that developers and companies will be able to borrow from financial institutions on priority basis.

Sources of Funds

7.6.52 Real estate mutual funds, pension funds and insurance companies are the major investors in the housing sector in developed countries. In the United States, pension funds invest 5 per cent of their reserves in real estate equity and mortgages, whereas in India developers' ability to get financial help from these sources is limited. Housing finance companies in India also need to be given access to pension, provident and insurance funds. As the gestation period of real estate projects is more than five years, on an average, it is necessary that developers have access to such long term funding sources.

Real estate investment trusts

7.6.53 In India real estate assets are kept outside the financial market and not leveraged for investment purposes. India must try to make real estate a full-fledged investment option. Real estate as an asset class is vastly different from capital market assets. It is a natural hedge against inflation, experiences low volatility and hence generates positive long-term returns. To begin, with an exclusive stock exchange could be set up under Securities and Exchange Board of India (SEBI) guidelines for trading real estate stocks.

7.6.54 The Government should permit the setting up of a Real Estate Investment Trust (REIT) which should be regulated by SEBI in order to open the investment floodgate for the real estate sector. The

REIT would operate like a mutual fund, where investments of individual investors are consolidated to invest in real estate, rather than stocks of companies. It would provide a higher level of liquidity as well as professional advice for price discovery, as the investor would be investing through an asset management company. It also provides assured returns in the form of dividends to its investors from rental income earned on real estate assets. The essential difference between a REIT and a mutual fund is that investments made in REIT are traded in real estate stocks and not invested in stock of companies. Further the swings in this market are in the range of 5-10 per cent, which an average investor is in a better position to absorb than the 60-90 per cent swings on the stock market.

Mortgage market and securitisation

7.6.55 Another source of finance for housing companies is development of the secondary mortgage market which involves conversion of mortgages into tradable financial or debt instruments. Securitisation is a process popular among housing finance companies in the West by which the home loan assets are bundled into securities and sold to the investors. Such securities are called mortgage-backed securities and they help the finance companies convert their loan assets into cash for further loan disbursements, thus maintaining a flow of funds from the lenders. It also helps finance companies reduce their investment risk; the risk of earning a lower rate of return on cash flows for pre-payments of home loans.

7.6.56 There are two pre-requisites for secondary mortgage market:

- (i) **Mortgage loan insurance:** The risk of default under mortgage loan is covered under an insurance policy for a nominal premium, which protects the risk of non-payment to the lender. As a result, the mortgage loans are risk-free and it is this reason that only 50 per cent risk weight is assigned to housing loans under capital adequacy norms. In India, however, such risk weight is 100 per cent given the absence of such insurance cover which increases the risk

of non-payment/failure. The Reserve Bank of India (RBI) has recently reduced the risk weight for housing loans to 75 per cent, taking into account the good recovery in this sector.

- (ii) **Foreclosure:** Housing loans are long-term loans, repayable over a period of 15 to 20 years. Any default will be restricted to the period of actual default. Under prudential norms, the account will become a non-performing asset after default of six monthly instalments. Foreclosure laws will enable the lender to call back the entire dues when default of six monthly instalments takes place, irrespective of the fact that the full amount is not due. The various agreements obtained by the lender will have such clauses to recall the entire balance due in case of default.

7.6.57 At present, banks and housing finance companies find it difficult to sell their housing loan portfolio to institutions if it does not have the remedy of foreclosing an account. The normal procedure for recovery of bad debts under the civil code takes more than 10 years. Parliament passed the National Housing Bank (Amendment) Act 2000 adding a new chapter, V-A, to the National Housing Bank Act, 1987. This simplifies the foreclosure norms for housing loans and permits summary proceedings for dues by appointing a Recovery Officer and setting up Appellate Tribunals on the lines of the Debt Recovery Tribunals in the case of banks. Further, the Government has also included scheduled banks in the definition of approved institutions, besides housing finance companies.

7.6.58 Under these provisions, officers of approved institutions with a legal background shall be appointed as recovery officers of the Tribunal. If a borrower defaults in repayment, the lending institution may resort to foreclosure of the account and apply to the recovery officers for sale of the property pledged, mortgaged or assigned to it as security. The foreclosure law can speed up the recovery process considerably. However, the government has to notify the rules and appoint recovery officers before the foreclosure norms can take effect.

ROAD NETWORKS

7.6.59 According to a study conducted by the real estate management company, C.B. Richard Ellis, the returns on commercial property in India are among the highest in the world. Mumbai prime property fetches returns of 13 per cent, New Delhi 12 per cent and Bangalore 11 per cent. In contrast, returns in London are 5.3 per cent and in Singapore 4.8 per cent. Lack of space is not the reason for these high returns because India is a huge country while Singapore is just a tiny city. Various reasons have been put forward to explain the curious phenomenon of astronomical real estate values in a poor country. The real reason, however, is the distorted market for real estate combined with the under-supply of roads. Absurd land ceiling and rental laws combined with high stamp duties have skewed the real estate market towards a situation of perennial shortage. Roads add to the supply of land by connecting villages to towns and this makes land available to the urban economy. This keeps land prices down. It also reduces the rural-urban migration, easing the pressure on cities.

7.6.60 Unfortunately, roads have long been neglected by our policy makers. Roads are a 'public good' and, therefore, an area where State investment is required. However, the 'planned economy' has failed to invest sufficiently in roads even as it has been investing in cars and running hotels. This has put pressure on land in cities, causing urban land prices to soar.

7.6.61 It is now time to usher in a free market in real estate development. With roads, tramways and rail connections to the surrounding areas, a lot of rural land will be 'developed'. All these parcels of land will add to the total supply of real estate and this will work to keep prices down.

FOREIGN DIRECT INVESTMENT

7.6.62 The real estate market is currently characterised by small players. None of the local developers have a truly national presence and large companies are still not fully involved in real estate development. None of the current players have the

financial strength to invest in large-scale development projects. The development of new towns and cities would require huge massive investment and technical expertise that domestic players alone cannot provide. One way to overcome this hurdle is to raise funds through the FDI route. However, right now, FDI in the real estate sector is allowed only for the development of integrated townships.

7.6.63 Allowing FDI in the real estate sector will result in the following advantages:

- (i) It will provide the much-needed investment for the funds-starved sector;
- (ii) it will bring in professional players equipped with expertise in real estate development;
- (iii) the introduction of new technology and quality real estate assets will have a demonstration effect on the local developers;
- (iv) it will lower real estate costs in the long run;
- (v) it will generate employment and revenue; and
- (vi) it will improve the quality of related infrastructure.

7.6.64 The real estate sector needs to be opened up to FDI as returns in the form of rentals (annual investment yield) and capital appreciation are assured. Rentals in Indian cities are amongst the highest across the world. The average yield from investments in commercial property has ranged between 11-13 per cent per annum in India over the last few years. Across the world, real estate is a preferred option for foreign investors. It is estimated that roughly, half the FDI flow into China is for the housing sector only.

7.6.65 But the stumbling block is the fear that foreign investors may repatriate all the profits. These apprehensions are fuelled by the fact that the Southeast Asian financial crisis was partly the result of short-term investments in the real estate sector in these countries leading to flight of capital.

To guard against this, a minimum lock-in period of three years must be fixed on investments and care should be taken to ensure that no long-term investment is funded by short-term capital.

7.6.66 Opening up the real estate sector will bring in substantial foreign investments into India which would result in developing the real estate market and making it more efficient. This is also likely to give a big fillip to the construction industry, which has tremendous spin-offs, especially in terms of employment generation. These issues are discussed more fully in Chapter 7.7.

7.6.67 Legal problems, small individual land holdings, untraceable records and unavailability of organised finance are major entry barriers to FDI in real estate. These need to be tackled before the sector is opened up.

MUNICIPAL LAWS, RULES & PROCEDURES

Municipal Laws

7.6.68 Most urban and municipal laws and regulations in India date back to half a century if not more. There is a need to thoroughly review and modernise them in the light of the latest developments in urban infrastructure, transport, pollution control etc. A committee of eminent persons from the concerned fields should be set up to draw up a model municipal law. Such a law must make provision for private investment in and supply of all public utilities and services. It must ensure that the municipal authority focuses its attention on data gathering, analysis, planning, organisation and monitoring. In other words, the government should play the role of the facilitator more than that of the provider.

Zoning Rules

7.6.69 In an ever-changing urban scene, the zoning regulations are in a constant state of flux

with no systemic reviews or updation taking place. There is need to establish a regulatory commission to continuously review the zone shifts and activity shifts as demographic patterns change in urban areas.

7.6.70 The failure of the Master Plan for Delhi is a case in point. The most important cause of this is the poor and inadequate implementation of the Plan during the first 20 years of its existence from 1961 to 1981. Most of the provisions made for various facilities in the Plan were not realised on the ground. Space made available for housing, retail, commercial offices, service industry, small-scale industry, as well as for educational, social and cultural institutions was far below the provisions made in the Master Plan. The implementing agency, the DDA, notified and acquired all the land required for the future growth of the city, but failed to develop it on a scale and at a speed sufficient to meet actual need. In such circumstances, restrictions on change of use of land and premium charged by authorities like DDA/Directorate of Industries are matters to be investigated.

Approval Procedures

7.6.71 Another serious malaise affecting investment in the real estate sector and housing development is the tardy process of planning approvals. A system of deemed approvals for all planning permissions by registered architects operating on the basis of self-regulation much like chartered accountants do, would enormously speed up the entire plan approval process. This will ensure that far larger quantum of housing stock is supplied every year, at more reasonable prices than is the case presently.

CONSUMER PROTECTION

7.6.72 Real estate came under the purview of the Consumer Protection Act (1986) in 1993 after an amendment to the definition of 'service' in Section 2(1) of the Act to include the term 'housing construction'. However, there are still several lacunae relating to consumer protection.

7.6.73 Under the provisions of this Act, housing is considered a 'service' not 'goods'. If housing is treated as 'goods' then replacement or liquidated damages can be claimed if it is defective, unlike in the case of breach of service provision, which requires only payment of a penalty. Further, pricing is covered under the Act under the 'unfair trade practice' as applicable to goods. By defining housing as a 'service', unfair practices related to pricing of housing are not covered. However, merely defining housing as 'goods' will not solve all problems. The responsibility of making the right choice under the Act rests with the consumer and the seller is protected from giving a warranty of the goods. Thus, even if housing were to be included as a good, the very definition of 'good' adopted in the Act may need to be reviewed to give adequate protection to a purchaser of housing.

PATH AHEAD

7.6.74 There are three critical issues in real estate development - archaic rules and regulations, lack of affordable finance on a mass scale and inadequate land availability.

Legislative Reforms

- a. Revise the number of legislations governing property transactions and merge them into one comprehensive law.
- b. The repeal of the Urban Land (Ceiling & Regulation) Act by various states which have not done so is necessary. This is expected to facilitate the release of 2.2 lakh hectares of urban land, which remains frozen.
- c. Amend the Rent Control Act so as to remove the absolute authority of the rent controller over the disposition of the rented property. This allows the rent controller to virtually divest the owners of the natural right to his property and transfer it to the tenant. The Rent Control Act must limit itself to ensuring a level playing field in terms of rent (adjustment) negotiations and a reasonable period for vacation of

property. Market rates must be allowed to prevail in the medium term. Instilling confidence in the owners would lead to release of vacant houses into the market within the levels of affordability of the tenants.

- d. Amendment of the Indian Stamp Act, 1899 and the Indian Registration Act to delink the process of registration from the payment of stamp duty and also to liberate the registration process from the requirement of various no-objection certificates.
- e. Rationalise the tax rates and duties pertaining to the real estate sector. States should reduce stamp duties from the present range of 13-26 per cent to the level of 3-5 per cent. Stamp duty rates must also be uniform across States. The perceived loss in stamp duty revenues will be more than compensated through increased disclosure of property sales and the correct value of the property transacted. Property tax must be linked to the capital value of the property than on the rental value of the property. Entertainment tax rates must be reduced.
- f. The principles of law applicable to statements made in a prospectus should also apply to the sale of property. This will also facilitate the institutionalisation of conveyances and conveyancers can investigate titles and cross-linkages between municipal authorities, electricity boards, taxation departments, land registries and collectorates can be easily facilitated through hyperlinks.
- g. A formal system for enabling private participation in the provision of municipal services will provide access to the skills required for improving the efficiency of urban services and make them self-sustaining in the long run. Pricing municipal services rationally will ensure enough funds for the maintenance and expansion of municipal services. Municipal authorities maybe allowed to raise funds by issuing municipal bonds.

Financial Reforms

- a. Allow the pension funds, provident fund and insurance sector to invest in real estate. Provident and pension funds must be allowed to invest in deposits/bonds of housing finance companies.
- b. Encourage creation of real estate mutual funds/real estate investment trusts.
- c. Promote trading in mortgage-backed securities. The introduction of foreclosure norms and establishment of recovery tribunals is essential. Though securitisation of mortgage debt has just started in India it has not succeeded due to the high incidence of stamp duty on documents.
- d. The present stipulation that FDI will only be allowed for the development of integrated townships of a minimum area of 100 acres needs to be relaxed to 50 acres or less, as such vast expanse of land may not be available in urban areas. FDI in the rest of the real estate sector may be permitted up to 74 per cent with a lock-in period of three years and there should be no repatriation of dividend during the construction period. Repatriation thereafter may be allowed.
- e. Develop a grading system among real estate developers to keep fly-by-night operators out and control default rates among developers. This will help investors (end user/buyer of property) be aware of the risks regarding the developer's ability to deliver as per specified terms and quality parameters and transfer of ownership on time.

Land Related Reforms

- a. Simplify and modernise the current registration system for land/property titles. The Registration and Other Related Laws

(Amendment) Act 2001 must be notified at the earliest.

- b. A time-bound programme for auctioning of all vacant government land should be drawn up and implemented. State owned development bodies like DDA can bid along with others for the land they want to develop.
- c. Promote public-private partnerships in housing based on the HUDA model in order to increase the housing stock.
- d. Freedom to convert rural land for urban use would increase the supply of land and stimulate real estate development.
- e. Set up a regulatory commission for continuously reviewing zoning regulations.
- f. A system of deemed approval of plans for development/re-development by registered/authorised architects can speed up the process of securing approvals.
- g. Existing ceiling on agricultural land holding, especially lands on the periphery of towns, needs to be reviewed to allow development of integrated townships.
- h. Amendment to the Land Acquisition Act to speed up the process of acquisition and to de-link the process of taking over possession of land from the process of determining compensation. The Act should also be modified to focus solely on the acquisition of land for public goods (e.g. roads, defence) and public utilities (power lines, irrigation dams/canals) and exclude commercial purposes such as housing.

7.6.75 The real estate sector can be a leading sector in generating economic growth and employment. The housing and construction industry employs 30 million people and as many as 250 industries are directly or indirectly dependent on this sector. The policy reforms outlined above, if implemented, can unleash a boom in this sector, the likes of which the country has never seen.

Weights for Capital Valuation of Realty

1. Construction Category

Construction category	Construction Type	Weight
C1	Vacant land/land under construction	0.5
C2	Semi-permanent structures	0.6
C3	Chawls	0.6
C4	RCC structures without lift (usually up to four floors)	1.00
C5	RCC structures with lift (usually more than four floors) and bungalows	1.10

2. User Category

User Category	Broad User Type	Detailed User Description	Weight
U1	Charitable	Charitable Properties	1.00
U2	Residential	Residential Properties	1.00
U3	Industries/Factories	Tuition classes and computer classes, nursing homes, factories including workshops, laundries, oil installations, printing press, refineries, private swimming pools, clubs, gymkhanas, industrial estates, mills (textiles, silk, flour, oil) godowns and tanks for industrial use, drama theatres, marriage halls, stadiums, service stations	2.00
U4	Shops	Shops, credit societies, co-operative departmental stores (Apna Bazaar, Sahakar Bhandar), petrol pumps, cinema houses, studios, ordinary lodging-boarding, other non-residential property not covered elsewhere.	2.50
U5	Offices	Offices in less prominent areas, other hotels excluding ordinary lodging-boarding	3.50
U6	Hotels (4 Star or lower) and Offices	Four star hotels, banks (Co-op scheduled banks excluding credit societies, Air conditioned markets, shopping complexes, commercial/administrative office buildings in commercial locality, departmental stores excluding Co.op department stores	4.00
U7	Hotels (5 star)	Five star hotels, banks (excluding credit societies and Co.op banks)	5.00

3. Age Category

Age Category	Year of Construction	Weight
A1	Pre-1940	0.80
A2	1941-1960	0.85
A3	1961-1970	0.90
A4	1971-1985	0.95
A5	Post-1985	1.00

Source : Tata Institute of Social Sciences, Mumbai.

Haryana - HUDA Model

The Haryana Urban Development Authority (HUDA) is a prime agency of the State Government engaged in the planned development of urban areas in the state. It undertakes development of land after the same is acquired by the Government of Haryana through its urban estates department for specific land uses, like residential, commercial and industrial etc. in accordance with the provisions of the development plans of a particular area.

The Development Plans are prepared and published by the Director, Town & Country Planning, Haryana, in exercise of the powers conferred by Sub-Section 7 of section 5 of the Punjab Scheduled Roads and Controlled areas (Restriction of Unregulated Development) Act, 1963. After acquisition of land, a layout plan is prepared on the basis of a plane table survey of the acquired land, and in accordance with the norms and standards evolved by HUDA for providing a congenial living environment.

For the purpose of ensuring the health and safety of the allottees and for proper aesthetics and a desirable street picture, the Haryana Urban Development Authority (Erection of Buildings) Regulations, 1979 have been framed, which, besides other design/structural requirements, specify the proportion of the site which may be covered with building, F.A.R., Max. height etc. in the case of different types of buildings.

INDUSTRIAL

Maximum permissible coverage on ground	Maximum permissible F.A.R	Maximum height of the industrial building
60 per cent of area of the site	125 per cent	21 meters

INSTITUTIONS AND OTHER PUBLIC BUILDINGS

Area of Plot	Maximum permissible coverage on ground floor	Maximum permissible F.A.R
upto 10,000 sq. M.	33 per cent of the area of the plot	100 %
Above 10,000 sq. M.	25 per cent of such additional plot	100 %

Residential

(a) Permissible Maximum Coverage

Area of Site	Maximum permissible coverage on ground (including ancillary and residential zone)	Maximum permissible coverage on the 1st floor 100 %
1. For the first 225 sq. m of the total area of the site	60 per cent of the such portion of the site	55 %
2. For the next 225 sq. m, i.e. portion of the area between 225 and 450 sq. m.	40 per cent of such portion of the site	35 %
3. For the remaining portion of the site. i.e., for the portion of the area exceeding 450 sq. m.	35 per cent of such portion of the site	25 %

(b) Permissible FAR and Maximum Height

Area of Site/category of plot	Maximum permissible FAR	Maximum permissible Height
6 Marla	1.45	11 Mtr.
10 Marla	1.45	11 Mtr.
14 Marla	1.30	11 Mtr.
1 Kanal	1.20	11 Mtr.
2 Kanal	1.00	11 Mtr.

NORMS FOR DEVELOPMENT OF COOPERATIVE GROUP HOUSING SCHEME

1	Building Zone	As shown on zoning plan of site cooperative society/organisation			
2	Set backs (including inter-se distances)	As per zoning plan or the B.I.S code as the case may be			
3	Boundary Wall /Gate	To standard design as specified in zoning plan			
4	Max. permissible coverage on ground as well as subsequent floors	33.33 per cent of the site			
5	Max. F.A.R	150 per cent of the site area			
6	Density of dwellings	40 to 80 DUs per acre (To be calculated @ 5 persons per dwelling unit.)			
7	Population density	200 to 400 persons per acre.			
8	Building area of general DUs (Super Area) Building Area of EWS Service Personal DUs (Super Area)	50 sq. m to 150 sq.m 20 sq.m to 35 sq. m			
9	Max. height of building	Upto 30 m or as per local instructions subject further to zonings and provisions of light, vent planes etc. as per B.I.S code.			
10	Covered Parking	Adequate parking on basis of occupancy shall be provided for cycle, scooters and cars with in residential blocks and in any case the area for such parking shall not be less than 5 per cent of the covered area of each dwelling unit. In case of dwelling units of size 120-150 sq. m space for one car, parking shall be provided for each dwelling unit. However, the total parking space including open parking shall be governed by the following:			
		Sr. No.	Area of flats (in sq.mts)	Car parking space	Scooter parking space
		1	Below 80	Nil	100 per cent of number of flats
		2	80-119	50 per cent of number of flats	50 per cent of number of flats
		3	Above 120	100 per cent of number of flats	Nil

11	Open Parking	In addition to the above, open parking space equivalent to 10 per cent of the total covered parking areas shall be provided for visitors etc.
12	Parking under stils and basements	Area under stils and basement shall not be counted towards F.A.R if used for covered parking.
13	Lifts and Stairs	For building having more than four storeys, provision of adequate number of lifts shall be made as per B.I.S Building code in addition to stairs. For continuous running of lift system, provision of power generation run on diesel/ petrol or other such fuel shall be made. Ramp shall be optional in Group Housing Schemes if adequate (as per B.I.S code) lifts and stairs are provided.
14	Ramps	Ramp shall be optional. If constructed in addition to the lifts and staircases (as mentioned above) within buildable zone and as per definition of Covered Area in NBC (Definitions) will not be counted towards F.A.R subject to the condition that ground coverage shall not exceed 35 per cent of the site.
15	Basement	A twin level basement restricted to the actual ground coverage will be permitted for parking and services and detailed out in the zoning plan of the site and the same will not be reckoned in F.A.R. Entry to the basement shall be from inside the building. Basement can also be used for captive generation, water storage, liftwell/room, fire fighting pumps, electric sub-stations etc. Subject to the restrictions, stipulated in the zoning plan.
16	Organised Children Park	At least equal to 15 per cent of the area of site
17	Fire Safety	All buildings shall conform to the provision of part IV of the National Building Code and shall be provided with adequate arrangements to overcome fire hazards to the satisfaction of concerned authorities
18	Building Regulations	HUDA (Erection of Buildings) Regulations, 1979 and B.I.S Building Code

1 Status on State Income Estimates, CMIE, May 1981.

2 Ministry of Urban Development & Poverty Alleviation.

3 Identifying the Barriers to Employment and Output Growth in India, Mckinsey & Co. Report