Foreign Direct Investment in Real Estate in India: Challenges and Implications

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Abstract

India is evolving as one of the 'most favored destination' for FDI in Asia and the Pacific (APAC). It has displaced US as the second-most favored destination for foreign direct investment (FDI) in the world after China and vantage of FDI in real estate for Indian economy can be extracted by the fact that it is the second largest employer next only to agriculture and its size is close to US $ 12 billion and grows at about 30% per annum. Five per cent of the country's GDP is contributed by the housing sector. In the next three or four or five years this contribution to the GDP is expected to rise to 6%.

There is no clear cut definition of private purpose and public purpose is provided regarding land acquisition by the state due to that recently two land acquisition notifications have been set aside. The Punjab and Haryana High Court (HC) has quashed a Haryana government's 2002 notification for inappropriately releasing land to private developers. Similarly, the Allahabad High Court has repealed a UP government's notification under which land was acquired for a private project in 2005. However, these rulings highlight the three most problematic aspects of the land acquisition under eminent domain: namely, excessive misuse of compulsorily acquisition laws by states to serve private interests; inadequacy of compensation provided to the owners; and violent protests against compulsory acquisitions.

This article intent to explore the complex terrain of the policy relating to foreign investment (FDI in particular) in real estate, the problems associated with the policy and demonstrates hypotheses or possibility in which the loopholes in the policy may be plugged. The article is divided into three parts. First part of the article spell out the entry routes for investment, Liberalization of Real-Estate Sector in 2005 and subsequent growth of the Indian real estate market.

The second part forms the nucleus of this article, as it canvasses or analyses in-depth, the primary Indian real estate laws before focusing on the key aspects of FDI in the Indian real estate and key out affiliated problems. A discussion of the challenges faced by foreign investors, in particular transparency and establishing legal title to property, will then follow.

The third part stress on certain possible improvements and amendments in the existing FDI norms as well as local laws so that the object of opening up the real estate sector to foreign investors is fulfilled. The article concludes by summarizing the observations made in the article and the way ahead for the real estate sector in terms of foreign investments.

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Introdcution:

Foreign Direct Investment (FDI) principally is the revenue brought into the country by foreign agencies for the purpose of business or investments. Let's convolute time to four year back. An epoch when Commerce Minister Kamal Nath lavished his ebullience on real estate by earmarking 100 percent foreign direct investments on the automatic route in the construction development sector. Until then foreign investors had to seek the consent of India's bureaucratic Foreign Investment Promotion Board (FIPB) to set up construction projects. Despite strong tremors received during the global recession, the real estate sector still remains one of the most promising and lucrative investment options. Commentators on the Indian real estate market have observed that:

> "Much like the miners of '49 and the ventures capitalists of '99, real estate investors of '08 seem to have found their destination-India"

According to an AT Kearney's FDI Confidence Index-

> "India is evolving as one of the 'most favored destination' for FDI in Asia and the Pacific (APAC). It has displaced US as the second-most favored destination for foreign direct investment (FDI) in the world after China"

Vantage of FDI in real estate for Indian economy can be extracted by the fact that it is the second largest employer next only to agriculture and its size is close to US $ 12 billion and grows at about 30% per annum. Five per cent of the country's GDP is contributed by the housing sector. In the next three or four or five years this contribution to the GDP is expected to rise to 6%.

There is no clear cut definition of private purpose and public purpose is provided regarding land acquisition by the state due to that between 16th January 2010 to 25th January 2010 two land acquisition notifications have been set aside. The Punjab and Haryana High Court (HC) has quashed a Haryana government's 2002 notification for inappropriately releasing land to private developers. Similarly, the Allahabad High Court has repealed a UP government's notification under which land was acquired for a private project in 2005. Both notifications have been cancelled on account of procedural lapses. However, these rulings highlight the three most problematic aspects of the land acquisition under eminent domain: namely, excessive misuse of

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compulsorily acquisition laws by states to serve private interests; inadequacy of compensation provided to the owners; and violent protests against compulsory acquisitions.[1]

Entry routes for investment and Liberalization of Real-Estate Sector in 2005

1. *Entry routes for foreign Direct Investment*

Foreign Direct Investments (FDI) may be made under two routes—Automatic Route and Government Route (also called the Approval Route). Under the Automatic Route, the foreign investor or the Indian company does not require any approval from the Reserve Bank or Government of India for the investment.[2] Under the Government Route, the prior approval of the Government of India, Ministry of Finance, and the Foreign Investment Promotion Board (FIPB) is required.[3]

2. *Liberalization of Real-Estate Sector in 2005 and subsequent growth of the Indian real estate market*

On March 3, 2005, the Department of Industrial Policy and Promotion (DIPP), Government of India, replaced the integrated township policy to permit Foreign Direct Investment (FDI) up to 100% in the real estate sector.[4]Now, FDI in townships, built-up infrastructure and construction-development projects (which would include, but not be restricted to, housing, commercial premises, hotels, resorts, hospitals, educational institutions, recreational facilities, city and regional level infrastructure facilities, such as roads and bridges, transit systems etc), have been allowed under the automatic route.[5]

The decision to liberalize the FDI norms in the construction sector is perhaps the most significant economic policy decision taken by the Union Government. Until now, only Non-Resident Indians (NRIs) and Persons of Indian Origin (PIOs) were permitted to invest in the housing and the real-estate sectors. Foreign investors, other than NRIs, were allowed to invest

[1] Ram Singh, Agenda for the Land Acquisition Bill. The Economics Times, 27th January 2010.
[2] www.dipp.nic.in, visited as on 13th September,2009
[3] *Ibid.*
[4] Vide Press Note 2, 2005 series (the real estate policy 2005)
[5] *Ibid.*

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only in the development of integrated townships and settlements either through a wholly owned subsidiary or through a joint venture company in India along with a local partner.[6]

As per the guidelines of the real-estate policy 2005, in case of the development of serviced housing plots, a minimum land area would be of 10 hectares; in case of construction development projects, a minimum built-up area would be of 50,000 sq.mts and in a combination of the above two projects, any one of the above two conditions would suffice.[7]

The real-estate policy 2005 does not clearly define the scope of 'built-up area', whether it is inclusive of basement, common areas, service areas, lifts, balcony etc. The developer's of the property feel that the measure of built-up area should be based on the FSI (Floor Space Index) / FAR (Floor Area Ratio).

The real estate policy 2005 states that the minimum capitalization norm shall be US$ 10 million for a wholly owned subsidiary and US$ 5 million for joint ventures with Indian partner/s. The funds would have to be brought in within six months of commencement of business of the company.

However, the real estate policy 2005 is not clear whether FDI of US$ 5 million is in relation to a single foreign investor or if it is the total contribution of multiple foreign investors in the project in India. DIPP should also clearly spell out the implication of the term commencement of business. It needs to be clarified that the date of commencement of business is the date on which the joint venture agreement or joint development arrangement or any other form of agreement for development activities in India is signed by the foreign investor or the date of incorporation of a company, as the case may be

Under the guidelines of the real-estate policy 2005, original investment cannot be repatriated before a period of three years from completion of minimum capitalization. However, the investor may be permitted to exit earlier with prior approval of the government through the FIPB.

According to the real-estate policy 2005, development of at least 50% of the integrated project must be completed within a period of five years from the date of obtaining all statutory clearances.

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[6] See *supra note* 7
[7] www.dipp.nic.in, visited as on 17th September, 2009

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Growth of Real Estate in India

Ever since the year 2005, when gates of real estate were thrown open to Foreign Direct Investment (FDI), the real estate sector has seen scorching growth of close to of 30 percent and has emerged as one of the most appealing investment areas for domestic as well as foreign investors.

The Indian real estate development sector has witnessed a mammoth revolution, driven by the booming economy, favorable demographics, and a liberalized foreign direct investment regime. It is the second largest employer next only to agriculture and its size is close to US $ 12 billion. Furthermore, such growth is projected to continue at a compound annual growth rate of 30% between 2008 and 2013, with investment in real estate projected to reach US $ 50 billion by 2010[8]

The Primary Indian Real Estate Laws

Real estate investment in India is ordained by versatile Federal and State laws, some them dating back dating back to the nineteenth century.

i. *Federal laws*[9]

a. *Transfer of Property Act, 1882*[10]

Transfer of Property Act, 1882, governs the transfer of property by various means including sales, leases, mortgages (other than by way of deposit of title deeds) and exchanges of immovable property.

b. *Land Acquisition Act, 1894*[11]

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[8] Global Market Report, NAI Global.
[9] Statute enacted by the Central Government
[10] Transfer of Property Act, No. 4 of 1882(17th February 1882)
[11] Land Acquisition Act, No.1 of 1894 (1st September 1894)

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Land Acquisition Act, 1894, provides for compulsory acquisition of land needed for public purposes and determines the amount of compensation to be paid for such acquisition.

c. *Indian Registration Act, 1908*[12]

Indian Registration Act, 1908, ('Registration Act') conserves evidence, assurances and title and provides for publication of documents and the prevention of fraud.

The Registration Act mandates the registration of certain types of instruments in connection with real estate and details the formalities for registering that instrument. Consequently, all transaction involving real estate have to be in writing and are subject to registration fees. For example the registration fee for a conveyance/sale deed is 2% of the true market value of a property or the consideration paid whichever is higher.

d. *Foreign Exchange Management Act, 1999*[13]

Foreign Exchange Management Act, 1999('FEMA') and the various *Rules, Regulations, Notification* and *Guidelines* issued under FEMA by the *Reserve Bank of India* ('RBI') primarily govern the transactions involving foreign exchange in India. Similarly, the acquisition of immovable property in India by person's resident outside India is also regulated by the provisions of FEMA, as well as by:

- Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000[14]
- Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) (Amendment) Regulations, 2006
- The Master Circular on Foreign Investment in India bearing number 02/2008-2009[15] issued by the RBI('Master Circular'); and

[12] Indian Registration Act, No. 16 of 1908(18th December, 1908)
[13] Foreign Exchange Management Act, No. 42 of 1999 (29th December 1999)
[14] Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (FEM (TIS) Regulations)

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Other related circulars issued by the RBI from the time to time to govern the acquisition of immovable property in India by person's resident outside India.

ii. *State law or local law*

a. *Land Revenue Code*

Such form of Code governs revenue administration, recovery of land revenue and matters connected therewith. They also deals with, amongst other things, zoning of lands, use of lands, record of rights and mutation records. For example The Maharashtra Land Revenue Code, 1966.

b. *Regional and Town Planning Act*

Such kind of code governs town planning, land use and development of property in the State and matters connected therewith. They also control and regulate the development of land falling within its jurisdiction. For example the Rajasthan Regional and Town Planning Act.

c. *Urban Land (Ceiling and Regulation) Act*

Such sort of statue regulates the construction of buildings on such lands and to prevent concentration of urban land in the hands of a few owners. For example Urban Land (Ceiling and Regulation) Act, 1976

d. *Agriculture Lands (Ceiling on Holdings)*

Such form of statue prescribes the terms and conditions of acquisition of agricultural land, specifically setting a ceiling limit.

e. *Stamp Duty Act*

[15] Dated 1st July 2008 issued by the RBI

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The stamp duty fees constitute to be one of the vital essentiality for the real estate transaction. Most agreement or instrument in connection with real estate, including, lease deeds, agreement for sale, conveyance and mortgages deeds, etc are required to be stamped. For example Bombay Stamp Act, 1958.

FDI in the Indian Real Estate Market

Real estate was not open for FDI till 2005. By press note 2 of 200514, FDI in real estate was allowed under the Automatic Route and no cap was put on the level of foreign investment through this route.

Foreign investors in Indian real estate market are fractioned into three categories:

1. *NRIs;*
2. *PIOs; and*
3. *Other foreign investors (which include individuals and companies)*

i. *Investment in the Indian real estate market by foreign investors is possible under the following three modes*

   A. *FDI by a NRI/PIO of immovable property situated in India*
   B. *FDI directly by a NRI/PIO in an Indian company and*
   C. *FDI by a foreign company in an Indian company or branch office.*

1. F.D.I. by a N.R.I/PIO of immovable property situated in India.

NRIs and PIOs are permitted to make direct investment in Indian real estate, other than agricultural land, plantation property or farm houses (together 'Agricultural Properties). A NRI/PIO purchasing residential or commercial property under general permission is not required to file any documents with the RBI.

- Acquisition and Transfer by a NRI

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A NRI may purchase any kind of immovable property in India, other than Agricultural Properties. [16]A NRI may also sell any kind of immovable property in India, other than Agriculture Properties in India, other than Agricultural Properties, if the transfer is made to:

- *A person resident in India;*
- *A NRI; or*
- *A PIO.*

A NRI is only permitted to transfer Agricultural Properties acquired by way of inheritance and can only transfer them to Indian citizens permanently residing In India.

- Acquisition and Transfer by a PIO

A PIO may acquire immovable property in India(other than agricultural properties) in the following manner:

- *By way of purchases;*
- *By way of gift from a person resident in India or from a NRI or a PIO; or*
- *By way of inheritance from a person resident outside India who has acquired such property in accordance with the provisions of the foreign exchange law in force at the time of acquisition by that person, or in accordance with the provisions of FEMA and the Regulations, or from a person resident in India.*

A PIO can transfer any immovable property in India

- By way of sale to a person resident in India; or
- By way of gift to a NRI, a PIO or a person resident in India.

A PIO can only transfer Agricultural Properties by way of sale or gift to Indian citizens who are resident in India.

Advantages and Disadvantages of investing in Indian real estate directly are:

[16] www.caclubindia.com, visited as on 15th September,2009

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Advantages

1) Remittance

I. NRO Account

A NRI can directly invest in immovable property and sell it. The authorized dealer may allow up to US $1 million to be remitted out of the balance in the NRO accounts per financial year (if such investment is made out of Rupee funds. Remittance of up to US $1 million is applicable to each NRI investing in a property.

II. NRE Account

A NRI can freely repatriate the amount invested for the acquisition of immovable property. However, if a NRI wishes to repatriate the profits from the NRE/FCNR account it would require prior permission of the RBI.

2) Tax

Since property is held directly in the name of the NRI the remittance of profit should only be subject to capital gains tax (CGT) and no distribution tax will be payable as in the case of repatriation of profits through distribution of profits by a company.

Disadvantages

1) Stamp Duty and registration fees

Stamp duty payable on a purchase or sale of the immovable property is higher than stamp duty payable on a transfer of shares. In addition, the document evidencing purchase or sale of the immovable property is subject to registration fees.

2) CGT

The period for qualifying as long-term capital gains is longer for transfer of immovable property than for transfer of shares. Credit for tax paid should be available under

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the network of double taxation treaties ('DTAA') India has with other jurisdiction. For example, India has such treaty with both the US and UK.[17]

2. F.D.I directly by a NRI/PIO in an Indian company

Current Indian foreign exchange regulations permit a NRI/PIO to hold up to 100% of shares in Indian companies engaged in the Indian real estate market.

The advantages and disadvantages of making investment in Indian real estate through an indirect route are-:

Advantages

1) Remittance

A NRI/PIO can remit up to 100% of investments in Indian companies. Furthermore, a NRI/PIO can also remit the dividends declared by Indian companies.

2) Stamp Duty

A NRI/PIO is liable to pay stamp duty on the transfer of shares in an Indian company in an amount equal to 0.25% of the consideration. However, no stamp duty would be payable on the transfer of shares if the shares are in a dematerialized form, rather than a physical form.

3) CGT

On the transfer of the shares, a NRI/PIO will be liable to pay CGT. Long-term capital gains in respect of shares of an unlisted company are taxed at the marginal rate of 11.33% and short-term capital gains are taxed at the marginal rate of 33.99%

[17] www.sebi.gov, visited as on 19th September,2009

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Disadvantages

1) Stamp Duty and registration fee

Stamp duty and registration fees payable by an Indian company upon the sale of immovable property will be the same as those payable by a NRI/PIO who has held the immovable property directly.

2) Dividend

An Indian company is liable to pay the dividend distribution tax at a rate of 16.95% on declaration/payment of dividend. Further, if the dividend is not declared and shareholders decide to wind up an Indian company, the profits distributed pursuant to the winding up would be taxed as a dividend.

3) Restriction on sale of Shares

A NRI/PIO can sell the shares of an Indian company only to another NRI/PIO. A sale to any other person requires regulatory approval.

3. F.D.I by a foreign company in an Indian company or branch office.

Foreign investors (other than branch offices, as discussed below) are not permitted to hold Indian real estate directly. Indian companies that have a component of foreign capital permitted to hold Indian real estate in two circumstances:

➢ Construction and development market

Foreign company investors can invest up to 100% in Indian companies engaged in the construction and development market subject to the following requirement:

- A minimum capitalization of US $ 10 million for a wholly owned subsidiary or US $ 5 million for a joint venture with Indian partners;

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- A minimum development of 50,000 sq. meters in the case of construction or 10 hectares in the case of development of serviced housing plots.[18]
- At least 50% of the project must be developed within five years from the date of obtaining all clearances;
- The Foreign Company cannot sell undeveloped plots.

➢ Ancillary activities

Foreign investors are permitted to invest up to 100% in Indian companies engaged in most commercial activities (Permitted Activities), barring a few specified activities. Current foreign exchange regulation permits Indian companies (either wholly or partly owned by foreign investors) engaged in Permitted Activities to purchase land, where such purchase is necessary for or incidental to carrying on such Permitted Activities.

Advantages

1) Remittance

If stipulated conditions for foreign investment are satisfied the investor can freely repatriate 100% of its investment in an Indian company on sale of shares or on dissolution of an Indian company.

2) Stamp Duty

Foreign investors would be liable to pay stamp duty upon the transfer of shares in an Indian company in an amount equal to 0.25% of the consideration. However, no stamp duty would be payable on a transfer of shares if the shares are in a dematerialized form, rather than a physical form.

[18] See, *supra note* 7

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3) CGT

If the investment has been made through a tax efficient jurisdiction, a foreign investor may not be liable to pay any CGT in India on the transfer of shares in an Indian company.

Disadvantages

1) Dividend

An Indian company would be liable to pay dividend distribution tax at a rate of 16.95% on declaration/payment of a dividend.

2) Scope of Investment.

The scope of investment is limited and may be subject to fulfillment of prescribed condition such as minimum capitalization, restriction on repatriation, etc.

ii. Other means of foreign participation in Indian Real Estate

a. Debt and security

The RBI permits foreign investors to make commercial loans into Indian real estate projects involving integrated township of 100 acres or more. Such loans are referred to as external commercial borrowings ('ECB'). ECBs can be in the form of bank loan, buyer's credit, supplier's credit, such as floating rate notes and fixed rate bonds.

ECBs must have a minimum average maturity between three to five year and are subject to additional terms and conditions including, amongst others, end-use restrictions and all-in-cost ceilings. The RBI does not allow ECBs to be used for working capital requirements.[19]

In, India security over immovable assets can be created either through the execution of a formal deed or by deposit of title deeds thereby resulting in the creation of an

[19] www.sebi.gov, visited as on 20th September, 2009

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equitable mortgage over the asset. Execution of a formal deed usually requires such deed to be stamped and registered. [20] Registration charges could be upto 8% of the value of the asset.

b. *Real estate investment trust*[21]

In April 2008, SEBI amended the SEBI (Mutual Fund) Regulation, 1996 to permit foreign investment through real estate mutual funds. Salient features of the Mutual Fund Regulation are as follows:

I. Existing mutual funds are eligible to launch REMF if they have an adequate number of experienced key personnel/directors;
II. Every REMF scheme needs to be closed ended and its unit listed on recognized stock exchange;
III. Net asset value (NAV) needs to be declared daily.
IV. No mutual fund is permitted to transfer real estate assets amongst its scheme;
V. A REMF is not permitted to undertake lending or housing finance activities; and
VI. The Mutual Fund Regulations also specify accounting and valuation requirement pertaining to REMF schemes.

Even though a REMF structure is permitted under current regulations, the lack of clarity on the Tax treatment of REMF (i.e. exemption from taxation at entity level), the daily calculations of NAV, the lack of benchmark indices and the limited permissibility of foreign investment in REMF have resulted in these vehicle not being commonly used for the purposes of chanelling foreign investment into the real estate sector in India.

[20] *Ibid.*
[21] No. lad-NRO/GN 2008-09/01/159601

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c. Foreign venture capital investors

A FVCI is permitted under current foreign exchange regulation to invest in companies carrying out the permitted activities, which include venture capital funds (VCF). VCFs are either treated as tax transparent vehicles or distributions by such vehicles are usually not taxed in the hands of the beneficiaries.[22] The regulatory environment in respect of real estate, the permissibility of FVCIs to invest in VCFs without restriction and the neutral tax treatment of VCFs, would increase the foreign investment into Indian real estate sector.[23]

d. Issue of ADR and GDR

Access to foreign capital market investor through the issuance of ADR and GDR by Indian companies for investment in the real estate sector is completely prohibited under existing foreign exchange regulation.

Property Titles in India- A Legal Minefield.

One of the greatest challenges to transparency in the Indian real estate markets is the difficulty of establishing legal title to land. Establishing property rights and ownership in India is a difficult and time consuming process that increases the costs involved in real estate transactions.

Indian real estate title searches require expert legal due diligence in multiple registries and often require additional work in: tracking down missing heirs and confirming the authority of signatories in order to clarify the chain of titles.

The following document will need to be scrutinized:

- Deeds of Sale;
- Antecedent Document;
- Encumbrances/non- encumbrances Certificates

[22] www.taxmann.net, visited as on 18th September,2009
[23] *Ibid*

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- Extract of the Record rights;
- In the case of foreign investors, confirmation that the subject property is qualified under relevant FDI laws; and
- Zoning and compliance with government regulations as to land use and development rights.

Other encumbrances or problems affiliated to Indian real estate

Earlier in this article length of discussion was done relating to FDI modes in India and other mode for foreign player participation. I have discussed and enumerated various impediment or disadvantages related to versatile mode of FDI, which need to be discussed.

Compulsory acquisition of private property by the state:

The Land Acquisition (Amendment) Act, 1984 provides for compulsory acquisition of private property by the state for making the provisions of public goods and services; such as, roads, dams, schools, etc. Section 38 allows acquisition for private projects as well, provided it serves a public purpose. The law is ambiguous about what is or is not a public purpose. Unfortunately, this and the other ambiguities have been misused by a nexus of the authorities and the industry to provide subsidised land to the latter.

There are many instances in which the states acquired land for ostensibly public purposes but ultimately used it for notpublic ends. In one such instance, in 2002 the Haryana government acquired land to construct a Metro rail line, evidently a public purpose. However, 90% of the acquired land was subsequently transferred to private developers.

The situation is worse as to the compensation rules. Under Section 23, the owners are entitled to the market-value of the acquired property plus a solatium. The floor price (circle rates), or the average of sale-deeds of similar property can be used to determine the market-value. Generally, circle rates are dated and well below the market rates. Also, in order to save on stamp-duty, the

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price quoted in sale-deed is much lower than the actual transaction price. Therefore, neither the sale-deeds nor the circle rates can reflect the market-value.

Besides, since property market is inherently thin, even market-value itself is less than the potential value. On the top of it, due to restrictions regarding changein-land use, etc, the market-value of agricultural land is further suppressed downward. Indeed, the very basis of determining compensation is flawed.

Since the compensation required is significantly less than the potential value, there is a tendency among public as well as private entities to over-acquire. In many instances, the excess land is used to earn profits in the realty sector.

Examination of court cases related to the acquisition for Delhi Metro reveals that the legal ambiguities have other costs too. In most cases, land acquisition collectors (LAC) have awarded compensation on the basis of the lower circle rates. In contrast, courts have used the higher sale-deeds as the basis. So, courts have awarded higher compensation.

The findings are startling. Both the LACs and the courts have applied the same law. Yet, strangely they have awarded drastically different compensations. For example, in Jantar Mantar area while the LAC valued the land at Rs18,480 per sq m, the rate used by the court was Rs 75,878. Such instances abound. Preliminary examination of high court cases indicates that this is a general phenomenon. It explains why the affected parties invariably resort to litigation. Of course, law suits are costly and entail huge wastage of time and national resources.

Poor farmers cannot afford costly and prolonged litigation and therefore are vulnerable to political manipulations. These people along with labourers resort to violent protests. As a result a large number of infrastructure projects have got delayed. According to an estimate these delays have cost industry as much as $100 billion.

The judiciary is also responsible for this unfortunate outcome. Certainly, the legislature and the executive are better equipped to determine what can or cannot serve public purpose. But, the

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judiciary could have ensured that the acquired land is used only for the prestated purpose, that the unused land is released back to its owners, and that the alternatives are explored before acquiring agricultural land.[24]

Indian real estate is encountered with numerous other obstacles. They are following as-:

The biggest obstacle to the growth of Indian real estate sector is that it is highly unorganized. Lack of transparency, malpractices and poor data management are some of the obvious bottlenecks that are arresting the desired growth of the sector and keeping international investors away. There is no one-stop regulatory authority to manage the operations within the sector. Such a free hand has led to many malpractices in property transactions, leaving the investors duped.

Because of this unorganized nature of the sector, investors shy away from taking stake in the parent company and prefer to buy stakes in specific FDI compliant projects. Another impending concern of the real estate sector is the lack of accurate statistics and transparency. In India, since most real estate businesses form the part of the state subject, it is confusing and difficult for foreign investors to set up shop in different states.

Plus there are stumbling blocks such as high stamp duties, varying rent control acts and property tax. There is an urgent need to appoint an independent regulator, which has a clear mandate to ensure fair competition and protection of the interest of consumer, investor and developer.[25]

Proffers or Suggestions for Indian real estate market.

I. *Transparency and Organizing the real estate sector*

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[24]Ram Singh, Agenda for the Land Acquisition Bill. The Economics Times, 27th January 2010.

[25] www.taxmann.com, visited as on 19th September,2009

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Transparency is essential if India wants to attract FDI in the real estate. It also provides the basis for their investment strategies and informed decision making. Real estate private equity funds are also forcing real estate companies to take a hard look at a greater transparency

Organizing the real estate sector could offer the wider reach to its customers and broader search option for properties, offices or agents, making their search more meaningful and comprehensive. By changing the structure of the real estate sector, real estate agents can help the buyers on conducting market analysis, check legal terms and procedures involved in the deal and hidden costs before suggesting any property to them and offer them the most competitive price.

II. *Modification in Land Reform*

Alteration should be done in the Land Reform Legislation of different states as to make it possible for real estate developers, who intend to use agricultural land to convert it into land suitable for real estate.

III. *Conditions regarding minimum built-up area*

The condition regarding minimum 'built-up area' to be developed has to be suitably rephrased so that the scope of the term 'built-up area' is clear. Preferably, going by the developers' opinion, use of FAR/FSI as a measure to determine the area to be developed may be employed.

IV. *Increase in Land Supply*

The government must increase land supply, through faster release of government land and through improving the turnaround time required for land clearance.

V. *Clarification for original investment from DIPP*

Clarification regarding what amounts to 'original investment' in reference to the condition for lock-in has to be clarified. Even though DIPP has given informal clarifications through the bulletin board service, it would be advisable to define the scope of the term in the regulations itself

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VI. *Clarification Through R.B.I circulars*

Clarification through RBI circulars on whether the premium amount on shares issued would also be taken into account to determine the amount of 'minimum capitalization' to be brought is suggested.

VII. *Clarification in the definition of public purpose and private purpose for land acquisition.*

A new law for land acquisition is imperative, with a clear definition of what constitutes public purpose and exploration of compensation beyond market value

Conclusion

The grandness or importance of foreign direct investment into real estate development is undisputed. The immensity of demand for housing, commercial space, townships and Infrastructure in India invariably will be catered to only if foreign investment into this Sector is tolerated.

The ebullience showered by Finance Minister in form 100% investment had faced numerous impediments because of unorganized practice of the real estate sector. It had displayed a sign of dispersion in 2006. The Central Government has recognized this and amended the regulations from time to time to make it convenient for foreign investment in the real estate sector. There are two vantages of FDI which elevated growth for foreign participation in the real estate market; Firstly, investment through FDI not only makes the foreign investor invest in the sector but also makes the foreign entity participate and monitor the way in which the foreign funds are used; and secondly, with ban on certain routes like ECBs/FCCBs/ADRs/GDRs makes FDI scheme the best possible route for foreign investors to invest in this sector.

However, deterrent in the FDI Policy as demonstrated in this article have to be catered if at all the FDI route has to continue being the captivating mode of investment for foreign investors. Secondly, local laws and approval mechanisms have to get a revamp because

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improvements in the FDI Policy will be of no avail if the foreign investor is faced with hurdles in the implementation of the projects undertaken under the FDI Policy.

The market presents lands of opportunity for foreign investors, but for those wanting to enter; they should proceed with caution and take time to fully understand the risk involved. Finally, inch by inch measures may not give the desired effect and a more proactive approach may actually pave way for higher investments into India and the recommendations made in this article have to be brought into effect soon if at all the objective of the liberalized FDI Policy for real estate development has to be achieved.

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